



Legislative Bulletin.....July 11, 2012

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H.R. 4402 - National Strategic and Critical Minerals Production Act of 2012

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Order of Business: The legislation is scheduled to be considered as soon as July 11, 2012, under a rule. The Rules Committee is expected to meet July 10, 2012, to determine a rule for the legislation.

Summary: H.R. 4420 directs that domestic mines that provide strategic and critical minerals shall be considered as an “infrastructure project” as described in President Obama’s Executive Order 13604, titled “Improving Performance of Federal Permitting and Review of Infrastructure Projects.”¹

The legislation directs the lead agency (federal, state, local, tribal, or Alaska Native Corporation) that is responsible for issuing a mining permit to designate a project lead to coordinate with other agencies to ensure that agencies:

- Minimize delays;
- Set and adhere to timelines and schedulers for completion of review;
- Set clear permitting goals; and
- Track progress against those goals.

The legislation provides for some relief from the National Environmental Policy Act if the lead agency has procedural and substantive safeguards built into their permitting process to ensure that environmental safeguards are taken into account.

The lead agency is directed to enhance government coordination on permitting and review by avoiding duplicative review, minimizing paperwork, and engaging in other agencies and stakeholders early during the process. The lead agency shall consider the following best practices:

- Deferring to and relying upon baseline data, analysis and reviews preformed by state agencies with jurisdiction over the proposed project.
- Conducting reviews concurrently rather than sequentially to the extent practicable and when such concurrent review will expedite rather than delay a decision.

¹ <http://www.gpo.gov/fdsys/pkg/FR-2012-03-28/pdf/2012-7636.pdf>

The legislation directs the lead agency to, when requested by a project proponent, enter into an agreement with the project proponent and other cooperating agencies that sets time limits for each part of the permit review process including the following:

1. The decision on whether to prepare a document required under the National Environmental Policy Act of 1969.
2. A determination of the scope of any document required under the National Environmental Policy Act of 1969.
3. The scope of and schedule for the baseline studies required to prepare a document required under the National Environmental Policy Act of 1969.
4. Preparation of any draft document required under the National Environmental Policy Act of 1969.
5. Preparation of a final document required under the National Environmental Policy Act of 1969.
6. Consultations required under applicable laws.
7. Submission and review of any comments required under applicable law.
8. Publication of any public notices required under applicable law.
9. A final or any interim decisions.

The legislation states that in no case should the above review process exceed 30 months unless it is agreed by the signatories of the agreement. H.R. 4402 does not require the lead agency to address agency or public comments that were not submitted during the public comment periods. While developing the minerals, it shall be the priority of the lead agency to maximize the development of the mineral, while mitigating environmental impacts.

H.R. 4402 also sets a 60 day time limit to file a legal challenge to a mineral permit. The legislation also directs the court to hear and determine any covered civil action as expeditiously as possible. In a covered civil action, the court is prohibited from granting or approving any prospective relief unless the court finds that the relief is narrowly drawn, and that it extends no further than necessary to correct the violation of a legal requirement.

The legislation prohibits the Equal Access to Justice Act from applying to a covered civil action. The legislation also prohibits any party from receiving payment from the federal government for their attorneys' fees, expenses, and other court costs.

Additional Information: The legislation addresses permitting timelines for mineral exploration and development. Permitting timelines are the most significant roadblock to mineral exploration. In the 2012 Ranking of Countries for Mining Investment², the U.S. tied with Papua New Guinea as last out of major mining countries due to permitting delays.

Committee Action: H.R. 4402 was introduced on April 19, 2012, and was referred to the House Natural Resources Subcommittee on Energy and Mineral Resources, as well as the House Judiciary Subcommittee on Courts, Commercial and Administrative Law. The Natural Resources Subcommittee discharged the legislation by unanimous consent. On May 16, 2012, the full committee held a markup and agreed to the legislation by a [roll call vote of 24-12](#).

² <http://www.dolbear.com/news-resources/documents>

Administration Position: No Statement of Administration Policy is available.

Cost to Taxpayers: CBO estimates that implementing H.R. 4402 would have no significant impact on the federal budget. CBO's score can be [found here](#).

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Bill Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: The legislation does not contain earmarks, limited tax benefits or limited tariff benefits.

Constitutional Authority: Rep. Amodei states "Congress has the power to enact this legislation pursuant to the following: Article IV, Section 3, Clause 2 of the Constitution." The statement can be [viewed here](#).

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