

AMENDMENT NO. _____ Calendar No. _____

Purpose: To provide for American critical mineral independence.

IN THE SENATE OF THE UNITED STATES—117th Cong., 1st Sess.

S. _____

To invest in the energy and outdoor infrastructure of the United States to deploy new and innovative technologies, update existing infrastructure to be reliable and resilient, and secure energy infrastructure against physical and cyber threats, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. Barrasso

Viz:

1 At the end, add the following:

2 **TITLE XII—MISCELLANEOUS**

3 **SEC. 12001. AMERICAN CRITICAL MINERAL INDEPEND-**

4 **ENCE.**

5 (a) DEFINITIONS.—In this section:

6 (1) BYPRODUCT.—The term “byproduct” has
7 the meaning given the term in section 7002(a) of the
8 Energy Act of 2020 (30 U.S.C. 1606(a)).

9 (2) CRITICAL MINERAL.—The term “critical
10 mineral” has the meaning given the term in section

1 7002(a) of the Energy Act of 2020 (30 U.S.C.
2 1606(a)), except that the term shall not exclude ma-
3 terials described in paragraph (3)(B)(iii) of that sec-
4 tion.

5 (3) CRITICAL MINERAL PROJECT.—The term
6 “critical mineral project” means a project—

7 (A) located on—

8 (i) a mining claim, millsite claim, or
9 tunnel site claim for any locatable mineral;

10 (ii) land open to mineral entry; or

11 (iii) a Federal mineral lease; and

12 (B) for the purpose of producing a critical
13 mineral, including—

14 (i) as a byproduct, or a product of a
15 host mineral, or from tailings; or

16 (ii) through an exploration project
17 with respect to which the presence of a by-
18 product is a reasonable expectation, based
19 on known mineral companionship, geologic
20 formation, mineralogy, or other factors.

21 (4) LEAD AGENCY.—The term “lead agency”
22 means the agency with primary responsibility for
23 issuing a mineral exploration or mine permit for a
24 project.

1 (5) MINERAL EXPLORATION OR MINE PER-
2 MIT.—The term “mineral exploration or mine per-
3 mit” means—

4 (A) an authorization of the Bureau of
5 Land Management or the Forest Service, as ap-
6 plicable, for a premining activity that requires
7 analysis under the National Environmental Pol-
8 icy Act of 1969 (42 U.S.C. 4321 et seq.);

9 (B) a plan of operations issued by the Bu-
10 reau of Land Management or the Forest Serv-
11 ice; and

12 (C) a permit for a project located in an
13 area for which a hardrock mineral permit or
14 lease is available.

15 (6) STATE.—The term “State” means—

16 (A) a State;

17 (B) the District of Columbia;

18 (C) the Commonwealth of Puerto Rico;

19 (D) Guam;

20 (E) American Samoa;

21 (F) the Commonwealth of the Northern
22 Mariana Islands; and

23 (G) the United States Virgin Islands.

24 (b) IMPROVING DOMESTIC PERMITTING PROC-
25 ESSES.—

1 (1) IN GENERAL.—Notwithstanding any other
2 provision of law, and except with agreement of the
3 project sponsor, the total period for all necessary
4 Federal reviews and permit consideration for a crit-
5 ical mineral project on Federal land reasonably ex-
6 pected to produce critical minerals may not exceed—

7 (A) with respect to a project that requires
8 an environmental assessment under section
9 102(2)(C) of the National Environmental Policy
10 Act of 1969 (42 U.S.C. 4332(2)(C)), 18
11 months; or

12 (B) with respect to a project that requires
13 an environmental impact statement under that
14 section, 24 months.

15 (2) DETERMINATION UNDER NATIONAL ENVI-
16 RONMENTAL POLICY ACT.—

17 (A) IN GENERAL.—To the extent that the
18 National Environmental Policy Act of 1969 (42
19 U.S.C. 4321 et seq.) applies to the issuance of
20 any mineral exploration or mine permit relating
21 to a critical mineral project, the lead agency
22 may deem the requirements of that Act to be
23 satisfied if the lead agency determines that a
24 State or Federal agency acting under State or
25 Federal law has addressed the following factors:

1 (i) The environmental impact of the
2 action to be conducted under the permit.

3 (ii) Possible alternatives to issuance of
4 the permit.

5 (iii) The relationship between long-
6 and short-term uses of the local environ-
7 ment and the maintenance and enhance-
8 ment of long-term productivity.

9 (iv) Any irreversible and irretrievable
10 commitment of resources that would be in-
11 volved in the proposed action.

12 (B) PUBLICATION.—The lead agency shall
13 publish a determination under subparagraph
14 (A) not later than 90 days after receipt of an
15 application for the permit.

16 (C) VERIFICATION.—The lead agency shall
17 publish a determination that the factors under
18 subparagraph (A) have been sufficiently ad-
19 dressed and public participation has occurred
20 with regard to any authorizing actions before
21 issuing any mineral exploration or mine permit
22 for a critical mineral project.

23 (3) SCHEDULE FOR PERMITTING PROCESS.—

24 For any critical mineral project for which the lead
25 agency cannot make the determination described in

1 paragraph (2)(A), at the request of a project spon-
2 sor, the lead agency, cooperating agencies, and any
3 other agencies involved with the mineral exploration
4 or mine permitting process shall enter into an agree-
5 ment with the project sponsor that sets time limits
6 for each part of the permitting process, including—

7 (A) the decision on whether to prepare an
8 environmental impact statement or similar anal-
9 ysis required under the National Environmental
10 Policy Act of 1969 (42 U.S.C. 4321 et seq.);

11 (B) a determination of the scope of any en-
12 vironmental impact statement or similar anal-
13 ysis required under that Act;

14 (C) the scope of, and schedule for, the
15 baseline studies required to prepare an environ-
16 mental impact statement or similar analysis re-
17 quired under that Act;

18 (D) preparation of any draft environmental
19 impact statement or similar analysis required
20 under that Act;

21 (E) preparation of a final environmental
22 impact statement or similar analysis required
23 under that Act;

24 (F) any consultations required under appli-
25 cable law;

1 (G) submission and review of any com-
2 ments required under applicable law;

3 (H) publication of any public notices re-
4 quired under applicable law; and

5 (I) any final or interim decisions.

6 (4) CONSIDERATIONS.—In carrying out this
7 subsection, the lead agency shall consider deferring
8 to, and relying on, baseline data, analyses, and re-
9 views performed by State agencies with jurisdiction
10 over the proposed critical mineral project.

11 (5) MEMORANDUM OF AGREEMENT.—The lead
12 agency with respect to a critical mineral project on
13 Federal land, in consultation with any other Federal
14 agency with jurisdiction over the critical mineral
15 project, shall, on request of the project sponsor, a
16 State or local government, an Indian Tribe, or an-
17 other entity the lead agency determines appropriate,
18 establish a memorandum of agreement with the
19 project sponsor, a State or local government, an In-
20 dian Tribe, or another entity the lead agency deter-
21 mines appropriate to carry out the activities de-
22 scribed in this subsection.

23 (6) ADDRESSING PUBLIC COMMENTS.—As part
24 of the review process of a critical mineral project
25 under the National Environmental Policy Act of

1 1969 (42 U.S.C. 4321 et seq.), the lead agency may
2 not address any agency or public comments that
3 were not submitted—

4 (A) during a public comment period or
5 consultation period provided during the permit-
6 ting process; or

7 (B) as otherwise required by law.