

115TH CONGRESS
1ST SESSION

H. R. 1407

To establish a strategic materials investment fund, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 7, 2017

Mr. HUNTER introduced the following bill; which was referred to the Committee on Armed Services, and in addition to the Committees on Financial Services, Foreign Affairs, and Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To establish a strategic materials investment fund, and for
other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Materials Essential
5 To American Leadership and Security Act” or the “MET-
6 ALS Act”.

7 **SEC. 2. SENSE OF CONGRESS ON DOMESTIC PRODUCTION**
8 **OF RARE EARTH ELEMENTS.**

9 (a) FINDINGS.—Congress finds the following:

1 (1) In the wake of increased tension between
2 the People's Republic of China and the nation of
3 Japan in 2010, the People's Republic of China en-
4 acted a de facto embargo of all rare earth elements
5 which placed the Department of Defense at risk of
6 losing access to materials used in the manufacture
7 of key components of numerous major weapons sys-
8 tems. The potential for the People's Republic of
9 China to suspend exports of rare earth elements to
10 the United States still exists today.

11 (2) In 2015, a major United States corporation,
12 the only major domestic producer of certain rare
13 earth products, filed for bankruptcy after compiling
14 \$1.4 billion in debt. Assets from the company were
15 sold to operators in the People's Republic of China
16 to pay off creditors while the domestic mine and
17 processing plant were shuttered and disassembled.

18 (3) The People's Republic of China currently
19 dominates the supply chain for the production of
20 rare earth elements controlling more than 90 per-
21 cent of the world's production.

22 (4) Rare earth elements are used in a host of
23 advanced defense applications and technologies
24 which would largely be rendered ineffective without
25 these materials.

1 (b) SENSE OF CONGRESS.—It is the sense of Con-
2 gress that—

3 (1) in the interest of national security the
4 United States must develop a domestic industrial
5 base for the production of strategic and critical ma-
6 terials;

7 (2) considering the host of defense-related ap-
8 plications that would be rendered ineffective if
9 United States access to foreign strategic and critical
10 materials was restricted, the United States must en-
11 sure a safe and secure supply chain for strategic and
12 critical materials for defense purposes;

13 (3) given the current supply chain for strategic
14 and critical materials the United States, and specifi-
15 cally the Department of Defense, is at considerable
16 risk for a supply interruption;

17 (4) if it is to divest itself from a dependence on
18 foreign-produced strategic and critical materials, the
19 United States must be willing to accept some risk in
20 the form of aiding domestic investment opportuni-
21 ties;

22 (5) the United States must support the domes-
23 tic production of strategic and critical materials by
24 creating a fund which uses a small percentage, 1
25 percent, of the internal programmatic administration

1 costs of major aircraft and missile weapons systems
2 to promote investment in domestic production of
3 strategic and critical materials;

4 (6) the fund should only leverage those funds
5 used by the Department of Defense for internal pro-
6 grammatic administration costs and should not de-
7 crease quantities to be procured by the Department
8 of Defense;

9 (7) the fund should be managed by the Defense
10 Logistics Agency Strategic Materials;

11 (8) the purpose of the fund should be to provide
12 5-year, interest-free loans to domestic producers of
13 strategic and critical materials in an attempt to re-
14 duce American dependence on foreign sources of
15 these materials and the loans should be paid back to
16 the fund at the termination of the loan period; and

17 (9) in those cases where domestic materials are
18 more expensive than materials available from inter-
19 national sources, often owing to unfair trade and
20 labor practices in foreign countries, the fund should
21 reimburse weapons systems programs for cost in-
22 creases as a result of procuring strategic and critical
23 materials from domestic sources.

1 **SEC. 3. STRATEGIC MATERIALS INVESTMENT FUND.**

2 (a) ESTABLISHMENT.—There is established in the
3 Treasury of the United States a separate fund to be
4 known as the “Strategic Materials Investment Fund” (in
5 this section referred to as the “Fund”). The Fund shall
6 consist of amounts deposited to it under subsection (e).

7 (b) FUND OPERATIONS.—The Secretary of Defense,
8 acting through the Administrator of the Defense Logistics
9 Agency Strategic Materials, may make expenditures from
10 the Fund to develop the domestic strategic and critical
11 materials industrial base, including by—

12 (1) making loans to domestic producers of stra-
13 tegic and critical materials in accordance with sub-
14 section (c) for the purposes of—

15 (A) constructing, upgrading, and operating
16 facilities inside the United States for the smelt-
17 ing, sintering, leaching, processing, separation,
18 beneficiation, or production of strategic and
19 critical materials; and

20 (B) developing new technologies for the
21 more efficient smelting, sintering, leaching,
22 processing, separation, beneficiation, or produc-
23 tion of strategic and critical materials; and

24 (2) reimbursing original equipment manufactur-
25 ers in accordance with subsection (d).

26 (c) LOANS TO DOMESTIC PRODUCERS.—

1 (1) IN GENERAL.—Amounts from the Fund
2 may be used to make loans to domestic producers of
3 strategic and critical materials for the purposes de-
4 scribed in subparagraphs (A) and (B) of subsection
5 (b)(1).

6 (2) ELIGIBILITY.—A domestic producer of stra-
7 tegic and critical materials shall not be eligible to re-
8 ceive a loan from the Fund if such producer—

9 (A) is carrying out an activity described in
10 subsection (f);

11 (B) has a history of financial insolvency or
12 bankruptcy; or

13 (C) is controlled by or acting on behalf of
14 the People’s Republic of China or the Russian
15 Federation.

16 (3) LOAN TERMS.—

17 (A) INTEREST.—Interest shall not accrue
18 on any loan made under paragraph (1).

19 (B) REPAYMENT.—

20 (i) REPAYMENT REQUIRED.—Not
21 later than 5 years after receiving a loan
22 under paragraph (1), the recipient of the
23 loan shall repay the full amount of the
24 loan—

25 (I) to the Fund; or

1 (II) if the Fund has terminated
2 under subsection (h), to the Treasury
3 of the United States

4 (ii) PENALTY.—If a recipient does not
5 repay the full amount of the loan in the
6 time period described in clause (i), the re-
7 cipient—

8 (I) shall not be eligible to receive
9 additional disbursements from the
10 Fund; and

11 (II) shall be liable to the United
12 States for the full amount of the loan
13 plus a penalty in an amount equal to
14 50 percent of the amount of the loan.

15 (C) PROHIBITION ON TRANSFER TO FOR-
16 EIGN ENTITY.—

17 (i) PROHIBITION ON TRANSFER.—A
18 recipient of a loan from the Fund shall not
19 transfer to a foreign government or an en-
20 tity controlled by or acting on behalf of a
21 foreign government, any interest in—

22 (I) any facilities constructed, up-
23 graded, or operated by the recipient;
24 or

1 (II) any new technologies devel-
2 oped by the recipient for the more ef-
3 ficient smelting, sintering, leaching,
4 processing, separation, benefaction, or
5 production of strategic and critical
6 materials.

7 (ii) PENALTY.—If the recipient of a
8 loan from the Fund makes a transfer pro-
9 hibited under clause (i), the recipient shall
10 be liable to the United States for the full
11 amount of the loan plus a penalty in an
12 amount equal to 500 percent of the
13 amount of the loan.

14 (d) REIMBURSEMENT OF ORIGINAL EQUIPMENT
15 MANUFACTURERS.—

16 (1) IN GENERAL.—Subject to paragraph (2),
17 amounts from the Fund may be used to reimburse
18 original equipment manufacturers for the increased
19 costs that result from such manufacturers pur-
20 chasing strategic and critical materials produced in
21 the United States from producers that have received
22 disbursements from the Fund.

23 (2) LIMITATIONS.—

24 (A) LIMITATION ON AMOUNTS AVAILABLE
25 FOR REIMBURSEMENT.—Not more than 50 per-

cent of the amounts deposited in the Fund for a fiscal year shall be available for reimbursing original equipment manufacturers under paragraph (1) in such fiscal year.

(B) LIMITATION ON REIMBURSEMENT OF EXCESSIVE COSTS.—Excessive costs, as determined by the senior acquisition executive for the program concerned, shall not be reimbursed under paragraph (1).

(e) DEPOSITS TO FUND.—

(1) IN GENERAL.—Except as provided in paragraph (2), for each of fiscal years 2018 through 2023, one tenth of one percent of the amounts appropriated for covered programs shall be deposited to the Fund. Such deposits shall be taken from amounts allocated for the internal administration of the covered programs and shall not reduce the quantities of items procured under the programs.

(2) EXCEPTION.—

(A) CERTIFICATION.—The requirement under paragraph (1) shall not apply to a covered program if the prime contractor for such program certifies to the senior acquisition executive concerned that no strategic or critical materials from the People's Republic of China or

1 the Russian Federation are included in the final
2 item delivered to the Government or in any
3 component thereof.

4 (B) SUPPORTING DOCUMENTS.—Not later
5 than 30 days after a prime contractor makes a
6 certification under subparagraph (A), the senior
7 acquisition executive concerned may require the
8 prime contractor to provide supporting docu-
9 ments verifying that the final item delivered to
10 the Government meets the requirements of such
11 subparagraph.

12 (C) CIVIL PENALTY.—A prime contractor
13 who makes a false certification under this para-
14 graph shall be subject to a civil fine of not more
15 than 1 percent of the value of the contract con-
16 cerned.

17 (f) PROHIBITED USES OF FUNDS.—No amount may
18 be expended from the Fund—

19 (1) to develop technologies that would decrease
20 the capacity of the domestic industrial base for stra-
21 tegic and critical materials; or

22 (2) to redesign technologies to reduce the use of
23 strategic and critical materials in such technologies.

24 (g) DEFINITIONS.—In this section:

1 (1) COVERED PROGRAMS.—The term “covered
2 programs” means all major defense acquisition pro-
3 grams (as that term is defined in section 2430 of
4 title 10, United States Code) for the development or
5 procurement of aircraft or missiles.

6 (2) ORIGINAL EQUIPMENT MANUFACTURER.—
7 The term “original equipment manufacturer” means
8 a contractor or subcontractor in the supply chain
9 that integrates strategic and critical materials into a
10 component used in a product that is sold to the Fed-
11 eral Government.

12 (3) STRATEGIC AND CRITICAL MATERIALS.—
13 The term “strategic and critical materials” means—

14 (A) the lanthanide elements, yttrium, and
15 scandium;

16 (B) titanium and titanium alloys;

17 (C) magnesium;

18 (D) antimony;

19 (E) tungsten;

20 (F) uranium;

21 (G) tantalum;

22 (H) fluorspar;

23 (I) lithium;

24 (J) strontium;

25 (K) vanadium;

1 (L) steel—

2 (i) with a maximum alloy content ex-
3 ceeding one or more of the following limits:

4 (I) manganese, 1.65 percent;

5 (II) silicon, 0.60 percent; or

6 (III) copper, 0.60 percent; or

7 (ii) containing more than 0.25 percent
8 of any of the following elements: alu-
9 minum, chromium, cobalt, columbium, mo-
10 lybdenum, nickel, titanium, tungsten, or
11 vanadium;

12 (M) zirconium and zirconium base alloys;

13 (N) metal alloys consisting of nickel, iron-
14 nickel, and cobalt base alloys containing a total
15 of other alloying metals (except iron) in excess
16 of 10 percent;

17 (O) thorium; and

18 (P) any other materials determined to be
19 materials critical to national security by the
20 Strategic Materials Protection Board estab-
21 lished under section 187 of title 10, United
22 States Code.

23 (h) SUNSET.—The Fund shall terminate on Sep-
24 tember 30, 2023, and any amounts remaining in the Fund

1 on such date shall be deposited in the Treasury of the
2 United States.

3 **SEC. 4. NUCLEAR REACTORS ASSESSMENT.**

4 (a) FINDING.—Congress finds that section 1012 of
5 the National Defense Authorization Act for 2008 (Public
6 Law 110–181; 122 Stat. 303) required that the United
7 States construct all major combatant vessels of the strike
8 forces of the Navy with integrated nuclear power systems.

9 (b) ASSESSMENT.—The Secretary of Defense, in con-
10 sultation with the Secretary of Energy, shall assess the
11 ability of thorium-fueled nuclear reactors to meet the
12 power generation needs of the Navy.

13 (c) ELEMENTS.—The assessment under subsection
14 (b) shall include—

15 (1) an identification of the benefits to naval op-
16 erations of incorporating thorium-liquid-fueled nu-
17 clear reactors or uranium reactors into a range of
18 naval vessels (including major surface combatants
19 and conventionally fueled ships), including identifica-
20 tion of any such benefits with respect to—

21 (A) fuel cycle, from mining of fuel to dis-
22 posal of fuel waste;

23 (B) security of the fuel supply;

24 (C) power needs for advanced weapons and
25 sensors;

1 (D) safety and operations, waste handling
2 and disposal, and proliferation issues compared
3 to uranium reactors;

4 (E) refueling and logistics;

5 (F) ship upgrades and retrofitting;

6 (G) manning levels;

7 (H) global range at flank speed, greater
8 forward presence, and extended combat oper-
9 ations;

10 (I) power for advanced sensors and weap-
11 ons, including electromagnetic guns and lasers;

12 (J) survivability due to increased perform-
13 ance and reduced signatures;

14 (K) high-power density propulsion;

15 (L) operational tempo;

16 (M) operational effectiveness; and

17 (N) estimated cost effectiveness; and

18 (2) an analysis of the domestic supply chain of
19 thorium, including a description of—

20 (A) domestic reserves;

21 (B) operational mines;

22 (C) separation and refinement capabilities;

23 and

1 (D) the ability for the domestic supply
2 chain to meet the requirements of the Depart-
3 ment of Defense for thorium.

4 (d) SUBMISSION TO CONGRESS.—Not later than De-
5 cember 31, 2020, the Secretary of Defense shall submit
6 to the congressional defense committees a report on the
7 results of the assessment under subsection (b).

8 (e) CONGRESSIONAL DEFENSE COMMITTEES DE-
9 FINED.—In this Act, the term “congressional defense
10 committees” has the meaning given that term in section
11 101(a)(16) of title 10, United States Code.

12 **SEC. 5. LIMITATION ON AMMONIUM PERCHLORATE FROM**
13 **FOREIGN SOURCES.**

14 (a) LIMITATION.—Beginning not later than 180 days
15 after the date of the enactment of this Act, the Secretary
16 of Defense shall ensure that any covered ammonium per-
17 chlorate is obtained from sources inside the United States.

18 (b) COVERED AMMONIUM PERCHLORATE.—

19 (1) Except as provided in paragraph (2), the
20 term “covered ammonium perchlorate” means any
21 ammonium perchlorate (or any sodium perchlorate
22 used as a precursor to ammonium perchlorate)
23 that—

24 (A) is incorporated into any item procured
25 by the Department of Defense; or

1 (B) is used to launch a national security
2 payload into space.

3 (2) The term does not include ammonium per-
4 chlorate obtained from sources outside the United
5 States for use in an air-to-air missile program and
6 qualified for such use as of the date of the enact-
7 ment of this Act.

8 (c) WAIVER.—The Secretary of Defense may waive
9 the limitation in subsection (a) if the Secretary makes a
10 determination in writing that obtaining covered ammo-
11 nium perchlorate from sources outside the United States
12 is in the national security interests of the United States.

13 **SEC. 6. PROHIBITION ON SALE OF DOMESTIC RARE EARTH**
14 **MINES.**

15 (a) PROHIBITION.—The Committee on Foreign In-
16 vestment in the United States shall not approve any for-
17 eign government-controlled transaction relating to a do-
18 mestic rare earth facility if a party to such transaction
19 is controlled by or acting on behalf of—

20 (1) the People’s Republic of China; or

21 (2) the Russian Federation.

22 (b) CERTIFICATION.—Before approving a foreign
23 government-controlled transaction relating to a domestic
24 rare earth facility, the Committee shall submit to Congress
25 a written certification that the transaction—

1 (1) does not violate the prohibition under sub-
2 section (a); and

3 (2) will not compromise the national security of
4 the United States.

5 (c) DEFINITIONS.—In this section:

6 (1) The term “Committee on Foreign Invest-
7 ment in the United States” means the committee es-
8 tablished under section 721(k) of the Defense Pro-
9 duction Act of 1950 (50 U.S.C. 4565(k)).

10 (2) The term “domestic rare earth facility”
11 means any facility inside the United States at which
12 rare earth elements are mined, produced, or proc-
13 essed, regardless of whether such facility is oper-
14 ational.

15 (3) The term “foreign government-controlled
16 transaction” has the meaning given the term in sec-
17 tion 721(a) of the Defense Production Act of 1950
18 (50 U.S.C. 4565(a)).

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