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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

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A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Materials Essential To American Leadership and Security Act'' or the ''METALS Act''.

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

(a) FINDINGS.—Congress finds the following:

(1) In the wake of increased tension between the People's Republic of China and the nation of Japan in 2010, the People's Republic of China enacted a de facto embargo of all rare earth elements which placed the Department of Defense at risk of losing access to materials used in the manufacture of key components of numerous major weapons systems. The potential for the People's Republic of China to suspend exports of rare earth elements to the United States still exists today.

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

(3) The People's Republic of China currently dominates the supply chain for the production of rare earth elements controlling more than 90 percent of the world's production.

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

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) in the interest of national security the United States must develop a domestic industrial base for the production of strategic and critical materials;

(2) considering the host of defense-related applications that would be rendered ineffective if United States access to foreign strategic and critical materials was restricted, the United States must ensure a safe and secure supply chain for strategic and critical materials for defense purposes;

(3) given the current supply chain for strategic and critical materials the United States, and specifically the Department of Defense, is at considerable risk for a supply interruption;

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

(5) the United States must support the domestic production of strategic and critical materials by creating a fund which uses a small percentage, 1 percent, of the internal programmatic administration

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

(6) the fund should only leverage those funds used by the Department of Defense for internal programmatic administration costs and should not decrease quantities to be procured by the Department of Defense;

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

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

(9) in those cases where domestic materials are more expensive than materials available from international sources, often owing to unfair trade and labor practices in foreign countries, the fund should reimburse weapons systems programs for cost increases as a result of procuring strategic and critical materials from domestic sources.

SEC. 3. STRATEGIC MATERIALS INVESTMENT FUND.

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

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

(1) making loans to domestic producers of strategic and critical materials in accordance with subsection (c) for the purposes of—

(A) constructing, upgrading, and operating facilities inside the United States for the smelting, sintering, leaching, processing, separation, beneficiation, or production of strategic and critical materials; and

(B) developing new technologies for the more efficient smelting, sintering, leaching, processing, separation, beneficiation, or production of strategic and critical materials; and

(2) reimbursing original equipment manufacturers in accordance with subsection (d).

(c) LOANS TO DOMESTIC PRODUCERS.—

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

(2) ELIGIBILITY.—A domestic producer of strategic and critical materials shall not be eligible to receive a loan from the Fund if such producer—

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

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

(C) is controlled by or acting on behalf of the People's Republic of China or the Russian Federation.

(3) LOAN TERMS.—

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

(B) REPAYMENT.—

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

(I) to the Fund; or

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

(ii) PENALTY.—If a recipient does not repay the full amount of the loan in the time period described in clause (i), the recipient—

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

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

(C) PROHIBITION ON TRANSFER TO FOREIGN ENTITY.—

(i) PROHIBITION ON TRANSFER.—A recipient of a loan from the Fund shall not transfer to a foreign government or an entity controlled by or acting on behalf of a foreign government, any interest in—

(I) any facilities constructed, upgraded, or operated by the recipient; or

(II) any new technologies developed by the recipient for the more efficient smelting, sintering, leaching, processing, separation, benefaction, or production of strategic and critical materials.

(ii) PENALTY.—If the recipient of a loan from the Fund makes a transfer prohibited under clause (i), the recipient shall be liable to the United States for the full amount of the loan plus a penalty in an amount equal to 500 percent of the amount of the loan.

(d) REIMBURSEMENT OF ORIGINAL EQUIPMENT MANUFACTURERS.—

(1) IN GENERAL.—Subject to paragraph (2), amounts from the Fund may be used to reimburse original equipment manufacturers for the increased costs that result from such manufacturers purchasing strategic and critical materials produced in the United States from producers that have received disbursements from the Fund.

(2) LIMITATIONS.—

(A) LIMITATION ON AMOUNTS AVAILABLE 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

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

(B) SUPPORTING DOCUMENTS.—Not later than 30 days after a prime contractor makes a certification under subparagraph (A), the senior acquisition executive concerned may require the prime contractor to provide supporting documents verifying that the final item delivered to the Government meets the requirements of such subparagraph.

(C) CIVIL PENALTY.—A prime contractor who makes a false certification under this paragraph shall be subject to a civil fine of not more than 1 percent of the value of the contract concerned.

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

(1) to develop technologies that would decrease the capacity of the domestic industrial base for strategic and critical materials; or

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

(g) DEFINITIONS.—In this section:

(1) COVERED PROGRAMS.—The term ''covered programs'' means all major defense acquisition programs (as that term is defined in section 2430 of title 10, United States Code) for the development or procurement of aircraft or missiles.

(2) ORIGINAL EQUIPMENT MANUFACTURER.—The term ''original equipment manufacturer'' means a contractor or subcontractor in the supply chain that integrates strategic and critical materials into a component used in a product that is sold to the Federal Government.

(3) STRATEGIC AND CRITICAL MATERIALS.—The term ''strategic and critical materials'' means—

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

(B) titanium and titanium alloys;

(C) magnesium;

(D) antimony;

(E) tungsten;

(F) uranium;

(G) tantalum;

(H) fluorspar;

(I) lithium;

(J) strontium;

(K) vanadium;

(L) steel—

(i) with a maximum alloy content exceeding one or more of the following limits:

(I) manganese, 1.65 percent;

(II) silicon, 0.60 percent; or

(III) copper, 0.60 percent; or

(ii) containing more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium;

(M) zirconium and zirconium base alloys;

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

(O) thorium; and

(P) any other materials determined to be materials critical to national security by the Strategic Materials Protection Board established under section 187 of title 10, United States Code.

(h) SUNSET.—The Fund shall terminate on September 30, 2023, and any amounts remaining in the Fund

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

SEC. 4. NUCLEAR REACTORS ASSESSMENT.

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

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

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

(1) an identification of the benefits to naval operations of incorporating thorium-liquid-fueled nuclear reactors or uranium reactors into a range of naval vessels (including major surface combatants and conventionally fueled ships), including identification of any such benefits with respect to—

(A) fuel cycle, from mining of fuel to disposal of fuel waste;

(B) security of the fuel supply;

(C) power needs for advanced weapons and sensors;

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

(E) refueling and logistics;

(F) ship upgrades and retrofitting;

(G) manning levels;

(H) global range at flank speed, greater forward presence, and extended combat operations;

(I) power for advanced sensors and weapons, including electromagnetic guns and lasers;

(J) survivability due to increased performance and reduced signatures;

(K) high-power density propulsion;

(L) operational tempo;

(M) operational effectiveness; and

(N) estimated cost effectiveness; and

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

(A) domestic reserves;

(B) operational mines;

(C) separation and refinement capabilities; and

(D) the ability for the domestic supply chain to meet the requirements of the Department of Defense for thorium.

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

(e) CONGRESSIONAL DEFENSE COMMITTEES DEFINED.—In this Act, the term ''congressional defense committees'' has the meaning given that term in section 101(a)(16) of title 10, United States Code.

SEC. 5. LIMITATION ON AMMONIUM PERCHLORATE FROM FOREIGN SOURCES.

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

(b) COVERED AMMONIUM PERCHLORATE.—

(1) Except as provided in paragraph (2), the term ''covered ammonium perchlorate'' means any ammonium perchlorate (or any sodium perchlorate used as a precursor to ammonium perchlorate) that—

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

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

(2) The term does not include ammonium perchlorate obtained from sources outside the United States for use in an air-to-air missile program and qualified for such use as of the date of the enactment of this Act.

(c) WAIVER.—The Secretary of Defense may waive the limitation in subsection (a) if the Secretary makes a determination in writing that obtaining covered ammonium perchlorate from sources outside the United States is in the national security interests of the United States.

SEC. 6. PROHIBITION ON SALE OF DOMESTIC RARE EARTH MINES.

(a) PROHIBITION.—The Committee on Foreign Investment in the United States shall not approve any foreign government-controlled transaction relating to a domestic rare earth facility if a party to such transaction is controlled by or acting on behalf of—

(1) the People's Republic of China; or

(2) the Russian Federation.

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

(1) does not violate the prohibition under subsection (a); and

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

(c) DEFINITIONS.—In this section:

(1) The term ''Committee on Foreign Investment in the United States'' means the committee established under section 721(k) of the Defense Production Act of 1950 (50 U.S.C. 4565(k)).

(2) The term ''domestic rare earth facility'' means any facility inside the United States at which rare earth elements are mined, produced, or processed, regardless of whether such facility is operational.

(3) The term ''foreign government-controlled transaction'' has the meaning given the term in section 721(a) of the Defense Production Act of 1950 (50 U.S.C. 4565(a)).

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