



---

**Legislative Bulletin..... November 1, 2007**

**Contents:**

**H.R. 2262—Hardrock Mining and Reclamation Act of 2007**

---

**Summary of the Bills Under Consideration Today:**

**Total Number of New Government Programs:** 1

**Total Cost of Discretionary Authorizations:** \$16 million in FY 2008 and \$267 million over the FY 2008 – FY 2012 period.

**Effect on Revenue:** \$160 million increase over the 2009 – 2012 period recorded as offsetting receipts.

**Total Change in Mandatory Spending:** Reduced by \$10 million in FY 2008 and \$206 million over the FY 2008 – 2012 period.

**Total New State & Local Government Mandates:** 0

**Total New Private Sector Mandates:** 2

**Number of Bills Without Committee Reports:** 0

**Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority:** 1

---

**H.R. 2262—Hardrock Mining and Reclamation Act of 2007**  
***(Rep. Rahall, D-WV)***

**Order of Business:** H.R. 2262 is scheduled to be considered Thursday, November 1, 2007, subject to a structured rule ([H.Res. 780](#)) that allows for ten minutes of debate on seven amendments made in order. The rule would waive all points of order against consideration of the bill—except those for PAYGO and earmarks—and would waive all points of order against the bill itself—except that for earmarks. The rule would make in

order one motion to recommit (with or without instructions). A summary of the amendments made in order under the rule is forthcoming.

**Summary:** H.R. 2262 would amend the Mining Law of 1872 to, among other things, prohibit mining claim holders on federal land from purchasing their mining operations, impose royalties on new and existing mining claim holders, and require new claim recipients to obtain federal permits before conducting mining activities. The main provisions of the bill are as follows:

### **Title I—Mineral Exploration and Development**

#### *Limitation on Patents*

- Prohibits the issuance of patents for mining claims unless the claim a patent application was filed prior to September 30, 1994. **Without patents for mining claims, claimholders and mining companies may not purchase federal land where their mines are located.**

#### *Mining Royalties*

- **Requires new mines to pay the federal government a royalty fee equal to 8% of the gross income of each mine. This would be the highest royalty fee on new mining operations in the world.**
- **Requires that existing mines pay the federal government a retroactive royalty fee equal to 4% of the gross income of each mine.**
- Allows the Secretary of Interior to change interest on unpaid royalties and assess penalties for underreporting of royalties owed.
- Stipulates that two-thirds of funds collected in this section would go to the Hardrock Reclamation Account (HRA) and one-third would go to the Hardrock Community Impact Assistance Account (HCIAA), both of which are established in this Act.

#### *Hardrock Mining Claim Maintenance Fee*

- Requires mining claim holders that own more than ten unpatented mines on federal land to pay a claim maintenance fee of \$150 per year. This would be the third highest claim maintenance fee in the world.
- Stipulates that failure to pay the annual maintenance fee will result in forfeiture of the claim to the mine.
- Requires that the fee be adjusted for inflation every five years.
- Stipulates that prompt payment of the claim maintenance fee **does not** mean that the claim holder has a right to conduct mining activities on the land. The claim

holder must first obtain the proper permit under this Act to conduct any mining activities.

## **Title II—Protection of Special Places**

### *Lands Open to Location*

- Prohibits mining in Wilderness study areas, areas of “critical environmental concern,” areas designated in the National Wild and Scenic Rivers Act, and U.S. Forest Service roadless areas.
- Allows any state, local, or tribal government submit a petition of the Secretary to withdraw a tract of land from mining eligibility. The secretary would be required to make a final decision on the status of the land within 180 days.

## **Title III—Environmental Consideration of Mineral Exploration and Development**

### *Standard for Hardrock Mining of Federal Lands*

- Requires the secretary to ensure that mining activities on federal land do not cause “undue degradation” and allows the secretary to prohibit mining activities if it is determined that undue degradation would occur. The definition of “undue degradation” is expanded in this Act to mean “irreparable harm to significant scientific, cultural, or environmental resources on public lands that cannot be effectively mitigated.”

### *Environmental Permits*

- Requires individuals engaging in mining activities that may cause turbulence to surface resources to obtain a special permit through the Department of Interior or, when possible, the Department of Agriculture.

### *Exploration Permits*

- Allows a claim holder to apply for a permit to explore and remove minerals from the claim in amounts needed for analysis, study and testing, but not for sale.
- Requires that a permit application submitted by a claim holder must meet Department of Interior guidelines and must include a reclamation plan.
- Requires that the secretary approve the exploration permit unless it is determined that:
  - a) the application and/or reclamation plan is not complete or accurate;
  - b) the applicant does not demonstrate that the reclamation plan can be completed;
  - c) the condition of the land following the exploration and reclamation would not conform to the area’s land use plan;
  - d) the area of the exploration is excluded from mining in this Act;
  - e) the application demonstrates that the exploration plan does not conform with applicable federal and state laws;

- f) the applicant fails to show sufficient financial resources to finance the project and reclamation; and
- g) the applicant has violated environmental provisions of the law.

#### *Operations Permit*

- Allows a claim holder to submit an application, including site data, operations plans, reclamation plans, long-term maintenance plans, and assurances of compliance with environmental laws, for a permit to conduct mining operations on federal lands.
- Requires that the secretary approve the mining operations permit if the applicant fully meets all of the following requirements:
  - a) the permit application is complete, accurate, and sufficient for developing a good understanding of the anticipated impacts of the activity;
  - b) the applicant has demonstrated that the plan can be accomplished by the applicant and will not cause undue degradation;
  - c) the condition of the land after the final reclamation will conform to the applicable land use plan;
  - d) the area subject to the plan is open to the types of mining proposed;
  - e) the operation has been designed to prevent damage to the hydrologic balance outside the permit area;
  - f) the applicant shows sufficient financial resources to finance the project and reclamation;
  - g) neither the applicant or operator has previously violated environmental provisions of the law; and
  - h) the plan demonstrates that ten years after the mine closure no treatment of ground or surface water for carcinogens will be needed.
- Stipulates that permits would expire in 20 years but could be renewed for an additional 20 years if all the permit conditions were still met.
- Requires permit holders to submit applications to alter the terms of their permits before any deviation from the initial plan takes place.
- Prohibits the cessation of mining activities for more than 90 days unless authorized by the Department of Interior after the department determines that the cessation follows proper procedures.
- Allows for transfer or sale of a mining operation permit and requires that the Department of Interior review permits every ten years.
- Requires that existing mines must meet all the conditions of this section within ten years.

#### *Persons Ineligible for Permits*

- Prohibits anyone who has violated any of this Act's provisions from obtaining a permit unless the applicant has proof that corrective activities are being done (subject to the Department of Interior's assessment).

#### *Financial Assurance*

- Requires applicants for mining and exploration permits to submit "evidence of financial assurance payable to the United States," including assurance that the amount will cover reclamation costs. The Department of Interior would conduct reviews of financial assurances every three years.

#### *Operation and Reclamation*

- Requires that the operator or owner of mining operations conduct a reclamation project, when the use of the mine is complete, that would restore the area to its original state (before the operation began). The operator would also have to comply with any land use plan for the area.
- Requires Department of Interior and USDA to develop reclamation standards that take into consideration: topsoil condition, surface area stability, erosion control, harmful leakage, vegetative coverings, removal of structures, sealing of holes, fire prevention methods, and wildlife restoration.
- Stipulates that no provisions could overrule state law.

### **Title IV—Mining Mitigation**

#### *Locatable Minerals Fund*

- Establishes the Locatable Minerals Fund which will collect money from donations and fines from enforcement of provisions under this Act. Money from the fund will be used to facilitate, among other things, abandoned mine reclamation projects. The fund will also consist of two sub funds, the HRA and the HCIAA (see below).

#### *Hardrock Reclamation Account*

- Establishes the Hardrock Reclamation Account (HRA), which would collect two-thirds of the funds from the royalty fees to assist reclamation efforts at former mines where environmental damage has occurred.

#### *Hardrock Community Impact Assistance Account*

- Establishes the Hardrock Community Impact Assistance Account (HCIAA), which would collect one-third of royalty fees and divide such funds proportionally amongst the states (based on the extent of their mining activities). Funds are to be directed to state and local efforts designed to lessen the negative impacts of mining.

## **Title V—Administrative Provisions**

### *Inspection, Monitoring, and User Fees*

- Authorizes the Secretary of Interior and/or the Secretary of Agriculture to make inspections of mining activities and monitor compliance under this Act. In addition, the secretaries may establish and collect user fees to reimburse the government for administrative costs.

### *Enforcement*

- Requires mine operators to take corrective actions within 30 days of the issuance of a notice of violation by the Department of Interior.
- Allows the Department of Interior to issue an immediate cessation of a mine if the department determines that particular mining activities can reasonably be expected to cause imminent danger to public or environmental safety. The cessation order would not be revoked until conditions have been corrected. Penalties for not taking corrective action within 30 days would be \$1,000 per day.
- Subjects any individual who knowingly submits false documents or tampers with monitoring equipment to a fine of up to \$10,000 and/or two years imprisonment.
- Subjects any individual who knowingly conducts mining activities without a permit to a fine of up to \$50,000 and/or three years imprisonment.

### *Miscellaneous Provisions*

- Requires the Secretary of Interior to adjust fees and penalties to inflation every five years; declares that any laws with stronger environmental protections than those in this Act remain in effect; clarifies that common minerals (such as clay, stone, pumice, and rock) are not to be treated as locatable minerals and removes the ability of an individual to make a claim on federal land for such minerals.

**Additional Background:** According to hearing testimony provided by the Deputy Director of the Bureau of Land Management in July, “For over 135 years, the 1872 Mining Law has served to assure a reliable and affordable domestic supply of the minerals—gold, silver, copper, lead, zinc, and uranium—critical to our economy and national security. The 1872 Mining Law also promoted the settlement of the western United States by providing an opportunity for any citizen of the United States to explore the available public domain lands for valuable mineral deposits, stake a claim, and, if the mineral deposit could be mined, removed, and marketed at a profit, patent the claim. Patenting results in the claimant acquiring ownership not only of the mineral resources but also of the lands containing these mineral deposits at the statutory price of \$2.50 or \$5.00 per acre.”

In 1976 the Federal Land Policy and Management Act (FLPMA) was enacted. This legislation authorized the Secretary of Interior to take action to prevent “unnecessary or undue degradation” of lands where mining activities were taking place. Since this time, provisions in the 1872 Mining Law and FLPMA have been implemented in coordination with each other. Though hardrock mining operations must comply with numerous environmental regulations established in recent legislation (such as, the Superfund Amendments and Reauthorization Act of 1986 and the Clean Air Act Amendments of 1990), there have been multiple, if unproductive, efforts to tighten restrictions on mining since 1993.

Though all concerned parties seem to agree that the mining laws need to be updated, H.R. 2262 has faced harsh criticism from the mining industry. The National Mining Association (NMA) vehemently protests the 8% gross income royalty on new mines and the retroactive 4% gross income royalty on existing mines, which would be the highest such royalty in the world. Opponents contend that these high fees will add excessive entry barriers to the domestic mining industry, cripple existing domestic mining companies, and send high-paying mining jobs to countries where mining businesses are not hampered by such large royalties and so many regulations.

**Possible Conservative Concerns:** Some conservatives may be concerned that H.R. 2262 applies a retroactive royalty on current and valid mine claims. The 4% retroactive royalty on existing mine may be interpreted by the courts as an unlawful taking of the mining claimants’ property in violation of the Fifth Amendment. In fact, imposing a retroactive royalty may also be construed as a violation of due process.

In addition to constitutional concerns, some conservatives may be concerned that the imposition of royalties in H.R. 2262, combined with increased regulations, could have crippling affect on America’s domestic mining operations. The 8% gross income royalty on new mining operations would be the highest in the world and would create artificial barriers to new exploration and mining investment in the U.S. According to a briefing paper released by the Republican Members of the Natural Resources Committee, “economic analysis done on a similar proposal in 1993 showed that jobs would be lost and that there would be an overall negative impact to State and Federal revenues received from mining operations and their employees.” Hardrock mining is already an expensive venture, which requires immense investments and large amounts of capital. This legislation would disincentivizes entry and innovation in the industry.

Conservatives may also be concerned that the royalties mandated by H.R. 2262 would send good paying jobs in mining activities, especially in western states, overseas. Furthermore, conservatives may be concerned that a lack of investment and growth in the mining industry could make the U.S. reliant on foreign countries for new, affordable sources of hardrock minerals. Such minerals, like gold, silver, copper, lead, zinc, and uranium, are absolutely essential to the technology and defense industries in the U.S. Conservatives may be concerned that by authorizing the world’s highest royalty on new mining operations and approving the imposition of a retroactive royalty on valid existing

claim holders, this legislation would decimate the domestic mining market and increase America's dependence on foreign resources.

**Committee Action:** H.R. 2262 was introduced on May 5, 2007, and referred to the Committee on Natural Resources. The bill was referred to the Subcommittee on Energy and Mineral Resources, which held hearings on July 26, 2007, and October 2, 2007, before discharging the bill on October 23, 2007. The same day the full committee held a mark-up and reported the bill, as amended, by a party line vote of 23 – 15.

**Administration Position:** A Statement of Administration Policy (SAP) for H.R. 2262 was unavailable as of October 31, 2007.

**Cost to Taxpayers:** According to CBO, H.R. 2262 would increase discretionary by \$16 million in FY 2008 and \$267 million over the FY 2008 – 2012 period to implement new permit and review requirements.

H.R. 2262 would also reduce direct spending by \$10 million in FY 2008 and \$206 million over the FY 2008 – 2012 period by imposing a royalty on income generated from mining for hardrock minerals on federal land.

Finally, H.R. 2262 would increase revenues from collecting royalties by \$160 million over the 2009 – 2012 period and \$310 million over the 2009 – 2017 period. However, because these payments would technically be a result of business-like transactions, they would be recorded as offsetting receipts.

**Does the Bill Expand the Size and Scope of the Federal Government?** Yes, the bill increases the regulatory power of the Department of Interior by imposing numerous new requirements on owners and operators of mining claims, which the Department of Interior will be authorized to enforce.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?** Yes. H.R. 2262 would subject owners and operators of mining claims to a royalty of either 8% or 4% (depending on whether the mine was new) of gross income from mining. Based on information from the Bureau of Land Management, the US Geological Survey, and industry experts, “CBO estimates that the cost of that mandate would total about \$200 million over the 2008-2012 period,” which would be below the UMRA threshold.

**Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?:** The Committee on Natural Resources, in [House Report 110-412](#), asserts that, “H.R. 2262 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e) or 9(f) of rule XXI.

**Constitutional Authority:** The Committee on Natural Resources, in [House Report 110-412](#), cites constitutional authority in Article I, Section 8, but fails to cite a specific clause.

However, House Rule XIII, Section 3(d)(1), requires that all committee reports contain “a statement citing the specific powers granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution.”

**RSC Staff Contact:** Andy Koenig; [andy.koenig@mail.house.gov](mailto:andy.koenig@mail.house.gov); 202-226-9717.

---

###