WEST VIRGINIA CODE CHAPTER 5b ARTICLE 14

WV Legislature

§5B-14-1. Short title.

This article is and may be cited as the Strategic and Critical Resources Act.

WV Legislature

§5B-14-2. Legislative findings and purpose.

(a) The Legislature finds that certain minerals and materials are essential to national security, the welfare of this state, energy reliability, critical infrastructure, and economic stability, and that their availability is vulnerable to supply disruptions.

(b) The purpose of this article is to:

(1) Promote the development and availability of strategic and critical resources through uniform statewide regulation;

(2) Reserve regulatory authority to the state and federal governments; and

(3) Preempt local regulation, except as expressly provided.

WV Legislature

§5B-14-3. Definitions.

As used in this article:

"Extraction" means the mining, removal, production, or recovery of a strategic and critical resource by a person lawfully entitled to do so;

"Strategic and critical resource" means any of the following items, to the extent intended to be or actually extracted, mined, withdrawn, removed, harvested, or produced from within or upon land, including, but not limited to:

(1) Aluminum, aluminum oxide fused crude, antimony, arsenic, barite, beryllium, beryl ore, bismuth, boron, cadmium, cerium, cesium, chromium, cobalt, copper, dysprosium, erbium, europium, ferrochromium, ferromanganese, fluorine, fluorspar, gadolinium, gallium, germanium, graphite, hafnium, holmium, indium, iridium, lanthanum, lead, lithium, lutetium, magnesium, manganese, mercury, molybdenum, neodymium, nickel, niobium, palladium, phosphate, platinum, potash, praseodymium, rhenium, rhodium, rubber (natural), rubidium, ruthenium, samarium, scandium, selenium, silicon, silver, strontium, tantalum, tellurium, terbium, thulium, tin, titanium, tungsten, uranium, vanadium, ytterbium, yttrium, zinc, and zirconium;

(2) Any other mineral, element, compound, substance, or material listed on, or designated after, January 1, 2025, pursuant to:

(A) The U.S. Defense Logistics Agency Strategic Materials List;

(B) The U.S. Department of Energy Critical Materials List;

(C) The Defense Production Act of 1950 (50 U.S.C. § 4501 *et seq.*);

(D) The Energy Act of 2020 (30 U.S.C. § 1606); or

(E) U.S. Geological Survey List of Critical Minerals.

(3) Any other mineral, element, compound, substance, or material with respect to which the President of the United States makes a presidential determination or executive order after January 1, 2025, specifying that item as essential to the national defense pursuant to Section 303(a)(5) of the federal Defense Production Act of 1950, as amended (50 U.S.C. § 4533(a)(5)); and

(4) Any host material from which a strategic or critical resource is intended to be economically recovered as a byproduct; and

"Strategic and critical resource facility" means land, structures, equipment, or infrastructure reasonably necessary for the extraction or processing of a strategic and critical resource.

WV Legislature

§5B-14-4. State preemption of local regulation.

(a) Except as provided in this section, a county or municipality may not enact nor enforce any ordinance, regulation, resolution, administrative act, or other local law that prohibits, restricts, limits, or otherwise regulates the extraction of any strategic and critical resource outside municipal or urban areas.

(b) Except as provided in this section, a county or municipality may not enact nor enforce any ordinance, regulation, resolution, administrative act, or other local law that prohibits, restricts, limits, or otherwise regulates the acquisition, siting, development, construction, equipping, use, operation, expansion, repair, or maintenance of any strategic and critical resource facility outside municipal or urban areas.

(c) This article does not exempt an owner or operator from compliance with generally applicable business licenses, ad valorem property taxation, municipal sales or use taxes, utility rates and service charges, municipal service fees, or the State Building Code.

WV Legislature

§5B-14-5. Federal and state law unaffected.

(a) This article does not limit the applicability of any federal law governing environmental protection, natural resources, or public health, nor any state statute or legislative rule enacted pursuant to such a federal law.

(b) Except as expressly set forth in this article, this article is not intended to and does not affect or otherwise limit the applicability of any federal law or state statute or legislative rule applicable to any item designated a strategic and critical resource in this article.

WV Legislature

§5B-14-6. Rules.

(a) The Office of Energy shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to implement the provisions of this article.

WV Legislature