



## West Virginia Legislature Partially Acts on Rare Earth Elements

During its 2022 60-day Session, the West Virginia Legislature took action to promote development of “rare earth element” recovery in the state, although it failed to deliver on all of the proposed legislative action on the last day of the Session.

On March 10, 2022, the Senate unanimously approved House Bill 4003, which is intended to clarify the ownership of rare earth elements present in mine drainage. The bill creates a new section of the West Virginia Abandoned Mine Lands Act, addressing valuable materials (not limited to rare earth elements) that may be produced through treatment of mine drainage. The new statute declares that these materials are part of the “waters of the state” and that they “can only be separated from the water with expensive and continuing investments of resources which may last for decades.” The new statute provides that any materials extracted through treatment of mine drainage “which have economic value” may be used, sold, or transferred for commercial gain by whoever successfully removes the materials from the mine drainage. To the extent the West Virginia Department of Environmental Protection is engaged in such activity through its mine drainage treatment activities, any proceeds the agency derives from the use, sale, or transfer of extracted materials must be deposited in the Special Reclamation Water Trust Fund or the Acid Mine Drainage Set-Aside Fund. Governor Jim Justice is expected to sign the bill into law.

A related bill that would have suspended for five years the severance tax on recovery of specifically identified rare earth elements (House Bill 4025) failed to complete legislative action before the end of the Session. On Friday March 11, 2022, the Senate amended the bill to include an unrelated change to the taxing authority of county governments. The Senate amendment would authorize county governments to impose up to a two percent “admission or amusement tax upon any public amusement or entertainment conducted within the limits of the county for private profit or gain.” During the final hour of the Session late on Saturday night, the House debated the procedural merits of coupling the “amusement tax” amendment to the severance tax bill, as well as the merits of the amendment itself. According to comments made by House members during debate, the genesis of the Senate amendment was a desire by Tucker County, West Virginia to impose a tax on skiing activity and other outdoor recreation to raise money to improve emergency services in the county. The large number of visitors to Tucker County has, according to certain lawmakers, placed a strain on emergency services in the area. The county also claimed an inability to raise additional money through property taxes due to a large percentage of the land in the county being owned by the state or federal governments. Ultimately, the House

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rejected the Senate's amended version of the bill by a vote of 76 to 21, with some legislators referring to the Senate amendment as a "tax on fun." The Senate did not take further action in response to the House vote before midnight.

As detailed in a prior [Alert](#), the federal Department of Energy will soon be awarding hundreds of millions of dollars in funding associated with research, recovery, and refining of various "critical materials" including rare earth elements. Application opportunities for the various grants under the federal Infrastructure Bill are projected to begin opening in the fall of 2022.

Babst Calland has a team of lawyers following state and federal activities related to rare earth element development opportunities and implementation of the Infrastructure Bill. Please contact any of the following attorneys to learn more: Robert M. Stonestreet at [rstonestreet@babstcalland.com](mailto:rstonestreet@babstcalland.com) or 681.265.1364; Christopher B. "Kip" Power at [cpower@babstcalland.com](mailto:cpower@babstcalland.com) or 681.265.1362; or Ben Clapp at [bclapp@babstcalland.com](mailto:bclapp@babstcalland.com) or 202.853.3488.

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