

116TH CONGRESS
2D SESSION

S. 4641

To amend the Mineral Leasing Act to provide for transparency and landowner protections in the conduct of lease sales under that Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 22, 2020

Mr. BENNET introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To amend the Mineral Leasing Act to provide for transparency and landowner protections in the conduct of lease sales under that Act, 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 “Public Engagement
5 Opportunity on Public Land Exploration Act of 2020” or
6 the “PEOPLE Act of 2020”.

7 **SEC. 2. TRANSPARENCY AND LANDOWNER PROTECTIONS.**

8 (a) REQUIREMENTS FOR INCLUSION OF LAND IDEN-
9 TIFIED IN EXPRESSIONS OF INTEREST IN LEASE

1 SALES.—Section 17(b) of the Mineral Leasing Act (30
 2 U.S.C. 226(b)) is amended by adding at the end the fol-
 3 lowing:

4 “(4) REQUIREMENTS FOR INCLUSION OF LAND
 5 IDENTIFIED IN EXPRESSIONS OF INTEREST IN
 6 LEASE SALES.—

7 “(A) IN GENERAL.—A member of the pub-
 8 lic may submit to the Secretary an expression
 9 of interest that identifies land for consideration
 10 for inclusion by the Secretary in a lease sale
 11 under this section.

12 “(B) INCLUSION OF LAND IN LEASE
 13 SALE.—Subject to the requirements of this sec-
 14 tion, the Secretary may include in a lease sale
 15 under this section the land identified under an
 16 expression of interest received by the Secretary.

17 “(C) NOTIFICATION.—On receipt of an ex-
 18 pression of interest, the Secretary shall notify
 19 by certified mail, electronic mail, and electronic
 20 posting on the website of the relevant leasing or
 21 land management agency—

22 “(i) any owners of surface rights on
 23 land identified under the expression of in-
 24 terest;

1 “(ii) any holders of recreational or
2 special use permits on the land;

3 “(iii) any holders of grazing rights on
4 the land;

5 “(iv) any owner of a water right the
6 water of which originates on or flows over
7 the land;

8 “(v) any owner of a water conveyance
9 structure, such as a ditch, on the land; and

10 “(vi) the local government with juris-
11 diction over the area in which the land is
12 located.

13 “(D) TRANSPARENCY.—

14 “(i) IN GENERAL.—The Secretary
15 shall require that each bid for a lease de-
16 scribed in subparagraph (B) include—

17 “(I) the name of the person or
18 entity submitting the bid, including
19 the name of all subsidiaries, affiliates,
20 and entities controlled by, or under
21 common control with, the person or
22 entity;

23 “(II) if an agent is submitting
24 the bid on behalf of a person or enti-
25 ty, the name of the person or entity

1 on behalf of which the agent is acting,
 2 including all subsidiaries, affiliates,
 3 and entities controlled by, or under
 4 common control with, the person or
 5 entity; and

6 “(III) if the person or entity sub-
 7 mitting the bid is the person or entity
 8 that submitted the applicable expres-
 9 sion of interest, or if an agent is sub-
 10 mitting the bid on behalf of the per-
 11 son or entity that submitted the appli-
 12 cable expression of interest, a disclo-
 13 sure of that fact.

14 “(ii) PUBLICATION.—The Secretary
 15 shall publish on the website of the relevant
 16 leasing or land management agency each
 17 name disclosed in a bid under clause (i).”.

18 (b) NOTICE REQUIREMENTS.—Section 17(f) of the
 19 Mineral Leasing Act (30 U.S.C. 226(f)) is amended—

20 (1) in the sixth sentence, by striking “The re-
 21 quirements” and inserting the following:

22 “(5) APPLICABILITY OF OTHER NOTICE RE-
 23 QUIREMENTS.—The requirements”;

24 (2) in the fifth sentence, by striking “Such
 25 maps” and inserting the following:

1 “(C) LOCATION.—A map included in a no-
 2 tice under paragraph (1)”;

3 (3) in the fourth sentence, by striking “Where
 4 the inclusion of maps in such notice” and inserting
 5 the following:

6 “(B) AVAILABILITY.—If the inclusion of
 7 maps in a notice under paragraph (1)”;

8 (4) in the third sentence, by striking “Such no-
 9 tice” and inserting the following:

10 “(2) REQUIRED INCLUSIONS.—

11 “(A) IN GENERAL.—A notice required
 12 under paragraph (1)”;

13 (5) by striking “(f) At least” and all that fol-
 14 lows through “land management agencies.” and in-
 15 serting the following:

16 “(f) NOTICE REQUIREMENTS.—

17 “(1) IN GENERAL.—Not later than 90 days be-
 18 fore offering land for lease under this section, and
 19 not later than 30 days before approving an applica-
 20 tion for permit to drill under the provisions of a
 21 lease issued under this section, modifying the terms
 22 of any lease issued under this section, or granting a
 23 waiver, exception, or modification of any stipulation
 24 of a lease issued under this section, the Secretary
 25 shall—

1 “(A) post notice in the appropriate local
2 offices, and on the electronic websites, of the
3 leasing and land management agencies offering
4 the land for lease;

5 “(B) notify by certified mail and electronic
6 mail any—

7 “(i) owners of surface rights on the
8 land covered by the lease;

9 “(ii) holders of special recreation per-
10 mits for commercial use, competitive
11 events, or other organized activities on the
12 land covered by the lease;

13 “(iii) holders of grazing rights on the
14 land covered by the lease;

15 “(iv) owner of a water right the water
16 of which originates on or flows over the
17 land;

18 “(v) owner of a water conveyance
19 structure, such as a ditch, on the land; and

20 “(vi) as applicable, members of the
21 public who have submitted to the Secretary
22 a request to receive notice regarding pro-
23 posed actions of the Secretary applicable
24 to—

25 “(I) a geographic area; or

1 “(II) a resource.”; and

2 (6) by inserting after paragraph (2) (as so des-
3 ignated) the following:

4 “(3) ADDITIONAL REQUIREMENTS.—

5 “(A) IN GENERAL.—Before determining
6 the parcels to be included in a lease sale under
7 this section, the Secretary shall provide a
8 scoping period of not less than 30 days during
9 which the Secretary shall provide public notice
10 and an opportunity for comment regarding all
11 parcels that may be included in the lease sale.

12 “(B) ENVIRONMENTAL ANALYSIS.—

13 “(i) DEFINITION OF DETERMINATION
14 OF NEPA ADEQUACY.—In this subpara-
15 graph, the term ‘determination of NEPA
16 adequacy’ means a determination of the
17 Secretary that an action—

18 “(I) is adequately analyzed in an
19 existing document prepared pursuant
20 to the National Environmental Policy
21 Act of 1969 (42 U.S.C. 4321 et seq.);
22 and

23 “(II) conforms with the applica-
24 ble land use plan.

“(ii) PUBLIC NOTICE AND COMMENT.—Before conducting a lease sale under this section, the Secretary, in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), shall ensure that the public has the period of time required under that Act to comment on any environmental analysis, including any determination of NEPA adequacy, carried out with respect to the lease sale.

“(iii) REQUIREMENT.—The period for public comment under clause (ii) shall be not less than 30 days.

“(C) NEPA ANALYSIS REQUIREMENTS.—

“(i) IN GENERAL.—Any analysis prepared pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for a lease sale under this section shall address all parcels being considered for sale.

“(ii) RESTRICTION.—No parcel may be included in a lease sale under this section—

“(I) without compliance with—

1 “(aa) the public notice and
 2 comment requirements of this
 3 subsection; and

4 “(bb) the National Environ-
 5 mental Policy Act of 1969 (42
 6 U.S.C. 4321 et seq.); and

7 “(II) unless the parcel is specifi-
 8 cally identified and considered in the
 9 analysis for that specific lease sale
 10 carried out in compliance with the
 11 National Environmental Policy Act of
 12 1969 (42 U.S.C. 4321 et seq.).

13 “(D) SURFACE MANAGEMENT BY ANOTHER
 14 FEDERAL AGENCY.—With respect to a parcel
 15 the surface of which is managed by another
 16 Federal agency, the parcel may not be included
 17 in a lease sale under this section without the
 18 consent of that Federal agency for that specific
 19 lease sale.

20 “(E) PROTESTS.—

21 “(i) IN GENERAL.—Any party may
 22 file a protest regarding the inclusion of a
 23 parcel in a lease sale under this section.

24 “(ii) DEADLINE; METHOD OF FIL-
 25 ING.—A protest under clause (i)—

1 “(I) shall be filed by the date
 2 that is not later than 45 days after
 3 the date on which the Secretary gives
 4 notice of the lease sale under para-
 5 graph (1); and

6 “(II) may be filed by electronic
 7 mail.

8 “(4) LOCAL GOVERNMENTS.—Before taking
 9 any action for which notice or opportunity for com-
 10 ment is required under this subsection, the Secretary
 11 shall provide to local governments with jurisdiction
 12 over the area in which land covered by a proposed
 13 action is located notice and an opportunity for com-
 14 ment that meets or exceeds the requirements for no-
 15 tice and opportunity for comment under this sub-
 16 section.”.

17 (c) SURFACE ESTATE OWNER PROTECTION.—Sec-
 18 tion 17 of the Mineral Leasing Act (30 U.S.C. 226) is
 19 amended by adding at the end the following:

20 “(q) SURFACE ESTATE OWNER PROTECTION.—

21 “(1) DEFINITION OF COVERED LAND.—In this
 22 subsection, the term ‘covered land’ means land sub-
 23 ject to a lease under this section—

24 “(A) the title to the oil and gas resources
 25 of which is held by the United States; but

1 “(B) the title to the surface estate of
2 which is not held by the United States.

3 “(2) POST-LEASE SURFACE USE AGREEMENT.—

4 “(A) IN GENERAL.—Except as provided in
5 paragraph (3), the Secretary shall not authorize
6 any operator to conduct exploration and drilling
7 operations on covered land until the operator
8 files with the Secretary a document, signed by
9 the operator and the 1 or more surface estate
10 owners, demonstrating that the operator has se-
11 cured a written surface use agreement between
12 the operator and the 1 or more surface estate
13 owners that meets the requirements of subpara-
14 graph (B).

15 “(B) CONTENTS.—The surface use agree-
16 ment under subparagraph (A) shall provide
17 for—

18 “(i) the use by the operator of only
19 such portion of the surface estate as is rea-
20 sonably necessary for exploration and drill-
21 ing operations based on site-specific condi-
22 tions;

23 “(ii) the accommodation of the sur-
24 face estate owner to the maximum extent
25 practicable, including the location, use,

1 timing, and type of exploration and drilling
2 operations, consistent with the right of the
3 operator to develop the oil and gas estate;

4 “(iii) placement, specifications, main-
5 tenance, and design of well pads, gathering
6 pipelines, and roads to be constructed for
7 oil and gas operations, to the extent
8 known;

9 “(iv) terms of ingress and egress on
10 the surface of the land for oil and gas op-
11 erations;

12 “(v) construction, maintenance, and
13 placement of all pits and equipment used
14 or planned for oil and gas operations, to
15 the extent known;

16 “(vi) use and impoundment of water
17 on the surface of the land;

18 “(vii) removal and restoration of plant
19 life;

20 “(viii) surface water drainage
21 changes;

22 “(ix) actions to limit and effectively
23 control precipitation runoff and erosion;

24 “(x) control and management of
25 noise, weeds, dust, traffic, trespass, litter,

1 and interference with the use of the sur-
2 face estate owner;

3 “(xi) operator indemnification for in-
4 jury to persons caused by the operator or
5 a subcontractor or agent of the operator;

6 “(xii) the reclamation of the site to a
7 condition capable of supporting the uses
8 that the land was capable of supporting
9 prior to exploration and drilling operations;
10 and

11 “(xiii) compensation for damages re-
12 sulting from exploration and drilling oper-
13 ations, including—

14 “(I) loss of income and increased
15 costs incurred;

16 “(II) damage to, or destruction
17 of, personal property, including crops,
18 forage, and livestock; and

19 “(III) failure to reclaim the site
20 in accordance with clause (xii).

21 “(C) PROCEDURE.—

22 “(i) NOTICE OF INTENT TO ENTER
23 INTO AGREEMENT.—An operator shall no-
24 tify the 1 or more surface estate owners of
25 the desire of the operator to conclude an

1 agreement under this paragraph by cer-
2 tified mail or electronic mail.

3 “(ii) ARBITRATION.—

4 “(I) IN GENERAL.—If the surface
5 estate owner and the operator do not
6 reach an agreement under clause (i)
7 by the date that is 90 days after the
8 date on which the operator provides
9 notice under that clause, the operator
10 may submit the matter to third-party
11 arbitration.

12 “(II) DEADLINE FOR ARBITRA-
13 TION.—An arbitration under sub-
14 clause (I) shall be concluded within a
15 period of 90 days.

16 “(III) COST.—The cost of an ar-
17 bitration under subclause (I) shall be
18 the responsibility of the operator.

19 “(IV) LIST OF ARBITRATORS.—
20 The Secretary shall make publicly
21 available a list of persons who are
22 qualified to arbitrate disputes under
23 this clause.

24 “(V) QUALIFICATIONS OF ARBI-
25 TRATORS.—In order to arbitrate a

1 dispute under this clause, an arbi-
 2 trator shall meet the minimum quali-
 3 fication criteria of the American Arbi-
 4 tration Association, including—

5 “(aa) a minimum of 10
 6 years of senior-level business or
 7 professional experience or legal
 8 practice;

9 “(bb) an educational degree
 10 or professional licenses appro-
 11 priate to the oil and gas industry;

12 “(cc) training or experience
 13 in arbitration or other forms of
 14 dispute resolution; and

15 “(dd) membership in rel-
 16 evant professional associations.

17 “(VI) REFERRAL.—Referral of a
 18 matter for arbitration by an operator
 19 to an arbitrator identified by the Sec-
 20 retary pursuant to subclause (IV)
 21 shall be sufficient to constitute com-
 22 pliance with subclause (V).

23 “(3) AUTHORIZED EXPLORATION AND DRILL-
 24 ING OPERATIONS.—

1 “(A) AUTHORIZATION WITHOUT SURFACE
2 USE AGREEMENT.—

3 “(i) IN GENERAL.—The Secretary
4 may authorize an operator to conduct ex-
5 ploration and drilling operations on cov-
6 ered land without first securing a surface
7 use agreement in accordance with para-
8 graph (2), if—

9 “(I) the Secretary makes a deter-
10 mination in writing that—

11 “(aa) the operator made a
12 good faith attempt to conclude
13 such an agreement, including by
14 submitting the matter to arbitra-
15 tion in accordance with subclause
16 (I) of paragraph (2)(C)(ii); but

17 “(bb) an agreement was not
18 concluded by the deadline under
19 subclause (I) or (II), as applica-
20 ble, of that paragraph;

21 “(II) the operator submits a plan
22 of operations that provides for —

23 “(aa) the matters described
24 in paragraph (2)(B); and

1 “(bb) compliance with all
 2 other applicable requirements of
 3 Federal and State law; and

4 “(III) the operator posts a bond
 5 or other financial assurance in the
 6 form of a surety bond, trust fund, let-
 7 ter of credit, government security, cer-
 8 tificate of deposit, cash, or equivalent
 9 in an amount the Secretary deter-
 10 mines to be adequate to ensure com-
 11 pensation to the 1 or more surface es-
 12 tate owners for any damages to, or
 13 reclamation of, the site.

14 “(ii) LIMITATION.—Self-bonding shall
 15 not be an acceptable form of financial as-
 16 surance under clause (i)(III).

17 “(B) SURFACE ESTATE OWNER PARTICIPA-
 18 TION.—In addition to any participation oppor-
 19 tunities provided to members of the public
 20 under this section, with respect to a lease
 21 issued under this section for covered land, the
 22 Secretary shall provide surface estate owners
 23 with—

24 “(i) before authorizing an operator to
 25 conduct exploration and drilling operations

on the covered land, a period of not less than 30 days to comment on the plans of operations of the operator;

“(ii) an opportunity to participate in bond level determinations and bond release proceedings under subsection (g);

“(iii) an opportunity to attend any on-site inspection carried out for the purpose of a determination or proceeding under clause (ii);

“(iv) an opportunity to file written objections to a proposed bond release; and

“(v) an opportunity to request and participate in an onsite inspection if the surface estate owner has reason to believe there is a violation of the terms and conditions of the plan of operations of the operator.

“(C) PAYMENT OF FINANCIAL GUARANTEE.—

“(i) IN GENERAL.—The owner of the surface estate of covered land subject to a lease issued under this section may petition the Secretary for payment of all or any portion of a bond or other financial assur-

1 ance required under subsection (g) as com-
2 pensation for any damages resulting from
3 exploration and drilling operations pursu-
4 ant to the lease.

5 “(ii) FORM OF COMPENSATION.—If
6 the Secretary approves the petition under
7 clause (i), the Secretary may use the bond
8 or other financial assurance referred to in
9 that clause to provide compensation to the
10 surface estate owner for the damages de-
11 scribed in the petition.

12 “(4) SURFACE ESTATE OWNER NOTIFICA-
13 TION.—In addition to any notice provided to mem-
14 bers of the public under this section, with respect to
15 a lease of covered land under this section, the Sec-
16 retary shall notify the 1 or more surface estate own-
17 ers by certified mail, electronic mail, and electronic
18 posting on the website of the relevant leasing or land
19 management agency—

20 “(A) of the lease sale by not later than 90
21 days before conducting the lease sale;

22 “(B) of the identity and address of the les-
23 see by not later than 10 business days after the
24 lease is issued;

1 “(C) of any subsequent request or decision
2 regarding the lease, including any request or
3 decision to modify the lease, waive a stipulation,
4 or approve a right of way, by not later than 5
5 business days after the Secretary receives the
6 request or makes the decision; and

7 “(D) of any issuance of a permit to drill
8 under the lease, by not later than 5 business
9 days after issuance of the permit.

10 “(5) BONDS OR FINANCIAL ASSURANCES.—

11 “(A) IN GENERAL.—With respect to a
12 lease of covered land under this section, the
13 Secretary shall notify the 1 or more surface es-
14 tate owners by certified mail, electronic mail,
15 and electronic posting on the website of the rel-
16 evant leasing or land management agency by
17 not later than 30 days before establishing or re-
18 leasing a bond or other financial assurance
19 under subsection (g).

20 “(B) OBJECTIONS.—If a surface estate
21 owner objects to the amount of the bond or
22 other financial assurance to be required for a
23 lease of covered land, the Secretary shall re-
24 spond in writing to the objections of the surface

1 estate owner, including a description of the ra-
2 tionale for the amount.

3 “(C) RELEASE OF BOND OF OTHER FINAN-
4 CIAL ASSURANCE.—The Secretary may release
5 the bond or other financial assurance required
6 for a lease of covered land only if—

7 “(i) the Secretary determines that
8 compensation for damages has been paid
9 in accordance with, as applicable—

10 “(I) the terms of the surface use
11 agreement under paragraph
12 (2)(B)(xiii); or

13 “(II) the determination of the
14 Secretary under paragraph (3)(A)(iii);

15 “(ii) the surface estate owner and the
16 operator have executed, and submitted to
17 the Secretary, a surface use and compensa-
18 tion agreement providing that the bond or
19 other financial assurance should be re-
20 leased;

21 “(iii) the Secretary determines that—

22 “(I) there has been a final reso-
23 lution of any action for damages; and

1 “(II) any damages awarded pur-
2 suant to that action have been paid;
3 or

4 “(iv) the Secretary determines that—

5 “(I) all wells on the covered land
6 have been plugged and abandoned;
7 and

8 “(II) the operator has not con-
9 ducted oil and gas operations on the
10 covered land for a period of not less
11 than 6 years.”.

○