

117TH CONGRESS
2D SESSION

S. 4229

To empower States to manage the development and production of oil and gas on available Federal land, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 17, 2022

Mr. BARRASSO (for himself, Ms. LUMMIS, Mr. RISCH, Mr. MARSHALL, Mr. HOEVEN, and Mr. CRUZ) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To empower States to manage the development and production of oil and gas on available Federal land, 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 “Opportunities for the
5 Nation and States to Harness Onshore Resources for En-
6 ergy Act” or the “ONSHORE Act”.

7 **SEC. 2. CLARIFICATION OF AUTHORITY.**

8 Section 17(a) of the Mineral Leasing Act (30 U.S.C.
9 226(a)) is amended by striking “may be leased by the Sec-

1 retary.” and inserting the following: “shall be leased by
 2 the Secretary of the Interior, or for National Forest Sys-
 3 tem land, the Secretary of Agriculture, unless—

4 “(1) otherwise excluded under this Act; or

5 “(2) the Secretary of the Interior or the Secretary
 6 of Agriculture, as applicable, shows good cause for why
 7 such land should not be leased.”.

8 **SEC. 3. COOPERATIVE FEDERALISM IN OIL AND GAS PER-**
 9 **MITTING ON AVAILABLE FEDERAL LAND.**

10 (a) IN GENERAL.—The Mineral Leasing Act (30
 11 U.S.C. 181 et seq.) is amended—

12 (1) by redesignating section 44 as section 47;

13 and

14 (2) by adding after section 43 the following:

15 **“SEC. 44. COOPERATIVE FEDERALISM IN OIL AND GAS PER-**
 16 **MITTING ON AVAILABLE FEDERAL LAND.**

17 “(a) DEFINITIONS.—In this section:

18 “(1) APD.—The term ‘APD’ means a permit—

19 “(A) that grants authority to drill for oil
 20 and gas; and

21 “(B) for which an application has been re-
 22 ceived that includes—

23 “(i) a drilling plan;

24 “(ii) a surface use plan of operations
 25 described in section 3162.3–1(f) of title 43,

1 Code of Federal Regulations (or a suc-
2 cessor regulation); and

3 “(iii) evidence of bond coverage.

4 “(2) AVAILABLE FEDERAL LAND.—The term
5 ‘available Federal land’ means any Federal land
6 that—

7 “(A) is located within the boundaries of a
8 State;

9 “(B) is not held by the United States in
10 trust for the benefit of a federally recognized
11 Indian Tribe or a member of a federally recog-
12 nized Indian Tribe;

13 “(C) is not a unit of the National Park
14 System;

15 “(D) is not a unit of the National Wildlife
16 Refuge System, other than a unit of the Na-
17 tional Wildlife Refuge System for which oil and
18 gas drilling is allowed under law;

19 “(E) is not a congressionally approved wil-
20 derness area under the Wilderness Act (16
21 U.S.C. 1131 et seq.); and

22 “(F) has been identified as land available
23 for lease, or has been leased, for the explo-
24 ration, development, and production of oil and
25 gas—

1 “(i) by the Bureau of Land Manage-
2 ment under—

3 “(I) a resource management plan
4 under the Federal Land Policy and
5 Management Act of 1976 (43 U.S.C.
6 1701 et seq.); or

7 “(II) an integrated activity plan
8 with respect to the National Petro-
9 leum Reserve—Alaska; or

10 “(ii) by the Forest Service under a
11 National Forest management plan under
12 the Forest and Rangeland Renewable Re-
13 sources Planning Act of 1974 (16 U.S.C.
14 1600 et seq.).

15 “(3) DRILLING PLAN.—The term ‘drilling plan’
16 means a plan described in section 3162.3–1(e) of
17 title 43, Code of Federal Regulations (or a successor
18 regulation).

19 “(4) SECRETARY.—The term ‘Secretary’ means
20 the Secretary of the Interior.

21 “(5) STATE APPLICANT.—The term ‘State ap-
22 plicant’ means a State that submits an application
23 under subsection (c).

1 “(6) STATE PROGRAM.—The term ‘State pro-
2 gram’ means a program in a State under which the
3 State may—

4 “(A) issue APDs, approve drilling plans,
5 approve sundry notices, approve suspensions of
6 operations or production, or grant rights-of-way
7 on available Federal land; and

8 “(B) impose sanctions for violations of
9 State laws, regulations, or any condition of an
10 issued APD or approved drilling plan, as appli-
11 cable.

12 “(7) SUNDRY NOTICE.—The term ‘sundry no-
13 tice’ means a written request—

14 “(A) to perform work not covered under an
15 APD or drilling plan; or

16 “(B) for a change to operations covered
17 under an APD or drilling plan.

18 “(8) SUSPENSION OF OPERATIONS OR PRODUC-
19 TION.—The term ‘suspension of operations or pro-
20 duction’ means a suspension of operations or pro-
21 duction described in section 3103.4–4 of title 43,
22 Code of Federal Regulations (or successor regula-
23 tions).

24 “(b) AUTHORIZATIONS.—

1 “(1) IN GENERAL.—On receipt of an applica-
2 tion under subsection (c), the Secretary may dele-
3 gate to a State exclusive authority—

4 “(A) to issue an APD on available Federal
5 land;

6 “(B) to approve drilling plans on available
7 Federal land;

8 “(C) to approve sundry notices relating to
9 work performed on available Federal land;

10 “(D) to approve suspensions of operations
11 or production; and

12 “(E) to grant rights-of-way in accordance
13 with paragraph (3).

14 “(2) INSPECTION AND ENFORCEMENT.—On re-
15 quest of a State for which authority is delegated
16 under paragraph (1), the authority delegated may
17 include the authority to inspect and enforce an
18 APD, drilling plan, or right-of-way, as applicable.

19 “(3) RIGHTS-OF-WAY.—The authority to grant
20 a right-of-way delegated to a State under paragraph
21 (1)(E) shall be the authority of the Secretary of the
22 Interior or the Secretary of Agriculture, as applica-
23 ble, under section 501 of the Federal Land Policy
24 and Management Act of 1976 (43 U.S.C. 1761), to
25 grant, issue, or renew rights-of-way over, upon,

1 under, or through available Federal land for the pur-
2 pose of mineral development.

3 “(4) EFFECT OF FEDERAL ENVIRONMENTAL
4 REVIEWS.—A State for which authority is delegated
5 under paragraph (1) shall continue processing appli-
6 cations for an APD, applications for approval of a
7 drilling plan, applications for approval of a sundry
8 notice, and applications to grant a right-of-way, re-
9 gardless of whether the Federal Government is car-
10 rying out any review related to the APD, drilling
11 plan, sundry notice, or right-of-way under the Na-
12 tional Environmental Policy Act of 1969 (42 U.S.C.
13 4321 et seq.) or the Endangered Species Act of
14 1973 (16 U.S.C. 1531 et seq.).

15 “(c) STATE APPLICATION PROCESS.—

16 “(1) SUBMISSION OF APPLICATION.—A State
17 seeking a delegation of authority under subpara-
18 graph (A), (B), (C), (D), or (E) of subsection (b)(1)
19 shall submit to the Secretary an application at such
20 time, in such manner, and containing such informa-
21 tion as the Secretary may require, including—

22 “(A) a description of the State program
23 that the State proposes to administer under
24 State law; and

1 “(B) a statement from the Governor or at-
 2 torney general of the State that demonstrates
 3 that the laws of the State provide adequate au-
 4 thority to carry out the State program.

5 “(2) DEADLINE FOR APPROVAL OR DIS-
 6 APPROVAL.—Not later than 180 days after the date
 7 on which an application under paragraph (1) is re-
 8 ceived, the Secretary shall approve or disapprove the
 9 application.

10 “(3) REQUIREMENTS FOR APPROVAL.—

11 “(A) IN GENERAL.—The Secretary may
 12 approve an application received under para-
 13 graph (1) only if the Secretary determines
 14 that—

15 “(i) the State applicant would be at
 16 least as effective as the Secretary in
 17 issuing APDs, approving drilling plans, ap-
 18 proving sundry notices, approving suspen-
 19 sions of operations or production, or grant-
 20 ing rights-of-way, as applicable;

21 “(ii) the State program of the State
 22 applicant—

23 “(I) complies with this Act; and

24 “(II) provides for the termination
 25 or modification of an issued APD, ap-

1 proved drilling plan, approved sundry
2 notice, approved suspension of oper-
3 ations or production, or granted right-
4 of-way, as applicable, for cause, in-
5 cluding for—

6 “(aa) the violation of any
7 condition of the issued APD, ap-
8 proved drilling plan, approved
9 sundry notice, approved suspen-
10 sion of operations or production,
11 or granted right-of-way;

12 “(bb) obtaining the issued
13 APD, approved drilling plan, ap-
14 proved sundry notice, approved
15 suspension of operations or pro-
16 duction, or granted right-of-way
17 by misrepresentation; or

18 “(cc) failure to fully disclose
19 in the application all relevant
20 facts;

21 “(iii) the State applicant has suffi-
22 cient administrative and technical per-
23 sonnel and sufficient funding to carry out
24 the State program; and

1 “(iv) approval of the application
2 would not result in decreased royalty pay-
3 ments owed to the United States under
4 subsection (a) of section 35, except as pro-
5 vided in subsection (e) of that section.

6 “(B) MEMORANDA OF UNDERSTANDING.—
7 With respect to a State applicant seeking au-
8 thority under subsection (b)(2)(A) to inspect
9 and enforce APDs, drilling plans, or rights-of-
10 way, as applicable, before approving the appli-
11 cation of the State applicant, the Secretary
12 shall enter into a memorandum of under-
13 standing with the State applicant under para-
14 graph (6) that describes the Federal and State
15 responsibilities with respect to the inspection
16 and enforcement.

17 “(C) PUBLIC NOTICE.—Before approving
18 an application received under paragraph (1),
19 the Secretary shall—

20 “(i) provide public notice of the appli-
21 cation;

22 “(ii) solicit public comment for the
23 application; and

24 “(iii) hold a public hearing for the ap-
25 plication in the State.

1 “(4) DISAPPROVAL.—If the Secretary dis-
2 approves an application submitted under paragraph
3 (1), the Secretary shall provide to the State appli-
4 cant written notification of—

5 “(A) the reasons for the disapproval, in-
6 cluding any information, data, or analysis on
7 which the disapproval is based; and

8 “(B) any revisions or modifications nec-
9 essary to obtain approval.

10 “(5) RESUBMITTAL OF APPLICATION.—A State
11 may resubmit an application under paragraph (1) at
12 any time.

13 “(6) STATE MEMORANDA OF UNDER-
14 STANDING.—Before a State submits an application
15 under paragraph (1), the Secretary, on request of
16 the State, may enter into a memorandum of under-
17 standing with the State regarding the proposed
18 State program—

19 “(A) to describe the Federal and State re-
20 sponsibilities for oil and gas regulations;

21 “(B) to provide technical assistance; and

22 “(C) to share best management practices.

23 “(d) ADMINISTRATIVE FEES FOR APDS.—

24 “(1) IN GENERAL.—A State for which authority
25 has been delegated under subsection (b)(1)(A) may

1 collect a fee for each application for an APD that
2 is submitted to the State.

3 “(2) NO COLLECTION OF FEE BY SEC-
4 RETARY.—The Secretary may not collect a fee from
5 the applicant or from the State for an application
6 for an APD that is submitted to a State for which
7 authority has been delegated under subsection
8 (b)(1)(A).

9 “(3) USE.—A State shall use 100 percent of
10 the fees collected under this subsection for the ad-
11 ministration of the approved State program of the
12 State.

13 “(e) VOLUNTARY TERMINATION OF AUTHORITY.—

14 “(1) IN GENERAL.—After providing written no-
15 tice to the Secretary, a State may voluntarily termi-
16 nate any authority delegated to the State under sub-
17 section (b)(1) on expiration of the 60-day period be-
18 ginning on the date on which the Secretary receives
19 the written notice.

20 “(2) RESUMPTION BY SECRETARY.—On termi-
21 nation of the authority delegated to a State under
22 paragraph (1), the Secretary shall resume any ac-
23 tivities for which authority was delegated to the
24 State under subsection (b)(1).

1 “(f) APPEAL OF DENIAL OF APPLICATION.—If a
2 State for which the Secretary has delegated authority
3 under subsection (b)(1) denies an application submitted
4 under subsection (c)(1), the applicant may appeal the de-
5 cision to the Office of Hearings and Appeals of the De-
6 partment of the Interior.

7 “(g) FEDERAL ADMINISTRATION OF STATE PRO-
8 GRAM.—

9 “(1) NOTIFICATION.—If the Secretary has rea-
10 son to believe that a State is not administering or
11 enforcing an approved State program, the Secretary
12 shall notify the relevant State regulatory authority
13 of any possible deficiencies.

14 “(2) STATE RESPONSE.—Not later than 30
15 days after the date on which a State receives notifi-
16 cation of a possible deficiency under paragraph (1),
17 the State shall—

18 “(A) take appropriate action to correct the
19 possible deficiency; and

20 “(B) notify the Secretary of the action in
21 writing.

22 “(3) DETERMINATION.—

23 “(A) IN GENERAL.—On expiration of the
24 30-day period described in paragraph (2), the

1 Secretary shall issue public notice of any deter-
2 mination of the Secretary that—

3 “(i) a violation of all or any part of an
4 approved State program has resulted from
5 a failure of the State to administer or en-
6 force the approved State program of the
7 State; or

8 “(ii) the State has not demonstrated
9 the capability and intent of the State to
10 administer or enforce the State program of
11 the State.

12 “(B) APPEAL.—A State may appeal the
13 determination of the Secretary under subpara-
14 graph (A) in the applicable United States Dis-
15 trict Court.

16 “(C) RESUMPTION BY SECRETARY PEND-
17 ING APPEAL.—The Secretary may not resume
18 activities under paragraph (4) if an appeal
19 under subparagraph (B) is pending.

20 “(4) RESUMPTION BY SECRETARY.—Except as
21 provided in paragraph (3)(C), if the Secretary has
22 made a determination under paragraph (3)(A), the
23 Secretary shall resume any activities for which au-
24 thority was delegated to the State during the pe-
25 riod—

1 “(A) beginning on the date on which the
2 Secretary issues the public notice under para-
3 graph (3)(A); and

4 “(B) ending on the date on which the Sec-
5 retary determines that the State may admin-
6 ister or enforce, as applicable, the approved
7 State program of the State.

8 “(5) STANDING.—A State with an approved
9 regulatory program shall have standing to sue the
10 Secretary for any action taken under this sub-
11 section.”.

12 (b) EXISTING AUTHORITIES.—Section 390(a) of the
13 Energy Policy Act of 2005 (42 U.S.C. 15942(a)) is
14 amended—

15 (1) by striking “Action by the Secretary” and
16 inserting “The Secretary”;

17 (2) by striking “with respect to any of the ac-
18 tivities described in subsection (b) shall be subject to
19 a rebuttable presumption that the use of” and in-
20 serting “shall apply”; and

21 (3) by striking “would apply if the activity” and
22 inserting “for each action described in subsection (b)
23 if the action”.

1 **SEC. 4. PERMITTING ON A NON-FEDERAL SURFACE ESTATE.**

2 The Mineral Leasing Act (30 U.S.C. 181 et seq.) is
3 amended by inserting after section 44 (as added by section
4 3(a)(2)) the following:

5 **“SEC. 45. PERMITTING ON A NON-FEDERAL SURFACE ES-**
6 **TATE.**

7 “(a) DEFINITIONS.—In this section:

8 “(1) DRAINAGE.—The term ‘drainage’, with re-
9 spect to a non-Federal surface estate, means the mi-
10 gration of any hydrocarbon under the subsurface of
11 the non-Federal surface estate.

12 “(2) UNIT.—The term ‘unit’ means a State-
13 regulated drilling and spacing unit.

14 “(b) PERMITS NOT REQUIRED FOR CERTAIN ACTIVI-
15 TIES ON A NON-FEDERAL SURFACE ESTATE.—The fol-
16 lowing activities conducted on a non-Federal surface es-
17 tate shall not require a permit from the Bureau of Land
18 Management and shall not be considered a major Federal
19 action under the National Environmental Policy Act of
20 1969 (42 U.S.C. 4321 et seq.):

21 “(1) Oil and gas operations for the exploration
22 for, or development or production of, oil and gas in
23 a lease or unit or communitization agreement in
24 which the United States holds a mineral ownership
25 interest of 50 percent or less.

1 “(2) Oil and gas operations that may have po-
 2 tential drainage impacts, as determined by the Bu-
 3 reau of Land Management, on oil and gas in which
 4 the United States holds a mineral ownership inter-
 5 est.

6 “(c) DOI NOTIFICATION.—The Secretary of the Inte-
 7 rior shall provide to each State a map or list indicating
 8 Federal mineral ownership within that State.

9 “(d) STATE NOTIFICATION.—Each State with an ap-
 10 proved permit to drill or drilling plan that would impact
 11 or extract oil and gas owned by the Federal Government
 12 shall notify the Secretary of the Interior of the approved
 13 permit to drill or drilling plan.

14 “(e) ROYALTIES.—Nothing in this section affects the
 15 amount of royalties due to the United States under this
 16 Act from the production of oil and gas.”.

17 **SEC. 5. STATE AND TRIBAL AUTHORITY FOR HYDRAULIC**
 18 **FRACTURING REGULATION.**

19 The Mineral Leasing Act (30 U.S.C. 181 et seq.) is
 20 amended by inserting after section 45 (as added by section
 21 4) the following:

22 **“SEC. 46. STATE AND TRIBAL AUTHORITY FOR HYDRAULIC**
 23 **FRACTURING REGULATION.**

24 “(a) DEFINITIONS.—In this section:

1 “(1) HYDRAULIC FRACTURING.—The term ‘hy-
2 draulic fracturing’ means the process of creating
3 small cracks or fractures in underground geological
4 formations for well stimulation purposes of bringing
5 hydrocarbons into the wellbore and to the surface
6 for capture.

7 “(2) SECRETARY.—The term ‘Secretary’ means
8 the Secretary of the Interior.

9 “(b) ENFORCEMENT OF FEDERAL REGULATIONS.—
10 The Secretary shall not enforce any Federal regulation,
11 guidance, or permit requirement regarding hydraulic frac-
12 turing relating to oil, gas, or geothermal production activi-
13 ties on or under any land in any State that has regula-
14 tions, guidance, or permit requirements for that activity.

15 “(c) STATE AUTHORITY.—The Secretary shall defer
16 to State regulations, guidance, and permit requirements
17 for all activities regarding hydraulic fracturing relating to
18 oil, gas, or geothermal production activities on Federal
19 land.

20 “(d) TRANSPARENCY OF STATE REGULATIONS.—

21 “(1) IN GENERAL.—Each State shall submit to
22 the Bureau of Land Management a copy of the regu-
23 lations of the State that apply to hydraulic frac-
24 turing operations on Federal land, including the reg-

1 ulations that require disclosure of chemicals used in
2 hydraulic fracturing operations.

3 “(2) AVAILABILITY.—The Secretary shall make
4 available to the public on the website of the Sec-
5 retary the regulations submitted under paragraph
6 (1).

7 “(e) TRIBAL AUTHORITY ON TRUST LAND.—The
8 Secretary shall not enforce any Federal regulation, guid-
9 ance, or permit requirement with respect to hydraulic frac-
10 turing on any land held in trust or restricted status for
11 the benefit of a federally recognized Indian Tribe or a
12 member of a federally recognized Indian Tribe, except
13 with the express consent of the beneficiary on whose behalf
14 the land is held in trust or restricted status.”.

15 **SEC. 6. PROTESTED LEASE SALES.**

16 Section 17(b)(1)(A) of the Mineral Leasing Act (30
17 U.S.C. 226(b)(1)(A)) is amended by inserting after the
18 seventh sentence the following: “The Secretary shall re-
19 solve any protest to a lease sale within 60 days following
20 such payment.”.

○