

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.

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## 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

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## 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 reg-  
 23      ulations 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.”.

○