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

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 ____________________

A BILL

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

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Opportunities for the
Nation and States to Harness Onshore Resources for En-
ergy Act” or the “ONSHORE Act”.

SEC. 2. CLARIFICATION OF AUTHORITY.

Section 17(a) of the Mineral Leasing Act (30 U.S.C.
226(a)) is amended by striking “may be leased by the Sec-
retary.” and inserting the following: “shall be leased by the Secretary of the Interior, or for National Forest System land, the Secretary of Agriculture, unless—

“(1) otherwise excluded under this Act; or

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

SEC. 3. COOPERATIVE FEDERALISM IN OIL AND GAS PERMITTING ON AVAILABLE FEDERAL LAND.

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

(1) by redesignating section 44 as section 47;

and

(2) by adding after section 43 the following:

“SEC. 44. COOPERATIVE FEDERALISM IN OIL AND GAS PERMITTING ON AVAILABLE FEDERAL LAND.

“(a) DEFINITIONS.—In this section:

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

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

“(B) for which an application has been received that includes—

“(i) a drilling plan;

“(ii) a surface use plan of operations described in section 3162.3–1(f) of title 43,
Code of Federal Regulations (or a successor regulation); and

“(iii) evidence of bond coverage.

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

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

“(B) is not held by the United States in trust for the benefit of a federally recognized Indian Tribe or a member of a federally recognized Indian Tribe;

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

“(D) is not a unit of the National Wildlife Refuge System, other than a unit of the National Wildlife Refuge System for which oil and gas drilling is allowed under law;

“(E) is not a congressionally approved wilderness area under the Wilderness Act (16 U.S.C. 1131 et seq.); and

“(F) has been identified as land available for lease, or has been leased, for the exploration, development, and production of oil and gas—
“(i) by the Bureau of Land Management under—

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

“(II) an integrated activity plan with respect to the National Petroleum Reserve–Alaska; or

“(ii) by the Forest Service under a National Forest management plan under the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.).

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

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

“(5) STATE APPLICANT.—The term ‘State applicant’ means a State that submits an application under subsection (e).
“(6) STATE PROGRAM.—The term ‘State program’ means a program in a State under which the State may—

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

“(B) impose sanctions for violations of State laws, regulations, or any condition of an issued APD or approved drilling plan, as applicable.

“(7) SUNDRY NOTICE.—The term ‘sundry notice’ means a written request—

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

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

“(8) SUSPENSION OF OPERATIONS OR PRODUCTION.—The term ‘suspension of operations or production’ means a suspension of operations or production described in section 3103.4–4 of title 43, Code of Federal Regulations (or successor regulations).

“(b) AUTHORIZATIONS.—
“(1) **In general.**—On receipt of an application under subsection (c), the Secretary may delegate to a State exclusive authority—

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

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

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

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

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

“(2) **Inspection and enforcement.**—On request of a State for which authority is delegated under paragraph (1), the authority delegated may include the authority to inspect and enforce an APD, drilling plan, or right-of-way, as applicable.

“(3) **Rights-of-way.**—The authority to grant a right-of-way delegated to a State under paragraph (1)(E) shall be the authority of the Secretary of the Interior or the Secretary of Agriculture, as applicable, under section 501 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761), to grant, issue, or renew rights-of-way over, upon,
under, or through available Federal land for the purpose of mineral development.

“(4) Effect of Federal environmental reviews.—A State for which authority is delegated under paragraph (1) shall continue processing applications for an APD, applications for approval of a drilling plan, applications for approval of a sundry notice, and applications to grant a right-of-way, regardless of whether the Federal Government is carrying out any review related to the APD, drilling plan, sundry notice, or right-of-way under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) or the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

“(c) State application process.—

“(1) Submission of application.—A State seeking a delegation of authority under subparagraph (A), (B), (C), (D), or (E) of subsection (b)(1) shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including—

“(A) a description of the State program that the State proposes to administer under State law; and
“(B) a statement from the Governor or attorney general of the State that demonstrates that the laws of the State provide adequate authority to carry out the State program.

“(2) Deadline for approval or disapproval.—Not later than 180 days after the date on which an application under paragraph (1) is received, the Secretary shall approve or disapprove the application.

“(3) Requirements for approval.—

“(A) In general.—The Secretary may approve an application received under paragraph (1) only if the Secretary determines that—

“(i) the State applicant would be at least as effective as the Secretary in issuing APDs, approving drilling plans, approving sundry notices, approving suspensions of operations or production, or granting rights-of-way, as applicable;

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

“(I) complies with this Act; and

“(II) provides for the termination or modification of an issued APD, ap-
proved drilling plan, approved sundry notice, approved suspension of operations or production, or granted right-of-way, as applicable, for cause, including for—

“(aa) the violation of any condition of the issued APD, approved drilling plan, approved sundry notice, approved suspension of operations or production, or granted right-of-way;

“(bb) obtaining the issued APD, approved drilling plan, approved sundry notice, approved suspension of operations or production, or granted right-of-way by misrepresentation; or

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

“(iii) the State applicant has sufficient administrative and technical personnel and sufficient funding to carry out the State program; and
“(iv) approval of the application would not result in decreased royalty pay-
ments owed to the United States under subsection (a) of section 35, except as pro-
vided in subsection (e) of that section.

“(B) Memoranda of Understanding.—

With respect to a State applicant seeking au-
thority under subsection (b)(2)(A) to inspect and enforce APDs, drilling plans, or rights-of-
way, as applicable, before approving the appli-
cation of the State applicant, the Secretary shall enter into a memorandum of under-
standing with the State applicant under para-
graph (6) that describes the Federal and State responsibilities with respect to the inspection and enforcement.

“(C) Public Notice.—Before approving an application received under paragraph (1), the Secretary shall—

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

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

“(iii) hold a public hearing for the appli-
cation in the State.
“(4) Disapproval.—If the Secretary disapproves an application submitted under paragraph (1), the Secretary shall provide to the State applicant written notification of—

“(A) the reasons for the disapproval, including any information, data, or analysis on which the disapproval is based; and

“(B) any revisions or modifications necessary to obtain approval.

“(5) Resubmittal of Application.—A State may resubmit an application under paragraph (1) at any time.

“(6) State Memoranda of Understanding.—Before a State submits an application under paragraph (1), the Secretary, on request of the State, may enter into a memorandum of understanding with the State regarding the proposed State program—

“(A) to describe the Federal and State responsibilities for oil and gas regulations;

“(B) to provide technical assistance; and

“(C) to share best management practices.

“(d) Administrative Fees for APDs.—

“(1) In general.—A State for which authority has been delegated under subsection (b)(1)(A) may
collect a fee for each application for an APD that is submitted to the State.

“(2) No Collection of Fee by Secretary.—The Secretary may not collect a fee from the applicant or from the State for an application for an APD that is submitted to a State for which authority has been delegated under subsection (b)(1)(A).

“(3) Use.—A State shall use 100 percent of the fees collected under this subsection for the administration of the approved State program of the State.

“(e) Voluntary Termination of Authority.—

“(1) In General.—After providing written notice to the Secretary, a State may voluntarily terminate any authority delegated to the State under subsection (b)(1) on expiration of the 60-day period beginning on the date on which the Secretary receives the written notice.

“(2) Resumption by Secretary.—On termination of the authority delegated to a State under paragraph (1), the Secretary shall resume any activities for which authority was delegated to the State under subsection (b)(1).
“(f) **Appeal of Denial of Application.**—If a State for which the Secretary has delegated authority under subsection (b)(1) denies an application submitted under subsection (c)(1), the applicant may appeal the decision to the Office of Hearings and Appeals of the Department of the Interior.

“(g) **Federal Administration of State Program.**—

“(1) **Notification.**—If the Secretary has reason to believe that a State is not administering or enforcing an approved State program, the Secretary shall notify the relevant State regulatory authority of any possible deficiencies.

“(2) **State Response.**—Not later than 30 days after the date on which a State receives notification of a possible deficiency under paragraph (1), the State shall—

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

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

“(3) **Determination.**—

“(A) In general.—On expiration of the 30-day period described in paragraph (2), the
Secretary shall issue public notice of any determination of the Secretary that—

“(i) a violation of all or any part of an approved State program has resulted from a failure of the State to administer or enforce the approved State program of the State; or

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

“(B) APPEAL.—A State may appeal the determination of the Secretary under subparagraph (A) in the applicable United States District Court.

“(C) RESUMPTION BY SECRETARY PENDING APPEAL.—The Secretary may not resume activities under paragraph (4) if an appeal under subparagraph (B) is pending.

“(4) RESUMPTION BY SECRETARY.—Except as provided in paragraph (3)(C), if the Secretary has made a determination under paragraph (3)(A), the Secretary shall resume any activities for which authority was delegated to the State during the period—
“(A) beginning on the date on which the Secretary issues the public notice under paragraph (3)(A); and

“(B) ending on the date on which the Secretary determines that the State may administer or enforce, as applicable, the approved State program of the State.

“(5) STANDING.—A State with an approved regulatory program shall have standing to sue the Secretary for any action taken under this subsection.”.

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

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

(2) by striking “with respect to any of the activities described in subsection (b) shall be subject to a rebuttable presumption that the use of” and inserting “shall apply”; and

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

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

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

"SEC. 45. PERMITTING ON A NON-FEDERAL SURFACE ESTATE.

(a) Definitions.—In this section:

(1) Drainage.—The term ‘drainage’, with respect to a non-Federal surface estate, means the migration of any hydrocarbon under the subsurface of the non-Federal surface estate.

(2) Unit.—The term ‘unit’ means a State-regulated drilling and spacing unit.

(b) Permits Not Required for Certain Activities on a Non-Federal Surface Estate.—The following activities conducted on a non-Federal surface estate shall not require a permit from the Bureau of Land Management and shall not be considered a major Federal action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.):

(1) Oil and gas operations for the exploration for, or development or production of, oil and gas in a lease or unit or communitization agreement in which the United States holds a mineral ownership interest of 50 percent or less.
“(2) Oil and gas operations that may have potential drainage impacts, as determined by the Bureau of Land Management, on oil and gas in which the United States holds a mineral ownership interest.

“(c) DOI Notification.—The Secretary of the Interior shall provide to each State a map or list indicating Federal mineral ownership within that State.

“(d) State Notification.—Each State with an approved permit to drill or drilling plan that would impact or extract oil and gas owned by the Federal Government shall notify the Secretary of the Interior of the approved permit to drill or drilling plan.

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

SEC. 5. STATE AND TRIBAL AUTHORITY FOR HYDRAULIC FRACTURING REGULATION.

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

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

“(a) Definitions.—In this section:
“(1) HYDRAULIC FRACTURING.—The term ‘hydraulic fracturing’ means the process of creating small cracks or fractures in underground geological formations for well stimulation purposes of bringing hydrocarbons into the wellbore and to the surface for capture.

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

“(b) ENFORCEMENT OF FEDERAL REGULATIONS.—The Secretary shall not enforce any Federal regulation, guidance, or permit requirement regarding hydraulic fracturing relating to oil, gas, or geothermal production activities on or under any land in any State that has regulations, guidance, or permit requirements for that activity.

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

“(d) TRANSPARENCY OF STATE REGULATIONS.—

“(1) IN GENERAL.—Each State shall submit to the Bureau of Land Management a copy of the regulations of the State that apply to hydraulic fracturing operations on Federal land, including the reg-
ulations that require disclosure of chemicals used in hydraulic fracturing operations.

“(2) **AVAILABILITY.**—The Secretary shall make available to the public on the website of the Secretary the regulations submitted under paragraph (1).

“(e) **TRIBAL AUTHORITY ON TRUST LAND.**—The Secretary shall not enforce any Federal regulation, guidance, or permit requirement with respect to hydraulic fracturing on any land held in trust or restricted status for the benefit of a federally recognized Indian Tribe or a member of a federally recognized Indian Tribe, except with the express consent of the beneficiary on whose behalf the land is held in trust or restricted status.”.

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

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