

117TH CONGRESS
1ST SESSION

S. 2170

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

JUNE 22, 2021

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 2021” or
6 the “PEOPLE Act of 2021”.

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 “(6) 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) PUBLIC NOTICE AND COM-
14 MENT.—Before conducting a lease sale
15 under this section, the Secretary, in com-
16 plying with the National Environmental
17 Policy Act of 1969 (42 U.S.C. 4321 et
18 seq.), shall ensure that the public has the
19 period of time required under that Act to
20 comment on any environmental analysis
21 carried out with respect to the lease sale.

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

1 “(C) REQUIREMENT TO CONDUCT NEPA
2 ANALYSIS.—

3 “(i) IN GENERAL.—Before conducting
4 a lease sale under this section, the Sec-
5 retary shall conduct an analysis under the
6 National Environmental Policy Act of
7 1969 (42 U.S.C. 4321 et seq.) unless the
8 Secretary determines that—

9 “(I) the proposed action is ade-
10 quately covered by relevant existing
11 analyses under that Act, such as an
12 environmental impact statement or
13 environmental assessment (including
14 supporting data and records);

15 “(II) the proposed action is in
16 conformance with the relevant land
17 use plan; and

18 “(III) there are no new cir-
19 cumstances, new information, or un-
20 anticipated or unanalyzed environ-
21 mental impacts that warrant new or
22 supplemental analysis.

23 “(ii) PUBLIC NOTICE AND COM-
24 MENT.—Before making a determination
25 under clause (i) that an analysis under the

1 National Environmental Policy Act of
 2 1969 (42 U.S.C. 4321 et seq.) is not re-
 3 quired with respect to a lease sale under
 4 this section, the Secretary shall provide a
 5 period of public comment for that deter-
 6 mination of not less than 30 days.

7 “(D) NEPA ANALYSIS REQUIREMENTS.—

8 “(i) IN GENERAL.—Any analysis pre-
 9 pared pursuant to the National Environ-
 10 mental Policy Act of 1969 (42 U.S.C.
 11 4321 et seq.) for a lease sale under this
 12 section shall address all parcels being con-
 13 sidered for sale.

14 “(ii) RESTRICTION.—No parcel may
 15 be included in a lease sale under this sec-
 16 tion—

17 “(I) without compliance with—

18 “(aa) the public notice and
 19 comment requirements of this
 20 subsection; and

21 “(bb) the National Environ-
 22 mental Policy Act of 1969 (42
 23 U.S.C. 4321 et seq.); and

24 “(II) unless the parcel is specifi-
 25 cally identified and considered in the

1 analysis for that specific lease sale
2 carried out in compliance with the
3 National Environmental Policy Act of
4 1969 (42 U.S.C. 4321 et seq.).

5 “(E) SURFACE MANAGEMENT BY ANOTHER
6 FEDERAL AGENCY.—With respect to a parcel
7 the surface of which is managed by another
8 Federal agency, the parcel may not be included
9 in a lease sale under this section without the
10 consent of that Federal agency for that specific
11 lease sale.

12 “(F) PROTESTS.—

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

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

18 “(I) shall be filed by the date
19 that is not later than 45 days after
20 the date on which the Secretary gives
21 notice of the lease sale under para-
22 graph (1); and

23 “(II) may be filed by electronic
24 mail.

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

10 “(5) INDIAN TRIBES.—

11 “(A) DEFINITIONS.—In this paragraph:

12 “(i) CULTURAL SITE.—The term ‘cul-
 13 tural site’ means—

14 “(I) a sacred site;

15 “(II) a historic property (as de-
 16 fined in section 800.16 of title 36,
 17 Code of Federal Regulations (as in ef-
 18 fect on the date of enactment of the
 19 PEOPLE Act of 2021)); and

20 “(III) a landform or landscape
 21 that—

22 “(aa) is the site of impor-
 23 tant customs, practices, objects,
 24 places, or ceremonies of Indian
 25 Tribes;

1 “(bb) is important to an In-
 2 dian Tribe for the undertaking of
 3 religious, cultural, spiritual, or
 4 traditional practices;

5 “(cc) is connected through
 6 features or ceremonies to other
 7 sites or a larger sacred land-
 8 scape; or

9 “(dd) contains important
 10 traditional food or material gath-
 11 ering areas.

12 “(ii) FORMER RESERVATION.—The
 13 term ‘former reservation’ means land that
 14 is within the exterior boundaries of any
 15 previous reservation that was established
 16 by treaty, Executive order, or Secretarial
 17 order for an Indian Tribe.

18 “(iii) INDIAN TRIBE.—The term ‘In-
 19 dian Tribe’ means an Indian tribe included
 20 on the list published by the Secretary
 21 under section 104 of the Federally Recog-
 22 nized Indian Tribe List Act of 1994 (25
 23 U.S.C. 5131).

24 “(iv) INTERESTED INDIAN TRIBE.—
 25 The term ‘interested Indian Tribe’, with

1 respect to land under consideration for in-
2 clusion by the Secretary in a lease sale
3 under this section, means an Indian Tribe
4 with—

5 “(I) historic, prehistoric, cultural,
6 or religious connection to a cultural
7 site located on the land;

8 “(II) a former reservation located
9 on the land; or

10 “(III) treaty rights or other re-
11 served rights that can be exercised on
12 the land.

13 “(v) SACRED SITE.—The term ‘sacred
14 site’ means a specific, discrete, narrowly
15 delineated site on land subject to leasing
16 under this section that is identified by an
17 Indian Tribe as sacred by virtue of the es-
18 tablished religious significance of the site
19 to, or ceremonial use of the site by, an In-
20 dian Tribe.

21 “(B) NOTICE AND OPPORTUNITY FOR COM-
22 MENT; FORMAL CONSULTATION.—Before taking
23 any action for which notice or opportunity for
24 comment is required under this subsection, the
25 Secretary shall—

1 “(i) provide any interested Indian
 2 Tribe notice and an opportunity for com-
 3 ment that meets or exceeds the require-
 4 ments for notice and opportunity for com-
 5 ment under this subsection; and

6 “(ii) at the request of any interested
 7 Indian Tribe, initiate formal consultation
 8 with the interested Indian Tribe regarding
 9 the proposed action.”.

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

13 “(q) SURFACE ESTATE OWNER PROTECTION.—

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

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

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

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

22 “(A) IN GENERAL.—Except as provided in
 23 paragraph (3), the Secretary shall not authorize
 24 any operator to conduct exploration and drilling
 25 operations on covered land until the operator

1 files with the Secretary a document, signed by
2 the operator and the 1 or more surface estate
3 owners, demonstrating that the operator has se-
4 cured a written surface use agreement between
5 the operator and the 1 or more surface estate
6 owners that meets the requirements of subpara-
7 graph (B).

8 “(B) CONTENTS.—The surface use agree-
9 ment under subparagraph (A) shall provide
10 for—

11 “(i) the use by the operator of only
12 such portion of the surface estate as is rea-
13 sonably necessary for exploration and drill-
14 ing operations based on site-specific condi-
15 tions;

16 “(ii) the accommodation of the sur-
17 face estate owner to the maximum extent
18 practicable, including the location, use,
19 timing, and type of exploration and drilling
20 operations, consistent with the right of the
21 operator to develop the oil and gas estate;

22 “(iii) placement, specifications, main-
23 tenance, and design of well pads, gathering
24 pipelines, and roads to be constructed for

1 oil and gas operations, to the extent
2 known;

3 “(iv) terms of ingress and egress on
4 the surface of the land for oil and gas op-
5 erations;

6 “(v) construction, maintenance, and
7 placement of all pits and equipment used
8 or planned for oil and gas operations, to
9 the extent known;

10 “(vi) use and impoundment of water
11 on the surface of the land;

12 “(vii) removal and restoration of plant
13 life;

14 “(viii) surface water drainage
15 changes;

16 “(ix) actions to limit and effectively
17 control precipitation runoff and erosion;

18 “(x) control and management of
19 noise, weeds, dust, traffic, trespass, litter,
20 and interference with the use of the sur-
21 face estate owner;

22 “(xi) operator indemnification for in-
23 jury to persons caused by the operator or
24 a subcontractor or agent of the operator;

1 “(xii) the reclamation of the site to a
2 condition capable of supporting the uses
3 that the land was capable of supporting
4 prior to exploration and drilling operations;
5 and

6 “(xiii) compensation for damages re-
7 sulting from exploration and drilling oper-
8 ations, including—

9 “(I) loss of income and increased
10 costs incurred;

11 “(II) groundwater contamination
12 and negative impacts to air quality;

13 “(III) damage to, or destruction
14 of, personal property, including crops,
15 forage, and livestock; and

16 “(IV) failure to reclaim the site
17 in accordance with clause (xii).

18 “(C) PROCEDURE.—

19 “(i) NOTICE OF INTENT TO ENTER
20 INTO AGREEMENT.—An operator shall no-
21 tify the 1 or more surface estate owners of
22 the desire of the operator to conclude an
23 agreement under this paragraph by cer-
24 tified mail or electronic mail.

25 “(ii) ARBITRATION.—

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

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

13 “(III) COST.—The cost of an ar-
14 bitration under subclause (I) shall be
15 the responsibility of the operator.

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

21 “(V) QUALIFICATIONS OF ARBI-
22 TRATORS.—In order to arbitrate a
23 dispute under this clause, an arbi-
24 trator shall meet the minimum quali-

1 fication criteria of the American Arbi-
2 tration Association, including—

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

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

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

13 “(dd) membership in rel-
14 evant professional associations.

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

21 “(3) AUTHORIZED EXPLORATION AND DRILL-
22 ING OPERATIONS.—

23 “(A) AUTHORIZATION WITHOUT SURFACE
24 USE AGREEMENT.—

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

7 “(I) the Secretary makes a deter-
8 mination in writing that—

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

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

19 “(II) the operator submits a plan
20 of operations that provides for—

21 “(aa) the matters described
22 in paragraph (2)(B); and

23 “(bb) compliance with all
24 other applicable requirements of
25 Federal and State law; and

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

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

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

21 “(i) before authorizing an operator to
22 conduct exploration and drilling operations
23 on the covered land, a period of not less
24 than 30 days to comment on the plans of
25 operations of the operator;

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

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

8 “(iv) an opportunity to file written ob-
 9 jections to a proposed bond release; and

10 “(v) an opportunity to request and
 11 participate in an onsite inspection if the
 12 surface estate owner has reason to believe
 13 there is a violation of the terms and condi-
 14 tions of the plan of operations of the oper-
 15 ator.

16 “(C) PAYMENT OF FINANCIAL GUAR-
 17 ANTEE.—

18 “(i) IN GENERAL.—The owner of the
 19 surface estate of covered land subject to a
 20 lease issued under this section may petition
 21 the Secretary for payment of all or any
 22 portion of a bond or other financial assur-
 23 ance required under subsection (g) as com-
 24 pensation for any damages resulting from

1 exploration and drilling operations pursu-
 2 ant to the lease.

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

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

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

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

23 “(C) of any subsequent request or decision
 24 regarding the lease, including any request or
 25 decision to modify the lease, waive a stipulation,

1 or approve a right of way, by not later than 5
 2 business days after the Secretary receives the
 3 request or makes the decision; and

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

7 “(5) BONDS OR FINANCIAL ASSURANCES.—

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

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

24 “(C) RELEASE OF BOND OF OTHER FINAN-
 25 CIAL ASSURANCE.—The Secretary may release

1 the bond or other financial assurance required
2 for a lease of covered land only if—

3 “(i) the Secretary determines that
4 compensation for damages has been paid
5 in accordance with, as applicable—

6 “(I) the terms of the surface use
7 agreement under paragraph
8 (2)(B)(xiii); or

9 “(II) the determination of the
10 Secretary under paragraph (3)(A)(iii);

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

17 “(iii) the Secretary determines that—

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

20 “(II) any damages awarded pur-
21 suant to that action have been paid;

22 or

23 “(iv) the Secretary determines that—

1 “(I) all wells on the covered land
2 have been plugged and abandoned;
3 and

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

○