

**WEEKLY HIGHLIGHTS AT-A-GLANCE****FEDERAL – Legislative**

- **Rights-of-Way; Public Lands.** On January 5, 2016, Rep. Paul Cook (R-CA) introduced H.R. 4313, the Historic Routes Preservation Act, a bill to establish a procedure for resolving claims to certain rights-of-way on federal lands. The bill, with co-sponsors from Western oil and gas producing states, provides an administrative means for counties to confirm rights-of-way on Bureau of Land Management lands, and will eliminate the burdens of filing quiet title actions in federal court. [Read more.](#)

**STATE – Judicial**

- **Lease Terms; Royalties; Production – Ohio.** In *Mobberly v. Wade* (7th District, Case 2015-Ohio-5287) the appellate court recently affirmed a lower court decision in favor of the lessee. The lessor, arguing for lease forfeiture, claimed the lease terminated due to a lack of production, that the lessee failed to file production statements with the Ohio Department of Natural Resources, and the lessee violated implied covenants of development and marketing. The court rejected the lessor's claims and found the lease valid and held by production. [Read more.](#)
- **Lease Terms; Well Commencement – Ohio.** In *Cooper v. EQT Prod. Co.* (Case No. 2:14-CV-0545), the Federal District Court for the Southern District of Ohio reconciled allegedly conflicting provisions in an oil and gas lease and found that the lease was properly extended notwithstanding a clause requiring the lessee to commence a well by a certain date. In its late December 2015 decision, the court, in finding for the lessee, held that an exercised lease extension relieved the lessee of the obligation to commence a well during the primary term. [Read more.](#)
- **Recordation; Title Transactions – Ohio.** On January 6, the Supreme Court of Ohio heard oral arguments in *Albanese v. Batman* (Case No. 12-0120) and *Lipperman v. Batman* (Case No. 15-0121). In these cases, the Court heard arguments considering whether the recording of an out-of-state will is a "title transaction" under the Ohio Dormant Mineral Act. [Read more.](#)
- **Royalty Clauses; Post-Production Expenses – Ohio.** On January 5, the Supreme Court of Ohio heard oral arguments in *Regis F. Lutz et al. v. Chesapeake Appalachia, L.L.C.* (Case No. 2015-0545) in a dispute between Chesapeake and lessors governing how royalty payments are made regarding post-production expenses. Specifically, the

arguments involve whether Ohio follows the “at-the-well” rule in deducting production expenses from royalties – a standard already adopted by producing states like Michigan, Pennsylvania, Texas, and Mississippi. [Read more.](#)

**INDUSTRY NEWS FLASH:** Last week, the American Petroleum Institute released its much-anticipated annual report, the *State of American Energy*, in which it details how oil and natural gas are critical to the U.S. economy. The report focuses on regional contributions to the energy industry, priority issues for development, and how federal decision-making affects the industry. [Read more.](#)

## State-by-State Legislative Session Overview

**Massachusetts** and the **U.S. Congress** adjourned their 2015 legislative sessions on January 5 and convened their 2016 legislative sessions on January 6.

**California, Indiana, Kentucky, Maine, Massachusetts, Mississippi, Missouri, Nebraska, New Hampshire, New York, Pennsylvania, Rhode Island** and **Vermont** are in regular session. The **District of Columbia** and the **U.S. Congress** are also in regular session.

The following states are in recess and are expected to reconvene their 2015 sessions on the dates provided: **New Jersey** (January 11); **Illinois** (January 13) and **Ohio** (January 20).

The following states are expected to convene their 2016 legislative sessions on the dates provided: **Georgia, Idaho, Iowa, Kansas** and **Washington** (January 11); **Delaware, Florida, South Carolina, South Dakota, Tennessee** and **Wisconsin** (January 12); **Colorado, Illinois, Maryland, Michigan, New Jersey, Virginia** and **West Virginia** (January 13) and **Ohio** (January 20).

The following governors have bill signing deadlines on the dates provided: **South Carolina** Republican Gov. Nikki Haley has until January 14 to act on legislation or it becomes law without signature. **Maine** Republican Gov. Paul LePage has until January 16 to act on any bills sent to him on July 16. All other legislation has been acted on. **Michigan** Republican Gov. Rick Snyder has 14 days from presentment to act on legislation or it is pocket vetoed. **Ohio** Republican Gov. John Kasich has 10 days from presentment, Sundays excepted, to act on legislation or it becomes law without signature.

**Alabama, Arizona, Delaware, Florida**, the **Georgia** House and Senate, **Iowa**, the **Kansas** House, **Louisiana**, the **Maryland** House and Senate, **New Mexico, Oklahoma, South Carolina, South Dakota**, the **Tennessee** House and Senate, **Utah, Virginia, Washington** and **Wyoming** are now pre-filing for the 2016 legislative session.

The following states are currently holding interim committee hearings: **Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut**, the **Florida** House and Senate, the **Georgia** House

and Senate, **Idaho, Iowa, Kansas, Maryland, Minnesota, Montana, Nevada, New Mexico, North Dakota**, the **Oklahoma** House and Senate, the **South Carolina** House and Senate, **South Dakota, Tennessee, Utah, Virginia, Washington, West Virginia** and **Wyoming**.

## Landmen

**New York** [AB 5389](#), sponsored by Asm. Barbara Lifton, D/WF-Ithaca, was introduced and referred to the Assembly Economic Development Committee on February 20, 2015. We reported on this bill in 2015 and no action had ever been taken on this legislation throughout 2015. However, on January 6, 2016, the bill was re-referred to that committee for the 2016 session. The bill would create licensing and other regulatory requirements for land leasing agents. A land leasing agent would be defined as any person who is either:

- A landman certified by the American Association of Professional Landmen.
- A landman registered with the American Association of Professional Landmen.

A land leasing agent would be prohibited from operating in the state without first being licensed by the secretary of state or between the expiration date of the license and its renewal date. The secretary would be required to determine the fee for an initial license application and a license renewal application, which could not exceed \$300. The secretary would be authorized to renew license applications, but would be prohibited from doing so more than six months after the expiration date of the license. The license application would have to include, in writing and under oath:

- The name and address of the applicant.
- The place or places where business is to be conducted, including the complete address or addresses.
- A summary of all relevant experience of the applicant as a land leasing agent and/or in the management of funds.
- Satisfactory evidence of good moral character.
- Any further information as the secretary could prescribe by rule or regulation.

If enacted, the bill would take effect 60 days after passage, except that any rules or regulations necessary to the implementation of its provisions could be added, amended or repealed on or before that date.

**Pennsylvania** [SB 991](#), sponsored by Sen. Andy Dinniman, D-West Chester, was introduced and referred to the Senate Consumer Protection and Professional Licensure Committee on September 21, 2015 and will carry over into 2016. The bill would provide for the mandatory registration of land acquisition brokers. A land acquisition broker would be defined as someone who does any of the following in the course and scope of their business:

- Acquires or manages oil, gas, or mineral interests.
- Performs title or contract functions related to the exploration, exploitation, or disposition of oil, gas, or mineral interests.

- Negotiates for the acquisition or divestiture of oil, gas, or mineral rights, including the acquisition or divestiture of land or oil, gas, or mineral rights for a pipeline.
- Negotiates business agreements that provide for the exploration for or development of oil, gas, or minerals.

The bill would establish and maintain a state registry of land acquisition brokers with registration brokers operating in the state, which would be available for public inspection on the Pennsylvania Real Estate Commission's website. The commission would also be instructed to establish an initial registration application fee and a biennial renewal fee, which each applicant would have to submit along with specified information, including a list of any other state or other jurisdiction in which the applicant holds or has held a similar registration or license and a list of any other state or jurisdiction in which the applicant has had a similar registration or license suspended or revoked.

If enacted, SB 991 would take effect 60 days after final passage and approval.

**Wisconsin [SB 375](#)**, sponsored by Sen. Frank Lasee, R-De Pere, and Sen. Robert Cowles, R-Green Bay, was considered in a public hearing in the Senate Insurance, Housing and Trade Committee on January 5. Senator Lasee is the chair of that committee. The bill would generally amend current law regulating the practice and licensure of real estate brokers and real estate salespersons. It would create provisions addressing independent real estate practice by brokers, which is not addressed under current law. Under these provisions, a broker who is associated with a firm would also be authorized to engage in independent real estate practice, as specified. The bill would also define an “employee” for the purposes of these provisions to specify that a licensee would not be considered an employee of a firm if:

- A written agreement has been entered into with the firm that provides that the licensee may not be treated as an employee for federal and state tax purposes.
- 75 percent or more of the annual compensation related to sales or output paid by the firm to the licensee pursuant to the agreement is directly related to the brokerage services performed by the licensee on behalf of the firm.

The majority of the bill would take effect on July 1, 2016 or on the day after publication by the Legislative Reference Bureau, whichever is later. SB 375 is significantly similar to [AB 456](#) (reported in last week’s report), which passed the Assembly Housing and Real Estate Committee and was referred to the Assembly Rules Committee as amended by [Assembly Amendment 1](#) on December 22. Note: This bill, like AB 456, is not legislation requiring real estate licensure for landmen. It has been included herein for your reference for those landmen who may also engage in real estate practice in Wisconsin.

## **Lands**

**Wisconsin [AB 319](#)**, sponsored by Rep. Thomas Weatherston, R-Caledonia, and others, was reported favorably by the Senate Workforce Development, Public Works and Military Affairs Committee unanimously on January 6. Similar bill [SB 231](#) also passed that committee unanimously on January 6. Current law prohibits the condemnation of real property owned by

the state, a municipality or a county, with an exception for high-voltage transmission lines constructed by electric public utilities and cooperative associations. These bills would extend the exception regarding condemnation to include natural gas distribution and transmission lines constructed by natural gas public utilities. If enacted they would take effect one day after publication by the Legislative Reference Bureau.

## Oil and Gas

### General Oil and Gas

**Wisconsin** [SB 457](#) was considered in the Senate Judiciary and Public Safety Committee on January 7. Sponsor Sen. Van Wanggaard, R-Racine, who is the chair of that committee as well as the vice-chair of the Senate majority caucus, offered [Senate Amendment 1](#) on January 6. Details from the hearing are not yet available. The bill would increase the criminal penalty for intentionally damaging property if the property is owned, lease, or operated by an energy provider and the person perpetrating the damage caused or intended to cause a substantial interruption of the energy provider's goods or services. It would also increase the criminal penalty for entering a property that is part of an energy plant or electric generation, distribution or transmission system or part of a natural gas distribution system without lawful authority or the consent of the energy provider that owns, operates or leases the property. If enacted, the bill would take effect one day after publication by the Legislative Reference Bureau. The bill is similar to [AB 547](#), which passed the Assembly Energy and Utilities Committee 14-1 as amended by [Assembly Amendment 1](#) on December 22 and was then referred to the Assembly Rules Committee.

### Leasing

**Pennsylvania** [SB 147](#), which passed the Senate unanimously with amendments on January 28, 2015 and was referred to the House Environmental Resources and Energy Committee on February 2, will carry over into the 2016 session. As amended, the bill would require proceeds from oil and gas production to be paid within 90 days of production and remitted to the entitled person on a quarterly basis for the three months accumulation of proceeds totaling less than \$100. Delinquent payments would be paid at the legal rate of interest. It would also require interest owners in joint ventures to be provided with certain information each year if the joint venture company is separately paying its share of the royalty. The lessor could submit a written request to inspect documents related to the payments. According to the [sponsor's memo](#), the bill is substantially similar to 2014's [SB 1236](#), which stalled after it passed the Senate with amendments. While this legislation is not specifically identifying or targeting landmen, the AAPL is currently working with our Pennsylvania lobbyist to ensure that landmen are properly exempted from any definitional language in the legislation that might adversely affect their interests in the state.

[SB 148](#), which also passed the Senate unanimously on January 28 and was referred to the House Environmental Resources and Energy Committee on February 2, 2015, will also carry over into 2016. The bill would prohibit a lessee from retaliating against a lessor of natural gas rights by ceasing development because the owner reported a complaint or claim of a contractual violation. A lessor alleging violation of this provision could bring a civil action against the lessee if they

provide evidence that shows they acted in good faith. If the court rules in favor of a lessor, the lessee could have to pay reasonable damages and could be subject to a civil fine of up to \$1,000 per day. The bill is substantially similar to 2014's [SB 1237](#), which passed the Senate but failed to advance in the House. While this legislation is not specifically identifying or targeting landmen, the AAPL is currently working with our Pennsylvania lobbyist to ensure that landmen are properly exempted from any definitional language in the legislation that might adversely affect their interests in the state.