

GOVERNMENTAL AFFAIRS WEEKLY REPORT

Weekly Highlights At-A-Glance

FEDERAL – Legislative

S.J. Res 14 – Oil and Natural Gas Sector Emissions Standards Regulations. (Update to 9/21/20 Weekly Report) On June 28, the House passed Democratic [S.J. Res. 14](#), “A joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Environmental Protection Agency relating to ‘Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review’”. The measure already passed the Senate in April. President Biden signed the disapproval resolution on June 30 following the White House expressing its support for the measure which reinstates an Obama-era regulation limiting methane emissions from oil and gas drilling, and which the Trump administration overturned (See [85 Fed. Reg. 57018](#); September 14, 2020). [Read more.](#) According to the Democratic resolution sponsors, “This joint resolution nullifies the Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review rule published by the Environmental Protection Agency on September 14, 2020. The rule finalized amendments to new source performance standards under the Clean Air Act for the oil and natural gas sector, such as an amendment that removed limitations on methane emissions from such sector.” The Obama-era rulemaking limits methane leaks from oil and gas wells during extraction. Proponents of the limit restoration are “hoping the EPA will impose stricter limits on fugitive methane, while opponents are concerned about more restrictions.” According to Bloomberg Government, “Regardless of what the EPA does, finding a long-term solution to methane emissions remains a key Democratic priority. Rep. Diana DeGette (D-CO), who led the push to use the Congressional Review Act to reverse Trump’s rule,

said, “There’s a lot of other methane legislation, as you know, that we have looked at, so we are going to sit down and figure out what we need to do next.” Congress was able to overturn the Trump administration rulemaking by use of the 1996 [Congressional Review Act](#), which allows Congress to scrap federal rules if acted upon within 60 legislative days of the session and only requires a majority vote. [Read more.](#)

S. 2177 – Oil and Gas Bonding Reform and Orphaned Well Remediation Act. On July 9, official bill text was made available for [S. 2177](#), known as the Oil and Gas Bonding Reform and Orphaned Well Remediation Act. Sponsored by Sen. Michael Bennet (D-CO), the bill would “amend the Mineral Leasing Act to ensure sufficient bonding and complete and timely reclamation of land and water disturbed by Federal and Indian oil and gas production.” According to Sen. Bennet, the measure “would take a two-step approach to address the risk that orphaned wells pose to watersheds, wildlife, and livestock; reduce the burden on local governments; modernize federal standards; and cut powerful methane pollution while creating good-paying jobs. First, it would create a fund to dramatically expand orphaned well cleanup on federal, state, and tribal lands, creating good-paying jobs. Second, it would modernize federal oil and gas bonding requirements to reflect the true cost of clean-up, while increasing transparency. This will ensure that companies, rather than taxpayers or state and local governments, cover the costs of future cleanup. President Joe Biden included funding for orphaned well cleanup in his American Jobs Plan.” [Read more.](#)

S. 2170 – Public Engagement Opportunity on Public Land Exploration (PEOPLE) Act. On June 22,

Sen. Michael Bennet (D-CO) introduced [S. 2170](#), known as the Public Engagement Opportunity on Public Land Exploration (PEOPLE) Act. The bill “would restore the role of the public, county commissioners, and other local elected leaders in shaping decisions about public land management and lease sales. The bill would increase transparency for lease sale nominations and bids, establish adequate and consistent public notice and comment periods, and require outreach to local governments, landowners, and public land user groups to minimize future conflict.” [Read more.](#)

H.R. 4219 – Federal Royalty Rate. On June 29, Rep. Liz Cheney (R-WY) introduced [H.R. 4219](#), which would “amend the Mineral Leasing Act to adjust the royalty rates for leases for coal mining and oil and gas extraction on Federal land.” Specifically, the legislation would permanently fix the federal royalty rate for surface coal and onshore oil and gas at 12.5%. The bill has little chance of advancing in the Democrat-controlled House. [Read more.](#)

H.R. 3330 – Public Land Renewable Energy Development Act of 2021. On June 28, official bill text was made available for [H.R. 3330](#), known as the Public Land Renewable Energy Development Act of 2021. Sponsored by Rep. Paul Gosar (R-AZ), the bill “will increase production of wind, solar, and geothermal energy on public lands while also establishing a revenue sharing mechanism that ensures a fair return for states, counties, sportsmen, conservation, and taxpayers.” According to Rep. Gosar, “This bill will streamline land use and promote more renewable energy on federal lands. In addition, taxpayers also benefit because the legislation directs revenues to the Department of Treasury for deficit reduction.” [Read more.](#)

Federal Oil and Gas Leasing Pause. On June 24, Republican congressional lawmakers delivered a letter to Interior Secretary Deb Haaland, pressing the agency on details on its oil and gas leasing pause on federal offshore and onshore lands in light of the recent federal court injunction ordering the pause be lifted, as reported in the June 28, 2021, Governmental

Affairs report. Apart from calling for the resumption of quarterly lease sales, the representatives demanded that the Interior Department “provide remedies for the cancellation of leases that occurred this year.” The letter, which detailed eight items to be provided to Congress, requested a response by July 1, which has yet to be seen. [Read more.](#)

Conservative Climate Caucus. In late June, more than 50 Republican congressional representatives launched the [Conservative Climate Caucus](#) to provide “a consolidated message on private industry as the path to climate solutions.” Rather than tackle climate challenges through “overreaching” regulations, the group argues that “local governments can handle regulation, and free-market innovation will drive realistic carbon solutions faster without putting U.S. energy industries at a competitive disadvantage.” Caucus member Rep. Kelly Armstrong (R-ND) said, “we can develop our natural resources while protecting the environment and that “allowing innovation and the free market to lead on climate solutions will make our country stronger and our air and water cleaner.” [Read more.](#)

[FEDERAL – Regulatory](#)

Interior Department Nomination. On June 18, President Biden nominated Laura Daniel-Davis for Assistant Secretary, Land and Minerals Management, at the Interior Department. Daniel-Davis previously “served as Chief of Staff to Interior Secretaries Sally Jewell and Ken Salazar in the Obama administration. She was most recently the Chief of Policy and Advocacy for the National Wildlife Federation. Laura was Deputy Chief of Staff to Rep. Mark Udall (D-CO) and also served at Interior in the Clinton Administration in several roles, including as Chief of Staff to the Deputy Secretary.” [Read more.](#)

BLM Resource Advisory Council – New Mexico. On June 25, the Bureau of Land Management (BLM) announced the Northern New Mexico Resource Advisory Council (RAC) will meet in-person for a field trip to visit the El Malpais National Conservation Area on August 18, and the RAC will hold its meeting

virtually on August 19. According to the BLM notice, "The 12-member Northern New Mexico RAC provides recommendations to the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in the RAC's area of jurisdiction."

[Read more.](#)

BLM Resource Advisory Council – California.

On June 30, the BLM announced the Central California Resource Advisory Council (RAC) will hold a public meeting on September 22 and will accept public comments. The meeting will include topics related to land management and recreation areas.

[Read more.](#)

BLM Resource Advisory Council – California.

On June 24, the BLM announced the Northern California District Resource Advisory Council (RAC) will conduct a field tour on August 26 and hold a business meeting on August 27, which is open to the public. Topics to be discussed include the Northwest California Integrated Resource Management Plan, which is still under development.

[Read more.](#)

BLM Desert Advisory Council – California.

On June 24, the BLM announced the California Desert District Desert Advisory Council (DAC) will meet virtually on August 7 and invites public comments. DAC Issues to be discussed include renewable energy projects, mining projects, and monument planning, among other issues.

[Read more.](#)

BLM Public Lands Withdrawal Extension – Alaska.

On July 8, the BLM published a *Notice of Proposed Withdrawal Extension and Opportunity for Public Meeting; Alaska* (86 Fed. Reg. 36154), which proposes to extend the withdrawal of approximately 730.13 acres of public lands located in Anchorage, Alaska, for an additional 20-year term. The withdrawal created by Public Land Order (PLO) No. 6127, as extended by PLO No. 7471, expires on February 11, 2022. PLO No. 6127 withdrew public land from settlement, sale, location, or entry, under

the general land laws, including mining laws, and from selection under Section 6 of the Alaska Statehood Act for the Campbell Tract administrative site, and reserved for use by the BLM for administrative site in Anchorage, Alaska. This notice provides for the public to comment and request a public meeting for the 20-year withdrawal extension. The public comment period is open through October 6, 2021. [Read more.](#)

FEDERAL – Judicial

Eminent Domain; Pipelines – U.S. Supreme Court.

On June 29, in *PennEast Pipeline Co. v. New Jersey* (Case No. 19-1039), the U.S. Supreme Court ruled in a 5-4 decision "that a pipeline company can use federal eminent domain authority to build a pipeline across state-owned land and private lands where easements have been granted by states." In the case, New Jersey "refused to allow the proposed PennEast natural gas pipeline to cross two parcels of state-owned land and 40 parcels of private land where environmental easements and other easements gave the state an interest. When the company went to court to win enforcement of its authority to use eminent domain proceedings, New Jersey asserted its sovereign immunity protected it from a private party's lawsuit." The U.S. Court of Appeals for the Third Circuit adopted the state's argument, but here, the Supreme Court overruled that decision holding that natural-gas pipeline projects with federal approval can seize state-owned land. Writing for the majority, Chief Justice John Roberts stated that "federal eminent domain authority applies to state properties as well as private properties." [Read more.](#)

BLM Leases – North Dakota On July 7, 2021, North Dakota sued the Bureau of Land Management (BLM) alleging the agency wrongfully initiated a moratorium on federal oil and gas lease sales, which jeopardizes a key component of the state's economy. In *North Dakota v. U.S. Dept. of Interior* (Case No. 1:21-cv-00148), North Dakota says the Mineral Leasing Act requires lease sales to be held for the states at least quarterly and that the federal agencies "have failed

to comply with this mandatory statutory duty and have indicated that they intend to continue to do so for an indefinite period.” The complaint, which asks the court to review the agency action, states that “There was a quarterly lease sale scheduled for March 2021 for the BLM region that includes North Dakota” and “This lease sale was not held as required by statute.” [Read more.](#)

BLM Leases – Utah. On June 29, in *Rivers v. Hoffman* (Case No. 4:19-cv-00057-DN), the U.S. District Court for the District of Utah addressed a case involving suspended BLM oil and gas leases sold in Utah in 2018. In 2019, the BLM suspended the Utah oil and gas leases after the U.S. District Court for the District of Columbia ruled that the BLM failed to properly study the impact of greenhouse gas emissions for leases sold. The agency said the suspensions would stay in place until it completed a review under the National Environmental Policy Act. Living Rivers and the Southern Utah Wilderness Alliance argued the agency mismanaged the suspensions, which has prevented the leased public lands from being managed for multiple uses for the public’s benefit. According to the court, “The Bureau of Land Management can suspend oil and gas leases sold in Utah in 2018 without additional environmental review.” The Court held that the lease suspensions were not “major federal actions that require compliance with the National Environmental Policy Act.” As a result, the claim against the BLM was dismissed for lack of jurisdiction. [Read more.](#)

STATE – Legislative

Energy Source Bans – Florida. On June 21, Gov. Ron DeSantis (R) signed HB 919 into law. The Republican-backed legislation prohibits municipalities, counties, special districts, or other political subdivisions from restricting or prohibiting types or fuel sources of energy production used, delivered, converted, or supplied by certain entities to customers. The bill was a response to many municipalities in Democrat-led areas banning natural gas hookups in new residential and commercial properties. The Act took effect July 1. [Read more.](#)

Prohibits Forced Electric Charging Stations in Gas Stations – Florida. On June 16, Gov. Ron DeSantis (R) also signed HB 839, which is aimed at pushing back on environmental groups trying to force gas stations to install electric vehicle charging infrastructure. Specifically, the Act prohibits a “municipality, county, special district, or political subdivision from taking certain actions to prohibit siting, development, or redevelopment of fuel retailers & related transportation infrastructure & from requiring fuel retailers to install or invest in particular fueling infrastructure.” The Act took immediate effect upon signing. [Read more.](#)

Independent Contractors – Louisiana. (Update to 5/17/21 Weekly Report) On June 23, Gov. John Bel Edwards (D) signed HB 705 into law. Sponsored by Rep. Neil Riser (R), the Act provides for the misclassification of employees and criteria for classifying employees. Specifically, the Act provides that if an individual or entity meets at least seven of twelve criteria listed in the new law, there shall be a rebuttable presumption of an independent contractor relationship with the contracting party for whom the independent contractor performs work. The Act also provides that obtainment of an independent contractor certification from the state is optional and is not required to establish independent contractor status. The Act further provides that any contracting party or independent contractor may rely on the provisions of the law to establish an employment or independent contractor relationship. The Act will be effective as of August 1, 2021. [Read more.](#)

Notarial Acts – Michigan. On July 1, Rep. Stephanie Young (D) introduced HB 5249. The bill would allow for an additional technology fee for remote electronic notarization if agreed upon by the parties in advance. [Read more.](#)

Conservation Goals – Michigan. On June 24, Sen. Wayne Schmidt (R) introduced Senate Resolution 72. The resolution is “to urge the Governor to establish a statewide goal of conserving at least 30 percent of land and 30 percent of water in the state

by the year 2030, as part of the nationwide 30x30 effort to accelerate conservation efforts, and to update the state land management plan accordingly.” [Read more.](#)

Leasing; Royalties – Pennsylvania. On June 25, Sen. Gene Yaw (R) introduced SB 806, which amends existing law to provide for better transparency regarding royalty payments and deductions. According to the sponsoring memo, the “legislation would not impact lease agreements, but it would require entities making payments to landowners to provide more description, clarity and uniformity on their royalty check statements. This proposal is designed to help ensure all parties feel their lease agreements are executed as intended, and it will help mitigate concerns that have developed in recent years.” [Read more.](#)

Eminent Domain; Landowner’s Bill of Rights; Right-of-Way Agents – Texas. (Update to 3/8/21 Weekly Report) On June 16, Gov. Greg Abbott (R) signed HB 2730 into law. According to the bill’s statement of purpose, HB 2730 changes “the eminent domain process to make the process more transparent, accountable, and fair for landowners.” The Act provides for a landowner’s bill of rights, probationary certificates for Right-of-Way agents, and qualifying and continuing education requirements for Right-of-Way agents. The Act is effective January 1, 2022. [Read more.](#)

Royalty Payment Cause of Action – Texas. (Update to 3/22/21 Weekly Report) On May 24, Gov. Greg Abbott (R) signed SB 1259 into law. Sponsored by Sen. Brian Birdwell (R), regarding causes of action for withholding payments of the proceeds from the sale of oil and gas production, “S.B. 1259 simply states that a payee does not have a common law cause of action for breach of contract against a payor for withholding royalty payments under the Natural Resources Code unless, for a dispute concerning the title, the contract requiring payment specifies otherwise.” The Act took immediate effect. [Read more.](#)



SPECIAL LEGISLATIVE SECTION: LOUISIANA SESSION ADJOURNMENT

LOUISIANA SESSION ADJOURNMENT ROUNDUP.

The Louisiana legislative session adjourned on June 10, 2021, and the deadline for action by Gov. John Bel Edwards (D) has passed, bringing the regular 2021 legislative session to a close. Following is the status of the remaining bills AAPL had been tracking and reporting on for members this session that failed to advance and died upon adjournment. All other legislation that passed from the 15 bills tracked for members was covered in prior reports.

HB 26 – Republican bill; Severance Taxes. Would have changed the value required for crude oil produced from stripper wells to be exempt from severance tax. Although the bill passed the legislature it was vetoed by Gov. John Bel Edwards (D).

HB 30 – Republican bill; Severance Taxes. Would have reduced the severance tax rate for oil over a specified period and fixed the severance tax rate for oil produced from certain wells at the current rate.

HB 57 – Republican bill; Severance Taxes. Would have exempted oil produced from orphaned wells, newly drilled wells, or newly completed wells that are undergoing or have undergone well enhancements including but not limited to re-entries, workovers, or plugbacks from certain severance taxes under specified circumstances.

HB 617 – Republican bill; Fossil Fuels. Would have established Louisiana as a fossil fuel sanctuary state and expressed that federal actions that curtail fossil fuels are an infringement on state’s rights.

HB 658 – Republican bill; Wells. Would have exempted oil production of newly completed wells that are undergoing or have undergone certain well enhancements.

HB 661 – Republican bill; Severance Taxes. Would

have exempted oil production of certain newly drilled wells from severance taxes.

HB 662 – Republican bill; Severance Taxes. Would have exempted oil production of certain orphaned wells from severance tax. Although the bill passed both chambers, it died in conference.

SB 59 – Republican bill; Risk Charge. Would have provided for the risk charge against nonparticipating mineral owners in drilling units. The bill was passed over in favor of **SCR 44** (as previously reported) which established a Risk Charge Commission to study current law and consider making recommendations regarding the costs and risks in drilling a well in a unit, the results of which will be submitted by report no later than February 4, 2022.

All bills and history may be accessed directly at the Louisiana Legislature website:
<https://legis.la.gov/legis/BillSearch.aspx?sid=current>

As always, these and all other bills AAPL tracks for members can be found in the Bill Tracking Summary spreadsheet available only to members on the AAPL website at:
<https://www.landman.org/resources/advocacy-and-legal>.



SPECIAL LEGISLATIVE SECTION: TEXAS SESSION ADJOURNMENT

TEXAS SESSION ADJOURNMENT ROUNDUP. The Texas legislative session adjourned on May 31, 2021, and the deadline for action by Gov. Greg Abbott (R) on any legislation was June 20, 2021, bringing the 87th regular legislative session to a close. Following is the status of the remaining bills AAPL had been tracking and reporting on for members this session that failed to advance and died upon adjournment. All other legislation that passed from the 102 bills tracked for members was covered in prior reports.

HB 878 – Democrat bill; Tax Deduction for High-Cost Gas. Relates “to the repeal of the temporary tax

reduction for certain high-cost gas.” Would have phased out the tax reduction for high-cost gas to amend existing law by adding a September 1, 2021, deadline for applications and related processes.

HB 879 – Democrat bill; Duplicate bill to HB 878. Would have phased out the tax reduction for high-cost gas to amend existing law by adding a September 1, 2021, deadline for applications and related processes.

HB 901 – Republican bill; Eminent Domain. Would have amended existing property law regarding eminent domain to provide conditions for a private entity with eminent domain authority to acquire real property for a public use and the terms for instruments of conveyance of certain easements, and their implementing procedures.

HB 902/SB 986 – Republican bill; Eminent Domain; Landowner’s Bill of Rights; Right-of-Way. The bill would have updated the Landowner’s Bill of Rights as it pertains to eminent domain, creating an ombudsman for landowners, and creating qualifying and continuing education requirements for Texas right-of-way agents as well as added grounds for suspension or revocation of a certificate as well as the creation of a probationary certificate.

HB 1041 – Democrat bill; Railroad Commission Political Contributions. Would have imposed certain restrictions regarding political contributions by a member of the Railroad Commission of Texas and of political contributions made in connection with the office of a commissioner.

HB 1042 – Democrat bill; Railroad Commission Name Change. Would have changed the name of the Railroad Commission of Texas to the Texas Energy Resources Commission and also make changes to commissioner elected terms.

HB 1043 – Democrat bill; Administrative Penalties. Would have amended existing law regarding penalties related to the Railroad Commission of

Texas, specifically increasing penalties related to those “which pertain to safety or the prevention or control of pollution or the provisions of a rule, order, license, permit, or certificate which pertain to safety or the prevention or control of pollution and are issued under this title, the person may be assessed a civil penalty by the commission.” The bill also would have increased penalties related to certain natural gas activities and the state water code.

HB 1282 – Democrat bill; Restriction on Energy Sources. As a reaction to numerous municipalities and states around the country seeking to ban gas hookups to commercial and residential buildings as a way to discourage – or impose de-facto bans – on natural gas production, the bill would have prohibited any regulatory authority, planning authority or political subdivision from adopting any policy or enforcing any regulation that would have the effect of discriminating against or prohibiting connection of a utility service based on the type or source of energy to be delivered to the end-use customer.

HB 1346 – Republican bill; Severance Taxes. Would have provided certain refunds for oil or gas severance taxpayers who do not hold a permit.

HB 1377 – Democrat bill; Gas Production Tax. Would have amended existing law to remove gas “produced from oil wells with oil and lawfully vented or flared” from the list of gas that is not taxed.

HB 1395 – Republican bill; Ad Valorem Taxation. Would have made changes to definitions and administrative officials and procedures regarding ad valorem taxation.

HB 1447 – Democrat bill; Remote Proceedings. Would have allowed for the use of remote technology in probate (and guardianship) proceedings. The bill passed the House but died in the Senate.

HB 1452 – Democrat bill; Flaring. Would have directed the Texas Railroad Commission to establish a policy before December 31, 2025, for the elimination of routine flaring of gas from wells or

other facilities regulated by the commission.

HB 1483 – Democrat bill; Conveyance Restrictions. Regarding real property conveyances, the bill would have provided that “if a grantee of an instrument conveying an interest in real property believes that a restriction in the instrument violates the constitution of this state or of the United States, the grantee may bring an action against the county in which the instrument is recorded to request the redaction of the restriction from the instrument.”

HB 1494 – Democrat bill; Taxes; Flared or Vented Gas. Would have imposed a 25 percent gas production tax on gas flared or vented and also provided for an exemption.

HB 1501 – Bipartisan bill; Energy Source Prohibitions. Relating to certain regulations adopted by a governmental entity restricting the use of a natural gas or propane appliance or other system or component, the bill would have prohibited the exclusion of energy sources. Passed both the House and Senate but died during the amendment process.

HB 1521 – Democrat bill; University Lands. Would have required the Board of Regents of the University of Texas System to adopt a formal policy goal to eliminate routine methane flaring on university lands by 2025.

HB 1683 – Republican bill; Federal Preemption. Would have sought to restrain any federal law that inhibits oil and gas operations in the state and provided that an “agency of this state or a political subdivision of this state, and a law enforcement officer or other person employed by an agency of this state or a political subdivision of this state, may not contract with or in any other manner provide assistance to a federal agency or official with respect to the enforcement of a federal statute, order, rule, or regulation purporting to regulate oil and gas operations if the statute, order, rule, or regulation imposes a prohibition, restriction, or other regulation that does not exist under the laws of this state.” The bill passed the House but died in the Senate.

HB 1834 – Republican bill; Mineral Liens. Would have amended existing law relating to a mineral contractor or subcontractor’s lien to secure payment related to mineral activities to include “material, machinery, supplies.”

HB 1879 – Republican bill; Eminent Domain. Would have required “establishing actual progress for the purpose of determining the right to repurchase real property from a condemning entity.”

HB 1913– Democrat bill; Gas Capture Plan. Provided that the Railroad Commission “may not issue a permit to drill, deepen, plug back, or reenter an oil or gas well unless the applicant submits with the application a gas capture plan to minimize flaring from the well” and provided related procedures and requirements.

HB 1959 – Republican bill; Notaries Public. Would have amended existing notary law by updating provisions related to identification and fee adjustments.

HB 1975– Democrat bill; Flaring. Provided for the publishing of certain flaring information.

HB 1976– Democrat bill; Flaring Study. Would have directed the Texas Railroad Commission to conduct a study on natural gas flaring.

HB 2006 – Republican bill; Notice. Regarding the notice requirements for permits for the commercial surface disposal of oil and gas wastes, the bill would have required notice to a river authority or groundwater conservation district under the conditions provided. Like HB 2006, the Senate companion bill, **SB 771**, also died in committee.

HB 2042 – Republican bill; Eminent Domain. Would have provided certain requirements in connection with the acquisition of real property for public use by an entity with eminent domain authority. Although HB 2042 failed in committee, the Senate companion bill, **SB 723**, passed the Senate but then failed to advance in the House.

HB 2131 – Republican bill; Recorded Instruments. Regarding the retention of instruments recorded in the property records of a county, the bill would have provided for record retention requirements.

HB 2144 – Republican bill; Tort of Public Nuisance. Would have reformed the tort of public nuisance to remove the common law tort and replace it with a statute that specifically defines which actions may be actionable for public nuisance. According to the Texas Civil Justice League, “Traditionally, the common law doctrine of public nuisance has been used to enforce ‘established public rights,’ which means the common interest of all members of the public to the use of public land, air, and water. In terms of oil and gas operations, the common law can create litigation opportunities for plaintiffs who bring claims against resource development companies from upstream to downstream channels.” As the [Texas Civil Justice League noted](#) in its support of the bill, “Public nuisance has also been used to launch national litigation against, for example, the Texas energy industry, threatening the economic well-being of our state and its citizens.” Most importantly, the bill would have established that a person may be held liable for a public nuisance “only if the person causes an unlawful condition and controls that unlawful condition at the time the condition violates an established public right. Conditions arising from the following conduct are not considered unlawful conditions for purposes of a public nuisance action: an activity expressly authorized or encouraged by a statute, ordinance, rule, or other similar measure adopted by the state, a political subdivision of the state, the United States, or a regulatory agency of the state or the United States; and the lawful manufacturing, distributing, selling, advertising, or promoting of a lawful product.”

([Read a complete bill summary and analysis here](#)) For example, if the Texas Railroad Commission had approved drilling operations and related practices, a private citizen could not bring a lawsuit against an operator for conducting those activities under the bill. The bill also required a higher burden be met by a plaintiff when bringing a public nuisance lawsuit.

HB 2292 – Republican bill; Ad Valorem Taxes. The bill related to the appraisal for ad valorem tax purposes of a real property interest in oil or gas in place.

HB 2370 – Democrat bill; Permit Applications. Related to procedures for certain permit applications submitted to the Texas Commission on Environmental Quality.

HB 2482 – Democrat bill; Active Wells; Application Fees. Would have increased certain application fees, provided for active well status procedures, bond requirements, and set plugging goals.

HB 2730 – Democrat bill; Eminent Domain; Landowner's Bill of Rights. Regarding eminent domain, the bill provided for a landowner's bill of rights.

HB 2868 – Democrat bill; Wells. Would have provided for financial security requirements for well operators and determinations of plugging costs.

HB 2881/SB 1030 – Republican bill; Non-participating Royalty Owners. Would have provided for definitions and applicability related to nonparticipating royalty interest owners.

HB 2882/SB 1031 – Republican bill; Division Orders; Payee Information. Related to information provided to a payee by a payor of proceeds of production from an oil or gas well that traverses multiple tracts.

HB 2883/SB 1032 – Republican bill; Payee Information. Related to the information a payor of the proceeds of production from an oil and gas well is required to provide a payee.

HB 2884/SB 1033 – Republican bill; Suspension of Payments. Provided for notification of suspension of payments from oil and gas production.

HB 2957/SB 1583 – Republican bill; Inspection of Oil and Gas Facilities. Provided for inspections and examinations by the Railroad Commission of Texas

of certain sites, such as wells, and facilities to be conducted using unmanned aircraft, such as drones.

HB 3039 – Republican bill; Railroad Commission. Would have allowed the Railroad Commission to electronically send certain notices related to delinquent inactive well contracts, certificate of compliance cancellations, surface mine bonding, and quarry safety certificate applications.

HB 3183 – Democrat bill; Gas Well Weatherization. Would have required gas well operators to take certain cold weather preparedness actions and provided for reporting and fines.

HB 3381 – Republican bill; Drill Cuttings. Related to the authority of the Railroad Commission of Texas to contract for the treatment of and to sell drill cuttings.

HB 3385 – Republican bill; Eminent Domain. Would have amended existing law regarding a landowner's bill of rights statement in connection with the acquisition of real property through eminent domain.

HB 3409 – Republican bill; Drainage; Offset Wells. Would have amended existing law relating to the duty of a lessee or other agent in control of certain state land to drill an offset well, pay compensatory royalty, or otherwise protect the land from drainage of oil or gas by a horizontal drainhole well located on certain land.

HB 4066 – Democrat bill; Railroad Commission; Wastewater. Would have amended existing law regarding the adoption by the Railroad Commission of a permit by rule for the beneficial reuse of domestic wastewater and mobile drinking water treatment system wastewater produced at certain oil and gas drilling facilities.

HB 4218 – Republican bill; Leasing; Overriding Royalties; Washouts. HB 4218 was vetoed by Gov. Greg Abbott (R). The bill would have amended existing law regarding a cause of action for the bad faith washout of an overriding royalty interest in an oil and gas lease. Specifically, the bill added the

definition of a bad faith washout to the Property Code and provided a remedy for such action. The bill would have authorized a person to bring a cause of action for a bad faith washout of the person's overriding royalty interest in an oil and gas lease in a district court of a county in which any part of the property subject to the lease is located. The bill also entitled the person to a remedy from that action in specific situations. Furthermore, H.B. 4218 required the person to bring the action not later than the second anniversary of the date the person obtained actual knowledge that the washout occurred. Additionally, the bill authorized an owner who prevails in the action to recover actual damages, court costs and attorney's fees, and the enforcement of a constructive trust on the oil and gas lease or mineral estate acquired to accomplish the washout of the overriding royalty interest. These remedies would have been cumulative of other remedies provided by common law or statute.

HB 4222 – Democrat bill; Railroad Commission. Would have amended existing law regarding the establishment of the oil and gas infrastructure security division within the Railroad Commission of Texas.

HB 4223 – Democrat bill; Oil and Gas Infrastructure. Would have amended existing law regarding the adoption of a comprehensive plan to protect oil and gas infrastructure in the state.

HB 4268 – Democrat bill; Gas Wells Cold Weather Preparedness. Would have amended existing law regarding cold weather preparedness of gas wells.

HB 4367 – Democrat bill; Orphaned Wells. Would have amended existing law regarding the reduction and plugging of orphaned oil and gas wells and provided for the imposition of a fee and an exemption from certain taxes and fees.

HB 4442 – Democrat bill; Oil and Gas Waste; Taxation. Would have amended existing law regarding the regulation of oil and gas waste, and created a tax exemption and imposed a fee.

HB 4524 – Democrat bill; Produced Water. Would have amended existing law regarding the adoption of rules by the Texas Commission on Environmental Quality regarding the discharge into water of produced water resulting from certain oil and gas activities.

HB 4551 – Democrat bill; Land Title Review Study. Would have created the Land Title Review Commission to study and provide recommendations on providing alternative remedies to disputed land title claims before litigation is pursued.

HJR 92 – Republican joint resolution. Proposed a constitutional amendment concerning the right to repurchase real property acquired by a governmental entity through eminent domain.

HJR 93 – Republican joint resolution. Proposed a constitutional amendment prohibiting the taking of property by eminent domain for the purpose of transferring the property to a private entity.

SB 127 – Democrat bill; Tax Reductions. Related to the tax reduction for certain high-cost gas, the bill would have amended existing law regarding application dates.

SB 310 – Democrat bill; Tax Deduction for High-Cost Gas. Related "to the repeal of the temporary tax reduction for certain high-cost gas."

SB 367 – Democrat bill; Permit Applications. Would have amended existing law regarding an application for a permit for a well adjacent to a well blowout site in certain counties. Specifically, the bill would have required that an applicant for a permit to drill an oil or gas well in a county with a population of more than 750,000 disclose to the commission in the application that the applicant was the operator of an oil or gas well: (1) located at a site adjacent to the site of the proposed well; (2) drilled through or into the same formations as the proposed well is to be drilled; and (3) from which an uncontrolled release of a subterranean fluid containing oil, gas, or condensate or of a well fluid that is caused by a loss of well

control occurred while the applicant operated the oil or gas well.

SB 388 – Democrat bill; Methane Flaring Plan. Related to the reduction of methane gas flaring on land dedicated to the permanent university fund and would have created a Methane Flaring Reduction Plan which directs the Board of Regents of the University of Texas System to adopt a formal policy goal to eliminate routine methane flaring on university lands by 2025.

SB 423 – Democrat bill; Eminent Domain Notice. Would have amended the service of notice requirements of a special commissioners' hearing in an eminent domain proceeding.

SB 622 – Democrat bill; Flaring Emissions. Would have added systems that reduce flaring emissions and other site emissions to the preference list for the new technology grant program.

SB 722 – Republican bill; Eminent Domain. Regarding eminent domain appraisal reports, the bill provided that “an entity that fails to meet the requirements of this subsection is liable to the owner for reasonable attorney’s fees incurred by the owner in connection with the entity’s acquisition of the owner’s property.”

SB 724 – Republican bill; Eminent Domain. Provided for the award of attorney’s fees and other costs in an eminent domain proceeding.

SB 1006 – Democrat bill; Railroad Commission Notices. Provided certain notice requirements for the Railroad Commission.

SB 1468 – Democrat bill; Security Interests. Would have amended existing law regarding oil and gas liens. Specifically, the sponsoring statement noted “there are concerns that, unless the first purchaser statute is amended, the security interests of Texas oil and gas interest owners are likely to continue to be interpreted as unsecured and subordinate to other perfected security interests in cases where the

first purchaser is organized or incorporated out of state. S.B. 1468 fixes that problem by re-designating the mineral interest as real property versus personal property for the purposes of bankruptcy proceedings and therefore protects the Texas interests as opposed to companies incorporated in other states like Delaware.”

SB 2108 – Republican bill; Oil and Gas Well Financial Security. Would have amended existing law regarding the financial security requirements for operators of oil and gas wells.

All bills and history may be accessed directly at the Texas Legislature website:

<https://capitol.texas.gov/Home.aspx>

As always, these and all other bills AAPL tracks for members can be found in the Bill Tracking Summary spreadsheet available only to members on the AAPL website at:

<https://www.landman.org/resources/advocacy-and-legal>.

STATE – Regulatory

Hydraulic Fracturing Ban – California. On June 22, the Kern County Board of Supervisors sent a letter to the California Department of Conservation Geologic Energy Management Division (CalGEM) to formally oppose proposed CalGEM proposed rulemaking which would halt applications for hydraulic fracturing and other well stimulation practices beginning on January 1, 2024, in the state. The letter was also delivered to Gov. Gavin Newsom (D) and the Secretary of California Department of Natural Resources. The Board also unanimously voted on the same day to oppose the ban. “Our Board, as a regulator of 80% of the oil and gas produced in California, objects to this rule-making and opposes this targeting of a specific technology method since the ban has no basis in the established science or real-world implementation,” wrote the Board. “Passage of this regulation will interfere with the legal rights of mineral owners to access oil and gas

and the ability to provide economic benefits through jobs and property tax revenue.” As we have reported in prior reports, CalGEM is in the early stages of draft rulemaking and we will continue to keep members updated as rulemaking proposals are released for public review, comment, and hearings. [Read more.](#)

Financial Assurance Rulemaking – Colorado.

As previously reported, the Colorado Oil and Gas Conservation Commission (COGCC) is continuing its rulemaking processes to implement [SB19-181](#), which was enacted in 2019, and “ensures that oil and gas development and operations in Colorado are regulated in a manner that protects public health, safety, welfare, the environment and wildlife resources.” Per the COGCC, “Financial Assurance is one of the three remaining mandated rulemakings from SB 19-181, which directed the Commission to broadly consider changes to financial assurance.” The COGCC is currently in the process of considering rulemaking regarding Financial Assurance and the bonding requirements for operators. ([See Fact Sheet here.](#)) The COGCC has set forth the process for public comment and hearing participation for the proposed rulemaking, with written comments due by September 10, 2021. The COGCC will also make available the opportunity for the public to sign up to make oral comments during a future hearing by September 16, 2021. [For more information click here.](#) [Read more.](#)

Oil Production Revenue – New Mexico. Last week, New Mexico reported oil production on state land led to a record \$1.25 billion in revenue in the last fiscal year. According to the New Mexico State Land Office, “since January, when the oil and gas industry began recovering from a downturn brought on by the COVID-19 pandemic, monthly royalty payments were at least \$100 million, with June’s early projection at \$135 million – a new record.” New Mexico State Land Commissioner Stephanie Garcia Richard added that relief “granted to oil and gas operators in allowing them to idle or shut in wells without forfeiting leases during the pandemic meant they were able to resume production when the market recovered.” [Read more.](#)

STATE – Judicial

Corrected Instruments; Assignments – Texas.

(Update to 1/14/19 Weekly Report) On May 14, in [Broadway National Bank v. Yates Energy Corp.](#) (Case No. 19-0334), the Texas Supreme Court addressed the issue of the Texas Property Code which “authorizes the correction of a material error in a recorded original instrument of conveyance by agreement.” Under the state code, “[t]o be effective, the instrument correcting the error must be executed by each party to the original instrument ‘or, if applicable, a party’s heirs, successors, or assigns.’” According to the court, “[t]he issue here is when are an original party’s heirs, successors, or assigns applicable, such that their agreement is necessary to make the correction. In this case, the court of appeals considered whether the original parties could validly agree to correct a mistake in the original instrument of conveyance, after a third party acquired an interest. The court concluded that the original parties could no longer correct their mistake solely by their agreement after an assignment.” The appellate court “reasoned that the assignment or sale of an interest in the property by an original party triggered the ‘if applicable’ clause, requiring the joinder of the assign for a material correction.” In sum, “the court held that a validly executed correction instrument under section 5.029 must be signed by the property’s current owners.” Here, the Texas Supreme Court held that “[w]e do not agree that a correction instrument’s validity under 5.029 invariably depends on the consent of an assign or subsequent purchaser. Rather, we understand the ‘if applicable’ clause to provide a substitute person or entity to sign when a party to the original conveyance is unavailable to sign a correction instrument for a material error. Because we disagree with the court of appeals’ interpretation of the ‘if applicable’ clause as the statute’s method for protecting the property interests of subsequent purchasers, we reverse and remand.” According to law firm, Gray Reed, “the remand back to the appellate court will require consideration of the trial court’s ruling that neither Yates nor its assigns are bona fide purchasers.” The Supreme Court’s slim

development, tourism and corrections projects, reports [WDTV](#).

Alaska adjourned a second special session on June 28 after the House voted to allow the budget to go into effect on July 1, and averted what would have been the state's first ever government shutdown, reports [Alaska Public Media](#). Republican Gov. Mike Dunleavy has said he will review the budget for any line items he may veto and then is prepared for implementation. Governor Dunleavy is also scheduled to call the legislature into a third special session on August 2 to fix the yearlong fiscal conflict over the Permanent Fund dividend, reports the [Anchorage Daily News](#).

South Carolina held a special session on June 29 where lawmakers returned more than \$150 million in local projects into the state budget after Republican Gov. Henry McMaster removed the items through his vetoes, reports the [Herald Sun](#).

Missouri adjourned a special session on June 30 after lawmakers were able to pass [SB 1](#) and send it to Republican Gov. Mike Parson's desk, reports [Columbia Missourian](#). The bill extends provider taxes crucial to the state's Medicaid program. The special session was called in response to anti-abortion lawmakers who want to limit access to contraceptives and ban Planned Parenthood as a Medicaid provider through the tax bill. The new version of the bill states "family planning services shall not include abortions or any abortifacient drug or device that is used for the purpose of inducing an abortion," but does not defund Planned Parenthood.

The **Minnesota** House adjourned a special session on July 1 after the legislature successfully passed the state's two-year \$52 billion budget and averted a partial government shutdown, reports [CBS Minnesota](#). The last two pieces of the spending plan were the education package, which passed unanimously, and the tax bill, which passed with amendments. The Senate adjourned a special session on July 7 after extending their special session to review Democratic Gov. Tim Walz's state agency, Senate and board appointments.

The following states adjourned their 2021 legislative sessions on the dates provided (by date): **New Hampshire** (June 24), **Oregon** (June 26), **Arizona** and **Delaware** (June 30), and **Rhode Island** (July 1).

Signing Deadlines (by date): **Missouri** Republican Gov. Mike Parson had until June 28 to sign or veto legislation, or it became law without signature. **New Hampshire** Republican Gov. Chris Sununu had until June 30 to sign or veto legislation, or it was pocket vetoed. **Hawaii** Democratic Gov. David Ige had until July 1 to sign or veto legislation, or it became law without signature. **Colorado** Democratic Gov. Jared Polis had until July 8 to sign or veto legislation, or it became law without signature. **New York** Democratic Gov. Andrew Cuomo had until July 10 to sign or veto legislation, or it is pocket vetoed. **Rhode Island** Democratic Gov. Daniel McKee had until July 11 to sign or veto legislation, or it becomes law without signature. **Arizona** Republican Gov. Doug Ducey has until July 12 to sign or veto legislation, or it becomes law without signature. **Oregon** Democratic Gov. Kate Brown has until July 23 to sign or veto legislation, or it becomes law without signature. **Delaware** Democratic Gov. John Carney has until July 30 to sign or veto legislation, or it is pocket vetoed. **Alaska** Republican Gov. Mike Dunleavy has 20 days after delivery, Sundays excepted, to sign or veto legislation or it becomes law without signature. **Connecticut** Democratic Gov. Ned Lamont has 15 calendar days, Sundays and legal holidays excepted, from presentment to sign or veto legislation or it becomes law without signature. **Illinois** Democratic Gov. J.B. Pritzker has 60 days from presentment to sign or veto legislation or it becomes law without signature. **Kansas** Democratic Gov. Laura Kelly has 10 calendar days from presentment, not including the day it was presented, to sign or veto legislation or it becomes law without signature. **Maine** Democratic Gov. Janet Mills must act on legislation presented within 10 days of adjournment or it becomes law unless returned within three days after the next meeting of the same legislature. **Nebraska** Republican Gov. Pete Ricketts has five days from presentment to sign or veto legislation, Sundays excepted, or it becomes law without signature. **New Jersey** Democratic Gov. Phil

Murphy has 45 days from presentment to act on legislation or it becomes law without signature. **South Carolina** Republican Gov. Henry McMaster has five days from presentment, excluding Sundays, to act on legislation or it becomes law without signature. **Tennessee** Republican Gov. Bill Lee has 10 days starting the day after presentment, Sundays excluded, to sign or veto legislation or it becomes law without signature. **Vermont** Republican Gov. Phil Scott has five days from presentment, excluding Sundays, to act on legislation or it will become law without signature.

The following states are currently holding 2022 interim committee hearings: [Colorado](#), [Connecticut](#), [Georgia](#), [Kentucky](#), [Louisiana](#), [Maryland](#), [Nebraska](#), [New Mexico](#), [North Dakota](#), [South Carolina House](#) and [Senate](#), [Tennessee](#), [Utah](#), [Vermont](#), [Virginia](#), [Washington](#), [West Virginia](#), and [Wyoming](#).

The following states are currently posting 2022 bill drafts, pre-files, and interim studies: [Alabama](#), [Kentucky](#), [Oklahoma](#), and [Utah](#). ■

This report is provided exclusively for AAPL members. If you have received this report as a non-member, please contact AAPL member services to learn more about joining AAPL. For more information, email membership@landman.org or call us at: 817-847-7700.

CONTENT DISCLAIMER: Information and/or website sources provided in this report may be among the many resources available to you. This report does not endorse nor advocate for any particular attorney or law firm, nor other private entity, unless expressly stated. Any legal, financial, and/or tax information contained herein is provided solely for informational purposes and does not represent legal, financial, or tax advice on behalf of AAPL and/or its affiliates. Links to outside sources are provided for reference only and any cited outside source is derived solely from material published by its author for public use. Any copyrighted material remains the property of its respective owner and no use or distribution authorization is granted herein. © 2021 AAPL.