

# GOVERNMENTAL AFFAIRS WEEKLY REPORT

## Weekly Highlights At-A-Glance

### FEDERAL – Legislative

**H.R. 4294 – American Energy First Act.** On September 11, House Republicans, Rep. Liz Cheney (R-WY), Rep. Steve Scalise (R-LA), and Rep. Rob Bishop (R-UT) introduced [H.R. 4294](#), known as the *American Energy First Act*. The bill, which has been referred to committee, is touted as an “all-of-the-above American energy reform bill” which “will expand domestic energy production on federal lands, streamline the federal permitting process, create well-paying jobs for American citizens, and lead to lower energy prices for consumers, all while generating billions of dollars for federal, state and local governments.” For one, the bill will allow states to manage oil and gas production on federal lands within their borders and will prevent the Bureau of Land Management from “intruding on energy development on state and private lands through unnecessary permitting requirements and duplicative federal environmental reviews.” The bill also prohibits the U.S. Department of the Interior from enforcing federal regulations on hydraulic fracturing on federal lands in states with regulatory management programs. The legislation also promotes further offshore production, promotes greater alternative energy development, and puts a limitation on oil and gas lease moratoriums. According to Rep. Bishop, “The American Energy First Act creates a comprehensive structure with which we can lessen our energy dependence on our would-be adversaries. The sustained expansion of American energy resources will stimulate job growth, boost our economy, and most importantly, mitigate the vulnerabilities that come from our reliance on foreign energy sources.” [Read more.](#)

**H.R. 4364 – Taxpayer Fairness for Resource Development Act of 2019.** On September 17, Rep.

Ben McAdams (D-UT) and Rep. Francis Rooney (R-FL) introduced [H.R. 4364](#), known as the *Taxpayer Fairness for Resource Development Act of 2019*, which has been referred to committee. “This bill seeks to amend the Mineral Leasing Act to adjust the fiscal terms for fossil fuel development and to make reforms to improve returns to taxpayers for the development of Federal energy resources.” According to the bill sponsors, the measure would adjust federal onshore royalty rates to 18.75% for all new oil and gas and coal leases from the current 12.5%, which Rep. Rooney says, “Has been unchanged for nearly a century and is considerably below the federal offshore royalty rate and the royalty rates charged by states.” The bill would also change the current onshore oil and gas minimum bid from \$2 to \$5 and requires it to be indexed to inflation, with 10% of net revenue to be paid to Social Security beneficiaries. Additionally, the bill would adjust onshore rental rates for oil and gas leases. The current values of \$1.50 for the first 5 years and \$2 for the second five years would increase to \$3 for the first 5 years and \$5 for the second 5 years. [Read more.](#)

**H.R. 205 – Protecting and Securing Florida’s Coastline Act of 2019.** (*Update to 8/12/19 Weekly Report*) On September 11, [H.R. 205](#), known as the *Protecting and Securing Florida’s Coastline Act of 2019*, passed the House along party lines. The Democrat-sponsored bill would permanently extend the moratorium on leasing in certain areas of the Gulf of Mexico. According to bill sponsor, Rep. Francis Rooney (R-FL), “Offshore drilling off the coast of Florida would create an industrial coastline less appealing to visitors, hinder our military readiness, and adversely affect our environment. I want to ensure that all areas east of the Military Mission Line in the Gulf of Mexico are permanently

protected from offshore drilling, so these negative consequences do not transpire.” The bill is unlikely to move forward in the Republican-controlled Senate and the White House announced President Trump would veto the bill. [Read more.](#)

**H.R. 1146 – Arctic Cultural and Coastal Plain Protection Act.** On September 12, [H.R. 1146](#), known as the Arctic Cultural and Coastal Plain Protection Act, passed the House along party lines. The Democrat-sponsored bill would prohibit the Bureau of Land Management (BLM) “from administering an oil and gas leasing, development, production, and transportation program in and from the Coastal Plain of the Arctic National Wildlife Refuge in Alaska” (ANWR). Specifically, the bill repeals part of the 2017 tax law passed by Republicans that ended a 40-year ban on drilling in the protected wilderness area and instead mandated lease sales in a coastal portion of the 19-million-acre refuge. The 2017 Tax Cut and Jobs Act “brought the prospect of drilling closer to reality by mandating the government hold two lease sales in the coastal plain of ANWR.” Those lease sales are expected to begin in the next few months once a BLM environmental impact statement is finalized in accordance with the 2017 law and mandatory waiting periods. Even if H.R. 1146 moves forward it has little chance to stop the lease sales, and the bill is unlikely to move forward in the Republican-controlled Senate and the White House announced President Trump would veto the bill. [Read more.](#)

**H.R. 1941 – Coastal and Marine Economies Protection Act.** On September 11, [H.R. 1941](#), known as the *Coastal and Marine Economies Protection Act*, passed the House along party lines. The Democrat-sponsored bill would prohibit the U.S. Department of the Interior “from offering any tract for oil and gas leasing or preleasing in the Atlantic Outer Continental Shelf planning area (North Atlantic, Mid-Atlantic, South Atlantic, and the Straits of Florida) or the Pacific Outer Continental Shelf planning area (Washington/Oregon, Northern California, Central California, and Southern California).” The bill is unlikely to move forward in

the Republican-controlled Senate and the White House announced President Trump would veto the bill. [Read more.](#)

**H.R. 4235 – Protecting Independent Contractors from Discrimination Act of 2019.** On September 6, Rep. Eleanor Holmes Norton (D-DC) introduced [H.R. 4235](#), known as the *Protecting Independent Contractors from Discrimination Act of 2019*. The bill would amend existing law to extend federal antidiscrimination protections to independent contractors, in addition to employees as the applicable laws now exist. If passed, the bill is unlikely to move forward in the Republican-controlled Senate in its current form. Rep. Norton said, “My bill focuses only on discrimination, such as discrimination based on race, age and gender, from which every worker is entitled to be free.” [Read more.](#)

## **FEDERAL – Regulatory**

**BLM Lease Sale – Nevada.** On September 13, the BLM announced its November 12, 2019 oil and gas lease sale will offer 263 parcels for lease totaling 547,969.252 acres in Lincoln, Nye and White Pine counties in Nevada. The required public comment period will be open until October 13, 2019. [Read more.](#)

**BLM ANWR Leasing – Alaska.** On September 12, the U.S. Department of the Interior made available its [Final Environmental Impact Statement \(EIS\)](#) for the Arctic National Wildlife Refuge (ANWR) Coastal Plain Oil and Gas Leasing Program. The EIS sets the stage for an auction later this year. The U.S. Geological Survey has estimated ANWR’s 1.56 million-acre coastal plain could hold between 4.3 and 11.8 billion barrels of technically recoverable crude. According to Sen. Lisa Murkowski (R-AK), who has long fought to open ANWR to leasing, “This is a major step forward in our decades-long efforts to allow for responsible resource development in Alaska’s 1002 Area, and I thank Secretary Bernhardt and his team for their thousands of hours of hard work. I’m hopeful we can now move to a lease sale in the very near

future, just as Congress intended, so that we can continue to strengthen our economy, our energy security, and our long-term prosperity.” [Read more.](#)

## **FEDERAL – Judicial**

**BLM Leasing – Utah.** On September 12, a group of environmental activists sued the BLM in an effort to invalidate 130 oil and gas leases covering 175,357 acres of public lands in Utah that the plaintiffs claim violated federal law for the BLM’s failure to analyze greenhouse gas and climate change impacts when granting those leases. In [Living Rivers v. Hoffman](#) (Case No. 4:19-cv-00074-DN), the activists argue that the leases are “in and near areas of remarkable cultural, historical, and archaeological significance” and “with wilderness characteristics” that will be negatively impacted by various emissions. The BLM has not yet responded to the lawsuit. [Read more.](#)

## **STATE – Legislative**

**Notice Requirements – California.** (Update to 9/9/19 Weekly Report) On September 11, [AB 1328](#) passed its final reading and will soon be transmitted to Gov. Gavin Newsom (D). The bill, sponsored by Asm. Chris Holden (D), already passed the Assembly in May. The measure would standardize the valid period for notices of intention approved by the Division of Oil, Gas, and Geothermal Resources to two years, and requires a study of the emissions from idle, idle-deserted and abandoned wells to be conducted and reported on or by January 1, 2023. Specifically, the bill “requires the operator of any oil or gas well, before commencing the work of drilling the well, to file, as specified, a written notice of intention to commence drilling. Drilling shall not commence until the notice is approved. If operations have not commenced within 24 months of receipt of the notice, the notice shall be deemed canceled, the notice shall not be extended, and the cancellation shall be noted in the division’s records. However, for well abandonment operations, the written notice of intention is valid for a term of one year only.” The legislation also defines “an idle well as an oil

and gas well that has not been used for two years or more and has not yet been properly plugged and abandoned to the division’s satisfaction, as specified, and defines an idle-deserted well as an idle well where no party responsible for the oil or gas well can be found.” [Read more.](#)

**Independent Contractors – California.** (Update to 9/9/19 Weekly Report) On September 18, [AB 5](#) was signed into law by Gov. Gavin Newsom (D) and will take effect January 1, 2020. To recap from earlier reports, the Act codifies the state Supreme Court case [Dynamex Operations West, Inc. v. Superior Court of Los Angeles](#) and clarifies its application in a case specific to delivery drivers and does not address work performed by landman, but is however instructive on California wage law and employment classification. According to *Forbes*, the *Dynamex* decision saw the court adopt a standard that presumes that all workers are employees instead of independent contractors. The Act will now apply the *Dynamex* “ABC test” to the Labor Code and Unemployment Insurance Code for instances when a definition of employee is not otherwise provided but exempts specified professions, although the legislation does not specifically identify landmen or landwork. [Read more.](#)

**Abandoned Wells; Surety Bonds – California.** (Update to 7/29/19 Weekly Report) On September 11, [AB 1057](#) passed its final reading and will soon be transmitted to Gov. Gavin Newsom (D). The most [recent amendment](#) makes certain changes to regulatory agency naming, sets forth the purposes of that regulatory division, and provides for certain notice requirements as well as financial assurances. The measure, sponsored by Asm. Monique Limon (D), passed the Assembly in May. According to the most recent Senate Bill Analysis, the “bill would authorize the division to require further financial security in addition to the required indemnity bond amounts for an operator’s well or wells to help ensure the state has the funds available to pay for plugging and abandonment if the well or wells are deserted by the operator, and also continue reform efforts at the division.” Lodging its opposition to the

measure, the Western States Petroleum Association states “[a]s currently amended, AB 1057 provides the [division] with near unilateral authority to increase surety bond requirements on an operator without limitation. In addition, the bill identifies several general criteria that the [oil and gas] supervisor must ‘consider’ when evaluating an operator’s bonding obligations, but does not provide limitations to the exercise of authority.” [Read more.](#)

**Franchise Tax – California.** (*Update to 2/4/19 Weekly Report*) On September 11, the final version of [AB 308](#) was enrolled after passing both the Senate and Assembly and will be transmitted to Gov. Gavin Newsom (D). The Democrat-sponsored bill would reduce the existing franchise tax in various increments based upon the gross receipts of a limited liability company or corporation for those small businesses owned by a deployed member of the United States Armed Forces. This bill incorporates [SB 349](#), sponsored by Sen. Anthony Portantino (D). [Read more.](#)

**Public Lands – California.** On September 12, the final version of [AB 342](#) was transmitted to Gov. Gavin Newsom (D) who has until October 14 to sign or veto the legislation. The bill, sponsored by Asm. Al Muratsuchi (D), seeks to block federal oil and gas leasing on protected federal lands within California, which includes national parks and wilderness areas in the state. Additionally, “Any new oil or gas projects approved in federally protected areas would be prohibited from having their pipelines or other essential infrastructure cross state lands.” However, the bill does provide an exemption for existing leases for oil pipelines and other infrastructure that cross state lands and “oil and gas companies still would have the right to enter into leases to use privately held land for infrastructure.” If signed into law, the bill would likely be challenged by the Trump administration in federal court as California does not have supremacy over federal lands in its jurisdiction. [Read more.](#)

**Notice; Reporting – California.** On September 12, the final version of [SB 551](#) was enrolled and

transmitted to Gov. Gavin Newsom (D), who will have until October 14 to sign or veto the legislation. The [amendments](#) made on September 5 make minor technical corrections. The bill, sponsored by Sen. Hannah-Beth Jackson (D), already passed the Senate in May. The measure would require, commencing July 1, 2022, that each operator of an oil and gas well submit a report with specified criteria to the Division of Oil, Gas, and Geothermal Resources (DOGGR) that demonstrated the operator’s total liability to plug and abandon all wells and to decommission all attendant production facilities, including site remediation, on a schedule determined by the Oil and Gas Supervisor. The bill also adds criteria to an existing report on the status of idle and long-term idle wells and delays the deadline for a report on the number of hazardous wells, idle-deserted wells, deserted facilities, and hazardous facilities. Additionally, commencing July 1, 2022, each operator of an oil and gas well is to submit a report with specified criteria to DOGGR that demonstrates the operator’s total liability to plug and abandon all wells and to decommission all attendant production facilities, including site remediation, on a schedule determined by the Supervisor. The bill also requires DOGGR to conduct inspections of production facilities attendant to long-term idle wells to ensure compliance with the relevant laws and delays from October 1, 2020 to April 1, 2021 the deadline for DOGGR to provide a report to the Legislature on the number of hazardous wells, idle-deserted wells, deserted facilities, and hazardous facilities. [Read more.](#)

**Regulatory Management – California.** (*Update to 8/26/19 Weekly Report*) On September 11, the final version of [AB 1440](#) was enrolled and transmitted to Gov. Gavin Newsom (D) who has 12 days to sign or veto legislation or it becomes law without his signature. The bill, sponsored by Asm. Marc Levine (D), revises the purpose of the state’s Division of Oil, Gas, and Geothermal Resources regarding supervision of the drilling, operation, maintenance, and abandonment of wells to remove references encouraging oil production and will now also have to take public health and the environment

into consideration when reviewing new oil or gas drilling permits. However, one of the legislators supporting the bill said the measure does not seek to stymie the oil and gas industry. "This does not stop or discourage oil production," said Sen. Bill Monning (D). "This puts human health and human safety at the top of the list. I don't think anyone would disagree with that priority." However, Senate Republican Leader Shannon Grove, whose Bakersfield-area district produces about 75% of the state's oil, cautioned that "when California can't produce its own oil and gas, it must import from Iraq, Saudi Arabia, and elsewhere. About 200 vessels bring supplies from overseas each year, with every load costing approximately \$120 million apiece," she said. "Think about where our oil comes from when we don't produce it here." [Read more.](#)

**Mineral Rights – Ohio.** On September 17, [HB 100](#), originally introduced by Rep. Jack Cera (D) in February 2019, was the subject of a [second hearing](#) in the House Energy and Natural Resources Committee. The [first hearing](#) was held in June. The bill creates a process for a surface land owner seeking to obtain abandoned mineral interests to institute a legal challenge regarding the validity of an affidavit filed by a mineral interest holder who wants to preserve their mineral interests; creates a process for the mineral interest rights to vest in the surface land owner if a court finds that the affidavit filed by the mineral interest holder is not valid; clarifies that a mineral interest holder cannot make a claim to preserve the mineral interest if that claim is not filed within the 20 years prior to the date that the surface owner notifies the holder that the mineral rights are abandoned; narrows the classes of persons who may make a claim to preserve a mineral interest; and requires a surface land owner to comply with additional notice procedures when notifying a mineral interest holder of the surface owner's intent to declare the mineral interest abandoned. [Read more.](#)

**Lake Erie Oil & Gas – Ohio.** On September 17, the House Energy and Natural Resources Committee held a [first hearing](#) on HB 94, which would ban the

taking of oil or natural gas from the bed of Lake Erie. The legislation, first introduced in February 2019 by Rep. Michael Skindell (D), specifically "prohibits the Director of Natural Resources or any other state authority from issuing any permit or making any lease to take or remove oil or natural gas from and under the bed of Lake Erie. In doing so, the bill creates an exception to current law that authorizes the Director of Natural Resources, with the approval of the Director of Environmental Protection, the Attorney General, and the Governor, and subject to certain requirements, to issue permits and make leases to parties applying for permission to take and remove sand, gravel, stone, and other minerals or substances from and under the bed of Lake Erie, either on a rent or royalty basis, as the Director of Natural Resources determines to be best for the state." [Read more.](#)

## **STATE – Judicial**

**Rule of Capture – Pennsylvania.** (*Update to 12/3/18 Weekly Report*) On September 13, the Pennsylvania Supreme Court held [oral argument](#) in the ongoing [Briggs v. Southwestern Energy Production Co.](#) (63 MAP 2018) rule of capture case. In the case, a "Pennsylvania family claims the producer trespassed on their property by extracting gas from an 11-acre parcel of family-owned land by drilling and hydraulically fracturing a well sited on a neighboring property." The [petition](#) before the Supreme Court addresses the following issue: "Does the rule of capture apply to oil and gas produced from wells that were completed using hydraulic fracturing and preclude trespass liability for allegedly draining oil or gas from under nearby property, where the well is drilled solely on and beneath the driller's own property and the hydraulic fracturing fluids are injected solely on or beneath the driller's own property?" In the lower court ruling, the Superior Court drew a distinction between hydraulic fracturing and conventional drilling, and held that the [long-established "Rule of Capture" principle](#) did not apply to prohibit a trespass claim by an adjoining unleased landowner against a producer when that producer utilizes hydraulic fracturing for a horizontal

well. According to the Marcellus Shale Coalition, that “panel’s decision disrupts longstanding rules of law on which property owners, production companies, and many other stakeholders in Pennsylvania have relied to conduct their affairs.” At oral argument, lawyers for Southwestern Energy “warned that any changes made to the state’s rule of capture doctrine could have dire consequences for the state’s exploration-and-production industry. (For a deeper case analysis see the *Pennsylvania Bar Association’s Shale Energy Law Committee Report* [here.](#))

[Read more.](#)

## **INDUSTRY NEWS FLASH**

► **U.S. shale production to hit 14.5 million b/d by 2030.** On September 12, energy research firm, Rystad Energy, projected that U.S. shale production will peak at 14.5 million b/d by around 2030, even higher than current records. Further, analysts expect Permian Basin production alone to grow to around 7.5 million b/d by 2040 making it the dominant part of domestic oil supply. [Read more.](#)

► **Abundance of U.S. natural gas resources breaks record.** On September 11, the Potential Gas Committee at the Colorado School of Mines reported a record increase in the estimated domestic natural gas resource base, increasing 20% more than two years earlier, which is the greatest increase in such a period in the assessment’s 54-year history. “This report verifies that our nation has more natural gas than at any point in our history, ensuring that American families and businesses can rely on this clean, affordable source of energy,” said American Gas Association President Karen A. Harbert. [Read more.](#)

## **LEGISLATIVE SESSION OVERVIEW**

**Regular Session:** Massachusetts, Michigan, New Hampshire, New Jersey, North Carolina, Ohio and Wisconsin are in regular session. The District of Columbia Council, Puerto Rico and the United States Congress are also in regular session.

**Adjournments/Recesses:** California adjourned its legislative session on September 13. New York is in recess subject to the call of the chair. Pennsylvania was in summer recess until September 23.

**Session Notes:** Missouri’s House will continue the limited, technical special session [called](#) by Republican Gov. Mike Parson to address multiple issues, including an inadvertent consequence of the state’s tax law which affected tax breaks on new cars. Lawmakers passed a bill to fix the issue and sent it to Governor Mike Parson (R) who is expected to sign it soon, reports [The Missouri Times](#). The special session ran concurrently with a constitutionally mandated veto session, which convened at noon on September 11 and ended with no overrides of Governor Parson’s six vetoes. After months of negotiation gridlock, North Carolina’s House Republicans voted to override Democratic Gov. Roy Cooper’s budget veto on September 11 while many Democratic lawmakers were absent, reports [The News and Observer](#). The Senate calendar does not yet include an override as both chambers focus on their redistricting process, but [WLOS](#) reports the earliest date for recorded votes will be September 30. The session adjournment date remains unknown.

**Signing Deadlines:** Alaska Republican Gov. Mike Dunleavy has 20 days from delivery, Sundays excepted, to act on legislation or it becomes law without signature. California Democratic Gov. Gavin Newsom has until October 14 to act on legislation or it becomes law without signature. Delaware Democratic Gov. John Carney has 10 days, Sundays excepted, to act on legislation or it becomes law. Illinois Democratic Gov. J.B. Pritzker has 60 days from presentment to act on legislation or it becomes law without signature. Maine Democratic Gov. Janet Mills has three days after the convening of the next meeting of the legislature to act on legislation presented on or after June 8 or it becomes law without signature. Utah Republican Gov. Gary Herbert has until October 7 to act on legislation or it becomes law without signature.

**Interim Committee Hearings:** The following states are currently holding 2019 interim committee hearings: [Alabama](#), [Alaska](#), [Arizona](#), [California Assembly](#) and [Senate](#), [Colorado](#), [Connecticut](#), [Delaware](#), [Florida House](#), [Georgia House](#) and [Senate](#), [Hawaii](#), [Idaho](#), [Illinois Senate](#), [Indiana](#), [Iowa](#), [Kansas](#), [Kentucky](#), [Louisiana](#), [Maine](#), [Maryland](#), [Mississippi House](#) and [Senate](#), [Missouri House](#) and [Senate](#), [Montana](#), [Nebraska](#), [Nevada](#), [New Hampshire House](#) and [Senate](#), [New Mexico](#), [New York Assembly](#) and [Senate](#), [North Dakota](#), [Oklahoma House](#) and [Senate](#), [Rhode Island](#), [South Carolina House](#) and [Senate](#), [South Dakota](#), [Tennessee](#), [Texas House](#), [Utah](#), [Virginia](#), [Washington](#), [West Virginia](#) and [Wyoming](#).

**Bill Pre-Files:** The following states are currently posting 2019 bill drafts, pre-files and interim studies: [Alabama House](#), [Arkansas](#), [Florida House](#) and [Senate](#), [Iowa](#), [Kentucky](#), [Nebraska](#), [New Hampshire](#), [Oklahoma House](#) and [Senate](#), [Oregon](#), [Tennessee](#), [Utah](#) and [West Virginia](#). ■

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