

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

- **Arctic National Wildlife Refuge.** On January 18, Rep. David Talerico (R) introduced HJR 4, a joint resolution urging the United States Congress to pass legislation to open certain lands within the Arctic National Wildlife Refuge to oil and gas development, urging the U.S. Interior Department to recognize the private property rights of certain landowners, and opposing any unilateral reduction in royalty revenue in the area, among other provisions. [Read more](#). A Democratic version of the measure, HJR 5, was introduced on January 8 by Rep. Dean Westlake (D). [Read more](#).
- **Keystone XL Pipeline and Dakota Access.** On January 24, President Trump signed executive orders aimed at reviving the Dakota Access and Keystone XL (KXL) crude oil pipeline projects. “We’re going to renegotiate some of the terms, and if they are satisfactory, we’re going to see if we can get this pipeline built,” Trump said at the White House before signing the executive orders. The executive orders do not grant the official permits needed to build the pipelines, but will help push the projects toward the final stages of approval. “We appreciate the president of the U.S. inviting us to reapply for KXL. We are currently preparing the application and intend to do so,” TransCanada said in a statement. Sunoco Logistics Partners LP, which acquired Dakota Access sponsor Energy Transfer Partners in November did not comment immediately on the president’s moves. [Read more](#).

FEDERAL – Regulatory

- **Regulatory Freeze.** On his first day in office, President Trump ordered an immediate regulatory freeze, instructing his Chief of Staff to issue a memorandum to the executive department and agencies to immediately freeze new or pending federal regulations until the new administration can review them. For regulations that have been finished but have yet to take effect, the executive order will temporarily postpone their effective date for 60 days, or potentially longer. Regulations that agencies have sent to the Office of the Federal Register but have not been published must immediately be withdrawn, with the exception of emergency situations related to financial, national security, health and safety matters. The [memo](#), dated January 20, will not affect rules that have already taken effect, and Congress would be required to vote using a simple-majority to repeal any regulations that took effect after last May. [Read more](#).

- **BLM Leasing – Ohio.** The BLM has announced more sites will be open to oil and gas leasing in Wayne National Forest. Leases for nearly 1,200 acres of the forest’s Marietta Unit in southeast Ohio will be sold online in March. In December, the BLM netted more than \$1.7 million in an auction of more than 700 acres of the forest, despite protests by environmental groups. [Read more.](#)

FEDERAL – Judicial

- **Purchase-Sale Agreement – West Virginia Federal Court.** On January 18, in *Statoil USA Onshore Properties, Inc. v. Pine Resources, LLC* (Case No. 15-2099), the Fourth Circuit Court of Appeals held that the assignee of certain Marcellus interests in West Virginia maintained spudding obligations under a purchase-sale agreement (PSA) despite a claim that those obligations extended to the assignee’s predecessor in interest only, reasoning that the “successor and assigns” clause in the PSA imposed those obligations on subsequent purchasers. [Read more.](#)

STATE – Legislative

- **Lease Recording – Nebraska.** On January 20, Senator Dan Hughes introduced LB 535, a bill which provides an exception for filing a statement with the register of deeds when recording an oil, gas, or mineral lease. [Read more.](#)
- **Water Use Notification – New Mexico.** On January 12, Sen. Carlos Cisneros (D) introduced SB 86, which would set certain requirements for public notice relating to water usage. [Read more.](#)
- **Leasing Moratorium – New Mexico.** On January 23, Rep. Derrick Lente (D) introduced House Joint Memorial 5, which requests that the BLM consider issuing a temporary moratorium on all hydraulic-fracturing related lease sales and permit approvals in the Mancos Shale/Gallup Formation in the greater Chaco area until the BLM’s Resource Management Plan amendment is completed. [Read more.](#)
- **Water Protection – North Dakota.** On January 23, Senator Rich Wardner (R) introduced SB 2331. The bill provides for protection of surface and ground water as it relates to the responsibilities of mineral resource developers. [Read more.](#)
- **Land Reclamation – North Dakota.** On January 23, Senator David Rust (R) introduced SB 2333. The bill sets new provisions relating to the reclamation requirements for land disturbed by oil and gas activity. [Read more.](#)
- **Oil and Gas Lease Act Amendments– Pennsylvania.** On January 19, SB 138 was introduced by Senator Gene Yaw (R), and approved by the Environmental Resources and Energy Committee on January 24. The bill would amend the Oil & Gas Lease Act further providing for definitions, for payment information to interest owners, for accumulation

of proceeds from production and for conflicts, providing for joint ventures, and inspection of records. [Read more.](#)

- **Leasing – Pennsylvania.** On January 19, SB 139 was introduced by Senator Gene Yaw (R), and approved by the Environmental Resources and Energy Committee on January 24. The bill would provide protection for a lessor of natural gas rights who reports a violation or suspected violation of a contractual agreement and for remedies and penalties. [Read more.](#)
- **Leasing; Production Units – Pennsylvania.** On January 20, SB 141 was introduced by Senator Gene Yaw (R), and referred to the Environmental Resources and Energy Committee. The bill amends current law to add a new section stating that “any portion of land subject to a lease that is combined with other lands or leases to form a unit shall be subject to operations and production on and in the unit. The operations and production shall continue a lease in force and effect during or after the primary term according to the lease provisions only as to that portion of the leased land that is included in the unit.” [Read more.](#)
- **Leasing; Production Units – Pennsylvania.** On January 20, SB 142 was introduced by Senator Gene Yaw (R), and referred to the Environmental Resources and Energy Committee. The bill amends current law relating to unconventional oil and gas conservation by consolidating the Oil and Gas Conservation Law with modifications relating to definitions, standard unit order, process, administration, standard of review, hearings and appeals, establishment of units, integration of various interests, lease extension and scope, providing for gas and hazardous liquids pipelines; and making a related repeal. [Read more.](#)
- **Unpaid Wages Claims – Texas.** On November 14, 2016, HB 253 was prefiled by Rep. Ana Hernandez (D). The bill would extend the period in which an employee may file a claim for unpaid wages with the Texas Workforce Commission. [Read more.](#)
- **Ad Valorem Taxes – Texas.** On January 6, HB 845 was introduced by Rep. Jose Lozano (R). The bill relates to the authority of the governing body of a taxing unit to exempt from ad valorem taxation mineral interests owned by nonprofit corporations organized for the exclusive purpose of generating income for certain charitable nonprofit corporations through the ownership, lease, and management of real property. [Read more.](#) Rep. Lozano has also introduced a constitutional amendment, HJR 51, for the same purpose and to put the issue to a public vote. [Read more.](#)
- **Unauthorized Transactions – Texas.** On January 9, HB 891 was introduced by Rep. Richard Raymond (D). The bill relates to creating an offense for certain unauthorized transactions involving oil, gas, or condensate, such as transactions without permit or approval. [Read more.](#)

- **Employee Classification – Texas.** On January 24, HB 1304 was introduced by Rep. Oscar Longoria (D). The bill would create a presumption of employment in certain situations but also allows for a rebuttal for those free from control or direction under a contract or in fact. The bill also creates a new penalty for misclassification. The bill is not likely to move forward in the Republican-led legislature. [Read more](#). A companion Senate bill, SB 592, with the same provisions as HB 1304, was also filed on January 24 by Senator Eddie Lucio (D). [Read more](#).
- **Oil and Gas Well Proceeds – Virginia.** On January 18, Delegate Todd Pillion (R) introduced HB 2389, a bill that provides that proceeds of certain gas or oil wells, escrowed because the owner’s identity and location remain unknown, shall be presumed abandoned and made available to the school board nearest the drilling unit. Current law requires such escrowed proceeds to be disposed of pursuant to the Uniform Disposition of Unclaimed Property Act. The bill also provides that certain escrowed proceeds due to known and locatable claimants of coalbed methane gas wells that were force-pooled prior to July 1, 2015 shall be made available to the local school board when one year has passed and certain other conditions are met. [Read more](#).
- **Ad Valorem Taxes; Liens on Mineral Production – Wyoming.** On January 25, Rep. Roy Edwards (R) introduced HB 220. The bill provides that mineral liens on production shall not apply to certain interests of an owner who is not a delinquent taxpayer, as well as defining “delinquent taxpayer” in the bill’s context. [Read more](#).

STATE – Judicial

- **Taxes; Pooled Interests – Texas.** On January 18, in *Chambers v. San Augustine Cty. Appraisal Dist.* (Case No. 12-15-00201-CV), the Court of Appeals of Texas, Twelfth District, concluded that San Augustine County could not assess taxes on a lessee’s pooled interests located in both Shelby County and San Augustine County, concluding that the lessee’s interests are located in and already taxed by Shelby County and that the pooling of those interests within a unit located in part in San Augustine County did not create a cross-conveyance of those interests sufficient to give San Augustine County the ability to impose another tax. [Read more](#).
- **Well Permitting – Texas.** On January 18, in *Ring Energy Inc. v. Trey Resources Inc.* (Case No. 08-15-00080-CV), the Court of Appeals of Texas, Eighth Circuit, held that plaintiffs seeking to halt injection well permits issued by the Railroad Commission may do so outside of Travis County and before the permittee engages in operations, departing from the usual understanding that plaintiffs had one place to challenge permits in Texas and couldn’t do so until the matter was ripe for review. [Read more](#).

INDUSTRY NEWS FLASH:

◆ **Trump Touts America First Energy Plan.** (As reported by Covington & Burling LLP's *Inside Energy & Environment*) The White House website has been updated with new content that includes "[An America First Energy Plan](#)". The content states that "The Trump Administration is committed to energy policies that lower costs for hardworking Americans and maximize the use of American resources, freeing us from dependence on foreign oil." [Read more.](#)

◆ **Western Energy Alliance launches new publication.** The Western Energy Alliance, whose 300 members are engaged in oil and gas exploration and production across 13 states, has launched a new publication, *Western Wire*, in an effort to emphasize support for the region's energy and natural resource industries. [Read more.](#)

State-by-State Legislative Session Overview

The administration of **Louisiana** Democratic Gov. Jon Bel Edwards has announced that the state's midyear budget shortfall is large enough to require a legislative special session to make adjustments, [The Times-Picayune](#) reports. Though slightly smaller than the \$313 million shortfall originally anticipated by Commissioner of Administration Jay Dardenne, the expected gap of \$303 million will be large enough to necessitate a special legislative session. [WAFB](#) reports that state economist Greg Albrecht attributes the funding shortage to the state's still struggling economy – revenues from income and sales taxes are lower than had been anticipated. Areas of the budget that can be cut without a special session are restricted by the state constitution, which often leaves healthcare and higher education funding as the main targets. Governor Edwards has indicated that he would rather open the entire budget to cuts rather than concentrating them in those areas. A statement from Edwards' office about the need for a special session can be found [here](#). The Joint Budget Committee is scheduled to hold a hearing on January 27 at 9:00 AM. The agenda for that meeting can be found [here](#).

Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin and Wyoming are in regular session. The **District of Columbia** Council, **Puerto Rico** and the **United States Congress** are also in regular session.

Oregon convened on January 9 for organizational days, and is in recess until February 1. A list of legislation introduced during the organizational days can be found [here](#). **West Virginia** held an organizational day on January 11 and is also in recess until February 1, but did not introduce any legislation.

Wisconsin is in special session. The session, which convened on January 5, will run concurrently with the regular legislative session.

Nevada and **Oklahoma** are expected to convene on February 6 and **Alabama** is expected to convene on February 7.

Illinois Republican Gov. Bruce Rauner has 60 days from presentment to act on legislation or it becomes law without signature.

The following states are currently posting bill draft requests/prefiles for the 2017 session: **Alabama** [House](#) and [Senate](#), [Florida](#), [Louisiana](#), [Nevada](#), and **Oklahoma** [House](#) and [Senate](#) bill drafts and [prefiles](#).

Franchise Tax

A number of **Texas** franchise tax bills were introduced and assigned to committees, including:

- [HB 1095](#), filed on January 18, which would phase out the franchise tax year by year until it would ultimately be eliminated by January 1, 2020.
- [HB 1196](#), filed on January 20, which would also repeal the franchise tax.
- [SB 72](#), which was introduced and referred to the Senate Finance Committee on January 24. This bill would decrease the franchise tax by a percentage each year until it is ultimately phased out. If enacted, the bill would become effective on September 1, 2017. This bill is sponsored by Sen. Jane Nelson, R-Flower Mound.
- [SB 112](#), which was introduced and referred to the Senate Finance Committee on January 25. This bill would decrease the rate of the franchise tax until it is eliminated. If this bill is enacted, it would take effect on January 1, 2018. Sen. Don Huffines, R-Dallas, sponsors this bill.
- [SB 130](#), which was introduced and referred to the Senate Finance Committee on January 25. This bill would amend the way that the franchise tax is computed by taking the entity's total revenue and subtracting an amount equal to the sum of \$1 million, the cost of goods sold, and compensation. Franchise tax would then be calculated off that sum. If this bill is enacted, it would take effect on January 1, 2018. Sen. Brandon Creighton, R-Conroe, is the sponsor of this bill.
- [SB 142](#), which was introduced and referred to the Senate Finance Committee on January 25. This bill offers amendments to the way cost of goods is calculated for the purpose of determining a corporation's franchise tax. This bill would take effect on January 1, 2018 and is sponsored by Sen. Van Taylor, R-Plano.
- [SB 178](#), which was introduced on January 25 and referred to the Senate Finance Committee. This bill would completely repeal the franchise tax on May 15, 2018. This bill is sponsored by Sen. Craig Estes, R-Wichita Falls.

Landmen

Employee Classification

Washington [HB 1300](#) was heard in a public hearing in the House Labor and Workplace Standards Committee on January 23 where testimony was submitted, the committee did not take action on the bill during the hearing. This bill would prohibit employers from misclassifying employees as independent contractors, charge them a fee to be an independent contractor, require an employee to enter into an agreement that would result in a change of their employment classification to independent contractor or evade detection of their goal to misclassify employees. The Department of Labor would be permitted to conduct investigations into the misclassification of employees and provide penalties if companies are found to have misclassified employees.

This bill is sponsored by Rep. Marcus Riccelli, D-Spokane.

Independent Contractors

New York [AB 2504](#) was introduced on January 20 by Asm. Barbara Lifton, D-Ithaca, and referred to the Assembly Economic Development Committee. This bill would require that all land lease agents be licensed and certified by the American Association of Professional Landmen before doing business in the state. All applications for license must be done in writing, under oath and as prescribed by the secretary of state. Each application must include:

- The name and address of the applicant.
- The places where business is to be conducted.
- A summary of experience of the applicant as a land leasing agent and/or the management of funds.
- Satisfactory evidence of good moral character.
- Any additional information that the secretary of state may require, or may be required by additional rules or regulations.

The bill would require all land lease agent applicants for licensure to pay an application fee determined by the secretary of state, but not to exceed \$300. The secretary of state would set the renewal fee, and agents would not be able to renew their license if it had lapsed for over six months, they would have to start the application process over.

If this bill becomes law, it will take effect on the 16th day after being enacted, unless there is an addition, amendment or repeal of any rule or regulation that would be necessary to implement this act.

Lands

Indian Lands

New Mexico [SJM 3](#) was scheduled to be heard in the Senate Rules Committee on January 27 at 9:00 a.m., the results of this hearing have not been posted. This resolution, sponsored by Sen. Cliff Pirtle, R-Roswell, is a request to the U.S. Congress to transfer 860 acres of land from the Lincoln National Forrest to the U.S. Department of the Interior for the use and benefit of the Mescalero Apache Tribe.

Public Lands

New York [SB 3440](#) was introduced on January 23 by Sen. Jose Serrano, D-Bronx, and referred to the Senate Energy and Telecommunications Committee. This bill would prohibit the lease of state forests and wildlife management areas for the purpose of gas production. This bill would take effect immediately if enacted.

Leasing

New York [AB 2510](#) was introduced on January 20 and referred to the Assembly Governmental Operations Committee. This bill would create the oil, gas and mineral land lease clearinghouse within the Department of State to allow for the collection and maintenance of all leases in physical and electronic form. Asm. Barbara Lifton, D-Ithaca, is the sponsor.

Oklahoma [HB 1902](#) was prefiled on January 20 by Rep. Kevin Calvey, R-Oklahoma City. This bill would declare any action taken by a municipality or other political subdivision that substantially interferes with a mineral estate, imposes limitations that adversely impact the use and development of minerals or prohibits access to the development of a mineral estate to be a taking of property rights under [Article II](#) of the Oklahoma Constitution. This bill would take effect immediately if enacted.

Pennsylvania [SB 141](#) was introduced by Sen. Gene Yaw, R-Lycoming, on January 20 and referred to the Senate Environmental Resources and Energy Committee. This bill would amend current law by allowing production to continue on land that is connected by multiple leases after the primary lease terminates, as long as the other leases are still valid.

If this bill becomes law, it will take effect 60 days after enactment.

Oil and Gas

Oil and Gas General

North Dakota [HB 1151](#) was amended on January 24 and passed the House on January 25. As amended, this bill would make it so that people operating or controlling an oil well do not have to report a spill that is 10 or fewer barrels of oilfield fluid over a 15 day period.

Bundling & Pooling

Texas SB 177 was introduced and referred to the Senate Natural Resources and Economic Development Committee on January 25. The “Majority Rights Protection Act” would establish a legal framework for protecting the property rights of oil field owners. It is also aimed at unlocking additional production in secondary and tertiary wells. The goal of the bill would be to update the unitization procedures to allow a super majority of 70 percent or more of both working and royalty interest owners to enter into a pool to move forward with additional field operations to recover oil in secondary and tertiary wells. Current law requires that all rights holders of an oil field agree to any redevelopment of operations. The way the law is now, one owner, or a small group, can prevent the redevelopment of a reservoir. This limits the rights of all the other property rights owners to use methods to recover additional oil from the field.

According to a [press release](#) from the sponsor, Sen. Van Taylor, R-Plano, “New techniques in oil extraction continue to offer our state and nation immeasurable opportunities, however Texas law has failed to keep up with these advancements,” stated Taylor. “The Majority Rights Protection Act would unlock hundreds of billions of dollars of energy production by establishing a proven legal framework successfully used in 29 other states. Passing this bill has the potential to be the biggest job creation, investment expanding, and revenue generating legislation in a generation.”

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