

WEEKLY HIGHLIGHTS AT-A-GLANCE

FEDERAL – Legislative

- **Comprehensive Energy Bill.** The U.S. Senate has begun debating the comprehensive bipartisan energy bill, [S. 2012](#), sponsored by Sen. Lisa Murkowski (R-Alaska). The legislation, dubbed the Energy Policy Modernization Act, could become the first broad rewrite of energy policy since 2007 if enacted into law. Murkowski's bill easily passed the Senate Energy and Natural Resources Committee that she chairs on a 18-4 vote, and the House version of the bill (H.R. 8) passed by a vote of 249-174 on December 3, 2015. Of particular importance to the landman industry, the bill requires the BLM to establish a single-state, 3-year-long pilot program to streamline drilling permits in spacing units where the federal government does not own or hold more than 25 percent of the subsurface minerals and does not own or hold surface area. Numerous amendments are expected to be offered as the bill progresses, and we will continue to report on those relevant to the AAPL as they are made available. [Read more.](#)

STATE – Judicial

- **Lease Terms; Tolling – Ohio.** On January 21, the Supreme Court of Ohio affirmed the validity of 700 leases in favor of the lessee in its long-awaited decision in two previously consolidated cases, *Hustack v. Beck Energy* and *State ex rel. Claugus Family Farm v. Seventh District Court of Appeals*, (Slip Opinion No. 2016-Ohio-178). In its decision, the court declared as valid Beck Energy leases that gave the company 10 years to begin preparing to drill if it wanted to maintain the leases in force. However, the court did not allow the leases to be tolled during the pendency of the case, costing Beck Energy approximately one year of the primary term on those valid leases. [Read more.](#)

STATE – Regulatory

- **Notice requirements – Colorado.** On January 25, the nine-member state Oil and Gas Conservation Commission (COGCC) approved proposed rules, originated through a special task force established by Gov. John Hickenlooper (D) to address conflicts and reach a compromise over state and local regulation of oil and gas operations. Monday's votes ended nearly 18 months of contentious public meetings on the impacts of oil and gas operations in urban areas and neighborhoods. The COGCC rules — which could become effective in six to eight weeks — still must undergo reviews by the Attorney General's office and the legislature. In short, the rules define when oil and gas operators must involve local communities in siting large drilling facilities. The final rules did not however include—as sought by industry—a provision exempting all existing surface use

agreements between landowners and operators from the notification and consultation process. “We feel the industry brought reasonable solutions to the table that were largely ignored, and the rules still go beyond the recommendations of the task force,” said Dan Haley, president and CEO of the Colorado Oil & Gas Association. [Read more.](#)

STATE – Legislative

- **Employee Misclassification; Independent Contractor – Indiana.** On January 26, the state Senate passed SB 400, a bill introduced by Senator Phillip Boots (R), which urges the Legislative Council to assign a study on employee misclassification, payroll fraud, and the use of independent contractor status to an interim study committee on employment and labor during the 2016 legislative interim period. The committee’s report with findings and any recommended legislation will be issued no later than November 1, 2016. [Read more.](#)
- **Industry Regulations – Nebraska.** Three bills have been introduced in the Nebraska legislature that would affect how the Nebraska Oil and Gas Conservation Commission (NOGCC) operates. According to one of the bill’s sponsors, Sen. Ken Schilz, “Certain things had to be changed in statutes to give more authorization to the commission or require something of permit holders.” [LB 1070](#) would change the powers and duties of the NOGCC to require liability insurance for wastewater injection wells, not unlike the current regulatory scheme in Colorado. [LB 1082](#) would remove the promotion of the oil and gas industry out of the NOGCC’s regulatory purview. [LB 1100](#) would adopt the Petroleum Education and Marketing Act, which would create a Board of industry members to promote the NOGCC and the state’s oil and gas industry. If LB 1100 passes, the NOGCC won’t be allowed to promote the industry itself, but they will still be able to educate the public about what the industry does. [Read more.](#)
- **Recorded Instruments; Leasing – New York.** State Assemblywoman Linda Rosenthal (D) has introduced AB 1312, a bill to amend the environmental conservation law, to require recordings of natural gas contracts or leases with the county clerk or equivalent official within 15 days of execution. The stated purpose is that by recording natural gas leases with the county, investors who own a stake in the affected mortgages will be better able to evaluate and judge the risk potential of their investments. [Read more.](#)
- **Lease Terms – New York.** AB 5390, sponsored by Assemblywoman Barbara Lifton (D), was introduced and referred to the Judiciary Committee on February 20, 2015. We reported on this bill in 2015 and no action had ever been taken. On January 6, 2016, the bill was re-referred to that committee for the 2016 session. The bill would require that a certain statement be included in all oil, gas or mineral leases to explain the possible risks to property value and the ability to obtain a mortgage on a home with an oil or gas lease. The statement would be required in all oil and gas leases executed on or after January 1, 2016. [Read more.](#)

- **Recordation; Leasing – New York.** AB 5383, sponsored by Assemblywoman Barbara Lifton (D), was introduced and referred to the Real Property Taxation Committee on February 20, 2015. No action had ever been taken in 2015. On January 6, 2016, the bill was re-referred to that committee for the 2016 session. The bill would require that oil, gas or mineral leases be recorded within 30 days of execution. [Read more.](#)
- **Assignments; Leasing – New York.** AB 5381, sponsored by Assemblywoman Barbara Lifton (D), was introduced and referred to the Judiciary Committee on February 20, 2015. We reported on this bill in 2015 and no action had ever been taken. On January 6, 2016, the bill was re-referred to that committee for the 2016 session. The bill would require that as of January 1, 2016, a lessee or assignee must provide written notice to the lessor mineral owner of any lease assignment. [Read more.](#)
- **Recordation; Leasing – New York.** AB 5391, sponsored by Assemblywoman Barbara Lifton (D), was introduced and referred to the Judiciary Committee on February 20, 2015. We reported on this bill in 2015 and no action had ever been taken. On January 6, 2016, the bill was re-referred to that committee for the 2016 session. The bill excludes oil, gas or mineral leases from the option to record a memorandum of lease at a county clerk's office, requiring that a lease, in its entirety, be filed and available for public review. [Read more.](#)
- **Lease Execution – New York.** AB 5377, sponsored by Assemblywoman Barbara Lifton (D), was first introduced and referred to the Judiciary Committee on February 20, 2015. No action had ever been taken in 2015. On January 6, 2016, the bill was re-referred to that committee for the 2016 session. The bill requires that any oil, gas or mineral lease shall be signed by all owners of the leased premises as of the date the lease is signed, and requires that a valid lease extension or modification must require the signature of both parties, and all owners of the leased premises. [Read more.](#)
- **State Lands; Royalties; Leasing – New York.** AB 2772, sponsored by Assemblyman Clifford Crouch (R), was introduced and referred to the Environmental Conservation Committee on January 20, 2015, but no action was taken in 2015. The bill has been re-referred to that committee for the 2016 session. The bill requires that lessee bids for oil and gas production leases on state lands include lease bonus payment and royalty payment figures. [Read more.](#)
- **County Lands; Leasing – New York.** AB 2772, sponsored by Assemblyman Clifford Crouch (R), was introduced and referred to the Environmental Conservation Committee on January 20, 2015, but no action was taken in 2015. The bill has been re-referred to that committee for the 2016 session. The bill authorizes counties to lease county land for natural gas exploration, development and production for five years or as long as gas is produced in paying quantities. [Read more.](#)

- **Lease Execution – New York.** AB 767, sponsored by Assemblywoman Linda Rosenthal (D), was introduced and referred to the Judiciary Committee on January 7, 2015, but no action was taken in 2015. The bill has been re-referred to that committee for the 2016 session. The bill provides that any oil, gas or mineral lease given on land owned by tenants in common, joint tenants or tenants by the entirety shall be signed by each such tenant owning an interest in the subject land as of the date the lease is to be signed. Any lease which contains less than every signature shall be void and unenforceable. [Read more.](#)
- **Bundling and Pooling; Leasing – New York.** AB 516, sponsored by Assemblywoman Linda Rosenthal (D), was introduced and referred to the Environmental Conservation Committee on January 7, 2015, but no action was taken in 2015. The bill has been re-referred to that committee for the 2016 session. The bill provides that non-integrated, nonparticipating owners cannot be forced pooled into a spacing unit and must be given an opportunity to opt-out of compelled integration within a spacing unit. [Read more.](#)
- **Spacing and Drilling Units – Oklahoma.** On January 18, HB 2332 was introduced by Rep. Mark McBride (R). The bill provides that when a location exception is filed with the state Corporate Commission for any spacing or drilling unit, the Commission shall give notice of a hearing to provide the unit description to adjacent landowners. [Read more.](#)
- **Royalty Payments; Leasing – Oklahoma.** On January 19, SB 1139 was introduced by Senator Bryce Marlatt (R). The bill extends the existing excise tax levy from 2016 to 2021 and allows producers to deduct from royalty payments the amount of the excise tax due or its equivalent in value. [Read more.](#)
- **State Land Management; Leasing – Utah.** On January 25, SB 72 was introduced by Senator Margaret Dayton (R) and referred to the Natural Resources, Agriculture, and Environment Committee. The bill would amend the circumstances under which state trust lands may be withdrawn from leasing and clarifies that lease applications may be submitted and processed online. [Read more.](#)
- **Independent Contractor – Utah.** On January 26, HB 116 was introduced by Rep. Brian Greene (R) and referred to the House Business and Labor Committee. The bill addresses the determination of who is an employer and sets forth factors for determining the status of an independent contractor. [Read more.](#)
- **Assignments; Leasing – West Virginia.** HB 2585, a carryover bill from the 2015 legislative session, has been reintroduced by sponsor House Member Anna Border-Sheppard (R), and was referred to the Judiciary Committee on January 13. The bill would require leaseholders of mineral interests to notify mineral owners when there is an assignment of the leasehold interests. [Read more.](#)

- **Mineral Interest Claims – West Virginia.** HB 2890, a carryover bill from the 2015 legislative session, has been reintroduced by sponsor House Member Pat McGeehan (R), and was referred to the Energy Committee on January 13. The bill creates a procedure to streamline the process for claiming abandoned mineral interests. [Read more.](#)
- **Surface Use Agreements – West Virginia.** HB 2707, a carryover bill from the 2015 legislative session, has been reintroduced by sponsor House Member Jeff Eldridge (D), and was referred to the Energy Committee on January 13. The bill would permit surface owners on whose properties natural gas-producing wells are drilled, and surface owners on whose property natural gas pipelines cross, to purchase gas at market rates in addition to any free natural gas in which they are contractually entitled. [Read more.](#)
- **Tax; County Assessment – West Virginia.** On January 14, SB 279 was introduced by Senator Ryan Ferns (R) and referred to the Natural Resources Committee. The bill would change the formulas for assessing the value of natural resources property containing oil and gas mineral interests and the tax assessor appraisal process for those interests. [Read more.](#)
- **Bundling and Pooling; Surface Use Agreements – West Virginia.** On January 18, HB 4037 was introduced by House Member Michael Folk (R) and referred to the Energy Committee. The bill would prohibit the state from requiring persons with oil or gas rights connected to deep oil or gas wells to involuntarily integrate their interests in a drilling unit and would also require a surface owner’s consent for operations or disturbances to the surface of the land in a drilling unit. [Read more.](#)
- **Leasing; Royalties; Surface Use – West Virginia.** On January 25, SB 383 was introduced by Senator Greg Boso (R) and referred to the Energy, Industry and Mining Committee. The bill would authorize the development of horizontal drilling of multiple adjacent leases held by the same operator, and the operator would be able to use any of the surface tract overlying the jointly developed leases. The bill also allows for determinations on how royalties are paid on multiple contiguous leases. [Read more.](#)

INDUSTRY NEWS FLASH: Exxon Mobil Corp. has just released its long-term global view of energy demand and supply, *The Outlook for Energy*. The Exxon report expects that global energy demand will climb 25 percent within the next couple of decades, with the biggest growth projected in natural gas. The report also predicts both oil and natural gas will meet about 80 percent of global energy demand between now and 2040. [Read more.](#)

State-by-State Legislative Session Overview

Alaska, Arizona, California, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia and Wisconsin are in regular session. The **District of Columbia** and the **U.S. Congress** are also in regular session.

The following states are expected to convene their 2016 legislative sessions on the dates provided: **Oklahoma** and **Oregon** (February 1); **Alabama** (February 2); **Connecticut** (February 3) and **Wyoming** (February 8). **Ohio** Republican Gov. John Kasich has 10 days from presentment, Sundays excepted, to act on legislation or it becomes law without signature.

Alabama, Louisiana, Oklahoma, and Wyoming are now pre-filing for the 2016 legislative session.

The following states are currently holding interim committee hearings: **Alabama, Arkansas, Connecticut, Minnesota, Montana, Nevada, North Dakota**, the **Oklahoma** House and Senate, and **Wyoming**.

Landmen

Wisconsin [SB 375](#) was scheduled to be considered in the Senate Insurance, Housing and Trade Committee on January 27. Details from the hearing are not yet available. Bill sponsor Sen. Frank Lasee, R-De Pere, offered two amendments to the bill last week, which are available [here](#) and [here](#). The bill would generally amend current law regulating the practice and licensure of real estate brokers and real estate salespersons. It would create provisions addressing independent real estate practice by brokers, which is not addressed under current law. Under these provisions, a broker who is associated with a firm would also be authorized to engage in independent real estate practice, as specified. The bill would also define an “employee” for the purposes of these provisions to specify that a licensee would not be considered an employee of a firm if:

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

The majority of the bill would take effect on July 1, 2016 or on the day after publication by the Legislative Reference Bureau, whichever is later. SB 375 is significantly similar to [AB 456](#), which had Assembly [Amendment 2](#) and [Amendment 3](#) offered on January 19 and 20, respectively.

Oil and Gas

General Oil and Gas

Michigan [HB 5258](#), primarily sponsored by Rep. Jeremy Moss, D-Southfield, was read a first time and referred to the House Energy Policy Committee on January 27. The bill would prohibit a permit or authorization from being issued for the drilling of an oil or gas well in a county with a population of 750,000 or more, unless the following conditions are met:

- The proposed well is to be located at least 2,000 feet from a residential building.
- The location and operation of the proposed well will be in compliance with applicable local ordinances.
- Certain public hearings and consideration of public input requirements have been met.

The 2,000-foot buffer zone requirement could be waived if the owner or owners of all residential buildings located within the buffer zone give written consent. The bill would take effect 90 days after enactment.

West Virginia [SB 396](#) was introduced by lead sponsor Sen. Chris Walters, R-Nitro, on January 27 and was referred to the Senate Energy, Industry and Mining Committee as well as the Senate Judiciary Committee, consecutively. Co-sponsor Sen. Greg Boso, R-Summersville, is the chair of the Senate Judiciary Committee, and co-sponsor Sen. Douglas Facemire, D-Sutton, is also a member of that committee. The bill would require oil and gas wells that are otherwise capable of producing at least 1,000 cubic feet of natural gas per day to be shut-in, as defined, when the well cannot be economically produced. A well shut-in under this provision would not be considered a nonproducing or abandoned well and would not have to be plugged, as required under current law. If a consumer who is legally entitled to receive natural gas and who actually consumes natural gas from a well shut-in under these provisions becomes unable to receive sufficient natural gas supply because of the shut-in, the consumer would be entitled to demand that the well be placed in production to the extent necessary to supply the consumer with natural gas or to the normal operating flow of the well, whichever is less. The bill would take effect 90 days after passage.

Wisconsin [AB 547](#) passed the Senate Judiciary and Public Safety Committee 3-2 on January 28. The bill would increase the criminal penalty for intentionally damaging property if the property is owned, lease, or operated by an energy provider and the person perpetrating the damage caused or intended to cause a substantial interruption of the energy provider's goods or services. It would also increase the criminal penalty for entering a property that is part of an energy plant or electric generation, distribution or transmission system or part of a natural gas distribution system without lawful authority or the consent of the energy provider that owns, operates or leases the property. If enacted, the bill would take effect one day after publication by the Legislative Reference Bureau. The bill is similar to [SB 457](#) as amended by [Senate Amendment 1](#), which also passed the Senate Judiciary and Public Safety Committee 3-2 on January 28.

Leasing

Pennsylvania [SB 147](#), which passed the Senate unanimously with amendments on January 28, 2015 and was referred to the House Environmental Resources and Energy Committee, will carry over into the 2016 session. As amended, the bill would require proceeds from oil and gas production to be paid within 90 days of production and remitted to the entitled person on a quarterly basis for the three months accumulation of proceeds totaling less than \$100. Delinquent payments would be paid at the legal rate of interest. It would also require interest owners in joint ventures to be provided with certain information each year if the joint venture company is separately paying its share of the royalty. The lessor could submit a written request to inspect documents related to the payments. According to the [sponsor's memo](#), the bill is substantially similar to 2014's [SB 1236](#), which stalled after it passed the Senate with amendments.

[SB 148](#), which also passed the Senate unanimously on January 28, 2015 and was referred to the House Environmental Resources and Energy Committee, will also carry over into 2016. The bill would prohibit a lessee from retaliating against a lessor of natural gas rights by ceasing development because the owner reported a complaint or claim of a contractual violation. A lessor alleging violation of this provision could bring a civil action against the lessee if they provide evidence that shows they acted in good faith. If the court rules in favor of a lessor, the lessee could have to pay reasonable damages and could be subject to a civil fine of up to \$1,000 per day. The bill is substantially similar to 2014's [SB 1237](#), which passed the Senate but failed to advance in the House.