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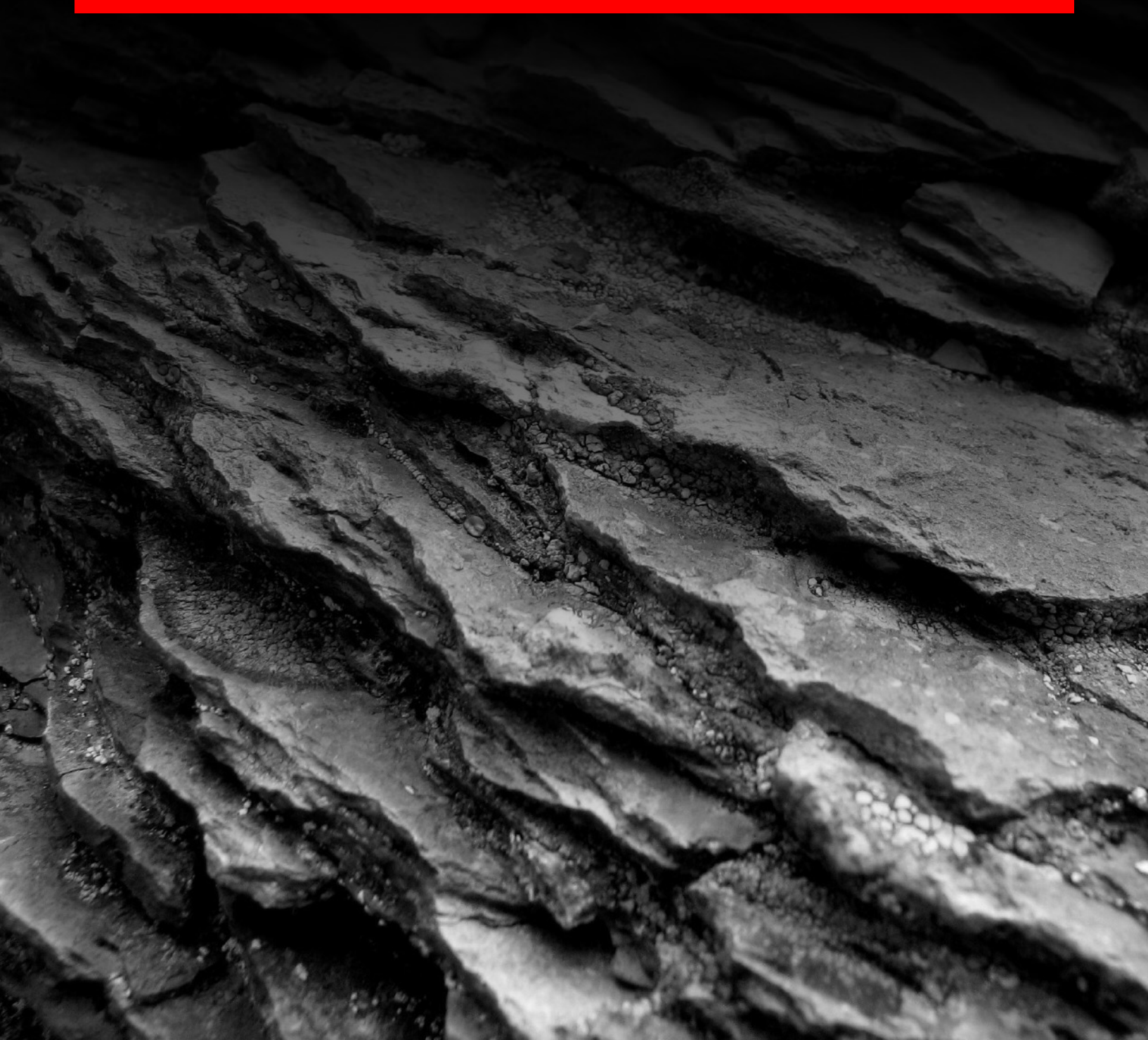
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 **NORTON ROSE FULBRIGHT**

# Quarterly legislative action update: Marcellus and Utica shale region

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Norton Rose Fulbright US LLP – 2015 - 1<sup>st</sup> Quarter - Private and confidential



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Our Norton Rose Fulbright Pittsburgh-Southpointe practice tracks legislative activity that we believe may impact oil and gas development within the Marcellus and Utica shale regions (Pennsylvania, West Virginia and Ohio).

This Update contains all of the relevant legislative activity occurring in Pennsylvania, West Virginia, and Ohio during the first quarter of 2015.

New legislative activity occurring after publication of this Update will be posted to [Norton Rose Fulbright's Hydraulic Fracking Blog](#) as soon as it is available. The next issue of this Quarterly Update will be published in early July 2015 and will contain all of the legislative activity occurring through the second quarter of 2015, highlighting changes occurring during that quarter.

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# Pennsylvania legislative action updates<sup>2</sup>

## House

### PA House Bill 33 – Amendments to Municipalities Planning Code

**Sponsor:** [Glenn Grell](#) (Republican – part of Cumberland County [outside Harrisburg])

**Overview:** Amends Municipalities Planning Code (“MPC”) to allow governing body to appoint up to three residents of the municipality to serve as alternate members of the Planning Commission.

Alternate members of Planning Commission appointed pursuant to this bill may participate fully in event of absence or recusal of any absent member.

**Current Status:** Approved unanimously by the House Appropriations Committee on March 30, 2015.

Passed unanimously by the House of Representatives on March 30, 2015.

### PA House Bill 48 – Water Well Standards (see also [PA House Bill 81](#) – identical when introduced)

**Sponsor:** [Robert W. Godshall](#) (Republican – part of Montgomery County [outside Philadelphia]; *Chair of Consumer Affairs Committee*)

**Overview:** Establishes Chapter 33 of Title 27, setting forth private water well construction standards, including powers and duties of Department of Environmental Protection and penalties for noncompliance.

“Construction” section states that Chapter shall not be construed to allow:

- the Department of Conservation of Natural Resources to require a permit for construction/decommissioning of water wells; or
- the Commonwealth or any municipality, agency, department, or division thereof to “meter, charge, tax or otherwise impose a fee for the usage of private water wells in this Commonwealth.”

<sup>2</sup> This summary contains hyperlinks to third party websites containing further relevant information. Clicking on the bill number will take you to the main bill information page at the General Assembly’s website, from which you can navigate to the bill text and legislative history. Where applicable, clicking on “Printer’s Number” will take you to the amended version of the bill. Clicking on the sponsor’s name will take you to the member information page on the General Assembly’s website, which includes biographical, district, and committee assignment information.

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**Current Status:** Referred to the House Committee on Consumer Affairs on January 21, 2015.

*\*PA House Bill 48 is a reintroduction of PA House Bill 343 from the 2013-2014 session of the Pennsylvania General Assembly.*

### **PA House Bill 67 – Amends Dormant Oil and Gas Act regarding abandonment of mineral interest**

**Sponsor:** [Robert W. Godshall](#) (Republican – part of Montgomery County [outside Philadelphia]; Chair of Consumer Affairs Committee)

**Overview:** In instances where the mineral estate (including oil and gas) has been severed from the surface estate, an interest in oil or gas shall be deemed abandoned after twenty years in the absence of:

- A permit to drill an oil or gas well;
- Actual production of oil or gas from the land or from lands pooled/unitized with the interest; or
- Use of interest in underground gas storage operations.

An interest deemed to be abandoned shall vest in the owner of the surface estate as of the date of the abandonment.

- Surface owner must file with recorder of deeds written notice of claim of vested interest in abandoned subsurface mineral estate rights.

An interest shall not be deemed abandoned if the owner records a claim of interest prior to the latest of the following:

- Twenty years after the last sale, lease, mortgage, or transfer of record of the interest; or
- Twenty years after the last issuance of a drilling permit, actual production of oil or gas from the interest or from lands pooled/unitized with the interest, or use of the interest in underground gas storage operations.

The recorded claim of interest operates to preserve the interest for twenty years, and may be preserved indefinitely by recording written notices pursuant to the act.

Bill does not indicate that twenty-year period begins to run from date of enactment, but could include time period before enactment as well.

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**Current Status:** Referred to House Committee on Environmental Resources and Energy on January 21, 2015.

*\*PA House Bill 67 is a reintroduction of PA House Bill 97 from the 2013-2014 session of the Pennsylvania General Assembly.*

**PA House Bill 70 – Amends Dormant Oil and Gas Act regarding unknown owner trusts**

**Sponsor:** [Robert W. Godshall](#) (Republican – part of Montgomery County [outside Philadelphia]; *Chair of Consumer Affairs Committee*)

**Overview:** Allows owner of interest in oil and gas rights underlying a tract of land to petition court to set up a trust in favor of unknown owner(s) of the oil and gas rights underlying the tract.

Requires petitioner to have made a diligent effort to locate the unknown owner(s).

Petitioner must show that creation of the trust is likely to result in the commercial development of subsurface properties.

Adds definitions for “Bonus” and “Correlative rights.”

**Current Status:** Referred to House Committee on Environmental Resources and Energy on January 21, 2015.

*\*PA House Bill 70 is a reintroduction of PA House Bill 96 from the 2013-2014 session of the Pennsylvania General Assembly.*

**PA House Bill 81 – Water Well Standards (see also [PA House Bill 48](#) – identical when introduced)**

**Sponsor:** [Kate Harper](#) (Republican – part of Montgomery County [outside Philadelphia]; *Chair of Local Government Committee*)

**Overview:** Establishes Chapter 33 of Title 27, setting forth private water well construction standards, including powers and duties of Department of Environmental Protection and penalties for noncompliance.

“Construction” section states that Chapter shall not be construed to allow:

- the Department of Conservation of Natural Resources to require a permit for construction/decommissioning of water wells; or
- the Commonwealth or any municipality, agency, department, or division thereof to “meter, charge, tax or otherwise impose a fee for the usage of private water wells in this Commonwealth.”

**Current Status:** Referred to the House Committee on Environmental Resources and Energy on January 21, 2015.

*\*PA House Bill 81 is a reintroduction of PA House Bill 343 from the 2013-2014 session of the Pennsylvania General Assembly.*





**PA House Bill 82 – Amends Oil & Gas Act to impose natural gas severance tax**

**Sponsor:** [Kate Harper](#) (Republican – part of Montgomery County [outside Philadelphia]; *Chair of Local Government Committee*)

**Overview:** Extensive severance tax bill, with rate of “3.5% of the gross value of units severed at the wellhead during a reporting period.”  
Current impact fee structure would remain unchanged and would be in addition to the new severance tax.

**Current Status:** Referred to the House Committee on Environmental Resources and Energy on January 21, 2015.

**PA House Bill 151 – Recreational land offset for pipeline construction**

**Sponsor:** [W. Curtis Thomas](#) (Democrat – Philadelphia)

**Overview:** Pipeline operator that purchases or obtains an easement over public land, agricultural-easement land, or permanently preserved land for a new or expanded pipeline must purchase or grant an easement for an equivalent section of land within the county for public active or passive recreational use.  
Pipeline operator must ensure that post-construction storm water runoff does not exceed pre-construction volume and rate.

**Current Status:** Referred to House Committee on Consumer Affairs on February 4, 2015.

*\*PA House Bill 151 is a reintroduction of PA Senate Bill 506 from the 2013-2014 session of the Pennsylvania General Assembly.*

**PA House Bill 167 – Permits issued by the Department of Environmental Protection supersedes local ordinances**

**Sponsor:** [Seth Grove](#) (Republican – part of York County [south-central Pennsylvania])

**Overview:** Amends Administrative Code to provide that a permit issued by the Department of Environmental Protection (“DEP”) shall supersede all local ordinances and enactments purporting to establish standards for natural resources and environmental protection that conflict with the DEP’s regulatory oversight.

**Current Status:** Referred to the House Committee on Environmental Resources and Energy on January 23, 2015.

*\*PA House Bill 167 is a reintroduction of PA House Bill 2115 from the 2013-2014 session of the Pennsylvania General Assembly.*

**PA House Bill 252 – Marcellus Shale Health Registry Act**

**Sponsor:** [Karen Boback](#) (Republican – Wyoming County and parts of Lackawanna and Luzerne Counties [northeast Pennsylvania])

**Overview:** Establishes a “health registry” for the collection of health-related data associated with unconventional gas well drilling, consisting of data collected and provided by health care practitioners.

Requires health care practitioners to report to Department of Health any “health concerns” that “may be associated with unconventional gas well operations.”

**Current Status:** Referred to House Committee on Health on February 3, 2015.

**PA House Bill 343 – Forest Reserves Municipal Financial Relief Law**

**Sponsor:** [Martin T. Causer](#) (Republican – Cameron, Potter and part of McKean Counties [northern tier of Pennsylvania]; member of Environmental Resources & Energy Committee)

**Overview:** Requires 20% of all revenue received by any state agency, except the Game Commission and the Fish and Boat Commission, through the sale of timber or through oil and gas leases and royalties, to be deposited into the Forest Reserves Municipal Relief Fund (“Fund”).

State treasurer distributes money in Fund to counties, school districts, and municipalities based on relative number of acres in each county, school district, or municipality as certified by the Secretary of Conservation and Natural Resources under Section 2(a) of Forest Reserves Municipal Financial Relief Law.

All money in Fund must be distributed on or before September 1 of each year.

**Current Status:** Referred to House Committee on Environmental Resources and Energy on February 5, 2015.

**PA House Bill 371 – Amendments to Underground Utility Line Protection Law to require use of domestic steel**

**Sponsor:** [Frank Burns](#) (Democrat – part of Cambria County [central Pennsylvania])

**Overview:** Requires that any construction, alteration, repair, or maintenance of natural gas gathering lines that requires use of steel products only use steel products made in the United States.

**Current Status:** Referred to House Committee on Consumer Affairs on February 9, 2015.



**PA House Bill 445 – Amendments to Underground Utility Line Protection Law (PA One Call)**

**Sponsor:** [Matthew Baker](#) (Republican – Tioga County and part of Bradford County [northeast Pennsylvania])

**Overview:** Adds several definitions; new defined term “conventional oil and gas well” specifically excludes horizontal, hydraulically stimulated well bores below the Elk Group or its stratigraphic equivalent (the Marcellus and Utica Shales lie below the Elk Group); “well pad” is also a newly defined term.

Excludes “crude oil or natural gas production and gathering lines or facilities associated with conventional oil and gas well[s]” from definition of “‘line’ or ‘facility’” as used in act.

Amends certain recordkeeping and reporting requirements applicable to all industries.

Provides for annual fee assessed to users of One Call System; amount of fee is not specified in bill.

Establishes a “Damage Prevention Committee” and provides that one of the members of the committee will be a representative of the natural gas or petroleum pipeline industry; committee shall review reports of violations of act, issue warnings, and make informal determinations of administrative penalties.

Establishes Underground Utility Line Protection Fund.

**Current Status:** Referred to House Committee on Consumer Affairs on February 11, 2015.

**PA House Bill 500 – Natural Gas Severance Tax**

**Sponsor:** [Madeleine Dean](#) (Democrat – part of Montgomery County [outside Philadelphia])

**Overview:** Extensive severance tax bill, with rate of “3.5% of the gross value of units severed at the wellhead during a reporting period, plus 3.5¢ per unit severed.”

Repeals sunset provision of Oil & Gas Act that would have terminated the impact fee upon passage of a severance tax, allowing imposition of both an impact fee and severance tax.

**Current Status:** Referred to the House Committee on Environmental Resources and Energy on March 4, 2015.

**PA House Bill 507 – Pennsylvania Disposal Well Act**

**Sponsor:** [Matt Gabler](#) (Republican – Elk County and part of Clearfield County [northern Pennsylvania])

**Overview:** Provides for 1,000 foot setback, measured horizontally from the vertical well bore, for disposal wells.

Defines “disposal well” as a “permitted well that is:

- (1) drilled or altered to inject brines and other fluids associated with the production of oil and natural gas for disposal; or
- (2) classified as a Class II well and regulated under 40 CFR Pt. 144 (relating to underground injection control program).”

**Current Status:** Referred to House Committee on Environmental Resources and Energy on February 17, 2015.

**PA House Bill 522 – Telephone reporting of violations of oil and gas laws**

**Sponsor:** [Scott Conklin](#) (Democrat – part of Centre County [central Pennsylvania])

**Overview:** Requires Department of Environmental Protection to establish toll-free, 24-hour telephone number maintained exclusively for the reporting of suspected violations of laws related to oil and gas.

**Current Status:** Referred to House Committee on Environmental Resources and Energy on February 23, 2015.

**PA House Bill 523 – Amends Oil and Gas Act to require notice by newspaper publication of application for well permit**

**Sponsor:** [Scott Conklin](#) (Democrat – part of Centre County [central Pennsylvania])

**Overview:** Requires applicant for well permit to publish in newspaper of general circulation in locality where well is to be located notice of filing of application, once per week, for four consecutive weeks.

**Current Status:** Referred to House Committee on Environmental Resources and Energy on February 23, 2015.

**PA House Bill 524 – Well Operation Response Team Act**

**Sponsor:** [Scott Conklin](#) (Democrat – part of Centre County [central Pennsylvania])

**Overview:** Directs Secretary of Labor and Industry to promulgate rules requiring that operators “make available a certified response team” that can respond to an emergency at well site; “emergency” is not defined.

Promulgated rules also include additional training and reporting requirements imposed on operators.

**Current Status:** Referred to House Committee on Environmental Resources and Energy on February 23, 2015.

### PA House Bill 526 – Natural Gas Severance Tax

**Sponsor:** [Scott Conklin](#) (Democrat – part of Centre County [central Pennsylvania])

**Overview:** Extensive severance tax bill, with rate of “5¢ per unit severed at the wellhead.” Prohibits deduction of severance fee from royalty paid to mineral interest holder. Does not address current impact fee, presumably leaving intact [58 Pa. Cons. Stat. § 2318](#) that would sunset the impact fee upon imposition of a severance tax.

**Current Status:** Referred to House Committee on Environmental Resources and Energy on February 23, 2015.

### PA House Bill 528 – Natural Gas Severance Tax with proceeds to LIHEAP program

**Sponsor:** [Scott Conklin](#) (Democrat – part of Centre County [central Pennsylvania])

**Overview:** Extensive severance tax bill, with rate of “10¢ per unit severed at the wellhead.” First \$300 million raised under tax to be allocated to Low-Income Home Energy Assistance Program, with any remaining amounts to be allocated to property tax or rent rebate under Taxpayer Relief Act. Repeals [58 Pa. Cons. Stat. § 2318](#) so that impact fee does not expire upon passage of severance tax.

**Current Status:** Referred to House Committee on Environmental Resources and Energy on February 23, 2015.

### PA House Bill 716 – Severance Tax Exemption for Manufacturing Purpose

**Sponsor:** [Mike Carroll](#) (Democrat – parts of Lackawanna and Luzerne Counties [northeast Pennsylvania])

**Overview:** Prohibits imposition of a tax on natural gas that is:

- (1) “sold and delivered by a producer at or near the producing site for the processing or manufacture of tangible personal property” or
- (2) “provided free of charge to the surface owner of the land from which the natural gas is severed.”

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**Current Status:** Referred to the House Committee on Environmental Resources and Energy on March 4, 2015.

### **PA House Bill 737 – Water Obstruction and Encroachment Permits**

**Sponsor:** [Michael K. Hanna](#) (Democrat – Clinton County and part of Centre County [north-central Pennsylvania])

**Overview:** Permit fee under [25 Pa. Code Ch. 105](#) (related to dam safety and waterway management) for a “de minimis impact project” shall be \$100.00.

Defines “de minimis impact project” as “the construction, maintenance, testing, repair, rehabilitation or replacement of water obstructions and encroachments that create a disturbance that affects an area not larger than 1/20 of an acre located within a floodway.”

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**Current Status:** Referred to the House Committee on Environmental Resources and Energy on March 6, 2015.

### **PA House Bill 818 – Landowner notice of certain permit applications**

**Sponsor:** [W. Curtis Thomas](#) (Democrat – Philadelphia)

**Overview:** Requires all applicants for permits under the “Air Pollution Control Act,” the “Dam Safety and Encroachments Act,” the “Clean Streams Law,” as well as applicants for water allocation permits pursuant to the Act of June 24, 1939 (P.L. 842, No. 365), to provide certain information to landowners in the “area of concern”

The “area of concern” is defined as an “area where all of the following apply”:

- (1) “An area affected by a radius of one-half mile from the center of a proposed permit activity or, where an activity is not centralized, an area extending one-half mile beyond the boundary of the proposed activity;
- (2) An area where one or more impacts of the type for which the Department of Environmental Protection [“DEP”] is authorized to analyze are anticipated; and
- (3) An area where one or more impacts that are not included under clause (2), such as noise, vibration or odor, are reasonably anticipated to arise from the proposed permitted activity.”

The applicant must provide landowners within the “area of concern” written notice of the date of publication of the permit application in the Pennsylvania Bulletin and information addressing submission of public comments related thereto, as well as the date, location, and time of any hearing scheduled by the DEP regarding the application, provided at least five (5) days prior to the hearing date.

In addition, the applicant must give landowners within the “area of concern” written notice of:

- (1) A description of the type of permit application submitted to the DEP;
- (2) A brief description of the activity planned for the project under the permit application;
- (3) A statement that the project under the application is anticipated to have one or more impacts on the landowners; and
- (4) A brief description of the anticipated impact or impacts.

Requires DEP to post each permit application on its website in its entirety.

**Current Status:** Referred to House Committee on Environmental Resources and Energy on March 23, 2015.

## Senate

### PA Senate Bill 53 – Amends Oil and Gas Act related to lease disclosure and indemnification

**Sponsor:** [Stewart J. Greenleaf](#) (Republican – parts of Bucks and Montgomery Counties [outside Philadelphia])

**Overview:** Requires operator, prior to executing an oil and gas lease, to disclose to lessor that lessor may be liable to other landowners for damages resulting from drilling.

Requires an oil and gas lease to contain an indemnification provision that holds landowner harmless from any and all liability, including environmental liability, arising out of operator’s operations pursuant to the lease.

**Current Status:** Referred to the Senate Committee on Environmental Resources and Energy on January 14, 2015.

*\*PA Senate Bill 53 is a reintroduction of PA Senate Bill 154 from the 2013-2014 session of the Pennsylvania General Assembly.*

### PA Senate Bill 64 – Distribution of impact fee

**Sponsor:** [Stewart J. Greenleaf](#) (Republican – parts of Bucks and Montgomery Counties [outside Philadelphia])

**Overview:** Appropriates \$3 million per year from revenue received from the impact fee to be directed to the Department of Health in order to:

- conduct research to determine whether health services are adequate in regions where unconventional gas operations occur and
- conduct research on effects of air quality in regions where unconventional gas operations occur.

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**Current Status:** Referred to Senate Committee on Environmental Resources and Energy on January 14, 2015.

*\*PA Senate Bill 64 is a reintroduction of PA Senate Bill 790 from the 2013-2014 session of the Pennsylvania General Assembly.*

### **PA Senate Bill 145 – Amends Oil and Gas Act to mandate Pugh Clause**

**Sponsor:** [Gene Yaw](#) (Republican – Bradford, Lycoming, Sullivan, Union, and part of Susquehanna Counties [northeast Pennsylvania]; Chair, Senate Committee on Environmental Resources and Energy)

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**Overview:** Provides that operations and production on a unit into which a leasehold has been unitized shall not maintain a lease into the secondary term for portions of the leasehold not included in the unit.

Applies only to lease interests in unconventional reservoirs, defined to include formations below the Elk Sandstone or its stratigraphic equivalent, and which can be economically produced only through the use of horizontal drilling and hydraulic fracturing.

Applies only to leases entered into on or after the passage of the bill.

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**Current Status:** Referred to the Senate Committee on Environmental Resources and Energy on January 14, 2015.

*\*PA Senate Bill 145 is a reintroduction of PA Senate Bill 356 from the 2013-2014 session of the Pennsylvania General Assembly.*

### **PA Senate Bill 147 – Amendments to Oil & Gas Lease Act**

**Sponsor:** [Gene Yaw](#) (Republican – Bradford, Lycoming, Sullivan, Union, and part of Susquehanna Counties [northeast Pennsylvania]; Chair, Environmental Resources & Energy Committee)

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**Overview:** Adds definitions for (i) Lessee and (ii) Lessor.

Adds “unique property identification” as one piece of information required on check stub/payment information.

Adds a section regarding information to be provided in case of a joint venture.

Adds a section allowing for inspection of records.

Adds definitions for Joint Venture.

Revises the section dealing with “Accumulation of Proceeds from Production.”



**Amendments:** [Printer's Number 0177:](#)

Extends date by which royalties must be paid to lessor from sixty (60) days to ninety (90) days following production.

[Printer's Number 0238:](#)

Provides that information contained in records inspected by lessor may not be disclosed to any other person except an attorney or accountant employed by lessor.

**Current** Printer's Number 0238 passed unanimously by the Senate on January 28, 2015.

**Status:** Referred to House Committee on Environmental Resources and Energy on February 2, 2015.

*\*PA Senate Bill 147 is a reintroduction of PA Senate Bill 1236 from the 2013-2014 session of the Pennsylvania General Assembly.*

### PA Senate Bill 148 – Natural Gas Lease Anti-Retaliation Act

**Sponsor:** [Gene Yaw](#) (Republican – Bradford, Lycoming, Sullivan, Union, and part of Susquehanna Counties [northeast Pennsylvania]; Chair, Environmental Resources & Energy Committee)

**Overview:** Prohibits retaliation by lessee when the lessor takes a “good faith action.” “Good faith action” is defined as “A claim, demand or complaint intended to secure rights granted under a lease or to determine whether the terms of a lease are being complied with, including, but not limited to, a request for an accounting of any costs, taxes or fees allowed to be deducted from royalty payments by lessee, that is made without malice or ulterior motive and which the lessor or a party acting on the lessor's behalf reasonably believes to be valid and legally correct.”

Allows a private civil action; must be within 1 year of alleged violation.

Statutory defense to liability if lessee “proves by a preponderance of the evidence that the action by the lessee was authorized under the terms of the lease or occurred for legitimate business reasons.”

Damages available: “reasonable damages” and a “civil fine of up to \$1,000 per day for each day the provisions of section 3 have been violated.” But, a court that “finds that an action has been instituted for other than a good faith action as defined in this act may order the lessor to pay reasonable damage to the lessee.”

**Current** Passed unanimously by the Senate on January 28, 2015.

**Status:** Referred to House Committee on Environmental Resources and Energy on February 2, 2015.

*\*PA Senate Bill 148 is a reintroduction of PA Senate Bill 1237 from the 2013-2014 session of the Pennsylvania General Assembly.*

**PA Senate Bill 257 – Private water supply testing and public disclosure of results**

**Sponsor:** [Wayne D. Fontana](#) (Democrat - part of Allegheny County [including Pittsburgh])

**Overview:** Requires Department of Environmental Protection (“DEP”) to sample and test private water supplies upon request by owner.

Results of testing of private water supplies must be provided to owner and must be disclosed publicly on DEP website.

**Current Status:** Referred to Senate Committee on Environmental Resources and Energy on January 15, 2015.

*\*PA Senate Bill 257 is a reintroduction of PA Senate Bill 592 from the 2013-2014 session of the Pennsylvania General Assembly.*

**PA Senate Bill 279 – Pennsylvania Grade Crude Development Advisory Council Act**

**Sponsor:** [Scott E. Hutchinson](#) (Republican – Clarion, Forest, Venango, and parts of Butler and Warren Counties [northwest Pennsylvania]; member of the Environmental Resources & Energy Committee)

**Overview:** Establishes the named Council and provides for its tasks:

- Study and recommend technical regulations and policies that impact the conventional oil and gas industry;
- Explore the development of a regulatory scheme for oversight and enforcement of the conventional oil and gas industry;
- Promote long-term viability of conventional oil and gas industry;;
- Issue a report of findings and recommendations, within 180 days of effective date of Act, to listed state officers;
- Assist Secretary of Department of Environmental Protection (“DEP”) and provide written comments on new DEP policy that will impact conventional oil and gas industry;
- Review and comment on all technical regulations under Oil and Gas Act;
- Provide institutional support to conventional oil and gas industry;
- Recommend measures to promote and develop conventional oil and gas industry;
- Develop plan to increase PA grade crude production;
  
- Develop joint working group with DEP to explore and develop economically viable production water management options; and
- Produce annual report of activities and recommendations.

Provides 2 duties to DEP:

- Consult with Council on all policies/technical regulations promulgated under Oil and Gas Act;
- Include written comments of the Council as part of submission to Environmental Quality Board; and
- Provide technical assistance to Council to enable Council to carry out duties.

**Amendments:** *Printer's Number 0444:*

Adds Secretary of Environmental Protection to list of recipients of annual report produced by Council.

**Current Status:** Printer's Number 0444 passed by the Senate Committee on Appropriations on February 17, 2015.

Passed unanimously by Senate on February 18, 2015.

Referred to House Committee on Environmental Resources and Energy on February 23, 2015.

*\*PA Senate Bill 279, as introduced, was a reintroduction of PA Senate Bill 1310 from the 2013-2014 session of the Pennsylvania General Assembly.*

**PA Senate Bill 307 – Provides for independent counsel for the Environmental Quality Board**

**Sponsor:** John T. Yudichak (Democrat – Carbon County and part of Luzerne County [northeast Pennsylvania])

**Overview:** Requires the Department of Environmental Protection to appoint independent counsel for the benefit of the Environmental Quality Board (“EQB”).

Independent counsel shall assist EQB on all matters, “including, but not limited to, the review of rulemaking petitions submitted to the [EQB], the drafting and development of amendments to proposed and final rulemaking and advice relating to procedural matters.”

Provides that discussions between independent counsel and EQB are privileged.

**Current Status:** Reported unanimously out of the Senate Committee on Environmental Resources and Energy on February 24, 2015.

**PA Senate Bill 313 – Unconventional Oil and Gas Unit Conservation and Integration Act**

**Sponsor:** [Gene Yaw](#) (Republican – Bradford, Lycoming, Sullivan, Union, and part of Susquehanna Counties [northeast Pennsylvania]; Chair, Senate Committee on Environmental Resources and Energy)

**Overview:** Applies only to unconventional reservoirs below the base of the Elk Sandstone or its stratigraphic equivalent, other than coal bed methane.

Provides for compulsory creation of drilling and production units.

Public Utility Commission (“PUC”) may, upon application, order creation of unit where applicant demonstrates that the plan for establishment of the unit will minimize surface disruption, impact to property, or other environmental impact.

PUC also may consider whether establishment of unit will permit optimal development of oil and gas resources.

Provides for rights of protest by certain defined individuals and/or entities.

Provides for 250-foot setback for laterals from boundary of unit.

Voluntary units (i.e. permitted by lease) are declared per se reasonable and subject to modification only in certain circumstances.

Repeals Oil and Gas Conservation Law.

**Current Status:** Referred to the Senate Committee on Environmental Resources and Energy on January 23, 2015.

*\*PA Senate Bill 313 is a reintroduction of PA Senate Bill 355 from the 2013-2014 session of the Pennsylvania General Assembly.*

**PA Senate Bill 347 – Protection of water supplies**

**Sponsor:** [John T. Yudichak](#) (Democrat – Carbon County and part of Luzerne County [Wilkes-Barre])

**Overview:** Amends Chapter 32 of the Oil & Gas Act to provide the following:

- Provides more time for the Department of Environmental Protection (“DEP”) to conduct an investigation into alleged pollution or diminution of water supply where “migration of natural gas is involved”;
- Requires DEP to publish on its website “lists of probable cases of subterranean water supply contamination that are supported by credible evidence”;
- Requires DEP to inspect each unconventional well site at least once per year after well begins production; and
- Requires DEP to maintain records on generation, transportation, and disposal of drill cuttings.

**Current Status:** Referred to Senate Committee on Environmental Resources and Energy on January 28, 2015.

**PA Senate Bill 348 – Leasing of state forest lands**

**Sponsor:** [John T. Yudichak](#) (Democrat – Carbon County and part of Luzerne County [Wilkes-Barre])

**Overview:** Department of Conservation and Natural Resources (“DCNR”) must hold at least one public hearing prior to entering into any lease for development of natural gas underlying state forests or parks.

- Act appears to apply regardless of whether surface development actually occurs on state lands.

DCNR must “attempt to acquire” subsurface rights in order to protect state forest or park land if the land has “unique environmental, natural, historical, or cultural features” making it “especially worth of permanent preservation.”

**Current Status:** Referred to Senate Committee on Environmental Resources and Energy on January 28, 2015.

*\*PA Senate Bill 348 is a reintroduction of PA Senate Bill 941 from the 2013-2014 session of the Pennsylvania General Assembly.*

**PA Senate Bill 367 – PA One Call System Applicability to Gathering Lines**

**Sponsor:** [Donald C. White](#) (Republican – Armstrong and Indiana and parts of Butler and Westmoreland Counties [west central Pennsylvania]; Member of Environmental Resources & Energy Committee)

**Overview:** Amends Underground Utility Line Protection Law to include natural gas gathering lines within the definition of “line” or “facility,” such that owners and operators of gathering lines must specifically comply with One Call System requests.

**Current Status:** Referred to the Senate Committee on Consumer Protection and Professional Licensure on January 30, 2015.

**PA Senate Bill 375 – Marcellus Shale Health Advisory Panel**

**Sponsor:** [Joseph B. Scarnati III](#) (Republican – Cameron, Clinton, Elk, Jefferson and McKean Counties and part of Clearfield County [northern Pennsylvania]; *President Pro Tempore*)

**Overview:** Establishes the “Health Advisory Panel on Shale Gas Extraction and Natural Gas Use.” Provides for composition and appointment of nine-member panel, and for meetings to occur no less frequently than biannually.

Duties of the panel include:

- Consult with experts involved with extraction and use of natural gas in Pennsylvania;



- Consult with Pennsylvania Department of Health (“DOH”) to review public health data relating to areas where shale gas extraction occurs and the benefits of the use of natural gas;
- Consult with experts regarding potential public health effects from extraction and use of natural gas;
- Evaluate public health data regarding extraction and use of natural gas, as well as information on extraction techniques, in order to provide government and public with information and analysis of safe, efficient, and environmentally responsible extraction and use of natural gas; and
- Submit annual report on activities to Governor and General Assembly.

Panel sunsets in six years.

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**Current Status:** Recommitted to the Senate Appropriations Committee on March 3, 2015.

**PA Senate Bill 380 – Disease and Cancer Cluster Coordination Act**

**Sponsor:** [John T. Yudichak](#) (Democrat – Carbon County and part of Luzerne County [northeast Pennsylvania])

**Overview:** Department of Health (“DOH”), in consultation with Department of Environmental Protection (“DEP”), must develop guidelines for investigation of “suspected or potential disease or cancer clusters,” “the pollutants or toxic substances that may be associated with” the clusters, and “the potential causes of” the clusters.

The guidelines must include definitions and standardized methods for reviewing and using data.

DOH, in consultation with DEP, may establish a “disease and cancer cluster response team” under direction of DOH to conduct investigations of clusters, environmental pollutants and toxic substances associated with clusters, and potential causes of clusters.

Any person may petition DOH requesting a response team conduct an investigation.

Provides for creation of advisory committees, made up of impacted individuals and state and local officials, in areas where investigations is being conducted.

**Current Status:** Referred to Senate Committee on Public Health and Welfare on February 3, 2015.

**PA Senate Bill 395 – Education for Extraction Tax**

**Sponsor:** [James R. Brewster](#) (Democrat – parts of Allegheny and Westmoreland Counties [Pittsburgh area])

**Overview:** Imposes an “Extraction for Education Tax” of “5% of the gross value of the units severed at the wellhead during the reporting period.”

Repeals sunset provision of Oil & Gas Act that would have terminated the impact fee upon passage of a severance tax, allowing imposition of both an impact fee and severance tax.

Allows producer subject to tax to receive a credit for impact fee paid under Chapter 23 of Oil & Gas Act so that total liability for both impact fee and “Extraction for Education Tax” is no greater than 5% of gross value at wellhead.

Establishes “Extraction for Education Fund” to be distributed to school districts across state based on “basic education formula” provided in Section 123 of Public School Code of 1949.

**Current Status:** Referred to Senate Committee on Environmental Resources and Energy on February 5, 2015.

**PA Senate Bill 417 – Amendment to Oil and Gas Act to require use of steel made in United States**

**Sponsor:** [James R. Brewster](#) (Democrat – parts of Allegheny and Westmoreland Counties [Pittsburgh area])

**Overview:** Amends [58 Pa. Cons. Stat. § 3219](#) (“Use of Safety Devices”) to require use of steel products made in United States for casing and other safety devices mandated by law.

**Current Status:** Referred to the Senate Committee on Environmental Resources and Energy on February 12, 2015.

*\*PA Senate Bill 417 is a reintroduction of PA Senate Bill 1458 from the 2013-2014 session of the Pennsylvania General Assembly.*

**PA Senate Bill 418 – Amendment to Underground Utility Line Protection Law**

**Sponsor:** [James R. Brewster](#) (Democrat – parts of Allegheny and Westmoreland Counties [Pittsburgh area])

**Overview:** Requires use of steel products made in United States when constructing, reconstructing, repairing, altering, improving, or maintaining gathering lines requiring use of steel products.

**Current Status:** Referred to the Senate Committee on Consumer Protection and Professional Licensure on February 12, 2015

*\*PA Senate Bill 418 is a reintroduction of PA Senate Bill 1459 from the 2013-2014 session of the Pennsylvania General Assembly.*

**PA Senate Bill 419 – Amendment to Oil and Gas Act to require publication of country of origin of steel products**

**Sponsor:** [James R. Brewster](#) (Democrat – parts of Allegheny and Westmoreland Counties [Pittsburgh area])

**Overview:** Amends [58 Pa. Cons. Stat. § 3222](#) to require Department of Environmental Protection to establish a publicly accessible website containing information about country of origin of steel products.

Steel products will only be considered to be United States steel products if “at least 75% of the cost of the articles, materials and supplies have been mined, produced or manufactured in the United States.”

**Current Status:** Referred to the Senate Committee on Environmental Resources and Energy on February 12, 2015.

*\*PA Senate Bill 419 is a reintroduction of PA Senate Bill 1460 from the 2013-2014 session of the Pennsylvania General Assembly.*



**PA Senate Bill 455 – Amendment to Solid Waste Management Act**

**Sponsor:** [John C. Rafferty, Jr.](#) (Republican – parts of Berks, Chester, and Montgomery Counties [outside Philadelphia]; *chair of the Senate Transportation Committee*)

**Overview:** Increases criminal penalties for violation of statute related to storage, transportation, treatment, processing, or disposal of hazardous waste.

**Current Status:** Referred to the Senate Committee on Environmental Resources and Energy on February 12, 2015.

**PA Senate Bill 519 – Natural Gas Severance Tax**

**Sponsor:** [Thomas McGarrigle](#) (Republican – parts of Chester and Delaware Counties [outside Philadelphia])

**Overview:** Extensive severance tax bill, with rate of “4% of the gross value of the units severed at the wellhead during a reporting period.”

Proceeds to be deposited into “Severance Tax for Education Fund.”

**Current Status:** Referred to the Senate Committee on Environmental Resources and Energy on February 19, 2015.

*\*PA Senate Bill 519 is a reintroduction of PA Senate Bill 1349 from the 2013-2014 session of the Pennsylvania General Assembly.*

**PA Senate Bill 557 – Pipeline Impact Fee**

**Sponsor:** [John C. Rafferty, Jr.](#) (Republican – parts of Berks, Chester, and Montgomery Counties [outside Philadelphia]); *chair of the Senate Transportation Committee*)

**Overview:** Adds Chapter 24 to Oil & Gas Act imposing a fee on use of natural gas gathering and transmission lines through “affected areas.”

The fee is “based on acreage of linear feet plus right-of-way width using the county average land value in an affected area.”

The fee collected under the bill is to be deposited into the newly-established Pipeline Impact Fund.

Money in the Pipeline Impact Fund is to be distributed to counties and municipalities in which the “affected area” is located.

“Affected area” is defined a “high consequence area” as that term is defined in [49 C.F.R. § 192.903](#), which itself defines the term “high consequence area” by reference to [49 C.F.R. § 192.5](#) through measurement of distances to nearby buildings, structures, and areas.

**Current Status:** Referred to the Senate Committee on Environmental Resources and Energy on March 6, 2015.

### **PA Senate Bill 561 – Amendments to Gas and Hazardous Liquids Pipelines Act**

**Sponsor:** [John C. Rafferty, Jr.](#) (Republican – parts of Berks, Chester, and Montgomery Counties [outside Philadelphia]); *chair of the Senate Transportation Committee*

**Overview:** Replaces Public Utility Commission with the Department of Transportation (“PennDOT”) as responsible agency.

Directs PennDOT to apply for federal delegation for Commonwealth pipeline safety for purposes of enforcement of federal hazardous liquid pipeline safety requirements.

Establishes minimum duties for PennDOT in the event of delegation by federal government, including inspection, fee collection, testing of substances, and filing of reports.

Requires PennDOT to seek federal authority to adopt safety standards for interstate gas pipelines.

**Current Status:** Referred to the Senate Committee on Consumer Protection and Professional Licensure on March 6, 2015.

*\*PA Senate Bill 561 is a reintroduction of PA Senate Bill 1503 from the 2013-2014 session of the Pennsylvania General Assembly.*

### **PA Senate Bill 571 – Amends Safe Drinking Water Act**

**Sponsor:** [Charles T. McIlhinney, Jr.](#) (Republican – part of Bucks County [outside Philadelphia])

**Overview:** Prohibits Department of Environmental Protection (“DEP”) from issuing permits for activity within defined distance from public or community water supplies unless applicant demonstrates that activity will not degrade the existing water quality.

- Distance varies by type of water supply.

Directs municipalities to adopt wellhead and surface water intake protection ordinances to regulate land use that could contaminate groundwater or surface water that supplies community water systems.

- Language to be included within ordinance varies by type of water supply.

**Current Status:** Referred to the Senate Committee on Environmental Resources and Energy on March 2, 2015.

*\*PA Senate Bill 571 is a reintroduction of PA Senate Bill 723 from the 2013-2014 session of the Pennsylvania General Assembly.*

**PA Senate Bill 572 – Amends Municipalities Planning Code**

**Sponsor:** [Charles T. McIlhinney, Jr.](#) (Republican – part of Bucks County [outside Philadelphia])

**Overview:** Prohibits Zoning Hearing Board from intervening or otherwise becoming a party in a land use appeal.

**Current Status:** Referred to the Senate Committee on Local Government on March 2, 2015.

**PA Senate Bill 653 – Water Well Construction Standards**

**Sponsor:** [Patricia H. Vance](#) (Republican – parts of Cumberland and York Counties [Harrisburg area])

**Overview:** Amends Title 27 (Environmental Resources) of the Pennsylvania Consolidated Statutes to include chapter providing for water well construction standards.

Requires Environmental Quality Board (“EQB”) to promulgate rules and regulations adopting construction and decommissioning standards for water wells.

Provides criminal penalties for construction of water wells not in compliance with standards adopted by EQB.

Department of Environmental Protection and Department of Conservation of Natural Resources may not require permits to construct or decommission water wells.

Counties or municipalities with water well construction standards consistent with those adopted by EQB under this chapter are exempt.

**Current Status:** Referred to Senate Committee on Environmental Resources and Energy on March 23, 2015.

*\*PA Senate Bill 653 is substantially similar to PA Senate Bill 1461 from the 2013-2014 session of the Pennsylvania General Assembly.*

# West Virginia<sup>3</sup> legislative action updates<sup>4</sup>

## House

### **WV House Bill 2062 – Proposes § 22C-13-1 to create Legislative Oversight Commission on Energy Workers Safety (“Commission”)**

**Sponsor:** [Mike Caputo](#) (Democrat – Marion County [northern West Virginia]; Vice Chair of Energy Committee)

**Overview:** Creates the Legislative Oversight Commission on Energy Workers Safety to oversee and promote worker safety.

Requires state agencies responsible for worker safety to report quarterly or as otherwise directed by a majority of the Commission on accident investigations and newly identified safety issues and their actions relating to safety issues.

Commission shall be comprised of five members nominated by the President of the Senate and five members nominated by the House of the Delegates.

DEP Office of Oil and Gas must submit quarterly reports providing information on injuries, fatalities and initiatives to revise and improve safety requirements for natural gas industry.

Commission shall study, review and examine the boards and agencies activities and make recommendations to the Legislature regarding any proposed plan, policy or rule.

Commission shall undertake a study and report its recommendations regarding the need for additional safety regulations, inspections and enforcement mechanisms to the Joint Committee on Government and Finance.

- Commission specifically should look into whether the existing safety scheme for the natural gas industry is adequate to protect natural gas workers.

**Current Status:** Referred to House Industry and Labor committee on January 15, 2015.

*\*WV House Bill 2062 is a reintroduction of WV House Bill 4382 from the 2013-2014 session of the West Virginia Legislature.*

<sup>3</sup> The 2015 session of the West Virginia Legislature, which is constitutionally limited to last only sixty days, ended on March 14, 2015.

<sup>4</sup> This summary contains hyperlinks to third party websites containing further relevant information. Clicking on the bill number will take you to the main bill information page at the Legislature’s website, from which you can navigate to the bill text and legislative history. Clicking on the sponsor’s name will take you to the member information page on the Legislature’s website, which includes biographical, district, and committee assignment information.



**WV House Bill 2080 – Amends Severance & Business Privilege Tax Act (“Tax”) to reallocate up to \$30 million of natural gas and oil severance tax revenues to the counties where the gas or oil originated from**

**Sponsor:** [Michael Ferro](#) (Democrat – Marshall County [northern West Virginia])

**Overview:** Creates Natural Gas and Oil Division of Highways Reallocated Severance Tax Fund to reallocate up to \$30 million annually of revenues collected via natural gas and oil severance tax.

Funds shall be distributed quarterly on a production pro rata basis to the districts where the natural gas or oil was produced. The districts then distribute the funds to the individual counties on a production pro rata basis.

- Each district must establish a Natural Gas and Oil County Reallocated Severance Tax Fund.

If more than \$30 million in taxes is collected, then each district’s share shall be based on its pro rata production share of the total amount of natural gas and oil produced within the state for that year.

Districts are required to allocate the funds to secondary road projects in their respective counties.

Districts must deliver an annual written report to the Joint Committee on Government and Finance outlining the specific secondary road projects for which the funds were expended during the previous year.

The Joint Committee on Government and Finance may authorize an audit of distributed funds at any time.

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**Current Status:** Referred to House Roads and Transportation committee on January 15, 2015.

**WV House Bill 2087 – Amends §§ 11A-3-19, 11A-3-21, & 11A-3-23 to permit surface owners to purchase mineral rights when mineral rights become subject to tax lien**

**Sponsor:** [Joe Manchin](#) (Democrat – Marion County [northern West Virginia])

**Overview:** This bill would allow a surface owner to substitute themselves for or replace the purchaser of a tax lien.

Mandates that purchaser must provide surface owners with notice to redeem prior to being able to obtain a deed to the mineral rights.

Provides procedural steps which surface owners must follow to redeem interests subject to tax liens, which include:

- submission of a redemption fee as identified in the notice to redeem, and
- and submission of a purchase price (twice the amount required for redemption).

If there are multiple surface owners, they are required to submit an agreement dividing the oil and gas interest among them according to their proportionate interests.

If the property is redeemed, the purchase price is refunded.

**Current Status:** Referred to House Judiciary Committee on January 28, 2015.

**WV House Bill 2269 – Bars Department of Environmental Protection, Department of Health and Human Resources, Division of Natural Resources and Department of Commerce from proposing or promulgating rules which are more stringent than corresponding federal laws or regulations**

**Sponsor:** [Ron Walters](#) (Republican – Kanawha County)

**Overview:** Requires rules which are promulgated by several state agencies, including the Department of Environmental Protection and the Division of Natural Resources, to be no more stringent than corresponding federal laws or regulations.

**Current Status:** Referred to House Judiciary Committee on January 23, 2015.

**WV House Bill 2407 – Proposes §11-13A-5b to reallocate and dedicate 3% of oil and gas severance tax revenues to the counties and municipalities from where the gas was taken**

**Sponsor:** [Erikka Storch](#) (Republican – Ohio County [northern tip of West Virginia])

**Overview:** Establishes Oil and Gas County and Municipality Reallocated Severance Tax Fund. Distribution to be done by the State Treasurer.



Reallocates 3% (2% to the county and 1% to the municipality) of oil and gas severance tax revenues, up to \$20 million annually, to the Fund for distribution to the oil and gas producing counties of origin and their respective municipalities.

Funds shall be distributed quarterly and must be used solely for economic development and infrastructure projects.

- Funds must be deposited into a specific, separate account.
- Defines “economic development” and “infrastructure project.”

Counties and municipalities must submit an annual report to the WV Joint Committee detailing what projects the funds were allocated to, a detailed account of expenditures, and compliance with purpose limitation.

Amount distributed is determined by dividing total amount of funds available by total number of barrels of oil and total number of cubic feet of gas produced in West Virginia in the preceding quarter and multiplying that number by the number of cubic feet produced in the individual county/municipality during the preceding quarter.

**Current Status:** Referred to House Energy Committee on January 27, 2015.

### **WV House Bill 2585 – Requires leaseholders to notify the mineral interest owners when there is an assignment of the lease**

**Sponsor:** [Anna Border-Sheppard](#) (Republican – Wirt County and part of Wood County [northwestern West Virginia])

**Overview:** Requires leaseholder to notify the owners of the mineral interests when there is an assignment of the lease to another party.

**Current Status:** Passed by House of Representatives on March 3, 2015.  
Passed by Senate on March 13, 2015.

### **WV House Bill 2688 – Amends §§ 22C-9-1 through 22C-9-5 to authorize unitization of interests in drilling units in connection with horizontal wells and establishes unitization application requirements**

**Sponsor:** [Lynwood Ireland](#) (Republican – Ritchie County and part of Pleasant County [northwestern West Virginia])

**Overview:** Increases number of members on Oil and Gas Conservation Commission (“Commission”) from five to seven members. Members shall include the director of the DEP, the chief of the office of oil and gas, the state geologist, and four residents appointed by the Governor.



Authorizes Commission to unitize tracts in a horizontal well unit upon the application by a person who controls the horizontal well unit and upon issuance of the horizontal well unit order.

Unit applicants must make good faith offers to all locatable royalty owners and must have consent from at least 67% of the royalty owners of the net acreage to be included in the unit. Applicants must have consent from at least 85% of the operator interest owners of the net acreage.

Unit application must include, among other things: a description of the well unit, identification of target formation, nature of operations contemplated, boundaries and acreage plats, diagrams of surface location for wellbore, list of tracts in unit, names/addresses of royalty owners, individual tract allocation percentages.

Unit may not exceed 640 acres unless applicant demonstrates that the unit would be drained efficiently and economically with a bigger unit, in which case the Commission may exceed the acreage limit by 10%.

Adds owners of working interests in a lease to definition of operator.

Defines “unconventional reservoir” as any formation containing or otherwise producing oil or natural gas that generally cannot be produced at economic flow rate or economic volumes except by hydraulic fracking treatments.

Interest owners who object to unitization are not liable for well site preparation, drilling, completion, maintenance, reclamation, plugging or other operations in the unit.

**Amendments:** Defines “unconventional reservoir” as any formation containing or otherwise producing oil or natural gas that generally cannot be produced at economic flow rate or economic volumes except by hydraulic fracking treatments.

Unit orders do not grant surface rights and, therefore, drilling shall not be initiated without consent from the surface owner if the mineral tract was forced into the unit pursuant to this section.

Interest owners who object to unitization are not liable for well site preparation, drilling, completion, maintenance, reclamation, plugging or other operations in the unit.

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**Current** Passed by House of Representatives on March 4, 2015.

**Status:** On March 13, 2015, the Senate made minor stylistic amendments to the version passed by the House on March 4, 2015.

Amended bill was referred back to House, which rejected the amendments on March 14, 2015.



**WV House Bill 2707 – Proposes §36-3-8a to require natural gas lessors to provide surface owners the ability to purchase gas from those wells**

**Sponsor:** [Jeff Eldridge](#) (Democrat – parts of Lincoln, Putnam, Boone, and Logan Counties [southwestern West Virginia]; *member of Energy Committee*)

**Overview:** Requires natural gas lessors to permit surface owner on whose property the well is drilled to purchase gas from that well at the market rate in addition to any free gas which the landowner is entitled to.

Lessor also is required to give same option to surface owners on whose properties a natural gas pipeline crosses.

**Current Status:** Referred to House Energy Committee on February 12, 2015.

**WV House Bill 2722 – Amends §22-6-2 to impose an administrative penalty or permit suspension if lessee fails to pay royalties owed to the lessor within 120 days of production**

**Sponsor:** [William Anderson](#) (Republican – part of Wood County [northwestern West Virginia]; *Speaker Pro Tempore*)

**Overview:** Requires lessees to pay all oil and gas royalties to lessors within 120 days of production.

If lessee fails to make payment within 120 days, interest shall accrue on the unpaid amount at the current prime rate plus two percent, compounded quarterly.

If lessee fails to pay the royalties owed plus the accrued interest, lessor may file a complaint with the Office of Oil & Gas of the Department of Environmental Protection (“DEP”).

The DEP may assess an administrative penalty and, if lessee continues to refuse to make payments, the DEP may suspend the operator’s permit.

**Current Status:** Referred to House Finance Committee on February 20, 2015.

**WV House Bill 2890 – Creating a procedure to quiet title to abandoned mineral interests by serving notice on a mineral interest owner and filing an affidavit with the county clerk within 60 days**

**Sponsor:** [Pat McGeehan](#) (Republican; Hancock County and part of Brooke County [eastern West Virginia])

**Overview:** Defines “claim” as any affidavit or other information filed with the county clerk to assert a mineral interest.

Allows abandoned mineral interests to vest in the surface owner if surface owner: (i) serves notice of intent to declare the interest abandoned to each interest holder via certified mail; (ii) files an affidavit of abandonment with the county clerk at least 30, but not later than 60 days after notice is served; and (iii) if no response is filed by the interest owner, surface owner shall file a notice of failure to file.

In order to vest in surface owner, mineral interest may not be:

- in coal or in mining or other rights pertinent to or exercisable in connection with an interest in coal;
  - If mineral interest includes both coal and other minerals, the non-coal interests may be deemed abandoned and may vest in surface owner.
- held by the United States, the state of West Virginia, or any political subdivision or agency of either the United States or West Virginia; or
- Within the past 20 years preceding the date notice is served on the mineral interest owner:
  - Mineral interest was not have been the subject of a title transaction that was filed or recorded in the county clerk's office;
  - There has not been actual production or withdrawal of minerals pursuant to a lease which the mineral interests are subject to;
  - The mineral interest has not have been used in underground storage operations;
  - No drilling or mining permit has been issued to the interest holder;
  - No claim to preserve the mineral interest has been filed;
  - No separately listed tax parcel number has been created for the interest in the county assessor's tax list.

The mineral interest owner may preserve their interest from being deemed abandoned by recording a claim within 60 days of being served with surface owner's notice of intent to deem the interest abandoned that:

- States the nature of the interest claimed and any recording information upon which the claim is based;
- Describes the property and any related covenants;
- States that the interest holder does not abandon their rights.

A claim of preservation preserves the rights of all holders in the mineral interest.

Anyone who holds an interest in underground storage operations may preserve all interest holder's rights by a single claim that defines the boundaries of the storage field or pool and its formations, without describing each separate interest claimed.

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**Current Status:** Referred to House Energy Committee on February 24, 2015.

**WV House Bill 2946 – Authorizing Shallow Gas Well Review Board to grant waivers of minimum distance requirements for shallow wells to encourage multi-well pads**

**Sponsor:** [Timothy Miley](#) (Democrat – Harrison County and part of Taylor County [northern West Virginia] – *Speaker of the House of Delegates*)

**Overview:** Amends § 22C-8-8 to allow Shallow Gas Well Review Board to grant waivers of any minimum distance requirements related to shallow wells to encourage pad drilling of multiple wells from the same target formation.

**Current Status:** Referred to House Energy Committee on February 24, 2015.

**WV House Bill 2975 – Mandating that tax assessor value oil and gas interest based on amount of oil or gas actually produced**

**Sponsor:** [Erikka Storch](#) (Republican – Ohio County [northern tip of West Virginia])

**Overview:** Mandates that the tax assessment of an oil and gas interest be based on the amount of oil or gas actually produced during that year.

**Current Status:** Referred to House Energy Committee on February 24, 2015.



**WV House Bill 2977 – Amends § 5A-11-3 to mandate that rents and royalties from mineral leases under state rivers and streams be expended for road paving and maintenance**

**Sponsor:** [Erikka Storch](#) (Republican – Ohio County [northern tip of West Virginia])

**Overview:** Mandates that all rents, royalties and other payments from mineral leases covering public lands acquired or managed by the Division of Natural Resources be retained by the Division of Natural Resources.

All rents and royalties from mineral leases entered into on or after July 1, 2015, covering state rivers or streams shall be deposited into the State Road Fund to be expended for road maintenance.

- All rents and royalties from leases entered prior to July 1, 2015 shall be retained by Division of Natural Resources.

All payments, other than rents and royalties, from leases covering state streams or rivers shall be retained by Division of Natural Resources.

All rents, royalties and other payments from land sales, exchanges and mineral rights leasing for public lands owned, managed, or controlled by the Adjutant General's Department will be retained by the Adjutant General.

**Current Status:** Referred to House Roads and Transportation Committee on February 24, 2015.

**WV House Bill 2985 – Establishing radiation levels for oil and gas drill cuttings that are disposed in solid waste and allowing mixing of drill cuttings with dirt and other substances**

**Sponsor:** [Erikka Storch](#) (Republican – Ohio County [northern tip of West Virginia])

**Overview:** Allows Secretary to regulate all radiation, including naturally occurring radioactive materials and technologically enhanced naturally occurring radioactive materials associated with drill cuttings and drilling wastes.

Establishes radiation limit of thirty picocuries per gram above background level for all types of toxins.

- If radiation exceeds thirty picocuries the landfill must immediately cease accepting radioactive waste until landfill is inspected and levels return to below limit.

Allows drill cuttings and waste to mixed with dirt, debris or other substances that may lawfully be disposed of in a solid waste facility to reduce the average radiation level below the limit.

**Current Status:** Referred to House Energy Committee on February 24, 2015.

**WV House Bill 3013 – Amends Natural Gas Horizontal Well Act to increase limit of disturbance of a well site to 1500 feet from an occupied structure and establishes air, noise, and dust monitoring requirements.**

**Sponsor:** [Barbara Evans Fleischauer](#) (Democrat – part of Monongalia County [outside Morgantown])

**Overview:** Adds additional requirement that well work permit applicants must serve their application, erosion and sediment control plan on the occupants of any residential structure located on the property where the well work will be performed.

Increases limit of disturbance from 625 feet to 1500 feet from any occupied dwelling structure.

Requires operators to establish continuous real-time monitoring of air, noise, dust and particulates at the residence or other point of impact that is closest to the well work.

Establishes noise, dust, air and light levels as follows:

- Noise levels during site construction may not exceed 70 dBA average an hour
- Noise levels at all other times may not exceed 55 dBA at any time
- Dust levels may not exceed the national ambient air quality level for a 24 hour period and there may be no visible dust on residences or crops
- Air levels must comply with risk levels set by Agency for Toxic Substances and Disease Registry of the Centers for Disease Control and Prevention
- No light from artificial illumination, flares or other sources shall shine directly on any residence or livestock or structure containing livestock.

Operators must establish continuous real-time monitoring of air, noise, dust and particulates at the residence or other point of impact that is closest to the well work. All levels must be continuously available upon request to all persons within 1500 feet of the disturbance area.

Surface owners may file claim within 2 years after the developer files notice that final reclamation of the well site is commencing.

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**Current Status:** Referred to House Energy Committee on February 24, 2015.

## Senate

### **WV Senate Bill 161 – Authorizes Department of Environmental Protection (“DEP”) to promulgate amendment to 33 CSR 20 to authorize use of electronic hazardous waste manifests**

**Sponsor:** [Herb Snyder](#) (Democrat - Cabell County [western West Virginia]; member of Energy, Industry & Mining Committee)

**Overview:** Authorizes the legislative rule filed by the DEP on July 30, 2014, which allows the use of electronic hazardous waste manifests.

Electronic forms will be made available after the US Environmental Protection Agency establishes the federal electronic hazardous waste manifest system.

**Current Status:** Referred to Natural Resources committee on January 14, 2015.

### **WV Senate Bill 169 – Authorizes Department of Environmental Protection (“DEP”) to promulgate revisions implementing an increase in Title V Clean Air Act operating fees**

**Sponsor:** [Herb Snyder](#) (Democrat - Cabell County [western West Virginia]; member of Energy, Industry & Mining Committee)

**Overview:** Authorizes revisions to 45 CSR 30 (Clean Air Act permitting program) to increase Title V operating permit fees from \$18/ton to \$28/ton.

Increase takes effect July 1, 2015.

**Current Status:** Referred to Judiciary committee on January 30, 2015.

### **WV Senate Bill 280 – Amends Natural Gas Horizontal Well Control Act to allow well work permits to be transferred with prior written approval of the Secretary of the Department of Environmental Protection (“Secretary”)**

**Sponsor:** [Bill Cole](#) (Republican - Parts of Wayne, Mingo, & McDowell Counties and Mercer County in Southern WV; President of West Virginia Senate)

**Overview:** Allows operators to transfer well work permits with prior written approval from the Secretary.

The proposed transferee must meet all requirements for holding a well work permit.

Establishes a permit transfer fee of \$500.



Within 90 days of Secretary's approval, transferee must notify in writing persons identified in § 22-6A-10. Notice must be served by: (i) personal service; (ii) registered mail; or (iii) any method of delivery that requires a receipt or signature confirmation.

Transferee must update all emergency contact information.

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**Current Status:** Signed into law by Governor Earl Ray Tomblin on February 4, 2015.

**WV Senate Bill 513 – Establishes requirements pertaining to containment equipment which must be utilized at drill sites.**

**Sponsor:** [Daniel Hall](#) (Republican – Wyoming County [southern West Virginia])

**Overview:** Requires unconventional wells to be designed and constructed with containment systems to prevent spills.

Requires operators to manage all regulated substances, including solid wastes and regulated substances in vehicles or equipment, in a containment system.

- Pits and centralized impoundments are sufficient if they comply with all applicable requirements.

Containment systems must:

- Be used on the well site when any equipment is brought onto the site and when any regulated substance (including drilling mud, mud additives, diesel fuel, etc.) are brought onto or generated on site;
- Have a coefficient of permeability no greater than  $1 \times 10^{-10}$  cm/sec, a minimum thickness of 24 mils, and a puncture resistance of 150 pounds;
- Be compatible with the materials and substances the containment may come into contact with; and
- Have no more than 30% of the total number of welds of the liner panels done in the field.

Operators shall use secondary containments when storing additives, chemicals, oils or fuels.

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**Current Status:** Referred to Senate Energy, Industry and Mining Committee on February 18, 2015.



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**WV Senate Bill 564 – Authorizing Shallow Gas Well Review Board to grant waivers of minimum distance requirements for shallow wells to encourage multi-well pads**

**Sponsor:** [Charles S. Trump](#) (Republican – Hampshire and Morgan Counties and parts of Berkeley and Mineral Counties [eastern West Virginia])

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**Overview:** Amends § 22C-8-8 to allow Shallow Gas Well Review Board to grant waivers of any minimum distance requirements related to shallow wells to encourage pad drilling of multiple wells from the same target formation.

Companion bill to House Bill 2946.

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**Current Status:** Referred to Senate Energy, Industry and Mining Committee on February 23, 2015.



# Ohio legislative action updates<sup>5</sup>

## House

### OH House Bill 8 – Oil and gas-unit operation/valuing reserves-method

**Sponsor:** [Robert Hagan](#) (Democrat – Youngstown)

**Overview:** Amends sections 1509.28 and 5713.051 of the Revised Code to revise provisions in the Oil and Gas Law governing unit operations.

Requires that any rules that the Chief adopts pursuant to section 1509.28 must either: (i) establish a prehearing publication notice requirement of more than three publications in a newspaper of daily general circulation in the county or counties in which the proposed unit is to be located; or (ii) require the last date of publication of such prehearing notice to occur not more than five days prior to the hearing.

Requires unit operations of land for which the Department of Transportation owns the mineral rights.

Specifies that the discounted cash flow formula used to value certain producing oil and gas reserves for property tax purposes is the only method for valuing all oil and gas reserves.

**Current** Referred to the Energy and Natural Resources Committee on February 10, 2015.

**Status:** Passed unanimously by House of Representatives on March 18, 2015.

Referred to Senate on March 18, 2015.

### OH House Bill 83 – Oil or gas well owner-royalty statement to holder of royalty interest

**Sponsor:** [Jack Cera](#) (Democrat – Belmont County)

**Overview:** Amends sections 1509.30 and 1509.99 of the Revised Code to require the owner of an oil or gas well to provide a royalty statement to the holder of the royalty interest when the owner makes a payment to the holder.

<sup>5</sup> This summary contains hyperlinks to third party websites containing further relevant information. Clicking on the bill number will take you to the main bill information page at the General Assembly's website, including the text of the bill. Clicking on the sponsor's name will take you to the sponsor's official website. Clicking on "Current Status" will take you to the bill's legislative history at the General Assembly's website.

The royalty statement must include, among other things, the following information: (i) volume of gas or oil for which the holder is being paid; (ii) price per thousands of cubic feet or per barrel of oil paid to the holder for such gas or oil; (iii) amount of state severance and any other production taxes paid on the holder's interest; (iv) any other deductions from or adjustments on the holder's interest; and (v) the net value of total sales of oil and gas produced from the lease, property, or well after deductions during the applicable payment period.

Under existing law, the holder of a royalty interest may request the owner to report to him, no more frequently than the payment period in his contract with the owner.

Sets certain penalties for reckless violation of the act, ranging from one hundred dollars to one thousand dollars for a first offense and two hundred to two thousand dollars per subsequent offense.

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**Current Status:** Referred to the Energy and Natural Resources Committee on March 4, 2015. .

## Senate

### OH Senate Bill 46 – Lake Erie – ban on oil & gas development

**Sponsor:** [Michael Skindell](#) (Democrat – Cleveland)

**Overview:** Prohibits the Director of Natural Resources from issuing any permit or making any lease to take or removal oil or gas from and under the bed of Lake Erie.

Currently, 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, can issue permits and make leases for oil and gas development under Lake Erie.

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**Current Status:** Due to apparent technical issues with Ohio Legislature website, the current status of Senate Bill 46 is unknown at this time.

*\*OH Senate Bill 46 is a reintroduction of OH Senate Bill 87 from the 2013-2014 session of the Ohio General Assembly.*

**OH Senate Bill 47 – Brine – prohibit land application and injection/well conversion-prohibit**

**Sponsor:** [Michael Skindell](#) (Democrat – Cleveland)

**Overview:** Prohibits the disposal of brine by deep well injection, by land application, or in surface or ground water.

Prohibits the conversion of a well to a use other than its original purpose (currently, can do so without a permit).

Eliminates current law which sets the Safe Drinking Water Act as the ceiling for rules, orders, and terms and conditions of permits (unless exceeding that ceiling is “essential to ensure that underground sources of drinking water will not be endangered”).

Eliminates the current law that allows for brine from Mississippian wells to be discharged directly into Ohio waters.

Prohibits brine transport within the state unless registration with and obtain certificate from Chief.

Sets certain penalties for violations of the act which range from one hundred dollar to twenty thousand dollars and/or imprisonment, depending on the provision violated, the intent of the violator, and the number of previous violations.

**Current Status:** Referred to the Energy and Natural Resources Committee on February 18, 2015.

**OH Senate Bill 120 – Oil and Gas law – revise enforcement**

**Sponsor:** [Joe Schiavoni](#) (Democrat – Columbiana and Mahoning Counties)

**Overview:** Amends sections 1509.33 and 1509.99 and enacts section 1509.051 of the Revised Code to revise enforcement of the Oil and Gas Law related to the storage, recycling, treatment, processing, and disposal of brine.

Requires the chief of the division of oil and gas resources management to revoke the permit(s), and deny any future permit applications, of any person who knowingly violates section 1509.22.

Amends the Oil and Gas Law to find persons who knowingly violate division (A) or (D) of section 1509.22 (dealing with disposal of brine and other fluids) guilty of a felony.

Allows courts to require persons who knowingly violate division (A) or (D) of section 1509.22 to reimburse the state agency for any response costs that it incurred in responding to the violation.

Removes the current exception that no person shall be subject to both a civil penalty and a criminal penalty for a single violation of section 1509.99.



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**Current** Referred to the Energy and Natural Resources Committee on March 10, 2015. .  
**Status:**

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