

GOVERNMENTAL AFFAIRS WEEKLY REPORT



Following are key election results in the race for President and the U.S. Congress, as well as relevant governors' races, state legislature results, and ballot measures called at the time of this report.

Race for President: Former Vice-President Joseph R. Biden (D) is the projected winner of the presidential election, although ballot canvassing and legal challenges are still ongoing and the Electoral College does not meet until December 14, 2020, to officially certify the winner. Among legal challenges brought by incumbent President Trump (R) in Michigan, Wisconsin, Arizona, Nevada, and Pennsylvania, last week, Georgia Secretary of State Brad Raffensperger (R) said the state would begin a county-by-county hand audit of ballots in the presidential race to be completed by November 20. Biden holds a slim margin of roughly 14,000 votes out of the nearly 5 million cast. While Georgia does not have an automatic recount law, a losing candidate may request a recount if the margin is less than or equal to 0.5%. [Read more.](#)

Governors Races: One key race of interest for AAPL was in Montana where Republicans flipped a Democratic governor's seat with Rep. Greg Gianforte (R) beating Mike Cooney (D). Gianforte is currently the sole congressman representing Montana in the U.S. House of Representatives. His seat was won by Matt Rosendale (R) by nearly 13 percentage points. Steve Daines (D), the current governor, was term-limited from running again and led an unsuccessful bid to win a U.S. Senate seat

in this election. In North Dakota, incumbent Gov. Doug Burgum (R) prevailed over his challenger, Shelley Lenz (D) to hold the seat. In West Virginia, incumbent Gov. Jim Justice (R) defeated his opponent Ben Salango (D). Indiana incumbent Gov. Eric Holcomb (R) defeated Woody Myers (D). For more, see the AAPL Governor Races Report: [click here.](#)

U.S. Senate Races: At the time of this report, election results show Republicans holding 50 seats and Democrats with 48 seats after the Alaska race was called between incumbent first-term Sen. Dan Sullivan (R) and challenger Dr. Al Gross (I) in which Sullivan held his seat. In another late call, incumbent first-term Sen. Thom Tillis (R-NC) defeated challenger, Cal Cunningham (D). With Alaska and North Carolina wins, Republicans would maintain control of the Senate if they win one of the two uncalled races in Georgia, as both of those are headed to a runoff on January 5, 2021, after no candidate hit the required 50% threshold to avoid a runoff under state law. Republican Senators David Perdue and Kelly Loeffler currently hold both seats. If Democrats flip both seats they would win the Senate majority at 50/50 since a Vice President Kamala Harris (D) would be the tie-breaking vote. In other significant races, incumbent Sen. John Cornyn (R-TX) defeated Air Force veteran MJ Hegar (D). In Montana, incumbent first-term Sen. Steve Daines (R) beat his challenger, current Gov. Steve Bullock (D), by roughly 10 percentage points in a hard-fought race that was projected as a possible Democratic flip. In Colorado, former Gov. John Hickenlooper (D) flipped a Republican seat by defeating incumbent Sen. Cory Gardner (R). In Arizona, Democrats flipped a Republican seat with former NASA astronaut Mark Kelly (D) defeating incumbent first-term Sen. Martha McSally (R), who has yet to concede the race. [Read more.](#)

U.S. House of Representatives Races:

Democrats are projected to maintain their majority in the House, although they failed to unseat any incumbent Republican representatives and now only hold a slim lead over Republicans in the chamber. For their part, Republicans picked up as many as six seats at the time of this report and are projected to retake the House in 2022. [Read more.](#)

State Races: On the state level, only two legislative chambers flipped party control, specifically, the New Hampshire Senate and House moved from Democratic to Republican control, after both went the other way in 2018. At present, Democrats could still win control of the Arizona House for the first time since 1966 or the Arizona Senate for the first time since 1992 as votes are still being counted. However, many eyes were on Texas as Democrats believed they could flip the state House, needing just nine seats to tip the balance of power in their favor. In the end, [the balance in the House was projected to remain the same](#) after the election with Republicans holding their 83-67 majority. In the Texas Senate, Republicans maintained their pre-election 19-12 majority. Overall, according to the National Conference of State Legislatures, “this appears to be a remarkably status quo election in the U.S. states. With just two chamber flips so far, it looks like 2020 will see the least party control changes on Election Day since at least 1944 when only four chambers changed hands. In the 1926 and 1928 elections, only one chamber changed hands.” [Read more.](#)

Ballot Measures: Please see below under “State-Regulatory” for the outcomes of ballot measures AAPL has been tracking this election season. For a deeper state-by-state look at all ballot initiatives, see the AAPL Ballot Measures Report: [click here.](#)

For more election data, see the AAPL Legislative Election Results Report: [click here.](#)

FEDERAL – Legislative

H.R. 8521 - Landowner Easement Rights Act. On November 13, official bill text was made available for [H.R. 8521](#), known as the *Landowner Easement Rights Act*. The bi-partisan measure, sponsored by Rep. Collin C. Peterson (D-MN) and Rep. Kelly Armstrong (R-ND), “would place a 50 year limit on conservation easements under the Department of Interior and give owners of existing easements the option to renegotiate, renew, or buy out of the easement.” According to Rep. Peterson, “This bill would allow long-term conservation projects to continue, while offering landowners a once-in-a-generation opportunity to reevaluate the terms of the agreement.” [Read more.](#)

H.R. 8411 - End Oil and Gas Tax Subsidies Act of 2020. On November 2, official bill text was made available for [H.R. 8411](#), known as the *End Oil and Gas Tax Subsidies Act of 2020*. The measure, sponsored by Rep. Earl Blumenauer (D-OR), would eliminate federal tax provisions that purportedly unfairly benefit oil and gas companies. “The oil and gas sectors are some of the world’s most profitable industries, claiming billions of dollars in earnings each year,” says Rep. Blumenauer. “Despite this success, these fossil fuel companies receive billions in tax breaks and subsidies annually, undermining the nation’s ability to invest in renewable energy sources and damaging our environment.” Should the bill pass the House, it has little to no chance of consideration in a Republican-led Senate. [Read more.](#)

FEDERAL – Regulatory

BLM Office Operations – New Mexico; Oklahoma; Texas. On November 6, the Bureau of Land Management (BLM) published a notice explaining that, “Due to the increasing cases of COVID-19 in New Mexico, Oklahoma and Texas, the Bureau of Land Management will be adjusting services at its offices, effective Monday, November 9. This decision was made to protect the safety and health of BLM employees and the public. Continuing our service to

the public while doing our part to address COVID-19 is very important. Following guidance from the CDC and recommendations from state and local public health authorities, some BLM offices are temporarily restricting in-person access to public rooms or offering limited services by appointment only." The BLM asks that before you visit offices in those states to confirm services and availability of staff. [Read more.](#)

Presidential Memorandum. On October 31, President Trump issued a *Memorandum on Protecting Jobs, Economic Opportunities, and National Security for All Americans*, in which the President notes that "[a]ccess to dependable, inexpensive sources of energy is a cornerstone of our well-being, of our economic strength and global competitiveness, and of our national security." To that end, the Memorandum directs that within 70 days, "the Secretary of Energy, in consultation with the United States Trade Representative, shall submit a report to the President, through the Assistant to the President for Economic Policy (who shall act in coordination with the Assistant to the President for National Security Affairs)" that will assess the "economic impacts of prohibiting, or sharply restricting, the use of hydraulic fracturing and other technologies" as well as related impacts on employment, energy prices, and national security. [Read more.](#)

FEDERAL – Judicial

EPA Consent Decree – California. On October 22, the Environmental Protection Agency (EPA) agreed to settle [ongoing air pollution litigation with environmental groups](#) regarding plans for limiting air pollution from oil and gas sources in eight states. The EPA has entered into a consent decree settlement, approved by the U.S. District Court for the Northern District Court of California, where the case, [Center for Biological Diversity v. Wheeler](#) (Case No. 3:20-cv-00448-VC), was being litigated. Under the consent decree agreement, the EPA will issue a notice that California, Connecticut, New York, Pennsylvania, and Texas have failed to submit state implementation

plans or plan revisions for addressing pollution control technology for oil and gas sources. The plans apply either to certain areas within the state or entire states in an ozone transport region. The EPA also agreed to either approve or reject oil and gas plan submissions from certain other regions, including Kern County, California by December 18, 2020. EPA approvals for Colorado areas are due to the EPA by no later than October 31, 2021, according to the settlement. [Read more.](#)

Leasing; Rights of Way; Pipelines – Pennsylvania. On September 11, in *Walls v. Repsol Oil and Gas USA, LLC* (Case No. No. 4:20-CV-00782), the U.S. District Court for the Middle District of Pennsylvania addressed a contract dispute between three Pennsylvanian landowners and one Texas oil and gas company over an oil and gas lease governing the use of land located in Tioga County. In 2002, Plaintiffs entered into the lease with Repsol's predecessor-in-interest, Victory Energy Corporation. Repsol now operates the Chicken Hawk Unit, a designated natural gas production unit, of which plaintiffs' property is a part. Repsol entered into negotiations for a pipeline right of way but the landowners rejected any agreement. Regardless, Repsol continued its pipeline installation. The plaintiffs claimed that the pipeline transports natural gas from production units that "do not unitize any of the Lease's leasehold acreage" and from other production units that do not neighbor the Lease's leasehold. The plaintiffs also alleged that the construction and installation of the pipeline was not authorized by the lease, and that they never granted Repsol the right to construct the pipeline. Here, the Court found the terms of the lease authorized such pipeline and it was not subject to a restriction as claimed. The Court also denied the landowners money damages because those were made "Without alleging facts to support their conclusory request for compensation." [Read more.](#)

STATE – Legislative

Tax Credits; Carryforward – Louisiana. (*Update to 11/2/20 Weekly Report*) As part of the legislature's

[30-day Special Session](#), on November 5, SB 1 was signed into law by Gov. John Bel Edwards (D). The Act, sponsored by Sen. Rick Ward, III (R), extends the carryforward period for the inventory tax credit for certain businesses. Per the sponsoring bill analysis, “Current law provides a state tax credit against income and franchise taxes for ad valorem taxes paid to local governments on inventory held by manufacturers, distributors, retailers, and on natural gas used in storage facilities. The credit is refundable or nonrefundable depending on various factors applicable to each taxpayer. To the extent a portion of the credit is nonrefundable, a taxpayer has a five-year carryforward period within which to utilize unused credit amounts against tax liabilities. Proposed law changes the carryforward period from five years to ten years, and provides that the ten-year carryforward period only applies to applicable taxes paid on or after January 1, 2020.” The Act is effective January 1, 2021. [Read more.](#)

Marketable Record Title – Michigan. On November 12, Rep. Brandt Iden (R) introduced HB 6332, which amends existing law regarding marketable title, notice requirements, and provides definition updates regarding mineral interests. The bill synopsis states this legislation is “An act to define a marketable record title to an interest in land; to require the filing of notices of claim of interest in such land in certain cases within a definite period of time and to require the recording thereof; to make invalid and of no force or effect all claims with respect to the land affected thereby where no such notices of claim of interest are filed within the required period; to provide for certain penalties for filing slanderous notices of claim of interest, and to provide certain exceptions to the applicability and operation thereof.” [Read more.](#)

Notaries Public – Michigan. (*Update to 11/2/20 Weekly Report*) On November 5, HB 6297 was signed into law by Gov. Gretchen Whitmer (D). The Act, sponsored by Rep. Sarah Lightner (R), “amend[s] the Michigan Law on Notarial Acts to allow notaries public to use two-way real-time audiovisual technology to perform notarial acts electronically

under certain circumstances.” The Act takes immediate effect. [Read more.](#)

Electronic Execution of Documents – Michigan. (*Update to 11/2/20 Weekly Report*) On November 5, HB 6294 was signed into law by Gov. Gretchen Whitmer (D). The Act, sponsored by Rep. Sarah Lightner (R), will “amend the Estates and Protected Individuals Code (EPIC) to allow certain documents to be signed or witnessed using two-way real-time audiovisual technology and to allow certain visits required under EPIC to be conducted using that technology.” The Act takes immediate effect. [Read more.](#)

87th Legislative Session – Texas. Although the Texas Legislature’s [140-day session will not begin until January 12, 2021](#), state lawmakers have already begun pre-filing bills. On the first filing day, more than 530 bills had already been filed in the House and Senate. According to the *Texas Tribune*, “Thousands of bills are expected to be filed throughout the legislative session, though only a fraction of them will make it through both chambers and end up on Gov. Greg Abbott’s desk.” For reference, during [the last biennial session in 2019](#), 10,877 legislative measures were filed, 4,581 passed, and 1,323 were [signed into law by the governor](#) – an enactment rate just over 12%, although joint, concurrent, and other resolutions of the legislature do not require the signature of the governor to become effective. As always, AAPL will track and report on all relevant Texas legislation for our members, so please keep an eye on these reports for bill details come January 2021. [Read more.](#)

STATE – Regulatory

Production Tax Ballot Measure – Alaska. (*Update to 11/2/20 Weekly Report*) On Election Day, Alaskans voted against [Ballot Measure 1](#) (Increase Fuel Production Tax) defeating the measure known as the Fair Share Act, which would have overhauled Alaska’s formula for claiming revenue from crude oil extracted from the Alpine, Kuparuk, and Prudhoe Bay fields. The ballot measure group, Vote Yes for

Alaska's Fair Share, said passing the measure would have brought in new state revenue and helped prevent the state from cutting the annual Permanent Fund dividend to pay for state services. For their part, oil companies were successful in their campaign to urge Alaskans to vote "no" on this initiative to rewrite existing Alaska tax law. ConocoPhillips Alaska signaled possible retreat from drilling on the North Slope if the ballot proposal was approved in the election, according to company president Joe Marushack. "This is an increase of the severance taxes by 150% to 300% depending on oil prices," said Marushack during a recent Alaska Chamber [presentation](#). "That's in addition to the income taxes we pay, the royalties we pay, the operating costs we pay. This is a huge increase on industry." [Read more.](#)

Natural Gas Building Ban – California. Last week, the San Francisco Board of Supervisors approved a ban on natural gas in new buildings starting in June 2021. The [county and city ordinance](#) requires new building construction to only utilize electric power. However, "The city will still allow some new mixed-fuel buildings if the building inspector finds that constructing an all-electric building is physically and technically infeasible." [Read more.](#)

Environmental Impact Report – California. On October 30, the Kern County Planning and Natural Resources Department released a new updated Draft Supplemental Recirculated Environmental Impact Report (SREIR) for Revisions to Title 19, *Draft Supplemental Recirculated Environmental Impact Report (August 2020 and October 2020) for Revisions to Title 19 – Kern County Zoning Ordinance (2020-A) Focused on Oil and Gas Local Permitting*. The full document is available [here](#). Title 19 revisions contain "extensive new protective measures for health and safety of communities and residents while providing for a clear and certain process for permitting." According to the California Independent Petroleum Association, the Kern County Board of Supervisors approved changes to Title 19 of the Kern County Zoning Ordinance in 2015 to implement local permitting of oil and gas activities and after

numerous legal proceedings resulted in two draft SREIRs that have been prepared and circulated for public comment. The first draft SREIR was completed in August 2020 and is referred to as the SREIR (August 2020), and this second draft SREIR released in October 2020 is referred to as the SREIR (October 2020). This SREIR (October 2020) shows all text changes from the earlier SREIR. The public comment period for this document closes on December 14, 2020. [Read more.](#)

Oil and Gas Tax Assessments – Louisiana.

(Update to 11/2/20 Weekly Report) On Election Day November 3, Louisiana voters approved a ballot initiative to determine the way the state values oil and gas wells for property tax purposes. The approval of [Amendment 2](#) allows local tax assessors to account for the presence or production of oil or gas to be included in the methodology used to determine the fair market value of a well. Previously, assessments did not account for the presence or production of oil or gas and instead relied on other criteria such as the cost of a replacement well and the type of equipment used. The amendment, which came about as the result of [HB 360](#), sponsored by Rep. Mike Huval (R), had the backing of the Louisiana Oil and Gas Association, the Louisiana Mid-Continent Oil and Gas Association and the Louisiana Assessor's Association. [Read more.](#)

RRC Flaring/Venting Rule – Texas. *(Update to 8/24/20 Weekly Report)* On November 4, the Railroad Commission of Texas (RRC) announced it approved revisions to Form R-32, [Application for Exception to Statewide Rule 32](#) (formerly, the *Statewide Rule 32 Data Sheet*). Per the RRC, "As part of the RRC's efforts to reduce flaring of natural gas in Texas, RRC staff proposed changes to Form R-32 requiring operators to more thoroughly document the circumstances surrounding the need to flare gas, providing the RRC accurate information to assess compliance with the flare/vent authority, and encouraging transparency in understanding the broader needs and reasons for flaring and/or venting during oil and gas production operations in Texas. [Proposed form revisions were presented at \[the\]](#)

[RRC conference on August 4, 2020, and the revisions were posted on the agency's website for public comment.](#) The RRC received comments from 26 individuals, operating companies, trade associations and non-governmental organizations. Some of the comments were not relevant or were beyond the scope of the proposed changes to the form. Staff considered all the comments that were determined to be germane to the proposal and modified the form accordingly. The new form greatly enhances collection of critical data points and in some cases significantly reduces flare duration. In addition, to support the Rule 32 program RRC staff is currently developing an online form for submission via the RRC Online System. The first phase of the implementation is currently planned to go live by the end of March 2021. Form R-32 goes into effect immediately, but operators have the choice to file either the new Form R-32 or the existing data sheet until April 1, 2021 when an online exception filing system is implemented. Once the online system is implemented, the current Rule 32 Data Sheet will be phased out and discontinued." [Read more.](#)

Railroad Commission Race – Texas. In the November 3rd election, Republican Jim Wright defeated Democrat Chrysta Castañeda in the race for Texas Railroad Commissioner. Wright ousted sitting Railroad Commissioner, Ryan Sitton, in the March primary. A lifelong South Texan, Wright's family have been ranchers in Texas for five generations. Wright turned his first job at a hazardous waste facility into a group of four oil field services companies that offer services ranging from consulting and transportation to industrial recycling. Wright "believes that the Railroad Commission should continue to engage with the industry and the public to find solutions to problems that will make a difference not only for Texans but in Washington and across the world." [Read more.](#)

Oil and Gas Industry Support – Wyoming. On November 10, [Gov. Mark Gordon \(R\) announced that Wyoming will allocate federal COVID-19 funds to aid the oil and gas industry in the state.](#) This follows on the heels of a similar move in North Dakota which

AAPL reported on a few weeks ago. "These funds will have a direct impact on Wyoming's employment rate and put people back to work in our oil and gas sector," said Gov. Gordon, announcing up to \$15 million in assistance through a new Energy Rebound Program. The Program will utilize federal CARES Act funding "to provide business relief targeted towards drilled, but uncompleted oil and gas wells, wells that were unable to be re-completed, and plugging and abandonment projects which could not be finished due to the impacts of the COVID-19 pandemic."

[Read more.](#)

STATE – Judicial

Dormant Mineral Act – Ohio. On October 26, in [Crum v. Yoder](#) (Case No. 2020-Ohio-5046), the Ohio Court of Appeals, Seventh District, addressed a Dormant Mineral Act (DMA) case where the plaintiffs asked the trial court to deem their mineral interest not abandoned under the 2006 version of the DMA. Specifically, under the facts of the case, certain heirs argued the mineral interest was not abandoned because the 2011 notice of abandonment was invalidly served by publication and/or there was a savings event in a 1994 deed. The trial court ruled against the plaintiffs and the appellate court reaffirmed the trial court judgment "that the lack of an internet search alone is not necessarily fatal to a DMA abandonment." In the case, the surface owners searched the public records of Monroe County (where the property is located) and Belmont County, but found nothing identifying the heirs of the grantors who reserved the minerals in the 1990 deed. The heirs offered a title examiner's 2016 affidavit that a Google search located obituaries and gave the names and potential locations of the children into evidence, "but the Seventh District was not persuaded that an internet search was required." The Court also touched on issues of delivering notice of abandonment to one's own address and the distinction between the language of exceptions and reservations in the context of the DMA issue. [Read more.](#)

[Senate, South Dakota, Tennessee, Texas Senate, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin](#) and [Wyoming](#).

Bill Pre-Files: [Alabama, Florida, Iowa, Kentucky, Montana, Nebraska, Nevada, New Hampshire, Oklahoma, Tennessee, Texas, Utah](#) and [Virginia](#) are currently posting 2021 bill drafts, pre-files and interim studies. ■

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