

# GOVERNMENTAL AFFAIRS REPORT

### **Highlights At-A-Glance**

#### FEDERAL – Legislative

H.R. 2811 - Limit, Save, Grow Act of 2023. On April 26, the Republican's debt limit increase bill, H.R. 2811, known as the Limit, Save, Grow Act of 2023, passed the House. The bill would raise the debt limit through March 31, 2024, or until the debt increases by \$1.5 trillion. <u>Read more</u>. The bill also contains many provisions from the GOP comprehensive energy package, H.R. 1, that passed the House in March but was deemed "dead on arrival" in the Senate by Democrat leaders. Read more. Specifically, H.R. 2811 repeals or modifies tax credits for renewable and clean energy, energy efficient property, alternative fuels, and electric vehicles; requires major federal rules (e.g., rules likely to result in an annual economic effect of at least \$100 million) to be approved by Congress before they take effect; and also includes various provisions related to the development of energy resources such as oil, natural gas, and minerals. For example, the bill requires additional federal oil and gas leasing: reduces or eliminates certain royalties and fees; and expedites the permitting process for various energy projects. The bill is unlikely to be considered in its current form in the Democrat-led Senate. Read more.

Senate Environment and Public Works Committee Energy Hearing. On April 26, the Senate Environment and Public Works Committee held an oversight hearing, *Committee Business Meeting & Opportunities to Improve Project Reviews for a Cleaner and Stronger Economy*, "to examine stakeholder perspectives on improving coordination, predictability and efficiency in the environmental review and permitting process to support a clean energy transition." Access the full hearing and witness <u>testimony here</u>. In his opening statement, Chairman Tom Carper (D-DE) stated, "We are here today to discuss an important and timely topic: opportunities to reform our nation's environmental review and permitting processes in a way that supports our transition to a clean energy economy and the goodpaying jobs that come with it." Ranking Member Sen. Shelley Moore Capito (R-WV) said, "In my home state of West Virginia alone, there are multiple real-world examples of how our broken environmental review and permitting process is holding up critical projects across multiple sectors important to West Virginians but also to our national economy." <u>Read more</u>.

## House Natural Resources Committee Hearing on Endangered and Threatened Species.

(Update to 4/17/23 Report) On April 27, the House Committee on Natural Resources held a full committee markup – a process where committee members review the measures in detail and may consider amendments – for a number of House resolutions AAPL has been tracking and reporting on for members, specifically <u>H.J. Res. 29</u> and <u>H.R. Res 46</u>, related to endangered and threatened species, including the Lesser Prairie-Chicken, among others. For background, on April 18, the Committee held a legislative hearing on a number of these measures. To access a full recording of the hearing, <u>Read more</u>.

#### FEDERAL – Regulatory

**BLM Resource Advisory Council Meeting – Alaska.** On April 24, the Bureau of Land Management (BLM) announced it will hold an Alaska Resource Advisory Council (RAC) meeting on May 24, 2023, in Anchorage. "Both in-person and virtual participation options are available and the public is welcome to attend. The 15-member Alaska RAC serves in an advisory capacity concerning issues relating to land use planning and the management of public land resources located within the State of Alaska. Members represent a variety of interests reflective of the Bureau's multiple-use mission and Alaska's diverse population." RAC meetings are open to the public. <u>Read more</u>.

#### BLM Resource Advisory Council Meeting – Utah.

On April 14, the BLM announced it "will hold a field tour and public meeting of the Utah Resource Advisory Council (RAC) on May 17-18, 2023, to receive advice and recommendations on public land planning efforts." According to BLM Utah Director Gregory Sheehan, "These opportunities allow stakeholders to gain a more-comprehensive understanding of resource management, provide input and ensure collaboration with others to find solutions." RAC meetings are open to the public. <u>Read more</u>.

#### Greater Sage-Grouse – California; Nevada.

On April 27, the BLM published a proposed rule, Endangered and Threatened Wildlife and Plants; Threatened Status for the Bi-State Distinct Population Segment of Greater Sage-Grouse With Section 4(d) Rule and Designation of Critical Habitat (88 Fed. Reg. 25613), to announce a reopening of previous comment periods for proposed rulemaking to list the Bi-State distinct population segment (DPS) of greater sage-grouse as threatened under the Endangered Species Act (Act) with a section 4(d) rule and to designate critical habitat for the Bi-State DPS. For background, the District Court for the Northern District of California vacated a March 31, 2020, withdrawal of an October 28, 2013, proposed listing rule. The proposed rule "will initiate a new status review to determine whether the Bi-State DPS meets the definition of an endangered or threatened species under the Act." The public comment period is open through June 26, 2023. Read more.

#### Mountain Valley Pipeline; Energy Department.

On April 21 – in a surprise move that angered environmental activists – U.S. Energy Secretary Jennifer Granholm delivered a letter to the Federal Energy Regulatory Commission calling upon the commissioners to proceed "expeditiously" with permitting the Mountain Valley Pipeline project. Granholm wrote, "I am writing about the impact the Mountain Valley Pipeline (MVP) project can have in support of the Nation's energy security and energy supply [...] Energy infrastructure, like the MVP project, can help ensure the reliable delivery of energy that heats homes and businesses, and powers electric generators that support the reliability of the electric system." <u>Read the letter here</u>. Granholm's efforts have been lauded by Sen. Joe Manchin (D-WV) who has long been pressing for approval of the vital pipeline project to traverse West Virginia and Virginia. <u>Read more</u>.

#### Environmental Justice Presidential Executive Order.

On April 21, President Biden issued an "Executive Order on Revitalizing Our Nation's Commitment to Environmental Justice for All" (Executive Order 14096), that seeks to "advance environmental justice for all by implementing and enforcing the Nation's environmental and civil rights laws, preventing pollution, addressing climate change and its effects, and working to clean up legacy pollution that is harming human health and the environment." Read the Executive Order here. The order directs "all federal agencies to make equity a core issue in their missions" and "also directs the Environmental Protection Agency and other agencies to focus on disproportionate impacts to low-income and other disadvantaged communities. Those agency actions must address cumulative impacts of pollution and climate change." The executive order also creates a new Office of Environmental Justice within the White House Council on Environmental Quality. The executive order updates a President Clinton-era order that "first focused agencies on inequitable exposure to pollution in marginalized communities. Biden promised to strengthen it shortly after taking office in January 2021." Read more.

#### FEDERAL – Judicial

**EPA Consent Decree; Oil and Gas Emissions – Washington, DC.** On April 17, a U.S. District Court judge approved a consent decree between the U.S. Environmental Protection Agency (EPA) and environmental groups in which the EPA agrees "to strengthen pollution regulations for certain oil and gas



facilities and equipment after environmental groups complained the standards hadn't been updated in more than a decade." In the consent decree, California Communities Against Toxics v. Regan (Case No. 1:22-cv-01012-CRC), the EPA agrees "to review and update its emissions rules to more fully regulate hazardous air pollutants from oil and gas storage, production and transmission facilities. Under the settlement, the government agreed to propose and finalize new rules in 2024 and 2025, but did not commit to make specific changes." In the underlying lawsuit, the litigants "said the regulations finalized in 2012 didn't cover all of the oil and gas equipment and processes that might emit pollutants, like storage tanks or oil wells that can leak gasses. It sought to force the government to consider requiring new technologies to monitor for leaking, and to close what they called loopholes that allow operators to avoid liability for emissions violations during equipment malfunctions." We will keep AAPL members informed once the EPA releases this consent decree proposed rulemaking. Read more.

#### Federal Oil and Gas Production – Washington,

**DC.** On April 25, environmental groups filed a lawsuit in federal court challenging "the failure of Defendants U.S. Secretary of the Interior Deb Haaland and U.S. Department of Interior (collectively referred to as 'Interior') to respond to the Conservation Groups' January 19, 2022, Petition for rulemaking to reduce the rate of oil and gas production on federal public lands." In <u>Center for Biological Diversity v. Haaland</u> (Case No. 1:23-cv-01144), the litigants claim "that the Administrative Procedure Act requires federal agencies like the Department of the Interior to 'give interested parties the right to petition for the issuance, amendment, or repeal of a rule' and that the law requires the agency to 'conclude a matter presented to it within a reasonable time." Read more. The legal action "targets the administration's failure to respond to portions of the petition on public lands oil and gas production in the lower 48 states" [...] and says it is "urgent that Biden officials align the federal oil and gas program with our country's climate goals and the president's own campaign promises." Read more.

Natural Gas Hookup Bans – Ninth Circuit

(California). On April 17, the U.S. Court of Appeals for the Ninth Circuit, on appeal from the U.S. District Court for the Northern District of California, dealt a blow to Berkely city leaders when it overturned an ordinance that banned natural gas hookups in some new buildings in the city in California Restaurant Assoc. v. City of Berkeley (Case No. 21-16278). The appeals court reversed the lower court's dismissal of the case where the California Restaurant Association (CRA) argued that "the ordinance was preempted by the federal Energy Policy and Conservation Act (EPCA). The CRA and groups supporting the case argued that the ordinance in fact amounted to a ban on natural gas appliances." The court explained that the EPCA "expressly preempts State and local regulations concerning the energy use of many natural gas appliances, including those used in household and restaurant kitchens. Instead of directly banning those appliances in new buildings, the City of Berkeley took a more circuitous route to the same result. It enacted a building code that prohibits natural gas piping into those buildings, rendering the gas appliances useless." In sum, the appeals court agreed with the plaintiff group, writing, "Berkley can't bypass preemption by banning natural gas piping within buildings rather than banning natural gas products themselves." Read more.

#### STATE – Legislative

**Bond Requirements; Well Plugging – California.** On April 19, AB 1167 advanced in committee following its introduction by Asm. Wendy Carrillo (D). The bill requires a person who acquires the right to operate a well or production facility to file with the State Oil and Gas Supervisor a bond for the well or production facility in an amount determined by the supervisor to be sufficient to cover, in full, all costs of plugging and abandonment and site restoration; and provides for related procedures. <u>Read more</u>.

**Carbon Sequestration – California.** On April 19, SB 308 passed committee following its introduction by Sen. Josh Becker (D). "This bill requires the California Air Resources Board (CARB) to establish rules and



processes for certifying carbon dioxide removal processes that can be used for negative emissions credits. This bill requires CARB to adopt a regulation requiring certain emitting agencies to purchase negative emissions credits equal to a specified percentage of their greenhouse gas (GHG) emissions, with that percentage increasing over time." Read more.

**Oil and Gas Supervisor – California.** On April 19, SB 275 passed committee following its introduction by Sen. Shannon Grove (R). Regarding the state Oil and Gas Supervisor, who is required to supervise the drilling, operation, maintenance, and abandonment of oil and gas wells, the bill would require a supervisor appointment to receive Senate confirmation. <u>Read more</u>.

**Carbon Capture, Removal, Utilization, and Storage** – **California.** On April 19, SB 438 passed committee following its introduction by Sen. Anna Caballero (D). The bill is identified as "a technical cleanup measure" to a 2022 bill "to clarify the accidental production of oil does not violate the ban on enhanced oil recovery on CCRUS projects." <u>Read more</u>.

#### Renewables Portfolio Standard Program -

**California.** On April 18, SB 663 passed committee following its introduction by Sen. Bob Archuleta (D). "This bill defines renewable hydrogen and adds renewable hydrogen as a renewable energy resource under the Renewable Portfolio Standard (RPS). This bill also establishes criteria for renewable hydrogen acquired from a pipeline to meet RPS standards." <u>Read more</u>.

**Oil and Gas Drilling Health Effects – California.** On April 25, <u>SB 556</u> was scheduled for a hearing following its introduction by Sen. Lena Gonzalez (D). The bill provides "people who have developed cancer, respiratory illnesses and birth defects the right to hold oil drillers liable for their illnesses if they live, work, or go to school within 3,200 feet of oil drilling and if the company did not use the best technologies to mitigate risk." Further, "the oil drillers and their boards of directors would have the presumption of liability for damages with minimum penalties of \$250,000 and maximum penalties of \$1 million. The presumption could be rebutted if the companies proved the illnesses were caused another way." <u>Read more</u>.

State Oil, Gas, and Geothermal Regulation -Colorado. On April 17, SB23-285 was introduced by Sen. Kevin Priola (D). The bill "changes the name of the Colorado Oil and Gas Conservation Commission in the Department of Natural Resources (DNR) to the Energy and Carbon Management Commission, effective July 1, 2023, and expands the commission's regulatory authority to include the regulation of energy and carbon management areas beyond oil and gas to include emerging energy generation and storage technologies-specifically deep geothermal and underground gas storage. The bill also changes the name of the commission's cash fund accordingly and allows the commission to use the fund for the purposes of administering the expanded regulatory areas." Read a detailed bill summary here.

**Clean Energy Plans – Colorado.** On April 21, SB23-198 was subject to a committee hearing following its introduction by Sen. Faith Winter (D). The bill provides that for entities submitting clean energy plans to state regulators they must achieve certain greenhouse gas reduction targets as indicated and sets entity and state reporting requirements. <u>Read more</u>.

**Geothermal Energy – Colorado.** On April 19, HB23-1252 passed committee following its introduction by Rep. Sheila Lieder (D). The bill would provide for the implementation of measures to advance thermal energy services. <u>Read more</u>.

**Pollution Protection Measures – Colorado.** On April 14, HB23-1294 was introduced by Rep. Jennifer Bacon (D). The bill would impose broad emissions controls over various industries, including oil and gas production. <u>Read a full bill summary here</u>. The bill, if passed, will "functionally prohibit new permitting for most industrial processes in the state," said the Colorado Oil and Gas Association and the American Petroleum Institute. The bill "adds new permitting restrictions and penalties on oil and gas development



and other commercial and industrial air pollution sources." As reported, "The bill focuses primarily on permitting in the oil and natural gas industry, but state officials must also consider indirect air pollution sources, and that will affect a wide range of industries across the state, said industry officials." The bill also "removes rules that allow temporary relief from emission control regulations during start-up, shutdown, or malfunction of commercial or industrial air pollution sources." <u>Read more</u>.

**Severance Taxes – Louisiana.** On April 20, HB 172 advanced to a floor vote following its introduction by Rep. Phillip DeVillier (R). The bill "reduces the severance tax rate on oil over an eight-year period from 12.5% to 8.5% of its value at the time and place of severance and fixes the severance tax rate for oil produced from certain incapable and stripper wells at the current rate." <u>Read more</u>.

#### Carbon Capture and Sequestration – Louisiana.

On April 3, <u>HB 571</u> was introduced by Speaker Clay Schexnayder (R). The bill provides multiple provisions for the regulation of carbon capture and sequestration. <u>Read a complete bill summary here</u>.

Independent Contractors – Montana. (Update to 2/20/23 Report) On April 25, SB 22 was signed into law by Gov. Greg Gianforte (R). Sponsored by Sen. Shane Morigeau (D), regarding existing law governing independent contractor exemption certificates, the bill adds new language to provide that a person without an independent contractor exemption certificate is rebuttably presumed to be an independent contractor when: (i) the person represents to a hiring entity or individual in writing that the person has an independent contractor exemption certificate; (ii) the person provides the hiring entity or individual a forged or otherwise fraudulent independent contractor exemption certificate; or (iii) the person's independent contractor exemption certificate expires while the person is working under the contract and prior to full performance of the contract, for a period not to exceed 120 days following the expiration of the certificate. Prior versions of this bill would have imposed an independent contractor analysis and employee

definitions but were removed from the final legislation. The Act is effective October 1, 2023. <u>Read more</u>.

Liens – North Dakota. (*Update to 1/23/23 Report*) On April 18, SB 2311 was signed into law by Gov. Doug Burgum (R). Sponsored by Sen. Brad Bekkedahl (R), the bill amends existing law regarding construction liens and well or pipeline construction liens. The Act takes effect on August 1, 2023. <u>Read more</u>.

**Transfer-on-Death Deeds – Oklahoma.** (*Update to 2/20/23 Report*) On April 26, Gov. Kevin Stitt (R) signed SB 298 into law. Sponsored by Sen. Brent Howard (R), the bill prohibits a designated grantee beneficiary from accepting real estate on behalf of another designated beneficiary through a transfer-on-death deed. The Act is effective November 1, 2023. <u>Read more</u>.

Energy Source Choices – Texas. (Update to 3/6/23) Report) Last week, SB 1017 passed the legislature. Sponsored by Sen. Brian Birdwell (R), the bill ensures that gasoline and diesel-powered engines can never be outlawed by local governments in Texas. The companion House version, HB 2374, was sponsored by Rep. Brooks Landgraf (R). "SB 1017 is about individual liberty, and when people are free to choose and the market is allowed to be competitive, Texas oil and natural gas always win," said Rep. Landgraf. "It's an honor to fight for the hard-working men and women of the Permian Basin, to fight for freedom and for energy independence." As reported by the Texas Oil & Gas Association, "This legislation would protect energy choice by preventing political subdivisions from adopting or enforcing ordinances, orders, regulations, or similar measures which would limit access to specific fuel sources or prohibit the sale of engines based on their fuel source." The bill will now head to the governor for signature. Read more.

**Hydrogen Energy Development – Texas.** On April 10, HB 2847 passed committee following its introduction by Rep. Drew Darby (R). The bill would grant "the Railroad Commission of Texas (RRC) jurisdiction over all pipeline transportation and underground storage of hydrogen and establishing the



Texas Hydrogen Production Policy Council to study and make recommendations relating to the RRC's policy framework for hydrogen energy development." <u>Read more</u>.

**Class 1 Injection Well Inspections – Texas.** On April 19, HB 4120 passed committee following its introduction by Rep. Ryan Guillen (R). Relating to the inspection of the location of a proposed Class I injection well, the bill amends existing law to provide that an inspection report prepared by an engineer or geoscientist licensed in the state can be accepted to meet the requirements as provided. <u>Read more</u>.

**Texas STRONG Defense Fund – Texas.** On April 20, HJR 111 passed committee following its introduction by Rep. Ryan Guillen (R). The resolution is "Proposing a constitutional amendment providing for the creation of the Texas severance tax revenue and oil and natural gas (Texas STRONG) defense fund, dedicating the money in that fund to benefit areas of the state significantly affected by oil and gas production, and providing for the transfer of certain general revenues to that fund, the economic stabilization fund, the state highway fund, the oil and gas regulation and cleanup account, the Texas emissions reduction plan fund, and the property tax relief fund." <u>Read more</u>.

Natural Gas Energy Conservation Programs -

**Texas.** On April 20, SB 1050 passed committee following its introduction by Sen. Bryan Hughes (R). Regarding local distribution companies delivering natural gas to homes and businesses and related energy conservation programs, would provide for "a statewide framework for natural gas energy conservation programs in order to allow more Texans to participate in such programs, which could allow for the purchase of higher efficiency appliances, the retrofitting of homes, and the saving of more capacity for electric generation." <u>Read more</u>.

**Orphaned Wells; Geothermal Operators – Texas.** On April 20, SB 1210 passed the Senate and has been transmitted to the House. Sponsored by Sen. Cesar Blanco (D), relating to the authority of the Railroad Commission of Texas to designate certain persons as the operator of an orphaned oil or gas well, the bill "would allow a geothermal operator to adopt an orphaned oil and gas well to convert it into a geothermal electricity production well." The purpose is to "reduce the number of orphaned oil and gas wells in Texas, thereby reducing the amount of money the Railroad Commission's Oilfield Regulation and Cleanup Fund must spend on plugging orphaned wells." <u>Read more</u>.

#### STATE – Regulatory

State Attorney General Launches Investigation of ESG Climate Fund – Louisiana. On April 25, Louisiana Attorney General Jeff Landry (R) "ordered an investigation into a major investor-led coalition that aims to fight climate change through the financial sector." Landry's office has announced a "'multipronged' effort focusing on the Climate Action 100+ Steering Committee, specifically scrutinizing Franklin Templeton and the California Public Employees' Retirement System. The investigation will look into whether the groups breached their obligations to investors by prioritizing climate initiatives. The move is yet another foray by the GOP against the environmental, social, and governance movement, or ESG." <u>Read more</u>.

**RRC** Draft Oil and Gas Division Monitoring and Enforcement Plan – Texas. On April 25, the Texas Railroad Commission announced that pursuant to 2017 legislation, the RRC was directed "to develop an annual plan to assess the most effective use of its limited resources to protect public safety and minimize damage to the environment. The RRC will always strive to strengthen its capabilities to track, measure, and analyze the effectiveness of its oil and gas monitoring and enforcement program." Read more. The purpose of this plan is to define and communicate the Oil and Gas Division's strategic priorities for its monitoring and enforcement efforts. The plan confirms many of the division's current priorities as well as establishing direction for data collection, stakeholder input, and new priorities for fiscal year 2024. The RRC seeks input from stakeholders in the development of



this plan." <u>Read the draft plan here</u>. The deadline for public comments is May 23, 2023. You may <u>submit</u> <u>comments here</u>.

Interactive Oil and Gas Map – Wyoming. Last week, the Wyoming State Geological Survey released a 2023 update to its Interactive Oil and Gas Map of Wyoming. As reported, "This is the sixth update since the web map was initially published in 2016. Continual updates are necessary to keep track of new oil and gas wells, changes to fields and modifications to hydrocarbon processing facilities such as refineries and gas plants. Since the last 2021 map version, more than 175 new wells came online in named oil or gas fields, and more than 150 new wildcat wells were drilled. This has had a notable visual impact on field boundaries and oil and gas infrastructure throughout the state." Read more.

#### INDUSTRY NEWS FLASH

► Texas upstream employment on the rise. As reported last week by the Texas Independent Producers and Royalty Owners Association (TIPRO), "upstream oil and natural gas employment in Texas totaled 198,700 jobs in March, up by 1,500 positions from the prior month and up by 20,000 year/year." According to TIPRO president Ed Longanecker, "The oil and gas industry continues to ramp up employment and production in line with growing demand for our product here and abroad." <u>Read more</u>.

► Shale production in the biggest basins expected to hit record in May. According to data released on April 18 from the U.S. Energy Information Administration (EIA), "shale crude oil production in the seven biggest shale basins is expected to rise in May to the highest on record. Oil output is set to rise 49,000 barrels per day to 9.33 million bpd, the EIA said, [and] production in the Permian is due to rise to 5.69 million bpd, the highest on record." <u>Read more</u>.

► American Chemistry Council releases white paper on importance of natural gas. On April 19,

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the American Chemistry Council "released a white paper highlighting the importance of natural gas and the need for policies that reflect its value to the American economy, the energy transition, and climate progress. Entitled *'Natural Gas: Its Key Role in a Strong Economy and a Lower Emissions Future,*' the paper explains how natural gas is linked to several national priorities. <u>Read more</u>.

#### LEGISLATIVE SESSION OVERVIEW

States in Session



Session Notes: Alabama, Alaska, Arizona House, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Iowa, Kansas, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Vermont, and Wisconsin are in regular session. The U.S. Congress is also in session.

**Kansas** lawmakers returned from recess on April 24 to finish up the omnibus budget as well as consider any potential vetoes from Democratic Gov. Laura Kelly, reports <u>The Kansas City Star</u>. The legislature is scheduled to adjourn after the veto session.

The **Arizona** Senate is on hiatus until May 3, reports the <u>AZ Mirror</u>. The chamber moved to adjourn on April 25, the 107<sup>th</sup> day of the 2023 legislative session. In Arizona, regular sessions of the legislature can only last 100 days, unless extended seven additional days by the House Speaker and the Senate President. After that, lawmakers can meet indefinitely if procedural motions are approved regularly by a majority of members. Senate Republican spokeswoman Kim Quintero said the break is aimed at continuing work on the state budget.

The following states adjourned their 2023 legislative sessions on the dates provided: **Indiana** (April 29), **Iowa** and **North Dakota** (April 28), **Tennessee** (April 21), and **Washington** (April 23).

Signing Deadlines (by date): Georgia Republican Gov. Brian Kemp has until May 8 to act on legislation or it becomes law without signature. Washington Democratic Gov. Jay Inslee has until May 16 to act on legislation or it becomes law without signature. Kentucky Democratic Gov. Andy Beshear has 10 days from presentment to act on legislation, Sundays excepted, or it becomes law without signature. Maryland Democratic Gov. Wes Moore has 30 days from presentment to act on legislation or it becomes law without signature. Mississippi Republican Gov. Tate Reeves has 15 days from presentment to act on legislation, Sundays excepted, or it becomes law without signature. Tennessee Republican Gov. Bill Lee has 10 days from presentment to act on legislation, Sundays excepted, or it becomes law without signature.

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