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Introduction of Oil and Gas Development

This article provides an update of the developments in the oil and gas law in the State of Tennessee from August 1, 2016 through July 31, 2017. This article focuses on major legislative and regulatory enactments as well as developments in the common law

I. Legislative and Regulatory Developments

The 110th General Assembly regular session began January 12, 2017 and ended May 24, 2017. The following is a discussion of the notable legislation passed during the regular session.

A. House Bill 438, also known as Senate Bill 1250

“Tennessee Energy Policy Council”

House Bill 438, also identified as Senate Bill 1250 (collectively, the “Bill”), amends Tennessee Code Annotated, Title 4, Chapter 29; Title 59; Title 60; Title 65 and Title 68, relative to the creation of the Tennessee Energy Policy Council (the “Council”). The Bill provided that “the development of a unified domestic energy policy for the State of Tennessee as part of a nationwide effort for increased domestic energy production is paramount to our national security and economic growth and stability.”¹

The Council is to make recommendations to the governor and general assembly on how to: “(1) Identify all state energy resources to ensure a secure, stable, and more predictable energy supply; (2) Manage the use of energy resources; and (3) Increase domestic energy exploration, development, and production within the state and region, with the goal of promoting economic growth and job creation while ensuring the protection and preservation of the state’s natural resources, cultural heritage, and quality of life.”²

The Council serves as the energy policy planning body for Tennessee. Several of the key general duties and responsibilities of the Council include:

1. H.B. 438, 110th Leg. (Tenn. 2017).
 2. TENN. CODE ANN. § 68-204-103(a) (West 2017).

- (1) Compile an annual report assessing the energy sector in this state, including the opportunities and the constraints presented by various uses of energy, to facilitate the expansion of the domestic energy supply, and to encourage the efficient use of all such energy forms in a manner consistent with state energy policy;³
- (2) Develop an ongoing comprehensive state energy policy plan to achieve maximum effective management and use of present and future sources of energy. The policy plan may include energy efficiency, renewable and alternative sources of energy, research and development into alternative energy technologies, and improvements to the state's energy infrastructure and energy economy, including smart grid and domestic energy resources, including, but not limited to, natural gas, coal, hydroelectric power, solar, wind, nuclear, and biomass;⁴
- (3) Create an annual energy policy plan that recommends:
 - (A) Necessary energy legislation to the governor and to the general assembly;
 - (B) The promulgation of necessary rules to regulatory boards charged with administering this title; and
 - (C) The implementation and modification of energy policy, plans, and programs as the council considers necessary and desirable;⁵ and
- (4) Actively engage in discussions with federal government agencies and leaders to identify opportunities to increase domestic energy supply within this state.⁶

The Governor of Tennessee signed the Bill into law on May 25, 2017, with the provisions regarding appointment of members to the Council taking effect the same day. The remainder of the act took effect on July 1, 2017.

3. *Id.* § 68-204-103(b)(1).

4. *Id.* at (b)(2).

5. *Id.* at (b)(3).

6. *Id.* at (b)(6).

II. Judicial Developments

During the relevant time period of this update, there were no notable judicial developments involving the oil and gas industry.