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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, 2015 through July 31, 2016. This article focuses on major legislative and regulatory enactments as well as developments in the common law.

I. Legislation and Regulatory Developments

The 109th General Assembly regular session began January 12, 2016 and ended April 22, 2016. The following is a discussion of the notable legislation passed during the regular session.

*A. House Bill 1542, also known as Senate Bill 2545**“Office of Energy Programs”*

Effective January 1, 2013, pursuant to Executive Order No. 25, the Governor transferred the Energy Division from the Department of Economic and Community Development to the Department of Environment and Conservation and renamed the division the Office of Energy Programs. House Bill 1542 (“HB 1542”), also identified as Senate Bill 2545 (“SB 2545”), as enacted, statutorily renames the Energy Division to be the Office of Energy Programs and statutorily transfers the office, its powers and responsibilities to the Department of Environment and Conservation to reflect changes made by the Governor’s order.¹ The transfer and name change amends, as to the language relative to the department and program, Tennessee Code Annotated, Title 4, Chapter 3; Tennessee Code Annotated, Title 4, Chapter 31; Tennessee Code Annotated, Title 8, Chapter 4; Tennessee Code Annotated, Title 59, Chapter 13, Section 106, and Tennessee Code Annotated, Title 66, Chapter 9, Section 204(b).

The Office of Energy Programs is charged with developing and implementing programs and initiatives which focus on energy efficiency, development of renewable energy resources and investments, promoting energy conservation, and energy management.² Several of the key general powers and responsibilities of the office include:

- (1) Promote research, development, recruitment and investments in conservation and renewable technology business (e.g., business that are labor intensive, environmentally sound, energy

1. TENN. CODE ANN. §§ 4-3-510 – 4-3-515 (2016).

2. TENN. CODE ANN. § 4-3-510 (2016).

conserving and compatible with the development of a statewide energy program), with the recognition that a commitment to energy efficiency and development of renewable resources promotes economic growth and job creation;³

- (2) Provide incentives for energy conservation and renewable technologies development;⁴
- (3) Administer federal energy programs to include, but not be limited to, an energy extension service and state energy conservation plan;⁵
- (4) Establish a working liaison with the Tennessee Valley authority and other energy-related nonprofit organizations;⁶ and
- (5) Prepare an annual report on the activities of the office of energy programs, including information on conservation, energy management, renewable industry investments and recruitments, and energy savings goals set and realized by the programs administered by the office of energy programs.⁷

The Governor of Tennessee signed HB 1542 / SB 2545 into law on April 7, 2016 and the transfer of departments and renaming of the division took effect the same day.

B. House Bill 1503, also known as Senate Bill 1690

“Amendment to Tennessee Petroleum Underground Storage Tank Fund”

House Bill 1503 (“HB 1503”), also identified as Senate Bill 1690 (“SB 1690”), amends Tennessee Code Annotated, Title 68, Chapter 215, Section 109(b)(2), Section 110(b) and Section 110(e), of the Tennessee Petroleum Underground Storage Tank Act in regards to the Underground Storage Tank and Solid Waste Disposal Control Board’s (“Board”) levy and collection of annual fees from the owners or operators of petroleum

3. *Id.* § 4-3-510(1).

4. *Id.* § 4-3-510(2).

5. *Id.* § 4-3-510(4).

6. *Id.* § 4-3-510(6).

7. *Id.* § 4-3-510(9)(A).

underground storage tanks and funding of the special fund known as the Petroleum Underground Storage Tank Fund.

HB 1503 / SB 1690 deleted and amended subsection 109(b)(2), as it relates to tank fees. Under the prior version of Tennessee Code Annotated, Title 68, Chapter 215, Subsection 109(b)(2) the “Board” was only allowed to lower the tank fees, annual fees being two hundred fifty dollars (\$250.00) per tank.⁸ HB 1503 / SB 1690 authorizes the underground storage tanks and solid waste disposal control board to suspend tank fees as the tank fund warrants it.⁹

HB 1503 / SB 1690 deleted and amended subsection 110(b) as it relates to the deposited of environmental assurance fees to the Tennessee Petroleum Underground Storage Tank Fund and add costs, restitution awards, and other recoveries collected by the State under the Tennessee Petroleum Underground Storage Tank Act to the items to be deposited in the fund.¹⁰ Under the prior version of Tennessee Code Annotated, Title 68, Chapter 215, Subsection 110(b) “[a]ll fees, civil penalties, and damages collect pursuant to this chapter shall be deposited in the fund. Any deposits to the fund that would result in the unobligated balance of the fund exceeding fifty million dollars (\$50,000,000) shall be transferred to the highway fund.”¹¹ The notable change by HB 1503 / SB 1690, allows for “all fees, civil penalties, damages, costs, restitution awards, and other recoveries collected or received by the state pursuant to this chapter, or related to or arising from claims arising under this chapter, shall be deposit in into the fund, regardless of the nature of recovery, cause of action, or basis of the claim, and regardless of whether the claim is statutory or equitable.”¹²

HB 1503 / SB 1690 deleted in its entirety and amended subsection 110(e) as to the “Board” decision making progress in lowering or suspending storage tank fees. HB 1503 / SB 1690 now requires the board, when adjusting underground storage tank fees to consider all reasonably anticipated current and future liabilities and income of the petroleum underground storage tank fund.¹³ The board must take in account the long-term viability of funds as to current and future obligations of the fund and

8. TENN. CODE ANN. § 68-215-109(b)(2) (2016).

9. *Id.*

10. *Id.* § 68-215-110(b).

11. *Id.*

12. *Id.*

13. *Id.* § 68-215-110(e).

administration.¹⁴ Under the prior version of Tennessee Code Annotated, Title 68, Chapter 215, Subsection 110(e), tank fees could be adjusted to maintain a minimum balance of \$2,000,000; now the board must see to that the fund substances a maximum balance of 50,000,000. Under HB 1503 / SB 1690 the board shall not consider lowering or suspending storage tank fees to a level resulting in failure to maintain a balance to cover the project annual amount of claims against the fund and administrative expenses.¹⁵

The Governor of Tennessee signed HB 1503 / SB 1690 in to law on April 27, 2016, and the amended provisions took effect the same day.

II. Judicial Developments

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

14. *Id.*

15. *Id.*