



*Transcending Boundaries*



Preliminary  
**Energy & Environment Legislative Digest**  
2021





*Transcending Boundaries*

# **Preliminary Energy & Environment Legislative Digest**

**A Guide to State Energy and Environment  
Legislation in the South**

June 2021

**Covering measures in 16 states and two U.S. territories**

Introduction by  
Rep. Lynn Smith of Georgia  
*Vice Chair*

## Acknowledgments

The Southern States Energy Board's Legislative Digest is compiled each year in collaboration with member states and territories.

We would like to thank the Board members, legislative research staff, and state administrative officials and their staffs as well as many other SSEB friends for assisting us in compiling and reviewing the Digest.

This version is current as of June 25, 2021.

### MISSION STATEMENT

Through innovations in energy and environmental policies, programs, and technologies, the **Southern States Energy Board** enhances economic development and the quality of life in the South.



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# Introduction

## Representative Lynn Smith

### *Vice Chair, Southern States Energy Board*

I am honored to introduce the 2021 Preliminary Energy & Environment Legislative Digest, a compendium of energy and environmental legislation enacted by the Board's 18 member states and territories during their 2021 legislative sessions.

For more than four decades, the Southern States Energy Board has published this Digest, and each year the Board endeavors to ensure that the information representing the legislative trends in its member states is accurate and comprehensive. The legislation presented in this document is current through June 25, 2021.



As legislatures wrangled with the problems caused by the COVID-19 pandemic, our members were busy. This year, our legislative members passed their highest number of bills since 2015 for a total of **512** energy and environmental acts. At the time of printing this preliminary edition, dozens more energy and environment bills awaited a Governor's signature. Look for those in the final edition of the Digest in September. Copies will be available at our 61<sup>st</sup> Annual Meeting, held this year in Oklahoma City from September 27-29.

Precise bill summaries are categorized for easy comparison. Some bills may cover a range of issues and fall into multiple categories. Energy measures are divided among the following categories: Alternative Energy Development; Coal and Minerals; Computer Technology and Digital Innovation; Emergency Management and Homeland Security; Energy Efficiency; Natural Gas and Petroleum; Reorganization and Coordination; and Utilities. In total, **299** energy-related bills were passed this year by our member states and territories.

Environmental measures are divided into the following categories: Air Quality and Pollution Control; Coastal Zone Management; Emergency Management and Homeland Security; Environmental Health Services; Hazardous Waste and Substance Management; Inland Water Resource Management and Conservation; Land Management and Conservation; Radioactive Waste; Reorganization and Coordination; Solid Waste; and Water Quality and Pollution Control. These categories combined for **213** pieces of legislation. As with previous years, flood mitigation, emergency information sharing, and emergency management planning continue to dominate legislative agendas.

This year, several trends emerged in our member states. Chief among that trend was the passage of what is commonly known as "energy discrimination laws." **Alabama, Arkansas, Florida, Georgia, Kentucky, Mississippi, Texas, and West Virginia** all passed some version of the law, which is generally intended to prohibit any political subdivision from halting the expansion, connection, or reconnection of a utility service based upon the type or source of energy provided to a customer.

The pandemic's effect of necessitating high-speed internet access for a surge in virtual events, telemedicine, virtual schooling, and more means the trend that began last year with enhanced broadband deployment measures has continued this year. **Alabama, Florida, Georgia, Louisiana, Maryland, Mississippi, Oklahoma, Texas, Virginia, and West Virginia** all passed laws pertaining to broadband deployment via easement provisions with utilities, tax incentives, and the establishment of offices dedicated to the deployment of broadband access.



Our Digest also covers the trends surrounding the legislative push for electric vehicle infrastructure, electric vehicle ad valorem taxation and tax breaks, and the associated issue of battery production and disposal. **Alabama, Arkansas, Florida, Georgia, Maryland, Oklahoma, South Carolina, Texas, and Virginia** all addressed the topic.

Renewable energy saw a resurgence in bills this year as well. Several of our states passed tax incentives and other statutes affecting the deployment of wind, solar, and the associated energy storage systems both privately and commercially owned. Related to the matter of renewable technology, several states also passed laws prohibiting the ability for housing associations to restrict solar installations and/or electric vehicle charging infrastructure. You can look for those bills in the states of **Florida, Louisiana, Maryland, South Carolina, Texas, Virginia, and West Virginia**.

Our members in **Texas** passed the most bills this year with 85 total. Many of the measures were directed at addressing the problems created by the historic winter storm Uri, which devastated parts of Texas in February 2021 with prolonged power outages. We offer our deepest sympathy to those who were affected by the storm. The bills passed in Texas this session will help to ensure the reliable delivery of critical energy services.

I thank you again for taking time to read this publication, which offers a succinct overview of the current legislative landscape of energy and environmental issues in our member states and territories. I encourage you to use it in your own state as a resource for future reference and use in your legislatures as you consider new bills for upcoming legislative sessions.

### About Representative Lynn Smith

A recognized leader in the community and the state of Georgia, State Representative Lynn Smith is known for her ability to listen, learn, and lead. Rep. Smith was elected to the Georgia House of Representatives in 1996. She currently serves as chairman of the House Natural Resources and Environment Committee (NR&E). She champions sound environmental policies that protect the environment as well as the economy of Georgia. To that effect, she is the author of several legislative bills that have become law. Most recently, she championed the Water Stewardship Act, the creation of the Regional Water Plans, and revisions to the Brownfield Act. She also serves on the Appropriations, Rules, and Reapportionment Committees. In 2011, along with the UGA Carl Vinson Institute of Government (CVIG), she developed the NR&E Committee Policy Academy to study annually the pressing issues before the committee.

In addition to state committees, Rep. Smith is the current Vice Chair of the Southern States Energy Board (SSEB) and is the past-chair of the Southern Legislative conference (SLC) Energy and Environment Committee. She is also a member of the National Conference of State Legislatures (NCSL). She is a former lay appointee to the State Bar of Georgia Investigative Panel and is a former Vice-Chair of the NCSL Environment Committee.

Before being elected to the Georgia House of Representatives, Rep. Smith served her community in several ways. She presided over the following organizations: the Newnan-Coweta Chamber of Commerce, the Newnan Carnegie Library, the Newnan-Coweta Public Library, the Coweta Economic Development partnership, the Shenandoah Georgia Youth Science and Technology Center, the Newnan Junior Service League, and the Driftwood Garden Club. She was a board member of the Newnan - Coweta United Way Board and the Newnan Hospital Board. She continues serving as a member of the Newnan Rotary Club and as a Georgia Master Gardener. A graduate of the University of Georgia, a former educator, business owner, and community leader, Rep. Smith continues to dedicate her time and energies to her community. She attends Central Baptist Church and supports many local philanthropic causes as well as community initiatives. Rep. Smith enjoys spending time with her children and grandchildren.

# Categories of Energy Legislation

## Alternative Energy Development

The category of Alternative Energy Development includes legislation related to the incentives, barriers, and costs associated with the development and use of alternative energy sources, uses, and technologies.

## Coal and Minerals

The category of Coal and Minerals addresses all aspects of coal and mineral extraction, production, and transportation. Legislation in this area encompasses mineral rights, mine safety and inspection, royalty distribution, and crushing operations.

## Computer Technology and Digital Innovation

The category of Computer Technology and Digital Innovation is a recent addition. Increasingly, legislatures are passing bills related to digital security, nascent computer technology, and increasingly robust artificial intelligence—all of which can have huge impacts related to grid security, energy efficiency, and solving problems specific to the energy industry.

## Emergency Management and Homeland Security

The category of Emergency Management and Homeland Security addresses the role of state governments in response to natural or man-made emergencies involving critical energy infrastructure and supply. These emergencies may require intrastate, interstate, and/or national response and includes intentional acts of terrorism.

## Energy Efficiency

The category of Energy Efficiency includes legislation pertaining to the development and promotion of energy efficient technologies and programs for buildings, homes, transportation, power systems, and industry and related energy conservation issues.

## Natural Gas and Petroleum

The category of Natural Gas and Petroleum addresses regulations on all aspects of natural gas and petroleum exploration, development, production, importation, transportation, storage, and marketing.

## Reorganization and Coordination

The category of Reorganization and Coordination is composed of legislation affecting the responsibilities or functions of existing state governmental agencies and departments that handle energy matters. Such legislation includes the creation of or changes in department or commission responsibilities and the requirements regarding notice to or coordination of agencies.



## Utilities

The category of Utilities focuses on legislation affecting water, gas, and electric services provided by utility and power companies. The types of legislation enacted in this area deal with changes in rates, production, distribution, services, operations, least cost planning, and the location of utility services.

## **Categories of Environmental Legislation**

### Air Quality and Pollution Control

The category of Air Quality and Pollution Control includes legislation regarding various pollutants that are released and emitted into the atmosphere. Specifically, measures in this category include air quality control acts, emission standards, acid rain initiatives, and ozone non-attainment.

### Coastal Zone Management

The category of Coastal Zone Management involves the preservation and enhancement of both offshore and onshore environments, including coastal landforms and marine ecosystems. Measures within this category include shore erosion controls, protection of aquatic vegetation and offshore reefs, control of marine harvests, and federal-state consistency provisions.

### Emergency Management and Homeland Security

The category of Emergency Management and Homeland Security addresses the role of state governments in response to natural or man-made emergencies, which compromise environmental security and health. These emergencies may require intrastate, interstate and/or national response, and include intentional acts of terrorism.

### Environmental Health Services

The category of Environmental Health Services includes measures enacted to discourage and prevent activities that disrupt life-support systems for humans and other species, damage wildlife and human health, and produce nuisances such as noise.

### Hazardous Waste and Substance Management

The category of Hazardous Waste and Substance Management contains legislation relating to toxic substances. The primary purpose of this legislation is to control the production, transportation, use, and disposal of toxic substances and wastes. (See Radioactive Waste for new laws relating to radioactive materials; see Solid Waste for new laws relating to non-toxic materials.)

### Inland Water Resource Management and Conservation

The category of Inland Water Resource Management and Conservation consists of legislation related to the conservation, permitting, management, and protection of inland water sources and/or reservoirs (e.g., lakes, rivers, streams and tributaries, groundwater, etc.). It includes measures that provide for the capture and control of the water supply, management and protection of wetlands and watersheds, and the regulation of outdoor water activities such

as fishing and boating. The category also includes measures pertaining to the responsibility, function, and jurisdiction of relative state and local government agencies.

### **Land Management and Conservation**

The category of Land Management and Conservation incorporates legislation concerning the management and protection of public and private lands and ecosystems. Legislation in this category includes land and growth management, land reclamation and restoration activities, including brownfield mitigation, soil erosion, abatement and prevention, environmental covenants, forestry and timber harvesting, hunting regulations, and park management.

### **Radioactive Waste**

The category of Radioactive Waste focuses on legislation related to the proper handling, storage, transportation, and disposal of high-level and low-level radioactive waste. High-level radioactive waste includes spent fuel and other high-level wastes generated from nuclear operations. Low-level radioactive waste is any material discarded from a nuclear operation that has been exposed to radiation.

### **Reorganization and Coordination**

The category of Reorganization and Coordination is composed of legislation affecting the responsibilities and functions of existing state governmental agencies and departments that handle environmental matters. Such legislation includes the creation of or changes in department or commission responsibilities and requirements regarding notice to or coordination of agencies.

### **Solid Waste**

The category of Solid Waste entails legislation relating to the treatment, disposal, and/or recycling of refuse, scrap, tailings, chemical effluents, litter, and agricultural or industrial wastes. While some legislation uses the term “solid waste” and “hazardous waste” interchangeably, this Digest will use “solid waste” for those wastes that are non-toxic and “hazardous waste” for toxic materials. (See Radioactive Waste for all radioactive waste materials; see Hazardous Waste and Substance Management for regulation of toxic substances.)

### **Water Quality and Pollution Control**

The category of Water Quality and Pollution Control concerns the purity of water as a resource for public and industrial uses. Legislation within this category pertains to quality control measures that guard against the contamination of water supplied by lakes, rivers, streams and tributaries, and/or groundwater. Furthermore, this category contains legislation relating to the recycling of contaminated water and/or sewage.

## Matrices and Graphs

The matrices and graphs on the following pages illustrate energy and environmental legislative activity observed in SSEB member states and territories during this year’s legislative sessions.

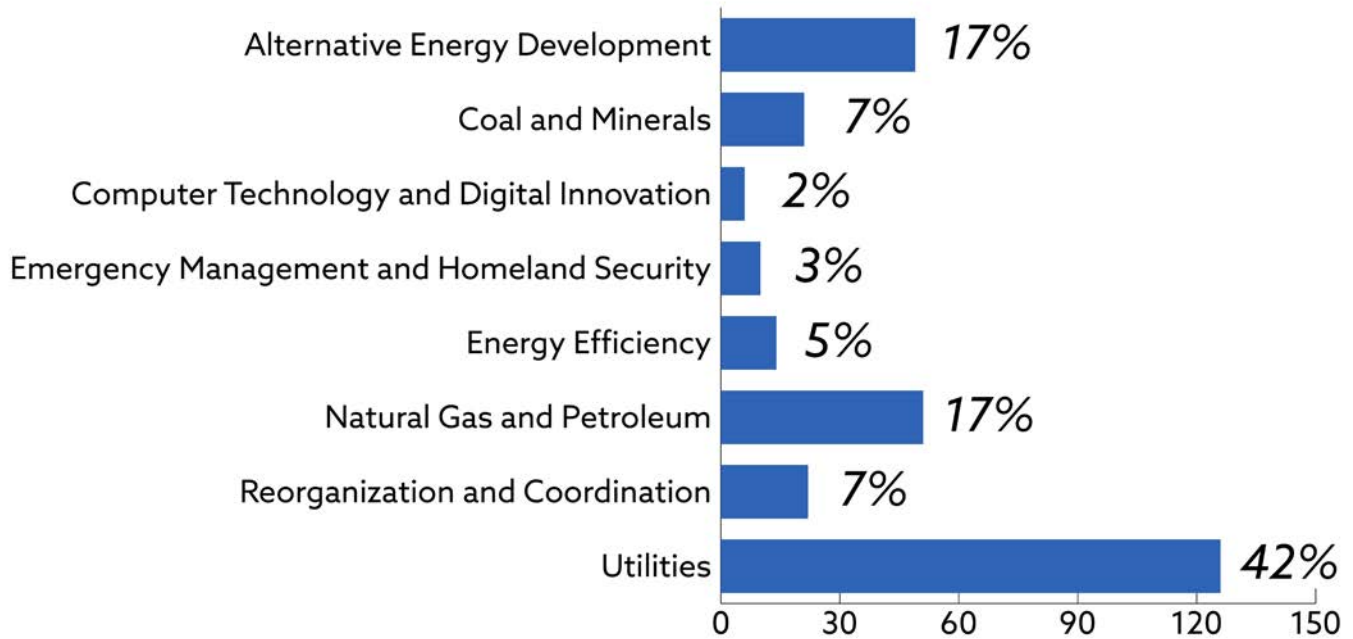
The matrices provide readers with a quick view of the categories of laws passed by each jurisdiction. The abbreviations used are expanded upon by the bar charts beneath.

The bar charts show the collective number of bills enacted by category as percentages.

### Legislation Prefixes

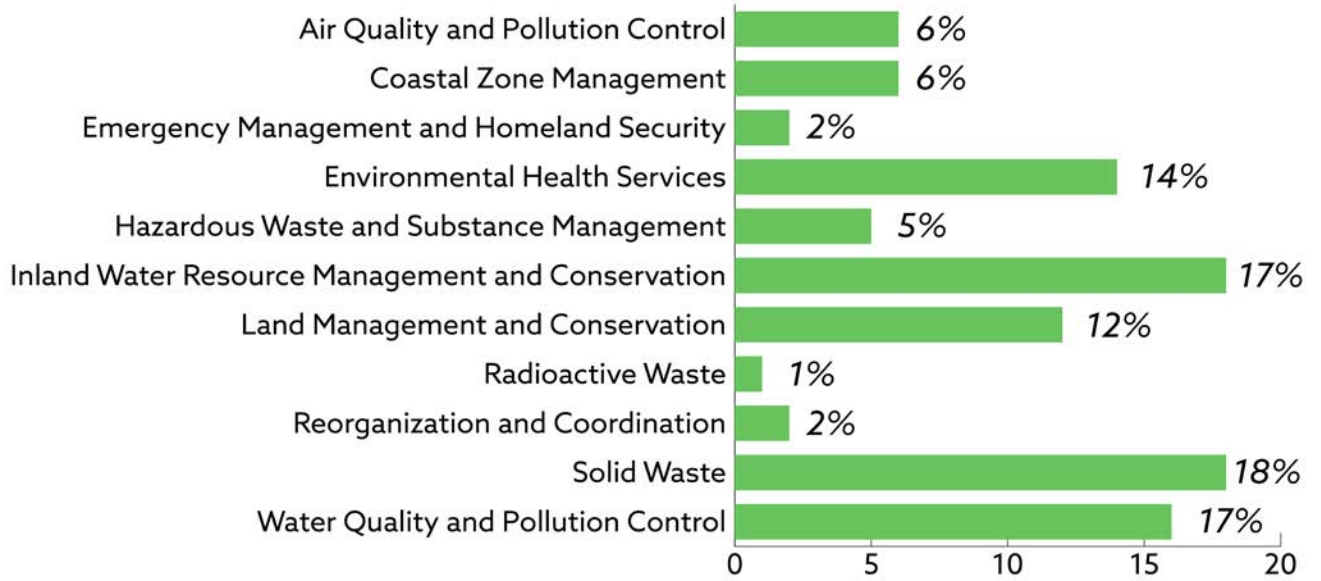
<i>B</i>	<i>Bill</i>
<i>HB</i>	<i>House Bill</i>
<i>HCR</i>	<i>House Concurrent Resolution</i>
<i>HJR</i>	<i>House Joint Resolution</i>
<i>HR</i>	<i>House Resolution</i>
<i>R</i>	<i>Resolution</i>
<i>SB</i>	<i>Senate Bill</i>
<i>SCR</i>	<i>Senate Concurrent Resolution</i>
<i>SJR</i>	<i>Senate Joint Resolution</i>
<i>SR</i>	<i>Senate Resolution</i>

## 2021 Energy Legislation Matrix



Categories	AL	AR	FL	GA	KY	LA	MD	MS	MO	NC	OK	PR	SC	TN	TX	VI	VA	WV
AED	✓	✓	✓	✓		✓	✓	✓	✓		✓		✓	✓	✓		✓	✓
CM	✓	✓			✓	✓	✓							✓	✓		✓	✓
CT	✓				✓	✓	✓											
EMHS	✓	✓			✓		✓								✓			✓
EE	✓			✓			✓	✓			✓			✓	✓		✓	✓
NGP	✓	✓		✓	✓	✓	✓	✓			✓			✓	✓	✓	✓	✓
RC				✓		✓	✓				✓			✓	✓		✓	✓
U	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓		✓	✓	✓	✓	✓	✓

## 2021 Environmental Legislation Matrix



Categories	AL	AR	FL	GA	KY	LA	MD	MS	MO	NC	OK	PR	SC	TN	TX	VI	VA	WV
AQPC		✓		✓			✓				✓				✓		✓	
CZM			✓			✓	✓	✓		✓			✓		✓			
EMHS	✓						✓							✓				✓
EHS	✓	✓	✓	✓	✓	✓	✓	✓					✓	✓	✓	✓	✓	✓
HWSM		✓		✓		✓	✓				✓				✓		✓	✓
IWRMC	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓			✓	✓		✓	
LMC	✓	✓		✓			✓	✓			✓			✓	✓		✓	
RW		✓																
RC			✓								✓		✓					✓
SW	✓	✓	✓	✓	✓	✓	✓	✓			✓			✓	✓		✓	✓
WQPC	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓			✓	✓		✓	✓





# ALABAMA

Alabama adopted **32** energy and environmental bills during its 2021 legislative session.

## ***Highlights:***

**HB 446** forbids any governmental entity from prohibiting a person or entity from using utility services from a provider capable of providing service and is otherwise authorized to do business in the state.

**SB 112** authorizes the Commissioner of the Department of Revenue to temporarily waive requirements for the International Fuel Tax Agreement and the International Registration Plan during a state of emergency or disaster.

## **Energy Legislation**

### Alternative Energy Development

SB 80 – Notice Requirements for Wind Energy Facilities

*Sponsored by Sen. Butler*

Requires a county or municipality to give an affected military installation notice and an opportunity for review of any proposed tall structure or wind energy facility for potential impacts prior to approving the tall structure or wind energy facility.

### Coal and Minerals

HB 169 – Abandoned Mine Reclamation Trust Funding and Departmental Definition Updates

*Sponsored by Rep. Garrett*

Updates definitions and corrects references to the Secretary of Labor by specifying that a departmental employee, rather than a registered forester, perform certain inspections related to mining and reclamation.

The bill also increases the amount of funds retained in the Special Abandoned Mine Reclamation Trust Fund in the State Treasury from appropriated funds granted annually by the U.S. Department of the Interior from 10 to 30 percent.

HB 219 – Coal Severance Tax Extension

*Sponsored by Rep. South*

Extends the 1971 Coal Severance Tax for an additional 10 years and provides for the distribution of certain additional severance tax revenue and earmarks the balance of the proceeds for the operation of the Surface Mining Commission.

Beginning in Fiscal Year 2022, a portion of the proceeds will be distributed by a new formula based on revenue from coal severed in a county that is at least 10 percent greater than the average of coal severed in that county for Fiscal Years 2018 through 2020 to the county of severance. This provision is excepted if any coal attributed to this new

distribution was loaded for shipping in another county, in which case 75 percent of this new distribution must go to the county of severance and 25 percent must go to the county where the coal was loaded.

Any remaining distribution must be transferred to a fund in the State Treasury that is continuously appropriated for the operation of the Surface Mining Commission, according to the bill.

#### HB 582 – Surface Mining Commission Meetings

*Sponsored by Rep. Rowe*

Requires the Alabama Surface Mining Commission to meet once every two months or as required by the Governor, the chair of the Alabama Surface Mining Commission, or the Director of the Alabama Surface Mining Commission.

Prior law required the commission to meet on a monthly basis.

#### SB 173 – Liming Material Labels

*Sponsored by Sen. Stutts*

Requires agricultural lime be labeled with its relative neutralizing value (RNV).

RNV is defined as a calculation that uses calcium carbonate to represent the effectiveness of agricultural liming materials.

### Computer Technology and Digital Innovation

#### SB 215 – Alabama Digital Expansion Authority

*Sponsored by Sen. Marsh*

Establishes the “Alabama Digital Expansion Authority” governed by an 11-member board to oversee the expansion and availability of high-speed broadband services throughout the state, including the administration a broadband accessibility grant program.

The bill also creates the Alabama Digital Expansion Division within the Alabama Department of Economic and Community Affairs.

Finally, the bill authorizes the newly established, nine-member Alabama Digital Expansion Finance Corporation to issue bonds in an amount not to exceed \$250 million in any fiscal year.

Eligible projects covered by the corporation includes any project that the corporation determines would expand, increase, or improve the availability of high-speed broadband networks, services, or technologies throughout the state and that qualify for funding under the statewide connectivity plan and its objectives as set forth by the division.

### Emergency Management and Homeland Security

#### SB 112 – Temporary Fuel Tax Waivers

*Sponsored by Sen. Orr*

Authorizes the Commissioner of the Department of Revenue to temporarily waive requirements for the International Fuel Tax Agreement and the International Registration Plan during a declared state of emergency or disaster.

The bill also reduces the current additional license tax and registration fee of either \$200 or \$100, established for battery and plug-in hybrid electric vehicles respectively, to \$50 for electric low-speed vehicles that are registered and operated on the public (non-interstate) highways of the state.

## SJR 124 – Cybersecurity Awareness Recognition

*Sponsored by Sen. Waggoner*

Recognizes October 2021 as National Cybersecurity Awareness Month and urges Alabama’s citizens, companies, and institutions to recognize the importance of cybersecurity and to observe this month through events, training, and education that will further our country’s national security and resilience.

## Energy Efficiency

### HB 281 – Energy Efficiency Tax Credits Extension

*Sponsored by Rep. Gaston*

Extends to 2027 the tax credits associated with qualified rehabilitations of historic structures, which includes certain energy efficiency applications.

### SJR 72 – Portland Limestone Cement Use

*Sponsored by Sen. Sessions*

Encourages the Department of Finance and its Division of Construction Management to review the benefits of Portland limestone cement and adopt standards to incentivize its use in state building projects, with an emphasis on those funded by the Public School and College Authority, with a target date of October 1, 2022.

Portland limestone cement is commonly regarded as having a lower environmental footprint than that of traditional cement.

## Natural Gas and Petroleum

### SR 135 – Continental Shelf Leasing Support

*Sponsored by Sen. Sessions*

Supports continued Gulf of Mexico outer continental shelf leasing, and respectfully calls on the President and Congress to:

- Pursue policies of energy independence over foreign dependence while creating American jobs;
- Promote domestic energy infrastructure through the approval of the Keystone XL Pipeline and the removal of barriers that prevent or slow new oil and natural gas pipelines;
- Allow future exploration and production on federal lands and federal waters to ensure reliable and affordable energy for the citizens of the United States;
- Pursue policies that promote innovations through competitive markets to reduce greenhouse gases; and
- Continue to pursue policies that encourage domestic oil and natural gas production, which will result in lower greenhouse gas emissions and a healthier environment than oil and natural gas produced elsewhere in the world.

## Utilities

### HB 223 – Director’s Fee for Certain Utility Board Members

*Sponsored by Rep. Ledbetter*

Authorizes the governing body of certain municipalities to pay members of its utility boards a director’s fee, in an amount set by the governing body, which may increase or decrease the obligations of the municipality by an undetermined amount dependent upon the difference in the compensation set by the governing body and the compensation otherwise received by the board members.

### HB 446 – Energy Service Choice

*Sponsored by Rep. Faulkner*

Establishes that no governmental entity may prohibit a person or entity from using utility services from a provider capable of providing service and is otherwise authorized to do business in the state.

### HB 501 – Temporary Operations Allowance for Certain Energy Contractors

*Sponsored by Rep. Sanderford*

Provides a waiver process for the Alabama Board of Electrical Contractors, the State of Alabama Plumbers and Gas Fitters Examining Board, the Home Builders Licensure Board, the State Licensing Board for General Contractors, and the Board of Heating, Air Conditioning, and Refrigeration Contractors to use for allowing an employing entity, and its employed licensees, to continue operations on a temporary basis after the incapacity of the designated qualifying representative, license holder, or certificate holder.

### HJR 7 – Electric Authority Commendation

*Sponsored by Rep. Lee*

Congratulates the Alabama Municipal Electric Authority on its 40 years of service to its members.

### SB 49 – Sewer Upkeep Funding

*Sponsored by Sen. Chambliss*

Provides that the use of public funds to repair or replace sewer laterals on private property is a “public purpose,” and authorizes a county, municipality, or authority incorporated under Title 11, Code of Alabama 1975, to repair or replace a private sewer lateral or to transfer public funds for repair or replacement of a private sewer lateral.

The bill also allows for the recovery of the transfer amount or the cost of repair or replacement by prorating that amount on the utility bill of the owner of the private sewer lateral.

### SB 58 – Underground Damage Prevention Fund Clarifications

*Sponsored by Sen. Roberts*

Clarifies that the Underground Damage Prevention Fund is established within the State Treasury, and the bill provides that any monies received by the Underground Damage Prevention Authority prior to the passage of this act that were directed to be paid into the fund must be deposited into the fund.

## SB 74 – Constitutional Amendment Proposal for Expanded PSC Jurisdiction

*Sponsored by Sen. Waggoner*

Proposes an amendment to the Constitution of Alabama of 1901 that, if ratified, would bring certain privately owned sewer systems in Shelby County that use directly or through lease or contract, public rights-of-way of public roads under the jurisdiction of the Public Service Commission.

## SB 76 – Small Wireless Facilities Using Existing Infrastructure

*Sponsored by Sen. Orr*

Establishes a procedure authorizing wireless providers to collocate, mount, or install small wireless facilities on existing poles, or install new poles on the right-of-way of the state or any agency, county, or municipality thereof.

The act exempts small wireless facilities from certain zoning review and approval procedures. It also establishes a procedure for the permitting of the development of small wireless facilities and poles in the rights-of-way of the state.

Finally, the bill establishes rates and fees for all for small wireless facilities permitting.

# Environmental Legislation

## Emergency Management and Homeland Security

### SB 43 – Severe Weather Volunteer Guidelines

*Sponsored by Sen. Price*

Requires the state's Emergency Management Agency to develop guidelines for the volunteer designation of safer place facilities throughout the state to protect individuals during severe weather events.

## Environmental Health Services

### SB 264 – Game and Fish Fund Increases

*Sponsored by Sen. Chesteen*

Increases receipts to the Game and Fish Fund, administered by the Commissioner of Conservation and Natural Resources, by \$14 and \$50 respectively, for each resident or nonresident nighttime feral swine and coyote hunting license issued.

## Inland Water Resource Management and Conservation

### HB 631 – Reservoir Management Development Grants

*Sponsored by Rep. Crawford*

Establishes the Alabama State Reservoir Management Development Program to provide grants to qualified local entities for reservoir management development.

The Department of Conservation and Natural Resources Commissioner must adopt rules necessary to administer the program and meet the future needs of the grant program. The initial rules to implement the program must be adopted by April 1, 2022.

The law also increases vessel registration fees and provides for the distribution of the vessel registration.

## SJR 81 – Support for Local Control of Water Systems

*Sponsored by Sen. Waggoner*

Expresses support for local control of water and wastewater systems in Alabama and opposes federal and state mandates that promote material preferences for water, wastewater, and stormwater infrastructure, such as “open competition,” “innovative materials,” and other similar policies.

## Land Management and Conservation

### HB 565 – Constitutional Amendment Proposal for Park Enhancement

*Sponsored by Rep. Ledbetter*

Proposes a constitutional amendment that, if ratified, would allow the Alabama State Parks Enhancement Authority to issue up to \$80 million in general obligation bonds to be used for acquisition, construction, equipping, improvement, maintenance, provision, and renovation of Alabama state parks under the jurisdiction of the Department of Conservation and Natural Resources and up to \$5 million in obligations to be used for public historical sites and public historical parks under the jurisdiction of the Alabama Historical Commission.

The legislation also states that bond proceeds in excess of \$85 million must be allocated to the Alabama Forestry Commission for the capital improvement, renovation, equipping, acquisition, provision, construction, and maintenance of state forests.

### HB 573 – Constitutional Amendment Implementation Accompaniment

*Sponsored by Rep. Ledbetter*

Implements the provisions of the constitutional amendment proposed by House Bill 565 that, if ratified, would allow the Alabama State Parks Enhancement Authority created by this constitutional amendment to issue up to \$80 million in general obligation bonds to be used for acquisition, construction, equipping, improvement, maintenance, provision, and renovation of Alabama state parks system under the jurisdiction of the Department of Conservation and Natural Resources, and up to \$5 million in general obligation bonds to be used for public historical sites and public historical parks under the jurisdiction of the Alabama Historical Commission.

Further, the bill requires bond proceeds in excess of \$85 million be allocated to the Alabama Forestry Commission for the capital improvement, renovation, equipping, acquisition, provision, construction, and maintenance of state forests.

### SB 135 – State Parks Legislative Committee Membership

*Sponsored by Sen. Elliott*

Increases the membership of the Joint Legislative Committee on State Parks from 12 to 16 members.

### SB 32 – Alabama Land Bank Authority Modifications

*Sponsored by Sen. Coleman-Madison*

Removes the distribution procedure for proceeds received from the sale or disposition of tax delinquent property from the Alabama Land Bank Authority.

This bill also lowers the threshold needed for cities and counties to form local land banks from having 1,000 tax delinquent properties in the locality, to having 100 tax delinquent properties in the locality.



## **Solid Waste**

### **HB 335 – Solid Waste Contractual Limits**

*Sponsored by Rep. Baker*

Limits the duration of contracts entered into by certain local government entities for collection and disposal of residential solid waste to a period of no more than five years.

### **HB 564 – Taxing Biosolids**

*Sponsored by Rep. South*

Authorizes Jefferson County to levy a privilege license or excise tax on the disposal of biosolids composed of human sewage in a county landfill.

In the event that the tax is not paid, the operator of the landfill is liable for the tax. The bill states the proceeds from the tax must be used by the Jefferson County Commission exclusively for the county's solid waste program.

### **SB 56 – Solid Waste Fund Uses**

*Sponsored by Sen. Tim Melson*

Allows counties and municipalities that provide solid waste services to use funds in its solid waste reserve account over \$1 million for any lawful purpose in the best interest of the locality.

### **SJR 2 – Recognizing Recyclers as Essential**

*Sponsored by Sen. Jones*

Recognizes the members of the Scrap Recyclers Association of Alabama and the Institute of Scrap Recycling Industries as essential businesses, and their employees are essential workers who are necessary for the production and manufacturing of goods and products in Alabama and throughout the world.

## **Water Quality and Pollution Control**

### **HJR 196 – Clean Water Alabama Endorsement**

*Sponsored by Rep. Faust*

Recognizes the importance of water access in Alabama and declares that it is imperative that all Alabamians continue to work together to ensure that access to clean water remains available, and therefore endorses Clean Water Alabama and its mission.

Clean Water Alabama is a non-profit group focused on developing strategies protecting Alabama's water resources.

# ARKANSAS

Arkansas adopted **41** energy and environmental bills during its 2021 legislative session.

## ***Highlights:***

**HB 1665** establishes the Affordable Energy Act, which requires the Public Service Commission to conduct cost-benefit analyses regarding the useful life of existing electricity generators.

**HB 1944** provides for the process of advanced recycling.

## **Energy Legislation**

### Alternative Energy Development

#### HB 1893 – Modifying Electric and Hybrid Vehicle Definitions

*Sponsored by Rep. Brown and Sen. Johnson*

Exempts the following vehicles from the definition of an “electric vehicle” or “hybrid vehicle” that are subject to additional registration fees:

- Golf carts;
- Low-speed vehicles (weight rating of less than 3,000 lbs. and maximum speed of 35 mph);
- Electric motorcycles; and
- Hybrid motorcycles.

#### SB 225 – Clarifying Registration Fees for Certain Electric Vehicles

*Sponsored by Sen. Johnson and Rep. Holcomb*

Clarifies that the definition of “electric vehicle” includes a “plug-in electric vehicle,” making them subject to the \$200 additional registration fee.

The bill further defines a “plug-in hybrid electric vehicle” as a vehicle propelled by a combination of electricity that is supplied through a rechargeable battery that can be recharged by plugging into an electrical outlet or charging station and an internal combustion engine. A plug-in hybrid electric vehicle is subject to a \$100 additional registration fee, according to the law.

#### SB 246 – Exempting Electric Vehicle Registration Fees for Veterans

*Sponsored by Sen. Johnson and Rep. Holcomb*

Clarifies that the additional registration fee for hybrid and electric vehicles previously levied in 2019 do not apply to a vehicle registration where the person has been issued a military service or veteran’s special license plate.

## SB 632 – The Electric Vehicle Infrastructure Grant Program

*Sponsored by Sen. Johnson and Rep. Haak*

Creates the Electric Vehicle Infrastructure Grant Program and an associated fund.

The grant program, administered by the Secretary of the Department of Energy and Environment, has exclusive authority to award grants to public or private entities under the program to be used for construction, installation, and associated costs connected with the deployment of Level 2 and Level 3 charging facilities.

The Electric Vehicle Infrastructure Fund, according to the bill, will consist of general revenues authorized by law, money obtained from private grants or other sources, and any other revenues prescribed by law.

## Coal and Minerals

### HB 1442 – Taking Resources from State-Owned Property

*Sponsored by Rep. Bentley and Sen. Stubblefield*

Amends existing law over the taking of minerals, timber, or other resources on state-owned property.

The bill directs the Commissioner of State Lands to accomplish the following:

- Provide the necessary hardware and software systems to allow for the electronic acceptance, solicitation, communication, and the electronic publishing of all information, records, reports, applications, and other required material relating to the extraction of sand, gravel, timber, logs, oil, natural gas, casinghead gas, coal, and other minerals;
- Create and maintain a website to allow for the filing of all bids, correspondence, permit or lease issuance, production reports, and payments relating to the above items; and
- Maintain a database accessible through the website to allow complete electronic access to all filings of bids, correspondence, permit or lease issuance, production reports, and payments relating to the above items.

### SB 26 – Sales and Use Tax Rate Modifications for Coal Purchases

*Sponsored by Sen. Sturch and Rep. Smith*

Expands the reduced sales and use tax rate on utilities to include coal purchased by a manufacturer classified within sectors 31 through 33 or code 115111 of the North American Industry Classification System.

According to the legislation, the coal is required to be used directly in the actual manufacturing process to qualify for the reduced sales and use tax rate of 0.625 percent.

## Emergency Management and Homeland Security

### HB 1321 – Crimes Involving Critical Infrastructure

*Sponsored by Rep. Gazaway and Sen. Clark*

Adds language regarding offenses against critical infrastructure to statutes related to criminal mischief and criminal trespass.

The bill designates a first degree Class B felony charge for criminal mischief involving critical infrastructure, which comes with a sentencing range of 5-20 years and up to \$15,000 in fines. Criminal trespass involving critical infrastructure is now a Class D felony with a sentencing range of 0-6 years and up to \$10,000 in fines.

## SB 145 – Defining State Contractors

*Sponsored by Sen. Gilmore and Rep. Beaty*

Amends the Arkansas Emergency Management Assistance Compact to comply with changes made to the national standard.

Specifically in terms of liability, the measure includes political subdivisions, local government, private entities contracted with the party state or local government, and volunteers with the party state and local government as officers or employees of a party state.

## Natural Gas and Petroleum

### HB 1273 – Oil and Gas Owners’ Lien Act Of 2021

*Sponsored by Rep. Smith*

Establishes the Oil and Gas Owners’ Lien Act of 2021.

The bill creates a lien in favor of each owner of oil and gas to secure the obligations of a first purchaser to pay the sale price. The bill declares the lien is perfected automatically without the need to file a financing statement or other record and have a super-priority over other liens.

### HB 1442 – Taking Resources from State-Owned Property

*Sponsored by Rep. Bentley and Sen. Stubblefield*

Amends existing law over the taking of minerals, timber, or other resources on state-owned property.

The bill directs the Commissioner of State Lands to accomplish the following:

- Provide the necessary hardware and software systems to allow for the electronic acceptance, solicitation, communication, and the electronic publishing of all information, records, reports, applications, and other required material relating to the extraction of sand, gravel, timber, logs, oil, natural gas, casinghead gas, coal, and other minerals;
- Create and maintain a website to allow for the filing of all bids, correspondence, permit or lease issuance, production reports, and payments relating to the above items; and
- Maintain a database accessible through the website to allow complete electronic access to all filings of bids, correspondence, permit or lease issuance, production reports, and payments relating to the above items.

### SB 136 – Determination of Advantageous Market for Pipeline Companies

*Sponsored by Sen. Irvin and Rep. Pilkington*

Modifies gas rates in order to determine the lowest or most advantageous market for pipeline companies.

According to the bill, in determining the lowest or most advantageous market the Arkansas Public Service Commission may take into consideration various factors, including without limitation:

- Price;
- Methodology of production;
- Reliability of supply;

- Impact on customer choice; and
- Conditions associated with transportation or storage.

#### SB 419 – Extending Gas Assessments Exception

*Sponsored by Sen. Dismang and Rep. Jett*

Extends the existing law concerning the Oil and Gas Commission fund to keep the exception on the first four and one-half mills on gas assessments until 2023, which provides the money to the state’s general fund.

### Utilities

#### HB 1196 – Sales Tax Exemption for Water on Poultry Farms

*Sponsored by Rep. Christiansen*

Establishes a sales and use tax exemption for the sale of water used exclusively in the operation of a poultry farm.

To be eligible for the exemption, water consumed must be separately metered from water used for any other purpose by the taxpayer. Under the bill, the Department of Finance and Administration (DFA), may establish additional or alternate requirements for the metering of the water.

Additionally, the DFA may also require a water utility to obtain a certificate from the taxpayer certifying that the taxpayer is eligible for the exemption, according to the bill.

#### HB 1557 – Emergency Plan Requirements for Electric Utilities

*Sponsored by Rep. Murdock and Sen. Chesterfield*

Requires electric utilities to have an emergency plan in place for individuals with disabilities or the elderly during certain weather events, including requiring the required identification of emergency warming and cooling centers.

The bill further requires an electric utility to directly notify local governments of planned power outages and other emergency measures meant to reduce energy consumption.

#### HB 1665 – Affordable Energy Act

*Sponsored by Rep. Hawks and Sen. Ballinger*

Declares that, beginning in 2021 and every three years thereafter, the Arkansas Public Service Commission must:

- Evaluate the remaining useful life of an existing electric generating unit;
- Include in the evaluation a cost-benefit analysis, a rate impact analysis, and an analysis of the impact on the reliability and resilience to the state’s electrical utility grid system; and
- Explicitly state the commission’s findings of whether life extensions of existing electric generating units are in the public interest.

#### SB 65 – Public Comment Availability for Certain State Emission Plan Components

*Sponsored by Sen. Ballinger and Rep. Beck*

Amends the law regarding state emission plans for fossil fuel-powered electric generating units to require a period of public comment on a proposed plan, permit amendments, rule amendments, or administrative orders necessary to implement a state plan for regulating carbon dioxide emissions from covered electric generating units.

The law states that beginning one year after the initial compliance date specified in the state plan and each year thereafter, the division, in coordination with the Arkansas Public Service Commission and the Arkansas Economic Development Commission, must submit the annual reports required under this law to the Legislative Council.

If a state approved plan results in increased electric or natural gas bills for customers, the Division of Environmental Quality must initiate development of a revised state plan that reduces the financial impacts to any customer class, according to the bill.

Finally, the legislation clarifies that the state plan previously approved by the U.S. Environmental Protection Agency must remain in effect while until the revised plan is developed and approved.

#### SB 137 – Energy Service Choice

*Sponsored by Sen. Irvin and Rep. Pilkington*

Prohibits discrimination on the basis of the energy source of a utility service.

The bill declares that a local government may not enact or adopt any ordinance, policy, or action that infringes, prohibits, or otherwise impairs the right of a customer to purchase, use, connect, or reconnect to a utility service, or to install in a building or other structure wires, pipes, or other conduits for the purpose of purchasing, using, connecting, or reconnecting to a utility service, on the basis of the energy source of the utility service to be delivered to the customer.

#### SB 386 – Water Distribution Oversight

*Sponsored by Sen. Clark and Rep. Love*

Designates the state Natural Resources Commission and the Health Departments as the leading state agencies with oversight over the entire state’s water distribution.

The bill states that all water distribution systems must conduct a fiscal audit every five years to accurately determine the cost of operating the system, including the cost of long-term maintenance and debt service, and rates must be set high enough to meet those costs.

Finally, the bill also requires a majority of the board members of a water provider to take at least eight hours of training. If they do not do so, then the system would face penalties.

#### SB 456 – Exempting Certain Purchases from Bid Requirements

*Sponsored by Sen. Stubblefield and Rep. Fite*

Declares that, among many other things, the following items are exempt from the bid requirements set forth for municipalities by the state:

- Utility services purchased at wholesale or the rates for which are subject to regulation by a state agency or a federal regulatory agency; and
- Motor fuels, oil, asphalt, asphalt oil, and natural gas.

#### SB 489/HB 1662 – Formula Rate Review Amendments

*Sponsored Rep. Maddox and Sen. Davis*

Amends the formula rate review act to specify that an “electric or natural gas” is the type of utility regulated under a formula rate review and water or sewer public utilities may request to be regulated by the same law.



According to the law, when calculating the adjustment to net any differences, the Arkansas Public Service Commission (PSC) must include the actual historical year change in revenue for a historical year, which must be determined as follows:

- For the purpose of including all of the elements of the change of revenue in calculating an adjustment to net any differences under subdivision (e)(1) of this section, the PSC must ensure that the revenue received for the historical year must be composed of:
  - Prior formula rate review test period 18 changes in revenue;
  - Netting revenue from a prior formula rate review test period; and
  - In order to isolate the change in revenue for the corresponding prior projected year being netted, prior projected year revenue for the year being netted; and
- The PSC must calculate an adjustment to net any differences under this law by calculating the differences between the prior formula rate review test period changes in revenue and the prior projected year revenue for the year being netted.

Further, the bill declares that PSC must not make any adjustments to the rates that are approved in the application for a general change in rates and charges during the formula rate review term except for those mandated by prior law.

#### SB 588 – Cost Recovery for Gas Utilities

*Sponsored by Sen. Ballinger and Rep. Beck*

Allows a gas utility to recover the cost of restoration of damages caused by storms and related perils through securitization of the storm restoration and related costs.

The act also allows for the recovery through securitization by an electric utility and a gas utility of reasonable and prudent costs to purchase and receive natural gas, fuel, or purchased power at extraordinary cost in immediate preparation for, or in response to, a storm.

#### SB 647 – Automatic Audit Threshold for Water and Sewer Systems

*Sponsored by Sen. Dismang*

Amends law concerning the annual audit of water and sewer systems to raise the automatic audit threshold from 750 connections within a system to 2,000.

#### SB 689 – Financing Cost of Storms and Related Perils

*Sponsored by Sen. Ballinger and Rep. Beck*

Allows a municipal electric utility to finance the associated costs with storms and related perils, including the cost to purchase gas, fuel, or power in preparation for, or in response, to a storm.

The bill states that a municipality may not issue bonds for the sole purpose of paying storm recovery costs related to a storm unless:

- The Arkansas Public Service Commission has previously adopted a financing order that allows for the issuance of storm recovery bonds by a public utility due to the same storm; or

- Upon request to the commission for an emergency storm declaration.

A municipality that issues bonds for the purpose of payment of storm recovery costs must take reasonable steps to mitigate the financial impact of bonds on customers of a municipal electric utility by:

- Pursuing recovery of costs incurred during storm recovery operations that were unnecessary or unreasonable; and
- Utilizing any grant funding or assistance to reduce the amount of storm recovery costs that may be available to the municipality.

## **Environmental Legislation**

### **Air Quality and Pollution Control**

SB 65 – Public Comment Availability for Certain State Emission Plan Components

*Sponsored by Sen. Ballinger and Rep. Beck*

Amends the law regarding state emission plans for fossil fuel-powered electric generating units to require a period of public comment on a proposed plan, permit amendments, rule amendments, or administrative orders necessary to implement a state plan for regulating carbon dioxide emissions from covered electric generating units.

The law states that beginning one year after the initial compliance date specified in the state plan and each year thereafter, the division, in coordination with the Arkansas Public Service Commission and the Arkansas Economic Development Commission, must submit the annual reports required under this law to the Legislative Council.

If a state approved plan results in increased electric or natural gas bills for customers, the Division of Environmental Quality must initiate development of a revised state plan that reduces the financial impacts to any customer class, according to the bill.

Finally, the legislation clarifies that the state plan previously approved by the U.S. Environmental Protection Agency must remain in effect while until the revised plan is developed and approved.

### **Environmental Health Services**

HB 1636 – Taking Feral Hogs Without a License

*Sponsored by Rep. Vaught and Sen. Hammer*

Amends the law regarding feral hogs, such that a person with a revoked hunting license may kill feral hogs on his or her own property.

HB 1664 – Environmental Compliance Officer Authority

*Sponsored by Rep. Vaught and Sen. Johnson*

Amends the environmental compliance resource act to clarify the authority of an environmental compliance officer and the environmental violations cited by environmental officers.

The bill specifies the funds associated with fines and administrative penalties associated with improper feral hog hunting are revenue for the Department of Agriculture. Previously, the funds had been directed to the Arkansas Natural Resources Commission, a division of the department.

## Hazardous Waste and Substance Management

### HB 1351 – PFAS Prohibition for Firefighter Training

*Sponsored by Rep. Wing and Sen. Flippo*

Declares that, beginning Jan 1, 2022, a person, local government, or state agency must not discharge class B firefighting foam that contains intentionally added per- and polyfluoroalkyl substances, more commonly known as PFAS chemicals, for training purposes in a foam training facility.

The bill also states the foam may not be used for testing purposes, except where required by law or ordinance if the appropriate measures to prevent accidental release of the chemical into the environment are first taken.

### SB 585 – Electronic Waste Collection, Recycling, and Reuse Act

*Sponsored by Sen. Wallace*

Establishes an Electronic Waste Recycling Program and a Collection Recovery Plan.

According to the legislation, before a program for the collection, recovery, transport, recycling, refurbishing, and marketing and distribution for reuse for consumer electronic items may be established, a contract administrator must:

- Develop a recovery plan; and
- Submit the recovery plan to the Division of Environmental Quality.

The recovery plan required under subsection (a) of this section must be updated every five years from the start date of the initial approval of the recovery plan.

At a minimum, the recovery plan must include a:

- Prohibition of a recycling fee at the retail point of purchase or point of sale of a consumer electronic item;
- Reasonable and convenient access to recovery and collection options for an eligible entity, including local and regional collection options;
- Comprehensive, convenient, environmentally, and economically sound collection system operated by a contractor and supervised and administered by a contract administrator that may include specific logistical criteria including without limitation the location, size, and number of eligible entities;
- Plan for marketing and distribution of collected consumer electronic items or components for individual, business, educational, or other use;
- Sustainability plan ensuring appropriate public or private funding of the program, which may include grants, appropriations, donations, or fees for service;
- Communications and promotion program informing an eligible entity on how and where consumer electronic items may be collected and recovered for recycling and reuse in compliance with Arkansas law,

including a website that the general public and eligible entities may access to be informed how and where to return consumer electronic items for recovery, recycling, refurbishing, and marketing and distribution for reuse; and

- Condition or requirement as may be required by the contract administrator.

The bill further requires hazardous waste and hazardous substances, including mercury, lead, cadmium, beryllium, and similar substances found in consumer electronic items or components must be managed, recycled, and disposed of in accordance with local, state, and federal law.

## Inland Water Resource Management and Conservation

### HB 1314 – Water Resource Credits

*Sponsored by Rep. Hillman and Sen. Hill*

Amends the maximum credits allowed under the Water Resource Conservation and Development Incentives Act.

The increases affect the water impoundment credit, surface water outside critical areas credit, surface water inside critical areas credit, and a land leveling credit.

The legislation also increases the carry forward period for all unused water conservation credits to 15 years and extends the completion deadline for projects from three to five years.

Finally, the bill doubles the amount of credits necessary to trigger the sunset of the tax credits from \$10,000,000 to \$20,000,000.

### HB 1773 – Water Conservation and Development Project Timelines

*Sponsored by Rep. Hillman*

Revises the Water Resource Conservation and Development Incentives Act to increase the time allowed for project completion from three to five years from the date of the tax credit approval.

### SB 536 – Buffalo River Conservation Committee

*Sponsored by Sen. Irvin*

Establishes the Buffalo River Conservation Committee.

The committee is tasked with creating measurable objectives and leading partnership projects to benefit water quality and resource management in the Buffalo River Watershed.

The legislation outlines the committee's duties as such:

- Work in cooperation with each member to identify opportunities to leverage each member's respective department's unique expertise, relationships, focus areas, and funding mechanisms in support of the vitality of the Buffalo River Watershed;
- Conduct an annual review of the Buffalo River Watershed Management Plan and include recommendations for updates of the plan and a report on successes during the year, as identified by the committee, to be submitted to the Governor;
- Establish subcommittees to lead various aspects of implementing the Buffalo River Watershed Management Plan;

- The subcommittees must identify opportunities for training, relationship building, and specific projects, all of which must be in service to preserving and enhancing water quality within the Buffalo River Watershed;
- Further develop the concepts from the Buffalo River Watershed Management Plan to incorporate additional tools and strategies as necessary;
- Consciously consider and act on the most recent pertinent available data related to water quality concerns and opportunities in the Buffalo River Watershed;
- Create an emphasis on action items that engage local stakeholders and landowners that have both a positive impact on water quality and are beneficial for landowners within the Buffalo River Watershed; and
- Consider the continued sampling and analysis of water quality data throughout the Buffalo River Watershed as vital for informing the work of the committee and its member agencies and organizations.

## Land Management and Conservation

### HB 1113 – Developing Schools on Donated Land

*Sponsored by Rep. Dotson Sen. English*

Amends the Commissioner of State Lands Urban Homestead Act to permit the development of schools on land donated by the Commissioner of State Lands when the land is not being used as a homestead.

### HB 1442 – Taking Resources from State-Owned Property

*Sponsored by Rep. Bentley and Sen. Stubblefield*

Amends existing law over the taking of minerals, timber, or other resources on state-owned property.

The bill directs the Commissioner of State Lands to accomplish the following:

- Provide the necessary hardware and software systems to allow for the electronic acceptance, solicitation, communication, and the electronic publishing of all information, records, reports, applications, and other required material relating to the extraction of sand, gravel, timber, logs, oil, natural gas, casinghead gas, coal, and other minerals;
- Create and maintain a website to allow for the filing of all bids, correspondence, permit or lease issuance, production reports, and payments relating to the above items; and
- Maintain a database accessible through the website to allow complete electronic access to all filings of bids, correspondence, permit or lease issuance, production reports, and payments relating to the above items.

### HB 1706 – Logging and Wood Fiber Transportation Job Creation Incentive Act

*Sponsored by Rep. Wardlaw and Sen. Dismang*

Establishes an “Arkansas Wood Energy Products and Forest Maintenance Income Tax Credit” that allows a credit against taxes owed in an amount equal to 30 percent of the costs of wood energy products equipment purchased for use in Arkansas by a taxpayer that is engaged in the business of collecting, separating, treating, pulverizing, drying, modifying, or manufacturing wood energy products and has been certified as owning a qualified wood energy products and forest maintenance project.

The credit is caveated with the requirement for a cost-benefit analysis of projects and binding incentive agreements with performance criteria and certain claw back provisions.

## Radioactive Waste

### HB 1154 – Radioactive Waste Definitions and Compliance

*Sponsored by Rep. Ladyman and Sen. Wallace*

Updates prior law regarding ionizing radiation to comply with current federal laws and regulations.

The bill modifies various definitions and references, including changing references to “special nuclear materials” to “radioactive materials.” It also adds enhanced definitions for “by-product” materials.

The bill also provides a definition for “transuranic waste” as “radioactive waste containing alpha-emitting transuranic elements with radioactive half-lives greater than five years, in excess of 10 nanocuries per gram.”

### HB 1890 – Concerning Spent Nuclear Fuel Rods

*Sponsored by Rep. Ladyman*

Requires the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor meet jointly to conduct a study on the commercial application of existing technology to reclaim and repurpose spent nuclear fuel rods.

The study required under this bill must include the following:

- An assessment of a specific program to offer to the federal government to include a proposed location in Arkansas and for the assets required to close the nuclear fuel cycle and request funding for the establishment of an education, risk analysis, and optimization design program;
- The assembly of a team of interested stakeholders with expertise to submit a funding application to the United States Department of Energy, including individuals from the:
  - General Assembly;
  - Executive department;
  - University of Arkansas; and
  - Argonne National Laboratory.

The committee must present a final report by December 1, 2022, according to the bill.

## Solid Waste

### HB 1944 – Defining Advanced Plastic Recycling

*Sponsored by Rep. Wing*

Removes the solid waste classification from post-use polymers or recovered feedstocks to allow for “advanced plastic recycling,” which is defined in the law as a manufacturing process for the conversion of post-use polymers and recovered feedstocks into basic hydrocarbon raw materials, feedstocks, chemicals, and other products, as well as mechanical recycling, however, the process may not be used as a substitute for energy production.



## SB 21 – Defining Mill Scale and Slag

*Sponsored by Sen. Wallace and Rep. Rye*

Removes “mill scale and slag” from the definition of solid waste and recategorizes it as such:

- Mill scale and slag means by-products that are a result of the steel manufacturing process that are managed as items of value in a controlled manner and used in a manner of beneficial reuse; and
- Mill scale and slag does not include by-products that are a result of the steel manufacturing process that would otherwise qualify as hazardous waste or that are determined to be discarded materials.

## SB 262 – Solid Waste Management Facility Modifications

*Sponsored by Sen. Hester and Rep. Eaves*

Removes the requirement that the licensing committee advising and assisting in the administration of licensing operators of solid waste management facilities include an on-site operator or supervisor of a waste tire processing facility.

The bill also requires a representative of a designated “Solid Waste Operator training academy” serve as a non-voting member, and it lengthens the validity of license from one to two years.

## Water Quality and Pollution Control

### HB 1261 – State Water Control Agency Authority

*Sponsored by Rep. Ladyman*

Authorizes the State Water Control Agency to seek and accept delegation of the permitting program for Section 404 of the Federal Clean Water Act activities and administer the permitting program in lieu of the United States Army Corps of Engineers.

### SB 240 – Expanding Definition of Nonmunicipal Domestic Sewage Treatment Works

*Sponsored by Sen. Wallace and Rep. Coleman*

Prevents the disruption of operation of domestic sewage treatment systems overseen by public facility boards or public water authorities by adding “public facilities board” and “public water authority” to the definition of “nonmunicipal domestic sewage treatment works.”

# FLORIDA

Florida adopted **13** energy and environmental bills during its 2021 legislative session. Several bills were awaiting the Governor's signature at the time of printing.

## ***Highlights:***

**HB 839** preempts a municipality, county, special district, or political subdivision from prohibiting the siting, development, or redevelopment of a fuel retailer or the necessary related transportation infrastructure within that specific local government's entire jurisdiction.

**SB 1954** establishes statewide resiliency programs that assess and address inland and coastal flooding and sea level rise.

## **Energy Legislation**

### Alternative Energy Development

SB 630 – Alternative Fueling Infrastructure and Housing Associations

*Sponsored by the Rules Committee, Regulated Industries Committee, and Sen. Baxley*

Revises the regulation and governance of condominium, cooperative, and homeowners' associations.

Specifically, with regard to condominium associations, the bill permits unit owners to install a charging station for an electric vehicle or a natural gas fuel vehicle on a parking area exclusively designated for use by the unit owner. The law states the unit owner is required to be responsible for the costs related to the installation, maintenance, and removal of the charging station for an electric vehicle or a natural gas fuel vehicle.

### Utilities

HB 1239 – Broadband Access Expansion

*Sponsored by the Commerce Committee, the House Ways and means Committee, and Rep. Tomkow*

Creates two new programs supporting the expansion of broadband Internet service to consumers without access to service.

First, the bill creates a program within the Florida Office of Broadband, within the Department of Economic Opportunity (DEO) to award grants, subject to appropriation, to applicants who seek to install or deploy infrastructure that expands broadband service to unserved areas. The bill specifies the types of entities eligible for such grants, provides application requirements and evaluation criteria, and requires the office to enter into an agreement with each grant recipient that specifies performance conditions, including potential sanctions.

The bill also establishes a process by which an existing broadband provider may challenge a grant application on the grounds that the provider already offers or plans to offer service in the area at issue, and it provides limitations on grant awards and requires the office to prepare an annual report summarizing the activity under this program.

Second, the bill requires municipal electric utilities, through July 1, 2024, to offer broadband service providers a discounted rate of \$1 per attachment per year for any new pole attachment necessary to make broadband service available to an unserved or underserved consumer within the utility's service territory. The measure provides safety and reliability standards for pole attachments and specifies each party's responsibility for costs associated with replacement poles necessary to make attachments, and it prohibits municipal electric utilities from raising their current pole attachment rates for broadband providers before July 31, 2022.

Further, the bill amends and creates definitions applicable to these programs and provides DEO with rulemaking authority to implement these programs, and it requires local technology planning teams established by the office to work with rural communities to help identify unserved and underserved consumers and to work with broadband providers to identify opportunities and reduce barriers to the deployment of service. The bill provides a nonrecurring appropriation of \$1.5 million for Fiscal Year 2021-2022 to DEO to develop, by June 30, 2022, geographic information system maps of broadband Internet service availability throughout the state.

#### HB 735 – Preempting Local Licensing for Energy Contractors

*Sponsored by Rep. Harding*

Codifies the current practice whereby counties and municipalities issue journeyman licenses in the plumbing, pipe fitting, mechanical and HVAC trades, as well as the electrical and alarm system trades.

#### HB 839 – Energy Service Choice

*Sponsored by the Local Administration and Veterans Affairs Committee, the Tourism, Infrastructure and Energy Subcommittee, and Rep. Fabricio*

Preempts a municipality, county, special district, or political subdivision from prohibiting the siting, development, or redevelopment of a fuel retailer or the necessary related transportation infrastructure within that specific local government's entire jurisdiction.

Further, the legislation preempts any action by a municipality, county, special district, or political subdivision resulting in a de facto jurisdiction-wide prohibition against a fuel retailer or the necessary related transportation infrastructure, and it preempts mandating any required infrastructure on a fuel retailer, including electric vehicle charging stations.

The bill does not preempt a municipality, county, special district, or political subdivision from adopting and implementing ordinances, regulations, policies, or resolutions on the siting, development, or redevelopment of fuel retailers or necessary related transportation infrastructure that are consistent with other allowable uses and general law.

## Environmental Legislation

### Coastal Zone Management

#### HB 223 – Prohibition of Mooring Vessels in Certain Areas During a Hurricane

*Sponsored by the State Affairs Committee, the Pandemics and Public Emergencies Committee, and Rep. Plasencia*

Prohibits vessels under 500 gross tons from remaining in the waters of marinas that have been deemed not suitable for refuge during a hurricane.

The bill requires vessel owners to promptly remove their vessels from the waterways upon issuance of an evacuation order by the deepwater seaport, and it specifies that if the Coast Guard captain of the port sets the port condition to “Yankee” and a vessel owner has failed to remove a vessel from the waterway, the marina owner must remove the vessel and may charge the vessel owner a reasonable fee for the removal.

In addition, the bill specifies that a marina owner may not be held liable for any damage incurred to a vessel from a hurricane and is held harmless as a result of such actions to remove the vessel from the waterways, unless the damage was caused by intentional acts or negligence.

Finally, the bill authorizes the deepwater seaport to impose and collect a fine in an amount not to exceed three times the cost associated with removing a vessel from the waterway if, after the hurricane watch has been issued, the owner or operator of a vessel has not removed the vessel from the waterway of the marina pursuant to an order from the deepwater seaport.

## **Environmental Health Services**

### **HJR 1377 – Constitutional Amendment Proposal Concerning Flood Resistance and Property Value**

*Sponsored by Rep. Chaney*

Proposes an amendment to the Florida Constitution authorizing the Legislature to, for the purposes of determining a property’s assessed value, prohibit the consideration of any change or improvement to real property used for residential purposes made to improve the property’s resistance to flood damage.

The joint resolution will be considered by the electorate at the next general election in November 2022. If adopted at the 2022 general election, the resolution would take effect January 1, 2023.

### **SB 524 – Fish and Wildlife Conservation Commission Trust Funds**

*Sponsored by Sen. Hooper*

Revises several of the Fish and Wildlife Conservation Commission’s trust funds to allow the agency to use trust fund revenues for administrative costs and to specifically authorize the investment of funds within the State Treasury.

### **SB 1018 – Genetic Testing of Bass**

*Sponsored by the Rules Committee, Environment and Natural Resources Committee, and Sen. Boyd*

Requires the Department of Agriculture and Consumer Services, in consultation with specified entities, to adopt a rule requiring certain facilities to maintain stock acquisition documentation or records of genetic testing related to Florida largemouth bass.

## **Inland Water Resource Management and Conservation**

### **HB 169 – Water Management District Purchase Authorization**

*Sponsored by Rep. Maggard and Rep. Roth*

Authorizes water management districts to purchase commodities and contractual services, excluding certain professional services, from the purchasing contracts of special districts, municipalities, counties, other political subdivisions, educational institutions, other states, nonprofit entities, purchasing cooperatives, or the federal government that have been procured pursuant to competitive bid, request for proposal, request for qualification, competitive selection, or competitive negotiation.

## SB 2516 – Water Storage North of Lake Okeechobee

*Sponsored by the Senate Appropriations Committee*

Requires the South Florida Water Management District (SFWMD), in partnership with the U.S. Army Corps of Engineers (USACE), to expedite the implementation of the Lake Okeechobee Watershed Restoration Project (LOWRP).

The bill requires the SFWMD to:

- Request the USACE to seek expedited congressional approval of the LOWRP;
- Execute a project partnership agreement with the USACE immediately following approval;
- Expedite implementation of the aquifer storage and recovery (ASR) science plan developed by the SFWMD and the USACE;
- Expedite implementation of the watershed ASR features of the LOWRP by the following dates:
  - By August 1, 2021, construct or contract for exploratory and monitoring wells to evaluate site suitability for ASR in the Kissimmee River and Taylor Creek/Nubbin Slough Basins;
  - By January 30, 2022, reactivate the existing ASR system in the Kissimmee River Basin;
  - By December 31, 2022, contract for exploratory and monitoring wells to evaluate site suitability for ASR on all other feasible LOWRP watershed ASR sites; and
  - By March 30, 2027, ensure that all feasible ASR systems are operational on all currently or subsequently proposed sites that are determined to be suitable for the LOWRP ASR.
- Pursue expeditious implementation of the LOWRP wetland restoration features; and
- Submit a report to the Legislature describing the SFWMD's compliance with the bill, including steps taken, plans for ongoing compliance, and specified updates related to the LOWRP implementation, by November 1, 2021.

## Reorganization and Coordination

### SB 1954 – Statewide Flooding and Sea Level Rise Resilience

*Sponsored by Appropriations Committee, Environment and Natural Resources Committee, and Sen. Rodrigues*

Establishes statewide resiliency programs that assess and address inland and coastal flooding and sea level rise.

The bill creates:

- The “Resilient Florida Grant Program” within the Department of Environmental Protection (DEP), which provides funding, subject to appropriation, to local governments for the costs of resilience planning and projects to adapt critical assets, as defined in the bill;
- The “Comprehensive Statewide Flood Vulnerability and Sea Level Rise Data Set and Assessment,” to be updated every five years. The DEP must:
  - Develop a statewide data set necessary to determine the risks to inland and coastal communities, including statewide sea level rise projections; and

- Develop a statewide assessment, based on the statewide data set, which identifies vulnerable areas, infrastructure, and critical assets.
- The “Statewide Flooding and Sea Level Rise Resilience Plan,” in which the DEP must annually submit a plan proposing up to \$100 million in funding for projects that address risks from flooding and sea level rise.

The bill authorizes local governments, regional resilience entities, and water management districts to submit lists of proposed projects to the DEP for inclusion in the plan, and the DEP, subject to appropriation, to provide funding to regional resilience entities for providing technical assistance, coordinating multijurisdictional vulnerability assessments, and developing project proposals for the statewide resilience plan.

## Solid Waste

### SB 694 – Notice for Displacement of Solid Waste Collection Services and Bags Report

*Sponsored by the Senate Appropriations Committee and the Community Affairs Committee*

Amends the requirement that a local government must either provide three years’ notice before its solid waste collection service displaces a private waste company or pay the displaced company an amount equal to the company’s preceding 15 months’ gross receipts for the displaced service.

The bill requires a local government that displaces a solid waste collection service to provide a three-year notice period and pay the displaced company an amount equal to the company’s preceding 18 months’ gross receipts at the end of the notice period. It specifies that this does not apply to any displacement where the local government provided three years notice on or before December 31, 2020.

The measure also defines the term “storm-generated yard trash” to expressly include storm-generated debris. It further provides that a private solid waste or debris management service provider is not required to collect such debris unless it is otherwise specified in a contract or agreement with a local government.

Finally, the act directs the Department of Environmental Protection (DEP) to review and update their 2010 Retail Bags Report. The DEP must submit the updated report with conclusions and recommendations to the legislature by December 31, 2021. Until such time that the legislature adopts the recommendations of the DEP, a local government, local governmental agency, or state governmental agency may not enact any rule, regulation, or ordinance regarding use, disposition, sale, prohibition, restriction, or tax of such auxiliary containers, wrappings, or disposable plastic bags.

## Water Quality and Pollution Control

### SB 64 – Nonbeneficial Surface Water Discharge Plan

*Sponsored by Environment and Natural Resources Committee and Sen. Albritton*

Creates a timeline and plan to eliminate nonbeneficial surface water discharge within five years.

The measure requires domestic wastewater utilities that dispose of effluent, reclaimed water, or reuse water by surface water discharge to submit a five-year plan to eliminate nonbeneficial surface water discharge to the Department of Environmental Protection by November 1, 2021.

The bill also:

- Specifies that potable reuse is an alternative water supply, for purposes of making reuse projects eligible for alternative water supply funding;
- Incentivizes the development of potable reuse projects;
- Incentivizes residential developments that use graywater technologies; and
- Specifies the total dissolved solids allowable in aquifer storage and recovery in certain circumstances.

## GEORGIA

Georgia adopted **20** energy and environmental bills during its 2021 legislative session.

### **Highlights:**

**HB 150** prohibits governmental entities from adopting any policy that prohibits the connection or reconnection of any utility service based upon the type or source of energy or fuel.

**HB 355** provides for the inclusion of building products in construction on the Georgia Carbon Sequestration Registry.

## Energy Legislation

### Alternative Energy Development

SR 201 – Resolution Concerning SK Innovation Settlement

*Sponsored by Sens. Miller, Gooch, Dixon, Ginn, and Hatchett*

Commends SK Innovation’s long-term investment in Georgia and calls upon LG to work with SK Innovation to negotiate in good faith to reach a favorable settlement to address the intellectual property issue in order to protect the United States’ competitive edge in electric vehicle battery protection and supply chain and ensure the success of the Jackson County factory and the associated jobs. *[Editor’s note: SK Innovation reached a settlement with LG on April 11, 2021.]*

### Energy Efficiency

SB 213 – Energy Savings Contracts

*Sponsored by Sens. Harper, Payne, Mullis, Summers, and Gooch*

Provides for payment on guaranteed energy saving contracts by local school systems using proceeds from local option sales taxes collected for educational purposes.

The bill further requires the phased implementation of energy cost savings measures, which the bill redefines to include “a facility alteration, a training program incidental to the contract, or an equipment purchase to be used in building a retrofit, addition, or renovation or in new construction which reduces designed to reduce energy or water consumption, wastewater production,” and any other measure not otherwise defined by the bill which is “designed to reduce energy or water consumption, reduce wastewater production, avoid capital costs, or achieve similar efficiency gains.”

## **Natural Gas and Petroleum**

### **HB 625 – Tri-County Natural Gas Authority Act**

*Sponsored by Reps. Rhodes, Powell, and Leverett*

Creates the Tri-County Natural Gas Authority in order to provide natural gas services within the service delivery area in the same manner as such services are provided by the cities on the effective date of the bill.

## **Reorganization and Coordination**

### **HB 762 – Fulton Technology and Energy Enhancement Authority**

*Sponsored by Reps. Mainor, Thomas, Evans, Roberts, Moore, and Jones*

Establishes the Fulton Technology and Energy Enhancement Authority in order to “identify, target, and alleviate the specific elements relating to the underdevelopment of technological resources and energy burdens which are causing poverty, increased unemployment rates, and statistics comparable to failing school rates and underdevelopment in these pockets and develop programs to address them.”

The authority’s purpose is further defined as reducing “poverty in the communities west of the main campus of the Georgia Institute of Technology by simultaneously creating jobs in the nontraditional trades of technology and energy.”

### **HR 143 – Broadband Infrastructure Authorization**

*Sponsored by Reps. Greene, Pirkle, and Dunahoo*

Authorizes the granting of nonexclusive easements for the construction, installation, operation, and maintenance of facilities, utilities, roads, and ingresses and egresses in, on, over, under, upon, across, or through property owned by the State of Georgia in Barrow, Bartow, Bibb, Camden, Carroll, Chatham, Glynn, Harris, Macon, Montgomery, Murray, Paulding, Polk, Rabun, Talbot, Troup, Walton, Ware, and Washington Counties.

According to the law, the easement is granted to Granite-Active Networks for the exclusive purpose of constructing, installing, operating, and maintaining high-speed internet cable.

## **Utilities**

### **HB 150 – Energy Service Choice**

*Sponsored by Reps. Williamson, Hatchett, Kelley, Frazier, Parsons, and L. Smith*

Prohibits governmental entities from adopting any policy that prohibits the connection or reconnection of any utility service based upon the type or source of energy or fuel.



## HB 156 – Utility Cyberattack Reporting Requirements

*Sponsored by Reps. Parsons, Martin, Kelley, V. Smith, Nix, and Mainor*

Requires governmental agencies and utilities to report any cyberattacks to the director of emergency management and homeland security.

According to the bill, the reporting requirements of the bill are met if:

- The cyberattack incident, data breach, or identified use of malware upon an agency is of a nature required to be reported to the United States government or any agency thereof or the agency elects to report such cyberattack incident, data breach, or identified use of malware to the United States government or any agency thereof; and
- Within two hours of making such report to the United States government or any agency thereof, the agency provides substantially the same information to the director of emergency management and homeland security or his or her designee.

## Environmental Legislation

### Air Quality and Pollution Control

#### HB 355 – Georgia Carbon Sequestration Registry and Building Products

*Sponsored by Reps. Wiedower, Jones, L. Smith, Gaines, Burns, and Kausche*

Provides for the inclusion of building products in construction on the Georgia Carbon Sequestration Registry.

The measure also allows participants in the registry to voluntarily report the utilization of carbon sequestration and embodied carbon results, and it establishes the Sustainable Building Technical Advisory Committee in order to ensure the interoperability, general alignment, and compatibility of credits derived from the carbon sequestration results of building materials and embodied carbon results with global carbon credit and offset markets, including establishing guidelines for establishing a carbon baseline, additionality, validation, verification, permanence, and co-benefits.

The State Forestry Commission is required to publish and maintain a list of approved certified third-party organizations capable of verifying the building embodied carbon from a baseline of standard buildings established by the advisory committee.

### Environmental Health Services

#### HB 511 – Creation of Various Trust Funds

*Sponsored by Reps. Reeves, England, Blackmon, Williamson, and Mitchell*

Provides for the establishment or revision of the Georgia Outdoor Stewardship Trust Fund, Solid Waste Trust Fund, Hazardous Waste Trust Fund, State Children's Trust Fund, Wildlife Endowment Trust Fund, Trauma Care Network Trust Fund, Transportation Trust Fund, Georgia Agricultural Trust Fund, Fireworks Trust Fund, and Georgia Transit Trust Fund as funds within the state treasury.

## **Hazardous Waste and Substance Management**

### **HB 511 – Creation of Various Trust Funds**

*Sponsored by Reps. Reeves, England, Blackmon, Williamson, and Mitchell*

Provides for the establishment or revision of the Georgia Outdoor Stewardship Trust Fund, Solid Waste Trust Fund, Hazardous Waste Trust Fund, State Children’s Trust Fund, Wildlife Endowment Trust Fund, Trauma Care Network Trust Fund, Transportation Trust Fund, Georgia Agricultural Trust Fund, Fireworks Trust Fund, and Georgia Transit Trust Fund as funds within the state treasury.

## **Inland Water Resource Management and Conservation**

### **HB 160 – Wastewater Projects and Costs Tax Clarification**

*Sponsored by Reps. Boddie, Dreyer, Schofield, and Mainor*

Redefines the term “municipality” as it relates to water and sewer projects and costs tax, referred to as the municipal option sales tax (MOST).

The law clarifies that, for the purposes of the tax considerations, a “municipality” includes “a municipality in which the average wastewater flow of such municipality is not less than 85 million gallons per day” or “a municipality that operates a wastewater system that interconnects with the wastewater system of a municipality that has an average wastewater flow that is not less than 85 million gallons per day.”

### **HB 244 – Flood Risk Reduction Funding**

*Sponsored by Reps. Hogan, DeLoach, Sainz, Meeks, and Williams*

Amends statutes relating to the funding of services or reduction of ad valorem taxes in unincorporated areas of counties and powers and duties of a governing authority, so as to include flood risk reduction in the enumerated list of county purposes for which county ad valorem taxes or county corporation taxes based upon gross direct insurance premiums must be used.

### **HB 374 – Water and Sewer Taxation Exemption**

*Sponsored by Reps. Gaines, England, Weidower, Benton, and Frye*

Exempts from taxation the sales to any authority created by local law enacted by the General Assembly or local constitutional amendment, which authority provides public water or sewer service.

### **SB 285 – Water Authority Board Addition**

*Sponsored by Sen. Jones*

Provides for a sixth board member for the Henry County Water Authority.

## **Land Management and Conservation**

### **SB 260 – Exempting Soil Amendments from Regulation**

*Sponsored by Sen. Harper*

Excludes soil amendments derived from industrial by-products generated solely from forest products, excluding chemical by-products of pulp digestion, from regulation.

## Solid Waste

### HB 207 – Electronic Form Submission for Certain Recyclers

*Sponsored by Reps. Corbett, Ridley, Barton, Watson, and Rhodes*

Allows for electronic submission of certain documentation required of manufacturers, distributors, dealers, secondary metals recyclers, used motor vehicle parts dealers, and scrap metal processors by the Department of Revenue.

### HB 511 – Creation of Various Trust Funds

*Sponsored by Reps. Reeves, England, Blackmon, Williamson, and Mitchell*

Provides for the establishment or revision of the Georgia Outdoor Stewardship Trust Fund, Solid Waste Trust Fund, Hazardous Waste Trust Fund, State Children’s Trust Fund, Wildlife Endowment Trust Fund, Trauma Care Network Trust Fund, Transportation Trust Fund, Georgia Agricultural Trust Fund, Fireworks Trust Fund, and Georgia Transit Trust Fund as funds within the state treasury.

### HR 114 – Recyclers Recognition

*Sponsored by Reps. Gaines, Yearta, L. Smith, V. Smith, Nix, and Anulewicz*

Recognizes the Georgia Recyclers Association, the Georgia Recycling Coalition, and the Institute of Scrap Recycling Industries and their employees as an essential part of the supply chain process needed for manufacturing and commending them for their economic contributions to Georgia.

### SB 119 – Burning Yard Waste Exemption

*Sponsored by Sen. Harper, et al.*

Exempts certain yard waste from the permitting requirements for burning woods, lands, marshes, or other flammable vegetation.

## Water Quality and Pollution Control

### HR 347/SR 230 – Groundwater Awareness Week

*Sponsored by Reps. Wiedower, Gaines, Williamson, Rhodes, Gravely, and Mathis / Sen. Harper et al.*

Recognizes March 7-13, 2021, as National Groundwater Awareness Week in Georgia.

# KENTUCKY

Kentucky adopted **20** energy and environmental bills during its 2021 legislative session.

## ***Highlights:***

**SB 230** provides tax exemptions for the “mining” of cryptocurrency.

**SB 257** requires the Public Service Commission, when reviewing any fuel adjustment clauses for contracts entered into or after July 1, 2021, to subtract any coal severance tax imposed by any jurisdiction when determining the reasonableness of fuel costs in contracts and competing bids.

## **Energy Legislation**

### Coal and Minerals

SB 141 – Distribution for Coal Workers’ Pneumoconiosis Fund

*Sponsored by Sen. Mills*

Provides guidelines for distribution of funds remaining in the Kentucky coal workers’ pneumoconiosis fund.

Specifically, the bill adds the following qualifiers to the existing law:

- If there are remaining funds in the employer-in-bankruptcy’s pro rata share after payment to the former employees to whom past due wages are owed, the employer-in-bankruptcy’s pro rata share must be distributed as directed by the bankruptcy court and, if not directed by the bankruptcy court, to the Kentucky coal employer self-insurance guaranty fund;
- Any funds that would be distributed to the employer must first be distributed to the Commonwealth, for a bond payment, or to a county, city, school system, or school district, fire district, or any special taxing authority, and then any remaining funds may be distributed as indicated by prior law; and
- Any funds collected, following the abolition of the Kentucky coal workers’ pneumoconiosis fund, from subrogation or otherwise, after the final distribution must be transferred to the Kentucky coal employers’ self-insurance guaranty fund.

SB 257 – Fuel Cost Fairness in Bids and Contracts

*Sponsored by Sen. Mills*

Requires the Public Service Commission, when reviewing any fuel adjustment clauses for contracts entered into or after July 1, 2021, to subtract any coal severance tax imposed by any jurisdiction when determining the reasonableness of fuel costs in contracts and competing bids.

## Computer Technology and Digital Innovation

### HB 230 – Tax Exemptions on the “Mining” of Cryptocurrency

*Sponsored by Rep. Rudy*

Defines various terms relating to “commercial mining” of cryptocurrency using blockchain technology, provides sales and use tax exemptions on the tangible personal property directly used and the electricity used in commercial mining of cryptocurrency as of the date of approved application.

The bill also provides for a four-year sunset from July 1, 2021, to June 30, 2025, and requires the amount of the exemption to be reported by the Department of Revenue beginning on January 1, 2022, and every January 1 thereafter.

According to the legislation, the sales and use tax exemptions specified are for electricity used or consumed in the commercial mining of cryptocurrency and for the tangible personal property directly used in the commercial mining of cryptocurrency, including all equipment necessary to mine, such as servers and computers, racks, power distribution units, transformers, cabling, switchgear, software, network equipment, and similar items.

### SB 255 – Cryptocurrency Inclusion in Energy-related Business Act

*Sponsored by Sen. Smith*

Renames the “Incentives for Energy Independence Act” to the “Incentives for Energy-related Business Act” and includes cryptocurrency facilities with a minimum capital investment of one million dollars in its operation as eligible for certain tax incentives.

The law defines “commercial mining of cryptocurrency” and “cryptocurrency facility,” and it clarifies that “facility” does not include “any mining operations, or drilling and production operations for natural gas, unless such coal, natural resource, or natural gas operations are being used for purposes of, or are hosting, the commercial mining of cryptocurrency, in which case such operations shall be a facility.”

The measure also adds language to modify the intent of the bill such that Kentucky becomes a “national leader in emerging industries which use substantial amounts of energy” such as cryptocurrency mining and exchanges, which the bill supports further by adding “increasing the usage of electricity in areas which have an abundant supply due to the loss of manufacturing businesses across the state,” as a legislative goal.

Finally, the bill clarifies that the Kentucky Economic Development Finance Authority will accept no application for incentives previously defined by the act for alternative fuel facilities, gasification facility, energy-efficient facility, renewable energy facility, or a carbon dioxide transmission pipeline after August 1, 2018.

## Emergency Management and Homeland Security

### HB 84 – Out-of-State Electricians and Disaster Response

*Sponsored by Rep. Dossett*

Adds electricians or master electricians certified from another state to the list of workers exempted from certain requirements during disaster response.

### SB 5 – Liability Protection During Declared Emergency

*Sponsored by Sen. Stivers*

Provides liability protection for owners of premises during a declared emergency, such that any liability claims for personal injury against an owner related to the SARS-COV-2 pandemic or the emergency should be filed within the statute of limitations set forth in current law.

According to the legislation, the claim arises at the time it is first discovered or should have been discovered. The claim is barred unless brought within two years of the date on which the alleged act or omission allegedly occurred.

The bill clarifies that during emergency or disaster response the Governor or the General Assembly may, by executive action, legislation, or administrative regulations, declare which of the following services, if any, are essential:

- Those individuals and businesses that are necessary to deal with the response to the disaster or declared emergency or that protect the life and health of Kentucky citizens;
- Individuals and businesses that are engaged in conduct, business, or an activity that otherwise constitutes a critical infrastructure sector as determined by the United States Department of Homeland Security's Cybersecurity and Infrastructure Security Agency, or its successor; or
- Individuals and businesses that are charged with responsibility for a governmental function related to a declared emergency or that is not in the ordinary course of conduct or business, including responsibilities that require changes to the medical, manufacturing, or educational environment in which they typically operate.

## **Natural Gas and Petroleum**

### **SB 172 – Underground Facility Notice Requirements**

*Sponsored by Sen. Howell*

Precludes certain activities from being exempt from the requirements of ceasing operations when damage occurs to an underground facility and notification of appropriate authorities.

According to the legislation, any individual or entity that is otherwise exempt from the requirements of the Underground Facility Damage Prevention Act of 1994 that conducts or is responsible for any excavation or demolition that results in underground facility damage to an underground facility or system used for producing, storing, conveying, transmitting, or distributing gas, petroleum, petroleum products, or hazardous liquids, must cease excavation or demolition activities and notify all affected operators of the location and nature of the underground facility damage immediately upon discovery of the damage.

### **SR 63 – Regarding Keystone XL**

*Sponsored by Sen. Smith*

Urges President Biden to rescind the Executive Order revoking the permits for the Keystone XL Pipeline Project.

## **Utilities**

### **HB 207 – Energy Service Choice**

*Sponsored by Rep. Gooch*

Prohibits a local government entity from enacting any legislative or executive action that has the purpose or effect of impairing a consumer's ability to use certain utility services based on source.

Services covered by this law include any utility managed by the Public Service Commission as well as any:

- Generation, production, transmission, or distribution of electricity to or for the public, for compensation, for lights, heat, power, or other uses;

- Production, manufacture, storage, distribution, sale, or furnishing of natural or manufactured gas, or a mixture of same, to or for the public, for compensation, for light, heat, power, or other uses; and
- Transport or conveyance of gas, crude oil, or other fluid substance by pipeline to or for the public, for compensation.

#### HB 238 – Utility Board Membership Modifications

*Sponsored by Rep. Johnson*

Allows city utilities boards to consist of either three or five members and for the appointment of nonresident utility commission members for utility commissions.

#### HB 272 – Late Payment Fees for Water Services

*Sponsored by Rep. Bray*

Establishes that a water district or a water association may charge a late payment fee of ten percent of the amount billed.

The act also specifies that the late payment charge meet certain requirements, and it prohibits the Public Service Commission from modifying, rejecting, or suspending late payment charges established by tariff.

Finally, the measure states that no guidance may be issued during a declared emergency that would conflict with rules issued by the U.S. Department of Homeland Security or successor agencies regarding the classification or treatment of the employees of utilities, regional wastewater commissions, regional water commissions, metropolitan sewer districts, and sanitation districts as essential or critical infrastructure workers needed to ensure the continuity of functions critical to public health and safety or economic and national security.

#### HB 303 – Underground Facilities Activity Requirements

*Sponsored by Rep. Santoro*

Requires a “positive response” from operators of underground facilities and establishes the timing of operator responses.

The bill defines a “positive response” as an automated or written communication system provided by each protection notification center for all locate requests the center receives that allows excavators, locators, operators, and other interested parties to determine the status of locating an underground facility and requires response and verification by operators and excavators to comply with their respective requirements of the Underground Facility Damage Prevention Act of 1994. The measure further amends existing law in order to:

- Provide for excavator start dates;
- Include entities engaged in exempt activities to notify operators immediately on discovery of damage to an underground facility; and
- Provide when mechanized equipment can be used in the tolerance zone.

The legislation also requires entities engaging in exempt activities to cease activity and notify an operator when an underground facility is damaged and exempts certain noninvasive inspection and maintenance excavating for an existing utility pole.

Finally, the bill allows for penalties on the employer if the violation is committed in the scope of employment and to provide that the Public Service Commission must establish a written agreement form to deviate from the locate request dates provided for in the Underground Facility Damage Prevention Act of 1994.

#### HB 392 – Energy Cost Assistance Fund Eligibility

*Sponsored by Rep. Gooch*

Modifies the eligibility threshold for participation in a voluntary energy cost assistance fund from 110 percent of the federal poverty guidelines to the percentage of the federal poverty guidelines required for eligibility in the subsidy component of the Low-Income Home Energy Assistance Program (LIHEAP).

The current threshold for Kentucky's LIHEAP is 150 percent of the federal poverty guidelines per household.

#### HB 465 – Ratemaking Criteria for Water and Sewer Utilities

*Sponsored by Rep. Koenig*

Establishes the criteria by which the Public Service Commission determines for ratemaking purposes the value of an asset acquired by a utility that is used to provide water or sewer service. The measure also allows a utility that has entered into an agreement to acquire water or sewer utility assets to apply to the Public Service Commission for an order declaring the value of the acquired assets for ratemaking purposes.

The bill allows the acquiring utility to seek an order declaring the value of the acquired water or sewer utility assets as part of its first application for a change in base rates following the acquisition of the assets, and it requires the acquiring utility to provide notice of its application for a declaratory order to the local governing bodies where the water or sewer system to be acquired is located or where it provides service and to the customers of the acquired systems if required by the governing documents of the acquired systems.

The measure further dictates the acquiring utility to post on its website additional information to educate and inform the public and all affected customers of the acquisition.

Finally, the act requires the acquiring utility, as part of any application for a change in base rates following the acquisition of water or sewer utility assets, to propose to unify the rate structure of the acquired system with its remaining customer base.

#### SR 233 – Linemen Appreciation

*Sponsored by Sen. Webb*

Expresses the Senate's appreciation for the work of linemen of the Big Rivers Electric Corporation, Duke Energy, East Kentucky Power Cooperative, Kentucky Association of Electric Cooperatives, Kentucky Power Company, and Louisville Gas and Electric and Kentucky Utilities Company, on the occasion of National Lineman Appreciation Day, April 18, 2021.



# Environmental Legislation

## Environmental Health Services

### HB 394 – Commissioner Provisions for the Fish and Wildlife Commission

*Sponsored by Rep. Massey*

Modifies the Fish and Wildlife Commission’s authority to appoint and compensate a commissioner not subject to the provisions of certain Kentucky laws.

The bill gives the Fish and Wildlife Commission the sole authority to appoint and determine compensation for a commissioner and establishes that the commission is the sole contracting body for the purposes of the authority to promulgate administrative regulations.

Last, the measure requires any proposed personal services contract with a commissioner to be submitted for review to the Government Contract Review Committee.

### SB 105 – Abandoned and Blighted Property Conservatorship Act

*Sponsored by Sen. Mills*

Establishes the guidelines for filing and serving a petition for the appointment of a conservator to take possession of and undertake the rehabilitation of an abandoned or blighted property and the procedure for hearing the petition, and it provides for the submission of a plan by the conservator to rehabilitate, demolish, or sell the abandoned and blighted property while establishing standards for termination of the conservatorship.

The court may appoint a competent entity as conservator if it finds all of the following apply as of the date of filing the petition:

- The building has not been legally occupied for at least the previous twelve (12) months;
- The owner fails to present sufficient evidence that the property was actively marketed during the preceding 60-day period;
- The property is not subject to a pending foreclosure action by an individual or nongovernmental entity;
- The property is not subject to an outstanding mortgage held by a bank or other creditor with a recorded security interest in the property, unless waived by the bank or other creditor;
- The owner fails to present sufficient evidence the property was acquired by the owner within the preceding six months. The evidence must not include instances where the prior owner is a member of the immediate family of the current owner, unless the transfer of title results from the death of the prior owner; and
- The court finds at least three of the conditions meeting the definition of abandoned and blighted property as follows:
  - The building has not been brought into compliance with the housing, building, or nuisance code requirements of the local government in which it is located within time constraints placed upon the owner by the appropriate code enforcement agency or agencies;
  - The building is unfit for human habitation, occupancy, or use;
  - The condition and vacancy of the building materially increases the risk of fire to the building and to adjacent properties;

- The building, by reason of neglect or lack of maintenance, has become a place for the accumulation of substantial trash and debris or a haven for rodents or other vermin that create potential health and safety hazards;
- The building is subject to unauthorized entry leading to potential health and safety hazards, and either the owner has failed to take reasonable and necessary measures to secure the building or the local government has secured the building in order to prevent such hazards after the owner has failed to do so;
- The building is an attractive nuisance to children or for illicit purposes, including drug use and vagrancy; or
- The building, because of its dilapidated appearance or other conditions, substantially negatively affects the economic well-being of residents or businesses near the building.

## Inland Water Resource Management and Conservation

### HB 393 – Training Extensions for Water District Commissioners

*Sponsored by Rep. Gooch*

Allows the Public Service Commission to grant extensions of time not to exceed six months for water district commissioners to complete their training requirements.

## Solid Waste

### SB 86 – Penalties for Improper Waste Disposal

*Sponsored by Sen. Wheeler*

Provides for the adoption of ordinances by local governments imposing a civil fine of no less than \$250 and not more than \$500 on any person who transports or disposes of waste at any site or facility that doesn't have a waste disposal permit issued by the Kentucky Energy and Environment Cabinet.

The District Court in the county where the offense occurred may impose penalties to be collected by the Circuit Court clerk and transferred to the treasurer in their entirety to be used for abatement, cleanup, and restoration of the open dump site, according to the bill. The owner, occupant, or person having control or management over the property must not be penalized if he or she did not generate the waste or knowingly allowed the disposal of solid waste on the property and has made reasonable effort to prevent the disposal of solid waste by other persons onto the property.

## Water Quality and Pollution Control

### HB 386 – Mixing Zone Requirements for Bioaccumulative Chemicals

*Sponsored by Rep. Freeland*

Requires that mixing zones for “bioaccumulative chemicals of concern” established on or before September 8, 2004, remain in effect until explicitly extinguished by the Energy and Environment Cabinet.

Prior law defined a “bioaccumulative chemicals of concern” as something that accumulates in one or more aquatic organisms by a human health bioaccumulation factor of greater than 1,000.

The legislation also requires the cabinet to apply “rapid and complete” mixing in establishing permit limitations and conditions for any discharge regulated under a Kentucky Pollutant Discharge Elimination System permit where the discharge occurs through a submerged high-rate multi-port diffuser or outfall structure. It defines “rapid and

complete” as the limited area surrounding or downstream from a wastewater discharge location where complete mixing of treated wastewater and receiving water occurs rapidly, including through the use of a submerged high-rate multi-port diffuser or outfall structure.

## LOUISIANA

Louisiana adopted **43** energy and environmental bills during its 2021 legislative session.

### ***Highlights:***

**SB 171** establishes a severance tax exemption for certain orphaned wells.

**HB 174** grants the Louisiana Municipal Natural Gas Purchasing and Distribution Authority the power to require contractors and subcontractors to be prequalified as part of the public bid process for projects including a pipeline facility.

## Energy Legislation

### Alternative Energy Development

#### HCR 40 – Utility Scale Solar Project Incentives

*Sponsored by Rep. Schexnayder*

Requests the Department of Economic Development and the State Board of Commerce and Industry to suspend certain tax incentives, subsidies, and other public financial support for certain utility scale solar projects.

Affected projects include utility scale solar projects with advance notifications filed on or after July 1, 2021, that are not initiated by the Louisiana Energy and Power Authority or a municipal-owned electric system in addition to those that are not subject to review and approval by the Louisiana Public Service Commission and the New Orleans city council.

#### SB 185 – Land Leases for Solar Farms

*Sponsored by Sen. Allain*

Provides for regulation of leases of land for solar farms.

The measure requires cooperation with landowners and utility and agricultural representatives in developing regulations governing solar devices and requires such regulations govern property leases for the exploration, development, and production of solar energy.

## SR 182 – Solar Energy Development Hearings

*Sponsored by Sen. Mizell*

Requests the secretary of the Department of Natural Resources and the commissioner of the Department of Agriculture and Forestry to hold a public hearing and invite representatives from the Police Jury Association of Louisiana and the Louisiana Municipal Association and other impacted entities for the purpose of receiving public testimony on issues and concerns related to the development and production of solar energy in the state and to provide guidance addressing those issues and concerns.

## Coal and Minerals

### HB 572 – Underground Storage Provisions

*Sponsored by Rep. White*

Adds hydrogen, nitrogen, ammonia, compressed air, and noble gases to the list of substances that can be stored in underground reservoirs and salt domes and changes the amount of certain fees the commissioner is authorized to levy.

### HB 58 – Judgment and Settlement Receipt Extension

*Sponsored by Rep. Coussan*

Extends the receipt of monies from judgments and settlements deposited into the Mineral and Energy Operation Fund through 2025.

## Computer Technology and Digital Innovation

### HR 213 – Blockchain Technology Study

*Sponsored by Rep. Wright*

Directs the House Committee on Commerce, or a subcommittee thereof, to study the potential role of blockchain technology in the state.

### HR 33 – Bitcoin Commendation

*Sponsored by Rep. Wright*

Commends Bitcoin for its success in becoming the first decentralized trillion-dollar asset and to encourage the state and local governments to consider ways that could help them benefit from the increased use of this new technology.

## Natural Gas and Petroleum

### HB 174 – Prequalification Requirements for Natural Gas Purchasing and Distribution Authority

*Sponsored by Rep. Huval*

Grants the Louisiana Municipal Natural Gas Purchasing and Distribution Authority or participating political subdivision the power to require contractors and subcontractors to be prequalified as part of the public bid process for projects including a pipeline facility.

## HB 549 – Natural Gas Pipelines as Facilities Rather Than Transport

*Sponsored by Rep. McCormick*

Changes the definitions for “facility” and “owner or operator” under the Right-To-Know Law in order to make explicit that natural gas pipelines are to be treated as “facilities” under this law and are subject to its reporting requirements, rather than being treated as a “transport vehicle” and being subject to reporting requirements therein.

## HCR 35/SCR 57/SCR 63 – Louisiana Offshore Oil Port Commendation

*Sponsored by Rep. Orgeron/Sen. Allain*

Commends the Louisiana Offshore Oil Port on its fortieth anniversary.

## HCR 71 – Offshore Oil and Gas Leasing Resumption

*Sponsored by Rep. Orgeron*

Urges the administration of President Biden to end its pause on offshore oil and gas leasing.

## HCR 98 – Opposing Increased Taxes for Natural Gas, Oil, and Fuel Industries

*Sponsored by Rep. Beaulieu*

Expresses the opposition of the Louisiana legislature to disproportionately increasing the tax burden on natural gas, oil, and fuel industries.

## SB 171 – Severance Tax Exemption for Orphaned Wells

*Sponsored by Sen. Allain*

Establishes that beginning Oct. 1, 2020, oil produced from any well that has been certified as an orphaned well, has been orphaned for 12 months or more, and is undergoing or has undergone well enhancements that required a Department of Natural Resources permit such as are-entry, workover, or plugback, is exempt from severance tax, when production begins on or after Oct. 1, 2020, and before June 30, 2031.

## SCR 10 – North Face Recognition

*Sponsored by Sen. Cathey*

Recognizes The North Face as an “Extraordinary Customer” of the Louisiana oil and gas and petrochemical industries.

## SCR 44 – Well Drilling Study

*Sponsored by Sen. Hensgens*

Creates the Risk Charge Commission to study current law and consider making recommendations regarding the costs and risks in drilling a well in a unit.

## Reorganization and Coordination

### HB 465 – Broadband Deployment Oversight

*Sponsored by Rep. Johnson*

Removes the authority to oversee, direct, or manage the 4.9 GHz band from the Governor’s Office of Homeland Security and Emergency Preparedness, and designates the office under the control of the executive director of broadband development and connectivity as the lessor of the band.

## HCR 64 – Capitalizing on Trade Potential Study

*Sponsored by Rep. Wright*

Continues the Joint Subcommittee on International Trade to study how to best capitalize on Louisiana's international trade potential, including the export of its "petroleum and coal products."

## SB 6 – Utility Purchase Exemption for Farms

*Sponsored by Sen. Cathey, Jr.*

Exempts purchases of utilities used by commercial farmers for on-farm storage from state sales and use tax.

## Utilities

### HB 59 – Fee Waiver for Certain Water Loss

*Sponsored by Rep. LaCombe*

Authorizes a local government to waive charges for water lost due to damage not caused by the customer.

### SB 169 – Underground Utilities and Facilities Damage Prevention Amendments

*Sponsored by Sen. Allain*

Amends existing definitions and requirements under the Underground Utilities and Facilities Damage Prevention Law.

The bill adds normal commercial farming operations as an exception to the definition of "excavation" or "excavate" and changes the definition thereof with regard to an exception from any force majeure, act of God, or act of nature to any activity resulting from force majeure related occurrences, including but not limited to an act of God or an act of nature.

Further, the measure requires any owner or operator of a natural gas pipeline that is inactive, has a diameter of a minimum of 15 inches and a maximum of 17 inches, and is located in a parish with a population between 45,000 and 75,000 to maintain the minimum amount of ground cover. It also requires that when the minimum ground cover has not been maintained the owner or operator of the pipeline is required to restore, at his own expense, the minimum ground cover over the pipeline prior to the pipeline being reactivated.

### SB 223 – Louisiana Utilities Restoration Corporation Amendments

*Sponsored by Sen. Johns*

Provides the provisions of the Uniform Commercial Code – Secured Transactions does not apply to certain powers granted to the Louisiana Utilities Restoration Corporation.

The law provides additional powers to a corporation under the Louisiana Electric Utility Storm Recovery Securitization Act and authorizes a corporation to be an assignee for financing storm costs, and it further establishes that before the corporation maybe an assignee, it must seek prior authorization from the Public Service Commission.

The corporation is allowed by the legislation to perform the functions and activities that assignees are authorized to do in financing storm recovery costs through storm recovery bonds, except the corporation may not be an issuer of storm recovery bonds.

Finally, the bill establishes the corporation's exercise of its powers is the performance of an essential governmental function of the corporation.

# Environmental Legislation

## Coastal Zone Management

### HCR 46 – Coastal and Storm Damage Reduction Study

*Sponsored by Rep. Mincey*

Asks the governor’s executive assistant for coastal activities to coordinate a study among state agencies and make recommendations to the governor and the legislature relative to management of the Amite River Basin.

Among other items, the study is required to examine the historical, existing, and planned hurricane storm damage reduction and flood protection and drainage infrastructure projects within the Amite River Basin that clearly depicts which communities are protected by that infrastructure given hydrologic conditions while considering any issues regarding the displacement of any persons as a result of flood control.

### HCR 26 – Oyster Shell Study

*Sponsored by Rep. Coussan*

Requests the Louisiana Department of Wildlife and Fisheries to conduct a study to determine the final destination of oyster shells removed from Louisiana waters.

### SB 98 – Marine Product Licensing

*Sponsored by Sen. Lambert*

Adds an exclusion to the definition of “marine product” for a marine motor used primarily for commercial or governmental purposes for the typical licensing and regulation of marine products by the Louisiana Motor Vehicle Commission.

### SCR 9 – Coastal Protection Plan Approval

*Sponsored by Sen. Lambert*

Approves the annual state integrated coastal protection plan for Fiscal Year 2022, as adopted by the Coastal Protection and Restoration Authority Board.

### SCR 34 – Permitting Cycle Times Review

*Sponsored by Sen. Hewitt*

Requests the Department of Natural Resources, Office of Coastal Management, to review permitting cycle times over the previous five years, review permitting cycle times in Texas, and to report to the legislature no later than December 31, 2021, with findings and specific recommendations of regulatory and statutory changes to expedite the permitting process.

### SR 200 – Commending Offshore Efforts by Director of Safety and Environmental Enforcement

*Sponsored by Sen. Mills*

Commends Scott Angelle, the longest serving Director of the Bureau of Safety and Environmental Enforcement, United States Department of Interior, for his efforts regarding offshore worker safety, environmental sustainability of offshore energy, increasing economic activity, and improving conservation of offshore resources.

## Environmental Health Services

### HB 69 – Prior Notice for Excavating and Demolishing

*Sponsored by Rep. McKnight*

Amends existing law such that when excavators and demolishers are required to provide notice prior to excavating or demolishing, they must do so at least 48 hours, but not more than 120, prior to the work being performed.

### HCR 48 – Support for Gulf Hypoxia Action Plan

*Sponsored by Rep. Zeringue*

Urges and requests continued support for the efforts in the Mississippi River Basin to achieve the goals of the Gulf Hypoxia Action Plan.

### HCR 55 – Conservation Funding Study

*Sponsored by Rep. Zeringue*

Creates the Outdoor Conservation Study Group to study and make recommendations regarding conservation funding mechanisms as well as conservation programs that could be generated from such funding.

### HR 37/38/39 – Water Wise Gulf South Commendation

*Sponsored by Rep. Duplessis*

Commends Water Wise Gulf South and its founding members Jeffrey Supak, Hilairie Schackai, and Dana Brown.

According to the resolutions, Water Wise Gulf South is an environmental awareness organization that was founded in New Orleans in 2018. Its mission is to collaborate with community-based organizations to advance green infrastructure, and together the organizations work to raise awareness of environmental issues facing the Gulf South region of the United States.

## Hazardous Waste and Substance Management

### HB 389 – PFAS Prohibition

*Sponsored by Rep. Horton*

Prohibits the use of Class B fire-fighting foam that contains certain fluorinated organic chemicals (PFAS) except in certain controlled circumstances after January 1, 2022.

## Inland Water Resource Management and Conservation

### HB 577 – Flood Coverage Modifications

*Sponsored by Rep. McKnight*

Makes various amendments relative to residential flood coverage.

Specifically, the bill provides that in addition to excess flood insurance, insurers may issue any of the following types of residential flood coverage:

- Standard flood coverage;
- Preferred flood insurance, which must include the same coverage as standard flood insurance, losses from water intrusion originating from outside the structure that are not otherwise covered by flood damage,



coverage for additional living expenses, and a requirement that any loss under personal property be adjusted only on the basis of replacement costs up to the policy limits;

- Customized flood insurance which includes coverage that is broader than the coverage provided under standard flood insurance;
- Flexible flood insurance, which covers losses from the peril of flood; and
- Supplemental flood insurance, which may provide coverage designed to supplement flood policy obtained from the National Flood Insurance Program or from an insurer issuing standard or preferred flood insurance.

#### HB 590 – Cost Assessment Authority for Groundwater Conservation District

*Sponsored by Rep. Davis*

Grants the Capital Area Groundwater Conservation District and its board additional authority to assess costs against all users within the district for capital expenditures and allows the board to assess such costs based on annual flows or specific costs for wells to individual users based on capital, debt service, and operation and maintenance costs.

The bill also outlines what constitutes costs and other parameters deemed necessary to conserve and protect groundwater resources.

#### HCR 6 – Flood Protection District Contributions

*Sponsored by Rep. Zeringue*

Directs flood protection districts and parish governing authorities in areas benefiting from the federal Hurricane and Storm Damage Risk Reduction System to contribute towards the \$400 million annual payments the state must make for the project.

#### HR 88 – Request to Limit Groundwater Withdrawal

*Sponsored by Rep. Marcelle*

Urges and requests the commissioner of conservation to adopt any necessary rules and regulations to limit the withdrawal of groundwater by commercial or industrial facilities to five million gallons of groundwater per day.

#### SCR 83 – Lower Pearl River Basin Task Force

*Sponsored by Sen. Hewitt*

Reestablishes the Lower Pearl River Basin task force to study the conditions, needs, issues, and funding relative to the flood protection and preservation of the Lower Pearl River Basin and to recommend any action or legislation that the task force considers necessary or appropriate.

### **Solid Waste**

#### HCR 70 – Campaign Sign Recycling

*Sponsored by Rep. White*

Urges and requests the lieutenant governor, the secretary of state, the Louisiana Environmental Education Commission, and local government associations to assist in the promotion and establishment of programs for the collection and recycling of campaign signs.

## SB 96 – Tire Dealer Standards

*Sponsored by Sen. Lambert*

Requires establishment of standards, requirements, and permitting procedures for generators, commonly known as tire dealers.

The Department of Environmental Quality and its secretary are authorized by the law to promulgate rules, regulations, and guidelines.

## Water Quality and Pollution Control

### HB 342 – Required Testing for Secondary Contaminants

*Sponsored by Rep. Wright*

Authorizes the governing authority of St. Tammany Parish to require testing for secondary contaminants in water systems in the parish.

The legislation defines “secondary contaminants” as a substance for which secondary maximum contaminant levels are established in the National Secondary Drinking Water Regulations of the Environmental Protection Agency.

### HCR 37 – Preproduction Plastic Discharge

*Sponsored by Rep. Hilferty*

Urges the Department of Environmental Quality to implement measures to prevent the release and discharge of preproduction plastic from facilities into the waters of the state of Louisiana.

### SB 129 – Community Drinking Water Infrastructure Sustainability Act

*Sponsored by Sen. Mills*

Creates and provides for the Community Drinking Water Infrastructure Sustainability Act.

The act is intended to develop a community water system accountability process to provide public assurance that drinking water is of high quality with clear standards and expectations of the community water system.

### SCR 24 – Funding Water Quality Remediation

*Sponsored by Sen. Foil*

Requests the Department of Environmental Quality to study the feasibility of providing funding for devices that remediate certain water quality impairments.

# MARYLAND

Maryland adopted **60** energy and environmental bills during its 2021 legislative session.

## ***Highlights:***

**HB 517** expands the types of projects that may be financed under a clean energy loan program to include efforts pertaining to water efficiency, environmental remediation, and, if installed with energy efficiency or renewable energy, grid resiliency.

**HB 174/SB 95** requires investor-owned gas and/or electric utilities to direct contractors and subcontractors on specified underground projects to pay their employees at least the applicable prevailing wage rate.

## **Energy Legislation**

### Alternative Energy Development

#### HB 44 – Electric Vehicle Recharging Equipment Rebate Extension

*Sponsored by Del. Fraser-Hidalgo*

Reestablishes through 2023 the Electric Vehicle Recharging Equipment Rebate Program and increases to \$1.8 million the maximum amount of rebates the Maryland Energy Administration (MEA) may award in each year.

The bill also requires MEA to transfer the lesser of \$10 million or the actual total outstanding amount of qualified plug-in electric vehicle and fuel cell electric vehicle tax credits applied for prior to July 1, 2020, from the Strategic Energy Investment Fund (SEIF) to the Transportation Trust Fund (TTF) and specifies state agencies to submit to the General Assembly certain information on zero emission vehicles and the Vehicle Emissions Inspection Program (VEIP).

#### HB 110/SB 144 – Electric Vehicle Charging Equipment Standards for Housing Associations

*Sponsored by Del. Korman/Sen. Guzzone*

Establishes standards relating to the installation and use of electric vehicle recharging equipment in condominiums and homeowners' associations (HOAs).

Specifically, the law requires that certain provisions of a recorded covenant or restriction, a declaration, or the bylaws or rules of a condominium or HOA are void and unenforceable if they prohibit or unreasonably restrict the installation or use of electric vehicle recharging equipment.

## HB 376/SB 153 – Renewable Energy Portfolio Requirements Modification

*Sponsored by Del. Mautz/Sens. Eckardt, Hershey, and Jennings*

Limits the annual Tier 1 percentage requirements of the state’s Renewable Energy Portfolio Standard for municipal electric utilities to 20.4 percent in total, including at least 1.95 percent from solar energy and up to 2.5 percent from offshore wind.

The bill also requires municipal electric utilities to purchase Tier 2 renewable energy credits in 2021 only.

## HB 517 – Expanded Clean Energy Loan Program

*Sponsored by Del. Watson/Sens. Hester and Elfreh*

Expands the types of projects that may be financed under a clean energy loan program to include efforts pertaining to water efficiency, environmental remediation, and, if installed with energy efficiency or renewable energy, grid resiliency.

The measure also establishes that projects can be refinanced under a clean energy loan program and replaces a reference to a property being “improved” through a loan under a program with a reference to a property being “financed” through a loan under the program. Finally, the bill requires that an ordinance or resolution that establishes a clean energy loan program include a specified provision, applicable to any project, regarding the repayment term of a loan.

## HB 561 – Renewable Energy Portfolio Raw and Wastewater Inclusion

*Sponsored by Del. Davis*

Expands “Tier 1” of the state’s Renewable Energy Portfolio Standard (RPS) to include raw or treated wastewater used as a heat source or heat sink for a heating or cooling system, subject to specified requirements.

According to the legislation, energy from such a system is eligible only if the system is connected with the electric distribution grid serving Maryland or processes wastewater from Maryland residents.

## HB 784 – Electric Vehicle Charging Requirements for New Housing Units

*Sponsored by Del. Terrasa*

Requires a builder (or a builder’s agent) of specified new housing units to provide each buyer or prospective buyer with the option to include in or on the garage, carport, or driveway either an “electric vehicle charging station” capable of providing at least “Level 2 charging” or a dedicated electric line of sufficient voltage to support the later addition of such a charging station.

The builder or its agent must provide notice of these options and other specified information to each buyer or prospective buyer. The bill applies only prospectively to any new construction for which a building permit is issued on or after the bill’s effective date of October 1, 2021.

## HB 875/SB 65 – Black Liquor Exclusion in Renewable Energy Portfolio Standard

*Sponsored by Del. Davis/Sen. Kelley*

Excludes “black liquor,” or any product derived from black liquor, from eligibility for inclusion in the state’s Renewable Energy Portfolio Standard (RPS) as a “Tier 1” resource.

The law does not define “black liquor,” but the common definition is a by-product from the kraft process when digesting pulpwood into paper pulp removing lignin, hemicelluloses and other extractives from the wood to free the

cellulose fibers. Other eligible sources are unchanged. A presently existing obligation or contract right may not be impaired in any way by the bill, which applies to all RPS compliance years beginning January 1, 2022, or later.

## HB 1007 – Geothermal Systems in the State’s Renewable Energy Portfolio

*Sponsored by Del. Charkoudian*

Creates a carve-out for post-2022 geothermal systems in Tier 1 of the state’s Renewable Energy Portfolio Standard (RPS), beginning in 2023 at 0.05 percent and increasing each year until reaching 1.0 percent in 2028 and later, subject to specified requirements and alternative compliance payments.

The Maryland Energy Administration (MEA) must staff a related work group created by the bill and complete a technical study.

## Coal and Minerals

### HB 399 – Dewatering Notification Requirements

*Sponsored by Del. Krimm*

Requires a contract of sale for property located within Baltimore, Carroll, Frederick, or Washington counties to include notice regarding the advisability of contacting the Maryland Department of the Environment (MDE) to determine if the subject property is within a “zone of dewatering influence” and that specified remedies are available for a property impacted by dewatering.

Dewatering is defined in the bill as pumping water out of a mined pit. The bill also establishes contractual rights for purchasers that do not receive the required notice. MDE must develop and publish on its website a searchable map of zones of dewatering influence as identified by MDE under existing provisions.

## Computer Technology and Digital Innovation

### HB 97/SB 66 – Office of Statewide Broadband Establishment

*Sponsored by Del. Leierman, et al./Sen. Elfreth, et al.*

Establishes the Office of Statewide Broadband (OSB) within the Department of Housing and Community Development (DHCD) as the successor to the Office of Rural Broadband (ORB), with expanded responsibilities.

The Governor is required to include sufficient funding in the annual operating budget to employ two additional staff members. The bill establishes the Digital Inclusion Fund and the Digital Connectivity Fund within DHCD to provide grants to local governments and nonprofits to increase access to high-speed Internet and to assist in the development of affordable broadband Internet infrastructure. The measure also transfers the Rural Broadband Coordination Board (RBCB) and the Rural Broadband Assistance Fund (RBAF) from the Department of Commerce to OSB.

## Emergency Management and Homeland Security

### HB 990/SB658 – Maryland Department of Emergency Management Provisions

*Sponsored by Del. Krebs/Sens. Kagan, Reilly, and Jackson*

Establishes the Maryland Department of Emergency Management (MDEM) as a principal department of the Executive Branch of state government and as the successor to the Maryland Emergency Management Agency (MEMA).

All duties and responsibilities associated with MEMA’s existing functions continue under MDEM, the bill states. It also transfers the Maryland 9-1-1 Board from the Department of Public Safety and Correctional Services (DPSCS) to MDEM. Employees transferred under the bill are transferred without any change in pay and retain all rights, status, and merit system and retirement status they may have on the date of transfer.

#### SB 170 – Copper Wire Theft Prevention Measures

*Sponsored by the Chair of the Finance Committee*

Prohibits a person from willfully altering, disconnecting, tampering with, removing, or otherwise interfering with a transportation-related “component for electrical current transmission and storage” or an “intelligent transportation system” if the component or system has been placed by the authority of a public body or official.

A person who violates this prohibition is subject to specified incarceration and/or monetary penalties. The bill is aimed at deterring the theft of state-owned copper wire.

### Energy Efficiency

#### HB 630 – School District Energy Policy Updates

*Sponsored by Del. Solomon*

Directs local school systems to adopt or update its school district energy policy by July 1, 2022.

The Interagency Commission on School Construction must coordinate with the Maryland Energy Administration and the Maryland Clean Energy Center to study and make recommendations on expanding and providing additional funding for the Maryland Net Zero Energy School Initiative Grant Program, according to the measure.

### Natural Gas and Petroleum

#### SB 661 – Oil Fee Extension

*Sponsored by Sen. Patterson*

Extends the current fee (eight cents per barrel) assessed on oil transferred into the state until July 1, 2024.

According to the legislation, beginning July 1, 2024, the fee changes to five cents per barrel. Until July 1, 2024, 7.75 cents of the per barrel fee are credited to the Maryland Oil Disaster Containment, Clean-up and Contingency Fund (Oil Fund) and 0.25 cents are credited to the Oil Contaminated Site Environmental Cleanup Fund (Reimbursement Fund). The bill also authorizes residential owners of heating oil tanks to apply for assistance from the Reimbursement Fund through June 30, 2024, and in fiscal year 2022 through 2029, funds from the Oil Fund are to be used to provide such reimbursements.

### Reorganization and Coordination

#### HB 945/SB 907 – Requirements for Office of Home Energy Regarding Medically Vulnerable Persons

*Sponsored by Del. Carey/Sen. Benson*

Requires the Office of Home Energy Programs to allow a critical medically vulnerable individual, who is at least 60 years old and assisted by a navigator, to provide certification from a medical provider of a severe health condition within 90 days after applying for the Critical Medical Needs Program.

## HB 397/SB 31 – Energy Assistance Requirements

*Sponsored by Del. Lierman/Sen. Ellis*

Requires the Public Service Commission (PSC), by January 1, 2023, to establish an administrative process to approve supply offers for electricity or gas for households in the state that receive energy assistance through a program administered by the Office of Home Energy Programs (OHEP).

An approved supply offer must include a commitment to charging at or below the standard offer service (SOS) rate for customers receiving energy assistance. Beginning July 1, 2023, unless PSC has approved the supply offer, the legislation states that a third-party retail supplier is prohibited from charging a customer receiving assistance from an OHEP program, receiving funds from an OHEP program, and taking other specified actions.

## HB 578/SB 428 – Reporting Requirements for the Public Service Commission

*Sponsored by Del. Davis/Sen. Kelley*

Delays the due dates for specified annual reports required of the Public Service Commission and the Department of Housing and Community Development by one to two months while the contents of the reports are unchanged.

## HB969/SB 846 – Power to the People Pilot Program

*Sponsored by Del. Carey/Sen. Benson*

Directs the Office of Home Energy Programs (OHEP), in coordination with the United Way of Central Maryland and the Fuel Fund of Maryland, to establish the Power to the People Pilot Program by July 1, 2022.

The pilot program will expand access to the Critical Medical Needs (CMN) Program and provide training for 2-1-1 Maryland United Way Helpline intake specialists and case managers to serve as navigators in order to reduce barriers to the state’s energy assistance application process for “critical medically vulnerable individuals.” The Governor must include in the fiscal year 2023 and 2024 annual budget bill \$80,000 to OHEP for the pilot program and the funds must be used to hire specified staff.

## Utilities

### HB 1160 – Cellular Tower Lease on Existing Infrastructure

*Sponsored by the Calvert County Delegation*

Authorizing Calvert County to enter into a contract for a cellular tower lease, including a cellular tower lease on a water tower, if the initial term of the lease is not more than 20 years.

### HB 174/SB 95 – Investor-Owned Utilities and Prevailing Wage Rate Requirements

*Sponsored by Del. Brooks/Sen. Kramer*

Requires investor-owned gas and/or electric utilities to require contractors and subcontractors on specified underground projects to pay their employees at least the applicable prevailing wage rate.

The bill applies to projects involving the construction, reconstruction, installation, demolition, restoration, or alteration of any underground gas or electric infrastructure of the company and any related traffic control activities.



## HB 473/SB 79 – Transfer of Community Solar Energy Subscription

*Sponsored by Del. Dumais/Sen. Kramer*

Authorizes community solar energy subscribers and residential electric choice customers to maintain their subscriptions or contracts at a new service address, if the new address is within the same service territory as the old address.

The bill applies to electric companies, electric cooperatives, and municipal utilities that participate in the affected programs. An electric company or a subscriber organization may not terminate a customer's contract or subscription due to a change of address that meets the requirements of the bill.

## HB 569/SB 407 – Increased Limit on Net Metered Capacity

*Sponsored by Del. Clippinger/Sen. Kramer*

Doubles the statewide limit on net metered capacity from 1,500 megawatts to 3,000 megawatts.

## HB 584/SB 508 – Net Energy Metering

*Sponsored by Del. Watson/Sen. Peters*

Prohibits the Public Service Commission from banning the construction or operation of multiple net metered solar energy generating facilities located on separate contiguous lots owned by a local government solely because the capacity of the combined systems exceeds the two-megawatt generating capacity limit.

The status only applies if the following conditions are met:

- The generating facilities are intended to be used solely for the benefit of the local government;
- The total capacity does not exceed five megawatts;
- The contiguous lots were not subdivided for the purpose of circumventing the two-megawatt limit; and
- The utility serving the net metered facilities is not an electric cooperative or municipal electric utility.

## HB 606/SB 392 – Limited-Income Mechanism Requirement

*Sponsored by Del. Davis/Sen. Augustine*

Requires utilities to adopt limited-income mechanisms, subject to the approval of the Public Service Commission (PSC) among other requirements.

The bill expands eligibility under the electric universal service program. For fiscal year 2023 only, the Governor must appropriate to the Office of Home Energy Programs (OHEP) in the Department of Human Services (DHS) an amount equal to the unexpended appropriation to OHEP for fiscal year 2021 that was included in Supplemental Budget No. 5.

The act also establishes the Workgroup on Low-Income Utility Assistance, staffed by DHS, with a report due by January 1, 2022.

## HB 648/SB 561 – Virtual Meetings for Electric Cooperatives

*Sponsored by Del. Wilson/Sens. Hershey and Eckardt*

Authorizes an electric cooperative to hold annual and special meetings virtually, or with a combination of in-person and virtual attendance.



## SB 762 – State Licensing Requirements for Electricians

*Sponsored by Del. Hornberger*

Repeals local authority to license master, journey person, and apprentice electricians beginning January 1, 2022, and instead requires a state license for each of those classifications.

However, the bill states a local jurisdiction may continue to issue or begin issuing local registrations for those classifications, subject to specified requirements. Local jurisdictions also retain the ability to establish a local board and require permits, fees, and inspections.

Finally, the bill also establishes a Workgroup to Study Limited Energy Services, staffed by the Maryland Department of Labor (MDL). The workgroup must study and make recommendations regarding legislation for the licensing and regulation of, and qualifications for, individuals who provide limited energy services in the state.

## HB 768 – Community Choice Aggregation Pilot Program

*Sponsored by the Montgomery County Delegation*

Establishes the Community Choice Aggregation Pilot Program and authorizes Montgomery County to form a “community choice aggregator,” beginning December 31, 2023.

The measure directs the Public Service Commission (PSC) to adopt related regulations by that date, including those related to risk mitigation for standard offer service customers. The pilot program must begin on the date the county gives notice to PSC of its intent to form a community choice aggregator, or April 1, 2024, whichever is earlier, and the program ends seven years after beginning, but no earlier than April 1, 2031. The bill also establishes a related workgroup with various study and reporting requirements.

## HB 777/SB 417 – Certificate of Public Convenience and Necessity Deadlines

*Sponsored by Del. Brooks/Sen. Pinsky*

Establishes a six-month deadline for the Maryland Department of the Environment and the Department of Natural Resources to review and make recommendations on a completed application for a certificate of public convenience and necessity (CPCN).

The bill also adds additional specificity for evaluations and recommendations made by the two departments. According to the measure, the Public Service Commission (PSC) determines when a CPCN application is complete and may waive the six-month deadline for good cause or on agreement of the parties to the proceeding.

## HB 842/SB 856 – Customer Account Information Sharing Requirements

*Sponsored by Del. Howard/Sen. Hershey*

Requires an electric company, on request of a retail electricity customer, to provide the customer the historic usage and billing information for the customer’s account for at least the 12 preceding months.

The legislation states the information must be made available to the customer in one of the following forms, as requested by the customer:

- Information accessible on the electric company’s website;
- Information provided electronically in a searchable PDF format; or
- A physical document sent to the customer at the customer’s billing address.

## HB 1328/SB 824 – Joint Trenching with Broadband Providers

*Sponsored by Del. Feldmark/Sens. Hester, Hayes, Hershey, and Ready*

Requires the Maryland Department of Transportation (MDOT) and units of local government to allow joint trenching by broadband providers, as specified.

MDOT and local governments are authorized to assess fees to certain broadband providers that participate in joint trenching, and the act states that fees collected by MDOT are distributed to special funds that support broadband development. To the extent practicable, the state must appropriate federal funding for the purpose of improving broadband access and adoption. MDOT must adopt regulations to implement the bill.

The bill expressly authorizes local governments to adopt policies to extend broadband access to underserved areas. The bill's requirements and authorizations do not apply to a county or municipal corporation within the Washington Suburban Sanitary District (WSSD).

## Environmental Legislation

### Air Quality and Pollution Control

#### HB 30 – Environmental Focus for Office of People's Counsel

*Sponsored by Del. Korman*

Requires the Office of People's Counsel (OPC), in determining whether the interests of residential and noncommercial users are affected, to consider the public safety, economic welfare, and environmental interests of the state and its residents, including the state's progress in meeting its greenhouse gas emissions reductions goals.

The bill requires OPC to hire at least one assistant people's counsel who will focus on environmental issues. The amount that OPC may assess for its costs and expenses is increased from 0.05 percent to 0.074 percent of certain public service company intrastate operating revenues. OPC is also added to the Maryland Commission on Climate Change and the Maryland Zero Emission Electric Vehicle Infrastructure Council by the measure.

#### HB 298/SB 83 – Electric Power Plants Research Requirement

*Sponsored by Del. Charkoudian/Sen. Kramer*

Requires the Power Plant Research Program (PPRP) to include an evaluation of the impact of electric power plants on climate change as part of its ongoing research.

The Public Service Commission (PSC), in supervising and regulating public service companies, is required by the bill to consider the maintenance of fair and stable labor standards for affected workers and additional specified climate effects and greenhouse gas (GHG) emissions. Relatedly, PSC may not take final action on a Certificate of Public Convenience and Necessity without considering the effect of climate change on the project and, for a generating station, the impact of the project on GHG emissions and its consistency with the state's GHG emissions reduction goals.

#### HB 334/SB 137 – Zero-Emission Bus Requirements

*Sponsored by Del. Korman/Sen. Zucker*

Prohibits the Maryland Transit Administration (MTA), beginning in fiscal year 2023, from entering into a contract to purchase buses for its transit bus fleet that are not zero-emission buses.

The bill does not apply to any bus that is part of a locally operated transit system, and it requires MTA to submit a report by January 1, 2022, and each January 1 thereafter, regarding the conversion of its bus fleet to zero-emission buses.

### Coastal Zone Management

HB 878/SB 701 – Bay Restoration Fund Allowances

*Sponsored by Del. Chang/Sen. West*

Authorizes a county to borrow money and incur indebtedness through the issuance and sale of notes in anticipation of the receipt of the county's allocation of funds from the Septics Account within the Bay Restoration Fund (BRF).

The measure also specifies the authorized uses of the net proceeds of the sale of any such notes.

### Emergency Management and Homeland Security

HB 990/SB658 – Maryland Department of Emergency Management Provisions

*Sponsored by Del. Krebs/Sens. Kagan, Reilly, and Jackson*

Establishes the Maryland Department of Emergency Management (MDEM) as a principal department of the Executive Branch of state government and as the successor to the Maryland Emergency Management Agency (MEMA).

All duties and responsibilities associated with MEMA's existing functions continue under MDEM, the bill states. It also transfers the Maryland 9-1-1 Board from the Department of Public Safety and Correctional Services (DPSCS) to MDEM. Employees transferred under the bill are transferred without any change in pay and retain all rights, status, and merit system and retirement status they may have on the date of transfer.

### Environmental Health Services

HB 204/SB 324 – Reporting Requirements for Environmental and Natural Resource Laws

*Sponsored by Del. Lierman/Sens. Elfreth and Bailey*

Establishes various tracking and reporting requirements for the Maryland Department of the Environment (MDE) and the Department of Natural Resources (DNR) with respect to the enforcement of environmental and natural resources laws.

Among other things, the law requires MDE to maintain specified complaint data and develop and maintain a website with specified information and data relating to the enforcement of certain environmental laws and the DNR must submit an annual report with specified data regarding the enforcement of natural resources and conservation laws.

HB 293 – Restrictions on the Killing of Certain Wild Animals

*Sponsored by Del. Stein*

Prohibits a person from sponsoring, conducting, or participating in a contest organized in Maryland that has the objective of killing a coyote, fox, or raccoon for prizes or monetary rewards.

The bill may not be construed to prohibit a landowner or the landowner's agent or lessee from killing coyotes, foxes, or raccoons on the landowner's property, as long as the killing is not part of an organized contest or lawful dog training or dog performance competitions. A \$50 fine is established by the measure for each coyote, fox, or raccoon killed in violation of the bill.

#### HB 391/SB 716 – Purposeful Balloon Release Criminality

*Sponsored by Del. Hartman, et al./Sens. Carozza, Hershey, and Lam*

Prohibits a person who is at least 13 years old, a corporation, a partnership, an association, a nonprofit entity, the state, or any unit or political subdivision of the state from knowingly and intentionally releasing, or causing to be released, a balloon into the atmosphere.

The bill further prohibits a person from organizing or participating in a mass balloon release. It requires a person who violates the act to perform six hours of community service or watch a video on environmental damage or both, and the measure establishes a \$100 civil penalty.

#### HB 414/SB 81 – Environmental Impact Study for Rapid Transit Project

*Sponsored by Del. Davis/Sen. Ellis*

Requires the Governor, from 2023 through 2027, to include in the annual state budget an appropriation from the Transportation Trust Fund of at least \$5 million, contingent on the receipt of federal funds to be used to provide matching funds needed to conduct an environmental impact study under the National Environmental Policy Act (NEPA) for the Southern Maryland Rapid Transit Project.

Subject to that provision, the law requires the Maryland Department of Transportation to promptly undertake all steps necessary to complete the design, engineering, and NEPA process and secure a record of decision for the project.

#### HB 1134/SB 318 – Hunting and Fishing Importance

*Sponsored by Del. Carey/Sen. Bailey*

States that the General Assembly finds hunting and fishing are valued parts of the state’s cultural and social heritage that provide unique recreational benefits to state residents and play important roles in the state’s economy and support the conservation, preservation, and management of the state’s natural resources.

The bill also expresses the General Assembly’s intent that residents of the state have a right to hunt and fish subject to regulations and restrictions under state laws.

#### HB 1207/SB 674 – Environmental Justice and Sustainable Communities Commission

*Sponsored by Del. Bridges/Sen. Elfreth, et al.*

Makes several changes to the Commission on Environmental Justice and Sustainable Communities (CEJSC).

Specifically, the bill makes the following changes:

- Alters the composition of the commission and provisions governing the appointment of members and the designation of the chair;
- Requires that, to the extent practicable, the membership must reflect the racial, gender, ethnic, and geographic diversity of the state;
- Requires the Maryland Department of the Environment (MDE) to provide new commission members with a specified orientation;

- Requires CEJSC to meet at least six times per calendar year, requires CEJSC to hold at least four “community listening sessions” per calendar year, and establishes meeting and community listening session requirements, as specified; and
- Alters and expands the required duties of CEJSC.

## Hazardous Waste and Substance Management

### HB 595/SB 726 – Personal Delivery Device Authorization

*Sponsored by Del. Fraser-Hidalgo/Sens. Feldman, Smith, and Hough*

Authorizes a “personal delivery device” (PDD) to generally operate on any roadway, sidewalk, shoulder, footpath, bicycle trail, or crosswalk in the state.

The bill excludes such devices from the definition of “motor vehicle” and “vehicle” (thereby also exempting PDDs from any associated registration requirements) and establishes various other standards and requirements that must be adhered to by PDDs operating under the bill’s various authorizations.

Further, the bill prohibits PDDs from transporting hazardous materials regulated under the Hazardous Materials Transport Act.

## Inland Water Resource Management and Conservation

### HB 295/SB 227 – Stormwater Management Regulatory Updates

*Sponsored by Dels. Love and Henson/Sens. Elfreth, Hester, and Pinsky*

Requires the Maryland Department of the Environment (MDE) to update specified stormwater management regulations and criteria once every five years to incorporate specified updated precipitation data.

The bill also establishes new related reporting requirements for MDE and requires MDE to submit a climate load allocation addendum to the Chesapeake Bay Total Maximum Daily Load Phase III Watershed Implementation Plan, as well as updated two-year milestones, to the U.S. EPA by December 31, 2025.

### HB 799/SB 442 – Wetlands Permitting and Licensing Review

*Sponsored by Del. Clark/Sen. Klausmeier*

Requires the Aquaculture Coordinating Council, in consultation with the Maryland Department of the Environment (MDE), to review MDE policies regarding the application of state or tidal wetlands license and permit requirements to aquaculture operations in the state and in addition to an existing reporting requirement of the council, by December 1, 2021, report to the Governor and the General Assembly its findings and recommendations, including any proposed legislation, on changes necessary to eliminate conflicts or redundancies in the oversight of aquaculture operations by MDE and the Department of Natural Resources.

### SB 350 – Aquaculture Zones Repeal

*Sponsored by the Chair of the Education, Health, and Environmental Affairs Committee*

Repeals provisions governing the establishment of Aquaculture Enterprise Zones in the Chesapeake Bay.

The bill also authorizes the Department of Natural Resources to issue an “enterprise lease” to a person for use in the waters of the state to assess the feasibility of cultivating native or naturalized species of aquatic plants for commercial purposes.

## Land Management and Conservation

### HB 80/SB 359 – Urban Tree Program Development

*Sponsored by Del. Charkoudian/Sen. Rosapepe*

Requires the Maryland Department of Transportation (MDOT), in consultation with specified state agencies, local governments, businesses, communities, and residents, to develop an urban tree program to replace trees that are removed during the construction of a transportation facility project, including the area impacted by the Purple Line project.

MDOT must collaborate with the Maryland Department of the Environment, the Department of Natural Resources, and any other necessary state agency to identify sources of funding available for the replacement of trees, according to the bill.

### HB 322 – Allowing for Low-Impact Landscaping

*Sponsored by Dels. Hill and Feldmark*

Prohibits specified restrictions on use from imposing unreasonable limitations on “low-impact landscaping,” such as within covenants, restrictions, or conditions included in, among other instruments, deeds, declarations, or contracts.

The bill defines “low-impact landscaping” as a technique that conserves water, lowers maintenance costs, provides pollution prevention, and creates habitat for wildlife. Such techniques include bio-habitat gardens designed to attract wildlife and pollinator gardens designed to attract pollinator species. The bill may not be construed to prohibit a restriction on use from including reasonable design and aesthetic guidelines regarding the type, number, and location of low-impact landscaping features. The bill is not applicable to historic property that is listed in, or eligible for inclusion in, the Maryland Register of Historic Properties.

### HB 860/SB 692 – Land Preservation Goals

*Sponsored by Del. Gilchrist/Sen. Young*

Establishes a state goal of preserving a total of 1,030,000 acres of productive agricultural land by 2030 through the Maryland Agricultural Land Preservation Foundation, the Maryland GreenPrint Program, the Rural Legacy Program, the Maryland Environmental Trust (MET), the Next Generation Farmland Acquisition Program (“Next Gen Program”), and local land preservation programs.

The bill expresses that the intent of the General Assembly is to extend the deadline to meet the state’s agricultural land preservation goal set under prior 2002 resolutions, from 2022 to 2030, and to include acres preserved through MET and the Next Gen Program as contributing toward the goal.

### HB 991 – Forest Conservation Act Changes and Tree-Planting Goals

*Sponsored by Del. Gilchrist*

Temporarily alters the definition of “forest mitigation banking” under the Forest Conservation Act (FCA) to include “qualified conservation” of forests.

The act also requires a technical study to be conducted, to review changes in forest cover and tree canopy in the state, and it establishes tree-planting goals, related programs and funding, and a related commission.

## Solid Waste

### HB 164/SB 116 – Recyclables Market Promotion

*Sponsored by Dels. Stein and Lierman; Sens. Kagan, West, and Hester*

Requires the Maryland Department of the Environment’s (MDE) Office of Recycling to promote the development of markets for recycled materials and recycled products in the state.

The legislation establishes various requirements for the office, including expanded reporting requirements, and requires the office to coordinate its activities with the Department of Commerce, the Department of General Services, the Maryland Department of Transportation, the Maryland Environmental Service, the Northeast Maryland Waste Disposal Authority, local governments, and private organizations.

### HB 248 – Composting Rights Governing Authority for Housing Associations

*Sponsored by Del. Shetty*

Blocks recorded covenant or restriction, a provision in a declaration, or a provision in the bylaws or rules of a condominium or homeowners association (HOA) from prohibiting or unreasonably restricting an owner from contracting with a private entity to collect organic waste materials from the owner for composting at a composting facility.

For HOAs only, the bill also prohibits a recorded covenant or restriction, a provision in a declaration, or a provision in the bylaws or rules of an HOA from prohibiting or unreasonably restricting a lot owner from composting organic waste materials for the owner’s personal or household use.

### HB 264/SB 483 – Food Residuals Requirements

*Sponsored by Del. Charkoudian/Sens. Hettleman, Hester, Kagan, and Pinsky*

Requires certain generators of large quantities of “food residuals” to separate the food residuals from other solid waste and ensure that the food residuals are diverted from final disposal in a refuse disposal system.

The implementation timeline for this requirement is staggered, based on weekly tonnages of food residuals, beginning January 1, 2023, and affected generators may apply for a waiver. The Maryland Department of the Environment must establish related guidelines and mapping systems as well as a plan to implement the bill and issue warnings for violations. After receiving a warning, a violator is subject to specified civil penalties by the bill.

### HB 280 – Recyclable Materials Update

*Sponsored by Del. Charkoudian*

Alters the definition of “recyclable materials” under the Maryland Recycling Act to exclude incinerator ash and repeals the authority of a county to utilize a resource recovery facility to meet five percent of the waste reduction required to be achieved through recycling in the county’s recycling plan.



## Water Quality and Pollution Control

### HB 76/SB 334 – Authority to Intervene under Clean Water Act

*Sponsored by Del. Love/Sen. Carter*

Establishes that a person meeting the threshold standing requirements under the federal Clean Water Act (CWA) has an unconditional right and the authority to intervene in a civil action initiated by the state in state court to require compliance with:

- Subtitle 3 of Title 9 of the Environment Article, which governs water pollution control;
- Related regulations; or
- Any related discharge permit, effluent limitation, or order issued by the Maryland Department of the Environment.

A person exercising the right to intervene pursuant to the bill must act in accordance with applicable practices, procedures, and laws in the state. The bill further establishes that a person who meets the requirements to intervene under the bill has the same rights as an interested person or aggrieved party under CWA, including the right to apply for judicial appeal.

### HB 94 – Water Quality Revolving Loan Fund Expansion

*Sponsored by Del. Stein*

Expands the authorized uses of the guarantee authority under the Maryland Water Quality Revolving Loan Fund (WQRLF) by repealing the restriction that WQRLF be used only to guarantee, or purchase insurance for, bonds, notes, or other evidences of obligation issued by a local government for the purpose of financing all or a portion of the cost of a wastewater facility, if such action would improve credit market access or reduce interest rates.

The bill also authorizes WQRLF to be used to provide loan guarantees for similar revolving funds established by municipalities or intermunicipal agencies and to serve as guarantee for long-term pay for success contracts, green bonds, or environmental impact bonds by any public, private, or nonprofit entity for the purchase of outcomes that provide a water quality benefit.

### HB 407/SB 22 – Licensing Requirement for On-Site Wastewater Sewage Disposal

*Sponsored by Del. Stein/Sen. Young*

Prohibits an individual from engaging in the business of inspecting an on-site sewage disposal system unless the person holds a valid on-site wastewater property transfer inspection license issued by the Department of the Environment on or after July 1, 2022.

The bill further requires the department to adopt regulations by January 1, 2022, and provides for an administrative penalty of up to \$10,000 for a violation of the act.

### HB 1069 – Water Testing for Private Supply Wells

*Sponsored by Del. Stewart*

Requires an owner of residential rental property that is served by a private water supply well to provide water quality testing every three years and to disclose to a tenant certain results.



The bill further requires the owner of a residential rental property served by a private water supply well to notify the Department of the Environment and the local health department about well contamination and to provide an on-going potable water supply and resolve the contamination within 60 days.

#### HB 501 – Fine Authority for Sanitary Commission

*Sponsored by the Montgomery County Delegation and Prince George’s County Delegation*

Requires a respondent in a complaint reviewed by the Washington Suburban Sanitary Commission’s (WSSC) Board of Ethics, who is found to have filed a required financial disclosure statement late, to pay a fee of \$5 for each day the filing is late, up to a maximum of \$500.

#### HB 507/SB 119 – Clean Water Commerce Act Modifications

*Sponsored by Del. Stein/Sens. Guzzone and Elfreth*

Reauthorizes and modifies the Clean Water Commerce Act (CWCA) through June 30, 2030, and requires the Maryland Department of the Environment (MDE) to transfer \$20.0 million annually from the Bay Restoration Fund (BRF) Wastewater Account to the Clean Water Commerce Account (CWC Account), a new account within BRF established by the bill.

The CWC Account must be used to purchase “environmental outcomes” to help the state achieve the Chesapeake Bay Total Maximum Daily Load. The bill establishes requirements for the provision and verification of environmental outcomes, among other things.

#### HB 636/SB 546 – Definitions for Elevated Lead in Water

*Sponsored by Del. Solomon/Sens. McCray and Carter*

Redefines “elevated level of lead” to mean a lead concentration in drinking water that exceeds five parts per billion (ppb) for the purposes of required lead water testing and remedial measures in public and nonpublic schools.

According to the legislation, if a water test sample for a drinking water outlet was analyzed on or before June 1, 2020, and the analysis indicated a concentration of lead that was more than 5 ppb but less than 20 ppb, a school must take appropriate remedial measures by August 1, 2021.

# MISSISSIPPI

Mississippi adopted **21** energy and environmental bills during its 2021 legislative session.

## ***Highlights:***

**HB 632** establishes that no political subdivision may prohibit the expansion, connection, or reconnection of a service based upon the type or source of energy provided to a customer.

**SB 2798** provides for the participation of rate-regulated electric utilities in the expansion of broadband services in the state.

## **Energy Legislation**

### Alternative Energy Development

SB 2895 – Ad Valorem Taxation Exemption for Renewable Energy Projects

*Sponsored by Sens. Suber, Jackson, and Jordan*

Allows a County Board of Supervisors to exempt from ad valorem taxation the property of a renewable energy project, up to an amount not to exceed 50 percent of the total assessed value of the project.

### Energy Efficiency

HB 1197 – Providing for Fixed Firm Price or Guaranteed Maximum in Contracts

*Sponsored by Rep. Lamar*

Provides that instead of the dual-phase procedure for awarding a contract for each proposed design-build project, either a fixed firm price or guaranteed maximum price contract must be adopted.

The bill further revises what must be included in the work statement to add:

- The location and nature of proposed site(s) that include preliminary geotechnical information from borings as well as survey drawings;
- Any mandatory requirements such as minimum number and types of spaces, any minimum or maximum building area(s) or height(s), applicable energy codes and/or efficiency targets, applicable zoning regulations and any aesthetic or character defining standards; and
- Any mandatory material and/or system performance requirements and/or specifications.

SB 2649 – Shared-Savings and Performance Basis Modifications

*Sponsored by Sen. Carter*

Extends the repeal date on the use of energy efficient equipment or service contracts on a shared-savings basis or performance basis from July 1, 2021, to 2025.

## SCR 506 – Intent to Observe Daylight Saving Time

*Sponsored by Sens. Blackwell and DeBar*

Expresses intent of the Legislature that Daylight Saving Time (DST) be the observed year-round standard time in Mississippi.

The resolution finds that the principle established by the Emergency DST Energy Conservation Act of 1973 that DST reduces electrical power consumption still applies today.

## Natural Gas and Petroleum

### HB 1418 – Gas Distribution System Expansion

*Sponsored by Rep. Reynolds*

Authorizes the governing authorities of the Oakland/Yalobusha natural gas district to expand its gas distribution system.

### HB 1433 – Oakland Natural Gas District Loans

*Sponsored by Rep. Reynolds*

Allows the board of supervisors of Yalobusha County to loan the Oakland natural gas district certain funds and provides that the loan must be applied solely to existing debt of the gas district.

### HB 1436 – Agreement for Natural Gas Resale and Purchase

*Sponsored by Rep. McLean*

Grants the Caledonia Natural Gas District the ability to enter into agreement with Mississippi Development Bank to allow for the purchase and resale of natural gas to any nonresidential customer located in noncertificated and nonfranchised areas in the state to further the purposes of the district.

### HB 1481 – Natural Gas Distribution System Expansion

*Sponsored by Rep. Thompson*

Allows the governing authorities of the town of Shannon, Mississippi, to expand the town's natural gas distribution system.

### HCR 39 – Offshore Oil and Natural Gas Leasing Resolution

*Sponsored by Rep. Powell*

Urges the current administration to bring an end to its pause on offshore oil and natural gas leasing and allow for the continued exploration, development, and production of the Gulf of Mexico's oil and natural gas resources while supporting ongoing development of America's pipeline transportation network.

### SB 2648 – Class VI Primacy Provisions

*Sponsored by Sen. Carter*

Provides that the Mississippi State Oil and Gas Board, instead of the Mississippi Commission on Environmental Quality, has jurisdiction and authority to enforce the provisions of the Mississippi Geologic Sequestration of Carbon Dioxide Act.

The measure also establishes that the board serves as the permitting agency for Class VI underground injection control wells and is authorized to promulgate such rules and regulations as are necessary for the development and administration of the Class VI underground injection control well program.

#### SB 3088 – Natural Gas Service Expansion

*Sponsored by Sen. Parks*

Authorizes the city of Baldwin to expand and operate its natural gas distribution system to serve certain areas of Tippah County.

### Utilities

#### HB 359 – Overdue Program Provision for Certain Municipalities

*Sponsored by Rep. Bell, et al.*

Provides for municipalities of a population of at least 150,000 to establish overdue water/sewer programs.

#### HB 632 –All Fuels Act of 2021

*Sponsored by Reps. Powell and Aguirre*

Establishes that no political subdivision may prohibit the expansion, connection, or reconnection of a service based upon the type or source of energy provided to a customer.

#### SB 2373 – Incompatible Motor Fuel Liability

*Sponsored by Sen. Branning*

Establishes that a refiner, supplier, wholesaler, or retailer is not liable for damages caused using incompatible motor fuel dispensed at a retail site if all the following apply:

- The incompatible fuel meets the standards promulgated by the Commissioner of Agriculture and Commerce;
- The incompatible fuel is selected by a person other than the retailer, including an employee or agent of the retailer; and
- The incompatible fuel is dispensed from a motor fuel dispenser that correctly labels the type of fuel dispensed.

For the purposes of this section, a motor fuel is incompatible with a motor according to the manufacturer of the motor.

#### SB 2798 – Broadband Expansion via Electric Utilities

*Sponsored by Sen. Carter*

Provides for certain participation of rate-regulated electric utilities in the expansion of broadband services in the state.

The act declares that it is the policy of the state of Mississippi to support the expansion of existing and emerging technologies fostering reliable and resilient service and customer access to enhanced services. The bill amends existing law to include fiber-optic infrastructure as an economic development activity, to allow rate-regulated electric utilities to permit broadband providers use of the electric delivery system to provide broadband services, to regulate

easements, and to allow certain entities to construct fiber-optic infrastructure on public utilities' existing rights-of-way.

## **Environmental Legislation**

### **Coastal Zone Management**

#### **HB 594 – Coastal Wetlands Protection Act Amendments**

*Sponsored by Rep. Ladner*

Amends the Coastal Wetlands Protection Act to define "ordinary high water mark" to mean a mark on the shore determined by the Department of Marine Resources staff, established by fluctuations in water level and indicated by physical and biological characteristics including, but not limited to, water stains, changes in the character of the soil, scour lines, presence of debris lines, changes in plant communities and other appropriate means that consider the characteristics of the surrounding area.

The measure further revises the definition of "coastal wetlands" to mean all publicly-owned lands subject to the ebb and flow of the tide, which are below the ordinary high-water mark, all publicly owned accretions above the ordinary high-water mark and all publicly owned submerged water bottoms below the ordinary high-water mark and includes the flora and fauna on the wetlands and in the wetlands.

### **Environmental Health Services**

#### **HB 382 – Testing Deer for Chronic Wasting Disease**

*Sponsored by Rep. Bounds*

Requires the Commission on Wildlife, Fisheries and Parks to test for chronic wasting disease (CWD) any sample of white-tailed deer harvested or dying from causes other than being harvested by hunting within any enclosure.

The bill further provides that if chronic wasting disease is detected within an enclosure, the commission may not declare surrounding or adjoining properties within a five-mile radius of the enclosure a CWD management zone until chronic wasting disease is positively detected within such radius on surrounding or adjoining properties.

### **Inland Water Resource Management and Conservation**

#### **HB 1480 – Sewer District Expansion**

*Sponsored by Reps. Massengill and Kinkade*

Expands the boundaries of the Marshall utility services sewer district.

#### **HB 1495 – Water Well Lease Provisions**

*Sponsored by Rep. Reynolds*

Authorizes the leasing of a certain water well to the City of Charleston by Tallahatchie County for a period of up to 25 years.

## Land Management and Conservation

### HCR 56 – Native Plant Appreciation Week

*Sponsored by Rep. Anderson*

Recognizing April 19-25, 2021, as “Native Plant Appreciation Week” in Mississippi and commending the efforts of the Audubon Delta region of the National Audubon Society to raise awareness of the use of native plants in our state.

## Solid Waste

### HB 949 – Requiring Referendum for Certain New Landfills

*Sponsored by Reps. Ford, Blackmon, Gibbs, and Stamps*

Prohibits building new landfills in a county where two or more exist unless a referendum is held approving such a project.

## MISSOURI

Missouri adopted **4** energy and environmental bills during its 2021 legislative session, but at the time of printing several bills were awaiting the Governor’s signature.

### ***Highlight:***

**HB 697** amends a number of provisions found in the Property Assessment Clean Energy (PACE) Act.

## **Energy Legislation**

### Alternative Energy Development

#### HB 697 – Property Assessment Clean Energy Act Amendments

*Sponsored by Rep. DeGroot*

Modifies various provisions relating to the Property Assessment Clean Energy (PACE) Act.

The bill redefines the term “assessment contract” to state that property owners may enter into assessment contracts to finance energy efficiency improvements with a Clean Energy Development Board for a period of up to 20 years not to exceed the weighted average useful life of the qualified improvements.

According to the bill, the Clean Energy Development Board must provide a copy of each signed assessment contract to the city or county collector and assessor. Additionally, the special assessments must be collected by the city or county collector.

Further, portions of the PACE Act, as described by the bill, only apply to PACE Programs for projects to improve residential properties of four or fewer units. Any Clean Energy Development Board formed to improve commercial

properties, properties owned by non-profit or not-for-profit entities, governmental properties, or nonresidential properties in excess of four residential units will be exempt from portions of the PACE Act, and portions of the program will not apply to the commercial PACE Programs and Commercial PACE Assessment Contracts of any Clean Energy Development Board Engaged in both commercial and residential property programs. Any Clean Energy Development Board that ceases to finance new projects to improve residential properties of four or fewer units before January 1, 2022, will be exempt from the portions of the PACE Act.

Municipalities that have created, joined, or withdrawn from a residential PACE Program or District must, according to the law, inform the director of the Division of Finance by submitting a copy of the enabling ordinance or withdrawal ordinance to the division.

A Clean Energy Development Board will not approve, execute, submit, or otherwise present for recordation any residential assessment contract unless the board verifies certain criteria set forth in the bill are satisfied, and the property owner executing a PACE Assessment Contract will have a three-day right to cancel the contract. The Clean Energy Development Board must also advise the property owner in writing that any delinquent assessment will be a lien on the property subject to the assessment contract and that the obligations under the PACE Assessment Contract continue even if the property owner sells or refinances the property.

According to the bill, contractors or other third parties cannot advertise the availability of residential assessment contracts that are administered by a board or solicit property owners on behalf of the PACE board, unless the contractor maintains his or her permits and agrees to act in accordance with advertising laws.

Finally, the bill states a contractor must not provide a different price for a project financed as a residential PACE Project than the contractor would provide if paid in cash by the property owner.

## **Environmental Legislation**

### **Inland Water Resource Management and Conservation**

SCR 7 – Support for a North Central Missouri Regional Water Commission Project

*Sponsored by Sens. Hegeman and Black*

Urges support of state funding for a North Central Missouri Regional Water Commission project by the state entering into a long-term commitment of money in the Multipurpose Water Resource Program Fund, subject to appropriations, provided that the total annual cost does not exceed \$1.5 million and the total cost over the life of the contract does not exceed \$24 million.

### **Water Quality and Pollution Control**

HB 819 – Fluoridation Impact Requirements

*Sponsored by Rep. Wallingford*

Requires public water systems and public water supply districts that intend to start or stop fluoridation of their water supply on a continuing basis to seek and receive information about the impact of fluoridation from the local health department.

Modifies the membership composition of the “Clean Water Commission” so that two members must be knowledgeable about the needs of agriculture, industry, or mining, and four members must represent the public.

## NORTH CAROLINA

North Carolina has adopted **4** energy and environmental bills in its ongoing 2021 legislative session.

***Highlight:***

**H 217** makes several changes to the laws regulating public utilities including modifications to governing rate case procedures.

## Energy Legislation

### Utilities

#### H 20 – Granting Additional Water Connections

*Sponsored by Reps. Sasser and Moss*

Expands the criteria under which the Secretary of Environmental Quality must grant a waiver to allow additional connections for provision of water to include structures located on lots that are zoned for residential use or mixed-use development.

This bill eliminates the requirement under existing law that the structure be “habitable” and located on lots that are zoned for a “single-family residence.”

#### H 217 – Public Utilities Regulatory Action

*Sponsored by Reps. Arp, Jones, Szoka, and Winslow*

Incorporates several technical, clarifying, conforming, and administrative changes to the laws related to public utilities, as recommended by the Utilities Commission.

Specifically, the measure states the Public Staff has authority to petition the commission to initiate proceedings to review, investigate, and take appropriate action with respect to the operations of public utilities, in addition to its existing authority to petition the commission on rates and service of public utilities. It also eliminates a requirement that the Public Staff investigate and make recommendations to the commission with respect to certificates for radio common carriers and adds language to provide that, when deemed necessary by the executive director in the interest of the using and consuming public, the Public Staff may appear before state and federal courts and agencies in matters affecting public utility service.



The Public Staff is further authorized to examine confidential information as needed to exercise their powers or duties under the statutes. The bill prohibits the Public Staff from disclosing any confidential information except as authorized by the person or entity having the right to assert confidentiality, the commission, or a court of competent jurisdiction. The staff also is required to publish all laws affecting public utilities to eliminate a requirement that the commission publish biennial supplements of the law.

The bill also makes changes governing rate case procedures, such that it:

- Eliminates a deadline for the commission to issue a final order within nine months of the institution of a rate case;
- Requires a public utility applying for an increase in sewer rates to notify affected customers of the potential increase (such notice is already required for public utilities applying for rate increases for electric, telephone, natural gas, and water rates). In addition, electronic means is added to the manner in which any public utility may notify its customers of an application for a rate increase;
- Raises the cap on requested revenue increase for rate cases that can be heard by a panel of three from \$300,000 to \$2 million. This provision was first included in 1973 to allow a “division” of the commission to hear rate cases where the total annual revenue requested or where the total annual revenue increase requested is less than \$50,000. The cap was last amended in 1981 when it was set to the current amount of \$300,000. The proposed cap is set at an amount to require full commission participation for the major electric, natural gas, and water utilities; and
- Provides that hearings for changes to a public utility’s rider for the cost of fuel and fuel related costs or hearings for rate changes for natural gas local distribution companies occasioned by changes in the cost of natural gas supply and transportation are not subject to the requirement that the commission conduct hearings in areas of the State served by the public utility.

The measure also increases the nonutility filing fee for a certificate of public convenience and necessity (CPCN) from \$25.00 to \$250.00, and it amends existing law to allow, rather than require, the commission to:

- Confer and consult with public utilities in North Carolina, the utilities commissions or comparable agencies of neighboring states, the Federal Energy Regulatory Commission and other agencies having relevant information, in development of this analysis;
- Hold a public hearing on such plan in a year that an annual update of an integrated resource plan is filed. A public hearing is still required in the year a biennial integrated resource plan is filed; and
- Authorizes the Public Staff and intervenors to attend or be represented at any formal conference conducted by the commission in developing a plan for the future requirements of electricity for the state.

The act adds language to allow the commission to order a natural gas utility to make an appropriate adjustment to its rates, consistent with the public interest, if the commission finds an over-recovery or deficiency has been or is likely to be substantially reduced, negated, or reversed before or during the period in which the rates were credited or recovered.

Finally, the commission is authorized to allow a lessor of a multi-unit apartment building to use a master meter for the provision of natural gas service and charge each tenant for the natural gas used by a central system based on each

tenant's metered or measured share of the natural gas used only for cooking, ventless fireplaces, or other ancillary purposes.

## **Environmental Legislation**

### **Coastal Zone Management**

H 30 – Granting Eminent Domain for Erosion Control and Flood and Storm Protection

*Sponsored by Rep. Hanig*

Permits the Town of Southern Shores to use eminent domain for the purpose of engaging in beach erosion control and flood and hurricane protection works.

### **Water Quality and Pollution Control**

H 139 – Soil Scientist Requirement

*Sponsored by Rep. Brody*

Adds a licensed soil scientist experienced in soil and site evaluation to the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board in substitution of the person employed by the North Carolina Cooperative Extension Service knowledgeable in the area of on-site wastewater systems.

# OKLAHOMA

Oklahoma adopted **27** energy and environmental bills during its 2021 legislative session.

## ***Highlights:***

**SB 1021** creates the Hydrogen Production, Transportation, and Infrastructure Task Force in order to meet and investigate hydrogen production and distribution.

**HB 1815** directs the Oklahoma Corporation Commission to issue a report and recommendations regarding availability and appropriateness of natural gas utilities to procure, transport, and deliver renewable natural gas to consumers.

## **Energy Legislation**

### Alternative Energy Development

HB 2234 – DRIVE Act of 2021

*Sponsored by Rep. Hilbert and Sen. Taylor*

Creates the Driving on Road Infrastructure with Vehicles of Electricity (DRIVE) Act of 2021.

The measure levies a three-cent tax per kilowatt hour or its equivalent on the electric current used to charge or recharge the battery or batteries of an electric vehicle beginning January 1, 2024. This tax is not applicable to electric vehicles charged at a private residence at which the owner or occupant of the residence uses electric power paid for by the owner or occupant of the residence.

A charging station operator must make a full and conspicuous disclosure at the site of the charging station and on the website maintained by or on behalf of the owner or operator, and any tax revenue collected must be apportioned to the DRIVE Revolving Fund and counties throughout the state.

The measure provides that 85 percent of the monies must be apportioned to the fund and 15 percent must be apportioned to the counties, and it requires charging station owners to remit the tax monthly, using forms prescribed by the Tax Commission.

Legacy chargers, and public charging stations that have never charged a fee for their use, are exempt from remitting the tax until 2041. The Tax Commission may terminate a charging station owner's operator license if the owner fails to remit the tax as required, and the bill states the Oklahoma Corporation Commission may inspect the premises and equipment of the charging station, and may require periodic third-party testing, calibration, and inspection reports. The commission may set fees necessary to carry out these duties and also assess a penalty of not more than \$500 per day to charging station operators that fail to comply with these requirements.

Charging stations constructed after November 1, 2021, must use a metering system that is capable of imposing the cost for the charging service. The metering system is required to include a system that allows for an audit of the

electricity supplied. The Oklahoma Tax Commission may inspect the premises and equipment of any charging station in order to enforce compliance.

Finally, the measure allows each motor license agent to retain \$3.56 for each electric vehicle registered and for agents to retain 3.25 percent of the vehicle excise tax collected.

#### SB 600 – Charging Station Tax Exemption

*Sponsored by Sen. Rader and Rep. Hilbert*

Exempts charging stations with a charging capacity of less than 50 kilowatts and charging stations that do not require payment for use from the three cents per kilowatt tax.

The measure also directs the Oklahoma Tax Commission to promulgate rules for the purpose of determining a percentage basis equivalent tax, which must be recalculated annually.

#### SB 1021 – Hydrogen Production, Transportation, and Infrastructure Task Force

*Sponsored by Sen. David and Rep. McBride*

Creates the Hydrogen Production, Transportation, and Infrastructure Task Force.

The task force consists of ten members, chaired by the Secretary of Energy and Environment, co-chaired by one appointee each of the Speaker of the House and President Pro Tempore of the Senate, with additional members appointed by the Speaker, the President Pro Tempore, and representatives of the Secretary of Commerce, Secretary of Transportation, Corporation Commission, Oklahoma Water Resources Board, and Oklahoma Center for Science and Technology.

The task force is directed by the measure to hold at least one meeting each on issues regarding hydrogen production and the distribution of hydrogen.

### Energy Efficiency

#### SB 91 – Capital Cost Avoidance for Performance-based Efficiency Contracts

*Sponsored by Sen. Hall and Rep. Boles*

Allows a public entity, when calculating cost savings for performance-based efficiency contracts, to consider capital cost avoidance and additional revenue directly attributed to the contract.

### Natural Gas and Petroleum

#### HB 1815 – Renewable Natural Gas Report

*Sponsored by Rep. McBride and Sen. David*

Directs the Oklahoma Corporation Commission to issue a report and recommendations regarding availability and appropriateness of natural gas utilities to procure, transport, and deliver renewable natural gas to consumers no later than December 1, 2021.

Renewable natural gas is defined by the bill to include biogas-derived methane gas, hydrogen gas or carbon oxide from renewable sources, or methane gas derived from any combination of hydrogen gas or carbon oxide from renewable sources. The report also must address production of educational materials regarding renewable natural gas and discuss future reporting requirements for producers.

## HB 2029 – Division Order Clarification

*Sponsored by Rep. O'Donnell and Sen. Tayler*

Clarifies a requirement that a division order include the name, address, and tax ID number of each interest owner.

A division order is an instrument for the purpose of directing the distribution of proceeds from the sale of oil, gas, casinghead gas, or other related hydrocarbons which warrants in writing the division of interest, according to the bill.

## HCR 1011 – State Interest in Oil and Gas Industry

*Sponsored by Rep. McBride and Sen. Taylor*

Declares that the oil and gas industry is a vital part of the economy and the state, and those companies that do business by and through the state in the interest of the state's economic policy should not boycott the oil and gas industry.

The resolution further declares:

- The state should not enter into a contract with a company unless the company submits a written certification that the company is not currently engaged in a boycott, in any manner, of the oil and gas industry that constitutes an integral part of business conducted or sought to be conducted with the state;
- The state should not adopt a procurement, investment, or other policy that has the effect of inducing or requiring a person to boycott the oil and gas industry or a person doing business with the oil and gas industry; and
- The Oklahoma Secretary of State should approve contracts or may waive application of this resolution on any contract with any state agency if the Secretary determines that compliance is not practicable.

## SB 535 – Pipeline Safety Violation Penalties

*Sponsored by Sen. Bergstrom and Rep. Lepak*

Doubles the cap on a penalty pursuant to provisions of the Corporation Commission related to pipeline safety violations.

The amount of administrative penalty per day of violation is capped at \$200,000, up from \$100,000. The maximum penalty increases from \$1,000,000 to \$2,000,000.

## SB 632 – Oil and Gas Illustrated Rights

*Sponsored by Sen. Taylor and Rep. McEntire*

Provides that the proceeds owed for oil and gas drilling and development, proceeds from the acquisition of oil and gas rights, and proceeds from an unfulfilled contract or agreement for the purchase of mineral rights are to be included in the list of illustrated rights as it relates to oil and gas.

The measure modifies the Nature, Extent, and Duration of Oil and Gas Lien Act to include the provision to secure the obligation of any person to pay any proceeds for the acquisition of oil and gas rights.

## Reorganization and Coordination

### HB 1712 – Road User Charge Task Force

*Sponsored by Rep. Hill and Sen. Haste*

Creates the Road User Charge Task Force.

The measure requires the task force to study methods that may be used to record and report public road usage as well as alternatives to the current system of taxing highway use through motor vehicle fuel taxes. The task force must submit a report of its findings to the legislature no later than December 31, 2023.

Finally, the law directs the Oklahoma Tax Commission to administer collection of any charges or fees associated with the Road User Charge Program.

### HB 2965 – Oklahoma Energy Resources Board Extension

*Sponsored by Rep. McCall and Sen. Treat*

Extends the sunset date of the following entities to 2024 on various boards and commissions including the Oklahoma Energy Resources Board.

## Utilities

### HB 2028 – Underground Facilities Marking Requirements

*Sponsored by Rep. O'Donnell and Sen. Allen*

Prohibits excavators from commencing excavation or demolition if they have knowledge that an operator has unmarked underground facilities.

Work may begin after notice has been given and such facilities have been marked, and excavators are required to maintain and preserve all marks for the duration of the excavation or demolition. They also are required to notify the notification center if marks are no longer visible or removed and check for positive response at the notification center prior to excavation or demolition. The measure provides time limits for certain notice and potential liability for excavators in certain circumstances, but during any state of emergency, time limitations are inapplicable.

The bill further requires operators to provide a positive response to the notification center prior to the expiration of the required notice period, and it requires all operators to be members in good standing of the notification center and requires certain documentation to be maintained by the notification center.

### HB 2040 – Sales Tax Exemption for Certain Broadband Equipment

*Sponsored by Rep. McCall and Sen. Leewright*

Creates a sales tax exemption for the sale, lease, rental, storage, use, or other consumption of qualifying broadband equipment by providers of Internet service or subsidiaries if the property is directly used or consumed by the provider or subsidiary in or during the distribution of broadband Internet service.

The exemption must be administered as a rebate and must not exceed \$20 million, but the allocation of this amount must be made using an incentive award formula as enacted into law by the legislature after recommendation by the Rural Broadband Expansion Council. Of that amount, \$15 million must be reserved for eligible projects serving counties having a population density of fewer than 100 persons per square mile and \$5 million for projects serving counties with a population density of more than 100 persons per square mile.

The Oklahoma Department of Commerce and the Rural Broadband Expansion Council are directed to use information provided by the Oklahoma Tax Commission to prepare a report to identify the qualifying rural broadband projects completed with the equipment purchased together with the location of the equipment and the geographic areas served as a result of the equipment purchases no later than December 1, 2023.

#### HB 2297 – Clarifying Broadband Service Definitions

*Sponsored by Reps. Roberts and Hall*

Defines “fixed wireless broadband Internet service provider” as an entity that offers Internet access through a stationary fixed point-to-point connection, often requiring direct line of sight between the provider’s wireless transmitter and its end-user consumer’s receiver as it relates to the Ad Valorem Tax Code.

The measure clarifies that fixed wireless broadband Internet service providers are not included in the definitions of transmission company and public service corporation.

#### HB 2402 – Design-Build Delivery Method for Water Systems

*Sponsored by Rep. Russ and Sen. Jech*

Authorizes counties, public trusts, and other political subdivisions operating a public water supply system or wastewater treatment system to utilize design-build as a project delivery method for those water systems.

The measure requires the Department of Environmental Quality to incorporate a flexible permitting process to allow this design-build authorization into its rules and to authorize up to five pilot projects in the interim before those rules are adopted.

## **Environmental Legislation**

### Air Quality and Pollution Control

#### SB 246 – Air Curtain Incinerator Requirements

*Sponsored by Sen. Allen and Rep. Roberts*

Lowers the population requirement for counties where people or entities located in certain areas are required to use air curtain incinerators for land clearing operations and air curtain incinerators for the burning of clean wood waste or yard brush from 900,000 to 500,000.

Additionally, the counties required to use air curtain incinerators must also include areas where the Department of Environmental Quality-certified ambient air quality monitoring data documents a violation of primary National Ambient Air Quality Standards.

### Hazardous Waste and Substance Management

#### HB 1631 – Nutrient Management Plan Requirements

*Sponsored by Rep. Harlin and Sen. Murdock*

Requires nutrient management plans for new or expanding poultry feeding operations to be prepared by the operator or a designee of the operator.

A “nutrient management plan” includes poultry waste handling procedures. The plan must be submitted to the Oklahoma Department of Agriculture, Food and Forestry for review and approval. Every nutrient plan must be

updated and submitted to the department every 6 years. The measure also allows a current operator to submit a one-page amendment to the most recently submitted plan in lieu of a renewal plan.

#### HB 1705 – Hazardous Waste Shipping Modifications

*Sponsored by Rep. Newton and Sen. Murdock*

Eliminates the requirement that persons generating or shipping hazardous waste must create a disposal plan and submit it to the Department of Environmental Quality for approval.

The measure also eliminates the fee for the generator disposal plan and modifies the fees for monitoring and for small quantity generators.

### Inland Water Resource Management and Conservation

#### HB 2330 – Municipal Water Wells

*Sponsored by Rep. Steagall and Sen. Rosino*

Allows for drilling of municipal water wells inside and outside of the municipal limits.

#### SB 1006 – Navigability Improvement for McClellan-Kerr Arkansas River Navigation System

*Sponsored by Sen. David and Rep. Sims*

Requires the Tri-State Commission to coordinate with any relevant federal or state agency to identify ways to improve the navigability of the McClellan-Kerr Arkansas River Navigation System.

#### SB 1022 – Water Permit Issuance

*Sponsored by Sen. David and Rep. Boles*

Authorizes the executive director of the Oklahoma Water Resources Board to issue temporary and regular water permits that have not been subject to a protest from an interested party.

### Land Management and Conservation

#### HB 1588 – Commercial Forestry Equipment Sales Tax Exemption

*Sponsored by Rep. Dempsey and Sen. Burns*

Provides a sales tax exemption relating to the sale of commercial forestry service equipment outlined in the measure to businesses engages in logging, timber, and tree farming from sales tax until January 2027.

#### HB 2049 – Conservancy District Requirements

*Sponsored by Rep. McCall and Sen. Simpson*

Modifies the cost at which a conservancy district contract requires an advertisement for bids in a newspaper to instances when the contract is valued at more than \$100,000.00.

### Reorganization and Coordination

#### SB 364 – Grand River Dam Authority Headquarters

*Sponsored by Sen. David and Rep. West*

Moves the headquarters of the Grand River Dam Authority from the City of Vinita to Mayes County.



## Solid Waste

### SB 448 – Advanced Recycling Facilities

*Sponsored by Sen. Taylor and Rep. Boles*

Amends the Oklahoma Solid Waste Management Act to provide that, if done properly, advanced recycling may not be considered disposal, incineration, or a solid waste management system.

The measure also provides that advanced plastic recycling facilities must not be considered disposal sites, solid waste management systems, or transfer systems. They are subject to inspections by the Department of Environmental Quality (DEQ).

According to the legislation, if these facilities do not comply with the requirements in law, they are not considered advanced recycling facilities and will be subject to all applicable solid waste laws and regulations as determined by the DEQ, and as long post-use polymers and recovered feedstock are properly managed and disposed of, they may not be considered solid waste.

## Water Quality and Pollution Control

### HB 1093 – Water Quality Standards Update

*Sponsored by Rep. Kerbs and Sen. Murdock*

Directs the Oklahoma Water Resources Board to update its water quality standards to allow for the development of watershed trading programs by November 1, 2026.

### HB 2049 – Conservancy District Requirements

*Sponsored by Rep. McCall and Sen. Simpson*

Modifies the cost at which a conservancy district contract requires an advertisement for bids in a newspaper to instances when the contract is valued at more than \$100,000,00.

## PUERTO RICO

Puerto Rico has not yet adopted **any** energy and environmental bills in its ongoing 2021-2024 legislative session.

# SOUTH CAROLINA

South Carolina adopted **13** energy and environmental bills during its 2021 legislative session.

***Highlight:***

**H 3194** provides sweeping authority and operational guidance for the state's Public Service Authority, Santee Cooper.

## Energy Legislation

### Alternative Energy Development

#### H 3354 – Renewable Energy Resource Tax Exemption

*Sponsored by Rep. Ballentine*

Adds a property tax exemption for renewable energy resource property having a nameplate capacity of and operating at no greater than 20 kilowatts beginning after fiscal year 2020-21.

#### H 3979 – Solar Energy Systems and Housing Restrictions

*Sponsored by Rep. Morgan*

Renders a deed restriction, covenant, or a homeowners' association document intended to prohibit the installation of a solar energy system void and unenforceable.

#### S 304 – Electric Vehicle Charging Station Classification

*Sponsored by Sen. Climer*

Specifies that a person or corporation using an electric vehicle charging station to resell electricity to the public is not an electric utility and stipulates future increases in consumer demand or energy consumption associated with electric vehicles does not establish found revenues for an electric utility.

#### S 463 – Geothermal Machinery Tax Credits

*Sponsored by Sen. Alexander*

Extends the tax credits for the purchase and installation of geothermal machinery and equipment until January 1, 2032.

## Utilities

### H 3194 – Santee Cooper Authority and Operational Guidance

*Sponsored by Rep. Lucas*

Amends existing law surrounding the authority and operation of the Public Service Authority (PSA), Santee Cooper, in the following ways:

- Authorizes the sale of the assets of the authority and the assumption or defeasance of its liabilities in the manner provided by the provisions of this bill;
- Establishes a six-member committee consisting of three members from each house to further negotiate the terms and conditions of the preferred sale proposal recommended by the Department of Administration (DOA);
- Provides that once the special committee completes deliberations, they must recommend a proposal to sell the PSA, and once the proposal has been approved by the House and Senate and considered by the Governor, the DOA is responsible for executing the documents necessary to effectuate the sale proposal once approved;
- Changes the manner in which the board members of the PSA are selected and provides additional selection criteria of education and work experience for board candidates and modifies the directors' term length from seven to five years while prohibiting them from serving more than two consecutive terms;
- Prohibits directors from making campaign contributions to the Governor who appointed them in the election cycle immediately preceding their appointment and establishes three nonvoting ex officio board members who are entitled to attend all meetings, including any executive sessions;
- Directs the board to annually elect a chairman as well as any officers they find appropriate. Once the bill becomes effective, this section of the bill will cause the current board members' terms to expire so that they may be replaced following the provisions of this act;
- Establishes that the PSA must explore joint cost-savings opportunities and to seek agreements with other electrical utilities, subject to approval by the Public Service Commission (PSC) and requires the PSA to prepare and submit an annual report detailing its efforts regarding implementation of this section;
- Requires the PSA to explore joint cost-savings opportunities and to enter into agreements with one or more third-party electrical utilities and that any cost savings agreement must be approved by the PSC with a finding that the agreement is in the public interest. In exploring joint cost-savings opportunities, the PSA must give first preference to electrical utilities providing electric service in this state;
- Directs the PSA to prepare and submit an annual report detailing its efforts regarding implementation of this section. The annual report must be submitted to the Governor, Speaker of the House, President of the Senate, the Office of Regulatory Staff, and the PSC; and
- Establishes the requirement that the PSA to develop an Integrated Resource Plan (IRP) that incorporates the loads and resources portion of the reform plan submitted to the General Assembly.

Further, the bill requires the PSC to review and approve the PSA's IRP incorporating the revised reform plan. No later than 300 days after the PSA files their IRP, the PSC must issue an order approving, modifying, or denying the IRP.

The PSC also is required, in consultation with the Office of Regulatory Staff (ORS) and the PSA, to develop, publicize, and keep current an analysis of the PSA's energy and capacity needs, electrical generating facility needs, forecasted electricity use growth, and electrical generation mix. This analysis must be used by the PSC in making determinations on PSA petitions related to the construction or acquisition of a major utility facility as well as other long-term energy procurement means exceeding five years in duration. Each year the PSC must submit a report to the Governor and appropriate committees of the General Assembly detailing the status of the PSC's analysis and plan.

The measure requires the ORS to work with the PSA and Central Electric Power Cooperative to establish a process that allows consumer input in the IRP process.

The legislation also establishes new procedures for the Board of Directors (BOD) in setting retail rates of the PSA. The PSA must provide at least two public meetings for affected customers to provide their input. At least 30 days before the BOD votes on a proposed rate increase, they must hold a public hearing that allows any interested party, including the ORS and the Consumer Affairs Office, to present testimony and recommendations. At the appropriate time, the BOD must schedule a meeting to vote on the proposed rate increase. The BOD is directed to establish a set of pricing principles which must be taken into consideration when establishing new rates. The BOD must prepare and submit an annual pricing report to the ORS and the consumer advocate, and the ORS must issue comments on the report after review.

No less than 180 days prior to a vote by the BOD to increase retail rates, the PSA must provide notice to all customers affected by a proposed rate increase, as well as the ORS and Department of Consumer Affairs. Customers who will be affected by a proposed rate increase have 120 days from the date of notice to prepare and submit written comments to be considered by the board before any vote concerning a proposed increase.

In addition to the public notice, the PSA must make available for review a comprehensive review of the PSA's rates and rate structure, a written report with management's rate adjustment recommendations, and an opportunity for affected customers to review this information. The PSA must provide at least two public meetings for affected customers to provide their input. The proposed rate schedule, revenue requirement, cost of service analysis, and rate/tariff design will be subject to an inspection, audit, and examination by the ORS or intervening parties. At least 30 days before the BOD votes on a proposed rate increase, they must hold a public hearing that allows any interested party including the ORS and the Department of Consumer Affairs to present testimony and recommendations.

When necessary, the BOD must schedule a meeting at which they will take into consideration the record of the retail rate proceedings and vote on the proposed rate increase. The BOD must use counsel that is independent from counsel used by PSA's management, and they may hire independent outside experts and consultants as necessary to carry out their duties pursuant to this act.

The BOD is directed to establish a set of pricing principles which must be taken into consideration when establishing new rates. The BOD must prepare and submit an annual pricing report to the ORS and consumer advocate. The report must include an analysis of the adherence to the pricing principles, current and projected rates with a comparison to inflation and other utilities, and an analysis of the rates and cost allocations amongst customer classes. The ORS must issue comments on the report after review.

The measure also establishes a regulatory process for the ORS and PSC to review and approve any long-term securities representing new debt that the PSA seeks to enter into. Prior to the issuance of new securities, the PSA must file an application with the PSC and provide a copy to the ORS. The application must detail the nature of the securities, details of any projects related to the securities, and the financial condition of the PSA.

The ORS is required to make an investigation into the securities application as necessary, and the PSA may be

heard before the commission regarding the ORS's investigation. Within ninety days of receiving the application, the commission must issue a determination as to the prudence and support for the new revenue obligation securities.

Finally, the act expands the investigative and examination authority of the ORS to include the PSA in their jurisdiction. The investigative authorities include the ability to examine the condition and management of utility and to review of the property, financial records, employees, and tax returns of an electric utility. Any lawful expenses of the ORS or PSC must be defrayed by assessments made by the Comptroller General against the PSA.

#### H 4438 – Powdersville Water District Commendation

*Sponsored by Rep. Cox*

Congratulates the Powdersville Water District for its fiftieth anniversary of providing high quality, accessible water service to the residents of South Carolina.

#### S 4064 – Manufacturing Tax Clarification

*Sponsored by Reps. Smith and Sandifer*

Clarifies that manufacturing property owned or leased by a public utility regulated by the Public Service Commission does not qualify for a 14.2857 percent property tax exemption regardless of whether the property is used for manufacturing.

## **Environmental Legislation**

### **Coastal Zone Management**

#### H 3684 – Limits on Cobia Fishing

*Sponsored by Rep. Herbkerman*

Provides limits for cobia, a marine fish, caught in the waters of this state and prohibits the taking or possession of cobia when federal regulations provide for the closure of a recreational or commercial cobia fishery in the waters of the south Atlantic Ocean.

### **Environmental Health Services**

#### H 3539 – Live Swine Transport

*Sponsored by Rep. Davis*

Provides that the transportation of live swine on a South Carolina public roadway or waterway requires an official form of identification approved by the State Veterinarian or other appropriate documentation that may be used in lieu of such identification.

In addition, the measure removes the requirement that a person hold a valid Department of Natural Resources (DNR) permit for taking, transporting, and releasing a pig and removes the requirement that pig hunting enclosures be permitted by DNR.

Swine transported without the proper identification are presumed to have been taken from the wild, which constitutes the offense of unlawful transport of a wild pig.

## Reorganization and Coordination

### H 4027 – Water Resources Commission Membership Modification

*Sponsored by Rep. Burns*

Increases the number of Renewable Water Resources commission members from Greenville from seven to eight and to decreases the number of members from Spartanburg from two to one.

## Solid Waste

### H 3222 – Authority Over Waste Tire Management

*Sponsored by Rep. Davis*

Gives the Department of Health and Environmental Control the authority to promulgate regulations regarding, make decisions about the permitting of, and conduct inspections and investigations of facilities of waste tire management.

### H 4026 – Recyclers Commendations

*Sponsored by Rep. Pope*

Commends the South Carolina Recyclers Association, the Carolina Recycling Association, the Institute of Scrap Recycling Industries, and their members for their part in being essential and remaining operational during the COVID-19 pandemic.

### H 4035 – IT Equipment Collection and Recovery Act Extension

*Sponsored by Rep. Hiott*

Extends the provisions of the South Carolina Manufacturer Responsibility And Consumer Convenience Information Technology Equipment Collection And Recovery Act.

# TENNESSEE

Tennessee adopted **35** energy and environmental bills during its 2021 legislative session.

## ***Highlights:***

**HB 229/SB 271** establishes a process for notifying developers regarding the location of natural gas pipelines and easements for pipelines for purposes of breaking ground.

**HB 78/SB 746** establishes a pilot project authorizing state agencies to enter into energy performance or guaranteed energy savings contracts enacted in 2018 as permanent practice.

## **Energy Legislation**

### **Alternative Energy Development**

HB 667/SB 795 – Commercial Property Assessed Clean Energy and Resilience Act

*Sponsored by Rep. Freeman/Sen. Rose*

Authorizes local governments to establish and adopt commercial property assessed clean energy and storm resiliency (C-PACER) programs that ensure that free and willing owners of agricultural, commercial, industrial, and multifamily residential properties will be able to obtain low-cost, long-term financing for qualifying improvements.

For purposes of this bill, “qualified improvement” means a permanent improvement installed and affixed to commercial property to:

- Decrease energy consumption or demand;
- Support the production of clean, renewable energy;
- Decrease water consumption or demand;
- Allow for reduction or elimination of lead from water used for drinking or cooking; or
- Increase water or wastewater resilience.

### **Coal and Minerals**

HB 90/SB 742 – Primacy and Reclamation Act Revisions

*Sponsored by Rep. Lamberth/Sen. Johnson*

Revises the Primacy and Reclamation Act of Tennessee to provide a regulatory framework for the regulation of surface coal mining and reclamation activities.

Specifically, the bill:

- Transfers responsibility for administering the Act from the Tennessee board of energy and natural resources to the commissioner of environment and conservation;
- Codifies various provisions of the federal Surface Mining Control and Reclamation Act of 1977 to specify such things as the contents of an application for a surface coal mining permit and the contents of reclamation plans. Under present law, many of the specific regulatory requirements are to be promulgated as rules and the rules must reflect the federal requirements;
- Adds a whistleblower protection provision whereby employees of coal mining operations who are discriminated against in their jobs for whistleblowing activities can seek compensation and reinstatement;
- Deletes the requirement that any rules promulgated under the act that are not substantively similar to federal requirements due to state law being more stringent than federal requirements be provided to the chairs of the agriculture and natural resources committee of the house of representatives and the energy, agriculture, and natural resources committee of the senate;
- Removes the requirement that a departure from environmental protection performance standards on an experimental basis must be approved by all state and federal agencies with jurisdiction over the environmental standards or practices for which departure is desired concur with the departure. Under this amendment, any such departures will require the approval of the commissioner and the U.S. Secretary of the Interior;
- Deletes a provision of prior law, which specifies that the general requirement that all permittees conform to the act when the federal government approves Tennessee's application for primacy, or any rules promulgated under the act upon the rules' effective date, does not require the regrading or replanting of any area on which the work was satisfactorily performed prior to such approval or effective date;
- Deletes an exemption from fee and bonding requirements for governmental entities that engage in activities regulated under the act;
- Replaces various statutorily set permit and acreage fees under the act with authorization for the commissioner to set the fees; and
- Revises some provisions for management of the coal mining protection fund to require the commissioner to administer the fund, specify that interest and other income from the fund's principal must stay in the fund, and expands authorization for use of monies in the fund so that proceeds from penalties may be used for reclamation, investigations, research, and other activities, and proceeds from bond forfeitures may be used for reclamation.

## Energy Efficiency

### HB 78/SB 746 – Energy Savings Contracts

*Sponsored by Rep. Lamberth/Sen. Johnson*

Establishes a pilot project to authorize state agencies, in consultation with the Department of General Services and in accordance with policies of the State Building Commission, to enter into energy performance or guaranteed energy savings contracts enacted in 2018 as permanent practice.



The measure further deletes the requirement for the Commissioner of the Department of Environment and Conservation to submit an annual report of the results of each pilot project to the Governor, Comptroller of the Treasury, and General Assembly.

It also requires any energy service company executing an energy performance contract or guaranteed energy savings contract to provide a written guarantee that the savings produced by such contract will be sufficient to pay for the financing repayment costs for that year. The energy service company is further required to post a performance bond, letter of credit, or other surety with the procurement agency in the total amount of guaranteed savings over the contract term.

## **Natural Gas and Petroleum**

### **HB 131/SB 215 – Excluding Certain Items from Tangible Personal Property Definition**

*Sponsored by Rep. Hazlewood/Sen. Watson*

Excludes from the definition of “tangible personal property” for sales and use tax purposes certain mains, pipes, pipelines, and tanks and certain railroads, railroad structures, substructures, tracks and the metal thereon, branches, switches, and other improvements thereon.

### **HB 229/SB 271 – Notification Process for Pipeline Easements**

*Sponsored by Rep. Vaughan/Sen. Yager*

Establishes a process for notifying developers regarding the location of natural gas pipelines and easements for such pipelines for purposes of breaking ground on residential and nonresidential developments and provides pipeline operators with notice of such developments.

## **Reorganization and Coordination**

### **HB 1616/SB 1634 – Electric Power Board Modifications**

*Sponsored by Rep. Calfee/Sen. Yager*

Establishes additional qualifications for service as a member of the city of Rockwood’s Electric Power Board by requiring one member to be on the city council, members to be property holders in their places of residence, and members to reside within their respective cities or unincorporated areas for one year preceding their appointment.

The measure further establishes terms of service for board members and procedures for filling vacancies on the board.

### **HB 1617/SB 1635 – Board of Waterworks, Sewerage, and Natural Gas Modifications**

*Sponsored by Rep. Calfee/Sen. Yager*

Establishes additional qualifications for service as a member of the city of Rockwood’s Board of Waterworks, Sewerage, and Natural Gas by requiring one member to be on the city council, members to be property holders in their places of residence, and members to reside within their respective cities or unincorporated areas for one year preceding their appointment.

The legislation further establishes terms of service for board members and procedures for filling vacancies on the board.

## HB 205/SB 614 – Interlocal Cooperation Board Provisions

*Sponsored by Rep. Cochran/Sen. Bell*

Provides each member of a board created pursuant to the Interlocal Cooperation Act for the purpose of providing service to two or more counties with up to \$300 per month compensation, the exact amount of which will be determined by resolution of such board.

The measure also authorizes the board members to participate in the group medical insurance plan provided to employees of the board or be reimbursed for premiums paid by members for other medical insurance coverage.

## HB 729/SB 849 – State Energy Policy Council Membership Addition

*Sponsored by Rep. Ragan/Sen. Pody*

Adds the chair of the Tennessee Public Utility Commission or the chair's designee as a voting member of the State Energy Policy Council.

## Utilities

### HB 54/SB 374 – Underground Utilities Safety Enforcement

*Sponsored by Rep. Marsh/Sen. Walley*

Makes various changes concerning safety enforcement of underground utilities, including increasing the penalties that may be assessed for violations.

Included in those various changes concerning safety are the following:

- Enforces that the person responsible for the excavation or demolition must designate the location of the proposed area of excavation or demolition by marking the area, consistent with the marking standards established by prior law with "safety white" color-coded stakes or white paint;
- Establishes that the operator must not charge the person giving notice to the one-call service, the excavator, or property owner for the marking of its facilities. However, an operator may recover the costs of the marking of its facilities from customers in an appropriate ratemaking procedure; and
- Requires an excavator to exercise reasonable care to avoid damage caused by an excavation or demolition within the safety zone around the marked location of the underground utilities by hand digging when practical, utilizing pneumatic hand tools, or utilizing mechanical or technical methods approved by the facility owner or operator. Hand digging and non-invasive methods are not required for removal of pavement or concrete. As defined by the bill, "safety zone" means a strip of land at least four feet wide, but not wider than the width of the utility plus two feet on either side of the utility.

### HB 252/SB 407 – Electrical Inspection Requirements

*Sponsored by Rep. Hazlewood/Sen. Stevens*

Requires persons working with any equipment that delivers electricity to the point of interconnection with a power distribution grid, long-distance power transmission grid, or other facility by and through which the electricity is distributed to meet certain requirements and makes such electrical equipment subject to inspection by a state-certified electrical inspector.

The bill further prohibits liability against certain electric systems arising from those persons working with that electrical equipment and requires that copies of the national standards be available for public viewing.

## HB 309/SB 89 – Public Utility Commission Extension

*Sponsored by Rep. Ragan/Sen. Roberts*

Extends the Tennessee Public Utility Commission to June 30, 2027.

## HB 388/SB 297 – Competitive Sealed Proposals for Utility Districts

*Sponsored by Rep. Darby/Sen. Briggs*

Authorizes the board of commissioners of a utility district to use competitive sealed proposals to purchase goods or services instead of competitive sealed bids in emergency situations or when the board determines that the use of competitive sealed bids is either not practical or advantageous to the utility district.

## HB 1044/SB 242 – Public Utility Commission Membership Expansion

*Sponsored by Rep. Hall/Sen. Roberts*

Increases membership of the Public Utility Commission from five to seven members.

## HB 1140/SB 1187 – Compensation for Board of Directors of Certain District

*Sponsored by Rep. Grills/Sen. Jackson*

Changes the compensation, from an amount not to exceed \$1,000 annually to an amount not to exceed \$200 monthly, for the board of directors of the Reelfoot Lake regional utility and planning district.

## HB 398/SB 495 – Water and Wastewater Treatment Authority Per Diem

*Sponsored by Rep. Boyd/Sen. Pody*

Increases from \$100 to \$300 the maximum per diem payment to a member of the board of commissioners of a water and wastewater treatment authority for attending a board meeting, not to exceed six board meetings per calendar year.

## HB 408/SB 333 – Citizens Gas Utility District Board Modifications

*Sponsored by Rep. Keisling/Sen. Yager*

Replaces one county elected commissioner position on the board of commissioners for the Citizens Gas Utility District of Scott and Morgan counties with an at-large commissioner position, with such change to coincide with the district's August 2025 election.

## HB 586/SB 428 – For-Profit Wastewater Treatment System Loans

*Sponsored by Rep. Marsh/Sen. Yager*

Authorizes loans from the wastewater facility revolving loan fund for privately owned for-profit community wastewater treatment systems that are subject to state regulation and meet certain financial qualifications.

The measure also expands the definition of local government under the Wastewater Facilities Act of 1987 to include a privately owned community wastewater treatment system subject to regulation by the Tennessee public utility commission, whether for-profit or not-for-profit.

## HB 651/SB 533 – Utility District's Change in Net Position Definition

*Sponsored by Rep. Alexander/Sen. Reeves*

Redefines "change in net position" for purposes of financially distressed utility districts and water or wastewater facilities to remove from the definition the reference to "but without reduction for any excluded non-cash items".

According to the legislation, a “change in net position” means total revenues less all grants, capital contributions, and expenses.

#### HB 655/SB 537 – District Travel Modification for Municipal and Utility Districts

*Sponsored by Rep. Hicks/Sen. Jackson*

Removes the filing requirement for municipal and utility district travel and expense reimbursement policies, and any amendments to the policies, and instead requires the policies and amendments be made available for review and audit by the comptroller or the comptroller’s designee.

#### HB 697/SB 1606 – Tort Liability for Water and Sewer Distribution Service

*Sponsored by Rep. Russell/Sen. Bailey*

Broadens the definition of “governmental entity” under the Tennessee Governmental Tort Liability Act to include certain 501(c)(4) nonprofit property owners associations that, among other requirements, own and operate a water or sewer distribution service.

## Environmental Legislation

### Emergency Management and Homeland Security

#### HB 1145/SB 285 – Critical Infrastructure Offense Revision

*Sponsored by Rep. Grills/Sen. Rose*

Revises the offense of critical infrastructure vandalism to include when a person knowingly:

- Interrupts or interferes with critical infrastructure or its operation; or
- Destroys or injures critical infrastructure or a farm.

### Environmental Health Services

#### HB 89/SB 741 – Tasks for Environmental Investigative Enforcement Officers

*Sponsored by Rep. Lamberth/Sen. Johnson*

Authorizes the Department of Environment and Conservation commissioner to delegate tasks to environmental investigative enforcement officers.

The law specifies circumstances under which park rangers and other law enforcement officers within the department may operate outside parks and other specific areas.

### Inland Water Resource Management and Conservation

#### HB 1389/SB 1080 – Non-motorized Vessels Study

*Sponsored by Rep. Todd/Sen. Roberts*

Requires Tennessee Advisory Commission on Intergovernmental Relations to study funding for all non-fish and game recreational activities, particularly the use of non-motorized vessels, and submit a report of their findings and recommendations, including any proposed legislation or interim reports, to the general assembly no later than December 31, 2022.

## HB 227/SB 1049 – Securing Mitigation for Water Impacts

*Sponsored by Rep. Vaughan/Sen. Southerland*

Authorizes the Department of Environment and Conservation to take certain actions to ensure that in-lieu fee sponsors secure mitigation for permanent impacts to waters.

## HB 764/SB 719 – Adding Water to Soil Conservation Districts Purview

*Sponsored by Rep. Lamberth/Sen. Johnson*

Rewrites the Soil Conservation Districts Law to be the Soil and Water Conservation Districts Law.

The bill also renames the Soil Conservation Committee as the Soil and Water Conservation Commission and revises the commission's membership as follows:

- Authorizes appointment of "agricultural industry representatives" as an option to appointing farmers to the representative seats. Generally, an "agricultural industry representative," as defined by this bill, includes any person engaged in a business that serves farmers, employed by a government agency that assists farmers, or who possesses a graduate-level degree in certain fields of agricultural studies;
- Authorizes the commissioners to appoint designees to serve in their stead;
- Replaces the dean of the college agricultural sciences and natural resources of the University of Tennessee at Knoxville with the senior vice president and senior vice chancellor of the university of Tennessee institute of agriculture; and
- Adds the elected president of the Tennessee association of conservation districts as an ex officio member.

The governor will continue to be the appointing authority for all seven representative commission members and members of the committee will continue to serve on the commission until the expiration of terms.

Finally, the measure also adds a requirement that all candidates for election or appointment to the office of district supervisor, and serving supervisors, must maintain their primary residence in the district of their candidacy.

## Land Management and Conservation

### HB 887/SB 1075 – Commercial Activity in State Parks

*Sponsored by Rep. Calfee/Sen. Roberts*

Requires the Department of Environment and Conservation commissioner to promulgate rules taking effect by July 1, 2021, to create a commercial use authorization to allow persons wanting to engage in commercial activities at state parks or state natural areas to obtain a permit to do so.

The measure specifies that the rules must include fees structured to promote park self-sufficiency and economic development.

## Solid Waste

### HB 154/SB 99 – Solid Waste Fee

*Sponsored by Rep. Haston/Sen. Walley*

Authorizes Chester County to impose a solid waste disposal fee.

## HB 1155/SB 1612 – Regulating Catalytic Converter Purchases

*Sponsored by Rep. Gillespie/Sen. Bailey*

Establishes that motor vehicle dismantlers and recyclers and scrap metal processors who purchase unattached catalytic converters as a single item and not as part of a scrapped motor vehicle must register with the chief of police and sheriff of each city and county in which the activity is carried on.

## HR 5 – Scrap Recyclers Commendation

*Sponsored by Rep. Lamberth*

Commend the members of the Tennessee Scrap Recyclers Association and the Institute of Scrap Recycling Industries for their role in maintaining the economic vitality of the supply chain for Tennessee's manufacturers and their employees.

## Water Quality and Pollution Control

### HB 91/SB 740 – Drinking Water Loan Fund Modifications

*Sponsored by Rep. Lamberth/Sen. Johnson*

Increases from 20 to 30 years the amount of time within which loans from the drinking water revolving loan fund must be amortized and increases from 30 to 40 years the time within which such loans must be amortized when made to previously defined disadvantaged communities.

### HB 128/SB 450 – Allowing for Water Warning Signage

*Sponsored by Rep. Howell/Sen. Bell*

Prohibits a homeowners' association from banning the use of a sign posted to warn the public of health, safety, or dangerous natural conditions associated with water on the property in certain circumstances.

### HB 1144/SB 790 – System of Incentives Definition

*Sponsored by Rep. Grills/Sen. Walley*

Defines "system of incentives" to include regulatory flexibility recognizing increased environmental performance and enhanced water quality under specified permitted activities through permit conditions pursuant to duly promulgated rules.

### HR 31 – World Water Day

*Sponsored by Rep. Lamar*

Celebrates March 22, 2021, as World Water Day.

### HJR 202 – National Groundwater Awareness Week

*Sponsored by Rep. Cooper*

Celebrates National Groundwater Awareness Week on March 7-13, 2021.

# TEXAS

Texas adopted **85** energy and environmental bills during its 2021 legislative session.

## ***Highlights:***

**SB 3** established extensive changes regarding the state's emergency preparedness and utility reporting in the wake of winter storm Uri.

**SR 342** urges the Public Utility Commission of Texas to significantly reduce the high system-wide offer cap and evaluate changes to the market structure.

## **Energy Legislation**

### Alternative Energy Development

HR 2077 – Geothermal Lab Commendation

*Sponsored by Rep. Guerra*

Congratulates the Southern Methodist University Geothermal Lab on its 51st anniversary and extends to all those associated with the research facility sincere best wishes for continued success.

HR 2078 – BEG Geothermal Development Commendation

*Sponsored by Rep. Guerra*

Congratulates the Bureau of Economic Geology on its receipt of a Small Business Technology Transfer Phase 1 award through the United States Air Force AFWERX innovation program in order to perform a feasibility study on the development of closed-loop geothermal energy systems at Ellington Field Joint Reserve Base in Houston.

SB 398 – Solar Installation Rights

*Sponsored by Sen. Menéndez*

Prohibit a municipality from stopping or restricting the installation of a solar energy device by a residential or small commercial customer, except where prohibited by a property owners' association.

The bill also amends disclosure requirements for sellers or lessors of distributed renewable generation resources.

SB 63 – Solar or Wind-Powered Energy Device Appraisal Exemption

*Sponsored by Sen. Nelson*

Clarifies a person is entitled to an exemption of the amount of appraised value of real property owned by the person attributed to the installation or construction of a solar or wind-powered energy device on the property used primarily for on-site energy production and use.

The bill specifies that a person is entitled to an exemption from taxation of the appraised value of a solar or wind-powered energy device owned by the person regardless of whether the person owns the real property on which the device is installed or constructed.

## SB 760 – Solar Power Facility Agreements

*Sponsored by Sen. Springer*

Establishes requirements for solar power facility agreements, including provisions related to decommissioning and financial assurance.

A solar power facility agreement is defined to mean a lease agreement between a grantee and a landowner that authorized the grantee to operate a solar power facility on the leased property, where a grantee is a person, other than an electric utility, who operated a solar power facility on property leased from a landowner. A solar power facility is defined as a solar energy device and a facility or equipment, other than that owned by an electric utility, supporting the operation of a solar energy device, including an underground or aboveground electrical transmission or communications line, an electric transformer, a battery storage facility, an energy storage facility, telecommunications equipment, a road, a meteorological tower, or a maintenance yard.

## Coal and Minerals

### HB 3416 – Triparty Relationship Provisions

*Sponsored by Rep. Darby*

Requires certain contractors, before entering into or renewing a triparty relationship agreement with a subcontractor or third party, to provide written notice to the subcontractor and third party.

A “triparty relationship agreement” is defined in the bill as any agreement pertaining to a well for oil, gas, water, or to a mine for a mineral that provides a subcontractor may provide any part of a contractors services required under a separate agreement with a third party and for a mutual or unilateral indemnity obligation between the contractor and third party.

The written notice to the subcontractor must:

- Describe the subcontractor’s indemnification obligations to the contractor and to the third party with respect to the services the subcontractor provides under any related agreement between the contractor and subcontractor;
- Be provided as a separate document from the agreements with the subcontractor and third party; and
- Be written in plain English in a manner that was designed to enable the subcontractor to understand the subcontractor’s contractual indemnity obligations in connection with any services performed by the subcontractor pursuant to the triparty relationship agreement.

The written notice provided to the third party must state whether the subcontractor possessed liability insurance coverage or qualified self-insurance as required by law for the subcontractor’s indemnity obligations in connection with any services performed by the subcontractor pursuant to the triparty relationship agreement. The notice must also provide any dollar limits of the subcontractor’s insurance policy or qualified self-insurance, if any. Finally, the bill provides that a contractor may satisfy the third party written notice by providing a certificate of insurance.



## Emergency Management and Homeland Security

### SB 475 – Texas Volunteer Incident Response Team

*Sponsored by Rep. Capriglione and Sen. Nelson*

Requires the Texas Department of Information Resources (DIR) to establish a state risk and authorization management program and to establish the Texas Volunteer Incident Response Team.

DIR must appoint a data management advisory committee and establish a framework for regional cybersecurity working groups and is authorized to establish regional network security centers.

The response team is directed by the bill to provide rapid assistance to participating entities during cybersecurity events. "Participating entities" include state agencies, including institutions of higher education, or local governments that receive assistance during a cybersecurity event

## Energy Efficiency

### HB 3215 – Performance-based Energy Efficiency

*Sponsored by Rep. Geren*

Amends current law relating to energy efficiency building standards to allow for a separate performance-based avenue to achieve energy efficiency in homes.

### HB 3583 – Energy Savings Performance Contracts

*Sponsored by Rep. Paddie*

Specifies that the scope of an energy savings performance contract could not be modified by change order, contract addendum, or other method to perform work not related to, connected with, or otherwise ancillary to the measure identified in the original scope or in a way that increases the price of the original contract by more than 25 percent of the estimated value.

These provisions apply only to the design or construction of a water supply project, water plant, wastewater plant, water and wastewater distribution or conveyance facility, or drainage project.

## Natural Gas and Petroleum

### HB 2201 – Oil and Gas Disposal Facilities

*Sponsored by Rep. Ashby*

Requires the Railroad Commission of Texas by rule to establish standards governing permissible locations for pits used by commercial oil and gas disposal facilities.

The rules must include a history of flooding in the 10 years preceding the construction of the pit as a factor in determining whether a proposed location of a pit was permissible.

### HB 3416 – Triparty Relationship Provisions

*Sponsored by Rep. Darby*

Requires certain contractors, before entering into or renewing a triparty relationship agreement with a subcontractor or third party, to provide written notice to the subcontractor and third party.

A “triparty relationship agreement” is defined in the bill as any agreement pertaining to a well for oil, gas, water, or to a mine for a mineral that provides a subcontractor may provide any part of a contractors services required under a separate agreement with a third party and for a mutual or unilateral indemnity obligation between the contractor and third party.

The written notice to the subcontractor must:

- Describe the subcontractor’s indemnification obligations to the contractor and to the third party with respect to the services the subcontractor provides under any related agreement between the contractor and subcontractor;
- Be provided as a separate document from the agreements with the subcontractor and third party; and
- Be written in plain English in a manner that was designed to enable the subcontractor to understand the subcontractor’s contractual indemnity obligations in connection with any services performed by the subcontractor pursuant to the triparty relationship agreement.

The written notice provided to the third party must state whether the subcontractor possessed liability insurance coverage or qualified self-insurance as required by law for the subcontractor’s indemnity obligations in connection with any services performed by the subcontractor pursuant to the triparty relationship agreement. The notice must also provide any dollar limits of the subcontractor’s insurance policy or qualified self-insurance, if any. The bill provides that a contractor may satisfy the third party written notice by providing a certificate of insurance.

#### HB 3516 – Standards for Oil and Gas Waste

*Sponsored by Rep. King*

Requires the Railroad Commission of Texas (RRC), when adopting rules to govern the treatment and beneficial use of oil and gas waste, to establish:

- Minimum siting standards for commercial fluid recycling pits;
- Uniform technical and construction standards consistent with noncommercial recycling standards for fluid oil and gas waste;
- Minimum and maximum bonding and financial security amounts for commercial fluid recyclers; and
- Standards for sampling and analysis of fluid oil and gas waste.

The act also states that rules adopted to govern the treatment and beneficial use of oil and gas waste could not differ in treatment of commercial and noncommercial recycling of fluid oil and gas waste.

The legislation requires the RCC to approve or deny an application for a permit under the rules adopted within 120 days of receipt.

#### HB 3794 – First Purchaser Repeal

*Sponsored by Rep. Geren*

Repeals the first purchaser statute and replaces it with Property Code provisions establishing oil and gas liens based on real property for applicable interest owners.

## HB 3973 – Abandoned Oil and Gas Wells Study

*Sponsored by Rep. Walle*

Creates a joint interim committee to study matters related to abandoned oil and gas wells in the state and review projected revenue to General Revenue Dedicated Oil and Gas Regulation and Cleanup Account No. 5155.

The bill requires the committee to report its findings and recommendations to the legislature no later than December 1, 2022.

## HB 963 – Natural Gas Vehicle Grant Program Amendment

*Sponsored by Rep. Lozano*

Amends the Health and Safety Code to make a used natural gas vehicle that otherwise satisfies model year requirements and applicable statutory requirements a qualifying vehicle under the Texas Natural Gas Vehicle Grant Program.

## HR 1311 – Texas Independent Producers and Royalty Owners Association Commemoration

*Sponsored by Rep. Anderson*

Commemorates the 75th anniversary of the Texas Independent Producers and Royalty Owners Association and extends to its members and staff sincere best wishes for continued success.

## SB 1258 – Offset Well Drilling Requirements

*Sponsored by Sen. Birdwell*

Provides that an owner, lessee, or other agent in control of certain state land was not required to drill an offset well if the well producing oil and gas in commercial quantities was a horizontal drainhole well located in an unconventional fracture treated field, unless any take point in the horizontal drainhole well was located closer to the state land than the greater of:

- The minimum distance established by the applicable lease-line spacing requirement of the Railroad Commission; or
- A perpendicular distance of 330 feet.

## SB 1260 – Provisions for Drill Cuttings

*Sponsored by Sen. Birdwell*

Amends the Natural Resources Code to expand the scope of provisions granting the state a first lien on a responsible person's interest in hydrocarbons to also include interest in any drill cuttings stored at a site or facility that has ceased oil and gas operations and that the responsible person has failed to clean up by the applicable deadline.

The bill authorizes the Railroad Commission of Texas to dispose of abandoned stored drill cuttings by contracting with a person to treat the drill cuttings at the site or facility for a subsequent beneficial use and selling the treated drill cuttings at a public auction or a public or private sale.

## SB 1582 – Liquefied Petroleum Gas Licensing Provisions

*Sponsored by Sen. Hughes*

Allows the Railroad Commission of Texas (RRC) to contract with a proctoring service to prepare, administer, and grade or review the mandatory examination required to hold a liquefied petroleum gas license in Texas.

The bill also removes the ability for a contracted testing service to administer the examination before remitting the nonrefundable fee to the RCC.

#### SB 1668 – Examination Waivers

*Sponsored by Sen. Hughes*

Allows the Railroad Commission of Texas to waive the instruction and examination requirements for petroleum gas cylinder license applicants who have completed training under guidelines established by the Propane Education and Research Council.

#### SB 601 – Beneficial Uses of Fluid Oil and Gas Waste

*Sponsored by Sen. Perry*

Establishes the Texas Produced Water Consortium to gather information resources studying the economic, environmental, and public health considerations of beneficial uses of fluid oil and gas waste.

According to the legislation, the commission is a consortium consisting of Texas Tech University, the agency advisory council, the stakeholder advisory council, the technical and economic steering committee, and private entities.

#### SB 833 – Oil and Gas Producers Refund Claims

*Sponsored by Sen. Campbell*

Authorizes certain oil and gas producers who already file severance tax returns, but who do not hold sales tax permits, to file refund claims for overpaid sales and use taxes directly with the comptroller.

### Reorganization and Coordination

#### HB 1284 – Onshore and Offshore Carbon Capture Jurisdiction

*Sponsored by Rep. Paddie*

Establishes the jurisdiction of the Railroad Commission of Texas (RRC) over all onshore and offshore injection and geologic storage of anthropogenic carbon dioxide.

The bill repeals the jurisdiction of the Texas Commission on Environmental Quality (TCEQ) over the injection of carbon dioxide produced by clean coal projects and transfers TCEQ's jurisdiction over standards for offshore carbon dioxide storage to the RRC. It also repeals a provision formerly forcing RRC's jurisdiction over carbon dioxide injection into certain saline formations subject to the Legislature's review.

It further requires RRC to adopt rules for the collection and administration of funds received by the commission for the proper management of carbon dioxide injection wells or storage facilities. Such funds must be deposited in the anthropogenic carbon dioxide storage trust fund established under the Natural Resources Code. Penalties collected by the RRC related to offshore carbon dioxide storage must be deposited in the fund, and the measure specifies that the fund may be used to finance permitting related to anthropogenic carbon dioxide injection and storage in addition to other uses established by current statute.

#### HB 5 – Broadband Expansion

*Sponsored by Reps. Ashby, Anderson, Paddie, Price, and Canales*

Provides for the expansion of broadband internet service in the state.

Specifically, the bill establishes the Broadband Development Office within the office of the comptroller of public accounts and tasks the office with preparing, updating, and publishing a state broadband plan, serving as a repository for information relating to broadband service and digital connectivity in Texas and engaging in community outreach, creating, annually updating, publishing a broadband development map to classify areas in Texas as eligible for broadband expansion assistance, and establishing a broadband development program to award grants, low-interest loans, and other financial incentives to applicants in the areas classified as eligible for assistance on the map for the purpose of broadband expansion.

The bill creates the broadband development account within the general revenue fund as a source of funding for the broadband development office, and it revises provisions relating to the governor's broadband development council to change the council's composition, provide for the alternation of the position of chair and vice chair between members that are from urban and rural counties, increase transparency regarding council meetings, provide for the council's meetings to be held remotely, and expand the council's duties.

#### SR 190 – Texas Oil and Gas Association Commendation

*Sponsored by Sen. Birdwell*

Commends the members of the Texas Oil and Gas Association and all who have contributed to the state's thriving oil and natural gas industry and extends to them best wishes for a rewarding Virtual Texas Energy Day at the Capitol.

### Utilities

#### HB 1154 – Utility District Website Requirements

*Sponsored by Rep. Jetton*

Requires every special purpose district created under Chapters 51 (Water Control Improvement Districts), 53 (Fresh Water Supply Districts), 54 (Municipal Utility Districts), or 55 (Water Improvement Districts), Water Code, that has a population of 500 or more to develop and maintain a district website.

The measure requires districts to post on such website the following information:

- Name of the district;
- Name and term of office for board members;
- Contact information for the main office of the district;
- Official district contact information for each member of the board;
- The name of the general manager or executive director or person that performs their duties;
- The contact information for a person representing the utility operator;
- The contact information for a person representing the tax assessor-collector;
- Whether the district imposes an ad valorem tax, the rate of the ad valorem tax;
- Whether the district imposes a sales and use tax, the rate of the sales and use tax;
- Notice of the tax hearing required under the Water Code;
- The location and schedule of meetings of the board;
- Notice of a meeting of the board;

- Minutes of each meeting of the board; and
- The most recent financial audit of the district.

The act also allows a district to facilitate the general public's ability to watch or listen to a board meeting by video or telephone conference call. It further requires "rural area districts" to designate a meeting place inside the district or within 10 miles of the boundary of the district if the district holds quarterly meetings. "Rural area districts" are defined as a district where more than half of the projected retail water or sewer connections are active and that is not wholly or partly located in a county that as of the 2010 Census had a population of 800,000 or more or bordered a county with a population of 800,000 or more.

Finally, the bill establishes that if no practical place exists for the board to meet within 10 miles of the boundary of the district, the district may establish a meeting place or places in the county in which the district is located.

#### HB 1484 – Use of Previously Approved Rates

*Sponsored by Rep. Metcalf*

Authorizes acquiring utilities to use previously approved rates immediately after acquiring another utility.

The bill amends the state's water code to authorize a person filing a proper application with the Public Utility Commission for the purchase or acquisition of certain water or sewer systems to request that the regulatory authority with original jurisdiction over the rates for water or sewer service provided by the person to such a system's customers authorize the person to charge initial rates for the service that are as follows:

- Shown in a tariff filed with a regulatory authority by the person for another water or sewer system; and
- In force for the other system on the date they apply.

The regulatory authority may not require a person who makes a request to initiate a new rate proceeding to establish the initial rates for service the person will provide to the customers of the purchased or acquired system.

#### HB 1505 – Broadband and Existing Utility Infrastructure

*Sponsored by Rep. Paddie*

Establishes a framework for the affixture of a pole attachment by a broadband provider to a pole owned and controlled by an electric cooperative, including an application process and contracts, procedures related to make-ready activities and attachment specifications, and cost sharing of pole modifications and replacements.

#### HB 1510/SB 1782 – Utilities Code Amendments

*Sponsored by Rep. Metcalf/Sen. Creighton*

Amends the Utilities Code to provide for the securitization of system restoration costs for electric utilities operating solely outside of the Electric Reliability Council of Texas (ERCOT).

Among other provisions, the bill creates the Texas Electric Utility System Restoration Corporation as a special purpose public corporation and instrumentality of the state to provide a lower-cost supplemental financing mechanism available to the Public Utility Commission of Texas (PUC) and those electric utilities to attract low-cost capital to finance those costs and includes among the system restoration costs that an electric utility may obtain timely recovery of using securitization financing reasonable and necessary weatherization and storm-hardening costs incurred, as well as reasonable estimates of costs to be incurred, by the utility.

The measure further authorizes, but expressly does not require, an electric utility operating solely outside of ERCOT to obtain a certificate of convenience and necessity from the PUC to install, own, or operate a generation facility with a capacity of 10 megawatts or less.

#### HB 1520 – Gas Utility Securitization Financing

*Sponsored by Rep. Paddie*

Provides securitization financing for gas utilities to recover extraordinary costs related to securing gas supply and providing service during natural and man-made disasters, system failures, or other catastrophic events and restoring systems after those types of events.

The securitization financing mechanism must provide rate relief to customers by extending the period during which the extraordinary costs were recovered from customers and support the financial strength and stability of gas utility companies. The Railroad Commission of Texas must ensure that securitization provided tangible and quantifiable benefits to customers and that the structuring and pricing of the customer rate relief bonds result in charges consistent with the terms of the applicable financing order and market conditions at the time of the pricing of the bonds.

#### HB 1572 – Electric Utility Definitions for Certain Generators

*Sponsored by Rep. Craddick*

Amends the Utilities Code to exclude a person not otherwise considered an electric utility who is an electric generation equipment lessor or operator from consideration as an “electric utility” for purposes of provisions of the Public Utility Regulatory Act governing those utilities.

The bill also establishes that, for purposes of provisions requiring a certificate of convenience and necessity, a person who is an electric generation equipment lessor or operator is not for that reason considered to be a retail electric utility.

#### HB 16 – Price Risk Requirements

*Sponsored by Rep. Hernandez*

Amends the Utilities Code to prohibit an aggregator, a broker, or a retail electric provider from offering to a residential or small commercial customer a wholesale indexed product and to require an aggregator, a broker, or a retail electric provider, before enrolling a customer other than a residential or small commercial customer in such a product, to obtain an acknowledgment signed by the customer that they accept the potential price risks associated with the product.

The measure further requires a retail electric provider to automatically serve a residential customer who does not select another retail electric product before the expiration of their contract term through a month-to-month default renewal product that the customer may cancel at any time without a fee. It also requires a retail electric provider that does not provide notice of the expiration of a customer’s contract in accordance with state law to continue to serve a customer who does not select another retail electric product before the expiration of their contract term under the pricing terms of the fixed rate product contract until the provider provides notice of the expiration of the contract or the customer selects another product.



## HB 17 – Energy Service Choice

*Sponsored by Rep. Deshotel*

Prohibits a regulatory authority, planning authority, or political subdivision from adopting or enforcing a measure that has the purpose, intent, or effect of directly or indirectly banning, limiting, restricting, discriminating against, or prohibiting the connection or reconnection of a utility service or the construction, maintenance, or installation of infrastructure for a utility service based on the type or source of energy to be delivered to the end-use customer.

The bill further prohibits an entity from imposing any additional charge or pricing difference on a development or building permit applicant for utility infrastructure that encourages those constructing homes, buildings, or other structural improvements to connect to a utility service based on the type or source of energy to be delivered to the end-use customer or discourages the installation of facilities for the delivery of the service based on the type or source of energy to be delivered to that customer. The bill expressly does not limit the ability of a regulatory authority or political subdivision to choose utility services for properties they own.

## HB 2483 – Emergency Electric Energy Leasing and Operation

*Sponsored by Rep. King*

Authorizes a transmission and distribution utility to lease and operate facilities that provide temporary emergency electric energy to aid in restoring power to the utility's distribution customers during certain widespread power outages and to procure, own, and operate, or enter into a cooperative agreement with other transmission and distribution utilities to procure, own, and operate jointly, transmission and distribution facilities that have a lead time of at least six months and aids in restoring power to the utility's distribution customers following a widespread power outage.

Among other provisions, the bill provides for the recovery of associated costs by a transmission and distribution utility and prohibits a utility that leases and operates such facilities from selling electric energy or ancillary services from those facilities. The provisions expire September 1, 2029, however, the bill requires the Public Utility Commission of Texas, not later than January 1, 2029, to analyze the effects of authorizing transmission and distribution utilities to lease, operate, procure, or own the utility facilities and to submit a report to the legislature that includes that analysis and a recommendation of whether it should allow the bill's provisions to expire.

## HB 3476 – Public Utility CPCN Amendments

*Sponsored by Rep. Schofield*

Prohibits a municipality with a population of 500,000 or more from requiring, as a condition of consent to the granting of a certificate of public convenience and necessity (CPCN) to a retail public utility, that all water and sewer facilities for a service area located in the municipality's extraterritorial jurisdiction be designed and constructed in accordance with the municipality's facility standards.

If the service area lies within the municipality's boundaries, the municipality may require as a condition of consent that a water or sewer facility be designed and constructed in accordance with its facility standards.

The Public Utility Commission of Texas (PUC) is required to include as a condition of granting a CPCN for a service area within the boundaries of a municipality with a population of 500,000 or more that all water and sewer facilities be designed and constructed in accordance with the municipality's facility standards. For a service area located in a municipality's extraterritorial jurisdiction, the PUC must include as a condition of granting a CPCN that all water and sewer facilities be designed and constructed in accordance with the Texas Commission on Environmental Quality's standards.



## HB 3615 – Chilled Water Program Disclosure

*Sponsored by Rep. King*

Excludes information related to a public power utility's chilled water program from the information or records reasonably related to a competitive matter excepted from public disclosure under state public information law and to subject information or records of a municipally owned utility or municipality that operates a chilled water program that are reasonably related to a municipally owned utility's rate review process or the method a municipality or municipally owned utility uses to set rates for retail electric service or for a chilled water program to disclosure under that law.

## HB 3648 – Critical Systems Designation

*Sponsored by Rep. Geren*

Requires the Public Utility Commission and the Railroad Commission of Texas (RRC) to adopt rules to designate certain gas entities and facilities as critical during an energy emergency no later than September 1, 2021, and the measure requires the Public Utility Commission to provide a report to the Legislature by January 1, 2022.

The adopted rules must:

- Consider essential operational elements when defining critical customer designations and critical gas supply information, including natural gas production, processing, transportation, and the delivery of natural gas to generators;
- Ensure that transmission and distribution utilities, municipally owned utilities, electric cooperatives, and the Electric Reliability Council of Texas power region were provided with the critical customer designations determined by the RRC rules under the bill;
- Provide for a prioritization for load-shed purposes of gas entities and facilities designated as critical; and
- Provide discretion to transmission and distribution utilities, municipally owned utilities, and electric cooperatives to prioritize power delivery and restoration among the customers on their respective systems.

## HB 3689 – Water and Sewer Rate Appeal

*Sponsored by Rep. Cortez*

Provides that regarding an appeal of water and sewer rates charged by a municipally owned utility to its outside-the-city limit customers, the Public Utility Commission's (PUC) jurisdiction is limited to the specific rate that has been appealed.

The bill further clarifies the PUC has no jurisdiction over municipal rates charged to customers within the city's corporate limits.

## HB 3717 – Election Exemption for Certain Water and Sewer System Sales

*Sponsored by Rep. Burns*

Exempts a municipality from the requirement to hold an election to authorize the sale of a municipal retail water or sewer utility system if the Texas Commission on Environmental Quality had issued a notice of violation to the system and the governing body of the municipality found by official action that it was financially or technically unable to restore the system to compliance with applicable law and regulations.

## HB 3853 – Middle Mile Broadband Systems

*Sponsored by Rep. Anderson*

Allows electric utilities to provide middle mile broadband systems on their electric delivery systems and lease excess fiber capacity to internet service providers.

## HB 4492 – ERCOT Debt Obligations Issuance

*Sponsored by Rep. Paddie*

Directs the Comptroller to invest not more than \$800 million of the Economic Stabilization Fund in debt obligations issued by the Electric Reliability Council of Texas (ERCOT).

The bill enables ERCOT to issue debt obligations to finance substantial balances owed by wholesale market participants and otherwise be uplifted as a result of Winter Storm Uri. The measure further authorizes the Public Utility Commission, on application of ERCOT, to adopt an order authorizing the issuance of debt obligations.

## HB 837 – Reporting Requirements for Certain CPCNs

*Sponsored by Rep. Lucio III*

Amends the Water Code to require the Public Utility Commission of Texas (PUC), if it requires an award of compensation regarding the granting of a petition for the expedited release of certain areas from a certificate of public convenience and necessity, to require the petitioner to submit a report to the PUC verifying for specified purposes that the compensation has been paid to the decertified retail public utility or certificate holder, as applicable.

## HB 872 – Public Disclosure Requirements

*Sponsored by Rep. Bernal*

Excepts from the public availability requirement of state public information law information maintained by a government-operated utility that provides water, wastewater, sewer, gas, garbage, electricity, or drainage service that is collected as part of an advanced metering system for usage, services, and billing or that reveals whether an account is delinquent or eligible for disconnection or whether services have been discontinued by the utility.

The bill requires such a utility to disclose that information collected as part of an advanced metering system to a customer or a customer's representative if the information directly relates to utility services provided to the customer and is not confidential under law.

The measure further modifies the nature of the confidentiality protections provided for the personal information in the account record of a customer of a government-operated utility, and any information relating to the volume or units of utility usage or the amounts billed to or collected from the customer for utility usage, from a system under which the onus is on the customer to request confidentiality to a system under which the default assumption is confidentiality unless the customer requests disclosure.

## HR 1285 – Line and Generation Work Recognition

*Sponsored by Rep. Wilson*

Recognizes the electrical utility line and generation workers of Texas and extends sincere gratitude for their perseverance and success in restoring electrical power to the people of Texas.

## HR 417 – Texas Energy Day

*Sponsored by Rep. Goldman*

Recognizes March 24, 2021, as Texas Energy Day at the Capitol.

## HR 641 – Railroad Commission Commemoration

*Sponsored by Rep. Goldman*

Commemorates the 130th anniversary of the Railroad Commission of Texas and extends to the commissioners and the commission's staff sincere best wishes for success with their important work.

## SB 387 – Rate Increase Amendments

*Sponsored by Sen. Schwertner*

Amends the Water Code to specify that the decisions of a governing body of a municipally owned utility affecting the water, drainage, or sewer rates of a ratepayer residing outside the municipality's corporate limits that the ratepayer is authorized to appeal to the Public Utility Commission of Texas includes a decision that results in an increase in rates when the utility takes over the provision of service to ratepayers previously served by another retail public utility.

## SB 1202 – Public Utility Regulatory Act Exclusions

*Sponsored by Sen. Hancock*

Excludes from consideration as an electric utility or a retail electric provider for purposes of provisions of the Public Utility Regulatory Act governing electric utilities a person who is not otherwise considered as such and who owns or operates equipment used solely to provide electricity charging service for consumption by an alternatively fueled vehicle.

The bill establishes that, for purposes of provisions requiring a certificate of convenience and necessity, such a person is not for that reason alone considered to be a retail electric utility. The measure also authorizes the Public Utility Commission to exclude from consideration as an electric utility, retail electric provider, or retail electric utility a provider who owns or operates equipment used solely to provide electricity charging service for a mode of transportation.

## SB 1281 – Biennial Grid Assessments

*Sponsored by Sen. Hancock*

Requires the Electric Reliability Council of Texas (ERCOT) to conduct a biennial assessment of the ERCOT power grid to assess the grid's reliability in extreme weather scenarios.

Each assessment must consider the impact of different levels of thermal and renewable generation availability and recommend transmission projects that may increase the grid's reliability in extreme weather scenarios.

The bill further requires the Public Utility Commission of Texas, in considering the need for additional service when granting a certificate of public convenience and necessity for a reliability transmission project that serves the ERCOT power region, to consider the historical load, forecasted load growth, and additional load currently seeking interconnection.

Finally, the measure establishes that an electric utility is not required to amend its certificate of public convenience and necessity to construct certain short-length transmission lines that connect the utility's existing transmission facilities to a substation or metering point if each landowner whose property is directly affected provides written consent and all rights-of-way necessary for construction have been purchased.

## SB 13 – Requirement to Verify Contract Terms Concerning Energy Company Boycotts

*Sponsored by Sen. Birdwell*

Prohibits a state agency or political subdivision from entering into a qualifying contract with a value of \$100,000 or more for goods and services unless the contract contains a written verification from the contracted company that it does not and will not during the contract term boycott energy companies.

According to the legislation, the prohibition does not apply to a governmental entity that determines that the prohibition is inconsistent with its constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds.

The bill further requires the comptroller of public accounts to prepare, maintain, and provide to the permanent school fund (PSF) and each statewide retirement system a list of all financial companies that boycott energy companies. The bill provides for the divestment of certain assets the PSF or any such retirement system holds in a listed company that does not cease boycotting energy companies within a specified time frame, exempts certain investments from divestment, prohibits the PSF or an applicable retirement system from acquiring securities of a listed company, and establishes certain reporting requirements for the PSF and the retirement systems.

Finally, the bill authorizes the attorney general to bring any action necessary to enforce the prohibition on investment in companies that boycott energy companies.

## SB 1441 – San Antonio Water System Partnership

*Sponsored by Sen. Campbell*

Allows for a partnership between the military and the San Antonio Water System (SAWS) by allowing a military base to reduce its production of Edwards Aquifer water and allow SAWS to produce the same amount of water without reducing their capped permit amount.

## SB 1580 – Securitization Financing for Electric Cooperatives

*Sponsored by Sen. Hancock*

Enables electric cooperatives to use securitization financing to recover extraordinary costs and expenses incurred due to the abnormal weather events that occurred in the state in the period of emergency beginning 12:00 a.m., February 12, 2021, and ending at 11:59 p.m., February 20, 2021.

## SB 2 – Governance of Certain Utility Bodies

*Sponsored by Sen. Hancock*

Revises provisions relating to the governance of the Public Utility Commission of Texas (PUC), the Office of Public Utility Counsel (OPUC), and the Electric Reliability Council of Texas (ERCOT).

The measure requires the commissioner designated as the presiding officer of the PUC and the chief executive of OPUC to be Texas residents and that any rules adopted by, or enforcement actions taken by, ERCOT receive approval from the PUC before taking effect.

It further mandates that the ERCOT bylaws require every member of its governing body be a Texas resident and prohibits a legislator from serving as a member. With respect to the composition of the governing body of ERCOT, the bill changes the ERCOT chief executive officer from a voting member to a nonvoting member and decreases the overall number of members from 16 to 11 by replacing the six members who are market participants, the two members representing consumer interests, and the five unaffiliated members with eight members to be selected

by the newly established ERCOT board selection committee that have executive-level experience in a qualifying profession.

The act prohibits the governing body from including more than two members who are employed by an institution of higher education in a professorial role, entitles members to receive a salary for their service, and prohibits a former member from engaging in lobbying activities before the second anniversary of the date they cease to be a member.

The bill makes a person ineligible to be selected to serve as a member of the governing body if they have a fiduciary duty or assets in the electricity market for the ERCOT power region, and it gives ERCOT until September 1, 2021, to come into compliance with the law's requirements.

### SB 3 – Extreme Weather Response

*Sponsored by Sen. Schwertner*

Provides for the preparation for, prevention of, and response to extreme weather emergencies and extended power outages and establish related requirements for the Public Utility Commission (PUC), the Electric Reliability Council of Texas (ERCOT) organization, the Railroad Commission of Texas (RRC), the Texas Division of Emergency Management (TDEM), and the Texas Commission on Environmental Quality (TCEQ).

Specifically, the bill provides for the mapping of the state's electricity supply chain, requires weather emergency preparedness for natural gas, electric, and water service entities, and provides for certain administrative and civil penalties. The bill also establishes the Texas Energy Disaster Reliability Council and the State Energy Plan Advisory Committee and creates a power outage alert. The bill also sets requirements for load management, provision of transmission service, and critical natural gas facilities during energy emergencies.

The measure also establishes the Texas Electricity Supply Chain Security and Mapping Committee in order to map the state's electricity supply chain, identify related critical infrastructure sources, establish best practices to prepare facilities to maintain service in an extreme weather event and recommend oversight and compliance standards for those facilities, and designate priority service needs to prepare for, respond to, and recover from an extreme weather event.

The committee must meet at least quarterly and to fulfill its requirements to:

- Map the state's electricity supply chain to designate priority electricity service needs during extreme weather events;
- Identify and designate the sources in the supply chain necessary to operate critical infrastructure;
- Develop a communication system between critical infrastructure sources, the PUC, and the ERCOT organization to ensure that electricity and natural gas supplies are prioritized to those sources during an extreme weather event; and
- Establish best practices to prepare facilities to maintain electric and natural gas service in an extreme weather event and recommend oversight and compliance standards.

The map must be updated yearly. The PUC must also create, maintain, and update at least annually a database identifying critical infrastructure sources with priority electricity needs to be used during an extreme weather event. The information maintained in the database is considered confidential and not subject to disclosure under public information laws.

The measure also provides further requirements for weather emergency preparedness for gas supply chain facilities, gas pipelines, electric generation facilities, transmission providers, and water utilities. For gas supply chain facilities and gas pipelines, the RRC must inspect the facilities for compliance with weather emergency preparedness requirements under the bill, provide a facility's owner with a reasonable period of time in which to remedy any violation discovered, and report to the attorney general any violation that was not remedied in that time. The RRC must prioritize inspection based on risk level.

The ERCOT organization must take the above action for generation assets and transmission providers in the power region, inspecting each facility for compliance with reliability standards established under the bill. The RRC must require a gas supply chain facility operator or gas pipeline operator and the PUC must require an electric generator that experienced repeated or major weather-related forced interruptions of production or service, as applicable, to contract with a person who is not an employee of the operator or provider to assess weatherization plans, procedures, and operations and submit the assessment to the RRC or to the PUC and the ERCOT organization, as appropriate. The appropriate regulatory entity may require an operator or provider to implement recommendations in the assessment.

The RRC must require a gas supply chain facility operator to implement measures to prepare to operate during a weather emergency. A "gas supply chain facility" is a facility that is:

- Used for producing, treating, processing, pressurizing, storing, or transporting natural gas;
- Not primarily used to support liquefied natural gas pretreatment, liquefaction, or regasification facilities in the business of exporting or importing liquefied natural gas to or from foreign countries; and
- Otherwise regulated by the RRC and not regulated under laws governing gas utilities.

The weather emergency preparedness requirement applies only to a gas supply chain facility included on the electricity supply chain map created under the bill. If the RRC determines that a person violated a rule adopted under the bill, it must notify the attorney general of a violation that was not remedied in a reasonable amount of time. The attorney general must initiate a suit to recover a penalty for the violation in the manner provided under laws governing the regulation of natural gas.

The act also directs the RRC to adopt rules regarding measures a gas pipeline facility operator is required to implement to prepare the facility to maintain service quality and reliability during extreme weather conditions if the facility directly served a natural gas electric generation facility operating solely to provide power to the grid for the ERCOT power region and was included on the electricity supply chain map. The RRC is further required to assess an administrative penalty against a person if a rule violation is not remedied in a reasonable period in the manner provided by the bill, and the penalty for each violation may not exceed \$1 million. Each day a violation continues is considered a separate violation for the purpose of penalty assessment.

The legislation further directs the PUC to require each provider of electric generation service to implement measures to prepare generation assets to provide adequate electric generation service during a weather emergency according to reliability standards adopted by the PUC. This requirement applies only to a municipally owned utility (MOU), electric cooperative, power generation company, or exempt wholesale generator that sells energy in the ERCOT power region. ERCOT must review, coordinate, and approve or deny requests by electric generation providers for a planned power outage during any season and for any period. The PUC must also require each electric cooperative, MOU, and transmission and distribution utility (TDU) providing transmission service in the power region to implement measures to prepare facilities to maintain service quality and reliability during a weather emergency according to standards adopted by the PUC.



The bill also requires an affected utility to ensure the emergency operation of its water system during an extended power outage at a minimum water pressure of 20 pounds per square inch, or at a water pressure level approved by TCEQ, as soon as safe and practicable following the occurrence of a natural disaster. An affected utility may adopt and enforce limitations on water use while the utility is providing emergency operations. In accordance with TCEQ rules, an emergency preparedness plan for a provider of potable water must provide for certain things, including the sharing of auxiliary generator capacity with one or more affected utilities, the use of portable generators capable of serving multiple facilities and on-site electrical generation or distributed generation facilities, the hardening the electric transmission and distribution system serving the water system, the designation of the water system as a critical load facility, and water storage capabilities. Each affected utility that supplies, provides, or conveys raw surface water must include in its emergency preparedness plan provisions for demonstrating the capability of each raw water intake pump station, pump station, and pressure facility to provide raw water service to its wholesale customers during emergencies. This requirement does not apply to raw water services deemed unnecessary or otherwise subject to interruption or curtailment during emergencies under a contract.

The bill directs the PUC to submit a weather emergency preparedness report to the lieutenant governor, the House speaker, and the Legislature by September 30 of each even-numbered year, and it must include an analysis of emergency operations plans of retail electric providers in addition to power generation entities. The RCC is directed to submit a similar report addressing weatherization preparedness and emergency operations plans developed by operators of facilities that produce, treat, process, pressurize, store, or transport natural gas and are included on the electricity supply chain map.

The act establishes the Texas Energy Disaster Reliability Council in order to:

- Prevent extended natural gas supply failures or power outages and implement procedures to manage emergencies caused by disasters;
- Maintain records of critical infrastructure facilities to maintain service in a disaster;
- Coordinate the delivery of fuel to serve human needs natural gas customers and providers of electric generation service in a disaster;
- Monitor supply chains for the electric grid to minimize service disruptions; and
- Make recommendations on methods to maintain the reliability of the ERCOT grid during a disaster.

The six-member council consists of the presiding officer and the executive director of the PUC, the chairman and the executive director of the RRC, the CEO of the ERCOT organization, and the chief of TDEM, who also serves as the presiding officer, according to the bill. By November 1 of each even-numbered year, the council must submit a report to the legislature on the reliability and stability of the electric supply chain that included recommendations on methods to strengthen the supply chain and to decrease the frequency of extended power outages caused by a disaster.

The measure further requires:

- TDEM to create a list of suggested actions for state agencies and the public to prepare for winter storms, organized by severity of storm based on the National Weather Service Winter Storm Severity Index; and
- The Department of Public Safety (DPS), with the cooperation of the Texas Department of Transportation (TxDOT), TDEM, the Office of the Governor, and the PUC, to develop and implement an alert to be activated when the power supply in the state is inadequate to meet demand.

The PUC must also:

- Review the type, volume, and cost of ancillary services to determine whether those services continue to meet the needs of the electricity market in the ERCOT power region;
- Evaluate whether additional voluntary seasonal, month-ahead, or other forward products enhance reliability while providing adequate incentives for dispatchable generation; and
- Ensure that all generation resources, energy storage resources, and loads in the ERCOT power region are allowed to provide ancillary services on a voluntary basis and that the services are procured and costs recovered on an equitable and nondiscriminatory basis.

The ERCOT organization must require an owner or operator of distributed generation to register information necessary for the interconnection of the distributed generator with the organization and interconnecting TDU. This requirement does not apply to distributed generation serving a residential property. "Distributed generation" is defined as an electrical generating facility located at a customer's point of delivery, is connected at a voltage less than 60 kilovolts, and is connected in parallel operation to the utility system.

The PUC must adopt a system to allocate load shedding among entities providing transmission service in the power region during an involuntary load shedding event initiated by the ERCOT organization during an energy emergency. The system must provide for allocation of the load shedding obligation to each entity in different seasons based on historical seasonal peak demand in their service territory. The PUC must require electric cooperatives and MOUs providing transmission service to maintain lists of customers willing to voluntarily participate in load reduction and coordinate with municipalities, businesses, and customers that consumed large amounts of electricity to encourage voluntary load reduction. After each load shedding event, the PUC may conduct an examination of the implementation of load shedding, including whether each electric cooperative, MOU, and TDU complied with its plan filed with the PUC. The PUC and ERCOT must conduct simulated or tabletop load shedding exercises with providers of electric generation service and transmission and distribution service with at least one exercise conducted during a summer month and another during a winter month.

The measure requires the PUC and the RRC work together and each adopt rules to establish a process to designate certain natural gas facilities and entities associated with providing natural gas in this state as critical during an energy emergency. At a minimum, the PUC's rules must:

- Ensure that electric cooperatives, MOUs, TDUs, and the ERCOT organization are provided with critical customer designation and critical natural gas supply information;
- Provide for a prioritization for load-shed purposes of the designated entities and facilities during an energy emergency; and
- Provide discretion to electric cooperatives, MOUs, and TDUs to prioritize power delivery and restoration among the customers on their respective systems.

At a minimum, the RRC's rules must:

- Establish eligibility and designation requirements for persons under the jurisdiction of the RRC required to provide critical customer designation and critical natural gas supply information to electric cooperatives, MOUs, TDUs, and ERCOT;



- Require that only facilities and entities prepared to operate during a weather emergency may be designated as a critical customer; and
- Consider essential operational elements when defining critical customer designations and critical natural gas supply information.

An electric utility providing electric delivery service for a retail electric provider (REP) must provide to the REP information about:

- The electric utility's procedures for implementing involuntary load shedding initiated by the ERCOT organization;
- The types of customers considered critical care residential customers, critical load industrial customers, or critical load under the bill and the procedure for a customer to apply for such a designation; and
- Reducing electricity use at times when involuntary load shedding events may be implemented.

REPs must provide the above information periodically with bills sent to its retail customers, and MOUs and electric cooperatives must provide the same information periodically with bills sent to their retail customers.

The measure allows an REP to enroll a residential or small commercial customer in a wholesale indexed product only under certain circumstances, including if:

- The product caps the monthly average all-in price per kilowatt hour of electricity charged to the customer at a maximum of 200 percent more than the monthly average price of electricity during the same month for the prior year;
- The REP provides to each potential customer before enrollment and in each customer billing statement notice of the highest monthly average price for the next six months; and
- For service starting at the beginning of the next month, the REP allows the customer to switch without charge or penalty to a fixed rate product offered to other customers.

A "wholesale indexed product" is defined as a retail electric product in which the price a customer pays for electricity includes a direct pass-through of real-time settlement point prices determined by the ERCOT organization.

The bill further requires a retail public utility who must possess a certificate of public convenience and necessity or a district and affected county that furnished retail water or sewer utility service to defer collection of the full payment of bills that were due during an extreme weather emergency until after the emergency passes. The provider must work with customers to establish a pay schedule for deferred bills. The measure establishes a civil penalty if a gas utility disconnected natural gas service to a residential customer during an extreme weather emergency or failed to defer collection of the full payment of bills until the emergency was over.

Finally, the bill creates the State Energy Plan Advisory Committee, composed of 12 members appointed by the governor, lieutenant governor, and House speaker, to prepare a comprehensive plan that:

- Provides recommendations for removing barriers in the electricity and natural gas markets that prevent sound economic decisions;

- Provides recommendations for using methods to improve the reliability, stability, and affordability of electric service; and
- Evaluates the electricity market structure and pricing mechanisms used in the state, including the ancillary services market and emergency response services.

The state energy plan is due to the Legislature by September 1, 2022.

#### SB 2116 – Critical Infrastructure Restrictions

*Sponsored by Sen. Campbell*

Prohibits business or governmental entities from entering into contracts or other agreements relating to state critical infrastructure with certain foreign-owned companies.

Under the bill, “critical infrastructure” means a communication infrastructure system, cybersecurity system, electric grid, hazardous waste treatment system, or water treatment facility.

An entity is prohibited from contracting with a company if the company is headquartered in China, Iran, North Korea, Russia, or a designated country, or if the entity knew that the company was owned by or the majority of stock or other ownership interest of the company was primarily based in the aforementioned nations.

The measure also allows the governor, after consultation with the public safety director of the Department of Public Safety, to designate a country as a threat to critical infrastructure for purposes of the bill. The governor may consult the Homeland Security Council to assess a threat to critical infrastructure for purposes of making a designation.

#### SB 2154 – PUC Membership Modifications

*Sponsored by Sen. Schwertner*

Increases the membership of the Public Utility Commission (PUC) from three to five governor-appointed commissioners.

To be eligible for appointment, the measure states a commissioner must be a Texas resident. The bill also expands eligibility to include a person who had at least five years of experience as a professional engineer.

According to the legislation, a minimum of two commissioners must be well informed and qualified in the field of public utilities and utility regulation. The bill further amends eligibility requirements so that a person is not eligible for appointment as a commissioner if at any time during the previous year, rather than the previous two years, the person was affiliated with certain public utilities, and a member of the legislature or a person who served as governor, lieutenant governor, comptroller, commissioner of the General Land Office, or attorney general within one year preceding appointment is also ineligible for appointment as a PUC commissioner.

#### SB 415 – Energy Storage Provisions

*Sponsored by Sen. Hancock*

Amends provisions of the Public Utility Regulatory Act, Utilities Code, governing electric energy storage equipment or facilities that are intended to provide energy or ancillary services at wholesale on the generator’s registration with the Federal Energy Regulatory Commission to make the provisions applicable only to the ownership or operation of such equipment or facilities in the Electric Reliability Council of Texas power region.

The bill further expands the applicability of those provisions by setting out contracting guidelines that allow a transmission and distribution utility that has received prior approval from the Public Utility Commission of Texas

(PUC) to provide electric energy from an electric energy storage facility to ensure reliable service to distribution customers. The measure prohibits the PUC from authorizing ownership of a storage facility by a transmission and distribution utility.

#### SB 507 – Broadband Rights-of-Way

*Sponsored by Sen. Nichols*

Requires the Texas Transportation Commission, on a competitively and technologically neutral and nondiscriminatory basis with respect to other providers of broadband service, to establish an accommodation process that authorizes broadband-only providers to use state highway rights-of-way, subject to highway purposes, for new broadband facility installations, additions to or maintenance of existing broadband facility installations, adjustments or relocations of broadband facilities, and existing broadband facilities retained within the rights-of-way.

#### SB 632 – Broadband Service Fiber Provisions

*Sponsored by Sen. Buckingham*

Authorizes the Lower Colorado River Authority (LCRA) to provide fiber capacity or facilities on reasonable and nondiscriminatory terms and conditions to facilitate broadband service connectivity.

Among other provisions, the bill prohibits LCRA from providing broadband service to a retail customer and limits the authority of LCRA to agree to lease fiber capacity or facilities to a municipality to facilitate broadband service connectivity, other than for communications regarding utility operations.

#### SB 669 – Water Development Board Disclosures

*Sponsored by Sen. Springer*

Replaces the requirement that the Texas Water Development Board (TWDB) submit to the Legislature a biennial report that includes the most recent data relating to the following with a requirement that the TWDB make the data publicly available:

- Statewide water usage in the residential, industrial, agricultural, commercial, and institutional sectors; and
- The data collection and reporting program for municipalities and water utilities with more than 3,300 connections.

#### SB 997 – Rate Adjustment Regulatory Authority

*Sponsored by Sen. Nichols*

Prohibits the Public Utility Commission, in a proceeding to review water or sewer rates charged under a written contract or an appeal of the amount paid, from holding a hearing on or otherwise prescribing just and reasonable amounts to be charged under the contract unless it determined that the rate harmed the public interest.

#### SR 85 – Line and Generation Worker Recognition

*Sponsored by Sen. Schwertner*

Recognizes the electrical utility line and generation workers of Texas for their efforts during the 2021 winter storm.

## SR 342 – Addressing High System-wide Offer Cap and Market Structure

*Sponsored by Sen. Schwertner*

Urges the Public Utility Commission of Texas to significantly reduce the high system-wide offer cap and evaluate changes to the market structure.

## Environmental Legislation

### Air Quality and Pollution Control

#### HB 2361 – Flaring Emissions Reduction Preference

*Sponsored by Rep. Landgraf*

Requires the Texas Commission on Environmental Quality to include projects the reduce flaring emissions and other site emissions among those to which it should give preference, and it permits lease costs as an allowable expense for a grant project concerning installation of emissions reducing equipment.

#### HB 4472 – Texas Emissions Reduction Program Funding Uses

*Sponsored by Rep. Landgraf*

Amends the Health and Safety Code to broaden use of Texas Emissions Reduction Program funds within the Texas Emissions Reduction Plan Fund (TERP Fund) by the Texas Commission on Environmental Quality (TCEQ) for air monitoring equipment operations, fee based contracts, the energy efficiency loan guarantee program, and for remitting to the State Highway Fund for use by the Texas Department of Transportation (TxDOT) on congestion mitigation and air quality improvement projects in nonattainment areas.

The bill requires TCEQ to remit to TxDOT for such projects at least 35 percent of the amount deposited to the credit of the TERP Fund.

#### SB 211 – Judicial Review Timeline Clarification

*Sponsored by Sen. Zaffirini*

Clarifies that the judicial review timeline established by prior law in the Texas Water Code applies to permitting matters under Chapters 361 and 382, Texas Health and Safety Code (the Solid Waste Disposal Act and Clean Air Act, respectively).

### Coastal Zone Management

#### HR 998 – Little Bay Restoration Commendation

*Sponsored by Rep. Morrison*

Commends the Little Bay Restoration Initiative and extends to all those associated with the endeavor sincere best wishes for continued success in their important work.

#### SB 1160 – Gulf Coast Protection District Creation

*Sponsored by Sen. Taylor*

Creates the Gulf Coast Protection District composed of territory in Chambers, Galveston, Harris, Jefferson, and Orange Counties with the authority exercise eminent domain, issue bonds, and impose fees and taxes.

The bill requires the district's governing body by order to annex to the district the territory of a county included in the published protection and restoration study at the request of the commissioners court of that county.

The district is further authorized to:

- Establish, construct, extend, maintain, operate, or improve a coastal barrier or storm surge gate in the manner provided by Local Government Code provisions relating to seawalls and levees in coastal municipalities and counties for a county to establish, construct, extend, maintain, or improve a seawall;
- Exercise the authority granted to counties to conduct any project described by those provisions;
- Establish, construct, and maintain recreational facilities for public use and environmental mitigation facilities related to an applicable project;
- Establish, construct, maintain, or operate a project recommended in the ecosystem restoration report or the protection and restoration study; and
- Provide interior drainage remediation or improvements to reduce additional flood risk for a project recommended in the ecosystem restoration report where additional flood risk results from the design or construction of an applicable project.

## Environmental Health Services

HB 2225 – Water Rights

*Sponsored by Rep. King*

Requires the Texas Parks and Wildlife Department (TPWD) to encourage and facilitate the dedication of water rights in the Texas Water Trust through lease, donation, purchase, or other voluntary transfer for certain environmental purposes, including maintaining or improving instream flows, water quality, fish and wildlife habitat, and bay and estuary inflows.

The bill authorizes TPWD to manage rights in the Texas Water Trust under a voluntary agreement with a rights holder and in a manner consistent with:

- The manner in which a holder of the rights was authorized to manage them;
- The dedication of the rights, including terms and conditions;
- Certain statutory provisions relating to instream flows dedicated to environmental purposes, rights between appropriators, and amendments to water rights; and
- Maximizing environmental benefits.

## Hazardous Waste and Substance Management

HB 2708 – Battery Recycling Facility Remediation

*Sponsored by Rep. Patterson*

Amends the Health and Safety Code to permit funding within General Revenue - Dedicated Hazardous and Solid Waste Remediation Account No. 550 to be used for the remediation of certain former battery recycling facilities.

## Inland Water Resource Management and Conservation

### HB 1410/SB 1959 – Water District Bond Limits

*Sponsored by Reps. Murphy and Israel/Sen. Creighton*

Limits the amount of certain water district bonds that may be issued to finance parks and recreational facilities at one percent of a district's taxable property value.

According to the bill, bonds for other improvements such as water, sewage, drainage, or roads are not restricted as such.

### HB 1606 – Water District Establishment

*Sponsored by Rep. Talarico*

Establishes that the Upper Brushy Creek Water Control and Improvement District is not required to comply with municipal regulations regarding the construction, maintenance, rehabilitation, or removal of dams.

### HB 1904 – Permissible Use of Water Infrastructure Fund

*Sponsored by Rep. Harris*

Amends the state water code to expand the permissible uses of the Water Infrastructure Fund (WIF) by allowing the Texas Water Development Board to transfer WIF funds to the financial assistance account of the Texas Water Development Fund II (DFund II).

According to the measure, money transferred into DFund II is no longer required to have an appropriation.

### HB 1905 – Regional Water Planning Duties

*Sponsored by Rep. Harris*

Amends the water code to remove certain duties of regional water planning groups, including removing the obligation for these groups to submit certain reports and surveys.

### SB 1890 – Water Code Amendments

*Sponsored by Sen. Creighton*

Amends the Water Code to specify that the law regarding uniform grant and contract management does not apply to the Flood Infrastructure Fund, the Texas Infrastructure and Resiliency Fund, or the Agricultural Water Conservation bond program.

## Land Management and Conservation

### HB 1564 – Receivership Process for Certain Land

*Sponsored by Rep. González*

Establishes a process for the appointment of a receivership for and disposition of certain lots that are abandoned, unoccupied, and undeveloped in a county that has a population of more than 800,000, was adjacent to an international border, and contained more than 30,000 acres of lots that had remained substantially undeveloped for more than 25 years after being platted.

The bill allows the commissioners court of an applicable county to implement an expedited process to administratively determine that a platted lot was abandoned, unoccupied, or undeveloped, if the lot:

- Remained undeveloped for 25 years or more after being platted;
- Was part of a subdivision in which 50 percent or more of the lots were undeveloped, unoccupied, or no more than 10 acres in size;
- Had an assessed value of less than \$1000; and
- Had not been valued for ad valorem taxation as land for agricultural use as of January 1, 2020.

According to the measure, the county does not have an ownership interest in any lot administratively determined to be abandoned, unoccupied, and undeveloped, except for any existing or future legal interest established by other law.

#### HB 2730 – Eminent Domain Revisions

*Sponsored by Rep. Deshotel*

Revises portions of the eminent domain process, including requirements for an initial offer, terms of conveyance, the landowner's bill of rights, and the appointment of special commissioners.

The bill also establishes education requirements for easement or right-of-way agents.

#### HB 2951 – Levee Improvement District Membership

*Sponsored by Rep. Jetton*

Amends current law relating to the appointment and removal of directors of a levee improvement district (LID) and validates certain appointments and actions of levee improvement districts.

The bill clarifies the procedure for vacancies on appointed LID boards such that they are filled by the appointment of a commissioners court and vacancies on elected LID boards are filled by the majority vote of the remaining board members.

#### HB 531 – Floodplain Notice

*Sponsored by Rep. Walle*

Requires a landlord to provide certain notice for a leased dwelling located in a floodplain.

Further, if a landlord fails to provide the notice and a tenant suffers a substantial loss or damage to the tenant's private property as a result of flooding, the tenant may terminate the lease within 30 days of the loss and the landlord must refund all rent or other amounts paid for any period after the termination.

#### SB 1118 – On-The-Ground Conservation Program

*Sponsored by Sen. Johnson*

Creates the On-The-Ground Conservation Program to be administered by the State Soil and Water Conservation Board (TSSWCB).

The program allows TSSWCB to designate priority conservation measures, including environmental goals identified by TSSWCB such as soil health improvements, erosion control, invasive species control, habitat protection, and land restoration. TSSWCB may then pursue these goals by securing outside funding and providing cost-share assistance, grants, and technical assistance, according to the legislation.

## Solid Waste

### SB 1818 – Metal Recycling Entities Liability Exemption

*Sponsored by Sen. Zaffirini*

Creates an exemption from liability for metal recycling entities (MREs) that if the MRE arranged for scrap disposal by contract in an appropriate manner, or if the MRE arranged for transport for disposal or treatment in an appropriate manner, the MRE is not held liable for a potential polluter's actions.

### SB 211 – Judicial Review Timeline Clarification

*Sponsored by Sen. Zaffirini*

Clarifies that the judicial review timeline established by prior law in the Texas Water Code applies to permitting matters under Chapters 361 and 382, Texas Health and Safety Code (the Solid Waste Disposal Act and Clean Air Act, respectively).

## Water Quality and Pollution Control

### HB 2225 – Water Rights

*Sponsored by Rep. King*

Requires the Texas Parks and Wildlife Department (TPWD) to encourage and facilitate the dedication of water rights in the Texas Water Trust through lease, donation, purchase, or other voluntary transfer for certain environmental purposes, including maintaining or improving instream flows, water quality, fish and wildlife habitat, and bay and estuary inflows.

The bill authorizes TPWD to manage rights in the Texas Water Trust under a voluntary agreement with a rights holder and in a manner consistent with:

- The manner in which a holder of the rights was authorized to manage them;
- The dedication of the rights, including terms and conditions;
- Certain statutory provisions relating to instream flows dedicated to environmental purposes, rights between appropriators, and amendments to water rights; and
- Maximizing environmental benefits.

### SB 900 – Groundwater and Surface Water Protection

*Sponsored by Sen. Alvarado*

Requires the Texas Commission on Environmental Quality to establish a Performance Standards for Safety at Storage Vessels Program to provide for the protection of groundwater and surface water resources from a release of substances from a storage vessel in the event of an accident or natural disaster.

### SB 905 – Potable Reuse of Wastewater Documentation

*Sponsored by Sen. Perry*

Requires the Texas Commission on Environmental Quality to create a direct potable reuse of wastewater regulatory document and make it publicly available.



# U.S. VIRGIN ISLANDS

The U.S. Virgin Islands has adopted **3** energy and environmental bills in its ongoing 2021 legislative session.

## ***Highlight:***

**B. No. 34-0025** makes several changes to the membership and procedures of its Public Services Commission.

## **Energy Legislation**

### Natural Gas and Petroleum

#### B. No. 33-0300 – Limit on Gas Station Licenses

Establishes a limitation on the licenses issued for gasoline stations to take effect in five years.

The bill also imposes a five-year, territory-wide moratorium on the issuance of business licenses for gasoline stations and exempts gasoline stations that are to be constructed on a site previously occupied by a gasoline station from the moratorium.

### Utilities

#### B. No. 34-0025 – PSC Amendments

Reduces the membership of the Public Services Commission from nine to seven members.

The measure establishes that a maximum of two commission members may reside outside of the territory. It also includes the following provisions:

- Procedures for virtual attendance of commission meetings;
- Increases the per diem for appointed commission members from \$50 to \$175;
- Establishes minimum criteria for Public Services Commission members;
- Prohibits members from having a financial interest in a utility or a family member of a person serving in an executive capacity at a public utility subject to regulation by the commission from being appointed to the commission;
- Prohibits a person serving in an executive capacity at a public utility from serving as a member of the commission for at least two years after leaving employment with the public utility or from entering into an employment relationship or other agreement with either an entity regulated by the commission or a subcontractor of the entity for one year after completion of service to the commission; and
- Prohibits voting members from holding other public offices and from raising campaign funds and actively campaigning for political candidates other than a member's family.

## Environmental Legislation

### Environmental Health Services

#### B. No. 34-0023 – Invasive Species Eradication Community Program

Establishes the Invasive Species Eradication Community Program and the related Invasive Species Eradication Community Program Fund in order to control of the population growth of vermin, nuisance, and invasive species that negatively impact the Virgin Islands.

## VIRGINIA

Virginia adopted **59** energy and environmental bills during its 2021 legislative session.

### ***Highlights:***

**HB 1965** directs the State Air Pollution Control Board to implement a low-emissions and zero-emissions vehicle program for motor vehicles with a model year of 2025 and later.

**HB 1834/SB 1247** requires owners of a large carbon-emitting power plant to provide notice to relevant localities and state agencies about the decision to close the plant within 30 days of making such decision.

## Energy Legislation

### Alternative Energy Development

#### HB 1850 – Motor Vehicle Power Source Regulations

*Sponsored by Del. Reid*

Authorizes motor vehicles powered primarily by means of electric battery power to exceed relevant weight limits by 2,000 pounds, provided that such weight is on the power unit and such weight does not exceed 82,000 pounds on an interstate highway.

The measure also modifies the weight exemption for motor vehicles fueled primarily by natural gas on an interstate highway from the difference between the weight of the natural gas tank and fueling system and a comparable diesel tank and fueling system to up to an additional 2,000 pounds, provided that such weight is on the power unit and does not exceed 82,000 pounds.

#### HB 1907 – Renewable Energy Procurement Costs Regulation

*Sponsored by Del. Sullivan, Jr.*

Provides that certain accelerated renewable energy buyers that are customers of Dominion Energy Virginia and had subscribed to, as of March 1, 2020, a voluntary companion experimental tariff offering for the purchase of

renewable attributes from renewable energy facilities that requires a renewable facilities agreement and the purchase of a minimum of 2,000 renewable attributes annually is exempt from the allocation of the net costs related to procurement of new solar or onshore wind generation capacity, energy, or environmental attributes, or energy storage facilities, by Dominion Energy Virginia.

According to the legislation, the exemption is based on the amount of Renewable Energy Certificates associated with the customer's renewable facilities agreements associated with the tariff offering in proportion to the customer's total electric energy consumption, on an annual basis.

#### HB 1919 – Green Bank Establishment

*Sponsored by Del. Kory*

Authorizes a locality, by ordinance, to establish a green bank to promote the investment in clean energy technologies in its locality and provide financing for clean energy technologies.

“Clean energy technologies” are defined in the bill as energy resources and emerging technologies that have significant potential for commercialization and do not involve the combustion of coal, petroleum or petroleum products, or municipal solid waste or nuclear fission. Further, it defines the technologies as including renewable energy sources, renewable energy projects, energy efficiency projects, alternative fuels used for electricity generation, alternative fuel vehicles and related infrastructure such as electric vehicle charging station infrastructure, and smart grid.

The measure establishes certain powers and functions of a green bank, including developing rules and procedures, financing and providing loans for clean energy projects, and stimulating demand for renewable energy. The bill requires the green bank to be a public entity, quasi-public entity, depository bank, or nonprofit entity and requires the locality to hold a hearing and publish notice of the hearing in a newspaper of general circulation prior to establishing the green bank.

#### HB 1965 – Low- and Zero-Emissions Vehicle Program

*Sponsored by Del. Bagby*

Directs the State Air Pollution Control Board to implement a low-emissions and zero-emissions vehicle program for motor vehicles with a model year of 2025 and later.

Regulations adopted by the board to implement the program are exempt from the Administrative Process Act and may not become effective prior to January 1, 2024. The bill further requires that the regulations adopted by the board will allow any motor vehicle manufacturer to establish a Virginia-specific zero-emission vehicle credit account and to make an initial deposit into its account. Such credits may be traded or sold or used to meet up to 18 percent of the manufacturer's zero-emissions vehicle program credit requirements in any model year.

The measure also authorizes the State Corporation Commission to exclude sales related to such vehicles from certain energy efficiency calculations.

#### HB 1994 – Small Agricultural Generator

*Sponsored by Del. Murphy*

Expands the definition of “small agricultural generator” to include any business operating a small agricultural generating facility that has been granted a manufacturer license as a distillery, limited distillery, brewery, limited brewery, winery, or farm winery utilizing a small agricultural generating facility on the premises.

## HB 2001 – Electric Vehicle Charging Infrastructure Requirements

*Sponsored by Del. Helmer*

Requires that any executive branch agency or institution or locality entering the design phase for the construction of a new building greater than 5,000 gross square feet in size or the renovation of a building where the cost of the renovation exceeds 50 percent of the value of the building ensure that such building has sufficient electric vehicle charging infrastructure and has features that permit the agency or institution to track the building's energy efficiency and carbon emissions.

The bill authorizes the Director of the Department of General Services to grant exemptions to such standards, in writing and with certain terms. The bill requires agencies to annually report to the Governor the energy efficiency and carbon emissions metrics for each such building built or renovated. Localities are required to design such building projects according to the same or similar standards, or more stringent standards if adopted by ordinance. The act also requires that localities incorporate appropriate resilience and distributed energy features.

Finally, the measure requires that any exemption from the standards granted by resolution of the governing body of a locality be made in writing and explain the basis for granting the exemption. It contains a delayed enactment of July 1, 2023, with respect to the provisions related to any locality with a population of less than 100,000.

## HB 2034/SB 1420 – Third-Party Power Purchase Agreement Pilot Programs

*Sponsored by Del. Hurst/Sen. Edwards*

Provides that for pilot programs under which an owner or operator of a renewable energy generation facility sells electricity to an eligible customer-generator through a third-party power purchase agreement, both jurisdictional and nonjurisdictional customers may participate on a first-come, first-serve basis.

## HB 2118 – Electric Vehicle Grant Fund and Program

*Sponsored by Del. Keam*

Establishes the Electric Vehicle Grant Fund and Program for the purpose of awarding grants on a competitive basis to public school divisions for assisting with costs of replacing diesel school buses with electric school buses, the implementation of recharging infrastructure or other infrastructure needed to charge or maintain such electric school buses, and workforce development and training to support the maintenance, charging, and operation of such electric school buses.

The program must also award grants to projects by public, private, and nonprofit Virginia entities to assist with replacing diesel-fueled vehicles and machinery with electric vehicles. No allocation of funds must be made to the Fund or the Program unless federal or nonstate funds are available to cover the entire cost of such allocation. The bill contains provisions relating to grant applications, priority, awards, and uses. The Department of Environmental Quality must convene a stakeholder work group to develop recommendations for establishing and administering the Fund and Program and must report the work group findings to the General Assembly.

## HB 2148 – Small Renewable Energy Project Definitions

*Sponsored by Del. Willett*

Includes in the definition of a "small renewable energy project" certain energy storage facilities and projects that include storage facility components.

Specifically, the bill adds to the definition an energy storage facility that uses electrochemical cells to convert chemical energy with a rated capacity not exceeding 150 megawatts or a hybrid project of generation and storage, which are now eligible for special permitting, review, and inspection requirements.

#### HB 2269 – Energy Storage Systems Revenue Share

*Sponsored by Del. Heretick*

Allows localities to assess a revenue share of up to \$1,400 per megawatt on energy storage systems.

The bill provides that on July 1, 2026, and every five years thereafter, the maximum amount of the revenue share that a locality may impose on certain solar energy projects and energy storage systems must be increased by 10 percent, and no increase may be made to any revenue share imposed by a locality on a solar energy project or energy storage systems for which an application has been filed with the locality and such application has been approved prior to January 1, 2021.

#### HB 2282 – Transportation Electrification Report

*Sponsored by Del. Sullivan, Jr.*

Directs the State Corporation Commission to report on policy proposals to accelerate transportation electrification in the Commonwealth.

The commission is required to submit, no later than May 1, 2022, a report to the General Assembly recommending policy proposals that could govern public electric utility programs to accelerate widespread transportation electrification in the Commonwealth. The bill further requires the commission to utilize a public process, facilitated by a third party with expertise in transportation electrification, in which the commission, the Department of Environmental Quality, the Department of Mines, Minerals and Energy, the Department of Transportation, and appropriate stakeholders participate. The bill requires that the commission, in developing its policy recommendations, evaluate:

- Areas where utility or other public investment may best complement private efforts to effectively deploy charging infrastructure, with particular focus on low-income, minority, and rural communities;
- How smart growth policies can complement and enhance the Commonwealth's transportation electrification goals; and
- How utility programs, investments, or incentives to customers or third parties to facilitate the deployment of charging infrastructure and related upgrades can support or enhance:
  - Statewide transportation electrification, including electrification of public transit;
  - The electrification of medium-duty and heavy-duty vehicles, school buses, vehicles at ports and airports, personal vehicles, and vehicle fleets;
  - Increased access to electric transportation and improved air quality in low-income and medium-income communities;
  - Achievement of existing energy storage targets;
  - Improvements to the distribution grid or to specific sites necessary to accommodate charging infrastructure; and

- Customer education and outreach programs that increase awareness of such programs and the benefits of transportation electrification.

The measure requires that the report also address whether and how transportation electrification can, under current law, reduce total ratepayer rates and costs, assist in grid management and more efficient use of the grid, in a manner that does not increase peak demand, through time-of-use rates, managed charging programs, vehicle-to-grid programs, or other alternative rate designs, utilize increased generation from renewable energy resources, and reduce fueling costs for vehicles. The legislation requires that, to the extent that the commission and stakeholders conclude that transportation electrification cannot currently deliver these benefits, the report include public policy recommendations.

Additionally, the bill directs that, beginning July 1, 2021, any approved costs of any investor-owned electric utility associated with investment in transportation electrification be recovered only through the utility's rates for generation and distribution, prohibits recovery of such costs through a rate adjustment clause and provides that such costs are not eligible for a customer credit reinvestment offset.

#### HB 2201/SB 1207 – Siting Agreements and Zoning Exceptions for Solar

*Sponsored by Del. Jones/Sen. Barker*

Expands existing provisions related to siting agreements and zoning special exceptions for solar projects located in an opportunity zone to include energy storage projects and makes the provisions statewide.

The bill provides that its provisions must not apply to any energy storage project that has received zoning and site plan approval, preliminary or otherwise, from the host locality before January 1, 2021.

The act also states that its provisions may not become effective with respect to energy storage projects unless the General Assembly approves legislation that authorizes localities to adopt an ordinance for taxation of energy storage projects such as solar projects with a local option for machinery and tools tax or solar revenue share.

#### SB 1223 – Electric Vehicle Charging Infrastructure Analysis

*Sponsored by Sen. Boysko*

Amends the Virginia Energy Plan to include an analysis of electric vehicle charging infrastructure and other infrastructure needed to support the 2045 net-zero carbon target in the transportation sector.

#### SB 1295 – Procuring Virginia or US-manufactured Components

*Sponsored by Sen. DeSteph*

Requires a utility, in the construction of certain onshore wind, solar, and energy storage facilities, to procure, subject to a competitive process, equipment from a Virginia-based or United States-based manufacturer using materials or product components made in Virginia or the United States, if reasonably available and competitively priced.

Additionally, the bill requires a utility, in the construction of certain offshore wind projects, to develop and submit a plan for review to the State Corporation Commission that includes considerations for the procurement of equipment from a Virginia-based or United States-based manufacturer using materials or product components made in Virginia or the United States, if reasonably available and competitively priced.

## Coal and Minerals

### HB 1899/SB 1252 – Coal Tax Credit Sunset

*Sponsored by Del. Hudson/Sen. Pike*

Sunsets the Coal Employment and Production Incentive Tax Credit and Coalfield Employment Enhancement Tax Credit after tax year 2021 and prohibits the allocation of such credits on and after January 1, 2022.

The bill provides that if Coal Employment and Production Incentive tax credits were earned prior to January 1, 2022, the credit holder may claim the credits in subsequent tax years pursuant to the applicable carryover requirements of current law, however, such credit holders are limited to claiming \$1 million in carryover credits per taxable year. The act directs the Department of Mines, Minerals and Energy to convene a stakeholder process to report by December 1, 2021, on recommendations for how the Commonwealth can provide economic transition support to the coalfield region.

### HB 1925 – Virginia Brownfield and Coal Mine Renewable Energy Grant Fund and Program

*Sponsored by Del. Kilgore*

Establishes the Virginia Brownfield and Coal Mine Renewable Energy Grant Fund and Program.

The bill provides that no allocation of funds must be made to the fund or program unless federal funds are available to cover the cost of such allocation. The fund and program are to be administered by the Department of Mines, Minerals and Energy (DMME) for the purpose of awarding grants to renewable energy projects that are located on brownfields or previously coal mined lands.

Grants are to be awarded on a basis of \$500 per kilowatt of nameplate capacity from renewable energy sources that are located on previously coal mined lands and \$100 per kilowatt of nameplate capacity from renewable energy sources that are located on brownfields, and no more than \$10 million must be awarded to any previously coal mined lands project and no more than \$5 million to any single brownfield project. No more than \$35 million must be allocated per year by the grant program. Of the \$35 million, \$20 million must be reserved for previously coal mined lands projects. If less than \$20 million is distributed to such projects, the remaining funds may be reallocated to brownfield projects.

The bill also requires the DMME, in consultation with the Department of Environmental Quality and stakeholders, to develop a handbook for renewable energy and energy storage development on brownfields and previously coal mined lands. Finally, the bill requires the DMME to submit an annual report regarding administration of the fund and program to the General Assembly.

### HB 2213 – Gold Mining Study

*Sponsored by Del. Guzman*

Directs the Secretary of Natural Resources, the Secretary of Health and Human Resources, and the Secretary of Commerce and Trade to establish a work group to study the mining of gold in the Commonwealth.

The bill requires that the study be conducted in consultation with the Virginia Council on Environmental Justice and appropriate stakeholders, including experts in mining, hydrology, toxicology, and other fields, environmental organizations, representatives of potentially affected communities in localities with significant deposits of gold, and residents of Native American communities in such localities.



The bill provides that the work group must evaluate and report its findings to the General Assembly by December 1, 2022, the following:

- The impacts of gold mining on public health, safety, and welfare;
- Evaluate whether existing air and water quality regulations are sufficient to protect air and water quality from the mining and processing of gold; and
- Whether existing bonding, reclamation, closure, and long-term monitoring of sites for such mining or processing are sufficient.

#### HB 2293 – Local Gas Severance Tax Extension

*Sponsored by Del. Morefield*

Extends the sunset date from January 1, 2022, to January 1, 2024, for authority to impose an additional local gas severance tax that is dedicated to the local Coal and Gas Road Improvement Fund, the Virginia Coalfield Economic Development Fund, and water, sewer, and natural gas systems and lines.

#### SB 1453 – Mines and Mining in the Virginia Energy Plan Revisions

*Sponsored by Sen. Edwards*

Creates proposed Title 45.2 (Mines, Minerals, and Energy) as a revision of existing Title 45.1 (Mines and Mining) and existing Title 67 (Virginia Energy Plan).

Proposed Title 45.2 consists of 21 chapters divided into five subtitles: Subtitle I (Administration), Subtitle II (Coal Mining), Subtitle III (Mineral Mines), Subtitle IV (Gas and Oil), and Subtitle V (Other Sources of Energy; Energy Policy).

The measure organizes the laws in a more logical manner, removes obsolete and duplicative provisions, and improves the structure and clarity of statutes pertaining to the administration of the Department of Mines, Minerals and Energy, underground and surface coal mining, underground and surface mineral mines, the Virginia Gas and Oil Act, energy from wind, solar, geothermal, and nuclear sources, and energy policy. The bill moves the remaining provisions of Title 67 that are not appropriate for inclusion in proposed Title 45.2 into other existing titles of the Code.

The bill has a delayed effective date of October 1, 2021, and is a recommendation of the Virginia Code Commission.

### Energy Efficiency

#### HB 1811 – Virginia Procurement Act Modifications

*Sponsored by Del. Helmer*

Provides that while procuring goods, if a state agency receives two or more bids for products that are:

- Energy Star certified;
- Meet Federal Energy Management Program (FEMP)-designated efficiency requirements;
- Appear on FEMP's Low Standby Power Product List; or
- WaterSense certified, such state agency may only select among those bids.



The bill also provides that while procuring goods, if a local public body receives two or more bids for such products, such local public body may only select among those bids unless, before selecting a different bid, the local public body provides a written statement that demonstrates the cost of the products that are Energy Star certified, meet FEMP-designated efficiency requirements, appear on FEMP's Low Standby Power Product List, or are WaterSense certified was unreasonable.

#### HB 2227 – Code Revisions Per Energy Efficiency and Conservation

*Sponsored by Del. Kory*

Directs the Board of Housing and Community Development, upon each publication by the International Code Council of a new version of the International Energy Conservation Code (IECC), to consider adopting amendments to the Uniform Statewide Building Code to address changes in the IECC related to energy efficiency and conservation.

### Natural Gas and Petroleum

#### HB 2293 – Local Gas Severance Tax Extension

*Sponsored by Del. Morefield*

Extends the sunset date from January 1, 2022, to January 1, 2024, for authority to impose an additional local gas severance tax that is dedicated to the local Coal and Gas Road Improvement Fund, the Virginia Coalfield Economic Development Fund, and water, sewer, and natural gas systems and lines.

#### SB 1311 – Natural Gas Pipeline Provisions

*Sponsored by Sen. McClellan*

Requires an applicant for a natural gas transmission pipeline greater than 36 inches inside diameter to submit in the application a detailed erosion and sediment control plan and stormwater management plan subject to Department of Environmental Quality review and approval.

After receipt of such application, the bill directs the department to issue a request for information about how the erosion and sediment control plan and stormwater management plan will address activities in or related to upland areas and requires the applicant to respond. The bill further directs the department to consider such information in developing a draft certification or denial, and to take certain additional public notice steps.

The measure prohibits the department and the State Water Control Board from expressly waiving certification of a natural gas transmission pipeline of greater than 36 inches inside diameter the federal Clean Water Act and requires the department or board to act on any certification request within a reasonable period of time pursuant to federal law.

### Reorganization and Coordination

#### HB 1855 – Department of Energy Reorganization

*Sponsored by Del. Sullivan, Jr*

Renames the Department of Mines, Minerals and Energy as the Department of Energy. Within the department, the bill renames the Division of Mined Land Reclamation as the Division of Mined Land Repurposing and renames the Division of Energy as the Division of Renewable Energy and Energy Efficiency.

The bill makes substantive changes, removing the requirement that the Chief of the Division of Mines be appointed by the Governor and authorizing an employee other than the Virginia Gas and Oil Inspector to serve as the principal

executive of the staff of the Virginia Gas and Oil Board. The act also provides that the Governor appoints the Chief Clean Energy Policy Advisor.

#### SB 1265 – Land-Disturbing Activities Inspection

*Sponsored by Sen. Deeds*

Authorizes the Department of Environmental Quality to conduct inspections of the land-disturbing activities related to construction of any natural gas transmission pipeline equal to or greater than 24 inches inside diameter, rather than the previous 36 inches specified.

The bill also clarifies certain instances that may give rise to such inspection and authorizes the department to issue a stop work instruction for every work area in Virginia if substantial adverse impacts or likely adverse impacts are found on a repeated, frequent, and widespread basis.

#### SB 1284 – Commonwealth Clean Energy Policy

*Sponsored by Sen. Favola*

Establishes the Commonwealth Clean Energy Policy, replacing the Commonwealth Energy Policy.

The bill sets out the energy policy and objectives of the Commonwealth Clean Energy Policy, which include:

- Recognizing that effectively addressing climate change and enhancing resilience will advance the health, welfare, and safety of the residents of the Commonwealth and that addressing climate change requires reducing greenhouse gas emissions across the Commonwealth's economy sufficient to reach net-zero emission by 2045 in all sectors, including the electric power, transportation, industrial, agricultural, building, and infrastructure sectors;
- Recognizing the need to promote environmental justice and ensure that it is carried out throughout the Commonwealth and the need to address and prevent energy inequities in historically economically disadvantaged communities; and
- Continuing to prioritize economic competitiveness and workforce development in an equitable manner.

## Utilities

#### HB 1834/SB 1247 – Notice Requirements for Carbon-Emitting Power Plants

*Sponsored by Del. Subramanyam/Sen. Deeds*

Requires each owner of a large carbon-emitting power plant to provide notice to relevant localities and state agencies about the decision to close the plant within 30 days of making such decision.

The bill requires localities in which such facilities are located, and planning district commissions in such localities, to conduct public hearings regarding the impending closure within six months of receipt of such notice, and it requires the Division of Energy to maintain a public website listing the facilities subject to the requirements of the bill and their anticipated closure dates.

As part of an integrated resource plan, the measure requires each utility to submit a facility retirement study for its carbon-emitting facilities and disclose the study to relevant localities and state agencies.

## HB 1923/SB 1334 – Broadband Pilot Program Expansion

*Sponsored by Del. Ayala/Sen. Edwards*

Expands an existing pilot program under which Dominion Energy and Appalachian Power are authorized to provide or make available broadband capacity to Internet service providers in areas of the Commonwealth that are unserved by broadband to include municipal Internet service providers.

## HB 2304/SB 1413 – Broadband Pilot Program Permanent Extension

*Sponsored by Del. Tyler/Sen. Boysko*

Makes permanent the pilot program under which a Phase I or Phase II electric utility is permitted to petition the State Corporation Commission to provide broadband capacity to unserved areas of the Commonwealth.

The legislation expands the program to allow for the participation of municipalities and government-owned broadband authorities, and it provides that investor-owned electric utilities may recover costs of and revenue generated from providing broadband capacity that serves as an electric grid transformation project in areas unserved by broadband, as defined in the bill.

Finally, the bill consolidates the State Corporation Commission petition approval process into one hearing.

## HB 2330 – PIPP Guidelines Establishment

*Sponsored by Del. Kory*

Requires the Department of Social Services, in consultation with, as it deems necessary, the Department of Housing and Community Development, to adopt rules or establish guidelines for the adoption, implementation, and general administration of the Percentage of Income Payment Program (PIPP) and the Percentage of Income Payment Fund.

The measure directs the PIPP to commence no later than one year after the department publishes such rules or guidelines, and it establishes the fund for the purposes of implementing and administering the PIPP.

The State Corporation Commission is required to promulgate any rules necessary to ensure that funds collected from the universal service fee of both American Electric Power and Dominion Energy Virginia are directed to the fund.

The legislation limits the total annual cost of the energy reduction programs to \$25 million for American Electric Power and \$100 million for Dominion Energy Virginia, and it requires the commission to initiate proceedings to provide for an annual true-up of the universal service fee within 60 days of the commencement of the PIPP and on an annual or semiannual basis thereafter.

The bill further provides that the PIPP-eligible customers may utilize existing energy efficiency or related programs approved by the commission and that the department may review the needs of PIPP-eligible customers and whether gaps remain in serving such customers that are not already served by existing and available federal, state, local, or nonprofit programs to meet the required energy reduction obligations.

The department is required to report the results of such analysis and review to the Chairs of the House Committee on Labor and Commerce and the Senate Committee on Commerce and Labor no later than November 1, 2022, and the commission is required to issue an order providing for the non-bypassable universal service fee as soon as practicable following the bill's effective date and requires the department and Dominion Energy Virginia, in the event the PIPP commences prior to July 1, 2023, to enter into a memorandum of understanding regarding payments rendered on behalf of PIPP-eligible customers.

## SB 1210 – Fee Schedule Working Group

*Sponsored by Sen. Petersen*

Directs the Director of the Department of Environmental Quality to convene working groups for the purpose of developing annual fee schedules for nonhazardous solid waste management facilities and annual maintenance fees for certain water withdrawal permits to replace the current annual fee schedules.

## SB 1343 – Mandatory Disclosure Exclusions

*Sponsored by Sen. Vogel*

Excludes from the mandatory disclosure provisions of the Virginia Freedom of Information Act proprietary information, voluntarily provided by a private business under a promise of confidentiality from a public body, used by the public body for a carbon sequestration agreement.

The bill requires the private business to specify the records for which protection is sought before submitting them to the public body and to state the reasons why protection is necessary.

## SB 1374 – Carbon Sequestration Task Force

*Sponsored by Sen. Lewis, Jr.*

Directs the Secretary of Natural Resources, jointly with the Secretary of Agriculture and Consumer Services, to convene a task force for the purpose of studying carbon sequestration in the Commonwealth and submit a report of its findings before the first day of the 2022 Session of the General Assembly.

The bill directs the task force to:

- Consider possible methods of increasing carbon sequestration within the natural environment through state land and marine resources use policies; agricultural, aquacultural, and silvicultural practices; and other practices to achieve restoration of natural resources and long-term conservation;
- Recommend short-term and long-term benchmarks for increasing carbon sequestration;
- Develop a standardized methodology to establish baseline carbon levels and account for increases in carbon sequestration over time;
- Identify existing carbon markets and considerations relevant to potential participation by the Commonwealth; and
- Identify other potential funding mechanisms to encourage carbon sequestration practices in the Commonwealth.

## SB 1385 – Pilot Program Sunset Removal

*Sponsored by Sen. Surovell*

Removes the sunset on a pilot program allowing a locality that has adopted the urban county executive form of government (Fairfax County) to request an electric utility to place underground electric distribution lines as part of a transportation infrastructure improvement project and changes several provisions in the program including:

- Expanding the scope to include electric cooperatives, telecommunications providers, cable providers, and other utilities;
- Expanding the scope to include all underground facilities;

- Placing additional limits on the levy to fund the project and the types of projects for which it may be imposed; and
- Authorizing the locality to secure necessary permits on behalf of the utility or provider.

## Environmental Legislation

### Air Quality and Pollution Control

#### HB 1824 – Mold Assessment Provisions

*Sponsored by Del. Askew*

Adds to the provision of the required disclosure statement directing a buyer to beware and exercise necessary due diligence with respect to determining the condition of real property or any improvements thereon a provision advising the buyer to obtain a mold assessment conducted by a business that follows the guidelines provided by the U.S. Environmental Protection Agency.

#### HB 2006/SB 1201 – Energy Storage Systems

*Sponsored by Del. Heretick/Sen. Petersen*

Declares that energy storage systems are included in the definition of certified pollution control equipment and facilities, making energy storage systems exempt from state and local taxation.

The bill defines “energy storage system” as equipment, facilities, or devices capable of absorbing energy, storing it for a period of time, and redelivering that energy after it has been stored. The tax exemption applies only to certain projects with alternating current storage capacity of more than five megawatts and less than 150 megawatts.

The measure also allows localities to assess a revenue share of up to \$1,400 per megawatt on energy storage systems, and it provides that on July 1, 2026, and every five years thereafter, the maximum amount of the revenue share that a locality may impose on energy storage systems as well as certain solar energy projects must be increased by 10 percent. No increase may be made to any revenue share imposed by a locality on a solar energy project or energy storage systems for which an application has been filed with the locality and such application has been approved prior to January 1, 2021. The bill defines energy storage systems as electric suppliers whose property must be assessed by the State Corporation Commission.

#### HB 2029 – Burning of Strand Board Prohibition

*Sponsored by Del. Krizek*

Prohibits the burning by any person, local government, or agency of the Commonwealth of Class A fuel materials that contain oriented strand board during live fire training activities.

#### SB 1282 – Greenhouse Gas Emissions Inventory

*Sponsored by Sen. Morrissey*

Directs the Department of Environmental Quality to conduct a statewide baseline and projection inventory of all greenhouse gas emissions and to update such inventory every four years.

The bill requires that the inventory be published and included in the annual report of the State Air Pollution Control Board, and it also authorizes the board to adopt regulations necessary to collect data needed to conduct, update, and

maintain the inventory. The bill exempts proprietary information collected by the department is exempted from the mandatory disclosure requirements of the Virginia Freedom of Information Act, according to the legislation.

## **Environmental Health Services**

### **HB 2030 – Beekeeper Pollinator Study**

*Sponsored by Del. Krizek*

Directs the Department of Agriculture and Consumer Services to study the Beekeeper Pollinator Protection Plan and voluntary best management practices for the purpose of proposing improvements to communication between beekeepers and applicators to reduce the risk to pollinators from neonicotinoid pesticides.

The bill authorizes the department to establish a stakeholder working group and directs it to report on its findings no later than December 1, 2021.

### **HB 2320/SB 1389 – Flood Risk Information**

*Sponsored by Del. Convirs-Fowler/Sen. Lewis, Jr.*

Directs the Real Estate Board to make available on its website a flood risk information form, the details of which are outlined in the bill.

The act establishes that an owner of residential real property located in the Commonwealth who has actual knowledge that the dwelling unit is a repetitive risk loss structure must disclose such fact to the purchaser on a form provided by the Real Estate Board on its website. The bill has a delayed effective date of January 1, 2022.

### **HJR 527 – Invasive Species Study**

*Sponsored by Del. Bulova*

Requests the Department of Conservation and Recreation, jointly with the Department of Agriculture and Consumer Services, to establish a work group to study the sale and use of invasive plant species.

The resolution requests that the departments work with several state agencies, conservation nonprofits, plant industry and agriculture groups, local government associations, and other stakeholders to develop recommendations regarding statutory and regulatory changes intended to reduce or eliminate the sale and use of invasive plant species in the Commonwealth and promote the sale and use of native plants.

### **SB 1274 – Wildlife Corridor Action Plan Incorporation**

*Sponsored by Sen. Marsden*

Directs various agencies to consider and incorporate, where applicable, wildlife corridors and any recommendation of the Wildlife Corridor Action Plan.

The bill directs the Department of Wildlife Resources to publish the Plan and subsequent updates on its website and to assist state agencies and political subdivisions, and by request any federal agency, in considering and incorporating, where applicable, wildlife corridors and the recommendations of the Plan when developing any governmental strategic plan, map, or action.

## **Hazardous Waste and Substance Management**

### **HB 1982 – Nutrient Credits Transfer**

*Sponsored by Del. Bulova*

Authorizes a facility that has been issued a Virginia Pollution Discharge Elimination System (VPDES) permit regulating stormwater discharges to acquire, use, and transfer nutrient credits for compliance with any waste load allocation established as an effluent limitation in its VPDES permit.

## **Inland Water Resource Management and Conservation**

### **HB 1837/SB 1161 – Virginia Soil and Water Conservation Board Membership**

*Sponsored by Rep Plum/Sen. Hanger, Jr.*

Clarifies that each of the six nonlegislative citizen members of the Virginia Soil and Water Conservation Board who is not an at-large member is to be appointed by the Governor from a list of two qualified nominees submitted for each vacancy by the board and the Board of Directors of the Virginia Association of Soil and Water Conservation Districts in consultation with other groups.

The bill further requires each of the six nonlegislative citizen members to be a resident of a different one of the six geographic areas represented in the association.

### **HB 1983 – Water Protection Permitting Modifications**

*Sponsored by Del. Bulova*

Provides that when a water protection permit applicant is required to purchase wetland or stream mitigation bank credits, but no credits are available in any mitigation provider's primary service area or at a cost of less than 200 percent of the price of credits available from a fund dedicated to achieving no net loss of wetland acreage and functions, the applicant may purchase or use credits from a mitigation provider's secondary service area.

The bill provides certain requirements that the permit applicant must comply with in order to purchase or use such credits from a secondary service area, including minimum tree canopy requirements.

### **HB 2187 – Flood Resiliency Clearinghouse Program Evaluation**

*Sponsored by Del. Hodges*

Directs the Commonwealth Center for Recurrent Flooding Resiliency to evaluate the development of a Flood Resiliency Clearinghouse Program and to work with the Department of Conservation and Recreation to evaluate solutions that manage both water quality and flooding and emphasize nature-based solutions.

The bill requires the Center to report its findings by November 1, 2021.

## **Land Management and Conservation**

### **HB 1836 – Natural Resources Update**

*Sponsored by Del. Plum*

Renames the Secretary of Natural Resources as the Secretary of Natural and Historic Resources.

The bill also designates the Secretary as the Chief Resilience Officer.



## HB 1837/SB 1161 – Virginia Soil and Water Conservation Board Membership

*Sponsored by Rep. Plum/Sen. Hanger, Jr.*

Clarifies that each of the six nonlegislative citizen members of the Virginia Soil and Water Conservation Board who is not an at-large member is to be appointed by the Governor from a list of two qualified nominees submitted for each vacancy by the board and the Board of Directors of the Virginia Association of Soil and Water Conservation Districts in consultation with other groups.

The bill further requires each of the six nonlegislative citizen members to be a resident of a different one of the six geographic areas represented in the association.

## HB 2042/SB 1393 – Tree Replacement Provisions

*Sponsored by Del. Guy/Sen. Marsden*

Gives a locality the ability to exceed general requirements in its tree replacement and conservation ordinances in specific circumstances, including development that impacts stormwater permit requirements, recurrent flooding, formerly redlined areas, and comprehensive plan compliance.

The act also directs the Secretary of Natural Resources and Secretary of Agriculture and Forestry to convene a stakeholder work group for the purpose of developing and providing recommendations to state and local governments related to policies that encourage the conservation of mature trees and tree cover on sites being developed, increase tree canopy cover in communities, and encourage the planting of trees.

## SB 1258 – Erosion and Sediment Control Requirements

*Sponsored by Sen. Marsden*

Requires any locality that does not operate a regulated municipal separate storm sewer system and for which the Department of Environmental Quality did not administer a Virginia Stormwater Management Program as of July 1, 2020, to notify the department if it decides to have the department provide the locality with review of a required erosion and sediment control plan and a recommendation on the plan's compliance with the requirements of the Erosion and Sediment Control Law and the State Water Control Board's regulations for any solar project and its associated infrastructure with a rated electrical generation capacity exceeding five megawatts.

The bill provides procedural steps for the department and the Virginia Erosion and Sediment Control Program authority for a locality to take in reviewing the plan and making recommendations and decisions, and it declares the department must adopt a fee schedule and charge fees for conducting such reviews.

## SB 1290 – Geographical Information Systems Establishment

*Sponsored by Sen. Mason*

Establishes in the Department of Conservation and Recreation a data-driven Geographical Information Systems model to prioritize potential conservation areas across the Commonwealth that provide quantifiable benefits to the citizens of Virginia, known as ConserveVirginia.

Aspects of the program include:

- The synthesis of multiple mapped data inputs, divided into categories, each representing a different overarching conservation value, and periodic revision of such values;



- Access to the model by the public and all state and federal agencies; and
- Incorporation of the model into acquisition or grant decisions when appropriate.

The legislation requires the Virginia Land Conservation Foundation to report on the success of the program and incorporate the program into needs assessments for expenditures from the Virginia Land Conservation Fund.

## Solid Waste

### HB 1902 – Single-Use Polystyrene Prohibition

*Sponsored by Del. Carr*

Prohibits the dispensing by a food vendor of prepared food to a customer in a single-use expanded polystyrene food service container.

The bill requires chain restaurants with more than 20 locations to stop using such containers by July 1, 2023, and sets the date for compliance by all food vendors as July 1, 2025. The measure provides a process by which a locality may grant consecutive one-year exemptions to individual food vendors on the basis of undue economic hardship. The bill provides a civil penalty of not more than \$50 for each day of violation, to be collected in a civil action brought by the Attorney General or the relevant locality.

### SB 1164 – Advanced Recycling Definitions

*Sponsored by Sen. Hanger, Jr.*

Defines, for purposes of the Virginia Waste Management Act, “advanced recycling” as a manufacturing process for the conversion of post-use polymers and recovered feedstocks into basic hydrocarbon raw materials and other materials. The bill also defines “gasification,” “post-use polymer,” and other terms related to advanced recycling.

### SB 1319 – Waste Diversion and Recycling Task Force Expansion

*Sponsored by Sen. Hashmi*

Requests the Department of Environmental Quality to continue and expand the scope and membership of the Waste Diversion and Recycling Task Force.

The bill directs the task force to hold its first meeting of the 2021 interim no later than October 15, 2021, and to publish an executive summary and a report of its findings and recommendations no later than November 1, 2022.

### SB 1447 – Solid Waste Management Fee

*Sponsored by Sen. Peake*

Adds Buckingham County to the list of counties authorized, by ordinance and after a public hearing, to levy a fee for the management of solid waste not to exceed the actual cost incurred by the county in removing and disposing of solid waste and to the list of counties authorized, by ordinance and after a public hearing, to levy a fee for the disposal of solid waste not to exceed the actual cost incurred by the county in procuring, developing, maintaining, and improving the landfill and for such reserves as may be necessary for capping and closing such landfill in the future.

## Water Quality and Pollution Control

### HB 2129/SB 1354 – Watershed Implementation Plan Adoption

*Sponsored by Del. Lopez/Sen. Hanger, Jr.*

Requires the State Water Control Board to adopt regulations establishing a Phase III Watershed Implementation Plan Enhanced Nutrient Removal Certainty Program (ENRC Program), consisting of a number of total nitrogen and total phosphorous waste load allocation reductions assigned to particular water treatment facilities with schedules for compliance.

The measure provides that the ENRC Program must operate in lieu of certain Chesapeake Bay waste load regulations. The bill directs the board to modify affected discharge permits to incorporate the provisions of the ENRC Program and requires certain compliance plans due from treatment works beginning February 1, 2023, to address the requirements of the ENRC Program.

The bill further establishes that the funding of certain design and installation costs for implementing nutrient upgrades pursuant to the ENRC Program must be eligible for grants from the Water Quality Improvement Fund, and it lists the projects and the total nitrogen or total phosphorus waste load allocation reductions that specified facilities are to complete.

According to the legislation, when grants to finance nutrient removal technology reach a sum sufficient to fund the completion of the ENRC Program at all publicly owned treatment works, certain General Assembly committees must review funding needs and mechanisms.

Finally, the bill provides that the ENRC Program must be deemed to implement through January 1, 2026, the Chesapeake Bay Phase III Watershed Implementation Plan, and that if after July 1, 2026, Virginia has not achieved its nitrogen pollution reduction commitments in the Phase III Watershed Implementation Plan, the Secretary of Natural Resources may develop an additional watershed implementation plan.

### HJR 538 – Clean Water as a Human Right

*Sponsored by Del. Aird*

Recognizes that access to clean, potable, and affordable water is a necessary human right.

### SB 1396 – Grants and Loans for Certain Failing Sewage Systems

*Sponsored by Sen. Hashmi*

Authorizes the State Board of Health to use the Onsite Sewage Indemnification Fund to provide grants and loans to property owners with income at or below 200 percent of the federal poverty guidelines to repair failing onsite sewage systems or install onsite sewage systems on properties that lack adequate sewage disposal.

The act provides that no expenses must be paid from the fund to support the program for training and recognition of onsite soil evaluators, or to provide grants or loans to repair failing onsite sewage systems or install onsite sewage systems on properties that lack adequate sewage disposal in lieu of payment to any owner or owners qualified to receive payment from the fund. It also directs the board to adopt regulations that include consideration of the impacts of climate change on proposed treatment works.

The measure establishes the policy of the Commonwealth regarding wastewater infrastructure and establishes the four-member Wastewater Infrastructure Policy Working Group as an advisory board in the executive branch of state government to continually assess wastewater infrastructure needs and develop policy recommendations. The bill further provides that the working group expires in 2030.

The Department of Environmental Quality, in partnership with the Virginia Department of Health and in consultation with stakeholders, is directed to estimate and report every four years the amount of wastewater infrastructure funding that is necessary to meet policy goals but is not eligible to be covered by grant funding pursuant to the Virginia Water Quality Improvement Act of 1997.

#### SB 1404 – Consideration of Phosphorus and Nitrogen Reductions

*Sponsored by Sen. Lewis, Jr.*

Authorizes grants from the Stormwater Local Assistance Fund awarded for projects related to Chesapeake Bay total maximum daily load (TMDL) requirements to consider total phosphorus reductions or total nitrogen reductions.

The bill allows for grants awarded for eligible projects in localities with high or above average fiscal stress as reported by the Commission on Local Government to account for more than 50 percent of the costs of a project.

## WEST VIRGINIA

West Virginia adopted **32** energy and environmental bills during its 2021 legislative session.

### ***Highlights:***

**SCR 202** urges the federal government to allocate \$8 billion for coal mine reclamation funding to the state.

**SB 492** establishes a program for bonding to reclaim abandoned wind and solar generation facilities.

## Energy Legislation

### Alternative Energy Development

#### HR 14/SR 35 – Clean Energy Recognition

*Sponsored by Del. Hanshaw/Sen. Nelson*

Recognizes the value of clean energy including abundant job opportunities, economic growth, energy independence, consumer choice, lower energy prices, and a cleaner environment and that clean energy, including generation from renewable sources such as wind, solar, and hydro power as well as nuclear, natural gas, and energy storage, plays an important role in West Virginia's diverse energy portfolio.

#### SB 492 – The West Virginia Wind and Solar Energy Facility Reclamation Act

*Sponsored by Sen. Smith*

Establishes a program for bonding to reclaim abandoned wind and solar generation facilities.

The measure requires the owners of wind generation facilities and solar generation facilities to notify and provide certain information to the Department of Environmental Protection (DEP), including dates when operations began and plans with certified cost and salvage estimates for decommissioning facilities. It establishes fees for new and modified applications and requires DEP to determine and assess a reclamation bond based on applicant's filings and a facility's total disturbed acreage, less salvage value.

The measure further establishes a maximum bond value limit, and it requires the owners of said facilities to submit bonds payable to the state in a form and in a sum determined by the DEP, conditioned on the satisfactory decommissioning; providing that owners of said facilities may enter into alternative reclamation agreements after approval by the DEP.

Exemptions from bond requirements are provided for certain facilities including those with nameplate capacities of less than 1.0 megawatts, those facilities operated by regulated public utilities who can demonstrate financial integrity and stability, and those facilities with qualifying pre-existing agreements or siting certificates from the PSC within specified limitations.

The bill provides for administrative penalties for failure to submit decommissioning bonds and agreements and gives appellate rights to the Environmental Quality Board. It further establishes a Wind and Solar Decommissioning Account within the State Treasury into which fees, assessed penalties, and accrued interest must be paid and held; providing that the account may only be used by the DEP to implement this article and adopted rules. Finally, the act allows for bond forfeiture when a facility is not properly decommissioned, if the deficiencies are not rectified and that the Office of Environmental Remediation or a private entity by contract may decommission facilities.

## **Coal and Minerals**

### **HB 2808 – Mineral Definition Changes**

*Sponsored by Del. Capito*

Remove salt from list and definition of “mineral” for severance tax purposes.

### **HR 18/SR 28 – Coal-fired Power Plants Importance**

*Sponsored by Del. Reynolds/Sen. Phillips*

Recognizes the importance of coal-fired power plants and coal resources to the state's future.

### **SCR 202 – Coal Mine Reclamation Funding**

*Sponsored by Sen. Blair*

Urges the federal government to allocate \$8 billion for coal mine reclamation funding to the state.

## **Emergency Management and Homeland Security**

### **SB 389 – State Resiliency Office Responsibilities**

*Sponsored by Sen. Swope*

Clarifies that the State Resiliency Office is responsible to plan for emergency and disaster response, recovery, and resiliency and the officer is a member of the State Resiliency Office Board.

The measure also places the Secretary of the Department of Health and Human Resources on the board, requires that the President of the Senate appoint two nonvoting members, one from each party, to the board, and the Speaker

of the House of Delegates appoint two nonvoting members, one from each party, to the board. The State Resiliency Officer is required by the law to vote only in the event of a tie vote of board.

## **Energy Efficiency**

### **HB 2667 – Cost Savings Program Creation**

*Sponsored by Del. Riley*

Creates a cost saving program for state buildings regarding energy efficiency.

The measure requires energy-savings contracts to include provisions relating to energy cost savings guarantees and deficiency payments, and it provides for audit and potential removal of energy metering devices installed at state buildings.

The bill establishes an energy savings program and contracting program within Division of Energy and benchmarking and energy efficiency goals for state buildings, such that it reduces energy usage for electricity, natural gas, fuel oil, and steam in all state buildings under the care, custody, and control of the state by 25 percent below 2018 levels by 2030.

## **Natural Gas and Petroleum**

### **HB 2581 – Real Estate and Personal Property Adjustments**

*Sponsored by Del. Graves*

Enacts new measures generally relating to the valuation, assessment, review, and appellate rights of property owners regarding valuation, classification, and taxability of real estate and personal property taxation.

The bill directs the Tax Commissioner to, no later than July 1, 2021, propose emergency rules concerning the valuation of property producing oil, natural gas, natural gas liquids, or any combination thereof, and it provides a methodology to determine fair market value and net proceeds.

### **SB 404 – Office of Oil and Gas Permitting**

*Sponsored by Sen. Smith*

Establishes an application fee of \$2,500 to modify an existing permit issued by the Department of Environmental Protection's Office of Oil and Gas and provides that the department secretary may allow and deny said modification applications and may create forms.

### **SB 677 – Mine Inspector Termination**

*Sponsored by Sen. Phillips*

Authorizes the Director of the Office of Miners' Health, Safety, and Training to terminate tenured mine inspectors and provides for a hearing process related to a mine inspector's termination.

The bill also updates language regarding capacitors used for power correction, electrical work performed on low, medium, or high voltage circuits or equipment, and the use of gas-detecting devices.

## SCR 55 – Atlantic Coast Pipeline Support

*Sponsored by Sen. Karnes*

Supports the Atlantic Coast Pipeline and the use of natural gas as a critical source of energy across the state.

## Reorganization and Coordination

### HB 2002 – Broadband Deployment

*Sponsored by Del. Linville*

Amends existing law relating generally to facilitating the rollout of broadband across the state.

The measure seeks to support, encourage, and expedite the expansion of broadband throughout the state of West Virginia by establishing requirements for agreements between the Division of Highways and an entity seeking to install telecommunications facilities, providing for in-kind contribution as a required term of agreement, establishing a process for Division of Highways to approve or deny application, and requiring the Division of Highways provide a consolidated checklist or flow chart of all state or federal regulatory requirements.

The provisions of the article only apply to installations of any kind which necessitate disturbance of ground for a length of 1,000 feet or greater in a right-of-way owned or controlled by the Division of Highways.

The measure further requires notice to the Office of Broadband of a telecommunication entity's intent to seek construction in the division's right-of-way, and it establishes the Office of Broadband is responsible for ensuring compliance with certain terms, allowing a utility to apply to share trench with telecommunications carrier.

The Office of Broadband is required to create, seek approval for, and update a formula or matrix to determine fair market value and in-kind compensation for carriers use of rights-of-way or telecommunications facilities owned by the Division of Highways, and the measure provides that the Division of Highways the authority to allow carriers the use of excess telecommunications facilities.

The measure dictates that telecommunications facilities who share trench share responsibility of compensating Division of Highways and allows Division of Highways to require a carrier bear joint and several liability.

Finally, broadband operators are required to credit subscribers for interruptions in service of more than 24 hours, and the measure further establishes that broadband service is not a utility or subject to utility regulation.

## Utilities

### HB 2370 – Swimming Pool Filling Rates

*Sponsored by Del. Howell*

Establishes that Public Service Districts cannot charge sewer rates for filling a swimming pool.

### HB 2842 – Energy Service Choice

*Sponsored by Del. Higginbotham*

Forbids a municipality, political subdivision, or a local governing body from enacting any code, ordinance, or land use regulation that prohibits, has the effect of prohibiting, or regulates in any manner a public utility or department of public utilities from furnishing a utility service to a utility customer based on an energy source which is provided or used by a utility service.

The measure further forbids a municipality, political subdivision, or a local governing body from enacting any code, ordinance, or land use regulation that would prohibit or regulate a customer of a public utility or department of public utilities from purchasing, using, or connecting or reconnecting to a utility service based on the energy source provided or used by a utility service, and it further bans a municipality, political subdivision, or a local governing body from enacting any code, ordinance, or land use regulation that would prohibit or regulate a public utility or department of public utilities from utilizing vehicles, equipment, machinery, or tools, to provide utility services to a utility customer based on the energy source used by or powering those vehicles, equipment, machinery, or tools used by a utility service.

#### HB 2884 – Customer Records Disclosure Exemption

*Sponsored by Del. Conley*

Exempts customer records of publicly-administered utility enterprises from production under the Freedom of Information Act.

#### HB 2969 – Public Service Commission Jurisdiction

*Sponsored by Del. Conley*

Clarifies the jurisdiction of the Public Service Commission (PSC) over toll bridges and provides that commission does not have jurisdiction over certain municipal power systems or telephone companies using voice-over Internet protocol, or VOIP, technology.

Specifically, the PSC does not have jurisdiction over the setting or adjustment of rates, fees, and charges of municipal power systems.

#### HB 3089 – Essential Utility Workers

*Sponsored by Del. Ward*

Establishes that utility workers are essential employees during a state of emergency.

#### HB 3310 – Public Utility Definition and Jurisdiction Amendments

*Sponsored by Del. Capito*

Amends the definition of public utility such that it does not include individuals or entities owning a solar photovoltaic energy facility located on and designed to meet only the electrical needs of the premises of a retail electric customer, the output of which is subject to a power purchase agreement with such retail electric customer.

The measure further establishes the jurisdiction of the Public Service Commission such that the provision of a solar photovoltaic energy facility located on and designed to meet only the electrical needs of the premises of a retail electric customer, the output of which is subject to a power purchase agreement (PPAs) with the retail electric customer, does not constitute a public service, subject to the following conditions and limitations:

- The aggregate of all PPAs and net metering arrangements in the state for any utility must not exceed three percent of such utility's aggregate customer peak demand in the state during the previous year;
- There must be individual customer on-site generator limits of designing the photovoltaic energy facility to meet only the electrical needs of the premises of the retail electric customer and which in no case must exceed 25kW for residential customers, 500 kW for commercial customers, and 2,000 kW for industrial customers;



- Customers who enter into PPAs of photovoltaic facilities are to notify the utility of its intent to enter into such a transaction, which the utility will respond within 30 days whether any of the caps have been reached. If the utility does not respond within 30 days, the generator may proceed and the caps will be presumed not to have been reached; and
- The Public Service Commission has rulemaking authority to govern and implement the provisions of interconnections for PPAs, except the PSC does not have authority over the power rates for such arrangements between the on-site generator and the customer.

#### SB 280 – Allowing for Electronic Payments

*Sponsored by Sen. Takubo*

Directs all political subdivisions to offer a system, with an online presence for acceptance of payments, that will allow persons to submit payments to political subdivisions electronically.

Payments that must be accepted through the required system include, but are not limited to, payments or fees for services provided by the political subdivision or any fee, fine, penalty, or other monetary payment collected by the political subdivision.

#### SB 542 – Aggregate Fuel Supply Requirements

*Sponsored by Sen. Phillips*

Requires all public electric utilities maintain a contract for a 30-day aggregate fuel supply for the remainder of the life of existing coal-fired plants and that public electric utilities provide advance notice of retirement, shutdown, or sale of electricity-generating units.

## Environmental Legislation

### Emergency Management and Homeland Security

#### SB 389 – State Resiliency Office Responsibilities

*Sponsored by Sen. Swope*

Clarifies that the State Resiliency Office is responsible to plan for emergency and disaster response, recovery, and resiliency and the officer is a member of the State Resiliency Office Board.

The measure also places the Secretary of the Department of Health and Human Resources on the board, requires that the President of the Senate appoint two nonvoting members, one from each party, to the board, and the Speaker of the House of Delegates appoint two nonvoting members, one from each party, to the board. The State Resiliency Officer is required by the law to vote only in the event of a tie vote of the board.

#### SB 486 – Chief Technology Office Authority

*Sponsored by Sen. Swope*

Renames and expands the authority of the Chief Technology Officer for the Office of Technology within the Office of Administration.

Among other responsibilities, the officer may submit resource and support requests to the federal government to support technology or cybersecurity initiatives or programs.



## Environmental Health Services

### SB 641 – Coal Severance Tax Funds for Cleanup Program

*Sponsored by Sen. Phillips*

Allows for the use of coal severance tax funds in funding litter cleanup programs.

## Hazardous Waste and Substance Management

### HB 2722 – PFAS Prohibition

*Sponsored by Del. Espinosa*

Prohibits the use of class B fire-fighting foam for testing purposes if the foam contains nonpolymeric perfluoroalkyl and polyfluoroalkyl substances (PFAS) chemicals unless the testing facility has implemented containment, storage, treatment, or disposal measures to prevent an uncontrolled release of the foam into the environment.

## Reorganization and Coordination

### HB 2382 – Rules Authorization

*Sponsored by Del. Foster*

Authorizes the Department of Environmental Protection to promulgate certain legislative rules.

Specifically, the bill authorizes the department to promulgate a legislative rule relating to:

- Ambient air quality standards;
- Standards of performance for new stationary sources;
- Control of air pollution from combustion of solid waste;
- Control of air pollution from municipal solid waste landfills;
- Acid rain provisions and permits;
- Emission standards for hazardous air pollutants;
- Control of greenhouse gas emissions from existing coal-fired electric utility generating units;
- Requirements governing water quality standards;
- Hazardous waste management systems; and
- Voluntary remediation and redevelopment rule.

## Solid Waste

### HB 2500 – Statewide Uniformity for Auxiliary Container Regulations

*Sponsored by Del. Foster*

Establishes that a local unit of government may not adopt or enforce an ordinance that regulates the use, disposition, or sale of auxiliary containers, prohibits or restricts auxiliary containers, or imposes a fee, charge, or tax on auxiliary containers.

The measure defines “auxiliary container” as a bag, cup, bottle, or other packaging, whether reusable or single-use, that meets both of the following requirements:

- Is made of cloth, paper, plastic, cardboard, corrugated material, aluminum, glass, post-consumer recycled material, or similar material or substrates, including coated, laminated, or multilayer substrates; and
- Is designed for transporting, consuming, or protecting merchandise, food, or beverages from or at a food service or retail facility.

However, no part of the act may be construed to prohibit or restrict a curbside recycling program, a designated residential or commercial recycling location, or a commercial recycling program.

#### HB 3129 – Rate Increases for Solid Waste Motor Carriers

*Sponsored by Del. Capito*

Clarifies that solid waste motor carriers are permitted to increase rates for the collection and hauling of solid waste once on or after January 1 of each year, without the filing of an application for approval by the Public Service Commission and such increase is considered just and reasonable and not unfairly discriminatory, prejudicial, or preferential if:

- The percentage increase over the prior rate is equal to or less than the percentage increase in the United States Department of Labor Bureau of Labor Statistics Garbage and Trash Collection Index between September of the year preceding the effective date of the requested rate increase and September of the year prior to the year preceding the effective date of the requested rate increase;
- The carrier files a revised tariff in compliance with the commission’s rules and regulations; and
- Notice is provided as directed by the commission.

After September 30 of each year, the commission must issue a general order stating the percentage increase in the Index and the inflation factor to apply to the rates currently in effect to calculate the maximum rate increase authorized under this law.

#### SB 368 – Reclamation of Abandoned and Dilapidated Properties Program

*Sponsored by Sen. Swope*

Authorizes the Department of Environmental Protection (DEP) to develop a Reclamation of Abandoned and Dilapidated Properties Program and imposes an additional solid waste fee.

The fee is imposed upon the disposal of solid waste at any solid waste landfill disposal facility in this state, according to the legislation. This additional fee must be in the amount of 20 cents per ton beginning July 1, 2021, 40 cents per ton beginning July 1, 2022, 60 cents per ton beginning July 1, 2023, 80 cents per ton beginning July 1, 2024, and \$1.00 per ton beginning July 1, 2025, thereafter or like ratio on any part of a ton of solid waste. The proceeds of the fee must be expended for the reasonable costs of administration of a county or regional solid waste authority.

The Reclamation of Abandoned and Dilapidated Properties Program must, with the fund established within the same law, assist county commissions or municipalities in their efforts to remediate abandoned and dilapidated structures.

### SB 464 – Composting Provisions

*Sponsored by Sen. Plymale*

Clarifies that the composting of all organic materials, including food waste, is legally permissible and requires compost products sold to comply with the West Virginia Fertilizer Law.

### SB 626 – Catalytic Converter Sales Restrictions

*Sponsored by Sen. Trump*

Enforces restrictions on the sale or transfer of an automobile catalytic converter by a scrap metal dealer while requiring certain evidence and documentation from a seller of an automobile catalytic converter.

The measure requires scrap metal dealers to make a good faith effort to record identifying information on a catalytic converter and creates the criminal offense of possession of a catalytic converter without proof of ownership or authority to possess.

## Water Quality and Pollution Control

### HB 2633 – 2021 Farm Bill

*Sponsored by Del. Pack*

Modifies the authority of West Virginia Conservation Agency and State Conservation Committee to include water quality issues.

### SB 377 – Boiled Water Advisories

*Sponsored by Sen. Takubo*

Extends until January 1, 2022, the deadline by which a water utility company and public service district must provide boiled water advisories through a text or voice alert mass notification system.

# ABOUT US

*The Southern States Energy Board (SSEB) is a non-profit interstate compact organization created in 1960 and established under Public Laws 87-563 and 92-440. Sixteen southern states and two territories comprise the membership of SSEB: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, Texas, U.S. Virgin Islands, Virginia, and West Virginia. Each jurisdiction is represented by the governor and a legislator from the House and Senate. A governor serves as the chair and legislators serve as vice-chair and treasurer. Ex-officio non-voting Board members include a federal representative appointed by the President of the United States, the Southern Legislative Conference Energy and Environment Committee Chair, and SSEB's executive director, who serves as secretary.*

*SSEB was created by state law and consented to by Congress with a broad mandate to contribute to the economic and community well-being of the southern region. The Board exercises this mandate through the creation of programs in the fields of energy and environmental policy research, development and implementation, science and technology exploration, and related areas of concern. SSEB serves its members directly by providing timely assistance designed to develop effective energy and environmental policies and programs and represents its members before governmental agencies at all levels.*

## OUR GOALS

- *Perform essential services that provide direct scientific and technical assistance to state and territorial governments;*
- *Develop, promote, and recommend policies and programs on energy, environment, and economic development that encourage sustainable growth;*
- *Provide technical assistance to executive and legislative policy-makers and the private sector in order to achieve synthesis of energy, environment, and economic issues that ensure energy security and supply;*
- *Facilitate the implementation of energy and environmental policies between federal, state, territory, and local governments and the private sector;*
- *Sustain business development throughout the region by eliminating barriers to the use of efficient energy and environmental technologies; and*
- *Support improved energy efficient technologies that contribute to a clean global environment while protecting indigenous natural resources for future generations.*





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