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2017 State Environmental Health Legislation

Editor's Note: NEHA's Government Affairs program has a long and productive association with the National Conference of State Legislatures (NCSL). The organizations have worked together on numerous legislative and policy areas that directly impact the environmental health profession. One of the keys to the successes of this collaboration has been the recognition of the fact that often some of the most significant legislation and policy initiatives related to environmental public health occur in state legislatures. The states have, in a very real sense, been the innovators in developing new programs and practices. In recognition of this fact, we have asked NCSL to provide occasional overviews of state environmental public health legislative activity, covering topics that are of the most pressing public concern

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Environmental health remains a concern within state legislatures. In 2017, 1,602 separate bills covering 2,879 environmental health topics were introduced at the state level, with 278 bills enacted (Table 1). Bills were introduced in every state and the District of Columbia, ranging from three bills in Wyoming to 255 bills in New York.

California enacted the most bills (32), followed by Virginia (20). Several states, including Alaska, Missouri, Ohio, South Dakota, and Wisconsin, did not enact any bills on environmental health. Massachusetts introduced 100 bills related to environmental health, but none were passed in 2017 and will carry over to 2018.

Toxics and chemicals were the foremost topics in 2017 (447 bills introduced). Food safety was the second foremost concern (380 bills introduced). Lead was the dominant chemical of concern in 2017 (248 bills introduced). Drinking water remained a top priority (284 bills introduced), along with bills addressing wastewater (134 bills introduced).

Other issues of legislative interest included pesticides (112 bills introduced), asthma (56 bills introduced), radon (49 bills introduced), body art (22 bills introduced), swimming pools (21 bills introduced) (Table 1).

North Dakota enacted three of the most consequential state laws on environmental health. In 2017, the legislature created a state

Department of Environmental Quality (S 2327), transferring environmental responsibilities from the state's Department of Health to the new department. The legislature also enacted the Food Freedom Act (H 1433) exempting certain food manufacturers from health or safety requirements. A third law requires mineral developers to test the water quality of private drinking water wells within half a mile of their operation (H 1409).

Toxics and Chemicals

Congress' revisions to the Toxic Substances Control Act through enactment of the Lautenberg Chemical Safety Act (LCSA) sought to limit state efforts in regulating chemicals. States remain as active in chemical safety, however, as they were prior to the enactment of LCSA. In 2015, prior to LCSA, states introduced 437 bills. In the first year of LCSA, states introduced 447 bills, many of which addressed lead hazards, a chemical states still have the authority to regulate. Of these 447 bills, 69 were enacted into law in 33 states.

One of the biggest issues in 2017 was sunscreen—whether a child can take sunscreen to school or camp without it being considered a prohibited drug. Another concern is whether oxybenzone (an ingredient in sunscreen) is harmful to marine life (an issue limited to the Hawaiian Legislature). The Food and Drug Administration considers sunscreen to be an over-the-counter drug product, meaning it is legal to purchase but it should not be applied to children without supervision. California passed a law in 2002 forgoing this warning, allowing students to use sunscreen in school. New York enacted a similar law in 2013, and Oregon and Texas

TABLE 1

2017 State Environmental Health Legislation

Topic	# of Bills Introduced	# of Bills Enacted
Asthma	56	13
Body art	22	3
Drinking water	284	56
Food safety	380	75
Indoor air quality	146	16
Pesticides	112	15
Swimming pools	21	3
Toxics and chemicals	447	69
Water/wastewater	134	28
Total bills	1,602	278

passed laws in 2015. In 2017, Alabama, Arizona, Florida, Georgia, Illinois, Louisiana, Massachusetts, Utah, and Washington passed laws regarding sunscreen products. Mississippi, Pennsylvania, and Rhode Island had bills introduced on the subject in 2017, but they were not enacted. The bill in Mississippi has died and the bills in Pennsylvania and Rhode Island were carried over to the 2018 session.

The Cleaning Product Right-to-Know Act was adopted in California (S 258). Florida enacted S 1018, requiring owners to report the release of certain pollutants within 24 hr to the state. In Maine, recent state law prohibits the sale and distribution of upholstered furniture with flame retardant chemicals (H 138). Rhode Island enacted similar provisions in 2017 (S 166 and H 5082).

Perfluorooctanoic acid (PFOA) also emerged as a concern in 2017. New York enacted S 5198 to reimburse several communities from PFOA contamination. Vermont enacted a law that holds individuals who release PFOAs into public water supplies to be strictly, jointly, and severably liable (S 10).

Lead

Of the 248 bills introduced regarding lead hazards, 34 were enacted or adopted into law. New Mexico adopted SJM 15 to study the risks of lead poisoning to the state. Pennsylvania established a task force on lead exposures and hazards to lead poisoning (SR 33).

Legislation to replace lead service lines was common. California S 427 requires communities to set a timeline to replace lead water service lines. Indiana H 1519 allows for utilities to be reimbursed for replacing private lead service lines. Minnesota S 1457 bans lead in plumbing and plumbing components. Wisconsin S 48 permits public utilities to use public funds to replace lines on private property. Appropriation bills in New York (A 3004, A 3007, and S 2007) and Pennsylvania (H 674) address lead service lines. The New York bills authorize \$20 million to communities to replace lead service lines. The Pennsylvania bill allows for public water systems to pay for the replacement of lead service lines on private property.

Requirements for testing lead in school water systems were enacted in California (A 746), Colorado (H 1306), the District of Columbia (B 29), Maryland (H 270), and Virginia (S 1359). Arizona's budget bill provides funds for consultants to address lead in school water systems (H 2545). New Jersey provides reimbursements to schools to test lead in water (A 4284). Oregon's Healthy and Safety Schools Plan (S 1062) mandates schools to adopt a healthy safe school plan, ensuring compliance with the U.S. Environmental Protection Agency's (U.S. EPA) Lead Renovation, Repair, and Painting Rule. Rhode Island extended the special House commission on lead in drinking water in the state (H 6035).

California A 1316 requires screening for blood lead levels for high-risk children to be covered by insurers and changes the definition of lead poisoning to include lead in arterial or cord blood. In Florida, legislation requires healthcare providers to report individual cases of elevated blood lead levels (H 1041). Maryland H 133 requires the state to notify both a child's parents and the owner of the property where a child lives of the results of an elevated blood lead test. New Jersey requires state blood lead standards to be consistent with recommendations from the Centers for Disease Control and Prevention (S 1830).

Asbestos

Several states adopted legislation regarding claims to the asbestos bankruptcy trust including Iowa (S 376), Mississippi (H 1426), North Dakota (H 1197), and South Dakota (S 138). Virginia S 305 requires the state to provide basic worker safety procedures regarding the handling of asbestos. In Montana, the Libby Asbestos Cleanup Oversight Team was created to address the asbestos cleanup in the town of Libby. (S 315).

Mercury

States enacted five bills on Mercury: three in Maryland, one in Utah, and one in Washington. Maryland H 504 and S 713 prohibits the sale of electric switches, electric relays, and gas valve switches containing mercury. Utah H 33 extends the repeal date of its earlier Mercury Switch Removal Act.

Indoor Air Quality

State legislatures introduced 146 bills related to indoor air quality, enacting 18 of them. Indoor air quality covers efforts to eliminate contaminants in buildings including carbon monoxide, mold, and radon.

Delaware enacted S 107, which establishes an indoor environment information portal on the its Health and Social Services website. Virginia H 1869 makes a tenant financially responsible for the cost of exterminating insects and pests if the tenant fails to report their existence to the landlord.

Carbon Monoxide

In previous sessions, legislation requiring carbon monoxide detectors was common. In 2017, 35 bills in 15 states were introduced that relate to carbon monoxide. Only one

bill was enacted—New Jersey’s Rosa-Bonilla Family Act, which requires the state to provide educational materials on carbon monoxide poisoning in motor vehicles (A 3662).

Mold

Maryland enacted two laws related to mold, both dealing with mold remediation service providers (H 115 and S 183). These bills extend the date for firms providing mold remediation services to be licensed. Virginia enacted a law requiring landlords to pay relocations costs of tenants who have to move due to a mold situation not caused by the tenant (H 735).

Radon

Of the bills on radon, five bills were enacted in four states. Connecticut added radon to a list of contaminants that private well owners should test for (H 7222). Nebraska enacted the Radon Resistant New Construction Act (L 9) that requires active radon mitigation systems be installed in new construction by licensed contractors. Utah H 37 amends the state construction code to address passive radon installation. Illinois H 2719 amends the Radon Resistant Construction Act, removing the reference to the Radon Resistant Building Codes Task Force. Illinois also amended its radon licensing law, clarifying the circumstances in which a conviction would prohibit a person from receiving a license (H 1688).

Food Safety

Food safety was the second most common environmental health topic for state legislatures in 2017 with 380 bills introduced and 75 enacted into law, which is down from 560 bills introduced in 2016.

California A 564 provides for the Secretary of Food and Agriculture to inspect raw and unprocessed fruits, nuts, and vegetables, and to enforce standards of quality. The Illinois legislature now requires restaurant employees be trained in basic allergen principles (H 2510). Micromarkets in Indiana no longer require staffing (S 77). Nebraska updated its food code (L 134). New Hampshire revised its food code to allow its Department of Health and Human Services to inspect facilities (S 221). Maryland (H 771 and S 262), Utah (S 250), and Virginia (H 1625 and S 515) enacted laws regulating mobile food trucks.

Food Safety Modernization Act

Connecticut H 6333 and Louisiana S 256 establishes each state’s agriculture department as the lead agency for enforcement of the Food Safety Modernization Act (FSMA). The Montana legislature provides for its agriculture department authority to inspect produce as part of FSMA (H 91). New Mexico H 305 authorizes its department similar powers to comply with FSMA, as does Oregon S 18 and South Carolina H 4003. Rhode Island provided FSMA authority to its Department of Environmental Management (H 6345 and S 720).

Georgia H 176 allows its Department of Agriculture to enter into agreements with the federal government to enforce provisions of FSMA. Texas H 3227 permits the agriculture department to enter into cooperative agreements, interagency agreements, grants, or memorandums of understanding with federal or state agencies for the administration, implementation, or enforcement of produce safety rules.

Cottage Foods and Food Freedom

In 2017, the Wyoming legislature expanded the state’s Food Freedom Act. The North Dakota legislature enacted its own Food Freedom Act and the Maine legislature enacted legislation that allows local jurisdictions to opt-out of state food safety requirements (i.e., food sovereignty).

The Wyoming legislature amended its Food Freedom Act to include rabbit and fish; to clarify homemade products that are specifically exempt from state licensure, inspection, and labeling; and to permit state agencies to provide assistance, consultation, and inspection services to food producers utilizing the state’s Food Freedom Law (H 129 and S 118). North Dakota H 1433 Food Freedom Law allows for producers of food (including animal products) to sell directly to consumers without a state food safety license.

Maine expanded the cottage food concept into food sovereignty by enacting S 242 and S 605. S 242 authorizes local governments to adopt their own food standards for foods grown, produced, or processed within the local jurisdiction, marking the first time that a state has given regulatory control to a municipal government over locally produced and sold food. Maine S 605 amended S 242 by providing that local governments

must still comply with state and federal food safety laws. Florida expanded its cottage food law by increasing the annual sales limitation required to gain cottage food protections (H 1233). Illinois H 3063 allows for cottage food operations to produce homemade food and drink, with exceptions for potentially hazardous foods.

Farmers markets in Illinois must provide an effective means to maintain potentially hazardous food at or below a specific temperature (H 2820). Distillers can sell whiskey and distilled spirits at festivals in Kentucky (H 100).

Oklahoma now permits the sale of home-based foods at farmers markets and through direct delivery (S 508). Tennessee S 1187 exempts certain producers of small amounts of nonhazardous foods.

Food Donation

Liability relief for groups that donate excess food to charitable organizations gained interest in state legislatures in 2017. California enacted S 557 that allows unused returned food to be offered to a food bank or nonprofit charitable organization. The state also enacted the Good Samaritan Food Donation Act to exempt gleaners and persons who donate food. (A 1219).

Kentucky allows fit, wholesome food to be donated to nonprofit organizations and allows those organizations to recondition donated food (H 237). Montana now allows wild game and fish meat be served at not-for-profit events (H 166). Oregon permits the salvage of wildlife for consumption if the animal has been struck by a vehicle (S 372).

New York S 5664 establishes voluntary guidelines for the donation of excess, unused, and edible food from educational institutions to voluntary food assistance programs. Oklahoma permits schools to donate food to nonprofit organizations (H 1875). Texas addresses food donation and distribution of surplus food from public schools (S 725). Virginia provides a tax credit for food crop donations to food banks (H 1093), as does West Virginia (S 25).

Raw Milk

Legislatures in eight states introduced 14 bills regarding raw milk, but only one bill survived to enactment. Rhode Island S 247 sets forth standards and procedures for the handling and sale of raw milk.

Drinking Water

Events in Michigan, Ohio, and West Virginia prompted state legislatures to become more involved with their drinking water systems, both private and public.

Arizona established the Small Drinking Water Systems Fund to provide grants to owners of small systems to upgrade their water infrastructure (H 2094). California enacted several water and wastewater grant programs (A 277 and A 560). Maine made a one-time appropriation for the treatment of contaminated private drinking water wells (S 426).

The Indiana General Assembly reviewed the ability of its utilities to provide clean and safe drinking water (S 416). Louisiana enacted an ambitious program to improve public drinking water quality and to develop recommendations to the legislature concerning effective and responsible practices to improve and maintain the water quality (H 533). Texas required the notification of water quality test results in state-supported living centers (S 546).

Lead Service Lines

California adopted a lead service line replacement program in 2016; in 2017 the state enacted S 427 to establish a timeline for the replacement. The appropriation bills in New York (A 2007) and Pennsylvania (H 674) provide financing options to replace lead service lines.

Colorado enacted H 1306 that requires the testing of lead in public schools. The District of Columbia enacted a similar provision (B 29). Illinois S 1943 provides waivers from testing for lead in school buildings. Maryland also requires periodic testing for the presence of lead in schools (H 270). Minnesota H 2 establishes a program to test for lead in schools. New Jersey A 4284 provides reimbursement for schools testing for lead in water. Virginia S 1359 requires each school board to implement a plan to test potable water for lead.

Private Wells

Connecticut H 7222 allows local directors of health to require private drinking water well owners to test for water contaminants. The Maine legislature enacted H 321 to improve the testing and treatment of water in residential private drinking water wells.

North Dakota enacted a law that requires mineral developers to test private drinking water wells within half a mile of their operation. Owners who refuse to allow the developers to test are ineligible to bring suit against the developer for water contamination (H 1409).

Water/Wastewater

Sixteen states enacted 26 bills related to water quality and wastewater. Arizona enacted comprehensive legislation that provides for the regulation of dry wells and increases awareness of properly disposing solid waste (S 1183). Arkansas enacted a couple of bills related to wastewater—H 1550 amends the nonmunicipal domestic sewage treatment program, including the prohibition of new water connections to noncompliant nonmunicipal systems; and S 685 permits water utilities to terminate service if the customer fails to pay for wastewater services.

California enacted S 277 and A 339, both of which provide loans and grants to communities to upgrade wastewater systems. New Jersey had several bills on environmental infrastructure that allow for loans for wastewater maintenance and upgrades (A 10, A 3883, and A 3884). The state also enacted A 4350 that precludes the state agency from imposing certification requirements on installers of individual subsurface sewage disposal systems.

Hawaii has been struggling with homes that lack septic systems and enacted H 1244 to provide an income tax credit for homeowners who upgrade their cesspools or connect to a municipal wastewater system. New York amended its Septic System Replacement Fund to allow septic system installers to receive state reimbursement directly (A 7892). In Virginia, the state must eliminate the evaluation and design services by the health department for onsite sewage systems and private wells (H 558).

Tennessee S 999 requires public reports of annual audits of water and wastewater treatment authorities. Washington enacted a law that allows for water-sewer districts to contract for asset management services (S 5119).

One bill was enacted concerning graywater. Colorado enacted H 1008 that provides an exception for graywater use if done for purposes of scientific research.

Pesticides

In 2017, 117 bills were introduced relating to pesticides, with four being adopted and 12 being enacted. California adopted ACR 51 that establishes a Mosquito Awareness Week. New Jersey adopted SR 67 and AR 142 that urge Congress to fund efforts to combat Zika and to add Zika to the federal list of tropical diseases.

California enacted laws to make its fumigation enforcement program part of its pesticide regulation department (A 593) and to regulate the use of carbon monoxide to control burrowing rodents (A 1126).

Florida, Illinois, and Montana amended their fee rates for their pesticide registration programs (H 5401, H 3130, and H 126, respectively). Maine amended its definition of pesticides by removing the reference to U.S. EPA (S 209). North Dakota S 2027 provides for a pesticide program and user fees. Rhode Island enacted two bills that provide exemptions from pesticide registration requirements—S 733 and H 6158 exempt persons from registration and permit fees for the minor use of pesticides.

In Hawaii, H 186 studies the impact of pesticides on the coffee berry borer. Maryland H 830 requires pollinator habitation plans be established by state agencies. Rhode Island adopted H 6256 that continues its Pollinator Working Group within its Department of Environmental Management.

Asthma

Eight bills were enacted and five bills were adopted on asthma in 2017. Resolutions supporting asthma awareness were adopted in California, Michigan, and Pennsylvania (ACR 68, HR 108, and HR 254, respectively).

Arizona enacted H 2208 that relates to the emergency administration of epinephrine and inhalers in schools. The Illinois legislature enacted S 1846 that requires the public health department to promulgate rules and regulations to include asthma in the standard school health examination. In Nebraska, a physician or healthcare professions may issue medication to schools for cases of asthma or for anaphylaxis emergencies (L 487).

Texas enacted two laws on the use of epinephrine injectors in private schools and institutes of higher education (S 579 and S 1367). Utah also amended its Emergency Administration of Epinephrine Act (S 108).

Body Art

Only three bills were enacted on body art in 2017 out of a total of 23 introduced. Alabama enacted H 262 that relates to natural hair stylists, Arizona enacted a law relating to minimum standards for hairstylists (S 1130), and Utah modified its Acupuncture Licensing Act Requirements (S 73).

States that introduced but did not enact bills include Massachusetts, which sought to prohibit body piercing except by persons licensed by its public health department; New York, which looked into body art chemicals that could cause cancer; North Carolina, which sought to regulate mobile beauty salons; and Virginia, which attempted to license laser hair removal technicians.

Swimming Pools

State legislatures introduced 21 bills in nine states that address swimming pools, from lifeguard and instructor certification requirements to sanitation standards and construc-

tion code revisions. California enacted S 442 that requires pools and spas be equipped with drowning prevention features when a building permit is issued and requires home inspectors to examine pools and spas.

In Texas, the legislature enacted a law that requires public swimming pools or artificial swimming lagoons to be maintained in a sanitary condition (H 1468). Washington exempted inflatable equipment at temporary events from the regulation of water recreational facilities (H 1449).

Tracking, Surveillance, and Biomonitoring

Thirty-six bills were introduced in 2017, with four being enacted into law. Arkansas enacted H 1259 that modernizes the state's environmental laboratory certification program. California A 1438 amends the state's Environmental Laboratory Accreditation Act. The state also enacted the Cleaning Products Right-to-Know Act (S 258).

Florida H 1041 requires the surgeon general's program for early identification of persons at risk of having elevated blood lead levels. Montana, in response to its adoption of medical marijuana laws, established requirements for testing laboratories and the testing of samples collected during an inspection (S 333). New York had two bills that sought to develop a state environmental health tracking system; both bills remain pending (A 5450 and S 484). 🗳️

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