Below are some of the latest agriculture, energy, environment, and transportation policy issues we are following in Washington, D.C. Further, NCSL’s Coronavirus (COVID-19) Resources for States webpage is updated daily to reflect new information in policy areas ranging from education to health care, and so much more.

If you have questions about NCSL’s COVID-19 resources or any of the stories below, please reach out to me, Ben Husch (ben.husch@ncsl.org), or my colleague Kristen Hildreth (kristen.hildreth@ncsl.org), and we will point you in the right direction.

Join Us for NCSL Base Camp 2020
COVID-19, the economy, systemic racism, high-stakes elections. For a year unlike any other, you need a plan unlike any other. Welcome to NCSL Base Camp 2020, where national thought leaders and policy experts join with states to map the way forward. Learn more

EPA Sends Lead and Copper Rule Revisions to OMB and Issues Rule Requiring Certification for Lead-Free Drinking Water
The Environmental Protection Agency (EPA) set new lead certification requirements for faucets, valves, pipes and fixtures in drinking water systems. EPA redefined the limits of “lead-free” pipes or plumbing fixtures that carry drinking water, both in homes and in public water systems, so that they contain no more than 0.25% of the metal, down from the 8% currently allowed. The rule requires manufacturers to get plumbing products certified “lead free” by an accredited third party and comes as the result of a congressional mandate via the Reduction of Lead in Drinking Water Act. EPA estimates the cost of complying with the rule could range from $7 million to $12 million for manufacturers of these pipes and fixtures.

Prior to this action, EPA sent its new lead and copper regulations, which have not been updated significantly since 1991, to the White House Office of Management and Budget for interagency review, typically the last step before a federal rule or policy is released to the public. For more information on those revisions, read NCsL’s blog.

A New Team of Federal Energy Regulators
First, Federal Energy Regulatory Commissioner (FERC) Bernard McNamee announced that his last day on the job will be Sept. 4. Shortly after McNamee’s announcement, the president announced that he planned to nominate two new commissioners, Mark Christie and Allison Clements, both of whom
would require Senate confirmation. Mark Christie is the chairman of the Virginia State Corporation Commission and is one of the longest-serving state utility regulators, having served for 16 years. Christie would assume the seat currently occupied by McNamee. Clements, of Ohio, would fill a seat left vacant in August 2019 with the departure of former Commissioner Cheryl LaFleur.

Relatedly, the Senate confirmed (79-16), Deputy Energy Secretary Mark Menezes. Menezes, currently a top Department of Energy adviser on energy policies and technologies and a former House and Senate staffer, would take the No. 2 position at the department. The Senate confirmed Menezes as undersecretary for Energy by voice vote in November 2017.

**Coal Powered Utilities Given More Time to Dispose of Coal Ash**

EPA finalized a rule providing utilities six additional months to cease the disposal of coal combustion residuals, more commonly referred to as coal ash, into unlined ponds or basins. The rule makes the new deadline April 2021 instead of October 2020, after the initial deadline of April 2019 had been pushed back. The final rule categorizes facilities that are lined with clay as being unlined and exempts certain facilities from lining their ponds with plastic if they meet certain criteria. EPA started regulating coal ash disposal in 2015 to prevent disasters like the 2008 spill at a Tennessee Valley Authority plant in Kingston, Tenn., that released millions of cubic yards of toxic waste into two rivers.

**USDA Releases Update on Distribution of Aid to Farmers**

The U.S. Department of Agriculture (USDA) extended the signup deadline for its COVID-19 aid program, the Coronavirus Food Assistance Program (CFAP) to Sept. 11, while also expanding the list of commodities that were eligible for aid. Overall, USDA has distributed $7 billion in aid to farmers and ranchers, which represents 43% of the total $16 billion available for direct payments. Additionally, more than half the funds have gone to livestock producers. Those farmers whose aid packages were approved only received 80% upfront to ensure a minimum level of funds available for farmers. Based on current levels, those farmers should receive the final 20% later this summer or early fall. In another COVID-related move, USDA announced plans to purchase up to $30 million in shrimp and will distribute the food through federal nutrition aid programs, such as food banks supported by the Emergency Food Assistance Program. This is the first time USDA has announced it will purchase U.S.-produced shrimp to distribute to communities and follows a similar move in May, when it allocated $30 million to purchase catfish.

**House Passes Sami’s Law on Voice Vote, Without Provisions to Withhold State Funds**

The House passed HR 4686, commonly known as Sami’s Law, after Samantha Josephson, a University of South Carolina student from New Jersey who was killed by someone pretending to be her Uber driver. The bill would require transportation network companies such as Uber and Lyft to implement systems for passengers to verify their drivers and also make it illegal for anyone other than the ride-hailing company to sell signage for vehicles. The bill does not include provisions from the introduced version that would have withheld federal highway funds from states that do not have vehicle identification laws. NCSL and its intergovernmental colleagues at the American Association of State Highway and Transportation Officials (AASHTO) lobbied against these provisions and were successful in getting them removed.

**Army Corps of Engineers Announces New Proposed Implementation Rules for its Nationwide Permitting Program**
The U.S. Army Corps of Engineers (Corps) proposed new implementation rules for its nationwide permitting program (NWP 12). The rules allow dredging and filling water bodies and wetlands under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899. The aim of the new proposal is to simplify when a Clean Water Act permit would be required. The proposal’s changes include a stipulation that the program would no longer be used for permitting electric utility, telecommunication, sewage, and water lines. Earlier this year, a federal district court in Montana suspended the permit program as part of a review of the interstate Keystone XL oil pipeline. On July 6, the U.S. Supreme Court undid that move, and reinstated most uses of the Corps’ Nationwide Permit 12 (NWP 12) for pipeline and utility trenching and construction, dredge and fill, and maintenance, inspection, and repair activities in or adjacent to wetlands and other waters of the U.S. However, the Supreme Court’s order continues to disallow use of NWP 12 for the Keystone XL pipeline.

Additionally, the U.S. Court of Appeals for the District of Columbia Circuit overturned a ruling from the U.S. District Court allowing the Dakota Access Pipeline to keep shipping oil while the court hears arguments over whether the administration failed to conduct a proper environmental review of the project. However, in a potential sign of the judges’ ruling on merits, they wrote that “appellants have failed to make a strong showing of likely success on their claims that the district court erred in directing the Corps to prepare an environmental impact statement.”

**Proposed Rule to Define “Habitat” Under the Endangered Species Act Released**
The U.S. Department of Fish and Wildlife Service issued a proposed rule defining the term "habitat" under the Endangered Species Act. The proposal was heavily anticipated following the ruling by the Supreme Court in 2018 in *Weyerhaeuser Company v. U.S. Fish and Wildlife Service*, regarding the habitat of the dusky gopher frog. The proposed definition identifies habitat as "the physical places that individuals of a species depend upon to carry out one or more life processes. Habitat includes areas with existing attributes that have the capacity to support individuals of the species." For more information on the Supreme Court ruling, read NCSL’s blog.

**Energy Consumption at Lowest Point in 30 Years**
The U.S. Energy Information Administration (EIA) reported U.S. energy consumption plummeted to its lowest level in more than 30 years this spring as a result of COVID-19. Overall U.S. energy consumption dropped 14% during April compared to a year earlier—the lowest monthly level since 1989 and the largest decrease ever recorded in data that has been collected since 1973. The largest drop previously seen was in December 2001, after the Sept. 11 attacks shocked the economy and a mild winter depressed electricity demand.

**Senate Votes to Reauthorize the Federal Pipeline Safety Agency, Future Uncertain**
The Senate passed, by unanimous consent, SB 2299, otherwise known as the Protecting our Infrastructure of Pipelines and Enhancing Safety (PIE) Act, to reauthorize the Pipeline and Hazardous Materials Safety Agency (PHMSA) and enact a number of changes to pipeline safety laws. The legislation focuses on liquefied natural gas facilities and pipelines related to the 2018 explosion in Massachusetts. It also includes provisions that require companies to use leak detection technology and develop plans for minimizing releases, though PHMSA may also develop rules on the issue. It remains very unclear whether Congress will pass a reauthorization as the bill passed by the House, HR 3432, which also focuses on methane releases, is opposed by Republicans and the energy industry.
Further, a new report from the Government Accountability Office concluded that a number of federal agencies, including PHMSA, the Federal Energy Regulatory Commission and the Coast Guard, have updated liquefied natural gas safety regulations that were potentially hampering safety. The report explained, "without processes to conduct a standards-specific review of regulations every 3 to 5 years, the agencies cannot be assured that the regulations remain effective at ensuring safety."

**FTA Awards Nearly Half a Billion Dollars for Bus Infrastructure Upgrades**
Federal Transit Administration (FTA) awarded $464 million in transit infrastructure grants nationwide to improve the safety and reliability of America’s bus systems and enhance mobility for transit riders. A total of 96 projects in 49 states and territories receive funding from FTA’s Grants for Buses and Bus Facilities Program. Highlighting the ongoing need for more infrastructure funding, demand far exceeded available funds, as FTA received 282 applications totaling approximately $1.8 billion in funding requests.

Thanks for reading. We will be back in a few weeks to fill you in on other federal happenings—stay healthy and safe.

Best,
Ben and Kristen