



NATIONAL CONFERENCE
of STATE LEGISLATURES
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September 23, 2015

The Honorable Mitch McConnell
Majority Leader
U.S. Senate
United States Capitol S-230
Washington, D.C. 20510

The Honorable Harry Reid
Minority Leader
U.S. Senate
United States Capitol S-221
Washington, D.C. 20510

Re: S. 697, the *Frank R. Lautenberg Chemical Safety for the 21st Century Act*

Dear Majority Leader McConnell and Minority Leader Reid,

On behalf of the National Conference of State Legislatures (NCSL) and the Environmental Council of the States (ECOS), we want to thank you for leading recent efforts toward a bipartisan compromise to reform the Toxic Substances Control Act (TSCA). We acknowledge that reform is needed to update this statute so that the federal government and states, as partners, have the tools to effectively evaluate and regulate chemicals.

NCSL and ECOS are grateful for the changes that have been made to previous versions of the *Frank R. Lautenberg Chemical Safety for the 21st Century Act* (S. 697) but believe that continued dialogue with the states as well as additional modifications are critical for a final comprehensive law that protects public health and the environment.

Looking to the future, we believe a strong law modernizing the nation's toxic chemicals regulations is well within our grasp. That being said, NCSL and ECOS request consideration of the following changes that will allow potentially hazardous chemicals to be most effectively regulated for the benefit of our citizens.

I. Avoid Preemption of State Action

Over the past three decades, states have stepped in to regulate toxic chemicals in the absence of federal action. While NCSL and ECOS appreciate the sponsors of S. 697's commitment to preserving these established state laws, we are concerned with language within the bill that would preempt a state law enacted after August 2015, if EPA begins a safety assessment of the chemical regulated under the state law. This language creates uncertainty for states and has the potential to delay or remove much-needed protections against toxic chemicals.

For example, proposed section 6(a) indicates that EPA may take up to three years after a chemical is categorized as high-priority to conduct a safety assessment and then an additional two years to issue chemical restrictions. This means there could be several years where the federal government is not acting, states are preempted, and the public and environment are unprotected from dangerous chemicals.

NCSL and ECOS recommend that the legislation be revised to allow states to enforce safeguards against a particular chemical in the absence of an EPA final determination. Additionally, preemption should be limited to the scope of EPA's actions only. We urge the full Congress to include such language in a final TSCA modernization bill.

II. Amend Waiver Provision Language

Section 17(f) of S. 697 establishes the requirements states must meet to be granted a waiver to regulate chemicals that have been assessed by EPA. NCSL and ECOS are supportive of the deadline placed on EPA to approve or deny a waiver in a timely manner. We also support the language that allows for EPA's waiver decisions to be judicially reviewable.

However, NCSL and ECOS again raise the concern that there could be a lack of any regulation (federal or state) during the time EPA is deciding whether or not to grant a state waiver. We maintain that the absence of any regulation would prolong the exposure time of citizens to a potentially harmful chemical. We ask for additional bill language that permits state action to protect the environment and the public during the waiver review process.

III. Address Resource Issues

We realize that many states do not have adequate staff or resources to implement actions that will protect their citizens from harmful chemicals, so they seek assistance, including funding for state and tribal assistance grants, from the federal government. NCSL and ECOS are in favor of a strong federal regulatory system, but only if that system is sufficiently funded and EPA has the necessary resources to fully implement this legislation. States are concerned that EPA will not have the requisite funding needed to carry out its testing and enforcement responsibilities under S. 697.

Any TSCA reform legislation must include sufficient funding for EPA to be able to test high-priority chemicals. Furthermore, we urge Senators to fund state grant programs, authorized under Section 28 of TSCA, in recognition of the enhanced state-federal partnership. A competitive grant program will provide states the resources to effectively assist the EPA in regulating chemicals.

In conclusion, NCSL and ECOS support TSCA reform efforts to protect public health and the environment. We appreciate recent revisions to S. 697 that reflect state interests, but urge that additional changes be made to ensure proper regulation of and protection from toxic chemicals.

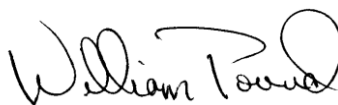
We continue to stress the importance of states working as partners with the federal government, and we offer our assistance in drafting language changes that respect state authority as the bill moves forward. NCSL and ECOS are extremely encouraged by the bipartisan compromise from both chambers of Congress on this issue, and look forward to working with members of Congress throughout the Senate approval and conference process.

Please contact NCSL staff, Melanie Condon (Melanie.condon@ncsl.org) and Susan Parnas Frederick (susan.frederick@ncsl.org) and ECOS staff Carolyn Hanson (Chanson@ecos.org) with any questions.

Sincerely,



Alexandra Dunn
Executive Director and General Counsel
Environmental Council of States



William T. Pound
Executive Director
National Conference of State Legislatures

Relevant References:

[NCSL Federal Chemical Policy Reform Policy Directive](#)

[NCSL Federalism Policy Directive](#)

[ECOS Resolution 10-8, Reforming the Toxic Substances Control Act](#)