States move to roll back environmental rules in Trump’s wake

By Ari Natter
Bloomberg News

Emboldened by the environmental rollbacks of President Donald Trump, state
legislatures are following suit, taking aim at items as varied as solar incentives, chemical spill protections and even anti-pipeline protesters.

The legislation in states from Florida to Wisconsin comes as the Environmental Protection Agency under Trump argues that it can curtail federal regulations, leaving it up to states to decide how to protect against pollution. Shifting the burden to state capitals allows industry lobbyists to divide and conquer their foes, pitting one state’s deregulation against another’s.

“A lot of the business groups interested in this have realized they can be successful when they go state to state,” said John Farrell, a director at the Institute for Local Self-Reliance, a Washington nonprofit that advises local governments on community development. For health and environment groups, “there is an element of whack-a-mole that goes on when it happens at the state level.”

Companies that are getting free of federal regulations can now target industry-friendly states — think Oklahoma or West Virginia — to get out from under their mandates, as well. By moving state to state, lobbyists can get more traction with lawmakers friendly to their cause.

Many of the efforts have been championed by groups with ties to the billionaire industry executives David and Charles Koch, such as Americans for Prosperity or the American Legislative Exchange Council.

“Now is our time. And ALEC is ready,” Lisa B. Nelson, ALEC’s chief executive officer, said in an email to its members after Trump’s election. “As our elected officials in Washington work to roll power back to the states, we will be there to catch the ball and run with it.”

A spokeswoman for ALEC declined to comment on the email.

The actions are as varied as the states represented:

- In West Virginia, where a chemical leaked into the Elk River and left 300,000
people without drinking water in 2014, legislation signed into law last month weakens the regulations for chemical storage tanks put in place after the spill.

• Oklahoma Republican Gov. Mary Fallin signed into law an end to a wind tax credit more than three years ahead of schedule amid a budget shortfall.

• A measure in Florida would prohibit any new regulations on businesses unless they were approved by the general assembly and would nullify all existing regulations that aren’t approved by the general assembly by July 2020.

• Twenty states are moving forward with anti-protester bills, including one in Tennessee that would provide civil immunity for drivers who run over protesters that are blocking the road.

• And states such as Indiana are moving to curb the payment those with rooftop solar get for selling their excess power to the grid, a fight that played out in previous years in Arizona and Nevada. Among those supporting the effort is Duke Energy Corp.

Other rollbacks are more general in nature, said Jennifer Hensley, the Sierra Club’s director of state lobbying and advocacy. For instance seven states are seeking to create so-called “prosperity districts” where the environmental laws and other regulations perceived as inhibiting business would be limited, she said.

Among them is a bill in Oklahoma that would allow the creation of independent districts that “would be the sole governing authority within its borders, and would replace all state laws except the state constitution, criminal law, common law and existing state compacts,” according to a summary. It passed in the state’s lower house last month.

“It was harder to persuade states to do things that we thought were fair to coal if we had an anti-coal administration,” said Paul Bailey, the president of the American Coalition for Clean Coal Electricity, which represents coal producers,
utilities and railways. “There was so much uncertainty about coal under the Obama administration, I think states may have been less willing to take risks in favor of coal.”

“States may be more willing to take risks now,” he said in an interview.

The Arlington, Va.-based ALEC brings together corporations and legislators to craft model legislation for introduction in statehouses. It has drawn criticism for opposing state environmental, climate and clean-energy policies.

“Since Trump is taking their Christmas list and doing all of it, they can take the effort they would have spent fighting a clean-energy administration and put that all towards undoing clean energy in the states,” Daniel J. Weiss, an environmental consultant who previously worked at the Center for American Progress said in an interview.

Just as the nation is divided over Trump, so is it divided over environmental protection and solar and wind energy. While deep red states such as Oklahoma are pushing to establish areas that will be completely free from environmental regulation, the two most populous states, New York and California, are pushing forward with greater action to cut pollution and address climate change.

California recently put in place strict new limits on methane emissions from oil and gas operations within its border. And next in line are new rules in the state for refrigerants and so-called “black carbon,” which is several times more potent than carbon dioxide. That comes on top of the state’s already ambitious plan to cut greenhouse gas emissions by 40 percent below 1990 levels by 2030.

New York and Illinois offered bailouts to their ailing nuclear plants, which provide carbon-free electricity, over the objections of refiners and other large power consumers.

The ying and yang of these decisions is best displayed in Ohio. There a
Republican-led House passed legislation that would scrap the state’s renewable energy standard and turn it into a voluntary requirement. It would also water down separate energy efficiency requirements.

“A new day is dawning in Washington, D.C., where the Trump Administration is finally ending the War on Coal,” the Ohio Coal Association said in written testimony in support of the bill. “Ohio can further the progress at the federal level by repealing the state’s costly and harmful energy mandates.”

But the state’s governor, Republican John Kasich vetoed a similar bill last year. This year the new version was passed with a veto-proof majority in the house, but is not likely to get that level of support in the Senate.

FirstEnergy Corp., Ohio’s homegrown utility with roots in the state that date to 1930, had protested the mandates, and earned nationwide news coverage after seeking extra payments from its customers to help its aging coal plants. After the state’s public utility commission shot that down, it has shifted and is now trying to get help for its nuclear fleet, arguing those plants are the “largest source of electricity that does not emit greenhouse gases and other pollutants.”

The American Petroleum Institute testified against legislation, which would offer zero emission credits estimated to generate $300 million a year for the struggling nuclear plants.

“Abundant natural gas has provided Ohio consumers with reliable and affordable energy and created countless jobs throughout the state without government subsidies,” said Chris Zeigler, API’s Ohio executive director. “Instead of subsidizing nuclear power companies, we should let the markets work to protect consumers.”
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