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Landmark California regulations under federal fire

Companies are going through Congress to fight California's stricter workplace, consumer and environmental laws. Gridlock and sympathetic Republicans in the House could work in their favor.



California officials are looking to Sen. Barbara Boxer (D-Calif.), who shares some of their concerns and heads the Environment and Public Works Committee, to take up their fight at a hearing this week. (Andrew Harrer, Bloomberg / July 24, 2013)

By Evan Halper

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WASHINGTON — California has a reputation for having some of the nation's most aggressive rules on workplace safety, consumer protection and environmental quality — regulations that force companies to make costly adjustments to the way they do business worldwide.

Now some of those companies, banking on congressional gridlock and sympathetic Republican leaders in the House, are fighting back. And officials in Sacramento worry that some of the state's landmark laws may be in danger.

At the top of their worry list is a measure with bipartisan support that would strengthen federal environmental laws on dangerous chemicals, but at the price of rolling back a pioneering California law that tries to protect consumers from the most toxic materials. State leaders are scrambling to fend off the bill, which they say is written so broadly that it also could undermine California's clean water laws and its effort to combat global warming.

"We are alarmed," said Debbie Raphael, director of the state Department of Toxic Substances Control. "We have programs in place that are very effective and have moved the marketplace to benefit not just California but the entire world. This ... puts all that at risk."

The U.S. government has the power to block the laws of California or any other state if the statutes have an impact on interstate commerce or otherwise interfere with federal authority. But Washington has tended to do that sparingly. Democrats there typically don't have a problem with the state's liberal policies, and Republicans have preferred to avoid infringing on states' rights.

But Republicans have taken up the argument that they need to curb such regulatory trailblazing to protect the rights of other states, particularly deep-red ones that don't want their industries faced with either following California's rules or being cut off from the country's biggest market. They argue that the state's regulations have gotten more aggressive. State officials say a more conservative Republican Party now puts business interests ahead of protecting states from Washington's authority.

Beyond the proposed federal Chemical Safety Improvement Act, a wide range of California measures are under siege. Agricultural interests have persuaded much of Congress that a state law prohibiting the sale of eggs laid by hens confined to tiny cages should be invalidated. California's foie gras ban has been under attack, as has its ban on the sale of inefficient light bulbs.

A proposed rule by one federal agency threatens the state's ban on cutting fins off sharks to sell for soup. A House panel recently amended a transportation bill to shift final authority over California's planned high-speed rail line to Congress, where many Republicans complain the project infringes on the rights of landowners in its path.

A measure that would have blocked California's authority to enforce state water law protections for endangered species made it through the House last year, though it stalled in the Senate.

"It's a constant push and pull," said Erwin Chemerinsky, dean of the UC Irvine School of Law. "When a state puts in regulations a business finds onerous, it turns to Congress."

The toxics legislation has caused particular alarm in California.

It was hatched in the Senate, which has usually been the chamber that has protected California against legislation pushed by the Republican-controlled House. It was co-written by the late Sen. Frank R. Lautenberg (D-N.J.), a liberal who had strong ties to consumer groups, and Sen. David Vitter (R-La.), a conservative who has long championed less regulation for industry.

The two struck a compromise that would significantly strengthen the federal Environmental Protection Agency's authority to regulate chemicals.

Under current law, EPA authority is limited to chemicals that already have been proved to be dangerous. As a result, only a fraction of the tens of thousands of chemicals on the market has been tested by the federal government. Vitter agreed to back new authority for the EPA to screen all chemicals for safety. But in exchange, he insisted on provisions, backed by the chemical industry, that could prohibit states from adding regulations of their own.

In the spring, news of the deal was hailed as a breakthrough on Capitol Hill, where consumer activists and environmental groups had lost repeated battles to strengthen the existing law, which they considered toothless.

Then details from the fine print emerged.

California officials objected that the measure not only would prohibit the state from imposing its own rules on the manufacture and sale of chemicals, but also that the language had such broad sweep, it could invalidate several other state laws as well.

California Atty. Gen. Kamala Harris described the measure in an email to The Times as "a no-win that puts Californians at risk from toxic chemicals and inhibits the development of safer, cleaner products." Her office has concluded that the measure would imperil Proposition 65, which voters enacted in 1986 to limit contamination of groundwater and make businesses disclose when consumers are exposed to carcinogens.

The California Environmental Protection Agency has "identified dozens of California laws and regulations that may be at risk of preemption" under the chemicals bill, Secretary Matt Rodriquez wrote in a letter to senators. He warned that it "could jeopardize California's ability to control greenhouse gases and thereby meet the state's targets under AB 32, the California Global Warming Solutions Act of 2006."

Vitter's office did not respond to requests for comment. Other supporters of the measure say it is not intended to unravel the state's toxics law, its global warming policies or other state laws. They say it will be amended to make that clear.

"This is a compromise we think supports national commerce and innovation and also recognizes places where a state rule is appropriate," said Anne Womack Kolton, vice president of communications at the American Chemistry Council. "It gives states the ability to preserve some of their authority."

California officials are looking to Sen. Barbara Boxer (D-Calif.), who shares some of their concerns and heads the Environment and Public Works Committee, to take up their fight at a hearing this week.

Others in the delegation are exasperated.

"I have a state that wants to set the bar higher," said Rep. Jared Huffman (D-San Rafael), who helped write several major California regulatory laws while serving in the Assembly. "On human health, on animal cruelty, on all sorts of things. The federal government should be supporting that. But there are some industries that are on a race to the bottom."

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