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US state action on chemicals could broaden following Democrats' midterm gains

Experts foresee more legislative activity, but economic pressures may constrain ambition

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Democrats' sweeping gains in US state legislatures during last week's midterm elections could open new fronts for chemicals-related actions in 2027, particularly in states where previous legislation has stalled.

But while the election results may create new opportunities in several states, experts say the midterms' so-called "blue wave" does not necessarily signal a mandate for a flood of new restrictions, as economic pressures and competing policy priorities may temper lawmakers' ambitions.

Democrats flipped 12 state legislative chambers previously controlled by Republicans as well as five governorships, according to the National Conference of State Legislatures (NCSL).

The results produced six new Democratic 'trifectas' – where one party controls the governorship and both legislative chambers – in Arizona, Michigan, Minnesota, Nevada, Pennsylvania and Wisconsin. Democrats also broke Republican trifectas in Georgia, Iowa, New Hampshire, Ohio and Texas, and "appear to be on their way to breaking one in Alaska, where votes are still being counted", the NCSL said.

The electoral changes could make it easier for lawmakers in some states to advance environmental and chemicals measures that previously fell short, according to attorneys from the law firm Beveridge & Diamond. States with new Democratic trifectas "may be able to enact entirely new environmental laws, expand existing regulatory programmes, and impose requirements beyond federal minimums", Zachary Pilchen, R Justin Smith, Lila Nojima and Heather Olson said.

In such states with incoming Democrat governors, there could be changes in "environmental policy through agency appointments, rulemaking, permitting decisions and enforcement priorities, without new legislation", the Beveridge & Diamond attorneys said.

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The American Chemistry Council (ACC) told Chemical Watch News & Insight that it "expects PFAS and broader chemicals-in-products policy to remain active issues in state legislatures".

"Our focus will be on engaging and educating newly elected officials across the political spectrum and serving as a resource as they consider these complex issues," the industry trade group said.

The state-level election results mirror a federal shift in power, where Democrats' midterm takeover of the US Congress could alter the outlook for regulatory issues such as federal food chemicals policy and TSCA.

Taken together, observers said the midterm results could broaden the number of states pursuing chemicals legislation in future sessions. However, they added that economics, competing legislative priorities and state-specific political conditions may determine how far lawmakers ultimately go.

New states enter the space?

David Quigley, a partner at Akin Gump, said he expects to see "an increase in the number of states, particularly those in and around the Rust Belt, that decide to get into [chemicals] regulation now".

Some of those states have introduced PFAS bans in previous sessions but lacked sufficient legislative support to advance them, Quigley said. For example, in 2024, Michigan saw a bill (HB 5657) to ban PFAS in consumer products fail to advance out of committee, he said.

"Now they've got a Democratic House, Senate and governor," Quigley said. "Just doing the math, I think there's a stronger possibility for bills like that across any number of environmental topics, just because the numbers are there."

Adam Cutler, counsel at Fox Rothschild, pointed to Pennsylvania, where a bill (HB 2145) to ban intentionally added PFAS in certain products passed the House with bipartisan support but has been stuck in a Senate committee since June.

If it does not clear Pennsylvania's Senate this year, "it would not be surprising to see a similar bill come up again" in 2027, when Democrats will control the chamber, he said.

However, Cutler cautioned that Democratic control alone does not necessarily translate into more chemicals legislation. PFAS bills have already attracted bipartisan support in some states, while others with existing Democratic trifectas have pursued little or no chemicals legislation, he said.

"That said, earned political capital exists to be used, and you might expect newly elected state legislators and governors to look for ways" to pursue chemicals policies, he said.

Cost concerns

Judah Prero, counsel at ArentFox Schiff, said chemicals management makes up only one part of a broader environmental agenda that must itself compete with other policy priorities.

"On a very high level, if there has been no historical interest by a state in chemical regulatory issues, it's hard to see why that would change," Prero said.

Prero also pointed to the costs that new laws can impose on companies and state governments, noting that broader economic concerns were a significant factor for voters in the midterms.

"Economic issues were definitely a factor in this election," he said. "I think the economic consequences of new regulation might slow things down a bit in a number of jurisdictions."

At the same time, he acknowledged that unexpected shifts are possible, noting New Mexico's sweeping 2025 PFAS law as an example.

Quigley offered a similar view.

"This election, while it brought in a blue wave, was extremely laser-focused on economic factors," he said. "The reason they got elected was inflation and a lack of jobs. So, I think there will be some temperance from an all-out assault of environmental legislation because of the economic focus."

Limits to further action

In states that are already active in chemicals policy, lawmakers could see midterm results as an opportunity to pursue additional restrictions, observers said.

Cutler said some lawmakers could see the election results as public support for broader legislation, but added that any resulting action will "vary state by state".

California, for example, has maintained a longstanding Democratic trifecta but has yet to pass a comprehensive ban on PFAS in products, instead pursuing restrictions targeting specific product categories, Cutler noted. With Governor-elect Xavier Becerra (D) replacing the term-limited Gavin Newsom in January, "we're watching to see whether that approach will change", he said.

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And in New Mexico, ongoing litigation over the state's PFAS product labelling requirement could influence whether lawmakers pursue a legislative response, Cutler added.

Ultimately, Prero said incoming state lawmakers will have to balance any increased political opportunity against other priorities, while also considering lessons learned from existing regulatory programmes and the costs of establishing new requirements.

"Of course there is a chance that there will be an uptick, but I don't expect a flood of new restrictions to start popping up everywhere," he said. "And I can guarantee that industry will continue to engage full force on these issues, so opposition won't disappear."

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