

spotlight

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NO MORE UNACCOUNTABLE GOVERNMENT

Legislators, not unelected bureaucrats, should make major policy decisions

KEY FACTS: Provisions in the state budget addressing regulatory reform have drawn attention to two necessary changes to existing law:

1. *State agencies should not be allowed to issue regulations that exceed federal requirements.*

That does not mean that North Carolina would not be able to exceed federal requirements.

The question is whether unelected and unaccountable state bureaucrats or political appointees should be the ones deciding whether the state should exceed federal standards, rather than leaving such decisions to elected lawmakers.

As a matter of good government, on issues of such magnitude that can kill jobs and make the state less competitive with its neighbors, the legislature, which is the lawmaking body of the state, should decide whether North Carolina should impose these costs on its citizens.

2. *Cost-benefit analysis should be required for all agencies.*

The federal government has required a form of cost-benefit analysis of regulations for nearly 40 years.

Governor Bev Perdue, in her 2010 executive order on regulatory reform, required cost-benefit analysis for agencies under her oversight.

The legislature should codify in statutes detailed cost-benefit analysis for all agencies.

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unselected state bureaucrats and political appointees make some of the biggest policy decisions in North Carolina. These decisions can have a devastating effect on the economy and on jobs, but if they displease the public, voters can do nothing about them because they are unable to vote out the people responsible.

The state legislature now is trying to promote good government by taking

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back some of the power that it originally delegated to state agencies and also put in some common-sense protections to limit the excessive costs of agency regulations.¹ On October 21, 2010, Governor Bev Perdue issued an executive order that was a good step towards addressing regulatory reform.²

Recently, the North Carolina Senate included provisions in its budget that would prohibit the Department of Environment and Natural Resources, the Department of Labor, and the Department of Agriculture and Consumer Services from issuing regulations that exceed federal standards.³ Furthermore, the provisions would require these agencies to conduct a cost-benefit analysis for many regulations.⁴ Regardless of whether a budget is the proper place to make such policy changes, the changes are long overdue.

This *Spotlight* report explains why prohibiting state agencies from exceeding federal standards, referred to as a “no more stringent law,” and requiring cost-benefit analyses promote good government.

“No More Stringent” Law

If the state legislature prohibited state agencies from issuing regulations that exceed federal standards, *North Carolina would still be able to exceed federal standards whenever the state wanted to.*

The only question is whether unelected and unaccountable state bureaucrats or political appointees should be the ones deciding whether the state should exceed federal standards, rather than leaving such decisions to elected lawmakers.

For environmental extremist groups, for example, it is much easier to convince political appointees or bureaucrats to push their own extreme agenda than it is to convince a majority of both chambers of the legislature. When the United States Environmental Protection Agency (EPA), in 2005, decided to regulate mercury emissions from coal-fired power plants,⁵ it was not extreme enough for the North Carolina environmental pressure groups.

Those regulations were the first of their kind in the United States and in the world — no other country regulated mercury emissions from coal-fired power plants.⁶ Unsatisfied, environmental pressure groups in North Carolina pushed for more, but instead of having to go to the legislature, they simply went to the Environmental Management Commission (EMC), made up of political appointees favorable to their cause. They were able to get the EMC to exceed federal standards, tightening required mercury emissions reductions from 70 percent⁷ to about 90 percent.⁸

The additional costs associated with exceeding federal standards made no difference to the EMC, largely because they were unaccountable to the public. On an issue of such magnitude that can kill jobs and make the state less competitive with its neighbors, the legislature, which is the lawmaking body of the state, should have decided whether North Carolina should impose these costs on its citizens.

According to the EPA, about one-third of all states already have “no more stringent” laws that “limit or condition the ability of their regulatory agencies to adopt regulations that are more stringent than any federal environmental regulations.”⁹ Those does not include other states’ “no more stringent” laws that limit agencies from exceeding standards in other areas of the law. Beginning in 1974, North Carolina also had “no more stringent” laws addressing environmental regulations, but the last of those laws was repealed in 1995.¹⁰

It may be beneficial for certain special-interest groups to influence agencies and commissions behind the scenes; however, for the citizens of North Carolina and for good government, policies that can have a major impact on the state should be discussed and debated in the open by lawmakers.

Cost-Benefit Analysis

The News & Observer is behind the times when it criticizes¹¹ the need for cost-benefit analysis of regulations.

Cost-benefit analysis, which is a well-established requirement for analyzing regulations, requires that the costs of a proposed rule be compared to the benefits of a proposed rule. Among other things, proper cost-benefit analysis quantifies the costs and benefits of the regulation as much as feasible and addresses alternatives to the regulation.

For nearly 40 years, the federal government has been using some form of cost-benefit analysis.¹² The state does not formally have cost-benefit analysis in its statutes, but the North Carolina Office of State Budget and Management already requires some form of cost-benefit analysis for many rules.¹³

In other words, requiring cost-benefit analysis in state law is not a radical new idea.

Furthermore, Gov. Perdue in her regulatory reform executive order required cost-benefit analysis by executive bodies in which the governor has oversight.¹⁴ Her order does not and may not cover Council of State agencies that are run by directly elected officials.¹⁵

A legislative cost-benefit requirement would, at a minimum, simply ensure that cost-benefit analysis is conducted for all agencies, not just for agencies under the governor's control. Ideally, cost-benefit analysis requirements would be detailed and mandate the rejection of regulations that exceed costs.

Conclusion

It is ironic when critics of a “no more stringent” law explain that such a prohibition would create a one-size-fits-all system of regulation.¹⁶ That is precisely the argument against federal regulation in the first place. If the critics are truly concerned with one-size-fits-all regulations, then they should be the first to call for the repeal of federal regulations.

Unfortunately, when there is federal regulation on a specific issue, North Carolina is not allowed to reject the regulation because it is unnecessary or too strict. That does not concern critics of a “no more stringent law,” however; they care only about the state exceeding federal requirements.

Fortunately for special-interest groups wanting to keep the status quo, a “no more stringent” law would not prevent them from getting the state to exceed federal standards. They could always go to the legislature and make their case. Unfortunately for them, they would not find persuading majorities of elected legislators as easy as swaying a handful of unelected bureaucrats or appointees.

Two simple reforms — a “no more stringent” law and a cost-benefit analysis requirement — would be a step in the right direction. They are regulatory reforms that should have a positive impact on the economy, but they are first and foremost about good government.

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End Notes

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3. North Carolina House Bill 200 (2011), Version 7, Section 13.11B.(a)-(c), www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2011&BillID=hb+200&submitButton=Go.
4. *Ibid.*
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13. Office of State Budget and Management, *State of North Carolina Budget Manual*, April 2009, www.osbm.state.nc.us/files/pdf_files/BudgetManual.pdf.
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15. *Ibid.*
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