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Reining In Regulation

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POLICY REPORT

Proposing a State REINS Act to Address the Costly Regulatory Burden in North Carolina

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Executive Summary

For decades, the overproliferation of federal regulations has attracted calls for reform from leaders on either side of the political divide. The preponderance of empirical studies of the effect of regulation on economic activity concludes that regulation harms economic growth.

The loss of economic productivity from federal regulatory activity over time is quite massive. Economists John W. Dawson of Appalachian State University and John J. Seater of North Carolina State University found that the U.S. economy is about one-fourth the size it potentially could be owing to the increasing federal regulatory burden.

Regulations are rules carrying the full force of law that are set by executive agencies and commissions to implement and interpret enacted legislation. The agencies are able to do this by a delegation of lawmaking authority from the legislature. In this respect, an essentially legislative power of lawmaking is vested in bureaucrats who lack direct accountability to the people. This leaves them open to several risks of abuse of power, with state law being crafted without the consent of the governed.

Recently, federal legislation called the REINS Act (for “Regulations from the Executive In Need of Scrutiny”) would address that problem by seeking to restore some delegated authority back to the U.S. Congress. Under the REINS Act, a proposed major rule could take effect only if Congress passed (and the president didn’t veto) a joint resolution to affirm it within 60 days after receiving a report of the proposed rule. It would thereby require any rule expected to have significant economic impact to be deliberated over by elected and accountable representatives of the people.

A groundbreaking new report from economists Paul Bachman, Michael Head, and Frank Conte at the Beacon Hill Institute at Suffolk University (BHI) estimated the annual burden of state regulations in North Carolina to be, at minimum, over $3.1 billion annually. That enormous figure, however, is “a fraction of the total cost to the private sector of regulations in North Carolina,” they write, since the bulk of state regulations’ costs were hard even to quantify. The total cost could be as much as $25.5 billion annually.

A proposed new regulation is far, far more likely to come into effect than a proposed new law in North Carolina: 99.9 percent of agencies’ proposed new regulations take effect, whereas only about one in five proposed bills become law. The General Assembly can take action to block new regulations, but the same deliberative process that makes passing bills difficult also makes it hard to block regulations.

This paper therefore proposes a state-based REINS Act as a key sunrise provision to prevent adding unnecessary and harmful regulations to the state’s regulatory burden. It describes aspects of a REINS Act for North Carolina.

It also offers other sunrise provisions to consider, including such reforms as strong cost/benefit analysis, full consideration of alternatives to regulation, regulatory reciprocity, small business flexibility analysis, no-more-stringent laws, and stated objectives and outcome measures. Finally, it proposes adding a default mens rea provision to help prevent another problem of overregulation, which is overcriminalization.

The business of statecraft is varied and complex. The American framework of government separates power among three branches: legislative, executive, and judicial. Laws — the rules or boundaries within which citizens and businesses, as well as private and public officials may legally operate — are created in the legislative branch by elected legislators directly accountable to the voters they represent.

To implement or interpret their enacted legislation, legislators delegate a narrowly tailored portion of their lawmaking authority to agencies and commissions (executive branch). They set the rules whereby the will of the legislature in the agencies' respective subject areas is to be faithfully upheld. These rules are also known as regulations.

Importantly, these regulations also carry the full force of law, and those affected by them can face fines, penalties, and even jail for violating them.

The federal REINS Act

A worrisome overproliferation of costly federal regulations, however, has for decades attracted reform calls by leaders from either side of the political divide. Recently, federal legislation called the REINS Act (for "Regulations from the Executive In Need of Scrutiny") has been proposed to address the problem by seeking to restore some delegated authority back to the U.S. Congress.

In 2011 the REINS Act passed the U.S. House but stalled in the U.S. Senate.[1] The same thing happened in 2013.[2] On July 28, 2015, the House passed the REINS Act of 2015; as of this writing it is before the Senate.[3]

The REINS Act would require Congress to pass a joint resolution to approve any proposed rule that would have a major impact on the economy, cause significant cost or price increases on consumers, or significantly harm competition, employment, productivity, and other healthy economic activities. The proposed major rule would not be allowed to take effect without the joint resolution to affirm it passing both chambers and being signed by the president within 60 days after Congress receives a report of the proposed rule. Also, if no vote on the regulation took place within 60 session days, the regulation would not take effect.

The underlying aim of REINS is a regulatory process that is more transparent, more circumspect, and more accountable to the people, who are the ultimate authority in America.

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This paper proposes a state-level REINS Act to address North Carolina's costly regulatory process. It then suggests other sunrise reforms.

How Regulation Affects Economic Growth

The preponderance of empirical studies of the effect of regulation on economic activity have concluded that regulation harms economic growth. In their landmark paper on lost economic productivity from federal regulatory activity, economists John W. Dawson and John J. Seater surveyed many new studies of the macroeconomic effects of regulation, finding that "[a]lmost all these studies conclude that regulation has deleterious effects on economic activity."[4]

Economists Russell S. Sobel and John A. Dove's review of state regulatory behavior also found in the research literature evidence that "as the total level of regulation is marginally increased, economic growth, prosperity, and the level of entrepreneurial activity marginally decrease."[5]

In 2014 John Hood surveyed the past quarter-century's worth of peer-reviewed economic literature (going back to 1990) on questions of public policy and economic growth. With respect to regulation's effects, Hood identified 160 studies. Over two-thirds found higher levels of regulation associated with lower levels of economic performance. Only 3 percent associated higher levels of regulation with higher levels of economic growth.[6]

In a related result, Hood found over three-quarters (76 percent) of 33 peer-reviewed studies since 1990 found a positive correlation between economic freedom and economic growth.[7]

Economist Antony Davies analyzed the effects of federal regulation at the industry level, and his findings were instructive as to how higher levels of regulation correlate with lower levels of economic growth. Davies found that from 1997 to 2010, the least regulated industries had nearly twice the rate of growth in output per person (63 percent vs. 33 percent) and output per hour (64 percent vs. 34 percent) than the most regulated industries. Furthermore, the least regulated industries had a slight decline in unit labor costs, whereas the most regulated industries experienced a 20 percent increase in unit labor costs.[8]

Licensing laws nationwide make it prohibitively difficult for the poor to enter low- to moderate-income occupations.

Economist Clyde Wayne Crews Jr. of the Competitive Enterprise Institute annually surveys federal regulations and estimates their effects on the national economy. His 2015 survey estimated that federal regulation and intervention cost American consumers and businesses $1.88 trillion in 2014 owing to lost economic productivity and higher prices. Crews also estimated that agency officials issued 16 new regulations for every law dutifully enacted by Congress (in total, 3,554 new regulations vs. 224 new laws). Meanwhile, there are an additional 3,415 proposed new regulations in the works from 60 federal departments, agencies and commissions.[9]

Disparate burdens imposed by regulation

The costs imposed by regulation are not uniformly borne, however. Business regulations are especially burdensome on small businesses, which typically lack in-house legal and compliance staff to help them navigate them all. As a result, compliance activities take a greater proportion of small firms' resources than they do of larger firms'.

In 2010 economists Nicole V. Crain and W. Mark Crain studied regulatory costs imposed on businesses for the U.S. Small Business Administration Office of Advocacy. They found the cost of federal regulations per employee to be $8,086 in 2008 across all firms. However, 89 percent of firms in the U.S. are small firms with under 20 employees. Federal regulations cost those firms $10,585 per employee — 36 percent higher than the $7,755 cost per employee incurred by large firms (500 or more employees), which comprise only 0.3 percent of firms in the U.S.[10]

To mitigate the impacts of this cost disparity, the federal government has since 1980 used small business flexibility analysis, which offers small businesses less stringent compliance and reporting requirements, less onerous scheduling or reporting deadlines, use of performance standards rather than design or operational standards, and exemption from some or all requirements of particular regulations. Most states have adopted small business flexibility analysis at the state level, but North Carolina is not among them.[11]

A particularly onerous regulatory activity affecting individuals is that of occupational licensing by states. States differ widely on which occupations to regulate; while over 1,100 professions are subject to state regulation, just over 5 percent of them are regulated in every state.[12] Many of the regulated occupations encompass lower-earning workers, such as bus drivers, barbers, preschool teachers, and many different kinds of construction workers, in positions that would otherwise be good entry points into employment, not to mention entrepreneurship.

In 2012 the Institute for Justice published a major national study of the burdens licensing laws place specifically on lower-earning workers. Conducted by Dick M. Carpenter II, Lisa Knepper, Angela C. Erickson, and John K. Ross, the study found that licensing laws nationwide make it prohibitively difficult for the poor to enter low- to moderate-income occupations. The average cost to aspiring workers in those fields was $209 in fees, nine months in the classroom paying for education and training (a cost in time as well as tuition, possible fees, and potentially even child care), and one exam (which also involves a fee).[13]

All those costly hurdles to obtaining the occupational license effectively keep out many would-be entrants into the regulated profession, and they are especially discouraging to the poor, the less educated, minorities, and even older workers seeking a new career in the industry (such as following an economic downturn).[14] Furthermore, road-blocking low-income individuals from entrepreneurship negatively affects impoverished communities more acutely with the loss of potential employers, locally accessible goods and services, and other benefits.[15]

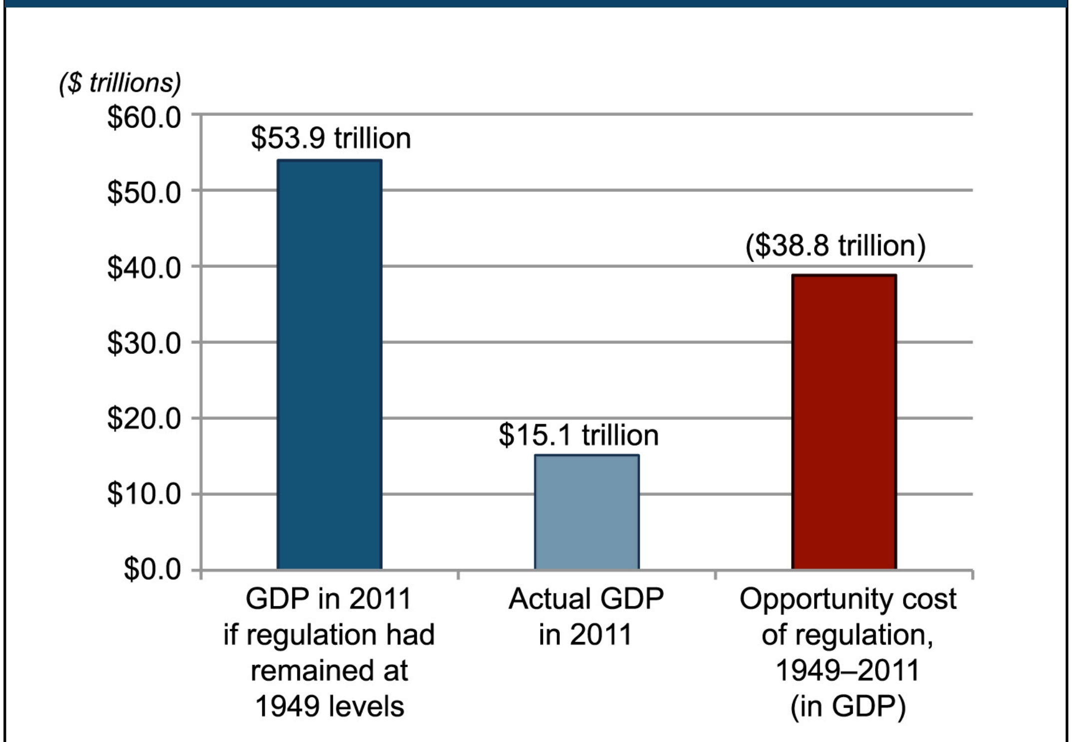
University of Minnesota labor economist Morris Kleiner, the nation's foremost expert in occupational licensing, estimated that licensing has resulted in 2.85 million fewer jobs.[16] He also found that employment within an occupation grows 20 percent faster in states where it is not subject to licensing regulation.[17]

Cumulative effects of lost productivity due to regulation

Dawson and Seater estimated the cumulative effects of lost economic productivity owing to federal regulatory activity over time (from 1949 to 2011; see Chart 1). They found that the U.S. economy is about one-fourth the size it potentially could be owing to regulatory burdens:

> *Federal regulations added over the past fifty years have reduced real output growth by about two percentage points on average over the period 1949-2005. That reduction in the growth rate has led to an accumulated reduction in GDP of about $38.8 trillion as of the end of 2011. That is, GDP at the end of 2011 would have been* $53.9 trillion instead of $15.1 trillion *if regulation had remained at its 1949 level. One channel through which regulation has reduced output is TFP [total factor productivity]. We find that federal regulation can explain much of the famous and famously puzzling productivity slowdown of the 1970s.*[18] *(Emphasis added.)*

Chart 1. Cumulative cost of new federal regulations, 1949–2011



Source: John W. Dawson and John J. Seater, "Federal Regulation and Aggregate Economic Growth," *Journal of Economic Growth*, Springer, vol. 18(2), June 2013, pp. 137–177

On the personal and household level, that foregone wealth is hard to imagine. Dawson and Seater computed the opportunity cost of federal regulations to be $277,100 per household and $129,300 per person (see Chart 2).[19]

That is to say, the average household would have an additional $277,100 per year to spend on caring for their children, taking care of housing needs, saving for college, planning for retirement, investing, enjoying goods and services, and charitable causes serving the needs of the community. The average household would be experiencing, in other words, living standards enjoyed now by only the top echelon of society. Furthermore, those opportunity costs continue to deepen. If federal regulation were to remain at 2005 levels, Dawson and Seater estimated the opportunity cost to grow by about 2 percent a year.[20]

> *But of course regulation continued to grow after 2005 and continues to grow today. According to RegData, a new instrument for measuring federal regulations produced by Patrick A. McLaughlin, Omar Al-Ubaydli, and the Mercatus Center at George Mason University, there were 1,040,940 restrictions in the Code of Federal Regulations as of 2012. This figure represents an increase in regulatory restrictions of over 28 percent since 1997[21] (in just 15 years).*

The gravity of Dawson and Seater's finding is that, as Reason science correspondent Ronald Bailey observed, "the opportunity costs of regulation—that is, the benefits that could have been gained if an alternative course of action had been pursued—are much higher than the costs of compliance."[22]

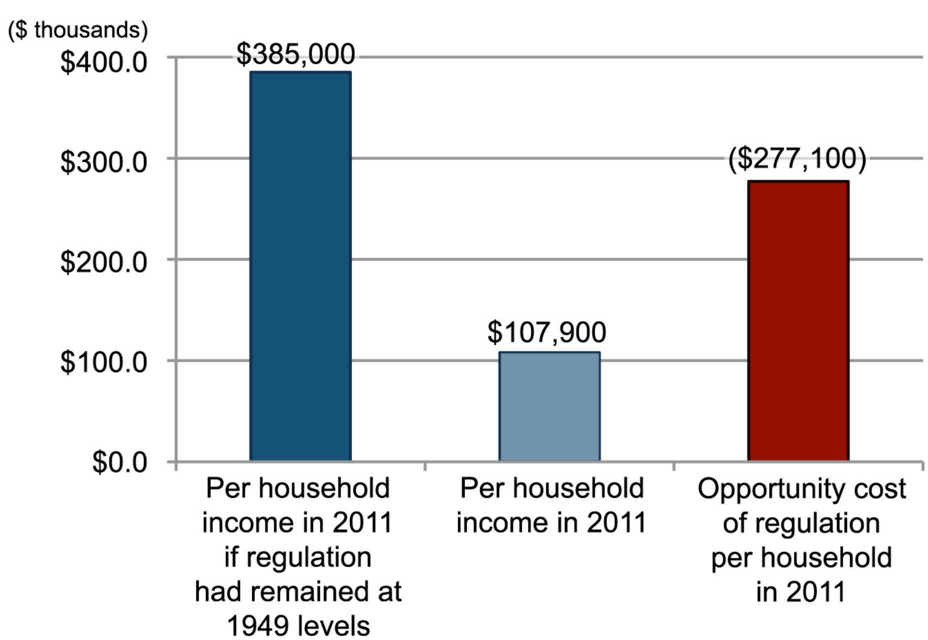
Compliance becomes ever harder amid a growing "forest of regulations and criminal statutes with varying interpretations that even legal scholars can't agree upon," in the words of Ellen Podgor, the Gary R. Trombley family white-collar crime research professor at the Stetson University College of Law.[23]

The resulting overcriminalization — indeed, the ease by which an upstanding citizen can unintentionally run afoul of one of the many, many laws and regulations — is the subject of the 2009 book Three Felonies a Day by criminal defense and civil liberties lawyer Harvey Silverglate, co-founder of the Foundation for Individual Rights in Education.[24] The corpus of laws and regulations is now so vast and so vague as to be practically unknowable. As Silverglate explains,

> *Since the New Deal era, Congress has delegated to various administrative agencies the task of writing the regulations [even as] Congress has demonstrated a growing dysfunction in crafting legislation that can in fact be understood.[25]*

This thicket is made more treacherous for the would-be law-abiding by erosion of the English common law tradition of mens rea to protect the unwitting lawbreaker. Under that tradition, the wrongful deed (actus reus) is not enough for conviction; it must accompany a guilty mind (mens rea). Especially with respect to regulation, mens rea protection has been increasingly overlooked or intentionally omitted.[26]

Chart 2. Cost per household in 2011 of federal regulations added since 1949



Source: John W. Dawson and John J. Seater, "Federal Regulation and Aggregate Economic Growth," *Journal of Economic Growth*, Springer, vol. 18(2), June 2013, pp. 137–177

Regulation and the Separation of Powers Problem

As discussed above, regulations are rules carrying the full force of law that are set by agencies and commissions to implement and interpret enacted legislation. They are able to do this by a delegation of lawmaking authority from the legislature. In this respect, however, an essentially legislative power of lawmaking is vested in bureaucrats who lack direct accountability to the people.

There is an efficiency gained by the legislature in providing the overarching guidance while leaving the particular details to subject-matter experts in respective agencies. Nevertheless, the agencies' lack of direct accountability to voters leaves them open to several risks of abuse of power, with state law being crafted without the consent of the governed.

Well-tailored regulations could theoretically produce net economic benefits by clarifying property rights and removing uncertainty with regard to legal liabilities, helping producers direct economic resources more efficiently. Sobel and Dove posit, therefore, that the regulatory process could err in one of two ways: "(1) failing to adopt an efficient regulation, or (2) wrongly enacting an inefficient regulation."[27]

As Sobel and Dove explain, if the first kind of error was more prevalent, the problem would be too little regulation; if the second kind, the problem would be too much regulation. They found the second error to be the predominant one throughout research literate; i.e., that there have been too many inefficient regulations wrongfully enacted.[28] (See below for different kinds of inefficient regulations.)

The Regulatory Environment in North Carolina

In a new, groundbreaking report, economists Paul Bachman, Michael Head, and Frank Conte of the Beacon Hill Institute at Suffolk University (BHI) attempt to gauge the annual burden in North Carolina imposed by state regulations. The BHI report is "an attempt to identify the scope and cost of regulations in the state of North Carolina in a manner more comprehensive than the surveys offered by business climate indices."[29]

The BHI report succeeds in that goal but acknowledges that a more comprehensive study is warranted to estimate the full scope and cost of state regulations in North Carolina. The annual cost estimates the BHI study produced would therefore be considered the baseline, with the actual cost likely much higher and certainly not less than the

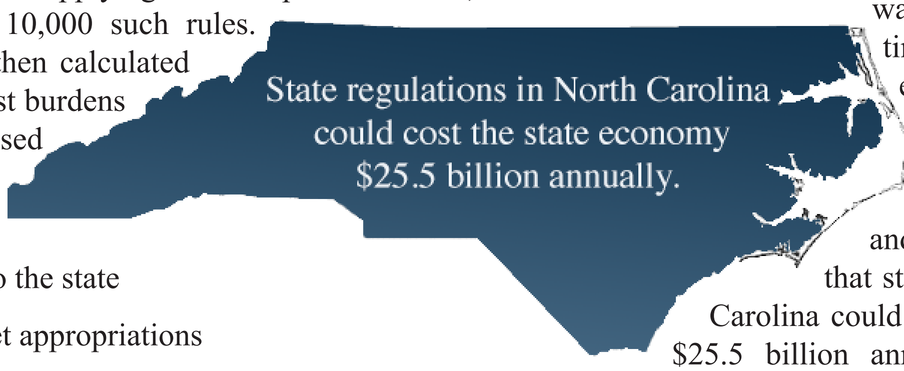
Inefficient regulations come in many forms, including (but not limited to):

- Regulations installed out of political concerns
- Regulations put in place to serve a special interest group
- Regulations from "captured regulators"; i.e., use of the regulatory process to raise the business costs of competitors, putting some out of business and thereby creating greater profits for the remaining firms and financial benefits for the regulators as a consequence[30]
- Regulations instituted out of a good-faith effort to address a problem but that had unintended negative consequences or created unforeseen outcomes or downstream effects
- Regulations originating from a desire to address a problem but taken over by special interests, lobbyists, powerful decision makers, etc., to serve other purposes
- Regulations that have become inefficient owing to technological or other innovation
- Regulations rendered obsolete by expanding information access, especially through the internet and smartphone applications
- Regulations based in misapprehension of a problem

report's estimate. As stated in the report, "after reviewing the North Carolina Administrative Code, we believe our figure represents a fraction of the total cost to the private sector of regulations in North Carolina."[31]

It is important to note that the BHI report is not a cost/benefit analysis. The BHI report does not seek to estimate benefits from state regulations. Nor does it measure the effectiveness of the regulations nor assume that the costs are without benefits. The report is an attempt to estimate the cost burden of state regulations in North Carolina. The authors stress that repeal and reform of regulations should take place only after a thorough cost/benefit analysis.[32]

BHI identified roughly 25,000 individual regulations in the 30 Titles of the North Carolina Administrative Code. It narrowed its focus to rules in the eight administrative titles identified as applying to the private sector, identifying over 10,000 such rules. The BHI report then calculated three different cost burdens those rules imposed on the private sector:



1. Fees paid to the state
2. State budget appropriations
3. Private sector compliance costs[33]

The BHI starting-point estimation of total cost burden was over $3.1 billion annually. It also found that compliance costs for the private sector were 44 percent higher than the fees and appropriations that residents and businesses in North Carolina pay to state regulatory agencies. Nevertheless, the BHI reports stresses,

> *Although the costs presented here are substantial, we were unable to establish a basis for estimating the costs of the regulations for several titles in the administrative code. Moreover, we were unable to estimate the opportunity cost to the private economy if the resources dedicated to complying with the regulations had been reallocated to investment, research and development and the production of goods and services. Using one research method, North Carolina's state regulations cost the state economy over $25 billion annually. For this reason, we believe the actual total costs of North Carolina's state regulations run far higher than the figures presented here.*[34]

Bachman, Head, and Conte reiterate that their estimated total cost burden of over $3.1 billion is likely extremely low. It is also an estimation for 2015 alone; i.e., the cost burden estimated for a single year.

Bachman, Head, and Conte discuss many titles and subchapters in the Administrative Code containing rules for which they were for various reasons unable to produce cost estimates. "The number of regulations in which we were not able to identify costs is many times more than the number of regulations for which we were able to identify costs," they write.[35]

As a rough estimate, they apply Murray L. Weidenbaum's finding that the cost of federal regulation was approximately 20 times the budget of enforcing agencies[36] to their finding that regulation cost the state $1.276 billion, and in so doing projected that state regulations in North Carolina could cost the state economy $25.5 billion annually. As they write, "This back-of-the-envelope exercise reinforces our view that our estimate represents only a fraction of the cost of state regulations on North Carolina."[37]

Dawson and Seater demonstrated the cumulative effect of an increasing diet of federal regulations over time. The opportunity costs are unfathomable: households missing out on $277,000 per year, current GDP only about one-fourth the size it could be. One could infer from Dawson and Seater's insights that North Carolina's increasing regulations have a significant, negative cumulative effect as well. (To go further along this line of thought, one would have to realize also that the state regulations' costs dogpile on top of the federal regulations' costs.)

A simple if raw way to measure the state's regulatory activity is by adding up the new pages in the North Carolina Register each year. Published since 1987, the North Carolina Register "contains information relating to agency rulemaking, executive orders, contested case decisions and other notices required by or affecting Chapter 150B of the General Statutes. All proposed administrative rules and notices of public hearings filed under G.S. 150B-21.2 must be published in the Register."[38]

Over the past 15 years, the number of pages added to the North Carolina Register each fiscal year has averaged 2,405. In the 1990s an average of 2,282 pages were added per year.[39]

The John Locke Foundation's First in Freedom Index 2015 ranked North Carolina's regulatory freedom only 36th out of the 50 states — 8th out of the 12 Southeastern states. Among others, the Index identified restrictive certificate-of-need regulations, state benefits mandates on private health plans, burdensome insurance regulations for automobiles and homes, and extensive occupational licensing rules as areas in which the state needed improvement.[40]

Four out of five N.C. businessmen thought regulations in North Carolina were unjustifiable based on costs and benefits.

The BHI report reviews several other measures of regulatory burden and business climate in North Carolina, with some indexes rating North Carolina relatively favorably (e.g., the labor market with respect to North Carolina's status as a right-to-work state) and others rating North Carolina relatively unfavorably (e.g., occupational freedom, given North Carolina's strict occupational licensing regime).

With respect to overcriminalization, Elon University Senior Associate Dean Alan Woodlief recently discussed how North Carolina has seen the same phenomenon as the federal government in drastically increasing "statutes and regulations complicating our business dealings and other aspects of our daily lives." He urged for "circumspection in adopting new laws and regulations."[41]

Woodlief recounted several instances of new state laws that were unnecessary, redundant, or tailored to serve special interests, then turned his attention to regulations:

> *When they [all the new laws] are combined with the myriad administrative regulations at the state and federal level, our law becomes increasingly byzantine, difficult for the average citizen, business owner and even lawyers and judges to navigate.*[42]

Recent interest in regulatory reforms

In the previous decade, the John Locke Foundation conducted surveys of North Carolina business leaders. These surveys consistently found the state's regulatory burden ranking very high as a factor reducing the state's competitiveness.[43]

Furthermore, as the decade progressed business leaders were reporting greater levels of concern over North Carolina's regulatory burden, ranking it second only to taxes in harming the business climate. By 2005, four out of five N.C. businessmen thought regulations in North Carolina were unjustifiable based on costs and benefits.[44]

The ensuing years saw leaders of both political parties attempt regulatory reforms. The Republican-led General Assembly has been pursuing annual regulatory reform bills, building off reforms from Democratic then-Gov. Bev Perdue.[45] Highlights among these reforms are:

- forbidding state environmental agencies (but not the legislature) from imposing rules more stringent than federal environmental regulations
- offering guiding principles for new state rules
- requiring cost estimates for many kinds of rules
- requiring at least two alternatives be proposed alongside any proposed rule with "substantial economic impact" (i.e., a projected economic impact of greater than $500,000)
- applying sunset provisions with periodic review to state regulations

Separation of powers problem in North Carolina regulatory activity

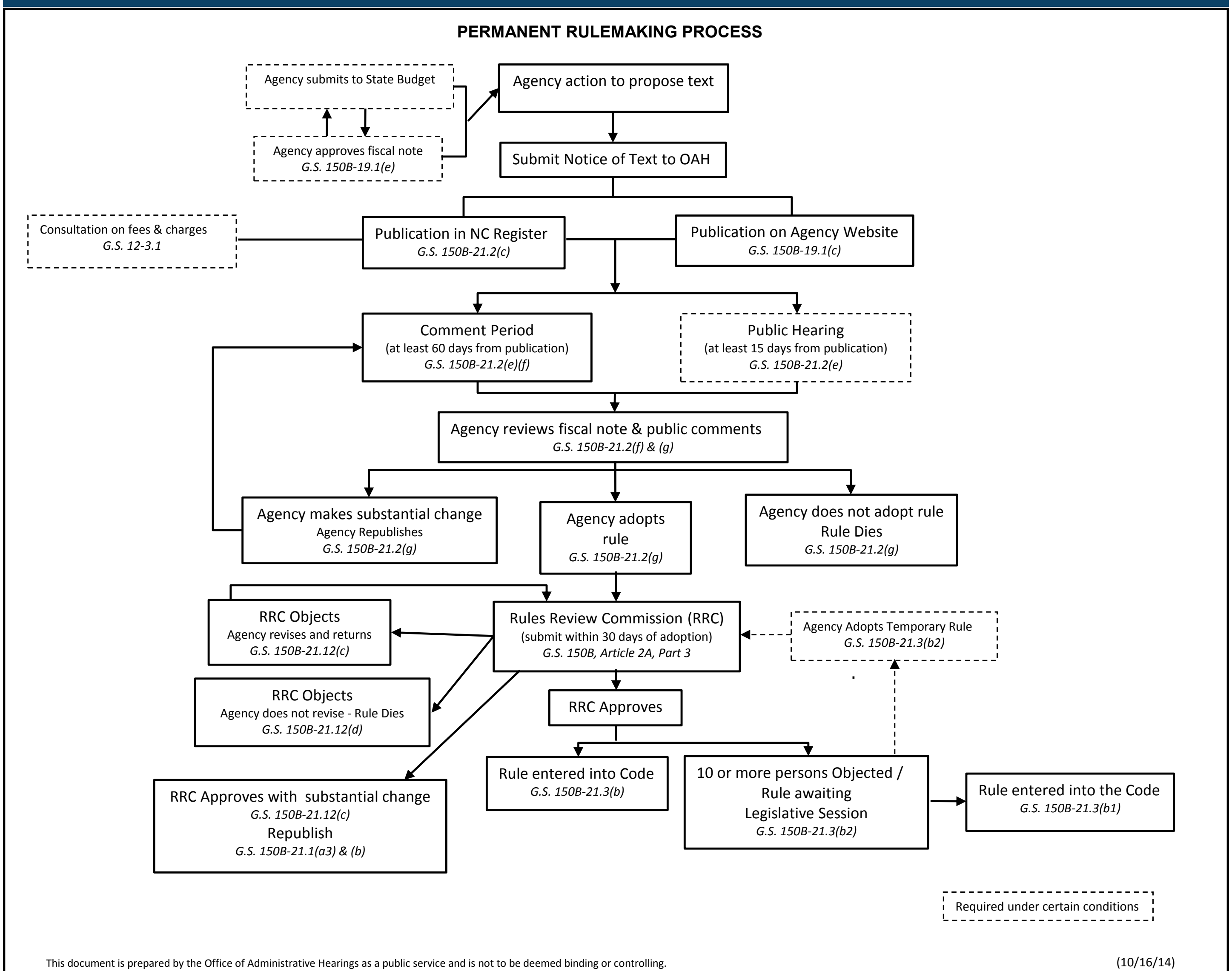
Still, the rulemaking environment in North Carolina is strongly biased toward approving new regulations, big or small. The path from proposed rule text to adopted rule has many stops, but that outcome is nearly a fait accompli. By way of comparison, a proposed law is far less likely to come into actual effect in North Carolina than a proposed rule.

The process of rule adoption in North Carolina is multilayered and is illustrated in Chart 3. Key aspects to highlight:

- When an agency adopts a rule, it proceeds to the Rules Review Commission (RRC) for review. The RRC cannot judge the merits of the proposed rule, however, only whether the rule is properly drafted, reasonably necessary, clear, and within the agency's statutory authority.
- If 10 or more people had lodged objections against an approved rule, it would be held awaiting the next session of the General Assembly. Legislators could produce a bill blocking it, but they would be under no obligation to do that. A bill to block the rule would have to pass both houses of the legislature and be signed by the governor in order for the rule ultimately to be blocked.

Furthermore, the RRC's authority to determine whether a regulation is within its statutory authority — i.e., within the authority delegated it by the legislature — is practically limited. Agencies have waged successful challenges in court against unfavorable rulings by the

Chart 3. How a rule progresses from proposal to permanent rule in North Carolina[46]



RRC over statutory authority. Two factors are at work there: the courts have favored expansive readings of statutes, and the legislature has often produced overly broad statutory language that could be exploited by agencies naturally seeking the broadest expansions of their own power.[47]

A 2010 study by the John Locke Foundation showed just how rare it is for a regulation to be blocked in North Carolina. Between fiscal years 2004-05 and 2008-09 there were 6,510 permanent rules introduced. Only 218 (about 3 percent) were subject to legislative review. Only 28 bills were introduced in the legislature to disapprove of those bills. Of those, only seven passed.[48]

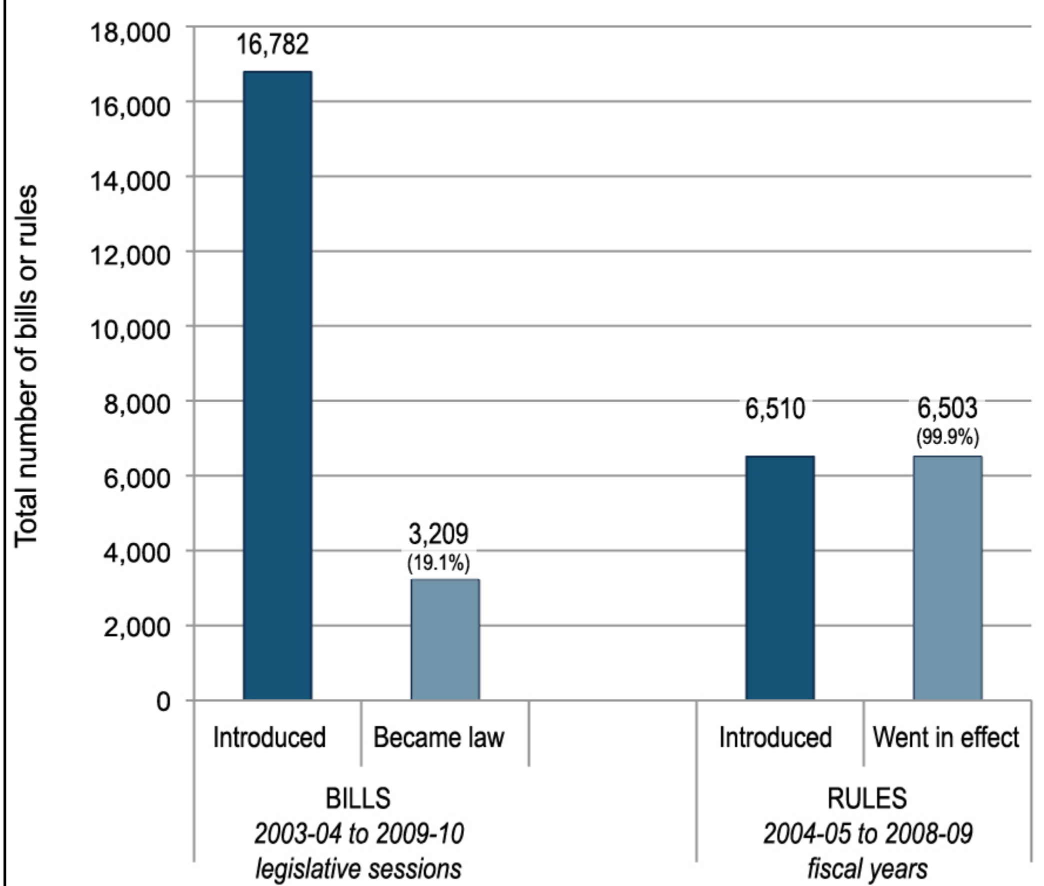
The takeaway was that only about one-tenth of one percent of proposed rules were ultimately blocked. About seven out of eight rules subject to legislative review are ignored and allowed to go into effect.

In a comparable time period, from the 2003-04 to 2009-10 sessions of the General Assembly (the state legislature), only 3,209 of the 16,782 bills introduced (including joint resolutions), or only about 19 percent, ultimately became law.[49] (See Chart 4.)

This disparity underscores a key factor: the legislative branch featuring elected representatives directly accountable to the people uses a process that is far more deliberative. For bills to progress into law, they undergo committee hearings, revisions, and multiple votes in both chambers, and they often require agreements and coalitions among legislators from different parts of the state, different parties, and the different chambers, and in most cases the governor's assent as well.

With respect to new regulations, however, the current process in North Carolina, which constitutionally vests legislative power in its General Assembly,[50] is such that the deliberative process of legislature makes it difficult to *block* new regulations. Especially with respect to major rules — i.e., rules that would be deeply impactful on citizens, businesses, and the economy — such an unintended consequence is effectively counter to the idea of lawmaking being the role of duly elected representatives in the legislature.

Chart 4. Different likelihoods of bills becoming law and rules going into effect in North Carolina



Sources: North Carolina Legislative Library; Daren Bakst, "Regulating the Regulators: Seven Reforms for Sensible Regulatory Policy in North Carolina," *Policy Report*, John Locke Foundation, February 2010.

A REINS Act for North Carolina

As discussed, the REINS Act for the federal government has been debated in successive terms of Congress since 2011. Under the REINS Act, a proposed major rule could take effect only if Congress passed (and the president didn't veto) a joint resolution to affirm it within 60 days after receiving a report of the proposed rule.

The REINS Act's statutory purpose is as follows:

> *The purpose of this Act is to increase accountability for and transparency in the Federal regulatory process. Section 1 of article I of the United States Constitution grants all legislative powers to Congress. Over time, Congress has excessively delegated its constitutional charge while failing to conduct appropriate oversight and retain accountability for the content of the laws it passes. By requiring a vote in Congress, the REINS Act will result in more carefully drafted and detailed legislation, an improved regulatory process, and a legislative branch that is truly accountable to the American people for the laws imposed upon them.*[51]

Only major rules would fall under the heightened Congressional oversight called for under REINS. Here is how they are defined:

> *The term "major rule" means any rule, including an interim final rule, that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget finds has resulted in or is likely to result in--*
>
> *"(A) an annual effect on the economy of $100,000,000 or more;*
>
> *"B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or*
>
> *"C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.*[52]

Potential concerns about the REINS Act include constitutionality, Congressional workload, and effectiveness.

With respect to constitutionality, the idea appears to have originated in an October 1983 lecture at Georgetown University Law Center delivered by Stephen Breyer, then a federal appellate judge, later appointed to the Supreme Court by President Bill Clinton. In his lecture, Breyer offered a qualified analysis "suggesting that Congress condition the exercise of a delegated legislative power on the enactment of a confirmatory statute, passed by both houses and signed by the President. It would be perfectly in keeping with the Constitution's language, Mr. Breyer noted, while simulating the function of the traditional legislative veto."[53] Numerous scholars defend the Act on the basis of Constitutionality[54] though there is not consensus within academic literature on that point.[55]

With respect to workload, the idea that drafting and passing joint resolutions to approve major rules would bog Congress down seems beside the point. If Congress failed to act, which would be a conceivable outcome if too many major rules were being proposed, and major rules were therefore not progressing into taking effect, such an outcome would seem in keeping with the REINS Act's intent. It would put the onus on the agencies to slow down and be more circumspect in proposing new regulations.

The other side of the coin would be the effectiveness question. It could be that instead of putting off debate over a potentially disruptive new major rule till it were to expire from Congressional neglect, the chambers would regard the passage of joint resolutions to affirm major rules in similar rote fashion as they do commemorative bills or joint resolutions to express appreciation for individuals, groups, events, and institutions. Perhaps joint resolutions could be omnibus measures to approve a slew of major rules.

While those outcomes are certainly possible, it would not change the fact that elected senators and representatives are accountable to the voters, who would decide how important a vote affirming a particular major rule, either by deliberation or by rote, ultimately is. It is hard to imagine Congressional complaisance regarding particularly notorious proposed regulations, such as many promulgated of late by the U.S. Environmental Protection Agency.[56] Furthermore, even rote bills are not always so; for example, Politifact.com noted that the House leadership in 2011 was keeping a pledge made in 2010 to "eliminate expressions of appreciation and recognition for individuals, groups, events, and institutions."[57]

REINS applied to North Carolina

The REINS principles would yield legislation that would do the following for North Carolina:

- Stipulate that only rules having "substantial economic impact" as defined by the Regulatory Reform Act of 2011[58] would be the ones to fall under REINS scrutiny
- Allow but not require the General Assembly to consider a joint resolution to approve any rule with substantial economic impact proposed by a state agency
- Mandate that without an affirming joint resolution from the legislature and the governor's signature (or allowance) within a set period of time (e.g., 60 days of publication in the North Carolina Register), the proposed rule with substantial economic impact would die
- Specify that a vote approving the joint resolution in the General Assembly is not a vote to enact the major rule as state law but instead is a grant of legislative authority to the agency to proceed with the proposed rule with substantial economic impact under the rule adoption process
- Retain the existing procedure for the General Assembly to disapprove rules outside of REINS scrutiny (for example, rules without substantial economic impact that draw 10 or more objections in the comment period), as ultimate authority should rest with the legislature and to avoid an unintended consequence of a complete legislative deference to agencies and commissions with respect to rules of lesser impact

This approach would retain REINS' important distinction between major and nonmajor rules. That distinction is key to REINS' balance between preserving efficacious action by government agencies in executing the will of the legislature and preventing deleterious action by them in usurping the position of the legislature. Going further, it would mean that the sitting legislature would not be bound by actions of previous legislatures in ceding too much authority to an agency.[59] On the other hand, a REINS approach that required legislative approval of small matters too would unnecessarily hamstring efficient governance.

A REINS Act for North Carolina should increase accountability and transparency, return improperly delegated legislative authority, and bring about more carefully crafted rules. Those outcomes would encourage a more exuberant rate of economic growth.

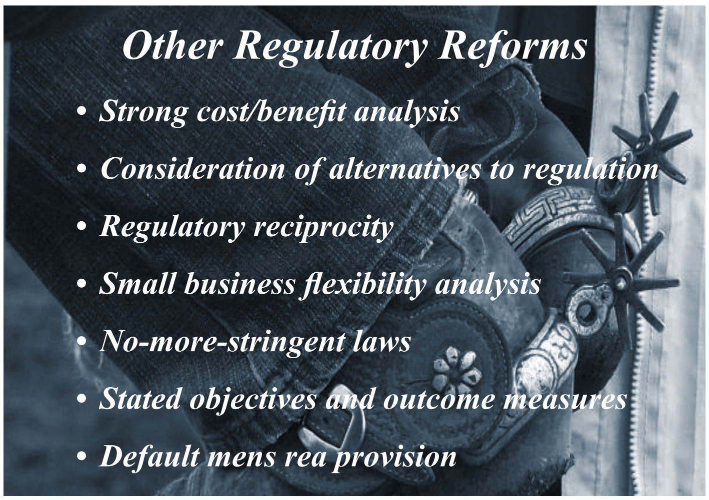
The North Carolina Supreme Court recognized in *Adams v. N.C. DENR* (1978) the propriety of the General Assembly delegating "a limited portion of its legislative powers" to agencies tasked to deal with intricacies the legislature could not effectively handle directly.[60]

It did not, however, consider state agencies the proper vehicles for deciding and dictating major matters of policy. The court also explicated in the same decision that "*such transfers of power [delegation] should be closely monitored to insure that the decision-making by the agency is not arbitrary and unreasoned and that* the agency is not asked to make important policy choices which might just as easily be made by elected representatives in the legislature.*"*[61] *(Emphasis added)*.

Crafted in such a manner as expressed above, a REINS Act for North Carolina should uphold its federal analog's purpose of increasing accountability for and transparency in the regulatory process, returning improperly delegated legislative authority, and bringing about more carefully crafted legislation and rules. Those outcomes should produce a less exuberant regulatory environment, which the bulk of peer reviewed economic literature suggests would encourage a more exuberant rate of economic growth.

Beyond REINS: Other Regulatory Reforms

Nevertheless, a vigorous effort to address the overarching problem of overregulation in North Carolina would not end with a REINS Act. The Regulatory Reform Act of 2013 included a sunset provision with periodic review,[62] which is an important building block. In their study of regulatory review processes used by the states, Sobel and Dove found the presence of a sunset provision to be "robustly statistically significant" in reducing a state's total level of regulations, with an impact that was "not only statistically but economically significant" for the state.[63]



Sobel and Dove concluded that, for policymakers seeking policies to bring about effective regulatory reform, "The single most important policy in a state is the presence of a sunset provision."[64]

Having recently instituted a sunset provision with periodic review, reform-minded North Carolina legislators can turn their attention to the new regulations instead of old ones. *Sunrise* provisions — laws affecting proposed new regulations, prior to adoption — would complement the sunset laws, not only by stopping unnecessary regulations before they start, but also by codifying the processes to which established regulations under periodic review would have to adhere because they would be evaluated on the same level of scrutiny as new rules.

Chief among sunrise provisions would be a state REINS Act. Several others are described briefly below.

Finally, another reform, default mens rea, would address the overcriminalization aspect of regulation.

Strong cost/benefit analysis

There is a foundation of cost/benefit analysis in the Regulatory Reform Act of 2011 (RRA 11) but it didn't include a rejection requirement whereby agencies would be required to reject a proposed rule if they found its estimated costs to exceed its estimated benefits. The decision to establish a law whose costs exceed its benefits should be up to the publicly accountable legislature.

To foster a regulatory environment more conducive to economic growth, the rulemaking process should encourage good, narrowly tailored rules adopted only when those rules are absolutely necessary. Furthermore, a rejection requirement should be carefully constructed so that it avoids becoming an "adoption requirement" just because benefits are found to exceed costs. "Benefits" should also be properly defined: benefits are not trespasses against individual rights, convenient measurable proxies for immeasurable goods (i.e., reduced carbon dioxide emissions assumed to mean a reduced global-warming risk), changes in behavior forced by mandates, etc.

Consideration of alternatives to regulation

Another reform in RRA 11 was to mandate that when an agency proposes a rule with substantial economic impact, it must consider at least two alternatives and explain why the alternatives were rejected. To expand on this reform, when the agency considers alternatives to its proposed rule, the agency should also be required to consider making no change along with the alternatives to consider and quantify. (Alternatives for a pre-existing rule under periodic review would correspondingly include no longer having the specific rule.) Agencies should be then required to choose the least burdensome alternative.

Regulatory reciprocity

Even if periodic review were in place, there would be no cap on the total stock of state regulation. As discussed above, Dawson and Seater have estimated great costs over time from accumulated federal regulation. Economists Patrick A. McLaughlin and Richard Williams have researched the negative economic and even safety effects of the growing stock of federal regulation and see "significant opportunities to improve the US economy via regulatory cleanup."[65]

An approach to incrementally trimming down this existing stock, especially of outdated rules with nevertheless lingering negative effects on the economy, would be to require agencies to retire two old rules for every new rule installed. This approach would also introduce opportunity cost to agency rulemaking, as agencies would have to consider the tradeoffs of creating a new rule.

Regulatory reciprocity in North Carolina could also lead to a voluntary speeding up of periodic review, as agencies might face internal pressure not to wait the full allowance of ten years to report unnecessary rules if identifying and culling them earlier would clear the path for a new rule it considered necessary.

To be the most effective, however, regulatory reciprocity should trade like rules for like. In other words, trading in two unnecessary minor rules for one major rule could have a net negative impact on the state's regulatory climate and economy, even though it would reduce the total stock of rules.

Small business flexibility analysis

Small businesses comprise 98 percent of employers in North Carolina, but they typically struggle with higher costs to comply with state and federal regulations because unlike big firms, they generally lack their own compliance and legal staffs. The federal government and most U.S. states have adopted small business flexibility analysis to help mitigate this cost disparity. North Carolina, however, is one of six states lacking some form of small business regulatory flexibility statute.[66]

Adopting small business flexibility analysis in North Carolina would not only help protect small businesses trying to comply with state regulations, but it would also extend to them protections afforded their peers in most other states.[67]

No-more-stringent laws

Given that the cost of compliance with regulations can be so burdensome, the decision to subject citizens and businesses in North Carolina to stricter rules than those already imposed by federal regulators should be that of the elected representatives of the people (legislators), not agency bureaucrats. "No-more-stringent" laws would prohibit state agencies, but necessarily not the legislature, from imposing stricter regulations in areas also covered by federal regulations.

RRA 11 applied the no-more-stringent principles to state environmental policy. The General Assembly should merely extend that reform to all state agencies.

Stated objectives and outcome measures

No matter how seemingly well considered it is, any new rule poses a real risk of unintended, unforeseen negative consequences. For this reason, agencies should be mandated to include stated objectives and outcome measures for regulations, so that when the time for review arrives, the regulations can be held accountable to them.

Furthermore, each rule creates its own winners and losers, and the winners of any regulation would be able to point to positive effects among themselves, regardless of whether the rule actually addresses its original purposes. It is therefore also important to be able to test a rule according to its foundational purposes, not any unintended, extraneous, isolated positive effects it has.

Default mens rea provision

Diligent efforts to address overregulation should also include efforts to address its consequential problem of overcriminalization. Restoring the common-law element of mens rea would repair the recent erosion of culpability requirements.[68] Where hasty regulators or legislators had neglected to include mens rea in their rules or laws, a default mens rea statute would assume mens rea was intact.

Under default mens rea, silence over mens rea would no longer mean lack of mens rea. It would mean presence of it. Should the regulators or lawmakers wish to enforce strict liability concerning a particular regulation or law, they would have to do so directly, not indirectly.

Recommendations

Regardless of whether Congress ultimately passes a federal REINS Act, members of the North Carolina General Assembly should draft a REINS Act geared toward state regulations. As Bachman, Head, and Conte found, the cost of state regulations in North Carolina is estimated in 2015 to be — at minimum — $3.1 billion annually.

That amount, however staggering, is nevertheless considered a mere fraction of the actual total cost of state regulations, owing to the difficulties in estimating the costs of several administrative code titles' regulations. The total cost of state regulations in North Carolina could be over $25 billion annually.

Year after year, those costs add up to render a state economy operating several levels lower than it otherwise would be. In practical terms, it means that households across North Carolina won't enjoy the higher living standards they could be enjoying. It means North Carolina communities, families, and individuals won't be as wealthy as they could be.

A state REINS Act should be only the first of many sunrise provisions enacted to slow down expanding regulations, however. Legislative leaders should also consider such reforms as strong cost/benefit analysis, full consideration of alternatives to regulation, regulatory reciprocity, small business flexibility analysis, no-more-stringent laws, stated objectives and outcome measures, and a default mens rea provision.

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The John Locke Foundation is a nonprofit, nonpartisan policy institute based in Raleigh. Its mission is to develop and promote solutions to the state's most critical challenges. The Locke Foundation seeks to transform state and local government through the principles of competition, innovation, personal freedom, and personal responsibility in order to strike a better balance between the public sector and private institutions of family, faith, community, and enterprise.

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Endnotes

1. H.R. 10, "Regulations From the Executive in Need of Scrutiny Act of 2011," The Library of Congress, thomas.loc.gov/cgi-bin/bdquery/z?d112:h.r.10:.
2. H.R. 367, "Regulations From the Executive in Need of Scrutiny Act of 2013," The Library of Congress, congress.gov/bill/113th-congress/house-bill/367.
3. H.R. 427, "Regulations From the Executive in Need of Scrutiny Act of 2015," The Library of Congress, congress.gov/bill/114th-congress/house-bill/427.
4. John W. Dawson and John J. Seater, "Federal Regulation and Aggregate Economic Growth," *Journal of Economic Growth*, Springer, vol. 18(2), June 2013, pp. 137–177; Working Paper version viewable at www4.ncsu.edu/~jjseater/regulationandgrowth.pdf. Studies they cite include Goff (1996), Nicoletti, Scarpetta, and O. Boylaud (2000), Bandiera, Caprio, Honohan, and Schiantarelli (2000), Nicoletti, Bassanini, Ernst, Jean, Santiago, and Swaim (2001), Bassanini and Ernst (2002), Djankov, LaPorta, Lopez-de-Silanes, and Shleifer (2002), Nicoletti and Scarpetta (2003), Alesina, Ardagna, Nicoletti, and Schiantarelli (2003), Kaufman, Kraay, and Mastruzzi (2003), Loayza, Oviedo, and Serven (2004, 2005), and Djankov, McLiesh, and Ramalho (2006).
5. Russell S. Sobel and John A. Dove, "State Regulatory Review: A 50 State Analysis of Effectiveness," *Working Paper* No. 12-18, Mercatus Center, George Mason University, June 2012, mercatus.org/publication/state-regulatory-review-50-state-analysis-effectiveness. For examples they cite Hale, Borys, and Adams (2011), Ardagna and Lusardi (2008), Klaper, Laeven, and Rajan (2006), and van Stel, Storey, and Thurik (2007).
6. John Hood, "Lower Taxes, Higher Growth: Scholarly Research Reveals Economic Benefits of Fiscal Restraint," *Spotlight* No. 452, John Locke Foundation, April 15, 2014, johnlocke.org/research/show/spotlights/303.
7. Hood, "Lower Taxes, Higher Growth."
8. Antony Davies, "Regulation and Productivity," *Mercatus Research*, Mercatus Center, George Mason University, May 8, 2014, mercatus.org/publication/regulation-and-productivity.
9. Clyde Wayne Crews Jr., "Ten Thousand Commandments 2015: An Annual Snapshot of the Federal Regulatory State," Competitive Enterprise Institute, May 8, 2015, cei.org/10kc2015.
10. Nicole V. Crain and W. Mark Crain, "The Impact of Regulatory Costs on Small Firms," Office of Advocacy, United States Small Business Administration (SBA), September 2010, viewable at sba.gov/advocacy/impact-regulatory-costs-small-firms.
11. See SBA Fact Sheet, "State Regulatory Flexibility Model Legislative Initiative," sba.gov/sites/default/files/advocacy/factsmodeleg_03.pdf.
12. Pam Brinegar, "Trends and Issues in State Professional Licensing," *The Book of the States* 2004, Council of State Governments, 2004, p. 447.
13. Dick M. Carpenter II, Lisa Knepper, Angela C. Erickson, and John K. Ross, "License to Work: A National Study of Burdens from Occupational Licensing," Institute for Justice, May 2012, ij.org/licensetowork.
14. Carpenter et al., "License to Work."
15. See "Appendix: Low-income entrepreneurship and voluntary certification" in Jon Sanders, "Voluntary Certification: An economically robust, freedom-minded reform of occupation licensing," *Spotlight* No. 464, John Locke Foundation, April 9, 2015, johnlocke.org/research/show/spotlights/314, pp. 5–6.
16. Kleiner, "Occupational Licensing: Protecting the Public Interest or Protectionism?" Policy Paper No. 2011-009, W.E. Upjohn Institute for Employment Research, 2011, viewable at dx.doi.org/10.17848/pol2015-009, p. 3.
17. Morries M. Kleiner, "Regulating Occupations: Quality or Monopoly?", *Employment Research* Vol. 13, No. 1, W.E. Upjohn Institute for Employment Research, January 2006, research.upjohn.org/cgi/viewcontent.cgi?article=1110&context=empl_research.
18. Dawson and Seater, "Federal Regulation and Aggregate Economic Growth."
19. Ibid.
20. Ibid.
21. RegData, regdata.mercatus.org accessed July 24, 2015.
22. Ronald Bailey, "Federal Regulations Have Made You 75 Percent Poorer," *Reason*, June 21, 2013, reason.com/archives/2013/06/21/federal-regulations-have-made-you-75-per.
23. Ellen Podgor, "Laws Have Overcriminalized Business Behavior," *The New York Times*, November 10, 2013, nytimes.com/roomfordebate/2013/11/10/prosecuting-executives-not-companies-for-wall-street-crime/laws-have-overcriminalized-business-behavior.
24. Harvey Silverglate, *Three Felonies a Day: How the Feds Target the Innocent*, New York: Encounter Books, 2009.
25. See discussion in L. Gordon Crovitz, "You Commit Three Felonies a Day: Laws have become too vague and the concept of intent has disappeared," *The Wall Street Journal*, September 27, 2009, wsj.com/articles/SB10001424052748704471504574438900830760842.
26. See discussion in "What were you thinking? As the criminal code expands, intent is often ignored," The Economist, January 24, 2015, economist.com/news/united-states/21640365-criminal-code-expands-intent-often-ignored-what-were-you-thinking.
27. Sobel and Dove, "State Regulatory Review."
28. Sobel and Dove, "State Regulatory Review."
29. See discussion in Sobel and Dove, "State Regulatory Review."
30. Paul Bachman, Michael Head, and Frank Conte, "The Regulatory Burden in North Carolina: What Are the Costs?" Beacon Hill Institute at Suffolk University, July 2015.
31. Ibid.
32. Ibid.
33. Ibid.
34. Ibid.
35. Ibid.
36. See David Henderson's tribute to Weidenbaum, "A Feel for Economics," in Regulation, Winter 2014-2015, object.cato.org/sites/cato.org/files/serials/files/regulation/2014/12/regulation-v37n4-2.pdf; cf. Murray Weidenbaum, "On Estimating Regulatory Costs," *AEI Journal on Government and Society*, May 1978, are.org/publication/on-estimating-regulatory-costs.

37. Bachman, Head, and Conte, "The Regulatory Burden in North Carolina."

38. North Carolina Office of Administrative Hearing (OAH), oah.state.nc.us/rules/register.

39. All volumes of the North Carolina Register are viewable online at the OAH web site.

40. "First in Freedom Index," *Policy Report*, John Locke Foundation, February 2015, johnlocke.org/research/show/policy%20reports/260, pp. 14–17.

41. Alan Woodlief, "Overcriminalization and overregulation in North Carolina," "Elon Law Now" faculty commentary series, May 15, 2015, elon.edu/e-net/Article/114446.

42. Ibid.

43. Q.v., John Hood and Don Carrington, "Warning Signs: A Survey of North Carolina Business Leaders on Competitiveness, Taxes, and Reform," *Policy Report*, John Locke Foundation, April 2002, johnlocke.org/research/show/policy%20reports/24; John Hood and Chad Adams, "Climate Change: A Survey of North Carolina Business Leaders on Competitiveness, Taxes, and Reform," *Policy Report*, John Locke Foundation, May 2004, /johnlocke.org/acrobat/policyReports/business_survey_report_2004.pdf; John Hood and Chad Adams, "Unsteady Ground: A Survey of North Carolina Business Leaders on Competitiveness, Taxes, and Reform," *Policy Report*, John Locke Foundation, November 2005, johnlocke.org/research/show/policy%20reports/63.

44. Hood et al., "Survey of North Carolina Business Leaders," various years.

45. See, e.g., Jon Sanders, "Not Written in Stone: How sunset laws can improve North Carolina's regulatory climate," *Spotlight* No. 439, John Locke Foundation, June 5, 2013, johnlocke.org/research/show/spotlights/289, and Daren Bakst, "Perdue's Regulatory Executive Order: A step in the right direction," *Spotlight* No. 401, John Locke Foundation, October 27, 2010, johnlocke.org/research/show/spotlights/252.

46. North Carolina Office of Administrative Hearings, October 16, 2014, ncoah.com/rules/RulemakingChart-PermanentRule.pdf.

47. Bakst, "Regulating the Regulators: Seven Reforms for Sensible Regulatory Policy in North Carolina," Figure 1, *Policy Report*, John Locke Foundation, February 2010, johnlocke.org/research/show/policy reports/207, p. 5.

48. Daren Bakst, "Regulating the Regulators." The figure charted permanent rules only and also noted that "Even when disapproving a rule, the legislature could make simple changes to it while keeping a significant part of it."

49. Source: North Carolina Legislative Library, ncleg.net/library/Documents/Legislative%20statistics.pdf, author's calculations.

50. North Carolina State Constitution, Article II, Section 1, ncga.state.nc.us/legislation/constitution/ncconstitution.html.

51. H. Rept. 114-214—"Regulations From the Executive in Need of Scrutiny Act of 2015," as reported by the Judiciary Committee, The Library of Congress, July 21, 2015, congress gov/congressional-report/114th-congress/house-report/214/1, accessed July 28, 2015.

52. Ibid.

53. "The Congressional Accountability Act," *The Wall Street Journal*, January 14, 2011, online.wsj.com/article/SB1000142405297020352 5404576049703586223080.htm; also see Paul M. Barrett, "REINS Act: Hogtie the Executive Branch!", *Bloomberg Businessweek,* March 24, 2011, businessweek.com/magazine/content/11_14/b4222010097754.htm.

54. See list at note 33 of (and including) Susan E. Dudley, Prepared Statement, Hearing on Federal Regulation: A Review of Legislative Proposals, Part II, Before the Homeland Security and Governmental Affairs Committee United States Senate, July 20, 2011, regulatorystudies.columbian.gwu.edu/files/downloads/Dudley_HSGAC_20110718.pdf.

55. For arguments contra REINS constitutionality see, e.g., Sally Katzen and Julian Ginos, "A Response to Professors Adler and Siegel Addressing the Constitutionality of the REINS Act," 2013 *N.Y.U. Journal of Legislation & Public Policy*, Quorum 13, April 15, 2013, nyujlpp.org/wp-content/uploads/2013/04/Quorum-2013-Katzen-REINS-Act-New.pdf, and Ronald M. Levin, "The REINS Act: Unbridled Impediment to Regulation," *Paper* No. 15-01-02, Legal Studies Research Paper Series, Washington University in St. Louis School of Law, January 2015, sensiblesafeguards.org/wp-content/uploads/SSRN-id2550870.pdf.

56. See, e.g., a loss to U.S. Gross Domestic Product estimated to be about $50 billion in "Assessing the Impact of Potential New Carbon Regulations in the United States," Institute for 21st Century Energy, U.S. Chamber of Commerce, May 28, 2014, energyxxi.org/sites/default/files/file-tool/Assessing_the_Impact_of_Potential_New_Carbon_Regulations_in_the_United_States.pdf; also see "Regulatory Tidal Wave: $515 Billion," Small Businesses for Sensible Regulations, sensibleregulations.org/resources/515-billion-dollar-tidal-wave, accessed July 29, 2015.

57. Louis Jacobson, "House GOP refrains from taking up purely commemorative bills," Politifact.com, March 25, 2011, politifact.com/truth-o-meter/promises/gop-pledge-o-meter/promise/688/eliminate-congressional-resolutions-to-honor-indiv.

58. S.L. 2011-398, (S.B. 781), ncga.state.nc.us/Sessions/2011/Bills/Senate/HTML/S781v6.html.

59. Dudley, Prepared Statement.

60. *Adams v. North Carolina Department of Natural and Economic Resources* (N.C. DENR), 295 N.C.683 (1978).

61. Ibid.

62. S.L. 2013-413, ncleg.net/gascripts/BillLookUp/BillLookUp.pl?Session=2013&BillID=h74&submitButton=Go.

63. Sobel and Dove, "State Regulatory Review."

64. Ibid.

65. Patrick A. McLaughlin and Richard Williams, "The Consequences of Regulatory Accumulation and a Proposed Solution," *Working Paper* No. 14-03, Mercatus Center, George Washington University, February 2014, mercatus.org/publication/consequences-regulatory-accumulation-and-proposed-solution.

66. SBA Fact Sheet.

67. For more discussion about small business flexibility analysis, see Reform Five in Bakst, "Regulating the Regulators."

68. See, e.g., John S. Baker Jr., "State Laws and Mens Rea Statutes," *White Paper*, Federalist Society, July 2012, accessible at fed-soc.org/publications/detail/mens-rea-and-state-crimes.

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"To prejudge other men's notions before we have looked into them is not to show their darkness but to put out our own eyes."

JOHN LOCKE (1632–1704) Author,
Two Treatises of Government &
Fundamental Constitutions of Carolina