

CLEANING UP THE REGULATORY TOOLSHED

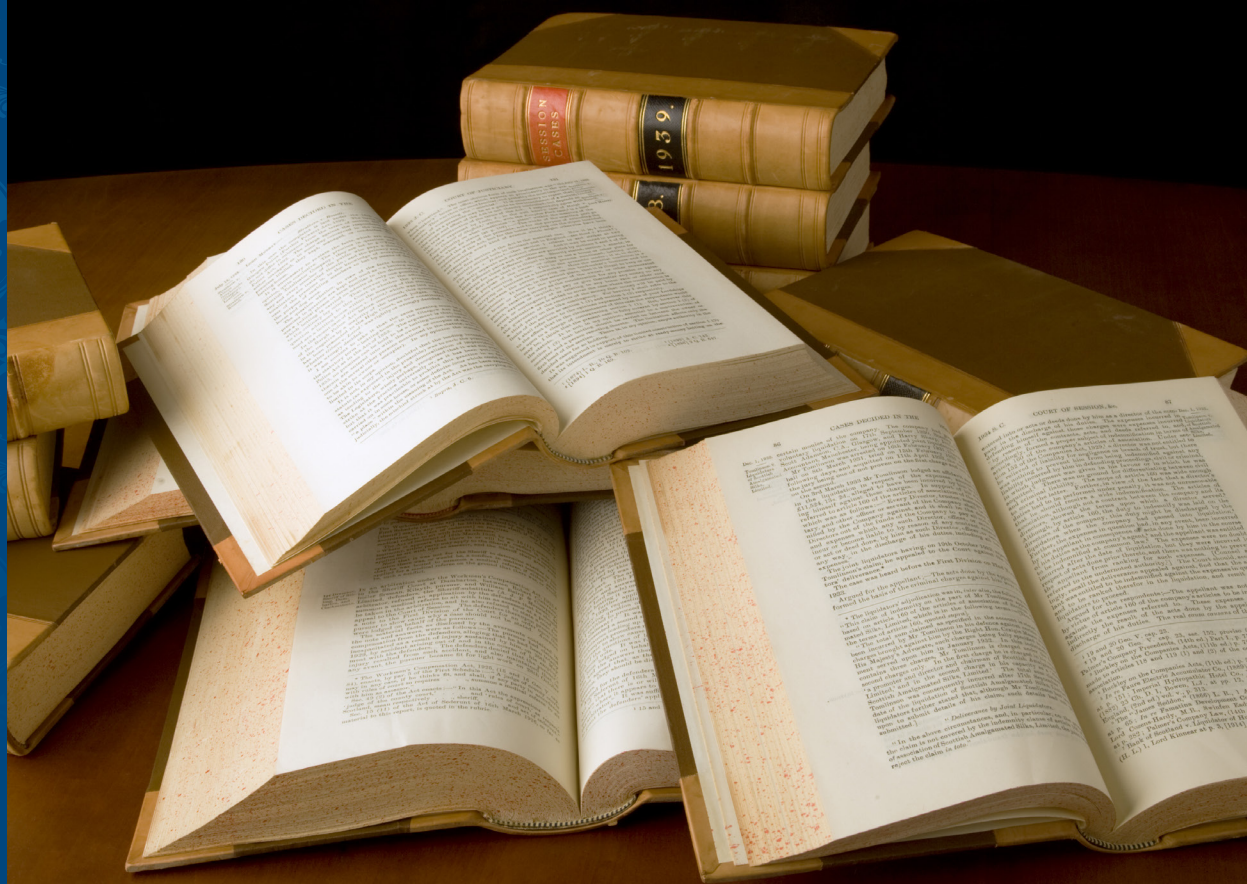
*How Sunset With Periodic Review
Is Working In North Carolina, and
How It Could Do Even More*

SPOTLIGHT

#488

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ABOUT THE AUTHOR



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Jon Sanders studies regulatory policy, a veritable kudzu of invasive government and unintended consequences. As Director of Regulatory Studies at the John Locke Foundation, Jon gets into the weeds in all kinds of policy areas, including electricity, occupational licensing, hydraulic fracturing, the minimum wage, poverty and opportunity, state rulemaking, film and other incentives programs, certificates of need, and cronyism. A classical liberal, which for the uninitiated doesn't mean a socialist who happens to like Mozart, Jon takes to heart the revolutionary declaration that all are created equal and endowed with the unalienable rights of life, liberty, the pursuit of happiness, property, and the enjoyment of the fruits of their labor. He shares the belief with Milton Friedman and Gary Becker that “the greatest beneficiaries of capitalism are those at the bottom of the income ladder” and agrees with Julian Simon that “the ultimate resource is people.”

Jon holds a master's degree in economics with a minor in statistics along with a bachelor of arts degree in English literature and language from North Carolina State University. This left brain/right brain confluence sometimes causes Jon to cite Jane Austen in discussing energy, Chaucer in lending regulations, C.S. Lewis in overregulation, and Shakespeare pretty much whenever he thinks he can get away with it. He's also prone to drop pop-culture references as the mood strikes.

Prior to joining the research division at JLF, Jon researched issues in higher education for the John William Pope Center for Higher Education Policy. Jon has also taught economics as an adjunct for N.C. State and the University of Mount Olive.

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CLEANING UP THE REGULATORY TOOLSHED

How Sunset With Periodic Review Is Working In North Carolina, and How It Could Do Even More

Few people noticed, but in 2013, the North Carolina General Assembly enacted a major reform: a sunset provision with periodic review for state rules.¹ It's a reform with proven effectiveness against red tape.

The reform created a systematic approach to dealing with a growing heap of state rules. By 2013, the total stock of state rules had grown to over 22,500.² Some applied to state government, but the rest affected private individuals and businesses in countless ways.

Without review, old rules can clutter up the regulatory “toolshed.” Rules can be — or become — unclear, unnecessary, outdated, obsolete, unduly burdensome, ineffective, and inefficient. Agencies might not even remember why they adopted them in the first place.³

As rules pile up, they can become real obstacles to economic growth.

There are many ways states try to deal with this problem, but most attempts have mixed results, at best. What makes a sunset provision with periodic review such a consequential reform is that it has proven effectiveness.

A 2012 study from the Mercatus Center at George Mason University found that most rules review processes used by the states yielded inconsistent, little, or no evidence of actual reduction in regulatory burdens. A sunset provision with periodic review, however, had “robustly statistically significant” evidence of the reform working. Not only that, its results were positive — and “economically significant.”⁴

Red tape is costly, and it just gets worse

The simple fact of the matter is this: red tape is bad for the economy. Here are the main takeaways from recent studies on government regulation:

- Regulations harm economic growth — a consistent finding across the great bulk of economic studies of the issue.⁵
- In 2014, federal regulation cost American consumers and businesses \$1.88 trillion

In 2015, state regulations cost North Carolina's economy as much as \$25.5 billion.

from lost economic productivity and higher prices.⁶

- Accumulating federal regulations slowed U.S. economic growth by 2 percent a year on average.⁷
- More lightly regulated industries grow much faster and produce at much greater rates than more regulated industries.⁸
- In 2012, if federal regulation remained at the same level it was in 1980, the U.S. economy would have been *\$4 trillion* bigger (about 25 percent bigger). That amounts to about *\$13,000 per person lost*.⁹
- In 2015, state regulations cost North Carolina's economy as much as \$25.5 billion.¹⁰

What do those annual loss figures mean? This: economic productivity has ongoing, compounding positive effects. *Preventing* economic productivity prevents those positive effects from coming about, meaning it has ongoing, compounding losses.

Those losses are not evident. They represent the

absence of positive effects of the economic productivity that is being prevented.

All those things are why cutting red tape and keeping regulatory burdens light and up-to-date are important for economic growth — personal income growth, too. A sunset with periodic review makes agencies drag old rules out of the toolshed, dust them off, and determine if they're actually needed.

How sunset with periodic review works in North Carolina

Under the reform of 2013, state rules are slated for automatic repeal (sunset) in 10 years without review (periodic review). After review, state rules fall in one of three categories:

- “Unnecessary.” A rule the agency no longer finds necessary. It gets repealed.
- “Necessary with substantive public interest.” A rule the agency considers necessary and has attracted public comment within the past two years. It must be readopted as if it is a new rule.
- “Necessary without substantive public interest.” A rule the agency considers necessary and hasn't attracted public comment. It is automatically re-upped.

North Carolina agencies have been in the process of reviewing rules since this reform passed. While the process is not yet half complete, its results so far have been encouraging.

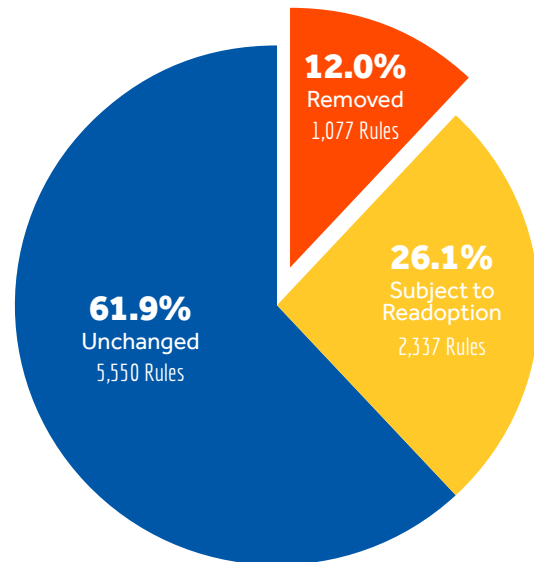
Already North Carolina is seeing its stock of rules streamline. Its regulatory burden is lightening. About one-eighth of the rules reviewed so far are being removed. Another one-fourth of rules have to undergo further scrutiny through the rule adoption process, meaning it's possible more are repealed.

Still, most (61.9 percent) of the rules reviewed so far have been retained. As a result, the chairman of the state Rules Review Commission has urged legislators to make the process stricter to ensure scrutiny of each rule — either the rule is repealed or sent back through the rulemaking process as if newly proposed. *Carolina Journal* reported:

“When 61 percent of the rules that are going through this process are staying in the code with no change, they're not getting the full exposure to public comment or careful examination,” [state Rules Review Commission chairman Garth] Dunklin said. That “bothers us from a policy standpoint.”

Results So Far of Sunset with Periodic Review in North Carolina

Of the 8,964 rules reviewed as of December 2016:



Source: Dan Way, “Rules review head wants more regulations scrapped,” *Carolina Journal*, January 4, 2017

In early December, Dunklin appeared before the Joint Legislative Administrative Procedure Oversight Committee and recommended the General Assembly revise the law to eliminate the option allowing agencies to simply maintain rules without review.

Eliminating the “middle bucket” would bring the law closer to its original objective, “simply that every bill in the code would expire on certain dates, and have to be readopted,” similar to a process other states use, Dunklin said.

“The concept there was to make agencies pick up and look at their rules, and examine their continuing usefulness and efficacy, expose them to the process of public comment that is a part of our rulemaking process,” Dunklin said. Outdated rules could be stricken from the code, and the remaining rules could be improved with renewed scrutiny.”¹¹

A bill progressing in the General Assembly as of this writing would take Dunklin's approach. It would remove

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the “with” or “without necessary public interest” classification of rules deemed “necessary.” As part of periodic review, any rule considered “necessary” would go back through the scrutiny of the rules adoption process as if new.¹²

Conclusion and recommendations

The 2013 reform that created a sunset provision with periodic review of state rules is already streamlining the state’s stock of rules. North Carolina’s regulatory burden is lightening, a welcome sign for economic growth and job creation.

Still, as Rules Review Commission chairman Dunklin pointed out, the reform could be stronger. The answer would be to **have all “necessary” rules go back through the rules adoption process** as if new. That would allow more thorough scrutiny of agency rules.

A sunset provision with periodic review prevents old rules from cluttering up the state regulatory toolshed and helps keep state rules up-to-date. Reform-minded lawmakers can now **consider other regulatory reforms**. The goal would be to produce good, common-sense rules only as needed and without unnecessarily hamstringing the economy. They include:

- *Red-tape reduction initiative* — working with state agencies to identify the full scope of regulatory requirements and reduce them to an agreed-upon goal (in British Columbia’s exemplary reform, that goal was reduction by one-third in three years; in fact they achieved a 37 percent reduction)¹³
- *One in, two (or more) out* — also known as *regulatory budgeting or regulatory reciprocity*, it is a stepwise reduction in red tape by creating an opportunity cost at the agency level for crafting new rules: for each

new one, the agency must retire a select number of old ones¹⁴

- *Default mens rea* — restoring the common-law protection against penalties for breaking a rule or law unwittingly and without intending to¹⁵
- *Small business flexibility analysis* — over two-thirds of states and the federal government have this ability to adjust regulatory burdens (such as compliance and reporting requirements) as they apply to small businesses, since regulations’ impact on them are disproportionately greater than on big businesses¹⁶
- *REINS principles* — any proposed rule that would impose a significant cost on the state’s economy must receive an affirming vote in the legislature, the lawmaking body accountable to the public, in order for it to continue in the rulemaking process¹⁷
- *Stated objectives and outcome measures* — a rule under review should be judged according to its foundational purpose, not whether it created an unintended benefit for a particular group who then has a lobbying interest in retaining it¹⁸
- *Strong cost/benefit analysis* — including a rejection requirement if a proposed rule would impose more costs than benefits (properly defined); a decision to establish a law whose costs exceed its benefits should belong to the publicly accountable legislature, not a state agency¹⁹
- *Full consideration of alternatives to regulation* — not only weighing the projected impacts of alternate rules, but also including in the comparison the projected impact of not adding a rule²⁰

ENDNOTES

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