

The background of the entire page is a dark green color. It is decorated with a repeating pattern of scissors, rendered in a slightly lighter shade of green. The scissors are oriented in various directions, some horizontally and some diagonally, creating a textured, patterned effect.

THE NEED FOR REGULATORY REFORM & TRANSPARENCY

BY ANDREW GILSTRAP





Across the United States, there are millions of regulations and restrictions that are holding back innovation and entrepreneurship.

Americans for Prosperity believes that peeling back these regulations would be an important step toward reigniting the American Dream. Thankfully there are a variety of options that state leaders can pursue to reduce the level of regulatory burdens and provide needed accountability and transparency to the regulatory process in their state.

TIER 1

HIGHEST PRIORITIV OPTIONS

REINS Act

(Regulations from the Executive in Need of Scrutiny)

One of the most impactful ways to prevent the imposition of substantial regulatory burdens is by enacting a reform proposal that is commonly known as a REINS Act. This reform not only slows the growth of new regulatory burdens but also ensures that democratically elected representatives have a voice in the rulemaking process. The reform involves two main elements. First and foremost, it requires that every regulation that is proposed be studied by independent bodies to determine its likely economic impact. These bodies, often housed within the state legislature, analyze the industries and communities that will be impacted by proposed regulations. Once they've assessed their likely impact, the regulations are categorized as either major or minor. Minor regulations will be those that are below a certain threshold of impact and will be vulnerable to a legislative disapproval resolution, which any member of the legislature can submit. Those regulations which exceed the threshold would be categorized as major and therefore require approval from both legislative chambers prior to enactment.

Several states, including Kansas, Florida, Wisconsin, and Indiana, have already implemented all or part of this legislative reform. Florida's law, which has been in effect since 2010, has substantially slowed the rate of regulatory growth and coincided with a period of substantial economic expansion.

- Florida REINS (2010) – CHAPTER 2010-279
- Wisconsin REINS (2017) – 2017 Wisconsin Act 57
- Indiana REINS-style law (2024) – Senate Enrolled Act 4
- Kansas REINS (2024) – House Bill 2648

STATE	YEAR ENACTED	FISCAL IMPACT THRESHOLD	LEGISLATIVE INVOLVEMENT	OVERSIGHT AUTHORITY
FL	2010	\$1 million or more over 5 years	Requires Legislative Approval	State Legislature
WI	2017	\$10 million or more over 2 years	Requires Legislative Approval	Joint Committee for Review of Administrative Rules
IN	2024	\$1 million or more over 2 years	Requires Legislative Approval	Budget Committee of the State Budget Agency
KS	2024	\$1 million or more over 5 years	Requires Legislative Approval	State Legislature

Source: Bradley Ward, Ph.D.'s creation based on statutory research

“For example, in Florida, the commissioner of agriculture is an elected state official not under the policy direction of the governor. In 2021, then-commissioner Nikki Fried attempted to initiate a statewide ban on Styrofoam. The Styrofoam ban worked its way through Florida’s rulemaking process and would have cost more than \$1 million over five years, triggering Florida’s legislative approval requirement. The legislature opted not to approve the rule, and the Styrofoam ban—and its high costs for Florida taxpayers—was defeated.

In other states and at the federal level without REINS, this million-dollar rule change would have been implemented unopposed. It would’ve cost taxpayers, and they would’ve had no say whatsoever. REINS ensures there are no costly regulations without representation.”

- Foundation for Government Accountability (2024)

Regulatory Sunsets

While some regulations may be valuable and necessary, that may not always be the case. As times change, they may become outdated or redundant. Instituting sunset provisions ensures that regulations are regularly reviewed and provides agencies with an opportunity to update or remove those regulations which are no longer effective. These sunset provisions generally stipulate that all regulations expire 5 to 10 years after their implementation, and they will often outline a process by which older regulations can be reviewed at regular intervals as well.

- Arizona Legislation for Regulatory Sunsets
- ALEC Model Policy





Ending Judicial Deference to State Agencies

In many states, state courts and judges overly defer to state regulatory agencies. This systemic bias against citizens undermines equality before the law and abdicates the judicial duty to say what the law is.

Last year, the U.S. Supreme Court ended *Chevron* deference that tipped the scales in favor of federal agencies in *Loper Bright v. Raimondo*. States should end systemic bias in favor of state agencies as well.

Model language from Pacific Legal Foundation:

State Legislatures can end the bias with two sentences.

In interpreting a state statute, regulation, or other sub-regulatory document, a state court or an officer hearing an administrative action may not defer to a state agency's interpretation of it, and must instead interpret its meaning and effect de novo.

In actions brought by or against state agencies, after applying all customary tools of interpretation, the court or hearing officer must exercise any remaining doubt in favor of a reasonable interpretation which limits agency power and maximizes individual liberty.

According to Pacific Legal Foundation, at least eight states explicitly defer to agency interpretations of statutes, rules, guidance, facts, or more, and roughly 30 state courts sometimes defer to agency interpretations. The states that have reformed their deference doctrines have done so in a variety of ways, including:

- 7 state judiciaries have limited deference to agencies;
- 6 states have enacted legislation limiting deference to agencies;
- And 1 state, Florida, limited deference through a ballot measure.

TIER 2

SECONDARY TARGETS

Economic Analysis Units

(Various State Models)

One of the major challenges that state-level decision-makers face when they are engaging with the regulatory process is a lack of clear information on the costs and benefits of regulations. To address this, many states have established semi-independent economic analysis units within the legislature, which are responsible for generating impartial information about the economic and fiscal impacts of proposed regulations. This tool is crucial for legislators undertaking a regulatory reform effort.

- ALEC Model

Regulatory Budgeting and Red Tape Rollbacks

Regulatory budgeting is a valuable method by which states can reduce the rate of regulatory accumulation. The concept is relatively simple but has a great ability to change the way in which regulators make decisions. First, the governor or legislature would set an annual cap on the total amount of new compliance costs associated with regulations on both a government-wide and agency-specific level. These caps serve as guardrails for agencies as they consider which regulations to implement. When implementing regulations with substantial new compliance costs, they would also need to weigh the costs of removing or scaling back existing regulations.

- Iowa's EO 10 and Red Tape Review
- Idaho's Red Tape Reduction Efforts

TIER 3

TERTIARY OPPORTUNITIES

Regulatory Sandbox

Rather than take a punitive action against an innovative business, regulators should take a more hands-off approach to new ideas or business models that they are less familiar with. A regulatory sandbox is one approach that can allow entrepreneurs or businesses with a novel idea to introduce their product or service to the market without the regulatory burdens that currently apply in that industry.

The genesis of this concept comes from the United Kingdom, which implemented their Project Innovate within the financial services sector. By the time it was fully implemented, the financial technology regulatory sandbox hosted nearly 700 participants. This was followed by nearly 57 similar programs across the world. In the United States, Arizona followed a similar model for their financial technology sandbox. Kentucky instituted this approach for their insurance industry. Utah implemented a legal services sandbox which ultimately served 2,000 Utahns with innovative models of legal services.

These sandboxes can be either industry targeted or universal. Examples of the industries that have been included in targeted regulatory sandboxes include fintech, legal services, agriculture, technology, and energy.

- Universal Regulatory Sandbox
- Targeted Regulatory Sandbox

Sunshine for Materials Incorporated by Reference

Regulations and other regulatory documents often incorporate or refer to a separate document without reprinting or providing access to the cited document. In some cases, a federal or state agency formally adopts private standards and makes them legally binding. This process of incorporation by reference reduces the size of regulatory documents, but in many cases, leaves the public and the regulated community without the ability to review the documents incorporated. Reform principles for providing access include:

1. Material incorporated by reference and not subject to copyright should be made available electronically in a place that can be easily found by regulated and interested parties.
2. If material is copyrighted, agencies should ask the owners of the copyright for permission to provide free online publication, or other methods of public access.
3. If copyright holders do not consent to free publication, agencies should work to provide appropriate access while still respecting the copyright interest.

We are unaware of any model legislation addressing transparency for industry-created standards incorporated by reference, but there is some good model language for proactive publication of documents used in statements of estimated regulatory costs in Florida's HB 305 (2025):

“(h) All documentation, assumptions, methods, and data used in preparing the statement of estimated regulatory costs shall be published on a publicly accessible website”

The Right on Transparency Coalition, led by AFP Foundation, is considering this for a 2025 model policy.

