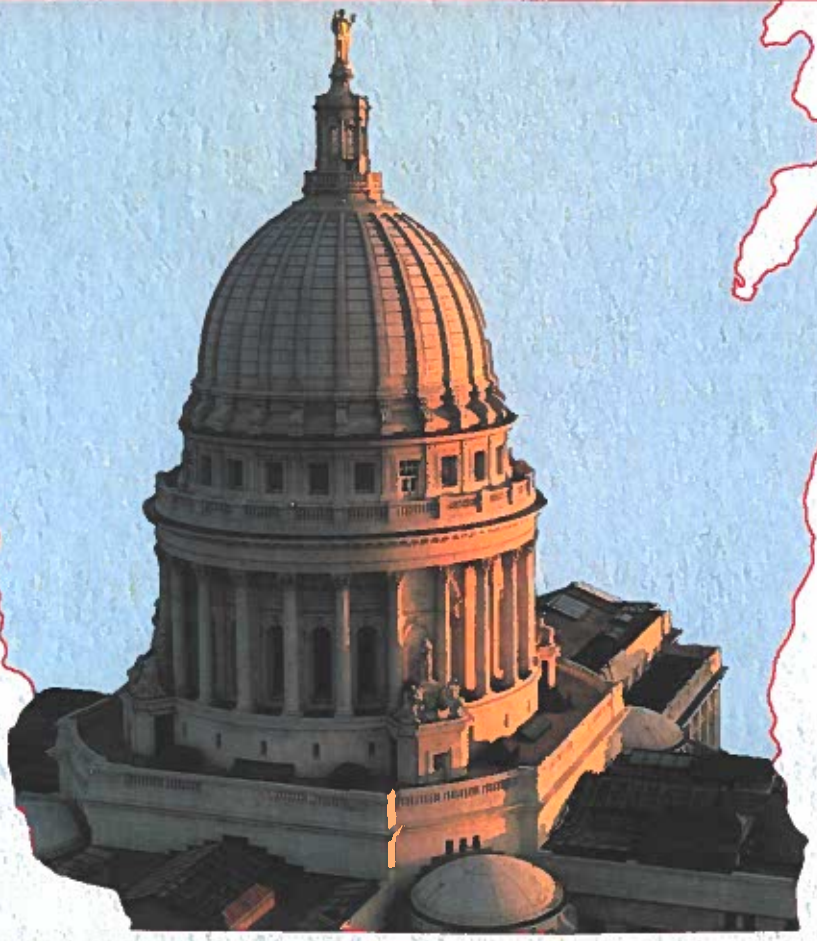
INSTITUTE FOR REFORMING GOVERNMENT

IRG CENTER FOR INVESTIGATIVE OVERSIGHT

WISCONSIN'S ADMINISTRATIVE REVOLUTION:

LESSONS FROM THE REINS ACT



FEBRUARY 2025

INSTITUTE FOR REFORMING GOVERNMENT

IRG CENTER FOR INVESTIGATIVE OVERSIGHT

ABOUT THE INSTITUTE FOR REFORMING GOVERNMENT

The Institute for Reforming Government, along with its partner organization IRG Action Fund, is focused on developing free-market and limited-government reforms, taking action on them, and getting results for Wisconsin. Founded in 2018, IRG has quickly grown into one of the state's largest think tanks, boasting an elite policy team with decades of experience in state and federal government, trade associations, and statewide campaigns. Most importantly, IRG gets results for the conservative movement in Wisconsin.

ReformingGovernment.org

ABOUT JAKE CURTIS

Jake is General Counsel and Director of the Center for Investigative Oversight at the Institute for Reforming Government. He brings a unique skill set by drawing on his years of experience as a lawyer, strategic advisor, and public official to navigate the intersection of law and policy. Throughout his career he has focused on government relations matters for both public and private sector clients.

Jake's diverse legal experiences have included practicing over fifteen years in private practice, serving as the Chief Legal Counsel at the Wisconsin Department of Natural Resources under Governor Scott Walker, as a policy advisor to a Wisconsin State Senator, and leading a groundbreaking litigation initiative at the Wisconsin Institute for Law & Liberty. Jake also served as an elected Ozaukee County Supervisor (2010-2014).

In light of these diverse experiences, Jake's legal and policy analysis has been featured in numerous publications, including The Wall Street Journal, The Hill, Washington Examiner, Washington Times, Real Clear Politics, National Review Online, The Federalist, and Milwaukee Journal Sentinel.

Jake is a graduate of the University of Wisconsin – Eau Claire, B.A., *summa cum laude*, 2005, the University of Wisconsin Law School, cum laude, 2008, the United States Air Force, Officer Training School, 2021, and the United States Air Force, The Judge Advocate General's Corps, 2022.

TABLE OF CONTENTS

- Outside of a decrease between 2021 and 2022, the overall number of regulatory restrictions in place in Wisconsin have increased since 2017.
- Except for 2011, the year when Executive Order #50 was issued by Governor Walker, the number of introduced scope statements has remained around 125, fluctuating between 100 and 150.
- The average number of permanent rules approved during the Walker Administration were significantly lower than the previous Doyle Administration. In the first year of the Walker Administration the number of permanent rules was reduced by almost 100.
- Outside of 2019, the permanent rules approved during the Evers Administration have at times been equal to or even below the Walker Administration average.
- While the average number of permanent rules passed during the Evers Administration could have been closer to the 2019 high of 166 (which would have far surpassed the Doyle Administration average), the average has instead remained below the Doyle Administration average and is actually closer to the less-than 100 average of the Walker Administration.
- While the REINS Act may not have reduced the overall number of regulations that have gone into effect post-REINS, it has certainly played a critical role in identifying extremely costly regulations that failed to adequately factor in costs to industry, local units of government, or ratepayers.

Executive Summary

> *"Perhaps the greatest impact of the administrative rules regulatory reforms put in place during the Walker-Kleefisch administration is represented by the number of hugely burdensome regulations that have been stopped in their tracks because of the courageous actions taken by key elected officials in Wisconsin. Executive branch officials must work with the Legislature to ensure the burdens of regulatory reforms do not overwhelm the regulated community's capacity to comply."*
>
> — JAKE CURTIS, GENERAL COUNSEL
> INSTITUTE FOR REFORMING GOVERNMENT

For years Congress has introduced the Regulations from the Executive in Need of Scrutiny ("REINS") Act, which would require congressional approval of major rules introduced by executive branch agencies that are determined to have an economic impact over a certain dollar amount. But like so many common sense policy proposals where Congress has refused to take on the challenge, states have led the way, serving as the key "laboratories of democracy"[1] for this important reform.

While states like Florida, Kansas, Indiana, and West Virginia deserve credit for advancing key administrative procedure reforms, including state level REINS Acts (West Virginia is unique in this respect and addressed in more detail below), no state better represents a stronger commitment to reforming the rulemaking process than Wisconsin.

Wisconsin's REINS Act, enacted in 2017 under the Walker-Kleefisch Administration, represents a pivotal effort to reform the administrative rulemaking process. Key provisions include:

- **Economic Impact Analysis:** Agencies must evaluate whether proposed rules will impose $10 million or more in implementation and compliance costs over a two-year period. Rules exceeding this threshold require legislative approval.
- **Strengthened Oversight:** The Act enhances the roles of the Department of Administration and the Legislature in reviewing scope statements and economic impacts of proposed regulations.

It is important to understand the complete story behind passage of the Wisconsin REINS Act, i.e. 2017 Wisconsin Act 57; however, more importantly, this report analyzes the impact of the REINS Act on the rulemaking process in Wisconsin since 2017. As detailed below, the REINS Act does not appear to have reduced the overall regulatory burden on state businesses and individuals, but

[1] Ironically, the phrase was coined by Supreme Court Justice Louis D. Brandeis, a 20th Century leader of the progressive movement, in his famous *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) dissent. For a full analysis of the Brandeis decision please see the American Enterprise Institute's Michael S. Greve March 2001 piece: Laboratories of Democracy | American Enterprise Institute - AEI

has likely prevented a gubernatorial administration that may be less inclined to closely evaluate the economic impact of proposed rules from blindly deferring to the proposal of new rules by administrative agencies. Put another way, but for the REINS Act, the number of overall regulations would have likely increased at a much higher rate and would have likely included costly regulations for key Wisconsin industries during the current Governor Evers administration. Additionally, this report analyzes several key anecdotal examples addressed below where the REINS Act (or at a minimum the other key reforms associated with the REINS Act) prevented proposed rules from taking effect that could have had substantial and detrimental economic impacts.

To be clear, the purpose of the REINS Act is not to "kill" administrative rules. Instead, it simply requires administrative agencies to make a good faith attempt to estimate the economic impact of proposed rules on not only the regulated communities, but local units of government, ratepayers, and individual residents. There may be situations where the Legislature agrees a proposed rule is necessary to protect health and safety, despite significant economic impact. Conducting a thorough cost-benefit analysis is the definition of policymaking. However, prior to the reforms enacted during the Walker-Kleefisch Administration, far too often the people's representatives did not even have a seat at the table. That all changed in 2011 and 2017 and the impact has been revealing based on several key regulatory metrics.

IRG asked the team at the Center for Research on the Wisconsin Economy ("CROWE") at the University of Wisconsin - Madison to establish a framework for reviewing these regulatory metrics.[2] Generally speaking, CROWE's recently released report (which is incorporated and referenced below), established several key data points which contributed to this report's findings, including the following:

- Outside of a decrease between 2021 and 2022, the overall number of regulatory restrictions in place in Wisconsin have increased since 2017.
- Except for 2011, the year when Executive Order #50 was issued by Governor Walker, the number of introduced scope statements has remained around 125, fluctuating between 100 and 150.
- The average number of permanent rules approved during the Walker Administration were significantly lower than the previous Doyle Administration. In the first year of the Walker Administration the number of permanent rules was reduced by almost 100.
- Outside of 2019, the permanent rules approved during the Evers Administration have at times been equal to or even below the Walker Administration average.
- While the average number of permanent rules passed during the Evers Administration could have been closer to the 2019 high of 166 (which would have far surpassed the Doyle Administration average), the average has instead remained below the Doyle Administration average and is actually closer to the less-than 100 average of the Walker Administration.
- While the REINS Act may not have reduced the overall number of regulations that have gone into effect post-REINS, it has certainly played a critical role in identifying extremely costly regulations that failed to adequately factor in costs to industry, local units of government, or ratepayers.

[2] IRG appreciates the diligent efforts of the CROWE team, including Co-Director Ananth Seshadri and Junjie Guo.

History of the REINS Act

In 2009, a 78-year-old Tea Party activist handed a member of Congress a piece of paper that quoted Article I, Section I of the U.S. Constitution that contained a simple legislative proposal: "All rules, regulations, or mandates that require citizens, state or local government financial expenditures must first be approved by the U.S. Congress before they can become effective."[3] And thus, the REINS Act was born.

That member of Congress was Rep. Geoff Davis (R-KY), who introduced the first REINS Act on October 8, 2009, in the 111th Congress. Since the first introduction, the REINS Act has been introduced and in some Congresses passed in the House, but has never passed the Senate.[4]

Congress	Sponsors	Results
111th	Rep. Geoff Davis (R-KY) Sen. Jim DeMint (R-SC)	Introduced
112th	Rep. Geoff Davis (R-KY) Sen. Rand Paul (R-KY)	Passed the House 241-184 on December 7, 2011.
113th	Rep. Todd Young (R-IN) Sen. Rand Paul (R-KY)	Passed the House 232-183 on August 2, 2013.
114th	Rep. Todd Young (R-IN) Sen. Rand Paul (R-KY)	Passed the House 243-165 on July 28, 2015.
115th	Rep. Doug Collins (R-GA) Sen. Rand Paul (R-KY)	Passed the House 237-187 on January 5, 2017. U.S. Senate Homeland Security and Governmental Affairs Committee passed a version of the bill out of committee.
116th	Rep. Jim Sensenbrenner (R-WI) Sen. Rand Paul (R-KY)	U.S. Senate Homeland Security and Governmental Affairs Committee passed the REINS Act on a party-line vote of 8-5.
117th	Rep. Kat Cammack (R-FL) Sen. Rand Paul (R-KY)	
118th	Rep. Kat Cammack (R-FL) Sen. Rand Paul (R-KY)	Passed the House 221-210 on June 14, 2023.

These efforts at the federal level have led to increased interest from state lawmakers. In 2010, Florida enacted a version of the REINS Act that requires legislative approval of agency rules, based on an economic impact analysis showing whether a rule, directly or indirectly, is likely to (i) have an adverse impact on economic growth, private-sector job creation or employment, or private-sector

[3] See We were never closer to seeing REINS Act become law (jacksonsun.com).

[4] For a full history of the REINS Act at the federal level, see the following Ballotpedia analysis: REINS Act - Ballotpedia.

investment, (ii) have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation, or (iii) increase regulatory costs, including any transactional costs "in excess of $1 million in the aggregate within 5 years after the implementation of the rule."[5] The bill was passed over former Governor Charlie Christ's veto, who argued in his veto message that "instead of addressing regulatory costs, this bill encroaches on the separation of powers."[6]

In 2024 both Indiana and Kansas passed state-level REINS Acts. On March 13, 2024, the Indiana Governor signed Senate Bill 4 into law, requiring review of rules with implementation and compliance costs of $1 million or more over a two-year period by the state's Budget Committee. On April 29, 2024, the Kansas Legislature overrode the Governor's veto and enacted House Bill 2648, requiring legislative approval of rules with implementation and compliance costs of $1 million or more over a five-year period. West Virginia's Administrative Procedure Act requires Legislative approval for *any* rule - "When an agency proposes a legislative rule, other than an emergency rule, it shall be deemed to be applying to the Legislature for permission, to be granted by law, to promulgate such rule as approved by the agency for submission to the Legislature or as amended and authorized by the Legislature by law."[7]

REINS States	Year Passed	Economic Impact Threshold
Florida	2010	$1 million over 5 years
Wisconsin	2017	$10 million over 2 years
Indiana	2024	$1 million over 2 years
Kansas	2024	$1 million over 5 years
West Virginia*	1994	*Any legislative rule*

Arizona represents a prime example of the difficulties reformers in certain states have faced in passing state-level REINS Acts. In May 2023 and April 2024, the Arizona Legislature passed REINS-style acts, only to have Governor Katie Hobbs exercise her veto authority.[8] Less than two months later, the Arizona Legislature approved a ballot measure for the November 5, 2024 ballot that if approved would have "prohibited a proposed rule from becoming effective if that rule is estimated to increase regulatory costs by more than $500,000 within five years after implementation, until the legislature enacts legislation ratifying the proposed rule." Arizona voters rejected the measure, with 53.31% voting against the measure and 46.69% voting to approve.

---

[5] See Laws of Florida, Chapter 2010-279 (engrossed version found here: loaddoc.aspx (myfloridahouse.gov).

[6] For a full review of Florida's REINS Act, see the Ballotpedia overview, found here: Florida REINS-style state law - Ballotpedia.

[7] W. Va. Code Ann. sec. 29A-3A-10. *See* 1994 Enrolled Committee Substitute for House Bill 4066, found here: 1994-RS-HB4066-SUB ENR_signed.pdf.

[8] For a full review of the Arizona attempts to pass a state level REINS Act, see the Ballotpedia overview, found here: Arizona Proposition 315, Legislative Ratification of State Agency Rules that Increase Regulatory Costs Measure (2024) - Ballotpedia.

The Wisconsin Administrative Revolution

No state better represents a stronger commitment to reforming the rulemaking process than Wisconsin.[9] Fueled by grassroots energy and the desire to reform state government, under the leadership of the Walker-Kleefisch Administration, Wisconsin set off on a bold course. While much attention was focused on the historic Act 10 legislation that wrested away bargaining power from public sector union bosses to the benefit of Wisconsin's hard-working taxpayers, the Administration began working with reform-minded legislators to address the administrative state that for far too long had left state agencies with nearly limitless power to exert policy preferences over the will of the elected Legislature. Wisconsin passed a REINS Act in 2017, but the story behind its administrative revolution really started in 2011 with the election of Governor Scott Walker and legislative allies that were willing to take on bold reforms to reign in the administrative state.

Much of what we now consider the standard rule-making process in Wisconsin was first set out in 2011 Act 21.[10] At its core, Act 21 provided that no agency may implement or enforce any standard, requirement, or threshold (including as a term or condition of any license it issues) unless such action is explicitly required or permitted by statute or rule. Gone are the days of implied or perceived authority. Additionally, for each proposed rule, the act required agencies to submit a "statement of scope" to the governor for review and prepare an economic-impact analysis relating to specific businesses, business sectors, public-utility ratepayers, local governmental units, and the state's economy as a whole.

Six years later, 2017 Act 39 addressed concerns over the lengthy periods of time that agencies were given to promulgate rules.[11] An agency must now submit a proposed rule to the Legislature before a scope statement expires, resulting in a 30-month deadline. This requirement adds certainty to the process for the regulated community. Act 108 created an expedited process for the repeal of certain "unauthorized rules."[12] If the law that authorized a rule's promulgation has since been repealed or amended, the rule is considered "unauthorized" (note the connection to Act 21). Any such rules, in addition to rules that are obsolete, duplicative, superseded, or economically burdensome, must be included in a biennial report to the legislature's Joint Committee for the Review of Administrative Rules ("JCRAR"). The report must also describe any actions taken by an agency, if any, to address each of the problematic rules listed.

---

[9] After ranking second in the 2023 State Policy Network ("SPN") Federalism Scorecard, Wisconsin moved up to number one in the recently released 2024 Scorecard, found here: 2024+Federalism+Scorecard+-+Center+for+Practical+Federalism.pdf. As Governor Walker and IRG have argued, the findings of the report are telling and make clear internal and external controls should receive bipartisan support. Recent history has shown that control of the White House and Congress is in a continuous cycle of change. A "friendly" federal government may two years later be considered an adversary to those in state government. But this shouldn't be the case. Whether a state is red, blue or purple, it should ensure that the "will of the people," best represented by members of the state legislature, holds state executive agencies accountable for the actions of their staff. And in so doing, it makes the state less susceptible to federal intrusion into the policy making process. *See* Wisconsin blazed trail in limiting government overreach, empowering taxpayers - Washington Times.

[10] The full 2011 Act 21 legislative history is found here: 2011 JR1 Assembly Bill 8.

[11] The full 2017 Act 39 legislative history is found here: 2017 Senate Bill 100.

[12] The full 2017 Act 108 legislative history is found here: 2017 Assembly Bill 317.

On top of these acts, the Wisconsin Supreme Court issued its groundbreaking decision in *Tetra Tech v. Wisconsin Department of Revenue*.[13] The Court's lead opinion, authored by former Justice Daniel Kelly (appointed to the Court by Governor Walker) ended its "practice of deferring to administrative agencies' conclusions of law." The Legislature ultimately codified the new standard in 2017 Act 369.

In addition to these key administrative law reforms, the Wisconsin Legislature embraced the REINS Act and enacted 2017 Act 57.[14] Wisconsin agencies must now determine whether a proposed rule will impose $10 million or more in implementation and compliance costs over a two-year period. If there is such a finding, an agency may not promulgate the rule absent authorizing legislation or germane modification to the proposed rule to reduce the costs below the $10 million threshold. In addition, the Department of Administration must review an agency's scope statement prior to presentation to the governor to ensure an agency has explicit authority to promulgate a given rule (again, note the connection to Act 21).

The originating legislation, Senate Bill 15, received a public hearing on March 30, 2017. The bill authors included Senator Devin LeMahieu, now the Senate Majority Leader, and Rep. Adam Neylon. Registering in support of the bill included Wisconsin Manufacturers & Commerce ("WMC"), Americans for Prosperity ("AFP"), ABC of Wisconsin, the American Petroleum Institute, the Dairy Business Association, the Metropolitan Milwaukee Association of Commerce ("MMAC") and the National Federation of Independent Business ("NFIB"). The bill supporters focused on the important role the Legislature should play in approving major administrative rules, the impact of rules on statewide economic development, and the ability of elected officials, responsive to the will of the people, to retain the ability to exercise oversight over agencies and unelected government officials. Key testimony included the following:

KEY TESTIMONY

"The most important reform is the $10 million cap. This will ensure very expensive rules are subject to additional scrutiny by the Legislature. It will also allow the public to hold individual legislators accountable for expensive rules.

Perhaps the best example of when the $10 million cap could have been valuable is when the so-called "Phosphorus Rule" was first enacted in 2010. We know today that the rule has a projected cost of $7 billion (including interest) on businesses and local governments. Despite this cost, in 2010, not even a committee of the Legislature had to vote on the rule."

DEVIN LEMAHIEU
STATE SENATOR

[13] Full decision found here: Frontsheet.

[14] The full 2017 Act 57 legislative history is found here: 2017 Senate Bill 15.

"We in the legislature are held accountable by Wisconsin citizens every election cycle. Bureaucrats in state agencies are accountable only to their agency heads. This bill will ensure officials elected by Wisconsin citizens are able to hold state agencies accountable, and have the necessary oversight over rules that impact Wisconsin citizens and businesses."

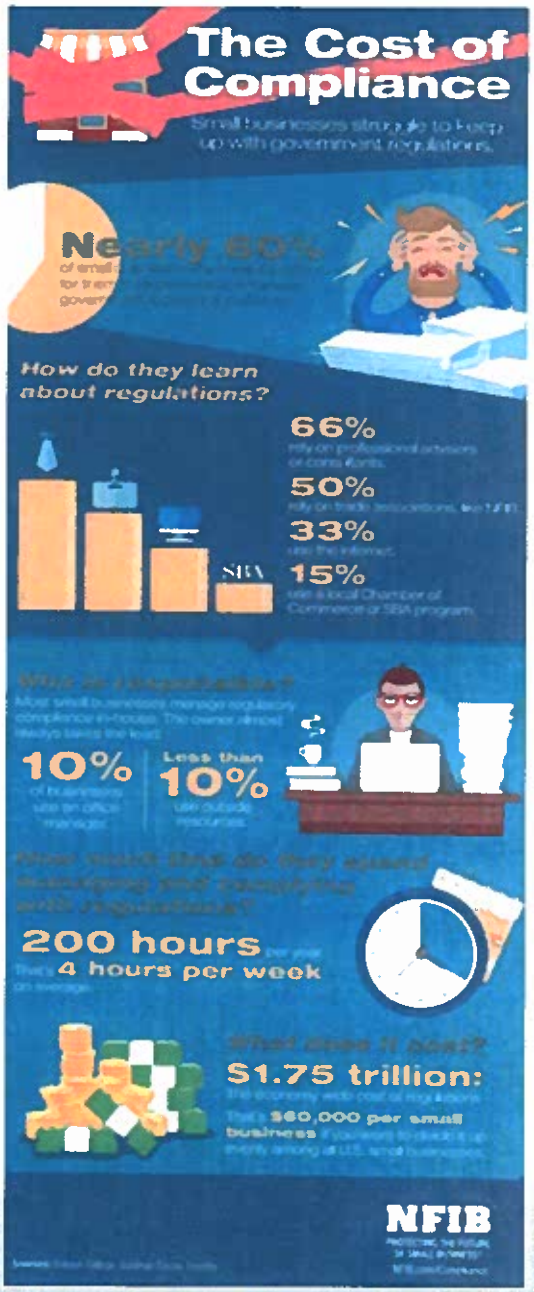
STATE REPRESENTATIVE
ADAM NEYLON
98TH ASSEMBLY DISTRICT

"Senate Bill 15 builds on many of the provisions of these earlier laws which were enacted by the Legislature specifically for small businesses, and recognizes the importance of bringing outside expertise into the rulemaking process - either through economic impact analysis or through action by the Legislature, whenever regulations have an impact of $10 million or more implementation or compliance costs.

In fairness to the agencies and to the bureaucrats responsible for drafting and enforcing compliance with regulations, they often simply lack the expertise or resources to know the impact of regulations on the regulated.

Senate Bill 15 requires public hearings before the formal drafting of a new regulation - a key step to helping public officials understand the actual cost and challenges with complying with regulations before they move through the process."

NFIB
The Voice of Small Business.



"Finally, Senate Bill 15 makes Wisconsin's administrative rule-making process more responsive to the marketplace by allowing either a co-chairperson of JCRAR or JCRAR as a whole, to request the preparation of an independent economic impact analysis for a proposed rule. State agencies often lack the technical expertise and private sector experience to discern the true compliance costs of a proposed regulation. Independent analysis from trained economists is a valuable new tool that state legislators can utilize when there is uncertainty regarding the financial impact of a proposed rule on small, independent businesses.

Senate Bill 15 adds more accountability to the administrative rule-making process by requiring passage of separate legislation for an agency to promulgate a rule that would result in implementation and compliance costs of $10 million or more over any two-year period. The full compliance costs of a proposed rule often become known only after the rule-making process has begun. If those costs exceed this threshold, it is appropriate for state lawmakers to determine whether the state agency can proceed with promulgation of the proposed rule."

WIB
THE LEADING VOICE FOR WISCONSIN SMALL AND INDEPENDENT BUSINESSES

"Such costly regulations are few and far between, but when they happen they are economy-changing. As an example, look at the most recent rule that would have hit this trigger: DNR's changes to the phosphorous effluent standards back in 2010. DNR made the decision that our state's water quality standards needed to be updated. They lowered the phosphorous standard by 90%, resulting in the most stringent standard in the nation. Subsequent studies on the rule by the state found it would create widespread social and economic harm, and projected costs of up to $7 billion statewide. The impacts of this rule are just now being felt as permits are only now being renewed and dischargers are beginning to deal with the stricter limitations. Not a single legislator voted to approve this regulation, and yet it has caused significant regulatory uncertainty and added costs for our state."

WMC
Wisconsin Manufacturers & Commerce

"The job creation potential of this reform is sizeable. It will provide long-term regulatory certainty to small businesses and large employers alike. Freeing job creators from the often costly whims of unelected and unaccountable bureaucrats makes it casier for them to make investment decisions that lead to job growth and greater prosperity in our state."

AMERICANS FOR PROSPERITY
WISCONSIN

The only registrations against the bill included Clean Wisconsin, River Alliance of Wisconsin, the Sierra Club, and the Democracy Campaign. The only statement in opposition was provided by the local chapter of the Sierra Club:

> *"The REINS Act, or the Regulations from the Executive in Need of Scrutiny Act, would require any proposed new regulation with estimated costs of compliance over $10 million to be approved by the state legislature, regardless of estimated benefits. Any regulation which docs not gain approval from the legislature within 70 days would automatically fail. Passage of the bill would place a great burden upon the legislature to review and approve agency regulations on time and in a politically charged climate, and in many cases without the necessary technical expertise that state agencies possess. The bill, which has a federal counterpart, has therefore been predicted by many to grind the regulatory process to a halt. Ultimately, this will result in far fewer regulations, many of which may be sorely missed as environmental, safety, and health standards correspondingly fall."*
>
> SIERRA CLUB
> WISCONSIN CHAPTER

Passage was recommended in committee on April 26, 2017 on a 3-2 vote and it passed the Senate on May 3rd on a 19-14 vote, with one Republican voting no. The bill passed the Assembly on June 14th on a party line 62-34 vote and was signed into law by Governor Walker on August 9th.

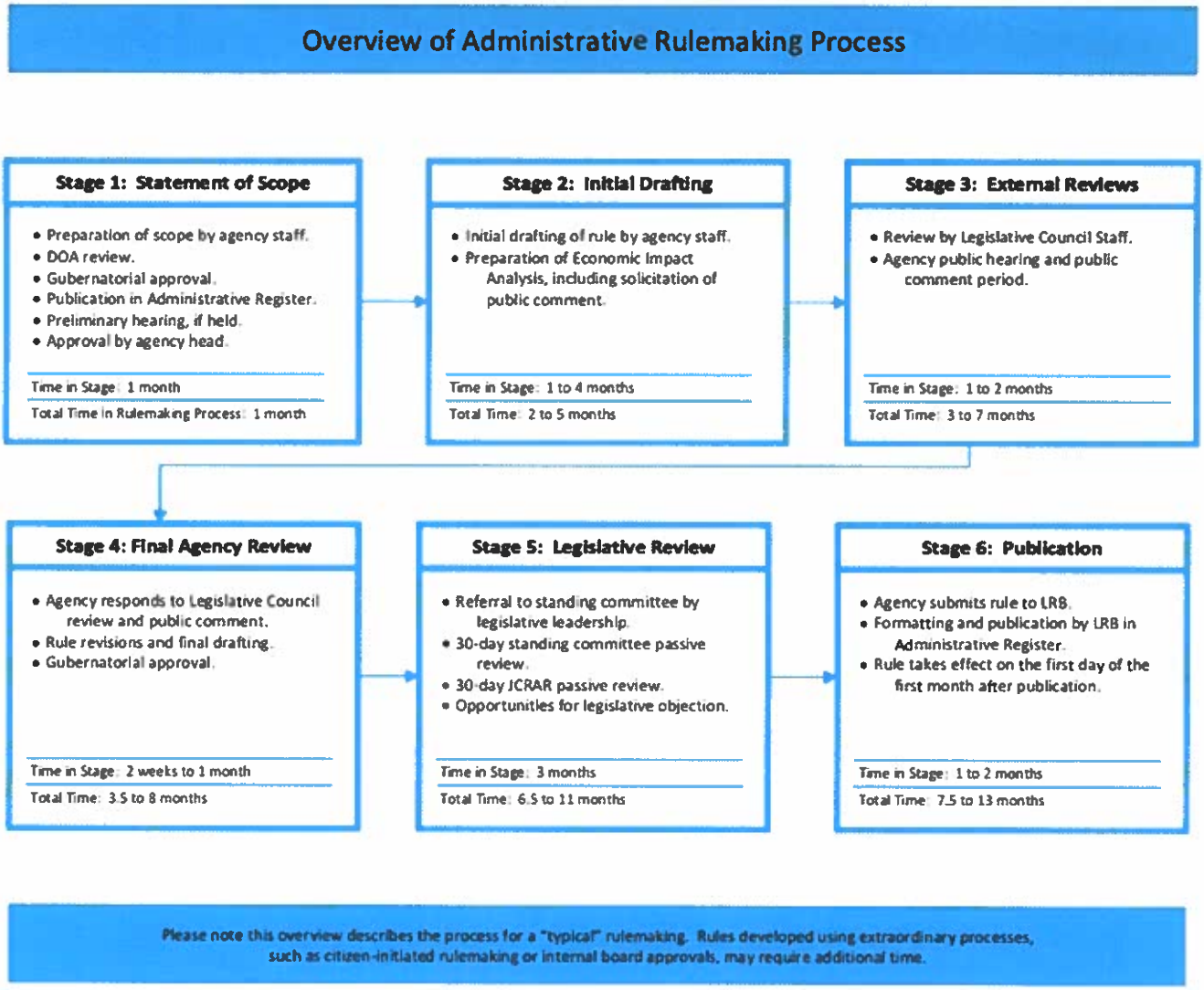
The Wisconsin REINS Act emphasized the role of statements of scope and initial agency rule drafting. It provides for the review of an agency's scope statement by the Department of Administration ("DOA") prior to presentation of the scope statement to the Governor for his or her approval. DOA must determine whether the agency has explicit authority to promulgate the rule. Scope statements must also be provided to the Co-Chairs of JCRAR upon publication of the statement with the Legislative Reference Bureau ("LRB"). There is also an avenue for preliminary comment and hearing on a statement of scope, which may be requested by a JCRAR co-chair or held by the agency on its own initiative.

Critically, the reform requires an economic impact analysis, directing an agency to determine whether a proposed rule has $10 million or more in implementation and compliance costs over a two-year period. Upon such a finding, an agency may not promulgate a rule absent authorizing legislation or germane modification to the proposed rule to reduce the cost below the $10 million threshold. The process for authorizing such rules does not apply to certain rules promulgated by the Department of Natural Resources ("DNR") if those rules are no more stringent than required under the federal Clean Air Act. In addition, prior to gubernatorial approval, the Act authorized a co-chair of JCRAR to request and contract for the preparation of an independent EIA of a proposed rule.

Finally, the Act created a new procedure that would, as an alternative to a temporary objection process under current law, allow JCRAR to indefinitely object to any proposed rule, for the same

reasons a temporary objection may be made under current law. An agency would not be able to promulgate a rule following an indefinite objection unless a bill authorizing such a promulgation was enacted into law. With respect to emergency rules, the Act specified that the process for preliminary comment and hearing on a statement of scope applied to the promulgation of an emergency rule, but that emergency rules are not subject to the limitations relating to authorization of high-cost rules, as described above.

In light of the above requirements, the Wisconsin administrative rulemaking process has resulted in a robust and thorough review by both the executive and legislative branches, resulting in the following framework:[15]

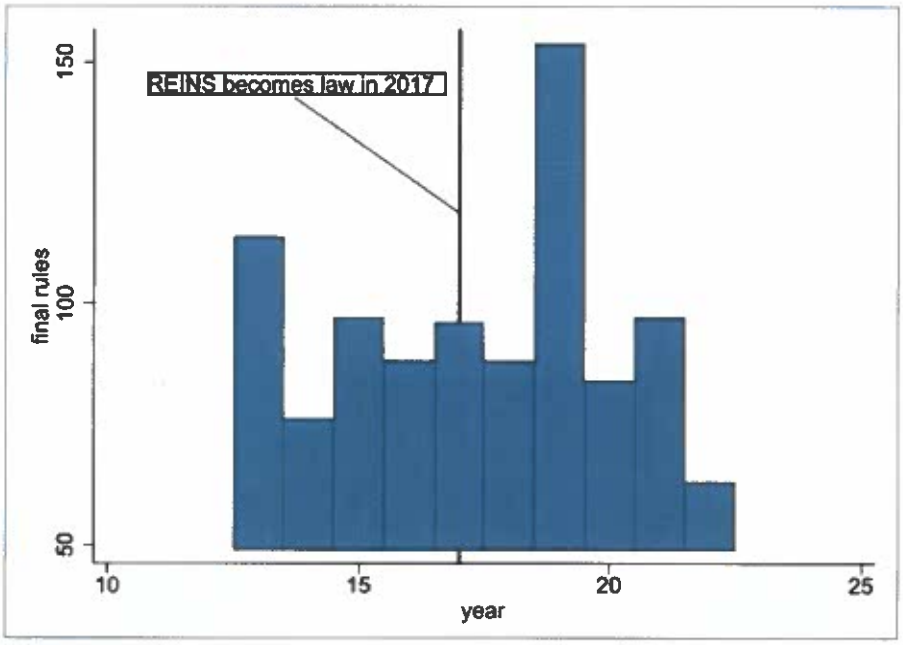


[15] See rule_making_process_flowchart.pdf (wisconsin.gov).

Impact of the REINS Act

As described in more detail below, while the cumulative number of regulations has not decreased since passage of the REINS Act in 2017, the data reveals that the Act very likely slowed the rate of growth of administrative rules year over year. With respect to scope statements, except for 2011, the year when Executive Order #50 was issued by Governor Walker, the number of introduced scope statements has remained around 125, fluctuating between 100 and 150. And with respect to the number of annual permanent rules, outside of 2019, the permanent rules approved during the Evers Administration have at times been equal to or even below the Walker Administration average. More to the point - while the average number of permanent rules passed during the Evers Administration could have been closer to the 2019 high of 166 (which would have far surpassed even the Doyle Administration average), the average has instead remained below the Doyle Administration average and is actually closer to the less-than 100 average of the Walker Administration.

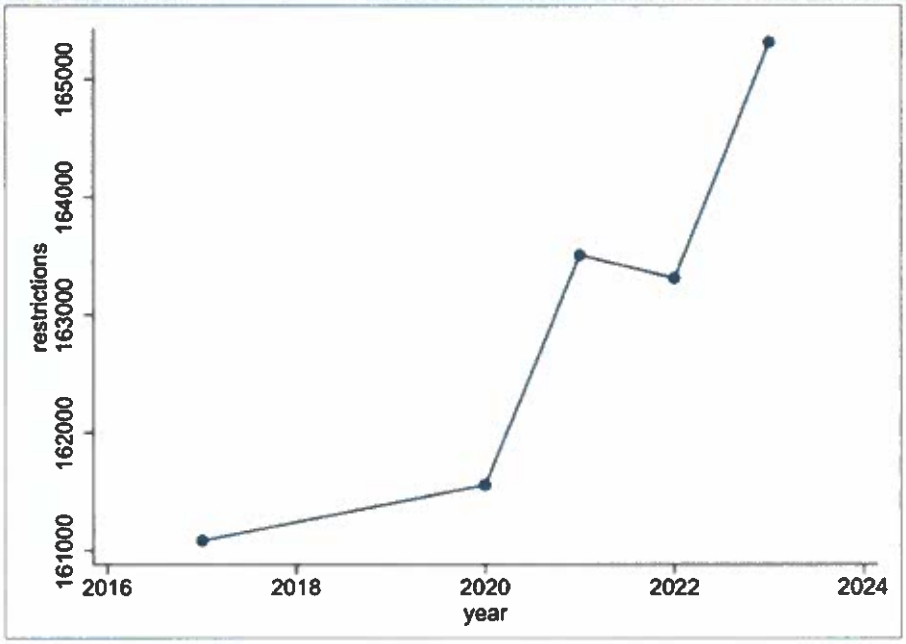
The impact of the Wisconsin REINS Act could be assessed by analyzing the number of final rules approved annually or by the impact of the Act on the overall number of restrictions in place. As to the former, a review of the number of final rules approved between 2013 and 2022 reveals that the number actually *increased* in certain years following passage of the REINS Act in 2017.[16] However, a key event occurred in 2019 that may explain the increase in the number of final rules - the election and swearing in of Governor Tony Evers. In 2018 Governor Evers defeated former Wisconsin Governor Scott Walker, who signed into law the REINS Act and supported its implementation. A close review of the number of final rules approved reveals a significant increase in 2019, followed by a relative return to previous years' averages between 2020 and 2021. In fact, in 2022, the number of final rules approved was lower than every previously analyzed year, in some cases by a significant margin.



Graphic 1

[16] A special thanks to Patrick McLaughlin, Senior Research Fellow at the Mercatus Center at George Mason University for his assistance in generating the data for the number of final rules approved between 2013 and 2022.

As to the latter data set, outside of a decrease in the overall number of regulatory restrictions in place between 2021 and 2022, the number of restrictions have increased since 2017.



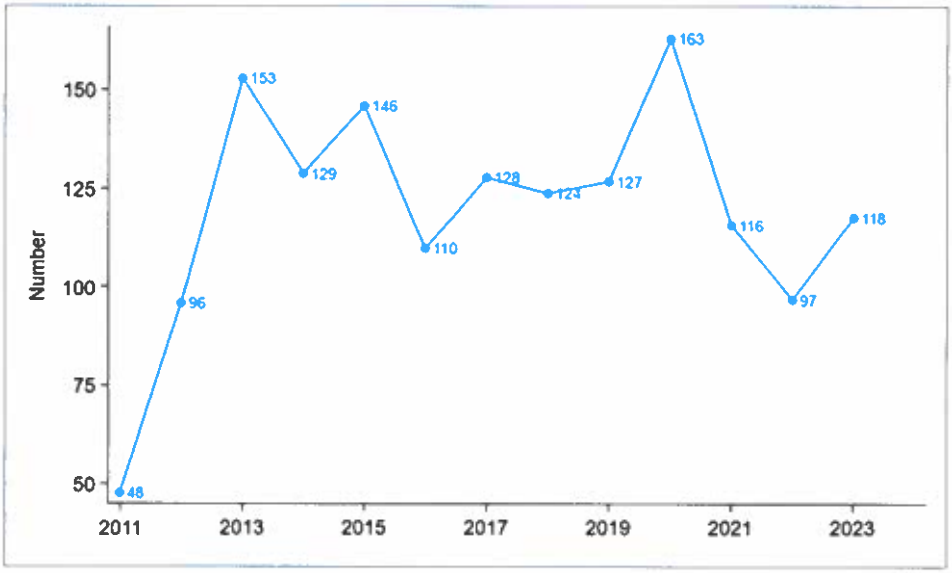
Graphic 2

However, and importantly, it is critical to analyze the possible impact of the REINS Act on the introduction of scope statements. As described above, the first step in administrative rulemaking is for an agency to prepare a scope statement with information about the intended rulemaking, including the objective of the proposed rule, the statutory authority for the rule, and a description of all entities that may be affected by the rule.

Before work may commence on actual rule drafting, the agency must submit the scope statement to DOA, which reviews the rule and forwards it to the Governor for approval in writing. If the scope statement is approved by the Governor, it is then submitted to LRB for publication in the Wisconsin Administrative Register. Executive Order #50, which was issued by Governor Walker on November 2, 2011, provides that an agency must submit an approved scope statement to LRB for publication within 30 days of the Governor's approval, or the scope statement will be considered to have been withdrawn.

Graphic 3 reports the number of scope statements published each year in the Wisconsin Administrative Register.[17] Except for 2011, the year when Executive Order #50 was issued, the number of introduced scope statements remained around 125, fluctuating between 100 and 150. Through early November 2024, 107 scope statements have been published. The final number for the full year will almost certainly be larger.

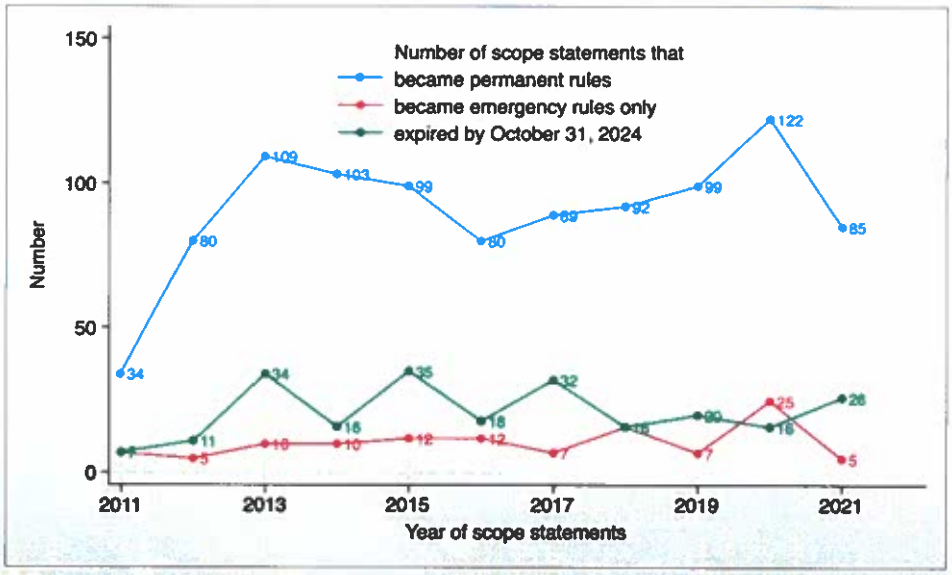
[17] Full Wisconsin Administrative Register found here: All Scope Statements.



Graphic 3

Once a scope statement is published, an agency has 30 months to submit a proposed rule for legislative review. The proposed rule could be either an emergency rule or a permanent rule or both. Depending on the drafting and reviewing process, a scope statement could lead to one of three outcomes: (1) a permanent rule, which may or may not be associated with an emergency rule, (2) an emergency rule only, or (3) expiration of the scope statement without a rule.

Graphic 4 reports the number of scope statements associated with each of the three outcomes. Among the 48 scope statements published in 2011, 34 became permanent rules, seven became emergency rules only, and the remaining seven expired without a rule. Among the 125 or so scope statements published in each year between 2012 and 2021, around 95 became permanent rules, around 10 became emergency rules only, and the remaining 20 or so expired without a rule. The data ends in 2021 because many scope statements published since 2022 are still active without an outcome.



Graphic 4

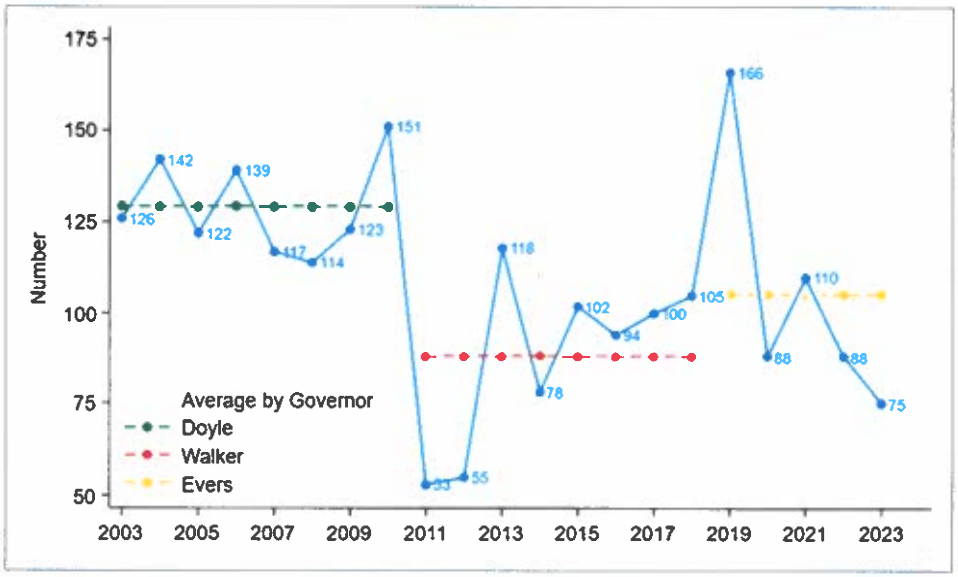
Graphic 5 reports the 10 agencies with the most scope statements between 2011 and 2021, and the outcomes of those scope statements. At the top is DNR, which introduced 189 scope statements during this period. Among them, 134 became permanent rules, 30 became emergency rules only, and the remaining 25 expired without a rule. In third is the Department of Agriculture, Trade and Consumer Protection ("DATCP"), which introduced 96 scope statements during this period. Among them, 67 became permanent rules, 20 became emergency rules only, and the remaining nine expired without a rule. The other agencies in the top five include the Department of Public Instruction (2nd), the Department of Safety and Professional Services (4th), and the Department of Health Services (5th).

		Outcome		
Agency	Total	Permanent	Emergency	Expiration
Department of Natural Resources	189	134	30	25
Department of Public Instruction	121	88	7	26
Department of Agriculture, Trade and Consumer Protection	96	67	20	9
Department of Safety and Professional Services	88	72	5	11
Department of Health Services	77	52	5	20
Controlled Substances Board	66	63	1	2
Department of Workforce Development	53	17	14	22
Department of Children and Families	51	35	4	12
Department of Revenue	49	46	1	2
Office of the Commissioner of Insurance	41	31	3	7

Graphic 5

Once a rule is approved, it must be published by LRB in the Administrative Register. Graphic 6 reports the number of permanent rules published in the Administrative Register in each year between 2003 and 2023.[18] The number decreased from an average of 129 in 2003-2010 under Governor Doyle to 88 in 2011-2018 under Governor Walker before increasing to 105 in 2019-2023 under Governor Evers. Except for the spike in 2019, the numbers are generally smaller after Executive Order #50 was issued in 2011 than they were before.

[18] By Year of Filing with Legislative Council Rules Clearinghouse.



Graphic 6

While the above graphics may appear to indicate the REINS Act has not had the intended impact, a close look at the data reveals the interplay between scope statements and final rules and the possible role of political influences.

> *Graphic 3 shows that the **number of scope statements** (the first key step in the rulemaking process) **has been lower in each year** since 2017, with the exception of 2020, the second year of the Evers Administration. This in turn resulted in a **lower number of permanent rules** relative to 2013, again, other than 2020 (see Graphic 4).*

Graphic 6 illustrates the impact of an Administration and Legislature working together to closely examine costly rules proposed by executive branch agencies. The average number of permanent rules approved during the Walker Administration were significantly lower than the previous Doyle Administration. In the first year of the Walker Administration the number of permanent rules was reduced by almost 100. Outside of 2019, the permanent rules passed during the Evers Administration have at times been equal to or below the Walker Administration average.

In light of the more progressive political posture of the Evers Administration relative to the Doyle Administration, the data suggests the number of permanent rules approved during the Evers Administration could have been much greater but for the reforms implemented during the Walker Administration. In other words, while the average number of permanent rules passed during the Evers Administration could have been closer to the 2019 high of 166 (which would have far surpassed the Doyle Administration average), the average has instead remained below the Doyle Administration average and is actually closer to the less-than 100 average of the Walker Administration.

Impact of the REINS Act: Key Examples

In addition to the above analysis, several key examples exist where a number of the above reforms, including the REINS Act requirement, blocked or stalled rules with significant economic impacts to regulated communities from taking effect that were otherwise not recognized by executive agencies. In other words, while the REINS Act may not have reduced the overall number of regulations that have gone into effect post-REINS, it has certainly played a critical role in identifying extremely costly regulations that failed to adequately factor in costs to industry, local units of government, or ratepayers.

Nitrate Rule. In August 2019, the Governor approved the statement of scope for Rule No. WT-19-19. The Nitrate Rule proposed revisions to NR 151, "to establish agricultural nonpoint source performance standards targeted to abate pollution of nitrate in areas of the state with highly permeable soils which are susceptible to groundwater contamination (sensitive areas) for the purpose of achieving compliance with the nitrate groundwater standards."[19] DNR took the position "[w]here statewide nonpoint source performance standards have been substantially implemented, they have not proven sufficient to achieve surface water quality standards or groundwater standards in sensitive areas." With respect to anticipated economic impact of implementing the rule, DNR estimated that "the economic impact of this rulemaking would be "moderate" (between $50,000 and $5 million per year, combined for all impacted stakeholders). It will likely have an impact on small business, namely agricultural producers and supporting businesses – the level of impact is currently indeterminate and will be assessed during the rulemaking process."

Upon receiving notice of the proposed rule, many in the regulated community objected based on the anticipated limits to the spreading of fertilizer and manure in much of the state after September 1 of each year. In addition, many in the regulated community specifically focused on the billions in compliance costs that would have been imposed on concentrated animal feeding operations ("CAFO") and other entities. While the initial DNR EIA estimated $972,600 in annual compliance costs,[20] WMC estimated $340 million to $1.1 billion in compliance costs. The Wisconsin Corn Growers Association estimated an impact of billions of dollars. And even the University of Wisconsin provided an analysis (actually commissioned by DNR itself) that significantly surpassed that initially provided by DNR, estimating an annual economic impact of $22.5 to $31 million.[21]

In an e-mail to stakeholders in 2021, DNR stated "the statutory process and associated firm timelines established by the Legislature for rule-making do not allow adequate time for the department to complete this proposed rule." While the cited reason for withdrawal of the proposed rule was the inability to meet the statutory 30-month deadline (see 2017 Act 39), the significant disparity between the initial DNR EIA and the economic impacts provided by members of the regulated community and the University of Wisconsin almost certainly played a key factor. In fact, various environmental groups in the state argued the REINS Act "played a role in the rule's demise," with one advocate claiming "I think that any significant public health protection promulgated by the DNR or other state agencies will run into problems with the REINS Act."[22]

---

[19] *See* Scope Statement SS-077-19, found here: ss_077_19_scope_statement.pdf (wisconsin.gov).

[20] DNR January 25, 2021 EIA found here: WT1919FiscalEstimate.pdf (wisconsin.gov) (noting "no" to the following question: "Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be $10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)?").

[21] *See* UW_NitrateReport_091521.pdf (wisc.edu).

[22] *See* Groups say 2017 law prevents Wisconsin DNR from pursuing standards to curb nitrate pollution - WPR.

PFAS Groundwater (and Drinking Water) Rules. A statement of scope relating to groundwater standards was approved by the Governor in August 2019 and the DNR Board in January 2020. DNR explained with respect to DG-15-19 that "Chapter 160, Wis. Stats., establishes an administrative process for developing numerical state groundwater quality standards to be used as criteria for the protection of public health and welfare by all state groundwater regulatory programs."[23] DNR further noted, "EPA describes PFAS as an urgent public health and environmental issue that requires increased and sustained action by every level of government." With respect to economic impacts, the DNR stated "[t]o the extent it is possible to estimate, the department estimates average annual costs incurred by other regulatory programs and rules is $3,284,171 in any year over a 5-year permitting cycle and $9,537,243 maximum over any two-year period."[24] Public comments highlighted the estimate as exceeding the $10 million threshold despite the DNR's attempt to keep the estimate just below the threshold.

On February 23, 2022, the DNR Board, also referred to as the Natural Resources Board ("NRB"), rejected DG-15-19 on a 3-3 vote, believed by many to be one of the first instances of the NRB rejecting a proposed rule.[25] The scope statement for DG-15-19 ultimately expired. While a separate vote, the NRB also took up DG-24-19 at the February 2022 meeting. According to the 2019 Statement of Scope, the objective of DG-24-19 was to "amend ch. NR 809, Wis. Adm. Code, to establish drinking water standards, referred to as Maximum Contaminant Levels (MCLs), for certain Per- and Polyfluoroalkyl substances (PFAS) including the contaminant compounds perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS)."[26] The DNR anticipated the economic impact "to stakeholders including small businesses to be significant." Cost estimates from some in the regulated community estimated the impact of the rule to range from $18 M - $174 M in capital costs alone.[27] Ultimately, NRB changed the limits of the rule at its February 2022 meeting from 20 ppt to 70 ppt with DNR reluctantly implementing the revised rule beginning in August 2022.[28]

In September 2022, DNR returned to the groundwater rule with the Governor approving the statement of scope for Rule No. DG-17-22. The PFAS Groundwater Rule proposed revisions to NR 140, "to add new public health-related groundwater standards for certain Per- and Polyfluoroalkyl Substances (PFAS)."[29] DNR took the position the proposed rule would "add public health groundwater standards for the four PFAS for which the United States Environmental Protection Agency (EPA) released drinking water health advisories (HAs) on June 15, 2022 in light of newly available science and in accordance with EPA's responsibility to protect public health." With respect to anticipated economic impact of implementing the rule, DNR indicated it would "examine the economic impact of the proposed rule when the rule is developed. Additional review and modification of regulatory program rules that rely on ch. NR 140 groundwater standards may impact the estimated cost of implementation and compliance. The economic impact to small businesses is indeterminant until the rule is drafted."

---

[23] *See* Order of the State of Wisconsin NRB Amending Rules, found here: FINAL - Board Order DG-15-19.

[24] *See* Scope Statement DG-15-19, found here: DG-15-19 Fiscal Estimate & Economic Impact Analysis.

[25] *See* NRB Brief of Action found here: 2022-02-APPROVED-February-Brief-of-Action.pdf.

[26] *See* Scope Statement DG-24-19, found here: Statement of Scope: Rule No. DG-24-19.

[27] Comment to DG-24-19 found here: PFASScopeComments.pdf.

[28] *See* NRB Brief of Action found here: 2022-02-APPROVED-February-Brief-of-Action.pdf.

[29] *See* Scope Statement DG 17-22, found here: Scope Statement DG-17-22.

In October 2023, while various environmental groups and individuals submitted comments relating to the health effects from PFAS, multiple industry groups expressed concern with the unaccounted for economic impact of the proposed rule.[30] Madison Metropolitan Sewerage District explained the costs associated with changes to a biosolids management program, noting such costs would have to be passed onto consumers: "preliminary analysis by District staff pertaining to biosolids disposal options in lieu of a land application option has landfilling costs at between $3 million and $5 million annually, depending on the distance to transport to the landfill and the landfill cost per ton. Incineration is not any cheaper. To incinerate, the costs start at $5 million annually and increase from there depending on incineration costs per ton and the distance to transport the material. These are costs that will necessitate raising rates for the customers we serve, and we feel that these costs should be accounted for in the economic impact analysis."[31] Just one member of the Municipal Environmental Group–Wastewater Division (MEG Wastewater) estimated "the cost of landfilling its biosolids at approximately $2.5 million annually and the cost of incineration at approximately $4 million annually."[32] In a lengthy comment jointly submitted by WMC and the Wisconsin Paper Council, the groups estimated the total cost to industry of the proposed rule over two years was between $620 million and $2.1 billion.[33] The breakdown of their estimate is as follows:

Table 12: Summary of WMC-WPC Analysis of Costs of PFAS Groundwater Rule

Cost Driver	Min Cost over 2 Years	Max Cost over 2 Years
Remediation & Redevelopment Sites	$80,600,000	$154,000,000
Landfills	$30,800,000	$64,000,000
Industrial Facilities That Discharge Liquid Wastewater or Biosolids Through Land Treatment System	$150,276,000	$475,546,000
Municipal Wastewater Treatment Facilities that Discharge Treated Wastewater Through a Land Treatment/Application System	$8,336,000	$133,150,400
Municipal Wastewater Treatment Facilities that Land Apply Biosolids and Waste Haulers that Accept Municipal Biosolids	$350,304,000	$1,340,470,000
New Site Investigation & Remediation of Unpromulgated Standards	*Unknown*	*Unknown*
Pit Trench Dewatering	*Unknown*	*Unknown*
Private Wells	*Unknown*	*Unknown*
Total	**$620,316,000**	**$2,167,166,400**

[30] Comments to DG-17-22 are found here: Draft EIA Public Comments NR 140 - PFAS.

[31] *Id.* at 6-7.

[32] *Id.* at 24.

[33] *Id.* at 47.

The Wisconsin Paper Council submitted an additional estimate, noting "[a]n engineering estimate of installation costs for a tertiary PFAS removal system at a facility with a 25 mgd discharge rate using microfiltration (needed to protect the performance and lifetime of GAC system) followed by GAC would range from $150 to $475 million. These costs are up to 3 orders of magnitude greater than the estimate provided in the EIA."[34] The League of Wisconsin Municipalities commented "[to] be transparent and forthcoming to ratepayers, local governments, state officials, and the general public, it is critical that all costs and impacts be considered before this rule is moved forward in the administrative rulemaking process."[35]

Ultimately, on December 8, 2023, the DNR "revised" its estimate of implementation and compliance costs to "$16,608,810 in the first year, $16,740,850 in the second year, and a total of $33,349,660 in the first two years."[36] On December 19, 2023, the DNR " stopped work on the proposed rule, and will only resume work upon enactment of a bill authorizing the department to promulgate the rule or upon germane modification and revision of the economic impact analysis," citing its economic impact analysis and explaining "it indicates that $10,000,000 or more in implementation and compliance costs are reasonably expected to be incurred by or passed along to businesses, local governmental units, and individuals over a 2-year period as a result of the proposed rule."[37] While lawmakers introduced bills to authorize the rulemaking to resume, the bills did not pass and it remains unclear whether any bills will be reintroduced during the upcoming legislative session.[38]

Antidegradation Rule. According to the May 2021 Statement of Scope, the purpose of WY-13-20 was to "update Wisconsin's antidegradation policy and implementation procedures to establish an effective, transparent process for conducting antidegradation reviews consistent with federal regulations."[39] States are required to adopt an antidegradation policy and implementation procedures that are consistent with the Clean Water Act and federal regulations promulgated under the Act (33 USC 1313(d)(4)(B), 40 CFR 131.12) and 40 CFR 132 Appendix E.

---

[34] *Id.* at 51.

[35] *Id.* at 58.

[36] Fiscal Estimate & Economic Impact Analysis for DG-17-22 found here: DRAFT- DOA-2049 FE/EIA Form 09/27/23 - DG-17-22.

[37] Final economic impact analysis submitted pursuant to Wis. Stat. § 227.139 for Department of Natural Resources proposed rule DG-17-22 found here: Letter.

[38] A fourth PFAS rule related to surface water came in the form of WY-23-19 with the rule setting surface water standards at 20/95 PPT for PFOA and 8 PPT for PFOS. The DNR largely ignored cost estimates from the regulated community showing $58.4 million in compliance costs over two years. Ultimately the rule took effect in 2022 with implementation ongoing. WY-23-19 found here: Water Quality Standards Rule Updates | | Wisconsin DNR.

[39] See Scope Statement WY-13-20, found here: FINAL - Scope Statement WY-13-20.

The Department expected "moderate economic impacts ($50,000 to less than $10 million in any 2 years) as a result of this rule" and noted the economic impact of the rule package was "partially dependent on the approach selected." The February 2023 Fiscal Estimate & Economic Impact Analysis estimated high end total statewide annual costs to industry of over $1 million and to local units of governments of almost $600,000.[40] Overall, DNR estimated "[t]he maximum annual cost is estimated to be $1,652,484; the maximum 2-year cost is estimated to be $2,484,384." The full DNR analysis is below:

Annual Cost Summary for Industries

Cost Area	Low End Number of Industries Per Year	High End Number of Industries Per Year	Low End Cost Per Industry	High End Cost Per Industry	Low End Total Statewide Annual Costs to Industries	High End Total Statewide Annual Costs to Industries
Alternatives Analysis (Wastewater Permittees)	1	2	$35,000	$50,000	$35,000	$100,000
Sampling (Wastewater Permittees)	1	2	$1,400	$8,400	$1,400	$16,800
Construction, New Discharger (Stormwater Permittees)	0	1	$0	$900	$0	$900
Industrial, New Discharger to High Quality Water Listed by Type (Stormwater Permittees)	0	1	$0	$235,146	$0	$235,146
Industrial, New Discharge to Other High Quality Water (Stormwater Permittees)	0	1	$0	$235,146	$0	$235,146
Industrial, Increased Discharge (Stormwater Permittees)	0	2	$0	$235,146	$0	$470,292
				Total:	$36,400	$1,058,284

Annual Cost Summary for Local Governmental Units

Cost Area	Low End Number of POTWs Per Year	High End Number of POTWs Per Year	Low End Cost Per Facility	High End Cost Per Facility	Low End Total Statewide Annual Costs to POTWs	High End Total Statewide Annual Costs to POTWs
Alternatives Analysis	4	8	$35,000	$50,000	$140,000	$400,000
Sampling	8	16	$1,400	$8,400	$11,200	$134,400
Choosing an Alternative	1	1	$4,784	$11,960	$4,784*	$59,800*
				Total:	$155,984	$594,200

*The cost to implement a chosen alternative is an ongoing annual cost that is incurred by one new additional permittee each year for up to five years.

A hearing was held in May 2023 and in response to the Department's economic analysis, WMC estimated compliance costs of $56.7 million over two years driven by manufacturers needing to install new systems for discharges into nearby waterways that would not otherwise be required. However, on March 20, 2023, the DNR submitted the proposed rule to the Wisconsin Legislative Council Clearinghouse pursuant to Wis. Stat. 227.15(1) and as a result, the Legislature raised concerns with compliance costs of the rule and voted to request modifications. While the DNR agreed to make certain modifications it has not yet forwarded any to the Legislature illustrating the power of the JCRAR to indefinitely object to new rules, effectively blocking them.

[40] Fiscal Estimate & Economic Impact Analysis for WY-13-20 found here: FINAL - DOA-2049 FE/EIA Form WY-13-20.

Commercial Building Code. According to the December 2020 Statement of Scope, the primary objective of the SS-149-20 rulemaking "project" was "to evaluate and update the Wisconsin Commercial Building Code, chapters SPS 361-366. This rulemaking update is intended to keep this Code consistent with dynamic, contemporary regional and national construction and fire prevention practices and standards, and with legislation enacted since the previous update of this Code."[41] The Department of Safety and Professional Services ("DSPS") Statement of Scope noted the anticipated economic impact of implementing the rule would be "moderate" and "is likely to have a significant impact on a substantial number of small businesses."

Despite the above statement in the Scope Statement, DSPS' Fiscal Estimate & Economic Impact Analysis estimated implementation and compliance costs of $0.[42] DSPS seemingly justified this estimate by relying on, among other factors, a 2019 analysis by the Midwest Energy Efficiency Alliance, which indicated "if Wisconsin updated the 2018 International Energy Conservation Codes (IECC), it would save 15% of energy costs based on a weighted average of all building types. This would result in a first year savings of $2,700,000 based on commercial construction levels in Wisconsin." DSPS further claimed if it were "to enact codes that match the 2021 standards, we could save up to 30% more energy, which could result in $170 million in savings for Wisconsinites by 2030."

Ultimately, in March 2023 the proposed rule was submitted to the Legislative Council Clearinghouse. In September 2023 JCRAR passed a motion for indefinite objection, noting "the economic impact analysis prepared for the proposed rule fails to comply with legislative intent and conflicts with state law because it does not provide an analysis and detailed quantification of the implementation and compliance costs, expressed as a single dollar figure, that are reasonably expected to be incurred by or passed along to the businesses, local governmental units, and individuals that may be affected."[43] It further claimed "[b]ecause of the deficient economic impact analysis, the committee is unable to determine whether the rule imposes an undue hardship, which is an additional reason for objection the committee is authorized to consider."

Aquatic Plant Management Rule. The DNR originally proposed permanent rule WY-29-19 that would have imposed requirements relating to the treatment and management of nuisance plants in lakes and ponds. WMC and others highlighted hundreds of millions in costs due to declining lakefront property values as well as new compliance costs for small businesses performing herbicide treatments. While the rule was expected to be rejected by the Natural Resources Board at its August 2022 meeting due to the concerns raised by stakeholders, DNR staff instead withdrew the rule from the agenda and the scope statement subsequently expired.

---

[41] See Scope Statement SS-149-20, found here: STATEMENT OF SCOPE.

[42] Fiscal Estimate & Economic Impact Analysis for SS-149-20 found here: ADMINISTRATIVE RULES.

[43] JCRAR record of proceedings found here: actions_taken_by_jcrar_on_september_29_2023_cr_23_007.

However, on October 16, 2024, the NRB met and considered permanent rule WY-20-23.[44] According to the Statement of Scope, the objectives of the proposed rule are "to bring the policies of the state's APM program into alignment with current state law, to remove obsolete language and update outdated sections of the rule, and finally, to expand the protection of native aquatic plants for the benefit of water quality, the public interest in navigable waters, and public health." With respect to economic impact, the Department anticipated "[t]he proposed changes for the APM program will have a moderate economic impact after rule implementation. There will not be a significant economic impact on small businesses. Private property owners of wetlands, ponds and lake associations and districts will be responsible for the primary cost increases." Referencing its comments to the prior version of the permanent rule, WMC urged the DNR to "consider all the issues raised during the prior rulemaking and avoid pursuing policies that are overly burdensome, exceed the Department's statutory authority, or impose excessive costs on businesses, lake associations, and property owners."

Future Reforms

To address the continued increase in the number of regulations impacting Wisconsin, the Wisconsin Legislature should consider other tools in addition to the REINS Act and the Act 21 reforms to actually decrease the overall regulatory burden on Wisconsin businesses, local units of government, and residents. Three specific measures could be considered to address the overall burden.

Regulatory Budget. First, the Legislature could consider a regulatory budget. According to the Mercatus Center, there is a "natural tendency for the level of regulation to rise over time—a phenomenon known as regulatory accumulation."[45] Once an administrative code has been streamlined, which Wisconsin has made great strides in accomplishing since 2011, "it makes sense to encourage a permanent culture change at agencies to prevent regulatory accumulation from recurring."[46] At the federal level, on January 30, 2017, President Trump issued Executive Order 13771, the first executive order to establish a regulatory budget. The order "instituted a regulatory cap on federal agencies for the remainder of fiscal year 2017, including a requirement that agencies eliminate two old regulations for each new regulation issued."[47] On July 18, 2019, Ohio Governor Mike DeWine signed a two-year budget that required state administrative agencies to cut two regulations for each new regulation issued.[48]

---

[44] Board Agenda, Scope Statement and comments related to WY-20-23 found here: Item-4.G.-Scope---WY-20-23.pdf.

[45] For a step-by-step guide to reducing state regulation levels, including implementing regulatory budgets, please see the Mercatus Center guide, found here: A Step-by-Step Guide to Using Mercatus Tools to Reduce State Regulation Levels | Mercatus Center.

[46] *Id.*

[47] For a full explanation of regulatory budgets at the federal level, see the following Ballotpedia analysis: Regulatory budget - Ballotpedia.

[48] See Ohio budget institutes 2-for-1 regulatory requirements (2019) - Ballotpedia.

Sunset Law. Second, in addition to a regulatory budget (or in place of), the Legislature could consider a sunset requirement for all future administrative rules. Generally, "[a] sunset provision, sunset clause, or sunset law is a statute or provision of a statute establishing a date on which an agency, law, or benefit will expire without specific legislative action, usually in the form of formal reauthorization."[49] According to a Ballotpedia survey, "11 state APAs include sunset provisions for most administrative rules and another 2 have sunset provisions that kick in under certain circumstances as of September 2020."[50] The length of time between final approval of a rule and reimplementation varies. In Idaho, Tennessee, and Colorado administrative rules expire after one year absent reauthorization, in Texas after four years, in Rhode Island and West Virginia after five years, in Kentucky, New Jersey, and Indiana, seven years, and in New Hampshire and North Carolina after ten years.[51]

Wisconsin voters support continued reform in the administrative rules process. According to September 2024 polling, generally, seventy-three percent (73%) of voters say that state agencies should have to seek legislative approval for at least some regulations they wish to impose. With respect to the economic impact of regulations, half (50%) say **all** regulations should be approved by the Legislature, an additional 16% say any with an economic impact over $500,000, and still another 7% for any regulation with an economic impact over $10 million. With respect to a sunset reform, two-thirds (67%) favor requiring that any rule or regulation that has been in effect for more than seven years be reviewed by the Legislature to determine whether or not it should remain. Just 18% are opposed.

Lower Economic Impact Threshold. At $10 million, Wisconsin's threshold for triggering the REINS Act is relatively high. As explained above, the other three REINS states have set thresholds at $1 million (in the case of Florida over five years, as opposed to two) and West Virginia reviews all administrative rule proposals. This report has highlighted several examples where state agencies have proposed rules that fall just under the threshold, thereby avoiding legislative scrutiny. Alternatively, agencies are free to break up what would otherwise be a single proposed rule into multiple rules, thereby, again, avoiding legislative review. The overall growth of the regulatory burden, highlighted above, also establishes that despite the numerous reforms implemented during the Walker-Kleefisch Administration and the diligence of JCRAR members in closely monitoring proposed rules with a significant economic impact, the REINS Act is simply unable to capture enough proposed rules to "bend the curve" on the cumulative number of regulations at the current threshold. By lowering the economic threshold, the Legislature would obviously capture more proposed rules for review, in the process potentially lowering the overall regulatory burden on Wisconsinites.[52]

---

[49] *See* Sunset provision - Ballotpedia.

[50] *See* Agency dynamics: States with sunset provisions for administrative rules - Ballotpedia; *see also* a comprehensive report from the Mercatus Center, found here: Sunset Legislation in the States: Balancing the Legislature and the Executive | Mercatus Center.

[51] For a full review of the Ballotpedia 50-state survey, please follow the link to the detailed spreadsheet, found here: Agency dynamics: States with sunset provisions for administrative rules - Ballotpedia.

[52] According to the Mercatus Center, Wisconsin is the 13th most regulated state in the U.S., with 165,311 total regulations as of 2023. Of the top policy areas targeted by Wisconsin regulations, four surpass the national average for state regulations. Wisconsin's environmental, public utilities, and natural resource regulations, at 58,720, is almost 29,000 regulations greater than the national state average. Of the top industries targeted by Wisconsin regulations, six surpass the national average for state regulations, including petro and coal production, chemical and paper manufacturing, waste management and remediation, and animal and crop production. Adding in the US Code of Fed Regulations (which runs 1,097,563 restrictions), Wisconsin's regulatory burden creates challenges for individuals and the regulated community, including additional people living in poverty, jobs lost annually, and higher prices for consumers. The full report can be found here: Wisconsin's Regulatory Landscape | Mercatus Center.

Conclusion

Perhaps the comment from the League of Wisconsin Municipalities to the above PFAS rule best captures the purpose behind the REINS Act - "[t]o be transparent and forthcoming to ratepayers, local governments, state officials, and the general public, it is critical that all costs and impacts be considered before this rule is moved forward in the administrative rulemaking process." For too long, costs and impacts associated with a proposed rule were not considered ***before*** a rule moved forward in the rulemaking process in any meaningful way and most importantly, costs and impacts were not considered ***by*** the People's elected representatives. That changed with the REINS Act.

As summarized above, while the REINS Act has not reduced the overall number of regulations on the books in Wisconsin, i.e. the overall regulatory burden, the data suggests it has likely reduced the rate of increase that would have almost certainly occurred in an administration seemingly uninterested in slowing the growth of government or regulations. As detailed throughout, while the average number of permanent rules passed during the Evers Administration could have been closer to the 2019 high of 166 (which would have far surpassed the Doyle Administration average), the average has instead remained below the Doyle Administration average and is actually closer to the less-than 100 average of the Walker Administration. But even setting aside the likely impact from the REINS Act of slowing down the growth of the number of overall regulations, it has certainly played a critical role in identifying extremely costly regulations that failed to adequately factor in costs to industry, local units of government, or ratepayers. Often these costs were estimated to be in the ***billions*** of dollars.

Wisconsin is recognized as a national leader in the space of administrative rulemaking reform. While executive branch agencies serve an important function in proposing rules and regulations to further clarify and enforce the policy decisions made by legislatures, when those rules and regulations have a significant impact on regulated communities, local units of government, and residents, the People's representatives, their elected officials, must have the ability to review proposed rules, suggest revisions, and in some cases, reject. Wisconsin has clearly established itself as a national leader. As suggested in this report, while the REINS Act has positively impacted the rulemaking process in Wisconsin, more can be done.

ReformingGovernment.org

PO Box 180291
Delafield, WI 53018

info@reforminggovernment.org

ReformingGovernment
@ReformingGovt