

AT LAST—HOPE FOR REGULATORY REFORM IN THE 103RD CONGRESS

After frustrating regulatory reform for six years, Congress at last may be about to take steps to streamline the regulatory process. Moving through Congress are at least five bipartisan legislative proposals that would improve how the federal government reviews the impact of proposed regulations and paperwork on business, state and local governments, and on the private sector. These bills either have passed one House of Congress or received serious consideration by congressional committees. Until this year, these and similar proposals did not even receive congressional hearings from the committees with jurisdiction over the issue. The reform proposals include: the Federal Mandate Relief Act; the Johnston-Mica Risk Assessment amendment; the Paperwork Reduction Act Amendments; the Regulatory Flexibility Act; and the Private Property Rights Act.

To be sure, these measures would not overnight roll back today's deadening mass of federal regulations and mandates, which are estimated to cost the economy over \$600 billion each year. But they would strengthen significantly the process by which the federal government and the Congress examine the impact of their proposals on the public. Moreover, their progress through Congress itself marks a victory for the groups of small business owners, state and local officials, and private property owners who are fed up with the costs and frustrations of federal red tape and mandates.

Worried that stronger executive branch review would undermine their regulatory agenda, some interest groups and leading Members of Congress have fought successfully against these proposals for years. But faced with strong support in Congress and lopsided floor votes favoring several of the proposals, the congressional leadership and the Clinton Administration are being forced into negotiations on the legislation.

The five pending bills would do much to bring balance and common sense to the regulatory process.

The Federal Mandate Relief Act (S. 993/H.R. 140), introduced by two former mayors, Senator Dirk Kempthorne (R-ID) and Representative Gary Condit (D-CA), addresses the number one problem undermining state and local governments: the growth in unfunded federal mandates. Unfunded mandates are costly requirements Washington places on cities and states without providing the funds to pay for them.

While unfunded mandates legislation has been introduced since 1990, the growing resentment of state and local officials has caused Congress to consider the Kempthorne-Condit bill, which is the strongest mandate relief bill. It states quite simply—no money, no mandate. Strong support for the bill from the National Association of Counties, the Conference of Mayors, and the National Governors' Association, among others, has helped to line up a majority of Congress behind the legislation, despite opposition from 80 special interest groups ranging from the AFL-CIO to the National Education Association to Greenpeace. The Senate Government Affairs Committee is scheduled to mark up the legislation June 9, and negotiations are underway in the Senate between Kempthorne and the Chairman of the Senate Government Affairs Committee, Senator John Glenn.

The Johnston/Mica Risk Assessment amendment, introduced by Senator Bennett Johnston (D-LA) and Representative John Mica (R-FL) would require the Environmental Protection Agency to analyze both the risks and the cost and benefits of proposed regulations. With environmental regulation alone estimated to cost the economy over \$100 billion annually, groups ranging from the National Federation of Independent Business

to the National Governors' Association are demanding that the government take better account of the consequences of proposed regulations before implementing them.

This amendment was first offered last year by Senator Johnston to the bill to give the EPA Cabinet-level status. Even though it passed the Senate on a 95 to 3 vote, the Administration and the House Democratic leadership vehemently opposed the amendment's inclusion in the House EPA bill. In response, Representative Mica and Representative Karen Thurman (D-FL), were able to fight successfully on the House floor to block consideration of the entire bill. Most recently, the Senate voted 90 to 8 during consideration of the Safe Drinking Water Act to adopt a compromise version of the Johnston amendment.

The Paperwork Reduction Act Amendments (S. 560/H.R. 962) was introduced by Senators Sam Nunn (D-GA) and John Danforth (R-MO), and Representatives William Clinger (R-PA) and Norman Sisisky (D-VA). This legislation would strengthen the Paperwork Reduction Act, signed into law in 1980 by President Carter. That Act established the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) as the traffic cop for government red tape.

Congress has failed since 1989 to reauthorize the OIRA and the Paperwork Reduction Act. The major obstacles to reauthorization have centered on disputes between the executive branch and the Chairmen of the House and Senate Government Affairs Committees over the extent of executive branch authority to review federal agency regulations and paperwork requirements. However, faced with strong support from the National Governors' Association, the Chamber of Commerce, the National Federation of Independent Business, and at least 70 other taxpayer, trade, and citizen organizations, Senator Glenn is trying to work out his differences with the Nunn bill and ready it for Senate floor action.

The Regulatory Flexibility Analysis Act (H.R. 930) has been introduced by Representative Thomas Ewing (R-IL), and a similar bill (S. 165) by Senator Malcolm Wallop (R-WY). The Regulatory Flexibility Act (RFA) was adopted in 1980 to require federal agencies to evaluate the impact of proposed regulations on small businesses and other small entities such as small towns and governments. Problems have arisen with the Act, however. For one thing, federal agencies, such as the Internal Revenue Service, fail to perform the evaluations. For another, the 1980 law prohibits judicial review of regulations that fail to comply with the RFA.

Changes to the RFA to correct these problems have been proposed for over eight years and are strongly supported by small business groups and the National Association of Towns and Townships. But other than hearings in the Small Business Committees, Congress had not taken significant action until Senator Wallop successfully offered his amendment to S. 4, the Senate Competitiveness Act, defeating an effort to kill the amendment on a 67 to 31 vote. Despite the support from the Small Business Administration and an endorsement in Vice President Gore's Reinventing Government Report, the Clinton Administration opposed the amendment. S.4 is now waiting action in a House-Senate conference committee. Representative Ewing's bill now has 251 cosponsors.

The Private Property Rights Act (S. 177/H.R. 385) was introduced by Senators Robert Dole (R-KS) and Howell Heflin (D-AL), and Representative Gerald Solomon (R-NY). This legislation codifies the "takings order," signed by President Ronald Reagan in 1988 to protect fifth amendment private property rights. It requires that proposed regulations be reviewed for their impact on private property rights.

This legislation represents only a modest step forward in controlling the government's growing abuse of private property rights, and is just one of the noteworthy property rights proposals introduced in Congress. However, it was successfully offered by Senator Dole to the Senate Safe Drinking Water Amendments Act, despite strong opposition from the environmental community. The adoption of this amendment by the Senate is a sign of the growing power of the grass-roots property rights movement.

None of these proposals has yet been enacted into law. But for the first time in years, these regulatory relief measures are moving through the legislative process, and lawmakers concerned about the growing burden of regulation would be wise to support them. At last, the growing anger among the American people at excessive red tape is causing Congress and the White House to take notice and act.

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