



# State legislatures should reclaim policymaking power with the REINS Act and targeted legislative review

**The rise of the administrative state has handed unelected bureaucrats the power of the legislature and the governor. That may sound hyperbolic, but it's true.** To become a law, a bill must be passed by a majority in two legislative chambers (in Nebraska, one) and signed by the governor. Along the journey from bill to law, committee chairs, legislative leadership, or the governor can easily kill a bill. Making laws is hard. That's a feature of our constitutional system of government—not a bug. Laws can deprive people of their property or even their freedom. They should be well-thought-out, debated, and voted on.

But many times, when legislatures pass laws, it is impractical to include every detail to make the execution of the law workable. For that reason, agencies tasked with carrying out the will of the legislature are given authority to make regulations to fill in the gaps. Those regulations have the same force and effect as law.

Unfortunately, the combination of legislatures passing vague laws, courts deferring to agencies' interpretations of statutes and regulations, and courts undermining the nondelegation doctrine has moved regulations out of the realm of gap-filling to policy creation. In other words, agency employees are singlehandedly creating laws that can deprive people of property and liberty.

At the federal level, we've seen the Supreme Court attempt to walk some of these missteps back by overturning agency deference in the *Loper Bright* decision and reinvigorating the nondelegation doctrine through the major questions doctrine.

Many state legislatures have no meaningful oversight of regulations. An unelected, midlevel bureaucrat can unilaterally change state policy with a regulation in a way that no elected lawmaker can.

**State legislatures are reclaiming their constitutional policymaking power by passing their own versions of the REINS Act—short for "Regulations from the Executive in Need of Scrutiny."** The Act requires that any regulation that has an economic impact greater than a threshold set by the legislature must be agreed to by the legislature. Florida and Wisconsin have had REINS Acts for years. Indiana and Kansas passed their REINS Act reforms in 2024.

The REINS Act gives agencies the freedom to promulgate gap-filling regulations to make laws workable, while ensuring that any major regulations are aligned with the will of the legislature.

However, the traditional REINS Act framework could be improved with additions from Pacific Legal Foundation's targeted legislative review model policy.

First, by expanding the trigger for legislative review to include substantial impact on social and cultural relations among citizens in addition to economic impacts. And second, by creating an independent economic analysis unit to review agency analysis to determine whether REINS should be triggered and then to provide lawmakers with the necessary information to evaluate a regulation that does trigger legislative review.

For a legislator to make informed decisions whether to support regulations that trigger the REINS Act, the legislator needs accurate information. In many states, an agency promulgating a regulation is incentivized to provide one-sided information in support of the regulation. For that reason, there should be an independent analysis of the regulation, or at the very least someone to check the agency's work.

**Want to know more about REINS Acts in your state?**

Contact PLF's Legal Policy Team at [legalpolicy@pacificlegal.org](mailto:legalpolicy@pacificlegal.org)





# What is the REINS Act and Targeted Legislative Review?

## OVERVIEW:

The REINS Act requires significant regulations to undergo thorough scrutiny by the legislature before they can take effect, reasserting proper legislative authority over the rulemaking processes.

## KEY FEATURES:

### 1. Legislative Oversight of Major Rules

- The Act requires that any agency rule with a substantial impact on the economy, commerce, or social and cultural relations among citizens be ratified by the legislature before taking effect. This ensures that elected representatives, not unelected bureaucrats, have the final say on policies that significantly affect the public.

### 2. Creation of the Legislative Economic Analysis Unit

- A Legislative Economic Analysis Unit (LEAU) is established within the legislature to provide independent economic analyses of proposed major rules prior to enactment. The LEAU is tasked with evaluating the projected costs, benefits, and potential alternatives of these rules, ensuring that legislators have the necessary data to make informed decisions.
- The LEAU is led by a Chief Economist, appointed jointly by the leadership of both legislative chambers. The unit is funded by contributions from regulatory agencies, ensuring its independence and sustainability.

### 3. Judicial Review

- The Act empowers courts to review whether agency rules have been authorized by the legislature, particularly in determining whether a rule is classified correctly as a major rule and whether it requires legislative approval.

### 4. Enhanced Democratic Accountability

- By requiring legislative approval of major rules, the Act strengthens democratic accountability, ensuring that significant regulatory decisions reflect the will of the people as expressed through their elected representatives.

### 5. Transparency and Public Involvement

- The Act mandates that the findings of the LEAU, along with any determinations regarding major rules, be made publicly available. This transparency ensures that the public can engage with, and understand the economic implications of, new regulations.

### 6. Emergency Provisions

- The Act allows for expedited rulemaking in genuine emergencies but requires the Governor to explain the necessity of bypassing the usual legislative process. Courts have the authority to review such emergency declarations, to prevent misuse.