



ISSUE BRIEF:

CLEAN OUT OBSOLETE LAW AND BUREAUCRACY

Obsolete law is a significant—and ignored—cause of government waste and an obstacle to economic growth. Yesterday’s laws and regulations cannot always adequately address today’s needs. Worse yet, they often senselessly tie the hands of government officials and Americans in every sector of society, preventing them from making common sense decisions to address challenges or create opportunities. Cleaning out obsolete law—which includes both statutes and regulation—is the first step to fixing broken government, trimming budget deficits, and reviving America’s economy.

THE PROBLEM

America has allowed laws and regulations to grow like weeds—at the federal, state, and local level—rarely subjecting them to later scrutiny, let alone adjustment or repeal. The U.S. Code contains approximately 7,000 times as many words as the Constitution. Most of the federal budget (56 percent in 2011)¹ is locked in by existing laws, many of them written generations ago. In many ways, today’s democracy is run by dead people.

Many laws are simply no longer needed, and even more are in desperate need of modernization. They waste money and stand in the way of common sense. Outmoded laws and regulations often perpetuate government programs and bureaucracies that no longer have a sensible purpose.

Incentives in our political system are upside down. Lawmakers win recognition and praise by passing new laws and programs, whether those laws are needed or not. Yet they are rarely condemned for allowing ineffectual laws or programs to continue. As a result, millions of words of binding law clog the arteries of government and confound our daily lives. As Congressman Jim Cooper says, “[T]here’s little or no reward in repealing laws, only the risk of offending people who benefit from the existing programs.”²

Likewise, regulatory agencies have great impetus to promulgate new rules to address every perceived problem under the sun, but almost no incentive to purge ineffective, old ones. No independent authority has the ability to identify regulatory idiocies within our sprawling bureaucracy, much less the power to eliminate them. Review and revision is critically lacking, as Senator Mark Warner writes: “[W]e never look back at existing regulations to see if they work.

¹ Congressional Budget Office, “Budget Infographic—Mandatory,” April 17, 2012; <http://www.cbo.gov/publication/43154>

² “Outdated Laws and Subsidies—How Did It Get So Bad?,” March 8, 2012; <http://www.theatlantic.com/politics/archive/2012/03/outdated-laws-and-subsidies-0151-how-did-it-get-so-bad/253860/>

And we don't know if the assumptions on costs and benefits made at the front-end actually pan-out over the long run.”³

When states and the federal government have attempted to address accumulated law, their efforts have mainly focused on reducing short-term budget shortfalls and not on the structural problems that lead to legal accumulation in the first place. As a result, the problem of obsolete law persists—and in fact has grown worse. America's body of law today has become so vast and complex that individuals and businesses find it increasingly difficult to be compliant.

EXAMPLES OF OBSOLETE LAW AND REGULATION

- *Davis-Bacon Act of 1931*. Intended to ensure fair compensation for construction workers during the Great Depression, this law now unreasonably bloats the cost of federal construction projects far above market rates. It also causes critical delays in infrastructure projects. Enforcing the act costs taxpayers approximately ten percent of all construction costs, or \$10.9 billion in 2011.⁴
- *Agricultural Adjustment Act of 1933/1938*. Seventy-five years ago it may have been sensible to prop up the agriculture industry by subsidizing crops at plummeting prices. But agricultural collapse of the type experienced during the Great Depression is no longer a serious threat—and subsidies like the Agricultural Adjustment Act, which pay out billions every year to corporate farms, even when these farms are already making substantial profits, are no longer needed.
- *Redundant federal agencies*. A 2011 report by the Government Accountability Office (GAO) found that we maintain 15 agencies overseeing food safety, 62 separate programs providing assistance for the “transportation disadvantaged,” and 80 separate economic development programs.⁵ The redundancies identified by the GAO have grown up over decades and centuries and now override one another's work while wasting tens of billions of tax dollars each year.
- *New York State Scaffold Law of 1885*. Enacted over a century ago, this state law saddles construction contractors and property owners with absolute liability for any injury which occurs on the job, even if the employee is intoxicated, negligent, or working in violation of safety protocols. Modern workers' compensation and OSHA regulations have made the law redundant. It vastly inflates construction liability costs, killing jobs and providing no benefit to worker safety.

³ “Self-Replicating Regulation: How to Trim Government Overlap,” March 12, 2012; <http://www.theatlantic.com/politics/archive/2012/03/self-replicating-regulation-how-to-trim-government-overlap/253898/>

⁴ James Sherk, Heritage Foundation, “Why the Davis–Bacon Act Should Be Repealed,” January 12, 2012; <http://www.heritage.org/research/reports/2012/01/why-the-davis-bacon-act-should-be-repealed>

⁵ Government Accountability Office, “Opportunities to Reduce Potential Duplication in Government Programs, Save Tax Dollars, and Enhance Revenue,” March 2011; <http://www.gao.gov/new.items/d11318sp.pdf>

THE SOLUTION

To succeed where past efforts have failed, we must establish a strong, independent mechanism for eliminating or ameliorating laws and regulations that address problems that no longer exist, are no longer functioning as intended, or are causing harmful unanticipated consequences.

At a time when public confidence in government is at an all-time low, we need to strike at the heart of the problem. Modernizing American law would not only produce significant cost savings by promoting ease of compliance, it would also enable federal, state, and local legislators to effectively address today's challenges.

Sunset provisions, which set expiration dates for new laws, are helpful because they compel lawmakers to revisit laws periodically and consider if they are still functioning properly. But they are not effective when legislative bodies habitually reenact old laws without serious evaluation.

This is why Common Good proposes the establishment of independent Spring Cleaning Commissions—at every level of government—which would be comprised of experienced citizens and would thoroughly review America's laws and, where needed, propose plans to modernize them.

We urge Congress and each state government to create a Spring Cleaning Commission (using the Defense Base Closure and Realignment [BRAC] Commission as a model) that makes specific recommendations to do three things: (a) repeal outdated or unnecessary laws, regulations, and programs; (b) develop reorganization plans that streamline or purge existing bureaucracies; and (c) develop ways to immediately implement changes (including revisions in civil service and other administrative rules).

Each year the Commission would select two or three areas of government to study (e.g., housing, environmental protection, disaster relief, etc.) and create task forces assigned to each one. Over six months, each task force would prepare recommendations for consideration by the entire Commission. The Commission would adopt, modify, or reject these recommendations, then submit its final recommendations to the president and to the American public. Opportunities for extensive public input (including public hearings) would be provided.

For more information on creating Spring Cleaning mechanisms to clean out obsolete law and bureaucracy, go to www.commongood.org/resources/c/fact-sheets-briefings.

This issue brief was prepared by Common Good, a nonpartisan reform coalition, as part of its Start Over campaign to fill the substance void in this election and beyond. It is intended to provide actionable policy ideas for use by citizens, reform groups, elected officials and candidates for public office. For more information, go to CommonGood.org.