



INSTITUTE FOR
REFORMING GOVERNMENT

THE WISCONSIN ADMINISTRATIVE REFORM TOOLBOX

A PRACTICAL LEGISLATIVE HANDBOOK FOR
RESTORING LAWMAKING AUTHORITY





ABOUT IRG

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.

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EXECUTIVE SUMMARY

State legislatures have spent decades ceding lawmaking authority to administrative agencies. Through broad interpretations of vague statutes, agencies now impose binding obligations that carry the force of law—without meaningful legislative approval or economic cost consideration. The result is a de facto fourth branch of government operating beyond effective democratic control.

Wisconsin addressed this problem directly. Beginning in 2011, the Legislature enacted a coordinated series of reforms that reasserted legislative primacy over rulemaking. These reforms were not academic proposals. They were enacted, implemented, litigated, and sustained across multiple legislative sessions and changes in administrations.

This toolbox packages Wisconsin’s reforms into several legislative tools for consideration by other states: This document offers three strategic implementation tracks, model statutory language drawn from Wisconsin’s enacted legislation, and practical guidance on sequencing reforms. It is designed for legislators and staff who seek tested solutions rather than theoretical frameworks.

Wisconsin’s experience preceded—and anticipated—the U.S. Supreme Court’s curtailment of agency deference in *Loper Bright Enterprise v. Rainmondo* (2024). States that act now will lead the national realignment in administrative law rather than follow it. Wisconsin has shown that reclaiming legislative authority over rulemaking is both achievable and durable; this toolbox offers other states a blueprint to do the same.

RECLAIMING THE LAW: THE WISCONSIN REFORM TOOLBOX

	1	END AGENCY SELF-AUTHORIZATION Require explicit statutory authority for every agency action to prevent “implied” powers.
	2	REQUIRE APPROVAL FOR HIGH-COST RULES Ensure rules with major economic impact are voted on by the legislature before taking effect.
	3	KILL “REGULATORY LIMBO” WITH DEADLINES Set hard expiration dates (e.g., 30 months) on rulemaking authority to prevent bureaucratic inertia.
	4	PURGE OBSOLETE and UNAUTHORIZED RULES Implement sunset reviews and expedited repeal processes to clean up the administrative code.
	5	SHIFT POWER FROM BUREAUCRATS TO COURTS End judicial deference to agency interpretations, ensuring the law is interpreted as written by the legislature.

INTRODUCTION

Over the last two years, the Institute for Reforming Government (“IRG”) has worked with leading experts in the administrative reform movement to produce serious, policy-driven research on the real-world consequences of administrative governance and legislative oversight. The modern administrative state has effectively created a “headless fourth branch” of government, operating with diminished accountability and imposing vast economic burdens through a default of “automatic effectiveness.” To highlight these concerns, IRG has issued timely and precise reports to assist lawmakers and thought leaders:

- In late 2024, IRG published [Federalism in Practice: Strengthening State Oversight of Clean Air Act Implementation Plans](#), which documented the structural and legal barriers state legislatures face when attempting to oversee state implementation plans (SIPs) administered under federal environmental law.
- In early 2025, IRG released [Wisconsin’s Administrative Revolution: Lessons from the REINS Act](#), a first-of-its-kind empirical analysis of a state-level REINS Act conducted in partnership with economists at the Center for Research on the Wisconsin Economy (CROWE).
- Most recently, IRG published [Bureaucracy in the Shadows: The Hidden Flow of Federal Guidance to Wisconsin State Agencies](#) detailing how federal agencies—across multiple administrations—have used informal guidance documents to shape state policy outside the formal rulemaking process.



Together, these reports form the foundation of IRG’s expanding influence in the national administrative reform movement and its work assisting states in improving regulatory climates. This toolbox does not restate those analyses. Instead, it distills their core lessons into a practical, legislator-facing framework designed to help states reclaim lawmaking authority, discipline administrative overreach, and restore democratic accountability.

Reclaiming Authority: The State Administrative Reform Toolbox	
 Demand Explicit Statutory Authorization	Agencies must not implement or enforce any standard unless the legislature has granted specific, clear authority in state law.
 Mandate Approval for High-Cost Rules	Require an affirmative legislative vote before any 'major rule' exceeding a specific economic cost threshold can take effect.
 Eliminate Bureaucratic Inertia and Limbo	Set firm 30-month deadlines for rulemaking; if an agency fails to act, its authority to create that rule expires.
 End Judicial Deference to Agencies	Ensure courts interpret the law independently rather than automatically deferring to an agency's own interpretation of its power.
 Purge Unauthorized and Obsolete Regulations	Establish an expedited process to identify and repeal rules that lack current statutory authority or have become outdated.

For decades, state legislatures have gradually ceded core lawmaking authority to administrative agencies. Through expansive interpretations of vague statutes, agencies increasingly impose binding obligations with the force of law—often without meaningful legislative approval, economic cost consideration, or institutional accountability. The result has been the emergence of a de facto fourth branch of government operating largely beyond effective legislative control.

Wisconsin confronted this problem directly. Beginning in 2011, the Legislature enacted a coordinated series of administrative law reforms designed to restore legislative primacy, impose discipline on rulemaking, and reestablish clear lines of constitutional responsibility. These reforms were not theoretical. They were enacted, implemented, tested, litigated, and—critically—sustained across multiple legislative sessions.

This toolbox packages those reforms into seven legislative tools—five enacted into Wisconsin law and two additional, next-phase reforms that build on that foundation. Together, they provide a durable, adaptable framework for reining in administrative overreach while preserving the proper role of agencies as implementers, not authors, of the law.



This resource is written for **action**. It is intended to be used by legislators, staff, and counsel. It provides a clear explanation of each reform and its institutional purpose; strategic guidance on sequencing and deployment; adaptable legislative concepts grounded in real statutory experience; and lessons learned from Wisconsin’s implementation.

Administrative reform succeeds when legislatures act deliberately, early, and with institutional confidence. Wisconsin's experience demonstrates that reclaiming legislative authority over rulemaking is not only possible—it is durable. This toolbox is offered as a starting point for states ready to govern, not defer.

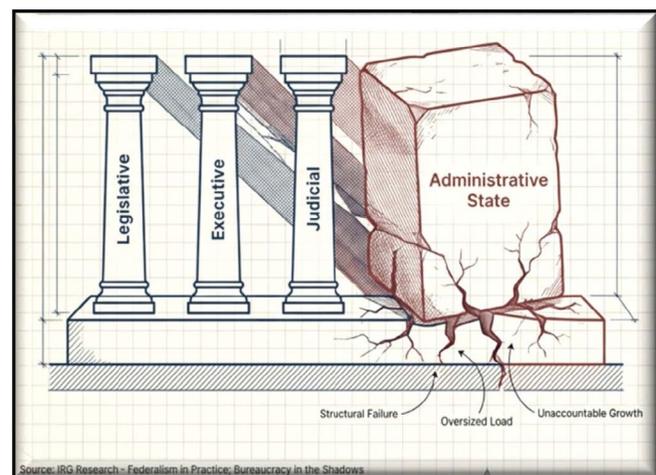
Over decades, a quiet but profound shift has occurred in American governance: the transfer of lawmaking authority from elected legislators to unelected agency bureaucrats. This growth of the administrative state has created a "fourth branch" of government that operates with limited accountability, imposing significant economic burdens on businesses, local governments, and citizens. This document provides a proven, road-tested playbook for state legislators to reclaim their constitutional authority and restore accountability to the rulemaking process.

THE PROBLEM: A CRISIS OF ACCOUNTABILITY

Prior to a wave of reforms, Wisconsin's state agencies operated with nearly limitless power to exert their policy preferences over the will of the elected Legislature. By deriving authority from vague or implied statutory language, agencies could create and enforce new standards that carried the force of law but lacked the consent of the governed. This runaway rulemaking imposed immense costs on the state's economy, created uncertainty for businesses and citizens, and operated with minimal oversight from the people's representatives.

WISCONSIN'S SOLUTION: A SEVEN-PART TOOLBOX

Beginning in 2011, [Wisconsin embarked on a bold and systematic administrative revolution](#). The state developed and implemented a suite of five powerful legislative tools designed to restore legislative authority, control regulatory costs, and increase transparency. This toolbox includes five reforms that have been enacted into law and two next-generation proposals that would further strengthen legislative oversight. Together, these seven tools form a comprehensive framework for reining in the administrative state.



HOW OTHER STATES CAN LEAD

Legislators in other states do not need to reinvent the wheel to address administrative overreach. The Wisconsin model offers a proven, "plug-and-play" set of reforms that can be lifted, adapted, and passed into law. This toolbox is designed to equip policymakers with the strategic guidance, detailed analysis, and model language needed to champion these critical reforms in their own states.

WHAT THIS TOOLBOX PROVIDES

This toolbox is a practical guide for action. It begins with an at-a-glance summary of the seven core reforms. It then offers a strategic “how-to” guide, outlining different legislative paths for implementation. The core of the toolbox is a detailed breakdown of each of the seven reform tools, explaining what each tool is, why it matters, and which key provisions are most critical to replicate. Finally, the Appendix provides model bill text for each of the seven reforms, allowing legislators to move quickly from concept to action.

The Wisconsin toolbox serves as a blueprint for nationwide administrative reform by packaging a specific set of legislative successes and proposals into a **highly accessible, “plug-and-play” format** for use by policymakers in other states.

The toolbox functions as a reform model through several key strategies:

- **Practicality Over Academia:** The toolbox is designed specifically for state legislators who are interested in enacting lasting reform to the administrative rulemaking process, meaning it prioritizes **usable, concise information** over academic or dense legal theory. The core of the toolbox focuses on the “what” and “why” of each reform rather than unnecessary legal deep dives.
- **Comprehensive Reform Scope:** The blueprint covers **seven specific reforms** aimed at transforming administrative processes. This includes five acts already enacted in Wisconsin—**Act 21, Act 39, Act 57 (the Reins Act), Act 108, and Act 369**—alongside two additional proposed reforms: **a regulatory budget and sunset review**.
- **Ready-to-Use Model Language:** To move from theory to action, the toolbox includes **actual bill PDFs and Legislative Reference Bureau (LRB) analyses** as appendices. This allows legislators in other states to have **instant access to model language** they can introduce in their own jurisdictions.

In essence, the Wisconsin toolbox acts like a **pre-fabricated construction kit for government oversight**; rather than requiring every state to design their own tools from scratch, it provides the tested blueprints, the assembly instructions, and the raw materials needed to build a standardized system of administrative restraint.

WISCONSIN'S REFORM FRAMEWORK: THE SEVEN TOOLS AT A GLANCE

This section provides a high-level overview of the seven core reforms that constitute the Wisconsin Toolbox. These legislative tools were designed to work in concert, creating a multi-layered system of executive and legislative oversight that reasserts the constitutional authority of the people's elected representatives over the administrative state. The table below summarizes each tool, its function, and its current status in Wisconsin.



TOOL	DESCRIPTION	PURPOSE	STATUS
2011 Act 21 Foundational Guardrails	Establishes the foundation for reform by requiring explicit statutory authority for rules and implementing structured rulemaking guardrails like scope statements.	Requires explicit statutory authority and front-end oversight	Enacted
2017 Act 39 Rulemaking Deadlines	Imposes a 30-month deadline on agencies to finalize rules after a scope statement is published, preventing indefinite delays.	Prevents indefinite rulemaking delays	Enacted
2017 Act 57 Legislative Approval of Major Rules	Creates a REINS-style requirement for explicit legislative approval for any proposed rule imposing \$10 million or more in costs over two years.	Requires legislative approval for high-cost rules	Enacted
2017 Act 108 Repeal of Unauthorized Rules	Establishes an expedited process for the Legislature's Joint Committee for the Review of Administrative Rules (JCRAR) to repeal unauthorized or obsolete rules.	Removes obsolete unauthorized rules	Enacted
2017 Act 369 Legislative Enforcement Power	Codifies the end of judicial deference to agencies' legal interpretations and empowers JCRAR to indefinitely object to proposed rules.*	Ends judicial deference; strengthens oversight	Enacted
Regulatory Budget	Requires an agency proposing a rule with any compliance cost to offset those costs by repealing existing rules of equal or greater value.	Caps cumulative regulatory burden	Proposed
Sunset Review	Mandates that all administrative code chapters automatically expire after seven years unless they are reviewed and explicitly reauthorized by the agency.	Forces periodic reauthorization of rules	Proposed

*As explained in more detail below, unfortunately since its passage this critical tool has been eliminated by Wisconsin's progressive Supreme Court, providing an instructive lesson to lawmakers to be mindful of (alleged) constitutional objections from those looking to preserve the status quo.

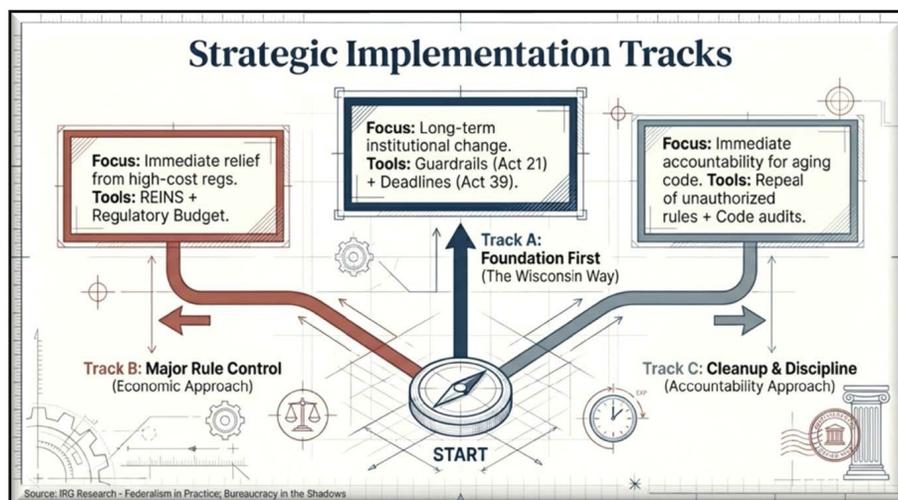
HOW TO USE THIS TOOLBOX: A GUIDE FOR LEGISLATORS

Below is a quick-start guide for legislators and staff. The Wisconsin Toolbox is not an all-or-nothing proposition. These reforms can be pursued incrementally, focusing on specific problems, or enacted through a single, high-impact bill. The optimal strategy depends on a state's unique political landscape, constitutional framework, and regulatory environment.

CHOOSE YOUR LEGISLATIVE PATH

The toolbox can be deployed along three distinct strategic tracks, each prioritizing a different aspect of administrative reform.

- **Track A: Foundation First** – This is the comprehensive, systematic approach that mirrors Wisconsin's own successful path. It begins by establishing the fundamental guardrails necessary to control agency self-authorization (**Act 21**). It then adds crucial process discipline to prevent bureaucratic inertia (**Act 39**). Finally, it hardens the Legislature's ability to enforce these new standards both in the agencies and in the courts (**Act 369**). This track builds a durable, long-term framework for accountable rulemaking.
- **Track B: Major Rule Control** – This path is designed to make a single, significant impact by focusing on the most economically burdensome regulations. It prioritizes the adoption of a REINS-style requirement for legislative approval of high-cost rules (**Act 57**). This is paired with a **Regulatory Budget** to cap the cumulative burden of all other rules, closing loopholes and forcing agencies to make trade-offs. This track directly targets the pocketbook issues associated with overregulation.
- **Track C: Cleanup and Discipline** – This strategy focuses on immediate accountability and efficiency by targeting the existing body of administrative law. It combines a powerful tool for repealing unauthorized and obsolete regulations already on the books (**Act 108**) with a mechanism that forces periodic re-evaluation of all rules (**Sunset Review**). This track is ideal for states with a large, outdated, and unmanageable administrative code, providing a direct path to reducing regulatory clutter.



QUICK-START CHECKLIST FOR LEGISLATORS

Step 1: Define the Problem

Identify agencies driving regulatory cost or controversy

Determine whether issues stem from new rules, legacy rules, or lack of oversight

Step 2: Choose a Reform Track

Foundation First

Major Rule Control

Cleanup and Discipline

Step 3: Select Initial Tools

Explicit authority requirement

Rulemaking deadlines

Legislative approval of major rules

Repeal of unauthorized rules

Judicial non-deference

Regulatory budget

Sunset review

Step 4: Prepare for Implementation

Assign oversight committee responsibility

Require cost and economic impact analysis

Consult constitutional counsel

Step 5: Plan for Oversight and Defense

Establish reporting requirements

Anticipate litigation posture

Prepare accountability-focused messaging

The following section provides a detailed analysis of each of these seven tools, equipping you to move forward on your chosen path.

THE SEVEN TOOLBOX INSTRUMENTS

REFORM TOOL 1: FOUNDATIONAL GUARDRAILS (WISCONSIN ACT 21)

This tool is the essential first step in the comprehensive “Foundation First” track.

Wisconsin Act 21 is the essential cornerstone of the state’s administrative revolution. It was strategically designed to end the pervasive practice of agency self-authorization and place the rulemaking process under the control of elected officials from its inception. This reform is the critical first step in establishing a culture of accountability.



2011 Act 21 is the foundational law that requires state agencies to have explicit, written permission from statute for any standard they enforce. It established the “scope statement” process, which requires gubernatorial approval before a rule can be drafted, and mandated a detailed economic impact analysis for proposed rules.

Why It Matters

- **Ends Implied Authority:** This reform eliminated the practice of agencies inventing regulatory authority from vague statutes. By requiring explicit permission from the Legislature for any standard or requirement, it ensures that agencies act as implementers of law, not as independent lawmakers.
- **Creates Executive Oversight:** The requirement for the governor to approve an agency’s “statement of scope” provides a critical front-end check on agency activism. This ensures that the state’s elected chief executive has reviewed and consented to an agency’s regulatory agenda before bureaucratic resources are spent drafting a rule.
- **Forces Economic Transparency:** The mandated economic impact analysis forces agencies to calculate and disclose the potential costs of a proposed rule on businesses, local governments, and the state economy as a whole. This brings transparency to the true costs of regulation and informs the decisions of both executive and legislative leaders.

Key Provisions

- No agency may implement or enforce any standard, requirement, or threshold unless explicitly required or permitted by statute or a rule.
- Agencies must prepare a “statement of scope” for each proposed rule, which must be approved by the governor before drafting can begin.
- The Department of Administration must review an agency’s scope statement to ensure the agency has explicit authority to promulgate the rule.

- Agencies must prepare a detailed economic-impact analysis for proposed rules.

What to Consider in Your State

- Statutory language prohibiting agencies from enforcing standards not explicitly authorized by law.
- A mandatory “scope statement” process requiring approval from the governor’s office before rule drafting can commence.
- A requirement for a detailed economic impact analysis to accompany all proposed rules.

This foundational reform sets the stage for further discipline in the rulemaking timeline, which is the focus of the next tool.

REFORM TOOL 2: RULEMAKING DEADLINES (WISCONSIN ACT 39)

This tool adds crucial process discipline to the “Foundation First” track.

Act 39 is a crucial process-discipline tool that provides certainty to the regulated community by preventing “zombie rules.” It forces agencies to act on their proposals in a timely manner or abandon them, eliminating the uncertainty created when proposed regulations linger indefinitely in the bureaucratic pipeline.

2017 Act 39 is a straightforward law that imposes a firm 30-month deadline for an agency to submit a proposed rule to the Legislature after its corresponding scope statement has been published. If the agency misses this deadline, the authorization expires.



Why It Matters

- **Prevents Indefinite Delays:** The deadline forces agencies to complete the rulemaking process efficiently. It prevents proposed rules from languishing for years, tying up agency resources and creating long-term uncertainty for the regulated community.
- **Provides Certainty and Predictability:** This reform is highly beneficial for businesses and other regulated entities. They gain clarity on whether a proposed rule is actively moving forward or has been abandoned, allowing them to plan and invest with greater confidence.
- **Reduces Bureaucratic Inertia:** The “use it or lose it” nature of the scope statement’s 30-month lifespan encourages agencies to prioritize their most important rulemaking efforts and prevents the administrative code from becoming cluttered with stalled, half-finished proposals.

Key Provisions

- An agency must submit a proposed rule to the Legislature before its corresponding scope statement expires.
- A statement of scope automatically expires 30 months after its publication.
- If a scope statement expires, the agency must restart the entire process with a new statement of scope to pursue the rule.

What to Consider in Your State

- Establish a clear, automatic expiration date (e.g., 24-36 months) for any published intent to create a rule.
- Require that if the deadline is missed, the agency must seek new, full approval to restart the entire rulemaking process.

While Act 39 disciplines the process, the next tool provides legislatures with direct control over the most costly outcomes of that process.

REFORM TOOL 3: LEGISLATIVE APPROVAL FOR MAJOR RULES (WISCONSIN ACT 57 - REINS)

This tool is the centerpiece of the high-impact "Major Rule Control" track.

Act 57, Wisconsin's REINS Act, is the most powerful tool for legislative accountability. It ensures that the people's elected representatives—not unelected bureaucrats—have the final say on any new regulation that imposes a major economic burden on the state's citizens and businesses.



2017 Act 57 is Wisconsin's state-level Regulations from the Executive in Need of Scrutiny (REINS) Act. It prohibits an agency from implementing any rule with an estimated economic impact of \$10 million or more over a two-year period without first obtaining explicit approval from the Legislature in the form of a passed bill.

"If something has a cost impact over \$10 million to industries or employers, this automatically requires action by the Legislature so that something can't go through that essentially is promulgated by people who aren't elected."

– former Gov. Scott Walker

Source: Wisconsin Public Radio, August 10, 2017



Why It Matters

- **Restores Constitutional Authority:** This reform reclaims the Legislature's core constitutional function of making law. It treats major, economy-altering regulations as what they are—new laws—and requires them to pass through the same bicameral legislative process as any other statute.
- **Creates Accountability:** By requiring a public, on-the-record vote for or against costly new rules, this law makes individual legislators directly accountable to their constituents for the economic burdens of regulation. It closes the accountability gap that allows legislators to blame “the bureaucracy” for unpopular rules.
- **Grounded in Public Support:** Polling demonstrates strong public backing for legislative oversight. In Wisconsin, 73% of voters believe the Legislature should approve at least some regulations. This includes 50% who say all regulations should be approved, another 16% for any rule costing over \$500,000, and an additional 7% for rules over \$10 million.
- **Deters Costly Rulemaking:** The high bar of legislative approval creates a powerful preventative effect, incentivizing agencies to find less costly regulatory alternatives or drop burdensome proposals altogether.

Key Provisions

- Agencies must determine if a proposed rule will impose \$10 million or more in implementation and compliance costs over any two-year period.
- If a rule meets or exceeds this threshold, the agency is prohibited from promulgating it unless the Legislature passes a bill authorizing it to proceed.
- As an alternative, the agency can make germane modifications to the proposed rule to reduce its costs below the \$10 million threshold.
- The co-chairs of the Joint Committee for the Review of Administrative Rules (JCRAR) are empowered to request and contract for an independent economic impact analysis of a proposed rule to verify agency estimates.

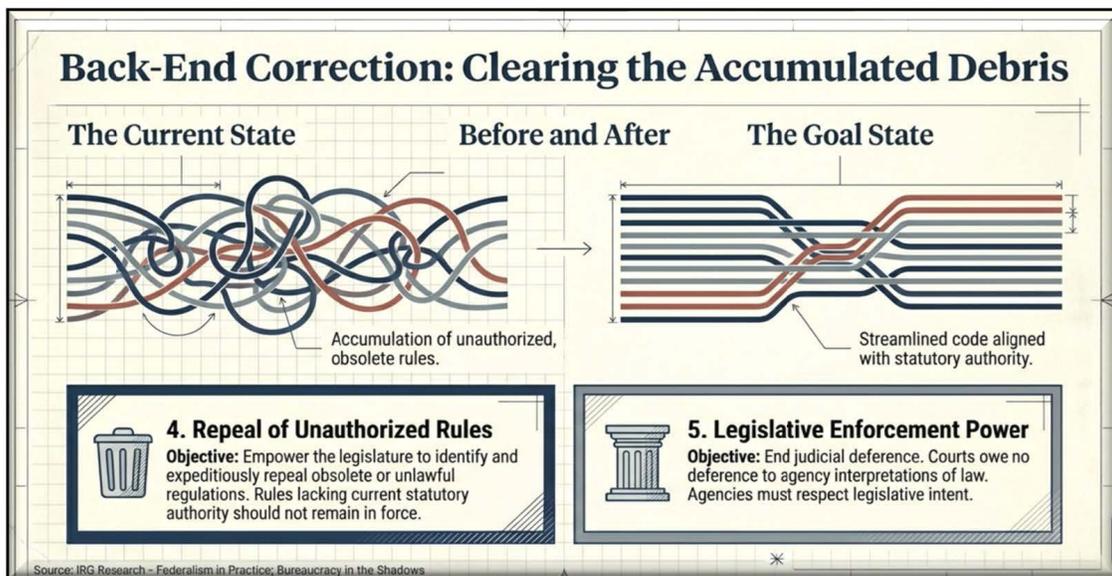
What to Consider in Your State

- Establish a clear, monetary trigger for defining a “major rule” (e.g., Wisconsin’s \$10 million over two years, or a lower amount, such as \$1 million, as recent states have done).
- Create a mechanism for affirmative legislative approval (e.g., passage of a bill or joint resolution) before any major rule can take effect.
- Empower a legislative committee to commission an independent economic analysis to verify agency cost estimates.

Common Objections & Clean Answers

OBJECTION	ANSWER
<p>"Passage of the bill would place a great burden upon the legislature...and in many cases without the necessary technical expertise that state agencies possess...[and] grind the regulatory process to a halt."</p>	<p>The bill’s proponents directly addressed this. Senator Devin LeMahieu testified that the goal is not to stop all rules, but to ensure "the public to hold individual legislators accountable for expensive rules." He cited the state’s \$7 billion Phosphorus Rule, an "economy-changing" regulation passed without a single legislative vote. The reform ensures that for the most consequential regulations, a situation where "the people's representatives did not even have a seat at the table" cannot happen again.</p>

This tool gives legislatures power over major new rules; the next tool provides a tool for cleaning up old ones.



REFORM TOOL 4: REPEAL OF UNAUTHORIZED RULES (WISCONSIN ACT 108)

This tool is a core component of the “Cleanup and Discipline” track, empowering the Legislature to remove unauthorized rules from the books.

Act 108 is an essential “housekeeping” tool that empowers the Legislature to efficiently clean up the existing administrative code. It provides a streamlined process for identifying and removing rules that are obsolete, duplicative, or no longer authorized by current state law, thereby reducing regulatory confusion and clutter.

REFORM TOOL 4

Repeal of Unauthorized Rules (Act 108 Style)

THE OBJECTIVE
Eliminate Obsolete & Unlawful Regulations.

THE MECHANISM
A systematic process to identify and remove rules that lack current statutory authority.

WHY IT WORKS
Aligns the administrative code with current enacted law and removes “regulatory debris”.

STATUS: ENACTED

2017 Act 108 is a law that creates an expedited process for the Legislature’s JCRAR to review and direct the repeal of “unauthorized rules”—those whose authorizing statute has since been repealed or amended by the Legislature.

Why It Matters

- **Ensures Rules Align with Current Law:** This reform prevents agencies from enforcing “zombie regulations” that remain on the books even after the Legislature has changed the underlying law that once authorized them. It ensures the administrative code reflects the current will of the Legislature.
- **Promotes Regulatory Hygiene:** Act 108 functions as a mechanism to clear out obsolete, duplicative, or superseded rules. This reduces the complexity of the administrative code, making it easier for citizens and businesses to understand and comply with current regulations.
- **Increases Legislative Oversight:** The law requires agencies to submit a biennial report to JCRAR listing all their problematic rules. This reporting requirement keeps legislators informed and empowers them to demand agency action to clean up the code.

Key Provisions

- A rule is considered “unauthorized” if the law that authorized its promulgation has been repealed or amended.
- Agencies must submit a biennial report to JCRAR listing all unauthorized, obsolete, duplicative, superseded, or economically burdensome rules.
- The report must describe any actions the agency has taken, or plans to take, to address these problematic rules.

What to Consider in Your State

- Create a clear statutory definition of an “unauthorized rule.”
- Establish a mandatory reporting process where agencies must periodically identify problematic rules for a legislative oversight committee.

- Grant the legislative committee clear authority to initiate the repeal of these identified rules.

This tool helps clean up the past, while the next tool strengthens a legislature’s power over the future of rulemaking.

REFORM TOOL 5: LEGISLATIVE ENFORCEMENT POWER (WISCONSIN ACT 369)

This tool provides the necessary enforcement power to complete the “Foundation First” track.

2017 Act 369 is a critical reform that hardens the Legislature’s enforcement capabilities. It ensures that legislative oversight of the rulemaking process is not merely advisory but has real teeth, giving legislative directives binding power both in the courts and within the administrative process itself.

REFORM TOOL 5

Legislative Enforcement Power

(Act 369 Style)



THE OBJECTIVE

End Judicial Deference.

THE MECHANISM

Courts and agencies must respect legislative intent. No automatic deference to agency interpretations of law.

CONSTRAINT

Must be designed to comply with bicameralism and presentment requirements.

STATUS: ENACTED

Act 369 is a law with two primary functions: it codified the Wisconsin Supreme Court’s landmark *Tetra Tech v. Wisconsin Department of Revenue* decision, ending judicial deference to agency interpretations of law, and it strengthened the power of JCRAR to object to and block proposed rules.

Why It Matters

- **Ends Judicial Deference:** This provision ensures that courts will decide the meaning of a law on their own legal judgment, rather than automatically deferring to an agency’s interpretation. This is a crucial separation-of-powers reform that strengthens the Legislature’s role as the primary law-writer and prevents agencies from becoming the final arbiters of their own statutory authority.
- **Empowers Legislative Veto:** The law grants JCRAR the authority to indefinitely object to a proposed rule. This action serves as a powerful check, preventing the rule from taking effect. An agency can only override the committee’s objection by convincing the full Legislature to pass a new law explicitly authorizing the rule.

Key Provisions

- Codified the new standard of judicial review established in *Tetra Tech*, ending deference to administrative agencies’ conclusions of law.
- Allows JCRAR to indefinitely object to any proposed rule, which prevents the rule from taking effect unless new, specific legislation is passed.

What to Consider in Your State

- Enact a statute that explicitly directs state courts to grant no deference to an agency’s interpretation of law or its legal conclusions.

- Grant a central legislative oversight committee the authority to suspend or object to a proposed administrative rule. *However, this provision requires extreme caution.* In 2025, the Wisconsin Supreme Court in *Evers v. Marklein II* struck down JCRAR’s power to indefinitely object to a rule, holding that it violated the state constitution’s bicameralism and presentment requirements. States seeking to replicate this tool should consider working closely with legal counsel to structure the committee’s power as a temporary suspension rather than a permanent veto, or consider pursuing a state constitutional amendment, to avoid a similar legal challenge.

Having reviewed the five enacted pillars of Wisconsin’s reforms, we now turn to two recommended next steps for even stronger oversight.

REFORM TOOL 6: THE REGULATORY BUDGET (RECOMMENDED)

This tool is a core component of the “Major Rule Control” track, designed to cap the cumulative burden of all regulations.

The regulatory budget is a powerful, next-generation reform designed to control the *cumulative* burden of regulations. It forces a “one-in, one-out” (or “one-in, two-out”) discipline that addresses the overall growth of the administrative state, not just the impact of individual high-cost rules. Modeled on Wisconsin’s proposed legislation (AB 277), a regulatory budget requires that for any new rule imposing compliance costs, an agency must simultaneously propose the repeal of a different existing rule (or rules) that reduces costs by an equal or greater amount.

REFORM TOOL 6
Regulatory Budget
(Future Phase)

THE OBJECTIVE
Control Cumulative Burden.

THE MECHANISM
“One-in, One-out.” New regulatory costs must be offset by repealing existing costs.

WHY IT WORKS
Caps total regulatory growth and forces agencies to prioritize trade-offs rather than just adding layers.

STATUS: RECOMMENDED

Why It Matters

- **Caps Total Regulatory Costs:** This is the only tool that directly addresses the steady accumulation of rules and their total economic impact. By requiring a cost offset for every new regulation, it aims to “bend the curve” on overall regulatory growth.
- **Forces Prioritization:** This reform compels agencies to regularly review their existing stock of rules to identify outdated, inefficient, or unnecessary ones for repeal. Instead of simply layering new regulations on top of old ones, they must make strategic trade-offs and justify new burdens.
- **Closes the REINS Loophole:** This tool directly counteracts agency gamesmanship. Wisconsin’s \$10 million REINS threshold is high compared to the \$1 million threshold (or lower) in many other states. A regulatory budget prevents agencies from evading review by splitting a single major rule into multiple smaller ones that each fall below the REINS trigger. It captures the cumulative burden of these smaller rules that collectively impose a significant cost on the economy.

Key Provisions (Based on AB 277)

- Requires an agency proposing a rule with any amount of implementation and compliance costs to take one of two actions.
- Option 1: Modify the proposed rule to eliminate the expected cost.
- Option 2: Propose the repeal of a different rule (or set of rules) that reduces compliance costs in an amount that will fully offset the costs of the new rule.

What to Consider in Your State

- Establish a “regulatory offset” requirement for all new rules that carry an economic cost.
- Mandate that agencies identify specific existing regulations for repeal to offset the costs of any proposed new regulation.

This tool caps the total cost of regulations, while the final recommended tool ensures that no regulation remains permanent without review.

REFORM TOOL 7: SUNSET REVIEW (RECOMMENDED)

This tool is a core component of the “Cleanup and Discipline” track, ensuring no rule remains permanent without justification.

Sunset review represents a fundamental shift in the nature of regulation. It changes the default from “rules are permanent unless repealed” to “rules are temporary unless re-justified,” forcing periodic accountability for the entire administrative code and preventing the buildup of outdated and unnecessary mandates.



Modeled on Wisconsin’s proposed legislation (AB 274), sunset review is a requirement for every chapter of the state’s administrative code to automatically expire after a set period (e.g., seven years) unless the promulgating agency proactively reviews and readopts it through a legislative oversight process.

Why It Matters

- **Forces Periodic Re-evaluation:** This mechanism compels agencies to regularly assess whether their old rules are still necessary, effective, and relevant in the current environment. It prevents regulations from remaining on the books for decades out of sheer inertia.
- **Provides a Legislative Checkpoint:** The readoption process gives the Legislature a regular, scheduled opportunity to weigh in on existing chapters of rules, not just newly proposed ones. This creates a recurring moment of accountability for the entire regulatory state.

- **Enjoys Strong Public Support:** This is a popular, common-sense reform. Polling in Wisconsin shows that two-thirds (67%) of voters favor requiring legislative review for any rule that has been in effect for more than seven years.
- **Is a Proven Reform:** This is not a novel concept. According to a Ballotpedia survey, at least 11 other states have already implemented some form of sunset provisions for their administrative rules, with expiration cycles ranging from one to ten years.

Key Provisions (Based on AB 274)

- Each chapter of the Wisconsin Administrative Code expires after seven years unless it is readopted.
- To readopt a chapter, an agency sends a notice to JCRAR and the appropriate standing committees.
- If no member of JCRAR or a relevant standing committee objects, the chapter is considered readopted without further action.
- If an objection is made, the agency must use the standard, full rule-making process to readopt the chapter.

What to Consider in Your State

- Establish an automatic expiration cycle for all administrative rules (e.g., 5, 7, or 10 years).
- Create an efficient readoption process that includes a clear checkpoint for legislative oversight committee review and objection.



AN OFFER OF ASSISTANCE

The Institute for Reforming Government (IRG) is committed to advancing the principles of limited, accountable government. We stand ready to provide guidance to legislators and staff in other states who are interested in pursuing these reforms.

We can help by:

- Briefing legislators, staff, and caucuses on the details of the Wisconsin reforms.
- Providing guidance in adapting model legislative language to fit a specific state's legal and constitutional framework.
- Sharing lessons learned from the political and practical implementation of these reforms in Wisconsin.

NEXT STEPS

The time to restore accountable, constitutional government is now. We urge legislators to use this toolbox to choose a path, select a tool, and introduce their first reform. By taking this step, you can begin the critical work of ensuring that the government of your state is once again truly a government of, by, and for the people.

CONCLUSION

These seven legislative reform tools provide a complete and powerful toolbox for restoring legislative authority and accountable government. You can adopt these reforms without reinventing the wheel. The unchecked growth of the administrative state is one of the most significant challenges facing state governments today, but it is not an unsolvable problem. The Wisconsin model provides a proven, road-tested, and effective playbook for any state legislature ready to reclaim its constitutional authority and restore the principle that laws should be made by lawmakers. This toolbox contains the strategy, the substance, and the specific tools needed to begin that process.

KEY STATUTORY LANGUAGE FROM WISCONSIN REFORMS

The following excerpts identify core operative provisions and are provided as illustrative starting points for legislators and counsel. Hyperlinks are provided to the full bill text and legislative counsel analysis.

[Act 21 \(Foundational Guardrails\)](#) – (1) *“No agency may implement or enforce any standard, requirement, or threshold unless the standard is explicitly required or explicitly permitted by statute.”* (2) *“Any standard not expressly authorized by statute is void and unenforceable.”*

[Act 39 \(Rulemaking Deadlines\)](#) – (1) *“An agency’s authority to promulgate a proposed rule expires if the rule is not submitted to the Legislature within 30 months after publication of the scope statement.”* (2) *“Upon expiration, a new scope statement is required to proceed.”*

[Act 57 \(REINS\)](#) – (1) *“A ‘major rule’ may not take effect unless approved by enacted legislation.”* (2) *“Absent timely legislative approval, authority to promulgate the major rule expires.”*

[Act 108 \(Unauthorized Rules\)](#) – (1) *“Each agency shall identify administrative rules that lack current statutory authorization.”* (2) *“The Legislature may direct repeal of unauthorized rules through an expedited procedure.”*

[Act 369 \(Enforcement Power\)](#) – (1) *“A court shall accord no deference to an agency’s interpretation of law.”* (2) *“Courts independently determine questions of law, subject to constitutional limits.”*

[AB 277 \(Regulatory Budget\)](#) – (1) *“No agency may promulgate a rule imposing implementation or compliance costs unless those costs are fully offset within the same calendar year or affirmatively authorized by enacted legislation.”* (2) *“The regulatory budget is binding on agency rulemaking authority.”*

[AB 274 \(Regulatory Sunset & Readoption\)](#): (1) *“All chapters of the Wisconsin Administrative Code expire after seven years unless affirmatively readopted.”* (2) *“Expiration requires agencies and the Legislature to review and reauthorize existing regulations.”*



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