

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/10/2017**

Amendment to: HB 1248

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>						
<b>Expenditures</b>						
<b>Appropriations</b>						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
<b>Counties</b>			
<b>Cities</b>			
<b>School Districts</b>			
<b>Townships</b>			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1248 enacts new law referred to as the Prosperity States Compact, which authorizes the creation of prosperity districts.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

HB 1248 enacts new law referred to as the Prosperity States Compact, which authorizes the creation of prosperity districts. A prosperity district becomes the sole governing political subdivision, and it replaces all state laws above the baseline of the North Dakota Constitution, common law, criminal law and existing compacts. A prosperity district has, among other things, no taxing power, nor eminent domain or civil forfeiture power; its police powers are restricted to criminal law, common law or the least restrictive regulation; it may not subsidize private enterprise, and any municipal services are limited to competitively contracted public-private partnerships. Its regulatory authority is limited. With the consent of Congress, reforms in prosperity districts are given the status of federal law.

If enacted, HB 1248 puts into place a new governing concept. The fiscal effects associated with the possible formation of prosperity districts cannot be determined.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

**Name:** Kathryn L. Strombeck

**Agency:** Office of Tax Commissioner

**Telephone:** 701.328.3402

**Date Prepared:** 01/25/2017

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**2017 HOUSE POLITICAL SUBDIVISIONS**

**HB 1248**

# 2017 HOUSE STANDING COMMITTEE MINUTES

Political Subdivision Committee  
Prairie Room, State Capitol

HB 1248  
1/26/2017  
27472

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Donna W. Hestham*

## Explanation or reason for introduction of bill/resolution:

Relating to a prosperity states compact.

## Minutes:

Attachments 1,2,3,4,5,6

**Vice Chairman Hatlestad:** Opened the hearing on HB 1248.

**Chairman Klemin, District 47:** Testifying in support of HB1248. Introduced the bill and Nick Dronius who will explain the bill. I handed out 3 informational attachments and proposed amendments for the HB 1248. The amendments strictly relate to the form and style of this bill, there was some issue related to subdivisions and that amendment goes back and rennumbers some of that and doesn't make any substantive changes. (See Attachments 1,2,3,4). 2:00

**Rep. Ertelt:** Can you give us this in your own words what a Prosperity States Compact is?

**Chairman Klemin:** It will be better if Mr. Dronius gives you a description of the bill. It is long and complicated but it basically sets up another form of political subdivision in North Dakota. It is entirely voluntary. Every resident and property owner in that particular subdivision would have to agree to it. The governor has the opportunity to say no you can't do this in a particular case. The counties can say no we aren't having prosperity districts in this county. We will hear an example about Walt Disney World in Florida probably being the most famous example of a Prosperity district.

**Vice Chairman Hatlestad:** We will take testimony in support of HB 1248.

**Curtis Olafson, Past Senator for District 10 from 2006-2012: Vice President of State Alliances for Compact America.** When I look at this legislation it is a natural fit for North Dakota because it gives us an opportunity to diversify our economy so we are not so dependent on crude oil and agricultural commodity markets. I think it gives a great opportunity and this is purely voluntary so it doesn't force anybody to do anything. That is key to keep in mind. I have worked with Mr. Dronius since 2011 on National political work and I can tell you his work product is always very thorough and meticulous, much like our

prime sponsor. So we have two of the best attorneys that I know that have looked through this in detail. That should give the committee a lot of assurance.

**Mr. Nick Dronius:** (See Attachment #5 and 6) Power-point called Restore Prosperity Now. 7:04-16:12 Any questions at this point?

**Rep. Guggisberg:** I assume that this power-point will be available to us afterward and citations for all the numbers that your giving.

**Mr. Nick Dronius:** Yes, if you go to Prosperity States.Org you will see an entire library of policy work in addition to what you have before you and also on our You tube channel there is various experts giving testimony and short statements to back that all up. I will be available 7days a week and 24 hours a day, just email me. Continues on power point presentation. 17:08-36:01

**Chairman Klemin:** It beneficial to the committee to go through the bill itself.

**Mr. Nick Dronius:** Absolutely. The bill is comprising Articles which are the big subsections. Article 1 is the preamble part and tells the purpose of it.

Article 2 is the heart and nature of the prosperity district. It has in detail what authorities it has. If you read anything in this Article 2 is the heart and soul of this.

Article 3 is the state wide tailoring section where you can preserve policies, laws regulations in your environment in both state and federal if you designate them in there.

Article 4 is the procedural portion that lays out how you petition, how you form, expand and withdraw from the district.

Article 5 explains how this becomes a compact, what the author is, what the acceptance is and what the effect of forming the compact is. This is the contractual language that makes this a sovereign contract when other states pass the same legislation.

Article 6 is compact commission, the interstate body that is created really to do dispute resolution between states and the federal government as an option that is its primary function. It has a number of protections built in it so it doesn't morph into something dangerous and it has no sovereign authorities. There is a compact administrator that coordinates the forming of the compacts and notifies all the other states of that.

Article 7 is the definitional section. They are very important and in particular the definition of eligible land is the definition that controls where districts are formed, so look very carefully at that definition and it tells you the distinction between rural, city, and you will it laid out right there.

Article 9 there is a severance clause, there is an explanation of what things are tailorable to each state and what things aren't. It is sort of the clean-up article for the compact. 40:00

**Rep. Ertelt:** You were referring to unimproved land value tax and I would like a little more explanation?

**Mr. Dronius:** Yes. The basic idea is formed by an economist know has Henry George in the 19<sup>th</sup> century, he observed there is something inequitable when unimproved value of land increases and the owner of the land doing nothing just being positioned in the right place can



acquire that land value for himself. He thought we should find a way to target taxes to take away that unearned value that accrues to land for no other reason than its position next to some public works. The problem with taxes it penalizes savings and investment, if you use an unimproved land value tax and you limited your taxation to percentage of the land that is not improved the value, resulting from where it is located, if you target taxation to that and nothing else that means you are liberating economic development in that area. You liberate all sorts of growth. The counter argument it does strongly encourage dense development because it is a tax, the land value that is unimproved will move up and you know if you build a skyscraper the improved value is gigantic. It would be a giant incentive to build and build. Some communities don't want that. You might want a different underlying framework like a consumption tax, flat tax or a combination of things. All things being equal, generally speaking the unimproved land value tax is the least economically damaging and the threat of overdevelopment is a little over blown but it does exist.

**Rep. Ertelt:** Does the area within a compact have to be contiguous and if it doesn't how is that dealt with?

**Mr. Dronius:** No, for many years now they have been noncontiguous. The biggest new compact passed in Arizona where they were streamlining medical licenses between states. We have a reciprocity clause in this compact that says if another state becomes a compact member then whatever the policy environment in their district will be recognized as the same policy environment in every other district in every other state. That is the default. We do have a number of things that can override the reciprocity in the tailoring section for what you would like to keep for your state. Reciprocity is good to have in there because it keeps you competitive with other members. 46:57

**Rep. Beadle:** To clarify in the terms of the contiguous question, it wasn't just in terms of the compact states having to be contiguous, but the land itself.

**Mr. Dronius:** When you form the district the land that goes into the district has to be contiguous one of the interesting features that is unique to prosperity district concept here is that any land owner outside can petition to get in the district and anyone inside the district can petition to get out and districts can also provide in the bi-laws other ways to exit.

**Rep. Beadle:** Can you tell us about the schematics of removing the control and removing the authority onto the district. So for example someone wants to petition and they want to put together one of these districts within Cass County, within that county they have sales tax associated with the county, they have drain assessments and special assessments. How does this impact the existing tax regulations in terms of special assessment and property tax adjustment and everything else? Are all the one currently levied going away?

**Mr. Dronius:** The fundamental principles the nominal amount of revenues from any source to any authority is guaranteed contractually and runs with the land like a home owner assessment. The more entities that are levying taxes makes it confusing. Which is part of the reason we have the negotiation option. If you can't easily identify the total sum of all the revenues generated in that area. Then the land value covenant idea that already presumes you can calculate that is not a good fit, instead you would want to do the negotiation route.



That requires a sit down with a designated official to come up with a covenant that preserves all those revenues and then gets approval by the legislature before it is effective. If it is approved by the legislature, then anyone whoever forms a district again can also have that covenant so there isn't a special deal cut for someone. You can't form the district without those revenue covenants and whatever it is it has to guarantee the same nominal revenues from all sources in that area.

**Rep. Ertelt:** The taxes that are accessed by other political subdivisions would remain?

**Mr. Dronius:** The guarantee in the compact is that you add all the revenues generated in the area that you want to be in the district currently is guaranteed. That amount is guaranteed as a floor. One of the questions is how do you enforce that? The county and state all get liens equivalent to that guarantee and if they foreclose on that lien they become owners of it and this is where the withdrawal from the district has some interesting effects. If you had a bad district that didn't pay its revenue covenants and someone comes in and forecloses on the liens and it then has the option to revert to the original.

**Rep K. Koppelman:** I see the term member referred in there but I didn't see a definition, are you referring to states or who is a member?

**Mr. Dronius:** I think it is in the definitions in Article 7 or 8, a member is defined as a state and a state is one of the several states of the United States. We do allow for the possibility of including the Indian Reservations if they want to be a member.

**Rep K. Koppelman:** What about congressional authorization, where is that, does it exist and how would you seek it if not?

**Mr. Dronius:** Congressional authorization is a congressional consent. Normally it is a joint resolution signed by the President. What it says can be as simple as congress consents to the compact between such and such a state titled such and such, or it can say congress consents to the following compact and they literally verbatim repeat the compact. Sometime they will say we will consent to that compact if you change it this way. There is a lot of play in how congress decides to consent to this.

**Rep K. Koppelman:** My question is you don't have existing consent you will be seeking this?

**Mr. Dronius:** We do have an argument that we do have existing consent to the extent that we are overriding federal criminal laws that interfere with these regulatory reforms. There is a standing statute from 1934 where it gives consent at the federal level to any compact conveniently coordinating it is that varied and that broad and it has been litigated in the supreme court a number of times and upheld. The argument that we would open with congress is we think to the extent that you criminalize all these regulations, we already have consent. We sure think we need better certainty and more clarity.

**Rep K. Koppelman:** This does not just limit itself to criminal justice, does it?

**Mr. Dronius:** That is correct, but a big part of it does deal with coordinating law enforcement inside the district and outside the district. You can make a solid argument that a large portion of this has consent. We can tell congress we think we have 98% consent of what we are doing already but we think we need more clarity and more certainty.

**Rep K. Koppelman:** I am familiar with a number of compacts that you are referring too that do deal with criminal justice issues, and some have all 50 states as members and they are generally agreed to for the basis of uniformity and reciprocity before states, this I see as a little differently.

**Mr. Dronius:** Rick Masters former general counsel for that organization was peer reviewer for this, that doesn't vouch for policy issues but he vouched for constitutionality.

**Chairman Klemin:** Would it be fair to say that this bill enabling legislation which would allow people to form a Prosperity District on eligible land and they will have to go through a lot of work to do it as set out in this bill. This enables them to do that and it doesn't set up a blue print that says you must do it exactly one way or another.

**Mr. Dronius:** Yes, what you have here is similar to a framework for creating a city, or an irrigation district and such. It will take significant work for this to be done but once the framework is done it can be used and joined by others. It's a tool in the tool chest.

**Rep. Ertelt:** Could you speak to the assets of existing political subdivisions, the state and federal highway systems I am thinking primarily roads but this could be waterways etc., do you become property of the compact?

**Chairman Klemin:** Considering terminology I think you are really talking about is the district or the zone. It sounds like you are thinking of the particular eligible land involved in this Prosperity District.

**Mr. Dronius:** All infrastructure that is owned by the state and federal government remains theirs. If someone tries to form a district that encompasses them the property owners have to give their consent. You can't form it without their consent, and a negotiation probably happen and understandings may be reached or not. The point is the most frictionless way to create a district will be in a place where there aren't already assets. Probably a neglected area of your state that needs some economic boost. This doesn't cost the state a dime and it enhances the productivity of the folks in that area and draw potentially investment from around the world. It is a win, win for the state.

**Rep. Ertelt:** Can an individual form a district on their own?

**Mr. Dronius:** If the individual meets all the criteria, yes they could form it. That is why it is so important that districts can expand to any adjacent landowner that wants to get in fairly easily. Walt Disney World special district could gobble up everything around it if it wanted to.



**Chairman Klemin:** There is a minimum size requirement like one square mile?

**Mr. Dronius:** To form the district is a minimum of one square mile but to expand it to an adjacent land owner it could go down to the house. There is the default setting if the state was not comfortable with it being so easily expanded then obviously you could tailor it to maybe limit expansion to a similar size. The reason we counsel against them and we haven't done it is we are concerned about a district like this being captured by potential interest groups that keep it for themselves. We want to make it very easy to join so if it is successful that ordinary folks on the outside can get in. It is a very important principal for this.

**Rep. Johnson:** It seems like compact districts will be formed around economic sectors, like agriculture and oil. Then doesn't that generate problems anyway?

**Mr. Dronius:** Keep in mind if you are outside an existing municipality and its planning jurisdiction and you are in a place where there isn't any infrastructure and you have 100% of all the land owners and 100% consent of all the qualified electors in that area, then the choices that are being made are being decided by a committee made by those that are affected by it. Because of the strong protections we put in there for where outside agencies can go in and fix the problem if there is a spill-over effect. You really are not creating any real risk beyond the formation of any new city or any new district. The difference is you are delivering a policy environment that no one else does. One that goes immediately to the best practices in the free market suite of practices for that community. Example of a district in Oklahoma. 1:05:22. The district itself will be driven by market forces.

**Chairman Klemin:** Any further testimony in support of HB 1248? Seeing none. Any testimony in opposition to HB 1248?

**Waylon Hedegaard, President of the North Dakota AFL-CIO:** 1:06:09 In opposition to HB 1248. These are such huge changes and this brings up so many questions. If you form all of these districts how are workers protected inside of them. What actually controls worker safety. Are they protected under OSHA are there regulations here? If workers are hurt inside there are they protected by WSI and if so are the companies forced to pay the premiums to WSI? What is to stop a company from buying three or four square miles of land in southwestern North Dakota forming one of these by themselves, since it can be done by individuals, strip mining the uranium out of there and with the difficulty and I really don't understand the externality part of it. Without actual leakage from that to the outside what is to say they don't just disincorporate after 5 years and leave that. How are we protected from this? This is a huge unknown. I will be reading the entire thing. This opens up more questions and something we should be studying for 10 years before we do this. I would urge a no vote.

**Chairman Klemin:** You may want to talk with Mr. Dronius about this, he may have some answers for you. Any other testimony in opposition to HB 1248? Seeing none we will close the hearing on HB 1248.

# 2017 HOUSE STANDING COMMITTEE MINUTES

Political Subdivision Committee  
Prairie Room, State Capitol

HB 1248  
2/10/2017  
Job # 28232

- Subcommittee  
 Conference Committee

*Carman Hecht*

## Explanation or reason for introduction of bill/resolution:

Relating to prosperity states compact

### Minutes:

1,2,3,4

**Chairman Klemin:** Opened for committee work (handouts 1,2,3) Explained the handouts and stated they give a brief overview of what the bill does. Handout #1 provides an overview of prosperity state process is all about. Also a fact sheet #2, as well as the email from Nick Dranias #3.

**Rep. Maragos:** Moved do pass on amendments 17,04664.02002. Dated January 25, 2017 by Rep. Klemin.

**Rep. Toman:** Second the motion.

Voice vote carried.

**Rep K. Koppelman:** Handed out amendment #4. It is a study resolution.

**Rep K. Koppelman:** Made a do pass motion on amendment #4, 17.0464.02003.

**Rep. Longmuir:** Second the motion.

**Chairman Klemin:** I don't believe it has passed anywhere

**Rep. Longmuir:** I read it and not sure what I read. I sent it to my States Attorney and he said it was a lot to grasp. I think this could be good but I don't feel comfortable voting on this yet.

**Rep K. Koppelman:** I did reach out and send the link to Interstate Compact they are still asking questions.

**Rep. Maragos:** Shall study or may study?

**Rep K. Koppelman:** I believe it's a shall consider.



**Rep. Maragos:** If it is not chosen to be studied this could be delay it even more years.

**Rep K. Koppelman:** Yes, that is true with any of our studies.

**Rep. Maragos:** I am going to resist this motion, I would rather that we say it's too soon. Then vote the way you want.

**Rep. Ertelt:** You use the word compact in the amendment and I think the bill goes beyond that to where you can have the prosperity district within your own state. So you don't have to enter into a compact.

**Rep K. Koppelman:** It may but that's the title of bill, so my intent was to study what's in front of us.

Motion revised to legislative management shall study.

**Rep. Simons:** I think the people that study it might not like it and it would be a change for the whole system, which I am for. Disney land is an excellent example of free market and getting federal government regulations out of things.

**Rep. Ertelt:** Would you be willing to address my question, I understand it says Prosperity States Compact, in your opinion would the study be limited to interaction between states or would it operate within our own state?

**Chairman Klemin:** The language itself doesn't dig into that part of it. But typically if it was studied I think they would look at the whole issue.

**Rep K. Koppelman:** The intent is to study the entire document we have seen.

Roll call vote #2 Koppelman amendment, failed, 6 yes, 8 no, 1 absent.

**Rep. Maragos:** Moved a do pass on HB 1248 as first amended.

**Rep. Simons:** Second the motion.

**Rep. Longmuir:** I feel we are rushing into something we don't completely understand. I won't be in support of this.

**Rep. Guggisberg:** I think this is a big step and are opening a door that we might not be able to shut again.

**Chairman Klemin:** I think it's clear that this is a new type of thinking, it's outside the box. It does allow for the prosperity district and we need to recall that it is completed voluntary and it doesn't cost the state or the counties or the cities anything. The Governor can decide not to approve one of these if they are proposed. Counties can also designate areas that cannot be used for this purpose.

**Chairman Klemin:** This does not affect the Constitution.

**Rep K. Koppelman:** I'm not ready for this not because I don't like the idea but I don't think I'm ready of it.

**Rep. Maragos:** I have not talked to the bill sponsors but based on the discussion of this committee, they will most likely try to correct to the extent they can this idea that people don't understand it or so comprehensive and big. If the bill doesn't pass this tells the sponsors where they have come up short and what they have to do to get it accepted.

Do pass as amended 9 yes, 5 no, 1 absent. Motion carried.

**Chairman Klemin:** Will carry the bill to the floor.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1248

- Page 2, line 23, after "by" insert "subparagraph d of paragraph 7 of subdivision a of"
- Page 3, line 5, after "to" insert "subdivision a of"
- Page 6, line 22, replace "(g)" with "(d)"
- Page 6, line 23, replace "(h)" with "(e)"
- Page 6, line 26, replace "(i)" with "(f)"
- Page 7, line 1, replace "(j)" with "(g)"
- Page 7, line 5, replace "(k)" with "(h)"
- Page 7, line 6, after "by" insert "subdivision d of"
- Page 7, line 19, after "under" insert "subdivision c of"
- Page 11, line 21, after "to" insert "paragraph 3 of subdivision c of"
- Page 11, line 27, after "to" insert "subdivision d of"
- Page 12, line 30, after "by" insert "subparagraph a of paragraph 1 of subdivision c of"
- Page 12, line 30, after "to" insert "subparagraph d of paragraph 7 of subdivision a of"
- Page 12, line 31, after "by" insert "subdivision d of"
- Page 14, line 8, after "by" insert "subparagraph a of paragraph 1 of subdivision c of"
- Page 14, line 9, after "to" insert "subparagraph d of paragraph 7 of subdivision a of"
- Page 14, line 21, after "by" insert "subparagraph a of paragraph 1 of subdivision c of"
- Page 14, line 22, after "to" insert "subparagraph d of paragraph 7 of subdivision a of"
- Page 15, line 6, after "under" insert "subparagraph b of paragraph 1 of subdivision c of"
- Page 15, line 9, after "by" insert "subparagraph a of paragraph 1 of subdivision c of"
- Page 15, line 10, after "to" insert "subparagraph d of paragraph 7 of subdivision a of"
- Page 15, line 26, after "by" insert "subparagraph a of paragraph 1 of subdivision c of"
- Page 15, line 27, after "to" insert "subparagraph d of paragraph 7 of subdivision a of"
- Page 15, line 28, after "by" insert "subparagraph b of paragraph 1 of subdivision c of"
- Page 16, line 5, after "to" insert "item 3 of subparagraph d of paragraph 7 of subdivision a of"
- Page 16, line 6, after "to" insert "subparagraph b of paragraph 1 of subdivision c of"
- Page 16, line 7, replace "their" with "its"
- Page 16, line 9, after "in" insert "subdivisions a through c of"
- Page 16, line 10, after "to" insert "item 3 of subparagraph d of paragraph 7 of subdivision a of"



Page 16, line 11, after "by" insert "subparagraph b of paragraph 1 of subdivision c of"

Page 16, line 13, after "in" insert "subdivisions a through c of"

Page 16, line 28, after "to" insert "subdivision d of"

Page 16, line 28, after "and" insert "subdivision d of"

Page 17, line 3, replace the third underscored comma with an underscored opening parenthesis

Page 17, line 4, replace the first underscored comma with an underscored closing parenthesis

Page 17, line 8, replace the underscored comma with an underscored opening parenthesis

Page 17, line 10, after "them" insert an underscored closing parenthesis

Page 17, line 27, after the first "of" insert "paragraph 9 of subdivision a of"

Page 18, line 4, after "market" insert "unimproved"

Page 18, line 19, after "market" insert "unimproved"

Page 19, line 3, after "market" insert "unimproved"

Page 19, line 12, after "market" insert "unimproved"

Page 20, line 26, after "in" insert "paragraph 9 of subdivision a of"

Page 22, line 15, after the first "of" insert "paragraph 9 of subdivision a of"

Page 23, line 1, after the first underscored comma insert "subdivision e of"

Page 24, line 8, after "in" insert "paragraph 3 of subdivision d of"

Page 29, line 11, after "by" insert "subdivision j of"

Page 29, line 18, after "by" insert "subdivision c of"

Page 29, line 22, after "under" insert "subdivision d of"

Page 29, line 24, after "under" insert "paragraph 9 of subdivision a of"

Page 31, after line 22 insert:

"12. Clarification of headings and internal references. This member's local legislative drafting and codification style requires the principal paragraphs of each Article of this compact to be designated solely by a numeral and internally cross-referenced as a subsection, designates certain subparagraphs alphabetically, references subclauses of subparagraphs either without designation or as numerical items, does not permit the use of initial capitalization to designate defined terms in the body of legislation, and requires the plural form of the terms "petitioners," "recipients," and "state officials," which is intended to include the possibility of a singular application, as well as the singular form of "governor," which is intended to include the possibility of plural application. This member understands that other members in privity may nevertheless refer to the same principal paragraphs with a heading that includes the word "section" prefacing the same numeral and also internally cross-reference the same as a "section," refer to the same subparagraphs with different headings, refer to the same defined terms with initial capitalization or full capitalization, and prefer to

use "governor(s)," "petitioner(s)," "recipient(s)," and "state official(s)" to reference the plural and singular form of such terms. As with any other difference in legislative drafting or codification style, these internal references are intended to be and should be construed as substantively equivalent."

Page 32, line 3, replace the underscored comma with an underscored opening parenthesis

Page 32, line 3, after "petitioners" insert an underscored closing parenthesis

Page 32, line 21, after "to" insert "item 1 of subparagraph a of paragraph 4 of subdivision d of"

Page 33, line 14, after "to" insert "subparagraph a of paragraph 1 of subdivision c of"

Page 34, line 19, remove "(a)"

Page 34, line 26, replace "(b)" with "b."

Page 34, line 28, replace "[1]" with "(1)"

Page 35, line 1, replace "[2]" with "(2)"

Page 35, line 5, replace "[3]" with "(3)"

Page 35, line 10, replace "(c)" with "c."

Page 35, line 11, replace "paragraph" with "subdivision"

Page 35, line 11, after "b" insert "of subsection 1 of this Article"

Page 35, line 12, replace "paragraph" with "subdivision"

Page 35, line 12, after "a" insert "of subsection 1 of this Article"

Page 35, line 17, replace "paragraph" with "subdivision"

Page 35, line 17, after "b" insert "of subsection 1 of this Article"

Page 38, line 30, after "of" insert "subdivision j of"

Page 39, line 11, after "under" insert "subdivision e of"

Page 39, line 18, after "by" insert "subdivision d of"

Page 40, line 4, after "under" insert "subdivision e of"

Page 40, line 13, after "by" insert "subdivision d of"

Page 40, remove line 30

Page 41, line 4, remove the third underscored comma

Page 41, line 4, after the underscored semicolon insert "and"

Page 42, line 10, after "by" insert "subdivision c of"

Page 42, line 16, after "under" insert "subdivision d of"

Page 42, line 21, after "under" insert "paragraph 9 of subdivision a of"

Page 48, line 24, after "in" insert "subdivision j of"

Page 49, line 9, replace "provisional" with ":"

2/10/17 DA  
4 of 4

a. Provisional"

Page 49, line 12, replace ", or permanent" with "; or

b. Permanent"

Page 49, line 21, after "to" insert "paragraph 3 of subdivision c of"

Page 50, line 20, after "to" insert "items 1 and 3 of subparagraph d of paragraph 7 of subdivision a of"

Page 53, line 1, after "trustees" insert an underscored opening parenthesis

Page 53, line 2, after "record" insert an underscored closing parenthesis

Page 60, line 4, after the first "of" insert "subdivisions a, b, c, e, g, and l of"

Renumber accordingly



PROPOSED AMENDMENTS TO HOUSE BILL NO. 1248

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study of the prosperity states compact."

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - PROSPERITY STATES COMPACT.** During the 2017-18 interim, the legislative management shall consider studying the feasibility and desirability of joining the prosperity states compact. The study must include a comprehensive review of other states that have adopted the compact and the benefits provided to those states by establishing prosperity districts under the compact. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly."

Renumber accordingly

Date: 2-10-17  
Roll Call Vote: 1

2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1248

House Political Subdivisions Committee

Subcommittee

Amendment LC# or Description: 17.0464.02002

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Rep. Maragos Seconded By Rep. Toman

Representatives	Yes	No	Representatives	Yes	No
Chairman Klemin			Rep. Guggisberg		
Vice Chairman Hatlestad			Rep. Hanson		
Rep. Beadle					
Rep. Becker					
Rep. Ertelt					
Rep. Johnson					
Rep. Koppelman					
Rep. Longmuir					
Rep. Maragos					
Rep. Pyle					
Rep. Simons					
Rep. Toman					
Rep. Zubke					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

*VOICE VOTE CARRIED  
Rep. Klemin Proposed Amendment*



Date: 2-10-17  
Roll Call Vote: 2

2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1248

House Political Subdivisions Committee

Subcommittee

Amendment LC# or Description: 17.0464.02003

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Rep. Koppelman Seconded By Rep. Longmuir

Representatives	Yes	No	Representatives	Yes	No
Chairman Klemin		/	Rep. Guggisberg	/	
Vice Chairman Hatlestad	//		Rep. Hanson		/
Rep. Beadle	//				
Rep. Becker	//				
Rep. Ertelt		//			
Rep. Johnson		//			
Rep. Koppelman	//				
Rep. Longmuir	//				
Rep. Maragos		/			
Rep. Pyle	—	/			
Rep. Simons		//			
Rep. Toman		//			
Rep. Zubke		/			

Total (Yes) 6 No 8

Absent 1

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Failed

amendment revised to Legislative  
management shall study.

Date: 2-10-17  
 Roll Call Vote: 3

**2017 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. HB 1248**

House Political Subdivisions Committee

Subcommittee

Amendment LC# or Description: 17.0464.02002 Title 03000

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Rep. Maragos Seconded By Rep. Simons

Representatives	Yes	No	Representatives	Yes	No
Chairman Klemin	/		Rep. Guggisberg		/
Vice Chairman Hatlestad	/		Rep. Hanson		/
Rep. Beadle		/			
Rep. Becker	/				
Rep. Ertelt	/				
Rep. Johnson	/				
Rep. Koppelman		/			
Rep. Longmuir		/			
Rep. Maragos	/				
Rep. Pyle	/				
Rep. Simons	/				
Rep. Toman	/				
Rep. Zubke	/				

Total (Yes) 9 No 5

Absent 1

Floor Assignment Rep. Klemin

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1248: Political Subdivisions Committee (Rep. Klemin, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). HB 1248 was placed on the Sixth order on the calendar.

Page 2, line 23, after "by" insert "subparagraph d of paragraph 7 of subdivision a of"

Page 3, line 5, after "to" insert "subdivision a of"

Page 6, line 22, replace "(g)" with "(d)"

Page 6, line 23, replace "(h)" with "(e)"

Page 6, line 26, replace "(i)" with "(f)"

Page 7, line 1, replace "(j)" with "(g)"

Page 7, line 5, replace "(k)" with "(h)"

Page 7, line 6, after "by" insert "subdivision d of"

Page 7, line 19, after "under" insert "subdivision c of"

Page 11, line 21, after "to" insert "paragraph 3 of subdivision c of"

Page 11, line 27, after "to" insert "subdivision d of"

Page 12, line 30, after "by" insert "subparagraph a of paragraph 1 of subdivision c of"

Page 12, line 30, after "to" insert "subparagraph d of paragraph 7 of subdivision a of"

Page 12, line 31, after "by" insert "subdivision d of"

Page 14, line 8, after "by" insert "subparagraph a of paragraph 1 of subdivision c of"

Page 14, line 9, after "to" insert "subparagraph d of paragraph 7 of subdivision a of"

Page 14, line 21, after "by" insert "subparagraph a of paragraph 1 of subdivision c of"

Page 14, line 22, after "to" insert "subparagraph d of paragraph 7 of subdivision a of"

Page 15, line 6, after "under" insert "subparagraph b of paragraph 1 of subdivision c of"

Page 15, line 9, after "by" insert "subparagraph a of paragraph 1 of subdivision c of"

Page 15, line 10, after "to" insert "subparagraph d of paragraph 7 of subdivision a of"

Page 15, line 26, after "by" insert "subparagraph a of paragraph 1 of subdivision c of"

Page 15, line 27, after "to" insert "subparagraph d of paragraph 7 of subdivision a of"

Page 15, line 28, after "by" insert "subparagraph b of paragraph 1 of subdivision c of"

Page 16, line 5, after "to" insert "item 3 of subparagraph d of paragraph 7 of subdivision a of"

Page 16, line 6, after "to" insert "subparagraph b of paragraph 1 of subdivision c of"

Page 16, line 7, replace "their" with "its"

Page 16, line 9, after "in" insert "subdivisions a through c of"



Page 16, line 10, after "to" insert "item 3 of subparagraph d of paragraph 7 of subdivision a of"

Page 16, line 11, after "by" insert "subparagraph b of paragraph 1 of subdivision c of"

Page 16, line 13, after "in" insert "subdivisions a through c of"

Page 16, line 28, after "to" insert "subdivision d of"

Page 16, line 28, after "and" insert "subdivision d of"

Page 17, line 3, replace the third underscored comma with an underscored opening parenthesis

Page 17, line 4, replace the first underscored comma with an underscored closing parenthesis

Page 17, line 8, replace the underscored comma with an underscored opening parenthesis

Page 17, line 10, after "them" insert an underscored closing parenthesis

Page 17, line 27, after the first "of" insert "paragraph 9 of subdivision a of"

Page 18, line 4, after "market" insert "unimproved"

Page 18, line 19, after "market" insert "unimproved"

Page 19, line 3, after "market" insert "unimproved"

Page 19, line 12, after "market" insert "unimproved"

Page 20, line 26, after "in" insert "paragraph 9 of subdivision a of"

Page 22, line 15, after the first "of" insert "paragraph 9 of subdivision a of"

Page 23, line 1, after the first underscored comma insert "subdivision e of"

Page 24, line 8, after "in" insert "paragraph 3 of subdivision d of"

Page 29, line 11, after "by" insert "subdivision j of"

Page 29, line 18, after "by" insert "subdivision c of"

Page 29, line 22, after "under" insert "subdivision d of"

Page 29, line 24, after "under" insert "paragraph 9 of subdivision a of"

Page 31, after line 22 insert:

"12. Clarification of headings and internal references. This member's local legislative drafting and codification style requires the principal paragraphs of each Article of this compact to be designated solely by a numeral and internally cross-referenced as a subsection, designates certain subparagraphs alphabetically, references subclauses of subparagraphs either without designation or as numerical items, does not permit the use of initial capitalization to designate defined terms in the body of legislation, and requires the plural form of the terms "petitioners," "recipients," and "state officials," which is intended to include the possibility of a singular application, as well as the singular form of "governor," which is intended to include the possibility of plural application. This member understands that other members in privity may

nevertheless refer to the same principal paragraphs with a heading that includes the word "section" prefacing the same numeral and also internally cross-reference the same as a "section," refer to the same subparagraphs with different headings, refer to the same defined terms with initial capitalization or full capitalization, and prefer to use "governor(s)," "petitioner(s)," "recipient(s)," and "state official(s)" to reference the plural and singular form of such terms. As with any other difference in legislative drafting or codification style, these internal references are intended to be and should be construed as substantively equivalent."

Page 32, line 3, replace the underscored comma with an underscored opening parenthesis

Page 32, line 3, after "petitioners" insert an underscored closing parenthesis

Page 32, line 21, after "to" insert "item 1 of subparagraph a of paragraph 4 of subdivision d of"

Page 33, line 14, after "to" insert "subparagraph a of paragraph 1 of subdivision c of"

Page 34, line 19, remove "(a)"

Page 34, line 26, replace "(b)" with "b."

Page 34, line 28, replace "[1]" with "(1)"

Page 35, line 1, replace "[2]" with "(2)"

Page 35, line 5, replace "[3]" with "(3)"

Page 35, line 10, replace "(c)" with "c."

Page 35, line 11, replace "paragraph" with "subdivision"

Page 35, line 11, after "b" insert "of subsection 1 of this Article"

Page 35, line 12, replace "paragraph" with "subdivision"

Page 35, line 12, after "a" insert "of subsection 1 of this Article"

Page 35, line 17, replace "paragraph" with "subdivision"

Page 35, line 17, after "b" insert "of subsection 1 of this Article"

Page 38, line 30, after "of" insert "subdivision j of"

Page 39, line 11, after "under" insert "subdivision e of"

Page 39, line 18, after "by" insert "subdivision d of"

Page 40, line 4, after "under" insert "subdivision e of"

Page 40, line 13, after "by" insert "subdivision d of"

Page 40, remove line 30

Page 41, line 4, remove the third underscored comma

Page 41, line 4, after the underscored semicolon insert "and"

Page 42, line 10, after "by" insert "subdivision c of"

Page 42, line 16, after "under" insert "subdivision d of"

Page 42, line 21, after "under" insert "paragraph 9 of subdivision a of"

Page 48, line 24, after "in" insert "subdivision j of"

Page 49, line 9, replace "provisional" with ":

a. Provisional"

Page 49, line 12, replace ", or permanent" with ";

b. Permanent"

Page 49, line 21, after "to" insert "paragraph 3 of subdivision c of"

Page 50, line 20, after "to" insert "items 1 and 3 of subparagraph d of paragraph 7 of subdivision a of"

Page 53, line 1, after "trustees" insert an underscored opening parenthesis

Page 53, line 2, after "record" insert an underscored closing parenthesis

Page 60, line 4, after the first "of" insert "subdivisions a, b, c, e, g, and l of"

Renumber accordingly

**2017 TESTIMONY**

**HB 1248**



1-26-17

## The Prosperity States Compact Table of Contents

The Prosperity States Compact is designed to furnish consenting communities with a local jurisdiction that is streamlined to maximize prosperity through a stable public policy environment consisting of optimal regulatory and fiscal policy. Here is an overview of its provisions:

**Article I: Findings and Declaration of Policy.** Declares purpose of legislation.

**Article II: Special Purpose Authority of Prosperity Districts.** Establishes Prosperity Districts as exclusive jurisdiction governing through optimal free market regulation, competitive outsourcing of services, and borrowing only to the extent of net assets (with no eminent domain, civil forfeiture or taxation authority) subject to exceptions for outside “evil intent” criminal law enforcement, outside agency remedying of externalities, state court judicial review, and outside agency use of eminent domain for transportation, utility and transmission purposes within corridors designated by the district or otherwise subject to state-of-the-art eminent domain reforms.

**Article III: Authorized Statewide Tailoring.** Authorizes each adopting state to suit the compact to its own unique policy and political environment, including the furnishing of one or more form revenue agreements or negotiation structures to replace tax revenues within Prosperity Districts, specific preservation (or repeal and override) of outside governing authorities and laws within districts, opt-out authority for counties, opt-in authority for municipalities, and clarification of the effect of Prosperity Districts on federal mandates, grants and primacy, among other provisions. Modifications of specified federal laws that will be effective with Consent of Congress can be made here.

**Article IV: Prosperity District Formation, Expansion and Withdrawal.** Sets out the formation, expansion and withdrawal process for Prosperity Districts, which is initiated by a petition by consenting landowners and residents to the local County Board of Supervisors containing an adequate legal description and revenue agreement to replace taxes within district.

**Article V: Compact Formation, Effect and Amendment.** Provides how the legislation becomes an interstate compact and that the Prosperity District’s policy environment is locked down from special interest meddling, how reciprocity between states will work, and how congressional consent delivers federal law reform within the district.

**Article VI: Compact Commission.** Establishes a Commission to represent states that have joined the Compact and to direct and oversee alternative dispute resolution outside of suboptimal court environments between member states, the federal government and residents of districts with regard to Compact provisions.

**Article VII: Definitions.** Furnishes definitions of all central terms, including the critically important definition of “Eligible Land” for the formation or expansion of Prosperity Districts.

**Article VIII: Miscellaneous.** Specifies the portions of the legislation that will be effective immediately upon passage in one state and the portions of the legislation that will only be effective upon formation of an interstate compact; specifies the categories of statewide tailoring that are permissible to include in Article III; and also provides guidance on drafting, severance and treatment of artificial persons.



# Policy Brief

December 5, 2016 - No. 14



COMPACT FOR AMERICA  
\*\*\*\*\*

## CUT THE RED TAPE

### Prosperity Districts and Reinventing the Role of Regulations

■ **By Adrian Moore, PhD**

Regulations are not the ultimate weapon for good. The fact is that they are a blunt weapon at best. They are rarely effective and more often do more harm than good. But the formation of Prosperity Districts, which promise a regulatory reset for a local community that wants to experiment with regulatory best practices can change that outcome. States that allow the formation of Prosperity Districts by joining the Prosperity States Compact can secure all of the benefits of a well-regulated free market by authorizing regulation only when truly necessary and when carefully tailored to address the harm in question.

#### Introduction

America is overregulated and people increasingly recognize it. Gallop's latest (2014) opinion poll on regulation found that 49% of Americans assert there is too much regulation of business and industry and only 22% think there is too little, and those attitudes haven't changed much in the previous five years.<sup>1</sup> An earlier (2012) PEW poll found that 52% of Americans thought government regulation of business does more harm than good while only 40% thought regulation of business is necessary to protect the public interest.<sup>2</sup> Regulation seeks to prevent bad acting, but at the same time it is costly, complex, often unknown by those subject to its rules, inflexible, and too often driven by political interests rather than protecting the public.

Lawmakers seem to think regulations are the ultimate weapon, capable of solving any problem. To be fair, they face a constant clamoring of requests to solve

every problem that arises, typically without waiting to see if people and markets can work things out on their own. Regulation is their most versatile tool to "do something." This has led to ridiculously picayune rules, like Colorado daycare regulations specifying the number of crayons per box provided the kiddies,<sup>3</sup> and endeavors of astonishing hubris. Consider the Dodd-Frank financial market rules, an 848-page attempt to regulate a vast, globally-integrated financial market, demanding that regulatory agencies spin off thousands more pages of regulations. One section alone asks regulators to address 1,420 specific questions in their rulemaking.<sup>4</sup>

Too often, regulations create their own bad action. Because they can often raise the cost of market entry by competing firms—or even ban them outright, or otherwise give some an advantage over others—regulations essentially increase the profits of those who

*Dr. Adrian Moore is Vice President of Policy at Reason Foundation and leads Reason's policy implementation efforts. He also conducts his own research on topics such as privatization, government and regulatory reform, air quality, transportation and urban growth, prisons and utilities. Dr. Moore regularly advises federal, state and local officials on ways to streamline government and reduce costs. His work has been published in the Wall Street Journal, Los Angeles Times, Boston Globe, Houston Chronicle, Atlanta Journal-Constitution, Orange County Register, as well as in, Public Policy and Management, Transportation Research Part A, Urban Affairs Review, Economic Affairs, and numerous other publications.*



lobby for them, rather than serving the public interest. Economic literature is rife with examples of industries or firms lobbying for unfair protective regulations.<sup>5</sup> From taxicab medallions to the certification of florists, regulations often benefit one group to the detriment of another, and the former become a special interest groups lobbying vigorously for regulatory advantages. Such regulations harm consumers by denying new competition to the market and driving up prices. After all, is anyone really suffering from uncertified flower arrangement?

The bottom line is that, while it might be extreme to assume all regulations do more harm than good, it is at least as wrong to think that regulations always do more good than harm. Many current regulations exist simply because they have existed for so long, and it's a legislative chore in itself to pry them up for review. Prosperity districts offer an opportunity to start from scratch, by removing politics and lobbying from the picture, and demanding that any regulation has to prove its worthiness when calculated against its harm.

### **Prosperity Districts: A Regulatory Blank Slate**

Prosperity Districts are optimally regulated and taxed greenfield areas, at least one square mile in size, that are designed to be easily formed and later expanded by consenting property owners and residents.<sup>6</sup>

Prosperity districts are created to provide a sort of blank slate—a designated area where the participants design the laws and regulations that will apply without having to accept all the laws and regulations that exist elsewhere. These districts allow participants to maximize freedom and economic opportunity, and to resort to laws and regulations only when they are demonstrably needed, agreed upon, and subject to limitations. Importantly, any legislative process that advances the prosperity district effort cannot help but shine a spot light on the overall regulatory environment, forcing policy makers to decide which rules on the books for decades still make sense in 2016 and which have outlived their usefulness, leaving only their unintended harms.

This brief explores why starting from a regulatory blank slate is a good idea for prosperity districts and how it would work.

## **Problems with Regulations**

- Costs
- One size fits all
- Inflexible and unchanging
- Indirect unintended consequences

### **Why Reduce Regulations?**

When a regulation seeks to prevent a harm or bad acting, it seems like a no-brainer. But many problematic side effects of regulations are hidden, or they address a harm that has been overcome by societal change or technology. Especially when they target rightful action for extreme scrutiny or severe punishment, regulations often don't make sense.

### **Problems with Regulations**

#### *Costs*

Even regulations that appear to have redeeming value have great costs—not minor “cost of doing business” costs. They are massive. Some of us graduated from high school in 1980, when accidental deaths were 5.3% of all deaths. In 2013, accidental death accounted for a slightly lower 5% of all deaths. Even if we assumed all of the decrease in accidental death was caused by regulations enacted since 1980 (rather than improvements in technology or knowledge), we are not dramatically safer after 36 years of massive growth in regulations. But the costs of such regulation have been staggering.

If the United States had frozen regulations in 1980, accidental death rates might have been slightly higher: about five fewer people per 100,000 die of accidents now than in 1980.<sup>7</sup> But at the same time economic growth would have been 0.8% higher per year, the overall U.S. economy would be 25% larger than it is now, meaning \$4 trillion per year more wealth, or about \$13,000 per year for every man, woman and child in the country.<sup>8</sup> And that is just the cost of federal regulations. State and local government regulations add considerably to those costs, though there are no reliable measurements of the total.

So while regulations may have slightly reduced ac-





cidental deaths (and likely had other beneficial effects as well) the costs were massive. A typical family's income would be more than double were it not for the high cost of regulations. How much health, welfare and happiness would that higher wealth have brought about? The link between greater wealth and higher individual health and longer lives has been well-established.<sup>9</sup>

### *One Size Fits All*

Cost is particularly high for low income earners. Regulations, particularly federal ones, but also to a great extent state and local regulations, typically try to impose one set of rules, requirements or restrictions on everyone despite the huge differences among individuals or firms.

The Regulatory Studies Center at George Washington University argues that “one size fits all regulations

half that work for the doctor, and a family doctor with a small office who probably has to spend more like two days per week on administration.

The U.S. Chamber of Commerce has been pointing out that “one size fits all financial regulation is harming consumers and our economy.”<sup>12</sup> It finds that the financial regulations passed after the Great Recession aimed at big banks also apply to small local credit unions that committed none of the sins that led to the financial market chaos. These rules raised regulatory costs for credit unions 39%, to \$6.1 billion in 2014.<sup>13</sup> Those costs don't fix any problem; they are just the “collateral damage” of one-size-fits-all financial regulations. And everyone who wants to save money or get a loan is paying a share of those costs, as businesses are forced to pass the costs on to their customers. Such broad-brush regulations allow big business, which can afford the costs because of their economies of scale, to

**If the U.S. had frozen regulations in 1980, the overall U.S. economy would be 25% larger than it is now, meaning \$4 trillion per year more wealth or about \$13,000 per year for every man, woman and child in the country.**

are a bad deal for low income Americans,” imposing “unavoidable costs that are passed on to every household, regardless of income.”<sup>10</sup> Forcing, for example, the same energy efficient appliance regulations (and the higher costs of them) on a poor family of six living in a 900 square foot apartment as on a wealthy childless couple living in a 3000 square foot beach house does not have the same outcomes for the environment or the same impact on the consumers.

Examples abound in regulations of business as well. A study of the regulatory requirements on doctors found that an average doctor spends 8.7 hours per week, one whole working day, on paperwork, reporting, and administration, up substantially from two decades ago.<sup>11</sup> If doctors on average spend a full day per week on meeting regulatory requirements, that means some doctors probably spend much more time on administration, and some much less. Imagine the difference between a doctor at a large hospital, with a massive administrative staff that probably does at least

survive, while regulating smaller businesses out of the market.

Consider the strange case of skim milk regulations in Florida. Small dairies want to take the fat out of milk, creating skim milk, and sell it. But big dairies, and state regulators say that is bad for consumers and require that all dairies add artificial vitamins to the milk before they can label it as “skim”.<sup>14</sup> This is not only an example of an industry seeking regulations to limit competition, but an attempt by regulators to impose one rule unnecessarily and denying consumers choices in the process. Consumers clearly can handle the choice between skim milk with vitamin A added and skim milk without it. They do not need regulators to step in and force all dairies to offer one kind of skim milk.

### *Inflexible and Unchanging*

The process of putting a regulation in place is long and complex. Passing the law is fraught with all the





politics one would expect, and regulatory bills tend to be long and technical. This is bad enough when ordinary people and businesses are held to the standard of knowing the law. But then the regulatory agency undergoes a rulemaking process to implement the law as a set of rules and requirements. In 2001 one “federal agency found that it needed an 18-foot chart, with 373 boxes, to explain its rulemaking process.”<sup>15</sup> At the federal level:

The development of regulations involves four key players: (1) Congress passes legislation to authorize or require an agency to issue regulations; (2) the executive branch decides the form and extent of regulations; (3) interested parties may comment on proposed regulations or challenge final ones in court; and (4) federal courts, which review regulations that are challenged in lawsuits, sometimes order agencies to revise the challenged regulations.<sup>16</sup>

Such an arduous and lengthy process, at all levels of government, results in regulations that are just as difficult to amend or dismantle as they were to create. But people, technology, and the economy change, and they change rapidly. Regulations based on the technology and economic forces in place in 2005 are completely outdated now, but they are still in place and making it hard for people, firms, and the market to adapt.

When the OECD looked at the challenge of keeping slow-moving regulations up with a fast-changing world, it argued:

[R]egulations can also erect barriers to the development of new, improved products and production processes. They can encourage or discourage research efforts by firms. They can distort the choice of technologies that are explored and adopted. They can create barriers to innovation by increasing the uncertainty and costs of the development process. And they can affect technology diffusion...

Not only do regulation and regulatory reform affect innovation and technology development, but technology can also have a powerful effect on regulation. This is most often the case when technical change makes certain regulations obsolete or inefficient. Industries considered natural monopolies due to the nature of existing technology and regulated as such can find themselves undermined by technologi-

**Regulations based on the technology and economic forces in place in 2005 are completely outdated now, but they are still in place and making it hard for people, firms, and the market to adapt.**

cal developments. For example, telecommunications, electric utilities and transport were long regulated by governments as monopoly structures, partly for considerations of public service and national security. But over time, the technologies underlying these sectors changed, lessening their monopoly character by lowering costs and introducing potential new actors.

The effect of changing technology on regulation is demonstrated powerfully in the telecommunications industry, where the development of digital technology and other advances continue to revolutionise the sector. Here, outdated regulations are governing products and services which didn't even exist when the rules were formulated. Technology has blurred the boundaries between different service providers – local telephone companies, long-distance companies, international carriers, satellite transmitters, radio broadcasters, cable television companies, cellular carriers, fibre-optics access providers, wireless cable operators, specialised radio services, etc. Innovation is leading to new multimedia products and a gradual merger of telecommunications with broadcasting, computing and entertainment. Still, in many countries, regulations continue to govern these suppliers and products based on the old technological regime.<sup>17</sup>

We can see this all around us, from building codes that don't recognize the characteristics of new materials<sup>18</sup> to utility regulations that struggle with distributed generation such as wind and solar on people's properties. But maybe the best example is one familiar to all of us—the rise of Uber, Lyft, and other ridesharing services.

Taxi markets have long been heavily regulated with



rules very slow to keep up with changing times and which served the interests of taxi firms, not of consumers.<sup>19</sup> But the gap between regulations and the market exploded when ridesharing apps and services appeared on the scene to serve pent-up demand for better taxi service. Using smartphones and related technologies, these services allowed for new and greater competition in the “taxi” market, but also solved the problems of consumer information and driver accountability that taxi regulations purported to address. In one fell swoop taxi regulations were made obsolete. For years now cities have been struggling with how to respond, some trying to fit the new services into the old rules, some getting rid of the old rules and deregulating, and many doing nothing while they struggle to figure out what they want to do. It is a textbook example of how the regulatory process has great difficulty keeping up with change in the world.

there are fewer regulations, it never shows up in the first county. The cost of housing unbuilt is invisible because it never existed, even as a proposal, in the first place. And the original regulatory purpose of more low-cost housing never happens either. In this way, all consumers lose, and so does the government that would have received those property taxes loses too.

Regulations can also prevent beneficial things from ever existing, a cost uncounted because it was never known. Think about the challenge an inventor faces. He has to come up with the idea, make sure it works, and then convince customers that his product is better than what they already have—a very tough process, and more inventors fail than succeed. But now add regulation into the story.

For example, cement factories are required by regulations to have certain technologies in place to “scrub” harmful gasses created in the process of baking lime-

**One very common unintended consequence is the “island effect,”** whereby regulators do not take into account that making life harder for workers and consumers in one place merely results in that market migrating to another, less-regulated location. It’s like they imagine everyone the regulation effects is stuck on an island and not mobile and part of a global economy.

#### *Indirect Unintended Consequences of Regulation*

Regulations have many indirect effects that are often overlooked. Many “downstream” costs to a regulation are not evaluated when measuring the costs. One very common unintended consequence is the “island effect,” whereby regulators do not take into account that making life harder for workers and consumers in one place merely results in that market migrating to another, less-regulated location. It’s like they imagine everyone the regulation effects is stuck on an island and not mobile and part of a global economy. For example, regulations requiring developers to provide affordable housing by selling some units at below-market prices leads to some housing being shifted to other, less onerous jurisdictions.<sup>20</sup> If some homes are not proposed to be built in one county, but are built elsewhere where

stone and other materials in the kiln. It is conceivable someone could invent a new process that either did not emit harmful gasses or which scrubbed them more effectively or efficiently. But this inventor has a truly massive mountain to climb. Even if he can complete the invention and convince cement companies it is better, he must also convince regulators that it is a better approach and convince them to go through the laborious, costly, and political process of changing the regulations to allow the use of the new technology. His invention is thus “illegal” before it ever gets out of the workshop, which discourages innovation. We have no idea how many better ways of doing things that are regulated might be explored, but that would-be inventors fail to overcome this incredible obstacle course, or, in many cases, don’t even try.





In spite of all these failings of regulation, it is essentially the “default solution” when a problem emerges. When something fails in the market, people rarely try to figure out a market solution. Instead the immediate response is “the government should step in and prevent this!” It is so automatic sometime it is shocking and it explains why city councils and state legislators never run out of new regulations to pass. Less restrictive approaches that allow individual choices to operate and market competition to fix problems are too often overlooked because that amounts to “doing nothing” while passing a regulation is bread and butter for the political process.

### **Prosperity District: Regulatory Square One**

Given regulations’ complex downsides that accompany what good they accomplish (if any), their highly politicized nature, and their intractability once established—no matter how the world changes—a Prosperity District wisely starts from scratch in its establishment, takes a minimalist approach, and creates mechanisms for avoiding the pitfalls of the existing regulatory regime. Indeed, its very value depends on this blank-slate attribute. Crucial to that is understanding how the pitfalls of regulations are mitigated.

### **Best Practices in Regulatory Reform**

Many attempts to reduce or reform regulations or the regulatory process, have been attempted, with some working better than others. Prosperity Districts will draw upon the best practices from those efforts to minimize the role of regulation within the district.

#### *Sunsetting*

Sunset provisions are essentially a built-in expiration date for regulations. They establish a date on which the regulation will cease to be law, unless the legislature takes action to renew it. A sunset provision is even stronger if it sets criteria for evaluation and defines success for the regulation to guide the decision whether or not to renew the regulation. Importantly, sunset provisions recognize how our fast-changing society and economy renders regulation inherently perishable, and how obsolete regulation causes harm, even as its intended use diminishes.

Thirty-six states have some type of sunset provi-

## **Regulatory Reform Best Practices**

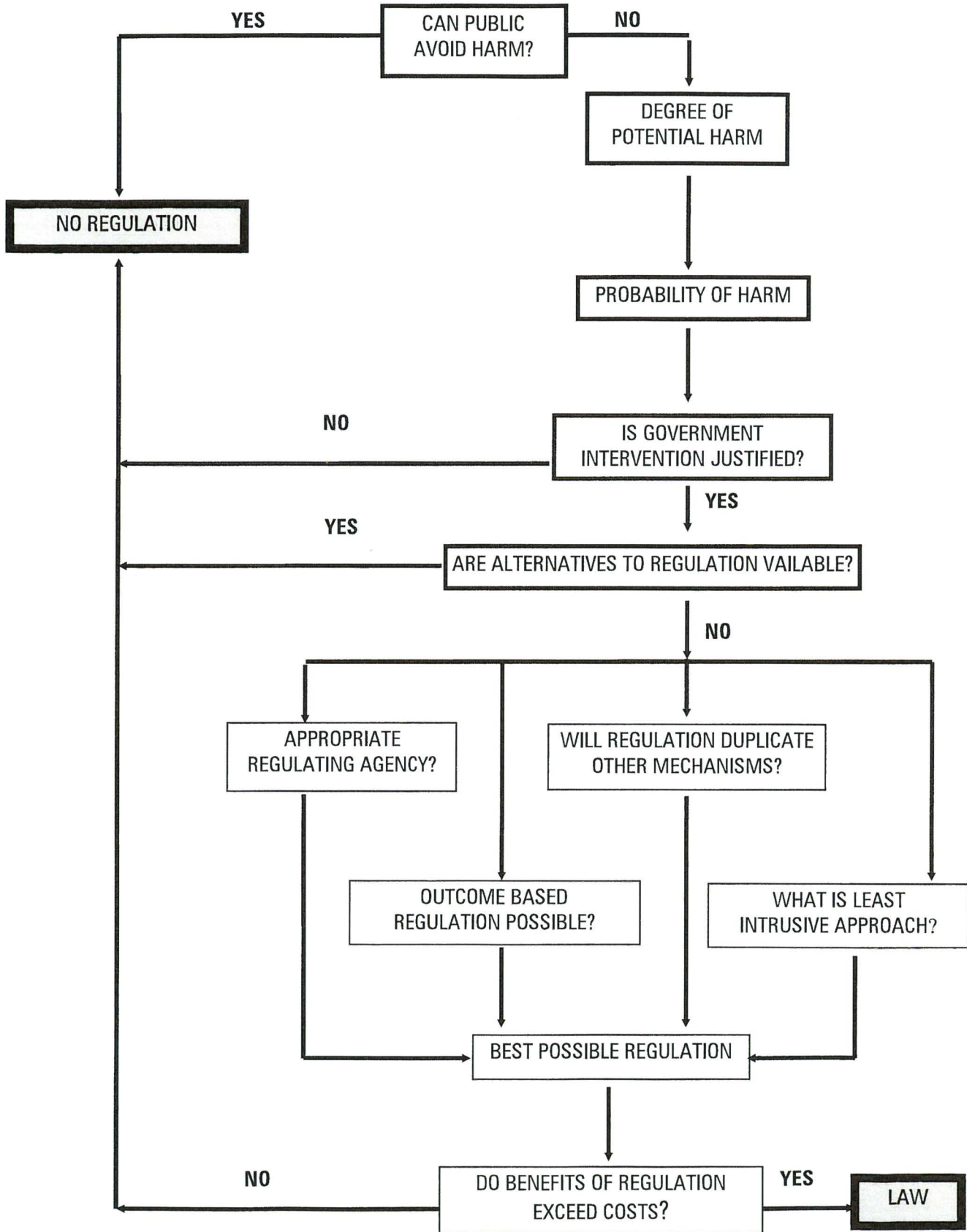
- sunset regulations
- adopt better a-priori and ex-post analysis
- create an independent reform body
- recognize the merits of competition
- acknowledge interest group influence
- focus on outcomes, not process
- weigh both costs and benefits
- keep regulations simple and narrow
- adopt a transparent analytical framework

sion, and 10 states have comprehensive ones—they are broadly considered effective at limiting ineffective regulations and balancing the oversight powers of the legislative and executive branches.<sup>21</sup>

A review of regulatory review processes in the 50 states found that “sunset provisions are the most effective means of reducing state regulatory levels.”<sup>22</sup> The research found that sunset provisions alone among all the regulatory review processes examined is strongly effective in limiting the number of regulations and their costs.

Australia makes extensive use of sunset provisions. An OECD report examining its effectiveness conclud-

# RSC Analytic Framework





**Indirect regulations, aimed at process rather than results, increase the chances of unintended outcomes. If the concern is the safety of taxicabs, policymakers should enforce laws against negligence or publicize safe operators to help the market information process.**

ed that sunset provisions “substantially reduced the overall number of regulations in force, removed much redundant regulation from the statute books and encouraged the updating and rewriting of much that remained.”<sup>23</sup>

#### *Better A-Priori and Ex-Post Analysis*

Legislative bodies forge most regulations in an atmosphere of politically charged emotional arguments combined with data and analysis. Emotion often overcomes data and analysis. Given the large potential costs and benefits of most regulations, the complexity of figuring out the full range of effects, and prevalence of special interest pleading and political grandstanding, applying more data and cold, hard analysis to regulatory decisions is essential.

Such analysis helps in two ways: First in considering the merits of a proposed regulation, and second in evaluating how well a regulation has worked, weighing both costs and benefits, to determine if it should remain in place. The former happens sometimes, the latter rarely does.

In up-front analysis, regulations should be evaluated for a full range of costs and benefits, including ones that can't be quantified, though those should be considered in that light. Potential unintended consequences and secondary effects should be considered, as well as comparing effectiveness and other issues with similar regulations. Most importantly, the analysis should examine all feasible means of addressing the problem, including doing nothing, that the regulation seeks to solve and compare the merits and weaknesses of each to ensure the most overall effective approach is being used.<sup>24</sup>

Ex-post analysis of regulations doesn't happen nearly enough and politicians don't always follow through even when it is done. An Australian study of regulatory analysis in its states found the analysis process to be

very effective in identifying problems with regulations and suggesting improvements, but determined that legislators rarely follow through to implement the recommendations.<sup>25</sup> Hence, it is best to tie ex-post analysis to a sunset provision that forces the legislature to act.

In my own work looking at efforts by federal agencies and state and local governments to review and analyze existing regulations and determine whether to keep, modify, or eliminate them, I conclude the following practices are crucial.<sup>26</sup>

#### *Create an Independent Reform Body*

Someone must have ownership of the reform process and an incentive for objective review. Individual agencies are too often wedded to the status quo.

#### *Recognize the Merits of Competition*

Competitive markets are more diverse, creating incentives for innovation, customer service and efficiency. Always examine if there are ways market forces can solve the problem the regulation is addressing.

#### *Acknowledge the Influence of Interest Groups*

Even if a policy change produces net gains for the community, the losers have an incentive to oppose change. Encourage those groups burdened by existing regulations to participate in reform. Analysis should take into account diffuse effects.

#### *Focus on Outcomes Rather Than Process*

Indirect regulations, aimed at process rather than results, increase the chances of unintended outcomes. If the concern is the safety of taxicabs, policymakers should enforce laws against negligence or publicize safe operators to help the market information process. They should not limit the number of taxis on the theory that by controlling licenses they can induce safety. Focusing on outcomes makes the impact of a regula-



tion more transparent, less vulnerable to special interests, and allows officials and the public to see and measure the direct effects of a regulation.

### *Weigh Both the Costs and the Benefits of a Regulation in Deciding Its Worth*

The success of a regulation should be tied to its intended effect, not to the behavior of regulators. It's not how many fines are levied, but how many harmful actions are prevented, and what costs to society are avoided, that measures the success of a regulation.

### *Regulations Should Be Simple and Narrow*

The broader or more complex a regulation, the more likely it is to cause unintended consequences. Also, the less likely it is that ordinary citizens can understand the rule and its impact. An opaque regulation plays into the hands of the special interests that benefit from it, without measurable good effect.

### *Adopt a Transparent Analytic Framework*

A decision process like the one in the preceding figure, created for a regulatory study commission, assures a consistent analysis on each regulation, and that no steps are overlooked. Being transparent at every stage of the process will improve citizen and interest group visibility of the reform process, and encourages their input.

## **Prosperity District Regulatory Structure**

Since prosperity districts are a regulatory blank slate, some effort has gone into creating an initial set of conditions and procedures, embedded within the enabling legislation and within the charter of the district itself. The following characteristics of a prosperity district incorporate much of the best practices discussed above, and enable the district governing board to incorporate more of them when desired.

### **Authority within the District**

A prosperity district will have a special purpose regulatory authority, created by its charter, charged with protecting the individual rights of life, liberty and property, which, for competent adults, shall be strictly limited to defending the freedom of all such individuals to pursue a flourishing and productive existence

**A prosperity district will have a special purpose regulatory authority, created by its charter, charged with protecting the individual rights of life, liberty and property, which, for competent adults, shall be strictly limited to defending the freedom of all such individuals to pursue a flourishing and productive existence either alone or in consensual association with others.**

either alone or in consensual association with others.

The managing board of the district has exclusive governing authority and jurisdiction within its boundaries. There are specific limits, however, and that authority:

- may not exercise the power of eminent domain, nor engage in property or asset forfeitures based on actions or omissions that constitute a violation of criminal law without first proving beyond a reasonable doubt that such criminal law has been violated by each owner of such property or asset, or levy any tax;
- may only exercise its police power in the course of promulgating and enforcing: (1) malum in se criminal law, the common law of torts, property and contracts, or the common law or equitable remedies specified by its respective district charter or otherwise in effect within the boundaries of the respective Prosperity District; or (2) regulations authorized in strict conformity with this Article;
- may not authorize by regulation or otherwise any monopoly or cartel in the provision of any good or service within its jurisdiction;
- may not accept gifts or conditional grants from any government, including, but not limited to, any state, county, municipality or the United States





government, which are sourced from taxes, government-imposed fees or fines, or borrowing which is secured or to be repaid by taxes or fines;

- may only furnish services, functions, utilities and infrastructure (“municipal function(s)”) through open and competitive bidding provided that: (1) no regulation promulgated or enforced by the Prosperity District directly or in combination with other regulations restricts free and open competition in the provision of the proposed municipal function(s); and (2) all costs incurred in furnishing the proposed municipal function(s) are to be reimbursed by either i) uniform, non-discriminatory user fees paid voluntarily by all users of the proposed municipal service or ii) otherwise paid pursuant to a separate contract voluntarily and consensually binding all persons domiciled in the Prosperity District during the provision of the municipal function(s);
- shall not furnish any subsidy to private enterprise;
- may only borrow funds to the extent of net assets; and
- may only have such additional duty, power and authority that is expressly specified in the district charter and also strictly compliant with its enabling legislation.

Living or owning property in a prosperity district is entirely voluntary, and 100% consensus from affected landowners and electors is required to form or expand the district. The members of any prosperity district are free include in their charters whatever additional measures are desired that do not violate the limitations listed above. The idea is to allow the rules to evolve anew based on prior assumptions of limiting regulations and maximizing freedom. Districts can experiment and learn from each other as well.

### **A Baseline of Rules**

No district is required to adopt any particular rules. However, a typical prosperity district charter will adopt certain baseline rules that have served civilization well, including malum in se criminal law to prevent initiation of violence against one another, and some or all of the common law of torts, property or contracts or common law or equitable remedies.

**Living or owning property in a prosperity district is entirely voluntary, and 100% consensus from affected landowners and electors is required to form or expand the district.**

### **What the District Governing Authority May Regulate and What It May Not**

The model enabling legislation for a prosperity district includes restrictions on regulation. Any regulation must fulfill each of the following criteria:

- the regulation either: (i) governs or protects the rights to life, liberty and property of those who are not parties to a contract that furnishes a rule of governance covering the same subject matter as the regulation; or (ii) governs only those who are in breach of a contract covering the same subject matter as the regulation, provided that the dispute resolution procedures specified in the contract, if any, are not being observed by all parties to the contract, and at least one party to the contract requests such regulation or enforcement;
- the regulation and its enforcement implements or prospectively modifies the malum in se criminal law, the common law of torts, property or contracts, or the common law or equitable remedies adopted by the Prosperity District’s respective district charter or otherwise in effect within the boundaries of the Prosperity District, or governs an act, activity, occupation, profession, use of property, person, entity, condition or state of affairs that is not ordinarily peaceful, non-violent and non-fraudulent;
- neither the predominant effect of the regulation considered alone or in the context of the Prosperity District’s existing regulatory framework, nor any part of its purpose is to protect any individual, entity, or group from otherwise rightful competition or to restrain competent adults for their own good; and
- the act, activity, occupation, profession, use of property, person, entity, condition or state of affairs





The chief benefit of starting from a blank slate of regulation in a prosperity district is not only getting clear of the decades of politicized regulatory decision making, but also having the opportunity to approach any market or behavioral failure with the least restrictive approach that solves the problem.

targeted for regulation has violated, is violating or is an actual threat to individual rights of life, liberty and/or property.

### Impact Statement and A-Priori Analysis

The enabling legislation for prosperity districts requires the use of regulatory impact statements both a priori and ex post. Significantly, there is a separation of powers requirement that precludes the same district managers from being involved in promulgating a regulation who are also involved in enforcing the regulation--and vice versa. This will ensure that the regulatory promulgation and review process is conducted by an essentially independent reform body. They must fully explore the effects of a proposed regulation or one up for review and must:

- articulate the nature and magnitude of the threat to the individual right to life, liberty or property targeted by the regulation by, at a minimum, characterizing the risk pathways, populations exposed and consequences of exposure and assessing whether the regulation or similar regulations have been effective in reducing the targeted risks;
- articulate a theory of cause and effect, consistent with established economic and scientific theories, that shows how the regulation could or did produce the desired outcomes and that also explicitly assesses whether the risks addressed by the regulation are likely to increase, decrease or stay the same in the absence of the regulation;
- demonstrate consideration of a wide variety of alternate and less restrictive or burdensome regulatory approaches consistent with the hierarchy of regulation contemplated by this Article, including, but not limited to, expressly assessing whether the

regulation has a negative effect on competition, whether the regulation can be modified to reduce its anti-competitive effects, and determining whether and how private voluntary action can reduce the risks addressed by the regulation;

- comprehensively assess the benefits and costs of a wide variety of alternative regulatory approaches or solutions to the asserted threat to individual rights of life, liberty or property, including a showing of how much of the problem the regulation is likely to solve;
- consider the foregoing criteria in light of all actual evidence of the regulation's efficacy or lack thereof from any previous promulgation or enforcement of the same or similar regulation; and
- specify the data utilized to make the assessments shown in the report.

### Process for Finding the Least Restrictive Regulatory Approach

The chief benefit of starting from a blank slate of regulation in a prosperity district is not only getting clear of the decades of politicized regulatory decision making, but also having the opportunity to approach any market or behavioral failure with the least restrictive approach that solves the problem.

Prosperity district enabling legislation limits the scope of regulations. Any regulation must be the least restrictive means to achieve its asserted purpose and may only:

- furnish additional or augmented civil remedies to render actions under the malum in se criminal law, the common law of torts, property or contracts, or the common law or equitable remedies adopted by its respective district charter, or otherwise in effect within the boundaries of the Prosperity District,





more effective in protecting the individual rights of life, liberty or property;

- impose clear, objective legal standards only if the foregoing mode of regulation will not reasonably reduce the threat to the individual rights of life, liberty or property;
- enable the enforcement of clear, objective legal standards by inspections and enforcement of violations by civil penalty only if the foregoing modes of regulation will not reasonably reduce the threat to the individual rights of life, liberty or property;
- enable the enforcement of clear, objective legal standards by permitting, licensing or other regulatory pre-approval processes only if the foregoing modes of regulation will not reasonably reduce the threat to the individual rights of life, liberty or property; or
- enable the enforcement of clear, objective legal standards by criminal sanctions only if the foregoing modes of regulation will not reasonably reduce the threat to the individual rights of life, liberty or property.

### **Sunsets and Reviews**

All regulations promulgated in a prosperity district must be automatically repealed no later than five years from their effective date and may only be reinstated subject to the analysis and review requirements in the district charter.

### **Conclusion**

The model laid out for prosperity districts incor-

porates the best practices available in minimizing regulatory impacts, ensuring their effectiveness, and avoiding the pitfalls of the traditional regulatory apparatus in the rest of the United States. It is a worthy experiment in starting from scratch and assessing the extent to which less restrictive approaches and more freedom and voluntary cooperation can prevent public problems from emerging.

Since living, working or owning property in a prosperity district is 100% voluntary, only those who choose to participate in the experiment will reap the benefits or the consequences of the rules at work in the district. There will be learning and there will be adjustment. Surrounding areas are protected by their own laws, and tangible external effects of the prosperity district will be subject to state and local laws.

Fundamentally, this is an experiment in economic liberty. Can a voluntary, very free and unrestricted district provide a booming economic opportunity? And can it do so in a way that people find desirable and enjoyable and do others seek to join or emulate the effort? The proof can only be found in the experiment itself, but the success of economic liberty in delivering prosperity is a defining part of history. A well-structured prosperity district presents no threat to those happy with the current rules while others explore the opportunities and consequences of changing the rules of the game. All of us will be able to learn from such experiments and should expect the effort would lead to great examples for others to follow.

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TESTIMONY

# Constitutionality of the Prosperity Zone Compact

By Ilya Shapiro

September 6, 2016



*Arizona State Legislature  
Joint Ad Hoc  
Committee on Prosperity Districts*

Chairmen Smith and Montenegro and members of the committee, thank you for this opportunity to discuss legal and constitutional issues attending the prosperity zone compact method for achieving policy reform.

As a member of the Compact for America's ("CFA") council of scholars, I'm an ardent supporter of the compact approach. This method makes the path to state-initiated reform quicker, easier, and more legally certain. It allows states to agree in advance to policies and procedures. It allows Congress to fulfill its entire role in a single resolution passed once. When time is of the essence and the federal government is unsupportive, this approach would allow positive change to occur as soon as two states agree on it. I know of no other approach that does this with the certainty, efficiency, and safety offered by a compact.

## **What Is a Compact?**

An interstate compact is both a law and a contract among two or more states. It is often formed by the passage of a statute in one state that creates an open offer to enter into or "adopt" a specified agreement and the subsequent passage of counterpart



statutes in other states that likewise “adopt” the specified agreement. In both the offering and accepting states, the statutes adopting the agreement are passed as ordinary legislation, with gubernatorial presentment.

The subject matter of compacts between the states may involve the invocation of any sovereign power, including the police power. There are over 200 existing interstate compacts. The average state is a party to at least 25 compacts.

Although most compacts deal with subjects that have immediate and direct interstate effects, such as a shared border or water resources, others simply coordinate and standardize policies for the sake of encouraging greater legal certainty and reliability among member states, their residents and businesses. The Interstate Insurance Product Regulation Compact, for example, requires all member states to adopt the same standards for approving insurance companies and policies. Likewise, the Agreement on Qualifications of Educational Personnel coordinates the uniform recognition of public-school teacher certification. Similarly, the Interstate Medical Licensure Compact provides relatively streamlined and reciprocal licensing for various medical professionals.

In our nation’s interconnected economy, the use of interstate agreements to coordinate public policy is not surprising. All states have interests in each other’s policies because they want to maintain predictable legal frameworks for their own businesses and residents as they travel and engage in commerce among the states. One of the earliest interstate compacts, predating the Constitution, reciprocally guaranteed the continued protection of existing property and contract rights in the adopting states from “any law which rendered those rights less valid and secure.” Although this early compact guaranteed continuity of internal policies among bordering states, modern communications and transportation allows such mutual interest to be the same regardless of where the states are located.

For the same reason that nearly every state has adopted uniform laws on topics such as commercial transactions, adult guardianships, and trade secrets, virtually any intrastate public policy is reasonably embedded in a compact. That’s why the subject matters of existing interstate compacts now span a huge public policy spectrum, such as boundary-line resolution, regulatory policy, economic development, transportation policy, tax-law coordination, and even advancing constitutional amendments.



## The Prosperity Zone Compact as a Legal Institution

Once at least two states pass the same legislation to adopt the Prosperity Zone Compact, a sovereign contract is formed between them whereby certain state-level policy reforms become entrenched in the Prosperity Zone from future repeal and reciprocally recognized. This Compact would replace decades of special interest-driven tax and regulatory policies with best practices in easily formed and expandable areas.

But can the Prosperity Zone Compact withstand legal scrutiny? The short answer is yes. Interstate compacts can offer all the authority of an ordinary state statute plus the durability of a sovereign contract and the capacity to replace federal law with congressional consent.

One concern sometimes expressed about the Prosperity Zone Compact is that it cannot have any legal effect before it receives congressional consent in the form of a joint or concurrent resolution passed by the House and Senate. This concern is based on the text of article I, section 10 of the Constitution, which provides: “No State shall, without the consent of Congress ... enter into agreement or compact with another State.” The broadness of the language of the “Compact Clause,” when read literally in isolation, seems to indicate that all agreements between or among states would require the consent of Congress. This interpretation is wrong because the Supreme Court has never interpreted this clause in isolation from the rest of the Constitution.

In recognition of the limited powers of the federal government, the Court has long recognized that the Compact Clause sweeps no more broadly than is needed to defend federal supremacy in the exercise of its delegated powers. For example, over 120 years ago, in *Virginia v. Tennessee*, 148 U.S. 503, 518 (1893), the Court held that only those interstate agreements that affect the power of the national government or the “political balance” among the state and federal governments require the consent of Congress. Respect for state sovereignty drove the Court to rule that the Compact Clause is not a freestanding prohibition on compacts that lack congressional consent. As it held in *U.S. Steel v. Multistate Tax Commission*, 434 U.S. 452, 495 (1978), if a compact merely coordinates powers that states could exercise rightfully on their own—without enhancing their authority relative to the federal government or invading any federal power—that compact does not trigger the need for congressional consent.

Further, the Court has held very clearly that the Compact Clause is exclusively concerned about such “vertical” effects between the states and federal government. It has expressly refused to apply the clause regarding the “horizontal” effects of an interstate compact, such as concerns about “collusion” among compacting states. *Id.* at 473, 478. In view of these principles, there is no question that the Prosperity Zone Compact can have immediate effect upon state passage of legislation adopting it for three reasons.

*First*, when passed by only one state, the Compact expressly only has the status of state legislation. No sovereign contract is formed at that time, no interstate commission is formed, and the state remains fully free to repeal the legislation or amend it. In other words, the Compact is purely statutory upon its first enactment. Hence, the Compact Clause is not implicated at all.

*Second*, the Prosperity Zone Compact actually already enjoys a measure of congressional consent. The Compact expressly invokes 4 U.S.C. § 112, which federal courts have held to provide congressional consent, in advance, to a wide range of interstate agreements related to criminal justice—such as compacts on extradition and the transfer and supervision of probationers and parolees. The Supreme Court specifically held the statute to effectively give advance consent to a compact formed decades after the original statute. *Cuyler v. Adams*, 449 U.S. 433, 440-41 (1981). Section 112 can thus apply to parts of the Prosperity Zone Compact: (a) authorizing the formation of Prosperity Districts with exclusive authority over criminal law, and requiring reciprocal recognition of such authority among all member states; and (b) requiring disputes over jurisdictional or interpretative disputes among federal and state agencies to be settled by alternative dispute resolution overseen by the Compact’s commission. To some extent, therefore, congressional consent already exists for the Prosperity Zone Compact, allowing it to be effective upon formation to the extent that it encroaches on federal criminal law and policy.

*Third*, the Compact Clause is no bar to the effectiveness of the Prosperity Zone Compact because the Compact uses conditional enactments to segregate the contractual provisions that merely exercise and coordinate powers that states could exercise rightfully on their own—such as reciprocally recognizing and committing to maintain the compact’s state law reforms—from those that may be construed as overriding contrary federal law beyond that which is already authorized by 4 U.S.C.



§112. The former are deemed immediately effective upon a second state adopting the Compact. The latter are expressly deemed effective only if the requisite additional congressional consent is secured. The use of conditional enactments in this way precludes any claim that the Prosperity Zone Compact threatens or displaces federal supremacy. That is because the compact has neither the intent nor effect of altering federal-state relations until the requisite congressional consent is received. The Compact's severance clause further underscores this intent by authorizing a court to sever any provision that might violate the Compact Clause.

Furthermore, the Compact's use of conditional enactments is entirely consistent with the general rule that congressional consent can be given for a compact *after* it's formed. As explained in *Virginia v. Tennessee*, 148 U.S. 503, 521 (1893), a compact's near-term effect on federal-state relations may be immaterial (or inherently unknowable) at formation. Accordingly, the mere creation of the Prosperity Zone Compact can't threaten federal power because it doesn't effect any change in policy until a Prosperity District is actually formed. Thus, the extent to which additional consent is needed for the Compact's terms to become federal law can't be known until the issue ripens via interactions between federal agencies and a future District.

In sum, the non-contractual terms of the Prosperity Zone Compact are immediately effective as ordinary legislation in the first state that passes it. This enables Prosperity Districts to be formed as soon as 20 days after the first state adopts the Compact. Additionally, the Compact's contractual terms enabling the formation of cross-border districts, requiring reciprocal recognition of reform policies and guaranteeing that such reform policies will be maintained are immediately effective when two states adopt the Compact. Finally, the terms of the Prosperity Zone Compact that can be construed as "enabling cooperative effort and mutual assistance in the prevention of crime and in the enforcement of their respective criminal laws and policies, and to establish such agencies, joint or otherwise, as they may deem desirable for making effective such agreements and compacts" are immediately effective on the basis of advance congressional consent under 4 U.S.C. § 112. Only the portion of the Prosperity Zone Compact that seeks to "upgrade" its fiscal and regulatory policies to the status of federal law beyond the consent furnished by § 112 is not immediately effective. By express provision, this upgrade must wait for congressional consent—precisely as the Constitution commands.

## “Upgrading” the Prosperity Zone Compact

The Compact is designed to “upgrade” the reforms within the Prosperity Zone to include the similar replacement of suboptimal federal laws, taxes, and regulations. This upgrade would require congressional consent. Interstate compacts receiving congressional consent are now clearly recognized as equivalent to federal law under the Supremacy Clause and as a potential source of vested rights that are protected against federal regulatory action. Indeed, interstate compacts receiving congressional consent not only displace state law under the Supremacy Clause, but have been held to supersede prior federal law and even to delegate federal power to compact-created agencies as well. For example, the D.C. Circuit has held that the liability provisions of the previously enacted Federal Employer’s Liability Act were displaced by the contrary provisions of the Washington Metropolitan Area Transit Authority interstate compact. *McKenna v. WMATA*, 829 F.2d 186, 188 (D.C. Cir. 1987).

Additionally, the rights, guarantees, and obligations such interstate compacts create are protected from deprivation by the federal government as vested rights under the Fifth Amendment’s Due Process Clause. For example, the Supreme Court ruled that water rights under the Colorado River Compact are protected against a federal agency’s efforts to undermine them by enforcing an inconsistent federal law. *Bryant v. Yellen*, 447 U.S. 352, 369 (1980).

The clear rule of law establishing the “upgradeability” of an interstate compact to the status of federal law for the foregoing purposes did not emerge suddenly. It is something with which courts and policy makers have grappled for centuries. Most of the time, federal upgradeability has been regarded as a bug and not a feature. An examination of a wide range of congressionally approved compacts reveals a common feature: provisions that prevent the compact from altering the powers of the federal government.

The only known possible limit on the federal law “upgrade” of an interstate compact that receives congressional consent is whether the compact is an appropriate area for congressional legislation. But early Supreme Court precedent indicates that there is another theoretical basis of recognizing the Prosperity Zone Compact’s equivalency in



status to federal law upon congressional consent. Specifically, such status can also stem from construing such consent as yielding to the independent sovereignty of the states over the subject matter of the compact.

Even if the sole test for receiving federal-law status upon congressional consent were an assessment of whether a compact's subject matter was appropriate for federal legislation, it's not difficult to justify such status for the Prosperity Zone Compact. After all, the Compact expressly seeks to replace federal laws and policies with its regulatory and fiscal reforms. The authority for such localized reform is precisely the same as that which authorized the federal law that it would replace. Perhaps ironically, the Supreme Court's broad reading of the Commerce Clause and other federal powers provides strong support for federal upgradeability of the Prosperity Zone Compact and almost any compact no matter how locally focused or non-federal it may seem.

### **Other Constitutional Concerns**

There are no independent constitutional impediments to the treatment of the Prosperity Zone Compact as the equivalent of federal law when it receives congressional consent. The targeted nature of its tax reforms to areas governed by a Prosperity District should pose no problems under the Uniformity Clause of Article I, section 8, which states, "all Duties, Imposts and Excises shall be uniform." The Compact does not define the class of objects to be taxed in geographic terms and indeed imposes no taxes at all. It merely replaces existing statutory taxes with a revenue-sharing covenant that is voluntarily adopted while forming a Prosperity District. The Prosperity Zone Compact is open to entry by all states based on uniform criteria. There is simply no way the Uniformity Clause would preclude the Prosperity Zone Compact from attaining the status of federal law upon receiving congressional consent.

Likewise, treating the Prosperity Zone Compact as the equivalent of federal law when it receives congressional consent is not precluded by the non-delegation doctrine under the Constitution's separation of powers guarantee. Although the replacement of inconsistent federal laws and policies is triggered by the formation of a Prosperity District, all criteria for granting the owners'/residents' petition are specified in the Compact and no substantive federal policy matter is otherwise delegated to any private party. The process is not materially different than the petition process used by private

parties to establish special districts throughout the states, all of which thereby gain access to analogous federal tax exemptions for municipal borrowing (which no one challenges as an improper delegation of federal taxing authority). Moreover, the Supreme Court has long sustained legislative acts entailing direct private-party approval or rejection of new regulatory schemes—even where a substantial degree of policy discretion was vested in those private parties. *Sunshine Anthracite Coal Co. v. Adkins*, 310 U.S. 381, 398-99 (1940); *Currin v. Wallace*, 306 U.S. 1, 14-15 (1939). In contrast to the “unfair competition” regulations sustained in *Sunshine Anthracite* or the price controls in *Currin*, no coercive power and far less legislative power is delegated to those private parties who want to form a Prosperity District. For this reason, current case law should easily sustain the Prosperity Zone Compact as federal law without raising concerns about impermissible legislative delegation.

Finally, it is exceedingly unlikely that the Prosperity Zone Compact’s alternative dispute-resolution process would be seen as improperly delegating the Article III judicial power. In *Texas v. New Mexico*, 462 U.S. 554, 571 n.18 (1983), the Supreme Court emphasized that it would happily defer to the informal dispute-resolution decisions of the Pecos River Commission, a compact agency created by the Pecos River Compact as a “completely adequate means” of resolving disputes among member states. The Court would likewise defer to the Prosperity Zone Compact’s dispute-resolution process overseen by its interstate commission.

## **Conclusion**

The Prosperity Zone Compact, once it came into being, would be a fully legal institution, an enforceable contract between state sovereigns that could be “upgraded” to the status of federal law upon congressional consent. There are no constitutional reasons why the fiscal and regulatory reforms contemplated for Prosperity Districts cannot be achieved in this manner.

Thank you for your time. I welcome your questions.

## **Note:**

\* Much of this presentation is drawn from Compact for America Policy Brief No. 10, “The Prosperity Zone Compact, Leveraging the Power and Promise of Interstate Compacts to Bring Back the American Dream,” July 21, 2016, available at



PROPOSED AMENDMENTS TO HOUSE BILL NO. 1248

- Page 2, line 23, after "by" insert "subparagraph d of paragraph 7 of subdivision a of"
- Page 3, line 5, after "to" insert "subdivision a of"
- Page 6, line 22, replace "(g)" with "(d)"
- Page 6, line 23, replace "(h)" with "(e)"
- Page 6, line 26, replace "(i)" with "(f)"
- Page 7, line 1, replace "(j)" with "(g)"
- Page 7, line 5, replace "(k)" with "(h)"
- Page 7, line 6, after "by" insert "subdivision d of"
- Page 7, line 19, after "under" insert "subdivision c of"
- Page 11, line 21, after "to" insert "paragraph 3 of subdivision c of"
- Page 11, line 27, after "to" insert "subdivision d of"
- Page 12, line 30, after "by" insert "subparagraph a of paragraph 1 of subdivision c of"
- Page 12, line 30, after "to" insert "subparagraph d of paragraph 7 of subdivision a of"
- Page 12, line 31, after "by" insert "subdivision d of"
- Page 14, line 8, after "by" insert "subparagraph a of paragraph 1 of subdivision c of"
- Page 14, line 9, after "to" insert "subparagraph d of paragraph 7 of subdivision a of"
- Page 14, line 21, after "by" insert "subparagraph a of paragraph 1 of subdivision c of"
- Page 14, line 22, after "to" insert "subparagraph d of paragraph 7 of subdivision a of"
- Page 15, line 6, after "under" insert "subparagraph b of paragraph 1 of subdivision c of"
- Page 15, line 9, after "by" insert "subparagraph a of paragraph 1 of subdivision c of"
- Page 15, line 10, after "to" insert "subparagraph d of paragraph 7 of subdivision a of"
- Page 15, line 26, after "by" insert "subparagraph a of paragraph 1 of subdivision c of"
- Page 15, line 27, after "to" insert "subparagraph d of paragraph 7 of subdivision a of"
- Page 15, line 28, after "by" insert "subparagraph b of paragraph 1 of subdivision c of"
- Page 16, line 5, after "to" insert "item 3 of subparagraph d of paragraph 7 of subdivision a of"
- Page 16, line 6, after "to" insert "subparagraph b of paragraph 1 of subdivision c of"
- Page 16, line 7, replace "their" with "its"
- Page 16, line 9, after "in" insert "subdivisions a through c of"
- Page 16, line 10, after "to" insert "item 3 of subparagraph d of paragraph 7 of subdivision a of"

Page 16, line 11, after "by" insert "subparagraph b of paragraph 1 of subdivision c of"

Page 16, line 13, after "in" insert "subdivisions a through c of"

Page 16, line 28, after "to" insert "subdivision d of"

Page 16, line 28, after "and" insert "subdivision d of"

Page 17, line 3, replace the third underscored comma with an underscored opening parenthesis

Page 17, line 4, replace the first underscored comma with an underscored closing parenthesis

Page 17, line 8, replace the underscored comma with an underscored opening parenthesis

Page 17, line 10, after "them" insert an underscored closing parenthesis

Page 17, line 27, after the first "of" insert "paragraph 9 of subdivision a of"

Page 18, line 4, after "market" insert "unimproved"

Page 18, line 19, after "market" insert "unimproved"

Page 19, line 3, after "market" insert "unimproved"

Page 19, line 12, after "market" insert "unimproved"

Page 20, line 26, after "in" insert "paragraph 9 of subdivision a of"

Page 22, line 15, after the first "of" insert "paragraph 9 of subdivision a of"

Page 23, line 1, after the first underscored comma insert "subdivision e of"

Page 24, line 8, after "in" insert "paragraph 3 of subdivision d of"

Page 29, line 11, after "by" insert "subdivision j of"

Page 29, line 18, after "by" insert "subdivision c of"

Page 29, line 22, after "under" insert "subdivision d of"

Page 29, line 24, after "under" insert "paragraph 9 of subdivision a of"

Page 31, after line 22 insert:

"12. Clarification of headings and internal references. This member's local legislative drafting and codification style requires the principal paragraphs of each Article of this compact to be designated solely by a numeral and internally cross-referenced as a subsection, designates certain subparagraphs alphabetically, references subclauses of subparagraphs either without designation or as numerical items, does not permit the use of initial capitalization to designate defined terms in the body of legislation, and requires the plural form of the terms "petitioners," "recipients," and "state officials," which is intended to include the possibility of a singular application, as well as the singular form of "governor," which is intended to include the possibility of plural application. This member understands that other members in privity may nevertheless refer to the same principal paragraphs with a heading that includes the word "section" prefacing the same numeral and also internally cross-reference the same as a "section," refer to the same subparagraphs with different headings, refer to the same defined terms with initial capitalization or full capitalization, and prefer to



use "governor(s)," "petitioner(s)," "recipient(s)," and "state official(s)" to reference the plural and singular form of such terms. As with any other difference in legislative drafting or codification style, these internal references are intended to be and should be construed as substantively equivalent."

Page 32, line 3, replace the underscored comma with an underscored opening parenthesis

Page 32, line 3, after "petitioners" insert an underscored closing parenthesis

Page 32, line 21, after "to" insert "item 1 of subparagraph a of paragraph 4 of subdivision d of"

Page 33, line 14, after "to" insert "subparagraph a of paragraph 1 of subdivision c of"

Page 34, line 19, remove "(a)"

Page 34, line 26, replace "(b)" with "b."

Page 34, line 28, replace "[1]" with "(1)"

Page 35, line 1, replace "[2]" with "(2)"

Page 35, line 5, replace "[3]" with "(3)"

Page 35, line 10, replace "(c)" with "c."

Page 35, line 11, replace "paragraph" with "subdivision"

Page 35, line 11, after "b" insert "of subsection 1 of this Article"

Page 35, line 12, replace "paragraph" with "subdivision"

Page 35, line 12, after "a" insert "of subsection 1 of this Article"

Page 35, line 17, replace "paragraph" with "subdivision"

Page 35, line 17, after "b" insert "of subsection 1 of this article"

Page 38, line 30, after "of" insert "subdivision j of"

Page 39, line 11, after "under" insert "subdivision e of"

Page 39, line 18, after "by" insert "subdivision d of"

Page 40, line 4, after "under" insert "subdivision e of"

Page 40, line 13, after "by" insert "subdivision d of"

Page 40, remove line 30

Page 41, line 4, remove the third underscored comma

Page 41, line 4, after the underscored semicolon insert "and"

Page 42, line 10, after "by" insert "subdivision c of"

Page 42, line 16, after "under" insert "subdivision d of"

Page 42, line 21, after "under" insert "paragraph 9 of subdivision a of"

Page 48, line 24, after "in" insert "subdivision j of"

Page 49, line 9, replace "provisional" with ":

a. Provisional"

Page 49, line 12, replace ", or permanent" with "; or

b. Permanent"

Page 49, line 21, after "to" insert "paragraph 3 of subdivision c of"

Page 50, line 20, after "to" insert "items 1 and 3 of subparagraph d of paragraph 7 of subdivision a of"

Page 53, line 1, after "trustees" insert an underscored opening parenthesis

Page 53, line 2, after "record" insert an underscored closing parenthesis

Page 60, line 4, after the first "of" insert "subdivisions a, b, c, e, g, and l of"

Renumber accordingly



## THE PROSPERITY STATES FACT SHEET

**The Prosperity States initiative is a reset button to deliver the good government we promised:**

- ★ State-of-art regulatory and fiscal best practices for a local community that wants them.
- ★ When two states pass the same legislation, those reforms are shielded from special interest interference.
- ★ When Congress consents, reforms within the Prosperity District (PD) become a federal law.

### How It Works.

A state passing Prosperity States legislation immediately creates statutory authority for Prosperity Districts (PD). Fully 100% of property owners and residents must petition for a PD to be formed on their land. PDs can be expanded by similar petition.

### Approval.

The petition to form or expand a PD is deemed approved when the Board of Supervisors for the county in which it is located does not reject the petition within 20 days. Upon recording of approved petition, the PD is formed or expanded.

### State Law Reset.

The formation or expansion of the PD replaces, within its boundaries, all state laws above the baseline of the state constitution, common law, criminal law and existing compacts.

### Prosperity.

The PDs created within Prosperity States liberate residents, transforming states into strongholds of free markets, federalism and limited government once again.

### Deep Reform.

Within its boundaries, each PD becomes the sole governing political subdivision of the state with:

- ★ No eminent domain or civil forfeiture power;
- ★ No taxing power;
- ★ Police powers restricted to criminal law, common law or least restrictive regulation;
- ★ No subsidization of private enterprise;
- ★ Municipal services limited to competitively contracted public-private partnerships;
- ★ Borrowing capacity limited to net assets and no possibility of state or federal bailout;
- ★ Regulatory authority limited to impede cronyism.

### Reliable Reform.

Prosperity States legislation takes the form of an Interstate Compact. That means when a second state passes Prosperity States legislation and gives formal notice to the first state, the Prosperity States Compact becomes a binding sovereign contract guaranteeing its reforms.

### Federal Law Upgrade.

With the consent of Congress, deep reforms existing in PDs are upgraded to the status of federal law.

**Economic growth is ignited. Jobs flourish. Prosperity is restored.**



# ProsperityStates

EMPOWERING COMMUNITIES TO IGNITE GROWTH

# RESTORE PROSPERITY NOW!



**NeWAY**  
FOUNDATION

NeWayFoundation.org



CompactForAmerica.org

*Federalism*  
**in Action**

FederalismInAction.com

[www.compactforamerica.org/restoreprosperitynow](http://www.compactforamerica.org/restoreprosperitynow)



**ProsperityStates**

EMPOWERING COMMUNITIES TO IGNITE GROWTH

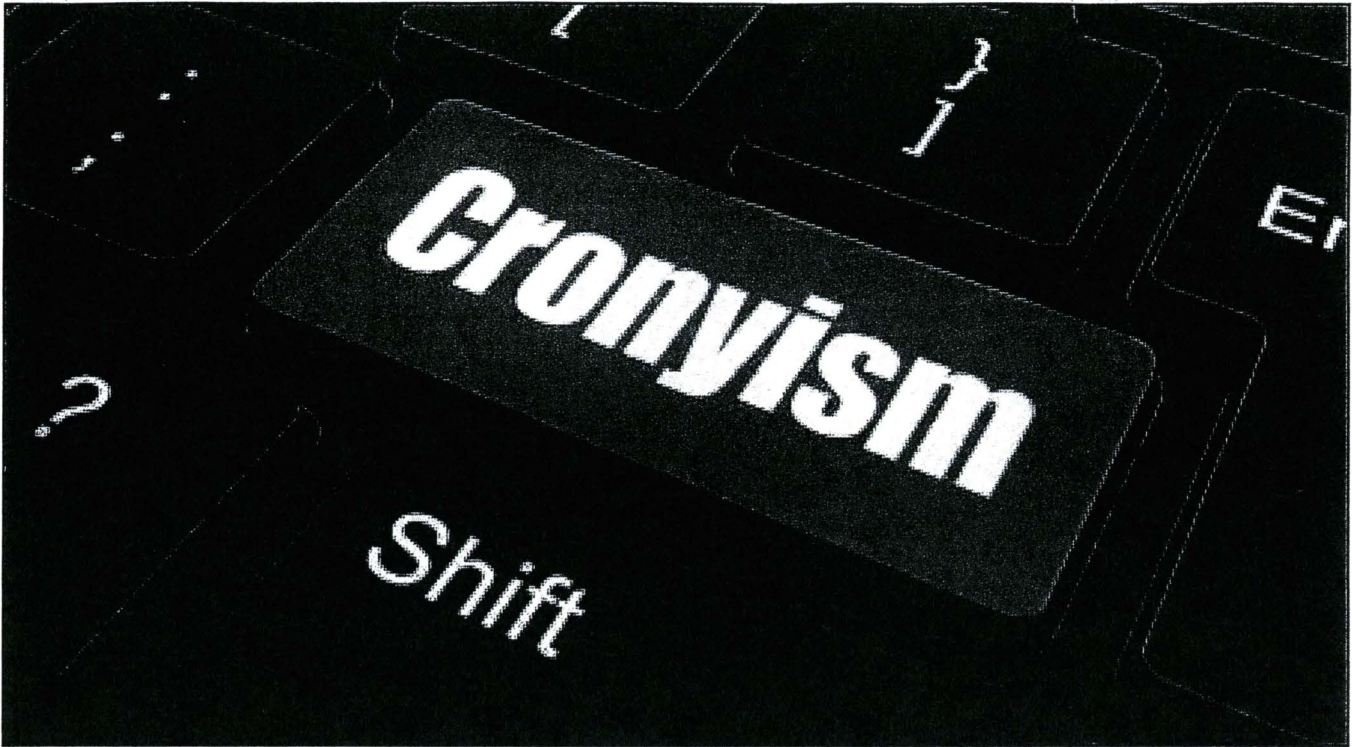
## What We Have Lost with Excessive Regulation

If the U.S. had frozen regulations in 1980, the overall U.S. economy would be 25% larger than it is now, meaning

\$4 trillion per year more wealth or about  
\$13,000 per year for every man, woman and child in the country.







[www.compactforamerica.org/restoreprosperitynow](http://www.compactforamerica.org/restoreprosperitynow)



## What is the Prosperity States Initiative?

---

- A full package of tools for local communities to help eradicate poverty, create jobs, grow wealth, and protect freedom
- **State and local** laws are reformed within that community
- Reforms are shielded from cronyism
- If congress consents, the reforms **become federal law**
- It is a reset button restoring a **level playing field** for any community that wants it



www.compactforamerica.org/restoreprosperitynow

**ProsperityStates**  
EMPOWERING COMMUNITIES TO IGNITE GROWTH

## WHAT DO WE HAVE TO GAIN WITH PROSPERITY COMMUNITIES?



### Host State



### >\$30Trillion

For-Profit capital becomes  
unleashed into economic  
development in host state

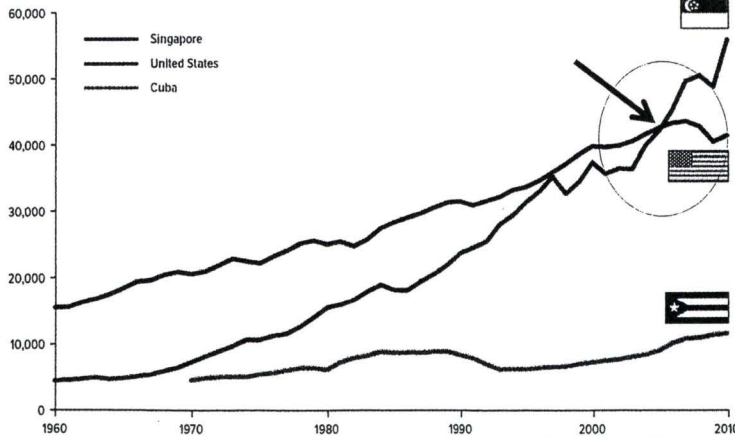
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**ProsperityStates**  
EMPOWERING COMMUNITIES TO IGNITE GROWTH

## IT HAS BEEN DONE BEFORE: SINGAPORE

### SINGAPORE OVERTOOK THE UNITED STATES IN GDP/CAPITA IN 50 YEARS!

**Lee Kuan Yew's Singapore Flourished while Fidel Castro's Cuba Floundered**  
GDP per Capita Based on Purchasing Power Parity (PPP)



Past performance does not guarantee future results.  
Source: Penn World Table (Center for International Comparisons at the University of Pennsylvania), U.S. Global Investors

“The average growth rate in developed countries **following establishment** of a large degree of economic freedom **exceeds 8 percent over a long period of time**, far above comparable countries who have significantly less economic freedom.”

## WHAT ARE THE MAIN FEATURES?

- Voluntary and Open to All
- Health and Safety Protected
- Fiscal Certainty Preserved
- No Abuse of Power
- No Free Riding & Externalities
- Political Compromise Possible
- Federal Reform Platform



## DISTRICTS ARE EASY TO FORM & EXPAND

### ARTICLE III of the Model Policy

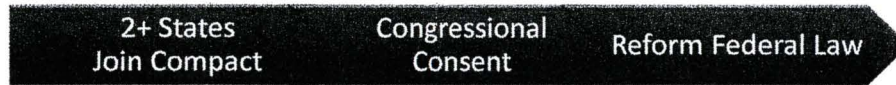
Outside City:



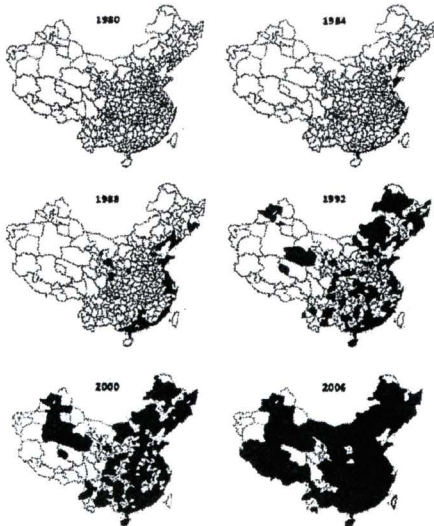
Inside City



### ARTICLE IV of the Model Policy



## FROM PROSPERITY DISTRICTS TO PROSPERITY STATES



- In 1980, four backwater cities were given SEZ status
- 25 years later, most of China enjoys a baseline of mostly Hong Kong-style economic policies

Source: "The Economic Impact of Special Economic Zones: Evidence from Chinese Municipalities" Jin Wang, London School of Economics

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## WHY? ASK THEM...



[www.compactforamerica.org/restoreprosperitynow](http://www.compactforamerica.org/restoreprosperitynow)



## HEALTH, SAFETY AND FREEDOM PROTECTED

- Strong property rights, contractual freedom
- Criminal laws against violence, theft, fraud and “evil intent” crimes
- District can adopt regulatory “training wheels” for first five years

- New regulations require:

**ARTICLE II of the Model Policy**

- Regulatory Impact Statement
- Protection of Third Parties
- Proof of Efficacy

- Burden of proof on district

- Regulations sunset every five years



## FISCAL CERTAINTY AND HUGE UPSIDE

---

- All land owners agree on formation or expansion to a “revenue covenant” that replaces taxation
- ARTICLE VI of the Model Policy**
- Guarantees as much revenue as was received before.
  - Generates revenue based on land value **or** on negotiated formula available to all prosperity districts.
  - Allows for voluntary adoption of Friedman’s “least bad tax” or other fiscal best practices
- Windfall can be allocated to tax cuts or essential services

## LIMITED POWER

---

- Police power limited to regulatory best practices and criminal law enforcement
- ARTICLE II of the Model Policy**
- Municipal services must be competitively bid; everyone must agree to pay voluntarily if users are subsidized
  - Borrowing is limited to net assets of district

## PROTECTED FROM ABUSE OF POWER

---

- Subject to constitutional law
- No taxing authority
- No eminent domain authority
- No civil forfeiture authority
- No subsidies for private enterprise
- No anti-competitive regulation
- No government grants
- Robust exit options
  - Reversion to non-district status is available at will for owners of property contiguous to the outside world
  - Districts are authorized to allow additional methods of exit

### ARTICLE II of the Model Policy

## NO EXTERNALITIES OR FREE RIDING

---

- What stays in the district remains there – except for crimes of evil intent, violence, theft, and fraud
- What leaves the district triggers outside intervention:
  - Outside agencies can address criminal activity
  - Outside agencies can address environmental spill-over effects
  - Outside agencies can serve legal process
- Users of outside governmental services must pay a user fee posted annually by the affected governmental body

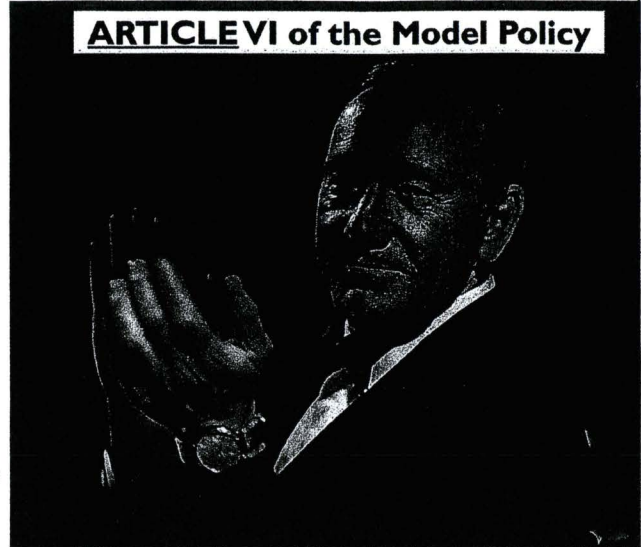
### ARTICLE II of the Model Policy



## POLITICALLY REALISTIC

- Statewide tailoring:
  - States can preserve designated laws
  - States can adjust formation process for districts
  - States can address federal-state issues
  - States can limit reciprocity
- Local tailoring:
  - Cities and towns can replicate statewide tailoring locally

### ARTICLE VI of the Model Policy



## HARD ISSUES HAVE BEEN TAILORED OUT

- Federal grant conditions, mandate and primacy compliance have been protected.
- Emergency/national security law is preserved.
- Banking, securities, fraud, insurance regulation, and mechanics lien laws are preserved.
- Public records/hearings law is preserved.
- Licensure is preserved for doctors and lawyers.
- Water, oil and mining rights legal framework is preserved.
- Criminal law, procedure, and law enforcement employment law is preserved.
- Counties can opt-out.
- Counties can require bonding or insurance to cover health-safety/abandonment risks.

[www.compactforamerica.org/restoreprosperitynow](http://www.compactforamerica.org/restoreprosperitynow)



## COMPACTS ARE POWERFUL!

- Unique durability
- Access to neutral forum for dispute resolution
- Unique federal upgradability

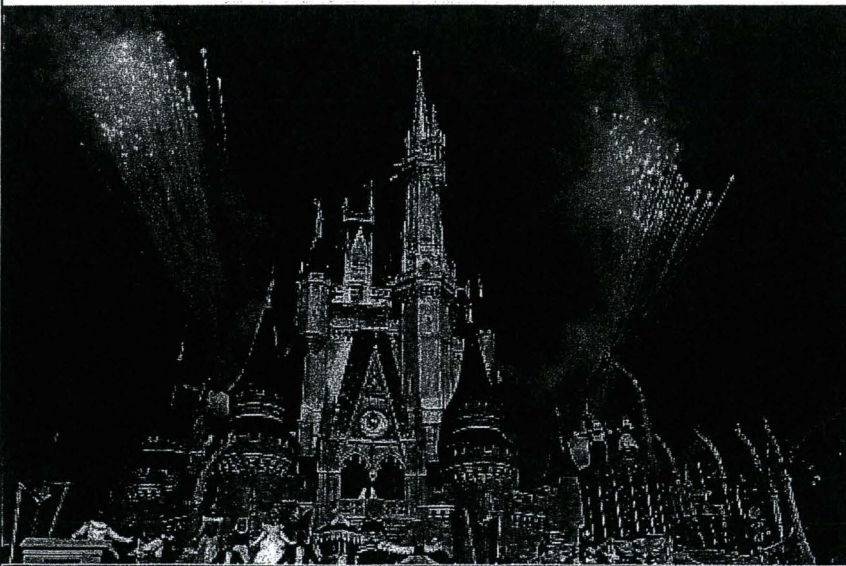
**ARTICLES IV AND V  
of the Model Policy**



[www.compactforamerica.org/restoreprosperitynow](http://www.compactforamerica.org/restoreprosperitynow)



## LET'S THINK BIG AGAIN



- The Magic Kingdom was born in **less than a decade.**
- **\$18 Billion per year.**
- **1 in 50 Florida jobs.**
- **Congress would consent in a heartbeat.**





# ProsperityStates

EMPOWERING COMMUNITIES TO IGNITE GROWTH

HB1248 #1  
2-10-17

## OVERVIEW

**Government red tape holds people back, robs them of the chance to be their best and denies everyone the benefits of a strong, thriving economy. Now, we can roll back the decades of regulations and special interest carve outs that destroy growth — with Prosperity States.**

The Prosperity State Initiative is, fundamentally, about progress. States passing enabling legislation can establish communities where government is rolled back to the basics. The result? Economic growth, jobs and prosperity – not just in the community itself, but throughout the state!

## THE PROSPERITY STATE FACT SHEET



### PROSPERITY STATES ARE VOLUNTARY.

Strong legal protections ensure a Prosperity State community will not negatively impact its neighbors.



### PROSPERITY STATES ARE FLEXIBLE.

Each state decides how much to reduce regulatory burdens in these designated communities before the legislation is finalized.



### PROSPERITY STATES ARE THE ULTIMATE FAIR SHOT.

Everyone in a Prosperity State community has an equally fair shot at creating their success. No one gets an advantage via a backroom deal or special carve out.



### PROSPERITY STATES SHAPE THE FUTURE.

Fifty years ago, no one could predict many of today's hottest jobs and industries. Because Prosperity States can react more quickly to changes in the business environment, they're better positioned to help regional economies and the state as a whole evolve their economies.



### PROSPERITY STATES CREATE REVENUE UPSIDE.

Even minor success in a Prosperity State community creates significant new jobs, new tax receipts, and an influx of workers to the state.



### PROSPERITY STATES ARE NEW, BUT NOT UNTESTED.

They're the best of proven policies from around the world.

Find out more at [www.ProspertyStates.org](http://www.ProspertyStates.org)



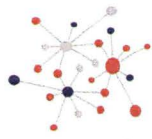
NeWAYFoundation.org



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FederalismInAction.com



# ProsperityStates

EMPOWERING COMMUNITIES TO IGNITE GROWTH

HB 1248

2-10-17

#2

## THE PROSPERITY STATES FACT SHEET

**The Prosperity States initiative is a reset button to deliver the good government we promised:**

- ★ State-of-art regulatory and fiscal best practices for a local community that wants them.
- ★ When two states pass the same legislation, those reforms are shielded from special interest interference.
- ★ When Congress consents, reforms within the Prosperity District (PD) become a federal law.

### How It Works.

A state passing Prosperity States legislation immediately creates statutory authority for Prosperity Districts (PD). Fully 100% of property owners and residents must petition for a PD to be formed on their land. PDs can be expanded by similar petition.

### Approval.

The petition to form or expand a PD is deemed approved when the Board of Supervisors for the County in which it is located does not reject the petition within 20 days. Upon recording of approved petition, the PD is formed or expanded.

### State Law Reset.

The formation or expansion of the PD replaces, within its boundaries, all state laws above the baseline of the state constitution, common law, criminal law and existing compacts.

### Prosperity.

The PDs created within Prosperity States liberate residents, transforming states into strongholds of free markets, federalism and limited government once again.

### Deep Reform.

Within its boundaries, each PD becomes the sole governing political subdivision of the state with:

- ★ No eminent domain or civil forfeiture power;
- ★ No taxing power;
- ★ Police powers restricted to criminal law, common law or least restrictive regulation;
- ★ No subsidization of private enterprise;
- ★ Municipal services limited to competitively contracted public-private partnerships;
- ★ Borrowing capacity limited to net assets and no possibility of state or federal bailout;
- ★ Regulatory authority limited to impede cronyism.

### Reliable Reform.

Prosperity States legislation takes the form of an Interstate Compact. That means when a second state passes Prosperity States legislation and gives formal notice to the first state, the Prosperity States Compact becomes a binding sovereign contract guaranteeing its reforms.

### Federal Law Upgrade.

With the consent of Congress, deep reforms existing in PDs are upgraded to the status of federal law.

**Economic growth is ignited. Jobs flourish. Prosperity is restored.**





Klemin, Lawrence R.

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**From:** Nick Dranias <nick.dranias@compactforamerica.org>  
**Sent:** Friday, February 10, 2017 7:10 AM  
**To:** Klemin, Lawrence R.  
**Subject:** Shouldn't At Least One Freedom Option Exist?

**CAUTION:** This email originated from an outside source. Do not click links or open attachments unless you know they are safe.



Dear Rep. Klemin:

**"Shouldn't states have at least one tool to deliver less government, less regulation and more constitutional fidelity for a local community that wants it?"**

[That's what Arizona State Senator Steve Montenegro and I ask in this Ricochet.com opinion editorial.](#)

Right now, Arizona State Sens. Montenegro, Allen, Barto, Borrelli, Petersen, and Smith alongside Reps. Campbell, Finchem, Kern, Livingston and Mitchell are answering that question in the affirmative by advancing **[SB1376 - the Prosperity States Compact.](#)**

**[They are not alone. Oklahoma Speaker of the House Jeff W. Hickman, Mississippi Speaker Pro Tem Greg Snowden, and North Dakota State Representative Lawrence Klemin, alongside many of their colleagues, are advancing counterpart legislation in their respective states as well.](#)**

What does the Prosperity States Compact do? Simply put, it empowers citizens to hit the reset button on big government by forming a Prosperity District.

Once formed, a Prosperity District repeals within its boundaries inefficient, corrupt and just plain stupid "spaghetti code" regulations and governing authorities that have been layered on top of the state and federal constitutions, the common law and the criminal law. Within the district, that heap of bad public policy is replaced with a streamlined local government designed to deliver the prosperity that naturally arises from freedom and responsibility.

Unlike the proposed Prosperity District, not a single one of the more than 40 types of special districts in Arizona or any other state in the nation delivers less government for any community.

***"Shouldn't there be at least one?"***

[The question is pending nationally.](#)

And with champions for the Prosperity States Compact like Senator Montenegro, the question is no longer rhetorical.

Very truly yours,



Nick Dranias  
President & Executive Director  
Compact for America Educational Foundation, Inc.



[NeWayFoundation.org](http://NeWayFoundation.org)



[CompactForAmerica.org](http://CompactForAmerica.org)



[FederalismInAction.com](http://FederalismInAction.com)

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HB 1248

2-10-17

#4

17.0464.02003  
Title.

Prepared by the Legislative Council staff for  
Representative K. Koppelman  
February 6, 2017

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1248

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study of the prosperity states compact."

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - PROSPERITY STATES COMPACT.** During the 2017-18 interim, the legislative management shall consider studying the feasibility and desirability of joining the prosperity states compact. The study must include a comprehensive review of other states that have adopted the compact and the benefits provided to those states by establishing prosperity districts under the compact. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly."

Renumber accordingly