



# COUNCIL ON ENVIRONMENTAL QUALITY

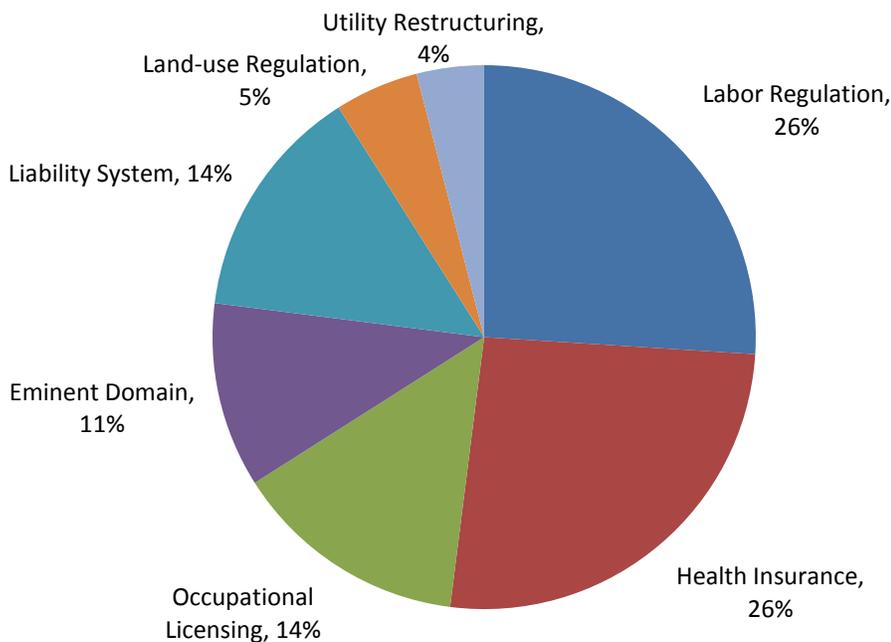
DATE: September 16, 2011  
TO: Council Members  
FROM: Karl Wagener  
Executive Director  
RE: Environmental Regulation and the Growth of Small Businesses

The Fall 2011 issue of *The Connecticut Economy* contains an [article](#), “Economic Regulation of Business: Market Safeguard or Development Straightjacket?” by Steven Lanza that has received considerable attention in the news media. The headlines<sup>1</sup> and content of the news articles will leave many readers with the impression that environmental regulations are part of the problem. Perhaps they are, but the article does not discuss environmental regulations, with one exception.

The article identifies Connecticut as the third-worst state in growing the *number* of small businesses, those firms which employ 1 to 499 employees. (The ranking does not consider the number of jobs or amount of revenue accounted for by small businesses). It then quantifies the regulatory burden on businesses using two regulatory indices, both of which measure and compare dozens of regulations across the 50 states. Both indices put Connecticut’s regulatory index in the highest (or most burdensome) eight among the 50 states.

The foundation of the regulatory indices is found in the “Freedom in the 50 States” report published by the Mercatus Center at George Mason University. That report scores all 50 states on nearly 200 regulations. Those regulations are categorized and weighted as shown in Figure 1.

**Figure 1: Components of Regulatory Index**



## Analysis

Note that environmental regulations are not part of this index. Land-use regulations, which usually have environmental elements, account for only five percent of the regulatory index. The land-use category above is composed of these specific elements:

Strength of state planning role  
Regulatory-taking restrictions  
Guidelines for state development plan  
Mandated local plans  
Internal-consistency mandate  
Vertical-consistency mandate  
Horizontal-consistency mandate

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In general, a state gets a higher (more burdensome) score for each element that favors the state's role over the local role. However, I do not see how statutory guidelines for Connecticut's Conservation and Development Policies Plan and the statutory requirement that every municipality adopt a Plan of Conservation and Development could ever affect more than one or two small businesses in a decade. The former is binding only on state agencies, and the latter plans are guidance for municipal commissions. Small businesses might run into zoning and wetlands hurdles, but those are not measured here.

After examining the absence of environmental regulations and the minor role of land-use regulations in the regulatory index, I was surprised to read this conclusive paragraph in *The Connecticut Economy* article (highlighting added):

So why does Connecticut rank so low? Like most of New England, Connecticut has fairly exacting labor standards — it has a relatively high minimum wage, a prevailing wage law, mandatory workers' compensation, and it is a non-right-to-work jurisdiction. Connecticut also requires special licensing for more occupations than any other state, including massage therapists, athletic trainers, and TV and radio technicians. And, like most states in the populous northeast, Connecticut has fairly rigorous land use standards marked by a significant state (versus local) role in land use planning, numerous endangered species statutes, and few safeguards against so-called regulatory takings. But in other categories, such as health insurance and utilities, Connecticut's regulations come pretty close to those of the average state.

The first two of the highlighted factors warrant a closer look, as they have been quoted specifically in the news articles:

1) "Significant state (versus local) role in land use planning": The state's primary role is in producing the Conservation and Development Policies Plan, which could affect a small business directly only if that business were to apply for a substantial state grant for construction. It could affect a small business indirectly because 1) municipal plans are required to consider the state plan and responsible growth guidelines and 2) zoning regulations are required to consider the municipal plan. However, Connecticut remains a home-rule state where zoning authority remains firmly in the hands of municipalities.

The minor influence of state land-use planning on small business growth is especially evident in light of the list of important small business categories listed in *The Connecticut Economy* article:

Management  
Manufacturing  
Education  
Administration  
Information  
Finance  
Accommodation  
Arts & Entertainment  
Retail trade

Professional  
Wholesale trade  
Health Care  
Construction  
Utilities  
Real Estate  
Transportation  
Forestry  
Mining

One has to get quite far down the list to find an industry where land-use restrictions could be impeding growth in the number of small businesses in Connecticut.

2) “Numerous endangered species statutes”: This is the exception, the one environmental factor mentioned in the introductory paragraph of this memo, and it is surprising for two reasons. First, endangered species are not mentioned in the actual regulatory index. Second, Connecticut is notable for having a weak, seldom-used endangered species law that is triggered only by state spending on a project. The proposed stormwater general permit for projects that disturb more than five acres contains application requirements relating to endangered and threatened species that could impede a small company’s construction plans, but that permit is not yet on the books.

This unexpected mention of endangered species led me to more research, and I discovered that *The Connecticut Economy* article evidently used the regulatory index published by the Mercatus Center in 2009, which mentioned endangered species (though that factor was insignificant in the state’s ranking). The 2011 edition makes no mention of endangered species. Upon further research, I learned that there is...

### ...Good News!

In the 2011 edition of the regulatory index, Connecticut’s ranking has improved to 39<sup>th</sup> (11<sup>th</sup> worst). Not much to brag about, but the (non-environmental) regulatory burden is lighter here than in any surrounding state and lighter than in Montana and West Virginia.

### Conclusion

There is constant discussion and news coverage of the burden that environmental regulations place on businesses, both nationally and in Connecticut. The release of *The Connecticut Economy* article was a press event with legislators and other officials in attendance. In late October, the General Assembly will convene for a special session on jobs. It will be very important for all parties to have factual data in order to make sound decisions. To date, I have not found solid data regarding the burden placed on Connecticut’s businesses by state environmental regulations. Such data would be extremely useful. We know, however, that the recent article in *The Connecticut Economy* does not provide insight into this question.

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<sup>1</sup> Examples: “UConn Report: CT Regulations Hurting Small Business Growth” (*Courant*); “Report Says Connecticut Could Regain Small Businesses by Easing Regulations” (*CTMirror*); “As Job Creation Slows, State Analysis Indicates Regulation Cutback Could Help,” (*The Day*).