

Thom Tillis's victory in the North Carolina primary for U.S. Senate was widely seen as a victory for the Republican Establishment over the Tea Party. What does this mean on environmental issues? In other word, where do "Establishment Republicans" stand on the environment?

In Tillis's case, lowering regulatory costs seems to be the highest priority. According to his [website](#), Tillis is dedicated to regulatory rollback:

As a businessman who led the reform movement that swept the North Carolina Capitol, Thom has made regulatory reform his signature crusade. As a result, the state legislature recently passed an extensive regulatory overhaul measure that will free North Carolina businesses of numerous government regulations that hinder economic growth and job creation. In Washington, Thom will continue his fight for regulatory reform to get our oppressive government out of our families and small businesses.

On the other hand, he does claim to be in favor of environmental protection:

Our environment is one of our most important assets and it must be protected. Our air and water quality continues to improve and we must take measures to ensure that we maintain a continuous process of improvement. We must find ways to work towards continued improvement without complex and costly regulations on business. I do not believe burdensome, costly legislation is needed to achieve this, and I believe there are viable options that will preserve and improve our environment.

The regulatory reform law that Tillis championed in North Carolina is long and complicated (summarized [here](#)), with lots of provisions dealing with specific types of regulation. For example, one provisions allows bed and breakfasts to serve three meals a day, and another requires carbon monoxide detectors in hotels. At the heart of the law, however, is its sunset requirement for all regulations.

The law requires reconsideration of existing regulations every ten years, starting with the state's surface water quality and wetlands rules. Agencies are required to get public comment. If there is significant public comment, then first the agency and then a Regulatory Review Commission would determine whether the comments were meritorious.

The Regulatory Review Commission can determine that a rule is unnecessary and that contrary comments lack merit, in which case the rule expires. Or it can find that the rule is necessary, which still results in its expiration if any of the comments filed relate to the clarity of the rule or its justification. In practice, this may mean that a rule will expire if anyone cares enough to hire a lawyer to file comments.

When a rule does expire, reenactment is subject to the state administrative procedure act. That would apparently trigger a new rulemaking process. According to [one observer](#):

Given N.C.'s lengthy rulemaking process, a 10-year readoption schedule could lead to constant churning and little certainty for either regulators or the public. Nothing in Session Law 2013-413 shortens the process for readoption of an existing rule, so the agency would need to go through all of the usual rule adoption steps: public notice, fiscal analysis, review by the Rules Review Commission, and possible legislative disapproval. The Falls Lake nutrient rules took about five years from beginning to effective date and the rules include some requirements that phase-in even later.

Why is indiscriminate sunseting a bad idea? First, because agencies have limited resources, so they will have to forego addressing new problems in order to revisit old ones. Second, because every ten years there will be a gap period when businesses will have free rein to ignore public health and safety requirements. Third, because in many cases it will be a waste of time and resources to duplicate work the agency did a decade earlier. And fourth, because it increases regulatory uncertainty — no way of knowing whether the new rule will be passed and if so whether it will be stronger or weaker. These practical problems would have been obvious to Tillis if the proposal had been to make all North Carolina statutes expire every ten years.

Fortunately, the law does not apply to state regulations required to implement or conform to federal laws such as the Clean Air Act, which does blunt the practical impact a bit. Of course, this also gives state agencies an incentive to act as much as possible as agents of the federal government rather than independently, which may not be what the authors of the law had in mind.

The good news is that Tillis has apparently not tried to abolish all environmental regulation, making him different from Tea Party leaders such as Rand Paul. But he also seems to be rather willing to burden the administrative process to the point where it might become

unworkable.