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TESTIMONY

THE REGULATORY LANDSCAPE IN NORTH CAROLINA

James Broughel, PhD
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North Carolina Joint Legislative Administrative Procedure Oversight Committee

October 3, 2017

Chairman Wells, Chairman Jordan, and members of the committee:

Thank you for inviting me here today to discuss the regulatory landscape in North Carolina. My name is James Broughel, and I am a research fellow at the Mercatus Center at George Mason University, where I study state regulatory issues as part of Mercatus's State and Local Policy Project.

My message here today can be summarized in three points:

1. North Carolina has a significant amount of regulation on its books, both in absolute terms and relative to some other US states.
2. The accumulation of regulations can be a drag on economic growth and prosperity in a state and can even weaken the effectiveness of the most important regulations in place.
3. Capping the level of regulation is a way to help the North Carolina economy grow, make the state a more attractive place to do business, and encourage more systematic look back at the rules affecting state residents.

QUANTIFYING REGULATION AT THE STATE LEVEL

At the Mercatus Center, my colleagues and I have launched State RegData, a first-of-its-kind project to quantify the level of regulation across the 50 states.[1] State RegData involves using text analysis software to scan through bodies of state administrative code. Generally, state codes are too large for any single individual to read through from start to finish. For example, the online version of the *North Carolina Administrative Code* contains 8.7 million words.[2] It would take a person about 483 hours—or more than 12 weeks—to read the entire code, assuming a person reads regulations 40 hours per week as a full-time job.

At Mercatus we use computer text analysis software to pull key information from state codes, such as word counts and counts of regulatory restrictions, which are instances of *shall*, *must*, *may not*, *prohibited*, and *required*. These words and phrases can signify legal constraints and obligations of

[1] State RegData forms a part of a broader project called QuantGov, which seeks to quantify legal text. See Patrick A. McLaughlin and Oliver Sherouse, "QuantGov—A Policy Analytics Platform," QuantGov, October 31, 2016.
[2] North Carolina Office of Administrative Hearings, *North Carolina Administrative Code*, accessed May 1, 2017.

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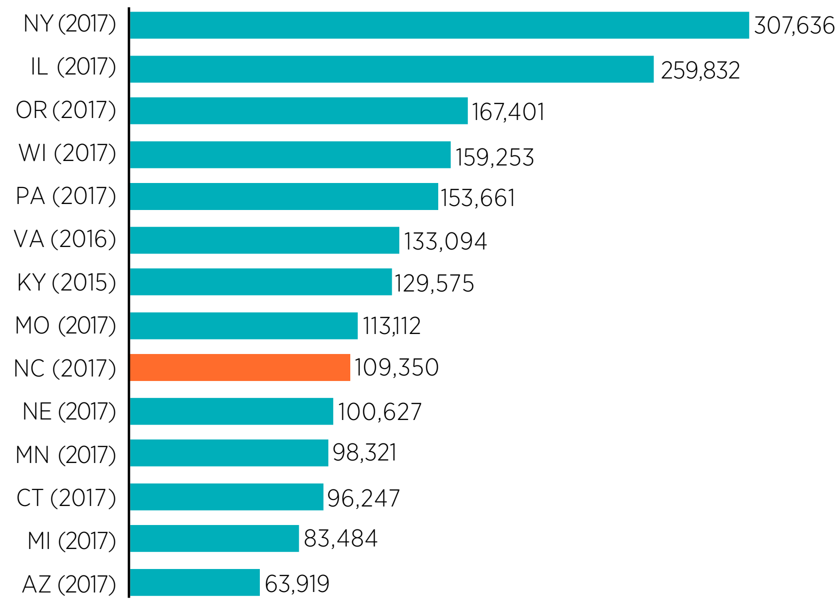
various kinds.[3] We also estimate the industries that are most targeted by state regulation and assess which state agencies produce the most regulation.

North Carolina has 109,350 regulatory restrictions in its administrative code.[4] Some of these restrictions are vital for protecting the health and safety of citizens, but others just make the code unnecessarily complicated or, worse, impose costly burdens on the public with no corresponding benefits. Title 21 of the *North Carolina Administrative Code*, related to Occupational and Licensing Boards and Commissions, contains more than 14,000 restrictions.[5] Surely some of these restrictions are not necessary for safeguarding public health, safety, or the environment. Many occupational licensing requirements exist to protect established interest groups rather than to serve the public interest.[6] Such protections often raise the wages of protected occupations but also raise prices for consumers and make it harder for residents to enter these professions and obtain well-paying jobs. These negative outcomes disproportionately burdern low-income individuals,[7] as well as other vulnerable populations like military spouses and immigrants,[8] who are trying to better provide for their families.

To date we have examined 14 state codes, and we plan to look at all 50 states in the near future. North Carolina's code is near the middle of the pack of states examined thus far. While North Carolina's regulatory code is 71 percent larger than Arizona's code in terms of regulatory restrictions, North Carolina has succeeded in avoiding the regulatory excesses seen in some other states. For example, New York's code is almost three times the size of North Carolina's. Nearby neighbors Virginia and Kentucky also have more restrictions on the books than North Carolina (see figure 1).

[3] Restrictions can also occur in legal text for other purposes, such as for definitional purposes. At times, restrictions may relate to government employees rather than the private sector.
[4] James Broughel and Daniel Francis, "A Snapshot of North Carolina Regulation in 2017," Mercatus Center at George Mason University, October 2017.
[5] Broughel and Francis, "A Snapshot of North Carolina Regulation in 2017."
[6] William Mellow and Dick Carpenter II, *Bottleneckers: Gaming the Government for Power and Private Profit* (New York, NY: Encounter Books, 2016).
[7] Matthew D. Mitchell, Occupational Licensing and the Poor and Disadvantaged (Mercatus Policy Spotlight, Mercatus Center at George Mason University, Arlington, VA, 2017).
[8] US Department of Treasury, Council of Economic Advisers, and US Department of Labor, *Occupational Licensing: A Framework for Policymakers*, July 2015, 4.

FIGURE 1. STATE REGULATORY RESTRICTIONS



Source: State RegData. Available at https://quantgov.org. Produced by James Broughel.

WHY REGULATORY ACCUMULATION MATTERS

The body of regulations in a state, taken together, has an effect on the economy that is greater than the sum of the effects of each individual regulation.[9] Michael Mandel of the Progressive Policy Institute in Washington, DC, likens the effect of regulation on the economy to dropping pebbles in a water stream.[10] The first pebble is insignificant, a thousand pebbles may slow the flow, but a million pebbles could dam the stream even when that last pebble was, by itself, also insignificant.

As more and more rules are added to the books, complexity increases. Scholarship from the fields of psychology, economics, and organizational science suggests that people are more likely to make mistakes and are less motivated and able to comply when they are required to follow too many rules simultaneously.[11] Thus, reducing the complexity of the regulatory system is also likely to be a powerful way to improve compliance, generating better outcomes from rules.

There seems to be a connection between regulation and economic growth as well. A 2013 study in the *Journal of Economic Growth* estimates that federal regulation has slowed the growth rate of the US economy by 2 percent per year on average since 1949.[12] A recent paper published by the Mercatus Center estimates that growth has been slowed by 0.8 percent per year on average by federal regulations implemented since 1980.[13] Finally, researchers at the World Bank estimate that countries with the least

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[9] James Broughel, *Regulation and Economic Growth: Applying Economic Theory to Public Policy* (Arlington, VA: Mercatus Center at George Mason University, 2017).
[10] Michael Mandel and Diana G. Carew, *Regulatory Improvement Commission: A Politically Viable Approach to US Regulatory Reform* (Washington, DC: Progressive Policy Institute, 2013).
[11] Richard Williams and Mark Adams, "Regulatory Overload" (Mercatus on Policy, Mercatus Center at George Mason University, Arlington, VA, 2012).
[12] John W. Dawson and John J. Seater, "Federal Regulation and Aggregate Economic Growth," *Journal of Economic Growth* 18, no. 2 (2013): 137–77.
[13] Bentley Coffey, Patrick McLaughlin, and Pietro Peretto, "The Cumulative Cost of Regulations" (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, 2016).

burdensome business regulations grow 2.3 percentage points faster annually than countries with the most burdensome regulations.[14]

Differences of one or two percentage points in growth may not sound like much, but consider this: From 2006 to 2016, North Carolina's real GDP growth averaged just 0.8 percent per year.[15] If this trend continues, it will take 87 years for the economy to double its size. By contrast, if North Carolina's economy were to grow 3 percent per year, it would take just 24 years for its real GDP to double. This small difference in growth rates is roughly the difference between the economy doubling once in a lifetime and doubling three times in the same time period. Years of slow growth means incomes for North Carolinians are lower than they would otherwise be. Reversing this trend would allow North Carolinians to improve living conditions and opportunity for themselves, as well as for their children and grandchildren.

A CAP ON REGULATION LEVELS

North Carolina has had a strong track record of pursuing regulatory reform in recent years.[16] However, another potential reform that has not yet been implemented, but that is worth considering, is a cap on regulation levels. A regulatory cap can prevent excessive regulatory accumulation while also preserving the flexibility regulators need to maintain a modern and up-to-date regulatory system. There are some benefits to this approach:

- *Limiting regulatory accumulation*. A cap is a check on the inertial growth of regulations. In Mandel's metaphor, a cap prevents too many pebbles from clogging the stream.
- *Demonstrated success*. The cap approach has been tried, and proven effective, in other places, most notably in Canada.
- *Locking in the competitive edge*. Based on restriction counts, North Carolina looks attractive to businesses because they face a less complex regulatory environment than in some neighboring states. A cap on regulation levels would help lock in this competitive edge and may even lead to reductions in complexity, helping North Carolina achieve regulation levels closer to those seen in states like Arizona or Connecticut.
- *A culture change at state agencies*. After the Canadian province of British Columbia instituted a cap on rulemaking in the early 2000s, one public official noted that it changed her role from a regulation "maker," who simply adds new rules, to a regulation "manager," who oversees and cares for a portfolio of rules.

British Columbia sought to reduce regulation levels by one-third within three years, which was a more ambitious goal than a simple cap on regulation levels.[17] However, since implementing a policy that one regulatory requirement be eliminated for every new one introduced, regulation levels have fallen even further in the province. Accompanying the overall reduction in regulation was an economic turnaround. While regulatory reform was one factor among many, it likely contributed to British Columbia's recent boom.[18] The success of this province's regulatory effort inspired a similar federal law in Canada, which passed the Canadian parliament overwhelmingly by a margin of 245 yes votes to just one no vote.[19] Importantly, the reforms did not come at the expense of public health or the

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[14] Simeon Djankov, Caralee McLiesh, and Rita Maria Ramalho, "Regulation and Growth," *Economic Letters* 92, no. 3 (2006): 395–401.
[15] US Bureau of Economic Analysis, "BEARFACTS: North Carolina," March 2017.
[16] The Regulatory Reform Act of 2013 and Senate Bill 16: Business Regulatory Reform Act of 2017 are two notable examples.
[17] Laura Jones, "Cutting Red Tape in Canada" (Mercatus Research, Mercatus Center at George Mason University, Arlington, VA, 2015), 19.
[18] James Broughel, "Can the United States Replicate the British Columbia Growth Model?," Mercatus Center at George Mason University, May 25, 2017.
[19] Red Tape Reduction Act (S.C. 2015, c. 12).

environment,[20] and a cap system is now made easier because previously unattainable data, such as those captured as part of the Mercatus State RegData project, are now available to track the level of regulation in a state across time.

Finally, a cap on regulation levels forces more careful consideration of both new and existing regulations. When a new regulation is determined to be important enough to put in place, this triggers the reconsideration of old regulations in order to identify rules for modification or repeal. A cap system leaves decisions about the fine details of policymaking to the regulatory agencies that tend to possess the relevant expertise, while the legislature could play a supervisory role in determining whether the cap should rise, fall, or stay the same over time. Such an approach may prove more effective than sunset provisions, which also encourage review of old regulations on the books, but which tend to lack an absolute requirement to eliminate burdens. Indeed, in 2013 North Carolina instituted a sunset review process for regulation.[21] A cap may bolster the effectiveness of the new sunset review process.

CONCLUSION

The state of North Carolina has more than one hundred thousand regulatory restrictions on its books. It has considerably more regulation than some other states such as Minnesota, Connecticut, and Arizona. A cap on regulation levels could help prevent unwanted regulatory accumulation while also granting regulators the flexibility to address new and evolving problems. The successful experience of British Columbia since 2001 offers a roadmap for how to implement such a reform, and it suggests reform could potentially spur economic growth. Data from the Mercatus Center State RegData project are also available to help in this endeavor. If North Carolina can consistently increase its growth rate by even tenths of a percentage point annually, this would have great implications for the opportunities available to state residents, both in the near term as well as far into the future.

Thank you again for your time and this opportunity to testify today. I look forward to your questions.

Sincerely,

James Broughel, PhD

Research Fellow
Mercatus Center at George Mason University

ATTACHMENTS

"A Snapshot of North Carolina Regulation in 2017" (Mercatus Policy Brief)
"Can the United States Replicate the British Columbia Growth Model?" (Mercatus Chart)
"A Step-by-Step Guide to Using Mercatus Tools to Reduce State Regulation Levels" (Mercatus on Policy)

[20] A 2011 British Columbia Progress Board report notes that the province maintained a top ranking in Canada on health and environmental outcomes from 2000 to 2010. See British Columbia Progress Board, "Final Benchmark Report," December 19, 2011. Similarly, a 2015 Conference Board of Canada report gives British Columbia the top ranking in Canada in terms of health. See Conference Board of Canada, "British Columbia Gets Top Marks on Health Report Card," February 12, 2015.
[21] 2013 N.C. Sess. Laws, 413, "Regulatory Reform Act of 2013."

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POLICY BRIEF

A Snapshot of North Carolina Regulation in 2017

109,350 Restrictions, 8.7 Million Words, and 12 Weeks to Read

by James Broughel and Daniel Francis

October 2017

It would take an ordinary person more than three years to read the entire US *Code of Federal Regulations* (CFR), which currently contains more than 112 million words.[1] The sheer size of the CFR poses a problem not just for the individuals and businesses that want to stay in compliance with the law, but also for anyone interested in understanding the consequences of this massive system of rules. States also have sizable regulatory codes, which add an additional layer to the enormous body of federal regulation. A prime example is the online version of the 2017 *North Carolina Administrative Code* (NCAC).[2]

A tool known as State RegData[3]—a platform for analyzing and quantifying state regulatory text—was developed by researchers at the Mercatus Center at George Mason University. State RegData captures information in minutes that would take an ordinary person hours, weeks, or even years to obtain. For example, the tool allows researchers to identify the industries that state regulation targets most by connecting text relevant to those industries with restrictive word counts. Known as regulatory restrictions, the words and phrases *shall*, *must*, *may not*, *prohibited*, and *required* can signify legal constraints and obligations.[4] As shown in figure 1, the top three industries with the highest estimates of industry-relevant restrictions in the 2017 NCAC are utilities, nursing and residential care facilities, and ambulatory healthcare services.

State RegData also reveals that the NCAC contains 109,350 restrictions and roughly 8.7 million words. It would take an individual about 483 hours—or more than 12 weeks—to read the entire NCAC. That's assuming the reader spends 40 hours per week reading and reads at a rate of

1. "The QuantGov Regulatory Clock," QuantGov, accessed June 23, 2017.
2. North Carolina Office of Administrative Hearings, *North Carolina Administrative Code*, accessed May 1, 2017.
3. State RegData is a part of a broader project called QuantGov, which seeks to quantify legal text. See Patrick A. McLaughlin and Oliver Sherouse, "QuantGov—A Policy Analytics Platform," QuantGov, October 31, 2016.
4. Restrictions can also occur in legal text for other purposes, such as for definitional purposes. At times, restrictions may relate to government employees rather than the private sector.

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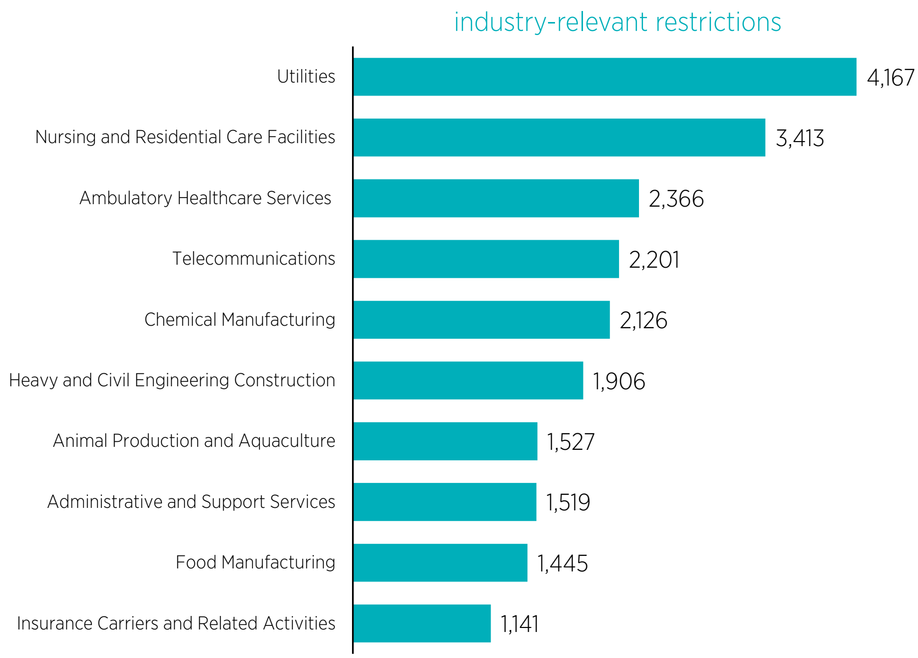
300 words per minute. For comparison, in 2017 there were more than 1.15 million additional restrictions in the federal code.[5] Individuals and businesses in North Carolina must navigate these different layers of restrictions to remain in compliance.

Figure 1. The Top 10 Industries Targeted by North Carolina State Regulation in 2017



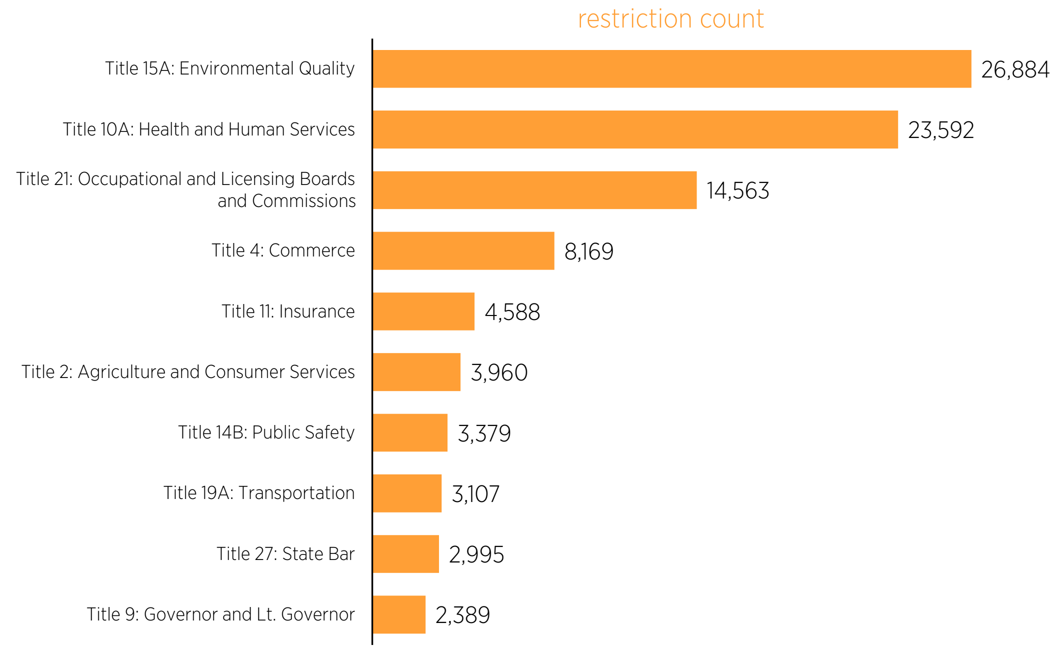
Source: State RegData, "North Carolina," http://www.quantgov.org/data/.

The titles of the NCAC are assigned based on the type of regulation housed within each title. Figure 2 shows that Title 15A, Environmental Quality, contains more than 26,000 restrictions. By this measure, Title 15A is the biggest title in the NCAC. The second-largest title is Title 10A, Health and Human Services, which includes more than 23,000 restrictions. These two titles alone contain 46 percent of all restrictions in the NCAC.

Federal regulation tends to attract the most headlines, but it is important to remember that the more than 112 million words and 1.15 million restrictions in the federal code are just the tip of the iceberg when it comes to the true scope of regulation in the United States. States like North Carolina write millions of additional words of regulation and hundreds of thousands of additional restrictions. State-level requirements carry the force of law to restrict individuals and businesses just as federal ones do.

5. "The QuantGov Regulatory Clock," QuantGov.

Figure 2. The Top 10 Titles in the 2017 North Carolina Administrative Code



Source: State RegData, "North Carolina," http://www.quantgov.org/data/.

Researchers are only beginning to understand the consequences of the massive and growing federal regulatory system on economic growth and well-being in the United States.[6] Meanwhile, the effects of state regulation remain largely unknown. If this snapshot of North Carolina regulation in 2017 is a good indicator, then the states are also active regulators, suggesting that the true impact of regulation on society is far greater than that of federal regulation alone.

6. For example, see Bentley Coffey, Patrick A. McLaughlin, and Pietro Peretto, "The Cumulative Cost of Regulations" (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, 2016).

ABOUT THE AUTHORS

James Broughel is a research fellow for the State and Local Policy Project at the Mercatus Center at George Mason University. Broughel has a PhD in economics from George Mason University. He is also an adjunct professor of law at the Antonin Scalia Law School.

Daniel Francis is a research programmer at the Mercatus Center. He received his BS in economics and mathematics from Florida State University.

ABOUT THE MERCATUS CENTER

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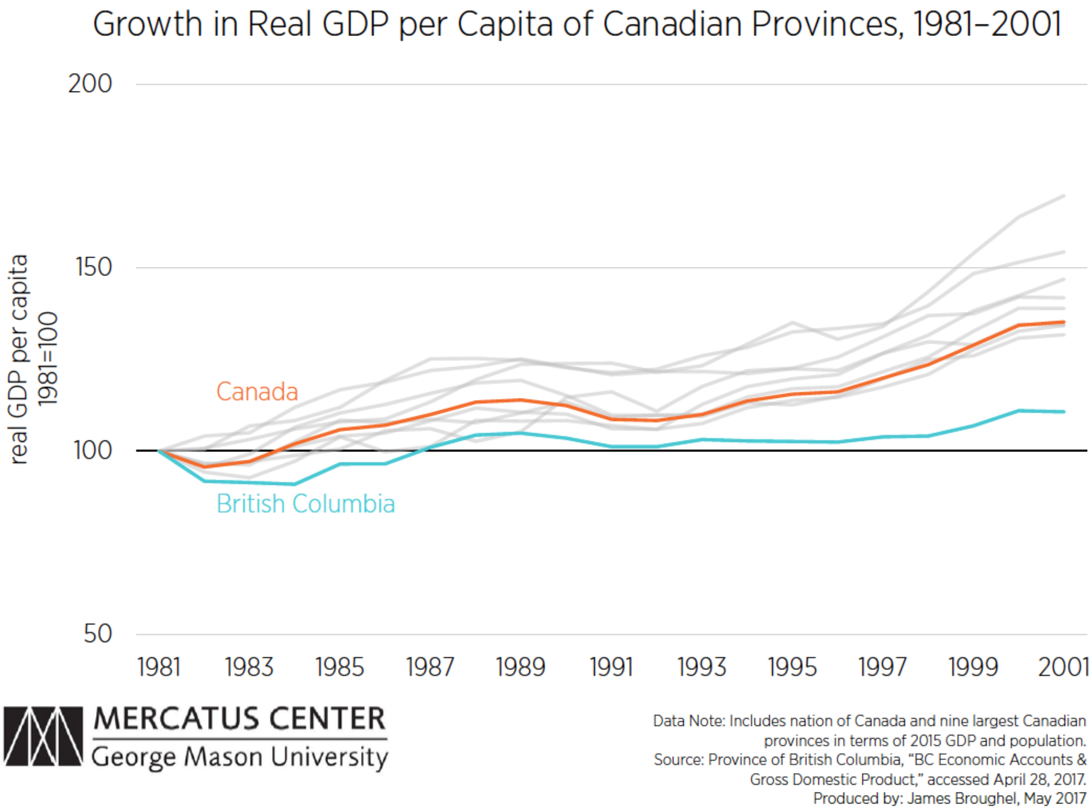
Chart / Data Visualization

May 25, 2017

Can the United States Replicate the British Columbia Growth Model?

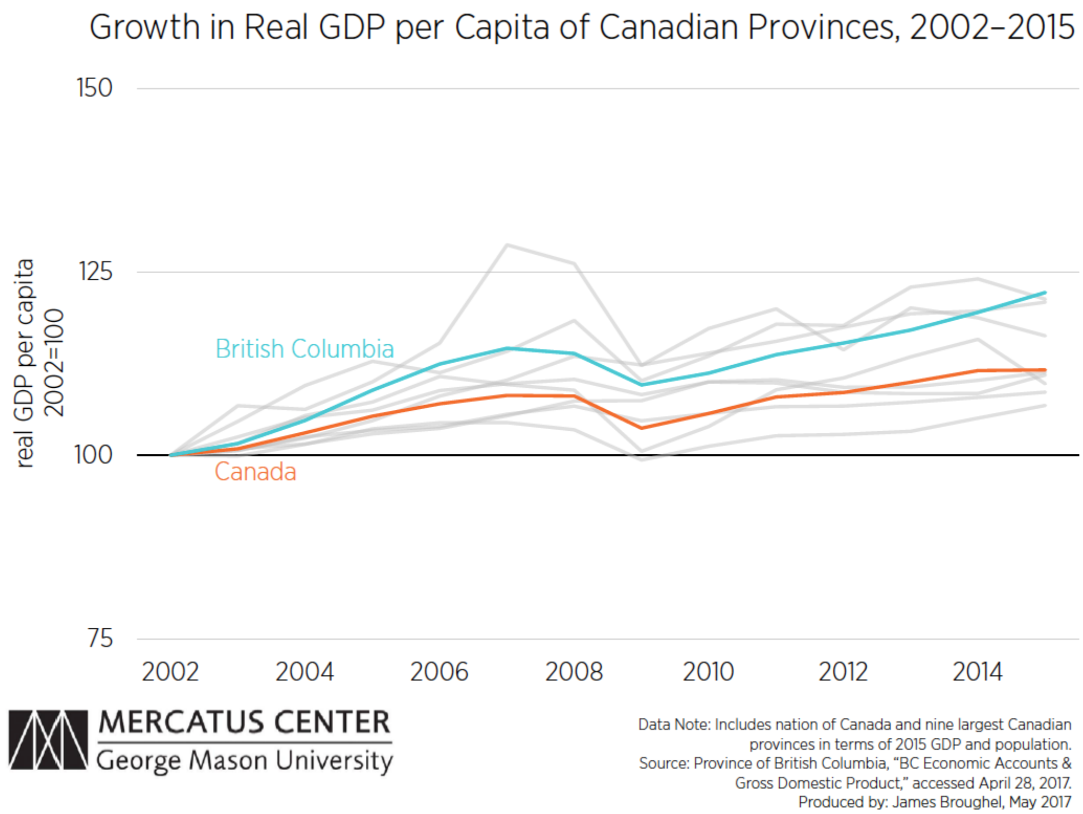
In 2001 British Columbia began an aggressive regulatory reform program. One motivation for reform was no doubt the disappointing economic growth the Canadian province experienced in the years prior. As of 2015, however, the province is now a leader in Canadian economic performance. The possibility of achieving similar gains in the United States—where growth has been disappointing in recent years—is one reason why regulatory reform may be an attractive option for policymakers at all levels of government.

The 1990s were sometimes referred to as a "dismal decade" in British Columbia; some commentators even joked that the acronym BC referred to the province being a "basket case," rather than its name. It is not surprising then that British Columbia was one of the worst performing economies in Canada around that time, as is demonstrated in the first chart.



The first chart plots real GDP per capita across time for the nine largest Canadian provinces in terms of 2015 GDP and population. Also included are changes for the nation of Canada as a whole. The base year is 1981, meaning the lines in the first chart plot how income per person changed relative to each region's 1981 level. As is clear from the graph, British Columbia performed considerably worse by this measure than any other major economy in Canada.

In 2001 leaders in British Columbia sought to reduce regulatory requirements by one-third within three years. Reformers not only achieved this goal, but they have cut regulation levels further in the years since—nearly 50 percent in total.



The economic situation in British Columbia changed dramatically. As of 2015, British Columbia is now Canada's best performing major economy in terms of real GDP per capita growth since 2002. The second chart plots this U-turn.

The turnaround represents a growth miracle of sorts. The question from a public policy perspective is whether this success can be transferred elsewhere. Many factors likely contributed to British Columbia's boom, but was regulatory reform the key ingredient?

Luckily, the core elements of British Columbia's reform are replicable, meaning other governments can copy the British Columbia regulatory reform model. These elements include establishing a goal to reduce regulation levels by a specified amount within a set period of time, carefully measuring how much regulation is in place, and capping regulation levels to ensure reduction targets can be met and unwanted regulatory accumulation does not return in the future.

Strong leadership and public support are also important, which take time and opportunity to develop. Nonetheless, by emulating its neighbors to the north, perhaps the United States can set off a growth miracle of its own.

MERCATUS ON POLICY

A Step-by-Step Guide to Using Mercatus Tools to Reduce State Regulation Levels

James Broughel

April 2017

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FOR STATES WISHING TO CUT EXCESSIVE "RED tape," that is, to reduce unnecessary regulatory burdens, designing a process to accomplish this goal can be a daunting task. This guide offers state policymakers a fairly simple and straightforward process for achieving this objective using tools developed by the Mercatus Center at George Mason University. Although the process outlined here is not the only path to reducing regulatory burdens, it has some advantages, including its relative simplicity, cost-effectiveness, and transparency. Some aspects of the approach have also been tested, and proven successful, in previous regulatory reform efforts.

STEP 1: DEFINE REGULATORY BURDEN

The first order of business for states wishing to reduce their level of regulation is to determine precisely what they want to reduce. Regulatory burden can be measured in a number of ways. For example, it can be measured in terms of the number of pages in the state administrative code, the number of final rules published by agencies, or paperwork, compliance, or social costs that rules impose on the public.

There are merits and drawbacks to each of these approaches. Because resources tend to be limited in states, this guide recommends using a relatively simple metric: the total count of restrictive words (also known as "regulatory restrictions") found in a state's administrative code. Restrictive words include legal obligations and prohibitions on the public and are signified by words and phrases such as "shall," "must," "may not," "prohibited," and "required." Resources permitting, policymakers who wish to develop a more comprehensive measure of regulatory burden could look beyond the state administrative code to agency notices, memoranda, guidance documents, and other agency releases.[1]

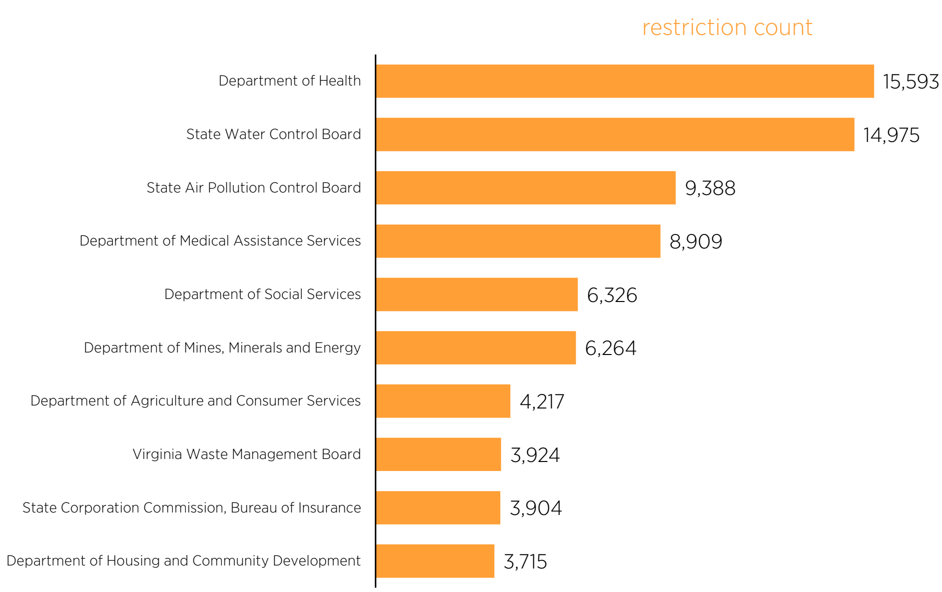
STEP 2: ESTABLISH A BASELINE

Before a state decides how much regulation it wants to cut, it must first know how much regulation it has and decide whether that amount seems excessive. If regulation is defined as the number of restrictive words appearing in the state administrative code, then a baseline, or initial starting point, can be established using Mercatus's State RegData tool,[2] which is a computer program that scans bodies of state regulatory text and counts the number of restrictive words.[3] When run through a state's administrative code, State RegData can establish each of the following: the total number of restrictive words on the books at a given point in time, the growth in the number of restrictions across time (if the administrative code is available for multiple years), the industries most targeted by state regulation, and the regulatory agencies with the most restrictive words on the books. Figure 1 provides an example of how tallying restrictions according to the regulatory agencies that produce them is possible for a state like Virginia.

STEP 3: SET A TARGET REDUCTION GOAL AND A DEADLINE

After establishing a baseline, the governor, state legislature, or some other body will set a goal for how much the code should be reduced. This will be largely a political decision, since it is difficult to know the "right" amount of regulation in any state. A 2013 survey of small businesses in the United States and Canada reported that respondents thought the burden of regulation could be reduced by about 30 percent without compromising the public interest.[4] However, the perception of how much unnecessary regulation exists will vary by time and by place as well as across populations affected.

Figure 1. Top Ten Regulatory Agencies in Virginia



Source: James Broughel and Oliver Sherouse, "A Snapshot of Virginia Regulation in 2016" (Policy Brief, Mercatus Center at George Mason University, Arlington, VA, January 19, 2017).

Before a state decides how much regulation it wants to cut, it must first know how much regulation it has and decide whether that amount seems excessive.

It may make sense to target a level of regulation close to levels found in similar or nearby states that are experiencing strong economic performance. One model to follow might be the Canadian province of British Columbia, which in 2001 set a goal of reducing its number of regulatory requirements (a metric similar to restrictive words) by one-third in three years.[5] By 2004, 37 percent of regulatory requirements in British Columbia had been eliminated, and more have been eliminated in subsequent years. As of 2016, 47 percent of the regulatory requirements had been eliminated since 2001.[6]

Rather than focus on the aggregate number of restrictive words found in the entire code, states may want to task different regulatory agencies with different reduction targets, since not every agency contributes to unnecessary regulatory burdens equally. Whatever target level and method of reduction policymakers choose, it is advisable to set a clear goal and a deadline for when the goal is to be met. Without clear objectives, reformers will have difficulty measuring the progress of their efforts, which could result in a lack of accountability and a lower probability of success.

Table 1: Steps to Reduce Regulation Levels in a State

STEP 1	Define regulatory burden
STEP 2	Establish a baseline
STEP 3	Set a target reduction goal and a deadline
STEP 4	Create an oversight mechanism
STEP 5	Establish a process to review the code and get buy-in from regulators
STEP 6	Institutionalize a regulatory budget

STEP 4: CREATE AN OVERSIGHT MECHANISM

Oversight over the red tape reduction process is needed and can come in many forms, and it does not have to be complicated or expensive to be effective. The body providing oversight can be an existing committee in the legislature or an office within the executive branch. A state may already have a body providing third-party review of regulations, which could be a logical place to house oversight functions since it presumably already possesses considerable expertise on state regulatory matters. Alternatively, if resources permit, a governor, via executive order, or the legislature, via statute, could set up a red tape reduction commission. The purpose of such a commission is to establish a process for reviewing the administrative code in a state, to ensure the successful and timely achievement of target goals, and to report back to the governor and the legislature regarding the progress of reform efforts.

The commission should also focus on communication with the public to ensure the benefits of regulatory reform, such as smarter and more efficient government, are well understood. The commission's staff should comprise a diverse group of individuals representing multiple viewpoints, including the viewpoints of consumers, industry, and government officials. Possible models for a red tape reduction commission include the Base Realignment and Closure system that recommended federal military bases for closure[7] and previous state red tape reduction commissions.[8]

STEP 5: ESTABLISH A PROCESS TO REVIEW THE CODE AND GET BUY-IN FROM REGULATORS

The next step is to review the regulatory code itself to identify red tape for elimination or modification. Input from the public can be helpful in this task, but it is important to get feedback from as many sources as possible so as not to limit responses to a narrow range of interests. Public feedback can also result in unexpected reform ideas that fall outside the scope of reformers' original plans. For example, during public hearings held as part of a 2010 New Jersey reform effort, members of the public complained about how prevailing wage requirements had raised the cost of public projects and prevented citizens from donating their services to their communities.[9] Although this sort of information might not be what reformers intended to gather at public hearings, such information is nonetheless valuable.

As for the actual review of the state code, this could conceivably be the responsibility of a red tape reduction commission or a legislative committee; however, it is probably more practical and economical to have regulatory agencies review their own portfolios of rules. First, regulators will be more familiar with their own rules than most other parties will be, so there is less of a learning curve. Second, this may require no additional state resources since presumably regulators are already monitoring program effectiveness to varying degrees. Resources and priorities simply have to be reallocated from a focus on rule writing to a focus on rule improvement and management.

Regulators also possess valuable information, and it is important that they perceive they are part of the reform effort and don't feel unfairly targeted with criticism. The risk of the latter is not negligible, since rules being eliminated are ones that regulators promulgated. If regulators are not invested in the reform, it is likely to fail. To enlist agency assistance and obtain agency buy-in, the oversight body may want to direct each agency to reduce its own restrictions by a predetermined amount and then give agencies wide latitude to decide how best to accomplish this goal. A formal policy requiring agencies to remove multiple old restrictions for every new one introduced is a way of motivating agencies to reduce regulatory burdens—by changing their incentives—while also giving regulators the flexibility to decide which requirements should stay and which should go. Such a policy is known as a regulatory budget. At first, the budget should be established to reduce regulation levels, but over time budget allowances might evolve toward keeping regulation levels constant or possibly growing at a certain rate.

If an agency is responsible for reducing its own regulatory burdens, the job of the oversight body will be primarily to check in with agencies periodically to make sure the effort is on track. With a clear metric to measure success, it will be fairly easy to determine whether regulatory agencies are succeeding. The oversight body can then focus on public relations, writing evaluative reports, and making recommendations to the state legislature (for example, when statutory action is needed to make regulatory changes).

STEP 6: INSTITUTIONALIZE A REGULATORY BUDGET

Once a state has succeeded in reducing its level of regulation to the desired level, maintaining the reduction should be a priority. There is a natural tendency for the level of regulation to rise over time—a phenomenon known as regulatory accumulation.[10] This is true in part because regulators are typically rewarded for issuing regulations, but not rewarded for withholding or eliminating regulations. Therefore, once the code has been streamlined, it makes sense to encourage a permanent culture change at agencies to prevent regulatory accumulation from recurring.

A regulatory budget is one such means to control the amount of regulation that can be issued and to change the culture at agencies.[11] After its initial goal had been met, British Columbia institutionalized a form of regulatory budget that ensures that the level of regulation stays roughly constant (as measured by the number of regulatory requirements) over time. States that want more flexibility might allow the regulatory code to grow over time, but only at a specified rate.

The key question will again be how to define the cap on regulatory burdens for the purpose of implementing a regulatory budget. Policymakers could frame the budget in terms of compliance or social costs that agencies may impose on the public or, to keep things simple, could again limit the total number of restrictive words each agency or all agencies may have on the books at any one time. The latter form of budget may prove easier to implement and enforce, because estimating costs can be time consuming and expensive. Cost analysis is also prone to gamesmanship by agencies, which can use their expert knowledge of an issue to over- or underestimate costs in economic analysis.[12] To guard against such manipulation, there needs to be third-party oversight over agency economic analyses, which is itself costly.[13] In contrast, a count of restrictive words is easy to calculate and difficult to manipulate.

CONCLUSION

The process outlined here is one way a state might go about reducing, and maintaining the reduction of, regulation levels. It is far from the only way. However, if any of the steps presented here are missing, there is a likely chance that the goals of reform efforts will not be met. Furthermore, there are several reasons to think the process described here is likely to be effective. First, it is simple. Setting a target reduction in the number of regulatory restrictions in a state's administrative code is straightforward, easy to monitor and assess, relatively inexpensive (given limited state resources), and difficult to manipulate. Second, similar reform efforts have been successful in the past, most notably in the Canadian province of British Columbia. Finally, analytic tools, such as State RegData from the Mercatus Center at George Mason University, are available to assist in this type of regulatory reform effort.

NOTES

1. Requirements found in these kinds of documents form a kind of stealth regulatory activity. See John D. Graham and James Broughel, "Stealth Regulation: Addressing Agency Evasion of OIRA and the Administrative Procedure Act," *Harvard Journal of Law & Public Policy, Federalist Edition* 1, no. 1 (2014): 30–54.
2. Visit www.regdata.org and www.quantgov.org for more information.
3. Patrick A. McLaughlin and Oliver Sherouse, "QuantGov—A Policy Analytics Platform," QuantGov, October 31, 2016.
4. Laura Jones, Nina Gormanns, and Queenie Wong, Canada's Red Tape Report with U.S. Comparisons (Toronto: Canadian Federation of Independent Business and KPMG Enterprise, 2013).
5. Laura Jones, "Cutting Red Tape in Canada: A Regulatory Reform Model for the United States?" (Mercatus Research, Mercatus Center at George Mason University, Arlington, VA, 2015).
6. B.C.'s Regulatory Reform Initiative, "Achieving a Modern Regulatory Environment: Fifth Annual Report, 2015/2016," Province of British Columbia, 2016.
7. Closing military bases, although very different from reducing red tape, faces a similar challenge. Narrow interest groups that benefit from a policy will resist its elimination, even if it is in the public interest, as will legislators who represent those interest groups. Third-party commissions can help overcome these kinds of political barriers. See Joshua Hall and Michael Williams, "A Process for Cleaning Up Federal Regulations: Insights from BRAC and the Dutch Administrative Burden Reduction Programme" (Mercatus Research, Mercatus Center at George Mason University, Arlington, VA, 2013).
8. For example, the Red Tape Review Group and the subsequent Red Tape Review Commission were both created in New Jersey in 2010. See New Jersey Exec. Order No. 3, January 20, 2010; and New Jersey Exec. Order No. 41, September 23, 2010.
9. New Jersey Red Tape Review Group, "Findings and Recommendations," April 19, 2010, 16.
10. Patrick A. McLaughlin and Richard Williams, "The Consequences of Regulatory Accumulation and a Proposed Solution" (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, 2014).
11. For more information about regulatory budgets, see James Broughel, "Regulatory Reform 101: A Guide for the States" (Mercatus on Policy, Arlington, VA, December 2016).
12. Interviews with US agency economists reveal that these kinds of problems are common in the federal government. See Richard Williams, "The Influence of Regulatory Economists in Federal Health and Safety Agencies" (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, 2008).
13. The cost of analysis is one reason why, at the federal level, economic analysis tends to be required only for the most economically significant regulations.

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