

THE REGULATORY LANDSCAPE IN PENNSYLVANIA

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Pennsylvania House Committee on State Government
Hearing on State Government Regulations: Burdens, Abuses, and Legislative Oversight

June 6, 2017

Mr. Chairman and members of the Committee: thank you for inviting me here today to discuss the regulatory landscape in Pennsylvania. 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 Program.

My message here today can be summarized in three points:

1. Pennsylvania has a significant amount of regulation on its books, both in absolute terms and relative to a number of other 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 Pennsylvania economy grow, make the state a more attractive place to do business, and also improve the performance of the most vital rules protecting the health and safety of citizens.

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 computer programs to scan through bodies of state administrative codes. Generally, state codes are too large for any single individual to read through from start to finish. For example, the online version of the *Pennsylvania Code* contains roughly 12.8 million words.² It would take a person about 713 hours—or just under 18 weeks—to read the entire code, assuming a person reads regulations 40 hours per week as a full-time job.

Of course, this is not practical, so at Mercatus we use computers to pull key information from state codes, such as words counts and counts of regulatory restrictions (which are words and phrases like “shall,” “must,” “may not,” and “required” that can signify legal constraints and obligations of various

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.

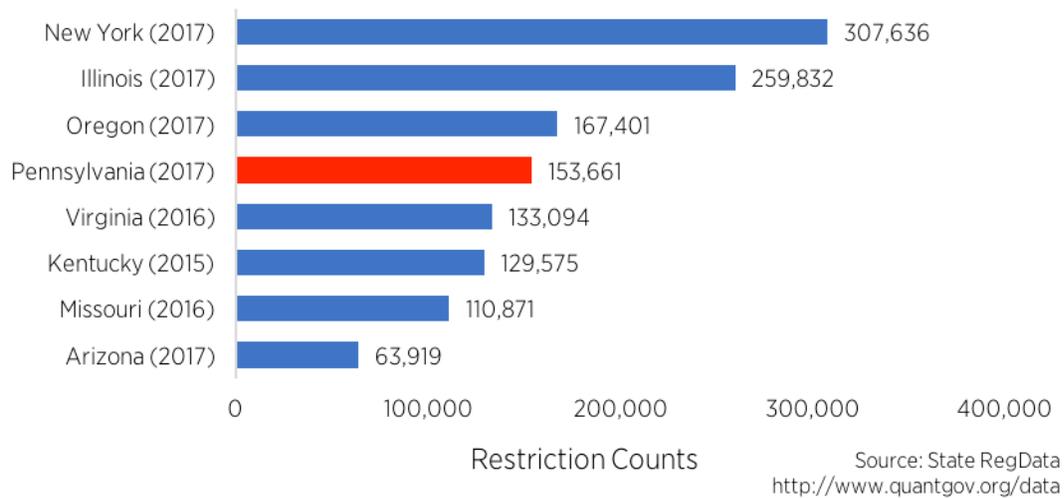
² Commonwealth of Pennsylvania, *Pennsylvania Code*, accessed April 10, 2017.

kinds).³ We can also estimate which industries are the most targeted by state regulation and assess which state agencies produce the most regulation.

As of earlier this year, Pennsylvania has 153,661 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. There are 208 restrictions governing the design and use of ladders in the state,⁵ and there are 190 restrictions setting standards for consumer packages and containers.⁶ Surely some of these restrictions are not necessary for safeguarding public health, safety, or the environment.

Pennsylvania's code is 140 percent larger than Arizona's code in terms of regulatory restrictions. It is 40 percent larger than Missouri's and 15 percent larger than Virginia's. On the other hand, Pennsylvania deserves credit for avoiding the regulatory excesses seen in some other states. For example, New York's code is double the size of Pennsylvania's, and the Illinois code is 69 percent larger than Pennsylvania's (see figure 1).

Figure 1: State Regulatory Restrictions



WHY REGULATORY ACCUMULATION MATTERS

When thinking about regulation, it is common to focus on each particular rule on a case by case basis, but in fact, the cumulative effect of all rules together will be different from the sum of the effects of all rules when each rule is viewed in isolation. Michael Mandel of the Progressive Policy Institute in Washington, DC, likens the effect of regulation on the economy to dropping pebbles in a stream.⁷ The first pebble may not slow the flow of water in a noticeable way, but the thousandth pebble might, and the millionth pebble might stop the flow altogether. This is true despite the fact that the millionth pebble might be of little consequence if it were the first pebble dropped in the stream.

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 public.

⁴ James Broughel, Oliver Sherouse, and Daniel Francis, "A Snapshot of Pennsylvania Regulation in 2017" (Policy Brief, Mercatus Center at George Mason University, Arlington, VA, April 2017).

⁵ *Pennsylvania Code*, Title 34, Chapter 21.

⁶ *Pennsylvania Code*, Title 70, Chapter 23.

⁷ Michael Mandel and Diana G. Carew, "Regulatory Improvement Commission: A Politically Viable Approach to US Regulatory Reform" (Policy Memo, Progressive Policy Institute, Washington, DC, 2013).

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.⁸ Thus, reducing the complexity of the regulatory system is likely to be a powerful way to improve the outcomes of rules.

Scholars are also finding a relationship between regulation and economic growth. A 2013 study in the *Journal of Economic Growth* estimates that federal regulation has slowed the US economy by 2 percent per year on average since 1949.⁹ A recent paper published by the Mercatus Center estimates growth has been slowed by 0.8 percent per year on average by federal regulations implemented since 1980.¹⁰ Finally, researchers at the World Bank have estimated that countries with the least burdensome business regulations grow 2.3 percentage points faster annually than countries with the most burdensome regulations.¹¹

Differences of one or two percentage points in growth may not sound like much, but consider this: If Pennsylvania's economy were to grow at 4 percent per year, it would take just 18 years for its real GDP to double. This means that if a child were born in Pennsylvania today and the state grew at 4 percent per year, that child would enter college in an economy twice the size of the economy in which he or she was born. By contrast, growing at 1 percent per year takes 70 years to double real GDP, just 9 years shy of the life expectancy at birth of someone born in the year 2014.¹² Since the year 2000, Pennsylvania real GDP growth has averaged just 1.5 percent per year. This period of slow growth represents an opportunity to increase the incomes of Pennsylvanians, now as well as in the future.

A CAP ON REGULATION LEVELS

Several regulatory reform proposals under consideration in the Pennsylvania General Assembly would create a requirement that regulations receive legislative consent before being finalized. Such proposals aim to incorporate more democratic accountability into rulemaking—a worthy goal. However, it is important that Pennsylvania maintain the flexibility to modify or eliminate old rules as needed. Requiring legislative consent for all rules will likely make it more difficult for state agencies to update or repeal old rules.

A cap on regulation levels can prevent excessive regulatory accumulation from occurring while also preserving the flexibility needed to maintain a modern and up-to-date regulatory system. There are some benefits to this approach:

- *Limiting regulatory accumulation:* A cap prevents too many pebbles from blocking up the stream, so to speak, as it serves to check the natural tendency for regulations to accumulate over time.
- *Demonstrated success:* The cap approach has been tried, and proven effective, in other places, most notably in Canada.
- *Locking in competitive edge:* In terms of regulation, Pennsylvania looks relatively attractive as a place to do business when compared to states like New York or Illinois. A cap on regulation levels would help lock in this competitive edge, and may even lead to reductions in regulation levels, helping Pennsylvania achieve levels closer to those seen in states like Virginia or Missouri.

⁸ Richard Williams and Mark Adams, "Regulatory Overload" (Mercatus on Policy, Mercatus Center at George Mason University, Arlington, VA, February 2012).

⁹ John Dawson and John Seater, "Federal Regulation Aggregate Economic Growth," *Journal of Economic Growth* 18, no. 2 (2013): 137–77.

¹⁰ Bentley Coffey, Patrick McLaughlin, and Pietro Peretto, "The Cumulative Cost of Regulations" (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, 2016).

¹¹ Simeon Djankov, Caralee McLiesh, and Rita Maria Ramalho, "Regulation and Growth," *Economic Letters* 92, no. 3 (2006): 395–401.

¹² Centers for Disease Control and Prevention, "Health, United States, 2015," 95, table 15.

- *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 the existing pile each year, to a regulation “manager,” who oversees and balances a portfolio of rules.¹³

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. 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. British Columbia went from relatively dismal growth in the 1980s and 1990s to becoming one of the top-performing economies in Canada.¹⁴ No doubt, other factors aside from regulatory reform also contributed to British Columbia’s turnaround. Nonetheless, this reform effort was deemed so successful that it inspired a federal law in Canada.¹⁵ And perhaps most importantly, the reforms did not come at the expense of public health or the environment.¹⁶

CONCLUSION

The Commonwealth of Pennsylvania has tens of thousands of regulatory restrictions on its books. It has considerably more regulation than many other states, including Virginia, Missouri, and Arizona. A cap on regulation levels could help prevent unwanted regulatory accumulation while also allowing regulators the flexibility to address new and evolving problems. The successful experience of British Columbia in the early 2000s offers a roadmap for how to implement such a reform, and it suggests reform could potentially spur economic growth. If Pennsylvania can increase its growth rate by one percentage point or more over the long term, this would have huge implications for the opportunities available to Pennsylvanians, both now and in the future.

ATTACHMENTS

A Snapshot of Pennsylvania Regulation in 2017 (Mercatus Policy Brief)

Can the United States Replicate the British Columbia Growth Model? (Mercatus Chart)

Using Regulatory Reform to Boost Growth (Mercatus Chart)

A Step-by-Step Guide to Using Mercatus Tools to Reduce State Regulation Levels (Mercatus on Policy)

¹³ Laura Jones, “Cutting Red Tape in Canada” (Mercatus Research, Mercatus Center at George Mason University, Arlington, VA, 2015), 19.

¹⁴ See for example, James Broughel, “Can the United States Replicate the British Columbia Growth Model?,” Mercatus Center at George Mason University, May 25, 2017; and James Broughel, “Using Regulatory Reform to Boost Growth: The Case of British Columbia,” Mercatus Center at George Mason University, April 11, 2017.

¹⁵ Red Tape Reduction Act (S.C. 2015, c. 12).

¹⁶ 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, “11th Annual Benchmark Report,” 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.



A SNAPSHOT OF PENNSYLVANIA REGULATION IN 2017

BY JAMES BROUGHEL, OLIVER SHEROUSE, AND DANIEL FRANCIS

April 2017

It would take an ordinary person almost three years to read the entire US *Code of Federal Regulations* (CFR), which contained over 103 million words in 2012.¹ 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. For example, the online version of the 2017 *Pennsylvania Code* contains 40 titles of regulatory text, each relevant to a unique area of regulation.²

A tool known as State RegData³—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. For example, the tool allows researchers to identify the industries most targeted by regulation by connecting keywords relevant to those industries with restrictive word counts (known as regulatory restrictions). These are words and phrases like “shall,” “must,” “may not,” “prohibited,” and “required” that 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 *Pennsylvania Code* are utilities, chemical manufacturing, and food manufacturing.

State RegData also reveals that the *Pennsylvania Code* contains 153,661 restrictions and roughly 12.8 million words. It would take an individual about 713 hours—or just under 18 weeks—to

1. Patrick A. McLaughlin, “The Code of Federal Regulations: The Ultimate Longread,” Mercatus Center at George Mason University, April 1, 2015.

2. Commonwealth of Pennsylvania, *Pennsylvania Code*, accessed April 10, 2017.

3. 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.

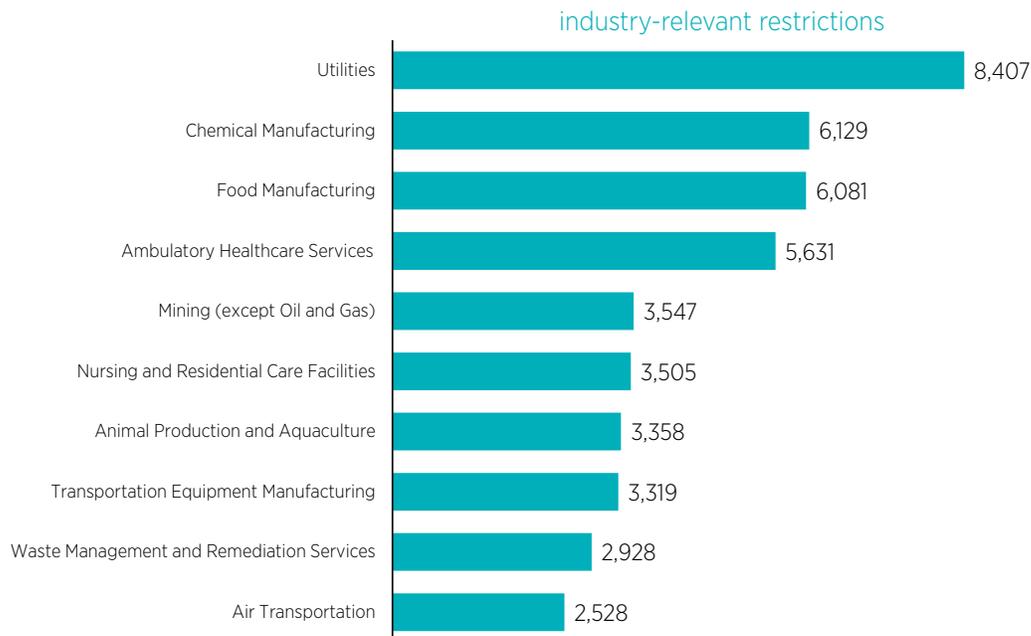
4. Restrictions can also occur in legal text for other purposes, such as for definitional purposes. At times, restrictions may relate to government employees, rather than the public.

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read the entire *Pennsylvania Code*. That’s assuming the reader spends 40 hours per week reading and reads at a rate of 300 words per minute. For comparison, in 2016 there were over 1.08 million additional restrictions in the federal code. Individuals and businesses in Pennsylvania must navigate all of these restrictions to remain in compliance.

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



Source: State RegData, “Pennsylvania,” <http://www.quantgov.org/data/>.

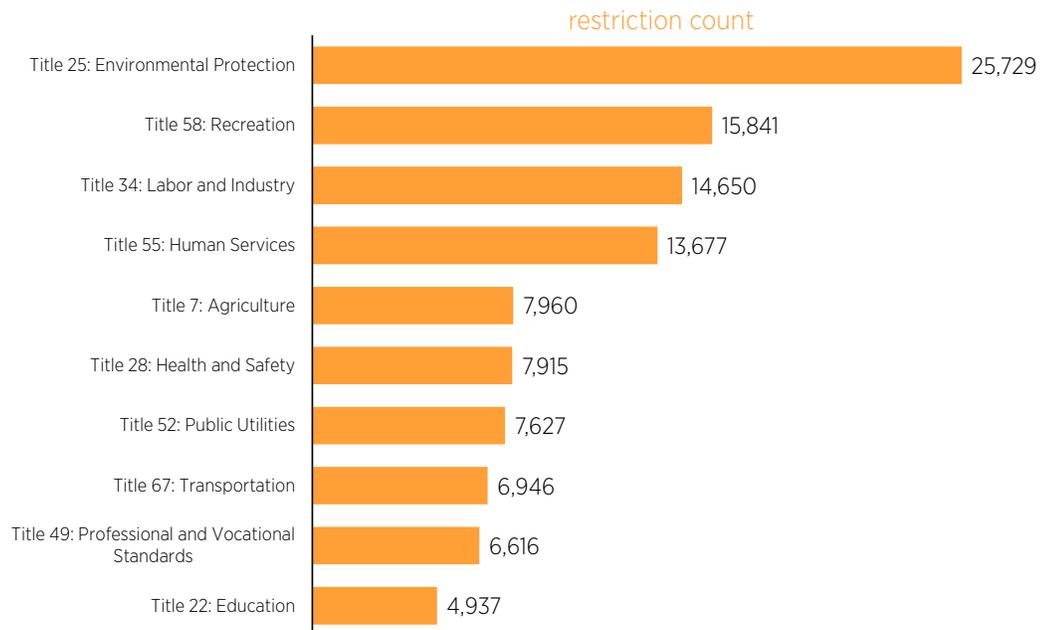
The titles of the *Pennsylvania Code* are organized based on the type of regulation housed within those titles. Figure 2 shows that in 2017, rules related to environmental protection, which are found in title 25, contained over 25,000 restrictions. This makes it the biggest title in the *Pennsylvania Code*. Coming in second is title 58, which is related to recreation. This title includes over 15,000 restrictions.

Federal regulation tends to attract the most headlines, but it is important to remember that the 100 million words and over 1 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 Pennsylvania 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.

Researchers are only beginning to understand the consequences of the massive and growing federal regulatory system on economic growth and other measures of well-being in

the United States.⁵ Meanwhile, the effects of state regulation remain largely unknown. If this snapshot of Pennsylvania regulation in 2017 is a good indicator, then the states are also active regulators, suggesting the true impact of regulation on society is far greater than that of federal regulation alone.

Figure 2. The Top 10 Titles in the 2017 Pennsylvania Code



Source: State RegData, “Pennsylvania,” <http://www.quantgov.org/data/>.

5. 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).

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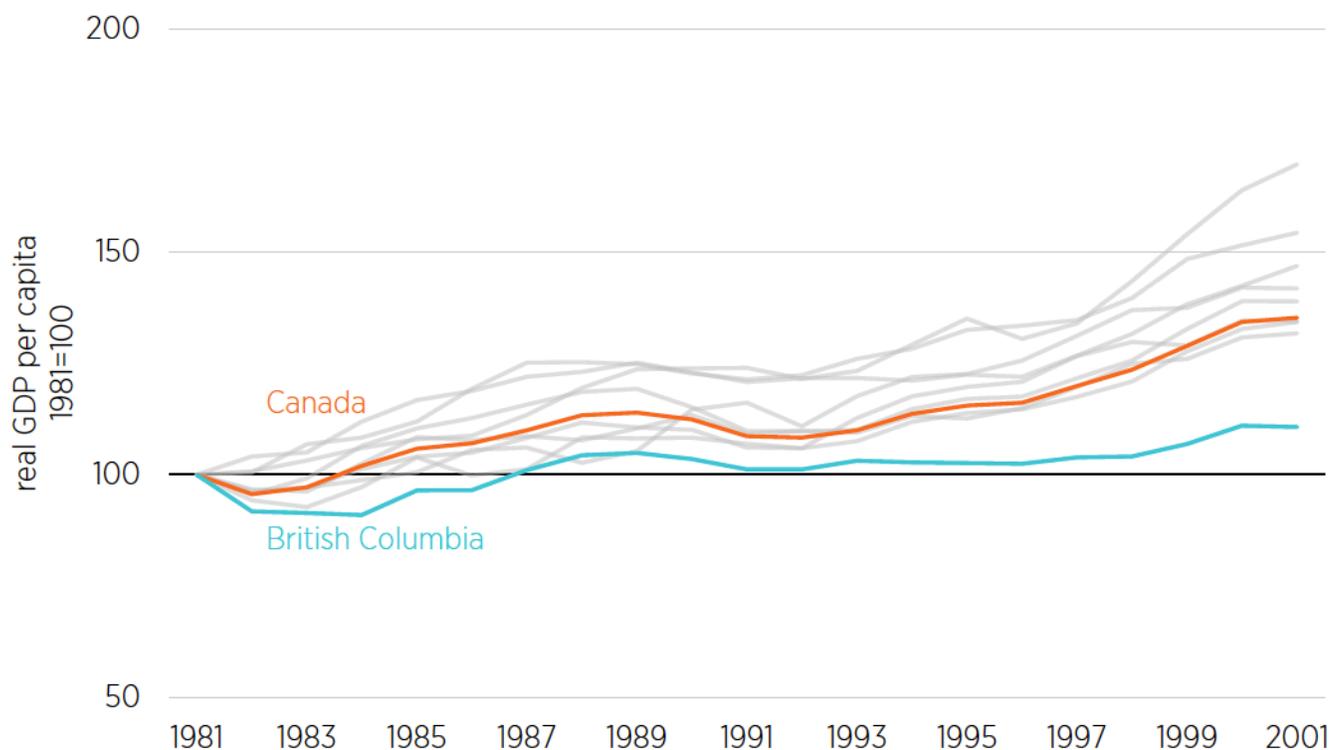
Can the United States Replicate the British Columbia Growth Model?

May 25, 2017

In 2001 British Columbia began an aggressive regulatory reform [1] program. One motivation for reform was no doubt the disappointing economic growth [2] 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 [3] 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.

Growth in Real GDP per Capita of Canadian Provinces, 1981–2001

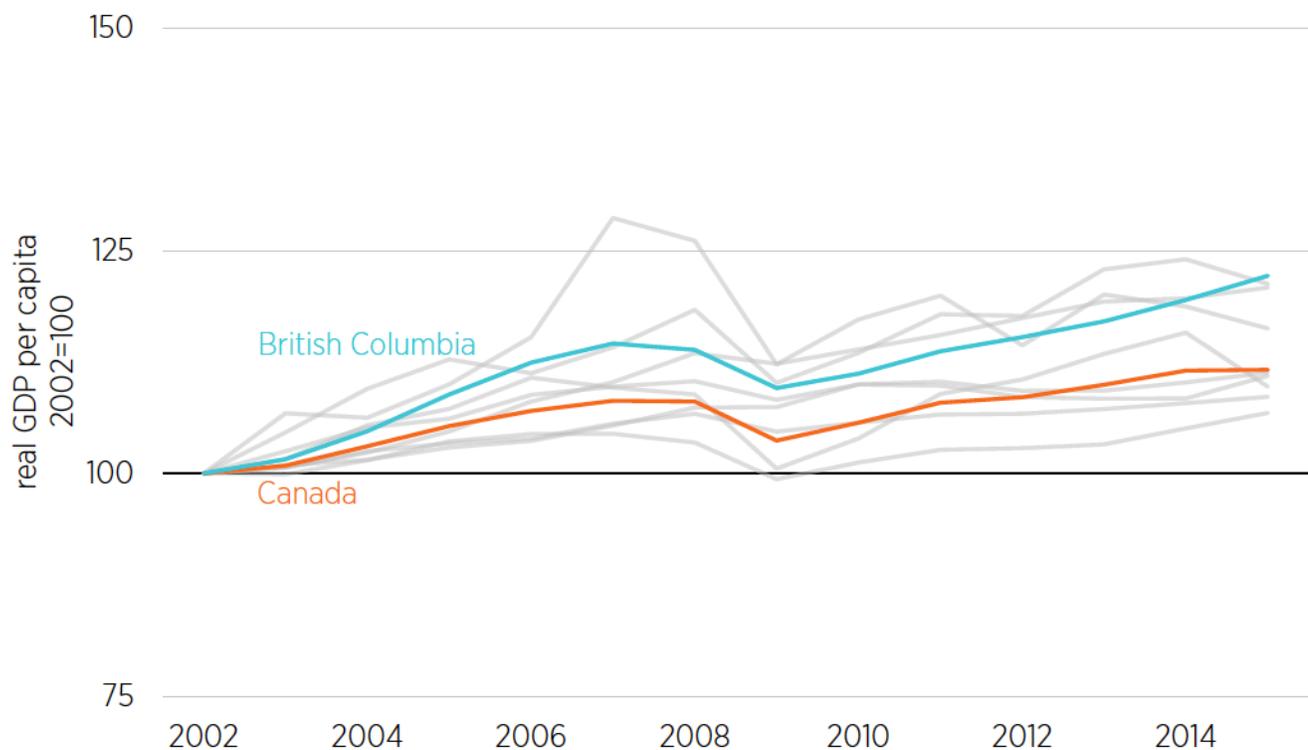


Data Note: Includes nation of Canada and nine largest Canadian provinces in terms of 2015 GDP and population.
 Source: Province of British Columbia, "BC Economic Accounts & Gross Domestic Product," accessed April 28, 2017.
 Produced by: James Broughel, May 2017

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 [4] in total.

Growth in Real GDP per Capita of Canadian Provinces, 2002–2015



Data Note: Includes nation of Canada and nine largest Canadian provinces in terms of 2015 GDP and population.
Source: Province of British Columbia, "BC Economic Accounts & Gross Domestic Product," accessed April 28, 2017.
Produced by: James Broughel, May 2017

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 [5] 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 [6] 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 [7] 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.

Source URL: <https://www.mercatus.org/publications/can-united-states-replicate-british-columbia-growth-model>

Links

- [1] <https://www.mercatus.org/publication/cutting-red-tape-canada-regulatory-reform-model-united-states>
 - [2] <https://www.mercatus.org/publications/using-regulatory-reform-boost-growth>
 - [3] <http://cantv.org/watch-now/why-regulatory-policy-matters-public-agenda-forum/>
 - [4] http://www2.gov.bc.ca/assets/gov/government/about-the-bc-government/regulatory-reform/pdfs/3904_regulatory_reform_ar_web_20160620.pdf
 - [5] <http://www.mruniversity.com/courses/principles-economics-macroeconomics/economic-growth-miracle-and-disaster>
 - [6] <https://www.mercatus.org/publications/reduce-state-regulations-with-mercatus-tools>
 - [7] <https://www.mercatus.org/publication/consequences-regulatory-accumulation-and-proposed-solution>
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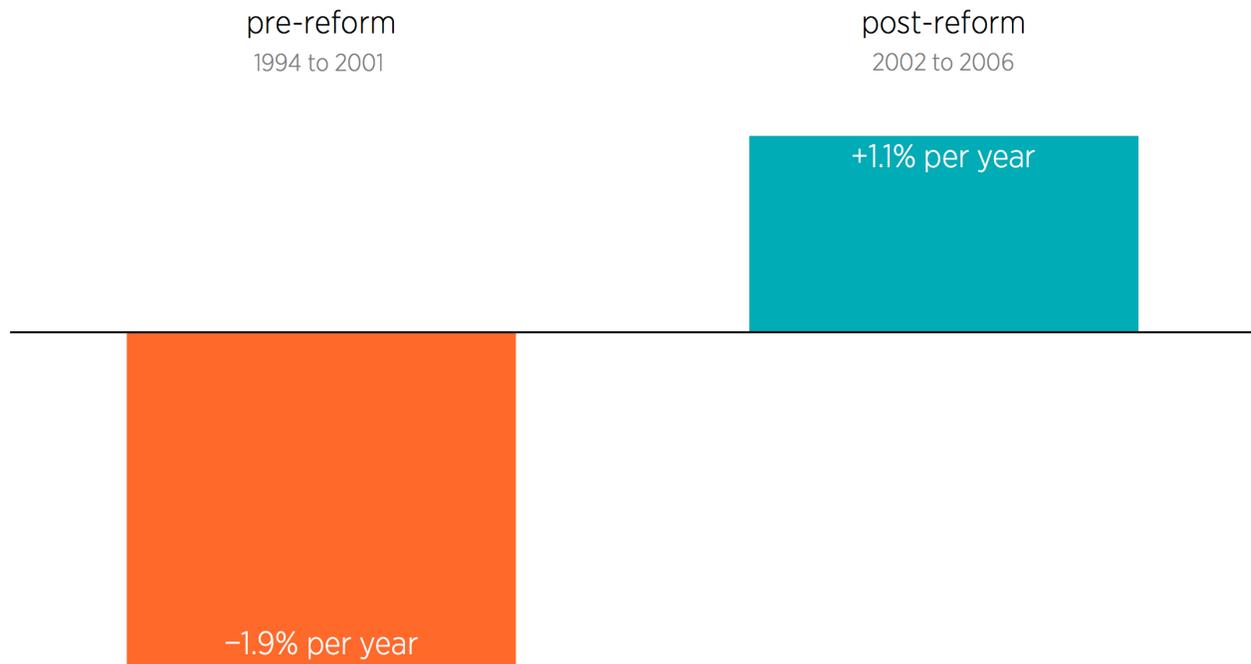
Using Regulatory Reform to Boost Growth

April 11, 2017

Economic growth during the 21st century in the United States has been slow relative to historical norms. From 1948 to 1999, US real GDP growth averaged 3.6 percent per year. Growth has averaged a dismal 1.9 percent per year from 2000 to 2015. This slowdown in growth may explain a general feeling of pessimism and a sense of shrinking opportunity among the American public.

Two popular policy prescriptions to jump-start growth are greater government spending (proposed by Keynesian economists who see the problem as a lack of demand) and tax cuts (proposed by economists favoring supply-side solutions). But with structural deficits the norm at the federal level, and the national debt projected to explode in the decades ahead, the bigger deficits needed to finance such measures are no longer palatable to many Americans.

British Columbia's Economic Growth Rate Relative to Canada's Growth Rate



Source: 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), 23. Produced by James Broughel, April 2017.

[1]Regulatory reform could be a form of low-hanging fruit to boost growth at a time when state and federal budgets are pinched. The experience of the Canadian province of British Columbia offers a model [2] for how this can be done. In 2001, the province began a red tape cutting effort, with a goal of reducing regulatory requirements by a third within three years. In June of 2001, the province had 382,139 requirements in place. By March of 2004, that number had fallen to 268,699—a decline of almost exactly 30 percent.

British Columbia Average Economic Growth Rate, Pre- and Post-Reform



[3]As the first chart illustrates, in the years leading up to the reform, British Columbia was experiencing a “dismal decade”—a phrase used to describe the sluggish economy in the province around that time. Real GDP in the province grew, on average, 1.9 percent less than Canada’s between 1994 and 2001. Meanwhile, growth shot up in the years after the reform began. British Columbia experienced a rebound, and growth was 1.1 percent higher per year, on average, than Canada’s between 2002 and 2006.

The absolute numbers make British Columbia’s improvement in economic performance more clear, as the second chart shows. In the 1994–2001 period, real GDP grew on average by 2.6 percent per year; this jumped to 3.8 percent in the 2002–2006 period. This difference is statistically significant ($p=.08$). A difference of just over one percentage point in growth might not sound like a lot, but consider the following: An economy that grows at 1 percent per year will double in size roughly every 70 years, but an economy growing at 2 percent takes half the time to double—just 35 years [4]. An economy growing at 4 percent will double GDP in a mere 18 years.

No doubt other events and forces aside from regulatory reform also contributed to British Columbia’s economic turnaround. Nonetheless, this example highlights how a major regulatory reform was associated with improved economic performance and—just as importantly—was accomplished without jeopardizing health or the environment. According to a 2009 benchmark report [5] from the British Columbia Progress Board, the province maintained a first-place ranking in Canada for environmental quality and health outcomes from 2001 onwards.

Given the dismal decade the United States has just gone through, as well as the budget pressures that governments at all levels are facing, states and the federal government should be thinking about whether regulatory reform makes sense. It could be a cost-effective way to boost growth and give Americans hope for a more positive future.

Source URL: <https://www.mercatus.org/publications/using-regulatory-reform-boost-growth>

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[1] https://www.mercatus.org/sites/default/files/broughel-regulatory-reform-british-columbia-chart-1-v1_copy_0.png

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[3] https://www.mercatus.org/sites/default/files/broughel-regulatory-reform-british-columbia-chart-2-v1_copy.png

[4] <https://www.mercatus.org/publications/2-percent-growth-35-years-double-size-US-economy>

[5] <http://www.westhawk.com/BCPB/2009Report/BCPB2009intro.html>

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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

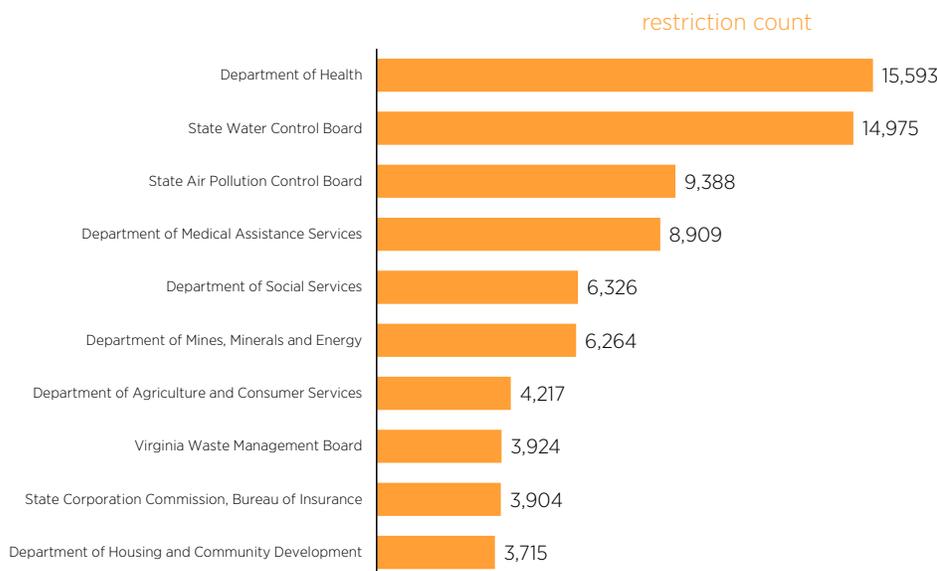
Before a state decides how much regulation it wants to cut, it must first know how much regulation it has and decide whether that amount seems excessive. If regulation is defined as the number of restrictive words appearing in the state administrative code, then a baseline, or initial starting point, 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.

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 closure⁷ and previous state red tape reduction commissions.⁸

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 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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