Regulatory Reform in Nebraska: Progress, Challenges, and Opportunities

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Introduction

Nebraska was an early mover in regulatory reform, but there is still room for improvement. The State RegData project, in a first-of-its-kind inventory of state regulations, found that in 2017, the state of Nebraska had 100,627 regulatory restrictions on the books—that is, terms within regulatory text that create legal obligations or prohibitions, such as the words "shall" and "must." In response to this finding, former Nebraska Governor Pete Ricketts issued Executive Order 17-04,[1] initiating a review of the state's regulations. Under the governor's plan, each regulatory agency in Nebraska was ordered to, among other things, conduct a review of all existing and pending agency regulations and revise or repeal any regulation deemed to be more restrictive than required under state or federal law, or that creates an undue burden.

Subsequent data[2] from the State RegData project show that the executive order likely led to a substantial reduction in unnecessary regulations. As of 2023, Nebraska's regulatory code had shrunk to 76,201 regulatory restrictions—a reduction of about 24.3 percent. Such dramatic progress puts Nebraska in an elite group – only a handful of states have been able to reduce red tape by even 5 percent. For the most part, states have created regulatory processes that result in consistent accumulation of new regulations, and rarely reexamining existing regulations to see what may no longer be necessary or working.

Yet for all its progress in cutting red tape, Nebraska still has several opportunities for further improvement. This essay describes several best practices for establishing a regulatory process that ensures maximum value out of regulations – because while

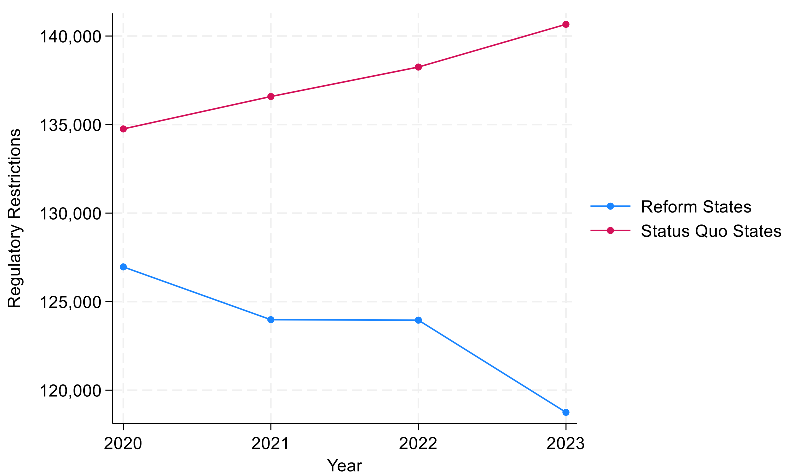
[1] https://govdocs.nebraska.gov/docs/pilot/pubs/eofiles/17-04.pdf
[2] https://www.mercatus.org/regsnapshots24

regulations are undoubtedly necessary, few people want regulations that fail to achieve their purported goals or do so at unreasonable costs.

Red Tape Reduction in Nebraska

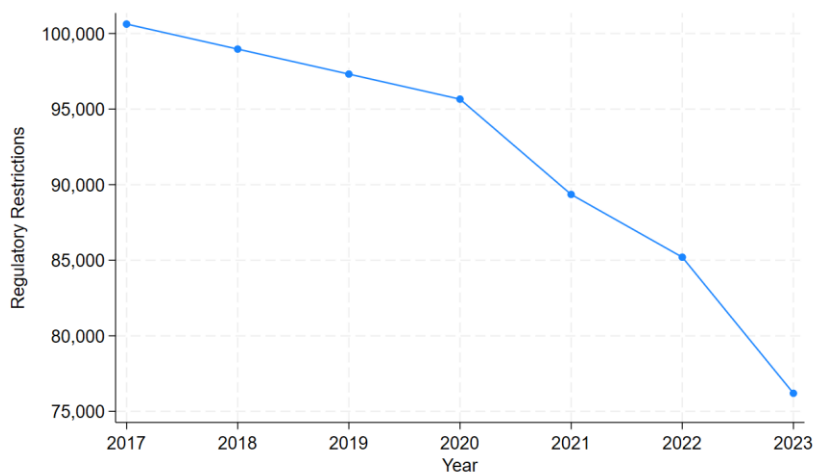
Governor Rickett's executive order appears to have been effective. This is evident in the data shown in Figure 1 – those states that do not have a process in place for reviewing old regulations (Status Quo States) tend to accumulate more and more regulations over time, whereas those states that have a proactive review process in place (Reform States) have reversed that process. For this comparison, Reform States includes that have reduced regulatory restrictions by at least five percent since the first year the state was included in State RegData and had made some sort of policy announcement related to the red tape reduction efforts. The states that qualified are, in alphabetical order: Idaho, Kentucky, Missouri, Nebraska, Ohio, and Oklahoma. The remaining states are grouped into the non-reform category, Status Quo States.

Figure 1: States without review process (Status Quo States) vs. states with review process (Reform States)



Nebraska's red tape reduction efforts begun in 2017 put the state in the Reform States category, of course. The State RegData project does not have data for years 2018 and 2019 for Nebraska, but data for the subsequent years (2020, 2021, 2022, and 2023) show that the red tape reduction seems to been sustained and continuous, as the figure below shows. (Note that, lacking data for 2018 and 2019, we have simply interpolated a straight line between 2017 and 2020.)

Figure 2: The Effectiveness of Nebraska's Red Tape Reduction Effort

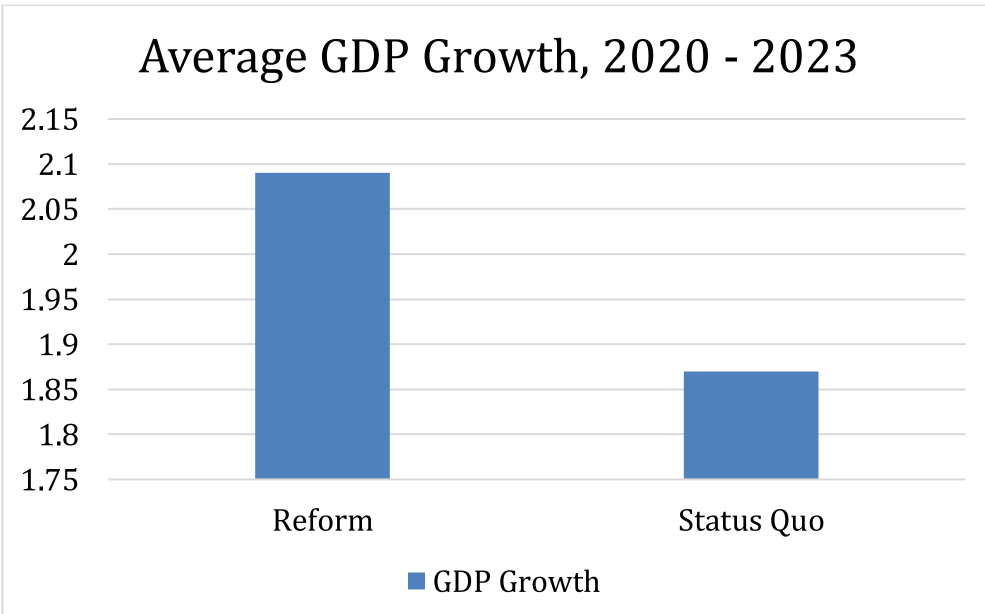


The Economic Benefits of Regulatory Reform

As mentioned above, all the evidence[3] from economic studies on regulatory reform in general and red tape reduction specifically indicates that Nebraska's economy benefitted as a result the paring of nearly 25 percent of old regulations. But even a back-of-the-envelope comparison of Reform States and Status Quo States should be sufficient to motivate more red tape reduction. From 2020 to 2023 (i.e., the time period covered by State RegData), the Reform States economic growth rates performed substantially better than the Status Quo States. Figure 3 compares the average growth rates for the two groups. The figure speaks volumes, simply by virtue of emphasizing the difference across the two groups. Reform States experienced average annual growth of 2.09 percent, while Status Quo States grew at 1.87 percent on average. For growth rates, a difference of 0.22 percentage points is significant. If that difference maintains for a twenty-year period, the faster growing group would have grown 5.25 percent more than the slower group – essentially gaining nearly three entire years of economic growth relative to the slower growing group.

[3] https://thirdorder.substack.com/p/federal-regulatory-budgeting-would

Figure 3: Average Growth Rates for Reform States and Status Quo States



Beyond the relationship between regulation and economic growth highlighted above, research on regulatory accumulation highlights how regulatory costs that are passed down to consumers disproportionately affects low-income households.[4] Regulations, especially in areas such as energy, food safety, and housing, increase the prices of goods and services that form a larger share of low-income households' budgets. This makes regulation a hidden tax that exacerbates inequality.

In addition to the direct costs imposed by regulation, the opportunity costs are significant. Regulatory burdens prevent individuals from entering the workforce or starting new businesses, particularly in underserved communities. A similar effect is mirrored in the dynamics of businesses: large firms often have the resources to manage regulatory compliance costs, but small businesses are less equipped to absorb these expenses. This creates an uneven playing field, where small businesses face significant barriers to entry or expansion due to regulatory costs.

[4] https://www.mercatus.org/research/policy-briefs/regressive-effects-regulations-nebraska

Further Reforms to the Regulatory Process in Nebraska

The quantity and quality of regulations in any state is ultimately a function of the state's regulatory process. While Nebraskans can and should celebrate some early successes in regulatory reform, some regulatory best practices have yet to be implemented in the state.

First, staving off red tape is, unfortunately, a constant process. The mere fact that new regulations are being made should be sufficient to trigger subsequent review. After all, there is never a guarantee that a new regulation will actually achieve its goal at a reasonable cost. Even if Nebraska has completed a one-time review of all its old regulations, any new regulations should be scheduled for review at regular intervals, and the entire stock of regulations should similarly be scheduled for a regular "spring cleaning."

Second, while reducing total regulatory volume by 24.3 percent is no mean feat, other jurisdictions have shown that even greater red tape reductions can be achieved. The Canadian province of British Columbia reduced red tape[5] by about 40 percent between 2001 and 2004. More recently, Idaho cut regulations by over 50 percent by following a combination of regulatory budgeting and regulatory sunsetting. And subsequent economic analysis has shown that cutting red tape like British Columbia and Idaho did leads to substantially faster economic growth—British Columbia's growth rate increased[6] by more than one percentage point as a direct result of eliminating unnecessary regulations.

If policymakers in Nebraska want to implement best practices in the state's regulatory process, they should find a way to make such retrospective review a permanent feature of its regulatory process. One way to achieve this goal is to require regulators to review one (or more) existing regulations for each new regulation that they make—a form of regulatory budgeting known as one-in, one-out. Another emerging best practice is to require all regulations to sunset after some period of time—for example, five years. At that point, if it still makes sense to have that regulation around, the impetus is on the regulator to justify it by demonstrating that a real problem still exists and that the regulation is effective in reducing it.

Another frequent issue in states' regulatory process involves the relative lack of power that legislators have over the new regulations created in a state. As it stands now, Nebraska still does not have any way for the legislature to weigh in on new regulations. A version of the REINS Act[7] would change that.

Beyond broad regulatory process reform, policy interventions aimed at reducing the regressive effects of regulation should include targeted reforms to occupational licensing, the introduction of regulatory sunset provisions attached to areas of regulation such as

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[5] https://thirdorder.substack.com/p/british-columbias-red-tape-reduction

[6] https://www.mercatus.org/research/working-papers/regulation-and-economic-growth

[7] https://platteinstitute.org/research-note-a-case-study-of-success-of-the-reins-act-in-state-regulatory-reform/

occupational licensing and criminal justice, and expanded use of cost-benefit analysis for new regulations to try to avoid enacting new regressive regulations.

Other issues would still remain but even so, implementation of a better process for regulatory review, including regulatory budgeting or sunsetting, and a REINS Act for new regulations, would go a long way towards making Nebraska the country's leader in regulatory reform.

Conclusion

Nebraska's regulatory reform efforts have yielded positive results, but more needs to be done to address the long-term effects of regulatory accumulation. By drawing on the insights from academic literature, Nebraska policymakers can better understand the relationship between regulation and economic growth. Adopting a permanent regulatory budget and regulatory sunsetting, implementing a version of the REINS Act, expanding occupational licensing reform, and addressing the regressive effects of regulation will be critical steps toward creating a more competitive and prosperous economic environment in the state.