

Requiring Specific Legislative Authority for Agency Rule-Making Would Help Washington Businesses

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A proposal has been introduced in the legislature that would revise rule-making requirements to assure that the legislature can carefully review rules that impose significant burdens on Washington businesses before the rules take effect.¹

House Bill 1617 would:

- Require strict interpretation of legislative intent by state agency rule-makers
- Require state agencies to derive any rule-making authority from direct legislative grants
- Change the burden of proof from the party asserting the invalidity of an agency rule to the actual state agency that enacted the rule
- Require a waiting period for new legislative rules to be effective until after one legislative session has passed

Small businesses, those with fewer than 50 employees, face far higher regulatory compliance costs than larger businesses. The U.S. Small Business Administration says that businesses with fewer than 20 employees spend 45% more per employee than larger firms to comply with just federal regulations.

A firm with fewer than 20 employees spends on average \$7,647 per employee to comply with federal regulations, while a firm with over 500 employees spends \$5,282 per employee.²

Total state regulations have expanded to fill 32 phonebook-sized volumes, which together form a stack of paper over five feet high. These rules have the force of law, and they strictly control and limit the day-to-day activities of every person and business in this state.

The fundamental policy question facing the people of Washington and their elected representatives is: How much regulation is enough? What is the right balance of government intervention versus economic freedom?

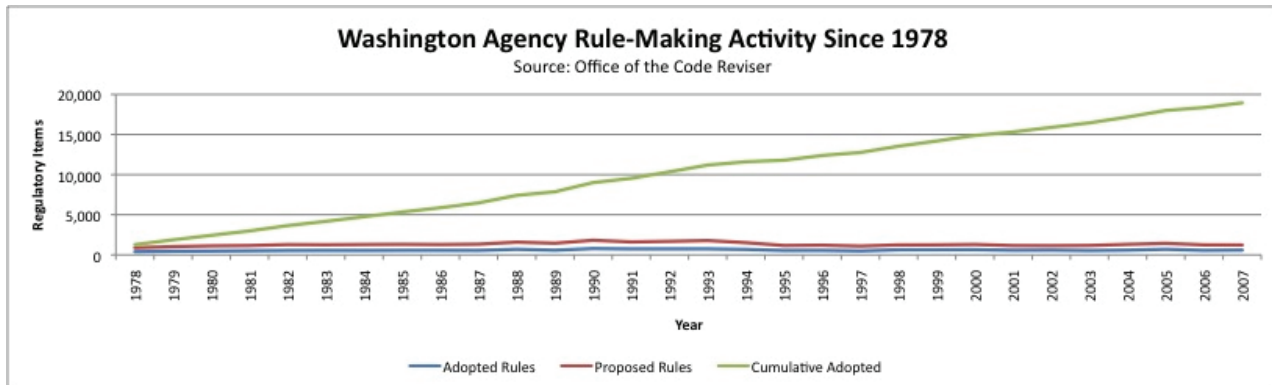
The answer is found in limiting government regulation to the rules needed to assure public health and safety, help the needy and protect consumers, so that over-regulation does not choke off the oxygen the economy needs to thrive.

¹ House Bill 1617, introduced January 26, 2009.

² "The Impact of Regulatory Costs on Small Firms," by Mark W. Crain, Lafayette College, Easton, Pennsylvania, 2005. Research done under contract for the United States Small Business Administration.

Restricting agencies to making rules based solely on enacted legislation would bring about stronger accountability. This proposal ensures that elected policymakers rather than unelected bureaucrats play an active role in signing off on legislation that will become agency rules.

According to the Office of the Code Reviser, state agencies submitted over 16,000 pages of administrative rules in 2007 (latest numbers available).³ Since the year 2000, over 4,775 state agency rules were adopted, resulting in over 55,000 new pages of code.



The chart above shows that since 1978, over 18,000 regulations have been adopted or changed by state government agencies. Obviously, not all adopted regulations pertain solely to the business community or commerce, but there is no quick way to tell where these regulations are directed or how the small business community is affected.

Each regulation by itself is unlikely to break a business or cause too much trouble. However, the thousands of regulations piling one upon another causes confusion among business owners who do not have teams of human resource personnel to handle the myriad of changes.

Many times small businesses rely on third party relationships, such as trade associations, chambers of commerce, etc., to learn of any regulatory change that affects their industry.

Putting the burden of proof on state agencies through the process of requiring legislative authority—by making legislators approve agency rules through the legislative process—would help stem the proliferation of agency rules, and bring transparency and accountability back to the agency rule-making process.

Washington Policy Center’s work within the small business community for the last decade has resulted in numerous recommendations from small business owners on the topic of regulation reform. Requiring direct legislative authority for agency rule making, in order to increase agency accountability, has been a long-standing recommendation.⁴

It is important for policymakers to recognize that small business owners are not asking for a repeal of agency rules or legislation that would jeopardize public safety or the well being of themselves, their employees or customers. The sheer number of agency rules confounds many small business owners. Keeping up with changes, additions and subtractions to the state’s codes is tough to do while also running a business.

Carl Gipson is director for small business, technology and telecommunications at Washington Policy Center, a non-partisan independent policy research organization in Seattle and Olympia. Nothing here should be construed as any attempt to air or hinder the passage of any legislation before any legislative body.

³ “Agency Rule-Making Activity Report,” Office of the Code Reviser, <http://apps.leg.wa.gov/documents/laws/wsr/rulactiv.pdf> (accessed December 16, 2008)

⁴ See “The Small Business Climate in Washington State,” Policy Brief, March 2002. Also, *Regulatory Reform and Accountability*, “Communications Policy Guide, Release 2.0” Policy Brief, January 2008.