

POLICY GUIDE FOR
> WASHINGTON STATE



Edited by Paul Guppy



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Foreword

by
Daniel Mead Smith, President

Washington state is a great place to live. We see that everyday in the number of new businesses opening, people moving to our state and the great natural environment we have here. But there are major policy problems that continue to be neglected. Our state ranks high in the wrong categories when it comes to education, traffic congestion, taxes and the business climate. This is the basis for Washington Policy Center's *Policy Guide for Washington State*.

Our mission is to promote free-market solutions through accurate research and education. The recommendations and ideas presented in this policy guide are centered on the core principles that have guided our work since the founding of our organization. Policymakers are always looking for fresh ideas backed by solid research. The goal of our organization, and this publication, is to help policymakers make wise and lasting decisions that improve the lives of the people of our state.

Our *Policy Guide for Washington State* offers innovative ideas, ranging from incremental to sweeping, for reforming and improving government performance. The chapters are divided into topical subsections for easy reference. Each subsection includes background information, policy analysis and specific policy recommendations. Each chapter also includes a list of additional resources.

This book is a revised edition of *Agenda 2005: The Guide to Public Policy Issues in Washington State*, released in January 2005. *Agenda 2005* had a similar format to our new policy guide book. It featured 139 policy recommendations on many of the same issues, such as balancing the state budget, reducing the tax burden, making government services more efficient, reducing health insurance costs, improving access to

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health care, protecting the environment and improving transportation by reducing traffic congestion.

Washington Policy Center is an independent nonprofit think tank, not a political group or lobbying organization. Our researchers testify before legislative committees by invitation and work with lawmakers at their request. We do, however, measure the impact of our ideas on the public debate. It is one thing to publish studies and write op-eds, and another to see our ideas and analysis make a difference in the public debate.

Following is a brief overview of the bills considered during the 2005 and 2006 legislative sessions that included policy recommendations we proposed in *Agenda 2005*. We are very pleased that 27 of our ideas were reflected in bills that passed one legislative chamber, and that ten were signed into law by the governor.

Overview of 2005 & 2006 Legislative Results

- Agenda 2005 ideas included in bills45
- Agenda 2005 ideas passed by the Senate15
- Agenda 2005 ideas passed by the House12
- Agenda 2005 ideas enacted into law10

I encourage you to contact us at (206) 937-9691 or at wpc@washingtonpolicy.org with your comments. You may also order additional copies of this book, the accompanying CD-Rom, or any of our detailed studies that provide additional research on the topics presented here.

I also encourage you to use our legislative website, www.WashingtonVotes.org, as a resource during the legislative session and at election time. This free nonpartisan website summarizes every bill, amendment and roll call vote. It also allows you to search bills by issue, track bills during session,

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and follow how your legislator votes on the issues you care about, all in an easy-to-use, plain-English format.

For policymakers, we thank you for your service to our state and hope you will find this guide useful as a resource. For citizens, we encourage you to keep our recommendations in mind as the Governor and legislature work on the major issues facing our state.

Our special thanks go to the M.J. Murdock Charitable Trust in Vancouver, Washington for providing the initial grant funds and the majority of the support for both our *Agenda 2005* and for this project. We also thank The JM Foundation in New York, which awarded us a grant to support publication of this policy guide. This project could not have been a success without their enthusiastic and early support.

In addition, everything we do is made possible by our generous supporters across the state. Their support of both this project and of our organization is greatly appreciated.

On behalf of the members of our board of directors, advisory boards and staff, thank you for your interest in our work and in free-market policies that can make our state a better place in which to live and work.

Note on sources: most sources for the facts presented in this Policy Guide are provided in endnotes following each chapter. Additional sources and information are available by contacting Washington Policy Center or by visiting the Policy Guide section on our website, www.washingtonpolicy.org.



Introduction

Five Principles of Responsible Government

by Paul Guppy
Vice President for Research

Our democratic system is founded on the principle that people have certain fundamental rights, and that the purpose of government is to protect these rights, so people can live peacefully together within a system of ordered liberty.

The Washington constitution makes this point clear:

“All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights.”

Government also provides certain basic services that enable citizens to enjoy the benefits of modern society. To do its work of protecting citizens' rights and providing basic services, government requires tax revenue, rules, enforcement and all the bureaucratic apparatus of large regulatory agencies.

The danger from government

There is a persistent danger, however, of government itself becoming the greatest threat to people's rights. In Washington, this threat does not take the form of a direct assault, but occurs subtly, through the continuous expansion of state regulations and programs, and the incremental rise in taxes, restrictions and penalties that goes with it.

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In its effort to upgrade public programs, or to expand their reach, government tends to impose increasing taxation and broader regulations that gradually erode basic freedoms.

This tendency is deepened and advanced by a variety of special interests that benefit from rising government spending. These interests are always ready to argue for new taxes, larger budgets and expanded programs, while downplaying the higher cost and fresh constraints imposed on ordinary citizens.

Therefore, limiting the scope and power of government is not just about saving money, it is about protecting people's rights. Since most of the people employed by government and the interests that benefit from public spending have little incentive to restrain the reach of the state, this task falls to the people and their elected representatives.

The purpose of this Policy Guide is to help state and local elected officials preserve the people's freedom as they do the daily work of government. It is also designed to serve as a ready reference for citizens, so they can better understand public issues, and judge the laws and regulations government officials adopt in their name.

Five principles of responsible government

The Washington Policy Center advocates five principles that can guide government officials in doing their work effectively, and in a way that respects the trust the public places in them. These ideas are not original to the Washington Policy Center; they are commonly cited as essential elements of good governing.

Here are short descriptions of these principles and why they are important to achieving effective and limited government in our state. They are in no particular order – in fact, they are interrelated; adhering to one makes it easier to implement the others.

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1. Exercise budget discipline

It is in the nature of government to expand. Government has no competitors and cannot be put out of business, so it operates without the natural constraints that bring financial discipline to private organizations. Instead, policymakers are under constant pressure to channel public money to this or that cause, or toward advancing a particular group or special interest.

The gain from funding requests is usually specific and easily seen, while the cost is diffused and barely perceptible. Lawmakers often find it easy to be generous with other people's money – especially when most people tend not to notice.

Lack of budget discipline results in government becoming overextended and unable to meet its commitments, resulting in a pervading sense of financial crisis, joined with recurring calls for tax increases.

Adopting a protected reserve fund, setting expiration dates for tax increases, canceling failed programs and establishing clear funding priorities are some examples of how policymakers can make sure government lives within its means. The problem of bringing budget discipline to public spending is discussed in Chapter 1 of this book.

2. Focus on core functions

There will always be people who feel government needs to do more, regardless of the added cost to society. In addition, people in government, just like those in other parts of the economy, want to work in a growth sector, so they tend to benefit when government takes on more tasks.

That is why it is so important for policymakers to keep government focused on its core functions. Expending time and

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finite resources attempting to tackle new missions means that other public services suffer as a result. Government can only do so much, and public agencies are most effective when they strive for excellence by doing a few things well.

Another reason to focus on core function is that many times government's efforts to help end up doing more harm than good. New laws and programs are launched with high enthusiasm and the best intentions, and often end up having unforeseen consequences that are worse than the original problem. A focus on core functions provides government with fewer opportunities for harming citizens and their interests.

A clear focus on core functions also enables policymakers to resist calls for ever higher levels of spending. Not trying to do too much allows agency managers to improve the quality of the services they provide, and it enhances the public's confidence in government's ability to act effectively and positively.

The discussion of transportation policy in Chapter 10, for example, shows how competition, contracting out and performance audits can keep government focused on core functions, to the benefit of taxpayers and the traveling public.

3. Respect property

Private property – meaning land, a home, a business, savings and investments, and intellectual and artistic creations – is the foundation of a free society. Property rights give citizens the means to defend all their other rights from the encroachments of government or the incursions of others.

Property gives people the means to pursue their dreams and live their lives the way they choose. Private property also provides people with the ability to help others, through their time and voluntary giving. When government takes property in the form of taxes, or reduces its value through regulation, or

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seizes it outright through eminent domain, it makes it harder for citizens to defend their rights, pursue their dreams or help others.

Most people gain their property through hard work, long hours, patience and careful planning. When government officials respect property, they respect the people who earned or created it.

Government must often tax and regulate the use of property in its various forms, but lawmakers should keep taxation and regulation to the minimum needed to carry out essential public functions. The policy recommendations presented in Chapter 2 provide examples of how policymakers can keep the tax and regulatory burden at reasonable levels.

4. Use voluntary incentives, not coercion, whenever possible

Many people have strong views about what they think society should look like. They are often tempted to use the power of government in an effort to make their social vision a reality.

Proponents of social change should work in the marketplace of ideas to persuade others to share their vision and work towards it. They should not use the power of government to force through their own ideas, but should seek to change policy, if that is needed, once reform is broadly supported by the public.

Similarly, policymakers should favor voluntary incentives to encourage positive change, so citizens do not feel they are the passive objects of social engineering imposed from above.

Washington lawmakers have enacted radical changes in the past, only to see them fail or be repealed once the temporary political conditions that made them possible have passed. In

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contrast, persuasion and voluntary action ensure that the reforms that are adopted will be popularly supported and enduring.

Chapter 4's discussion of health care reform is an example of a policy area in which market incentives and individual choice avoid the problems created by top-down dictates.

5. Resist political pressure from public sector unions

Public sector unions occupy a unique position within our governing system. They represent one part of government (public employees) which is organized to lobby another part of government (the legislature).

Employers and unions in the private sector operate under the unyielding discipline of the market. Union leaders know that if their demands cause the company to go under, everybody loses. Government, however, cannot go out of business. There is no natural limit to the demands that public union leaders can make on the treasury, especially since each expansion of government generally increases the amount of monthly dues paid to the union.

In the private sector, unions negotiate directly with the owners and managers of a company. If company stockholders are unhappy, they can take their investment elsewhere. In government, the "owners" are the taxpayers. They have no involvement in negotiating with public sector unions, and they also have no choice about paying for whatever conditions, salary or benefits the legislature has agreed to provide.

Public employees should receive fair compensation for the work they do, and it is in the public interest to attract hard working, talented people to public service. But government is about more than providing high paying jobs and generous benefits. If a government program or service no longer makes

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sense, policymakers who respect taxpayers will end it, and devote the savings to effective programs, or toward reducing the tax burden on citizens.

Ten questions to ask about every new bill and regulation

It is difficult to know how to implement the principles of responsible government. A good place to start is to have a practical and objective way of judging the thousands of new bills and regulations proposed every year. Following are ten questions lawmakers and citizens should ask when reviewing any new legislative proposal:

1. Will it expand or restrict people's freedom?
2. Does it respect people's work, property and earnings?
3. Does it serve the general good, or only advance a narrow interest?
4. Does it increase or reduce the tax burden government places on its citizens?
5. Does it provide a needed service that the private sector cannot do better?
6. Does it duplicate something the government is already doing?
7. Does it create a policy or program that has failed in the past?
8. Is it ineffectual – a nice sounding title with no chance of actually helping people?
9. Does it accomplish very little today in exchange for great cost tomorrow?
10. Will it automatically expire on a certain date if it does not work?

If the supporters of a new bill or regulation cannot provide satisfactory answers to these questions, it should not be adopted.

Introduction*Conclusion*

The purpose of government is to serve the people, not the other way around. The principles described here will produce government that serves the people of Washington. Government actions should be authorized in law, adequately funded and limited in scope.

The pages that follow present dozens of specific recommendations for carrying out the five principles of responsible government.



Chapter 1: Spending Policy

1. Structural Budget Reform

Recommendations

1. Adopt the Priorities of Government process to slow the rate of spending growth and end the chronic sense of crisis in state finances.
2. Adopt a constitutionally-protected emergency reserve fund with a meaningful trigger mechanism.
3. Sell non-essential real estate holdings.
4. Begin a “base closing” process for state programs and agencies to determine which ones can be consolidated or eliminated.
5. Adopt a five-year sunset and review period for state boards and commissions.

Background

Washington’s two-year General Fund budget spends more today than at any point in state history, about \$27 billion. Much of government spending growth is set on auto-pilot by entitlement policies. The total state budget every two years is over \$53 billion when entitlements and federal grant funds are included.¹

Failure to set clear priorities has created a structural deficit by locking in past spending, regardless of importance, while leaving more urgent needs unmet. This results from the legislature’s habit of practicing reverse budgeting, in which

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routine government activities are funded first while high-priority needs are left in fiscal crisis.

This occurred recently when legislators and the governor faced a \$1.7 billion deficit for the 2005-07 biennium. In 2005, the legislature enacted \$450 million in permanent new taxes. During the 2006 session the legislature passed a supplemental budget that further increased spending, for a total increase in state spending of 17 percent over two years. The sharp increase in spending creates permanent taxpayer obligations in the future.

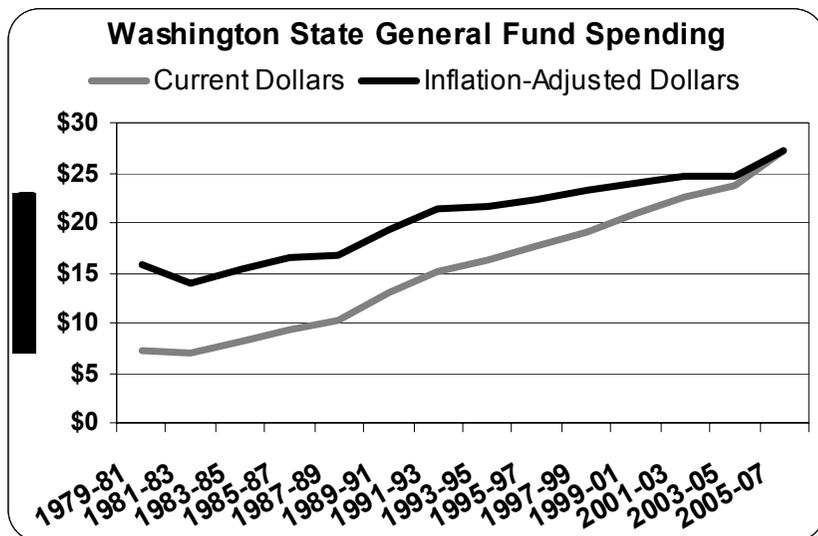
Shortly after the 2006 session ended, the Office of Financial Management projected a \$718 million deficit for the next biennium.² A few months later, state economist Dr. Chang Mook Sohn reported to legislators that while a good economy may provide enough revenue to prevent deficits in the short term, this is “clearly not sustainable.”³

Unnecessary tax increases

Yet even without new taxes the amount of revenue flowing into the state treasury is steadily increasing. Without “revenue enhancements” (tax increases), lawmakers already had 7.3 percent more revenue – twice the rate of inflation – going into the 2005 session than they had spent in the previous biennium.⁴ In 2004, tax revenues had grown 5.4 percent, also well above inflation.⁵

The legislature’s large increase in public outlays for 2005 – 2007 is the latest instance of a spending pattern that has been in place for some time. Between 1960 and 2005, the state’s population grew 120 percent, while general fund revenue grew in inflation-adjusted terms by more than 400 percent.⁶ The dramatic rise in state spending is shown in the following chart.

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State tax revenues are constantly rising. Deficits occur when lawmakers increase spending at an even faster rate.

Although the amount of money the state collects from citizens is always increasing, lawmakers regularly boost state spending by an even faster rate. The legislature's failure to set priorities and fund urgent needs first creates a false sense that the tax burden government places on citizens must be increased, when new taxes revenues are actually not needed. The result is a structural deficit created by the gap between the increased level of planned spending and the actual increase in tax revenues.

Spending rising faster than revenue causes structural deficit

To understand the structural deficit, it helps to look at the budget in a broader context. Citizens tend to forget that state government is constantly growing. The only fiscal issue the legislature debates every year is how fast spending should rise.

When lawmakers discuss "cuts," they are referring to reductions in the *rate* of spending increase. When tax revenues rise more slowly than *planned* spending, the difference is called

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a “deficit.” When revenue rises faster than the rate of spending increase, the result is a surplus. Either way, except in very rare cases, overall public spending is constantly rising.

During the 1990s, a time of unprecedented economic prosperity when there was less pressure on social services, state government spending still rose at a rapid pace. Instead of controlling spending and preparing for the downturn that was certain to come, state policymakers sharply increased financial commitments and left the treasury with few reserves to maintain services during difficult economic times. As the economy is recovering now, lawmakers are continuing habit of overspending.

State government is badly overextended

Lawmakers’ instinctive attraction to new spending, while satisfying in the short run, makes it harder for them to meet their obligations in the long term. State government is badly overextended because it tries to do too much. The legislature and the governor make permanent promises but only provide temporary funding. When money inevitably runs short, elected officials seek more revenue from the public, leaving citizens with less of their own earnings to meet life’s daily needs.

The result of this approach is an ongoing financial crisis in which recurring deficits are an endemic part of the budget process.

Policy Analysis

An effort to rationalize Washington’s budget structure was initiated by Governor Gary Locke in 2002 when he established his Priorities of Government process.⁷ The process requires each agency to rank program activities in order of their importance to the public.

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The Priorities of Government process is centered on three strategies.

1. View state government as a single enterprise.
2. Achieve results, at less cost, through creative budget solutions.
3. Reprioritize spending, eliminating programs or consolidating similar activities in different agencies.⁸

Governor Locke described Priorities of Government as “focusing on results that people want and need, prioritizing those results, and funding those results with the money we have.”⁹

Protect taxpayers with a constitutional reserve fund

To protect taxpayers against unnecessary future tax increases, policymakers should establish an emergency reserve fund, as was recommended by the Washington State Tax Structure Study Committee.¹⁰

For such an emergency fund to be effective it must be protected from politicians’ natural temptation to spend until the state faces an actual fiscal emergency. One mechanism is to require a supermajority of 60 percent of the legislature to authorize use of the emergency fund. Washington has a 60 percent requirement, but it routinely fails because lawmakers use a simple majority vote to cancel it, and thus gain access to the fund.

Effective trigger for accessing reserve spending

The best protection for taxpayers is to set a trigger in the state constitution that signals when lawmakers may legally spend money in the reserve. For instance, the trigger could be set to allow emergency spending when regular tax revenue

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drops more than 10 percent compared to the previous biennium. Whatever trigger mechanism is selected, it should be set so it only activates during true economic emergencies, and is not simply incorporated into the routine budget process.

In addition, reserve policy should set a clear measure of when government is taking too much of the people's money in taxes. Once a reasonable reserve has been built up – for example, an amount equal to five percent of General Fund spending – a second trigger mechanism should either lower tax rates or refund to taxpayers the amount they have overpaid.

Selling non-essential real estate

State government owns approximately nine percent of the land in the state, or about 3.9 million acres. Much of it consists of essential lands that serve the public interest: forest trusts, 125 state parks and of course hundreds of important public buildings.

Since 1889, however, the state has acquired properties that never did or no longer serve a public purpose, or which it could lease back at much lower cost. In an example from the private sector, ZymoGenetics, a Seattle-based biotechnology company, sold its headquarters building in 2002, then leased it back for a term of 15 years. The move allowed the company to get out of a business – real estate – that is not its core competency and at the same time raise \$52 million in cash. Through a simple leaseback arrangement the company made money, saved itself the headache of owning and managing a large corporate campus, and retained use of the building for its own needs.¹¹

Set up a land review commission

Lawmakers can reduce the structural deficit by initiating a thorough review of the state's real estate holdings, perhaps through a special temporary body like the federal Base Closing

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and Re-Alignment Commission (BRAC). Such a review body could recommend a list of properties that could be sold to the public. This policy would show respect for taxpayers, would increase opportunities for private land ownership and would partly relieve the state of an activity that is not a core government function – managing real estate.

“Base closing” review process for state programs

Currently there are more than 550 agencies, boards and commissions in Washington state government, administering hundreds of programs and funds that serve a wide array of purposes.¹² As the business of government grows over time, programs can become unnecessary or redundant. Yet management will insist that their program remain in place and even grow regardless of whether it is needed anymore.

Comparing private industry with government shows that private industries innovate and improve services ending old practices and developing new ones. In contrast, government stagnates as entrenched interests such as management and labor unions fight within the status quo. Lawmakers should, from time to time, evaluate the purpose and function of state programs and improve services by consolidating, eliminating, or privatizing operations. This “base closing” process should be as independent of the legislative branch as possible.

State boards and commissions

Most boards and commissions advise agencies and policymakers on constituent interests or industry practices, or serve as professional oversight or certification bodies. Some were created years ago to serve a legitimate public need, but have long since outlived their purpose.¹³

In many cases, the services provided by the board or commission can easily be turned over to private organizations and professional partnerships. A fee on a particular industry or

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type of business provides funds for many commissions. In these cases, there is no need for the industry group to be accredited by the government. Instead, such commissions should be organized as private entities and funded by the businesses concerned. Existing boards and commissions should be scheduled to sunset in five years, giving time for the legislature to review them and determine which ones should be continued.

Often state commissions are created only to satisfy certain political constituencies. Eliminating some of these boards and commissions may anger some influential interest groups, but will not jeopardize, and in fact may improve, vital public services to Washington residents.

Ending the sense of crisis in state finances

Reducing the long-term structural costs of government will ease the burden on taxpayers and ensure that future economic slowdowns do not force the state into yet another financial emergency. Structural budget reforms would promote efficiency, improve the quality of services to the public and would resolve the constant sense of crisis that pervades the state's public finances.

Recommendations

1) Adopt the Priorities of Government process to slow the rate of spending growth and end the chronic sense of crisis in state finances. The Priorities of Government standard has proved successful in the past. The legislature and executive agencies should adopt it as a permanent part of the budget process. Priorities of Government brings discipline to public spending, slows the growth of the tax burden government places on its citizens and directs limited government funding to where it is most needed.

2) Adopt a constitutionally-protected emergency reserve fund with a meaningful trigger mechanism. The legislature

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has easily tapped into “emergency” funds in the past to boost routine spending. For that reason an emergency fund should be constitutionally protected, with a specific trigger, so it contributes to budget continuity and stability, and ensures reserves are only available when the state faces a true fiscal emergency. Money collected beyond the reserve requirement should be returned to taxpayers.

3) Sell non-essential real-estate holdings. Policymakers should evaluate the real estate holdings of each state agency to determine if taxpayers would be better served by selling the property. Those that do not benefit the public should be sold to raise revenue and to reduce costs to the state. In other cases the state may be better off leasing some facilities, rather than owning them outright.

4) Begin a “base closing” process for state programs to determine which ones can be consolidated or eliminated. This review process would help optimize state spending by eliminating state programs that are unnecessary, wasteful or have fulfilled their purpose. The money saved could be devoted to higher-priority programs that provide valuable services to the public.

5) Adopt a five-year sunset and review period for state boards and commissions. The legislature should establish a mandatory five-year sunset review for all boards and commissions. Those that are no longer needed would automatically expire. Those the legislature determines are still needed could be re-authorized for a further five-year term.

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2. State Spending Limit

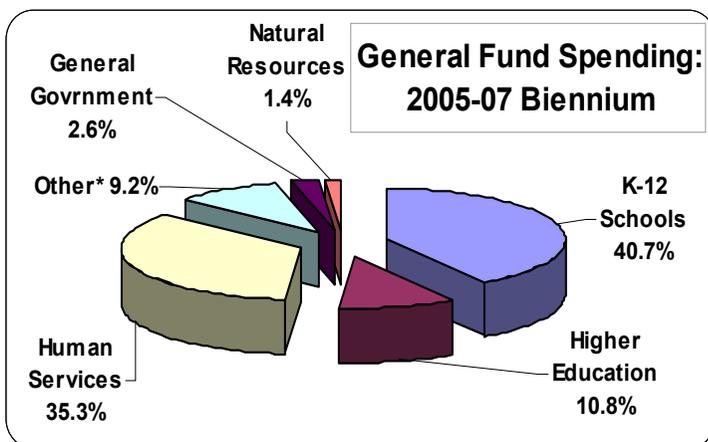
Recommendation

1. Adopt a constitutional amendment to limit the growth of taxes and spending to inflation and population growth.

Background

In 1993, Washington voters passed Initiative 601 to limit the annual growth of state spending to inflation plus population growth.¹⁴ The limit worked for a time. In the four legislative sessions prior to 1993 state spending grew by an average 12 percent each biennium. Following the adoption of spending limits, growth in the cost of government slowed to an average of 8.6 percent per biennium.¹⁵ But over the years legislators gradually suspended those restrictions and the rate of annual spending growth again increased.

The following chart shows the current distribution of current General Fund spending.



*“Other” includes debt service, pension contributions for police, firefighters and judges, additional education programs, transportation and special appropriations.

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In both the 2005 and 2006 sessions, legislators further weakened Initiative 601 and ratcheted up the limit to accommodate their spending increases. What was intended to be a firm but reasonable check on the growth of state spending has been reduced almost to zero. Today it is a meaningless cap that is bypassed regularly by lawmakers intent on boosting spending. In 2005, the legislature again “temporarily” eliminated Initiative 601’s requirement that tax increases be approved by a two-thirds vote of the legislature. The two-thirds budget safeguard was canceled by a simple majority vote.

Initiative 601 was not made part of the Washington constitution, and was easily overturned by the legislature. Colorado’s spending limit, in contrast, was enacted as part of the constitution and has proved much more effective at protecting citizens from over-aggressive state spending.

Passed by the people in 1992, Colorado’s Taxpayer’s Bill of Rights (TABOR) limits the amount of tax revenue the state can keep each year to the sum of inflation plus population growth. Any taxes collected above this amount must be returned to taxpayers in the form of rebates.¹⁶

The table below shows how TABOR succeeded in restraining the growth of government and allowed the people of Colorado to keep more of their own money. Over the ten years after the state implemented TABOR, non-government job growth in the state increased dramatically, as did per-capita personal income.¹⁷

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Colorado: Comparison of economic growth and state spending before and after passage of Taxpayer Bill of Rights (TABOR)

	1983-1992	1993-2002
	Growth Rates	Growth Rates
Population	10.4%	25.3%
Inflation	29.7%	37.3%
TOTAL	40.1%	62.6%
State Revenues (Taxes)	104.7%	61.3%
State Spending	89.8%	63.8%
Per Capita Personal	59.2%	65.3%
Income	(+\$7,810)	(+\$14,437)
All Job Growth	18.1%	34.6% (586,000)
	(248,000)	
Govt. Employment	21.1% (50,000)	20.0% (59,600)
Non-Govt.	17.5%	37.3% (526,400)
Employment	(198,000)	

As a constitutional protection against government overspending TABOR cannot be weakened through the ordinary budget process. Colorado lawmakers do not harbor unrealistic expectations about how much tax money they will be collecting in the years ahead. This in turn serves to keep unsustainable government spending in check.

In 2005, Colorado voters approved Referendum C, which provides for a temporary increase in TABOR spending limits. After five years, the original limits will be applied to future spending growth.¹⁸

Policy Analysis

Thirty states have some form of spending limit to protect their citizens from overtaxation.¹⁹ More than half of these spending limits are part of the state's constitution.²⁰ As of

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2006, a dozen more states were considering proposals for taxing and spending limits.²¹

Research shows that the most effective spending limits are constitutional instead of statutory.²² Constitutional spending limits are insulated from attempts by narrow majorities to open holes for spending increases. Research also shows that tying the growth of government spending to inflation plus population increases a limit's effectiveness compared with other methods of measuring economic activity.²³

Originally, Initiative 601 pegged government growth to a combination of inflation and population growth, but in 2005 the legislature and governor changed the fiscal growth factor to a ten-year average of state personal income growth.²⁴

Washington's economy and its citizens would benefit from a state spending limit that is both constitutional and tied to a growth in inflation and population.

Recommendation

1. Adopt a constitutional amendment to limit the growth of taxes and spending to inflation and population growth.

Reasonable budget limits similar to those of Initiative 601, but as part of the state constitution, would protect taxpayers and bring greater discipline to public finances. Coupled with an emergency reserve fund, it would also ensure that future levels of public spending are sustainable and, most importantly, help restore citizens' confidence in their government's willingness to manage costs.

3. Public Workforce Policy

Recommendations

1. Adopt a flexible freeze on state hiring.
2. Eliminate positions vacant more than six months.
3. Bring state employee contributions more in line with the private sector.
4. End compulsory monthly union dues from public employee paychecks.
5. Phase in a defined-contribution retirement plan that gives workers benefits that can never be taken away.
6. Reform the state pension system by eliminating the “gain-sharing” program.

Background

Since 1983, state employment has grown by over 41,000 employees, reaching nearly 107,000 FTEs (full-time equivalent positions) in 2005.²⁵ By far the largest employer in Washington is state government. Between 1983 and 2005, the state workforce grew by 64 percent, a period when the number of people in Washington increased only 45 percent. The rapid rise in state public employment in recent decades is shown below.

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State public employment has grown 64% since 1983. Today the largest employer in Washington is the state government.

Average annual compensation for full-time state employees tops \$59,000. This includes a salary of more than \$47,000, a generous benefits package including medical and dental insurance, a 401(k) retirement plan, minimum 12 days paid vacation and 10 paid holidays each year, combined with protective union rules that virtually guarantee lifelong employment.²⁶

At the same time, the average annual salary for a typical Washington state resident is about \$35,000.²⁷ During an economic downturn many people in the private sector face a reduction in pay or the loss of their jobs, while government workers are generally assured employment with regular raises.

Policy Analysis

Maintaining the present growth rate in the state workforce will eventually push the cost of government beyond what taxpayers can reasonably support. A change in workforce policy is needed to reduce the pressure a rising permanent payroll places on public budgets. A number of ideas for achieving this goal are presented here.

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Flexible freeze on hiring

A flexible freeze on state hiring would reduce state employment growth, while allowing agency managers to maintain existing staffing levels – by prioritizing new hiring where it is most needed – while ensuring the overall size of state government does not continue to grow. This approach maintains the flexibility necessary for agency managers to focus on the most important programs and maintain adequate service levels.

Eliminate positions vacant for six months

A major cost driver of state government is the number of people on the public payroll. These are desirable, good-paying jobs with excellent benefits. But taxpayers expect government to be about more than providing good jobs to those in the state workforce. A starting point in reducing built-in personnel costs would be to eliminate the hundreds of positions that have been vacant for six months or more.

State employee medical coverage

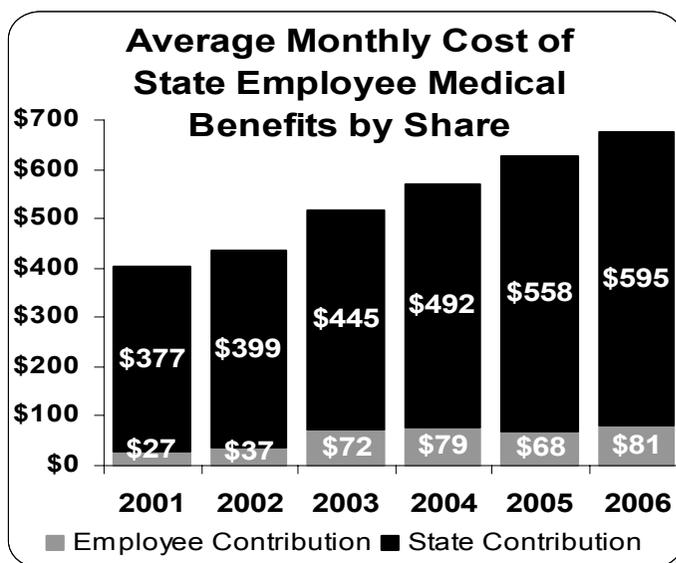
State employees receive generous health care benefits from an array of eight plan choices (though not all choices are available in every county). In 2005, the average total compensation for state employees was more than \$59,000, and a generous benefits package comprised more than 20 percent of that package.²⁸

In 2006, state employees will pay, on average, \$81 of the \$676 monthly premiums.²⁹ With more than 220,000 state employees and dependents enrolled, that is a weighted average of 12 percent employee contribution for family medical coverage.³⁰ The state pays 100 percent of the cost for employee and family dental coverage.

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Compared to the private sector and the nation's workforce in general, not only are state employee benefits generous but their cost share is as well. In 2005, while the average state employee contribution for benefits was \$68 per month, the national average was \$226 per month.³¹ In 2004, state employees paid just 12 percent of their premiums per month, while nationally the average employee contributed between 21 and 27 percent for family coverage.³²

The following chart shows the trend in weighted average monthly cost of state employee medical benefits, broken down by share.³³ From 2004 to 2005, while the total cost of state employee health plans increased, employee contribution actually decreased in terms of dollars and percentage.



Rising employee health coverage costs are placing a growing strain on the state budget.

As health care costs continue to climb, the current arrangement will place a growing strain on the state budget. In order to make their employees better stewards of health care dollars, private sector employers have increased the share of premiums contributed by employees. This also has the effect of

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making more visible the cost of health care as a portion of overall compensation. Washington would do well to follow this example.

Compulsory union deductions from employee paychecks

Currently the Washington state workforce is mostly a closed shop. Most state employees must belong to an approved union as a condition of employment. Failure to join a union is cause for dismissal.

Union dues are automatically deducted from workers' paychecks. State law provides for mandatory union dues to be set through talks between union leaders and the governor.³⁴ Currently, monthly dues average around \$45 a month. Government unions collect some \$2 million a month, or about \$24 million a year from workers. Part of this money is used to pay administrative costs and handle workplace issues, while some is devoted to lobbying, candidate campaigns and other political activities.

Union dues reform in Colorado

In May 2001, Colorado Governor Bill Owens signed an executive order ending the mandatory withholding of union dues from state employee paychecks, making dues payments voluntary instead. The unpopularity of withholding is indicated by the fact that union dues revenue dropped 50 percent, and the Colorado Federation of Public Employees was forced to lay off 17 of its political field operatives.³⁵ Labor leaders are now more accountable because they must show that union benefits are worth what workers are asked to pay.

Washington's "union security" clause

In 2005, the Washington legislature approved a new contract negotiated by unions and the governor, in which union representatives insisted on a "union security" clause requiring

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mandatory paycheck deductions. The contract included a pay raise, but also increased union dues to 1.3 percent of a worker's salary. As a result, most workers saw little or no increase in take-home pay. The state automatically deducts the higher dues from employee paychecks.³⁶

Employee frustration came to a head when workers in a dozen bargaining units pushed for decertifying their unions.³⁷ Their efforts failed ultimately, but the dispute revealed deep discontent with union managers and argues for a more voluntary relationship between workers and organized labor.

Gain sharing and pension reform

State and local government employees in Washington are required to participate in pension plans administered by the Washington State Department of Retirement Systems. The system pays benefits to more than 400,000 current and retired employees, and has about \$40 billion in assets.³⁸ The state's plans are defined-benefit plans, meaning they pay a pre-calculated set of benefits based on number of years worked and salary.

In March 1998, at the height of a booming stock market, lawmakers approved a "gain-sharing" plan that gave state workers a boost when the average rate of investment returns exceeded 10 percent over four years.³⁹ Assuming an ever-rising stock market, lawmakers promoting the plan insisted it would not cost taxpayers a dime, that the promised higher benefits would be paid for with profits earned on stocks.⁴⁰

When the economy cooled in 2001, taxpayers were still on the hook for these benefits even though stock returns were no longer climbing as fast. The gain-sharing plan alone put the pension fund into debt by another \$1 billion.

Lawmakers often criticize private companies for raiding employee pensions, yet this is exactly what the legislature has

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done by skipping payments into the state pension fund. Today, the state pension plan is underfunded by nearly \$5 billion.

Ending gain sharing

In the near term, lawmakers should eliminate the gain-sharing plan, because it makes promises the legislature cannot keep. For long-term solvency, Washington should follow the example of the private sector and phase in a retirement system based on reliable and portable personal accounts. Personal retirement accounts give workers control over their pension dollars and provide life-time benefits that can never be taken away.

Defined contribution plans

Because they operate under the discipline of the marketplace, private companies in recent years have developed a smarter approach. They have moved away from old-style defined-benefit plans to defined-contribution plans and taking advantage of 401(k) accounts. Defined-contribution plans give employees their retirement money upfront, in the form of tax-free contributions to their personal retirement account. Employees can contribute to the account as well, also tax free.

The great advantage of defined-contribution plans is they give workers direct ownership of their own retirement money. As investment strategies and risk levels change with age, defined-contribution plans give workers the freedom and flexibility that one-size-fits-all government pensions do not. Employees in such plans are not forced to rely on promises that might be broken in the future.

Recommendations

1) Adopt a flexible freeze on state hiring. Under a flexible freeze the state workforce could be reduced without state

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employees losing jobs. In most circumstances, unfilled positions are eliminated and retirees are not replaced.

2) Eliminate positions vacant more than six months. If a position remains open for more than six months, it is reasonable to assume the agency can do its work without an employee in that position. By eliminating these vacant positions the state can cut budgeted payroll in areas that are obviously not critical to public safety or the basic functioning of state government. This policy would provide more accurate budget information for the legislature and would lower costs to taxpayers.

3) Bring employee contribution limits for medical coverage more in line with the private sector. In order to make their employees better stewards of health care dollars, the state should increase the share of health insurance premiums contributed by employees. Policymakers should also promote the option of Health Savings Accounts so workers can have direct control over their health care benefits.

4) Eliminate automatic payroll deduction of monthly union dues from public employee paychecks. If government union leaders collected voluntary dues from members, instead of resorting to automatic deductions, they would be more responsive to their members' needs and views. It would also encourage them to be more transparent and accountable for how members' money is spent.

5) Phase in a defined-contribution retirement plan that gives workers benefits that can never be taken away. Personal retirement accounts with tax-free defined-contributions would end the financial crisis in the state retirement system. Lawmakers can best keep their promises to retirees by creating a pension system that is personal, flexible and financially sustainable.

6) Reform the state pension system by eliminating the “gain-sharing” program. During a booming stock market

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lawmakers made promises to state retirees that they can no longer keep. Ending the gain-sharing program would help return the state pension to a sound footing.

4. Competitive Bidding

Recommendations

1. Encourage state agencies to save money and improve service to the public by using competitive bidding authority.
2. Protect competitive bidding authority from being restricted or bargained away during mandatory collective bargaining negotiations.

Background

The state's tight financial situation lends fresh urgency to the use of competitive bidding as a long-term way to bring rising spending under control. Competitive bidding allows state agencies to open work normally performed only by in-house employees to bids from a variety of sources. Public employees are allowed to bid for contracts along with contractors from the private sector. Introducing competition allows government managers to provide improved services at lower cost to taxpayers.

Until recently state law, based on a court ruling in the 1978 Spokane Community College case that was later codified by the legislature, held that any work historically performed by state workers had to always be performed by state workers.⁴¹ Private companies were not allowed to submit bids to see if the same amount and quality of work could be done at lower cost.

In 2002, the legislature, as part of a larger collective bargaining and civil service reform measure, enacted a law which gave state agencies, starting in July 2005, the authority to open work contracts to competitive bidding.⁴²

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The contracting provisions from the 2002 reform survived the state's collective bargaining negotiations in 2005. Unfortunately the state has done little to pursue savings from competitive bidding with the private sector. This is due in part to the current political climate in Olympia and the fact that the 2002 reforms created an overly-complicated process for pursuing bidding. Currently, opposition from government unions and a burdensome process prevent the state from realizing the full benefits of competitive bidding.

Policy Analysis

There are four key benefits of competitive bidding that show how competition successfully improves quality and eases the budget strain of a core government program. These are presented below.

Four Benefits of Competitive Bidding

- 1) *Lower cost.* Private companies are disciplined to seek efficiencies through the need to operate at a profit while providing superior service at a competitive price. By employing the techniques of competition, public managers find efficiencies within their operations and lower the cost of performing a service.
- 2) *Higher service levels.* Monopolies, whether public or private, frequently lack the stimulus to innovate and improve service delivery. By opening services to competition governments can upgrade services and achieve cost savings.
- 3) *Better management.* Government can streamline its operations by using the same accounting procedures and productivity measures that the private sector uses, which are more accurate and comprehensive than traditional government methods.

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4) *Changed government culture.* When a government seeks dynamic competition over a monopoly status quo its culture changes. Instead of performing many functions with limited expertise, governments that are open to competition liberate themselves to perform a smaller set of core functions better than ever before, while leaving much of the routine work to contractors.

Across the country, state, county and city governments are opening services to competitive bidding that were once performed exclusively by government agencies. These competitions are often won by government workers themselves, showing that efficiencies can be found even when public employees continue to do the work. For public leaders, tapping the benefits of competition is a better alternative than pushing for ever-rising levels of taxation.⁴³

Recommendations

1) Encourage state agencies to save money and improve service to the public by using competitive bidding authority. Many opportunities for competitive contracting exist throughout state government. Experience from other states shows typical cost savings of 10 to 25 percent when agency managers introduce open competition for government work.

2) Protect competitive bidding authority from being restricted or bargained away during mandatory collective bargaining negotiations. Washington policymakers should simplify the bidding process to make it easier for agencies to use competition to improve services. Lawmakers should shield the contracting out from union and political influence by removing it from the collective bargaining process. Improving service to the public is too important to be a bargaining chip in government labor negotiations.

5. The State Liquor Monopoly

Recommendation

1. Privatize the state's liquor sales and distribution monopoly while retaining current alcohol taxes, health and safety regulations, and public education programs.

Background

Founded in 1934 in response to the repeal of Prohibition, the Liquor Control Board is a three-person board whose members are appointed by the governor to six-year terms. The Board oversees the sale and distribution of alcoholic beverages in the state. Its total budget for the 2005-07 biennium is a little over \$193 million, with more than 1,350 full and part-time employees. In 2005, the Board collected more than \$263 million in taxes and license fees.⁴⁴

Seventy-five percent of the Board's employees work in the Product and Retail Sales Division.⁴⁵ The Division is a monopoly business owned and run exclusively by the state, selling more than 1,900 liquor products through a network of 161 state-owned retail stores. In addition to its own outlets, the Board contracts with 154 independently-owned liquor stores to sell its products.⁴⁶ The Board also oversees a Licensing and Regulation Division, and an Enforcement and Education Division which employs more than 85 Liquor Enforcement Agents.

Policy Analysis

Washington state strongly supported Prohibition, and when the 18th Amendment was repealed state leaders responded to the public's desire for as much government control over liquor as possible by creating the current monopoly system. Since then, however, the public's attitude toward the

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consumption of hard spirits has changed and the Liquor Control Board's original rationale no longer exists.

Since its original mission has long since disappeared, the state should get out of the liquor sales business and allow the Board to focus efforts on inspection, enforcement and public education. The state could then do a better job of policing alcohol sales, because it would not at the same time be trying to profit from the sale of alcohol.

A further advantage of privatization is that the state would no longer shoulder the financial risk and responsibility of purchasing, storing, distributing and selling liquor to Washington residents. For example, the Board's new 160,000 square foot warehouse was completed months behind schedule at more than \$5 million over budget.⁴⁷

Taxes on liquor sales would continue to be collected, but taxpayers would no longer be required to support a sprawling distribution and sales network.⁴⁸ In return, tax revenue once used to pay for large storage warehouses, retail outlets, long-term capital expenses and future state employee retirement benefits could be redirected toward increased enforcement and balancing the state budget.

Privatizing the sales and distribution of liquor would generate new tax revenue in two ways. First, existing stores that sell liquor would pay Business and Operating tax on those sales. Second, where private operators assume ownership of a formerly state-owned liquor store, the new owners would begin paying property and business taxes on a commercial activity that is currently tax exempt.

Recommendation

1) Privatize the state's liquor sales and distribution monopoly while retaining current alcohol taxes, health and safety regulations, and public education programs.

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Privatizing the sale and distribution of liquor would bring a number of advantages to the people of Washington. Innovation and competition in the marketplace would lead to better service and wider choice for consumers. The Liquor Control Board would then be free to concentrate on alcohol tax collection, license enforcement and public health and safety.

6. Abuse of the Emergency Clause

Recommendation

1. Restrict use of the emergency clause to genuine emergencies. Lawmakers should refrain from using the emergency clause to deny people their constitutional right of referendum.

Background

In 1912, Washington amended its constitution to allow initiatives and referenda. Through these processes citizens can draft and approve legislation or recall legislation passed by the legislature. Article 2, Section 1 of the state constitution says:

“The second power [after initiatives] reserved by the people is the referendum, and it may be ordered on any act, bill, law, or any part thereof passed by the legislature.”⁴⁹

The legislature is authorized, however, to attach an emergency clause to any bill or section of a bill and thereby shield it from repeal by the people through a referendum. The emergency clause appears in the same part of the constitution, Article 2, Section 1, and states that the bill or section is,

“necessary for immediate preservation of the public peace, health or safety, support of the state government and its existing public institutions.”

The emergency clause not only immunizes a bill from repeal by referendum, it also gives the bill’s provisions immediate legal effect, bypassing the normal waiting period of 90 days after adjournment.

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In order to repeal a bill that includes an emergency clause, citizens must file an initiative, which is a much more difficult process. The number of valid signatures needed to put a referendum on the ballot is four percent of the votes cast for governor in the most recent election, or about 112,000. The threshold for initiatives is eight percent, or roughly 225,000 signatures.⁵⁰ By adding one sentence to a bill, lawmakers make it twice as hard for the people to repeal it.

Policy Analysis

During the 2005 session, lawmakers inserted the emergency clause in 98 bills, or about 19 percent of all bills passed.⁵¹ The governor vetoed the emergency clauses out of two bills. In a few bills the emergency clause was used for its true purpose, such as in the state budget, which must take effect sooner than 90 days after adjournment.

In the vast majority of cases, though, the emergency clause was used in low-priority legislation, like regulating horseracing or off-road vehicles.⁵² One lawmaker even attached an emergency clause to his bill creating a state potato commission, although that bill did not ultimately pass.⁵³

In 2006, during a shorter session, the emergency clause was inserted in 34 bills.⁵⁴ Apparently lawmakers and the governor saw the “immediate preservation of the public peace, health or safety” was at stake when they added the emergency clause to the bill allowing the lieutenant governor to raise money to pay for the 2006 meeting of the National Lieutenant Governors Association.⁵⁵

The most serious misuse of the emergency clause occurs when lawmakers use it to pass controversial and unpopular legislation. In 2006, the emergency clause was inserted into SB 6896, which canceled Initiative 601’s budget limits to allow for a large increase in spending.

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Lawmakers did the same thing in 2005 with SB 6078, which enacted a large tax increase and boosted state spending sharply. These two bills together comprise the largest spending measures in state history – a total two-year increase of 17 percent. By attaching emergency clauses to these bills, lawmakers denied citizens the right to challenge the dismantling of voter-approved Initiative 601.

Some lawmakers acknowledge the emergency clause is abused and is tapped as a regular strategy to provide political cover against popular referendums.⁵⁶ Legislators would show greater respect for the state constitution, and for the people of Washington, by limiting the use of this important legal power to genuine public emergencies.

Recommendation

1) Restrict use of the emergency clause to genuine public emergencies. Lawmakers should refrain from using the emergency clause to deny people their constitutional right of referendum. If an emergency clause is attached to a bill, it should contain a specific description of the public emergency being addressed, and why special legislation is needed to address the problem.

Additional Resources

Washington Policy Center Research

“New Audit Law to See Whether Government Agencies are Keeping Their Promises,” by John Barnes, May 2006.

“The State Budget Tug-of-War,” by Paul Guppy, January 2006.

“Guide to Initiative 900: Reviewing Government through Performance Audits,” by John Barnes, October 2005.

“Overextended Government, Not Lack of Revenue, is the Reason for State’s Structural Deficits,” by Paul Guppy, March 2005.

“When the Union Really Isn’t Working for the Worker: New Collective Bargaining Agreement Includes Increase in Union Dues,” by Daniel Mead Smith, January 2005.

“A Policy Guide for Budget Reform: Strategies for Improving State Government Services and Reducing the Deficit,” by Eric Montague, January 2003.

“Ideas for Balancing the State Budget Without Raising Taxes,” by Eric Montague, January 2002.

Other Resources

Washington State Auditor’s Office – The passage of Initiative 900 in 2005 gave the State Auditor broad authority to conduct performance audits of state and local governments. Visit www.sao.wa.gov to stay informed about the process.

Budget & Tax News, a publication of the Heartland Institute. This monthly publication covers state budget and tax issues from all over the nation. Use this resource to stay abreast of events and trends in state budgets as well as innovative tools

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policymakers are using to balance budgets. Visit www.heartland.org.

“The California Performance Review,” managed by Reason Public Policy Institute and published by the California State Government, offers comprehensive budget reform recommendations, many of which would be effective here in Washington state. For more information visit www.rppi.org or report.cpr.ca.gov.

Privatization.org - This website offers information about cost-saving ways to deliver high quality government services through privatization.

Mackinac Center for Public Policy - A pioneer in the development of responsible state budget policy. For more on the success they have seen in Michigan and recommendations that would work for Washington state, visit www.mackinac.org.

Mercatus Center at George Mason University - A research institution focusing on regulatory reform. www.mercatus.org.

“Using Activity Based Management for Continuous Improvement: 2000 Edition, A Step-by-Step Approach,” by Tom Pryor, published by ICMS, Inc.

¹ “Washington State Budget Process,” Office of Financial Management, April 2006, p. 4, at www.ofm.wa.gov.

² “Six Year Outlook,” Office of Financial Management, April 2006, available at www.ofm.wa.gov, accessed May 3, 2006.

³ “\$1 billion tax windfall would wipe out projected deficit,” by Andrew Garber, *The Seattle Times*, June 16, 2006, p. B-2.

⁴ Ibid.

⁵ “Revenue Collection Report,” Economic and Revenue Forecast Council, Olympia, October 10, 2004, <http://www.ercf.wa.gov/pubs/oct04.pdf>.

⁶ Population numbers from the Office of Financial Management. In 1960, the population was 2,853,214, and in 2005 was estimated at 6,256,400. Revenue data is from the “Revenue Collection Report” cited above.

⁷ “Gov. Gary Locke Announces ‘Priorities of Government’ Strategy for Lean, Results-Oriented State Budget,” news release, Office of the Governor, Olympia, November 14, 2002, <http://www.governor.wa.gov/press/press-view.asp?pressRelease=1222&newsType=1>.

⁸ Ibid.

⁹ “Priorities of Government,” Governor Gary Locke, news conference, November 14, 2002, at www.digitalarchives.wa.gov/governorlocke.

¹⁰ “Tax Alternatives for Washington State: A Report to the Legislature,” Washington State Tax Structure Study Committee, Olympia, Washington, November 2002, Appendix D.

¹¹ “Biotech Cashes in on Real Estate: ZymoGenetics Sells, Leases Back HQ,” by Luke Timmerman, *The Seattle Times*, October 8, 2002, p. C-1.

¹² “Washington State Government 2005-2006 Organizational Chart,” Office of Financial Management, available at www.ofm.wa.gov/databook/pdf/orgchart.pdf, accessed May 10, 2006.

¹³ For examples of specific boards and commissions the legislature should review, see “Ideas for Balancing the State Budget Without Raising Taxes,” Washington Policy Center Policy Brief, January 2002.

¹⁴ Under Initiative 601 state expenditures were limited to a growth rate at or below the average of the sum of inflation and population change during the previous three years.

¹⁵ “Spending Limits,” Association of Washington Business, Washington policy paper, Business 2004 Legislative Agenda, January 2002, www.awb.org.

¹⁶ “The TABOR Legislative Handbook,” The Independence Institute, Golden, Colorado, January 2000, <http://i2i.org/articles/1-2000.PDF>.

¹⁷ Fred Holden, “A Decade of TABOR, Ten Years After: Analysis of the Taxpayer’s Bill of Rights,” Independence Institute, Golden, CO, June 2003, p. 7, at www.i2i.org.

¹⁸ Ibid., p. 7.

¹⁹ National Conference of State Legislatures, overview of state tax and expenditure limits, 2005, at www.ncsl.org/programs/fiscal/tels2005.htm, accessed April 13, 2006.

²⁰ Ibid.

²¹ “TABOR did not fuel Colorado’s economy, reports say,” by Marie Price, *The Journal Record*, Oklahoma City, March 24, 2006.

²² “Tax and Spending Limits: Theory, Analysis, and Policy,” by Barry W. Poulson, Independence Institute, Golden, CO, February 2004, p. 1, at www.i2i.org, accessed May 4, 2006.

²³ Ibid.

²⁴ Senate Bill 6078, 2005 session, see www.WashingtonVotes.org for more information.

²⁵ This figure includes staff and faculty at state-funded universities and colleges. It does not include K-12 teachers and staff, who are considered

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employees of local school districts. See “Full-Time Equivalent State Employees -

All Budgeted and Higher Education Funds,” Office of Financial Management, at www.ofm.wa.gov, accessed April 28, 2006.

²⁶ Office of Financial Management, Olympia, Washington, cited in “State government’s hiring outpaces population growth,” by Chris McGann, *Seattle Post-Intelligencer*, August 1, 2005, and Jason Mercier, “State government employment up 1,676: Ninth straight year employment has increased,” Evergreen Freedom Foundation, available at www.effwa.org, accessed April 28, 2006.

²⁷ “State Personal Income, 2005,” Bureau of Economic Analysis, United States Department of Commerce, at www.bea.doc.gov. Per capita annual personal income for Washington residents was \$35,409 in 2005.

²⁸ Office of Financial Management, Olympia, Washington, cited in “State government’s hiring outpaces population growth,” by Chris McGann, *Seattle Post-Intelligencer*, August 1, 2005, and Jason Mercier, “State government employment up 1,676: Ninth straight year employment has increased,” Evergreen Freedom Foundation, available at www.effwa.org, accessed April 28, 2006.

²⁹ Washington Public Employees Benefits Board, “PEBB Perspective,” October 2005, p. 4.

³⁰ “A World of Hurt: Medical Costs Squeeze State Budget,” Washington Alliance for a Competitive Economy, February 28, 2005, p. 3.

³¹ The Kaiser Family Foundation and Health Research Education Trust, “Employer Health Benefits, 2005 Annual Survey,” p. 63, at www.kff.org/insurance/chcm091405nr.cfm, accessed May 9, 2006.

³² Ibid. and “A World of Hurt: Medical Costs Squeeze State Budget,” Washington Alliance for a Competitive Economy, February 28, 2005, p. 3.

³³ Washington Public Employees Benefits Board, “PEBB Perspective,” October 2005, p. 4.

³⁴ Revised Code of Washington 41.80.100.

³⁵ “New Colorado Paycheck Protection Rule Having Profound Effect,” by David Almasi, Political Money Monitor, National Center for Public Policy Research, February 25, 2002, at www.nationalcenter.org, accessed April 28, 2006.

³⁶ See “When the Union Isn’t Really Working for the Worker: New Collective Bargaining Agreement Includes Increase in Union Dues,” by Daniel Mead Smith, Washington Policy Center, January 2005, at www.washingtonpolicy.org/Misc/OPEDSmithBargaining2004.html.

³⁷ “10 units file to leave unions,” by Adam Wilson, *The Olympian*, March 19, 2006.

³⁸ “Pension perk may cost state billions,” by Andrew Garber, *The Seattle Times*, December 13, 2005.

³⁹ Ibid.

⁴⁰ “Olympia’s ‘broccoli’: Choking on the pension debt,” by David Ammons, *The Olympian*, April 29, 2006.

⁴¹ *Washington Federation of State Employees v. Spokane Community College*, 90 Wash. 2d 698, 585 P. 2d 474 (1978) and codified by the legislature in RCW 41.06.380.

⁴² Substitute House Bill 1268, The “Personnel System Reform Act of 2002.”

⁴³ For examples from other states of the effectiveness of contracting out see, “Competing for Highway Maintenance: Lessons for Washington State,” by Dennis Lisk, Washington Policy Center Policy Brief, September 1998, at www.washingtonpolicy.org/ConOutPrivatization/PBLiskTransHiwayMaintenance.html, and “Research Shows Private Prisons Enable States to Improve Quality and Control Costs,” Washington Policy Center Legislative Memo, February 28, 2005, at www.washingtonpolicy.org/ConOutPrivatization/PR_PrivatePrisons2005.html.

⁴⁴ “2005 State of Washington Budget Notes,” Legislative Evaluation and Accountability Program Committee, p. 122, at www.leap.leg.wa.gov. Employee and revenue numbers from: Washington State Liquor Control Board 2005 Annual Report, pp. 2 and 18, at www.liq.wa.gov, accessed April 28, 2006.

⁴⁵ “A Control State System Regulating Alcohol Responsibly,” Agency Overview, Washington State Liquor Control Board, 2004, at www.liq.wa.gov/publications/Agency%20Overview%201%202002.pdf.

⁴⁶ Washington State Liquor Control Board 2005 Annual Report, p. 7, at www.liq.wa.gov, accessed April 28, 2006.

⁴⁷ “Liquor’s Quicker...at Wasting our Tax Dollars, That Is,” by Michael Zuzel, *The Columbian*, May 18, 2001.

⁴⁸ One argument in favor of the state-run system is that it appears to generate revenue for the general fund. The problem with this view is that the true cost of operations is not considered in the state’s analysis. Things like deferred maintenance on state-owned buildings, inventory, long-term capital and employee retirement costs are not included on the state’s balance sheet. As a result, the current expense budget does not account for the full cost of running the public liquor sales and distribution system. Any privatization plan should include a thorough and complete business analysis conducted by the Office of Financial Management to determine the true cost of operating the state’s liquor business. For more information see, “Liquor Control Board: A Case for the State Giving Up the Booze Business,” by Hans A. Zeiger, Evergreen Freedom Foundation, *In Brief*, Volume 12, Number 2, October 4, 2002.

⁴⁹ Constitution of the State of Washington, at www1.leg.wa.gov/LawsAndAgencyRules/constitution.htm

⁵⁰ Washington Secretary of State Office, “Filing Initiatives and Referenda in Washington State,” p. 11, at www.secstate.wa.gov/elections, accessed May 5, 2006.

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⁵¹ See www.WashingtonVotes.org and www.leg.wa.gov for more information on bills.

⁵² SB 5951 and HB 1003.

⁵³ HB 1608 2005 session, introduced by Rep. Bill Grant (D-Walla Walla).

⁵⁴ See www.WashingtonVotes.org and www.leg.wa.gov.

⁵⁵ HB 2419, 2006 session.

⁵⁶ In November 2005, the Evergreen Freedom Foundation released a survey of legislators on use of the emergency clause. Several lawmakers insisted the clause was used for purely political purposes, and one claimed to have heard a colleague say the clause was being attached to specific legislation to shield the bill from repeal by referendum. The full report, "Legislators favor constitutional amendment to reform use of emergency clause," is available at www.effwa.org/main/article.php?article_id=1212, accessed May 11, 2006.



Chapter 2: Tax Policy

1. Guiding Principles of Taxation¹

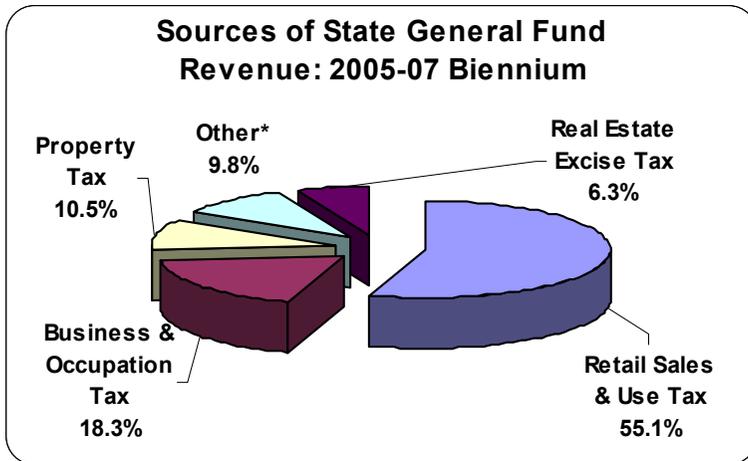
Recommendations

1. Adopt guiding principles based on equity and economic neutrality to shape changes in Washington's tax system, so the tax system is focused on raising needed revenue for government, not directing the choices and behavior of citizens.
2. Policymakers should seek to lower the overall tax burden to promote prosperity and opportunity in the economy for the benefit of all citizens.

Background

The people of Washington pay over 50 different kinds of taxes at the state and local level.² The largest single revenue source for state and local government is the general sales and use tax, representing about 55 percent of all taxes. The next largest revenue source is the Business and Operating (B&O) tax. The chart shows the sources of state General Fund revenue.

Tax Policy



*“Other” includes revenue from liquor sales, tobacco taxes, lottery proceeds, insurance premiums.

In historical terms Washington’s level of taxation is perhaps the highest ever, and state residents in Washington are among the most highly taxed in the nation. Today, Washingtonians pay more money to meet their tax obligation than they do for food, clothing and transportation combined.

Our state also has one of the latest “Tax Freedom Days” in the country, the date each year on which citizens have earned enough money to pay their tax obligation to all levels of government and can begin working for themselves. In 2006, Washington’s Tax Freedom Day was May 4th, the fourth highest ranking in the nation.³

The proper function of taxation is to raise money for government, not to direct the behavior of its citizens. This is true regardless of whether government is big or small, and this is true for lawmakers at all levels of government. Many lawmakers think of the tax code as a way to penalize “bad” behaviors and reward “good” ones. They have sought incessantly to guide, micromanage and steer the economy by manipulating the tax laws.

Tax Policy

Taxation will always impose some damage on an economy's performance, but that harm can be minimized if policymakers resist the temptation to use the tax code for social engineering, class warfare and other extraneous purposes. A simple and fair tax system is an ideal way for advancing Washington's economic interests and promoting prosperity for its residents.

Policy Analysis

The fundamental principles presented here provide guidance for a fair and effective tax system; one that raises needed revenue for government, while minimizing the burden on citizens.

- **Simplicity** – The tax code should be easy for the average citizen to understand, and it should minimize the cost of complying with the tax laws. Tax complexity adds cost to the taxpayer, but does not increase public revenue. For governments, the tax system should be easy to administer, and should help promote efficient, low-cost administration.
- **Accountability** – Tax systems should be accountable to citizens. Taxes and tax policy should be visible and not hidden from taxpayers. Changes in tax policy should be highly publicized and open to public debate.
- **Economic Neutrality** – The purpose of the tax system is to raise needed revenue for the government, not control the lives of citizens. The tax system should exert minimal impact on the spending and business decisions of individuals and businesses.
- **Equity and Fairness** – Fairness means all taxpayers should be treated the same. The government should not use the tax system to pick winners and losers in society, or unfairly shift the tax burden onto one class of citizens.

Tax Policy

The tax system should not be used to punish success or to “soak the rich.”

- **Complementary** – The tax code should help maintain a healthy relationship between the state and local governments. The state should always be mindful of how its tax decisions affect local governments so they are not working against each other – with the taxpayer caught in the middle.
- **Competitiveness** – A low tax burden can be a tool for Washington’s economic development by retaining and attracting productive business activity. A high quality revenue system will be responsive to competition from other states.
- **Balance** – An effective tax system should be broad-based, without relying too heavily on a few sources of revenue. For the same reason, an ideal tax system should avoid special exemptions, preferring a low overall tax rate with few loopholes.
- **Reliability** – A high quality tax system should be stable, providing certainty in taxation and in revenue flows. It should provide certainty of financial planning for individuals and businesses.

While these guiding principles are important, there are inherent problems with any system of taxation. Basically, taxation reduces spending on private sector goods and services traded in the free market. The benefits of free exchange – to both the purchaser and seller – are reduced when trade is restrained by taxation. The way that taxes restrain private trade varies.

Income and property taxes reduce incomes to taxpayers, lowering their demand for goods and services. Sales and excise taxes increase costs to suppliers, reducing their willingness to

provide goods at any given prices. In any case, taxes reduce private trade and curtail job creation.

Since taxes lower the economic welfare of citizens, policymakers should try to minimize the economic and social problems that taxation imposes. Citizens then directly gain the benefits of a low tax burden. These benefits are summarized below:

Benefits of a low tax burden

- Faster economic growth – A tax system that allows citizens to keep more of what they earn spurs increased work, saving and investment. A low tax burden will mean a competitive advantage for Washington over states with high-rate, overly progressive tax systems.
- Greater wealth creation – Low taxes significantly boost the value of all income-producing assets and help citizens maximize their fullest economic potential, thereby broadening the tax base.
- End micromanagement and political favoritism – A complex, high-rate tax system favors interests that are able to exert influence in Olympia, and who can negotiate narrow exemptions and tax benefits. “A fair field and no favors” is a good motto for a strong tax system.
- Increased civic involvement – A complex, high-rate tax system makes it nearly impossible for the average citizen to understand how and why the state is collecting money. Citizens become cynical and alienated from their government. At some point, most citizens come to feel the state government no longer represents their interests. A simplified, broad-based, low-rate system encourages citizens to become re-engaged with government and to seek greater civic involvement.

The people of Washington work hard for what they earn. Money paid in taxes is by definition not available to meet other needs. As a matter of respect to citizens, policymakers should work to keep the overall level of taxation to the absolute minimum needed to pay for the core functions of government.

Recommendations

1) Adopt guiding principles based on equity and economic neutrality to shape changes in Washington's tax system, so the tax system is focused on raising needed revenue for government, not directing the choices and behavior of citizens. Basic to the concept of a fair tax system is that the state should take no more from citizens than it needs to pay for the essential functions of government. This consideration goes beyond the need to balance the budget; it is a matter of fundamental respect and trust between citizens and their government.

2) Policymakers should seek to lower the overall tax burden to promote prosperity and opportunity in the economy for the benefit of all citizens. Washingtonians require and expect basic government services, and taxes must be collected to pay for these services, but government revenue should be limited to real public needs, so the tax system itself does not become one of the major problems of life. A fair and efficient tax system is a matter of having respect for the citizens of our state.

2. State Income Tax

Recommendation

1. Avoid enacting a state income tax.

Background

Washington is one of only seven states that does not tax citizens' incomes. Doing so would fundamentally alter the state's tax structure, changing it from one that mainly taxes consumption to one that also taxes productivity.

Each state levies a different combination of taxes on the people who live, do business or travel within its borders. These different types and levels of taxation have a profound impact on the actions of residents and businesses and can significantly impede economic growth. More than any other type of tax, an income tax can stifle a state's economic growth, create instability in public revenues and limit people's take-home income.

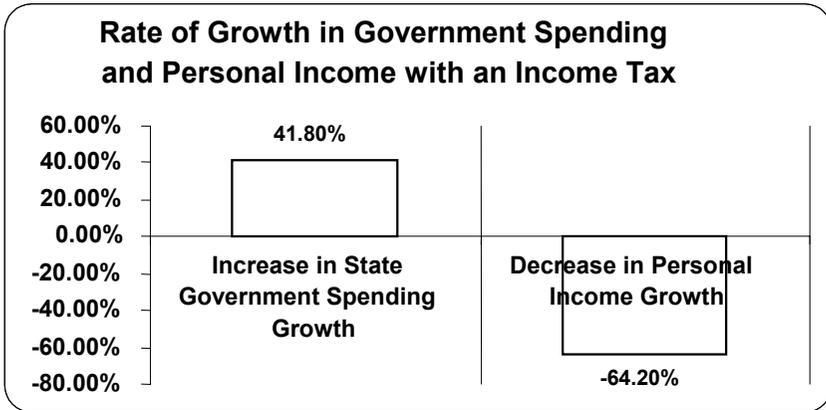
Policy Analysis

Examination of long-term economic trends in states that have adopted income taxes indicate how a state tax on incomes may affect Washington. Since 1967, nine states have imposed an income tax.⁴ In those states, government spending growth increased an average of 41.8 percent and personal income growth decreased an average of 64.2 percent after enacting the new tax.⁵ If an income tax causes the same trends to occur in Washington state, government spending would increase by an inflation-adjusted \$48 billion over ten years.

Over the same period growth in personal incomes would be reduced by some \$210 billion, and the average salary of

Tax Policy

Washingtonians would be \$5,740 lower than what they would expect to earn without an income tax.⁶ The following chart illustrates that the rate of government spending growth increases and personal income growth slows in states that impose an income tax, based on economic changes since adoption of an income tax through 1998.⁷



Government spending grows faster and personal incomes rise more slowly in states with an income tax.

Why does personal income growth fall off and government spending increase faster in states that tax personal incomes? There are a number of reasons. Personal income growth is largely a function of market incentives. When government imposes a tax on earnings, individuals lose incentive to work harder and increase their wages. Similarly, when a share of interest earnings from savings is lost each year to taxation, individuals have less incentive to save.

A comparison among states also shows that states without an income tax consume a significantly smaller portion of their citizens' earnings and tend to be better stewards of the taxes they do collect. In states that do not have an income tax, taxes account for an average of only \$89 per \$1,000 of household income.⁸ In contrast, the eight states with the highest

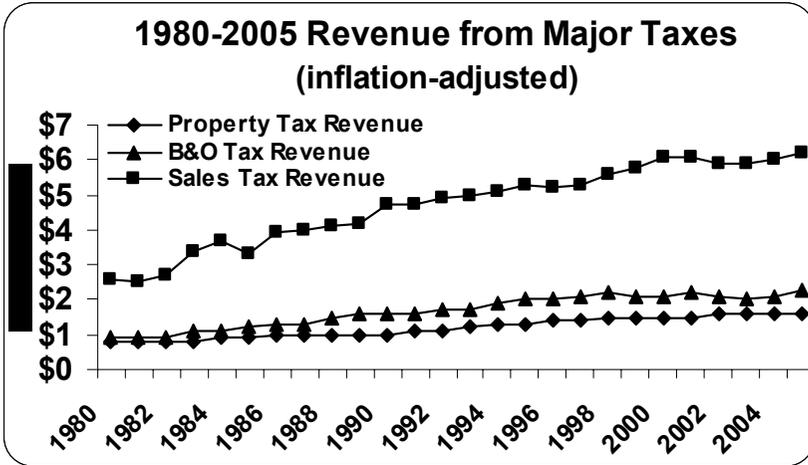
Tax Policy

income tax rates collected an average of \$131 per \$1,000 of household income.⁹

Government spending tends to increase faster under a state income tax for two primary reasons. First, it adds one more way policymakers can incrementally increase tax revenues to fuel a faster rate of government growth. But over time, even small increases combine to stifle economic growth, transferring more money out of the productive economy and into the government sector.

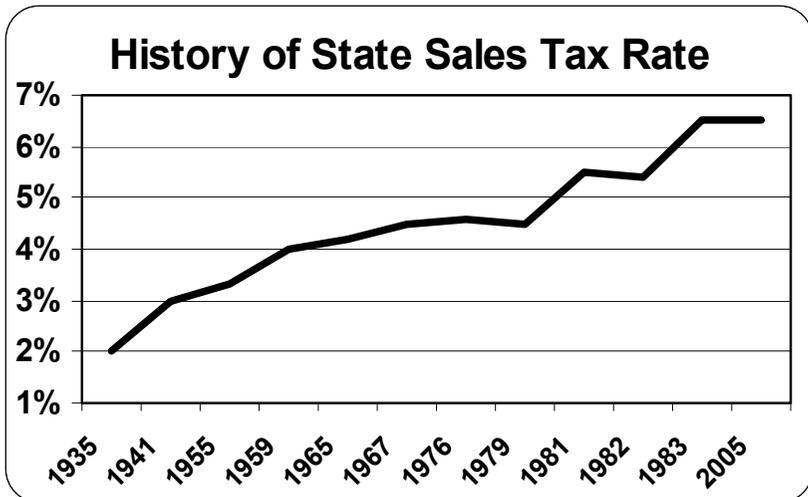
Second, an income tax is not as transparent as other taxes. The tax is automatically deducted from workers' paychecks each month. The only time citizens may be aware of how much they pay in income tax is when they complete a tax return once a year, and even then they may be more interested in any refund they might receive than in the amount of tax they paid in the first place. The obscure nature of an income tax increases the temptation for elected officials to increase the tax rate with less chance of a public reaction.

Often lawmakers and special interest groups that rely on government spending say a state income tax is necessary because revenues from existing taxes are insufficient. But as following chart shows, revenues from Washington's major taxes – property, Business and Operating and sales – are growing steadily and outpacing inflation. In addition to increases in tax rates, revenues have grown sharply due to the natural expansion of the economy.



In most years, state revenue from major taxes grows faster than inflation. (\$ in billions).

The sales tax rate has grown since its inception in 1935 from two percent to 6.5 percent today. The following chart shows the growth of the sales tax rate. This upward trend contributed greatly to the growth in state revenues.



The state sales tax rate has more than tripled since 1935.

Tax Policy

State income taxes tend to reduce personal income growth, increase the rate of government spending and lower the competitiveness of the business climate. Avoiding an income tax allows people to spend more time working for themselves and their families, and less time working to pay for government.

Recommendation

1) Avoid enacting a state income tax. A state income tax would have an important negative effect on the Washington economy. Comparisons among states show that income taxes reduce state competitiveness, add cost and complexity to the tax code, and reduce the incentive for people to work, save and invest. Absence of an income tax is one of the few clear advantages Washington's business climate has in relation to those of other states.

3. Sales Tax Deductibility

Recommendation

1. Encourage Congress to promote equal tax treatment among states by making state sales tax deductibility permanent.

Background

In 1986, as part of a major overhaul of the tax code, Congress ended the deductibility of state sales taxes. Since then, as residents of one of the seven states without a state income tax, Washington residents have been unable to deduct what they pay in state sales taxes from their federal income tax. Since state income taxes are fully deductible, residents of other states received more favorable treatment under the code.

Policy Analysis

In 2004, Congress and the President resolved this inequity with passage of H.R. 4520, the American Jobs Creation Act.¹⁰ A provision of the bill again made state sales tax deductible from the amount of personal income subject to the federal income tax. The deduction saves Washington residents an estimated \$500 million per year.¹¹

In practice, Washingtonians do not have to keep track of all their sales receipts through the year to calculate how much they paid in state taxes. The IRS issued a table that estimated, based on income, what dollar amount taxpayers could claim as sales tax costs on federal income tax forms. Additional deductions were allowed for sales tax paid on major purchases, such as automobiles.

The sales tax deductibility provision enacted in 2004 was only in place for tax years 2004 and 2005.¹² As of May

2006, Congress has not extended sales tax deductibility temporarily or permanently.

Recommendations

1) Encourage Congress to promote equal tax treatment among states by making state sales tax deductibility and permanent. The sales tax deductibility provision expired in 2006. Unless Congress extends the provision or makes it permanent, residents in Washington and six other states will again be subject to unequal treatment under the federal tax code.

4. Property Tax Limitation

Recommendations

1. Re-enact the 1% limit on annual increases in the regular property tax burden imposed by state and local governments.
2. Enact property tax relief to reduce the financial burden government places on citizens, to promote economic growth, homeownership, job creation and greater personal freedom.

Background

Many people believe their property value alone determines how much property tax they must pay, and when the county assessor updates home values to reflect market trends, their taxes automatically go up. This is not the case.

County assessors do not levy property taxes. Elected state legislators and the local board and council members of Washington's 39 counties and more than 1,700 cities and other taxing districts decide how much property tax citizens must pay. Once elected officials in each taxing district decide the total dollar amount they feel they need to fund public operations for the following year, the assessor apportions that amount among the district's property owners, based on each land parcel's assessed value. It is a budget-based tax system, and that is the source of most of the confusion over who is responsible for rising property taxes.

Most people are familiar with rate-based tax systems, like the state sales tax or the federal income tax. Under a rate-based system elected officials first set a percentage rate which determines the fraction of each dollar of a given tax base that must be paid to the government. The revenue the government will receive from such a tax cannot be known in advance; it can only be estimated.

Tax Policy

A budget-based system like the property tax begins at the other end. Elected officials *first* decide how much money they feel is needed for their government budget, then divide this among the tax base to determine what rate is needed to raise that amount of revenue.

The rate is expressed as so many dollars per \$1,000 of assessed value. Under this system, the amount of revenue the government will collect is known from the beginning. It is the tax *rate* that is unknown until the assessor calculates it. The difference between the two systems can be expressed this way:

- Rate-based system: $\text{rate} \times \text{tax base} = \text{revenue}$.
- Budget-based system: $\text{revenue} \div \text{tax base} = \text{rate}$.

Once the rate is determined, the county assessor applies it to the value of each owner's property. One piece of land may fall under the jurisdiction of as many as ten separate taxing districts.¹³ The assessor adds the budget demands of the different districts together, calculates the tax rate, and then mails the final bill to each property owner. Property tax payments are due twice a year.

Voter-approved tax limitation

In recent years Washington voters have approved three popular measures to ease the growth of the property tax burden state and local governments place on their citizens.¹⁴ Each measure set progressively more stringent limitations on how much state and local elected officials could increase the basic property tax each year. The relatively easy passage of these measures indicates public support for limiting property tax increases has remained stable over time.

The latest of these measures to become law was Initiative 747, passed by voters in 2001. It provides that a taxing district may not increase the total amount it collects in regular property taxes by more than one percent from one year to the next. Initiative 747's one percent limit replaces the earlier Referendum 47 limit, which held annual property tax increases to the lower of the rate of inflation or six percent.¹⁵ The status of a legal challenge filed against Initiative 747 is discussed below.

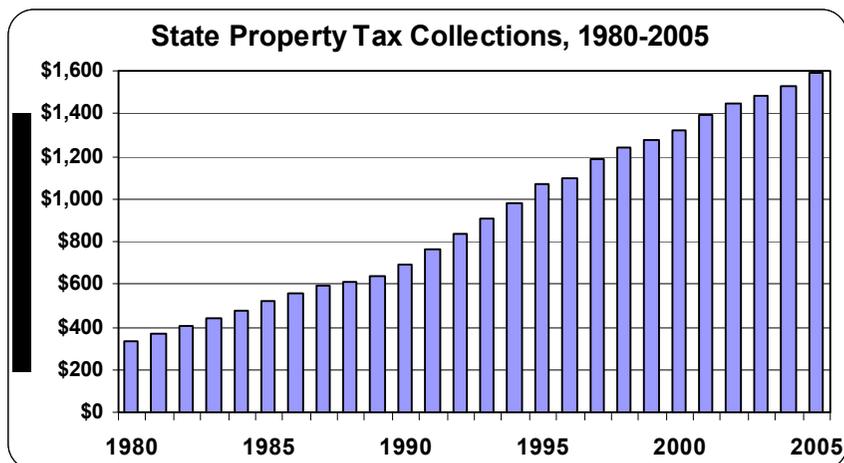
Under Initiative 747, local officials have three options when considering whether and how much to increase yearly property tax collections: 1) they can increase the amount collected by up to one percent; 2) they can increase the amount collected by more than one percent by drawing on unused taxing authority they banked in previous years; or 3) they can ask voters to approve a higher increase. There are no statutory limits on tax increase proposals sent to the voters. Such proposals need only a simple majority to pass.

Policy Analysis

Washington Policy Center research staff have tracked the results of voter-enacted property tax legislation for six years. Our annual studies examine the extent to which elected leaders in Washington's 39 counties and 22 major cities restrict increases in regular property tax collections to voter-approved limits, or whether they choose to enact higher increases.

Our research finds that voter-passed initiatives have been successful in restricting how much the regular property tax burden grows each year. Well over 90 percent of Washington counties and major cities now limit their annual increase in regular property tax collections to one percent or less. This is a considerable change from 1998, when only six counties and two cities did so. Initiative 747 has markedly eased the yearly increase in the tax burden.

The average total property tax increase for Washington counties was 4.7 percent in 1998; today it is one percent. Similarly, in 1998 the average total property tax increase for Washington's 22 major cities was 3.5 percent, today it is one percent.¹⁶ Yet while the annual rate of property tax increase has slowed, the amount of money collected by the state from this revenue source has sharply increased since 1980.



While the rate of annual tax increase has slowed, the amount the state collects from the property tax continues to grow (\$ in millions).

Because of tax limitation, property taxes are much lower today than they would have been under previous law. Limits on increases have brought over \$1.1 billion in tax savings for Washington citizens, although the overall rate of property taxation remains high.

Judge Roberts overturns Initiative 747

In June 2006, King County Superior Court Judge Mary E. Roberts struck down Initiative 747, saying the underlying law it was supposed to amend was ruled unconstitutional between the time Initiative 747 was filed in January 2001 and when it went to the voters that November. As a result, she said, voters were “incorrectly led” about what they were voting on.¹⁷

Judge Roberts' ruling is wrong on two counts. First, the voters were not misled. The ballot title clearly states what Initiative 747 would do:

Ballot Title: "Initiative Measure No. 747 concerns limiting property tax increases. This measure would require state and local governments to limit property tax increases to 1% per year, unless an increase greater than this limit is approved by the voters at an election. Should this measure be enacted into law?
Yes. No.¹⁸

Second, since no one can tell how the law might change between January, when an initiative is filed, and November, when the people vote on it, the effect of her ruling is to deprive the people of the right to make law through initiative. The legislature or a judge could sabotage any future initiative simply by changing underlying law after the initiative was filed but before election day. Simply put, it is not possible to draft an initiative that meets Judge Roberts' test for constitutionality.¹⁹

Recommendation

1) Re-enact the 1% limit on annual increases in the regular property tax burden imposed by state and local governments. Judge Roberts' flawed legal reasoning results in a ruling that is supposed to uphold the state constitution but instead undermines one of the people's basic constitutional rights. The legislature should re-enact the 1% limit on property tax increases and reconfirm the people's right to the initiative process.

2) Enact property tax relief to reduce the financial burden government places on citizens, to promote economic growth, homeownership, job creation and greater personal freedom. Initiative 747 sought to limit but not reduce the overall property tax burden. Lowering the current level of property taxation

Tax Policy

would reduce the existing financial burden on citizens, free up money for investment in economic growth and job creation, and give Washingtonians greater personal freedom.

5. Sunset Provision for Taxes

Recommendation

1. Tax increases should have an expiration date.

Background

Whenever Congress passes a tax cut or exemption it usually contains a sunset clause, meaning it will expire on a certain date. A political firestorm ensues when the expiration date nears as lawmakers grapple with extending the cut or letting it terminate. Often the tax break expires without lawmakers having to vote it up or down.

Temporary tax cuts and exemptions also create financial unpredictability for taxpayers from one year to the next. Ultimately, when tax cuts and exemptions are set to expire automatically, future tax increases are built into the law.

In contrast, tax increases are rarely set to expire or “sunset” on a certain date. They tend to be permanent, thus freeing lawmakers from having revisit them and take an official position. Often taxes are created or increased for specific projects, but they do not expire automatically when the project is paid for or completed. Lawmakers channel the revenue into the general fund or mark it for future spending. It becomes revenue in search of spending.

Citizens and businesses pay more than 50 different taxes in Washington.²⁰ Lawmakers routinely increase these taxes incrementally or create new ones, even during times when the natural expansion of the economy pours additional moneys into state coffers. For example, during the 2005 Session the legislature raised taxes by \$500 million, even though state revenues were growing by seven percent due to economic growth alone.

By the time the legislature convened in 2006, the state forecasted a \$1.6 billion surplus. It turned out that the \$500 million in new taxes was unnecessary. They became revenue in search of new spending, and lawmakers were more than happy to oblige. Had those tax increases been set to expire, citizens and lawmakers would have had an opportunity to repeal them easily.

Recommendation

1) Tax increases should have an expiration date. When new taxes and tax increases are set to expire, lawmakers will have the opportunity to look at the facts and determine if the tax is serving its intended purpose. If revenue from the tax is still justified, lawmakers can reauthorize it for a period of time. If the project or goal for which the tax was imposed has been accomplished, citizens should be permitted to keep their money.

6. Tax Advantages of Tribal Businesses

Recommendation

1. Washington policymakers should review the relationship between the state and tribal businesses, especially in new areas of commerce and on non-tribal lands.

Background

For decades, tribal businesses (including casinos, hotels and other businesses) have benefited from a system of rules and regulations that gives the owners of these businesses a significant competitive advantage over non-tribal Americans. Whether in the form of fewer restrictive regulations such as unemployment insurance, business and occupation taxes, or workers compensation taxes, many tribal businesses are able to take advantage of the reduced regulatory environment. Nowhere is this exemplified more than in the gaming industry.

There are 29 federally recognized tribes in Washington. Twenty-two tribes operate casinos, which together generated \$1.3 billion in gross revenue in 2005.²¹

In Washington, state and local governments are specifically prohibited by federal law from taxing any aspect of tribal gaming, whether it is a business and occupation tax on operations, or sales and use taxes for equipment. Also, no taxes are allowed on tribal gaming itself.

In 1988, Congress passed the Indian Gaming Regulatory Act prohibiting states from taxing tribal gaming revenues. However, tribes sometime negotiate a voluntary revenue-sharing agreement with states. This allows tribal leaders to mute public criticism about unequal tax treatment among businesses without giving up a valuable tax exemption.

Some tribal businesses also make impact mitigation payments to local governments to help cover the cost of community services. Unlike regular taxes paid by other citizens, however, these payments are voluntary, and the amount is negotiated between the tribal business owners and local governments.

Also, tribal business owners only make revenue-sharing and impact mitigation payments *after* their businesses have made a clear profit. In contrast, non-tribal business owners must pay the state business and operating tax whether they make a profit or not.

Policy Analysis

Non-tribal card rooms and mini-casinos are subject to the full array of business taxes: sales tax on food and beverages, business and occupation tax, sales tax on construction and equipment purchases, etc. Additionally, local governments can levy a tax of up to 20 percent on gross receipts from gambling. Actual rates range from 5 to 20 percent. More than half of local jurisdictions that tax non-tribal card rooms impose a tax rate of 10 or 11 percent.

The federal Indian Gaming Regulatory Act not only specifically prohibits states from imposing taxes on casino operations, but also on non-tribal businesses that operate gambling businesses on behalf of tribes or that supply casinos with goods and services.

Right now, tribal businesses are technically responsible for tobacco taxes but can avoid paying them fairly easily. Tribal members do not pay the tax on cigarettes if they assemble cigarettes on tribal lands. And when tribal businesses stretch the rules in their favor, most state and local officials are reluctant to press the matter out of fear of being called racist or insensitive to the discrimination American Indians suffered in the past.

Some tribes are moving beyond their traditional core business of operating casinos and game rooms and branching out into other industries. Proposals for future tribal businesses include selling gasoline without collecting the 31 cents-per-gallon state gas tax, operating hotels and shopping malls without collecting state taxes, and opening a tax-exempt oil refinery to produce even cheaper gas for non-tribal consumers.

Two tribes, the Squaxin and the Swinomish, recently won a case in U.S. District Court (Judge Thomas Zilly) allowing them to keep revenue from gas taxes rather than forward them to the state.²² Other Washington tribes could assert the same right and use part of the additional profits to lower the price they charge drivers at the pump.

The Puyallup Tribe, for example, owns a deep-water port in Tacoma, the former the site of the Emerald Queen Casino. The Tribe is planning to accept tax-free overseas trade, which could significantly undercut the volume of international trade that currently goes to the ports of Seattle and Tacoma.

Comparison of Washington state regulations and taxes that apply to tribal businesses and non-tribal businesses		
	Tribal Businesses	Non-Tribal Businesses
Subject to smoking ban	No	Yes
Subject to 1964 Civil Rights Act	No	Yes
Subject to voter-passed initiatives	No	Yes
Must pay gaming taxes	No	Yes
Must pay B&O tax	No	Yes
Must pay sales tax	No	Yes
Must pay tobacco tax	No	Yes
Must pay workers' comp. taxes	No	Yes
Must pay unemploy. tax	No	Yes
May offer slots	Yes	No
May offer keno	Yes	No
May offer craps	Yes	No
May offer roulette	Yes	No
May offer baccarat	Yes	No
Betting limit	\$500	\$100

Recommendation

1) Washington policymakers should review the relationship between the state and tribal businesses, especially in new areas of commerce and on non-tribal lands. Policymakers should request a study to measure the economic impact of tax-free tribal businesses on non-tribal businesses. An objective assessment is needed to determine whether the special tax and regulatory treatment granted to tribal businesses is exceeding its intended purpose.

Additional Resources

Washington Policy Center Research

“Tax Freedom Day Highlights Government Encroachment,” by Colin McGowan, May 2006.

“Relying on Sin Taxes Reveals the Contradictions in the State Budget,” by John Barnes, June 2005.

“New Research Shows Voter-Passed Property Tax Limitation is Working,” 2005.

“Property Tax Limitation in Washington State,” by Paul Guppy, August 2003.

“The Economic Case Against an Income Tax in Washington State,” by David G. Tuerck, John S. Barrett, Sorin Codreanu, May 2003.

“A Policy Guide for Budget Reform: Strategies for Improving State Government Services and Reducing the Deficit,” by Eric Montague, January 2003.

“Guiding Principles of a Fair and Effective Tax System,” by Paul Guppy, January 2002.

“An Overview of Referendum 51,” by Eric Montague, September 2002.

“State Income Taxes Increase Government Spending and Reduce Personal Income Growth,” by Eric Montague, June 2002.

Other Resources

Tax Foundation - This national think tank provides detailed analysis of local and national tax policy, calculating Tax Freedom Day each year. www.taxfoundation.org.

Streamlined Sales Tax Project - This project will allow states to charge sales tax on purchases from out of state. www.streamlinedsalestax.org.

“The Internet Tax Solution: Tax Competition, not Tax Collusion,” by Adam D. Thierer and Veronique de Rugy, Cato Institute, October 23, 2003. www.cato.org.

Washington Tax Structure Study Committee Final Report: Tax Alternatives for Washington State,” Washington State Department of Revenue, November 2002.

“The Indian Gaming Regulatory Act and the Rights of States,” Dr. John Hill, Alabama Policy Institute, April 2005.

“A Tough Bet, Non-Tribal Casinos Have the Deck Stacked Against Them,” by Alexis Nepomuceno, *Washington Business Monthly*, Association of Washington Business, March 2006.

“Indian Guide to Washington State Excise Taxes,” Department of Revenue – Washington State, 2004.

“Untaxed and Lightly Regulated,” Washington Research Council, November 14, 2002.

“Washington’s Cardroom Industry: A Fragile Recovery,” Washington Research Council, November 29, 1999.

¹ The text in this section is adapted from: “Principles of Sound Tax Policy,” by Dan Mitchell, Heritage Foundation, Washington, D.C., November 2001, “Guiding Principles of Taxation,” Tax Policy and Research, Montana Department of Revenue, October 2001, and “Some Underlying Principles of

Tax Policy” by Richard K. Vader and Lowell E. Galloway, Joint Economic Committee, United States Congress, Washington, D.C., September 1998.

² “Tax Reference Manual, Information on State and Local Taxes in Washington State,” Revenue Research Report, Department of Revenue, Olympia, January 2002, p. 1, at www.dor.wa.gov/content/statistics/2002/Tax_Reference_2002/default.aspx.

³ “Tax Freedom Day Highlights Government Encroachment, by Colin Gowan, Washington Policy Center Policy Note 06-04, May 2006, at www.washingtonpolicy.org/Misc/TaxFreedomDay_06.htm. See also, “Tax Freedom Day Special Report,” The Tax Foundation, Washington, D.C., April 2006, at www.taxfoundation.org.

⁴ These states are Connecticut, Illinois, Maine, Michigan, Nebraska, New Jersey, Ohio, Pennsylvania and Rhode Island.

⁵ “Economic Impact of the Adoption of a State Income Tax in Washington,” by Dr. Thomas R. Dye, Lincoln Center for Public Service, published by the National Taxpayers Union, Washington, D.C., June 2000.

⁶ Ibid.

⁷ Ibid.

⁸ Based on data from the U.S. Census Bureau and “America Celebrates Tax Freedom Day,” Special Report, The Tax Foundation, Washington, D.C., April 2002.

⁹ Ibid.

¹⁰ H.R. 4520, “To amend the Internal Revenue Code of 1986 to remove impediments in such Code and make our manufacturing, service, and high-technology businesses and workers more competitive and productive both at home and abroad,” passed by Congress and sent to the President, October 11, 2004, at www.thomas.loc.gov/cgi-bin/bdquery/z?d108:h.r.04520.

¹¹ Les Blumenthal, “State sales tax deduction cut from federal measure,” *The News Tribune*, Tacoma, May 11, 2006. See also “Promoting State Sales Tax Deductibility,” Office of Congressman Brian Baird, October 2003, at www.house.gov/baird/tax.htm.

¹² Conference Report on H.R. 4520, “The American Jobs Creation Act of 2004,” Committee on Ways and Means, United States House of Representatives, October 7, 2004, at www.waysandmeans.house.gov/media/pdf/hr4520/hr4250confreptshortsummary.pdf.

¹³ Examples of taxing districts include, the state, county, city, road, school, public utility, library, port, water, fire, sewer, parks, flood zone, hospital, airport, ferry, cemetery, mosquito control, park-recreation, emergency medical, irrigation, cultural-arts, agricultural pest and urban apportionment. In all there are 1,744 taxing districts in Washington.

¹⁴ The three measures are: Referendum 47, passed November 1997 by 64% to 36%; Initiative 722, passed November 2000 by 56% to 44% (this initiative

was later invalidated by the courts); and Initiative 747, passed November 2001 by 58% to 42%.

¹⁵ The measure of inflation required under Referendum 47 was the Implicit Price Deflator reported by the United States Treasury every October.

¹⁶ “Average Increases in Regular Property Tax Collections by County, 1998-2003,” and “Average Increases in Regular Property Tax Collections by Major Cities, 1998-2003,” Property Tax Limitation in Washington State, Washington Policy Center, August 2003, at www.washingtonpolicy.org/TaxLimitation/PBGuppyTaxLimit747PropertyTaxLimitation2003.html.

¹⁷ “*Washington Citizens Action of Washington et. al. v. State of Washington and William Rice, Director of the State Department of Revenue*,” King County Superior Court, Judge Mary E. Roberts, No. 05-2-02052-1 SEA, June 13, 2006.

¹⁸ “Proposed Initiatives to the People – 2001,” text of Initiative 747, filed January 8, 2001, Index of Initiative and Referendum History and Statistics: 1914 – 2005, Office of the Washington Secretary of State, at www.secstate.wa.gov/elections/initiatives/statistics.aspx.

¹⁹ For a fuller discussion see, “Judge Roberts Got it Wrong in Overturning Initiative 747,” by Paul Guppy, Washington Policy Center, June 28, 2006, at www.washingtonpolicy.org/Transportation/OPED_SoundTransitsFailedPromises.htm.

²⁰ “Tax Reference Manual: Information on State and Local Taxes in Washington State,” Washington State Department of Revenue, January 2005, at www.dor.wa.gov.

²¹ “Washington casino revenue reaches \$1.3 billion,” by Allan Brettman, *The Oregonian*, June 22, 2006.

²² See also, “Tribes could escape gas tax,” by Joseph Turner, *The News Tribune*, Tacoma, May 14, 2006, and “Tribes take over gas tax from state,” *The Associated Press*, May 30, 2006.



Chapter 3: Environment and Energy

1. The Precautionary Principle

Recommendation

1. Policymakers should avoid using the so-called “precautionary principle” when addressing environmental issues and instead weigh economic, environmental and other values in setting policy.

Background

In Washington state and across the world, environmental activists are pushing to change fundamentally the way in which environmental policy decisions are decided. As they increasingly advocate more and more restrictive regulations, it becomes all the more difficult to justify those restrictions in light of the heavy cost to society and the negligible benefit to the environment.

Recognizing that more restrictions are difficult to justify, they seek not to focus their efforts on policy options with higher benefits, but to change the playing field so that even extremely onerous restrictions can be justified.

Environmental activists are promoting a new standard called the “precautionary principle.” This approach seeks to change the way policymakers judge the merits of environmental restrictions and proposals while weighing them against the costs to society. Some activists even argue that the precautionary principle should be codified permanently in law.

Setting science aside in environmental decisions

The precautionary principle, however, would make decisions about environmental protection less accurate and more subjective, and would give the greatest weight to mere intentions rather than objectively measurable results. The principle actually encourages radical environmental activists to use political tactics that confuse the public, instead of promoting real scientific understanding.

The precautionary principle has a variety of definitions, but the one provided by the Lowell Center for Sustainable Production is typical. The Lowell Center cites the 1998 “Wingspread Statement on the Precautionary Principle,” defining it as:

“when an activity raises threats of harm to human health or the environment, precautionary measures should be taken *even if some cause and effect relationships are not fully established scientifically.*”¹ (emphasis added)

The Statement lists four central components of the precautionary principle:

1. Taking preventive action in the face of uncertainty;
2. Shifting burdens onto proponents of potentially harmful activities;
3. Exploring a wide range of alternatives to possibly harmful actions, and;
4. Increasing public participation in decision-making.

Precaution is underscored by a duty to uphold the basic human right of each individual (and future generations) to a healthy, life-sustaining environment, regardless of other harm this approach might do to society.

Policy Analysis

The principle calls for policymakers to take action on environmental issues even when science is incomplete and puts the burden on those who want to undertake an activity or exercise their right to oppose new government restrictions. At the core of the principle is a reaction against the notion of balanced environmental solutions, placing environmental “protection” (even if ineffective) above all other values. Other values are accommodated only when environmental protection has been supposedly secured.

This creation of a guilty-until-proven-innocent standard is an attempt to shift the balance of power in environmental discussions. Much has been written about the standard’s flaws, so this summary examines just three of the flaws in this particular rationale.²

First, the precautionary principle places a higher burden on those providing countervailing costs than on those advocating the projected benefits of restrictions. This puts regulators in the strange position of counting the same potential impact in two ways – counting the impact on the environment from use of a chemical or building project as more important than the harm to human health caused by imposing new environmental restrictions. This makes complicated policy decisions about protecting the environment even more biased and subjective.

It is already very difficult to come up with valid apples-to-apples comparisons in a cost-benefit analysis of new environmental restrictions. The precautionary principle makes it

even more difficult by adding a subjective consideration, even when comparing straightforward apples-to-apples impacts. This subjectivity is actually a step away from scientific rigor

and makes policymaking more random and vulnerable to political bias.

Second, the precautionary principle assumes that policies designed to supposedly “protect” the environment are somehow immune to negative, unintended consequences. Following the above definition, it calls for action even if there is serious doubt about whether the action will really help the environment, but argues against action if there is a remote possibility it may harm the environment.

In other words, the key element in setting policy is not the science or the facts, but the intention of the policy. If an action is intended to help the environment, even if there is a lack of hard data, it should enjoy special favor. If an action is not intended to help the environment, regardless of its real effect, there is a presumption against it.

Intentions, however, have little to do with the effectiveness of a particular regulation or action. Many regulatory activities have been undertaken in the past with the *intention* of improving the environment, only to backfire and make matters worse.

Finally, this principle moves decisions from the realm of scientific analysis to the world of political gamesmanship. When the principle is followed, any factual uncertainty always accrues to the benefit of environmental activists. Radical activists, rather than engaging in calm discussion in order to help the public gain scientific understanding, have a strong political incentive to protest, stall and create uncertainty. The goal for them is simply to make weighing the reasonable pros and cons of various policy proposals as difficult as possible.

It is understandable why environmental activists would want to promote such a vague standard as the precautionary principle, since they benefit from it. Public policymakers, on the

other hand, should not reward a decision-making standard that makes public confusion its primary strategy.

Recommendation

1) Policymakers should avoid using the flawed “precautionary principle” when addressing environmental issues and weighing economic, environmental and other values to society in setting policy. Some governments have already begun using the precautionary principle. Washington should avoid making the same mistake. Codifying this poorly conceived principle into law would make policy decisions more subjective and unfair, by making the mere intentions of a new regulation as important as the real-world effects of that regulation.

Worst of all, it makes the consideration of environmental regulations a political game in which stalling tactics and deliberate obfuscation were actively rewarded. Such a standard fails to produce decisions that are best for the environment and for society as a whole.

2. PBDE Flame Retardants

Recommendation

1. Washington should allow the continued use of deca-BDEs as a flame retardant until alternatives have been thoroughly studied.

Background

As environmental quality in Washington state continues to improve, efforts by environmental activists to justify new restrictions and regulations becomes more difficult. Efforts to prove harm to the public from certain commercial activities becomes harder, and each new restriction offers smaller potential benefits for dramatically increasing costs.

In response, environmental activists now judge environmental policies not based on real outcomes but against vague principles like a “toxic-free legacy.”³ Proving harm is not the goal. The goal is to remain true to a particular environmental doctrine whatever the social and economic side effects of that doctrine might be.

One recent manifestation of this new standard is the effort to ban chemicals called polybrominated diphenyl ethers (PBDEs) which are used primarily in computers as flame retardants. Advocates of the ban claim that PBDEs are toxic and should be eliminated. This effort is buoyed by a draft report from the Washington Department of Ecology (DOE). On their strongly anti-PBDE web site, DOE officials call PBDEs “a fast growing concern.”⁴ They say, “Some PBDEs used as flame retardants have been linked to brain and thyroid problems in laboratory rodents.”⁵

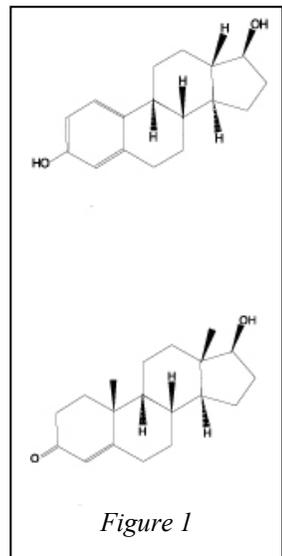
Ironically, if Washington policymakers followed this advice it would not only be unjustified, given the lack of evidence of toxicity, but it would likely lead to lower fire safety standards or to the use of less-understood and potentially more dangerous chemicals as substitutes.

The DOE, the Department of Health (DOH) and environmental activists point to a number of potential impacts as justification for banning flame-retardant PBDEs. The data cited by the DOE, however, does not distinguish between the various types of PBDEs.

The data they cite, in fact, indicates that deca-BDE, the only PBDE still being used as a flame retardant, has been studied extensively and that the risk of harmful impacts with deca are very low. DOE's report notes that "Considerable scientific research on deca-BDE has been conducted in recent years,"⁶ and the results show that it is significantly less toxic than other forms of PBDE.⁷

The most serious claims made by DOE and DOH about the impact of deca-BDE are even more questionable. Instead of using data related to the impacts of deca-BDE, the impacts of the significantly more toxic polychlorinated biphenyls (PCBs) are substituted.

The rationale for this substitution is explained by the DOH and environmental activists saying that "PBDEs have a similar chemical structure to PCBs, which have been studied in humans."⁸ Thus, the basis for the comparison is the similarity of the chemical structure between the two molecules. This extrapolation is faulty for three clear reasons.



First, similar molecules can have very different impacts on the human body. Take a look, for instance, at the two molecules illustrated in Figure 1. They appear very similar and have a similar structure. The molecule on the bottom is testosterone, while the molecule on the top is estradiol, the primary type of estrogen found in women during reproductive years. These two molecules could not have a more divergent impact on the human body. Extrapolating similar impacts on humans from similar chemical structures is inexact at best and pure guesswork at worst.

Second, DOE admits that there are significant differences in impact between deca-BDE and other forms of PBDE. Deca-BDE is much less toxic than either of these types of PBDE. According to studies cited by DOE, penta-BDE is about 15 times as toxic as deca-BDE in studies of developmental neurotoxicity.⁹ If there can be significant variation between similar structures of the same type, why is it defensible to assume that structures that are more divergent, like deca-BDE and PCBs, would have similar results?

Finally, why would we assume that the chlorine found in PCBs would have a similar impact as the bromine found in deca-BDE? For instance NaCl is salt, whereas NaBr is “used as a hypnotic, anticonvulsant, and sedative in medicine.”¹⁰ Mixing and matching chemicals and assuming similar results simply is not sound.

Even if we assume that impacts are as significant as environmental activists claim, phasing out PBDEs in the near future would be unwise. The reason deca-BDE has become popular is that it is a very effective fire retardant. Fire safety standards, both at the state and national level, are increasing as officials work to reduce the number of injuries and deaths caused by fire.

It is unlikely that the government would reduce fire safety standards as part of an effort to ban deca-BDE, so any

valid analysis would include estimating the potential environmental impacts of all substitute retardants that would be used instead. DOE's report does discuss several alternatives, but the level of understanding about the potential environmental impacts is less than deca-BDE. Substituting other chemical retardants would be a gamble. Banning PBDEs would be based on the hope that replacement chemicals would be better.

The Washington Toxics Coalition argues "Numerous companies, including Sony, HP, and Dell, have stopped using deca in favor of safer fire retardant alternatives and their products continue to meet the highest safety standards for televisions and computers."¹¹ In reality, however, some of the chemicals that are being used to replace PBDEs are actually *more* toxic, according to DOE.

Dell's web page notes that they are phasing out PBDEs and using other compounds, noting that "Printed circuit boards typically contain brominated flame-retardants such as Tetrabromobisphenol A (TBBA)."¹² TBBA is listed by the DOE as a potential alternative. Their assessment of its toxicity, however, shows it to be more poisonous to humans than PBDEs.¹³

This result is not surprising. The justification for banning PBDEs and other compounds focuses not on improving public safety but on creating a "toxic-free legacy." (Interestingly, there is no definition of "toxic-free" anywhere in the materials provided by the advocates of this goal.)

As a result, such steps are advocated without looking at the overall costs of these proposals. In many cases it is simply assumed that public health will be a byproduct of that effort. As shown above, however, that is not always the case.

Recommendation

1) Washington should allow the continued use of deca-BDEs as a flame retardant to protect Washington citizens until alternatives have been thoroughly studied. Until a viable alternative to PBDEs is offered, banning these flame retardant compounds would be a case of harming public safety for the sake of remaining true to an amorphous principle.

3. Clean Air and Asthma

Recommendation

1. Focus efforts to reduce asthma on health care projects rather than on ambiguous “clean air” efforts that are unlikely to have an impact.

Background

In recent years, rising rates of asthma have been used to justify a number of new environmental restrictions, especially increased restrictions on auto emissions. The link seems obvious. As the air becomes less clear, it should be more likely to cause problems for those who are susceptible to asthma.

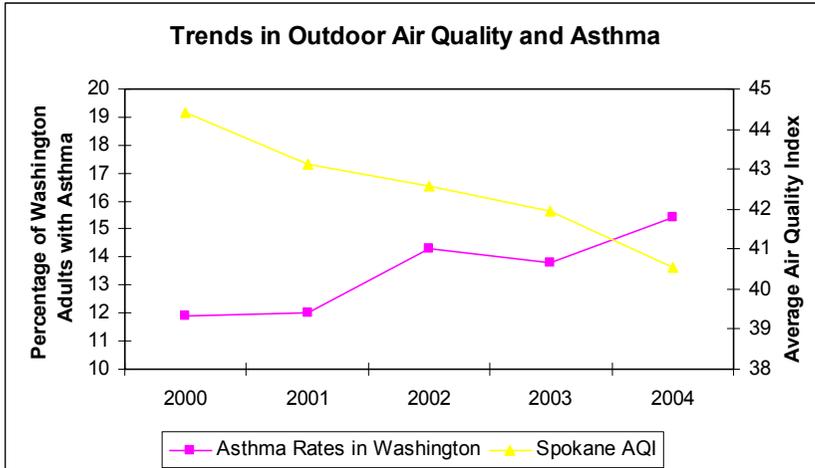
Looking at the data, however, shows that outdoor air quality appears to have a little relationship to asthma rates in Washington state. In fact, as the air quality that we cherish in Washington has improved, asthma rates have worsened.

Some might argue that efforts to provide cleaner air cannot hurt. Actually, revenue that could be used for truly effective anti-asthma efforts are being lost to the economic costs of these restrictions. Ironically, restrictions justified on the grounds that they help reduce asthma draw funding away from efforts that truly do make a difference.

A review of the scientific data over the last 15 years shows that air quality in Washington has improved dramatically.¹⁴ During that time, however, asthma rates have increased. As the Washington Environmental Council noted, “Kids in Seattle and Spokane suffer from asthma at a rate higher than the national average.”¹⁵ As the graphic indicates, during the

past five years for which asthma rates in Washington are available, air quality in Spokane has improved dramatically.

Seattle's air quality has remained steady and residents there continue to enjoy some of the cleanest air in the country. Compared to cities with a similar size like Boston, Denver and El Paso, Seattle has consistently cleaner air.¹⁶ Studies show that people living in cities across the globe that have air which is more polluted than that in the United States do not suffer from asthma at the same levels as Americans do.



If outdoor air is not causing asthma, then what is? Experts agree that factors associated with family income, not the outdoor environment, are a major factor. *The Seattle Times* reported that,

“Asthma triggers are more common in low-income communities, public-health officials said. More than a quarter of low-income people living with asthma have mold in their homes, according to [King] county; about 16 percent have cockroaches; 23 percent have pets, and most have dust mites.”¹⁷

The Boston Globe echoed that finding after a study in Boston schools found that,

“Children who live in wealthy communities north of Boston are not as likely to have asthma as those in congested cities because they often learn in newer schools and live in better-maintained houses where their parents are less likely to smoke, specialists said.”¹⁸

Policy Analysis

Placing emphasis on solving these problems in the home, then, appears to be the best way to reduce what is a worrying trend in increasing asthma rates, especially among children.

Costly new government restrictions aimed at cars, on the other hand, take money and attention away from programs that actually help reduce asthma and its harmful impact on children and adults. Washington residents will pay an estimated \$1,000 to \$3,000 more for each new car when the new emission standards go into effect. That high added cost is likely to have limited or zero impact on reducing asthma rates.

Those costs, however, will hurt the economy and lower potential tax revenues that could fund truly effective anti-asthma programs. One such program is sponsored by the Centers for Disease Control in King County, which cut asthma hospitalizations by 39 percent between 2000 and 2004.¹⁹ The grant for that program amounted to just over \$550,000 – a relatively small amount compared to what is likely being lost due to new government air quality restrictions.

While these results seem counterintuitive, the rhetoric of activists pushing these restrictions indicates that they know this to be the case. Citing asthma rates as a justification rather than air

quality statistics indicates that they realize that building a case using the actual quality of air would hurt their cause.

Instead they use asthma rates and assert the link to air quality, hoping policymakers and the public do not look at the actual air quality statistics themselves. By focusing on the impacts at one level of distraction, backers of new restrictions use a sort of sleight-of-hand being used to justify a standard that would otherwise be questionable.

As with most cases where such statistical misdirection is used, the result is unlikely to be benign. By drawing our attention away from the real causes of respiratory illness, we are less likely to focus effort and resources on the real solution to increasing rates of asthma.

Recommendation

1) Focus efforts to reduce asthma on health care projects rather than on ambiguous “clean air” efforts that are unlikely to have an impact. Highlighting air quality standards in an effort to improve asthma rates is distracting and unproductive. Policymakers should focus on targeted health care initiatives, such as reducing indoor air contaminants, that directly reduce the incidence of asthma.

4. Property Rights Fairness

Recommendation

1. Adopt land use policies that fairly compensate property owners for value lost to zoning regulation, or make current owners exempt when new restrictions on development are imposed.

Background

In November 2004, Oregon voters overwhelmingly passed a new law, Measure 37, requiring counties and the State of Oregon to pay for the value landowners lose when new zoning restrictions are put in place. The ballot measure was approved by a margin of 60 percent statewide and received a majority of votes in all but one of Oregon's 36 counties.²⁰ Similar proposals are being considered in Washington.

Both supporters and opponents of Measure 37 claimed it would change the landscape of Oregon. The reality, however, is that the impact on the landscape has been much less than either side expected.

Measure 37 allows landowners two years to request compensation for any zoning restrictions imposed since the time they purchased their land. If a landowner purchased an investment property in 1950 and finds government has since strictly limited its use, he could make a claim for the current value of the land as if he were applying under the permitting rules of 1950.

When Measure 37 passed, some opponents predicted “anarchy,” “chaos” and even a “nightmare.”²¹ Critics claimed

that it would bankrupt the state and counties by requiring them to pay out millions of dollars in claims.

Policy Analysis

These negative predictions have not come true. Instead Oregon has seen a pattern of limited claims affecting primarily small, long-held family properties. While a high percentage of claims are approved, the actual impact on the ground is small. This is true for several reasons.

- There are a limited number of landowners who are eligible to make significant claims against the state. Many of Oregon's most significant zoning changes are 30 years old, and very few individuals or companies have held their land long enough to waive most zoning rules.
- Corporations typically do not hold unproductive land indefinitely and so very few corporations could ask for zoning compensation.²²
- The vast majority of claims were made by families who purchased their land as an investment or for agricultural uses. As a result, the actual number of acres involved is relatively small. Many Measure 37 claims are for parcels of fewer than 100 acres; many are for parcels of only five to ten acres.

Most requested proposed zoning changes were small. In Clackamas County there were claims like, "Requesting modification and/or removal of the regulations so that land can be divided into three building lots of approximately 2 acres each," and "Requesting to divide the 5 acre property into four 1 to 1 1/2 acre lots."²³

Permits still required

Even after a Measure 37 claim is approved, landowners still need a permit based on the rules in place at the time the land was purchased. For instance, many claims involve land zoned for “exclusive farm use” (EFU), a restriction created in 1982 that prevents land from being subdivided below 80-acre parcels. A 1994 law placed further restrictions on land not producing \$80,000 a year from farming. For rural landowners who purchased land after 1982 this means that they cannot subdivide their land into parcels smaller than 80 acres.

Public safety requirements

Land changes are further limited by Measure 37 itself. As noted on the State of Oregon web page, “The measure does not apply to commonly and historically recognized public nuisances, public health and safety regulations, regulations required to comply with federal law, and regulations restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing.”²⁴

Despite the accusation by one Measure 37 opponent that flood plains would be “attractive locations for car dealerships and truck stops,”²⁵ counties use public safety restrictions to limit construction even when the outcome might be socially desirable. Habitat for Humanity was denied a building permit in Linn County because officials found “the claimant is not entitled to compensation under Measure 37 because the property is within the Calapoola River floodway and development of property in a floodway is a public safety issue that is exempt under Measure 37.”²⁶

Effect on property values

One argument made against property fairness initiatives is that they lower property values. Measure 37 opponents said, “If your neighbor purchased her property before the enactment of a land use regulation governing the approval and siting of cell phone towers, and the local government waives that land use regulation, Measure 37 does not allow you to recover for the reduction in your property value.”²⁷

There are (at least) two shortcomings of this argument.

First, what opponents of Measure 37 see as a “reduction” in value may actually be a reduction from a price that was overvalued compared to the natural market price. For instance, if 10 landowners had equal land development rights in 1980 and eight of them choose to exercise their right to build, it does not make sense that they can years later “democratically” vote to limit the rights of the other two landowners simply because these two did not act immediately.

The eight owners who developed their property may argue that new construction by the two remaining landowners would negatively impact the value of their land by eliminating open space. The reality is, however, that their property values were artificially *overvalued* while the other two landowners waited to build. While there may be a reduction in the property value, it is a reduction to the normal market level – rather than a falsely high level that the other eight landowners enjoyed for years.

Second, the above scenario does not leave the eight landowners without options. They can gather together and purchase the land of the two other owners. Alternatively, they can ask the government to prevent new building by retaining the latest land use restrictions and paying compensation to the two

landowners for their loss of property value. This is the truly democratic response, with the public bearing the cost of restricting private property for public benefit (in this example, maintaining open space in a built-up area).

Some unanswered questions

There are some important, unanswered questions about the effect of Measure 37 in Oregon and similar measures in Washington.

It is unclear how Measure 37 will impact jurisdictions in Oregon as they look to add new restrictions. Cities, counties and others would have to either be prepared for some landowners to claim exceptions to the zoning or set aside funding to pay the cost of any new zoning.

In Washington state there is one particular potential impact. Washington private forest landowners have received protection from Endangered Species lawsuits as part of a Habitat Conservation Plan covering all private landowners. The protection from litigation is based on the fact that Forests and Fish protections cover all forests across the landscape.

If certain parcels are exempted from the Forest and Fish rules the assurances, based on landscape-wide protections, could be threatened by gaps left by individual landowners who received exemptions. These gaps could threaten the entire Habitat Conservation Plan that not only provides protection for salmon and other species, but also provides predictability to foresters large and small.

This is not unlikely, primarily because many family forest landowners feel, justifiably, that the Forest and Fish rules burden them more than some of the larger landowners. Small landowners may see claiming an exemption as the only way to recover their investment.

Recommendation

1) Adopt land use policies that fairly compensate property owners for value lost to zoning regulation, or make current owners exempt when new restrictions on development are imposed. Government should not deprive citizens of the value of their property without just compensation. State and local officials should either pay landowners for lost value, or let landowners build according to the rules in place the present owners purchased their property.

5. Responsible Forestry and Fires

Recommendations

1. Allow forest thinning to prevent fires.
2. Permit salvage logging after fires to create jobs and restore healthy forests.

Background

For centuries, wildfires were an integral part of forest ecosystems. Occasional fires created a mosaic of habitat, renewing forests and creating the habitat diversity necessary for the variety of species that live in Washington's forests. Some trees, like lodge-pole pine, even require heat from fires to open their cones and distribute seeds.

Today, however, fires no longer play the role they played for so many years. With built-up urban areas, unhealthy forests and an increased number of human-started fires, fire now plays a role that often does damage to the ecosystems it used to benefit. The debate about their role, however, continues and is used frequently to argue against both fire suppression as well as timber harvests before and after fires.

The arguments of environmental activists are not wrong in principle – that fire, given time, will do its job and restore forest ecosystems. The problem is that in the short term, uncontrolled and unnatural fires do significant damage to habitat those same environmentalists are desperately trying to protect.

Responsible forestry, before and after fires, can help protect the habitat we have while putting unhealthy forests on the path to recovery.

Unhealthy forests

In many forests across Washington, forests are in what is known as the “exclusion” stage.²⁸ In this stage forests can be, to a greater or lesser extent, overstocked, with too many trees fighting for limited sunlight, nutrients and water. The result is a forest that is weak and vulnerable to a variety of problems.

- **Weak forests.** These forests are poor habitat for threatened and endangered species, they never reach the “complex” stage of forest habitat that more selective species need to thrive.
- **Bug infestation.** Trees use energy in a particular order, with life, growth and reproduction being the most important, and fighting off pests toward the end of the list. If trees lack energy due to competition, they become easy food for growing bug infestations. Damage from insects is most dramatically occurring in British Columbia, and poses a serious threat to Washington forests.
- **Fire.** In the past, fires removed the weakest trees, leaving stronger, healthier trees to survive and grow. Now, fires rip through unhealthy forests, destroying much of it, rather than just the weakest trees.

Fire and bug infestations have a greater impact today than in the past, not only because they are more widespread, but because there is simply less room for error due to the reduced amount of specialized forest habitat in Washington.

Putting forests on the right track

Some environmental activists advocate letting fire and bugs do their work naturally, eliminating unhealthy forests and letting new healthier forests return in their place. This, in fact, might work, but there are problems with this strategy due to the influence of invasive species and other factors. It is, however, a possible strategy for the long term, meaning about two centuries.

In the short term – the next one to two hundred years – this strategy would undoubtedly damage habitat that could otherwise be protected. In recent years, catastrophic fires have destroyed spotted owl nesting sites and damaged useful forest habitat for others species as well.

If humans did to the forest what these fires did, environmental activists would likely be apoplectic. If the goal is to create a healthy mix of habitats, it is unclear why harvesting some trees harms this goal any more than fires and bug infestations that do the same damage.

One reason environmental activists oppose limited harvests is that they see profit playing an “unnatural” role in what, to them, is a pristine setting. Thus, they view any discussion of thinning unhealthy forests or salvage and replanting after a forest fire as a ruse designed to make money. This is simply incorrect for a couple of reasons.

First, thinning is much less profitable than other types of harvests. On state land, thinning is often combined with other harvests because thinning alone does not make much money. The trees are small and are of limited utility, especially if they have been hit by insect infestation. Thinning removes the smallest and least healthy trees, leaving the largest, most valuable trees behind.

Second, environmentalists don't offer any short-term strategy of their own. They put their faith in a long-term "natural" approach they hope will work out for the best. This is like hoping the natural ebb and flow of the tides, in the long run, cleans contaminated sediments in polluted waterways.

Forestry after the fire

In 2006, the debate over salvage logging burst to the forefront with a bill sponsored by Congressman Brian Baird and a one-page article in *Science* magazine.²⁹

The issue is as follows. When trees are killed by fire, fungus and insects soon move into the trees. In some cases the fungus creates "blue stain," diminishing the value of the trees for commercial use. Harvesting quickly can limit blue stain and ensure that the state and foresters get the best value for the trees – creating jobs and raising money for forest stewardship. This is the activity that Baird's bill, called the "Forest Emergency Recovery and Research Act" sought to encourage.³⁰

Opponents pointed to a short piece by an Oregon State University graduate student published in *Science* magazine indicating that salvage logging did more damage to replanted trees than if no salvage had been done. There are a number of problems with this analysis (many acknowledged by the author).

For instance, the *Science* article focuses on the number of seedlings remaining after salvage logging, yet the authors also had data on many other variables that they chose not to include. They did not discuss the number of shrubs that appear with and without salvage logging. These shrubs and other plants can seriously hinder recovery of trees after catastrophic fire by shading young seedlings and competing for nutrients.

Additionally, the *Science* article examined salvage logging occurring three years after the fire. Foresters know that

it is best to do salvage logging within weeks or months after the fire. This not only creates jobs and gets the best value from the trees, it also has the lowest environmental impact. This argues not against salvage logging, but for faster logging and replanting.

Recommendations

1) Allow forest thinning to prevent fires. The focus on the environmental debate fails to recognize that there is no debate that logging creates jobs and helps rural communities. Limited logging to thin forest reduces the risk of destructive fires and improves Washington's economy.

2) Permit salvage logging after fires to create jobs and restore healthy forests. Given these positive economic *and* environmental benefits, scientists and policymakers are increasingly supportive of forestry both before and after fires that helps promote healthy forests. Until there is a reasonable short-term alternative, doing nothing in unhealthy forests is likely to be a counterproductive environmental strategy.

6. LEED Building Standards

Recommendations

1. Policymakers should avoid mandating cookie cutter approaches to “green” building design which often fall short of the promised gains.

Background

“I feel like the goal was to get the plaque rather than to help the environment,” *Building manager for a publicly funded LEED certified building.*³¹

Those who actually have to manage buildings certified under the Leadership in Environmental and Energy Design (LEED) system often have the sense that getting “green,” and receiving a plaque to prove it, is more important than the actual benefits of the building.

In 2005, the legislature made a modified version of LEED a requirement for new state buildings where “practicable.”³² Supporters argue that LEED brings a wide range of benefits. They claim that energy use will be dramatically reduced and that worker productivity and health will improve. They even claim that schools built using LEED will see dramatic improvements in student test scores. The best part, they say, is that all of this comes at a negligible up front cost of about two percent – costs which will be recovered by lower energy costs over time.

Claims are usually untrue

The problem is that these claims rarely turn out to be true. Despite these failures, however, environmental activists

continue to promote these standards. As technology improves, there are more ways architects and engineers save energy in new buildings. Mandated cookie cutter approaches, however, frequently miss the mark.

Claims of energy savings

The most important claim made by LEED supporters is that it will reduce energy use. They argue energy savings will more than offset the higher up front costs of acquiring LEED certification.

Numerous high profile examples show this is not the case.³³ Advocates often cite a study completed by the California Sustainable Building Task Force that claims LEED projects are 30 percent more efficient than non-LEED buildings. This estimate is based on a small sample of five buildings in California, four of which are LEED Gold, the second highest level of certification, or higher.

This 30 percent estimated savings is used as the average savings for *all* LEED buildings, despite the fact that the sample is made up primarily of buildings that have the highest up front costs. It is not surprising then that these estimates have proven to be significantly inaccurate when applied to other LEED buildings.

It is difficult to find an apples-to-apples comparison because each building is different and there are few circumstances of similar LEED and non-LEED buildings built in the same area, at the same time for similar purposes. However, there is one such comparison in the Tacoma School District. Two middle schools were built at about the same time and of similar sizes – one used LEED, the other did not.

Comparing school buildings

LEED advocates claimed the LEED school “realized energy savings of 35 percent.”³⁴ After operating for 18 months, the statistics showed this is not true. The LEED school had the third-highest cost for gas and electricity of all middle schools in the district.³⁵ Interestingly, the LEED school now spends about 25 percent *more* than the average middle school in Tacoma on gas and electricity, and more than the non-LEED school built at the same time. This is not an isolated circumstance.

Seattle’s new city hall was built using LEED standards and was supposed to reduce energy use compared to the previous city hall, which was both older and larger. Instead, the new city hall “uses 15 percent to 50 percent more electricity some months than the older, larger building it replaced, according to Seattle City Light utility bills.”³⁶

The city also announced that it would have to spend several million dollars more to repair many of the “green” building elements that were not working properly.³⁷ Those costs do not include the additional tax money that was spent to get LEED certification in the first place.

Interviews with others tell the same story. One major corporation looking to create sustainability standards told the author that it had actually seen energy usage go up at the pilot projects where it had used LEED. A building manager in Vancouver, Washington cited by LEED advocates said that while there is no apples-to-apples basis for comparison, his new LEED building was not meeting expectations for energy savings.

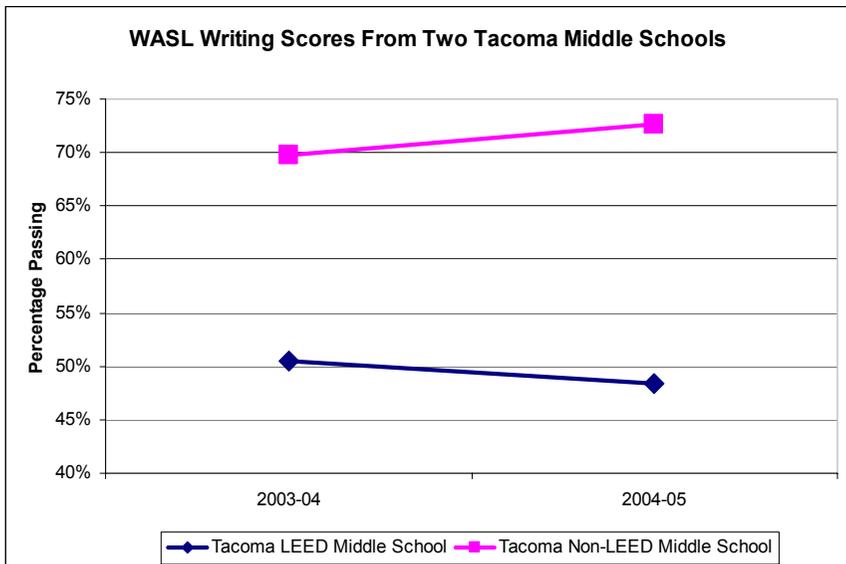
What is most strange is that environmentalists who push hardest for LEED express no concern about the lack of real energy savings. Once a building is certified, it seems, they are

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no longer interested in whether it actually produces the desired results. A spokeswoman for LEED even admits that “the certification process doesn't audit actual performance of the building or how much energy it really uses.”³⁸

Does LEED help kids learn?

While energy savings are the primary reason cited by LEED advocates, they also claim a variety of other benefits. For instance, they argue that “High performance green buildings have been shown to: Increase student test scores by 20 percent.”³⁹ An examination of Washington “green” certified schools shows, however, no clear improvement in student scores.



Examining two schools highlighted by LEED advocates, Greenwood Elementary and Giaudrone Middle School, shows that in some cases scores actually went down. At Greenwood,

both writing and math scores in the Washington Assessment of Student Learning (WASL) actually dropped in the years after adding the green elements. For Giaudrone, the trends in reading, writing and math mirror the trends in the district and state and are nowhere near the 20 percent increase LEED advocates promised.⁴⁰

LEED standards have actually made some schools less conducive to learning. The Director of Support Services in the Lake Washington School District reports that some rooms in one school get so warm from the increased number of windows and reduced air conditioning that they were unusable on hot days.⁴¹

A LEED school in Detroit had to shut down on a day when the temperature reached the 90s. The Detroit News reported, “energy costs dropped 20 percent as a result of the (LEED certification)” but the “heat and humidity proved too much for all of the schools.”⁴² In these instances, the basic function of the school is actually sacrificed to achieve the green standards.

Forget the plaque

Saving energy, improving work and learning environments and promoting sustainability are worthwhile goals. Policymakers should not rely on questionable estimates and standards that do not fit real circumstances. As noted, the promises of LEED often miss the mark.

This is one reason businesses, which are less likely to follow uneconomic environmental fads, are not using LEED standards more frequently. According to one estimate, 16 percent of new government buildings use LEED, while only one percent of new commercial buildings follow the standard.⁴³

Recommendation

1) Policymakers should avoid mandating cookie cutter approaches to “green” building design which often fall short of the promised gains. Governments should look for ways to reduce energy and utility costs, but should fit those efforts to individual projects. Mandating standards in a arbitrary, one-size-fits-all manner, however, is not likely to achieve the benefits promised by LEED advocates.

Additional Resources

Washington Policy Center Research

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“Africa Malaria Day - action or bombast?,” by Roy Innis, April 2006.

“Oregon State University Salvage Logging Critique Suppresses Own Data and Mixes Politics with Science,” by Todd Myers, March 2006.

“Politics Kills Science on Forest Fire,” by Todd Myers, March 22, 2006.

“Northwest Global Warming Data Isn’t As Clear As Some Claim,” by Todd Myers, February 2006.

“Banning PBDEs Increases the Threat to Public Safety,” by Todd Myers, February 9, 2006.

“Analysis of News Reporting on Habitat Conservation Plans by The Seattle Post-Intelligencer,” by Todd Myers, July 2005.

“Bringing Coal to Newcastle; Emission Standards Fight Comes with an Environmental Cost,” by Todd Myers, April 2005.

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“Should the State Follow LEED or Get Out of the Way?,” by Todd Myers, February 8, 2005.

“King County’s Critical Areas Package: A Heavy Handed Approach to Growth Management,” by Russ Brooks and William R. Maurer, 2004.

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“Clearing the Air on New Source Review,” by Eric Montague, 2004.

“An Alternate Framework to the U.S. Commission on Ocean Policy,” by Michael DeAlessi, July 2004.

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“Private Land Trusts: A Free-Market Forest Conservation Tool,” by Eric Montague, October 2002.

“Saving Our Salmon: Using the Free Market to Protect the Environment,” by Travis W. Misfeldt, March 1999.

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“The Skeptical Environmentalist: Measuring the Real State of the World,” by Bjorn Lomborg, Cambridge University Press, Cambridge, United Kingdom, 2001.

Property and Environment Research Center – A national think tank based in Bozeman, Montana that provides free-market solutions to environmental problems. www.perc.org.

The Competitive Enterprise Institute – A national nonprofit public policy organization dedicated to advancing the principles of free enterprise and limited government. www.cei.org.

Foundation for Research on Economics and the Environment - A national think tank that applies economics and scientific analysis to generate and explore alternative and innovative solutions to environmental problems. www.free-eco.org.

Environment & Climate News provides a monthly overview of national and international environmental news with a market-oriented perspective. www.heartland.org.

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³ Toxic Free Legacy Coalition, at www.toxicfreelegacy.org, accessed May 31, 2006.

⁴ Department of Ecology, “Home Page – Washington State Department of Ecology – ECY DOE,” at www.ecy.wa.gov, accessed January 11, 2006.

⁵ Department of Ecology, “PDBE flame retardants: A fast-growing concern,” at www.ecy.wa.gov/programs/eap/pbt/pbde/index.html, accessed January 11, 2006.

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⁷ Ibid. p. 25.

⁸ Department of Health, “Program Information WA State Dept of Health,” at www.doh.wa.gov/ehp/oehas/pbdehumanhealth.htm, accessed January 15, 2006.

⁹ Department of Ecology et al., December 1, 2005, p. 26.

¹⁰ “Sodium Bromide,” Wikipedia, at www.en.wikipedia.org/wiki/Sodium_bromide, accessed January 25, 2006.

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¹⁴ Sources: Centers for Disease Control, “BRFSS Prevalence Data,” at apps.nccd.cdc.gov/brfss/, accessed November 22, 2005, and Environmental Protection Agency, “EPA Air Data - Air Quality Index Chart,” at www.epa.gov/air/data/aqiday.html?co~53033~, accessed November 22, 2005.

¹⁵ Washington Environmental Council, Environmental Agenda 2005, p. 4, at www.wecprotects.org/state/documents/EnvAgenda.pdf, accessed November 22, 2005.

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¹⁸ “State Study Links Asthma to Economic Circumstances,” by Jennifer Fen Efforts, *The Boston Globe*, September 18, 2005.

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²⁰ Most dramatic was Melanoma County, which includes the city of Portland. The county voted for John Kerry by a margin of 71 to 27 percent, but supported Measure 37 by a margin of 51 to 49 percent.

²¹ Joseph W. Tovar, “Oregon’s land-use nightmare: Washington must resist the lure of Measure 37,” *The Seattle Times*, May 29, 2005, p. D-1.

²² In one case a bankrupt corporation made a claim, perhaps in hopes of recovering some value. The claim was denied, however, because the corporation had been dissolved, “M118962 – BLM of Hood River, Inc.,” June 8, 2005.

²³ “Measure 37 Information,” Clackamas County Department of Transportation and Development, Planning Division, at www.co.clackamas.or.us/dtd/zoning/37/, accessed September 17, 2005.

²⁴ “Risk Management Division Measure 37,” at www.egov.oregon.gov/DAS/Risk/M37.shtml, accessed September 17, 2005.

²⁵ Joseph W. Tovar, “Oregon’s land-use nightmare: Washington must resist the lure of Measure 37,” *The Seattle Times*, May 29, 2005, p. D-5.

²⁶ “Resolution 2005-136 (M37 Denial) (M37-006-04),” Board of County Commissioners for Linn County, May 4, 2005.

²⁷ “Measure 37: Summary & Questions,” 1000 Friends of Oregon, March 31, 2005, at www.friends.org/issues/documents/M37/QA-about-M37.pdf, accessed September 18, 2005.

²⁸ To see the extent of this phenomena on state lands see “Final Environmental Impact Statement on Alternatives for Sustainable Forest Management of State Trust Lands in Western Washington and for Determining the Sustainable Harvest Level,” Washington State Department of Natural Resources, July 2004, pp. 4-11, at www.dnr.wa.gov/htdocs/fr/sales/sustainharvest/feis.htm.

²⁹ “Post-Wildfire Logging Hinders Regeneration and Increases Fire Risk,” by D. C. Donato, J. B. Fontaine, J. L. Campbell, W. D. Robinson, J. B. Kauffman and B. E. Law, *Science*, Vol. 311, No. 5759, January 20, 2006, p. 352.

³⁰ H.R. 4200, “The Forest Emergency Recovery and Research Act,” 109th Congress, introduced November 2, 2005 by Rep. Greg Walden (R – OR), passed the United States House of Representatives May 17, 2006, at www.govtrack.us/congress/bill.xpd?bill=h109-4200.

³¹ Interview with the author, January 26, 2005.

³² SB 5509, 2005 Session, Washington State Legislature, at www.apps.leg.wa.gov/billinfo/summary.aspx?bill=5509&year=2005.

³³ To avoid the charge of “cherry picking,” this discussion uses only examples cited by environmental advocates. By using the buildings they highlight themselves, the failure of these buildings to meet the goals claimed by advocates is more dramatic.

³⁴ Washington Environmental Council, “Priorities for a Healthy Washington,” at www.environmentalpriorities.org/greenbuildings/greenbuildings1-7-05.PDF, accessed January 30, 2005.

³⁵ The statistics regarding the Tacoma School District are from a phone interview with a member of the facilities staff at the Tacoma School District, February 2, 2005.

³⁶ “Seattle’s new City Hall is an energy hog,” by Kathy Mulady, *Seattle Post-Intelligencer*, July 5, 2005.

³⁷ “Defects cropping up in new city buildings,” by Jim Brunner, *The Seattle Times*, April 24, 2005.

³⁸ “Seattle’s new City Hall is an energy hog,” by Kathy Mulady, *Seattle Post-Intelligencer*, July 5, 2005.

³⁹ “Priorities for a Healthy Washington, High Performance Green Building Standards,” Washington Environmental Council, January 7, 2005.

⁴⁰ *Ibid.*, and “New Greenwood school is green – and a nice place to work, learn,” by Kyle Arnold, *Seattle Post Intelligencer*, February 7, 2005.

⁴¹ Interview with the author, January 26, 2005.

⁴² “Some Metro area schools closed due to heat,” by Santiago Esparza, *Detroit News*, May 30, 2006.

⁴³ “The Costs and Financial Benefits of Green Buildings: A Report to California’s Sustainable Building Task Force,” California Green Building Task Force, October 2003, p. 5, at www.ciwmb.ca.gov/GreenBuilding/Design/CostBenefit/Report.pdf.



Chapter 4: Health Care

1. Health Care Mandates

Recommendations

1. Authorize low cost, mandate free health insurance.
2. Require an independent cost-benefit analysis of existing health care mandates.
3. Adopt a moratorium on new health care mandates.

Background

Paying for health care coverage is one of the fastest-rising costs facing businesses and citizens in Washington. At the same time health insurance is one of the most heavily regulated sectors of our state's economy. These two trends are linked, with increasing state regulation playing a major role in driving up the cost and reducing the accessibility of health care coverage.

In 2004, national health care spending grew almost eight percent, to an estimated \$1.9 trillion.¹ Health care spending now makes up about 16 percent of the national economy, and is projected to increase to 20 percent by 2015.² In 2005, employers saw their cost of providing health insurance increase an average of 9.2 percent, nearly three times the rate of inflation.

Although some of the cost drivers of health care are beyond the control of policymakers, there is one key factor which state policymakers directly control: the cost and impact of state-imposed mandates. Mandates are state laws listing benefits for specific conditions or services that every health insurance policy sold in the state must cover, whether insurance

purchasers have requested the coverage or not. Research shows that mandates can increase the cost of basic health coverage by about 20 to 50 percent.³

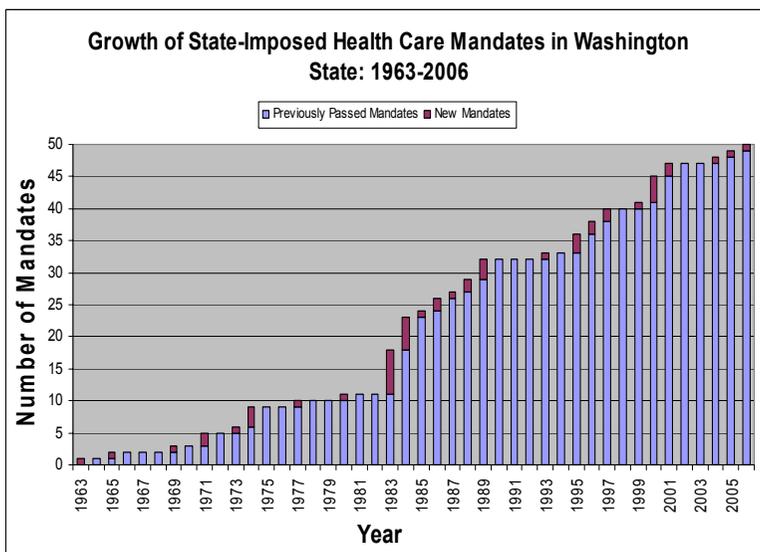
State-imposed mandates interfere with the normal voluntary relationship between buyers and sellers. Mandates mean insurance purchasers are forced to pay for medical coverage they may not otherwise choose, and patients are made to bear the cost of services they do not want and may never use. This creates a “crowding out” effect, by which some health care services are not available because insurers must offer the benefits mandated by the state instead.

Moreover, mandates may encourage health providers to follow fixed clinical procedures and services, depriving doctors of the discretion they need to practice medicine. By doing so, they increase the likelihood that medical resources are misallocated, and that care provided through existing health care insurance plans is not flexible, innovative or efficient.

Beginning with a single access-to-provider mandate in 1963 (for chiropody), the number of new mandates and enacted changes to existing mandates in Washington has grown to 50 in 2006. During two distinct periods the number of new mandates surged. Between 1982 and 1990 the number of mandates tripled from 10 to 30, and from 1993 to 2001 their number increased a further 50 percent.⁴

From 2004 through 2006, an additional mandate has been added each year: a ban on denying insurance coverage for injuries caused by narcotic and alcohol abuse; a requirement for mental health parity; and a requirement for prostate cancer screening. The yearly increase in the number of health care mandates is shown in the following chart.

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The cumulative effect of state-imposed mandates contributes significantly to the cost of health insurance in Washington.

Such an extensive set of state imposed restrictions on what consumers can buy would have a substantial impact on any industry. It is not surprising, then, that these mandates have considerable impact on health insurance prices and availability in Washington.

Research by the Congressional Budget Office (CBO) found that “government regulation at both the state and federal levels can also increase the costs of health insurance and lead to higher premiums.” CBO cited “mandates to cover specific benefits such as chiropractic services or minimum hospital stays for births” as examples of such high-cost insurance regulations.⁵

Mandates and their associated costs contribute to the number of uninsured people in Washington. Since 1992, the number of new mandates and changes to existing mandates rose, as noted, by more than 50 percent, increasing from 30 to 50. Over the same period the uninsured rate in Washington

increased nearly as much, rising from 10.4 percent to over 14 percent.⁶

The authors of one national study found that state-imposed mandates may account for as many as one in four Americans who are uninsured. “Mandates are not free,” they report, “they are paid for by workers and their dependents, who receive lower wages or lose coverage altogether.”⁷

Another study found a strong correlation between higher health coverage costs and increases in the uninsured population. Professors Frank A. Sloan and Christopher J. Conover of Duke University found that, “...the higher the number of coverage requirements placed on plans, the higher the probability that an individual was uninsured, and the lower the probability of people having any private coverage, including group coverage. The probability that an adult was uninsured rose significantly with each mandate present.”⁸

Policy Analysis

The number of mandates and other state imposed regulations means that basic health insurance is not available in Washington. State law contains a “value” or “bare-bones” insurance provision dating from 1990, but it includes many detailed regulatory requirements and is not free of all mandates.⁹

A policy allowing true basic health insurance free of state-imposed mandates has the following advantages:

- Promotes the public interest – the public benefits when government policies allow greater, rather than fewer, choices in the health care market.
- Encourages personal freedom – citizens would have greater say in one of the most personal and sensitive areas of life.

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- Enhances market efficiency – health care consumers would be able to seek the coverage they need at a price they are willing to pay.
- Reduces the number of uninsured – individuals, families and small business owners who are currently priced out of the market would have new opportunities to gain access to health insurance.

Recommendations

- 1) Authorize low cost, mandate free health insurance.** Insurance should be available to individuals and to businesses without state-imposed mandates, with pricing that reflects its actual value to consumers.
- 2) Require an independent cost-benefit analysis of existing health care mandates.** As has been done in other states, an independent cost-benefit analysis would more accurately determine the role of mandates in increasing the cost of health coverage.
- 3) Adopt a moratorium on new health care mandates.** A moratorium on new mandates would create a much-needed "time-out" in the growth and complexity of health insurance regulations. This in turn would give policymakers and the public the opportunity to learn more about the long-term impact of mandates on the price and availability of health care coverage.

2. Health Savings Accounts and High Deductible Health Plans

Recommendations

1. Encourage insurance companies to enter Washington's HSA/HDHP market to promote choice and price competition benefiting consumers.
2. Exempt high deductible health plans from state community rating requirements.
3. Urge Congress to make premiums for individually-purchased health insurance plans, such as those accompanying HSAs, tax deductible.

Background

The current system of employer-based health care coverage dates from the period of wage controls imposed by the federal government during World War II. Since employers were barred from offering higher wages to attract workers, they began offering non-monetary benefits such as free health care. In 1943, the IRS ruled that the cost of these benefits was a legitimate business expense, making health coverage fully tax deductible for businesses, but not for individuals.

That ruling, later confirmed by Congress, created three interconnected economic distortions in the health care market:

- 1) It prevented patients from knowing the actual cost of the care they received.
- 2) It created the third-party payer problem, encouraging patients to demand care, regardless of whether it is necessary or cost effective. Most weekend warriors

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do not need a \$1,000 MRI for their aches come Monday morning.

3) It undermined the true understanding of health insurance. People tend to see their health benefits as a pre-paid service, not as a way of mitigating risk. People reason, "It's a free benefit. I'll use as much as I want."

An effective tool to dismantle these distortions did not exist until Health Saving Accounts (HSAs) were established on December 8, 2003, when President Bush signed the Medicare Prescription Drug, Improvement and Modernization Act. The law became effective January 1, 2004, when the first HSA was sold, allowing consumers to purchase health coverage with the same tax advantage as businesses for the first time in 61 years.

Citizens in Washington and throughout the country can now make pre-tax deposits into an HSA that can be used to pay for routine health care expenses. HSAs must be accompanied by a high deductible health plan (HDHP). For 2006, this means a plan with an annual coverage deductible of at least \$1,050 for an individual or \$2,100 for families. In Washington, the legislature enacted a bill creating an HSA benefit option for the state's 106,000 employees and their families.

In 2006, annual HSA deposits cannot exceed the amount of the insurance deductible or \$2,700 for individuals and \$5,450 for families, whichever is less. These latter limits are indexed to inflation and will increase in future years. Savings in an HSA can earn interest or be invested in stocks or mutual funds just like saving in Individual Retirement Accounts. Interest and investment earnings are tax-free.

HSA balances belong to individual account holders and remain theirs if they change jobs, become unemployed or retire.

The funds can be used to pay qualified medical expenses and unspent funds carry over to the next year. Below is a summary of how HSAs work.

An Overview of Health Savings Accounts

- Each HSA must be accompanied by a high-deductible health plan (HDHP).
- Annual tax free contributions can be made up to the lesser of:
 - the amount of the HDHP deductible, or
 - \$2,700 for individuals and \$5,450 for families (indexed to inflation).
- HSAs are portable. HSA funds belong to the account holder and travel with the person from job to job.
- Contributions to an HSA may come from any source, including: self, parent, spouse, grandparent, or employer.
- Funds may be spent tax free on qualified medical expenses.
- Investment earnings in the account accumulate tax free.
- Unspent funds in an HSA carry over to the next year; there is no “use it or lose it” limitation.

The idea behind HSAs is simple. Individuals should be able to manage some of their own health care dollars through accounts they own and control. They should be able to use these funds to pay for health care expenses such as prescriptions, x-rays and other diagnostic tests, and office visits to their health care provider. Consumers who have more direct control over their health care dollars are more likely to take responsibility for their health care decisions.

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Health Savings Accounts have several additional advantages for consumers. Besides making health coverage more affordable, HSAs are another way of building financial assets. The money in an HSA belongs to the account holder, not to an employer, insurance company, or government agency.

As people become more familiar with HSAs, more people are purchasing them. In the last nine months of 2005, the number of Americans with HSAs tripled to at least 3.2 million.¹⁰ Congressional researchers estimate that over the next decade as the market continues to develop, approximately 40 million people will acquire an HSA. Because unlimited annual rollover is allowed, unspent funds in an HSA can accumulate tax free for years and be available at retirement.

After retirement, HSA money may be spent for any non-medical purpose subject only to income tax. There are never taxes for medical costs, including long-term care expenses or Medicare premiums. Unspent money in an HSA can be inherited by heirs or a surviving spouse.

HSAs also carry advantages for employees and employers. The accounts provide flexible service to employees, giving them more choice and control over their health care spending. Through HSAs, employers can encourage a more health conscious and productive workforce. Moreover, any employer contributions to an HSA are not taxable to the employee.

Employers benefit by having lower administrative costs and less paperwork. HSAs are managed by employees or their financial advisors, not by the employer. Employers also see HSAs as a method of controlling their ever increasing health care costs. Whole Foods, the grocery chain, covers all of its employees through personal, high-deductible plans while providing cash to employees for the deductible, and spends only half of the national corporate average for health care costs.¹¹

Policy Analysis

Consumer-directed Health Savings Accounts bring price and service competition to the health care market. Doctors, clinics, and hospitals have an incentive to provide quality and price transparent care to patients. As consumers begin shopping more for their basic health care, providers will get questions they usually do not hear from patients such as, “How much does that cost?” Currently, it is difficult for patients to access information about the price and quality of a medical service.

As the number of patients with HSAs rises, so will the amount of transparent information that is available to these patients. Already, websites exist which compare hospital prices on a cost-to-charge ratio and prescription drugs for a given disease or condition. The emergence of in-store health clinics provides consumers with straight forward pricing for a limited number of health care services.

One example of such a clinic in Washington is MinuteClinic, located in select Bartell Drug Stores. For an advertised fee, MinuteClinics provide vaccines and diagnosis and treatment of relatively minor ailments such as pink eye, strep throat, and athlete’s foot. Such consumer friendly and economical sources of health care provide an example for the entire health care system.

In addition to making coverage more accessible, Health Savings Accounts carry civic and social advantages. HSAs make people more independent and self-reliant, rather than dependent on government or employers for a vital life necessity. HSAs encourage people to be more accountable and responsible in their own lives.

Recommendations

1) Encourage insurance companies to enter Washington's HSA market to promote choice and price competition that benefit consumers. Over the years insurance companies have steadily left the state, leaving consumers with fewer choices. The advent of HSAs offers a way to reverse that trend. The legislature should encourage more insurers to enter the state's emerging HSA market.

2) Exempt high deductible health plans from state community rating requirements. This would allow fair and accurate pricing of HSA health coverage because the cost of the insurance policy would then be based on the actual health risk a person brings to the insurance pool.

As a good first step toward helping the uninsured, the exemption could be limited to people who had no health coverage in the previous six months. Extending the exemption to small businesses buying first-time HSAs for their employees would further reduce the uninsured population.

3) Urge Congress to make premiums for individually-purchased health insurance plans, such as those accompanying HSAs, tax deductible. Under current federal law, money paid for the high deductible health plan that must accompany each Health Savings Account carries no tax advantage, yet all other financial aspects of HSAs – contributions, interest earnings and payouts – are tax free. State policymakers should encourage Washington's congressional delegation to make premiums for all individually-purchased health insurance plans tax deductible.

3. Certificate of Need Law

Recommendations

1. Repeal Washington's Certificate of Need law.
2. Short of repeal, scale back Certificate of Need restrictions to allow doctors, clinics and hospitals to respond to patients' needs more quickly and efficiently.

Background

Imagine your community is home to a nursing care facility that has operated for years with optimal customer satisfaction. It provides quality care and assistance, its facilities are modern and clean, and the staff is excellent. The nursing home is exceeding capacity and its operators look at the growing demand and decide to expand the facility by adding five beds. The administrators consult experts, study options and cost projections and, after careful consideration, secure a building permit and begin construction. It sounds reasonable, except they just broke the law.

Currently it is illegal to open or expand most kinds of medical facilities in Washington, unless the state grants a special Certificate of Need (CON). Washington is one of thirty-seven states (including the District of Columbia) that require specific government permission to open, expand or modify most kinds of health care facilities.

Dating back to New York in 1964, CON laws grew out of the belief that surplus supply of medical facilities and services meant providers would pass the excess cost on to patients. Limiting supply, some believed, would cap rising health care costs.

Typical Steps in the CON Need-Determination Process for Building or Expanding a Hospital in Washington

- Compile historical hospital use data for area during previous ten years.
- Compute average use rates for each year and for each age group: 0-64 & 65+, at a minimum.
- Forecast each area's hospital use rates for a target year (in some cases as far out as 10+ years).
- Adjust use rates for population trends from the Office of Financial Management.
- Adjust projections and use rates based on presence of a Health Maintenance Organization.
- Adjust use rates for residents who use out-of-state hospitals.
- Distribute forecasted patient days to hospital planning areas based on market share.
- Use average occupancy standards to determine each planning area's bed need.
- Add psychiatric bed need forecast (determined in a separate process) to non-psychiatric need forecast.
- Make necessary final adjustments for population, use rates, market shares, out-of-area use rates, and shifts in occupancy rates.

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Eventually, every state adopted CON laws. Washington adopted its law in 1972. It is administered by the state Department of Health. The National Health Planning and Resources Development Act of 1974 directed each state to examine proposed health care facilities and determine the need for such services.

By 1982, however, the federal government recognized the failure of CON laws to reduce health care costs and repealed the national health planning requirements. Since then, 14 states have followed suit and eliminated their CON requirements.

Washington retains its original 1972 statute, even though the law has demonstrably failed in its stated goal of reducing costs and increasing access to health care. The state, not doctors or hospital administrators, decide whether anyone may build, expand, sell, purchase, or significantly modify 15 different kinds of medical facilities and services, including hospitals, nursing homes, outpatient surgery centers, retirement communities, and organ transplant services.

The CON application process lasts up to two years or more and costs hundreds of thousands of dollars, which is added to the price of health care. The process itself is extremely arcane. The table shows the process the Department of Health uses to determine the need for surgery operating rooms.

The CON process is just one phase of a much larger set of regulatory requirements. The following table shows the many additional permitting, licensing, building code, environmental and zoning requirements that must be completed.

Additional requirements for clinic and hospital construction in Washington¹²

Licensure and Physical Plant Requirements

- Finishes (carpet, tile, wall covering)
- Heating and ventilation system
- Hot water system
- Medication handling
- Nurse call system
- Room size, furniture & equipment
- Shower and toilet fixtures

Fire / Life Safety Requirements

- Automated sprinkler system
- Electrical generator system
- Fire alarm system
- Fire / life safety structural design
- Life support system
- Medical gas system
- Smoke control system

Standards Adopted by State Building Code Council

- 2003 International Building Code
- 2003 International Fire Code
- 2003 International Mechanical Code
- 2003 International Plumbing Code
- Barrier-free requirements
- National electrical code
- Washington state energy code
- Washington state ventilation code

These regulations are important to protecting public health and safety, and there is no suggestion that this requirement should be loosened or repealed. The purpose here

is to show that the lengthy and complicated Certificate of Need process is imposed *in addition* to a long list of existing requirements.

Policy Analysis

Three decades of experience shows that Washington's CON laws have not worked as intended. A 1999 study by the Washington State Joint Legislative Audit and Review Committee (JLARC) and a 2005 study by Seattle's Mercer Human Resource Consulting Group both concluded that Washington's CON laws have neither reduced the cost of nor increased access to health care.

A 2004 report by the Federal Trade Commission and the Department of Justice came to the same conclusion, and suggested that in some states CON laws have contributed to higher health care costs by reducing supply and stifling competition.

The program's record indicates CON no longer serves the public interest, if indeed it ever did. The stated purpose of the program is to control costs and meet changing conditions. Yet to succeed, our health system requires the very flexibility CON is designed to prevent.

In a state experiencing rapid growth and demographic change, CON prevents providers from adapting to the changing health needs of the community.

For example, in 2006, Cancer Treatment Centers of America wanted to build a \$76 million, 24-bed state-of-the-art medical facility on a 10 acre site in Kent. City leaders strongly supported the proposal, which would have created 250 new jobs. State regulators, however, concluded the hospital was not needed, twice rejecting it through the CON process.¹³

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CON laws result in the opposite of their intended purpose, by actively blocking citizens' access to health care choices and to modernized health care facilities. The laws also bog down health care providers in stacks of regulation and paperwork.

The CON process has become arcane and politicized, and medical organizations holding CONs frequently use the laws to keep competitors out of their area. When health care organizations are allowed to compete with each other in a system that functions more like a normal market, consumers of health care win because there are incentives for providers to innovate and grow more efficient.

Competition builds a more nimble, community-responsive system that readily adapts to changing needs. Bureaucratic red tape and inflexible planning and regulatory structures that keep competitors out cannot achieve this.

In practice, Washington's CON laws do not improve health outcomes for citizens. Instead, they are used to control access to health care. State regulators – not communities and health care professionals – pick winners and losers in the health care market by deciding when and where medical facilities will be built.

Recommendations

1) Repeal Washington's Certificate of Need Law. Washington should join the 13 states like Pennsylvania, California and Texas that have repealed their Certificate of Need regulations. Citizens in those states benefit from a faster and less-bureaucratic process for opening new hospitals and clinics. Washington citizens would similarly benefit if our state's failed CON law were repealed.

2) Scale back Certificate of Need regulations to allow doctors, clinics and hospitals to respond to patients' needs more quickly and efficiently. If retained, the CON law should be limited to only a few types of medical facilities or only apply at a higher expenditure threshold. This could be done as a precursor to full repeal or with the intention streamlining the CON process to make it more workable.

4. Medical Liability Reform

Recommendations

1. Cap the amount of noneconomic damages that can be awarded by a jury.
2. Eliminate joint and several liability rules.
3. Encourage more far-reaching medical liability reforms such as schedules of damages, “early offer” programs and specialized medical courts.
4. Strengthen the effectiveness of the Medical Quality Assurance Commission.

Background

Currently, individuals may file civil lawsuits against doctors, clinics and hospitals for unlimited amounts of money for breaches of duty that cause injury. This legal system has two primary purposes – deter doctors and other health care providers from acting negligently, and compensate injured people for the losses they have suffered.

Although not required by state law, most doctors in Washington buy malpractice insurance to protect themselves and their practices against expensive jury verdicts. The high cost of malpractice insurance contributes to the rising cost of health care, and is having a harmful effect on doctors, patients and payers.

The American Medical Association includes Washington on the list of states it considers to be facing a

medical liability crisis, threatening the viability of the medical community and the health of patients. This is the third malpractice crisis in 30 years, following the ones in the mid-1980s and the mid-1970s. It is a recurring problem in desperate need of a long-term solution.

Although fewer medical malpractice claims have been filed in recent years, the monetary value, or severity, of each claim is rising. As of 2003, the national median malpractice jury award was \$1.2 million. High jury awards are not isolated events, they influence future court cases as well as out-of-court settlements.

Higher claim costs are the primary reason for increased malpractice insurance premiums. Moreover, in Washington, because of joint and several liability rules, each defendant in a medical malpractice lawsuit is potentially responsible for paying the total jury award to a patient, regardless of how small that defendant's role was in causing the patient's injury.

This rule encourages injured patients and their lawyers to seek full payment from the defendant with the "deepest pockets," not necessarily the one most responsible for causing harm.

Malpractice lawsuits affect physician behavior, contributing to the practice of defensive medicine and driving up health care costs. Defensive medicine refers to a doctor ordering diagnostic tests, procedures, specialist referrals or prescription drugs mainly to reduce malpractice liability, not to serve the patient better.

A recent study found that medical liability costs and defensive medicine account for 10 percent of medical care costs.¹⁴ Additionally, physicians in a state with a malpractice crisis, like Washington, are more likely to retire early, leave the state, or reduce their scope of practice.

In 2005, two contentious medical malpractice initiatives, Initiatives 330 and Initiative 336, appeared on the November ballot. Each took a radically different approach to changing Washington's medical liability laws. Both initiatives failed, prompting the governor to negotiate and the legislature to pass a health care liability bill in 2006.

The new law makes modest changes to patient safety, liability insurance and the legal process. Most of these changes, however, are minimal and will not truly resolve the medical malpractice crisis in Washington.

Policy Analysis

Twenty-six other states have adopted some form of limitation on jury awards, primarily on noneconomic damages. Many states model their tort reform on California's Medical Injury Compensation Reform Act (MICRA), enacted in 1975. MICRA caps noneconomic damages at \$250,000 and limits attorneys' fees based on a sliding scale.

Under MICRA, malpractice claims in California are settled in one-third less time than the national average of more than five years, and malpractice insurance rates have dropped by 40 percent since MICRA's inception. The result is a system that better serves the needs of patients by reducing the cost of litigation and speeding compensation payments.

Noneconomic damage caps reduce the average size of an award and limit malpractice insurance premium growth. Caps have been demonstrated to result in a 23 percent to 31 percent reduction in the amount of an average jury award. Moreover, states with caps of \$350,000 or less on non-economic damages saw increases in malpractice insurance premiums of 13 percent in 2000-01, while states without caps experienced a 44 percent increase in premiums.

Joint and several liability

Over the last 20 years, the majority of states have reformed their joint and several liability laws. In states that abolished joint and several liability, physicians are not held liable for the negligent acts of other doctors. This approach is fairer because it allocates financial damages in proportion to each defendant's actual level of fault. It also reduces costs because malpractice insurers, when issuing policies, know how much risk each doctor is assuming.

Washington needs reforms similar to those in other states that are successfully reducing costs while protecting patients. Practical reforms include reasonable limits on non-economic damages and eliminating joint and several liability. These recommended reforms would represent an important start.

More comprehensive medical liability reform

The medical liability system is complicated, and it currently does not adequately meet its two objectives of deterring medical negligence and compensating injured patients.

Policymakers should consider broader, long-term reforms that fully address the fundamental problems with the medical liability system. Effective long-term reforms include:

- A regular schedule for determining noneconomic damages, with financial awards increasing with the seriousness of the patient's injury;
- "Early offer" programs that allow fast payment of compensation with an injured patient's agreement not to seek further payments; and,

- Specialized medical courts where independent medical experts can make faster, more consistent decisions about awarding just compensation to injured patients.

Improving the Medical Quality Assurance Commission

The purpose of the medical liability system is to secure fair compensation for injured patients, punish negligent or incompetent doctors, and deter future acts of negligence. The court system by itself, however, is ill equipped to police the medical profession and ensure the good conduct of doctors. The enforcement powers of the executive branch are best suited for that.

Washington regulates physicians through the Medical Quality Assurance Commission (MQAC). The Commission is responsible for establishing, monitoring and enforcing qualifications for licensure, consistent standards of practice and continuing competency.

While patient complaints and out-of-court malpractice settlements may not be widely known to the public, they are no secret to the members of MQAC. Acting on this information, the state should investigate, impose limits on practice and, if need be, revoke the licenses of negligent doctors *before* they do serious and lasting harm to patients.

Recommendations

1) Cap the amount of noneconomic damages that can be awarded by a jury. Limits in other states range from \$250,000 to one million dollars. Regardless of what figure Washington policymakers consider appropriate, the goal is to make future awards more predictable, which in turn will make insurance premiums more predictable.

2) Eliminate joint and several liability. Defendants should be liable only for their own decisions and actions, not the decisions and actions of others. This will decrease the need for patients to bring a marginal suit against a “deep pocket.”

3) Encourage the development of more far-reaching medical liability reforms such as schedules of damages, “early offer” programs and specialized medical courts. Longer term solutions need to be developed if the goals of the medical liability system are to be achieved.

4) Strengthen the effectiveness of the Medical Quality Assurance Commission. Physician competency and quality are regulated by state law. Regulators need to make greater efforts to assure the public that the few “bad apples” in the medical profession are identified and removed from the health care system.

5. Promoting Patient Safety

Recommendations

1. Encourage patient centered care.
2. Remove state legal barriers to electronic health information networks, to help patients get the right care at the right time.
3. Encourage greater transparency, so the public has access to accurate information about health care quality, cost and provider qualifications.

Background

Since the Institute of Medicine's "*To Err is Human*" report in 1999, patient safety issues have become a focal point for health care policymakers. That report made national headlines, as America learned that between 44,000 and 98,000 citizens died in hospitals each year because of medical errors.¹⁵

The majority of these errors are thought to be preventable. Medical errors include diagnostic, treatment and preventive errors, as well as communication errors and equipment failures.

Recent studies indicate that Americans receive only half of the care recommended by their providers, regardless of race, gender, income or insurance status. Additionally, fewer than half of Americans who need preventive services, such as regular cancer screening, get them. Our current health care system does not provide the right care at the right time.

Health Care

Our health care system is overwhelmed with information, with no cohesive, meaningful way of making sense out of it or of accessing it easily. A patient's medical records are mainly paper files, are often voluminous, and yet frequently lack the information doctors need to provide proper care. A recent survey shows that 83 percent of doctors report reviewing one of their patients' test results in the previous two months that "they wished they had known about earlier."¹⁶

Another study shows that the categories of missing clinical information were precisely those that patients want doctors to have, including laboratory and radiology results, letters and dictation, and prescribed medicines. The consequences of not having key medical information available at the time it is needed include unnecessary delays in care, additional laboratory tests, imaging and office visits.

It is also difficult to access good information about providers. Patients and purchasers of insurance coverage would like a simple, accurate rating system to help them choose a provider. Currently, there is no comprehensive transparent rating system that shows the cost, quality of care and level of training for doctors and other health care providers.

Finally, as the amount of clinical information available increases, physicians are being pressured to follow evidence-based medicine guidelines. Evidence-based medicine is defined as "integrating individual clinical experience with the best available external clinical evidence from systematic research."¹⁷

The data behind evidence-based medicine may be useful to physicians, but the resulting guidelines are frequently held out as the equivalent of the standard of care. This misuse of evidence-based medicine essentially micromanages the practice of medicine. In the current litigious environment in which doctors are increasingly fearful of being sued, the pressure to adhere to evidence based medicine guidelines may sacrifice individualized patient care.

Policy Analysis

Our health care system needs to be patient based, efficient and cost-effective. It needs to provide quality care with few medical errors. Patient safety is a broad issue under which almost all aspects of health care can be grouped. While every aspect of patient safety is thus beyond the scope of this policy guide, there are three categories of patient safety issues that are good beginning points for policymakers. These are patient centered care, electronic health information networking and transparency.

Evidence-based medicine

Evidence based medicine can be a powerful tool for physicians, providing them with useful information to use in treating their patients. The danger lies in placing evidence-based medicine above all other elements of patient care. Patients go to physicians for their professional judgment and expertise. The physician-patient relationship is based on trust and communication, including discussions of the patient's goals, values and concerns.

Placing too much emphasis on evidence-based medicine risks destroying the combination of art and science practiced by physicians, and replacing it with a purely mechanical, "cookbook" approach to medicine. As physicians lose their clinical discretion, individual patients may be harmed. Evidence-based medicine should be used to enhance patient-focused care, not misused by policymakers and regulators to make decisions about cost and access.

Timely review of new drugs

In 2003, the legislature enacted a program to reduce the costs of prescription drugs for state-funded health care programs.¹⁸ This law requires pharmacists to substitute a less expensive drug from a state-approved Preferred Drug List (PDL) for the drug prescribed by the physician, if the state determines the cheaper drug will have equal medical efficacy.

Currently, there are 26 drug classes on the PDL. The review of each drug class takes about 18 months, so often the newest, most beneficial drugs are not included on the PDL. Policymakers need to ensure that new drugs are reviewed in a timely fashion so that patients can benefit from medical advances.

Electronic health information networking

President Bush called for most Americans to have electronic health records by 2014. Some of the benefits of electronic records are improved quality of care and greater efficiency as the necessary health care information is available to the right person at the right time.

The federal Department of Health and Human Services has a health information technology plan for achieving nationwide health care data exchange. The major components of this plan are:

- Developing industry standards;
- Creating a certification process for the components of health information technology (electronic medical records and the network infrastructure);

Health Care

- Developing a network model that can be used to test the network as it is developed; and,
- Addressing variations in state laws affecting privacy and security of health care information.

While much of this plan is outside the jurisdiction of state policymakers, state laws affecting privacy and security are clearly under their authority. As state barriers to the exchange of health care information are identified, policymakers should encourage a proper balance between protecting the privacy and security of a patient's information with a process that permits the exchange of information in real time. By doing so, policymakers can help patients access the care they need when they need it.

Transparency

Patients do not yet have access to all of the information that they need to make responsible health care decisions. What treatment to get and from whom are two of the most basic health care decisions. Yet there is limited information concerning providers' quality, expertise and cost. The development of a transparent rating system for providers would provide some of the necessary information to patients and consumers.

Alone, each of these three categories can improve the safety of patients seeking medical care. They will be even more effective if combined.

Recommendations

1) Encourage patient centered care. The patient should remain the focus of care. Physicians should retain their

discretion to treat patients appropriately with the drugs they determine would most help the patient, based on a wide variety of information including the appropriate application of evidence-based medicine, clinical knowledge, intuition and knowledge of the patient.

2) Remove state barriers to an electronic health information network, which will help patients get the right care at the right time. Having the right information available to physicians at the moment the patient seeks care can reduce costs, improve quality, and reduce medical errors.

3) Encourage greater transparency, so the public has access to accurate information about health care quality, cost and provider qualifications. A good first step towards this goal would be to encourage insurance companies to develop such systems and make the information available to the enrollees of each health plan.

Additional Resources

Washington Policy Center Research

“What Washington Can Learn from Massachusetts Health Care Reform,” by Tanya Karwaki, June 2006.

“A Pocket Guide to Health Savings Accounts (Revised Edition),” by Liv S. Finne, June 2006.

“The Failure of Government Central Planning: Washington’s Medical Certificate of Need Program,” by John Barnes, January 2006.

“‘Fair Share’ Bill is Unfair and Impractical,” by Paul Guppy, January 2006.

“Overview of Initiatives 330 and 336: Proposals to Reform Washington’s Medical Liability Law,” by Paul Guppy, September 2005.

“Drug Formulary Law is Blocking Patients’ Easy Access to Prescription Drug Treatment,” January 2006.

“Health Care 2004: Opportunities for Reform and Innovation,” by Melissa Lambert Milewski, 2004.

“Health Savings Accounts Will Revolutionize American Health Care,” by John C. Goodman, 2004.

“Ten Tools for Achieving Consumer-Driven Health Care,” by Greg Scandlen, June 2003.

“Treatment Denied: State Formularies and Cost Controls Restrict Access to Prescription Drugs,” by Linda Gorman, February 2003.

“An Analysis of the Impacts of the Medical Malpractice System,” by Eric Montague, 2003.

“How Mandates Increase Costs and Reduce Access to Health Care Coverage,” by Paul Guppy, June 2002.

“The Ten Billion Dollar Entitlement: Assessing the Cost of Single-Payer Health Care,” by Paul Guppy, November 2000.

Other Resources

Galen Institute - A free-market think tank focusing on state and national health care reform and tax policy. www.galen.org.

National Center for Policy Analysis - Offers health policy research emphasizing consumer driven reforms. www.ncpa.org.

Council for Affordable Health Insurance – A research and advocacy association of insurance carriers active in the individual, small group, HSA and senior markets. www.cahi.org.

Health Care News, The Heartland Institute, a national nonprofit research and educational organization promoting free-market solutions to social and economic problems, www.heartland.org/publications.

“A Legislators and Consumers Guide to Prescription Drug Importation.” Published by the American Legislative Exchange Council and Institute for Policy Innovation. Available online at www.alec.org or www.ipi.org.

“Fakes in the medicine chest,” by Leila Abboud, Anna Wilde Mathews and Heather Won Tesoriero, *Wall Street Journal*, September 22, 2003.

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- ¹ Centers for Medicare and Medicaid Services, National Health Expenditures Data Highlights, at www.cms.hhs.gov/nationalhealthexpenddata/downloads/highlights/pdf.
- ² Centers for Medicare and Medicaid Services, National Health Expenditures Projections, 2005 – 2015, forecast summary and selected tables, at www.cms.hhs.gov/nationalHealthExpenddata/downloads/proj2005.pdf.
- ³ “Health Insurance Mandates in the States,” March 2006, Council for Affordable Health Insurance, at www.cahi.org/cahi_contents/resources/pdf/mandatepub/2006.pdf.
- ⁴ “How State Imposed Mandates Increase Costs and Reduce Access to Health Care,” by Paul Guppy, Washington Policy Center Policy Brief, June 2002, at www.washingtonpolicy.org/HealthCare/PBGuppyHealthCareMandates.html.
- ⁵ “Health Care Costs and Insurance Coverage,” testimony by Dan L. Crippen, Director, Congressional Budget Office, before the Committee on Education and Workforce, United States House of Representatives, June 11, 1999.
- ⁶ United State Census Bureau, Income, Poverty, and Health Insurance Coverage in the United States: 2004, at www.census.gov/pdf/2005/pubs/p60-229.pdf.
- ⁷ “Mandated Benefit Laws and Employer-Sponsored Health Insurance,” by Gail A. Jensen, Ph.D., Wayne State University and Michael A. Morrissey, Ph.D., University of Alabama-Birmingham, Health Insurance Association of America, January 1999.
- ⁸ “Effects of State Reforms on Health Insurance Coverage of Adults,” by Frank A. Sloan and Christopher J. Conover, *Inquiry* 35, No. 3, Fall 1998, pp. 280 – 293.
- ⁹ Revised Code of Washington, 48.44.023(b), “Mandatory offering providing basic health plan for employers with fewer than twenty-five employees – Exemption from statutory requirements – Premium rates – Requirements for providing coverage for small employers.”
- ¹⁰ “January 2006 Census Shows 3.2 Million People Covered by HSA Plans,” survey of 96 AHIP companies, Center for Policy and Research, America’s Health Insurance Plans, March 2006, at www.ahip.org/content/default.aspx?docid=15302.
- ¹¹ “A Lesson for Government: How Consumer-Based Health Care is Benefiting Workers in the Private Sector,” by Sally Pipes, Washington Policy Center Policy Note, 05-01, at www.washingtonpolicy.org/Misc/PN_Pipes_Consumer_health.html.

¹² Washington State Department of Health, Facilities and Services Licensing, Construction Review Services, at www.doh.wa.gov.

¹³ “Patients see hope, but the state says there’s no need,” by Peter Neurath, *Puget Sound Business Journal*, May 12, 2006.

¹⁴ “The Factors Fueling Rising Healthcare Costs, 2006,” prepared for American’s Health Insurance Plans, January 2006, PriceWaterHouseCoopers, at www.pwcglobal.com/extweb/pwcpublishations.nsf/docid/e4cofoo4429297A852571090065A70B.

¹⁵ “To Err Is Human: Building a Safer Health System,” by L. Kohn, J. Corrigan and M. Donaldson (editors), Committee on Quality of Health Care in America, Institute of Medicine, National Academy Press, Washington, D.C., 1999, at www.books.nap.edu/html/to_err_is_human.

¹⁶ Poon, et al, *Arch Intern Medicine*, 2004; 164: 2223-8.

¹⁷ “Evidence-based Medicine: What It Is and What It Isn’t,” by L.L. Sackett, W.M.C. Rosenberg, J.A.M. Grays, R.B. Hayes, and W.S. Richardson, *British Medical Journal*, 312, 1996, pp. 71-72.

¹⁸ SB 6088, introduced by Senator Alex Deccio, signed by Governor Locke June 26, 2003, see www.washingtonvotes.org, at <http://www.washingtonvotes.org/Legislation.aspx?ChamberLegislationTypeID=14&Number=6088&SessionID=2&op=View>.



Chapter 5: Education

1. K-12 Education Spending

Recommendations

1. Return the education system to its core function by focusing on classroom instruction.
2. Reduce personnel costs by offering flexible health benefits.
3. Competitively contract out services that are not essential to classroom instruction.
4. Hold education leaders accountable for student improvement.
5. Involve parents and the private sector in Early Childhood Learning programs.

Background

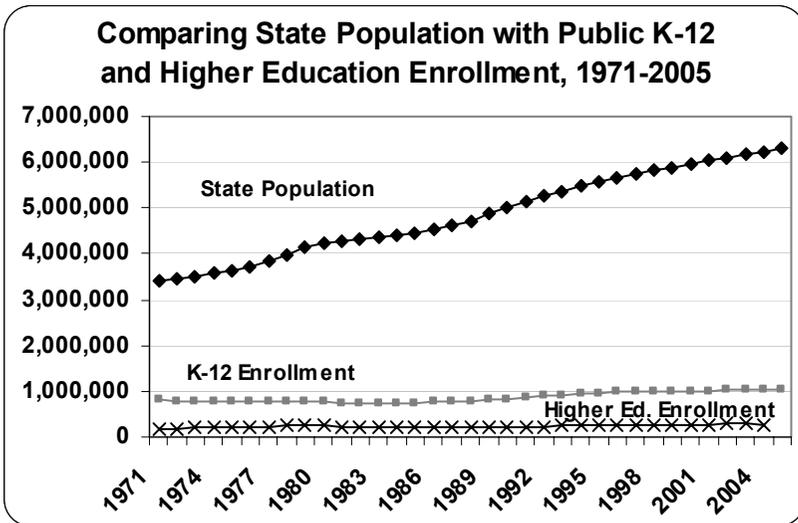
Public schools were established in Washington in 1854 by the first territorial Legislature. The system started with 53 schools and about 2,000 students.¹ A century and a half later, there are just over a million (1,021,000) K-12 public school students attending 2,251 schools in 296 districts across the state.²

Public school enrollment has increased only slightly since 1984, following a long decline in enrollment starting in 1970. The gains in the number of public school students since 1984 are due to net migration into the state and a slight increase in the birth rate beginning in 1995.³

The state's total population, however, has grown at a much faster pace than the number of students, creating a larger

Education

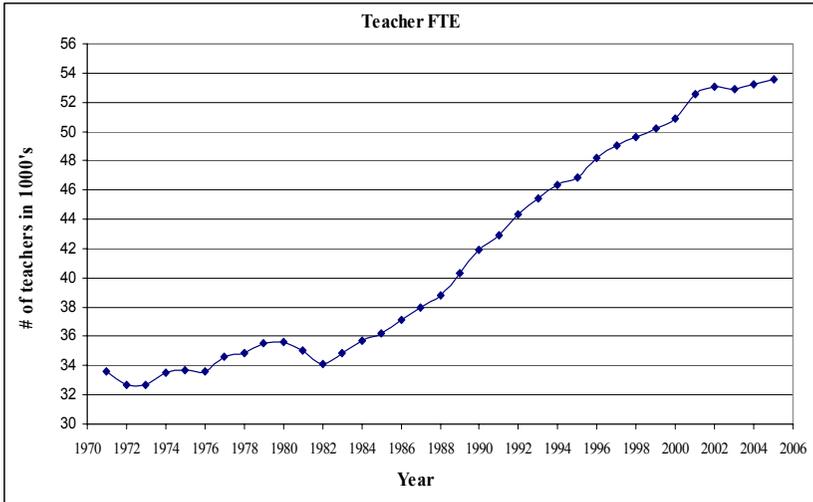
tax base to pay for educating a proportionately smaller number of students. Between 1971 and 2006, the state population increased by almost three million people (82 percent),⁴ while K-12 public school enrollment increased by only little over 200,000 students (25 percent).⁵ These trends are shown in the chart below.⁶



State population has grown much faster than public school enrollment, creating a larger tax base to pay for educating a proportionately smaller number of students.

While K-12 student enrollment in public schools has increased by only about a quarter, the number of teachers on the payroll has risen more than twice as fast, growing 68 percent over the last 30 years.

Education



While the number of students enrolled in public schools since 1970 increased 25 percent, the number of teachers on the payroll rose more than twice as fast.

The rise in K-12 spending

K-12 education is the largest single expenditure in the state budget. In 2006-07, the total budget for public schools is \$13.4 billion, including state, local and federal grant funding. The bulk of K-12 education spending, over \$11 billion, comes from the state General Fund budget. About \$700 million comes from federal grants, and about \$1.2 billion is provided by local funding, raised primarily through property taxes.⁷ How state education funding is allocated is shown in the following table.

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2005-07 State Basic Education Programs (in millions)		
General Apportionment	\$8154.5	70.5%
Special Education	932.0	8.1%
Transportation	489.1	4.2%
Learning Assist. Program	155.4	1.3%
Bilingual Education	123.2	1.1%
Institutions	38.8	0.3%
Subtotal: Basic Education Programs	\$9893.0	85.5%
2005-07 Non-basic Education Programs (in millions)		
Student Achievement Fund (I-728)	\$629.4	5.4%
Levy Equalization	357.2	3.1%
K-4 Enhanced Staffing Ratio	207.2	1.8%
Initiative 732 COLA (1.2%,1.7%)	135.2	1.2%
Health Care Increases	126.2	1.1%
Education Reform	82.7	0.7%
Two Learning Improvement Days	56.0	0.5%
State Office & Ed. Agencies	26.6	0.2%
Statewide Programs/Allocations	20.3	0.2%
Highly Capable	13.8	0.1%
Educational Service Districts	7.4	0.1%
Food Services	6.3	0.1%
Summer & Other Skills Centers	6.2	0.1%
Pupil Transportation Coordinators	1.6	0.0%
Subtotal: Non-Basic Education Programs	\$1676	14.5%
TOTAL – STATE FUNDS	\$11,569	100.0%

Public schools receive additional funds through the capitol budget and through separate local and federal programs. Altogether, average spending per student in Washington public schools is about \$9,500 a year.

Of the money for public schools, about 59 percent is spent on classroom instruction. The rest of the public school budget is spent on administrators, maintenance personnel,

special education, counseling, transportation, food services and interest on debt. An additional \$1.7 billion is spent on school construction and to pay interest and principal on long-term bond debt.⁸

Yet, even with higher levels of funding, and fewer students in school in proportion to the number of taxpayers paying for public education, 30 percent of students in Washington public high schools fail to graduate on time.⁹

Policy Analysis

The education establishment consistently argues that K-12 public education in Washington is underfunded. Yet by most measures, K-12 public education in Washington is well-funded. The problems that continue to plague the public education system can best be solved by internal change, not by pouring new tax money into an unreformed system.

Rising trend in spending

K-12 education funding in Washington has increased significantly in recent decades, even after accounting for inflation. Between 1980 and 2000, state and local spending on K-12 education increased by 94 percent in inflation-adjusted dollars, from \$3.96 billion in 1980 to \$7.67 billion in 2000.¹⁰ The rising trend continues. As mentioned, K-12 spending in the current biennium exceeds \$11 billion.¹¹

Yet while spending has almost tripled, the number of K-12 public students rose over the same period by only 35 percent, increasing from 756,500 K-12 students in 1980 to 1,021,000 students in 2006.

Washington public schools are well-funded

Advocates for increased spending often argue that education is underfunded because it makes up a smaller share of the state budget than in the past. Their choice of statistics is selective, however, and it is only by looking at broad measures that an accurate picture emerges.

As the state expands spending on non-education programs, the *proportion* going to public education falls, even as the *amount* spent on education is increasing. Public schools in Washington are receiving more public money than in the past, even as total state spending on other programs expands.

Over the long term, per capita K-12 spending in Washington has been above the 50-state average every year between 1980 and 2000 (the last year for which the comparison is available). While the figure has gone up and down over the years, education spending per capita in Washington has not fallen below the national average for two decades.¹²

State education funding has steadily increased over time, and in no year has the legislature reduced the amount of money devoted to public schools. In fact, per-pupil spending is higher than ever, and therefore school district administrators have more resources than in the past to educate a given number of students. In addition, there are more taxpayers paying into the system than ever before. By almost every reasonable measure, public schools in Washington receive adequate funding.

More spending does not always lead to better outcomes

Education spending in Washington has increased sharply in recent decades, while there has been little or no increase in student performance. Nationally, the money spent on K-12 schools has also been dramatically increasing, even after figures are adjusted for inflation.

Education

Between 1960 and 2000, real expenditures per student in the United States more than tripled from \$2,235 in 1960 in inflation-adjusted dollars to \$7,591 in 2000.¹³ Per-student spending continues to rise. As noted, Washington is spending about \$9,500 per student in 2006. Yet national tests show little significant change in student performance.¹⁴

Recommendations

1) Return the education system to its core function by focusing resources on classroom instruction. Over the years the school system has been given more and more tasks to make up for failures in other policy areas. Schools should be allowed to focus their resources on academics and not be asked to solve other problems facing society.

2) Reduce personnel costs by offering employees more flexible health benefits. Replacing the current restrictive and expensive health benefits system with tax free individual Health Savings Accounts, backed by low cost, high-deductible catastrophic insurance, would reduce costs for school districts and give employees greater control over their own health care dollars.

3) Competitively contract out services that are not essential to classroom instruction. Less than 40 percent of K-12 employees are teachers. Contracting out maintenance, accounting and other routine services would allow school districts to focus on their core mission – educating students.

4) Hold education leaders accountable based on actual student improvement. Principals and school superintendents should receive raises and promotions based on educational results, not seniority or their skill in working within a bureaucratic system.

5) Involve parents and the private sector in Early Childhood Learning programs. The newly-created Department of Early Learning combines the existing duties of state policy and child care licensing, Working Connections Child Care subsidies, the Head Start Collaboration Office and the Early Childhood Education and Assistance Office. For the new Department to be an innovative success, and not just another top-down state agency, it must involve parents and communities on a voluntary basis. It should also tap the energy and flexibility of private sector organizations to operate and manage early learning programs.

2. Teacher Pay

Recommendations

1. Make the most of current education spending by rewarding teachers based on performance.
2. Give local principals control over budget and teaching staff.
3. Establish separate oversight to provide safeguards and an appeals process.

Background

In 2004-05, there were approximately 59,072 public elementary and secondary teachers in Washington, about 39 percent of the 151,000 workers employed by school districts.¹⁵ The average salary of public K-12 teachers for a nine-month work year was just over \$46,000 in 2005-06. As a condition of employment, public school teachers pay about \$763 a year in mandatory union dues.¹⁶

While current salaries in public schools are well above the state average wage, the Washington Education Association (WEA) teachers union has made securing higher salaries for its members its number one priority. The union's main policy goal is for school districts to increase the *beginning*, not average, salary for certified teachers to \$45,000, on a total teacher pay scale that rises to a maximum of \$90,000, paid over nine months.¹⁷ At the same time, the union is highly critical of proposals that would link a teacher's professional performance to compensation.

Although controversial in Washington, performance pay has become routine in other parts of the country. Douglas County, Colorado has had such a system since 1994. The purpose of the pay system is to “reward teachers for outstanding student performance, enhance collegiality, and encourage positive school and community relations.”¹⁸

The system was developed by a committee made up of community members, teachers and administrators. The president of the area’s teachers federation says that under performance pay, “Teachers must demonstrate how their work is being used to drive instruction, and they are rewarded for employing new skills.”¹⁹

Several states, including Tennessee, Arizona, Colorado, Iowa, Ohio, Florida, and North Carolina, have adopted performance-based pay systems for teachers.

Policy Analysis

The current pay structure for Washington public school teachers, which bases pay increases on the number of years of experience and the number and level of education credits and degrees, was established in the 1920s to “ensure fair and equal treatment for all.”

This salary structure has changed little over the last 80 years. During that time, the world has changed, becoming more innovative and competitive, yet teacher pay today is based on seniority and training level, not actual effectiveness on the job.

Because pay is not linked with performance, as it is in almost every other profession, there is no chance to reward success in the classroom and teachers are not held accountable for failure. This gives teachers little incentive to become better educators over time and to help their students learn more effectively.

Education

The advantage of performance pay is that it encourages teachers to develop their talents and acquire new skills. Performance pay also allows school boards, administrators and parents to recognize quality educators and encourage them to excel in the classroom. At the same time, performance pay improves the quality of the teaching profession by encouraging underperforming teachers to seek a different line of work.

There are four different approaches to creating an effective performance pay system.²⁰

- Merit pay. Individual teachers are evaluated and given bonuses based on improvements in their effectiveness in the classroom.
- Knowledge- and skills-based pay. Teachers receive a salary increase when they acquire new levels of education and training. In Washington, teacher contracts often include automatic knowledge-based pay increases.
- Performance pay. Teachers are rewarded when their students show measurable improvement on standardized academic tests.
- School-based performance pay. All the administrators, teachers, and staff at a particular school receive a bonus if their students meet certain academic standards.

In one survey, 85 percent of teachers and 72 percent of principals said that providing financial incentives would “help a lot” when it comes to attracting and retaining good teachers. To determine performance fairly, teachers should be assessed with frequent evaluations of student achievement, teaching skills, subject knowledge, classroom management and lesson planning.

Policymakers who support performance pay systems show respect for students, parents and taxpayers who have a right to expect that public schools will consistently and effectively educate children.

Recommendations

1) Make the most of current education spending by rewarding teachers based on performance. The pay schedule should be changed to reward and retain top-performing teachers and attract talented teachers to high-need schools.

2) Give local principals greater control over their own school's budget and teaching staff. Currently it is almost impossible for principals to get rid of low-performing teachers. Using fair and objective measures of job performance, principals should be given the authority to hire, fire and promote teachers, and be held accountable for the quality of their teaching staff.

3) Establish separate oversight to provide safeguards and an appeals process. Teachers and other school employees should have the right to contest unfair treatment. Third-party oversight is needed to avoid favoritism, unmerited raises and management abuse of individual teachers.

3. Class Sizes

Recommendations

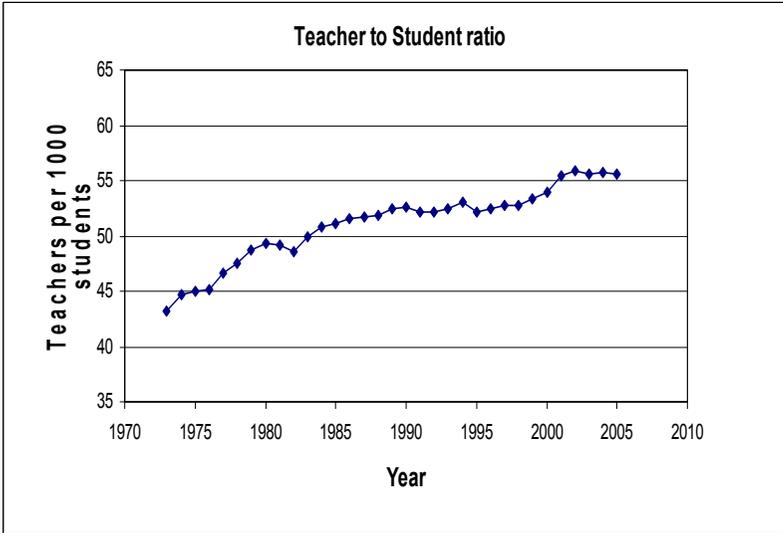
1. Class size reduction should not be imposed as a blanket, one-size-fits-all policy.
2. Reduce barriers that keep talented people from entering the teaching profession.

Background

Nationally, the number of students per teacher in public K-12 schools has fallen dramatically in recent decades. In 1965, the student/teacher ratio in elementary and high schools was 25 to one. By 2002 (the latest year available), the number of students per teacher had fallen to 16.²¹ Meanwhile, national per-student public education spending increased sharply. Over the 20 years from 1982 – 2002, per student spending increased 73 percent, from an average \$5,200 to \$9,000,²² a trend that continues today.

Washington has shared in this trend. While the current student-teacher ratio, at about 19, is higher than the national average, the number of teachers per 1,000 students has increased steadily since the early 1970s, as shown in the following chart.²³

Education



The number of teachers per student in Washington public schools has risen significantly over the last 30 years.

Yet a single-minded focus on class size is misplaced. Research shows that good teachers are more important than small class sizes. Economist Eric Hanushek of Stanford University's Hoover Institution gives three reasons why class size reduction generally does not improve student learning:

1. Class size reductions are usually not targeted to the specific situations where they would be effective.
2. Class size reductions require hiring more teachers, and the new teachers hired are often less experienced than current teachers. Students may be worse off in a smaller class if they have a less experienced teacher.
3. Class size reduction is expensive and alternative programs might be a better use of scarce education dollars.

A new study found that California's class-size reduction program did not result in significant test score gains.

California's class-size reduction also had certain unintended consequences. New teaching jobs opened up as a result of the class-size reduction policy, leading qualified teachers in urban areas to leave their jobs and take positions in the suburbs.

Urban schools then had a large teacher shortage and were forced to hire less-experienced teachers. The study found that because teacher quality is more important than class size for student achievement, many urban students were worse off after class sizes were reduced.

Policy Analysis

Improving teacher quality, rather than simply trimming class sizes, is a more effective way to maximize the effectiveness of education spending. Traditionally, to become a teacher in Washington state one must complete a designated teacher preparation program at a college or university. Prospective teachers can sometimes get a conditional or emergency certificate that will allow them to teach for a limited amount of time.

Also, in 2001, the Washington Legislature created some alternative ways teachers can gain certification. Instead of attending a traditional teaching program at a university, or going back for a master's or post-baccalaureate teaching degree, candidates can attend an intensive summer teaching academy, followed by a full year employed by a district in a mentored internship. This is followed, if necessary, by a second summer at a teaching academy.

Despite this greater flexibility, many of the brightest students are still discouraged from entering the teaching profession because of the many bureaucratic requirements necessary to gain a teaching certificate. The additional year

required to complete the certification program is a significant barrier to college graduates who did not major in teaching and who have other promising career opportunities that are open to them right away.

Studies find that a teacher's knowledge of the subject matter, not formal certification, is most strongly correlated with how well students learn. This important aspect of teaching is not adequately accounted for in the rigid teacher certification process. For example, under current restrictions, Bill Gates is not certified to teach computer science in Washington high schools, nor would Gary Locke meet the requirement to teach a Washington state civics class.

Recommendations

1) Class size reduction should not be adopted as a blanket, one-size-fits-all policy. Class reduction funds should be targeted to over-crowded schools. Other schools should be allowed to use class size reduction funds in alternative ways that lead to improved academic outcomes.

2) Reduce barriers that keep talented people from teaching. Content knowledge and professional experience should be the standard for hiring teachers rather than outdated bureaucratic requirements. Teacher certification should focus on mastery of subject matter, not on process.

4. Student Testing and Achievement

Recommendations

1. Maintain consistent WASL standards, so students are judged equally from year to year.
2. Improve test-taking skills, so the WASL test is a reliable measure of students' true academic knowledge.

Background

The quality of education in a state is not necessarily related to the level of education spending. This can be seen in both national and international test scores, which show that high academic achievement is often not parallel to high levels of education spending. Similarly, measures such as spending per student, number of students per teacher, average teacher salary, and level of spending by local school districts are not reliable predictors of high academic performance.

To state that academic achievement in Washington is inherently linked to the levels of education spending in the state is a flawed premise. Only through dramatic, internal changes, not increased spending, will the academic achievement of Washington students significantly improve.

Policy analysis

With that in mind, in recent years, Washington students have done well on some education measures and poorly on others. National tests show that Washington students often do better than the national average.

Education

While Washington compares favorably on some national measures, the results for the 2004-05 Washington Assessment for Student Learning (WASL) show that in general public schools are failing to educate children to the standard set by the state.²⁴

- In fourth grade, only 79 percent of Washington students met the WASL reading standard, 57 percent met the writing standard and 60 percent met the math standard.
- In seventh grade, 69 percent met the WASL reading standard 61 percent met the writing standard and 37 percent met the math standard.
- In tenth grade, 60 percent of students met the reading standard, 65 percent met the writing standard and 39 percent met the math standard.

In all three grades less than 37 percent of students met the WASL standard in science.²⁵ Test results show that often the longer a student remains in public school the greater the chance of failing a portion of the WASL.

The research argues not for lowering test standards, which would only result in more poorly educated students being graduated into society, but for maintaining standards and improving student learning. A greater proportion of current public education money should be spent in the classroom, to help teachers educate students more effectively.

Recommendations

1) Maintain consistent WASL standards, so students are judged equally from year to year. Test standards should not be lowered to make it appear that more students are passing. Lowering standards is not fair to students who have met the higher standard, and leaves policymakers with a moving target,

Education

making it difficult or impossible to accurately assess changes in the system.

2) Improve test-taking skills, so the WASL is a reliable measure of students' true academic knowledge. Not all students are good at taking tests, but practice, preparation and careful instruction from teachers can ensure all students have an equal chance to perform well.

5. Charter Schools

Recommendation

1. Allow non-profit groups to expand education opportunities for children by opening charter schools in Washington.

Background

Charter schools are public schools that are privately run and are exempt from many state and federal rules governing traditional public schools. Like other public schools, charter schools are funded by public education money, must accept all students and do not charge tuition.

Proponents say charter schools allow educators to escape the bureaucracy entangling other public schools and find creative solutions for struggling students. Opponents say such schools drain money from traditional public schools and lack accountability.

In the midst of this debate, the charter school movement has grown rapidly since it began more than a decade ago. Currently, there are about 3,000 charter schools throughout the United States, enrolling over 680,000 students.²⁶

A typical charter school has about 250 students.²⁷ Charter schools are popular and have difficulty meeting demand; about 70 percent of charter schools have a waiting list. Currently, 40 states (and the District of Columbia) allow charter schools; Washington is not one of them.

Basic standards at charter schools

While charter schools are free of most bureaucratic restrictions, they must meet certain basic standards. They must:

Education

- Conduct annual self-assessments and report on progress at least annually to the school district and to parents.
- Comply with state and federal rules about health, safety, parents' rights, nondiscrimination and civil rights.
- Participate in free and reduced-priced lunch programs.
- Participate in the WASL, ITBS, and other measures of academic success.
- Be subject to financial, performance, and accountability examinations.

Unlike public schools, charter schools will close if students are not learning at satisfactory levels. A sponsor can also revoke a charter before it expires for emergency health and safety reasons. If a warning is given and the school does not correct its problems, charters can also be revoked for contract violations or for poor fiscal management. In addition, charters are not renewed if the academic progress of charter school students is inferior to the progress of similar students in the area.

Charter schools lead to improved learning

Research shows that students at charter schools benefit from improved learning in reading and math, compared to the nearest regular public school they would otherwise attend. Students were 5.2 percent more likely to be proficient in reading, and 3.5 percent more likely to be proficient in math, if they attended a charter school compared to a regular public school.²⁸

Education

Students at charter schools that had been open longer showed the greatest improvement. Students were 10.1 percent more likely to be proficient in reading, and nearly 11 percent more likely to be proficient in math, if they attended a charter school that had been operating at least nine years.²⁹

Because they offer parents choices, charter schools also help other public schools improve. A Harvard University study found that the possibility of competition prompted significant academic improvements at public schools in Arizona, Michigan and Milwaukee. The study's author concludes:

“If every school in the nation were to face a high level of competition both from other districts and from private schools, the productivity of America's schools, in terms of students' level of learning at a given level of spending, would be 28 percent higher than it is now.”³⁰

When charter schools exist in a state, administrators at other public schools find that if they fail to educate students, dissatisfied parents will take their children, and the funding that goes with them, elsewhere.

Policy Analysis

In March 2004, the Washington legislature passed a charter schools law which would have allowed non-profit groups to operate a limited number of charter schools under certain restrictions.³¹

- No more than 45 charter schools could open over a period of six years.
- Each school would have a detailed five-year plan that meets state academic standards.

Education

- Most charter schools would serve disadvantaged students – those with limited English, special needs or disabilities or who are enrolled at failing public schools.
- Religious and for-profit organizations would not be permitted to run charter schools, as is common in other states.
- Charter schools could not receive existing local levy money. They could only receive funds from local levies that pass after they have been established.

Public sector unions, particularly teachers unions, strongly oppose charter schools, seeing them as a threat to the existing public education monopoly. They especially oppose allowing charter school faculty members a choice about joining a union as a condition of employment, since this would reduce the amount of money they collect in dues from teachers.

Shortly after Washington's charter school law was signed, charter school opponents filed Referendum 55, which required approval by voters for the charter school law could go into effect. The state teachers union, the Washington Education Association (WEA), strongly argued for a "no" vote on the referendum.³² In November 2004, Referendum 55 failed and the charter school law was repealed.³³

Recommendation

1) Allow non-profit groups to expand education opportunities for children by opening charter schools in Washington. Established public education interests have demonstrated their hostility to charter schools, yet these schools have demonstrated remarkable success in other states, and offer significant academic benefits for Washington school children.

Education

The legislature should again consider charter school legislation to allow greater educational opportunities in Washington. Such legislation should not include a cap on the number of charter schools and should not place restrictions on where charter schools can be opened.

6. Higher Education

Recommendations

1. Contract out campus maintenance services.
2. Return to a more vigorous core curriculum for all students.
3. Increase academic focus on teaching basic skills in science, technology, engineering and math (STEM).

Background

The public higher education system in Washington consists of 34 community and technical colleges, six four-year universities and colleges, and a number of branch campuses. In fall 2004, there were 105,366 students enrolled in public four-year colleges and universities and 249,537 students enrolled in community and technical colleges in Washington.³⁴ There are 33 reported private higher education institutions in Washington, as well as a number of private institutions that focus on workforce training.³⁵

The total operating budget for higher education for the 2005 – 2007 biennium is \$2.93 billion, a 9.3 percent increase over the previous two-year budget.³⁶ The capital budget adds a further \$922 million to higher education spending in 2005-07.³⁷ Public higher education is primarily funded through the General Fund and student tuition, but also receives revenue from higher education grants and contracts, and dedicated local revenues.

Rising tuition costs

In the 2003-04 academic year, resident tuition paid for approximately 51 percent of the cost of instruction at research universities, 39 percent of the cost at comprehensive institutions and 36 percent of the cost at community colleges. The remaining portion of instruction costs is primarily paid for through the state General Fund. Tuition for nonresident undergraduate students is higher and covers the entire cost of instruction.³⁸

Tuition and fees at the University of Washington for state residents are \$5,383 in 2006, and \$5,500 at Washington State University. It costs slightly less, about \$4,000, to attend the state's three other public universities; Central Washington, Eastern Washington and Western Washington. Tuition and fees at Washington community colleges was \$2,445 in 2006.³⁹ Depending on the institution, tuition covers between 33 and 47 percent of the cost of student education.

University and college tuition and fees have increased almost 90 percent since 1994, while inflation increased only 37 percent. At the same time, public spending on higher education has increased greatly, more than doubling from \$1.7 billion in 1993-95 to almost \$5 billion today.⁴⁰

Policy Analysis

In recent years, college costs have been soaring. Polling data indicates that most Americans worry "about their ability to afford higher education for their children." Sixty percent of Americans agree that "colleges should do a better job of keeping costs down."⁴¹

One important way for Washington colleges to keep costs down is to contract out certain services to private contractors, as is done in other states. Private sector workers can

often perform the same service more efficiently and at a lower price than public employees.

At Washington's public universities, large staffs of public employees are responsible for the preservation and maintenance of campus facilities. These public employees operate physical plant services including power and heating operations, school utilities, building maintenance, grounds maintenance and custodial services. At the University of Washington, for example, the cost of plant operations and maintenance doubled in just 14 years, rising from \$39 million in 1992 to over \$81 million in 2006.⁴²

Bringing competition to college and university operations through contracting out would make education budgets go farther and would reduce the need for yearly tuition increases.

Improving core academics

Many American students are graduating from college with only a rudimentary understanding of the history and literature of their country and the world in which they live. One survey found that only three of the 55 highest ranking colleges and universities in America "require a course in Western civilization. None of the 55 requires a course in American history."⁴³ In addition, only 10 percent of top institutions require students to take a history class to graduate.⁴⁴

The same lack of rigor is evident in Washington state's institutions of higher learning. A detailed review of the required courses at the five public universities found that students could attend courses for four years and receive a degree without gaining knowledge in essential core subjects.⁴⁵

Education

- The University of Washington has no meaningful core requirements in computer literacy, mathematics, natural sciences, social sciences, literature, art, music, history, philosophy or comparative religion.
- The essential disciplines of the arts, humanities and social sciences are consistently neglected by the core requirements of all state universities.
- No Washington state university requires the study of American history or government in order to graduate.
- The weak general education requirements directly contradict statements extolling the value of general education found in university catalogues and web sites.

Certainly individual students still get a good education, but at no public university is there an institutional guarantee that students will receive an education that exposes them to the diversity of human knowledge, and prepares them to participate fully in our democracy and in the global economy.

Improving math and science education

The 20th century was a time when great industries were established and flourished, such as the auto, steel, pharmaceutical and biotechnology industries. Similarly, new ideas will spawn the great industries of tomorrow. Yet so many of these concepts rely on educated individuals, especially people proficient in science, technology, engineering and math (called STEM).

For example, 55 percent of the CEOs at Fortune 100 companies have a STEM background. Major innovation depends heavily on individuals who earn degrees at the Ph.D. level because of the inherent expertise associated with the degree.

American students currently lag behind their international counterparts in basic science and math skills. When comparing the 8th grade test scores of American students with their international counterparts, the United States is in the 32nd percentile in math and the 59th percentile in science.⁴⁶

These figures worsen when comparing 12th grade advanced math and physics students around the world: American students are in the lowly 6th percentile in math and at a bleak zero percent in science.⁴⁷ These figures portray the stark reality that, when compared to other countries, students in Washington and the nation as a whole are failing to gain a sufficient knowledge of math, science and technology to succeed in the modern world economy.

Recommendations

1) Contract out campus maintenance services. Experienced private firms could competitively bid to provide these services, reducing the cost of education for taxpayers and students. Some types of services that could be contracted out include, building maintenance, landscaping and grounds maintenance, plant and equipment support, information technologies, and payroll and employee benefit services.

2) Return to a more vigorous, shared core curriculum for all students. Washington's public universities are consigning students to an impoverished intellectual life and denying them the opportunity to develop to their fullest potential. Students, parents and taxpayers deserve a well-structured, integrated core curriculum which will encourage academic excellence and prepare students to join fully in life beyond the university.

3) Increase academic focus on teaching basic skills in science, technology, engineering and math (STEM). The quality of public education must improve if the United States is

Education

to remain a global economic power. Stronger academic standards and more effective teaching are needed to sustain our science and engineering capabilities, and the ability of our free-market economy to foster innovation and creativity.

Additional Resources

Washington Policy Center Research

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Chapter 6: Business Climate

1. Improving the Business Climate

Recommendations

1. Amend or repeal laws and regulations that impede business innovation and entrepreneurship.
2. Repeal laws and regulations that no longer serve a public purpose and only work to keep competitors out of the marketplace.
3. Require the governor to review and approve new agency regulations.

Background

The United States economy is performing well, with low inflation and healthy growth over several consecutive quarters. High energy prices, political instability abroad and a flattening housing market are creating concerns about future growth, but over all the national outlook is good. In mid-2006, the national unemployment rate is at its lowest point in a decade and Washington's unemployment rate stands at about five percent – quite an improvement over its earlier high of 7.7 percent in April 2002.

The current economic numbers can lead to a deceptive impression about the state's long-term prospects. Not everything is rosy for business in Washington – particularly for small businesses. Fewer small businesses (those with fewer than 50 employees) are able to afford health insurance for their workers.

Business Climate

There is a serious lack of qualified employees willing to work in certain industries, and the regulatory environment is more complex and difficult than ever. Washington has a relatively hostile business climate, which limits job creation and imposes a drag on general economic prosperity.

While the overall business climate is important to the economic vitality of the state, special attention must be paid to smaller firms.¹

- 98 percent (about 195,000) of all firms in Washington with employees are small businesses.
- In addition, about 370,000 people in Washington are self-employed.
- Washington's recovery from the 2000 – 2001 recession was led by a surge of new jobs created by small businesses.

While larger businesses play an important role in creating and sustaining a viable economic climate, small businesses are a major catalyst for job growth and revitalization.

Policy Analysis

Entrepreneurs and businesses face numerous challenges every day. Some of the strongest threats to their economic survival comes not from competitors, but from the confusing tangle of state, county and municipal regulations.

State and local regulators place significant barriers between would-be successful entrepreneurs and their dreams. The staggering amount of regulatory red tape amounts to more than 100,000 requirements that a small business owner must know, understand and follow in order to run a business legally.

Business Climate

The regulatory structure strangles small businesses, drives up the cost of entering the market and increases the cost of living for consumers.

Ongoing research through the Washington Policy Center's Center for Small Business and Entrepreneurship has identified several issues small business owners say are the primary barriers to their success. Those issues are:

- the rising cost of health insurance;
- a clogged transportation system;
- the high business tax burden;
- high-cost unemployment insurance;
- the state workers' compensation monopoly;
- confusing and complex regulations;
- tort and liability expenses; and,
- access to affordable water and energy supplies.

Many of these issues are discussed in other chapters of this policy guide. Other sections in this chapter provide recommendations regarding the overall business climate, affordable health care for small businesses, unemployment insurance, regulatory reform and estate tax repeal.

State and local policymakers should reduce government-imposed barriers for Washington entrepreneurs, which would expand economic opportunity for all citizens, and promote a vibrant business climate today and for future generations.

Recommendations

1) Amend or repeal laws and regulations that impede business innovation and entrepreneurship. Over the course of the state's 117 year history, literally thousands of laws have been enacted that make it more difficult to start and run a small business in Washington. Policymakers should initiate a systematic review process to identify outdated laws in need of amendment or repeal.

2) Repeal laws and regulations that no longer serve a public purpose, and only work to keep competitors out of the marketplace. Such laws harm consumers by keeping competitors out of the marketplace. The for-hire vehicle, taxicab, hair care and moving industries provide examples of antiquated or overly-strict regulations that work against the public interest by reducing price competition and consumer choice.

3) Require the governor to review and approve new agency regulations. New agency laws hugely affect the business community. Submitting any new significant rule to review and approval by the governor would help slow the incessant flow of new regulations from state bureaucrats, and would create clear accountability when new business restrictions are put in place.

2. Small Business Access to Health Insurance

Recommendations

1. Legalize the sale of basic health insurance plans to small businesses.
2. Allow small business owners to purchase health plans in any state, just like other types of insurance.
3. Freeze health care mandates until the cost and benefit of current mandates are studied.
4. Encourage affordable access to Health Savings Accounts.

Background

The steadily-rising cost of health insurance is a major problem for the business community. Small business owners who participated in Washington Policy Center's Small Business Project identified the cost and availability of health care as the number one concern of small businesses. Business owners voiced particular concern about the way state imposed mandates drive up health insurance costs for small firms.

The sale of health insurance in Washington is governed by an amazingly complex combination of state laws, rules and regulations, and small businesses have few resources for dealing with the confusing web of red tape. Increases in health insurance costs are forcing many small business owners to reduce or eliminate health care coverage for their workers.

According to a National Federation of Independent Business (NFIB) survey of small business owners throughout Washington, the number of employers who offer health care coverage for all employees has dropped from 65 percent in 1993 to less than 47 percent in 2003.²

Policy Analysis

Health insurers in Washington are required by law to cover 50 state imposed mandates covering a broad range of providers, illnesses and treatments. A mandated benefit is a requirement that an insurance company cover (or offer coverage for) common health care providers, benefits and patient populations.

Employers must often pay for coverage their employees do not want or need. The large number of mandates, combined with the heavy taxes and regulations placed on all insurance policies, means economical low-cost health coverage is currently not available in Washington. It is like a hotel market with all Hiltons and Sheratons, but no Motel 6.

Between being forced to buy an expensive “Cadillac” insurance plan or no plan at all, plus yearly double-digit premium increases, the business community is scrambling for health plan alternatives.

Business owners deal with competition every day. They understand that reducing barriers to entry for new health insurance products would increase competition in the marketplace. For this reason, small business owners support a package of reforms that would streamline state regulations, reduce mandates, increase competition among insurers and encourage low cost Health Savings Accounts (HSAs).

HSAs offer small employers a cost effective way to provide health coverage to their employees when traditional coverage is too expensive. Money placed in HSAs is tax free and belongs to individual workers. The money is theirs to keep if they switch jobs, are unemployed for a time or decide to retire. HSA funds can be used tax free to pay any qualified medical expense. An accompanying catastrophic insurance policy covers medical costs in case of major illness or injury.

Recommendations

1) Legalize the sale of basic health insurance to small businesses. In 2006, the legislature considered a number of bills trimming mandates and regulations that would have opened new opportunities for small businesses to obtain health insurance. The Senate in particular made progress in this direction. Though none became law, lawmakers should consider allowing insurers to again offer low-cost, economical health plans to Washington residents.

2) Allow small business owners to purchase health plans in any state, just like other types of insurance. Health insurance is less heavily regulated in most other states, and coverage is often less expensive in those states than in Washington. Allowing small business owners to shop for coverage across state lines would lower costs and create more options for small business employees and their families. In addition, the resulting competition would lower prices and improve service for all businesses and citizens in Washington.

3) Freeze health care mandates until the cost and benefit of current mandates are studied. Health care plans offered by insurance companies in Washington must include 50 mandated benefits in order to be legally offered in the market. Health care mandates in Washington include options such as mental health, acupuncture and massage therapy. Together, these mandates add more than 20 percent to the cost of health insurance in Washington.

4) Encourage affordable access to Health Savings Accounts. Reducing state imposed mandates and streamlining insurance regulations would reduce the cost of insurance plans that must accompany Health Savings Accounts. Lowering the cost of HSAs would allow many small business owners to offer affordable health benefits to their workers.

3. Regulatory Reform

Recommendations

1. Regulate for results, not for process.
2. Re-organize the Office of Regulatory Assistance into an Office of Regulatory Reform that would identify regulations which duplicate or contradict each other, are outdated or do more harm than good.
3. Include a regulatory sunset provision for new regulations, and submit all existing regulations to review by the legislature every five years.
4. Create a regulatory fast track for companies and individuals with a good record of complying with regulations.

Background

The right to live where we choose, the right to own property, the right to make a living and the right to enter into voluntary agreements with others are all fundamental aspects of what it means to be a human person. Respect for our natural rights is essential to maintaining civil life in a free society, and the central function and purpose of government is to protect the basic freedoms of its citizens.

Yet government itself often poses a grave and immediate threat to those rights. One of the most pressing public issues today is the ever-expanding scope and burden of government regulations, and the implications of this trend for people's economic liberties.

The overall problem can, perhaps, best be summarized by a statement in an editorial from *The Seattle Times*, "Sometimes, the government simply doesn't know when to leave the marketplace alone."³ Today, Washington citizens,

small businesses and major industries face an expanding array of regulations at all levels of government.

The burden of regulation

Very small firms, those with fewer than 20 employees, spend 45 percent more per employee than larger firms in order to comply with just the federal regulations. A firm with fewer than 20 employees might spend \$7,647 per employee to comply with federal regulations, whereas a firm with over 500 employees would spend only \$5,282 per employee.⁴

Total state regulation has 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 in the 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 power only 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.

The drafters of Washington's constitution provided guidance by recommending "a frequent recurrence to fundamental principles," which is "essential to the security of individual rights and the perpetuity of free government."⁵ Within the limits of ordered liberty it is the right of citizens to live their lives as they see fit, not as the government directs. When state government oversteps its bounds by regulating the smallest details of everyone's lawful activities, it hinders the vibrant economic and social life of the community.

Government is the largest employer

The largest employer in Washington today is the state government, with some 105,000 workers (in contrast, Microsoft and Boeing combined only have 93,000 workers in Washington). Government as a whole is now one of the largest industry classifications in the state. Washington ranks among the highest states in the per capita tax burden, and is among the highest in the overall cost of government it places on its citizens. One national study ranks Washington as the fifth most regulated state.⁶

Policy Analysis

The numbers provide ample warning that state government is becoming too large and expensive, and is moving too slowly to adapt to the changing world around it. In combination with the burgeoning cost and size of government, the regulatory burden on Washington residents has increased substantially. As small business owners, non-profit groups, homeowners, farmers and other ordinary citizens work to realize their dreams, they find they are increasingly frustrated by government regulators.

One builder of affordable housing calls the detailed permit reviews required by the Growth Management Act “ridiculous,” and says the process plods slowly and adds significant costs. Added costs include inventory carrying charges, fees for sophisticated engineering and extensive legal fees. In the end, these costs must be passed along to homebuyers in the form of higher prices, pushing many low-income families out of the housing market.⁷ One builder found that government taxes and regulations added 22 percent to the sale price of his homes.⁸

Examples of easing regulations

In New York, the governor created a Governor's Office of Regulatory Reform (GORR) to work with all agencies to reduce the number and complexity of state regulations. The Office's message to citizens is explicit: "If you're getting the runaround or being unnecessarily hounded by one of our state agencies call us..."⁹ GORR officials say they will intervene and take care of the problem – fast. The Office's goal is to make New York more attractive to business growth, and it has been credited with helping to create thousands of new jobs.

In streamlining regulations Washington leaders do not need to reinvent the wheel. By following the successful example of New York, and of similar efforts in states such as Texas, Massachusetts and New Jersey, policymakers can reform and modernize the state's Byzantine regulatory system.

Recommendations

1) Regulate for results, not for process. Measuring the results of the regulatory process, rather than the process itself, would enable policymakers to know whether state agencies are accomplishing their core mission, or simply spending their budget. Focusing on measurable outcomes would free agencies, businesses and individual citizens to find the best way to achieve a desired public good.

2) Re-organize the Office of Regulatory Assistance into an Office of Regulatory Reform that would identify regulations which duplicate or contradict each other, are outdated or do more harm than good. Currently the Office of Regulatory Assistance only tries to simplify state regulations. It does not ask whether those requirements are in any way useful or needed. Re-organized as an Office of Regulatory Reform, it could actively review all state regulations and determine which ones duplicate or contradict each other, are no longer needed, or do more harm than good to the public interest.

3) Include a regulatory sunset provision for new regulations, and submit all existing regulations to review by the legislature every five years. Under the current system most state regulations are written to last forever. Policymakers should require all agency rules and regulations to carry a sunset provision, and every five years be reviewed and, if still needed, reauthorized by the legislature.

4) Create a regulatory fast track for companies and individuals with a good record of complying with regulations. To focus enforcement where it is needed, state regulatory agencies should authorize companies and individuals who have a good record of following environmental and regulatory rules to approve their own applications and permits. The results would be periodically audited by state oversight agencies. Companies and individuals that did follow regulations voluntarily would be penalized and their self-monitoring authorization would be revoked.

4. Unemployment Insurance Reform

Recommendations

1. Bring state benefits more in line with the national average.
2. Allow workers to have personal unemployment accounts.
3. Increase benefit compliance audits.
4. Require training or community service as a condition of receiving benefits.

Background

Washington's unemployment insurance system imposes the highest per employee cost in the nation. While the tax *rate* is not higher than most states, businesses in Washington must pay that rate on the first \$30,500 of salary for each employee, the second highest wage base in the nation. In contrast, businesses in most other states only pay unemployment taxes on the first \$7,000 to \$10,000 of salary.

A primary cost-driver of Washington's state-run system is the high level of benefits it pays out. The maximum unemployment benefit, at \$496 per week, is close to the highest in the nation.

In an effort to slow cost increases and promote job creation, the legislature passed major reforms to the system in 2003, most of which went into effect January 2004. The reforms included holding the maximum weekly benefit at \$496, reducing the maximum time an employee can collect unemployment benefits from 30 to 26 weeks, and changing the benefit calculation to include a full year of work, not just the two highest-paid quarters.

Business Climate

In 2005, however, the legislature reversed itself and repealed several key improvements from 2003 – just when many of these reforms were beginning to have an effect. The legislature’s sudden repeal of unemployment insurance reforms added an unexpected burden to the business climate and angered many small business owners.

In 2006, the state legislature enacted a broad unemployment insurance package, making permanent the 2005 changes, key among them:

- Businesses would be taxed according to a four-quarter scale while worker benefits would be paid out by the two-quarter scale, therefore, most businesses would get some tax relief in their unemployment insurance premiums.
- The unemployment insurance trust fund would pay the difference between the taxes collected from businesses and the benefits paid out to workers.

Policy Analysis

Today, Washington’s unemployment benefits are among the most generous in the nation, and the average unemployment tax imposed on workers is the highest in the nation, at \$854 per worker.

High unemployment benefits increase unemployment because often the incentive to stay on unemployment is greater than the incentive to work. Many people will try to collect the maximum they can from the system, waiting until their benefits are almost exhausted before seriously seeking new employment.

In addition to discouraging work, the current employment tax system is fundamentally unfair. Despite a lifetime of paying in, workers receive no refund when they

Business Climate

retire, and workers who have not been unemployed never receive any benefit at all.

Overall, Washington's high unemployment tax burden has four primary negative effects on the state economy:

1. It discourages job growth and deprives the people of Washington of new work opportunities.
2. It encourages existing businesses to outsource jobs to other states.
3. It has a smothering effect on start-up businesses, and punishes successful businesses that attempt to hire more workers.
4. It discourages businesses in other states from relocating or expanding their operations to Washington.

Given the overall high costs of Washington's unemployment benefits system, policymakers should consider an alternative system based on personal, portable worker benefit accounts.

Such an approach has worked in other countries. In 2002, Chile pioneered a new system in which workers pay 0.6 percent of their wages into a personal account administered by a private fund. Employers contribute an additional 2.4 percent. A portion of the funds go into the general fund to cover young workers and those who cannot contribute enough into their account to meet the minimum level of benefits.¹⁰

Key to the success of Chile's program is individual control of personal benefits. In contrast to the Washington system, unemployed workers in Chile can collect benefits whenever they are out of work for any reason, whether they are laid-off, fired or choose to leave their job. Strict qualification

limits and punitive enforcement are not required because workers control their own benefits.

One of the best features of Chile's system is the built-in incentive for saving long-term. At retirement, workers keep all the money in their unemployment account. Washington's system has no such provision – employees here receive nothing from the system at retirement.

Recommendations

1) Bring state benefits more in line with the national average. When carried too far, high unemployment benefits increase unemployment. At a certain point the incentive to remain on subsidized unemployment is greater than the incentive to work. Studies show that job-finding activities and formal job placement rises dramatically in the final few weeks of benefit eligibility. Bringing benefits in line with the national average would reduce the cost of unemployment taxes and help ensure a competitive business climate, while maintaining adequate worker protections.

2) Allow workers to have personal unemployment accounts. Under the current system, Washington workers receive no refund or benefit when they retire, and workers who have not been unemployed receive no benefits at all. A system based on individual accounts returns fairness and equity to the system. Personal accounts promote individual responsibility, provide workers with an added financial asset, encourage saving for retirement, and would relieve the state of most of the administrative cost and complication of the current system.

3) Increase benefit compliance audits. In a recent performance audit, the State Auditor praised the Employment Security Department for its fraud protection practices, pointing to the Department's automated claims management system as a model of efficiency. Ironically, many employers feel it is this system that encourages workers to avoid seeking a job.

Increasing audits of people who are on unemployment would help ensure that they are really complying with job search requirements, rather than simply waiting for their benefits to run out.

4) Require training or community service as a condition of receiving benefits. Many people view unemployment benefits as a kind of paid vacation from the state. Job search requirements are minimal and unenforced, so people often pursue personal interests while receiving unemployment checks. Weekly training and community service would help prepare unemployed people for a return to work, and would provide a reasonable incentive to accept a job when one is available to them.

5. Estate Tax Repeal

Recommendation

1. Repeal the Washington estate, gift and inheritance tax.

Background

In 1981, Washington voters approved Initiative 402 to repeal the state estate tax. It passed by a greater than two-to-one margin.¹¹ State lawmakers then instituted a “pick-up tax” by taking a portion of federal estate taxes levied on deceased Washington residents.

In 2001, Congress enacted a ten-year phase out of the federal estate tax. However, the Washington state legislature did not take action to conform our state laws to that change. As the federal tax was reduced year by year, the state Department of Revenue began collecting estate tax revenues at a rate higher than the legally allowed tax rate.

Currently, the federal estate tax rate tops out at 15 percent but will skyrocket to 55 percent in 2011, unless Congress acts to make the phase out of the federal tax permanent. Legislation to accomplish this is pending in Congress.

The Washington Supreme Court ruled in February 2005 that, because of Initiative 402, the Department of Revenue was only entitled to a portion of federal estate taxes due, and that Congress’ action in 2001 eliminated the ability of Washington to collect a portion of the soon-to-expire federal tax.

In 2005, state legislators passed a new estate tax. The new tax law “de-couples” Washington’s estate tax law from the federal government’s tax laws.¹² The 2005 law effectively

repeals Initiative 402 and re-instates a stand-alone Washington estate tax law.

Policy Analysis

The rate at which an estate is taxed varies from 10 percent to 19 percent, depending on the size of the estate. Estates in Washington are taxed if the assessed value exceeds \$2 million. Family farms are exempt, but there is no exemption for family owned small businesses.

The impact of the 2005 estate tax law is growing. The Washington Department of Revenue estimates it will collect tax from just over 200 estates in 2006, 220 in 2007, and 240 in 2008. The Department estimates the estate tax will bring about \$100 million to state coffers a year, and officials expect the amount of revenue collected to gradually increase over time. Total revenue from estate tax collection equals about four percent of Washington's operating budget.

Recommendation

1) Repeal the Washington estate, gift and inheritance tax. The estate tax is counterproductive because it impedes economic growth and discourages family businesses from remaining in or relocating to this state. Most importantly, it is unfair, because it targets family-owned businesses that can least afford to pay it, while their larger, incorporated competitors are exempt.

Additional ResourcesWashington Policy Center Research

“Reviving Washington’s Small Business Climate: Policy Recommendations from the 2005 Small Business Conferences,” by Carl Gipson, January 2006.

“Mandatory Paid Sick Leave - Another Ailment for the Small Business Climate,” by Carl Gipson, January 2006.

“‘Fair Share’ Bill is Unfair and Impractical,” by Paul Guppy, January 2006.

“An Honor Washington Could Do Without -- Highest Minimum Wage in the Nation,” by Carl Gipson, January 2005.

“When the Union Really Isn’t Working for the Worker: New Collective Bargaining Agreement Includes Increase in Union Dues,” by Daniel Mead Smith, January 2005.

“An Overview of Initiative 841: Repeal of State Ergonomics Regulations,” by Paul Guppy, October 2003.

“Reforming Washington’s Workers’ Compensation System,” by Allison Demeritt, May 2004.

Other Resources

National Federation of Independent Business Research Foundation, www.nfib.com/research.

Small Business and Entrepreneurship Council, www.sbecouncil.org.

“U.S. Economic Freedom Index,” published annually by the Pacific Research Institute in association with *Forbes*.

Public Service Research Foundation - A national think tank that studies the impact of unions on government and publishes an informative quarterly newsletter called, "Government Union Review." www.psrff.org.

"In the Dark on Job Training: Federal Job-Training Programs Have a Record of Failure," by David Muhlhausen, Ph.D., and Paul Kersey, Heritage Foundation, July 6, 2004.
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www.mckinseyquarterly.com.

2006 Competitiveness Redbook, WashACE, National Association of Manufacturers, www.nambooks.com.

"In Defense of Globalization," by Jagdish Bhagwati, Oxford University Press, New York, NY, 2004.

"Union Members' Attitudes Toward their Union's Performance." A study conducted by the Mackinac Center for Public Policy and Zogby International analyzing union members' perspective on performance. Available online at www.mackinac.org.

¹ "2005 Small Business and Territorial Profiles - Washington," State Economic Profiles, United States Small Business Administration, at www.sba.gov/advo/research/profiles.

² "Health Care Issue Overview," produced by National Federation of Independent Business, Washington Chapter, January 2003.

³ "Restaurant Smoking Ban is Needless Regulation," editorial, *The Seattle Times*, January 27, 1997.

⁴ "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.

⁵ Constitution of the State of Washington, Article I, Section 23, at www.leg.wa.gov/LawsAndAgencyRules/constitution.htm.

⁶ “Economic Freedom in America’s 50 States: A 1999 Analysis,” by John Byars, Robert McCormick and Bruce Yandle, Clemson University, January 2000. According to “A Regional Economic Vitality Agenda,” published by the Washington Research Council, Washington businesses carry 54 percent of the tax burden, highest of any of the seven nearest western states.

⁷ Cited in “Ease the Regulatory Burden,” testimony before the House State Government Committee by Eric Montague, Washington Policy Center, February 19, 2001, at www.washingtonpolicy.org/LaborPolicy/TestimonyRegBurdensFeb01.html. See also, “In Depth: To Build a House,” by Joe Nabbefeld, *Puget Sound Business Journal*, March 31, 2000.

⁸ “Government Regulations Add ‘Sticker Shock’ to New Home Prices,” by Paul Guppy, Policy Note 99-14, Washington Policy Center at www.washingtonpolicy.org/GovtRegulations/PNStickerShock99-14.html.

⁹ Governor’s Office of Regulatory Reform, State of New York, <http://www.gorr.state.ny.us/gorr/>.

¹⁰ Data about the Chilean system from “Chile Will Privatize a New Span of Its Noted Social Safety Net,” by Larry Rohter, *The New York Times*, June 24, 2002, available at www.nytimes.com.

¹¹ Initiative Measure No. 402, passed November 3, 1981, Initiatives to the People 1914 through 2005, Office of the Secretary of State, at http://www.secstate.wa.gov/elections/initiatives/statistics_initiatives.aspx.

¹² ESB 6096, “Creating an estate tax,” introduced by Senator Eric Poulsen, March 24, 2005, signed by Governor Gregoire, May 17, 2005, WashingtonVotes.org, at <http://www.washingtonvotes.org/Legislation.aspx?ID=37972>.



Chapter 7: Criminal Justice and Public Safety

1. Prison Services

Recommendation

1. Authorize a pilot program allowing for the contracting out of state prison services to a private company.

Background

The primary function of government is to protect the lives, liberty and property of its citizens. Public safety is thus essential to the continuance of civil society. Public safety depends on a reliable and effective criminal justice system, and central to the administration of justice is a humane, secure and efficient prison system.

At first glance building and operating prisons would appear to be a natural and exclusive function of government. On closer inspection, however, there is really no reason operating a prison system should remain a government monopoly. Like many essential public services, the government's responsibility is to see that a sustainable, high-quality corrections system is provided, not that the government itself should build and operate it.

In the United States, police powers are largely exercised by the states, and citizens look to their state and to local governments to protect them from domestic crime. State prisons and local jails are where most criminals serve their sentences, and state corrections policy mainly determines how the nation's criminal justice system functions.

Rapidly rising prison costs

In Washington, the burden of maintaining the state-run prison system is becoming increasingly costly. The state Department of Corrections budget has almost tripled over the last 12 years, rising from \$502 million in the 1991-1993 biennium to \$1.4 billion in the 2005-2007 biennium.¹

Corrections costs rose almost 12 percent over the last two years, a rate more than twice that of inflation.² The increasing cost of operating the state prison system has outpaced the rise in total General Fund spending in every biennium in the 1990s, and is now one of the fastest growing areas of state spending.

Tougher sentencing results in lower crime rates

Over the last 15 years the population of Washington has increased to over six million people. Over the same period the overall crime rate, especially for violent crime, has dropped dramatically. Much of that success is the result of voter approved sentencing laws that ensure the most dangerous criminals stay behind bars.

The growing prison population

Improved public safety measures have placed increased demand on the state prison system. Almost every facility is overcrowded, some by more than 30 percent.³ The Work Release and the Work Ethic Camp programs often have space available, but because of the seriousness of their crimes many prisoners are not eligible for these programs.

The present over-capacity at Washington's state prisons is part of an ongoing trend. Over the ten years from 1996 to 2006, the population of offenders increased by 48 percent, or

5,863 offenders.⁴ Corrections officials expect this trend to continue. The Department's long-range plan states:

“Between fiscal Years 2006 and 2017, the incarcerated offender population is forecast to increase from about 18,000 to 24,000 based on the June 2006 forecast. This is an increase of about 6,000 offenders, or a 31 percent increase.”⁵

This level of recurring and dramatic increase in the number of prisoners housed in state facilities cannot be sustained over time.

Overcrowding is also evident at Washington's 39 county jails. Together county jails are designed to hold 11,157 prisoners, but instead house an average daily population of around 11,800, resulting in an average over-capacity of more than 106 percent throughout the system.⁶

Washington's state prison system is well beyond its designed capacity, and by 2010 DOC plans to add some 2,700 additional beds.⁷ Many of these will be in medium and low security facilities, which are especially effective candidates for competitive contracting.

Department of Corrections workforce

The Department of Corrections has trouble maintaining an adequate workforce necessary for managing these perennially over-crowded facilities. State workers earn lower wages than employees of local city and county jails, but are typically better trained and educated. As a result, state employees often leave their state jobs for higher paying positions at local jails.

Were a private company faced with the same problem, their flexible labor practices would allow them to offer

innovative compensation packages, combining wages and medical benefits with stock options and advancement opportunities, thereby providing ample incentive for employees to stay at their jobs.

Data shows benefits of private prisons

The Legislative Evaluation and Accountability Program Committee has released a study of the Airway Heights corrections facility, long considered an example of operational efficiency in Washington. But in comparing the facility to similar ones in other states, the study found that Washington's costs were between 36 and 77 percent higher than in other states.⁸ Labor costs accounted for between two-thirds and 100 percent of that cost difference.⁹ Labor is an area where competitive contracting with the private sector saves money.

Yet many people oppose competitive contracting for state and local prison services. They feel the government has a fundamental responsibility to actively manage and control prisoners who are sentenced for punishment by the courts. This view overlooks the equally important responsibility of the government to perform services as efficiently and cost effectively as possible, while providing for the general welfare.

Policy Analysis

The traditional corrections model based on government-run prisons is having difficulty keeping up with the growing needs of public safety. The conventional answer is for lawmakers simply to put more money into the current system. Given budget constraints and the public's strong anti-tax sentiment, however, that approach is not practical or effective.

Without change, the state prison system will continue to struggle with overcrowded and underfunded prisons, and local law enforcement will be forced to send potentially dangerous

criminals back into the community. A well-structured privatization program would expand options for state policymakers, enhance public safety and put the benefits of competition to work for taxpayers.

Comparative study of private prisons

One study compares two groups of states to measure the effectiveness of privately run prisons over four years – 1997 through 2001.¹⁰ States that made a greater investment in private prisons enjoyed far lower expenses per day per inmate than other states. These states had an average daily cost of \$82.59 per inmate in 2001, compared with an average daily cost of \$123.43 for states with few or no privately run prisons.

In Washington, with almost no prison privatization, per diem costs in 2001 were \$104.25. Yet in neighboring Idaho, where state leaders made a significant investment in private prisons, per diem costs were 42 percent lower, just \$60.21. Other Western states that greatly benefited from lower per day costs due to private prisons were Montana (\$80.93), New Mexico (\$85.89) and Colorado (\$67.05).

Privately operated prisons in other states are cost effective, provide education and job training for prisoners, and reduce overall recidivism rates. During a Washington Policy Center conference, representatives from three prison companies showed how they consistently realize operational savings of 10 percent to 20 percent, and construction savings of around 15 percent, while maintaining the high level of service and quality taxpayers want from government.¹¹

Limited correctional privatization is already working in our state. Security Specialists Plus has owned and operated a 50-bed work release facility for Whatcom County since 1991. The firm charges \$30 to \$35 a day to house and care for each inmate. The cost of keeping the same prisoner in the county jail

is over \$60 a day. With an average of 38 inmates a day over ten years, the arrangement has gained documented savings of over \$4 million.¹² This small Washington firm is a realistic indicator of what could be achieved if privatization were adopted at the state level.

Opponents of contracting out prison services say private prisons can only save money by cutting the wages of guards and staff. Washington Policy Center research has identified five management areas where private companies routinely reduce costs without cutting employee wages or benefits:

- *Efficient construction.* Private firms can often build prison facilities for 15 percent to 25 percent less than is usual with public works projects.
- *More efficient use of staff time.* Flexible schedules, fewer work rules and worker incentives that are often banned in the public sector allow private companies to put staff time and skills to the most effective use.
- *Superior design.* The layout of private prisons is often more innovative and efficient than public ones and usually require fewer guards to safely monitor the same number of prisoners.
- *Lower administrative cost.* Freed from cumbersome civil service requirements, private prisons often spend up to one-third less on administrative expenses.
- *Streamlined purchasing.* Private companies are not bound by uneconomic purchasing rules, and can often buy equipment and supplies at much lower cost than the government.

Extensive research and real-world experience show that prison privatization serves the public interest by offering state

leaders a proven way to lower costs and reduce crowding, while maintaining a safe, humane and high quality corrections system.

Recommendation

1) Authorize a pilot program allowing for the contracting out of state prison services to a private company. Following successful completion of the pilot program, competitive contracting, if it proves successful, could be used to expand competition throughout the state and local corrections system, reducing costs and increasing the quality of corrections in Washington.

By tapping into the competitive advantages of private prison management, state and local governments can provide safe incarceration of convicted prisoners without raising taxes or cutting essential public services.

2. Prison Medical Services

Recommendation

1. Open state and county prison health systems to competitive contracting.

Background

A key component of the high cost of incarceration is inmate health care. More than 10 percent of the corrections budget is devoted to health care services, including physical, mental and dental services. With the growing number of physically and mentally ill people entering the criminal justice system, and the increasing focus on treatment and rehabilitation for substance abusers, that number is likely to grow.

In Washington state the high cost is particularly apparent. In 2006, the State Department of Corrections spent more than \$110 million to provide medical care for about 17,500 inmates, or roughly \$6,200 per inmate.¹³ At the county level, costs are similarly high. In King County, inmate health care costs taxpayers more than \$25 million a year, far greater than the cost of the County's entire public parks system.

The rising cost of health care is not the only factor threatening the viability of the state's monopoly prison system. The quality of health services is also suffering as a result of overstretched facilities, inadequate staffing and an inflexible work environment common to government bureaucracies. Faced with similar problems, prison officials in other states are turning to the private sector for quality, cost effective alternatives for managing the health care needs of the growing inmate population.

The practice of working with private health care organizations is not new. Many states have contracted out some part of inmate health services for over a decade. As of 2004, a total of 498 prisons in 32 states had some privatized health care for inmates; in many of them inmate health care systems are run completely by private contractors.¹⁴

In one example, prison officials in Illinois began contracting for health care services in the early 1980s to help contain growing corrections costs. Today, three competing companies run the entire state system. As a result, the state's health costs, at just under \$1,700 per inmate a year, are lower today than they were in 1991 and are the second lowest in the nation. Mississippi, Indiana, New Jersey and Washington D.C. also began using private health care providers during the 1990s, all with similar positive results.¹⁵

In the federal system, private doctors are being used to supplement the similarly overstretched prison infrastructure. In a 1996 study, six large federal facilities with similar prison populations were analyzed. Between 1989 and 1990, five had health care cost increases of more than 15 percent a year, while the sixth, using private competition for health care services, saw an average increase of only three percent a year. As a result, nearly every federal prison now has some level of competition for health care services.

Policy Analysis

Unfortunately, Washington prison officials do not take advantage of private competition. While the Department of Corrections regularly contracts with private medical professionals for some services, it is only an option of last resort. Prison officials continue to maintain a costly workforce of full-time doctors, nurses, psychologists, counselors and dentists to meet the demanding medical requirements of the inmate population.

Some critics claim that private companies may have little incentive to provide quality care. Indeed, in at least one case, prison officials terminated a contract with a private company because of poor care. But this is the exception rather than the rule. In fact, several cases of government medical care were so bad that courts found they violated inmates' rights and ordered jails to hire a private company. Recognizing this concern, many states require private contractors to achieve and maintain accreditation through the highly regarded National Commission on Correctional Health Care.

The promising results of prison health care privatization do not mean that full privatization of all correctional health care is always best, but encouraging prison officials to tap into the benefits of market competition is preferable to the current state monopoly.

Recommendation

1) Open state and county prison health systems to competitive contracting. Under competition, state officials would likely realize savings of at least 10 to 20 percent a year. Opening state and municipal prison health services to competition would reduce costs and improve quality at all levels of the corrections system. Savings from the program could be used to reduce the chronic shortage of prison capacity.

3. “Three Strikes You’re Out” Law

Recommendations

1. Retain the full force and integrity of Washington’s successful “Three Strikes You’re Out” law.
2. Build on the success of “Three Strikes” legislation by considering additional offenses that could be counted as strikes.

Background

In November 1993, voters in Washington passed Initiative 593, the nation’s first “Three Strikes You’re Out” law by a majority of 76 percent.¹⁶ The law lists more than 40 violent felonies as “strikes” and requires mandatory life sentences for offenders who commit three such violent crimes. Since then, 25 other states and the federal government have enacted some form of “Three Strikes You’re Out” (Three Strikes) laws to deal with repeat serious criminals.

Since enactment the Three Strikes law has proven remarkably effective in reducing violent crime. By 1995 violent crime had declined by 4.8 percent. Based on previous trends, this means there were 256 fewer rapes, 171 fewer robberies and 845 fewer violent assaults than would likely have occurred without the new law. The trend of lower crime rates, and of fewer violent crimes committed, has continued through to the present.

When the law was passed, critics said many hundreds if not thousands of people would be committed to life sentences in Washington’s prisons. The state Sentencing Guidelines Commission estimated the law would put as many as 80 people in prison for life in the first year. Instead, the highest number of

offenders sentenced to life in any one year was 36, in 1995.¹⁷ Since then the figure has declined. In 2003, for example, 17 offenders received life sentences under the law; in 2004, 11 did. As of March 2006, 279 people have been convicted under the Three Strikes law, far fewer than predicted.¹⁸

Police officers, prison officials and others in law enforcement have noticed that many criminals have changed their behavior because of the Three Strikes law.¹⁹

- One police detective reported that “I get very few questions about Three Strikes anymore, because the inmates are now as aware of the law as I am.”
- Seattle police report that as the Three Strikes initiative was going to the ballot, 17 registered, two-strike sex offenders decided to leave the state.
- A suspected forger informed police that he switched from robbery to passing bad checks because he already had two strikes on his record and forgery was not a strike.
- A typical comment police hear from career criminals is “Three Strikes made me realize it's time to clean up my act.”

An illustration of why the Three Strikes law has reduced violent crime is the case of Michael Elton Johnson. Johnson was convicted of raping a 14-year-old girl in 1976. He served four years. Shortly after his release he was convicted of attempted second degree rape of a 15-year-old girl and was sentenced to 11 years. In 1991, he assaulted his wife with knife, and received a further two year sentence.

After his release his criminal career continued: he committed three more rapes, two kidnappings and four other

assaults. The victims of all these crimes would have been spared if the Three Strikes law had been enacted just three years earlier. In 1994, Johnson was sentenced to life without parole under Washington's newly enacted Three Strikes law.²⁰

Policy Analysis

The Three Strikes law is designed to stop two kinds of criminals: violent predators, and offenders who commit lesser but a far greater number of crimes than other offenders. The law's chief benefit is the number of repeat crimes it prevents. Felons with one or two strikes on their record have a powerful incentive to obey the law, or at least not violently assault their fellow citizens.

Prosecutors, defense attorneys and judges carefully explain to strike-one and strike-two offenders what will happen after the third conviction for violent crime. When a third conviction means life behind bars, many felons resist the temptation to commit that last offense.

In the past, career criminals may not have minded serving periodic terms in prison, but passage of Three Strikes appears to have caused many of them to rethink their behavior, rather than run the risk of a life sentence. In addition, many two-strike criminals who feel they will likely hurt someone again, may have simply decided to move out of state.

In recent years, this important criminal justice reform has come under attack from critics in the legislature. In 2003 the legislature considered a bill (HB 1881) to provide that second degree robbery and second degree assault, both of which involve the use or threat of violent force in the commission of a crime, would no longer count as strikes.²¹

More recently, a bill (HB 1803) was introduced in the 2006 session to remove second degree robbery from the list of

eligible strikes.²² While these bills did not pass, if they had they would have significantly weakened the state's Three Strikes law. It is likely similar bills will continue to be introduced and debated in the legislature.

Recommendations

1) Retain the full force and integrity of Washington's successful "Three Strikes You're Out" law. The list of serious, violent crimes covered by the law should not be reduced. Research shows that Three Strikes is working. It holds criminals accountable for their repeated decisions to victimize their innocent neighbors. The result has been lower crime, safer streets and better communities for all Washington residents.

2) Build on the success of Three Strikes legislation by considering additional offenses that could be counted as strikes. Policymakers should examine other areas of criminal law, such as serious drug offenses, that should be counted as strikes, to further reduce the kind of crimes that do the most harm to society.

4. Hard Time for Armed Crime Law

Recommendations

1. Preserve the effectiveness of the Hard Time law.
2. Build on the success of the Hard Time reform by considering ways to strengthen the law.

Background

The “Hard Time for Armed Crime” (Hard Time) reform was introduced as an initiative to the legislature in 1994. Supporters gathered enough signatures to place the measure on the ballot. Rather than forward it to voters, however, the legislature enacted it by a large majority in April 1995.²³ The new law closed loopholes in the existing criminal code and increased prison sentences for offenses involving the use of deadly force.

Confrontational crimes have a high risk of unintended violence to the victim. By passing the Hard Time law the legislature intended to reduce or prevent serious injury to crime victims by deterring the use of deadly weapons. To effect that deterrence, the Hard Time law requires an added amount of time to the sentences for crimes committed while armed with a firearm: five years for a class A felony, three years for a class B felony, and 18 months for a class C felony. The added penalties are doubled for a second armed conviction.

Lesser, but still significant time enhancements are required if an offender is armed with any other type of deadly weapon, such as a knife or a club, while committing a crime: two years for a class A felony, one year for a class B felony, and six months for a class C felony.

Theft and possession of stolen firearms

Hard Time split existing firearms law into two distinct crimes: theft of a firearm and possession of a stolen firearm. The beginning sentencing range for theft of a gun increased to 12 to 14 months and the maximum sentence doubled to ten years. The starting sentencing range for possession of a stolen firearm remained at six to 12 months, but the maximum sentence doubled to 10 years. Each firearm stolen or possessed under these crimes is considered a separate offense.

The different scales between the use of a firearm and other deadly weapons recognize the reduced risk of harm from knives and similar implements. Regardless of the type of weapon enhancement applied at trial, the time added to an offender's sentence under the Hard Time law is not eligible for time off for good behavior.

Factors in murder convictions

Washington state has strict qualifications for a murderer to qualify for a death sentence. Not only does the murder require malice and forethought, but also aggravating circumstances. Hard Time expanded the list of aggravating factors to include murders committed during drive-by shootings or when attempting to join, remain in, or advance in any criminal organization such as a gang or mob.

Furthermore, any criminal who commits murder in an effort to avoid a life sentence without parole under the Three Strikes law is similarly covered by the Hard Time statute. Under the law, this class of murderer must now receive either a life sentence without parole or a death sentence upon conviction. The intent of the legislature is that there be no repeat offenders for aggravated murder.

Tracking judges and prosecutors

The most innovative aspect of Hard Time made Washington the first state in the nation to track the sentencing practices of individual judges. The provision allows the public to examine how each Superior Court judge sentences serious felons. The judge's record can then be compared to the expected sentencing range to get an assessment of which judges are lenient and which are strict.

Prosecutors are also held accountable under Hard Time. Plea agreements are recorded on each judgment and sentencing document. If the final sentence is either lenient or harsh, the prosecutor's recommendation is listed along with the judge's final ruling to see if they concurred. Sentencing and plea agreement reports are released on September 1st of each year.

Policy Analysis

Hard Time dramatically increased sentences for violent armed criminals. Contrary to predictions of opponents, these longer sentences did not usually require lengthy and costly trials.

The Sentencing Guidelines Commission studied a total of 173 deadly weapon enhancements from July 1995 to mid-May, 1996. One hundred eleven of them were for crimes committed while armed with a firearm and 62 were for use of other weapons such as knives and clubs. Since then prosecutors have secured 100 to 200 deadly weapons enhancements (DWEs) a year added to criminal sentences; 126 for the year July 2004 – July 2005, the most recent available.²⁴

In spite of the tougher penalties for carrying a deadly weapon, 76 percent of the firearm sentence enhancements were included as part of a guilty plea, resulting in shorter court

proceedings, less police, prosecutor and defense attorney time and lower cost to the criminal justice system.

The Hard Time law has proved successful in making citizens safer by removing dangerous, convicted criminals from the streets before they can hurt someone again. King County Prosecutor Norm Maleng summed up the benefit of the law this way, “The Hard Time law has, day in and day out, served to ensure longer sentences for the type of armed criminal the public fears the most. It has quietly become the most significant criminal justice measure of the 1990s.”

Recommendations

1) Preserve the effectiveness of the Hard Time law. The list of serious, violent crimes covered by the law should not be reduced. Research over the years shows that Hard Time for Armed Crime is a principle reason violent crime dropped sharply in the 1990s and remains low today. The law is working to physically separate violent criminals from innocent citizens, resulting in safer neighborhoods across Washington.

2) Build on the success of the Hard Time reform by considering ways to strengthen the law. Policymakers should consider requiring that sentences for unlawful possession of a firearm, theft of a firearm and possession of a stolen firearm be served consecutively. They should also consider other areas of criminal law that can be strengthened by the addition of Hard Time sentence enhancements.

5. Gun Control

Recommendation

1. Avoid adding new restrictions on the legal ownership and possession of firearms.

Background

“The right of the individual citizen to bear arms in defense of himself, or the state, shall not be impaired...”²⁵

This provision of the state constitution, in addition to Second Amendment of the federal constitution, recognizes the fundamental right of Washington citizens to own and carry firearms.

While recognizing this basic right in law, Washington does impose some limited regulations on the sale and possession of firearms. Gun dealers must be licensed by the state and the federal government. Convicted felons are not permitted to own firearms, unless their rights have been restored by a court. There is a five day wait to purchase a handgun. Background checks are made through the National Instant Check System.

Carrying a concealed handgun is allowed for those who are legally eligible to own a firearm. A permit issued by country law enforcement is required, good for five years, with \$36 processing fee, plus a \$24 FBI fingerprint fee.²⁶

Recently, however, some elected officials have called for much stricter gun control laws. Soon after Kyle Huff killed six people at a late-night party in Seattle on March 26, 2006, Seattle Mayor Greg Nickels called on the state legislature to

enact more regulations on gun ownership.²⁷ None of the Mayor's proposals, however, would have prevented the tragedy.

Shift in the gun control debate

The gun control debate has shifted over the last 20 years. In the past, it was common to hear that it is in everyone's best interests if the government made efforts to remove guns from society. The legislative agenda of anti-gun groups was much more radical and overt. Activists pointed to Britain, Australia, and Canada as models of gun control policy. Enactment of strict gun control laws in these countries, however, has failed to produce the results advocates promised.

- In 1997, Britain banned handguns, and between 1998 and 2003 gun crimes doubled. Between 1997 and 2001, homicides in Britain increased by 19 percent and violent crime increased by 26 percent, while in the United States those same crimes fell by 12 percent.²⁸
- Between 2000 and 2001, robbery increased by 28 percent in Britain, but only four percent in the United States. Domestic burglary increased by seven percent in Britain, but only three percent in the United States.²⁹
- In 1996, Australia enacted sweeping gun control laws. In the six years following, violent crime rates rose by 32 percent.³⁰
- Canadians are not faring well under their stringent gun control laws. Today Canada's violent crime rate is more than double that of the United States.³¹

The fact that during this time right-to-carry laws were *expanding* in the United States makes these statistics all the more telling. Now 40 states, including Washington, allow citizens to carry guns. Partly as a result, violent crime rates are steadily declining in the United States. On average, states with

right-to-carry laws have 24 percent lower total violent crime rates than other states.³²

Policy Analysis

While violent crimes committed with firearms often lead to calls for more gun control, there is another type of story about gun use that does not receive as much press attention. Following are typical examples from around the state.³³

- In 1990, a group of gang members pulled a Seattle man from his bicycle and beat him. He used his legally-registered handgun to shoot one of the assailants and stop the attack.
- In 2002, a West Seattle woman shot an intruder who had broken into her home and was beating her roommate.
- In 2003, an elderly Tacoma man confined to his bed shot an intruder who had kicked in his door and attacked him.
- In 2004, a Spokane woman awoke one morning to discover an intruder in her house, whom she held at gunpoint until the police arrived.
- In 2004, an Olympia man shot an armed man who attacked him in violation of a court-imposed restraining order, wounding the assailant and stopping the attack.
- In 2005, a Tacoma man fired on an armed robber who was threatening a store clerk at gunpoint. The assailant was wounded and was arrested when police arrived.

Many additional examples could be cited. In all of these cases, if it were not for the legal use of guns in self-defense, the victims would likely be dead.

Now even the most vocal anti-gun groups in Washington admit there is an individual right to own guns. The debates rage not over the right of law-abiding citizens to own guns, but how to keep them away from criminals.

But just because the debate has shifted does not mean citizens are immune from fresh proposals to limit gun ownership, as shown by the Mayor of Seattle's announcement.

There was a federal assault weapons ban in place from 1994 to 2004. The Bureau of Alcohol, Tobacco, and Firearms says the ban did not reduce crime nationally. Criminals who wanted to obtain such weapons found easy ways to get them in spite of the ban. Moreover, law enforcement research shows these guns are used in only about one percent of violent crimes.

Research shows that in the United States guns are used at least 2.5 million times a year for self-defense or to stop a crime.³⁴ Guns are used about three to five times as often for defensive purposes as for criminal purposes. Most often the mere sight of a gun prevents a crime from occurring or getting worse. Armed law-abiding citizens make one point clear: criminals have no right to safe working conditions.

Recommendation

1) Avoid adding new restrictions on the legal ownership and possession of firearms. Washington currently has reasonable gun ownership and permitting restrictions on the books. Adding new restrictions would not deter criminals who already break existing laws to obtain firearms, but it would hamper law-abiding citizens' ability to protect themselves. Legal gun ownership is not only a constitutional right, it is a proven way to reduce crime and save lives.

Additional Resources

Washington Policy Center Research

“Legal Gun Ownership Saves Lives,” by John Barnes, May 2006.

“Private Prisons and the Public Interest: Improving Quality and Reducing Cost through Competition,” by Paul Guppy, February 2003.

“Prison Health Care: Healing a Sick System through Private Competition,” by Eric Montague, 2003.

“Private Prisons: A Sensible Solution,” by Eric Montague, August 2001.

“The Three-Strikes Law Works,” by John Carlson, 2001.

“Hard Time for Armed Crime: A Review” by R. David LaCourse, 1997.

Other Resources

Reason Foundation’s Competitive Corrections Research Project - This project included detailed data about the expanding market for private correctional facilities across the nation and worldwide. www.reason.org.

Association of Private Correctional and Treatment Organizations - www.apcto.org.

¹ “Historical Reports: General Fund Expenditure History – Operating,” published regularly by the Legislative Evaluation and Accountability Program Committee, (LEAP), at www.leap.wa.gov, and 2005-07 Budget, Department of Corrections, at www.doc.wa.gov/budgetAndResearch/Budget/htm.

² Ibid.

³ “Institution Offender Population,” Washington State Department of Corrections, November, 2005, at

www.doc.wa.gov/BudgetAndResearch/Researchdata/institution_population.

⁴ Department of Corrections Strategic Plan 2007 – 2013, Washington Department of Corrections, p. 9, at

www.doc.wa.gov/stratplan/DOCStrategicPlan2007.pdf.

⁵ Ibid.

⁶ “5 Years Statewide ADP, Counties, Rated Capacity, ADP, and Percent Use,” Jail Statistics, Washington Association of Sheriffs and Police Chiefs, 2004 at

www.waspc.org/index.php?c=5%20Years%20Statewide%20ADP.

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www.doc.wa.gov/stratplan/DOCStrategicPlan2007.pdf.

⁸ Washington Alliance for a Competitive Economy, “Contracting: Unfulfilled Promise of Personnel Reform,” February 2006, p. 4.

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¹² Interview with Greg Rustand, Security Specialists Plus, Bellingham, Washington, July 7, 2006.

¹³ “Health Care Services for Adults in State Prisons,” Agency Activity Inventory, 2005-07 Budget, Department of Corrections, at

www.ofm.wa.gov/budget05/activity/310ai.pdf.

¹⁴ “2005 Annual Privatization Report,” edited by Geoffrey F. Segal, Reason Foundation, at www.reason.org/apr2005/.

¹⁵ “Case Study: Prison Health Care Outsourcing,” Corrections Privatization, Reason Foundation, at

www.privatization.org/database/policyissues/corrections_state.html#3.

¹⁶ “Elections and Voting, Initiatives to the People, 1914 through 2003,” Office of the Secretary of State, Olympia, at

www.secstate.wa.gov/elections/initiatives/statistics_initiatives.aspx.

¹⁷ “Three-strikes life terms fewer than expected,” by Maureen J. O’Hagan, *The Seattle Times*, August 17, 2004. The figure is based on data from the Sentencing Guidelines Commission.

¹⁸ “Two-Strikes and Three-Strikes: Persistent Offender Sentencing in Washington State, through March 2006, Washington Sentencing Guidelines Commission, June 20, 2006, at www.sgc.wa.gov/PUBS/Persistent_Offender/Persistent_Offender_Report_06_QTR1.pdf.

¹⁹ “Three Strikes in Review,” by David L. LaCourse, Jr., Washington Policy Center Policy Brief, 1997, at [www.washingtonpolicy.org/CriminalJustice/PBLaCourse\(WIPS\)ThreeStrikesInReview.html](http://www.washingtonpolicy.org/CriminalJustice/PBLaCourse(WIPS)ThreeStrikesInReview.html).

²⁰ Ibid.

²¹ HB 1881, introduced by Rep. Al O’Brien, February 12, 2003. A hearing on the bill was held in the House Criminal Justice and Corrections Committee, March 5, 2003, at www.washingtonvotes.org/Legislation.aspx?ChamberLegislationTypeID=9&Number=1881&SessionID=2&op=View.

²² HB 1803, “Regarding the second degree robbery definition,” introduced by Rep. Jeannie Darneille, introduced February 7, 2005 and re-introduced in the 2006 session, at www.washingtonvotes.org/2005-HB-1803.

²³ “Initiative to the Legislature No. 159,” filed April 8, 1994, enacted April 21, 1995, Initiatives to the legislature 1914 – 2005, Office of the Secretary of State, at www.secstate.wa.gov/elections/initiatives/statistics_initleg.aspx.

²⁴ “Statistical Summary of Adult Felony Sentencing, Fiscal Year 2005,” Sentence Guidelines Commission, at www.sgc.wa.gov/PUBS/Statistical_Summaries/Statistical_Summary_2005.pdf.

²⁵ Section 24, “Right to Bear Arms,” Constitution of the State of Washington, at www1.leg.wa.gov/LawsAndAgencyRules/constitution.htm.

²⁶ “Application Fees,” Firearms Section, Business and Professions Division, Washington Department of Licensing, at www.dol.wa.gov/ppu/firfront.htm, accessed June 28, 2006.

²⁷ “The fight against firearms; City pushing for tougher state laws, but would it help?” by Hector Castro, *Seattle Post-Intelligencer*, May 3, 2006.

²⁸ “International Comparisons of Criminal Justice Statistics, 2001, by Gordon Barclay and Cynthia Tavares, United Kingdom Home Office, Research Development and Statistics Directorate, October 2003, at www.homeoffice.gov.uk/rds.

²⁹ Ibid.

³⁰ “More Gun Control Isn’t the Answer,” by John R. Lott, Jr., and Eli Lehrer, *The National Post* (Canada), June 15, 2004.

³¹ For Canadian data, see: Crime Statistics, *The Daily*, July 21, 2005, Statistics Canada, at www.statcan.ca. For United States data, see: “2003 Uniform Crime Report,” Federal Bureau of Investigation, at www.fbi.gov/ucr/03cius.htm.

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³³ “In the Spotlight,” Armed Citizen, National Rifle Association, database of news reports for Washington state, at www.nraila.org/ArmedCitizen/Default.aspx, accessed June 28, 2006.

³⁴ “Firearms Fact Card 2006,” National Rifle Association, summarizing research by criminologist Gary Kleck, at www.nraila.org/Issues/FactSheets.



Chapter 8: Labor Policy

1. Improving Workers' Compensation

Recommendations

1. Legalize private workers' compensation insurance and move the system towards greater choice and competition.
2. Allow small groups and associations to self-insure.
3. Increase fraud prevention efforts.
4. Clarify the calculation of benefits.
5. Bring benefit levels more in line with those in other states.

Background

The phrase “workers’ compensation insurance” often elicits vacant stares and furrowed brows from those who hear it. This complex and important social program, which replaces employer liability for workplace injured workers, is often confusing and tedious for employers, workers, policymakers and the public alike.

The Department of Labor and Industries (L&I), which administers the state’s workers’ compensation program, is one of the largest agencies in state government, with more than 2,600 full-time staff and a budget of \$525 million.¹

The Department is the sole insurer for most businesses in Washington. The program provides insurance covering over 161,000 employers, 2.3 million workers, and collects over \$1.2 billion in premiums each year. L&I also oversees 382 employers who self-insure and provide coverage for 800,000

workers. The state program and self-insured companies provide coverage for the more than 180,000 industrial injuries that are reported annually.²

Policy Analysis

The original purpose of workers' compensation was to provide sure and certain relief for workers in the event of an on-the-job injury. In return for joining a legally-mandated program, employers gained protection against the uncertainty of individual lawsuits brought against them by injured employees. For employers and workers the system is intended to provide security, financial predictability and fair treatment.

Yet over the years the "exclusive remedy" aspect of workers' compensation has been eroded. Workers routinely sue the Department in court to gain a higher level of benefits, and, while they are not suing employers directly, employers must bear the full cost of lawsuits and any resulting awards through higher workers' compensation taxes. In addition, employers must pay the long-term cost of litigation when court decisions result in a permanent higher level of benefits for all claimants.

In the past few years, businesses have become increasingly frustrated with the Department's rate increases, because every rate increase is essentially a tax increase on businesses, which usually must be passed on to consumers in the form of higher prices.

Washington had the fifth highest workers' compensation benefits paid out in the nation for 2003. Washington's benefit payments increased 12% from 2001 to 2003; and today the average weekly benefit is \$697.02 per covered worker.³

High insurance costs are a significant contributor to job loss, layoffs and wage cuts, and have a detrimental effect on the economic vitality and business climate of the state. In recent years L&I has imposed whopping rate increases of up to 30

percent. In 2006, employers are paying 12.1 percent more on average in L&I accident fund premiums.⁴

Much of the financial strain in the system is the result of structural weaknesses and lack of competition. Washington is one of only five states where buying private workers compensation insurance is illegal. Except for a few companies that self-insure, all employers are forced to purchase insurance from the sole provider: the state. Bringing competition to workers' compensation insurance in Washington would create more choices, reduce prices and improve service for both workers and employers.

The system has also been weakened by a series of lawsuits. Injured workers and their lawyers who sue and win realize an immediate economic gain. But the system as a whole is undermined and risks becoming fiscally unsustainable, to the ultimate detriment of all employers and workers.

Major reforms are needed to bring the workers' compensation system back to its original purpose; a true insurance plan which mitigates risk for employers, provides fair and reliable benefits for injured workers, and contributes to a stable business environment for all Washington citizens.

Recommendations

1) Legalize private workers' compensation insurance and move the system towards greater choice and competition.

Washington is one of only five states nationwide that make it illegal for companies to purchase private workers' compensation insurance. Large companies may have sufficient cash flow to self-insure, but all others must purchase insurance from one source at a non-negotiable price – the state government.

2) Allow small groups and associations to self-insure.

Washington law currently bans groups of small employers from

joining together to self-insure, reserving that choice only to large companies and a few public entities. Allowing groups and associations to self-insure would bring greater choice and price competition to the system. Standards for coverage would still be set by the state, so basic protections for workers would not be compromised.

3) Increase fraud prevention efforts. By Labor and Industries' own assessment, in 2003 worker compensation fraud cost taxpayers \$30.7 million. The more fraud that occurs, the higher future workers' compensation premiums will rise. Initiative 900, passed by voters in 2005, authorizes the State Auditor to conduct a more thorough examination of the system and recommend improvements. The State Auditor's office plans to audit the program starting in late 2006.

4) Clarify the calculation of benefits. No-fault insurance is supposed to keep costs low by eliminating the need for lawsuits. Yet this approach is not working. Lawsuits have built new fixed costs into the system. Policymakers should make the way benefits are calculated clearer and simpler to avoid legal disputes.

5) Bring benefit levels more in line with those in other states. Reducing the maximum benefit cap to match the national average would save money and establish a more reasonable level of benefits.

2. Minimum Wage

Recommendations

1. Take state labor policy off auto-pilot by returning control over minimum wage increases to the legislature, so that wage costs do not automatically go up every January 1st.
2. Decouple automatic minimum wage increases from the Puget Sound Consumer Price Index to reflect the true cost of living across the state.
3. Allow employers to pay a temporary training wage to create more entry-level jobs and allow young workers to gain valuable experience.
4. Delay automatic minimum wage increases in years when Washington's unemployment rate is higher than the national average.
5. Allow restaurants to count tip income as part of normal minimum wage earnings, so employment costs in one industry are not artificially inflated.

Background

Washington has the highest state minimum wage in the nation. At \$7.63 an hour it is fully 48 percent higher than the federal minimum wage of \$5.15. Washington's unemployment rate has declined to around five percent for the first time in several years, but that was not always the case. During the recession years of 2000-2001 and in 2002-2005, Washington's unemployment rate topped out at 7.7 percent, a period when the state's minimum wage and its unemployment rate were the highest or second highest in the nation.⁵

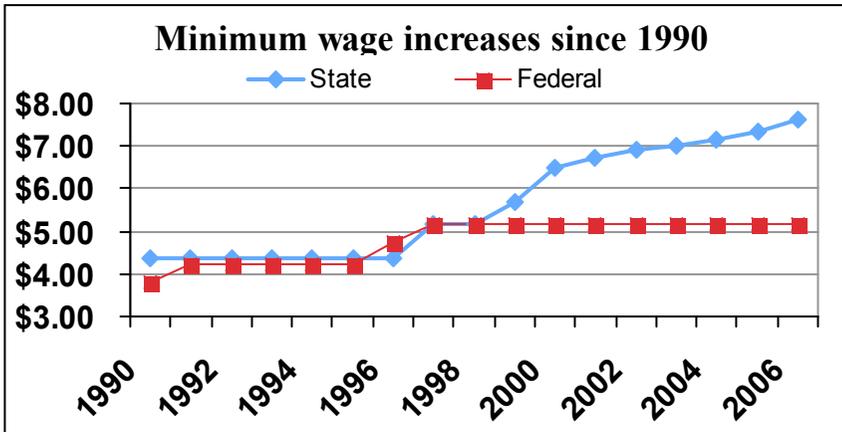
Labor Policy

Washington's present minimum wage law was enacted by voters with passage of Initiative 688 in 1998. The measure enacted a two-step boost in the state minimum wage from \$4.90 to \$6.50, and for the first time created regular yearly increases tied to inflation.⁶

The state minimum wage now automatically increases every January 1st and is pegged to the Puget Sound cost of living, the highest in the state. Previously, the legislature had increased the minimum only ten times since the first state-mandated wage was enacted in 1959.

Washington has some 73,300 minimum wage jobs, or about 3.5 percent of all industry jobs. They tend to be concentrated in certain industries: food services, retail sales, health care, agriculture, forestry and fishing. The majority of minimum wage workers are employed by small businesses.

Minimum wage jobs usually supplement other income; very rarely is it the sole financial support for a family. Eighty-five percent of those earning the minimum wage either live with a parent or relative, are part of a two-income couple or are single and have no children.⁷ The chart below shows the rise in Washington's minimum wage compared to the federal minimum.



In Washington, the minimum wage increases automatically every January 1st, regardless of economic conditions.

Policy Analysis

During the difficult economic recovery, Washington small businesses were particularly harmed by the high minimum wage requirement. The burden of job loss falls disproportionately on low-skilled and minority workers. A study by labor policy researchers at Cornell University concludes that, “A 10% increase in the minimum wage causes four times more employment loss for employees without a high school diploma and African American young adults than it does for more educated and non-black employees.”⁸

Workers priced out of the labor market

Washington’s high minimum wage law falls hardest on those who can least afford it. The poor, homeless, teenagers and other young workers trying to enter the workforce and low-income families are the first to be impacted by a rising unemployment rate. When state law artificially increases the cost of creating jobs, fewer jobs are created. Low-skill, low-income workers are the first to be priced out of the job market.

The high minimum wage creates a ripple effect through the economy by pushing up all wages, which is one reason powerful unions always support minimum wage increases. Supporters of an ever-higher minimum wage grew weary of the public debate needed to argue for increases. So they included a provision in Initiative 688 that linked the wage to inflation, insuring it would go up automatically every January 1st, with no debate, no additional vote and no discussion.

Politically the strategy is brilliant. It avoids all that messy public discussion about the harmful effects of raising the minimum wage – increases just happens and most people don't notice the broader effect on the job market.

The result is a higher cost of living for everyone. While most people can pay a little more for a hamburger or a house, the burden again falls heaviest on those who can least afford it; the poor and the unemployed.

The high minimum wage alone is not the only reason Washington is less competitive nationally than other states, but it is a strong contributing factor. Washington suffers deeper economic down-turns and slower recoveries than other states. Policymakers should recognize that putting state labor policy on auto-pilot does not improve job opportunities or the business climate, but actually makes them worse.

Tip income and the minimum wage

Washington state is one of only seven states where food servers receive the state minimum wage *in addition* to their tips. This puts an undue burden on small restaurants, many of which are family-owned, by artificially inflating their wage costs in comparison to other types of businesses. In states without this restriction hourly and tip income may be counted together, and the law specifies that from these two sources no employee may ever be paid less than the minimum wage.

Restaurant servers in Washington average almost \$19 an hour in tips plus wages, meaning on average they earn over \$11 an hour on tips.⁹ One proposal would allow employers in the restaurant industry to pay 50% of the minimum wage (\$3.81 in 2006) to tipped employees, with the legal guarantee that no worker would earn less than the legal minimum wage. This reform would not fully equalize treatment among industries, but it would spur job creation and help level the playing field by treating employment costs in restaurants similar to those in other businesses.

Recommendations

1) Take state labor policy off auto-pilot by returning control over minimum wage increases to the legislature, so that wage costs do not automatically go up every January 1st. The high level of the mandatory minimum wage hurts job creation and the general business climate. The legislature should regain control of this policy so lawmakers can decide when wage increases make sense based on what is happening with the state's economy.

2) Decouple automatic minimum wage increases from the Puget Sound Consumer Price Index to reflect the true cost of living across the state. Forcing all labor costs to match the most expensive region creates a particular burden for businesses in the eastern part of the state. Using regional measures of inflation is more fair and would more accurately reflect price changes in the local economy.

3) Allow employers to pay a temporary training wage to create more entry-level jobs. This would create opportunities so new employees can gain important work experience, and allow workers who are between jobs to reduce the time they go without work.

4) Delay automatic increases in years when state unemployment is higher than the national average. If full control over minimum wage policy cannot be returned to the

legislature, a mechanism should be created which suspends automatic increases when the unemployment rate is high and people are most in need of work opportunities.

5) Allow restaurants to count tip income as part of normal minimum wage earnings, so employment costs in one industry are not artificially inflated. Allowing tips to be counted as income would expand job opportunities and lower wage costs, especially for smaller, family-owned restaurants.

3. The Temporary Labor Market

Recommendation

1. Minimize state regulation of the temporary labor market to promote job opportunities for low-income and part-time workers.

Background

Policymakers and the public tend to place much emphasis on the economy producing permanent, full-time jobs, yet one valuable segment of our state's workforce is often overlooked; temporary workers. They are students and homemakers, recent immigrants and new citizens, people between jobs and permanent part-timers.

For many laid off workers, a temporary job is the best path back to full-time employment. For others, a temporary position frees up time for other interests. The temporary labor market is a reflection of how free citizens pursue their own goals in life. Everyone has the right to work, not work or work less, as they choose. The temporary labor market makes these highly personal economic choices possible.

The key to the temporary labor market is the job-finding agencies that bring workers and employers together for the benefit of both. For example, one company headquartered in Washington operates more than 800 neighborhood storefront offices across the country, 36 in Washington state, where anyone can walk in and sign up for work.

As requests from employers come in, workers are matched with specific jobs and sent to the business or jobsite. Typical jobs include construction, homebuilding, food packing, landscaping and light manufacturing. At the end of the day

workers return to the placement company's office and receive a paycheck.

Private temporary placement companies make this efficient labor market possible because they handle all the paperwork, make sure workers follow federal and state regulations, and make the required payroll deductions. People seeking quick employment need only show up on time, be drug-and-alcohol free and be willing to work. Employers get reliable workers with a minimum of red tape. Workers get the chance to work where they want and when they want. The system is entirely voluntary and, like most good ideas, is elegantly simple: people can work and get paid the same day.

Policy Analysis

The temporary labor market, however, has its detractors. Traditional labor unions in particular don't like flexible work arrangements, because these jobs exist outside the conventional union structure. Their ideal is that every employer should use unionized workers and no others. Rather than accept a vibrant temporary workforce, unions try to use the force of government to foreclose what they see as inconvenient labor competition.

Opponents of voluntary temporary labor seek to burden this market with as many regulatory barriers as possible. One lawsuit in another state sought to bar workers from paying a minimal fee to cash their paychecks in the dispatch office at end of the day. The result of the lawsuit was to force workers to wait a day and go to a bank or to a costly check-cashing store. Many temporary workers, however, are low-income and do not have bank accounts. Many of them would prefer to pay a small fee and cash their paychecks right away.

Temporary labor opponents have also sought to force closure of heated waiting rooms where workers gather to seek work. They claim that workers should be paid while they wait for job assignments. Since few businesses can afford to pay

Labor Policy

people for not working, temporary labor offices would have to close their waiting rooms, and job seekers would be left to congregate on street corners.

Temporary placement companies often provide workers with hard hats, work boots, dust-masks and eye-protection for free. Temporary labor opponents say workers should not be held responsible for lost or broken equipment, meaning that workers would have to provide important safety gear themselves.

Opponents support legislation to force temporary companies to provide mandated paid health benefits, even though such top-down requirements defeat the purpose of providing flexible and voluntary job opportunities for temporary workers.

Together these hostile efforts add up to a coordinated assault on the temporary labor market. Adverse rulings by the courts or onerous regulations imposed by government would come with a high cost. Employers would lose information about where to find able and willing workers and thousands of job opportunities would disappear. Washington's economy would become even more difficult for struggling small businesses and innovative start-ups.

Worst of all, the most vulnerable in our communities would lose vital job opportunities, forcing them onto public assistance or leaving them vulnerable to the underground labor market.

Recommendations

1) Minimize state regulation of the temporary labor market, to maximize job opportunities for low-income and part-time workers. Letting the temporary labor market operate as freely and efficiently as possible is an effective way to stimulate our state economy, while creating choice and opportunity for thousands of hard-working men and women. For example, placement agencies should be able to offer paycheck cashing services for a minimal fee, so low-income workers are not forced to open bank accounts as a condition for finding work.

4. Mandatory Paid Sick Leave

Recommendation

1. Avoid imposing a mandatory, one-size-fits all sick leave policy on Washington businesses and their employees. Allow employers to retain flexibility in setting compensation and benefits.

Background

In the 2006 legislative session lawmakers considered a bill that would mandate that every employer provide a minimum amount of paid sick leave for each employee.¹⁰ There was no exemption for small businesses. Under the proposal, all businesses would have been mandated to give 10 days of paid sick leave based on the following requirements:

- An employee would be granted at least 40 hours of paid sick leave for each six months of full-time work;
- An employee would be entitled to take paid sick leave after completing six months of consecutive employment;
- Part-time employees would receive paid sick leave in proportion to the hours they have worked.

Currently, forty-six percent of Washington employers voluntarily offer workers a paid sick leave benefit.¹¹ Nationally, no state requires paid sick leave as a matter of law.

Proponents of mandatory paid sick leave say that it is needed for employees to supplement income for days lost at work when caring for themselves or their children, and to avoid bringing contagious diseases to the workplace.

Labor Policy

Employers cite several reasons why they do not always offer paid sick leave. Many jobs are temporary, or are jobs where an employee's absence is covered by a fellow co-worker. Some employees prefer to receive other forms of compensation, rather than be eligible for paid sick days they may never use. Some jobs are based on tips and gratuities, thus paying an employee full compensation to stay at home undermines the business' economic viability.¹²

Impact on small businesses

Small businesses would be disproportionately impacted by a mandatory paid sick leave policy. As the following chart shows, every business category is affected, but employers with fewer than 100 employees would be disproportionately impacted.

Percentage of Washington businesses affected by proposed paid sick leave mandate	
All firms	54%
100+ employees	22%
50-99 employees	35%
25-49 employees	45%
10-24 employees	51%
2-9 employees	58%

Many small firms already offer some level of paid sick leave, but if that level is less than ten days, these business' costs would be automatically increased by the mandated benefit bill considered by the legislature.

Seventy-three percent of Washington firms offer paid time off to workers, without distinguishing between sick leave and vacation time.¹³ This allows workers to use their paid time off as they see fit, without losing an earned benefit if they don't happen to take sick days. Mandating paid sick leave by law would end this flexibility, since paid time off does not meet the proposed definition of sick leave.

Estimates vary of how much work productivity would be lost due to a new mandatory benefit imposed upon employers. According to some surveys, employees often use paid sick days in proportion to how much leave is available. If an employee has 12 sick days a year he or she will typically use about seven days per year; and an employee with five sick days will use about three days a year.

A study by the U.S. Small Business Administration shows that employees of small businesses have, by-and-large, access to fewer benefits than do the employees of large businesses.¹⁴ The smallest firms are often forced to make substantially higher contributions per participant for benefits than the largest firms. Smaller businesses face a much higher marginal cost in implementing any new mandated benefit, placing them at a marked disadvantage compared to their larger competitors.

Policy Analysis

In the modern economy, most companies have adopted voluntary and flexible ways of compensating their employees, based on the demands of workers and the need of firms to stay competitive in their particular market. Many companies give their employees three, five or seven days per year. Arbitrarily increasing the number of paid sick days from seven to ten, for example, may seem to help a few employees, but will contribute to unemployment and increase the cost of living for all citizens.

Smaller businesses would have to adjust to a new employment mandate by raising prices, reducing paid vacation, cutting other non-cash benefits, hiring fewer workers or a combination of all four. In forcing employers to provide a new benefit policymakers would end up making things worse for workers, not better.

Labor Policy

The cumulative effect of regulations such as numerous health insurance mandates and the automatically-increasing minimum wage already have a negative effect on the state's ability to create jobs. The proposed mandatory sick leave requirement, added to existing regulations, would significantly increase costs, especially for local small businesses, and make our business climate even less attractive to out-of-state companies.

Recommendation

1) Avoid imposing a mandatory, one-size-fits all sick leave policy on Washington businesses and their employees. Allow employers to retain flexibility in setting compensation and benefits. Blanket regulations that apply one rule to every business are harmful to the economy as a whole. Most businesses have some sort of paid sick leave or paid time off policy, but business owners should not have a single, one-size-fits-all rule forced upon them by the state.

5. Mandatory Paid Health Benefits

Recommendation

1. Do not impose a restrictive “Fair Share” health benefit mandate on the Washington labor market.

Background

In 2006 the legislature debated a bill proponents referred to as the “Fair Share Act,” which would require all companies in Washington with 5,000 or more employees to provide a certain level of health care benefit, or pay a new nine percent payroll tax to the state treasury.¹⁵

Proponents say the proposal would reduce the number of uninsured by increasing access to health coverage for Washington workers. They say owners of large companies have a responsibility to provide a minimum standard of health coverage to their workers and that if they do not do so voluntarily the state should require it by law.

Proponents also say companies shift their health coverage costs to the taxpayers when their workers enroll in publicly-funded health programs. The nine percent payroll tax is intended to reimburse the government for this perceived corporate subsidy.

Policy Analysis

A close analysis of the proposal finds it to be bad public policy for two primary reasons: it is wrong in principle and wrong in practice.

Wrong in principle

The idea is wrong in principle because it unfairly targets a narrow group of companies. Citizens should always be concerned when certain groups or businesses are singled out as the focus of government power.

The proposal is unfair to workers who choose to access health coverage in other ways, such as through a spouse or individual-based coverage that puts workers in charge of their own health care. Mandating a one-size-fits-all, employer-based health care system deprives workers of choices in one of the most important areas of life.

It is particularly unfair to temporary and part-time workers. If a temporary employee works just *one day*, he could be counted toward the employer's quota of 5,000 workers. Increasing the regulatory burden on jobs in Washington will encourage outsourcing to other states and countries.

The bill is unfair to business owners who should have the right to run their business free from micro-management by the state. If the largest companies can be hit with a costly and inflexible mandate, then no business in Washington is immune to similar treatment. Supporters of "Fair Share" have said they view the requirement is a basic employment standard and that it should eventually be applied to all companies.

The proposal discourages new jobs. It creates a strong incentive for companies to maintain no more than 4,999 employees in Washington, and severely punishes successful companies that attempt to hire more workers.

Public health programs are not “corporate welfare”

Proponents of the “Fair Share” proposal say employers are receiving corporate welfare when their workers sign up for public health programs for which they are eligible.

Yet the state itself encourages people to participate in public health programs. For example, since the inception of the Basic Health Plan 18 years ago, it has been the express policy of Washington state to sign up as many working people as possible. It is illogical and contradictory to criticize employers when workers actually join a state plan for which they are legally eligible.

It is equally wrong to say that public health programs for working people are “corporate welfare.” Corporate welfare is a special economic benefit or market protection that policymakers give directly to favored companies. Many working people live in public housing, receive food assistance and use subsidized transportation. These important social programs are not “corporate welfare” to the companies that give these workers jobs, and neither is broad-based subsidized health care.

Part of national labor union strategy

In 2006, the Maryland legislature passed a “Fair Share” bill over Governor Ehrlich’s veto. The Maryland bill applies to companies with 10,000 employees and imposes an eight percent payroll tax. Union leaders say this is part of a nationwide, state-by-state strategy, and they picked Washington in 2006 as the next battleground.

The Washington “Fair Share” bill is similar to the Maryland bill, except that the payroll tax is higher and it applies to companies with half as many in-state employees. It is also similar to the “Pay or Play” legislation that died in the Washington legislature in 2005. That bill applied to companies

with as few as fifty employees. Proponents say they plan to re-introduce both bills in future legislative sessions.

Reducing artificial costs imposed by government

The “Fair Share” proposal’s mandatory approach ignores the large artificial costs the state already imposes on the provision of health care coverage. The greatest barrier to health insurance is cost. State policies contribute significantly to the cost of health insurance. Such policies include state-imposed mandates, lack of basic health coverage and disincentive for purchasing Health Savings Accounts. Specific recommendations for reducing government-imposed health costs are presented in Chapter 4.

Recommendation

1) Do not impose a restrictive “Fair Share” health benefit mandate on the Washington labor market. The “Fair Share” approach does nothing to make health coverage more affordable, personal or portable. It is not only unfair to both workers and employers, it moves our state in exactly the wrong direction in efforts to make health care more affordable.

Additional Resources

Washington Policy Center Research

“Reviving Washington’s Small Business Climate: Policy Recommendations from the 2005 Small Business Conferences,” by Carl Gipson, January 2006.

“Legislative Session Largely a Letdown for Small Business,” by Carl Gipson, April 2006.

“House Strips Away Senate’s Plan to Help Small Businesses Afford Health Insurance,” by Carl Gipson, March 2006.

“Legislature Poised to Roll Back Unemployment Reforms,” by Carl Gipson, February 2006.

“Mandatory Paid Sick Leave - Another Ailment for the Small Business Climate,” by Carl Gipson, January 2006.

“Small Business Owners Have Their Say,” by Carl Gipson, January 2006.

“An Honor Washington Could Do Without -- Highest Minimum Wage in the Nation,” by Carl Gipson, January 2005.

“Reforming Washington’s Workers’ Compensation System,” by Allison Demeritt, May 2004.

“Entrepreneurship in The Emerald City: Regulations Cloud the Sparkle of Small Businesses,” by Jeanette Peterson, August 2004.

“Agenda for Reform: Priority Solutions for Improving Washington’s Small Business Climate,” by Eric Montague, January 2004.

“The Small Business Climate in Washington State,” by Eric Montague, March 2002.

“Consumer, Not Corporate, ‘Greed’ is Ultimately Behind Layoffs,” by Mark J. Perry, 2002.

Other Resources

The Washington Competitiveness Council - A state government sponsored council of community and business leaders charged with recommending policies for making Washington state more competitive. www.governor.wa.gov.

“2004 Washington ACE Report: Accelerating out of the Turn?” published by Washington Alliance for a Competitive Economy (WashACE), a partnership of the Association of Washington Business, Washington Research Council and Washington Research Council. The report is available online at www.awb.org.

U.S. Small Business Administration Office of Advocacy - Publishes research reports and lobbies Congress and state legislatures on behalf of small business. www.sba.gov/advo/.

Mercatus Center at George Mason University - A research institution focusing on regulatory reform. www.mercatus.org.

¹ “Omnibus Operating Budget, 2005-07,” Office of Financial Management, at leap.leg.wa.gov/leap/budget/detail/2005/o0507swfinal.pdf.

² “2005 Year in Review, Washington’s Workers’ Compensation System,” Department of Labor and Industries, at www.lni.wa.gov/ipub/200-009-000.pdf.

³ “Workers’ Compensation – Benefits Paid,” 2006 Competitiveness Redbook, WashACE, 2006.

⁴ In 2006, employers pay an average of \$31 more per month for each full time worker. Data from Independent Business Association based on L&I payroll tax rate increases, December 2005.

⁵ Regional Resources – Washington state, Labor Force Data, Bureau of Labor Statistics, United States Department of Labor, at http://www.bls.gov/ro9/ro9_wa.htm, accessed June 29, 2006.

⁶ Office of the Secretary of State, Index to Initiative History and Statistics, 1914 – 2003, Initiative No. 688, passed November 3, 1998, http://www.secstate.wa.gov/elections/initiatives/statistics_initiatives.aspx.

⁷ “Distribution of Workers Affected by Proposed \$7.00 [national] Minimum Wage,” Minimum Wage Statistics, Employment Policies Institute, http://www.epionline.org/mw_statistics_state.cfm.

⁸ “Why Raising the Minimum Wage is a Poor Way to Help the Poor,” by Dr. Richard Burkhauser and Dr. Joseph Sabia, (both of Cornell University), published by the Employment Policies Institute, July 2004, http://www.epionline.org/study_detail.cfm?sid=71.

⁹ “Tips as Wages,” Issue Brief 12/05, Washington Restaurant Association, December 2005, at www.wrahome.com/PDF%20files/12_05_Issues_Brief_tip_Credit.pdf.

¹⁰ HB 2777, introduced by Rep. Mary Lou Dickerson, January 13, 2006. The companion bill in the Senate was SB 6592.

¹¹ “2004 Employee Benefits Survey,” by Rick Lockhart, Labor Market and Economic Analysis, Washington State Employment Security Department, March 2005, p. 11, at www.workforceexplorer.com.

¹² See “Mandatory Paid Sick Leave – Another Ailment for the Small Business Climate,” by Carl Gipson, Legislative Memo, Washington Policy Center, January 2006, at www.washingtonpolicy.org/SmallBusiness/LegMemoMandatorypaidicksleave.

¹³ Ibid.

¹⁴ “Cost of Employee Benefits in Small and Large Business,” United States Small Business Administration, Washington, D.C., August 2005.

¹⁵ HB 2517, “Requiring large businesses to pay a certain amount in health care coverage,” sponsored by Rep. Eileen Cody. The companion bill in the Senate was SB 6356.



Chapter 9: High-Tech Policy

1. Cyber-Security and Identity Theft

Recommendations

1. Enhance privacy laws, based on consumer notice, consent and security, to limit how companies share sensitive customer information with outside organizations.
2. Keep burden on government, not citizens, to justify when private information must be shared.
3. Allow consumers to freeze their credit reports at any time in order to protect them from unauthorized access.

Background

As fast as electronic technology develops for legitimate and legal purposes, so too does technology intended for malicious reasons. As quickly as code writers produce software designed to enhance security, someone with criminal motives is seeking a way around it.

As the electronic economy emerges, particularly in Washington, a steadily-increasing number of individuals and organizations rely on electronic and web-based means of storing and exchanging information. The privacy and security of this information is more important than ever before.

Cyber-security affects virtually everyone in modern society, since sensitive financial and medical records are often stored on potentially vulnerable computer systems, and an increasing amount of shopping and other routine business take place over the internet.

High-Tech Policy

There are several types of cyber threats that consumers face every time they turn on their computers, surf the internet or read their e-mail. The two most common ploys are “phishing” and spyware (or adware).

“Phishing” is a type of computer fraud designed to steal a person’s identity and other personal information by imitating legitimate organizations like banks or government agencies. Spyware is software secretly downloaded onto a computer for the purpose of tracking a user’s passwords or account numbers as he or she navigates the internet.

Both “phishing” and “spyware” are symptoms of the broader crime revolving around identity theft. Identity theft is quickly becoming a much larger threat to society in general, not just computer users. The porous way that information makes its way through our electronic and physical mail systems is not secure enough to defend against high-tech 21st century threats.

Washington ranked 8th in the nation in 2004 for identity theft – more than 5,600 residents reported they were victims; an increase of almost 20 percent over 2003. Identity theft crimes cost U.S. consumers more than \$53 billion a year.

Having ones identity and credit stolen goes beyond mere financial repercussions. Victims may be rejected for jobs, home mortgages, insurance policies or credit cards because their personal information is being used maliciously by someone else.

Guarding against identity theft is the focus of new state laws as well as recent criminal task forces. The state Attorney General’s office formed an Identity Theft Advisory Panel in 2005 to ask for feedback from citizens, businesses and government agencies on how to best fight identity crimes.

In 2005, the legislature passed a bill to strengthen law enforcement tools against spyware, phishing and identity theft.¹

High-Tech Policy

This legislation adds new sections to the state's Consumer Protection Act and makes it illegal for any person to:

- collect personally identifiable information by tracking a person's computer keystrokes;
- collect peoples' web browsing histories;
- take control of a person's computer to send unauthorized e-mails or computer viruses over the internet;
- create bogus financial charges;
- organize a group attack on another person's computer;
- take control of a user's computer through multiple, aggressive pop-up advertisements;
- modify another person's computer security settings;
- generally interfere with another person's ability to identify or remove spyware from his or her computer.

Also in 2005, the legislature passed two other computer crime related bills, House Bill 1966 and Senate Substitute Bill 5939. The first lays out general guidelines for prosecuting cases of identity theft. The second requires that policy reports be given by request to victims of identity theft in order to facilitate fraud alerts and to clear fraudulent activity from victims' records.

Policy Analysis

In addition to tougher enforcement by the Attorney General's office and state law enforcement agencies, consumers themselves should become educated about changing security threats. Current defensive software can only do so much

because new threats constantly emerge to subvert existing protections. A mix of public and private cooperation is necessary to address ever-present threats and to reduce the incidence of cyber crime.

The law can be strengthened to empower citizens to protect themselves. For example, currently only people already victimized by identity theft are allowed to freeze their credit reports so as to foil any further attacks. This is like locking the barn door after the horse has been stolen. The day before an identity thief strikes, the law renders a person powerless to prevent it. Only after the crime does the law allow victims to act in protecting (what's left) of their credit standing.

Allowing all consumers to be in charge of who can access to their personal credit information would greatly reduce identity theft attacks. Consumers could have their credit reports "frozen" so that no one could access the reports without the consumer's direct consent. Legislation authorizing this failed in 2005, but will likely return in future sessions.

Legislators should accommodate the concerns of legitimate businesses that are worried about problems arising because consumers may not have immediate access to their credit reports. Legislation could be crafted which allows consumers to freeze or unfreeze their credit reports at any time. This would help avoid delays for consumers who are trying to arrange financing for big-ticket items such as a new car or a home.

While steps have been taken to help curb identity theft over the past two years, most identity crime takes place off-line. People are much more likely to be victimized through what they throw into their trash cans or leave in an unsecured mailbox than through the internet. According to the Better Business Bureau, only 11 percent of known identity theft cases occurs online.² Low-tech dumpster diving and telephone fraud account for more thefts than internet-based fraud.

However, it is still important that private companies be encouraged to develop products that respond to today's threats. Consumer education is also important. A well informed consumer is better equipped to avoid identity victimization than a consumer who relies solely on government regulation for protection.

Recommendations

1) Enhance privacy laws, based on consumer notice, consent and security, to limit how companies share sensitive customer information with outside organizations. Individual consumers who voluntarily give their private information to a company need to be informed about that company's policies regarding use of that information, and whether it will be given or sold to a third party.

2) Keep burden on government, not citizens, to justify when private information must be shared. Government has legitimate reasons to have limited and carefully defined access to information about private citizens, especially for law enforcement purposes. But the burden must remain on the government to show when such access is justified, not on citizens to explain why sensitive personal information should remain private.

3) Allow consumers to freeze their credit reports at any time in order to protect them from unauthorized access. Consumers should be able to limit who has access to their sensitive financial information. Any new restrictions should be flexible enough to allow consumers to maintain easy access to their credit reports.

2. Access to Broadband

Recommendations

1. Reduce taxes on telecommunication services.
2. City, state and local governments should refrain from operating a municipal broadband network – either wired or wireless.
3. Encourage market forces that expand broadband service, wired or wireless, into rural areas.

Background

The world marketplace is quickly evolving into a digitally-connected web of business communication. The technological infrastructure necessary to support and advance our emerging e-commerce engine is very complex and very expensive. Private companies that risk capital on expanding the reach of broadband technology will only do so if it makes economic sense. Heavily taxing and regulating an industry dependent on innovation will stifle the research and development necessary for the high-tech sector to extend broadband access to more and more people.

While the number of broadband internet connections grew rapidly from 2005 to 2006, the United States overall ranks low on broadband connection per person compared to other industrialized nations. The U.S. led the world in broadband penetration as recently as 2000, but since then we have fallen to 16th place. Despite this slower relative growth, 84 million Americans, or 42 percent of American adults, now have broadband hookups at home – large numbers of whom skipped the dial-up modem age and went straight to a high-speed internet connection.³

High-Tech Policy

Counterproductive federal, state and local tax and regulatory policies hamper new investment in broadband infrastructure. In some parts of Washington, publicly-subsidized ventures, like Tacoma's Click! Network, are undercutting existing private service providers and deterring future investment. Click! received millions in subsidies and yet has never fulfilled its original promises to the people of Tacoma.⁴

Overall, communication services in Washington face one of the heaviest tax burdens in the nation. By one estimate, telecommunication companies pay an average of 39 percent more in taxes than other industries.⁵ In Washington, for example, telecommunication consumers pay well over half-a-billion dollars a year in taxes.⁶

Another impediment to wider access to broadband is the heavy tax burden government at all levels places on telecommunication services. Reducing the tax burden on telecommunications customers would lower a major barrier to broadband access for rural residents and smaller businesses.

Reducing taxes would accomplish two important goals. First, small businesses located in areas already served by broadband and wireless communications would be better able to afford the service. Second, by lowering taxes on all consumers, telecommunication companies would be encouraged to invest more capital to reach markets they do not currently serve, primarily in low income and rural areas.

Ending the Spanish-American War tax

The U.S. Treasury recently reduced telecommunication taxes slightly by announcing it would no longer collect the three percent federal excise tax on long-distance phone calls. Congress enacted the tax in 1898 to pay for the Spanish-American War. Federal officials should apply the same decision to local phone service as well, so all consumers can benefit

equally from not having to pay for a war that ended more than 100 years ago.

Expanding broadband to rural areas

Rural Washington lags behind the rest of the state in access to broadband internet connections, largely because of the higher cost of outlying networks. Building fiber optic pipelines from urban or suburban transmission stations to rural communities is extremely expensive and time consuming compared to the number of new customers reached.

Several telecommunication companies are undertaking extensive broadband buildout, but other companies are circumnavigating the physical limitations of laying new pipe or using existing telephone and power lines by using the emerging technology of Wireless Fidelity Internet (WiFi) protocol. WiFi connections already exist in thousands of homes and businesses in Washington, but they are mostly short-range connections. A WiFi user has to be within at least 150 feet of the nearest wired connection.

Some cities have tried establishing public, city-wide WiFi systems to provide free wireless broadband access residents. Large cities such as San Francisco and smaller ones such as St. Cloud, Florida, have tried these systems, with only limited success.

Two policy considerations are key to establishing workable rural WiFi connections for citizens. First, as seen time and again with new technology, it is essential that private companies initiate WiFi service instead of a government-run, taxpayer subsidized system. The discipline of the market prevents private companies from becoming an entrench, politically-protected agency which continues spending money whether or not it is accomplishing its purpose.

Secondly, the Federal Communications Commission should free up more of the radio spectrum so wireless broadband internet can be carried to smaller municipalities. Already, several companies are marketing themselves as Wireless Internet Service Providers (WISP) and buying up available spectrum to carry wireless internet signals. This allows customers to pay a fee and use portable computers or even “smartphones” to conduct business anywhere there is a signal. Liberating radio spectrum would encourage more WISP connections and drive down prices.

Recommendations

1) Reduce taxes on telecommunication services. Today telecommunications services are highly taxed, because over the years state and federal legislators have found this to be a convenient revenue source. In an era of rapidly-growing technology, however, the high tax burden runs the risk of stifling innovation and slowing affordable access to broadband to more citizens. Lowering the telecommunication tax burden would directly benefit current and future broadband users, and would contribute generally to the prosperity of Washington state and the nation.

2) City, state and local governments should refrain from operating a municipal broadband network – either wired or wireless. Government can play important, indeed vital, roles in fostering an effective local telecommunications market, but owner and market competitor is not one of them. Running a sophisticated telecommunications and cable service is simply not a core function of government.

3) Encourage market forces that expand broadband service, wired or wireless, into rural areas. Advanced technology and communications systems continue to expand the ability of rural small businesses to compete with businesses located in urban areas. Integral to the continued growth of rural businesses is the further expansion of affordable broadband access—wired

and/or wireless. Policymakers, both state and federal, should take steps to reduce the regulatory barriers to building broadband access to rural communities.

3. Open Source Software

Recommendations

1. State and local laws should remain neutral regarding the procurement of Open Source Software by government agencies.
2. State laws should avoid special tax subsidies or tax breaks to Open Source Software or Open Standards development.

Background

Most computer software is sold like any other commercial product and is protected by U.S. intellectual property laws (primarily copywriting and patent protection). Such software products are sold under defined legal controls. Customers without prior permission cannot see or change the program's basic source code. High-tech companies that develop software and sell it under license have a strong economic initiative to stand behind their product, to create improved versions of it and to search continually for ways to protect it from attack by viruses and hackers.

Open Source Software is different. With various types of Open Source Software, of which Linux is the best known, users can access and alter the source code at will. Altering the source code is not an infraction of intellectual property laws because Open Source developers encourage innovation from by users.

The defining attributes of Open Source Software include free or low-cost distribution, access to source code, the ability to redistribute modifications, technology neutrality and equal availability to people in all technical fields.

Supporters say Open Source Software is superior to traditionally-developed software because it benefits from constant improvements supplied by code writers around the

world. Companies that use and distribute Open Source Software are doing so legally, but they rely on different revenue streams to earn a profit.

Policy Analysis

Many governments agencies are attracted to Open Source Software because it is often available for free or at a very low initial cost. But this is only the start. Software acquisition managers must also consider other factors that could add to the cost of using Open Source Software for government applications.

Open Source Software requires heavier technical support and consultation with the distributor than commercial software. Commercial software is designed to be used straight out of the box, without technical assistance. Public-sector managers must weigh whether this Open Source Software is capable of doing the required work, how well it fits with existing computer systems and what additional time and training is needed to teach agency personnel how to use it.

While the initial acquisition cost may be low, the inability to connect with existing computer systems and the need to train staff may add substantially to the total cost government agencies must pay to make an Open Source Software system meet their particular needs.

There is a strong ideological component to the ongoing debate over Open Source Software. While there is a substantial for-profit market for Open Source Software and the consulting services that go with it, many of its strongest advocates are critical of free market capitalism in principle. They believe software should be community property freely available to everyone, regardless of who created it.

They see standard commercial software as “bad” because customers must pay for its use, resulting in profits for

High-Tech Policy

private companies. This attitude is especially prevalent among supporters of Open Standards. Open Standard rules would force software companies to make their file standards compatible with every other file standard. This would be an unnecessary regulation because the more adaptive companies can make their software, the better it is for business.

Open Source advocates ignore the fact that a substantial portion of software company profits, just as in any industry, are used to fund further research, which results in the constant improvement of existing products and the invention of new ones.

Open Source Software advocates lobby state governments to change procurement policies so only Open Source or Open Standards products can be considered. This approach greatly limits the availability of essential tools for government employees. It also blocks private companies from being able to reinvest money into further research and development that improves products and services.

The development of software code is like any other innovative human activity. It is the result of the mental labor of the people working for the companies that created it. Software development, like any writing, is a form of intellectual property. The natural ownership rights of those who create it should be respected in law and in the marketplace.

Open Source providers choose to earn money by providing heavy technical assistance and consultation. They are certainly well within their rights to do so. But people who retain control of what they have made are equally acting within their rights, and they should be allowed to benefit commercially from their efforts, without facing discrimination.

Policymakers may think that Open Source Software has certain attractive ideological qualities, but they should be aware of the practical problems involved. Open Source Software requires more man hours and technical assistance than

commercial software, and the extra time and cost should be taken into account when making procurement decisions.

Washington policymakers should avoid adopting procurement rules that mandate the use of Open Source Software to the exclusion of all other options. Such a policy does not result in the best use of taxpayer money because it needlessly ties the hands of public managers who are responsible for running their agencies efficiently and within budget.

Policymakers should also be aware that arbitrarily mandating the use of Open Standards reduces the ability of software companies to improve existing products and to develop new ones.

Recommendations

1) State and local laws should remain neutral regarding the procurement of Open Source Software by government agencies. Policymakers should not restrict or predetermine the technical support needs of government agencies by arbitrarily setting procurement policy so that only the purchase of Open Source Software can be considered.

2) State laws should avoid special tax subsidies or tax breaks to Open Source Software or Open Standards development. Policymakers should recognize that there is a role, and a market, for both Open Source Software and commercial software and refrain from implementing tax or regulatory policies that grant special treatment to one over the other.

4. High-Tech Education

Recommendations

1. Encourage scholastic achievement in the areas of science and technology.
2. Retool the education system to better prepare students for careers of engineering, science and technology.
3. Increase infrastructure investment in higher education geared toward science, math, engineering and mathematics.

Background

Advanced technological innovations and inventions throughout the 20th century established America, and particularly Washington, as a key leader in the high-tech industries. Rising to the top of the technology industry was difficult, but remaining at the top is proving equally difficult.

Other countries have greatly increased the number of their students graduating with degrees in science, technology, engineering and mathematics. These countries are already attracting a significant number of jobs from multinational corporations. Certain sectors in high-tech industry are beginning to move from the United States to nations that have a more readily available and highly educated workforce, and in the process are taking valuable research and development investments away with them.

Policy Analysis

Our economy is based on a highly educated and productive workforce that is adaptable to emerging technological sectors and is motivated to spur technological innovations. But the innovation of our entrepreneurs can only

be sustained to the extent that our private and public institutions invest in the infrastructure that produced such entrepreneurs in the first place.

Maintaining major technical innovation requires a sufficient number of graduates with Ph.D. level degrees in science, technology, engineering and math (called STEM). Yet each year fewer American students focus on STEM subjects at advanced levels.

In 1987, 4,700 Ph.D. degrees were awarded to American citizens, while 5,600 Asian citizens were awarded Ph.D. degrees. By 2001, only 4,400 Ph.D. degrees were awarded to Americans, while 24,900 Asian citizens received Ph.D. degrees.⁷ At a time when the number of American students receiving Ph.D. degrees declined, the number earned in Asian countries jumped by a factor of five.

The United States is also awarding fewer engineering degrees as a percentage of all undergraduate degrees than other countries. The following table shows the number of engineering degrees awarded in the United States compared to those awarded in four Asian countries.

BS Engineering Degrees in Select Countries of Citizens Age 24 in 2001 (figures in thousands)			
	Total BA and BS degrees	Engineering degrees	Engineering degrees as % of all degrees
United States	1,253.1	59.5	5%
China	567.8	219.5	39%
South Korea	209.7	56.5	39%
Taiwan	117.4	26.6	23%
Japan	542.3	104.6	19%

Source: National Science Foundation, Science and Engineering Indicators, 2002.

Most European countries also award a higher percentage of degrees in STEM subjects than the United States, led by Germany with 31 percent of bachelor degrees awarded in engineering and science.⁸

Recommendations

1) Encourage scholastic achievement in the areas of science and technology. Too many students enter college with an interest in engineering, science or technology but drop out or change the focus of their majors. Colleges and university leaders should use contracting out and other efficiencies to reduce tuition costs and increase academic opportunities for science and technology students.

2) Re-tool the education system to better prepare students for careers in engineering, science and technology. The average time to obtain a Ph.D. is at its greatest length ever, just over seven years. The higher education system should be re-tooled to help Ph.D. students in engineering, science and technology leave school in a reasonable time and begin their professional careers.

3) Increase infrastructure investment in higher education geared towards science, math, engineering and mathematics. Policymakers should take steps to encourage our institutions of higher learning to attract more U.S. students to graduate in the areas of science and engineering, as well as seek to retain the talents of non-U.S. citizens upon their graduation.

5. Ending Cable Monopolies

Recommendations

1. End outdated local cable monopolies in favor of statewide franchises that allow more choice for consumers.

Background

New telecommunication technology is making it possible for consumers to buy cable programming from alternate sources, like telecom companies and internet providers, but government regulators continue to insist on maintaining outdated local cable monopolies.

In the 1970s, building a cable network from scratch was expensive and risky. It made sense for local governments to use the “natural monopoly” model to get the new technology established. Like mail delivery or early phone companies, the government offered cable providers insulation from competition in return for offering universal service.

The local cable company strung wires and installed a T.V. box for any homeowner who asked for it. The customer paid a set price and local officials collected taxes and franchise fees. As a result, cable service became widely available and cable companies earned a secure return on the huge capital investment they had made while building the network.

The cost of cable television and broadband internet access is also heavily influenced by local franchise fees. The fees are imposed on private cable operators by local governments in exchange for allowing the cable operators to service the city or county’s cable customers. Between 1996 and 2005 nationwide franchise fees rose from \$1.4 billion to \$2.4 billion per year, leaving the average customer paying almost \$37 per year just to cover the franchise fee.⁹

High-Tech Policy

Cable companies are increasingly required to pay higher taxes and fees, and to give valuable channels to local governments for free. Sometimes cable companies are even made to deposit lump sum payments directly into city treasuries just to continue in business. Cable companies have no choice but to pass higher tax and franchise costs on to their customers. That is one reason cable prices have risen three times the rate of inflation for the past decade.

Policy Analysis

After three decades, local monopoly cable no longer makes sense. Cable companies still provide universal service, but for municipal officials the original purpose of serving the customer has been lost. They now see the local cable franchise as just another lucrative revenue source, and as the years pass local governments squeeze it harder.

In recent decades the radical deregulation of airlines, trucking, railroads, banking and telecommunications have unleashed an explosion of innovation and choice for consumers that has made the U.S. economy the most dynamic in the world. The internet has succeeded so spectacularly because government officials avoided smothering it with arbitrary rules and red tape. The government's hands-off approach means that ideas and investment flow where they are needed most, and because of it America is at the forefront of an unprecedented digital revolution.

The same dynamic will work for cable. New technologies make possible a range of programs, services and low prices that were unimagined in the past.

Recommendation

1) End outdated local cable monopolies in favor of statewide franchises that allow more choice for consumers. Several

states have already taken steps to implement a statewide video franchise system. Washington should take the same approach, so consumers can gain access to emerging technologies.

Additional Resources

Washington Policy Center Research

“Bring the Competition Revolution to Cable T.V.,” by Paul Guppy, April 2006.

“A New Way to Make a Phone Call,” by Paul Guppy, May 2004.

“It’s Time for Consumer Choice in Local Phone Service,” by Paul Guppy, 2002.

“When Government Enters the Telecommunications Market: An Assessment of Tacoma’s Click! Network,” by Paul Guppy, June 2001.

Other Resources

Discovery Institute Technology and Democracy Project - A research project designed to evaluate the role of technology in modern democracy and how it can help sustain economic prosperity and social development, www.discovery.org.

“Finding and Fixing Vulnerabilities in Information Systems: The Vulnerability Assessment and Mitigation Methodology,” by Philip S. Anton, Robert H. Anderson, Richard Mesic and Michael Scheiern, Rand Corporation, 2003.

Progress and Freedom Foundation - A market-oriented think tank that studies the digital revolution and its implications for public policy, www.pff.org.

“Antitrust after Microsoft: the Obsolescence of Antitrust in the Digital Era,” by David B. Kopel, Heartland Institute, Chicago, Illinois, 2001.

“Spyware Regulation,” by James L. Gattuso, Research Fellow in Regulatory Policy, Regulation in Brief No. 18, October 4, 2004, The Heritage Foundation, Washington, D.C., www.heritage.org.

“Trends in Competitiveness of Telecommunications Markets: Implications for Deregulation of Retail Local Services,” by Richard O. Levine, Joseph S. Kraemer and Randolph J. May, Progress and Freedom Foundation Special Report, December 2003. www.pff.org.

¹ ESHB 1012, “Regulating computer software,” sponsored by Representative Jeff Morris, enacted May 17, 2005, Title 19, Revised Code of Washington, text at www.apps.leg.wa.gov/billinfo/summary.aspx?bill=1012&year=2005.

² “ID theft: The real risk, Internet hackers stealing info make headlines, but most ID theft happens in the low-tech world, CNNMoney.com, March 22, 2005, data based on a Better Business Bureau telephone survey of 4,000 consumers, at www.money.cnn.com/2005/03/22/technology/personaltech/id_theft/index.htm.

³ “Home Broadband Adoption 2006,” Pew Internet & American Life Project, May 2006, accessed June 1, 2006, at www.pewinternet.org.

⁴ See “When Government Enters the Telecommunications Market, An Assessment of Tacoma’s Click! Network,” by Paul Guppy, Washington Policy Center Policy Brief, June 2001, at www.washingtonpolicy.org.

⁵ “Telecommunications Taxes: 50-state Estimates of Excess State and Local Tax Burden,” by Robert Cline, *State Tax Notes*, June 3, 2002, pp. 931 – 47.

⁶ *Ibid.*

⁷ “Sustaining the Nation’s Innovation Ecosystem: Maintaining the Strength of Our Science and Engineering Capabilities,” report of the President’s Council of Advisors on Science and Technology, Washington, D.C., June 2004, at

www.ostp.gov/PCAST/FINALPCASTSECAPABILITIESPACKAGE.pdf.

⁸ *Ibid.*

⁹ “Cable Pricing, Value and Costs,” National Cable and Telecommunications Association, May 2003 (updated in May 2006), at www.ncta.com.



Chapter 10: Transportation

1. Transportation Spending

Recommendations

1. Adopt a policy of increasing road capacity as the most effective way to end traffic gridlock and allow citizens better freedom of movement.
2. End the practice of the state charging itself sales tax for transportation projects.
3. Implement performance audit program improvements recommended by State Auditor investigations.
4. Tie funding increases in transportation spending to measurable performance improvements.
5. Use market-based labor pricing for transportation projects, rather than the artificially-inflated prevailing wage system.

Background

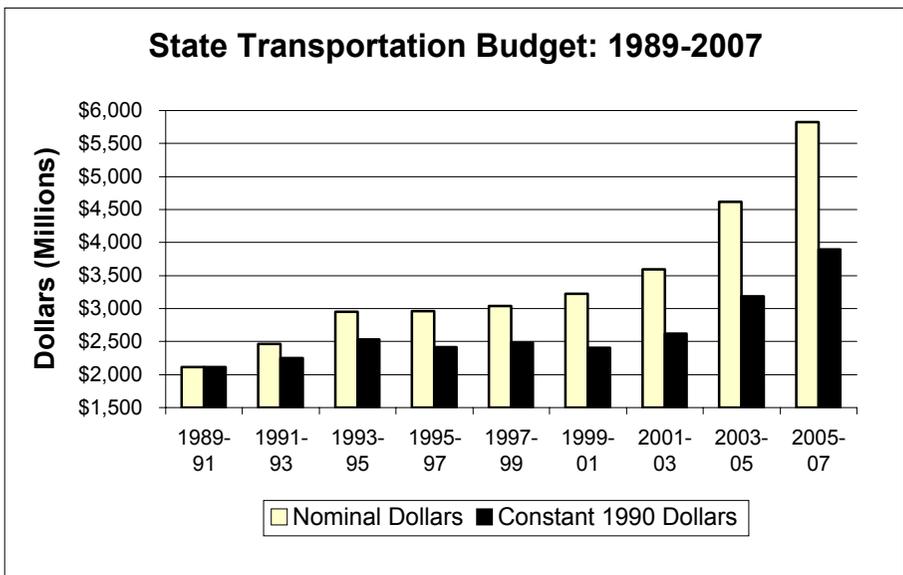
Over the last 20 years, Washington's population has increased almost 40 percent, yet the state road network has not kept pace. The basic highway network was planned in the 1950s and largely built in the 1960s. Since then, only parts of Interstate 90 and Interstate 405 serving Seattle and its suburbs have received large increases in carrying capacity. Even so, the Puget Sound region has become one of the most congested metro areas in the nation. Other major traffic corridors around the state have received minor capacity improvements at best, offering little relief to the state's 4.6 million drivers.

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Much of the debate over transportation improvements revolves around tax revenue and spending levels. In 1999, voters approved Initiative 695, which brought Washingtonians more than \$764 million in tax relief by reducing the car tab tax from hundreds of dollars annually to \$30.

In 2002, voters rejected a proposed 9-cent-a-gallon gas tax increase. The following year the legislature passed a smaller tax increase – five cents a gallon – that raises more than \$4 billion in new funding for so-called Nickel Package projects.

The following bar chart shows that, after stagnating in inflation-adjusted terms in the mid-1990s, state transportation spending has been steadily increasing since 1999.



State transportation spending stagnated in the mid-1990s, but has increased sharply in real terms since 1999.

Initiative 900, which passed in November 2005, gave the State Auditor's Office authority to conduct performance audits of state agencies, starting with the larger organizations. The Auditor's office is contracting with private firms to conduct

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the audits, with a completion date of May 2007. The audits will focus on several Department of Transportation programs, including road maintenance, highway project management, the ferry system and performance measures.

Policy Analysis

Failed programs and cost overruns have severely harmed the Puget Sound region's transportation system, primarily by absorbing funding that would otherwise be available for improving road capacity. The defunct Seattle Monorail, which cost taxpayers over \$100 million and served no purpose whatsoever, was one of these.

On an even larger scale, Sound Transit will expend more than \$2 billion initially, will move a small fraction of the people who travel every day, and will do nothing to relieve congestion on the region's highways.

In 2006, 95 percent of daily trips are made by private automobile, a figure that has not changed after three decades of heavy subsidies for high capacity, low ridership mass transit. Even when, or if, Sound Transit light rail expands to its originally planned 21 miles, it will do little or nothing to relieve regional traffic congestion. Significant increases in road capacity, once commonly understood as the best way to move millions of people, has been at a virtual standstill since the late 1960s.

Planning a transportation system that meets the needs of Washington residents requires strong leadership from public policymakers and a renewed insistence on results over process. Washington Policy Center's research highlights some of the structural changes that can be made to improve our road network and recapture the vision of a transportation system based on freedom of movement. Key aspects of this vision include reducing structural barriers that drive up the cost of delivering major transportation projects

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A prime example of high structural costs is the state's use of the costly and antiquated prevailing wage system to pay for public construction. Prevailing wage is defined as the wage paid to the majority of workers in the applicable trade. In practice the rate is not interpreted as the true market wage but as the going union rate for the largest city in the region, usually Seattle. The effect of this interpretation is to reverse the meaning of the term "prevailing wage."

Currently the federal government and 33 states, including Washington, impose prevailing wage requirements on public construction projects. Ten states have abolished their prevailing wage laws, and reaped significant public benefits as a result.¹ To cite just one example, Florida lawmakers found they saved 15 percent on public projects once their state's inflationary prevailing wage law was repealed.²

Open market forces and transparent pricing determine the true prevailing price of labor, not a predetermined, government-fixed price. By interfering in the natural function of the labor market the government artificially drives up how much it must pay to build and maintain the public roads network.

Recommendations

1) Adopt a policy of increasing road capacity as the most effective way to end traffic gridlock and allow citizens better freedom of movement. Until the 1970s, state leaders pursued a policy of increasing road capacity adequately to meet the growing mobility needs of the people. Over the last three decades, however, public leaders have divided transportation funding between subsidized transit and roads. This approach has not worked. Returning to a policy of adding road capacity as needed is the best way to use limited transportation dollars to restore freedom of movement to the public.

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2) End the practice of the state charging itself sales tax for transportation projects. The state's current practice of charging sales tax on transportation design and construction is simply a device for cycling money out of the transportation budget and into the General Fund budget. Ending this practice would increase the funding available for road improvements and traffic relief. The state's own projects should be tax exempt, so that all funds raised through dedicated transportation taxes can be used in the way they were intended; improving mobility for citizens.

3) Implement performance audit program improvements recommended by State Auditor investigations. Performance audit investigations are due to be completed in 2007. Policymakers and state transportation officials should implement performance audit recommendations that will improve efficiency, speed the completion of projects and build public trust in how public money is spent.

4) Tie funding increases in spending to measurable performance improvements. Putting in place clear, measurable performance benchmarks, including permit streamlining and competitive contracting, before enacting increases in funding, will help restore public trust in the state's ability to spend transportation money wisely.

5) Use market-based labor pricing for transportation projects, rather than the artificially-inflated prevailing wage system. Built-in waste like the prevailing wage system makes it difficult for elected leaders to ask the public in good faith to pay more in taxes for needed transportation projects. Using competitive market wages would stretch limited transportation dollars and show respect for the financial sacrifice people make when paying for public roads.

2. Traffic Congestion Relief

Recommendations

1. Reduce spending on costly and ineffective fixed-route mass transit.
2. Increase general purpose lane capacity and focus on relieving traffic chokepoints.

Background

Traffic congestion in the Puget Sound area affects businesses and individuals everywhere in the state. Agricultural producers need reliable access to ports in Everett, Olympia, Seattle and Tacoma. For business owners around Puget Sound, congestion adds costs and hampers competitiveness by delaying delivery of goods, eating up the time of their employees and inflating travel expenses.

Families are also affected. As more time is needed to commute to and from work, less time is available for activities with family and friends. Because of traffic congestion, 55 percent of families with children say they are normally late, or miss entirely, at least one family-related function per week.³

The longer a commuter or commercial vehicle spends idling in traffic, the more time and money is literally going up in smoke. In the summer of 2006 the price of unleaded gas exceeded \$3 a gallon, and international oil prices topped \$70 per barrel, an all-time record. These high prices add economic cost, and heavy traffic congestion only makes matters worse.

Seattle drivers lost over 72 million hours (46 hours per driver) of delay due to traffic congestion in 2003, and consumed 49 million gallons of excess fuel. The overall congestion cost to Seattle area drivers was \$1.2 billion. Spokane drivers were

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delayed 1.8 million hours (10 hours per driver) and consumed 1.1 million gallons of excess fuel, for an overall added cost of \$32 million during the same year.⁴

Policy Analysis

Over the years the number of Vehicle Miles Traveled (VMT) each day has steadily increased, while available lane miles have only increased slightly. Since 1997, available lane miles have increased 2.7 percent whereas daily vehicle miles traveled increased 12 percent.⁵ The trend indicates that state transportation officials have not been spending transportation dollars where they are needed most – increasing the number of lane miles available to the driving public.

An effective and balanced transportation policy should focus on three guiding principles:

- 1) Identify core problems by analyzing how our transportation infrastructure got to this point.
- 2) Identify the best, and most commonsense ways to fix traffic flow problems, particularly by increasing lane capacity at key chokepoints.
- 3) Establish a priority list of road projects that will help move the most people in the fastest manner.

Policy Recommendations

1) Reduce spending on costly, ineffective fixed-route mass transit. Policymakers should change spending priorities that heavily favor mass transit systems despite chronically low ridership. Riders of these expensive systems, like light rail and the Sounder Commuter Train, are being heavily subsidized by automobile commuters, yet commuter rail does little to ease traffic gridlock.

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2) Increase general purpose lane capacity while focusing on fixing chokepoints. Focusing transportation funding on key chokepoints by adding general purpose lane miles will help move the most people at the least cost.

3. Competitive Contracting

Recommendations

1. Establish clear oversight guidelines for managing any new competitive contracting system.
2. Encourage an atmosphere of healthy competition in which private companies compete with state employees and other contractors to perform public work, like highway maintenance.
3. End state funding for research designed to derail the competitive contracting process.

Background

In 2002, the Washington legislature passed the Personnel System Reform Act which, among other things, allows state agencies to competitively contract for services historically provided by state employees. The competitive contracting provision of the Act, which took effect July 2005, offers new flexibility to state transportation managers facing tight budgets and the urgent need to maintain service levels while reducing overall cost. In other states, competitive contracting is used routinely to boost the quality of services, while gaining the best value for taxpayers.

In Washington, highway maintenance is one area of government that would benefit greatly from competitive contracting.⁶ An independent audit commissioned by the legislature in 1998 estimated that competitive contracting for highway maintenance would save state taxpayers up to \$250 million a year, without reducing the high level of service expected by motorists.⁷

The state highway maintenance program covers nearly 18,000 lane miles of state highways, ten major mountain passes,

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45 rest areas and dozens of other transportation-related systems. Basic maintenance operations include road repair, roadside and landscape maintenance, snow and ice control, rest area operations and many others.

Policy Analysis

The findings of the legislature's audit reflect the generally positive experiences other states have had with contracting out. These states use highway maintenance contracting to increase flexibility, ensure high quality and reduce cost in keeping up vital highway infrastructure. Similarly, competitive bidding would allow Washington policymakers to serve the public while getting the most out of scarce transportation dollars.

Competitive bidding does not mean privatization. In other states public employees compete for, and often win, competitions to perform government work. It is competition, not privatization, that achieves higher efficiency by allowing managers to choose the most cost effective option while delivering improved services. Even when government workers continue to provide a given public service, the very possibility of competition drives down costs and encourages excellence.

In a government agency the size and scope of the Department of Transportation – it is larger than most businesses in the state – one would reasonably expect there to be areas where its work could be done more efficiently. Long-standing programs in states like Massachusetts, Texas, Florida and Virginia demonstrate that competition for highway maintenance can be effectively implemented with minimal impact on state workers and significant improvement in cost savings and work quality.⁸

Recommendations

1) Establish clear oversight guidelines for managing any new competitive contracting system. Key to the success of any competitive contracting program is strong oversight and a transparent contract award process. State managers can enhance public support by building on the practical experiences of other states in designing oversight and accountability into any contracting out program.

2) Encourage an atmosphere of healthy competition in which private companies compete with state employees and other contractors to perform public work. By rewarding state employees for good work, and incorporating the best innovations of the private sector, competitive contracting would build morale and enhance the culture of excellence within the Department of Transportation. Based on the successful experiences of other states, highway maintenance is a good place for the Department to start a vigorous contracting out program.

3) End state funding for research designed simply to derail the competitive contracting process. Efforts by Department of Transportation staff have attempted to cast a negative light on the competitive contracting process. Considering the proven success of competition and contracting across the nation, state managers should avoid wasting resources on research that has already been done elsewhere.

4. Legalizing Private Transit Services

Recommendations

1. End the public transit monopoly by allowing private companies to bid for services on existing and proposed routes.
2. Do not allow local transit agencies to use government subsidies to take business away from private carriers.

Background

As traffic congestion in Washington grows worse, communities and lawmakers face the increasing need to expand public roads and improve transit service to maintain mobility for citizens. State leaders have not been adding enough road capacity to keep up with population growth. Instead, many public leaders push for more funding for mass transit in a failed, decades-long effort to “get people out of their cars.”

Starting in the late 1960s and early 1970s, public leaders attempted to relieve traffic congestion by pushing people into public transit systems, first regional buses and later costly light rail projects. This approach has not worked.

Thirty years ago mass transit accounted for six percent of daily trips in the Puget Sound region. After years of massive public subsidies (since 1960, federal, state and local governments have paid out more than \$385 billion to transit systems nationwide⁹), mass transit today accounts for less than four percent of daily trips.

Even as the public funding devoted to mass transit increases in Washington, its share of total daily trips continues to decrease each year. This is in line with national trends.¹⁰ In spite of these trends, transit advocates continually push for new spending on buses and rail.

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The continued push for more funding in the face of a declining share of daily travel indicates that mass transit planning is based more on political ideology than on measurable results.

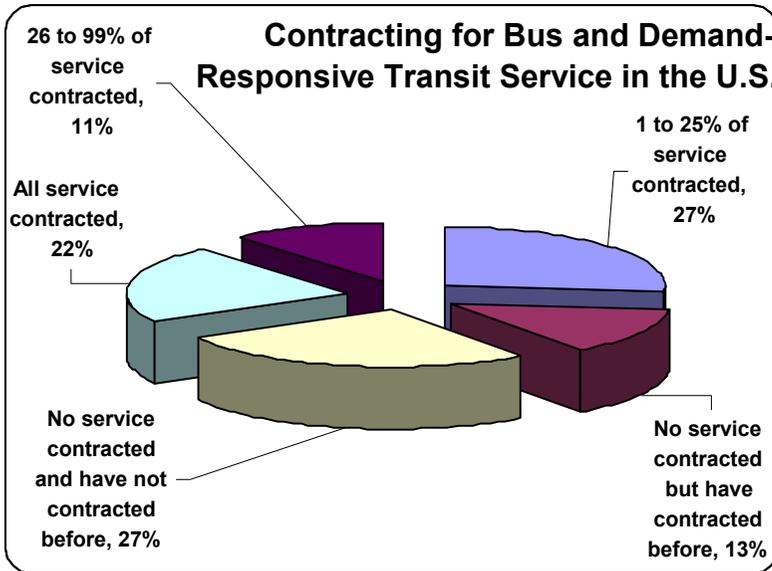
A study by the American Enterprise Institute-Brookings Joint Center for Regulators Studies sums up the situation well:

“Transportation policy is largely shaped by entrenched political forces. The forces that have led to inefficient prices and service, excessive labor costs, bloated bureaucracies, and construction-cost overruns promise more of the same for the future.”¹¹

The primary reason mass transit in Washington is so inefficient is that it operates within a culture of monopoly. Insulated transit bureaucracies have little incentive to change and improve. No one in a position of responsibility loses his job when a transit agency’s customer base shrinks. On the contrary, transit agency employment tends to increase, as budgets grow and ridership declines.

Privatization and public-private partnerships in transit can help alleviate the performance failures in the current system by introducing competition and price transparency. Hundreds of transit systems throughout the United States contract for some portion of their services.¹² More than one-third of the 500 state, regional and local government agencies that receive aid from the Federal Transit Administration contract out 25 percent or more of their transit services.¹³ The chart below shows the levels of private contracting in the public transit industry as of 2001.¹⁴

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Hundreds of state and local transit agencies across the country contract out some or all of their work, achieving lower costs and better service to the public.

Policy Analysis

Proponents of mass transit say it will relieve traffic congestion, save the environment and foster community values such as neighborliness and small-town charm.¹⁵ Yet this is not happening. Congestion continues to worsen in America's large cities, and transportation expenditures continue to escalate.

The best solution is to allow private companies to bid for existing and proposed transit routes. Currently there are more than 100 private companies licensed to offer various auto transportation services in Washington, but they are barred by law from entering the public transit market.¹⁶ Many of these companies have the ability and desire to provide high-quality transit services to the public in urban and rural areas, if local governments would allow them to do so.

Over the last several years a conglomerate of interests known as the North Sound Connecting Communities Project has been studying intercounty transit needs in Whatcom, Skagit

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and Island Counties. Each county has its own public transit agency, but the region is plagued by lack of interconnections.¹⁷ In January 2005 the legislature allocated \$2 million for a two-year project to expand public transit among the three counties.¹⁸ The project began in September 2005.¹⁹

Private companies available for transit services

Private companies are ready and capable of offering improved service to transit riders in the region. For example, the owner of Airporter Shuttle/Bellair Charters, based in Ferndale, has expressed strong interest in providing three-county bus service. His fleet of buses already serves the entire geographic area, reflecting a tremendous amount of experience and knowledge about commuting patterns and travel needs. Yet county transit agencies, not wishing to face competition, do not support allowing private contracting under the legislature's expanded service program.

The service benefits available through competitive contracting are real and substantial. A national study by the Transportation Research Board of the National Research Council found that:

“The main reasons transit systems contract for service, according to transit managers, are to reduce costs and increase flexibility to introduce new services... Half the general managers of transit systems that currently contract reported that reducing costs, increasing cost-efficiency, and introducing new services are the most important reasons for contracting. About one-third rated as important the desire to create a more competitive and flexible environment.”²⁰

Increasing flexibility and introducing new services are exactly the goals of adding intercounty transit between Whatcom, Skagit and Island Counties, yet local leaders ignore

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national evidence and experience by blocking private contracting from being part of their plan.

Contracting out transit services in other states

Other states show how market forces can be tapped to benefit the traveling public. In 2005 Michigan required local transportation authorities to allow private carriers to bid on services funded through regional transportation programs.²¹

The Michigan law also prohibits transit agencies from duplicating services and routes already provided by private carriers. Transit agencies cannot use government subsidies to take over the business of private carriers, which is essentially what is happening with intercounty transit in Whatcom, Skagit and Island Counties.

Washingtonians would directly benefit from private companies competing for mass transit routes and services. Often the expansion of public transit agency budgets is more about empire building and creating more public sector jobs than providing good service to the public at lower cost.

Recommendations

1) End the public transit monopoly by allowing private companies to bid for services on existing and proposed routes. Expanding competition, price transparency and public-private partnerships in transit in Washington would reduce cost and improve service to the traveling public.

2) Do not allow local transit agencies to use government subsidies to take business away from private carriers. Public transit agencies not only work to preserve their own monopolies, but often seek to take business from private carriers. Washington should follow Michigan's example by prohibiting local transit agencies from using tax subsidies to duplicate routes served by private carriers.

5. Sound Transit

Recommendation

1. Hold a public vote on whether Sound Transit should collect taxes beyond the ten year limit of its original plan, based on the agency's performance in fulfilling promises made to voters in 1996.
2. Require that Phase One of Sound Transit Light Rail be completed and its effectiveness measured before more ambitious light rail projects are considered.
3. Adopt Bus Rapid Transit (BRT) as a more effective alternative to light rail.

Background

In 1996 voters in parts of King, Pierce and Snohomish counties created a new transit agency, Sound Transit, and entrusted it with new tax revenues based on a detailed ten year plan of what the agency would provide to the public in that timeframe. A comparison between what was proposed and the reality ten years later shows Sound Transit has failed to build the system it promised to voters.

Follow-up reports find that promoters of the ballot measure used planning assumptions that were overly optimistic, which made the project appear more acceptable to voters.²² The ridership figures given to the public were inaccurate, and were based on unrealistic predictions that have not been realized.

The cost figures given to voters also turned out to be wrong. Today, the agency keeps its spending within its tax revenues only by drastically cutting back on promised services. In addition, operating costs for the system are much higher than

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voters were told they would be, and are higher than many transit services in other parts of the country.²³

Most importantly, Sound Transit leaders show little regard for what people think when they say they will not hold a vote on whether they should collect taxes beyond the ten-year limit of the original plan. Sound Transit lawyers assert that the agency's claim on tax revenue is not limited to ten years, as the 1996 ballot measure implied, but is permanent. According to their interpretation, Sound Transit can collect taxes forever.

Policy Analysis

Voters should have a say in how their transit taxes are used. The public's judgment should be based on what has been achieved since the project started. The following section compares promises Sound Transit supporters made to voters during the 1996 campaign with the reality of what the agency has achieved in 2006. Quotations are taken from the voters' pamphlet and from "YES RTA" campaign material given to voters at the time.

Promise: "Implement a 10-year regional transit system plan..."

Reality: Sound Transit is far short of providing the system plan promised in 1996. The agency has cut back on several service projects and unilaterally extended its program to at least 13 years.

Promise: "After 10 years, any addition to the system will have to be voter approved, assuring accountability and satisfaction."

Reality: Sound Transit has significantly reduced its original plans while collecting full tax revenues. The agency says it has no plans to seek voter approval for these changes.

Promise: "Cost of the plan is \$3.9 billion."

Reality: The cost of Sound Transit today tops \$4.7 billion and rising, even after large cut-backs in service. Sound Transit supporters now say the costs they gave voters in 1996 were only "placeholder" figures.²⁴

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Promise: “Public transportation will have the capacity to move 40% of the region’s commuters to their jobs.”

Reality: Sound Transit and other mass transit are well below this capacity. Also, creating capacity is not the same as moving people. Today, 95% of daily trips are in private automobiles.

Promise: “53,000 cars out of rush hour traffic everyday.”

Reality: There are *more* cars in rush hour traffic today than in 1996. Annual data on traffic increases does not show a reduction of 53,000 cars a day.

Promised: “No one area will subsidize another.”

Reality: Sound Transit is showing indications of reversing this policy. Its Citizen Oversight Committee says, “[Subarea equity] remains a serious impediment to the development of a regional system and requires an in-depth examination as to its continued usefulness.”²⁵

Promise: “Regional Express will swell ridership to 390,000 per day.”

Reality: Sound Transit has not met the ridership figures promised in 1996. Today it projects bus ridership of 33,000 by 2010. Commuter rail boardings are 3,800 per day, well below what was promised.

Promise: Nine round-trip Sound Transit trains between Seattle and Tacoma.

Reality: Sound Transit provides four round-trip rail trips between Seattle and Tacoma, half of what voters were promised.

Promise: Upgrading existing Burlington Northern Santa Fe track for use by Sound Transit would be \$470 million.

Reality: Today the cost estimate for track upgrades is \$942 million.²⁶

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Promise: A new 21-mile light rail line for \$2.3 billion in ten years.

Reality: Sound Transit is building a 14-mile light rail for \$2.7 billion, the last mile of which will cost \$225 million.

Promise: Sound Transit light rail would be completed by 2006 and carry 42,000 daily riders.

Reality: Sound Transit light rail ridership in 2006 is zero, as it will be in 2007 and 2008.

Promise: “40% of operating costs will be covered by fare revenues.” “Fares will cover a growing share of the operating costs.”

Reality: The opposite is happening. 2004 fare revenues covered 12% of operating costs. Sound Transit expects this figure to fall to 10.3% in 2006.

The data shows that Sound Transit has consistently failed to fulfill its commitments to the people of the region. The agency regularly and unilaterally changes its definition of success, usually by cutting services, while continuing to collect full taxes from the public. The agency’s record over ten years more than justifies a new vote on its plans.

In addition, Sound Transit should not move forward with new light rail schemes until the present, shortened line is completed and evaluated. The Link Light Rail project broke ground in late 2003 and is scheduled to finish its initial phase in 2009, connecting downtown Seattle to SeaTac International Airport. Agency managers want to then extend light rail to Everett, Tacoma and the Seattle eastside suburbs. Such ambitious plans are not justified until the net benefits of the initial light rail segment, if any, are known.

1. Hold a public vote on whether Sound Transit should collect taxes beyond the ten year limit of its original plan, based on the agency’s performance in fulfilling promises made to voters in 1996. Voters have not received what Sound

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Transit promised to them under the original ten-year plan. Instead, services have been cut back and costs have soared. The elected officials of Sound Transit's board should allow voters to have a say about whether the project should continue collecting full taxes beyond the ten years authorized by the 1996 vote.

2) Require that Phase One of Sound Transit Light Rail be completed and its effectiveness measured before more ambitious light rail projects are considered. Before more ground is seized and torn up, and billions more of taxpayer dollars committed on extending the line, policymakers should perform an independent cost/benefit analysis on expansion plans.

3) Adopt Bus Rapid Transit (BRT) as a more effective alternative to light rail. Buses operating in a dedicated travel lane provide frequent, flexible and high quality service at much less capital cost than building fixed light rail. BRT service creates less impact on the environment, less disruption to neighborhoods and functions at significantly lower operating cost than rail. Policymakers and transportation officials should adopt BRT services as a more cost-effective alternative to meeting Washington's mass transit needs.

6. Toll Roads and HOT Lanes

Recommendation

1. Use toll roads and High Occupancy Toll (HOT) lanes to expand road capacity and reduce traffic congestion without increasing the general tax burden.

Background

Toll roads and pay-to-drive toll lanes offer Washington policymakers a practical way to increase road capacity and reduce congestion without increasing the general tax burden. Tolls also fit the same user fee concept behind gasoline taxes; people who use the roads help pay directly to build and maintain them.

In the past, collecting vehicle tolls was awkward and expensive, involving salaried toll takers, lines of booths and disruptions in traffic. Today, electronic tags make it much easier to manage a toll road or HOT lane. A pre-paid sticker tag as thin as a credit card can be attached to a car bumper or windshield. Electronic sensors record when the car enters or leaves a toll road or toll lane, without any reduction in traffic speed.

Another, though more expensive, option is an electronic transponder attached to the car. The transponder provides much greater range and can be used to summon roadside assistance in pre-set safety zones.

Types of toll roads

Toll roads and HOT lanes can be implemented in a number of ways. One approach is to create a dedicated toll lane for truck-trailer combinations and other large commercial vehicles. Separating trucks and cars improves safety, raises

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speeds in general traffic lanes, and reduces transport delays for trucking companies.

Another approach is to allow single occupancy cars to pay a toll and drive in the High Occupancy Vehicle (HOV) lane during certain times of the day. This maximizes the capacity of the HOV lane and gives drivers a choice when general purpose lanes become clogged. Drivers who value getting where they are going faster have the option of paying a fee to use a less congested lane.

Experience in other states shows that using private companies to build and operate toll roads allows government officials to tap the innovation and efficiency of the competitive market, while creating new road capacity that serves the public. Using private companies avoids many of the mandatory practices that artificially drive up the cost of public works projects.

HOT lanes in Washington

The Washington State Department of Transportation plans to convert existing carpool lanes to HOT lanes on nine miles of State Route 167 between Renton and Auburn. The goal is to maintain a minimum speed for traffic flow of at least 45 mph 90 percent of the time. Tolls will only apply to single occupancy vehicles; the HOT lanes will remain free at all times to car-pools and public transit. The four-year pilot project is scheduled to start in early 2008.²⁷

Transportation officials estimate the toll lanes will help move up to 13 percent more vehicles in the SR 167 corridor.²⁸ If successful the Department will explore creating HOT lanes on other congested highways.

Policy Analysis

In considering how to structure toll roads in this state, Washington transportation officials can learn from the experience of similar projects around the world. Following are three examples.²⁹

1. *Toronto's Highway 407 ETR*. Toll revenues allowed this new project to pay off its construction debt in just two years. Tolls are collected electronically, and cars entering toll lanes without a pre-paid transponder are photographed and the driver is sent a bill in the mail. The project is privately operated, and is fully financed through the tolls collected.
2. *San Diego's I-15 Freeway*. Tolls are collected electronically by computers, and the cost of the toll rises or falls depending on traffic volume. The system is calibrated so cars are kept moving at an average pace of 60 mph. Project managers estimate that toll collections will cover about two-thirds of the cost of building the new freeway.
3. *Great Britain's M6 Toll Road*. In 2004, British transportation officials opened a new toll highway to run right next to the existing toll-free M6. The new road relieves congestion and allows work crews to repair and improve the older freeway.

Many other case-studies could be cited. Virginia, Colorado, Florida and Texas are examples of other states that have instituted different forms of toll roads and HOT lanes.³⁰

Toll roads and HOT lanes have their opponents. Some people fear that pay-to-drive lanes and roads will tempt transportation officials to double-dip; charge a toll for a road or lane that has already been paid for through general transportation taxes. This is a legitimate concern. Frequent

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legislative oversight and independent audits are needed to insure that toll revenues are used to fund *new* road capacity for the traveling public, not simply augment the Department of Transportation's existing budget.

Following are three other common objections to toll roads and HOT lanes, with a response to each.

1. *Cost.* Opponents of toll roads point to the high cost of building and maintaining new roads. To keep costs down, toll roads built in other states and around the world have been built with a combination of public and private money. Market competition and private sector involvement in building tolls roads work to keep waste and cost overruns in check, compared to traditional, government-run public works projects.

2. *Social Implications.* Opponents of toll roads say that it is unfair to allow faster travel times for people who can afford to pay more. First, it is fair to give people a choice; those who choose to pay more enjoy higher speeds. Second, the costs of tolls is minor compared to the cost of owning, maintaining, fueling and insuring a car. It is unlikely that someone who can afford to own a car cannot afford to pay a toll, if given that choice. Third, even people who do not pay the toll benefit from toll roads, because of reduced congestion in regular traffic lanes.

3. *Environmental Impact.* Opponents say that building more roadways to accommodate HOT lanes and other types of toll roads just eats up more land and harms the environment. This is an argument against building *any* roads, not just toll roads. If roads must be built or expanded to serve the needs of the community, tolls and HOT lanes simply offer a mechanism for funding these improvements. Also, modern planning and engineering capabilities allow road designs that greatly reduce

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impact on the environment, accommodate wildlife and preserve open space.

Toll roads and HOT lanes are not the universal solution to Washington's transportation needs. Revenue from gasoline, licensing and similar taxes and fees will always make up the bulk of transportation funding. Revenue from toll and HOT lanes, however, offer an innovative and flexible way for transportation officials to increase road capacity and relieve congestion at key chokepoints around the state.

Recommendation

1) Use toll roads and High Occupancy Toll (HOT) lanes to expand road capacity and reduce traffic congestion. Recent research and the experience of other states and countries indicate that toll roads and HOT Lanes can provide an affordable, workable solution to traffic congestion. Washington state faces problems with congestion similar to those in California. Close study of toll roads in San Diego, and the valuable experience gained from the SR 167 pilot project, will provide policymakers with a good idea of how such highways can benefit drivers in Washington.

Additional Resources

Washington Policy Center Research

“Undermining Trust in Government; Sound Transit’s Failed Promises,” by Paul Guppy, June 2006.

“Tolls as a Tool - A Practical Way to Relieve Traffic Congestion in Washington,” by Paul Guppy and Kelli Aitchison, March, 2005.

“DOT Should Adopt Reforms and Efficiencies Before We Give It More Tax Dollars,” by Paul Guppy, April 2005.

“Initiative 912 Fuels Debate Over New Gas Tax,” by John Barnes, October 2005.

“Lack of Automobility Key to New Orleans Tragedy,” by Randal O’Toole, 2005.

“Great Rail Disasters: American Cities Discover that Light Rail Reduces Transit Service,” by Randal O’Toole, July 2005.

“Great Rail Disasters: The Impact of Rail Transit on Urban Livability,” by Randal O’Toole, February 2004.

“Competitive Contracting for Highway Maintenance: Lessons Learned from National Experience,” by Geoffrey F. Segal and Eric Montague, January 2004.

“An Overview of Referendum 51,” by Eric Montague, September 2002.

“Roads in the Right Places: A New Plan to Ease Congestion,” by Eric Montague, 2001.

“Proven Ways to Pay for Transportation Without Raising Taxes,” by Eric Montague, 2001.

“Traffic vs. Kids: How Puget Sound Gridlock Hurts Families,” by Jeff Kemp and Paul Guppy, with Dawn Wilson and Kai Hirabayashi, October 2000.

“Competing for Highway Maintenance: Lessons for Washington State, Parts I & II,” by Dennis Lisk, September 1998 and January 1999.

Other Resources

Cascadia - A project of Discovery Institute that produces research on transportation and commerce solutions for the I-5 Corridor between Eugene, Oregon and Vancouver, British Columbia. www.discovery.org.

Texas Transportation Institute - This research institute located at Texas A&M University publishes annual assessments of regional congestion. <http://tti.tamu.edu/>.

“A Guide to Smart Growth: Shattering Myths, Providing Solutions,” by Jane S. Shaw and Ronald D. Utt, Heritage Foundation/PERC, Washington, D.C. and Bozeman, MT, 2000.

“Digest of Transportation Research,” published by Reason Public Policy Institute. This monthly compendium offers a comprehensive list of major transportation research completed by academic, government and other private entities.

¹ “Prevailing Wage Laws Mandate Excessive Costs,” Policy Brief 99:33, Washington Research Council, November 29, 1999, at www.researchcouncil.org/Briefs/1999/PB99-33/PrevailingWagePB.htm.

² Ibid.

³ “Traffic vs. Kids, How Puget Sound Gridlock Hurts Families,” a joint study by the Washington Policy Center and Families Northwest, October 2000, at www.washingtonpolicy.org/Transportatin/PBWFCTransTrafficvKids.html.

⁴ “The 2005 Urban Mobility Report,” by David Schrank and Tim Lomax, Texas Transportation Institute, The Texas A&M University System, May 2005.

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⁵ “Road Usage and Safety,” 2005 Data Book, Washington State Office of Financial Management, at www.ofm.wa.gov/databook/transportation/tt02.asp.

⁶ See, “Competing for Highway Maintenance: Lessons for Washington State,” Parts I and II, published by Washington Policy Center, September 1998 and January 1999, available at www.washingtonpolicy.org.

⁷ “Department of Transportation Highways and Rail Programs Performance Audit,” prepared for the Joint Legislative Audit Review Committee by Cambridge Systematics, Inc., March 13, 1998.

⁸ More examples and details are discussed in “Competing for Highway Maintenance: Lessons for Washington State,” by Dennis Lisk, January 1999, and, “Competitive Contracting for Highway Maintenance: Lessons Learned from National Experience,” by Eric Montague and Geoffrey Segal, January 2004, available at www.washingtonpolicy.org.

⁹ Wendell Cox, “Competition, Not Monopolies, Can Improve Public Transit,” The Heritage Foundation, Washington, DC, August 2000, at www.heritage.org, accessed April 25, 2006.

¹⁰ According to the United States Census and the Federal Highway Administration, in 1980 public transit accounted for 6.4% of daily commutes. By 1990, that number had fallen to 5.3%, and by 2000 had fallen to 4.7%.

¹¹ “Government Failure in Urban Transportation,” by Clifford Winston, American Enterprise Institute-Brookings Joint Center for Regulators Studies, Washington, D.C., November 2000, p. 2, at www.heartland.org.

¹² “Transit Service Contracting in the United States,” by Thomas R. Menzies, Jr. and Daniel Boyle, *Transportation Research News*, Number 217, November – December 2001, available through the Transportation Research Board at www.trb.org.

¹³ Ibid.

¹⁴ “Contracting for Bus and Demand-Responsive Transit Services: A Survey of U.S. Practice and Experience,” Transportation Research Board of the National Research Council, 2001, p. 4, at www.onlinepubs.trb.org/onlinepubs/sr/sr258.pdf, accessed May 12, 2006.

¹⁵ “Competition, Not Monopolies, Can Improve Public Transit,” by Wendell Cox, The Heritage Foundation, Washington, D.C., August 2000, at www.heritage.org.

¹⁶ The Washington Utilities and Transportation Commission licenses companies to provide auto transportation, excursion passenger services, and charter passenger services, see www.wutc.wa.gov.

¹⁷ “Final Report and Recommendations,” by Preston L. Schiller, Ph.D., Intercounty Transit Committee, North Sound Connecting Communities Project, January 2005, pp. 4-5, at www.discovery.org/scripts/viewDB/filesDB-download.php?id=324, accessed May 12, 2006.

¹⁸ SB 6091, “Making 2005-07 transportation appropriations, section 225 (7), 2005 legislative session, at

www.washingtonvotes.org/Legislation.aspx?ID=37735.

¹⁹ “Bus routes to link Whatcom, Skagit, Island Counties,” by Kelsey Dosen, *Western Front*, July 12, 2005.

²⁰ “Contracting for Bus and Demand-Responsive Transit Services: A Survey of U.S. Practice and Experience,” Transportation Research Board of the National Research Council, 2001, pp. 132-33, at

www.onlinepubs.trb.org/onlinepubs/sr/sr258.pdf, accessed May 12, 2006.

²¹ Michigan Senate Bill 281, Appropriations: 2005 – 2006 Transportation Budget, Public Act 158 of 2005, Section 710, at

www.michiganvotes.org/Legislation.aspx?ID=36568.

²² “Sound Move, Year 8, Review of Progress Toward Achieving a Regional High Capacity Transportation System,” Sound Transit Citizens Oversight Panel Report, April 7, 2005, p. i, at

www.soundtransit.org/pdf/working/cc/COPSoundMoveYear8.pdf.

²³ “Citizens’ Year-End 2005 Performance Report of Sound Transit,” Sound Transit Citizen Oversight Panel, January 19, 2006, at

www.soundtransit.org/pdf/working/cc/Year-End_Report_2005.pdf.

²⁴ “Sound Move, Year 8, Review of Progress Toward Achieving a Regional High Capacity Transportation System,” Sound Transit Citizens Oversight Panel Report, April 7, 2005, p. vii, at

www.soundtransit.org/pdf/working/cc/COPSoundMoveYear8.pdf.

²⁵ “Citizens’ Year-End 2005 Performance Report on Sound Transit,” Citizen Oversight Panel, January 19, 2006, at

www.soundtransit.org/pdf/working/cc/Year-End_Report_2005.pdf.

²⁶ “Sound Move, Year 8, Review of Progress Toward Achieving a Regional High Capacity Transportation System,” Sound Transit Citizens Oversight Panel Report, April 7, 2005, p. vi, at

www.soundtransit.org/pdf/working/cc/COPSoundMoveYear8.pdf.

²⁷ “SR 176 – HOT Lanes Pilot Project,” WSDOT Projects, Department of Transportation, at www.wsdot.wa.gov/projects/sr/167/hotlanes, accessed July 11, 2006.

²⁸ *Ibid.*

²⁹ See “Building for the Future: Easing California’s Transportation Crisis with Toll Roads and Public-Private Partnerships,” The Reason Foundation, www.reason.org.

³⁰ See for example, “HOT Lane Conundrums,” by Robert W. Poole, Jr., Commentary on Public Works Financing, May 23, 2005, The Reason Foundation, at www.reason.org/commentaries/poole_20050523.shtml.



Chapter 11: Energy

1. Energy Production

Recommendation

1. Eliminate government regulations that create market and operational inequalities between private and public power producers.
2. Allow private producers to respond effectively to changes in demand in the electricity market.
3. Give electricity providers the flexibility to build diversified energy portfolios without restrictive government mandates.

Background

Washington derives most of its electricity from hydroelectric dams scattered throughout the region. At a distant second place is natural gas, followed by nuclear power and various lesser sources. Hydroelectric power has long been Washington's leading source of power, although the importance of other sources, especially natural gas, have increased in recent years. The following table shows hydroelectricity's overall importance and the general trend in state power sources between 1990 and 2004.¹

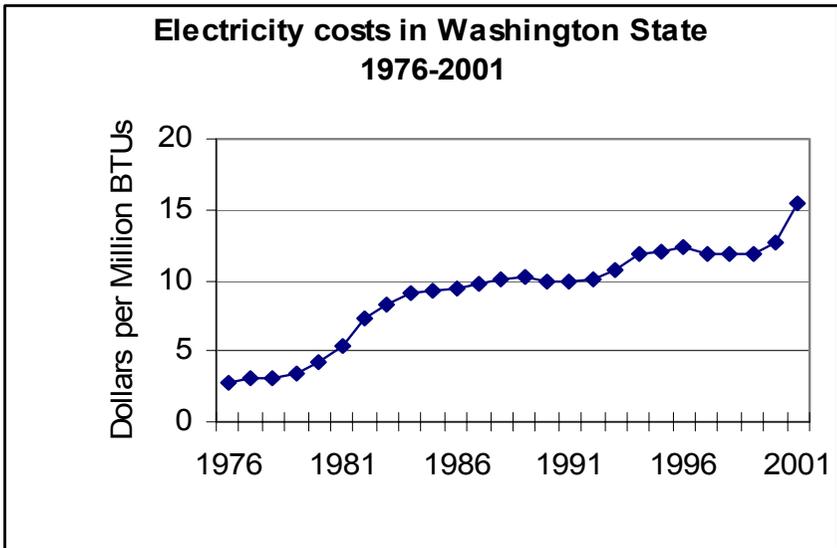
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Power Source	Total Electricity Production in Washington (Percentage Share)			
	1990	1995	2000	2004
Hydroelectric	85.7	80.7	74.2	70.1
Coal	7.2	5.8	8.7	10.2
Nuclear	5.6	6.8	8.0	8.8
Natural Gas	0.3	4.8	7.1	8.3
Other Renewables	1.1	1.2	1.4	2.3
Other Gases	0	0.5	0.2	0.3
Petroleum	0	0.2	0.4	0.1
Pumped Storage	0	0	0	0
Other	0	0	0	0

Washington's hydroelectric power industry is the largest in the United States and generates more power each year than any other state's entire renewable energy program.² Hydroelectric power is a relatively inexpensive way to generate electricity. Washington abundance of hydroelectric power is responsible for this state's having consistently lower electricity rates than the national average.

This enables Washington to sell excess power to other states. In 2004, Washington's average retail electricity price was 5.8 cents per kilowatt hour, while the national average rate was 7.62 cents.³ In 2004, Washington had the 42nd lowest average retail electricity prices, out of all 50 states plus the District of Columbia.⁴

The cost of electricity in Washington state, though, has risen faster than the rate of inflation since 1976. That year the cost was \$2.02 per million British Thermal Units (BTUs).⁵ By 2001 the cost had risen to \$15.46.⁶ The 765 percent rise in electricity costs outpaced the 442 percent rise in general inflation over the same period.⁷ The following chart illustrates the growth in the cost of electricity between 1976 and 2001.⁸



Washington's retail electricity is sold and distributed primarily by government and cooperative utilities. Three private, investor-owned companies (Puget Sound Energy, PacifiCorp, and Avista) provide electric power to approximately 1.5 million customers in Washington,⁹ and 65 public and consumer-owned, non-profit utilities (municipal utilities, public utility districts, rural cooperatives) supply the remaining 4.8 million Washington residents with power.¹⁰

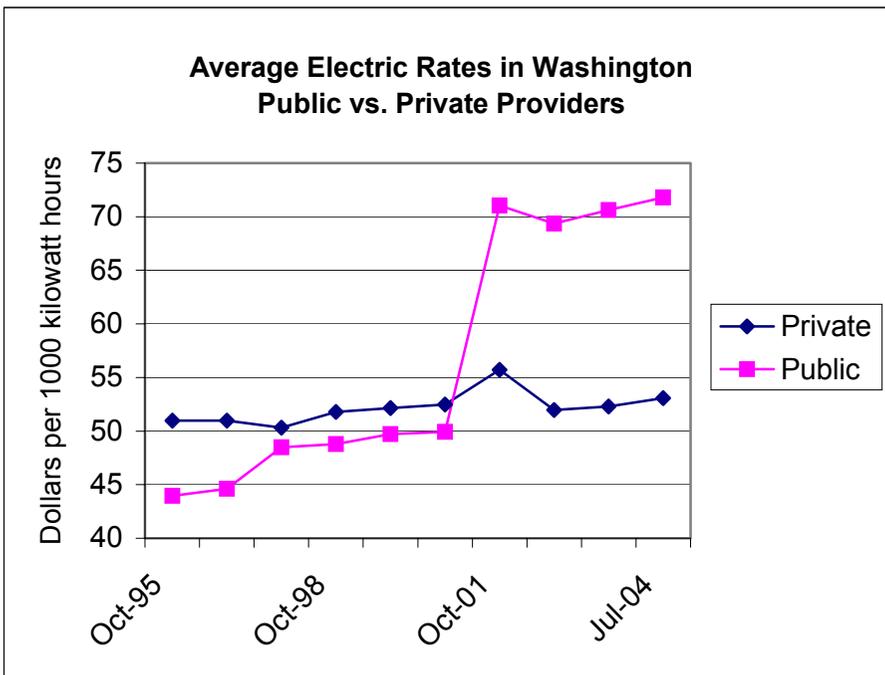
Policy Analysis

Government subsidy also contributes heavily to Washington's lower electricity costs. In the wake of Congress's Public Utility Regulatory Policy Act of 1978 and the Energy Policy Act of 1992, many states have opened their retail electricity markets to competition. While Washington has resisted moving towards retail deregulation, the state's wholesale electricity market is open to competition.¹¹

Municipal and public utilities, and to a lesser extent power cooperatives, operate with market advantages not

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available to investor-owned utilities. For example, they receive preferential power purchasing options, tax exemptions and exclusive financing, and they are not subject to regulation by the Washington Utilities and Transportation Commission (WUTC). The state's private power companies fall under WUTC's jurisdiction and must request permission for rate increases. As the chart below shows, public utilities increased rates at a much faster pace than private utilities.¹²



Yet another factor that poses a challenge to the electricity industry in Washington is the issue of production portfolio diversification. As mentioned, Washington relies primarily on hydroelectricity. This has proven a two-edged sword. On the one hand, reliance on hydroelectricity has provided a relatively inexpensive power source. On the other hand, one year of reduced rain fall, or political pressure from environmentalist groups to reduce dam flows in favor of salmon

runs, can reduce hydroelectric supply, thereby increasing both wholesale and retail electricity prices.

Washington's three private electricity providers, Puget Sound Energy, PacificCorp, and Avista, have all taken steps to diversify their portfolios, and industry executives are optimistic about accomplishments thus far and what will be done in the future.

Recommendations

1) Eliminate government regulations that create market and operational inequalities between private and public power producers. These subsidies introduce artificial distortions into the power market and hinder true competition that would, ultimately, lower electricity rates and improve service for all citizens.

2) Allow private producers to respond effectively to changes in demand in the electricity market. Private companies generally respond much more quickly, and usually at lower cost, to market fluctuations in power supply and demand. The public interest is served when power producers are allowed to invest in, upgrade and improve power supplies to keep up with the energy needs of an expanding economy.

3) Give electricity providers the flexibility to build diversified energy portfolios without restrictive government mandates. Both public and private electricity providers need to have a variety of sources from which they purchase or generate electricity. Fluid environmental factors as well as shifting market and economic conditions can do extensive damage to electricity customers and their providers who rely on few sources. This is especially true for Washington's private companies, which fall under WUTC regulation and thus are not able to respond quickly to supply and price fluctuations.

2. Energy Regulation

Recommendation

1. Fundamentally restructure the power production permitting process (EFSEC) to insure the state's energy needs are met.

Background

In 1970, after analyzing electricity supply and demand trends and forecasts, the Washington legislature realized that the state would require increased energy production. The legislature created a legal and regulatory framework for the design and construction of major non-hydro energy production facilities, the Energy Facility Site Evaluation Council (EFSEC).

The Council's authorizing statute describes its intended purpose.

“The legislature finds that the present and predicted growth in energy demands in the state of Washington requires the development of a procedure for the selection and utilization of sites for energy facilities and the identification of a state position with respect to each proposed site...

It is the policy of the state of Washington to recognize the pressing need for increased energy facilities, and to ensure through available and reasonable methods, that the location and operation of such facilities will produce minimal adverse effects on the environment, ecology of the land and its wildlife, and the ecology of state waters and their aquatic life.”¹³

Thermal electric power plants producing 350 megawatts or greater and their dedicated transmission lines, new oil refineries or large expansions of existing facilities, large natural

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gas and oil pipelines, and underground natural gas storage fields fall under EFSEC's licensing jurisdiction.¹⁴ When EFSEC was established, its original jurisdictional threshold was 250 megawatts. Environmental activists pushed to lower the threshold to 50 megawatts and bring more power projects under EFSEC's regulatory control.

In response to the urgent power needs of the state, however, the legislature moved in the opposite direction. In 2001, the threshold for projects that must pass through the EFSEC process was raised to 350 megawatts. Smaller projects, both thermal and renewable, can voluntarily opt into the EFSEC process but are not required to use it.

The original idea behind ESFEC was to bring the confusing array of agencies and state requirements needed to build a major power plant within one agency. When reviewing a permit application EFSEC consolidates the analysis and input of the following state agencies:¹⁵

- Department of Ecology
- Department of Fish and Wildlife
- Department of Community, Trade and Economic Development
- Utilities and Transportation Commission
- Department of Natural Resources
- Department of Agriculture
- Department of Health
- Military Department
- Department of Transportation

The typical permit application process is long and difficult. Once a formal application is submitted, EFSEC holds land use hearings, seeks reviews by independent consultants, considers separate air and water permit applications, conducts adjudicative hearings, commissions environmental impact statements, and conducts consultant reviews and hearings as it deems necessary.¹⁶

The process can take 12 to 14 months, after which EFSEC submits a recommendation to the governor that the proposed power plant site application be accepted or rejected. All EFSEC's costs for this process are paid by the entity seeking a permit, and can easily run in to the hundreds of thousands of dollars.¹⁷ If a plant is built, these permitting costs are usually passed on to customers in the form of higher electricity prices.

Since its inception 34 years ago, EFSEC has considered 19 separate site applications (not including re-submissions), of which it has approved 13. Only two of the 13 facilities have been built and are actually producing power. The other projects have either been cancelled since approval, have had their permits expire, or the applicants have simply taken no action since approval.

Companies often find EFSEC's permitting process so expensive and laborious that their original proposal no longer makes economic sense once they finally receive permission to build. While the regulatory process advances at its own slow pace, market prices change, competitors enter the market, investors become discouraged or financing arrangements expire. EFSEC currently has two site applications under review.¹⁸

The barriers created by EFSEC are most aptly illustrated by the Sumas 2 power natural gas plant that was proposed by Sumas Energy 2, Inc. In 1999, the company applied for a permit to build a 660 megawatt natural-gas fired electricity plant in the town of Sumas, Washington.

After more than two years of review, EFSEC rejected the Sumas 2 project even though the application met all federal and state pollution regulations. EFSEC denied Sumas 2 for a number of arbitrary reasons, the details of which are described in the Washington Policy Center Policy Brief "A Case of Over-Regulation."¹⁹

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In spite of no clear legal right to do so, EFSEC also insisted that the application failed to demonstrate a need for additional energy production in Washington. In short, EFSEC acted outside of its authority, as laid out in state law. EFSEC finally approved a revised and resubmitted Sumas 2 application in 2002, three-and-a-half years after it was first submitted. Other regulatory problems have, however, prevented the project from proceeding. A summary of the years-long process follows.

Timeline of Sumas 2 Permit Process

- January 1999 – Sumas Energy 2, Inc., proposes a 660 megawatt natural gas powered electricity-generating plant on a 37 acre site in the town of Sumas, Washington. The company requests expedited review.
- July 1999 – EFSEC denies expedited review and requires changes in the application.
- January 2000 – Sumas Energy 2 submits a revised application.
- February 2001 – EFSEC recommends to Gov. Locke that that he deny the application. Sumas Energy 2 asks EFSEC to. Sumas Energy 2 says it will revise the project plan. EFSEC grants the request.
- June 2001 – Sumas Energy 2 submits another revised application to EFSEC.
- May 2002 – EFSEC recommends the governor approve the second revised application. The governor accepts the recommendation.
- August 2002 – Site certificate issued.
- March 2004 – Canadian National Energy Board denies Sumas Energy 2 a permit to build needed transmission lines to an Abbotsford, B.C. substation.
- Early 2006 – Supreme Court of Canada upholds the permit denial.
- March 2006 – Sumas Energy 2 requests that the EFSEC terminate its permit.
- April 2006 - EFSEC terminates the permit and the project is ended.

Policy Analysis

The Sumas 2 facility, as originally proposed, would have generated enough electricity to power 500,000 homes.²⁰ As Washington's electricity demands wax and wane throughout the weather seasons, increased production benefits the people of the region whether the power is used in this state or sold elsewhere as surplus.

As the Sumas 2 timeline demonstrates, the process to get permission from the government to build a new power plant is agonizingly long and burdensome. A proposed facility can meet all state and federal pollution regulations, have the official approval of local leaders, have secured all necessary arrangements for property and water use, and still permission to build can be denied for purely subjective reasons.

In 2003, a new EFSEC director took steps to make the process more efficient, and in October 2004 the agency amended the regulations so that applicants no longer need to demonstrate a need for the proposed facility.²¹

Recommendation

1) Fundamentally restructure the power production permitting process (EFSEC) to insure the state's energy needs are met. EFSEC was created because of the pressing need for increased energy facilities, yet very few high-production facilities have been built since EFSEC assumed control of the permitting process. Rising energy prices testify to the need for a greater supply of energy. EFSEC has made significant progress in streamlining its permitting process. Policymakers should encourage and build on this improvement in the way EFSEC does business or, if it proves necessary, they may want to consider eliminating the agency and starting again.

3. Green Energy

Recommendation

1. Allow consumers to choose their energy provider as the best way to encourage development of new green energy sources.
2. Avoid setting arbitrary government quotas that mandate a pre-set level of green energy production.

Background

Policymakers in Washington are considering various ways to promote “green” sources of energy such as wind, solar and wood burning (known as biomass), with the goal of lowering carbon emissions and reducing dependence on overseas energy supplies.²²

One idea is to mandate certain levels of “green” energy use by requiring energy producers to meet a set quota by 2020. This seems like an easy solution – simply make energy producers use “green” sources by setting progressively tougher legal targets to reach 15 percent by 2020.

In reality, setting arbitrary targets not only impacts the economy, often hurting people least able to afford more expensive energy, but actually stifles alternative energy technologies and makes it harder for consumers to choose green energy sources that best fit their values.

Greater market competition, on the other hand, offers numerous economic and environmental advantages. The higher profit margins associated with green energy provide producers with incentives to develop new technologies and market green energy more aggressively.

Policy Analysis

Allocating costs to those who can pay

There are two important reasons that green energy sources have not been more prevalent in Washington and the United States. First, the cost of green energy is typically higher than hydro or petroleum-based alternatives like coal, natural gas or oil. Solar, for example, is several times more expensive than petroleum or hydro sources.

Second, solar and wind are not consistent sources of energy and are not reliable enough to meet changing demand. Producers typically need to build backup to solar and wind to prevent interruptions in supply. This creates a variety of problems when trying to mandate quotas for green energy.

- Quotas will likely increase costs across the board, which are passed on to all energy consumers, regardless of their ability to pay.
- The green quotas initiative, I-937, filed in 2006, provides an out-clause if costs increase too much. This does not eliminate increases, it merely caps them, and shows that even backers recognize a fairly low threshold at which increased costs outweigh the benefits of green energy.
- Some mandated green sources, like large wind turbines, carry their own impact on the environment, and do not fit the values of consumers who may prefer hydro or biomass instead.
- In a regulated environment producers can invest large sums of money on large projects and be assured of a return. Wind and solar, however, are not suited to this type of project.

For instance, the Wild Horse wind farm in Kittitas County has a capacity of 229 megawatts.²³ The total energy generating capacity for Washington state, by comparison, is 27,573 megawatts,²⁴ making the Wild Horse project less than one percent of total state capacity. By contrast, one proposed gas-fired plant will add about 1,300 megawatts of capacity, more than five times as large as Wild Horse.²⁵ Large differences in scale make it difficult for energy producers to meet artificial green targets.

Further, there is nothing special about 15 percent as opposed to 13 percent or 17 percent – the target is arbitrary. The question becomes, is the 15 percent target appropriate even if it means that energy producers choose qualifying “green” sources that are at odds with the values of their consumers? If supporters of a target cannot justify that specific target, it becomes even more difficult to justify the problems the target creates.

As a result of these factors, efforts to meet an artificial green energy quota may create market distortions that do not yield the results activists who support them want.

Advantages of market competition

A system that allows consumer choice, however, allows those who cannot afford cost increases to select the mix of energy that protects them from such increases. Currently, many energy producers, like Seattle City Light, offer their customers a choice of a “green” energy package. However, this choice is offered within the context of a single seller and provides only as much consumer choice as the one seller is willing to permit.

Others who are more able to afford these costs will tend to purchase higher cost green energy. In this way, not only are low income families protected from these additional costs, but higher income families may end up subsidizing green energy by purchasing more than the quota might otherwise dictate.

Energy

A market-based system that allows consumers to choose their energy provider is the most “progressive” way to allocate the increased costs that come with alternative energy – low income families pay less and high income families pay more.

Companies who use these techniques will see two advantages. First, they may see an increase in market share against competitors who don’t use products with these labels. Second, and perhaps most important, there is an increased profit margin for many of these products. In many cases, companies can charge a premium for products that exceeds the incremental cost of using alternative sources of energy.²⁶ Harnessing this profit motive can provide a couple of important benefits that increase the use of green energy.

Increased profit creates an incentive for energy producers to market sources of energy that provide additional profit per unit sold. If companies can earn additional profit per kilowatt hour by converting energy users from coal, gas and oil to wind, for example, they would make efforts to convert more customers to those green sources. Given that potential, wise producers would quickly increase their marketing of these resources.

This would also provide increased investment funding to develop new technologies and bring the cost of alternative energy production down. That investment could also be used to expand alternative energy resources to meet growing demand. Reductions in cost would bring those energy sources within the reach of more consumers, expanding the business opportunity for energy producers. If producers kept a portion of the increased efficiency as profit, the value of technological innovation would grow further.

Providing consumers with more options allows them to choose what type of energy they want. Rather than relying on producers to dictate the type of green energy available,

especially given the many conflicting pressures producers will face under quotas, a system that provides consumer choice gives people the opportunity to choose specific types of green energy.

Without choice, the people of Washington may find that energy sources they like are squeezed out by alternatives they are less comfortable with. This problem will become very real if quotas are set. Seattle City Light currently generates 95.2 percent of its energy from sources that do not generate greenhouse gasses (hydro and nuclear),²⁷ but do not fit activists' "green energy" definition. Thus, at least 10 percent of Seattle's current energy production would have to shift to other sources that may or may not have a greater environmental impact. For consumers concerned about global warming this amounts to trying to fix what is not broken while adding unknown cost.

Increasing consumer choice rather than simply setting green energy targets has the potential to achieve many of our environmental goals in a way that better fits the values of Washington residents without the many difficulties associated with regulation that sets arbitrary quotas.

Recommendations

- 1) Allow consumers to choose their energy provider as the best way to encourage development of new green energy sources.** Consumer choice would reward innovation in developing new sources of green energy. More choice in green energy supplies would let consumers choose the energy source that best fit their values, and allow those who are well off bear the burden of higher costs, allowing low-income families to keep their energy costs low.
- 2) Avoid setting arbitrary government quotas that mandate a pre-set level of green energy production.** Imposing more regulation would create a system in which consumers would be left hoping that the mix of green energy sources selected by

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energy producers matches their values. It would also involuntarily increase costs for *all* energy users, not just those who choose to receive their power from green sources.

Additional Resources

Washington Policy Center Research

“Take Care When Replacing Gas and Coal with Wood Biomass,” by Todd Myers, May 2006.

“Clearing the Air on New Source Review,” by Eric Montague, 2004.

“A Case Study in Energy Over-Regulation: Denial of the Sumas 2 Generating Facility,” by Scott Fallon, May 2001.

“The Governor’s Energy Proposal: An Independent Analysis,” by Scott Fallon, March 2001.

“Paying for Power: Taxpayer-Subsidized Electricity in Washington State,” by Elaine R. Davis, 1997.

Other Resources

Northwest Independent Power Producers Coalition - The trade group for private power producers in Washington and Oregon.

“Generating Electric Power in the Pacific Northwest: Implications of Alternative Technologies,” by Christopher G. Pernin, Mark A. Bernstein, Andrea Mejia, Howard Shih, Fred Reuter and Wilber Steger, Rand Corporation, 2002.

“Municipalization in a New Energy Environment: It Doesn’t Work,” Solem and Associates, Edison Electric Institute, September 2002, www.eei.org.

“The State of Energy,” by Paul Schlien, *Washington Business Magazine*, July/August 2003, www.awb.org.

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“Municipalization in a New Energy Environment: It Doesn’t Work,” Solem and Associates, Edison Electric Institute, September 2002, www.eei.org.

“Power to the People: An Economic Analysis of California’s Electricity Crisis and its Lessons for Legislators,” by Benjamin Zycher, Pacific Research Institute, May 2002, www.pacificresearch.org.

¹ “State Electricity Profiles 2004,” Energy Information Administration, United States Department of Energy.

² “In Your State,” United States Department of Energy, at www.energy.gov/washington.htm.

³ “State Electricity Profiles 2004,” Table A1, Energy Information Administration, United States Department of Energy; Average Retail Price of Electricity to Ultimate Customers by End-Use Sector, Energy Information Administration, at <http://www.eia.doe.gov/cneaf/electricity/epa/epat7p4.html>.

⁴ Ibid.

⁵ “Selected Energy Prices in Washington State,” 2005 Washington State Data Book, Washington State Office of Financial Management, at www.ofm.wa.gov/databook/energy/yt05/asp. One BTU equals the quantity of heat required to raise the temperature of one pound of water by one degree Fahrenheit.

⁶ Ibid, “Selected Energy Prices in Washington State.”

⁷ Ibid, “Table Containing History of CPI-U U.S. All Items Indexes and Annual Percent Changes From 1913 to Present,” U.S. Department of Labor, at www.bls.gov/cpi/#tables.

⁸ “Selected Energy Prices in Washington State,” 2005 Washington State Data Book, Washington State Office of Financial Management.

⁹ “Regulated Industries,” Washington Utilities and Transportation Commission, at www.wutc.wa.gov/regulatedindustries.

¹⁰ “Electric Utilities Reporting to The Washington Utilities and Transportation Commission,” Washington Utilities and Transportation Commission, at www.wutc.wa.gov/webimage.nsf/0/6cb88e8a2983af62882567b70071e7f5?OpenDocument.

¹¹ “Responsible Utility Regulation is a Key Competitiveness Issue,” Washington Research Council, January 11, 2002.

¹² “Electric Residential Rate Comparison, 1/1/95 – 8/4/04,” Washington Utilities and Transportation Commission.

¹³ Revised Code of Washington 80.50.010.

¹⁴ “About EFSEC,” www.efsec.wa.gov/council.html.

¹⁵ The departments of Agriculture, Health, Military and Transportation are not regular members of the Council, but can elect to appoint a Council representative for the siting of new projects.

¹⁶ For details see Washington Administrative Code, Title 463.

¹⁷ “Generalized Siting Process,” Washington State Energy Facility Site Evaluation Council, at www.efsec.wa.gov/EFSEC%20Process.pdf.

¹⁸ E-mail correspondence between John Barnes and Allen Fiksdal, Manager of EFSEC, October 6, 2004. See also www.efsec.wa.gov/proj.html for a list of projects under EFSEC jurisdiction.

¹⁹ “A Case Study in Energy Over-Regulation: Denial of the Sumas 2 Generating Facility,” by Scott Fallon, Washington Policy Center, May 2001.

²⁰ *Ibid.*, p. 1.

²¹ “Proposed Siting Standards and Rules Revisions,” Washington State Energy Facility Site Evaluation Council, at www.efsec.wa.gov/rulerev_new.html.

²² In this discussion, “green” energy sources will follow the definition used in Initiative 937, which includes solar, wind and biomass, but not nuclear or hydro power, despite the fact that the latter two emit no greenhouse gasses and, in the case of hydro, is renewable. It is notable that this definition is different from the definition of “green” energy used in laws in other states.

²³ Energy Facility Site Evaluation Council, “Energy Facility Site Evaluation Council; Projects,” at www.efsec.wa.gov/proj.html, accessed June 14, 2006.

²⁴ Energy Information Administration, “State Electric Profiles,” at www.eia.doe.gov/cneaf/electricity/st_profiles/e_sum.html, accessed June 14, 2006.

²⁵ *Ibid.*

²⁶ For an examination of how “Fair Trade” coffee yields increased profit, see Tim Hartford, “The Undercover Economist,” Oxford University Press, 2005.

²⁷ Seattle City Light, “Seattle City Light, Green Up, Power Resources,” at www.ci.seattle.wa.us/light/Green/greenPower/greenuppr.asp, accessed June 14, 2006.

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