

Regulatory Reform Bills Would Improve Our Business Climate

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March 2013

Introduction

This Legislative Memo provides an overview and analysis of four bills: SB 5679, SB 5680, SB 5718 and SB 5641. Three of the bills have companion bills in the House. These proposals would significantly reform and simplify our state's regulatory policy and improve the state's business climate. Here is a short description of each bill.

SB 5679 (and companion HB 1591) would require certain state agencies to streamline regulations by establishing a recurring, formal review process of existing rules with the goal of reducing the regulatory burden on businesses.

SB 5680 (and HB 1403) would direct certain state agencies to participate in the Business License System (BLS) — the state's primary business portal — by providing all information and applications for each agency's business licenses, permits and inspections on the BLS website.

SB 5718 (and HB 1757) would monitor the creation of a comprehensive one-stop business portal so businesses owners could conduct all interactions with state regulators at a single, web-based location.

SB 5641 would require the governor's signature on significant legislative rules adopted by state agencies whose head or governing body is appointed by the governor.

Based on our research and longstanding proposals to reform the regulatory process in our state, these four bills would reduce the burden state officials place on employers and thus improve the state's overall business climate.

Background

Government regulations pose a significant encumbrance to employers, large and small. Our state's regulations are among the most burdensome in the nation. In its biennial comparison of states, the Mercatus Center at George Mason University in 2011 ranked Washington State a dismal 48th in regulatory freedom.¹ The low ranking reflects the state's onerous regulatory climate.

¹ "Freedom in the 50 States: An Index of Personal and Economic Freedom," William P. Ruger and Jason Sorens, Mercatus Center at George Mason University, June 2011, at www.mercatus.org/sites/all/modules/custom/mercatus_50_states/files/Freedom50States2011.pdf.

Washington's complex maze of regulations is a debilitating obstacle to success for many businesses, especially small businesses. The result is a consistently high "business churn" ranking for our state. According to the latest data, Washington ranked ninth in business starts and 11th in business closures in 2010.² While many factors account for this high business failure rate, a state Department of Revenue study on the business survival rate in Washington found that "taxes and costs of complying with government regulations are factors that contribute to business failure."³

Clearly government regulations impose a significant handicap on employers, large and small.

Last year, a report by the Kauffman Foundation, a national nonprofit organization that promotes and studies entrepreneurship, revealed the survey results of small business owners across the nation who were asked to rank their state's friendliness to business. The responses of our state's small business owners pegged Washington as boasting the 10th least-friendly business regulations nationwide.⁴ Similarly, a survey by Chief Executive Group of 650 CEOs cited Washington's "regulatory snares" as a factor in our state's ranking as the 13th worst state for business.⁵

Small businesses are more likely to suffer the harmful effects of complex regulatory policies, because most cannot afford lawyers and consultants to help them navigate the twisting labyrinth of governmental red tape. This translates into much higher compliance costs for small business owners compared to large businesses.

The Small Business Administration reports that very small firms (those with fewer than 20 employees) spend 36% more per employee than do larger firms in order to comply with just federal regulations. A firm with fewer than 20 workers spends about \$10,585 per employee to comply with federal regulations, while a firm with over 500 workers spends \$7,755 per employee.⁶

Further evidence is former Governor Gregoire's consecutive executive orders (10-06 and 11-03) implementing a moratorium on "non-critical" agency rulemaking in 2011 and 2012. In the press release announcing the moratorium on new regulations, Gregoire said:

"The time and effort small business owners would put into meeting new requirements would be better spent in improving their bottom line, and adding new employees.... We want businesses to create jobs."⁷

Despite the executive orders, rule proliferation continued unabated. In that two-year period, state agencies imposed a total of 805 new, permanent rules and 909 temporary, emergency rules that together fill 15,754 pages and change 10,047 sections of the Washington Administrative Code.⁸

Compounding the burden of the new regulations that are adopted every year, each of which has the force of law, is the fact it is practically impossible for the average citizen to know, understand,

² "2013 Competitiveness Redbook: Key Indicators of Washington State's Business Climate," Washington Alliance for a Competitive Economy, September 2012.

³ "Small Business Survival: A Joint Report to the Governor," by the departments of Community, Trade & Economic Development; Employment Security; Labor & Industries; and Revenue; October 5, 2007, at www.dor.wa.gov/docs/reports/BusinessSurvivalReportOct2007.pdf

⁴ "Thumbtack.com Small Business Survey," conducted in partnership with the Kauffman Foundation, May 2012, at www.kauffman.org/uploadedfiles/thumbtack_survey_methodology.pdf.

⁵ "Best/Worst States for Business 2012," Chief Executive Group survey, May 2012, at www.chiefexecutive.net/best-worst-states-for-business-2012.

⁶ "The Impact of Regulatory Costs on Small Firms," by Nicole V. Crain and W. Mark Crain for SBA Office of Advocacy, September 2010, at www.archive.sba.gov/advo/research/rs371tot.pdf.

⁷ "Gregoire suspends agency rule-making," *The Olympian*, November 17, 2010, at www.theolympian.com/2010/11/17/1443626/gregoire-suspends-agency-rule.html.

⁸ "Agency Rule-Making Activity," Office of the Code Reviser, at www.leg.wa.gov/CodeReviser/Documents/rulactiv.pdf.

and follow each and every regulation. And once adopted, regulations are rarely reviewed to ensure they have not become outdated, duplicative or unnecessary.

The State Auditor's Office last year released a performance audit of regulations in Washington state. The audit examined whether Washington state government websites easily and effectively provide information to the public and whether the 26 regulatory agencies have streamlined their business rules as the legislature and the governor have repeatedly directed them to do.⁹

The auditor's report found agencies are not effectively providing information to business nor are they streamlining regulations. The report concluded much work remains to achieve the dual goals of simplifying agency regulations and making it easier for businesses to understand and follow regulations.

The auditor noted three core problems:

- Washington does not have a one-stop business portal for all business transactions with state government, including licensing, permitting and tax payments.

Only 16% of state business licenses are available through the Business License Service (BLS) website, which is supposed to be the state's primary licensing portal.¹⁰

- Regulatory information on agencies' websites is incomplete and the sites are often difficult to navigate.

Business owners must read through up to 26 different agency sites to find all the information they need to comply with state business regulations, and those sites are often difficult to use and do not always provide complete information about the state's nearly 1,400 licenses and permits. In fact, no agency website provides complete information for business permits and licenses.¹¹

- Agencies must do more to streamline the rules that govern permits, licenses and inspection.

While some state agencies regularly review regulations to ensure they are clear, consistent and up-to-date, no agency measures the results of its streamlining activity to see if it is having the desired effect.¹²

The Auditor's Office clearly understands that the complex maze of costly regulations has a negative impact on the small businesses that drive our state's economy. The report repeatedly refers to the enormous impact state regulations have on businesses, especially small businesses, and government's duty to ease the burden as much possible for the benefit of employers, workers, the government and the general economy.

A recent jobs report by the Washington Economic Development Commission (WEDC) echoes the auditor's assessment that significant regulatory relief is needed to improve the state's business climate and competitiveness. Declaring "we can and must do better," the report details the commission's five recommendations to "accelerate job growth and become the leading innovation hotspot of the world." Among its five recommendations is to reform our state's regulatory policies.¹³

⁹ "Regulatory Reform: Communicating Regulatory Information and Streamlining Business Rules," Report No. 1008276, Washington State Auditor's Office, September 6, 2012, at www.sao.wa.gov/AuditReports/AuditReportFiles/ar1008276.pdf.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

¹³ "Driving Washington's Prosperity—A Strategy for Job Creation and Competitiveness," Washington Economic Development Commission, January 2013, at www.wedc.wa.gov/Download%20files/2013StrategicPlan.pdf.

The WEDC is comprised of representatives from business, labor, education, economic development organizations, agency directors and lawmakers from both parties. Its report says, “Washington’s overly burdensome regulatory system must be addressed as a top economic development priority.”

Acknowledging that “regulatory processes impose costs of doing business, and significantly influence investment behavior, location decisions, startup activity, expansions and hiring” and referencing the auditor’s report of the state’s regulatory shortcomings, the WEDC includes a comprehensive list of specific recommendations to revamp how the state regulates businesses. Among the recommendations is simplifying and centralizing regulations in order to reduce the state’s regulatory burden on business.

Analysis of SB 5679, SB 5680, SB 5718 and SB 5641

SB 5679, 5680 and 5718 would put into action the recommendations of the state auditor in last year’s critical performance audit on regulations, which found agencies are not effectively providing information to business nor are they streamlining regulations, as both the legislature and executive orders have repeatedly directed them to do. Demonstrating the urgent need for action, all three bills passed the Senate unanimously and the companion bill HB 1403 passed the House with no dissent.

The bills also embody several of the WEDC’s recommendations to streamline, simplify and centralize regulations.

SB 5641 is not one of the recommendations from the auditor’s or the WEDC’s reports, but it is a longstanding Washington Policy Center recommendation.

SB 5679 and HB 1591: Requiring certain agencies to establish a formal review process of existing rules

The problem: The auditor’s report found three state agencies lack rule review processes consistent with past executive orders to reduce the regulatory burden on businesses, cut costs and increase compliance. These agencies are the departments of Ecology, Health, and Labor & Industries.

The solution: SB 5679 and HB 1591 would direct these three agencies to perform a formal review process of existing rules every five years. The objective of the review would be to improve the processes for licensing, permitting and inspection to reduce the regulatory burden on businesses without compromising public health and safety.

The benefit: Requiring these three state agencies, which each have significant rulemaking authority, to have a formal process and specific streamlining criteria for reviewing regulations would help ensure agency rules are necessary, clear and consistent. Documenting the review process in regular intervals would make certain all business rules are evaluated. Measuring the results of streamlining would let agencies know whether their efforts are producing their intended effects. These bills would hold state agencies accountable for performing the review process and demonstrating clear, measurable results from their streamlining activities.

SB 5680 and HB 1403: Promoting economic development by providing information to businesses

The problem: State law requires full participation in the Business Licensing System by specific agencies. The auditor’s report found that only the Department of Revenue provides all of its licenses through the BLS website, only 16% of all the state’s business licenses are available through

the BLS website, and only two of the 10 most-requested licenses are available through the BLS website.

The solution: SB 5680 and HB 1403 would require specific agencies to fully participate in the BLS. Each agency would have to provide the Department of Revenue (DOR), which currently administers the BLS, with every business license issued by the agency with the applicable license requirements, and links to the licensing information, application and instructions on the agency's website. DOR would report annually to the governor and legislature which agencies are participating and what information those agencies are providing.

The benefit: Given the poor agency participation in the BLS, the auditor's report recommended the legislature revise the statute to accurately list the agencies that issue business licenses, and recommended the legislature to direct agencies to provide information and applications for all of their business licenses on the BLS website. SB 5680 and HB 1403 would codify into law the auditor's recommendations.

SB 5718 and HB 1757: Providing monitoring of the development of a one-stop portal for Washington businesses.

The problem: In 2006, Executive Order 06-02 directed state agencies to make it easier for businesses to operate in Washington State with six specific directives, one of which was to "develop a one-stop business portal." Six years later, the task is still not completed.

The solution: SB 5718 and HB 1757 would give the legislature the authority to monitor progress toward implementation of the one-stop business portal. The bills would require multi-agency coordination and collaboration with the business community to provide a plan to the legislature establishing performance benchmarks and for measuring the results of implementing the one-stop business portal by November 2013. Annual progress reports would be submitted to the legislature until the portal reaches initial implementation, which is when a system backbone is developed, specified agencies are connected to the backbone, and a public-facing web portal is developed.

The benefit: Clear legislative oversight on the creation of a truly one-stop business portal is needed. The auditor's report noted: "In spite of specific statutory and executive direction to simplify regulatory interactions with businesses, Washington is still a long way from achieving the vision of a one-stop business portal. None of Washington's three central business websites provides complete regulatory information about all of the state's business licenses and permits."¹⁴

SB 5641: Requiring the governor's signature on significant legislative rules

The problem: If an agency adopts a rule that is considered a "significant legislative rule," the agency must conduct a cost-benefit analysis, determine whether the proposed rules differ from federal regulations, or impose more stringent requirements on private entities than public entities. A significant legislative rule is one that adopts substantive law pursuant to delegated authority, a violation of which subjects a violator to a penalty or sanction; establishes, alters, or revokes licensing or permitting standards; or adopts a new or significantly amended policy or regulatory program. In spite of their impact on the lives of citizens, the governor is not required to sign significant legislative rules.

¹⁴ "Regulatory Reform: Communicating Regulatory Information and Streamlining Business Rules," Report No. 1008276, page 15, Washington State Auditor's Office, September 6, 2012, at www.sao.wa.gov/AuditReports/AuditReportFiles/ar1008276.pdf

The solution: SB 5641 would require the signature of the governor for significant legislative rules adopted by state agencies whose head or governing body is appointed by the governor.

The benefit: Currently, unelected bureaucrats have broad authority to propagate regulations that have a significant impact on individuals and businesses, effectively circumventing the legislative process to enact laws. Requiring the governor to review and sign significant legislative rules adopted by state agencies would ensure the governor is aware of and held accountable for the rulemaking activity of the agency heads he or she has appointed.

Conclusion

Washington Policy Center has long recommended that the state lighten the regulatory burden its officials impose on small businesses and their employees. Longstanding WPC recommendations for improving the state's regulatory climate include:

- Streamlining regulations
- Improving how regulatory information is communicated to the public
- Providing a centralized means by which businesses transact with government
- Instilling accountability into agency rulemaking by requiring the Governor's signature

Regulatory reform to spur job creation is finally getting the attention it deserves. The four bills passed by the Senate are a much needed first step toward overhauling the state's regulatory policy. They would finally require state officials to account for cost effectiveness and results while guarding against overlapping, outdated and conflicting rules. These improvements would make it easier for businesses to understand and comply with these rules.

Based on our research on reforming the regulatory process in our state, these bills would reduce the regulatory load on employers and workers, and would significantly improve the state's business climate.

Erin Shannon is director of the Center for Small Business at Washington Policy Center, a non-partisan independent policy research organization in Seattle, Olympia and Eastern Washington. Nothing here should be construed as an attempt to aid or hinder the passage of any legislation before any legislative body. For more information, visit washingtonpolicy.org.