POLICY GUIDE

FOR WASHINGTON STATE

4th Edition
Edited by Paul Guppy

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Inquiries about book orders should be addressed to:

Washington Policy Center
PO Box 3643
Seattle, WA 98124-3643
p 206-937-9691
wpc@washingtonpolicy.org

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POLICY GUIDE

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Foreword

by Daniel Mead Smith, President

"WPC's Policy Guide *is indispensable for advancing the ideas and solutions that our state needs. It contains facts, figures, graphs and data that I often use as a resource. I'm extremely grateful to the researchers behind the* Policy Guide *because it's helping me win the battle of ideas that we need to move the state forward."*

–Senator Michael Baumgartner (6th District, Spokane)

That endorsement of our 3rd edition from a state legislator tells us we are doing our job—offering lawmakers positive solutions to the policy challenges facing our state, and it is the reason we are publishing this updated fourth edition of our *Policy Guide for Washington State*.

Washington Policy Center is an independent public policy think tank, not a trade association or lobbying organization. We testify before committees when invited and work with elected officials at their request. We also measure the impact of our ideas. It is one thing to publish studies and hold events, and another to have our ideas and analysis influence the public debate.

We continue to increase our impact by working with policymakers and media. In addition to our main office in Seattle, we have an office two blocks from the state capitol, we opened a new office in Eastern Washington, we appear in the media an average of five times per day, and we track our ideas that become official policy in our state.

For example, during the 2011 legislative session, 13 of our policy recommendations were signed into law by Governor Gregoire—more than in any previous year.

Our mission is to improve the lives of our state's citizens through fact-based, market-oriented solutions. That is what this new book offers in its 10 comprehensive chapters and over 300 pages.

This book is a revised edition and is presented in the same format as our previous *Policy Guides*. Unfortunately, our state continues to rank high in the wrong categories when it comes to education, traffic congestion, taxes and our business climate. By adopting the policy recommendations that follow, state policymakers, including our newly elected governor in 2013, can make our state a better place for all citizens.

Our *Policy Guide* offers innovative ideas, ranging from incremental to sweeping, for reforming and improving government performance. Each of the 10 chapters is divided into a number of topical subsections for easy reference. Each subsection includes background on the issue, policy analysis and specific policy recommendations, as well as listing additional resources for further information.

I encourage you to use our legislative website, WashingtonVotes.org, as a resource during the legislative session and also as you vote. This website summarizes all legislation and allows users to search by issue, follow legislation during the session and keep track of how legislators vote, all in an easy to use, plain-English format.

To policymakers, we thank you for your service to our state and hope you will continue to find this guide a useful resource. To citizens, we encourage you to keep our recommendations in mind as policymakers address the major issues facing our state. Our special thanks go to our supporters across the state, their loyal support of Washington Policy Center is greatly appreciated.

Please visit us at washingtonpolicy.org, call us at (206) 937-9691 or email wpc@washingtonpolicy.org with your comments, or to order additional copies of this book or any of our individual studies, which provide additional research and information on the issues presented here.

On behalf of our board of directors, advisory boards and staff (all of whom are listed at the end of the book), thank you for your interest in our work and in improving people's lives through market solutions.

POLICY GUIDE

FOR WASHINGTON STATE

Introduction to the 4th Edition

by Paul Guppy, Vice President for Research

A slowdown in the growth of state revenue compared to the steady rise in spending has mired Olympia in a seemingly intractable budget shortfall now and for the foreseeable future.

It didn't have to be this way. A failure to exercise budget discipline, a failure to focus on core functions, a reliance on government coercion instead of voluntary incentives, and the political influence of public sector unions together have greatly contributed to the budget crisis the state has faced since the start of the Great Recession in 2008.

A massive $500 million tax increase enacted in 2005 failed to save the state from chronic budget shortfalls because, even as they increased the financial burden they impose on citizens, policymakers in Olympia increased spending even faster. Lawmakers acted as if the economic good times would last forever.

When the recession hit state leaders were ill prepared to adjust their planned increases in spending to match the new reality of slower revenue growth. Vainly waiting for a surging economic recovery to turn on the money taps again has not worked. The way out lies in a return to fiscal discipline, funding core functions first, trusting citizens to make their own decisions, and limiting the power of public sector unions.

These are the basic Principles of Responsible Government described in the 3rd Edition of the *Policy Guide for Washington State*. These principles are presented here again to guide policymakers in developing practical solutions to the current crisis and to help build a

stable, well-funded and limited state government for the benefit of all people living in Washington.

Five Principles of Responsible Government

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 in a society based on ordered liberty.

The Washington state constitution makes this point in Article 1, Section 1:

> 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 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 Problem of Government

Government itself, however, poses a serious 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.

In their effort to extend the reach of public programs, government officials tend to impose increasing taxation and broader regulations that over time erode the basic freedoms of citizens.

This tendency is encouraged 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 financial burden and physical constraint government imposes on ordinary citizens.

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

Washington Policy Center advocates five principles that government officials should use to do their work effectively, and in a way that respects the trust the public places in them. These ideas are not original to 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 principal makes it easier to implement the others.

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 impose financial discipline on managers of private organizations. Instead, policymakers are under constant pressure to channel public money to this or that cause, or toward enriching 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 find it easy to be generous with other people's money—especially when most people tend not to notice.

Lack of budget discipline causes governments to become overextended and unable to meet their commitments. This produces a

pervading sense of financial crisis, joined with calls for tax increases, as has occurred during the recent recession.

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 employed by government tend to benefit personally 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 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 functions 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 to harm 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.

When public officials tap the benefits of competition, contracting out and performance audits, they keep government focused on core functions, to the benefit of taxpayers and the public interest.

3. Respect Property as a Basic Civil Right

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 are civil rights that give citizens the means to defend all their other rights, whether from the encroachments of government or the incursions of other people.

Private property allows people 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, it becomes 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 earn or create 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. Sound policy recommendations, like those presented in this book, 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 to try 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 their ideas on others, but should seek to change policy, if that is needed, once reform is broadly supported by the public.

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

Public policy built on market incentives and individual choice avoids the problems created by involuntary, top-down dictates.

5. Resist Political Pressure from Public Sector Unions

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

Employers and unions in the private sector operate under the unyielding market discipline. 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 limit to the demands that public union leaders can make on the treasury, especially since each expansion of government spending 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 sense, policymakers who respect taxpayers should end it, and devote the savings to effective programs, or to 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 with 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 officials place on 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 costly program with a nice sounding title but 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.

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 ONE
SPENDING POLICY

1. Structural Budget Reform

Recommendations

1. Adopt performance-based, Priorities of Government budgeting to control the rate of spending growth and create more sustainable budgeting.

2. Place requirements for performance outcomes directly into the budget.

3. Require that updated four-year budget forecasts be tied to quarterly revenue forecasts or to the adoption of a new budget.

4. Adopt a 72-hour budget timeout.

5. Require that completed fiscal notes be made available before bills can be acted on.

6. Permanently repeal unaffordable programs instead of temporarily suspending them.

7. Provide the governor with discretionary authority to cut spending when revenues fall short of projected amounts.

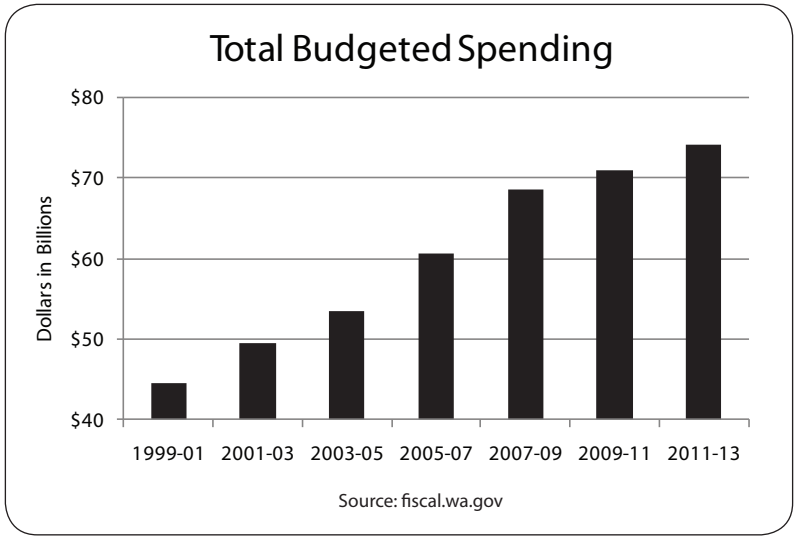
8. Set aside a five percent reserve when adopting the biennial budget.

Background

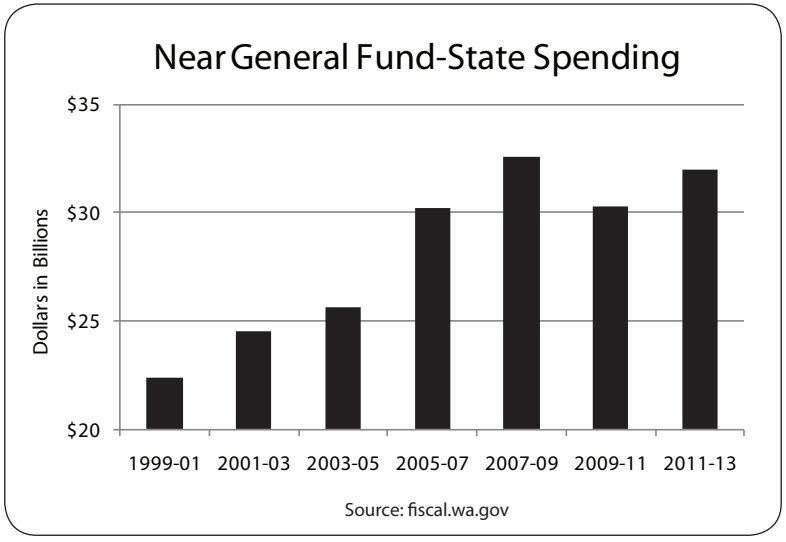
A combination of past spending increases and a historic economic downturn has left lawmakers in Olympia facing difficult and important choices to reset state government. Though tax revenues dipped for the 2009–11 budget, they are projected to begin increasing again for the 2011–13 budget. While this should be cause for relief, lawmakers

for years have been spending more than taxpayers provide, creating a structural budget gap that now threatens important public programs. This past overspending was unsustainable on its own, but the trend was exacerbated by the "Great Recession."

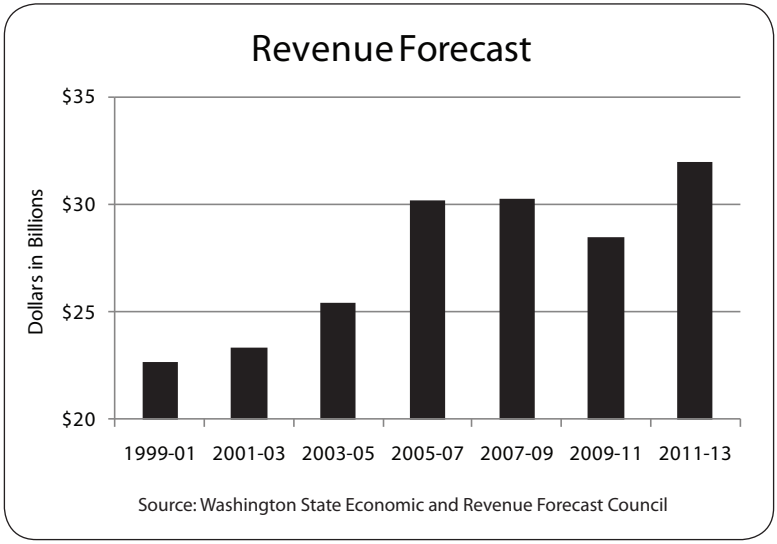
While the discussion focused on spending cuts during the 2011 legislative session, state spending is projected to increase both for "Total Budgeted" spending and for Near General Fund-State (NGF-S) spending. Although this increase in spending for the NGF-S follows a 2009–11 budget cycle that saw a significant decrease in spending, Total Budgeted spending has not decreased since the onset of the Great Recession. Total Budgeted spending includes the transportation, capital and operating budgets including federal funds and grants. Near General Fund-State is the account that principally pays for the operation of state government and is funded primarily by state sales, property, and business and occupation taxes.



Total budgeted spending is set to increase by some $3 billion for 2011–13. This builds on increases of $2.4 billion for 2009–11, $8 billion for 2007–09 and $7 billion for 2005–07. Since 1999–01, Total budgeted spending has increased 66%.



Near General Fund-State spending is set to increase $1.7 billion for 2011–13. This follows a decrease of $2.3 billion for 2009–11 and increases of $2.4 billion for 2007–09 and $4.6 billion for 2005–07. Since 1999–01, NGF-S spending has increased 43%.



After years of flat or declining revenue, state revenues are projected to grow again by $2 billion for 2011–13 (based on the June 2011 Revenue Forecast). This follows a decrease of $1.8 billion for 2009–11 and

increases of $88 million for 2007–09 and $4.8 billion for 2005–07. Since 1999–01, state revenues have increased 35%.

Due to ongoing economic uncertainty, lawmakers will face persistent budget problems in the future unless structural budget reforms are adopted that set the budget on a long-term sustainable course.

Policy Analysis

To begin the necessary changes, lawmakers should re-evaluate all existing programs and activities against a prioritized, performance-based matrix. To do this, agencies should be required to rank their activities as high, medium or low priority, with no more than one-third of the total costs allocated to each ranking. Lawmakers should direct agencies to identify at least one expected performance outcome for each program activity. Once lawmakers have this information, they can make informed decisions about which programs will deliver the highest results for taxpayers and everyone who relies on essential public services.

An example of how to do this was initiated by former Governor Gary Locke in 2002 when he established his Priorities of Government process.[1] The process requires each agency to rank program activities in order of their importance to the public.

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.[2]

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."[3]

Measuring Government Performance

The natural next step in the Priorities of Government budgeting process is to identify measurable performance outcomes for those programs funded in the budget. By having detailed performance

information, better prioritization can occur by funding strategies that deliver the best results.

Providing Adequate Time to Review Spending Proposals

The state's combined budget (operating, capital and transportation) is hundreds of pages long. Despite the length and complexity of these documents, however, hearings are usually held the same day the budget bill is introduced, and it is amended and enacted with inadequate time for meaningful public input.

The opportunity for a detailed review by the public before legislative hearings or votes on budget bills would increase public trust in government and enhance accountability for the spending decisions lawmakers make on the people's behalf.

Know Full Impact of Spending Proposals Before Making Decisions

One of the most recognizable measurements of the state's fiscal health is the multi-year budget outlooks. These updates, however, are not done on a regular basis. To provide updated information throughout the year on the state's fiscal condition, the legislature should issue an updated four-year budget outlook each time a new official revenue forecast is released, or when a new appropriation bill is adopted.

Along with the budget outlook, another important tool lawmakers use to make spending decisions is the legislative fiscal note. These analyses provide information on the added cost a spending proposal would impose on taxpayers. Unfortunately, bills are sometimes acted on before these estimates are completed, thus robbing the public and lawmakers of the information they need to make informed decisions.

Repeal Unaffordable Programs

As lawmakers look for ways to achieve budget savings, they should resist the temptation to keep unaffordable programs alive in statute, especially when they have provided no funding for them. By suspending programs instead of repealing them, lawmakers are providing a false sense of hope to program supporters while putting undue pressure on future budget writers.

For example, during the 2011 legislative session lawmakers suspended Initiative 728 (class-size reduction), Initiative 732 (pay raises for teachers), paid family leave, and they instituted a temporary three percent salary reduction for state employees. By failing to repeal these programs and make a permanent reduction in the state salary base, these unfunded programs are automatically included in future budgets, creating significant problems for future lawmakers.

Surgical Budget Reductions

Under state law, if a cash deficit is projected the governor is required to order across-the-board cuts to bring spending into balance with revenues:

> RCW 43.88.110 (7): If at any time during the fiscal period the governor projects a cash deficit in a particular fund or account as defined by RCW 43.88.050, the governor shall make across-the-board reductions in allotments for that particular fund or account so as to prevent a cash deficit, unless the legislature has directed the liquidation of the cash deficit over one or more fiscal periods.

Unfortunately, this one-size-fits-all approach means all spending is treated equally and does not allow prioritization to occur. As a result, spending for K-12 education is treated the same as spending for low-priority government activities. This is why the across-the-board cut authority for the governor has been referred to as a budget "chainsaw" versus a "scalpel."

Though the budget-cutting authority for governors across the country varies, at least fifteen states provide their governor discretionary budget-cutting authority that allows prioritization of reductions to occur.[4]

Washington's governor should be provided a scalpel to make discretionary spending reductions that do not exceed a set percentage (between five and ten percent) of an agency's appropriations. Cuts in excess of the set percentage should require approval by a standing legislative emergency budget committee (made up of one member from each caucus in the House and Senate). No reductions should be made in the budget of an independently elected state official, like the attorney

general or the secretary of state, without that official's approval or the approval of the standing legislative committee.

Any reductions made should be immediately reported to legislative fiscal committees and publicly posted on the state's budget transparency website (www.fiscal.wa.gov). This type of enhanced budget-cutting authority for the governor would provide spending reduction tools other than blind across-the-board cuts, while addressing any accountability or transparency concerns.

One benefit of this type of discretionary budget-cutting authority for the governor is enhanced taxpayer protection. While the legislature could decide to raise taxes in a special session to reduce a deficit, the governor cannot raise taxes on her own. This means the default response for budget deficits that arise when the legislature is adjourned would be surgical spending reductions, instead of the uncertainty of possible tax increases enacted in a special session.

This type of discretionary spending cutting authority for the governor would encourage the legislature to leave adequate reserves to avoid allowing the governor to decide what spending reductions to impose.

Five Percent Budget Reserve

Though Washington has one of the best nonpartisan revenue forecast processes in the country, forecasting state revenues and predicting economic activity remains an imprecise science. Yet the state budget is built around these imperfect assumptions. Consider what happened for the 2011–13 budget that was balanced for only one day.

The day after Governor Gregoire signed the 2011–13 budget, most of the ending fund balance (including the constitutional emergency reserve) was wiped out by a June 2011 forecast that showed state revenues increasing by less than expected. This left the state with total reserves of only $163 million, or less than 0.5% of spending. Prior to the June 2011 forecast there was $723 million in total reserves, or 2.3% of spending. This scant remaining reserve left the state unprepared when revenue projections failed to meet the legislature's expected level of spending increase.

To help provide for a more sustainable budget and avoid the need for special sessions or the governor ordering budget cuts, lawmakers should adopt structural requirements that mandate at least a five percent reserve (not counting the constitutional rainy-day account) be set aside when adopting the initial biennial budget. For a $32 billion budget, this would be reserves of around $1.6 billion, versus the $723 million initially set aside.

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 resolve the constant sense of crisis that pervades the state's public finances.

Though daunting, the state's budget problems can be diligently addressed by refocusing on purchasing high-priority performance outcomes instead of lawmakers being influenced by emotional pleas for continued funding based on past spending decisions. This will help reprioritize excessive spending policies that have contributed to a projected budget deficit despite forecasted revenue growth.

By making structural reforms and focusing on purchasing performance outcomes, lawmakers can make informed decisions and build a solid budget focused on delivering the best results for taxpayers and users of government services. If lawmakers ultimately ask state citizens to pay higher taxes for additional spending, the public will know one of two things:

1. Lawmakers believe the state's lowest priorities are still worth purchasing even in this tough economic climate, and taxpayers need to sacrifice more, or

2. The budget is not properly prioritized and lower priorities are being purchased first, resulting in the request for tax increases to fund higher priorities.

Recommendations

1. **Adopt performance-based, Priorities of Government budgeting to control the rate of spending growth and create more sustainable budgeting.** 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 by requiring all budgets be adopted based on this sensible review process, so essential public services are funded first. 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. **Place requirements for performance outcomes directly into the budget.** To improve budget accountability, high-level performance outcome measures should be placed directly into the budget so lawmakers and citizens can quickly see whether past goals have been met before each new increase in spending is considered.

3. **Require that updated four-year budget forecasts be tied to quarterly revenue forecasts or to the adoption of a new budget.** To provide updated information throughout the year on the state's fiscal outlook, an updated four-year budget outlook should be issued each time the official revenue forecast is released, or when a new appropriation bill is adopted.

4. **Adopt a 72-hour budget timeout.** To facilitate public involvement, the legislature should adopt a 72-hour timeout period in the legislative process once a budget, tax or spending bill is introduced or amended. This would allow lawmakers and the public a three-day period to calmly consider the two-year budget, new taxes or new spending before legislative hearings or final voting occurs.

5. **Require that completed fiscal notes be made available before bills can be acted on.** Lawmakers and the public should know the full impact of a spending bill before final legislative action is taken. Bills proposing increased spending should not receive hearings or votes until a thorough fiscal analysis is completed and released to the public.

6. **Permanently repeal unaffordable programs instead of temporarily suspending them.** By suspending versus repealing programs,

lawmakers are providing a false sense of hope to program supporters while putting undue pressure on future budget writers.

7. **Provide the governor with discretionary authority to cut spending when revenues fall short of projected amounts.** Enhanced budget-cutting authority for the governor would provide budget-reduction tools other than the current one-size-fits-all, across-the-board, cuts option, allowing for prioritization of reductions to occur while addressing any accountability or transparency concerns.

8. **Set aside a five percent reserve when adopting the biennial budget.** To help provide for a more sustainable budget and avoid the need for special sessions or the governor ordering budget cuts, lawmakers should adopt structural requirements that mandate at least a five percent reserve (not counting the constitutional rainy-day account) be set aside when adopting the initial biennial budget.

2. State Spending Limit

Recommendation

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

Background

In 1993, Washington voters passed Initiative 601 to limit the annual growth of state spending to a three-year rolling average of inflation plus population growth.[5] The limit worked for a time. In the decade before Initiative 601, state spending increased on average by 17% per biennium. Between 1993–95 and 2003–05, state spending increased an average of eight percent per biennium under the provisions of Initiative 601, half the previous rate of spending increase. In 2005, however, lawmakers changed the spending limit growth factor, resulting in a 17% increase in spending during the 2005–07 biennium. Had the economy not gone into recession in 2008, it is likely state spending would have continued to increase beyond the eight percent per biennium average under the original Initiative 601 caps.

Initiative 601 was not made part of the Washington constitution, and it was easily overturned by a simple majority vote in the legislature. This is why it is imperative to put meaningful spending restrictions similar to the original Initiative 601 limits in the constitution, so that once the economy recovers, state spending grows at a more sustainable rate, and the financial burden lawmakers place on citizens is controlled.

Policy Analysis

Thirty states have some form of spending limit to protect their citizens from overtaxation.[6] More than half of these spending limits are part of the state constitution.[7]

Research shows that the most effective spending limits are constitutional instead of statutory.[8] Constitutional spending limits are insulated from attempts by narrow legislative majorities to open loopholes that allow higher spending increases. Research also shows that

tying the growth of government spending to inflation plus population growth increases a limit's effectiveness, compared to other methods of measuring economic activity.[9]

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.[10] This allows spending to increase at a much faster rate.

Tying increases in public spending to the growth in the average of personal incomes artificially exaggerates the impact of wealthy people's incomes on state spending. This budget rule increases unfairness in the tax system because state spending and taxation go up for everyone, even though not everyone's income has increased to keep pace.

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

Recommendation

Adopt a constitutional amendment to limit the growth of state 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.

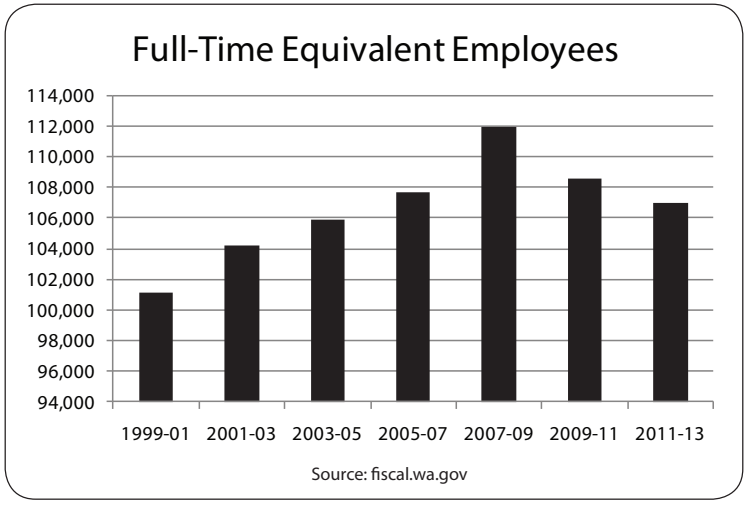
3. Public Workforce Policy

Recommendations

1. Restore the legislature's authority over state collective bargaining agreements.
2. Adopt collective bargaining transparency.
3. Bring state employee health care premium contributions more in line with the private sector.
4. End the compulsory taking of monthly union dues from public employee paychecks.
5. Phase in a defined-contribution retirement plan that gives state workers benefits that can never be taken away.

Background

State public employment grew sharply beginning in 1999, expanding by over 5,800 people and reaching a peak of 111,984 FTEs (full-time equivalent positions) in 2008.[11] State public employment grew six percent in just ten years, and has since dropped slightly from its previous high.



In 2010, the average annual compensation for a full-time equivalent state employee topped $74,700. This included a salary of more than $57,200, plus a generous $17,500 benefits package.[12] These state employee compensation costs accounted for 23.4% of total spending in 2007–09 or 30.4% of spending when accounting for K-12 pass-through funds (money provided to local school districts for compensation; K-12 school employees are not state employees).

Drilling down even further, however, there is a clear distinction between state employee compensation costs as a percentage of spending when comparing general government employees versus higher education employees.

Looking at just general government employees and spending (excluding higher education) the percentage of compensation costs to spending drops to 15.5% in 2007–09. Comparing just higher education employees and spending the percentage of compensation costs to spending was 64% in 2007–09.

This illustrates that when looking at compensation as a percentage of spending, higher education employee compensation is a much larger cost driver for higher education spending than general government compensation is for general government spending.

Whether these compensation figures are too high or too low is subject to debate, but the fact remains the cost of state employee compensation is one of the greatest budget cost drivers and is one under the total control of policymakers.

Policy Analysis

State collective bargaining law prevents the legislature, and the public, from knowing the process that determines employment contract costs. The current system undermines transparency and public accountability for the tax dollars being spent through the state payroll. Under the 2002 Civil Service Reform Act, the legislature can only vote "yes" or "no," with no amendments or other changes, to a contract negotiated secretly by the governor and union officials.

As a result, state unions no longer have their priorities weighed equally with other special interest groups during the normal legislative

budget process. Instead, union executives now negotiate directly with the governor, while lawmakers only have the opportunity to say yes or no to the entire contract. Lawmakers cannot make any changes.

To put the legislature back in charge of the budget so spending can be prioritized to serve the public interest, the 2002 collective bargaining law should be repealed and replaced with something similar to the policy Indiana adopted in 2005.

When Indiana Governor Mitch Daniels took office in 2005 he issued an executive order that, in effect, ended secret state negotiations with unions.

According to Anita Samuel, Assistant General Counsel and Policy Director for Gov. Daniels:

> Employees are still able to pay union dues through payroll deductions. It is completely their choice. Union reps are allowed to represent employees in the grievance procedure. We expanded who was eligible to take a grievance through our State Employees Appeals Commission under this EO [Executive Order]. Every employee, merit and non-merit below an executive level could file a complaint. The prior process only applied to merit employees.
>
> The state does not negotiate with the unions on any issues. At times, the State Personnel Department will meet with the unions when requested. The state sets the compensation, pay for performance increases and benefits without negotiating with the unions. Governor Daniels put in place a robust pay for performance system starting in 2006. The first year the structure was 0% [pay increase] for [an employee who] does not meet expectation, 4% for meets [expectations] and 10% exceeds [expectations]. The second year it was 0, 3, 8.5%. Employees were also given a 1.5% general salary increase that the legislature called for. I think that most employees were pleased with this system.[13]

Unions exist to fight for their members, not to advocate for policy that is in the best interest of taxpayers. This why it is incumbent on the legislature to have the authority to weigh all spending requests equally in

the context of the priorities of all taxpayers and citizens and not be cut out of budget decisions totaling hundreds of millions of dollars.

The legislature should reassert its authority over state employment policy to ensure greater public accountability and transparency. This would help advance improvements that reduce costs while rewarding the excellent work of state employees.

State Employee Medical Coverage

In 2012, state employees are projected to pay, on average, $75 per month, or $208 for a family plan, well below the typical employee cost of private sector plans.[14] Taxpayers will pick up the rest. Nearly 338,800 public employees and families members are enrolled.[15]

In addition to current costs, the legislature is adding to the financial burden of the program by expanding its generous coverage to more groups. In 2007, lawmakers passed five bills allowing groups such as same-sex domestic partners, part-time university employees and employees of tribal government to buy coverage under the state program.[16]

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 has the effect of making the cost of health care as a portion of overall compensation more visible. Washington policymakers should adopt a similar policy in order to help control costs.

In 2011, Governor Gregoire signed a bipartisan bill, SB 5773, giving state employees access to family Health Savings Accounts, a workplace benefit that is common in the private sector.[17] HSAs help control costs by giving employees control over their own health care dollars, making them better stewards of how that money is spent. To save money and enhance worker morale, state officials should encourage public employees to choose family Health Savings Accounts as the way to receive their health benefits.

Compulsory Union Deductions from Employee Paychecks

Currently, the Washington state workforce operates mostly as 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 executives and the governor.[18] 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.

Washington's "Union Security" Clause

In 2007, the Washington legislature approved a new contract negotiated by unions and the governor behind closed doors, in which union executives insisted on a "union security" clause requiring mandatory paycheck deductions. Any employee who does not want to join the union or pay mandatory dues can be fired.

The text of a typical union security clause is shown below (emphasis added)[19]:

> **Article 36.3 Union Security**
>
> All employees covered by this Agreement will, as a condition of employment either become members of the Union and pay membership dues or, as nonmembers, pay a fee as described in A, B, and C below, no later than the 30th day following the effective date of this Agreement or the beginning of their employment. If an employee fails to meet the conditions outlined below, the Union will notify the Employer and inform the employee that his or her employment **may be terminated**.

Despite the mandatory requirement for most state workers to join and pay a union, the unions are not public entities; they are private organizations. This scheme shields the unions from the accountability and transparency requirements mandated under state law for public entities.

As an employer, the state should not force individuals to join selected private organizations. However, if such a requirement does

exist, the unions should be treated as public entities and be subject to all applicable laws and disclosure requirements. State workers and the public should be fully informed about union activity.

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 643,500 current and retired employees and pays out about $2.9 billion in benefits each year.[20]

The state pension plans have assets of $57 billion but are responsible for liabilities of more than $62 billion.[21] That means the state pension plans are underfunded by at least $5 billion, creating a potentially crushing financial burden for future taxpayers.

Defined Contribution Plans

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

As an additional benefit, defined-contribution plans protect future taxpayers from massive unfunded liability, such as the one state plans carry today.

Recommendations

1. **Restore the legislature's authority over state collective bargaining agreements.** The legislature should reassert its authority over state employment policy to ensure greater accountability and transparency, and it should advance improvements that reduce costs while rewarding the excellent work of state employees.

2. **Adopt collective bargaining transparency.** State employment contracts should not be negotiated in secret. Taxpayers are ultimately responsible for funding these agreements. They should be allowed to monitor the negotiation process and to hold state officials accountable for their actions.

3. **Bring state employee health care premium contributions 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. **End the compulsory taking of monthly union dues from public employee paychecks.** If government union leaders collected voluntary dues from their members instead of resorting to mandatory automatic payroll deductions, they would be more responsive to their members' needs and views. It would also encourage union officials to be more transparent and accountable for how they spend their members' money.

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 mitigate the financial crisis in the state retirement system. Lawmakers can best keep their promises to retirees by creating a modern pension system that is personal, flexible and financially sustainable.

4. Performance-Based Competitive Bidding

Recommendations

1. Encourage state agencies to save money and improve service to the public by using performance-based competitive bidding authority.

2. Protect competitive bidding authority from being restricted or bargained away during secret collective bargaining negotiations.

3. Adopt a competition council to help agency managers identify cost savings and public services that could be improved through competitive contracting.

Background

The state's tight financial situation lends fresh urgency to the use of performance-based competitive bidding. Competitive bidding allows state agencies to open work normally performed 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. Competition allows government managers to provide improved services to the public at lower cost to taxpayers.

Until recently, state law, following a court ruling in the 1978 Spokane Community College case, held that any work historically performed by state workers had to always be performed by state workers.[22] 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 the authority to open work contracts to competitive bidding.[23] The new rule went into effect in July 2005.

Unfortunately, the state has done little to gain savings from competitive bidding with the private sector under the provisions of this law. This is partly because of 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.

A performance audit conducted by the Joint Legislative Audit and Review Committee (JLARC) in January 2007 found:

> few agencies have competitively contracted for services in the 16 months since receiving authorization to do so.
>
> Agency managers reported two main reasons for not competitively contracting. First, managers perceive the process itself to be complicated and confusing, providing a disincentive to pursue competitive contracting. Second, competitive contracting is a subject of collective bargaining, which creates additional challenges by requiring labor negotiations. Managers must bargain, at a minimum, the impacts of competitive contracting.
>
> Additionally, some agency collective bargaining agreements include provisions which [sic] prohibit agencies from competitively contracting.

In a 2009 update of the JLARC audit, Washington Policy Center asked the state Office of Financial Management's contract division how many personal service contracts have been requested or approved by agencies under the Civil Service Competition provision of the 2002 law. The answer was zero.[24] Washington Policy Center also surveyed various agencies to see how they were taking advantage of this reform.

Of all the agencies surveyed, only the Health Care Authority reported it had used competitive contracting under the 2002 law. Typical of agency responses was this answer from Washington State University (WSU):

> I have been advised that WSU has not executed any contracts under this 2002 Civil Service Reform/RCW 41.06.142 process. It's apparently a complicated process and the administrative decision was made early on that WSU would not participate or take any action that would implicate this process (i.e., contract for purchased services that would displace classified staff).[25]

The primary flaw lawmakers included in the 2002 civil service law was making an agency's contracting out authority subject to collective bargaining. Public sector unions have a strong financial incentive to induce agency managers to surrender their ability to seek lower prices because the agency's work is then reserved for union members, regardless of cost to taxpayers.

Policy Analysis

The benefits of competitive pricing that the legislature and Governor Locke expected to achieve from the Personnel System Reform Act of 2002 have not been realized. A performance audit investigation by JLARC staff, supported by Washington Policy Center's independent survey of major agencies, finds that state managers have done almost nothing to carry out the legislature's intended competitive pricing policy.[26]

This is not because agency managers are not interested in lowering the cost of delivering public services. State employees routinely look for ways to do their jobs better and to make their agency's budget go further. The reason is that managers face two insurmountable obstacles in seeking savings from ending in-house monopolies and moving to competition.

First, the 2002 law made competitive bidding subject to mandatory collective bargaining negotiations. Leaders of public sector unions have made no secret of their stout opposition to any form of competition, seeing the possibility of contracting out as threatening their access to government workers. Among the key provisions of most mandatory collective bargaining agreements adopted since 2002 is the restriction or elimination of an agency's ability to seek lower prices through competition.

Second, a successful 2008 lawsuit filed against the state by leaders of public sector unions has made it difficult or impossible for an agency to implement a competition program if a state worker might become a "displaced employee" as a result. Given these severe limitations, competitive bidding in Washington remains an impressive management tool in theory but is completely useless in practice.

Four Benefits of Competitive Bidding

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

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.

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.[27]

Competition Council

To help facilitate the move to robust performance-based competitive contracting, state agencies would benefit from the creation of a formal competition council. The state auditor's office notes that this is a "leading practice" across the country. Following is one of the recommendations from a recent performance audit of the state's contracting process conducted by the state auditor:

> Create a centralized office or staff with a high degree of expertise in performance measurement and performance-based contracting to provide technical assistance to agencies in developing and improving their use of performance measures and outcomes.[28]

Though not identical to this recommendation, companion bills were introduced in 2011 to create a version of this reform (HB 1873 and SB 5316), but they were not acted on by the legislature. From the bill reports:

> Creates the Washington competition council as an advisory council within the office of financial management to, among other duties:
>
> > (1) Examine and promote methods of providing select government-provided or government-produced programs and services through the private sector by a competitive contracting program; and
> >
> > (2) Develop an institutional framework for a statewide competitive program to encourage innovation and competition within state government.[29]

As noted by the state auditor, several states take advantage of this type of reform. Here are two examples:

> **Florida** – In 2006, lawmakers in Florida created the Council on Efficient Government to help managers at state agencies focus their public workforce on carrying out each agency's core mission, while hiring outside contractors to perform lower-priority work. The council's goal is to "deliver services by outsourcing or contracting with private sector vendors whenever

vendors can more effectively and efficiently provide services and reduce the overall cost of government."

The council evaluates state services for feasibility and cost-effectiveness before any public work is considered for competitive bidding. If a bidding process would not reduce costs to the public, the work is not contracted out.[30]

Texas – In 1993, Texas lawmakers created the Council on Competitive Government to identify opportunities within state agencies to lower costs through competition. The legislature gave the Council instruction to "identify, study and finally determine if a service performed by one or more state agencies may be better provided through alternate service methods, including competition with state agencies that provide the service or commercially available sources."[31]

Public employees should be encouraged to participate in competitive bidding processes, but union leaders should not be able to exercise a veto over a management decision that a public service can be improved and streamlined through price competition. Adopting a formal competition council would help agency managers identify cost savings and public services that could be improved through competitive contracting.

Letting state agencies use competitive pricing to lower the cost of delivering public services, and at the same time improve service quality, is one of the reforms necessary to solving the state's long-term budget problem. Properly implemented, a well-managed competitive pricing policy would lead to a more cohesive state government that focuses on core services, while using competition to tap the efficiencies of the open marketplace.

Recommendations

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

2. **Protect competitive bidding authority from being restricted or bargained away during secret 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 contracting out from union and political influence by removing it from the secretive collective bargaining process. Improving service to the public is too important to be a bargaining chip in closed-door government labor negotiations.

3. **Adopt a Competition Council to help agency managers identify cost savings and public services that could be improved through competitive contracting.** A competition council would help take the politics out of contracting and provide the business case and monitoring expertise necessary to ensure taxpayers are receiving contract value and results.

Additional Resources from Washington Policy Center, Available at washingtonpolicy.org

"A Review of Washington State's 2011–13 Budget and Recommendations for Structural Reform," by Jason Mercier, July 2011.

"Ending the Spending Crisis: Structural Reforms for a Sustainable State Budget," by Jason Mercier, January 2011.

"How Competitive Contracting Can Help Balance the Budget without Raising Taxes," by Jason Mercier, December 2009.

"Resources for Building the State Budget," by Jason Mercier, February 2009.

"Changing the Budget Status Quo," by Paul Guppy and Jason Mercier, December 2008.

"Citizens Guide to SJR 8206, Budget Stabilization Account," by Jason Mercier, August 2007.

"Washington Votes for Fiscal Discipline, Against Tax Increases," by Jason Mercier, November 2007.

"State Lawmakers Should Return the Extra Money They are Taking from Taxpayers," by Paul Guppy, December 2006.

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

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

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CHAPTER TWO
TAXATION POLICY

1. Guiding Principles of Taxation[1]

Recommendations

1. Adopt guiding principles based on equity and economic neutrality to change Washington's tax code, so the tax system is used to raise needed revenue for core functions of government, not to direct the behavior of citizens.

2. Policymakers should reduce the financial burden they place on citizens to promote prosperity and opportunity for everyone.

Background

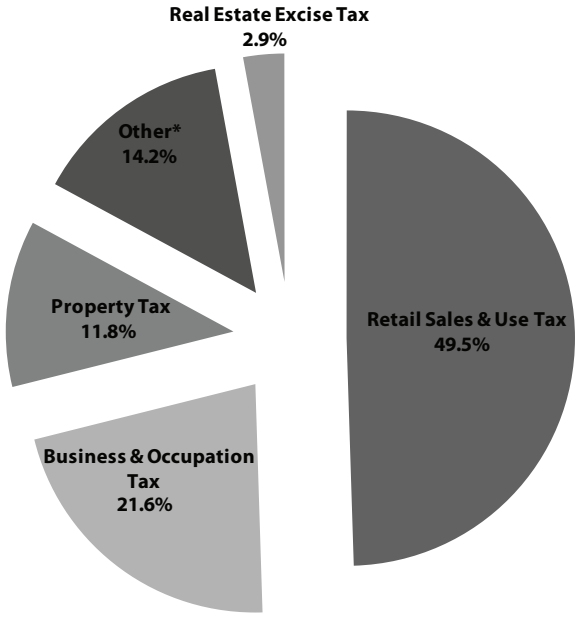
The people of Washington pay over 50 different kinds of taxes at the state and local level.[2] This does not include federal taxes. The largest single revenue source for state and local government is the general sales and use tax, representing about 50% of all taxes. The next largest revenue source is the Business and Occupation (B&O) tax. The chart on the next page shows the sources of state general fund revenue.

The proper function of taxation is to raise money for core government services, not to direct the behavior of 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 try incessantly to guide, micromanage and steer people's lives by manipulating tax laws.

Taxation will always impose some drag 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 to

Sources of General Fund-State Revenues

2011-13 Biennium Estimates



Retail Sales & Use Tax	$15.694 billion
Business & Occupation Tax	$6.845 billion
Property Tax	$3.754 billion
Other*	$4.501 billion
Real Estate Excise Tax	$930 million
Total	**$31.724 billion**

*Other includes revenue from liquor sales, tobacco taxes, insurance premiums, etc.

Source: June 2011, Revenue Forecast Council, GF-S cash basis

advance Washington's economic interests and promote prosperity for its residents.

Policy Analysis

The fundamental principles presented here provide guidance for a fair and effective tax system; that is, one that raises needed revenue for core functions of government while minimizing the financial 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 core functions of government, not to 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 are treated the same. The government should not use the tax system to pick winners and losers in society or to unfairly shift the tax burden onto one class of citizens. The tax system should not be used to punish success or "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, with 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 the incomes of 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 high taxes lower the economic welfare of citizens, policymakers should minimize the economic and social problems that taxation imposes. Citizens then gain the benefits of a low tax burden. These benefits are summarized below:

- **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 that 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 change Washington's tax code, so the tax system is used to raise needed revenue for core functions of government, not to direct the behavior of citizens.** A fair tax system means public officials should take no more money from citizens than is needed to pay for the core 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 reduce the financial burden they place on citizens to promote prosperity and opportunity for the benefit of everyone.** Washingtonians need and expect to receive basic government services, and taxes must be collected to pay for these services. 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 shows respect for the citizens of our state.

2. State Income Tax

Recommendation

Avoid enacting a state income tax.

Background

Washington is one of only nine states that does not tax citizens' personal 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

The people of Washington first considered an income tax in 1932, when it was enacted by a large majority. In 1933, the measure was struck down by the state supreme court as a violation of the constitution's uniformity clause. In the years since 1932 Washington voters have rejected a state income tax five times (most recently in 2010 with 64% of voters rejecting Initiative 1098), and the supreme court has invalidated income tax bills passed by the legislature.

As is the case with the state's existing taxes, once in place an income tax would likely be expanded, as lawmakers in Olympia have repeatedly demonstrated their willingness to increase the rate and broaden the application of a new tax in the years following its enactment. Examples include:

- The first state sales tax was two percent. Today the state tax is 6.5%

- The first state gas tax was one cent per gallon. Today the state tax is 37.5 cents per gallon

- The payroll tax for unemployment compensation started at 1.8%. Today it can be as high as five percent

- Property tax rates started at under $1 per thousand dollars of assessed value. Today rates are closer to $10 per thousand dollars of assessed value.

Americans experienced a similar pattern after the federal income tax was enacted. The initial federal income tax rate started at one percent and applied only to the very wealthiest people in the country, less than one percent of the population. In the years following, however, Congress progressively increased tax rates and lowered income thresholds until paying the income tax became a permanent part of monthly expenses for most working households.

Promoting Washington as one of only nine states without a general income tax is a key part of the state's economic development policy. State officials use the absence of an income tax as a major selling point in trying to attract new businesses to Washington. The state Department of Commerce lists "No income tax in Washington" as contributing to a favorable business environment. The Department's website says:

> Washington's lack of income tax helped earn the state the rank of 9th in the 2010 State Business Tax Climate Index by the Tax Foundation in Washington, D.C.[3]

In a special advertising section recently published in a national business magazine, state officials highlight "0 income tax for individuals and business" as a leading business advantage for Washington.[4] They note that the number of registered businesses in the state has more than doubled in 15 years, adding:

> That's because of the favorable business climate. The state has no income tax and energy costs are below the national average.[5]

This conclusion is supported by The Tax Foundation, which reports that the 10 states with the best business climate share one

thing in common—they either have no sales tax or no income tax. The Foundation's Business Climate Index report finds:

> It is obvious that the absence of a major tax is a dominant factor in vaulting these ten states to the top of the rankings.[6]

> Clearly a zero rate is the lowest possible rate and the most neutral base, since it creates the most favorable tax climate for economic growth. The states that have a zero rate on individual income, corporate income or sales gain an immense competitive advantage.[7]

By enacting an income tax, Washington would be giving up a significant competitive advantage in relation to other states. Washington has a high sales tax. Adding an income tax means Washington would join the states that impose all the major forms of tax on their citizens. The Tax Foundation reports:

> The lesson is simple; a state that raises sufficient revenue without one of the major taxes will, all things being equal, out-compete those states that levy every tax in the state tax collector's arsenal.[8]

The experience of other states also shows an income tax does not contribute to increased stability in state finances. Oregon, New Jersey, and California all have income taxes and have suffered major budget shortfalls in recent years, just as Washington has.

Economists make similar predictions about the instability an income tax would bring to Washington state finances:

> The consensus [among national experts on taxation] is that the income tax—particularly the type of income tax proposed by I-1098 [high earners income tax]—might rake in more money, but it will also make state tax revenues more volatile than they are today.[9]

One researcher notes that, while people disagree about the merits of an income tax, "on the factual question, volatility will be greater with an income tax."[10]

In fact, Standard and Poor's July 2011 credit rating for the state notes among the factors that positively impacts Washington's credit rating:

> The state's reliance on retail sales and business and occupation (gross receipts) taxes for a combined 68% of general fund tax revenues typically afford more revenue stability than that of other states, many of which rely on personal income tax revenues.[11]

In 2010 income tax supporters placed a measure to create an income tax, Initiative 1098, on the November ballot. The proposal would have levied an income tax on only the top two percent of earners in the state. As mentioned, Washington voters soundly rejected the idea, defeating Initiative 1098 by nearly two-to-one.[12]

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

Avoid enacting a state income tax. A state income tax would have a negative effect on the Washington economy. An income tax would reduce state competitiveness, add cost and complexity to the tax code and reduce the incentive for people to work, save and invest. Policymakers should respect the views of voters when they decisively rejected a state income tax in 2010. The absence of an income tax is one of the few clear advantages Washington's business climate has over those of other states.

3. Business and Occupation Tax Reform

Recommendation

1. Centralize and streamline the administration of the B&O tax, with strict apportionment to local governments.

2. Adopt a constitutional amendment replacing the Business & Occupation tax with a simpler, fairer Single Business tax.

Background

Washington's Department of Revenue defines the B&O tax as a tax on "gross receipts of all business operating in Washington, for the privilege of engaging in business. The term gross receipts means gross income, gross sales, or the value of products, whichever is applicable to a particular business."[13]

Today's B&O tax stems from the Business Activities Tax enacted in 1933, which was the state's first gross receipts tax on businesses. Lawmakers imposed the tax as a temporary emergency measure to raise revenue for the government during the Great Depression. After an unsuccessful court challenge, the state supreme court upheld the tax later that year.

In 1935, the legislature amended the Business Activities Tax to create the current B&O tax. At first, the tax comprised two simple rates levied annually on gross receipts: 0.5% on services, and 0.25% on all other businesses. By the mid-1990s, the legislature had enacted 13 different B&O rates levied on a wide variety of industries. In the late 1990s, the legislature partially streamlined the system, reducing the number of tax rates to ten.

As a levy on gross receipts, the B&O tax does not allow business owners to deduct the cost of doing business, such as payments for materials, rents, equipment or wages, when calculating the amount of tax they must pay. However, over the years the legislature has passed numerous special deductions, credits and exemptions as a benefit to some industries. At the same time, lawmakers have increased B&O tax rates

over time, so that total revenue going to the state treasury would not decline as some industries received favored treatment.

The B&O tax is the second largest source of tax revenue for the state, after the retail sales tax. In fiscal 2008, the state collected just over $2.9 billion in B&O taxes from businesses, representing over 18% of all taxes collected for the state general fund. In comparison, the state collected $8.3 billion in retail sales taxes over the same period.

Policy Analysis

One of the problems with the B&O tax is the extra layer of taxation it applies to all products and services at each stage of production—an effect called "pyramiding." Pyramiding means the tax is structured so that it is applied more than once to the same product or service, resulting in additional money going to the state and a heavier financial burden on business owners and their customers.

Naturally, taxing the same products and services more than once was unpopular and was viewed as unfair. However, the Department of Revenue described the early days of the B&O tax as a "temporary, emergency revenue measure during the Depression."[14]

There is wide consensus in Washington that the B&O tax is unfair and badly in need of reform. There is equally wide disagreement, however, over exactly what should replace the current tax structure.

Proposed reformed tax systems are often based on the goal of securing a specific amount of money for the legislature to spend, generally stated as, "In order to raise X amount of tax dollars the legislature needs to enact this particular proposal." However, a just and efficient tax system should be based upon fundamental principles that emphasize the protection of taxpayers and the efficiency of government services.

Centralize Administration

Replacing the B&O tax system would take time. Meanwhile, lawmakers can reduce the burden the present tax imposes on business owners. Policymakers should streamline the cost of complying with the B&O tax by centralizing its administration.

Currently, 38 Washington cities impose their own version of a B&O tax, and unlike local sales and use taxes that are collected by the Department of Revenue, all the administrative functions of municipal B&O taxes are conducted by individual cities. Shifting administration of the tax to the Department of Revenue, as is already done with local sales taxes, would reduce the cost and complexity of city B&O taxes and would greatly help businesses. This move would particularly help small business owners, who are disproportionately hit by regulatory compliance costs.

Centralization of B&O municipal tax administration would ensure uniformity of tax compliance for firms that operate in several different jurisdictions. Business owners should not be taxed at a rate that exceeds 100% of their gross receipts liability. This problem is addressed by ensuring that municipal taxation of gross receipts occurs only where there is a business-related activity.

A requirement of significant physical presence in the jurisdiction should be a prerequisite to taxation by that city. In other words, there must be an economic connection between actual business activity and the amount of tax owed. Simply estimating the level of business activity, as some cities do, should not be the basis on which municipal officials impose a local tax on a business.

Single Business Tax

In addition to the immediate improvements, elected officials could gain long-term benefits by adopting a replacement of the B&O tax based on the following principles:

- Revenue neutral.
- Treat all business owners equally by using one flat rate.
- Eliminate loopholes and special treatment.
- Simplify administration of the tax to reduce compliance costs for business.

The B&O tax should be replaced with a Single Business Tax, also called a gross receipts margins tax, based on total receipts. This approach

is similar to that taken by the Texas Franchise Tax.[15] The following provisions would be part of a constitutional amendment needed to create a Single Business Tax in Washington:

- A Single Business tax would be created as the only tax the state and cities (but not counties) could levy on employers.
- All existing state and city taxes on employers would be repealed, except for the new Single Business tax.
- Counties, which currently do not impose business taxes, would continue to be prohibited from doing so.
- The change would only affect the business tax. There would be no change in state and local sales taxes and property taxes currently paid by businesses.

The Single Business Tax would be computed by subtracting from an employer's total gross annual receipts the cost of either production or total compensation to determine the amount of money against which the tax rate is applied. The taxable amount could not be more than 60% of total gross receipts.

A uniform tax discount would be provided to reduce the impact of the Single Business Tax on small businesses with low profitability. Credits and exemptions that give special tax breaks to some industries would be eliminated. The exact legal meaning of production costs and of compensation cost would be defined by the legislature.

The initial Single Business Tax rate would be set by the legislature and would comply with the constitutional requirement that taxes be applied uniformly to all business owners. In other words, adoption of a Single Business Tax would assure that everyone pays the same rate. The legislature would set the tax rate at a level that would be revenue neutral; the state would continue to collect the same amount of money under a Single Business Tax as it does under the current B&O tax.

Local officials (excluding counties) could impose a separate tax on businesses located within their city borders, but the same uniformity requirement would apply. Any local business tax would have to be based on a single rate applied equally to all business owners. For simplicity, all

business taxes, state and local, would be collected by the state, and the local portion would be distributed each year to city treasuries.

In order for the Single Business Tax to be workable, lawmakers would have to enact precise definitions for the legal meanings of the terms "cost of production," "cost of compensation," and to set the "uniform tax discount."

A business owner would be given a choice of three ways to calculate his taxable margins, and would be allowed to choose the one that results in the lowest tax burden. Calculating the taxable margins could be based on either the business's:

1. Total gross receipts minus labor costs,

2. Total gross receipts minus all production costs except labor, or

3. 60% of total gross receipts.

Then the business owner would multiply the taxable margin by the Single Business Tax rate for each taxing jurisdiction. The final amount owed for each taxing jurisdiction would be sent to the state in one payment, and portions would then be distributed by the state to local governments.

Recommendations

1. **Centralize and streamline the administration of the B&O tax, with strict apportionment to local governments.** The collection and administration of state and local B&O taxes should be centralized to provide businesses one point of contact to pay their taxes.

2. **Adopt a constitutional amendment replacing the Business & Occupation tax with a simpler, fairer Single Business tax.** The B&O tax should be replaced with a revenue neutral Single Business Tax that provides a more rational basis for tax liability, while simplifying the financial burden state lawmakers place on businesses and their customers.

4. Property Tax Limitation

Recommendations

1. Maintain Washington's uniformity principle when taxing property, so all classes of property owners are treated the same under the law.

2. Reduce or phase out the state portion of the property tax 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 1,720 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 that 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.

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: rate x tax base = revenue**
- **Budget-based system: revenue ÷ tax base = 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.[16] 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.[17] 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.[18]

Judges Overturn, and Legislature Re-enacts, 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.[19]

Judge Roberts' ruling was wrong on two counts. First, the voters were not misled. The ballot title clearly states what Initiative 747 would do: limit the increase in property tax collections to one percent per year.[20] Second, Judge Roberts said the initiative did not accurately reflect the law it sought to amend. But a separate court ruling changed the underlying law *after* Initiative 747 was filed, so initiative sponsors had no way of updating the text of the initiative before it appeared on the ballot.

Under Judge Roberts' hyper-technical legal reasoning, it is impossible to file a valid ballot initiative in Washington state, since initiative sponsors have no way of knowing how the legislature or a judge may change the law the initiative seeks to amend in the 10 months between the filing deadline and election day.

Judge Roberts' ruling, though flawed, was upheld by a sharply divided state supreme court in 2007. The public reaction was so strong that lawmakers quickly convened a one-day special session for the purpose of re-enacting the Initiative 747 property tax limitation. Since the courts had struck down Initiative 747 on a procedural technicality, the legislature's re-enactment of the measure makes it immune to further legal challenge.

Under the Initiative 747 law, 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

Some tax-relief bills introduced in the legislature seek to create a "split roll," in which, for the first time, different classes of property owners would be treated differently under the law. For example, some bills offer tax relief to homeowners, but not to business properties. If state tax collections remain the same, the result would not be broad-based tax relief at all, but merely an unfair shift of part of the existing tax burden from one group of property owners to another.

Efforts to provide property tax relief to Washingtonians should maintain the longstanding constitutional principle of treating the same class of taxpayers equally and uniformly. Lawmakers should avoid proposals that promise tax relief, but instead just shift the tax burden from one group of citizens to another, thus using tax policy to create winners and losers in society.

The simplest way lawmakers can ease the financial burden they place on citizens is to phase out the state property tax levy. Permanently phasing out the state property tax would not reduce local taxes collected by county and local governments. It would, however, induce state-elected officials to set clear priorities in state spending.

A proposal was introduced in 2003 to phase out the state portion of property taxes over ten years. A fiscal analysis of this bill (SB 5127) notes:

> The state levy is approximately 25% of the property tax bill. Taxpayers may see their bill reduced by this much over the span of the bill depending on the increases in local levies ... The state portion of property tax is distributed to the general fund, not to local governments. Therefore, local governments will not directly lose revenue on state property tax collections.[21]

Although this phase-out would not have impacted local property tax levies, the proposal also would have amended RCW 84.52.050 (limitation of levies) to prohibit local governments from adopting any levy expansion due to the gap left by the state levy reduction.

The state property tax generated approximately $3.7 billion in revenues during the 2009–11 biennium or 13% of total revenues for the

state budget. To help facilitate the phase-out of the property tax without unduly burdening state finances, a phase-out could be conditioned on the state first securing a five percent budget reserve with revenues in excess used to buy down the state property tax.

This would allow state officials to secure adequate savings for budget sustainability, while also providing necessary tax relief as the economy and state finances recover.

Recommendations

1. **Maintain Washington's uniformity principle when taxing property, so all classes of property owners are treated the same under the law.** Washington tax law contains a fundamental principle of fairness: All property owners are treated equally when being taxed by state and local officials. Policymakers should defend this principle and resist proposals to create a so-called "split roll," by which separate classes of property owners would be created and then taxed at different rates.

2. **Phase out the state portion of the property tax 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 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. One way to do this without impacting local government financing would be to phase out the state property tax levy.

5. Tax and Fee Protections

Recommendations

1. Adopt a constitutional amendment requiring a two-thirds legislative vote to raise state or local taxes.

2. Give tax increases an expiration date.

3. Like gas-tax revenue, toll revenue should be constitutionally protected.

4. Dedicated tax and user-fee accounts should be protected to prevent lawmakers from "sweeping" these accounts to spend the money on general programs.

Background

The voters have consistently voiced a desire to restrict the ability of government officials to unduly raise the tax burden. Initiative 601, passed by voters in 1993, required not only a two-thirds vote of the legislature to raise taxes, but also voter approval of any tax increase in excess of the state spending limit. The two-thirds vote requirement for tax increases was ratified by voters, for the fourth time, in 2010, when Initiative 1053 passed by 64%.

Despite numerous legislative amendments to the law, including several "suspensions," the legislature has never fully repealed the mandate from voters that tax increases require a two-thirds vote. In fact, in 2006, legislative Democrats voted to repeal their 2005 suspension of the law with the passage of SB 6896 (though they would later again suspend the law in 2010).

Not able or willing to fully eliminate the two-thirds restriction legislatively, opponents have tried over the last 18 years to get the supreme court to throw out the requirement, including a new effort filed by the Washington Education Association and several House Democrat lawmakers in 2011. This latest judicial challenge seems unlikely to succeed because the court has had several opportunities over the years

(since passage of Initiative 601 in 1993) to overturn the two-thirds requirement and has consistently declined to do so.

The only sure way to end this debate once and for all is for voters to vote on a constitutional amendment. This would provide the public and policymakers with predictability about whether this tax protection will exist from one year to the next.

Tax restrictions help prioritize government spending and provide a legislative climate in which increases in the financial burden officials impose on citizens are difficult to pass. Under such a restriction, if lawmakers felt they really needed to collect more money from people, tax-increase proposals could be submitted directly to voters for approval.

Of the sixteen states with supermajority tax restrictions, only Washington's is not part of the state constitution.

Policy Analysis

Constitutional Taxpayer Protections

Since the legislature has repeatedly suspended the voter-approved requirement that tax increases require a two-thirds vote for approval, constitutional protections are needed. These protections, however, should not be limited to the state-imposed tax burden, but should extend to local taxpayers as well.

To encourage government officials to build a strong public consensus on the need for any proposed tax increase, a two-tiered approach should be adopted. Government officials should utilize two different options to raise the tax burden:

1. With a two-thirds vote of the legislative body, or

2. With a simple majority vote pending ratification by the voters via a referendum.

Either option would ensure that a broad consensus is reached and the taxpayers are included on any policy decisions that would result in an increase in their tax burden.

Tax Increase Sunsets

Often, when Congress enacts a tax cut or a tax exemption, it includes a sunset clause, meaning the cut or exemption will expire on a certain date. Inevitably, a sharp political debate ensues when an expiration date nears, as lawmakers grapple with whether to vote to extend the tax reduction or to let it end. Often they allow a tax break to quietly expire without lawmakers having to vote it up or down.

Temporary tax cuts and exemptions create financial unpredictability for taxpayers from one year to the next. Ultimately, when tax cuts and exemptions are set to expire automatically, it is the same as building automatic future tax increases into the law.

In contrast, tax increases are rarely set to expire, or "sunset," on a certain date. They tend to be permanent, thus allowing lawmakers to avoid addressing them or having to 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 then redirect the revenue into the general fund or mark it for future spending. It becomes tax revenue in search of spending.

Citizens and businesses pay more than 50 different taxes in Washington.[22] Lawmakers routinely increase these taxes incrementally or create new ones, even during times when the natural expansion of the economy is pouring additional money into state coffers.

Protect Toll Revenue

State lawmakers are gradually adopting a system of funding transportation projects with toll revenue. Unlike gas taxes, toll revenue is not constitutionally directed to be used only for highway purposes. The toll revenue can be redirected to any purpose, including non-transportation government spending, such as entitlement programs.

To ensure that vital transportation infrastructure needs are met, and to ensure that fees paid by drivers are used on projects that benefit drivers, toll revenue should not be diverted to general spending or other non-highway purposes. Toll revenue should receive the same protection that gas-tax revenue receives under the state constitution. If toll revenue were constitutionally protected, drivers would be more willing to accept

a broad-based system of road tolls to help pay for and manage traffic congestion relief.

Protect Dedicated Tax and Fee Accounts

According to the state budget's balance sheet, the governor and legislature authorized more than $1.2 billion in fund transfers of "dedicated" accounts in the 2009–11 budget. This means those tax and fee revenues have been raided and redirected from their promised dedicated purposes.

This problem is not limited only to transfers from dedicated accounts to the main budget account (Near General Fund State) but also between dedicated accounts.

These transfers take funds from a dedicated account and spend it on purposes other than those to which the public was promised the revenue would be directed. Dedicated accounts should be protected to ensure fund balances are not "swept" by lawmakers, in effect creating de facto tax increases.

To facilitate more user-pay funding models for government service, dedicated tax and user-fee accounts should be protected from budget raids.

One possibility is to require a supermajority vote in order to raid a dedicated account. Dedicated tax and user-fee based accounts could also have a breaker formula to reduce the tax/fee level after a certain fund balance is reached, so account balances do not get too large and become targets of fund sweeps in the first place.

As lawmakers reset state spending for the 21st century, they should look for state services that are candidates for user fees, but they should do so in a manner that ensures the revenues generated actually go to providing the promised services.

Recommendations

1. **Adopt a constitutional amendment requiring a two-thirds legislative vote to raise state or local taxes.** Since public officials often refuse to honor voter-approved taxpayer protections, the constitution

should be amended to require a two-thirds vote of a state or local legislative body, or voter approval through a referendum, before any state or local tax increase takes effect.

2. **Give tax increases an expiration date.** When new taxes and tax increases are set to expire, lawmakers will have the opportunity to determine whether the tax is serving its intended purpose. If collecting revenue from the tax still serves the public interest, lawmakers can reauthorize it for a further period of time. If the project or goal for which the tax was imposed has been accomplished, the tax should expire and citizens should be permitted to keep their money.

3. **Like gas-tax revenue, toll revenue should be constitutionally protected.** To gain public support for funding transportation projects with road tolls and to ensure that road revenues are actually spent on reducing traffic congestion, toll revenue should receive the same constitutional protection currently given to gas-tax revenue.

4. **Dedicated tax and user-fee accounts should be protected to prevent lawmakers from "sweeping" these accounts to spend the money on general programs.** To facilitate the move to more user-pay funding models for government service, dedicated tax and user-fee accounts should be protected by a higher vote threshold in the legislature to ensure fund balances are not easily "swept" by lawmakers, in effect creating de facto tax increases.

6. Tax Transparency Website

Recommendation

Create an online searchable database of all tax districts and tax rates in the state, modeled after the existing state budget website.

Background

According to the Department of Revenue, there are some 1,840 taxing districts in the state whose officials impose various taxes on Washingtonians. Unfortunately for taxpayers, there is no single comprehensive resource available to help individuals and businesses learn which taxing districts and rates they are subject to and how much officials in each taxing district add to their total tax burden. A typical home, for example, can be located in as many as ten different taxing districts.[23]

Policy Analysis

To improve the transparency of state and local taxation, lawmakers should create an online searchable database of all tax districts and tax rates in the state, modeled after the state spending website www.fiscal.wa.gov. Such an online tax database would allow citizens to find their state and local tax rates (such as property and sales taxes) by entering their zip code or street address, or by clicking on a map showing individual taxing district boundaries.

An online calculator could be provided, for educational purposes only, to allow individuals and business owners to estimate their total tax burden and which officials are responsible for which parts of it. The information on the website would not be legally binding. A citizen's legal tax obligation would still be set each year by the taxing authority in each jurisdiction.

Taxing districts should be required to report their tax rates annually to the state and to report any changes to their tax rates within 30 days of enactment of rate changes. This information would then be posted on a searchable website available to the public.

Increasing the ease of public access to state and local tax rates would contribute to governmental accountability, public participation and the understanding of the cost of government services. Improved tax transparency would also facilitate meaningful tax competition among taxing districts, as taxpayers compare potential tax liabilities based on where they decide to live or locate their businesses.

By creating an online searchable database of all tax rates in the state for each taxing district, policymakers would make taxation more transparent and help citizens learn more about what government decisions mean to their pocketbooks—helping to remove some of the mystery surrounding taxation.

Recommendation

Create an online searchable database of all tax districts and tax rates in the state modeled after the state budget website. The legislature should provide citizens with easy access to state and local tax rates in an open, transparent and publicly accessible way. Increasing public access to state and local tax rates would significantly contribute to government accountability, public participation and an understanding of the cost of government services.

7. Tax Advantages of Tribal Businesses

Recommendations

1. State leaders should negotiate an agreement with tribal casino owners so that a portion of Indian gambling profits are paid into the state general fund in lieu of taxes, as is common in other states.

2. Policymakers should set up a review of the relationship between the state and tribal businesses, especially in new areas of commerce, like gas stations, in which tribes compete against non-Indian citizens.

Background

For decades, tribal businesses (including casinos and hotels) have benefited from a system of rules that gives Indians significant business advantages over non-tribal citizens. Whether in the form of exemptions from unemployment insurance, business and occupation taxes, or workers' compensation taxes, tribal businesses are able to take advantage of a reduced regulatory environment. Nowhere is this exemplified more than in the gaming industry.

In Washington there are 29 federally recognized Indian tribes. These tribes operate 28 casinos, which together generated $1.95 billion in gross revenue in 2011.[24]

The total combined membership of the 29 tribes in the state is just over 61,500 people, or 0.009% of the people in the state. Some tribes have as few as 200 members, while the largest has more than 10,000.[25] Tribal membership is defined as the certified number of people who are officially recognized by tribal leadership, based on their racial identity.

Who is an Indian?

There is no legal definition of who is an American Indian. Each tribe decides on and enforces its own membership rules. The National Indian Gaming Commission describes federal policy this way:

> Indian tribes have the authority to determine membership requirements. Many tribes have a blood quantum requirement (i.e., one-fourth) and may have additional requirements relating to residency, place of birth, or enrollment deadlines. The Federal Government generally requires a person to be a member of a federally recognized tribe to be eligible for federal benefits.[26]

For example, leaders of the Snoqualmie Tribe, in a dispute over control of the tribe's anticipated casino profits, recently expelled 60 members because they "don't have the required one-eighth tribal blood to be members."[27] At the same meeting of designated "preferred voters," tribal leaders banished eight members, depriving them of all tribal benefits, including the right to be on tribal land and the right to claim Indian identity.[28]

For purposes of the U.S. Census, the definition of who is an Indian is based on self-identification. In 2010, 2.78 million people identified themselves as American Indian or Alaska Native.[29] Only a small portion of people who self-identify, however, are registered members of a recognized Indian tribe.

Tribal Businesses' Tax Status

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.

Some tribal businesses make limited 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.

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 Occupation 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% on gross receipts from gambling. More than half of local jurisdictions that tax non-tribal card rooms impose a tax rate of around 10 or 11%.

Many tribes are moving beyond their traditional core business of operating casinos and game rooms and branching out into other industries. Already, more than 50 tribal gas stations are exempt from paying 75% of the state fuel tax (the tax is 37.5 cents per gallon), underselling non-tribal operators who cannot compete with tax-exempt prices. Proposals for future tribal businesses also include 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.

The Indian Gaming Regulatory Act

In 1988, Congress passed the Indian Gaming Regulatory Act prohibiting states from taxing tribal gaming revenues. However, tribes sometimes negotiate a voluntary profit-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.

In Washington, however, there is no profit-sharing agreement between the state and Indian tribes, as there is in most other states.

In 2005, the Washington State Gaming Commission reached a tentative agreement with the Spokane Tribe under which the tribe would pay a percentage of its gaming profits, based on a sliding scale, to the state general fund.[30]

This agreement never took effect. On October 27, 2005, Governor Gregoire sent a letter to the Gaming Commission canceling the proposed agreement and instructing state negotiators to start over.[31]

In 2007, she signed a new agreement with financial terms far more generous to the Spokane Tribe.[32] Under the new compact, the

tribal members will retain between $60 million and $90 million over ten years, which, under the canceled agreement, would have been paid to the general fund and used to fund state programs.

The canceled 2005 Spokane Tribe agreement could have served as a model for agreements with the state's other casino-owning tribes. If the state had such profit-sharing agreements with these tribes, the state general fund in 2006 alone would have received between $42 million and $490 million, depending on the net profits of individual casinos.

The following table summarizes the legal and regulatory advantages of tribal-owned businesses.

Comparison of Washington State Regulations and Taxes that Apply to Tribal Businesses and Non-tribal Businesses

	Tribal Businesses	Non-tribal Businesses
Must obey indoor smoking ban	No	Yes
Must obey 1964 Civil Rights Act	No	Yes
Must obey voter-approved initiatives	No	Yes
Pay gaming taxes	No	Yes
Pay Business & Occupation tax	No	Yes
Pay sales tax	No	Yes
Pay tobacco tax	No	Yes
Pay workers' compensation tax	No	Yes
Pay unemployment tax	No	Yes
Pay state gas tax	25%	100%
May offer slot machines	Yes	No
May offer Keno	Yes	No
May offer Craps	Yes	No
May offer Roulette	Yes	No
May offer Baccarat	Yes	Yes
Higher betting limit	Yes	No

Recommendations

1. **State leaders should negotiate an agreement with tribal casino owners so that a portion of gambling profits are paid into the state general fund in lieu of taxes, as is common in most other states.** By not following through with the model agreement negotiated with the Spokane Tribe in 2005, state leaders are depriving the state of important additional revenue that could supplement spending on essential public services, like public education and health care.

   They are also missing an opportunity to serve the public interest, because there is no policy in place to redress some of the imbalance between the favorable tax treatment enjoyed by tribal businesses and the high-tax environment in which all other business owners must operate.

2. **Policymakers should set up a review of the relationship between the state and tribal businesses, especially in new areas of commerce, like gas stations, in which tribes compete against non-Indian citizens.** Policymakers should request a study to measure the economic and competitive impact of tax-free tribal businesses on non-tribal businesses in areas of commerce other than gambling. 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 from Washington Policy Center, Available at washingtonpolicy.org

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"Citizens' Guide to Initiative 1098: To Establish a State Income Tax," by Paul Guppy, September 2010.

"Report on 2010 Tax Increases in Washington State," May 2010.

"Replacing the Business and Occupation Tax with a Single Business Tax," by Jason Mercier and Carl Gipson, May 2010.

"Improving Tax Disclosure is the Next Step in the State's Transparency Reforms," by Jason Mercier, February 2009.

"Learning from the Past and Creating our Future" (keynote address at WPC's 2008 Government Reform Conference), by David Walker, April 2008.

"Assessing the Impact of the 1% Property Tax Limit," by Paul Guppy, February 2008.

"Review of Homestead Property Tax Proposals," by Jason Mercier, February 2008.

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"New Tax Deferral Program Offers Little Hope to Hard-Pressed Homeowners," by Paul Guppy, December 2007.

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"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.

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

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[13] "Business and Occupation Tax, Chapter 82.04 RCW," Tax Reference Manual - 2010, Washington State Department of Revenue, page 113.
[14] "Business and Occupation Tax, History," Tax Reference Manual - 2010, Washington State Department of Revenue, page 118.
[15] "Texas Franchise Tax," Texas Comptroller of Public Accounts, at www.window.state.tx.us/taxinfo/franchise/.
[16] 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 some 1,840 taxing districts in Washington.
[17] 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%.
[18] The measure of inflation required under Referendum 47 was the Implicit Price Deflator reported by the United States Treasury every October.
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[31] Letter from Governor Christine Gregoire to Mr. Curt Ludwig, Chairman, Washington State Gaming Commission, October 27, 2005.
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CHAPTER THREE
ENVIRONMENTAL POLICY

1. Setting Priorities for Protecting the Environment

Recommendation

Create a Washington Environmental Priorities Council that uses scientific and economic information, not political factors, to set select projects for protecting the environment.

Background

Washington's policymakers manage a variety of environmental restoration projects, regulations and programs that are designed to protect the environment, reduce pollution and maintain the quality of life for state residents. Unfortunately, our environmental priorities are often determined more by politics than by objective science and economic information.

As the state faces budget shortfalls, the margin for error in our expenditures falls. The problem is not only that the state spends on projects that do not help the environment. Misusing taxpayer dollars means less funding is available for projects that would yield large environmental benefits.

The state's decisions about environmental spending are not made based on rigorous scientific and economic comparisons.

For example, in 2008 the Washington Conservation Voters supported the creation of a state program encouraging schools to "buy local" food. Initially, the Farm to School program received $290,000. The 2009 supplemental budget cut this to $142,000. Subsequently, the program was zeroed out. Such a quick cancellation in funding indicates that the program was never really effective in the first place. Indeed, when Washington Policy Center asked for metrics from the program about

environmental impact, officials admitted they had none. The state spent $432,000 and achieved no benefit for the environment.

In the Spring of 2010, the state auditor found the Puget Sound Partnership spent hundreds of thousands of dollars on frivolous projects that did nothing to improve the health of Puget Sound. The audit identified a number of areas of waste, including nearly $12,000 to purchase vests and jackets with the Partnership's logo as gifts for supporters, and $5,000 for lip balm sticks for promotional use. In all, the auditor's office found more than $300,000 in ineffective spending by the partnership.

The state's climate strategy has also been a source of expenditures that yielded no benefit. As part of developing a strategy on climate change, the state hired the Center for Climate Strategies (CCS). For this service, Washington paid $200,000 to CCS. Other states also hired CCS to do similar work. They, however, paid much less. Minnesota, for instance, paid only $40,000 for the identical process. South Carolina paid nothing for its services.

What is more, the proposals developed by the Climate Action Team were never acted on, and a bill incorporating their ideas never even received a vote in committee. The state spent $200,000 for nothing.

This is not the only example of Washington wasting money on climate efforts. As part of the state's participation in the Western Climate Initiative (WCI), it pays dues to be a member. Initial dues for Washington came from the Department of Commerce (then Community, Trade and Economic Development, or CTED) and the Department of Ecology. The dues amounted to $134,990 in total. By way of contrast, California paid only $89,000, Ontario paid $90,000 and Oregon paid $30,000.

Finally, the state has emphasized using highly visible, but inefficient, solar panels on state buildings. In 2010, the state opened a new 2,000-bed prison called the Coyote Ridge Corrections Center that some are calling the "nation's greenest prison."[1] The prison features a "solar array that covers 16,929 square feet" that is rated at 75 kw of energy. Installation cost taxpayers $880,000. The solar panels will save the state an estimated $4,000 to $7,000 a year in electricity costs, with a total savings of $140,000 during the panels' 25-year lifespan. Over the 25-year lifespan, this means the state will achieve carbon emissions reductions worth about

$6,700. Adding the $6,700 to the $140,000 yields a savings of $146,700 at the cost of spending $880,000. The state is spending $6 to save $1.

This short list of projects cost a total of $1.5 million. This is about the amount the state diverted from other environmental programs, including programs on clean air and toxic cleanup, to fund implementation of the Governor's climate change executive order issued in 2009.[2]

Without an objective assessment of the state's environmental priorities, taxpayer dollars are spent on projects that do not yield environmental benefits and waste opportunities to make real improvements. Such an assessment would provide credible, thoughtful information to policymakers so environmental policies would be more certain of producing environmental benefits.

Without a Guide, Politics Rules the Day

Legislators make these sorts of mistakes because they do not have an objective list of priorities from which to choose. Without guidelines based on science and economics, legislators turn to politics to determine priorities. This is understandable, although counterproductive.

Not all policymakers are scientists or economists. All politicians, however, do have an understanding of what sells with the public—otherwise they would not have been elected. In that circumstance, given a choice of policies that promises similar environmental benefits, politicians will base their decision on their area of expertise—social benefits. They will choose policies they believe will yield the greatest public image benefit for themselves.

Giving policymakers a priority list based on sound science and economics makes politics a tiebreaker among equally good projects, rather than the primary driver of an environmental policy decision. People may differ some in their goals, but a ranking based on science and economics would provide a strong foundation from which to allow personal values to play a productive role, rather than the current role where personal desires are used to override and ignore the real-world success or failure of environmental policies.

Ultimately, without a reasoned ranking of policy options, politicians are left with little more than their personal whims and political trends to make decisions about an issue they claim is critical to protecting the environment.

Policy Analysis

The Environmental Priorities Council would combine a scientific and economic analysis of the state's environmental problems, examining them to determine what issues are truly important and where government policy can make the most difference.

Sound science is critical to understanding the environmental risks we face. What are the threats to salmon? What is the risk from carbon emissions or other pollutants? Is there enough stream and forest habitat for animals and fish? Science can accurately assess these risks, indicating where the largest threats are and where we are closest to the environmental danger zone in each of these areas.

Economics can provide an assessment of where we can make the most difference when addressing these problems. What approaches make the most sense to improve energy efficiency and reduce carbon emissions? What are the costs and benefits of various strategies to improve salmon populations? Would the environment benefit more from focusing on clean water or by reducing air pollution? By studying the improvements in human health, cost reductions and other benefits, a sound economic analysis would identify the best ways to reduce the risks identified by environmental science.

Together, science and economics provide a foundation for sound decision making. Neither of these disciplines provides a perfect assessment, and there is still a role for personal values in making final policy decisions. Some people argue the loss of individual liberty is not worth small improvements in environmental quality—others argue the opposite.

The Washington Environmental Priorities Council would identify key environmental issues facing the state and ask scientists to provide risk assessments. The council would take those assessments and bring together economists to analyze the costs and potential policies to address these risks. The council would then use that information to generate

a prioritized list that would provide lawmakers a clear road map for enacting environmental solutions.

Such an approach would not only avoid the trap of falling for eco-fads and other trendy environmental policies, it would also ensure the state spends its scarce resources on approaches that yield the greatest environmental benefit.

Since concern for the environment begins with a concern about the smart allocation of scarce resources, spending the state's limited budget wisely would seem the least we can do.

Recommendation

Create a Washington Environmental Priorities Council that uses scientific and economic information, not political factors, to set select projects for protecting the environment. Policymakers should establish a Washington Environmental Priorities Council to create a list of environmental projects based on an economic cost-benefit analysis and scientific review, rather than on political considerations.

2. 'Green' Building Mandates

Recommendations

1. End mandated "green" building regulations for schools and other public buildings.

2. Return control of school design, maintenance and remodeling to local district facilities managers.

Background

Promoting Performance-Based Green Buildings

As school districts and the state struggle with limited resources, policymakers need to ensure that taxpayers receive the educational and environmental benefits they are paying for. After six years, independent analysis and the words of district facilities directors themselves demonstrate that Washington's "green" building law is not only failing to achieve the promised goals, it is actually doing more harm than good.

In 2005, the legislature required that all new Washington schools and state buildings receive "Silver" certification from the Leadership in Environmental an Energy Design (LEED) system or meet the Washington sustainable school design protocol. The law said:

> The legislature finds that public buildings can be built and renovated using high-performance methods that save money, improve school performance, and make workers more productive. High-performance public buildings are proven to increase student test scores, reduce worker absenteeism, and cut energy and utility costs.[3]

Studies were provided to back up these claims. In January 2005, the legislature received a study commissioned by the Washington State Board of Education and the Office of the Superintendent of Public Instruction and conducted by Paladino and Company.[4] The study claimed the payoff from these "green" schools would be significant, predicting a "conservative" estimate of a 25% reduction in energy use,

five percent increase in student test scores, and a 15% decrease in student absenteeism.

The small additional building cost would be more than offset by the expected energy savings, leading to a predicted 150% return on investment.

Six years after those regulations were imposed, however, the very schools used in the study are failing to meet the goals claimed. In many cases, school districts have actually incurred higher costs for "green" design elements that provide little benefit, but added greatly to the cost of constructing the building. The state's own student achievement rankings show no difference between students at "green" schools and those attending schools built without the costly "green" requirements.

Given the record of failure, the legislature should move from a prescriptive, cookie-cutter approach to one that allows local school directors to use their expertise to customize buildings that fit local circumstances and local climate. Research demonstrates that school districts have successfully improved energy efficiency without politically imposed rules.

Allowing local school districts to find the best ways to cut building energy costs, instead of forcing districts to comply with an arbitrary "green" rule regardless of outcome, will truly make Washington's schools "high performance."

Failing to Make the Grade

When developing a "green" regulation for Washington's schools, the state hired Paladino and Company, which notes on its website that, "Our mission is simple: transform development into a sustainable process through collaboration on exemplary green building projects."[5] The study focused on five school districts, examining the costs and benefits of various strategies at each school. Not surprisingly, they determined that requiring green building standards would yield large dividends to the state.

At the time of the study, however, the research was speculative, as many of the schools had not yet been opened or had been open less than

a year. Six years later, the actual results from the schools are significantly different from the results promised in the report.

For instance, the study said "green" schools would reduce energy use by 30 to 50%. None of the schools, however, has achieved that goal. There are, however, "green" schools that use 30% *more* energy than comparable schools built before the rules went into effect.

Through the 2009 school year, several "green" schools were less energy efficient than their non-green counterparts located in the same district.

In the Bellevue School District, Sherwood Forest Elementary, built under the "green" regulations, used 51% more energy than Somerset Elementary in the same district. In 2011, the Joint Legislative Audit and Review Committee (JLARC) confirmed this, noting that Sherwood Forest used 53% more energy (BTUs per square foot) than expected and ranked near the bottom, 12th out of 16 district schools, in energy efficiency.[6]

The same pattern emerged in Spokane. Through 2008, Lincoln Heights Elementary School in Spokane, one of the pilot schools built under the "green" buildings program, used 15% more energy per square foot than Browne Elementary, built nearby without the "green" requirements. JLARC's audit found that Lincoln Heights uses 25% more energy than was anticipated.[7]

JLARC's analysis does report Lincoln Heights produced "utility savings" of about $12,698 per year. This estimate is questionable. It is not based on a comparison of recently built non-green schools, but is a general estimate. Even assuming the number is correct, however, the study finds it will take nearly 30 years to recover the additional construction cost of the building. JLARC estimates the useful life of a school building before major remodeling is needed to be 20 years. Put simply, JLARC's analysis indicates the building's mandated "green" features will never pay for themselves.

These are not isolated incidents. JLARC found the majority of "green" schools, eight of thirteen, would not earn an Energy Star rating. It also found that five of the nine schools analyzed for energy efficiency were in the bottom half of the schools in that district. In other words,

most "green" schools used more energy than *average* non-green schools, not simply new, green schools in the same district.

Proponents of continuing the "green" building mandate have offered three responses.

First, advocates point to the JLARC report, noting that eight of the nine schools analyzed saw energy efficiency improve over time. They argue green schools need time to achieve the promised results. The reason these schools have seen such significant improvements, however, is largely because they started out so poorly.

For example, Sherwood Forest is one of the schools that improved the most, reducing energy use by 28% from its first year of operation to the most recent year. However, even at its best, Sherwood Forest is still relatively inefficient, using 12% more energy per square foot than the average Bellevue elementary school. Forest View Elementary, in Everett, saw a 26% decrease in its energy use over time. It, however, ranked 11th out of 17 schools in the school district, and still does not qualify for an Energy Star designation.

Second, some advocates argue new schools attract more after-school events, resulting in more energy use during the day. While this has been hypothesized, the data to back up this claim are very poor. For instance, the Spokane School District estimates that Lincoln Heights was used 3,776 additional hours during the 2008–09 school year. This would amount to 10 extra hours of building use for every day of the year. This level of use is highly unlikely.

Indeed, building-use data do not always support the claim. While Lincoln Heights, a "green" pilot school, was used more than Browne Elementary, a non-green school, other "green" schools saw less use. Both Lidgerwood and Ridgeview, "green" schools in the Spokane district, saw less after hours use than Browne. Since Browne is already more efficient than these "green" schools, incorporating after-hours use only exacerbates the gap between the schools.

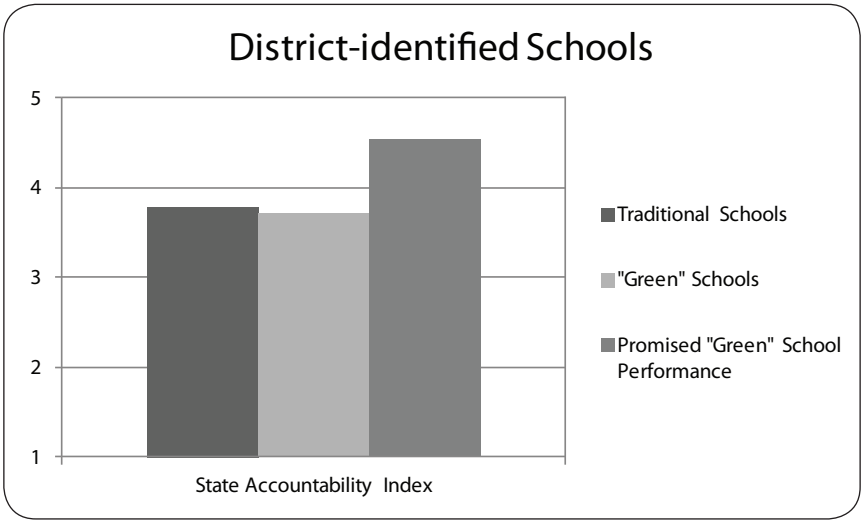
Finally, "green" building advocates argue that these schools are about more than just energy savings. This is true, but it should not distract from the initial promise that the regulations would "pay for

themselves." The effort to change the subject is a tacit admission that "green" schools are not performing as promised.

Additionally, the evidence indicates that "green" schools do not improve student attendance or student learning.

In early 2010, the Washington State Board of Education released the "Achievement Index," rating every school in the state on a scale of 1 to 7. The Board said, "The Achievement Index was developed by the Washington State Board of Education and offers individual school data from 2007–2010," and "is designed to provide users with a comprehensive and clear analysis of school performance."[8] The index rates more than just test scores, combining the Measurement of Student Progress, High School Proficiency Exams and graduation rates to assess the performance of each pubic school.

Analyzing the performance of 42 "green" schools compared to the other schools in those same districts, "green" schools performed slightly worse than traditionally built schools. As the graph below shows, the "green" schools fall far short of the promised 20% improvement in student performance.



The costs have been well above what supporters projected. Estimating the cost of the "green" elements of these schools is very difficult and no district studied was able to measure these costs with confidence. Several districts, however, did offer an educated guess and

everyone agreed that the best estimate was that "green" buildings cost about six percent more, not the two percent promised by Paladino and Company in its report.[9]

Self-reported data to JLARC offers a lower number of about three percent more on average. Even with that lower number, JLARC's data demonstrates that none of the schools they surveyed would pay for themselves in the building's 20-year lifespan.

Policy Analysis

Why Green Regulations Do Not Work

There are a number of reasons "green" building regulations do not live up to the promises made to the legislature in 2005. First, the initial cost projections were extremely rosy. It is likely that the bill's supporters chose the most optimistic estimates in order to get the legislation passed. "Green" building backers over-promised, so it is not surprising that school districts are now under-delivering.

Second, the rules rely on a cookie-cutter approach that requires spending that does little to achieve energy savings or other goals, but must be met to receive the required green certificate points. In Spokane, for instance, additional bike racks were installed to meet a requirement, but in reality the racks largely sit empty.

Third, the rules often try to impose contradictory goals. They call for larger windows in the belief that more daylight increases student test scores. The big windows, however, greatly increase energy costs by making a room colder in winter and hotter in spring and summer. Similarly, the schools recirculate air more frequently to improve the "health" of the buildings. That also means running the HVAC fans more, increasing energy use.

Given these contradictory goals, it is not surprising that green buildings don't deliver the promised benefits. The energy-saving goal may be desirable, but the top-down rules fail to achieve the promised results.

Rewarding Success Not Effort

School officials do not need much additional incentive to improve efficiency. In fact, average per square foot energy costs for Spokane schools has fallen in every decade, with schools dating from the 1930s being about 18% less efficient than schools built in the 1990s. Facility directors know their districts, and the data show that they successfully improve the energy efficiency of their buildings year after year without a "green" mandate imposed by Olympia.

In Bellevue, most schools already met Energy Star standards before the "green" rules went into effect, indicating the district managers already understood the value of energy efficiency. In Bethel and Lake Washington school districts, facilities managers have made significant improvements simply by changing behaviors and taking other low-cost steps.

By removing the additional, costly "green" regulations, local districts would make improvements that would pay for themselves, avoiding others that save little in energy but add a lot in cost. At a time when tax money is scarce, this would also provide budget accountability at the local level, allowing school leaders to set priorities and choose building projects that best improve student learning.

Legislators should repeal the "green" rules they imposed in 2005 and provide districts with more flexibility. Doing so is the surest way to achieve the promise of improving energy efficiency.

Recommendations

1. **End mandated "green" building regulations for schools and other public buildings.** They have failed to live up to their promise and cost more than initially projected. They have failed to save energy and improve student test scores, as "green" activists promised they would.

2. **Return control of school design, maintenance and remodeling to local district facilities managers.** District facilities managers have consistently shown superior ability to create energy efficient buildings that serve student needs.

3. Greenhouse Gas Emissions and Carbon Pricing

Recommendations

1. Eliminate costly and ineffective carbon regulations and programs.
2. Put an appropriate price on carbon emissions.
3. A price on carbon emissions must be revenue neutral to reduce the cost to businesses and provide an incentive for innovation.

Background

Washington's climate policy has failed. Despite a range of regulations, significant government spending and a tremendous amount of political debate, state efforts to reduce carbon emissions and improve energy efficiency have fallen far short of the goal.

Since 2004, Washington's carbon emissions have actually increased. Washington is one of only nine states to see emissions increase during that period. The United States as a whole saw emissions decline by nearly 16%.[10] Managers at the Washington state Department of Ecology admit they are unlikely to meet the official goal of reducing carbon emissions 20% by 2020.[11]

The City of Seattle is no different. Despite high-profile efforts to curb carbon emissions and meet the reductions target of the Kyoto Protocol, city officials now admit they are unlikely to meet that target. Indeed, Seattle's most recent report on greenhouse gas emissions notes, "Seattle's emissions increased approximately 80,000 metric tons from 2005 to 2008," and that meeting the Kyoto target would "be challenging as our city continues to grow in population and bounces back from the economic downturn."[12] Virtually all of the reductions occurred in the 1990s, long before Seattle enacted its emissions-reduction policies.

King County officials made a similar admission, saying they will have difficulty meeting their 2012 emission-reduction targets.

As a result, Washington has lost important opportunities to improve energy efficiency. At a time when Washington's economy is struggling, taxes spent fruitlessly are dollars that could have created jobs, reduced unemployment and increased prosperity. Unfortunately, energy policy to date reflects the worst of both worlds—increasing costs on businesses and families while yielding no environmental benefit.

It is time for a fresh start. Washington should repeal the costly and ineffective regulations that have failed to reduce emissions as promised, put an appropriate price on carbon and cut taxes on investment and job creation. Removing needless regulation and cutting investment taxes would not only help the economy, it would create incentives to invest in energy-efficient technology and reduce energy use.

By repealing failed policies and promoting innovation, Washington can make real progress on energy efficiency.

Policy Analysis

The Failure of the Current Approach

So far there has not been an honest examination of why state emissions policy is failing. The reason is that many of the approaches favored by politicians have not been successful, have spent large sums of money for little benefit or are simply inaccurate. Three examples tell the story.

First, Washington's "green" buildings law has failed to reduce carbon emissions despite increased costs for school districts. Over the past five years, tens of millions of dollars have been spent to comply with the regulation even as the evidence from the districts and the legislature's own auditing agency demonstrate no energy savings.

Second, the state is now requiring that carbon emissions be included in environmental analysis in the State Environmental Policy Act (SEPA). That analysis, however, is unlikely to be a reliable indicator of actual emissions. The state and King County use different methodologies to calculate greenhouse gas emissions. Additionally, many of the calculations are based on national averages. Since Washington has one of the lowest carbon intensities in the United States, using the national average greatly overestimates actual emissions.

Third, the primary policy to reduce transportation-related carbon emissions is to expand transit and light rail. This approach, however, has not yielded the promised ridership and carbon emission reductions. Light rail in King County is well below ridership projections. Even if light rail eventually meets ridership projections, it would reduce statewide carbon emissions by less than one percent of current levels by 2030, a tiny reduction for a very high price.[13]

These policies are failing for some simple reasons. First, they assume that effective policy can be made based on speculative data, even when similar projections have turned out to be wrong. Second, they assume policymakers can change the behavior of citizens in controllable ways. This belief is consistently proven wrong and often creates unintended consequences that far outweigh any positive results.

Finally, policies are often chosen because they make policymakers look good to voters or special interest groups, rather than being based on scientific or economic justification. These failures mean Washington is actually seeing emissions increase even as the nation as a whole reduces emissions.

Instead of attempting to guide carbon emissions policy centrally, and making high-cost decisions that fail to live up to their promise, Washington needs a new approach. By encouraging businesses and families to use efficient technologies, policymakers can take advantage of the approach that has worked in other states. Individuals and businesses know what opportunities exist to reduce their energy use and do more with less. Trying to fit all of those disparate individuals into a cookie-cutter policy is doomed to fail.

A New Technology-Based Approach

Washington state should play to its economic strengths and take advantage of the progress already made on cutting carbon emissions. The legislature should take three steps to improve our energy efficiency and reduce carbon emissions.

First, eliminate costly and ineffective carbon regulations and programs. Washington spent millions of tax dollars to implement the Governor's climate change executive order, but the centerpiece of that

effort, a regional cap-and-trade system, is dead. The one element of the effort that will be achieved, shutting down the Centralia coal plant, will not be achieved for a decade and a half.

Eliminating these unnecessary expenditures and repealing failed carbon regulations would allow agencies to save money and reduce the negative impact of those regulations on businesses trying to survive in a down economy.

Second, put an appropriate price on carbon. Businesses and consumers have repeatedly demonstrated they respond to price signals and improve energy efficiency. With Washington's already low-carbon energy supply, the impact on energy costs will be low.

A price on carbon, however, more effectively encourages a reduction in transportation emissions. Some people have called for extreme carbon prices of $100 per metric ton, which would amount to a $1 per gallon gas-price increase. A more reasonable approach is about $10 per ton to start. That level would amount to about 10 cents per gallon gas-price increase, much less than the normal market swings in gas prices.

Finally, the proposal must be revenue-neutral to reduce costs to businesses and provide an incentive for innovation. A combination of tax cuts for capital investment and Business and Occupation tax cuts would allow businesses to invest in more energy-efficient equipment. These cuts are proven job creators, encouraging businesses to expand and innovate.

Two additional arguments should be addressed.

Some have argued the state should keep some of the revenue from the carbon tax to spend on "green" projects chosen by politicians. Such projects, however, rarely turn out well. Numerous such projects, from biofuel subsidies to funding for failed projects like Solyndra, consistently demonstrate that projects are chosen not for their impact on the environment but for their impact on the voters. Increasing taxes to spend on such eco-fad projects would be doubly wasteful.

Other people cast doubt on whether we should even cut carbon emissions. We agree with scientists like Pat Michaels of the CATO Institute and the University of Washington Climate Impacts Group that the level of atmospheric carbon from all sources does increase the heat in

the atmosphere. What is less clear is how much of an impact humans are having and what the temperature impact will be.

A recent study from Oregon State University, published in the journal *Science*, found "the rate of global warming from doubling of atmospheric carbon dioxide may be less than the most dire estimates of some previous studies."[14] Until our ability to predict the impact of atmospheric carbon is better understood, Washington state should follow a no-regrets policy that promotes energy efficiency and reduces regulation and taxes.

If, indeed, climate change is serious, Washington can adjust the price of carbon accordingly. If, however, it is not, we will still receive the benefit of reducing regulation, cutting business taxes, encouraging innovation and reducing our dependence on imported oil from countries like Russia, Venezuela and Iran. These are all worthy goals that would provide ancillary benefits from our approach.

Further, given the understandable tax sensitivity in Washington state, such an approach is more likely to pass political muster. Previous efforts to just raise energy taxes without cutting regulations and business taxes were predictably unpopular. A revenue-neutral approach that cuts taxes while giving families and businesses the opportunity to avoid carbon taxes through efficiency has so far not been offered in Washington state.

A Sustainable and Responsible Policy

It is time to take an approach that is not contingent on continued taxpayer funding or the ability of politicians to make the right technology bets. Harnessing the creativity of every family and business by encouraging them to find methods—methods that only they know—to become more efficient in ways that suit their lifestyle will yield better results than relying on cookie-cutter approaches.

A revenue-neutral carbon price can create an effective strategy that puts us on the path to improving energy efficiency with a fresh start on climate policy.

Recommendations

1. **Eliminate costly and ineffective carbon regulations and programs.** Washington spent millions of tax dollars to implement the Governor's climate change executive order, but the centerpiece of that effort, a regional cap-and-trade system, is dead. Eliminating these unnecessary expenditures and repealing failed carbon regulations would allow agencies to save money and reduce the negative impact of those regulations on businesses seeking to survive in a down economy.

2. **Put an appropriate price on carbon emissions.** Businesses and consumers have repeatedly demonstrated they respond to price signals and improve energy efficiency. With Washington's already low-carbon energy supply, the impact of placing a price on carbon emissions on energy costs would be low. A reasonable approach is about $10 per ton to start. That level would amount to about 10 cents-a-gallon gas-price increase, much less than the normal market swings in gas prices.

3. **A price on carbon emissions must be revenue-neutral to reduce the cost to businesses and provide an incentive for innovation.** Putting a price on carbon emissions must be balanced by a combination of tax cuts for capital investment and Business and Occupation tax cuts that allow businesses to invest in more energy-efficient equipment. These tax cuts are proven job creators, encouraging businesses to expand and innovate.

4. Puget Sound Partnership

Recommendations

1. Develop goals for the cleanup of Puget Sound based on a scientific and transparent process.

2. The Puget Sound Partnership should provide a clear list of recovery projects based on environmental, not political, priorities to guide agency actions and funding decisions.

Background

The Puget Sound Partnership was created in 2007. It is charged by the Governor and legislature to create a plan to restore and protect Puget Sound. Since at least 1996, several state agencies, including the Puget Sound Action Team, have tried to prioritize environmental projects essential to Puget Sound's health.

Along with establishing the administrative functions and structure of the partnership, lawmakers required the newly formed state agency to develop a recovery plan in the form of an Action Agenda. The agenda is supposed to coordinate the efforts and funding of several federal, state and local agencies by setting clear direction for protection and cleanup work. The stated goal of the Partnership is to restore the Puget Sound to a healthy state by 2020.

In late 2008, the partnership, after months of meetings held around the Puget Sound region, created its first Action Agenda. The agenda was based on five priority strategies that each contain near- and long-term action items. The priority strategies include protecting, restoring and preventing water pollution at its source, and building, implementing and monitoring an accountability management system.

Since the completion of its first Action Agenda, the partnership has undertaken several other activities, including establishing a science review panel to guide the information used to establish recovery benchmarks and cleanup targets for Puget Sound. Currently the

partnership is working on the next version of the Action Agenda, which is due to be completed in early 2012.

Policy Analysis

The success of the partnership in its early years has been limited to just a few of the projects listed in the current Action Agenda, such as the restoration of the Nisqually Delta. The project involved removing a number of dikes and allowing several miles of habitat to return to its natural condition. There have been, however, several setbacks in the partnership's Agenda efforts.

Science Review

For instance, a critical review from an independent research firm found significant errors in the Department of Ecology's estimates of pollutants entering Puget Sound as a result of storm water runoff.[15] In December 2009, Ecology officials released a memorandum admitting the errors. They said their storm water report:

> Was fundamentally flawed in assuming a much higher average annual hydrologic yield from land uses and watersheds with more impervious area. In general, the improved hydrologic analysis method resulted in absolute toxic chemical loading estimates that are approximately 3 times lower than the loading estimates provided in the phase 2 study.[16]

Subsequently, the partnership has released a third report on toxic pollution in Puget Sound. According to this latest report, "Phase 3: Targeting Priority Toxic Sources," officials reduced their estimate of the total amount of toxic pollution entering Puget Sound by nearly 71%, compared to what they said the Phase 2 report.

The errors in the science report about toxics in Puget Sound were not found until after the partnership had used the flawed report to set the 2008 Action Agenda. This failure is not surprising because officials did not establish the Science Review Panel until after they had finished drafting the 2008 Agenda.

Unfortunately, during the establishment of ecosystem recovery targets used to guide the 2012 Action Agenda, the partnership pursued

simultaneous reviews of the ecosystem recovery targets through a public and scientific review process. The review processes for the ecosystem targets, however, did not allow the public to review the work of the science panel. Instead, the panel and public reviews followed separate tracks, with no clear connection between them.

By not allowing the public to see the work of the science panel, recommendations that were forwarded to the leadership council from public workshops did not include any review based on a clear scientific understanding.

Prioritize Funding

In addition to problems with the scientific review process, the partnership has struggled to take effective action to protect Puget Sound by directing funding to the highest valued actions. This point was highlighted in the partnership's "2009 State of the Sound" report, which shows lawmakers are not following the agenda's priority strategies for funding purposes. According to the partnership, "There are still significant gaps in funding .... On the other hand, some threats received amounts larger than identified in the Action Agenda ...."[17]

The inability to prioritize funding was also the focus of a recent audit of the Partnership completed in September 2011 by the Joint Legislative Audit and Review Committee (JLARC).[18] Among other things, the JLARC audit noted:

> The 2008 Action Agenda does not provide a clear prioritization for actions that reach across Puget Sound .... OFM and legislative fiscal staff report there is no easy way to translate many of the near-term actions into specific budget line items and that no single list of prioritized actions exists to inform funding decisions.[19]

The lack of a clear list of priority projects ensures that funding gaps will continue to exist. Policymakers created the partnership, in part, to provide a strong governance structure that would identify funding priorities, but the agency is failing to carry out this essential function.

Recommendations

1. **Develop goals for the cleanup of Puget Sound based on a scientific and transparent process.** The partnership should establish a linear process that allows the scientific review process to be completed prior to adopting recommended policies. This process should also provide more time for stakeholder review and a transparent public process.

2. **The Puget Sound Partnership should provide a clear list of recovery projects based on environmental, not political, priorities to guide agency actions and funding decisions.** This can be accomplished by using a Priorities of Government (POG). The POG system would require that the Partnership create a specific list of activities, including the costs to complete each activity, prioritized based on the needs of Puget Sound restoration and protection. This prioritized list then could be used by policymakers to guide their funding decisions.

5. The Growth Management Act and the Shoreline Management Act

Recommendation

Conduct a comprehensive review of the Growth Management Act to guide the legislature in passing improvements and updates to the act.

Background

In 1990, the legislature enacted the Growth Management Act (GMA), imposing new regulations on construction in the state of Washington. Under the rules of the GMA, the state would shift from centralized planning to a decentralized planning process, giving more control to local policymakers to set goals for growth. The stated purpose of the act was to provide greater coordination of development to sustain economic growth while protecting the overall environment.

This new "bottom up" approach to growth identified 13 policy goals to be considered by local governments during their planning process. The original goals were defined as: provide for needed urban growth; reduce sprawl; transportation; housing; economic development; property rights; permits; natural resource industries; open space and recreation; environment; citizen participation; public facilities and services and historic preservation. When the GMA was adopted, the legislature made it clear that these policy goals were to be treated equally, with no specific goal seen as more important than the others.

Over the last 20 years, the GMA has undergone many significant modifications that have shifted it away from the original purpose of the act. Since 1995, the Department of Commerce, Washington state's lead agency enforcing GMA rules, has tracked the number of amendments made to the act. During that time, more than 110 amendments have been adopted.

These amendments range from substantive to technical in their nature and scope. Such changes have included the creation of GMA Hearing Boards and the inclusion of the state's Shoreline Management

Act as a new goal, as well as modifications to a range of compliance dates and review processes.

Policy Analysis

Does the Growth Management Act Work?

Since the enactment of the GMA, there have been more than one hundred studies and reviews of its effectiveness. The most comprehensive review of GMA comes from the Washington State Land Use Study Commission and was authored in 1998.[20] The purpose of the study commission was:

> Integrating Washington's land use and environmental laws into a single, manageable statute. In working towards this goal, the Commission was directed by the Legislature to review the effectiveness of existing land use and environmental laws and to identify revisions in those laws needed to adequately plan for growth and to achieve economically and environmentally sustainable development.[21]

Unfortunately, this report is outdated and provides no insight into the more than ten years of growth and planning that have occurred since its publication. Since 1998, there have been other summaries and studies, but most of these reviews measure only portions of the overall goals of the act; they do not take a full-review approach.

In addition, amendments and modifications to the GMA may have changed the value and effectiveness of the original goals, but the lack of a comprehensive analysis makes it difficult to measure accurately the impact of each change in the law.

Cost-Benefit Analysis

Despite the impressive list of studies and reviews, none of them assesses the economic impacts, environmental successes or progress toward the policy goals of the act. In fact, there is little consensus between business and environmental interests regarding the successes and failures of the GMA.

In December 2008, the Department of Commerce released its report entitled "Planning for Climate Change – Addressing Climate Change through Comprehensive Planning under the Growth Management Act." The purpose of this report was to fulfill a directive from 2008 legislation, which required Commerce officials to make recommendations for amending the GMA to give local governments authority to cite global climate change as a reason for imposing new land use rules and transportation planning.

The recommendations coming from the 2008 Commerce report largely focus on amending the goals of the GMA to include greenhouse gas emission reductions. Other recommendations include changes to county-wide planning to require consideration of global climate change, as well as updates to the State Environmental Policy Act and transportation concurrency plans.

In response to the Commerce Department report, the legislature considered amending the GMA to include the reductions of greenhouse gas emissions as part the GMA's environmental goal. This legislation would have also required a new focus to force greater population densities in neighborhoods and try to require greater use of government-run transit services.

The cost of expanding the GMA is high but unknown. Commerce officials acknowledged in their 2008 report that they do not know what the costs of their recommendations will be. The report reads:

> While the impacts of climate change on affordable housing, employment, transportation costs, and economic development must be considered, there is little information or scientific data available related to the impacts of climate change policy.[22]

To impose the recommendations of the Commerce report before understanding the costs associated with these actions would have been irresponsible, and so far such a bill has not passed. Before the legislature considers any additional expansion of the GMA, lawmakers should consider the following three questions:

1. What are the true costs and benefits of the Growth Management Act?

2. How have Growth Management Hearing Board decisions changed the effectiveness and intent of the Growth Management Act?

3. How can a comprehensive and independent cost-benefit analysis be used to improve the effectiveness of the Growth Management Act?

To answer these questions, the legislature should conduct a full audit of the GMA. Without a complete analysis, there is no way lawmakers can ensure taxpayers are getting the protections and benefits they were promised when the GMA was enacted, or that its environmental goals are actually being achieved.

Recommendation

Conduct a comprehensive review of the Growth Management Act to guide the legislature in passing improvements and updates to the act. To ensure that a review is independent, comprehensive and effective, lawmakers should assign an independent party, like the State Auditor, to facilitate the review. The public should be allowed to participate, and the many goals of the GMA should be reviewed to see if they are being achieved.

6. Water Rights

Recommendation

1. Policymakers should provide more predictability in the state's water rights process by refunding processing fees to citizens when water use applications are delayed or stalled.

2. Policymakers should allow citizens to hire outside experts to help the state process their water rights applications.

3. Protect user fee revenues.

Background

The state Department of Ecology regulates water rights in our state. Ecology officials direct two types of regulations, those involving water quality and those involving water quantity. The department's Water Resource Program monitors the amount of fresh water in the state's lakes, streams and freshwater aquifers.

The mission of the Water Resource Program is to "support sustainable water resources management to meet the present and future water needs of the people and the natural environment, in partnership with Washington communities."[23] In other words, the program is charged with ensuring that fresh water will be adequately shared and protected for both current use and for future generations.

The Water Resource Program has ten different program activities, including clarifying and managing water rights; promoting compliance of water laws; assessing stream flows; regulating well construction; and supporting water use efficiency. Managers of the program are responsible for approving water application permits in Washington.

Water Resource Program managers have fallen behind in processing water use applications. Today there are more than 7,000 water applications waiting for action. The types of stalled water applications include:

- 1,200 transfers or changes to existing permits.
- 5,700 new applications.
- About 500 more applications filed each year.
- Most stalled applications (4,000) are 10 to 20 years old.
- Most water basins have 50 to 70 applications pending.
- A few areas, like Yakima with 900 and Whatcom with 700, have many more stalled applications.[24]

Applicants generally have three choices when submitting a permit application. These options include submitting a permit and waiting for your permit to be processed. Those wishing to receive an expedited review can either seek a water transfer by going through a County Conservancy Board, if one is available, or they can pay a fee for the Department of Ecology to review other applicants. Paying the fee increases the chances a permit will actually be acted on in a reasonable period of time.

Policy Analysis

Despite the abundance of water in the Pacific Northwest, there are many demands placed on the region's water resources. Population growth has put an increasing demand on water availability. In addition, Water Resource Program managers have identified other pressures that exist today. These include:

- Lack of water for economic growth, job creation and housing.
- Streams and rivers without sufficient water year-round for fish and wildlife.
- Groundwater levels sharply declining in many areas of the state.
- An outdated legal system, written to address the society of a different century.
- Unstable and insufficient funding for water management.[25]

The Department of Ecology's growing backlog of water applications can, in part, be attributed to the growing list of problems. In response, the legislature in 2010 passed SB 6267, requiring Ecology officials to "review current water resources functions and fee structures,

and report ... on improvements to make the program more self-sustaining and efficient."[26]

The emphasis of the SB 6267 law is on charging water applicants a user fee to process permits in a more timely manner. In fact, the report conducted by the department outlines policy ideas to promote a user fee system. Ecology notes:

> Relatively modest annual fees on water right permit holders, certificate holders and claimants could raise a large proportion of the revenue required for ongoing water resources management activities from which water right holders benefit. Such a fee could replace a large proportion of State General fund dollars currently appropriated for this work and could also support expanding some critical areas of work such as adjudications, scientifically based information gathering, and water supply and demand forecasting.[27]

It is obvious from the growing backlog of applicants that department officials need to change the way they process water right applications. A user fee policy, however, requires safeguards to make sure the money collected is used to fund promised services.

First, policymakers should require the user fees collected have a direct connection between the fee and the service the fee is meant to fund. Officials break trust with the public when they siphon off fee revenues to pay for some other program or to please a political interest group. Second, the amount of the fee charged to the public should be tied directly to the actual cost of the program it funds. Increasing fees beyond the actual cost of the program means agency officials are gouging the public—charging people more money than they actually need to fund a particular program.

An alternative approach to charging fees would be to allow water use applicants to hire outside reviewers and experts. Under this model, an applicant would bear the cost of paying a private-sector specialist to do the same work as state employees. Such a model has been used successfully to review land use applications, allowing agency staff to provide expedited review and better service to the public.

Finally, any new process, whether it involves a new user fee or allows water applicants to hire outside experts, should include time incentives to ensure citizens are no longer held in a seemingly endless holding pattern. Unlike permits, it would not be in the best interest of the public to automatically approve a water permit because an agency had failed to act. Instead, applicants should receive a refund of part or all of the fees they paid if state officials do not provide a timely answer. This would provide an incentive for the department to develop a culture of responsive, professional service.

Recommendations

1. **Policymakers should provide more predictability in the state's water rights process by refunding processing fees to citizens when water use applications are delayed or stalled.** The Department of Ecology should be encouraged to provide responsive, professional service by giving citizens a refund of processing fees if water use applications are not completed in a reasonable time. The purpose of charging citizens a fee is so that state agencies can provide fast and reliable service to the public. If the fee is not achieving this purpose it should be returned to the citizen who paid the application fee. Adopting a refund policy would provide an important incentive to Ecology officials to be responsive to the citizens they serve.

2. **Policymakers should allow citizens to hire outside experts to help the state process their water use applications.** Giving citizens the option of paying private-sector experts to help process an application would allow Department of Ecology officials to focus on oversight and protecting the public interest, rather spending time developing technical and engineering information about an application.

3. **Protect user fee revenues.** To keep trust with the public, the legislature should impose rules on the Department of Ecology to prevent fees collected from citizens to process water right applications from being siphoned off to fund other department programs, or from being placed in the General Fund.

7. Nuclear Energy

Recommendation

Include nuclear power as one part of achieving the public policy goal of creating clean and reliable energy sources.

Background

Recent efforts to reduce Washington's carbon emissions include the adoption of policies that limit the ways policymakers can prepare for future economic growth.

Instead of limiting their options, policymakers in Olympia should ensure that proven zero emissions baseload technologies, like nuclear power, are part of the state's strategy for clean energy generation.

In 2010, the legislature passed HB 2658, requiring the state Department of Commerce to develop a new energy policy. Lawmakers said the state must balance three main goals:

- Maintain competitive energy prices that are fair and reasonable for consumers and businesses and support the state's continued economic success.
- Increase competitiveness by fostering a clean energy economy and jobs through business and workforce development.
- Reduce greenhouse gas emissions.

Although the state's new energy policy is not complete, Commerce officials are proposing short-term initiatives "that can work together to fill gaps in existing policy, and encourage development of Washington's energy economy."[28] Unfortunately, the initiatives they are considering mainly favor unreliable and expensive renewable technologies, like wind and solar power, and fail to recognize the economic and environmental benefit of existing technologies.

Policy Analysis

In Washington state, citizens and businesses benefit from lower than average energy prices. According to the state Department of Commerce:

> Washington state energy expenditures as a percent of GSP tend to be lower than the corresponding U.S. GDP figures, primarily because our electricity prices are significantly below the national average: for 2006 Washington average of 6.14 cents/kWh vs. U.S. average of 8.90 cents/kWh.[29]

Approximately 81% of all electricity produced in Washington comes from reliable, carbon-free sources, including hydroelectric and nuclear generation. In fact, Seattle City Light, one of the largest public utilities in the country, receives nearly five percent of its energy from nuclear power, more than it receives from wind, solar and biomass sources combined.

Since Washingtonians already benefit from cheap, carbon-free energy, lawmakers need to explore all viable options for meeting the state's future energy needs. The Northwest Power and Conservation Council estimates the increase in energy demand in the Northwest will be about 1.4 percent per year through 2030.[30] Favoring unproven technologies over reliable clean energy sources like nuclear power will unnecessarily drive up costs for Washington's citizens and businesses.

While renewable wind and solar energy and conservation will play a role in fulfilling the increased demand for energy, it is unlikely these sources alone will be able to keep pace with the rate of growth.

Nuclear power is a baseload energy source, meaning it can easily meet the daily ebbs and flows of energy demand. In addition, nuclear power is less expensive than other energy sources. In its 2011 outlook for energy prices, the Energy Information Administration estimates the cost of nuclear energy will average about 11 cents per kWh in 2016, comparable to coal and wind, and half the cost of photovoltaic solar energy.[31]

Energy Northwest, the operator of the only operating nuclear facility in the Northwest, at Hanford, reports production costs of less

than four cents per kilowatt-hour in 2007.[32] Comparatively, the cost to produce a kilowatt-hour of solar power is 17 cents to 32 cents, depending on the source and use, and wind energy costs up to 15 cents per kilowatt-hour.[33] In addition, wind and solar power cannot be reliably produced 24 hours a day, so gas-fired plants must be built to fill in when wind and solar sources fail to produce enough power. In contrast, a nuclear plant requires no backup power source.

Clearly, nuclear power provides a more reliable energy source while maintaining a fair and reasonable price for consumers. This is consistent with the public policy goals lawmakers have laid out for the state.

Fostering a Clean Economy

In addition to providing a reliable energy source, nuclear power can help the state foster a clean-energy economy. Nuclear power provides an array of high-paying jobs, from construction to operation of plant facilities. The Nuclear Energy Institute notes:

> On average, a nuclear power plant creates 1,400–1,800 high-paying jobs during construction, with peak employment estimated as high as 2,400 jobs during that period, and yields 400–700 jobs during the operation of the plant. Additionally, the average nuclear plant generates approximately $430 million a year in total output for the local community and nearly $40 million per year in total labor income.[34]

By comparison, the Wild Horse wind project in Eastern Washington cost $480 million and created 400 construction jobs and 30 full-time positions. The site also provides about $12–$15 million in local spending, with an annual property tax of about $1.3 million.[35]

Additionally, Washington is already a recognized leader in nuclear research. The inclusion of nuclear power in the state's energy strategy would help the state build on the existing workforce and a long tradition of engineering expertise.

Reduce Greenhouse Gas Emissions

Finally, nuclear power helps reduce greenhouse gas emissions. Opponents of nuclear energy cite the risks from nuclear waste and material falling into the wrong hands. These problems can, however, be addressed, and if climate change represents the risk that some opponents of nuclear energy claim, these risks should be weighed against each other.

Washingtonians benefit from cleaner air and a healthier environment because our current sources of energy are almost entirely carbon-free energy sources, particularly in generating electricity.

Including nuclear power in future planning would help the state make significant steps toward reducing carbon-emitting energy sources and preventing additional sources of emissions. In fact, an analysis done for the U.S. Department of Energy finds, "Washington's nuclear power plant could supply 16% more electricity and avoid annual emissions of 1,500 tons of SO_2, 2,100 tons of NOx and 1.3 million metric tons of CO_2" through additional capital investments and upgrades.[36]

Recommendation

Include nuclear power as one part of achieving the public policy goal of creating clean and reliable energy sources. As part of reducing Washington's carbon emissions, the legislature should provide the full range of energy generation options. The approach currently proposed by state Department of Commerce officials imposes policies involuntarily on Washington's residents, rather than engaging their creativity, and focuses too narrowly on energy efficiencies and renewable energy sources.

8. Renewable Energy Mandate

Recommendation

Allow utilities to count clean hydroelectric power as a source of renewable energy.

Background

In 2006, Washington voters passed Initiative 937, the Energy Independence Act, requiring utilities in Washington to increase conservation and to get 15% of their power from qualifying renewable energy sources by the year 2020.

Specifically, the Initiative 937 law requires that a qualifying utility, any utility serving more than 25,000 or more customers, to "use eligible renewable resources or acquire equivalent renewable energy credits, or a combination of both. ..."[37] Additionally, utilities must meet the following annual power production requirements in order to meet the mandates required by Initiative 937:

- At least three percent of its power production must come from allowed renewable sources by January 1, 2012, and each year thereafter through December 31, 2015.
- At least nine percent of power must come from allowed renewable sources by January 1, 2016, and each year thereafter through December 31, 2019.
- At least 15% of its power must come from allowed renewable sources by January 1, 2020, and each year thereafter.[38]

The intent of Initiative 937, according to the initiative language, was to promote energy independence in the state of Washington by increasing conservation, using allowed renewable energy sources and reducing the use of carbon-emitting sources of energy. Initiative 937 promised that:

> Making the most of our plentiful local resources will stabilize electricity prices for Washington residents, provide economic benefits for Washington counties and farmers, create high-quality jobs in Washington, provide opportunities for training apprentice workers in the renewable energy field, protect clean air and water, and position Washington state as a national leader in clean energy technologies.[39]

In addition to imposing conservation and renewable energy requirements, Initiative 937 narrowly defined which energy sources count as renewable. Although the initiative recognizes water as a renewable resource, it limits the amount of hydroelectric power that utilities can count as renewable. The Initiative 937 law says:

> Incremental electricity produced as a result of efficiency improvements completed after March 31, 1999, to hydroelectric generation projects owned by a qualifying utility and located in the Pacific Northwest or to hydroelectric generation in irrigation pipes and canals located in the Pacific Northwest, where the additional generation in either case does not result in new water diversions or impoundments.[40]

Policy Analysis

The Initiative 937 law has created a number of unintended consequences because utilities are forced to shift away from hydroelectric power generation to more expensive forms of renewable energies, like solar and wind power.

First, Washington is already a leader in clean, renewable hydroelectric power. Nearly 75% of electricity generated in the state comes from hydroelectric sources.

According to the U.S. Energy Information Administration, the average cost to generate a megawatt-hour with hydroelectricity is approximately $86. The cost to produce a megawatt-hour from renewable sources allowed by the Initiative 937 law is $211 to $312 for solar, and $92 to $243 for wind.[41] Initiative 937 requires Washington utilities to buy power from less efficient sources of energy, thus making consumers pay more to get the same amount of power.

Second, Initiative 937 will lead to a reduction in job opportunities. Increased energy costs for ratepayers decreases spending by consumers and businesses for other activities. Before Initiative 937 passed, the Washington Research Council analyzed the proposal and found that the renewable energy mandate would lead to job losses. The council wrote:

> Using the WRC-REMI model of the Washington state economy, we project that these four to eight percent higher electricity prices would cost the state 2,100 to 5,100 jobs in 2016 and 3,600 to 7,100 jobs in 2020. The model takes into account jobs that might be created in the energy industry, so there is no real economic upside to this higher spending on electricity. The spending standard simply reflects money wasted on less efficient electricity production.[42]

A more recent economic analysis of Colorado's renewable energy mandate, which requires utilities to use 30% renewable power by 2020, supports the 2006 job loss findings of the Washington Research Council. Using the State Tax Analysis Modeling Program, the Beacon Hill Institute found that:

> By 2020 the Colorado economy will shed 18,380 jobs, within a range of 6,043 and 29,242 jobs. The decrease in labor demand—as seen in the job losses—will cause gross wages to fall. In 2020 the 30 percent mandate will reduce annual wages by $1,269 per worker, with the low cost case producing a $417 wage drop and the high cost cast will reduce wages by $2,019 per worker.[43]

While Colorado's renewable energy mandate is more restrictive than the one imposed by Washington, the Institute's findings independently support the Washington Research Council's 2006 findings regarding job losses, because the institute's use of a different economic model reaches the same conclusion.

Third, blindly mandating certain renewable energy, like wind and solar, increases instability in energy markets and further increases costs for consumers. Many renewable energy sources are intermittent and unreliable and, at times when the wind does not blow or the sun does not shine, produce no energy at all. In contrast, a nuclear, natural gas or hydroelectric plant produces a steady and predictable flow of

electricity 24 hours a day. For this reason, state lawmakers require that each renewable energy plant be backed-up by a dependable natural gas or similar power plant to ensure customers do not experience power shortages.

Other consequences of the Energy Independence Act include higher electricity bills for the poor, less investment in emerging power technologies and less focus on improving energy efficiency.

Finally, Initiative 937's success at reducing carbon emissions is also limited. Washington utilities, like Seattle City Light, have found they need to replace energy from sources that are already carbon free, like hydroelectric and nuclear, which make up 95% of the energy supply in Seattle. Swapping existing clean energy sources with sources required by Initiative 937 does nothing to reduce the emission of greenhouse gasses.

Recommendation

Allow utilities to count clean hydroelectric power as a source of renewable energy. The definition of "renewable energy" under the Initiative 937 law should be broadened to include hydroelectric and other non-carbon sources, so that all renewable sources are equally recognized as helping the environment. Such a change would reduce costs for power customers and promote additional technologies that reduce carbon emissions.

9. Mandatory Drug Take-Back Programs

Recommendations

1. Avoid imposing a costly mandatory drug take-back program on Washington citizens and businesses.

2. Encourage the disposal of unwanted medicines in a way that is simple and effective.

3. Conduct additional research to determine the source of trace drug elements in the environment.

Background

Legislative proposals to require collection of unused pharmaceuticals claim that such mandates are needed to protect ground water quality, stating, "disposing of medicines by flushing them down the toilet or placing them in the garbage can lead to the contamination of groundwater and other bodies of water, contributing to long-term harm to the environment and to animal life."[44] There is no firm evidence, however, that this is an accurate description of how pharmaceutical elements end up in ground water.

There is little doubt that very small trace amounts of natural and synthetic drugs are showing up in waterways in some parts of the country. For instance, a stream study by the U.S. Geological Survey (USGS) states, "results show that a broad range of chemicals found in residential, industrial, and agricultural wastewaters commonly occurs in mixtures at low concentrations in streams in the United States."[45]

The amounts USGS scientists detected are exceedingly small. The trace amounts are expressed in parts per trillion—one unit of a trace element present in one trillion units of water. For example, caffeine is one of the more common elements found in the USGS study. On average, researchers detected levels of caffeine in natural streams at up to 25 parts per trillion. At this level, a person would have to drink over 2,000 years worth of stream water at an intake of two to three liters per day to ingest the same amount of caffeine present in one cup of coffee.[46]

Some lawmakers have proposed trying to reduce even the tiny amount of trace elements that occur in waterways by requiring a mandatory drug take-back program. The primary flaw in this approach is that scientists do not know whether unused or discarded drugs are actually the source of the trace elements in the first place. So far, reliable studies have only measured the presence of trace elements, with no attempt at determining their source.

In addition, there is no evidence the presence of part-per-trillion levels of trace elements poses a threat to human health and safety or to wildlife. Federal research has found no effect on human health from trace elements in the environment. The EPA points out that:

> More research is needed to determine the extent of ecological harm and any role it [the presence of drug elements] may have in potential human health effects. To date, scientists have found no evidence of adverse human health effects from Pharmaceuticals and Personal Care Products as Pollutants in the environment.[47]

These finding show that imposing a new mandate would increase costs for citizens, without any indication it would actually help the environment.

Policy Analysis

Independent research clearly documents that drug take-back laws increase the cost of medicines for businesses and patients, while providing no benefit to the environment. Before lawmakers force producers to implement a drug take-back program, they should consider the following key findings:

1. Mandatory take-back programs are not shown to reduce the presence of drugs in the environment.

2. Municipal wastewater treatment is more effective at removing trace elements from the environment.

3. Sending unwanted drugs to protected landfills keeps them out of groundwater and the environment.

To date, none of the scientific research shows that mandatory take-back programs reduce the small amount of drugs in the environment. This, in part, is because the drugs being found in the environment come from human and animal excretion after the use of drugs, not from disposal of unwanted medicines. The FDA reports:

> The main way drug residues enter water systems is by people taking medications and then naturally passing them though their bodies, says Raanan Bloom, Ph.D., an environmental assessment expert in FDA's Center for Drug Evaluation and Research. "Most drugs are not completely absorbed or metabolized by the body, and enter the environment after passing through waste water treatment plants."[48]

A study by the Department of Ecology and the U.S. Environmental Protection Agency reports on the benefits of advanced wastewater treatment technologies in removing the trace elements of pharmaceuticals and personal care products from the environment. The study found that:

> Results of this screening indicate that the combination of enhanced biological nutrient removal and filtration processes provides the greatest PPCP [Pharmaceuticals and Personal Care Products] removal.[49]

Compared to effective wastewater treatment, mandatory take-back programs do almost nothing for the environment, but they do increase the cost of medicine for patients.

The U.S. Environmental Protection Agency and the Office of National Drug Control Policy have issued clear directives for the effective disposal of unused or unwanted drugs. The federal rules "are designed to reduce the diversion of prescription drugs, while also protecting the environment."[50] These standards call for the disposal of unused or unwanted drugs by placing them in protected landfills, not flushing them into the sewer system.

The focus of these new guidelines is educating the consumer on proper and safe methods of disposal. These include removing drugs from original containers and mixing them with undesirable substances, like

coffee grounds, and sealing them in an impermeable container before throwing the unused drugs in the trash.

Rather than imposing ineffective mandates, lawmakers should encourage more research so scientists can pinpoint the cause of the pharmaceuticals appearing in the environment. This research should be directed at answering the following questions:

- What is the cause and source of these trace elements?
- What impact, if any, do these trace elements have?
- What amounts of drugs go unused or unwanted?
- What are the costs and benefits of diverting resources to mandatory drug take-back programs compared to providing appropriate funding to proven solutions?

By not over-reaching, policymakers will be able to fulfill other obligations that have greater and a more immediate impact on the environment. Thinking passage of mandatory drug take-back legislation will help the environment ignores the scientific findings related to the disposal of drugs in the environment. Even with maximum enforcement, a state drug take-back mandate would do little to protect the environment if the true source of trace elements in groundwater lies somewhere else. In addition, trying to reduce the very minimal impact of unused drugs on the environment shows a failure by lawmakers to prioritize more serious threats to the environment

Recommendations

1. **Avoid imposing a costly mandatory drug take-back program on Washington citizens and businesses.** There is little evidence drug take-back mandates reduce the presence of trace elements in the environment, because current research has not identified the source of these elements, but mandates do increase the cost of medicines for Washington citizens.

2. **Encourage the disposal of unwanted medicines in a way that is simple and effective.** Managed landfills are designed to protect

groundwater from all forms of pollution that could come from municipal waste. Disposal of expired or unwanted medicines in the managed trash stream, rather than into the sewer system, would ensure that traces of drug elements do not find their way into the groundwater.

3. **Encourage additional research to determine the source of trace drug elements in the environment.** Before imposing new laws, lawmakers need more information about how very small levels of drug elements get into groundwater in the first place. Once the source has been identified, new regulations can be developed as needed to reduce or eliminate it.

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CHAPTER FOUR
HEALTH CARE POLICY

1. Creating a State Health Insurance Exchange

Recommendations

1. The state health care exchange should be transparent.
2. The exchange should be easy to use and should achieve lower health care costs.
3. The exchange should be nonpolitical, and pricing and benefit levels should be set by the private insurance market, not the government.

Background

In March 2010, President Obama signed the Patient Protection and Affordable Care Act, called simply the Affordable Care Act or, ACA. Under the ACA the federal government will manage the health care of all Washington state residents. Passed with narrow partisan majorities, the law remains unpopular with the public and may be repealed. In the meantime, the following sections describe the main steps the state must take to comply with the law.

One half of the $1 trillion cost of the legislation will be spent on taxpayer-funded subsidies to purchase health insurance in new state health insurance exchanges. Eligibility for the subsidy will be based on an income of 133% to 400% of the federal poverty level. For a family of four, 400% of the poverty level is currently $89,000, which will increase to $96,000 by 2016. Subsidies will thus go to upper middle class people as well as the poor.

State exchanges must offer four levels of benefit plans plus a high-deductible, catastrophic plan for young adults. This forces each state to either set up its own exchange or participate in a regional, multi-state program. If a state does not comply, the federal government will force that state's residents into a federal program.

An estimated 100 million people will be eligible for subsidies in an exchange. An additional 40 million people may be forced into the exchanges after their employers drop employee health insurance because of high costs. This could represent up to 800,000 people in Washington state.[1] These additional people will put a considerably bigger burden on taxpayers than the administration's original cost estimate of $1 trillion.

In 2011, the Washington legislature passed legislation to create a state exchange, one of the first states to do so. An eight-member voting board and a nonvoting chairperson, all appointed by the governor, will make the decisions in the exchange. These decisions must comply with federal regulations.

Policy Analysis

In designing the exchange, Washington could start with a "clean slate" and move toward a patient-oriented, consumer-driven system. The exchange can be a transparent, information-based market where individuals and small groups select plans that fit their needs. States can use the exchange as a mechanism to combine all existing state government insurance plans, such as Medicaid and Basic Health, into one administrative program.

Done right, the exchange should be easy to use and should promote decreased health care costs. Insurance rates and benefit levels should be set by the insurance market and not by government regulations. The administration of the exchange should be done through a nonpolitical, independent board, not by a politicized bureaucracy.

Under the federal legislation, "essential benefit" plans must meet federal requirements, but the state exchanges should also offer an array of "mandate-free" or "mandate-light" insurance plans that satisfy market needs. Any subsidies in the exchange should flow to and be controlled by the patient, not by insurance executives or government officials. Tax credits or deductions to purchase health insurance could also be offered in an exchange.

So far two states, Utah and Massachusetts, are operating functioning exchanges. Utah has an information-based clearinghouse that serves as an electronic insurance broker. Overhead costs are low,

consumers have wide choices and enrollment is growing in this new exchange. Utah's approach is clearly popular with state residents.

Massachusetts took a different approach. Starting in 2006, it created a much more restrictive, top-down exchange. The uninsured rate in the state dropped from 10 to three percent, which greatly increased demand for health care, and not enough doctors were available. Consequently, access to health care in Massachusetts has dramatically decreased and costs to state taxpayers have exploded.

Each state can function as a laboratory to design the most efficient, cost-effective exchange. Although the new federal health care legislation includes hundreds of new mandates and regulations, states like Washington have an opportunity to overhaul their existing programs, start fresh and establish a meaningful patient-directed health care system.

The alternative is to submit to more government regulation and central planning with the attendant bureaucratic inefficiencies, which will not increase access or decrease costs to patients.

Recommendations

1. **The state health care exchange should be transparent.** The health care exchange should provide citizens with accurate, neutral information about their health care choices. It should present private insurance and state-run programs on an equal basis, allowing individuals and families, not government managers, to choose plans that best fit their needs.

2. **The exchange should be easy to use and should achieve lower health care costs.** The primary goal of the exchange should be to increase consumer choice and reduce costs through open competition. Premium rates and benefit levels should be set by the market, not by state regulators.

3. **The exchange should be nonpolitical, and pricing and benefit levels should be set by the private insurance market, not the government.** The exchange should be administered by an independent board, insulated from political influence. Citizens should be allowed the widest possible choice, from inexpensive low-mandate plans to high-priced "Cadillac" coverage. Any tax subsidy or entitlement should be controlled by individual citizens, not dictated by state bureaucrats.

2. The Affordable Care Act and Medicaid Expansion

Recommendations

1. Allow Health Savings Accounts (HSAs)
2. Aggressively pursue fraud in the Medicaid program.
3. Tighten eligibility requirements.
4. Encourage the use of block grants.
5. Repeal the Affordable Care Act (ACA).

Background

The ACA expands Medicaid to include any adult earning less than 133% of the federal poverty level. Estimates reveal that 16 to 23 million new patients nationally and 280,000 to 360,000 people in Washington state will be added to Medicaid.[2]

At the current rate of spending increases, Medicaid spending will nearly double, compared to fiscal 2010 levels in ten years, that is, by fiscal 2020.[3] At an average growth rate of seven percent per year, Medicaid is the fastest-growing federal entitlement program.[4] The millions of new enrollees who will be added to create a "new" Medicaid program under the ACA law will make this cost problem much worse.

Obviously Medicaid is financially unsustainable and changes will be needed to avoid the program's financial collapse. Some Medicaid reform proposals, such as negotiating discounts, shifting patients away from emergency rooms, and controlling drug costs, do not address the underlying problem of funding a broad health care entitlement.[5]

On the other hand, proven policies like health savings accounts (HSAs), aggressively pursuing fraud aggressively, tightening eligibility requirements, and using block grants to states, have been shown to be effective in controlling costs in both the health care and welfare policy areas.

To help provide state officials with the necessary flexibility, Medicaid should be restructured as an indexed block grant program. An indexed block grant would allow state Medicaid funds to grow each year based on a national fiscal growth factor.

An indexed Medicaid block grant would also provide Washington state the flexibility to set up one state-controlled health insurance program to cover all patients now covered by Medicaid, Basic Health and the Children's Health Insurance Program.

Rather than compounding the existing Medicaid problems, the new federal health care law should be repealed. There is no logical reason to enlarge an entitlement program that is already going bankrupt.

Policy Analysis

The current Medicaid program is arguably the worst health insurance plan in the country. Patients have little incentive to limit their use of health services, further driving up costs. The tragic irony is that because of low provider reimbursements, access for patients is severely limited. The number of doctors who are not seeing new Medicaid patients grows larger each year. On paper, all Medicaid patients have insurance, but that does not mean they are able to see a doctor.

After more than 40 years, there is no evidence Medicaid has improved health outcomes for the vast majority of either children or adults enrolled in the program.[6] Medicaid, like any entitlement that offers services apparently for free, has encouraged overutilization of health care resources. When services appear to be "free," the health care market has no ability to place a true value on that service and no way to know if limited resources are being allocated efficiently.

Limited public safety net programs will always be needed to provide health care for the poorest and most vulnerable people in our society. However, the bloated and expanding Medicaid entitlement program, as it is presently structured, is not sustainable.

A better plan is to repeal the ACA law and stop the new, expanded Medicaid program before it starts. The government should then focus on meaningful reform to the current Medicaid, like adopting block

grants, based on changes that have proven successful in other entitlement programs. This would ensure that Medicaid is placed on a sound financial basis so it remains reliable enough to provide dependable health services for low-income families.

Recommendations

1. **Allow Health Savings Accounts (HSAs).** Allowing HSAs would let people on Medicaid control their own health care dollars and spending. HSAs have been shown to decrease costs of health care in the private market. They should be available in the Medicaid program as well.

2. **Aggressively pursue fraud in the Medicaid program.** Estimates put fraudulent abuse in government health care programs as high as 30%. The state should do everything possible to eliminate fraud.

3. **Tighten eligibility requirements.** Restoring the definition of Medicaid eligibility to the original 133% of the federal poverty level would relieve financial pressure on the program. A more focused eligibility standard would ensure that Medicaid serves as a health care safety net for the poor.

4. **Encourage the use of block grants.** Block grants would lead to more state control and fewer federal regulations. States are in a better position to determine the health care needs of their poor citizens. The federal government should give the states a bigger role in regulating their individual Medicaid programs.

5. **Repeal the Patient Protection and Affordable Care Act.** Almost one half of the spending in the ACA will go to the expansion of Medicaid. Medicaid is already financially insolvent and limits access to health care for current enrollees. Expanding an ineffective program makes no sense.

3. Guaranteed Issue and Community Rating

Recommendations

1. Avoid imposing price controls on insurance policies.

2. Repeal the Affordable Care Act (ACA) to free states from guaranteed issues and community rating.

Background

The ACA forces insurance companies to price policies based on community rating limits and to accept anyone as a customer (guaranteed issue) regardless of pre-existing conditions. Washington state has already had experience with community rating and guaranteed issue.

In 1993, Washington had approximately 600,000 uninsured residents, or about 11% of the population. That year Olympia passed sweeping health care reform legislation, the Washington State Health Plan, in an effort to reduce the number of uninsured and make health coverage more affordable.[7]

The basis of the program was to require all state residents not in Medicare to join a managed competition plan. The goal of the program was to provide universal coverage for all Washington residents. The program included:

1. Price controls on insurance premiums.
2. Statewide community rating.
3. New mandates on employers and individuals.
4. A guaranteed issue rule.

The plan created a powerful new state bureaucracy, raised taxes, added restrictions on employers and individuals, and gave state government vastly expanded control over health care.

The consequences of the plan were devastating. In the following years, 14 health insurance companies left the state, and the few remaining insurers were forced to raise prices by up to 40%. The number of

uninsured rose 20%, as people were forced to drop policies they could no longer afford. The state began attracting sick patients from all over the country because of the guaranteed issue provision.

Policy Analysis

The guaranteed issue and community rating requirements were the primary reasons the 1993 law failed.

The guaranteed issue law forced insurers to sell a policy to anyone, regardless of medical risk or pre-existing conditions. One insurance company received a polite letter from a satisfied policyholder. She had purchased a policy during her recent pregnancy and, now that her baby was born, she no longer needed the policy and was dropping her coverage. She assured the company she would certainly choose them again when she needed to pay for medical care in the future.[8]

The community rating law required premiums charged by an insurance company to be an average of all premiums (for sick and healthy, young and old, etc.) in a given region. Exceptions were allowed for some factors, such as age, but the rating "bands" (legal controls on the price of insurance policies) kept insurers from setting prices to reflect the real risk involved in selling someone a particular insurance policy.

Together, community rating and guaranteed issue rules created two bad effects. First, they encouraged healthy people not to buy health insurance, since state rules made the price artificially high. Second, they encouraged people to wait until they got sick before buying insurance.

By 1994, it was obvious the plan was not working and a citizen revolt occurred at the voting booths. The Democrats in the legislature lost their majority, and the Democratic governor who supported the plan was forced to approve its repeal.[9]

While most elements of the 1993 reform plan were repealed, Washington's health insurance market never fully recovered. The guaranteed issue law, though modified, remains in place, the market is burdened by more than 58 state-imposed mandates, and the state levies a special tax on all insurance policies.

When passed, supporters said the Washington Health Plan would provide universal coverage and lower health care costs, but the plan failed in both respects. The legacy of the Washington Health Plan is an insurance market burdened by costly regulations, a small number of remaining insurance companies, a high number of mandates, the guaranteed issue law and community rating price controls. Today, health costs are higher than ever, and the uninsured rate is no better than when the plan was proposed seventeen years ago.

Recommendations

1. **Avoid imposing price controls on insurance policies.** Insurance risks and policy pricing should be set by the insurance companies. History has shown that when the government dictates guaranteed issue and community rating mandates for the insurance companies, competition is eliminated and patient choice in the health insurance market decreases.

2. **Repeal the Affordable Care Act (ACA) to free states from guaranteed issues and community rating.** Guaranteed issue and community rating are fundamental to the national ACA law. States will not be free of the harmful effects of these two policies as long as ACA remains in place.

4. 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.
4. Urge Congress to allow the interstate purchase of health insurance so Washington residents can shop for health coverage in any state.

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.

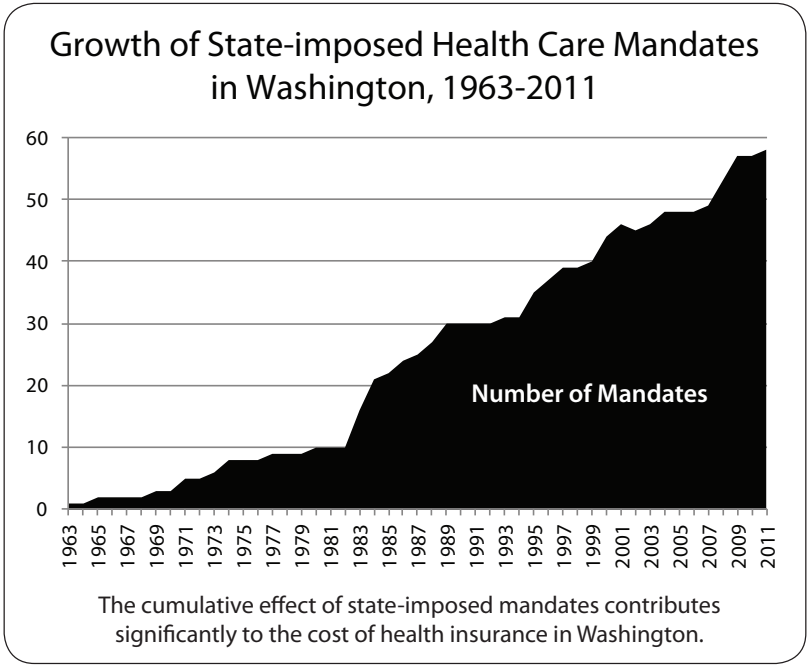
In 2009, national health care spending grew four percent to an estimated $2.5 trillion, or $8,086 per person.[10] Health care spending now makes up about 17.6% of the national economy and is projected to increase by an annual average of 6.3% over the next decade, to nearly 20% of GDP by 2019.[11] In 2010, health insurance premiums continued to rise for employers and workers, marking a 138% increase in the cost of premiums since 1999.[12]

A major driver of health care costs is the 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. Mandates increase the cost of basic health coverage by about 20 to 50% overall, depending on the state, or by about 0.5 to 1.0% per mandate.[13] This is part of a national problem. There are 2,156 health care mandates nationwide.[14]

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 58 in 2011.[15] 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%.[16] Since 2001, lawmakers have imposed 10 additional mandates. The yearly increase in the number of health care mandates is shown in the following chart.



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.[17]

Mandates and their associated costs contribute to the number of uninsured people in Washington. As mandates increase, the number of uninsured people increases as well. According to the state Insurance Commissioner, over a million Washingtonians, 14.6% of the state's population, will be without health insurance by the end of 2011.[18] Among working-age adults (ages 19 to 64), one in five people will be without health coverage.[19]

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."[20]

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."[21]

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.[22]

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.
- 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.

Letting Washingtonians Buy Health Coverage in Any State

Right now state law makes it illegal for people in Washington to buy health insurance in another state, no matter how good a deal that policy might be for them. This prohibition generally does not apply to other types of insurance, like auto, homeowners and life insurance.

Today the innovative and fast-moving internet makes access to choice, price competition and product information easier than ever. Dozens of easy-to-use websites provide health coverage information. One site alone (eHealthInsurance) lists at least 147 plans.

Other insurance models work this way. Multi-state companies selling auto, homeowners and life insurance offer choice, good prices and quality service for one reason only. The consumer is in charge, and insurers know they have to please the customer, not government regulators or company benefits managers, in order to get business.

Greater market choice and better prices in health care are available across the country and easily available through the internet.

Washington lawmakers should remove the legal barriers and let their citizens tap into a nationwide market in affordable health care.

Recommendations

1. **Authorize low-cost, mandate-free health insurance.** Insurance should be available to individuals and 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.** 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. Policymakers would then have the opportunity to learn about the long-term impact of mandates on the price and availability of health care coverage.

4. **Urge Congress to allow the interstate purchase of health insurance so Washington residents can shop for health coverage in any state.** The number of mandates varies widely from state to state. By gaining access to a national market in health coverage, Washington residents could shop for options that decrease costs and increase choice in the marketplace.

5. Medical Liability Reform

Recommendations

1. Cap the amount of noneconomic damages that can be awarded by a jury at no more than $350,000.

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 from acting negligently and compensate injured people for the losses they have suffered.

Nationwide, medical malpractice lawsuits are common.[23] Sixty-one percent of physicians age 55 and older have been sued at some point during their careers. Nine out of 10 surgeons age 55 and older have been sued.[24]

Although not required by state law, most doctors in Washington buy malpractice insurance to protect themselves and their practices against expensive jury verdicts.[25] The high cost of malpractice insurance contributes to the rising cost of health care, and it is having a harmful effect on doctors, patients and payers.

Over the years, the average jury verdict in Washington has increased by almost 70% and the average settlement cost has increased by over 50%. Similarly, the number of verdicts and settlements over $1 million increased tenfold in roughly a decade. 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. Because of Washington's joint and several liability rule, each defendant in a medical malpractice lawsuit is potentially responsible for paying the total jury award, regardless of how small that defendant's role was in causing a 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 defensive medicine and driving up health care costs. Defensive medicine refers to a doctor ordering diagnostic tests, procedures or prescription drugs mainly to reduce malpractice liability, not to serve the patient better. In a recent Gallup survey, physicians claimed more than 20% of their practice to be defensive in nature, completely unnecessary for the health of their patients.[26]

A recent study found that medical liability costs and defensive medicine account for at least 10% of medical care costs.[27] The exact figure is uncertain, but estimated annual costs range from $60 to $200 billion.[28] Physicians in a state with high malpractice costs, like Washington, are more likely to retire early, leave the state, or reduce their scope of practice. Fewer doctors restricts patients' access to quality health care.

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 law made modest changes to patient safety, liability insurance and the legal process. Most of these changes, however, were minimal and have not resolved the medical malpractice crisis in Washington. Furthermore, since its passage, the reform has been severely curtailed by the Washington Supreme Court, which struck two primary sections of the law in 2009 and 2010.[29]

Policy Analysis

The majority of 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% 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 to 31% 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% in 2000–01, while states without caps experienced a 44% increase in premiums.

In 2003, Texas capped malpractice jury awards for noneconomic damages at $250,000. As a result of this and other reforms, the state's largest malpractice insurance company cut its premiums by 35%, resulting in $217 million in savings to doctors, and their patients, over a four-year period.[30]

Officials at one nonprofit hospital, Christus Health, report malpractice reform has saved them some $100 million, which they can now devote to charity care, instead of fighting lawsuits. Limiting jury awards has made Texas a much more attractive place to practice medicine. In the years following passage of malpractice reform, thousands of doctors entered the state, many to serve in rural areas.

Joint and Several Liability

As with malpractice reform, 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 noneconomic damages and eliminating joint and several liability. These recommended reforms 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;.
- 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.

There must be a system in place to protect those physicians testifying against incompetent doctors from legal retribution. Competency should be decided by the MQAC, not the courts.

Recommendations

1. **Cap the amount of noneconomic damages that can be awarded by a jury to $350,000 or less.** As in other states, the goal is to make future awards more predictable, which in turn will make insurance premiums more predictable.

2. **Eliminate joint and several liability.** Doctors should be held responsible 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 pockets" defendant.

3. **Encourage the development of reforms such as schedules of damages, "early offer" programs and specialized medical courts.** Long-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 doctors in the medical profession are identified and removed from practice.

6. Medicaid Reform

Recommendations

1. Adopt a state voucher program to give Medicaid recipients control over their health care dollars.

2. Encourage Congress to allow block grants of federal funds instead of matching funds to the states.

Background

The Medicaid program, created in 1965, provides federal and state funding on a matching basis for health care for the poor and disabled. Today, over 60 million people receive services through the Medicaid program.[31]

There are currently four groups of people receiving assistance through the Medicaid program. These are the poor, the disabled, mothers and children, and individuals needing long-term care. Although mothers and children make up most of the beneficiaries, long-term care accounts for 70% of yearly Medicaid dollars.[32]

Physician participation in Medicaid is voluntary. Medicaid payments to doctors have always been lower than those of any other insurance carrier, including Medicare. Consequently, physicians commonly lose money with every Medicaid patient they treat and doctors have been withdrawing from the program, thus decreasing access to health care for low-income and disabled people.

In 1966, the cost of Medicaid was $1 billion. Medicaid costs exploded to $330 billion by 2007.[33] It is estimated that the cost will rise to $900 billion a year by 2019. In many years, the financial burden of Medicaid grows at twice or three times the rate of inflation. At its present rate of growth, by 2030 Medicaid-funded nursing home expenditures alone will equal the size of the entire Social Security program today.

Policy Analysis

Medicaid has resulted in a number of harmful effects for the very people it is intended to help. First, it discourages work and job improvement for low-paid employees, since with increasing income, workers lose their Medicaid benefits.

Second, Medicaid encourages employers of low-income workers not to offer health benefits. They assume, or hope, taxpayers will provide these benefits instead.

Third, Medicaid discourages private insurance companies from offering nursing home policies. As the government program crowds out private carriers, this insurance market gets smaller every year, resulting in less choice for consumers.

Lastly, Medicaid discourages charity care and philanthropic giving in the health care sector. If the government is assumed to be already giving health care to low-income people, private donors shift their money to other causes.

State lawmakers are caught in a vicious cycle wherein the more of their citizens' state tax money they devote to Medicaid, the more money they receive from the federal government. If Washington state spends a dollar on Medicaid, it gets another dollar in matching funds from federal taxpayers, seemingly doubling the state's spending on health care.

The federal match makes state lawmakers feel they are receiving "free" money, so it is no surprise that Medicaid is the largest budget item for virtually every state in the country. Of course the "free" matching money is provided by federal taxpayers, who are the same people as state taxpayers.

In 1996, the federal government reformed welfare and repealed the Aid to Families with Dependant Children (AFDC) program. The AFDC operated with state and federal matching funds, like Medicaid. Opponents of AFDC repeal predicted tragedy for low-income families. That didn't happen. In fact, welfare caseloads decreased dramatically and poverty across all demographic groups declined as well, as more families became economically independent and entered the workforce.

The basis for the success of AFDC reform included a five-year lifetime limit on participation and the freezing of federal funds, which were then distributed to the states as block grants.

Policymakers can learn from the welfare reform of 1996. Federal funding for Medicaid should be given as block grants, not as matching funds. This would induce states to budget for the truly needy and not rely on a blank check from federal taxpayers.

To introduce the responsible use of Medicaid funds, recipients should be given individual vouchers so they can control their own health care spending. These vouchers could be used to purchase private insurance policies and could be used to fund personal Health Savings Accounts. Dollars not spent could be rolled over from year to year and could be taken from one job to another.

Like welfare reform, this change in the Medicaid program would help lift poor families out of poverty, by making them independent and allowing them to own their health care coverage.

Recommendations

1. **Adopt a state voucher program to give Medicaid recipients control over their health care dollars.** Vouchers would allow Medicaid recipients to choose the health insurance policies that work best for them, and to participate in consumer-driven health care. It would also increase access by giving Medicaid recipients a broader choice of doctors.

2. **Encourage Congress to allow block grants of federal funds instead of matching funds to the states.** Medicaid costs will continue to spiral out of control unless a meaningful ceiling is placed on spending. A simple method to accomplish this is to use federal block grants instead of unlimited matching funds. That would induce states to be better stewards of their health care budgets, since state lawmakers would no longer feel they are getting "free" money from federal taxpayers.

7. Innovations in Health Care Services

Recommendation

Policymakers should avoid heavy-handed regulations that block innovation in the delivery of health care services.

Background

Although over 85% of health care in the United States is paid for by a third party, usually an insurance company or a government agency, a growing number of free-market health care models are becoming common in Washington and across the country. These alternative ways of delivering health care services allow the patient to make all the key decisions in how to access care: where to go, when to go, whom to see, how to pay and how much to pay.

These alternatives are thriving outside the financing and regulatory structure of government, and largely beyond the notice of state legislators. In fact, public officials, even those working in health care regulation, are often among the last to know how the health care marketplace is changing.

At the same time, patients seeking alternatives in health care delivery have the full protection of all the consumer laws, professional licensing requirements, quality-of-service standards and truth-in-advertising rules that apply to any legitimate business activity in the state.

Following is a short description of the innovations and patient-centered conveniences emerging in the private health services market.

Policy Analysis

Concierge Medicine

Concierge medicine is defined as paying a fixed amount of money per month to have 24-hour access to a dedicated primary care physician. Same-day appointments, email access and more time with the doctor are standard services. The vast majority of concierge patients also

have affordable, high-deductible insurance to cover hospitalizations and major medical expenses.

This model is now being applied across a wide range of socioeconomic levels. The movement started with the very wealthy, but today many concierge practices are very affordable. A clinic in Seattle charges adults in their 40s only $768 a year, or just $64 a month.[34] Some charge as little as $35 per month.

Doctors are able to build successful practices because of the volume of patients. The low cost and 24-hour access make it much easier for doctors to practice preventive medicine, and patients with long-term health conditions are more likely to keep their illness from getting worse, thus saving money in the long run.

Convenient Care Clinics

A convenient care clinic is a small health care facility located in a common shopping area, like a mall or large retail store. They are open seven days a week, take walk-in visits and offer affordable services. They are generally staffed by qualified nurse practitioners under the supervision of a doctor. They provide simple medical procedures, testing, immunizations, physicals and preventive health screenings.[35]

Unlike traditional doctor offices, convenient care clinics openly post their prices and accept payment by cash, credit card or insurance. Convenient care members report a 98% patient satisfaction rate.[36]

Large retailers such as Walmart are opening in-store clinics to treat customers with routine medical problems. From a patient standpoint, the convenient location and the reduced cost are major attractions.

There are more than 800 convenient care clinics nationwide, and that number is expected to grow in the future.[37]

Use of the Internet

The internet offers many sites to meet the growing demand for reliable, high-quality health care-related data. People are using the internet to research their own medical conditions, compare results

and outcomes for various procedures and providers, and make cost comparisons before making important care decisions.

The internet is one of the most promising tools for informing people about their own health and options for treatment. For this reason it is important for policymakers not to place regulatory roadblocks or new taxes on this growing and cost-effective source of consumer information.

Value-Based Medicine

Good data now exist that show a definite decrease in health care costs for payers who use a value-based model for their employees. By financially rewarding healthy behavior, like an improved diet, getting more exercise or giving up smoking, these employers have seen a significant drop in their rate of increase in health coverage.

In 2001, Pitney Bowes began a value-based benefits program centered on employees with diabetes and asthma. The company saw its annual costs decrease for both conditions within the first year, and it experienced $4 million in health care savings by the fourth year of the program.[38]

In the late 1990s, executives at Quad Graphics began a program of imposing no copayments on workers who joined a weight- and diabetes-management program or a smoking-cessation program. Total cost for participants ranged from 17 to 21% below previous estimates for each year of the program.[39]

Conclusion

Allowed to function on its own, the free market has the ability to develop creative solutions to the ongoing problems of funding and access in health care that would not work in a rigid government-program setting. Policymakers should encourage more of these activities, letting private innovators in the market explore what works and what doesn't, and then pass the benefits on to health care consumers.

In particular, state lawmakers and the insurance commissioner should not place a stifling regulatory burden on these innovative and

practical ideas, as they have done to hospitals and clinics with the costly and time-consuming Certificate of Need process.

Recommendation

Policymakers should avoid heavy-handed regulations that block innovation in the delivery of health care services. Over-regulation by the state would prevent doctors and clinics from developing new ways to build relationships with patients. It would also prevent medical professionals from using new technology, such as electronic medical records, or talking to patients through email, to improve the way they practice medicine.

Additional Resources from Washington Policy Center, Available at washingtonpolicy.org

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CHAPTER FIVE
EDUCATION POLICY

1. K-12 Education Spending

Recommendations

1. Return the education system to its core function by focusing resources on classroom instruction by teachers.

2. Put local school principals in charge of their own budgets. Allow principals to control hiring, firing and the curriculum, then hold them accountable for student learning.

3. Education spending should distributed based on individual basic student grants. The grant should follow the student to the public school of the family's choice.

4. End rigid categorical programs to eliminate wasteful administrative oversight. Allow principals to direct education dollars to the classroom.

5. Remove restrictive class size requirements to allow innovation and flexibility in spending education dollars.

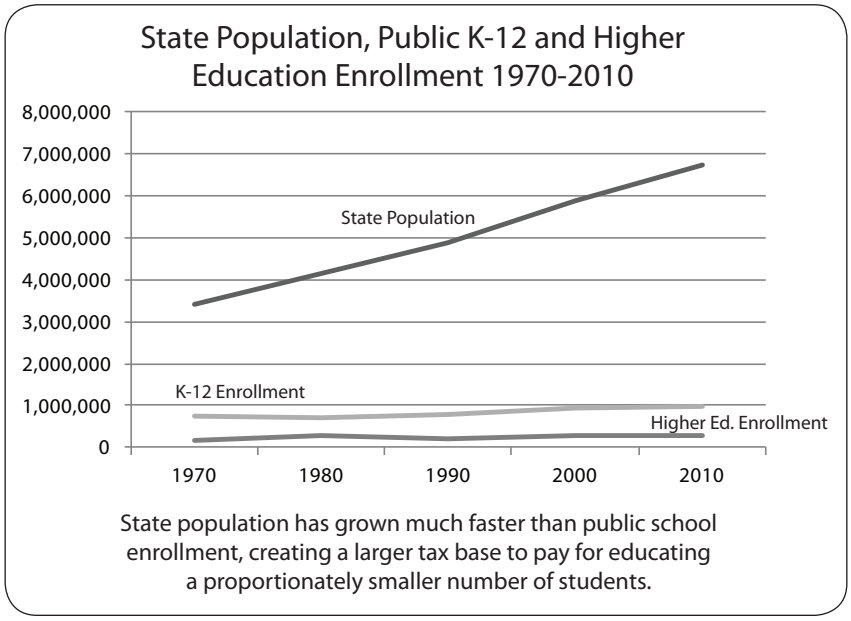
6. Create a transparent accounting system, accessible online, to inform policymakers, parents and taxpayers about how education dollars are spent.

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 under a million (988,283) K-12 public school students attending 2,011 schools in 295 districts across the state.[2]

The state's total population has grown much faster than the number of students, creating a larger tax base to pay for educating a proportionately smaller number of students. Between 1970 and 2010, the state population nearly doubled, growing by 97%,[3] while K-12 public school enrollment increased by only 30% (about 230,000 students).[4] At the same time, the number of public school employees increased by 72%.[5]

Population and student growth trends are shown 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.

The Rise in K-12 Spending

K-12 education is the largest single expenditure in the state budget. For 2011–13, the total operating funds for Washington public schools is nearly $16 billion, which includes state and federal funding. The bulk of K-12 education spending, about $13.7 billion, comes from the state General Fund budget.[7] About $1.9 billion comes from federal grants.[8] In addition, a further $4 billion is provided through local property tax levies.[9]

Details on how the state portion of education funding is spent are shown in the following table.[10]

2011–13 State Basic Education Programs (in millions of $)		
General Apportionment	10,459.7	75.8%
Special Education	1,350.1	9.8%
Transportation	649.8	4.7%
Learning Assistance Program	252.2	1.8%
Bilingual Education	172.5	1.2%
Highly Capable Students	17.5	0.1%
Institutions	32.6	0.2%
Subtotal: Basic Education Programs	$12,933.4	93.5%

2009–11 Non-basic Education Programs (in millions of $)		
Levy Equalization	611.7	2.2%
Education Reform	158.1	1.1%
State Office Administration	48.6	0.3%
Educational Service Districts	15.8	0.1%
Food Service	14.2	0.1%
Subtotal: Non-Basic Education Programs	$848.4	
Total – State Funds*	**$13,781.8**	**100.0%**

**"State Funds" include the General Fund-State and the Education Legacy Trust Account, together known as Near General Fund-State.*

Altogether, average spending per student in Washington public schools is about $10,300 a year, not including capital spending.[11]

Of the money allocated to public education, only about 59% is devoted to classroom instruction. The rest is spent on administrators, maintenance personnel, special education, counseling, transportation, food services and interest on debt. In addition to the operating budget, an additional $1 billion is spent on school construction. The state spends a further $11.1 billion on higher education and other education programs.[12]

Yet, even with more funding, dropout rates are high. State officials report only 73% of students typically graduate from high school,[13] and an independent estimate shows that only 65.6% of the class of 2008 graduated from Washington's high schools.[14] In contrast, the graduation rate in privates schools is often 90% or higher.

Washington ranks ninth worst in the nation in dropout rates, with only eight states having a lower graduation rate. Washington is one of only 13 states that did not improve public-school graduation rates between 1998 and 2008.[15]

Washington students who do complete public high school courses often find the education they received is incomplete. Administrators report that 37% of freshmen attending a four-year university or two-year community college must take remedial courses in math or reading before they are ready for college-level work.[16]

The state provides a basic education grant for every enrolled K-12 student through the general apportionment formula to school districts across the state. The average state basic grant was $5,192 per student in school year 2010–11.[17] However, the amount of funding school districts actually receive varies according to arbitrary staffing ratios and teacher seniority rules imposed by Olympia.

The Prototype School Reform and School Finance

In 2009, the legislature enacted a law intended to dramatically reduce classroom sizes in grades K-3, expand the definition of basic education, expand early learning, change the evaluation and pay of teachers, and change how local schools are funded.[18]

The new law created twenty work categories, such as "media specialist," "social worker," and "technology staff," and provided that every school district had to hire a set number of employees in each category per 1,000 students. The ratios chosen were those thought needed to staff a so called "prototype school," a theoretical concept created by two university professors, Dr. Allen Picus and Dr. Lawrence O. Odden.[19]

The prototype school theory calls for funding of full-day kindergarten, class sizes of 15 students or fewer in kindergarten, first, second and third grades, increased one-on-one tutoring, more technology in the classroom, classrooms with children of different ages, summer school, and a full program for gifted students.

The prototype school concept is unproven and expensive. As applied in Washington, it calls for adding about $3.4 billion a year to

the cost of public education and the hiring of 5,500 more public-sector employees.[20]

Policy Analysis

Despite the legislature's efforts to create an expansive prototype school funding model, education officials consistently say they need more money. Yet by any reasonable measure, taxpayers in Washington are providing ample funding for public education.

Rising Trend in Spending

K-12 education funding in Washington has increased significantly in recent decades, even after adjustment for inflation. Between 1980 and 2011, state and local spending on K-12 schools more than doubled, from just under $4.8 billion to over $13 billion.[21]

Washington Public Schools are Well-Funded

Advocates for increased spending argue education is underfunded because it makes up a smaller share of the state budget than in the past, or that schools should spend a larger share of people's personal income. 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* of the budget 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 state spending on other programs expands. Despite claims that schools have been "cut," state education funding in real terms has steadily increased over time.

In fact, today per-student 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, more taxpayers are paying into the system than ever before.

More Spending Does Not Lead to Better Learning

While education spending in Washington has increased sharply in recent decades, 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. Although per-student spending continues to rise, state and national test scores show no significant improvement in student performance.[22]

Shifting from Funding Staff Ratios to Funding Children

Currently, Washington allocates funding to the schools by funding a certain number of classroom teachers to meet defined classroom sizes, plus staff ratio formulas. This funding is allocated according to a preset salary grid and blindly pays teachers based on seniority and training credits, not on their ability to teach students.

In this system, no account is taken of actual student needs at the local level, nor in recognizing and rewarding particularly talented teachers. It also does not account for ineffective teachers. If parents complain, bad teachers are simply transferred to another classroom, or to another school.

Staffing schools by allocating ratios allows central school district bureaucracies to control the assignment of personnel to individual schools. Schools have little flexibility to alter the mix of resources in a way that would most benefit students. As a result, today in Washington state, principals are hamstrung by lack of control over their budgets and staff hiring. Local principals in Washington state control less than five percent of the money allocated to their schools.[23]

Washington's Joint Legislative Audit and Review Committee (JLARC) reports that:

> In most cases, central administrators determine the number of certificated and classified staff assigned to individual schools. Almost 96 percent of districts responding to JLARC's survey said that central administrators determine whether to hire additional teachers and 89 percent said central administrators determine the number and type of classified staff employed at each school.[24]

Local principals have almost no control over which teachers are assigned to their schools, or whether a particular teacher's skills and experience match with the needs of students.

Individual Education Grants

A better method of school finance, called individual education grants or "fund the child," has revitalized schools across the country. This approach has proved successful in Cincinnati, Baltimore, San Francisco, Houston, St. Paul and Oakland, and there are pilot programs in Boston, Chicago and New York City.

Under this system, education funding follows the child to the public school of the family's choice. Schools that are successful attract students. Schools that do not teach students and do not satisfy parents see declining enrollment. This signals to the district superintendent that the leadership of that school needs to be replaced.

Funding for each child can include a dollar multiplier to assist children who require more resources, such as disabled children, children with limited English proficiency and poor children. Devoting these dollars to local schools allows principals to decide how to best educate these children. Accountability is built in. Schools that do not educate children are reorganized and their failed leadership is replaced.

Categorical Spending Programs and Administrative Waste

In addition to basic education programs, the state funds numerous categorical non-basic education programs. One of those categories, "Education Reform," covers thirty-three different programs.[25]

Funding a large number of categorical spending programs is a central bureaucrat's dream come true. In one study, UCLA Professor of Management Bill Ouchi found that:

> After the legislature allocates the new money [to education], that cash doesn't go directly to individual schools—it goes to the district central office. There, the bureaucrats don't send dollars to the schools. Instead, they hire people to perform new tasks in the schools. The problem with doing it this way is that the decisions on exactly what kind of staff each school needs aren't made at the local school, they're made far away in the central office.[26]

Combining categorical programs into a single revenue stream would allow school superintendents to reduce central staff and free

money for student instruction. It would also relieve local principals of having to apply and report on a range of different funding sources for their schools. Instead, education funding should be provided to principals on a straight per-student basis, without categorical limits, so principals can direct resources as needed to the classroom.

Create a Transparent Accounting System

Currently it is difficult for policymakers or the public to understand how public education money is spent, because the Office of Superintendent of Instruction does not report how spending relates to student learning. A JLARC study identified the kinds of data that should be made easily available to policymakers and the public:[27]

- School expenditure data
- Staff/teacher descriptive data
- Student descriptive data and outcome
- School/community descriptive data

Some progress has been made in providing the public with more information about the public school system. Detailed and comprehensive student achievement data for every school in Washington is now available through the State Board of Education's Public School Accountability Index.

Building-level school expenditure data will now be provided by the Office of Superintendent of Public Instruction, but school districts still do not have to show how their spending relates to student learning, so further efforts at public transparency are needed.

Recommendations

1. **Return the education system to its core function by focusing resources on classroom instruction by teachers.** Independent research shows that placing a good teacher in the classroom is the single most effective way to educate children, especially if that teacher has mastery of the subject matter. Over the years, the school system has been given more and more tasks unrelated to educating children. Education leaders should direct the public's money toward academics, and not be asked to solve the broad range of problems facing society.

2. **Put local school principals in charge of their own budgets. Allow principals to control hiring, firing and the curriculum, then hold them accountable for student learning.** The proven experience of private schools and charter public schools shows children are best served when the onsite leader, the principal, assembles an effective teaching team. Principals know the needs of their own schools, and they know which students need additional help. Principals should be held accountable for student learning, and those who prove ineffective should be replaced.

3. **Education spending should be based on individual basic student grants. The grant should follow the student to the public school of the family's choice.** Policymakers should allow parental choice among public schools, not staffing ratios, to guide funding allocations. Parents who voluntarily choose their child's public school become more involved and have a shared interest in improving the education of all children at the school.

4. **End rigid categorical programs to eliminate wasteful administrative oversight. Allow principals to direct education dollars to the classroom.** This policy change would allow more efficiency and local innovation in spending education dollars at all levels of decision-making.

5. **Remove restrictive class size requirements to allow innovation and flexibility in spending education dollars.** Reducing class sizes has not resulted in improvements in student learning, as advocates promised. Instead, policymakers should remove legal restrictions that micro-manage schools, and let principals implement the kinds of learning programs that work best for their students.

6. **Create a transparent accounting system, accessible online, to inform policymakers, parents and taxpayers about how education dollars are spent.** The Office of Superintendent of Public Instruction should improve the collecting of relevant information about the funding and performance of local schools, especially about how spending on personnel relates to student learning, and make this information easily available online to policymakers, parents and the general public.

2. Putting the Principal in Charge

Recommendations

1. Allow school principals to be true education leaders.
2. Allow any qualified professional to apply to be a public school principal and train principals to assume a leadership role.
3. Hold principals accountable by grading schools on an A, B, C, D, F performance scale, using the State Board of Education Accountability Index.
4. End principal tenure so non-performing principals can be dismissed and replaced with effective education leaders.

Background

Years of research show that the second most important influence on student learning, after teacher effectiveness, is the quality of the school principal.[28] Effective principals are able to set clear goals, establish high expectations and provide necessary support and training, so teachers can succeed and students can learn.

Under the current system, school principals in Washington do not control teacher hiring, the curriculum, the budget or day-to-day management in their own schools. In almost all cases, central administrators and labor union officials decide when and where teachers will work. Local principals cannot assemble a teaching team or match teacher skills with the needs of students. Mandatory salary and work restrictions make it very difficult for a principal to reward a good teacher or fire a bad one.

Policy Analysis

Allow Principals to Assemble Their Teaching Teams

Principals should be able to hire the best person to teach in the classroom, even if the most qualified person does not happen to have

a teaching certificate or has not been assigned by the central office. Principals should be allowed to promote excellence in the classroom by retaining teachers who demonstrate an ability to teach.

Principals should also be allowed to fire teachers who are unwilling or unfit to do the important work of educating children. It is unfair and demoralizing to other teachers when poorly performing teachers are kept on staff, often with the same or higher level of pay and benefits.

To ensure accountability, school districts should hold principals answerable for teacher performance and yearly student progress at their schools. Teachers should also have access to an impartial review and appeals process, including union representation, if they feel they have been treated unfairly by the principal.

The importance of removing weak teachers from the classroom is one of the central findings of a study by Stanford University:

> Moreover, a theme that emerges over and over again in the studies is the excessive difficulty in dismissing weak teachers. Although few administrators wish to dismiss large numbers of teachers, making it easier to dismiss the weakest teachers may well change the dynamics of local school reform.[29]

Remove Legal Barriers that Micro-Manage Schools

Top-down mandates—such as union work rules, staffing formulas and limits on school hours—prevent flexibility and innovation in spending education dollars. To become education leaders, local principals should be allowed to implement the learning program that works best for their students.

If a principal feels longer school days, home visits or Saturday sessions are needed to help educate children, state mandates and union work rules should not be allowed to prevent students from learning. Principals should be able to pay teachers more for working longer hours to help struggling students. Principals should also be allowed to hire one-on-one tutors to help students at risk of falling behind.

Open Principal Positions to All Qualified Applicants

The position of principal should not be limited to applicants who hold a teaching certificate. Principals must be skilled at leading and motivating adults and students. Anyone with demonstrated skills in managing gained from businesses, nonprofits or military experience should be allowed to enter a principal-training program. For example, former United States Army general, John Stanford, had no background in education when he was hired to head the largest school district in the state.[30]

Many current principals were selected because of their skill in navigating the education bureaucracy, rather than for their executive ability. All principals should receive additional training to prepare them to be education leaders, not passive administrators. Principals who cannot manage a budget and oversee a staff of teaching professionals should be replaced with ones who can.

Give Schools A through F grades, Based on Accountability Index Performance

The new State Board of Education Accountability Index ranks schools on a scale based on five outcomes. The outcomes measure student learning in reading, writing, math and science, plus each school's graduation rate.[31] Using these measures, schools were placed in one of five categories: Exemplary, Very Good, Good, Fair or Struggling. The great majority of schools, 1,208, rank as only Fair or Struggling, while just 212 schools, barely 10%, rank as either Very Good or Exemplary.[32]

Public schools should receive letter grades each year based on their performance on the state Accountability Index. In this way, parents would better understand how well or how poorly their schools are performing. Administrators of schools receiving a C, D or F would have a strong incentive to work hard to raise their schools grade ranking, to the benefit of their students.

Grading schools on an objective A to F grading scale is one of the reforms that dramatically raised the quality of public schools in Florida.[33] Attention from the media was intense, and districts across the state started working hard to encourage schools to improve their grades. Many Florida schools formerly earning Ds and Fs now earn As, Bs and Cs, and

some school districts set a goal that all local schools receive a B ranking or better.

Recommendations

1. **Allow school principals to be true education leaders.** The experience of private schools and charter public schools have shown that an effective school principal can inspire and lead schools to achieve extraordinary gains in student learning. Principals should have control over the actual dollars in their budgets, choose teachers and staff, and design the educational program for their students.

2. **Allow any qualified professional to apply to be a public school principal and train principals to assume a leadership role.** Principals are usually required to have a teaching credential, even though there is no research showing teaching credentials are necessary to be an effective leader. Broadening the leadership talent pool will bring fresh new approaches to solve the problems facing modern public schools.

3. **Hold principals accountable by grading schools on an A, B, C, D, F performance scale, using the State Board of Education Accountability Index.** Assigning letter grades to public schools based on clear, objective measures would better inform policymakers, parents and taxpayers about the real quality of local education.

4. **End principal tenure so non-performing principals can be dismissed and replaced with effective education leaders.** Principals with control over budgets, staff and programs have demonstrated they are able to raise student achievement. Principals who fail to serve students should not be insulated by job-protection rules that serve the career interests of adults, while depriving children of the education they have been promised.

3. Improving Teacher Quality

Recommendations

1. Raise teacher quality by reforming teacher pay.
2. Hire teachers based on proven experience and mastery of academic subject matter, particularly in math and science, rather than on the number of teaching certificates earned or education requirements met.
3. Allow principals to hire the best qualified teachers based on the learning needs of their students.
4. Allow local principals to fire bad teachers.

Background

Research consistently shows that placing an effective teacher in the classroom is more important than any other factor, including class size, in raising student academic achievement.[34] A good teacher can make as much as a full year's difference in students' learning growth.[35] Students taught by a high-quality teacher three years in a row score 50 percentile points higher than students of ineffective teachers.[36] Students taught by a bad teacher two years in a row may never catch up.

Two decades of research show the qualities of an effective teacher are:

- Mastery of the subject matter being taught.
- Five or more years of teaching experience.
- Teacher training that emphasizes content knowledge and high standards of classroom competency.
- Strong academic skills, intellectual curiosity and an excitement about learning for its own sake.[37]

Policy Analysis

In Washington, only 62% of students passed the math End-of-Course exam.[38] This is in part because public school teachers often do not have mastery of the subjects they teach. In Washington, only 40% of math teachers hold a college degree in math, and only 77% of science teachers hold a college degree in science.[39] School officials regularly report they are unable to find people who are qualified to teach high school math and science who also hold a teaching certificate.

Many Washington professionals are highly qualified to teach these subjects, but, because they do not have a formal certificate, it is illegal for public school officials to offer them teaching positions. Getting a teaching credential requires months of additional classroom work, something many qualified professionals have neither the time, money nor inclination to do.

School of education administrators defend the current system by saying someone who knows a subject may not be able to teach the subject. However, experienced professionals, like an engineer who wants to teach high school math, can quickly be taught classroom procedures. His enthusiasm and mastery of mathematics is the most important factor in whether his students will learn.

Putting the local principal in charge of evaluating the teaching staff would allow the principal to easily remove any teacher who is not working out. Principals know which teachers are doing a good job, and can fairly and efficiently evaluate them. Principals should then be held accountable for teacher performance and student learning.

If a district superintendent finds a local school is consistently failing to teach students, he should dismiss the principal and hire a new one. The lines of responsibility should be clear to public school employees and to the public. Teachers and principals who are unable to educate children to the standard required by the state should be removed from the system, and their places taken by people who can be effective educators.

Recommendations

1. **Raise teacher quality by reforming teacher pay.** The single-salary "time and credits" pay grid the legislature requires school districts to

use should be repealed. Instead, teacher pay should be set at the local level, depending on the performance of the teacher and the needs of the students, not determined by arbitrary pay scales dictated by Olympia.

2. **Hire teachers based on their proven experience and mastery of academic subject matter, particularly in math and science, rather than on the number of teaching certificates earned or education requirements met.** Current law makes it illegal to hire many highly qualified people to teach in a public school. Mid-career professionals, former military members, retired business owners and others are all potential teachers, if they show mastery of their subject and acquire the necessary classroom skills. Professionals bring life experiences to the classroom and help students understand the complex world they will enter after graduation.

3. **Allow principals to hire the best qualified teachers based on the learning needs of their students.** Principals should be able to hire the best person to teach in the classroom, and be able to hold all faculty members accountable for whether students are learning.

4. **Allow local principals to fire bad teachers.** In order to assemble and maintain a high-quality, highly motivated educational team, principals must be allowed to weed out teachers who are not effective at educating children. Keeping bad teachers in the classroom is demoralizing to good teachers and unfair to students.

4. Performance Pay for Teachers

Recommendations

1. Change the automatic single-salary pay grid so that teacher pay is based on performance and the ability to educate children, not on arbitrary degree requirements or years of employment.

2. Establish school oversight at the district level and an appeals process to ensure fair treatment of teachers. Allow superintendents to fire ineffective principals.

Background

More than half of the people employed by public school districts in Washington are not classroom teachers. In 2010–11, there were approximately 48,398 teachers working in elementary and high school classrooms, only 47% of the 102,094 workers employed in public school education.[40] The average base salary of public K-12 teachers for a nine-month work year is just over $53,323 (2009–10).[41]

School districts supplement teacher pay for additional time, responsibilities and incentives (known as "TRI"), most of which is paid from local levy revenue. The average additional salary paid to teachers under this arrangement is $10,580, bringing the total average salary for a nine-month work year to $63,903, plus benefits.[42]

Policy Analysis

The current pay structure for Washington public school teachers was established in the 1920s to "ensure fair and equal treatment for all." The system stresses employee equality over professional excellence.

This salary structure has changed little over the last 85 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 in educating children.

Teachers with strong backgrounds in math and science sacrifice far more financially under the single-salary schedule than their college peers who do not go into teaching.[43] For example, four years after college, graduates with technical training who are not teachers earn almost $13,500 more than their peers who entered the teaching profession. After ten years, the pay gap grows to almost $28,000.[44]

University of Washington researcher Dan Goldhaber notes how non-teacher professionals are rewarded based on ability:

> Not surprisingly, the non-teacher labor market rewards ability at a much higher rate than the teacher labor market, with the teacher labor market actually giving a slight premium to those with the lowest SAT scores in 2003.[45]

He also notes that better qualified teachers use their clout to avoid having to work in high-poverty schools:

> Teachers with more labor-market bargaining power—those who are highly experienced, credentialed, or judged to be better—will therefore tend to be teaching in nicer settings with lighter workloads. As a consequence, the most-needy students tend to be paired with the least-qualified teachers.[46]

A teacher-pay system designed to ensure "fair and equal treatment for all" has resulted in placing the least effective teachers in the classrooms of the neediest students.

Performance Pay

Leaders of Washington's teachers' unions strongly oppose paying teachers based on ability, but this approach is now common in many parts of the country. Douglas County, Colorado, has had such a system since 1994. There, the system is designed to "reward teachers for outstanding student performance, enhance collegiality, and encourage positive school and community relations."[47]

In Douglas County, unions do not oppose merit pay. 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."[48]

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

The advantage of performance pay is that it encourages teachers to develop their talents and acquire new skills. Performance pay also allows school 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:[49]

1. **Merit pay:** Individual teachers are evaluated and given bonuses based on improvements in their effectiveness in the classroom.

2. **Knowledge- and skills-based pay:** Teachers receive a salary increase when they acquire new levels of education and training.

3. **Performance pay:** Teachers are rewarded when their students show measurable improvement on standardized academic tests.

4. **School-based performance pay:** All the administrators, teachers, and staff at a particular school receive a bonus if their students meet certain academic standards.

To determine performance fairly, teachers should be assessed frequently on student achievement, teaching skills, subject knowledge, classroom management and lesson planning. An appeals process should be put in place so teachers receive an independent review if they feel they have been unfairly treated. Principals who abuse the performance-pay system to benefit themselves or to unfairly enrich their friends should be disciplined or dismissed.

Policymakers who support equitable 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. **Change the automatic single-salary pay grid so that teacher pay is based on performance and the ability to educate children, not on arbitrary degree requirements or years of employment.** The pay schedule should be changed to reward and retain top-performing teachers and attract talented teachers to high-need schools.

2. **Establish school oversight at the district level and an appeals process to ensure fair treatment of teachers. Allow superintendents to fire ineffective principals.** Teachers and other school employees should have the right to contest unfair treatment. Independent oversight by superintendents and school boards is needed to avoid favoritism, unmerited raises and management harassment of individual teachers. Principals who abuse the merit pay system should be disciplined or dismissed.

5. The Burdens and Cost of Accepting Federal Funding

Recommendations

1. Reduce burdensome reporting requirements of federal education programs.

2. Opt out of ineffective federal education programs to help liberate Washington schools from federal control.

Background

Over the years, Congress has passed eight major expansions of the federal Elementary and Secondary Education Act, today known as the No Child Left Behind Act (NCLB), and has significantly increased federal control over state education policy.

For the 2012 fiscal year, the federal Department of Education has requested a budget of $77.4 billion, a $7.5 billion increase over the 2011 budget.[50] In the 2012 budget, $48.8 billion would be spent on over 60 competitive grant programs and some 20 formula grant programs.[51] In 2012, the Department of Education plans to increase its permanent staff by 70 new employees, for a total of 4,422 employees and total Departmental Management costs per year of $1.75 billion.[52]

For the 2011–13 biennium, Washington state lawmakers expect to receive $1.97 billion in education funds from the federal government, which represents approximately 10% of total state spending in K-12 education.

Washington's Office of Superintendent of Public Instruction (OSPI) administers 23 separate federal programs to receive this funding. The general categories covering these programs in Washington schools in 2011–13[53] are:

2011–13 Categories of Federal Funding	Federal Funds
OSPI and Statewide Programs	$ 81,065,000
School Food Services	$ 437,988,000

Special Education	$	691,796,000
Elementary/Secondary School Improvement	$	7,352,000
Education Reform	$	103,161,000
Transitional Bilingual Program	$	71,001,000
Title I, Part A, Learning Assistance Program	$	581,207,000
Total	**$**	**1,974,863,000**

The No Child Left Behind Act

States receiving Title I funds must comply with the extensive reporting and testing requirements of the 2001 NCLB Act. This act requires states to assess students on a statewide test in math and reading in grades three through eight and once in high school. NCLB requires that by 2014 all students will be proficient in math and reading.

Student test scores show that NCLB has not improved student achievement in Washington state. The preliminary school list released by the Office of the Superintendent of Public Instruction shows that 63% of Washington's schools failed in the 2010–11 school year to make adequate yearly progress under NCLB achievement targets.[54]

Reporting Requirements of Federal Grants

NCLB is not the only federal mandate imposing heavy reporting burdens on school districts.

Other federal programs include aid to special needs (disabled) children, migrant children, neglected and delinquent children, and for vocational education, Head Start, math and science professional development for teachers, bilingual education, the education of Indian children, youth training, day care, school food services and transportation.[55]

Each of these programs imposes detailed and complex reporting requirements on state and local administrators. For example, Title I, Part A is composed of four major funding streams: the Basic Grant, the Concentration Grant, the Targeted Grants and the Education Finance Incentive Grants. State administrators must calculate the four grant

categories for each school district and add them together to determine Washington's Title I, Part A, allocation.

The process is so opaque that no one can predict a state's funding based on population of low-income children. In fact, states like Kentucky, Mississippi and Missouri, with relatively high levels of child poverty, receive less Title I funding per student than other states.[56]

Federal special education funding also imposes heavy reporting burdens on school districts. Here is just some of the information school districts must collect: Special Education Personnel Employed and Needed; Federal Special Education Child count and Least Restrictive Environment; Special Education Students Suspended/Expelled; Timeline for Initial Evaluation of Special Education and Transition from Part C to Part B by Child's 3rd Birthday; Child Outcomes Summary Form—district-wide entry and exit data.[57]

In addition, state education officials must monitor and comply with a constant stream of unpredictable rules and changes issued by U.S. Department of Education regulators. The department has issued mandatory instructions to state K-12 educators more 100 times since NCLB was enacted in 2001.[58]

There is no limit to how far Department of Education officials can involve themselves in local schools. Federal officials recently ordered school administrators to develop parts of a national parental involvement plan—regardless of a school's existing relationship with parents in its community—or else lose all Title I, Part A, funding.[59]

According to Representative John Kline (R-Minn.), chairman of the House Education and the Workforce Committee:

> States and school districts work 7.8 million hours each year collecting and disseminating information required under Title I of federal education law. Those hours cost more than $235 million. The burden is tremendous, and this is just one of many federal laws weighing down our schools.[60]

Trying to fund local schools by first sending federal taxes to Washington, D.C., then waiting for federal officials to return some of those dollars to Washington state officials, who then distribute them to

school district officials, who then allocate the funds to local schools, is very inefficient.

Each step along the way reduces the portion of every dollar that actually reaches children in the classroom. It is impossible to measure accurately how much money is wasted through federal education funding, but a 1998 estimate found that just 65 to 70 cents of every education dollar leaving Washington makes it to local classrooms.[61]

Policy Analysis

Professor Herbert J. Walberg made this statement in 1997 to the U.S. House of Representatives Committee on Education:

> Federal categorical programs contribute to these productivity problems and create others. The programs are strongly influenced by teacher unions and other education lobbying groups to advance their interests rather than those of students, taxpayers, and the nation. They create red tape and huge bureaucracies that make U.S. administrative costs twice the average of other OECD [Organization for Economic Cooperation and Development] countries.
>
> They obfuscate accountability for learning results. Imperious, detailed rules and regulations make it difficult for state and local educational authorities to bring about constructive changes. They distract educators from their clients-students, both categorical and non-categorical.[62]

Federal influence over local education assumes lawmakers and regulators in Washington, D.C., know more about what is good for children than educators in the community.

The No Child Left Behind Act and other federal programs compel state officials, local principals and classroom teachers to spend their time complying with federal rules, which diverts resources away from educating children. Federal mandates also encourage school officials to avoid accountability for failed schools by saying they were only doing what the federal government requires.

Recommendations

1. **Reduce burdensome reporting requirements of federal education programs.** Washington's representatives in Congress should work for education rule changes that reduce and streamline the costly reporting requirements of receiving federal assistance.

2. **Opt out of ineffective federal education programs to help liberate Washington schools from federal control.** State officials should identify and withdraw from federal education programs that impose more cost on local schools than they benefit Washington school children. The loss of funding would be balanced by more efficient use of state and local dollars.

6. Increasing Parental Involvement through Education Choice

Recommendations

1. Allow parents, rather than government officials, to decide which public school their children will attend.

2. Increase parental involvement by ending Washington's ban on charter public schools.

3. Enact tuition tax-credit scholarships to allow families to attend a private school with privately donated funds.

Background

In 2010, local administrators assigned 60% of Washington's students to schools ranked in the two lowest-performing categories, as rated by state officials, and they assigned 74,000 students to "struggling" schools, the state's lowest academic ranking.[63]

Students in Washington state have very few choices to avoid being assigned to an underperforming public school. Current law limits students to the following five educational options:

1. Students can ask to transfer to another school district, if officials give their permission and the desired district has room to accommodate them.[64]

2. Students can enroll in a full-time online school.

3. Parents can buy a home and establish residency in another school district, if they can afford it.

4. Students can leave public school and be homeschooled.

5. Students can attend a private school of their choice, again, if the parents can afford it.

Because of the cost and level of commitment required, only a small number of students are able to benefit from these choices.

Policy Analysis

One solution adopted in other states is to promote parental involvement by allowing more choice among public schools. A recent study by North Carolina officials at the Charlotte-Mecklenburg School District shows that among students attending low-quality public schools, winners of a lottery to attend a charter public school are more likely than their peers to graduate from high school, attend a four-year college and earn a bachelor's degree.[65]

Public Charter Schools

Forty-one states and the District of Columbia allow their students to attend charter public schools.[66] Charter schools are popular with parents. Across the nation, over 1.7 million children attend 5,453 charter public schools. This number increased by nine percent in 2010 alone.[67] Many charter schools have more parents who want to be involved than they can accommodate, and are forced to place students on a waiting list.

The experience of other states shows charter public schools consistently provide a better, decentralized model for providing a quality public education than traditional public schools. Some charter public schools have eliminated the achievement gap between black and white students. Charter public schools commonly achieve these remarkable results for less money than traditional public schools.[68] Even in the rare instances when charter schools fail, they can be closed, something that is nearly impossible with traditional public schools.

Washington is one of the few states that bans charter public schools. In 2004, Democratic Governor Gary Locke signed a charter public school bill that had passed the legislature with bipartisan support.[69] However, the statewide teachers union, the Washington Education Association, strongly opposes public charter schools. The union mounted a successful ballot referendum campaign that blocked the law from going into effect.[70]

Another way to promote parental involvement is to allow tax credits for donations made to educational scholarships. These programs

allow corporations and individuals to receive a tax benefit for the contributions they give to scholarship-granting organizations, which then provide funding to children who wish to attend a private school. As of 2011, nine states have enacted tax-credit scholarship laws. These are Arizona, Florida, Georgia, Indiana, Iowa, North Carolina, Oklahoma, Pennsylvania and Rhode Island.[71]

Nine states and the District of Columbia enhance parental involvement by allowing educational voucher programs. These states are: Colorado, Florida, Georgia, Indiana, Louisiana, Ohio, Oklahoma, Utah and Wisconsin.[72] Many of these voucher programs benefit children with special learning needs. Ohio has an educational voucher program for children with autism.

Vouchers, like food stamps or housing aid, allow the recipient of public assistance to decide how the benefit should be spent. Voucher funds go directly to the service provider—the recipient does not receive cash directly. Public education vouchers enable parents to get directly involved in their children's education by letting them select the school program that best meets each child's particular learning needs. Once the parent chooses the school, education funds are sent to the school to cover tuition, fees and other costs on behalf of the student.

Policymakers in Washington state tightly limit how much parents may become involved in directing their children's education. Public school officials automatically receive funding, usually with significant increases, year in and year out, regardless of their performance in improving student learning. School officials have little incentive to improve, because they have a "captive audience." They know many parents are forced by economic circumstances to enroll their children, even if the school consistently fails to provide students with a quality education.

Promoting parental involvement through broader choices breaks the problem of the "captive audience" and creates an incentive for all public school officials to improve. When officials at low-performing public schools are faced with the possibility of losing students, and the funding that comes with them, they will make improvements in order to keep parents involved.

Student-centered finance promotes parental involvement because it requires that individual funding follow the child to the school of the parents' choice.

Greater parental involvement in choosing schools would create a powerful incentive for public school officials to be nimble and responsive to the changing educational needs of students and families. School administrators would realize they have to compete for students and that securing public education funding depends on serving children, not conforming to political pressures or bureaucratic rules.

Tying funding to the educational needs of individual students, rather than to rules dictated by Olympia, would induce school officials to develop programs that help students reach their fullest potential.

Recommendations

1. **Allow parents, rather than government officials, to decide which public school their children will attend.** The most effective way to get parents involved in supporting public education is to allow them to choose their children's' school. Once parents are voluntarily involved, they have an incentive to improve the quality of education for all students attending their community public school.

2. **Increase parental involvement by ending Washington's ban on charter public schools.** Charter schools are a proven way to improve public education. Parents know they must support the school or it will close. Students attending traditional schools benefit as well, since alternatives are available if their own school is failing to provide them with the high-quality education they were promised.

3. **Enact tax-credit scholarships to allow families to attend a private school with privately donated funds.** Tax-credit scholarships serve the public interest by encouraging individuals and corporations to support increased educational opportunities options, especially for students from low-income families.

7. Online Learning

Recommendations

1. Ensure all students have access to online learning courses.
2. Repeal the 15% education funding cut the state imposes on every student who enrolls in full-time online learning.
3. Allow students to earn course credits by demonstrating mastery of a subject, instead of imposing arbitrary seat-time requirements.
4. Allow students who attend traditional schools to use part of their basic education funding to enroll in online learning courses.

Background

Over the past ten years, legislators have passed a number of laws to increase student access to online learning. In 2002, Governor Gary Locke initiated the Digital Learning Commons, which provides students access through their local school district to over 600 individual online courses developed by respected education companies like Apex Learning, Aventa Learning and Advanced Academics.

Students can take courses in the following study areas: core academic subjects, credit recovery classes, elective classes, Advanced Placement subjects, foreign language, technical and vocational skills, and English as a Second Language. Fees range from $250–$350 per course.

When an online course is part of a student's basic education, as defined by law, the local school district pays the course fee. Fees for courses that are not part of a basic public education are paid by the student.

In 2005, the legislature authorized school districts to offer full-time online programs to public school students.[73] These students are entitled to receive the full basic education grant provided by the state for every student in Washington.[74]

Online learning programs are popular. In 2009–10, 12,554 Washington students enrolled in full-time online programs.[75] This is nearly double the 6,600 students who were enrolled the previous school year.[76] Continued funding is contingent on the student making adequate monthly progress, as measured by public school officials. A student's online funding can be withdrawn if the student is not successfully passing his or her online courses.

Currently, there are 40 full-time online programs offered by school districts that have contracted with private companies or designed their own programs.[77] These full-time online programs are regulated under Washington's Alternative Learning Experiences law. In addition, in 2009, the legislature required that online learning programs be approved by the Digital Learning Department in the Office of Superintendent of Public Instruction.[78] The state superintendent provides school districts with a procedure guide and a model online learning policy.

School districts have since developed and reported their online policies and procedures. According to their own reports, not all 295 school districts in Washington are providing students with access to online learning. Of the 223 districts who reported, 203 districts are offering online learning courses, but 20 are not.[79]

The 2011 Legislative Session

In 2011, lawmakers updated the state learning standards (the Essential Academic Learning Requirements) to include literacy in the use of technology. Schools are now required to teach students how to "integrate technology literacy and fluency."[80] The legislature also required school districts to give students high school credit for completing approved online courses.[81]

At the same time, the legislature imposed a 15% funding cut on every student who enrolls in a full-time online learning course. The cut applies to the 2011–12 and 2012–13 school years. Until the legislature imposed this cut, online students received the same funding as students attending traditional public schools.

Policy Analysis

Over ten years, Washington lawmakers have steadily expanded student access to online learning and, until recently, have provided full funding for students who choose to learn online. While online courses remain an important option, the vast majority of students attend traditional public schools. Only about 16,000, less than 2%, of Washington's nearly one million public school students were enrolled in online courses in 2009–10.[82]

The legislature's policy of cutting online students' funding by 15% may be unconstitutional, because it discriminates against students based on their public education choices. The Constitution provides for equal access to a public education for all student who seek one. Online courses are not special categorical programs, separate earmarks or supplements to basic education. For thousands of students, participation in online learning is their full-time public education.

The research shows that full-time online programs are particularly well-suited for certain public school students, and for many of them it is the only practical alternative to dropping out. Online courses provide a second chance to students who have failed in traditional schools.

Online courses provide students pursuing specialized sports or arts training to craft a learning program that fits a demanding daily schedule.[83] They help disabled students who face physical barriers in a traditional school building, and they provide consistent educational access for students whose families travel or live in isolated areas.

Although online learners make up a small share of all public school students, the ability of students to choose an online public education is an important part of fulfilling the state's paramount duty to educate every child residing within its borders.

Recommendations

1. **Ensure all students have access to online learning courses.** Some school districts continue to place roadblocks in front of students who wish to pursue an online education. State policymakers should guarantee all students voluntary access to online courses, and should

ensure that adequate online resources are available to meet student demand.

2. **Repeal the 15% education funding cut the state imposes on every student who enrolls in full-time online learning.** It is unfair, and possibly unconstitutional, to deny funding to public school students because of their education choices. All students enrolled in approved public education courses, whether online or in a traditional classroom, should receive equal funding.

3. **Allow students to earn course credits by demonstrating mastery of a subject, instead of imposing arbitrary seat-time requirements.** Online learning allows students to learn on their own time at their own pace. Rules about student time spent sitting in a classroom, which date to the 19th century, have no relevance in the digital age. Students should earn credits toward graduation based on what they have learned, not on how they learned it.

4. **Allow students who attend traditional schools to use part of their basic education funding to enroll in online learning courses.** State officials should not discriminate against students based on the students' education choices. Students should be able to devote their basic education funding equally to completing traditional school courses or online courses, or any combination of the two, at their discretion.

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CHAPTER SIX
BUSINESS CLIMATE

1. Improving Washington State's Business Climate

Recommendations

1. Amend or repeal laws and regulations that impede business innovation and entrepreneurship.

2. Repeal outdated laws and regulations that no longer serve a public purpose and work only to keep competitors out of the marketplace.

3. Require the governor to review and approve new agency regulations.

Background

The effects of the Great Recession continue to be felt both nationally and in Washington state. The state's unemployment rate has been at or above nine percent since March 2009, and the private sector has shed 175,000 jobs since 2007, with only tepid job growth in 2011 and similar mediocre economic growth expected in 2012.

The economic impact has been especially hard on small businesses—the same businesses that have traditionally led our economy out of past recessions. There are many reasons why small businesses suffer disproportionately compared to their larger competitors. Some reasons are tied to national trends rather than local conditions, but the fact remains that job growth remains flat in Washington, and that is bad for the economy, the government and society in general.

Fewer small businesses (those with fewer than 50 employees) are able to afford health insurance for their workers.

There is a lack of qualified employees willing to work in certain industries. Even with some recent minor improvements, the state-

imposed 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, policymakers should in particular seek ways to help smaller firms.[1]

- Of the state's 225,990 firms, 96% or 217,490, are small businesses, as defined by the Small Business Administration (those with fewer than 50 employees).
- Approximately 387,500 people in Washington are self-employed.
- Small firms employed 41% of the state's private sector workforce.
- Just over 1.1 million people work for small businesses in Washington.
- Washington has the third highest business start-up rate and the second highest business failure rate in the country.
- It appears job recovery in the small business community, since the 2009 official end of the recession, is lagging behind job growth for larger firms.

While large businesses play an important role in creating and sustaining a viable economic climate, small businesses traditionally are a major catalyst for job growth and revitalization, but they are struggling to recover from this latest recession.

Policy Analysis

Entrepreneurs and businesses face numerous challenges every day. Some of the strongest threats to their economic survival come not from competitors, but from the confusing tangle of state, county and municipal regulations.

Washington entrepreneurs consistently find that state and local regulators represent significant obstacles to the realization of 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. The regulatory structure strangles small businesses, drives up the cost of entering the market, impedes job creation and increases the cost of living for consumers.

Washington Policy Center has identified several problems small business owners say are the primary barriers to their success. Those problems 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
- Access to affordable water and energy

Many of these issues are addressed in other chapters of this policy guide. Other sections in this chapter provide recommendations for how to improve the overall business climate, and discussions about 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.** During the state's 122-year history, thousands of laws have been enacted that make it more difficult to start and run a small business in Washington. Policymakers should conduct a systematic review process to identify ineffective laws that should be amended or repealed.

2. **Repeal outdated laws and regulations that no longer serve a public purpose and work only to keep competitors out of the marketplace.**

Such laws harm consumers by keeping competitors out of the marketplace. Rules governing the for-hire vehicle, taxicab, hair care and moving industries are 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.** The steady stream of new agency rules have a huge effect on the business community. Submitting any new significant rule to review and approval by the governor would help slow the incessant flow of new regulations issued by state bureaucrats and would create clear accountability about who is responsible when new business restrictions are put in place.

2. Regulatory Reform

Recommendations

1. Regulate for results, not for process.

2. Reorganize the Office of Regulatory Assistance into an Office of Regulatory Reform that would identify regulations that 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 are all fundamental aspects of a free society. Respect for our natural rights is essential to maintaining civic life, 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 these 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 is summarized by a statement in an editorial from *The Seattle Times*, "Sometimes, the government simply doesn't know when to leave the marketplace alone."[2] 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 36% more per employee than larger firms in order to comply just with federal regulations. A firm with fewer than 20 employees might spend $10,585 per employee to comply with federal regulations, whereas a firm with over 500 employees would spend only $7,755 per employee.[3]

Today, regulations in our state fill 32 phone-book-size 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: What is the right balance of government intervention versus economic freedom? The answer is that government power should be limited 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."[4]

Within the limits of ordered liberty, it is the right of citizens to live as they see fit, not as the government directs. When state government oversteps its bounds by regulating the smallest details of lawful activities, it hinders the vibrant economic and social life of the community.

Government is the Largest Employer

Government is now one of the largest industry classifications in the state. Washington ranks among the highest states in the per capita tax burden, and it is among the highest in the overall cost of government it places on its citizens. One national study ranked Washington as the second-most regulated state. That same study ranked Washington at only 40th in economic freedom, well below top-ranked New Hampshire.[5]

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, nonprofit 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, costs must be passed along to homebuyers in the form of higher prices, pushing many low-income families out of the housing market. One Vancouver builder found that government taxes and regulations added 22% to the sale price of his homes.[6]

A study by the University of Washington found that state and local land use restrictions add $200,000 to the cost of a home in Seattle, helping push the median inflation-adjusted home price in the city to $447,800.[7] The study's author noted that, "The state is intervening to restrict supply. It's not that there's no land at all."[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.

Another idea taking root among several states is the creation of a small business ombudsman for state government. The idea is based

on the U.S. Small Business Administration's Office of the National Ombudsman (ONO). Like the federal office, a state-level ombudsman would be someone empowered to represent business owners as they navigate the confusing maze of state agencies and their thousands of pages of requirements.

The state ombudsman could listen to citizen complaints and investigate regulatory problems on their behalf. The federal office has saved small businesses across the country thousands of dollars. A state ombudsman would provide a similar benefit to Washington businesses.[10]

Regulatory reform is not just a domestic issue. The province of British Columbia, Canada, and Britain implemented strong regulatory reform efforts within the last decade.

In the early 2000s, British Columbia adopted an ambitious regulatory reform program. Entitled "A New Era for Small Business," the provincial government introduced over two dozen tax-relief measures that provided over $1 billion in tax relief; eliminated more than 70,000 regulations, effectively cutting red tape by one-third in three years; expanded their OneStop business service program to allow small businesses to complete government forms online; and introduced a first-job wage program to encourage employers to hire young people with no paid work experience.[11]

Between 2005 and 2010, the government of Britain undertook a similar reform, called the "Hampton Initiative," and cut the cost of red tape by $5.7 billion. Officials were concerned that some businesses were over-regulated and some were under-regulated. They based their effort on these principles:

1. All regulatory activity should be based on a clear, comprehensive risk assessment.

2. All regulators should provide broad-reach advice to businesses.

3. Form design guidelines should be established and regulators should use business reference groups to review the design of new and existing forms.

4. Regulators' penalties should be reviewed with the aim of making them more consistent and effective.

5. Regulatory bodies should be consolidated and regulations simplified, so that mandatory rules are not unduly complex and burdensome.[12]

Washington leaders do not need to reinvent the wheel of streamlining regulations. By following the successful examples of New York, Texas, Massachusetts and New Jersey, to name a few, or international efforts in British Columbia and Britain, 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 down their budgets. Focusing on measurable outcomes would free agencies, businesses and individual citizens to find the best way to achieve desired public good.

2. **Reorganize our state's Office of Regulatory Assistance into an Office of Regulatory Reform that would identify regulations that duplicate or contradict each other, are outdated or do more harm than good.** Currently, the Governor's Office of Regulatory Assistance only helps citizens navigate the complex maze of existing state regulations. It does not ask whether those requirements are in any way useful or needed. Reorganized 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, be reviewed every five years and, if still needed, be 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 not follow regulations voluntarily would be penalized, and their self-monitoring authorization would be revoked.

3. Estate Tax Repeal

Recommendation

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.[13] 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 state law 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.

The top federal estate tax rate fell from 55% in 2001 to 35% in 2009 and went to zero for the year 2010. Congress re-implemented the tax at 35% for 2011 and following years, with a $5 million exemption amount.

The Washington Supreme Court ruled in February 2005 that, because of Initiative 402, the Department of Revenue is entitled only to a portion of federal estate taxes due, and that Congress's action in 2001 eliminated the ability of Washington to collect a portion of the soon-to-expire federal tax. The court's decision meant that, if the legislature did nothing, Washington's estate tax would have ended in 2010 when the federal tax expired.

In 2005, however, state legislators enacted a new estate tax. The new tax law "de-couples" Washington's estate tax law from the federal government's tax laws.[14] The 2005 law repealed Initiative 402 and reinstated a stand-alone Washington estate tax law.

Policy Analysis

The rate at which an estate is taxed varies from 10% to 19%, 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 2005 estate tax law imposes a significant financial burden on Washington citizens. The Washington Department of Revenue collected $178 million in estate taxes in fiscal year 2007, $105 million in 2008 and $136 million in 2009.[15] Total revenue from estate tax collection equals just under one percent of all state taxes collected.

Tax officials expect the amount of revenue they collect to increase over time, as inflation pushes the value of more estates beyond the $2 million threshold and more families are affected. Families are often forced to sell their business or other assets in order to pay the tax. Meanwhile, corporations in the same field of business are unaffected by the estate tax.

Recommendation

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.

4. Unfair Competition: Government vs. Private Sector

Recommendations

1. Policymakers should devote limited state resources to providing services in areas where the private sector is unable to provide services to the public.

2. Wherever possible, government agencies should refrain from regulating businesses or industries in which the state itself is an active competitor.

Background

When a business receives government support to the detriment of its competitor, that is, the competitor is legally barred from enjoying the same government support, that business is benefiting from unfair competition. When businesses are forced to compete against politically favored businesses, or against the government itself, they are less likely to prosper because they face higher costs in relation to their competitors.

One of the many dangers of government competing against the private market, or of granting politically favored businesses tax or regulatory exemptions, is the threat of a diminished tax base as disfavored businesses fail. A smaller tax base inevitably leads to higher tax rates imposed on the remaining businesses and their customers.

Washington state government competes against private businesses, or outlaws private competition, in a number of areas. Whether the state-sponsored competition is on a small scale, as in the state printing office, or a large monopoly, as in the industrial insurance market, there are a number of markets in which policymakers should end state operations that are not core government services. The state government should focus on delivering services that only it can provide, leaving the offering of private goods and services to the private market.

Policy Analysis

Unfair competition exists when a government entity uses its tax advantages or regulatory exemptions to supply goods or services to customers in competition with private citizens. Private business owners are therefore arbitrarily subjected to an artificial competitive disadvantage.

Small business owners are likely to be most impacted by unfair government competition. Small businesses are much more likely to start up quickly and expand rapidly as needs arise. These businesses are also more likely to face artificial barriers to success in the form of government regulations (see the Regulatory Reform subsection in this chapter), which chips away at thin profit margins.

A classic example is the Washington State Department of Printing. This office performs printing work for state government, including the legislature and state agencies. A government-owned printing office may have been necessary when it was created in 1854, but today there are hundreds of private printing businesses that could do the same work at competitive prices, saving taxpayers thousands of dollars every year.

Sometimes unfair competition comes in the form of a favorable tax or regulatory treatment. Washington's tribal businesses have benefited from special rules and regulations that gives the owners of these businesses a significant competitive advantage over non-tribal businesses. The special tax advantages tribal businesses receive are described in Chapter 2.

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 to cut their prices, drawing customers away from competitors who do not benefit from special rules.

Recommendations

1. **Policymakers should devote limited state resources to providing services in areas where the private sector is unable to provide services to the public.** The people of Washington pay taxes to support

vital public services that cannot be provided any other way, not to subsidize state-run commercial operations. Policymakers should end government-owned commercial enterprises that the state uses to compete against its own citizens.

2. **Wherever possible, government agencies should refrain from regulating businesses or industries in which the state itself is an active competitor.** When a state agency enters a commercial market, it moves from being an impartial umpire to one of the players. To the extent possible, state officials should avoid regulating commercial activities in which they have a vested commercial interest.

5. Licensing to Restrict Competition

Recommendations

1. Refrain from using licensing restrictions to block citizens' access to a functioning market.

2. Review all laws and regulations and eliminate those that unduly impede innovation and entrepreneurship.

3. Eliminate duplicate regulations and consolidate the confusing range of local regulations at the state level.

Background

The state of Washington routinely certifies or licenses the practice of many different types of businesses. According to one national study, 35% of the national workforce is licensed or certified by at least one level of government (federal, state or local) and 29% are fully licensed. This is a drastic increase from 4.5% of the national workforce that was subject to direct government oversight in the 1950s.[16]

In Washington, the state requires businesses operating in scores of industries to become licensed or certified. A snapshot of license requirements from the Department of Licensing and the Department of Labor and Industries includes industries such as auctioneers, body piercers, collection agencies, court reporters, geologists, landscape architects, security guards, electricians, handymen and many more that have to be licensed in their particular trades. These two agencies have over 300,000 active licensees on file.[17]

While the state imposes hundreds, if not thousands, of regulations on myriad industries, local governments add their own burden on business owners. City and county government officials impose their own tailor-made regulations that businesses and entrepreneurs must follow. While it is important that local officials maintain a certain level of autonomy in writing rules that are specific to their environment, officials often use the upper hierarchical rules as a starting point for adding more regulations, creating a bewildering mishmash of rules for businesses that

operate in several different jurisdictions. This raises the cost of regulatory compliance and creates a disincentive for smaller competitors to enter the market.

Policy Analysis

Entrepreneurs and businesses face numerous challenges every day. Some of the strongest threats to their economic survival come not from competitors, but from the confusing tangle of state, county and municipal regulations.

Unfortunately, when the state requires licensing, it is often trying to accomplish two goals that do not actually help consumers or small businesses: The state is raising money for itself through license or certification fees, and the state is shutting out potential competition for businesses that have endured the licensing process.

Licensing and certification are often touted as a way to "professionalize" a workforce or industry. However, mandating licenses quickly shifts from a standard that helps the consumer to a systemic barrier to market entry, particularly for low-income people who want to start a business.

It is reasonable for professions that demand high technical skill to require some form of certification, such as architecture, medicine or law, but often the needed oversight can be provided by private voluntary associations, like a guild, professional group, or an independent third party like the Better Business Bureau.

In addition, the internet now allows consumers to gain direct information about the qualifications of professionals they might hire. Angies's List, for example, is used by more than one million people a month to find reliable services at reasonable prices. List members post more than 40,000 contractor and provider reviews a month, including real-world assessments of doctors, dentists, roofers, plumbers, builders, house cleaners, auto mechanics and hundreds of other professions.[18]

These reviews are based on actual experience, and they provide consumer information that is far more reliable and relevant than whether a person for hire once passed a state licensing requirement.

Mandated license requirements have a significant downside. They create a barrier to market entry and can eliminate the incentive for a budding entrepreneur to start a new business, thus stifling job creation and denying consumers access to useful services.

Recommendations

1. **Refrain from using licensing restrictions to block citizens' access to a functioning market.** Licensing requirements should be kept at the minimum needed to protect consumers and preserve public safety. These public goals can often be accomplished through professional standards enforced by private associations. Government licensing should not be used to keep citizens from bringing new products and services to market or simply to raise money for government agencies through license fees.

2. **Review all laws and regulations and eliminate those that unduly impede innovation and entrepreneurship.** Laws and regulations build up over time with little coordination or follow-up to find out whether they are still needed or ever worked in the first place. Policymakers should conduct frequent and systematic reviews of all laws and regulations and eliminate those that block innovation and business creation while providing no benefit to the public.

3. **Eliminate duplicate regulations and consolidate the confusing range of local regulations at the state level.** Business owners face a bewildering array of rules and requirements imposed at the city, county and state level. Policymakers at all levels should eliminate overlapping regulations and simplify the administration of those that remain.

6. 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 monopoly unemployment insurance system imposes one of the highest per-employee costs in the nation.[19] While the tax *rate* is not higher than most states, businesses in Washington must pay that rate on the first $31,400 of salary for each employee.[20] In contrast, businesses in most other states only pay unemployment taxes on the first $7,000 to $10,000 of salary, resulting in a much lower tax burden than Washington's.

Generous Benefits

A primary cost-driver of Washington's state-run monopoly system is the high level of benefits it pays out. The maximum unemployment benefit, at a generous $583 per week, is close to the highest in the nation. Washington's average weekly benefit payout is $325, 12% higher than the nationwide average of $290 a week.

Lawmakers make it easy for workers to receive tax-funded unemployment benefits. Among the ten reasons a person can use to get state unemployment benefits are, "to accept other work," a pay reduction of 25%, or a reduction in work hours of 25%.[21]

A person must have worked just 17 weeks to qualify for benefits. Employers, especially in the arts and seasonal businesses, often specifically design temporary employment positions so that a worker will

receive unemployment payments once the employer has no further need of the employee. The level of benefits paid out is not based on financial need.[22]

In 2008, the legislature further expanded the unemployment insurance program. Lawmakers made employees who voluntarily leave their current work to join an apprenticeship program eligible to receive tax-funded benefits.[23]

Effort at Reform

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.

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 these are:

- 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 general unemployment insurance trust fund would pay the difference between the taxes collected from individual 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 payroll tax imposed on workers is the second-highest in the nation, at $803 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 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% of their wages into a personal account administered by a private fund. Employers contribute an additional 2.4%. 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.[24]

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.

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CHAPTER SEVEN
GOVERNMENT ACCOUNTABILITY

1. Abuse of the Emergency Clause

Recommendation

Restrict use of the emergency clause to genuine emergencies and adopt constitutional limitations on its use.

Background

In 1912, Washington amended its constitution to allow initiatives and referenda, which permit voters directly to pass or repeal state laws. Through these processes, citizens can join together to draft and approve legislation or to recall measures already 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.

Lawmakers can, however, attach an emergency clause to any bill or section of a bill, because the legislation is supposedly needed to protect the government or public safety. Bills or bill sections that contain an emergency clause cannot be repealed by the people through a popular referendum. The emergency clause appears in the same part of the constitution, Article 2, Section 1, and requires that the bill or section with the clause is:

> necessary for the 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 the legislature adjourns.

In order to repeal a bill that includes an emergency clause, citizens must file an initiative, which is a much more difficult process than a referendum. The number of valid signatures needed to put a referendum on the ballot is four percent of the number of votes cast for the office of Governor in the most recent election, or 120,577 signatures. The threshold for initiatives is eight percent, or 241,153 signatures.[1] By adding one sentence to a bill, lawmakers make it twice has hard for the people to repeal it.

Policy Analysis

Lawmakers have routinely abused the exemption by attaching an emergency clause to 930 bills adopted since 1997 (15% of bills adopted), including 71 times during the 2011 legislative session (17% of bills adopted). In recent sessions, the Governor has reduced abuse of the emergency clause by using her line item veto power to remove them from bills before signing them. An example is her partial veto of HB 1000 in 2007:

> An emergency clause is used when immediate enactment of a bill is necessary to preserve the public peace, health, or safety or when it is necessary for the support of state government. It should be used sparingly because its application has the effect of limiting citizens' right to referendum.[2]

Some lawmakers acknowledge the emergency clause is tapped as a regular strategy to provide political cover against popular referenda.[3] 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.

Constitutional reforms are needed due to the state supreme court's refusal to provide the legislature guidance on what an appropriate use of the emergency clause looks like and instead granting total deference to a legislative declaration of an emergency. The first opportunity the Supreme Court had to address the legislature's questionable use of an emergency clause was in 1995 with the passage of

SB 6049, which provided public funding for building a Mariners baseball stadium in Seattle.

In a 6-3 ruling upholding the denial of a referendum, the Court said:

> Ultimately, the emergency that faced the Legislature was that the Seattle Mariners would be put up for sale on Oct. 30 (1995) unless, prior to that date, the Legislature enacted legislation that would assure the development of a new publicly owned baseball stadium for King County.[4]

The supreme court had an opportunity to revisit this ruling in 2005 when faced with the question of whether the legislature's suspension of the voter-approved two-thirds vote requirement for tax increases was an emergency warranting denial of a referendum.

Again in a 6-3 ruling, the court upheld the legislature declaration of an emergency. The impact of the ruling was to give the legislature a blank check to use emergency clauses any time it wants. This has the effect of routinely stripping the people of their right of referendum. The dissenting judges, however, wrote blistering objections to the majority's decision.

For example, Justice Richard Sanders warned the ruling allows the legislature to avoid the people's right of referendum:

> Where the Legislature uses an emergency clause simply to avoid a referendum rather than respond in good faith to a true "emergency" ... and where the court essentially delegates its independent role as a constitutional guardian to the legislative branch of government in its power struggle against the popular branch of government; I find little left of the people's right of referendum.

The most effective way to end the legislature's abuse of the emergency clause is with a constitutional amendment creating a supermajority vote requirement for its use. This means that the legislature would be prohibited from attaching an emergency clause unless a bill is approved by a 60% vote. Budget bills, however, would be exempt from the supermajority vote requirement, allowing them to pass with a simple majority and not be subject to referendum.

If a true public emergency occurs that warrants denying the people their right of referendum, a 60% vote requirement in the legislature would not be difficult to achieve. In the case of a true emergency, the public would welcome the legitimate use of the emergency clause by the legislature, recognizing that it is intended to be used at just such a time to protect public safety or the normal functioning of state government. Political convenience, however, should no longer qualify as means for denying the people their right of referendum.

Recommendation

Restrict use of the emergency clause to genuine emergencies and adopt constitutional limitations on its use. 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.

A constitutional amendment should be adopted to prohibit the use of an emergency clause unless the bill containing the clause is approved by a 60% vote. Budget bills, however, should be exempt from the supermajority vote requirement, allowing them to pass with a simple majority and not be subject to referendum because they are necessary to fund normal government functions.

2. Open-Government Reforms

Recommendations

1. Create a Public Records Ombudsman authorized to enforce the Public Records Act.

2. Clarify the use of the attorney-client privilege exemption.

3. Require audio taping of executive sessions.

4. Adopt a constitutional amendment placing the preamble of the Public Records Act into the constitution, and require a 60% vote of lawmakers to enact a new exemption from disclosure to take effect.

5. Local government employee costs and union contracts should be made available on the state's searchable budget transparency website.

Background

In 1972, voters overwhelmingly enacted Initiative 276, providing citizens with access to most records maintained by state and local government.[5] The new law created the Public Records Act (PRA). The preamble to the PRA says:

> The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created.
>
> This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected. In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern.[6]

When approved by the voters in 1972, the Public Records Act granted government only 10 exemptions from public disclosure. Since then, more than 300 exemptions have been added. State courts have further weakened the public's access to information with various legal rulings.

Along with the Public Records Act, citizens are provided access to the activities of government through the state Open Public Meetings Act (OPMA). Created by the legislature in 1971, the intent section of this law states:

> The legislature finds and declares that all public commissions, boards, councils, committees, subcommittees, departments, divisions, offices, and all other public agencies of this state and subdivisions thereof exist to aid in the conduct of the people's business. It is the intent of this chapter that their actions be taken openly and that their deliberations be conducted openly.[7]

Policy Analysis

Due to the massive expansion in the number of exemptions from public disclosure and numerous violations of the Public Records Act and Open Public Meetings Act, as identified by the state auditor in his 2008 Performance Audit, meaningful open-government reforms are needed to restore the people's power to remain "informed so that they may maintain control over the instruments that they have created."[8]

Public Records Ombudsman

Currently, when government officials violate the Public Records Act, citizens are forced to file a lawsuit to receive the public records improperly withheld. This means an individual must take on the full force and legal resources of the government agency being sued. To level the playing field, the legislature should authorize an independent, open-government ombudsman to be an advocate for citizens.

This independent public records advocate would be able to provide information on public records and open public meetings to state and local agencies and the public, while also representing the public in obtaining public records from state and local agencies.

Although the attorney general has appointed an assistant attorney general to provide advice on open-government issues, this "ombudsman" is not truly independent. The primary mission of the attorney general is to represent state agencies in legal actions, including defending agency officials who claim exemption of public records from disclosure.

This creates a conflict of interest that can prevent an ombudsman in the Attorney General's office from acting independently and in the interest of protecting the public's right to know. Several other states have created an independent ombudsman to assist the public. Washington lawmakers should follow their example.

Attorney-Client Privilege Abuse

One of the most egregious examples of judicial weakening of the state Public Records Act occurred in 2004. That year, the state Supreme Court issued a decision in *Hangartner v. City of Seattle*. In its ruling, the justices declared that attorney-client privilege must be considered an exemption from the Public Records Act. This exemption is in addition to the limited exemption already in the law, which allows only attorney-client communications associated with an active lawsuit to be withheld from disclosure.

The irony of this ruling is that the ultimate clients of government are the citizens, yet under the guise of attorney-client privilege, government records can be withheld from the public.

The result of this decision is that virtually all communication between government agencies and their attorneys can be kept secret, even routine communication not related to any actual or threatened lawsuit. This ruling has the potential to block disclosure of a substantial amount of information necessary to hold government accountable. This ruling should be reversed, so the law retains only the original, narrow exemption based on ongoing litigation.

Audio Taping of Executive Sessions

The Open Public Meetings Act requires all meetings of state and local government governing bodies to be open to the public and announced in advance. However, the law allows the governing officials to meet behind closed doors in an executive session for certain limited

purposes, such as consulting with their attorney on litigation, or discussing the maximum price they are willing to pay for a parcel of land.

Closed executive sessions are allowed only if the purpose of the meeting is announced in advance, and the secret discussion is limited to the announced allowed topic.

To ensure executive sessions are not being used to evade public disclosure, the sessions should be audio recorded. The recordings could be made exempt from disclosure under the Public Records Act and from subpoena or discovery in a lawsuit.

If a lawsuit is filed under the Open Public Meetings Act challenging the propriety of the executive session, and the person filing the lawsuit presents evidence sufficient to convince a judge that a violation had likely occurred, the audio recordings could be used to settle the question.

If a judge finds the challenged executive session included improper discussions and violated the law, the audio recording of only the portions of the meeting that should not have occurred in executive session could then be publicly disclosed.

Public Records Act Intent

The Public Records Act was passed to keep the people of Washington informed about the decisions state officials make in their name. The intent section of the Public Records Act is clear:

> The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.[9]

Still, over time a long list of exemptions has been enacted, increasing secrecy in government and weakening citizens' ability to see important public information. The intent of the Public Records Act should be added to the state constitution and a higher vote threshold adopted for enacting new exemptions.

Disclosing Local Public Employee Costs

In 2008, state officials enacted Washington Policy Center's recommendation to create a searchable state budget transparency website (www.fiscal.wa.gov). While cost data is available for state employees, local government employee compensation is not included. This means, for example, that despite most education funding going to personnel costs, this information is not available on the state's website. (Teachers, while paid with state funds, are counted as local government employees.)

One of the primary drivers of the cost of government is steadily rising local public employee compensation, including generous health benefits and pension payments. Many local government workers earn more than the taxpayers who pay their salaries.

Similarly, it is common for a local public employee to become eligible for retirement years before his private sector neighbor is able to stop working. To inform the public, the cost of local public employee compensation and union contracts should be made available through the state's searchable budget website.

Recommendations

1. **Create a Public Records Ombudsman authorized to enforce the Public Records Act.** An independent public records advocate should be created to provide information on public records and open public meetings to state and local agencies and the public, and to represent the public in obtaining public records from state and local agencies.

2. **Clarify the use of the attorney client-privilege exemption.** The use of attorney-client privilege by government officials to deny access to public records should be limited to situations where actual litigation is pending or threatened. Officials should not use it to block public disclosure simply because an attorney has participated in a discussion of government policy, attended a meeting or has seen a particular document.

3. **Require audio taping of executive sessions.** To ensure executive sessions are not being used to evade public disclosure requirements, these sessions should be audio taped. If a lawsuit is filed under the Open Public Meetings Act challenging the legality of the closed

executive session, a judge could use the audio recordings to determine if a violation of the law has occurred.

4. **Adopt a constitutional amendment placing the preamble of the Public Records Act into the constitution, and require a 60% vote of lawmakers to enact a new exemption from disclosure to take effect.** Despite the clear intent of the act, hundreds of exemptions from public disclosure have been added over the years. To reverse this trend the statutory protections of the Public Records Act should be placed in the state constitution, and a 60% vote should be required to add new public disclosure exemptions.

5. **Local government employee costs and union contracts should be made available on the state's searchable budget transparency website.** To enhance disclosure and transparency, local government personnel costs should be made available on the state's budget website, www.fiscal.wa.gov, in the same way state employee costs are disclosed.

3. Improve Legislative Transparency

Recommendations

1. The legislature should make itself subject to the Public Records Act and Open Public Meetings Act.

2. Adopt a constitutional or statutory provision that requires 72-hour public notification before any bill receives a public hearing; prohibit title only bills; and prohibit votes on final passage until the final version of the bill to be approved has been publicly available for at least 24 hours.

Background

Although all state and local governmental agencies are subject to the Public Records Act and the Open Public Meetings Act, the legislature is exempt from full disclosure under the claim of legislative privilege. This is why state lawmakers are able to go into an executive session to plan strategy and discuss the reasons why legislators do or do not support a bill, while local governments are prohibited from using executive sessions to discuss policy decisions.

While all local government records and internal communications not subject to another exemption are subject to public disclosure, the legislature and state and local agencies have often claimed legislative privilege to block the release of emails and other internal policy-related records.

Even though Washington's legislature has exempted itself from the state's open government laws, it has adopted rules that would appear to provide the public an opportunity to participate in the legislative debate. These transparency rules, however, are easily and routinely waived by some lawmakers.

Policy Analysis

To facilitate public involvement in the legislative process the legislature's rules require that:

> At least five days notice shall be given of all public hearings held by any committee other than the rules committee. Such notice shall contain the date, time and place of such hearing together with the title and number of each bill, or identification of the subject matter, to be considered at such hearing.

In fact, according to one legislative committee's procedures the purpose of a public hearing "is to respectfully hear from the public."

This common-sense statement reflects a fundamental premise of our democracy: As the governed, we are to be provided the opportunity to comment on the laws we live by and to ensure those who represent us are informed about our opinions and expectations.

Unfortunately, this transparency protection for the public is routinely brushed aside as some lawmakers waive legislative rules requiring five-day notice before holding a bill hearing; provide inadequate notice of the time, location and topic of public hearings; hold hearings on bills with no text; and vote on bills the same day details are made publicly available.[10]

For example, during the 2010 legislative session the Senate Ways and Means Committee gave the public just five hours notice of a public hearing it planned on SB 6250, a bill to create a state income tax. Not only was this impossibly short notice, but no copies of a proposed substitute income tax bill were made available. The only clue about how such a new tax would work was provided by a short blog post issued by Senate Majority Leader Lisa Brown.

Also in 2010 the committee that planned to vote on an $800 million tax increase (SB 6143) provided only a few hours notice to the public. An announcement was made at about 9:00 a.m. on Saturday, April 10th. The committee approved the plan at a 1:30 p.m. meeting the same day. The full House then voted on and passed the 112 page tax bill that evening, less than 14 hours after the public had been notified.

Contrast this secretive procedure with the transparency required of local government. Tim Ford, the Open Government Ombudsman for the attorney general noted, "It would be illegal for a local government to provide less than 24 hours notice of a special meeting."

Though they look good on paper, the legislature's transparency rules in practice have deprived the public of the ability to be informed about decisions that affect the lives of every Washington resident.

Recommendations

1. **The legislature should make itself subject to the Public Records Act and Open Public Meetings Act.** There should be no distinction or favoritism between state lawmakers and any other local or state government officials when it comes to the state's open-government laws. To lead by example, and to further the public interest, the legislature should make itself subject to all the requirements of the Public Records Act and the Open Public Meetings Act.

2. **Adopt a constitutional or statutory provision that requires 72-hour public notification before any bill receives a public hearing; prohibit title-only bills; and prohibit votes on final passage until the final version of the bill to be approved has been publicly available for at least 24 hours.** Because transparency and public disclosure in the legislative process are vital to a representative democracy, and because the purpose of public hearings is to hear respectfully from the public, the legislature should provide adequate notice before public hearings or votes so citizens are able to participate in the legislative process.

4. Protecting Voter-Approved Initiatives

Recommendation

Adopt constitutional reform that requires a two-thirds vote of the legislature to amend a voter-approved initiative.

Background

Article 1, Section 1 of the state constitution says:

> 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.

It is because of this clear authority of power of the people over their government that before any legislative powers are granted, the people reserve for themselves co-equal lawmaking authority. This power is explained in Article 2, Section 1 of the state constitution:

> The legislative authority of the state of Washington shall be vested in the legislature, consisting of a senate and house of representatives, which shall be called the legislature of the state of Washington, but the people reserve to themselves the power to propose bills, laws, and to enact or reject the same at the polls, independent of the legislature, and also reserve power, at their own option, to approve or reject at the polls any act, item, section, or part of any bill, act, or law passed by the legislature. (a) Initiative: The first power reserved by the people is the initiative.

Despite reserving this power to enact laws, it is very difficult for citizens to qualify an initiative for voter consideration. The number of valid signatures needed to put an initiative on the ballot is eight percent of the votes cast for Governor in the most recent election, or 241,153.[11]

The high threshold required for an initiative to get on the ballot, and then the majority vote required for it to become law, ensures that such laws reflect the will of the people and should be respected by state lawmakers.

Reflecting this principle, the state constitution, in Article 2, Section 41, requires the legislature to muster a two-thirds affirmative vote in order to amend an initiative within two years of it becoming law. After two years have passed, however, the legislature needs only a simple majority vote to amend or repeal a voter-approved initiative. In fact, lawmakers have done this many times.

Policy Analysis

While the protection given to voter-approved initiatives by Article 2, Section 41 may appear to be a sufficient safeguard of the people's will, lawmakers' habit of routinely amending initiatives, along with their practice of attaching emergency clauses to their changes, denies the people the ability to stop a majority of the legislature from disregarding voter-passed laws.

For example, in 2005, lawmakers amended three voter-approved initiatives and attached referendum-denying emergency clauses to each change. The three initiatives were:

Initiative 402. Passed by voters in 1981, this initiative eliminated the state death tax and tied the state tax rate to the federal IRS code. Later, when Congress phased out the federal death tax, the state tax was phased out too. The state treasury, however, continued to collect the tax. A state supreme court ruling upheld Initiative 402, meaning the state death tax would no longer exist. In response, the legislature repealed Initiative 402 by a simple majority vote and enacted a stand-alone state death tax, which is in place today.[12]

Initiative 134. Passed by voters in 1992, this initiative created rules for corporate and union political campaign contributions. The legislature amended Initiative 134 to overturn a state supreme court ruling upholding the law as written instead of as interpreted by state agencies. The effect was that the voters' original intent was changed by state agency officials, supported by a simple majority vote in the legislature.[13]

Initiative 601. Passed by voters in 1993, this initiative created state tax and spending restrictions to restrain the growth of government and to limit tax increases. To accommodate a massive increase in state spending and to pass a $500 million tax increase, lawmakers in 2005, by a simple

majority vote, suspended Initiative 601's requirements for a two-thirds vote to raise taxes. They also enacted a new spending calculation that allows the legislature to spend at a faster rate than originally allowed by Initiative 601.[14]

The legislature amended all these initiatives after the protective two-year window provided by the constitution had expired. By adding an emergency clause to each of their changes, lawmakers prevented voters from holding a referendum on the changes being made to the laws they had enacted.

Because of this, Article 2, Section 1 of the state constitution should be amended to remove the two-year time limit and require a two-thirds vote whenever lawmakers seek to change laws enacted by the people.

Alternatively, if lawmakers cannot secure a two-thirds vote to amend an initiative, they should create a procedure that allows them to send the proposed changes to voters for approval. This would allow voters final say over whether the legislature's desired changes should be adopted, and it would show that legislators respect the people's constitutional power as co-equal lawmakers.

Recommendation

Adopt constitutional reform that requires a two-thirds vote of the legislature to amend a voter-approved initiative. The two-year limit on requiring a two-thirds vote of lawmakers to amend an initiative should be eliminated, so the two-thirds requirement would apply whenever the legislature seeks to change a voter-approved law. The only time legislators should be able to amend an initiative with a simple majority vote is when they first send the proposed changes to voters for approval.

5. Reducing the Number of Statewide Elected Offices

Recommendations

1. Reduce the number of elections for statewide offices from nine to four, by making the Secretary of State, Superintendent of Public Instruction, Commissioner of Public Lands and Insurance Commissioner governor-appointed positions.

2. Have candidates for Governor and Lieutenant Governor run on one ticket, like the U.S. President and Vice President.

Background

Every four years, Washington voters are asked to elect officials for nine separate statewide offices (not counting the state supreme court). These offices are:

- Governor
- Lieutenant Governor
- Secretary of State
- Treasurer
- State Auditor
- Attorney General
- Superintendent of Public Instruction
- Commissioner of Public Lands and
- Insurance Commissioner

Since voters can only realistically focus on a few high-level offices, there has been a debate about whether this is the most effective way to structure our state government.

One view holds that voters should use the "long ballot" to institute the greatest amount of direct democracy by requiring election of a large number of statewide officials.

Others argue a "short ballot" approach is better because the people choose a limited number of top officials who are then held uniquely responsible for the proper functioning of government.

Proponents of this view say elected officials are then subject to greater public scrutiny because there are fewer of them.

All of these statewide elected offices, except Insurance Commissioner, are established by the state constitution. Insurance Commissioner is unique since the legislature, not the constitution, established the elective nature of the office.

Other than the nine elected positions, all other senior officials in the executive branch are appointed by the governor. They make up the Governor's cabinet and include several key positions, many as important as some elected offices.

State officials appointed by the governor include:

- Secretary of Social and Health Services
- Director of Ecology
- Director of Labor and Industries
- Director of Agriculture
- Director of Financial Management
- Secretary of Transportation
- Director of Licensing
- Director of Enterprise Services
- Director of Commerce
- Director of Veterans Affairs
- Director of Revenue
- Secretary of Corrections
- Secretary of Health
- Director of Financial Institutions
- Chief of the State Patrol

The duties and responsibilities of some of these appointed officials are similar to, and in some cases carry more responsibility than, those of the Secretary of State, Superintendent of Public Instruction, Commissioner of Public Lands or Insurance Commissioner.

Policy Analysis

Today, eight of Washington's statewide elected officials are autonomous of the governor. In practice, they can lobby the legislature

independently and even work against what the governor is trying to accomplish.

Any such conflict is resolved in those parts of government that are administered by appointees. If a policy disagreement arises among cabinet officers, the governor settles it by forming a single, unified policy for the administration.

Similarly, if the legislature is unable to reach agreement with a cabinet official over important legislation, the dispute can be taken "over his head" to the governor. The governor may or may not agree with the position the cabinet appointee has taken, but at least the legislature will get a final answer. The legislature knows that, through the governor, the executive branch speaks with one policy voice.

The reason this works is because the governor has direct authority over the appointed officials. They serve at the governor's pleasure and can be dismissed at any time. The governor is accountable to the voters for the overall performance of the administration.

Accountability Offices

The secretary of state, superintendent of public instruction, commissioner of public lands and insurance commissioner are policy offices, much like those currently in the governor's appointed cabinet.

The treasurer, auditor and attorney general, however, carry out an oversight role, working to ensure government agencies are following the law. It is because of this distinction that independent election of these offices makes sense.

Since there would be just three of these "watchdog" offices, it would be easy for voters to remember what function these offices perform in state government. Voters would then clearly understand what they are voting on when selecting among candidates running for these positions.

Office of Lieutenant Governor

To ensure the successful transition of power in the event the governor is unable to fulfill his duties, it makes sense to have an elected lieutenant governor ready to step into the top office. That does not mean,

however, that the lieutenant governor needs to be elected independently of the governor. Instead, Washington should model the office of lieutenant governor after that of the vice president of the United States. This would mean candidates for governor and lieutenant governor would run on the same ticket.

Maryland structures its election or governor and lieutenant governor this way. Article 2, Section 1B of the Maryland constitution states:

> Each candidate who shall seek a nomination for Governor, under any method provided by law for such nomination, including primary elections, shall at the time of filing for said office designate a candidate for Lieutenant Governor, and the names of the said candidate for Governor and Lieutenant Governor shall be listed on the primary election ballot, or otherwise considered for nomination jointly with each other.
>
> In any election, including a primary election, candidates for Governor and Lieutenant Governor shall be listed jointly on the ballot, and a vote cast for the candidate for Governor shall also be cast for Lieutenant Governor jointly listed on the ballot with him ... .[15]

Shorter Ballot and Greater Accountability

With fewer statewide elected offices, voters would choose the five highest state officials in four elections, as follows:

- Governor and Lieutenant Governor
- Attorney General
- State Treasurer
- State Auditor

If problems arise with public education, insurance regulation, or management of public lands, voters would know the solution lies with the governor, who could change the top managers of these policy areas at any time. If the governor fails to use his appointment powers to improve the management of these departments, voters could take that failure into account at election time.

Reducing the number of statewide elected offices would shorten the length of the ballot and focus public accountability in a way that people can understand and remember, both during a governor's term and in election years when voters are assessing candidates for the state's top offices.

Recommendations

1. **Reduce the number of statewide elected offices from nine to four by making the secretary of state, superintendent of public instruction, commissioner of public lands and insurance commissioner governor-appointed positions.** The state constitution should be amended to change these offices from elected to appointed positions. The office of insurance commissioner can be changed by statute. The offices should then be restructured as cabinet agencies, thus making the governor fully responsible for the actions of the policy offices in the executive branch.

2. **Have candidates for governor and lieutenant governor run on one ticket, like the U.S. president and vice president.** The constitution should be amended to provide for the governor and lieutenant governor to run together on the same ticket. This would allow for an orderly transition of power if the governor is unable to fulfill the responsibilities of the office, and would bring the lieutenant governor into the cabinet.

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CHAPTER EIGHT
LABOR POLICY

1. Improving Workers' Compensation

Recommendations

1. Legalize private workers' compensation insurance and move the system toward greater choice and competition.
2. Allow small groups and associations to self-insure.
3. Clarify the calculation of benefits.
4. Bring benefit levels more in line with those of 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 workers injured on the job, is often confusing and tedious for employers, workers, policymakers and the general public.

The Department of Labor and Industries (L&I), which administers the workers' compensation program, is one of the largest agencies in state government, with 2,778 full-time staff and a two-year budget of $638 million.[1]

By law, only L&I is permitted to sell workers' compensation insurance in Washington, and virtually all businesses in the state are required to have such insurance. The program provides insurance that covers over 168,000 employers and 2.5 million workers, and it collects more than $1.6 billion in premiums each year.[2]

In 2007, mandatory premium collections were so high the L&I declared a partial rate holiday, allowing employers to keep $346 million of

their money until the rate officials charged for premiums more accurately reflected the true costs of the program.[3]

But the last few years have seen severe rate increases. In 2008, L&I raised rates approximately three percent. In 2009 rates went up another three percent. However, in 2010 rates went up eight percent, and in 2011 rates increased 12%. These rate increases are averages; some businesses saw smaller increases and some experienced much larger increases in the cost of doing business. Over the last decade, businesses have experienced a massive 64% increase in premiums.[4]

In addition to running the state's only workers' compensation insurance business, L&I managers regulate almost 400 employers who self-insure and provide coverage for 830,000 workers, about one-third of all workers in the state. The L&I program and self-insured companies provide coverage for the more than 140,000 industrial injuries that are reported annually.[5]

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 eroded. Workers routinely sue L&I 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 permanently higher level of benefits for all claimants.

In the past few years, businesses have become increasingly frustrated with L&I's large rate increases imposed through a monopoly system. Every rate increase represents a tax increase on business, which is passed on to consumers in the form of higher prices.

The 2007 rate holiday afforded employers and workers a period of partial tax relief. From July 1st through the end of the year, L&I officials suspended the Medical Aid portion of the workers' compensation premiums—the Accident Fund premium was not affected. The rate holiday expired at the end of 2007 and L&I officials then permanently increased rates an average of 3.2%.

Four years later, however, both the Accident and Medical Aid funds face fiscal uncertainty. A State Auditor report in 2010 stated that both accounts were being underfunded, which raised the probability of insolvency, or at least drastic future rate increases in order to stave off insolvency.[6]

Washington has one of the highest rates of workers' compensation benefits paid out by any state in the nation. Washington's average weekly benefit is almost $700 per covered worker—about 65% higher than the U.S. worker's compensation average.[7]

High insurance costs are a significant contributor to job loss, layoffs and wage cuts, and they have a detrimental effect on the economic vitality and business climate of the state. In recent years, L&I has greatly varied the premium adjustments, resulting in cost swings between whopping rate increases of up to 30% and brief rate holidays. In 2010, employers on average paid 4.5% more in L&I Accident Fund premiums, 8.4% more on Medical Aid fund premiums, and 16% more on Supplemental Pension Fund premiums than they did in 2009.[8]

Much of the financial strain in the system is the result of structural weaknesses and lack of competition. Washington is one of only four states where buying private workers compensation insurance is illegal. Except for the few large companies that self-insure, all employers are forced to purchase insurance from a 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 that 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 toward greater choice and competition.** Washington is one of only four states that makes 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—state government—at a non-negotiable price.

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. **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.

4. **Bring benefit levels more in line with those of 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 and Living Wage

Recommendations

1. De-couple automatic minimum wage increases from the Puget Sound-area Consumer Price Index to reflect the true cost of living across the state.

2. Delay automatic increases in years when state unemployment is higher than the national average.

3. Allow temporary training wages for young or inexperienced workers.

4. Refrain from imposing mandatory "living wage" controls, whether or not directed at a particular industry.

Background

Washington has the highest state minimum wage in the nation. At $8.67 an hour it is fully 20% higher than the current federal minimum wage of $7.25. On January 1, 2012, the state minimum wage will automatically increase to $9.04 an hour, 24% higher than the federal minimum.[9]

Because a high minimum wage decreases job opportunities, Washington law allows 14- and 15-year-olds to be paid 85% of the state minimum wage, or $6.86 an hour, in order to mitigate some of the job losses for people in this age group.[10] However, those 16 and older must be paid the full minimum wage, pricing many young and inexperienced workers out of the labor market.

Washington's unemployment rate, which had declined to 4.5% in 2007, has remained at or above nine percent since April of 2009 due to the effects of the current economic downturn.

Young, inexperienced and minority workers are bearing the brunt of the joblessness. It is not unusual for young and minority workers' jobless rates to be higher than the general population, but the

teen unemployment rate is drastically higher. As of April 2011, the teen unemployment rate for Washington was 33.2%, the fourth highest in the nation.[11]

The unemployment rate for young workers, those ages 16 to 24, is also disproportionately high. In 2011, the unemployment rate nationally for young workers was 19%, but for young Hispanics the unemployment rate was 22%, for Asians it was 21%, and for black youth it was 33%.[12]

Washington's present minimum wage law was adopted 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.[13]

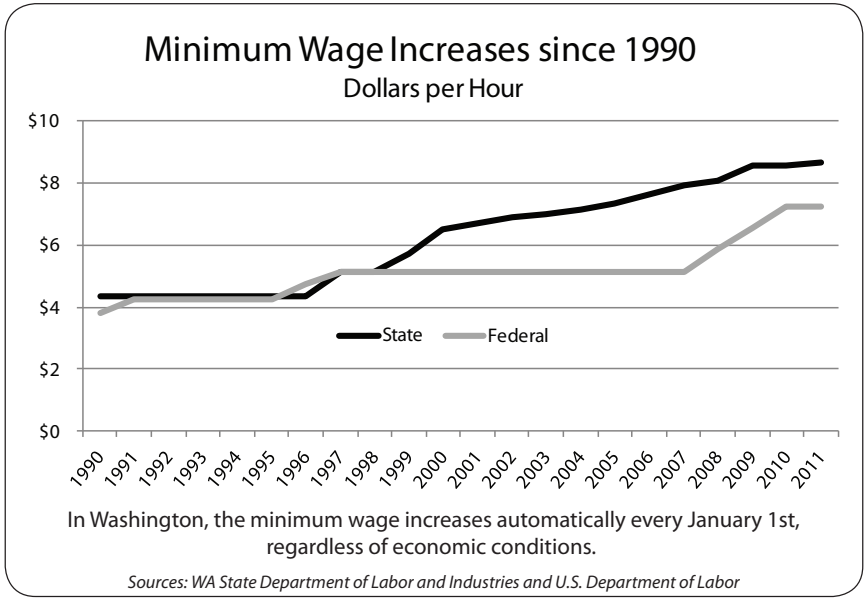
The state minimum wage now automatically increases every January 1st and is pegged to the Puget Sound-area cost of living, the highest in the state. Previously, the legislature had increased the minimum only ten times since the first state-mandated wage was enacted in 1959.

Under the current policy of automatic increases, the state minimum wage has increased 31% in ten years. Inflation over the same period was 28%.

Washington has some 67,000 minimum wage jobs, or about 3.1% of all industry jobs.[14] They tend to be concentrated in certain sectors: food service, 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 are they 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.[15] A U.S. Department of Labor analysis reports that only four percent of workers over the age of 25 earn the minimum wage. Therefore, teens and young workers, not wage-earning adults, are more likely to lose employment due to increases in the minimum wage.[16]

The following chart shows the rise in Washington's minimum wage since 1990 compared to the federal minimum.



In Washington, the minimum wage increases automatically every January 1st, regardless of economic conditions.

Sources: WA State Department of Labor and Industries and U.S. Department of Labor

Among minimum wage supporters is an activist subset that promotes the idea of government imposing a mandatory "living wage" on the labor market. A living wage is a hyper-minimum wage, where the mandated wages paid to employees are based on the worker being able to afford a certain theoretical standard of living.

Living wage ordinances throughout the nation have primarily been enacted by local governments. Bellingham is the only city in Washington that has imposed a living wage ordinance, and even there the law only applies to a limited number of government contractors, not the general economy. Bellingham officials are concerned the hyper-minimum would drive businesses and jobs out of the city if it were broadly applied.

Supporters of the living wage, however, are beginning to target private industries and mandate living wage requirements. For instance, in 2007, living wage proponents came within a few hundred signatures of putting a hyper-minimum wage initiative on the ballot in the city of Spokane.

The initiative would have required all retail stores of over 95,000 square feet to pay their employees a minimum wage of 135% of the state's minimum wage if the employee received a pre-set level of health care

benefits, or 165% of the minimum wage if the employee did not receive the approved level of health care benefits.[17]

If Spokane voters had passed the living wage ordinance, the impact of the policy would have been detrimental to the very working people advocates said they wanted to help. But its effects would have been felt city-wide. The unintended consequences of a city-wide living wage ordinance would have resulted in fewer jobs, fewer working hours for those in the retail industry who would have fallen under the new law, and a trickle-down effect on small retailers who are unable to pay the higher wage and would have lost employees.

Policy Analysis

During a time of economic struggle, small businesses in particular are finding it difficult to pay for yearly wage increases. Fortunately, in 2010 the Department of Labor and Industries ruled there would be no minimum wage increase due to the Consumer Price Index remaining flat (actually it fell about two percent). But the wage went up again in 2011 and will rise again in January 2012—even though Washington's unemployment rate was close to 9.5%.

The burden of job loss falls disproportionately on low-skilled and minority workers. A study by labor policy researchers at Cornell University found that:

> A 10 percent 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.[18]

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 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. They included a provision in Initiative 688 that linked the wage to inflation, ensuring it would go up automatically every January 1, with no debate, no additional vote and no discussion.

Politically the strategy is brilliant. It avoids public discussion about the harmful effects of raising the minimum wage—increases just happen, and most people do not 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 is not the only reason Washington's business climate is less competitive than that of other states, but it is a strong contributing factor. Washington suffers deeper economic downturns 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.

The arguments made against the minimum wage are even stronger against the mandated living wage. Backers of the living wage are basing an employee's earning on the perceived need of the employee and not on productivity or on the supply of labor. Ignoring fundamental economic principles in the course of determining worker remuneration is a form of price control and will result in increased labor costs, higher prices for consumers and few jobs for workers.

Recommendations

1. **De-couple automatic minimum wage increases from the Puget Sound-area 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 and rural parts of the state. Using regional measures of inflation is fairer

and would more accurately reflect price changes in the local economy.

2. **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.

3. **Allow for a temporary training wage for young or inexperienced workers.** Currently 14- and 15-year olds can be paid 85% of the minimum wage. Employers of young workers up to age 25 should have the option of paying 85% of the minimum for a limited time, to give new workers the opportunity to gain valuable knowledge and workplace experience needed to transition to a higher wage. This temporary wage would reduce youth unemployment by allowing young workers to get started on a path that leads to greater earning power.

4. **Refrain from imposing mandatory "living wage" controls, whether or not directed at a particular industry.** Arbitrarily raising the cost of labor among a specific industry based solely on workers' perceived need is bad economic policy and bad public policy. It leads to higher prices for consumers and fewer jobs for workers.

3. Mandatory Paid Sick Leave

Recommendation

Avoid imposing a mandatory, one-size-fits-all sick leave policy on Washington business owners 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 have made every employer provide a minimum amount of paid sick leave for each employee.[19] 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 work.

The bill did not pass, but proponents have made it clear they intend to push in future legislative sessions for a law that would impose a single, paid sick leave policy on every employer in the state.

Having received no statewide traction since the 2006 state legislation, proponents have refocused their efforts on passing mandatory paid sick leave requirements city by city.

A Seattle City Council ordinance imposes paid sick days on all of the city's businesses, regardless of size. While the required benefits depend on the size of a business by number of employees, the policy requires even the smallest business to provide this benefit.[20]

Currently, 44% of Washington employers voluntarily offer full-time workers a paid sick leave benefit.[21] Nationally, only the state of Connecticut requires paid sick leave as a matter of law, and even then it is only directed toward the service industry and many types of businesses, including nonprofits, are exempt from the law. The only other governments to impose such a law are Washington, D.C., Milwaukee and San Francisco.

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.

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 never use. Some jobs are based on tips and gratuities, so being forced to pay employees full salary to stay at home undermines the businesses' economic viability.[22]

Impact on Small Businesses

Small businesses are disproportionately impacted by mandatory paid sick leave policies. As the following chart shows, every business category is affected, but employers with fewer than 100 employees are disproportionately affected.

Percentage of Washington Businesses Affected by a Statewide Paid Sick Leave Mandate	
All firms	56%
100+ employees	33%
50-99 employees	47%
25-49 employees	54%
10-24 employees	58%
2-9 employees	58%

Many small firms already offer some level of paid sick leave, but if that level is less than ten days, the mandated benefit bill considered by the legislature would automatically increase these businesses' costs.

Seventy-three percent of Washington firms offer paid time off to full-time workers, without distinguishing between sick leave and vacation time.[23] In addition, 23% of firms report offering undesignated paid leave, often accumulated by workers in personal "time banks," on top of the yearly paid holidays the employer already provides.[24]

Undesignated leave and personal time banks allow 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 flexible benefit, 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 on 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. 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 employees of large businesses.[25] The smallest firms are often forced to make substantially higher contributions for benefits per participant 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.

A National Federation of Independent Business study shows that 66% of small businesses provide some sort of paid leave and that the remaining one-third of small businesses deal with employee leaves on a case-by-case basis, thereby meeting the same standard that backers of mandatory paid family leave are advocating.[26]

Policy Analysis

In the modern economy, most companies offer 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 of paid leave per year. Arbitrarily increasing the number of paid sick days from seven to ten through a government-imposed mandate may help a few employees, but it would contribute to unemployment and increase the cost of living for all citizens.

Smaller businesses are often forced 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 of these things. By forcing employers to provide a new benefit, policymakers would end up making conditions worse for many workers, not better.

The cumulative effect of top-down regulations, such as numerous health insurance mandates and the automatically increasing minimum wage, already inhibit the ability of Washington businesses to create jobs. The proposed mandatory sick leave requirements, added to existing regulations, would significantly increase costs, especially for small businesses, and make our business climate even less attractive to out-of-state companies.

Recommendation

Avoid imposing a mandatory, one-size-fits-all sick leave policy on Washington business owners 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 form 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.

4. Expanded Employee Leave Policies

Recommendations

1. Policymakers should encourage flexibility in the workplace for employee leave policies, rather than push for specific mandated benefits.

2. Repeal the never-implemented Paid Family Leave payroll tax program.

Background

Washington employees have a number of benefits guaranteed to them by both federal and state laws. Proposals are introduced each year, however, to expand either the current statutory benefits or add new benefits for employees. If adopted, these proposals would end up costing employers and consumers more, and could cause employees to lose other, non-statutory, benefits.

Employers in Washington are already required to provide benefits under the following state and federal family leave laws:

- Family Care Act
- Family Leave Act
- Leave due to Domestic Violence, Sexual Assault, Stalking
- Leave for Spouses of Deployed Military Personnel
- Leave for Certain Emergency Services Personnel
- Protection from Discrimination
- Pregnancy Disability Leave
- Federal Family Medical and Leave Act

Bills debated in recent legislative sessions include proposals to require mandatory leave for employees who want to participate in their child's educational activities, vaguely defined,[27] and for employees who have been elected to the state legislature.[28]

Policy Analysis

Employers already provide several mandated benefits under federal and state law, and cities are beginning to mandate specific benefits such as a "living wage" and paid sick leave. These statutory mandates come at a cost, however. As government officials impose more rules dictating how citizens can run a business, employers are left with fewer options for designing benefits tailored to meet their employees' individual and family needs. A mandated benefit that one employee likes may not be needed or desired by another employee.

These types of detailed benefit mandates hit small businesses the hardest, though all businesses are affected. According to the Washington Employment Security Department, 65% of full-time employees in the state receive paid leave for vacation, and another 21% receive paid leave for any reason. However, 79% of businesses with more than 500 employees offer full-time employees paid vacation or undesignated paid leave, while only 61% of the smaller firms (with between two and nine employees) did the same.[29]

Lawmakers may feel they are being generous in requiring business owners to pay employees to attend a school activity, and they may believe such detailed mandates serve the public interest. But what lawmakers do not see is the cost their mandates impose on society as a whole—by raising prices and making job creation more difficult—and how they deprive employees of choice and flexibility in the workplace.

In 2007, the legislature enacted a law giving employees up to $250 a week of paid leave for up to five weeks a year after the birth or adoption of a child, for a total paid benefit of $1,250 per worker per year.[30] The new mandated benefit was to be funded through a payroll tax of two cents per employee on every hour worked in the first year. After the first year regulators at the Department of Labor and Industries could increase the payroll tax without further action by the legislature.[31]

Recognizing the significant financial burden the new tax would place on employment, the legislature enacted a bill in 2009 delaying implementation of the program for three years.[32] The extraordinary action of passing a new entitlement and then quickly suspending it demonstrates the problem with the original idea. In theory, lawmakers felt they were dispensing a new, politically attractive benefit to workers. In practice, they

realized imposing new costs on employment would actually hurt workers and job creation, so they blocked the law from going into effect.

The fate of the paid family leave program shows that adding new government-mandated benefits is unlikely to achieve the intended policy goals, and instead only increases costs to small businesses and restricts choices for workers. Employers may be forced to cut back on employee benefits that are not imposed by law in order to balance out the cost of mandated benefits.

Recommendations

1. **Policymakers should encourage flexibility in the workplace for employee leave policies, rather than push for specific mandated benefits.** Mandates remove the option for a business owner to be flexible in responding to the individual and family needs of workers, instead forcing business owners to adopt a one-size-fits-all requirement imposed from above. By imposing mandates, officials make it illegal for employees to request a different mix of salary and benefits that best serve their interests.

2. **Repeal the never-implemented Paid Family Leave payroll tax program.** Enacted in 2007 but never implemented, this program created a new mandated employee benefit funded by a new payroll tax. This program, which exists only on paper, should be repealed so business owners and workers can be confident the state will not add to the financial burden the state places on employment.

Additional Resources from Washington Policy Center, Available at washingtonpolicy.org

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CHAPTER NINE
TECHNOLOGY AND TELECOMMUNICATIONS POLICY

1. Access to Broadband

Recommendations

1. City, state and local governments should not operate monopoly municipal broadband networks—either wired or wireless.

2. Encourage market forces to expand broadband service, wired or wireless, into rural areas.

3. Adopt a "hands-off" approach to regulating and taxing advances in the telecommunications and technology industries.

Background

The world marketplace has evolved into a digitally connected web of business and consumer communication. The technological infrastructure needed to support and advance the global e-commerce engine is complex and expensive. Private companies willing to risk capital on expanding the reach of broadband technology will only do so if it makes economic sense.

Policymakers should be aware that heavily taxing and regulating an industry that depends on rapid innovation stifles the research and development high-tech companies use to extend broadband access to more people. A heavy-handed taxation policy on e-commerce also drives away consumers—or causes them to seek services from alternate (often illegal) vendors.

While the number of broadband internet connections grew rapidly from 2010 to 2011, the United States overall ranks low in broadband penetration 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 15th place worldwide.[1]

A broadband connection provides a computer user with convenient and dedicated high-speed service when using the internet, usually through a dedicated line. This is different from a much slower dial-up connection, which uses an existing telephone line to connect the user to the internet.

The U.S. lags in the speed of the average broadband connection. Despite this slower relative growth, 66% of Americans have broadband service at home. A large number of households skipped the dial-up modem stage and went straight to a high-speed internet connection.[2]

Policy Analysis

Counterproductive federal, state and local tax and regulatory policies hamper new investment in broadband and wireless infrastructure.[3] In some parts of Washington, publicly-subsidized ventures, like Tacoma's Click! Network, are undercutting private service providers and driving away future investment. Click! received millions of dollars in public subsidies, and yet it has never fulfilled its original promises to the taxpayers of Tacoma.[4]

Overall, communication services in Washington face a higher level of taxation than most other consumer goods and services. By one estimate, telecommunication companies pay an average of 39% more in taxes than other industries.[5] Washington has the eleventh-highest combined state, local and federal telecommunications tax rate in the nation.[6]

Reducing the tax burden on telecommunications customers would lower a major barrier to broadband access for rural residents and small businesses. It would also promote consumer fairness. Currently, when a customer signs up for a wireless or broadband connection a large number of state and local taxes are automatically imposed through monthly billing.

Unlike state and local sales taxes, these fees are not widely known, and therefore consumers are generally not aware of these added costs prior to purchasing the service.

Expanding Broadband to Rural Areas

Rural Washington lags behind the rest of the state in access to broadband internet connections, largely because of the high cost of building outlying networks. Building fiber optic pipelines from urban or suburban transmission stations to rural communities is extremely expensive and time-consuming, given the number of new customers reached.

Several telecommunication companies are undertaking extensive broadband buildouts, but other companies are circumnavigating the physical limitations of laying new pipe or tapping existing telephone and power lines by using the emerging technology wireless data networks.

Wireless data networks come in many different forms. The most dominant technologies are LTE/LTE Advanced (Long Term Evolution) and WiMax (Worldwide Interoperability for Microwave Access). Both are capable of bringing wired-like data speeds to users—around 20+ megabits of information transmitted per second. Laboratory tests have boosted transmission speeds to over ten times that, but practical, widespread use of those speeds is still years away.

Policymakers should recognize there is already sufficient competition among private companies to provide ample and affordable internet access to nearly everyone. Municipal governments should resist the urge to jump into the market. History is strewn with examples of governments investing in outdated technology or blowing project budgets and taking from the taxpayers' pockets to cover cost overruns, as officials at Tacoma's Click! Network have done.

Some officials have tried to create public, city-wide Wi-Fi systems to provide free wireless broadband service for residents. Large cities such as San Francisco and Philadelphia, and smaller ones such as St. Cloud, Florida, and Spokane, Washington, have tried these systems with limited success. Many times the government's feasibility studies on subscription rates and capital costs turn out to be wrong, predicting much rosier results than the actual outcome and causing entire networks to shut down or be sold at a loss to private operators. The result is millions in taxpayer dollars being spent for nothing.

There is no lack of adoption by the general public of these new improvements in telecommunications. It took more than 90 years for landline service to reach 100 million consumers. It took over 21 years for 100 million consumers to buy a color television. But it took less than 17 years for wireless phones to reach 100 million consumers.

As new technological improvements, such as VoIP (Voice over Internet Protocol), which allows affordable phone service over the internet, bolster the telecommunications industry, government officials should approach the technology with a light regulatory hand. The immense proliferation of wireless technology is the result of the landmark 1996 federal Telecommunications Act, which left the wireless industry largely unregulated.

The benefits of this wise policy can be seen in the fact that the U.S. has over 300 million wireless subscribers, with a 96% penetration rate, and that wireless-only households (homes that have no need for a traditional wired landline telephone) jumped from 8.4% in 2005 to almost 27% in 2010.[7]

Recommendations

1. **City, state and local governments should not operate monopoly municipal broadband networks—either wired or wireless.** Government officials can play an important, indeed a vital, role 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 not a core function of government, and policymakers should allow private companies to build and operate these services.

2. **Encourage market forces to 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 or wireless. State and federal policymakers should reduce regulatory barriers to building broadband access to rural communities.

3. **Adopt a "hands-off" approach to regulating and taxing advances in the telecommunications and technology industries.** The state government should adopt a policy of reducing regulations that hamper new communication technologies, like VoIP, which evolve rapidly and offer numerous benefits to consumers and businesses.

2. Teleworking and Telecommuting

Recommendation

State government should increase telework options for state workers and establish a "best practices" approach to teleworking.

Background

The internet age has transformed many parts of our state's economy. As companies improve the data speeds of networks that reach beyond a business or government, such as homes and schools, employees are increasingly able to seek out new and improved ways of doing their work from remote locations by using broadband internet networks to stay connected to their co-workers and managers.

Teleworking, also referred to as telecommuting, is not new. However, employees in both the public and private sectors have new and improved tools, like faster and less expensive laptops, wireless fidelity networks, broadband cellular systems and virtual private network hookups, that allow them to work efficiently from any location that has network capability.

While teleworking is not for everyone—there will always be certain types of jobs that require an office presence—managers in both business and government should re-evaluate their needs in regard to employee location and management practices, and consider the benefits of establishing a teleworking policy.

State government has the opportunity to set a "best practices" approach by increasing teleworking for state employees as part of the Commute Trip Reduction Program, a program that emphasizes carpools, vanpools and other methods of commuting.

Policy Analysis

There are many benefits to increasing both public and private sector teleworking, ranging from increased employee satisfaction and

retention to higher productivity levels. In addition to employee morale and productivity benefits, there are important public policy benefits.

First, there is the potential for decreased traffic congestion. The Puget Sound region has notoriously bad traffic, and congestion relief is no longer a top priority for state transportation officials (see the discussion in Chapter 10 for more details).

As commutes get longer in both duration and distance, teleworking can provide an important alternative. A 2006 University of Maryland study found that nearly half of all commuters travel more than 20 miles a day to and from work, 22% travel more than 40 miles, and 10% travel more than 60 miles.[8]

Second, teleworking can have an important impact in protecting the environment. Removing thousands of Washington commuters from the highways would conserve fuel and reduce CO_2 emissions.

The same University of Maryland study found that 1.35 billion gallons of fuel, worth $4.5 billion (at $3.33 per gallon), could be saved if everyone with the potential to telework did so just 1.6 days per week (as of this writing, the AAA estimates a gallon of gas for Washington drivers is approximately $3.77). Similarly, the Environmental Protection Agency calculates that this much saved fuel would prevent 26 billion pounds of carbon dioxide from being released.

The federal government took up the issue of increasing teleworking options for its workers a number of years ago. Several bills have been introduced to increase teleworking in federal agencies. In the wake of the attacks on September 11, 2001, the federal government recognized that teleworking has an added security benefit. It helps the government continue to function if it has to resort to its emergency contingency plans.

The state of Washington employs approximately 100,000 workers, and while it is not possible for all state workers to telecommute, state government should set up systems that allow more public employees to telework. In addition to its own merits, this policy would set an important example for private employers.

Recommendation

State government should increase telework options for state workers and establish a "best practices" approach to teleworking. State government has an opportunity to implement programs that private sector businesses could emulate in order to increase telework options for their employees—thereby reducing traffic congestion and increasing energy savings.

3. Ending Cable Monopolies

Recommendations

1. Deregulate cable franchises to increase choice and lower prices for local customers.

2. 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 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 TV 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 made while building the network.

The cost of cable television and broadband internet access is 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 provide service to area customers. Between 1996 and 2010, nationwide franchise fees rose from $1.4 billion to $2.7 billion per year, leaving the average customer paying $45 per year just to cover the franchise fee.[9]

Cable companies are increasingly required to pay higher local taxes and franchise fees and to give valuable channel space to local governments for free. Sometimes cable companies are even made to deposit lump sum payments directly into city treasuries just to continue to stay in business. Cable companies have no choice but to pass higher tax and franchise costs on to their customers. This is one reason cable prices have risen three times faster than the rate of inflation over the past decade.

Policy Analysis

After nearly 40 years, 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 cable company as just another lucrative revenue source, especially from high franchise fees. As the years pass, local government officials tend to squeeze this reliable money source harder.

In recent decades, the deregulation of airlines, trucking, railroads, banking and telecommunications has 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 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.

If full deregulation is too radical a change, policymakers should at least allow cable providers to compete within a statewide franchise, as several other states have done, so local customers would have a greater range of affordable service choices.

The statewide franchise model has been replicated in several states since the mid-2000s. Twenty states have enacted statewide franchise reform since 2005, which has led to over five million new broadband connections.[10]

Recommendations

1. **Deregulate cable franchises to increase choice and lower prices for local customers.** Policymakers should build on the success of deregulation in other business sectors and free cable companies to set prices and compete against other communications providers in a normal, open marketplace. As a mature technology, cable has much to offer homeowners and businesses, and it is in a good position to compete in the telecommunications market.

2. **End outdated local cable monopolies in favor of statewide franchises that allow more choice for consumers.** Short of full deregulation, policymakers should allow a statewide franchise in cable services. Several states have already taken steps to implement a statewide franchise system. Washington should take the same approach, so consumers can more easily gain access to emerging technologies.

4. Discriminatory Wireless Taxes

Recommendations

1. Avoid imposing new taxes or fees on wireless services.

2. Spend the revenue collected through wireless service fees on its originally intended purposes.

Background

Wireless connectivity is almost ubiquitous in the United States. There are over 300 million wireless users in a nation of 312 million people. Residents in over one-quarter of households use only their wireless devices and do not even own a traditional wired telephone. In 2010, Americans used over 2.2 trillion minutes and sent over 2.1 trillion text messages.[11]

Clearly, Americans are relying on their wireless devices and services more each year. Unfortunately, policymakers are also relying on wireless services more each year too, as wireless tax rates in Washington state continue to climb.

A recent study reports that Washington state has the second-highest wireless tax rate in the nation at 23.5%, whereas the average rate throughout the U.S. is only 16.26%. Oregonians pay only 6.86%, and Idahoans only 7.25% in wireless tax rates. By contrast, Washingtonians pay a nine percent general sales tax, on average.

This means Washington wireless customers pay a tax rate that is approaching the level of "sin" taxes. The state of Washington currently levies a 50% per-carton tax on cigarettes and approximately 40% per unit of alcohol.

State officials are not the only ones to levy disproportionate taxes on wireless services. The city of Olympia imposes a nine percent telecommunications tax on top of the state-local sales tax. The city of Seattle imposes a six percent tax on telecommunications, using its utility tax taxing authority. Cities in Washington can impose up to a six percent

tax on utilities but can impose higher levels with voter approval, as in the case of Olympia.

In addition to carrying a disproportionate tax burden, wireless customers are paying to backfill government revenue shortfalls. Imitating a practice common in states across the nation, lawmakers in Olympia raided the Emergency 911 account that is funded by a fee imposed on wired and wireless customers. The Federal Communications Commission reported in 2010 that state legislatures redirected more than $100 million in 911 fees to other purposes.[12]

Policy Analysis

Why is the upward trend of higher telecommunications taxes important? The trend is significant because more people are relying on their mobile phones to connect to the Internet. Mobile phones are no longer used just for voice communication. They are now multi-data capable, meaning they can access and produce different types of data, such as text SMS (Short Message Service), MMS (Multimedia Messaging Service), email, streaming video and music, in addition to connecting to sites on the Internet.

Easy and reliable access to mobile data will only become more important to consumers as telecommunications companies develop the fourth generation of data networks (known as 4G), which will result in wired Internet-type speeds.

Traditional voice traffic is declining rapidly while data traffic is growing exponentially. Cisco research reported that mobile data traffic grew 2.6-fold between 2009 and 2010, and that in 2010 mobile data traffic was three times the size the global Internet was in the year 2000.

Reliance on mobile communication devices and services will only increase in the future. The same study by Cisco predicts that, by 2015, global mobile data traffic will have increased by 2,600% compared to 2011. There will also be about one mobile device per person by 2015, or approximately 7.1 billion devices.[13]

A survey by the Pew Internet and American Life Project says that for many people, especially for minority groups, a mobile smartphone is the primary way they connect to the Internet. In fact, 51% of Hispanics

and 46% of blacks use their phones to access the Internet, as opposed to 33% of whites.[14] In other words, minorities tend to have a greater reliance on their smartphones for accessing the Internet, while whites are more likely to have a variety of devices with which they access the Internet.

As a result, the high tax rates that wireless service customers pay have a disproportionate impact on minority citizens and lead to a dampening of demand for these services. Washington's average state and local sales tax rate is approximately nine percent, rising to nearly 10% in several urban areas. Even when the Emergency 911 fee is not counted, the problem of disproportionate taxation remains.

Policymakers should resist the temptation to join the discouraging national trend of raiding dedicated accounts funded by wireless taxes and diverting funds that should be spent on the critical infrastructure investments for which they were intended.

Recommendations

1. **Avoid imposing new taxes or fees on wireless services.** Washington citizens pay the second-highest rate of taxes and fees imposed on wireless services in the nation. Policymakers should refrain from continually increasing taxes on this growing and vital economic sector.

2. **Spend the revenue collected through wireless service fees on its originally intended purposes.** While some fees, such as Emergency 911, may be necessary to fund important public safety infrastructure, policymakers should not raid the these accounts for the sake of funding unrelated government projects.

5. Deregulation of Wireline Telephone System

Recommendations

1. Give telephone service providers greater freedom to set prices.
2. Exempt competitive services from being regulated by the utility commission.
3. Reduce intrastate access charges on telephone calls.

Background

Intrastate Access Charges

For over eighty years, since the passage of the federal 1934 Communications Act, both federal and state legislators have regulated traditional wireline telephone service. A major focus of legislators and regulators has been to ensure that reliable, high-quality phone service is available to everyone in the United States.

However, providing phone service to urban customers living in dense neighborhoods is vastly different from providing similar service to rural customers who live far from telephone lines. The marginal cost of providing phone service to one additional home in an urban area is far less than expanding the same service in areas where individual homes may be miles apart. Therefore, the same phone service provided to urban and suburban areas would normally be prohibitively expensive to both carriers and customers in remote areas.

As part of the regulatory framework, telephone companies use a number of direct or indirect subsidy mechanisms to provide service to rural and remote areas. One of the indirect subsidies used at the state level is intrastate access charges that long-distance and wireless providers pay to smaller rural local phone providers who originate or terminate calls for them.

It was, and is, common for telephone companies to overcharge long-distance and business customers so they are able to offer below-

market prices to rural and remote customers. This is similar to airlines charging first and business class passengers more than the cost of providing a flight so the airline can sell coach tickets for less than the cost of the service and still make a profit.

This cross-subsidy arrangement worked well during the age of monopoly wireline telephony, especially before 1984, but times have changed. Today, wireline faces stiff competition from wireless and Voice Over Internet Protocol (VoIP) services. Over one-quarter of U.S. households have dropped traditional wireline phones in favor of wireless or VoIP-only services.

Customers in high-cost service (rural and remote) areas are deprived of choices because new telephone providers are unable to match the artificially low cost of service provided by the established carriers. Customers in low-cost (urban) areas also lose out because competitive services can also charge an inflated price knowing that the dominant company must charge artificially high prices to maintain its internal subsidies.

Ideally, the cost of intrastate access charges should not exceed the cost of interstate access. The current system of high intrastate access charges and low interstate access charges should be replaced with parity and technology neutrality in call-termination fees. The current eighty-year-old regulatory system is outdated for modern technology and today's market competition. Regulations should be revised and updated to reduce the price distortions created by mandatory intrastate subsidies.

Greater Pricing Freedom

Since long-distance phone service was deregulated in the early 1980s, competition in wireline phone service has increased sharply and costs to consumers have dramatically decreased. Over 98% of Washington households now have a wireline telephone.[15] The 1920s goal of creating reliable, universal telephone service in the U.S. has been achieved.

In addition, new technology has allowed new forms of communication, like wireless phones and VoIP, to be available throughout the country and to provide competitive alternatives to traditional telephone service.

Pricing flexibility is needed for wireline providers to be able to compete with wireless and VoIP operators. An example of this need is shown by the deregulation of cable television by the Telecommunications Act of 1996. The FCC reported that in the decade following passage of the 1996 act, people living in areas with more than one cable provider, or with access to a wireless alternative like satellite TV, paid prices that were 20% lower than people in areas that still had only one cable provider.

Unfortunately, pricing flexibility has not come to wireline telephone consumers, who now enjoy a range of competitive services like wireless and VoIP, but are still paying artificially high prices for traditional wireline services.

State Utility Commissions

Washington's Utility and Transportation Commission (WUTC) regulates traditional wireline phone service in the state. It does not have the authority, and therefore does not regulate, cable television, the Internet, wireless services or VoIP connections.

The Commission does, however, continue to enforce the old regulatory regime, amended by the 1996 Act, on wired telephones. Its mission is "consumer protection for our state's most essential services."[16] But should the commission even regulate traditional wireline service anymore, now that robust and reliable alternatives are common? Wired telephones are no longer an "essential service," since many people no longer use traditional phones. Many people have substituted old-style telephones for other technologies that work just as well.

Starting in 2006, officials in Indiana deregulated retail telecommunications services over a three-year phase-out period. The Indiana legislature recognized that proven alternatives now exist and stated that "competition has become commonplace in the provision of telecommunications services in Indiana and the United States."[17]

The Indiana Utility Regulatory Commission (IURC) still has jurisdiction over several aspects of wireline services and oversees interconnection agreements, carrier-to-carrier disputes and "carrier of last resort" matters. State policy still provides that, one way or another, all Indiana residents will have access to phone service. However, the IURC

no longer regulates landline telephone service rates for businesses or most residential customers.

A big focus of deregulation efforts was reforming the cable franchise agreements—essentially making it easier for cable television companies to expand their customer base statewide. One of the main benefits is that cable TV companies can also provide cable broadband and VoIP services to compete with traditional phone companies. The result is increased competition and choice for consumers in all three types of service.

Several other states have enacted or have considered similar deregulatory measures. Whether the proposals have dealt specifically with removing price regulation from the states' utility commissions or other matters (such as franchise requirements or quality-of-service levels), state lawmakers are recognizing that consumers have more than one option when it comes to telecommunications providers and are better off when those providers are allowed to innovate and respond to changes in consumer demand.

The utility commission should also cede consumer protection responsibilities to, in Washington's case, the Consumer Protection Division of the attorney general's office. There is little reason for the WUTC to oversee consumer protection in certain areas, while the Attorney General's office enforces similar consumer rules in all other areas.

The commission's role should focus on its core mission of maintaining universal access to phone service and implementing the federal policies mandated by Congress. This change would streamline the consumer-complaint process and ensure uniform treatment of all commercial entities, rather than imposing separate standards for different industries.

Recommendations

1. **Give telephone service providers greater freedom to set prices.** The days of regional telephone monopolies are over. Wireline telephone companies now face stiff competition from wireless and VoIP technologies. State officials should end outdated regulation and allow wireline providers to respond to changing consumer expectations.

2. **Exempt competitive services from being regulated by the utility commission.** The legislature should revoke the WUTC's authority to impose price controls on wired services and regulate telephone companies under the same rules that govern their competitors in cable television, Internet services, wireless phone service and VoIP telephony.

3. **Reduce intrastate access charges on telephone calls**. Policymakers should adopt a policy of rate parity, so that intrastate telephone connection fees are reduced to the same level as interstate connection fees. This would provide equal treatment for all types of phone service and save consumers money.

6. Digital Precautionary Principle

Recommendations

1. Policymakers should consider both benefits and costs when regulating innovative technology—not just consider imagined costs while discounting real benefits.

2. Regulators should focus on resilience, rather than anticipation, when crafting rules.

3. Policymakers should direct enforcement efforts at bad actors who misuse technology, not place limits on the development of technology itself.

Background

It is becoming increasingly difficult to find any areas of industry that are not heavily regulated by government officials. Whether these fiats are handed down by distant federal regulators or close-to-home state and municipal officials, the sheer number of mandatory rules is proliferating at an alarming speed.

As the number of regulations grow, a more disconcerting trend is the type of rules being issued. Many proposed regulations take an *ex ante* (before the event) approach to regulating an industry, rather than the previously accepted practice of an *ex post* (after the event) framework. Regulators are increasingly imposing rules based on what they *think* might happen, rather than seeking evidence that a rule is needed to correct an existing, real-world problem in the marketplace.

We are seeing a move toward preventative regulations that do not rely on real scientific or economic data. We are seeing the emergence of regulations that reflect a "digital precautionary principle," by which regulators are discouraging technical innovation by automatically assuming the cost of a new product or service will outweigh its benefits to humans or to the environment.

Used largely in environmental policy, there are many definitions of the precautionary principle, but Harvard professor Cass Sunstein's may be the most accurate. He says:

> Simply put, the [precautionary] principle counsels that we should avoid steps that will create a risk of harm; until safety is established through clear evidence, we should be cautious. In a catchphrase: better safe than sorry.[18]

Another characteristic of the principle is an ignorance of cause and effect. Generally, a regulation is written to offset a negative impact—social or economic—caused by a certain action. The precautionary principle turns this relationship on its head and demands that, until an action can be proved safe, it should be banned entirely.

An early definition of the precautionary principle appears in the United Nations' 1992 Rio Declaration:

> Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

In other words, regulators need not rely on actual scientific or economic evidence when crafting new rules. In this view, suspected or imagined bad effects are sufficient to justify harsh limits on what people can do.

This puts the private market, which must operate under these ill-founded regulations, at a huge disadvantage. When information about possible harm to humans or the environment is not based on firm scientific or economic standards, it becomes subject to decisions made in the political arena. New regulations become subject to influence by competing politic interest groups, rather than following clear evidence or peer-reviewed science.

There are many criticisms of the precautionary principle approach to policy. Chief among them is it ignores fairly assessing the trade-off between costs and benefits in favor of considering only cost. Under the precautionary principle, no benefits are taken into account. If a technological improvement greatly improves the lives of millions of

people but results in minor cost to others, the improvement would be banned, despite the fact that it actually would do far more good than harm.

Policy Analysis

The information technology industry is one of the most dynamic and creative business sectors in human history. It has seen tremendous growth both in the United States and around the world over the past several decades.

This industry's success is not just about dollars and cents. Improvements in information technology have created dramatic gains in productivity and a better quality of life for nearly everyone. According to The Information Technology & Innovation Foundation, advances in information technology are responsible for two-thirds of the total productivity growth in the U.S. between 1995 and 2002, and virtually all of the growth in labor productivity.[19]

However, government regulators are increasing their scrutiny of the information technology industry. They are subjecting it to ever more *ex ante* regulations that are based on what *might* happen, rather than on real scientific and economic evidence.

Federal Scope

At the federal level, the Federal Communications Commission is pushing for stifling "net neutrality" rules. These rules would limit how data flows on the Internet. Advocacy groups pushing for net neutrality are seeking an egalitarian system that treats all data the same—regardless of whether that data is requested by people playing the digital game "Starcraft," or a doctor conducting remote surgery, or someone illegally downloading a movie. Under "net neutrality," all data requests are treated as if they are equally important.

From a systems standpoint (much less economic or ideological) this egalitarian approach makes little sense and will actually make more users' experiences worse than before. As with congested freeways, sometimes the connections that carry Internet data flows get clogged with traffic. Internet Service Providers then take steps to alleviate congestion

in order to maximize throughput and maintain high-quality service for users.

One way to improve data flow is to delay (in computers, delay is measured in small fractions of a second) low-priority information, such as an email, in favor of more high-intensity services, like teleconferencing or video streaming. The effect of receiving an email three nanoseconds later than normal is minimal—most people would not notice—while any delay in the flow of data that serves an online business meeting would create a distortion called jitter, making conversation difficult or impossible.

The FCC is pursuing a course of preventative rules to enforce egalitarianism (which has no economic benefit) based on officials' concept of "fairness," at a cost to consumers of fast, high-quality Internet services and future technological improvements.

State Scope

On the state level, the digital precautionary principle was invoked (probably unknowingly) when legislators in Washington sought to regulate a particular technology—rather than the bad actors who may be misusing the technology.

In 2007, legislators introduced House Bill 1031, which targeted a certain type of electronic communications device. The intent of the bill was to prevent unauthorized use of consumer information received from Radio Frequency Identification Devices (RFID). Because the bill was directed at a particular technology, however, it unwittingly covered the wireless phone industry as well.

The broad technical definitions in HB 1031 extended to wireless phones, and the bill drafters had no way of foreseeing the massive growth in wireless broadband services. Nor could policymakers have anticipated the emerging technology of Near Field Communications (NFC), which will enable consumers to use their cell phones as a mobile wallet.

HB 1031 itself would not have banned such technologies from Washington state, but it would have severely restricted services for businesses and consumers who currently benefit from advanced wireless technology.

The bill did not pass, but it illustrates the dangers of policymakers attempting to place sweeping limits on the future use and growth of new technologies, rather than focusing their efforts on solving public problems as they arise.

City Scope

Probably the clearest example of the digital precautionary principle in practice is the San Francisco city ordinance that enacted a cell phone handset radiation disclosure law, despite the lack of any scientific evidence.

In 2003, San Francisco officially adopted a precautionary principle statement. It states, "Where threats of serious or irreversible damage to people or nature exist, lack of full scientific certainty about cause and effect shall not be viewed as sufficient reason for the City to postpone measures to prevent the degradation of the environment or protect the health of its citizens."[20]

Following this mentality, city officials passed a cell phone radiation disclosure law, despite the Federal Communications Commission, the World Health Organization and National Cancer Institute all disputing the city's assertion that there was any link between cell phone use and brain cancer.

The city's response? "There's information that's out there if you're willing to look hard enough," said one city spokesman.[21] The city ordinance required retailers of cell phones to display:[22]

1. The SAR (specific absorption rate) value of that phone and the maximum allowable SAR value for cell phones set by the FCC.

2. A statement explaining what SAR is.

3. A statement that additional educational materials regarding SAR values and cell phone use are available from the cell phone retailer.

The ordinance even dictated the font and font size of the display ("Arial or equivalent, no smaller than 8 point").

In May 2011, the city backed away from the regulation as passed and is considering an alternative regulation, one that would most likely move away from the SAR label requirement. One reason is that SAR measures *peak* radiation emission from a handset instead of the *average* emission levels. Therefore, a customer wishing to minimize radiation exposure could actually end up purchasing a handset that emits a higher average level of radiation when the handset with the higher peak rate actually emits lower overall radiation.

Regulators face a daunting challenge. They are often expected to regulate industries to protect or enhance human health and environmental safety based on incomplete facts or speculation. Allowing the precautionary principle to govern digital regulations, however, will not advance the public interest and will result in unquantifiable opportunity costs to people who benefit from new technologies.

Efforts to regulate risk out of existence are not only futile, but actually lead to new risks. Taken to its logical conclusion, strict adherence to the precautionary principle in the technology industry would rob our society and the economy of countless innovations because the known benefits of moving forward far outweigh the imagined risks.

Recommendations

1. **Policymakers should consider both benefits and costs when regulating innovative technology.** Hiding behind anecdotal scare stories and hypothetical costs can rob future generations of the benefits of innovative technologies before they are allowed to develop.

2. **Regulators should focus on resilience, rather than anticipation, when crafting rules.** A regulatory system that focuses on preventing any negative consequences to anyone at any time will smother innovation because no one truly knows how new inventions and investment in those technologies will pay off.

3. **Policymakers should go after bad actors who misuse technology, not the technology itself.** Bad people often use technology to gain economies of scale when conducting crimes. Law enforcement should focus on the bad actors themselves, imposing sweeping limits on new technology and innovation.

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CHAPTER TEN
TRANSPORTATION POLICY

1. Performance Measures

Recommendations

1. Make traffic relief a top priority as an "Investment Guideline."
2. Implement program improvements recommended by State Auditor investigations.
3. Reinstate the congestion relief performance measures the legislature repealed in 2007.

Background

Traffic relief is the most basic goal of any transportation policy, yet it does not exist as a priority in Washington state. In all cases, "mobility" should mean traffic relief, but state officials define mobility as a strategy to move people, rather than to improve traffic flows.

In 2000, Washington's Blue Ribbon Commission on Transportation identified several benchmarks to measure the effectiveness of the state's transportation system. These performance measures are very specific and some of them were adopted into law. They include:

- Traffic congestion on urban state highways shall be significantly reduced and be no worse than the national mean.
- Delay per driver shall be significantly reduced and no worse than the national mean.

However, seven years later, lawmakers passed Senate Bill 5412, which repealed these precise benchmarks. Instead, the legislature substituted five broad, ill-defined policy goals: Preservation, Safety, Mobility, Environment and Stewardship.[1]

Likewise, the strategy for spending transportation taxes is defined in the Washington Transportation Plan 2007–2026.[2] This document, created by the Washington State Transportation Commission (WTC) and the Washington State Department of Transportation (WSDOT), identifies five "Investment Guidelines" to prioritize spending tax dollars in transportation.

The five guidelines in the 2007–2026 transportation plan are nearly identical to the five goals set by Senate Bill 5412: Preservation, Safety, Economic Vitality, Mobility, and Environmental Quality and Health.

In both cases, the term "mobility" should mean traffic congestion relief for the public. Instead, state officials define it as a strategy to move *people,* rather than improving vehicle flows. This means officials have shifted their spending priorities from actually fixing traffic congestion to trying to provide alternatives to congestion.

In other words, according to the Washington Transportation Plan, relieving traffic congestion is not an "investment guideline" in determining how transportation money is spent. Instead, the plan says policymakers should spend money on other, less-efficient forms of transportation, like buses or light rail operated by government agencies.

Ironically, this spending strategy will always lead to greater traffic congestion.

According to the Federal Highway Administration, private passenger vehicles account for about 85% of all forms of transportation in the Seattle region.[3] This means all other modes, like mass transit, bicycles and walking, serve only 15% of travelers.[4]

Adopting a policy that disproportionately spends public money on only 15% of the market will always lead to greater congestion, because the road system that serves the remaining 85% of the traveling public is left to languish.

Initiative 900, which passed in November 2005, gave the State Auditor's Office authority to conduct performance audits of state

agencies. In one audit of the state's effort to reduce traffic congestion, the Auditor concluded that"

> The Washington State Legislature should choose/identify projects based on congestion reduction rather than other agendas.[5]

Policy Analysis

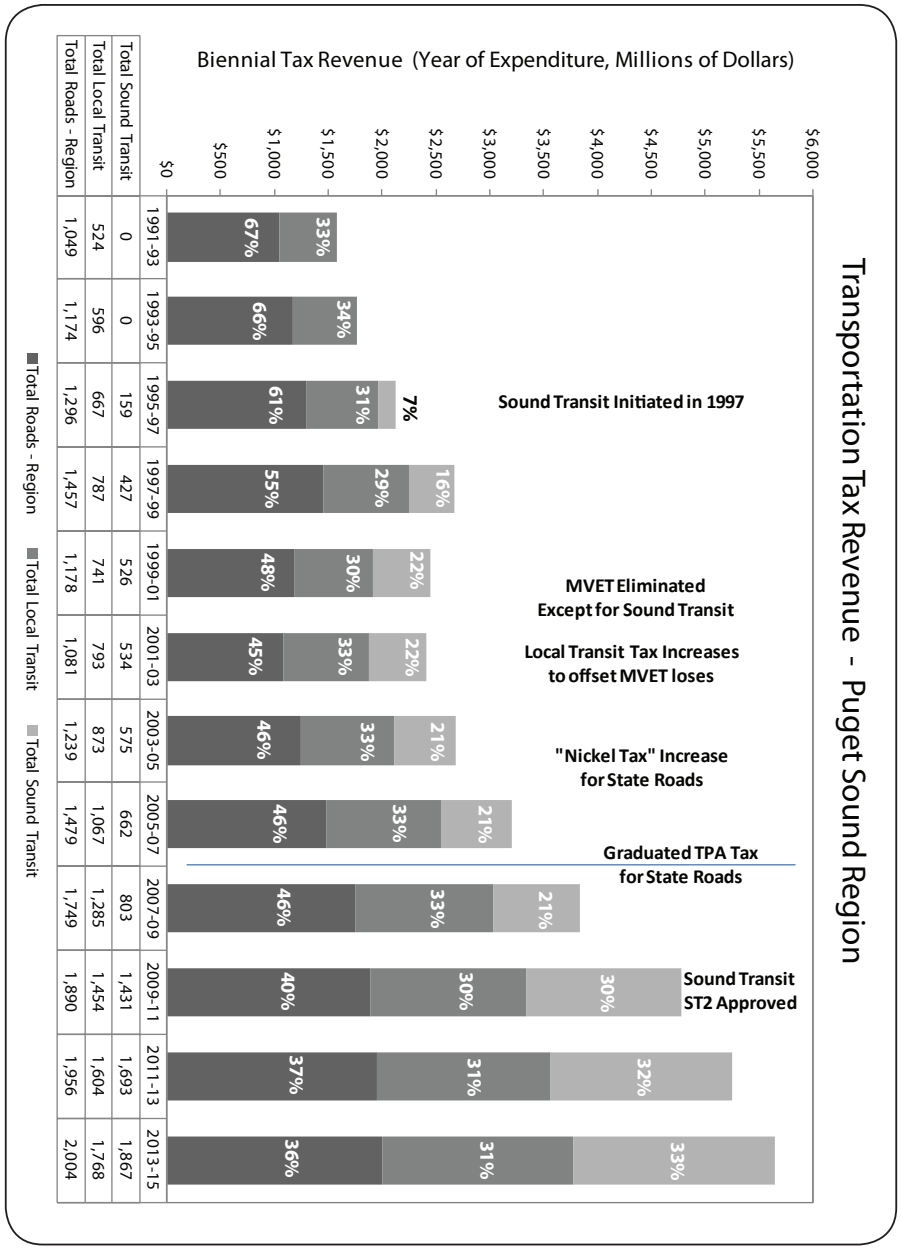
The tables on the following pages compares road and transit taxes collected from the state, local transit districts and Sound Transit,in the central Puget Sound region (Snohomish, King and Pierce counties) since 1991 and projected forward to 2015.

Over the last twenty years, state road and local transit spending has risen from $1.57 billion every two years to $4.78 billion every two years. That is nearly a 200% increase in transportation taxes and fees collected in the central Puget Sound region.

State road funding in the region has risen 80% since 1991, while public transit funding has risen more than 450% over the same time period.

Public transit's share of the 14 million daily person trips made in this region is now less than three percent, while transit collects 60% of all state and transit transportation tax revenues.

Sound Transit now collects half of the transportation funding that goes to public transit in the region and is projected to collect more tax revenue than all of the local transit agencies combined within two years. Sound Transit is on pace to collect almost $30 billion in total tax collections by 2030, yet estimates show the agency will carry 2.5% of all person trips made in the Puget Sound region by 2030.



	1991-93	1993-95	1995-97	1997-99	1999-01	2001-03	2003-05	2005-07	2007-09	2009-11	2011-13	2013-15
Total Sound Transit	0	0	159	427	526	534	575	662	803	1,431	1,693	1,867
Total Local Transit	524	596	667	787	741	793	873	1,067	1,285	1,454	1,604	1,768
Total Roads - Region	1,049	1,174	1,296	1,457	1,178	1,081	1,239	1,479	1,749	1,890	1,956	2,004

Transportation Tax Revenue, Three-County Puget Sound Region (Millions of Dollars)

Biennium	1991-93	1993-95	1995-97	1997-99	1999-01	2001-03	2003-05	2005-07	*2007-09*	*2009-11*	*2011-13*	*2013-15*	Totals 1991-2015
Road Revenues													
23 cents Fuel Tax	626	652	677	722	734	742	765	770	*836*	*882*	*913*	*933*	9,254
Nickel & TPA	--	--	--	--	--	--	156	291	*444*	*528*	*551*	*561*	2,530
Permits & Fees	210	224	238	241	291	309	319	418	*469*	*479*	*492*	*510*	4,200
MVET to Roads	212	298	380	494	153	31	--	--	--	--	--	--	1,568
Total Roads - Region	**1,049**	**1,174**	**1,296**	**1,457**	**1,178**	**1,081**	**1,239**	**1,479**	***1,749***	***1,890***	***1,956***	***2,004***	**17,552**
Sound Transit Local Tax Revenues													
Sound Move	--	--	159	427	526	534	575	662	*710*	*737*	*825*	*915*	6,071
ST2	--	--	--	--	--	--	--	--	*93*	*694*	*868*	*952*	2,607
Total Sound Transit	**0**	**0**	**159**	**427**	**526**	**534**	**575**	**662**	***803***	***1,431***	***1,693***	***1,867***	**8,678**
Metro Transit Local Tax Revenues													
Sales & MVET Tax	**392**	**448**	**503**	**593**	**592**	**594**	**619**	**747**	**926**	**1,044**	**1,162**	**1,297**	**8,916**
Snohomish Community Transit													
Sales & MVET Tax	**58**	**66**	**74**	**88**	**83**	**103**	**116**	**142**	**160**	**193**	**206**	**213**	**1,502**
Pierce Transit													
Sales & MVET Tax	**64**	**72**	**79**	**92**	**52**	**82**	**124**	**148**	**164**	**181**	**200**	**220**	**1,478**
Everett Transit													
Sales & MVET Tax	**9**	**10**	**11**	**14**	**14**	**14**	**14**	**31**	**35**	**37**	**37**	**38**	**264**
Total Local Transit	**524**	**596**	**667**	**787**	**741**	**793**	**873**	**1,067**	**1,285**	**1,454**	**1,604**	**1,768**	**12,160**

The source of state roads revenues from 1997-2015 is the 2007 Key Facts, Washington State Department of Transportation, Major Sources of Tax Revenue chart, pg. 42, December 2007, at www.wsdot.wa.gov/publications/manuals/fulltext/M0000/KeyFacts.pdf. County-by-County Comparison, Return per Dollar Contributed by Citizens within Each County State & Federal Transportation Funds, A Fourteen-Year Look, 2004–2017, Washington State Department of Transportation, February 2009, at www.wsdot.wa.gov/NR/rdonlyres/01173667-1743-4C3C-A127-9BC5695CB630/0/CountyByCountyFuelTaxComparison.pdf. According to this study, 51% of the statewide road revenues come back to King, Pierce and Snohomish Counties. The regional distribution of state road tax revenues depicted in the chart applies this estimate.

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Recommendations

1. **Make traffic relief an "Investment Guideline."** Much as they did in 2010 when they added economic development to the state's list of transportation goals, lawmakers should include congestion relief as a top transportation policy goal.

2. **Implement the performance audit improvements recommended by State Auditor investigations.** Through the auditing process, the State Auditor has identified about $300 million in transportation cost savings through finding efficiencies, eliminating duplicative services and waste. State Department of Transportation officials and the legislature should implement these money-saving recommendations.

3. **Reinstate the congestion relief performance measures the legislature repealed in 2007.** These measures include: "Traffic congestion on urban state highways shall be significantly reduced and be no worse than the national mean," and "Delay per driver shall be significantly reduced and no worse than the national mean." Reinstating these measure will show the public that policymakers have again made reducing traffic congestion a top priority.

2. Base Transportation Spending on Consumer Demand

Recommendations

1. Use consumer demand to prioritize projects and spending, proportionally.

2. Adopt a policy of fixing chokepoints and strategic increases in road capacity as the two most effective ways of ending traffic gridlock and allowing citizens more freedom of movement.

Background

Transportation resources should be distributed based on natural market demand, in response to the needs of the public, rather than the current system of spending on services that are somehow meant to attract demand.

In economics, supply is a function of demand. This means a willingness to use a service must exist before a supply of that service is created. Boeing executives do not make 300 airplanes knowing they will only sell 100. Likewise, governments should not spend a disproportionate amount of taxes in low-demand sectors, where the public's willingness to use the service does not justify the spending.

In any market, increasing the supply of a service or product before demand is available is wasteful and creates a large gap between costs and benefits.

In the private sector, where benefits are measured by consumer choices, this type of inefficient behavior is unsustainable. A business will simply cease to exist once costs exceed the value of benefits to consumers.

But in the public sector, normal economic laws do not apply. There is a higher tolerance for fiscal inefficiency because benefits are not always measured by consumer choices. There is also an element of public value unrelated to financial considerations.

Thirty years ago, mass transit accounted for six percent of daily trips in the Puget Sound region. After years of massive public subsidies, mass transit today accounts for less than four percent of daily trips.

The continued push for more mass transit and light rail 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.

In transportation policy, public value should be measured by freedom of mobility and traffic relief for the public. Policymakers can keep the space between costs and benefits small by separating projects that provide these values from projects that do not.

Policy Analysis

European and U.S. transit systems provide good contrasting examples of how economic concepts apply in transportation.

Many people believe European countries have highly successful public transportation networks,and one of the most-cited systems is in Switzerland. Switzerland lies in the center of Europe and is an important transportation hub for both freight and passenger traffic throughout the continent. The Swiss system is successful, not because of the amount of service or infrastructure, but primarily because it has certain demographic and economic characteristics that induce market demand.

In other words, there is an existing market with a natural customer base, and Swiss policymakers respond with proportional public infrastructure spending. As a result, mode share, ridership and fare box recovery are high. In the United States, transit resources are distributed in just the opposite way.

Under the "build it, and they will come" theory, many policymakers think that increasing the supply of transit will somehow automatically create more public demand. This speculative model fails because most U.S. cities do not possess the economic or demographic characteristics that create enough voluntary consumers for public transit.

Using the economic principles of supply and demand shows that building excess transit capacity before there is an equal amount of willingness to use it leads to an underperforming system. As a result,

mode share, ridership and fare box recovery in U.S. mass transit systems are typically low.

Recommendations

1. **Use consumer demand to prioritize projects and spending, proportionally.** Until the 1970s, officials pursued a policy of increasing road capacity to meet the growing mobility needs of Washington's drivers. Over the last three decades, however, policymakers have divided transportation funding between subsidized mass transit and public roads. This approach has not worked. When prioritizing transportation projects, policymakers should use consumer demand to determine public spending, not the other way around. Applying these time-tested economic principles to transportation policy will improve people's mobility and reduce traffic congestion.

2. **Adopt a policy of fixing chokepoints and strategic increases in road capacity as the two most effective ways of ending traffic gridlock and allowing citizens more freedom of movement.** Focusing on roadway chokepoints and interchange bottlenecks is the most cost-effective way to get traffic moving.

3. Respect People's Freedom of Mobility

Recommendations

1. Respect people's choices and allow greater freedom of mobility by actively working to *reduce* traffic congestion.
2. Repeal the state's Vehicle Miles Traveled (VMT) reduction targets.
3. Increase general purpose lane capacity while focusing on fixing chokepoints.

Background

Government is supposed to serve society, not the other way around. Policies that force citizens to behave differently than they normally would disregard the natural marketplace and ultimately threaten to take away political freedom from citizens.

Similarly, government policies in transportation should be responsive to the market and improve the freedom of citizens to live, play and work where they choose.

Manipulating transportation policies to force a particular behavior coerces people into abandoning their individual liberties in favor of a socialistic benefit where, supposedly, a greater collective good is created.

These measures always fail because of what Milton Friedman called, "one of the strongest and most creative forces known to man," rational self interest, or people's desire to do what they believe is best for their own lives.

Proponents of social change should work in the marketplace of ideas to persuade others to share their vision and work toward 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.

The state has a monopoly on our road system. As such, government leaders have agreed to provide citizens with a certain level of service, or freedom of mobility. Using traffic congestion as an enforcement tool, rather than fixing it, is an attempt at social engineering that is sure to fail. Trying to force people out of their cars is not the proper role of government.

Policy Analysis

In a dual effort to manage congestion and reduce CO_2 emission, the state's Climate Advisory Team (CAT) proposed reduction targets on the amount of per capita Vehicle Miles Traveled (VMT). The targets include a VMT reduction of 18% by 2020, 30% by 2035, and 50% by 2050.[6]

On average, each licensed driver in Washington drives about 12,555 miles per year. Transportation department officials project that, in 2020, each driver will drive about 13,500 miles annually. According to the CAT, an 18% reduction in VMT by 2020 means a Washington driver would be limited to only 11,070 miles per year, or about the same level that person drove in 1985.[7]

House Bill 2815, passed in 2008, implemented these recommendations at the state level. This type of policy strategy seeks to force drivers out of their cars and into transportation modes operated by public agencies. But restricting mobility in one mode for the benefit of another will always fail because it does not respect the choices of people to do what is best for them.

Instead of forcing behavior changes by limiting mobility through top-down social engineering, a more realistic way to reduce congestion and CO_2 emissions is to remove barriers to better technology that will improve fuel efficiency. Also, as mentioned, policymakers should make congestion relief a top priority, since cars sitting in traffic emit more CO_2. Ultimately, cars are part of the solution, not the problem.

One of the cost impacts ignored by supporters of VMT reduction targets is the potential loss of state revenue that relies on how much people drive, like revenue from fuel taxes and tolls. A policy of reducing VMT for drivers, while simultaneously adopting revenue streams that

rely on driving, guarantees the state will fail at one or the other. These conflicting goals waste money.

Government policies in transportation should be responsive to the market and improve the freedom of citizens to live and work where they choose. Policymakers should respect people's choices and allow for greater freedom of mobility.

Recommendations

1. **Respect people's choices and allow greater freedom of mobility by actively working to reduce traffic congestion.** Officials should adopt a policy that places congestion relief ahead of other spending considerations. Restrictions on Vehicle Miles Traveled (VMT) and deliberately or passively increasing traffic congestion to force people out of their cars should be avoided.

2. **Repeal the state's VMT reduction targets.** VMT reduction targets limit people's freedom of mobility and revenue sources that rely on driving, like fuel taxes and tolls. These targets create conflicting policies that waste money and harm taxpayers.

3. **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 and least impact on the environment.

4. Improve Freight Mobility

Recommendations

1. Complete the 5-9 Corridor (State Route 509, State Route 99, I-5 and I-90) and State Route 167.
2. Policymakers should adopt a policy of "do no harm."
3. Create a dedicated freight budget account for freight-specific projects.
4. Increase heavy rail capacity to allow medium and long range freight distribution companies greater ability to shift from roads to rail.
5. Create new freight-only lanes and corridors to enable rapid pass-through for long-range and local freight distribution.

Background

Freight mobility should play a significant role in transportation policy, since that mobility is the key to our state's economic strength. The transport of consumers and goods puts our economy in motion, creates jobs and improves our quality of life.

From trucking, freight rail, aviation and marine shipping, the value of goods that move through Washington state is expected to rise from $400 billion dollars a year in 2011 to $1.2 trillion in 25 years.[8] In just nine years, the freight industry will add two million more trucks to the national road system.

Our highways, which carry 70% of all commercial truck freight, are already badly congested, and that congestion is expected to double in the next twenty years.[9] The Washington Transportation Commission estimates Washington has up to $200 billion of unmet transportation infrastructure needs.[10] Yet, local and state leaders spend billions of our transportation tax dollars in areas that do not help.

Replacing the Seattle waterfront viaduct with two fewer lanes, replacing the Highway 520 floating bridge with no additional general purpose lanes, replacing the center lanes on the I-90 bridge with light rail, and ignoring the I-5 bottleneck through Seattle are not long-term solutions.

This means the number of general purpose highway lanes connecting the state to its largest employment hub will decrease in the next twenty years, despite regional population increases of more than one million new residents.

Policy Analysis

Policymakers must acknowledge that the freight industry is essential to Washington's economic health and fund projects that improve mobility, not make it worse.

Sound Transit's East Link proposal is a good example. Reconfiguring the center lanes across I-90 for light rail, as agency officials propose, would not only fail to reduce traffic congestion, it would, according to the state Department of Transportation, worsen traffic congestion by up to 25%.[11]

Drivers of freight vehicles would suffer the most from this policy. During the morning peak drive, the number of truck drivers able to cross into Seattle would drop by 24%. Leaving Seattle during the afternoon peak drive, truck drivers would see a 19% reduction in capacity.[12]

A policy of linking public demand and traffic relief to spending would require Sound Transit officials to think in a different direction. The agency should keep the two center lanes on I-90 as a reversible HOV and freight and transit corridor and continue restriping the outer roadway to create an additional lane in each direction, as already approved by the Federal Highway Administration. Because the center lanes are already a reversible HOV, freight and transit corridor, no light rail should be added to the bridge. Then the new lanes in the outer roadways would not need to be restricted.

Another example where officials are making traffic worse and hurting freight mobility is replacing vehicle lanes with bike-only restrictions, also known as "road diets." Seattle officials are quick to say

road diets maintain the car-carrying capacity on the roads where they are applied. However, Seattle officials are much slower to admit that road diets do not *improve* car-carrying capacity either.

This means road diets are essentially exchanging the future capacity needs of the roadway for other uses today—in this case, bicycle traffic.

Road diets generally do not create congestion on corridors that carry fewer than 20,000 vehicles per day. According to a report from the Federal Highway Administration on the effectiveness of road diets:

> Under most average daily traffic (ADT) conditions tested, road diets have minimal effects on vehicle capacity, because left-turning vehicles are moved into a common two-way left-turn lane. However, for road diets with ADTs above approximately 20,000 vehicles, there is a greater likelihood that traffic congestion will increase to the point of diverting traffic to alternate routes.[13]

In other words, as traffic volumes increase above 20,000 cars per day, throughput deteriorates. The traffic volumes on Seattle's Nickerson Street were already higher than 20,000 trips per day (20,300) in 2007.[14] So traffic congestion is likely already worse than it was before the road capacity was reduced.

And the traffic outlook for the future does not get any better. According to Seattle's traffic analysis, Nickerson's traffic volumes will grow about one percent per year, with an additional 3,680 trips from a planned development.[15]

This means Nickerson Street will have about 29,456 daily trips by 2030, which is nearly 50% more than what the Federal Highway Administration says is the tipping point for the road diet to cause higher traffic congestion.

Because of the significant up-front financial costs, responsible public officials generally build transportation infrastructure to accommodate future growth. Seattle officials are doing precisely the opposite, reducing traffic lanes as the city grows.

Recommendations

1. **Complete the 5-9 Corridor and State Route 167.** The 5-9 Corridor refers to State Route 509, I-5, I-90, and State Route 99. Both State Route 509 and State Route 167 are unfinished. These roads are over capacity and serve a major role in moving freight to and from the ports of Seattle and Tacoma.

2. **Policymakers should adopt a policy of "do no harm."** Converting the center lanes on I-90 to light rail, restricting general purpose lanes to bicycles or transit only, failing to secure funding for vital road repairs like the Sound Park Bridge in Seattle, and reducing the number of unrestricted freeway lanes through the largest employment and population center in Washington are examples of policy decisions that make freight mobility worse in the Puget Sound region.

3. **Create a dedicated freight budget account for freight-specific projects.** In most cases this will not require new tax revenue because the freight industry already pays significant fees and taxes to fund transportation projects, but these funds are often spent on projects that do not improve freight mobility.

4. **Increase heavy rail capacity to allow medium- and long-range freight distribution companies greater ability to shift from roads to rail.** Improving the rail line through Stampede Pass and building more regional rail capacity will reduce shipping costs and allow shippers to efficiently shift freight from roads to rail, thus easing traffic congestion.

5. **Create new freight-only lanes and corridors to support rapid pass-through for long range and local freight distribution.** The new corridors could be tolled, and the trucking industry would likely experience lower overall shipping costs, because of the reduced traffic delay in getting goods to consumers.

5. Use Public/Private Partnerships to Fund Transportation Infrastructure

Recommendations

1. Remove barriers that prevent private companies from contributing resources and entering into public partnerships.

2. End inefficient public transit monopolies by allowing private companies to bid for services on existing and proposed transit routes.

3. Do not allow local transit agencies to use government subsidies to take business away from private citizens.

Background

By tapping private investment dollars, Public/Private Partnerships (PPP) allow lawmakers to fund new projects, reduce financial risk, maintain current transportation infrastructure and increase value to taxpayers.

There are many benefits associated with a PPP. They include leveraging private dollars for public use, shifting financial risk from taxpayers to the private sector, using competition to create incentives that lower capital and operating costs, and gaining more efficient distribution of scarce transportation resources.

Other factors, like public oversight, asset ownership, long-term maintenance, liability and labor costs, will dictate which PPP is a better fit. In some cases, these issues have been treated as obstacles and have prevented partnerships from forming. Yet, other states have solved these problems and have adopted several types of partnerships. Undoubtedly, these concerns are important, but they should not deter policymakers from taking advantage of Public/Private Partnerships. Joining with the private sector is one way transportation officials can increase the public's financial resources and get roads built.

Washington state's experience with PPPs has been limited to the design/build format, which is an extremely passive approach and underutilizes the potential of private investment.

Washington state does allow PPPs by statute, but the law contains provisions that effectively prevent PPPs from forming. Washington law requires that debt must be issued by the state treasurer, which eliminates financial incentives for private investment. Washington law also prohibits unsolicited proposals and requires a lengthy and inefficient approval and oversight process.

Public/Private Partnerships have a proven track record across the United States, and PPPs should be embraced by public officials in Washington. However, reform is required if lawmakers want to take full advantage of PPPs to fund transportation projects in Washington state.

Policy Analysis

There are many opportunities for PPPs to fund not only transportation infrastructure, but public transit services as well.

State leaders should 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.

Private Companies Available for Transit Services

Private companies are capable of offering improved service to transit riders in the region. For example, the owners of Airporter Shuttle/ Bellair Charters, based in Ferndale, have expressed strong interest in providing bus service in a three-country area.

Their 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, support a ban on private contracting under the legislature's expanded service program.

Competitive contracting offers substantial service benefits to the public. 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.[17]

A good example is the Federal Transit Administration's rule requiring that special shuttle bus services to public events be provided by private contractors if they are available. In 2007, the University of Washington paid King County Metro $500,000 to carry fans to Husky home games. County bus drivers like the arrangement because it means guaranteed overtime and high pay. If allowed, however, a private company which is not bound by costly unions rules, such as Seattle-based Starline Luxury Coaches, could provide the same service to football fans at much less cost to taxpayers.[18]

But in 2010, Washington Senator Patty Murray inserted an amendment into a federal spending bill that exempts King County Metro from the rule, thus preventing private operators from providing the service. Local leaders ignore national evidence and experience by blocking private contracting from being part of their plan.

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. **Remove barriers that prevent private companies from contributing resources and entering into public partnerships.** Through public/private partnerships, the state can leverage private sector resources to

build new infrastructure, reduce project costs and manage risk. These partnerships have a proven track record across the United States and should be embraced by public officials.

2. **End inefficient public transit monopolies by allowing private companies to bid for services on existing and proposed transit routes.** Expanding competition, price transparency and public-private partnerships in transit in Washington would reduce cost and improve service to the traveling public.

3. **Do not allow local transit agencies to use government subsidies to take business away from private citizens.** Public transit agencies work not only to preserve their own monopolies, they often seek to take business away from private carriers. Public transit should be about moving the most people for the least cost, and private operators should be allowed to compete fairly for that service.

6. Protect Toll Revenue for Highway Purposes

Recommendation

Protect toll revenue for highway purposes.

Background

In 1921, officials implemented Washington's first gas tax: One cent per gallon. With this new revenue stream, state leaders were able to build, maintain and expand Washington's highway network. And as the state's transportation infrastructure needs increased, so did the tax. Today, Washington's gas tax rate is 37.5 cents per gallon, the seventh highest in the nation.[19]

Nationally and in Washington state the highway system was constructed largely on the philosophy that users would pay. This user-fee theory successfully built 7,000 miles of roadway and allows Washingtonians to drive nearly 60 billion miles per year, producing industry, mobility, economic freedom and a higher quality of life for everyone.

Seventy years ago, as they often do today, politicians saw "opportunities" with a new and stable revenue stream, and they began to divert gas tax collections to programs and services not related to roads and highways.

According to the Washington State Good Roads Association (WSGRA), more than $10 million of gas taxes was diverted to other purposes in the ten years between 1933 and 1943.[20] This gave rise to a popular, statewide effort to protect motor vehicle fuel taxes for their intended purpose. In 1944, Washington voters passed the 18th Amendment to the state constitution, which limits the use of gas tax revenue exclusively to roads and highways.

To gather support for the constitutional amendment, the WSGRA stressed the natural attractiveness of a user-fee system, stating:

> Several hundred miles of good, paved, safe highway would have been built to save money in motor vehicle operation had this special motor tax money been used as it was intended. These were highways and streets we paid for, but didn't get![21]

The measure passed, and, since then, gas tax revenues have been restricted solely to "highway purposes."

Today and for a variety of reasons, the increase in gas tax revenues has not kept pace with the state's infrastructure needs. The Washington Transportation Commission estimates the state has up to $200 billion in unmet, unfunded transportation projects.[22] So state leaders are now looking to another type of road-user-fee to create a supplemental funding stream, tolls.

Policy Analysis

Washington motorists have plenty of modern-day experience with tolls, which have been recently implemented on the Tacoma Narrows Bridge and Highway 167 in south King County. Transportation officials are also implementing tolls on the Evergreen Point floating bridge across Lake Washington in 2011, and bills proposed in Olympia include imposing express toll lanes on Interstate 405.

People intuitively support public programs and services funded through user fees. Roadway tolls are no exception. When tolls are used to pay for a piece of infrastructure like a bridge or a length of highway, drivers naturally understand and generally support the added costs of performing the activity. Likewise, but to a lesser extent, when tolls are used to manage congestion and the revenue is spent on the highway where it was collected, users generally agree to pay.

For the payer, tolls fund a visible product that results directly in a tangible benefit. However, as Washington's early experience with gas taxes illustrates, the public become less supportive when the tolling fees are diverted to benefit other user groups. People naturally see the diversion of toll revenue as unfair.

To their credit, in 2008 legislative leaders in Olympia tried to address the public's concern about fairness by implementing a statewide tolling policy. Among other provisions, the policy defines in law how

toll revenue can be used. According to the law, toll revenue is limited to operating costs, debt, and any other project or improvement on the tolled facility.

However, the policy also allows toll revenue to be used for "the operations of conveyances of people or goods." This clause allows tolls, which are paid by motorists, to be used to fund an activity of a different user group, public transportation, and for the financial benefit of private transportation unions.

Public transportation is important, especially in dense urban areas, but it is not a highway purpose and, therefore, should not be funded with vehicle-related taxes and fees, like tolls, which are paid by drivers.

In 1969, the Washington State Supreme Court ruled in O'Connell v. Slavin that public transportation did not fall under the provision of "highway purposes" as defined in the 18th Amendment. The court said:

> But all of the purposes which are listed pertain to highways, roads and streets, all of which are by nature adapted and dedicated to use by operators of motor vehicles, both public and private, and none of them pertain to other modes of transportation, such as railways, waterways, or airways.[23]

The court also reaffirmed the definition of a highway and ruled that public transportation is:

> not a "way" at all, but is a number of buses, trains, or other carriers each holding a number of passengers, which may travel upon the highways or may travel upon rails or water, or through the air, and which are owned and operated, either publicly or privately, for the transportation of the public. The mere fact that these vehicles may travel over the highways, or that, as the appellant points out, may relieve the highways of vehicular traffic, does not make their construction, ownership, operation, or planning a highway purpose, within the meaning of the constitutional provision.[24]

Like gas taxes, tolls are paid by drivers and, in fairness, should be limited to highway purposes, as required by the 18th Amendment.

The state already cannot keep pace with funding its current and future transportation needs. Public transit is a local function with its own public tax base. Any new transportation revenue source created by the state should be used to pay for existing obligations or to expand highway capacity; it should not be diverted to creating new commitments at the local level, such as public transit.

Recommendation

Protect toll revenue for highway purposes. Constitutionally protecting toll revenue for highway purposes ensures fair and equitable treatment for toll payers, guarantees a sensible connection between the fee charged and what it is used to pay for, and contributes financially to the state's unmet transportation obligations.

7. Sound Transit

Recommendations

1. The Washington state legislature should make Sound Transit's governing board of directors a directly elected body.

2. Hold a public vote on whether Sound Transit should continue collecting taxes based on the agency's poor performance in fulfilling promises made to voters since 1996.

3. Adopt Bus Rapid Transit (BRT) as a more cost-effective alternative to expensive 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.[25] 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 voters were told they would be and are higher than many transit services in other parts of the country.[26]

In 2007, the state auditor's found that Sound Transit has substantially failed to deliver what voters authorized with the passage of Sound Move.[27]

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

Sound Transit officials say light rail is an unqualified success. Yet, a closer look at the actual performance shows citizens are not getting what they are paying for.

In 1996, Sound Transit officials promised voters they would build 25 miles of light rail for a total cost of about $1.8 billion, and they would be finished by 2006. In fact, officials were so confident in their "conservative" projections they called it "Sound Move, The 10-Year Regional Transit System Plan."

Fifteen years later, Sound Transit officials have unilaterally reduced the planned line to 21 miles, and have only delivered about 17 miles for about $2.6 billion. The rest will not be finished until around 2020, for a total cost approaching $15 billion. In other words, Sound Transit's system is smaller, billions of dollars over budget and more than a dozen years late when compared to what officials originally promised voters.

Promises Sound Transit made in 1996 but failed to deliver include the following (quotes are from the Sound Move plan adopted in May 1996 and passed by voters in November 1996):

Promise: "[Sound Transit] is committed to building and operating a ten-year system plan that can be confidently funded and completed as promised to the region's citizens."
Reality: Today, the initial segment is already four miles shorter, billions over budget and more than a dozen years late from what was promised in 1996.

Promise: "If voters decide to not extend the system, [Sound Transit] will roll back the tax rate."

Reality: Voters rejected an extension in 2007, but Sound Transit officials did not roll back taxes. Instead, officials pushed for a second measure the following year, which voters ultimately approved.

Promise: Light rail will carry 32.6 million riders per year, or 107,000 per weekday, by 2010.
Reality: Today, light rail carries 23,000 riders per weekday at best, and will likely carry only about six or seven million riders for the year.

Promise: "Sound Move is based on extremely conservative cost and ridership assumptions."
Reality: Despite claiming seventeen times that Sound Move's cost and ridership projections are based on "conservative" estimates, Sound Transit officials are spending billions more and carrying fewer riders than what they told voters.

Promise: Riders will pay more than half (53%) of their annual operating costs of light rail.
Reality: Today, Sound Transit officials say riders will cover only 40%, but Sound Transit is actually on track to recover far less than that.

Promise: Sound Transit's initial light rail facility can carry 22,000 passengers per hour, per direction.
Reality: Today, the facility carries less than 1,000 passengers per hour, per direction.

The region's light rail system is not living up to its expectations because Sound Transit officials deliberately overestimated benefits and underestimated costs to make the project appear attractive to voters. Once the agency secured higher taxing authority from voters, its promises fell apart.

More recently, Sound Transit asked voters to expand its regional public transportation system (ST2). During the election, Sound Transit officials told voters the expanded rail portion (137 miles of light rail and commuter rail) would carry 310,000 passenger trips per day by 2030.[28]

Yet, officials at the Puget Sound Regional Council (PSRC) say passenger rail will carry about half of the riders Sound Transit told voters it would. In its Transportation 2040 plan, PSRC officials estimate the

region will build about 164 miles of passenger rail by 2040.[29] Yet, this larger rail system will only carry about 164,400 passenger trips.[30]

According to the PSRC, this means regional passenger rail will be 20% larger but carry 47% fewer people than what Sound Transit officials told voters. To look at it another way, Sound Transit claims its rail system will provide 2,263 trips per mile, while the PSRC says it will only provide 1,002 trips per mile.

Even if Sound Transit's ridership projections somehow come true, light rail will still only carry about one percent of all daily trips. Worse, Sound Transit says two-thirds of these riders will come from the existing bus system.

The average cost for King County to operate a Metro bus is about $4 per passenger trip.[31] The average cost for Sound Transit to operate light rail is $7.45 per passenger trip.[32] So we are building a redundant system for billions in capital expenses that costs nearly twice as much to operate.

City and county officials recently closed the aging South Park Bridge, saying they did not have the $130 million needed to replace it. The bridge carried as many daily travelers as the entire $3 billion light rail system. Many regional transportation projects go unfunded while Sound Transit officials spend billions on a train few people will ever ride.

Light rail has proven to be a massive waste of taxpayer's money. The data show that Sound Transit officials have consistently failed to fulfill their 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.

Recommendations

1. **The Washington state legislature should make Sound Transit's governing board of directors a directly elected body.** Currently, Sound Transit's board includes 18 local elected officials who are appointed by various other elected officials. This insulates the board from any direct accountability to the public for decisions regarding Sound Transit operations. State legislators should change the governing structure of Sound Transit to allow voters to directly select who sits on the board.

2. **Hold a public vote on whether Sound Transit should continue collecting taxes based on the agency's poor performance in fulfilling promises made to voters in 1996.** Voters have not received what Sound Transit promised under the original ten-year plan. Instead, services have been cut back and costs have soared. Sound Transit officials should allow voters to have a say about whether the agency should continue collecting full taxes and ratify or reject the changes made to the original Sound Move plan.

3. **Adopt Bus Rapid Transit (BRT) as a more effective alternative to light rail.** A true bus rapid transit system could be built faster, more cheaply and would carry more passengers than light rail. Sound Transit should admit its bias against BRT and give taxpayers what they want: cheap, efficient, high-capacity transit. Policymakers and transportation officials should adopt BRT services as the most cost-effective way of meeting Washington's mass transit needs.

8. Reduce Artificial Cost Drivers

Recommendations

1. End the practice of the state charging itself sales tax for transportation projects.

2. Save 15% on transportation projects by using market-based labor pricing, rather than the artificially inflated prevailing wage system.

3. Officials at all levels of government should review permitting and regulatory mandates on transportation projects in order to reduce costs and shorten planning and construction time.

4. Remove the requirement that light rail be included in a new Columbia River bridge.

Background

One of the more significant obstacles to building transportation infrastructure in the U.S. is the ever-rising costs of projects.

In debating a new six-year surface transportation reauthorization bill, Congress considered whether to expand funding beyond projected revenues and, if so, how to pay for the new spending. Current revenues in the Highway Trust Fund can only pay for $236 billion worth of projects over the next six years. Some people claim there is a need for much higher spending levels, which would require new taxes and fees.

There is another side to the funding equation that lawmakers must address before they obligate taxpayers to another six-year federal transportation bill: How to reduce costs.

In the broadest sense, there are two drivers of costs in transportation projects: natural and unnatural. Natural cost drivers occur as a result of normal economics. They include inflation, material expenses, and higher costs for new technologies.

Unnatural costs are from policies created by government officials that artificially inflate expenses on public works projects. These policies

are implemented for reasons that are unrelated to actually building a project. Unnatural cost drivers include prevailing wage rules, imposing state sales taxes on state projects, apprenticeship requirements, inefficient permitting, environmental compliance, setting aside money for public art, and requiring that mass transit be included in highway projects.

Policy Analysis

The existing Washington State Route 520 floating bridge spans Lake Washington and connects the cities of Seattle and Bellevue. It was built in 1963 and cost about $245 million in today's dollars. The cost of the proposed replacement will be about 19 times more. Officials have already spent more money ($400 million in 2011) on planning and design than the total cost of building the first bridge, adjusted for inflation.

The Federal Highway Administration (FHWA) estimates that a typical Environmental Impact Statement took an average of 2.5 years to complete in the 1970s. Today it takes 6.5 years. According to the FHWA, complex highway projects now take an average of 13 years to complete. Only a fraction of that time is spent on construction.

Then there are the costs created by requiring mass transit to be included in highway projects. One of the most significant cost-contributors of the Columbia River bridge project between Vancouver, Washington, and Portland, Oregon, is the requirement to add light rail. Building light rail across the Columbia River would cost about a billion dollars, which represents 30% of the project's total costs, not to mention the millions in additional operating expenses that will burden local taxpayers indefinitely. Yet, light rail would serve only between three and nine percent of all trips that cross the bridge.

Deliberately increasing costs by 30% to serve less than 10% of bridge crossings, most of which are already served by inexpensive buses, creates unnecessary risk and establishes a very large gap between public costs and public benefits.

Another example of an unnatural cost driver is the state's use of the expensive and antiquated prevailing wage system to pay for public construction. Studies show that imposing prevailing wage rules on transportation projects unnecessarily increases labor costs by 22% and boosts total project costs by about 10%.

Prevailing wage is supposed to be the wage paid to the majority of workers in the applicable trade. In practice though, the rate used is not the true market wage but is 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.[33] To cite just one example, Florida lawmakers found they saved 15% on public projects once their state's inflationary prevailing wage law was repealed.[34]

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 road network.

Most people recognize and agree that mobility, and the infrastructure that it requires, is the key to economic strength and security as the country moves deeper into the 21st century. But to do more with less, officials must recognize the artificial nature of these particular policies and work to contain them in any new federal funding package.

On August 1, 2007, the Interstate 35 bridge in Minneapolis collapsed, tragically killing 13 people and injuring 145 others. Investigators concluded the bridge failed from a design flaw. Within hours of the collapse, Minneapolis officials pledged to rebuild the bridge.

Remarkably, a new, state of the art, ten-lane bridge opened on September 18, 2008, just 414 days after the old one fell. The new bridge cost under $300 million. Officials were able to rebuild the I-35 bridge quickly and cheaply because they controlled risk.

Funding was secured up front. Permitting and environmental reviews were streamlined. Officials used a design/build public/private partnership, which allowed design and construction to occur simultaneously. Instead of bogging down in a debate over adding

expensive light rail, which transit supporters strongly lobbied for, officials included two additional general purpose lanes and suggested they could be replaced by a transit system at some point in the future. This allowed the project to move forward without costly delays. Officials also provided $27 million in financial incentives if the contractor completed the project early, and they imposed penalties for delays.

The I-35 bridge is a successful model of how to build transportation infrastructure. By controlling risk and using the private sector, officials kept costs low and completed the project on budget and ahead of schedule.

State and federal officials can learn a lot from officials in Minnesota. Instead of a system based on politics, process and red tape, we need a system focused on project delivery, results and performance—one that leverages public funds by using all financial tools available and limits artificial cost drivers.

Recommendations

1. **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.

2. **Save 15% on transportation projects by using market-based labor pricing, 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 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 they pay for public roads.

3. **Officials at all levels of government should review permitting and regulatory mandates on transportation projects in order to reduce cost, planning and construction time.** Artificial cost-drivers drive

up budgets without improving service to the public. Officials should eliminate policies that may result in benefits to certain interest groups but do not contribute to getting road projects built.

4. **Remove the light rail requirement across the Columbia River bridge.** Light rail represents about a third of the cost of the project yet will provide less than 10% of all crossings, most of which are already provided by inexpensive buses. Adding light rail across the Columbia River bridge would be redundant, expensive and wasteful.

9. 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 simply to derail the competitive contracting process.

Background

In 2002, the Washington legislature passed the Personnel System Reform Act that, among other things, allows state agencies to competitively contract for services historically provided by state employees.

The competitive contracting provision of the act took effect in July 2005 and 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 service that would benefit greatly from competitive contracting.[35] 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.[36]

The state highway maintenance program covers nearly 18,000 lane miles of state highways, ten major mountain passes, 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 enter into, 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 provide a given public service, the very possibility of competition drives down costs and encourages excellence.

In a government agency the size 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 result in significant improvement in cost savings and work quality.[37]

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 program.

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.** 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 program.

3. **End state funding for research designed simply to derail the competitive contracting process.** The Department of Transportation staff have cast a negative light on the competitive contracting process. Considering the proven success of competition and contracting out across the nation, state managers should avoid wasting resources on research that has already been done elsewhere.

Additional Resources from Washington Policy Center, Available at washingtonpolicy.org

"Five Principles of Responsible Transportation Policy," by Michael Ennis, July 2011.

"King county Officials Over-Promise Bus Service for Tax Increases," by Michael Ennis, July 2010.

"Public Transit in Washington," by Randal O'Toole, WPC Adjunct Scholar, July 2010.

"Vanpools in the Puget Sound Region, The Case for Expanding Vanpool Programs to Move the Most People for the Least Cost," by Mike Ennis, January 2010.

"The Facts on Light Rail, A Comparative Analysis of Light Rail Systems in Six West Coast Cities," by Michael Ennis, April 2008.

"Despite Claims, Gas Tax Projects Are Not on Track," by Michael Ennis, March 2008.

"The Value of Public/Private Partnerships," by Michael Ennis, February, 2008.

"Part V: The Imbalance of Roads and Transit," by Michael Ennis, September 2007.

Part III: Cost Exceeds Benefits in Sound Transit's Light Rail Expansion," by Michael Ennis, 2007.

"More Bucks for Sound Transit Won't Mean Fewer Cars on the Road," by Michael Ennis, May 2007.

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THE POLICY EXPERTS
ABOUT THE EDITOR AND AUTHORS

PAUL GUPPY | pguppy@washingtonpolicy.org
Vice President for Research

Paul specializes in state and local tax systems, health care reform and free-market economics. He is a member of the state's Citizen Commission for Performance Measurement of Tax Preferences, and served on the King County Citizens Election Oversight Committee and the Attorney General's Eminent Domain Task Force. Paul is a graduate of Seattle University and holds graduate degrees in political science from Claremont Graduate University and the London School of Economics.

MICHAEL ENNIS | mennis@washingtonpolicy.org
Director, WPC's Center for Transportation

Michael is the state's leading expert on free-market transportation policy. He is the author of WPC's *Five Principles of Responsible Transportation Policy,* appears regularly in media throughout the state and has been covered in *The Wall Street Journal*, CNN, Bloomberg News, and *Investor's Business Daily*. Before joining WPC, Michael worked for the Washington State Senate and House of Representatives and was formerly a staff assistant for U.S. Senator Slade Gorton. Michael served in the U.S. Army with the 2nd Ranger Battalion and is currently in his third term on the Enumclaw City Council. He earned his Bachelor's degree from the University of Washington and his Master's of Public Administration degree from the UW's Daniel J. Evans School of Public Affairs.

LIV FINNE | lfinne@washingtonpolicy.org
Director, WPC's Center for Education

Liv is the author of WPC's Education Reform Plan: *Eight Practical Ways to Reverse the Decline of Public Schools*, *Learning Online: An Assessment of Online Public Education Programs*, *An Option for Learning: An Assessment of Student Achievement in Charter Public Schools*, *An Overview of Public School Funding in Washington*, and *Early Learning Proposals in Washington State*. Liv serves on the American Legislative Exchange Council's Education Task Force, holds a law degree from Boston University School of Law and a Bachelor of Arts degree from Wellesley College.

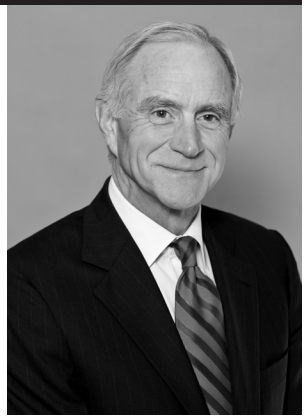
JASON MERCIER | jmercier@washingtonpolicy.org
Director, WPC's Center for Government Reform

Jason serves on the Executive Committee of the American Legislative Exchange Council's Tax and Fiscal Policy Task Force and is the private sector chairman of ALEC's Fiscal Federalism Working Group. He is a contributing editor of the Heartland Institute's *Budget & Tax News*, a columnist for NW Daily Marker, a contributing expert at State Budget Solutions, serves on the board of the Washington Coalition for Open Government, and was an advisor to the 2002 Washington State Tax Structure Committee. In June 2010, Governor Gregoire appointed Jason as WPC's representative on her Committee on Transforming Washington's Budget, where WPC's ideas and solutions helped state lawmakers close budget deficits without raising taxes. Jason holds a Bachelor's degree in Political Science from Washington State University.

TODD MYERS | tmyers@washingtonpolicy.org
Director, WPC's Center for the Environment

Todd is one of the nation's leading experts on free-market environmental policy and is the author of *Eco-Fads: How the Rise of Trendy Environmentalism is Harming the Environment*, which has received accolades from *Forbes*, *National Review*, and more. Todd's in-depth research on the failure of the state's 2005 "green" building mandate continues to receive national attention. He currently serves on the American Legislative Exchange Council's Energy, Environment and Agriculture Task Force. He formerly served on the Executive Team at the Washington State Department of Natural Resources. Todd holds a Master's degree from the University of Washington.

ROGER STARK, MD, FACS | rstark@washingtonpolicy.org
Health Care Policy Analyst



Dr. Stark is a retired physician and the author of *The Patient-Centered Solution: Our Health Care Crisis, How It Happened, and How We Can Fix It*. He graduated from the University of Nebraska College of Medicine and completed his general surgery residency in Seattle and his cardiothoracic residency at the University of Utah. He was one of the co-founders of the open heart surgery program at Overlake Hospital in Bellevue and has served on the hospital Governing Board. Dr. Stark has been actively involved in the hospital's Foundation, serving as Board Chair and Executive Director. He is a member of many professional organizations and is active in the Woodinville Rotary.

Former WPC policy analysts **Carl Gipson** and **Brandon Houskeeper**, as well as summer 2011 research intern **Ben Shelton,** also contributed to this edition of *Policy Guide for Washington State*.

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