

Business Matters

Resolving Washington's anti-business climate

Evergreen Freedom Foundation

December 2001

Executive Summary

*Business Matters
In 10 parts*

"We will do everything in our power to guarantee a thriving, environmentally-sustainable business climate." – Governor Gary Locke

Boeing's corporate exodus came as no surprise to those who recognize and acknowledge the state's anti-business climate. And Boeing will not be the last business to leave if state officials do not take immediate action to reform the policies contributing to that climate. With a \$2 billion budget deficit looming next biennium and the highest unemployment rate in the nation (7.2%), Washington cannot afford to wait.

Boeing president Allan Mullaly has already warned our state legislature that "the state of Washington is not competitive... Meaning it costs us more to operate in the state of Washington."

The Evergreen Freedom Foundation has identified ten areas the state of Washington need to improve if we wish to keep and expand our business community.

- 1. Energy.** Washington is facing an energy crisis. This crisis has been facilitated in part by policy that focuses almost exclusively on conservation while ignoring, or even deterring, necessary production. Excessive regulations need to be lifted so businesses can invest in five potential new energy sources: geothermal, increased hydro-power, landfill gas recovery, burning mixed wood, and nuclear.
- 2. Water.** Businesses in Washington have been harmed by the state's sluggish water permit process. This process must be greatly streamlined to allow timely permit approval.
- 3. Transportation.** Seattle ranks second only to Los Angeles in commuter time lost due to traffic congestion. While the state has poured increasing amounts of money into the transportation system, the problem has grown worse, not better. That is because the system itself is broken. Five important steps must be taken to fix it: 1) make the transportation budget process effective (i.e. use a congestion relief index to prioritize funding of projects), 2) allow meaningful performance measures and audits, 3) identify and implement cost savings, 4) restructure the Department of Transportation, and 5) identify alternative funding sources.
- 4. Taxes.** Washington imposes one of the heaviest business tax burdens in the nation. The state's B&O tax rates must be reduced and policy-makers should open debate on the merits of a formula basing tax rates on profits rather than gross receipts. Sales tax on new plant construction should be eliminated and property taxes lowered. Premiums on worker compensation rates will skyrocket 40% next year.
- 5. Unemployment Insurance.** Our state's current Unemployment Insurance program was one of the major causes of Boeing's relocation to Chicago. Businesses face a 14% increase in UI rates next year. The program must be reformed to 1) eliminate perverse incentives to remain unemployed, 2) develop effective accountability measures to ensure that claimants are demonstrating progress toward re-employment, and 3) end federal involvement so UI funds collected from Washington businesses remain in the state.
- 6. Regulations.** Washington businesses are among the most highly regulated in the nation. Unfortunately, many of the agency rules– which total about 16,000 pages– are bleeding businesses to death with a thousand paper cuts. Legislators should implement a "common sense" review standard and all agency rules should be subject to a sunset review.
- 7. Growth Management.** Washington's Growth Management Act (GMA) was passed for the purpose of easing congestion and increasing the availability of affordable housing. It has had the opposite

effect. Three unelected state Hearings Boards have thwarted the economic stimulus planning of local governments and communities. These boards should be abolished and counties and cities should be permitted to opt out of GMA if local growth management plans prove more efficient and effective.

8. Impact Fees. When Boeing decided to increase productivity and renovate its Everett plant– thereby creating jobs and improving the economy– the company was hit with a \$50 million impact fee. These punitive, tack-on taxes must be repealed.

9. Health Care. It isn't easy to find affordable health care and health insurance in Washington state. That is a major deterrent to businesses and employees considering locating here. Lawmakers need to develop policy that puts health service choices back in the hands of consumers and stops inflating costs with expensive insurance benefit mandates. State government also needs to control the rapidly rising costs of its own health care expenditures.

10. Fair Labor Practices. Current state policy rewards labor strife by awarding union-only project labor agreements and prevailing wage laws. Our governor and legislators need to implement policies that focus on getting the best product for taxpayers at the lowest price. Prevailing wage laws should be repealed and project labor agreements eliminated.

The health of our economy and state businesses depends on bold and decisive leadership and immediate action. The barriers and burdens driving businesses out of the state must be removed.

The purpose of the **Business Matters Quarterly Journal** is to educate and inform businesses in Washington state of the latest developments in the public policy arena. We offer common sense, free-market recommendations that will ease punitive restrictions on businesses and allow them to operate freely and productively, creating jobs and bolstering our consumer-driven economy.

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Harnessing new energy

Once known for its abundant energy supply, Washington has now fallen into an energy crisis largely of its own making. While the government deregulation scheme in California served as the catalyst for our current energy woes, our failure to develop and improve our energy infrastructure sealed our fate.

Governor Gary Locke boasts that,

“. . . before this energy crisis began, state and local authorities had already approved six new gas-fired electricity plants to be built by private companies that could have provided 3,000 megawatts of power—enough for more than two cities each the size of Seattle—had they been built. The state did its part. But it was the companies that chose to delay construction and invest their money in such things as dot coms and the stock market. . . . It was not we who decided not to build the plants, it was the companies for business reasons.”

Though state officials claim they did their part to address our energy problems, Locke’s assessment that businesses are to blame for our shortage begs the question: How did Washington’s anti-business climate contribute to the crisis?

A simple study of basic economics shows that companies would be lining up to take advantage of the state’s newly issued permits for energy plant construction if it was profitable to do so. The demand is clearly there, but Washington’s punitive regulations and lack of a coherent statewide energy policy deter companies that might otherwise produce the supply we need.

During the last year, the price of energy has skyrocketed from a low of \$16 per megawatt hour to as high as \$5,000 per megawatt hour. Individuals and businesses in our state are projected to spend \$10 billion on energy related expenses this year. Yet, despite this staggering sum, the only energy policy Washington can speak of is aimed at installing price controls, not addressing imminent future energy needs.

With Washington relying on hydro-electric power for up to 75% of its energy supply, the current drought and environmental restrictions on dam spilling (fish protection) have dramatically reduced the availability of energy.

Further complicating Washington’s energy outlook are previous energy agreements with California. Washington has been selling energy to California during the summer months with the understanding that California will sell power back to the state during the winter months. This agreement is not likely to materialize due to California’s energy crunch, which may leave us in a bind this winter.

Our energy shortage is hard on businesses and individuals. According to the Washington State Office of Trade and Economic Development, “. . . Washington’s economy is based on the advantages of low cost power, becoming an average-cost state could mean economic dislocations and adjustments.”

Already Washington’s aluminum industry has essentially ceased production, even closing some plants permanently. The aerospace industry is also facing increased energy costs of 50% to 95%. Boeing must now decide between relocating its production plants to another state or absorbing the increase in energy costs to maintain its share of the aerospace market. Pulp, paper, and lumber firms have also had to curtail

production, eliminating nearly 1,000 jobs.

Recommendations

While energy conservation is part of the solution, it is not the whole solution. The only way to reverse skyrocketing energy prices is to increase production and supply. There are plenty of energy supply sources, and it is up to the state to step out of the way and let companies come in and tap them. Five clear energy sources exist:

- 1. Geothermal:** It is believed that between 400 to 3,900 megawatts could be obtained through geothermal resources in our state. We should be exploring this untapped energy supply and studying the impact and opportunities for geothermal energy plant construction. *Estimated cost: 4.9 to 7.3 cents per kilowatt-hour.*
- 2. Increased Hydro-power:** Through new hydro-power projects and the expansion of current projects, approximately 170 megawatts can be secured for the state's energy needs. *Estimated cost: 1 to 6.5 cents per kilowatt-hour.*
- 3. Landfill gas recovery:** An estimated 125 megawatts can be secured by powering fuel-generators with the methane gas produced by decaying landfill materials. *Estimated cost: 3.1 cents per kilowatt-hour.*
- 4. Burning mixed wood:** Wood residue from industrial byproducts can be burned to provide an estimated 300 megawatts. *Estimated cost: 4 to 5 cents per kilowatt-hour.*
- 5. Nuclear:** The most obvious source of significant base-load energy is the 800-pound gorilla no one wants to talk about: nuclear energy. The megawatt potential of nuclear energy is massive, and any new technology that taps into this source should address public concerns about safety and environmental preservation. *Estimated cost: 4.3 cents per kilowatt-hour.*

These five energy sources are capable of meeting our future energy needs. But, as Governor Locke has pointed out, simply granting permits will not guarantee production. The state must encourage production by addressing the current anti-business practices that deter companies from tapping these resources. Our state's excessive regulations and lack of a coherent statewide energy plan reduce the value of these permits to less than the paper they're printed on. Our lights will continue to flicker, and may burn out, if our governor and state lawmakers do not take decisive action to address the core problem of our energy crisis.

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Tapping the state's water potential

A water crisis in the rainy Northwest? Sounds more like an oxymoron than a serious threat to our state's economy and business climate. While it is true that we are enduring what could be Washington's worst drought since 1977, it is our state's own water policies that played the biggest role in leaving state businesses high and dry. Although there was plenty of advance warning about this year's low water supplies, little was done to prepare for the shortage.

According to a Department of Ecology news release on July 17, 2001, 5,600 to 8,900 jobs will be lost in our state's agriculture industry this year as a result of the water crisis. But even though this drought is almost as severe as the one experienced in 1977, only 172 temporary emergency water-rights permits have been issued this year compared to the 517 issued then. There is no denying the low availability of water, but sufficient resources do exist to ease the suffering of our state economy if emergency water permits are granted to help individuals and businesses through the dry spell.

Unfortunately, there are strict and onerous regulations blocking the needed flow of water. The Central Puget Sound Water Supplier's Forum report notes that: "Regulatory and institutional constraints . . . inhibit the implementation of numerous municipal supply options. These constraints need to be resolved before many effective solutions with regional benefits can be planned and implemented."

Currently, obtaining water rights can take months, even years, depending on the location of one's watershed. Even if an individual or business is able to finally obtain authorization to use public water resources, that water right does not assure the availability of water when the state determines a drought is present even if emergency sources exist. This means water needs must be forecast years in advance before any project or use of water can begin. These conditions do not entice new businesses into our state, nor provide incentives to existing businesses to expand operations.

Three Water Acts have limited the availability of water for individuals and businesses:

- 1. Water Resources Act of 1971** – While the goal of this Act is to preserve the state's water resources for "the greater benefit of the people," its result has been to place the supposed needs of state fish above those of citizens. It does so by mandating a minimum stream flow level before approving any new water rights.
- 2. 1971 Water Well Construction Act** – As stated in the Department of Ecology Water Law Primer, this statute reads: "Well construction cannot begin unless a water right permit has been issued (if required for the quantity and use proposed). A driller must submit a water well report to Ecology following construction of a well. By rule, Ecology may limit or prohibit well drilling in areas requiring intensive control of ground water withdrawals." Under a streamlined process this Act may work, but when the permitting process often takes years, the readily available resource of well water evaporates as a viable option for individuals and businesses.
- 3. 1990 and 1991 Growth Management Acts** – These Acts prohibit issuing new building permits for businesses until those businesses can prove they are able to access an adequate, safe-to-drink water supply. Unfortunately, the length of time it takes to meet these requirements causes many businesses

to give up long before they can be approved.

While problematic, even these three pieces of legislation are no excuse for the bureaucratic roadblocks the Department of Ecology has placed in the way of businesses seeking to obtain water rights. The key to improving the water crisis in our state is to allow individuals and businesses to responsibly use available water resources, and to dramatically streamline the current permitting process.

House Bill 1832, signed into law on May 10, 2001, provides hope that the state may be ready to address this crisis. Some of the bill's highlights include:

- Creation of two avenues for water rights applicants: one for new water rights and one for changing or transferring existing water rights.
- Allowing individuals to transfer and change water rights without tying the decision into effects on pending applications for new water rights.
- Authorizing local water conservancy boards to process water rights changes and transfers.

Recommendations

While this bill is the first step toward opening the state's spigot, more needs to be done to address the long wait facing water rights applicants. To keep our current business base and bring new businesses to Washington, the Pacific Northwest needs to live up to its reputation of abundant natural resources by streamlining the water permit process to responsibly accommodate the current market opportunities of businesses. Even in times of drought emergency sources are available, and hastening the water permitting process will allow businesses to meet the needs of their enterprise as well as the surrounding community. The state's obstruction to timely approval of water permits only serves to reduce Washington's economic potential.

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Unlocking Gridlock

Governor Gary Locke aptly warned, "If we don't fix our transportation problems now, our businesses won't grow. . .they'll leave our state. If we don't have businesses, we won't have jobs. It's that simple."

Well said. It comes as no surprise to I-5 commuters that the Seattle area ranks 2nd in the nation (behind only Los Angeles) in time lost due to traffic congestion. State officials claim we need to increase taxes to solve this problem. But more taxes are not the answer. What we need is accountability for the money state officials already have. The Governor needs to allow the State Auditor to do his job and conduct performance audits, and we need performance-based budgeting for transportation. Locke recently vetoed both.

The Evergreen Freedom Foundation, in its "Unlocking Gridlock" series, has detailed a five-part solution to fixing our state's transportation mess. The five proposals are: 1) making the transportation budget process effective, 2) allowing meaningful performance measures and performance audits, 3) implementing cost savings, 4) restructuring the Department of Transportation, and 5) identifying alternative funding sources.

Making the transportation budget process effective

- Create a binding, accountable budget
- Tie funding to performance
- Find and eliminate inefficiencies
- Treat the Legislative Transportation Committee expenses like the expenses of other committees

Allowing meaningful performance measures and performance audits

- Clear and concise mission statement of Washington State Department of Transportation (WSDOT) needs to be adopted
- Specific and quantifiable goals must reflect overall expectation and intentions of the mission statement adopted
- Performance goals must be established to show WSDOT's progress
- Regular performance audits must be undertaken to determine if WSDOT is effectively and efficiently managing its funds

Implementing cost savings

- Review core missions and functions of state agencies
- Refine competitive bidding
- Streamline the permitting process
- Avoid project labor agreements
- Repeal the prevailing wage

Restructuring the Department of Transportation

- Make the Secretary of Transportation a governor-appointed position
- Eliminate unnecessary transportation agencies
- Consolidate funding

Identifying alternative funding sources

- State and local governments should sell their interests in assets that do not serve core functions of government
- Minimize the federal role in transportation
- Privatize the ferry system
- Examine the Sound Transit Light Rail Project
- Use sales taxes generated by automobile and other transportation-related sales to fund new roads

Lawmakers must agree on a responsible plan to provide and improve the transportation infrastructure our state needs. Performance-based budgeting, performance audits, dedication of all existing taxes on automotive items, etc. should be the very first steps in addressing the transportation quagmire and bringing about needed road construction and maintenance.

Rather than pursue the tried-and-failed course of taxing citizens without providing accountability for funds, our state leaders need to manage the WSDOT much like any CEO would run a company. They need to look for cost savings while still providing the highest quality product to the consumer. While citizens may be willing to pay more for an **efficient** transportation system, the trend of recent statewide anti-tax initiatives should send the message that voters are no longer willing to write a blank check to state officials.

The Unlocking Gridlock series can be found at www.effwa.org , or requested by contacting our office at the address and phone number below.

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Reducing Washington's business tax burden

Washington state imposes one of the heaviest business tax burdens in the nation. Our onerous Business and Occupation (B&O) tax discourages the creation of new jobs, and may even be the cause of losing them. A recent report by the Washington Technology Center found that our state's businesses pay the 4th highest tax burden in the nation.

It is not only high business taxes that cause Washington to lose its luster in the eyes of employers but the substantial tax burden placed upon individuals as well. If employees can barely afford to live in the state, little incentive exists to bring business to Washington. Onerous taxes are also putting existing small businesses and new start-ups in serious jeopardy of fading into a historical footnote during this time of economic hardship.

During the 1998 fiscal year Washington residents paid \$36.59 in property taxes per \$1,000 of personal income, ranking us 17th highest across the nation. The U.S. average for this time period was \$33.22. In terms of total state and local tax collections per \$1,000 of personal income, Washingtonians paid \$115, ranking us 17th highest nationally (national average was \$111.70).

Though businesses and individuals in Washington currently pay no income tax, the state has implemented many other taxes to bring in revenue. Our state relies heavily on B&O taxes, retail/use taxes, and property taxes for funding.

B&O Tax

Washington's B&O tax is not based on corporate profits, but instead is concerned with the gross receipts of business generated within the state. Four rates exist: manufacturing (.484%), wholesaling (.484%), retailing (.471%), and service and other activities (1.5%). For the 1998 fiscal year, \$1.9 billion in B&O taxes was collected, representing 17.5% of the state's general fund.

Manufacturing is classified as any product manufactured within the state, regardless of where that product is sold. The value of the B&O tax on manufacturing is determined by the value of the product, which generally is determined by the selling price.

Wholesaling refers to businesses that sell or resell products at a wholesale rate. Wholesalers are required to keep a resale certificate from every buyer to document all transactions made.

Retailing concerns products sold at a retail rate.

Service and other activities is a catch-all classification to ensure that no business escapes B&O taxes. Businesses that do not fall into one of the above three categories are in this group.

Since the B&O tax is not concerned with profits, new businesses are at a significant disadvantage when attempting to compete with existing businesses that already have a steady flow of profits. The regressive nature of the tax forces many to fold.

Retail/Use Taxes

The state collected \$5.3 billion in retail taxes during the 1999 fiscal year. This accounted for almost 48% of the taxes deposited in the general fund. The state sales tax rate is 6.5%. Local retail tax rates are imposed by counties or cities and range from .5 to 1.7%. While retail taxes capture all sales within the state's borders, what most residents don't realize is that Washingtonians are also responsible for *use* taxes.

Use taxes are levied on items not *purchased* in the state but *used* in the state. Such items can be anything from cars purchased in a state with lower sales tax to gifts that were not subject to sales tax when purchased.

Property Taxes

Until the 1930s, property taxes were the only major tax collected for state spending. Including state and local taxes, approximately 30% of the taxes collected are property taxes. The property tax rate is figured at 100% of a property's fair market value. Gauging from the success of initiatives aimed at limiting property tax increases, voter sentiment in the state demonstrates a growing frustration with a property tax burden that has become onerous.

The high rates at which these three taxes are levied continue to contribute to Washington's anti-business climate by affecting businesses and by creating an environment in which it is very difficult for individuals to afford housing. All three of the above-mentioned taxes need to be reduced. The B&O tax must have its rates immediately reduced and debate should begin on the merits of a formula that bases the tax rate on profits rather than gross receipts. We need to bring our sales tax in line with the rest of the nation and stop levying it on the construction of new plants. If attempts to undermine the recently passed I-747 are undertaken, our initiative system will only continue to be flooded by citizen attempts to reign property taxes in.

The state of Washington is in danger of supplanting Washington D.C. as the tax-and-spend capital of the nation. To significantly improve our economic situation and roll out the welcome mat to businesses, immediate reduction and reform of our tax structure must occur.

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Unemployment Insurance—A hand up or a hand out?

Washington's Unemployment Insurance (UI) program has a noble sounding mission:

The mission of the Unemployment Insurance Program is to enhance the well-being of the state workforce and business community through the timely and equitable payment of benefits and the collection of taxes and overpayments. The program promotes economic security for individuals, their families and their communities, and assists employers to maintain a stable workforce.

Unfortunately, like many government programs created with good intentions, the UI program is now *contributing* to our state's anti-business climate rather than helping to solve it. The program's implementation has resulted in fewer jobs, higher unemployment, and less security for businesses.

The UI program has five major problems that need to be resolved: 1) high rates, 2) high benefits, 3) perverse incentives, 4) lack of accountability and enforcement, and 5) insufficient return on federal contributions.

While just one of the identified problems would be a burden for state businesses, the combination of all five has resulted in a program that could single-handedly convince prospective businesses to avoid Washington, and convince existing businesses to minimize their investments or leave the state entirely.

UI rates are highly inflated

Washington businesses are taxed for unemployment insurance an average of 2.2% on the first \$28,500 dollars (effective 2002) of an employee's wage. This gives our state the dubious distinction of ranking second highest in the nation for taxable wage base per employer. By comparison, California only taxes the first \$7,000 dollars of an employee's earnings.

With a current UI trust fund of \$1.8 billion, Washington has the nation's ninth highest business contributions to the unemployment program. Because UI rates are not based on the state's real average wage, but also include additional compensation like stock options, businesses operating in Washington are burdened with a UI rate substantially higher than businesses in other states. With one of the highest unemployment rates in the country at 6.6% (the U.S. average is 5.4%), Washington businesses face a significant expense when it comes to paying UI benefits to unemployed workers.

Unemployment benefits are high

Employers in Washington pay the nation's fourth highest maximum weekly benefits to UI claimants. While the average weekly paycheck in our state is about \$719, a recipient of UI is eligible for a maximum of \$496 dollars a week. Since Washington presents a choice between finding a new job and staying at home to collect \$11,940 over a six-month period, it is not difficult to understand why Washington ranks first nationwide for the number of initial UI claims filed. The state registered 150,295 claimants in the first quarter of 2001. With an average payment of \$4,282 per person, Washington has the nation's second highest average UI payments per recipient. Rather than simply aid an individual or family in temporary need, Washington's UI program provides long term income.

The current UI program offers perverse incentives to remain unemployed

Even with one of the highest minimum wage requirements in the nation (\$6.92 per hour as of January 1, 2002), a person can still collect more money from the average UI check in Washington. When individuals can make more money by staying home than by going to work, it is probable that they will be tempted to do so. The result is a program that offers perverse incentives for remaining unemployed.

The UI program lacks enforcement and accountability

Individuals receiving UI benefits are required to show that they have followed up on at least three job possibilities a week. They are not required to physically report to any state office, or even set foot in any place of business during their search. Glancing through the classifieds and making an inquiry by phone fulfills the state's requirements. Individuals who belong to a full referral union qualify for benefits if they are a "member in good standing" (their dues are current), and have followed the union rules for dispatch. However, the Employment Security Department (ESD) has no system in place to monitor a member's attendance for dispatch or a member's rejection of a suitable job.

When provided with data from the National Electrical Contractors Association (NECA) showing that members of a full referral union were not present for dispatch or refused a suitable job, the ESD responded by shifting the burden of proof from the individual to former employers. While ESD does have a fiduciary responsibility to protect the UI fund, the measures it has adopted allow individuals to abuse the system.

Washington gets insufficient returns on contributions to Federal UI

While all states pay into the federal UI program administered by the Department of Labor, only a portion of these UI payments ever make it back to the states. The federal program was set up to provide administrative funds to help operate state UI programs and to create an emergency fund for states in which UI trust funds are depleted during times of high unemployment. Rather than holding these funds in a trust and returning the unused portion to the states, millions of the dollars collected have been spent to pay down the national debt. Since the money is not being used for its intended purpose, states should be allowed to keep the full amount of UI revenues collected from businesses.

Until these five issues are resolved, Washington's UI program will continue to work against our economy and citizens rather than for them. Two clear options exist regarding this situation: 1) to reform Washington's UI program, or 2) to allow the status quo to imperil Washington's economic future. It is obvious which option will serve to balance the needs of employees, employers, our economic future, and make our state a better place to live, work, and do business.

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Common sense regulatory reform

It looks like the state may finally be taking seriously the regulatory nightmare that Washington businesses face. The first step toward reforming Washington's current regulatory system (which bleeds businesses to death by a thousand paper cuts) was House Bill 2049, signed into law on May 7, 2001.

The bill's prime sponsor, Rep. Kirk Pearson, illustrated the necessity of the bill by stating, Washington has nearly 16,000 pages of agency-created rules and regulations. It's difficult for businesses to know and comply with every rule on the book, especially when there are so many. It used to be that agencies would come in to a business and automatically begin issuing fines for those out of compliance. A few years ago, the Legislature required agencies to develop technical assistance programs to help businesses comply. But some agencies still lean toward fining businesses first and asking questions later.

Thus, without a single dissenting vote, HB 2049 put into place some common sense reform by providing businesses "a reasonable period of time to correct violations during a technical assistance visit before any civil penalty provided for by law is imposed for those violations."

Ergonomics rules

Though the bill was a good first step, the legislature still needs to take immediate action to shrink those 16,000 pages of regulations down to the bare minimum necessary. One glaring example of where they should take action is Washington's soon-to-be imposed ergonomic standards. Businesses have already voiced their lack of confidence in the legislature by forming a coalition and filing suit to halt the implementation of the new ergonomic rules.

Depending on who is conducting the study, these ergonomic rules will cost businesses in the state anywhere from \$80 million to \$800 million. Compliance with the rules will require businesses to spend their time and effort reviewing the rules, identifying jobs that come into question, developing engineering and administrative controls, producing ergonomic awareness education workshops, scheduling job hazard training, and hiring training evaluators whose job will be spent ensuring that employers are in compliance with the detailed regulations.

Reasonable regulations exist to create a safe work environment. No one objects to that. However, there is much debate over the scientific veracity of the "evidence" used to mandate new ergonomic standards.

The Mayo Clinic conducted a study (published in the June 12, 2001 issue of *Neurology*) to determine the effect of heavy computer use on the development of carpal tunnel syndrome. Contrary to all conventional wisdom within the rule-making community, the study found that there was no correlation.

Dr. Stevens of the Mayo clinic stated in that article, "I'd like computer users to know that prolonged use of a computer does not seem to lead to carpal tunnel, at least not in our employees who used computers up to seven hours per day. Carpal tunnel syndrome is a common condition in the population, however, which means that some computer users will develop CTS. Our study suggests, however, that the risk of developing the syndrome is not increased by working at a computer."

Findings like these by the Mayo clinic point out the folly behind forcing ergonomic rules upon businesses before conducting the thorough scientific research required to justify increased costs and regulations. If real harm will befall an employee as a result of his or her job, common sense safeguards must be put into place. However, “conventional wisdom” should never suffice as grounds for creating and imposing rules that put an undue burden on our state’s businesses.

Recommendations

The Evergreen Freedom Foundation wholeheartedly agrees with Rep. Pearson’s assessment that, “If we want to keep and attract business and jobs to our state, we need to provide an atmosphere that is friendly and conducive to business. Out-of-control agency enforcement is not the way to do that.”

Along with removing the burden the new ergonomic rules will place on businesses, our Legislature should provide for a sunset review of all regulatory WACs. Rather than force our state businesses to toil under an onerous and meaningless regulatory burden (stealing precious time and resources away from their ability to strengthen our economy), Washington state leaders must take additional steps to reform the state’s regulatory environment. When business resources are released from constant enslavement to regulations, all of Washington’s workers will benefit.

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Time to grow beyond GMA

Since 1990, Washington state has restricted its land use as a result of the Growth Management Act (GMA). In that same time, however, there has been an increase of 1.4 million residents in the state. Though GMA originally sought to provide a framework for counties and cities to plan for the needs of an increasing population, in attempts to improve community business climates it has instead evolved into a major hindrance, especially for rural counties.

Good intentions gone bad

GMA was intended to provide the framework for a bottom-up approach to managing growth. It was packaged and sold to counties with an emphasis on local grassroots involvement, not statewide planning. This local control ended in 1991 when GMA was revised to include the disastrous Hearings Boards (three quasi-judicial bodies with authority to decide the outcome of challenges to local comprehensive land-use plans and regulations). The **unelected** members on these boards have become the fourth branch of state government, invalidating years of work by local planning commissioners and throwing large portions of counties into a state of disarray by declaring the county plans and regulations to be non-compliant or invalid.

An invalidity or non-compliance ruling is the final nail in the coffin of a county's business community. For example, when a county's growth boundaries (the area in which new growth is allowed to occur) are declared non-compliant, businesses on the wrong side of the growth line are subject to onerous restrictions that may make it impossible to remain in operation.

Further development is severely restricted, which may prevent the business from ever expanding beyond its original physical structure. Should the business need to relocate due to building restrictions, it is allowed to sell its property, but the property may only be used by a business that provides the same services. Non-compliant buildings may not change uses. Once ruled non-compliant, if the building was used to make sewing machines, only another sewing machine company may occupy the building. In addition, if a building goes unused for long enough (perhaps in the case of a former business that was unable to lease or sell the building to a comparable business), it may not be utilized for a non-compliant purpose.

Remember, all it takes for a growth boundary to be declared non-compliant is the opinion and ruling of an unelected Hearings Board, which has the power to override county elected officials and planning commissions throughout the state. This system of governance does not inspire much faith in the hearts and minds of prospective business owners considering residence and operation in our state.

While the punishment of businesses is egregious enough, GMA goes a step further to inflict damage on the livelihood of counties that fail to comply. Under state law provision RCW 36.70A.345, the governor is authorized, with consultation of the Hearings Boards, to impose sanctions upon counties.

The governor may impose a sanction or sanctions specified under RCW 36.70A.340 on . . . (4) a county or city that fails to adopt its comprehensive plan or development regulations when such actions are required to be taken.

These sanctions are spelled out in RCW 36.70A.340:

. . . the governor may either: (1) Notify and direct the director of the office of financial management to revise allotments in appropriate levels; (2) Notify and direct the state treasurer to withhold the portion of revenues to which the county or city is entitled . . . (3) File a notice of noncompliance with the secretary of state and the county or city, which shall temporarily rescind the county or city's authority to collect the real estate excise tax . . . until the governor files a notice rescinding the notice of noncompliance.

Therefore, under GMA, if a county or city is ruled non-compliant, the whole local government can be starved of state revenue.

Lewis County

One of the most striking examples of how GMA has damaged the business community in Washington comes out of Lewis County. When the Packwood mill was shut down, the city of Packwood hoped to turn the area around the old mill area into a business park. As plans for the park progressed, negotiations began with what would have been the county's first electronics assembly corporation. These negotiations were running smoothly until the dictatorial Hearings Board re-drew the surrounding growth boundary, leaving the Business Park outside the line of compliance. As a result, the electronics firm located elsewhere (taking its jobs with it), and the only business that can utilize the old mill area is another mill business. Thanks to the Hearings Board decision, Packwood was unable to capitalize on the high paying jobs that the company would have brought to the economically depressed area.

Recommendations

In order to revive Washington's weakened economy, especially in rural counties, four immediate revisions to GMA must be made:

1. The unelected Hearings Boards must be abolished, allowing GMA to empower local officials to determine the best type of growth for their communities as it was originally intended to do.
2. Counties and cities should be given greater freedom to plan for local growth needs. Instead of facing sanctions, local officials should have the power to be accountable to their electorate and not be held captive by unelected bureaucrats.
3. Common sense economic development should be made a mandatory element of any growth management plan.
4. All plans for growth should adopt market-driven principles. When market forces are allowed to determine how and where businesses should exist, community health is not artificially determined by the "good intentions" of lawmakers from other parts of the state. Local officials are best suited to determine what is in the economic interest of their communities, and they should be empowered to make growth decisions.

With our economy and budget floundering, now is the time for growth. If we continue to insist that businesses and communities seeking to create and attract new jobs for citizens jump through ever-changing hurdles, economic recovery will never materialize. It's time to get out of the way and let the free market do what it does best: create new jobs and empower citizens to make individual choices.

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"We will do everything in our power to guarantee a thriving, environmentally-sustainable business climate." – Governor Gary Locke

Repealing the negative effect of impact fees

When Boeing decided to increase productivity and expand its Everett plant, state officials nonchalantly charged a \$50 million impact fee for the company's efforts. Never mind that the permit process alone for the project took 2½ years. One must wonder how long our state's businesses will continue to subject themselves to this distorted fee system that punishes them for attempting to grow our economy. In Boeing's case, it appears to be not much longer.

Though framed around the belief that "growth should pay for growth," impact fees, like the ones levied against Boeing, fail to take into consideration that growth already pays for itself by increasing the tax base of the community and by generating new revenue. Impact fees serve as nothing more than a tack-on tax that punishes new businesses for wanting to provide jobs and services in a given community.

Impact fees first appeared in Washington as a result of the state's GMA act of 1990. RCW 82.02.090 sec. 3 defines these fees:

"Impact fee" means a payment of money imposed upon development as a condition of development approval to pay for public facilities needed to serve new growth and development, and that is reasonably related to the new development that creates additional demand and need for public facilities, that is a proportionate share of the cost of the public facilities, and that is used for facilities that reasonably benefit the new development. "Impact fee" does not include a reasonable permit or application fee.

In plain English, impact fees are levied under the auspices of paying for perceived infrastructure needs necessary to support the new business or development. These fees do not take into account nor replace the permit and application fees businesses already face when opening shop in an area. This puts communities that issue impact fees at a significant self-imposed disadvantage compared with those that have the wherewithal to refrain from mandating these tack-on taxes. When given the option of paying "x" amount for the privilege of bringing jobs and homes to an area or paying no impact fees to locate in another area, the choice is obvious.

Perhaps one of the most ridiculous examples of impact fees can be illustrated by reviewing the plight of Wellington River Hollow, LLC, which purchased the option for McKenzie Place (a 144-unit multifamily development), located in an unincorporated portion of King County.

When first conducting the feasibility study in July 1998, Wellington requested an estimate of the school impact fee that would be levied against the development from the Northshore School District. The district first informed Wellington that the fee would be \$387 per unit including a \$65 per unit King County administration fee. For the 144 units, Wellington was facing a school impact fee of \$65,088 to build the multifamily housing complex.

Based on this estimate Wellington decided to pursue the project. However, in March of 1999, Wellington was informed by the King County Department of Development (DDES) that the school impact fees would be \$1,398 per unit plus the \$65 per unit administration fee. Now Wellington was facing a school impact fee of \$210,672 for the privilege of providing the area with an additional 144 units of multifamily housing.

This was \$145,584 more in school impact fees than estimated only months before. King County would not provide the fee estimate until after all county permits had been approved.

Under protest Wellington paid the entire \$210,672, but has since challenged in district court the constitutionality of school impact fees. The main source of frustration was the fact that, had the project been built elsewhere in the district, no impact fees would have been levied. On top of this fact, despite paying \$210,672 in school impact fees, the residents of Wellington's multi-family housing project are **prohibited** from attending the new school that was built from the collected fees because of district attendance zones. Interestingly, the attendance zone in which the new school was built does not levy school impact fees against new development.

What needs to be remembered in this situation is that Wellington was forced to pay the additional \$210,672 in school impact fees on top of all the other permit and application fees necessary to gain approval for the project.

Recommendations

Just as with any business tax, impact fees ultimately are passed on to consumers in the form of higher home costs, rents, and more expensive services and products. These tack-on taxes are hindering the ability of the state's businesses and developers to utilize the strengths of America's free market system and bring about the economic growth needed in our state. Impact fees are also pushing the affordability of homes and rent further beyond our means, positioning the state on the cusp of becoming unlivable for the employees of the state's remaining businesses.

Immediate revision of the state's GMA to repeal impact fees must be undertaken. Until these fees can be repealed, more must be done to allow businesses facing these fees to receive detailed accounts of where and how they are being spent. These tack-on taxes are a constant reminder to all seeking to grow Washington's economy of the anti-business climate facing them. Rather than tacking on more taxes, we should allow businesses the freedom to grow our state's economy, and in doing so grow Washington's mainly consumption-based tax revenue which will provide for any new infrastructure the growth may necessitate.

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Diagnosing Washington's health care system

Washington's health care system is just now taking baby steps toward recovery from the state's disastrous 1993 attempt to take over health care. It is past time. When even doctors are complaining, the health of the industry is in need of some serious review and reflection.

Kathleen O'Connor, author of the *Washington CEO* article "Frustrated Doctors Find Their Voices," relates the frustration of the state's doctors: "They complain they do not often have the say in the type of medications they can readily prescribe and they have to call insurers to get approval for prescriptions, length of stay in hospitals and what they consider to be other care decisions."

Couple this with the practically non-existent competition in Washington's health insurance industry and the state is facing a scary prognosis in its quest for accessible, affordable, quality health care. State government itself is also a major factor in the rapid rise of health care costs, in part because the state doesn't fully reimburse for Medicaid, forcing health care providers to shift costs to the private sector. Washington state government is facing a 15% increase in health care costs, totaling about \$1.7 billion over the next two years.

As a result of these pressures, many small businesses will be forced to choose between hiring and retaining employees or providing health benefits. Thus, Washington is offering little incentive to current and prospective employers to locate or remain in the state. Though the state has started to take some steps to undo the damage of 1993, our leaders still seem to be unable to connect the dots between the increasing mandates upon health insurers in the state and the few insurers currently willing to do business in Washington.

Mandating benefits

Just recently, the state fought for and won the right to require all health insurance providers who cover prescription drug benefits in the state to cover birth control. This is just the latest in a long list of state-mandated benefits insurers are required to cover. Outlined in RCW 48.47.010(10) mandated benefits are defined as ". . . covering or [an] offering required by law to be provided by a health carrier to: (a) Cover a specific health care service or services; (b) cover treatment of a specific condition or conditions; or (c) contract, pay or reimburse specific categories of health care providers for specific services . . ."

Benefits currently mandated for health insurers in Washington include: optometry, chiropractic care, psychological services, registered nurses and advanced registered nurse practitioners, chemical dependency, dentistry, denturist services, temporomandibular joint disorders, home health hospice, mental health, podiatry, chiropody, foot care services, reconstructive breast surgery, mastectomy and lumpectomy, phenylketonuria, mammograms, neurodevelopmental therapy, women's health care provider self referral, maternity care stays, diabetes coverage, maternity and drugs in the individual market, and now birth control (for insurers offering drug benefits).

While all of these mandated benefits seem noble and are much appreciated by those in need of the services, it has served to further separate the consumer from the expense of health care while driving up costs. This interference with marketplace incentives has made Washington state the vanguard in sending the insurance industry packing. In an attempt to "help" consumers obtain access to better and cheaper health insurance,

every new legislative session for the past ten years has “reformed” the health care industry, instituting new mandates for services and individuals insurance companies must cover, new conditions for delivering services, more regulations for primary providers, etc. These “reform” efforts have made profitability for the private-sector insurance industry in Washington state unpredictable at best.

Health insurance consumers must also look in the mirror of culpability since they continue to support these same elected officials who force benefit mandates on health insurers. It is critical to remember that all benefits received by employees, including health care, are paid in lieu of wages. The average cost to employers for medical insurance for their employees with families is \$545 per month and \$200 per month for single employees. In 1998, the U.S. Chamber of Commerce reported that benefits account for 37.2 percent of payroll costs. But most employees believe “somebody else” is covering these costs, so they view benefits as an “entitlement” rather than compensation. This mentality, along with a state government that mandates extensive benefits upon the health insurance industry, force small businesses to make tough decisions on whether or not to even offer health benefits to their employees, increasing the ranks of the state’s uninsured.

Recommendations

So what can be done to improve the affordability and needed access to health insurance in the state?

- The health care insurance market must continue to be nurtured back to a strong state of competition from its near death experience of 1993, making it relatively easy for companies to enter and exit according to marketplace demands.
- Lawmakers need to let consumers decide what services they require and stop mandating increased costs on all of us by forcing more benefit requirements upon insurers.
- Lawmakers should break from the current mold of using the top-down approach of structuring health insurance from a cookie cutter template and instead allow individuals to utilize the advantages of a defined contribution system. (EFF has produced an in-depth primer regarding the defined contribution health insurance strategy and will be happy to answer any questions regarding this blueprint for reform.)
- Consumers must remember what we are insuring ourselves against: the unexpected and catastrophic, not routine medical care.
- Finally, employees must understand the financial consequences of choices—health care is not cheap or free, and when our employers pay for it, it is in lieu of increased wages.

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Bringing fairness to Washington's labor practices

While priding itself on strong labor relations, Washington actually has been perpetuating a climate of unjust labor relations by embracing project labor agreements (PLA) and prevailing wage laws. Amazingly, it took an executive order from President Bush (No.13202) to bring fairness to the capitol dome renovation and repair project in Olympia. Facing the possibility of losing \$15 million in federal grants, Governor Locke was forced to open the project bid to all the state's contractors, eliminating the standard awarding of a PLA for public projects.

Project labor agreements

PLAs are made between the manager of a construction project and a group of local unions or a building trades council, and they require that all employees on the construction project be represented by a union. A contractor who does not bargain with unions (open shop) and wishes to be awarded a construction project under a PLA must jump through a number of union hoops. For example, a contractor is often forced to reduce his workforce to a handful of "core" employees; hire new workers from the union hall; pay representation dues for all non-unionized employees; pay into union health and retirement funds (though the employees likely already have these benefits); and agree to obey union work rules.

A Wharton Study illustrated that the "terms and conditions" costs of mandatory unionized labor add an average of 6.8% to labor costs. While estimates vary, projects built by union shops tend to increase the costs by 5% to 26% over similar projects built by non-union contractors. In this time of tight revenue and budget crisis, Washington would be prudent to stop incurring these cost overruns and instead allow the free market system to work when accepting bids for public works projects.

Prevailing wage laws

Along with PLAs, Washington's prevailing wage laws also serve to create a caste system for contractors in the state. In 1945, the state enacted our version of the federal Davis-Bacon Act (RCW 39.12.020). This law requires workers to be paid prevailing wages when hired for public works projects or maintenance of public buildings. State law defines prevailing wage as the combination of hourly wage, usual benefits and overtime paid to the majority of workers, laborers and mechanics in the **largest** city of each individual county.

In essence, the prevailing wage law sets a high-minimum wage for labor on public works projects. Competition in contracting is substantially reduced or eliminated. Without this wage competition, contract prices cannot be driven down, increasing the final cost. Most studies on prevailing wage laws have concluded that they substantially add to the cost of project construction.

In 1989, the Washington State Senate proposed legislation to eliminate application of the prevailing wage to projects that are estimated to cost less than \$100,000, and limit wage surveys to collecting data from only non-public works projects. At that time DOT prepared a fiscal note for the bill (SB 5822), which concluded that if the law was passed, DOT projects of less than \$100,000 would save 67% on labor costs and 20% of total project costs. For projects costing more than \$100,000, DOT estimated a 33% savings on labor and 16.5% savings on total project costs.

Recommendations

To resolve these cost overruns and unfair bidding restrictions, EFF challenges Governor Locke to adopt the five principles outlined in President Bush's executive order when awarding bid contracts: (1) all project contracts should be awarded based on open competition; (2) Washington should maintain neutrality towards parties bidding on project contracts; (3) reducing construction costs to the taxpayers should be of paramount importance; (4) expand job opportunities for small and disadvantaged businesses by not forcing them to conform to the one-size-fits-all rules that govern labor unions; and (5) prevent discrimination against businesses and their employees based upon labor affiliation or lack thereof.

Along with adoption of these five principles, Washington should repeal the prevailing wage law to assure maximum efficiency of taxpayer dollars while protecting workers and their wages in each local area. At a minimum, the law should be revised so the prevailing wage for each type of work being done is calculated from the average wage rates in the local area, not just the **largest** city in each county.

While unions do have a legitimate role in protecting against unfair treatment for workers, the state has favored labor organizations over non-union businesses, squandering precious taxpayer dollars in the process. Washington state government should be in the role of maximizing the efficiency of tax dollars, not choosing sides between labor unions and non-union businesses.

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