



A COMPLEX MAZE OF STATE AND LOCAL LAWS AND REGULATIONS

BRIEFLY

A recent performance audit by the state auditor shows that efforts to reform the state's regulatory system have produced uneven results. Agencies should communicate regulatory information to business better, and they should do more to streamline regulations.

Regulatory reform is a perennial issue for businesses. The accumulation of federal, state, and local government regulations impose significant compliance costs. In 2008, the annual cost of federal regulations was estimated to be \$1.75 trillion. The cost of compliance falls heavily on businesses with fewer than 20 employees. In 2008, such businesses had annual federal regulatory costs of \$10,585 per employee—36 percent higher than the costs of large firms. (Crain and Crain) State and local governments add regulations of their own.

In a 2011 Thrive Washington report, we urged state policymakers to balance costs and benefits: “Regulations happen for a reason. They are designed to protect consumers, workers, citizens and the environment. The trick is stopping when new regulations add costs without adding benefits” (Thrive).

Regulatory reform efforts are not new in Washington state government. Since the early 1980s, in response to the “complex maze of state and local laws and regulations” that impede doing business in Washington, “legislators have passed dozens of bills and governors have issued executive orders to improve the regulatory environment and the overall business climate” (SAO b).

Yet the results have been uneven, at best, as a recent performance audit by the state auditor has confirmed. In 2010, Washington state agencies “proposed nearly 17,000 pages of new and revised rules—more than double the number proposed 30 years earlier.” In 2011, after a freeze of non-critical rule-making, agencies submitted 13,000 pages of rule

revisions. (SAO b)

The first piece in a planned series of performance audits addressing state regulations—an inventory of all regulations in the state, by agency—was released in September 2011. Next, in September 2012, the auditor’s office released “Regulatory Reform: Communicating Regulatory Information and Streamlining Business Rules.” This subject is important because, as the report puts it,

To be successful, businesses must be able to find, understand, and comply with the regulations that apply to them. They spend time and money trying to learn and comply with those regulations. The challenge is especially difficult for small businesses, usually lacking the resources that enable larger companies to hire attorneys and other specialists to help them comply. When businesses fail to fully comply with regulations, they face fines and penalties. (SAO b)

The audit asks if “state government websites effectively provide regulatory information to businesses” and if “regulatory agencies have processes in place to streamline their business rules consistent with governors' orders.”

Inventory of Regulations

The inventory includes the name and purpose of each permit, license, and inspection; the business activity being regulated; where the application is available; fees; state laws and rules related to the permit, license, or inspection; and processing time (as available). (SAO a)

Twenty-six agencies administer 1,377 business permits, licenses, and inspections. Four agencies have permits, licenses, and inspections totaling over 100: Health (284), Ecology (199), Agriculture (166), and Labor & Industries (107). (SAO b)

Communicating Information

As the report states, “Ultimately, anything other than complete regulatory information poses a significant and potentially costly risk for business owners” (SAO b).

The audit finds that “the states making the most progress in serving the needs of businesses have developed one-stop portals to provide businesses the information and resources they need to comply with state regulations.” Washington lawmakers have called for the “one-stop shop” for years, with limited success. As the report admonishes,

It is not enough to put ‘some’ or ‘most’ information online. When businesses face penalties if they do not comply with all the regulations, it is only fair that they be able to find out about 100 percent of those regulations online.

Washington has three central business websites, but none of them have complete regulatory information.

- The Business Licensing Service (BLS) is meant to be the primary licensing portal for the state, but only 16 percent of state business licenses and two of the ten most-requested licenses are available through the BLS website.
- The Office of Regulatory Assistance is focused on permitting, but it only has information for 31 percent of all business permits.
- Business.wa.gov is meant to be a single portal for licensing, permitting, regulatory approvals or filings, and tax collection. The “Permits, Licenses and Inspections” section links to only seven of the 26 agencies.

Additionally, regulatory information

from agencies themselves is incomplete: “While all permits and licenses are available online, complete regulatory information for 57 of the most requested permits and licenses is not available.” Indeed, “no agency website provided complete information for the permits and licenses we reviewed.”

Also troubling is the fact that

Only 23 percent of permits and licenses provide processing time information to businesses. . . . Permit and license processing time is the one element of regulatory information that both the Governor and Legislature have repeatedly directed state agencies to provide to businesses. Business owners need reliable information about processing times to develop realistic project plans.

Among the reasons given by agencies for not providing this information were “doing so could increase the agency’s legal liability and the potential for lawsuits if it cannot meet the published time period,” “businesses would be upset if they knew how long processing would take,” and “the complexity of projects can vary significantly, as can agency review times.”

The audit’s recommendations include creating a “single, one-stop portal for all business transactions with state government;” ensuring that “all regulatory agencies provide complete and accurate information for all business licenses and permits on their websites;” and developing “website standards that enable regulatory agencies to develop clear, consistent, and usable web content.”

Streamlining Regulations

As noted by the report, “Rule streamlining is critical to establishing and maintaining a manageable regulatory environment—and to creating a positive business climate.”

Since 1997, executive order 97-02 has been in effect; its purpose is to ensure that regulations “meet standards of need, reasonableness, effectiveness, clarity, fairness, stakeholder involvement, coor-

dination among regulatory agencies, and consistency with legislative intent and statutory authority” (Governor a). A 2006 executive order called for the development of a one-stop business portal; streamlining the permitting process; and establishing measurable standards for turnaround, professionalism, consistency, efficiency and effectiveness, and overall quality of outcomes. (Governor b)

The auditor’s office surveyed state agencies about their streamlining activities: “Eleven agencies said they had conducted extensive streamlining during the past 10 years or had tracked the effects of their streamlining activity.” The audit also found that while many agencies do streamline some rules, Ecology, Health and Labor & Industries do not have formal review processes. Additionally, “none of the agencies we visited formally measured the results of streamlining activity to determine whether rule revisions had their intended effects.”

Despite consistent and longstanding orders to streamline regulations, agencies are clearly falling short. Some reasons, according to the audit, are: agencies are no longer required to report on measures taken to improve regulatory programs; there is limited accountability and executive oversight; agencies have limited budget and staff; and there are few established standards.

The audit recommends that all regulatory agencies adopt documented and regular streamlining processes that include “specific criteria to evaluate the need, consistency and clarity of existing rules” and “measurement and tracking of results.”

Comment

The auditor acknowledges an important objective: “Our goal in conducting this series of audits is to promote more effective regulation at a lower cost to both business and government, not to promote deregulation.”

As we have previously stated, “Eliminating redundant, inconsistent and

unnecessary regulation without sacrificing safety and quality of life has long been the goal of regulatory reform advocates” (Thrive).

Recommendations from our earlier report include: Regulating to federal standards unless there is a clear determination that higher standards achieve significant environmental benefits, streamlined permitting with a single agency overseeing procedures, assuring that permits cover the time period commensurate with the life of the proposed project, and requiring gubernatorial sign off of any significant rule adopted by regulatory agencies where the governor appoints the director.

The performance audit begins the reform process, appropriately, with a regulatory inventory and a prescription for improving procedures. Of the auditor’s recommendations, three would be particularly welcome. First, all regulatory agencies should absolutely “provide complete and accurate information for all business licenses and permits on their websites.” Second, agencies should review all business rules regularly to see if they could be streamlined. Third, agencies should measure and track streamlining results.

Future work on this subject, according to the report, will include permit processing times, the targeting and coordination of business inspections, the basis for state regulations that exceed federal standards and the cost effectiveness of a one-stop portal for all business transactions with state government.

This is important work. Soon, we will elect a new state auditor. Continuing this effort should be one of his highest priorities.

References

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