Washington Research Council

POLICY brief

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Some Gains for Business in 2000 Session

B R I E F L Y

State lawmakers passed several bills of interest to the business community during the 2000 legislative session. The even split between Democrats and Republicans in the House, however, hampered the passage of controversial bills that business interests supported — as well as those they opposed.

Among others, the legislature passed bills aimed at promoting investment in telecommunications infrastructure in Washington's rural areas, giving consumers of medical services a "bill of rights," changing incentives in the market for individual health insurance, and avoiding an unemployment insurance tax increase.

The 2000 legislative session finally ended after two special sessions with passage of only a few bills that the business community had more or less wanted. But if a business interests only won a few, neither were they badly burned by passage of bills they opposed.

The even split between Democrats and Republicans and in the House cut both ways. It made passage of controversial bills, whether favored or opposed by business, much more difficult.

Here's a summary of significant legislation adopted by legislators that business owners, in varying degrees, supported or opposed:

Telecommunications: SSB 6675, EHB 2881

Seeing that Washington's economy and community vitality depend on a robust telecommunications infrastructure, Gov. Gary Locke requested a package of bills aimed at motivating telecom companies to spread their investments statewide.

"In rural Washington, a modern telecommunications infrastructure is as important as roads and rails were a hundred years ago," Locke said last fall.

In an effort to spur the provision of advanced telecommunication services to rural areas, the legislature passed SSB 6675, allowing public utility districts (PUDs) and rural port districts to market wholesale telecom services and facilities.

The bill language ultimately adopted contains amendments crafted to ensure that PUDs do not invest in fiber-optic lines and other facilities to compete with existing telecom companies on selling services to end-use customers.

GTE, for one, was largely satisfied with the final legislative language.

In the bill that ultimately passed, however, one provision was dropped that GTE wanted preserved: limiting PUD wholesale services to cities with populations exceeding 70,000. This provision would have put Everett and Vancouver off limits to PUD wholesale telecom services.

GTE had expressed concern that a PUD could lay fiber-optic cable in, say, Everett, where the company has already invested, and then wholesale the cable's use at a relatively low price to GTE's competitors. In the end, though, the bill held enough safeguards to satisfy the company.

Gov. Gary Locke, however, was not entirely happy with the end result. He vetoed sections 4 and 8 of the bill, saying their requirements "could impair districts' current activities and significantly complicate or delay the facilities and services that our rural areas so urgently need."

Sections 4 and 8 listed a series of steps, including a written plan and public hearings, that PUDs and rural port districts would have to complete before financing, constructing and wholesaling telecom facilities and services.

108 S. Washington St., Suite 406

Seattle WA 98104-3408

PH 206-467-7088

FX 206-467-6957

www.researchcouncil.org

In another action, legislators passed EHB 2881. This bill changes current state law governing so-called "alternative forms of regulation" pertaining to telecommunications services – a measure sought by U S West Communications Inc.

Currently, the Washington Utilities and Transportation Commission regulates the possible rate of return that dominant telecom companies, such as U S West, may earn by dictating the companies' service charges. One problem with this kind of regulation is that it deters investment in new services.

Since 1989, however, local regulated telecom companies have had the option of negotiating an alternative form of regulation. But the commission has had the power unilaterally to rescind alternative regimens. Uncertainty about how the commission might later modify an agreement has discouraged U S West from applying for alternative regulation.

This bill erases that uncertainty by removing the commission's rescinding authority. The commission may rescind or modify an alternative regimen only upon the request for the telecom company operating under it.

The bill also requires the commission to approve or reject a proposed alternative within nine months. U S West would have preferred four months. "Nine months in today's world is like a light-year," says a company official.

As well, U S West would have preferred that legislators prescribe an alternative form of regulation, rather than leaving it up to telecom companies to negotiate alternatives with the commission. But this bill was better than none, because the company wants to diminish the commission's power to regulate its earnings. As it is, when U S West earns more than the commission permits, either through introducing new services, selling more of existing ones or making operations more efficient, the commission reduces the company's service rates.

More than 40 other states have moved away from the traditional rate-of-return regulatory model. In U S West's view, the bill "does not create some giant public-policy loophole" for local telecom companies. It simply gets Washington up to speed.

Health Care: 2SSB 6199, E2SB 6067

Legislators acted to give medical patients a "bill of rights" and to change incentives in current law that had led health insurers to stop selling individual health policies.

2SSB 6199, referred to as a patient bill of rights, requires health insurers to follow new legal requirements designed to aid consumers in making informed decisions about purchasing insurance, and in assuring that they receive adequate health-care treatment.

Among the provisions relating to adequate health-care treatment are those requiring insurers to give policyholders a sufficient choice of health-care providers, a comprehensive grievance process and a third-party review of denied claims.

The bill's most controversial provision, and possibly the one that will have the most dramatic effect, is the one making insurers liable for substantial harm resulting from their decisions that gainsay treatment recommendations made by physicians.

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If a physician recommends treatment he deems medically necessary, and the treatment is not specifically excluded from the policy contract, then the insurer becomes liable for any substantial harm to the patient that is proven to have resulted from the insurer's decision to deny, delay or modify the recommended treatment.

When denying, delaying or modifying, the insurer in effect becomes a physician and then is subject to the state's medical malpractice law.

The only certain way for insurers to escape possible liability is always to accede to physician treatment recommendations.

Before policyholders may sue their insurers, though, they must have suffered substantial harm (as defined by the bill) and then have referred their disputes to independent review organizations (created by the bill). But even when review organizations find for insurers, policyholders may still take their cases to court.

Although the purpose of the bill is to deter insurers from interfering with medically sound treatment decisions made by physicians, the bill may also cause insurance-company medical directors, for fear of liability, to permit unnecessary or inappropriate treatments – the very things managed care was created to stop.

According to the Association of Washington Health Care Plans, it's been estimated that the bill's liability provisions will push premiums up as much as 4 percent. And, on the basis of one study, the association predicts that with every percentage-point rise in premiums, 8,700 people will drop health insurance.

E2SSB 6067 is the legislature's response to major health insurers having pulled out of the individual insurance market. After suffering huge losses in that market for several years, insurers stopped accepting new applicants for coverage.

Significantly, the bill changes a provision in current law that insurers have argued allows people to make the financially rational choice of buying insurance only when they need it and then dropping it once treated for their health conditions. Under current law, insurers may withhold coverage for new applicants with health problems for no longer than three months. The bill changes the waiting period to nine months. The hope is that a longer waiting period will encourage people to buy and retain insurance indefinitely, rather than timing their purchases to the onset of illness or pregnancy.

Just as an insurer incurs losses when people drop into and out of coverage, so also it may face financial problems when too many people with expensive medical problems sign up for coverage. The bill includes a mechanism for distributing the resulting losses for such "adverse selection."

It allows insurers as a group, not individually, to deny coverage to 8 percent of new applicants who are identified, by means of a standard health questionnaire, as people likely to require costly medical care. These applicants are diverted to the Washington State Health Insurance Pool, commonly called the "high risk pool." To cover its deficit between premiums taken in and medical expanses paid for, the pool will assess all health insurers (based on their overall market shares). It also will assess stop-loss carriers doing business in this state as well as the state Health Care Authority's uniform medical plan, for state employees; in each case, 10 insured people will count as one for purposes of calculating the assessment.

Washington's three major health insurers – Regence BlueShield, Premera Blue Cross and Group Health Cooperative – have promised to return to the individual market soon after the high risk pool is restructured per the bill's requirements, and the pool's reconfigured board designs the standard health questionnaire.

Unemployment Insurance: SHB 3077

SHB 3077 changes the way unemployment figures are calculated, thereby avoiding a tax increase above the 1999 level.

It reduces the subsidies to businesses at the higher end of the tax scale cutting taxes 5 percent for employers in rate classes 4 through 16.

It increases the maximum time that dislocated workers in certain industries may draw unemployment benefits from 30 weeks to 52 weeks, at an estimated cost of $60 million during the next three years.

It sets up a task force to analyze the entire unemployment insurance system with the aim of making it work better for both employers and employees.

There were several measures that business wanted but were not passed:

— Restricting the Department of Ecology's rulemaking authority under the Shorelines Management Act – a law that business contends the department has used to implement salmon habitat restoration requirements in a way that exceeds legislative intent.

— Barring the Department of Labor and Industries' proposed rule regulation workplace ergonomics.

According to the National Federation of Independent Business, the rule will require employers to review activities performed by employees to determine so-called "caution zones," then to determine whether hazards exist, and finally to mitigate hazards "to the extent feasible."

HB 2785 would have required the department to do pilot projects with another state agency to obtain more information before adoption.

SB 6859 also would have required the state to try out the rule on its own agencies before forcing it on employer

— Changing the Office of Insurance Commissioner from an elective to an appointive office, SB 6114.

— Amending the state constitution to allow the legislature to tax homeowners and businesses differently, SJR 8212.

Business interests were successful in their opposition to some bills:

— SB 6368, which would have extended unemployment insurance benefits to locked-out workers for the duration of a lock-out.

—ESB 6402, which would have given state workers the right to bargain collectively about wages, hours, and terms and conditions of employment, but would have prohibited strikes. The bill also would have reformed the state civil service classification rules and authorized state agencies and higher-education institutions to contract out for services now provided by classified workers.

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