Thrive WASHINGTON

Strategies to move our state forward

Consolidation Versus Specialization:

Restructuring the Washington State Executive Branch

A joint research series from the Washington Roundtable and Washington Research Council

THE THRIVE WASHINGTON PROJECT

The Great Recession dramatically changed fiscal conditions in Washington state, possibly forever. The impact of falling revenues and structural budget deficits has elicited a near universal call for a transformative shift in state government. This research series—developed by the Washington Roundtable and Washington Research Council—will provide actionable state policy recommendations that, if enacted, will preserve essential services, lay a foundation for sustainable economic growth and create an environment in which Washingtonians can thrive.

The old proverb, "too many cooks spoil the broth," underscores the importance of strong leadership focused on the task at hand and capable of acting with authority. The Great Recession has intensified calls for transparent, accountable government. Often, as is the case in Washington state, structural barriers interfere with the efforts of elected officials to deliver the leadership voters demand.

RECOMMENDATIONS

- **Reduce the number of statewide elected officials from nine to six.**
  - Enact legislation to make the state insurance commissioner and lands commissioner appointed members of the governor's cabinet.
  - Place a constitutional amendment on the ballot that eliminates the elected office of superintendent of public instruction.
- **Adopt Governor Gregoire's natural resources reorganization plan.**
- **Issue an Executive Order requiring the formation of a review team within the Department of Social and Health Services to deliver recommendations to the governor that will eliminate intra-agency overlap, streamline access to agency services, reduce staff needs, improve transparency, and increase accountability.**

With nine autonomous statewide-elected officials, Washington has one of the most fragmented executive branches in the country. Of the 50 states, only three elect more independent statewide officials than Washington. In all states, the governor is the recognized chief executive that voters hold accountable and rely on for decisive leadership. To the extent that the governor's administrative authority is fragmented and shared with other independently elected officials, accountability and transparency are compromised. With independent elected executives overseeing such critical – albeit relatively narrow – areas of state government as insurance regulation, public lands management and public education, Washington has too many cooks and too little accountability, consistency and transparency.

The election of multiple executive branch officers – sometimes called a "plural executive" – has many consequences:

- **Independently elected officials can work at cross-purposes.** In every state of the state message, state budget and civic address, governors lay out priorities, a ranking of issues frequently developed with significant public input. Education, health care and the environment consistently top the list of executive and voter concerns. Yet, the governor shares responsibility in each of these areas with other elected officials. There is no guarantee those officials will share and reinforce the governor's agenda.

- **Multiple independent elected officials inhibit accountability.** When things go wrong (or right) voters do not know whom to hold accountable.
- **A divided executive branch is more susceptible to interest group influence.** Research has shown that elected officials who oversee narrow areas of public policy (insurance, education, and natural resources, for example) are more susceptible to influence by interest groups directly affected by their decisions. The governor, accountable for all of state government, must balance a variety of interests, which reduces the clout of any single constituency.
- **Media attention and campaign advertising primarily cover the "major" state races, typically the governor and attorney general.** Down-ballot offices, such as secretary of state or insurance commissioner, garner less attention, which means voters have less information about those candidates. In such instances, engaged interest groups can exert extraordinary sway over election outcomes. Correspondingly, down-ballot officers have relative anonymity when in office, making them more insulated from electoral consequences.

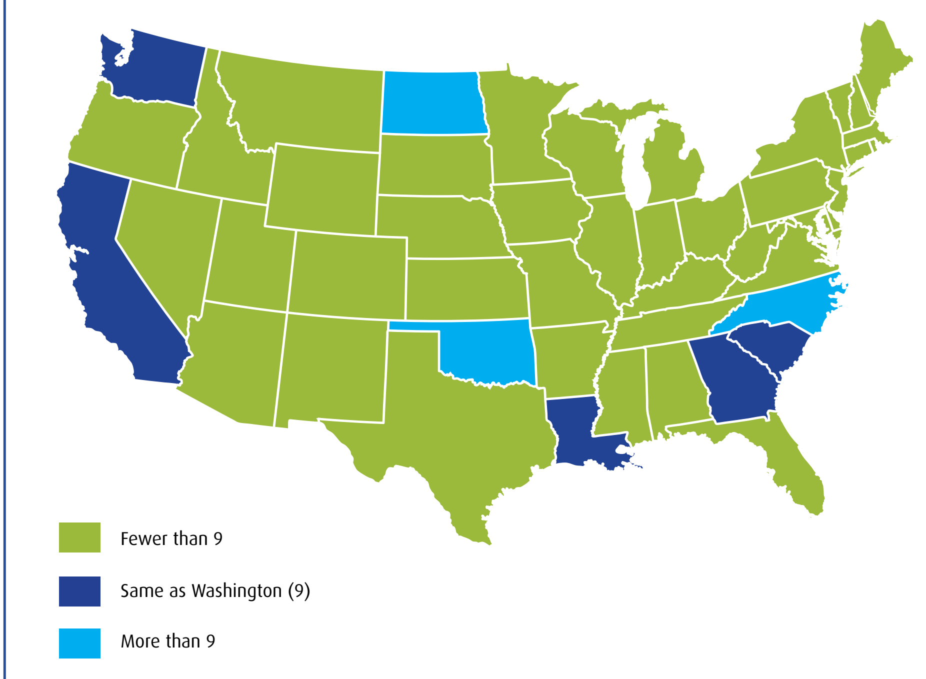
Agency specialization can serve as a way to check and balance power. It can also lead to inefficiencies and accountability problems.

Three states elect only one statewide executive official, the governor. Three others elect 10 or more. Washington elects nine. There are trade-offs depending on where a state falls on the spectrum.

Reducing the number of executive officers can produce efficiencies, create a more effective command structure and establish clear lines of accountability. At the same time, having too few elected executive officers (a governor-only structure for instance) raises the specter of consolidated power that can

Of the 50 states, only three elect more independent statewide officials than Washington.

NUMBER OF INDEPENDENTLY ELECTED EXECUTIVE OFFICIALS



> **Washington's populist legacy has often led to policies and governance structures designed to frustrate the abuse of power, even at the expense of efficiency and clear accountability. The key is to "right-size" Washington's executive branch.**

be abused. On the other extreme, electing too many executive officers creates a scenario where power is diffused and citizens have trouble holding the correct officials accountable. While agency specialization can serve as a way to check and balance power, it can also lead to inefficiencies and accountability problems.

Washington's populist legacy has often led to policies and governance structures designed to frustrate the abuse of power, even at the expense of efficiency and clear accountability. The key is to "right-size" Washington's executive branch.

Although most of this Thrive Washington paper addresses the structural problems inherent in the "plural executive," we also consider the special challenges of managing the state's umbrella social services agency, the Department of Social and Health Services. Guiding our recommendation in this area are lessons learned from the state's recent examination of how to reorganize its natural resources agencies. We also draw on successful reorganization efforts in other states.

STATE GOVERNMENT WORKING AT CROSS PURPOSES

In Washington, the governor proposes a consolidated state budget to the legislature every year. None of the other eight elected officers writes his or her own budget. However, each independent agency does have independent rule making authority and, often, independent permitting authority. When each agency can write its own rules (which have the force of law), conflicts will arise. Briefly consider these examples of overlapping jurisdictions and competing missions.

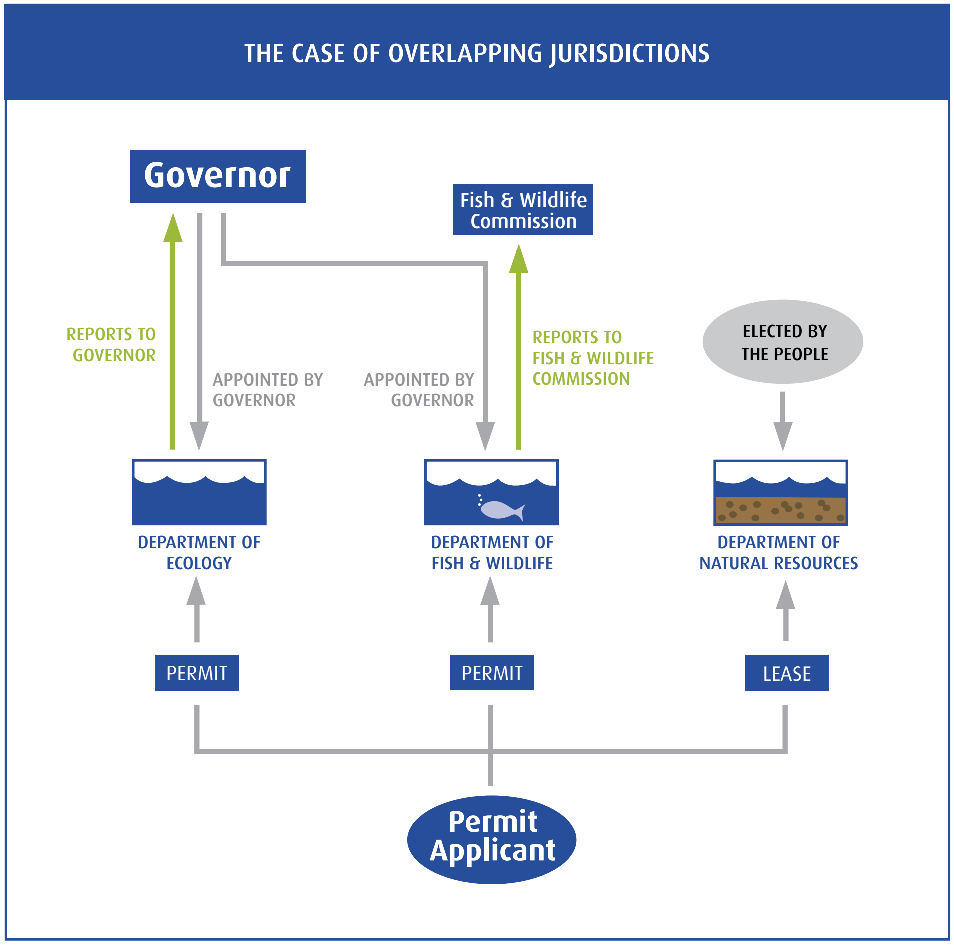
The Case of Overlapping Jurisdictions

The complexity of permitting is particularly clear in environmental regulation. Currently, any work requiring an operating permit – private or public – conducted in the Puget Sound is subject to the jurisdiction of three independent executive agencies. The Department of Ecology governs the water in the Puget Sound, the Department of Natural Resources governs the land under the water, and the Department of Fish and Wildlife governs the fish in the water. To conduct work in the Sound, one may need a permit from Ecology, a lease from Natural Resources and another permit from Fish and Wildlife. To further complicate matters, each agency is subject to a different process of accountability. The director of Ecology is appointed by and reports to the governor. The commissioner of public lands is elected by the citizens. The director of Fish and Wildlife is appointed by the governor, but answers to the Fish and Wildlife Commission. Reorganization has the potential to increase regulatory efficiency and strengthen accountability.

The Case of Competing Departmental Missions

The elected superintendent of public instruction and commissioner of public lands each have a stake in how state trust lands are managed. The Office of Superintendent of Public Instruction (OSPI) notes it is responsible for "supervising school district budgeting, accounting, and financial reporting to provide consistent financial management and accountability." At the same time, the Department of Natural Resources (DNR) is charged with generating revenue for state schools by "sustainable and environmentally responsible harvesting of timber on state trust lands." What happens when DNR wants to set aside public lands for conservation, but OSPI would prefer the resource be managed to maximize revenues? The governor has little power to force a cooperative policy. The voters have little ability to ensure the two agencies work together.

Similar conflicts can occur between the governor and the state insurance commissioner. The insurance commissioner's mission is to "protect consumers, the public interest, and our state's economy through fair and efficient regulation of the insurance industry." Coupled



with that mission is the power to write regulatory rules for insurance companies practicing in Washington. In 1993, that rule-making authority started a process that eventually led to a conflict between the insurance commissioner and the governor.

The Washington Health Services Act liberalized access to state regulated health care plans in 1993. Using independent rule-making authority, the insurance commissioner opened the insurance market to all of Washington's uninsured citizens regardless of pre-existing conditions and at state mandated "community rates." The immediate result was a sharp increase in rates and abandonment of the individual premium market by most of Washington's insurance carriers. The number of companies offering individual policies dropped from 30 to seven. In 2000, then-Governor Gary Locke acted to restore the market, directly confronting the independently elected insurance commissioner. He signed SB 6199, which reestablished a more market oriented health insurance industry and stripped the insurance commissioner of the power to establish "community ratings" (pricing).

A seven-year state health care reform effort (1993-2000) in Washington exacerbated tensions between and within the branches of state government. The divisions between the legislature and executive were complicated by policy disputes dividing two independently elected executive officers, the governor and insurance commissioner. The first tension is

The challenge of diffused government: The governor oversees five education agencies. In addition, there are four independent boards and the state Superintendent of Public Instruction.

inherent in the checks-and-balances of American government. The second is an unfortunate and preventable byproduct of Washington's plural executive structure—too many independently elected executive officials without a mechanism to maintain a unified mission.

A DIVIDED EXECUTIVE BRANCH INHIBITS ACCOUNTABILITY

Accountability challenges are not new. More than 100 years ago, Woodrow Wilson pinpointed the key weakness of divided government. In Congressional Government (1885), then–Professor Wilson argued that when government is divided, citizens are unable to hold anyone properly accountable. Wilson's concerns about fragmented leadership 125 years ago are applicable to Washington's fragmented executive branch today.

When multiple executive officers hold partial yet concurrent policy jurisdiction, each can blame the other for failed implementation. Our state's ongoing effort to improve educational performance and accountability provides a clear example.

On Whose Desk Did the WASL Buck Stop?

If voters were unhappy with the Washington Assessment of Student Learning (WASL), to whom should they have complained? The governor? The superintendent of public instruction? Neither? Both? This is the dilemma of divided executive government. During the 2008 election, state superintendent candidate Randy Dorn promised to abolish the WASL. On the other side, Governor Gregoire – a long-time supporter of accountability in public education – pledged to maintain the integrity and rigor of the assessment-based graduation requirement.

After the votes were counted, the newly elected superintendent sought to eliminate the WASL. However, the re-elected governor rejected the blanket abandonment of the WASL and demanded some form of educational accountability. Through a series of compromises, Washington adopted the High School Proficiency Exam.

The compromise left business, parent, and teacher groups dissatisfied. Regardless of the merits of each group's concern, from an institutional accountability perspective, Washington faces a larger problem. Who is responsible for the current test? If group A does not like the test, the superintendent could refer them to the governor who insisted on an exit test. If group B does not like the test, the governor could deflect back to the superintendent whose office wrote the test. If the superintendent of public instruction were directly responsible to the governor or a cabinet official appointed by the governor, every voter would know where the buck stops.

Outside OSPI and the challenges of a plural executive, the rest of Washington's current education system remains similarly disconnected. The governor oversees five other education agencies. In addition, there are four independent boards: the Professional Educators Standards Board, Higher Education Coordinating Board, State Board for Technical and Community Colleges and State Board of Education.

A reorganized and more streamlined education governance structure could empower the executive branch to eliminate educational "silos" and forge a more cohesive and comprehensive educational plan.

The governor unveiled key tenets of a proposed restructuring of the state's education systems in early January. While specifics are to be worked out, the initial proposal conceptualizes a central point of authority and accountability appointed by the governor. At a minimum, a central figure would have the power to "put everyone in the room" and promote cross-agency cooperation.

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A DIVIDED EXECUTIVE BRANCH IS MORE SUSCEPTIBLE TO INTEREST GROUP INFLUENCE

In the 1970s, researchers at the Chicago School of Economics were studying a new economic phenomenon called "interest group capture." The theory, well supported by data, argues that regulatory bodies and offices that focus on narrow policy areas are subject to "capture" by the industries they regulate. The groups most affected by the decisions of the agency and executive are highly motivated to become involved in the operations of the agency, including participating in the election of the executive. They have the most at stake. Over time, their concentrated interest will give them disproportionate influence over the agency.

All government entities that specialize on a narrow policy area are potential victims of interest group capture. Three examples in Washington state include:

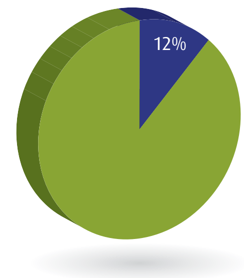
- **Office of Superintendent of Public Instruction.** The state constitution charges the superintendent with "supervision of all matters pertaining to public schools." This makes the office a focal point for professional education interests, both in terms of direct advocacy and campaign dollars. A review of filings with the Public Disclosure Commission demonstrates that groups such as the Washington Education Association, principal and superintendent interest groups, and other public school employees groups were the biggest contributors to OSPI candidates running for office during the last two election cycles. The risk is that the superintendent will become uniquely responsive to these groups, rather than to the needs and interests of the citizenry.

- **Insurance Commissioner.** Anticipating that insurance and health care companies would be extremely interested in the actions of the Office of the Insurance Com-

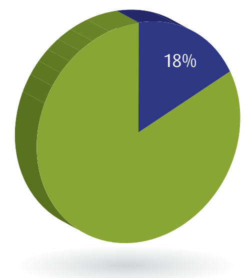
All government entities that specialize on a narrow policy area are **potential victims of interest group capture.**

INDEPENDENTLY ELECTED LANDS, INSURANCE, AND SCHOOLS EXECUTIVE OFFICERS ACROSS THE NATION

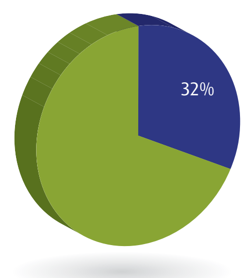
Percentage of States with An Independently Elected Lands Commissioner



Percentage of States with An Independently Elected Insurance Commissioner



Percentage of States with An Independently Elected Education Superintendent



The natural resources reorganization effort led by Governor Gregoire will reduce the number of overlapping agencies and the size of state government, save taxpayers nearly $3 million in the second year of the biennium, and shrink the state workforce.

missioner, the legislature banned campaign donations from those regulated industries. However, the ban does not extend to attorney groups and consumer activists, which are heavy contributors to candidates for insurance commissioner. This makes the insurance commissioner a potential target for interest group capture by a small and select group of advocates.

- **Lands Commissioner.** Directing the Department of Natural Resources, the lands commissioner holds considerable power over the use – and non-use – of public lands. Unsurprisingly, natural resource industry representatives often focus their advocacy efforts on the commissioner and the department. Typically, the general public exhibits much less interest in the office. Consequently, having an independently elected lands commissioner makes the office a potential target for interest group capture.

In each of these areas – K-12 education, insurance and natural resource management – significant public policy issues are at play. Yet these offices receive disproportionate attention from highly affected interest groups. Further, as down-ballot races, they receive relatively little public attention during the campaign season. In practice, gubernatorial candidates inevitably address health care, education and environmental considerations. And, after the election, the public holds the governor accountable for execution of public policy in those areas. No additional public benefit is derived from the fragmentation of accountability into separate elected offices.

"RIGHT-SIZING" WASHINGTON'S BUREAUCRACY

Within the executive branch, striking the right balance to maximize agency performance and accountability can be a challenge. In particular, consider the recent comprehensive effort to restructure natural resources regulation and governance – an effort we believe suggests a positive direction for social services reorganization.

The effort began in September 2009, with a working group that outlined the benefits of consolidating all of Washington's natural resource agencies into a one-, two- or three-agency structure. The recommendations included streamlining the permitting process, consolidating quasi-judicial appeals boards and decreasing the number of bureaucracies.

In December 2009, Governor Gregoire issued an Executive Order creating a Natural Resources Cabinet declaring the state's current structure had "over time resulted in a complex, multi-agency system with overlapping jurisdictions, duplicative activities and unclear processes." The new cabinet included the Departments of Agriculture, Commerce, Health and Ecology as well as the Recreation and Conservation Office, Puget Sound Partnership and the Utilities and Transportation Commission. Also included in the partnership were the Department of Natural Resources, Department of Fish and Wildlife, the State Parks and Recreation Commission and the State Conservation Commission. One of the stated goals was "combining permit regulations of multiple agencies and local governments and issuing consolidated environmental permits through a single entity within a specific geographic area. The goal is to provide citizens with a simpler way to receive coordinated, timely, and consistent environmental permits from state agencies."

The natural resource consolidation effort enjoyed many successes. In October 2010, Lands Commissioner Peter Goldmark announced the creation of One Front Door to Washington's Outdoors – a single access point for all natural resource agencies. In addition, environmental hearings boards were reduced from five to two and the appeals process was streamlined.

More significant reforms were announced last December when the governor issued a comprehensive reorganization plan for the state's natural resource agencies. The plan proposes the following:

- Consolidate the Department of Fish and Wildlife, the State Parks and Recreation Commission, the Recreation and Conservation Office and the law enforcement unit of the Department of Natural Resources into a new Department of Conservation and Recreation.
- Consolidate the work of the Columbia River Gorge Commission, the Pollution Liability Insurance Agency and the Department of Health's reclaimed water program into the Department of Ecology.
- Move the State Conservation Commission into the Department of Agriculture, and the Department of Archaeology and Historic Preservation into the Department of Natural Resources.

The effort will reduce the number of overlapping agencies and the size of state government, save taxpayers nearly $3 million in the second year of the biennium, and shrink the state workforce.

Bringing the Natural Resources Model to the Department of Social and Health Services

A 2006 audit of the Department of Social and Health Services **exposed the misuse of up to $1 billion of Medicaid spending.**

If the creation of a natural resource cabinet can bring order to Washington's natural resource bureaucracy, a similar initiative could achieve the same goal within the state's health and human services administration. In particular, an intra-agency reorganization effort within the Department of Social and Health Services (DSHS) could accomplish significant savings and efficiencies. By naming her Health Care Cabinet last year and working to integrate Medicaid with other publicly-funded health care programs under the Health Care Authority, the governor has taken positive steps toward realignment. More can be done.

The sprawling agency accounts for approximately one-third of the state operating budget and 18,000 to 20,000 employees. DSHS is made up of agencies within agencies. Currently, DSHS manages services as diverse as nursing homes, Medicare, foster care, Alzheimer's care, alcohol abuse, disability services, domestic abuse, deaf services, gambling addiction, emergency housing, maternity care, juvenile parole services, and much more. State legislators frequently, and justifiably, contend that the organization lacks transparency and accountability.

Between 2004 and 2006, state audits of DSHS exposed problems with overspending on salaries, lack of internal controls to prevent misuse of state funds, non-employee access to sensitive information, and foster care parents without criminal background checks. In 2004, the agency came under fire for spending money on illegal day care providers and individuals using stolen Social Security numbers. A 2006 audit further found the misuse of up to $1 billion of Medicaid spending on ineligible residents. The state auditor expressed frustration over the report, noting that, of the 28 "findings," many had been flagged in previous audits.

Repeated violations and sluggish responsiveness have led some legislators to call for restructuring DSHS. Such reforms can be accomplished if the governor issues an Executive Order bringing managers together to work along the same lines as the Natural Resources Cabinet. The governor should direct DSHS to form a review team to develop, with gubernatorial oversight, recommendations that will eliminate intra-agency overlap, streamline access to agency services, reduce staff needs, improve transparency and increase accountability. Possible recommendations would include reassigning responsibilities to multiple, smaller and more focused agencies. Other states have taken that approach.

What Other States Are Doing to "Right-Size" Delivery of Social and Health Services

A 2003 comprehensive report by the National Governors Association reviewed reform efforts in other states. They found that "Over half of the restructuring states made intra-

29 states use a combination of smaller agencies to deliver social services. The sharper focus increases accountability.

agency changes that affected departments and systems within the agency (e.g., consolidation or elimination of some components of an agency)." Washington's use of a single, large umbrella agency to deliver health services places it in the minority. Twenty-nine states use a combination of smaller agencies to deliver social services. The sharper focus of specialized agencies increases accountability, allowing policymakers and taxpayers more transparent access to agency operations.

The report highlighted two important trends:

- Nearly all states sought to consolidate health programs around the core services provided, functions performed, and/or special populations served. Most abandoned structures that had been organized categorically (i.e., a single program providing a core set of services).

- States are shifting away from organizational structures built around specific health conditions (e.g., HIV/AIDS). In fact, several states characterized their restructuring initiatives as an effort to move away from programmatic "silos"—i.e., programs that operate independently even though they may serve the same populations.

Gubernatorial Executive Orders drove most of the reforms outlined above. The report concludes "The mechanism most commonly used by states to plan and implement a health agency restructuring initiative in 2003 was a health agency work group or a task force made up of members both internal and external to the health agency. Planning processes ranged from a health commissioner working with a small internal staff work group to more elaborate grassroots planning processes involving town hall meetings, state conferences, and websites devoted to restructuring."

These reform efforts have produced recommendations that, if enacted, could be effective in Washington. Consider the following:

- Alaska created a permanent Office of Program Review within its health and social services agency dedicated to serving as an internal agency watchdog. In effect, Alaska created an "internal affairs" bureau for its own bureaucracy.

- Maine created an Advisory Committee for Health and Human Services so that any reform effort would not be a single-shot affair. The problem with most reform efforts is that they make one-time recommendations, but new problems are always emerging. Maine has created a mechanism to deal with that bureaucratic pathology.

- Texas created the Texas Sunset Commission to review functions within its health and social services agencies every 12 years. Agencies can be abolished unless the legislature reauthorizes them. Such a mechanism forces the Texas Legislature to periodically review the manner in which social services are delivered.

All of the reforms outlined demand a continual review process rather than a one-time reform, the impact of which fades over time.

POLICY RECOMMENDATION

The governor should direct DSHS to form a review team to develop recommendations that will eliminate intra-agency overlap, streamline access to agency services, reduce staff needs, improve transparency and increase accountability.

> "The fiscal crisis currently facing Washington state requires its government to improve how it does business, to innovate, to increase efficiency and effectiveness, to provide excellent service to its citizens and to better meet the fiduciary responsibilities to the people of the state."
> —Governor Gregoire

CONCLUSION AND RECOMMENDATIONS

Given the state's enduring structural deficit, Washington must fundamentally reexamine how it provides government services. The state has a unique opportunity to restructure government and provide long-term sustainability for the government services citizens value. As Governor Gregoire noted, "The fiscal crisis currently facing Washington state requires its government to improve how it does business, to innovate, to increase efficiency and effectiveness, to provide excellent service to its citizens and to better meet the fiduciary responsibilities to the people of the state."

The following policy reforms provide a framework for making that vision a reality:

- Reduce the number of statewide elected officials from nine to six.

  1. Enact legislation to make the state insurance commissioner and lands commissioner appointed members of the governor's cabinet.

  2. Place a constitutional amendment on the ballot that eliminates the elected office of superintendent of public instruction.

- Adopt Governor Gregoire's natural resources reorganization plan.
- Issue an Executive Order requiring the formation of a review team within the Department of Social and Health Services to deliver recommendations to the governor that will eliminate intra-agency overlap, streamline access to agency services, reduce staff needs, improve transparency, and increase accountability.

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