Opinion

Our View

Legislators ignore impact of minimum wage hike

Supporters of minimum wage hikes pooh-pooh critics who warn that increased labor costs lead to lower employment.

They suggest that employers, notorious for sitting on bags of money, are able either to absorb increased labor costs, or increase prices to offset costs without negative impacts to employees.

It's political claptrap Oregon legislators spouted this month when they passed a three-tiered wage hike scheme. The people who run Oregon's public universities quickly proved it a fallacy.

The law hikes the current statewide minimum wage of $9.25 an hour to $9.75 in July.

Under the law, the state is divided into three regions. Over six years the wage increases by different rates in each region, based on population, median income and cost of living. In Portland, the minimum wage will reach $14.75, in rural and coastal counties with struggling economies it will top out at $12.50, and $13.50 in the rest of the state by 2022.

State budget analysts couldn't begin to calculate how much this would cost government, let alone private businesses, in extra wages and benefits. But no worries, supporters said, because studies show that increasing minimum wages has no impact on employment and hiring.

The people who run Oregon's public universities must not have received the memo.

Universities typically hire students at minimum wage to fill a variety of jobs around campus. The wages of students in the federal work study program are picked up by the federal government, but hundreds of others are paid out of university coffers.

Shortly after Gov. Kate Brown signed the measure into law, our colleagues at The Oregonian reported that the wage hikes will cost the seven universities millions in additional labor costs, and force them to look at cutting hundreds of jobs held by student workers to cut costs.

Officials at Oregon State University told the paper that the hike would increase the cost of the more than 7,800 students it pays by $4.8 million in the next biennium. At the University of Oregon, the tab will be an extra $2.3 million in the same period, and rise to $6.1 million extra when the wage hits the top rate. Portland State University is looking at $2.5 million in extra costs in the 2017-2019 cycle.

A spokesman for OSU said the hike could cost 650 to 700 students their jobs. PSU said it would likely make budget cuts and raise tuition.

It probably came as no surprise to freshmen economics majors that a multi-million dollar hike in labor costs has to be offset either by an increase in revenues — tuitions and fees — or a reduction in expenses — job cuts. Unfortunately, legislators skipped that class.

If caught off guard that public universities, agents of the state, are talking job cuts in light of hikes in the minimum wage, imagine their surprise when local retailers, restaurants, hotels, nurseries, orchards, packing houses and processors start doing the same.

Rik Dalvit/For the Capital Press

Our View

There's a certification for that

Time was, consumers trusted the producers who grew and processed the food they ate. Consumers, most of whom had ties to agriculture, knew how crops and livestock were grown and processed for the market.

Not any more. The link between most consumers and agriculture has been severed. Consumers today are typically one or more generations away from the farm. Direct knowledge of agriculture has been replaced by hearsay and online information, some of which is accurate and some of which is pure propaganda.

Now a growing number of consumers, who are confused by the conflicting information, say they want to know exactly how their food is produced.

That's where certifications come in. The best-known certification is for organically grown food. Since the federal government introduced the green label for organic food in 2002, consumers see it as an assurance that they know how that food was produced.

The problem is the proliferation of other certifications and labels, each one usually involving an audit and a fee.

Now food can be certified salmon safe, GMO free, gluten free, fair trade, vegan, natural, sustainable, humanely raised, rainforest safe, bird friendly, wholesome and, in the case of seafoods, slave free, to name a few of the certifications that are currently popular.

Because consumers — and retailers — now demand certifications, producers who want their business must undergo more and more audits. Those who sell to several retailers often need several different certifications. That means several audits, and several fees to pay.

All of which can be overwhelming, and unneeded.

In the U.S., everything from pesticides to grain quality to the amount of dust produced is regulated by the federal government.

"Most people don't understand the regulatory system in the U.S.," said Randy MacMillan, vice president of Clear Springs Food, a trout farm in Idaho that goes through six annual audits of its environmental impact, food safety practices and social responsibility on top of meeting 1,300 regulations enforced by 30 state and federal agencies.

More certifications are on the way. Concern over the use of gestation stalls for sows, whether chickens are raised in cages or if livestock is given antibiotics amounts to a growing trend that one expert described as a "tsunami" of certification.

"The customer is always right," goes the retail adage. That food customers want to be sure they know how their food is produced is OK, too.

But if farmers, ranchers, fish farms and processors have to devote massive resources to filling out a growing number of forms to gain certification for food that is already wholesome, the net effect will only be higher prices — and bigger packages so all of the added labels will fit.

Readers' views

Odd priorities in enforcement

Reading two of the articles in the Capital Press this last week made me wonder what is up with enforcement priorities for the Clean Water Act, a field I worked in for some years back in the '90s when the current wave of regulation was germinating.

A farmer is threatened with suit for stabilizing a streambank, preventing discharge of mud, streambank debris and soil pollutants to North Santiam River when a cursory Internet search "streambank stabilization allowed under the Clean Water Act" finds numerous instances of both routine and emergency projects funded by the EPA to perform exactly the same functions and using many of the same techniques, which are often outlined in various states' adopted erosion control manuals.

And yet an alien organism that occurs nowhere in nature is released into the environment and the companies responsible are given 10 years to "survey, provide technology, analyze and assist (the people who did not create the problem.)" But no mention of $37,500 fines per instance for those responsible.

So, what, regulators, are we cherry-picking the easy targets, regardless of good faith, and letting the tougher ones get away? How about 10 years to survey and analyze, and the EPA provide funding and assistance as in some of the other cases and projects funded by the EPA.

Your own Internet search will find many instances.

Having been a regulator myself, this is not the way to conduct business.

Earn your pay going after some of those tougher dischargers and consider that a farmer who proactively reduced pollution to a local river might merit an award instead of a lawsuit.

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Supreme Court to address right to challenge feds on 'wetlands'

By DAMIEN SCHIFF
For the Capital Press

Guest comment
Damien Schiff

If the government says that you can't use your property, you should be able to sue the government.

Unfortunately, the Obama administration — and its U.S. Army Corps of Engineers — disagree.

They disagree so strongly that they appealed to the Supreme Court last year after the 8th Circuit, in a Pacific Legal Foundation case, sided with PLF and ruled that owners may seek judicial review when their land is declared "wetlands" subject to the federal Clean Water Act.

Now, the Supreme Court has accepted the case, U.S. Army Corps of Engineers v. Hawkes. This gives the justices an opportunity to rule for the entire country on the question of landowners' right to sue when bureaucrats claim federal control over certain "wetlands."

Some background: The Corps, along with the Environmental Protection Agency, administers the Clean Water Act. That law requires that landowners receive a permit in order to discharge pollutants — which include sand, dirt and other clean fill material — into "navigable waters." The statute in turn defines such waters, somewhat unhelpfully, as the "waters of the United States," or "WOTUS."

The Corps and the EPA have interpreted that phrase broadly, even more so in the sweeping new WOTUS definition issued last year, under which "waters of United States" includes most streams, creeks, ponds, wetlands and other wet spots.

'Wetlands' regulations

Because the Act's scope is difficult to discern, the Corps has a "jurisdictional determination" process. Landowners can request the Corps to analyze whether their property includes any regulable features, such as wetlands. The Corps then issues the jurisdictional determination explaining the agency's views on jurisdiction. That determination has significant legal and practical consequences.

Legally, the determination sets forth the agency's official view of whether a given property is subject to the Clean Water Act.

Practically speaking, the jurisdictional determination effectively compels property owners to go through an arduous permit process if they hope to make use of their land. The process can take several years and hundreds of thousands of dollars in consultant and other fees. Yet it provides no guarantee that the property owner will be able to do what he or she wants.

Given these impacts, a property owner should be able to challenge a jurisdictional determination in court.

But the lower courts have split on the issue. The most recent decision is the 8th Circuit's in Hawkes. There, the plaintiffs wanted to acquire land for their peat mining business. The land has some wetland characteristics, but it is miles away from the nearest navigable water. Nevertheless, the Corps issued a jurisdictional determination claiming that the land is subject to the Clean Water Act.

The Hawkes plaintiffs sued the Corps to challenge the agency's assertion of jurisdiction. But the district court, illogically, ruled that the plaintiffs first need to apply for a permit before they can sue to establish that they don't need a permit. On appeal, the 8th Circuit reversed. It ruled that landowners should have the right to sue the Corps to contest a jurisdictional determination. The court's analysis highlights the many legal and practical consequences that a jurisdictional determination produces. It also notes that allowing judicial review is crucial because the Clean Water Act's scope is so difficult to determine.

Finding appealable

With the case now before the Supreme Court, the key legal issue is whether a jurisdictional determination constitutes a "final agency action" — i.e., an action that is so conclusive that it is ripe for appeal to the judiciary. And critical to that question is whether the determination has legal consequences. But the foregoing discussion makes the answer clear. A jurisdictional determination requires the property owner to obtain a permit before developing the land. And it puts the landowner on notice of the Corps' views, thereby increasing the landowner's potential liability.

The Supreme Court's decision to review the Hawkes case is especially significant given the Court's unanimous 2012 decision in another PLF case — Sackett v. EPA. There, the High Court ruled that a property owner has the right to sue EPA when that agency issues a "compliance order" under the Clean Water Act.

Similar cases

The similarities between the agency actions in Hawkes and Sackett are clear. Both produce significant legal and practical consequences for property owners. Thus, the Supreme Court should rule that jurisdictional determinations, like compliance orders, merit judicial review.

No reasonable property owner is in favor of polluted waters and degraded habitats. But no reasonable federal agency should be in favor of depriving property owners of their day in court to contest the agency's jurisdiction. Allowing judicial review of jurisdictional determinations will help maintain a reasonable administration of our nation's environmental laws.

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