



Newsletter

The Voice of Independent Business in State Government

No expansion of sales tax **TOUGH STATE BUDGET PROCESS BEGINS**

Governor Doyle has proposed a \$62.7 billion state budget for the 2009-2011 biennium, a budget that actually reduces General Purpose Revenue spending by 5%. The budget would raise some taxes significantly. There is not, however, any expansion of the sales tax base.

Expansion of the sales tax base is the single biggest tax threat faced by the state's small business owners and farmers. WIB has lobbied vigorously for decades against adding the sales tax to business services and farm necessities. Independent business owners are not out of the woods yet, however. The budget still must go through the Joint Committee on Finance and both houses of the legislature and there will be tremendous pressure to find new tax revenue.

The budget bill has several tax increases. \$311.8 million would be raised in the biennium through a new top personal income tax rate of 7.75% for individuals earning \$225,000 and couples earning \$300,000. The capitol gains exclusion would be cut from 60% to 40%, gaining \$95 million. The cigarette tax would be bumped 75 cents a package, adding \$290 million. A new tax on oil company profits would bring in \$272 million. "Combined reporting" on the tax liability of multi-state corporations is part of the separate budget repair bill for the 2007-2009 biennium.

HOW THE BUDGET PROCESS WORKS

Everything that would spend General Purpose Revenue must be in the state budget bill at the end of the legislative process. The bill is now with the legislature's Joint Committee on Finance which will hold hearings around the state. That process allows a tremendous amount of public input. Citizens testify on any section of the bill.. WIB attends every hearing to get an understanding of what WIB members and the public are saying and what the legislators are hearing. WIB's website, WWW.WIBIZ.ORG will post the hearing schedule as soon as it is released.

After the Finance Committee, made up of 12 majority Democrats and 4 minority Republicans, reports out the budget bill in late May the bill goes to both houses for further action. It can be amended significantly during that process. Legislative leaders hope to pass the bill before June 30th so the new tax revenue and projected program cuts can take place for all or most of the first year of the biennium.

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UI FUND IN CRISIS

Wisconsin's Unemployment Insurance Fund is in crisis and state employers are going to pay for it. UI leaders have presided over years of benefit payouts that have exceeded tax revenue income and the fund has gone from a balance of over \$1.8 billion eight years ago to being dead broke today. Owners of independent businesses must pay close attention as the crisis leads to higher UI taxes and the inevitable battle between Big Business and small business, a battle that accompanies every UI Fund crisis.

State officials say that UI benefits have exceeded employer contributions every year since 1996. The fund balance increased between 1996-2000 because of interest earned. The balance has declined every year since 2000 as benefit payouts exceeded tax revenue income and earned interest.

The UI fund was expected to run out of money to pay benefits at some point in February, 2009. The December 31st balance was \$222 million and that balance was declining rapidly. The state fund must borrow from the federal government when it has no cash to pay benefits. The UI annual report projects borrowing up to \$400 million to cover benefits in February, March and April. First quarter revenues, expected in late April, will allow the state to pay back the feds. But the state expects to borrow every three months and if the deep recession continues it seems likely the state will not be able to pay back the federal loans every quarter. That means the feds will charge interest and Wisconsin employers will be assessed to pay back that interest.

"2009 will be a particularly difficult year for the (UI) Fund" in spite of higher taxes being levied in 2009, says the report submitted to the governor and legislature by Roberta Gassman, secretary of the Department of Workforce Development.

State law requires the UI system to move to a higher tax table if the UI Reserve Fund balance is below \$300 million on the preceding June 30th. "The Reserve Fund balance will surely be below \$300 million on June 30, 2009" the DWD report says. Employers will face higher UI taxes in 2010 for the second year in a row. Another increase is set for 2011 and employers could face special assessments to pay back the federal government loans plus interest that seems likely to be accrued.

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WHAT ELSE?

A large amount of the state's deficit will be covered by one-time economic stimulus funds from the federal government. The use of one-time funding is what got Wisconsin in our deep fiscal hole. This budget does little to correct that problem.

State employees, who have had very modest wage increases in recent years, would see no increase for two years under the Doyle budget. The "qualified economic offer" process that has restrained growth in teacher union contracts in recent years would be eliminated.

A statewide ban on smoking in public places would go into effect two months after the budget is signed into law.

The BadgerChoice program will be delayed and expansion of FamilyCare for ailing elderly will be slowed.

A new refundable jobs tax benefit program would provide up to a 10% tax credit on a portion of the wages for new employees hired by expanding businesses.

The initial reaction at the State Capitol was, as expected, very negative. No one likes budget bills developed in difficult economic times. It is more fun to develop budgets in prosperous times and the governor's proposal clearly suggests the Doyle Administration does not expect an economic revival in 2009.

The budget process is likely to be contentious but not likely to last into late summer or early autumn. WIB's website, WWW.WIBIZ.ORG will feature regular updates on the process with a strong emphasis on how developments affect owners of independent businesses. ■

GAS MARKUP LAW "UNCONSTITUTIONAL"

Wisconsin's minimum markup for gasoline has been ruled unconstitutional by a federal court. District Judge Rudolph Randa in Milwaukee ruled that the Unfair Sales Act petroleum provisions violate the Sherman Anti-Trust Act's provisions on restraint of trade.

The Unfair Sales Act requires a 6% retail markup over cost or a 9.18% markup over the average wholesale price of gasoline. The law's intent is to keep large companies from using predatory pricing to drive small dealers out of business.

The ruling applies only to gasoline. The minimum markup law remains in effect for alcohol and most other products sold at retail. WIB members have had decidedly mixed feelings about the law in recent years, some complaining that it is a dinosaur that has led to higher-than-necessary gas prices. Others have maintained that the law allows them to stay in business by keeping giants such as Wal-Mart from selling below cost.

Some legislators have tried for many years to revoke the Unfair Sales Act but that campaign has never gotten enough support from lawmakers. The new federal court ruling is likely to renew legislative efforts aimed at repeal and could cause new lawsuits aimed at overturning the entire law or the law as it applies to specific products. ■

► *UI Fund In Crisis continued from page 1*

(Editor's note: the entire *FINANCIAL OUTLOOK : Wisconsin Unemployment Insurance Program* 2009 report can be found on WIB's website, WWW.WIBIZ.ORG.)

The DWD report projects huge negative UI Fund balances through 2013 under current law. The balances would exceed \$1.2 billion at the end of 2010 and 2011, according to the projections.

Unemployment Insurance tax and benefit policies are generally set by the Unemployment Insurance Advisory Council, a committee of five management and five labor leaders. Their negotiated recommendations go to the legislature where they are usually, but not always, rubber stamped. During the 1983 UI crisis the legislature dumped the UIAC, used bipartisan legislative leadership as an ad hoc council and developed UI strategies that saved the system. The 1983 crisis also, however, brought on the highest UI taxes in Wisconsin history and history appears to be repeating itself.

Although no one could have forecast the devastating recession that has hit the nation, the crisis facing Wisconsin's UI Fund was easier to forecast. When benefit outgo exceeded tax and interest income year after year, the UI Fund was destined to collapse. That collapse has arrived.

One management UI leader said, "We're not in crisis." Yes, we are. The crisis is real and the costs to Wisconsin employers will be high. WIB will be fighting to make certain that small businesses are not made to bear an unfair portion of the cost to fix the UI system. ■

JUDGE STALLS SICK LEAVE ORDINANCE

Enforcement of the City of Milwaukee's controversial paid sick leave ordinance has been temporarily blocked by a judge. Saying "There's a dead certainty that the case will go to the Court of Appeals and (state) Supreme Court," Circuit Judge Thomas Cooper granted a temporary injunction to opponents of the ordinance and scheduled a hearing for a permanent injunction for May 11.

The paid sick leave ordinance was supported by 69% of Milwaukee voters in the November referendum. It was put on the ballot through "direct legislation" with supporters getting sufficient petitions to put it on the ballot and bypass the Milwaukee Common Council and mayor.

The ordinance would require employers to provide up to nine days of paid sick leave for workers at larger businesses and five for small business employees. Opposition to the ordinance is led by the Metropolitan Milwaukee Association of Commerce, which claims the ordinance wording is vague and it will be expensive for businesses to implement.

Milwaukee would be only the third city in the nation to require mandatory paid employee sick leave. San Francisco and Washington, D.C. have the requirement. The Milwaukee case is being watched closely statewide. Business leaders fear that if the Milwaukee ordinance is upheld worker groups in other communities will seek to spread the concept statewide. ■

ONE BUSINESS OWNER CAN MAKE A DIFFERENCE!

The 2009 state budget crisis is not something unprecedented. Indeed, it is shockingly similar to a 1983 crisis.

In 1983 the state was deep in the second of back-to-back recessions. Democrats controlled both houses of the legislature and a new Democratic governor, Tony Earl, had just moved into the East Wing. The state was broke. The budget was busted. Leaders in both houses wanted to expand the sales tax base to business services and farm necessities to get new state revenue. And a WIB member rode to the rescue!

The Jean Wells story is a classic example of the important role one business owner can play in a difficult legislative battle. The story illustrates perfectly why every single WIB member is vital and can play a huge role in the campaign to preserve and protect independent businesses and farms in Wisconsin.

Jean Wells owned a small company in Janesville called Heirloom Clock. Jean understood that costs from expansion of the sales tax base would, most certainly, put Heirloom Clock out of business. Jean's state senator, Senator Tim Cullen, was majority leader of the Senate. Tom Loftus of Sun Prairie was speaker of the Assembly. Cullen and Loftus called a meeting of concerned groups for May 12, 1983 in a parlor at the Inn on the Park across from the Capitol. Jean Wells agreed to attend that meeting with WIB's Wayne Corey.

The rest is history. Jean and Wayne met with Cullen before the event and Cullen agreed to call on Jean, the only non-lobbyist in attendance, during the discussion. Jean made her heartfelt points effectively as only a private business/farm owner can do. Cullen heard the message from his constituent and stopped the plan to expand the sales tax base. Jean Wells was a hero in 1983 to every business and farm owner!

One WIB member changed the course of tax history in Wisconsin because she stood up for every business and farm owner in the most important meeting of 1983. She was not glib or prominent but she was very, very effective. Every WIB member is absolutely essential to the cause. That was true in 1983 and remains true 26 years later! ■

SENATE PASSES MINIMUM WAGE HIKE

The Wisconsin Senate has voted to raise the state's minimum wage by 17%. The Senate approved Senate Bill 1 by 18-14. The vote was along party lines, Democrats supporting the bill and Republicans opposed. If approved by the Assembly and signed into law by Governor Doyle the state minimum wage will become \$7.60 an hour effective September 1. The bill also indexes the minimum wage to the national inflation rate, meaning annual increases will be inevitable.

The state minimum wage usually covers only workers at very small businesses but because the state wage will be higher than the federal minimum wage if SB 1 becomes law, all workers in the state will be covered. The federal minimum wage is now \$6.55 and goes to \$7.25 July 24. The current Wisconsin minimum wage is \$6.50 an hour.

Assembly Speaker Michael Sheridan (D-Janesville) says the bill will be considered in that house.

Wisconsin Independent Businesses opposes SB 1. During a serious recession a large hike in the minimum wage is certain to cause some employers to delay hiring decisions because of the added costs. ■

REFORMING INDIVIDUAL HEALTH INSURANCE

Senator Kathleen Vinehout (D-Alma), a legislative leader on health insurance reform, wants to provide new protections for Wisconsinites forced to buy health insurance in the "non-group" or individual insurance market. Senator Vinehout is introducing a series of bills offering protections for owners of the smallest of small businesses, farmers and also consumers in the small group market.

Senator Vinehout's bills will:

Limit the pre-existing condition exclusion to one year. It is currently two years. When a consumer buys a new individual health insurance policy any claim during the "pre-existing condition exclusion" can be investigated as possibly stemming from a "pre-existing condition" that negates the claim. Reducing that period to one year is obviously to the advantage of the policy holder;



Senator Kathleen Vinehout of Alma discusses health care reform proposals with WIB's Wayne Corey.

Limit the pre-existing condition "look back" to one year. There currently is no limit on how far back an insurance carrier can investigate. Insurance carriers "look back" at health history before deciding whether to sell a policy and at what price.

Replace "prudent person" standards to "objective standard" for determining if a pre-existing condition was present when a consumer buys an individual health insurance policy. The "prudent person" standard, according to Senator Vinehout, "includes conditions that were never diagnosed but which exhibited symptoms for which an ordinary prudent person would have sought medical advice, care or treatment." The "objective standard" allows consideration of only those conditions for which a consumer actually received medical advice, diagnosis or treatment prior to purchasing the policy.

Allow a consumer to change the coverage terms of a policy at the time of renewal with the same carrier without any additional underwriting or new pre-existing condition exclusion.

In the group and individual market Senator Vinehout proposes to require policies to cover unmarried adult children until age 27. In addition, under current law if a person loses group coverage but obtains new group coverage within 63 days they can apply their creditable pre-existing condition coverage to the 12 month exclusion period allowed by law. Senator Vinehout would change that to obtaining new group coverage within 90 days, a change that will benefit many small employers and employees.

"These proposed reforms answer problems posed by many individual business and farm owners. WIB strongly supports this effort and we are grateful to Senator Vinehout for her leadership," said Wayne Corey, WIB executive director. ■



Robert E. Gregg
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Robert E. Gregg is a partner with the Boardman Law Firm of Madison. He has been associated with WIB for 25+ years. Boardman attorney Jennifer Mirus also contributed to this report. Find more employment law updates at the WIB web site, WWW.WIBIZ.ORG. Click on LEGAL LINE. Contact Bob at rgregg@boardmanlawfirm.com.

Employer Right to Know Safety-Related Medical Information. A railroad engineer sued for disability discrimination after being discharged for refusal to provide complete medical information to his employer. Company policy required all employees on safety-sensitive jobs to report any prescription medications that might affect safe operations. The company learned that the employee had been taking more than one medication which caused drowsiness and lack of concentration. He failed a safety test during the time he was taking these medications. He neglected to list any of the drugs on standard safety forms. The company fired him for this failure to report. The case was dismissed because there was no discrimination. All employees were required to report medications that could affect safety. Safety is an important interest that warrants this limited medical information inquiry. All employees have an obligation to comply. *Kosmicki v. Burlington Northern and Santa Fe Railroad* (8th Cir. 2008).

Improper Use of Pre-employment Drug Test Violates ADA. A pre-employment test for illegal drugs does not come under the ADA's prohibition against pre-job-offer medical evaluation. However, in *Connelly v. First Personal Bank* (N.D. Ill., 2008), an applicant for a bank officer position was eliminated when the drug test revealed a prescription drug. Revealing an applicant's use of legal medications is pre-employment

"medical testing" and can violate the ADA. In the pre-employment phase, the testing lab should not have revealed the presence of a prescription drug, and the bank should not have considered it. After one is hired, the employer has latitude to get medical fitness for duty information, including effects of prescription drugs. Further, the ADA's medical testing rules say any person subjected to an improper process can bring a case.

Good Computer Use Policy Saves Company from Liability. An employee used the company computer and company cell phone to harass a couple with whom he had a personal dispute. He used the computer to find information on the victims and to place false ads, orders and magazine subscriptions in their names and to make false statements, pretending to be them. The employee was fired for inappropriate use of company time and the electronic system. The victims sued the ex-employee and the company. The Wisconsin Court of Appeals dismissed the company from the case because it had good computer usage policies which clearly prohibited such activities. All employees were required to verify receipt and understanding of the policies. The company periodically reemphasized the policies. It had done everything a reasonable employer should do to prevent abuse. Therefore, the company was not liable for the employee's misuse of the equipment. *Sigler v. Kobiasky* (Wis. App., 2008).

\$3.75 Million To Harassed Auto Parts Warehouse Worker. The direct supervisor of a new female employee in an auto parts warehouse began sexually-harassing behaviors, including graphic sexual comments, obscene gestures and slapping her on the buttocks with his belt. She and other line supervisors reported this to the warehouse manager, who did nothing. She and others then complained to Human Resources, and no action was taken. The jury awarded \$3.75 million under the Missouri Equal Rights Law. The State Appellate Court ruled that the award was more than justified due to "a workplace rife with sexual harassment" and the evidence of "indifference" to employees' welfare; instead of acting to address the problem, "the company chose to ignore, hide and trivialize the situation." *Lynn v. TNT Logistics N. America, Inc.* (Ct. App., MO, 2008). ■

If you have questions about these issues or any workplace problem, call the WIB toll-free member HOTLINE at 800-362-9644

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