

# **INDEPENDENT BUSINESS ASSOCIATION**

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## **SMALL BUSINESS REPORT SMALL BUSINESS REPORT**

### **IBA SMALL BUSINESS REPORT - April 15, 2011**

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# IBA SMALL BUSINESS REPORT



## April 15, 2011

### Your State Representatives Need To Hear From YOU NOW!

Your State Representatives need to hear from YOU now about pending state industrial insurance reform legislation that will be a **very big deal** to YOU now and into the future, as is explained below. **This legislation MUST pass before next Friday, April 22<sup>nd</sup>** for you to receive these important benefits.

**SB 5566**, that will make major reforms to the state's industrial insurance program, passed the Senate last month as we reported. SB 5566 makes one VERY BIG change in the state's industrial insurance system that is projected to save employers and employees up to \$1.2 billion over the next 2 years. It contains a provision to allow injured workers who are eligible for lifetime pension benefits to voluntarily settle their state industrial insurance claim with a cash payment rather than receive monthly payments possibly for the rest of their life. Without the passage of SB 5566, you can expect another double digit state industrial insurance rate increase in 2012 approaching 20+% given the current financial condition of the state's industrial insurance program. More about that below.

### Sample Message To Your State Representatives

Here is a sample message your state Representatives need to hear from YOU: *Please support the passage of SB 5566 to reform the state's indus-*

*trial insurance program. WE are a small business and are struggling to survive in this current economy. There is no way we can afford another double digit state industrial insurance rate increase in 2012. SB 5566 allows workers an opportunity to voluntarily settle their state industrial insurance claim with protections against unfair settlements and does not force them to settle.*

### How To Contact Your State Representatives

Call **1-800-562-6000** and ask the legislative attendant to deliver your message to your State Representatives. They will help you identify who your state representatives are, next they will take your message, and then deliver your message directly to your state representatives.

### The Background and Politics On SB 5566

**SB 5566** is currently stalled in the House of Representatives because House Speaker Frank Chopp is siding with the state's labor unions and trial lawyers who oppose the passage of SB 5566. The labor unions and the trial lawyers claim that SB 5566 is unfair to injured workers because if they settle their claim for state industrial insurance benefits with the state of Washington it will effectively be a benefit cut to those injured workers. We will explain the facts that show this is a good proposal and why the passage of SB 5566 will benefit you, below.

Now, some very BIG politics come

into play. Stay with us here, this will get a little complicated. Legislation that failed to pass the "opposite chamber" by 5pm on April 12, 2011, is technically dead. SB 5566 did not pass the House of Representatives by April 12, 2012. However, the Senate has included passage of SB 5566 in its bipartisan budget proposal that will likely pass the Senate very soon. By including SB 5566 in the Senate budget proposal, SB 5566 then becomes "necessary to implement the budget" and thus SB 5566 is still alive. But how do we force a vote on SB 5566 when the leader of the House of Representatives opposes the passage of SB 5566?. One way is to press for a procedural vote to bring SB 5566 to the floor of the House of Representatives and hope enough Democrats in the House join with Republicans to make this happen. Such a vote by the House Democrats is like a mutiny against their leader. This was tried on April 14th and unfortunately failed on a vote of 43 to 54—along party lines. Democrats who are leaning in support of SB 5566 did not vote for it because of the other big issues, like the state budget yet to be completed, and the concern that forcing a vote on SB 5566 at this time would greatly complicate party unity in passing the final state budget. Another way is by stopping key legislation that the Legislature must pass to fund its Capital Budget, the budget that pays for state construction projects. The Capital Budget requires the passage of legislation that authorizes the state to issue bonds to

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pay for the construction projects in the Capital Budget. It takes a 60% majority vote of the Legislature to approve any state bonding legislation. It requires all the Democrats and some of the Republicans in the House of Representatives to approve the state bonding legislation. At this time, there are no Republicans in the House of Representatives who will vote for the state bonding legislation before the House passes SB 5566. There may be some House Democrats who will not vote for the bonding legislation before the House passes SB 5566. That is why your calls to your Representatives are so IMPORTANT, so they know you want them to fight for the passage of SB 5566 by stopping the passage of the state's Capital Budget legislation via the bonding legislation.

## Background

Now for the status of Washington state's industrial insurance program:

- In a 2009 State Auditor's report of the state's industrial insurance program found the costs of the program were far in excess of its premium revenues. The Auditor stated:
  - A 74.4 percent chance of insolvency in the Accident Fund (that pays for temporary and permanent pension benefits) within two years, 81.4 percent within three years and 89.5 percent within five years.
  - A 3.9 percent probability of insolvency in the Medical Aid Fund (that pays for state industrial insurance medical benefits) in two years, 12.9 percent within three years and 26.5 percent within five years.
- According to the Department of Labor and Industries and despite a 16% rate hike for 2010, the Supplemental Pension Fund ran out of

money in April, 2010 forcing L&I to borrow millions that must be repaid with interest. Quarterly shortfalls will continue into 2011.

- Outside consultants show it currently costs L&I \$1.81 to run the system for every \$1.00 of premium it collects.
- L&I financial documents state the "best estimate is a 33% rate increase would be necessary for the Accident Fund to break even".
- In Washington, the average injured worker with a time-loss claim misses 274 days of work – more than twice the average of most other states. Oregon's average time loss rate is about 70 days.
- Washington State has the highest pension rate in the nation. More than 50% of injured workers are likely to receive a pension if they've been off work more than two years. Pension rates are up more than 300% since 1996.

## Former L&I Director Speaks Out In Support Of SB 5566

Former L&I Director Gary Weeks recently sent a letter to Speaker Chopp and other members of the Legislature. His letter was very clear, that the voluntary settlement provision in SB 5566 is something former Director Weeks strongly supports to right the Washington State industrial insurance system. Mr. Weeks explains that after being Director for the Department of Labor and Industries, he became Director of Oregon's Department of Consumer and Business Services (DCBS), which oversees Oregon's workers'

compensation system. He goes on to say in his letter:

- "In Oregon, I had the opportunity to direct DCBS in the critical few years after passage of that state's landmark 1990 reforms. A central piece of the labor- and business-backed package was voluntary settlement agreements with strong sideboards for protection of the injured worker. Voluntary settlement agreements, sometimes called "compromise & release," are an important strategy for controlling costs associated with long term disability and pension claims." **Note:** the phrase "labor – and business – backed package (legislation) Labor unions in Oregon supported the same provisions contained in SB 5566
- One of the primary reasons that Oregon has been able to hold Workers Compensation rates constant for over 20 years is the voluntary settlement process. It is important to understand that this change can occur while still providing protection for the worker from an unfair or unjust settlement.
- If passed in Washington, I do believe the voluntary settlement program contained in ESB 5566 would be a substantial improvement to Washington's system, providing a flexible option for workers' benefits while allowing the system another tool to address the complex claims that primarily drive its cost structure and premium rates.

You can view former Director Weeks letter at

[www.ibaw.net/weeksltr.pdf](http://www.ibaw.net/weeksltr.pdf)

## Protections in SB 5566 To Protect Injured

## Workers

Voluntary settlement agreements must be submitted to, and approved by, the independent state Board of Industrial Insurance Appeals (BIIA). Any party may reject a settlement at any time before the settlement become final. Settlements must be approved if the BIIA finds that the parties have entered into the agreement knowingly and willingly. If the injured worker is not represented by an attorney, a settlement officer at the BIIA must review the settlement agreement, explain to the worker the benefits generally available, ensure the worker has an adequate understanding of the proposal and its consequences, and can approve the settlement only if the BIIA finds it is in the best interest of the worker. The legislation provides factors for the settlement officer to consider when making the best interest determination.

## State Budget – The Last Issue For The Legislature

The last piece of business the 2011 Legislature must complete is to pass a state budget for the state's continued operations over the next two years. "In my nearly 40 years representing small businesses in Olympia, I have never seen a bigger challenge for the Legislature," explained IBA's Gary Smith. "The challenge is historic due to the poor economy and the result is something that almost no one will like, but it must be done." Below is what is happening and how it might affect you.

The state must find nearly \$5.1 billion in spending cuts to balance the state's budget over the next two years. They must cut about 17% of their spending as compared to the previous two year budget. Below is how this is currently going. With the passage of I-1053 last

November, tax increases are not an option

First, Governor Gregoire proposed a budget in early January that she said she hates. It proposed to cut \$4.6 billion in state spending.

In late March, the House of Representatives proposed its version of the budget. Any budget must get 50 votes to pass the House of Representatives and 25 to pass the Senate. That is really the key dynamic, finding enough votes to pass a budget by both the House of Representative and the Senate, and that will also get the Governor's signature.

The House of Representatives and the Senate have taken two very different approaches.

In the House of Representatives the House Democrats developed their own version of the budget in late March. Since the Democrats developed their budget without any discussions with Republicans, the House Republican are not providing any votes to pass the Democrat's budget. The House Democrat budget passed the House by a vote of 53-43.

The Senate Democrats worked with the Senate Republicans to develop the Senate's bi-partisan budget proposal. Now the budget is in the Senate after passing the House. The Senate will replace the House budget with the Senate's bi-partisan budget and send it back to the House for approval or else it will go to a conference committee for the House and the Senate to work out a compromise budget both can agree with.

The big question is, will they get an agreed to budget passed before April 24th when the 2011 regular legislative session is scheduled to end. That is the goal at this time given the recent state

revenue report that March revenues were slightly higher than previously projected (see page 4 of this Report for more on this). But, given there are very few days left to get this done, everything must go perfectly for them to get done by April 24th.

Below are some of the major difference between what the House has passed and what the Senate is proposing:

- House \$4.4 billion in cuts
- Senate \$4.8 billion in cuts
- Senate \$250 million more in teacher salary reductions than the House
- House assumes \$300 million in new revenue from privatizing state liquor distribution, Senate does not
- Senate \$180 million in cuts to Disability Lifeline (welfare program) as compared to the House
- Both have significant cuts in funding of Higher Education thus reducing in-state students admissions, the Senate cuts a total of \$530 million
- State employee furlough days – more furlough days in the Senate proposed budget than in the House proposal.
- Senate stops automatic increases to state employee retirement plans to save \$361 million
- Senate reduces \$212 million from kindergarten through 4th grade class-size programs.
- Senate saves \$177 million from cutting state employee salaries by 3 percent.

- Senate cuts the Basic Health Plan for low income citizens by \$122 million by reducing enrollment by 34,000 people in 2013. The House does not make cuts to the Basic Health Plan hoping for federal funds to pay for this program.
- Senate saves about \$1.2 billion by not funding two education initiatives that increase teacher pay and reduce classroom sizes. The House only cuts \$680 million for one education initiative.

## Governor Signs First Industrial Insurance Reforms

On March 11, 2011, Governor Gregoire signed SB 5801 that requires the Department of Labor and Industries to establish a health care provider network to treat injured workers. Providers who meet minimum standards set by L&I are accepted into the network and must agree to follow L&I evidence-based coverage decisions, treatment guidelines, and policies. Providers who follow L&I established best practice standards can qualify for a second tier within the network.

This legislation is projected to save the state's industrial insurance program about \$250 million over six years by providing the most cost effective and most appropriate medical care for injured workers. Currently, physicians recommend treatment of injured workers and L&I either approves or authorizes different treatment options. The concept of this legislation is that the Department pre-sets the most cost effective and appropriate treatment approach for the most common worker injuries so that physicians use those treatments

In addition, L&I must establish additional Centers of Occupational Health and Education (COHEs), with a goal of extending access to all injured workers by December 2015. COHE's are designed to promote disability prevention through helping coordinate health services and return to work activities. L&I

can certify or decertify COHEs based on criteria listed in the legislation.

## Slightly Better State Economic News

The state revenue collections for March are on target with its previous March forecast reported by the state's Economic and Revenue Forecast Council on April 11, 2011. This is one of the first months since the state went into the current recession for the state to meet or beat the state's projected revenue forecast. This could signal the end of the state's continued decline into the current recession and the real beginning of the economic recovery. The latest revenue was \$5.1 million and (0.6%) higher than expected in our March forecast. State revenues in this latest reporting period were 10.2% above the same period a year ago.

Dr. Raja, the state's Chief Economist and head of the state's Economic and Revenue Forecast Council, stated that, "the risks to the state's forecast continue to be high, including uncertainty about the Japanese economy and political unrest in the Middle East causing gas prices to spike."

Dr Raja went on to report that, the Washington economy has continued to recover, but slowly and hesitantly. However, geopolitical developments pose new threats to the recovery. First, we had the volatility in oil prices because of political unrest in the Middle East, then we had the tragedy in Japan, the world's third largest economy, and one of the state's leading trade partners. Even without these unfortunate foreign developments, the state's economy faced considerable headwinds from slow job growth and a sluggish housing market. The state's economy has added 7,500 net new jobs in the last four months. The state's private sector did better, adding 8,300 jobs in the November through February period. The manufacturing sector showed strong growth during the last four months, adding 3,200 jobs of which 2,400 were in the aerospace industry.

Construction remains weak, shedding 3,400 net jobs, mostly in nonresidential construction. Private services-producing employment grew by 8,300 in the last three months, led by an increase of 3,800 jobs in retail trade. In the public sector, the federal government added 300 jobs but state and local government employment fell by 1,100 jobs. The unemployment rate edged down to 9.1% in February 2011 from 9.2% in January and is down nearly a full percentage point from 10.0% a year ago.

## More On The Economy

There are some broader signs of hope for a strengthening economy. With the unrest in Libya and the tragedies in Japan, the stock market fell at first but has recovered to nearly the same level it was at before either of these events occurred. On March 15, the Dow Jones Industrials were at about 11,600, now they are at 12,341+ That is a notable recovery and demonstrates confidence in the U.S. economy. Given the recent events, the decline was far less than would be expected due to the basic strength of the economy.

The latest national jobs reports were more encouraging than they have been for many months with a notable growth in employment in February.

Both of these are encouraging and say our economy is headed in the right direction. Yes, there is a long way to go but we all need some positives when we can find them.

## 1099 Reporting Repeal— A Done Deal

Finally, after eight months of trying, the repeal of the 1099 reporting requirement included in the National Health Care Reform legislation was finally signed into law by President Obama on April

14, 2011. The 1099 reporting requirement would have required every business to send a 1099 report to every business they deal with whenever they spent \$600 or more with that business in the previous calendar year for either goods or services.

This repeal is a BIG victory for small businesses. President Obama has been unwilling to make any changes to his landmark National Health Care Reform legislation, and this is the first.

Thanks to all of you that made this possible. Those of you who called your members of Congress made the difference.

The repeal of the 1099 reporting provision passed the Senate earlier this month by a vote of 87-to-12. The U.S. House of Representatives passed the repeal measure in March on a bipartisan vote of 314-to-112.

The hold up on passing the repeal was how to pay for it. The repeal of the 1099 reporting provision was estimated to cost the U.S. Treasury \$22 billion in uncollected taxes.

IBA argued that the 1099 reporting requirement would have been a huge regulatory burden on small businesses and resulted in more than 30 million new 1099 reporting forms flooding the IRS each year, not to mention the accounting hassle and the fact that whenever there was a wrong EIN on a 1099 reporting form, the recipient of the 1099 could find themselves in a fight with the IRS.

Good bye and good riddance 1099 reporting law!

## Washington State Preparing For Implementation Of National Health Care Reform Law

The Washington State Health Care Authority has applied for a federal grant to prepare for the implementation of the National Health Care Reform legislation in Washington State.

This is of BIG concern to IBA and we expressed our view to the Legislature earlier this year. The National Health Care Reform law is not yet ready for implementation at this time. There are many unknowns still to be decided by the federal government including, whether the law is even constitutional or not.

Access to affordable health care is extremely challenging for most small businesses.

SB 5445 is being proposed to establish an "exchange" as required by the national health care reform legislation. SB 5445 directs that the "exchange will be set up in accordance with the National Health Care Reform legislation.

The National Health Care Reform requires an "exchange" in every state to create a more organized and competitive market for health insurance by offering a choice of plans, establishing common rules regarding the offering and pricing of insurance, and providing information to help consumers better understand the options available to them. Effectively an "exchange" is a large state-run insurance brokerage that will also function like a regulator in some cases.

For small businesses, the National Health care Reform requires each "exchange" to offer health insurance to any small business, but premiums in most states can vary within prescribed limits based on the health status of workers. Many health reform proposals would require insurers to accept all applicants without consideration of the applicant's health, and would further prohibit or significantly limit premium variation related to health status.

The big issue now before the state of Washington is how the "exchange" in Washington State will operate along side of the private insurance industry and how the private insurance industry will be able to co-exist with the exchange.

Many meetings and much work will go on in the coming months as this new "exchange" board attempts to develop an exchange that is required to be in operation by 1/1/ 2014.

IBA will keep you posted.

## More Health Care Legislation Affecting Small Businesses

HB 1560 revises the state's Health Insurance Pool (HIP) that was originally created by the Legislature in 2007 for the purpose of offering subsidized health insurance to lower income employees of small businesses that did not otherwise offer health insurance. The HIP has so far proven to be relatively unsuccessful and HB 1560 effectively attempts to revive and renew the HIP. Washington State has receive funding from the federal government to try and help subsidize the HIP and make it operational.

IBA will keep you posted as the HIP again attempts to provide health care to lower income employees of small businesses.

## Health Insurance What Do YOU Want???

IBA needs your input on what you want in the way of health insurance for your small business. Please help us by completing the IBA Small Business Directive on page 6 of this IBA Small Business Report. You can also complete it via the Internet at



[www.ibaw.net/directive](http://www.ibaw.net/directive) This survey will be kept strictly confidential by IBA and no one will see your individual responses. Your input is vital on this extremely important issue as IBA represents your interests on this issue.

## Last Call For Tax Amnesty!

You can get a waiver on penalties and interest on past due state business taxes you owe, if you act IMMEDIATELY: The waiver applies to past due that were due taxes before February 1, 2011 and include:

- State business and occupation (B&O) tax
- State public utility tax
- State and local sales and use tax including:
- General retail sales and use taxes
- Rental car taxes
- King County food and beverage tax
- Additional sales and use tax on motor vehicle sales/leases
- Lodging taxes, but not including tourism promotion area lodging charges

To utilize this waiver, you must:

- Submit an application and all tax returns for which you are requesting a waiver by **April 18, 2011**. You can access an application via the Internet at: [www.dor.wa.gov/Docs/Apps/App\\_instr\\_Amnesty\\_final.pdf](http://www.dor.wa.gov/Docs/Apps/App_instr_Amnesty_final.pdf) or by calling **1-360-902-7171**
- After you submit your application, you will be notified in writing by the Department.
- You must pay all of the taxes due by **April 30, 2011**. If you fail to pay the past due taxes by that time, You will still be liable for penalties and interest as if you had not been a part of the pro-

gram.

- Even businesses that are not registered with the Department of Revenue can register now, file tax returns, and participate in this program if that business registers immediately. They can register via the Internet at : <http://www.dol.wa.gov/business/file.html?homebox> and they must still fill out the tax waiver form application as stated above.

## Consumers, Contractor and Retailers — Warning Don't Get Sued or Stuck Paying Taxes For Your Contractor—How To Protect Yourself

You must make sure your contractor or subcontractor are paying their taxes or YOU can get stuck paying them. Unfortunately, there are thousands of contractors out there right now who are behind on paying their taxes.

Under state law, if you, as a consumer, retailer or contractor, hire a contractor who is not paying his or her state industrial insurance premiums, or paying sales taxes, those taxing agencies can come back after you for the taxes due.

It gets **WORSE**. If someone is injured on the job site and the contractor you hire is not paying their state industrial insurance, the injured worker can sue you for their injury, medical costs and lost wages because you hired the non-tax-paying contractor. This situation is very real in the construction industry and more limited in other industries.

YOU can protect yourself in most cases if you do a little checking on a contractor

before your hire him/her. IBA has prepared a special Internet website to help you learn how to check on a contractor BEFORE you hire him/her and see if they are current on paying their state industrial insurance premiums and paying their state sales taxes and business taxes. This does take a few minutes but can save you hours of headaches and bundles of money by avoiding having to pay the taxes your contractor should have paid or getting sued by an injured worker.

You can access this special IBA Website at: [www.ibaw.net/contractorstatus.htm](http://www.ibaw.net/contractorstatus.htm)

## Get Motivated Seminar—FREE From IBA

YOU can attend the Get Motivated Seminar coming to Seattle and Kent on June 7th for FREE. IBA has arranged for 100 group tickets and is giving them to IBA Members for FREE, **first come first served**.

Get Motivated Seminars are a day of amazing people sharing ideas on how you can make your life better and more successful. The potential speakers at the Seattle seminar are:

- General Colin Powell**, retired
- Dan Rather**, former CBS News
- Laura Bush**, former First Lady
- Steve Forbes**, CEO Forbes, Inc.
- Howard Putman**, CEO Southwest Airlines
- Joe Montana**, former football star
- Brian Tracey**, Sales Expert
- Bill Cosby**,  
And potentially others.

To order FREE tickets from IBA, complete the enclosed IBA Small Business Directive in this IBA Small Business Report.

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# IBA Small Business Directive

**Click on the following link or go to the following Internet address to complete and send this IBA Small Business Directive via the Internet. [www.ibaw.net/directive](http://www.ibaw.net/directive)**

This survey starts with where your business now stands with respect to health insurance. IBA needs a baseline of what IBA members currently are doing with respect to health care so we know where we are starting from. This information will be kept confidential so no one will see what your individual situation is.

Do you currently have health insurance through your company for  yourself  some of your employees  all of your employees  we all have individual coverage currently. Mark all that apply.

Are some of your employees **not** covered by your company because of cost?  Yes  No

How much of the cost of your health insurance do your employees pay for? \_\_\_\_\_ percent

Some future health insurance items for you to provide us your opinion on:

What is most important to you in acquiring health insurance?

cost

coverage

maximizing value, considering cost and coverage

Are you comfortable with buying your health care coverage from a government entity that may act as an insurance broker or actually be your health insurer??

Yes  Possibly  No

How important is it to you that the private health insurance market remain in place if National Health Care Reform is implemented

Very Important  Somewhat Important  Not Important

How do you feel people with pre-existing health conditions should be provided insurance:

Require insurers to accept all applicants, regardless of health condition, this will increase the cost of health insurance for all who buy health insurance

Insure applicants with pre-existing health conditions through a government subsidized high-risk health insurance pool and have all taxpayers help subsidize these people (possibly based on income).

Other, please explain on a separate piece of paper and send to IBA or via e-mail at [iba@isomedia.com](mailto:iba@isomedia.com)

Please send any other thoughts you may have on health insurance for small businesses to IBA on a separate piece of paper and send to IBA or via or via e-mail at [iba@isomedia.com](mailto:iba@isomedia.com)

Yes, we would like \_\_\_\_\_ tickets to the Get Motivated seminar being held in Seattle on June 7, 2011.