

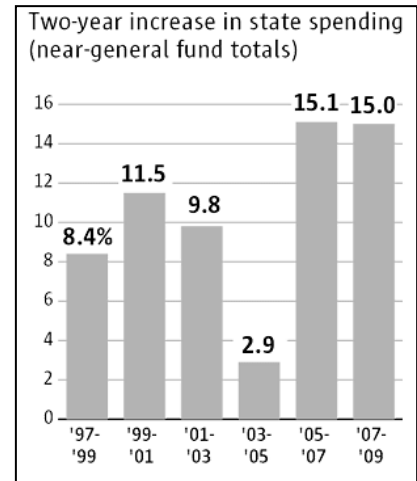
# Budget Policy



## Background:

Initiative 601, passed in 1993, initially put the brakes on state spending by tying growth in expenditures to the annual rate of inflation and population. New taxes would first need a two-thirds vote of the legislature and then a vote of the people if the tax increase caused spending to exceed the limit. In the years immediately following the passage of Initiative 601, the state had budgets that were more fiscally responsible.

The POG process was established in 2002 following the recession caused by the 9-11 terrorist attacks. POG was created to ensure that the operating budget does not spend more than it brings in through revenues while achieving the results that are most important to its citizens. The POG process is unique by departing from the traditional incremental budget approach that focuses on adjustments to existing spending levels. To be effective, government must only buy the services it can afford or is required to fund such as education.



In 2008, voters approved Initiative 960 that includes a requirement for a two-thirds majority vote for new taxes and fees proposed by the Legislature, a growing trend among states to provide greater accountability to voters.

## Problem:

The state operating budgets passed in recent years have raised warning signals for the business community. This comes despite progress made with the passage of the constitutional rainy day fund in 2007. Principles established by Initiative 601 have been ignored, or simply altered when convenient. Lawmakers have deviated from using the award winning Priorities of Government (POG) budget process. Government growth is at an all time high and spending exceeds revenues.

The economy is cyclical with its ups and downs. State revenues, which come from taxes on business owners and individuals, follow that same cycle. When tax revenues fall short of spending levels, past remedies were to increase taxes and cut programs regardless of which party was in charge. While the recently passed constitutional rainy day fund is a step in the right direction, more fiscal restraint is needed to ensure long-term sustainability for our state budget and a viable economy for employers and our state citizens to prosper in the future.

## Solution:

1. Establish the POG process as the standard method for development of state budgets.
2. Prioritize private sector jobs, economic development and a solid education system within state spending.
3. Close and resist the creation of loopholes used to circumvent the spirit of the state's expenditure limits.
4. Preserve the two-thirds vote requirement for increasing taxes and fees enacted by Initiative 960.
5. Limit spending and implement controls to provide long-term financial stability for our state.
6. Ensure a fiscally adequate state emergency reserve fund to buffer the effects of poor economic times or other financial emergencies.
7. Restrict the transfer of money from dedicated funds for reasons other than originally intended.
8. Extend the state expenditure limit to funds or accounts that are subject to allotment procedures under Chapter 43.88 RCW, except those accounts or funds used under GAAP for acquisition or funding of capital projects.

# Public Charter Schools

## Background:

Public charter schools are public elementary and secondary schools operating in tandem with existing conventional public schools. 4,600 charter schools already operate in 40 states and were first implemented in Minnesota in 1991. In addition to state funding, charter schools are eligible for federal start-up funds as well as all traditional federal allocations granted to public schools to meet student needs.

Charter schools operate under “charters” with local school districts or public universities that identify student achievement goals, performance expectations and accountability measures for both student and school performance. Charter schools are exempt from many state rules governing items such as length of school day or school year, district curriculum selections, and teacher selection and assignment. However, charter school students are expected to meet the same state learning standards as conventional public schools, including attainment of statewide learning objectives and passage of statewide achievement tests.

The Legislature passed charter school legislation in 2004, but before the legislation could take effect, a successful referendum campaign overturned the law.

The election of President Obama in 2008 has, however, substantially increased support for charter schools nationwide. President Obama promises to double current charter school funding (\$216 million) over four years, proposing a \$52 million increase for FY 2010 alone. More importantly, the \$4.3 BILLION "Race to the Top" ("RTTT") federal grants will likely be available only to states that authorize charter schools.

## Problem:

One of the criteria for receiving a federal grant under the RTTT program is whether a state puts any limits on the number of charter schools that can be created. Because Washington is one of only 10 states that does not currently allow any charter schools, the state is unlikely to receive any RTTT funding. This is unfortunate, because Washington might otherwise receive over \$200 MILLION under this federal grant program. In addition, by authorizing charter schools Washington’s existing alternative public schools and traditional public schools would have the option of accessing other federal grants as part of a school-district approved conversion to a charter school. In 2009, the US Department of Education awarded a total \$82 million in charter school grants to five states: AZ, LA, NM, TN & WI.

## Solution:

1. Authorize the creation of public charter schools by local school districts, state universities and other accountable public entities (state board of education, etc.), including conversion of existing public schools into public charter schools.
2. Grant public charter schools a high degree of financial and organizational autonomy so that they have the freedom to customize staff, curriculum and educational services to best meet their students needs.
3. Hold each public charter school strictly accountable for improving student performance, including compliance with the Education Reform Act of 1993, as amended.
4. Create a level playing field in terms of both funding and regulation on which public charter schools and conventional public schools can compete for the privilege of serving students and their families.

# Climate Change

## Background:

Climate change has become the number one environmental issue facing the world today. Rather than debating the science as to whether or to what degree human activity is contributing to global warming, the primary focus is on the development and implementation of coordinated federal, regional, state and even local policies aimed at reducing greenhouse gas emissions. In an effort to avoid duplicative and costly regulations that can harm Washington's competitiveness, AWB continues to support a single national program as the best approach to limiting greenhouse gas emissions. Among the essential components of such a program, is that it pre-empt similar state and regional regulations. Federal legislation progressing through Congress sets targets that reduce greenhouse gas emissions to 83% below 2005 levels by 2050, a goal that is more aggressive than the state's target of reducing emission levels to 50% below 1990 levels. The proposed federal reduction targets far exceed those established for Washington and will result in greater greenhouse gas emission reductions than those that will be attained by all existing and pending state climate change programs. In 2009, the Governor signed an Executive Order requiring the state to develop baseline emission estimates and to apportion among facilities emitting more than 25,000 metric tons or more a share of emission reductions necessary to meet Washington's statewide emission limits. The Executive Order also directs the Department of Ecology to propose strategies for achieving emission reductions from industries. Since pending federal legislation is unlikely to pre-empt most existing and potential state regulations, Washington policies may produce reduction requirements that will be additive to federal requirements, meaning the state will not only exceed its own emission reduction targets but also the more stringent federal reduction requirements. This outcome will place Washington at a significant competitive disadvantage.

## Problem:

Washington state's share of the world's greenhouse gas emissions is less than three tenths of one percent, providing a negligible impact on climate change. Nevertheless, our state agencies and the legislature have consistently been more aggressive than others in adopting climate related policies. For example, the state has adopted renewable energy standards, carbon dioxide mitigation requirements and emission performance standards for power generation. The state has also adopted vehicle emission standards, renewable fuel standards and energy efficiency and conservation standards for new buildings, placing the state well ahead of most others in adopting climate change policies. However, Washington policies, such as greenhouse gas emissions reporting, now need to be reconciled with emerging federal requirements and the state needs to obtain recognition of and reward businesses for their lower emission intensities, early actions and efficiencies they have achieved to reduce overall emissions, so that Washington business are not placed at an economic disadvantage.

## Solution:

1. Amend current statutes to direct and allow the Department of Ecology to adopt greenhouse gas reporting rules that are consistent with Federal EPA requirements and protect confidential business information.
2. Repeal the vehicle miles traveled policy and goals and replace them with more appropriate ones for the transportation sector that directly relates to transportation emissions and avoid adopting other restrictive policies and laws in areas that are only indirectly related to greenhouse gas emissions, such as land use and development.

# Digital Products Tax Policy



## Background:

The Legislature in 2007 passed ESHB 1981 (chapter 182, Laws of 2007) that creates a sales and use tax exemption for sales of electronically delivered standard financial information to investment management companies or financial institutions. Because of this limitation, SHB 1128 (chapter 522, Laws of 2007) recognized that a policy question existed concerning the sales and use taxation of all other electronically delivered products. A legislative committee with business participation was formed and delivered a report to the Legislature in December of 2008 for the 2009 session resulting in the passage of HB 2075.

In addition, Washington is a member of the Streamlined Sales and Use Tax Agreement (SSUTA) and on September 20, 2007, and effective January 1, 2008, SSUTA was amended to define three specified digital goods (digital audio-visual, digital audio, and digital books) as not being tangible personal property. Washington's law makes these changes and adds a definition for "digital automated services" that requires sales tax to be collected where previously it was not.

## Problem:

Significant questions have surfaced as the Department of Revenue (DOR) implements HB 2075, legislation adopted during the 2009 Legislative Session to clarify the taxability of digital products. Implementation is complicated given the diversity in the development and widespread adoption of software and information technology. The law became effective July 26, 2009 leaving little time for employers to understand their compliance obligation and to develop accounting systems to administer the collection of taxes. Before HB 2075, employers lacked certainty and clarity in Washington's tax code on digital products. The passage of HB 2075 provides a framework for businesses on digital products tax policy. This framework is in need of further guidance by the legislature to prevent unintended consequences and harm to business.

## Solution:

1. The legislature, not a regulatory agency must carefully consider the taxability of any digital product and determine whether and how to tax digital products. If an item is not specified in law then a presumption should exist that it is not taxable.
2. Expand amnesty relief to include periods where DOR has not provided specific guidance and where employers can demonstrate a good faith effort to implement systems to administer the collection of taxes.
3. Do no harm to data center location decisions by clarifying the tax sourcing provisions, web-hosting and business input exemptions.
4. Expand the exemption for on-line education used in workforce training curriculum.
5. Streamline the exemption process for business inputs and standardized information.
6. Address technical problems to ease administration and compliance.

Legislative Objective

# Economic Development & Infrastructure Financing

## Background:

The 2009 legislature renamed the Department of Community Economic Development and Trade to the Department of Commerce with a requirement that a proposed mission and vision be presented to the 2010 legislature for their action. The agency has held stakeholder meetings around the state to develop strategies that are designed to help pull Washington out of the recession and shape the future of the new Department of Commerce.

## Problem:

All across Washington, opportunities for development and redevelopment could invigorate stagnating economies by creating jobs, stimulating the redevelopment of blighted areas in the inner city, increasing affordable housing and promoting more efficient land use. Publicly owned infrastructure is a critical part of many economic vitality projects. Without it, private investment sometimes cannot move forward. Government must provide basic infrastructure such as water and sewer systems, sidewalks and streetlights, street and road improvements, parking and other basic services. Private sector investment is also necessary for other services such as telecommunications and internet access.

The Job Development Fund, Community Economic Revitalization Board, Local Infrastructure Financing Tool (LIFT) and many other programs exist to promote economic and infrastructure development. These are among more than 86 different programs administered by 12 different agencies, making our system very complex and difficult to access. The LIFT program is an initial step towards true tax increment financing. Greater coordination and additional investment need to occur to make sure that state and local infrastructure meet the demands for business growth.

## Solution:

In addition to addressing the specific policy goals of AWB that will improve the business climate of Washington, the 2010 legislature should:

1. Develop a strategic plan on state and local economic development and infrastructure needs including an analysis of existing programs and review of other state programs.
2. Support stable funding for existing programs with a proven record of success and eliminate those programs that are not successful.
3. Continue to expand the LIFT program to a full tax-increment-financing (TIF) program.
4. Improve the links at the state, local and federal levels for economic development and infrastructure financing tools.
5. Establish central clearinghouse for economic development and infrastructure financing tools with coordinated outreach and application assistance to employers.
6. Establish new and provide the broadest application of existing tax incentives to promote economic development and infrastructure expansion.

Legislative Objective

# Education & Training

## Background:

President Obama created the “Race to the Top” (RTTT) education reform grants to support states in their efforts to improve student achievement, close achievement gaps, improve graduation rates and ensure students are able to succeed in whatever career or educational choices they pursue beyond high school. In July 2009, the U.S. Department of Education published its proposed criteria for the RTTT grants. These proposed regulations require that all states applying for RTTT grants must take a systemic approach to education reform including implementation of world-class standards and assessments, enhancing teacher effectiveness, providing transparent data systems that support instruction, and turning around low-performing schools. Washington falls short in not allowing intervention in persistently struggling schools, not tying student performance to teacher evaluation and compensation, and not allowing innovative and flexible school designs, including expansion of charter schools, to better meet student needs. Separate from RTTT, Congress passed into law the Workforce Investment Act (WIA) of 1998 (PL 105-220) to prepare youth, dislocated workers, and adults for entry into the workforce, and to provide for the planning, implementation, and ongoing oversight of a comprehensive state workforce development system.

## Problem:

Washington State’s competitiveness rests on the cornerstone of a well-educated and technically competent workforce. The Federal government’s \$4.3 billion “Race to the Top” (RTTT) grant program, available only in 2010 to a select group of forward-looking States, provides a unique opportunity to improve Washington schools’ ability to prepare students for the rigors of the 21<sup>st</sup> Century. Unfortunately, our state’s current laws fall short of requirements necessary to compete for this one-time grant that could bring our state \$200-\$400 million in additional federal education dollars. To qualify for the RTTT funds, Washington will need to make critical, student-focused reforms such as implementing a statewide accountability program, including the use of achievement data in the evaluation of individual student and teacher performance, and joining 40 other states in authorizing the creation of public charter schools. Separate from RTTT, the workforce development and training system in Washington is very complex and access to workforce development programs for small business is difficult. Additional improvements are necessary in all levels of the educational system and in workforce training programs to ensure Washington maintains its edge in an ever-globally competitive environment.

## Solution:

1. Maintain and improve a high quality standards-based education system:
  - Ensure that students have meaningful opportunities to learn; require K-12 system accountability; and grant state education agencies authority to intervene in the persistently lowest performing schools.
  - Ensure school funding is tied to student achievement of established standards and school accountability, and provides schools with the flexibility they need to deliver high-quality, focused instruction.
  - Support quality K-12 education through standards-based curriculum, assessments and the Certificate of Academic Achievement. Support the State Board of Education’s plan to align graduation course requirements to reflect real-world expectations.
  - Allow the creation of public charter schools that will be held accountable to the same education standards as existing public schools.
  - Improve K-12 and higher education alignment. Significantly reduce the number of high school graduates that need remediation in reading, writing or math before beginning post-secondary education or vocation-specific training. Establish system to measure performance and focus resources.

- Ensure a commitment to improving mathematics and science education and achievement through increased rigor in course instruction, and accelerating recruitment, training and compensation strategies to address the shortage of qualified math and science teachers.
  - Promote the delivery of individual instruction consistent with state standards through use of electronic media and other innovative practices
  - Encourage career counseling and guidance programs that enhance student retention and adequately prepare graduates for post-secondary opportunities.
  - Take steps to ensure Washington is among the top ten states with the highest graduation rates.
2. Encourage policies that support additional enrollment of Washington students, at both state and independent institutions, in high demand programs that are critical to the state's economic growth.
- Maintain and improve General-fund State funding for high demand job skills, incumbent worker training and transferable skill sets programs and funding for higher education, and advance investments in research at the state's research universities. Eliminate those programs that are not successful or relevant.
3. Fill the needs of the workforce at all levels of skills.
- Support the enhancement of Career Technical Education (CTE) programs in middle schools and high schools to ensure alignment with economic development trends and higher education opportunities.
  - Support apprenticeship programs, skills centers, vocational programs, partnerships with educational institutions, and other innovative ways to provide more opportunities for students and increase the supply of skilled craft workers. Review existing programs to ensure they meet the needs of the workplace.
  - Authorize employer tax incentives for the employment of students in workforce training programs for high demand job skills such as math, science and health science.
  - Establish central clearinghouse for available workforce pool with coordinated outreach to employers. This should include private plant closures, lay-offs and public efforts with military Transition Centers.

## Legislative Objective

# Energy

### Background:

Washington's economy has been built on abundant, reliable and affordable electric energy. Although Washington relies primarily on inexpensive, zero greenhouse gas emitting hydropower, it also has an abundant source of biomass that is a significant potential source of renewable energy. Washington is uniquely poised to use its sustainable managed feedstocks for renewable energy purposes.

The state once enjoyed a competitive energy advantage that allowed employers to provide family-waged jobs, meet strict environmental regulations, offset high transportation costs and remain competitive in the regional, national and global marketplace. Our competitive energy advantage began to seriously erode, however, during the 2000/2001 energy crisis. A severe drought and market manipulation contributed significantly to wholesale electricity and natural gas market conditions that exposed utilities and their customers to unprecedented costs that they are still bearing today.

In 2006, voters narrowly passed Initiative 937 (by 51.6 %), which mandated that qualifying utilities obtain 15% of their energy supply from prescriptively defined "renewable energy" by 2020. This mandate ignores the fact that more than 70% of the electricity consumed in Washington is derived from existing renewable and alternative energy resources such as hydropower, biomass and nuclear energy.

During the 2009 Legislative session SHB 1086 was introduced that would require electric utilities to guarantee that developers of small renewable energy projects would recover all of their costs and a profit from utility customers, even though their resources cost more than conservation, conventional resources, and utility-scale renewable energy technologies, such as wind generation. This renewable energy mandate, known as a "feed-in tariff", would place additional costs burdens on Washington's families and businesses.

### Problem:

Renewable and alternative energy resources, including but not limited to water, wind, nuclear, solar, thermal and geothermal, and biomass all play a very important role in diversifying our state's electric energy portfolio, provided such resources are obtained and integrated at a reasonable cost. Unfortunately, recently adopted energy policies have not only failed to address rising energy costs, but have contributed to the problem. These increased costs are being passed on to the end users – Washington's families and businesses. In addition, Washington's I-937 energy mandates are more restrictive than the laws of neighboring states and place Washington at a competitive disadvantage.

### Solution:

The Legislature must level the playing field and allow Washington State to compete fairly at both the regional and national level by minimizing energy costs on Washington's families and businesses, and maximizing the opportunity to utilize Washington's abundant, renewable natural resources.

1. Support amendments to Initiative 937 (RCW 19.285) to improve Washington's competitiveness by providing the flexibility found in similar laws in Oregon and California.
2. Support legislation fully recognizing biomass resources, including forest biomass, which is an abundant resource and creates an opportunity to diversify and meet the state's energy needs, as well as to address forest health, wildfire, and climate change concerns.
3. Oppose legislation mandating distributive generation and feed-in tariffs such as SHB 1086.
4. Support legislation that provides opportunities for the restoration and redevelopment of unfinished nuclear power project sites for the purpose of creating energy parks for the generation of electricity.

Legislative Objective

# Environmental Remediation Tax Classification

## Background:

Prior to July 1, 1998, the taxation of environmental remediation was often uncertain and subject to different treatment depending upon the status of the site and the form of the contract for remediation. Some site owners paid sales tax on the remediation contract and others were exempt from sales tax. Similarly, the business and occupation (B&O) tax rates for remediation contractors were at different levels for different sites, even if the same type of work was being performed. The uncertain and differential taxation discouraged independent cleanup of sites. Site owners who moved forward expeditiously to clean up their property were penalized by the unequal (higher) taxation. The owners could avoid sales tax by waiting until their site came under formal cleanup orders, rather than conducting an independent cleanup as allowed under the Model Toxics Control Act (MTCA).

In the mid-1990's, the Department of Ecology established a Policy Advisory Committee on the state's cleanup program under MTCA. One of the recommendations of this committee was to eliminate the delay in cleanup activities by establishing a single tax classification for all property owners to clean up contaminated property. Legislation passed in 1998 provided this new tax classification. It excluded the labor and services portion of cleanup contracts from sales tax and provided a uniform B&O tax rate for contractors and other service providers involved in environmental remedial actions. Certification was required from site owners and environmental professionals to assure that the activities proposed for the site were legitimate remediation activities.

SB 6781 from the 2006 session would have reinstated this program but was vetoed by Gov. Gregoire stating past incentives did not increase cleanup and cleanup by government would inappropriately shift the costs burden to the general fund.

## Problem:

Many businesses have liability for cleanup costs, either on property they own or on other property for which they may have full or partial liability. The law establishing the tax classification for environmental remediation activities expired on July 1, 2003. It has not been extended or reinstated by the legislature. The former tax classification for environmental remediation activities makes it more affordable to clean up these sites and put them back into productive use. These types of cleanup projects can also have significant economic development benefits, enhancing our ability to use industrial property and create new jobs. The former law also had the added benefit of simplifying the tax code for these projects instead of having multiple rates for different activities of the same project.

## Solution:

AWB supports the reenactment of the tax classification for environmental remediation activities to encourage prompt cleanup and to again provide clarity on the proper tax classification.

1. Support legislation to restore the tax classification for all environmental remediation activity.
2. Eliminate the economic disincentive for taxpayers to clean up contaminated property.
3. Encourage activity to convert contaminated property into productive property for economic activity and the creation of new jobs.



# Estate Tax

## Background:

Through an initiative in 1981, Washington voters overturned the state inheritance tax. However, a credit allowance on the federal estate tax allowed the state to continue to collect a limited “estate tax”, known by employers as the “death tax”. In 2001, the federal government passed a law to phase out the federal estate tax by 2010 and the state credit no longer exists.

After the change in federal law in 2001, the State continued collecting taxes and in February 2005, the State Supreme Court ruled unanimously in *Hemphill et al v. Department of Revenue* that the state had no authority to collect this money and would have to reimburse it retroactively. In response, the 2005 Legislature passed a new state estate tax, ESB 6096. The business community fought the passage of this legislation, but was unsuccessful. However, the legislation did establish a deduction for family owned farms.

In 2007, Initiative 920 was validated with more than 400,000 signatures to repeal the estate tax but was ultimately not passed by the voters. Legislation introduced in the 2007 legislative session attempted to provide a deduction from the estate tax for family held business similar to what already exists for farmers. The legislation received a public hearing in the House but failed to pass after the democrat majority expressed an unwillingness to change the law so soon after Initiative 920 to repeal the entire state estate tax was defeated.

## Problem:

By the time the owner of a family business dies, he or she has already paid federal, state and local taxes on their income several times – B&O taxes, excise taxes, license fees, social security taxes, federal income taxes, sales taxes, state and local property taxes, etc. When small businesses prepare for the estate tax, often the result is under-investing in the company, hurting future economic growth, the ability to create jobs and the resulting taxes that are paid. Attorneys are now advising their clients of the seriously negative effects of the estate tax on business and other assets in Washington. Some employers have already left Washington. Others are considering moving.

## Solution:

1. Lawmakers should eliminate the estate tax to protect family owned business.
2. If the federal government reinstates the state death tax credit, enact a state pick-up tax credit equal to the state death tax credit amount.
3. Provide a deduction from the state estate tax for family held business similar to what already exists for farmers.

## Legislative Objective

# Health Care

### **Problem:**

Health care costs continue to rise at paces far in excess of inflation, causing many employers to either reduce the benefits they provide to their employees, drop existing coverage, or refrain from purchasing new coverage. According to PriceWaterhouse Coopers medical costs will increase 9.6% in 2009 and 9.0% in 2010.

The high costs of health care coverage have a direct impact on the number of uninsured in the state, and an expensive health care market makes Washington unattractive to new and existing businesses who want to provide good benefits for their employees and compete in the world market. In 2006, the Governor's Blue Ribbon Commission on Health Care studied the problems unique to Washington and developed numerous recommendations to improve our system. While many of the recommendations were adopted, the Legislature has failed to move forward with recommendations that give individuals and families more choice in selecting private insurance plans that work for them.

### **Solution:**

#### **Health Care Reform**

1. **Reduce costs.** Support proposals that reduce health care premiums and health care costs by encouraging innovation, more fully engaging technology, and increasing flexibility at all levels. Support medical malpractice reform to control excess costs and over utilization of services.
2. **Empower consumers.** Support proposals that increase health care data transparency and improve the information available to consumers as they make health care decisions. Restore choice to consumers that enables them to make decisions that meet their individual needs.
3. **Expand coverage.** Support proposals that restore affordability of coverage in the private market in order to meet the financial challenges of the uninsured.
4. **Focus on prevention and wellness.** Support efforts that encourage individuals to take responsibility for improving their overall health, participate in wellness programs and receive preventive screenings for early detection, and better manage chronic disease.

#### **Reinvigorate the Private Market**

1. Support proposals that stimulate an active and viable health care delivery market by encouraging increased competition, new entrants into the coverage market, innovation in coverage plans and benefit designs, and eliminating and streamlining regulatory provisions that stifle the market
2. Oppose measures that reduce or eliminate choice of health care product designs, increase regulation that restricts market activity, and unduly increases costs for purchasers
3. Oppose measures that establish government-run programs as competitors to the private market, provide an advantage for purchasers to purchase coverage through the government, and/or requires groups of purchasers to acquire coverage solely from the state

#### **Small Group Market**

1. Support more affordable benefit plans for small businesses and younger workers who are currently priced out of the market
2. Oppose efforts to limit or further regulate association health plans

#### **State Mandates**

1. Support proposals that require an actuarial review of all proposed mandates that evaluates whether implementation of the mandate makes improvements to health care outcomes throughout the system

2. Oppose employer and individual purchasing mandates and the development of a government-run health care system
3. Oppose mandates that increase costs
4. Oppose other regulatory restrictions that inhibit the ability of health insurers, providers and other system participants from utilizing market-based tools to control costs and increase access to coverage

# Immigration Reform



## Background:

While past presidential administrations have voiced support for various forms of immigration reform, Congress has repeatedly failed to act to reform our immigration system. Although the Obama administration voices support for comprehensive immigration reform, a clear proposal has yet to emerge in Congress and appears to be delayed until 2010. Meanwhile, efforts are underway to increase enforcement against employers and litigation continues over the controversial e-verify program.

## Problem:

Current and projected demographic and sociological changes to the United States workforce underscore an urgent need for workers in all aspects of the national economy. The workforce available to perform manual labor is aging rapidly, while the shortage of high tech workers is well documented. Our immigration system is not meeting the needs of employers. The country is not producing enough highly skilled experts in fields that are essential to American competitiveness, stunting job creation and constraining innovation and continued economic growth.

Our current immigration laws fail to provide U.S. employers with the ability to recruit and retain the talented workers that they need. As a result, companies like Microsoft are being forced to consider moving facilities to Canada and other nations that have sufficient workers or an adequate guest worker program. At the same time, experts estimate there are as many as 12 million out of status workers in the country working hard in agriculture, construction, and the restaurant industry, to name a few. Without these workers our crops would rot in the fields and our service industry would grind to a halt. The combination of a need for workers and an inadequate immigration system is limiting our economic growth and our global ability to compete with other countries with more attentive immigration policies.

## Solution:

1. Create a carefully monitored federal guest worker program to fill the growing gaps in America's workforce, ensure the viability and integrity of existing temporary non-immigrant visa programs, and allow employers flexibility on the basis of labor market needs.
2. Modernize student visa programs to make our colleges and universities more attractive, so that we can recruit the best and brightest throughout the world to study in the U.S. and contribute to our future growth.
3. Adopt an "essential worker pilot program" that will assist in providing employers with a legal and stable workforce, after local workers are offered employment.
4. Reform the employee verification process by establishing clear, consistent standards that promote a legal workforce while protecting employers from undue costs and unrealistic demands.

# Unionization and Collective Bargaining

## Background:

In early 2007, the United States House of Representatives passed EFCA (H.R. 800), but it was never considered in the United States Senate due to threats of a filibuster. Realizing the measure is stalled until after the 2008 elections, obtaining a filibuster-proof majority in the Senate and a supportive presidential administration has been a key political goal of organized labor.

At the state level, labor has sought in 2006 (HB 3068), 2007 (HB 2383), and 2008 (bill withdrawn), “Worker Privacy Act” legislation that would prohibit employers from requiring attendance at meetings or otherwise requiring communication with employees about labor unions. The bill’s prohibition is backed by the imposition of substantial litigation exposure and expense for employers. In January 2008, the bill was withdrawn to await the outcome of *United States Chamber of Commerce v. Brown*, a U.S. Supreme Court case reviewing a similar California statute.

In June, 2008, the court invalidated the California statute under federal labor law. While the court’s decision also applies to preempt the “Worker Privacy Act,” state labor unions have expressed their intent to bring the proposal back in one form or another.

Finally, in 2008, unions introduced SB 6385 to provide for collective bargaining rights under state law, enforced by the Public Employment Relations Commission, for employees of employers too small to fall under the enforcement standards of the National Labor Relations Act. As amended in committee, the bill was narrowed to employees of small opera, symphony, and theater employers, where complaints originally surfaced – but labor has expressed an intent to return with a bill covering all small employers.

## Problem:

In an effort to dramatically shift the balance of federal labor law in favor of unionization, national and state unions are seeking three significant pieces of legislation with major implications for employers of all sizes. At the national level, labor is attempting to enact the “Employee Free Choice Act” (EFCA), a bill which would end secret ballot union elections and require recognition of a union based on the presentation of signed union cards. The EFCA would also enhance penalties against employers and would give only 90 days to negotiate a first union contract before requiring binding arbitration to resolve any impasse in negotiations.

At the state level, labor is attempting to pass a “Worker Privacy Act” which would significantly limit the ability of employers to communicate with employees about union matters. Labor is also seeking legislation that would subject the state’s smallest businesses – currently too small to be covered by federal law – to collective bargaining obligations enforced by the state Public Employment Relations Commission.

## Solution:

1. Promote consistency with federal law by opposing proposals that are preempted by the National Labor Relations Act, prohibit conduct allowed by the NLRA, and violate employers’ free speech rights.
2. Resist efforts to eliminate or restrict employee choice and privacy with respect to secret ballot union elections.
3. Do not impose state-level collective bargaining obligations on the state’s smallest employers.

## Land Use

### **Background:**

Land use, growth and development in Washington State are governed by a wide-range of laws and policies including the Growth Management Act (GMA), the Shoreline Management Act (SMA) and the State Environmental Policy Act (SEPA) as well as a long list of other environmental and local regulations. Many local governments are currently in the process of updating their land use plans and regulations, and landowners and local governments alike fear continued litigation over many uncertainties contained in these laws.

### **Problem:**

According to the Washington State Office of Financial Management, approximately 1.4 million people are expected to make the greater Puget Sound area their home in the next 10-15 years with an additional 500,000+ people statewide. In addition, due to Washington's myriad land use regulations, the amount of buildable land is on the decline and the housing and construction markets are struggling as a result of our historic economic recession.

### **Solution:**

To responsibly accommodate future population growth, promote economic development and provide opportunities for the housing and construction markets to recover, we need policies that will streamline the land use development process within Urban Growth Areas. Such policies should meet the existing goals of the Growth Management Act to encourage growth and density within urban areas and reduce sprawl which will, in turn, reduce greenhouse gas emissions from motor vehicles. To accomplish these objectives, AWB:

1. Supports providing increased incentives to local jurisdictions and developers to achieve greater densities by streamlining the SEPA process.
2. Supports amending state law to provide that impact fees be determined no later than at the time of land use approval.
3. To prevent additional economic harm to the struggling housing and construction markets, as well as the downturn in development of residential, commercial and industrial land, AWB opposes changes to Washington's real property vesting laws.

# Manufacturing Sales & Use Tax Incentive



## Background:

Following a detailed economic study pursued by the AWB in 1994, the 1995 Legislature passed the Manufacturing Machinery and Equipment Sales and Use Tax Exemption. The incentive effectively reduces the purchase price of machinery and equipment by 8.2 percent, providing a stimulus for investment. During the 1996 session, the Legislature included purchases of machinery equipment used by a manufacturer for research and development purposes, and for repairs and replacement parts. The detailed economic analysis was updated in 2000 and recently in 2008. The initial analysis predicted that the economic benefit to the state would more than outweigh the revenue loss. A follow up study performed in 2000 found the benefit was even greater than the original predictions. An update to the 1995 and 2000 study is underway.

## Problem:

The manufacturing sales and use tax incentive has not met its full potential as an economic development tool in Washington State for a number of reasons that need to be addressed by lawmakers. The Department of Revenue has established its own interpretation of how to apply the tax incentive that is lacking legislative guidance by an economic development strategy for Washington. This includes, but is not limited to restrictive regulatory interpretations by the agency on the use of computers, prototypes buildings and fixtures. With manufacturing growth at risk nationally, Washington needs an economic development plan to retain, attract and grow a core industry to our economy while using this model to promote other industry segments.

## Solution:

Expand the use of the M&E tax incentive as a primary economic development tool for our state:

1. Remove restrictive regulatory processes and interpretations including the majority use test, prototypes, computers, converted-use, buildings and fixtures. Provide the broadest application of the incentive to meet the original intent of the law.
2. Expand the existing M&E tax incentive to include other consumables that go into business inputs.
3. Extend the sales tax exemption on machinery and equipment to additional capital-intensive industries.

# Municipal Tax Fairness



## Background:

Many of the state's cities impose business and occupation (B&O) taxes and/or a public utility tax. Over the years, each city enacted its own definitions and tax classifications through various ordinances. This led to a complicated and confusing situation in which taxpayers are confronted with differing interpretations of the tax laws from the state to the local level and among the cities. As a result, the legislature in 2003 required adoption of a model B&O ordinance by the state's cities that impose a B&O tax (EHB 2030). The Association of Washington Cities (AWC) adopted a model ordinance intended to provide a more uniform system of municipal B&O taxes. The stated intent of the model ordinance is to eliminate multiple taxation of business income while continuing to allow some local control and flexibility to municipal governments.

Cities impose B&O taxes on the gross receipts of activities conducted by businesses without any deduction for the costs of doing business. A city with a B&O tax imposes the tax on a business if the city determines that there is nexus. Currently, if nexus is established, some cities assert a B&O tax on the entire value of the transaction or particular activity involved without regard to the place where the transaction or business activity occurs. Under the adopted model ordinance, taxpayers may be treated as having nexus even where the taxpayers' only activity is delivering into a city using its own trucks or acting on its behalf.

Recently, the City of Seattle has adopted a square footage tax to replace the revenues from business lost as a result of actions by the state legislature. The new tax is intentionally complex to drive business to pay their tax under the older structure rather than experience savings from the law change.

## Problem:

Thirty-eight cities and the Department of Revenue collect business and occupation taxes in Washington. This means thirty-nine forms to fill out, thirty-nine governments to pay taxes to and thirty-nine potential different interpretations. In an attempt to establish uniformity, the 2003 legislature required adoption of a model B&O ordinance by the state's cities that impose a B&O tax (EHB 2030). The model code adopted by the cities allows for substantial deviations that eliminate B&O tax consistency among the cities. The lack of uniformity and centralization of administration and collection of the B&O tax system makes our state B&O tax system unnecessarily complex. The current model ordinance as adopted by the cities violates the spirit, if not the letter, of the legislation as it does nothing to ensure consistent application and fair allocation of the B&O tax among multiple jurisdictions.

## Solution:

1. Ensure that, where a business performs activities in multiple jurisdictions, municipal B&O taxes are apportioned so a business is taxed only on the transaction or business activities performed within the taxing jurisdiction and collectively at no more than 100 percent of its gross receipts taxable in Washington.
2. Support the transfer of the duty to collect and administer municipal B&O and public utility taxes to the state Department of Revenue. This would lessen the taxpayers' reporting burden, ensure consistent application of B&O taxation and increase tax compliance for local jurisdictions.
3. Support a model municipal B&O code that is consistent with the state B&O code and that is applied consistently among jurisdictions and prevent discriminatory replacement taxes from being adopted.
4. Taxation of gross receipts should occur only in the city where the transaction or business activity occurs. A requirement of a significant physical presence in the jurisdiction should be a prerequisite to taxation by that city.

# Property Tax

## Background:

According to the National Council of State Legislatures, using 2005 data, Washington ranks 24th in per capita state and local property tax in the nation and 26th on per \$100 of personal income. Our State Constitution requires assessing and valuing all property uniformly and equitably at 100 percent of its true and fair market value. This provision results in business and citizens being treated the same. Prior to 1971, the burden of proof in administrative appeals was a mere preponderance of the evidence instead of the unusually high clear, cogent and convincing standard used today. The majority of states use the more traditional standard of the preponderance of the evidence which means that in order for either party to prevail they must convince the board that it is more likely than not that they are correct in their valuation opinion. To more accurately reflect market conditions; lawmakers passed SB 5368 in the 2009 session to require all counties to revalue real property annually by 2014.

## Problem:

In recent years, property taxes in Washington have increased dramatically. The causes are varied. Isolated surges in some real estate markets, infrequent property reevaluations, voter-approved levies and expanding local government budgets. Recently, legislators have felt pressure to limit property taxes for homeowners and have proposed legislation that would change the State Constitution requirement of assessing and valuing all property uniformly and equitably at 100 percent of its true and fair market value – one of the best features of our property tax system. Doing so creates a "split roll," a shift of the property tax burden to commercial and industrial properties. At the same time, lawmakers have ignored opportunities to provide meaningful relief through changes in the appeal process. The current burden of proof standard is preventing citizens and businesses from obtaining legitimate relief from excessive property tax valuations. Assessors are relying upon the presumption of correctness and the taxpayer's high burden of proof standard.

## Solution:

AWB believes we can improve our current system to relieve some of the problems experienced throughout the state by:

1. Preserving and affirming the principle of assessing and valuing all property uniformly and equitably at 100 percent of its true and fair market value. Oppose the establishment of a homestead exemption or other proposals similar to California's Proposition 13.
2. Ensuring that the property tax burden is not shifted from one class of taxpayer to another.
3. Providing full tax disclosure by requiring that property tax notices and levy ballot measures include comprehensive information for taxpayers.
4. Easing the unreasonably high "burden of proof" placed on taxpayers that challenge property valuations to the more traditional standard of the "preponderance of the evidence", eliminating the presumption of correctness of an assessor's evaluation and shifting the burden of proof from the taxpayer if they prevail.
5. Establishing options, such as dispute resolution, for taxpayers that appeal their property tax valuations.
6. Gradually reduce the state property tax levy by using surplus, non-emergency fund revenues.

# Research & Development Tax Incentive



## Background:

In 1994, the Legislature enacted tax incentives to encourage additional research and development (R&D) investment in the high-technology sector. The legislation allows businesses that conduct activities in advanced computing, advanced materials, biotechnology, electronic device technology or environmental technology to take a credit against the business and occupation (B&O) tax and an exemption from sales and use taxes on construction of R&D and pilot scale manufacturing facilities. Originally, a firm qualified for the high technology B&O tax incentives on all R&D spending if the firm's spending on research and development exceeded 0.92 percent of B&O taxable amount. For-profit firms were entitled to take a credit equal to 1.5 percent of R&D spending whereas the credit was equal to 0.484 percent of the R&D expenditures for nonprofit organizations. A maximum of \$2 million in credit was available each year to an eligible firm. Legislation passed in 2004 (ESHB 2546) extended the sunset date of the R&D tax incentive laws to January 1, 2015. Unfortunately, ESHB 2546 also reduced R&D tax incentives for many Washington employers in amounts up to and in some cases exceeding 70 percent. In 2005, the legislature passed legislation (ESHB 2314) that over a period of four years returns the R&D B&O tax incentive rate to 1.5 percent. This change was a good start. However, the R&D tax incentives are still calculated on the amount of R&D expenditures after subtracting 0.92 percent from the calculation of the taxable amount.

## Problem:

Small businesses express difficulty in accessing the R&D tax incentives created by the legislature to increase investments and to attract and preserve high-paying Washington jobs. The current 0.92 percent deduction significantly reduces the R&D tax incentive available to Washington employers. Moreover, the 0.92 percent deduction disproportionately impacts smaller companies with lower R&D investments and manufacturing activities. Companies that receive the tax incentive are required to fill out detailed annual surveys subject to penalties. Companies that do not initially fill out the survey are not eligible for the tax credit and do not have another opportunity to fill out the survey later. Additionally, the current expiration date of the incentive raises concerns for investors on the long-term economic development plan for our state. Without the full incentives in place, many companies cannot or will not continue to invest in R&D activities in the state of Washington.

## Solution:

AWB supports restoring and improving the R&D tax incentive in Washington by:

1. Restoring the R&D tax incentive calculation to the amount and form originally approved by the legislature in order to attract and preserve jobs for Washington's citizens;
2. Removing the penalty for the late filing of or unintended failure to file the annual survey;
3. Eliminating the sunset in the tax incentive;
4. Repealing the requirement to file the survey as a prerequisite in determining eligibility for the incentive; and
5. Removing restrictive regulatory processes and interpretations and providing the broadest application of the incentive to meet the original intent of the law.

# Reseller Permit

## Background:

The 2009 legislature hastily passed and the Governor signed SB 6173 to change the resale certificate into a seller's permit issued by the DOR. The goal is to improve sales tax compliance and raise additional revenue. The former resale certificate was self-issued while the new seller's permit requires approval and issuance by the DOR. Nationally, businesses may use a self-issued form that is more similar to the former resale certificate or retain the appropriate data electronically/digitally as allowed through the Streamlined Sales and Use Tax Agreement and the Multistate Tax Commission requirements.

## Problem:

The new reseller permit law goes into effect on January 1, 2010 but several legislative changes will be required to prevent undue hardship on businesses. While officially called a "seller's permit", this name is confusing to vendors and to businesses that make purchases for resale (The Department of Revenue is calling the permit a "Reseller's Permit," which is more accurate). Additionally, contractors have different eligibility criteria than other businesses because of the emphasis lawmakers placed on the underground economy for improved sales tax compliance, which increases the compliance burden for contractors. Further, confusion exists over what forms will be accepted by the Department of Revenue (DOR) from multi-state employers. Finally, the law lacks sufficient safe harbor protections for businesses that rely on agency information or use electronic/digital data storage in place of a copy of the seller's permit. The law also fails to incorporate provisions allowing sellers under audit to prove through other means that sales were correctly made for resale.

## Solution:

1. Clarify terminology in the seller's permit law to end confusion by officially renaming the program to a "reseller" permit.
2. Improve contractor requirements by allowing the automatic issuance of permits for eligible businesses, change the time frame from one year to two and coordinate statutory definitions for different types of contractors.
3. Provide safe harbor provisions for businesses that rely on agency provided data through a voluntary automatic verification process and allow DOR or sellers to supplement audit information from their own data and other sources to prove that sales were made for resale.
4. Allow a single use reseller permit for companies with intermittent needs (e.g., spec builder obtaining a single use reseller permit for a single retail construction job).
5. Ensure the acceptance by DOR and state businesses of uniform resale certificates or its electronic/digital equivalent from multi-state businesses
6. Coordinate existing tax exemption certificates with the reseller permit.

Legislative Objective

# Staffing Industry B&O Tax Classification

## Background:

The temporary staffing industry employs over 40,000 people in Washington State and pays an annual payroll of over \$1 billion. The industry has created over one million new jobs in Washington State in the past 7 years. Early in 2003 following a court ruling, the Department advised the industry it must collect sales tax in those cases where it was performing a sales taxable event. In September 2003 the Department issued an ETA. During the summer of 2004 the Department concluded that it could not require a company to pay B&O tax based on the job performed by a retail activity employee and deny the same method for other types of jobs performed by the employees of a staffing company. Therefore, it instructed each staffing company to pay B&O tax based on the rate determined by the work done by each temporary employee. While this results collectively in a reduced tax obligation, it will result in a tremendous administrative burden for the industry. Similarly, the Department has recognized that audit costs for the staffing industry will increase significantly.

## Problem:

Prior to a Supreme Court decision in December of 2002, most staffing industry companies paid business and occupation (B&O) tax at the rate of 1.5 percent on the gross income derived from fees paid by clients for personnel services net of wages, payroll taxes and benefits paid to contracted workers. As a result of the decision, the B&O tax must now be paid on revenues that include the amounts for wages and payroll taxes. In addition, the Department has issued a new directive requiring the collection of sales tax by staffing companies when a worker performs a task that is considered a retail service. There remains tremendous confusion in the differences in statutes, policies and industry practices in the collection and remission of sales tax. In one instance, the Department has said that the industry will pay B&O tax at the services rate of 1.5% or in other instances, as per DOR instruction, the staffing company is allowed to file B&O under the activity performed the employee and DOR will negate and will insist on the filing at 1.5%. In another instance, it has said that if the event preformed by the employee is retail by definition the company can pay at the retail B&O rate and must collect sales tax.

The current situation has created confusion and has resulted in misapplication of the law and large penalties for the industry. While the staffing industry has agreed that in those instances where the customer is actually performing retailing activities it should collect the retail sales tax, or a resale certificate as appropriate. The current policy of the DOR continues to create confusion, costs, and must be simplified.

## Solution:

1. The staffing industry is in the business of providing temporary staff to expand or augment another business' operation. The preferred and most fair B&O tax calculation of the staffing industry is a definition of the industry and single tax classification that reflects the function of the industry.
2. If the DOR continues a policy of multiple B&O tax calculations and rates for the staffing industry, it should be based on the predominate activity of the business client utilizing the temporary worker and not on the worker's individual assigned tasks.

# State Tax Appeals Reform

## Background:

In Washington, a taxpayer must present its challenge to an administrative law judge employed by the same taxing authority that issued the assessment or denied the refund in the first instance. Regardless of the administrative law judge's fairness, the judge's status as an employee and agent of the tax collector creates an unavoidable perception of bias. Additionally, as a precondition to challenging the state's determination of a tax liability before an independent decision-maker, a taxpayer must pay 100% of an asserted liability for tax, interest and penalty or post a bond, which can be an expensive and onerous requirement. The Model State Administrative Tax Court Act was established by the American Bar Association to serve as a possible framework for state tax dispute resolution change.

## Problem:

Washington state businesses have become increasingly concerned and frustrated with the existing avenues available for appeals of tax decisions made by the Department of Revenue (Department). Taxpayers that desire to contest the Department's determination of a refund claim or tax liability face obstacles that undermine the public's perception of the fairness of tax decisions. The imposition of these substantial costs upon the taxpayer's right to contest state determinations before an independent decision-maker places a significant burden on taxpayers and can discourage legitimate challenges to state tax determinations. Furthermore, it has a chilling effect upon a taxpayer's right to judicial review, especially upon small and mid-sized businesses that often find it impossible to produce the substantial funds necessary to pay the tax to get to court.

## Solution:

The Association of Washington Business (AWB) believes that taxpayers deserve to have tax disputes heard by an independent and qualified body in a fair and inexpensive process, without being required to pre-pay the tax or post a bond.

1. Taxpayers should have the right to a hearing of the Department's tax decisions before an independent tax tribunal.
2. Taxpayers should not be required to pre-pay an assessment or post a bond as a precondition to a hearing by the tax tribunal.
3. Taxpayers should not be required to exhaust their Department remedies as a precondition to a hearing of the Department's tax decisions by the tax tribunal.
4. One member of the tax tribunal should be a member of the Bar and all members of the tax tribunal should be members of the Bar or of similar associations that certify the competency and skill of their members (such as the Washington Society of CPAs or the Institute of Professionals in Taxation) and should have a high level of knowledge and experience in Washington tax law.
5. Hearings before the tax tribunal should be informal and efficient. Taxpayers with smaller dollar matters should be entitled to review under a streamlined small claims procedure.
6. Taxpayers should be entitled to choose their representative in any hearing before the tax tribunal.
7. Decisions of the tax tribunal should be published and should be followed by the Department.
8. The Department's practice of non-acquiescing to tax tribunal decisions should be prohibited.
9. Amend the Administrative Procedures Act (APA) to enhance objectivity and independence in contested case decision-making.

## Legislative Objective

# Streamlined Sales & Use Tax Agreement

**Background:**

The most significant change to sales and use tax law in recent history is the Streamlined Sales Tax Agreement (SSTA). The SSTA establishes common product definitions, administration and reporting procedures, and compensation to sellers when adopted nationwide. The goal is to protect main street retailers, to ease the burden on employers operating in multiple states and to create incentives for remote sellers without nexus in Washington to voluntarily collect sales and use tax. The 2007 legislature passed SB 5089 to make the final changes to conform our sales tax law to the SSTA. Under the Streamlined Sales Tax Agreement, sales tax is based on the destination (where the consumer takes possession) of the product or service. To allow employers who make retail delivery sales enough time to comply with the new law, the legislature delayed implementation of destination sourcing until July 1, 2008. The legislature also established a tax credit for small businesses to cover costs in changing their accounting systems or for the use of a Certified Service Provider (CSP). The 2006 National Joint Cost of Collection Study concludes the average cost of compliance for retailers in 2003 was 3.09% of the sales tax collected. Of the 45 states that collect sales tax, 28 provide an allowance. Washington does not.

**Problem:**

Following adoption of the Streamlined Sales Tax Agreement (SSTA), small and medium size businesses continue to express concerns on their ability to implement destination sourcing for sales and use tax collection and remittance. While a tax credit exists to help employers comply with the new law, many highly impacted businesses are not eligible. Laws passed to ensure that compliance with the SSTA does not constitute nexus for purposes of licensing fees and business and occupation taxes need further clarification to prevent overzealous cities from collecting taxes unnecessarily. Finally, businesses are increasingly frustrated with the lack of recognition for their role in collecting taxes. Businesses incur costs calculating, recording and collecting sales tax from customers. They set up systems to gather data, prepare and file reports. Develop sales tax manuals, train personnel and supervise performance among other activities to collect and remit sales tax.

**Solution:**

1. Protect uniform definitions, classifications and administration of the sales and use tax code consistent with the SSTA. Develop and advocate changes to the SSTA to protect small business and encourage ease of compliance. Enact legislative and regulatory changes adopted by the Governing Board to ensure compliance as a member of the SSTA to the extent changes represent substantial simplification.
2. Recognize the role of all business in collecting sales and use tax and provide an allowance or other form of compensation, such as reducing the cost of compliance, to help recoup their costs.
3. Clarify that the presence in a local jurisdiction of delivery sales using third party delivery companies or deliveries in a company owned vehicle does not establish nexus for purposes of licensing fees or business and occupation taxes.
4. Revenues from remote sellers through the participation in the SSTA should expand tax credits for business affected by the sourcing change and for the cities mitigation account. Unrelated programs should not earmark revenues gained through SSTA.
5. Ongoing mitigation to cities that lose revenue through the sourcing shift change should be transitional and not permanent. Funding should come solely from the Mitigation Account that relies on new revenues gained from voluntary collection of remote sales. Mitigation should not increase taxes and not be funded with general fund state revenue.
6. Preclude local jurisdictions from imposing moratoria on distribution centers, industrial and warehouse facilities or to re-designate industrially zoned property because of adoption of the Streamlined Sales Tax Agreement.

# Telecommunications Tax Policy

## Background:

In September of 2007, the Department of Revenue held a Telecommunications Conference with several hundred in attendance from private and public sectors. Documents from the conference include a baseline report found at <http://dor.wa.gov/docs/reports/telecombaselinereport.pdf>. Conference speakers spoke about the convergence of technology, the future of the telecommunications industry and the importance of pro-investment communications tax policy. The Department of Revenue recognizes the need to address the many issues raised during the conference and commits to launch a focused effort in 2009 on telecommunications tax policy after the legislative session adjourns. Many states are realizing that investment in communications infrastructure have spillover economic benefits far beyond the direct impact on the companies making the investment. Nationally, some 17 jurisdictions have reformed their tax policy on telecommunications by granting exemptions from the retail sales/use tax for the purchase of equipment used to provide telecommunications service. North Carolina became the latest state to enact an exemption effective in 2006.

## Problem:

Telecommunications infrastructure and access is key to all aspects of Washington State's economy. However, consumers in Washington pay approximately 21.5% in tax on their bill, which is the third highest tax rate in the nation following only New York and Florida. This is due to high taxes and fees imposed on the telecommunications industry. The industry is also hit with the retail sales and use tax on the purchase and installation of equipment used to provide telecommunications services. The retail sales tax rate currently varies statewide between 7% and 8.9%. Ensuring the speedy deployment of advanced telecommunications equipment and services is an expensive process. The application of tax both on the end users and on the inputs used to provide results in a substantial pyramiding of the tax on telecommunications. This pyramiding of tax violates sound tax policy of only levying such taxes on the end purchaser of the goods or services. Imposing multiple levels of tax on the industry results in reducing available investment, slowing rollout of products and increasing the price of service. Washington's telecommunications tax policy slows the rapid rollout of new infrastructure and services rather than fostering the deployment of new services and products.

## Solution:

Address significant issues facing the telecommunications industry and resulting taxes on consumers including::

1. Reduce customer taxes while considering tax policy that minimize the impact of reforms in the industries ability to compete based on the technology they use.
2. Prevent the taxation of business inputs, also known as tax pyramiding.
3. Address the revenue structure of the 911 surcharge.
4. Establish a centralized utility tax collection administered by the Department of Revenue.
5. Exempting inter-company transactions by communications service providers from the Washington B&O tax
6. Clarify that the universal service fund collections and revenues by communication service providers are exempt from the state and local Washington B&O tax.
7. Prevent the expansion of the utility tax and the establishment of new utility taxing authorities.

# Transportation Tolling

## Background:

Today's technology provides new opportunities in the efficiency of using tolls. New tolling concepts exist, such as high occupancy toll (HOT) lanes, express toll lanes, truck only lanes, corridor tolling, and mileage-based pricing. Tolling continues to be a primary solution by a few states with intense traffic needs. Economists believe that using flat user charges such as the gas tax does not reflect the true value of highway travel under congested conditions. In Washington, the legislature enacted a statewide tolling policy in the passage of HB 1773 in the 2008 session while at the same time we are testing these theories with two pilot projects on the use of tolls. The Narrows Bridge is collecting tolls to help finance the new construction. Some state subsidy exists for this pilot project. The second project is the SR 167 High Occupancy Toll (HOT) Lanes. This four-year effort will test a new congestion management tool that allows solo drivers with a Windshield e-Sticker Transponder to pay an electronic toll without ever stopping to use the carpool lanes. Toll rates will fluctuate with the level of congestion to ensure that traffic in the HOT lane flows at least at 45 mph, even when the regular lanes are congested.

## Problem:

The 1998 Blue Ribbon Commission on Transportation and other studies have identified nearly \$50 billion in transportation investment needs throughout the state. The 2003, 2004 and 2005 funding packages set us on a course for improvement, but leave significant needs unmet. The Association of Washington Business believes transportation infrastructure is crucial to improving our state's business climate. Washington can no longer rely on the traditional funding mechanisms to finance these projects. Tolls will be a critical part of the solution as we look to the future funding of transportation projects. For tolls to be successful in Washington, the toll revenues will need similar constitutional protection as motor vehicle fuel taxes to ensure they are not used for unrelated purposes.

## Solution:

1. Tolls are an appropriate long-term financing mechanism for transportation projects.
2. Tolls should have a similar constitutional protection as motor vehicle fuel taxes to ensure revenues are not used for unrelated purposes.
3. Revenues from toll projects should be dedicated to the project corridors from which they are collected.
4. Utilize public-private partnerships for road construction, preservation, maintenance and tolling authority.
5. Substantial infrastructure projects should consider the feasibility of implementing tolls.
6. Tolls should ensure a seamless, efficient and interoperable system.
7. A combination of revenue accountability and sunsets on tolls should be considered by the legislature to promote support from citizens for tolls as part of financing our transportation infrastructure.

# Transportation

## **Background:**

Transportation investments have been made through increased gas taxes passed by the legislature and voters in response to longstanding concerns regarding Washington's transportation system and its effect on our safety, competitiveness and mobility of people and goods. Surveys show that voters consider a gas tax the most acceptable revenue generating option for transportation. The "Nickel package" in 2003 and the 9.5 cent gas tax increase in 2005 set us on a course for meaningful transportation improvement, but leave significant needs unmet. The State should continue to investigate future funding for transportation by engaging a broad spectrum of business and community leaders. The Washington Transportation Commission is in the process of developing a long term transportation plan for 2011-2030 to establish a 20-year vision for a statewide transportation system that is due to lawmakers in December 2010. The Washington State Department of Transportation is studying alternative financing methods and economic hardships while the Department of Commerce is studying county and city response methodologies, computer modeling and reduction estimates.

## **Problem:**

Despite transportation tax increases in 2003 and 2005 and the influx of federal stimulus dollars, transportation infrastructure investment is not meeting needs for economic vitality, congestion relief, safety, preservation or quality of life. However, recent legislative initiatives for container fees, horse-power surcharges and green house gas cap and trade schemes will further depress the State's economy while we are suffering the most severe recession in modern times. Alternatives to the fuel tax remain uncertain and are the subject of an ongoing legislative study. Fuel prices remain extremely volatile and, while they have receded from peak prices of 2008, they appear to be rising again. There is no apparent support for additional taxes in the immediate future or any consensus on how to provide additional resources for transportation investment.

## **Solution:**

AWB believes that our transportation infrastructure is crucial to improving our state's business climate and will continue to work on solutions to our transportation needs while protecting economic development. Considering the current state of the economy and business climate, in the immediate future the Legislature should focus on project delivery, efficiencies and accountability to the public.

1. Uphold the commitments of the 2003 and 2005 gas tax increases to allow projects to stay funded and on schedule. Expand the use of scheduled incentives and maintain the use of established performance criteria to reach these goals.
2. Prioritize the preservation of existing state transportation infrastructure.
3. Amend the policy goals of RCW 47.04.280 for the Washington Transportation Plan to include economic vitality as a state statutory goal along with the existing five policy goals.
4. Protect import and export trade by opposing the imposition of a container tax or transfer tax on fuels.
5. Support the continued independence of the Freight Mobility Strategic Investment Board (FMSIB) and funding of its unbiased priority projects that ensure a consistent long-term investment in transportation projects of statewide significance.

6. Improve the accountability of project delivery and provide additional flexibility to maximize efficiencies between projects within the same corridor.
7. Work to resolve conflicting policy goals between efforts to reduce vehicle miles traveled, greenhouse gas emissions and ensuring available revenue for transportation investment while protecting the ability of citizens to move freely.
8. Improve access to the high occupancy vehicle (HOV) lanes, transit only lanes, park and rides and transit only parking spaces for USDOT/WUTC authorized passenger transportation solutions of 9 passenger capacity or higher operated by private or non-profit transportation providers.

# Unemployment Insurance

## Background:

Employers throughout the country are struggling in a sluggish economy that is crippling businesses and driving significantly high levels of unemployment. In one year, the rate of unemployment in Washington grew from 5.4% to 9.1%, with peak unemployment levels reaching 9.4% in June 2009 (**subject to change**). While several state UI trusts funds have gone bankrupt requiring loans from the federal government to pay unemployed workers, Washington is fortunate to still have a healthy trust fund balance which if managed properly, should sustain us through these tough economic times.

The Employment Security Department estimates that the unusually high level of unemployment in the state will cause unemployment taxes to increase for all employers in 2010 and in 2011. Those employers who experienced layoffs beginning in 2009 will experience the most significant increases.

Both the state and federal governments have temporarily increased UI benefits to unemployed individuals during this economic downturn. Even without the temporary increases, Washington pays the fifth highest UI benefits to unemployed workers in the country.

## Problem:

The rate of unemployment is likely to remain at very high levels throughout this next year. In early 2009, the Legislature authorized temporary increases in UI benefits that will expire in January 2010. When the legislation passed, this increase in temporary benefits was estimated to cost \$193 million dollars. By June 2009, the cost estimate had increased to \$230 million (**subject to change**), for just 10 months worth of increased benefits, and as the unemployment rate increases, the costs increase. Both temporary benefit increases passed last year will expire in 2010. It is highly likely the Legislature will not only attempt to make the temporary increases permanent, but will also seek other changes to increase benefits such as increasing the multiplier for determining the benefit amount, adding a dependent allowance, and expanding UI benefits to all part-time employees only interested in part-time work.

Each benefit increase will increase UI taxes, which in our current economy could have devastating effects on employers. Main street small employers will be hit disproportionately hard if any of the above expansions occur.

## Solution:

1. Oppose efforts to increase unemployment insurance benefits that will either raise employer taxes or add additional costs to employers
2. Oppose changes to the voluntary quit provisions adopted during the 2009 legislative session that will expand eligibility to individuals for reasons beyond those specifically listed in the law
3. Oppose direct or indirect fund transfers of unemployment insurance monies, and income derived therefrom, to fund state programs unrelated to unemployment insurance benefit payments and administration.
4. Work collaboratively with the Employment Security Department to secure additional REED Act dollars without adversely impacting employer taxes
5. Oppose the expanding benefits to part-time workers who only work part-time; and benefit enhancements for dependents

# Wage & Hour Reform

## Background:

Washington judicial decisions have highlighted and, in some instances, exacerbated this problem. In *Drinkwitz v. Alliant Techsystems* (2000), for example, the Washington Supreme Court held Washington employers could not rely on a “window of correction” to fix infrequent or inadvertent payroll errors despite the existence of this right in federal law. In *Cerrillo v. Esparza Trucking* (2006), the same court held that agricultural employees beyond those of “first producers” and “first transporters” are exempt from the overtime provisions of state law. But this holding, while favoring the employer, highlighted a situation where federal law imposes more stringent requirements on agricultural employers. And in *Stevens v. Brink’s Home Security* (2007), the Supreme Court made Washington an outlier amongst the other 49 states and the federal government by holding that employers may have to pay employees for drive time between home and the job site if the employee is driving a company-provided vehicle.

In some instances, the Department of Labor & Industries has attempted to address this problem, through rulemaking (e.g., on the “salary basis” test after *Drinkwitz*), or by administrative policy (e.g., on company-vehicle drive time after *Brink’s*). Yet the fundamental concern is a state statutory scheme that lacks definition or clarity on a number of complicated wage and hour issues.

## Problem:

Washington employers are bound by the wage, hour, and employment standards requirements of various state laws. Additionally, the vast majority of Washington employers are also governed by a similar set of federal laws. But state and federal law don’t always line up. On some matters, like the minimum wage itself, Washington law is more protective of worker rights. On other matters, Washington law is entirely silent in the face of a thoroughly developed body of federal law. Often, skilled plaintiffs’ attorneys have been able to create substantial risk and liability for Washington employers by exploiting subtle and confusing differences between state and federal law.

## Solution:

1. Promote consistency between state and federal wage and hour law when there is no clearly articulated, policy-based reason for more restrictive state standards.
2. Limit the liability of Washington employers who rely in good faith on federal standards in the absence of comparable state provisions.
3. Address the outcome of *Cerrillo* by aligning federal and state agricultural employee overtime exemptions.
4. Address *Brink’s* by mirroring provisions of the federal Employee Commuting Flexibility Act to clearly state when drive time between home and work in a company-provided vehicle is or is not compensable.

# Workers' Compensation Reform

## Background:

For the last several years, job providers have called for reforms to Washington's workers' compensation system. However, despite hopeful amendment to the vocational rehabilitation system in 2007 and needed revision to rules governing out of state work by Washington employers, the status quo has changed very little.

## Problem:

Washington's competitive economy is hampered by a workers' compensation system that is rich in benefits but high in cost and administrative complexity. *Examples of costs drivers that need to be addressed include:*

1. **An outmoded model of wage calculation.** The manner in which wages are calculated for full-time, part-time, and seasonal workers is convoluted and thwarts the goal of swift and certain benefits for injured workers. The landmark cases of *Cockle* and *Avundes* added further expense and uncertainty to the process by expanding the traditional definition of "wages" and complicating wage calculations for seasonal workers.
2. **Unsustainable pension trends.** Washington has historically had one of the highest pension rates in the nation and, despite a 1/3 drop in the total number of claims since 1990, pension awards have increased over 150%. This trend is not sustainable over the long term, and is caused by internal claims management issues as well as a lax statutory framework surrounding vocational rehabilitation, occupational disease, and the inability to voluntarily settle all or some aspects of claims.
3. **Time loss duration.** Despite a 360% reduction in the claims load for claims managers at the State Fund since 1990, average time loss duration has increased by 38% since 2001 to a surprising 257 days. This trend has increased employer costs by almost \$200 million per year, and hurts workers by delaying return-to-work and contributing to long-term disabilities.
4. **Diversion of Workers' Comp Trust Funds.** All too frequently, the Legislature and L&I have viewed the workers' comp trust funds as readily available sources of money for agency programs completely unrelated to workers' comp. Examples include specialty compliance, wage and hour enforcement, and paid family leave.

## Solution:

1. Allow employers, employees and L&I to use final settlement agreements to settle claims.
2. Allow for greater employer assistance in controlling health care costs through provider networks.
3. Redefine Washington's extremely broad definition of "occupational disease".
4. Use 100% of state average monthly wage as basis for maximum benefits (as opposed to 120%) and simply benefit calculations by implementing 52-week averaging with a single flat rate of compensation.
5. Defend the successful retrospective ratings program against proposals that would limit its effectiveness.
6. Eliminate duplication and unnecessary delays by allowing self-insured employers to manage their claims.
7. Prohibit the use of workers' comp funds for non-comp programs.