Mount Vernon Chamber of Commerce
Proposed 2008 Legislative Agenda

Health Care:

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. 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. Exorbitant health care costs also erode the ability of the state to provide other vital services without raising taxes.

The Mount Vernon Chamber supports bipartisan legislation that would:

- **Encourages the availability of low cost, flexible health plans**
  - Oppose new, and support the reduction of, regulatory and legislative requirements that unnecessarily add costs to the system.
  - Promote free market delivery and payment for health care services and oppose government programs that unfairly compete with private sector businesses.
  - Support measures that allow employers access to health plans that are relevant to the needs of their workforce within price ranges they can afford.
  - Support efforts to create tax incentives to offset the high costs of health care coverage for purchasers.

- **Supplies information to consumers currently isolated from cost**
  - Support innovations that promote consumer education and awareness as to the cost of their health care, as well as personal responsibility for healthy consumer lifestyles and employer-based wellness programs.
  - Support measures that encourage individuals to seek non-emergency treatment at more cost-efficient primary care centers, urgent care centers, and community health centers rather than emergency departments.

- **Improves productivity/efficiency of the current health care system**
  - Support measures that focus health care spending on the most cost-effective, effective care available.
  - Support efforts to reduce costs associated with health care liability, and discourage unnecessary and expensive defensive medicine.
  - Support efforts that encourage the efficient use of medical technology without inappropriately hindering access to quality care.
  - Do no harm to market-based health coverage plans that have a history of success in Washington State, including the protection of association plans and individual market successes.
  - Oppose efforts to mandate the purchasing of health care by employers or the establishment of a single-payer health care system.
Reduces State Costs and Discourages Government Cost Shifting

- Encourage governments to allocate appropriate funding to reduce uncompensated care, pay adequate reimbursement levels, and alleviate cost shifting to the private sector.
- Encourage exploration of all cost saving opportunities in the general fund budget.

Land Use/GMA:

The goals and requirements of the Growth Management Act (GMA) form the basis of local land use planning and regulation in Washington State. After years of experience under the GMA many critical questions remain as open now as they did upon the law’s landmark enactment. Such questions involve:

- Interaction of GMA requirements and goals with local permitting decisions and the efficiency and predictability of the local permitting process;
- Land use regulations that protect important habitat and ecological functions (“critical areas”) while protecting property rights and adequate developable land to meet housing and economic growth;
- The need for, and time in which to perform, periodic updates of comprehensive plans and development regulations by local governments;
- Concerns over the timeliness and process of appeals of local governments’ planning, regulating, and permitting decisions.

To address rising concerns over the GMA, Governor Gregoire proposed a 6-part legislative agenda for the 2006 legislative session. Although legislation passed allowing accessory uses on agricultural land (SHB 2917) and permitting smaller, slower-growing counties and cities additional time to complete GMA updates (ESSB 6427), many issues remain unresolved, particularly government regulation of pre-existing uses on private land.

Specifically, problems continue to exist with the application of Best Available Science in protecting critical areas, which have been highlighted with recent decisions of the Growth Management Hearings Boards.

The Mount Vernon Chamber Supports:

- Streamlining the permit review process through means such as integrating processes at both the local government and state agency levels to provide coordination between the various agencies to provide speed, certainty, and predictability in project review and approval.
- Require local governments to allow sufficient land within urban growth areas to accommodate a variety of needs and choices, including single family and multifamily housing, as well as sufficient buildable land for commercial and industrial use, while meeting density requirements.
- Establish a system of performance measures to gauge how jurisdictions are achieving housing and economic development goals and require accountability for the timely processing of permits.
- Protect against net loss of economically productive land by expanding urban growth boundaries through the addition of new land to replace land that has been restricted by the state GMA.
- Reduce permitting or planning requirements that limit economic development and employment opportunities.
- Ensure that Best Available Science does not override or undermine the other goals of the GMA.
Regulatory Reform:

Since the mid-1990’s, there has been significant changes to the rulemaking process in Washington state. Unfortunately, these changes have not been enough to reduce the regulatory burden facing employers.

In 1995 landmark regulatory reform legislation, HB 1010, was passed to:

- Require state agencies to base new rules on specific criteria and specific legislative authority. Require state agencies to justify the need for new rules which exceed federal standards. Encourage state inspectors to stress education before enforcement. To allow small business to recover limited attorney fees for successfully challenging a state rule and to require state agencies to coordinate new rules with existing local, state and federal laws.

Despite these reforms, Washington State continues to be a heavily regulated state, putting us at a competitive disadvantage. In the 2001 report from Governor Locke’s Competitiveness Council, regulatory reform was highlighted as why our state is non-competitive. Recommendations to increase legislative authority, appoint a secretary of regulatory reform, establish timely permit decision making, create a pilot program for permit streamlining, require DOE to formally promulgate its 401 certification rules, expand the Master business license program to cities, ensure the state’s energy policy maintains Washington’s competitive advantage in supplying low-cost reliable electricity to the region, and changing the venue in which agency rule challenges are brought are some of the recommendations the Council made.

The legislature passed several of these recommendations in the 2003 session that were vetoed by Governor Locke. Other bills that were signed into law, such as the requirement for notice of new rules, did not fully implement the Competitiveness Council recommendations since it only applied to a limited number of agencies.

The benefits of HB 1010 have not been fully realized by the business community. In addition many Administrative Procedures Act (APA) questions were raised in the WE CARE v. Department of Labor and Industries case before the state Supreme Court however these questions were not answered as a result of I-841 passing the ballot and the case being declared “moot”. Ongoing efforts for meaningful regulatory reform through legislative and administrative changes are still needed.

The Mount Vernon Chamber Supports:

- Legislation to improve the regulatory climate in Washington, including:
  A. Requiring agencies to have legislative authority and to cite specific text of law when creating new rules.
  B. Clarifying the level of burden of proof that an agency has in demonstrating the need for rulemaking.

Office of Regulatory Assistance (ORA): Support the reauthorization and reasonable funding of the ORA to target agency-specific reforms to reduce the regulatory burden facing employers, including:

- A. Using technical assistance as the preferred solution to compliance issues rather than enforcement.
- B. Consolidating permit processing, creating clear deadlines and streamlining land use and environmental appeals.
C. Implementing methods for increased electronic transactions such as licensing, compliance obligations, list serves, and web pages for public forums.

D. Continuing the use of sunset provisions for ongoing accountability to determine the effectiveness of the Office.

Governor’s Signature of Significant Rules:

Support legislation to require the signature of the Governor on significant rules as defined in RCW 34.05.328 before they become effective.

Equal Access to Justice:

Expand the existing equal access to justice laws for small businesses who successfully challenge a state agency action in Superior Court to all counties in Washington State and for other appeals to state agency actions or rules.

Contested case proceedings:

Amend the Washington Administrative Procedures Act (APA) to enhance objectivity and independence in contested case decision making.

State Death Tax:

In early 2005, our state Supreme Court tossed out the state estate tax in Hemphill et all v. Department of Revenue and Congress is in the process of phasing out the federal version as well by 2010. Despite that, the governor and legislators have created a new stand-alone death tax in the 2005 legislative session.

No matter how you look at it, to tax death is wrong. A death in the family is traumatic enough and causes disruptions down on the farm, at the factory, or in the family store because often the founder and leader is gone. Whole communities can be devastated when small business sell to larger business or when small business close shop to avoid the death tax. Family members often have to come to grips with who will carry on the operation, but it is very difficult with the tax collector standing in the shadows with a crippling tax bill. 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, and state and local property taxes, etc. Most of what’s left goes to pay wages and benefits to employees, who, in turn, pay some of the taxes all over again. When small businesses prepare for the death tax often the result is under-investing in the company, hurting future economic growth and the ability to create jobs and the resulting taxes that are paid.

The stand-alone state death tax raises about $127 million for the 2007-2009 state budget. Even though the legislation, ESB 6096 from the 2005 session, purports to exempt family-owned farms and would not include estates of less than $2 million, some experts looking at the law say it may not. It still forces children to literally “sell the farm” or go deeply in debt to pay the state when mom or dad dies. Often the family assets are tied up in machinery, equipment, buildings, inventory and property. In today’s world, it doesn’t take too much to hit the $2 million threshold when many average family homes in Seattle go for more than $500,000 or a combine on the Palouse goes for a couple hundred thousand. More often than not, it isn’t as though a family member can go to the bank and withdraw a large sum or sell stock or bonds to pay the tax. Instead they are forced to sell equipment, property, or worse – close shop!
The death tax needs a permanent burial. While it is tempting to use death taxes to balance the budget, our state would get much more tax revenue in the long run if it helped preserve the small businesses that produce the jobs and wages that support the entire economy.

Family businesses are the backbone of America, and we shouldn’t tax them to death – and beyond.

The Mount Vernon Chamber Supports:

The elimination of the death tax.

State Tax Appeals Reform:

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.

First, 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.

Second, 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 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.

The Mount Vernon Chamber of Commerce 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. MOUNT VERNON CHAMBER proposes that the Model State Administrative Tax Court Act be reviewed and considered as a possible framework for state tax dispute resolution change.

The Mount Vernon Chamber believes:

- Taxpayers should have the right to a hearing of the Department’s tax decisions before an independent tax tribunal.
- Taxpayers should not be required to pre-pay an assessment or post a bond as a precondition to a hearing by the tax tribunal.
- 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.
- 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.
- 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.
• Taxpayers should be entitled to choose their representative in any hearing before the tax tribunal.
• Decisions of the tax tribunal should be published and should be followed by the Department.
• The Department’s practice of non-acquiescing to tax tribunal decisions should be prohibited.
• Tax tribunals should balance caseload scheduling with fairness, due process and equity to the taxpayer.
• Amend the Administrative Procedures Act (APA) to enhance objectivity and independence in contested case decision making.

**Unemployment Insurance Competitiveness:**

The Legislature made significant improvements to Washington’s unemployment insurance system in 2003, but UI costs for Washington’s family wage employers remain well above the national average, jeopardizing overall business competitiveness. There is a direct relationship between reasonable unemployment insurance system costs and a strong state economy. High unemployment costs contribute to higher unemployment rates because rising system costs consume scarce resources for jobs and equipment as well as create uncertainties that discourage the hiring of new employees. It is critical that the Legislature continue to work toward decreasing high unemployment insurance costs while maintaining the stability of Washington’s unemployment system.

**Background**

Washington’s unemployment insurance system has undergone a number of major transformations since 2002 – the result of four significant legislative changes and one referendum. In 2003, 2ESB 6097 made considerable inroads toward a more fair and equitable UI system for Washington’s employers, both in terms of their relationship to each other within the system as well as with businesses in competing states. But these changes also set the stage for further clashes between the employer community and organized labor over what is the appropriate level of benefits. With 2006 came the potential for long-lasting “compromise,” but only time will tell if ESSB 6885 is the proper balance between benefits and taxes.

The Mount Vernon Chamber supports the following goals in the area of unemployment insurance:

Strengthen the integrity and solvency of the UI system by ensuring that benefits are only available to workers who:

A. Are unemployed through no fault of their own,

B. Are unemployed for reasons that are directly related to the employer-employee relationship,

C. Remain able and available for work, and

D. Engage in stringent active work search requirements.

Achieve cost savings through:

A. Reduction of employer costs for separations that are not attributable to the employment relationship,

B. Creation of a more equitable indexing determination for adjusting the maximum benefit and taxable wage base.
C. Encourage the pursuit of adequate federal appropriations for Washington State’s UI system administration.

D. Oppose direct or indirect fund transfers of unemployment insurance monies, and income derived there from, to fund state programs unrelated to unemployment insurance benefit payments and administration.

E. Strengthen the integrity of the UI system by ensuring that all entities – employers and employees alike – receive equitable treatment under the law.

F. Strengthen the integrity of the UI system by insuring that elimination of the illegal practice of State Unemployment Tax Avoidance ("SUTA dumping") is vigorously pursued.

Water Resources:

Adequate and reliable water resources are an essential component of a vibrant economy and an adequate housing supply. Our water resources system includes individual water right holders using water for commerce, and public water systems that supply water for domestic, industrial and commercial uses. Through its water resource policies, the state has an opportunity to design collaborative local programs that respect private rights, preserve economic growth and protect the environment. An example of one such collaborative approach is the effort to replace deep well irrigation from the declining Odessa Aquifer with surface water from the Columbia Basin Reclamation Project.

Washington’s water policies are based primarily on the prior appropriation doctrine and a significant body of case law. Under our prior appropriation system, a water right is established and maintained when a particular quantity of water is put to beneficial use. This so-called “use it or lose it” principle is now complicating the ability of individual water right holders to conserve water for a variety of uses while maintaining an ownership right to the conserved quantity.

Current approaches to public water systems’ water rights are threatening economic growth in Washington. A substantial portion of our state’s economic growth and development occurs in areas supplied by public water systems. In order to achieve healthy economic growth and adequate housing supply, public water systems must have certainty about their water rights in order to obtain the financing required to build and maintain infrastructure, and the flexibility to use water where growth is planned, particularly where mandated by provisions of our state’s Growth Management Act (GMA). The orderly growth of our economy depends on the ability to move water to where it is needed.

The Mount Vernon Chamber Supports:

- Policies that ensure enough water for a growing economy, recognize existing water rights as property rights, and provide flexibility in the use and reuse of existing water rights.
- The elimination of relinquishment policies to remove disincentives for water conservation.
- Developing timely and effective water management techniques, including storage, to minimize or eliminate instream flow impacts while meeting the needs of out-of-stream uses.
- Legislation that creates flexibility to serve growing populations and economies, and that preserves the quantity of water identified in permits and certificates.
- Collaborative water management projects that address specific local water resources problems.
- Supports a streamlined permitting process for implementing and constructing new water storage facilities.
The Mount Vernon Chamber opposes policies or legislation requiring the implementation of a “no net loss” or greater requirement

**Workers’ Compensation Reform:**

Washington’s competitive economy is hampered by a workers’ compensation system that is rich in benefits but high in costs and mired in administrative complexity. For the last three years, job providers have experienced unpredictable cost increases and hikes in premium rates and have called for reforms to Washington’s workers’ compensation system in order to bring greater predictability, certainty and accountability to the system. *Examples of costs drivers that need to be addressed include:*

**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 by complicating the calculation of benefits for seasonal workers.

**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 settle claims.

**Time loss duration:** Despite a 30% reduction in the claims load for claims managers at the State Fund since 1994, average time loss duration has increased by 25%. 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.

**Inability to settle claims:** Washington is one of only a few states that do not permit parties involved in claims to voluntarily agree to settle all or some aspects of the claim. Some injured workers are being forced into vocational programs they don’t want and others are receiving inappropriate pensions.

Throughout the spring and summer of 2006, the Department of Labor & Industries has led an improvement initiative aimed at developing proposals for 2007 in meetings with business, labor unions, and trial lawyers. While the Department’s proposed legislation embraces few of the full system reforms proposed by the employer community, the Department’s effort ensures that workers’ compensation will be an important subject of debate during the 2008 legislative session.

The Mount Vernon Chamber is committed to achieving the following reforms:

**Wage Simplification/Benefit Calculation**

- Address the *Cockle* & *Avundes* decisions by restoring the definition of wage to exclude fringe benefits and by implementing 52-week averaging with a single flat rate of compensation.

**Self-Insured Expanded Authority**

- Eliminate duplication and unnecessary delays by allowing self-insured employers to manage their claims.
Settlement Agreements

- Allow employers, employees and L&I to use final settlement agreements to settle claims.

System Costs

- Defend the workers’ compensation system from proposals that would increase system costs or inefficiencies.

Vocational Rehabilitation

- Target vocational rehabilitation to workers who can benefit from it.
- Limit training programs to “one time through”.
- Allow settlement of claims where worker is not interested in vocational rehabilitation.

Pension Trends

- Redefine Washington’s extremely broad definition of “occupational disease”.
- Improve internal pension award management practices to increase return to work options over pensions.

Retrospective Rating Programs

- Defend the operation and integrity of the retrospective ratings program.