

# ExecutiveMemo

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A newsletter of the Illinois Manufacturers' Association

April 8, 2009

## BRIEFLY

### Tax Foundation:

#### Illinois among debt leaders

The highly respected Washington DC-based Tax Foundation released its *Annual Facts and Figures* report that, in part, says every citizen in Illinois would owe more than \$8,100 dollars to pay off the state's growing debt.

Illinois ranks 7th among the 50 states in Debt per Capital for 2006, the last year for which annualized figures are available. Given recent disclosures by Illinois Governor Pat Quinn and other elected officials, that number is well below the estimated current debt of \$9-\$11.5 billion. Illinois leads our neighboring states in per capita debt with Kentucky, ranked 13th, the nearest.

Debt skyrocketed under the previous administration of Governor Rod Blagojevich as dozens of new programs were added to the state budget without revenues to pay for them. In addition, expansion of existing programs added to the debt load that is now weighing down Illinois and hindering efforts to respond effectively to the recession.

According to the report, Illinois ranks 23rd in state business tax climate for 2009. The ranking is a measure of how each state's tax laws affect economic performance. The state ranks 43rd for unemployment insurance taxes paid for jobless benefits.

Copies of *2009 Facts & Figures, How does your state compare* can be obtained at: [www.taxfoundation.org/news/show/24389.html](http://www.taxfoundation.org/news/show/24389.html).

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## As businesses respond to today's economy, energy costs can help offset financial risk

How businesses will cope with today's changing and uncertain economic times is a topic on everyone's mind, from the CEO on down. But in the midst of this dramatic downturn, there are emerging bright spots, or ways to insulate your business from budget overages. One of those ways is through managing your energy costs.

Now corporations in many states have the ability to identify and even customize efficient, cost-effective plans for energy usage and procurement solutions that maintain the bottom line.

### Smart energy purchasing strategies can positively impact your business

Given the unpredictability of energy prices, combined with today's challenging economic climate, business customers recognize that they can't afford the risk of unmanaged costs hitting their bottom line. But big questions remain: "How do we manage our total costs?" and "What's our energy position two-to-three years out?"

In states with competitive energy markets, business customers have opportunities to control budgets in the face of ever-changing energy costs. Independent energy providers can now work directly with business managers to help insulate their companies from volatile price fluctuations by offer-

ing a range of energy solutions designed to meet varying degrees of risk tolerance.

With the advent of open energy markets, the actual cost of energy is the area in which consumers now have a greater degree of control. Suddenly, businesses not only have a choice in how much they pay for energy, but also in how they purchase it. But the complexities in today's energy markets can mean that the process of determining what's right for your business is slightly overwhelming.

In making decisions about how to manage your energy, it can be helpful to take a deep look at exactly how your business uses energy, and when that consumption peaks. Based on that, you can better determine which type of pricing structure might best suit your business needs — and approach energy providers who offer those types of purchasing programs.

For example, you may be presented with options that include:

#### 1. A fixed contract

This option offers you a predictable monthly energy expense that allows you to more accurately budget and forecast future energy spending. What's more, a fixed-rate contract may guarantee stability in energy

See **OFFSET RISK**, page 2

### Help fight and defeat "Card Check" . . . attend EFCA Briefing

April 14th, Kishwaukee College, 21193 Malta Rd., Malta — 8:30-10:30 am

Presenter: James Spizzo, Partner and former Chair, Traditional Labor Practice Group, VedderPrice

Congress will soon begin debating the Employee Free Choice Act (EFCA) that could eliminate private ballot elections and require binding arbitration for union contracts. The EFCA is the worst potential change in labor law in nearly a century. After spending \$250 million to elect like-minded legislators, powerful union bosses now believe that they have a "once in a lifetime" opportunity to help reverse declining union membership. Join your fellow manufacturers at a town hall style meeting to voice your opposition to "Card Check." Contact Kimberly McNamara, 800-482-0462, ext. 2109, email: [kmcnamara@ima-net.org](mailto:kmcnamara@ima-net.org). For more information, visit [www.ima-net.org/cardcheck.cfm](http://www.ima-net.org/cardcheck.cfm).

### IMA'S EXECUTIVE MEMO IS UNDERWRITTEN BY:



EXPLORE YOUR INTERNATIONAL OPTIONS.

Dedicated, in-country global expertise with offices in Monterrey, Mexico and Shanghai, China.

costs for the life of the contract. This can insulate you from variable charges, fluctuating rates or market spikes.

### 2. An index contract

If you are looking for market based pricing that fluctuates entirely with market prices you might want to consider an index contract. If market prices go down so does your cost for energy. When market prices go up, your costs will likely increase too. You can also choose a "trigger" price and lock in a fixed price when the specific target is met.

### 3. Energy block pricing

If your business is looking for optimum opportunities, but can afford more risk, purchasing specific portions of your energy in locked "blocks" allows you to tailor your supply to meet a particular need. Businesses that actively monitor and manage their energy usage patterns can actually narrow down their peak periods of consumption and select a block of time to lock in a fixed price. After that, usage that falls outside the block is billed at market price.

Here's another important thing to keep in mind when choosing an energy purchase plan. Many different pricing options give business customers the ability to specify components of their agreement, including the choice to bundle all non-energy charges (like ancillaries, line losses, and transmission) into a fixed price charge. This can further reduce exposure to risk and help avoid unexpected monthly charges. Regardless of size, scope or energy needs, taking advantage of energy purchasing plans can make a real difference in your bottom line.

In addition to monitoring your pricing structures, market experts are continually thinking of new, practical ways that may help business consumers to save on energy costs. Here are today's top ideas.

- 1. Do your homework.** Gather information from all sources, including websites, suppliers and word of mouth, so you'll know where the market may head before it gets there. That may seem obvious, but many businesses admit NOT collecting this data, which means they can't respond to it.
- 2. Follow how utilities change.** In open markets, rates and regulations can change frequently. Watching the action can mean opportunities for you to review your rates and ultimately, save money.
- 3. Monitor and review your costs.** As part of your cost management plan, keep weekly or monthly tabs on your transportation costs, interest rates and other costs that can change quickly.

**4. Consider your usage and tolerance for risk.** Examine how and when you use energy, and consider the bottom-line impact of your energy program and your overall tolerance for risk. Take the long view on managing overall costs and link energy initiatives to your revenue plan.

**5. Look at alternative technology.** Ideas like co-generation, capacitor banks and alternative fuel choices can lower costs. Some companies have enjoyed success in substituting biomass for fossil fuels in plants or using hydrogen over natural gas.

Experts agree that there is no doubt that energy prices will continue to fluctuate, especially as constant technological advances unleash the potential of harnessing new energy sources. Keeping a close watch on the energy market, and on your consumption, is one more way to insulate your business from unexpected costs and reduce unnecessary expenses — for the long-term.

*For more details on Constellation NewEnergy and its electricity purchasing programs, contact Denise Haggerty at [Denise.Haggerty@Constellation.com](mailto:Denise.Haggerty@Constellation.com) or call 312-704-8525. Visit our website at [www.newenergy.com](http://www.newenergy.com).*

## Illinois jobs in jeopardy if tax hike used to camouflage spending problem

*Chairman of the Illinois Manufacturers' Association cautions state move to correct chronic spending with tax increases will drive jobs to other states and compound problems*

"Illinois has a spending problem, not a revenue problem," said Ron Bullock, owner of Bison Gear & Engineering Corp. and chairman of the Illinois Manufacturers' Association. Bullock and other Illinois business leaders meet with Governor Patrick Quinn Wednesday afternoon (March 25, 2009) in Springfield in response to the Governor's proposal last week to increase income taxes by 50 percent to close a claimed \$11.6 billion budget deficit.

"Before we consider self-inflicting a wound, Illinois must conduct a thorough examination and reduction of the unchecked spending which has produced this deficit," cautions Bullock. "In addition, we must consider that significant taxpayer dollars coming back to Illinois as part of the newly enacted federal stimulus funds will help offset the deficit." As a single example, preliminary figures from state education

officials indicate the stimulus package could provide up to \$3 billion for Illinois schools. The estimated overall \$8-11 billion of stimulus funds coming back to Illinois can offset much of the budget shortfall.

As chairman of the largest state manufacturers' association in the U.S., Bullock states, "In these times, we should be making Illinois more attractive as a location for high-paying manufacturing jobs rather than driving them to other states."

*Bison Gear & Engineering Corp., headquartered in its St. Charles, Illinois, designs and manufactures fractional horsepower electric motors, gearmotors and gear reducers used in industrial and commercial OEM applications worldwide. For more information, visit [www.BisonGear.com](http://www.BisonGear.com).*

## Effectively managing legal costs

*By Jeffrey E. Schiller & Karen Kavanagh Mack*

In difficult economic times, successful businesses must look to save unnecessary costs wherever possible. One place to start is by doing all that can be done to reduce the risk of protracted, expensive litigation. Sometimes, a corporation is forced to prosecute or defend claims in the course of normal business operations, but certain proactive legal steps which can be taken at relatively lower cost can limit a company's potential exposure, both to attorney's fees, and to a bad result through the litigation process. A few of these are set forth here.

**Document transactions.** Make sure that you document all transactions or obligations and have your attorney review the documentation before you sign them. Too often, businesses make agreements or alter them during client relationships without properly documenting them, or without consulting counsel, either because they want to avoid sending a signal that they don't trust their client or supplier, or attempt to save money on lawyer's fees. If the relationship later falters, however, nothing will drive up the cost of litigation faster than undocumented, incomplete, ambiguous, or amended and conflicting agreements between the parties. A few thousand dollars can rapidly morph into tens or even hundreds of thousands of dollars in litigation costs if clear, unambiguous agreements are not in place, or if non-lawyers try to change or add to such agreements by adopting a do-it-yourself legal approach.

**Written procedures regarding employment.** There should be written procedures in place to deal with employee departures.

See **LEGAL COSTS**, page 3

Whether an employee leaves of his/her own volition, or is terminated, the consequences must be anticipated beforehand to minimize the risk of litigation. If a business has confidential information or a client base it wishes to protect in the event that an employee leaves and goes to a competitor, it should obtain written agreement from the employee to refrain from revealing such information, or soliciting such clients, and it must do so before or while the employee is employed. In addition, there are limitations on what can be protected, and the circumstances in which such a protection is binding and these must be complied with as part of the employer/employee relationship. If a business wishes to terminate an employee, the simplest way to avoid a suit for wrongful termination is to have regular, written employee evaluations and reviews, a manual or handbook pertaining to employee conduct, expectations, and job responsibilities, and written documentation of the employee's termination and any continuing obligations between company and former employee (whether that be confidentiality, severance, nondisparagement, etc.). Employment litigation can be extremely expensive, bitter and protracted. It is best to take all steps to avoid it, or at least to be able to have a route to quick judicial resolution, particularly in times where an out-of-work former employee may see little to lose from pursuing a claim.

#### Organize documents for audits.

Inevitably, a governmental inspector will visit your facilities at some point in the future. Whether that visit is by a federal, state or local agency, it is best to have all of the proper documentation organized and ready for inspection. Unorganized and messy recordkeeping can be an easy target for inspectors and could very well lead to a more in-depth analysis of your business operations. If you are unsure of all the recordkeeping requirements for your business, or just want to make sure that you are up to date on the current rules, your company may be well served by conducting an internal audit by an outside consultant and/or attorney knowledgeable in the various laws and regulations applicable to your business. Additionally, the mere thought of having an inspector visit your facilities may seem stressful in itself. Thus, take the opportunity (before any inspection occurs) to develop a protocol for how an inspection will be handled, including establishing the person or persons responsible for accompanying the inspector, what is and is not permissible during an inspection, and how to respond if the inspection does not go favor-

ably. While preparation of such an audit and/or inspection protocol plan will require an expenditure of funds, it may be money well spent in avoiding future fines, penalties and possible enforcement action.

#### Attorneys' fees clauses in contracts.

Include a clause in your contracts which allows the prevailing party in litigation to recover attorney's fees. Nothing dampens the ardor of litigants without a very strong case quicker than the realization that they will not only have to pay their own lawyers, but possibly your lawyers too. This is particularly true in expensive litigation between businesses, but it is also true in situations such as the employee termination setting described above, where plaintiffs often hire lawyers on a contingency basis, i.e., where they pay their lawyer a percentage of their damages recovery if they prevail, and nothing if they do not.

**Pre-litigation cost benefit analysis.** Talk to your attorney about potential cost before getting into litigation and think with your head, not with your heart. Frequently, clients come to lawyers when they are angry at someone, wanting justice. Principles are important, but they must be balanced against economic consequences, especially in difficult times. Unless there are clear, recoverable damages to be obtained, or the strong likelihood of obtaining quick injunctive relief which will force the other side to come to the bargaining table, initiating a lawsuit can prove extremely expensive and a cost-benefit loser. The only way to ascertain whether the potential reward of litigation is greater than the risk is to consult with a lawyer beforehand, get an estimate of approximate cost and possible recovery, and use those as guides in deciding what to do. Of course, an honest and accurate assessment of the likelihood of success in litigation depends on the objective nature of the information you provide to your counsel. One of the greatest values your lawyer can give you is objectivity. Your lawyer is your advocate, but not your cheerleader. You owe it to your business to provide your lawyer with complete and accurate information, so that the analysis you receive is likewise complete and accurate.

There are many ways to reduce the risk of big ticket litigation costs. Doing so prudently will often require spending a little to avoid spending a lot.

*Authors Jeffrey E. Schiller & Karen Kavanagh Mack are partners in the Chicago law firm of Deutsch, Levy & Engel, Chartered, practicing in the area of commercial and business litigation. They can be contacted at 312-346-1460; or email [schiller@dlec.com](mailto:schiller@dlec.com); [mack@dlec.com](mailto:mack@dlec.com).*

## DATES OF NOTE

More information/events may be found at <http://www.ima-net.org/calendar.cfm> and <http://www.ima-net.org/MIT/open.cfm>  
Email: [jstanley@ima-net.org](mailto:jstanley@ima-net.org)

Sponsored by OSHA and DCEO . . .

### Powered Industrial Vehicle Incident Prevention April 14, 2009

Lewis & Clark Community College,  
600 Troy Rd., Nelson Campus, LeClaire Rm.,  
Edwardsville, 1:00-3:00 PM  
Contact Tom Monroe at 618-468-3500

April 15, 2009

Illinois Central College, North,  
5407 N. University St., Arbor Hall Auditorium,  
Peoria, 9:00-11:00 AM  
Contact Ellen George at 309-999-4580

April 29, 2009

Carle Foundation Hospital, The Forum at Carle,  
611 W. Park St., Urbana, 9:00-11:00 AM  
Contact Larry Krause 217-403-8770

Since October 1, 2003, 50 employees in Illinois have been killed by powered industrial vehicles (PIV). These machines are used for material handling needs in many industries. OSHA and the Illinois Department of Commerce and Economic Opportunity will host a FREE seminar to learn how to combat PIV hazards. Learn how to protect your company and avoid costly injuries and OSHA enforcement.

April 21, 2009

**Selling is Everyone's Job Reception and Dinner**  
— Drury Lane, Oakbrook Terrace, 5:30-9:00 pm  
The Metals Service Center Institute and the IMA are teaming up with other great local organizations to bring you Jeffrey Gitomer — a great CPAE Speaker Hall of Famer — who will share his selling secrets and strategies. Regardless of your title, at the end of the day, everyone is a Salesperson. \$125 per person. Contact Kate Johnson, 847-485-3006, email [kjohnson@msci.org](mailto:kjohnson@msci.org). To register, visit [www.msci.org/EventCalendar/details.aspx?EventID=477&cat=99999](http://www.msci.org/EventCalendar/details.aspx?EventID=477&cat=99999)

From VedderPrice . . . Employment Law  
Conference: Countdown to compliance  
Chicago – May 6, 2009

Rosemont – May 7, 2009

Join VedderPrice for their annual Employment Law Conference. As always, this program will offer practical advice for today's busy Human Resources Professionals and In-House Counsel.

Registration and continental breakfast take place from 8:00-8:30 am. The conference begins at 8:30 am and adjourns at 11:35 am. Visit [www.vedderprice.com/index.cfm/fuseaction/seminars.home/seminars.cfm](http://www.vedderprice.com/index.cfm/fuseaction/seminars.home/seminars.cfm) to register.

## IMA's Business Day at the Capitol Springfield

WEDNESDAY, MAY 6, 2009

Register TODAY at:

<http://www.ima-net.org/bizday09.cfm>

## SBA upgrades podcasting for small business owners

The U.S. Small Business Administration has upgraded its podcasts to offer additional resources to the nation's entrepreneurs. Business owners can take advantage of this and other business resources from the SBA to help them more effectively manage their firms, including free online training courses and other business tools and resources.

The SBA podcasts, available online at [www.sba.gov/tools/audiovideo/Podcasts/index.html](http://www.sba.gov/tools/audiovideo/Podcasts/index.html), provide an introduction to a variety of small business topics, and provide useful business information and advice.

The newest podcast topics include Marketing to the Federal Government, Getting Your Small Business Ready for Tax Season and Online Reporting of Employee Wages. Existing podcasts for entrepreneurs are Is Entrepreneurship for You and Checklist for Starting a Business. New podcasts will be added regularly to provide insight and tips on such topics as downshifting in a slowing economy, going green and business plan development, along with programs for veterans and information to help entrepreneurs start, grow and succeed.

Each podcast delivers a broadcast quality recording that can now be downloaded through RSS feeds, in addition to portable media players and personal computers. RSS is a format for delivering regularly changing Web content, such as podcasts, that provides an easy way to keep up with news and information, and avoids searching for information on Websites. It benefits readers who want to subscribe to timely updates that can be directly delivered. The content, known as a feed, can be read using a readily available RSS reader.

The podcasts are less than 10 minutes in length and feature expert interviews from government, industry and business professionals. SBA podcasts and other resources can be accessed online at [www.sba.gov/tools/index.html](http://www.sba.gov/tools/index.html).

## 2009 High-Performance Computing Adoption Conference, May 11-13, San Francisco

The 2009 High-Performance Computing Adoption Conference will expose attendees to information critical to strategic business and technical efforts impacted by high-performance computing adoption. The conference, sponsored by RTI International, will be held May 11-13 at the Hyatt Regency San Francisco Airport Hotel.

The three-day event will define the challenges of high-performance adoption and provide solutions for scaling the innovation curve. The program will feature policy and market experts as well as thought leaders from both industry and academia who will offer strategic insights into roadmaps for success in adopting high-performance computing.

"High-performance computing is changing the game," said conference director, Stephen Baker of RTI. "From fundamental research to advanced modeling and simulation, high-performance computing is invigorating productivity and innovation throughout industry and science. In an increasingly competitive global economy, the question is no longer can organizations afford to adopt high performance computing, but rather can they afford not to?"

The conference will include topics from implementation challenges and barriers to adoption, to public policy factors and market considerations. Attendees will have the opportunity to engage leading minds shaping the high-performance computing ecosystem and understand how strategic allocation of critical national resources will fuel domestic competitiveness in the high-performance computing revolution.

High-performance computing adoption experts will lead a half-day preconference symposium offering companies and organizations the opportunity to make

dramatic improvements in efficiency and competitiveness.

Keynote speakers at High-Performance Computing Adoption '09 will examine the broad implications of high-performance computing, including topics such as the HPC Revolution: Unleashing Innovation; HPC in the Next Decade: Density, Adaptivity, Energy, Integrity, and Complexity; HPC in Engineering Transformation; and Computing at the Crossroads

Additional conference sessions will examine a variety of topics including: Leading Perspectives and Analysis of Key Market and Industry Considerations; Perspectives from the National Labs; Emerging Technologies and the HPC Ecosystem; Beyond Multi-Core: Advanced Computational Platforms; Innovation Enablers: Interconnects and Accelerators.

*RTI International is a research institute dedicated to improving the human condition by turning knowledge into practice. For registration and other information about the HPC Adoption '09 conference, visit <http://www.hpcadoption.org>.*

## SBA warns of fraudulent attempts to obtain bank account information from small businesses

The U.S. Small Business Administration has issued a scam alert to small businesses, warning them not to respond to letters falsely claiming to have been sent by the SBA asking for bank account information in order to qualify them for federal tax rebates.

The fraudulent letters were sent out with what appears to be an SBA letterhead to small businesses across the country, advising recipients that they may be eligible for a tax rebate under the Economic Stimulus Act, and that SBA is assessing their eligibility for such a rebate. The letter asks the small business to provide the name of its bank and account number. Do not respond.

The scheme is similar in many ways to email scams often referred to as "phishing" that seek personal data and financial account information that enables another party to access and individual's bank accounts or to engage in identity theft.

The SBA is working with the SBA Office of Inspector General to investigate this matter. The Office of Inspector General asks that anyone who receives such a letter report it to the OIG Fraud Line at 800-767-0385, or email at [OIGHotline@sba.gov](mailto:OIGHotline@sba.gov).

### Participate in the IMA's 2009 Compensation Survey . . .

The Illinois Manufacturers' Association, in partnership with RSM McGladrey, invites you to participate in the **2009 ANNUAL IMA COMPENSATION SURVEY**. Your responses to this survey will be helpful to all manufacturers in the state of Illinois. All participants will receive a **FREE** electronic copy of the survey report. In addition, participants will receive significant discounts on custom reports available only to those who participate in this survey.

To ensure the timely analysis and processing of survey results, participants need to submit their data **NO LATER THAN FRIDAY, APRIL 17, 2009**. If you cannot meet this deadline but still wish to participate, please contact Janie Stanley of the IMA at [jstanley@ima-net.org](mailto:jstanley@ima-net.org) or 800-875-4462, ext. 3020.

**To participate now, click on the following link:** <https://www.ima-net.org/compsurvey09.cfm>