



# TEXAS

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# BUSINESS REPORT



## Washington Attacks Texas Industry Sector *EPA-TCEQ Brouhaha Threatens Business Climate*

Under a delegation agreement with the federal Environmental Protection Agency (EPA), the Texas Commission on Environmental Quality (TCEQ) is required to operate an air emission permitting program at least as stringent as federal regulations. Lately, the news outlets have been filled with stories about the proposals by EPA to disapprove Texas' air permitting program.

A reading of most of these reports would have one believe that the state of Texas has for years gotten away with running an air quality regulatory program that is not equal to federal requirements and has sacrificed air quality in Texas in order to make business easier for our industrial facilities and manufacturers. Only part of the story is partly correct – Texas' air quality permitting program is not equal to the federal program. It is better.

The program that EPA is challenging today is the same program that has been achieving unprecedented reductions in air emissions for over a decade and that has efficiently and effectively authorized the construction of new emission sources, or changes to existing emission sources, with one key objective in mind – to reduce emissions in Texas so that we will meet federal air quality standards. It is also the same program that EPA has failed to either fully approve or disapprove by exercising its statutory obligation to render decisions on Texas' program in a timely manner. Some elements of the Texas program that EPA is suggesting are deficient



were adopted in state law as long ago as 1992. We at TAB are always proponents of careful and deliberate decision making at any level of government, but 17 years is a long time, by any measure.

Texas began to realize years ago that to achieve the necessary reductions in air emissions in this state would require not only the resolve to identify and make the

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### WORKFORCE Q&A

*I am worried about all of the recent media coverage on H1N1 giving my employees another excuse to stay home. Can I require employees who have symptoms to still report to work?*

(see page 2)

### GOLDWATER ON GOVERNMENT

*"Remember that a government big enough to give you everything you want is also big enough to take away everything you have."*

– Former US Senator  
Barry Goldwater (R -- Arizona)

### TAB MISSION

*To make the Texas business climate the best in the world.*

# WORKFORCE Q&A



David Jordan, Sr.  
FULBRIGHT & Jaworski L.L.P.

***I am worried about all of the recent media coverage on H1N1 giving my employees another excuse to stay home. Can I require employees who have symptoms to still report to work?***

The media coverage on H1N1 influenza has indeed been widespread, and many employers are confused about whether to dust off emergency response plans or to maintain business as usual. Despite this confusion, however, governmental agencies have weighed in on an employer's obligations and best practices as they relate to influenza in the workplace.

For example, the Occupational Safety and Health Administration (OSHA) has restated recently with regard to H1N1 that an employer has a general duty to provide a workplace free of recognized hazards. With this obligation, an employer has a duty to take steps to protect his workforce from the spread of H1N1. For example, OSHA recommends that employers require employees to use appropriate hygiene and engage in social distancing. OSHA also strongly recommends that employers incentivize employees to stay home from work if they exhibit influenza-like symptoms. Examples of employee incentives include a culture of encouraging ill employees to stay home, relaxed leave and leave documentation policies, and compensation for time off.

Moreover, despite the potential for disability discrimination allegations, the Equal Employment Opportunity Commission (EEOC), in guidance released in early October ([http://www.eoc.gov/facts/pandemic\\_flu.html](http://www.eoc.gov/facts/pandemic_flu.html)), encouraged employers to send employees home who report influenza-like symptoms. This encouragement is consistent with the Centers for Disease Control and Prevention's recommendation that employers should send ill employees home. The EEOC reminds employers that sending an employee home because he or she reports influenza-like symptoms does not violate the Americans with Disabilities Act (even if the employee's condition meets the definition of a disability) because the employee likely poses a direct threat to the safety of other employees in the workplace.

## ***Employment Relations questions?***

***Don't forget to call TAB's Employment Relations Hotline  
for your next HR Question  
1.800.856.6721, ext. 164 or E-mail [smcgee@txbiz.org](mailto:smcgee@txbiz.org)***

# TEXAS BUSINESS REPORT

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# EPA Decision Has High Stakes For Texas

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reductions, but a process for efficient administrative, legal and technical review that would enable approval of the changes so that the environmental benefits could be realized as early as possible. It hardly makes sense for the state to demand thousands of tons of reductions in industrial emissions and then force every change necessary to achieve those reductions through a bureaucratic process that can take months, if not years. In addition, facilities in Texas have been granted the flexibility to operate more efficiently in exchange for making further emission reductions than would otherwise have been required. So, in Texas we have standard permits for pollution control projects to streamline approval of critical emission reductions and flexible permits that reduce the administrative and operational burden on industrial facility owners in exchange for agreements to apply the best available control technology to an entire facility and reduce emissions plantwide.

So what has this program achieved? Beginning in 1999, Texas has realized hundreds of thousands of tons per year in emission reductions. Monitored ozone levels in our largest urban areas have decreased dramatically. Houston is now showing attainment of the current ozone standard years ahead of schedule.

Federal and state air permitting regulations are detailed and complex. Understanding both well enough to intelligently assess exactly where they differ and what those differences mean requires considerable thought and effort. Unfortunately, there is no evidence in any of the proposed decisions to disapprove parts of the Texas air permitting program that EPA has published in the Federal Register that thoughtful analysis

has been performed. And they have had up to 17 years to look. Some environmental groups have applauded EPA's actions and have suggested that it is high time this program was fixed so that the environmental benefits that have been avoided will finally be achieved. Sadly, fixing what is not broken will not improve air quality one bit. What it will do is increase the uncertainty of operating critical manufacturing businesses in uncertain times and add further bureaucracy to a process that is more than sufficiently bureaucratic already.

***“ Beginning in 1999, Texas has realized hundreds of thousands of tons per year in emission reductions. Monitored ozone levels... have decreased dramatically. Houston is now showing attainment of the current ozone standard years ahead of schedule. ”***

Under federal law EPA has a legal obligation to ensure that Texas' air program meets all applicable requirements. Given the importance of achieving cost effective and technically feasible emission reductions, we would assume that slowing that process down, adding increased financial and legal uncertainty to our business climate or creating unrealistic public expectations are the last things EPA would hope to accomplish.

Visit [www.txbiz.org](http://www.txbiz.org) to review TAB's comments on EPA's proposed disapproval of standard permits for pollution control projects and flexible permits.



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\*\* IDC Worldwide Quarterly PC Tracker, May 2009.

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# MEMBER PROFILE

## Texans Can! Academy *Turning challenges into opportunities for Texas children*

The Dallas Chapter of the Texas Association of Business (TAB) recently honored Richard Marquez, CEO of Texans Can!, as the 2009 Distinguished Business Leader in Education. This award recognizes Texas business executives who exhibit strong leadership skills, promote ethical business practices and contribute to the local community. With thirty years of experience in the education profession, Mr. Marquez joined the Texans Can! team in March 2007. "Richard Marquez and Texans Can! represent the leading edge of solutions to the critical problems associated with the ever increasing drop out rate in our public school system. They were our choice due to their proactive work recapturing these kids and preparing them for productivity in the Texas workforce," stated Kirk Beckert with Summit Consolidated Group, a local TAB chapter officer.

A TAB member, the Texans Can! Academy freely provides a second chance for at-risk youth to achieve economic independence and a hope for a better life at campus locations across the Lone Star State. Thousands of at-risk Texas youth are succeeding in this relationship-based educational system. Texans Can! students know that earning their high school diploma will bring them a better future through the program's unique, adaptable, one-on-one educational model. Since 1985 they have helped over 60,000 kids.

Founded on the principle that all children are valuable, and providing them a compassionate, positive and nurturing environment, these students are accomplishing their goals. These students are not required to attend school, but look forward to coming to school each and every day. With a ratio of one teacher to no more than 18 students, a special bond is developed among the group that helps them excel and complete their education whereas before there was no hope. For most of the youths attending, this is their last chance to receive an education.

The Texans Can! Academy operates 10 charter schools

for at-risk, disadvantaged youth who have dropped out of their traditional schools. The campuses are open and tuition free to any student who wants to continue their high school education. Many of these students did not thrive in the traditional education system. The students have either fallen behind because of numerous moves, the need to work during school hours to support themselves or their families, or the need to make a change of campus environments.

"It is a privilege to honor Richard and the Texans Can! Academy," stated TAB President Bill Hammond. "They are creating citizens who will be contributors to the Texas economic system, and are helping to develop the next generation of leaders in our state."

TAB proudly supports the efforts of charter schools that have demonstrated a commitment to excellence. Charter schools in Texas are an indispensable complement to our public education system.

TAB's Distinguished Business Leader Award is one of its most prestigious recognitions for leadership and community involvement. Past recipients are Dick Cheney, Herb Kelleher, Ebby Halliday, Norm Brinker, the late Robert Dedman, Earl Nye, Ray Hunt and H. Ross Perot.

***The Texans Can! Academy is "creating citizens who will be contributors to the Texas economy, and are helping develop the next generation of leaders in our state."-- Bill Hammond***



Texans Can! Academy CEO Richard Marquez receives the Distinguished Business Leader in Education Award from TAB President Bill Hammond

## Bill White enters Governor's Race

Ending weeks of speculation, popular Houston Mayor Bill White announced his candidacy for Governor. White first faces a Democratic primary in March against humorist Kinky Friedman and hair-products impresario Farouk Shami. If White is victorious in the primary, he is likely to face either Governor Rick Perry, a battle-tested campaigner and the longest serving governor in Texas history, or Senator Kay Bailey Hutchison, who has garnered the largest margins of victory in general elections in recent memory.

Political pundits agree that White brings credibility to the Democratic ticket, which had been lacking in "star power" and name recognition. Stature gained during his stint as the Texas Democratic Party Chairman and his popularity as Houston's mayor provide an immediate advantage against his Democrat opponents.

In the GOP primary battle, Perry and Hutchison are currently embroiled in a television ad war. Perry's ad touts economic achievements, while Hutchison discusses her decision to stay in the Senate through the primary to fight ObamaCare.

Hutchison's decision puts on hiatus the desires of many elected officials hoping to be appointed to the Senate seat, should she resign. In addition, Attorney General Greg Abbott, who has been mulling a run for Lt. Governor, will stay in place. After raising over a million dollars in hopes of running for Attorney General, Abbott protégé Ted Cruz is stuck in limbo unless Abbott decides not to run for re-election.

## Chairman's Report: 2009 Chairman Don Bethel



PRO-BUSINESS • PRO-TEXAS  
FOR OVER 75 YEARS

Dear Friends,

I have been honored to serve as the 2009 Chair of the Texas Association of Business (TAB), a distinction that ranks among the proudest in my professional life.

Facing an unprecedented economic meltdown, TAB spoke loudly for the business community by championing a tax cut for small businesses and overhauling the State's broken public school accountability system. The Association also stood victorious in battles against new taxes on employers and rollbacks to lawsuit reform.

Last year's Chairman, Randy Jones, correctly predicted that TAB would have one of its most successful legislative sessions to date. I'm delighted to report that even our own expectations were exceeded. Thanks to the leadership of President Bill Hammond and the talented Governmental Affairs team of Cathy DeWitt, Steve Minick, Kandice Sanaie and Sandy Kress, the Association again earned its stripes as the most influential trade association in Texas.

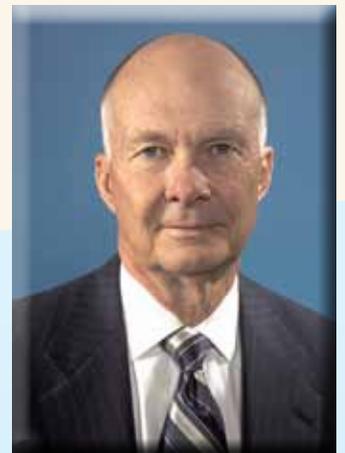
In Washington, Texas was and remains under siege by an anti-business Congress and a President whose focus lies less on job creation and more on radical, partisan priorities. TAB has gained traction fighting ill-conceived plans like ObamaCare, "Cap & Trade" and "Card Check". Utilizing our internal resources, we engaged our grassroots army to generate over 20,000 pieces of correspondence to Congressional leaders, and influenced lawmakers to cross party lines in order to do what is best for business.

In addition to our traditional lobbying and correspondence efforts, TAB began aggressive social media campaigns that have led to our material being utilized by Congressional and Senate leaders, the US Chamber of Commerce, local chambers across Texas, statewide campaigns and syndicated national columnists.

As my term draws to an end, I am proud that the landmark victories TAB has gained in 2009 will help make Texas the best place in America to live, work, grow a business and raise a family.

Sincerely,

Don Bethel  
2009 Chairman





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# Talk **About** Business

## Four Horsemen Of The Economic Apocalypse



Bill Hammond, TAB President

The business community has been wary of the White House's priorities since January, and after twelve months, the leaders in Washington have done little to assuage our fears. Sinking toward an eleven percent unemployment rate, a 12 trillion dollar deficit and a broken financial system, the power brokers in Washington need now, more than ever, to stop the assault on free enterprise and the elements of our business climate that have helped lead us to economic prosperity.

The Texas Association of Business is an unabashed proponent of fiscal responsibility on both the state and national level. President Obama's anti-business policies have been detrimental to the economic strengths that our state has built over the past fifteen years; putting Texas in jeopardy. The four results or potential results of the President's priorities – destroying the American energy sector, giving more power to unions, a government take-over of health care, and out of control spending – are truly the Four Horsemen of the Economic Apocalypse.

As the energy capital of America, Texas is vulnerable to the radical

environmental policies being considered in Congress. Despite the speculative nature of all climate science, our nation is charging toward the cliff with no regard for the consequences. If draconian environmental legislation is passed and rigidly enforced, energy companies accountable to shareholders will be apt to take their business overseas in order to protect their bottom line. An industry shift like this would damage the economic and energy security of both Texas and the United States.

As a Right-To-Work state, employers are not bound by the rights of overzealous unions. The organized labor movement is in the midst of an enormous struggle to increase their power. Their position will be strengthened instantly if "Card Check", which would make union organization dramatically easier, passes. Once a union is formed – based on majority sign-ups and not private elections – the employer and the union begin the bargaining process. If no agreement is reached within 90-days, the parties will immediately begin mediation. If, after thirty days, no decision can be reached, the dispute is referred to arbitration. We've seen what

bloated union demands have done to the automotive industry. Why would Obama want to replicate their downfall in industries across America?

Then again, an even better question is "Why do I want the government to take over my health care?" For nearly forty years, the federal government has failed to rein in the cost of Medicare, with costs rising 34 percent more per Medicare patient than the combined costs of all health care in America. Given those statistics, do we have any expectation that the government can somehow change course to run a federal health insurance program with any degree of success?

And how much is this costing? The US Chamber estimates that a public option health care plan will cost \$2.4 trillion by 2014. The share of American debt for each citizen is over \$39,000. The People's Republic of China owns \$1.2 trillion of our debt. In order to service our current debt, the US is adding \$500 billion annually in interest alone. While Washington is steering us toward an economic apocalypse, it is becoming clearer everyday that we won't be able to escape this debt until The Rapture.