



# TEXAS

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# BUSINESS REPORT



## Message To Super Committee: Go Big *The Financial Well-Being Of The Country Depends On It.*

In the past few months the Texas Association of Business has endeavored to better represent its members in Washington, D.C. and get the message out that organizing our fiscal house should be the number one priority.

With the addition of our federal lobbyist, Wayne Franke, and three trips in the last five months by TAB President and CEO Bill Hammond to the Nation's Capital, TAB is doing what its members ask it to do; still concentrate on Austin but also have a much larger presence in Washington, D.C.

"The source of most of the pain and suffering for Texas business isn't Austin, it's Washington," said Hammond. "The good news is that members of the Texas Congressional Delegation are very responsive to the message from Texas business. That message is: we are extremely concerned by the out of control spending in DC."

The positive feedback to our message has been bi-partisan. "The message is coming through loud and clear and members from both sides of the aisle are very receptive," said Hammond.



TAB voices concern over out of control spending in Washington, D.C.

TAB has also joined with the US Chamber to urge members of the Super Committee to take bold action to cut much more than the \$1.2 trillion goal. TAB signed on to a US Chamber letter supporting that concept, and then sent a letter of its own urging the Super Committee to, in so many words, go big or go home.

TAB is urging Congress to look at some of the plans from its *Texas Center for Federal Policy* for some solutions to the

### WORKFORCE Q&A

*Our company received a federal contract to supply our private labeled oil to the U.S. Army Base Exchanges in West Texas, New Mexico and Arizona. Will our company have to use E-Verify for our workforce?*

(see page 2)

### SAVE THE DATE

*TAB's Annual Conference is coming up February 1 & 2 in Austin. Hear from the State's leaders and from the candidates for U.S. Senate. We will also look at the future demographics of Texas and what that means to your business, and you will hear from the State's media leaders. Check the insert inside for more information and to register for this can't miss event.*

### TAB MISSION

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

# WORKFORCE Q&A



Harry Joe,  
Jackson Lewis LLP

***My company is engaged in the purchase of refined bulk oil from refineries which are then packaged into smaller quantity containers under a private label and sold to large wholesalers and retail chain stores. We successfully bid on and received a federal contract to supply our private labeled oil to the U.S. Army Base Exchanges in West Texas, New Mexico and Arizona. Will our company have to use E-Verify for our workforce?***

The E-Verify Federal Contractor Rule (FAR Case 2007-013 Employment Eligibility Verification) requires all Federal contractors through express language inserted into their Federal contract to agree to use E-Verify to verify

employment authorization of all persons they hire to work under the federal contract and their current employees who were hired after November 6, 1986 who perform work under the Federal contract within the United States.

As a general rule, an employer cannot use E-Verify to verify the employment authorization of existing employees. However, a Federal contractor can use E-Verify to verify their entire current workforce including current employees who will not be assigned to work under the Federal contract if the new Federal contractor notifies DHS of its intention to do so at the time of online enrollment into the E-Verify Program or when it updates its profile in the E-Verify system.

The obligation of Federal contractors to use E-Verify does not apply to certain types of prime contracts. Contracts for commercially available off the shelf items and related services (COTS), for less than the acquisition threshold of \$100,000, for less than 120 days, or contracts for work performed outside the United States do not subject the Federal contractor to mandatory use of E-Verify. A COTS item is a commercial item that is sold in substantial quantities in the commercial marketplace and is offered to the government in the same form that is available in the commercial marketplace or has minor modifications.

Now, in response to the question above, the Federal contract should be examined to determine whether an E-Verify Clause exists. If so, the company will be required to use E-Verify for new hires and current existing employees assigned to work under the Federal contract. If it exists, the company may seek an administrative review of whether the E-Verify Clause should have been inserted into the Federal contract on the argument that the privately labeled and packaged oil products qualify as a COTS item. However even if the COTS exception applies, for new hires and current employees working in Arizona, the obligation to use E-Verify may arise not from the FAR E-Verify Federal Contractor Rule, but under Arizona's state law which the United States Supreme Court recently upheld in Chamber of Commerce of the United States v. Whiting (Docket No. 09-115, May 26, 2011).

## ***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)***

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# TAB Ballot

*For the election of Directors-at large nominated to serve January 1, 2012 through December 31, 2014.*

*As prescribed by the Constitution of Texas Association of Business (TAB), the following active TAB members in good standing have been nominated to serve on the TAB Board of Directors for a three-year term. According to the TAB Constitution, any member, upon receiving the ballot, shall have six (6) days from the date on the ballot or date of mailing (whichever is later) within which to offer substitute nominations for one or more of the nominees for whom substitution is suggested. If no substitute nominations are made as prescribed within ten (10) calendar days from the date of mailing, the list of nominees shall automatically be elected as members of the Board for the specified term indicated on the ballot.*

**David Altounian** - Austin  
Motion Computing

**Jon Andrews** - McKinney  
ExtendHealth

**Kirk Beckert** - Dallas  
Texans Can

**Steve Brown** - Grapevine  
Esparza's Restaurante Mexicano

**Cory Bush** - Groesbeck  
Bush's Chicken

**O. Ben Carroll** - Dallas  
Cambridge Legacy Group

**Bob Cartwright** - Pflugerville  
Intelligent Compensation

**Scott Childress** - Cross Plains  
Childress Agricultural Enterprises, LLC

**Doug Chisum** - Odessa  
Cutting Edge Advertising, Inc

**Elizabeth Darling** - Austin  
OneStar Foundation

**Adam Feriend** - Weatherford  
JRJ Construction

**Cynthia Figueroa** - Dallas  
The Fugueroa Law Firm

**Gary Gibson** - Houston  
Star Furniture Company

**Valorie Glass** - McAllen  
Atlas & Hall

**Duane Gordy** - Beaumont  
Cherokee Development

**Allen Hartman** - Houston  
Hartman Management, Inc

**Pete Havel** - Dallas  
The Wolf Group

**Tracy Hayes** - Austin  
CWS Corporate Housing

**Jeff Heckler** - Austin  
Public Services Group

**Nathan Ingram** - Magnolia  
Tranquility Ranch, LLC

**Chris Johnston** - Giddings  
L.F. Manufacturing Inc

**J. Alan Johnston, Jr.** - Houston  
Johnston, LLC

**Kal Kincaid** - Beaumont  
APAC-Texas, Inc

**Jennifer Lustina** - Austin  
JHL Company

**Linda McKenna** - Weslaco  
Rio Grand Valley Partnership

**Ron McMillan** - Austin  
Time Warner Cable

**Audrey Mross** - Dallas  
Munck Carter, LLP

**Thomas Niesen** - Dallas  
Acuity Systems

**Mike Payne** - Jarrell  
Jarrell Star-Ledger

**David Pope** - Liberty Hill  
Pope Insurance Group

**Penny Rayfield** - Austin  
OnShore Resources

**Patrick Rhode** - Austin  
Cintra Developments, LLC

**Brad Rollins** - San Antonio  
Dahill - A Xerox Company

**Mike Sipes** - Graham  
State Farm Insurance

**John Smart** - Dallas  
I Wuf, LP

**Ed Smith** - Alvin  
House Calls Home Health

**John Stacy** - Wylie  
InsuranceMakesMeSick.com

**Tim Vaughn** - Longview  
T Vaughn Properties, LLC

**Linda VonQuintus** - Austin  
AAA Texas

**Tom Wise** - Austin  
Superior Health Plan

**Wilbur Yates** - Kilgore  
Edward Jones

**Guy Young** - Fort Worth  
The Gus Bates Company

# Go Big

*continued from page one*

long term spending problems caused by entitlement programs. Many are similar to the Ryan Plan, developed by Congressman Paul Ryan and unanimously supported by the TAB Board.

The policy solutions include:

- ★ Block granting Medicaid funds to the states and allowing them to develop their own programs that will cost less money and provide better care.
- ★ Increase the minimum retirement age for Social Security, allowing for some payroll tax diversions into individually controlled accounts and offering tax incentives for people to save for their own retirement.
- ★ Transform Medicare into a premium support system similar to Medicare Advantage, giving seniors coverage choices rather than mandating one size fits all coverage.

The problem with these entitlement programs is that the government has overpromised benefits and then underfunded the programs.

“I had the chance to hear Paul Ryan speak, and he makes the point that if Congress knew in 2007 about the upcoming financial crisis in 2008, and did nothing, that would be criminal,” said Hammond. “Now, Ryan says, we know there is another financial crisis coming because of Washington’s spending, and it would be criminal for Congress not to act now.”

# BUSINESS PROFILE

## Honors For TAB's Team



TAB's Membership Development Team was recently recognized with the two top awards at the annual meeting of the Council of State Chambers and the Association of State Chamber Professionals. At the conference in Pinehurst, North Carolina, the TAB was singled out for achieving the Highest Membership Growth in both numbers (members) and dollars (revenue) in the nation.

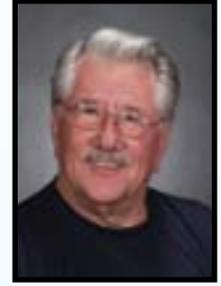
"These awards are a reflection of the entire Membership Development Team and TAB's leadership," said Dale Young of Summit Consolidated Group, TAB's Membership Chairman. "From each individual team member to every member of our Board of Directors, membership growth is critical to responding to the needs of the Texas business community."

"Having a strong Membership Development Team is what keeps TAB strong," said Bill Hammond, TAB President and CEO. "Without a growing membership TAB wouldn't be able to be the premier advocate for business in Texas. This is the team that literally builds TAB from the ground up, and we are lucky to have such great people working on behalf of Texas business out in the field."

## Meet the TAB Award Winning Team:



**Marshall Jeffus**  
*Serving northwest and west Texas since 2006.*



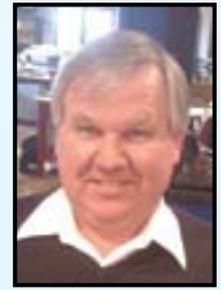
**Ron McGill**  
*Serving central Texas for over two years.*



**Monna Miller**  
*Consultant serving the Dallas area. She's been helping the members of TAB since 1974.*



**Miles Resnick**  
*Serving southeast Texas for the past three years.*



**Mark Sadowski**  
*Serving north and northeast Texas for the last five years.*



**Russell Penson, Jr.**  
*Serving the Houston area since May of 2010.*

Also serving as the Southeast Texas consultant for almost five years, **Lee Ann Fueslier**.

# Obama NLRB Requires Employers To Post Notice of “Employee Rights”

By: Frank L. Carrabba

The Obama Administration’s National Labor Relations Board (NLRB) has passed a rule requiring almost all employers, including small businesses, to post a notice that advises employees of their rights under the National Labor Relations Act (NLRA). The notice must be posted by January 31, 2012. Unlike employment laws that apply to companies based upon the number of individuals employed, the NLRA’s jurisdiction is determined by a company’s affect on interstate commerce measured by its annual volume of business. The NLRB’s website, [www.nlr.gov](http://www.nlr.gov), or your labor attorney, can help you determine if your business is covered by the NLRA.



This poster could end up in your business

You may obtain a copy of the poster at the NLRB’s website. The notice not only informs employees of their rights under the NLRA, it also lists examples of potential unfair labor practices (ULP) that may be committed by employers and unions.

One of the rights listed is that of concerted activity, a right under the NLRA that even some of the most experienced employers have no knowledge of. The notice informs employees that they have the right to “take action with one or more co-workers to improve your working conditions by, among other means, raising work-related complaints directly with your employer or with a government agency, and seeking help from a union.” Concerted activity is protected under the NLRA even though there is no union involved.

With respect to other posting requirements, it must be posted in

a conspicuous place, where other notifications of workplace rights and employer rules and policies are posted. In addition, the NLRB advises that “employers should publish a link to the notice on an internal or external website if other personnel policies or workplace notices are posted there”. Lastly, if at least 20% of your employees are not proficient in English and speak another language, you must post both the English version and the other language version, which you may obtain from the NLRB.

As to the consequences for failing to post the notice, the employer who does not post will be guilty of a ULP. If the employer has allegations of additional ULPs, the NLRB may extend the six-month statute of

limitations. A knowing and willful failure to post the notice may be considered evidence of unlawful motive in a ULP case involving other alleged violations of the NLRA.

Many employer associations, including the National Association of Manufacturers and the Coalition for a Democratic Workplace, have filed lawsuits against the NLRB. Hopefully, the courts will find that the NLRB does not have rulemaking authority in this area and nullify its action. However, until that time; all employers must become educated on their responsibilities to comply with this new NLRB rule. Your supervisors and managers will be faced with questions from your employees and must be trained as to how to answer these questions without violating the NLRA. Your labor law advisor can assist you in this training.

## QUOTES

**“We feel that Texas could become a magnet for new manufacturing jobs.”**

– Bill Hammond in the *Austin and Houston Business Journals*, TAB urges lawmakers to act on plan to spur manufacturing.

**“The idea is to make the public aware of what’s going on.”**

– Bill Hammond in the *Austin American-Statesman*, Billboard prompts ACC graduation rate debate.

**“We applaud his efforts, as (former Texas Gov.) Bill Clements used to say, to build a fence between the hog and the trough.”**

– Bill Hammond in the *Houston Chronicle*, Tax item pushed by Perry under fire.



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# Talk **About** Business

## The Committee Needs To Be Super



Bill Hammond, TAB President

It shouldn't be called the Super Committee for nothing. The spending numbers are downright scary, and it's about time Washington does something about it. The Super Committee, the Congressional bipartisan panel charged with finding \$1.2 trillion in savings over a 10 year period, could make a real dent in reducing Federal spending, if it doesn't stop at \$1.2 trillion in cuts.

Let's look at some simple numbers; big numbers, but still simple. Congress is talking about spending \$43 trillion over the next 10 years. The Super Committee's goal is to find \$1.2 trillion in cuts. That's somewhere around 2.5 percent. If you were forced, I'm sure all of you could find 2.5 percent to cut from your businesses budget over a 10 year period. Why should Congress be any different? The answer is they shouldn't be.

The real sticking point is going to be realizing that we need to cut what has, to this point, been untouchable: entitlement programs. While these cuts don't have to be cruel, we must do things differently, so that these programs don't continue to bleed money.

Let's start with Medicaid. I'm fond of telling teachers that they should

be worried about Medicaid because it's crowding out every other state budget item, and it's about to do the same at the federal level, especially if Obamacare stays on the books. The Federal Government needs to block grant money to the states, and let states design and implement their own programs, instead of mandating everything. The states can do it cheaper and improve accessibility and coverage for people who qualify for Medicaid.

When it comes to Medicare, there should be far more choices for seniors and a cost effective managed care model should be implemented. The age limit for Medicare eligibility should also be slowly raised. People are working well past 65 in a lot of cases, and many have access to other insurance that isn't paid for by taxpayers.

Then there's the 800 pound gorilla in the room - Social Security. First, we shouldn't touch the system for people 55 and older. For everyone else, we have to make fundamental changes or no one will get benefits. Raise the retirement age, modify automatic cost of living adjustments and encourage people to invest for their retirement

on their own. We can no longer just ignore this problem and expect it to go away.

The biggest problem with the entitlement programs is that the federal government has overpromised and underfunded these programs. As these programs are now they are unsustainable. It's much like many local pension programs. Houston civic leader Bill King has a great presentation on the problems. He points out that by 2020 it will take more than \$500 million to fund the city pension plan, which is half of all property tax collections the city will be taking in at that time. That is the definition of overpromising and underfunding, and also the definition of unsustainable.

I recently had the chance to hear Congressman Paul Ryan speak, and he makes the point that if Congress knew in 2007 the financial upheaval that was coming in 2008 - and still did nothing to circumvent it - that would be criminal. Ryan says now we know that there is another financial crisis on the horizon, caused by Washington's out-of-control spending. Thus it would be criminal for Congress not to act now to avert that crisis.