



TEXAS BUSINESS REPORT

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Our Priorities Are Your Priorities

TAB Board Approves New State Agenda

With the start of the 2013 legislative session just a couple of months away, the TAB Board has set the agenda that TAB will be pushing at the Capitol.

The entire list is too long to be published in this newsletter, but you can see the whole thing on www.txbiz.org, TAB's website. Just look for the State Priorities banner at the top and click it.

"Education, as always, is a big deal for TAB this upcoming session," said TAB President and CEO Bill Hammond. "That is really the key for the economic future of Texas."

Another top priority will be requiring those people on unemployment benefits to pass a drug test in order to receive those benefits.

"When it comes to drug testing for unemployment benefits, we are limited in what the state can require because of federal regulations," said Hammond. "We feel the state should require as much testing as it can by law. Unemployment benefits are a contract and part of that contract is that someone be available and ready to go to work. If you are using illegal drugs you aren't ready to go to work."

Another major issue will be transparency in state budgeting. Governor Perry has proposed a budget compact that calls for a major change in the way we create a spending plan for the state. That change is also backed by the lieutenant governor and house speaker, and by TAB.

Simply put, many dedicated funds are fueled by various fees that pay for specific state programs, or are at least intended to pay for such. We oppose any effort to reduce the budget of a fee-funded regulatory program for the purpose of redirecting the fee revenues to another purpose. We support efforts to reduce unobligated fund balances in regulatory fee funds by reducing fees to match



The State Capitol is about to get very busy.

WORKFORCE Q&A

Can we legally take a commission away from salespeople for disciplinary reasons? One of our sales people quotes whatever price the customer wants to hear, and then the customer calls with overbilling questions.

(see page 2)

UPCOMING EVENT

*TAB Higher Education Conference:
"Leaders and Laggards"*

*November 27th
10:00 a.m. - 2:00 p.m.*

*Hilton Austin
500 East 4th Street
Austin, TX 78701*

Join the Texas Association of Business for an update on higher education in Texas featuring statewide experts.

Register at www.txbiz.org

TAB MISSION

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

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WORKFORCE Q&A



Tommy Simmons,
Texas Workforce Commission

Can we legally take a commission away from salespeople for disciplinary reasons? One of our sales people quotes whatever price the customer wants to hear, and then the customer calls with overbilling questions.

Under the Texas Payday Law, a deduction from wages must be made for a lawful purpose and authorized by the employee in writing, unless it has been ordered by a court or is required or specifically authorized by a statute or regulation. It would be legal to deduct money from a salesperson's commission under specified conditions, if the employee has

authorized such a deduction in writing, and the deduction authorization is clear and specific enough to where a reasonable employee could be expected to know how much the deduction might be if the condition for the deduction arises. The authorization also would need to specify that the money will be deducted from the employee's pay. See the final sentence below regarding minimum wage and overtime pay issues. Another way to handle it would be to cover the issue in a written commission pay agreement, wherein the employee certifies that he or she understands and agrees to the various conditions that must be met for a commission to be earned and payable, including a provision that a commission is "earned" once all conditions for earning it have been met, and all chargebacks have been reconciled against the gross commission due. "Chargebacks" would need to be specifically defined and could include any sales-related loss to the company that is caused by the employee's negligence, oversight, failure to follow established procedures and price lists for sales, and/or failure to obtain prior written approval for any exceptions to such procedures and price lists from a designated supervisor prior to completing the sale. The net commission would be whatever is left after the gross commission has been reduced by any chargebacks and required or authorized deductions, and the net amount would be payable once the listed conditions have been met. As with any good wage agreement, have the employee and a company representative sign and date it. Wage claims under the Texas Payday Law are subject to the best evidence rule, and whoever has the best evidence of the wage agreement will prevail on that point. Keep in mind that if the employee files a wage claim regarding a deduction from commission pay, the burden will be on the employer to show that it made the deduction pursuant to proper written authorization, or that the commission was calculated properly under the commission pay agreement. Remember also to ensure that the employee's pay meets the minimum wage and overtime pay requirements, unless the employee happens to qualify under the retail sales or outside sales representative exemptions to the FLSA.

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***

TEXAS BUSINESS REPORT

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TAB STATEWIDE OFFICERS

Rudy Oeftering, *State Chairman*
John Bass, *Chair Elect*
Dale Young, *Treasurer*
Terri Ricketts, *Secretary*
Bill Hammond, *President*

TAB TEAM CONTACTS

Sandra McGee, *Senior Vice President*
Employment Services & Finance
smcgee@txbiz.org

Dan Cahalen, *Senior Vice President*
Membership Development
dcahalen@txbiz.org

Aaron Cox, *Vice President*
Chamber Relations
acox@txbiz.org

Cathy DeWitt, *Vice President*
Workers' Compensation, Tort Reform and
Employment Relations
cdewitt@txbiz.org

Stephen Minick, *Vice President*
Environmental Quality and Energy
sminick@txbiz.org

Kandice Sanaie, *Governmental Affairs Manager*
Insurance & Health Care
ksanaie@txbiz.org

Nelson Salinas, *Governmental Affairs Manager*
Education
nsalinas@txbiz.org

Robert Wood, *Communications Director*
rwood@txbiz.org

Lori Buntin, *Events Director*
lbuntin@txbiz.org

TAB REGIONAL OFFICES

Coastal Area

Daryl Davis
ddavis@txbiz.org - (816) 582-3311

North Texas Area

Mark Sadowski
msadowski@txbiz.org - (214) 906-3361

Northwest Texas Area

Marshall Jeffus
mjeffus@txbiz.org - (940) 642-5428

Southeast Texas Area

Miles Resnick
mresnick@txbiz.org - (409) 363-1481

Russ Penson

rpenon@txbiz.org - (816) 286-9122

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TAB Board Ballot

For the election of Directors-at Large nominated to serve January 1, 2013 through December 31, 2015.

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.

Ms. Phyllis Anzalone -

Sugar Land, Amerex Brokers, LLC

Mr. A.B. Bernard -

Beaumont, BGI Contractors

Mr. David Bethel -

Houston, Allen, Williford & Seale, Inc.

Mr. Albert Black -

Dallas, Ready to Work

Mr. Emanuel Bodner -

Houston, Bodner Metal & Iron Corp

Ms. Pam Bratton -

Austin, Meador Staffing Service

Mr. Tom Broussard -

Beaumont, Broussard's Mortuary

Mr. Mike Coffey -

Fort Worth, Imperative Information Group

Mr. Jason Cox -

Lone Star, Cox Logistics, LLC

Dr. Bob Day -

Garland, Broadway Eye Care

Mr. Jeff England -

College Station, K2Share, LLC

Mr. James Erben -

Erben Associates, LLC

Mr. Dick Evans -

Dallas, Proliance Resource Group

Mr. Richard Fleming -

Dallas, State Tax Group

Ms. Beth Garvey -

Plano, Instaff

Mr. Mark Glaze -

Clarksville, Red River Compression

Mr. Gerardo Interiano -

Austin, Google

Ms. Mabrie Jackson -

Irving, North Texas Commission

Ms. Robyn Jacobson -

Houston, Entrust

Mr. Von Kimball -

Lubbock, Bigham Brothers, Inc.

Mr. Dennis Knautz -

Fort Worth, Acme Brick Company

Mr. Kevin Krueger -

Victoria, Krueger Construction Company

Ms. Sally Larrabee -

Baytown, Process Control Outlet

Ms. Laura Lasco -

Houston, Lasco Enterprises, LLC

Mr. Ken Lauber -

Austin, Texas Mutual Insurance

Mr. Don Morriss -

Texarkana, F. W. Offenhauser & Company

Mr. Michel Moser -

Midlothian, Holcim (Texas) LP

Mr. Edward Munoz -

Pasadena, CA, Raytheon Company

Mr. David Nix -

Lamesa, Bethel Nix Realty

Mr. Jeremy Normand -

Arlington, State Farm

Ms. Kristin Pannell -

Frisco, EFA Processing

Mr. Jonathan Reed -

Houston, Industrial III Inc.

Mr. Ricky Scarborough -

Orange, Scarborough Industries

Mr. Randy Verhoek -

Danbury, Integribees LLC

Mr. Brent Webb -

Dallas, Aircraft Inventory Management

Dr. Alan Wimberley -

Lewisville, Responsive Education Solutions

Priorities

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expenditures and to eliminate overpayments by affected businesses and industries. Also we support legislative efforts to more clearly identify the source of funds for regulatory programs and fees that unfairly recover more than the costs of the programs that they pay for.

TAB is also concerned with the use of contested case hearings at TCEQ that add significant legal costs to all parties in the permit process and can require two years or more to complete. TAB supports replacing contested case hearings with a notice and comment process like most states and even the EPA use now. "Texas cannot remain competitive in attracting economic opportunities when it takes far longer to get a permit in this state. Notice and comment hearings will ensure that all concerns about a permit are considered before that permit is issued without the expense and time of conducting a contested case hearing," said Hammond.

When it comes to higher education funding it appears that momentum is growing to pass a TAB priority from last session that would tie a portion of higher education funding to outcomes, like completion rates, rather than enrollment. Governor Perry supports 10 percent of funding based on outcomes, but Representative Dan Branch (R-Dallas) says he would support up to 25 percent of funding to be based on outcomes. TAB supports either number, but thinks each should be just a starting point that should continue to increase over time.

MEMBER PROFILE

Broussard's Mortuary – Providing Support and Service to Southeast Texans for Five Generations

The rich history of Broussard's Mortuary began in the late 1800s when Alexander Broussard opened the first funeral parlor in Southeast Texas, beginning a five-generation tradition of caring and service.

Alex Broussard was succeeded in the family business by his son, Dale, and then by his grandsons, Alex and James. The family vocation entered its fourth generation when first cousins Jim and Tom Broussard joined the company in the early 1980s. Tom and Jim are currently the Co-CEOs of Broussard's. Today, Blue Broussard and Jayme Broussard Toeppich make up the fifth generation of the business.

Tom Broussard is a newly appointed member of TAB's Board of Directors. A native of Beaumont, Tom attended Lamar University and is a graduate of both Commonwealth College of Funeral Service and the National Foundation of Funeral Service School of Management.

During Tom's tenure, Broussard's Mortuary has received a number of awards and recognitions, including the inaugural Torch Award for Marketplace Ethics from the Better Business Bureau of Southeast Texas; Outstanding Family Business by Baylor University; and recognition of exemplary service from the Texas Funeral Directors Association following Hurricane Rita. Such honors have been added to the long-running list of accolades the Broussards have accumulated over the years.

To say that Tom has made a priority out of continuing his family's tradition of serving the community is nothing short of an understatement. His election onto TAB's Board was simply one of many for Tom. From Chambers of Commerce to the American Red Cross to the Catholic Charities of Southeast Texas, Tom has been involved with numerous boards and charitable organizations, serving as Chairperson in several cases. He has earned such honors as the President's Volunteer Service Award and Small Business Person of the Year.

Tom views his role in the community as a privilege: "It is a genuine honor to serve Southeast Texas in a similar way as our family has done for so many generations." Such an outlook is a testament to Tom's never-ending dedication to both the community at large and the business community.

Furthermore, in a time when the challenges that businesses face are greater than ever, Tom recognizes the importance of backing organizations like TAB:

"In times of economic struggle, we also are presented with economic opportunity. Since every positive economic time revolves around small business, it only makes sense that we support TAB. Someone needs to carry the interests of small business to government, and they are a steady force for the well being of family businesses like ours."

That first wood-framed parlor Alexander Broussard erected in downtown Beaumont was replaced in 1903 by a large brick facility that still stands today. The Broussard's have opened additional facilities across southeast Texas as more families have come to rely on their care, a notion that has allowed the Broussards to see the true value of their line of work.

Tom explains, "The simplest description is that what we do each day is not about caskets, cemeteries or crematories; it is about facilitating meaningful experiences for the families who call upon us."

The Broussards are proud Texans, who remain committed to assist the community through service and stewardship, just as they have for generations.

"...it only makes sense that we support TAB... they are a steady force for the well-being of family businesses like ours."

*- Tom Broussard,
Co-CEO
Broussard's Mortuary*



Blue Broussard, Jayme Broussard Toeppich, Tom Broussard, and Jim Broussard

Critical Election Days Away

It Is Time To Vote

It may seem hard to believe, but the long road is almost over. In just a few days early voting begins for the 2012 General Election. The stakes for our state and our country have never been higher.

The BACPAC Board has finalized its list of endorsements for this election. The full list can be found on our website, www.txbiz.org. Look for the Endorsement banner in the scroll at the top of the page.

At the top of the list is the endorsement of

Mitt Romney for President of the United States. "We have always felt that Governor Romney's business experience is what is needed to get this country's economy back on track," said Bill Hammond, TAB President and CEO. "We have also been a strong backer of Vice Presidential candidate, Congressman Paul Ryan, who spoke at our Washington Conference this year."

The BACPAC Board has also endorsed former Texas Solicitor General Ted Cruz for the U.S. Senate. "Ted Cruz will be a champion for small business owners,"



said Hammond. "He will fight to eliminate federal regulations, defeat President Obama's job-killing agenda, and unleash the private sector. Ted brings the kind of conservative principles and values that we need in Washington, D.C."

Upon hearing of the endorsement, Cruz said he was ready to go to work for the business interests of Texas in

Washington D.C.: "I'm grateful to have the TAB's support, and look forward to working with them to get

government spending under control and reduce the burden of excessive government regulation and taxes on business."

The BACPAC Board also endorsed statewide candidates for Railroad Commission, backing Christi Craddick and Barry Smitherman. Hammond explains, "With the explosion of new oil and gas exploration in Texas, the Railroad Commission has taken on a whole new importance. Barry has been doing a great job on the Railroad Commission, and we feel that Christi Craddick's background will make her a real asset to the Commission."

QUOTES

"These results buttress the argument for a strong public school accountability system. If Texas stays the course with the current system, we will see these numbers rise in the coming years."

– Bill Hammond in the Austin American-Statesman talking about low SAT scores.

"While no one likes the idea of higher fees, if you look at the TRIP study, the cost of doing nothing is far higher. We see the registration fee increase as the only real alternative right now."

– Bill Hammond in the Texas Tribune, reacting to a study showing \$23.2 billion is wasted in traffic.

Statement of Ownership, Management, and Circulation of the Texas Business Report as Required by the United States Postal Service.

The Texas Business Report, publication number 7761, is a monthly publication of the Texas Association of Business, with 12 issues published annually. The cost of annual subscriptions is \$2 of TAB member dues. The annually-required publication paperwork was filed with the USPS on **October 2, 2012**.

The Texas Association of Business is headquartered at 1209 Nuces Street; Austin, TX 78701, where the Texas Business Report is also published and edited. Texas Association of Business and Bill Hammond hold ownership of the Texas Business Report. Editor of the publication is Robert Wood, TAB Communications Director, who also serves as the publication contact person at 512-637-7709. There is no Managing Editor for the publication. There are no known bondholders, mortgagees, and other security holders owning or holding 1 percent or more of total amount of bonds, mortgages, or other securities for the Texas Business Report.

With regards to tax status, the purpose, function, and nonprofit status of this organization and the exempt status for federal income tax purposes has not changed during preceding 12 months.

Statement of Ownership of the Texas Business Report, as a general publication, is required to be published and is included in the October issue. The Statement was signed by Robert Wood and dated **10-02-12**, certifying that all information furnished on the form is true and complete and with the understanding that anyone who furnishes false or misleading information on the form or who omits material or information requested on the form may be subject to criminal sanctions (including fines and imprisonment) and/or civil sanctions (including civil penalties).

	Average number of copies since October 2011	Number of copies for September 2012 issue
Total Number of Copies	4500	4500
*Mailed Outside-County Paid Subscriptions	3528	3531
*Mailed In-County Paid Subscriptions	300	286
*Paid Distribution Outside the Mails Including Sales Through Dealers and Carriers, Street Vendors, Counter Sales, and Other Paid Distribution Outside USPS	0	0
*Paid Distribution by Other Classes of Mail Through the USPS	0	0
Total Paid Distribution	3828	3817
**Free or Nominal Rate Outside-County Copies	153	146
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**Free or Nominal Rate Copies Mailed at Other Classes Through the USPS	0	0
**Free or Nominal Rate Distribution Outside the Mail	0	0
Total Free or Nominal Rate Distribution	168	163
Total Distribution	3996	3980
Copies not Distributed	0	0
Total	3996	3980
Percent Paid	95.80%	95.90%



1209 Nueces Street
Austin, Texas 78701
(512) 477-6721 phone
(512) 477-0836 fax
www.TXBIZ.org

Talk **About** Business

The Road Does Not Go On Forever



Bill Hammond, TAB President

It pains me to say that Robert Earl Keen was wrong: The road does not go on forever, at least not without money to build it.

This is a serious problem facing Texas. Sitting in traffic is annoying but also costly. The latest figure put on the cost of congestion by the national transportation research group, TRIP, is \$23.2 billion. That is money lost to us personally, and to the economy. The time has come to step up, pay for new projects and start to make this problem better.

TAB is going to push for a \$50 increase in the vehicle registration fee. While no one, including me, wants to pay more money, we all have to realize that the cost of doing nothing is far greater than the additional \$50 per year.

The money raised by the increase in the fee will go, in its entirety, to pay for up to \$16 billion in bonds to begin to immediately build road projects. There are many benefits in funding all these projects up front. First, this will mean lots of construction jobs across the state. By getting these projects going, we also will start to see an improvement in traffic faster than if we were to do these projects a little bit at a time over decades.

Another problem with stretching out these projects is we will have outgrown them before they are even finished.

There are other ways we can fund new construction, but none of them will provide enough money to leverage all of that bond money. We could raise the gasoline tax, but in the long run we will continue to see shrinking revenue because of more fuel efficient cars. The gasoline tax is no longer a reliable source to fund new construction. It is to the point where the gasoline tax may only be a reliable source of funding maintenance on existing roads. A gasoline tax increase also is not politically viable at this time either.

We also can end diversions from the transportation fund to other state projects and programs. Ending those diversions would mean about another one billion dollars. While TAB agrees with and supports the ending of diversions, at this point it would take several years to gradually end them all and get that money moved into the transportation fund to pay for new road projects. Another problem is that money also comes from the gasoline tax, which as mentioned above isn't all that reliable when it comes to a new project funding source.

If anyone has any serious ideas about how to fund roads, other than a \$50 increase in registration fees, then we are all ears. I'm not saying this is the magic bullet that will take all of our traffic nightmares away. What I am saying is, at least for right now, it is the most palatable alternative.

I expect this will be a hotly debated topic when the 2013 Legislative Session begins, and it should be. It is vital that we solve this funding crisis to keep the economy strong and to make Texas attractive to businesses in other states who want to come here. At the same time, it is vital that our solution to the problem not hurt the economy by placing a huge, new economic burden on businesses or consumers. It will be a delicate balancing act.

For the past several years there have been a lot of people saying, "We have to do something about traffic." That, however, was never followed by what exactly we should do. Here is one alternative: Let's talk about it, debate it and ultimately pass a plan that will ensure that we fund new transportation projects to keep Texas moving and make Robert Earl Keen a truth teller once again.