



# TEXAS

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# BUSINESS REPORT



## Together!

### *Chamber partners gearing up for 2013 session.*

With the beginning of the 2013 Legislative Session just a few weeks away, TAB hosted the biennial Chamber Partners Conference on December 4 and 5.

The biannual conference provided a comprehensive look ahead at the priorities of Texas' business for the upcoming legislative session. Such priorities include strengthening education, funding infrastructure like roads and water systems and dealing with long term issues of health care and workers' compensation.

"We want to present a united business front to the Legislature," say TAB President and CEO Bill Hammond. "These issues are vital to keeping Texas competitive in the global marketplace. We are doing well in attracting new jobs and new business to this state, but that could all end tomorrow if we don't continue to make needed improvements to keep our business climate strong."

"The Partners Conference was great," said Kathi Masonheimer, Community Development Director with the Brady/McCulloch County Chamber of Commerce. "The information and insights I gained not only help prepare me to more effectively advocate for the businesses our chamber serves but better connects us as a cohesive unit to work for business and continue to make our state great."

TAB Vice President of Government Affairs Steve Minick briefed the crowd on the critical need to fund new transportation projects and on TAB's support of an increase in the vehicle registration fee to fund that construction. He also told the crowd that it is vital that we fund the statewide water plan. In order to do so, TAB proposes a small tap fee on water connections to do that.



Texas Education Commissioner  
Michael Williams

Briefings on health care were given by TAB Government Affairs Manager Kandice Sanaie, as well as a briefing on TAB's support for new, larger incentives to bring more movie and television productions to Texas. "These projects mean jobs for Texas, but also help put

## WORKFORCE Q&A

*What issues should we consider when we are hiring new salespersons in the states into which we are expanding and would like to begin using noncompete agreements?*

(see page 2)

## UPCOMING EVENT

*TAB Annual Conference  
January 30-31*

*Registration is now open for  
TAB's Annual Conference  
"Building Blocks for a Better  
Texas".*

*AT&T Conference Center  
1900 University Avenue  
Austin, Texas 78705*

*Visit [www.txbiz.org](http://www.txbiz.org) to register.*

## TAB MISSION

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

# WORKFORCE Q&A



C.B. Burns,  
Kemp Smith, El Paso

***My company, which is based in Texas, is growing at a fast pace and is expanding into several other states. Our industry is highly competitive, and we give our salespersons specialized training on our products and access to information we consider confidential and which we would like to protect. What issues should we consider when we are hiring new salespersons in the states into which we are expanding and would like to begin using noncompete agreements?***

One of the first issues you need to analyze is the law of the different states in which you will be expanding as to the enforceability of employment noncompete agreements. For example, in California, employment noncompete agreements are not enforceable, so if you are expanding into California, you generally could not enforce a noncompete agreement for California-based employees. Most other states are willing to enforce noncompete agreements if they are valid – that is, supported by consideration and reasonable in their scope. In some states, the act of employing someone – even if at will – is sufficient consideration. In other states, like Texas, that is not sufficient. There must be some other consideration to support the noncompete, such as a promise to provide specialized training or give access to confidential information. When it comes to the reasonableness of a noncompete, courts in all states that enforce them generally analyze the length of the noncompete period, the geographical restrictions and the nature of the activity in which the employee cannot engage or compete. Courts are reluctant to enforce agreements that are too onerous and prevent an employee from competing outside of a reasonable time period (more than three years, for example), competing in a different geographical area in which the employee had no interactions, or engaging in business activities that are unrelated to the business activities that the employee performed. There are other issues you may also want to consider – such as whether a forum selection clause (a clause that requires all disputes to be litigated in a specific venue, such as Dallas County, Texas) should be used and whether it would be enforced by courts of other forums or whether a choice of law provision (a clause that provides that Texas law or the law of another state would apply to any litigation involving noncompete agreements) should be used and, again, whether it would be enforced. Because noncompete agreements that cross state lines require analysis of a number of issues, it is important that you consult with an experienced lawyer that is well-versed in how the laws of different states apply to noncompete agreements.

## ***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

Volume 27 | Issue 12  
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Dale Young, *Treasurer*  
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# End of Year Report: 2012 Chair Rudy Oeftering



PRO-BUSINESS • PRO-TEXAS  
FOR OVER 85 YEARS

Dear Fellow Texans,

In eighth grade, I sold bubble gum. Assistant Principal Mallory noted that the constant crowd around my locker and was quickly able to connect it to the spike in bubble gum discipline violations. He abruptly shut down the little locker front candy store. It was my first lesson in the relationship between business and government.

As members of TAB, we are keenly aware of the relationship between business and government. When government works efficiently and effectively, business can prosper. When government works poorly, business suffers.

The enviable Texas business environment is not an accident. Good decisions by Texas leaders throughout the decades have enabled Texas business to be an engine of prosperity. That prosperity has created opportunities for Texas families. That prosperity also has enabled Texas businesses to support a stable tax base to fund take basic state services. For example, did you know that businesses pay 70 percent of all school taxes?

While we enjoy the prosperity of this great state, we also must accept an important responsibility. That responsibility is to engage government at all levels to assure a bright Texas future. I realize that you are continually called on to help your community. You are what I have termed a "Civic First Responder". Business people are often the first asked to help a community in need. Business people are most always the first to say yes. I wouldn't have it any other way.

What is it that we bring to the table that others seek when it's time to solve problems? What we bring to the table is a "can do" attitude and sound decision making. We couldn't survive in business without these traits, and they are very much needed in our city, state and national governments.

We have no choice but to engage. All of us have been witness to what can happen to a business environment when business people retreat from engaging the government around them. I'm not naming names but I seem to be making a lot of new friends arriving from California and Michigan. For them, and others to follow, Texas must continue to be a beacon of opportunity.

TAB plays the most important role of any Texas organization in maintaining good government and a prosperous business environment. It has been a privilege for this poor kid of immigrant parents to serve as the TAB Chairman. Please don't forget, the future of the Texas Association of Business is as bright as the future of Texas and for the same reason — you.

*Rudy Oeftering*  
2012 TAB Board Chairman

## Together! *continued from page one*

Texas in the worldwide spotlight," argues Sanaie.

TAB Government Affairs Manager Nelson Salinas briefed our chamber partners on higher education and announced a breakthrough on the funding of community colleges. (See page 5 for the full story).

TAB Vice President of Government Affairs Cathy DeWitt provided a briefing on employment relations, workers' compensation and labor law. She discussed legislation that TAB is backing to strengthen the prescription monitoring programs in an attempt to reduce abuse of prescriptions drugs and also TAB's support for drug testing for recipients of unemployment benefits.

Of course the largest single issue every session is the state budget. The Lt. Governor's Chief of Staff Blaine Brunson updated members on the budget challenges facing the state during the next session. He also talked about the Lt. Governor's idea to use one billion dollars from the Rainy Day Fund to pay for water projects. That money would be used as the principle in a new Water Infrastructure Development Bank to help local communities kick start water projects.

New Texas Education Commissioner Michael Williams closed the conference with a keynote address. One of Williams's main goals is closing the achievement gap between minority and white students. He wants to make that goal part of the new school accountability system that he is developing, along with using college readiness, grades on the STAAR exam and test performance improvement as other factors to measure education improvement.

# MEMBER PROFILE

## Dee Brown, Inc. – Quality Stone and Masonry Construction Since 1955

Since 1955, Dee Brown, Inc. (DBI) has been a leader in the stone and masonry industry. Founded by C. DeWitt “Dee” Brown, Jr., the family-run company performs high quality stone and masonry work for commercial, institutional, municipal and residential projects.

A graduate of Texas A&M University—Commerce (formerly East Texas State University), Robert “Buddie” Barnes, Jr., son-in-law of Dee Brown, began his career with DBI in 1969. Barnes was named Vice President and Division Manager of Dee Brown Masonry, Inc. in 1977 and was promoted to Executive Vice President and COO in 1985. After Brown became ill in 1999, Barnes stepped in as Chairman of the Board, President, and CEO.

Throughout Barnes’ term, DBI has seen major growth and expansion. During 2004-2007, DBI increased Texas sales by almost 100% which landed them a spot on the Dallas 100™, a ranking of the fastest growing privately held companies in North Texas. In 2008, Barnes’ son, Robert “Rob” Barnes, III, was named President and COO, transitioning the family business into its third generation. Barnes has maintained his position as Chairman of the Board and CEO.

DBI’s portfolio includes a variety of exterior and interior stone applications for projects such as the J. Paul Getty Center in Los Angeles and the new Dallas Cowboys Stadium in Arlington. DBI has a strong presence in the Dallas-Fort Worth area. In Dallas, the company has worked on many prominent buildings, including the Dallas Museum of Art, Nasher Sculpture Center, Meyerson Symphony Center, American Airlines Center, and George W. Bush Presidential Center. Recent Fort Worth projects include Acme Brick Headquarters and the new Omni Hotel & Residences.

Currently, DBI has four contracts with hospitals including the Baylor Health Care System and Cook Children’s Medical Center. DBI also does work for Southern Methodist University, University of Texas

at Dallas, Texas Christian University, Texas A & M University—Commerce and the University of North Texas.

As a progressive company, DBI has succeeded in staying abreast of issues in the marketplace to ensure that it never ceases to meet the needs of our economy. Over the years, both Brown and Barnes have been involved with local, state and national legislation. Barnes explains, “As individuals, we were able to get into the legislators’ offices to discuss issues, but we felt that they looked at our issues

not as a group but as individuals. As a member of TAB, when we approach a Congressman or Senator with an issue, they truly listen and give our concerns the proper deliberation. Legislators understand TAB members represent a much greater voice for the State of Texas and their electorate.”

Barnes is a valued member of TAB’s Executive Committee. In addition, Barnes is an active member of other boards and organizations, including the Associated General Contractors (AGC), Salesmanship Club of Dallas, Texas

A&M—Commerce Foundation and Distinguished Alumni Chapter, Baylor Health Care System Foundation, Visiting Nurses Association (VNA), Circle Ten Council of the Boy Scouts of America and many more. His extensive list of civic involvements proves that Barnes is an individual who unfailingly gives back to the community and our state.

***“As a member of TAB, when we approach a Congressman or Senator with an issue, they truly listen and give our concerns the proper deliberation.”***

***- Robert “Buddie” Barnes, Jr.,  
President & CEO  
Dee Brown, Inc.***



*Hunt Corporate Headquarters in Dallas, a DBI project.*

# College Funding Breakthrough

## Major funding agreement reached

A year ago TAB put up billboards in Austin and Dallas to call attention to the low completion rates at our community colleges. “We took a lot of heat for those billboards,” said TAB President and CEO Bill Hammond. “Those billboards, however, started discussions between TAB and community colleges and those discussions have led to a major agreement on the way community colleges are funded.”

The state’s community colleges have agreed to support legislation that will tie 10 percent of their funding to completion rates. A bill suggesting that already has been filed for the 2013 Session.

“We’re not talking about unreasonable goals,” said Hammond. “These are goals that are achievable. They are small improvements, but they start us down the road of



increasing the number of students who are finishing with an associate degree that they can use to get a job or to continue their education.”

TAB strongly supports performance-based funding for all institutions of higher education, tying at least 10 percent of state funding to improvement in completion rates.

While the community colleges have pledged support for such a plan, it is a different story for some of our four-year state institutions.

“They need to get on the train,” said

Hammond, at a news conference before TAB’s Higher Education Conference in November. “We are not asking them to double or triple their productivity. What we ask them to do is increase their productivity by five, six, seven percent a year.”

## QUOTES

**“Whether it’s an associate’s degree or a certificate or a four-year baccalaureate or beyond, Texas is going to be facing enormous challenges in the future unless we are able to increase completion rates”**

– Bill Hammond on KERA Radio from TAB’s Higher Education Conference

**“The public can understand the grading system, so the pressure is on to increase the grade year to year.”**

– Bill Hammond supporting an A-F school grading system in the Dallas Morning News

**“Other states are telling companies, ‘Don’t go to Texas. They’re not investing in infrastructure.’”**

– Bill Hammond in the Austin American Statesman from testimony before the Select Committee on Economic Development

**Texas Association of Business**  
**Annual Conference**  
**Building Blocks For A Better Texas**  
**AT&T Conference Center**  
**1900 University Avenue • Austin, Texas 78705**  
**January 30–31, 2013**

The Texas Association of Business has invited influential state policy makers, legislators, industry experts and thought leaders to share their business insights on the most critical issues for Texas—

- T**ransportation
- W**ater
- E**ducation

Also discover the latest in health care, workers comp and environmental issues

- K**eynote presentations offering updates on the legislative session, state affairs, and how the Texas business community will maintain its incredible business climate and create a
- S**ustainable future

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To register go to [www.txbiz.org](http://www.txbiz.org), click on Annual Conference.



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# Talk **About** Business

## The Un-Affordable Care Act



Bill Hammond, TAB President

Considering this administration's dislike of carbon-based fuels, why is the Obama administration trying to put a lump of coal in everyone's stocking this Christmas?

As a former small businessman, affording health insurance for my employees was always a struggle. It's the same struggle that thousands of small business owners face every day, and it's about to get much worse.

Small business owners in Texas will face an additional 10 to 20 percent increase in health insurance costs, on top of any other increase that might also be due, even before Obamacare takes full effect in 2014. This increase will cause some small businesses, especially those in the hospitality industry, to drop coverage in droves, leaving employees uninsured until health insurance exchanges are set up, which brings us to another problem.

At this point, no one seems confident that exchanges will be ready by the start of 2014. However, there is no guarantee that people will buy insurance through the exchange even when it's available. Sure, there are penalties if one opts not to buy insurance, but there is also a question of whether those penalties are even enforceable.

If you are an individual buying insurance, or are an employer buying individual policies for one or two of your workers, get ready for an even bigger sticker shock. According to experts and insurance underwriters, a 30 to 40 percent increase in individual plans is firmly expected.

What is the timing on these increases? Both companies and individuals will face the prospect of paying higher rates many months before any health care exchanges are available because of the fact that most yearly insurance contracts run out long before January 2014. If your contract is up in July, for example, be prepared to pay for these higher rates from then until January 2014, assuming the exchanges are set up, and perhaps beyond if you don't end up dropping coverage altogether.

This is a recipe for disaster. The percentage of uninsured Texans has the potential to skyrocket, and job creation could decline dramatically. Many businesses will hold themselves below 50 full-time employees, reduce the number of employees if they are above 50, or convert full-time employees to part-time employees in order to avoid the employer responsibility requirements in the Affordable Care Act.

Here is what employees are facing. If your employer simply can't afford the rising cost of health insurance, you have the option of going to the exchange (whenever it is set up). Your employer might even give you a raise to help pay for that insurance, a raise that is taxable. You may also have a tax credit to help you pay for that insurance, but it is highly likely that even with that help, the total cost will not be covered due to much higher deductibles that you will be paying. That is going to lead to more people without insurance.

I would encourage all individuals, employees, and business owners who purchase health insurance policies to call their current insurance carrier and ask how they should best handle the upcoming changes or visit [www.healthcare.gov](http://www.healthcare.gov) and let the Federal Government explain what needs to be done to protect your employees and your business.

I urge Congress to fix this mess. Repealing this plan in the short term and coming up with something that will support the private health insurance market and give businesses more options to provide affordable coverage for employees is what we need.