



TEXAS

A Publication of the Texas Association of Business
Volume 29 | Issue 7 | July 2014 | www.TXBIZ.org

BUSINESS REPORT



The Energy Economy

Texas returns to its economic roots.

For those of us who remember the Arab oil embargo of the early 70's, the thought of America being energy independent sounded crazy. Even going back to the early 2000's, that thought seemed almost impossible, yet, here we are.

Texas is, once again, a world leader in energy and is the driving force behind America having enough oil and gas available to almost eliminate the need for foreign imports.

The latest numbers from the Energy Information Administration show that Texas is now producing 36 percent of this country's oil. According to the report, for the first time since the late 70's, Texas production topped 3 million barrels per day. That puts Texas at almost the same level as Iraq, the number two producing country in OPEC.

"It is incredible to look at the growth in this industry and see the benefits for our state and our country," said TAB CEO Bill Hammond. "With this growth, however, comes challenges too. We need to ensure that we meet those challenges to keep the energy flowing."

Those challenges include transportation. Roads in the fastest growing and highest producing area of Texas, the Eagle Ford Shale, are jammed and in need of repair. "We face a challenge funding transportation improvements in every part of the state," said Hammond.

"That's why it is important to begin the process of increased funding by passing Proposition One on the November ballot. Then we must offer up more funding alternatives to lawmakers when they return to Austin for the 2015 Legislative Session."



Energy is driving the Texas economy

WORKFORCE Q&A

Under what circumstances are interns considered employees subject to the minimum wage and overtime requirements of the FLSA?

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TAB MISSION

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

WORKFORCE Q&A



Meghaan C. McElroy,
Haynes and Boone, LLP

Under what circumstances are interns considered employees subject to the minimum wage and overtime requirements of the FLSA?

As summer arrives, an increasing number of for-profit private sector employers are hiring high school and college students as interns and likely not compensating them for their work. These employers must be careful if they attempt to utilize unpaid interns as litigation in this arena is heating up across the country. Private for-profit employers must treat their interns as employees and pay them at least the minimum wage and overtime compensation for hours worked over 40 in a

workweek unless the interns qualify as “trainees” under the Fair Labor Standards Act (FLSA).

The Wage and Hour Division of the U.S. Department of Labor (WHD) created a six-factor test to determine whether an intern constitutes an employee under the FLSA. Importantly, while some circuit courts of appeals have refused to follow the six-factor test or are considering now the appropriate test to be used, the Fifth Circuit Court of Appeals, which covers Texas, has cited the WHD’s six-factor test with approval. Accordingly, for private for-profit employers in Texas, all of the following criteria must be met for the internship to be unpaid:

1. The internship is similar to training given in an educational environment;
2. The internship experience is for the benefit of the intern;
3. The intern does not displace regular employees, but works under close supervision of existing staff;
4. The intern does not provide an immediate advantage to the employer;
5. The intern is not necessarily entitled to a job at the conclusion of the internship; and
6. There is mutual understanding that the internship is unpaid.

Given the stringency of this test – and, in particular, the requirement that all criteria be satisfied – employers should err on the side of caution and treat their interns as paid employees. Nevertheless, if an employer seeks to maintain an unpaid internship program the employer should consider the following useful tips to avoid FLSA liability: (1) have some type of educational oversight over the program, and try to arrange for class credit; (2) avoid giving the intern “productive work” (such as clerical work or customer interaction), as this is seen as benefitting the employer; (3) provide the intern with skills that can be applied to an array of employment settings, rather than something specific to the employer; (4) do not use an intern to supplement tasks that regular employees would typically perform (or to replace entry-level employees); and (5) establish at the onset that the internship is for a specified time period and is not a trial period for permanent employment.

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

Volume 29 | Issue 7
July 2014

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Texas Business Report (ISSN0892-6816) is published on the 15th of every month by Texas Association of Business, located at: 1209 Nueces Street, Austin, TX 78701. Subscriptions are available at a rate of \$2.00, which is deducted from TAB members' annual dues. Articles may be reprinted with permission. Legislative advertising paid by TAB.

Periodicals Postage Paid at Austin, Texas.
POSTMASTER – Send address changes to:
Texas Business Report,
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TAB Hosts Day of Action

Major news media from Austin and beyond came to the TAB building to hear from businesses and clergy about the immigration issue and hear a call on Congress to act before the end of the year.

“We are all supportive of our leadership doing something,” said TAB Government Affairs Manager Nelson Salinas. “We are calling on them to get immigration reform passed and done now, the sooner the better. The way we see it this is about jobs, the economy and a strong workforce for Texas.”

“If you look at our immigration system, I don’t think it works for anybody,” said Texas Restaurant Association CEO Richie Jackson. “There’s failure after failure that we’ve seen, and we would urge Congress to act upon fixes for our immigration system.”

“It is two separate issues,” said Pastor Tim Moore with the Evangelical Immigration Table. “There is the unaccompanied minors and women coming, and that is an issue that is being dealt with on a basis of them either being refugees or that status being determined by the courts. It is not an immigration issue...a few will get to stay, most will be returned. The issue of the 11 or 12 million, who have come over the last 10-20-30 years, that population was encouraged to come because we needed the labor; we still need the labor, and because we needed the labor our churches are filling up with both documented and undocumented workers.”



TAB Government Affairs Manager Nelson Salinas addresses news conference

Pastor Moore said the first goal of this big tent of groups encouraging immigration reform is to secure the border. “We ask for the borders to be secure. Nearly all Americans do.”

Moore said that Texas has the opportunity to lead the way on immigration reform as it has done in the past. “There is a commitment in Texas to lead the way, and to lead the way is not to grow harsh, not to grow legalistic.”

Jackson argues that passing immigration reform will keep more jobs in America. “Every industry has jobs that are low skilled. Most industries export those jobs. If you take agriculture, if you take restaurants, if you take construction, we don’t have the option to export those jobs. We have to fill those jobs in America. You have to deal with the economic realities of how much the public is willing to pay for a hamburger or produce or the agricultural products that are grown here, how much it costs to build a house here in America. That’s why we need to import workers rather than export jobs.”

Dr. Jeff Patterson with the Texas Catholic Conference said it should be understood that immigration reform is probably the most important issue we are facing both as a country and as a state. “We need to have this kind of dialogue and this kind of push for immigration reform from all sides. We need now to step up and address this problem as a country and as a government to try and resolve a comprehensive immigration reform package.”

Energy

continued from page one

There are many known benefits of our energy boom. Our state’s Economic Stabilization Fund, or Rainy Day Fund, is growing exponentially because of the energy tax money coming in. Our sales tax revenues are also booming, and a lot of that growth is because of sales taxes related to the new energy economy.

There are some unforeseen and little known benefits as well. For example the oil and gas industry is becoming a leader in the area of water conservation. According to Railroad Commissioner Christi Craddock, the oil and gas industry uses less water than any other category in the Texas Water Development Board’s 2013 Water Use Survey. She said in a recent newspaper column that oil and gas producers also are driving desalination technology to convert salt water to fresh water.

While Texas leads in fossil fuel production, it is also the leader by far in renewable energy. “There is a perception that California is the green energy state,” said Hammond. “That simply isn’t true. Texas has invested billions of dollars on power grid improvements to move wind-generated electricity from West Texas to the rest of the state. We are far ahead of California, and every other state when it comes to investment and production of renewable energy.”

All of this growth means jobs and lots of them. Industrial job growth from May 2013 to May 2014 in Texas was 2.5 percent according to MNI. MNI President Tom Dubin told the *San Antonio Business Journal* “there’s no doubt that Texas’ economy is being driven by the growth in the energy sector.”

MEMBER PROFILE

Imperative Information Group

Mike Coffey, president of Fort Worth-based background screening firm Imperative Information Group, is thankful for Texas' business-friendly environment.

"When my peers around the country complain about the burdens their state and local governments place on them, I just shake my head in amazement," Coffey said.

Coffey started Imperative Information Group 15 years ago. "I'd been married less than two years; we'd just bought our first home; and our foster daughter was moving in the next week," said Coffey. "The opportunity to start the company presented itself, and my wife and I said 'Okay, let's do it.'"

Imperative Information Group now has 17 employees and delivers high-quality background investigations to employers, private equity managers and law firms around the country.

Imperative Information Group is a member of the Texas Association of Business and Coffey serves as a board member.

"TAB membership is important to us because of TAB's key role in ensuring that Texas remains business friendly," Coffey said. "I'm so impressed with the breadth and depth of knowledge that Bill and the staff have regarding Texas' legislative and business environment. It is good to know that we are supporting their efforts through our membership."

Coffey said that being a TAB board member offered him an opportunity to more deeply study the issues addressed by TAB's lobbying efforts. "I've never been a guy who easily trusted others to make decisions on my behalf. The legislative briefings, committee calls and opportunities to discuss issues with the really smart and experienced people on the TAB staff give me confidence that TAB is thoughtfully approaching the various issues affecting Texas businesses and families."

Additionally, Coffey said that being a board member gives him an opportunity to work with other business

leaders from around the state. "I'm constantly studying my business, looking for ways to become more efficient or to serve our clients better. Sitting at a TAB lunch or dinner with leaders from other industries is both interesting and educational. Many of these folks are running companies that have been around longer than I've been alive," said Coffey, who is 45. "I can learn a lot from them by just paying attention."

"The really smart and experienced people on the TAB staff give me confidence that TAB is thoughtfully approaching the various issues affecting Texas businesses and families."

***- Mike Coffey,
President
Imperative Information
Group***

Imperative Information Group also supports TAB by sponsoring the annual Employment Relations Symposium, at which Coffey also is speaking this year. "I speak to at least a dozen human resources meetings or conferences a year," Coffey said, "and the Employment Relations Symposium is one of the top three events I attend."

The most significant legislative issue on Coffey's radar is consumer protection. "Over the last decade, there have been dozens of class action lawsuits against employers and background screening companies for failing to follow basic consumer protection practices," Coffey said. "I spend a lot of time educating employers and legislative staff about existing consumer protection laws.

Where needed, there are ways to improve those protections without hurting employers' ability to make well-informed hiring decisions."



*Mike Coffey, President,
Imperative Information Group*

The TCCE and Transportation

The Texas Association of Business and our partner the Texas Chamber of Commerce Executives combined forces at the TCCE convention in College Station to push the message that Texans need to approve Proposition 1 on the November ballot.

Moving Texas Forward President Scott Haywood and State Rep. Kyle Kacal (R-College Station) joined those groups at a presentation to TCCE members and later at a news conference covered by local Bryan-College Station media to push for new transportation funding solutions.

“Transportation funding has hit its critical mass,” said

Kacal “Our transportation system is a fundamental component of the Texas economy. We all have a stake in this, and if our needs are not met, we all lose.”

“It used to be a one-size-fits-all funding system,” said Bill Hammond, CEO of the Texas Association of Business. “Our gasoline tax paid for almost all of our road construction, but that hasn’t been the case for a long time. Now we need many alternatives to pay for new projects and maintain our transportation system.”

Among them, Hammond lists an expansion of public/private partnerships; dedication of all or part of the motor vehicle sales tax to transportation; increasing the vehicle registration fee; and ending all non-educational diversions of gas tax money away from transportation projects.

“Those things, along with the passage of Proposition One in November, will give us the funding we need to begin to address the problems we have now,” said Hammond.

Proposition 1 is the transportation funding constitutional amendment on the November ballot. It will use existing revenues from oil and gas production taxes

to pay for new, non-tolled, transportation projects.

“Transportation is at the heart of growth for our region and state,” said Longview Chamber President Kelly Hall. “Our chamber of commerce and our members believe that passing Proposition 1 is an essential component of securing our state’s prosperity for the next generation. I believe all chambers in Texas need to work in concert with TAB and Move Texas Forward by actively supporting Proposition One.”



TAB and chamber leaders talk transportation

QUOTES

“Workforce, just like water, roads and education, is a necessary part of infrastructure for all businesses to succeed...”

– Nelson Salinas, TAB Governmental Affairs Manager on KVUE-TV Austin

“You see literally thousands of businesses move from California to Texas today, and they’re doing so because of the business climate.”

– TAB CEO Bill Hammond on KEYE-TV Austin talking about a California Senator’s business recruiting trip.

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Talk **About** Business

They're Dreaming in California



Bill Hammond, TAB CEO

You have to wonder what was going through a California state senator's head when he came upon the idea of coming to Texas to recruit businesses to move to California. Good luck with that.

When Gov. Rick Perry goes to California to recruit business it works, because Texas continues to have one of the best business climates in the United States and in the World. Governor Perry can point to low taxes and a regulatory climate that makes sense. It is an easy sell.

What can California Sen. Ted Gaines say? He did get one thing right; California can learn a thing or two from Texas about building a strong business climate.

Every year CNBC releases a list of top states for business. Texas is always at the top of that list, this year landing in the second spot behind only Georgia. Where was California? The Golden State was a not so golden 32.

What kills California is the cost of doing business, where the state ranks 48, Texas ranks 23, so there is some room for improvement here, too. California is 48th in business friendliness. If you want to build a great business climate, improving those two numbers

is a place to start. Texas, by the way, ranked 20th in that category. Texas ranks 18th in cost of living, another category that severely hurts California, which comes in at 48th.

As I said, there is room for improvement here in Texas. For example, Texas and California are almost dead even with it comes to education: California at 26 and Texas at 27. For both states, those numbers are far too low and must be improved. I cannot advocate for California, but I will continue to advocate for raising the bar in Texas to ensure that we have the educated workforce that our state must have to meet our future needs.

California also ranks higher in quality of life. Texas is 37th while California is 23rd. While personally, I would disagree with this number, it does show that there are things we should improve in Texas. We must do things like invest in our infrastructure to cut travel times and help Texans arrive at their destinations safely. We have finally funded the state water plan, now we must get these local water projects moving to improve and stabilize our water supplies for both drinking and recreation. Improving our quality of life also goes back to improving education. Our children

and grandchildren must have the tools to do better than we are doing.

What helps Texas is our current infrastructure (ranked first). While we must find money to build and maintain our system, and while it is congested in the major cities, it is still overall the best around. What also helps Texas is our access to capital (ranked fifth) and the overall strength of our economy (ranked first). Texas is also dead even with California in technology and innovation, with Texas ranked number two only behind California.

Right now, working with our members who serve on our various issue-oriented committees, TAB is coming up with our 2015 legislative agenda. While it may be entertaining to poke fun at someone from California thinking he can steal jobs and business away from Texas, it is also a reminder that we must continue to improve and evolve to keep our business climate strong. If we do not take solid steps in 2015 to strengthen our business climate by keeping taxes low, improving education and reviewing state regulation, one day it might be California looking at Texas with pity. That is a day none of us want to see.