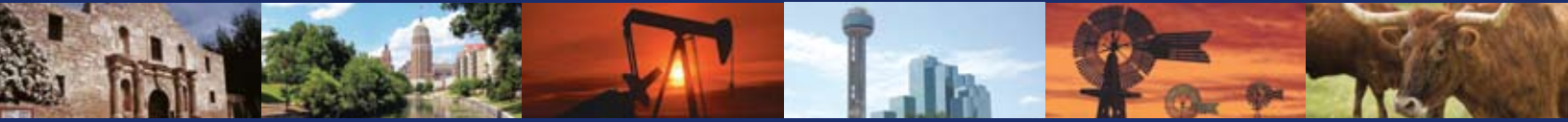




# TEXAS

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# BUSINESS REPORT



## TAB Scores Big in Legislative Session

### *New lobby team, hard work yield results*

On January 13, 2009, Lt. Governor David Dewhurst (R) and House Speaker Joe Straus (R – San Antonio) gaveled in the start of the 81<sup>st</sup> Regular Legislative Session. The hard work was about to begin.

“TAB has been fortunate to have achieved so much in the legislative arena in the past,” said President Bill Hammond. “Because of happenings in Washington, employers had more obstacles thrown at them in 2009 than at any other time in recent memory. There was no time to rest on our laurels.”

To ensure success, the Association added attorney and former House aide Kandice Sanaie, environmental affairs veteran Steve Minick and education powerhouse Sandy Kress to its Government Affairs team, which included Hammond and Vice-President Cathy DeWitt. The new additions “strengthened its position”, according to respected political newsletter *Capitol Inside*. The publication ranked the Association as the most powerful business group in its Texas Lobby Power Rankings 2009.



*With a fresh team dedicated to fighting on behalf of the Texas business community, TAB made an impact in Austin*

Promoting economic development; improving the state’s public education system; protecting the rights of employers from government regulation; improving environmental quality while balancing the needs of a thriving business community; finding solutions to provide

affordable health care to all Texans; cutting taxes and spending; and protecting important gains that drastically limit lawsuit abuse were the most critical areas for the Texas business community.

During the legislative session, TAB lobbyists worked tirelessly in their efforts, and as the session wore on, it became clear that the hard work was paying off.

## WORKFORCE Q&A

*If an employee is away from work on a leave protected under the Family and Medical Leave Act (“FMLA”), are we allowed to count that absence against the employee for purposes of qualification for the perfect attendance bonus?*

(see page 2)

## FOCUS ON 2010

*State House races will become increasingly important next year as Republicans, led by House Speaker Joe Straus of San Antonio, battle to maintain and expand their precarious majority, now 76-74, and Democrats seek to gain control for the first time in eight years.*

*Fort Worth Star-Telegram  
June 9, 2009*

## TAB MISSION

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

# WORKFORCE Q&A



Robert S. Nichols,  
Bracewell & Giuliani LLP

***In an effort to motivate better attendance, our company wants to adopt a perfect attendance bonus program. If an employee is away from work on a leave protected under the Family and Medical Leave Act ("FMLA"), are we allowed to count that absence against the employee for purposes of qualification for the perfect attendance bonus?***

The answer has changed as a result of the new FMLA regulations that became effective on January 16.

Under the previous United States Department of Labor ("DOL") regulations, employers were prohibited

from disqualifying employees from perfect attendance awards based on the employee having taken FMLA leave. The DOL's old view was that bonuses or other awards for perfect attendance do not require performance by the employee but rather contemplate the absence of occurrences, and an employee who otherwise met the requirements for such a bonus could not be disqualified because the employee had taken FMLA leave.

In a dramatic shift, in the new regulations, the DOL instructs that if a bonus or other payment is based on the achievement of a specified goal, such as hours worked, products sold or perfect attendance, and the employee has not met the goal due to FMLA leave, then the payment may be denied to the employee, unless otherwise paid to employees on an equivalent leave status for a reason that does not qualify as FMLA leave.

In other words, an employer can disqualify an employee from receiving a perfect attendance award because the employee took leave or was otherwise absent, including for an FMLA-protected absence, if the rules for disqualification are applied in a non-discriminatory manner. For example, if an employee who used paid vacation for a non-FMLA purpose would receive the payment, then the employee who uses paid vacation for an FMLA-protected purpose also must receive the payment. (Of course, under the FMLA, generally, an employer can require the use of, or an employee can choose to use, paid leave, such as vacation or sick leave, while the employee is on FMLA leave.)

With this new rule, employers now have the opportunity to make use of perfect attendance awards to encourage exemplary attendance. However, because the award program must be completely non-discriminatory, an employer should ensure that an employment attorney carefully reviews any proposed award program, in conjunction with the employer's other leave and attendance policies, to confirm that the program is lawful.

## ***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 24 | Issue 6  
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# TAB makes impact; Perry to sign or veto bills by June 21st

*continued from page one*

A proving ground for the hard work was demonstrated in the passage of HB 3, the bill that monumentally changed the public school accountability system and created more opportunities for career and technology education in order to promote a robust, educated workforce.

“TAB knows that pushing our students to reach higher can be the gateway to a successful post-secondary education and career opportunities,” said Senate Education Chair Florence Shapiro. The bill was more than a decade in the making, as TAB consistently placed public school accountability as one of its top legislative priorities.

Despite pushback from the education establishment, HB 3 will improve the way our children will learn and better prepare them for the challenges they will face in the global marketplace.

As the state’s largest business association, health care was another vital issue to TAB. “Employer-sponsored health care was in danger,” said lobbyist Kandice Sanaie. “Increases in health care costs with no increases in transparency have hampered businesses across the state from being able to provide for the needs of their employees.”

TAB was instrumental in killing bills that would have jeopardized the benefits of tens of thousands of Texans who receive health insurance coverage through the Employee Retirement Income Security Act (ERISA). The Association also stopped dozens of requirements that would have mandated health care coverage for specific services and conditions, all at a cost to businesses, including small employers.

The Association’s efforts did not go unnoticed. Senate Health and Human Services Chair Jane Nelson identified TAB as “a key ally in the efforts to make health care available to families across the state.”



As the economy unraveled, the Obama Administration dangled a \$555 million dollar carrot to Texas if the state instituted radical changes to its unemployment insurance system. These changes would eventually have led to a permanent, \$75 million annual tax on employers. TAB was the earliest and loudest voice against accepting Washington’s short-term fix, generating heaps of praise from employers across the state and the vociferous scorn of anti-employer lawmakers. “Our opponents wanted instant gratification despite the dire consequences for Texas employers,” said Hammond. “This is the same logic that caused the economic crisis in the first place.”

Governor Rick Perry turned down the money, and legislative efforts to accept the money were felled by an unrelated filibuster orchestrated, ironically, by House Democrat Leader Jim Dunning, the most vocal

proponent of accepting Washington’s money.

In addition to protecting the state’s job creators from a \$75 million tax, employers across the state can breathe a little easier as bills that gave employees more leave time for non-urgent needs, allowed employees to take and keep firearms on company parking lots, and increased minimum wage requirements were killed due in large part to TAB-led efforts.

“Simply put, this was a great year for employers,” said Cathy DeWitt. “Preventing bad bills like these from becoming law is one of the key reasons that Texas had more job creation in 2008 than any other state in the nation combined.”

On energy and environmental issues, TAB testified on dozens of bills that would have placed draconian regulations on the businesses that employ hundreds of thousands of Texans. The Association played a key role creating incentives for clean energy projects, including clean coal. In addition, it helped kill bills relating to cement kiln operation that would have increased regulation and created unfair market manipulation.

“This session, we got about as close to a 100 percent success rate as possible,” said Steve Minick. “The Texas business community can be proud that the state has been proactive in creating a hospitable economic climate while also improving our environmental quality.”

TAB President Bill Hammond said, “I’m proud of our team and all they did to ensure that Texas remains the best place in America to do business.” For more information on TAB’s wins, losses and draws, stay tuned for the release of the Association’s 81st Legislative Session Results brochure.

# MEMBER PROFILE

## Corporate Facilities Management Services, LLC

CFMS is devoted to helping businesses help themselves. The company’s mission statement details the commitment CFMS has to ensuring that clients gain a greater ability to focus on their core business processes by eliminating the worry of important but non-core business processes related to the management and operation of property, facilities and assets.

After being laid off in 1997 by a local Texas Instruments plant, CFMS founder John Alaniz relied on his faith and professional acumen as an experienced facilities manager to launch the new company. Formed in December 2001, CFMS began with a focus of identifying hidden labor force of quality, qualified individuals who want to work flexibly to accommodate the work-life balance.

The CFMS family derives its success from excellence in equipment operations, building maintenance, project management and site services. The organization has provided solutions for some of the largest Central Texas businesses, and the company continues to grow.

“Everywhere you look, businesses are going through tough times,” said Alaniz. “This business climate creates opportunity as we offer the ability to reduce costs in these uncertain times.”

CFMS also tailored its business model to adapt to the economic conditions. The company shares facility



management resources with other institutions to heighten and expand the skills to improve business efficiency.

Facility management is one of the greatest financial burdens facing the state. Schools, municipalities and county governments waste untold taxpayer dollars due to the types of inefficiency CFMS identifies and roots out.

Today, CFMS spans over twelve counties from Georgetown to Hillsboro, and is a proud member of the Belton, Killeen and Temple Chambers of Commerce. John Alaniz has branched out into working with non-profit groups, and is a respected community leader.

Alaniz devotes time to disadvantaged neighborhoods in hopes of making a difference in the lives of at-risk youth.

“John is a great corporate and community citizen,” said Temple Mayor Bill Jones. “He is involved with many organizations, including many not for profits. His business has exceptional representation.”

A TAB member since 2003, Alaniz cites his membership as essential to making a legislative impact. “The Texas Association of Business allows small businesses like mine to have a voice,” said Alaniz. “I’m proud to be a member of TAB and look forward to fighting for free enterprise for years to come.”

“John is a sterling example of the heart and soul of TAB,” said TAB President Bill Hammond. “Now more than ever, improving efficiency is vital to the business community. CFMS is one of the stories whose success is built on creating success in other businesses.”

### FAST STATS

Member: Corporate Facilities Management Services, LLC  
 Hometown.....Temple, Texas

Year Business was Founded..... 2001  
 TAB Member Since..... 2003  
 Website .....www.FACManagement.com  
 Phone Number ..... (254) 770-3333

Reason for Joining TAB “The Texas Association of Business allows small businesses like mine to have a voice.”

# Thanks to Employment Law Handbook Editors

The Texas Association of Business thanks the editorial team who participated in the 2009-2011 Employment Law Handbook, the only handbook written by Texas labor law attorneys that focuses exclusively on the needs of our state's employers.

Their efforts are a true and each attorney willingly devoted their time and energies into making this book happen. Thanks to the following men and women who made this possible:

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# TAB Announces Small Business of the Year Finalists

The Texas Association of Business (TAB) recently announced the regional finalists for the Texas Small Business of the Year Award.

“The Texas business community and employers have been the driving force behind the most successful state economy in recent American history,” said TAB President Bill Hammond. “More than half the jobs created in the United States in 2008 were in Texas. Small business is the foundation on which that success has been built. The Texas Association of Business is proud to recognize the communities and business leaders who have helped make our state the shining star in the nation’s economy.”

The finalists in contention for the 2008-2009 Texas Small Business of the Year Award include:

**Region 1** - Tom Jordan,  
**US Flag and Flagpole Supply**,  
Beaumont, TX

**Region 2** - Sherrie McCall,  
**Chocolate Angel**, Richardson, TX

**Region 3** - Joe Dee Brooks,  
**Allied Oilfield Machine and Pump**, Levelland, TX

**Region 4** - Amber Anthony & Ashley Rosilier,  
**Run Gear Run**, San Antonio, TX

**Region 5** - Oddie Dollins,  
**Durham-Ellis Pecan**,  
Comanche, TX

**Region 6** - Shannon McCollum,  
**Shannon Pools**, Nacogdoches, TX

**Region 7** - PJ Ellison,  
**Ellison’s Greenhouses**,  
Brenham, TX

*Congratulations to all of our distinguished finalists!*



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# Talk **About** Business

## TAB Success Is Due To Supporters Like You



Bill Hammond, TAB President

The past year saw America face the most difficult economic turmoil in generations.

While savings and retirement accounts dwindled, it appeared to many that Congress' only response was to provide bailouts to the same financial institutions that drove us into this mess. During the November 2008 elections, voters sought a new direction. Who could blame them?

Voter frustration with Washington trickled down the ballot, altering the composition of the Texas Legislature and reducing the number of fiscal conservatives in both the Texas House and the Senate.

Concurrently, TAB also put to rest a five-year legal battle, allowing the Association to devote its full attention to championing pro-business legislation and killing measures that would negatively impact employers across the state.

The 81st Regular Legislative Session began in dramatic fashion with the election of a new Speaker of the House. San Antonio Republican Joe Straus was elected to lead the body now comprised of 76 Republicans and 74 Democrats.

Party polarization emboldened the plaintiffs' attorneys and labor unions against the business community as a whole.

Despite the challenges, TAB remained committed to its core principles of fighting taxes and making Texas home to the best business climate in the world. Our first and best line of defense was our talented lobby team.

Late hours, hundreds of letters and office visits, testifying at countless committee hearings and time away from family are emblematic of the life of a TAB lobbyist during the session. When the gavel adjourns the Legislature, our success can be measured very easily: Did our efforts help leave the economy in better shape than it was before the session?

Given the enormity of the obstacles facing the business community, I'm proud to say that TAB had one of its most successful sessions to date. TAB lobbyists engaged in smash-mouth battles against powerful, well-funded opponents to ensure that when session ended, our hard work meant something for the employers of Texas.

As a result of TAB-led efforts, Governor Perry rejected \$555 million dollars in strings-attached money from

Washington; the current automatic college admission policy was scaled back to provide students with fine arts virtuosity or demonstrated leadership a better chance of admission; a slate of anti-tort reform bills tantamount to a trial lawyer stimulus package died on the vine; and most importantly, the Legislature passed a bill that overhauled public education accountability to improve the way our children learn, how their performance is assessed and how we can prepare them to meet future challenges.

TAB lobbied for a more equitable, broad-based change of the EZ-rate to alleviate the tax burden on businesses; however, an alternative that raised the margins tax ceiling passed instead. Although our approach differed, Texas still able to cut taxes.

As I reflect on the 81st Legislature, it is essential to thank the Association's membership and leadership who have helped transform our organization from a respected trade group into the most powerful, influential voice for Texas business. This is due to the support of men and women like you, who have stood steadfast by TAB during its greatest successes and toughest challenges. **Thank you for all you do for Texas.**