



TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

service ★ courtesy ★ integrity ★ accountability

COMMISSION MEETING

February 26, 2013

Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

*José Cuevas, Jr., Presiding Officer
Midland*

*Steven M. Weinberg, MD, JD, Member
Colleyville*

*Melinda Fredricks, Member
Conroe*

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AGENDA

REGULAR COMMISSION MEETING

10:00 a.m. – February 26, 2013

**5806 Mesa Drive
Austin, TX 78752**



TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

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José Cuevas, Jr.
Presiding Officer-Midland

Steven M. Weinberg, MD, JD
Member-Colleyville

Melinda S. Fredricks
Member-Conroe

Sherry Cook
Administrator

Tuesday, February 26, 2013

10:00 a.m.

Agenda

| | | |
|-----|---|-------------------------|
| 1. | Call to Order | José Cuevas, Jr. |
| 2. | Approval of Commission Meeting Minutes of January 24, 2013 | José Cuevas, Jr. |
| 3. | Commission Report: Administrator and Agency Activities, Budget Issues , Staff Achievements, Legislative Activities | Sherry Cook |
| 4. | Legislative Session Briefing | Carolyn Beck |
| 5. | Recognition of Recipients for the 2012 José Cuevas, Jr. Gold Star Award | José Cuevas, Jr. |
| 6. | Recognition of Recipient for the 2012 Sherry Cook Leadership Award | Sherry Cook |
| 7. | Recognition of Promotion for Vanessa Mayo as the New Business Services Division's Assistant Director | Ed Swedberg |
| 8. | Public Comments | José Cuevas, Jr. |
| 9. | Reception Honoring Award Recipients and Assistant Director Vanessa Mayo | José Cuevas, Jr. |
| 10. | Executive Session to Consult with Legal Counsel Regarding Pending and Anticipated Litigation Against the Agency and to Deliberate the Appointment, Employment, Evaluation, Duties of the Position of Administrator (Govt. Code §551.071, §551.074) | José Cuevas, Jr. |
| 11. | Next Meeting Date: Tuesday, April 23, 2013 Tuesday, May 28, 2013 | José Cuevas, Jr. |
| 12. | Adjournment | José Cuevas, Jr. |

Note: Items may not necessarily be considered in the order they appear on the agenda. Executive session for advice of Counsel (pursuant to §551.071 of the Government Code) may be called regarding any agenda item. Action may be taken on any agenda item.

NOTICE OF ASSISTANCE AT PUBLIC MEETINGS

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice) (512) 206-3259 (fax). Relay Texas at 1-800-735-2989 (TTY/TDD), at least three (3) days prior to the meeting so that appropriate arrangements can be made.

MINUTES

REGULAR COMMISSION MEETING

10:00 a.m. – February 26, 2013

**5806 Mesa Drive
Austin, TX 78752**



TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

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COMMISSION MEETING MINUTES

February 26, 2013

The Commissioners of the Texas Alcoholic Beverage Commission (TABC) met in Regular Session on Tuesday, February 26, 2013 at the Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Suite 185, Austin, Texas.

**COMMISSIONERS
PRESENT:**

José Cuevas, Jr.
Melinda Fredricks

STAFF PRESENT:

Sherry Cook, Administrator

Alfredo Alvarez, Jr. Agent III, San Antonio Enforcement
Regional Office

Gene Anderson, Lieutenant, Arlington Enforcement
Regional Office

Carolyn Beck, Director, Communication & Government
Relations

David Brandon, Enterprise Manager, Information
Resources Division

Mindy Carroll, Director, Education and Prevention

Julie Davis, Technical Writer, Human Resources Division

Marc Decatur, Major, North Texas Region

Luann Dickerson, Executive Assistant, Executive Division

David Doggett, Sergeant Denton Area Enforcement Office

Loretta Doty, Director, Human Resources Division

Shelby Eskew, Director, Business Services Division

Joey Estrada, Grants Coordinator, Education and
Prevention

Jeff Farmer, Agent, Denton Area Enforcement Office

Randy Fields, Major, Coastal Bend Region

Loretta Green, Licensing Supervisor, Arlington Regional
Office

Ruby Gonzalez, Administrative Assistant, Education and Prevention
Toni Hale, Project Manager, Education and Prevention
Bruce Harlan, Captain, Training Division
Amy Harrison, Director, Licensing Division
Emily Helm, General Counsel, Legal Division
Christina Hutchinson, Administrative Assistant, Licensing Division
Dexter Jones, Assistant Chief, Field Operations, North Texas Region
Ashleigh Jons, Program Specialist, Education and Prevention
Joann Joseph, Assistant Director, Licensing Division
Michael Lockhart, Lieutenant, Arlington Enforcement Regional Office
Richard Maness, System Support Specialist, Information Resources Division
Vanessa Mayo, Assistant Director, Business Services Division
Andy Peña, Director, Office of Professional Responsibility/Training Division
Alexis Reed, Clerk, Office of Professional Responsibility
Gloria Darden Reed, Executive Assistant, Executive Division
Sharon Roberson, Administrative Assistant, Field Operations
Albert Rodriguez, Lieutenant, Office of Professional Responsibility
Robert Saenz, Chief, Field Operations
Karen Smithwick, Director, Ports of Entry
Todd Talley, Regional Liaison, Coastal Bend Region
DeWayne Thompson, Agent, San Antonio Enforcement Office
Tana Travis, Lieutenant, Houston Enforcement Regional Office
Rod Venner, Assistant Chief, Field Operations, Border Region
Jay Webster, Director, Information Resources Division
Martin Wilson, Assistant General Counsel, Legal Division

**GUESTS
PRESENT:**

Vic Brooks, Vice President, Austin Market, Republic
National Distributing Company
ML Calcote, Consultant, Republic National Distributing
Company
Doug Dubois, Director of Government Affairs, Texas Food
and Fuel Association
Casey Ray Farmer,
Jo Ann Farmer
Mackenzie Farmer
Michelle Farmer
Mike Hatcher
Jean Luntz
Jack Martin, Attorney, Jack Martin & Associates
Hubert Manuel Roberson, Teacher, Arrow Academy
Randy Yarbrough, Wholesale Beer Distributors of Texas

CALL TO ORDER

The meeting of the Texas Alcoholic Beverage Commission was called to order at 10:06 a.m. by Presiding Officer José Cuevas. Chairman Cuevas announced that Commissioner Steven Weinberg was unable to attend the Commission meeting. However, he and Commissioner Fredricks make up a quorum and the meeting would proceed.

APPROVAL OF COMMISSION MINUTES OF JANUARY 24, 2013

Presiding Officer José Cuevas called for approval of the Commission meeting minutes of January 24, 2013. Commissioner Melinda Fredricks so moved to approve the minutes as written. Chairman Cuevas seconded. The motion carried.

**COMMISSION REPORT: ADMINISTRATOR AND AGENCY ACTIVITIES,
BUDGET ISSUES, STAFF ACHIEVEMENTS, LEGISLATIVE ACTIVITIES**

Presiding Officer Cuevas called upon Administrator Sherry Cook for the commission report on Administrator and Agency Activities, Budget Issues, Staff Achievements and Legislative Activities.

Administrator Cook welcomed the Commissioners back to Austin for another commission meeting and began her report with significant activity involving the city of Austin's inaugural Formula One Race, "Circuit of the Americas" held during the month of November 2012. She stated that \$2.8 million worth of beer, wine and mixed beverages were sold with bars, restaurants, and hotels tab totals citywide boosting

Austin's alcohol sales for the month to \$48.4 million (23% higher than November 2011). Administrator Cook commented that a spike in last November's growth can also be attributed to the local option elections and other activities occurring in the state.

Administrator Cook's report highlighted a continuation in the alcoholic beverage industry's steady growth with a net gain of 472 new licensed businesses at the end of January 2013. She stated that most of the regions of the state experienced growth and commented that proportionately small increases were in regions in West Texas and the Panhandle; however the North Central and Northeast Texas regions (Arlington and Dallas-Fort Worth Metroplex) had larger increases. Administrator Cook stated that the driving force in trends for the demand for alcoholic beverages is due to an increase in the state's population.

Administrator Cook's explanation of an increase in aggregate sales during the first five months of the fiscal year beginning September 2012 and ending the fiscal year January 2013 was supported in the PowerPoint slide presentation. She stated that total sales during this period were about 2.35 percent higher than they were during the same period the prior year. However economic conditions during that period were about the same with a difference between the two with the presence of a slightly larger population during the latter period.

Administrator Cook explained the change in volume by beverage class. She stated that the demand for beer continues to fall while the demand for beverages with higher alcohol content, especially malt liquors continue to increase.

Presiding Officer Cuevas inquired on what was the percentage of growth. Administrator Cook responded that she did not have the percentage of growth information available.

Administrator Cook will find out the percentage of growth in the change in volume by beverage class of malt liquors and report information to Presiding Officer Cuevas.

Administrator Cook stated that the personal importations taxed and POE revenues are continuing to decline. Her thoughts and Agency expectations were that the impact of the border violence would remain more or less constant and with the increase of the administrative fee, the POE revenues and the volume of taxable personal importations would stabilize to the 2012 fiscal year levels. However, she comments that after five months into the current fiscal year (2013), POE revenues and personal importations stamped by POE tax compliance officers both fell just under 20 percent during the first five months of FY 2013. Administrator Cook stated that these areas for revenue and taxable personal importations will closely be monitored for any shortfalls that could cause harm to agency operations.

Presiding Officer Cuevas inquired if Administrator Cook could forecast the opening of the new bridges. Administrator Cook answered negatively and stated that the funding request for that project will be part of the exceptional items submitted to the Legislative Budget Board (LBB). She stated that the House Appropriations Committee has approved funding for the bridge at Fabens and Seaports. Administrator Cook stated that this funding would go into effect September 1, 2013, if approved by the Senate.

Administrator Cook briefed the Commission on some of the Agency activities and accomplishments. She addressed the high number of vacancies that has plagued the Agency and has caused considerable explanation to the LBB.

Administrator Cook announced that she and her executive team have devised a plan to offset the number of agency vacancies. She stated that a new agent academy is scheduled to start on February 2, 2013 with an anticipated number of 16 prospective agent trainees. The agent trainees' graduation date is March 14, 2013.

Administrator Cook stated that the next new agents' academy is scheduled to begin on June 10, 2013 with the recruiting, advertising and posting to begin on January 31, 2013. She anticipates the hiring of 15 agent trainees who if successful in the completion of the academy program will graduate in July 2013. Administrator Cook stated that two new agent academies will be scheduled during the Fall and Spring of the year in hopes to "close the historically vacancy gaps across the Agency."

Presiding Officer Cuevas quizzed Administrator Cook on the number of new agent applications that will be received during the recruiting and posting process to fill the 15 vacancies. Administrator Cook responded that the agency will receive from 300 to 500 prospective applicants with anticipation that half of those will be disqualified due to background checks, PR testing and other qualifiers. She stated that as part of the recruitment process, TABC stresses its priority as being a regulatory agency and encourages the agent to focus on customer service and to be business friendly first, however when a bad actor in business is out of compliance with the alcoholic beverage code and refuses to comply, the law enforcement authority must be acted upon to protect the community and the people of Texas.

Administrator Cook invited the Commissioners to visit the new Agents' class A – 2013 on the 3rd floor at TABC headquarters.



**Acting Captain Bruce Harlan, Agent Marvin Montero
& New Agents Class A - 2013**

Administrator Cook spoke on the countless hours she and her Executive Team spent at the State Capitol for the current legislative session. Her legislative briefing included a discussion of items that were approved and funded by the House Appropriations Committee, as well as, items that were left pending.

Administrator Cook stated that after the Commission, she along with members of her Executive Team will report to the State Capitol to attend a possible hearing on Article V, and also, a hearing of the Senate Finance committee meeting will be held.

Presiding Officer Cuevas asked Administrator Cook to define Article V, what does it represent. Administrator Cook stated that Article V deals with law enforcement agencies, such as Texas Alcoholic Beverage Commission, Department of Public Safety, Parks and Wildlife, Juvenile Justice and the other Schedule "C" agencies.

Presiding Officer Cuevas inquired on what has TABC requested for "Schedule C" budget (current pay schedule/pay raises). Administrator Cook responded the request is following the Department of Public Safety's lead from recommendation received from the State Auditor's Office for a sufficient pay increase for "Schedule C" of 2.5 to 5 million dollars. Administrator Cook stated that TABC can cover the amounts with its fees, fines and surcharges. She stated that "Schedule C" is one of DPS' exceptional items addressed during the House Appropriations Committee meeting by Vice Chairman Representative Sylvester Turner stating that "it is important and needs consideration."

Administrator Cook highlighted legislative briefing House Appropriations approved and funded items:

- #1 Exceptional Item - Regaining 30 full-time employee positions (previously cut from budget)
- #6 Ports of Entry Regulation - (Equipment, Bridge Approvals)
- Proposed New Rider: Capital Budget Expenditures from Federal and Other Funding - The Texas Commission is hereby exempted from capital budget rider provisions contained in Article IX of this Act when gifts, grants, inter-local funds, and federal funds are received in excess of the amounts identified in the agency's capital budget rider and such funds are designated by the donor, grantor, or federal agency for the purchase of specific capital items, limited to projects related to law enforcement or the regulation of the Alcoholic Beverage Code. (Note: the word "gifts" stricken out of rider)
- Proposed New Rider: Use of Appropriated Funds for Informational and Educational Purposes -- TABC may develop, create, or purchase with appropriated funds public service announcements or advertisements for informational and educational purposes via written, audio, audio-visual, digital, or other electronic median to communicate to the alcoholic beverage industry and the public, the legal responsibilities of the Commission's code and rules to ensure voluntary compliance.

Administrator Cook stated that the "items left pending" were put in a priority item ranking for the House Appropriations' Subcommittee consideration. Those items in ranking order included:

- #2 Fuel Cost at \$3.96 pump price
- #3 Public Safety/Law Enforcement Equipment
- #5 Information Technology

In other words, Administrator Cook commented that the items were ranked in priority order that the Agency believes is its highest priorities to complete its mission of regulating and enforcing the Alcoholic Beverage Code in an ever-growing market.

Administrator Cook commented on an item left pending that dealt with the contingency appropriations for judgments and settlements. She explained that the item deals with payments of judgments or settlements, including attorney's fees, resulting from actions brought to challenge the validity or constitutionality of the Alcoholic Beverage Code and defended by the Office of the Attorney General that are obtained against the Texas Alcoholic Beverage Code and defended by the Office of the Attorney General that are obtained against the Texas Alcoholic Beverage Commission, or any individual(s) acting in their official capacity on behalf of the

Texas Alcoholic Beverage Commission, shall be paid by the agency and are hereby appropriated to the agency in the amount necessary to pay claims, judgments and settlements. She stated that the legislative committee believes that the settlements/judgments were paid by a state prospective civil liabilities judgment rather than paid by the Agency. She stated, for example, the *Authentic* case against TABC. Presiding Officer Cuevas asked for the cost on that case. Administrator Cook answered about \$84,000. She stated for that the Agency is not financially prepared to absorb the costs associated with the judgments.

Commissioner Fredricks inquired what source the legislative committee thought the funds came from that paid the judgments/settlements. Administrator Cook responded that they thought it came from a state-funded source that would pay on a civil judgment.

Commissioner Fredricks asked does that entity exist and do other state agencies use the source and TABC does not. Administrator Cook stated that the process goes through a legislative process to withdraw the funds. General Counsel Helm commented that judgment has to be more than 10 percent of the Agency's entire budget it is expected to absorb. She stated that if the agency is liable after trying to get out or resolve the suit, the agency needs to go back to the legislature to get appropriations for a pseudo written contract.

General Counsel Helm speculated that the confusion was between the codes for constitutionality. Commissioner Fredricks stated the basis of the confusion was in defending the law. General Counsel concurred. Commissioner Fredricks inquired if the rules adopted by the Commission are bound. General Counsel Helm answered in the affirmative.

Administrator Cook stated that she and Presiding Officer Cuevas testified before the Senate Finance Committee and it was received well. She anticipates receiving a positive response from the Senate Finance Markup Committee toward the Agency's budget request. Administrator Cook stated that she reminds members of the legislative appropriations committees that TABC is a self-funded agency that raises its revenue from fees, fines and surcharges that is specific toward appropriations to regulate of the alcohol beverage industry.

Presiding Officer Cuevas applauded Administrator Cook and her staff for the work and the many hours spent at the Capitol. He believes TABC has a good story to tell and present in the Agency's defense. He stated that he appreciates the work she and her staff have done working with the members of the House of Representatives and feels that they have been very receptive.

Administrator Cook concurred and echoed the Presiding Officer's comments in meeting with members of the House and Senate. She and her Executive Team have enjoyed the individual meetings with legislative members and their legislative staff; they have been wonderful to work with. She has indoctrinated the new members and

familiarized seasoned legislative members about Texas Alcoholic Beverage Commission in its uniqueness as being a regulatory law enforcement agency.

Administrator Cook gave kudos to Director Carolyn Beck for doing an excellent job assembling and equipping the Executive Team with a vital educational packet of legislative language/terms and other helpful information.

Presiding Officer Cuevas stated he received comments from the legislative office staff complimenting Executive Assistant Gloria Reed's professionalism and easy to work with demeanor.

Presiding Officer Cuevas asked Administrator Cook about her meeting at the Texas Restaurant Association (TRA) Legislative Affairs Conference. Administrator Cook stated that the Association invited her to attend the conference to introduce herself as the new Texas Alcoholic Beverage Commission's Administrator. She was asked to speak about legislation that had been filed that would directly impact their business.

Commissioner Fredricks concurred with Presiding Officer Cuevas comments in applauding Administrator Cook and her staff for their dedicated work ethic during the legislative session.

Administrator Sherry Cook's report was supported by a PowerPoint presentation (Attachment 1)

LEGISLATIVE SESSION BRIEFING

Presiding Officer Cuevas called upon Director Carolyn Beck for the next agenda item, Legislative Session Briefing. Director Beck briefed the Commission on the status of bills filed in the 83rd Legislative Session with high impact issues that could affect Agency operations.

Director Beck outlined highlights of bills filed for on-premise retailers, package stores, wineries and distilleries, beer, brewers, brewpubs, minors, bills amending the alcoholic beverage code, and other bills affecting TABC.

Director Beck spoke on Senate Bill 596 introduced by Senator Brian Birdwell. She stated that SB596 is related to protest on standard issues that are not of a public safety in nature. Bill highlights include:

- If protest is filed on a Mixed Beverage Permit based on issues related to community standards, the protestant can ask for hearing to be held before a county judge instead of State Office of Administrative Hearing (SOAH);
- A person whose application has been denied for certain reasons may not –
(1) apply again for 31 days or (2) be granted a permit or license unless

material changes to previous conditions have taken place;

- Authorizes certain Protestants to appeal to district court if a county judge or TABC grants an original license or permit. This applies when protests based on community standards;
- Prohibits *non-TABC-licensed* locations from giving free alcohol to the public at a commercial establishment if the owner or operator is ineligible for a license or permit or has been denied a license or permit.

Commissioner Fredricks asked Director Beck if she was referring to the County Judge rather than a County Clerk at Law to hear a case. General Counsel Helm responded that the County Judge can delegate his responsibility.

Presiding Officer Cuevas, referring to an issue in Arlington, quizzed Director Beck if SB 596 upholds a Judge's denial of a permit to an establishment that was giving away beer. Director Beck answered in the affirmative.

Director Beck briefed the Commission on HB668/SB598 that repeals law that limits package store owner to five stores. Presiding Officer Cuevas asked if "Big Box Stores" could take advantage with these bills. Director Beck stated that there is a law that prohibits a publicly traded company with a package store permit. Presiding Officer Cuevas stated that currently there is one group that has a publicly traded company permit and asked if there is a special law for them. Director Beck responded affirmatively.

House Representative John Kuempel filed a resolution under HJR76 that is a constitutional amendment to require a person to be 21 to enter a package store. Presiding Officer Cuevas inquired if it would be a misdemeanor for a person under 21 to enter a package store. Director Beck replied that the focus would be to place an administrative action against the package store for allowing a person under 21 to enter the store.

Commissioner Fredricks asked if a child under the age of 21 accompanies a parent or legal guardian into the package store would that be a violation. Director Beck responded that there are exceptions that are taken into consideration.

Director Beck discussed house bills that affect minors. She stated that HB310 allows certain minors to plead guilty by mail. Commissioner Fredricks quizzed Director Beck if a minor can plead "no contest or not guilty" and take care of the violation by mail.

Director Beck did not have a positive answer and stated that she will find out the answer.

Listed under the heading of other bills amending the code lead to a discussion by Director Beck on SB409 introduced in legislation by Senator Kirk Watson stating that if an administrative case is pending against a permit, no permit or license can be

issued to the premises. An exception created states if the permit holder has been evicted through a court proceeding which gives the permit holder “a right to due process” TABC can suspend the license, issue a new permit or license and continue to pursue an administrative action. Commissioner Fredricks inquired if there is a law or rule that prohibits the issuance of a license or permit if there has been criminal activity at that location.

Director Beck will provide an answer to Commissioner Fredricks’ inquiry.

Presiding Officer Cuevas thanked Director Beck for an updated thorough and informative report.

Director Beck’s presentation was supported by a PowerPoint presentation (Attachment 2)

RECOGNITION OF RECIPIENT FOR THE 2012 JOSÉ CUEVAS, JR. GOLD STAR AWARD

Presiding Officer Cuevas’ vision for the creation and presentation of the 2012 Gold Star Award began with his statement:

“Our employees are the driving force of this agency. They are smart, resourceful and creative. The Gold Star Award - Employee of the Year recognizes exemplary work performance and service – above and beyond the normal high expectations we have for our employees. A Gold Star Award nominee is a role model, always professional and is constantly seeking and applying new knowledge while upholding the agency’s Mission, Vision, Philosophy and Guiding Principles.”

The Agency is proud to award:

2012 Civilian Employee of the Year - Sharon Roberson

2012 Certified Peace Officer Employee of the Year – Agent Jeffrey Farmer

*The José Cuevas Jr.
Gold Star Award*

**Congratulations
Sharon Roberson**



*The José Cuevas Jr.
Gold Star Award*

**Congratulations
Agent Jeffrey Farmer**



Chairman Cuevas' presentation was supported by a PowerPoint presentation (Attachment 3)

RECOGNITION OF RECIPIENT FOR THE 2012 SHERRY COOK LEADERSHIP AWARD

The Texas Alcoholic Beverage Commission (TABC) is pleased to announce The Sherry Cook Leadership Award program to recognize a management level employee who exemplifies outstanding leadership and provides exemplary service. The award's purpose is to further the advancement of TABC's Mission and Vision by recognizing those who establish new standards of excellence.

The Texas Alcoholic Beverage Commission 2012 Sherry Cook Leadership Award recipient is Director Mindy Carroll.



Congratulations Mindy



Administrator Sherry Cook's presentation was supported by a PowerPoint presentation (Attachment 4)

RECOGNITION OF PROMOTION FOR VANESSA MAYO AS THE NEW BUSINESS SERVICES DIVISION'S ASSISTANT DIRECTOR

Presiding Officer Cuevas called upon Assistant Administrator Ed Swedberg to come forward to present the next agenda item, "Recognition of Promotion for Vanessa Mayo as the New Business Services Division's Assistant Director.

Assistant Administrator Swedberg asked Ms. Mayo to come forward for her recognition. He briefly read Ms. Mayo's bio and spoke about her agency contributions and the promotion. Presiding Officer Cuevas, Commissioner Fredricks congratulated Assistant Director Mayo on her promotion.



Administrator Sherry Cook, Commissioner Melinda Fredricks, Assistant Director Vanessa Mayo, Presiding Officer José Cuevas, Assistant Administrator Ed Swedberg

PUBLIC COMMENTS

Presiding Officer Cuevas opened the floor for comments before the Commission. No one came forward to address the Commission.

RECEPTION HONORING AWARD RECIPIENTS AND ASSISTANT DIRECTOR VANESSA MAYO

Presiding Officer Cuevas extended an invitation to the all Commission meeting attendees including the family and friends of honored award recipients to a reception in the foyer.

EXECUTIVE SESSION TO CONSULT WITH LEGAL COUNSEL REGARDING PENDING AND ANTICIPATED LITIGATION AGAINST THE AGENCY AND TO DELIBERATE THE APPOINTMENT, EMPLOYMENT, EVALUATION, DUTIES OF THE POSITION OF ADMINISTRATOR (GOVT. CODE §551.071, §551.074)

Presiding Officer Cuevas announced that the regular open session of the Texas Alcoholic Beverage Commission will be recessed at this time 11:23 a.m., February 26, 2013 and an executive session will be held to consult with Legal

Counsel regarding pending and anticipated litigation against the agency and to discuss the duties, responsibilities, and evaluation of the Administrator, pursuant to Texas Government Code, Sections 551.071 and 551.074.

Upon the return of the Commission, Presiding Officer Cuevas announced that the Texas Alcoholic Commission has concluded its executive session and is now in open regular session. The date is February 26, 2013 and the time is 12:00 p.m. No final action, decision or vote was made in executive session.

NEXT MEETING DATES: Tuesday, April 23, 2013
Tuesday, May 28, 2013

ADJOURN

Presiding Officer José Cuevas called for a motion to adjourn. Commissioner Fredricks made a motion. Presiding Officer Cuevas seconded. The motion was made and seconded. The motion passes. Presiding Officer José Cuevas announced that the meeting was adjourned at 12:01 p.m.

Attachment 1

**Administrator's Report: Administrator and
Agency Activities, Budget Issues, Staff
Achievements, Legislative Activities**

Commission Report
February 26, 2013



TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

service ★ courtesy ★ integrity ★ accountability

Sherry Cook
Administrator

COMMISSIONER
STEVEN WEINBERG, MD, JD

CHAIRMAN
JOSE CUEVAS, JR.

COMMISSIONER
MELINDA S. FREDRICKS

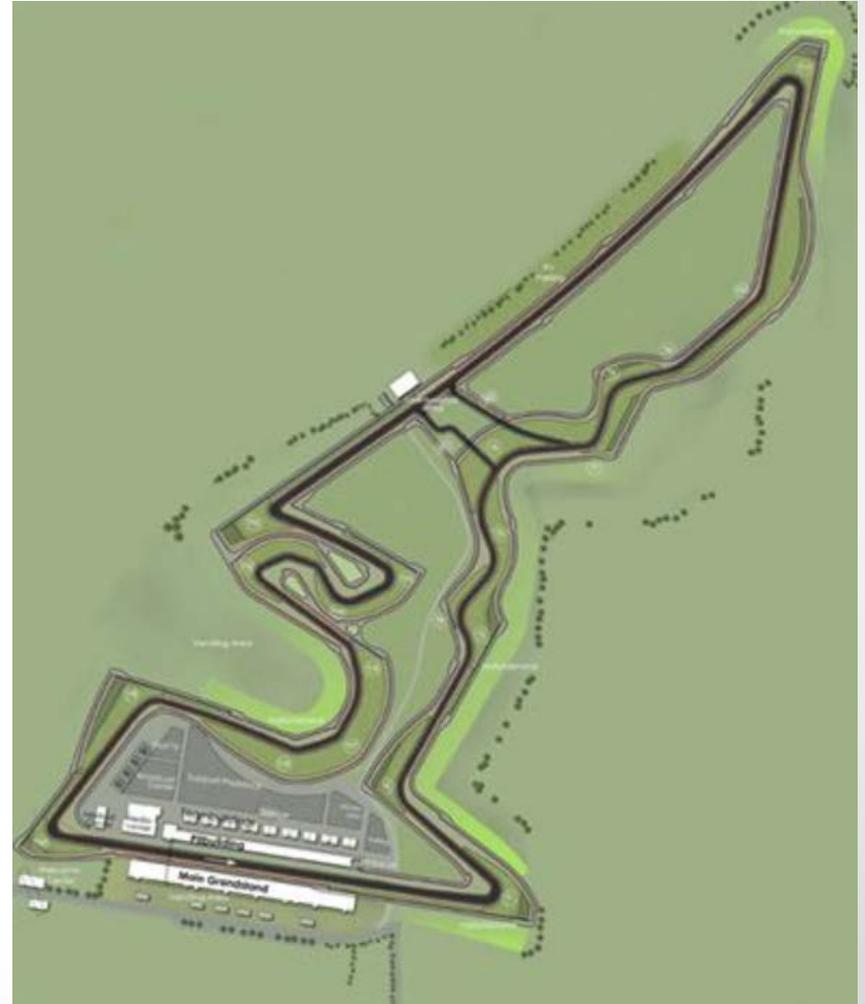


Significant Activity

Formula One Inaugural Race



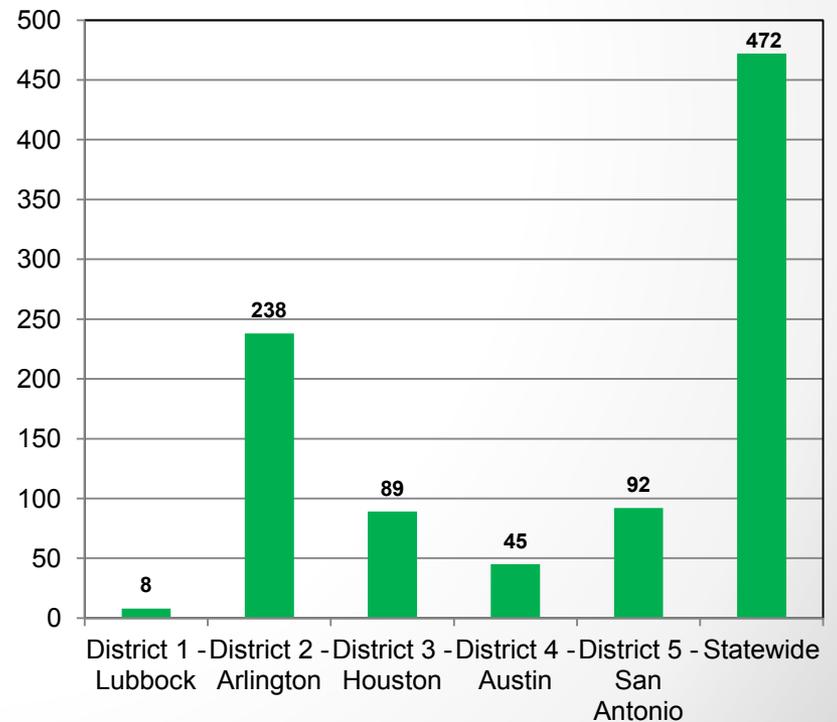
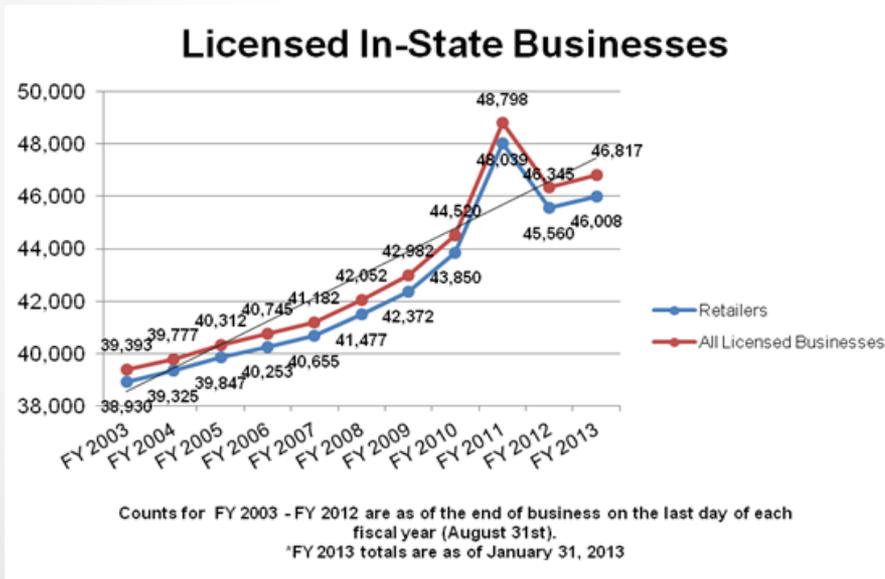
- \$2.8 Million
 - Beer
 - Wine
 - Mixed Drinks
- \$48.4 Million
 - Austin alcohol sales for the month of November



Trends

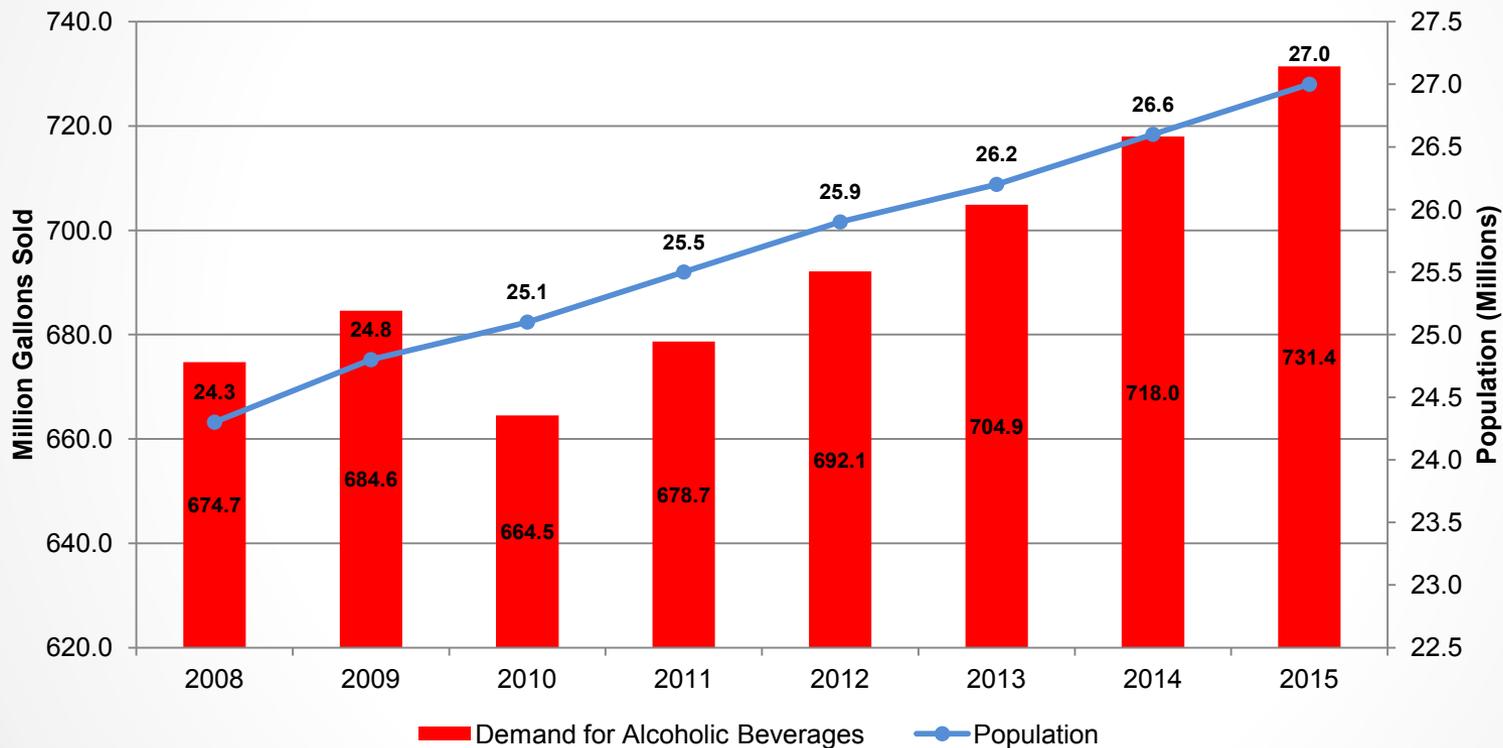
Growth Continues

Increase in Licensed Businesses
September – January
2012-2013



Trends

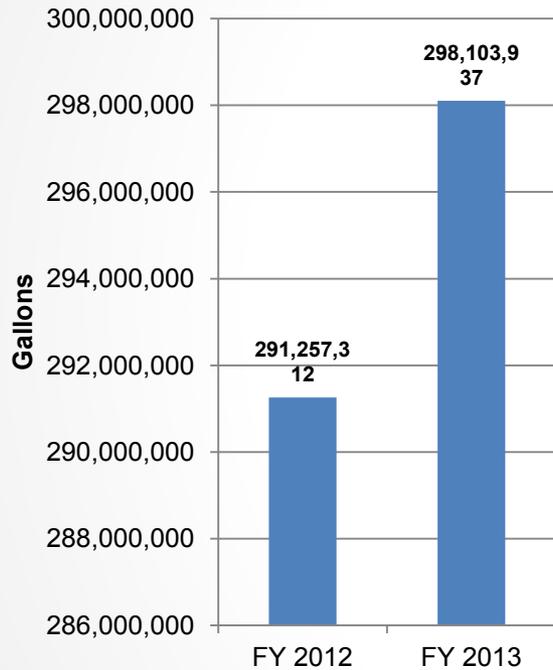
Demand for Alcoholic Beverages And State Population FY 2008 - FY 2015



Trends

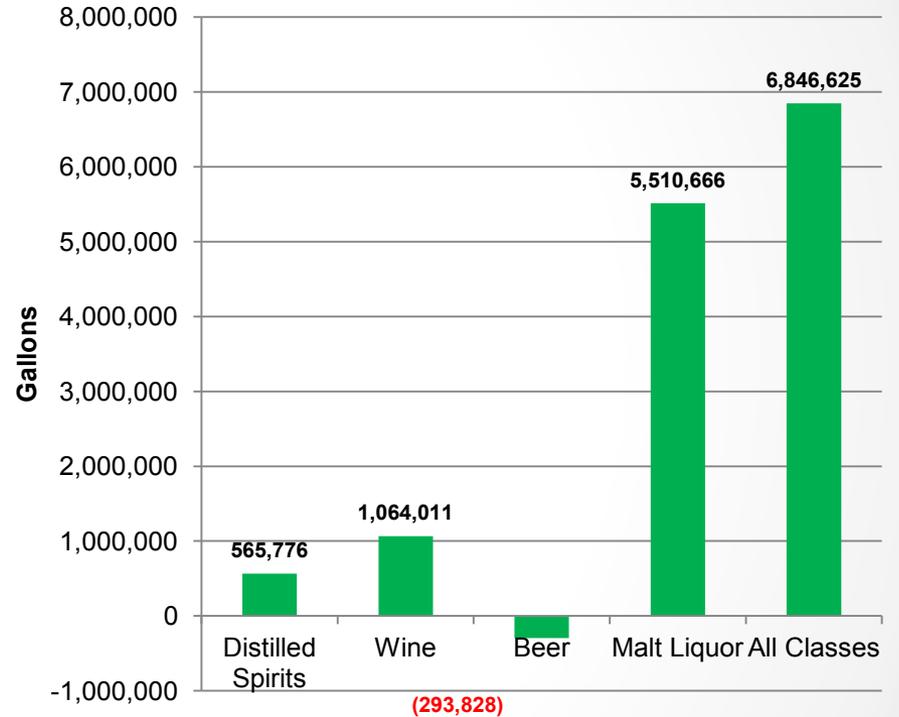
Aggregate Wholesale Sales

September - January



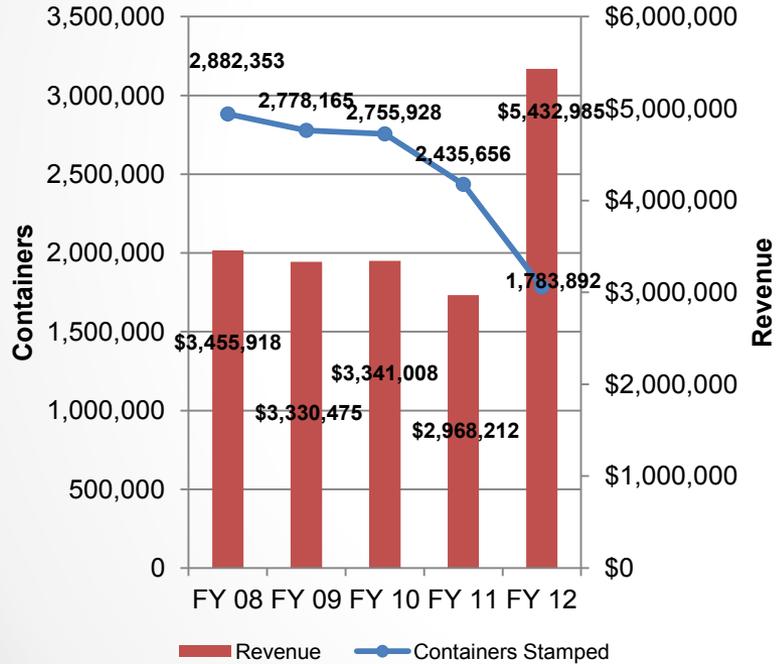
Changes in Wholesale Volume

FY 2012 (Sep - Jan) to FY 2013 (Sep - Jan)

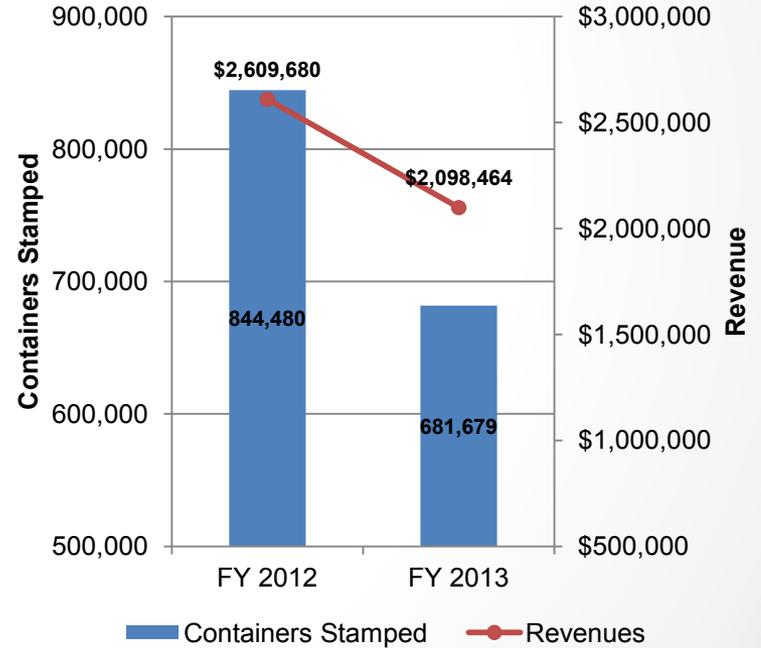


Trends

**Personal Importations Taxed
And POE Revenues
FY 2008 - FY 2012**



**POE Containers Stamped
& Tax/Fee Revenue
September - January**



Accomplishments New Agent Academy

- Start Date – February 2, 2013
- Number of Agents – 16
- Graduation Date – March 14, 2013

Next Academy – June 10, 2013

- Posting Date – January 31, 2013
- Number of Positions - 15
- Start Date – June 10, 2013
- Graduation – July 2013



**Acting Captain Bruce Harlan, Agent Marvin
Montero, & New Agents Class A - 2013**

83rd Legislative Session Update

Nov. 12, 2012
Pre-filing of bills

January 8, 2013 –
83rd Legislature
convened

March 8 - Last
day to file regular
bills

May 27 – Sine Die

June 16 - Last day
governor can sign
or veto bills



Legislative Update

House Appropriations



Approved/Funded Items

| | | | |
|--|-------------------|-------------------|---------------------|
| #1 - Reductions Per S.B.1 / H.B. 1 | \$ 1,200,000 | \$ 1,200,000 | \$ 2,400,000 |
| | | | |
| #6 - Ports of Entry Regulation | | | |
| POE - Hardware/Printers/Card Readers | \$ 201,865 | \$ - | \$ 201,865 |
| POE - Seaports (8 FTEs) | 314,831 | 298,965 | 613,796 |
| POE - Fabens (7 FTEs) | 245,834 | 230,620 | 476,454 |
| Progreso Lease Increase (\$2,100 to \$4,500) | 28,800 | 28,800 | 57,600 |
| SAO Changes to TCO Classification Sch B | 114,989 | 114,989 | 229,978 |
| | <u>114,989</u> | <u>114,989</u> | <u>229,978</u> |
| Total Exceptional Item #5 | <u>\$ 906,319</u> | <u>\$ 673,374</u> | <u>\$ 1,579,693</u> |

Approved/Funded Items Continued

Proposed New Rider:

Capital Budget Expenditures from Federal and Other Funding Sources. The Texas Commission is hereby exempted from capital budget rider provisions contained in Article IX of this Act when gifts, grants, inter-local funds, and federal funds are received in excess of the amounts identified in the agency's capital budget rider and such funds are designated by the donor, grantor, or federal agency for the purchase of specific capital items, limited to projects related to law enforcement or the regulation of the Alcoholic Beverage Code.

Amounts expended from these funding sources shall not count against the limitation imposed by capital budget provisions elsewhere in this Act. The TABC shall notify the Legislative Budget Board and the Governor upon receipt of such funds of the amount received and the planned expenditures.

Approved/Funded Items Continued

Proposed New Rider:

Use of Appropriated Funds for Informational and Educational

Purposes: The Texas Alcoholic Beverage Commission may develop, create, or purchase with appropriated funds public service announcements or advertisements for informational and educational purposes via written, audio, audio-visual, digital, or other electronic median to communicate to the alcoholic beverage industry and the public, the legal responsibilities of the Commission's code and rules to ensure voluntary compliance.

Items Left Pending

| Pending Items House Appropriations Sub-Committee | | FY 2014 | FY 2015 | Biennial Total |
|---|--|--------------|--------------|-------------------|
| #2 - Operational/Insurance Cost Increases | | | | |
| 1 | Fuel Cost at \$3.96 Pump Price | \$ 625,782 | \$ 625,782 | \$ 1,251,564 |
| | 1% Insurance Increase | 313,507 | 317,082 | 630,589 |
| | Rent Increases | 233,020 | 265,393 | 498,413 |
| | Long/Haz Increase | 114,620 | 138,361 | 252,981 |
| | Lump Sum Payments | 150,000 | 150,000 | 300,000 |
| | Total Exceptional Item #2 | \$ 1,436,929 | \$ 1,496,618 | \$ 2,933,547 |
| #3 - Public Safety/Law Enforcement Equipment | | | | |
| 1 | 54 Vehicles (Maintain 125,000 mile) | \$ 704,000 | \$ 484,000 | \$ 1,188,000 |
| 2 | Radios (212 Radios Enforcement Only) | 1,802,000 | - | 1,802,000 |
| | Public Safety Equipment | 174,093 | 174,093 | 348,186 |
| | Total Exceptional Item #3 | \$ 2,680,093 | \$ 658,093 | \$ 3,338,186 |
| #5 - Information Technology | | | | |
| 1 | Versa Software Maintenance Increase for current on-line application | \$ 25,000 | \$ 30,000 | \$ 55,000 |
| 2 | Network Security | 26,452 | 26,452 | 52,904 |
| 3 | Microsoft Enterprise Agreement | 25,239 | 25,239 | 50,478 |
| 4 | Staff Augmentation - 2 FTE Equivalent | 320,000 | 320,000 | 640,000 |
| 5 | Replacement of A/C in TABC HQ Data Center | 173,206 | - | 173,206 |
| 6 | Mobile Workforce - Tablet | 371,001 | 209,501 | 580,502 |
| | Total Exceptional Item #4 | \$ 940,898 | \$ 611,192 | \$ 1,552,090 |
| #7 - Education and Prevention Programs | | \$ 95,000 | \$ 95,000 | \$ 190,000 |

Items Left Pending Continued

#9 Contingency Appropriations for Judgments and Settlements: Payment of judgments or settlements, including attorney's fees, resulting from actions brought to challenge the validity or constitutionality of the Alcoholic Beverage Code and defended by the Office of the Attorney General that are obtained against the Texas Alcoholic Beverage Commission, or any individuals(s) acting in their official capacity on behalf of the Texas Alcoholic Beverage Commission, shall be paid by the agency and are hereby appropriated to the agency in the amount necessary to pay claims, judgments, and settlements.

Questions



TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

service ★ courtesy ★ integrity ★ accountability

Questions

COMMISSIONER
STEVEN WEINBERG, MD, JD

CHAIRMAN
JOSE CUEVAS, JR.

COMMISSIONER
MELINDA S. FREDRICKS



Attachment 2

Legislative Session Briefing

83RD LEGISLATIVE SESSION UPDATE

February 26, 2013

TABC Commission Meeting



Nov. 12, 2012
Pre-filing of bills

January 8, 2013 -
83rd Legislature
convened

March 8 - Last day
to file regular
bills

May 27 - Sine Die

June 16 - Last day
governor can sign
or veto bills

83RD LEGISLATIVE SESSION

- 2,663 bills filed as of 2/24/13
 - 6,304 total bills filed last session
- 38 bills amending the Alcoholic Beverage Code
 - 18 bills this time last session
- Other high impact issues
 - The Budget - annual budgets, zero-based budgeting, hiring freeze, etc.
 - Gambling, Poker, 8-Liners
 - Smoking in public places



- ON-PREMISE RETAILERS -

- ◉ HB34 by Menendez - Creates BYOB permits for sexually oriented businesses
- ◉ HB880 by Chris Turner - Requires liquor liability insurance for on-premises locations
- ◉ HB893 by Geren / SB400 by Hancock - Allows TX Rangers Stadium to let patrons come and go from MB areas of stadium with drinks
- ◉ HB1269 by Martinez-Fischer - Requires on-premises locations to offer non-alcoholic wine or beer for sale
- ◉ HB1622 by Stickland - Authorizes BGs in area already wet for MB and BQ



- SB 596 BY BIRDWELL -

- If protest is filed on a Mixed Beverage Permit based on issues related to community standards, the protestant can ask for hearing to be held before a county judge instead of SOAH.
- A person whose application has been denied for certain reasons may not:
 - Apply again for 31 days or
 - Be granted a permit or license unless material changes to previous conditions have taken place
- Authorizes certain protestants to appeal to district court if a county judge or TABC grants an original license or permit. This applies when protests based on community standards.
- Prohibits non-TABC-licensed locations from giving free alcohol to the public at a commercial establishment if the owner or operator is ineligible for a license or permit or has been denied a license or permit.



- PACKAGE STORES -

- HB421 by Thompson / SB236 by Hinojosa - Allows package store sales on Sundays
- HB703 by Canales - Allows package store sales on Sundays in counties that border Mexico
- HB668 by Martinez / SB598 by Birdwell - Repeals law that limits package store owner to five stores
- HJR76 by Kuempel - Constitutional Amendment to require a person to be 21 to enter package store.



- WINERIES AND DISTILLERIES -

- ◉ SB131 by Nelson - Extends hours of winery sales on New Year's Eve
- ◉ SB451 by Carona - Requires winery permit holder to make wine, including through alternating proprietorship
- ◉ HB1505 by Kuempel / SB642 by Van de Putte - Allows distillers to sell bulk spirits to food processors holding an industrial permit
- ◉ SB652 by Van de Putte - Authorizes a brewery to transfer bulk product to a distillery for production purposes



BEER - BREWERS - BREWPUBS

- ◉ SB515 by Eltife - Authorizes brewpubs to make up to 12,500 barrels a year (up from 5K) and sell up to 1,000 to retailers and the rest to distributors, consumers, or any qualified person outside of Texas.
- ◉ SB516 and SB517 by Eltife - Authorizes brewers / manufacturers producing up to 125,000 barrels a year to self-distribute up to 40,000 barrels
- ◉ SB518 by Eltife - Authorizes brewers / manufacturers producing up to 225,000 barrels a year to sell up to 5,000 barrels a year direct to consumer for on-premises consumption
- ◉ HB1555 by Smith / SB350 by Williams - Changes criteria for holding a Manufacturer's Agent's Warehousing License
- ◉ HB1538 by Geren / SB639 by Carona - Includes severability language, prohibits price discrimination, prohibits payment for territorial agreements



- MINORS -

- HB232 by Guillen - Allows certain minors to perform community service in lieu of alcohol awareness course
- HB310 by Guillen - Allows certain minors to plead guilty by mail
- HB892 by Lozano - Redefines "minor" to EXCLUDE a person at least 18 and on active duty in military.
- HB1012 by King - Upgrades penalty for providing alcohol to a minor to state jail felony if the minor's drinking causes another person to suffer serious injury or death
- HB1013 by King - Amends law related to civil liability for damages caused by the intoxication of a minor, raising age from 18 to 21.



OTHER BILLS AMENDING CODE

- HB575 by Anchia - Relating to admin actions based on criminal prosecution.
- SB409 by Watson- If an admin case is pending against a permit, no permit or license can be issued to the premises. Creates the exception if the permit holder has been evicted through a court.
- HB515/HB1062 by Pitts / SB559 by Duncan - Repeals sections of the AB Code enacted during special session (early excise tax payments)
- HB1020 by Reynolds - Clean-up bill changing TCADA to TDSHS



OTHER BILLS AFFECTING TABC

- ◉ HB700 by Lavender / HB1194 by Paddie - Open carry
- ◉ HB911 by Moody increases the penalty for stealing less than \$50 worth of alcoholic beverages from a Class C misdemeanor to a Class B. More than \$50 is already a Class B.
- ◉ HB130 by Raymond - Relating to honesty in taxation - requires state agencies and the legislature to refer to fines, fees and surcharges as "Regulatory Taxes"
- ◉ HB231 by Isaac - Relating to suspending ERS annuity payments for retired employees who return to work for the state.



83RD LEGISLATIVE SESSION UPDATE



QUESTIONS?

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governor can sign
or veto bills

Attachment 3

**Recognition of Recipients for the 2012 José
Cuevas, Jr. Gold Star Award**

*For Excellence In
Public Service*



The José Cuevas Jr.

Gold Star Award

Our employees are the driving force of this agency. They are smart, resourceful and creative. The Gold Star Award - Employee of the Year recognizes exemplary work performance and service – above and beyond the normal high expectations we have for our employees. A Gold Star Award nominee is a role model, always professional and is constantly seeking and applying new knowledge while upholding the agency’s Mission, Vision, Philosophy and Guiding Principles.

*The José Cuevas Jr.
Gold Star Award*



**2012 Civilian Employee of the Year
Sharon Roberson**

Sharon Roberson began her career with TABC in 1982, in the Austin District office. During her tenure, she has held a variety of positions including Administration and Licensing Technician in which she processed licensing and bingo applications for Travis, Bastrop, and Hays County. She transferred to Austin Headquarters as a Secretary and progressed to her current position as an Administrative Assistant in the Field Operations Division.

Sharon grew up in Elgin. She has one son: Manuel, 32; and one nephew, Courtney, 24. Sharon loves spending time with her boys and her church family.

The José Cuevas Jr. Gold Star Award



This February she was blessed with her first grandchild, Chase Manuel. Sharon is invaluable to Field Operations. She was a participant in the switch from LicenseEase to Versa Regulation. Her knowledge of the processes and the previous computer system made her a critical part of the testing phase. When questions were asked about the steps for a particular process, Sharon was the “go-to” for a correct answer. She helped the IRD team understand why things could or could not be done a certain way and the pros and cons of changing a process. More recently, Sharon’s institutional knowledge was critical during the Field Operations reorganization. She is a natural teacher; she was able to work with administrative assistants who were new to the division and train them on the division’s processes and procedures.

The José Cuevas Jr. Gold Star Award



Sharon always comes to work with a smile and a positive attitude. Her friendly demeanor makes her approachable and other employees genuinely enjoy working and interacting with her.

She treats everyone she encounters with respect. Her professionalism is obvious to anyone who works with her. Sharon takes her job seriously. She works hard and maintains a positive attitude. Any employer would be lucky to have Sharon, but we are the lucky ones because she has remained a loyal TABC employee for 30 years!

*The José Cuevas Jr.
Gold Star Award*

**Congratulations
Sharon Roberson**



*The José Cuevas Jr.
Gold Star Award*



**2012 CPO Employee of the Year
Agent Jeffrey Farmer**

Agent Jeffrey Farmer began his career with TABC in 2004. Before joining TABC he served the public as a peace officer with the Smithville, TX Police Department where he attained the rank of sergeant.

Agent Farmer is currently assigned to the North Texas Region in the Denton TABC office. He carries himself with a great deal of professionalism and represents the vision and mission of the TABC in his daily activities. He is noted especially for his investigative skills. Agent Farmer values his continuing education and is currently enrolled in a Bachelor's degree program in Criminal Justice where he is only a couple hours away from obtaining his degree.

The José Cuevas Jr. Gold Star Award



Agent Farmer has been married to his lovely wife Michelle for 23 years. They have been blessed with a son, Casey, who is 21-years-old, and a 16-year-old daughter, MacKenzie. Agent Farmer is active in his community and in his work environment. He participated on the Special Response Team within the agency and on advisory committees such as the local human trafficking task force.

He has made presentations to community groups on and off duty in order to promote the mission of TABC. Agent Farmer reports all complaints, even potential ones. He looks at the Enforcement manual before he presents an issue and has an excellent grasp of policy and procedures.

The José Cuevas Jr. Gold Star Award



Jeff is a good neighbor toward everyone around him and extends offers of assistance and proffers small courtesies like opening doors or assisting the carrying large items for people. Compliments that Agent Farmer has received from the public, the alcoholic beverage industry and from managers within the TABC, just in 2012, are easily more than any other employee in the office. This does not count the numerous “thank yous” that Jeff earns for his work at TABC every day.

*The José Cuevas Jr.
Gold Star Award*

**Congratulations
Agent Jeffrey Farmer**



Attachment 4

**Recognition of Recipients for the 2012 Sherry
Cook Leadership Award**



The Sherry Cook Leadership Award

The Texas Alcoholic Beverage Commission (TABC) is pleased to announce The Sherry Cook Leadership Award program to recognize a management level employee who exemplifies outstanding leadership and provides exemplary service. The award's purpose is to further the advancement of TABC's Mission and Vision by recognizing those who establish new standards of excellence.



The Sherry Cook Leadership Award

Basic Eligibility Requirements

- All current TABC employees classified at or above the division supervisory level are eligible.
- The nominee should have developed and/or managed one or more projects that led to improved administration of the agency and/or the division.
- The nominee should be known for developing teamwork and by staff for promoting their professional growth and development.



The Sherry Cook Leadership Award

Award Criteria

- Nominees for the award will be judged based upon the following criteria:
- Served in an active leadership role for the agency for at least two years;
- Successfully developed or managed a project that resulted in greater employee and/or customer satisfaction and a positive improvement in business results;
- Developed and furthered teamwork in agency activities;
- Enabled others to act by giving them the tools and methods to solve the problem;
- Provided good mentorship;
- Displayed commitment to the Four Cornerstones of Service, Courtesy, Integrity, and Accountability and to the TABC Mission, Vision, and Guiding Principles; and
- Demonstrated dedication “above and beyond the call of duty” to achieve the best result.



The Sherry Cook Leadership Award

Selection Process

A panel of seven judges comprised of representatives from all TABC districts and headquarters will review the nominations and present a recommendation to the Administrator.



The Sherry Cook Leadership Award

**Congratulations
Mindy**





The Sherry Cook Leadership Award

Mindy Carroll, Director of Education

After teaching in public education, Mindy started her career with the Texas Alcoholic Beverage Commission in 2006 as the education specialist. In 2008, she was promoted to the assistant director of the Education Division and in 2011 was promoted to the director. The division is responsible for managing the States EUDL (Enforcement of Underage Drinking Laws) Block Grant and Mindy is the EUDL State Coordinator. In 2011, the division managed about \$1.5 million in funding and distributed grants to 19 different projects. Mindy also oversees all educational programming including the seller server training program.

CERTIFICATION

REGULAR COMMISSION MEETING

10:00 a.m. – February 26, 2012

**5806 Mesa Drive
Austin, Texas 78731**



TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

service ★ courtesy ★ integrity ★ accountability

STATE OF TEXAS

COUNTY OF TRAVIS

This certifies that the attached is a true copy of the proceedings of the Texas Alcoholic Beverage Commission meeting held on February 26, 2013.

A handwritten signature in cursive script that reads "Sherry K. Cook".

Sherry Cook
Administrator

Sworn and subscribed before me this the 15th day of April 2013.

A handwritten signature in cursive script that reads "Gloria Darden Reed".

Gloria Darden Reed
Notary in and for Travis County

