Research Report

AUGUST 2004

Tax And Expenditure Limitation Reform

Is It Needed In Texas?

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A Joint Project With The Americans For Prosperity Foundation.

Texas Public Policy
FOUNDATION
15TH ANNIVERSARY

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ABOUT THE TEXAS PUBLIC POLICY FOUNDATION

The Texas Public Policy Foundation is a 501(c)3 non-profit, non-partisan research institute guided by the core principles of limited government, free enterprise, private property rights and individual responsibility.

The Foundation's mission is to improve Texas government by generating academically sound research and data on state issues, and by recommending the findings to opinion leaders, policy makers, the media and general public. The work of the Foundation is conducted by academics across Texas and the nation, and is funded by hundreds of individuals, corporations and charitable institutions.

By refusing government funding, the Foundation maintains its independent voice on the issues important to Texas' future.

In 1989, a small group of civic-minded Texans created the Texas Public Policy Foundation to bring independent, market-based thinking to tackle problems facing state government. Through the years, the Foundation has championed solutions to the day's pressing issues, and won support for market-based policies that have made Texas a better place to live and work.

The Foundation's impact on public policy is substantial, and has been noted by lawmakers and opinion leaders alike. The *Dallas Morning News* has said the Foundation is "dubbed the 'official think tank of Texas' by friends and foes."

POLICY RECOMMENDATION

Texas needs a truly effective tax and expenditure limitation in its constitution with the following provisions:

1) a spending growth limitation equal to population growth plus inflation,
2) a limitation measure that applies to all spending excluding only that which is federally funded,
3) a provision to refund surpluses to taxpayers, and
4) a limitation that applies to local governments as well as the state.

RESEARCH HIGHLIGHTS

- Colorado's Taxpayers' Bill of Rights (TABOR), a tax and expenditure limitation, resulted in $3.25 billion in tax rebates to Colorado citizens from 1997 to 2001.

- **Texas has had a tax and expenditure limitation (TEL) amendment in its constitution since 1978; it is wholly ineffective.**

- Texas' TEL provision in the constitution is very vaguely worded, limiting appropriations of only non-federal, non-dedicated funds.

- TELs are needed because of the inability of government to control spending.

- TELs are also needed as a way to protect busy taxpayers who cannot continuously monitor everything their elected representatives are doing.

- Texas' TEL provision allows appropriations increases up to the growth of the state's economy, which is not defined.

- Statutory language implementing Texas' TEL does limit appropriations increases to growth in personal income, which when combined with other provisions is no limit at all.

- Real, per capita non-federal Texas state expenditures increased 28.5 percent from 1990 to 2003.

- If real, per capita non-federal Texas state expenditures in 2003 were the same as in 1990, **Texas taxpayers could have saved $8.7 billion in state taxes in 2003.** This translates into almost $1,600 for an average four-person family.

- **Texas' TEL lacks nine of ten ideal characteristics identified by researchers.**

- Texas imposes some tax limits on local governments, especially property tax rate limits on cities and counties.

- Excluding school districts, growth in locally financed local government spending in excess of population growth and inflation from 1992 to 2002 cost Texas taxpayers an additional $3.5 billion in 2002.

- Some cities have seen expenditure growth far exceed the sum of population growth and inflation.

- Texas school district spending growth far exceeds growth in student population and inflation.

- If, in real, per student terms, Texas school districts had spent in the 2000-01 school year what they spent in the 1990-91 school year, **Texas property tax payers would have saved $5.4 billion in property taxes in 2000-01.**

- If, real, per student spending in 2000-01 had been equal to that of 1990-91 and state spending on public education was no different from that of 2000-01, the average school property tax rate could have been $.40 per $100 valuation less.

- Between the Robin Hood equalization system, the formula funding system of Texas' public school finance system, and fears of hitting the statutorily-defined school property tax limit, public school spending can be expected to continue to spiral out of control.

ABOUT THE AUTHOR

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Dr. Schlomach came to the Foundation from the Texas Education Agency. He has also served as a staff member in the Texas Legislature, most recently as the chief of staff to State Rep. Kent Grusendorf, the chairman of the House Committee on Public Education.

Previously, Dr. Schlomach was a researcher in the Office of the Texas Comptroller. There he conducted research into education and transportation, and was the principle author of a study examining the public school start dates. He has also served as an assistant lecturer in the Texas A&M Department of Economics, and has taught at Austin Community College.

Dr. Schlomach has had a long-standing relationship with the Foundation, and was named a “Senior Fellow” in 2002.

INTRODUCTION

In recent years, tax and expenditure limits have received increasing attention at the state level as a result of the success of Colorado's TABOR (**Ta**xpayers' **B**ill **o**f **R**ights). Colorado's TABOR is an expenditure growth limit placed in the state's constitution as a result of a citizens' initiative. In the five fiscal years, 1997 through 2001, Colorado's TABOR measure resulted in tax rebates to Colorado's citizens amounting to $3.25 billion.[1]

Many would be surprised that Texas has its own expenditure limit written into its constitution. It was passed in 1978, the same year that Proposition 13 in California passed. The California proposition was the culmination of a tax revolt in that state. Within a few years, many other states, as well as Texas, had passed tax limitation measures as a result of a general anti-tax sentiment that swept the nation.[2]

Not all tax/expenditure limitation measures are created equally. Some are more effective than others. In fact, limitation measures like that of Texas might actually result in more spending than would otherwise occur. Recent research has sought to determine just how effective are different tax/expenditure limitation measures.

WHY TELS ARE NECESSARY

The first tax and expenditure limitation (TEL) measure was introduced in 1972 by then-Governor Ronald Reagan in California.[3] The logic Reagan used for his TEL proposal was simple. It is clear that elected officials generally face a lot more political pressure to increase spending and taxes than they do to keep spending and taxes under strict control.

We would like to believe that when an individual is elected to an office, that individual acts in the common good, carefully weighing the costs and benefits of various policy options. Invariably though, costs and benefits of the various options unevenly impact individuals in society at large. A government program may benefit some and harm others. A tax may harm everyone but it may harm some more than others. Clearly, those who have the most to gain and the most to lose from certain government policies have good reason to petition government accordingly. These are special interests ("stakeholders" in modern parlance).

When we elect our representatives and send them to the city council, the school board, the commissioners' court, the state capitol, and Washington, D.C., ideally they would act in our collective stead. In the face of special interests demanding tax money forcibly expropriated from the hard-working citizenry, the elected official would weigh collective benefits and costs and act in the common good.

Reality is not so ideal. First, there is often little or no agreement on what is the common good. Second, even when something such as public education is generally agreed to be in the common good there is disagreement on what level of taxation and expenditure should prevail. Third, costs and benefits are mostly impossible to measure for any given government policy so that it is easy to be deceived on their relative sizes and the resulting net benefits or costs. Fourth, the honest truth is that special interests exercise far more control over the political process than do taxpayers.

Special interests stand to gain a lot as a result of their efforts lobbying and financially supporting the election of those officials who favor them.[4] Most taxpayers, on the other hand, are busy earning a living, at best vaguely aware of what occurs when elected officials make their taxing and spending decisions. We taxpayers hope that our elected officials, better informed and watching out for us, will protect our interests, but this critically depends on a politician's ability to withstand temptation.

Public choice economic theory acknowledges that elected officials, wishing to be re-elected and acting in their own self interest, will be heavily influenced by special interests. Special interests, with so much to gain and/or lose, are in a position to know exactly how an official votes and special interests have every reason to use every possible means of persuasion to influence an official. These means might include inundating the official with mail, visits from selected constituents, and/or visits from lobbyists, as well as campaign contributions to the official or to an official's rival in an election.

Most taxes are spread out. That is, they affect everybody a little bit. Though special interests pay taxes, too, a tax that hits everybody a little bit might put a lot of money into the pockets of special interests. So, the benefits of a good deal of government spending are very concentrated. For example, a teacher is not going to object at all to a ten percent increase in property taxes if that translates into a ten percent increase in teacher pay. A couple hundred dollars in tax in exchange for thousands in pay is a great deal. Given the size of government today, it is hard to find someone who is not part of some special interest that benefits from some part of government spending.

As great as special interest pressures can be, a critical mass can build on the side of average taxpayers. It is not impossible for elected officials to exercise fiscal discipline. In fact, Texas government does tend to be relatively frugal with Texas generally ranking in the bottom fifth of states in per capita spending. In Texas, it was the state legislature that first had to pass the constitutional tax and expenditure limitation (TEL) measure. Unlike California and Colorado, the Texas constitution does not make provision for citizens to initiate law changes independent of action by the legislature.

Put succinctly, with TELs "taxpayers need not regularly, continuously, relentlessly and exhaustively monitor and react to the fiscal foibles of the political process. The people have their own quite demanding personal, professional and family lives, and prefer a systemic, 'always on' solution."[5] The best way for the people to exercise control over those who represent them is through the state constitution.

WHY TEXAS' TEL HAS NOT MATTERED

In Article 8, Section 22 of the Texas constitution, "the rate of growth of appropriations from state revenues not dedicated by this constitution" is restricted to the "rate of growth of the state's economy." The constitution leaves it to the legislature to enact laws to enforce this rather vague restriction on appropriations. The loopholes are large. There is no restriction on dedicated revenues, so the gasoline tax, which is entirely dedicated, and a number of licensing fees that are dedicated *can* rise in total faster than the growth of the state's economy. The *growth* of the state's economy is not precisely defined. Also, a simple majority of the legislature can declare an emergency, which is undefined, and ignore the provisions of the TEL.

The statute enabling Article 8, Section 22 is Chapter 316, Subchapter A of the Government Code. Economic growth is defined on the basis of total state personal income growth *predicted* for the next biennium. The duty of determining the limitation is delegated to the Legislative Budget Board, which is granted wide latitude in subsection 316.002(c) for redefining economic growth if "a more comprehensive definition" is developed by a committee consisting of the governor, lieutenant governor, speaker, and comptroller.

Rarely has the Texas appropriations limit posed a problem for the spending ambitions of the Texas legislature. One reason is that Texas is a conservative state and the Texas legislature appears more disciplined than legislatures of many other states. Another, however, is that there is a lot of potential manipulation of the Texas expenditure limit. Clearly, though, manipulation strategies are not publicized when they are used.

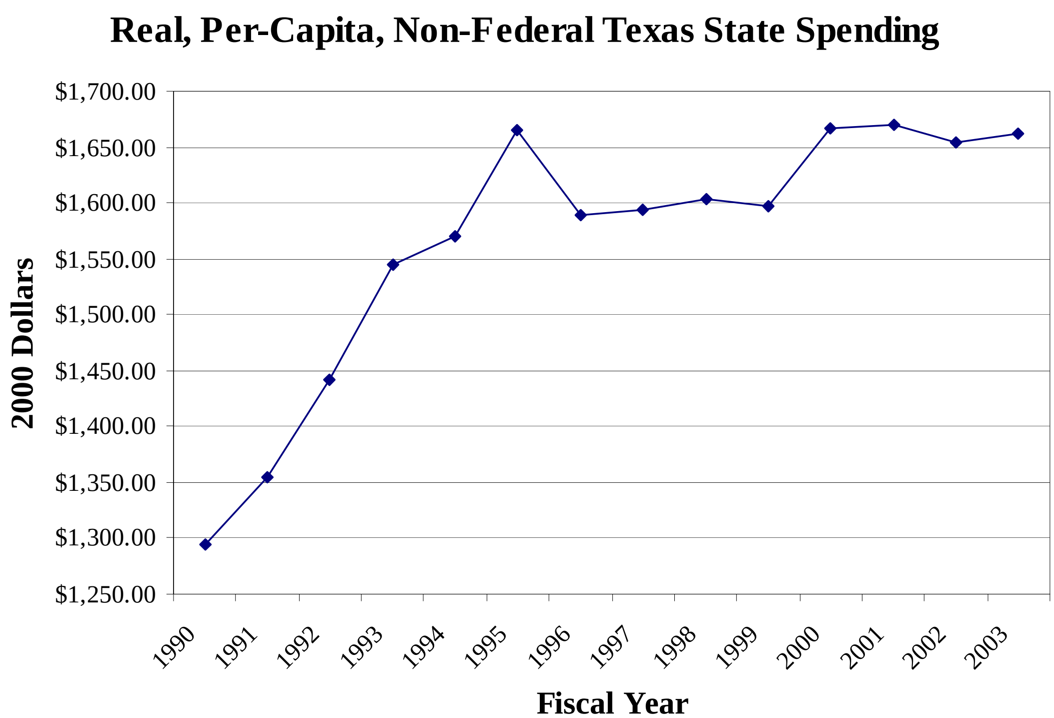
One possible strategy is to expand the appropriations base. The growth in state expenditures is limited on the basis of appropriations from one biennium to the next. When the Texas legislature meets in January of uneven years, it is only five months into the second year of the current biennium, meaning that the legislature can make new appropriations for the current biennium if the funds are available. If the limit gets in the way of desired spending for the next biennium and there is some leeway in the current biennium, the legislature can effectively raise the limit by appropriating more money in the current biennium.

Another strategy might be to play around with definitions of dedicated and non-dedicated funds and what it means to appropriate. Depending on how dedicated funds can be spent, it is possible to trade dedicated spending for non-dedicated spending. Some dedicated monies might feed into a special fund that, technically speaking, is not "appropriated." By feeding non-dedicated tax money into the fund, it is possible to free up dedicated funding for other purposes and since the funding is dedicated, the appropriations limit does not technically apply.

Despite the relative frugality of the Texas legislature, Texas state expenditures have risen considerably since 1990. From 1990 through 2003, total state expenditures (netting out federal funds) more than doubled, rising almost 135 percent.[6] To be fair, the state's population has increased, thereby increasing demand for state services. Inflation has caused costs for everyone to increase, including state government.

By adjusting for both population change and inflation, the best measure of growth in government spending is to look at *real, per capita expenditures*. This is calculated by taking total expenditures and adjusting them to erase differences in the general level of prices from year to year and then dividing the adjusted numbers by population. Real, per capita, non-federally funded state expenditures increased 28.5 percent from 1990 to 2003 in Texas.[7] Recent real, per capita, non-federally funded state expenditure history can be seen in Figure 1.

Figure 1.



Sources: Author's calculations, Texas Comptroller, Census Bureau, Bureau of Labor Statistics

Recall that fiscal years 1990 and 1991 were the last two fiscal years budgeted during Governor Clements' second term. Fiscal years 1992 through 1995 were budgeted under Governor Richards and saw considerable growth in real, per capita spending. Budgeting under Governor Bush's first term was relatively disciplined but the first fiscal year of his second term saw a sudden jump in real, per capita spending, besting the 1995 record, budgeted under Governor Richards. The last two fiscal years illustrated were budgeted under Governor Perry and have seen real, per capita spending fall below the former Richards and Bush records – but just barely.

If real, per capita, non-federally funded spending in 2003 equaled that in 1990, fiscal 2003 expenditures would have been $8.7 billion lower. That translates into an average $394 per Texan in 2003 dollars. Because the Texas constitution requires the state to balance the budget, this translates into an extra state tax cost of almost $1,600 for a family of four in 2003 as a result of the increase in real, per capita spending since 1990.

The Texas TEL has not worked very well to discipline state spending.[8] The discipline that has been exercised in the late 1990s and since 2000 has been in spite of the state's TEL, not because of it. Personal income increased a great deal throughout the United States during the economic boom of the 1990s. In fact, Texas state taxes as a percentage of total personal income fell during the 1990s.[9] Consequently, limiting state appropriations to the growth in personal income was not and is not much of a limit, even if there were not ways to easily get around the limit.

WHY TEL DESIGN MATTERS

According to the National Council of State Legislatures, 25 to 27 states have some type of tax and expenditure limitation (TEL).[10] Some have statutory limits. Others have constitutional limits. Most limit appropriations. Others limit spending. Some, like Texas, limit the limitation to a narrowly defined set of spending categories. Others apply the limitation to non-federal state spending. Only a few require refunds to taxpayers.

The variations in the designs of TELs make it difficult to pass judgment on whether TELs, in general, are truly effective. The general consensus is that the design of a TEL matters. As noted above in the discussion about Texas' TEL, it is possible for lawmakers to game the system. Some TELs have a lot more loopholes than others. Unfortunately, the Texas TEL is a very porous law.

Consider the following nine characteristics (plus one) of one analyst's idea of an ideal TEL[11] and how Texas' TEL stacks up:

1. It should originate with and be approved by the voters, where possible, rather than the legislature.
   The Texas constitution does not allow for initiative, making it very likely that the legislature will create a TEL that constrains the budget as little as possible.
2. It should be constitutional rather than statutory.
   Texas' TEL is constitutionally vague so that specifics are in statute, making the mechanism easily changed by the legislature.
3. It should apply a cap to 100 percent of the budget rather than to only certain categories.
   Texas' TEL applies to a small part of the state budget – only that funded by non-dedicated state funds.
4. It should cap spending rather than revenue or taxes.
   Texas' TEL caps appropriations but not, technically speaking, spending.
5. It should limit the growth of spending to the growth rate of population plus inflation rather than to the growth of personal income.
   Texas' TEL limits appropriations growth to personal income growth rather than population growth and inflation.

6. It should require voter approval for its provisions to be circumvented.
   A simple majority of the legislature can declare an emergency and circumvent Texas' TEL.
7. It should apply to both state and local governments. And it should allow for transfer of responsibility to local governments and provide for the appropriate adjustments in each jurisdiction's limit.
   Texas' TEL only applies to state expenditures and can present a problem for efforts to move greater responsibility for school funding to the state.
8. It should not require additional action by the legislature for implementation.
   In other words, a TEL should be self-contained within the constitution. Texas' TEL is not.
9. It should give taxpayers standing to sue to enforce its provisions and require injunctive relief to prohibit any illegal taxes or spending while suit is pending.
   Texas' TEL provides no such standing for taxpayers.
10. It should include a taxpayer refund provision, refunding excess revenues directly to taxpayers.
    This is admittedly difficult to do with Texas' tax system, but there could be a provision requiring general tax cuts.

With one possible exception, Texas' TEL violates every one of the ideal characteristics outlined above. A statistical analysis relating two TEL characteristics to spending patterns in the 50 states shows that states with or without TELs that *fail* to limit spending growth to population growth plus inflation *and* do not refund excess revenue to taxpayers, like Texas, could expect their per capita expenditures to increase $15 per year. With just the relatively rigorous growth limit of population growth plus inflation, this results in a state's per capita expenditures *falling* $40 per year. With both the rigorous growth limit and a taxpayer refund provision, a state's per capita expenditures fall by $115 per year.[12]

Colorado's TABOR measure, passed in 1992 and taking effect in 1994, is widely considered the most successful of TELs. It limits spending growth to the sum of population growth and inflation. It also requires surplus tax funds to be returned to taxpayers and it takes into account the transfer of responsibilities and costs from state government to local government. Prior to its passing, many claimed that TABOR would produce a stagnant state economy. However, from 1995 to 2000, Colorado ranked first among the states in growth of gross state product and second in growth of personal income.[13]

Clearly, first and foremost, for a TEL to be successful and accomplish its purpose – to limit state government growth – the limiting factor must be the sum of population growth and inflation. Colorado, like Texas, passed a TEL in 1978. However, like that of Texas, this earlier TEL was easily circumvented and allowed for tax increases when the Colorado economy fell on hard times.[14] In the ten-year period prior to TABOR, Colorado's general fund outlays grew 33.3 percentage points more than the sum of population growth and inflation. In the ten-year period after TABOR, general fund outlays grew only 15.3 percentage points more than the sum of population growth and inflation.[15]

The Colorado TABOR law, though the best example of a TEL for truly limiting government, is not perfect. A somewhat conflicting measure was passed that mandates increases in public school spending. Effectively, the Colorado legislature now has control over less than a third of the state budget. The last recession resulted in severe cuts in higher education and some social services due to required spending in certain areas.[16] A constitution with a TABOR law should leave budgetary discretion within the limitation to the legislature.

One of the biggest problems with TELs linked to economic activity measures such as personal income is that they allow for rapid government growth in periods of rapid economic growth. Had Texas' real, per capita state spending continued to increase at the rapid rates of the early 1990s and not leveled out, the budget balancing that occurred for the 2004-2005 biennium could not have occurred without significant tax increases due to the recent recession. Tax increases during recessions are a common problem with TELs like that of Texas in other states with even less fiscal discipline than Texas.[17]

On the other hand, a common complaint against TELs that limit spending growth to population growth and inflation is that they often lead to a ratcheting down of government spending during recessions. This is due to the fact that the base on which each budget period's growth is calculated is spending from the previous period. Spending frequently falls, especially relative to inflation and population growth, during recessions since most states have balanced budget requirements and tax revenues fall during recessions. Thus, government spending is permanently ratcheted downward after recessions.

One researcher found that states with high income growth that have TELs show *greater* growth in spending than states that have no TELs at all. This lends credence to the belief that most TELS allow legislators to claim fiscal prudence by setting generous spending growth limits even as spending far outpaces population growth and inflation. Most TELs, after all, have their origins in state legislatures rather than in citizen initiatives. Texas is one of these.[18]

A statistical analysis of states with TELs indicates that per capita expenditures *increase* when TELs are enacted by legislatures. When TELs are enacted by citizen initiative, however, per capita expenditures *decrease*. The most important characteristics of a TEL as identified by this study were: 1) expenditure growth limited to the sum of population growth and inflation, and 2) immediate refunding of surpluses to taxpayers.[19]

Based on the most current research, Professor Barry Poulson of the University of Colorado at Boulder has recommended some key factors that should be part of a TEL. These correspond to the ideal characteristics listed above and are reflected in a model TEL constitutional amendment.[20]

1. A TEL should be constitutional rather than statutory.

2. It should be based on population growth and inflation.
3. It should limit all spending except that from federal funds.
4. It should include local government spending.
5. During surplus years, surplus revenue should be deposited in a substantial "budget stabilization fund" to level out spending during lean years without tax increases. Surplus revenue should also be deposited in an "emergency fund" that can only be accessed with a supermajority vote under limited circumstances. The balance of surplus revenues should be refunded to taxpayers or provide for a tax cut.
6. Actual historical measures of revenue and expenditures should be relied upon rather than projections.

LOCAL GOVERNMENT TELS

Another aspect of TELs has to do with tax and expenditure limitations on local governments, exclusive of any such limits at the state level. As of 1995, 46 states imposed such limits, Texas being one of them. These limits take six main forms:

1. Overall property tax rate limits,
2. Specific property tax rate limits,
3. Property tax levy limits,
4. General revenue or general expenditure increase limits,
5. Assessment increase limits, and
6. Full disclosure/truth-in-taxation provisions.[21]

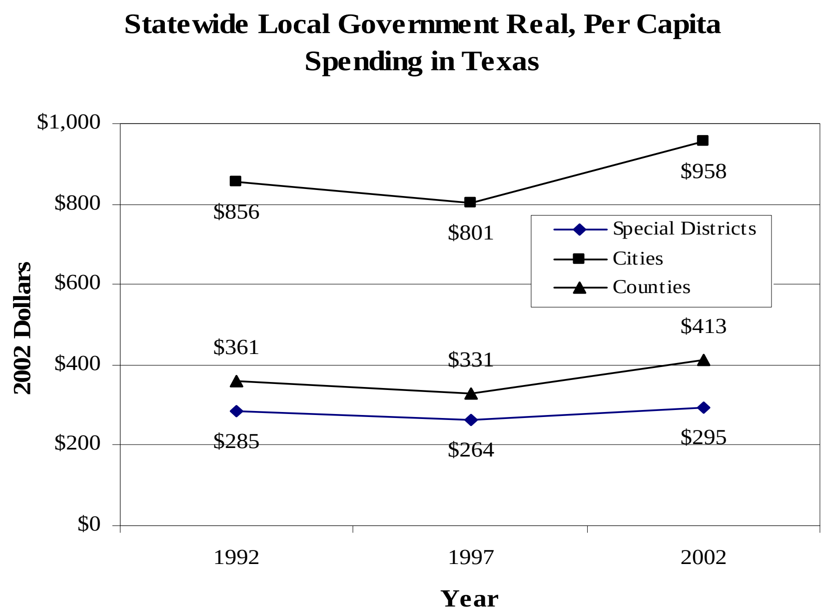
Texas imposes limits in the second, third, fifth, and sixth categories. Texas imposes property tax rate limits at the county and city levels constitutionally, and at the school district level statutorily. In addition, locally determined sales tax rates cannot exceed two percent. Texas also imposes property tax levy limits through a statutory rollback provision. Through the rollback provision, Texas also imposes weak full disclosure/truth-in-taxation provisions on local governments.[22] Texas first imposed assessment increase limits in 1997, providing for a 10 percent per year limit on appraisal increases on homestead property in statute.[23]

Texas does not impose overall property tax rate limits. Given the various special districts that rely on property taxes as well as municipalities, school districts, and counties, all of which depend on property taxes, it is within the realm of possibility that an unlucky Texas taxpayer could face a total property tax rate over $4 per $100 value in the future. Today there are junior college districts, emergency districts, fire districts, water districts, flood districts, among others. And, more are created or potentially created every time the legislature meets. Special districts generally are limited in the tax rates they can charge, with the limit determined in the initial election creating a district, but there is no limit in the number of districts an individual property might be subjected to.

Texas has rollback provisions that can be considered a levy limit of a sort. Property tax levies that increase more than 8 percent are subject to rollback provisions. However, these provisions are not automatic. Voters have to notice that the rollback level has been reached and then petition for a local referendum to roll back property tax rates.[24] For a brief time, from 1995 to 1997, Texas statute included a provision whereby any levy increase required notice to be published and a hearing held. This strong truth-in-taxation/levy limit proved to be more than most property tax entities were willing to handle and the provision was repealed at the earliest opportunity.[25]

As noted above, Texas does have a TEL that imposes weak limits on increases in the state's general expenditures, but it does not apply to local governments. Unfortunately for Texas taxpayers, local governments have been especially profligate of late. Figure 2 is constructed using data from the 1992, 1997, and 2002 census of governments conducted by the Census Bureau.[26] Between 1992 and 1997, the average real, per capita expenditures by cities, counties, and special districts, net of funding from other levels of government, actually fell. From 1997 to 2002, however, these gains for economic liberty were more than completely erased as real, per capita spending by these levels of government surged.[†]

Figure 2.



Sources: Author's calculations, Census Bureau, Bureau of Labor Statistics

If real, per capita spending in 2002 had been equal to that of 1992, total city spending in Texas would have been $2.2 billion less that year. Total special district spending would have been $204 million less in 2002 if 1992 spending levels had been maintained. County spending would have been $1.1 billion less. The end of the decade of the 1990s saw an explosion of local government spending growth in Texas.

[†] It should be noted that not all Texans live in cities or in special districts. The per capita numbers for each of these are, therefore, somewhat understated. This does not affect the analysis, however, with respect to the trends identified.

An argument often heard at the Texas capitol for more state spending is that local governments are being burdened with taking up the state's slack. This almost appears to be the case. From 1992 to 1997, when local government real, per capita spending was falling, state real, per capita spending was mostly climbing precipitously. From 1997 to 2002, when state real, per capita spending was relatively steady, local government real, per capita spending turned upward, and radically so.

If these data are to be used to buttress the argument that state spending is inadequate, some fundamental questions should be answered. First, in an era of almost continuous growth in per capita personal income, why must government get bigger? It would seem that increased personal resources would indicate less of a need for government rather than a greater need. Second, why did local real, per capita spending increase when state spending stabilized? It would seem that if state and local spending are intimately tied together, local spending would have stabilized when state spending stabilized.

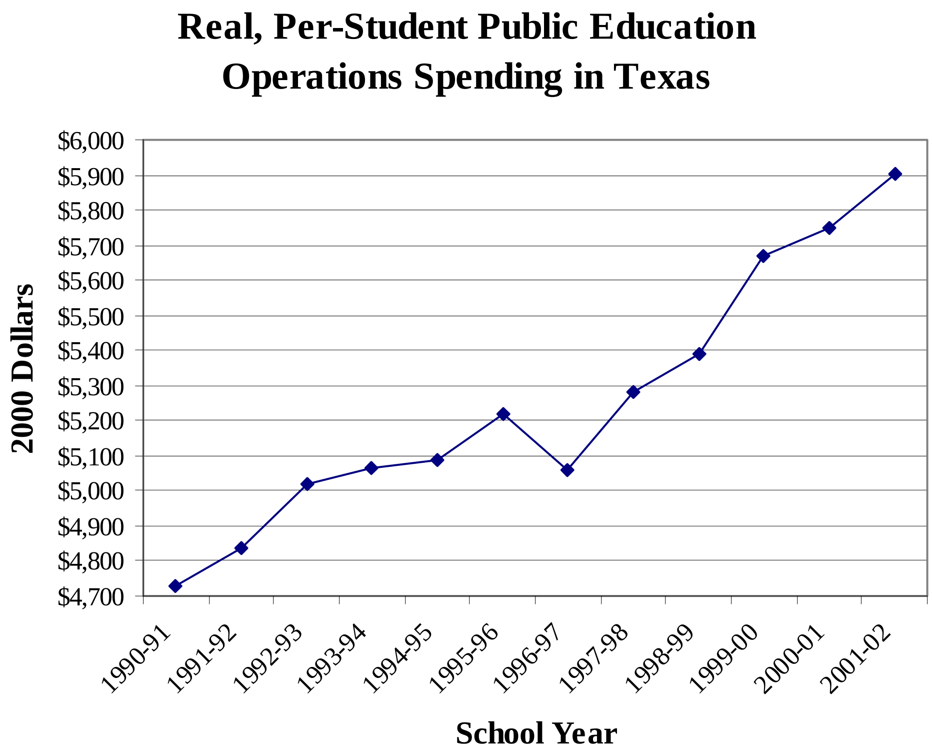
Using Census Bureau data for municipality expenditures from a small sample of cities in Texas, growth in government beyond population and inflation is certainly a big problem for some city taxpayers. From 1990 to 2001, El Paso saw inflation and population growth combined at 45 percent. City expenditures, though, grew 87 percent, an excess of 42 percentage points. Dallas was even worse with its inflation and population growth combined at 54 percent and city expenditure growth at 109 percent, a whopping 55 percentage point excess. Austin saw its excess expenditure growth at less than 12 percentage points while Amarillo saw its excess at 14 percentage points. Houston's excess was 21 points.

To be sure, not all city governments were spendthrifts from 1990 to 2001. Tyler, for example, saw its expenditures increase 13 percentage points *less* than the sum of population growth and inflation. San Antonio saw a similar differential of 11 percentage points. A problem with the census data is that there is no way to separate out state and federally funded spending from local tax funded spending, but there is certainly evidence that a number of cities in the state are not fiscally disciplined.

An indisputable fact is that public schools have been the government spending growth industry of the 1990s. Figure 3 shows average real, per student spending from the 1990-91 school year through the 2000-01 school year. This spending does not include debt service by school districts but it does include both state and local funding. Since state funding has been decreasing as a share of total public school expenditure (though, until recently total state funding has generally increased), we can be sure that local taxation follows a pattern similar to total expenditures.

Over the eleven year period illustrated in Figure 3, real, per student spending increased 25 percent. If, in real terms, per student spending had stayed at the 1990-91 level, by 2000-01, Texas school ad valorem taxpayers would have saved $5.4 billion, roughly a $.40 per $100 valuation savings on school property taxes, a 28 percent savings, given the level of 2000-01 state spending.[27]

Figure 3.



Sources: Author's calculations, TEA *Snapshots* data, Bureau of Labor Statistics

In general, the claim might be true that local government TELs have resulted in: 1) more use of fees and less use of broad-based tax sources, 2) a shift of power and responsibility to the state with greater reliance on state revenue sources, and 3) the creation of special districts, shifting local government responsibilities from tax limited entities.[28] With over 1,200 special districts by 1999 the third part of the claim might especially be true.[29] Given the level of expenditures exhibited in Census Bureau data, there is more limited evidence of the first two parts of this claim.

The second part of the claim above is especially *not* true of school districts in Texas. There is a tendency in Texas for school districts to fund an increasing share of school spending due to the vagaries of school finance law. School districts are funded based on formulas calculated on the basis of student attendance. These formulas are determined by the legislature and they do not automatically adjust with inflation. School districts can, to some extent, control their own spending through their property tax rate, but the state's so-called Robin Hood school spending equalization system keeps school district revenues within a narrow upper and lower bound with increases in property tax rates.

When a school district's property values rise, the state does not have to contribute as much to the district's total spending if the school district is eligible to receive state funds. Wealthy districts that do not receive state funds see their contributions to other school districts increase when property values rise. During periods of rapidly increasing property values, like the decade of the 1990s, the state's school funding obligations fall, freeing state revenue to be used in other ways.

Proponents of ever greater public school spending have been very successful in exploiting the state's ever-falling share of public school expenditures (even as total and per student expenditures have risen precipitously) by claiming that this is evidence that the state is "not living up to its obligations" and that schools are "underfunded." Poor school districts have an incentive to increase their school tax rate in order to maximize their subsidy under Robin Hood. Rich districts have an excuse to increase their school tax rate because they have to help subsidize poor districts. No matter if a school district is poor or rich, the state can always be blamed for the need to increase local tax rates even as local school spending booms.

At the same time, the Texas legislature imposes a statutory limit on the property tax rate that school districts may charge. Court decisions have stated that if an undefined critical mass of school districts ever reach the maximum $1.50 per $100 valuation tax limit imposed by the legislature, this will constitute an unconstitutional statewide property tax. So, occasionally the legislature has tried to "buy down" property tax rates with large increases in state funding. The most significant effort to achieve this in 1997 was quickly erased by school districts swiftly bouncing their tax rates back up in a very short period of time. Even when it is not buying down school district property tax rates, the legislature is extorted by school officials into excessively increasing the formula provisions in some way every two years, thereby increasing state funding, in a desperate attempt to keep districts from raising rates and reaching the forbidden rate cap.

In short, Texas' school finance system creates the perfect storm of spiraling school spending, as can be seen in Figure 3. Even as total state spending on public education has increased in the past, the state share of total public education spending has fallen. If ever there was a case to be made for automatic spending limitations, the Texas public education system is it. A TEL like Colorado's TABOR would go far to rein in out-of-control public education spending in Texas.

Colorado's TABOR applies to local government as well as to state government. This represents an effort to keep government growth from simply shifting to the local level from the state level. A wise and fully considered TABOR measure must take this possibility into account.

Another option in Texas to address burgeoning school spending would be to set a maximum school district property tax rate for school districts in the constitution. This would create a constitutional quandary for the courts, but the current system lends itself to always dangerously coming close to an unknown critical mass limit. In addition, the city and county tax rate limits have never seemed to present a constitutional problem or quandary of any sort.

CONCLUSION

Not all tax and expenditure limitation (TEL) measures are created equally. Some are more effective than others. Texas has one of the least effective of TEL designs. Nevertheless, since 1995 the Texas legislature has generally shown a great deal of fiscal restraint. Considering the early 1990s and prior history, though, Texans cannot count on the legislature's recent fiscal discipline to last. It would be wise to reform the Texas TEL along the lines of Colorado's TABOR amendment.

In 2003, House Joint Resolution 15, a constitutional amendment proposed by Representative Carl Isett to amend Texas' TEL to be similar to that of Colorado, was never scheduled for a House floor vote. The Texas legislature seems so fearful of its spending power being effectively limited that this measure, which required a public referendum on this issue, was not put up for debate by the elected representatives. Perhaps the only way to pass an effective TEL is, indeed, to have initiative as an option for citizens to force the issue.

Local government TELs mainly built into the Texas constitution seem to be working pretty well. The statutory TEL on school districts appears to be, for all intents and purposes, worthless. The greatest help to Texas property taxpayers would be to get public school spending under control. One way to accomplish this would be to pass a constitutional limit on school property tax rates, likely taking away the legal argument that when a large number of school districts hit the property tax cap, an unconstitutional statewide property tax has been created.

ENDNOTES

[1] Holden, Fred, *A Decade of TABOR – Ten Years After: Analysis of the Taxpayers' Bill of Rights*, Issue Paper No. 8-2003, Independence Institute: Golden, CO, June 2003, p. 1, http://i2i.org/articles/tabor2003.PDF.
[2] Uhler, Lewis K. and Barry Poulson, *Tax and Expenditure Limits: From Roots to Current Realities*, The National Tax-Limitation Foundation: Roseville, CA, Summer 2003, p. 6.
[3] Ibid, p. 1.
[4] An eye-opening report on how campaign contributions are often used by Texas senators has been produced by Campaigns for People and is available at http://www.cleanuptexaspolitics.com/node/view/150.
[5] Holden, p. 3.
[6] Author's calculation. See http://www.window.state.tx.us/taxbud/expend.html for total expenditures and http://www.window.state.tx.us/taxbud/revenue.html for federal revenues.
[7] Author's calculation based on data from the Texas Comptroller of Public Accounts (see endnote 5), Census Bureau (http://www.census.gov) population estimates and the Consumer Price Index (http://www.bls.gov).
[8] See the following for an expanded discussion of the failures of Texas' TEL. Hartman, David A., "The *Texas Tax Relief Act* in Retrospect," *Veritas*, Texas Public Policy Founcation: Austin, TX, Fall 2000, pp. 12-21, http://www.texaspolicy.com/pdf/2000-veritas-1-3-taxrelief.pdf.
[9] *Texas Almanac: 2002-2003*, Dallas Morning News, Dallas, TX, 2001, p. 453.
[10] See http://www.ncsl.org/programs/fiscal/lfp104.htm and http://www.ncsl.org/programs/fiscal/lfp104c.htm.
[11] Stansel, Dean, *Taming Leviathan: Are Tax and Spending Limits the Answer?*, Cato Policy Analysis No. 213, Cato Institute: Washington DC, July 25, 1994, p. 20, http://www.cato.org/cgi-bin/scripts/printtech.cgi/pubs/pas/pa-213.html.
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[13] Ibid, pp. 6-8.
[14] Uhler, p. 8.
[15] Holden, p. 7.
[16] Poulson, Barry W., *Tax and Spending Limits: Theory, Analysis, and Policy*, Issue Paper No. 2-2004, Independence Institute: Golden, CO, January 2004, p. 15, http://i2i.org/articles/2-2004.pdf.
[17] Ibid, p. 6.
[18] Ibid, p. 7.
[19] New, Michael J., *Limiting Government through Direct Democracy: The Case of State Tax and Expenditure Limitations*, Cato Policy Analysis No. 420, Cato Institute: Washington DC, December 13, 2001, http://www.cato.org/pubs/pas/pa420.pdf.
[20] Poulson, pp. 16-18 and appendix. See also Uhler, pp. 11-14 for an alternative discussion of reforms to Colorado's TABOR so as to make it more ideal.
[21] Center for Urban Policy and the Environment, Indiana University, *Tax and Expenditure Limits on Local Governments*, U.S. Advisory Commission on Intergovernmental Relations: Washington DC, March 1995, pp. 1-2, http://www.library.unt.edu/gpo/acir/Reports/information/M-194.pdf.
[22] Ibid, pp. 9 and 67.
[23] Section 23.23, Property Tax Code.
[24] Center for Urban Policy and the Environment, p. 37.
[25] Interview with Charles Bredwell, former legislative aide to former State Representative Steve Holzheauser, author of the short-lived provision.
[26] Census Bureau, *Census of Governments*, http://www.census.gov/govs/www/index.html.
[27] Author's calculations based on Texas Education Agency *Snapshot* data and the Consumer Price Index.
[28] Center for Urban Policy and the Environment, p. 1.
[29] Texas Comptroller of Public Accounts, "Provide Centralized Public Information Concerning Special Districts," *e-Texas Recommendation*, December 2000, http://www.window.state.tx.us/etexas2001/recommend/ch01/eg14.html.

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