



Texas Public Policy Foundation

A Review of the *83rd Session* of the Texas Legislature



Fiscal Policy

The regular session of the 83rd Texas Legislature was a mixed bag for fiscal conservatives. When it came to spending, the Legislature appropriated about \$22 billion more in general revenue and Economic Stabilization Funds (ESF) than it did in 2011, a 26 percent increase.

All of this new spending went to pay for things like five-figure executive pay raises, costly new government buildings, and questionable programs like the Film and Music Marketing program and the Texas Wine Marketing Assistance program.

Lawmakers also spent about \$4 billion of the state's ESF to pay for water projects, education, and other projects. If the water spending is approved by voters in November, almost half of the current balance of the state's "savings account" will have been spent as a result of this session.

The 83rd Legislature brought significant spending increases, medium-sized tax cuts, and a reminder of the need for Texas to limit the growth of government.

Lawmakers did, however, provide \$1.4 billion in tax and fee relief, directed mainly at the state's margin tax. Some utility customers also received a reduction in fees as lawmakers began phasing out the System Benefit Fund. However, \$327 million of the tax cut is temporary, leaving \$1.1 billion in permanent tax and fee reductions.

When it came to the state's spending limit, several bills were filed in both chambers that would have improved the state's Constitutional Tax and Expenditure Limit (TEL), much of it based on research done by the Foundation. However, just a handful of the bills made it out of committee. An expenditure limitation did receive discussion on the House floor as it was amended onto another bill. Unfortunately, it was taken out in conference committee. Having a discussion on limiting the growth in government in both legislative chambers represents a major step forward and provides something to build on in the next session.

Though spending increased significantly this session, conservatives won on taxes and were able to bring many of their issues to the forefront of the debate. Additionally, Texas continued its long-standing practice of *not* increasing taxes. There's more work to be done, but certainly some things to build on.



Economic Freedom

Economic freedom is at the center of the "Texas Miracle" that has made Texas the national leader in job growth for over a decade now.

Of course, the level of taxes and spending plays a big role in promoting (or deterring) economic freedom, as covered in the previous section. Here we'll look at another important part of economic freedom; what the government lets us do with the portion of our property and money we get to keep after paying taxes to the government.

There were many attempts this session to expand regulation on commerce and only a few to reduce regulation. Fortunately, the few attempts to reduce regulation were far more successful.

For instance, competition in the Texas telecommunications market was improved this session so that we will continue to experience increased choice in video, telephone, and Internet services. In addition, prices will likely trend lower through reduced taxes, reduced subsidies, and increased competition.

Electric customers will have to wait a bit longer to see what happens to electricity prices. While one attempt to increase costs on the industry—higher fines—was beaten back, the Public Utility Commission of Texas (PUC) was given emergency cease and desist authority to stop certain business activity without a court order. Additionally, the Texas Legislature took no action on the question of giving subsidies to generators—that issue is now in the hands of the PUC.

The Legislature defeated efforts to expand regulation of consumer finance, though many cities have been adopting regulations on their own. Finally, numerous efforts to place more occupations under occupational licensing schemes were defeated, including bills that would have required licenses for roofers and foundation repair contractors.

The Foundation also helped stop increased regulations on land use. While cities didn't attempt much, counties tried to make up for their lack of zoning authority. However, as the Foundation has pointed out, the problem is not that counties don't have enough land use authority; it is that cities have *too* much. Fortunately, counties didn't succeed this session.

In 2011, eminent domain was a big issue, with many reforms passing. This session, however, condemnors kept most proposed reforms from becoming law. The good news, though, is that the reforms that passed this session increase protections against eminent domain abuse in cases of local water and special districts, and that several bills that might have turned away from previous reforms did not pass.

One group of property owners did not fare so well this session. Legislation did pass that would allow the state to place a public beach access easement on beach front property owners' land without compensation. However, it is likely that the bill will be found unconstitutional if an attempt by the Texas General Land Office to impose such an easement is challenged in court.

Overall, Texas made modest progress in economic freedom this session and will thus likely stay ahead of the pack in job creation and increasing prosperity for all its citizens.



Higher Education

For conservatives, higher education appears both the least compelling and the most compelling of the issues we confront. It appears least compelling because urgent threats—taxes, regulation, and government expansion generally—threaten us almost daily, whereas higher education battles are long-term and esoteric, with hard-to-quantify results.

But it is also the most compelling because, as conservatives rightly lament, we are “losing the culture.” Universities have become our culture-crafters. Lincoln scholar Harry V. Jaffa recognized this back in 1959 when he wrote that universities have become “the decisive source of the ruling opinions on our country.” Jaffa predicted that the “utopianism and intolerance” taught in universities “would surely spell the end of constitutional democracy.”

Bearing this in mind, the Center for Higher Education approached this session proposing legislation to help everyday Texans grasp how poorly higher education is performing. For the reasons cited above, universities are unreformable

from within. The only alternative is to raise public awareness in an effort to reform them from the outside. This requires measures that increase accountability and, with it, the transparency on which accountability depends.

To this end, the passage of the Center's priority “Informed Student Document,” legislation was a major advance. The bill requires universities to provide prospective students information about the success of the school and its graduates, employing metrics covering comparative tuition costs, average starting salaries, student loan debt, and graduation rates. This success at arming students and parents with important comparative information is vital to improving outcomes in higher education.

Another transparency measure, the “Honest Transcript” bill, did not pass. It would have helped eliminate the problem of grade inflation by requiring that student transcripts provide the average grade given for the whole class alongside the individual student's grade.

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K-12 Education

The 83rd Texas Legislature saw some truly meaningful reforms come to Texas public education. Though we certainly hoped for more, at the end of the day, it can be said without question our lawmakers took positive steps toward improving education opportunities for Texas students, as well as toward making our education system as a whole more flexible, competitive, and efficient.

On the public education reform front, Senate Bill 2 took significant steps to overhaul the Texas charter school sys-

tem. Most significantly, it gradually expands the cap on public open-enrollment charter schools. Starting in the fall of 2014, the state will add about 15 new charter schools per year, leaving us with a cap of 305 open-enrollment charter schools in 2019. This is a significant step toward addressing the ever growing wait list of students attempting to attend charter schools, currently numbering more than 100,000.

The other significant win this session for the Foundation was the passage of House Bill 1926, which made significant positive reforms to the state's virtual education market. For the first time since the inception of the Texas Virtual School Network, private and non-profit providers of online content will be able to participate in the network without having to partner with an ISD to do so. This should make for a significant reduction in red tape for private providers attempting to provide content, and significantly improve course options for Texas students looking for digital alternatives to their locally provided courses.

Unfortunately, for all the positives that took place in public education reform, private school choice was unable to gain traction during the 83rd Texas Legislature. Education tax credit scholarships, statewide education scholarships, and scholarships for special needs students were all considered before the Senate Education Committee. While Senate Bill 23 (tax credit scholarships) and Senate Bill 115 (special needs scholarships) were both successfully voted out of committee, neither was ultimately discussed on the Senate floor.

A strengthening of Texas' parent-trigger law shared a similar fate. While we are one of only seven states with an active parent-trigger law, which allow parents to petition for the reconstitution of a failing public school into a public charter school, the fact that it takes a parent up to six years to pull the trigger renders Texas' trigger highly ineffective. Sen. Larry Taylor's Senate Bill 1263 would have shortened that period to three years and significantly strengthened the trigger. Unfortunately, the bill was unable to push through the House Public Education Committee.

At the end of the day, we can definitively say that the Texas education system took positive steps toward becoming more open and competitive in 2013. The reforms the Legislature made on the public side, between charter and virtual schools, were significant. The failures of private school choice efforts, however, mean we still have a long way to go toward truly empowering parents to choose the best education for their child in Texas.



Health Care

The importance of resisting the expansion of Medicaid as called for by the federal Affordable Care Act—ObamaCare—cannot be overstated. As the largest and fastest-growing program in the state—now nearly 30 percent of the 2014-15 All Funds budget—the future of Medicaid in many ways represents the future of state spending. If Texas expands its Medicaid program in accordance with ObamaCare, forcing an estimated 1.5 million people into the program, Texans can expect future spending cuts to other budget areas such as education and infrastructure, as well as ongoing tax increases.

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It is in the context of ObamaCare's Medicaid expansion (which takes effect on January 1, 2014, for those states that choose to expand) that the Center for Health Care Policy went into the 83rd legislative session with the goal of preventing the expansion and holding the line in Texas. Powerful interests aligned to push lawmakers to expand Medicaid, including hospital and physician groups, as well as many counties and school districts, all of them eager for the influx of federal dollars but heedless that expansion would put Texas on the hook for tens of billions more in state spending on Medicaid in the long term.

However, by demonstrating that Medicaid is a broken, failing program that provides poor health outcomes for those it is currently meant to serve, and by persistently arguing that it would be financially unsustainable, the Foundation was able to make a persuasive and ultimately successful case that Medicaid expansion is a reckless and unconscionable policy. A number of expansion bills were filed, continuing to surface even late in the session, but none of them reached the floor of either chamber. The session ended with Texas holding the line against the ObamaCare Medicaid expansion.

Despite the failure of expansion bills, a number of lawmakers attempted to keep the door to expansion open by including language in the budget that outlined a framework for

Medicaid expansion, setting conditions for state agencies to negotiate with Washington for expansion. Fortunately, all expansion language was removed from the budget.

Moving in the other direction, an amendment was added to a Medicaid reform bill that will prevent the Health and Human Services Commissioner from negotiating with Washington for Medicaid expansion in the future. Any changes in eligibility beyond current requirements will now have to be approved by the Legislature.

Aside from the Medicaid expansion debate, the Foundation supported a successful effort to shield Texas businesses with more than 50 full-time employees from onerous ObamaCare penalties. The federal health care law imposes certain health insurance requirements on “small group employers,” or as defined by ObamaCare, businesses with one to 100 employees. However, the law allows states to redefine “small group employer” as those with one to 50 employees until Jan. 1, 2016. The Foundation supported this effort, thus temporarily protecting businesses with 50 to 100 employees from costly ObamaCare insurance rating rules for another two years.

A number of other initiatives undertaken by the Foundation’s Center for Health Care Policy this session were unsuccessful, such as a Medicaid block grant bill, but no effort was more important than preventing the expansion of Medicaid under ObamaCare.



Environment & Energy

The first thing to note about the 83rd Texas Legislature with respect to environmental issues is what didn’t happen. Far fewer environmental regulatory bills were filed this session than in the previous two sessions. The majority of the few environmental bills that were filed died in committee. In the 81st Legislature, at least 120 bills were filed to increase environmental regulation, 15 of which involved global warming. This session had less than 20 bills filed that would have increased regulatory authority at the Texas Commission on Environmental Authority. Environmentalist groups appear to be recognizing the futility of even trying to impose more stringent regulations on Texas, and legislators remain concerned with EPA’s aggressive agenda that could impact the historical upsurge in oil and gas production.

On the other hand, while environmentalists were unable to increase the regulatory burden on the Texas economy, ef-

orts to reform current environmental regulations—to impose systemic checks on agency action, or to streamline the permitting process—were similarly stymied. A proposal, long championed by the Foundation, to require economic impact analysis of all proposed environmental rules, did not pass. By requiring a straightforward estimate of cost and of anticipated environmental results, the bill would shed light on regulations with high cost but with low to immeasurable benefit. Properly used, this form of regulatory impact analysis is a basic tool to preserve limited government. The bill passed the Senate but failed in the House committee.

Continued growth in water demand and current drought conditions led to efforts to address Texas’ long term water needs. In response, legislation created a new state water infrastructure bank, known as SWIFT (State Water Infrastructure Fund of Texas) that would make loans to support water projects. While there was widespread support among legislators for the creation of the SWIFT, the issue of how to fund it proved more controversial. Eventually, a plan to transfer \$2 billion from the state’s Economic Stabilization Fund to the SWIFT has been sent to the voters and will depend on the results of a constitutional amendment referendum to be held in November. In contrast to the focus on state funding, no action was taken to remove some of the state regulatory impediments to private development of water resources.

The Legislature also enacted a new law creating a centralized state authority to set statewide policy in response to federal endangered species issues and to develop federally enforceable “Endangered Species Act Habitat Conservation Plans” before being federally required to do so. While late amendments reduced the negative impact of the bill, the implicit move towards more accommodation of federal action on endangered species is an unfortunate departure from the “Texas Model” of protecting private property and state sovereignty.



Effective Justice

The Foundation’s Center for Effective Justice had quite a successful session. The state budget saves \$97 million by closing at least two unneeded prisons (there are 8,000 empty prison beds in Texas) but continues to provide appropriate levels of funding for probation, drug courts, and other proven interventions for nonviolent offenders. The Texas Department of Criminal Justice (TDCJ) Sunset Bill includes important provisions for performance-based funding, risk assessments, and re-entry for ex-offenders.

Re-entry bills, in fact, were a highlight of the session. Legislation was passed to allow certain ex-offenders who have proven successful on probation to petition the court to reduce their offense from a state jail felony to a Class A misdemeanor. (Ex-offenders are only eligible if they have paid restitution, and the prosecutor has consented.) Another bill immunizes employers from being sued for negligent hiring in most circumstances when they hire ex-offenders. Yet another bill prohibits occupational licenses from being denied to certain ex-offenders who have completed deferred adjudication.

That was only one of the Center’s significant occupational licensing victories. Criminal penalties were repealed for violation of many occupational licensing rules, including those for cosmetology, staff leasing, and property tax consulting. More importantly, several proposed, but unnecessary, occupational licenses were not created, such as those for foundation repair and roofing. Additionally, a licensing exception was created for thermostat installers. Also, the Sunset Advisory Commission was given the “sunrise” function of making recommendations on proposed licenses before they are established.

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In the juvenile justice arena, the Legislature passed bills to limit the ineffective use of ticketing students in school for minor misbehavior and to promote the use of a tiered discipline model. Warning letters, community service, or counseling for youths who commit fine-only misdemeanors in school will now be utilized before a student is given a Class C misdemeanor citation. New legislation also allows children to have fine-only, non-traffic Class C misdemeanors sealed if they are found not guilty, the case is dismissed, or they are granted deferred disposition.

The Legislature gave express authorization for victim-offender conferencing, prostitution diversion courts, and a pilot jail diversion program for low-level mentally ill defendants/offenders in Harris County.

Perhaps the biggest criminal justice story of the session was the success of a bill (known as the “Michael Morton Act”) to establish open-file discovery systems in all Texas counties. Attorneys will now spend less time embroiled in picayune discovery arguments and may instead focus their limited resources on the merits of a case.

Of course, while the session was largely successful, it was not perfect. Significant drug sentencing reform stalled, for example, as did the most expansive state jail reform bills. A bill to create a commission to review all criminal offenses outside the state penal code did not pass, nor did a bill to institute the rule of lenity. Many of these bills had support, but died for technical reasons (such as being attached to more controversial legislation). The Foundation’s Center for Effective Justice is optimistic about the work to be done on these bills in the next session.



Tenth Amendment

This session, the Texas Legislature confronted the Trojan horse of “cooperative” federal-state programs—the principal means through which the federal government subverts and controls state governments.

governments.

The federal government does this in two ways. First, it sends money to the states with a myriad of conditions attached; if the state wants the money every other state is getting, it must bow down to the federal will. Second, federal programs often require state cooperation for implementation and enforcement.

According to the Supreme Court’s commandeering cases, *Printz v. U.S.* (1997) and *New York v. U.S.* (1992), the federal government cannot actually command state officials to do anything. But the Court still has not understood that allowing the federal government to coerce state cooperation, through the threat of losing federal dollars offered to other states, or the threat of losing regulatory autonomy, allows the federal government to pressure the states into serving as deputies and dupes of Washington. The Legislature showed that it is starting to understand how to resist these intrusion: Just say no.

One major victory in the fight against federal intrusion was led by the Center for Health Care Policy, which helped the Legislature resist the Medicaid expansion in ObamaCare (*see previous section on Health Care*). But ObamaCare’s Medicaid expansion is only one among hundreds of federal funding

sources with strings attached. The Center for Tenth Amendment Studies championed a proposal that would help the Legislature see such programs as they really are: not sources of free money, but instruments of federal control.

The bill would require the state attorney general to designate federal funds with coercive conditions as such in regular reports to the Legislature—so that legislators know what part of the money they are getting from Washington comes at the expense of freedom, self-government, and constitutional government in the state of Texas. It would require the state attorney general to fight back against such programs through the federal courts, which can enforce the Supreme Court’s prohibition on federal commandeering of states. The bill stalled in the House, but gained many adherents, and is almost certain to come back in the next Legislature.

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The Center for Tenth Amendment Studies opened up another major front in the federalism fight: the struggle to knock down barriers to competition in state and federal law, so that the competitive federalism of the original Constitution can survive and flourish. The Center challenged a proposal that would have created a price-fixing cartel for the state’s beer distributors. In the months ahead, we will be targeting and breaking down barriers to competition in our own state, in other states, and in the federal government. Special interests should be stopped at the state level, before they form national coalitions and become federalized cartels.

On these fronts, a lot of work remains ahead. Texas failed to do all that it could have done to push back against federal overreach, but it did more than enough to send Washington a clear message: “No.” ★

