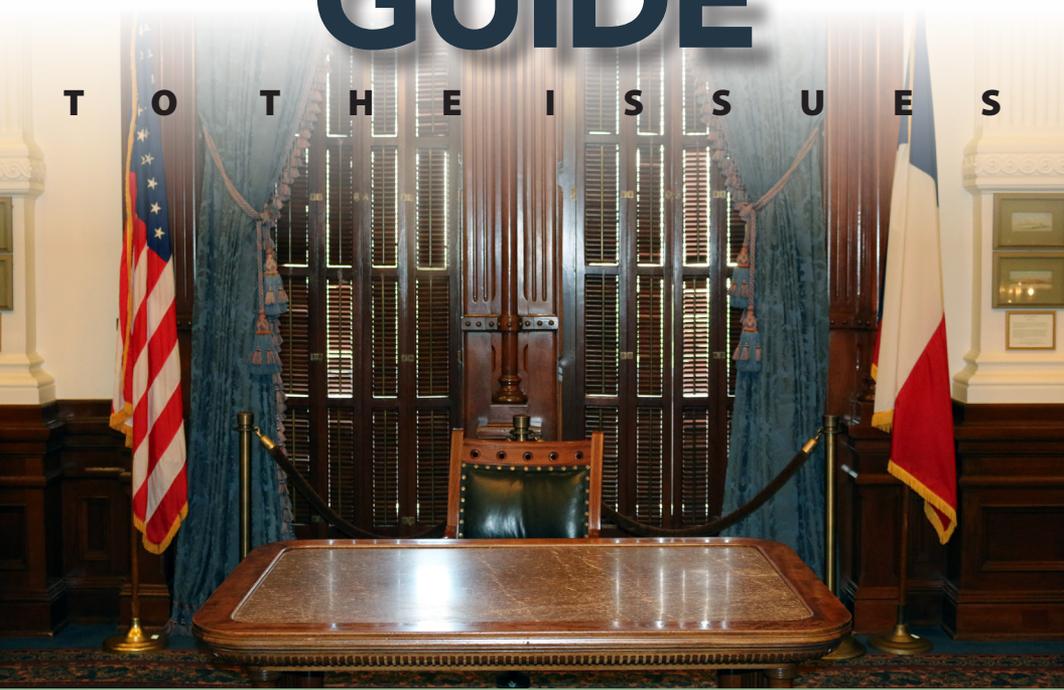


TEXAS PUBLIC POLICY FOUNDATION

2017-18

LEGISLATOR'S GUIDE

T O T H E I S S U E S



TEXAS PUBLIC POLICY
FOUNDATION

About the Texas Public Policy Foundation

The Texas Public Policy Foundation is a 501(c)3 non-profit, non-partisan research institute. The Foundation's mission is to promote and defend liberty, personal responsibility, and free enterprise in Texas and the nation by educating and affecting policymakers and the Texas public policy debate with academically sound research and outreach.



TEXAS PUBLIC POLICY
F O U N D A T I O N

On July 18, Gov. Greg Abbott will call the 85th Texas Legislature into special session to address 20 issues. These 30 days present a historic opportunity for the Legislature to promote liberty and economic opportunity for Texans. Given the breadth of the Foundation's research on these topics, our policy experts have quickly compiled this *2017-18 Legislator's Guide to the Issues – Special Session Edition*.

We organized this edition around what we consider the three main themes of the special session:

Empowering Texas Families begins with improving the quality of our children's education. Given the problems that many public school districts have had providing appropriate education to students with special needs, the Legislature should provide these families with Education Savings Accounts that allow parents to customize their children's educational services. To benefit the overwhelming majority of Texas children enrolled in public schools, the Legislature should revamp existing spending practices to improve teacher pay, strengthen teacher quality through reformed hiring and retention policies, and begin the process of scrapping the antiquated and convoluted school finance formulas in favor of a new model that is student-centered, transparent, and affordable for a 21st century Texas.

Defending Local Liberty begins with understanding that the purpose of government is to protect liberty. While the 85th Texas Legislature took positive steps during the regular session, much more needs to be done to enable Texans to challenge the growth of property taxes and local spending, to establish their right to not be annexed by a municipality without an affirmative vote of those affected, and to curb municipal abuses of permitting processes, development rules, and the management of trees.

Promoting Statewide Reform begins with curbing the excessive growth of government. The most important measure the Legislature can take is to tighten the state spending limit so that state government grows no faster than population plus inflation. The Legislature should also end government collection of union dues, and improve election integrity through measures that reduce opportunities for mail ballot fraud.

As with previous editions of our *Legislator's Guide*, each entry provides a quick reference on the topic, as well as additional research resources.

We hope this *Legislator's Guide* is useful in informing the policy decisions you will make during this special session. The Foundation team stands ready to assist you in achieving all of these important objectives and making Texas' beacon of liberty shine even brighter for generations to come.

Kevin Roberts

Executive Vice President
Texas Public Policy Foundation

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Funding Public Schools for the 21st Century

The Issue

The Texas Constitution establishes public education through Article VII, Section 1, which states:

A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.

Since 1989, the Texas Supreme Court has ruled six times on school finance. In the process, the Court has laid out three tests that the system must fulfill in order to be constitutional. These are illustrated in **Figure 1**, and are explained in detail in [Texas School Finance: Basics and Reform](#).

Critically, the Qualitative Efficiency test had not been addressed by the courts until the most recent ruling in 2016. In 2005, the Texas Supreme Court wrote that it wished to rule upon Qualitative Efficiency, but did not do so because no petitioners at that time appealed to this test, which asks: *does the system produce results with little waste?* Like the courts, the Legislature must address this test, which requires an appropriate relationship between inputs and outputs.

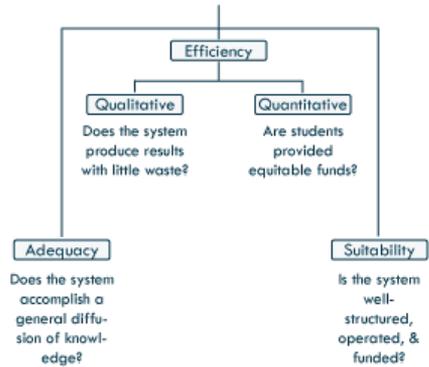
In the 2014-15 school year, Texas taxpayers spent a total of \$60.98 billion on public education according to the Texas Education Agency's (TEA) *2014-15 Financial Actual Report*. In the same school year, there were 4,778,559 students attending Texas public schools. As a result, Texans spent \$12,761 per student, whereas the average tuition for accredited private schools in Texas was only \$7,848. According to the TEA's *2014-15 Texas Academic Performance Reports (TAPR)*, the average elementary and secondary school class size is about 20 students. Therefore, Texans spend about \$255,000 for the average class. At the same time, the *2014-15 TAPR* shows that the average annual salary for teachers was \$50,715. Resources are not currently allocated in the most efficient manner to help Texas students.

Public education is funded by an unnecessarily complex and inefficient system that is not student-centered. Texas' funding formulas have been cobbled together based on political dynamics, not by what works for students. As a result, the system fails the Texas Constitution's Qualitative Efficiency test. In addition, the system fails the Quantitative Efficiency test on a student basis. We detail solutions to this problem in our [Basics and Reform](#) study (49-56).

The Texas Supreme Court, which has dealt with school finance reform for the last 30 years, has repeatedly encouraged the Legislature to make structural reforms to the system. Yet Texas has failed to enact any significant reform that would benefit students or taxpayers. In order to meet Texas' constitutional

Figure 1: Constitutional Tests of Texas Public Education

Article VII, Section 1 sets up 3 tests for public education in Texas:



obligation to provide “support and maintenance of an efficient system of public free schools,” we must scrutinize how our current system is failing, and make recommendations for meaningful reform. Analysis should include what the purpose is and the relationship between inputs and outputs in public schools, the relationship between public and state funding, and how we can meet or exceed the three tests to achieve a constitutional public funding system.

Facts

- Total public education expenditures in the 2014-15 school year amounted to \$60.98 billion. With 4,778,559 students in average daily attendance (ADA), per student spending is \$12,761.
- Only 18 percent of high school graduates from 2010-13 met the SAT or ACT college-readiness standards (Finding of Fact, 160).
- One-third of English Language Learners (ELL) in grades 3-12 failed to progress a grade level in English (Finding of Fact, 352).
- Not one student performance measure examined by the district court demonstrated sufficient student achievement (Conclusion of Law, 71).
- Per Judge Dietz, the system is failing to meet the needs of “hundreds of thousands” of Texas students (Executive Summary at page 3 and 5).

Recommendations

- Implement a student-centered funding structure for public education based solely on the delivery of a general diffusion of knowledge.
- Ensure that allotments are transparent, equitable, and portable.
- Deregulate public schools and allow educators to operate as professionals.

Resources

[*Texas School Finance: Basics and Reform*](#) by Michael Barba, Kent Grusendorf, Vance Ginn, and Talmadge Heflin, Texas Public Policy Foundation (March 2016).

[*Texas Education: Original Intent of the Texas Constitution*](#) by Kent Grusendorf, Texas Public Policy Foundation (July 2014).

[*How School Choice Affects the Achievement of Public School Students*](#) by Caroline Hoxby, Hoover Institution Press (2002).

[*Evaluation of the DC Opportunity Scholarship Program: Final Report*](#) by Patrick Wolf, Babette Gutmann, Michael Puma, and Brian Kisida, U.S. Department of Education (June 2010).

[*School Choice and Climate Survey*](#), Grand Prairie ISD (Dec. 2014).

[*How ESAs Can Keep Texas the Land of the Free and Home of the Brave*](#) by Kent Grusendorf and Nate Scherer, Texas Public Policy Foundation (Jan. 2016).

[*What Keeps Texas Schools from Being as Efficient as They Could Be?*](#) by Dr. Paul Hill (July 2012).

[*Eric Hanushek’s Expert Report for School Finance Trial*](#) by Kent Grusendorf, Michael Barba, and Dianna Muldrow, Texas Public Policy Foundation (Oct. 2014).

Teacher Pay and Administrative Flexibility

The Issue

Nothing is more important to a child's academic success in the classroom than his teacher. To ensure that students have access to the best educators, administrators must be free to hire, fire, and determine the pay of teachers. The Texas Association of School Administrators agrees: "Bureaucracies value power and authority, while learning organizations are driven by beliefs and values. *Schools must be transformed from their current bureaucratic form...* Educating our youth is not a state responsibility but a local function. Attempts to run the schools from Austin and Washington will result in a further decline in the local sense of ownership and responsibility at the very time when local involvement is most needed."

When parents, principals, and teachers are given the authority to make the necessary decisions to improve public education, it is the students who will win. Local administrators will have more freedom to encourage and reward their highest performers and teachers will experience increased work satisfaction and productivity. They will both provide the best product to their customer: the student and his parents.

Texas spends more than \$12,000 per student each year on public education. In Texas, the average elementary school class has 18 students; in high schools, the average class size is 27. Therefore, Texas spends about \$216,000 per elementary school class and about \$324,000 per high school class. However, the average Texas teacher's salary in 2014-2015 was \$50,715.

From 1992-2014, teaching staff in Texas increased by 53 percent, while administrator and "all other staff" increased by an alarming 174 percent. If Texas had simply increased its administrative staff at the same rate as teaching staff, Texas would have saved \$7.4 billion *annually*. Every teacher could receive a \$22,100 pay raise *annually*. Of course, pay raises should be based on teacher performance, not a pre-determined set salary schedule.

At the same time, school leaders must be relieved of some of the most onerous limitations on staff management found in Chapter 21 of the Education Code. Meria Carstarphen, former superintendent of the Austin ISD and former superintendent in a traditionally run union state, testified that Texas labor laws (non-union) make it more difficult to manage labor practices than the union states in which she previously worked. She found that Texas' Chapter 21 labor laws can add up to \$80,000 for each teacher dismissal process. These labor laws harm the teaching profession, force misallocation of resources, and prevent employment decisions from being made at the local level.

What is in the best interest of the child? Clearly, great teachers matter to the child. And great teachers should be rewarded and encouraged to mentor their less-experienced peers. Allowing districts—and their locally elected board members—to direct salary schedules and hiring practices helps both teachers and students. No bureaucracy in Austin should have the power to dictate how a locally run school district runs its business. That is not in the best interest of the child.

The Facts

- Texas spends over half of its budget on education—the largest line item in the budget.
- Texas maintains a state salary schedule that requires school districts to give annual raises to all instructors in the district based on longevity within the profession.
- Advanced degrees and years of service do not correlate with higher student achievement, yet they usually lead to higher pay.
- Educators in Texas are generally granted “term contracts.” However, the state’s Term Contract Nonrenewal Act has the same effect as teacher tenure provides in other states.
- It is extremely difficult to dismiss ineffective teachers in Texas. Labor laws protect employees at the expense of good teachers, taxpayers, and students.
- Teachers are paid less than market rates due to the monopsony power of school districts.
- Texas teachers stand to make substantially higher salaries if districts limited non-teaching staff growth to that of teaching staff.

Recommendations

- Empower local school principals to determine teacher pay by eliminating Texas’ minimum salary schedule, which acts as a one-size-fits-all template and inhibits common sense resource allocations to the detriment of good teachers.
- Repeal Chapter 21 of the Texas Education code, which hurts the careers of great teachers by protecting the teachers that are demonstrably poor.

Resources

[*The MetLife Survey of the American Teacher: Challenges for School Leadership*](#) by Dana Markow et al, MetLife, Inc. (Feb. 2013).

[*No Financial Accountability*](#) by Mark Hurley, Texas Education Accountability Project (Mar. 2012).

[*Report for the Efficiency Interveners*](#) by Eric Hanushek (July 2012).

[*Allan E. Parker’s Expert Report for School Finance Trial*](#) by Kent Grusenderf and Michael Barba, Texas Public Policy Foundation (Jan. 2015).

[*Public Education Productivity Improvement: The Path Forward for Texas Policymakers*](#) by Donald R. McAdams and Lynn Jenkins, Texas Institute for Education Reform (July 2012).

[*Creating a New Vision for Public Education in Texas*](#), Public Education Visioning Institute and Texas Association of School Administrators (May 2008).

[“Table 213.40. Staff, teachers, and teachers as a percentage of staff in public elementary and secondary school systems.”](#) National Center for Education Statistics.

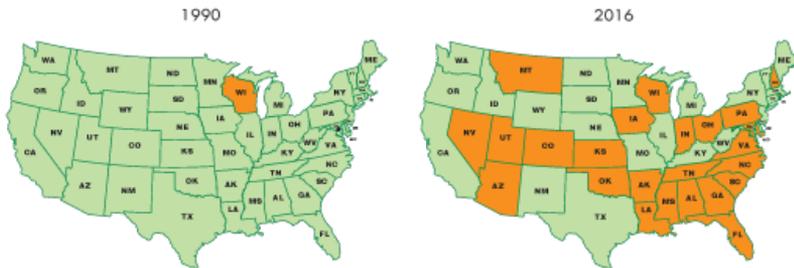
[“Table 203.40. Enrollment in public elementary and secondary schools, by level, grade, and state or jurisdiction: Fall 2013.”](#) National Center for Education Statistics.

Educational Choice for Students with Special Needs

The Issue

A majority of states have some form of private school choice. Texas has none. Every Texas child should be afforded the opportunity to select the educational options that best suit his or her individual needs. Children with special needs are a particularly vulnerable group in need of expanded, individualized options that will allow them a customized education designed to meet their unique needs.

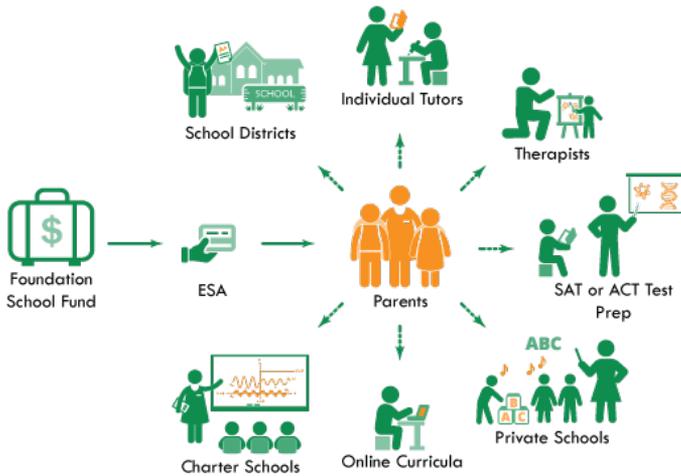
Figure 3: The Spread of Educational Choice, 1990 - 2016



Texas is behind many states in educational opportunity. In 2017, Arizona passed the most comprehensive choice program in the nation that would allow almost every student in the state the freedom to select the best educational program for their own educational needs. Arizona did this through an Education Savings Account (ESA) program, which they refer to as the Empowerment Scholarship Account program. An ESA is innovative because it can be used for a variety of educational expenses throughout a school year, including therapy, tutoring, test fees, textbooks, or tuition. In addition, families can roll over unused ESA dollars from one school year to the next. Funds remaining upon graduation can often be used for higher education. Modeled after Health Savings Accounts, the ESA concept provides an offset to many of the third-party pay problems inherent in education today. **Figure 4** illustrates how ESAs might work.

Half the nation's state legislatures have established educational choice programs. ESAs have been established by legislatures in Nevada, Arizona, Tennessee, Mississippi, and Florida. Arizona's program is the leading model currently in operation because of its near-universal availability. Arizona students are eligible for the program if they have been enrolled in public schools for at least 100 days of the prior fiscal year and must be a member of a limited number of populations, among them children with an active IEP or Section 504 plan. Over the next four school years, all Arizona students will become eligible as long as they meet the 100-day requirement. Arizona has had an ESA program since 2011, and parents have taken full advantage of the program's flexibility. About one-third of ESA funds are expended on multiple items; in other words, a sizable number of parents choose not to use the entire ESA on tuition.

Figure 4: Reformed Flow of Funds through Education Savings Accounts



Arizona special needs students were the first to be given access in 2011. In 2015, they comprised 58 percent of the 2,406 Arizona ESA holders. Parent satisfaction with the program is notably high: a survey of over half of participating families in the 2012-2013 school year found that 71 percent were “very satisfied,” 19 percent were “satisfied,” and 10 percent were “somewhat satisfied.” No respondents registered negative or neutral feedback.

A survey of Florida’s current and previous McKay scholarship programs (an educational choice program for children with special needs) found similarly high levels of parent satisfaction. A total of “92.7% of current McKay participants are satisfied or very satisfied with their McKay schools; only 32.7% were similarly satisfied with their public schools.” The researchers also included parents no longer participating in the program to see if dissatisfaction with the program was higher in that group. They found that, “Perhaps the strongest evidence regarding the McKay program’s performance is that over 90% of parents who have left the program believe it should continue to be available to those who wish to use it.”

For the general student population, student performance improves as a result of educational choice. According to the Friedman Foundation, of 18 empirical studies on this topic, 14 found that student achievement improved and two found no measurable impact. The two studies that found a negative impact were both of the program in Louisiana, known for its overbearing regulations on participating private schools. Choice also has been shown to improve public school performance. Of 33 empirical studies surveyed by the Friedman Foundation, 31 found that public schools improve when students are allowed a choice. Only one found no measurable improvement and only one found a negative impact.

We are unaware of studies examining student performance in relation to educational choice strictly within the special needs student population. However, students with special needs would have been eligible for many of the programs studied above.

continued

Choice for Students with Special Needs cont'd

What follows is a summary of social science research on this topic; citations to these studies are contained in [*Texas School Finance: Basics and Reform*](#) (58):

- A 1998 peer-reviewed study by MIT scholars found that math scores of Milwaukee school choice participants improved by 1.5 – 2.3 percentage points.
- A 1999 peer-reviewed study by UT Austin and Harvard scholars found that, in Milwaukee, reading scores of students in the fourth year of their choice program had improved by 6 percentile points; math scores improved by 11 points.
- A 2002 study by Stanford economists found that programs in Wisconsin, Michigan, and Arizona improved public school district achievement in reading, math, science, and social studies.
- A 2003 peer-reviewed study by scholars at Johns Hopkins, Columbia, and Harvard found a 3-percentile point increase in math scores for African-American children and stated that choice programs have “greater potential benefit for children in lower-scoring schools.”
- A 2001 study in *Education Next* (a non-profit journal) found that choice students in Charlotte, NC, scored 5.9 percentile points higher on math tests and 6.5 percentile points higher on reading tests.
- A 2010 peer-reviewed study from Harvard University scholars found that New York public school students in choice programs improved their math and reading scores. Math scores of students who came from low-performing public schools increased by 4-5 percent; reading scores increased by 2-3 percent.
- A 2010 study by the Federal Department of Education found that the school choice program in Washington, D.C. had no impact on student test scores, but increased high school graduation rates from 70 percent to 82 percent.
- A 2008 peer-reviewed *Policy Studies Journal* article confirmed the reading score improvement from the 2001 *Education Next* study, but did not find a change in the math scores.
- A 2006 Brookings Institution study found that African-American students in Washington, D.C., Dayton, OH, and New York, NY, scored 6 percentile points higher on their Iowa Tests than students who remained in their former school.
- A 2012 joint study by the Brookings Institution and Harvard University looked at New York’s school choice program. They found that college enrollment by African-American school choice students increased by 25 percent. They also found that African-American enrollment in selective colleges (which have an average SAT of 1100 or greater) more than doubled.

The Facts

- An ESA program for all students in special education or with 504 status in Texas would make educational options available for approximately 609,000 students.
- The financial impact to a child's school district of the student using an ESA would be more favorable than the impact if a child moved to another district, as many special needs families already do in search of better options.
- Thirty-six percent of surveyed private schools in Texas said they would or probably “would be interested in participating in an ESA program that would serve only students with special needs.”
- In a survey of Florida's McKay scholarship program for students with special needs, “92.7% of McKay participants are satisfied or very satisfied with their McKay schools; only 32.7% were similarly satisfied with their public schools.” The average private school tuition in Texas in 2015 was \$7,847.98, well within reach of the amount (approximately \$7,800) that would have been provided by an ESA that year.
- Eighty-six percent of parents participating in Florida's McKay program said their scholarship school has provided all the services they promised to provide. Only 30 percent said they received all federally mandated services from their previous school.

Recommendation

Promote educational excellence in Texas and provide options for vulnerable students by adopting Education Savings Accounts for Texas students with special needs.

Resources

[*The Education Debit Card: What Arizona Parents Purchase with ESAs*](#) by Lindsey Burke, Friedman Foundation (Aug. 2013).

[*ESA Handbook: A Parent's Guide*](#), Arizona Department of Education (Aug. 2014). This work explains the Arizona ESA (absent recent expansions) in detail.

[*ESA Parent Handbook*](#) by the Nevada State Treasurer (Jan. 2016). This work explains the Nevada ESA in detail.

[*Texas School Finance: Basics and Reform*](#) by Michael Barba, Kent Grusendorf, Vance Ginn, and Talmadge Heflin, Texas Public Policy Foundation (Mar. 2016).

[*Children in Need: Special Needs Students in Texas Would Benefit From Education Savings Accounts*](#) by Emily Sass and Stephanie Matthews, Texas Public Policy Foundation (May 2017).

continued

Choice for Students with Special Needs cont'd

[*How School Choice Affects the Achievement of Public School Students*](#) by Caroline Hoxby, Hoover Institution Press (2002).

[*Evaluation of the DC Opportunity Scholarship Program: Final Report*](#) by Patrick Wolf, Babette Gutmann, Michael Puma, and Brian Kisida, U.S. Department of Education (June 2010).

[*School Choice and Climate Survey*](#), Grand Prairie ISD (Dec. 2014).

[*The Moral Case for School Choice*](#) by Michael Barba and Kent Grusendorf, Texas Public Policy Foundation (Sep. 2014).

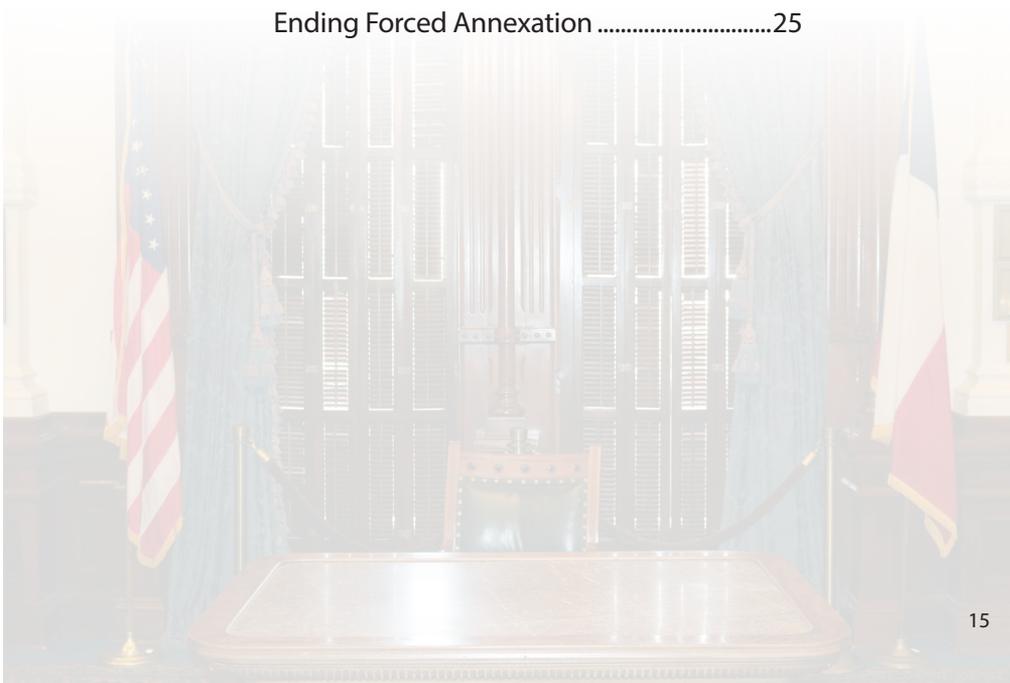
[*A Win-Win Solution: The Empirical Evidence on School Choice*](#) by Greg Forster, Ph.D. (May 2016).

[*Vouchers for Special Education Students: An Evaluation of Florida's McKay Scholarship Program*](#) by Jay P. Greene and Greg Forster, Manhattan Institute (June 2003).

[*Exploring Texas's Private Education Sector*](#) by Andrew Catt, *EdChoice* (Jan. 2017).

Defending Local Liberty

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Property Tax Rollback Trigger

The Issue

Texas homeowners are struggling under the weight of fast-growing local property taxes. In fiscal 2015, more than 4,100 local governments levied \$52.2 billion in property tax revenue, an increase of almost \$12 billion over the past five years. This translates to \$1,900 in property tax revenue in 2015 from every man, woman, and child in the Lone Star State—a cost of nearly \$8,000 for a family of four.

Compared to other major U.S. states, Texas' property tax burden rates among the worst. According to the Tax Foundation, the mean effective property tax rate on owner-occupied housing in Texas ranks as the 6th highest nationally, while local property taxes collected per capita rank as the 14th highest in the U.S.

Property taxes in Texas are not only substantial, but the tax burden is also growing quickly. From 2000 to 2015, property taxes levied across the state grew by more than 132 percent. Over that same period, population and inflation—a commonly used metric that accounts for the rising cost of funding basic public goods and services along with economies of scale—increased by only 82 percent. This delta suggests that local property taxes are growing much faster than they should be.

Texans' desire for meaningful property tax reform is confirmed by the polls. According to a poll by the University of Texas and the *Texas Tribune*, conducted February 3-10, 2017, the top priority for the 1,200 adults surveyed was “lowering property tax bills for homeowners,” which ranked as the top choice among 20 percent of all respondents. A close third in the poll was “continuing to limit government by approving no new spending and no new taxes,” which ranked as the top choice among 16 percent of all respondents.

Another poll by the University of Texas and the *Texas Tribune*, conducted June 2-11, 2017, of 1,200 registered voters showed that approximately 77 percent of those responding either strongly or somewhat support a move by the Legislature to limit how fast property taxes can grow. Only 14 percent of those surveyed strongly or somewhat opposed this move, while 8 percent didn't know.

Texans are, rightfully, hungry for reform because oppressive taxes can discourage economic growth and activity, distort investment decisions (especially among capital intensive industries), depress job creation, and make it difficult to afford day-to-day life. It is critical that Texas lawmakers take steps to mitigate these negative effects with substantive policy reforms that control the rate of growth.

One idea to protect taxpayers is to establish a “trigger” requiring an automatic rollback election to be held when local property tax revenues grow too much in any one year. That threshold should be set at 4 percent or population growth plus inflation, whichever is less. Together, these reforms will place the onus on local governments to justify excessive tax increases to voters.

Structural reforms, like the one above, are key to creating a more predictable and sustainable tax environment that is necessary for ongoing economic growth and job creation. Perhaps most importantly, these kinds of reforms place more power in the hands of those who bear the burden of government.

The Facts

- In fiscal 2015, more than 4,100 local governments levied \$52.2 billion in property taxes on Texas homeowners and businesses. That translates into a burden of nearly \$8,000 for a family of four.
- From 2000 to 2015, Texas' property tax grew by 132 percent. Population and inflation increased just 82 percent over the same period.
- According to a poll conducted by the University of Texas and the *Texas Tribune* of 1,200 registered voters over June 2 to June 11, 2017, 77 percent of Texans support a move by the Legislature to limit how fast property taxes can grow.

Recommendation

Require voter approval for property tax rates that result in property tax revenue increases of more than 4 percent or population growth plus inflation, whichever is less.

Resources

[*Time for a Property Tax Trigger*](#) by Bryan Mathew and James Quintero, Texas Public Policy Foundation (March 2017).

[*The Freedom to Own Property: Reforming Texas' Local Property Tax*](#) by Vance Ginn, Kathleen Hunker, and James Quintero, Texas Public Policy Foundation (Oct. 2015).

Local Spending Limit

The Issue

Local government spending in Texas is growing much faster than it should.

According to the U.S. Census Bureau, local spending totaled \$40.3 billion in 1992. By 2014—the latest available data—aggregate local spending had risen to \$129.5 billion, an increase of 221 percent.

While some level of increase is to be expected in a fast-growth state, the local spending trajectory is well in excess of traditional economic measures, like population and inflation.

From 1992 to 2014, Texas' population grew from 17.7 million to 27 million, an increase of approximately 53 percent. Meanwhile, the Bureau of Labor Statistics' Consumer Price Index (U.S. All items, 1982-84) shows that inflation simultaneously increased by 68.7 percent. Thus, population and inflation grew at a much more modest rate of 121.6 percent, demonstrating that there's an imbalance between the actual spending growth and the ideal.

There are many consequences linked to excessive local spending. The most obvious is that taxpayers must bear a high and fast-growing property tax to pay for all that extra spending. Governments with no stringent spending requirements may also have trouble getting a handle on waste and inefficiency. Finally, governments that spend too much may negatively affect the local economy and job creation.

To better protect taxpayers and the economy against these eventualities, Texas lawmakers should expand the state's constitutional Tax and Expenditure Limit (TEL) to include spending by all political subdivisions, e.g., cities, counties, school districts, and special districts. Right now, Texas' TEL only applies to certain types of state government spending; however, with modest changes, it could be broadened to apply those same spending limitations to the local level too. After all, if state government is to be bound by these kinds of good governance measures, then it only makes sense to extend that principled policy to political subdivisions of the state as well.

Additionally, the growth rate should be tightened further still to be population plus inflation, total state personal income, or total gross state product, whichever is less. Finally, the growth rate should be calculated using actual data from the prior year(s) instead of future projections, which can be less accurate.

Dr. Arthur Laffer, one of President Ronald Reagan's chief economic advisors, said it best: "Government spending is taxation." If the Texas model of low taxes and limited government is to be maintained well into the future, then it is critical that policymakers contain the growth of local spending and the tax increases that necessarily come along with it.

The Facts

- Local government spending totaled \$40.3 billion in fiscal 1992. By fiscal 2014, local spending had grown to \$129.5 billion, representing an increase of 221 percent. Over the same period, population growth and inflation increased by just 121.6 percent.
- The accelerated rate of local spending growth helps, in part, to explain the high and fast-growing nature of property taxes in Texas.
- Texas' existing TEL does not include local governments.

Recommendations

- Texas' constitutional spending limit should be expanded to include expenditures made by all political subdivisions of the state.
- The spending limit should be based on the growth rate of state population plus inflation, total state personal income, or total gross state product, whichever is less.
- The growth rate used for the local spending limit should be calculated from the 12 most recent months for which data is available immediately preceding the adoption of a budget by a local government.

Resources

[*The Real Texas Budget: Why Texas Needs to Ratchet Down Spending Growth*](#) by Vance Ginn, Talmadge Heflin, and Bill Peacock, Texas Public Policy Foundation (June 2016).

["Local government should follow state's lean budget lead"](#) by James Quintero, *Austin American-Statesman* (Aug. 4, 2015).

Property Rights and the Local Government Permitting Process

The Issue

Current local government permitting is a lengthy, burdensome, and complex process that infringes upon private property rights and violates the foundation and ideals that Texas was built upon.

Overall, government regulations can comprise as much as 25 percent of a unit's final sales price. One reason for this cost is that local governments often change permitting and development rules midway through construction projects. Imposing additional regulations in the middle of the construction process not only reduces the profit margin for builders, but diminishes the number of units developed and raises the cost of housing and of operating a business. A builder can, for instance, purchase a lot, gather laborers and supplies, commence construction, and then be stopped multiple times during the process in order to dismantle and redesign the structure to meet evolving municipal regulatory standards. For every occurrence where work is stopped and regulations require changes in the project, costs go up and time that could have been spent building additional units is lost. For buyers, this translates to higher prices and decreased selection—an undesirable outcome for producers and consumers alike.

But it is not just changing the rules in the middle of the game that makes housing and other projects more expensive. The number of onerous regulations, repeated checks, and unnecessary reviews that businesses have to pass for permits generally causes a huge delay within the approval process. In Austin, for instance, regulatory delay adds on average 3.5 months to the process, compared to just three weeks of regulatory delay in Denver, Colorado, or less than a week in Raleigh, North Carolina, suggesting that Austin is dragging its feet in the approval of site plans.

In Harris County, the approval process for business permits can cause delays to opening for up to six months while trying to comply with unnecessary provisions. In one instance, an individual rented a space to make and bottle fresh juices, but was forced to have equipment and amenities completely unrelated to their business, such as grease traps and vent hoods. This caused almost a two-month delay to opening. The effects of these regulations are not localized; they have far-reaching effects on the lives of all individuals across the state. The tedious permitting process adds considerable time and costs to many sectors of the economy; it hinders construction projects and imposes undue burdens upon entrepreneurs and companies. This results in delays, higher construction costs, higher housing costs, and higher prices paid by consumers, fewer jobs, and less economic growth.

This difficult permitting process infringes upon basic private property rights by imposing costs on the applicant. These costs are then transferred directly onto consumers as seen with the housing market. For example, Austin recently has had a large influx of new residents, and because of regulatory delays, rental costs rose more rapidly than wages. The types of codes and regulations that businesses have to meet often don't have anything to do with the production of their product and force them to meet arbitrary and expensive standards. If Texas seeks to continue

its history of being a free market state that protects the private property rights of its citizens, lawmakers should seek to reel in the burdensome and unnecessary local permitting process.

One reason cities can add these costs with impunity is because they are not subject to the Texas Real Private Property Rights Preservation Act (RPPRPA). Passed into law by the Legislature in 1995, RPPRPA allows property owners to receive compensation for loss of property value due to new regulations on land use. Its authors sought a method of protection and a deterrent against local government regulations that would damage the value of someone's property. Since the act exempts municipalities, none of the cities' zoning and permitting regulations are subject to RPPRPA, rendering the act essentially ineffective.

The Facts

- Meeting unnecessary criteria for the permitting process causes large delays of up to 6 months for businesses in certain municipalities.
- A report done in 2015 found that in Austin regulatory delay adds an average of 3.5 months to the already 4 month long approval process.
- Austin is a very popular city to move to and because of significant regulatory delays in the Austin permit review process, which stifles the production of new housing, “between 2004 and 2013 average rents in the Austin area increased by 50% while median incomes increased by just 9%.”
- According to the National Association of Homebuilders (NAHB), a nationwide survey of hundreds of single-family home builders found that “government regulations represented 25 percent of unit's final sales price.”
- The Texas Real Private Property Rights Preservation Act, in Section 2007.002, allows property owners to seek compensation for any government action that reduces the market value of private property by 25 percent or more.

Recommendations

- Reduce the regulatory burden that local municipalities like Austin have on businesses and building by lowering the time for approval and certain code requirements for permits.
- Prohibit municipal and county governments from imposing new regulations or requirements after property owners have acquired the necessary permits and permission to begin development or construction.
- The Texas Real Private Property Rights Preservation Act should be amended to apply to municipal actions relating to the permitting process.

Resources

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continued

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[“Austin renters face soaring costs in ‘extraordinary market’”](#) by Marty Toohey, *Austin American Statesman* (May 3, 2014).

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[*Private Property Interrupted*](#) by Kathleen Hunker, Texas Public Policy Foundation (July 2014) .

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The California-ization of Texas: Tree-Cutting Ordinances

The Issue

Some cities in Texas impose unreasonable regulations that either prohibit property owners from cutting down trees on their land or require payments to be made to the municipality first, sometimes in excess of the value of the tree. Around 50 cities—including major population centers like Austin, Dallas, Houston, and San Antonio—have these kinds of intrusive, California-style regulations in effect to the detriment of countless property owners.

Oddly, these ordinances treat trees differently than other types of vegetation on an owner's property. For example, picking flowers or shrubs does not generally require government permission, but in many cities cutting down a tree without approval is a violation of law. In Austin, the city requires private landowners to request and receive the city's permission to remove any tree with a trunk diameter of 19 inches or more. Further, Austin forbids the removal of "heritage trees"—trees of particular species with diameters of 24 inches or more—unless the landowner can prove to the city that the tree is diseased, a fire safety risk, or that the tree prevents reasonable development of the land.

Supporters of the status quo often attempt to defend these big government regulations on the basis of communal benefits. For example, proponents argue that the presence of trees can improve property values for the neighborhood as a whole; that trees mitigate flooding impacts, improve air quality, and reduce storm-water runoff; and that trees have some aesthetic or sentimental value.

Though these arguments have some surface-level appeal, this rhetoric ignores the simple fact that trees are not a collective resource. They are real property owned by the landowner. The idea that private property rights include ownership of the natural resources contained within runs back to the philosophy of private property ownership itself. As John Locke wrote: "As much land as a man, tills, plants, improves, cultivates, and can use the product of, so much is his property."

As private property, it is unjust for government to coerce a private actor to provide a social benefit without compensation. The state of Texas has long understood this as an issue of justice—Article I, Section 17 of the Texas Constitution states: "No person's property shall be taken, damaged or destroyed for or applied to public use without adequate compensation being made."

If public benefits are being provided by trees on private property, then the public should pay for those benefits. Otherwise, property owners should be free to develop their land as they see fit—including trimming and removing all trees and timber.

The Facts

- Approximately 50 Texas cities have adopted burdensome regulations that restrict or prohibit a property owner's right to prune or remove trees on their land, according to the Texas Chapter of the International Society of Arboriculture.

continued

Tree-Cutting Ordinances cont'd

- It is generally recognized that private property rights include ownership of the natural resources contained within the land. As John Locke states in the *Second Treatise of Civil Government*: “As much land as a man tills, plants, improves, cultivates, and can use the product of, so much is his property.”
- Article I, Section 17 of the Texas Constitution states “No person’s property shall be taken, damaged or destroyed for or applied to public use without adequate compensation being made.”

Recommendations

To better protect landowners and strengthen private property rights, the Texas Legislature should prohibit local governments from preventing the trimming or removal of trees or timber located on a landowner’s property.

Resources

[“Austin Tree Ordinance Violates Private Property Rights”](#) by Rob Henneke and James Quintero, *Austin American-Statesman* (March 25, 2017).

[Local Over-regulation: Tree-cutting Ordinances](#) by James Quintero, Texas Public Policy Foundation (May 2017).

Ending Forced Annexation

The Issue

Texas is one of the few remaining states that allows forced annexation, a practice permitting home-rule cities to unilaterally expand their boundaries and capture property owners living on the outskirts. Texans forcibly annexed by a city are subject to higher taxes, tougher regulations, and a lot more debt, whether they like it or not.

Municipal annexation power dates back to the 1912 Home Rule Amendment to the Texas Constitution. In response to a nationwide debate about citizens' rights to local self-governance, Texans enshrined the concept into the state's formational document. Home-rule cities are thus defined by what they cannot do; such municipalities have the authority to exercise any power that is given them by the people and not prohibited by the Constitution or laws of the state.

Since no limit on annexation was expressly stated in the 1912 amendment, cities wielded virtually unlimited authority to annex property. However, after watching cities abuse the annexation power throughout the early 20th century, the Legislature began to enact reforms.

In the 1960s for example, a land battle between Houston and Friendswood prompted the Legislature to pass the Municipal Annexation Act of 1963. The act limits cities' expansion to a confined buffer zone around the municipality known as the extraterritorial jurisdiction (ETJ).

Similarly, in 1989, the Legislature created a requirement that cities prepare a municipal annexation plan to extend services to newly annexed areas within four and a half years after annexation.

Finally, the "mother of all annexation battles" occurred in 1996. Houston decided to quickly and unilaterally take control of the wealthy, politically active Kingwood community while ignoring the area's vocal protestations. Less than a month later, Kingwood residents found their way to the Capitol, and the Texas Legislature enacted heightened requirements for municipal annexation plans, public hearing timelines, and notice requirements.

These annexation reforms made a significant difference in limiting some of the more dangerous parts of annexation authority generally, but do not go far enough in addressing the fundamental flaws inherent in the system, such as the involuntary nature of the process.

To overcome these flaws and better protect Texans' property rights, the Legislature should reform the system to allow affected property owners a chance to participate in the process through a popular election.

In fact, such a reform nearly passed during the 85th Texas Legislature's regular session. The new changes would have required cities to gain the consent of residents and property owners in the targeted area by petition or vote before annexation. Unfortunately, due to procedural obstructions, this reform effort failed to reach the governor's desk.

continued

Forced Annexation cont'd

The Facts

- America was founded on the idea that citizens cannot be deprived of their liberty without representation and due process. The injustice of “taxation without representation” is not rectified by giving a citizen the right to vote after the government has already taken his or her money.
- Citizens who prefer a smaller government and fewer central services live outside the city limits for a reason. Forcing citizens to become part of a city denies them the ability to vote with their feet.
- Cities view annexation as a way to expand their tax base and capture additional revenue, whether or not such annexation increases efficiencies. Wealthier suburbs are thus favored for annexation, although poorer areas outside of the city limits can oftentimes benefit more from municipal annexation since these communities frequently lack sufficient services.
- Cities often underestimate how much it will cost to expand their services to annexed areas, resulting in a dilution of services. Researchers Mary Edwards and Yu Xiao reported in the *Urban Affairs Review* that cities are typically required to take out debt and issue bonds to finance the costs of annexation. The San Antonio Police Officers Association vocalized this concern in opposition to the city’s 2015 annexation plan, with the president of the union stating, “I think it’s [annexation] a horrible idea. We’re barely covering what we’ve got right now.”
- Forced annexation means that those annexed have a new government forced upon them by city officials they did not elect, to pay off debt they did not run up, and to finance services they do not want.

Recommendations

- Require a vote of affected residents and property owners prior to a municipal annexation. If the vote does not pass, the city should not be permitted to annex the area.
- Review the disannexation process to ensure that previously annexed citizens can enforce municipal promises to extend services to annexed areas, without the necessary involvement and approval of the Texas attorney general.
- Stop cities from wrongfully extending their extraterritorial jurisdiction through impermissible interpretations of their development agreements.

Resources

[Ending Forced Annexation in Texas](#) by Jess Fields and James Quintero, Texas Public Policy Foundation (July 2015).

[Mythbusters: Annexation](#) by Allegra Hill, Texas Public Policy Foundation (May 2016).

[Ending Forced Annexation](#) by James Quintero, Texas Public Policy Foundation (March 2017).

Promoting Statewide Reform

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Adopt a Conservative State Spending Limit

The Issue

Texas has done better economically and fiscally than most states during the [past fifteen years](#). However, one area that still needs improvement is consistently controlling the state's budget growth. Since all government spending must ultimately be paid for by taxation, limiting budget increases is essential for a competitive economy that supports prosperity.

Since the 2004-05 state budget, the 2016-17 initially appropriated budget of \$209.1 billion was up 68.5 percent compared with only a 51 percent compounded increase in the key metric of population growth plus inflation in this period. Adjusting the total budget for this key metric shows that total budget growth is up 11.8 percent above the pace of compounded population growth plus inflation since the 2004-05 budget. This excessive increase has burdened Texans with higher taxes and fees to sustain elevated spending levels and slowed economic growth.

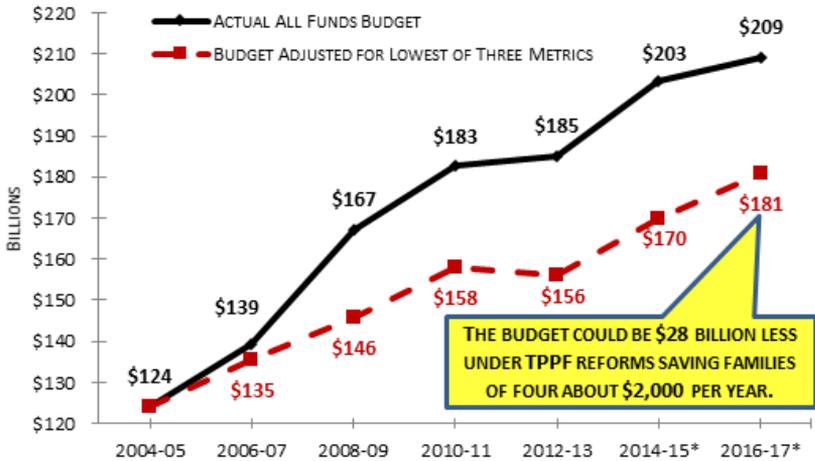
While historically the Legislature has occasionally passed conservative budgets that increase by no more than this key metric, Texas needs to keep past costly budget cycles from repeating. This can be accomplished by adopting a stronger state spending limit in the Texas Constitution and statute whereby the weaknesses of the current spending limit derives from:

- **Not covering most of the budget.** In Article VIII, Section 22(a) of the Texas Constitution, the only appropriations subject to the spending limit are those derived from “state tax revenues not dedicated by this constitution,” which is about 45 percent of the 2016-17 total budget. By capping less than half of the budget, a majority of the budget can grow unabated while legislators have perverse incentives to dedicate funds and resort to accounting gimmicks.
- **Not providing a reliable indicator for the budget's growth rate.** The Texas Constitution requires that the limit be based on the growth in the state's economy, which is statutorily identified as personal income growth. [Research finds](#) that this measure's instability leads to costly fiscal volatility and uncertainty.
- **Not relying on actual measures of economic growth.** Given that several groups submit estimates of personal income growth to the Legislative Budget Board in November before a regular legislative session for the next two fiscal years, the projections are for almost three years. The difficulty of accurately predicting this growth rate leads to large discrepancies between actual and projected growth rates that are never corrected later.

With so many hindrances to budgetary prudence, there is ample reason why Texas' state spending limit has failed to effectively limit the budget over time. With a few changes, legislators can more effectively restrain the growth of government and allow Texans the best opportunity to prosper.

Figure 1 presents the budget adjusted for these growth rates to consider what the budget would look like if the Legislature had implemented our recommended reforms in 2003 and followed them from the 2004-05 to 2016-17 budgets. This shows that taxpayers would be asked to support a substantially smaller budget of \$181 billion, \$28 billion less than the current two-year budget.

Figure 1: Texas' Government Budget Growing Faster Than the Reformed Spending Limit Since 2004-05



Notes: Budget data are the latest spending measures from 2004-05 to 2014-15 and appropriations for 2016-17. Adjusted budget estimates are calculated based on the Foundation's reformed spending limit.

Fortunately, the 2016-17 budget and 2018-19 budget meet the needs of Texans while potentially achieving the historic milestone of two consecutive state budgets held below population growth plus inflation. Given these valuable steps, now is the time during the special session to strengthen the state's weak spending limit.

The Facts

- Texas' total state budget growth is up an estimated 11.8 percent above the pace of compounded population growth plus inflation since the 2004-05 budget.
- The current spending limit is weak because it excludes a majority of the budget, is based on the estimated growth of future personal income, and can be avoided rather easily by lawmakers.
- The Texas Senate passed [SB 9](#) (85-R) that covered more than half of the budget, based growth rate on population growth and inflation, and computed the growth rate with past and projected data.

continued

State Spending Limit cont'd

Recommendations

- Pass a conservative state spending limit that makes the following changes, where applicable, to Article VIII, Section 22(a) of the Texas Constitution and to Section 316 of the Government Code, as in [SB 943](#) (85-R):
 - ▶ Apply the limit to Texas' total government budget;
 - ▶ Base the limit on the lowest growth rate of the Census Bureau's measure of [state population](#) plus the Bureau of Labor Statistics' measure of inflation for the [consumer price index for all items](#), the Bureau of Economic Analysis' measure of [total state personal income](#), or the Bureau of Economic Analysis' measure of [total gross state product](#) for the two fiscal years immediately preceding a regular legislative session when the budget is adopted; and
- Change Article VIII, Section 22(a), such that a supermajority vote of two-thirds in each chamber instead of a simple majority is required to exceed the spending limit.

Resources

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[TEL It Like It Is: Why Texas Needs Spending Limit Reform](#) by Talmadge Heflin and Vance Ginn, Texas Public Policy Foundation (Dec. 2015).

[A Labor Market Comparison: Why the Texas Model Supports Prosperity](#) by Vance Ginn, Texas Public Policy Foundation (Oct. 2015).

Paycheck Protection

The Issue

The state of Texas and most local governments, including school districts, provide automatic deduction of union dues from public workers' paychecks. However, it is not the role of government to serve as the dues collector for unions, or as a revenue collector for any private organization. Along those lines, many states have already adopted laws prohibiting state and local governments from collecting union dues.

The statutes now on the books in states like Wisconsin, Michigan, North Carolina, and Alabama do not limit in any way the ability of members of government unions and other public employees to pay dues to their labor organization or to contribute to union PACs. But the statutes do require public union officials to make their own arrangements with union members regarding dues collections, rather than rely on the public employer to deduct union dues automatically out of employee paychecks.

The experience of these states in the relatively short time that the bans on automatic payroll deduction have been in effect suggests that, in many cases, once employers cease collecting union dues out of their paycheck at taxpayers' expense, and union leaders have to take active measures to continue bankrolling their union, public employee union members conclude the organization does not merit their financial support after all.

Requiring union members and all government employees to make private arrangements with unions is important, given that unions such as the American Federation of State, County and Municipal Employees and the Service Employees International Union use funds collected from public sector employees to fund their private sector unionization drives. It is simply not the role of the government at the state or national level to act as the middleman and dues collector for private organizations like unions. Prohibiting the state government from acting as a dues collector for unions—or other organizations—is restoring government to its proper role.

The Facts

- Texas' government unionization rate is roughly 20 percent.
- Currently the state of Texas collects dues on behalf of public sector unions.

Recommendation

Prohibit government deduction of union dues from public workers' paychecks.

Resources

[*State Labor-Management Policy and the Texas Model*](#) by Stanley Greer, Texas Public Policy Foundation (Feb. 2015).

[*The Texas Miracle and Labor Policy*](#) by Bill Peacock, Texas Public Policy Foundation (April 2015).

Cracking Down on Mail-in Ballot Fraud

The Issue

Mail-in ballot fraud is “*the tool of choice’ for those who are engaging in election fraud.*”

Once rare and only used when voters knew they were going to be out of town on Election Day, mail-in ballots have become commonplace in Texas and around the nation. The advent of early voting has largely addressed the originating rationale for mail-in ballots. Instead, mail-in ballots are now mostly used for convenience or by people who, due to illness, injury, or disability, find traveling to the polls to be arduous. In Texas, mail-in ballots bypass the state’s voter ID law. Mail-in ballots are vulnerable to electoral fraud when voters, especially the aged and the disabled, are encouraged by paid political operatives to apply for a mail-in ballot and then “assisted” in filling out the ballot and handing it over to the operative for delivery.

Seniors or disabled voters living in their own homes may find it difficult to make it to the polls, whether during early voting or on Election Day. Thus, these voters turn to mail-in ballots. Voter ID is not required before voting from home. Ballot harvesters, otherwise known as *politiqueras*, exploit the proven vulnerabilities of mail-in balloting by approaching seniors to sign up, “helping” them fill in their ballot, and then carrying the ballot to the mail. This mode of fraud appears to be particularly hard to address. The fact is a formal polling facility is the only place where the sanctity of the secret ballot free from coercion can be monitored.

House Bill 658, signed into law in 2017, closes one avenue of mail-in ballot fraud while simultaneously making it easier for voters in nursing homes to participate in elections by allowing residential care facilities with five or more voters to become early voting centers. Some 3,000 assisted living facilities statewide might benefit. However, assisted living centers include memory care facilities, a class of facility that is growing rapidly, where the residents have compromised mental capabilities. Memory care facilities do not yet appear to be a large source of ballot fraud. Research by the Foundation examined voter registration and voting records of 40 facilities that exclusively provide memory care in Texas and found only 19 registered voters at 11 facilities having cast five votes of which three were mail-in ballots in the 2016 general election.

To preserve the integrity of the vote, Texas Election Code restricts candidates, bystanders, sound trucks, election-related badges, and other activities from polling places. Further, it is unlawful to influence voters at the polls. In addition, the Election Code specifies that election judges must be affiliated or aligned with different political parties. Yet voters, often elderly or disabled, receive no such protections when voting by mail. With the use of mail-in ballots growing, why aren’t these votes given the same protections as votes at the precinct polling place? The practice of employing mail-in ballot harvesters, or *politiqueras*, needs to be ended. Election law prohibits a polling place staffed by paid agents of one candidate or one political party, yet, ballot harvesters are functionally the same in many key respects as election judges.

The Facts

- Texas first allowed absentee voting in 1917; voting by mail followed.
- In the 2016 general election, 41 percent of registered voters in Texas' 15 most-populous counties—more than four million voters—had voted by mail-in ballot or by early voting.
- Since the 2004 primary election, of 93 election law violations pursued by the Texas attorney general, almost half were cases of mail-in ballot fraud.
- A non-exhaustive survey of mail-in ballot fraud incidences in Texas includes:
 - ▶ 2016: 700 suspicious mail-in ballots sequestered in a Dallas County voter fraud case.
 - ▶ 2012: six Cameron County mail-in ballot harvesters, known in Texas as *politiqueras*, accused of fraud, guilty pleas for illegally assisting voters follow.
 - ▶ 2010: justice of the peace race in Dallas County.
 - ▶ 2008: illegal vote harvesting in Jim Wells County during the primary.
 - ▶ 2006: Duval County, almost half of the ballots cast in the primary were mail-in.
 - ▶ 1994: two Falfurrias addresses account for more than 120 mail-in ballot requests.

Recommendations

The Election Code should proscribe the practice of ballot harvesting. As much as is practicable, mail-in ballots should be treated with the same legal protections as ballots cast at a polling location. The chain of custody for mail-in ballots should be limited to ballots in an envelope expressly for the purpose of transmitting a mail-in ballot, sealed, and signed by the registered voter:

- Mailed from an international or out-of-state location.
- Deposited into the U.S. Postal Service by the voter themselves or by an immediate relative.
- Presented by the voter to two people, both election judges, affiliated or aligned with different political parties, and assigned the duty to collect mail-in ballots.

Resources

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[“Prosecutors issue first arrest warrant in West Dallas voter fraud case,”](#) by Naomi Martin and Robert Wilonsky, *Dallas Morning News* (June 2, 2016).

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[“Demand for mail-in ballots in Texas is growing, as are the risks,”](#) by Anna M. Tinsley, *Fort Worth Star-Telegram* (July 9, 2012).

[Election Code. Title 3. Chapter 32.](#) Subchapter A. Appointment of Election Judges.

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DEFENDING LOCAL LIBERTY

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Local Spending Limit
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