

## Fiscal Policy: 80th Session In Review

by **Byron Schlomach, Ph.D.**

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### TAX/EXPENDITURE LIMITS

- Expenditure limits on government take the form of limits on the allowable increase in spending each year.
- Tax limits can take many forms including requiring a general election before a tax can be increased at all, or allowing for only a limited amount of rate increase before a vote must be taken. Tax limits can be applied to total revenue or to tax rates.
- The state has an expenditure limit passed in 1978 that is based on growth in personal income, which has been ineffective as it has allowed state expenditures to grow faster than population growth and inflation and increase the burden of government for taxpayers, yet remain under the current limit.
- Historically, tax limits in Texas have simply prohibited certain taxes, including a prohibition on a statewide property tax, or prohibitions on income taxes unless approved in an election.
- Local governments do not face expenditure limits, but they are subject to tax limitations.
- Local sales taxes cannot exceed a total of 2 cents; property tax rates cannot exceed certain maximums; growth in local property tax levies are potentially subject to rollback elections that are nevertheless difficult for voters to organize, and allow generous growth under which a rollback is not possible.
- The Foundation has supported efforts to make tax and expenditure limits stricter at all levels of government. Although the bills received a hearing in committee, many legislators and vocal lobby groups have been opposed to limiting the growth of government through tax and expenditure limits.

- The Foundation recommends that the state should be subject to a spending limit based on population growth and inflation; the limit should be trued up historically and not be based only on inaccurate prognostications of growth.
- The Foundation has also recommended that local governments should face similarly strict expenditure limits or revenue limits.
- The 80th Legislature did show greater restraint on spending than past legislatures, notably while experiencing an unprecedented budget surplus, with growth in budgeted ongoing expenditures at just over the Foundation's estimate of population growth and inflation over the next two years.

### SPENDING/BUDGETING TRANSPARENCY AND REFORMS

- The state's budget is a confusing document that often yields little information and often combines several programs in one line item or spreads spending on programs throughout the budget. As a result it is difficult to get an accurate picture on state spending and the use of taxpayer dollars.
- The Foundation has argued that the budget should be laid out with greater specificity, giving more information and increasing the possibility that the governor can exercise constitutional line-item veto authority.
- The Foundation has also recommended that expenditures at all levels of government be more readily available to the general public. The availability of the internet and the low cost of information retrieval today makes this a low-cost proposition.

- Although the state's budget is considered "performance-based," the performance measures adopted in the budget often serve more to obfuscate rather than to illuminate.
- Increasing the specificity of the budget not only makes spending more transparent but gives the governor more opportunities to reduce wasteful spending with a line-item veto.
- The House attempted to make university budgets line-item specific instead of the usual lump-sum appropriation. The final budget reflected lump sums with detailed riders that cannot be vetoed.
- House Bill 3430 by Representative Mark Strama was a bipartisan effort to require that state expenditures be posted on the internet by the Comptroller did succeed with essentially no opposition. The information posted online will include a searchable database of expenditures and a database of major state contracts.

## TAX REFORM AND TAX CUTS

- Texas is fortunate not to have an income tax; nevertheless, it is widely recognized that property taxes are already too high and are growing too fast.
- Texas relies heavily on the sales tax—more heavily than most other states, but Texas still does not have the highest sales taxes in the nation; sales taxes have the virtue of being transparent and they do not directly tax work effort, innovation, and investment.
- The Foundation has supported reducing school property taxes through modest sales tax increases, if necessary; however, the state's tax revenues have increased markedly just due to an extraordinarily healthy economy and tax increases to offset property tax cuts are unnecessary.
- The Foundation strongly supported House Bill 2785 by Representative Ken Paxton to reduce school property tax rates an additional 9 cents over relief already promised and funded by the state. This proposal would not have necessitated any offsetting increase in state taxes.
- While the property tax cut measure found a good deal of support in the House, though it was weakened by an amendment in the House that would have held tax relief hostage unless new and higher spending was approved for teacher pay raises, the additional property tax relief did not get a hearing in the Senate.
- The Center for Fiscal Policy supported the efforts of the Foundation's Center for Economic Freedom to achieve the repeal of the Telecommunications Infrastructure Fund (TIF) tax through House Bill 735 by Representative Joe Straus. Although the TIF tax was allowed to continue for one more year until 2008, despite having already accomplished its intended purpose, it will expire three years before its scheduled expiration date of 2011 and save Texas taxpayers over \$600 million in fiscal years 2009, 2010, and 2011.
- The Foundation also supported efforts by the Texas Comptroller to move tax hearings to the State Office of Administrative Hearings since the Comptroller's office has been the position of being judge, jury, and executioner on tax matters, making Texas less business friendly as a state than it should be. This measure succeeded administratively and statutorily with no opposition.
- Efforts to increase the sales tax in order to only raise more funds for government were successfully blocked. Among the especially persistent efforts to raise new revenue, was House Bill 2084 by Representative Fred Hill to add a penny to the sales tax in the Dallas/Fort Worth region in order to fund expanded rail transit which, regardless of transit's efficacy, would have eventually led to pressure to give local areas the opportunity to raise sales taxes all over the state. ✨

## Education Policy: 80th Session In Review

by **Jamie Story & Brooke  
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### SCHOOL CHOICE

- School Choice was one of the Foundation's two original areas of focus and we continue to aim to introduce competition into the public school monopoly by allowing parents to choose the best public or private school for their child.
- Currently, the only forms of school choice in Texas are charter schools and public school transfers. Aside from these options, the only parents who have "choice" are those who can afford to move to a better neighborhood or send their children to private schools.
- Public school transfers exist through No Child Left Behind (federal), the Public Education Grant program (state), and district transfer policies (local).
- This session, six bills were filed that would have created private school choice, or vouchers. These targeted the following populations:
  - Low-income students in urban districts (Senate Bill 1506 by Senator Kyle Janek)
  - Students with disabilities (House Bill 19 by Representative Frank Corte)
  - Students with autism (Senate Bill 1000 by Senator Florence Shapiro)
  - Dropouts and students at-risk of dropping out (Senate Bill 1513 by Senator Royce West)
  - Foster children (House Bill 3867 by Representative Ken Paxton)
- Of these, only the autism voucher bill made it out of the Senate Education Committee, but the Senate did not have the votes necessary to bring it to the Senate floor for debate.
- House Bill 3868 by Representative Ken Paxton would have made it easier for eligible students to utilize Public Educa-

tion Grants (PEGs). Currently, more than 600,000 students who attend low-performing schools are eligible to apply for transfer to another public school through the PEG program. However, only 188 (or 0.03%) of these students actually use the transfer, largely because districts are not required to accept PEGs. This bill would have required districts with availability to accept PEG transfers. It was voted unanimously out of committee, but was never scheduled for debate in the full House.

- Fewer than 2% of Texas public school students are enrolled in charter schools. Senate Bill 4 by Senator Florence Shapiro, also called the "Champion Charter Act," would have further decreased this number by closing down a number of "low-performing" charters. But the definition of low-performing failed to take into account growth in student performance over time, so the bill only penalized those charters with the most challenging students—many of whom may be homeless, pregnant, or on probation. The bill was never debated in the full House.
- The Texas Legislature passed Senate Bill 1788 by Senator Florence Shapiro to expand access to online courses for students across the state through the creation of a virtual school network. Students attending public and charter schools, private schools and receiving schooling at home are all able to enroll in virtual courses.

### TEACHER QUALITY AND CERTIFICATION

- In the 2006 special session, the Legislature made a commitment to excellent teachers by creating the largest performance-based pay program for teachers in the country. After the House stripped it out of its version of the state budget, the Senate's version maintained the program and ultimately the budget sent to the

Governor preserved the majority of the funding for the incentive pay program.

- Regulations, burdensome documentation requirements, and numerous levels of appeal make it nearly impossible to fire an ineffective teacher. Education groups claim there is no evidence that schools are unable to dismiss teachers, but dismissal data over the last five years shows that while the private sector dismissed about 16% of its employees annually and Texas government agencies dismissed about 12% of employees annually, schools only dismissed a fraction of one percent of teachers annually.
- Strong teachers make a significant impact on student learning. In fact, research shows that students with strong teachers erase the achievement gap associated with race, ethnicity and income within three to five years. The Foundation supports efforts to give school leaders more control over their employees. Unfortunately, Senate Bill 1643 by Senator Florence Shapiro which would have given schools principals the ability to get rid of ineffective teachers (after three years of bad evaluations) did not make it to the Senate floor for debate.
- Currently, only teachers are eligible for school leadership positions. Successful leaders in business, government, the military and the non-profit world are effectively kept out of the running for superintendent, principal, and assistant principal openings if they are not a certified teacher.
- Legislation filed this session would have, allowed school boards to hire individuals outside of the education community with a college or advanced degree and significant leadership and management experience, along with a two-year temporary certificate designed to give school boards more flexibility in hiring practices.

## TESTING AND ACCOUNTABILITY

- The Foundation's research on the state's testing and accountability system offered legislators an alternative to the state's current system for evaluating student learning. The Foundation's paper on end-of-course exams provided a blueprint for reforming the current system and many of the recommendations were ultimately passed into law through Senate Bill 1031 by Senator Florence Shapiro.
- To better assess student comprehension and achievement, the Legislature replaced the high-stakes, cumulative exit exam administered in 11th grade with 12 end-of-course exams to be administered at the end of each core subject course. Slated to begin in 2011-

2012, the exams will be a part of a student's grade, as well as required for graduation.

- The House signaled an interest in sunseting the current school rating system, but legislators ultimately chose to study the current accountability system over the interim.

## FINANCIAL TRANSPARENCY

- The Foundation has long advocated for more transparency in spending and more accountability on the use of tax dollars. In education, the Foundation was a strong voice for ensuring that the roughly \$10,000 spent per student for education was actually going to the classroom. During the last interim, the Texas Education Agency (TEA) adopted rules requiring 65% of the money spent on public education to go to the classroom.
- Since then, the Governor's office, the Comptroller's office, and the TEA, have begun posting their expenditures online. Also as a result of the TEA's efforts at transparency, 30 school districts began posting their spending on the Internet.
- The Foundation supported greater transparency by requiring all Texas school districts to post their financial records on their district websites. House Bill 2560 by Representative Bill Zedler provided such a requirement, and although it passed the House, it did not come up for a vote in the Senate. With the TEA and other districts as an example, the Foundation hopes other school districts will choose to make their spending more transparent over the interim.

## PRESCHOOL

- Currently, more than 60% of Texas four-year-olds are enrolled in publicly-funded preschool. Low-income, non-English-speaking, homeless, and military children already qualify for free public pre-K.
- While certain low-income children may benefit from pre-K, there is no evidence to suggest lasting academic benefits for middle- and upper-income children. In fact, several studies demonstrate increased behavioral problems as the result of pre-K enrollment.
- Senate Bill 50 by Senator Judith Zaffirini proposed expanding public pre-K through \$122 million in increased spending for publicly-funded preschool and child care, but the legislation ultimately passed increased spending by a fraction of that amount, and eligibility for government pre-K was extended only to a few hundred foster children. ✨

## Economic Freedom: 80th Session In Review

by **Bill Peacock**

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### EMINENT DOMAIN

- While the rest of the country was reeling, the Texas Municipal League embraced the U.S. Supreme Court's *Kelo* decision when it said that *Kelo* "simply confirms what cities have known all along: under the Fifth Amendment to the U.S. Constitution, economic development can be as much a 'public use' as a road, bridge, or water tower." This incredible statement witnesses to the substantial erosion of private property in the last 50 years.
- In House Bill 2006 (by Representative Beverly Woolley), passed this session by Legislature, Texas has taken a determined stand against the U.S. Supreme Court's abandonment of the most fundamental of our rights. This is entirely necessary too, because without House Bill 2006, cities will continue to be able to take property for almost any reason simply by crafting their plans to skirt the limited protections put into law in 2005 by Senate Bill 7.
- El Paso is a perfect example of the need for eminent domain reform. Under its downtown redevelopment plan currently in place, it will be able to begin taking property via eminent domain in 2008, unless House Bill 2006 becomes law.
- House Bill 2006 defines public use as a "use of property that allows the state, a political subdivision of the state, or the general public of the state to possess, occupy, and enjoy the property." Because the courts have allowed takings for public "purposes" and "benefits," this definition is essential to re-establishing constitutional property rights protections.
- House Bill 2006 also bans takings that are not for a public use. Since takings for

other than a public use are already prohibited in the U.S. and Texas constitutions, it is unfortunate that the courts have made it necessary for the Legislature to speak clearly on this issue.

- In Texas, once a property has been condemned by a government entity, it can be used for just about any purpose if the government waits for ten years. House Bill 2006 requires government entities to offer to sell back a property to the previous owner if the entity has not used the property for the public use for which it was taken.
- A Senate amendment to House Bill 2006 requires "special commissioners [to] consider any diminished access to the highway and to or from the remaining property to the extent that it affects the present market value of the real property..." Concerns have been raised that this amendment would substantially raise the cost of condemning property along public rights-of-way. However, in the fiscal note to Senate Bill 1711, the Texas Department of Transportation was not able estimate the increased cost. Whatever the cost of paying these damages—which will be substantially less than has been alleged—it pales in comparison to the costs to property owners and society if House Bill 2006 fails to become law.

### ELECTRICITY DEREGULATION

- Despite reports to the contrary, the demise of Senate Bill 482 by Representative Troy Fraser—which would have regulated the Texas electric market—is good for the Texas economy and for Texas consumers. The Texas Public Policy Foundation's recent comprehensive study of the Texas

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electric market by Dr. Robert J. Michaels concluded that “Texas is competitive electricity’s greatest success story in the United States, if not the world. Furthermore, competition has brought substantial benefits to Texas in only a few years, both in absolute terms and relative to other states. Innovations planned for 2009 will further improve investment choices and power pricing, and institutions put in place by the Texas Public Utility Commission can sustain competitive markets into the future.”

- Electricity prices in Texas have certainly increased since deregulation began. According to the U.S. Energy Information Agency, the average retail price in Texas, adjusted for inflation, is up about 23%. It is about 17% higher than the current national average. The highest rates are about 50% higher than the national average.
- However, Texas, which is heavily dependent on natural gas for electric generation, weathered a significant increase in natural gas prices. Natural gas prices today are almost 200% higher than in 2001, and experienced price spikes of over 300%. When compared to other states that rely heavily on natural gas, average prices in Texas are in the middle of the pack, lower than in New England, the Mid-Atlantic coast, and California. Rates in Houston and Dallas are comparable to almost every other major city. Rather than being the cause of high prices, it seems that deregulation has allowed us to avoid some of the impact of higher natural gas prices.
- The Texas market was only fully deregulated as of January 1, 2007. With the price to beat and all other price controls out of the way, Texans will finally be able to experience the full benefit of deregulation. Innovation and efficiency will bring Texas consumer the best products at the best prices.
- The only change to electricity regulations this session came in the last minute passage of House Bill 624 (by Representative Phil King), which gave the Texas Public Utility Commission the authority to reject mergers and acquisitions of electric utilities, despite the fact that the system has worked just fine without this approval for over 30 years.
- The lack of new regulations will give the electric market—which was only fully deregulated as of January 1—time to demonstrate the benefits of deregulation. If Texas can make it without a special session, the move to re-regulate may fade away, and Texas will continue

to be the best example of the success of deregulation in the country and even the world.

## TIF TAX

- The maze of telecommunications taxes is as hard on consumers’ pocketbooks as it is difficult for them to understand. Texans pay the third highest level of state and local telecom transaction taxes in the nation. This includes state and local sales taxes, municipal franchise fees, and charges for the Texas Universal Service and Texas Telecommunications Infrastructure funds.
- The average Texas’ local telecom tax rate is 11.32% and the average state tax rate is 13.97%. Adding federal taxes to the mix means that the average Texan’s total telecom tax bill is just under 30%, almost one third of the cost of telecommunications services. In comparison, the general transaction (or sales) tax rate in Texas is 8.25%.
- The TIF tax is a gross receipts tax intended to fund the installation of communications infrastructure at public institutions. With that goal achieved, the fee was scheduled to expire. However, the Texas Legislature extended it through 2011 at a cost to Texas consumers of about \$211 million per year.
- House Bill 735 by Representative Joe Straus will eliminate the TIF tax in 2008, saving Texas consumers over \$200 million per year. In addition, it will end the practice of using a tax designed for infrastructure build out for general revenue purposes.

## TORT REFORM

- In the last few year, dredging companies began to experience an explosion of personal injury lawsuits. Today almost 60% of all the personal injury lawsuits against dredgers nationwide are filed in just four South Texas counties—Cameron, Hidalgo, Starr and Zapata. However, this didn’t occur because of a wave of new injuries in these areas, but because a few trial lawyers started to take advantage of a loophole in Texas venue law. Fortunately, the Texas Legislature closed this loophole this session.
- Legislation that would have restructured the Texas court system died at the end of session as special interests sought to keep alive the few “judicial hellholes” left in Texas. ✨

## Health Care Policy: 80th Session In Review

by **Mary Katherine Stout**

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### THE CHILDREN'S HEALTH INSURANCE PROGRAM

- Established in 1999 by the 76th Legislature, the Children's Health Insurance Program (CHIP) provides health care coverage to families who make too much for Medicaid, but are deemed to make too little to afford health insurance.
- Eligibility for the program is set at 200% of the federal poverty level (FPL), which amounts to slightly more than \$41,000 in annual income for a family of four.
- Facing a budget shortfall in 2003, the 78th Legislature passed major reforms designed to ensure program integrity and reserve the benefit only for those who are truly eligible and whose families have no other reasonable resources to pay for their care.
- This session the Legislature reversed those reforms with House Bill 109 by Representative Sylvester Turner, including: figuring eligibility on net income, rather than gross income to disregard certain expenses; removing a 90-day waiting period for coverage designed to prevent "crowd out;" increasing the liquid assets allowable to be eligible, along with the exempt value of vehicles; and granting coverage for twelve months, rather than six. In the bill eventually sent to the Governor, the Senate amended the period of eligibility to require an electronic check on CHIP families with the highest incomes at the six month mark.
- The policy change is estimated to increase the CHIP caseload by 100,000 people who would have been otherwise ineligible or did not reenroll at the six month mark under the current policy.

- The Foundation has opposed efforts to expand the program, arguing that taxpayers supporting a "safety net program" have an expectation that recipients are truly eligible and have no other reasonable alternatives to provide for their own care.
- The CHIP program is a generous benefit that comes at little or no cost to recipients. In fact, on a per capita basis, a family of four pays more in taxes to support the CHIP program than a family at the highest income would pay in cost sharing over two years.

### MEDICAID

- Medicaid is projected to cover roughly 3 million Texans over the next biennium, including some 2 million children, as well as the aged, blind, and disabled who are the highest cost recipients and growing as baby boomers enter the programs. In addition, Medicaid pays for 58% of all births in the state.
- Recent Medicaid reforms contained in Congress' Deficit Reduction Act of 2005 were designed to give states more flexibility in managing their Medicaid programs. These changes are far from the fundamental reforms the program needs, but they provide the states with modest steps to better control Medicaid.
- During the interim and in legislative testimony in September 2006, the Foundation recommended that the Legislature pursue a waiver to tailor the Medicaid benefits package, increase cost sharing, use Health Savings Accounts to create better incentives for recipients, implement long-term care Medicaid reforms, and restructure the financing for

hospitals. Senate Bill 10 by Senator Jane Nelson, the session's Medicaid reform legislation, included all of those aspects.

- In the future, the state must look for more opportunities to exercise flexibility, most notably by asking for a federal block grant for the Medicaid program. We continue to recommend that the state offer the federal government greater budget certainty for Medicaid in exchange for more program flexibility.

## HEALTH SAVINGS ACCOUNTS


- Health Savings Accounts (HSAs) make people conscious of what their health care costs by giving individuals more control in making decisions about their care and their health care dollars.
- The Foundation has supported efforts to make an HSA option available to state employees, whose health insurance costs have grown to almost \$2.2 billion, an increase of \$143 million over the previous biennium. House Bill 1269 by Representative Myra Crownover proposed this change for the second session in a row, but failed to get a vote in the House.
- Although the state made modest changes to the health benefits design in 2003, state employees have a benefits package that exceeds most offerings from private employers. In addition, state employees effectively have only one choice in health plans, preventing any real competition on price or service.
- The Foundation has argued that HSAs are an important way to enhance the current benefits with more choice and more control, while achieving important cost savings for the states. Furthermore, although the state pays the full premium for state employees, those employees paying for dependent coverage would benefit from a choice in benefits with greater competition on price.

## HEALTH INSURANCE MANDATES

- Every session disease association and medical providers lobby the legislature for new mandates on health insurance coverage, requiring that every health insurance policy in the state must cover certain treatments and services.
- Texas already has 51 different mandates on health insurance, putting Texas among the five states with the most health insurance mandates.

- Although these mandates are an attractive option for many policymakers and interest groups alike, they artificially drive up the cost of health insurance.
- This session there were almost two dozen bills filed to require coverage for self-inflicted injuries, prosthetic devices, brain injury, and cardiac scans, among others.
- Most of the mandate bills died in committee, but a bill relating to mandated coverage for brain injuries made it to the Governor's desk, along with an amendment expanding mandatory coverage for children with autism.
- The Foundation has consistently reminded lawmakers that mandates drive up the cost of insurance, often making it a bad deal and encouraging people to "go bare" rather than pay high prices for care they believe unnecessary. It also eliminates important aspects of competition between health plans and limits consumer choice.

## DEREGULATING HEALTH CARE

- While many legislators voice support for free market ideas in health care, there are few pieces of legislation that actually take necessary steps to free the market of unnecessary government control and regulation. Among the areas the legislature regulates most heavily is the practice of medicine, or "scope of practice" laws, that limit what licensed professionals may do.
- This session there was one bill that stood out for its remarkable step in the direction of freer markets, looking to loosen restrictions on retail health clinics that are setting up shop in major retail centers like Wal-Mart and CVS.
- House Bill 1096 by Representative Rob Orr would have increased the number of nurse practitioners a doctor may oversee, loosened requirements on the percent of time the doctor must be on premises at the clinic, as well as the distance from the clinic the doctor must practice. Each of these regulations contributes to unnecessarily driving up the cost of care.
- These clinics are intended to deliver basic, routine care, such as attention for pink eye, kidney infections, administering vaccinations, and testing for strep throat.
- The bill was voted from committee, but was never heard on the House floor. This is important legislation that the Foundation will continue to work on over the interim, championing reduced regulations in health care as a way to make health care more affordable and accessible. 

## Effective Justice: 80th Session In Review

by **Marc Levin**

Director, Center for Effective Justice

### ALTERNATIVES TO INCARCERATION

- Texas has the nation's second highest incarceration rate with over 220,000 adult inmates incarcerated in state prisons and county jails. Half of Texas prisoners are nonviolent offenders.
- At the beginning of the 80th session, the Legislative Budget Board (LBB) estimated that the state would need another 17,300 prison beds by 2012, which would cost \$1.6 billion to build and billions more to operate over the next decade.
- The 2008-09 budget represents a historic shift away from simply building more prisons, as it creates capacity in community-based treatment and intermediate sanctions facilities to divert tens of thousands of nonviolent offenders from prison. The diversion initiatives in the budget that closely follow the Foundation's recommendations, when combined with the conversion of Texas Youth Commission (TYC) lockups back to the adult system, may avert the need for new prisons.
- The Foundation assisted Senator Rodney Ellis in drafting Senate Bill 1909 which would have mandated that nonviolent, low-level drug offenders be redirected from prison into probation and treatment, cleared the Senate but was not considered in time by the House. However, many judges, prosecutors, and probation and parole officials have said, now that the community beds and day treatment slots are going online, they will finally have the tools to reduce prison utilization. The budget creates bonding authority for three new prisons with 4,000 beds, but construction cannot begin unless the LBB approves, a decision that will likely be shaped by the success of the diversion initiatives.
- In keeping with Foundation recommendations, the Legislature enacted probation reforms in House Bill 3200 by representative Jerry Madden that will institute a performance-based funding formula so departments are rewarded for fewer revocations to prison and more early termination, meaning that they will no longer have a financial incentive to keep probationers on their rolls simply to collect their fees, even though they have met all of their terms and pose no danger to the public.
- House Bill 530 by Representative Madden followed the Foundation's recommendation to expand the number of drug courts, which have proven to dramatically reduce recidivism and costs by diverting minor drug offenders from prison into a rigorous regimen of treatment, drug testing, and employment.
- The Foundation also recommended legislation (House Bill 2391 by Representative Madden) to give peace officers the discretion to issue a citation and notice to appear for certain misdemeanors that do not pose an immediate danger to public safety. The freed up space in county jails could be leased by the state in lieu of building more prisons. Bexar County has projected this legislation will save their taxpayers \$10,000 a day.
- In January 2007, the Foundation held a primer on juvenile justice and the crisis at TYC and weeks later it became a major scandal. Through landmark legislation in Senate Bill 103 by Senator Chuy Hinojosa, the Legislature passed many of our recommendations into law, such as ending state incarceration of misdemeanants. While juvenile misdemeanants can be placed at local postadjudication facilities, this shift will end the incentive for communities to dump nonviolent youth onto the state by overutilizing TYC and reduce recidivism, as community-based programs can work more closely with families, churches, non-profits, and employers. The legislation also tracks our recommendations by instituting independent review panels to assure the prompt release of rehabilitated youths,

allowing more parental visitation, and creating an ombudsman and office of independent counsel to prevent abuse. Even before this legislation takes effect, the conservator in charge of TYC identified over 1,000 rehabilitated youths for release—some of whom were at TYC for graffiti or curfew violations. Within a few months, these reforms have already reduced TYC’s population by over 1,000, which translates into \$21 million in savings.

## EMPOWERING CRIME VICTIMS

- The Foundation assisted with House Bill 2291 by representative Joe Farias to give victims of property crimes the right to request mediation with the offender, which would result in a binding restitution agreement. While the goal of creating such a mediation option on a statewide basis was not achieved, legislation was approved requiring the Texas Juvenile Probation Commission to conduct a study on juvenile victim-offender mediation and make policy recommendations to the Legislature in July 2008.
- The Legislature passed House Bill 2151 by Representative Dwayne Bohac requiring graffiti offenders to clean up the mess they created.
- A constitutional amendment drafted by the Foundation would have allowed offenders’ wages to be garnished to pay restitution to the victim, but the bill failed to come up for debate in the full House.

## COMPETITION IN CORRECTIONS

- Studies have shown that private prisons save money both directly and indirectly, as states with competition have lower per inmate costs. The Foundation supported House Bill 198 by Representative Madden to raise the arbitrary caps on the number of inmates that can be kept at existing privately operated prisons.
- Texas Department of Criminal Justice (TDCJ) modified its initial plans so that if new prisons are built, at least one will be privately operated. New intermediate sanctions and drug treatment facilities will be privately operated.

## REENTRY AND EMPLOYMENT OF EX-OFFENDERS

- Ex-offenders who are employed are three times less likely to re-offend. The Foundation drafted legislation approved by the Senate that would have allowed ex-offenders, other than murderers, rapists, and violent sex offenders, to obtain provisional licenses for most occupations that would then become permanent licenses if they complied with all probation and parole conditions and all occupational rules. Senate Bill 1750 died in the House in the closing days of the session.
- The Foundation drafted legislation to provide civil liability relief from negligent hiring lawsuits to employers who hire nonviolent ex-offenders.

## SCHOOL-TO-PRISON PIPELINE

- Research has indicated that students who are suspended, expelled, and/or have early contact with the criminal justice system are much more likely to end up in prison.
- The Foundation recommended legislation that was ultimately passed in House Bill 278 by Representative Madden, repealing the authority of school districts to issue criminal citations to students for routine misbehavior, such as chewing gum and tardiness, which is not a criminal offense under state or local law.
- 130,000 Texas students are sent to Disciplinary Alternative Education Programs (DAEPs), some of which are half-day programs (although the district receives full state funding). There has been no statewide accountability or standards for DAEPs, which are not required to offer the courses need for graduation. House Bill 426 by Representative Madden directs the Texas Education Agency to create standards for evaluating DAEPs. Moreover, the Legislature enacted a specific proposal made by the Foundation—to administer an intake and outtake exam such as the Iowa Test of Basic Skills to students placed at a DAEP for 90 days or more, providing a barometer of learning.

## OVERCRIMINALIZATION

- The Foundation has documented 1,700 criminal offenses in state law and urged the Legislature to rein in the inappropriate use of criminal law, particularly as it impacts ordinary business activities. It is a Class A misdemeanor (up to a year in jail) to violate any occupational rule. Moreover, the “deadweight loss” to society from occupational licensing is over \$35 billion.
- The Foundation opposed a proposed licensing scheme for interior designers that would have would have criminalized thousands of interior decorators. The bill did not pass.
- The Foundation also testified against failed legislation that would have required every auto mechanic and repair shop to obtain a government license and another failed bill that would have required journeymen and sheetmetal workers to be licensed.
- The House passed legislation backed by the Foundation to repeal the criminal offense associated with the animal identification program, but it was not considered by the full Senate.
- The Foundation testified against a bill—rejected in committee—that would have required all counties to adopt residential building codes that include a criminal penalty. 