

Keeping Texas Competitive



An Agenda for Prosperity and Growth
TEXAS PUBLIC POLICY FOUNDATION | JANUARY 2011

Keeping Texas Competitive
An Agenda for Prosperity and Growth
JANUARY 2011

Texans gave policymakers a mandate for freedom in November because they know that freedom is what unleashed the nation's strongest economy and why Texas created more jobs than all other states combined over the last 10 years. The following agenda is a roadmap to freedom for the 2011 Texas Legislature to keep Texas competitive and at the forefront of national prosperity and economic growth.

Reduce Texas' Tax and Spending Burden. Controlling the size and cost of government is the number one reason why Texas' economy has remained strong. To keep it that way, Texas should:

- Balance the budget within available revenue, without raising taxes/fees, while safeguarding the Economic Stabilization Fund.
- Restructure the state's general revenue funded public pension systems to a more predictable and sustainable model.
- Eliminate programs and agencies that are outside the Constitutional vision of limited government.
- Adopt a strong tax and expenditure limit (TEL) that limits increases in state and local spending to population growth plus inflation or the growth in personal income, whichever is less.
- Adopt a new state budget methodology that focuses on expenditures made at the program level to make the appropriations process more transparent, understandable, and efficient.

Stand Up Against Federal Overreach. Medicaid will soon threaten to bankrupt every state, while EPA overreach threatens the heart of Texas' economy—the energy sector. To curb the size and influence of the federal government and to restore those powers reserved to the States or to the people, Texas should:

- Win state control over health care delivery and reduce health care costs without sacrificing quality.
- Reduce Texas' dependence on federal funds.
- Call for a federal balanced budget amendment including meaningful limits on federal spending.
- Strengthen state authority in air quality permitting and resist federal encroachment over state environmental law.
- Prevent efforts to regulate carbon dioxide and eliminate green energy subsidies and mandates.

Improve Educational Quality for Texas Students. Rapid growth in education spending has failed to improve student outcomes. To improve education quality and reduce costs, Texas should:

- Eliminate the cap on state charter schools.
- Eliminate restrictions on virtual school courses and enrollment that do not apply to traditional courses.
- Base administrator/teacher pay and employment on performance, eliminating salary schedules, and restrictions on firing educators that do not apply to other Texas workers.
- Tie higher education funding to student success results such as graduation, number of degrees issued, student satisfaction, employment outcomes, and student assessments.

Foster a Free Market Economy. People want to live, work, and do business in Texas because they can profit from their efforts. To increase economic growth and competition, and create more jobs, Texas should:

- Improve Texas' civil justice system by adopting a fair "loser pays" statute, an early dismissal for frivolous lawsuits, and a more efficient system for handling claims under \$100,000.
- Eliminate price regulation of homeowners insurance and telephone service in competitive areas, reduce regulation of and interference with Texas' wholesale and retail electricity markets, and enact clear, rigorous requirements for cost-effectiveness analysis in TCEQ and other state agency rulemakings.
- Ban the use of eminent domain for takings that are not for a public use and apply the Texas Real Private Property Rights Preservation Act to cities to prevent regulatory takings.
- Define landowners' private property rights in groundwater.
- Allow consumer choice in health care through expanded scope of practice and an HSA option for state employees.
- Do not create criminal offenses for non-fraudulent business activities or license more occupations.

Texas faces significant challenges in 2011. But this isn't the first time Texas has faced these challenges, and, more often than not, we've faced them successfully. Texans will be up to the challenge again. Our individual energy, commitment, and abilities will combine to bring more jobs, more economic growth, and more freedom to Texas.



Reduce Texas' Tax and Spending Burden

Controlling the size and cost of government is the number one reason why Texas' economy has remained strong. To keep it that way, Texas should:

- *Balance the budget within available revenue, without raising taxes or fees, and while safeguarding the Economic Stabilization Fund.* Texas can balance the budget without exhausting the Economic Stabilization Fund or raising taxes by using a principled approach to guide fiscal decisions. The Legislature should adopt a 2012-13 budget that can be funded within available revenue. No existing taxes or fees should be increased, and no new sources of revenue should be created. The Economic Stabilization Fund balance should be maintained at at least 5 percent of the general revenue and general revenue-dedicated funds.
- *Eliminate programs and agencies that are outside the Constitutional vision of limited government.* State spending should be consistent with the mission of Texas' state government and should be prioritized on the basis of constitutional mandates with statutory requirements second. Benefits from a program or agency should be unambiguous, and agencies and programs whose functions can be better accomplished by the private sector should not be funded. State agencies should be evaluated with performance measures that reflect outcomes rather than outputs. Programs or agencies that are not consistent with the mission of Texas' state government should be eliminated.
- *Adopt a strong tax and expenditure limit (TEL) that limits increases in state and local spending to population growth plus inflation or the growth in personal income, whichever is less.* The Legislature can improve and strengthen Texas' existing TEL by making the following changes: (1) make sure the TEL is self-contained within the state's constitution and does not require enabling legislation; (2) apply the provisions to all state spending—the current TEL only applies to half of the budget; (3) base the expenditure growth limit on the sum of population growth plus inflation or the growth of personal income, whichever is less; (4) require a supermajority vote of each chamber to exceed the limit rather than the current standard of a simple majority vote; and (5) bring all levels of government in Texas under the scope of the amendment.
- *Adopt a new state budget methodology that focuses on expenditures made at the program level to make the appropriations process more transparent, understandable, and efficient.* Although Texas has made great strides towards state government transparency, the Legislature can take additional steps to ensure greater public oversight. By changing the appropriations bill pattern to document funding for specific programs rather than general strategies, legislators and the public will have a better grasp of how money is being appropriated. This is an important addition to current transparency measures on government spending—such as check registers—since the best way to limit wasteful government spending is to stop it from being appropriated in the first place.

Stand Up Against Federal Overreach

Medicaid will soon threaten to bankrupt every state, while EPA overreach threatens the heart of Texas' economy—the energy sector. To curb the size and influence of the federal government and to restore those powers reserved to the States or to the people, Texas should:



- *Win state control over health care delivery and reduce health care costs without sacrificing quality.* Texans could receive quality health care for much less than it costs today, but federal mandates and requirements prevent the state and the private sector from meeting these needs in a cost effective way. To address this problem, Texas could enter into an interstate compact to win back state control over health care delivery, replace Medicaid, and/or receive federal block grants for Medicaid funding without strings attached.
- *Reduce Texas' dependence on federal funds.* Federal funds are never free, yet the availability of federal funds is used often to justify the creation of a new program or agency. Federal funding has conditions and mandates attached, however, which often require states to produce matching funds. Ultimately, a reliance on federal funds leads to increased state government spending which results in reduced economic growth in the Texas economy. In addition, federal funds can even disappear, leaving the state with the burden to fund the program or agency in full. Just as increasing state spending burdens taxpayers, increasing demand for federal funds burdens those same taxpayers. Programs and agencies partly funded by federal funds should be judged on their entire expenditure—not just the cost to the state—to determine their efficiency and effectiveness.
- *Call for a federal balanced budget amendment including meaningful limits on federal spending.* Of the many ways in which the current expansion of the federal government threatens the future of our Republic, perhaps none is more pressing than the explosion in our national debt. For America to remain the greatest country in the world, we must put limits on how much the federal government can borrow from our children and grandchildren. Texas should call for a constitutional convention to propose a constitutional amendment to balance the budget—with meaningful limits on spending so that a balanced budget doesn't translate directly into higher taxes. When enough states join Texas in making that call, Congress will get the message, and propose an effective amendment for ratification by the several states.
- *Strengthen state authority in air quality permitting and resist federal encroachment over state environmental law.* The Clean Air Act delegates authority for state air quality permitting to states. The EPA recently rejected Texas' Flexible Permitting Program, took over several major facilities' permits, and threatened enforcement against more than 100 Texas businesses in compliance with their permits. These actions are merely the next step in the EPA's steadily increasing regulatory authority which threatens to cripple the Texas economy. Texas should urge the EPA and Congress to transform the SIP process, which is inefficient, convoluted, short on results, and inflexible. Texas should retain authority over its air quality permitting through the cooperative federalism intended under the Clean Air Act.
- *Prevent efforts to regulate carbon dioxide and eliminate green energy subsidies and mandates.* Texas' energy policy should be realistic and driven by supply, reliability, efficiency, affordability, technology, diversity, and security. Existing climate science claiming that man-made greenhouse gases cause global warming is too uncertain to justify state or federal carbon caps. Texas should continue to resist the EPA's adopted rules that require the state to begin regulating green house gases on January 2, 2011.



Improve Educational Quality for Texas Students

Rapid growth in education spending has failed to improve student outcomes. To improve education quality and reduce costs, Texas should:

- *Eliminate the cap on state charter schools.* Texas charter schools serve a higher proportion of economically disadvantaged and minority students—many at risk of dropping out or former dropouts—than traditional public schools. Using innovative and non-traditional methods to meet individual student needs, these schools can be part of the solution in reducing the dropout rate, increasing the number of students academically prepared for college, and offering specialized curriculum and programs. Charter school caps are artificial limits on charter school growth with no connection to charter school quality or growing student and parental demand. Eliminating the cap will encourage innovative alternatives to traditional public schools.
- *Eliminate restrictions on virtual school courses and enrollment that do not apply to traditional courses.* Virtual school courses offer an important alternative to traditional public schools. Virtual school courses give students in rural areas broader and more rigorous course offerings and provide flexibility to students with health issues, those who have difficulty learning in a traditional classroom setting, teenage parents, or students who must work part-time. However, current restrictions limit the availability of virtual courses and enrollment in them. The Legislature should fully integrate virtual courses into the public education curriculum.
- *Base administrator/teacher pay and employment on performance, eliminating salary schedules and restrictions on firing educators that do not apply to other Texas workers.* Research shows that the most important school-related factor in raising student achievement is the quality of a student's teacher. Research also suggests that selective and targeted pay raises are effective at increasing teacher quality and improving student learning as well as decreasing teacher turnover. Eliminating Texas' minimum salary schedule gives school officials more freedom at the local level to target resources to meet local needs. Increasing teacher incentive pay funds allow school officials to reward quality teachers with raises rather than raising teacher pay regardless of effectiveness with across-the-board raises. Additionally, placing Texas educators under the same employment requirements as private sector workers will allow principals and school districts to ensure that continued employment is based on performance.
- *Tie higher education funding to student success results such as graduation, number of degrees issued, student satisfaction, employment outcomes, and student assessments.* Statewide average operating cost per student continues to increase dramatically, and tuition increases reduce affordability and access to higher education for Texans. Professor research projects displace teaching, and the six-year graduation rate for Texas universities is only 49 percent. State funding increases should require university accountability and move to a student-centered, graduation-focused approach. This approach puts state appropriations in the hands of students who can choose from competing institutions, incentivizing universities to minimize costs and maximize instructional quality.

Foster a Free Market Economy

People want to live, work, and do business in Texas because they can profit from their efforts. To increase economic growth and competition, and create more jobs, Texas should:

- *Improve Texas' civil justice system by adopting a fair "loser pays" statute, an early dismissal for frivolous lawsuits, and a more efficient system for handling claims under \$100,000.* Since 2003, Texans have embarked on an unprecedented effort to restore justice to its rightful place in Texas courtrooms. Despite the benefits of reform in areas such as venue shopping, product liability, medical liability, and asbestos and silica litigation, more work remains to be done. This is particularly true when it comes to dealing with frivolous lawsuits and allowing claimants less expensive access to the system.
- *Eliminate price regulation of homeowner's insurance and telephone service in competitive areas, reduce regulation of and interference with Texas' wholesale and retail electricity markets, and enact clear, rigorous requirements for cost-effectiveness analysis in TCEQ and other state agency rulemakings.* Texas is the national leader in both economic growth and the reduction of regulation in major sectors of its economy. The connection is not coincidental. The ability of companies to create new jobs is directly related to their ability to operate without burdensome government regulation. To continue down this path, Texas should stop regulating markets based on the price of products and services, eliminate costly mandates and subsidies for renewable energy and energy efficiency, and require state agencies to fully consider the cost of regulations on the private sector before adopting them.
- *Ban the use of eminent domain for takings that are not for a public use and apply the Texas Real Private Property Rights Preservation Act to cities to prevent regulatory takings.* Texas has taken some steps since *Kelo* to reduce eminent domain abuse, but major areas in need of reform have not been addressed. For instance, Texas statute does not prohibit the taking of property that is not for a public use. Nor is the government required to actually *use* property for the use for which it was taken. When it comes to regulatory takings, Texas law provides little protection for property owners who should be compensated when land use regulations result in a loss of property value. This is largely because cities are exempted from the Texas Real Private Property Rights Preservation Act.
- *Define landowners' private property rights in groundwater.* The Legislature should clarify that the landowner's rights to groundwater below his land are a vested real property right, clarifying that "desired future conditions" do not create authorized caps on groundwater withdrawals. As a vested real property right, groundwater rights are guaranteed compensable under the Texas Constitution.
- *Allow consumer choice in health care through expanded scope of practice and an HSA option for state employees.* Scope of practice regulations limit the diversification of health care services to Texans. Nurse practitioners could improve patient access to health care, if they were permitted to practice independently within their scope of practice as defined by the Board of Nursing. Giving state employees an HSA option will provide those employees with flexibility in their health care decisions as well as provide cost savings to the employees and to the state.
- *Do not create criminal offenses for non-fraudulent business activities or license more occupations.* Texans once lived under a criminal code that resembled the Ten Commandments. Today, nearly 10,000 federal, state, and local offenses confound more often than command, diluting the traditional focus of criminal law on truly wrongful conduct. ★



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 by educating and affecting policymakers and the Texas public policy debate with academically sound research and outreach.

Funded by hundreds of individuals, foundations, and corporations, the Foundation does not accept government funds or contributions to influence the outcomes of its research.

The public is demanding a different direction for their government, and the Texas Public Policy Foundation is providing the ideas that enable policymakers to chart that new course.

