



Texas Public Policy Foundation

Center for Economic Freedom

84th Texas Legislature in Review

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Texas has built its economic success on the foundation of the Texas Model, that is, lower taxes, stronger property right and less regulation, fewer frivolous lawsuits, and reduced reliance on the federal government. To this end, the 84th Texas Legislature made marked improvements in tort reform and slight progress related to property rights but action on regulations was mixed. Economic liberty was definitely on the minds of Texas lawmakers this year; yet, the session left plenty of room for improvements in 2017.

Tort Reform

Some of the greatest victories for economic liberty this legislative session occurred in the area of tort reform. Passing HB 1492, for instance, opened up asbestos litigation to greater transparency. Past federal reforms had created a procedural loophole whereby attorneys could hide their clients' exposure history and submit conflicting claims. By mandating that this information remain discoverable throughout legal proceedings, the Legislature helped ensure that manufacturers would not be saddled with damage awards in excess of their culpability. More importantly, the funds set aside for asbestos victims would not be prematurely drained by claimants who had multiple avenues of relief.

Another step in the right direction was passing SB 735, which reined in the ability of plaintiff attorneys to investigate and disclose defendants' net worth whenever the defendants' clients claimed a right to punitive damages. Evidence of a party's wealth can be extremely prejudicial. Permitting attorneys to use the information as leverage produced a serious risk that verdicts would be based on the contents of a defendant's wallet rather than the merits of the case. The Legislature's decision to introduce an evidentiary threshold before that discovery was allowed brought that risk to a minimum and made certain it was proportional to the benefit conferred.



Property Rights

Also on civil justice, the 84th Legislature paid special attention to how the court system treated Texans tangled up in the condemnation process. Condemnation disputes

are inherently stacked against the property owner, which can deter Texans from enforcing their rights through the courts, giving condemnors great latitude in pushing the boundaries of what's acceptable under the law. The most common example arises in compensation proceedings, where condemnors offer the lowest possible amount to landowners. Another example is that condemnors sometimes don't use condemned property for the public use for which it was taken.

Members passed SB 1812, with unanimous support. The comptroller's office will now maintain a database of all entities authorized to condemn private property. State law grants thousands of organizations the power of eminent domain. But, before this session, property owners could not discern which ones were properly delegated that authority without incurring heavy litigation expenses.

Two bills to combat these practices, SB 474 and SB 479, respectively, were introduced this session. Neither of them passed. To the Legislature's credit, however, members passed SB 1812, with unanimous support. The comptroller's office will now maintain a database of all entities authorized to condemn private property. State law grants thousands of organizations the power of eminent domain. But, before this session, property owners often could not discern which ones were properly delegated that authority without incurring heavy litigation expenses. Passing SB 1812, though producing a small change, will provide landowners an important reference point and help them decide when it is necessary to assert their rights in court. On the whole, it represents an important step in reducing the financial hurdles that keep Texans from finding safe harbor under the law.

Windstorm Insurance

Economic liberty did not fare so well when it came to Texas' property-insurance market. There, the Legislature undermined recent progress toward reducing state

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interference in the windstorm-insurance market. With a 69 percent market share along the coast, the government-created Texas Windstorm Insurance Association (TWIA) has become the coast's primary windstorm insurer. Recently, though, a gradual increase in rates had set it on the path toward more-actuarially sound rates that would allow more participation by the private market.

SB 900 takes the TWIA in the opposite direction. It blurs the lines between the government and the private sector. Its changes to the TWIA's governing board may undercut any support the organization had for higher rates. Ultimately, SB 900 creates an inopportune mix of intervention and mandates that will further increase subsidies and reduce private-sector participation for the foreseeable future.

Market Regulations

In the area of consumer finance, no harm was done. At least five bills aimed at obstructing consumer access to property-tax loans stalled in committee despite strong support from special interests. HB 1936 in particular had the full backing of the banking industry during its hearing before the House Committee on Business and Industry. Members expressed little interest in removing current protectionist policies, however, even when there was strong evidence that the regulations dragged Texans further into debt.

Likewise, the Legislature successfully fought off attempts to tighten regulations on short-term consumer lending. Multiple bills were filed to further restrict consumer access to short-term lending. While none of them passed, neither did the Legislature address the problem of Texas cities enacting their own ordinances restricting nontraditional lines of consumer credit.

Regarding electricity markets, legislation to remove the Public Utility Commission's (PUC) authority to abandon competition by moving to a capacity market (HB 962 and SB 1827) failed to pass. So while an earlier attempt by the PUC to install a capacity market was thwarted, it still has the potential to crop up again without legislative approval.

Finally, the Legislature did not strengthen Texas' right-to-work laws. SB 1968, for example, would have barred public employers from siphoning an employee's wages for membership dues without consent. Unfortunately, the bill died in the House after successfully navigating the Texas Senate. Two other bills did not receive a hearing in either chamber. That said, while workers and employers are still vulnerable to coercive labor practices, the positive response SB 1968 garnered suggests Texas could see movement in the right direction in 2017.

Conclusion

Taken altogether, the 84th Legislature made some progress for economic liberty. Lawmakers declined the anticompetitive demands of special interests on multiple occasions. And, while they also refused to tackle certain protectionist regulations on the books, the omission does not take away from the fact that Texas' legal regime overall is more favorable to economic growth today than it was on the first day of the session. Texas' success hinges on the quality of the courts, just as it depends on well-reasoned, pro-market legislation. The reforms enacted this year will help the state's court system produce outcomes that are both predictable and fair, letting Texans direct money toward private enterprise, rather than toward finding legal counsel. ★

