



Pledge With Texans: 82nd Legislative Session Summary

TCC Pledge: Balance the Budget without Raising Taxes

- [House Bill 1 – The State Budget – Signed by the Governor](#)

The first goal of TCC's 2011 Pledge with Texans was to balance the state budget without raising taxes. When the Comptroller of Public Accounts announced the revenue estimate for the 2012-13 biennium in January 2011, the projection estimated that the state would have \$77.3 billion in general revenue available for appropriation. However, a shortfall was also projected for the 2010-11 biennium, leaving a net general revenue amount for 2012-13 of \$72.2 billion (also accounting for an \$800 million deposit into the Economic Stabilization Fund). This was \$9.9 billion less than had been appropriated from the general revenue fund for the 2010-11 biennium. The Comptroller noted that "for 2012-13, the state can expect to have \$72.2 billion in funds available for general-purpose spending. This total available general revenue represented a 2.9 percent decrease from the corresponding amount of general funds available for 2010-11."¹

This was the second time that Texas legislators have been faced with a general revenue shortfall in the past decade, and legislators addressed the shortfall in the same way: by reducing spending and without increasing taxes. Through House Bill 275, legislators appropriated \$3.2 billion from the Economic Stabilization Fund in order to balance the 2010-11 budget. The general revenue shortfall for the 2012-13 biennium was met through spending reductions across the entire state budget: \$1.6 billion was cut from the general revenue budget in total (or 2 percent of general revenue spending compared to 2010-11), resulting in a total general revenue budget of \$80.5 billion. The All Funds budget (which included federal and other funds) was reduced by \$15.1 billion (or 8.1 percent compared to 2010-11).

- [Protecting the Economic Stabilization Fund](#)

While it was appropriate to spend \$3.2 billion of the ESF to help balance the 2010-2011 biennium budget (via HB 275), legislators remained vigilant and retained an approximate \$6.5 billion balance in the Fund by not utilizing the monies for the 2012-2013 biennium budget. This is a critically important accomplishment because the Fund plays a significant role in underpinning the long-term fiscal health of the state. The fund helps the state to retain a strong bond rating, and is a necessary cushion against skyrocketing Medicaid costs once PPACA takes full effect in 2014.

- [Senate Bill 7 \(82-1\) – Improving Health Care Efficiency - Signed by the Governor](#)

Senate Bill 7 reforms health and human services programs and agencies in order to improve service delivery and to generate revenue savings to the state. The bill also attempts to improve the quality and efficiency of health care in Texas. The key provisions include expanding Medicaid Managed Care to South Texas counties that are currently excluded, abolishing the State Kids Insurance Program, transitioning away from fee-for-service health care program models, seeking an interstate health care compact (see Limiting Federal Intrusion section for more information) and allowing for the creation of health care collaboratives to reduce the cost of health care.

¹ Texas Comptroller of Public Accounts, 2012-13 Biennial Revenue Estimate, January 10, 2011.

In sum, SB 7 reforms the state's health care system, some of which (such as the Medicaid Managed Care expansion) are necessary to balance the state budget without raising taxes. Many of the other provisions address fundamentally flawed economic incentives within the current system and will pave the way for lower-cost, higher-quality health care in future biennia.

- [Senate Bill 8 \(82-1\) – School District Mandate Relief – Signed by the Governor](#)

Senate Bill 8 makes reforms to the Education Code to increase school district flexibility, particularly with regard to implementing the budget reductions that were enacted during the regular session. For example, the bill removes current statutory requirements that necessary school district personnel reductions be made in reverse order of seniority, giving school districts further flexibility to make necessary workforce reductions in a way that prioritizes the quality of instruction that an educator can provide rather than simply the seniority of the teacher as determined by years of service per current law. In addition, SB 8 allows school districts to furlough staff for up to six days per year.

SB 8 is a positive reform that will give much greater flexibility to local school districts over their workforce and payroll.

- [House Bill 18 \(82-1\) – Relieving the Class Size Mandate – Passed in House](#)

House Bill 18 (82-1) would have provided school districts with some relief from state-imposed student-teacher ratios. Specifically, the bill clarifies current statutory provisions related to exceptions to the 22:1 ratio that can be granted by the Education Commissioner. Under the provisions of HB 18 the Commissioner is prohibited from granting an exception that would result in a student-teacher ratio of more than 25:1 in a classroom, or a district-wide average of 22:1. This tracks a recommendation of both the Comptroller of Public Accounts and the Texas Conservative Coalition Research Institute's State Budget Task Force:

In concert with improving productivity, the state should allow school districts more flexibility to run their own operations by reducing and eliminating state mandates. One of the most prominent and costly state mandates is the 22:1 student to teacher ratio in kindergarten through the fourth grade. According to the Office of the Comptroller:

Many school officials believe the 22:1 limit interferes with their ability to staff campuses cost-effectively, asserting that classes with up to 25 students can operate without any loss of instructional effectiveness. Some suggest that the 22:1 requirement be based upon average class size rather than applying to all classes, giving districts more flexibility to set class size, allocate resources and limit costs.²

Basing the student-teacher ratio on average class size would permit classes of up to around 25 students and would save \$558 million all funds per year. Adjusted for state general revenue across a biennium, this reform would yield savings of around \$580 billion in GR over the 2012-13 biennium.³

Passage of HB 18 would have provided school districts with some much-needed flexibility from a state-imposed mandate as they seek to address revised funding levels in the upcoming and future biennia.

² Texas Comptroller of Public Accounts, "Financial Allocation Study for Texas," December 2010.

³ TCCRI State Budget Task Force Final Report, January 2011.

- *Stricter State Constitutional Spending Limit – No Action Taken*

Several resolutions were filed that proposed a stricter spending limit in the Texas Constitution based on population growth and inflation. These included HJR 70 by Paxton, HJR 42 by Callegari, and HJR 58 by Hancock. No significant action was taken on any of these bills.

TCC Pledge: Limit Federal Intrusion

- [Senate Bill 7 \(82-1\) – Interstate Health Care Compact - Signed by the Governor](#)

Senate Bill 7 is a particularly strong, conservative health care reform bill that could lead to long-term positive benefits for the State of Texas.

The bill proposes an interstate health care compact pursuant to Article I, Section 10 of the United States Constitution. Once two or more states have agreed to it, the compact would become effective upon the later of the following: (a) the date a state adopts this compact under that state's laws or (b) the date on which Congress consents to the compact.

A compact is a creative solution to the inflexible federal health care system. Under the compact, states would have flexibility in spending federal funds on health care. For example, member states could alter eligibility and benefit levels. This flexibility is critical given escalating health care costs and the new restraints imposed by the federal government under PPACA.

An interstate health care compact is a constitutional vehicle to free the state from prescriptive federal mandates in the health care area. It is a substantive response to the challenge of federal government intruding on states' rights under the Tenth Amendment to the U.S. Constitution

- [House Concurrent Resolution 18 – Federal Balanced Budget Amendment- Signed by the Governor](#)

While the State of Texas operates within a spending limit contained in the Texas Constitution, the United States Constitution contains no such limitation. It is the omission of such a spending limit from the Constitution that has allowed the federal government to engage in deficit spending, resulting in the record levels of debt that the taxpayers of the United States must now (or eventually) repay. A balanced budget amendment is imperative:

- The federal government was running a budget deficit of \$871 billion through seven months of fiscal year 2011, \$71 billion more than at the same point in fiscal 2010.
- The deficit in March was \$188 billion, slightly less than an earlier CBO forecast.⁴

Interest owed on the more-than-\$14 trillion accumulated federal debt increased by \$6 billion during the month, while payments to Social Security beneficiaries also jumped by \$6 billion, according to the CBO.

- [House Bill 2510 – Exempting Incandescent Light Bulbs from Federal Regulation – Signed by the Governor](#)

House Bill 2510 will provide that an incandescent light bulb that is manufactured in Texas and remains within Texas' borders may not be regulated by federal law or under the authority of United States Congress to regulate interstate commerce.

The bill requires the Texas Attorney General (AG) to defend a citizen of Texas who is prosecuted for a violation of a federal law concerning an incandescent light bulb manufactured and retained in Texas.

Congress passed a law in 2007 that will outlaw certain incandescent light bulbs beginning in 2012. The state should have the authority to regulate products within its borders when such products are not used in interstate

⁴ <http://online.wsj.com/article/BT-CO-20110506-713361.html>

commerce. While the bill may face a legal challenge, that appears to be the point: to force a court to rule on the constitutionality of the 2007 congressional legislation.

NOTE: Sen. Mike Enzi (R-Wy.) has introduced the S. 395 Better Use of the Light Bulb (BULB Act) to repeal the light bulb ban. It is cosponsored by 22 senators including Rand Paul. In the House, Rep. Marsha Blackburn has also introduced H.R. 91 the BULB Act to turn over the light bulb ban⁵.

- [House Bill 335 – Transparency of Cost of Federal Health Care Reform Legislation – Vetoed by the Governor](#)

House Bill 335 will ensure that both legislators and the public are able to understand the financial cost of federal health care reform legislation on the state and its citizens.

The bill would have required state agencies to submit a report to the Legislative Budget Board before implementing a provision of a federal health care reform law if the agency incurs an expenditure under circumstances identified in the bill, or if the Legislative Budget Board determines that a report about the expenditure is necessary to a comprehensive and continuing review of a program or operation of a state agency.

Per the Governor's Veto Proclamation: "...I do not think the mandate required by House Bill 335 is necessary, as this information would be available upon request of state leadership. As such, I will be working with state leaders to direct state agencies to provide information necessary to assess the impact of overreaching federal health care legislation on Texas."

- [House Bill 41 \(82-1\) & Senate Bill 29 \(82-1\) – Prohibiting Unreasonable Searches by Security Officials – Each bill passed each respective body in the Special Session; SB 29 passed on Second Reading in the House on the final day of the Special Session; SB 29 motion to suspend failed 96 Yeas, 26 Nays, 2 Present, not voting \(four-fifths vote required\)](#)

Numerous news stories have detailed overly aggressive body searches by the Transportation Security Administration (TSA) of travelers going through airport security. House Bill 41 and Senate Bill 29 attempt to address this problem.

The bills would amend Penal Code Sec. 39.03 to provide that a public servant would commit an offense if, while acting under his or her office and without probable cause, the public servant performed a search for the purpose of granting access to a publicly accessible building or form of transportation and intentionally, knowingly, or recklessly "touched the anus, sexual organ, buttocks, or breast of another person, including touching through clothing; or touched the other person in a manner that would be offensive to a reasonable person."

A public servant would include a U.S. officer, employee, or agent; anyone contracted to perform on behalf of a U.S. branch, department, or agency; or anyone acting under federal law. The public servant would have a defense to prosecution if he or she performed the search pursuant to, and consistent with, an explicit and applicable grant of federal statutory authority that was consistent with the U.S. Constitution.

- [House Concurrent Resolution 50 – Asserting Texas' Tenth Amendment Rights – Passed in House Only](#)

HCR 50 would have affirmed Texas' constitutional rights and served notice to the federal government to cease and desist enforcing certain mandates that infringe upon those rights.

⁵ Summary from FreedomWorks

- [House Concurrent Resolution 94 – Federal Financial Regulation – Passed in House Only](#)

House Concurrent Resolution 94 urged Congress to repeal the Dodd-Frank Wall Street Reform and Consumer Protection Act, noting that the agency created by the bill “will be at least as large as the Internal Revenue Service; Texas banks will have fewer and more expensive products to offer to their customers, and the credit needs of rural and urban Texans will be determined by an agency in Washington.”

- [House Bill 32 – Health Care Freedom – Point of Order Sustained \(House\)](#)

House Bill 32 would have amended the Insurance Code to provide that a Texas resident is not required to obtain individual health insurance coverage, and is not subject to a fine or penalty for a failure to do so. Some narrow exceptions are included in the bill, such as one for students who are required by a higher education institution to have health insurance coverage as a condition of enrollment.

HB 32 would address one of the central problems of the Patient Protection and Affordable Care Act of 2010 (PPACA): the individual health insurance mandate contained in that legislation is an overreach of the federal government’s authority. Texas has joined 26 other states in challenging the constitutionality of that provision of the legislation.

In January 2011, a Florida federal judge ruled against the Obama Administration and in favor of the 26 states over the constitutionality of the PPACA. [Other legal challenges are pending in various federal courts.] In the Florida decision, the court found that PPACA exceeded the scope of Congress’ power under the Commerce Clause of the federal Constitution. While the Commerce Clause empowers Congress to regulate commercial activity, the court concluded that the decision by an individual to not purchase health insurance is inactivity, not activity. Therefore, Congress cannot compel a person to purchase health insurance. HB 32 takes exactly this position by providing that Texans are not subject to a fine or penalty if they fail to purchase health insurance.

TCC Pledge: Improve Election Integrity

- [Senate Bill 14 – Voter Identification - Signed by the Governor](#)

Senate Bill 14 will require individuals to show photo identification before voting. Acceptable forms of identification consist of the following: election identification certificate, or personal identification card issued to the person by the Department of Public Safety; a military identification card that contains the voter's photograph; a United States citizenship certificate that contains the voter's photograph; a United States passport; and a license to carry a concealed handgun issued by the Department of Public Safety.

The bill provides reasonable exceptions to the photo ID requirement, including exceptions for indigent, elderly, and disabled voters. In addition, the bill provides a mechanism by which individuals who are not carrying photo ID with them may still vote provisionally; they would then be required to provide verification of their identity within six days of the election.

Voter ID was designated as an emergency item by Governor Perry at the start of the 82nd Legislative Session. With the passage of this legislation, Texas joins other states who have addressed voter fraud with similar legislation. Eliminating voter fraud is an essential part of protecting voter rights, because every fraudulent vote cancels out a legitimate vote. The United States Supreme Court has ruled voter identification to be constitutional. [see also: SB 1 (82-1), which requires verification of citizenship or residency status for new or renewal drivers' licenses]

- [House Bill 2449 – Mail-In Ballot Security – Signed by the Governor](#)

House Bill 2449 addressed the problem of “vote harvesting” with mail-in ballots. In the future, when official ballots or carrier envelopes are obtained in violation of current law pursuant to one continuing course of conduct, the illegal conduct could be considered as a single offense and the number of ballots or carrier envelopes aggregated in determining the grade of offense.

This addresses a shortcoming in existing law under which a vote harvester would have to be caught in possession of at least 20 ballots in order to be charged with a felony.

- [House Bill 174 – Cancellation of Voter Registration of Non-Citizens and Deceased Voters – Signed by the Governor](#)

House Bill 174 requires local registrars of deaths to file a monthly abstract report with the Secretary of State and with the voter registrar of the decedent's county of residence. Under the bill, voter registrars will be required to cancel a voter's registrations immediately if registrars receive notice that the voter is deceased.

The Secretary of State would also be required quarterly to compare records to the statewide voter registration list and notify voter registrars if a determination is made that a voter is deceased or is not a citizen. The bill will also require certain court clerks to send a copy to the Secretary of State and the county or district attorney of persons excused or disqualified from jury service because they indicate that they are not a citizen of the United States.

This legislation will enhance the integrity of voter registration rolls by creating a mechanism through which voters who have died and non-citizens who have illegally registered to vote are removed from voter rolls. In turn, this new mechanism will reduce opportunities for election fraud by helping to ensure that voter registration rolls are accurate and up to date.

TCC Pledge: Secure the Texas Border

- [House Bill 1 – Border Security Funding – Signed by the Governor](#)

Within the fiscally-conservative state budget, \$87.8 million was devoted to funding border and homeland security initiatives, including more than \$50 million capital equipment items such as border security vehicles and fiber optic scopes that will help law enforcement agents secure the state's international border. This investment is important because one of the state government's core constitutional responsibilities is to provide for law enforcement; Texas shares a 1,200 mile border with Mexico, which presents abundant opportunities for crimes to occur, such as the trafficking of persons and drugs.

Devoting funding to preventing such crimes is clearly necessary and was another notable success of the state budget. Law enforcement efforts along the border, such as Operation Wrangler III, have been shown to decrease border crime by one-third in periods of less than a month.

- [Senate Bill 1 \(82-1\) – Verifying Citizenship of Applicants for Drivers Licenses – Signed by the Governor](#)

In October 2008, the Texas Public Safety Commission enacted an administrative rule (37 T.A.C. § 15.171) that made several changes to the driver's licenses that are issued to legal immigrants.

Provisions added to Senate Bill 1 in the Special Session codify portions of this rule, requiring applicants for new, renewal, or duplicate licenses to prove either: U.S. citizenship; or legal immigration (unless the information has previously been provided). SB 1 also links the expiration of legal immigrants' drivers' licenses, provisional licenses, or occupational licenses to the date of the expiration of their legal immigration status.

These changes are particularly important not only because they will help ensure that non-citizens are prevented from voting (especially in light of the passage of SB 14, the photo voter ID bill), but they will also prevent illegal immigrants from obtaining drivers licenses, and assist the work of law enforcement officers and border security officials, who will be able to ascertain the immigration status of anyone they detain.

- [Senate Bill 1009 – Notification of Foreign Students Leaving a Course of Study – Signed by Governor](#)

Senate Bill 1009 amends the Education Code as it relates to foreign students who leave a course of study at public institutions of higher education. As the Legislative Budget Board noted:

The bill would require public institutions of higher education to notify the federal Student Exchange and Visitor Information (SEVIS) if certain foreign students withdraw from all courses in which the student is enrolled or if the institution dismisses the student or takes any other official administrative action in regard to the student as a result of the student's nonattendance.

SEVIS is operated by U.S. Immigration and Customs Enforcement (ICE), which "helps the Department of Homeland Security and Department of State monitor school and exchange programs and F, M and J category visitors. SEVP administers the F and M visa categories."⁶

SB 1009 will help ensure that ICE is informed whenever a foreign student leaves a course of study at a public institution of higher education in Texas (SB 1009 pertains to students on F and M visas). In many cases, enrollment on such a course will be the basis on which a foreign student was legally admitted to the United States. It is vital, therefore, that ICE be made aware whenever a foreign student leaves a course as this may invalidate their residency in the United States.

- [House Bill 12 \(81R\), Senate Bill 9 \(82-1\) – Ending Sanctuary Cities. In the Regular Session: HB 12 Passed in the House Only; Motion to Suspend Regular Order of Business Failed in Senate \(19 ayes, 12 nays\) because of 21-vote rule; Special Session: SB 9 Passed in the Senate Only](#)

House Bill 12 passed the House with overwhelming support in the Regular Session, and Senate Bill 9 passed the Senate in the Special Session, an encouraging indication that the Legislature is seeking to address the problem of sanctuary cities for illegal immigrants. Legislation to ban sanctuary cities was designated as an emergency item by Governor Perry at the start of the 82nd Legislative Session.

The bills provided that cities would no longer be eligible to receive state grant funds if they prohibit their employees or officials from taking enforcement actions relating to illegal immigrants, such as inquiring into the immigration status of a person arrested or lawfully detained for the investigation of a crime.

In addition, the bill would have authorized the Attorney General to bring suit against a sanctuary city to force that city to comply with the law. Border security involves not just patrolling the border, but also enforcing laws against people who illegally enter the country or remain in the country after their visa expires. House Bill 12 would have ensured that Texas cities could not frustrate law enforcement.

- [House Bill 875 – Illegal Aliens in the Criminal Justice System – Passed in the House Only](#)

House Bill 875 would have required sheriffs or other officers in charge of correctional facilities, upon receiving a defendant arrested for a felony or certain intoxication offenses, to immediately make a reasonable effort to determine the defendant's citizenship status.

- [HB 197 - Verify Citizenship for Occupational Licenses – Passed in the House Only](#)

CSHB 197 would have added Ch. 60 to the Occupations Code to require an individual working in a licensed occupation to submit proof of citizenship or work authorization before engaging in work under the license. The individual would have to provide the documentation to the relevant licensing authority when submitting an initial application or renewal. An individual who submitted an application online would have 30 days after the filing date to submit the required documents. The bill would include an exemption for applicants for a combative sports license (e.g., professional contestant or referee).

- [HB 1122 - Increase Penalties for Human Trafficking – Passed in the House Only](#)

House Bill 1122 would have amended Chapter 20 of the Penal Code to increase penalties for engaging in human trafficking. Trafficking another person with the intent that the trafficked person engage in sexual services or knowingly benefiting from participating in a venture that involves such activity would be a second-degree felony. Trafficking a child with the intent that the trafficked child engage in forced labor or sexual services (or knowingly benefiting from participating in a venture that involves such activity) would be a first-degree felony.

The bill would amend Chapter 33 of the Civil Practice and Remedies Code to provide that a person is jointly liable for any legally applicable damages if he or she acted in concert with another person to compel prostitution of another or engage in human trafficking.

Importantly, the bill would amend Article 12 of the Code of Criminal Procedure to provide that that there is no statute of limitation for (1) compelling the prostitution of a child, and (2) trafficking a child for child sexual services (or an offense where a person benefits from such trafficking).

TCC Pledge: Cut Taxes and Encourage the Free Market

- [House Bill 274 – “Loser Pays” Tort Reform – Signed by the Governor](#)

House Bill 274 would institute "loser pay" reforms to the Texas system of civil justice so that cases that are without merit may be dismissed, saving innocent parties from enduring the costs of a protracted meritless lawsuit. If a suit is dismissed as meritless, per the rules to be drafted by the Supreme Court, the bill would permit a court to award "equitable and just" costs and reasonable and necessary attorney's fees to the prevailing party.

Texas individuals or businesses forced to defend themselves against a frivolous lawsuit should not have to bear the legal costs of defending themselves. As a recent *Wall Street Journal* opinion piece argues:

Small businesses—the engines of our economy and the creators of 64% of American jobs—are usually the target of frivolous lawsuits. In fact, small businesses paid 81% of business tort liability costs in 2008. On average, a small business earning \$1 million must spend \$20,000 annually on lawsuits—money they could have otherwise spent on product development or new job creation...

Lawsuit abuse—and the serial litigants who often drive it—costs every American \$838 a year, according to Towers Perrin. Tort reform is a matter of fairness, of leveling the playing field between litigants and defendants. If a legitimate case is brought before a court, the victim should not bear the financial responsibility of bringing justice. But if a frivolous, get-rich-quick case is built against an individual or business, the defendant should not be financially liable for a wrongful accusation.⁶

HB 274 addresses this problem by deterring such lawsuits. This will strengthen the free market in Texas by reducing the cost of doing business in the state and encouraging entrepreneurs and businesses to invest their capital in Texas in the knowledge that the state has a fair and equitable legal climate.

- [House Bill 3 \(82-1\) – Texas Windstorm Insurance Association Reform – Signed by the Governor](#)

The Texas Windstorm Insurance Association (TWIA) is a 'pool' of all property and casualty (P&C) insurance companies authorized to write coverage in Texas. TWIA provides basic wind and hail insurance coverage for Gulf Coast property owners who might otherwise be left uninsured. TWIA is funded in part by the premiums charged to property owners who purchase coverage through the Association, and in part by assessments made against P&C insurers operating in Texas. In recent years, TWIA has had to cope with two catastrophic events (Hurricanes Dolly and Ike) that caused billions of dollars of losses for the Association, claims for hundreds of millions of dollars for losses not covered by the Association, and related litigation.

House Bill 3 (82-1) addresses these issues and clarifies existing statutory provisions related to the resolution of disputes concerning TWIA claims. In particular, the bill:

- Improves oversight and auditing of TWIA, and requires an annual catastrophe plan detailing how losses incurred under existing policies will be paid. Auditing authority is granted to the State Auditor.
- Contains provisions allowing TWIA to require alternative dispute resolution to precede and ideally preclude the need for a civil action arising in connection to a claim against the Association.
- Creates policy discounts for policyholders who elect to use binding arbitration to resolve disputed claims.

⁶ “A Texas Roundhouse for the Trial Lawyers,” *Wall Street Journal*, Chuck Norris and Stephen DeMaura, June 3, 2011.

- Requires the appointment of a panel of experts to provide advice on the causes of damage to covered properties. Distinctions between damage caused by wind, waves, tidal surges, or rising seawater are critical to the total amount of losses incurred by the Association.
- Creates new conduct standards for TWIA employees, including conflict of interest provisions.
- Requires TWIA board meetings to be broadcast live on the internet and archived on the Association's website.
- Clearly subjects TWIA to state open records and open meetings statutory requirements.

For TWIA to function effectively, it is essential that its financial resources are used primarily for paying claims, and not legal fees or damages.

- [Senate Bill 1087 – Equal Regulatory Framework for Cable and Video Service Providers – Signed by the Governor](#)

Senate Bill 408 (79R) by Sen. Nelson created a statewide franchising system for cable or video service providers operating in Texas that permitted cable service providers to terminate a municipal franchise by providing notice to the relevant municipality. However, as the bill analysis for HB 256 (82R; House companion to SB 1087) noted, “[s]ince this enactment, all video services providers, other than an incumbent cable operator providing service in a municipal franchise area before September 1, 2005, can seek a state franchise from the Public Utility Commission of Texas to provide video services.”⁷

SB 1087 equalizes the treatment of cable service providers and video service providers by establishing that a cable service provider or video service provider that was not allowed to or did not terminate a municipal franchise under [the provisions of SB 408] may elect to terminate all unexpired municipal franchises and seek a state-issued certificate of franchise authority for each area served under a terminated municipal franchise by providing written notice to the commission and each affected municipality before January 1, 2012. The new law puts competing service providers on a level regulatory framework.

- [Senate Bill 980 – Deregulation of Certain Telecommunication Services – Signed by the Governor](#)

Senate Bill 980 (House companion: HB 2620) establishes that private telecommunications utilities cannot be subjected to more burdensome regulations than public utilities, affirming the role of the free market. The bill also prohibits state regulation of Voice over Internet Protocol services (VOIPs), and provides that utilities operating in deregulated markets should not receive assistance from the Universal Service Fund (USF), which is intended to ensure telecommunications services in high-cost, rural areas. This is appropriate because utilities in deregulated areas are able to charge rates that cover these costs, so there is no need for USF assistance. Finally, the bill's provision that deregulated markets as of September 1, 2011 will remain deregulated is consistent with the conservative principle that free markets lead to better results than regulation.

- [Senate Bill 1693 – Periodic Rate Adjustments by Electric Utilities – Signed by the Governor](#)

Senate Bill 1693 changes the law relating to periodic rate adjustments (PRA) by electric utilities. Under previous law, the process to recover investments, revenues, and expenditures associated with electric grid infrastructure could be administratively burdensome and time consuming. Senate Bill 1693 creates a framework under which the Public Utility Commission of Texas (PUC), with participation from electric utilities and other affected parties, has the authority to implement periodic rate adjustments in order to expedite recovery of certain distribution infrastructure costs.

⁷ HRO Analysis for SB 480 (79R).

Specifically, the bill allows an electric utility to petition the Public Utility Commission (PUC) for approval of a PRA for invested capital categorized as distribution plant, distribution-related intangible plant, and distribution-related communication equipment and networks. The PRA can be adjusted upward or downward and cannot be used for any expenses other than those mentioned above. The PRA must be consistent in cost allocation to various rate classes and must not diminish the PUC's ability to change existing rates if the PUC finds the rates are unreasonable. The bill does not prevent the PUC from reviewing the investment costs included in a PRA and allows for a refund to customers if any amount is found to be imprudent.

Senate Bill 1693 will permit continued investment in Texas' distribution system by making the ratemaking process more predictable and less litigious, and by allowing for more timely cost recovery. This continued investment has paid dividends: in 1999, the Texas legislature allowed utilities building transmission to periodically adjust their rates, which would then be subject to a "true up" in the next general rate case. Since then, more than 8,000 circuit miles of transmission improvements have been constructed and 45,000 MW of new generation have been added.

- [Senate Bill 875 – Environmental Permitting - Signed by the Governor](#)

Senate Bill 875 would provide that an individual or entity who is subject to an administrative, civil, or criminal enforcement action brought for nuisance or trespass arising from greenhouse gas emissions has an affirmative defense if:

- 1) the actions that resulted in the alleged nuisance or trespass were authorized by a rule, permit, order, license, certificate, registration, approval, or other form of authorization issued by the Texas Commission on Environmental Quality (TCEQ) or the federal government (including federal government agencies); and
- 2) either
 - a) the individual or entity was in substantial compliance with the applicable authorization (e.g., a permit) when the alleged nuisance or trespass was occurring; or
 - b) TCEQ or the federal government exercised enforcement discretion in connection with the actions that resulted in the alleged nuisance or trespass.

In a recent court case in Mississippi, plaintiffs sued energy and chemical companies for contributing to global warming and greenhouse gas emissions under Mississippi common-law claims, including public and private nuisance, trespass, and negligence.⁸

Businesses cannot operate efficiently if they are subjected not only to government regulation, but also to lawsuits even when they comply with government regulation. While government environmental regulations may be excessive at times, they are at least formulated by people and agencies that have expertise that citizen activists and courts lack. Thus, if government regulators are satisfied that a business or entity is not violating greenhouse emissions guidelines that should be sufficient to provide that business or entity with certainty that it will not be sued for greenhouse emissions. Senate Bill 875 would provide this certainty by creating a "safe harbor" for those who comply with government regulations.

⁸ See <http://www.taftlaw.com/news/publications/detail/589-global-warming-lawsuit-thrown-out-by-federal-court-of-appeals>.

- [House Bill 1390 – Retainage in Certain Construction Contracts – Signed by the Governor](#)

House Bill 1390 will make changes to an area of construction law dealing with a practice known as retainage. If contractors or subcontractors work on a property or provide material for work on a property, they may seek a lien to protect their right to payment. Retainage is a practice that makes the remedy of a lien more likely to be meaningful by ensuring that funds exist to satisfy the lien. Retainage refers to a property owner's withholding 10% of the full contract price from a contractor for at least 30 days after the work is completed. If problems arise with payments at any point along the contracting train (e.g., a subcontractor claims that the contractor has not paid him), the retained funds can be used to pay the subcontractor, assuming the subcontractor has perfected a lien against the retained funds.

Currently, a subcontractor seeking a lien against retained funds to secure payment for services must do so within 30 days of the work being completed (or the contract being terminated or abandoned). If this deadline is missed, the subcontractor loses his power to make a claim. This 30-day window is too short, because it is common in the industry for subcontractors to be paid a month or longer after project completion. Indeed, the general contractor cannot receive the retainage from the owner until at least 30 days after the project is completed, and in practice it is often more than 30 days. This means that if the general contractor plans to use the retainage funds to pay the subcontractor, he will pay the subcontractor more than 30 days after the project is completed. In such cases, it will be too late for the subcontractor to file a lien if the general contractor does not satisfy his obligation to pay the subcontractor.

Thus, a subcontractor can either refrain from asserting a lien against retained funds, missing the 30-day deadline to do so; or, the prudent subcontractor can protect himself by filing a lien before he knows whether the general contractor has failed to pay him. Essentially, a prudent subcontractor is forced to file liens on every project he works -- which has the negative result of clouding title — regardless of whether the general contractor has given even a hint that it might not pay the subcontractor.

By expanding the 30 day window to 60 days, House Bill 1390 will allow subcontractors to file liens only when they experience problems with obtaining payment from general contractors. The bill should thus reduce the number of liens filed, and will further a key purpose for which retainage exists - to ensure that subcontractors are paid for their work without creating a significant burden on owners.

- [Senate Bill 1 \(82-1\) – Extension of the \\$1 million Franchise Tax Revenue Exemption – Signed by the Governor](#)

A provision of Senate Bill 1 in the Special Session extends the \$1 million Franchise Tax Revenue exemption through December 2013. This is a critical piece of legislation that protects the state's small businesses from having to pay the Franchise Tax. Texas' strong economic climate is built on the notion that businesses' tax burden should be as low as possible; exempting small businesses from the Franchise Tax encourages entrepreneurship and will help keep Texas' business climate vibrant.

- [Reduce or Eliminate School Property Taxes – No Action Taken](#)

Several bills were passed that will narrowly reduce the negative impact of school district property taxes such as SB 516 by Patrick/Fletcher (property tax exemption for surviving spouses of disabled veterans) and SB 201 by Uresti/Callegari (ensuring that the disabled veteran exemption moves with the veteran).

However, no action was taken by the Legislature on any property tax reform or reduction that would have far-reaching or broad-based impact.

Other Significant Conservative Victories

- [House Bill 15 – Sonogram Prior to an Abortion - Signed by the Governor](#)

In order to uphold the health and safety of Texas women, and to uphold the sanctity of human life, House Bill 15 requires that a woman seeking an abortion undergo a sonogram and be given the option to view the image of her baby, as well as the option to hear the baby's heartbeat. This was established as an emergency item by Governor Perry.

- [Senate Bill 18 – Protecting Private Property Rights- Signed by the Governor](#)

Senate Bill 18, which was an emergency item for the 82nd Legislature, strengthens the property rights of owners who are faced with having their property confiscated by an entity with the power of eminent domain. The bill makes clear that any taking through the power of eminent domain must be for a "public use," and requires that entities make a "bona fide" offer to purchase property before initiating eminent domain proceedings.

SB 18 is the latest of many steps the Legislature has taken to bolster private property rights since the deplorable *Kelo* decision of the U.S. Supreme Court, which authorized the taking of private property through eminent domain for economic development purposes. With the passage of SB 18, private property rights in Texas are strengthened, and governments' powers are limited.

- [Senate Bill 321 – Advancing Second Amendment Rights- Signed by the Governor](#)

House Bill 681 amends Chapter 52 of the Labor Code to provide that an employer may not prohibit an employee from "transporting or storing a firearm or ammunition the employee is authorized by law to possess in a locked, privately owned motor vehicle in a parking lot, parking garage, or other parking area the employer provides for employees." The bill contains limited exceptions, notably for public and private schools, and provides employers with immunity from civil liability except in cases of "gross negligence." This is a strong second amendment rights bill.

- [Senate Bill 551 – Property Tax Reform - Signed by the Governor](#)

Senate Bill 551 amends the Tax Code (Chapters 26 and 31) as it relates to the liability for interest on taxes on improvements that escaped taxation in a previous year.

Under current law, entities that levy property taxes can charge property owners interest on the value of back taxes that accrue in relation to improvements made to a property in a previous year, provided that the value of those improvements was not included in the property appraisal performed by the relevant appraisal district. HB 234 establishes that interest on back taxes in relation to improvements is not owed by a property owner provided that all three of the following apply:

- The appraisal district has actual or constructive notice of improvement in the year in which the improvement escaped taxation;
- The land on which the improvement is located did not escape taxation for the year in question; and,
- The property owner pays all back taxes due on the improvement within 120 days after the tax bill is sent.

This is a sensible reform that protects taxpayers from financial hardship resulting from an oversight on the part of an appraisal district.

- *House Bill 1201 – Repeal of the Trans-Texas Corridor - Signed by the Governor*

House Bill 1201 repeals statutes pertaining to the establishment, development, operation, financing, and acquisition of right-of-way for the Trans-Texas Corridor. With the passage of this bill, the Trans-Texas Corridor is fully and finally repealed.