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# Taxes & Torts *in* Texas

## The Honorable Rick Perry

*Texas, facing many of the same crises afflicting California, has enacted dramatic reforms, most of them consisting mainly of obvious common sense applied to what are routinely written up as "intractable" problems. To show how another large state is moving forward, CPR reprints the following excerpt from remarks delivered December 9 at The Heritage Foundation by Texas Governor Rick Perry.*

**A**mong the states, spending increased by 39 percent during the economic boom years of the late 1990s. When the dot-com bubble began to burst and the economic engine finally began to cool, it was inevitable that many states would have new spending habits they could no longer afford. There are two fundamental choices that must be made in tough budgetary times — especially in states like Texas where the constitution requires a balanced budget — and that is either to raise taxes or to control spending. I believe that when the economy softens, it is precisely the wrong time to raise taxes. Our families and businesses should not have to shoulder additional sacrifices so government doesn't have to.

### Zero-Based Budgeting

We welcomed the New Year in Texas with the news that the state government was nearly \$10 billion in the hole, representing roughly 16 percent of what we spend in state general revenue. It was a huge challenge — one that would require more than a little tinkering with the

levers of the government machinery. It was time to overhaul the engine.

The Texas Legislature meets only 140 days every two years, though there is a movement afoot to change that to two days every 140 years. And based on the refusal recently by some legislators to show up for work, I think that movement is gaining momentum.

But with a part-time Legislature, tough decisions must be made quickly. When we convened in January, we did two things in short order. We required nearly every state agency to produce cuts of 13 percent for the remainder of the fiscal year. And second, because Texas elected its first Republican majority in 130 years, legislative leaders joined me in a new approach to budgeting. We started at zero.

We scrapped the practice that had gone on for decades — the writing of new budgets with the previous year's budget as the starting point. Instead, we viewed tough economic times as a unique opportunity to build government anew, reshape priorities, and refocus its mission.

Every state agency had to explain their priorities and identify ways that they could create additional savings. No government program or government expenditure was immune from inspection. And we refused to budge from our position of "no new taxes" even as the voices of big government began to fill the editorial pages and the halls of the state capitol with outrage.

The proponents of bigger government have complained I have been hardheaded in my opposition to tax hikes. They call it political calculation. I call it an act of principle. We often hear the voices of those opposed to budget cuts. Well, they have a right to be heard. But what about the voice of the taxpayers — the men and

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*The Honorable Rick Perry is governor of Texas. This article is excerpted from Heritage Lecture #814, published by the Heritage Foundation and available at: <http://www.heritage.org/Research/Taxes/hl814.cfm>*

women who run the drycleaner up the street, who drive the trucks that put food on our tables, and who pay the bills and pay the taxes and represent everything that is best about America?

They are the quiet engines of progress, the silent majority of Americans, and they are wise enough to know that it is not the size of government that defines the compassion of our people, but the priorities we set. That is why we approached our state budget like families do. Our families can't count on a raise in salary to make ends meet; they have to address spending.

When the politicians refuse to cut spending, their version of a raise amounts to your version of a tax increase. And it's not right. No government in the history of mankind has ever taxed and spent its way to greater prosperity. It was Wilson Churchill who said, "For a nation to try to tax itself into prosperity is like a man standing in a bucket and trying to lift himself up by the handle."

## New Priorities

At the end of the day, the people of Texas got a budget that did not contain one cent in new taxes. We consolidated 12 health and human service agencies down to five, while increasing education funding by more than a billion dollars. We pared down spending on the state education bureaucracy by more than \$70 million. And we invested in jobs because job creation in the private sector is the one proven revenue generator we have.

In fact, we created a new \$295 million enterprise fund to attract new jobs and employers to Texas. In tough economic times, a lot of leaders like to talk about jobs. But you can't create jobs by passing the tax hikes that kill jobs.

Now, I'm not going to stand up here and tell you I signed the perfect budget. It was a product of consensus and compromise. Some are really worked up about new fines and fees on drunk drivers to fund trauma care and highway safety. The Legislature also used payment deferrals continued from past budgets and drew down \$1 billion from our state's rainy day reserve fund.

But instead of spending every dime of federal assistance sent to the states, we set aside hundreds of millions of dollars to deal with future bumps along the road to economic recovery. Our budget reflects new priorities and a new way of governing, but fundamental

shifts in governance are not fully accomplished overnight. Rome was not built in a day and neither was bureaucracy. It takes time to implement lasting, fundamental reform.

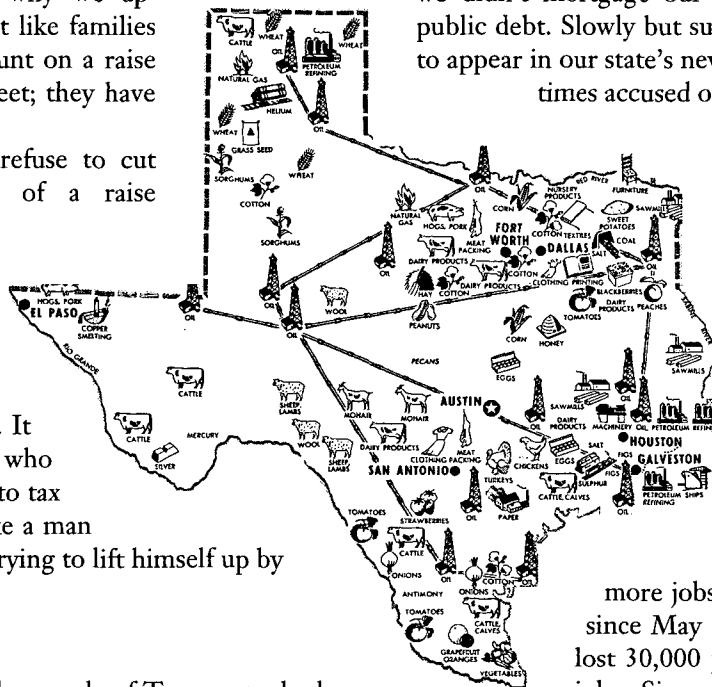
But we avoided the lunacy of selling tobacco revenue bonds at less than 50 cents on the dollar. We didn't raid our pension funds. We didn't fund a bunch of ongoing obligations with one-time sources of funding, and we didn't mortgage our future on a mountain of public debt. Slowly but surely, good news is starting to appear in our state's newspapers — a group sometimes accused of shunning good news.

Texas public schools continue to advance. Hispanic enrollment in Texas universities is at an all-time high. Our bond rating has remained steady and strong, and the economic storm clouds lingering since the twilight of the Clinton Administration are clearing.

Last month we added more jobs in Texas than any month since May of 2000. While California lost 30,000 jobs, Texas gained 28,500 jobs. Since New Year's Day, I have stood up time and again with entrepreneurs and business leaders across Texas to announce thousands of new, private sector jobs adding billions of dollars to our economy. The signs of an economic recovery are there.

And I don't think it is a coincidence that Texas is now at the forefront of good economic news because instead of spending what we have always spent and raising taxes to support a growing spending habit, our new two-year state budget will spend \$2.6 billion less in general state revenue. It represents the first time since World War Bi that the Legislature has spent less general revenue than the previous one.

We would be wise to remember that the wealth of our people is not defined by how much money is in government's coffers, but taxpayers' pockets. Jobs are not created by government, but by the ingenuity of the private sector. But government can unleash private sector ingenuity by removing the impediments to job creation: high taxes, over-regulation, and frivolous litigation. Many states have sought to go a differ-



ent route in tough economic times, including some states with Republican governors. I am not here to criticize my colleagues, but I will say this: If even Democrats refuse to campaign on big government ideas, why would any Republican govern on them?

When Bill Clinton stood before the Congress and said the era of big government is over, we reached a pivotal point in our great national debate. The liberals knew they could no longer win on the merits of their own ideas, but they *could* win based on the theft of our ideas. Suddenly, the other side was for deficit reduction, welfare reform, and a middle-class tax cut. Conservatives do not have to worry about selling conservative ideas when Democrats are running on them. Our task is not to redefine a conservative vision, but *always* to articulate one.

### Lawsuit Reform

On no issue is there a more stark difference than on lawsuit reform. The Texas success story can be traced to two historic achievements: Despite a \$10 billion deficit, we balanced our budget with no new taxes, and we passed the most sweeping lawsuit reforms in America.

Our health care system was in a state of crisis. We had neurosurgeons and other specialists leaving high-risk areas, or the practice of medicine altogether, because of the threat of frivolous lawsuits and the reality of skyrocketing medical liability rates. Today in Texas, three out of five counties do not have an obstetrician. That's a hardship for many pregnant women in certain areas of our state, but especially women with high-risk pregnancies.

A large part of the problem was a litigation climate rife with abuse. There was a jackpot mentality among some in the legal profession who were simply looking to strike it rich with one big verdict. There have been so many frivolous medical claims filed that seven out of every eight are dismissed without payment. The Texas airwaves, billboards, and telephone books are filled with advertisements from our robust personal injury bar. One trial lawyer even opened an office across the street from a children hospital advertising his expertise in birth injury cases.

We decided to address this issue head-on before one more good doctor left our state. Legislators placed caps on arbitrary non-economic damages. Individual health care providers are no longer subject to non-economic damages above \$250,000 per case. Health care institutions are subject to a separate \$250,000 cap with an entire claim not to exceed a total of \$750,000 in non-economic damages.

But we took it one step further. To prevent the legal delays that would have ensued for years and to give Texas patients and doctors immediate relief, we asked

voters to approve a constitutional amendment to give legislators the authority to limit non-economic damages in all civil cases.

And despite a \$10 million advertising blitz by the Texas trial lawyers, 11 days ago Texas voters protected their health care, saved their doctors, and restored balance to our system of civil justice by passing Proposition 12. Our tort reforms extended beyond the practice of medicine. We passed into law the most sweeping tort reform measures in the nation. The *Wall Street Journal* called it "Ten-Gallon Tort Reform," and said, "Texas not only provides an example for other states but also for Republicans in Congress."

Now, I'm not a lawyer by trade. I'm a farmer. But I know what a lot of entrepreneurs know as someone who helped run the family business: There is no greater job killer than a legal system run amok. We reformed our class action laws, allowing defendants to appeal class certification directly to the Texas Supreme Court to decide up-front, not after years of litigation, if the plaintiff has a class action. And we did something else regarding class action suits. Have you heard about plaintiffs' lawyers receiving millions in fees for a class action while the clients get nothing but coupons? Now, if the clients get paid in coupons, so do the lawyers!

We passed a new offer-of-settlement law. If a party refuses a settlement offer and receives less from a jury than what was offered at settlement, they get to pick up the other side's legal fees and costs from the date of their refusal. Texas created a new standard to ensure sued parties pay only their proportionate responsibility. Sometimes the individual or entity that causes the damage isn't in the lawsuit. Under our new law, you don't get blamed for what you didn't do.

We also reformed our product liability laws so innocent retailers are not left on the hook for a manufacturer's mistake. We enacted liability limits for good Samaritans, voluntary firefighters, charity volunteers, and teachers, who should not be sued for simply doing an important public service.

We closed loopholes that allow trial lawyers to venge shop, and we did something else that makes abundant sense: If it can be shown that failing to wear a seat belt contributed to a person's injuries, it can now be admitted as evidence in court. These comprehensive reforms restore balance to our system of justice while maintaining proper protections for Texans who are harmed. As a leading CAW told me, there is no better way to create jobs than to pass tort reform. We are doing everything we can to make Texas a state attractive for jobs and entrepreneurs, opportunity, and prosperity.

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# Still *Busy*

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**A critique of business lobbyist effectiveness  
brings confirming evidence to light.**

My article last issue ("Busy Signals," *CPR*, Nov./Dec. 2003), pointed out that a relatively small number of pro-market lobbyists do more than their share of the work for their cause at the state Capitol. Also, it argued that maybe, just maybe, dues-paying members of some merchant groups, trade associations, industry organizations, and business coalitions are not getting the "bang for

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**BY ROBERT L. GIOVATI**