

WRITING THE STATE BUDGET

82nd Legislature

Budget cycle in brief.....	1
General appropriations bill	2
Initial budget development	4
Legislative action	5
Restrictions on spending	7
Action after final passage	10
Interim budget action	11

Writing a two-year budget is one of the main tasks of the Texas Legislature. During the 2011 regular session, the 82nd Legislature will consider a budget for fiscal 2012-13, the two-year period (“biennium”) from September 1, 2011, through August 31, 2013. A majority of states and the federal government operate on a one-year rather than a two-year budget cycle.

The budget cycle in brief

Although Texas law designates the governor as the state’s chief budget officer, the Legislature traditionally has dominated the budget process. The Legislative Budget Board (LBB) is charged with preparing the budget and evaluating agencies’ financial performance. The LBB staff operates under the board, which consists of the speaker of the House and the lieutenant governor as co-chairs, the chairs of the House Appropriations and Ways and Means committees, the chair of the Senate Finance Committee, two House members appointed by the speaker, and three senators appointed by the lieutenant governor. Both the LBB and the governor develop budget recommendations and must submit budget proposals to the Legislature. The Legislature develops and adopts the budget.

Since the early 1990s, the state has developed biennial budgets through a form of performance budgeting based on strategic planning. The governor initiates this process by outlining the government’s mission, goals, and priorities. Each state agency then develops strategies for accomplishing its goals and submits a budget request to implement its strategic plan. The Legislature determines the agency’s biennial funding after considering performance measures to gauge the agency’s success in meeting its goals.

Before each regular session begins, the comptroller of public accounts issues a constitutionally required estimate of revenue available for spending. On January 10, 2011, Comptroller Susan Combs estimated that the state will have available about \$177.8 billion from

all revenue sources during fiscal 2012-13. The estimate includes \$72.2 billion in general revenue-related funds available for general-purpose spending, 2.9 percent less than the \$74.3 billion in general revenue-related funds that were available for fiscal 2010-11. See the comptroller's *Biennial Revenue Estimate, 2012-13* for a more complete description of the revenue estimates and projected economic outlook.

The comptroller's revenue estimate includes a negative \$4.3 billion balance from fiscal 2010-11, which may be partially offset by agency spending reductions. In January 2010, the governor, the lieutenant governor, and the speaker of the House instructed all state agencies to identify a 5 percent reduction to their general revenue and general revenue-dedicated funds appropriated for fiscal 2010-11. Among the major exceptions were the Foundation School Program and benefits or client eligibility levels in the Medicaid entitlement, Children's Health Insurance Program (CHIP), and foster care programs. The final accepted reductions to agency spending totaled about \$1.3 billion for fiscal 2010-11. In December 2010, the three state leaders instructed agencies to reduce spending by another 2.5 percent.

Each session, the LBB publishes an estimated state budget, which includes agency-by-agency figures for funds spent or budgeted in previous years, the budget amount requested by each agency, the amount recommended by LBB, and proposed methods of financing. This proposal serves as the starting point for the Legislature's budget deliberations. The January 2011 LBB baseline recommendations for the House and Senate general appropriations bills for fiscal 2012-13 assumed spending would remain within the comptroller's revenue estimate and that no additional revenue source, such as the Economic Stabilization ("rainy day") Fund would be used. The House Appropriations Committee and the Senate Finance Committee each will hold hearings at which agencies may justify their spending priorities and others may express their views.

Appropriations bills must comply with certain constitutional and statutory restrictions on spending. For an adopted appropriations bill to be valid, the comptroller must certify that the state will have enough revenue to cover the approved spending.

The governor may veto any appropriations bill or any specific spending provisions, called line items, within the general appropriations bill. If the Legislature still is in session, it may override the governor's line-item veto by a two-thirds majority of members present in each house.

Between sessions, the governor and the LBB may adjust appropriations under certain circumstances by using budget execution authority. The LBB and the Governor's Office monitor budget implementation and evaluate agencies' success at attaining their goals. Other agencies, such as the State Auditor's Office, the Sunset Advisory Commission, and legislative committees, also may review the financial performance, effectiveness, and efficiency of state agencies or programs.

The general appropriations bill

The House and the Senate general appropriations bills for fiscal 2012-13 are the starting points for the Legislature to prescribe agency spending and to alter state accounting, performance measures, and other budgetary provisions. The bills set a baseline for each state agency and each category of spending. The House is expected to go first this session, so the final version of the bill will be HB 1.

LBB budget estimates. In January 2011, the LBB issued baseline budget estimates for the House and Senate budget bills (see the [House](#) and [Senate](#) versions of LBB's *Summary of Legislative Budget Estimates*, January 2011).

Budget format. Appropriations bills may deal only with spending. Art. 3, sec. 35 of the Texas Constitution limits bills to one subject, except for general appropriations bills, which can include various subjects and accounts. However, this provision has been interpreted as prohibiting the changing of substantive law through an appropriations bill, which may deal only with spending. House Rule 8, sec. 4 reflects this interpretation and explicitly prohibits changes in general law in an appropriations bill.

Articles. For fiscal 2012-13, LBB recommendations for the general appropriations act retain the basic structure of previous budget acts, with 10 articles for agency budgets. Articles 1 through 8 cover state agency

budgets by functional category. For example, Article 3 covers agencies of public and higher education. Article 9 contains general provisions and directions to state agencies, the state salary classification schedule, and contingency appropriations and reductions. Article 10 contains appropriations for the Legislature.

The appropriations bills voted out of committee in previous sessions generally have contained at least three additional articles, including:

- agencies' exceptional items or "wish lists";
- a savings clause, stating that if any part of the act were held invalid, the remaining portions of the act would not be affected; and
- an emergency clause stating that the bill would take effect upon enactment.

Listed at the end of each article are summary appropriations for employee retirement contributions, group health benefits, social security and benefit replacement pay, and lease payments for buildings financed through the Texas Public Finance Authority. Also shown are recapitulations ("recaps") of total spending by article and by type of fund.

Agency budget configuration. Each agency's budget first describes the *method of financing* or mix of revenue sources that finances the agency's appropriation, including interagency contracts.

This information is followed by the number of full-time equivalent (FTE) employee positions authorized by the Legislature and a schedule of exempt positions that specifies salaries of certain employees not covered by the state employee salary classification schedule. FTE authorizations serve as a cap on agency staffing.

Appropriations for each agency's budget are described in components that link funding to the agency's strategic plan, which is expressed in terms of goals and strategies.

Agency goals are general statements of the agency's long-range purposes. They provide a framework for expressing specific strategies, which state how an agency intends to achieve its goals and objectives. Each goal also has specific outcome measures that assess the impact of the agency's actions on the public.

Strategies, sometimes called line items, are the bases for appropriating money to an agency. An appropriation for a single strategy may fund more than one division or program in the agency. The agency may need more than one strategy to accomplish each objective. Strategies also are linked to specific output and efficiency measures. Output measures gauge the quantity of a service provided or a good produced. Efficiency measures gauge the cost or time taken per unit of output.

The examples on [page 4](#) illustrate the format for two portions of the fiscal 2012-13 appropriation for the Commission on the Arts. Figure 1 expresses one set of goals and strategies in terms of funds appropriated, and Figure 2 illustrates the performance measure targets for the same set of objectives.

A rider sets conditions on an appropriation. Some riders express detailed instructions specific to a particular agency's operations. Riders also are used to describe an agency's capital budget, listing all capital expenditures and their methods of finance, or to break down agency funding by goals and strategies and by performance measures.

Some riders contain *contingent appropriations*, which appropriate money only if the Legislature enacts other specific bills. These riders reflect other pending legislation that would authorize particular programs or establish new state agencies. For example, provisions for agencies going through Sunset review usually include a rider making all appropriations contingent on the enactment of Sunset legislation to continue the agency.

The budget may report an agency's *appropriations for administrative functions* as:

- part of a strategy's funding for costs, such as salaries and capital expenditures, that are related directly to a strategy;
- a budget goal called *Indirect Administration*, which can cover general overhead costs, such as computers, administration, and support services, that are not attributed to specific programs or allocated to a strategy;
- an item at the end of an agency's budget called *Other Direct and Indirect Costs Appropriated Elsewhere in this Act*, which identifies expenditures for agency operations that are

not appropriated directly to the agency. For example, employee health-benefit contributions are appropriated to the state Employees Retirement System, not through the individual agency budgets. Usually this item appears in the budgets of agencies that are required to support all of their operations through revenues they collect; or

- a rider called *Appropriations Limited to Revenue Collections*, which requires an agency to pay for specific programs or costs, including administrative costs, with specific revenues such as fees or fines.

Some agencies’ budgets contain only one or two of the above, while others contain all four.

Initial budget development

The Governor’s Office and the LBB work jointly to instruct state agencies on strategic planning

(Government Code, ch. 2056), appropriations, and pre-session budget hearings.

Pre-session budget instructions and hearings. In May 2010, the directors of the LBB and the Governor’s Office of Budget, Planning and Policy instructed state agencies to submit budget requests for fiscal 2012-13 containing two components: a “baseline” request to fund ongoing operations and a list of “exceptional” items above the baseline level. For fiscal 2012-13, agencies were instructed to limit their baseline requests to the amount spent in fiscal 2010 and budgeted in fiscal 2011, minus a 5 percent spending reduction target. Agencies also were required to submit a plan showing how they would reduce their baseline requests by 10 percent for fiscal 2012-13. Deadlines for receipt of agencies’ budget requests, known as Legislative Appropriations Requests (LARs), were set for August 2010.

State law requires the governor to hold budget hearings with an opportunity for testimony by agencies

Figure 1	COMMISSION ON THE ARTS		For the Years Ending	
			August 31, 2012	August 31, 2013
Items of Appropriation:				
A. Goal: ARTS AND CULTURAL GRANTS				
Provide and Support Arts and Cultural Grants.				
A.1.1. Strategy: ARTS ORGANIZATION GRANTS				
A.1.2. Strategy: ARTS EDUCATION GRANTS				
A.1.3. Strategy: DIRECT ADMINISTRATION				
Total, Goal A: ARTS AND CULTURAL GRANTS				
		\$ 2,100,000	\$ 2,100,000	
		\$ 850,000	\$ 850,000	
		\$ 351,467	\$ 351,467	
		\$ 3,301,467	\$ 3,301,467	

Figure 2		
	2012	2013
Performance Measure Targets:		
A. Goal: ARTS AND CULTURAL GRANTS		
Outcome (Results/Impact):		
A.1.1. Strategy: ARTS ORGANIZATION GRANTS		
Output (Volume):		
Number of Funded Applications from Rural and Geographically Isolated Communities	136	136
Number of Funded Applications from Minority Organizations	310	310
Efficiencies:		
Average Grant Amount Awarded to Arts and Cultural Organizations	3,000	3,000

and the public (Government Code, secs. 401.043 and 401.044). Such hearings are optional for the LBB (Government Code, sec. 322.010). The governor and the LBB may cooperate, exchange information, and hold joint public budget hearings. These hearings are the first opportunity for public testimony regarding future agency and program funding. The LBB and the governor's budget staff held joint hearings during August, September, and October 2010 for agencies to explain their requests, provide supporting data, and answer questions not addressed in the LARs.

Growth rate adopted. Art. 8, sec. 22 of the Constitution caps spending of state tax revenue not dedicated by the Constitution to a particular purpose. The growth of spending from nondedicated tax revenue from one biennium to the next may not exceed the LBB's official estimate of the state's economic growth rate, defined as the growth in statewide personal income, unless specifically authorized by a vote of a majority of the members present in each house. On November 15, 2010, the LBB adopted an estimated growth rate of 8.92 percent, which limits spending from nondedicated tax revenue in fiscal 2012-13 to \$78.1 billion (for more on the growth rate, see pages 7-8).

Comptroller reports. Art. 3, sec. 49a of the Constitution requires the comptroller to submit before a regular session statements disclosing the financial condition of the state at the close of the last fiscal period and estimates of the revenues and expenditures for the current fiscal year, as well as anticipated revenue for the upcoming biennium. A supplemental estimate is required before any special session. The revenue estimate issued in January 2011 for fiscal 2012-13 is \$72.2 billion in general revenue-related funds and \$172.8 billion in all funds.

The comptroller is not bound by the initial revenue estimate and may revise it at any time. The only revenue estimate that applies in determining if the state budget is balanced is the one made when the comptroller certifies the general appropriations bill (see comptroller certification, p. 10).

LBB budget submission. Government Code, sec. 322.008 requires the LBB to send copies of an estimated state budget to the governor and each member of the Legislature within the first five days of a regular session. This document, called *Legislative Budget Estimates*, includes agency-by-agency figures for funds

spent or budgeted in previous years, the budget amount requested by each agency, the amount recommended by LBB, and methods of financing. The document indicates the number of FTE positions targeted for each agency and a schedule of salaries for exempt positions. The LBB must submit a budget in the form of a bill within seven days of the beginning of the regular session.

The LBB must submit to the Legislature by the third Tuesday of the regular session a report evaluating the performance and efficiency of agency programs (Government Code, sec. 322.011). Recommendations cited in the LBB's report, *Texas State Government Effectiveness and Efficiency*, often are incorporated into funding proposals.

Governor's budget proposal. Governors formerly submitted their own detailed budget proposals, but in recent years they have tended to submit either general outlines or no separate budget at all. If submitting a budget, the governor must do so before giving the State of the State address (Government Code, sec. 401.046) and may prepare a general appropriations bill that must be submitted by the 30th day of the session or by the 20th day following inauguration if newly in office (Government Code, sec. 316.009).

Legislative action

The House and the Senate usually take turns originating the general appropriations bill and chairing the budget conference committee. For the 2011 regular session, the bill will originate in the House. Both houses work on the budget, and they hold hearings simultaneously.

During the 81st Legislature's 2009 regular session, the Senate Finance Committee reported SB 1 by Ogden, the general appropriations bill for fiscal 2010-11, on March 30, and the bill passed the Senate on April 1. The House Appropriations Committee reported a substitute version of SB 1 on April 7, and the bill passed the House on third reading on April 18. A conference committee was appointed, and both houses adopted the committee report in late May. Comptroller Combs certified SB 1 on June 8, and Gov. Perry signed the bill on June 19.

House action. The House Appropriations Committee (HAC) has jurisdiction over appropriations bills. For the 2011 session, HAC includes a chair, a vice

chair, and 25 additional members. Up to one-half of the general HAC membership is determined by seniority and one-half chosen directly by the speaker, which is the method used for determining the membership of other substantive committees. House Rule 4, sec. 4(b) prohibits the chair of the Appropriations Committee from serving on another substantive committee.

The chair of HAC usually appoints standing subcommittees to consider different parts of the budget, such as general government, health and human services, education, criminal justice, and business and economic development. Each subcommittee holds public hearings and makes recommendations on budget proposals for agencies, programs, or funding under its jurisdiction. The full committee then makes final budget decisions during “mark-up” of the bill.

Time constraints. House Rule 8, sec. 21(g) requires the HAC to report the general appropriations bill to the House by the 90th day of the session, which will be April 11 for the 2011 session. The general appropriations bill has priority over other bills that would appropriate money. Under House Rule 8, sec. 21(a), during the first 118 days of the session the speaker may not lay before the House any bill appropriating money unless the general appropriations bill already has been enacted and the comptroller has certified it. The speaker is to withhold his signature from such bills. If the HAC does not meet its 90th-day reporting deadline, this rule is suspended. The 118th day of the 2011 session is May 9.

House Rule 8, secs. 21(b) and (f) further restrict consideration of specific appropriations bills. To ensure compliance with the constitutional limit on spending from state tax revenue not dedicated by the Constitution, no bill that appropriates such revenue may be considered before final approval of the general appropriations bill, and no bills may be considered that, when added to amounts previously appropriated, would exceed the limit.

Bills reducing taxes or providing payment for legislative expenses, judgments against the state, and emergency matters are not subject to the House appropriations restraints (House Rule 8, sec. 21(e)).

Dynamic economic impact statement. Under a new provision adopted in 2011, the HAC chair must send the general appropriations bill to the LBB to prepare a dynamic economic impact statement. This statement must include the number of state employees to be affected and the estimated impact on private-sector employment resulting from any change the bill makes in state expenditures from the preceding biennium (Rule 4, sec. 34 (a-1)).

Distribution of the bill. A printed copy of the general appropriations bill reported by the HAC must be distributed to each House member at least 168 hours (seven days) before it may be considered on second reading during a regular session. During a special session, the bill must be distributed at least 72 hours in advance (House Rule 8, sec. 14(a-1)). The Calendars Committee must post electronically the calendar on which the general appropriations bill will be considered on second reading at least 144 hours (six days) in advance for that calendar to be eligible for consideration (House Rule 6, sec. 16(a-1)).

Limit on amendments. The House Calendars Committee usually adopts a special rule limiting floor amendments to the appropriations bill to changes that do not affect the “bottom line.” The rule usually has required that any amendment adding or increasing an appropriation item must contain an equal or greater reduction in one or more other appropriation items. For a special rule proposed by the Calendars Committee concerning a general appropriations bill to take effect, House members must adopt it by a majority vote. A proposed rule cannot be amended.

Second-reading amendments must be filed at least 72 hours (three days) before the calendar on which the bill appears is eligible for consideration (House Rule 11, sec. 6(h)). The House usually considers numerous floor amendments before approving its version of the general appropriations bill.

Senate action. The Senate Finance Committee develops the Senate budget proposal. Like all standing committees, the entire Finance Committee is appointed by the lieutenant governor, who also names the chair and the vice chair. Budget hearings historically have occurred before the entire Senate Finance Committee, although in past sessions workgroups have heard testimony on specific areas of the budget.

Unlike in the House, Senate action on the general appropriations bill tends to follow the same rules that apply to all other legislation before the Senate. Bills are placed on the daily calendar in the order in which the Senate receives the committee reports. Approval by two-thirds of the members present is required to suspend the regular order and bring the general appropriations bill to floor consideration. Unlike in the House, the Senate Finance Committee version of the budget usually passes the full Senate without floor amendments.

Conference committee action. After the House and the Senate adopt their versions of the general appropriations bill, the speaker appoints five House members and the lieutenant governor appoints five senators to a conference committee to reconcile differences between the bills. The conference committee usually includes the chairs of the House Appropriations and Senate Finance committees and four other members of each committee, although the rules do not restrict who may be chosen.

House Rule 13, sec. 9(b) and Senate Rule 12.04 allow conferees to reconcile only points on which the House and Senate bills differ. They may not alter figures that are identical in both bills. If both bills include a spending item but differ on the amount, the conferees may not set the amount lower than the smaller of the two amounts nor increase it above the larger amount. If an item appears in only one bill, the conferees may include or delete it. If they include it, they may reduce but not increase the amount originally included in the bill.

The conferees may not include an item in the conference committee bill that does not appear in either the House or the Senate bill. However, House Rule 13, sec. 9(b)(5) and Senate Rule 12.04(5) allow the conference committee to add money for purposes or programs authorized by bills that have been passed by at least one house.

The conference committee may seek permission from the House and the Senate to make changes otherwise prohibited by the rules — “outside the bounds” — by means of a resolution specifying the changes. Adoption of the resolution requires a majority vote in each house. The resolution must be provided to members at least 48 hours before being considered in a regular session and 24 hours before in a special session (House Rule 13, sec. 9(f) and Senate Rule 12.08).

House Rule 13, sec. 10(a) requires that the conference committee report on the general appropriations bill be distributed to members at least 24 hours before it may be considered. Senate Rule 12.09(a) requires that the conference committee report be laid out for 48 hours before being considered in a regular session and 24 hours before in a special session.

Restrictions on spending

Lawmakers must adhere to a number of restrictions when approving state spending. These include limits set forth by the Texas Constitution and in state statute and those associated with federal funds.

Constitutional limits. Five major constitutional limits bear on the appropriations process.

Appropriation requirement. Under Art. 8, sec. 6 of the Texas Constitution, no money may be drawn from the state treasury unless it has been appropriated by law. No appropriation may be made for longer than two years.

Budget growth limit. Art. 8, sec. 22 caps spending of state tax revenue not dedicated by the Constitution to a particular purpose. An example of dedicated revenue that does not count toward the constitutional spending limit is motor-fuels tax revenue dedicated to highway and public education expenditures.

The rate of growth of spending from nondedicated tax revenue may not exceed the LBB’s official estimate of the growth rate of the state’s economy. A majority vote of the members of each house may override this spending limit, which the 80th Legislature did in 2007, for the first time since 1978 by adopting a concurrent resolution authorizing it to exceed the spending limit to fund school property tax relief. Government Code, ch. 316, subch. A specifies how the LBB adopts the growth rate.

On November 15, 2010, the LBB adopted an estimated growth rate of 8.92 percent from fiscal 2010-11 to fiscal 2012-13. The LBB adopted the comptroller’s growth-rate estimate from among five forecast sources that offered estimates ranging from 4.63 percent to 13.13 percent. The current rate is the lowest economic growth rate ever adopted; the previous low was a rate

of 9.14 percent in 2009. The highest growth rate, 33 percent, was adopted in 1980 after the spending limit first was enacted. The budget growth limit for fiscal 2012-13 exceeds estimated revenue by about \$6 billion.

Prohibition against deficit spending. Art. 3, sec. 49a limits spending to the amount of revenue the comptroller estimates will be available during the two-year budget period. The comptroller must certify that the state will have enough revenue to pay for the approved spending. Once the comptroller certifies a general appropriations bill, that certification stands, even if the comptroller subsequently determines that revenues will not cover expenditures after all. The Legislature may override the provision only if at least four-fifths of the members of each house approve.

The state may end a fiscal biennium with an unanticipated deficit, but it must eliminate the deficit in the subsequent budget. There must be sufficient revenue for the upcoming biennium to cover both spending in the general appropriations bill and any deficit left over from the previous biennium (see Attorney General Opinion JM-666, April 1, 1987). For example, when Comptroller Combs issued her *Biennial Revenue Estimate* in January 2011, she reduced her fiscal 2012-13 general revenue projection of \$76.5 billion by \$4.3 billion, the general revenue deficit amount currently projected for fiscal 2010-11, leaving \$72.2 billion available for spending. If spending reductions or legislative action reduce or eliminate the projected fiscal 2010-11 deficit, the Legislature will have more general revenue available to spend in fiscal 2012-13.

Limits on state debt. Art. 3, sec. 49 of the Constitution prohibits state borrowing except to “supply casual deficiencies of revenue,” repel invasion, suppress insurrection, defend the state in war, or pay existing debt. Texas voters have amended this provision numerous times to authorize the issuance of general-obligation bonds backed by the state’s full faith and credit, most recently in 2007.

Voters amended Art. 3, sec. 49 in 1991 to allow creation of state debt through ballot propositions submitted to the voters by a two-thirds vote of each house of the Legislature without amending the Constitution itself for each new bond proposal. This provision has never been used.

Art. 3, sec. 49-j, approved by voters in November 1997, sets a specific limit on certain state debt. The Legislature may not authorize general-obligation or revenue bonds or large lease-purchase agreements designed to be repaid from general revenue if the resulting annual debt service from general revenue would exceed 5 percent of the average amount of general revenue (excluding funds dedicated by the Constitution) over the preceding three fiscal years. The limitation does not include bonds that are backed by the full faith and credit of the state and are reasonably expected to be paid from other revenue sources and not draw on general revenue, unless repayment from general revenue actually is required.

At the end of fiscal 2010, actual debt service on outstanding debt payable from general revenue equaled about 1.36 percent of unrestricted general revenue, according to the Bond Review Board. The ratio of total authorized debt service (issued and unissued) to unrestricted general revenue was 4.10 percent at the end of fiscal 2010. The total authorized debt service increased significantly because voters approved more than \$9.75 billion in additional general obligation debt in the November 2007 general election.

Limit on child welfare spending. Art. 3, sec. 51-a limits state spending on assistance to needy children and their caretakers to no more than 1 percent of the total state budget. Federal matching funds and administrative expenses are not included under the spending cap.

According to the LBB, the welfare spending limit for fiscal 2010-11 was about \$1.8 billion. The fiscal 2010-11 budget allocated \$131.4 million in state spending for grants for Temporary Assistance for Needy Families, about \$1.7 billion below the constitutional limit.

Dedicated revenues and funds. Legislative spending discretion also is restricted by constitutional or statutory dedications that reserve certain revenue sources for special purposes or by state compliance with court orders and federal requirements.

General revenue-dedicated funds are those funds within the General Revenue Fund, such as the State Parks Account and the System Benefit Fund, reserved to specific purposes by the Texas Constitution or specific statutes. According to the LBB’s *Fiscal Size-up, 2010-11*

Biennium, only about 20 percent of the general revenue funds and general revenue-dedicated funds appropriated for fiscal 2010-11 reflected totally discretionary spending by the Legislature.

Constitutional or statutory dedications consumed about 45 percent of all general revenue and general revenue-dedicated fund appropriations in fiscal 2010-11. About 23 percent of general revenue and general revenue-dedicated fund spending was influenced or directed by federal laws, regulations, and court decisions, and about 12 percent was influenced by statutorily imposed funding formulas, according to the LBB. Spending from other funds not included in the General Revenue Fund, such as the State Highway Fund (Fund 6), are restricted by constitutional provisions.

In addition to general revenue restrictions, the state's \$182.2 billion total appropriation for fiscal 2010-11 included about \$65.5 billion in federal fund expenditures. Federal funds generally are granted for specific purposes or with restrictions on how states may spend these funds.

Fund consolidation. Since 1991, the Legislature has phased out restrictions on many dedicated revenue funds and has changed the methods of fund accounting. In the past, most dedicated revenue was held in separate "special funds," severely limiting the general revenue available for general-purpose spending. The Legislature has phased in the consolidation of many dedicated funds into general revenue and has contained the growth of newly created dedicated accounts. The General Revenue Fund now contains about 200 dedicated accounts.

Government Code, sec. 403.095 requires that at the direction of the Legislature, the comptroller reduce the balance in general revenue-dedicated accounts by the amount that exceeds appropriations from these accounts. Funds in general revenue-dedicated accounts that the comptroller estimates will exceed appropriations for the current biennium as of August 31, 2011, were included in the comptroller's estimate of funds available for general-purpose spending in fiscal 2010-11. Accounts exempt from this provision include accounts created by a court or the Constitution, trust funds, and funds outside the treasury.

Economic Stabilization Fund. The Economic Stabilization Fund, or "rainy day" fund, will reach \$9.4 billion by the end of fiscal 2013, according to the comptroller's January 2011 *Biennial Revenue Estimate*.

The comptroller must transfer one half of any unencumbered balance remaining in the General Revenue Fund at the end of a biennium to the rainy day fund. Only twice has an unexpended balance been transferred to the fund under this provision – in 1991 and again in fiscal 2008 in the amount of \$1.8 billion.

The rainy day fund also receives 75 percent of any oil or natural gas production tax revenue that exceeds the amount collected in fiscal 1987. These transfers are required both by statute and by Art. 3, sec. 49-g of the Constitution, approved by voters in 1988.

The rainy day fund has grown rapidly in recent years because of increased collections of oil and natural gas production taxes. Transfers of excess natural gas and oil production tax collections to the rainy day fund are projected to be \$1.2 billion from fiscal 2009 through fiscal 2011.

Money in the rainy day fund may be spent only with legislative approval. Subject to various limitations, approval by at least three-fifths of the members present in each house is required for spending from the fund that does not exceed the amount of any unanticipated deficit or revenue decline during a biennium. However, any amount from the fund may be spent for any purpose if at least two-thirds of the members present in each house approve it.

The rainy day fund cannot exceed an amount equal to 10 percent of the total amount deposited into general revenue (minus certain types of income and funds) during the previous biennium. The cap usually is higher than 10 percent of the actual general revenue estimate for a biennium because many funds, including federal funds, are first deposited into the General Revenue Fund before being transferred to other accounts. The cap for fiscal 2010-11 is \$11.9 billion.

The Legislature has appropriated money from the Economic Stabilization Fund during four legislative sessions. In 2005, the 79th Legislature enacted HB 10 by Pitts, the supplemental appropriations act, appropriating a total of \$1.93 billion from the rainy

day fund, including funding for public schools and textbooks, Child Protective Services, Medicaid, CHIP, and the new Emerging Technology Fund. In 2003, the 78th Legislature appropriated a total of \$1.26 billion from the fund, mostly for Medicaid, teacher health insurance, and the Texas Enterprise Fund, through a supplemental appropriations act, HB 7 by Heflin. In 1993, the 73rd Legislature appropriated a total of \$198 million from the rainy day fund for criminal justice programs, including establishing the state jail system. In 1991, the 71st Legislature appropriated \$29 million, the entire balance of the fund, to the Foundation School Fund.

Action after final passage

Certification. After an appropriations bill is approved by each house and signed by the speaker and the lieutenant governor, it goes to the comptroller. Under Art. 3, sec. 49a of the Constitution, no appropriations bill may be considered enacted or sent to the governor for consideration until the comptroller certifies that the state will have enough revenue to cover the approved spending. Government Code, sec. 403.0131(a), added in 2003, requires the comptroller to certify the appropriations act not later than the 10th day, excluding Sundays, after the date the act is reported enrolled by the house from which it originated.

Art. 3, sec. 49a allows appropriations in excess of anticipated revenues in cases of “emergency and imperative public necessity” with approval of four-fifths of the total membership of each house. Generally, however, the Legislature does not approve an appropriations bill unless the revenue necessary to pay for it is available.

A bill not certified is treated as if it never passed and is returned to the house from which it originated. If the Legislature still is in session when the comptroller returns the bill, the bill can be amended to conform to the comptroller’s revenue estimate.

Governor’s veto powers. Art. 4, sec. 14 of the Constitution authorizes the governor to veto line items in any spending bill that contains more than one item of appropriation. In 2009, Gov. Perry used line-item vetoes to reduce spending by \$97.2 million in general revenue funds and \$288.9 million in all funds. The vetoed

appropriations were contingency appropriations for 29 bills that were not enacted or were vetoed. In previous sessions, the governor has vetoed appropriations for group insurance contributions for some community colleges, certain payments to the federal government, and funds associated with a data services contract.

While the Legislature is in session, the governor has 10 days (not counting Sundays) after receiving the appropriations bill to make line-item vetoes. If the governor fails to act within the 10 days, the bill becomes law. If the Legislature still is in session when the governor vetoes a line item, the bill is returned to the Legislature, which may override the veto if two-thirds of the members present in each house approve. The house where the bill originated votes first.

If the appropriations bill goes to the governor later than the 10th day (not counting Sundays) before the session ends, the governor has 20 days (counting Sundays) after the session ends to act. If the 82nd Legislature’s 2011 regular session lasts its full 140 days and ends on May 30, the veto deadline will be Sunday, June 19.

The Legislature must take all actions on a bill during the same session. Because the general appropriations act usually receives final approval during the last few days of a session, the Legislature typically forfeits the chance to override any line-item vetoes. If the Legislature happens to be meeting in a subsequent special session when the governor vetoes line items from an appropriations bill approved during the regular session, the Legislature cannot override the vetoes during the special session.

Veto-proof riders. Riders that are not “items of appropriation” are not subject to veto. Texas Constitution, Art. 4, sec. 14 states: “If any bill presented to the Governor contains several items of appropriations he may object to one or more of such items, and approve the other portion of the bill.” But in a 1911 court case (*Fulmore v. Lane*, 140 S.W. 405), the Texas Supreme Court held that the governor generally may not veto a rider. A 1951 attorney general’s opinion (V-1196) determined that the governor has no authority to veto a rider in an appropriations bill “unless it is in itself an ‘item,’ that is, a provision containing a specific appropriation of money.” In a 1975 case, *Jessen Associates, Inc. v. Bullock*, 531 S.W.2d 593, the Texas

Supreme Court upheld this view. If a rider is not an item of appropriation, the veto “is of no effect,” but “if the language is intended to set aside funds for a specified purpose, it is an ‘item of appropriation’ and is therefore subject to veto by the Governor.”

Rider 64 in the budget for the Texas Department of Transportation (TxDOT) is an example of an expenditure authorized by a rider that is not technically an “item of appropriation” — and thus, presumably, veto-proof. The rider designates a specified amount of funds for rail projects “out of amounts appropriated above in Strategy A.1.2, Contracted Planning and Design.” The rider language does not appropriate money; it merely stipulates how some of the total amount appropriated to TxDOT for planning and design is to be spent. Thus, if the governor had wanted to veto the \$10.7 million for the rail projects, he would have had to veto the entire \$353.3 million for the biennium for TxDOT’s Contracted Planning and Design strategy.

Lump-sum appropriations. In recent state budgets, each institution of higher education has been funded through a single line item, or lump-sum appropriation, instead of through multiple-line appropriations for separate strategies. A breakdown of each institution’s funding by goals, strategies, and other budget components has been listed in the first rider, called “Informational Listing of Appropriated Funds.” Lump sum appropriations have been controversial in previous sessions, with governors criticizing the practice as reducing accountability over detailed line-item spending.

Effective date. A general appropriations bill usually takes effect immediately, as specified in the bill. Art. 3, sec. 39 of the Constitution says that other bills must be approved by at least two-thirds of the membership of each house in order to take effect sooner than 90 days after adjournment of the session in which they are enacted. A general appropriations bill, however, takes effect as soon as the governor signs it or allows it to become law without signing it (Art. 4, sec. 14). Nevertheless, the spending approved in a general appropriations act generally does not take effect until the start of the new fiscal biennium on September 1 following the regular session.

Interim budget action

An enacted appropriations bill is subject to adjustment after it takes effect, either to reduce appropriations or to add appropriations authority to cover unforeseen spending requirements.

Appropriation reductions and adjustments.

Once it enacts a general appropriations bill, the Legislature may adjust appropriations during the two-year budget period, either in a special session called by the governor or in a subsequent regular session. The appropriations bill itself may include provisions allowing agencies to make discretionary transfers between appropriations items, subject to various limitations or prior approval by the governor and the LBB.

Budget execution authority. Government Code, ch. 317 allows the governor and the LBB, acting jointly, to use budget execution authority to make certain changes in appropriations when the Legislature is not in regular or special session.

A budget execution order may prohibit an agency from spending funds, change the purpose for an appropriation, change the time that an appropriation is distributed to an agency, or transfer an appropriation from one agency to another. It cannot spend money that has not already been appropriated by the Legislature. An order may not withhold for more than 180 days money appropriated to any agency, reduce the salary of an elected state official or a board member appointed by the governor, or reduce appropriations to the Legislature or legislative agencies. An order may not extend beyond a two-year budget period. An order may be superseded by legislative action.

Informal reductions. The governor and legislative leaders also may informally instruct agencies to modify their spending without taking official action to reduce appropriations. In January 2010, the governor, the lieutenant governor, and the speaker of the House jointly instructed state agencies to identify a 5 percent reduction to their general revenue and general revenue-dedicated funds for fiscal 2010-11. All agencies complied with the instructions and identified target reductions accordingly. The three state leaders approved some of the proposed spending reductions and modified or waived others. In December 2010, state leaders instructed agencies

to reduce spending by another 2.5 percent from their original general revenue and general-revenue dedicated appropriations for fiscal 2011.

Supplemental appropriations. The Legislature may change the state budget after it has been approved. Because the regular session begins in January, with eight months remaining in the two-year budget period, agencies sometimes ask for supplemental appropriations to tide them over until the new budget period begins. For example, the 81st Legislature authorized for fiscal 2008-09 supplemental appropriations of almost \$2.4 billion in federal Recovery Act funds for various purposes, additional funding for damage from hurricanes, and other adjustments deemed necessary. A December 2010 letter from legislative leaders said that the supplemental appropriations bill considered by the 82nd Legislature will formalize the spending reductions that agencies previously identified for fiscal 2010-11.

Budget monitoring. Several legislative agencies and entities evaluate agency budget performance and state finance issues between legislative sessions.

The LBB monitors agency performance measures and expenditures and performs interim assignments

directed by the general appropriations act. After a regular session ends, the LBB summarizes the state budget, state revenues, and state government functions, activities, and agencies in its *Fiscal Size-up* report.

The State Auditor's Office, a legislative agency, audits state government management and financial systems, and its work can include audits of the financial operations of state agencies. It also assists in strategic planning and budgeting by assessing the use and appropriateness of agency performance measures.

The Sunset Advisory Commission, also a legislative agency, reviews all agencies scheduled by the Texas Sunset Act (Government Code, ch. 325) for termination in a given year, examining each agency's operational efficiency, conformity to its strategic plan and statutory objectives, and any duplication or overlapping jurisdictions with other agencies.

The House Appropriations Committee and the Senate Finance Committee often schedule oversight hearings during the interim between regular sessions. Other House and Senate committees also may review agency spending as part of their oversight of the state agencies under their jurisdiction.

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