

Andrew Blifford

From: Ursula Parks <Ursula.Parks@lbb.state.tx.us>
Sent: Friday, June 26, 2015 2:12 PM
To: Mike Morrissey; Andrew Blifford
Cc: Amy Borgstedte; Michael VanderBurg
Subject: Letter to CPA

Comptroller Hegar has asked that I send over a memo asking the question on how they would treat items in the HB 1 veto proclamation. I wanted to give y'all a heads up on that; my plan would be to send it over on Monday, and I'll send you a draft ahead of time.

Andrew Blifford

From: Andrew Blifford
Sent: Friday, July 17, 2015 3:19 PM
To: Ursula Parks
Cc: Mike Morrissey
Subject: Memo to CPA

Ursula - our respective offices met today, and agree we'd like you to send the LBB staff's analysis of the vetoes to the Comptroller next week (the version you sent both of us last week).

If something's been updated, can you let us know of any changes? Otherwise, can you send a final version addressed to the CPA for us to look over one more time?

Also, we've asked Lege Council to prepare something similar. They should be providing that early next week, at which point we'd like it to go to the CPA as well.

Thanks

Andrew Blifford

From: Ursula Parks <Ursula.Parks@lbb.state.tx.us>
Sent: Friday, July 17, 2015 3:25 PM
To: Mike Morrissey; Andrew Blifford
Subject: Re: Memo to CPA

I will certainly do so; I'll check the memo I previously sent and see if there are any tweaks to it & get it over to you. Would you like for it to go out to the CPA on Monday?

Thanks!

>>> Andrew Blifford <Andrew.Blifford@speaker.state.tx.us> 7/17/2015 3:19 PM >>>

Ursula - our respective offices met today, and agree we'd like you to send the LBB staff's analysis of the vetoes to the Comptroller next week (the version you sent both of us last week).

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Thanks

Andrew Blifford

From: Mike Morrissey
Sent: Tuesday, July 21, 2015 10:48 AM
To: Andrew Blifford
Subject: RE: Hegar Letter.docx

Agrer

On Jul 21, 2015 10:12 AM, Andrew Blifford <Andrew.Blifford@speaker.state.tx.us> wrote:

We're fine with sending.

From: Ursula Parks [<mailto:Ursula.Parks@lbb.state.tx.us>]
Sent: Tuesday, July 21, 2015 8:57 AM
To: Mike Morrissey; Andrew Blifford
Subject: Hegar Letter.docx

All clear for distribution?

Full disclosure: from what I sent yesterday evening, I changed one comma, corrected one year, and changed one word ("contemplated" to "authorized") for the sake of consistency.



LEGISLATIVE BUDGET BOARD

Robert E. Johnson Bldg.
1501 N. Congress Ave. - 5th Floor
Austin, TX 78701

512/463-1200
Fax: 512/475-2902
<http://www.lbb.state.tx.us>

MEMORANDUM

TO: The Honorable Glenn Hegar,
Comptroller of Public Accounts

FROM: Ursula Parks
Director

DATE: July 21, 2015

SUBJECT: HB 1 Veto Proclamation

I am writing to provide you with LBB staff analysis on the validity of certain appropriations contained in House Bill 1, the General Appropriations Act (GAA), for the 2016–17 biennium in light of the contents of the Proclamation issued by Governor Greg Abbott with respect to that Act.

The Proclamation from June 20, 2015 seeks to veto the appropriation for a number of purposes and programs contained in House Bill 1. However, in nearly all instances the Proclamation does not veto the actual appropriation but rather seeks either to veto non-appropriating rider language or informational items. As it is the case that the Governor may only veto items of appropriation, for the reasons outlined below I believe that many of the items in HB 1 referenced in the Proclamation remain valid provisions.

In our analysis, most of the actions in the Proclamation have the effect neither of actually reducing agency or institution appropriations, nor indeed of eliminating legislative direction on the use of funds.

The Proclamation seeks to go beyond what is authorized in the Texas Constitution, is in many respects unprecedented, and is contrary to both practice and expectation since adoption of the Texas Constitution in 1876.

Giving effect to these objections would be a significant expansion of the power of the Governor with respect to amending or abridging not only legislative appropriations but also non-

appropriation provisions of legislative intent and direction. Ample case law makes clear that the Legislature's power to legislate is plenary, while the Governor's veto power is limited and specific; deference should therefore be afforded to the Legislature in determining the form and terminology it employs. The actions in the Proclamation are thus contrary to the authority provided in the Constitution and also to interpretation afforded through both Texas Supreme Court and Attorney General Opinion.

The Texas Constitution, Article 4, Section 14 states: *If any bill presented to the Governor contains several items of appropriation he may object to one or more of such items, and approve the other portion of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items to which he objects, and no item so objected to shall take effect.*

The Texas Constitution provides very specific and limited power to the Governor with respect to vetoing appropriations. The significant power to veto "items of appropriation" is afforded, but not the authority to amend or edit appropriations, or to veto legislative direction or intent.

It is noteworthy that Governor Abbott stated in his 2016–17 Governor's Budget that one of his budget principles was "providing the Governor with expanded line-item veto authority to ensure prudent and sensible spending solutions" and specifically noted that passage of a constitutional amendment granting "reduction" line-item authority to the Governor would provide a tool to "reduce spending without having to remove entire appropriations." The implication in this statement supports the analysis that the Constitution currently provides limited and specific authority in this area; authority that the Proclamation seeks to extend.

With respect to identifying items in the GAA that are subject to veto, the salient phrase is "items of appropriation." Supported by the case laid out below, an "item of appropriation" is, if nothing else, an appropriation of funds. An "item of appropriation" cannot be a statement of legislative intent, direction, or condition on the use of appropriated funds. In the furtherance of clarity in this area, we offer the following:

Texas Constitution

The Texas Constitution makes a number of references to appropriations, the relevant sections are excerpted in Attachment B. It is clear from reading the language in Article III and Article VIII that appropriations describe the act of authorizing the removal of funds from the Treasury (Art VIII, Sec 6) and then also the sum total of those authorized amounts (Arts III, Sec 49a and VIII, Sec 22). It is critical that all involved parties clearly and reliably identify those amounts authorized to leave the Treasury; those amounts are, per the language in the Constitution, appropriations. Once the definition of "appropriation" is understood as authorizing funds to leave the Treasury, the language in Article IV Section 14 describing "*items of appropriation*" may clearly be understood in the same way. The use in Art IV of "item" simply makes clear that the Governor may veto a subset of the statewide appropriation; the power nevertheless is solely to veto appropriations, and not the direction of an appropriation. If the constitution is read consistently, "appropriation" also means in Article IV what it means in Articles III and VIII

which is the action by law of authorizing the removal of funds from the Treasury. Such removal does not happen in riders that are directing the use of funds that are appropriated elsewhere; the removal action is in the appropriation itself, not in the explanation of it.

It is not reasonable to construe the meaning of “items of appropriation” in different ways depending on circumstance. To have one definition of “items of appropriation” that exists solely for the purpose of allowing the Governor to make a line-item veto under Texas Constitution, Article 4, Section 14, but which does not make an appropriation for purposes of the Comptroller totaling the spending of the state under Texas Constitution Article 3, Section 49a(b) and the Legislative Budget Board in doing so for Article 8, Section 22 (and all other budget documents, including those adopted by the Legislature) would be inconsistent and a detriment to the efficient execution of those constitutional duties.

Legal Precedent

In 1911, the Texas Supreme Court delivered an opinion with respect to *Fulmore v. Lane*, 104 Tex.499, 140 S.W. 405, a case in which the Governor sought to veto a portion of an appropriation, as well as directive language with respect to the appropriation. The court found that the Governor’s veto authority was limited by the Texas Constitution (“the rights of veto must depend upon a grant of power on the Constitution...”) and that such authority is limited to that found in Article 4 Section 14.

Later cited in *Jessen* (a discussion of which follows) is the following from *Fulmore* that remains pertinent: “The executive veto power is to be found alone in section 14, art. 4, of the Constitution of this state. By that section he is authorized to disapprove any bill in whole, or, if a bill contains several items of appropriation, he is authorized to object to one or more of such items. Nowhere in the Texas Constitution is the authority given the Governor to approve in part and disapprove in part a bill. The only additional authority to disapproving a bill in whole is that given to object to an item or items, where a bill contains several items of appropriation. It follows conclusively that where the veto power is attempted to be exercised to object to a paragraph or portion of a bill other than an item or items, or to language qualifying an appropriation or directing the method of its uses, he exceeds the constitutional authority vested in him, and his objection to such paragraph, or portion of a bill, or language qualifying an appropriation, or directing the method of its use, becomes noneffective.” (140 S.W. at 412).

As subsequently supported by Attorney General opinions, a veto attempt is void if the action in question seeks to veto something that is not an item of appropriation.

Jessen v. Bullock, 531 S.W.2d 593 (Tex. 1975) is helpful in defining the difference between an appropriation and a directive rider. *Jessen* centered on whether the Governor could veto a rider authorizing expenditure. The Texas Supreme Court found that the rider was not eligible for veto: “In reaching this conclusion, we hold that a rider to the latest General Appropriations Act^[1] was not subject to the veto of the Governor. The Governor has the power to veto an entire

appropriations bill; but his power to veto part of an appropriations bill is limited to vetoing "items of appropriation." This rider, authorizing the construction of certain enumerated projects without the consent of the College Coordinating Board, was not intended by the Legislature to appropriate funds, and therefore was not an "item of appropriation" which was subject to veto apart from the remainder of the bill."

A distinction between actual appropriations, and rider language that "qualifies or directs the use of appropriated funds" is critical not only to this question but to the overall accountability of state fiscal management. If one accepts that a directive rider that specifies the use of "funds appropriated above" is also an item of appropriation, then it must be true that the rider is specifying an amount in addition to the appropriations made above, and thus total appropriations must be treated as well in excess of the total amount shown in the GAA, and that the Legislature's use of a phrase such as "out of funds appropriated above" in these riders is meaningless. Such an interpretation of the GAA would be chaotic, would not be in keeping with a plain or reasonable reading of the GAA, and would not allow the Comptroller or the LBB to fulfill constitutional responsibilities in a consistent and precise manner.

Note as well that *Jessen* is also a defense of the right of the Legislature to provide direction and intent to state agencies. As none of the items in question constitute a statement of intent on the part of the Legislature to increase spending (one of the tests articulated in *Jessen*) and are instead a statement of legislative direction, they are not subject to veto.

The Texas Supreme Court also found that, "It can be said then that the term "item of appropriation" contemplates the setting aside or dedicating of funds for a specified purpose. This is to be distinguished from language which qualifies or directs the use of appropriated funds or which is merely incidental to an appropriation. Language of the latter sort is clearly not subject to veto." The riders in question do not definitively set funds aside for a sole purpose, since again, they are not an appropriation and further, as the GAA contemplates re-purposing funds; the riders in question certainly still fall in the latter category of qualifying or directing the use of an appropriation.

This reading of *Jessen* has also been supported by Attorney General opinion; for example, Opinion GA-0776 issued on May 21, 2010 states in reference to a rider that directed a transfer of funds from one agency to another: "The Legislature's express use of the phrase "*transfer* to the Department of Motor Vehicles all funds ... *appropriated* to [TxDOT]" suggests that, in enacting section 17.30(b), the Legislature was merely qualifying or directing the use of funds that it expressly appropriated to TxDOT elsewhere in the Act. General Appropriations Act, art. IX, Section 17.30(b), at 5379 (emphasis added). Thus, under the plain language of Section 17.30(b) and the test announced by the Texas Supreme Court in *Jessen*, a court would likely conclude that section 17.30(b) does not constitute an appropriation to the DMV. Rather, Section 17.30(b) would likely be construed as language that merely directs the use of funds appropriated elsewhere in the 2010-11 General Appropriations Act."

While the riders below do not direct transfers, the fact that they direct the use of funds already appropriated makes opinion GA-0776 relevant to this discussion.

The test established in *Jessen* was also applied in Attorney General Opinion MW-51 issued on August 31, 1979 which discusses a rider that directs the use of funds to construct a state office building and provides legislative intent as to the specifics of construction: "These two paragraphs (a reference to the text of the rider) do not constitute an "item" of appropriation under the test established in *Jessen*. They do not set aside or dedicate funds. Instead, the language directs and qualifies the use of funds appropriated elsewhere."

Both *Fulmore* and *Jessen*, in addition to providing clarity on the distinction between appropriations and direction, also gives strong support to the importance of legislative intent. *Fulmore* states, citing Chief Justice Hemphill in an earlier case, "Among the most important of these rules are the maxims that the intention of the legislature is to be deduced from the whole and every part of a statute, when considered and compared together that the real intention, when ascertained, will prevail over the literal import of the terms...." If it is not the intent of the legislature to make an appropriation (to authorize the removal of funds from the Treasury) and is therefore not an item of appropriation, then it is not subject to veto by the Governor.

When the Legislature states "out of funds appropriated elsewhere" it is making clear the intent that the direction is not a new appropriation, but merely directing an appropriation already made.

General Appropriations Act: Appropriations

As noted, the Governor's line item veto authority extends solely to items of appropriation: (1) to strategies for state agencies, (2) to lump sum appropriations to institutions of higher education, or (3) to appropriating riders. General riders, which provide direction on the use of an appropriation, are not subject to veto. To that end, the GAA itself specifically identifies such items, and each agency bill pattern contains the line, "Items of Appropriation" immediately preceding the listing of strategies. This phrase is deliberately chosen and used consistently throughout the GAA in each agency's bill pattern to directly speak to the language in the Constitution. With respect to higher education, the GAA identifies a lump-sum appropriation to each institution; for these entities the strategies are strictly informational (and described as such in the GAA), and not items of appropriation.

In addition to the items found in the strategy listing, on occasion riders that make appropriations in addition to these amounts are included in the GAA. As is required by the Texas Constitution, Article 8, Section 6, the language of these riders is specific that they also make an appropriation. These riders are also capable of standing alone; they are specific, they contain a time frame for the appropriation, the source of funds, and use the words "are appropriated" to make clear the legislative intent that the action of appropriation is happening within the rider itself. Therefore, a rider that clearly makes an appropriation by use of the phrase "in addition to amounts

appropriated above, there is appropriated \$XXX for the purpose of..." are also items of appropriation, as they are plainly making an appropriation, which is to say they are authorizing the setting aside funds from the Treasury for a specific purpose, period, and use by a state entity (authorizing removal).

The GAA is an act of the Legislature, and has the force of law; the form and structure of that Act has meaning. As noted above, the plenary power of the Legislature to legislate is relevant; the legislature determines the form, structure, and language of the GAA. The very clear intent of the Legislature is to define appropriations as those actions that specifically discern an amount of money to be withdrawn from the Treasury to the credit of a state entity. The use of the word "appropriation" is both meaningful and deliberate.

Appropriations may be made by the Legislature and may also be vetoed by the Governor; the power of the veto is to prohibit a withdrawal of funds from the Treasury. It does not extend to vetoing the Legislature's intent and direction.

General Appropriations Act: Directive Riders

Directive riders, such as the capital budget rider or other riders that reference appropriations made elsewhere in the Act are not themselves items of appropriation. These riders direct the use of funds, but do not in themselves authorize the withdrawal of from the Treasury for a purpose. Instead, they identify funds "appropriated above" to the agency in question, and provide direction for their use.

As these riders are not in themselves items of appropriation, and as only items of appropriation may be vetoed, it is our opinion that directive riders in themselves cannot be vetoed. Hence, it is the opinion of the LBB staff that none of the riders contained in the Proclamation, save for certain of the contingency riders that actually make appropriations, are subject to veto.

Note as well that these riders in most cases do not completely restrict an appropriation. For example, the Capital Budget rider for the State Facilities Commission contains text that says "None of the funds appropriated above may be expended for capital budget items except as listed below. The amounts shown below shall be expended only for the purposes shown and are not available for expenditure for other purposes." However:

- The rider language specifically notes that the funds are "appropriated above" and are not appropriated by the capital budget rider itself.
- Article IX, Section 14.03 specifically provides direction on how the funds identified in the capital budget may be used for other projects, as well as direction for modifying the amount of appropriations to which capital budget restrictions apply, with approval of the LBB and the Governor's Office.

The fact that the GAA in many cases contemplates (and provides direction for) re-purposing of appropriations described by directive riders implies that simply being identified in the capital

budget or other rider does not fully constrain the funds to the rider's purpose. It follows that even if elimination of a directive rider or certain text in a rider could occur it would not also eliminate the appropriation, as the GAA contemplates repurposing the appropriation. Therefore, in the case of the capital budget, the appropriation supporting a project is not eliminated by simply eliminating a project. Indeed, on occasion there is need to change capital budget projects during the interim; in those cases the appropriation supporting the project remains valid and the agency is afforded some latitude in spending those funds and may apply to the LBB and the Governor to use them for such projects as it deems necessary.

The same logic holds for other directive riders; the GAA allows a 20% transfer of funds from one strategy to another (limited in certain cases). The GAA clearly contemplates re-purposing of funds identified via rider; again, it is regularly the case that a state agency comes forward in the interim seeking to change the use of funds identified in directive riders, and the GAA provides such a mechanism. If it were the case that such riders could be vetoed (which, again, we dispute) striking the direction of a rider does not eliminate the appropriation (again, the funds are "appropriated above") it simply eliminates direction.

The total amount of an item of appropriation represents a statement of the Legislature's judgment as to how much each entity should be provided for a particular purpose. Riders read in the context of both the appropriation they are directing and the repurposing provisions of Article IX, function together as a body of work that communicates the Legislature's intent to both direct agencies and provide those agencies with the means to address changing circumstances. Eliminating directive riders—or portions of riders—is not only contrary to the Texas Constitution but also diminishes the Legislature's plenary ability to provide direction while preserving flexibility.

Higher Education Appropriations

With respect to higher education institutions, the Proclamation seeks to veto a portion of the total lump sum appropriation, as the strategies identified in the Proclamation are informational, and do not in the case of higher education constitute items of appropriation. As previously noted, only items of appropriation may be vetoed, and only in their entirety. The Proclamation seeks to amend the item of appropriation, a power not afforded by the Texas Constitution.

Out of Bounds Resolutions

Note as well that both chambers of the Texas Legislature at the outset of each session adopt rules for their own operation. Within these rules are provisions for documentation to be included in the Conference Committee Report (CCR) for each piece of legislation. Both the House and Senate require that the CCR include a specific discussion of how differences between the two chambers are resolved, and provide that each chamber must adopt that such an "out of bounds resolution" before the CCR may be adopted.

With respect to appropriations bills, both chambers lay out rules for how differences between "items of appropriation" are to be discussed. The rules for how items of appropriation are shown

in the resolution differ from how differences in text are to be shown; this distinction is very specific in the rules: for the 84th Legislature, the House rule is Rule 13 Section 9 and in the Senate is Rules 12.03 and 12.04.

The LBB staff prepare the out of bounds resolution for appropriations bills. In constructing the resolution, "items of appropriation" are defined as strategy amounts and as riders specifically making an appropriation. We are very clear that directive riders are subject to the text rules, not to the appropriation rules.

Each session, both full chambers adopt the resolution prepared thusly; this supports the contention that it is the intent of the Legislature that directive riders not be considered items of appropriation.

Conclusion

Ensuring a common understanding of what constitutes appropriations is important constitutionally and for providing efficient and effective state oversight of agency expenditures. We welcome further discussion on this matter, and are at your disposal for any analysis you may find helpful.

/up

cc: Lt. Governor Dan Patrick
Senator Jane Nelson
Logan Spence
Mike Morrissey
Shannon Ghangurde
Mike Reissig
John McGeady
Julie Ivie
Central Files

Speaker Joe Straus
Representative John Otto
Jesse Ancira
Andrew Blifford
Hunter Thompson
Phillip Ashley
Sarah Keyton
Michael VanderBurg
Amy Borgstedte

Attachment A: Summary of Criteria for Validity Determination

The Constitution directs that only “items of appropriation” are subject to veto by the Governor: The Texas Constitution, Article IV, Section 14, states: *If any bill presented to the Governor contains several items of appropriation he may object to one or more of such items, and approve the other portion of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items to which he objects, and no item so objected to shall take effect.*

The power of the Texas Legislature to legislate is plenary, and the power of the Governor to veto is both limited and specific. The Governor may not veto legislative intent or direction.

Is the provision an “item of appropriation?”

An “item of appropriation” is if nothing else also an “appropriation” of funds. Per the Texas Constitution, an appropriation is the means by which the legislature authorizes the withdrawal of funds from the Treasury; further, the Supreme Court in *Jessen v Bullock* found that “It can be said then that the term “item of appropriation” contemplates the setting aside or dedicating of funds for a specified purpose. This is to be distinguished from language which qualifies or directs the use **of appropriated funds** or which is merely incidental to an appropriation. Language of the latter sort is clearly not subject to veto.” (emphasis added).

Attorney General opinions support this distinction; the following two are but examples that are relevant to this discussion:

- Opinion GA-0776 issued on May 21, 2010 states in reference to a rider that directed a transfer of funds from one agency to another: “The Legislature’s express use of the phrase “*transfer* to the Department of Motor Vehicles all funds ... *appropriated* to [TxDOT]” suggests that, in enacting Section 17.30(b), the Legislature was merely qualifying or directing the use of funds that it expressly appropriated to TxDOT elsewhere in the Act. General Appropriations Act, Article IX, Section 17.30(b)...Thus, under the plain language of Section 17.30(b) and the test announced by the Texas Supreme Court in *Jessen*, a court would likely conclude that Section 17.30(b) does not constitute an appropriation to the DMV. Rather, Section 17.30(b) would likely be construed as language that merely directs the use of funds appropriated elsewhere in the 2010–11 General Appropriations Act.”
- Opinion MW-51 issued on August 31, 1979 which discusses a rider that directs the use of funds to construct a state office building and provides legislative intent as to the specifics of construction: “These two paragraphs (a reference to the text of the rider) do not constitute an “item” of appropriation under the test established in *Jessen*. They do not set aside or dedicate funds. Instead, the language directs and qualifies the use of funds appropriated elsewhere.”

A helpful test for whether a rider is an “item of appropriation” might be to determine whether the rider would have an effect in the absence of the supporting appropriation. If a rider would lose effect—which is to say, it would not authorize the withdrawal of funds from the Treasury—if

appropriations made elsewhere were vetoed, or for some other reason did not exist, then the rider itself is not an item of appropriation.

The **General Appropriations Act** itself defines “items of appropriation” as strategies for state agencies, and as an identified lump-sum appropriation for institutions of higher education. Further, a rider that clearly makes an appropriation by use of the phrase “in addition to amounts appropriated above, there is appropriated \$XXX for the purpose of...” are also items of appropriation, as they are plainly making an appropriation, which is to say they are authorizing the setting aside funds from the Treasury for a specific purpose, period, and use by a state entity. These appropriating riders do pass the test above, as they can have full effect as stand-alone appropriations; they do not rely on an appropriations made elsewhere to take effect.

A distinction between actual appropriations, and rider language that “qualifies or directs the use of appropriated funds” is critical not only to this question but to the overall accountability of state fiscal management.

It is not reasonable to construe the meaning of “items of appropriation” in different ways depending on circumstance. To have one definition of “items of appropriation” that exists solely for the purpose of allowing the Governor to make a line item veto under Texas Constitution, Article IV, Section 14, but which does *not* make an appropriation for purposes of the Comptroller totaling the spending of the state under Texas Constitution Article III, Section 49a, and the LBB in doing so for Article VII, Section 22, (and all other budget documents) would be inconsistent.

Such a consistent definition has long been presented by both the Comptroller and the Legislative Budget Board. The Comptroller in providing a cost-out of each version of the GAA is assiduous in making determinations of what portions of the bill do and do not make appropriations; directive riders are not included in the Comptroller’s or LBB’s costing analysis.

An “item of appropriation” is by definition an appropriation; therefore only actual appropriations are subject to veto. Further analysis accompanies each item below.

Analysis of Veto Proclamation by Agency

Commission on the Arts

The veto Proclamation clearly identifies Strategy A.1.3, Cultural Tourism Grants, and strikes the appropriation to the second year of the biennium. Strategy A.1.3 is an item of appropriation, and as such may be vetoed. The Proclamation also seeks to amend Rider 5, Contingency for Cultural Tourism Grants, by striking language associated with the strategy appropriation in fiscal year 2017. This has no effect, as the rider itself is not an item of appropriation and is therefore not subject to veto; however, as the appropriation in the second year is itself struck, the issue of the rider is moot.

Commission on State Emergency Communications

Rider 8, Contingency for Legislation Related to Regional Poison Control Centers. The Proclamation strikes a contingency rider that directs an appropriation reduction in the event legislation passed that reduced the number of poison control centers. The legislation on which the rider is contingent did not pass, and therefore the appropriation reduction would not take effect irrespective of the veto Proclamation.

Facilities Commission

The veto Proclamation does not veto the appropriation related to state facilities construction; that appropriation is in Strategy A.2.1, Facilities Design and Construction. The Proclamation does seek to amend Rider 3, Capital Budget, and to strike Rider 20, DMV Headquarters Acquisition and Relocation; and Rider 22, G.J. Sutton Building Replacement. As none of those riders makes an appropriation, and are therefore not "items of appropriation" they are not subject to veto. The funds identified in the riders, \$216 million, remain a valid appropriation. Rider 3 neither in whole nor in part can stand alone; it relies on appropriations made elsewhere. This distinction is recognized by Attorney General Opinion GA-0776. Riders 20 and 22 also cannot stand alone; they simply provide direction to the Facilities Commission on how to manage the sources of funding.

Article IX allows an agency to request to re-purpose funds for projects identified in the Capital Budget rider for other uses. For example, the Facilities Commission could make a request to the LBB and the Governor to not use funds for the DMV headquarters but rather for a different project entirely; there is nothing in the struck language that abridges that ability to repurpose the appropriated funds. The appropriations made in Strategy A.2.1 remain valid, and the legislative direction provided in Riders 2, 20, and 22 remain as well.

Department of State Health Services

Rider 70, Jail-Based Competency Restoration Pilot Program. The veto Proclamation seeks to strike "each fiscal year of" in the rider text as a means to reduce by half the appropriated amount. The rider does not make an appropriation; it provides direction to the agency on how to continue an existing program. The appropriation resides in Strategy B.2.3, Community Mental Health Crisis services. There is no direction in the Texas Constitution allowing the Governor to edit a rider or indeed to veto legislative direction or intent. This rider cannot stand alone; it relies on an appropriation made elsewhere (see Attorney General Opinion GA-0776). As such, the Proclamation seeks to amend a directive rider. It is unclear from the Proclamation to what the Governor objects; there is a lack of specificity with respect to the period of the appropriation the Proclamation seeks to veto. Both the appropriation authority provided in Strategy B.2.3 and the direction provided in Rider 70 remains valid.

Texas Education Agency

Rider 61, Southern Regional Education Board. The rider does not make an appropriation; it directs the agency to allocate funds to pay an estimated (not specific) amount of dues. The rider

does not specify the source of funds. There is no reduction in appropriation authority, and the direction provided in the rider remains valid.

Institutions of Higher Education

The Proclamation seeks to eliminate the following informational strategies:

UT Austin: C.2.8, Identity Theft and Security	\$5,000,000
A&M University: C.1.1, International Law Summer Course	\$275,154
Tarleton State: C.3.2, Center For Anti Fraud	\$2,000,000
SFA State: C.3.4, WET Center	\$1,000,000
Del Mar College: O.2.1, Maritime Museum	\$200,000

Appropriations for Institutions of Higher Education (IHEs) are lump-sum and are identified as such in the GAA. The strategy listing for IHEs is purely informational, again, as noted in the GAA itself. Striking the informational strategy listing does not reduce the appropriation. As the listings and the associated riders are not items of appropriation, they are also not subject to veto. Both the appropriation authority and the direction provided via informational strategies and riders remain valid.

Water Development Board

Rider 20, Water Conservation Education Grants. The rider does not make an appropriation; it provides conditions and direction on the use of funds appropriated elsewhere. The rider cannot stand alone; it relies on appropriations made elsewhere (see Attorney General Opinion GA-0776). Both the appropriation authority and the direction provided via Rider 20 remain valid.

Securities Board

Rider 3, Contingency for HB 2493. This contingency addressed the use of certain funds in the event HB 2493 was not enacted. The contingency does not make an appropriation and is not subject to veto, as it provides direction on the purpose of funds appropriated elsewhere in a certain contingency.

Article IX

Section 13.11 Definition, Appropriation, and Reporting and Audit of Earned Federal Funds. The Proclamation strikes subsection (l) which relates to a contingency for HB 8, which did not pass. Since the legislation on which the language was contingent did not pass, the section has no effect. However, the section does not make an appropriation, and is not an item of appropriation. This section directs a reclassification of revenues pursuant to HB 8; as such, it is not subject to veto.

The following items in the Proclamation do make appropriations and are therefore subject to veto. All of these bills either did not pass or were themselves vetoed:

Section 18.15, contingency for HB 2466
Section 18.26, Contingency for SB 424
Section 18.34, Contingency for HB 14
Section 18.42, Contingency for HB 1799
Section 18.47, Contingency for HB 2703
Section 18.51, Contingency for HB 3481
Section 18.52, Contingency for SB 12
Section 18.61, Contingency for SB 309
Section 18.68, Contingency for HB 1552

Attachment B: Constitutional References

Article III, Section 49a(b): ...no appropriation in excess of the cash and anticipated revenue of the funds from which such appropriation is to be made shall be valid. No bill containing an appropriation shall be considered as passed or be sent to the Governor for consideration until and unless the Comptroller of Public Accounts endorses his certificate thereon showing that the amount appropriated is within the amount estimated to be available in the affected funds. When the Comptroller finds an appropriation bill exceeds the estimated revenue he shall endorse such finding thereon and return to the House in which same originated. Such information shall be immediately made known to both the House of Representatives and the Senate and the necessary steps shall be taken to bring such appropriation to within the revenue, either by providing additional revenue or reducing the appropriation.

Article IV, Section 14: If any bill presented to the Governor contains several items of appropriation he may object to one or more of such items, and approve the other portion of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items to which he objects, and no item so objected to shall take effect.

Article VIII, Section 6: No money shall be drawn from the Treasury but in pursuance of specific appropriations made by law; nor shall any appropriation of money be made for a longer term than two years.

Article VIII, Section 22: In no biennium shall the rate of growth of appropriations from state tax revenues not dedicated by this constitution exceed the estimated rate of growth in the state's economy...