

August 26, 2015

The Honorable Ken Paxton  
Attorney General  
State of Texas  
209 W. 14th St., 8th Floor  
Austin, Texas 78701-1614

Re: Attorney General Opinion request relating to the Governor's veto proclamation

Dear General Paxton:

As Comptroller of Public Accounts, I respectfully request an Attorney General Opinion on the effect of certain parts of the Governor's veto proclamation<sup>1</sup> for House Bill 1, the General Appropriations Act (the Act).<sup>2</sup> The Comptroller is the state's chief accounting and fiscal officer who supervises the state's fiscal concerns as required by law. So, when agencies establish appropriations in the state's accounting system, my office reconciles the entered amounts with the Act, and approves them upon compliance. This control mechanism ensures that payments made during the biennium stay within the limits of the appropriations. Due to questions surrounding the Governor's veto proclamation, I seek legal guidance on the questions listed below to ensure that the correct appropriation amounts are used. I ask that you provide your opinion on each of the questions listed, relating to the following items:

1. Texas Facilities Commission - Capital Budget Rider for the G.J. Sutton Building Replacement, Elias Ramirez State Office Building New Parking Garage, and Acquisition and Relocation of Department of Motor Vehicles Headquarters.<sup>3</sup>
2. Texas Facilities Commission - Riders 20 and 22 for the Acquisition and Relocation of Department of Motor Vehicles Headquarters and G.J. Sutton Building Replacement.<sup>4</sup>
3. Department of State Health Services - Jail-Based Competency Restoration Pilot Program.<sup>5</sup>
4. Texas Education Agency - Southern Regional Education Board.<sup>6</sup>
5. Water Development Board - Water Conservation Education Grants.<sup>7</sup>
6. The University of Texas at Austin - Identity Theft and Security.<sup>8</sup>
7. Texas A&M University - International Law Summer Course.<sup>9</sup>

<sup>1</sup> Veto Proclamation of Gov. Abbott, Tex. H.B.1, 84th Leg., R.S. (2015).

<sup>2</sup> Tex. H.B.1, 84th Leg., R.S. (2015).

<sup>3</sup> H.B.1, Art. I, 1-39 through 1-46; Veto Proclamation at 2-5.

<sup>4</sup> H.B.1, Art. I, 1-39 through 1-46; Veto Proclamation at 2-5.

<sup>5</sup> H.B.1, Art. II, II-48 and II-72; Veto Proclamation at 5.

<sup>6</sup> H.B.1, Art. III, III-18; Veto Proclamation at 5.

<sup>7</sup> H.B.1, Art. VI, VI-54 through VI-59; Veto Proclamation at 7.

<sup>8</sup> H.B.1, Art. III, III-65 through III-68; Veto Proclamation at 5.

<sup>9</sup> H.B.1, Art. III, III-86 through III-88; Veto Proclamation at 6.



8. Tarleton State University - Center for Anti-Fraud, Waste and Abuse.<sup>10</sup>
9. Stephen F. Austin University - Waters of East Texas Center.<sup>11</sup>
10. Del Mar College - Maritime Museum.<sup>12</sup>
11. Securities Board - Contingency for House Bill 2493.<sup>13</sup>

## The Item Veto

The Texas constitution separates the powers of government into legislative, executive, and judicial branches, and no branch may exercise the powers of the other absent an exception created by the constitution.<sup>14</sup> The affirmative power to enact laws rests with the Legislature.<sup>15</sup> The Governor has no general authority to legislate or make laws; only the negative power to veto laws. For most bills, he may only approve or veto the entire bill. His power to veto a portion of a bill is limited to items of appropriation.<sup>16</sup>

Section 14, Article IV of the constitution contains the scope of the Governor's item veto authority:

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.<sup>17</sup>

The Governor's item veto power is legislative in nature and is a negative power.<sup>18</sup> Because it is a legislative power, its scope is limited to the constitutional grant and may not be enlarged.<sup>19</sup> Any instructions or directions in the veto message are without effect.<sup>20</sup> The constitution does not give the Governor the power to reduce an item; only to veto it.<sup>21</sup>

Because the Governor's item veto power is limited to "items of appropriation," the principal debate is over the meaning of that term and whether the provisions purportedly vetoed by the Governor are "items of appropriation."

The Texas Supreme Court defines an item of appropriation as language that sets aside or dedicates funds for a specified purpose.<sup>22</sup> The court contrasts language that qualifies an appropriation, directs the

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<sup>10</sup> H.B.1, Art. III, III-93 through III-95; Veto Proclamation at 6.

<sup>11</sup> H.B.1, Art. III, III-130 through III-132; Veto Proclamation at 6.

<sup>12</sup> H.B.1, Art. III, III-198 through III-207; Veto Proclamation at 6.

<sup>13</sup> H.B.1, Art. VIII, VIII-55; Veto Proclamation at 7.

<sup>14</sup> Tex. Const. Art. II, § 1.

<sup>15</sup> *Fulmore v. Lane*, 104 Tex. 499, 140 S.W. 405, *aff'd on rehearing*, 104 Tex. 499, 140 S.W. 1082 (1911).

<sup>16</sup> *Id.* at 512.

<sup>17</sup> Tex. Const. Art. IV, § 14.

<sup>18</sup> *Fulmore* at 511.

<sup>19</sup> Op. Tex. Att'y Gen. Nos. M-1199 (1972), M-1141 (1972).

<sup>20</sup> *Fulmore* at 511; Tex. Att'y Gen. LO-88-55 (1988).

<sup>21</sup> Op. Tex. Att'y Gen. Nos. M-1044 (1972), M-1141 (1972).

<sup>22</sup> *Jessen Associates, Inc. v. Bullock*, 531 S.W.2d 593, 599 (Tex. 1975); *accord* Op. Tex. Att'y Gen. Nos. GA-0776 (2010).



method of its use or is merely incidental to an appropriation. Such language is not an item of appropriation that is subject to the item veto.<sup>23</sup>

## Fulmore

In 1911, the Texas Supreme Court upheld a Governor's item veto in *Fulmore v. Lane*, but did so for various reasons in separate opinions. The *Fulmore* court considered whether the Legislature appropriated a single sum to the Attorney General's office for the biennium or two sums, one for each year. A rider that was "[f]or the guidance of the Attorney-General in the expenditure of such sums" provided a list of specific categories and amounts.<sup>24</sup>

Even though the appropriation was far less specific than appropriations to other departments, the court held that the appropriation satisfied the constitutional requirement that appropriations be for a specific purpose and thus subject to veto. Justice Dibrell, in his original opinion for the court, stated the Legislature's decision to grant a broad appropriation to the Attorney General's office may have shown greater confidence in that department, or greater variance in the labors of that department.<sup>25</sup>

Chief Justice Brown, writing the court's opinion on the motion for rehearing, found that each appropriation of \$41,580 were parts of the aggregate item of \$83,160 that "fell by the veto of the main sum so far as they depended upon the appropriation made in that paragraph."<sup>26</sup> But when the text identifying \$41,580 for each fiscal year was read together with text from section 1 of the Act, "...the following sums of money...are hereby appropriated....," it was sufficient to constitute two separate appropriations.<sup>27</sup>

Justice Ramsey, in his concurring opinion on the motion for rehearing, acknowledged that the Legislature might have lumped everything into a single appropriation to defeat the Governor's item veto power. He explained that the court could not rule on the wisdom of the tactic, and that the appropriation met the constitutional requirement for specificity.<sup>28</sup>

## Jessen

In 1975, the Texas Supreme Court found a Governor's attempted item veto to be ineffective in *Jessen v. Bullock*.<sup>29</sup> The *Jessen* court held the following text was not an item of appropriation and was, therefore, not subject to gubernatorial veto:

"The Board of Regents of The University of Texas System is hereby authorized (1) to expend such amounts of its Permanent University Fund bond proceeds and/or other bond proceeds and such amounts of its other available moneys as may be necessary to fund one or more of the following projects either in whole or in part, (2) to accept gifts, grants, and matching grants to

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<sup>23</sup> *Fulmore* at 512; *Jessen* at 599.

<sup>24</sup> *Fulmore* at 503.

<sup>25</sup> *Id.* at 507.

<sup>26</sup> *Id.* at 514.

<sup>27</sup> *Id.* at 515.

<sup>28</sup> *Id.* at 529, citing *Terrell v. Sparks*, 135 S.W. 519 (Tex. 1911).

<sup>29</sup> *Jessen* at 599.



fund any one or more of such projects either in whole or in part, and (3) to acquire, construct, alter, add to, repair, rehabilitate, equip and/or furnish any one or more of such projects for The University of Texas at Austin:

- (1) Alterations and Additions to Law School
- (2) Engineering Teaching Center II....<sup>30</sup>

The Governor attempted to veto the entire paragraph and the list of 15 projects that followed it. The *Jessen* court stated that rules applicable to the construction of statutes also apply to the determination of what constitutes an item of appropriation.<sup>31</sup> A fundamental rule of statutory construction is to ascertain and give effect to legislative intent.<sup>32</sup> So, the court analyzed the text to determine whether the Legislature intended it to be an appropriation.<sup>33</sup>

The court found it significant that the funds were appropriated elsewhere, but stated the Legislature might have intended the paragraph to re-appropriate the funds. The court noted that the paragraph had a function beyond the mere re-appropriation of the funds. It granted approval for specific projects. This indicated legislative intent that the paragraph direct the use of funds appropriated elsewhere. The court held that the paragraph was a rider, rather than an item of appropriation, and was, therefore, not subject to the item veto.<sup>34</sup>

The court's holding was based on its interpretation of legislative intent, drawn from the fact that the text satisfied a function distinct from the mere re-appropriation of funds — a function that qualified or directed the use of funds appropriated elsewhere.

There is no requirement in Texas law that an appropriation be for a certain amount or maximum sum.<sup>35</sup> While the *Jessen* court considered other states' definitions that appeared to require specific sums, it did not adopt those definitions. Specifically, the court cited definitions from Florida and Virginia that defined an item of appropriation to contain "an amount to be used" or "an indivisible sum of money." But unlike Florida or Virginia, the *Jessen* court did not require an item of appropriation to contain a certain sum.

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.<sup>36</sup>

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<sup>30</sup> *Jessen* at 597; Text of Conference Committee Report, Senate Bill 52, Art. IV, at IV-29, 64th Leg., R.S. (1975) (listing 15 specific projects).

<sup>31</sup> *Jessen* at 599-600; Op. Tex. Att'y Gen. Nos. GA-0578 (2007), GA-0016 (2003).

<sup>32</sup> *Jessen* at 599; Op. Tex. Att'y Gen. No. GA-0016 (2003).

<sup>33</sup> *Jessen* at 599 (giving effect to legislative intent is a fundamental rule of statutory construction that applies to determining what constitutes an item of appropriation).

<sup>34</sup> *Id.* at 600.

<sup>35</sup> *National Biscuit Co. v. State*, 135 S.W.2d 687, 693 (Tex. 1940).

<sup>36</sup> *Jessen* at 599.



The Texas Supreme Court had already considered whether an appropriation has to specify a certain sum or maximum sum in order to satisfy the constitutional requirement that appropriations be specific. It held that it does not.<sup>37</sup>

## The Effect of the Veto Proclamation

*1. The Texas Facilities Commission Capital Budget Rider: G.J. Sutton Building Replacement, Elias Ramirez State Office Building New Parking Garage, and Acquisition and Relocation of Department of Motor Vehicles Headquarters.*

The Facilities Commission section of the Act contained Strategy A.2.1 that appropriated funds for facilities design and construction, followed by Rider 3, Capital Budget, which limited capital budget expenditures to a specific list of projects.<sup>38</sup> The Governor did not strike item A.2.1, but struck items(e)(5)-(7) of Rider 3.<sup>39</sup>

The primary goal in statutory construction is to determine and give effect to legislative intent as expressed by the plain language of the statute, which is presumed to have been deliberately and purposefully selected by the Legislature.<sup>40</sup> Rules applicable to the construction of statutes also apply to the construction of items of appropriations and riders.<sup>41</sup> Rider 3 used the phrase “funds appropriated above,” directing the use of funds appropriated elsewhere. Other riders in the Act use different language to indicate they contain appropriations that are not appropriated elsewhere. For example, Rider 28.d. for the Department of Agriculture uses the phrase, “in addition to amounts appropriated above” to appropriate additional funds with that paragraph.<sup>42</sup> These contrasting provisions may demonstrate that the Legislature uses different terms to specify when a rider makes an appropriation and when a rider refers to an appropriation made elsewhere.<sup>43</sup> On the other hand, *Jessen* acknowledges the possibility the Legislature could intend a rider to merely reappropriate funds already appropriated elsewhere.<sup>44</sup>

Rider 3 for the Texas Facilities Commission serves the function of approving projects. The Act generally prohibits the use of funds that it appropriates for capital budget purposes without the prior approval of the Governor and the Legislative Budget Board (LBB).<sup>45</sup> But the Act provides an exception. Approval is not required when an agency has “a capital budget provision following its

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<sup>37</sup> *National Biscuit* at 693.

<sup>38</sup> H.B.1, Art. I, 1-39 through 1-46.

<sup>39</sup> Veto Proclamation at 2-5.

<sup>40</sup> Op. Tex. Att’y Gen. No. GA-1055 (2014), citing *Tex. Mut. Ins. Co. v. Ruttiger*, 381 S.W.3d 430, 452 (Tex. 2012); see also *Jessen* at 599, Op. Tex. Att’y Gen. No. GA-0016 (2003).

<sup>41</sup> *Jessen* at 599-600; Op. Tex. Att’y Gen. Nos. GA-0578 (2007), GA-0016 (2003).

<sup>42</sup> H.B.1, Art. VI, at VI-10.

<sup>43</sup> Op. Tex. Att’y Gen. No. GA-0578 (2007), citing *Laidlaw Waste Sys., Inc. v. City of Wilmer*, 904 S.W.2d 656, 659 (Tex. 1995).

<sup>44</sup> *Jessen* at 600.

<sup>45</sup> H.B.1, Art. IX, § 14.03, at IX-63 through IX-65, Rider 14.03(a)(1) and (h)(2)(D). Note that preapproval was unconstitutional until Art. XVI, § 69 was adopted by voters in 1985. Op. Tex. Att’y Gen. Nos. GA-0578 (2007), M-1141 (1972).



items of appropriation.”<sup>46</sup> Rider 3 is titled “Capital Budget” and has the function of approving the listed projects, alleviating the need for gubernatorial and LBB approval.

**Questions:**

- 1.a. What is the effect of the Governor’s veto of the Texas Facilities Commission Rider 3 Capital Budget items: G.J. Sutton Building Replacement, Elias Ramirez State Office Building New Parking Garage, and Acquisition and Relocation of Department of Motor Vehicles Headquarters?**
- 1.b. What is the effect of the Governor’s veto of the unexpended balance appropriations for the Texas Facilities Commission Capital Budget items: G.J. Sutton Building Replacement, Elias Ramirez State Office Building New Parking Garage, and Acquisition and Relocation of Department of Motor Vehicles Headquarters?**
- 1.c. If Rider 3 reappropriates funds, does that reduce the amount in Strategy A.2.1, or some other strategy?**
- 1.d. If the veto is effective, does that veto reduce the amount of the Facilities Commission’s Strategy A.2.1, or some other strategy?**
- 1.e. If the veto is effective, does the veto prohibit the use of Strategy A.2.1 funds for the vetoed projects? Or, would such a prohibition exceed the Governor’s purely negative veto power?**<sup>47</sup>

*2. The Texas Facilities Commission Riders 20 and 22: Acquisition and Relocation of Department of Motor Vehicles Headquarters and G.J. Sutton Building Replacement.*

The Facilities Commission section of the Act also contained Riders 20 and 22, which authorize bond issuances for certain projects.<sup>48</sup> The Governor struck Riders 20 and 22.<sup>49</sup>

Riders 20 and 22 used the phrase “included in amounts appropriated...in strategy A.2.1...is,” referencing funds appropriated elsewhere. As discussed above, other riders use different language to describe funds that are not appropriated elsewhere. This contrast may indicate legislative intent.<sup>50</sup> Or, it is possible the Legislature could intend a rider to merely reappropriate funds already appropriated elsewhere.<sup>51</sup>

Riders 20 and 22 for the Texas Facilities Commission serve the function of authorizing the Texas Public Finance Authority to issue bonds. Government Code Section 1232.108 requires legislative authorization for the specific project and the estimated amount or maximum amount for the bond

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<sup>46</sup> *Id.*

<sup>47</sup> See *Fulmore* at 512. (Governor has no general authority to legislate or make laws; only the negative power to veto laws.)

<sup>48</sup> H.B.1, Art. I, 1-39 through 1-46.

<sup>49</sup> Veto Proclamation at 4-5.

<sup>50</sup> Op. Tex. Att’y Gen. No. GA-0578 (2007), citing *Laidlaw Waste Sys., Inc. v. City of Wilmer*, 904 S.W.2d 656, 659 (Tex. 1995).

<sup>51</sup> *Jessen* at 600.



issuance.<sup>52</sup> The Attorney General considered the validity of a similar rider in the 1991 General Appropriations Act.<sup>53</sup> The rider authorized the Texas Public Finance Authority to issue revenue bonds to finance construction “of a state office building on land owned by Texas A&M University System in Nueces County, at an estimated cost of \$10,000,000.”<sup>54</sup> The rider satisfied the authorization requirements of Section 10(a), article 601d, V.T.C.S., which was the pre-codification version of Government Code Section 1232.108. The Attorney General found the language was not an appropriation, and instead was a “classic rider” that “directed the expenditure of funds appropriated elsewhere.”<sup>55</sup>

**Questions:**

**2.a. What is the effect of the Governor’s veto of the Texas Facilities Commission Riders 20 and 22: Acquisition and Relocation of Department of Motor Vehicles Headquarters and G.J. Sutton Building Replacement?**

**2.b. What is the effect of the Governor’s veto of the unexpended balance appropriations for the Texas Facilities Commission Riders 20 and 22: Acquisition and Relocation of Department of Motor Vehicles Headquarters and G.J. Sutton Building Replacement?**

**2.c. If Riders 20 and 22 reappropriate funds, do they reduce the amount in the Facilities Commission Strategy A.2.1?**

**2.d. If the veto is effective, does that reduce the amount in Strategy A.2.1?**

**2.e. If the veto is effective, does the veto prohibit the use of Strategy A.2.1 funds for the vetoed projects?**

**3. The Department of State Health Services - Jail-Based Competency Restoration Pilot Program.**

The Department of State Health Services section of the Act<sup>56</sup> appropriates funds for strategy B.2.3, Community Mental Health Crisis Services. The section includes Rider 70, which directs a portion of those funds to be allocated to the Jail-Based Competency Restoration Pilot Program. The Governor did not strike item B.2.3, but did strike a portion of Rider 70.<sup>57</sup> The Governor struck the words, “each fiscal year of” and stated in his message that he objected to one year of the appropriation.<sup>58</sup>

Rider 70 uses the phrase, “out of funds appropriated above in Strategy B.2.3....” As discussed above, other riders use different language to describe funds that are not appropriated elsewhere. This contrast

<sup>52</sup> Tex. Gov’t Code § 1232.108; *see also* Tex. Gov’t Code §§ 2166.452 and 2166.453.

<sup>53</sup> Tex. Att’y Gen. LO-92-13 (1992).

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> H.B.1, Art. II, II-48 and II-72.

<sup>57</sup> Veto Proclamation at 5.

<sup>58</sup> *Id.*



may indicate legislative intent.<sup>59</sup> Or, it is possible the Legislature could intend a rider to merely reappropriate funds already appropriated elsewhere.<sup>60</sup>

Rider 70 may serve the function of fulfilling the statutory contingency requirement for the Jail-Based Competency Restoration Pilot Program. The program's authority is contingent on receipt of an appropriation.<sup>61</sup> A function that is distinct from the mere re-appropriation of funds may indicate intent to qualify or direct the use of funds appropriated elsewhere.<sup>62</sup>

**Questions:**

- 3.a. What is the effect of the Governor's veto of the Department of State Health Services Jail-Based Competency Restoration Pilot Program funds?**
- 3.b. If the veto is effective, does it eliminate \$1,743,000 for fiscal year 2016, or for fiscal year 2017? Or does it convert the appropriation into a single sum of \$1,743,000 for the biennium?**
- 3.c. If Rider 70 reappropriates funds, does it reduce the amount in the Department of State Health Services Strategy B.2.3?**
- 3.d. If the veto is effective, does that reduce the amount in Strategy B.2.3?**
- 3.e. If the veto is effective, does the veto, or the lack of a specific appropriation, prohibit the use of other available funds for the vetoed projects?**

*4. The Texas Education Agency - Southern Regional Education Board.*

The Texas Education Agency section of the Act contained Rider 61 which directs "funds appropriated above" to be allocated to pay membership fees to the Southern Regional Education Board.<sup>63</sup> The Governor struck Rider 61.<sup>64</sup> As discussed above, other riders use different language to describe funds that are not appropriated elsewhere. This contrast may indicate legislative intent.<sup>65</sup> Or, it is possible the Legislature could intend a rider to merely reappropriate funds already appropriated elsewhere.<sup>66</sup>

**Questions:**

- 4.a. What is the effect of the Governor's veto of the Texas Education Agency Southern Regional Education Board funds?**

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<sup>59</sup> Op. Tex. Att'y Gen. No. GA-0578 (2007), citing *Laidlaw Waste Sys., Inc. v. City of Wilmer*, 904 S.W.2d 656, 659 (Tex. 1995).

<sup>60</sup> *Jessen* at 600.

<sup>61</sup> Tex. Code Crim. Proc. Art. 46B.090(a).

<sup>62</sup> *Jessen* at 600.

<sup>63</sup> H.B.1, Art. III, III-18.

<sup>64</sup> Veto Proclamation at 5.

<sup>65</sup> Op. Tex. Att'y Gen. No. GA-0578 (2007), citing *Laidlaw Waste Sys., Inc. v. City of Wilmer*, 904 S.W.2d 656, 659 (Tex. 1995).

<sup>66</sup> *Jessen* at 600.





**4.b. If Rider 61 reappropriates funds, does it reduce one or more of the Texas Education Agency Strategies?**

**4.c. If the veto is effective, does that reduce one or more of the Texas Education Agency Strategies?**

**4.d. If the veto is effective, does the veto, or the lack of a specific appropriation, prohibit the use of funds to pay membership fees to the Southern Regional Education Board?**

*5. The Water Development Board - Water Conservation Education Grants.*

The Water Development Board section of the Act appropriates funds for Strategy A.3.1, Water Conservation and Education Assistance. It also includes Rider 20 which states that “included in amounts appropriated above” are funds for grants to water conservation education groups.<sup>67</sup> The Governor struck Rider 20.<sup>68</sup> As discussed above, other riders use different language to describe funds that are not appropriated elsewhere. This contrast may indicate legislative intent.<sup>69</sup> Or, it is possible the Legislature could intend a rider to merely reappropriate funds already appropriated elsewhere.<sup>70</sup>

**Questions:**

**5.a. What is the effect of the Governor’s veto of the Water Development Board Water Conservation Education Grant funds?**

**5.b. What is the effect of the Governor’s veto of the unexpended balance appropriation for the Water Development Board Water Conservation Education Grants?**

**5.c. If Rider 20 reappropriates funds, does it reduce Water Development Board Strategy A.3.1 by \$1,000,000 in fiscal year 2016?**

**5.d. If the veto is effective, does that reduce Strategy A.3.1 by \$1,000,000 in fiscal year 2016?**

**5.e. If the veto is effective, does the veto, or the lack of a specific appropriation, prohibit the use of funds for Water Development Board Water Conservation Education Grants?**

*6. The University of Texas at Austin, Identity Theft and Security.*

The Act’s appropriations to colleges and universities follow a pattern that is different from other agency appropriations. The University of Texas at Austin section of the Act contains a single lump sum appropriation for “Educational and General State Support.”<sup>71</sup> Unlike other sections of the Act, the goals and strategies are not labeled “items of appropriation,” but instead are contained in a rider entitled “Informational Listing of Appropriated Funds.” The rider explains:

<sup>67</sup> H.B.1, Art. VI, VI-54 through VI-59.

<sup>68</sup> Veto Proclamation at 7.

<sup>69</sup> Op. Tex. Att’y Gen. No. GA-0578 (2007), citing *Laidlaw Waste Sys., Inc. v. City of Wilmer*, 904 S.W.2d 656, 659 (Tex. 1995).

<sup>70</sup> *Jessen* at 600.

<sup>71</sup> H.B.1, Art. III, III-65.



The appropriations made above for Educational and General State Support are subject to the special and general provisions of this Act and include the following amounts for the purposes indicated.<sup>72</sup>

Unlike the appropriation in *Fulmore*, there is no statement that the list of amounts and purposes are “for the guidance” of the agencies.<sup>73</sup> There is only the label of “informational.” Included among these informational listings is the Strategy C.2.8, Identity Theft and Security. The column “For the Years Ending August 31, 2016” lists “\$2,500,000” and the column “For the Years Ending August 31, 2017” lists “2,500,000.”<sup>74</sup> The section also includes Rider 9, Appropriation for Identity Theft and Security.<sup>75</sup> The Governor did not veto the lump sum appropriation, but did veto Strategy C.2.8. and Rider 9.<sup>76</sup>

The Legislature’s use of “Appropriation” in the rider’s title might indicate intent that the rider is the appropriation. But, Rider 9 used the phrase, “amounts appropriated above.” It does not specifically identify whether it refers to the lump sum appropriation or to a particular strategy. As discussed above, other riders use different language to describe funds that are not appropriated elsewhere. This contrast may indicate legislative intent.<sup>77</sup> Or, it is possible the Legislature could intend a rider to merely reappropriate funds already appropriated elsewhere.<sup>78</sup>

#### Questions:

- 6.a. What is the impact of labeling the strategies as “informational”?
- 6.b. Are the strategies and the columns of dollar amounts for each fiscal year appropriations that set aside or dedicate funds for a specified purpose? Or are they riders that qualify an appropriation or direct the method of its use, and, therefore, not items of appropriation?
- 6.c. What is the effect of the Governor’s veto of the University of Texas at Austin, Identity Theft and Security funds in Strategy C.2.8 and Rider 9?
- 6.d. Does Strategy C.2.8 create a legally binding limitation, or is it merely guidance?
- 6.e. Does Rider 9 create a legally binding limitation, or is it merely guidance?
- 6.f. If the University of Texas at Austin Strategy C.2.8 reappropriates funds, does it reduce the University of Texas at Austin’s lump sum appropriation by \$2,500,000 in fiscal year 2016 and by \$2,500,000 in fiscal year 2017?

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<sup>72</sup> *Id.*

<sup>73</sup> *Fulmore* at 503; *but see* Tex. Educ. Code § 61.059(k).

<sup>74</sup> H.B. I, Art. III, III-66.

<sup>75</sup> *Id.* at III-68.

<sup>76</sup> Veto Proclamation at 5.

<sup>77</sup> Op. Tex. Att’y Gen. No. GA-0578 (2007), *citing Laidlaw Waste Sys., Inc. v. City of Wilmer*, 904 S.W.2d 656, 659 (Tex. 1995).

<sup>78</sup> *Jessen* at 600.



**6.g. If the veto is effective, does that reduce the University of Texas at Austin’s lump sum appropriation by \$2,500,000 in fiscal year 2016 and by \$2,500,000 in fiscal year 2017?**

**6.h. If the veto is effective, does the veto, or the lack of a specific strategy or rider, prohibit the use of the university’s lump sum appropriation for Identity Theft and Security research and education as described in Rider 9?**

*7. The Texas A&M University - International Law Summer Course.*

The Texas A&M University section of the Act contains a single lump sum appropriation for “Educational and General State Support.”<sup>79</sup> This is followed by an “Informational Listing of Appropriated Funds” rider that includes Strategy C.1.1., International Law Summer Course with dollar amounts in each fiscal year column.<sup>80</sup> The section concludes with Rider 4, International Law Summer Course.<sup>81</sup> The Governor did not veto the lump sum appropriation, but did veto Strategy C.1.1. and Rider 4.<sup>82</sup>

Unlike the University of Texas Rider 9, the Texas A&M University Rider 4 refers specifically to the appropriation made by the Strategy:

Out of funds *appropriated* to Texas A&M University in Strategy C.1.1, International Law Summer Course, \$137,577 in General Revenue in fiscal year 2016 and \$137,577 in General Revenue in fiscal year 2017 will be used for the International Summer Course.<sup>83</sup>

So, on one hand, only the lump sum is labeled an “item of appropriation” and the strategy is labeled “informational.” But, on the other hand, Rider 4 references an appropriation in C.1.1. This may indicate legislative intent that Strategy C.1.1 appropriates funds. Or, it is possible the Legislature intended for Strategy C.1.1 and Rider 4 to merely reappropriate funds already appropriated in the lump sum for Educational and General State Support.

**Questions:**

**7.a. What is the effect of the Governor’s veto of the Texas A&M University International Law Summer Course funds?**

**7.b. Does Strategy C.1.1 create a legally binding limitation, or is it merely guidance?**

**7.c. Does Rider 4 create a legally binding limitation, or is it merely guidance?**

**7.d. If the Texas A&M University Strategy C.1.1 reappropriates funds, does it reduce Texas A&M University’s lump sum appropriation by \$137,577 in fiscal year 2016 and by \$137,577 in fiscal year 2017?**

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<sup>79</sup> H.B. 1, Art. III, III-86.

<sup>80</sup> *Id.* at III-86 through III-87.

<sup>81</sup> *Id.* at III-88.

<sup>82</sup> Veto Proclamation at 6.

<sup>83</sup> H.B.1, Art. III, III-88. (emphasis added)



**7.e. If the veto is effective, does that reduce the Texas A&M University's lump sum appropriation by \$137,577 in fiscal year 2016 and by \$137,577 in fiscal year 2017?**

**7.f. If the veto is effective, does the veto, or the lack of a specific strategy or rider, prohibit the use of the university's lump sum appropriation for an International Law Summer Course?**

*8. The Tarleton State University - Center for Anti-Fraud, Waste and Abuse.*

The Tarleton State University section of the Act contains a single lump sum appropriation for "Educational and General State Support."<sup>84</sup> This is followed by an "Informational Listing of Appropriated Funds" rider that includes Strategy C.3.2., Center for Anti-Fraud with the amount of \$1,000,000 for each fiscal year. The section concludes with Rider 6, Center for Anti-Fraud, Waste and Abuse.<sup>85</sup> The Governor did not veto the lump sum appropriation, but did veto Strategy C.3.2. and Rider 6.<sup>86</sup>

Similar to A&M's Rider 4, Tarleton's Rider 6 refers to funds appropriated in Strategy C.3.2.

So, on one hand, only the lump sum is labeled an "item of appropriation" and the strategy is labeled "informational." But, on the other hand, the strategy is described as conveying the appropriation. This may indicate legislative intent that Strategy C.3.2 appropriates funds. Or, it is possible the Legislature intended for Strategy C.3.2 and Rider 6 to merely reappropriate funds already appropriated in the lump sum for Educational and General State Support.

**Questions:**

**8.a. What is the effect of the Governor's veto of the Tarleton State University Center for Anti-Fraud, Waste and Abuse funds?**

**8.b. Does Strategy C.3.2 create a legally binding limitation, or is it merely guidance?**

**8.c. Does Rider 6 create a legally binding limitation, or is it merely guidance?**

**8.d. If the Tarleton State University Strategy C.3.2 reappropriates funds, does it reduce Tarleton State University's lump sum appropriation by \$1,000,000 in fiscal year 2016 and by \$1,000,000 in fiscal year 2017?**

**8.e. If the veto is effective, does that reduce the Tarleton State University's lump sum appropriation by \$1,000,000 in fiscal year 2016 and by \$1,000,000 in fiscal year 2017?**

**8.f. If the veto is effective, does the veto, or the lack of a specific strategy or rider, prohibit the use of the university's lump sum appropriation for the Center for Anti-Fraud, Waste and Abuse?**

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<sup>84</sup> *Id.* at III-93.

<sup>85</sup> *Id.* at III-95.

<sup>86</sup> Veto Proclamation at 6.



## 9. *The Stephen F. Austin University - Waters of East Texas Center.*

The Stephen F. Austin University section of the Act contains a single lump sum appropriation for “Educational and General State Support.”<sup>87</sup> This is followed by an “Informational Listing of Appropriated Funds” rider that includes Strategy C.3.4., Wet Center with \$500,000 in each fiscal year column.<sup>88</sup> The section concludes with Rider 4, Waters of East Texas Center.<sup>89</sup> The Governor did not veto the lump sum appropriation, but did veto Strategy C.3.4. and Rider 4.<sup>90</sup>

Again, this rider refers to funds appropriated in Strategy C.3.4. So, on one hand, only the lump sum is labeled an “item of appropriation” and the strategy is labeled “informational.” But, on the other hand, the strategy is described as conveying the appropriation. This may indicate legislative intent that Strategy C.3.4 appropriates funds. Or, it is possible the Legislature intended for Strategy C.3.4 and Rider 4 to merely reappropriate funds already appropriated in the lump sum for Educational and General State Support.

### Questions:

- 9.a. What is the effect of the Governor’s veto of the Stephen F. Austin University Waters of East Texas Center funds?
- 9.b. Does Strategy C.3.4 create a legally binding limitation, or is it merely guidance?
- 9.c. Does Rider 4 create a legally binding limitation, or is it merely guidance?
- 9.d. If the Stephen F. Austin University Strategy C.3.4 reappropriates funds, does it reduce Stephen F. Austin University’s lump sum appropriation by \$500,000 in fiscal year 2016 and by \$500,000 in fiscal year 2017?
- 9.e. If the veto is effective, does that reduce the Stephen F. Austin University’s lump sum appropriation by \$500,000 in fiscal year 2016 and by \$500,000 in fiscal year 2017?
- 9.f. If the veto is effective, does the veto, or the lack of a specific strategy or rider, prohibit the use of the university’s lump sum appropriation for the Waters of East Texas Center?

## 10. *Del Mar College - Maritime Museum.*

The Public Community and Junior Colleges section of the Act contains a single lump sum appropriation for “Educational and General State Support.”<sup>91</sup> This is followed by an “Informational Listing of Appropriated Funds” rider that includes Strategy O.2.1., Maritime Museum with \$100,000 in each fiscal year column.<sup>92</sup> Among the riders that follow is Rider 26, Del Mar College - Maritime

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<sup>87</sup> H.B.1, Art. III, III-130.

<sup>88</sup> *Id.* at III-130 through III-131.

<sup>89</sup> *Id.* at III-132.

<sup>90</sup> Veto Proclamation at 6.

<sup>91</sup> H.B.1, Art. III, III-198.

<sup>92</sup> *Id.* at III-198 through III-200.



Museum.<sup>93</sup> The Governor did not veto the lump sum appropriation, but did veto Strategy O.2.1. and Rider 20.<sup>94</sup>

Again, this rider refers to funds appropriated in Strategy O.2.1. So, on one hand, only the lump sum is labeled an “item of appropriation” and the strategy is labeled “informational.” But, on the other hand, the strategy is described as conveying the appropriation. This may indicate legislative intent that Strategy O.2.1 appropriates funds. Or, it is possible the Legislature intended for Strategy O.2.1 and Rider 26 to merely reappropriate funds already appropriated in the lump sum for Educational and General State Support.

**Questions:**

- 10.a. What is the effect of the Governor’s veto of the Del Mar College Maritime Museum funds?**
- 10.b. Does Strategy O.2.1 create a legally binding limitation, or is it merely guidance?**
- 10.c. Does Rider 26 create a legally binding limitation, or is it merely guidance?**
- 10.d. If the Del Mar College Strategy O.2.1 reappropriates funds, does it reduce Del Mar College’s lump sum appropriation by \$100,000 in fiscal year 2016 and by \$100,000 in fiscal year 2017?**
- 10.e. If the veto is effective, does that reduce the Del Mar College’s lump sum appropriation by \$100,000 in fiscal year 2016 and by \$100,000 in fiscal year 2017?**
- 10.f. If the veto is effective, does the veto, or the lack of a specific strategy or rider, prohibit the use of the college’s lump sum appropriation for the Maritime Museum?**

*11. The Securities Board - Contingency for House Bill 2493.*

The Securities Board section of the Act contains several items of appropriation, followed by an informational listing for “Salary and Wages.”<sup>95</sup> This is followed by Rider 3, which states:

3. Contingency for H.B. 2493. Amounts appropriated above include \$557,352 in fiscal year 2016 and \$636,688 in fiscal year 2017 in General Revenue for the purpose of employee merit salary increases contingent upon H.B. 2493, or similar legislation relating to the classification of the agency as a Self-Directed and Semi-Independent agency, not being enacted.<sup>96</sup>

The Governor struck Rider 3.<sup>97</sup> While statute limits merit salary increases to a percentage set by the Act, the Act does not set a percentage.<sup>98</sup>

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<sup>93</sup> *Id.* at III-207.

<sup>94</sup> Veto Proclamation at 6.

<sup>95</sup> H.B.1, Art. VIII-54.

<sup>96</sup> *Id.* at VIII-55.

<sup>97</sup> Veto Proclamation at 7.

<sup>98</sup> Tex. Gov’t Code § 659.261; H.B.1, Art. IX § 3.03, at IX-19.



Usually contingency riders become effective if a specified bill is enacted. Rider 3 becomes effective if H.B. 2493 fails to be enacted. H.B. 2493 was not enacted and, therefore, the contingency was met.

Rider 3 uses the phrase, "Amounts appropriated above include...." As discussed above, other riders use different language to describe funds that are not appropriated elsewhere. This contrast may indicate legislative intent.<sup>99</sup> Or, it is possible the Legislature could intend a rider to merely reappropriate funds already appropriated elsewhere.<sup>100</sup>

**Questions:**

**11.a. What is the effect of the Governor's veto of Securities Board Rider 3, Contingency for H.B. 2493?**

**11.b. If Rider 3 reappropriates funds, does it reduce one or more of the Securities Board Strategies by \$557,352 in fiscal year 2016 and \$636,688 in fiscal year 2017?**

**11.c. If the veto is effective, does that reduce one or more of the Securities Board Strategies by \$557,352 in fiscal year 2016 and \$636,688 in fiscal year 2017?**

**11.d. If the veto is effective, does the veto, or the lack of a specific appropriation, prohibit the Securities Board from using its appropriations for merit salary increases?**

Thank you for providing your opinion on the effect of the Governor's vetoes to these items.

Sincerely,



Glenn Hegar

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<sup>99</sup> Op. Tex. Att'y Gen. No. GA-0578 (2007), citing *Laidlaw Waste Sys., Inc. v. City of Wilmer*, 904 S.W.2d 656, 659 (Tex. 1995).

<sup>100</sup> *Jessen* at 600.

