



## LEGISLATIVE BUDGET BOARD

# Intra-Biennium Budget Adjustments

## Requests to Exceed

**PRESENTED TO SENATE FINANCE COMMITTEE**  
**LEGISLATIVE BUDGET BOARD STAFF**

**JANUARY 2018**

# Statement of Interim Charge

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**Request to Exceed Review:** Review all riders requiring interim action by the Legislative Budget Board to reduce the number of times interim budget modification is necessary.

# Requests to Exceed and Interim Budget Adjustments

The General Appropriations Act contains a variety of provisions designed to ensure not only that state entities expend appropriated funds in the manner intended by the Legislature but also that sufficient flexibility is provided to address unforeseen interim events or changes in forecasts.

The term “Request to Exceed” specifically refers to a request by a state agency to exceed a limitation placed on appropriations in the GAA. Such requests are subject to Legislative Budget Board approval. The term is more broadly used to refer to any provision in the GAA that requires LBB approval.

- Specific usage: An agency may request to exceed the 20% limitation on transfers between strategies
- General usage: An agency may need LBB approval before taking action to allocate funds to projects

LBB action on Requests to Exceed cannot in itself increase overall state appropriations above amounts in the GAA:

- Certain actions may authorize or recognize increased costs in certain areas (for example, Child Protective Services critical needs)
- Other actions act as a limitation or prohibition on increased cost, for example, a provision requiring the Health and Human Services Commission to have LBB approval before setting rates that would increase the cost of Medicaid

# History: Constitutional Amendment

Legislative remedies to the issue of interim budget control and flexibility date to 1951

- **Texas Constitution, Article XVI, Section 69** was approved by voters in 1985 after a period of failed constitutional amendments and Attorney General Opinions all addressing a mechanism to address unforeseen budget events in the interim between legislative sessions.
  - Permits the Legislature to require state agencies to obtain approval before spending or making an emergency transfer of appropriated funds; ballot language referred to “protect public funds” by authorizing prior approval.

Sec. 69. PRIOR APPROVAL OF EXPENDITURE OR EMERGENCY TRANSFER OF APPROPRIATED FUNDS. The legislature may require, by rider in the General Appropriations Act or by separate statute, the prior approval of the expenditure or the emergency transfer of any funds appropriated to the agencies of state government.

# History: GAA Provisions

- Between 1951 and 1985, a series of provisions in the GAA exerting interim budget control were adopted but found problematic in Attorney General opinions
- The 69th legislature (1985) adopted in the GAA Art. V, Sec. 97 which prohibited expenditures over \$5,000 for purchase, remodel, or repair of residential living quarters except when specific conditions exist and the Legislative Budget Board approves the expenditure. The rider also required that a report of such expenditures be made to the Legislative Budget Board by the State Purchasing and General Services Commission.
- The Legislature has chosen to include in the GAA provisions requiring LBB approval; the language has become more specific over time.
- The number of provisions has steadily increased, with some notable provisions also being removed by various Legislatures
  - The growth in such provisions has been in riders that pertain specifically to a single state agency or a group of agencies within an article.
  - Provisions affecting all state agencies have remained relatively stable in recent years, and some have been removed; for example, a limitation on state agency travel expenditures was adopted by the 76<sup>th</sup> Legislature in 1999 and removed in by the 83<sup>rd</sup> Legislature in 2013.

# Types of Adjustments

These provisions are applied in three main ways:

- Article IX contains provisions affecting all appropriations in the GAA;
- Special Provisions affect solely the article to which they are attached; and
- Riders in a single agency's bill pattern affect solely that agency.

These provisions:

- Do not cross over biennia or legislation; they must be readopted (or not) each legislative session, and riders in the GAA do not control appropriations made in other bills unless specifically referenced
- Generally also require concurrent approval by the Governor

Additionally:

- Agency compliance with appropriations is controlled by the Comptroller of Public Accounts
- Other Article IX provisions require state agencies to report certain information as a condition of using appropriation authority

# Summary of Current Provisions

The General Appropriations Act for the 2018-19 biennium contains the following 117 riders requiring LBB approval prior to an action or condition by a state agency. Some of these riders contain multiple requirements.

- 16 of the provisions are in Article IX and generally apply to all state agencies;
- 51 of the provisions apply to Article II, with 26 of those applying solely to HHSC.

Article	Approval
I: General Government	12
II: Health and Human Services	51
III: Public Education	6
III: Higher Education	5
IV: Judiciary	1
V: Public Safety and Criminal Justice	9
VI: Natural Resources	5
VII: Business and Economic Development	7
VIII: Regulatory	5
IX: General Provisions	16

# Article IX, General Provisions

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- Provisions in Article IX apply to all state agencies unless they are explicitly excluded from the provision.
- Some provisions in Article IX include language allowing an agency make a request to the LBB to exceed a limitation.
- In the absence of an approval mechanism, an agency would be fully subject to the limitation in question.



# Article IX, General Provisions

- Control circumstances in which changes to state agency executive compensation are permitted
- Allow agencies to request to move unexpended balances from the first year of the biennium to the second year of the biennium
- Allow agencies to exceed FTE limitations under certain criteria
- Allow agencies to exceed imitations on capital expenditures under certain criteria
- Require approval of statewide behavioral health expenditures
- Require approval for agencies to transfer funds from one to another in the event of a declared disaster (this authority is otherwise available only via statutory budget execution)
- Require approval prior to expenditure of unforeseen increases in federal funds over a threshold
- Allow certain project substitutions for GO Bond funded projects
- Allow agencies to exceed the 20% limitation on transfers between strategies
- Require Quality Assurance Team approval of certain IT projects
- Require approval prior to reclassifying certain positions
- Provide oversight prior to expenditure of certain Deep Water Horizon related revenues and certain SORM expenditures

# Agency-Specific Provisions

Examples of agency-specific requirements include:

Agency	Provision
Special Provisions for Article II	SP 17 Requires LBB approval for any rate that would result in increased expenditures over appropriated amounts
Support for Military and Veterans Exemptions	Rider 1 requires LBB approval for distribution of funds to institutions of higher education
Texas Department of Criminal Justice	Rider 46 requires LBB approval for rates associated with Correctional Managed Health Care
Texas Alcoholic Beverage Commission	Rider 13 prohibits certain expenditures on travel and other activities; there is no mechanism to exceed the limitation
Cancer Prevention and Research Institute of Texas	Rider 4 requires prior approval for transfers from grant strategies to administrative strategies
Texas Education Agency	Rider 34 requires LBB approval for the methodology for allocation of funds to Regional Education Service Centers

# Multi-Provision Actions

Item	Provisions
<p>In FY 2017, the LBB approved a series of budget adjustments to fund critical needs in child protective services. The following provisions were used to make this funding available for CPS</p>	<ol style="list-style-type: none"> <li>1) Article IX, Sec. 6.10, Limitation on State Employment Levels, to increase the FTE cap</li> <li>2) Article IX, Sec. 13.10, Temporary Assistance for Needy Families (TANF) or Social Services Block Grant (SSBG), to transfer TANF funds from HHSC to DFPS into DFPS Strategies B.1.1 and B.1.9</li> <li>3) DFPS Rider 6(c), Foster Care Rates, to transfer GR freed up in Strategy B.1.9 by the transfer of TANF from HHSC to Strategy B.1.1</li> <li>4) Special Provisions 10, Limitations on Transfer Authority, to transfer GR from HHSC to DFPS</li> </ol>
<p>In 2018, the state response to Hurricane Harvey used authority in both Article I and Article IX to ensure funds were made available as efficiently as possible</p>	<ol style="list-style-type: none"> <li>1) Trusteed Programs within the Office of the Governor, Rider 3 to make funds available for debris removal</li> <li>2) Article IX Section 14.04(d) to transfer funds from TDCJ to the General Land Office for housing</li> <li>3) Article IX Section 14.04 waives other restrictions on transfer provisions allowing state agencies to internally shift funds in the event of a disaster</li> </ol>



# LEGISLATIVE BUDGET BOARD

## **Contact the LBB**

Legislative Budget Board

[www.lbb.state.tx.us](http://www.lbb.state.tx.us)

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