

Fiscal 2014-15

State budget: Restrictions on spending

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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. This report provides a brief overview of some of the major restrictions that apply to legislative appropriations.

Constitutional limits

Five major constitutional limits bear on the appropriations process.

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

Budget growth limit. The Constitution also caps spending of state tax revenue that is not dedicated by the Constitution to a particular purpose.

The growth rate of spending from non-dedicated tax revenue may not exceed the official estimate of the growth rate of the state's economy set by the Legislative Budget Board (LBB). A majority vote of both houses of the Legislature may override this spending limit, which the 80th Legislature did in 2007 for the first time since 1978 by adopting a concurrent resolution authorizing that the spending limit be exceeded to fund school property tax relief.

Government Code, ch. 316, subch. A specifies how the LBB adopts the growth rate. On Nov. 15, 2012, the LBB adopted a projected state personal income growth rate of 10.71 percent from fiscal 2012-13 to fiscal 2014-15. This limits spending from non-dedicated tax revenue in fiscal 2014-15 to \$77.9 billion, up from \$70.4 billion in fiscal 2012-13. The spending cap amount is subject to change with additional appropriations for fiscal 2013. Introduced appropriations bills assume a supplemental appropriation of \$6.8 billion for fiscal 2012-13 will be necessary to fund costs that were insufficiently funded by the 82nd Legislature. According to the LBB, this would increase the spending limit to \$84.4 billion. Examples of revenue streams subject to the spending cap include sales, motor vehicle sales, franchise, and cigarette and tobacco taxes. (Art. 8, sec. 22).

Revenues that the Constitution restricts to a specific purpose are not subject to the constitutional spending limit. Motor-fuels tax revenue dedicated to highways and the 25 percent of oil and natural gas production taxes dedicated to public education are examples of restricted revenue that does not count toward the limit.

Prohibition against deficit spending. The Constitution also limits spending to the amount of revenue the Texas Comptroller of Public Accounts estimates will be available during the two-year budget period (Art. 3, sec. 49a). 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, the certification stands, even if the comptroller subsequently determines that revenue will not cover expenditures after all. The Legislature may override the deficit spending prohibition only if at least four-fifths of the members in each house approve.

The state may end a fiscal biennium with an unanticipated deficit, but it must eliminate the deficit in the subsequent budget. Sufficient revenue must be available 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 Susan Combs issued her Biennial Revenue Estimate at the beginning of the 82nd Legislature, she reduced her fiscal 2012-13 general revenue projection of \$76.5 billion by \$4.3 billion, the general revenue deficit amount then projected for fiscal 2010-11, which left \$72.2 billion available for spending in 2012-13.

Limits on state debt. The Constitution prohibits state borrowing except to “supply casual deficiencies of revenue” up to \$200,000, repel invasion, suppress insurrection, defend the state in war, or for a purpose it specifically authorizes (Art. 3, sec. 49).

The Legislature may 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 (Art. 3, sec. 49(b)). This provision has never been used.

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) during 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.

At the end of fiscal 2012, debt service on outstanding debt payable from general revenue equaled about 1.34 percent of unrestricted general revenue, according to the Bond Review Board. The total authorized debt service (issued and unissued) equaled 3.48 percent of unrestricted general revenue.

Limit on child welfare spending. The Constitution limits state spending on assistance to needy children and their caretakers to no more than 1 percent of the total state budget (Art. 3, sec. 51-a(b)). Federal matching funds and administrative expenses are not included under this cap, which according to the LBB, was about \$1.6 billion for fiscal 2012-13. The fiscal 2012-13 budget allocated \$248.8 million in state spending to grants for Temporary Assistance for Needy Families, about \$1.4 billion below the constitutional limit.

Dedicated revenues and funds

Discretion in legislative spending also is restricted by constitutional or statutory dedications that reserve certain revenue sources for special purposes or by state compliance with court orders or federal requirements.

According to the LBB's *Fiscal Size-up: 2012-13 Biennium*, 82.5 percent of the general revenue funds and general revenue dedicated funds appropriated for fiscal 2012-13 are restricted by various means. Of all general revenue and general revenue dedicated funds budgeted in fiscal 2012-13:

- 46.5 percent was restricted by constitutional or statutory dedications;
- 24.1 percent was influenced or directed by federal laws, regulations, and court decisions; and
- 11.9 percent was influenced by statutorily imposed funding formulas.

After accounting for these restrictions, 17.5 percent of all general revenue and general revenue dedicated funds in fiscal 2012-13 were available for totally discretionary spending.

General revenue dedicated funds are those funds within the General Revenue Fund, such as the State Parks Account and the System Benefit Fund, reserved for specific purposes by the Texas Constitution or specific statutes. Many of these funds have significant balances that have carried over from previous biennia. The table below includes the 10 general revenue dedicated accounts with the greatest estimated balances available for certification by the comptroller following the 2011 legislative session.

In addition to general revenue restrictions, the state's \$173.5 billion total appropriation for fiscal 2012-13 included about \$54.7 billion in federal fund expenditures. Federal funds generally are granted for specific purposes or

with restrictions on how states may spend them. Spending from most other funds not included in the General Revenue Fund, such as the State Highway Fund (Fund 6), the Texas Mobility Fund, and the Property Tax Relief Fund, are restricted by specific constitutional provisions.

Rainy Day Fund

The Economic Stabilization Fund ("Rainy Day Fund") will reach \$11.8 billion by the end of fiscal 2015, according to the comptroller's January 2013 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 (Art. 3, sec. 49-g). Only twice has an unexpended balance been transferred to the fund under this provision – once in fiscal 1992 (\$20.2 million) and again in fiscal 2008 (\$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.

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 \$3.6 billion during fiscal 2014-15.

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

Top 10 general revenue dedicated accounts with balances available for certification

No.	GR Account Name	FY 2011 Estimated Ending Balance	FY 2012-13 Estimated Revenues	FY 2012-13 HB 1 Appropriations	Adjustments, Reductions, Other Appropriations	Est. Revenues & Balances Available for Certification
5100	System Benefit	\$623,440,000	\$309,745,000	\$168,967,176	\$86,762,303	\$850,980,127
5071	Emissions Reduction Plan	414,737,000	152,920,000	132,411,596	218,620,828	653,866,232
5111	Designated Trauma Facility & EMS	270,584,000	227,454,000	115,072,483	5,001,620	387,967,137
5028	Fugitive Apprehension	151,596,000	45,800,000	-	-	197,396,000
5050	9-1-1 Service Fees	125,490,000	39,562,000	76,023,329	75,445,808	164,474,479
0655	Petroleum Storage Tank Remediation	144,326,000	2,470,000	44,454,397	54,349,475	156,691,078
0151	Clean Air	51,669,000	203,155,000	112,478,262	2,194,081	144,539,819
5000	Solid Waste Disposal Fees	92,223,000	38,650,000	10,986,324	-	119,886,676
5103	TX B-On-Time Student Loan	91,036,000	86,000,000	80,557,791	23,000,000	119,478,209
0036	TX Dept. of Insurance Operating	116,262,000	-	-	-	116,262,000

Source: Report on Use of General Revenue Dedicated Accounts, Texas Comptroller of Public Accounts, Sept. 2011

in each house of the Legislature 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 approved by at least two-thirds of the members present in each house.

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 2014-15 is \$14.4 billion.

One current question concerns whether funds drawn from the Rainy Day Fund count toward the funds subject to the constitutional spending limit. On January 23, the LBB said these funds would count toward the cap because the Constitution, while directing any transfers from the Rainy Day Fund, does not dedicate the revenue to any specific purpose.

The Legislature has appropriated money from the Rainy Day Fund during five legislative sessions. In 2011, the 82nd Legislature appropriated \$3.2 billion in HB 275 by Pitts to cover revenue shortfalls in the fiscal 2010-11 budget. 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.

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