

## Greg Abbott's Working Texans Plan

### I. Line Item Veto

***Recommendation: Amend the Texas Constitution to grant the Governor line-item reduction veto authority over the state budget.***

Some states provide a more flexible line-item veto than Texas, granting their governors a “reduction” line-item authority, by which a specific appropriation may be approved but reduced in amount. As Alexander Hamilton explained in Federalist No. 73, the veto power recognizes: “that the legislature will not be infallible... that a spirit of faction may sometimes pervert its deliberations; that impressions of the moment may sometimes hurry it into measures which itself, on maturer reflection, would condemn...”<sup>1</sup>

Granting “reduction” line-item veto authority to the Texas Governor would give a fiscally responsible Governor a useful tool to reduce spending without eviscerating appropriations entirely. The “reduction” power is a flexible tool that could help constrain the growth of government.

It is important to note that the same legislative veto override authority would exist as under current law. Article IV, Section 14 of the Texas Constitution holds that “If, on reconsideration, one or more of such items be approved by two-thirds of the members present of each House, the same shall be part of the law, notwithstanding the objections of the Governor.” Therefore, the Legislature could override a reduction veto via a two-thirds vote.

### II. Dedicated Accounts and Funds Consolidation (Truth-in-Budgeting)

Texas imposes over 250 different taxes and fees that are dedicated towards a specific purpose by statute. Commonly known as “general revenue-dedicated accounts”, these funds may receive revenues from a variety of sources which are typically linked to the purpose of the fund. For instance, the Designated Trauma Facility and EMS Fund (Acct no. 5111) receives 33 percent of the additional court fines for persons convicted of traffic-related offenses, such as speeding, and 49.5 percent of the revenue collected from driver responsibility program (“drivers’ ed”) surcharges. Amounts credited to the account are intended to be used to fund designated trauma facilities, county and regional emergency medical services, and trauma care systems.<sup>2</sup>

Article III, Section 49a(b) of the Texas Constitution requires the Comptroller of Public Accounts to certify that state revenues are equal to or greater than state expenses in the biennial budget. The Comptroller may only count funds in general revenue accounts towards certification. General revenue accounts

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<sup>1</sup> Federalist Paper No. 73, Alexander Hamilton. Online at: <http://usgovinfo.about.com/library/fed/blfed73.htm>

<sup>2</sup> <https://cpafmprd.cpa.state.tx.us/fiscalmoa/fund.jsp?num=5111>

include the state's main general revenue account, into which all non-dedicated tax collections are deposited, as well as the more than 250 dedicated general revenue accounts described above.

Through a process known as "funds consolidation", *all general revenue-dedicated* accounts can be consolidated, and their total collective balance may be applied toward certifying that the state budget does not exceed available revenue. This creates an incentive for the Legislature to leave balances in general revenue-dedicated accounts so that they can be used to certify that the state budget is within available general revenue.

As a result of this incentive, large balances have accrued in general revenue-dedicated accounts and state spending is much higher than it would be if the funds consolidation process was not practiced. For example, the 9-1-1 Service Fees (Acct no. 5050) is funded with the emergency service fees collected by telecommunications service providers.<sup>3</sup> The funds are earmarked for the Commission on State Emergency Communications (CSEC), to be used for providing 9-1-1 services.<sup>4</sup>

The table below illustrates the extent to which funds consolidation has grown over the past two decades:

Total Value of GR Dedicated Accounts Used in Certification (In Billions)	
72nd Legislature, 1991	\$0.54
73rd Legislature, 1993	\$0.94
74th Legislature, 1995	\$1.31
75th Legislature, 1997	\$1.14
76th Legislature, 1999	\$1.34
77th Legislature, 2001	\$1.63
78th Legislature, 2003	\$2.20
79th Legislature, 2005	\$2.75
80th Legislature, 2007	\$3.08
81st Legislature, 2009	\$3.67
82nd Legislature, 2011	\$4.95
83rd Legislature, 2013	\$4.17
<b>Cumulative Total:</b>	<b>\$27.72</b>

<sup>3</sup> [http://www.window.state.tx.us/taxinfo/911\\_fees/911\\_esf.html](http://www.window.state.tx.us/taxinfo/911_fees/911_esf.html)

<sup>4</sup> Tex. Health & Human Service Code §771.071(e)

Prohibiting the practice of funds consolidation is a critical reform that will restore truth-in-budgeting. Dedicated accounts should be used only for their intended purpose; not to grow the state budget.

***Recommendation 1: Pass a Constitutional Amendment prohibiting the use of statutorily-dedicated accounts for budget certification, beginning in the 2023-24 biennium.***

Expressly prohibiting the use of statutorily-dedicated accounts for budget certification in the Constitution would be the most effective way to end the funds consolidation process. This would improve the transparency of the state budget and would ensure that statutorily-dedicated accounts are used only for their intended purpose.

Such a provision would have to be phased-in over time. The provision could read: “The Legislature may not by general law make an unappropriated balance of a dedicated account or fund available for general governmental purposes or certification except by expressly repealing the dedication.”

One way to achieve this would be to reduce the use of statutorily-dedicated accounts for budget certification starting in the 2015-16 biennium, which would give the state four budget cycles to phase out the practice. Therefore, in the first biennium of the phase-out (2015-16) the Legislature could use only 80 percent of the balance of dedicated accounts for budget certification, followed by 60 percent in 2017-18, 40 percent in 2019-20, 20 percent in 2021-22, and zero in 2023-24.

***Recommendation 2: Review the taxes and fees associated with statutorily-dedicated accounts in order to ensure that they are set at appropriate levels (and reduce where necessary).***

By prohibiting the use of these balances for funds consolidation, the Legislature would have to appropriate the balances in these funds to their dedicated purposes over time, since retaining a balance in these funds would no longer serve a broader budgetary purpose.

It is also critical to review the amount of each dedicated tax or fee that is associated with a dedicated account. For example, the estimated ending balance for FY 2013 of the Petroleum Storage Tank Remediation account is \$143,276,000. The account is expected to earn additional revenue totaling \$47,199,000 in FY 2014 - 2015. Nonetheless, during the 83rd Legislature, lawmakers only appropriated \$46,465,994 from the account in the FY 2014 - 2015 biennium budget, leaving an estimated \$144,009,006 available for budget certification.<sup>5</sup>

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<sup>5</sup> [http://www.window.state.tx.us/finances/pubs/use\\_of\\_gr\\_ded/pdf/Use\\_of\\_Gen\\_Rev\\_Dedicated\\_Funds\\_83rd\\_Leg.pdf](http://www.window.state.tx.us/finances/pubs/use_of_gr_ded/pdf/Use_of_Gen_Rev_Dedicated_Funds_83rd_Leg.pdf)

Each tax or fee must be set at a rate that sufficiently meets the needs of the purpose for which it is being collected, in turn, lowering the unnecessary burden on taxpayers. Since these accounts currently hold such large balances in the aggregate, it is clear that many of the associated taxes and fees are likely higher than what is necessary for the accounts to achieve their intended purposes. The House Ways and Means Committee and the Senate Finance Committee should undertake a review, engaging with industry stakeholders and the general public, to establish appropriate fees and tax rates as part of the process of ending the practice of funds consolidation.

### III. State and Local Debt

In the 2012-13 biennium, the Legislative Budget Board's Fiscal Size Up<sup>6</sup> estimated that Texas has a total debt service expenditure of \$3.265 billion, approximately 1.9 percent of total appropriations. This is a 19.4 percent increase from the 2010-11 biennium of \$530.6 million, and a 284.5 percent increase of \$2.324 billion from the 2000-01 biennium.<sup>7</sup> By comparison, the total 2012-13 biennial expenditure on two-year institutions of higher education from General Revenue funds was \$1.924 billion.<sup>8</sup>

More worrisome, Texas has extremely high levels of local debt. According to the Texas Bond Review Board (BRB), local governments have \$195.81 billion in outstanding bond debt.<sup>9</sup> This translates to \$7,787 in local debt per capita - *the second highest per capita local debt burden in the nation* among the ten largest states, behind only New York, and immediately ahead of California, Pennsylvania, and Illinois.<sup>10</sup> It is also worth noting that *local government debt accounts for 83 percent of all public debt in Texas*, with state debt accounting for the remaining 17 percent.

***Recommendation 1: Create clear and concise transparency requirements for the disclosure of debt information to voters in state and local bond elections.***

In 2012, the Office of the Comptroller released a series of reports focusing on local debt, school district spending and transparency, and public pension obligations.<sup>11</sup> These reports form the basis of this recommendation. To ensure that voters are adequately informed about any new debt that they are being asked to approve, state and local bond election ballots should be required to include the following information:

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<sup>6</sup> Legislative Budget Board Fiscal Size-Up for the 2012-13 Biennium, available online at: [http://www.lbb.state.tx.us/Fiscal\\_SizeUp/Fiscal\\_SizeUp.pdf](http://www.lbb.state.tx.us/Fiscal_SizeUp/Fiscal_SizeUp.pdf) (last checked October 25, 2013).

<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> Texas Local Government Debt chart, <http://www.brb.state.tx.us/lgs/lgspubs2012.aspx>

<sup>10</sup> Texas Bond Review Board, 2012 Annual Report.

<sup>11</sup> "A Roadmap to Better," Susan Combs, Texas Comptroller of Public Accounts, December 2012, available online at <http://www.texastransparency.org/yourmoney/pdf/TexasItsYourMoney-Roadmap.pdf> (last checked March 15, 2013).

- the amount of debt currently outstanding (currently \$1,580 per capita, at the state level),
- current debt service payments (currently \$18 per capita, per year, at the state level),
- current per capita debt obligations,
- the amount of new debt being proposed,
- estimated debt service for the new debt, and
- estimated per capita burden being proposed.

These transparency requirements should apply to all political subdivisions, including cities, counties, school districts, and special taxing districts. Below is an example of what a revised ballot might look like:

<b>CITY OF BETA</b>				
BOND ELECTION - NOVEMBER 06, 2012				
	DEBT OUTSTANDING PRINCIPAL	REMAINING INTEREST	TOTAL DEBT SERVICE PAYMENT	DEBT OUTSTANDING PER CAPITA
AUG. 31, 2012	\$65,030,343	\$42,742,000	\$107,772,343	\$1,400.76
PROPOSED ISSUE	\$25,795,000	\$18,200,000*	\$43,995,000*	\$555.63

  

EXISTING ANNUAL DEBT TAX RATE	\$0.18 per \$100	EXISTING AVERAGE RESIDENTIAL DEBT SERVICE TAX LEVY**	\$274.97
PROPOSED NEW RATE IF BOND PASSES	\$0.22 per \$100	NEW DEBT SERVICE TAX LEVY IF BOND PASSES	\$336.08
% INCREASE	22.2%	% INCREASE	22.2%

**\* Estimated interest and total payment.**

**\*\* Average debt service tax is calculated on the average 2012 residential property value in the city of \$152,760.**

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**PROPOSITION**

THE ISSUANCE OF **\$25,795,000 ROAD CONSTRUCTION BONDS** FOR THE CONSTRUCTION, ACQUISITION AND EQUIPMENT OF HIGHWAYS AND BRIDGES (INCLUDING THE REHABILITATION, RENOVATION AND IMPROVEMENT THEREOF) AND THE PURCHASE OF THE NECESSARY RIGHT OF WAY, AND THE LEVYING OF THE TAX IN PAYMENT THEREOF:

FOR

AGAINST

Source: Comptroller of Public Accounts<sup>12</sup>

<sup>12</sup> <http://texastransparency.org/yourmoney>

***Recommendation 2: Require all local taxing entities to post their financial statements and local government contracts online.***

In order to provide greater transparency to local taxpayers and voters, local taxing entities should also be required to post their annual financial statements online. While many political subdivisions already do this, it should be a statutory requirement that includes the publication of certain debt-related information, such as:

- the total amount of debt currently authorized,
- the debt’s original stated purpose,
- issued and unissued amounts of authorized debt,
- total issued debt spent and unspent, and
- the per capita debt burden on taxpayers.

In addition, local political subdivisions should be required to post their vendor contracts online. State agencies are already required to report all contracts over a certain value to the Legislative Budget Board (LBB).<sup>13</sup> LBB maintains an online searchable database of these contracts<sup>14</sup>, which may be scrutinized by members of the public, taxpayers, and policy makers. No such requirement exists at the local level, yet this information is a critical part of ensuring that local taxpayers are able to understand how their money is being spent.

Requiring each local taxing entity – including cities, counties, school districts, and special taxing districts – to post all vendor contracts over certain values and financial statements online, or to submit them to the state for inclusion in a website maintained by the Comptroller or the Legislative Budget Board (in the case of small political subdivisions that do not maintain their own websites), would ensure that both the state and its political subdivisions are subject to the same transparency requirements.

#### **IV. Constitutional Spending Limit**

Over the past decade, the state has suffered two budget shortfalls arising from national and international economic downturns: the first in the 2003 legislative session and the second in the 2011 session. Budgets written during these fiscal crises have typically been followed up with a subsequent budget that reversed necessary and sensible spending reductions and increased state outlays. For instance, during a significant shortfall, the 2004-05 budget appropriated \$59.0 billion in general revenue – a 1.6 percent decrease from the previous biennium. However, in 2006-07 many of these reductions

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<sup>13</sup> The threshold varies depending on the type of contract. For example, all contracts over \$14,000 for professional services, consulting services, or construction services must be reported to LBB for inclusion in the database, while the threshold is \$100,000 for “major information systems,” and \$50,000 for contracts that do not fall into any of these categories. See: <http://www.texas Transparency.org/opendata/contracts.php>

<sup>14</sup> See: <http://contracts.lbb.state.tx.us/>

were rolled back as the Legislature enacted a \$67.2 billion budget, or a 14 percent increase over the 2004-05 level.<sup>15</sup>

Texas' current constitutional spending limit must be strengthened so that it can provide a meaningful check on the growth of state spending into the future.

The most critical weaknesses in relation to the calculation of Texas' constitutional spending limit at present are:

1. The limit applies only to non-dedicated General Revenue (GR) spending, rather than *all* state spending, and
2. The limit is based on an *estimate* of future personal income growth.

Partly as a result of these deficiencies, Texas' budget growth over the past decade has been among the fastest in the nation. A recent report by the Tax Foundation noted that Texas' population and inflation adjusted budget growth between 2001 and 2011 was the fifteenth fastest in the nation.<sup>16</sup>

***Recommendation 1a: Amend the Texas Constitution and state statute with a stricter spending limitation based on population growth and inflation, and apply the new limit to all GR and GR-dedicated state spending.***

Texas' current constitutional spending limit must be improved so that it can provide a meaningful check on the growth of state spending into the future.

To provide meaningful protections for taxpayers, the flawed constitutional spending limit should be rewritten to limit growth of the state budget to population growth plus inflation. In using this measure, the state will be able to continue to provide necessary services to the population as it grows. Any budget growth above this would be constitutionally restricted. In addition, a new limit should apply to all state GR and GR-Dedicated spending. Several other states employ spending limits based on population growth and inflation, including Alaska, Colorado, Nevada, and Utah.<sup>17</sup>

***Recommendation 1b: Require a two-thirds vote to override the constitutional spending limit.***

The Texas Constitution also authorizes the Legislature to override the spending limitation by a simple majority vote. Although this provision has never been exercised, it effectively renders the existing spending limit a meaningless "safeguard" against higher spending. By comparison, spending revenue from the Economic Stabilization Fund requires either a two-thirds or a three-fifths vote in the

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<sup>15</sup> Legislative Budget Board, Fiscal Size-Up 2010-11; p. 9.

<sup>16</sup> Tax Foundation, Growth in Government Spending 2001-11. Online at: <http://taxfoundation.org/blog/monday-map-growth-state-government-spending-2001-2011>

<sup>17</sup> Tax Policy Center, "States with Revenue and/or Spending Limits," April 5, 2013. Online at: [http://www.taxpolicycenter.org/taxfacts/Content/PDF/state\\_tel.pdf](http://www.taxpolicycenter.org/taxfacts/Content/PDF/state_tel.pdf)

Legislature.<sup>18</sup> An essential component of enacting a stricter constitutional spending limit will be to impose a two-thirds vote requirement to override the limit. A precedent is set by the constitutional requirements for appropriating funds from the Economic Stabilization Fund; the constitution establishes a three-fifths requirement (Art. III, 49-g, (k)) and a two-thirds requirement (Art. III, 49-g, (m)).

## V. The Economic Stabilization Fund

***Recommendation: Amend the Texas Constitution to narrow the permissible uses of the ESF to cover revenue shortfalls in the current biennium, debt retirement, one-time infrastructure projects, and expenses related to a state of disaster as declared by the governor.***

When voters endorsed the creation of the ESF in 1988, they approved a constitutional amendment “establishing an economic stabilization fund in the state treasury to be used to offset unforeseen shortfalls in revenue.”<sup>19</sup> Until the 83rd Legislature, with two narrow exceptions, the ESF has only been used to make supplemental appropriations related to revenue shortfalls: SB 7 (71S6, 1991), HB 7 (78R, 2003), HB 10 (79R, 2005), and HB 4 (82R, 2011).<sup>20</sup> The two exceptions, SB 171 (73R, 1993) and SB 532 (73R, 1993), related to Texas Department of Criminal Justice (TDCJ) capacity issues and totaled less than \$200 million.<sup>21</sup>

Amending Article III, Section 49-g(m) of the Texas Constitution to specify that other than in times of budget shortfall for a current biennium, the ESF may only be used for retirement of existing debt, one-time infrastructure payments, or to cover expenses related to a state disaster as declared by the governor under the Texas Government Code §418.014 would achieve this goal.

## VI. Agency Sunset Review Process

The agency Sunset review process has resulted in very modest streamlining and consolidation of state government. Since its inception in 1977, the Sunset Commission process has resulted in the abolition of 78 agencies—37 completely abolished, and 41 partially abolished with functions transferred elsewhere. Since 1979, legislative action affecting agencies subject to sunset review has resulted in the continuation of 81 percent of agencies, the abolishment of 9 percent of agencies, and the abolishment/transfer of functions of 10 percent of agencies.<sup>22</sup>

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<sup>18</sup> Texas Constitution Art., 3 Sec. 49-g

<sup>19</sup> House Research Organization, 1988 Constitutional Amendments, available at: [http://www.lrl.state.tx.us/scanned/Constitutional\\_Amendments/amendments70\\_HRO\\_1988-11-08.pdf#page=15](http://www.lrl.state.tx.us/scanned/Constitutional_Amendments/amendments70_HRO_1988-11-08.pdf#page=15)

<sup>20</sup> House Research Organization, 1988 Constitutional Amendments, available at: [http://www.lrl.state.tx.us/scanned/Constitutional\\_Amendments/amendments70\\_HRO\\_1988-11-08.pdf#page=15](http://www.lrl.state.tx.us/scanned/Constitutional_Amendments/amendments70_HRO_1988-11-08.pdf#page=15)

<sup>21</sup> Legislative Reference Library, FAQs about the Economic Stabilization Fund; available at: <http://www.lrl.state.tx.us/whatsNew/client/index.cfm/2011/2/28/FAQs-about-the-Economic-Stabilization-Rainy-Day-Fund>

<sup>22</sup> *Ibid.*



The fiscal impact of enacted sunset recommendations is also measurable. Using 29 years of fiscal note data from reviews conducted between 1982 and 2011, there are an estimated \$945 million in savings attributed to the agency sunset review process.<sup>23</sup> Expenditures on the Sunset Advisory Commission from the same period were \$32 million. Based solely on these figures, the agency sunset review process saves the state \$29 for every \$1 it spends.<sup>24</sup>

However, viewed differently, the savings resulting from the Sunset review process are meager at best. Since 1982, the state has appropriated \$1.3 trillion (adding together total appropriations from every state budget over the last 30 years). The \$945 million in savings attributable to the Sunset process over the same time period accounts for just 0.07 percent of the \$1.3 trillion in total state spending.

While the Sunset process has been in effect, the size of state bureaucracy has swelled. In 1980, there were 119 state government FTEs per 10,000 total state population. Using the population data from the most recent census and the employment information from the State Auditor's Office, there are currently 129 state FTEs per 10,000 total state population, which is more than Illinois, Ohio, Florida, and even California.<sup>25</sup> This per capita increase in the number of state employees underscores the point that the Sunset process has not resulted in smaller, leaner state agencies. In fact the Sunset process is undermined in this regard by its own statute. Government Code [Section 325.020] states explicitly that “if an employee is displaced because a state agency or its advisory committee is abolished, reorganized, or continued, the state agency and the Texas Workforce Commission shall make a reasonable effort to relocate the displaced employee.”

***Recommendation 1: Expand the Sunset Commission to be a majority citizen-led commission on government reform (appointed by Governor, Lt. Governor, and Speaker of the House).***

Similar to the federal Defense Base Realignment and Closure Commission (BRAC), private citizen commissioners should be appointed to provide experience and insight to the reform process. BRAC Commissioners are typically made up of retired military officers that can provide objectivity and credibility in decisions about military base closure.<sup>26</sup> BRAC’s model has had demonstrable successes: BRAC’s realignment of Bergstrom Air Force Base eventually led to the relocation of Austin’s crowded Robert Mueller Airport to the current location on the site of the AFB, Austin-Bergstrom International Airport.<sup>27</sup>

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<sup>23</sup> Sunset Advisory Commission, “Sunset in Texas,” January 2012. Online at: <http://www.sunset.state.tx.us/suntx.pdf>

<sup>24</sup> *Ibid.*

<sup>25</sup> Legislative Budget Board 2012/2013 Fiscal Size-Up.

<sup>26</sup> See [www.brac.gov](http://www.brac.gov)

<sup>27</sup> See, e.g., U.S. Air Force Civil Engineer Center at: <http://www.afcec.af.mil/brac/bergstrom/index.asp>; See also Department of Defense at: <https://www.oea.gov/installations/brac-legacy-installations/bergstrom-afb?legacy=1&return=aHR0cHM6Ly93d3cub2VhLmdvdvi9pbnN0YXxsYXRpb25zL2JyYWMTbGVnYWNSLWluc3RhbGxhdGlvdnM=>

Another state commission model to look to is the Florida Taxation and Budget Reform Commission (TBRC), which is made up of 25 business and community leaders as well as former public officials. This commission was created to examine the budget, expenditure, and taxation process for the state of Florida, and can make recommendations to the state Legislature or even directly to the ballot as constitutional amendments.<sup>28</sup> In 2008, for example, four amendments to the Florida Constitution were proposed by the TBRC. Three of these amendments expanded property tax exemptions and were approved. A fourth would have authorized local option sales taxes to fund community colleges and was defeated by voters.<sup>29</sup>

Currently, there are twelve members of the Sunset Commission - ten legislators and two members of the public. In order to be a majority citizen-led commission, nine new places for members of the public would need to be added, seven of them appointed by the Governor. Each commissioner would be limited to one 4-year term and citizen commissioners should represent a broad diversity of geography and background.

Increased involvement by business and community leaders in the Sunset Commission process would provide increased accountability to Texas taxpayers, and bring fresh proposals to the process.

***Recommendation 2: Statutorily refocus the mission of the Sunset Commission on the abolition, consolidation, and cost reduction of state agencies.***

In 1976, when the Sunset Commission was first proposed, the Dallas Times Herald speculated that the Sunset process would “tear the hide off the bureaucracy, cut into its guts and see if surgery is indicated... and then, if necessary, restructure governmental agencies and programs—or, if the bodily organs are beyond use, let them die.”<sup>30</sup> That clearly has not occurred.

A statutory mission or purpose statement should be added to Chapter 325 of the Government Code narrowing and refocusing the work of the Sunset Commission. Sample language could read:

Sec. 325.0011. MISSION & PURPOSE. The purpose of the Sunset Advisory Commission is to review state agencies in an effort to evaluate the justification for the agency's existence. The commission's primary objective is to consolidate agencies, reduce costs, or abolish agencies.

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<sup>28</sup> See Florida Budget and Taxation Reform Commission 2007-2008 Final Report, available at: <http://www.law.fsu.edu/library/databases/ftbrc/pdf/TBRCFinalReport.pdf>

<sup>29</sup> Florida Department of State, Division of Elections: November 4, 2008 General Election, Official Results. Online at: <http://election.dos.state.fl.us/elections/resultsarchive/Index.asp?ElectionDate=11/4/2008>

<sup>30</sup> “Sunset for Texas,” Dallas Times Herald, June 16, 1976

It is also necessary to amend Government Code sections 325.010, 325.011, 325.012 to better reflect this mission and purpose statement. Current criteria for review should focus on improving agency operations. While perhaps a laudable goal, the primary objective of the Sunset Advisory Commission and any review it conducts should be abolition, or consolidation, of a state agency resulting in an overall state appropriations reduction.

***Recommendation 3: Repeal the Sunset Act provision protecting state bureaucracy.***

Government Code Section 325.020 explicitly states, “if an employee is displaced because a state agency or its advisory committee is abolished, reorganized, or continued, the state agency and the Texas Workforce Commission shall make a reasonable effort to relocate the displaced employee.” This undermines the intent of the Sunset process to create a leaner, more efficient government. If the Sunset process determines that an agency is no longer needed, the state should not continue to employ someone simply because they once worked for a state agency that is now defunct. State hiring decisions should be based on merit and on the need for a particular employee at a particular agency.

## **VII. Unfunded Mandates**

***Recommendation: Amend the Texas Constitution and statute to restrict the power of the Legislature to mandate requirements on local governments.***

Under current state law, the Legislature is permitted to impose requirements or mandates on local governments that provide additional fiscal burdens on those governments. At the same time, while requiring local governments to do more, the Legislature, at times, does not provide enough local funding to meet those requirements. This can sometimes force the affected local to raise taxes, reduce services, issue new debt, or, more typically, the local government is forced to absorb the cost of the new state mandate using existing resources.

For example, the Fair Defense Act, which sets forth specific standards relating to the entitlement and appointment of counsel for indigent defendants in certain criminal adversarial judicial proceedings, cost counties about \$165 million in fiscal year 2010.<sup>31</sup> According to the Texas Association of Counties:

Since passage of the Fair Defense Act, indigent defense costs have increased 127 percent from \$91.4 million in 2001 to \$207.5 million in 2012. However, state grants distributed by the Texas Indigent Defense Commission, and derived from dedicated funds, have covered only a small proportion of those costs. In FY 2012, the state funded only about \$28.3 million of the total

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<sup>31</sup> “Significant Unfunded and Underfunded Mandates on Texas County Governments,” Texas Association of Counties, Feb. 25, 2011. Available online at: <http://www.county.org/member-services/legislative-updates/hot-topics/Documents/UnfundedMandates.pdf> (last checked October 25, 2013).

statewide indigent defense costs, while counties contributed approximately \$179 million (about 86 percent of the total costs).<sup>32</sup>

A constitutional amendment should be passed prohibiting the Legislature from imposing any mandates on local political subdivisions that impose additional costs without, at the same time, providing the appropriate funding -- effectively prohibiting future unfunded mandates on political subdivisions.

## VIII. Transportation Finance

***Recommendation 1: Amend the Transportation Code so that expenditures from the State Highway Fund (SHF) are used only for right-of-way acquisition, construction and policing of public roadways, and prohibit expenditures by any non-transportation agencies.***

Despite the clear constitutional provision that Motor Fuels Taxes “shall be used for the sole purpose of acquiring rights-of-way, constructing, maintaining, and policing such public roadways,” significant appropriations from the SHF are directed to agencies other than TxDOT and the Department of Public Safety. The majority (81 percent) of appropriations from the SHF over the past decade have gone directly to the Texas Department of Transportation (TxDOT). However, other amounts are diverted to seven other agencies, including the Health and Human Services Commission (HHSC) and the Texas Education Agency (TEA).

As noted above, Article VIII, Section 7a of the Texas Constitution reads as follows:

Subject to legislative appropriation, allocation and direction, all net revenues remaining after payment of all refunds allowed by law and expenses of collection derived from motor vehicle registration fees, and all taxes, except gross production and ad valorem taxes, on motor fuels and lubricants used to propel motor vehicles over public roadways, shall be used for the sole purpose of acquiring rights-of-way, for constructing, and maintaining, and policing such public roadways.

Similarly, Section 222.001(a) of the Transportation Code states that revenue from the State Highway Fund may only be used as follows:

- (1) to improve the state highway system; or
- (2) to mitigate adverse environmental effects that result directly from construction or maintenance of a state highway by the department; or
- (3) by the Department of Public Safety to police the state highway system and to administer state laws relating to traffic and safety on public roads.

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<sup>32</sup> “Legislative Briefing: Indigent Defense,” Texas Association of Counties, February 11, 2013. Available online at: <http://www.county.org/member-services/legislative-updates/Documents/Briefs/2013%20Legis%20Brief%20-%20Indigent%20Defense.pdf> (last checked October 25, 2013).

This section should be amended by adding a new subsection (c) to read as follows:

(c) Except as otherwise provided by this code, money in the state highway fund that is not described by Subsection (a) may be used only to improve the state highway system.

This reform would ensure that the State Highway Fund is not used to fund other agencies of government. For instance, in the 2014-15 biennial budget<sup>33</sup>, more than \$800 million was appropriated to non-transportation related agencies, including the Office of Comptroller, the Veteran's Commission, and the Department of Insurance. Prohibiting such appropriations would make an additional \$400 million per year available for transportation spending from the State Highway Fund. This is achieved without affecting State Highway Fund appropriations to TxDOT, DPS, the Department of Motor Vehicles (DMV), the Texas Transportation Institute, or the appropriations to the Office of the Attorney General for litigating right-of-way acquisitions on behalf of TxDOT.

Non-transportation agencies that lose State Highway Fund appropriations under this reform could have that revenue made up from the General Revenue Fund, or the functions that are funded from the State Highway Fund could be transferred to other agencies. This reform is predicated on the notion that expenditures from the State Highway Fund should be used for constructing, maintaining, and policing roadways: expenditures that do not meet this standard should be funded from General Revenue.

***Recommendation 2: Amend the Texas Constitution to dedicate upwards of two-thirds of Motor Vehicle Sales and Use Tax Revenue to the State Highway Fund.***

Any specific fiscal policy recommendation regarding transportation funding must be viewed in the context of the constitutional amendment – approved by the 83<sup>rd</sup> Legislature – that will be presented to voters in November 2014. As noted above, if approved, that legislation will allocate between \$800 million and \$1.1 billion of additional revenue to the SHF each year.

However, the constitutional amendment diverts revenue to the SHF that would otherwise go to the Economic Stabilization Fund. To divert further funding to the SHF, an additional constitutional amendment would be necessary.

In fiscal year 2012, the Motor Vehicle Sales Tax (including use taxes and rental taxes) brought \$3.6 billion into the state coffers, making it among the largest sources of state revenue<sup>34</sup>. Yet most of that money goes into the General Revenue Fund (GR), most of which is consumed in other areas of government.

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<sup>33</sup> Conference Committee Report on Senate Bill 1 (83R, 2013).

<sup>34</sup> Texas Revenue History by Source, Fiscal Year 2012 <http://www.window.state.tx.us/taxbud/revenue.html>

Since motor vehicle sales have a direct impact on the state’s transportation infrastructure, it is appropriate to dedicate upwards of two-thirds of that tax to the SHF to keep pace with transportation needs. The following chart shows that dedicating a third of Motor Vehicle Sales Taxes to the State Highway Fund would have a significant impact on state transportation financing:

**Motor Vehicle Sales Tax Collections & Motor Fuels Taxes Deposited in State Highway Fund**

	Motor Vehicle Sales Tax	Motor Fuels Tax to State Highway Fund
FY 2010	\$2.6 billion	\$2.2 billion
FY 2011	\$3.0 billion	\$2.3 billion
FY 2012	\$3.6 billion	\$2.3 billion

*Source: Comptroller of Public Accounts*

Increasing the amount of motor vehicle taxes dedicated to the SHF could be adopted in lieu of or supplement the allocation of oil and gas production taxes to the SHF which is currently being proposed to voters.