

# PROCLAMATION

BY THE

## Governor of the State of Texas

TO ALL TO WHOM THESE PRESENTS SHALL COME:

### STATEMENT ON APPROPRIATION OF LUMP SUM \$1,441,725 FOR DEPARTMENT OF AGRICULTURE

As Governor of Texas, I have consistently advocated and actively sought strengthening of the state's agricultural programs and improvements in the state's agricultural economy. I have recommended additional research funds to develop improved farm and ranch products. I have recommended increased efforts to provide Texas agriculturalists with knowledge of the latest developments in farming and ranching techniques and tools. I have recommended expansion of the state's efforts to create new agricultural commodities and to find new markets for Texas products. My recommendations have been specific and directed toward a particular end so that an evaluation could be made of purposes and results and the magnitude of financial commitment intended.

The Legislature has made in House Bill 5 a lump sum appropriation to the Department of Agriculture of \$1,441,725 for some 15 widely varying projects, programs and purposes. Six of these programs existed in the form of individual program appropriations in the 1968 fiscal year general appropriations act. In the same act, appropriations for ten other programs and projects were made in one lump sum. The total amount appropriated for all these purposes and programs for the 1968 fiscal year was \$783,706. My comparable recommendation for the 1969 fiscal year was \$773,608. The appropriation made in House Bill 5 approaches twice either total.

My recommendations were made entirely in the form of individual program appropriations, identifying the exact purpose for which funds were recommended and the exact amount recommended for each purpose. The appropriation made by the Legislature combines all purposes and all monies into one gigantic appropriation which runs on to three pages in the appropriation act.

The lump sum form of appropriation used in this instance for the Department of Agriculture is of grave concern to me. Such a method of appropriation represents a blatant attempt to protect unnecessary and unwarranted appropriations by combination with other appropriations which are legitimate and beneficial. Appropriations made in this manner are nothing less than an abdication of legislative responsibility to determine priorities of need and to indicate clearly the legislative judgement as to financial requirements for different purposes and programs.

In addition, lump sum appropriations of this nature severely inhibit the Chief Executive in the exercise of his constitutional responsibility to render judgement on appropriations through exercise of his veto power. The Chief Executive must either strike the entire appropriation from the law, and with one stroke of the pen blank out all the beneficial and necessary parts of the appropriation along with the abusive and unnecessary ones, or pass over the whole appropriation with its waste and excessiveness intact.

Because this appropriation contains authorization for a number of worthwhile and meritorious expenditures which I have recommended, I am not vetoing it. I am, nevertheless, expressing my profound concern that this method of appropriation, if it becomes a matter of common and pervasive legislative practice, could lead to the most pernicious waste of the financial resources of this state that our history may record.

60TH LEGISLATURE—1ST CALLED SESSION

SUMMARY OF VETOES

ARTICLE I—

Courts of Civil Appeals

Briefing Legal Clerks, 13 of the 14 District Courts ..... \$ 91,000

ARTICLE II—

Department of Health—Cotton Gin Rider

ARTICLE III—

Air Control Board—Cotton Gin Rider

Building Commission

Two automatic elevators in the Capitol Building ..... 275,000

Comptroller of Public Accounts

Constructing and Equipping a Prefabricated Building ..... 600,000

Board of Control

Assistant Executive Director ..... 16,500

Board of Insurance

Investigation of Insurance Claims ..... 50,000

Liquor Control Board

Deputy Administrator ..... 17,500

Assistant Director of Auditing ..... 13,000

Parks and Wildlife Department

Purchase of land in Somervell County ..... 90,000

Acquisition of land and development of Port Lavaca Causeway State Park ..... 187,500

Rider Provision—Designating Historical Sites

Department of Public Safety—Riders

Turnpike Authority

Restriction on use of Airplanes and Helicopters

ARTICLE IV—

Blinn College

Old Washington State Park ..... 22,000

ARTICLE V—

Riders

Section 2, Paragraph D—Restricting State Employment

Section 12—Liability Insurance

TOTAL ..... \$1,362,500

COURTS OF CIVIL APPEALS

Briefing Legal Clerks in the items shown below:

Courts of Civil Appeals:

First District, Houston, Item 5 ..... \$7,000

Second District, Fort Worth, Item 6 ..... 7,000

Third District, Austin, Item 6 ..... 7,000

Fourth District, San Antonio, Item 6 ..... 7,000

Sixth District, Texarkana, Item 6 ..... 7,000

Seventh District, Amarillo, Item 5 ..... 7,000

Eighth District, El Paso, Item 6 ..... 7,000

Ninth District, Beaumont, Item 6 ..... 7,000

Tenth District, Waco, Item 6 ..... 7,000

Eleventh District, Eastland, Item 6 ..... 7,000

Twelfth District, Tyler, Item 6 ..... 7,000

Thirteenth District, Corpus Christi, Item 6 ..... 7,000

Fourteenth District, Houston, Item 5 ..... 7,000

The new position of Briefing Legal Clerk was added to 13 of the 14 Courts of Civil Appeals. This position was not included by any of these courts in their 1969 budget requests. Although some attempt at justification was made before the Legislature, the need for this new position has not been adequately demonstrated. I am, therefore, vetoing this position as it appears among the Courts of Civil Appeals.

## APPROPRIATIONS—VETO PROCLAMATION

### DEPARTMENT OF HEALTH AND AIR CONTROL BOARD

#### Rider Provision

Included in both the appropriations made for the Department of Health and the appropriations for the Air Control Board is the rider provision:

"None of the funds appropriated above may be expended on activities, other than research and correspondence, which are in any manner connected with cotton gins or the cotton ginning industry of the State of Texas."

A rider similar in language and practically identical in intended effect appeared in Senate Bill 15 following the appropriation for the Department of Health and the Air Control Board. In vetoing those riders I made the following observations:

"According to the Health Department, more complaints are registered at the state level concerning air polluting by the cotton ginning industry than any other major industry in this state. According to the Air Control Board, about 10 to 20 percent of the population of Texas could be affected with allergies and respiratory difficulties from dust, smoke and mold particles from cotton gins. Many industries may fall within the provisions of these riders since they are either directly or indirectly connected with the cotton ginning industry.

"The cotton ginners would be prohibited from cooperating with the Health Department or the Air Control Board even if they desired and wished to install anti-pollution equipment. Some representatives of the cotton ginning industry have contacted my office and have expressed a desire to cooperate in anti-pollution activity, but they contend the riders prohibit them from doing so.

"The Department of Health, Education and Welfare has promulgated certain rules and regulations which are designed to require states to implement more effective air pollution control methods. If such control is not achieved, federal grants could be curtailed or cancelled. Some fears have been expressed by state administrators that federal agencies will intervene in air pollution programs in those states with ineffective controls. Texas must not put itself in this position."

Because my veto of the riders in Senate Bill 15 allowed the Health Department and Air Control Board to work actively with cotton ginners and the cotton ginning industry, complaints to the Air Control Board have declined substantially during the past year and over \$1,000,000 has been spent for air pollution control devices by ginners who have received the assistance of the Health Department and Air Control Board.

The effect of the two riders which appear in House Bill 5 would be to prevent the two agencies from assisting the industry in developing air pollution control programs and systems, and consequently, from preventing or reducing the air pollution which can result from gin operations. I am, therefore, vetoing these riders.

### BUILDING COMMISSION

#### Item No. 14

For two new automatic elevators in the Capitol Building ..... \$275,000

In 1969 the State Finance Building will be completed and the offices of the Comptroller and State Treasurer will be moved from the Capitol to this new building. The relocation of these Departments will make a substantial portion of the office space in the Capitol Building available for reallocation and extensive remodeling will be necessary.

By deferring the installation of any additional elevators until the reallocation of space and architectural plans are finalized the design of the office space and the utility of the elevators can both be optimized. For this reason I am vetoing the appropriation.

60TH LEGISLATURE—1ST CALLED SESSION

COMPTROLLER OF PUBLIC ACCOUNTS

Item No. 18

For the purpose of constructing and equipping a prefabricated building on land presently held by the Department of Mental Health and Mental Retardation in the City of Austin, bounded by Forty-fifth and Guadalupe Streets and Lamar Boulevard, and for the payment of installation and operation of utilities and janitorial services, professional fees, travel, paying and rent of equipment, materials, operating expense, capital outlay, and all other expenses incident to the moving of the State Comptroller's Department in the Capitol to the new building . . . . . \$600,000

The inclusion of an appropriation for temporary office space for the Comptroller in House Bill 5 represented an attempt by the Legislature to make some provision for meeting the need for additional legislative office space in the Capitol prior to the regular session next year. Since the incorporation of this item into the appropriation bill, a satisfactory alternative arrangement has been developed, and I have been informed by the appropriate members of the Legislature that the expenditure is not now necessary. In response to their request, I am vetoing this item.

BOARD OF CONTROL

Item No. 3

Assistant Executive Director . . . . . \$16,500

The appropriation for the Board of Control contains a new job, Assistant Executive Director. The Department did not request this position in its 1969 fiscal year budget, nor did I or the Legislative Budget Board recommend it. In addition, this item did not appear in either the preliminary House or Senate appropriation bills. Since no role or function has been established for this job in the organizational structure of the agency, it would create only confusion and inefficiency within the administrative staff. Consequently, I am vetoing this item.

BOARD OF INSURANCE

Item No. 11

For investigation of insurance claims pertaining to health, accident or hospitalization insurance, and for assistance to claimants against insurers in the prosecution of their claims. For salaries, operating expense and travel . . . . . \$50,000

This item first appeared in the Conference Committee Report on Senate Bill 15 in the Regular Session of the 60th Legislature. No explanation was made as to the intent of the Legislature in including this appropriation in Senate Bill 15 or as to the purpose for which the funds were to be used. The reasons for the inclusion of these funds, in this form, are no more clear now than they were at that time, and therefore, I am again vetoing this item.

LIQUOR CONTROL BOARD

Item No. 4

Deputy Administrator . . . . . \$17,500

This position was not included in the agency request, my recommendations, the Legislative Budget Board recommendations, the House appropriation bill, or the Senate appropriation bill.

The Liquor Control Board did request significant organizational realignment and additional administrative personnel to improve the agency's performance and effectiveness. At no time, however, has there been expressed a need which would be met by an auxiliary position at the executive level beyond that of Assistant Administrator. I am, therefore, vetoing the position of Deputy Administrator.

## APPROPRIATIONS—VETO PROCLAMATION

### Item No. 6

Assistant Director of Auditing ..... \$13,000

This position was not requested by the agency, not recommended by me or the Legislative Budget Board and appeared only in the conference version of the general appropriation bill.

There has been no indication that such a position is needed within the organizational structure of the agency, and I am, therefore, vetoing it.

### PARKS AND WILDLIFE DEPARTMENT

#### Item No. 14.F

To purchase land located in Somervell County as provided in Chapter 412, Acts of the 60th Legislature, Regular Session, 1967 ..... \$90,000

#### Item No. 15

For acquisition of land and development of Port Lavaca Causeway State Park as authorized by H. B. No. 1034, 60th Legislature, Regular Session, 1967 ..... \$187,500

I recommended to the 60th Regular Session, and the Legislature enacted, a proposed constitutional amendment and enabling legislation for a park land acquisition and development program to be financed by the sale of \$75,000,000 in bonds to be repaid from park use fees. The people of Texas approved this constitutional amendment in November, 1967.

My reason for recommending the bond program and the intent of the Legislature and the people of Texas in approving it was to provide an adequate source of funds for the Parks and Wildlife Department to implement a comprehensive, state-wide plan for the development of a system of parks and recreation facilities to meet the needs of all the people and all the areas of our state. This program will make our park system one of the finest in the nation and enable us to continue to satisfy all the growing demands for park and recreational facilities in Texas. Financing this program will create no additional tax burden upon the people of the state.

The Legislature has appropriated tax funds in House Bill 5 for the development of some state park properties which were acquired prior to adoption of the bond program and which, therefore, are ineligible for development with bond proceeds. The fees collected at these parks will be used, along with fee income from other parks, to retire the bonded indebtedness of the state-wide program, and I have no objection to these appropriations.

Appropriations are also made, however, for acquisition or acquisition and development of two park sites, the Somervell County site and the Port Lavaca Causeway site, which are eligible for the bond program. These appropriations take tax resources which are needed for other purposes and commit them to two park sites which may be included in the bond program and which are, consequently, contrary to the purpose and intent of the comprehensive development program which the Legislature has passed and the people of Texas have adopted. For this reason, I am vetoing these appropriations.

### PARKS AND WILDLIFE DEPARTMENT

#### Rider Provision

The rider provision in the fourth paragraph of page III-113<sup>1</sup> following the appropriation to the Parks and Wildlife Department reads as follows:

"The appropriation made in Item 14D above is to be expended for the acquisition, restoration, and maintenance of the following historical sites listed in order of their priority: Leaton, McKavett, Lancaster, Griffin, Concho and Richardson. No money is to be spent for restoration and maintenance until the State of Texas shall have acquired valid legal title to such sites."

<sup>1</sup> Page 198 in this volume.

## 60TH LEGISLATURE—1ST CALLED SESSION

This rider appeared in Senate Bill 15 and was the subject of Attorney General's opinion M-219, dated April 18, 1968. In this opinion the Attorney General held the rider invalid since it necessarily conflicts with Article 6081s, Vernon's Civil Statutes, which gives the Parks and Wildlife Department broad discretion in designing, acquiring, restoring, and maintaining State historical structures and sites. I am for this reason vetoing the rider.

### DEPARTMENT OF PUBLIC SAFETY

#### Rider Provision

The appropriation to the Department of Public Safety contains the same rider provision which I vetoed twice before from the provisions of the General Appropriations Acts passed by the 59th Legislature and the Regular Session of the 60th Legislature. This rider states:

"Whenever the Texas Department of Public Safety shall, by agreement entered into under the authority of the Inter-Agency Cooperation Act, provide for appropriate reimbursement therefor, such Department is authorized to expend so much funds as may be necessary out of funds appropriated herein to permit the proper policing of turnpike and turnpike projects under contracts entered into with the Texas Turnpike Authority pursuant to Chapter 410, Acts of the Fifty-third Legislature, Regular Session, 1953, provided, however, that funds received from the Texas Turnpike Authority shall be deposited to the State Highway Fund No. 6, and are not re-appropriated by this Act."

The reasons I gave for vetoing this rider from the provisions of H. B. 12, Acts of the 59th Legislature and S. B. 15, Acts of the 60th Legislature, Regular Session are as follows:

"This rider appears to conflict directly with a contract between the Department of Public Safety and the Texas Turnpike Authority, made under the provisions of the Texas Turnpike Authority Act, which states: "This agreement is subject to the enactment by the Legislature of necessary emergency legislation to permit the replacement of personnel assigned to the turnpike . . . and like provisions for each biennial appropriation."

Additionally, this rider conflicts with the Inter-Agency Cooperation Act, which states:

". . . payments received by the State agency performing the service shall be credited to that State agency's current appropriated item or account from which the expenditures of that character were originally made."

This rider is also repugnant to Section 31, Article V of the General Appropriation Act (H. B. 5, 60th Legislature, First Called Session).

"Sec. 31. REIMBURSEMENTS AND PAYMENTS. Any reimbursements received by an agency of the State for authorized services rendered to any other agency of the State government, and any payments to an agency of the State government made in settlement of a claim for damages, are hereby appropriated to the agency of the State receiving such reimbursements and payments for use during the fiscal year in which they are received . . ."

The Department of Public Safety has policed the turnpike since it was created in 1957 and has always been reimbursed for this service. This rider would, in effect, take yearly appropriations of approximately \$120,000 to \$150,000 away from the Department. The elimination of this rider would permit continuation of the salary of one patrol lieutenant and twelve highway patrolmen, allowing the Department to use more patrolmen on the public highways of Texas.

My veto in no way affects turnpike policing permitted by the Turnpike Authority Act and the Inter-Agency Cooperation Act.

These reasons are as valid today as in 1965 and in 1967, and for those same reasons I am vetoing this provision.

## APPROPRIATIONS—VETO PROCLAMATION

### Rider Provision

The appropriation for the Department of Public Safety includes the following rider provision:

“The Department of Public Safety is authorized to own and operate three (3) airplanes and two (2) helicopters only, all of which are to be based in Austin except for rescue operations. None of the funds appropriated above shall be expended for the purchase of airplanes or helicopters without the specific approval of the Governor.”

The effects of this rider could severely restrict the usefulness of aircraft by the Department of Public Safety in criminal and traffic law enforcement.

Any continuing law enforcement problem or investigation in an area of the state away from Austin could require aircraft to be located in that area. This rider would prevent such location of aircraft.

Limiting the location of helicopters would almost prohibit their use in traffic surveillance and control. Their use in connection with civil disasters and civil disorders away from Austin, furthermore, would also be subject to question.

Section 19 of Article V of the appropriations act requires the approval of the Governor prior to the expenditure of funds for the purchase of aircraft.

In a time when the problems of combating criminal activities are daily becoming greater and more demanding and traffic accidents and deaths are almost constantly climbing, placing further restrictions upon the state's chief law enforcement agency cannot conceivably aid in our efforts to protect the lives and property of the people of Texas. I am, therefore, vetoing this rider.

### BLINN COLLEGE

Old Washington State Park ..... \$22,000

The operation of a museum at the Old Washington State Park should be the responsibility of the Parks and Wildlife Commission which has jurisdiction of this park and all other state parks. In addition, the operation of a museum is not within the role and scope of a public junior college, I am, therefore, vetoing this item.

### ARTICLE V, SECTION 2, PARAGRAPH D.

“Section 2, paragraph d. None of the funds appropriated in this Act may be used to employ a person who took a leave of absence from state employment for the purpose of participating in a political campaign.”

Article I, Section 16 of the Constitution of the State of Texas prohibits the enactment of this rider. Section 16 reads: “No bill of attainder, ex post facto law, retroactive law, or any law impairing the obligation of contracts, shall be made.”

In the case of *Tuberville v. Gowdy*, Civ.App., 272 S.W. 559 (1925), as revealed by the Interpretation Commentary in the Texas Constitution, the court held: “A retroactive law is one meant to act on things that are past. As such, a statute is retroactive which takes away or impairs vested rights acquired under existing laws, or creates new obligations, imposes new duties, or adopts a new disability in respect to transactions already past, and which affects acts or rights accruing before it came into force.”

This rider, having the effect of law as a part of the General Appropriations Act (H. B. 5) passed by the 60th Legislature, First Called Session, 1968, is clearly unconstitutional. I am, therefore, vetoing it.

### ARTICLE V, SECTION 12.

“Section 12. Liability Insurance. As employee compensation in addition to that otherwise provided herein, any state agency authorized by this Act to purchase and operate motor vehicles, may reimburse its employees, out of funds appropriated in this Act, for costs incurred in purchasing any necessary additional personal liability insurance for the purpose of insuring against personal liability arising out of the full-time use of such state-owned motor vehicles.”

**60TH LEGISLATURE—1ST CALLED SESSION**

The General Appropriations Act (S. B. 15) passed by the Regular Session of the 60th Legislature in 1967, contained an identical rider which I vetoed. I stated in vetoing the provision last year that the proper method for changing state policy regarding provision of personal liability insurance coverage for employees operating state vehicles is by enactment of a basic statute. A statute would not be subject to the constitutional question which may be raised concerning the rider. A statute, furthermore, could clarify the ambiguities, prevent the possible inequities, and remove the uneconomical features of the policy which the rider would establish. These reasons for objection to the rider are still completely valid, and I am, therefore, again vetoing it.



IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the seal of State to be affixed hereto at Austin this 20th day of July, 1968.

**JOHN CONNALLY**

By the Governor:

**ROY R. BARRERA**  
Secretary of State