

Section 2.18

Excess Obligation Prohibited

The Texas Constitution and the General Appropriations Act prohibit a state agency from incurring obligations in excess of amounts lawfully appropriated by the Texas Legislature over the course of a biennium. Therefore any installment purchase, lease purchase, lease with option to buy, equipment lease, or any other type of purchase which incurs an obligation beyond the current appropriations biennium is strictly prohibited, unless such obligation is expressly conditioned upon continued legislative appropriation.

Notwithstanding this prohibition, a state agency may incur an excess obligation if its proposed installment purchase arrangement has been certified by CPA as cost effective. General Appropriations Act, Article IX, § 6.03 (2008-2009 Biennium). However, any certification by TPASS related to obligations incurred for the purchase or lease of automated information systems equipment may only be made if the requesting agency has on file with the Legislative Budget Board a Biennial Operating Plan, including any amendments, and the plan has been approved by the Legislative Budget Board.

Requests for Certifications should be directed to CPA Fiscal Management Division. For CPA to make a certification as provided for under the General Appropriations Act, the following information must be provided with the purchase requisition and be signed by the purchasing director or other proper authority of the submitting agency:

- A statement comparing the anticipated cost savings to be realized through the present acquisition of the equipment versus the outright purchase of the equipment at a later time when adequate funds become available;
- A statement affirming that the ordering entity expects to be able to make payments beyond the current biennium without having to rely on an increased level of general revenue appropriations;
- An estimate of the total anticipated interest charges over term of the installment contract; and
- A statement indicating that the lease (or installment) purchase is the most cost effective means of obtaining the needed equipment despite the additional interest cost to the state.

In addition to the above requirements, any purchase agreement subject to this section must contain a clause enabling the agency to cancel the agreement in the event the legislature curtails or fails to appropriate money to cover the term of the agreement to prevent any unconstitutional excess obligation. For example, "Any contract resulting from this solicitation is contingent upon the continued availability of lawful appropriations by the Texas Legislature."

Penalty for Requisitioning Officer or Employee

If any excess obligation is incurred that violates the General Appropriations Act or the Texas Constitution, the State Auditor shall certify the fact of the violation and the amount of over-obligation to TPASS, and TPASS shall deduct an amount or amounts equivalent to the over-obligation from the salary or other compensation due the officer or employee responsible for disbursing or requisitioning, and apply that amount to payment of the obligation. General Appropriations Act, Article IX, § 6.03 (2008-2009 Biennium); Texas Constitution, Article XVI, Section 10.