



STATE OF TEXAS

September 3, 2010

The Honorable Arne Duncan
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Dear Secretary Duncan:

On August 10, 2010, the president signed House Resolution 1586, the \$26 billion emergency education jobs bill ("Bill") into law. On behalf of Texas teachers and the schoolchildren they educate, I am enclosing Texas' application for \$830 million in funds available to Texas under the Bill.

Texas is submitting the application to make every legal effort to obtain the \$830 million. Congress intended for the Bill to provide the \$830 million to Texas schools, and Texas taxpayers are helping foot the bill. If the U.S. Department of Education ("Department") approves our application, the \$830 million will immediately be made available to Texas school districts. The intent for these funds is to add to the existing state public education appropriation for fiscal year 2011 already enacted into law.

The Bill was amended to target Texas, which turned a Bill intended to save teachers' jobs into a Bill that could cost hardworking teachers their jobs, shortchanging schoolchildren across Texas ("Anti-Texas Amendment").

The Anti-Texas Amendment burdens our state alone with three additional requirements not required of any other state:

- Texas is singled out and required to assure that a certain percentage of state revenues will be spent according to federal priorities in 2011, 2012 and 2013, an assurance that, if made at this time, would violate the Texas Constitution ("Constitution") and the governor's oath of office.

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- Texas may not be granted a waiver of these or other provisions by the Department. You, as education secretary, have the right to provide funding to the 49 other states even if they do not turn in an application and refuse to make any assurances – but not Texas.
- Texas is required to provide districts with the \$830 million in funding through Title I funding formulas, thereby reducing available funds for more than 800 rural and suburban districts. The 49 other states are allowed to choose the funding distribution that is right for their students, teachers and schools.

The Constitution requires Texas to have a balanced budget and thus prohibits deficit spending. Furthermore, the Texas-only requirements may also result in a funding cliff – the very funding cliff the Obama administration warned states against after passing the American Recovery and Reinvestment Act of 2009 (“Recovery Act”). The fallout from the Anti-Texas Amendment is staggering – including the very real possibility of depriving teachers and Texas schoolchildren of the \$830 million intended for them. If Congressman Doggett had not included these provisions, it is likely that Texas teachers would have received these monies immediately.

Texas Constitution and court rulings, including rulings by the Texas Supreme Court, do not allow the Governor of Texas to commit a future legislature to spend Texas taxpayer dollars on federal priorities in 2012 and 2013:

- The Constitution makes clear that money is appropriated and spent pursuant to legislative act. See Tex. Const. art. 8, § 6 (“No money shall be drawn from the treasury but in pursuance of specific appropriations made by law; nor shall any appropriation of money be made for a longer term than two years.”); see also Tex. Const. art. 16, § 48, *Bullock v. Calvert*, 480 S.W.2d 367, 370-71 (Tex. 1972) (“The appropriation of state money is a legislative function.”).
- The Constitution does not allow one legislature to bind another, and Texas courts have repeatedly held that one legislature cannot bind another. See Tex. Const. art. 8, § 6, (“... nor shall any appropriation of money be made for a longer term than two years.”); see also, e.g., *Central Power and Light v. Pub. Util. Com’n*, 649 S.W.2d 287, 289 (Tex. 1983), *San Antonio Conserv. Soc. v. City of San Antonio*, 455 S.W.2d 743, 746 (1970), *Watts v. Mann*, 187 S.W.2d 917 (Tex.App. Austin 1970, writ ref’d).

In summary, the appropriation of state money is the responsibility of the legislature, no money may be appropriated for longer than two years, and the current legislature cannot bind a future

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legislature. Therefore, the governor cannot ensure the composition of any future budget or bind a future legislature to fixed appropriations or spending amounts.

Some have said the provisions of the Anti-Texas Amendment are merely a suggestion and that signing the application will not bind a future legislature or commit the state to future spending levels; but our conversations with your Department have made clear that the application does, in fact, commit Texas to future spending levels, and not merely to making an effort. Consequently, the enclosed application states that the governor makes the required assurances so long as no assurance violates Texas law. Surely it was not Congress' intent to require a governor to violate the laws of his state in order for schools to receive funding for the benefit of teachers and schoolchildren.

Others have claimed that Texas has issued similar funding assurances in the past with the Recovery Act funds. This is false. Assurances about Recovery Act funding in the 2010–2011 state budget were made only in concert with state lawmakers while the 2010–2011 budget was being finalized. No assurance was made that bound a future legislature to future funding levels.

For the past decade or longer, public education has been a top priority of ours and of lawmakers of both political parties. Even in 2003, when the state faced a \$10 billion shortfall, Texas set our priorities and found ways to increase funding to public education by nearly \$2 billion.

From 2000 to 2009, the state's share of public education spending increased from \$11 billion a year to \$20 billion, an 82 percent increase. Last year, lawmakers increased formula funding to districts by \$2 billion, resulting in every district receiving at least \$180 more per student than it received in the previous year.

Our legislative leadership reiterated their strong support for continued public education funding in a letter to you dated August 26, 2010. When the 82nd Texas Legislature convenes in January 2011, Texas will continue to make public education one of our top priorities as state leaders work to meet the constitutional requirement to balance the fiscal year 2012–13 budget within available revenues.

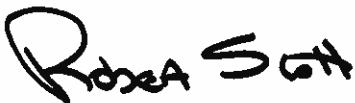
In the event Texas' application is denied, the Department assured me and the Office of the Governor, both in our meeting in Washington, D.C., and in a follow-up conference call, that the Department has all necessary authority to and will (barring a subsequent congressional mandate requiring the Department to otherwise distribute the \$830 million intended for Texas under the Bill) reserve the \$830 million for Texas until the 2012–13 budget becomes law and Texas is awarded the \$830 million. Our 2012–13 legislature will not be elected until November 2, 2010. Our state's revenue estimate for fiscal years 2012–13 will not be made until our legislature

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convenes in January 2011. After the revenue estimate is made available, the Texas Legislature will begin the process of adopting its budget for the 2012–13 biennium. This process is expected to be completed by June 2011. At that time, the Department assures us that the \$830 million will be available to Texas, that the governor shall have an opportunity to make the necessary assurances, and that, upon receipt of such assurances, the Department will award the \$830 million to Texas. These commitments by the Department are welcome and are a key element upon which Texas is placing great reliance and basing our actions now and going forward. So that Texas may continue to base our actions on the Department's commitments, I ask that you provide these commitments to us in writing as soon as possible, but not later than September 8, 2010.

Texas appreciates the Department's working with us to achieve the real intent of the Bill – providing for teachers and schoolchildren of Texas. Texas is committed to working with the Department to find a way to bring this money back to the teachers of Texas. I look forward to your immediate response.

Sincerely,

A handwritten signature in black ink that reads "Robert Scott". The signature is written in a cursive, slightly slanted style.

Robert Scott
Commissioner
Texas Education Agency

Enclosure

**Application of the State of Texas
for Funding under the
Education Jobs Fund Program**



**U.S. Department of Education
Washington, D.C. 20202**

EDUCATION JOBS FUND APPLICATION FOR THE STATE OF TEXAS

(Public Law No. 111-226, Section 101)

Legal Name of Applicant: Robert Scott, Commissioner

DUNS No: 179260856

Employer Identification Number: 74-6003079

Governor's Mailing Address:

P.O. Box 12428

Austin, TX 78711

State Contact for the Education Jobs Fund Program: Kara Belew

Contact's Position and Office: Director of Financial Accountability, Office of the Governor

Contact's Mailing Address:

P.O. Box 12428

Austin, TX 78711

Contact's Telephone No.: (512) 463-2000

Contact's Fax No.: (512) 463-1975

Contact's E-mail Address: kara.belew@governor.state.tx.us

Completion of this application constitutes a request by the Governor for funding under the Education Jobs Fund program.

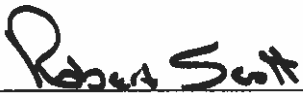
The Governor hereby assures that:

1. The State will comply with all applicable statutes, regulations, and its approved Education Jobs Fund (Ed Jobs) application and will use funds under the program in accordance with those statutes and regulations and its approved application;
2. The State will use fiscal control and fund accounting procedures that ensure proper disbursement of and accounting for funds under the Ed Jobs program, including procedures to ensure compliance with Federal cash management requirements;

3. The State will reserve not more than 2 percent of its allocation for the administrative costs of carrying out its responsibilities with respect to Ed Jobs funds and will use all remaining funds to make awards to local educational agencies (LEAs) for the support of elementary and secondary education in accordance with section 101(5) of Public Law No. 111-226 (Act);
4. The State will make awards to LEAs on a timely basis so that funds are available for their use during the 2010-2011 school year;
5. The State will not require an LEA that has previously submitted the required local application under the State Fiscal Stabilization Fund (SFSF) program to submit an application to receive funding under the Ed Jobs program;
6. The State will not use funds under the Ed Jobs program, directly or indirectly, to (a) establish, restore, or supplement a rainy-day fund; (b) supplant State funds in a manner that has the effect of establishing, restoring, or supplementing a rainy-day fund; (c) reduce or retire debt obligations incurred by the State; or (d) supplant State funds in a manner that has the effect of reducing or retiring debt obligations incurred by the State;
7. The State will develop and implement a monitoring plan that will enable the State to ensure that its LEAs comply with all applicable programmatic and fiscal requirements;
8. The State will comply with the reporting requirements (including subrecipient reporting requirements) of section 1512 of the American Recovery and Reinvestment Act of 2009 and such other reporting requirements as the Secretary may establish;
9. The State will comply with all applicable assurances in OMB Standard Form 424B (Assurances for Non-Construction Programs); and
10. With respect to the certification regarding lobbying in Department Form 80-0013, no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making or renewal of Federal grants under this program; the State will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," when required (34 C.F.R. Part 82, Appendix B); and the State will require the full certification, as set forth in 34 C.F.R. Part 82, Appendix A, in the award documents for all subawards at all tiers.

Assurances by the Governor in this application are provided so long as no assurance conflicts with the powers conveyed and limitations imposed by the Texas Constitution or other applicable laws or regulations, including limitations on assuring maintenance-of-effort in a way that would bind future Texas legislatures to specified funding levels. The Governor further assures that:

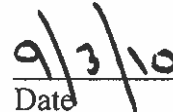
1. The State will comply with the maintenance-of-effort (MOE) requirements in section 101(10)(A) of the Act for fiscal year (FY) 2011;
2. The State will prioritize public education funding in the General Appropriations Acts for FYs 2011, 2012, and 2013 in a manner consistent with section 101(11)(B);
3. The State will distribute funds to LEAs on the basis of the LEAs' relative shares of funds under Part A of Title I of the Elementary and Secondary Education Act of 1965 (ESEA) for the most recent fiscal year for which data are available;
4. Funds distributed under this program will be used to supplement and not supplant State formula funding that is distributed on a similar basis as funds are distributed to LEAs under Part A of Title I of the ESEA and the State will provide to the U.S. Department of Education (Department) such additional information that the Department may require to verify compliance with this requirement; and
5. Within 60 days of the date of the State's grant award, the State will submit the most current applicable MOE data available for FY 2011 to help the Department determine compliance with sections 101(10)(A) and (11)(B) of the Act with respect to that fiscal year.



Governor or Authorized Representative (Printed Name)



Signature of Governor or Authorized Representative



Date

**Appendices to the
Texas Application for Funding under the
Education Jobs Fund Program**

APPENDIX A
STATE ALLOCATION DATA

NOTE: The amounts provided in the chart below represent the amount of each State's Education Jobs Fund allocation (Public Law No. 111-226, Section 101).

<u>State</u>	<u>Allocation</u>
Alabama	\$149,539,554
Alaska	23,540,399
Arizona	211,824,489
Arkansas	91,311,898
California	1,201,534,585
Colorado	159,521,991
Connecticut	110,486,654
Delaware	27,425,111
District of Columbia	18,072,658
Florida	554,821,008
Georgia	322,313,830
Hawaii	39,311,983
Idaho	51,641,026
Illinois	415,397,841
Indiana	207,058,122
Iowa	96,490,048
Kansas	92,457,070
Kentucky	134,945,560
Louisiana	147,031,839
Maine	39,068,602
Maryland	178,929,680
Massachusetts	204,016,907
Michigan	318,132,952
Minnesota	166,717,087
Mississippi	97,823,122
Missouri	189,727,725
Montana	30,737,469
Nebraska	58,890,974
Nevada	83,113,178
New Hampshire	40,988,015
New Jersey	268,104,738
New Mexico	64,869,642
New York	607,591,394
North Carolina	298,458,355
North Dakota	21,517,716
Ohio	361,179,690
Oklahoma	119,380,027
Oregon	117,949,095
Pennsylvania	387,815,661
Puerto Rico	129,371,097
Rhode Island	32,929,312
South Carolina	143,700,517
South Dakota	26,292,261

<u>State</u>	<u>Allocation</u>
Tennessee	195,881,328
Texas	830,820,460
Utah	101,303,951
Vermont	19,304,177
Virginia	249,482,375
Washington	208,335,375
West Virginia	54,657,667
Wisconsin	179,650,099
Wyoming	17,533,686
American Samoa	8,324,352
Guam	20,146,108
Northern Mariana Islands	8,289,850
Virgin Islands	13,239,690
BIE Set-aside	50,000,000
Administrative Set-aside	1,000,000
<u>Total</u>	10,000,000,000

APPENDIX B

APPLICATION SUBMISSION INFORMATION

SUBMISSION INFORMATION

Please submit your application to the Department as follows:

1. E-mail an electronic version of your application in .PDF (Portable Document) format to EducationJobsFund@ed.gov and
2. Mail the original and two copies of your application by express mail service through the U.S. Postal Service or through a commercial carrier to the following address:

Dr. Joseph C. Conaty
Director, Academic Improvement and Teacher Quality Programs
Office of Elementary and Secondary Education
U.S. Department of Education
400 Maryland Avenue, S.W., Room 3E314
Washington, D.C. 20202