

TEXAS STATE LIBRARY AND ARCHIVES COMMISSION (TSLAC)

Appeal of Denial of Request to Waive Maintenance of Effort (MOE) Requirement in the Grants to States Program

Background

In June 2013, Interim Texas State Librarian Edward Seidenberg submitted to the IMLS a request for waiver for the amount of \$11,530,835 in state financial support representing a decrease of approximately 67 percent in SFY 2012 as compared to the average of the three preceding years. In a response dated September 30, 2013, Maura Marx, Deputy Director, Office of Library Services, conveyed that our request for waiver was denied, but offered the opportunity for appeal.

With a new state librarian appointed as of November 1, we set out to review all financial documentation going back several years to be sure that the amounts reported on our Financial Status Reports were accurate, and that all expenditures were included and were MOE-eligible and consistent with LSTA reporting guidelines and priorities. That review led to a resubmission—and subsequent approval by IMLS staff—of revised Financial Status Reports for the three preceding years (SFY 2009-11). As a result of that resubmission, the average of the three preceding years set a revised MOE amount of \$8,540,125. We are, therefore, now appealing the decision to deny our waiver request, and seeking a waiver for the amount of \$2,924,602 in state financial support for library service for SFY 2012 grant period. This amount represents a decrease of 34.25 percent in State financial support when compared to the average level of state financial support reported for SFY 2009-11.

In the attached Appendix 1, we have provided data of TSLAC's appropriation in comparison to six other Texas state agencies. This table shows the total MOE-eligible General Revenue appropriation for TSLAC. The figures in this table differ in some cases from those included in our waiver request as more accurate appropriations data is available than had been when the original document was included. Further, for this appeal, we have focused attention on a smaller comparison group of agencies against which we are benchmarking. The agencies are a combination of similar arts, cultural, and education agencies, as well as other agencies in our budget category (Article I agencies). All arguments in this appeal are based on comparisons to these agencies as a representative benchmark sample of Texas state agencies.

Comparison of TSLAC cuts to those of other agencies

Ms. Marx's letter of September 30 reiterates that under the governing rule, 20 U.S.C. § 9133(c)(3), the IMLS Director may grant an MOE waiver if the SLAA demonstrates (1) that circumstances were "exceptional and uncontrollable" and that (2) agency's budget was proportionately reduced in comparison with other agencies within the state. Ms. Marx goes on to say that IMLS staff determined that we had provided sufficient evidence of a precipitous and unforeseen decline in the state's financial resources. However, the documentation submitted also demonstrated a disproportionate reduction relative to other agencies.

We do not believe that the TSLAC budget was disproportionately impacted and propose that several factors be considered in reviewing this appeal.

When looking at agency appropriations only for the 2012 state fiscal year (FFY 2011), we recognize that the TSLAC reduction appears on first analysis to be disproportionate to reductions in other agencies. However, we believe the actual situation is more complex. A review of Texas state agency appropriations over multiple years shows that TSLAC was not singled out and, combined with the restoration of funds in the current biennium, funding to our agency over the last several years has been consistent with other agencies. As we will describe below in detail, while many agencies had similar decreases as TSLAC, those decreases did not all occur in the same fiscal year.

In detailed explanation below, we wish to demonstrate the following arguments:

- Texas state agency budgets fluctuate significantly over multiple years and over multiple biennia; all agencies have not experienced their reductions in the same year.
- When comparing agency budgets against multi-year averages as is the case with the MOE calculation for the state library agency, the cut to TSLAC appears much more proportionate than merely looking at the one previous year.
- Because Texas has a biennial budget, it is often the case that funding for agencies fluctuates between the two years of the biennium. On average, other agencies had cuts similar to the TSLAC cut over the biennium.
- Finally, and most illustrative to this argument, in the following biennium, when the state funding situation had improved, TSLAC's overall agency appropriation increased 70 percent, an increase that was in fact higher than many other agencies.

Appropriations for Texas state agencies vary significantly from year to year

Our original waiver request and the subsequent review that formed the basis of the denial rested almost entirely on an analysis of the TSLAC appropriation for SFY 2012 (FFY 2011)—the year of the MOE shortfall—as compared to other agencies in the same year. This analysis does not recognize the degree to which Texas state agency budgets tend to fluctuate from year to year. These fluctuations are due to the efforts by the legislature to support specific project needs in given fiscal years while also responding to competing demands for available resources. Comparisons of TSLAC's funding in SFY 2012 to other agencies only in that year do not reflect the variable pattern of funding that is the norm in Texas. For example:

- Cultural agencies in Texas have usually not taken their cuts in the same years. The Texas Commission on the Arts fell nearly 67% in SFY 2011, a year prior to the TSLAC decrease. The Texas Historical Commission received reductions of 16% each year for three of the four years from SFY 2009 to 2012.
- In SFY 2012, the State Preservation Board, which oversees the state's cultural museum, saw a 73% increase; however, in the preceding year (SFY 2011), that agency saw an overall funding decrease of 52% and in the succeeding year (SFY 2013), their funding again decreased 50%.
- In SFY 2013, the year following the MOE year, the appropriation of the mighty Texas Education Agency decreased by 17% (representing a total reduction of \$2.9 billion, a figure that is roughly 1,000 times the \$2.9 million reduction to TSLAC which is our MOE shortfall).

The figures above are represented in Appendix 1.

Comparisons against multi-year averages show TSLAC's decrease to be proportionate

The effect of this volatility of funding is that over time, most agencies see similar types of increases and decreases. Because the maintenance of effort needed to qualify for federal funding is compared against a three-year average, it seems reasonable to consider three-year averages of the benchmark agencies. Appendix 2 shows comparison data for three - and four-year averages for TSLAC as compared with the sample group of six other state agencies.

The Appendix 2 table demonstrates that when looking at averages of the same years for other agencies—especially cultural agencies—proportionate decreases are also found. When comparing SFY 2012 appropriations for the comparison agencies against their three-year averages for SFY 2009-11, we find that the Texas Commission on the Arts decreased by 40 percent, the Texas Historical Commission decreased by 19 percent, and the Legislative Reference Library by 11 percent.

These long-term decreases are even more pronounced when compared to four-year averages. When comparing SFY 2013 appropriations against a four-year average for SFY2009-2012, all but one agency in our comparison group showed reductions by margins comparable to or greater than our MOE shortfall for SFY 2012. Four of the five agencies with a funding gap between SFY 2013 appropriations and the 4-year average have double-digit shortfalls ranging from 15 to 40 percent.

Comparisons of biennial budgets show TSLAC's decrease to be proportionate

Texas operates on a biennial budget. The year of the MOE shortfall for which we are appealing was the first year of the SFY 2012/2013 biennium (FFY 2011 and 2012). While state funding for some agencies was stronger in the first year of the biennium than the second, many agencies suffered reductions proportionate to the TSLAC reduction in the second year.

Appendix 1 demonstrates that for the SFY 2012/2013 biennium—when the combined two-year cut in MOE-eligible funding to TSLAC represents 32 percent—all six of the agencies in our comparison group also saw decreases in amounts that ranged from 4 to 50 percent. Four of the six saw double-digit decreases for the SFY 2012/2013 biennium as compared to the previous SFY 2010/2011 biennium. As we have pointed out above, this decrease was shared mostly by other cultural organizations: compared with the previous biennium, appropriations for the Commission on the Arts decreased by 50 percent, the Historical Commission by 28 percent and the State Preservation Board by nearly 16 percent.

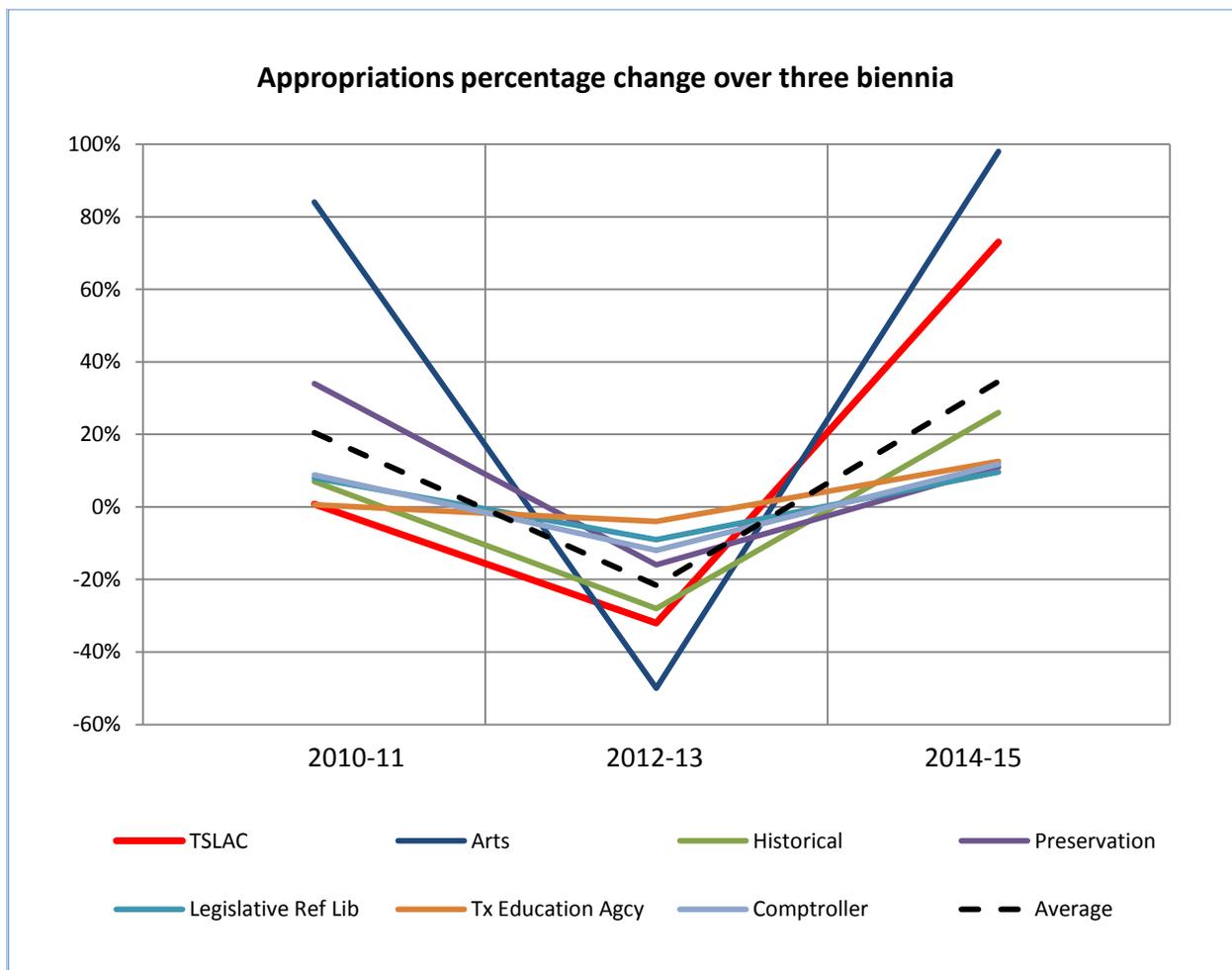
This analysis supports our overarching argument that the TSLAC reduction for SFY 2012 is proportionate to the reductions to other agencies over multiple years and especially when comparing across biennia.

TSLAC programs saw a restoration of funding in SFY2014-2015 greater than most other agencies

While TSLAC experienced a significant cut to its funding for the 2012/2013 biennium, the most recent legislature, which met earlier this year, restored a majority of the agency's state revenue funding for the 2014/2015 biennium. In fact, the approved 2014/2015 Appropriations Act includes an *overall* agency increase of 64.5% in general revenue funding with \$4 million of the total annual appropriation designated for programs that help meet the state's MOE for LSTA funds.

Figures in Appendix 1 also demonstrate that the increase to the Texas State Library and Archives Commission in the SFY 2014/2015 biennium was greater than all but one other agency in our comparison group. The increase to TSLAC in MOE-eligible funds of \$4 million, represents a 73 percent increase over the previous biennium (SFY 2012/2013), greater than all but the Commission on the Arts, which saw a 98 percent restoration after that agency's 50 percent loss in the previous biennium. The next highest increase was the Historical Commission at 26 percent. The variability of the restoration demonstrates again our point that funding to agencies can be highly variable. But even more important to this analysis, it shows that following the SFY 2012/2013 biennium when many agencies lost significant funding, state income and resources rebounded in SFY 2014/2015, allowing the legislature and governor to restore the funds as they could afford to do so. Generally speaking, the agencies that had deeper cuts in the 2012/2013 biennium saw greater rebound in the 2014/2015 biennium.

The chart below provides a visual display of the relative movement of appropriations for TSLAC and the six comparison agencies across the last three biennia. Two features should be noted. First, among these seven agencies, TSLAC had the second greatest decrease in the second biennium and the second greatest rebound in the third biennium. Second, the relative restorations of the agencies in the third biennium are uniformly proportionate to their cuts in the second biennium. This latter point supports our contention that in applying the reductions and the restorations—that is, when viewing the cuts across multiple years and biennia—the reduction and subsequent restoration to TSLAC was consistent and proportionate.



Our restoration demonstrated that the MOE provision works

Unquestionably, the potential loss of LSTA funds due to a failure by the state to maintain effort played a role in the restoration of funding in the last legislative session. TSLAC staff as well as stakeholders from across Texas reiterated to legislators on numerous occasions that the degree to which funding for the agency was restored could be seen as a mitigating factor in our attempts to retain federal funding. In a very real way, the increased appropriation in the current biennium is a demonstration that the maintenance of effort provision for federal funds works as intended and serves as a powerful incentive to maintain state support for library services.

As you can appreciate, this additional appropriation represented a major victory for both agency staff and the statewide library community which rallied to the aid of our agency. These restored funds will result in increases for programs such as the TexShare resource-sharing project, which will be negatively impacted by any loss of federal funds.

In your deliberations regarding this appeal, we urge you to consider the good faith shown by the state leadership in the restoration of these funds. We also ask you to consider the difficulty we will face in establishing a momentum in requesting future increases to TSLAC appropriations when increases in state appropriations are followed immediately by decreases in federal funding. And finally, we hope that you recognize the efforts our agency and our constituents undertook to achieve the 73 percent increase in LSTA-eligible program funding in the current biennium.

Summary

To summarize the above arguments:

- State agency appropriations in Texas fluctuate over time. Looking at one year is misleading while examining multi-year trends reveals that TSLAC's reduction in SFY 2012 was proportionate to the reductions to other agencies.
- When viewed against multi-year averages, the decrease to TSLAC in SFY 2012 was in line with other agencies, a pattern that is even more evident when comparing to a four-year average.
- Comparing TSLAC's biennial budget to the biennial budgets of other agencies shows that the agency's cut in the 2012/2013 biennium was very consistent with those to other agencies.
- When the overall economy improved—and in response to potential loss of federal funds—the State made a good-faith effort to restore funds to TSLAC and other agencies in proportion to their cuts, though the restoration to TSLAC was actually greater than most other agencies.

In the broad view of the funding of Texas agencies, the decrease to TSLAC in SFY 2012 and for the SFY 2012/2013 biennium was proportionate to the decreases to other agencies and we respectfully suggest that granting the MOE waiver would therefore be fair and equitable.

Appendix 1 -- Comparison of TSLAC to Appropriations of Other Agencies

Note: Table only includes STATE funds, excluding Federal, Local, and/or Private funds.

	SFY 2008	SFY 2009	SFY 2010	SFY 2011	SFY 2012	SFY 2013	SFY 2014	SFY 2015
Texas State Library and Archives Commission (shows only state appropriations that relate to LSTA program)								
Total GR-Related Funds	\$8,538,560	\$8,774,398	\$8,614,825	\$8,831,940	\$5,615,523	\$6,300,000	\$10,300,000	\$10,300,000
% +/- from previous year:		2.8%	-1.8%	2.5%	-36.4%	12.2%	63.5%	0.0%
Biennial totals:		\$17,312,958		\$17,446,765		\$11,915,523		\$20,600,000
% +/- from previous biennium:		N/A		0.8%		-31.7%		72.9%
Commission on the Arts								
Total GR-Related Funds	\$3,092,147	\$2,782,005	\$8,122,990	\$2,690,694	\$2,693,272	\$2,693,272	\$5,272,228	\$5,372,288
% +/- from previous year:		-10.0%	192.0%	-66.9%	0.1%	0.0%	95.8%	1.9%
Biennial totals:		\$5,874,152		\$10,813,684		\$5,386,544		\$10,644,516
% +/- from previous biennium:		N/A		84.1%		-50.2%		97.6%
Historical Commission								
Total GR-Related Funds	\$18,123,012	\$15,169,280	\$19,470,616	\$16,297,292	\$13,683,754	\$12,085,823	\$17,558,103	\$14,943,042
% +/- from previous year:		-16.3%	28.4%	-16.3%	-16.0%	-11.7%	45.3%	-14.9%
Biennial totals:		\$33,292,292		\$35,767,908		\$25,769,577		\$32,501,145
% +/- from previous biennium:		N/A		7.4%		-28.0%		26.1%
State Preservation Board								
Total GR-Related Funds	\$14,291,694	\$10,957,171	\$22,928,792	\$11,004,386	\$19,093,911	\$9,466,611	\$20,325,604	\$11,439,276
% +/- from previous year:		-23.3%	109.3%	-52.0%	73.5%	-50.4%	114.7%	-43.7%
Biennial totals:		\$25,248,865		\$33,933,178		\$28,560,522		\$31,764,880
% +/- from previous biennium:		N/A		34.4%		-15.8%		11.2%
Legis Reference Library								
Total GR-Related Funds	\$1,402,638	\$1,487,206	\$1,458,323	\$1,653,357	\$1,358,990	\$1,472,239	\$1,520,728	\$1,582,986
% +/- from previous year:		6.0%	-1.9%	13.4%	-17.8%	8.3%	3.3%	4.1%
Biennial totals:		\$2,889,844		\$3,111,680		\$2,831,229		\$3,103,714
% +/- from previous biennium:		N/A		7.7%		-9.0%		9.6%
Texas Education Agency								
Total GR-Related Funds	\$14,868,593,691	\$16,707,134,214	\$14,903,838,290	\$16,848,718,775	\$16,683,308,583	\$13,794,047,943	\$16,788,773,868	\$17,519,177,926
% +/- from previous year:		12.4%	-10.8%	13.0%	-1.0%	-17.3%	21.7%	4.4%
Biennial totals:		\$31,575,727,905		\$31,752,557,065		\$30,477,356,526		\$34,307,951,794
% +/- from previous biennium:		N/A		0.6%		-4.0%		12.6%
State Comptroller								
Total GR-Related Funds	\$211,628,540	\$211,528,541	\$230,308,743	\$230,072,743	\$203,300,247	\$202,133,952	\$226,681,901	\$226,681,901
% +/- from previous year:		0.0%	8.9%	-0.1%	-11.6%	-0.6%	12.1%	0.0%
Biennial totals:		\$423,157,081		\$460,381,486		\$405,434,199		\$453,363,802
% +/- from previous biennium:		N/A		8.8%		-11.9%		11.8%

Appendix 2 - Comparison of TSLAC MOE average to 3- and 4- year averages of Comparison Group Agencies
State Fiscal Years 2009 to 2013

SFY	2009	2010	2011	2012	2013
FFY	2008	2009	2010	2011	2012
TSLAC	\$8,774,398	\$8,614,825	\$8,831,940	\$5,615,523	\$6,300,000
3-year average			\$8,740,388		
IMLS adjustment based on Federal Approp.			\$200,263		
MOE			\$8,540,125		
Decrease MOE to 2012			-\$2,924,602		
% Change vs. 3-yr average				-34.25%	
4-year average				\$7,959,172	
Difference				-\$1,659,172	
% Change vs. 4-yr average					-20.85%
Commission on the Arts	\$2,782,005	\$8,122,990	\$2,690,694	\$2,693,272	\$2,693,272
3-year average			\$4,531,896		
Difference			-\$1,838,624		
% Change vs. 3-yr average				-40.57%	
4-year average				\$4,072,240	
Difference				-\$1,378,968	
% Change vs. 4-yr average					-33.86%
Historical Commission	\$15,169,280	\$19,470,616	\$16,297,292	\$13,683,754	\$12,085,823
3-year average			\$16,979,063		
Difference			-\$3,295,309		
% Change vs. 3-yr average				-19.41%	
4-year average				\$16,155,236	
Difference				-\$4,069,413	
% Change vs. 4-yr average					-25.19%
State Preservation Board	\$10,957,171	\$22,978,792	\$11,004,386	\$19,093,911	\$9,466,611
3-year average			\$14,980,116		
Difference			\$4,113,795		
% Change vs. 3-yr average				27.46%	
4-year average				\$16,008,565	
Difference				-\$6,541,954	
% Change vs. 4-yr average					-40.87%

Appendix 2 - Comparison of TSLAC MOE average to 3- and 4- year averages of Comparison Group Agencies

State Fiscal Years 2009 to 2013

SFY	2009	2010	2011	2012	2013
FFY	2008	2009	2010	2011	2012
Legislative Reference Library	\$1,487,206	\$1,458,323	\$1,653,357	\$1,358,990	\$1,472,239
3-year average			\$1,532,962		
Difference			-\$173,972		
% Change vs. 3-yr average				-11.35%	
4-year average				\$1,489,469	
Difference				-\$17,230	
% Change vs. 4-yr average					-1.16%
Texas Education Agency	\$16,707,134,214	\$14,903,838,290	\$16,848,718,775	\$16,683,308,583	\$13,794,047,943
3-year average			\$16,153,230,426		
Difference			\$530,078,157		
% Change vs. 3-yr average				3.28%	
4-year average				\$16,285,749,966	
Difference				-\$2,491,702,023	
% Change vs. 4-yr average					-15.30%
State Comptroller`	\$21,528,541	\$230,308,743	\$230,072,743	\$200,300,247	\$202,133,952
3-year average			\$160,636,676		
Difference			\$39,663,571		
% Change vs. 3-yr average				24.69%	
4-year average				\$170,552,569	
Difference				\$31,581,384	
% Change vs. 4-yr average					18.52%