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Opinion Committee

Jim Solis - Chair  
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COMMITTEE ON ECONOMIC DEVELOPMENT  
TEXAS HOUSE OF REPRESENTATIVES

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August 18, 1999

RQ-0105-99

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The Honorable John Cornyn  
Attorney General  
State of Texas  
P.O. Box 12548  
Austin, Texas 78712-5488

AUG 25 1999

FILE # ML-40958-99  
D.# 40958

ATTORNEY GENERAL'S OFFICE

929 Liz Robinson

Dear General Cornyn:

I am writing to request an Attorney General opinion regarding language in two pieces of legislation which were passed during the 76th Texas Legislative Session. The issue is regarding the Employees Retirement System and Temporary Service Retirement Option language in SB 1180 and House Bill 3504.

HB 3504 establishes a long-range plan for the South Texas Hospital and the provision of tuberculosis and other health care services in the Lower Rio Grande Valley. Specifically, it requires TDH to contract for the construction of a new facility for outpatient health care services out of appropriated funds. The bill addresses the transfer of services and sets out provisions for displaced state employees of South Texas Hospital.

SB 1130, the Omnibus ERS bill, contains language in SECTION 14, Section 814.1041 Government Code, regarding displaced employees which is different than the displaced state employee provision in HB 3504, SECTION 9, Section 814.1043, Government Code.

SB 1130 grants displaced employees who qualify, three years of service and three years of age to reach retirement. It deleted a similar provision which granted five years of services and five years of age toward retirement. HB 3504 contains both the three and five year retirement provisions for displace employees of South Texas Hospital.

SB 1130 also contains SECTION 60. It states:

The change in law made by this Act to Section 814.1041, Government Code, prevails over any other Act of the 76th Legislature, Regular Session, 1999, regardless of the relative dates of enactment, that purports to amend Section 814.1041 or create a similar provision to allow a temporary retirement option for members of the Employees Retirement System of Texas whose positions are subject to privatization or a reduction in workforce or who are transferred between state agencies, and any amendment to Section 814.1041, Government Code, or similar provision in another Act of the 76th Legislature, Regular Session, 1999 has no effect.

Leticia Van de Putte - Vice Chair  
Members: Joe Deshotel, Mark Homer, Jim Keffer, Vilma Luna  
Ruth Jones McClendon, Gene Seaman, Ken Yarbrough

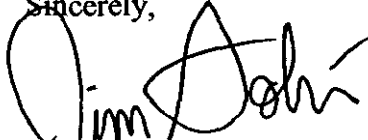
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I have been advised that the retirement provision in HB 3504, which is different than SB 1130, SECTION 14, Section 814.1041 Government Code, does not have force and effect. The Texas Legislative Council has offered two reasons. One is that due to SECTION 60 of SB 1130, the language contained in that legislation supercedes all similar language in other legislation. The other is that SB 1130 was passed and signed into law after HB 3504. I would like a clarification on this matter. Does the retirement provision in HB 3504 have no effect? If so, why?

Thank you for your time and attention to this request. I would appreciate your assistance on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Solis", written over a large, stylized circular flourish.

Jim Solis  
Chairman

House Committee on Economic Development

## AN ACT

1-1  
1-2 relating to the long-range plan for the South Texas Hospital and  
1-3 the provision of tuberculosis and other health care services in the  
1-4 Lower Rio Grande Valley.

1-5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-6 SECTION 1. CONSTRUCTION OF NEW PHYSICAL FACILITIES FOR  
1-7 OUTPATIENT HEALTH CARE SERVICES. (a) The Texas Department of  
1-8 Health shall contract for the construction of an initial, new  
1-9 physical facility for outpatient health care services out of funds  
1-10 appropriated to the department for that purpose.

1-11 (b) The initial physical facility constructed under  
1-12 Subsection (a) of this section must be:

1-13 (1) located at the site of the South Texas Hospital in  
1-14 Harlingen, Texas; or

1-15 (2) colocated with the initial site of the Regional  
1-16 Academic Health Center at a common site in Harlingen, Texas, and  
1-17 adjacent to the center.

1-18 (c) The contract under Subsection (a) of this section for  
1-19 the construction of the initial physical facility in Harlingen,  
1-20 Texas, must specify that the physical facility be designed and  
1-21 constructed to allow for the provision of all outpatient health  
1-22 care services, including outpatient tuberculosis services, provided  
1-23 at the South Texas Hospital on the effective date of this Act. The  
1-24 facility may be designed and constructed to allow for the provision  
2-1 of additional outpatient health care services.

2-2 (d) If the initial physical facility constructed under  
2-3 Subsection (a) of this section is colocated with the Regional  
2-4 Academic Health Center, the contract under this section must  
2-5 specify that, to the maximum extent possible, that facility and the  
2-6 Regional Academic Health Center must be designed and constructed  
2-7 together to realize potential savings in construction costs and  
2-8 long-term maintenance and operations costs by using common central  
2-9 utility plants, cafeterias, laundry facilities, maintenance  
2-10 facilities, and other support facilities. The board of regents of  
2-11 The University of Texas System shall cooperate with the Texas  
2-12 Department of Health to coordinate the structure and design of the  
2-13 physical facilities of the facility constructed under Subsection  
2-14 (a) of this section and the Regional Academic Health Center to  
2-15 achieve a maximally efficient use of resources.

2-16 (e) Out of funds available to the Texas Department of Health  
2-17 for that purpose, the department may contract for the construction  
2-18 of additional physical facilities for outpatient health care  
2-19 services, including outpatient tuberculosis services. One facility  
2-20 may be located in McAllen, Texas, and another facility may be  
2-21 located in Brownsville, Texas.

2-22 SECTION 2. OUTPATIENT HEALTH CARE SERVICES. (a) On  
2-23 completion of the initial physical facility in Harlingen, Texas,  
2-24 required by Section 1 of this Act, the provision of all outpatient  
2-25 health care services, including outpatient tuberculosis services,  
2-26 provided by the South Texas Hospital on the effective date of this  
2-27 Act shall be transferred to that facility.

3-1 (b) The Texas Department of Health may contract with one or  
3-2 more public or private health care providers or entities for the  
3-3 management and operation of the physical facilities constructed  
3-4 under Section 1 of this Act and for the provision of outpatient  
3-5 health care services at those facilities.

3-6 SECTION 3. INPATIENT HEALTH CARE AND RELATED LABORATORY  
3-7 SERVICES. Out of funds appropriated to the Texas Department of  
3-8 Health to provide inpatient health care services, the department  
3-9 shall contract with one or more public or private health care  
3-10 providers or entities, including a political subdivision that is  
3-11 located in the Rio Grande Valley region and is responsible for  
3-12 providing health care services to its residents, for the provision  
3-13 of inpatient health care services, including inpatient tuberculosis  
3-14 services, and related laboratory services provided by the South

3-15 Texas Hospital on the effective date of this Act.

3-16 SECTION 4. INTERIM RENOVATION OF PHYSICAL FACILITIES OF  
3-17 SOUTH TEXAS HOSPITAL. Out of funds appropriated to the department  
3-18 for the purpose of this section, the Texas Department of Health  
3-19 shall contract for minimally necessary structural and design  
3-20 renovations to the physical facilities of the South Texas Hospital  
3-21 required for compliance with Texas Accessibility Standards and the  
3-22 federal Americans with Disabilities Act of 1990 (42 U.S.C. Section  
3-23 12101 et seq.), as amended, and for the continued operation of the  
3-24 South Texas Hospital to provide outpatient health care services  
3-25 until construction of the initial physical facility required by  
3-26 Section 1 of this Act in Harlingen, Texas, for the provision of  
3-27 those services is completed.

4-1 SECTION 5. FUTURE OF SOUTH TEXAS HOSPITAL. The Texas Board  
4-2 of Health shall give the Texas Department of Mental Health and  
4-3 Mental Retardation the first option to lease the current physical  
4-4 facilities of the South Texas Hospital on completion of  
4-5 construction of the initial physical facility required by Section 1  
4-6 of this Act for outpatient health care services in Harlingen,  
4-7 Texas, and after contracting providers or entities under Section 3  
4-8 of this Act have begun providing inpatient health care and related  
4-9 laboratory services. If the Texas Department of Mental Health and  
4-10 Mental Retardation does not lease the facilities, the Texas Board  
4-11 of Health shall study and prepare leasing and other options for  
4-12 potential future uses of the facilities.

4-13 SECTION 6. CONTINUATION OF SUPPORT SERVICES. (a) If the  
4-14 initial physical facility constructed as required by Section 1 of  
4-15 this Act is colocated with the Regional Academic Health Center, the  
4-16 Texas Department of Health and the Texas Department of Mental  
4-17 Health and Mental Retardation shall enter into an interagency  
4-18 contract to provide for the continuation of support services for  
4-19 the facility operated by the Texas Department of Mental Health and  
4-20 Mental Retardation that is colocated with the South Texas Hospital.

4-21 (b) The contract may include a provision requiring the Texas  
4-22 Department of Health to continue providing employees for support  
4-23 facilities at the site.

4-24 SECTION 7. DISPLACED EMPLOYEES OF SOUTH TEXAS HOSPITAL. (a)  
4-25 Out of available funds appropriated to the Texas Department of  
4-26 Health, the department shall reassign a member of the employee  
4-27 class of the department who is employed at the South Texas Hospital  
5-1 and whose position is displaced as a result of a contract entered  
5-2 into by the Texas Department of Health under this Act or the  
5-3 transfer of services from the South Texas Hospital to an open  
5-4 position within the department in reasonable proximity to the South  
5-5 Texas Hospital and for which the member is qualified. If  
5-6 reassignment of a member of the employee class to another position  
5-7 within the department is not possible, the department shall provide  
5-8 job placement assistance to the member.

5-9 (b) A contract awarded by the Texas Department of Health  
5-10 under this Act must include a provision that the contracting entity  
5-11 shall offer an employee of the South Texas Hospital whose position  
5-12 is displaced as a result of the contract a similar employment  
5-13 position with the contracting entity before offering the position  
5-14 to any other person if the contracting entity determines that the  
5-15 displaced employee is qualified for the position.

5-16 SECTION 8. TIME FRAME. Not later than September 1, 2000,  
5-17 the Texas Department of Health shall enter into the contracts  
5-18 required by this Act.

5-19 SECTION 9. AMENDMENTS. (a) Subchapter B, Chapter 814,  
5-20 Government Code, is amended by adding Section 814.1043 to read as  
5-21 follows:

5-22 Sec. 814.1043. TEMPORARY SERVICE RETIREMENT OPTION FOR  
5-23 MEMBERS EMPLOYED AT SOUTH TEXAS HOSPITAL. (a) This section  
5-24 applies only to members of the employee class who are employed by  
5-25 the Texas Department of Health at the South Texas Hospital on or

5-26 after the effective date of this section and on or before September  
5-27 1, 2000, and who separate from state service during that time.

6-1 (b) A member described by Subsection (a) is eligible to  
6-2 retire and receive a service retirement annuity if the member's age  
6-3 and service credit, each increased by three years, would meet age  
6-4 and service requirements for service retirement under Section  
6-5 814.104(a) at the time the member separates from state service as  
6-6 described by Subsection (a). The annuity of a person who retires  
6-7 under this subsection is computed on the person's accrued service  
6-8 credit increased by three years.

6-9 (c) A member described by Subsection (a) becomes eligible to  
6-10 retire and receive a service retirement annuity on the date on  
6-11 which the member would have met the age and service requirements  
6-12 for service retirement under Section 814.104(a) had the member  
6-13 remained employed by the state if, on the date of separation from  
6-14 state service, the member's age and service credit, each increased  
6-15 by five years, would meet age and service requirements for service  
6-16 retirement under Section 814.104(a). The annuity of a person who  
6-17 retires under this subsection is computed on the person's accrued  
6-18 service credit.

6-19 (d) If a member described by Subsection (c) is reemployed by  
6-20 the state before retirement, the time between the member's  
6-21 separation from state service and reemployment may be used only to  
6-22 compute eligibility for service retirement and may not be used to  
6-23 compute the amount of any service retirement annuity.

6-24 (e) A member who applies to retire under this section and  
6-25 the Texas Department of Health shall provide documentation required  
6-26 by the retirement system to establish eligibility to retire under  
6-27 this section.

7-1 (b) Section 13.003, Health and Safety Code, is amended to  
7-2 read as follows:

7-3 Sec. 13.003. SERVICES AT SOUTH TEXAS HOSPITAL. (a) The  
7-4 primary purpose of the South Texas Hospital is to provide inpatient  
7-5 and outpatient services, either directly or by contract with one or  
7-6 more public or private health care providers or entities, to the  
7-7 residents of the Lower Rio Grande Valley.

7-8 (b) The board may establish at the South Texas Hospital:

- 7-9 (1) cancer screening;
- 7-10 (2) diagnostic services;
- 7-11 (3) educational services;
- 7-12 (4) obstetrical services;
- 7-13 (5) gynecological services; [and]
- 7-14 (6) other inpatient health care services; and
- 7-15 (7) outpatient health care services, including

7-16 diagnostic, treatment, disease management, and supportive care  
7-17 services.

7-18 SECTION 10. This Act takes effect only if a specific  
7-19 appropriation for the implementation of this Act is provided in  
7-20 H.B. No. 1 (General Appropriations Act), Acts of the 76th  
7-21 Legislature, Regular Session, 1999. If no specific appropriation  
7-22 is provided in H.B. No. 1, the General Appropriations Act, this Act  
7-23 has no effect.

7-24 SECTION 11. EMERGENCY. The importance of this legislation  
7-25 and the crowded condition of the calendars in both houses create an  
7-26 emergency and an imperative public necessity that the  
7-27 constitutional rule requiring bills to be read on three several  
8-1 days in each house be suspended, and this rule is hereby suspended,  
8-2 and that this Act take effect and be in force from and after its  
8-3 passage, and it is so enacted.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I certify that H.B. No. 3504 was passed by the House on April 27, 1999, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 3504 on May 21, 1999, by a non-record vote.

I certify that H.B. No. 3504 was passed by the Senate, with amendments, on May 19, 1999, by the following vote: Yeas 29, Nays 0.

\_\_\_\_\_  
Chief Clerk of the House

\_\_\_\_\_  
Secretary of the Senate

APPROVED:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor