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OPINION COMMITTEE

JIM PITTS, Chairman
Committee on Appropriations
Texas House of Representatives

STEVE OGDEN, Chairman
Senate Finance Committee
Texas State Senate

State of Texas
House Committee on Appropriations
Senate Finance Committee

FILE # HL-46073-09
I.D. # 46073

May 28, 2009

The Honorable Greg Abbott
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

RQ-0801-GA

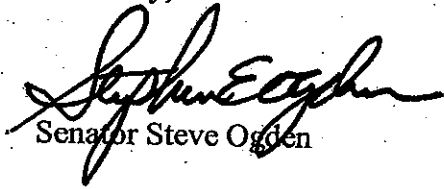
Dear General Abbott,

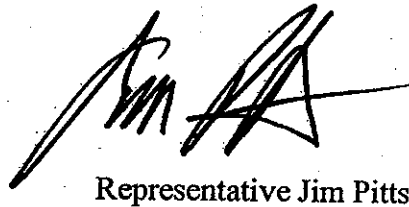
We represent the Conference Committee on Senate Bill 1 for the 81st Legislature as Co-Chairs and write this request with the unanimous support of the committee members. We write to request a written opinion regarding the validity of an appropriation made by Senate Bill 1 for the 2010-11 biennium.

Article IX, Section 17.13 of Senate Bill 1 provides one-time payments to certain eligible members of the Employees Retirement System and the Teacher Retirement System. We seek your opinion as to whether the one-time payments, as provided in the attached rider, are constitutionally and statutorily permissible.

Should you need any further guidance or clarification please contact us.

Sincerely,


Senator Steve Ogden


Representative Jim Pitts

Enclosure

CONTINGENCY AND OTHER PROVISIONS
(Continued)

(b) Proposition 4 by Article by Agency by Project	2010-11 Biennial Total	
	Bond Proceeds	Debt Service
ARTICLE I		
Facilities Commission		
Deferred Maintenance for Facilities	\$ 5,786,253	\$ 579,200
Historical Commission		
Repair and Renovation of Courthouses	\$ 20,000,000	\$ 2,780,137
ARTICLE II		
Department of State Health Services		
Mental Health Facility Repair and Renovation	\$ 27,228,000	\$ 2,722,800
Department of Aging and Disability Services		
Repairs of State Owned Bond Homes and State Schools	\$ 26,987,000	\$ 2,698,700
ARTICLE V		
Adjutant Generals Department		
Major Maintenance and Roof Replacements at Readiness Centers	\$ 6,535,000	\$ 653,500
Department of Criminal Justice		
Repair and Rehabilitation of Facilities and Renovation of the Marlin Correctional Mental Health Facility	\$ 80,000,000	\$ 8,460,000
Department of Public Safety		
Repair and Rehabilitation of Buildings and Facilities and Construction of a Crime Lab in Laredo	\$ 16,100,000	\$ 1,870,503
Texas Youth Commission		
Repair and Rehabilitation of Existing TYC Facilities	\$ 5,556,651	\$ 555,665
ARTICLE VI		
Parks and Wildlife Department		
Statewide Capital Repairs and State Park Weather Related Damages	\$ 38,006,000	\$ 3,800,000
Total, by Article	\$226,198,904	\$24,120,505

Sec. 17.12. Certain Federal Reimbursements. Any reimbursements received from the Federal Emergency Management Agency for expenditures paid for with funds transferred during the fiscal year ending August 31, 2009, from the Health and Human Services Commission to the Department of Public Safety in excess of \$11,000,000 are appropriated to the Trusteed Programs within Office of the Governor under Strategy A.1.12, Texas Emerging Technology Fund (estimated to be \$70,000,000) for transfer to the Emerging Technology Fund.

Sec. 17.13. One-Time Payments.

- (a) There is hereby appropriated to the Comptroller of Public Accounts an amount estimated to be \$155,248,741 out of the General Revenue Fund which consists of an amount estimated to be \$34,723,050 for the Employees Retirement System and an amount estimated to be \$120,525,691 for the Teacher Retirement System for the purpose of providing a one-time payment (equivalent to the annuitant's monthly benefit, not to exceed \$500) to eligible members of the Employees Retirement System and the Teacher Retirement System as defined below in sections b and c.

The Comptroller of Public Accounts shall transfer to a subaccount within General Revenue at the Employees Retirement System the amount above for the purpose of a one-time payment upon the issuance of an Attorney General opinion that indicates the above one-time payments are constitutionally and statutorily permissible. If the above payments are constitutionally and statutorily permissible, they shall be implemented, if possible, by December 31, 2009.

Contingent on the passage of Senate Bill 2567, or similar legislation authorizing the payment provided for herein by the Eighty-first Legislature, Regular Session, the Comptroller of Public Accounts shall transfer to a subaccount within General Revenue at the Teacher Retirement System the amount above for the purpose of a one-time payment upon the issuance of an Attorney General opinion that indicates the above one-time payments are constitutionally and statutorily permissible. If the above payments are constitutionally and statutorily permissible, they shall be implemented, if possible, by December 31, 2009.

CONTINGENCY AND OTHER PROVISIONS
(Continued)

- (b) For Employees Retirement System annuitants to be eligible for the one-time payment provided for above, a person must be an annuitant under the Employees Retirement System who retired from the employee class on or before December 31, 2008, and who is receiving:
- (1) a standard or optional service retirement annuity payment under Sections 814.104, 814.105 or 814.107, Government Code;
 - (2) a disability retirement annuity under Sections 814.206 or 814.207, Government Code;
 - (3) a life annuity payment under Sections 814.301, 814.302, or 814.305, Government Code;
 - (4) an annuity for a guaranteed period of 120 months under Sections 814.301 or 814.302, Government Code.

The one-time payment does not apply to payments of any lump sum death benefit, refund, partial lump sum benefit or return of contributions.

If the Attorney General does not provide a conclusive opinion that such one-time payments are constitutionally and statutorily permissible, amounts appropriated herein shall be transferred to the Employees Retirement System to increase the state contribution rate from 6.45 percent to 6.95 percent.

- (c) For Teacher Retirement System annuitants to be eligible for the one-time payment as authorized in Senate Bill 2567, or similar legislation, a person must be, disregarding any forfeiture of benefits under Section 824.601, Government Code, an annuitant eligible to receive:
- (1) a standard retirement annuity payment, based on an effective date of retirement on or before December 31, 2008;
 - (2) an optional retirement annuity payment as either a retiree or beneficiary, based on an effective date of retirement on or before December 31, 2008;
 - (3) a life annuity payment under Section 824.402(a)(4), Government Code, based on a date of death of a member of the system on or before December 31, 2008; or
 - (4) an annuity for a guaranteed period of 60 months under Section 824.402(a)(3), Government Code, based on a date of death of a member of the system on or before December 31, 2008; or
 - (5) an alternate payee annuity payment under Section 804.005, Government Code, based on a date of commencement of the annuity payment to the alternate payee on or before December 31, 2008.

The one-time payment does not apply to payments under:

- (1) Section 824.304(a), Government Code, relating to disability retirees with less than 10 years of service credit;
- (2) Section 824.804(b), Government Code, relating to participants in the deferred retirement option plan with regard to payments from their deferred retirement option plan accounts; or
- (3) Section 824.404(a) or 824.501(a), Government Code, relating to active Member or retiree survivor beneficiaries who receive a survivor annuity in an amount fixed by statute.

If the Attorney General does not provide a conclusive opinion that such one-time payments are constitutionally and statutorily permissible, amounts appropriated herein shall be transferred to the Teacher Retirement System to increase the state contribution rate from 6.40 percent to 6.644 percent.

- (d) It is the intent of the Legislature that the one-time appropriations made above are due to the availability of American Recovery and Reinvestment Act (ARRA) funds.