



**Report to the 72nd Legislature**

**Texas Child Care Development Board**

**June 1991**

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## TEXAS CHILD CARE DEVELOPMENT BOARD

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### Members

Governor Ann Richards

Lt. Governor Bob Bullock

Attorney General Dan Morales

Comptroller John Sharp

State Treasurer Kay Bailey Hutchison

Land Commissioner Garry Mauro


June 1991

To Members of the Texas Legislature:

The Child Care Development Board is pleased to present to you this report on the progress in developing a child care facility for children of state employees. Recognizing that quality day care is essential in providing young children with a healthy environment while their parents support the overall efforts of the Texas work force, we hope to establish a model for Texas employers.



Ann Richards  
Governor



Bob Bullock  
Lieutenant Governor



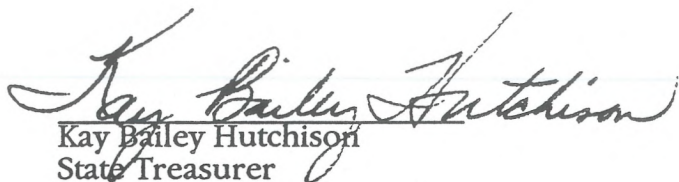
Dan Morales  
Attorney General



Garry Mauro  
Land Commissioner



John Sharp  
Comptroller



Kay Bailey Hutchison  
State Treasurer

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**Texas Child Care Development Board  
June 1991**

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## **Quality Child Care for Children of State Employees: A Model for Texas Employers**

Quality, affordable child care is important to parents in both the public and private sectors. However, finding good and convenient child care can be very difficult. Across the country, public and private sector employers have developed a wide range of services to assist parents in obtaining child care. In 1982, 95 percent of the corporations offering child care programs reported measurable benefits to their companies from these programs, including reduced turnover, reduced absenteeism and increases in productivity, job performance and morale. Employer-sponsored child care has a positive effect on recruitment of new employees and improves employee attitudes toward the employer. Assisting working parents also enhances corporate image and community relations.<sup>1</sup> As information concerning the need for and benefits of employer-sponsored child care have increased, assuring the availability of child care for children of state employees has become an issue of active interest to state elected officials.

### **Identifying the Need for Services**

In 1988, a Capitol Complex Child Care Survey was administered to identify child care needs of state employees. Of the 322 respondents who completed the survey, 107 employees (33.2 percent) had children of day care age (0 - 6) living with them. From the survey, it was projected that approximately 2,475 of the 7,448 employees in the 12 participating Capitol complex agencies had 2,768

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<sup>1</sup> Employer Assisted Child Care in Texas: Available Options and How to Choose among Them. United Way of Texas Child Care Working Group, 1988, Austin.

children of day care age. In their responses, parents rated "convenient location to work" the second most important feature in a day care center (after "caring attitude of staff"). Parents overwhelmingly indicated they would use Capitol complex day care services if available and reasonably priced. [Attachment A]

### **Child Care Development Board Created**

In response to the growing need for child care services, in 1989 Senator Gonzalo Barrientos and Representative Lena Guerrero passed legislation creating the Texas Child Care Development Board. The board, comprised of the governor, lieutenant governor, attorney general, comptroller, state treasurer and commissioner of the General Land Office, is charged with the responsibility of developing and administering a program to provide child care services for state employees. [Attachment B]

This enabling legislation required the board to identify a site within the Capitol complex that could be developed as the state's first day care center. For that purpose, the legislature appropriated \$400,000 that could be spent on work related to renovation and building costs. In the two years since its creation, the board has worked with the State Purchasing and General Services Commission (SPGSC) to identify an appropriate space and develop plans for a center.

### **Facility Site Selection**

Senate Bill 1480 required the state's first day care facility to be located in an existing state-owned building. Finding a site in the Capitol complex proved to be a difficult challenge. Most existing buildings were fully occupied and, according

to Attorney General Opinion JM-1156, the original law did not allow for either new construction on state-owned land or leasing of privately owned facilities. A site ultimately became available at the northeast corner of Lavaca and 15th Streets.

[Attachment C]

### **Operational Issues: State Versus Private Provider**

In planning for the operation of a facility, the board relied on its advisory committee and the advice of child care providers in the public and private sectors. These experts indicated that a minimum enrollment of 100 children in a center was considered necessary in order to be financially viable. Therefore, plans have been developed for a facility with a minimum enrollment of 100 as a bottom line.

For actual service provision, the board has developed a model for a center which would operate in a state facility but be run by a private provider. In this way, state employees would contract for services directly with the provider, and fees collected by the provider would fund operations. For-profit as well as non-profit organizations are eligible to bid on the contract to provide services in the state facility.

### **Law Mandates Accreditation Standards**

The law requires that a day care facility established by the state must meet day care quality standards established by the National Association for the Education of Young Children. Among other factors, these standards relate to the staff-child ratio and square footage allotments of centers. They were adopted to enhance the



overall quality of the child care environment. Any provider selected must meet and maintain these standards.

### **Site Development and Building Renovation**

In the year following identification of a facility site, the Child Care Development Board has worked with SPGSC staff to select an architect and review building plans. Due to the condition of the existing structures, extensive remodeling will be required. By spring 1991, authorization to publish invitations to bid for building contractors was given to SPGSC.

### **Legislative Amendments of 72nd Legislature**

During the first two years of the board's existence, several issues have created obstacles to effectively implementing the intent of the original sponsors.

Therefore, corrective legislation was introduced by Senator Gonzalo Barrientos and Representative Libby Linebarger in the 72nd Legislature.

Senate Bill 615 clarifies that the Child Care Development Board is responsible for the selection of a child care provider and that SPGSC shall lease to a provider selected by the board. It further delineates the duties of the board to include setting the lease rate assessed to the provider. [Attachment D]

House Bill 2259, as passed, provides a more flexible make-up of the advisory committee. It also allows the state to acquire real and personal property and to construct and otherwise improve existing buildings to establish child care facilities. [Attachment E]

### **Renovation Schedule and Center Opening**

It is anticipated that the final award for building renovation will be issued by mid-summer of 1991, which should allow work to be completed in time for a January 1992 opening of the facility. The center will serve at least 106 children who will be selected on a first-come basis following guidelines established by the board.

### **Requests for Proposals from Private Providers**

Issuing a formal Request For Proposals (RFP) from private providers was held in abeyance until questions related to lease costs were resolved. Following the adoption of clarifying amendments, the board now assumes responsibility for the final decision in these matters. The RFP will stipulate all legal requirements imposed by the state on a private provider in this endeavor. The provider will also be responsible for developing a parent association or establishing other means of effectively communicating with parents to assure that all concerns regarding center operations will be properly channeled. The board will select the provider based on responses to the published RFP and demonstrated ability to meet state requirements in providing quality child care.

### **Caring for Our Children: A Model for Texas Employers**

The lack of quality child care puts tremendous pressures on families when parents must return to work shortly after the birth of their child. Coping with less-than-satisfactory child care services increases stress-related symptoms in both parents and children. And, children in inadequate care are subject to long-term

risks that may lead to difficulties in school, troubles with the law and relatively low chances of employability.<sup>2</sup>

The efforts of the State of Texas to provide child day care services is a proud statement of the concern and hope that we have for all our children. The benefits of child care for our children, our families and all Texas employers will be realized as the model for excellence is established in state government.

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<sup>2</sup> The Child Day Care Crisis in Texas: An Introduction to the Problem. United Way of Texas Child Care Working Group, 1986, Austin.

**Attachment A**

## Capitol Complex Child Care Survey

### Projected Findings

A Capitol Complex Child Care Survey was administered to identify child care needs of state employees. Of the 322 respondents who completed the Capitol Complex Child Care Survey, 107 employees, or 33.2%, have children of day care age (0-6 years) living with them.

This survey projects that approximately 2475 (33.2%) of the 7448 employees in the 12 participating capitol complex agencies have children of day care age living with them. These employees have approximately 1.36 children each, totaling 2768 children (from these 12 agencies) of day care age.

Location of their children's day care center is an important issue to parents. When asked to identify the most important feature in choosing present arrangements, "convenient location to home" was the most important feature next to "caring attitude of staff." When asked to identify the most important feature in what they would choose if available, "convenient location to work" was rated the highest next to "caring attitude of staff." Location to home was rated fifth.

Parents who are now using other day care services indicated that they would use capitol complex day care services if available and reasonably priced. Based on survey responses, the following number of children have been projected for Fall 1988 potential enrollment in an on-site child care center from the 12 agencies surveyed: infant care--314 children; toddler care--116 children; preschool--157 children; summer care--629 children; evening care--409 children; sick child care--1447 children; and evening drop in--1164 children.

### Conclusions

This survey indicates that if a child care center were established on site, we could expect a significant number of parents (879) to consider moving their (1195) children. Parents want child care centers close to work.

Note: The Capitol Complex Work Group did a telephone survey in early Spring 1988 to identify child care space available in the capitol complex area. All but two centers called were full with extended waiting lists. It is the Work Group's opinion that there is lack of quality child space available for capitol complex employees who want their children close to work.

### Research Methodology

The Capitol Complex Child Care Survey was administered in May 1988 to 12 agencies within a predetermined capitol complex boundary area. Based upon a sample of approximately 25 clusters consisting of 320 employees, this study infers information about the population of 7448 employees within these 12 agencies in the capitol complex.

To enable the Capitol Complex Child Care Work Group to generalize the findings of this survey, acceptable sampling and statistical procedures were used. Through the use of a cluster sampling design, each participating state agency was instructed to select a limited number of work groups. Appropriate proportions of these work groups were then chosen by using a random number table. This methodology should be considered quasi-research. The error rate for most of the items would not be expected to exceed + or - 10%.

**Attachment B**

S.B. No. 1480

AN ACT

relating to the creation of a Child Care Development Board and a Child Care Advisory Committee and to using state-owned buildings for child care facilities.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Title 110A, Revised Statutes, is amended by adding Article 6252-3e to read as follows:

*Art. 6252-3e. CHILD CARE DEVELOPMENT BOARD*

*Sec. 1. DEFINITIONS. In this article:*

- (1) "Board" means the Child Care Development Board.*
- (2) "Commission" means the State Purchasing and General Services Commission.*
- (3) "Committee" means the Child Care Advisory Committee.*

*Sec. 2. BOARD. (a) The Child Care Development Board is established.*

*(b) The board is composed of the following persons or their representatives:*

- (1) the governor;*
- (2) the lieutenant governor;*
- (3) the attorney general;*
- (4) the state treasurer;*
- (5) the comptroller; and*
- (6) the commissioner of the General Land Office.*

*(c) The board may use the staff, equipment, and supplies of an agency represented on the board to assist the board as necessary in performing its duties under this Act.*

*Sec. 3. DUTIES. The board shall develop and administer a program to provide child care services for state employees who work in state-owned buildings. The board by rule may establish methods to administer and supervise the program. The board or the board's designee shall submit a report to the legislature each legislative session that summarizes the development and progress of the child care services program and describes additional child care services needed by state employees.*

*Sec. 4. CHILD CARE ADVISORY COMMITTEE. (a) The Child Care Advisory Committee is established.*

*(b) The committee is composed of:*

- (1) the executive director of:*
  - (A) the State Purchasing and General Services Commission; and*
  - (B) the Texas Department of Community Affairs; and*
- (2) the following members appointed by the board:*
  - (A) a representative of the United Way of Texas child care working group;*
  - (B) a representative of the Texas Association for the Education of Young Children;*
  - (C) a representative of the corporate child development fund;*
  - (D) a representative of child care providers; and*

*(E) six state employees subject to the state classification plan, each of whom has at least one child in a child care facility and each of whom resides in a different geographic area of the state.*

*(c) The committee shall advise the board on the:*

- (1) location, size, and design of the child care facilities; and*
- (2) curriculum a child care facility must provide to ensure the provision of high quality developmentally appropriate services.*

*Sec. 5. FACILITY SITE. The board shall provide the commission with specifications for a child care facility site that include the location, size, and design for a facility. The board, with the cooperation of the commission, shall develop plans to implement the repairs, renovations, or improvements that the board considers necessary to provide child care facilities. The commission shall give priority to making those repairs, renovations, and improvements before making other building repairs, renovations, or improvements.*



*Sec. 6. CHILD CARE SERVICE STANDARDS. The board shall set specific performance standards for child care services under the program and prescribe the number of children a facility may serve. The standards must conform to the standards of quality child care set by the National Association for the Education of Young Children. The board shall monitor the activities and operations of a facility by conducting regular visits to a facility during operating hours to investigate, inspect, and evaluate the services provided.*

*Sec. 7. CHILD CARE PROVIDERS. (a) The commission shall lease a state child care facility site at a reasonable rate to a child care provider selected by the board.*

*The board by rule may prescribe provisions that must be included in a lease and provisions that may not be included in a lease.*

*(b) A provider must:*

*(1) obtain for the facility a license under Chapter 42, Human Resources Code;*

*(2) maintain proof of current liability insurance by an insurance company approved by the State Board of Insurance in an amount approved by the board;*

*(3) indemnify the state, the members of the board, and the commission from any claim, demand, or cause of action asserted by a person as a result of the operation of the facility or any act or omission of the child care provider or the facility personnel;*

*(4) provide any furniture, equipment, toys, or materials necessary for a child care facility; and*

*(5) provide salaries and insurance for the child care facility personnel.*

*Sec. 8. ENROLLMENT. (a) The board shall establish procedures for application to attend and enrollment in a state child care facility established under this article.*

*(b) Except as provided by Subsection (c) of this section, the child care provider shall give preference in enrollment by the date of application, with an earlier date of application receiving preference over a later date of application. The provider shall maintain a list of applicants who are waiting for an opening in the facility.*

*(c) The board may permit enrollment because of special circumstances defined by the board, including financial need and other special hardships.*

*Sec. 9. FUNDS AND DONATIONS. (a) The legislature may appropriate funds from the Texas capital trust fund (Article 601e, Revised Statutes) to establish and operate a child care facility under this article. On the first day of each biennium or from the first amounts deposited into the fund during each biennium, the comptroller shall set aside in a special account within the Texas capital trust fund any appropriations for the biennium for the purposes of this article. If any portion of an appropriation made from the fund for purposes of this article remains unexpended and unobligated at the end of the period for which it is appropriated, that amount remains in the account established for the purposes of this article.*

*(b) The board may solicit private donations of property or money to provide renovations, equipment, or other items necessary to provide child care services. The commission shall accept and use the donations only for the program.*

*Sec. 10. ADDITIONAL FACILITIES. (a) The board may begin procedures to establish another child care facility when the number of applicants on waiting lists to enroll in a child care facility exceeds 49.*

*(b) The commission shall provide the board with a list of sites available for a new or expanded child care facility not later than the 120th day after the date on which the commission receives from the board the specifications for a child care facility under Section 5 of this article.*

*(c) If the commission cannot provide the board with a suitable site, the board shall select a site that the board considers suitable.*

*(d) After a site has been selected, the commission shall implement, as a first priority over other building construction, repairs, or renovations, the plans to prepare the child care facility.*

SECTION 2. Section 4.15, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4.15. LEASE OF SPACE TO PRIVATE TENANTS. (a) The purpose of this section is to encourage the most efficient use of valuable space in state office buildings and parking garages, to serve the needs of the employees and visitors in the buildings, to provide child care services for state employees, and to enhance the social, cultural, and economic environment in and near the buildings. *Providing a site for a child care facility in a state-owned building has first priority over all other uses of a building, except for the purposes essential to the official functions and duties of the agencies housed in the building.*

(b) In a state-owned building that is under the commission's control and that is used primarily for office space or vehicle parking for the state government, the commission may lease at fair market value an amount of space to private tenants for commercial, cultural, educational, or recreational activities. However, 30 days before executing a lease under this section, the commission must submit a copy of the lease to the asset management division of the General Land Office. During this 30-day period the asset management division of the General Land Office shall submit written comments to the commission concerning the lease. Comments submitted by the asset management division of the General Land Office shall be considered by the commission prior to executing the lease. Under this section the commission may not lease any space to a private tenant for use as private office space unless the private office space is related and incidental to another commercial, cultural, educational, [or] recreational, or child care activity of the tenant in the building. *Notwithstanding any other provision in this Act, the commission shall lease suitable space in state-owned buildings to child care providers selected by the Child Care Development Board, as provided by Article 6252-3e, Revised Statutes.*

(c) *Except as provided by this section and Article 6252-3e, Revised Statutes, the [The] commission shall determine the amount of space in a building to be allocated to private tenants and the types of activities in which the tenants may engage based on the market for certain activities among employees and visitors in the building and in the vicinity of the building. The amount of space allocated to private tenants may not exceed 15 percent of the total space in the building. Any space leased to provide child [day] care services for state employees [of the building] shall not be counted in the 15 percent maximum.*

(d) If the commission allocates space in a building to a private tenant, it shall do so in a manner that encourages the tenant to use space with street frontage or in other areas of heavy pedestrian activity; except that, if the commission allocates space for the purpose of providing child [day] care service for state employees [in the building], the commission shall designate [encourage] the use of the space most appropriate for child [day] care.

(e) The commission may furnish utilities and custodial services to a private tenant, other than a child care provider, at cost. *The commission shall furnish utilities and custodial services to a child care provider selected by the Child Care Development Board at cost.*

(f) The commission may lease space in a building after the lease is negotiated with the tenant or after the tenant is selected through a competitive bidding process. In either case, the commission shall follow procedures that promote competition and protect the interests of the state; except that, if the space is leased for the purpose of providing child [day] care services for state employees [of the building], the Child Care Development Board, in its sole discretion, [commission] may select the child care provider [tenant] through procedures other than competitive bidding.

(g) The commission may permit a private tenant to sublease or assign part or all of the space the tenant leases. However, the commission must approve in writing all subleases and assignments of leases. *The Child Care Development Board must also approve in writing a sublease or assignment of the lease, if the private tenant is a child care provider.*

(h) The commission may refuse to lease space to a person or to permit an activity in the space if the commission considers the refusal to be in the best interests of the state, except when the Child Care Development Board has located and approved suitable space for a child care facility in a state-owned building, in which case the commission may not refuse to lease the space to that child care provider.

(i) The commission shall deposit lease revenue in the State Treasury to the credit of the General Revenue Fund. The revenue may be used only for building and property services performed by the commission.

(j) The commission shall request the Texas Commission for the Blind to determine under Section 94.003, Human Resources Code, if it is feasible to install a vending facility in the building in which the commission intends to lease space to a private tenant, *other than a child care provider*. If the installation of the facility is feasible, the commission shall permit the installation in accordance with Chapter 94, Human Resources Code. If a vending facility is installed, the commission may not lease any space in the building to a tenant that the commission, after consultation with the Texas Commission for the Blind, determines would be in direct competition with the vending facility. If the Texas Commission for the Blind determines that the installation of a vending facility is not feasible, the commission shall lease space to at least one private tenant whose activity in the building will be managed by a blind person or by a handicapped person who is not blind.

(k) The space leased to a private tenant is subject to ad valorem taxation in accordance with Subsection (d), Section 11.11, Tax Code, as amended. However, if the private tenant would be entitled to an exemption from taxation of the space if the tenant owned the space instead of leasing it *or if the tenant uses the space for a child care facility*, the space is not subject to taxation.

SECTION 3. Section 5.01, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5.01. *ACQUISITION, CONSTRUCTION, ETC.; AUTHORIZATION.* (a) Under such terms and conditions as may be provided by law, the commission may acquire necessary real and personal property, modernize, remodel, build, and equip buildings for state purposes, and make contracts necessary to carry out and effectuate the purposes herein mentioned in keeping with appropriations authorized by the legislature. The commission shall not sell or dispose of any real property of the state except by specific authority from the legislature.

(b) *The Child Care Development Board shall determine if a child care facility may be included in a state-owned office building constructed after September 1, 1989, that contains at least 100,000 square feet of net usable space and shall notify the commission of that determination. The commission shall notify the Child Care Development Board of a project to rehabilitate or renovate substantially an existing state-owned office building containing at least 100,000 square feet of net usable space before developing the rehabilitation or renovation plan. Not later than the 30th day after the date on which the Child Care Development Board receives the notice, the board shall determine if a child care facility may be included in the rehabilitation or renovation project and shall notify the commission of that determination. The commission shall include a child care facility in a construction, rehabilitation, or renovation project if the Child Care Development Board determines that the child care facility should be included.*

SECTION 4. (a) The Child Care Development Board shall conduct its first board meeting not later than October 1, 1989.

(b) The board shall provide the State Purchasing and General Services Commission with specifications for a child care facility site not later than December 1, 1989.

(c) The commission shall provide the board with a list of suitable sites for a child care facility based on the specifications of the board not later than January 1, 1990.

(d) The board shall select a site from the list provided by the commission not later than March 1, 1990. If the commission cannot provide the board with a suitable site, the board shall select a site that the board considers suitable.

(e) After a site has been selected, the board and the commission shall implement, on a priority basis, the plans to prepare the child care facility.

SECTION 5. This Act takes effect September 1, 1989.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on May 15, 1989, by a viva-voce vote; and that the Senate concurred in House amendment on May 25, 1989, by a viva-voce vote; passed the House, with amendment, on May 23, 1989, by the following vote: Yeas 86, Nays 52, two present not voting.

Approved June 16, 1989.

Effective Sept. 1, 1989.

**Attachment C**



**THE ATTORNEY GENERAL  
OF TEXAS**

April 16, 1990

**JIM MATTOX  
ATTORNEY GENERAL**

Honorable William P. Hobby      Opinion No. JM-1156  
Lieutenant Governor  
The State of Texas Office      Re: Child care facilities in  
of the Lieutenant Governor      building owned or leased by the  
P. O. Box 12068      State of Texas      (RQ-1905)  
Austin, Texas 78711-2068

Dear Governor Hobby:

You ask several questions about Senate Bill 1480. Acts 1989, 71st Leg., ch. 1207, at 4904. That bill established the Child Care Development Board, which is charged with developing and administering a program to provide child care services for state employees who work in state-owned buildings. V.T.C.S. art. 6252-3e. The bill also made several amendments to the provisions of the State Purchasing and General Services Act, article 601b, V.T.C.S., that deal with the lease of space in state-owned buildings to private tenants.

Your first question is whether the site must be located in a state-owned building.<sup>1</sup> The language of Senate Bill 1480 and the legislative history make clear that the legislature contemplated that the site for a child care facility would be in a state-owned building. The caption to Senate Bill 1480 states that the act relates "to the creation of a Child Care Development Board and a Child Care Advisory Committee and to using state-owned buildings for child care facilities." A bill analysis prepared for Senate Bill 1480 states that the purpose of the bill is to "implement a program to use state-owned buildings for child care facilities." Bill Analysis, S.B. 1480, 71st Leg. (1989). Also, section 7 of article 6252-3e provides that

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1. We do not consider what particular financing arrangements may qualify a building as a "state-owned building."

the Purchasing and General Services Commission shall lease a state child care facility site at a reasonable rate. A requirement that the State Services and General Purchasing Commission lease the space for the facility at a reasonable rate makes sense only if the facility site is owned by the state. See V.T.C.S. art. 601b, § 4.15 (dealing with lease of space in state-owned buildings to private tenants). We think that the caption to Senate Bill 1480 and the provisions discussed above make clear that child care facilities developed under article 6252-3e were intended to be in state-owned buildings.

Your second question is:

Under SB 1480 and Article 5, State Purchasing and General Services Act, may a child care facility site be located in a building of appropriate size that would be newly constructed specifically for the board by the commission, or is the board limited respecting newly constructed state buildings to buildings that contain at least 100,000 square feet of net usable space, under section 5.01(b), State Purchasing and General Services Act?

Most of the provisions of Senate Bill 1480 deal with the development of a child care facility in existing state-owned space. Nothing in the bill suggests that the legislature intended that a building be built solely for child care. Our conclusion that Senate Bill 1480 does not authorize the construction of a building solely for the purpose of providing a child care facility is supported by section 5.01 of article 601b, which provides:

(a) Under such terms and conditions as may be provided by law, the commission may acquire necessary real and personal property, modernize, remodel, build, and equip buildings for state purposes, and make contracts necessary to carry out and effectuate the purposes herein mentioned in keeping with appropriations authorized by the legislature. The commission shall not sell or dispose of any real property of the state except by specific authority from the legislature.

(b) The Child Care Development Board shall determine if a child care facility may be included in a state-owned office building constructed after September 1, 1989, that contains at least 100,000 square feet of net usable space and shall notify the commission of that determination. The commission shall notify the Child Care Development Board of a project to rehabilitate or renovate substantially an existing state-owned office building containing at least 100,000 square feet of net usable space before developing the rehabilitation or renovation plan. Not later than the 30th day after the date on which the Child Care Development Board receives the notice, the board shall determine if a child care facility may be included in the rehabilitation or renovation project and shall notify the commission of that determination. The commission shall include a child care facility in a construction, rehabilitation, or renovation project if the Child Care Development Board determines that the child care facility should be included.

The language that is now subsection (a) has been in article 601b since it was adopted in 1979. Acts 1979, 66th Leg., ch. 773, at 1908. Subsection (a) addresses the authority of the State Purchasing and General Services Commission to construct new state buildings. Senate Bill 1480 added subsection (b), which deals with inclusion of space for a child care facility in a newly-constructed state building. The fact that subsection (b) refers to the "inclusion" of a child care facility in a newly constructed building indicates that the legislature did not intend that new state buildings be constructed solely for the purpose of housing a child care facility.

Your third question is:

Once a site is obtained, may it be leased to a child care provider at a reasonable rate that is less than fair market value under Section 4.15(b), State Purchasing and General Services Act; Section 7(a), Article 6252-3e, Revised Statutes; Article III, Section 51, of

the Texas Constitution; and other relevant law?

Section 7(a) of article 6252-3e provides in part:

The [State Purchasing and General Services] commission shall lease a state child care facility site at a reasonable rate to a child care provider selected by the board.

Section 4.15 of article 601b deals with the lease of space in state-owned buildings to private tenants. Senate Bill 1480 amended subsection (f) of section 4.15 to provide as follows:

The commission may lease space in a building after the lease is negotiated with the tenant or after the tenant is selected through a competitive bidding process. In either case, the commission shall follow procedures that promote competition and protect the interests of the state; except that, if the space is leased for the purpose of providing child [day] care services for state employees [of-the-building], the Child Care Development board, in its sole discretion, [commission] may select the child care provider [tenant] through procedures other than competitive bidding. (Language added by S.B. 1480 emphasized; language deleted by S.B. 1480 overstricken.)

Read together, those provisions indicate that space for a child care facility is to be leased at a rate that is reasonable to charge for a child care facility, not necessarily at the rate that could be charged for the same space if it could be leased for other purposes. Therefore, we conclude that space to be used as a child care facility is not required to be leased at fair market value.

You ask whether leasing space for child care facilities at a rate lower than fair market value would be a donation of public property and therefore in violation of article III, section 51, of the constitution. Article III, section 51, would not prohibit lease of public property for less



than fair market value if it served a public purpose.<sup>2</sup> Attorney General Opinions JM-1091 (1989); MW-373 (1981). The bill analysis to Senate Bill 1480 sets out the public purpose to be achieved by leasing space for child care facilities at a rental rate that may be less than fair market rates:

Various studies have shown that absenteeism, tardiness and employee turnover can be reduced substantially when employees with young children have convenient, economical, quality child-care services available. Such studies have also shown positive effects on employee morale, job satisfaction, and productivity.

Bill Analysis, S.B. 1480, 71st Leg. (1989). We think the courts would agree with the legislature that leasing space for child care facilities at a rate less than fair market value in order to improve employee performance is a public purpose.

Your fourth question is:

Under Section 7(a), Article 6252-3e, Revised Statutes, may the board determine and set what constitutes a reasonable rate for the lease as part of the board's power to prescribe by rule provisions that must be included in a lease to a child care provider?

Section 7(a) of article 6252-3e provides:

The [State Purchasing and General Services] commission shall lease a state child care facility site at a reasonable rate to a child care provider selected by the board. The [Child Care Development] board by rule may prescribe provisions that must be included in a lease and provisions that may not be included in a lease.

---

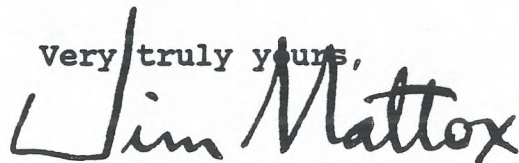
2. There must also be adequate controls to assure that the public purpose is achieved.

We think the plain meaning of that provision is that the determination of a "reasonable" rental rate was to be a matter for the State Purchasing and General Services Commission, not the Child Care Development Board.

S U M M A R Y

Senate Bill 1480, Acts 1989, 71st Leg., ch. 1207, authorizes the development of child care facilities in state-owned buildings. It does not authorize the state to lease space for child care facilities in privately owned buildings. The bill does not authorize the construction of a new state building solely for the purpose of housing a child care facility. The bill authorizes the State Services and General Purchasing Commission to rent space for a child care facility at a rate that is "reasonable" to charge for a child care facility; that rate may be less than fair market value. It is for the State Services and General Services Commission, not the Child Care Development Board, to determine what constitutes a "reasonable" rental rate.

Very truly yours,



J I M M A T T O X  
Attorney General of Texas

MARY KELLER  
First Assistant Attorney General

JUDGE ZOLLIE STEAKLEY  
Special Assistant Attorney General

RENEA HICKS  
Special Assistant Attorney General

RICK GILPIN  
Chairman, Opinion Committee

Prepared by Sarah Woelk  
Assistant Attorney General

**Attachment D**

18-21--215

1 AN ACT

2 relating to the lease of a state child care facility site.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

4 SECTION 1. Subsection (a), Section 7, Article 6252-3e,  
5 Revised Statutes, is amended to read as follows:

6 (a) The commission shall lease to a child care provider  
7 selected by the board a state child care facility site at a  
8 reasonable rate set [~~to--a--child-care-provider-selected~~] by the  
9 board. The board by rule may prescribe provisions that must be  
10 included in a lease and provisions that may not be included in a  
11 lease.

12 SECTION 2. Subsection (b), Section 4.15, State Purchasing  
13 and General Services Act (Article 601b, Vernon's Texas Civil  
14 Statutes), is amended to read as follows:

15 (b) In a state-owned building that is under the commission's  
16 control and that is used primarily for office space or vehicle  
17 parking for the state government, the commission may lease at fair  
18 market value an amount of space to private tenants for commercial,  
19 cultural, educational, or recreational activities. However, 30  
20 days before executing a lease under this section, the commission  
21 must submit a copy of the lease to the asset management division of  
22 the General Land Office. During this 30-day period the asset  
23 management division of the General Land Office shall submit written  
24 comments to the commission concerning the lease. Comments

1 submitted by the asset management division of the General Land  
 2 Office shall be considered by the commission prior to executing the  
 3 lease. Under this section the commission may not lease any space  
 4 to a private tenant for use as private office space unless the  
 5 private office space is related and incidental to another  
 6 commercial, cultural, educational, recreational, or child care  
 7 activity of the tenant in the building. Notwithstanding any other  
 8 provision in this Act, the commission shall lease at a rate set by  
 9 the Child Care Development Board suitable space in state-owned  
 10 buildings to child care providers selected by the board [~~Child-Care~~  
 11 ~~Development---Board~~], as provided by Article 6252-3e, Revised  
 12 Statutes.

13 SECTION 3. Section 29, Texas Public Finance Authority Act  
 14 (Article 601d, Vernon's Texas Civil Statutes), is amended to read  
 15 as follows:

16 Sec. 29. PREFERENCE IN LEASING. Buildings [~~For-the-purposes~~  
 17 ~~of-Section-6-047-State-Purchasing-and-General-Services-Act-(Article~~  
 18 ~~601b7-Vernon's-Texas--Civil--Statutes)7--buildings] owned by the  
 19 authority shall be considered state-owned space for the purposes  
 20 of:~~

21 (1) Section 6.04, State Purchasing and General  
 22 Services Act (Article 601b, Vernon's Texas Civil Statutes); and

23 (2) child care facility sites located in state-owned  
 24 buildings under Article 6252-3e, Revised Statutes, and Articles 4  
 25 and 5, State Purchasing and General Services Act (Article 601b,

1 Vernon's Texas Civil Statutes).

2           SECTION 4. The importance of this legislation and the  
3 crowded condition of the calendars in both houses create an  
4 emergency and an imperative public necessity that the  
5 constitutional rule requiring bills to be read on three several  
6 days in each house be suspended, and this rule is hereby suspended,  
7 and that this Act take effect and be in force from and after its  
8 passage, and it is so enacted.

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

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

I hereby certify that S.B. No. 615 passed the Senate on March 27, 1991, by the following vote: Yeas 29, Nays 0.

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

I hereby certify that S.B. No. 615 passed the House on May 7, 1991, by the following vote: Yeas 145, Nays 0, one present not voting.

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

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor

**Attachment E**



TEXAS LEGISLATIVE SERVICE

HB 2259  
AS FINALLY PASSED AND  
SENT TO THE GOVERNOR

17-21--206

1 AN ACT

2 relating to child care services for state employees.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

4 SECTION 1. Section 3, Article 6252-3e, Revised Statutes, is  
5 amended to read as follows:

6 Sec. 3. DUTIES. The board shall develop and administer a  
7 program to provide child care services for state employees [~~who~~  
8 ~~work--in--state-owned--buildings~~]. The board by rule may establish  
9 methods to administer and supervise the program. The board or the  
10 board's designee shall submit a report to the legislature each  
11 legislative session that summarizes the development and progress of  
12 the child care services program and describes additional child care  
13 services needed by state employees.

14 SECTION 2. Section 4, Article 6252-3e, Revised Statutes, is  
15 amended to read as follows:

16 Sec. 4. CHILD CARE ADVISORY COMMITTEE. (a) The board shall  
17 appoint a child care advisory committee composed of persons  
18 interested in child care services for state employees. The board  
19 may appoint to the committee [~~Child--Care--Advisory--Committee--is~~  
20 ~~established-~~

21 [~~(b)--The-committee-is-composed-of~~]:

22 (1) the executive director of:

23 (A) the State Purchasing and General Services  
24 Commission; and

1 (B) the Texas Department of Community Affairs;

2 [and]

3 (2) [~~the following members appointed by the board:~~

4 [+A+] a representative of the United Way of Texas  
5 child care working group;

6 (3) [+B+] a representative of the Texas Association  
7 for the Education of Young Children;

8 (4) [+C+] a representative of the corporate child  
9 development fund;

10 (5) [+D+] a representative of child care providers;

11 [and]

12 (6) one or more [+E+~~six~~] state employees subject to  
13 the state classification plan, each of whom has at least one child  
14 in a child care facility; and

15 (7) one or more other persons knowledgeable in child  
16 care services or the need of working people for child care services  
17 [~~and each of whom resides in a different geographic area of the~~  
18 ~~state~~].

19 (b) [+F+] The committee shall advise the board on the:

20 (1) location, size, and design of the child care  
21 facilities; and

22 (2) curriculum a child care facility must provide to  
23 ensure the provision of high quality developmentally appropriate  
24 services.

25 SECTION 3. Section 5, Article 6252-3e, Revised Statutes, is  
26 amended to read as follows:

27 Sec. 5. ESTABLISHMENT OF CHILD CARE FACILITIES [~~FACILITIES~~]

1 SITE]. (a) The board shall provide the commission with  
2 specifications for each [a] child care facility site that include  
3 the location, size, and design for the [a] facility.

4 (b) To establish child care facilities, the commission, at  
5 the direction of the board, shall:

6 (1) acquire necessary real and personal property,  
7 including mobile and prefabricated buildings;

8 (2) build, modernize, renovate, remodel, repair,  
9 improve, and equip buildings; and

10 (3) construct or place new buildings on real property  
11 already owned by the state.

12 (c) The commission shall make any contract necessary to  
13 establish a child care facility under this article. A contract  
14 made under this section must comply with the State Purchasing and  
15 General Services Act (Article 601b, Vernon's Texas Civil Statutes)  
16 [~~The--board,--with-the-cooperation-of-the-commission,--shall-develop~~  
17 ~~plans-to-implement-the-repairs,--renovations,--or--improvements--that~~  
18 ~~the-board-considers-necessary-to-provide-child-care-facilities~~].

19 (d) In establishing child care facilities under this  
20 article, the board must specify the terms and conditions under  
21 which the commission is required to act and may include a schedule  
22 for implementation of the activity. The board may from time to  
23 time request, add to, or delete terms or conditions and may request  
24 from the commission a report on the progress of activity under this  
25 article. If activity is delayed or cannot be implemented under the  
26 board's terms and conditions, the commission shall immediately  
27 advise the board and may postpone further action until the

1 commission receives instructions from the board. The commission  
2 and the executive director of the commission shall carry out their  
3 responsibilities under this article in good faith [~~The--commission~~  
4 ~~shall--give--priority--to--making--those--repairs, renovations, and~~  
5 ~~improvements before making other building repairs, renovations, or~~  
6 ~~improvements~~].

7 (e) This section does not affect the duties or  
8 responsibilities of the board or the commission under Section  
9 5.01(b), State Purchasing and General Services Act (Article 601b,  
10 Vernon's Texas Civil Statutes).

11 SECTION 4. Section 4.15(d), State Purchasing and General  
12 Services Act (Article 601b, Vernon's Texas Civil Statutes), is  
13 amended to read as follows:

14 (d) If the commission allocates space in a building to a  
15 private tenant, it shall do so in a manner that encourages the  
16 tenant to use space with street frontage or in other areas of heavy  
17 pedestrian activity; except that, if the commission allocates space  
18 for the purpose of providing child care service for state  
19 employees, the commission shall designate the use of the space most  
20 appropriate for child care at the direction of the Child Care  
21 Development Board.

22 SECTION 5. Sections 6.02(a) and (c), State Purchasing and  
23 General Services Act (Article 601b, Vernon's Texas Civil Statutes),  
24 are amended to read as follows:

25 (a) When a state agency needs space to carry on its  
26 functions, the head of the agency or his or her designee shall  
27 submit a written request for the space to the commission. The

1 agency may consider the need of its employees for child care  
2 services when the agency assesses its need for space and when it  
3 submits its request for space.

4 (c) The commission shall adopt standards regarding the uses  
5 of and the needs for space by state agencies and the types of space  
6 needed by state agencies. The Child Care Development Board by rule  
7 shall adopt standards regarding the type, size, and location of any  
8 child care services that may be needed by a state agency based on  
9 an agency's location and employee demographics. The commission  
10 shall apply standards adopted by the board under this subsection in  
11 fulfilling the commission's responsibilities relating to the  
12 establishment of child care facilities.

13 SECTION 6. Article 6, State Purchasing and General Services  
14 Act (Article 601b, Vernon's Texas Civil Statutes), is amended by  
15 adding Section 6.14 to read as follows:

16 Sec. 6.14. SUBLEASES TO CHILD CARE PROVIDERS. (a) Subject  
17 to any restrictions imposed by a lease or other enforceable  
18 contract, the commission, at the direction of the Child Care  
19 Development Board and the request of the occupying agency, shall  
20 sublease part of a space leased under this article to a child care  
21 provider for the operation of a child care facility. Article  
22 6252-3e, Revised Statutes, applies to the establishment and  
23 operation of the child care facility, except as provided by this  
24 section. This section does not affect the duties of the commission  
25 regarding child care facilities in state-owned buildings and  
26 potential child care facility sites in state-owned buildings under  
27 Article 6252-3e, Revised Statutes, and Articles 4 and 5 of this

1 Act.

2 (b) The occupying agency and the Child Care Development  
3 Board may agree to procedures relating to the selection of the  
4 child care provider, to granting some preference in enrollment to  
5 children of officers and employees of the occupying state agency,  
6 and to any other matters regarding the operation of a child care  
7 facility.

8 (c) The commission shall sublease space under this section  
9 to a child care provider approved by the Child Care Development  
10 Board at a rate set by the board.

11 (d) In leasing space under this article, the commission  
12 shall, whenever possible, enter into lease contracts that allow for  
13 subleasing of space to child care providers.

14 SECTION 7. Section 25, Texas Public Finance Authority Act  
15 (Article 601d, Vernon's Texas Civil Statutes), is amended by adding  
16 Subsection (d) to read as follows:

17 (d) The Child Care Development Board is not an occupying  
18 state agency for purposes of this section. The commission or the  
19 appropriate state agency, with the cooperation and assistance of  
20 the Child Care Development Board, shall include in the schedules  
21 developed under Subsection (a) of this section the method of  
22 charging state agencies that occupy all or part of a building  
23 governed by this section for the space in the building that is used  
24 for a child care facility under Article 6252-3e, Revised Statutes,  
25 and Articles 4 and 5, State Purchasing and General Services Act  
26 (Article 601b, Vernon's Texas Civil Statutes). An occupying  
27 agency's share shall be based at least in part on the ratio of the

1 number of the occupying agency's employees who work in the building  
2 to the total number of state employees who work in the building.

3 SECTION 8. Notwithstanding the authority granted by this  
4 Act, no state general revenue may be appropriated for costs related  
5 to the implementation of this Act during the fiscal biennium  
6 beginning on September 1, 1991, unless expressly authorized by the  
7 General Appropriations Act.

8 SECTION 9. The importance of this legislation and the  
9 crowded condition of the calendars in both houses create an  
10 emergency and an imperative public necessity that the  
11 constitutional rule requiring bills to be read on three several  
12 days in each house be suspended, and this rule is hereby suspended,  
13 and that this Act take effect and be in force from and after its  
14 passage, and it is so enacted.

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

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

I certify that H.B. No. 2259 was passed by the House on May 9, 1991, by the following vote: Yeas 78, Nays 67, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2259 on May 26, 1991, by the following vote: Yeas 74, Nays 61, 2 present, not voting.

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

I certify that H.B. No. 2259 was passed by the Senate, with amendments, on May 25, 1991, by the following vote: Yeas 21, Nays 7, 1 present, not voting.

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

APPROVED: \_\_\_\_\_

Date

\_\_\_\_\_  
Governor





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