

By: Dukes

H.B. No. 663

A BILL TO BE ENTITLED

AN ACT

relating to the performance of a private commercial contractor that provides a service of a state agency.

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

SECTION 1. Section 2162.103, Government Code, is amended to read as follows:

Sec. 2162.103. COST COMPARISON AND CONTRACT CONSIDERATIONS. (a) In comparing the cost of providing a service, the council shall conduct and consider the conclusions of cost-benefit analyses that compare the costs and benefits of ~~consider the~~:

(1) a private contractor's performance of the service, including considering the cost of supervising the work of a private contractor; ~~and~~

(2) ~~cost of~~ a state agency's performance of the service, including considering the cost of:

(A) services provided by ~~the costs of~~ the comptroller, attorney general, and other support agencies; and

(B) other indirect expenses ~~costs~~ related to the agency's performance of the service; and

(3) improving the state agency's performance by:

(A) developing and implementing a most efficient organization model;

(B) implementing recommendations of state

1 oversight agencies such as the Legislative Budget Board, the state  
2 auditor, and the Sunset Advisory Commission; and

3 (C) implementing the recommendations of the  
4 agency's governing body intended to improve the agency's provision  
5 of a service the council identifies under Section 2162.102(a).

6 (b) The state agency may submit a proposal to the council  
7 describing a reorganized service delivery method to compete  
8 directly with the performance of a private commercial contractor.

9 (c) In comparing the cost of providing a service, the  
10 council in conjunction with the state agency shall prepare and  
11 consider an estimate of the costs of returning the performance of  
12 the service from the contractor to the state agency in the event  
13 that it proves necessary to do so. The estimate must include a  
14 reasonable proposed timetable for actions necessary to return the  
15 service to the state agency.

16 (d) [~~(b)~~] A bid or contract must include an analysis of  
17 health care benefits, retirement, and workers' compensation  
18 insurance for a contractor's employees that are reasonably  
19 comparable to the health care benefits, retirement, and workers'  
20 compensation insurance of the state.

21 (e) Cost-benefit analyses used for an evaluation under  
22 Subsection (a) must include a short-term analysis covering a period  
23 of not more than six months and a long-term analysis covering a  
24 period of at least one and not more than five years.

25 SECTION 2. Subchapter C, Chapter 2162, Government Code, is  
26 amended by adding Section 2162.106 to read as follows:

27 Sec. 2162.106. AUDIT REQUIREMENTS AND CONTRACT CONDITIONS.

1 (a) A contract awarded to a private commercial contractor under  
2 this subchapter must include a provision that the continuation of  
3 the contract for the entire contract period is contingent on the  
4 outcome of audits conducted under this section.

5 (b) A private commercial contractor to which a contract is  
6 awarded under this subchapter must cooperate with a compliance  
7 audit conducted by the state auditor. The state auditor shall  
8 conduct the audit not later than the end of the sixth month after  
9 the month the contract was awarded. In conducting the audit, the  
10 state auditor shall:

11 (1) determine whether the contractor has met the  
12 conditions of its contract and cooperated with the audit under this  
13 section;

14 (2) assess whether the contractor has provided a level  
15 of service delivery comparable to that provided by the state agency  
16 that most recently provided the service before the service was  
17 performed by a private commercial contractor; and

18 (3) assess whether the cost savings presented in the  
19 contractor's contract bid are being realized by the contractor.

20 (c) If the state auditor concludes after the audit that the  
21 private commercial contractor has performed satisfactorily, the  
22 contractor may continue to perform under the contract until the  
23 state auditor completes a second audit. The state auditor shall  
24 conduct the second audit not earlier than the end of the sixth month  
25 after the completion of the first audit under this section and not  
26 later than the 18th month after that audit is completed.

27 (d) If the state auditor concludes after the initial or

1 second audit conducted under this section that the contractor has  
2 not performed satisfactorily, the state agency shall terminate the  
3 contract with the commercial contractor and the state agency shall  
4 take the necessary actions to resume its role in providing the  
5 service in accordance with the timetable prepared under Section  
6 2162.103(c).

7 (e) If a service obligation is returned to the state agency  
8 under Subsection (d):

9 (1) the state agency immediately shall complete a  
10 performance evaluation to design a program to improve the delivery  
11 of the service and implement the program designed; and

12 (2) until the end of the sixth month after the month  
13 the contract terminated under Subsection (d), the council may not:

14 (A) require the service to be submitted to  
15 competitive bidding; or

16 (B) make a determination regarding the service  
17 under Section 2162.102(b).

18 (f) If in the performance of a compliance audit under this  
19 section the state auditor notes an irregularity that may indicate  
20 that the state has overpaid the contractor or has made a payment for  
21 a service not performed, the state auditor shall conduct a recovery  
22 audit designed to identify any amounts overpaid or amounts paid for  
23 unperformed services. The state auditor shall report the results  
24 of the recovery audit to the attorney general and the affected state  
25 agency. The attorney general and affected state agency shall  
26 cooperate in taking action to recover the amounts owed to the state.

27 SECTION 3. The changes in law made by this Act apply only

1 to:

2 (1) the activities of the State Council on Competitive  
3 Government or a state agency, concerning a proposal to contract  
4 with a commercial source to provide services being performed by a  
5 state agency, on or after the effective date of this Act; and

6 (2) the evaluation of the services performed by a  
7 contractor under a contract made on or after the effective date of  
8 this Act.

9 SECTION 4. This Act takes effect September 1, 2007.