

By: Dukes

H.B. No. 581

A BILL TO BE ENTITLED

AN ACT

relating to outsourcing a service performed by a state agency to a private commercial contractor.

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 or a similar model developed by the council;

(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. Chapter 2162, Government Code, is amended by
26 adding Subchapter D to read as follows:

27 SUBCHAPTER D. OUTSOURCING MAJOR FUNCTIONS

1 Sec. 2162.151. APPLICABILITY. This subchapter applies in
2 relation to a contract, contract amendment, or contract extension
3 made or proposed to be made between a state agency and a private
4 commercial contractor only if:

5 (1) a service performed by the agency at the time the
6 contract is awarded, amended, or extended will be outsourced under
7 the contract, contract amendment, or contract extension; and

8 (2) the contract, contract amendment, or contract
9 extension, as applicable:

10 (A) will lead to the loss of 100 or more state
11 employee positions; or

12 (B) has a value of \$10 million or more.

13 Sec. 2162.152. DETERMINATION BY COUNCIL REQUIRED. (a) In
14 circumstances under which this subchapter applies, a state agency
15 may not award a contract to, amend a contract with, or extend a
16 contract with a private commercial contractor unless the council
17 determines that the service that will be outsourced under the
18 contract, contract amendment, or contract extension is a service
19 that may be better provided by selecting the provider of the service
20 through competition with other state agencies and private
21 commercial contractors that can provide the service.

22 (b) A state agency may not award a new contract to which this
23 subchapter applies unless the council has made the determination
24 required by Subsection (a) and the provider of the service under the
25 contract is selected through competition with other state agencies
26 and private commercial contractors. A state agency may amend or
27 extend an existing contract under circumstances in which this

1 subchapter applies after the council makes the determination
2 required by Subsection (a).

3 Sec. 2162.153. CONTINUATION OF OUTSOURCING CONTRACT;
4 COMPLIANCE AUDIT. (a) The state auditor shall conduct a
5 compliance audit with regard to the outsourced service not later
6 than the end of the sixth month after the month the service was
7 outsourced under the contract, contract amendment, or contract
8 extension. The contractor shall pay the costs of the audit. In
9 conducting the audit, the state auditor shall:

10 (1) determine whether the contractor has:

11 (A) met the conditions of the contract with
12 regard to the outsourced service; and

13 (B) cooperated with the audit as required by
14 Subsection (c);

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

19 (3) assess whether the cost savings presented in the
20 contractor's contract bid or proposal with regard to the outsourced
21 service are being realized.

22 (b) Subject to Subsection (e), the contractor may continue
23 to perform under the contract until the state auditor completes a
24 second compliance audit. The state auditor shall conduct the
25 second audit beginning not earlier than the end of the sixth month
26 after the month in which the first audit is completed under this
27 section and not later than the 18th month after the month in which

1 the first audit is completed.

2 (c) The private commercial contractor shall cooperate with
3 an audit conducted by the state auditor under this subchapter or
4 Chapter 321.

5 (d) After the initial and second audits conducted under this
6 section, the state auditor shall issue an audit report to the
7 contractor, the state agency, the governor, the lieutenant
8 governor, the speaker of the house of representatives, and the
9 presiding officer of each standing committee of the legislature
10 with jurisdiction over the state agency and the subject matter of
11 the contract. The report must explain the auditor's conclusions
12 regarding whether the contractor:

13 (1) cooperated satisfactorily with the audit; and

14 (2) performed satisfactorily under the contract.

15 (e) If the governing body of the state agency, after
16 reviewing the auditor's report and any response by the contractor,
17 concludes that the contractor did not cooperate with the audit or
18 did not perform satisfactorily under the contract, the governing
19 body shall terminate the contract as soon as practicable.

20 (f) A state agency that enters into a contract or agrees to a
21 contract amendment or extension that is subject to this subchapter
22 shall notify the state auditor of the existence of the contract not
23 later than the date the contract, contract amendment, or contract
24 extension takes effect.

25 Sec. 2162.154. ACTIONS FOLLOWING RETURN OF SERVICE. If a
26 service obligation is returned to the state agency after a contract
27 is terminated under Section 2162.153(e):

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

4 (2) until the end of the sixth month after the month
5 the contract is terminated under Section 2162.153(e), with respect
6 to the service, the council may not:

7 (A) require the service to be submitted to
8 competitive bidding; or

9 (B) make a determination regarding the service
10 under Section 2162.102(b).

11 Sec. 2162.155. RECOVERY AUDIT. If, in the performance of a
12 compliance audit under this subchapter, the state auditor notes an
13 irregularity that may indicate that the state has overpaid the
14 contractor or has made a payment for a service not performed, the
15 state auditor shall conduct a recovery audit designed to identify
16 any amounts overpaid or amounts paid for unperformed services. The
17 state auditor shall report the results of the recovery audit to the
18 attorney general and the affected state agency. The attorney
19 general and affected state agency shall cooperate in taking action
20 to recover the amounts owed to the state.

21 SECTION 3. The changes in law made by this Act apply only
22 to:

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

27 (2) the evaluation of the services performed by a

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1 contractor under a contract, contract amendment, or contract
2 extension made on or after the effective date of this Act.

3 SECTION 4. This Act takes effect September 1, 2009.