

By: Dukes

H.B. No. 1232

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:

1 SUBCHAPTER D. OUTSOURCING MAJOR FUNCTIONS

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

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

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

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

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

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

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

1 extend an existing contract under circumstances in which this
2 subchapter applies after the council makes the determination
3 required by Subsection (a).

4 Sec. 2162.153. COMPLIANCE AUDIT. (a) All contracts,
5 contractors, and subcontractors subject to this subchapter are
6 subject to audits conducted by the state auditor in accordance with
7 Chapter 321. The contractor or subcontractor, as appropriate,
8 shall reimburse the state auditor for the cost of the audit. In
9 conducting an audit under this subsection, 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 (b);

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 cost savings projected in the
20 cost-benefit analysis conducted under Section 2162.103 are being
21 realized.

22 (b) The private commercial contractor and any
23 subcontractors shall cooperate with an audit conducted by the state
24 auditor under this subchapter or Chapter 321.

25 (c) If the governing body of the state agency, after
26 reviewing the auditor's report and any response by the contractor,
27 concludes that the contractor did not perform satisfactorily under

1 the contract, the governing body shall terminate the contract as
2 soon as practicable.

3 (d) A state agency that enters into a contract or agrees to a
4 contract amendment or extension that is subject to this subchapter
5 shall notify the state auditor of the existence of the contract not
6 later than the date the contract, contract amendment, or contract
7 extension takes effect.

8 Sec. 2162.154. ACTIONS FOLLOWING RETURN OF SERVICE. If a
9 service obligation is returned to the state agency after a contract
10 is terminated under Section 2162.153(c):

11 (1) the state agency immediately shall:

12 (A) complete a performance evaluation to design a
13 program to improve the delivery of the service; and

14 (B) implement the program designed under
15 Paragraph (A); and

16 (2) until the end of the sixth month after the month
17 the contract is terminated under Section 2162.153(c), with respect
18 to the service, the council may not:

19 (A) require the service to be submitted to
20 competitive bidding; or

21 (B) make a determination regarding the service
22 under Section 2162.102(b).

23 SECTION 3. The changes in law made by this Act apply only
24 to:

25 (1) the activities of the State Council on Competitive
26 Government or a state agency concerning a proposal to contract with
27 a commercial source to provide services being performed by a state

1 agency, on or after the effective date of this Act; and

2 (2) the evaluation of the services performed by a
3 contractor under a contract, contract amendment, or contract
4 extension made on or after the effective date of this Act.

5 SECTION 4. This Act takes effect September 1, 2011.