

By: Dukes

H.B. No. 881

A BILL TO BE ENTITLED

AN ACT

relating to outsourcing a service performed by a health and human services agency to a private commercial contractor.

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

SECTION 1. Chapter 2162, Government Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. OUTSOURCING MAJOR FUNCTIONS

Sec. 2162.151. DEFINITION. In this subchapter, "health and human services agency" has the meaning assigned by Section 531.001.

Sec. 2162.152. APPLICABILITY. This subchapter applies in relation to a contract, contract amendment, or contract extension made or proposed to be made between a health and human services agency and a private commercial contractor only if:

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

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

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

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

Sec. 2162.153. COST ANALYSIS AND CONTRACT CONSIDERATIONS FOR OUTSOURCING STATE SERVICES. (a) Before awarding, amending, or extending a contract to which this subchapter applies, a health and

1 human services agency shall perform a cost analysis comparing the
2 agency's costs of performing the service to be outsourced to the
3 costs of outsourcing the service as provided by this section. The
4 council, in making a determination under Section 2162.102(a), shall
5 perform a cost analysis comparing a health and human services
6 agency's costs of performing a service to the costs of outsourcing
7 the service as provided by this section.

8 (b) In determining a health and human services agency's
9 costs of performing the service, an analysis shall be prepared that
10 includes:

11 (1) the health and human services agency's actual cost
12 of providing the service currently, including:

13 (A) services provided by the comptroller,
14 attorney general, and other support agencies; and

15 (B) other indirect expenses related to the health
16 and human services agency's performance of the service;

17 (2) the assumptions and documentation supporting the
18 actual cost determination under Subdivision (1); and

19 (3) recommendations for improving the health and human
20 services agency's performance by developing the most efficient
21 organizational model to provide the service, if applicable,
22 including implementing recommendations of state oversight agencies
23 such as the Legislative Budget Board, the state auditor, and the
24 Sunset Advisory Commission.

25 (c) In comparing the cost of providing the service under
26 this section, the health and human services agency or council
27 shall:

1 (1) include the costs of a private contractor to
2 perform the state service and the cost to the health and human
3 services agency of monitoring the contractor's performance against
4 the terms of the contract;

5 (2) include an assessment of whether the private
6 contractor can provide a level of service comparable to that
7 provided by the health and human services agency that most recently
8 provided the service; and

9 (3) prepare and consider an estimate of the costs of
10 returning the performance of the service from the private
11 contractor to the health and human services agency in the event that
12 it proves necessary to do so, including a reasonable proposed
13 timetable for actions necessary to return the service to the health
14 and human services agency.

15 (d) A health and human services agency performing a cost
16 analysis under this section may consider a reorganized service
17 delivery method to compete directly with the performance of a
18 private contractor.

19 (e) A bid or contract must include an analysis of health
20 care benefits, retirement, and workers' compensation insurance for
21 a private contractor's employees that are reasonably comparable to
22 the health care benefits, retirement, and workers' compensation
23 insurance of the state.

24 (f) A cost analysis under this section must cover a period
25 of at least one year and not more than five years.

26 (g) A health and human services agency shall send the
27 analysis and supporting documentation required by Subsection (b) to

1 the governor, the chairs of the appropriate legislative committees,
2 the Legislative Budget Board, and the state auditor. The analysis
3 and supporting documentation must be sent to the state auditor
4 before extending a solicitation for bids for, amending, or
5 extending a contract to which this subchapter applies.

6 (h) Based on a risk assessment, the state auditor may review
7 and comment on the methodology used to determine the health and
8 human services agency's cost required by Subsection (a). The state
9 auditor shall provide the results of the review and comment to the
10 affected health and human services agency, the governor, the chairs
11 of the appropriate legislative committees, and the Legislative
12 Budget Board.

13 Sec. 2162.154. AUDIT AUTHORITY. (a) Based on a risk
14 assessment performed by the state auditor, a cost analysis under
15 Section 2162.153 is subject to audit by the state auditor in
16 accordance with Chapter 321.

17 (b) Based on a risk assessment performed by the state
18 auditor, a contract to which this subchapter applies is subject to
19 audit by the state auditor in accordance with Chapter 321. The
20 private contractor shall pay the costs of an audit conducted under
21 this subsection. In conducting the audit, the state auditor may:

22 (1) assess whether cost savings have been realized
23 from the contract; and

24 (2) address compliance under the terms of the
25 contract, including amounts paid under the contract.

26 (c) A contract to which this subchapter applies must include
27 a provision that authorizes the state auditor to have access to any

1 information the state auditor considers relevant in performing the
2 state auditor's duties under this section.

3 (d) The state auditor shall file an audit report for audits
4 performed under Subsections (a) and (b).

5 (e) Reports filed by the state auditor under Subsection (d)
6 shall be provided to:

7 (1) the affected health and human services agency;

8 (2) the governor;

9 (3) the chairs of the appropriate legislative
10 committees;

11 (4) the Legislative Budget Board;

12 (5) the council, if applicable;

13 (6) the attorney general; and

14 (7) the private contractor, if applicable.

15 Sec. 2162.155. REQUIRED NOTIFICATION. A health and human
16 services agency that enters into a contract or agrees to a contract
17 amendment or extension that is subject to this subchapter shall
18 notify the state auditor of the existence of the contract not later
19 than the date the contract, contract amendment, or contract
20 extension takes effect.

21 Sec. 2162.156. RECOVERY OF FUNDS. If, in the performance of
22 an audit under this subchapter, the state auditor identifies
23 amounts overpaid, amounts paid for unperformed services, or
24 unallowable costs, the attorney general and the affected health and
25 human services agency shall cooperate in taking action to recover
26 the amounts owed to the state.

27 Sec. 2162.157. CONTRACT TERMINATION. If the governing body

1 of the health and human services agency, after reviewing an audit
2 report by the state auditor under this subchapter, any response by
3 the private contractor, and applicable agency performance
4 evaluations of the private contractor, concludes that the private
5 contractor did not perform satisfactorily under the contract, the
6 governing body shall terminate the contract as soon as practicable.

7 Sec. 2162.158. ACTIONS FOLLOWING RETURN OF SERVICE. If a
8 service obligation is returned to a health and human services
9 agency after a contract is terminated under Section 2162.157, the
10 health and human services agency shall:

11 (1) immediately complete a performance evaluation to
12 design a program to improve the delivery of the service and
13 implement the program designed; or

14 (2) rebid the contract.

15 SECTION 2. Section 2162.103(a), Government Code, is amended
16 to read as follows:

17 (a) Except as otherwise provided by Section 2162.153, in
18 [In] comparing the cost of providing a service, the council shall
19 consider the:

20 (1) cost of supervising the work of a private
21 contractor; and

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

24 (A) the costs of the comptroller, attorney
25 general, and other support agencies; and

26 (B) other indirect costs related to the agency's
27 performance of the service.

1 SECTION 3. The changes in law made by this Act apply only
2 to:

3 (1) the activities of the State Council on Competitive
4 Government, the Department of Aging and Disability Services, the
5 Department of Assistive and Rehabilitative Services, the
6 Department of Family and Protective Services, or the Department of
7 State Health Services concerning a proposal to contract with a
8 private contractor to provide services being performed by the
9 Department of Aging and Disability Services, the Department of
10 Assistive and Rehabilitative Services, the Department of Family and
11 Protective Services, or the Department of State Health Services, on
12 or after the effective date of this Act; and

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

16 SECTION 4. This Act takes effect September 1, 2015.