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FLOOR AMENDMENT NO. ~~HOUSE OF REPRESENTATIVES~~

BY: Dukes

1 Amend C.S.H.B. No. 6 (house committee report) by adding the  
2 following appropriately numbered SECTIONS to the bill and  
3 renumbering subsequent SECTIONS of the bill accordingly:

4 SECTION \_\_. Chapter 2162, Government Code, is amended by  
5 adding Subchapter D to read as follows:

6 SUBCHAPTER D. OUTSOURCING MAJOR FUNCTIONS

7 Sec. 2162.151. DEFINITIONS. In this subchapter:

8 (1) "Commission" means the Health and Human Services  
9 Commission.

10 (2) "Health and human services agency" has the  
11 meaning assigned by Section 531.001.

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

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

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

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

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

26 Sec. 2162.153. COST ANALYSIS AND CONTRACT CONSIDERATIONS  
27 FOR OUTSOURCING STATE SERVICES. (a) Before awarding, amending,  
28 or extending a contract to which this subchapter applies, the  
29 commission or a health and human services agency, as applicable,  
30 shall perform a cost analysis comparing the commission's or

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

7 (b) In determining the costs of performing the service, an  
8 analysis shall be prepared that includes:

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

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

14 (B) other indirect expenses related to the  
15 performance of the service;

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

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

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

27 (1) include the costs of a private contractor to  
28 perform the state service and the cost to the commission or  
29 agency of monitoring the contractor's performance against the  
30 terms of the contract;

31 (2) include an assessment of whether the private  
32 contractor is capable of providing a level of service comparable

1 to the level provided by the commission or agency that most  
2 recently provided the service; and

3 (3) prepare and consider an estimate of the costs of  
4 returning the performance of the service from the private  
5 contractor to the commission or agency if necessary, including a  
6 reasonable proposed schedule for actions necessary to return the  
7 service to the commission or agency.

8 (d) The commission or a health and human services agency  
9 performing a cost analysis under this section may consider a  
10 reorganized service delivery method to compete directly with the  
11 performance of a private contractor.

12 (e) A bid or contract for outsourcing a service must  
13 include an analysis of health care benefits, retirement, and  
14 workers' compensation insurance for a private contractor's  
15 employees that are reasonably comparable to the health care  
16 benefits, retirement, and workers' compensation insurance of  
17 this state.

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

20 Sec. 2162.154. REPORT; STATE AUDITOR REVIEW. (a) The  
21 commission or a health and human services agency shall send the  
22 analysis and supporting documentation required by Section  
23 2162.153(b) to the governor, the chairs of the appropriate  
24 legislative committees with jurisdiction over the commission or  
25 agency, the Legislative Budget Board, and the state auditor. The  
26 analysis and supporting documentation must be sent to the state  
27 auditor before extending a solicitation for bids for, amending,  
28 or extending a contract to which this subchapter applies.

29 (b) Based on a risk assessment, the state auditor may  
30 review and comment on the methodology used to determine the  
31 commission's or health and human services agency's cost required  
32 by Section 2162.153(a). The state auditor shall provide the

1 results of the review and comment to the affected commission or  
2 agency, the governor, the chairs of the appropriate legislative  
3 committees with jurisdiction over the commission or agency, and  
4 the Legislative Budget Board.

5 Sec. 2162.155. AUDIT AUTHORITY. (a) Based on a risk  
6 assessment performed by the state auditor, a cost analysis under  
7 Section 2162.153 is subject to audit by the state auditor in  
8 accordance with Chapter 321.

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

15 (1) assess whether cost savings have been realized  
16 from the contract; and

17 (2) address compliance under the terms of the  
18 contract, including amounts paid under the contract.

19 (c) A contract to which this subchapter applies must  
20 include a provision that authorizes the state auditor to have  
21 access to any information the state auditor considers relevant  
22 in performing the state auditor's duties under this section.

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

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

27 (1) the commission and any affected health and human  
28 services agency;

29 (2) the governor;

30 (3) the chairs of the appropriate legislative  
31 committees with jurisdiction over the commission or agency;

32 (4) the Legislative Budget Board;

1           (5) the council, if applicable;

2           (6) the attorney general; and

3           (7) the private contractor, if applicable.

4           Sec. 2162.156. REQUIRED NOTIFICATION. The commission or a  
5 health and human services agency that enters into a contract or  
6 agrees to a contract amendment or extension subject to this  
7 subchapter shall notify the state auditor about the contract not  
8 later than the date the contract, contract amendment, or  
9 contract extension takes effect.

10          Sec. 2162.157. RECOVERY OF FUNDS. If, in the performance  
11 of an audit under this subchapter, the state auditor identifies  
12 amounts overpaid, amounts paid for unperformed services, or  
13 unallowable costs, the attorney general and the commission or  
14 affected health and human services agency shall cooperate in  
15 taking action to recover the amounts owed to the state.

16          Sec. 2162.158. CONTRACT TERMINATION. If the executive  
17 commissioner of the commission, after reviewing an audit report  
18 by the state auditor under this subchapter, any response by the  
19 private contractor, and applicable agency performance  
20 evaluations of the private contractor, concludes that the  
21 private contractor did not perform satisfactorily under the  
22 contract, the executive commissioner shall terminate the  
23 contract as soon as practicable.

24          Sec. 2162.159. ACTIONS FOLLOWING RETURN OF SERVICE. If a  
25 service obligation is returned to the commission or a health and  
26 human services agency after a contract is terminated under  
27 Section 2162.158, the commission or agency, as applicable,  
28 shall:

29           (1) immediately complete a performance evaluation to  
30 design a program to improve the delivery of the service and  
31 implement the program designed; or

32           (2) rebid the contract.

1 SECTION \_\_. Section 2162.103(a), Government Code, is  
2 amended to read as follows:

3 (a) Except as otherwise provided by Section 2162.153, in  
4 ~~[It]~~ comparing the cost of providing a service, the council  
5 shall consider the:

6 (1) cost of supervising the work of a private  
7 contractor; and

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

10 (A) the costs of the comptroller, attorney  
11 general, and other support agencies; and

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

14 SECTION \_\_. Subchapter D, Chapter 2162, Government Code, as  
15 added by this Act, and Section 2162.103, Government Code, as  
16 amended by this Act, apply only to:

17 (1) the activities of the Health and Human Services  
18 Commission, the State Council on Competitive Government, the  
19 Department of Family and Protective Services, or the Department  
20 of State Health Services concerning a proposal to contract with  
21 a private contractor to provide services being performed by the  
22 Health and Human Services Commission, the Department of Family  
23 and Protective Services, or the Department of State Health  
24 Services, on or after the effective date of this Act; and

25 (2) the evaluation of the services performed by a  
26 private contractor under a contract, contract amendment, or  
27 contract extension made on or after the effective date of this  
28 Act.