



17 MAY 17 AM 10:33
HOUSE OF REPRESENTATIVES

FLOOR AMENDMENT NO. _____

BY: _____

Dukes

1 Amend C.S.S.B. No. 11 (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 meaning
11 assigned by Section 531.001.

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

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

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

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

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

25 Sec. 2162.153. COST ANALYSIS AND CONTRACT CONSIDERATIONS
26 FOR OUTSOURCING STATE SERVICES. (a) Before awarding, amending, or
27 extending a contract to which this subchapter applies, the
28 commission or a health and human services agency, as applicable,
29 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. The
3 council, in making a determination under Section 2162.102(a), shall
4 perform a cost analysis comparing the commission's or agency's
5 costs of performing a service to the costs of outsourcing the
6 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, including:

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

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

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

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

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

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

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

1 the level provided by the commission or agency that most recently
2 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 include
13 an analysis of health care benefits, retirement, and workers'
14 compensation insurance for a private contractor's employees that
15 are reasonably comparable to the health care benefits, retirement,
16 and workers' compensation insurance of this state.

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

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

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

1 review and comment to the affected commission or agency, the
2 governor, the chairs of the appropriate legislative committees with
3 jurisdiction over the commission or agency, and the Legislative
4 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 to
11 audit by the state auditor in accordance with Chapter 321. The
12 private contractor shall pay the costs of an audit conducted under
13 this subsection. In conducting the audit, the state auditor may:

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

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

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

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

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

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

28 (2) the governor;

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

31 (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. If the commission or
5 a health and human services agency enters into a contract or agrees
6 to a contract amendment or extension subject to this subchapter,
7 the commission or agency shall notify the state auditor about the
8 contract not later than the date the contract, contract amendment,
9 or contract extension takes effect.

10 Sec. 2162.157. RECOVERY OF FUNDS. If, in the performance of
11 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 taking
15 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 by
18 the state auditor under this subchapter, any response by the
19 private contractor, and applicable agency performance evaluations
20 of the private contractor, concludes that the private contractor
21 did not perform satisfactorily under the contract, the executive
22 commissioner shall terminate the contract as soon as practicable.

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

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

30 (2) rebid the contract.

31 SECTION _____. Section 2162.103(a), Government Code, is

1 amended to read as follows:

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

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

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

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

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

13 SECTION _____. Subchapter D, Chapter 2162, Government Code,
14 as added by this Act, applies only to:

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

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