



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) "Department" means the Department of Family and
11 Protective Services.

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 department and a private
15 commercial contractor only if:

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

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

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

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

24 Sec. 2162.153. COST ANALYSIS AND CONTRACT CONSIDERATIONS
25 FOR OUTSOURCING STATE SERVICES. (a) Before awarding, amending, or
26 extending a contract to which this subchapter applies, the
27 department shall perform a cost analysis comparing the department's
28 costs of performing the service to be outsourced to the costs of
29 outsourcing the service as provided by this section. The council,

1 in making a determination under Section 2162.102(a), shall perform
2 a cost analysis comparing the department's costs of performing a
3 service to the costs of outsourcing the service as provided by this
4 section.

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

7 (1) the department's actual cost of providing the
8 service currently, including:

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

11 (B) other indirect expenses related to the
12 performance of the service;

13 (2) the assumptions and documentation supporting the
14 actual cost determination under Subdivision (1); and

15 (3) recommendations for improving the department's
16 performance by developing the most efficient organizational model
17 to provide the service, if applicable, including implementing
18 recommendations of state oversight agencies, including the
19 Legislative Budget Board, the state auditor, and the Sunset
20 Advisory Commission.

21 (c) In comparing the cost of providing the service under
22 this section, the department or council shall:

23 (1) include the costs of a private contractor to
24 perform the state service and the cost to the department of
25 monitoring the contractor's performance against the terms of the
26 contract;

27 (2) include an assessment of whether the private
28 contractor is capable of providing a level of service comparable to
29 the level provided by the department; and

30 (3) prepare and consider an estimate of the costs of
31 returning the performance of the service from the private

1 contractor to the department if necessary, including a reasonable
2 proposed schedule for actions necessary to return the service to
3 the department.

4 (d) In performing a cost analysis under this section, the
5 department may consider a reorganized service delivery method to
6 compete directly with the performance of a private contractor.

7 (e) A bid or contract for outsourcing a service must include
8 an analysis of health care benefits, retirement, and workers'
9 compensation insurance for a private contractor's employees that
10 are reasonably comparable to the health care benefits, retirement,
11 and workers' compensation insurance of this state.

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

14 Sec. 2162.154. REPORT; STATE AUDITOR REVIEW. (a) The
15 department shall send the analysis and supporting documentation
16 required by Section 2162.153(b) to the governor, the chairs of the
17 appropriate legislative committees with jurisdiction over the
18 department, the Legislative Budget Board, and the state auditor.
19 The analysis and supporting documentation must be sent to the state
20 auditor before extending a solicitation for bids for, amending, or
21 extending a contract to which this subchapter applies.

22 (b) Based on a risk assessment, the state auditor may review
23 and comment on the methodology used to determine the department's
24 cost required by Section 2162.153(a). The state auditor shall
25 provide the results of the review and comment to the department, the
26 governor, the chairs of the appropriate legislative committees with
27 jurisdiction over the department, and the Legislative Budget Board.

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

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

6 (1) assess whether cost savings have been realized
7 from the contract; and

8 (2) address compliance under the terms of the
9 contract, including amounts paid under the contract.

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

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

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

18 (1) the commission and the department;

19 (2) the governor;

20 (3) the chairs of the appropriate legislative
21 committees with jurisdiction over the commission or department;

22 (4) the Legislative Budget Board;

23 (5) the council, if applicable;

24 (6) the attorney general; and

25 (7) the private contractor, if applicable.

26 Sec. 2162.156. REQUIRED NOTIFICATION. If the department
27 enters into a contract or agrees to a contract amendment or
28 extension subject to this subchapter, the department shall notify
29 the state auditor about the contract not later than the date the
30 contract, contract amendment, or contract extension takes effect.

31 Sec. 2162.157. RECOVERY OF FUNDS. If, in the performance of

1 an audit under this subchapter, the state auditor identifies
2 amounts overpaid, amounts paid for unperformed services, or
3 unallowable costs, the attorney general and the department shall
4 cooperate in taking action to recover the amounts owed to the state.

5 Sec. 2162.158. CONTRACT TERMINATION. If the executive
6 commissioner of the commission or the commissioner of the
7 department, as applicable, after reviewing an audit report by the
8 state auditor under this subchapter, any response by the private
9 contractor, and applicable agency performance evaluations of the
10 private contractor, concludes that the private contractor did not
11 perform satisfactorily under the contract, the executive
12 commissioner or commissioner, as applicable, shall terminate the
13 contract as soon as practicable.

14 Sec. 2162.159. ACTIONS FOLLOWING RETURN OF SERVICE. If a
15 service obligation is returned to the department after a contract
16 is terminated under Section 2162.158, the department shall:

17 (1) immediately complete a performance evaluation to
18 design a program to improve the delivery of the service and
19 implement the program designed; or

20 (2) rebid the contract.

21 SECTION _____. Section 2162.103(a), Government Code, is
22 amended to read as follows:

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

26 (1) cost of supervising the work of a private
27 contractor; and

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

30 (A) the costs of the comptroller, attorney
31 general, and other support agencies; and

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

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

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

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