

By: Dukes

H.B. No. 4073

A BILL TO BE ENTITLED

AN ACT

relating to outsourcing a service performed by the Health and Human Services Commission or 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. DEFINITIONS. In this subchapter:

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

(2) "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 the commission or a health and human services agency and a private commercial contractor only if:

(1) a service performed by the commission or 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

1 employee positions; or

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

3 Sec. 2162.153. COST ANALYSIS AND CONTRACT CONSIDERATIONS
4 FOR OUTSOURCING STATE SERVICES. (a) Before awarding, amending, or
5 extending a contract to which this subchapter applies, the
6 commission or a health and human services agency, as applicable,
7 shall perform a cost analysis comparing the commission's or
8 agency's costs of performing the service to be outsourced to the
9 costs of outsourcing the service as provided by this section. The
10 council, in making a determination under Section 2162.102(a), shall
11 perform a cost analysis comparing the commission's or agency's
12 costs of performing a service to the costs of outsourcing the
13 service as provided by this section.

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

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

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

20 (B) other indirect expenses related to the
21 performance of the service;

22 (2) the assumptions and documentation supporting the
23 actual cost determination under Subdivision (1); and

24 (3) recommendations for improving the commission's or
25 the health and human services agency's performance by developing
26 the most efficient organizational model to provide the service, if
27 applicable, including implementing recommendations of state

1 oversight agencies, including the Legislative Budget Board, the
2 state auditor, and the Sunset Advisory Commission.

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

6 (1) include the costs of a private contractor to
7 perform the state service and the cost to the commission or agency
8 of monitoring the contractor's performance against the terms of the
9 contract;

10 (2) include an assessment of whether the private
11 contractor is capable of providing a level of service comparable to
12 the level provided by the commission or agency that most recently
13 provided the service; and

14 (3) prepare and consider an estimate of the costs of
15 returning the performance of the service from the private
16 contractor to the commission or agency if necessary, including a
17 reasonable proposed schedule for actions necessary to return the
18 service to the commission or agency.

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

23 (e) A bid or contract for outsourcing a service must include
24 an analysis of health care benefits, retirement, and workers'
25 compensation insurance for a private contractor's employees that
26 are reasonably comparable to the health care benefits, retirement,
27 and workers' compensation insurance of this state.

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

3 Sec. 2162.154. REPORT; STATE AUDITOR REVIEW. (a) The
4 commission or a health and human services agency shall send the
5 analysis and supporting documentation required by Section
6 2162.153(b) to the governor, the chairs of the appropriate
7 legislative committees with jurisdiction over the commission or
8 agency, the Legislative Budget Board, and the state auditor. The
9 analysis and supporting documentation must be sent to the state
10 auditor before extending a solicitation for bids for, amending, or
11 extending a contract to which this subchapter applies.

12 (b) Based on a risk assessment, the state auditor may review
13 and comment on the methodology used to determine the commission's
14 or health and human services agency's cost required by Section
15 2162.153(a). The state auditor shall provide the results of the
16 review and comment to the affected commission or agency, the
17 governor, the chairs of the appropriate legislative committees with
18 jurisdiction over the commission or agency, and the Legislative
19 Budget Board.

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

24 (b) Based on a risk assessment performed by the state
25 auditor, a contract to which this subchapter applies is subject to
26 audit by the state auditor in accordance with Chapter 321. The
27 private contractor shall pay the costs of an audit conducted under

1 this subsection. In conducting the audit, the state auditor may:

2 (1) assess whether cost savings have been realized
3 from the contract; and

4 (2) address compliance under the terms of the
5 contract, including amounts paid under the contract.

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

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

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

14 (1) the commission and any affected health and human
15 services agency;

16 (2) the governor;

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

19 (4) the Legislative Budget Board;

20 (5) the council, if applicable;

21 (6) the attorney general; and

22 (7) the private contractor, if applicable.

23 Sec. 2162.156. REQUIRED NOTIFICATION. The commission or a
24 health and human services agency that enters into a contract or
25 agrees to a contract amendment or extension subject to this
26 subchapter shall notify the state auditor about the contract not
27 later than the date the contract, contract amendment, or contract

1 extension takes effect.

2 Sec. 2162.157. RECOVERY OF FUNDS. If, in the performance of
3 an audit under this subchapter, the state auditor identifies
4 amounts overpaid, amounts paid for unperformed services, or
5 unallowable costs, the attorney general and the commission or
6 affected health and human services agency shall cooperate in taking
7 action to recover the amounts owed to the state.

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

15 Sec. 2162.159. ACTIONS FOLLOWING RETURN OF SERVICE. If a
16 service obligation is returned to the commission or a health and
17 human services agency after a contract is terminated under Section
18 2162.158, the commission or agency, as applicable, shall:

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

22 (2) rebid the contract.

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

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

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

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

5 (A) the costs of the comptroller, attorney
6 general, and other support agencies; and

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

9 SECTION 3. The changes in law made by this Act apply only
10 to:

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

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

22 SECTION 4. This Act takes effect September 1, 2017.