

- SUBJECT:** Requiring the attorney general to review certain state health contracts
- COMMITTEE:** Public Health — committee substitute recommended
- VOTE:** 6 ayes — Delisi, Truitt, Dawson, McReynolds, Solis, Zedler  
0 nays  
3 absent — Laubenberg, Coleman, Jackson
- WITNESSES:** For — (*Registered, but did not testify:* Johnnie Rogers, Texas Academy of Independent Pharmacists)  
Against — None  
On — Don Bailey, David Mattox, Pete Wassdorf, Office of the Attorney General
- BACKGROUND:** The Health and Human Services Commission (HHSC) contracts with private vendors for many of the state's health services. Some of the largest include Medicaid and the Children's Health Insurance Program (CHIP). The Employees Retirement System (ERS) and Teacher Retirement System (TRS) also enter into large contracts for the health benefits they offer to participants.  
  
HHSC generally has about four health contracts that are over \$250 million, TRS has four, and ERS has one.
- DIGEST:** CSHB 880 would require the Office of the Attorney General (OAG) to review the form and terms of any contract over \$250 million for health services and permit OAG to make recommendations before the contract was entered into by HHSC, ERS, or TRS.  
  
OAG would be alerted to any applicable contract negotiations and could participate or observe. If OAG did not have sufficient expertise in a matter, it could require the agency to obtain outside legal services.  
  
The bill would take effect September 1, 2005, and apply only to contracts entered into on or after November 1, 2005.

**SUPPORTERS  
SAY:**

OAG is the state's attorney and will be called on to defend the state in any contract dispute, so it should ensure that the state's contracts are in order before they are signed. The way the process works now is that OAG gets involved at the end of the process, when there may be little time to make changes if there are problems. Most individuals would not sign a contract without their attorney's nod, and Texas should not either.

Agency staff is extremely competent when it comes to the programmatic details about these contracts, but may not have much contract litigation experience. OAG is better equipped to identify problems early on. It would not require additional staff at OAG because only a few contracts over \$250 million would be involved.

There is a need for greater oversight of the contracting process. Some high-profile examples of health contract problems at HHSC have shown that problems with these contracts can lead to financial losses or delays of repayment to the state. For example, Texas is still trying to recover from the National Health Insurance Corporation (NHIC) for administration of Medicaid and from Clarendon for administration of CHIP.

**OPPONENTS  
SAY:**

OAG is no better equipped- and likely less- than agency legal staff to negotiate health contracts. The OAG contract staff are skilled in defending contracts, not negotiating them. The important oversight, payment, and performance goals built in to good contracts are the expertise of the agency lawyers. A procedural look-over would not add significant value to the contracting process.

OAG only has two contract lawyers and could need more staff to complete the task proposed in CSHB 880 even at the threshold of \$250 million. The agencies also could incur a cost because gaining sufficient expertise could best be obtained by contracting with outside counsel. The cost of all the new resources could be better spent on many other state priorities.

**OTHER  
OPPONENTS  
SAY:**

A new law is not needed. The OAG already responds to requests for assistance from state agencies. If a health agency were not equipped to negotiate a contract, the OAG would help.

**NOTES:**

The committee substitute increased the threshold for OAG review to \$250 million, from \$50 million in the original version.

The fiscal note estimates no cost to the state. The bill as filed had a fiscal note of \$1 million in fiscal 2006-07.