

Regular Session, 2010

HOUSE BILL NO. 1443

BY REPRESENTATIVES EDWARDS, ARMES, BARROW, HENRY BURNS, HARDY, HAZEL, HUTTER, MICHAEL JACKSON, JOHNSON, ROSALIND JONES, SAM JONES, LEGER, MCVEA, MONTOUCET, RICHARDSON, RITCHIE, ROY, PATRICIA SMITH, ST. GERMAIN, THIBAUT, AND WHITE AND SENATORS MARIONNEAUX AND NEVERS

VETOED
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Veto Message

1 AN ACT

2 To establish requirements of certain contracts entered into by the Department of Health and
3 Hospitals for the privatization of activities performed by certain institutions or
4 programs; to provide for the method of source selection; to provide evaluation
5 factors to be included in a request for proposals; to require legislative approval; to
6 provide for the submission of reports; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. The provisions of this Act shall apply to any contract entered into by the
9 Department of Health and Hospitals beginning any time after April 15, 2010, for the
10 privatization of any portion of the activities which were performed by the following
11 institutions or programs operated by the Department of Health and Hospitals Fiscal during
12 Year 2009-2010: Eastern Louisiana Mental Health System, Jackson Campus, Eastern
13 Louisiana Mental Health System, Greenwell Springs Campus, Southeast Louisiana Hospital,
14 Central Louisiana State Hospital, and the Red River Treatment Center, which shall be
15 collectively referred to hereinafter as "contracts". For purposes of this Act, the foregoing
16 institutions and programs shall be referred to as "institution". The provisions of this Act
17 shall not apply to the renewal or extension of any contract in effect prior to April 15, 2010.

18 Section 2. Notwithstanding any other provision of law or rule to the contrary, the
19 method of source selection for these contracts shall be a request for proposal, as provided
20 in R.S. 39:1503. The following evaluation factors shall be included in each request for
21 proposal provided for in this Act.

1 (1) A contractor's ability to formally interview and consider for employment under
2 the contract any interested former employee of an institution.

3 (2) A contractor's ability to employ any former employee of an institution who was
4 discharged from his state employment due to the privatization initiative and who has at least
5 fifteen years of employment in the state civil service.

6 (3) An itemized listing of services and respective cost per service proposed by the
7 contractor for each state fiscal year of the contract. The listing may note where cost
8 estimates incorporate Consumer Price Index data. The listing shall be utilized for the
9 purpose of comparison with the Fiscal Year 2009-2010 listing of types of services and
10 respective cost per service of the institution to be privatized.

11 (4) A contractor's ability to provide a level of services and overall patient capacity
12 which is no less than the level of services and patient capacity provided during Fiscal Year
13 2009-2010 by the respective state institution. Standards for this evaluation factor shall
14 include, without limitation, the bed capacity, the ratio of staff to patients, the staff
15 credentials, including psychiatrists rather than psychologists, and registered nurses rather
16 than licensed practical nurses, the quality of forensic and other psychiatric services, and the
17 achievement of each patient outcome which is common to the services provided before
18 privatization and after privatization of the institution.

19 (5) Continuation of any psychiatric, medical doctor, nurse, pharmacist, or other
20 healthcare personnel training activities to meet current and future needs of the state.

21 Section 3. The department shall not issue a request for proposals prior to securing
22 approval of the House and Senate committees on health and welfare.

23 Section 4. Prior to awarding any contract, the Department of Health and Hospitals
24 shall submit the proposed contract for review and approval of the House and Senate
25 committees on health and welfare, meeting jointly, and, if approved by each of the
26 committees on health and welfare, for review and approval of the Joint Legislative
27 Committee on the Budget.

1 Section 5. Within sixty days of the close of each state fiscal year, beginning with
2 Fiscal Year 2012-2013, the secretary of the Department of Health and Hospitals shall
3 provide a written report to the House Committee on Health and Welfare and the Senate
4 Committee on Health and Welfare. The report shall detail the results and costs associated
5 with the contracted services, if any, since the privatization of the institutions. Results
6 associated with the contracted services shall include but not be limited to the following:

7 (1) A comparison of actual patient outcomes for each service provided by a
8 contractor which was formerly provided by an institution.

9 (2) A comparison of employment information for each institution prior to and
10 subsequent to the privatization, including the number of employees terminated, the number
11 subsequently rehired, the average compensation (wages, benefits, and retirement
12 contributions) of employees prior to and subsequent to privatization, a comparison of
13 average compensation of employees terminated and subsequently rehired prior to and
14 subsequent to the privatization, and a comparison of the number of credentialed
15 professionals by category, including but not limited to psychiatrists, psychologists, registered
16 nurses, and licensed practical nurses.

17 (3) A comparison of costs to the state of Louisiana to deliver the mental health
18 services via the privatization contract with the costs had the institution delivered the same
19 mental health services, including but not limited to per diem costs per inpatient and
20 outpatient. Such costs shall include capital costs whether or not such costs are reflected in
21 the privatization contract or elsewhere in the state budget.

22 Section 6. Notwithstanding any provision of law to the contrary, if the Department
23 of Health and Hospitals does not execute a contract for the privatization of programs or
24 services at the Red River Treatment Center, then the Department of Health and Hospitals
25 shall operate the Red River Treatment Center during Fiscal Year 2011-2012 at only the
26 amount appropriated for the operation of the facility by the Legislature in the Act which
27 originated as House Bill No. 1 of the 2010 Legislative Session for Fiscal Year 2011-2012.

28 Section 7. This Act shall become effective upon signature by the governor or, if not
29 signed by the governor, upon expiration of the time for bills to become law without signature
30 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If

1 vetoed by the governor and subsequently approved by the legislature, this Act shall become
2 effective on the day following such approval.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

VETO MESSAGE

House Bill 1443 by Representative Edwards establishes new procurement process requirements related to the privatization of certain mental health and addictive disorder facilities and programs. More specifically, the bill adds additional steps to the Department of Health and Hospitals' contracting process, which prolongs the process and the Department's ability to implement best practices for those with mental health needs as well as adding costs to the state.

National best practices indicate persons with mental health needs should receive care in the least restrictive environment while still meeting their health care needs. Most mental health services delivered by the Department today are provided through private contracts, and this has enabled the state to provide more services to more people at lower cost. The Department utilizes patient by patient assessments as to needs, involves families and the care team, and seeks to provide the service in the setting best for the individual. It has been demonstrated that institutional services in certain instances can be operated more efficiently utilizing best practices within the private sector, and it is incumbent upon us to take advantage of those opportunities to save taxpayer dollars wherever we can, with the ultimate goal being to deliver high quality services cost effectively.

The state is facing a budget crisis that has not been matched in over 25 years. This is due to multiple factors, such as the federal government's decreased contribution to the state Medicaid program resulting in a \$339 million loss, and the federal DSH audit rule, which will decrease available DSH by \$200 million. The DSH audit rule itself is leading to a \$43 million reduction in funding for Louisiana's mental health institutions. The proposed executive budget filled this \$43 million federal hole with \$36 million in state general funds, but we must explore more cost effective measures. Our budget invests in expanded community-based services, and protects the institutions from what would have been devastating reductions.

The reality is that we cannot keep doing what we have always done and ignore the major reductions in funding by the federal government. And we must at the same time improve services. There are sufficient protections in law to ensure the request for proposal process has oversight. Adding additional steps to the procurement process outside of those protections will hinder the state's ability to deal with the challenges we face, will discourage potential partners from participating, may create legal impediments to implementation, and could result in increased expenditures.

For these reasons, I have vetoed House Bill No. 1443 and hereby return it to the House of Representatives.