

SUBJECT: Including audit and investigation notice provisions in state agency contracts

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 6 ayes — Marchant, Madden, B. Cook, J. Davis, Gattis, Goodman
0 nays
3 absent — Elkins, Lewis, Villarreal

WITNESSES: For — None
Against — None
On — *(Registered, but did not testify:)* Martha McCabe, State Auditor's Office

BACKGROUND: Under Government Code, sec. 321.013(a), the Legislative Audit Committee may order the State Auditor's Office (SAO) to audit and investigate any entity receiving funds from the state

DIGEST: CSHB 3498 would require state agencies to include a provision in each of their contracts stating that the SAO may conduct an audit or investigation of any entity accepting state funds, and that an entity's acceptance of funds would constitute acceptance of SAO's authority to do so. The provision would apply equally to entities that accepted state funds directly through a contract or indirectly through a subcontract. The bill also would require SAO to assist agencies in developing the contract provisions.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003. It would apply only to contracts entered into on or after the effective date of the bill and would not affect any of SAO's authority under other law to conduct audits or investigations.

SUPPORTERS SAY: Under current law, all entities receiving state funds may be audited and investigated, including contractors and subcontractors. Some contractors

might not know this, however, and their subcontractors consequently might not know they were receiving state money indirectly. Problems along these lines arose with the state's outgoing Medicaid contract manager, National Heritage Insurance Company, whose subcontractors were unaware they were subject to SAO audits.

CSHB 3498 would rectify this situation by better informing those who did business with the state about their responsibilities. The bill would require provisions in all state contracts specifying that contractors and subcontractors were subject to SAO auditing and investigation. This would eliminate ambiguity and confusion, thereby reducing resources wasted on convincing parties that the state had the authority to audit or investigate them. Preventing such misunderstandings also could improve auditors' access to documents, records, and individuals in the event an audit or investigation was ordered.

**OPPONENTS
SAY:**

This bill is unnecessary because it would require all state contracts to contain superfluous information stating what should be obvious to reasonable and prudent businesspeople. Setting this precedent could lead to a multitude of contract provisions the state would have to add were it to include every action within its lawful authority to take.

NOTES:

The original bill's caption referred to contracts by governmental bodies, not state agencies. The committee substitute also conformed the bill as introduced to Texas Legislative Council drafting style.