

1 HB494
2 129169-1
3 By Representative Johnson (R)
4 RFD: State Government
5 First Read: 12-APR-11

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8 SYNOPSIS: Under existing law, the procurement of
9 professional services is subject to certain
10 selection procedures.

11 This bill would exempt the Medicaid Agency
12 from these provisions for contracts with
13 physicians, pharmacists, dentists, opticians,
14 nurses, and other health professionals which
15 involve only services on agency task forces,
16 boards, or committees.

17
18 A BILL
19 TO BE ENTITLED
20 AN ACT

21
22 To amend Section 41-16-72 of the Code of Alabama
23 1975, relating to procurement of professional services, to
24 exempt certain contracts with health professionals which
25 involve only service on agency task forces, boards, or
26 committees.

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Section 41-16-72 of the Code of Alabama
2 1975, is amended to read as follows:

3 "§41-16-72.

4 "Any other provision of law notwithstanding, the
5 procurement of professional services by any agency,
6 department, board, bureau, commission, authority, public
7 corporation, or instrumentality of the State of Alabama shall
8 be conducted through the following selection process:

9 "(1)a. Except as otherwise provided herein,
10 attorneys retained to represent the state in litigation shall
11 be appointed by the Attorney General in consultation with the
12 Governor from a listing of attorneys maintained by the
13 Attorney General. All attorneys interested in representing the
14 State of Alabama may apply and shall be included on the
15 listing. The selection of the attorney or law firm shall be
16 based upon the level of skill, experience, and expertise
17 required in the litigation and the fees charged by the
18 attorney or law firm shall be taken into consideration so that
19 the State of Alabama receives the best representation for the
20 funds paid. Fees shall be negotiated and approved by the
21 Governor in consultation with the Attorney General. Maximum
22 fees paid for legal representation may be established by
23 executive order of the Governor.

24 "Nothing in this article and nothing in Chapter 15
25 of Title 36 modifies or repeals the exclusive authority of the
26 governing boards of the public institutions of higher
27 education to direct and control litigation involving their

1 respective universities and to employ and retain legal counsel
2 of their own choice, consistent with their broad powers of
3 management and control set forth in Chapters 47-56 of Title 16
4 and in the constitution. Provided further, nothing in this
5 article modifies or repeals the authority of the Attorney
6 General to direct and control litigation involving the state
7 or any agency, department, or instrumentality of the state, or
8 the authority of the Governor to appear in civil cases in
9 which the state is interested.

10 "b. Attorneys retained by any state purchasing
11 entity to render nonlitigation legal services shall be
12 selected by such entity from a listing of attorneys maintained
13 by the Legal Advisor to the Governor. All attorneys interested
14 in representing any purchasing state entity may apply and
15 shall be included on the listing. The selection of the
16 attorney or law firm shall be based upon the level of skill,
17 experience, and expertise required for the services, but the
18 fees charged by the attorney or law firm shall be taken into
19 consideration so that such state entity shall receive the best
20 representation for the funds paid. Fees for such services
21 shall be negotiated by the state entity requiring the services
22 and shall be subject to the review and approval of the
23 Governor or the Director of Finance when so designated by the
24 Governor.

25 "c. This article shall not apply to the appointment
26 by a court of attorneys or experts.

1 "d. This article shall not apply to the retention of
2 experts by the state for the purposes of litigation, or
3 avoidance of litigation.

4 "e. Nothing in this article shall be construed as
5 altering or amending the Governor's authority to retain
6 attorneys pursuant to Section 36-13-2, however, the Governor
7 shall select such attorneys from three proposals received from
8 attorneys included on the listing maintained by the Attorney
9 General.

10 "(2) Physicians retained to provide medical services
11 to the state shall be selected by the purchasing state entity
12 from a list of qualified physicians maintained by the Alabama
13 Medical Licensure Commission. All physicians interested in
14 providing medical services to the State of Alabama may apply
15 and shall be included on the listing.

16 "(3) Professional services of architects, landscape
17 architects, engineers, land surveyors, geoscience, and other
18 similar professionals shall be procured in accordance with
19 competitive, qualification-based selection policies and
20 procedures. Selection shall be based on factors to be
21 developed by the procuring state entity which may include,
22 among others, the following:

23 "a. Specialized expertise, capabilities, and
24 technical competence, as demonstrated by the proposed approach
25 and methodology to meet project requirements.

1 "b. Resources available to perform the work,
2 including any specialized services within the specified time
3 limits for the project.

4 "c. Record of past performance, quality of work,
5 ability to meet schedules, cost control, and contract
6 administration.

7 "d. Availability to and familiarity with the project
8 locale.

9 "e. Proposed project management techniques.

10 "f. Ability and proven history in handling special
11 project contracts.

12 "Notice of need for professional services shall be
13 widely disseminated to the professional community in a full
14 and open manner. Procuring state entities shall evaluate such
15 professionals that respond to the notice of need based on such
16 state entity's qualification-based selection process criteria.
17 Any such procuring state entity shall then make a good faith
18 effort to negotiate a contract for professional services from
19 the selected professional after first discussing and refining
20 the scope of services for the project with such professional.
21 Where the Alabama Building Commission has set a fee schedule
22 for the professional services sought, fees shall not exceed
23 the schedule without approval of the Director of the Alabama
24 Building Commission and the Governor.

25 "(4) The Director of Finance, through the Division
26 of Purchasing of the Department of Finance, shall establish
27 and maintain lists of professional service providers, other

1 than those specifically named in this section, which may be
2 required from time to time by any state agency, department,
3 board, bureau, commission, authority, public corporation, or
4 instrumentality. When such professional services are needed,
5 the purchasing state entity shall solicit proposals from the
6 professional service providers desiring to receive requests
7 for proposals. The purchasing state entity shall select the
8 professional service provider that best meets the needs of the
9 purchasing entity as expressed in the request for proposals.
10 Price shall be taken into consideration. In the event the fees
11 paid to the selected professional service provider exceed by
12 10 percent the professional service fee offered by the lowest
13 qualified proposal, the reasons for selecting a professional
14 service provider must be stated in writing, signed by the
15 director of the purchasing state entity, and made a part of
16 the selection record.

17 "(5) Contracts for professional services shall be
18 limited only to that portion of a contract relating to the
19 professional service provided. Goods purchased by the state in
20 conjunction with the contract for professional services shall
21 be purchased pursuant to Section 41-16-20.

22 "(6) Should an emergency affecting the public
23 health, safety, convenience, or the economic welfare of the
24 State of Alabama so declared in writing under oath to the
25 Governor and the Attorney General by the state entity
26 requiring the professional services arise, the professional
27 services required to alleviate the emergency situation may be

1 procured from any qualified professional service provider
2 without following the process or procedure required by this
3 article.

4 "(7) The process set forth herein for the selection
5 of professional service providers shall not apply to the
6 Legislature, the Alabama State Port Authority, or to colleges
7 and universities governed by a board of trustees or by the
8 Department of Postsecondary Education. The State Department of
9 Education shall not be subject to the provisions of this
10 article, requiring the process set forth herein for the
11 selection of professional service providers, except for the
12 future acquisition of professional services in support of
13 computer technology on a statewide basis which exceeds the
14 amount of expenditures set forth within this chapter. However,
15 if a state agency or department is able to provide the
16 necessary computer networking services, then the services
17 shall be provided by the agency or department without being
18 contracted to an outside provider. In the event the State
19 Department of Education has intervened into the financial
20 operations of a local board of education, the State Department
21 of Education shall follow the provisions of law applicable to
22 local boards of education for services related to the local
23 board of education subject to intervention. The Alabama
24 Medicaid Agency shall not be subject to the provisions of this
25 article requiring the process set forth herein for the
26 selection of professional service providers for contracts with
27 physicians, pharmacists, dentists, opticians, nurses, and

1 other health professionals which involve only service on
2 agency task forces, boards, or committees.

3 "(8) Under any contract letting process in this
4 section, all requests for proposals from any state entity
5 purchasing professional services shall be sent to all
6 professional service providers regardless of race that have
7 notified the state of their interest in receiving state
8 business.

9 "(9) Under any contract letting process in this
10 section, all lists containing professional service providers
11 and contractors for contracts under the provisions of this
12 article shall seek the racial and ethnic diversity of the
13 state."

14 Section 2. All laws or parts of laws which conflict
15 with this act are repealed.

16 Section 3. This act shall become effective
17 immediately following its passage and approval by the
18 Governor, or its otherwise becoming law.