

1 HB452  
2 134431-1  
3 By Representatives Clouse, Love and Oden  
4 RFD: State Government  
5 First Read: 01-MAR-12

2  
3  
4  
5  
6  
7  
8 SYNOPSIS: Under existing law, the Contract Review  
9 Permanent Legislative Oversight Committee reviews  
10 contracts of state departments for personal or  
11 professional services with private entities or  
12 individuals to be paid out of appropriated funds.  
13 Contracts let in specified emergency situations may  
14 be let for 60 days without committee review, but a  
15 succeeding contract is subject to review by the  
16 committee. Personal and professional service  
17 contracts let by competitive bid are excluded from  
18 review.

19 This bill would clarify that all emergency  
20 contracts excepted from legislative committee  
21 review, irrespective of the emergency  
22 circumstances, would have a term of no more than 60  
23 days and a second identical or substantially  
24 similar emergency contract for those particular  
25 services could not be let within one year of the  
26 commencement date of the initial emergency  
27 contract.

1  
2 A BILL  
3 TO BE ENTITLED  
4 AN ACT  
5

6 Relating to personal and professional services  
7 contracts; amending Section 29-2-41.1 and Section 41-16-72, as  
8 last amended by Act 2011-577, 2011 Regular Session, Code of  
9 Alabama 1975, to provide further for emergency contracts.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

11 Section 1. Section 29-2-41.1 and Section 41-16-72,  
12 as last amended by Act 2011-577, 2011 Regular Session, Code of  
13 Alabama 1975, are amended to read as follows:

14 "§29-2-41.1.

15 "In case of an emergency adversely affecting public  
16 health, safety, security, or the economic welfare of the  
17 state, so declared in writing to the Governor by the head of  
18 the institution or agency involved, setting forth the nature  
19 of the danger to public health, safety, security or the  
20 economic welfare of the state, contracts may be let to the  
21 extent necessary to meet the emergency without review by the  
22 committee. Any contract let pursuant to this section involving  
23 an emergency ~~adversely affecting the economic welfare of the~~  
24 state shall be let for a period of not more than 60 days  
25 during which time the committee shall review a contract for a  
26 longer period of time if such services are required beyond the  
27 60-day limit hereby imposed. The institution or agency may not

1 enter a second identical or substantially similar emergency  
2 contract for those particular services within one calendar  
3 year of the commencement of the initial emergency contract.

4 "Immediately upon the letting of an emergency  
5 contract that will be followed by a subsequent contract of  
6 longer duration, the head of the institution or agency  
7 involved shall notify the committee of the emergency contract  
8 and the subsequent contract, and the terms, purpose, duration,  
9 and other information as requested by the committee regarding  
10 the contracts. In instances when this notification is  
11 received, the committee's 60-day review of the subsequent  
12 contract will run concurrently with the term of the emergency  
13 contract.

14 "§41-16-72.

15 "Any other provision of law notwithstanding, the  
16 procurement of professional services by any agency,  
17 department, board, bureau, commission, authority, public  
18 corporation, or instrumentality of the State of Alabama shall  
19 be conducted through the following selection process:

20 "(1)a. Except as otherwise provided herein,  
21 attorneys retained to represent the state in litigation shall  
22 be appointed by the Attorney General in consultation with the  
23 Governor from a listing of attorneys maintained by the  
24 Attorney General. All attorneys interested in representing the  
25 State of Alabama may apply and shall be included on the  
26 listing. The selection of the attorney or law firm shall be  
27 based upon the level of skill, experience, and expertise

1 required in the litigation and the fees charged by the  
2 attorney or law firm shall be taken into consideration so that  
3 the State of Alabama receives the best representation for the  
4 funds paid. Fees shall be negotiated and approved by the  
5 Governor in consultation with the Attorney General. Maximum  
6 fees paid for legal representation may be established by  
7 executive order of the Governor.

8 "Nothing in this article and nothing in Chapter 15  
9 of Title 36 modifies or repeals the exclusive authority of the  
10 governing boards of the public institutions of higher  
11 education to direct and control litigation involving their  
12 respective universities and to employ and retain legal counsel  
13 of their own choice, consistent with their broad powers of  
14 management and control set forth in Chapters 47-56 of Title 16  
15 and in the constitution. Provided further, nothing in this  
16 article modifies or repeals the authority of the Attorney  
17 General to direct and control litigation involving the state  
18 or any agency, department, or instrumentality of the state, or  
19 the authority of the Governor to appear in civil cases in  
20 which the state is interested.

21 "b. Attorneys retained by any state purchasing  
22 entity to render nonlitigation legal services shall be  
23 selected by such entity from a listing of attorneys maintained  
24 by the Legal Advisor to the Governor. All attorneys interested  
25 in representing any purchasing state entity may apply and  
26 shall be included on the listing. The selection of the  
27 attorney or law firm shall be based upon the level of skill,

1 experience, and expertise required for the services, but the  
2 fees charged by the attorney or law firm shall be taken into  
3 consideration so that such state entity shall receive the best  
4 representation for the funds paid. Fees for such services  
5 shall be negotiated by the state entity requiring the services  
6 and shall be subject to the review and approval of the  
7 Governor or the Director of Finance when so designated by the  
8 Governor.

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

11 "d. This article shall not apply to the retention of  
12 experts by the state for the purposes of litigation, or  
13 avoidance of litigation.

14 "e. Nothing in this article shall be construed as  
15 altering or amending the Governor's authority to retain  
16 attorneys pursuant to Section 36-13-2, however, the Governor  
17 shall select such attorneys from three proposals received from  
18 attorneys included on the listing maintained by the Attorney  
19 General.

20 "(2) Physicians retained to provide medical services  
21 to the state shall be selected by the purchasing state entity  
22 from a list of qualified physicians maintained by the Alabama  
23 Medical Licensure Commission. All physicians interested in  
24 providing medical services to the State of Alabama may apply  
25 and shall be included on the listing.

26 "(3) Professional services of architects, landscape  
27 architects, engineers, land surveyors, geoscience, and other

1 similar professionals shall be procured in accordance with  
2 competitive, qualification-based selection policies and  
3 procedures. Selection shall be based on factors to be  
4 developed by the procuring state entity which may include,  
5 among others, the following:

6 "a. Specialized expertise, capabilities, and  
7 technical competence, as demonstrated by the proposed approach  
8 and methodology to meet project requirements.

9 "b. Resources available to perform the work,  
10 including any specialized services within the specified time  
11 limits for the project.

12 "c. Record of past performance, quality of work,  
13 ability to meet schedules, cost control, and contract  
14 administration.

15 "d. Availability to and familiarity with the project  
16 locale.

17 "e. Proposed project management techniques.

18 "f. Ability and proven history in handling special  
19 project contracts.

20 "Notice of need for professional services shall be  
21 widely disseminated to the professional community in a full  
22 and open manner. Procuring state entities shall evaluate such  
23 professionals that respond to the notice of need based on such  
24 state entity's qualification-based selection process criteria.  
25 Any such procuring state entity shall then make a good faith  
26 effort to negotiate a contract for professional services from  
27 the selected professional after first discussing and refining

1 the scope of services for the project with such professional.  
2 Where the Alabama Building Commission has set a fee schedule  
3 for the professional services sought, fees shall not exceed  
4 the schedule without approval of the Director of the Alabama  
5 Building Commission and the Governor.

6 "(4) The Director of Finance, through the Division  
7 of Purchasing of the Department of Finance, shall establish  
8 and maintain lists of professional service providers, other  
9 than those specifically named in this section, which may be  
10 required from time to time by any state agency, department,  
11 board, bureau, commission, authority, public corporation, or  
12 instrumentality. When such professional services are needed,  
13 the purchasing state entity shall solicit proposals from the  
14 professional service providers desiring to receive requests  
15 for proposals. The purchasing state entity shall select the  
16 professional service provider that best meets the needs of the  
17 purchasing entity as expressed in the request for proposals.  
18 Price shall be taken into consideration. In the event the fees  
19 paid to the selected professional service provider exceed by  
20 10 percent the professional service fee offered by the lowest  
21 qualified proposal, the reasons for selecting a professional  
22 service provider ~~must~~ shall be stated in writing, signed by  
23 the director of the purchasing state entity, and made a part  
24 of the selection record.

25 "(5) Contracts for professional services shall be  
26 limited only to that portion of a contract relating to the  
27 professional service provided. Goods purchased by the state in



1 conjunction with the contract for professional services shall  
2 be purchased pursuant to Section 41-16-20.

3 "(6) Should an emergency affecting the public  
4 health, safety, ~~convenience,~~ or the economic welfare of the  
5 State of Alabama so declared in writing under oath to the  
6 Governor and the Attorney General by the state entity  
7 requiring the professional services arise, the professional  
8 services required to alleviate the emergency situation may be  
9 procured from any qualified professional service provider  
10 without following the process or procedure required by this  
11 article. Any contract let pursuant to this subdivision  
12 involving an emergency as herein specified may not be let for  
13 a period of more than 60 days. During this time, if the  
14 contract would otherwise be subject to review by the Contract  
15 Review Permanent Legislative Oversight Committee, the  
16 committee shall review a subsequent contract for a longer  
17 period of time if such services are required beyond the 60-day  
18 limit. The institution or agency may not enter a second  
19 identical or substantially similar emergency contract for  
20 those particular services within one calendar year of the  
21 commencement of the initial emergency contract.

22 "Immediately upon the letting of an emergency  
23 contract that will be followed by a subsequent contract of  
24 longer duration, the state entity shall notify the committee  
25 of the emergency contract and the subsequent contract, and the  
26 terms, purpose, duration, and other information as requested  
27 by the committee regarding the contracts. In instances when

1 this notification is received, the committee's 60-day review  
2 of the subsequent contract will run concurrently with the term  
3 of the emergency contract.

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, optometrists, opticians,

1 nurses, and other health professionals which involve only  
2 service on 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. This act shall become effective on the  
15 first day of the third month following its passage and  
16 approval by the Governor, or its otherwise becoming law.