

1 SB263  
2 136630-2  
3 By Senators Holtzclaw, Sanford, Orr and Irons  
4 RFD: Fiscal Responsibility and Accountability  
5 First Read: 09-FEB-12

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4 ENGROSSED

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7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

10  
11 Relating to personal and professional services  
12 contracts pursuant to the Contract Review Permanent  
13 Legislative Oversight Committee; amending Section 29-2-41.1  
14 and Section 41-16-72, as last amended by Act 2011-577, 2011  
15 Regular Session, Code of Alabama 1975, to provide further for  
16 emergency contracts.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

21 "§29-2-41.1.

22 "In case of an emergency adversely affecting public  
23 health, safety, security, or the economic welfare of the  
24 state, so declared in writing to the Governor by the head of  
25 the institution or agency involved, setting forth the nature  
26 of the danger to public health, safety, security or the  
27 economic welfare of the state, contracts may be let to the

1 extent necessary to meet the emergency without review by the  
2 committee. Any contract let pursuant to this section involving  
3 an emergency ~~adversely affecting the economic welfare of the~~  
4 state shall be let for a period of not more than 60 days, or  
5 120 days if the committee has not been formed due to the end  
6 of the quadrennium, during which time the committee shall  
7 review a contract for a longer period of time if such services  
8 are required beyond the 60-day limit hereby imposed. The  
9 institution or agency may not enter a second identical or  
10 substantially similar emergency contract for those particular  
11 services within one calendar year of the commencement of the  
12 initial emergency contract.

13 "Immediately upon the letting of an emergency  
14 contract that will be followed by a subsequent contract of  
15 longer duration, the head of the institution or agency  
16 involved shall notify the committee, if the committee has been  
17 formed, of the emergency contract and the subsequent contract,  
18 and the terms, purpose, duration, and other information as  
19 requested by the committee regarding the contracts. If the  
20 contract is let between quadrenniums, the committee shall be  
21 notified as soon as is practicable. In instances when this  
22 notification is received, the committee's 60-day review of the  
23 subsequent contract will run concurrently with the term of the  
24 emergency contract.

25 "§41-16-72.

26 "Any other provision of law notwithstanding, the  
27 procurement of professional services by any agency,

1 department, board, bureau, commission, authority, public  
2 corporation, or instrumentality of the State of Alabama shall  
3 be conducted through the following selection process:

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

19 "Nothing in this article and nothing in Chapter 15  
20 of Title 36 modifies or repeals the exclusive authority of the  
21 governing boards of the public institutions of higher  
22 education to direct and control litigation involving their  
23 respective universities and to employ and retain legal counsel  
24 of their own choice, consistent with their broad powers of  
25 management and control set forth in Chapters 47-56 of Title 16  
26 and in the constitution. Provided further, nothing in this  
27 article modifies or repeals the authority of the Attorney

1 General to direct and control litigation involving the state  
2 or any agency, department, or instrumentality of the state, or  
3 the authority of the Governor to appear in civil cases in  
4 which the state is interested.

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

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

22 "d. This article shall not apply to the retention of  
23 experts by the state for the purposes of litigation, or  
24 avoidance of litigation.

25 "e. Nothing in this article shall be construed as  
26 altering or amending the Governor's authority to retain  
27 attorneys pursuant to Section 36-13-2, however, the Governor

1 shall select such attorneys from three proposals received from  
2 attorneys included on the listing maintained by the Attorney  
3 General.

4 "(2) Physicians retained to provide medical services  
5 to the state shall be selected by the purchasing state entity  
6 from a list of qualified physicians maintained by the Alabama  
7 Medical Licensure Commission. All physicians interested in  
8 providing medical services to the State of Alabama may apply  
9 and shall be included on the listing.

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

17 "a. Specialized expertise, capabilities, and  
18 technical competence, as demonstrated by the proposed approach  
19 and methodology to meet project requirements.

20 "b. Resources available to perform the work,  
21 including any specialized services within the specified time  
22 limits for the project.

23 "c. Record of past performance, quality of work,  
24 ability to meet schedules, cost control, and contract  
25 administration.

26 "d. Availability to and familiarity with the project  
27 locale.

1            "e. Proposed project management techniques.

2            "f. Ability and proven history in handling special  
3 project contracts.

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

17            "(4) The Director of Finance, through the Division  
18 of Purchasing of the Department of Finance, shall establish  
19 and maintain lists of professional service providers, other  
20 than those specifically named in this section, which may be  
21 required from time to time by any state agency, department,  
22 board, bureau, commission, authority, public corporation, or  
23 instrumentality. When such professional services are needed,  
24 the purchasing state entity shall solicit proposals from the  
25 professional service providers desiring to receive requests  
26 for proposals. The purchasing state entity shall select the  
27 professional service provider that best meets the needs of the

1 purchasing entity as expressed in the request for proposals.  
2 Price shall be taken into consideration. In the event the fees  
3 paid to the selected professional service provider exceed by  
4 10 percent the professional service fee offered by the lowest  
5 qualified proposal, the reasons for selecting a professional  
6 service provider ~~must~~ shall be stated in writing, signed by  
7 the director of the purchasing state entity, and made a part  
8 of the selection record.

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

14 "(6) Should an emergency affecting the public  
15 health, safety, ~~convenience,~~ or the economic welfare of the  
16 State of Alabama so declared in writing under oath to the  
17 Governor and the Attorney General by the state entity  
18 requiring the professional services arise, the professional  
19 services required to alleviate the emergency situation may be  
20 procured from any qualified professional service provider  
21 without following the process or procedure required by this  
22 article. Any contract let pursuant to this subdivision  
23 involving an emergency as herein specified may not be let for  
24 a period of more than 60 days, or 120 days if the committee  
25 has not been formed due to the end of the quadrennium. During  
26 this time, if the contract would otherwise be subject to  
27 review by the Contract Review Permanent Legislative Oversight



1 Committee, the committee shall review a subsequent contract  
2 for a longer period of time if such services are required  
3 beyond the 60-day limit. The institution or agency may not  
4 enter a second identical or substantially similar emergency  
5 contract for those particular services within one calendar  
6 year of the commencement of the initial emergency contract.

7 "Immediately upon the letting of an emergency  
8 contract that will be followed by a subsequent contract of  
9 longer duration, the state entity shall notify the committee,  
10 if the committee has been formed, of the emergency contract  
11 and the subsequent contract, and the terms, purpose, duration,  
12 and other information as requested by the committee regarding  
13 the contracts. If the contract is let between quadrenniums,  
14 the committee shall be notified as soon as is practicable. In  
15 instances when this notification is received, the committee's  
16 60-day review of the subsequent contract will run concurrently  
17 with the term of the emergency contract.

18 (7) The process set forth herein for the selection  
19 of professional service providers shall not apply to the  
20 Legislature, the Alabama State Port Authority, or to colleges  
21 and universities governed by a board of trustees or by the  
22 Department of Postsecondary Education. The State Department of  
23 Education shall not be subject to the provisions of this  
24 article, requiring the process set forth herein for the  
25 selection of professional service providers, except for the  
26 future acquisition of professional services in support of  
27 computer technology on a statewide basis which exceeds the

1 amount of expenditures set forth within this chapter. However,  
2 if a state agency or department is able to provide the  
3 necessary computer networking services, then the services  
4 shall be provided by the agency or department without being  
5 contracted to an outside provider. In the event the State  
6 Department of Education has intervened into the financial  
7 operations of a local board of education, the State Department  
8 of Education shall follow the provisions of law applicable to  
9 local boards of education for services related to the local  
10 board of education subject to intervention. The Alabama  
11 Medicaid Agency shall not be subject to the provisions of this  
12 article requiring the process set forth herein for the  
13 selection of professional service providers for contracts with  
14 physicians, pharmacists, dentists, optometrists, opticians,  
15 nurses, and other health professionals which involve only  
16 service on agency task forces, boards, or committees.

17 "(8) Under any contract letting process in this  
18 section, all requests for proposals from any state entity  
19 purchasing professional services shall be sent to all  
20 professional service providers regardless of race that have  
21 notified the state of their interest in receiving state  
22 business.

23 "(9) Under any contract letting process in this  
24 section, all lists containing professional service providers  
25 and contractors for contracts under the provisions of this  
26 article shall seek the racial and ethnic diversity of the  
27 state."

1                   Section 2. This act shall become effective on the  
2           first day of the third month following its passage and  
3           approval by the Governor, or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate  
committee on Fiscal Responsibility and  
Accountability..... 09-FEB-12

Read for the second time and placed on the calen-  
dar 1 amendment..... 16-FEB-12

Read for the third time and passed as amended .... 23-FEB-12

Yeas 31  
Nays 0

Patrick Harris  
Secretary