

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

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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.

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2 A BILL
3 TO BE ENTITLED
4 AN ACT
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6 Relating to personal and professional services
7 contracts pursuant to the Contract Review Permanent
8 Legislative Oversight Committee; amending Section 29-2-41.1
9 and Section 41-16-72, as last amended by Act 2011-577, 2011
10 Regular Session, Code of Alabama 1975, to provide further for
11 emergency contracts.

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

16 "§29-2-41.1.

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

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

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

16 "§41-16-72.

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

22 "(1)a. Except as otherwise provided herein,
23 attorneys retained to represent the state in litigation shall
24 be appointed by the Attorney General in consultation with the
25 Governor from a listing of attorneys maintained by the
26 Attorney General. All attorneys interested in representing the
27 State of Alabama may apply and shall be included on the

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

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

23 "b. Attorneys retained by any state purchasing
24 entity to render nonlitigation legal services shall be
25 selected by such entity from a listing of attorneys maintained
26 by the Legal Advisor to the Governor. All attorneys interested
27 in representing any purchasing state entity may apply and

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

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

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

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

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

1 "(3) Professional services of architects, landscape
2 architects, engineers, land surveyors, geoscience, and other
3 similar professionals shall be procured in accordance with
4 competitive, qualification-based selection policies and
5 procedures. Selection shall be based on factors to be
6 developed by the procuring state entity which may include,
7 among others, the following:

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

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

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

17 "d. Availability to and familiarity with the project
18 locale.

19 "e. Proposed project management techniques.

20 "f. Ability and proven history in handling special
21 project contracts.

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

1 effort to negotiate a contract for professional services from
2 the selected professional after first discussing and refining
3 the scope of services for the project with such professional.
4 Where the Alabama Building Commission has set a fee schedule
5 for the professional services sought, fees shall not exceed
6 the schedule without approval of the Director of the Alabama
7 Building Commission and the Governor.

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

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

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

25 "Immediately upon the letting of an emergency
26 contract that will be followed by a subsequent contract of
27 longer duration, the state entity shall notify the committee

1 of the emergency contract and the subsequent contract, and the
2 terms, purpose, duration, and other information as requested
3 by the committee regarding the contracts. In instances when
4 this notification is received, the committee's 60-day review
5 of the subsequent contract will run concurrently with the term
6 of the emergency contract.

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

1 article requiring the process set forth herein for the
2 selection of professional service providers for contracts with
3 physicians, pharmacists, dentists, optometrists, opticians,
4 nurses, and other health professionals which involve only
5 service on agency task forces, boards, or committees.

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

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

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