By Senators Holtzclaw, Sanford, Orr and Pittman

RFD: Fiscal Responsibility and Accountability

First Read: 07-FEB-12

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SYNOPSIS: Under existing law, the Contract Review Permanent Legislative Oversight Committee reviews contracts of state departments for personal or professional services with private entities or individuals to be paid out of appropriated funds. Contracts let in specified emergency situations may be let for 60 days without committee review, but a succeeding contract is subject to review by the committee. Personal and professional service contracts let by competitive bid are excluded from review.

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

TO BE ENTITLED

AN ACT

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§29-2-41.1.

"In case of an emergency adversely affecting public health, safety, security, or the economic welfare of the state, so declared in writing to the Governor by the head of the institution or agency involved, setting forth the nature of the danger to public health, safety, security or the economic welfare of the state, contracts may be let to the extent necessary to meet the emergency without review by the committee. Any contract let pursuant to this section involving an emergency adversely affecting the economic welfare of the state shall be let for a period of not more than 60 days during which time the committee shall review a contract for a longer period of time if such services are required beyond the 60-day limit hereby imposed. The institution or agency may not
enter a second identical or substantially similar emergency contract for those particular services within one calendar year of the commencement of the initial emergency contract.

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

"§41-16-72.

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

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

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

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

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

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

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

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

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

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

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

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

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

"e. Proposed project management techniques.

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

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

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

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

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

"Immediately upon the letting of an emergency contract that will be followed by a subsequent contract of longer duration, the state entity shall notify the committee of the emergency contract and the subsequent contract, and the terms, purpose, duration, and other information as requested by the committee regarding the contracts. In instances when
this notification is received, the committee's 60-day review
of the subsequent contract will run concurrently with the term
of the emergency contract.

"(7) The process set forth herein for the selection
of professional service providers shall not apply to the
Legislature, the Alabama State Port Authority, or to colleges
and universities governed by a board of trustees or by the
Department of Postsecondary Education. The State Department of
Education shall not be subject to the provisions of this
article, requiring the process set forth herein for the
selection of professional service providers, except for the
future acquisition of professional services in support of
computer technology on a statewide basis which exceeds the
amount of expenditures set forth within this chapter. However,
if a state agency or department is able to provide the
necessary computer networking services, then the services
shall be provided by the agency or department without being
contracted to an outside provider. In the event the State
Department of Education has intervened into the financial
operations of a local board of education, the State Department
of Education shall follow the provisions of law applicable to
local boards of education for services related to the local
board of education subject to intervention. The Alabama
Medicaid Agency shall not be subject to the provisions of this
article requiring the process set forth herein for the
selection of professional service providers for contracts with
physicians, pharmacists, dentists, optometrists, opticians,
nurses, and other health professionals which involve only
service on agency task forces, boards, or committees.

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

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

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