

1 SB423  
2 129582-1  
3 By Senator Beasley  
4 RFD: Fiscal Responsibility and Accountability  
5 First Read: 19-APR-11

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

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

A BILL  
TO BE ENTITLED  
AN ACT

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

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.