

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/SB 350

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Education); and Senator Montford and others

SUBJECT: Online Procurement

DATE: February 3, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Peacock</u>	<u>McVaney</u>	<u>GO</u>	<u>Favorable</u>
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AED</u>	<u>Recommend: Fav/CS</u>
3.	<u>Sikes</u>	<u>Kynoch</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 350 authorizes district school boards, Florida College System institution boards of trustees and university boards of trustees to make purchases through an online procurement system, electronic auction service, or other efficient procurement tool.

In addition, the bill requires each district school board and Florida College System institution board of trustees to review the purchasing agreements and state term contracts available through the Department of Management Services pursuant to s. 287.056, F.S., before purchasing nonacademic commodities and services. The bill also:

- Requires each bid specification for nonacademic commodities and services include a statement that the purchasing agreements and state term contracts have been reviewed, and
- Authorizes each district school board to use the cooperative state purchasing programs managed through the regional consortium service organizations.

The bill has an indeterminate fiscal impact. Online procurement may result in costs savings for district school boards, Florida College System institution boards of trustees and university boards of trustees. District school boards and Florida College System institutions may realize some cost savings to the extent goods and services are available at lower costs through the state term contracts and purchasing agreements. District school boards may also realize cost savings by utilizing cooperative state purchasing programs managed through regional consortium service organizations. However, the extent of these potential cost savings is not known.

The bill is effective July 1, 2016.

II. Present Situation:

Chapter 287, F.S., regulates state agency¹ procurement of personal property and services.² Agencies may use a variety of procurement methods, depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors. These include the following:

- "Single source contracts," which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- "Invitations to bid (ITB)," which are used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- "Requests for proposals (RFP)," which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- "Invitations to negotiate (ITN)," which are used when negotiations are determined to be necessary to obtain the best value and involve a request for high complexity, customized, mission-critical services, by an agency dealing with a limited number of vendors.³

Contracts for commodities or contractual services in excess of \$35,000 must be procured utilizing a competitive solicitation process.⁴ However, specified contractual services and commodities are not subject to competitive-solicitation requirements.⁵

Chapters 120 and 287, F.S., establish a process by which a person may file an action protesting a decision or intended decision pertaining to contracts administered by the Department of Management Services (DMS), a water management district, or state agencies.⁶

State Contracts and Purchasing Agreements

DMS's Division of State Purchasing procures state term contracts and establishes purchasing agreements for selected products and services.⁷ Section 287.056(1), F.S., requires state agencies to purchase commodities and contractual services from purchasing agreements and state term

¹ As defined in s. 287.012(1), F.S., "agency" means any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges.

² Local governments are not subject to the provisions of ch. 287, F.S. Local governmental units may look to the chapter for guidance in the procurement of goods and services, but many have local policies or ordinances to address competitive solicitations.

³ See ss. 287.012(6) and 287.057, F.S.

⁴ Section 287.057(1), F.S., requires all projects that exceed the Category Two (\$35,000) threshold contained in s. 287.017, F.S., to be competitively bid. As defined in s. 287.012(6), F.S., "competitive solicitation" means the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.

⁵ See s. 287.057(3)(e), F.S.

⁶ See ss. 287.042(2)(c) and 120.57(3), F.S.

⁷ Section 287.042(1)(a) and (2)(a), F.S.

contracts in accordance with s. 287.057, F.S. Other eligible users of state term contracts and purchasing agreements include any local government, school board or other special district, authority, or government entity, and any independent, nonprofit college or university located within the state and accredited by the Southern Association of Colleges and Schools.⁸ Statewide contracts and purchasing agreements enable eligible users to pool their buying power to lower total costs and reduce administrative burden in the purchase of products and services.

Online Procurement of Commodities and Contractual Services

Pursuant to s. 287.057(22), F.S., the DMS is required to maintain a program for online procurement of commodities and contractual services in consultation with the Chief Financial Officer (Department of Financial Services) and the Agency for State Technology (AST). The DMS has authority to contract for equipment and services to develop and implement online procurement in consultation with the AST and in compliance with standards of AST.⁹ The DMS is required to adopt rules for the administration of the program for online procurement.¹⁰ The DMS may also impose and collect fees for use of the online procurement system.¹¹

The DMS's online procurement program is MyFloridaMarketPlace (MFMP). MFMP is used by the Division of State Purchasing for formal solicitations (ITB, RFP, and ITN) and by state agencies for informal quotes and electronic invoicing.¹² MFMP has been in operation for more than ten years.¹³

District School Boards

Purchases and leases by school districts must comply with requirements of law and rules of the State Board of Education.¹⁴ Each school district is required to establish purchasing rules.¹⁵ Section 1010.04(3), F.S., permits the district school board to purchase from current county contracts if such contracts are to the economic advantage of these entities and the county purchasing agent is authorized by law to make purchases for the benefit of other governmental agencies within the county.

Section 1001.451, F.S., authorizes school districts with 20,000 or fewer unweighted full-time equivalent students to enter into cooperative agreements to form regional consortium service organizations to provide purchasing.

Section 1006.27, F.S., requires the Department of Education to assist district school boards with procuring school buses, contractual needs, equipment, and supplies at reasonable prices by

⁸ See s. 287.056(1), F.S., and Rule 60A-1.005, F.A.C.

⁹ Section 287.057(22)(a), F.S. Also, see s. 282.0051(4), F.S. (AST has responsibility to perform project oversight on all state agency information technology project costs of \$10 million or more that are funded in the General Appropriations Act or other law.)

¹⁰ Section 287.057(22)(b), F.S. See Rules 60A-1.030-1.033, F.A.C.

¹¹ Section 287.057(22)(c), F.S.

¹² Analysis from the DMS dated February 3, 2015, on file with the Committee on Governmental Oversight and Accountability.

¹³ See http://www.dms.myflorida.com/business_operations/state_purchasing.

¹⁴ Section 1010.04(1)(a), F.S. See also s. 1001.42(12)(j), F.S.

¹⁵ Section 1010.04(2), F.S. See also Rule 6A-1.012, F.A.C.

providing a plan under which district school boards may voluntarily pool their bids for such purchases.

Section 1006.283, F.S., authorizes a consortium of school districts to implement an instructional materials program that includes purchase of instructional materials.

III. Effect of Proposed Changes:

The bill authorizes district school boards, Florida College System institution boards of trustees and university boards of trustees to make purchases through an online procurement system, an electronic auction service, or other efficient procurement tools.

The bill requires each district school board and Florida College System institution board of trustees to review the purchasing agreements and state term contracts available through the Department of Management Services under s. 287.056, F.S., before purchasing nonacademic commodities and services. The bill also:

- Requires each bid specification for nonacademic commodities and services include a statement that the purchasing agreements and state term contracts have been reviewed, and
- Authorizes each district school board to use the cooperative state purchasing programs managed through the regional consortium service organizations.

The bill provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shares with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 350 may have an indeterminate fiscal impact on the private sector. The bill may shift some contracting dollars towards businesses that have entered into purchasing agreements with the Department of Management Services and vendors who hold state term contracts.

C. Government Sector Impact:

The bill has an indeterminate fiscal impact on the government sector. Online procurement may result in costs savings for district school boards, Florida College System institutions and universities. District school boards and Florida College System institutions may realize some cost savings to the extent goods and services are available at lower costs through the state term contracts and purchasing agreements. District school boards may also realize cost savings by utilizing cooperative state purchasing programs managed through regional consortium service organizations. However, the extent of these potential cost savings is not known.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1010.04 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Appropriations on February 3, 2016:

The committee substitute:

- Removes the definition of “online procurement” or “electronic procurement” created under s. 287.012, F.S.
- Removes the authorization for district school boards to adopt rules under s. 1001.42 (12)(i), F.S., to facilitate the efficient and effective procurement of materials, supplies, and services, including the use of online procurement as defined in the bill.
- Removes the reference to district school boards using online procurement, as defined in the bill, to facilitate the purchase of school buses and related equipment under s. 1006.27, F.S.
- Requires district school boards to review the Department of Management Services’ purchasing agreements and state term contracts prior to purchasing nonacademic commodities and contractual services, rather than requiring district school boards use

these purchasing agreements and state term contracts, and extends the review requirement to Florida College System institution boards of trustees.

- Requires each bid specification for nonacademic commodities and services include a statement that the purchasing agreements and state term contracts have been reviewed.
- Authorizes each district school board to use the cooperative state purchasing programs managed through the regional consortium service organizations.

B. Amendments:

None.