

By the Committees on General Government Appropriations;  
Governmental Oversight and Productivity; Regulated Industries;  
and Senators Clary and Crist

601-2058-05

1                                   A bill to be entitled  
2           An act relating to professional services  
3           acquisition; amending s. 287.055, F.S.;  
4           revising certain definitions; defining the term  
5           "negotiate"; providing additional criteria for  
6           processing bids to purchase professional  
7           services which exceed certain threshold  
8           amounts; amending s. 287.17, F.S.; revising the  
9           limitation on the use of state aircraft;  
10          providing an effective date.

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12 Be It Enacted by the Legislature of the State of Florida:

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14           Section 1. Paragraphs (d) and (g) of subsection (2),  
15 paragraph (a) of subsection (3), and paragraphs (b) and (c) of  
16 subsection (4) of section 287.055, Florida Statutes, are  
17 amended, and paragraph (1) is added to subsection (2) of that  
18 section, to read:

19           287.055 Acquisition of professional architectural,  
20 engineering, landscape architectural, or surveying and mapping  
21 services; definitions; procedures; contingent fees prohibited;  
22 penalties.--

23           (2) DEFINITIONS.--For purposes of this section:

24           (d) "Compensation" means the ~~total~~ amount paid by the  
25 agency for professional services regardless of whether stated  
26 as compensation or stated as hourly rates, overhead rates, or  
27 other figures or formulas from which compensation can be  
28 calculated.

29           (g) A "continuing contract" is a contract for  
30 professional services entered into in accordance with all the  
31 procedures of this act between an agency and a firm whereby

1 the firm provides professional services to the agency for  
2 projects in which construction costs do not exceed \$1 million,  
3 for study activity when the fee for such professional service  
4 does not exceed \$50,000, or for work of a specified nature as  
5 outlined in the contract required by the agency, with no time  
6 limitation except that the contract must provide a termination  
7 clause. Firms providing professional services under continuing  
8 contracts shall not be required to bid against one another.

9 (1) "Negotiate" or any form of that word means to  
10 conduct legitimate, arms length discussions and conferences to  
11 reach an agreement on a term or price. For purposes of this  
12 section, the term does not include presentation of flat-fee  
13 schedules with no alternatives or discussion.

14 (3) PUBLIC ANNOUNCEMENT AND QUALIFICATION  
15 PROCEDURES.--

16 (a)1. Each agency shall publicly announce, in a  
17 uniform and consistent manner, each occasion when professional  
18 services must be purchased for a project the basic  
19 construction cost of which is estimated by the agency to  
20 exceed the threshold amount provided in s. 287.017 for  
21 CATEGORY FIVE or for a planning or study activity when the fee  
22 for professional services exceeds the threshold amount  
23 provided in s. 287.017 for CATEGORY TWO, except in cases of  
24 valid public emergencies certified by the agency head. The  
25 public notice must include a general description of the  
26 project and must indicate how interested consultants may apply  
27 for consideration.

28 2. Each agency shall provide a good faith estimate in  
29 determining whether the proposed activity meets the threshold  
30 amounts referred to in this paragraph.

31 (4) COMPETITIVE SELECTION.--

1 (b) The agency shall select in order of preference no  
2 fewer than three firms deemed to be the most highly qualified  
3 to perform the required services. In determining whether a  
4 firm is qualified, the agency shall consider such factors as  
5 the ability of professional personnel; whether a firm is a  
6 certified minority business enterprise; past performance;  
7 willingness to meet time and budget requirements; location;  
8 recent, current, and projected workloads of the firms; and the  
9 volume of work previously awarded to each firm by the agency,  
10 with the object of effecting an equitable distribution of  
11 contracts among qualified firms, provided such distribution  
12 does not violate the principle of selection of the most highly  
13 qualified firms. The agency may request, accept, and consider  
14 proposals for the compensation to be paid under the contract  
15 only during competitive negotiations under subsection (5).

16 (c) This subsection does not apply to a professional  
17 service contract for a project the basic construction cost of  
18 which is estimated by the agency to be not in excess of the  
19 threshold amount provided in s. 287.017 for CATEGORY FIVE or  
20 for a planning or study activity when the fee for professional  
21 services is not in excess of the threshold amount provided in  
22 s. 287.017 for CATEGORY TWO. However, if, in using another  
23 procurement process, the majority of the compensation proposed  
24 by firms is in excess of the appropriate threshold amount, the  
25 agency shall reject all proposals and reinitiate the  
26 procurement pursuant to this subsection.

27 Section 2. Section 287.17, Florida Statutes, is  
28 amended to read:

29 (Substantial rewording of section. See  
30 section 287.17, F.S., for present text.)

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1           287.17 Limitation on use of motor vehicles and  
2 aircraft.--

3           (1) The aircraft and motor vehicles owned, leased, or  
4 operated by any state agency, as defined in s. 287.012, shall  
5 be available for official state business only as authorized by  
6 agency heads, as defined in s. 287.012.

7           (2) The following criteria shall be considered in  
8 determining appropriate uses of motor vehicles and aircraft:

9           (a) Whether the use of a motor vehicle or aircraft is  
10 necessary to carry out state official or employee job  
11 assignments.

12           (b) Whether the use of a motor vehicle or aircraft is  
13 for transporting an employee, state official, or other person  
14 authorized by the agency head for purposes of conducting  
15 official state business or for purposes of performing services  
16 for the state.

17           (c) Whether the Department of Law Enforcement has been  
18 directed by the agency head to provide security or  
19 transportation pursuant to s. 943.68.

20           (d) Whether an emergency exists requiring the use of a  
21 motor vehicle or aircraft for the protection of life or  
22 property.

23           (3)(a) The term "official state business" may not be  
24 construed to permit the use of a motor vehicle or aircraft for  
25 commuting purposes, unless special assignment of a motor  
26 vehicle is authorized as a perquisite by the Department of  
27 Management Services, required by an employee after normal duty  
28 hours to perform duties of the position to which assigned, or  
29 authorized for an employee whose home is the official base of  
30 operation.

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1        (b) For motor vehicles used by a state employee whose  
2 duties are those of a law enforcement officer, as defined in  
3 s. 943.10, the term "official state business" shall be  
4 construed to permit the use of the vehicle during normal duty  
5 hours to and from lunch or meal breaks and incidental stops  
6 for personal errands, but not substantial deviations from  
7 official state business, if such use is at the direction of or  
8 with the permission of the agency head.

9        (4) An agency head, as defined in s. 287.012, shall  
10 comply with the following criteria for the special assignment  
11 of motor vehicles:

12        (a) An agency head may assign a motor vehicle to a  
13 state officer or employee only if the officer or employee is  
14 projected to drive the motor vehicle a minimum of 10,000 miles  
15 annually on official state business, unless an agency head  
16 annually provides written justification for the need of the  
17 assignment of a motor vehicle. Commuting mileage incidental to  
18 use of the motor vehicle on official state business shall be  
19 excluded from calculating the projected mileage. Priority in  
20 assigning motor vehicles shall be given to those employees who  
21 drive over 15,000 miles annually on state business.

22        (b) An agency head may assign motor vehicles to state  
23 officers and employees who perform duties related to law  
24 enforcement. However, the agency head shall not assign a  
25 pursuit motor vehicle to an officer or employee whose job  
26 duties do not routinely require performance of a patrol or law  
27 enforcement function requiring a pursuit vehicle.

28        (5) Each state agency's head shall, by December 31,  
29 2000, conduct a review of motor vehicle utilization with  
30 oversight from the agency's inspector general. This review  
31 shall consist of two parts. The first part of the review shall

1 determine the number of miles that each assigned motor vehicle  
2 has been driven on official state business in the past fiscal  
3 year. Commuting mileage shall be excluded from calculating  
4 vehicle use. The purpose of this review is to determine  
5 whether employees with assigned motor vehicles are driving the  
6 vehicles a sufficient number of miles to warrant continued  
7 vehicle assignment. The second part of the review shall  
8 identify employees who have driven personal vehicles  
9 extensively on state business in the past fiscal year. The  
10 purpose of this review is to determine whether it would be  
11 cost-effective to provide state motor vehicles to such  
12 employees. In making this determination, the inspector general  
13 shall use the break-even mileage criteria developed by the  
14 Department of Management Services. A copy of the review shall  
15 be presented to the Office of Program Policy Analysis and  
16 Government Accountability.

17       (6) A person who is not otherwise authorized in this  
18 section may accompany the Governor, the Lieutenant Governor, a  
19 member of the Cabinet, the President of the Senate, the  
20 Speaker of the House of Representatives, or the Chief Justice  
21 of the Supreme Court when such official is traveling on state  
22 aircraft for official state business and the aircraft is  
23 traveling with seats available. Transportation of a person  
24 accompanying any official specified in this subsection shall  
25 be approved by the official, who shall also guarantee payment  
26 of the transportation charges. When the person accompanying  
27 such official is not traveling on official state business as  
28 provided in this section, the transportation charge shall be a  
29 prorated share of all fixed and variable expenses related to  
30 the ownership, operation, and use of such state aircraft. The  
31 spouse or immediate family members of any official specified

1 in this subsection may, without payment of transportation  
2 charges, accompany the official when such official is  
3 traveling for official state business and the aircraft has  
4 seats available.

5 (7) It is the intention of the Legislature that  
6 persons traveling on state aircraft for purposes consistent  
7 with, but not necessarily constituting, official state  
8 business may travel only when accompanying persons who are  
9 traveling on official state business and that such persons  
10 shall pay the state for all costs associated with such travel.  
11 A person traveling on state aircraft for purposes other than  
12 official state business shall pay for any trip not exclusively  
13 for state business by paying a prorated share of all fixed and  
14 variable expenses related to the ownership, operation, and use  
15 of such aircraft.

16 Section 3. This act shall take effect July 1, 2005.

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18 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
19 COMMITTEE SUBSTITUTE FOR  
20 CS for CS for SB 1784

21 Restores bill language to current law in s. 287.055(4)(b),  
22 F.S., regarding the acquisition of professional services.  
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