

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 Appropriations Subcommittee on Education

BILL: PCS/SB 350 (814970)

INTRODUCER: Appropriations Subcommittee on Education and Senator Montford

SUBJECT: Online Procurement

DATE: December 7, 2015

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/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.

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; however, the extent of those 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

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.

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

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.⁷ The DMS is required to adopt rules for the administration of the program for online procurement.⁸ The DMS may also impose and collect fees for use of the online procurement system.⁹

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

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 287.057(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.)

⁸ Section 287.057(22)(b), F.S. See Rules 60A-1.030-1.033, F.A.C.

⁹ Section 287.057(22)(c), F.S.

agencies for informal quotes and electronic invoicing.¹⁰ MFMP has been in operation for more than ten years.¹¹

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 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:

The bill may have an indeterminate fiscal impact on the private sector.

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, but the extent of those potential cost savings is not known.

VI. Technical Deficiencies:

None.

¹⁰ Analysis from the DMS dated February 3, 2015, on file with the Committee on Governmental Oversight and Accountability.

¹¹ See http://www.dms.myflorida.com/business_operations/state_purchasing.

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.)

Recommended CS by Appropriations Subcommittee on Education on December 3, 2015:

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.

B. Amendments:

None.