

**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.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Education

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BILL: SB 350

INTRODUCER: Senator Montford

SUBJECT: Online Procurement

DATE: December 1, 2015

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>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____

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**I. Summary:**

SB 350 authorizes district school boards to adopt rules regarding the efficient and effective procurement of materials, supplies, and services, including the use of online procurement. The bill also authorizes district school boards, Florida College System institution boards of trustees and university boards of trustees to make purchases through an online procurement system.

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 agency<sup>1</sup> procurement of personal property and services.<sup>2</sup> 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;

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<sup>1</sup> 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.

<sup>2</sup> 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.

- "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.<sup>3</sup>

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

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.<sup>6</sup>

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

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.<sup>10</sup> MFMP has been in operation for more than ten years.<sup>11</sup>

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<sup>3</sup> See ss. 287.012(6) and 287.057, F.S.

<sup>4</sup> 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.

<sup>5</sup> See s. 287.057(3)(e), F.S.

<sup>6</sup> See ss. 287.042(2)(c) and 120.57(3), F.S.

<sup>7</sup> 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.)

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

<sup>9</sup> Section 287.057(22)(c), F.S.

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

<sup>11</sup> See [http://www.dms.myflorida.com/business\\_operations/state\\_purchasing](http://www.dms.myflorida.com/business_operations/state_purchasing).

### III. Effect of Proposed Changes:

**Section 1** amends s. 287.012, F.S., to define the terms “online procurement” or “electronic procurement” as a competitive bid process that uses a vendor bid system, an electronic auction service, or other types of procurement that use a web-based system developed by a governmental entity or a third-party software, and that conforms to the procurement process specified in s. 287.057 or by rules adopted by the State Board of Education, school districts, or other state agencies.

This section appears to create another type of ‘online procurement’ for DMS; MFMP was created under the authority of s. 287.057(22), F.S., as an online procurement system.

This section also appears to authorize the State Board of Education, school districts and other state agencies to adopt procurement rules that could conflict with DMS’s rulemaking authority for online procurement contained in s. 287.057(22)(b), F.S., and the online procurement rules already promulgated by DMS in Rules 60A-1.030-1.033, F.A.C.

Additionally, creating another definition of ‘online procurement’ and allowing other agencies to promulgate procurement rules conflicts with the legislative intent of ch. 287, F.S., that “there be a system of uniform procedures to be utilized by state agencies in managing and procuring commodities and contractual services”.<sup>12</sup>

**Section 2** amends s. 1001.42(12), F.S., to authorize district school boards to adopt rules to facilitate the efficient and effective procurement of materials, supplies, and services, including the use of online procurement as defined in s. 287.012, F.S.

**Section 3** amends s. 1006.27(1), F.S., to authorize district school boards to use online procurement as defined by s. 287.012, F.S., for purchasing buses, equipment and supplies.

**Section 4** amends s. 1010.04(2), F.S., to authorize district school boards, Florida College System institution boards of trustees and university boards of trustees to make purchases through an online procurement system that includes electronic auction services or other efficient procurement tools.

**Section 5** 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.

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<sup>12</sup> Section 287.001, F.S.

**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.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 287.012, 1001.42, 1006.27 and 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.)

None.

**B. Amendments:**

None.