

**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 Committee on Governmental Oversight and Accountability

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BILL: SPB 7036

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: School District Purchasing

DATE: November 30, 2015      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	McVaney		<b>GO Submitted as Committee Bill</b>
2.				
3.				

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**I. Summary:**

SPB 7036 requires each district school board, when purchasing nonacademic commodities and services, to use the purchasing agreements and state term contracts through the Department of Management Services pursuant to s. 287.056, F.S., unless the district school board determines that it is not to the economic advantage of that school district to use the agreements and contracts.

For each determination that the agreements and contracts are not to the economic advantage of the school district, the district school board must provide a written statement justifying such determination and post the statement on the district school board’s website.

The bill may result in an indeterminate decrease in expenditures by district school boards.

**II. Present Situation:**

**Chapter 287, Florida Statutes**

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:

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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.

- "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," 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," 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," 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>

The chapter establishes 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>

### **State Contracts and Purchasing Agreements**

DMS's Division of State Purchasing procures state term contracts and establishes purchasing agreements for selected products and services.<sup>7</sup> Section 287.056(1), F.S., requires state agencies to purchase commodities and contractual services from purchasing agreements and state term 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.<sup>8</sup> 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.

### **District School Boards**

Purchases and leases by school districts must comply with requirements of law and rules of the State Board of Education.<sup>9</sup> Each school district is required to establish purchasing rules.<sup>10</sup> Section 1010.04(3), F.S., permits the district school board to purchase from current county

<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 287.042(1)(a) and (2)(a), F.S.

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

<sup>9</sup> Section 1010.04(1)(a), F.S. See also s. 1001.42(12)(j), F.S.

<sup>10</sup> Section 1010.04(2), F.S. See also Rule 6A-1.012, F.A.C.

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 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:**

**Section 1** amends s. 1010.04, F.S., to require each district school board, when purchasing nonacademic commodities and services, to use the purchasing agreements and state term contracts available under s. 287.056, F.S., unless the district school board determines that it is not to the economic advantage of that school district to use the agreements and contracts. For each determination that the agreements and contracts are not to the economic advantage of the school district, the district school board must provide a written statement justifying such determination and post the statement on the district school board's website.

**Section 2** 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 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 shift some contracting dollars towards businesses that have entered into purchasing agreements with the DMS and vendors who hold state term contracts.

**C. Government Sector Impact:**

District school boards may realize some cost savings to the extent goods and services are available at lower costs through the state term contracts and purchasing agreements.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill 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.)

None.

**B. Amendments:**

None.