

**PUBLIC CHAPTER NO. 1098****HOUSE BILL NO. 3353****By Representatives Curtiss, Casada, Moore, McDaniel**

Substituted for: Senate Bill No. 3598

By Senators Ketron, Black, Yager, Overbey, Kelsey and Mr. Speaker Ramsey

AN ACT to amend Tennessee Code Annotated, Title 4 and Title 12, relative to the state procurement commission.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 4, is amended by adding the following as a new chapter:

4-56-101. As used in this chapter, unless the context otherwise requires:

(1) "Bidder" means a legal entity that has properly registered with the state procurement office;

(2) "Commission" means the state procurement commission, which replaces the board of standards within title 12, chapter 3;

(3) "Committee" means the state protest committee, which replaces the board of standards within § 12-3-214 and the review committee within title 12, chapter 4;

(4) "Council" means the advisory council on state procurement;

(5) "Goods" means all property, including, but not limited to, supplies, equipment, materials, printing, and insurance. "Goods" does not include leases, acquisitions and disposals of real property, which are governed under title 4, chapter 15;

(6) "Grant" means any grant awarded to the state or awarded by the state for the furnishing by the state of assistance, whether financial or otherwise, to any person to support a program authorized by law. "Grant" does not include an award with the primary purpose of procuring an end product, whether in the form of supplies, services, or construction, or any contract resulting from such an award;

(7) "Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any goods or services. It also includes all functions that pertain to the obtaining of any goods or service, including the description of requirements, selection and solicitation of sources,

preparation and award of a contract, and all phases of contract administration;

(8) "Services" means all services and agreements obligating the state, except services for highway and road improvements, which are governed by title 54, and designer and construction services, which are governed under title 4, chapter 15; and

(9) "Vendor" means a legal entity that has been established by the department of finance and administration's division of accounts as a vendor through proper authority for which payment may be made by the state.

§ 4-56-102.

(a)

(1) There is created a procurement commission of three (3) voting members, which shall be ex officio members: the comptroller of the treasury, commissioner of general services and commissioner of finance and administration. The chief procurement officer will serve as a non-voting member.

(2) The governor shall determine who will serve as chair and the commission shall elect from its membership a vice chair and secretary.

(b) The attorney general and reporter shall serve as legal counsel to the commission in accordance with the requirements of § 8-6-301.

§ 4-56-103.

(a) Prior to forwarding proposed rules related to procurement to the attorney general and reporter, all departments shall submit such proposed rules to the commission for the commission's review and comment together with any recommendations for changes to such proposed rules. In addition within thirty (30) days following the appointment of the commission, all departments shall submit existing rules related to procurement to the commission for the commission's review and comment and recommendations for any changes to such rules.

(b)

(1) The commission has the power and authority, except as otherwise provided in this chapter, to review and comment on proposed rules and regulations, policies, standards and procedures to be followed consistent with this chapter and title 12, chapter 3 and title 12, chapter 4, and to make recommendations for changes thereto, governing procurement of goods and services; contracting; agency contract and grant management and

control; training and professional development; and disposal of any and all goods and services by the state.

(2) In addition, the commission is authorized to promulgate necessary rules and regulations in accordance with the uniform administrative procedures act, title 4, chapter 5, to implement the provisions of this chapter.

(c) There is created a state protest committee authorized to act on any protest presented in accordance with title 12, chapter 3 and title 12, chapter 4. The committee shall be comprised of the treasurer, commissioner of finance and administration and the commissioner of general services, or their designee, except that one (1) member shall be the committee member and not the member's designee; provided that no person who has had any direct involvement in the procurement being protested or resulting contract may hear the protest.

(d) The members of the commission and committee shall serve without additional compensation, but shall be entitled to reimbursement for their necessary expenses. All reimbursement for travel expenses shall be in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

(e) The commission shall not exercise authority over the award or administration of any particular contract or grant.

4-56-104.

(a) There is created a procurement office headed by the chief procurement officer in such department as the governor shall designate, after consulting with the comptroller of the treasury, which shall take effect as provided in § 4-56-105(1).

(b) Effective March 31, 2011, the governor shall appoint the chief procurement officer, who shall be a person:

(1) Qualified by training and relevant and recent experience in large scale public procurement of goods and services, establishment of contracts, contract oversight, providing training and contract administration, and demonstrated executive and organizational ability to perform the duties of this office; and

(2) Qualified by training or relevant and recent experience in administering programs to encourage and enhance economic opportunities for small businesses and minority-owned businesses.

(c) The chief procurement officer shall be a full-time public official of the state as an executive service employee appointed by the governor to serve at the pleasure of the governor.

(d)

(1) Necessary personnel in the department of general services involved in the procurement of goods and necessary personnel in the department of finance and administration involved in the procurement of services, as required by the procurement officer, shall be transferred to the procurement office together with the funding for the compensation and benefits for such personnel.

(2) The chief procurement officer is authorized to employ such additional personnel as are necessary to carry out the purposes of this chapter, upon the approval of the governor.

(3) The compensation of employees of the procurement office shall be fixed by the governor.

(e)

(1) All contracts and contract rights and responsibilities, and renewals for such contracts, in existence with the department of general services and the department of finance and administration with respect to the duties transferred by this act shall be preserved and transferred to the procurement office.

(2) Any bidding procedure or negotiations concerning any such procedure which is in the process but not complete shall continue under the purview of the procurement officer.

(3) All documents, books, records, papers or other writings in the possession of the department of general services and the department of finance and administration with respect to the duties transferred by this act shall be transferred to and remain in the custody of the procurement office.

(4) Any rules, regulations, orders, decisions and policies heretofore issued or promulgated by the departments of finance and administration or general services whose functions have been transferred under this act to the procurement office shall remain in full force and effect and shall hereafter be administered and enforced by the procurement officer. To this end, the commission, shall have the authority, consistent with the statutes and regulations pertaining to the programs and functions transferred herein, to modify or rescind orders, rules and regulations, decisions or policies heretofore issued and to adopt, issue or promulgate new orders, rules and regulations, decisions or policies as may be necessary for the administration of the programs or functions herein transferred.

(f) Subject to the provisions of this chapter and other procurement laws under the jurisdiction of the chief procurement office, the chief procurement officer may adopt operational procedures governing the internal functions of the procurement office.

4-56-105. The chief procurement officer has the power and duty to:

(1) Effective July 1, 2011, establish a single public internet procurement web site that includes how to do business with the state; registration for bidders; posting of all procurements in process and related status to award; and a database of established contracts by state agencies, departments and institutions;

(2) Effective October 1, 2011, develop a transition plan that provides for the implementation by date and action to consolidate the procurement and contracting for goods, services and grants; disposal of any all goods and services by the state; to include employee job classifications for the state procurement office and agency procurement functions that include development and training plans and other plans as prescribed and approved by the commission;

(3) Develop and propose to the general assembly any changes required to consolidate statutes, and develop proposed rules and regulations, policies, standards and procedures to be followed as set forth in this chapter and title 12, chapter 3 and title 12, chapter 4 approved by the commission that:

(A) Establishes a central procurement process with opportunities for strategic sourcing; and establishes a central contract management process;

(B) Establishes a central grant management process that will assist agencies in identifying grant opportunities and provides for a central database of information regarding grant recipients and sub-recipients for monitoring purposes;

(C) Establishes a central performance and quality assurance process that assist agencies in identifying risk areas and recommending contract performance and management best practices;

(D) Establishes a central bidder relations management process to include a central bidder registration database and program for conducting business with the state, which provides bidders and vendors with training and assistance with technical matters, procurement notification, contract and grant awards and conducting business with the state; and

(E) Establishes a central process for the disposal of goods.

(4) Develop and conduct training for the state procurement office and agency procurement staff to promote procurement excellence, either independently or in cooperation with other state governments, municipalities or other units of local government, or other persons that fosters professional development and certification. In conducting this training, the chief procurement officer shall:

(A) Prescribe professional and accountability standards and guidelines for procurement, contract, grant, performance and quality assurance management personnel;

(B) Conduct or participate in procurement education and training programs;

(C) Conduct research into existing and new methods of procurement; and

(D) Establish and maintain an electronic library of education and training courses and technical reference resources.

(5) Delegate authority with the approval of the comptroller of the treasury to designees or to any department, agency, or official as prescribed in rules, regulations, standards, and policies approved by the commission; and

(6) Establish and maintain agenda and minutes of the commission and the council and all actions of both which shall be open to public inspection during regular office hours and chair the council. Except as otherwise indicated, all requirements of this section shall be ready for implementation by the procurement officer by October 1, 2011.

4-56-106.

(a)

(1) There is created an advisory council on state procurement. There shall be five (5) voting members of the council. There shall be seven (7) non-voting members of the council representing the bidder and vendor community and other procurement professionals. All members shall have a demonstrable working knowledge of the state procurement process. In making the appointments to the advisory council, the appointing authorities shall give due consideration to the need for geographic, age, racial, gender and ethnic diversity on the council.

(2)

(A) The five (5) voting members of the council shall consist of two (2) representatives of state agencies appointed by the commissioner of general services, one (1) representative from the department of finance and

administration to be appointed by the commissioner of finance and administration, one (1) representative from the office of the comptroller of the treasury to be appointed by the comptroller of the treasury, and the chief procurement officer who shall serve as chair. The initial appointments by the commissioners shall be made prior to March 1, 2011 but only after such persons are named by the governor elected in November 2010 election. The initial appointment by the comptroller of the treasury shall be made prior to March 1, 2011 but only after the election of the comptroller by the 107<sup>th</sup> general assembly. Any vacancy shall be filled for the unexpired term by the appointing authority making the initial appointment. The pattern established for initial appointments shall be followed for appointments by the appropriate officials when appointments are to fill expired terms.

(B)

(i) Voting members representing state agencies appointed by the commissioner of general services shall serve a staggered four-year term, beginning March 1, 2011. These voting members of the council shall, upon expiration of the member's term, be eligible for reappointment and shall serve until a successor is appointed.

(ii) The terms shall be staggered so that the terms of only two (2) voting members shall terminate at the same time. The term of one (1) voting member initially appointed by the commissioner of general services and the voting member appointed by the commissioner of finance and administration shall be appointed for a two-year term to begin on March 1, 2011 to expire on February 28, 2013, and the successors shall serve a four-year term to begin on March 1, and expire February 28 of the appropriate year. The term of the other voting member initially appointed by the commissioner of general services shall be appointed for a three-year term to begin on March 1, 2011, to expire on February 28, 2014, and the successor shall serve a four-year term to begin on March 1, and expire February 28 of the appropriate year. The chief procurement officer shall be an ex officio member whose term shall begin March 1, 2011 and the one (1) voting member appointed by the comptroller of the treasury shall be appointed for a four-year term to begin on March 1, 2011, to expire on February 28, 2015. The successor shall

serve a four-year term to begin on March 1, and expire February 28 of the appropriate year.

(C) Proxy voting is prohibited by voting members of the council; provided, however, that in instances where a voting member will be absent from a vote of the council, the member's appointing authority is authorized to appoint an alternate or designee for the vote.

(3)

(A) Except as provided in subdivisions (3)(A)(ii) and (3)(B), the seven (7) nonvoting members shall be selected to serve staggered four-year terms as follows:

(i) The speaker of the house of representatives, the speaker of the senate, and the governor shall each appoint two (2) representatives, with one (1) representative from the bidder/ vendor community and one (1) representative recommended by the National Institute of Government Purchasing. The final advisory non-voting member appointment shall be appointed by the chair of the fiscal review committee. The initial appointments to the council shall be made prior to March 1, 2011 by the speaker of the senate and the speaker of the house of representatives but only after the election of such speakers occurs following the convening of the 107<sup>th</sup> general assembly, and shall be made prior to March 1, 2011 by the governor but only after the governor takes the oath of office in January 2011. The pattern established for initial appointments shall be followed for appointments by the appropriate officials when appointments are to fill expired terms.

(ii) The non-voting member appointed by the chair of the fiscal review committee shall serve a two-year term, beginning March 1, 2011 until the term expires February 28, 2013. The non-voting member appointed by the chair of fiscal review shall be eligible for reappointment to succeeding two-year terms without limitation; the two-year term of office of successor appointees shall begin March 1 and expire February 28 of the appropriate year.

(iii) The initial appointments of the non-voting members shall be staggered. The speaker of the senate and the speaker of the house of representatives shall each initially appoint one (1)

member for a two-year term to begin March 1, 2011 and expire February 28, 2013, and one (1) member for a three- year term to begin March 1, 2011 and expire February 28, 2014; and the governor shall initially appoint one (1) member for a two-year term to begin March 1, 2011 and expire February 28, 2013, and one (1) member for a three-year term to begin March 1, 2011 and expire February 28, 2014. All subsequent appoints shall be for a four-year term to begin March 1 and expire February 28 of the appropriate year.

(B) Except as provided in subdivision (3)(B)(ii), each non-voting member of the council, upon expiration of the member's term, shall not be eligible for reappointment for two (2) years after the conclusion of that member's term. In no event shall a non-voting member of the council serve more than four (4) consecutive years as a non-voting member of the council. In the event a member resigns or becomes ineligible for service during the member's term, a successor shall be appointed by the appropriate appointing authority to serve the remainder of the term.

(4) No employer shall discriminate in any manner against an employee who serves on the council because of the employee's service on the council. Employees who serve on the council shall not be denied any benefit from their employer because of the employee's service on the council.

(5) Members of the council shall not be paid but may be reimbursed for travel expenses. All reimbursement for travel expenses shall be in accordance with the comprehensive travel regulations promulgated by the department of finance and administration and approved by the attorney general and reporter.

(b) The council shall meet at least twice each year for the discussion of problems and recommendations for improvement of the procurement process or any other matter relevant to procurement as determined by the chief procurement officer.

(c) The council shall review and issue a formal comment approved by the council on procurement policies, standards, guidelines and procedures established by the chief procurement officer prior to being presented for approval by the commission. All reviews and formal comments shall be issued within sixty (60) days of being presented to the council by the chief procurement officer. The formal comments approved by the council shall be provided to the members of the commission, and the officers of the fiscal review committee.

(d) When requested by the chief procurement officer, the council may conduct studies, research, analyses, and make reports and

recommendations with respect to subjects or matters within the authority and duties of the chief procurement officer. The chief procurement officer may appoint advisory groups to assist in specific areas, and with respect to any other matters within the authority of the chief procurement officer.

(e) In performing its responsibilities, the council's role shall be strictly advisory, but it may do any of the following:

(1) Make recommendations to the governor, general assembly, fiscal review committee, commissioner of general services, commissioner of finance and administration, and comptroller of the treasury relating to the enactment or promulgation of laws or rules that affect title 12, chapters 3 and 4 and title 4;

(2) Make recommendations to the commissioner of general services and commissioner of finance and administration regarding the method and form of statistical data collections; and

(3) Monitor the performance of the chief procurement office in the implementation of legislative directives.

(f) The council may develop evaluations, statistical reports and other information from which the general assembly may evaluate the impact of legislative changes to procurement laws.

(g) Whenever any bill is introduced in the general assembly proposing to amend this chapter, to make any change in public procurement or contract law, or to make any change in the law that may have a financial or other substantive impact on the administration of public procurement and contract law, the standing committee to which the bill is referred may refer the bill to the council. The council's review of bills relating to procurement and contract law should include, but not be limited to, bills that propose to amend title 4, chapter 56 and title 12, chapters 3 and 4. All bills referred to the council shall be reported back to the standing committee to which they were assigned as quickly as reasonably possible. Notwithstanding the absence of a report from the council, the standing committee may consider the bill at any time. The chair making the referral shall immediately notify the prime sponsors of the referral and the council shall not review and comment on the proposed legislation until the prime sponsors have been notified. The comments of the council shall describe the potential effects of the proposed legislation on the procurement and contract process and its operations and any other information or suggestions that the council may determine to be helpful for the sponsors, standing committees or general assembly. The comments of the council may include recommendations concerning the proposed legislation. Except for reporting the recommendations for or against passage of proposed legislation and responding to any inquiries made by the members of the general assembly, council staff shall not lobby or advocate for or against passage of proposed legislation.

4-56-107. The comptroller of the treasury is authorized to examine and approve all procurements, contracts, grants and other documents that serve to incur financial obligations against state government. This authority to approve shall be developed in consultation with the chief procurement officer and set forth in procurement and contract policies, standards, rules, regulations, procedures and guidelines approved by the commission.

4-56-108.

(a) All requests of the procuring agency to procure goods or services by negotiation with a single service provider, referred to in this section as a noncompetitive contract, shall be contemporaneously filed with the fiscal review committee of the general assembly, comptroller of the treasury and the chief procurement officer. Such requests shall document the following:

(1) Description of the goods or services to be acquired;

(2) Explanation of the need for or requirement to acquire the goods or services;

(3) Name and address of the proposed contractor's principal owner;

(4) Evidence that the proposed contractor has experience in providing the same or similar goods or services and evidence of the length of time the contractor has provided the same or similar goods or services;

(5) Explanation of whether the goods or services were purchased by the procuring agency in the past, and if so, the method used to purchase the goods or services and the name and address of the contractor;

(6) Description of the procuring agency's efforts to use existing state employees and resources or, in the alternative, to identify reasonable and competitive procurement alternatives, rather than to use non-competitive negotiation;

(7) Justification of why the goods or services should be acquired through non-competitive negotiation; and

(8) Any additional information that the fiscal review committee may direct the procuring agency to provide that will assist the committee in evaluating the contract.

(b)

(1) The following contracts and contract amendments shall be subject to review by the fiscal review committee:

(A) Proposed non-competitive contracts with a term of more than one (1) year or which are renewable by either party that would extend the contract beyond twelve (12) months and which have a cumulative value of not less than two hundred fifty thousand dollars (\$250,000), including all possible renewals;

(B) Any amendment to a contract described in subdivision (b)(1);and

(C) Any amendment to a contract meeting the term and dollar threshold requirements of subdivision (b)(1)(A), regardless of whether the original contract was procured through competitive or non-competitive means, where the amendment does the following:

(i) Increases or decreases funding and extends or shortens the contract term unless the original contract contained a term extension provision and as long as the additional funding does not increase the amount per compensable increment,

(ii) Changes the entity or name of the entity with which the state is contracting; or

(iii) Otherwise changes an original or amended contract in a substantive manner.

(D) Agencies shall initiate consultation with the fiscal review committee staff prior to proceeding with an amendment for review and approval by appropriate state authorities. The fiscal review committee staff shall provide agencies with policies developed by the fiscal review committee regarding such amendments.

(2) The contracts subject to review shall include all contracts of the executive branch that otherwise meet the requirements of subdivision (b)(1), including, but not limited, to contracts of higher education, including the board of regents, the University of Tennessee, and the Tennessee higher education commission. Highway and road improvement contracts reviewed by the department of transportation, contracts reviewed by the state building commission and debt issuance contracts reviewed by the comptroller of the treasury shall not be subject to this review.

(3) The committee, pursuant to its jurisdiction under § 3-7-103(a), is authorized to review any other state contract or contract amendment in accordance with the procedures established in this

section without regard to whether the contract or contract amendment meets the requirements of subdivision (b)(1).

(4) The fiscal review committee shall have twenty (20) business days from receipt of the request as provided in this section to comment on the proposed contract. After this twenty-day period, any such contract authorized by the chief procurement officer may be executed. All other requests to negotiate non-competitive contracts shall be reviewed by the fiscal review committee after approval by the chief procurement officer. With respect to such requests, the fiscal review committee shall be provided the same information to be submitted in accordance with subsection (a). The chair or the chair's designee, after consultation with the comptroller of the treasury, shall have authority to waive the twenty-day period for comment and authorize the chief procurement officer to execute contracts or amendments that are determined to be in the best interests of the state, and to proceed with reporting and comment by the committee at their next scheduled meeting.

(c) If an exception is granted to any request, approved in accordance with subsection (a)(1) or rules promulgated pursuant to § 4-56-103, any such exception shall be filed with the fiscal review committee for their perusal, comment and review.

(d) The procurement office shall file a goods and services contract report quarterly with the fiscal review committee. The report shall list contracts approved in accordance with rules authorized by § 4-56-103(a) during the prior quarter and detail whether each contract procurement was competitive.

(e) Each procuring agency granted a special delegated authority, pursuant to rules authorized by § 4-56-103(a), to establish goods and services contracts shall report to the fiscal review committee a list of all contracts awarded under the delegated authority. The list of contracts awarded shall be filed quarterly and shall include the contractor name, contract period, contract amount, method used to select the contractor, and completion date for a monitoring review, as defined by any applicable policy developed by the chief procurement officer, and any other information the procuring agency wishes to include.

(f) The department of transportation shall report to the fiscal review committee on highway and road improvement contracts it has approved that would otherwise meet the requirements of subdivision (b)(1) within thirty (30) days of approval, including all of the information specified in subsection (a) and any other information the committee deems necessary or helpful. The fiscal review committee shall have the option to conduct a separate hearing on highway and road improvement contracts approved by the department of transportation.

(g) The state building commission shall report to the fiscal review committee on contracts it has approved that would otherwise meet the requirements of subdivision (b)(1) within thirty (30) days of approval, including all of the information specified in subsection (a) and any other information the committee deems necessary or helpful. The committee shall have the option to conduct a separate hearing on contracts approved by the building commission.

4-56-109.

(a) The provisions of this chapter supplement, but shall not supersede other provisions of law.

(b)

(1) No public officer or employee who is involved in making or administering a contract on behalf of a public agency may derive a direct benefit from the contract except as provided in this section, or as otherwise allowed by law.

(2) No public employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of the public body when the employee knows that:

(A) The employee is contemporaneously employed by a bidder, offeror contractor involved in the procurement transaction;

(B) The employee, the employee's spouse, or any member of the employee's immediate family holds a position with a bidder, offeror contractor such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five percent (5%);

(C) The employee, the employee's spouse, or any member of the employee's immediate family has a pecuniary interest arising from the procurement transaction; or

(D) The employee, the employee's spouse, or any member of the employee's immediate family is negotiating, or has an arrangement concerning, prospective employment with a bidder, offeror or contractor.

(3) A public officer or employee who will derive a direct benefit from a contract with the public agency the officer or employee serves, but who is not involved in making or administering the contract, shall not attempt to influence any other person who is involved in making or administering the contract.

(4) No public officer or employee may solicit or receive any gift, reward, or promise of reward in exchange for recommending, influencing, or attempting to influence the award of a contract by the public agency the officer or employee serves.

(5) As used in this section, "immediate family" means a spouse or minor child living in the household.

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(a) It is an offense for a public employee or former public employee having official responsibility for procurement transactions to accept employment with any bidder, offeror or contractor with whom the employee or former employee dealt in an official capacity concerning procurement transactions for a period of one (1) year from the cessation of employment by the public body unless the employee or former employee provides written notification to the public body, or a public official if designated by the public body, or both, prior to commencement of employment by that bidder, offeror or contractor.

(b) It is an offense for any person who, for compensation, prepares an invitation to bid or request for proposal for or on behalf of a public body to

(1) Submit a bid or proposal for that procurement or any portion thereof or;

(2) Disclose to any bidder or offeror information concerning the procurement that is not available to the public. However, a public body may permit such person to submit a bid or proposal for that procurement or any portion thereof if the public body determines that the exclusion of the person would limit the number of potential qualified bidders or offerors in a manner contrary to the best interests of the public body.

(c)

(1) It is an offense for a contractor or subcontractor to demand or receive from any of the contractor or subcontractor's suppliers or for a contractor to demand or receive from the contractor's subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged.

(2) It is an offense for a subcontractor or supplier to make or offer to make any payment, loan, subscription, advance, deposit of money, services or anything, present or promised,

unless consideration of substantially equal or greater value is exchanged.

(3) It is an offense for any person to demand or receive any payment, loan, subscription, advance, deposit of money, services or anything of value in return for an agreement not to compete on a public contract.

(4) If a contractor, subcontractor, supplier or any person violates any provision of this subsection (c), the amount thereof shall be conclusively presumed to have been included in the price of the contract, subcontract or order and ultimately borne by the public body and shall be recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties.

(d) A violation of this section is a Class A misdemeanor.

(e) A contract entered into in violation of this section on or after the effective date of this act is void. A contract that is otherwise void under this section may continue in effect until an alternative can be arranged when:

(1) Immediate termination would result in harm to the public health or welfare; and

(2) The continuation is approved by the commission.

Approval of continuation of contracts under this subsection shall be given for the minimum period necessary to protect the public health or welfare. The chief procurement officer and the comptroller of the treasury shall be notified immediately upon a determination that a contract violates this section.

(f) For purposes of this section:

(1) As used in this section, the term "public officer" means an individual who is elected or appointed to serve or represent a public agency, other than an employee or independent contractor of a public agency.

(2) A public officer or employee is involved in administering a contract if he or she oversees the performance of the contract or has authority to make decisions regarding the contract or to interpret the contract.

(3) A public officer or employee is involved in making a contract if such officer or employee participates in the development of specifications or terms or in the preparation or award of the contract. A public officer is also involved in making a contract if the board, commission, or other body of which such

officer is a member takes action on the contract, whether or not the public officer actually participates in that action, unless the contract is approved under an exception to this section under which the public officer is allowed to benefit and is prohibited from voting.

(4) A public officer or employee derives a direct benefit from a contract if the person or his or her spouse:

(A) Has more than a ten percent (10%) ownership or other interest in an entity that is a party to the contract;

(B) Derives any income or commission directly from the contract; or

(C) Acquires property under the contract.

(5) A public officer or employee is not involved in making or administering a contract solely because of the performance of ministerial duties related to the contract.

SECTION 2. Tennessee Code Annotated, Title 12, Chapter 3, is amended by changing all references to "the board of standards" to "the procurement commission", except in § 12-3-214, where all references to the "board of standards" shall be changed to "protest committee"; and by changing all references in Title 12, Chapter 3 to "the commissioner of general services" to "the chief procurement officer".

SECTION 3. Tennessee Code Annotated, Title 12, Chapter 4, is amended by changing all references to "the review committee" to "protest committee"; and is further amended by changing all references to the "commissioner of finance and administration" to "the chief procurement officer".

SECTION 4. The Tennessee Code Commission is directed to transfer the current language in § 12-4-109(a)(1)(G) through (J) to § 4-56-106, effective October 1, 2011, to be designated accordingly.

SECTION 5. Tennessee Code Annotated, Section 4-29-233, is amended by adding the following language as new, appropriately designated subdivisions:

( ) State procurement commission, created by § 4-56-102;

( ) State protest committee, created by § 4-56-103;

( ) Advisory council on state procurement, created by § 4-56-106;

SECTION 6. Except as otherwise specified in this act, this act shall take effect October 1, 2011, the public welfare requiring it.

**PASSED: June 3, 2010**



KENT WILLIAMS, SPEAKER  
HOUSE OF REPRESENTATIVES



RON RAMSEY  
SPEAKER OF THE SENATE

APPROVED this 23rd day of June 2010



PHIL BREDESEN, GOVERNOR