

LEGISLATIVE BILL 256

Approved by the Governor May 16, 2007

Introduced by Aguilar, 35

FOR AN ACT relating to state government; to amend sections 72-803, 72-818, 73-508, 81-154, 81-161.03, 81-8,239.01, 81-8,239.03, 81-8,239.04, 81-8,239.05, 81-8,239.07, 81-1108.43, 83-901, and 83-916, Reissue Revised Statutes of Nebraska, and section 81-8,239.02, Revised Statutes Cumulative Supplement, 2006; to change bidding and contract requirements as prescribed; to require submission of a request for a utility easement; to raise dollar thresholds for requisitions and purchases; to rename a fund; to create a fund and provide for its use; to eliminate the Forms Management Program Act; to harmonize provisions; to repeal the original sections; and to outright repeal sections 81-1162, 81-1163, 81-1164, 81-1165, 81-1166, 81-1167, 81-1168, 81-1169, and 83-134, Reissue Revised Statutes of Nebraska.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 72-803, Reissue Revised Statutes of Nebraska, is amended to read:

72-803 (1) The state and any department or agency thereof, subject to the powers of the state building division of the Department of Administrative Services, shall have general charge of the erection of new buildings which are being erected for such department or agency, the repair and improvement of buildings under the control of such department or agency, including fire escapes, and the improvement of grounds under the control of such department or agency.

(2) Buildings and other improvements costing more than ~~forty~~ fifty thousand dollars shall be (a) constructed under the general charge of the department or agency as provided in subsection (1) of this section and (b) let by contract to the lowest responsible bidder after proper advertisement as set forth in subsection (4) of this section.

(3) The successful bidder at the letting shall enter into a contract with the department or agency, prepared as provided for by subsection (4) of this section, and shall furnish a bond for the faithful performance of his or her contract, except that a performance bond shall not be required for any project which has a total cost of ~~forty~~ one hundred thousand dollars or less unless the department or agency includes a bond requirement in the specifications for the project.

(4) When contracts are to be let by the department or agency as provided in subsection (2) of this section, advertisements shall be published in accordance with rules and regulations adopted and promulgated by the state building division stating that sealed proposals will be received by the department or agency at its office on the date therein stated for the furnishing of materials, the construction of buildings, or the making of repairs or improvements and that plans and specifications can be seen at the office of the department or agency. All bids or proposals shall be accompanied by a certified check or by a bid bond in a sum fixed by the department or agency and payable thereto. All such contracts shall be awarded to the lowest responsible bidder, but the right shall be reserved to reject any and all bids. Whenever any material described in any contract can be obtained from any state institution, the department or agency shall exclude it from such a contract. ~~Upon the awarding of the contract or contracts therefor, the Attorney General shall review the contract or contracts to be entered into by the department or agency and the contracting parties.~~

Sec. 2. Section 72-818, Reissue Revised Statutes of Nebraska, is amended to read:

72-818 A Except as provided in section 37-330, a state agency may shall submit a any request for granting a utility easement on state-owned land to the committee. The committee may only approve utility easements by majority vote. Utility easements may only be granted to political subdivisions or their contractors for utility or construction-related purposes. The committee shall certify the approval of a utility easement to the Director of Administrative Services who shall execute the instrument necessary to grant the easement. The state building division of the Department of Administrative Services shall be responsible for the implementation of easements granted under this section.

Sec. 3. Section 73-508, Reissue Revised Statutes of Nebraska, is amended to read:

73-508 Except as provided in section 73-507, all proposals for sole

source contracts for services in excess of ~~twenty-five~~ fifty thousand dollars shall be preapproved by the materiel division except in emergencies. In case of an emergency, contract approval by the state agency director or his or her designee is required. A copy of the contract and agency justification of the emergency shall be provided to the Director of Administrative Services within three business days after contract approval. The state agency shall retain a copy of the justification with the contract in the agency files. The Director of Administrative Services shall maintain a complete record of such sole source contracts for services.

Sec. 4. Section 81-154, Reissue Revised Statutes of Nebraska, is amended to read:

81-154 The materiel division shall establish and maintain standard specifications for personal property purchased in the name of the state. The materiel division shall enlist the cooperation and assistance of the using agencies in the establishment, maintenance, and revision of standard specifications and shall encourage and foster the use of standard specifications in order that the most efficient purchase of personal property may be continuously accomplished. All such standard specifications shall be so drawn that it will be possible for three or more manufacturers, vendors, or suppliers to submit competitive bids. If a requisition for personal property exceeds ~~ten~~ twenty-five thousand dollars and bids cannot be obtained from three bidders, then the standard specifications of the personal property upon which bids are sought shall be reviewed by the materiel division and the using agencies involved. If it is determined by the materiel division, because of the special nature of the personal property sought to be purchased or leased or for any other reason, that the standard specifications should remain as written, bids may be accepted from a fewer number of bidders than three with the approval of the Governor or his or her designated representative.

Sec. 5. Section 81-161.03, Reissue Revised Statutes of Nebraska, is amended to read:

81-161.03 The materiel division may, by written order, permit purchases, contracts, or leases to be made by any using agency directly with the vendor or supplier whenever it appears to the satisfaction of the materiel division that, because of the unique nature of the personal property, the price in connection therewith, the quantity to be purchased, the location of the using agency, the time of the use of the personal property, or any other circumstance, the interests of the state will be served better by purchasing or contracting direct than through the materiel division.

Such permission shall be revocable and shall be operative for a period not exceeding twelve months from the date of issue. Using agencies receiving such permission shall report their acts and expenditures under such orders to the materiel division in writing and furnish such agent with proper evidence that competition has been secured at such time and covering such period as may be required by the materiel division.

The materiel division shall adopt and promulgate rules and regulations establishing criteria which must be met by any agency seeking direct market purchase authorization. Purchases for miscellaneous needs may be made directly by any agency without prior approval from the materiel division for purchases of less than ~~five~~ ten thousand dollars if the agency has completed a certification program as prescribed by the materiel division.

The Department of Correctional Services may purchase raw materials, supplies, component parts, and equipment perishables directly for industries established pursuant to section 83-183, whether such purchases are made to fill specific orders or for general inventories. Any such purchase shall not exceed twenty-five thousand dollars. The department shall comply with the bidding process of the materiel division and shall be subject to audit by the materiel division for such purchases.

Sec. 6. Section 81-8,239.01, Reissue Revised Statutes of Nebraska, is amended to read:

81-8,239.01 (1) For purposes of sections 81-8,239.01 to 81-8,239.08 and section 7 of this act, unless the context otherwise requires, the definition of state agencies found in section 81-8,210 shall apply, except that such term shall not include the Board of Regents of the University of Nebraska.

(2) There is hereby established a division within the Department of Administrative Services to be known as the risk management and state claims division. The division shall be headed by the Risk Manager who shall be appointed by the Director of Administrative Services. The division shall be responsible for the Risk Management Program, which program is hereby created. The program shall consist of the systematic identification of exposures to risk of loss as provided in sections 11-201 to 11-203, 13-911, 25-2165, 43-1320, 44-1615, 44-1616, 48-194, 48-197, 48-1,103, 48-1,104, 48-1,107,

48-1,109, 81-8,212, 81-8,220, 81-8,225, 81-8,226, 81-8,233, 81-8,239.01 to 81-8,239.08, and 81-8,300 and section 7 of this act and shall include the appropriate methods for dealing with such exposures in relation to the state budget pursuant to such sections. Such program shall be administered by the Risk Manager and shall include the operations of the State Claims Board and other operations provided in such sections.

(3) Under the Risk Management Program, the Risk Manager shall have the authority and responsibility to:

(a) Employ any personnel necessary to administer the Risk Management Program;

(b) Develop and maintain loss and exposure data on all state property and liability risks;

(c) Develop and recommend risk reduction or elimination programs for the state and its agencies and establish, implement, and monitor a statewide safety program;

(d) Determine which risk exposures shall be insured and which risk exposures shall be self-insured or assumed by the state;

(e) Establish standards for the purchase of necessary insurance coverage or risk management services at the lowest costs, consistent with good underwriting practices and sound risk management techniques;

(f) Be the exclusive negotiating and contracting agency to purchase insurance or risk management services and, after consultation with the state agency for which the insurance or services are purchased, enter into such contracts on behalf of the state and its agencies, officials, and employees to the extent deemed necessary and in the best interest of the state, and authorize payment for such purchase out of the appropriate funds created by section 81-8,239.02;

(g) Determine whether the state suffered a loss for which self-insured property loss funds have been created and authorize and administer payments for such loss from the State Self-Insured Property Fund for the purpose of replacing or rebuilding state property;

(h) Perform all duties assigned to the Risk Manager under the Nebraska Workers' Compensation Act and sections 11-201 to 11-203, 81-8,239.05, 81-8,239.07, and 84-1601 to 84-1615 and section 7 of this act;

(i) Approve the use of risk management pools by any department, agency, board, bureau, commission, or council of the State of Nebraska; and

(j) Recommend to the Legislature such legislation as may be necessary to carry out the purposes of the Risk Management Program and make appropriation requests for the administration of the program and the funding of the separate funds administered by the Risk Manager.

(4) No official or employee of any entity created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act shall be considered a state official or employee for purposes of sections 81-8,239.01 to 81-8,239.06.

Sec. 7. A state agency head shall file copies of all settlements, and a state agency head or the Attorney General shall file copies of all final, nonappealable judgments, of all self-insured liability claims with the Risk Manager. If the state agency has insufficient funds to pay the settlement or judgment, the state agency shall notify the Risk Manager. The Risk Manager shall then submit the settlement or judgment to the Legislature in the same manner as provided in the State Miscellaneous Claims Act. The Legislature shall review the settlement or judgment and make an appropriation if appropriate.

Sec. 8. Section 81-8,239.02, Revised Statutes Cumulative Supplement, 2006, is amended to read:

81-8,239.02 The following separate permanent revolving funds are established in the state treasury for use under the Risk Management Program according to the purposes for which each fund is established:

(1) The State Insurance Fund is hereby created for the purpose of purchasing insurance to cover property, fidelity, and liability risks of the state and workers' compensation claims against the state and other risks to which the state or its agencies, officials, or employees are exposed and for paying related expenses. The fund may receive deposits from assessments against state agencies to provide insurance coverage as directed by the Risk Manager. The Risk Manager may retain in the fund sufficient money to pay for any deductibles, self-insured retentions, or copayments as may be required by such insurance policies;

(2) The State Self-Insured Property Fund is hereby created for the purpose of replacing, repairing, or rebuilding state property which has incurred damage or is suffering other loss not fully covered by insurance and for paying related expenses. The fund may receive deposits from assessments against state agencies to provide property coverage as directed by the Risk

Manager. The Risk Manager may assess state agencies to provide self-insured property coverage; and

(3) The State Self-Insured Indemnification and Liability Fund is hereby created for the purpose of paying ~~compensable liability and fidelity claims against the state or its agencies, officials, or employees which are not fully covered by insurance and for paying~~ indemnification claims under section 81-8,239.05. Indemnification claims shall include payments for awards, settlements, and associated costs, including appeal bonds and reasonable costs associated with a required appearance before any tribunal. The fund may receive deposits from assessments against state agencies to pay for the costs associated with providing and supporting indemnification claims. The creation of this fund shall not be interpreted as expanding the liability exposure of the state or its agencies, officials, or employees; and -

(4) The State Self-Insured Liability Fund is hereby created for the purpose of paying compensable liability and fidelity claims against the state or its agencies, officials, or employees which are not fully covered by insurance and for which there is insufficient agency funding and for which a legislative appropriation is made under the provisions of section 7 of this act. The creation of this fund shall not be interpreted as expanding the liability exposure of the state or its agencies, officials, or employees. The Risk Manager shall report all claims and judgments paid from the State Self-Insured Liability Fund to the Clerk of the Legislature annually. The report shall include the name of the claimant, the amount claimed and paid, and a brief description of the claim, including any agency, program, and activity under which the claim arose. Any member of the Legislature may receive a copy of the report by making a request to the Risk Manager.

Sec. 9. Section 81-8,239.03, Reissue Revised Statutes of Nebraska, is amended to read:

81-8,239.03 The Risk Manager shall present a budget request as provided in section 81-1113 for the Risk Management Program which shall separately state the amount requested for the Tort Claims Fund, State Insurance Fund, State Self-Insured Property Fund, State Self-Insured Indemnification and Liability Fund, and Workers' Compensation Claims Revolving Fund, and such budget shall be based on the projected needs for such funds. If the Risk Manager does not assess state agencies for any of the funds listed in this section, the amount of expenditures paid from the fund on behalf of any non-general-fund agency shall be separately stated and paid into the funds from an appropriation to such non-general-fund agency. If the amount of money in any of such funds is not sufficient to pay any awards or judgments authorized by sections 48-192 to 48-1,109 or the State Tort Claims Act, the Risk Manager shall immediately advise the Legislature and request an emergency appropriation to satisfy such awards and judgments. Any money in such funds available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 10. Section 81-8,239.04, Reissue Revised Statutes of Nebraska, is amended to read:

81-8,239.04 All money or property recovered by or returned to the state, including but not limited to dividends, money recovered pursuant to litigation, or the salvage value of damaged property for damages relating to either a liability or property loss for which money from the State Insurance Fund, State Self-Insured Property Fund, State Self-Insured Indemnification and Liability Fund, State Self-Insured Liability Fund, Workers' Compensation Claims Revolving Fund, or Tort Claims Fund has been paid, shall be deposited in the respective fund, except that such money or property recovered under the terms of an insurance policy, the premiums for which were paid solely by a cash fund agency and purchased at its request, shall be deposited in the respective cash fund.

Sec. 11. Section 81-8,239.05, Reissue Revised Statutes of Nebraska, is amended to read:

81-8,239.05 (1) The State of Nebraska shall indemnify its officials and employees and its past officials and employees for money damages and reasonable costs incurred as a result of an act or omission occurring in the course and scope of employment of such official or employee after May 22, 1981. Such official's or employee's right to indemnification shall include the payments of awards, settlements, and associated costs, including appeal bonds and reasonable costs associated with a required appearance before any tribunal.

(2) Subsection (1) of this section shall not apply in case of malfeasance in office or willful or wanton neglect of duty. This section shall not be interpreted as an expansion of any state official's or employee's personal liability.

(3) The Attorney General shall notify the Risk Manager when an official or employee is being represented by the Attorney General or has engaged competent counsel approved by the Attorney General. The reasonable costs of litigation, including appeal bonds, or the reasonable costs of any appearance before any tribunal shall be paid by the Risk Manager from the State Self-Insured Indemnification and Liability Fund.

(4) The Attorney General shall file copies of all awards and settlements and any final court approval with the Risk Manager and shall request that the Risk Manager make the required payments, if funds are available, from the State Self-Insured Indemnification and Liability Fund, except that any portion of an award or settlement which is for punitive damages may only be paid with the approval of the Legislature. The official or employee may file a claim under the State Miscellaneous Claims Act if payment is not made.

(5) The Risk Manager shall report all claims and judgments paid from the State Self-Insured Indemnification and Liability Fund to the Clerk of the Legislature annually. The report shall include the name of the claimant, the amount claimed and paid, and a brief description of the claim, including any agency, program, and activity under which the claim arose. Any member of the Legislature may receive a copy of the report by making a request to the Risk Manager.

Sec. 12. Section 81-8,239.07, Reissue Revised Statutes of Nebraska, is amended to read:

81-8,239.07 The Risk Manager, acting as agent for the state agencies, ~~as defined in section 81-8,239.01,~~ may (1) self-insure and contract for related risk management services, (2) purchase a liability insurance policy or policies, or (3) use any combination of self-insurance and insurance to protect the agencies and their employees and other persons authorized to operate a vehicle by an agency against loss occasioned by negligence in the operation of any trucks, automobiles, snowplows, road graders, or other vehicles. Any such policy shall be purchased by public bidding conducted by the Risk Manager upon terms and forms prepared by him or her and shall be ~~in a limit of not less than fifty thousand dollars to cover the death or bodily injury or injuries of one person and, subject to the limitation to one person, one hundred thousand dollars to cover death or bodily injury or injuries to more than one person in the same accident and ten thousand dollars to cover property damage.~~ have limits for death, bodily injury, and property damage that are the same as would be required by law for a private individual. The premium on the policy or policies shall be paid by the Risk Manager from the State Insurance Fund created in section 81-8,239.02. The Risk Manager shall authorize and administer the payment of self-insured losses and payment for risk management services from the State Insurance Fund, State Self-Insured Property Fund, ~~or State Self-Insured Indemnification and Liability Fund, or State Self-Insured Liability Fund~~ as appropriate.

Sec. 13. Section 81-1108.43, Reissue Revised Statutes of Nebraska, is amended to read:

81-1108.43 No state agency or department shall perform for itself any of the services normally performed by a professional engineer or architect in the preparation of plans and specifications for the construction, reconstruction, or alteration of any building or in the administration of the construction documents and final approval of the project when the total project cost is four hundred thousand dollars or more, and no state agency shall employ its own work force for any such construction, reconstruction, or alteration of capital facilities when the total project cost is fifty thousand dollars or more. The Department of Administrative Services shall adjust the dollar amounts in this section every four years beginning January 1, 2002, to account for inflationary and market changes. The adjustments shall be based on percentage changes in a construction cost index and any other published index relevant to operations and utilities costs, as selected by the department.

This section shall not apply to ~~section 83-134,~~ ~~to~~ the Department of Roads, or to any public power district, public power and irrigation district, irrigation district, or metropolitan utilities district. If, during the program statement review provided for under section 81-1108.41, it is determined that existing or standard plans and specifications are available or required for the project, the division may authorize an exemption from this section. The Director of Administrative Services shall not issue any warrant in payment for any work on a capital construction project unless the state agency or department files a certificate that it has complied with the provisions of this section.

Sec. 14. Section 83-901, Reissue Revised Statutes of Nebraska, is amended to read:

83-901 The purpose of sections 49-617, 68-621, 72-249, 72-1302 to

72-1304, 81-101, 81-102, 81-1021, 83-101.08, 83-107.01, 83-108, 83-108.04, 83-112, ~~83-134~~, 83-135, 83-139, 83-140, 83-144, 83-145, 83-147 to 83-150, 83-153 to 83-156, 83-170 to 83-173, 83-186, 83-188, 83-443, and 83-901 to 83-916 is to establish an agency of state government for the custody, study, care, discipline, training, and treatment of persons in the correctional and detention institutions and for the study, training, and treatment of persons under the supervision of other correctional services of the state so that they may be prepared for lawful community living. Correctional services shall be so diversified in program and personnel as to facilitate individualization of treatment.

Sec. 15. Section 83-916, Reissue Revised Statutes of Nebraska, is amended to read:

83-916 (1) The Department of Correctional Services shall have general charge of the erection of new buildings, the repair and improvement of buildings, including fire escapes, and the improvement of grounds.

(2) Buildings and other improvements costing more than ~~forty~~ fifty thousand dollars, exclusive of equipment not germane to construction and building material made in the institution, shall be (a) constructed under the general charge of the department as provided in subsection (1) of this section and (b) let by contract to the lowest responsible bidder after proper advertisement as set forth in subsection (5) of this section, except that buildings costing more than ~~forty~~ fifty thousand dollars, such as shops, warehouses, or a cannery, when declared necessary by the department and to be constructed on the grounds of any Department of Correctional Services adult correctional facility, may be constructed by the use of inmate labor. Any construction by inmate labor shall have the approval of the department, the warden, and the chief engineer of the department.

(3) Inmate labor or the labor of state charges shall be employed, whenever the department deems it practicable, in all construction, repairs, and improvements at state institutions.

(4) The successful bidder at the letting referred to in subsection (2) of this section shall enter into a formal contract with the department, prepared as provided for by subsection (5) of this section, and shall furnish a bond for the faithful performance of his or her contract, except that a performance bond shall not be required for any project which has a total cost of ~~forty~~ one hundred thousand dollars or less unless the department includes a bond requirement in the specifications for the project.

(5) When contracts are to be let by the department as provided for by subsection (2) of this section, advertisements shall be published in accordance with rules and regulations adopted and promulgated by the state building division of the Department of Administrative Services stating that sealed proposals will be received by the Department of Correctional Services at its office on the date therein stated for the furnishing of materials, the construction of buildings, or the making of repairs or improvements and that plans and specifications can be seen at the office of the department. All bids or proposals shall be accompanied by a certified check or bid bond in a sum fixed by the department and payable thereto. All such contracts shall be awarded to the lowest responsible bidder, but the right shall be reserved to reject any and all bids. Whenever any material described in any contract can be obtained from any state institution, the department shall exclude it from such a contract. ~~Upon the awarding of the contract or contracts therefor, the Attorney General shall review the contract or contracts to be entered into by the department and the contracting parties.~~

Sec. 16. Original sections 72-803, 72-818, 73-508, 81-154, 81-161.03, 81-8,239.01, 81-8,239.03, 81-8,239.04, 81-8,239.05, 81-8,239.07, 81-1108.43, 83-901, and 83-916, Reissue Revised Statutes of Nebraska, and section 81-8,239.02, Revised Statutes Cumulative Supplement, 2006, are repealed.

Sec. 17. The following sections are outright repealed: Sections 81-1162, 81-1163, 81-1164, 81-1165, 81-1166, 81-1167, 81-1168, 81-1169, and 83-134, Reissue Revised Statutes of Nebraska.