

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1168

Introduced by Lautenbaugh, 18.

Read first time January 19, 2012

Committee: Education

A BILL

1 FOR AN ACT relating to schools; to adopt the School District

2 Purchasing Act.

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

1 Section 1. Sections 1 to 15 of this act shall be known
2 and may be cited as the School District Purchasing Act.

3 Sec. 2. The purpose of the School District Purchasing Act
4 is to provide a uniform purchasing procedure for school district
5 purchases of equipment, supplies, other items of personal property,
6 and services and to provide for sales of surplus personal property
7 which is obsolete or not usable by the school district.

8 Sec. 3. The Legislature encourages school districts to
9 work together under the provisions of the School District Purchasing
10 Act when joint purchases would be to the best advantage of such
11 school districts.

12 Sec. 4. For purposes of the School District Purchasing
13 Act:

14 (1) Mobile equipment means all vehicles propelled by any
15 power other than muscular, including, but not limited to, motor
16 vehicles, off-road designed vehicles, motorcycles, passenger cars,
17 buses, self-propelled mobile homes, truck-tractors, trucks, cabin
18 trailers, semitrailers, trailers, and utility trailers;

19 (2) Personal property includes, but is not limited to,
20 supplies, materials, mobile equipment, and equipment used by or
21 furnished to any school district;

22 (3) Services means any and all services except telephone,
23 telegraph, postal, and electric light and power service, and other
24 similar services; and

25 (4) Purchasing or purchase means the obtaining of

1 personal property or services by sale, lease, or other contractual
2 means.

3 Sec. 5. The school board or board of education of a Class
4 IV or Class V school district or a Class III school district
5 encompassing a city having a population of fifty thousand inhabitants
6 or more shall and the school board or board of education of any other
7 class of school district may employ a purchasing agent who shall not
8 be a member or officer of the board. All purchases made from funds of
9 the school district shall be made through the purchasing agent. The
10 board shall pay the agent for such services as shall be agreed upon
11 at the time of employment. The purchasing agent shall serve at the
12 pleasure of the board and give bond in such amount as the board shall
13 prescribe.

14 Sec. 6. The purchasing agent, under the supervision of
15 the school board or board of education, or the board, if there is no
16 purchasing agent, shall purchase all personal property and services
17 required by any office, school, or facility of the district, subject
18 to the School District Purchasing Act. The purchasing agent or the
19 board, if there is no purchasing agent, shall draw up and enforce
20 standard specifications which shall apply to all personal property
21 purchased for the use of the district, shall have charge of all
22 central storerooms operated or established by the board, and shall
23 transfer personal property to or between the offices, schools, and
24 facilities of the district.

25 Sec. 7. The school board or board of education or the

1 purchasing agent, subject to the approval of the board, shall: (1)
2 Prescribe the manner in which personal property shall be purchased,
3 delivered, and distributed; (2) prescribe dates for making estimates,
4 the future period which they are to cover, the form in which they are
5 submitted, and the manner of their authentication; (3) revise forms
6 from time to time as conditions warrant; (4) provide for the transfer
7 to and between offices, schools, and facilities of personal property
8 which is surplus with one but which may be needed by another or
9 others; (5) dispose of by sale personal property which has been
10 declared by the board to be surplus and which is obsolete or not
11 usable by the district. Except as otherwise provided in subsection
12 (2) of section 15 of this act, such property with a value of less
13 than two thousand five hundred dollars may be sold without
14 competitive bidding. Except as otherwise provided in such subsection,
15 property with a value of two thousand five hundred dollars or more
16 shall be sold through competitive bidding; (6) prescribe the amount
17 of cash deposit or bond to be submitted with a bid on a contract and
18 the amount of deposit or bond to be given for the performance of a
19 contract, if the amount of the bond is not specifically provided by
20 law; and (7) prescribe the manner in which claims for personal
21 property or services delivered to any office, school, or facility of
22 the district shall be submitted, approved, and paid.

23 Sec. 8. (1) Except as provided in section 9 of this act,
24 purchases of personal property or services by the school board or
25 board of education or purchasing agent shall be made:

1 (a) Through the competitive sealed bidding process
2 prescribed in section 11 of this act if the estimated value of the
3 purchase is twenty thousand dollars or more;

4 (b) By securing and recording at least three informal
5 bids, if practicable, if the estimated value of the purchase is equal
6 to or exceeds five thousand dollars, but is less than twenty thousand
7 dollars; or

8 (c) By purchasing in the open market if the estimated
9 value of the purchase is less than five thousand dollars, subject to
10 section 12 of this act. In any school district in which the board has
11 not appointed a purchasing agent pursuant to section 5 of this act,
12 the superintendent or his or her designee is authorized to make
13 purchases with an estimated value less than five thousand dollars.

14 (2) In no case shall a purchase made pursuant to
15 subdivision (1)(a), (b), or (c) of this section be divided to produce
16 several purchases which are of an estimated value below that
17 established in the relevant subdivision.

18 (3) All contracts and leases shall be approved as to form
19 by the attorney for the district, and a copy of each long-term
20 contract or lease shall be filed with the secretary of the board.

21 Sec. 9. (1) Competitive bidding shall not be required (a)
22 when purchasing unique or noncompetitive items, (b) when purchasing
23 petroleum products, (c) when obtaining professional services or
24 equipment maintenance, or (d) when the price has been established by
25 one of the following: (i) The federal General Services

1 Administration; (ii) the materiel division of the Department of
2 Administrative Services; or (iii) a cooperative purchasing agreement
3 by which supplies, equipment, or services are procured in accordance
4 with a contract established by another governmental entity or group
5 of governmental entities if the contract was established in
6 accordance with the laws and regulations applicable to the
7 establishing governmental entity or, if a group, the lead
8 governmental entity.

9 (2) The school board or board of education may, by
10 majority vote of its members, waive the bidding requirements of the
11 School District Purchasing Act if such waiver is necessary to meet an
12 emergency which threatens serious loss of life, health, or property
13 in the district.

14 (3) The board may waive the bidding requirements of the
15 act if the district can save a significant amount of money by
16 entering into a special purchase. The board shall, five days prior to
17 such special purchase, publish notice of its intention to make such a
18 special purchase, stating the items considered and inviting informal
19 quotes. A two-thirds vote of the entire board shall approve such
20 special purchase.

21 Sec. 10. In awarding the bid, the following elements
22 shall be given consideration when applicable:

23 (1) The price;

24 (2) The ability, capacity, and skill of the supplier to
25 perform;

1 (3) The character, integrity, reputation, judgment,
2 experience, and efficiency of the supplier;

3 (4) The quality of previous performance;

4 (5) Whether the supplier can perform within the time
5 specified;

6 (6) The previous and existing compliance of the supplier
7 with laws relating to the purchase or contract;

8 (7) The life-cost of the personal property or service in
9 relation to the purchase price and the specific use;

10 (8) The performance of the personal property or service
11 taking into consideration any commonly accepted tests and standards
12 of product or service usability and user requirements;

13 (9) The energy efficiency ratio as stated by the
14 supplier;

15 (10) The life-cycle costs between alternatives for all
16 classes of equipment, the evidence of expected life, the repair and
17 maintenance costs, and the energy consumption on a per year basis;
18 and

19 (11) Such other information as may be secured having a
20 bearing on the decision.

21 Sec. 11. When competitive sealed bidding is required by
22 section 8 of this act:

23 (1) Sealed bids shall be solicited by public notice in a
24 legal newspaper of general circulation in the school district at
25 least once a week for two consecutive weeks before the final date of

1 submitting bids;

2 (2) In addition to subdivision (1) of this section,
3 sealed bids may also be solicited by sending requests by mail to
4 prospective suppliers and by posting notice on a public bulletin
5 board;

6 (3) The notice shall contain: (a) A general description
7 of the proposed purchase; (b) an invitation for sealed bids; (c) the
8 name of the school district official in charge of receiving the bids;
9 (d) the date, time, and place the bids received shall be opened; and
10 (e) whether alternative items will be considered;

11 (4) All bids shall remain sealed until opened on the
12 published date and time by the school board or board of education or
13 its designated agent;

14 (5) Any or all bids may be rejected and the bid need not
15 be awarded at the time of opening, but may be held over for further
16 consideration;

17 (6) If all bids received on a pending contract are for
18 the same unit price or total amount and appear to be so as the result
19 of collusion between the bidders, the board or the purchasing agent
20 shall have authority to reject all bids and to purchase the personal
21 property or services in the open market, except that the price paid
22 in the open market shall not exceed the bid price;

23 (7) Each bid, with the name of bidder, shall be entered
24 on a record and each record, with the successful bidder indicated
25 thereon, shall, after the award or contract, be open to public

1 inspection; and

2 (8) All lettings on such bids shall be public and shall
3 be conducted as provided in Chapter 73, article 1.

4 Sec. 12. Except in an emergency, which the school board
5 or board of education shall declare by resolution, no order for
6 delivery on a contract on open market order for personal property or
7 services for office, school, or facility of the district shall be
8 awarded until the treasurer of the board is satisfied that the
9 unencumbered balance in the fund concerned, in excess of all unpaid
10 obligations, is sufficient to defray the cost of such order or
11 contract is satisfied that the purchase is one contemplated in the
12 terms of the budget as set up by the board. Whenever any office,
13 school, or facility of the district shall purchase or contract for
14 any personal property or services contrary to the School District
15 Purchasing Act, such order or contract shall be void. The person
16 responsible for the order or contract shall be personally liable for
17 the costs of such order or contract and, if already paid for out of
18 district funds, the amount may be recovered in the name of the
19 district in an appropriate action.

20 Sec. 13. (1) Neither the purchasing agent nor any member
21 of his or her office staff, if any, shall be financially interested
22 in or have any personal beneficial interest, either directly or
23 indirectly, in any contract or purchase order for any personal
24 property or services used by or furnished to any office, school, or
25 facility of the district, nor shall such purchasing agent or a member

1 of his or her staff, if any, receive directly or indirectly, from any
2 person, firm, or corporation to which any contract or purchase order
3 may be awarded, by rebate, gift, or otherwise, any money, anything of
4 value whatsoever, or any promise, obligation, or contract for future
5 reward or compensation. Any purchasing agent or any member of his or
6 her office staff, if any, who violates any of the provisions of the
7 School District Purchasing Act shall, upon conviction thereof, be
8 guilty of a Class IV felony. All contracts or agreements in violation
9 of this section are declared unlawful and shall be wholly void as an
10 obligation against the county.

11 (2) If there is no purchasing agent, the school board or
12 board of education acting pursuant to the School District Purchasing
13 Act shall be subject to section 49-14,103.01.

14 Sec. 14. The school board or board of education, in
15 addition to other powers granted it by law, may enter into contracts
16 for lease of real or personal property for authorized purposes. Such
17 leases shall not be restricted to a single year and may provide for
18 the purchase of the property in installment payments.

19 Sec. 15. (1) The school board or board of education, or
20 the purchasing agent, with the approval of the board, may authorize
21 an official or employee to sell surplus personal property, other than
22 mobile equipment, which is obsolete or not usable by the district and
23 which has a value of less than two thousand five hundred dollars. In
24 making such authorization, the board or purchasing agent may place
25 any restriction on the type or value of property to be sold, restrict

1 such authority to a single transaction or to a period of time, or
2 make any other appropriate restrictions or conditions.

3 (2) The board or the purchasing agent, with the approval
4 of the board, may authorize an official or employee to sell surplus
5 mobile equipment which is obsolete or not usable by the district and
6 which has a value of less than five thousand dollars. Surplus mobile
7 equipment which is obsolete or not usable by the district and which
8 has a value of five thousand dollars or more shall be sold through
9 competitive bidding.

10 (3) Any district official or employee granted the
11 authority to sell surplus personal property which is obsolete or not
12 usable by the district as prescribed in subsection (1) or (2) of this
13 section shall make a written report to the board within thirty days
14 after the end of the fiscal year reflecting, for each transaction,
15 the item sold, the name and address of the purchaser, the price paid
16 by the purchaser for each item, and the total amount paid by the
17 purchaser.

18 (4) The money generated by any sales authorized by this
19 section shall be payable to the treasurer of the district and shall
20 be credited to the funds of the office, school, or facility of the
21 district to which the property belonged.

22 (5) No person authorized by the board or purchasing agent
23 to make such sales shall be authorized to make or imply any warranty
24 of any kind whatsoever as to the nature, use, condition, or fitness
25 for a particular purpose of any property sold pursuant to this

1 section. Any person making sales authorized by this section shall
2 inform the purchaser that such property is being sold as is without
3 any warranty of any kind whatsoever.