

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 543

Introduced by Lowe, 37.

Read first time January 22, 2019

Committee: Government, Military and Veterans Affairs

1 A BILL FOR AN ACT relating to government; to amend sections 52-118,
2 73-306, and 81-1016, Reissue Revised Statutes of Nebraska, and
3 section 81-1316, Revised Statutes Cumulative Supplement, 2018; to
4 change provisions relating to payment bonds for construction
5 contracts for public buildings; to change powers and duties related
6 to rules and regulations of the Department of Administrative
7 Services; to exempt all state agency deputy directors and attorneys
8 from the State Personnel System as prescribed; and to repeal the
9 original sections.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 52-118, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 52-118 (1) Except as provided in subsection (2) of this section, it
4 shall be the duty of the State of Nebraska or any department or agency
5 thereof, the county boards, the contracting board of all cities,
6 villages, and school districts, all public boards empowered by law to
7 enter into a contract for the erecting, furnishing, or repairing of any
8 public building, bridge, highway, or other public structure or
9 improvement, and any officer or officers so empowered by law to enter
10 into such contract, to which the general provisions of the mechanics'
11 lien laws do not apply and when the mechanics and laborers have no lien
12 to secure the payment of their wages and suppliers who furnish material
13 and who lease equipment for such work have no lien to secure payment
14 therefor, to take from the person as defined in section 49-801 to whom
15 the contract is awarded a payment bond or bonds in a sum not less than
16 the contract price with a corporate surety company and agent selected by
17 such person, conditioned for the payment of all laborers and mechanics
18 for labor that is performed and for the payment for material and
19 equipment rental which is actually used or rented in the erecting,
20 furnishing, or repairing of the public structure or improvement or in
21 performing the contract.

22 (2) The labor and material payment bond or bonds referred to in
23 subsection (1) of this section shall not be required for (a) any project
24 bid or proposed by the State of Nebraska or any department or agency
25 thereof which has a total cost of fifteen thousand dollars or less or (b)
26 any project bid or proposed by any county board, contracting board of any
27 city, village, or school district, public board, or officer referred to
28 in subsection (1) of this section which has a total cost of ten thousand
29 dollars or less unless the state, department, agency, board, or officer
30 includes a bond requirement in the specifications for the project.

31 (3) The bond or bonds referred to in subsection (1) of this section

1 shall be to, filed with, approved by, and safely kept by the State of
2 Nebraska, department or agency thereof, officer or officers, or board
3 awarding the contract. No material or rental equipment shall be purchased
4 or contracted for and no work shall begin pursuant to any contract
5 referred to in subsection (1) of this section ~~shall be entered into by~~
6 ~~the State of Nebraska, department or agency thereof, officer or officers,~~
7 ~~or board referred to in subsection (1) of this section~~ until the bond or
8 bonds referred to in subsection (1) of this section have has been so
9 made, filed, and approved.

10 (4) The bond or bonds referred to in subsection (1) of this section
11 may be taken from the person to whom the contract is awarded by the owner
12 and owner's representative jointly as determined by the owner. The
13 corporate surety company referred to in subsection (1) of this section
14 shall have a rating acceptable to the owner as the owner may require.

15 Sec. 2. Section 73-306, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 73-306 The Department of Administrative Services may ~~shall~~ adopt and
18 promulgate rules and regulations to carry out sections 73-301 to 73-305.
19 Such rules and regulations shall apply to the Director of Administrative
20 Services in carrying out his or her duties pursuant to such sections.

21 Sec. 3. Section 81-1016, Reissue Revised Statutes of Nebraska, is
22 amended to read:

23 81-1016 The bureau may ~~shall~~ adopt and promulgate rules and
24 regulations necessary to administer sections 81-1008 to 81-1025.

25 Sec. 4. Section 81-1316, Revised Statutes Cumulative Supplement,
26 2018, is amended to read:

27 81-1316 (1) All agencies and personnel of state government shall be
28 covered by sections 81-1301 to 81-1319 and shall be considered subject to
29 the State Personnel System, except the following:

30 (a) All personnel of the office of the Governor;

31 (b) All personnel of the office of the Lieutenant Governor;

- 1 (c) All personnel of the office of the Secretary of State;
- 2 (d) All personnel of the office of the State Treasurer;
- 3 (e) All personnel of the office of the Attorney General;
- 4 (f) All personnel of the office of the Auditor of Public Accounts;
- 5 (g) All personnel of the Legislature;
- 6 (h) All personnel of the court systems;
- 7 (i) All personnel of the Board of Educational Lands and Funds;
- 8 (j) All personnel of the Public Service Commission;
- 9 (k) All personnel of the Nebraska Brand Committee;
- 10 (l) All personnel of the Commission of Industrial Relations;
- 11 (m) All personnel of the State Department of Education;
- 12 (n) All personnel of the Nebraska state colleges and the Board of
13 Trustees of the Nebraska State Colleges;
- 14 (o) All personnel of the University of Nebraska;
- 15 (p) All personnel of the Coordinating Commission for Postsecondary
16 Education;
- 17 (q) All personnel of the Governor's Policy Research Office, but not
18 to include personnel within the State Energy Office;
- 19 (r) All personnel of the Commission on Public Advocacy;
- 20 (s) All agency heads;
- 21 (t)(i) The Director of Behavioral Health of the Division of
22 Behavioral Health; (ii) the Director of Children and Family Services of
23 the Division of Children and Family Services; (iii) the Director of
24 Developmental Disabilities of the Division of Developmental Disabilities;
25 (iv) the Director of Medicaid and Long-Term Care of the Division of
26 Medicaid and Long-Term Care; and (v) the Director of Public Health of the
27 Division of Public Health;
- 28 (u) The chief medical officer established under section 81-3115, the
29 Administrator of the Office of Juvenile Services, and the chief executive
30 officers of the Beatrice State Developmental Center, Lincoln Regional
31 Center, Norfolk Regional Center, Hastings Regional Center, Grand Island

1 Veterans' Home, Norfolk Veterans' Home, Eastern Nebraska Veterans' Home,
2 Western Nebraska Veterans' Home, Youth Rehabilitation and Treatment
3 Center-Kearney, and Youth Rehabilitation and Treatment Center-Geneva;

4 (v) The chief executive officers of all facilities operated by the
5 Department of Correctional Services and the medical director for the
6 department appointed pursuant to section 83-4,156;

7 (w) All personnel employed as pharmacists, physicians,
8 psychiatrists, or psychologists by the Department of Correctional
9 Services;

10 (x) All personnel employed as pharmacists, physicians,
11 psychiatrists, psychologists, service area administrators, or facility
12 operating officers of the Department of Health and Human Services or the
13 Department of Veterans' Affairs;

14 (y) Deputies and examiners of the Department of Banking and Finance
15 and the Department of Insurance as set forth in sections 8-105 and
16 44-119, except for those deputies and examiners who remain in the State
17 Personnel System; ~~and~~

18 (z) All personnel of the Tax Equalization and Review Commission; ~~-~~

19 (aa) All personnel employed as deputy directors of all agencies.
20 Deputy director includes, but is not limited to, any position titled
21 deputy director and includes any person in the position to fill in and
22 have the authority to act in the absence of the director of an agency on
23 other than an interim basis. Each deputy director hired after the
24 effective date of this act shall hold office at the will of the director
25 of the agency and shall receive such salary as fixed by such director and
26 approved by the Governor based upon the level of credentials for the
27 position. Each employee who is employed as a deputy director on the
28 effective date of this act may elect to become employed at will. The
29 election to become employed at will may be made at any time upon
30 notification to the director of the agency in writing, but once made,
31 such election shall be final. Until the election to be employed at will

1 is made, the employee shall be treated as continuing participation in the
2 State Personnel System; and

3 (bb) All personnel employed as attorneys of all agencies. Attorney
4 includes, but is not limited to, any position titled attorney and
5 includes any position that requires the employee to have a Juris
6 Doctorate degree and be licensed to practice law in the State of
7 Nebraska. Each attorney hired after the effective date of this act shall
8 hold office at the will of the director of the agency and shall receive
9 such salary as fixed by such director and approved by the Governor based
10 upon the level of credentials for the position. Each employee who is
11 employed as an attorney on the effective date of this act may elect to
12 become employed at will. The election to become employed at will may be
13 made at any time upon notification to the director of the agency in
14 writing, but once made, such election shall be final. Until the election
15 to be employed at will is made, the employee shall be treated as
16 continuing participation in the State Personnel System.

17 (2) At each agency head's discretion, up to the following number of
18 additional positions may be exempted from the State Personnel System,
19 based on the following agency size categories:

	Number of Agency	Number of Noncovered
	Employees	Positions
	less than 25	0
	25 to 100	1
	101 to 250	2
	251 to 500	3
	501 to 1000	4
	1001 to 2000	5
	2001 to 3000	8
	3001 to 4000	11
	4001 to 5000	40
	over 5000	50

1 The purpose of having such noncovered positions shall be to allow
2 agency heads the opportunity to recruit, hire, and supervise critical,
3 confidential, or policymaking personnel without restrictions from
4 selection procedures, compensation rules, career protections, and
5 grievance privileges. Persons holding the noncovered positions shall
6 serve at the pleasure of the agency head and shall be paid salaries set
7 by the agency head. An agency with over five thousand employees shall
8 provide notice in writing to the Health and Human Services Committee of
9 the Legislature when forty noncovered positions have been filled by the
10 agency head pursuant to this subsection.

11 (3) No changes to this section or to the number of noncovered
12 positions within an agency shall affect the status of personnel employed
13 on the date the changes become operative without their prior written
14 agreement. A state employee's career protections or coverage by personnel
15 rules and regulations shall not be revoked by redesignation of the
16 employee's position as a noncovered position without the prior written
17 agreement of such employee.

18 Sec. 5. Original sections 52-118, 73-306, and 81-1016, Reissue
19 Revised Statutes of Nebraska, and section 81-1316, Revised Statutes
20 Cumulative Supplement, 2018, are repealed.