

## LEGISLATIVE BILL 1037

Approved by the Governor April 18, 2022

Introduced by Arch, 14; Cavanaugh, M., 6; Clements, 2; Day, 49; Geist, 25; Hansen, B., 16; Hansen, M., 26; Kolterman, 24; McKinney, 11; Murman, 38; Sanders, 45; Walz, 15; Williams, 36; Albrecht, 17; Wayne, 13.

A BILL FOR AN ACT relating to the Department of Administrative Services; to amend sections 81-153 and 81-1120, Reissue Revised Statutes of Nebraska; to require an evaluation of the state's procurement practices; to change powers and duties of the materiel division and provisions relating to the Materiel Division Revolving Fund; to provide operative dates; to repeal the original sections; and to declare an emergency.

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

Section 1. (1) The Department of Administrative Services shall contract for the completion of an evaluation of the state's procurement practices. The evaluation shall analyze past procurement challenges and address potential areas for improvement, including, but not limited to: (a) Due diligence, (b) evaluation of cost, (c) accountability for decisionmaking, and (d) protest procedures.

(2) The department shall contract with an outside consultant with expertise in government procurement within sixty days after the operative date of this section for the purpose of conducting such evaluation. Such contract shall not be subject to any competitive bidding requirement.

(3) The evaluation shall be collaborative and shall include involvement by members of the Legislature and members of the executive departments described in this subsection. The evaluation shall be completed with input from:

(a) The chairpersons of the Executive Board of the Legislative Council, the Government, Military and Veterans Affairs Committee of the Legislature, and the Health and Human Services Committee of the Legislature or the designees of such chairpersons;

(b) Other members of the Legislature as such chairpersons deem appropriate;

(c) The Department of Administrative Services;

(d) The Department of Health and Human Services; and

(e) Any other using agencies, as defined in section 81-145, deemed appropriate to participate by the Department of Administrative Services.

(4) The Department of Administrative Services shall electronically submit a report with the results of the evaluation to the Legislature and the Governor on or before November 15, 2022. Such report shall include recommendations for improvements to the state's procurement policies and practices.

Sec. 2. Section 81-153, Reissue Revised Statutes of Nebraska, is amended to read:

81-153 The materiel division shall have the power and duty to:

(1) Purchase or contract for, in the name of the state, the personal property required by the using agencies and the state;

(2) Promulgate, apply, and enforce standard specifications established as provided in section 81-154;

(3) Sell and dispose of personal property that is not needed by the state or its using agencies as provided in section 81-161.04 or initiate trade-ins when determined to be in the best interest of the state;

(4) Determine the utility, quality, fitness, and suitability of all personal property tendered or furnished;

(5) Make rules and regulations consistent with sections 81-145 to 81-171 and 81-1118 to 81-1118.06 to carry into effect the provisions thereof. Such rules and regulations shall include provisions for modifying and terminating purchase contracts and the cost principles to be used in such modification or termination;

(6) Employ such clerical, technical, and other assistants as may be necessary to properly administer such sections, fix their compensation, and prescribe their duties in connection therewith, subject to existing laws and appropriations;

(7) Allow the purchase of personal property without competitive bidding when the price has been established by the federal General Services Administration or to allow the purchase of personal property by participation in a contract competitively bid by another state or group of states, a group of states and any political subdivision of any other state, or a cooperative purchasing organization on behalf of a group of states. The division may also give consideration to a sheltered workshop pursuant to section 48-1503 in making such purchases;

(8) Enter into any personal property lease agreement when it appears to be in the best interest of the state; ~~and~~

(9) Negotiate purchases and contracts when conditions exist to defeat the purpose and principles of public competitive bidding; ~~and -~~

(10) Obtain an electronic procurement system, which shall be funded or paid for by providing the system provider with, as determined by the materiel

administrator, a percentage or portion of identified transactions. Such percentage or portion may be collected by the system provider from contractors and bidders.

Sec. 3. Section 81-1120, Reissue Revised Statutes of Nebraska, is amended to read:

81-1120 (1) There is hereby created the Materiel Division Revolving Fund. The fund shall be administered by the materiel division of the Department of Administrative Services. The fund shall consist of (a) fees paid for printing, copying, central supply, and mailing services provided to state agencies and local subdivisions by the division, and (b) assessments charged by the materiel administrator to state agencies, boards, and commissions for purchasing services provided by the division, and (c) any money collected pursuant to subdivision (10) of section 81-153. Such assessments shall be adequate to cover actual and necessary expenses that are associated with providing the service and not otherwise covered by the money collected pursuant to subdivision (10) of section 81-153. The fund shall be used to pay for expenses incurred by the division to provide such services.

(2) State agencies, boards, and commissions shall make the materiel division assessment payments to the fund no later than August 1 of each year, or in four equal payments to be made no later than August 1, October 1, February 1, and April 1 of each year, at the discretion of the materiel administrator.

(3) Any money in the fund 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. 4. Sections 2, 3, and 5 of this act become operative three calendar months after the adjournment of this legislative session. The other sections of this act become operative on their effective date.

Sec. 5. Original sections 81-153 and 81-1120, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 6. Since an emergency exists, this act takes effect when passed and approved according to law.