

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 980**

Introduced by Wallman, 30; Conrad, 46; Haar, 21; Karpisek, 32;  
Mello, 5; White, 8.

Read first time January 19, 2010

Committee: Government, Military and Veterans Affairs

A BILL

1 FOR AN ACT relating to state government; to amend sections 73-301,  
2 73-302, 73-303, 73-304, 73-305, 73-306, 73-307, and  
3 81-154.01, Reissue Revised Statutes of Nebraska; to name  
4 an act; to define terms; to change provisions relating to  
5 contracts for personal services; to provide requirements  
6 for privatization contracts; to harmonize provisions; to  
7 provide an operative date; and to repeal the original  
8 sections.

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

1           Section 1. This section, sections 73-301 to 73-307, and  
 2 sections 2 and 8 of this act shall be known and may be cited as the  
 3 State Personal Services Contract Act.

4           Sec. 2. For purposes of the State Personal Services  
 5 Contract Act:

6           (1) Contract for personal services means an agreement  
 7 by a contractor to provide human labor but does not mean a  
 8 contract to supply only goods or personal property. The term  
 9 includes contracts with private service providers, consultants,  
 10 and independent service contractors, except as provided in section  
 11 73-307;

12           (2) Director means the Director of Administrative  
 13 Services;

14           (3) Privatization contract means a contract for personal  
 15 services by which a person other than a state employee contracts  
 16 with a state agency to provide human labor valued at fifty thousand  
 17 dollars or more annually if the human labor is the same or  
 18 substantially similar to and in lieu of such labor provided, in  
 19 whole or in part, by permanent, classified state employees and if  
 20 the contract would result in a reduction in force of at least one  
 21 permanent, classified state employee position in the state agency  
 22 or the elimination of a vacant permanent, classified state employee  
 23 position in the state agency; and

24           (4) State agency means an agency of the state other than  
 25 the University of Nebraska, the Nebraska state colleges, and any

1 other board, commission, or agency established by the Constitution  
2 of Nebraska.

3           Sec. 3. Section 73-301, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5           73-301 (1) ~~The Director of Administrative Services~~  
6 director shall review and approve or disapprove any contract  
7 for personal services between a private entity and ~~any a~~ a state  
8 agency, ~~other than (1) the University of Nebraska, (2) the Nebraska~~  
9 ~~state colleges, and (3) any other board, commission, or agency~~  
10 ~~established by the Constitution of Nebraska, if, on the effective~~  
11 ~~date of the contract, the personal services are performed by~~  
12 ~~permanent state employees of the agency and will be replaced by~~  
13 ~~services performed by the private entity~~ or if the contract is a  
14 privatization contract. ~~The contract~~

15           (2) Each contract subject to approval by the director  
16 shall be subject to the public bidding procedures established in  
17 sections 81-145 to 81-162 except in emergencies approved by the  
18 Governor.

19           ~~For purposes of this section, contract for personal~~  
20 ~~services means an agreement by a contractor to provide human~~  
21 ~~labor but does not mean a contract to supply only goods or~~  
22 ~~personal property. The term includes contracts with private service~~  
23 ~~providers, consultants, and independent service contractors.~~

24           Sec. 4. Section 73-302, Reissue Revised Statutes of  
25 Nebraska, is amended to read:

1           73-302 (1) A state agency that seeks to enter into a  
2 contract ~~described in section 73-301~~ for personal services with  
3 a private entity shall submit the following information to the  
4 ~~Director of Administrative Services;~~ director:

5           (a) The proposed contract;T

6           (b) ~~a~~ A review of the long-term actual cost savings;T

7           (c) ~~the~~ The measurable goals for improving the quality of  
8 the service;T and

9           (d) ~~an~~ An assessment of the feasibility of alternatives  
10 within the agency to contracting for performance of the service.

11           (2) In calculating the cost savings under subsection (1)  
12 of this section, the state agency shall project, for twelve months  
13 and for sixty months, the following:

14           (a) Direct costs, including salary and fringe benefits;

15           (b) Indirect overhead costs which shall include only  
16 those costs that can be attributed solely to the work in question  
17 and that would not exist if the work were not performed by state  
18 employees. Indirect overhead costs shall include the pro rata share  
19 of existing administrative salaries and benefits, rents, equipment  
20 costs, utilities, and materials;

21           (c) Any continuing or transitional costs that are  
22 directly associated with contracting for the work, including  
23 unemployment compensation and the cost of transitional services;  
24 and

25           (d) Additional costs of performance of the work by state

1 employees, including the salaries and benefits of additional staff  
2 performing inspection, supervision, and monitoring duties and the  
3 cost of additional space, equipment, and materials needed to  
4 perform the services.

5 Sec. 5. Section 73-303, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7 73-303 A state agency that seeks to enter into a contract  
8 ~~described in section 73-301~~ for personal services shall also submit  
9 to the ~~Director of Administrative Services~~ director a formal plan  
10 of assistance to the state employees of such state agency who will  
11 be displaced by such contract. The plan shall include, but need not  
12 be limited to, the following provisions:

13 (1) Efforts by the state agency to place displaced  
14 employees in vacant positions in that agency or another state  
15 agency;

16 (2) Provisions in the contract for personal services, if  
17 feasible, for the hiring of displaced employees by the contractor;  
18 and

19 (3) Demonstration by the state agency that it has taken  
20 formal and positive steps in considering alternatives to such  
21 contract, including reorganization, reevaluation of service, and  
22 reevaluation of performance.

23 Sec. 6. Section 73-304, Reissue Revised Statutes of  
24 Nebraska, is amended to read:

25 73-304 The ~~Director of Administrative Services~~ director

1 may approve a proposed contract for personal services if:

2 (1) The potential economic advantage of contracting is  
3 not outweighed by the public's interest in having the particular  
4 services performed directly by the state agency;

5 (2) The contract does not adversely affect the state's  
6 affirmative action efforts;

7 (3) The contract will include adequate control mechanisms  
8 to insure that the services are provided pursuant to the terms of  
9 the contract; and

10 (4) The private entity is fairly compensating its  
11 employees.

12 Sec. 7. Section 73-305, Reissue Revised Statutes of  
13 Nebraska, is amended to read:

14 73-305 The ~~Director of Administrative Services~~ director  
15 shall, within forty-five days after receipt of the information  
16 described in sections 73-302 and 73-303 from the state agency,  
17 prepare a report detailing why the proposed contract for personal  
18 services was approved or disapproved. The report shall be  
19 delivered to the chairperson of the Appropriations Committee of the  
20 Legislature and the Legislative Fiscal Analyst.

21 Sec. 8. The director shall not approve a privatization  
22 contract unless all of the following requirements are satisfied:

23 (1) Thirty-five days prior to the beginning of any open  
24 bidding process, the state agency shall provide written notice  
25 to the collective-bargaining agent of the intent to seek to

1 enter a privatization contract. During such thirty-five-day period,  
2 the collective-bargaining agent shall have the opportunity to  
3 discuss alternatives to contracting. Such alternatives may include  
4 amendments to the contract if mutually agreed upon by the parties.  
5 Notices regarding the bid opportunity may not be issued during such  
6 thirty-five-day period. The continuation of discussions beyond the  
7 end of such thirty-five-day period shall not delay the issuance of  
8 notices;

9 (2) The proposed privatization contract is projected to  
10 result in overall cost savings to the state of at least ten percent  
11 above the projected cost of having the services provided by state  
12 employees covered under the State Employees Collective Bargaining  
13 Act; and

14 (3) (a) When comparing the cost of having a service  
15 provided by state employees covered under the State Employees  
16 Collective Bargaining Act to the cost of having the service  
17 provided by a contractor, the expected costs of having services  
18 provided by state employees covered under the State Employees  
19 Collective Bargaining Act and obtaining the service through a  
20 contractor should be compared over the life of the contract.  
21 One-time costs associated with having services provided by a  
22 contractor rather than state employees covered under the State  
23 Employees Collective Bargaining Act, such as the expected cost of  
24 leave pay-outs for separating employees, unemployment compensation,  
25 and the cost of meeting the state's obligation, if any, to continue

1 health insurance benefits, shall be spread over the expected life  
2 of the contract.

3 (b) For purposes of this subdivision, the basic cost of  
4 services by a contractor includes:

5 (i) The bid price or maximum acceptable bid identified by  
6 the state agency; and

7 (ii) Any additional costs to be incurred by the  
8 state agency for inspection, facilities, reimbursable expenses,  
9 supervision, training, and materials, but only to the extent that  
10 these costs exceed the costs the state agency could expect to incur  
11 for inspection, facilities, reimbursable expenses, and materials  
12 if the services were provided by state employees covered under the  
13 State Employees Collective Bargaining Act.

14 (c) For purposes of this subdivision, the basic cost  
15 for services provided by a state employee covered under the State  
16 Employees Collective Bargaining Act includes:

17 (i) Wages, benefits, and training;

18 (ii) The cost of supervision and facilities, but only to  
19 the extent that these costs exceed the costs the state agency could  
20 expect to incur for supervision or facilities if the services were  
21 provided by a contractor; and

22 (iii) The estimated cost of obtaining goods when the  
23 comparison is with the cost of a contract that includes both goods  
24 and services.

25 (d) Possible reductions in the cost of obtaining

1 services from state employees covered under the State Employees  
 2 Collective Bargaining Act that require concessions shall not  
 3 be considered unless proposed in writing by the certified  
 4 collective-bargaining agent and mutually agreed to by the state and  
 5 the collective-bargaining agent.

6           Sec. 9. Section 73-306, Reissue Revised Statutes of  
 7 Nebraska, is amended to read:

8           73-306 The Department of Administrative Services shall  
 9 adopt and promulgate rules and regulations to carry out ~~sections~~  
 10 ~~73-301 to 73-305.~~ the State Personal Services Contract Act. Such  
 11 rules and regulations shall apply to the ~~Director of Administrative~~  
 12 ~~Services~~ director in carrying out his or her duties pursuant to  
 13 ~~such sections.~~ the act.

14           Sec. 10. Section 73-307, Reissue Revised Statutes of  
 15 Nebraska, is amended to read:

16           73-307 ~~Sections 73-301 to 73-306~~ The State Personal  
 17 Services Contract Act shall not apply to the Nebraska Consultants'  
 18 Competitive Negotiation Act.

19           ~~Sections 73-301 to 73-306~~ The State Personal Services  
 20 Contract Act shall not be construed to apply to renewals of  
 21 contracts for personal services already approved pursuant to or not  
 22 subject to ~~such sections,~~ the act, to amendments to such contracts,  
 23 or to renewals of such amendments unless the amendments would  
 24 directly cause or result in the replacement by the private entity  
 25 of additional permanent state employees or positions greater than

1 the replacement caused by the original contract.

2           Sec. 11. Section 81-154.01, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4           81-154.01 The materiel division shall make available  
5 copies of current purchase agreements and standard specifications  
6 to the University of Nebraska. The University of Nebraska may  
7 utilize such purchase agreements if it determines that it would  
8 be to its advantage to do so. The materiel division may utilize  
9 purchase agreements entered into by the University of Nebraska  
10 upon a finding by the materiel administrator that the use of  
11 such agreements would be in the best interests of the state.  
12 For purposes of this section, purchase agreements do not include  
13 contracts for personal services subject to ~~sections 73-301 to~~  
14 ~~73-307.~~ the State Personal Services Contract Act.

15           Sec. 12. This act becomes operative on July 1, 2011.

16           Sec. 13. Original sections 73-301, 73-302, 73-303,  
17 73-304, 73-305, 73-306, 73-307, and 81-154.01, Reissue Revised  
18 Statutes of Nebraska, are repealed.