

LEGISLATIVE BILL 314

Approved by the Governor June 11, 1997

Introduced by Landis, 46

AN ACT relating to state government; to amend sections 72-812, 72-816, 81-154, 81-161.03, 81-174, 81-184, 81-1118, 81-1302, 81-1307, 81-1315, 81-1318, 81-1321, 81-1322, 81-1324, 81-1376, and 81-1391, Reissue Revised Statutes of Nebraska, and sections 50-401.01, 81-1108.17, 81-1317, and 81-1317.01, Revised Statutes Supplement, 1996; to change provisions relating to the personnel of the Legislature, the State Personnel System, the Director of Personnel, the State Personnel Board, the Task Force for Building Renewal, bidding procedures, and collective bargaining; to eliminate definitions and provisions relating to informal bidding, the merit system, rules and regulations, transferred employees, and pay plans; to create funds; to provide for performance evaluations and buy-out programs; to provide duties; to harmonize provisions; to provide operative dates; to repeal the original sections; to outright repeal sections 81-188, 81-1313, 81-1327, 81-1328.01, 81-1328.02, 81-1328.03, 81-1329, 81-1330, 81-1331, 81-1332, 81-1333, and 81-1334, Reissue Revised Statutes of Nebraska, and section 81-1354.05, Revised Statutes Supplement, 1996; 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 establish an annual performance evaluation process for the administrative head of each state agency that is not created by the Constitution of Nebraska and that has an administrative head who is not appointed by the Governor and who has an annual base salary in excess of thirty thousand dollars. The first evaluation of an administrative head pursuant to this section shall not occur prior to the completion of one year of service by the administrative head. The results of the evaluation shall be provided to the governing body which appoints the administrative head unless the evaluation is waived under subsection (3) of this section.

(2) The department shall establish and maintain a pool of individuals who are qualified to conduct performance evaluations of administrative heads and shall schedule annual performance evaluations for each administrative head who is subject to evaluation. The pool shall consist of not less than twenty qualified individuals. Each evaluation shall be conducted by a panel of not less than three and not more than five individuals as determined by the Director of Administrative Services and selected at random from the pool by the director or his or her designee. Each member of the panel shall be paid a daily or hourly fee set by the department at a level necessary to keep qualified individuals in the pool. The panel shall also be reimbursed for actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(3) The department shall provide staff support and model procedures and processes for the evaluations. After conducting an evaluation, the panel shall recommend one of the following to the governing body: (a) Retain; (b) no comments; (c) retain with qualifications; or (d) discharge. The rest of the evaluation shall be kept confidential, except that the governing body may discuss the evaluation with the panel in executive session and the administrative head may make any part of the evaluation results public. Evaluation work product and results shall not be deemed public records and may be withheld from the public pursuant to section 84-712.05. Each agency shall pay for the cost of the annual performance evaluation of its administrative head. If a governing body conducts an annual performance evaluation of the administrative head using procedures which meet the approval of the department, the annual performance evaluation under this section may be waived by the director.

Sec. 2. Section 50-401.01, Revised Statutes Supplement, 1996, is amended to read:

50-401.01. (1) The Legislative Council shall have an executive board, to be known as the Executive Board of the Legislative Council, which shall consist of a chairperson, a vice-chairperson, and six members of the Legislature, to be chosen by the Legislature at the commencement of each regular session of the Legislature when the speaker is chosen, and the Speaker of the Legislature. The Legislature at large shall elect two of its members from legislative districts Nos. 1, 2, 15, 16, 21, 23 to 30, 32, 34, 35, and

46, two from legislative districts Nos. 3 to 14, 20, 31, 39, and 45, and two from legislative districts Nos. 17 to 19, 22, 33, 36 to 38, 40 to 44, and 47 to 49. The Chairperson of the Committee on Appropriations shall serve as a nonvoting ex officio member of the executive board whenever the board is considering fiscal administration.

(2) The executive board shall:

(a) Supervise all services and service personnel of the Legislature and may employ and fix salaries compensation and other terms of employment for such personnel as may be needed to carry out the intent and activities of the Legislature or of the board, unless otherwise directed by the Legislature; and

(b) Appoint persons to fill the positions of Legislative Fiscal Analyst, Director of Research, and Revisor of Statutes. The persons appointed to these positions shall have training and experience as determined by the executive board and shall serve at the pleasure of the executive board. Their respective salaries shall be set by the executive board.

(3) Notwithstanding any other provision of law, the executive board may contract to obtain legal, auditing, accounting, actuarial, or other professional services or advice for or on behalf of the executive board, the Legislative Council, the Legislature, or any member of the Legislature. The providers of such services or advice shall meet or exceed the minimum professional standards or requirements established or specified by their respective professional organizations or licensing entities or by federal law. Such contracts, the deliberations of the executive board with respect to such contracts, and the work product resulting from such contracts shall not be subject to review or approval by any other entity of state government.

Sec. 3. Section 72-812, Reissue Revised Statutes of Nebraska, is amended to read:

72-812. The Vacant Building and Excess Land Committee is hereby created. The committee shall be composed of the Director of Administrative Services, the State Building Administrator, and the ~~administrator-consultant~~ administrator of the Task Force for Building Renewal created pursuant to section 81-174. When reviewing and considering action to be taken in regard to a particular building or piece of land, the committee shall also include a representative of the state agency responsible for the building or land as a nonvoting member.

Sec. 4. Section 72-816, Reissue Revised Statutes of Nebraska, is amended to read:

72-816. The Vacant Building and Excess Land Fund is created. The Department of Administrative Services shall administer the fund which shall be used to pay for the maintenance of vacant state buildings and excess state land and for expenses related to the disposal of state buildings and land referred to the department by the committee pursuant to sections 72-811 to 72-818. The fund shall consist of appropriations made to the fund and proceeds credited to the fund pursuant to section 72-815.

Funds may be transferred from the Vacant Building and Excess Land Fund to the General Fund at the direction of the Legislature. Any money in the Vacant Building and Excess Land 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.

If there are insufficient funds in the fund to enable the department to fully implement the orders of the committee issued pursuant to sections 72-811 to 72-818, the department shall implement them in the order which most efficiently meets the purposes of such sections.

Funds appropriated to the Task Force for Building Renewal shall not be used to carry out any of the purposes of such sections (1) unless the building would otherwise qualify for the use of such funds pursuant to the Deferred Building Renewal Act and (2) except for any expenses incurred by the ~~administrator-consultant~~ administrator of the Task Force for Building Renewal in fulfilling his or her duties under such sections.

Sec. 5. Section 81-154, Reissue Revised Statutes of Nebraska, is amended to read:

81-154. The materiel division shall establish and maintain a specifications and standards program and coordinate the establishment and maintenance of uniform standards and 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 uniform standards and specifications and shall encourage and foster the use of standard specifications in order that most efficient purchase of personal property may be continuously accomplished. All such standards and 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 five ~~ten~~ thousand

dollars and bids cannot be obtained from three bidders, then the standards and 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 standards and 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. 6. 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 desiring to increase the maximum limit of its direct market purchase authorization. Such criteria shall include a requirement that no agency office located in Lancaster County shall make direct market purchases of any items available from the materiel division's central stores division. Purchases for miscellaneous needs may be made directly by any agency without prior approval from the materiel division for purchases not to exceed one hundred of less than five thousand dollars, except that no agency office located in Lancaster County shall purchase directly those items available from the materiel division's central stores 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. 7. The Master Lease Program Trust Fund is created. The fund shall consist of lease payments made by state agencies and shall be used to pay any lessor who is a party to any financing agreement sponsored by the Department of Administrative Services. Any earnings from the fund credited to the Accounting Division Revolving Fund shall be used for payment of expenses incurred in administering the financing agreements. Any money in the Master Lease Program Trust 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. 8. Section 81-174, Reissue Revised Statutes of Nebraska, is amended to read:

81-174. There is hereby established the Task Force for Building Renewal to carry out the provisions of sections 81-173 to 81-190 Deferred Building Renewal Act. The Governor shall appoint an administrator-consultant administrator as the chief officer of the task force. The administrator-consultant administrator shall retain not more than four consultants to assist him or her in the administration of the provisions of sections 81-173 to 81-190 Deferred Building Renewal Act. Each task force member shall be selected on the basis of his or her ability to administer and accomplish efficient building maintenance and shall have knowledge of and experience in the contracting of construction projects and the maintaining of buildings. Members shall be selected so that the task force represents diversified expertise needed for maintenance judgments and, if practical, each member should reside at a location that allows efficient visitation of state-owned buildings. Voting membership of the task force shall be limited to the five members identified in this section.

Sec. 9. Section 81-184, Reissue Revised Statutes of Nebraska, is amended to read:

81-184. The cost of administration of the Deferred Building Renewal Act shall be paid from the Building Renewal Allocation General Fund as the

Legislature shall appropriate. The Governor shall each odd-numbered year submit a specific itemized appropriation request to cover such administrative costs.

Sec. 10. Section 81-1108.17, Revised Statutes Supplement, 1996, is amended to read:

81-1108.17. (1) The Department of Administrative Services shall be the custodian of the State Capitol and capitol grounds, the state laboratory and laboratory grounds, the Governor's Mansion and grounds, and all other buildings and lands owned or leased by the State of Nebraska except as exempted under subsection (5) of section 81-1108.15.

(2) To aid in the performance of his or her duties, the Director of Administrative Services shall appoint an administrator. The administrator, under the direction of the director, shall have complete control and all powers necessary to properly maintain the capitol and capitol grounds, the state laboratory and laboratory grounds, the Governor's Mansion and grounds, and all other buildings and lands owned or leased by the State of Nebraska except as exempted under subsection (5) of section 81-1108.15.

(3) The administrator shall have the authority to develop, produce, and provide for free distribution or sale books, brochures, pictures, slides, postcards, and other informational or promotional material concerning the capitol. The administrator shall have control over the money received from the sale of such material and from private or public donations. Such proceeds and donations shall be placed in the Department of Administrative Services Cash Fund, which fund is hereby created, and shall be used for the purpose of funding projects designed to restore the capitol building to its original condition and the production of such promotional materials. Such projects shall be prescribed by the administrator upon the advice of the Nebraska Capitol Commission pursuant to the approved comprehensive capital facilities plan for the capitol building.

(4) The administrator, under the direction of the director, is authorized to lease space or to provide facilities for restaurants, cafeterias, or other services and newsstands for the convenience of state officers and employees in the State Capitol or buildings leased when such space is not needed for public use. Proceeds from the operations and rental of such facilities shall be credited to the State Building Revolving Fund and shall be expended as necessary for the purpose of offsetting the costs of operating and maintaining such facilities. Receipts from public parking charges shall be credited to the Department of Administrative Services Cash Fund and shall be used for the purpose of funding projects designed to restore the capitol building to its original condition.

(5) The administrator, under the direction of the director, is authorized to lease space or to provide facilities for the parking of state officers' and employees' vehicles as well as state-owned vehicles. He or she is authorized to lease, rent, or permit for use as apartments, dwellings, offices, and parking areas any or all of the property acquired for parking or for future building needs. All leases shall contain the provision that upon notice that such property is needed for public use, the use or occupancy of the property shall cease. All money received as rent from any property acquired shall be remitted to the State Treasurer and credited to the State Building Revolving Fund, except that receipts from parking charges for employee, public, and state vehicle parking shall be credited to the Capitol Buildings Parking Revolving Fund, which fund is hereby created, for the purposes of providing and maintaining parking for state employees and visitors.

(6) The system of charges for state buildings and facilities shall include an amount sufficient to (a) accurately reflect operating, maintenance, renovation, and repair costs and (b) fund building renewal projects under the Deferred Building Renewal Act. The proceeds received under subdivision (a) of this subsection shall be remitted to the State Treasurer for credit to the State Building Revolving Fund. The proceeds received under subdivision (b) of this subsection shall be remitted to the State Treasurer for credit to the Building Renewal Allocation Fund. The administrator shall develop a system of equitable billings and charges for parking facilities under his or her control and used by state employees and state vehicles. The system of charges shall include an amount sufficient to cover the operating, maintenance, and repair costs associated with the parking facilities. The administrator, under policies and procedures established by the Director of Administrative Services, may expend funds from time to time credited to the Capitol Buildings Parking Revolving Fund for the purposes of obtaining, operating, and maintaining parking facilities for employees and visitors. All money derived from any source other than that to be credited to the State Building Revolving Fund, the Capitol Buildings Parking Revolving Fund, the Department of

Administrative Services Cash Fund, the Building Renewal Allocation Fund, or other appropriate revolving fund shall be remitted to the State Treasurer and credited to the General Fund.

(7) The administrator shall acquire a flag of the United States of America of suitable and convenient size. The colors of the flag shall be fast colors, and the cloth shall be of substantial material. The administrator shall acquire, construct, and locate in a suitable place on the State Capitol proper, or its environs, a suitable flagstaff or pole upon which the flag of the United States of America shall be conspicuously displayed during each day of the year. The flag shall be so arranged on the staff or pole that it may be raised or lowered with ease.

(8) The administrator shall see that all parts and apartments of the capitol and buildings leased are properly ventilated and kept clean and in order. The administrator shall see that all visitors, at proper hours, are properly escorted over the capitol grounds and through the capitol, free of expense.

(9) The administrator shall at all times have charge of and supervision over the police, janitors, and other employees in and about the capitol and capitol grounds, state laboratory and laboratory grounds, the Governor's Mansion and grounds, and all other buildings and lands owned or leased by the State of Nebraska except as exempted under subsection (5) of section 81-1108.15. The administrator shall institute, in the name of the state and with the advice of the Attorney General, civil and criminal proceedings against any person for injury or threatened injury to any public property in the capitol or on the capitol grounds, the state laboratory and laboratory grounds, the Governor's Mansion and grounds, and all other buildings and lands owned or leased by the State of Nebraska under his or her control, or for committing or threatening to commit a nuisance in or on the buildings or lands.

(10) The administrator shall keep in his or her office a complete record containing all plans and surveys of the capitol and capitol grounds, state laboratory and grounds, Governor's Mansion and grounds, and all other buildings and lands owned or leased by the State of Nebraska and of underground construction under such buildings and lands.

Sec. 11. Section 81-1118, Reissue Revised Statutes of Nebraska, is amended to read:

81-1118. The materiel division of the Department of Administrative Services is hereby established and shall be managed by the materiel administrator who, except with respect to real property, shall assume the former role of Purchasing Agent.

There are hereby established the following five bureaus of the materiel division of the Department of Administrative Services which shall have the following duties, powers, and responsibilities:

(1) Central stores bureau shall be responsible for general stores, food, scientific, photo, visual aids material, and the book stores. In addition, the central stores bureau shall keep inventory-control records, requisition material from the purchasing bureau, and dispose of surplus material;

(2) The traffic bureau shall be responsible for the transportation of material, tracking shipments, and making freight claims;

(3) The reproduction services bureau shall be responsible for specifications and for receiving bids and placing orders to the lowest and best commercial bidder for all printing, reproduction, and mailing operations for the state. The reproduction services bureau shall also be responsible for coordinating all existing printing, reproduction, and mailing operations of the state which shall be limited to existing state facilities;

(4) The standards and specifications bureau shall be responsible for establishing guidelines as to the quality of items purchased unless otherwise provided for by law; and

(5) The purchasing bureau shall be responsible for all purchases by all state agencies other than the University of Nebraska. The materiel division shall administer the public notice and bidding procedures and any other areas designated by the Director of Administrative Services to carry out the lease or purchase of personal property. All purchases of and contracts for materials, supplies, or equipment and all leases of personal property shall be made in the following manner except in emergencies approved by the Governor:

(a) By a competitive formal sealed bidding process through the materiel division in all cases in which the purchases are of estimated value in the amount of five ~~ten~~ thousand dollars or more;

(b) By a competitive informal bidding through the materiel division in all cases in which the purchases are of estimated value equal to or

exceeding ~~twenty-five hundred five thousand~~ five thousand dollars but less than ~~five ten thousand~~ five thousand dollars;

(c) By unrestricted open market purchases through the materiel division in all cases in which purchases are of estimated value of less than ~~twenty-five hundred five thousand~~ five thousand dollars;

(d) All requisitions for whatever purpose coming to the purchasing bureau shall be in conformance with the approved budget of the requisitioning department or agency; and

(e) All contracts for purchases and leases shall be bid as a single whole item. In no case shall contracts be divided or fractionated in order to produce several contracts which are of an estimated value below that required for competitive bidding.

Nothing in this section shall be construed to require that works of art must be procured through the materiel division.

Sec. 12. Section 81-1302, Reissue Revised Statutes of Nebraska, is amended to read:

81-1302. As used in sections 81-1301 to 81-1316 and 81-1354.01, unless the context otherwise requires:

(1) Gender when referring to masculine also includes feminine;

(2) State personnel service shall refer to the personnel system established by such sections together with those aspects of personnel systems established under any other law as such systems may be affected by such sections;

(3) Position shall mean an office or employment in an agency of this state, whether part time or full time, temporary or permanent, and whether occupied or vacant, or existing for the performance of specific duties;

(4) Employee shall mean any person in the employ of an agency or department who receives a salary or wage;

(5) Position title shall mean the title assigned a position having discrete characteristics relative to the duties, responsibilities, skills, training, experience, and other factors under the state position classification plan;

(6) Job description shall mean the description of duties, responsibilities, typical tasks to be performed, degree of supervision to which subject or for which responsible, and conditions under which an incumbent in a given position shall perform, for each class and position in the state service;

(7) Pay grade shall mean a specified range of salary or wage, the starting and intermediate rates within such range, and the maximum rate of such range as may be approved by legislative enactment;

(8) Position classification plan shall mean the system of classifying each position in the state service in accordance with the kinds of skills, experience, working conditions, and other factors peculiar to each and the structuring of classes of positions in accordance with the different kinds of treatment necessary for each class and the positions within each class;

(9) Salary or pay plan shall mean a plan by which positions, as previously arranged under the classification plan, are evaluated by classes in relation to one another, by which pay grades are specified for each class of positions, and which is governed by a set of fundamental rules authorizing and controlling changes in the pay of classes of positions and their incumbents as may be provided for by law and rules and regulations promulgated pursuant to such law;

(10) Fiscal year shall mean the twelve months between July 1 of one year and June 30 of the next succeeding year;

(11) Biennium shall mean the twenty-four months between July 1 of each odd-numbered year and June 30 of the year following the next succeeding calendar year;

(12) Certification of employee or applicant shall mean the act of the Director of Personnel by which a candidate for employment by an agency of the state or an employee of an agency of the state shall have been found minimally qualified for the duties of the position sought or held and which shall then authorize such an applicant to be employed or retained, as the case may be;

(13) Certified employee shall mean an employee of the state who has been examined as deemed appropriate by the Director of Personnel and who has been found minimally qualified for the position he or she holds;

(14) (12) Qualified shall mean, with reference either to a candidate for employment or an employee, that he or she has been examined by appropriate means and found to possess the minimum ability and the minimum requirements of training, experience, and other requirements for the position sought or held and may therefore be certified as eligible for employment in such position;

(15) (13) Job specifications shall mean a formal statement of

skills, experience, personal qualities, education, and other factors to be required of persons who hold or seek employment for each position in the state's service;

(16) (14) Recruiting shall mean the act or actions through which potentially qualified persons are caused to apply for employment with any agency of the state;

(17) Examination shall mean the identification of minimum requirements for filling a position in the state's service through objectively rated written examination, performance tests, review of credentials, review of employment references, oral interview, or any combination of such activities as may be deemed appropriate by the Director of Personnel;

(18) Register shall mean an official list containing the names and other appropriate data on each person who shall have qualified for employment for each position in the state's service;

(19) Appointment shall mean the act by which a candidate for employment shall become an employee of the state;

(20) (15) Classification shall mean the process by which the duties, responsibilities, working conditions, skills required, experience required, supervision received or exercised, or both, and other factors relative to a position are established in proper relationship to the same factors for all other positions in the state's service and from which there shall result a job description, job specifications, and assignment to a pay grade for the position so affected;

(21) (16) Budget division shall mean the budget division of the Department of Administrative Services;

(22) (17) Staffing pattern shall mean the number of positions in each class and the specific classes of positions as may be authorized for each department or agency of state government by the budget division;

(23) (18) Authorized position shall mean any position the creation of which has been approved by the budget division;

(24) (19) Merit increase shall mean any increase in the rate of pay for any position in the state's service beyond the starting rate and which shall be provided for by the pay plan and which shall be granted in recognition of length of service, superior or outstanding performance, or as otherwise provided for by law;

(25) Certification of payrolls shall mean the review of all payrolls or payroll vouchers by the Director of Personnel to assure the propriety of rates of pay, position classification, merit increases, staffing pattern, and other factors as may be provided by law and the affixing of his or her statement that each of the employees covered by such payroll or voucher is properly provided for thereon and may be issued a warrant for the amount provided thereon;

(26) (20) Grievance shall mean a management action resulting in an injury, injustice, or wrong involving a misinterpretation or misapplication of rules promulgated by the personnel division or agency rules and regulations;

(27) (21) Director shall mean the Director of Personnel; and

(28) (22) Personnel division shall mean the personnel division of the Department of Administrative Services.

Sec. 13. Section 81-1307, Reissue Revised Statutes of Nebraska, is amended to read:

81-1307. The Director of Personnel shall be responsible for the administration of the personnel division. Subject to the review powers of the State Personnel Board, the director shall be responsible for development of recommendations on personnel policy and for development of specific administrative systems and shall have the authority to adopt, promulgate, and enforce rules and regulations pertaining thereto. The director shall be responsible for specific administrative systems including, but not limited to, the following:

(1) Employment Services:

(a) General employment policies and procedures;

(b) Position classification plans;

(c) Job descriptions;

(d) Job specifications;

(e) Salary or pay plans;

(f) Staffing patterns; and

(g) Recruiting, examination, and certification of qualified

applicants for employment and the maintenance of registers of qualified candidates applicants for employment for all positions in state government;

(2) Personnel Records:

(a) A system of records and statistical reports containing general data on all employees, including current salary levels and such other information as may be required by the operating needs of state departments and

agencies and the budget division; and

(b) Standards for the development and maintenance of personnel records to be maintained within operating departments of the state government;

(3) Personnel Management:

(a) Minimum standards for evaluation of employee efficiency and a system of regular evaluation of employee performance;

(b) Administrative guidelines governing such matters as hours of work, promotions, transfers, demotions, probation, terminations, reductions in force, salary actions, and other such matters as may not be otherwise provided for by law;

(c) Administrative policies and general procedural instructions for use by all state agencies relating to such matters as employee benefits, vacation, sick leave, holidays, insurance, sickness and accident benefits, and other employee benefits as the Legislature may from time to time prescribe; and

(d) A system of formally defined relationships between the personnel division and departments and agencies to be covered by the State Personnel System;

(4) Salary and Wage Survey: Measuring, through the use of surveys, the state's comparative level of employee compensation with the labor market;

(5) Payroll Certification and Staffing Patterns: The director shall work with the budget division in the provision of certified information or in the performance of work as necessary to assure the following:

(a) That payrolls of all departments and agencies of the state government consist of employees who have been authorized for those departments and agencies by the budget division;

(b) That staffing

(a) Staffing patterns for each department and agency of state government that conform with those authorized by the budget division;

(c) That revisions (b) Revisions to staffing patterns of all departments and agencies that have been approved by the budget division;

(d) That each monthly or other payroll of each department and agency of state government is reviewed to assure that salary increases for any employee are in accordance with the approved state pay plan and that all actions affecting payrolls have been authorized by the budget division;

(e) That merit

(c) Merit increases provided for any employee of the state that are the result of positive action by the appropriate supervisor; and

(f) That the (d) The state's pay plan, as enacted by the Legislature, together with such amendments as may occur, is explained in appropriate handbooks for employees of the state;

(g) That pay plans covering any position or positions exempted from the state personnel service are reviewed by the Director of Personnel; and

(h) That comparative salary data is prepared biennially for all positions exempted from the state personnel service;

(6) Temporary Employee Pool: The director shall administer a temporary employee applicant pool from which state agencies can draw when in need of a short-term labor supply; and

(7) Employee Recognition Program: The director shall administer an employee recognition program for state employees. The program shall serve as the authorized program for honoring state employees for dedicated and quality service to the government of the State of Nebraska.

Sec. 14. Section 81-1315, Reissue Revised Statutes of Nebraska, is amended to read:

81-1315. State employees subject to sections 81-1301 to 81-1316 shall be prohibited from participation in political activities during office hours or while otherwise engaged in the performance of official duties as employees of this state. Any employee violating this section shall be subject to disciplinary action under the rules and regulations adopted and promulgated pursuant to sections 81-1301 to 81-1334 ~~81-1328~~. Such disciplinary action may include demotion, dismissal, reduction of salary, or suspension.

Sec. 15. Section 81-1317, Revised Statutes Supplement, 1996, is amended to read:

81-1317. Except as may be prohibited by the Industrial Relations Act or the State Employees Collective Bargaining Act and except for the pay increases provided by the Legislature, the Director of Personnel shall have authority to establish programs and otherwise adjust terms and conditions of employment for FY1995-96 and FY1996-97 ~~FY1997-98~~ and ~~FY1998-99~~ for employees not covered by collective-bargaining agreements, including terms and conditions of employment which may not be specifically provided or may otherwise be provided by law, in order to make such terms and conditions of employment more consistent with those of such covered employees or otherwise

address changes arising out of collective bargaining, but in no event shall the adjustment exceed the benefits derived from collective bargaining.

Sec. 16. Section 81-1317.01, Revised Statutes Supplement, 1996, is amended to read:

81-1317.01. Except for employees of the University of Nebraska and the state colleges and except as may be prohibited by the Industrial Relations Act or the State Employees Collective Bargaining Act, terms and conditions of employment which may otherwise be provided by law for employees not covered under the State Personnel System may be adjusted by the employer-representative as defined in section 81-1371 for ~~FY1995-96 and FY1996-97 FY1997-98 and FY1998-99~~ to address changes arising out of collective bargaining, but in no event shall the adjustment exceed the benefits derived from collective bargaining.

Sec. 17. Section 81-1318, Reissue Revised Statutes of Nebraska, is amended to read:

81-1318. There is hereby created a State Personnel Board composed of five persons appointed by the Governor subject to confirmation by the Legislature. Not more than three of the members shall be members of the same political party. Each board member ~~-serving on August 30, 1987,~~ shall retain his or her position until resignation or until a successor is appointed at the expiration of the member's appointive term. Any member of the board may be removed by the Governor, upon notice and hearing as determined by the Governor, for neglect of duty or malfeasance in office, but for no other cause. New members shall be appointed for terms of five years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the member succeeded. State employees covered by sections 81-1301 to 81-1319 shall not be appointed to the State Personnel Board. At least three appointees to the board shall have experience in personnel administration, business or public administration, labor relations, or law. The board, by majority vote, shall designate one member to serve as chairperson. The principal office and business address of the board shall be the personnel division of the Department of Administrative Services in Lincoln, Nebraska, but the board may meet and exercise any or all of its powers at any other location.

The board may delegate to a group of three or more members any or all of the powers which it may exercise. The board shall be authorized to designate and delegate its powers under section 81-1318.01 to hearing officers to conduct grievance appeal hearings and recommend a decision to the board for final action. A vacancy in the board shall not impair the right of the remaining members to exercise all the powers of the board, and three members of the board shall at all times constitute a quorum of the board.

Sec. 18. Section 81-1321, Reissue Revised Statutes of Nebraska, is amended to read:

81-1321. As used in sections 81-1320 to ~~81-1327~~ 81-1326, state employee shall mean any person or officer employed by the state including the head of any department or agency, except when such head is a board or commission, and who works a full-time or part-time schedule on an ongoing basis.

Sec. 19. Section 81-1322, Reissue Revised Statutes of Nebraska, is amended to read:

81-1322. For the purpose of sections 81-1320 to ~~81-1327~~ 81-1326, any state employee whose employment has been terminated, for other than disciplinary reasons, and who returns to state employment within one year from the date of such termination shall have his or her service for sick leave entitlement computed by combining prior continuous service with current continuous service disregarding such period of absence and shall have reinstated to his or her sick leave account all earned sick leave not used at the time of his or her departure, except that any employee who has retired or voluntarily terminated in lieu of retirement shall, if he or she returns to state employment, be considered a new employee for the purpose of sick leave entitlement.

Sec. 20. Section 81-1324, Reissue Revised Statutes of Nebraska, is amended to read:

81-1324. All sick leave shall expire on the date of separation and no employee shall be reimbursed for sick leave outstanding at the time of termination, except as provided in sections 81-1320 to ~~81-1327~~ 81-1326.

Sec. 21. Section 81-1376, Reissue Revised Statutes of Nebraska, is amended to read:

81-1376. There is hereby created within the Department of Administrative Services the Division of Employee Relations to be headed by the Chief Negotiator who shall be appointed by, serve at the pleasure of, and represent the Governor. The Director of Administrative Services may serve as

the Chief Negotiator. The division shall be responsible for negotiating and administering all labor contracts entered into by the State of Nebraska, except that the division shall not be responsible for contracts entered into by constitutional offices, the Board of Trustees of the Nebraska State Colleges, and the Board of Regents of the University of Nebraska.

The Chief Negotiator shall for agencies within the jurisdiction of the division:

- (1) Negotiate or supervise the negotiations of labor contracts on a statewide basis;
- (2) Be responsible for the administration of all collective-bargaining agreements, except that the Chief Negotiator may delegate such responsibility to designated representatives who may be employees of state agencies when the Chief Negotiator deems it appropriate;
- (3) Be vested with authority on all mandatory topics of bargaining to negotiate the contracts. Contracts may adjust or change rates of pay and other terms and conditions of employment that are mandatory topics of bargaining pursuant to the Industrial Relations Act and the State Employees Collective Bargaining Act;
- (4) Make recommendations to the Governor and Legislature regarding wages, hours, and conditions of employment for all unorganized employees;
- (5) Consult with agency and department heads regarding possible terms of labor contracts and administration of agreements when appropriate; and
- (6) Manage the day-to-day operations of the division.

The division and the Chief Negotiator may represent any of the constitutional offices in labor contract negotiations and administration of contracts if requested to do so by such offices by resolution of the governing officer or body submitted to the Chief Negotiator and affected collective-bargaining agent and filed with the commission.

The responsibilities for negotiating contracts with employees of the Nebraska state colleges and the University of Nebraska shall not be exercised by the division and the Chief Negotiator. The Board of Regents and the Board of Trustees of the Nebraska State Colleges shall be responsible for negotiating contracts with exclusive collective-bargaining agents for their employees.

Sec. 22. The Health and Life Benefit Administration Cash Fund is created. The fund shall consist of payments made by individuals eligible for program benefits, transfers from the State Employees Insurance Fund for administrative and operation expenses as authorized by the Legislature, and interest earnings as authorized by the Legislature. The fund shall be used by the risk management and state claims division of the Department of Administrative Services to administer the provisions of the federal Public Health Service Act and for the administration of the section 125 plan. 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. Any money in the Personnel Division Cash Fund on the effective date of this act shall be transferred to the Health and Life Benefit Administration Cash Fund.

Sec. 23. Section 81-1391, Reissue Revised Statutes of Nebraska, is amended to read:

81-1391. Any state employee who is a certified disaster service volunteer of the American Red Cross may, with the authorization of his or her supervisor, be granted a leave not to exceed fifteen working days in each year to participate in specialized disaster relief services in Nebraska for the American Red Cross, upon the request of the American Red Cross, without loss of pay, vacation time, sick leave, or earned overtime accumulation.

For purposes of this section, state employee shall have the definition found in section 81-1331 means any employee of the state or of any state agency, specifically including all administrative, professional, academic, and other personnel of the University of Nebraska, the state colleges, and the State Department of Education, but excluding any employee or officer of the state whose salary is set by the Constitution of Nebraska or by statute. An employee of any local government or entity, including any entity created by local public agencies pursuant to the Interlocal Cooperation Act, shall not be considered a state employee for purposes of this section.

Sec. 24. (1) The Legislature finds that the state must use its human resources in the most cost-effective manner possible by employing skilled workers at reasonable rates and in positions in which their skills will be best utilized. The Legislature also finds that it is necessary to create a program that will give state employees the opportunity to voluntarily leave state government with compensation for surrendering vested rights under the State Personnel System or the state's collective-bargaining agreement.

(2) The personnel division of the Department of Administrative Services shall develop, administer, and coordinate all requests from agencies for an employee buy-out program. The personnel division shall determine under what conditions a buy-out is offered, including the appropriateness of a buy-out and the number of buy-outs to be offered.

(3) If an agency determines there is a need for a buy-out program, the director of the affected agency shall submit a proposed plan detailing the scope of the buy-out, addressing such factors as geographic sites, classifications impacted, future agency needs, and potential costs. Any proposed buy-out program shall include an independent actuarial analysis to assist in determining the value of the vested rights identified. The formula of such actuarial analysis shall be uniformly applied to all offered buy-out plans. In no event shall payments which exceed the valuation determined by the independent actuarial analysis be offered as part of a buy-out program. The Director of Administrative Services shall be responsible for approving any buy-out plan prior to the offering of the plan to eligible employees.

(4) For purposes of this section:

(a) Agency means any agency, department, commission, or board of state government whose employees are covered under the State Personnel System or a collective bargaining agreement;

(b) Buy-out means the situation in which a state employee leaves his or her position with state government and waives any vested rights in connection with that employment in exchange for some form of compensation, whether direct or indirect, by the state;

(c) Employee means those employees covered under the State Personnel System or a collective bargaining agreement; and

(d) Vested rights includes, but is not limited to, the continued right to employment, vacation leave, sick leave, holiday leave, retirement, and insurance benefits.

(5) The Director of Administrative Services shall provide an annual report regarding all employee buy-outs to the Governor and the Legislature at the end of each fiscal year.

(6) The director shall adopt and promulgate rules and regulations to carry out this section.

Sec. 25. Sections 2, 12 to 14, 17 to 20, 23, 24, 27, and 29 of this act become operative three calendar months after adjournment of this legislative session. The other sections of this act become operative on their effective date.

Sec. 26. Original sections 72-812, 72-816, 81-154, 81-161.03, 81-174, 81-184, 81-1118, and 81-1376, Reissue Revised Statutes of Nebraska, and sections 81-1108.17, 81-1317, and 81-1317.01, Revised Statutes Supplement, 1996, are repealed.

Sec. 27. Original sections 81-1302, 81-1307, 81-1315, 81-1318, 81-1321, 81-1322, 81-1324, and 81-1391, Reissue Revised Statutes of Nebraska, and section 50-401.01, Revised Statutes Supplement, 1996, are repealed.

Sec. 28. The following sections are outright repealed: Section 81-188, Reissue Revised Statutes of Nebraska, and section 81-1354.05, Revised Statutes Supplement, 1996.

Sec. 29. The following sections are outright repealed: Sections 81-1313, 81-1327, 81-1328.01, 81-1328.02, 81-1328.03, 81-1329, 81-1330, 81-1331, 81-1332, 81-1333, and 81-1334, Reissue Revised Statutes of Nebraska.

Sec. 30. Since an emergency exists, this act takes effect when passed and approved according to law.