

FIRST REGULAR SESSION

# SENATE BILL NO. 528

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCOTT.

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TERRY L. SPIELER, Secretary.

2101S.011

## AN ACT

To repeal sections 34.010, 34.031, 34.032, 34.040, 34.042, 34.044, 34.065, and 34.130, RSMo, and to enact in lieu thereof six new sections relating to state purchasing.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 34.010, 34.031, 34.032, 34.040, 34.042, 34.044, 34.065, and 34.130, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 34.010, 34.031, 34.032, 34.040, 34.042, and 34.044, to read as follows:

34.010. 1. The term "department" as used in this chapter shall be deemed to mean department, office, board, commission, bureau, institution, or any other agency of the state, except the legislative and judicial departments.

2. The term "lowest and best" [in] **as used in this chapter means** determining the lowest and best award, cost, and other factors [are to be] considered in the evaluation process. Factors may include, but are not limited to, value, performance, and quality of a product.

3. The term "Missouri product" refers to goods or commodities which are manufactured, mined, produced, or grown by companies in Missouri, or services provided by such companies.

4. The term "negotiation" as used in this chapter means the process of selecting a contractor by the competitive methods described in this chapter, whereby the commissioner of administration can establish any and all terms and conditions of a procurement contract by discussion with one or more prospective contractors.

5. The term "purchase" as used in this chapter shall include the rental or

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

17 leasing of any equipment, articles or things.

18           **6. The term "reverse auction" as used in this chapter shall mean**  
19 **a procurement method wherein bidders are invited to bid on specified**  
20 **goods or nonprofessional services through real-time electronic bidding,**  
21 **with the award being made to the lowest responsive and responsible**  
22 **bidder. During the bidding process, bidders' prices, but not their**  
23 **identity, are revealed and bidders shall have the opportunity to modify**  
24 **their bid prices for the duration of the time period established for bid**  
25 **opening.**

26           7. The term "supplies" used in this chapter shall be deemed to mean  
27 supplies, materials, equipment, contractual services and any and all articles or  
28 things, except for utility services regulated under chapter 393, RSMo, or as in  
29 this chapter otherwise provided.

30           **[7.] 8.** The term "value" includes but is not limited to price, performance,  
31 and quality. In assessing value, the state purchaser may consider the economic  
32 impact to the state of Missouri for Missouri products versus the economic impact  
33 of products generated from out of state. This economic impact may include the  
34 revenues returned to the state through tax revenue obligations.

          34.031. 1. The commissioner of administration, in consultation with the  
2 environmental improvement and energy resources authority of the department of  
3 natural resources, shall give full consideration to the purchase of products made  
4 from materials recovered from solid waste and to the reduction and ultimate  
5 elimination of purchases of products manufactured in whole or in part of  
6 thermoformed or other extruded polystyrene foam manufactured using any fully  
7 halogenated chlorofluorocarbon (CFC). Products that utilize recovered materials  
8 of a price and quality comparable to products made from virgin materials shall  
9 be sought and purchased, with particular emphasis on recycled oil, retread tires,  
10 compost materials and recycled paper products. The commissioner shall exercise  
11 a preference for such products if their use is technically feasible and, where a bid  
12 is required, their price is equal to, or less than, the price of items which are  
13 manufactured or produced from virgin materials. Products that would be inferior,  
14 violate safety standards or violate product warranties if the provisions of this  
15 section are followed may be excluded from the provisions of this section.

16           2. The commissioner of administration shall:

17           (1) Review the procurement specifications in order to eliminate  
18 discrimination against the procurement of recycled products;

19           (2) Review and modify the contract specifications for paper products and  
20 increase the minimum required percentage of recycled paper in each product as  
21 follows:

22           (a) Forty percent recovered materials for newsprint;

23           (b) Eighty percent recovered materials for paperboard;

24           (c) Fifty percent waste paper in high grade printing and writing paper;

25           (d) Five to forty percent in tissue products;

26           (3) Support federal incentives and policy guidelines designed to promote  
27 these goals;

28           (4) Develop and implement a cooperative procurement policy to facilitate  
29 bulk order purchases and to increase availability of recycled products. The policy  
30 shall be distributed to all state agencies and shall be made available to political  
31 subdivisions of the state[;

32           (5) Conduct a survey using existing staff of those items customarily  
33 required by the state that are manufactured in whole or part from polystyrene  
34 plastic, and report its findings, together with an analysis of environmentally  
35 acceptable alternatives thereto, prepared in collaboration with the department of  
36 natural resources, to the general assembly and every state agency within six  
37 months of August 28, 1995].

38           3. Notwithstanding the provisions of this section, no state agency may  
39 purchase any food or beverage containers or wrapping manufactured from any  
40 polystyrene foam manufactured using any fully halogenated chlorofluorocarbon  
41 (CFC) found by the United States Environmental Protection Agency (EPA) to be  
42 an ozone-depleting chemical.

43           4. No state agency may purchase any items made in whole or part of  
44 thermoformed or other extruded polystyrene foam manufactured using any fully  
45 halogenated chlorofluorocarbon (CFC) found by the United States Environmental  
46 Protection Agency (EPA) to be an ozone-depleting chemical without approval from  
47 the commissioner of administration. Approval shall not be granted unless the  
48 purchasing agency demonstrates to the satisfaction of the director of the  
49 department of natural resources and the commissioner that there is no  
50 environmentally more acceptable alternatives or the quality of such alternatives  
51 is not adequate for the purpose intended.

52           5. For each paper product type and corresponding recycled paper content  
53 standard pursuant to subdivision (2) of subsection 2 of this section, attainment  
54 goals for the percentage of paper products to be purchased that utilize

55 post-consumer recovered materials shall be[:

- 56 (1) Ten percent in 1991 and 1992;  
57 (2) Twenty-five percent in 1993 and 1994;  
58 (3) Forty percent in 1995; and  
59 (4)] sixty percent by 2000.

60 6. In the review of capital improvement projects for buildings and  
61 facilities of state government, the commissioner of administration shall direct the  
62 division of design and construction to give full consideration to alternatives which  
63 use solid waste, as defined in section 260.200, RSMo, as a fuel for energy  
64 production or which use products composed of materials recovered from solid  
65 waste.

66 7. The commissioner of administration, in consultation with the  
67 environmental improvement and energy resources authority of the department of  
68 natural resources, shall prepare and provide by January first of each year an  
69 annual report summarizing past activities and accomplishments of the program  
70 and proposed goals of the program including projections for each affected  
71 agency. The report shall also include a list of products utilizing recovered  
72 materials that could substitute for products currently purchased and a schedule  
73 of amounts purchased of products utilizing recovered materials compared to  
74 purchases of similar products utilizing virgin materials for the period covered by  
75 the annual report.

76 8. The office of administration, department of natural resources and  
77 department of economic development shall cooperate jointly and share to the  
78 greatest extent possible, information and other resources to promote:

- 79 (1) Producers or potential producers of secondary material goods to  
80 expand or develop their product lines;  
81 (2) Increased demand for secondary materials recovered in Missouri; and  
82 (3) Increased demand by state government for products which contain  
83 secondary materials recovered in Missouri.

84 9. The commissioner of administration may increase minimum recycled  
85 content percentages for paper products, minimum recycled content percentages  
86 for other recycled products and establish minimum post-consumer content as such  
87 products become available. The preference provided in subsection 1 of this  
88 section shall apply to the minimum standards established by the commissioner.

34.032. 1. The provisions of section 34.040 to the contrary  
2 notwithstanding, each department and agency of the state government, including

3 the general assembly, shall purchase, in the manner provided by law, and use  
4 recycled paper when recycled paper can be obtained that is comparable to the  
5 quality presently used by the department or agency and if the price is  
6 competitive. [For the purposes of this section, "competitive" means a price within  
7 ten percent of the price of items which are manufactured or produced from virgin  
8 materials.] Attainment goals for the percentage of paper products to be purchased  
9 that utilize post-consumer recovered materials shall be[:

10 (1) Ten percent in 1991 and 1992;

11 (2) Twenty-five percent in 1993 and 1994;

12 (3) Forty percent in 1995; and

13 (4)] sixty percent by 2000.

14 2. Each department and agency of state government shall also purchase  
15 a minimum of fifteen percent recycled motor oil for use in motor vehicles.

16 3. Each department and agency of state government shall cause to be  
17 recycled:

18 (1) A minimum of twenty-five percent of paper products used or fifty  
19 percent of the paper disposed of, whichever is greater;

20 (2) Seventy-five percent of all used motor oil.

21 4. Each department and state agency shall, to the maximum extent  
22 practicable, separate plastics, paper, metals and other recyclable items [by July  
23 1, 1990].

24 5. [By January 1, 1990,] Each department and state agency shall develop,  
25 in cooperation with the office of administration, and implement a policy for  
26 recycling and waste reduction. Each department and agency shall collect and  
27 recycle waste paper and empty aluminum beverage containers generated by  
28 employee activity. The office of the governor and the general assembly shall  
29 implement a policy for recycling and waste reduction and shall collect and recycle  
30 waste paper and aluminum beverage containers generated within its  
31 facilities. Recycling programs for agency offices located outside of the city of  
32 Jefferson may be coordinated through the office of administration or operated  
33 locally provided that the office of administration reviews and approves such  
34 programs. Proceeds from the sale of recycled materials may be used to offset  
35 costs of the recycling program. Any moneys found by the office of administration  
36 to be in excess of costs incurred shall be transferred to the department of social  
37 services to be used by the heating assistance program pursuant to sections  
38 660.100 to 660.135, RSMo.

39           6. The department of higher education, in cooperation with the office of  
40 administration and state colleges and universities, shall develop and distribute  
41 guidelines for waste reduction and the collection of recyclable materials generated  
42 in classrooms, administrative offices, dormitories, cafeterias and similar campus  
43 locations.

44           7. Bid specifications for solid waste management services issued by any  
45 department or agency of state government shall be designed to meet the  
46 objectives of sections 260.255 to 260.325, RSMo, encourage small businesses to  
47 engage and compete in the delivery of waste management services and to  
48 minimize the long run cost of managing solid waste. Bid specifications shall  
49 enumerate the minimum components and minimum quantities of waste products  
50 which shall be recycled by the successful bidder. Bids for solid waste  
51 management services to state departments and agencies located within the seat  
52 of government shall be issued in units in order to maximize opportunities for  
53 small business to provide solid waste management services to the state. Each  
54 department and agency shall designate one person in an existing position to serve  
55 as a solid waste management coordinator to ensure that the agency and the office  
56 of administration cooperate to meet the requirements of this section.

          34.040. 1. All purchases in excess of ~~[three]~~ **ten** thousand dollars shall  
2 be based on competitive bids, except as otherwise provided in this chapter.

3           2. On any purchase where the estimated expenditure shall be  
4 ~~[twenty-five]~~ **one hundred** thousand dollars or over, except as provided in  
5 subsection 5 of this section, the commissioner of administration shall:

6           (1) Advertise for bids in at least two daily newspapers of general  
7 circulation in such places as are most likely to reach prospective bidders and may  
8 advertise in at least two weekly minority newspapers ~~[and]~~ **or** may provide such  
9 information through an electronic medium available to the general public at least  
10 five days before bids for such purchases are to be opened. Other methods of  
11 advertisement, which may include minority business purchase councils, however,  
12 may be adopted by the commissioner of administration when such other methods  
13 are deemed more advantageous for the supplies to be purchased;

14           (2) Post a notice of the proposed purchase in his or her office; and

15           (3) Solicit bids by mail or other reasonable method generally available to  
16 the public from prospective suppliers. All bids for such supplies shall be mailed  
17 or delivered to the office of the commissioner of administration so as to reach  
18 such office before the time set for opening bids.

19           3. The contract shall be let to the lowest and best bidder. The  
20 commissioner of administration shall have the right to reject any or all bids and  
21 advertise for new bids, or purchase the required supplies on the open market if  
22 they can be so purchased at a better price. When bids received pursuant to this  
23 section are unreasonable or unacceptable as to terms and conditions,  
24 noncompetitive, or the low bid exceeds available funds and it is determined in  
25 writing by the commissioner of administration that time or other circumstances  
26 will not permit the delay required to resolicit competitive bids, a contract may be  
27 negotiated pursuant to this section, provided that each responsible bidder who  
28 submitted such bid under the original solicitation is notified of the determination  
29 and is given a reasonable opportunity to modify their bid and submit a best and  
30 final bid to the state. In cases where the bids received are noncompetitive or the  
31 low bid exceeds available funds, the negotiated price shall be lower than the  
32 lowest rejected bid of any responsible bidder under the original solicitation.

33           4. All bids shall be based on standard specifications wherever such  
34 specifications have been approved by the commissioner of administration. The  
35 commissioner of administration shall make rules governing the delivery,  
36 inspection, storage and distribution of all supplies so purchased and governing  
37 the manner in which all claims for supplies delivered shall be submitted,  
38 examined, approved and paid. The commissioner shall determine the amount of  
39 bond or deposit and the character thereof which shall accompany bids or  
40 contracts.

41           5. The department of natural resources may, without the approval of the  
42 commissioner of administration required pursuant to this section, enter into  
43 contracts of up to five hundred thousand dollars to abate illegal waste tire sites  
44 pursuant to section 260.276, RSMo, when the director of the department  
45 determines that urgent action is needed to protect public health, safety, natural  
46 resources or the environment. The department shall follow bidding procedures  
47 pursuant to this section and may promulgate rules necessary to establish such  
48 procedures. Any rule or portion of a rule, as that term is defined in section  
49 536.010, RSMo, that is created under the authority delegated in this section shall  
50 become effective only if it complies with and is subject to all of the provisions of  
51 chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and  
52 chapter 536, RSMo, are nonseverable and if any of the powers vested with the  
53 general assembly pursuant to chapter 536, RSMo, to review, to delay the effective  
54 date or to disapprove and annul a rule are subsequently held unconstitutional,

55 then the grant of rulemaking authority and any rule proposed or adopted after  
56 August 28, 1999, shall be invalid and void.

57         6. The commissioner of administration and other agencies to which the  
58 state purchasing law applies shall not contract for goods or services with a vendor  
59 if the vendor or an affiliate of the vendor makes sales at retail of tangible  
60 personal property or for the purpose of storage, use, or consumption in this state  
61 but fails to collect and properly pay the tax as provided in chapter 144,  
62 RSMo. For the purposes of this section, "affiliate of the vendor" shall mean any  
63 person or entity that is controlled by or is under common control with the vendor,  
64 whether through stock ownership or otherwise.

65         **7. The commissioner of administration may authorize the use of**  
66 **the reverse auction procurement method to procure goods or**  
67 **nonprofessional services if the commissioner believes that the use of**  
68 **the reverse procurement method will result in savings to the state. The**  
69 **office of administration shall promulgate rules regarding the handling**  
70 **of the reverse auction process.**

34.042. 1. When the commissioner of administration determines that the  
2 use of competitive bidding is either not practicable or not advantageous to the  
3 state, supplies may be procured by competitive proposals. The commissioner  
4 shall state the reasons for such determination, and a report containing those  
5 reasons shall be maintained with the vouchers or files pertaining to such  
6 purchases. All purchases in excess of ~~[five]~~ **ten** thousand dollars to be made  
7 under this section shall be based on competitive proposals.

8         2. On any purchase where the estimated expenditure shall be  
9 ~~[twenty-five]~~ **one hundred** thousand dollars or over, the commissioner of  
10 administration shall:

11         (1) Advertise for proposals in at least two daily newspapers of general  
12 circulation in such places as are most likely to reach prospective offerors ~~[and]~~  
13 **or** may advertise in at least two weekly minority newspapers and may provide  
14 such information through an electronic medium available to the general public  
15 at least five days before proposals for such purchases are to be opened. Other  
16 methods of advertisement, however, may be adopted by the commissioner of  
17 administration when such other methods are deemed more advantageous for the  
18 supplies to be purchased;

19         (2) Post notice of the proposed purchase; and

20         (3) Solicit proposals by mail or other reasonable method generally



21 available to the public from prospective offerors.

22 All proposals for such supplies shall be mailed or delivered to the office of the  
23 commissioner of administration so as to reach such office before the time set for  
24 opening proposals. Proposals shall be opened in a manner to avoid disclosure of  
25 contents to competing offerors during the process of negotiation.

26 3. The contract shall be let to the lowest and best offeror as determined  
27 by the evaluation criteria established in the request for proposal and any  
28 subsequent negotiations conducted pursuant to this subsection. In determining  
29 the lowest and best offeror, as provided in the request for proposals and under  
30 rules promulgated by the commissioner of administration, negotiations may be  
31 conducted with responsible offerors who submit proposals selected by the  
32 commissioner of administration on the basis of reasonable criteria for the purpose  
33 of clarifying and assuring full understanding of and responsiveness to the  
34 solicitation requirements. Those offerors shall be accorded fair and equal  
35 treatment with respect to any opportunity for negotiation and subsequent revision  
36 of proposals. Revisions may be permitted after submission and before award for  
37 the purpose of obtaining best and final offers. In conducting negotiations there  
38 shall be no disclosure of any information derived from proposals submitted by  
39 competing offerors. The commissioner of administration shall have the right to  
40 reject any or all proposals and advertise for new proposals or purchase the  
41 required supplies on the open market if they can be so purchased at a better  
42 price.

43 4. The commissioner shall make available, upon request, to any members  
44 of the general assembly, information pertaining to competitive proposals,  
45 including the names of [bidders] **offerors** and the amount of each [bidder's]  
46 **offeror's** offering for each contract.

34.044. 1. The commissioner of administration may waive the  
2 requirement of competitive bids or proposals for supplies when the commissioner  
3 has determined in writing that there is only a single feasible source for the  
4 supplies. Immediately upon discovering that other feasible sources exist, the  
5 commissioner shall rescind the waiver and proceed to procure the supplies  
6 through the competitive processes as described in this chapter. A single feasible  
7 source exists when:

8 (1) Supplies are proprietary and only available from the manufacturer or  
9 a single distributor; or

10 (2) Based on past procurement experience, it is determined that only one

11 distributor services the region in which the supplies are needed; or

12 (3) Supplies are available at a discount from a single distributor for a  
13 limited period of time.

14 2. **The following categories do not require a written**  
15 **determination of single feasible source:**

16 (1) **Services of visiting speakers, professors, and performing**  
17 **artists;**

18 (2) **Works of art and historical items for museum and public**  
19 **display;**

20 (3) **Published books, maps, periodicals, and technical pamphlets**  
21 **for libraries;**

22 (4) **Regulated utility services;**

23 (5) **Trial use or testing specific items for suitability;**

24 (6) **Print, electronic, broadcast, or other media advertising.**

25 3. On any single feasible source purchase where the estimated  
26 expenditure shall be [five] **ten** thousand dollars or over, the commissioner of  
27 administration shall post notice of the proposed purchase. Where the estimated  
28 expenditure is [twenty-five] **one hundred** thousand dollars or over, the  
29 commissioner of administration shall also advertise the commissioner's intent to  
30 make such purchase in at least two daily newspapers of general circulation in  
31 such places as are most likely to reach prospective bidders or offerors [and] **or**  
32 may provide such information through an electronic medium available to the  
33 general public at least five days before the contract is to be let. Other methods  
34 of advertisement, however, may be adopted by the commissioner of administration  
35 when such other methods are deemed more advantageous for the supplies to be  
36 purchased. The requirement for advertising may be waived, if not feasible, due  
37 to the supplies being available at a discount for only a limited period of time.

[34.065. Where, because of the large number of possible  
2 bidders for a particular purchase, it is impractical to submit a  
3 request for a bid to all possible bidders each time a bid is  
4 requested, request shall be made in rotation pursuant to the  
5 regulation of the commissioner of administration so as ultimately  
6 to include all the possible bidders, except that recognized  
7 competitive bidders shall be solicited in each instance.]

[34.130. On or before May first of each year, each  
2 department shall submit to the commissioner of administration a

3       classified list of its estimated needs for supplies for the following  
4       fiscal year. The commissioner of administration shall consolidate  
5       these and may purchase the entire amount or such part thereof at  
6       one time as he shall deem best. Any contract for such purchases  
7       may provide only the price at which the supplies needed during the  
8       year shall be purchased and that the supplies shall be delivered in  
9       such amounts and at such times as ordered throughout the year  
10      and be paid for at such time and for such amounts as delivered. In  
11      such case, certification from the commissioner of administration  
12      and the auditor shall be required only for the amount ordered at  
13      any time.]

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