

CHAPTER 5 (HB 95)

AN ACT relating to the reorganization of the Finance and Administration Cabinet.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 42.013 is amended to read as follows:

- (1) The office of the secretary of the Finance and Administration Cabinet shall include a deputy secretary who shall be appointed by the secretary with the approval of the Governor. The deputy secretary shall be responsible to and have such authority to sign for the secretary as the secretary designates in writing.
- (2) The secretary may organize the office into such additional administrative units as he deems necessary to perform the functions and fulfill the duties of the cabinet, subject to the provisions of KRS Chapter 12. The Office of the Secretary shall include the **Office of Technology Operations, the Customer Resource Center**, ~~[Division of Information Resources]~~ and the **Administrative Policy and Audit** ~~Division [of Internal Audit]~~.
- (3) All appointments under this chapter to positions not in the classified service shall be made pursuant to KRS 12.050 and such appointees shall be major assistants to the secretary and shall assist in the development of policy.

Section 2. KRS 42.023 is amended to read as follows:

- (1) The Department for Administration of the cabinet established by KRS 42.014 shall be generally responsible for any functions and duties the secretary may assign relating, but not limited to, supervision of purchasing and store keeping, control of stores, control of personal property and disposition of surplus personal property, printing and reproductions, state forms, postal services, and technical assistance and advice to state agencies.
- (2) There shall be established in the Department for Administration a Division of **Material and Procurement Services** ~~[Purchases]~~, **a Division of Surplus Property**, a Division of Printing, a Division of Risk Management, a Division of Creative Services, a Division of Occupations and Professions, and a Division of Postal Services, each of which shall be headed by a director appointed by the commissioner, subject to the approval of the Governor, and who shall be responsible to the commissioner. There may be, if needed, sections assigned to specific areas of work, responsible directly to the commissioner for administration.

Section 3. KRS 42.024 is amended to read as follows:

- (1) The Division of **Material and Procurement Services** ~~[Purchases]~~ shall be responsible for the performance of the cabinet's purchasing functions under KRS Chapters 45 and 45A, except those purchasing functions related to the acquisition of interests in real property, and contractual and construction services which are related to and required in connection with the construction, renovation, and repair of state-owned buildings. The Division of **Material and Procurement Services** ~~[Purchases]~~ shall be responsible for the control of all state-purchased personal property.
- (2) **The Division of Surplus Property shall be responsible** ~~[and]~~ for the disposition of all personal property of the state declared surplus. The division shall be the single state agency of the Commonwealth of Kentucky that may receive, warehouse, and distribute surplus property under the Federal Property and Administrative Services Act of 1949, as amended,

and any other federal law relating to the disposal of surplus federal property to the states and political subdivisions within the states. The division shall comply with federal laws and regulations in the administration of surplus property received through federal agencies. The secretary of the Finance and Administration Cabinet may promulgate administrative regulations in accordance with KRS Chapter 13A as necessary to comply with the minimum standards established by federal laws and regulations governing disposal of surplus federal property and to implement subsection (3) of this section.

~~(3)(2)~~ The Division of Creative Services shall provide photography, multimedia, and graphic service to state government.

~~(4)(3)~~ The secretary of the Finance and Administration Cabinet may establish, charge, and collect from donees of federal surplus property a fair and reasonable fee or service charge to defray the cost of operating the surplus property disposal program. The fees shall be deposited in a trust and agency account in the State Treasury to the credit of the Division of *Surplus Property*~~[Purchases]~~.

Section 4. KRS 42.065 is amended to read as follows:

- (1) *An Administrative Policy and Audit Division*~~[A Division of Internal Audit]~~ is established in the Office of the Secretary within the Finance and Administration Cabinet.
- (2) The *Administrative Policy and Audit* Division~~[of Internal Audit]~~ shall be headed by a director, appointed by the secretary of finance pursuant to KRS 12.050, and shall include other personnel employed pursuant to KRS Chapter 18A, as determined by the director of the division, with the approval of the secretary, to be necessary and desirable to carry out the division's functions.
- (3) The division may, with the approval of the secretary of finance, conduct any internal audit, investigation, or management review in the Finance and Administration Cabinet related to the secretary's duties and responsibilities as chief financial officer of the Commonwealth pursuant to KRS 42.012.
- (4) When it is necessary to complete an internal audit, investigation, or management review in the Finance and Administration Cabinet, with the written approval of the secretary of the Governor's Executive Cabinet, the division shall have access, during business hours, to all books, reports, papers, and accounts in the office or under the custody or control of any budget unit, or of any other program cabinet, department, or agency under the authority and direction of the Governor.

Section 5. KRS 42.0201 is amended to read as follows:

- (1) There is created within the Finance and Administration Cabinet the Office of the Controller. The office shall be attached to the Office of the Secretary of the Finance and Administration Cabinet for administrative and reporting purposes.
- (2) The Office of the Controller shall be headed by an executive director appointed by the secretary of the Finance and Administration Cabinet with the approval of the Governor. The executive director shall function as the state controller, who shall be a person qualified by education and experience for the position and held in high professional esteem in the accounting community.

- (3) The state controller shall be the Commonwealth's chief accounting officer and shall be responsible for all aspects of accounting policies and procedures, financial accounting systems, and internal accounting control policies and procedures. The Office of the Controller shall establish guidelines for state personnel administration on issues relating to paycheck distribution dates, assignment of data elements to accurately report labor costs, assignment and tracking of actual expenditures by code, and coverage issues relating to Social Security and Medicare.
- (4) The state controller; the executive director of the Office of Financial Management and Economic Analysis, Finance and Administration Cabinet; and the state budget director designated under KRS 11.068 shall develop and maintain the Commonwealth's strategic financial management program.
- (5) There are established in the Office of the Controller the Division of ***Statewide Accounting Services***~~[Accounts]~~ and the Division of Social Security.
 - (a) The Division of ***Statewide Accounting Services***~~[Accounts]~~ shall be headed by a director appointed by the secretary of the Finance and Administration Cabinet, subject to the approval of the Governor. The director shall report directly to the state controller. The division shall perform financial record keeping functions at the state controller's direction, and shall be responsible for:
 1. The performance of the cabinet's functions outlined in KRS 45.305, 48.800, and other related statutes; and
 2. The state government's duties and functions relating to the county fee system for local entities.
 - (b) The Division of Social Security shall be headed by a director appointed by the secretary of the Finance and Administration Cabinet pursuant to KRS 12.050. The director shall report directly to the state controller. The division shall be responsible for the duties of the state agency for Social Security specified in KRS 61.410 to 61.500.

Section 6. KRS 45.990 is amended to read as follows:

- (1) Any officer, agent, or employee of any budget unit who willfully fails or refuses to comply with any of the provisions of KRS 45.011 to 45.031, 45.121, 45.142, 45.151, 45.242, 45.244, 45.251, 45.253, 45.305, or 45.313, or who expends any money in violation of any of the provisions of those sections, shall be subject to prosecution in the Franklin Circuit Court, and upon conviction shall be guilty of a violation.
- (2) If any person incurs, or orders or votes for the incurrence of, any obligations in violation of any of the provisions of KRS 45.244, he and his sureties shall be jointly and severally liable therefor.
- (3) Any employee of the Division of ***Material and Procurement Services***~~[Purchases]~~, or any official of the Commonwealth of Kentucky, elective or appointive, who shall take, receive, or offer to take or receive, either directly or indirectly, any rebate, percentage of contract, money, or other things of value, as an inducement or intended inducement in the procurement of business, or the giving of business, including, but not limited to, personal service contracts, for, or to, or from, any person, partnership, firm, or corporation, offering, bidding for, or in open market seeking to make sales to the Commonwealth of Kentucky, shall be deemed guilty of a Class C felony.

- (4) Every person, firm, or corporation offering to make, or pay, or give, any rebate, percentage of contract, money, or any other thing of value, as an inducement or intended inducement, in the procurement of business, or the giving of business, including, but not limited to, personal service contracts, to any employee of the Division of *Material and Procurement Services*~~[Purchases]~~ or to any official of the Commonwealth, elective or appointive, in his efforts to bid for, or offer for sale, or to seek in the open market, shall be deemed guilty of a Class C felony.

Section 7. KRS 45A.045 is amended to read as follows:

- (1) The Finance and Administration Cabinet shall serve as the central procurement and contracting agency of the Commonwealth.
- (a) The cabinet shall require all agencies to furnish an estimate of specific needs for supplies, materials, and equipment to be purchased by competitive bidding for the purpose of permitting scheduling of purchasing in large volume. The cabinet shall establish and enforce schedules for purchasing supplies, materials, and equipment. In addition, prior to the beginning of each fiscal year all agencies shall submit to the Finance and Administration Cabinet an estimate of all needs for supplies, materials, and equipment during that year which will have to be required through competitive bidding.
- (b) The Finance and Administration Cabinet shall have power, with the approval of the secretary of the Finance and Administration Cabinet, to transfer between departments, to salvage, to exchange, and to condemn supplies, equipment, and real property.
- (c) The Finance and Administration Cabinet shall attempt in every practicable way to ensure that state agencies are fulfilling their business needs through the application of the best value criteria.
- (2) The Finance and Administration Cabinet shall recommend regulations, rules, and procedures and shall have supervision over all purchases by the various spending agencies, except as otherwise provided by law, and, subject to the approval of the secretary of the Finance and Administration Cabinet, shall promulgate administrative regulations to govern purchasing by or for all these agencies. The cabinet shall publish a manual of procedures which shall be incorporated by reference as an administrative regulation pursuant to KRS Chapter 13A. This manual shall be distributed to agencies and shall be revised upon issuance of amendments to these procedures. No purchase or contract shall be binding on the state or any agency thereof unless approved by the Finance and Administration Cabinet or made under general administrative regulations promulgated by the cabinet.
- (3) The Finance and Administration Cabinet shall purchase or otherwise acquire, or, with the approval of the secretary, may delegate and control the purchase and acquisition of the combined requirements of all spending agencies of the state, including, but not limited to, interests in real property, contractual services, rentals of all types, supplies, materials, equipment, and services.
- (4) The Finance and Administration Cabinet shall sell, trade, or otherwise dispose of any interest in real property of the state which is not needed, or has become unsuitable for public use, or would be more suitable to the public's interest if used in another manner, as determined by the secretary of the Finance and Administration Cabinet. The determination of the secretary of the Finance and Administration Cabinet shall be set forth in an order and shall be reached only after review of a written request by the agency desiring to dispose of

the property. This request shall describe the property and state the reasons why the agency believes the property should be disposed. All instruments required by law to be recorded which convey any interest in any real property so disposed of shall be executed and signed by the secretary of the Finance and Administration Cabinet and approved by the Governor. Unless the secretary of the Finance and Administration Cabinet deems it in the best interest of the state to proceed otherwise, all interests in real property shall be sold either by invitation of sealed bids or by public auction. The selling price of any interest in real property shall not be less than the appraised value thereof as determined by the cabinet, or the Transportation Cabinet for the requirements of that cabinet.

- (5) The Finance and Administration Cabinet shall sell, trade, or otherwise dispose of all personal property of the state that is not needed, or has become unsuitable for public use, or would be more suitable to the public's interest if used in another manner, or, with the approval of the secretary, may delegate the sale, trade, or other disposal of the personal property. In the event the authority is delegated, the method for disposal shall be determined by the agency head, in accordance with administrative regulations promulgated by the Finance and Administration Cabinet, and shall be set forth in a document describing the property and stating the method of disposal and the reasons why the agency believes the property should be disposed of. In the event the authority is not delegated, requests to the Finance and Administration Cabinet to sell, trade, or otherwise dispose of the property shall describe the property and state the reasons why the agency believes the property should be disposed of. The method for disposal shall be determined by the Division of ~~Purchases,~~ Surplus Property ~~Branch~~, and approved by the secretary of the Finance and Administration Cabinet or his or her designee.
- (6) The Finance and Administration Cabinet shall exercise general supervision and control over all warehouses, storerooms, and stores and of all inventories of supplies, services, and construction belonging to the Commonwealth. The cabinet shall promulgate administrative regulations to require agencies to take and maintain inventories of plant property, buildings, structures, other fixed assets, and equipment. The cabinet shall conduct periodic physical audits of inventories.
- (7) The Finance and Administration Cabinet shall establish and maintain programs for the development and use of purchasing specifications and for the inspection, testing, and acceptance of supplies, services, and construction.
- (8) Nothing in this section shall prevent the Finance and Administration Cabinet from negotiating with vendors who maintain a General Services Administration price agreement with the United States of America or any agency thereof. No contract executed under this provision shall authorize a price higher than is contained in the contract between the General Services Administration and the vendor affected.
- (9) Except as provided in KRS Chapters 175, 176, 177, and 180, and subject to the provisions of this code, the Finance and Administration Cabinet shall purchase or otherwise acquire all real property determined to be needed for state use, upon approval of the secretary of the Finance and Administration Cabinet as to the determination of need and as to the action of purchase or other acquisition. The amount paid for this real property shall not exceed the appraised value as determined by the cabinet or the Transportation Cabinet (for such requirements of that cabinet), or the value set by eminent domain procedure. Subject to the provisions of this code, real property or any interest therein may be purchased, leased, or otherwise acquired from any officer or employee of any agency of the state upon a finding

by the Finance and Administration Cabinet, based upon a written application by the head of the agency requesting the purchase, and approved by the secretary of the Finance and Administration Cabinet and the Governor, that the employee has not either himself or herself, or through any other person, influenced or attempted to influence either the agency requesting the acquisition of the property or the Finance and Administration Cabinet in connection with such acquisition. Whenever such an acquisition is consummated, the request and finding shall be recorded and kept by the Secretary of State along with the other documents recorded pursuant to the provisions of KRS Chapter 56.

- (10) The Finance and Administration Cabinet shall maintain records of all purchases and sales made under its authority and shall make periodic summary reports of all transactions to the secretary of the Finance and Administration Cabinet, the Governor, and the General Assembly. The Finance and Administration Cabinet shall also report trends in costs and prices, including savings realized through improved practices, to the above authorities. The Finance and Administration Cabinet shall also compile an annual report of state purchases by all spending agencies in the state's statewide accounting and reporting system. The report format shall include, but not be limited to, dollar amount, volume, type of purchase, and vendor.
- (11) For capital construction projects, subject to the provisions of this code, the bidding may be on whichever of the following methods, in the judgment of the secretary of the Finance and Administration Cabinet, offers the lowest real cost to the taxpayer:
 - (a) A total design-bid basis;
 - (b) A package system commonly referred to as "turnkey"; (c) Phase bidding commonly referred to as "fast track"; or (d) Construction management.

Bids shall be reviewed by the engineering staff to assure quality and value, and compliance with bid procedures. All specifications shall be written to promote competition.

- (12) The Finance and Administration Cabinet shall have control and supervision over all purchases of energy-consuming equipment, supplies, and related equipment purchased or acquired by any agency of the state as provided in this code, and shall promulgate administrative regulations to designate the manner in which an energy-consuming item will be purchased so as to promote energy conservation and acquisition of energy efficient products. Major energy components shall be amortized on a seven (7) to ten (10) years' recovery basis and shall take into consideration the projected cost of fuel. The Finance and Administration Cabinet, in consultation with the Cabinet for Economic Development, shall conduct a thorough economic feasibility analysis on any major energy-using component of at least three million (3,000,000) BTU's per hour heat input and shall issue a certificate of economic feasibility prior to the Finance and Administration Cabinet's purchasing or retrofitting any such component that utilizes any fuel other than coal. The economic feasibility analysis shall consist of life-cycle cost comparisons of a component that would utilize coal and one(s) that would utilize any fuel other than coal. For the analysis, the Finance and Administration Cabinet shall provide detailed estimates of equipment purchase price, installation cost, annual operation and maintenance costs, and usage patterns of energy-using components.

Section 8. KRS 45A.540 is amended to read as follows:

Every county, city, school district, and special district may purchase goods, supplies, equipment, material, and printing which meet the procurement standards for minimum recycled material content through the central stores branch of the Division of **Material and Procurement Services**~~[Purchases]~~ in the Finance and Administration Cabinet. Counties, cities, school districts, and special districts which purchase goods, supplies, equipment, material, and printing which meet the procurement standards established pursuant to KRS 45A.520 for minimum recycled material content shall receive a fifty percent (50%) reduction in any administrative fee the central purchasing agency is authorized to charge.

Section 9. KRS 156.076 is amended to read as follows:

The chief state school officer shall furnish full information on established price contracts to each district board of education. Any board of education may purchase supplies and equipment from the vendor to whom the contract has been awarded, under the terms of the contract. Any board of education may advertise for its own bids on supplies and equipment which meet the specifications of the contracts awarded by the Division of **Material and Procurement Services**~~[Purchases]~~. Any board of education, after advertising for bids, may award contracts if the chief state school officer certifies that the bid offers supplies and equipment which meet the standards and specifications fixed by the Kentucky Board of Education and that the bid price is lower than that established by the price contract agreement. If supplies and equipment that meet the specifications of the contracts awarded by the Division of **Material and Procurement Services**~~[Purchases]~~ or a federal, local, or cooperative agency are available for purchase elsewhere, a board of education may purchase those supplies and equipment without advertising for bids. However, prior to making the purchases, the board of education shall obtain certification from:

- (1) The Department of Education for technology components defined in the master plan for education technology for which standards have been established by the Kentucky Board of Education. The department shall certify that the items to be purchased meet or exceed, at a lower cost, the specifications of the components of the original equipment of manufacturers currently holding Kentucky education technology system price contracts; and
- (2) The district's finance officer for supplies and equipment other than that described in subsection (1) of this section. He shall certify that the items to be purchased meet the standards and specifications fixed by state price contract, federal (GSA) price contract, the local school district's bid, or the bid of another school district whose bid specifications allow other districts to utilize their bids, and that the sales price is lower than that established by the price contract agreement or available through the bidding process and the price does not exceed two thousand five hundred dollars (\$2,500). Section 10. KRS 197.210 is amended to read as follows:

- (1) On and after June 17, 1954, all offices, departments, institutions, agencies, and all political subdivisions which are supported in whole or in part by the Commonwealth shall purchase, when economically feasible, from the department all articles or products required which are produced or manufactured by prison labor, as provided by KRS 197.200 to 197.250. No article or product shall be purchased by any office, department, institution, or agency, from any source except as specified in this subsection.

Exceptions may be made in any case where, in the opinion of the Finance and Administration Cabinet, the articles or products produced or manufactured do not meet the reasonable requirements of the offices, departments, institutions, agencies, or where the requisition

cannot be reasonably complied with because of an insufficient supply of the articles or products required. However, no office, department, institution, or agency shall be allowed to evade the intent and meaning of KRS 197.200 to 197.250 by slight variations from standards adopted by the Division of **Material and Procurement Services**~~[purchases]~~, when the articles or products produced or manufactured by the department in accordance with the standards, are reasonably adapted to the actual needs of the office, department, institution, or agency.

- (2) All purchases under KRS 197.200 to 197.250 shall be made through the Finance and Administration Cabinet upon requisition by the proper authority of the office, department, institution, agency, or political subdivision of the Commonwealth.

Section 11. KRS 424.260 is amended to read as follows:

- (1) Except where a statute specifically fixes a larger sum as the minimum for a requirement of advertisement for bids, no city, county, or district, or board or commission of a city or county, or sheriff or county clerk, may make a contract, lease, or other agreement for materials, supplies except perishable meat, fish, and vegetables, equipment, or for contractual services other than professional, involving an expenditure of more than ten thousand dollars (\$10,000) without first making newspaper advertisement for bids.
- (2) If the fiscal court requires that the sheriff or county clerk advertise for bids on expenditures of less than ten thousand dollars (\$10,000), the fiscal court requirement shall prevail.
- (3)
 - (a) Nothing in this statute shall limit or restrict the ability of a local school district to acquire supplies and equipment outside of the bidding procedure if those supplies and equipment meet the specifications of the contracts awarded by the Division of **Material and Procurement Services**~~[Purchases]~~ or a federal, local, or cooperative agency and are available for purchase elsewhere at a lower price. A board of education may purchase those supplies and equipment without advertising for bids if, prior to making the purchases, the board of education obtains certification from the district's finance or purchasing officer that the items to be purchased meet the standards and specifications fixed by state price contract, federal (GSA) price contract, or the bid of another school district whose bid specifications allow other districts to utilize their bids, and that the sales price is lower than that established by the various price contract agreements or available through the bid of another school district whose bid specifications would allow the district to utilize their bid.
 - (b) The procedures set forth in paragraph (a) of this subsection shall not be available to the district for any specific item once the bidding procedure has been initiated by an invitation to bid and a publication of specifications for that specific item has been published. In the event that all bids are rejected, the district may again avail itself of the provisions of paragraph (a) of this subsection.
- (4) This requirement shall not apply in an emergency if the chief executive officer of the city, county, or district has duly certified that an emergency exists, and has filed a copy of the certificate with the chief financial officer of the city, county, or district, or if the sheriff or the county clerk has certified that an emergency exists, and has filed a copy of the certificate with the clerk of the court where his necessary office expenses are fixed pursuant to KRS 64.345 or 64.530, or if the superintendent of the board of education has duly certified that an emergency exists, and has filed a copy of the certificate with the chief state school officer.

Section 12. The General Assembly hereby confirms Executive Order 98-1132, issued by the Governor on August 21, 1998, as amended by Executive Order 99-486, issued by the Governor on

April 13, 1999, to the extent that the orders are not otherwise confirmed by Sections 1 through 11 of this Act.

Approved February 14, 2000