

SECOND REGULAR SESSION

# HOUSE BILL NO. 1068

## 92ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES HARRIS (23) (Sponsor), ABEL, JOHNSON (90), LeVOTA,  
JONES, SKAGGS, KUESSNER AND VILLA (Co-sponsors).

Read 1<sup>st</sup> time January 14, 2004, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

3200L.011

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### AN ACT

To repeal sections 34.010 and 34.040, RSMo, and to enact in lieu thereof two new sections relating to state procurement.

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

Section A. Sections 34.010 and 34.040, RSMo, are repealed and two new sections  
2 enacted in lieu thereof, to be known as sections 34.010 and 34.040, to read as follows:

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

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

8 3. The term "purchase" as used in this chapter shall include the rental or leasing of any  
9 equipment, articles or things.

10 4. The term "supplies" used in this chapter shall be deemed to mean supplies, materials,  
11 equipment, contractual services and any and all articles or things, except for utility services  
12 regulated under chapter 393, RSMo, or as in this chapter otherwise provided.

13 5. **The term "reverse auction" used in this chapter shall mean a procurement**  
14 **method in which bidders are invited to bid on specified goods or nonprofessional services**  
15 **through real-time electronic bidding, with the award being made to the lowest responsive**  
16 **and responsible bidder. During the bidding process, bidders' prices are revealed and**  
17 **bidders shall have the opportunity to modify their bid prices for the duration of the time**  
18 **period established for bid opening.**

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

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

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

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

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

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

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

35 5. The department of natural resources may, without the approval of the commissioner  
36 of administration required pursuant to this section, enter into contracts of up to five hundred

37 thousand dollars to abate illegal waste tire sites pursuant to section 260.276, RSMo, when the  
38 director of the department determines that urgent action is needed to protect public health, safety,  
39 natural resources or the environment. The department shall follow bidding procedures pursuant  
40 to this section and may promulgate rules necessary to establish such procedures. Any rule or  
41 portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the  
42 authority delegated in this section shall become effective only if it complies with and is subject  
43 to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This  
44 section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the  
45 general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to  
46 disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking  
47 authority and any rule proposed or adopted after August 28, 1999, shall be invalid and void.

48         6. The commissioner of administration and other agencies to which the state purchasing  
49 law applies shall not contract for goods or services with a vendor if the vendor or an affiliate of  
50 the vendor makes sales at retail of tangible personal property or for the purpose of storage, use,  
51 or consumption in this state but fails to collect and properly pay the tax as provided in chapter  
52 144, RSMo. For the purposes of this section, "affiliate of the vendor" shall mean any person or  
53 entity that is controlled by or is under common control with the vendor, whether through stock  
54 ownership or otherwise.

55         **7. The commissioner of administration may authorize the use of the reverse auction**  
56 **procurement method to procure goods or nonprofessional services if the commissioner**  
57 **believes the use of the reverse procurement method will result in savings to the state. The**  
58 **office of administration shall promulgate rules regarding the handling of the reverse**  
59 **auction process. No rule or portion of a rule promulgated pursuant to the authority of this**  
60 **section shall become effective unless it has been promulgated pursuant to chapter 536,**  
61 **RSMo.**