

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1085

Introduced by Howard, 9; Albrecht, 17; Blood, 3; Bolz, 29; Cavanaugh, 6;
Crawford, 45; DeBoer, 10; Geist, 25; Hunt, 8; Linehan, 39;
Pansing Brooks, 28; Slama, 1; Walz, 15; Wishart, 27.

Read first time January 21, 2020

Committee:

- 1 A BILL FOR AN ACT relating to the Public Counsel; to amend sections
- 2 81-8,242, 81-8,243, 81-8,246, 81-8,247, 81-8,249, 81-8,250,
- 3 81-8,252, 81-8,253, and 81-8,254, Reissue Revised Statutes of
- 4 Nebraska; to change terminology relating to the Public Counsel; and
- 5 to repeal the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 81-8,242, Reissue Revised Statutes of Nebraska,
2 is amended to read:

3 81-8,242 The Public Counsel shall be a person well equipped to
4 analyze problems of law, administration, and public policy, and during
5 such person's ~~his~~ term of office shall not be actively involved in
6 partisan affairs. No person may serve as Public Counsel within two years
7 of the last day on which such person ~~he~~ served as a member of the
8 Legislature, or while such person ~~he~~ is a candidate for or holds any
9 other state office, or while such person ~~he~~ is engaged in any other
10 occupation for reward or profit.

11 Sec. 2. Section 81-8,243, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 81-8,243 The Public Counsel shall serve for a term of six years,
14 unless removed by vote of two-thirds of the members of the Legislature
15 upon their determining that the Public Counsel ~~he~~ has become
16 incapacitated or has been guilty of neglect of duty or misconduct. If the
17 office of Public Counsel becomes vacant for any cause, the deputy public
18 counsel shall serve as acting public counsel until a Public Counsel has
19 been appointed for a full term. The Public Counsel shall receive such
20 salary as is set by the Executive Board of the Legislative Council.

21 Sec. 3. Section 81-8,246, Reissue Revised Statutes of Nebraska, is
22 amended to read:

23 81-8,246 In selecting matters for ~~his~~ attention, the Public Counsel
24 shall ~~address himself~~ particularly review ~~to~~ an administrative act that
25 might be:

- 26 (1) Contrary to law or regulation;
27 (2) Unreasonable, unfair, oppressive, or inconsistent with the
28 general course of an administrative agency's judgments;
29 (3) Mistaken in law or arbitrary in ascertainments of fact;
30 (4) Improper in motivation or based on irrelevant considerations;
31 (5) Unclear or inadequately explained when reasons should have been

1 revealed; or

2 (6) Inefficiently performed.

3 The Public Counsel may ~~concern himself~~ also work to strengthen with
4 ~~strengthening~~ procedures and practices which lessen the risk that
5 objectionable administrative acts will occur.

6 Sec. 4. Section 81-8,247, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 81-8,247 The Public Counsel may receive a complaint from any person
9 concerning an administrative act. The Public Counsel ~~He~~ shall conduct a
10 suitable investigation into the things complained of unless the Public
11 Counsel ~~he~~ believes that:

12 (1) The complainant has ~~available to him~~ another remedy available
13 which the complainant ~~he~~ could reasonably be expected to use;

14 (2) The grievance pertains to a matter outside the Public Counsel's
15 ~~his~~ power;

16 (3) The complainant's interest is insufficiently related to the
17 subject matter;

18 (4) The complaint is trivial, frivolous, vexatious, or not made in
19 good faith;

20 (5) Other complaints are more worthy of attention;

21 (6) The Public Counsel's ~~His~~ resources are insufficient for adequate
22 investigation; or

23 (7) The complaint has been too long delayed to justify present
24 examination of its merit.

25 The Public Counsel's declining to investigate a complaint shall not
26 bar the Public Counsel ~~him~~ from proceeding on the Public Counsel's ~~his~~
27 own motion to inquire into related problems. After completing ~~his~~
28 consideration of a complaint, whether or not it has been investigated,
29 the Public Counsel shall suitably inform the complainant and the
30 administrative agency involved.

31 Sec. 5. Section 81-8,249, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 81-8,249 (1) If, having considered a complaint and whatever material
3 the Public Counsel ~~he~~ deems pertinent, the Public Counsel is of the
4 opinion that an administrative agency should (a) consider the matter
5 further, (b) modify or cancel an administrative act, (c) alter a
6 regulation or ruling, (d) explain more fully the administrative act in
7 question, or (e) take any other step, the Public Counsel ~~he~~ shall make
8 ~~state his~~ recommendations to the administrative agency. If the Public
9 Counsel so requests, the agency shall, within the time ~~he has~~ specified,
10 inform the Public Counsel ~~him~~ about the action taken on such ~~his~~
11 recommendations or the reasons for not complying with them.

12 (2) If the Public Counsel believes that an administrative action has
13 been dictated by a statute whose results are unfair or otherwise
14 objectionable, the Public Counsel ~~he~~ shall notify ~~bring~~ to the
15 Legislature of such ~~Legislature's notice his~~ views concerning desirable
16 statutory change.

17 Sec. 6. Section 81-8,250, Reissue Revised Statutes of Nebraska, is
18 amended to read:

19 81-8,250 The Public Counsel may report ~~publish his~~ conclusions and
20 suggestions by transmitting them to the Governor, the Legislature or any
21 of its committees, the press, and others who may be concerned. When
22 publishing an opinion adverse to an administrative agency the Public
23 Counsel ~~he~~ shall include any statement the administrative agency may have
24 made to the Public Counsel ~~him~~ by way of explaining its past difficulties
25 or its present rejection of the Public Counsel's proposals.

26 Sec. 7. Section 81-8,252, Reissue Revised Statutes of Nebraska, is
27 amended to read:

28 81-8,252 If the Public Counsel has reason to believe that any public
29 officer or employee has acted in a manner warranting criminal or
30 disciplinary proceedings, the Public Counsel ~~he~~ shall refer the matter to
31 the appropriate authorities.

1 Sec. 8. Section 81-8,253, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 81-8,253 No proceeding, opinion, or expression of the Public Counsel
4 shall be reviewable in any court. Neither the Public Counsel nor any
5 member of the Public Counsel's ~~his~~ staff shall be required to testify or
6 produce evidence in any judicial or administrative proceeding concerning
7 matters within the Public Counsel's ~~his~~ official cognizance, except in a
8 proceeding brought to enforce sections 81-8,240 to 81-8,254.

9 Sec. 9. Section 81-8,254, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 81-8,254 A person who willfully obstructs or hinders the proper
12 exercise of the Public Counsel's functions, or who willfully misleads or
13 attempts to mislead the Public Counsel's ~~Counsel in his~~ inquiries, shall
14 be guilty of a Class II misdemeanor. No employee of the State of
15 Nebraska, who files a complaint pursuant to sections 81-8,240 to
16 81-8,254, shall be subject to any penalties, sanctions, or restrictions
17 in connection with such employee's ~~his~~ employment because of such
18 complaint.

19 Sec. 10. Original sections 81-8,242, 81-8,243, 81-8,246, 81-8,247,
20 81-8,249, 81-8,250, 81-8,252, 81-8,253, and 81-8,254, Reissue Revised
21 Statutes of Nebraska, are repealed.