

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1093

Introduced by Walz, 15.

Read first time January 18, 2018

Committee:

1 A BILL FOR AN ACT relating to the Public Counsel; to amend sections
2 81-8,241, 81-8,244, and 81-8,245, Revised Statutes Cumulative
3 Supplement, 2016; to provide for an office of Inspector General of
4 Nebraska Public Health; to provide powers and duties for the Public
5 Counsel; to harmonize provisions; and to repeal the original
6 sections.

7 Be it enacted by the people of the State of Nebraska,

1 Section 1. (1) The office of Inspector General of Nebraska Public
2 Health is created within the Office of Public Counsel for the purpose of
3 conducting investigations, audits, inspections, and other reviews of
4 state-owned facilities providing health care and state-licensed health
5 care facilities as such term is defined in section 71-413. The Inspector
6 General of Nebraska Public Health shall be appointed by the Public
7 Counsel with approval from the chairperson of the Executive Board of the
8 Legislative Council and the chairperson of the Health and Human Services
9 Committee of the Legislature.

10 (2) The Inspector General of Nebraska Public Health shall be
11 appointed for a term of five years and may be reappointed. The Inspector
12 General shall be selected without regard to political affiliation and on
13 the basis of integrity, capability for strong leadership, and
14 demonstrated ability in accounting, auditing, financial analysis, law,
15 management, public administration, investigation, or criminal justice
16 administration or other closely related fields. No former or current
17 executive or manager of the Department of Health and Human Services shall
18 be appointed Inspector General of Nebraska Public Health within five
19 years after such former or current executive's or manager's period of
20 service with the department. Not later than two years after the date of
21 appointment, the Inspector General shall obtain certification as a
22 Certified Inspector General by the Association of Inspectors General, its
23 successor, or another nationally recognized organization that provides
24 and sponsors educational programs and establishes professional
25 qualifications, certifications, and licensing for inspectors general.
26 During his or her employment, the Inspector General shall not be actively
27 involved in partisan affairs.

28 (3) The Inspector General of Nebraska Public Health shall employ
29 such investigators and support staff as he or she deems necessary to
30 carry out the duties of the office within the amount available by
31 appropriation through the office of Public Counsel for the office of

1 Inspector General of Public Health. The Inspector General shall be
2 subject to the control and supervision of the Public Counsel, except that
3 removal of the Inspector General shall require approval of the
4 chairperson of the Executive Board of the Legislative Council and the
5 chairperson of the Health and Human Services Committee of the
6 Legislature.

7 Sec. 2. Section 81-8,241, Revised Statutes Cumulative Supplement,
8 2016, is amended to read:

9 81-8,241 The office of Public Counsel is hereby established to
10 exercise the authority and perform the duties provided by sections
11 81-8,240 to 81-8,254, the Office of Inspector General of Nebraska Child
12 Welfare Act, and the Office of Inspector General of the Nebraska
13 Correctional System Act and section 1 of this act. The Public Counsel
14 shall be appointed by the Legislature, with the vote of two-thirds of the
15 members required for approval of such appointment from nominations
16 submitted by the Executive Board of the Legislative Council.

17 Sec. 3. Section 81-8,244, Revised Statutes Cumulative Supplement,
18 2016, is amended to read:

19 81-8,244 (1)(a) The Public Counsel may select, appoint, and
20 compensate as he or she sees fit, within the amount available by
21 appropriation, such assistants and employees as he or she deems necessary
22 to discharge the responsibilities under sections 81-8,240 to 81-8,254. He
23 or she shall appoint and designate one assistant to be a deputy public
24 counsel, one assistant to be a deputy public counsel for corrections, one
25 assistant to be a deputy public counsel for institutions, and one
26 assistant to be a deputy public counsel for welfare services.

27 (b) Such deputy public counsels shall be subject to the control and
28 supervision of the Public Counsel.

29 (c) The authority of the deputy public counsel for corrections shall
30 extend to all facilities and parts of facilities, offices, houses of
31 confinement, and institutions which are operated by the Department of

1 Correctional Services and all county or municipal correctional or jail
2 facilities.

3 (d) The authority of the deputy public counsel for institutions
4 shall extend to all mental health and veterans institutions and
5 facilities operated by the Department of Health and Human Services and to
6 all regional behavioral health authorities that provide services and all
7 community-based behavioral health services providers that contract with a
8 regional behavioral health authority to provide services, for any
9 individual who was a patient within the prior twelve months of a state-
10 owned and state-operated regional center, and to all complaints
11 pertaining to administrative acts of the department, authority, or
12 provider when those acts are concerned with the rights and interests of
13 individuals placed within those institutions and facilities or receiving
14 community-based behavioral health services.

15 (e) The authority of the deputy public counsel for welfare services
16 shall extend to all complaints pertaining to administrative acts of
17 administrative agencies when those acts are concerned with the rights and
18 interests of individuals involved in the welfare services system of the
19 State of Nebraska.

20 (f) The Public Counsel may delegate to members of the staff any
21 authority or duty under sections 81-8,240 to 81-8,254 except the power of
22 delegation and the duty of formally making recommendations to
23 administrative agencies or reports to the Governor or the Legislature.

24 (2) The Public Counsel shall appoint the Inspector General of
25 Nebraska Child Welfare as provided in section 43-4317. The Inspector
26 General of Nebraska Child Welfare shall have the powers and duties
27 provided in the Office of Inspector General of Nebraska Child Welfare
28 Act.

29 (3) The Public Counsel shall appoint the Inspector General of the
30 Nebraska Correctional System as provided in section 47-904. The Inspector
31 General of the Nebraska Correctional System shall have the powers and

1 duties provided in the Office of Inspector General of the Nebraska
2 Correctional System Act.

3 (4) The Public Counsel shall appoint the Inspector General of
4 Nebraska Public Health as provided in section 1 of this act. The
5 Inspector General of Nebraska Public Health shall have the powers and
6 duties provided in such section.

7 Sec. 4. Section 81-8,245, Revised Statutes Cumulative Supplement,
8 2016, is amended to read:

9 81-8,245 The Public Counsel shall have the power to:

10 (1) Investigate, on complaint or on his or her own motion, any
11 administrative act of any administrative agency;

12 (2) Prescribe the methods by which complaints are to be made,
13 received, and acted upon; determine the scope and manner of
14 investigations to be made; and, subject to the requirements of sections
15 81-8,240 to 81-8,254, determine the form, frequency, and distribution of
16 his or her conclusions, recommendations, and proposals;

17 (3) Conduct inspections of the premises, or any parts thereof, of
18 any administrative agency or any property owned, leased, or operated by
19 any administrative agency as frequently as is necessary, in his or her
20 opinion, to carry out duties prescribed under sections 81-8,240 to
21 81-8,254;

22 (4) Request and receive from each administrative agency, and such
23 agency shall provide, the assistance and information the counsel deems
24 necessary for the discharge of his or her responsibilities; inspect and
25 examine the records and documents of all administrative agencies
26 notwithstanding any other provision of law; and enter and inspect
27 premises within any administrative agency's control;

28 (5) Issue a subpoena, enforceable by action in an appropriate court,
29 to compel any person to appear, give sworn testimony, or produce
30 documentary or other evidence deemed relevant to a matter under his or
31 her inquiry. A person thus required to provide information shall be paid

1 the same fees and travel allowances and shall be accorded the same
2 privileges and immunities as are extended to witnesses in the district
3 courts of this state and shall also be entitled to have counsel present
4 while being questioned;

5 (6) Undertake, participate in, or cooperate with general studies or
6 inquiries, whether or not related to any particular administrative agency
7 or any particular administrative act, if he or she believes that they may
8 enhance knowledge about or lead to improvements in the functioning of
9 administrative agencies;

10 (7) Make investigations, reports, and recommendations necessary to
11 carry out his or her duties under the State Government Effectiveness Act;

12 (8) Carry out his or her duties under the Office of Inspector
13 General of Nebraska Child Welfare Act. If any of the provisions of
14 sections 81-8,240 to 81-8,254 conflict with provisions of the Office of
15 Inspector General of Nebraska Child Welfare Act, the provisions of such
16 act shall control;

17 (9) Carry out his or her duties under the Office of Inspector
18 General of the Nebraska Correctional System Act. If any of the provisions
19 of sections 81-8,240 to 81-8,254 conflict with the provisions of the
20 Office of Inspector General of the Nebraska Correctional System Act, the
21 provisions of such act shall control;

22 (10) Carry out his or her duties under section 1 of this act. If any
23 of the provisions of sections 81-8,240 and 81-8,254 conflict with section
24 1 of this act, section 1 of this act shall control;

25 (11) ~~(10)~~ Investigate allegations of violation of subsection (2) of
26 section 84-908 by an administrative agency pursuant to a complaint made
27 to his or her office and make a determination as to whether such
28 administrative agency has violated such subsection. The Public Counsel
29 shall report his or her determination in writing to the Governor, the
30 Secretary of State, the Attorney General, the Executive Board of the
31 Legislative Council, and the director or chief executive officer of the

1 agency. The report to the executive board shall be submitted
2 electronically; and

3 (12) ~~(11)~~ Investigate and address the complaint and case of:

4 (a) Any juvenile committed to the custody of a youth rehabilitation
5 and treatment center; and

6 (b) Any juvenile released from a youth rehabilitation and treatment
7 center for reentry into the community, while that juvenile is subject to
8 the Community and Family Reentry Process and a service or treatment
9 program in which the juvenile may be involved after his or her release
10 from a youth rehabilitation and treatment center, whether that service or
11 program is administrated by the Office of Juvenile Services or a private
12 provider in the community. The Office of Juvenile Services and private
13 providers in the community shall cooperate with any investigation
14 conducted by the Public Counsel pursuant to this subdivision and provide
15 all documentation and information requested by the Public Counsel in
16 connection with such an investigation.

17 Sec. 5. Original sections 81-8,241, 81-8,244, and 81-8,245, Revised
18 Statutes Cumulative Supplement, 2016, are repealed.