

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1293

Introduced by Conrad, 46.

Read first time January 16, 2024

Committee:

1 A BILL FOR AN ACT relating to government; to amend sections 43-4317 and
2 47-904, Reissue Revised Statutes of Nebraska, and sections
3 50-401.01, 81-8,241, 81-8,242, 81-8,243, 81-8,244, and 81-8,245,
4 Revised Statutes Cumulative Supplement, 2022; to state legislative
5 findings and declarations; to change provisions relating to the
6 appointment and terms of the Inspector General of Nebraska Child
7 Welfare, the Inspector General of the Nebraska Correctional System,
8 and the Public Counsel; to provide powers and duties for the
9 Executive Board of the Legislative Council; to provide subpoena
10 powers as prescribed; to change powers of the Public Counsel; to
11 harmonize provisions; and to repeal the original sections.
12 Be it enacted by the people of the State of Nebraska,

1 Section 1. The Legislature finds and declares that:

2 (1) It is within the constitutional and inherent power of the
3 Legislature to manage, control, and participate in the general management
4 of state institutions, investigate state institutional activity, and
5 ensure that state expenditures are consistent with state and public
6 policy. This power of management and control is constitutional, broad,
7 and indispensable;

8 (2) Article IV, section 19, of the Constitution of Nebraska
9 explicitly provides that the general management, control, and government
10 of all state charitable, mental, reformatory, and penal institutions
11 shall be vested as determined by the Legislature;

12 (3) It is also within the constitutional and inherent power of the
13 Legislature to secure needed information in order to legislate, hold
14 hearings, and conduct investigations of matters relating to the operation
15 of state government. This power of oversight is constitutional, broad,
16 and indispensable;

17 (4) Article IV, section 23, of the Constitution of Nebraska
18 explicitly provides that the Legislature may at any time require
19 information, in writing and under oath, from the officers of all
20 expending agencies upon any subject relating to the condition,
21 management, and expenses of their respective offices; and

22 (5) In order to facilitate its authority to manage and control state
23 institutions and investigate and oversee state institutions, the
24 Legislature created the office of Inspector General of Nebraska Child
25 Welfare.

26 Sec. 2. Section 43-4317, Reissue Revised Statutes of Nebraska, is
27 amended to read:

28 43-4317 (1) The office of Inspector General of Nebraska Child
29 Welfare is created within the office of Public Counsel for the purpose of
30 conducting investigations, audits, inspections, and other reviews of the
31 Nebraska child welfare system. The Inspector General shall be appointed

1 by the ~~Public Counsel with approval from the chairperson of the~~ Executive
2 Board of the Legislative Council pursuant to section 50-401.01 and the
3 ~~chairperson of the Health and Human Services Committee of the~~
4 ~~Legislature.~~

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

22 (3) The Inspector General shall employ such investigators and
23 support staff as he or she deems necessary to carry out the duties of the
24 office within the amount available by appropriation through the office of
25 Public Counsel for the office of Inspector General of Nebraska Child
26 Welfare. The Inspector General shall be subject to the control and
27 supervision of the Public Counsel, except that removal of the Inspector
28 General shall require approval of the chairperson of the Executive Board
29 of the Legislative Council and the chairperson of the Health and Human
30 Services Committee of the Legislature.

31 Sec. 3. The Legislature finds and declares that:

1 (1) It is within the constitutional and inherent power of the
2 Legislature to manage, control, and participate in the general management
3 of state institutions, investigate state institutional activity, and
4 ensure that state expenditures are consistent with state and public
5 policy. This power of management and control is constitutional, broad,
6 and indispensable;

7 (2) Article IV, section 19, of the Constitution of Nebraska
8 explicitly provides that the general management, control, and government
9 of all state charitable, mental, reformatory, and penal institutions
10 shall be vested as determined by the Legislature;

11 (3) It is also within the constitutional and inherent power of the
12 Legislature to secure needed information in order to legislate, hold
13 hearings, and conduct investigations of matters relating to the operation
14 of state government. This power of oversight is constitutional, broad,
15 and indispensable;

16 (4) Article IV, section 23, of the Constitution of Nebraska
17 explicitly provides that the Legislature may at any time require
18 information, in writing and under oath, from the officers of all
19 expending agencies upon any subject relating to the condition,
20 management, and expenses of their respective offices; and

21 (5) In order to facilitate its authority to manage and control state
22 institutions and investigate and oversee state institutions, the
23 Legislature created the office of Inspector General of the Nebraska
24 Correctional System.

25 Sec. 4. Section 47-904, Reissue Revised Statutes of Nebraska, is
26 amended to read:

27 47-904 (1) The office of Inspector General of the Nebraska
28 Correctional System is created within the office of Public Counsel for
29 the purpose of conducting investigations, audits, inspections, and other
30 reviews of the Nebraska correctional system. The Inspector General shall
31 be appointed by the ~~Public Counsel with approval from the chairperson of~~

1 ~~the Executive Board of the Legislative Council pursuant to section~~
2 ~~50-401.01 and the chairperson of the Judiciary Committee of the~~
3 ~~Legislature.~~

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

21 (3) The Inspector General shall employ such investigators and
22 support staff as he or she deems necessary to carry out the duties of the
23 office within the amount available by appropriation through the office of
24 Public Counsel for the office of Inspector General of the Nebraska
25 Correctional System. The Inspector General shall be subject to the
26 control and supervision of the Public Counsel, except that removal of the
27 Inspector General shall require approval of the chairperson of the
28 Executive Board of the Legislative Council and the chairperson of the
29 Judiciary Committee of the Legislature.

30 Sec. 5. Section 50-401.01, Revised Statutes Cumulative Supplement,
31 2022, is amended to read:

1 50-401.01 (1) The Legislative Council shall have an executive board,
2 to be known as the Executive Board of the Legislative Council, which
3 shall consist of a chairperson, a vice-chairperson, and six members of
4 the Legislature, to be chosen by the Legislature at the commencement of
5 each regular session of the Legislature when the speaker is chosen, and
6 the Speaker of the Legislature. The Legislature at large shall elect two
7 of its members from legislative districts Nos. 1, 17, 30, 32 to 35, 37,
8 38, 40 to 44, 47, and 48, two from legislative districts Nos. 2, 3, 15,
9 16, 19, 21 to 29, 45, and 46, and two from legislative districts Nos. 4
10 to 14, 18, 20, 31, 36, 39, and 49. The Chairperson of the Committee on
11 Appropriations shall serve as a nonvoting ex officio member of the
12 executive board whenever the board is considering fiscal administration.

13 (2) The executive board shall:

14 (a) Supervise all services and service personnel of the Legislature
15 and may employ and fix compensation and other terms of employment for
16 such personnel as may be needed to carry out the intent and activities of
17 the Legislature or of the board, unless otherwise directed by the
18 Legislature, including the adoption of policies by the executive board
19 which permit (i) the purchasing of an annuity for an employee who retires
20 or (ii) the crediting of amounts to an employee's deferred compensation
21 account under section 84-1504. The payments to or on behalf of an
22 employee may be staggered to comply with other law; and

23 (b) Appoint persons to fill the positions of Legislative Fiscal
24 Analyst, Director of Research, Revisor of Statutes, ~~and~~ Legislative
25 Auditor, Public Counsel, Inspector General of Nebraska Child Welfare, and
26 Inspector General of the Nebraska Correctional System. The persons
27 appointed to these positions shall have training and experience as
28 determined by the executive board and shall serve at the pleasure of the
29 executive board. The Legislative Performance Audit Committee shall
30 recommend the person to be appointed Legislative Auditor. Their
31 respective salaries shall be set by the executive board.

1 (3) Notwithstanding any other provision of law, the executive board
2 may contract to obtain legal, auditing, accounting, actuarial, or other
3 professional services or advice for or on behalf of the executive board,
4 the Legislative Council, the Legislature, or any member of the
5 Legislature. The providers of such services or advice shall meet or
6 exceed the minimum professional standards or requirements established or
7 specified by their respective professional organizations or licensing
8 entities or by federal law. Such contracts, the deliberations of the
9 executive board with respect to such contracts, and the work product
10 resulting from such contracts shall not be subject to review or approval
11 by any other entity of state government.

12 Sec. 6. (1) It is within the constitutional and inherent power of
13 the Legislature and the Public Counsel to gather information pursuant to
14 their official functions, and to conduct investigations of matters within
15 the authority of the Legislature or the subject-matter jurisdiction of
16 the Public Counsel. The Legislature and the Public Counsel may issue
17 subpoenas as provided in this section. A subpoena shall not be exercised
18 unless the Executive Board of the Legislative Council or the Public
19 Counsel has determined that no other method of securing the desired
20 information would be successful or practicable, and that the matter is of
21 primary importance to the welfare of the State of Nebraska. The Public
22 Counsel, when conducting an investigation and gathering information,
23 shall observe the procedures described in this section in addition to any
24 executive board procedures whenever subpoenas are issued.

25 (2) The Executive Board of the Legislative Council may, by a
26 majority vote of all its members, issue a subpoena or subpoena duces
27 tecum requiring any person to provide any books, records, materials,
28 electronic data, or other documents or information to the Public Counsel
29 in connection with a specific inquiry or investigation in question.

30 (3) Upon issuing a subpoena, a record shall be made by the clerk for
31 the executive board reflecting the date the subpoena was issued, to whom

1 it was issued, for what purpose it was issued, and the date on which
2 testimony or production of documents shall take place. Under
3 extraordinary circumstances, the identity of the person subpoenaed may be
4 withheld from publication if necessary to protect the safety of an
5 individual or the confidentiality of the matters to be heard.

6 (4) Service of a subpoena requiring the attendance of a person to
7 provide testimony or information or to produce relevant documents shall
8 be made in the manner provided by law for the service of subpoenas in
9 civil actions unless a shorter period of time is authorized by a majority
10 vote of all of the members of the executive board. Any person who is
11 served with a subpoena to attend a meeting or hearing or to produce
12 documents shall also be served with a general statement informing him or
13 her of the subject matter of the investigation or inquiry and a notice
14 that he or she may be accompanied at the meeting or hearing by counsel of
15 his or her own choosing.

16 (5) A person shall be in contempt if he or she (a) fails or refuses
17 to appear in compliance with a subpoena or, having appeared, fails or
18 refuses to provide information or (b) fails or refuses to answer any
19 relevant question or inquiry or fails or refuses to furnish any relevant
20 record, material, electronic data, paper, or other document subpoenaed.
21 The Public Counsel may apply to the executive board, or, if the
22 Legislature is not in session, to the district court of any county with
23 jurisdiction to compel obedience by proceedings for contempt.

24 (6) A person who is guilty of contempt under this section shall be
25 subject to punishment pursuant to sections 50-105 and 50-106 when the
26 Legislature is in session, or to section 50-407 when the Legislature is
27 not in session. If the executive board or the Public Counsel fails in any
28 material way to comply with the requirements of this section, any person
29 subject to a subpoena or a subpoena duces tecum who is injured by such
30 failure shall be relieved of any requirement to attend a meeting or
31 hearing for which the subpoena was issued, or, if such person is present

1 at such meeting or hearing, relieved of any requirement to answer any
2 questions or inquiries or produce any evidence at such meeting or
3 hearing. The failure by the executive board or the Public Counsel to
4 materially comply with the requirements of this section shall be a
5 complete defense in any proceeding against such person for contempt or
6 other punishment.

7 (7) Nothing in this section shall be construed to limit or prohibit
8 the acquisition of evidence or information by the Public Counsel by any
9 other means or method not otherwise prohibited by law.

10 Sec. 7. Section 81-8,241, Revised Statutes Cumulative Supplement,
11 2022, is amended to read:

12 81-8,241 The office of Public Counsel is hereby established to
13 exercise the authority and perform the duties provided by sections
14 81-8,240 to 81-8,254, the Office of Inspector General of Nebraska Child
15 Welfare Act, and the Office of Inspector General of the Nebraska
16 Correctional System Act. The Public Counsel shall be appointed ~~by the~~
17 ~~Legislature, with the vote of two thirds of the members required for~~
18 ~~approval of such appointment from nominations submitted by the Executive~~
19 ~~Board of the Legislative Council pursuant to section 50-401.01.~~

20 Sec. 8. Section 81-8,242, Revised Statutes Cumulative Supplement,
21 2022, is amended to read:

22 81-8,242 The Public Counsel shall be a person well equipped to
23 analyze problems of law, administration, and public policy, ~~and during~~
24 ~~such person's term of office~~ shall not be actively involved in partisan
25 affairs. No person may serve as Public Counsel within two years of the
26 last day on which such person served as a member of the Legislature, or
27 while such person is a candidate for or holds any other state office, or
28 while such person is engaged in any other occupation for reward or
29 profit.

30 Sec. 9. Section 81-8,243, Revised Statutes Cumulative Supplement,
31 2022, is amended to read:

1 81-8,243 The Public Counsel shall serve at the pleasure of the
2 Executive Board of the Legislative Council ~~for a term of six years,~~
3 ~~unless removed by vote of two-thirds of the members of the Legislature~~
4 ~~upon their determining that the Public Counsel has become incapacitated~~
5 ~~or has been guilty of neglect of duty or misconduct.~~ If the office of
6 Public Counsel becomes vacant for any cause, the deputy public counsel
7 shall serve as acting public counsel until a successor Public Counsel is
8 ~~has been appointed for a full term.~~ The Public Counsel shall receive such
9 salary as is set by the Executive Board of the Legislative Council.

10 Sec. 10. Section 81-8,244, Revised Statutes Cumulative Supplement,
11 2022, is amended to read:

12 81-8,244 (1)(a) The Public Counsel may select, appoint, and
13 compensate as he or she sees fit, within the amount available by
14 appropriation, such assistants and employees as he or she deems necessary
15 to discharge the responsibilities under sections 81-8,240 to 81-8,254. He
16 or she shall appoint and designate one assistant to be a deputy public
17 counsel, one assistant to be a deputy public counsel for corrections, one
18 assistant to be a deputy public counsel for institutions, and one
19 assistant to be a deputy public counsel for welfare services.

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

22 (c) The authority of the deputy public counsel for corrections shall
23 extend to all facilities and parts of facilities, offices, houses of
24 confinement, and institutions which are operated by the Department of
25 Correctional Services and all county or municipal correctional or jail
26 facilities.

27 (d) The authority of the deputy public counsel for institutions
28 shall extend to all mental health institutions and facilities operated by
29 the Department of Health and Human Services, to all veterans institutions
30 operated by the Department of Veterans' Affairs, and to all regional
31 behavioral health authorities that provide services and all community-

1 based behavioral health services providers that contract with a regional
2 behavioral health authority to provide services, for any individual who
3 was a patient within the prior twenty-four months of a state-owned and
4 state-operated regional center, and to all complaints pertaining to
5 administrative acts of the department, authority, or provider when those
6 acts are concerned with the rights and interests of individuals placed
7 within those institutions and facilities or receiving community-based
8 behavioral health services.

9 (e) The authority of the deputy public counsel for welfare services
10 shall extend to all complaints pertaining to administrative acts of
11 administrative agencies when those acts are concerned with the rights and
12 interests of individuals involved in the welfare services system of the
13 State of Nebraska.

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

18 ~~(2) The Public Counsel shall appoint the Inspector General of~~
19 ~~Nebraska Child Welfare as provided in section 43-4317. The Inspector~~
20 ~~General of Nebraska Child Welfare shall have the powers and duties~~
21 ~~provided in the Office of Inspector General of Nebraska Child Welfare~~
22 ~~Act.~~

23 ~~(3) The Public Counsel shall appoint the Inspector General of the~~
24 ~~Nebraska Correctional System as provided in section 47-904. The Inspector~~
25 ~~General of the Nebraska Correctional System shall have the powers and~~
26 ~~duties provided in the Office of Inspector General of the Nebraska~~
27 ~~Correctional System Act.~~

28 Sec. 11. Section 81-8,245, Revised Statutes Cumulative Supplement,
29 2022, is amended to read:

30 81-8,245 The Public Counsel shall have the power to:

31 (1) Investigate, on complaint or on his or her own motion, any

1 administrative act of any administrative agency;

2 (2) Prescribe the methods by which complaints are to be made,
3 received, and acted upon; determine the scope and manner of
4 investigations to be made; and, subject to the requirements of sections
5 81-8,240 to 81-8,254, determine the form, frequency, and distribution of
6 his or her conclusions, recommendations, and proposals;

7 (3) Conduct inspections of the premises, or any parts thereof, of
8 any administrative agency or any property owned, leased, or operated by
9 any administrative agency as frequently as is necessary, in his or her
10 opinion, to carry out duties prescribed under sections 81-8,240 to
11 81-8,254;

12 (4) Request and receive from each administrative agency, and such
13 agency shall provide, the assistance and information the counsel deems
14 necessary for the discharge of his or her responsibilities; inspect and
15 examine the records and documents of all administrative agencies
16 notwithstanding any other provision of law; and enter and inspect
17 premises within any administrative agency's control;

18 (5) Issue a subpoena, enforceable by action in an appropriate court,
19 to compel any person to appear, give sworn testimony, or produce
20 documentary or other evidence deemed relevant to a matter under his or
21 her inquiry as provided in section 6 of this act . ~~A person thus required~~
22 ~~to provide information shall be paid the same fees and travel allowances~~
23 ~~and shall be accorded the same privileges and immunities as are extended~~
24 ~~to witnesses in the district courts of this state and shall also be~~
25 ~~entitled to have counsel present while being questioned;~~

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

31 (7) Make investigations, reports, and recommendations necessary to

1 carry out his or her duties under the State Government Effectiveness Act;
2 (8) Carry out his or her duties under the Office of Inspector
3 General of Nebraska Child Welfare Act. If any of the provisions of
4 sections 81-8,240 to 81-8,254 conflict with provisions of the Office of
5 Inspector General of Nebraska Child Welfare Act, the provisions of such
6 act shall control;

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

12 (10) Investigate allegations of violation of subsection (2) of
13 section 84-908 by an administrative agency pursuant to a complaint made
14 to his or her office and make a determination as to whether such
15 administrative agency has violated such subsection. The Public Counsel
16 shall report his or her determination in writing to the Governor, the
17 Secretary of State, the Attorney General, the Executive Board of the
18 Legislative Council, and the director or chief executive officer of the
19 agency. The report to the executive board shall be submitted
20 electronically; and

21 (11) Investigate and address the complaint and case of:

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

24 (b) Any juvenile released from a youth rehabilitation and treatment
25 center for reentry into the community, while that juvenile is subject to
26 the Community and Family Reentry Process and a service or treatment
27 program in which the juvenile may be involved after his or her release
28 from a youth rehabilitation and treatment center, whether that service or
29 program is administrated by the Office of Juvenile Services or a private
30 provider in the community. The Office of Juvenile Services and private
31 providers in the community shall cooperate with any investigation

1 conducted by the Public Counsel pursuant to this subdivision and provide
2 all documentation and information requested by the Public Counsel in
3 connection with such an investigation.

4 Sec. 12. Original sections 43-4317 and 47-904, Reissue Revised
5 Statutes of Nebraska, and sections 50-401.01, 81-8,241, 81-8,242,
6 81-8,243, 81-8,244, and 81-8,245, Revised Statutes Cumulative Supplement,
7 2022, are repealed.