

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 294

Introduced by Flood, 19.

Read first time January 12, 2021

Committee:

- 1 A BILL FOR AN ACT relating to government; to amend section 81-1316,
- 2 Revised Statutes Cumulative Supplement, 2020; to exempt certain
- 3 state agency deputy directors and legal counsel from the State
- 4 Personnel System as prescribed; and to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 81-1316, Revised Statutes Cumulative Supplement,
2 2020, is amended to read:

3 81-1316 (1) All agencies and personnel of state government shall be
4 covered by sections 81-1301 to 81-1319 and shall be considered subject to
5 the State Personnel System, except the following:

- 6 (a) All personnel of the office of the Governor;
- 7 (b) All personnel of the office of the Lieutenant Governor;
- 8 (c) All personnel of the office of the Secretary of State;
- 9 (d) All personnel of the office of the State Treasurer;
- 10 (e) All personnel of the office of the Attorney General;
- 11 (f) All personnel of the office of the Auditor of Public Accounts;
- 12 (g) All personnel of the Legislature;
- 13 (h) All personnel of the court systems;
- 14 (i) All personnel of the Board of Educational Lands and Funds;
- 15 (j) All personnel of the Public Service Commission;
- 16 (k) All personnel of the Nebraska Brand Committee;
- 17 (l) All personnel of the Commission of Industrial Relations;
- 18 (m) All personnel of the State Department of Education;
- 19 (n) All personnel of the Nebraska state colleges and the Board of
20 Trustees of the Nebraska State Colleges;
- 21 (o) All personnel of the University of Nebraska;
- 22 (p) All personnel of the Coordinating Commission for Postsecondary
23 Education;
- 24 (q) All personnel of the Governor's Policy Research Office;
- 25 (r) All personnel of the Commission on Public Advocacy;
- 26 (s) All agency heads;
- 27 (t)(i) The Director of Behavioral Health of the Division of
28 Behavioral Health; (ii) the Director of Children and Family Services of
29 the Division of Children and Family Services; (iii) the Director of
30 Developmental Disabilities of the Division of Developmental Disabilities;
31 (iv) the Director of Medicaid and Long-Term Care of the Division of

1 Medicaid and Long-Term Care; and (v) the Director of Public Health of the
2 Division of Public Health;

3 (u) The chief medical officer established under section 81-3115, the
4 Administrator of the Office of Juvenile Services, and the chief executive
5 officers of the Beatrice State Developmental Center, Lincoln Regional
6 Center, Norfolk Regional Center, Hastings Regional Center, Grand Island
7 Veterans' Home, Norfolk Veterans' Home, Eastern Nebraska Veterans' Home,
8 Western Nebraska Veterans' Home, Youth Rehabilitation and Treatment
9 Center-Kearney, and Youth Rehabilitation and Treatment Center-Geneva;

10 (v) The chief executive officers of all facilities operated by the
11 Department of Correctional Services and the medical director for the
12 department appointed pursuant to section 83-4,156;

13 (w) All personnel employed as pharmacists, physicians,
14 psychiatrists, or psychologists by the Department of Correctional
15 Services;

16 (x) All personnel employed as pharmacists, physicians,
17 psychiatrists, psychologists, service area administrators, or facility
18 operating officers of the Department of Health and Human Services or the
19 Department of Veterans' Affairs;

20 (y) Deputies and examiners of the Department of Banking and Finance
21 and the Department of Insurance as set forth in sections 8-105 and
22 44-119, except for those deputies and examiners who remain in the State
23 Personnel System;

24 (z) All personnel of the Tax Equalization and Review Commission; ~~and~~

25 (aa) The associate director of the Conservation Division of the
26 Nebraska State Historical Society and all personnel employed as a
27 Conservator I or Conservator II of the Conservation Division of the
28 Nebraska State Historical Society; -

29 (bb) All personnel employed as deputy directors of all agencies
30 other than those listed in subdivisions (c) through (j) and (n) through
31 (p) of this subsection. For purposes of this subdivision, deputy director

1 includes, but is not limited to, any position titled deputy director and
2 includes any person in the position to fill in and have the authority to
3 act in the absence of the director of an agency on other than an interim
4 basis. Each deputy director hired after the effective date of this act
5 shall hold office at the will of the director of the agency and shall
6 receive such salary as fixed by such director and approved by the entity
7 with oversight over the director or, if none, the Governor, based upon
8 the level of credentials for the position. Each employee who is employed
9 as a deputy director on the effective date of this act may elect to
10 become employed at will. The election to become employed at will may be
11 made at any time upon notification to the director of the agency in
12 writing, but once made, such election shall be final. Until the election
13 to be employed at will is made, the employee shall be treated as
14 continuing to participate in the State Personnel System; and

15 (cc) All personnel employed as agency legal counsel of agencies
16 which have two hundred or more employees other than the agencies listed
17 in subdivisions (c) through (j) and (n) through (p) of this section. For
18 purposes of this subdivision, agency legal counsel means an employee who,
19 under administrative direction, directs and manages the entire legal
20 department and all legal functions within an agency and is responsible
21 for legal representation of the agency as a whole; supervises assigned
22 staff engaged in providing professional legal and technical support
23 services; and performs related work as assigned. Each agency legal
24 counsel of an agency described in this subdivision hired after the
25 effective date of this act shall hold office at the will of the director
26 of the agency and shall receive such salary as fixed by such director and
27 approved by the entity with oversight over the director or, if none, the
28 Governor. Each employee who is employed on the effective date of this act
29 as an agency legal counsel of an agency described in this subdivision may
30 elect to become employed at will. The election to become employed at will
31 may be made at any time upon notification to the director of the agency

1 in writing, but once made, such election shall be final. Until the
2 election to be employed at will is made, the employee shall be treated as
3 continuing to participate in the State Personnel System. Nothing in this
4 subdivision shall be construed to authorize an agency legal counsel to
5 represent an agency in court or before a federal administrative tribunal
6 except as authorized by the Attorney General or as otherwise specifically
7 permitted by law.

8 (2) At each agency head's discretion, up to the following number of
9 additional positions may be exempted from the State Personnel System,
10 based on the following agency size categories:

11	Number of Agency	Number of Noncovered
12	Employees	Positions
13	less than 25	0
14	25 to 100	1
15	101 to 250	2
16	251 to 500	3
17	501 to 1000	4
18	1001 to 2000	5
19	2001 to 3000	8
20	3001 to 4000	11
21	4001 to 5000	40
22	over 5000	50

23 The purpose of having such noncovered positions shall be to allow
24 agency heads the opportunity to recruit, hire, and supervise critical,
25 confidential, or policymaking personnel without restrictions from
26 selection procedures, compensation rules, career protections, and
27 grievance privileges. Persons holding the noncovered positions shall
28 serve at the pleasure of the agency head and shall be paid salaries set
29 by the agency head. An agency with over five thousand employees shall
30 provide notice in writing to the Health and Human Services Committee of
31 the Legislature when forty noncovered positions have been filled by the

1 agency head pursuant to this subsection.

2 (3) No changes to this section or to the number of noncovered
3 positions within an agency shall affect the status of personnel employed
4 on the date the changes become operative without their prior written
5 agreement. A state employee's career protections or coverage by personnel
6 rules and regulations shall not be revoked by redesignation of the
7 employee's position as a noncovered position without the prior written
8 agreement of such employee.

9 Sec. 2. Original section 81-1316, Revised Statutes Cumulative
10 Supplement, 2020, is repealed.