

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 963

Introduced by Wayne, 13.

Read first time January 04, 2024

Committee:

1 A BILL FOR AN ACT relating to county attorneys; to amend sections
2 23-1201, 23-1205, 23-1212, 23-1218, 23-1220, and 77-5007.01, Reissue
3 Revised Statutes of Nebraska, and sections 32-567 and 32-604,
4 Revised Statutes Cumulative Supplement, 2022; to provide for the
5 powers and duties of county attorneys and deputy county attorneys to
6 be performed by district attorneys and deputy district attorneys
7 appointed by the Attorney General; to eliminate provisions relating
8 to powers and duties and elections of county attorneys; to provide
9 powers and duties for the Attorney General; to harmonize provisions;
10 to provide operative dates; to repeal the original sections; and to
11 outright repeal sections 23-1201.01, 23-1201.02, 23-1204,
12 23-1204.01, 23-1204.03, 23-1204.04, 23-1204.05, 23-1204.06,
13 23-1206.01, 23-1206.02, 23-1209, 23-1221, 23-1222, 23-1223, and
14 32-522, Reissue Revised Statutes of Nebraska.
15 Be it enacted by the people of the State of Nebraska,

1 Section 1. (1) Beginning January 1, 2025, the powers and duties of
2 county attorneys and deputy county attorneys in each of the counties of
3 Nebraska shall be performed by district attorneys and deputy district
4 attorneys as provided in this section.

5 (2) The Attorney General shall designate a district attorney for
6 each of the district court judicial districts described in section
7 24-301.02, to begin serving effective January 1, 2025. A district
8 attorney shall serve as the county attorney for each of the counties
9 contained within the judicial district.

10 (3) The Attorney General may assign additional deputy district
11 attorneys and support staff to each district attorney as necessary to
12 handle the workload in the district. All district attorneys, deputy
13 district attorneys, and staff assigned by the Attorney General to a
14 district shall be full-time employees of the office of the Attorney
15 General and shall not engage in the private practice of law.

16 Sec. 2. Section 23-1201, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 23-1201 (1) Except as provided in subdivision (2) of section 84-205
19 or if a person is participating in a pretrial diversion program
20 established pursuant to sections 29-3601 to 29-3604 or a juvenile
21 pretrial diversion program established pursuant to sections 43-260.02 to
22 43-260.07, it shall be the duty of the county attorney, when in
23 possession of sufficient evidence to warrant the belief that a person is
24 guilty and can be convicted of a felony or misdemeanor, to prepare, sign,
25 verify, and file the proper complaint against such person and to appear
26 in the several courts of the county and prosecute the appropriate
27 criminal proceeding on behalf of the state and county. Prior to reaching
28 a plea agreement with defense counsel, the county attorney shall consult
29 with or make a good faith effort to consult with the victim regarding the
30 content of and reasons for such plea agreement. The county attorney shall
31 record such consultation or effort in his or her office file.

1 (2) It shall be the duty of the county attorney to prosecute or
2 defend, on behalf of the state and county, all suits, applications, or
3 motions, civil or criminal, arising under the laws of the state in which
4 the state or the county is a party or interested. The county attorney may
5 be directed by the Attorney General to represent the state in any action
6 or matter in which the state is interested or a party. ~~When such services
7 require the performance of duties which are in addition to the ordinary
8 duties of the county attorney, he or she shall receive such fee for his
9 or her services, in addition to the salary as county attorney, as (a) the
10 court shall order in any action involving court appearance or (b) the
11 Attorney General shall authorize in other matters, with the amount of
12 such additional fee to be paid by the state. It shall also be the duty of
13 the county attorney to appear and prosecute or defend on behalf of the
14 state and county all such suits, applications, or motions which may have
15 been transferred by change of venue from his or her county to any other
16 county in the state. Any counsel who may have been assisting the county
17 attorney in any such suits, applications, or motions in his or her county
18 may be allowed to assist in any other county to which such cause has been
19 removed.~~

20 (3) The county attorney shall file the annual inventory statement
21 with the county board of county personal property in his or her
22 possession as provided in sections 23-346 to 23-350. It shall be the
23 further duty of the county attorney of each county, within three days
24 from the calling to his or her attention of any violation of the
25 requirements of the law concerning annual inventory statements from
26 county officers, to institute proceedings against such offending officer
27 and in addition thereto to prosecute the appropriate action to remove
28 such county officer from office. When it is the county attorney who is
29 charged with failure to comply with this section, the Attorney General
30 may bring the action. It shall be the duty of the county attorney to make
31 a report on the tenth day of each quarter to the county board which shall

1 show final disposition of all criminal cases the previous quarter,
2 criminal cases pending on the last day of the previous quarter, and
3 criminal cases appealed during the past quarter. The county board may
4 waive the duty to make such report.

5 Sec. 3. Section 23-1205, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 23-1205 Due to the absence, sickness, disability, or conflict of
8 interest of the county attorney and his or her deputies, or upon request
9 of the county attorney for good cause, the Attorney General Supreme
10 Court, ~~the Court of Appeals, or any district court, separate juvenile~~
11 ~~court, or county court before which the cause may be heard~~ may appoint an
12 attorney to act as county attorney in any investigation, appearance, or
13 trial by an order entered upon the minutes of the court. ~~Such attorney~~
14 ~~shall be allowed compensation for such services as the court determines,~~
15 ~~to be paid by order of the county treasurer upon presenting to the county~~
16 ~~board the certificate of the judge before whom the cause was tried~~
17 ~~certifying to services rendered by such attorney and the amount of~~
18 ~~compensation.~~

19 Sec. 4. Section 23-1212, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 23-1212 For purposes of sections 23-1212 to 23-1220 ~~23-1222~~, unless
22 the context otherwise requires:

23 ~~(1) County attorney shall mean the county attorney of a county in~~
24 ~~this state whether such position is elective or appointive and regardless~~
25 ~~of whether such position is full time or part time;~~

26 ~~(2) Deputy county attorney shall mean an attorney employed by a~~
27 ~~county in this state for the purpose of assisting the county attorney in~~
28 ~~carrying out his or her responsibilities regardless of whether such~~
29 ~~position is full time or part time;~~

30 ~~(1) (3) Council shall mean the Nebraska County Attorney Standards~~
31 ~~Advisory Council;~~

1 (2) (4) Attorney General shall mean the Nebraska Attorney General;

2 (3) (5) Commission shall mean the Nebraska Commission on Law
3 Enforcement and Criminal Justice; and

4 (4) (6) Continuing legal education, including instruction providing
5 a working knowledge of electronic speed measurement principles and
6 instruction on the investigation and prosecution of crimes against
7 children, shall mean that type of legal education, including instruction
8 providing a working knowledge of electronic speed measurement principles
9 and instruction on the investigation and prosecution of crimes against
10 children, which has application to and seeks to maintain and improve the
11 skills of the county attorney and deputy county attorney in carrying out
12 the responsibilities of his or her office or position.

13 Sec. 5. Section 23-1218, Reissue Revised Statutes of Nebraska, is
14 amended to read:

15 23-1218 The Nebraska Commission on Law Enforcement and Criminal
16 Justice, after consultation with the council, shall:

17 (1) Establish curricula for the implementation of a mandatory
18 continuing legal education program, including instruction providing a
19 working knowledge of electronic speed measurement principles and
20 instruction on the investigation and prosecution of crimes against
21 children, for county attorneys and deputy county attorneys;

22 (2) Administer all programs of continuing legal education, including
23 instruction providing a working knowledge of electronic speed measurement
24 principles and instruction on the investigation and prosecution of crimes
25 against children, for county attorneys and deputy county attorneys
26 required under sections 23-1212 to 23-1220 ~~23-1222~~;

27 (3) Evaluate the effectiveness of programs of continuing legal
28 education, including instruction providing a working knowledge of
29 electronic speed measurement principles and instruction on the
30 investigation and prosecution of crimes against children, required under
31 sections 23-1212 to 23-1220 ~~23-1222~~;

1 (4) Certify the number of hours of continuing legal education,
2 including instruction providing a working knowledge of electronic speed
3 measurement principles and instruction on the investigation and
4 prosecution of crimes against children, completed by a county attorney
5 and deputy county attorney as required under sections 23-1212 to 23-1220
6 ~~23-1222~~ and maintain all records relating thereto;

7 (5) Report to the Attorney General the names of all county attorneys
8 and deputy county attorneys who have failed to complete the number of
9 hours of continuing legal education, including instruction providing a
10 working knowledge of electronic speed measurement principles and
11 instruction on the investigation and prosecution of crimes against
12 children, as required under section 23-1217;

13 (6) Establish tuition and fees for all programs of continuing legal
14 education, including instruction providing a working knowledge of
15 electronic speed measurement principles and instruction on the
16 investigation and prosecution of crimes against children, as required
17 under sections 23-1212 to 23-1220 ~~23-1222~~;

18 (7) Adopt and promulgate necessary rules and regulations for the
19 effective delivery of all programs of continuing legal education,
20 including instruction providing a working knowledge of electronic speed
21 measurement principles and instruction on the investigation and
22 prosecution of crimes against children, for county attorneys and deputy
23 county attorneys as required under sections 23-1212 to 23-1220 ~~23-1222~~;

24 (8) Do all things necessary to carry out the purpose of training
25 county attorneys and deputy county attorneys as required by sections
26 23-1212 to 23-1220 ~~23-1222~~; and

27 (9) Receive and distribute appropriated funds to the Nebraska County
28 Attorneys Association to develop, administer, and conduct continuing
29 legal education seminars, prepare and publish trial manuals and other
30 publications, and take any other measure that will enhance the
31 investigation and prosecution of crime in this state.

1 Sec. 6. Section 23-1220, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 23-1220 Upon being advised by the commission of a failure on the
4 part of a county attorney or deputy county attorney to complete the
5 number of hours of continuing legal education, including instruction
6 providing a working knowledge of electronic speed measurement principles
7 and instruction on the investigation and prosecution of crimes against
8 children, required by section 23-1217, the Attorney General shall take
9 appropriate action to discipline or remove such county attorney or
10 district attorney from office and appoint a replacement. ~~commence a civil~~
11 ~~action in the district court of the county in which the county attorney~~
12 ~~holds office, or in the case of a deputy county attorney in the district~~
13 ~~court of the county in which he or she is employed, seeking his or her~~
14 ~~removal from office or employment. Such action shall be brought in the~~
15 ~~name of the county. Such action shall be tried in the same manner as~~
16 ~~other civil actions under Chapter 25, except that such action shall be~~
17 ~~tried exclusively to the court without a jury.~~

18 Sec. 7. Section 32-567, Revised Statutes Cumulative Supplement,
19 2022, is amended to read:

20 32-567 Vacancies in office shall be filled as follows:

21 (1) In state and judicial district offices and in the membership of
22 any board or commission created by the state when no other method is
23 provided, by the Governor;

24 (2) In county offices other than county attorney, by the county
25 board;

26 (3) In the membership of the county board, by the county clerk,
27 ~~county attorney~~, and county treasurer;

28 (4) In the membership of the city council, according to section
29 32-568 or 32-569, as applicable;

30 (5) In township offices, by the township board or, if there are two
31 or more vacancies on the township board, by the county board;

1 (6) In offices in public power and irrigation districts, according
2 to section 70-615;

3 (7) In offices in natural resources districts, according to section
4 2-3215;

5 (8) In offices in community college areas, according to section
6 85-1514;

7 (9) In offices in educational service units, according to section
8 79-1217;

9 (10) In offices in hospital districts, according to section 23-3534;

10 (11) In offices in metropolitan utilities districts, according to
11 section 14-2104;

12 (12) In membership on airport authority boards, according to section
13 3-502, 3-611, or 3-703, as applicable;

14 (13) In membership on the board of trustees of a road improvement
15 district, according to section 39-1607;

16 (14) In membership on the council of a municipal county, by the
17 council;

18 (15) For learning community coordinating councils, according to
19 section 32-546.01; and

20 (16) For regional metropolitan transit authority boards, according
21 to section 18-808.

22 Sec. 8. Section 32-604, Revised Statutes Cumulative Supplement,
23 2022, is amended to read:

24 32-604 (1) Except as provided in subsection (2) or (4) of this
25 section, no person shall be precluded from being elected or appointed to
26 or holding an elective office for the reason that he or she has been
27 elected or appointed to or holds another elective office.

28 (2) No person serving as a member of the Legislature or in an
29 elective office described in Article IV, section 1 or 20, or Article VII,
30 section 3 or 10, of the Constitution of Nebraska shall simultaneously
31 serve in any other elective office, except that such a person may

1 simultaneously serve in another elective office which is filled at an
2 election held in conjunction with the annual meeting of a public body.

3 (3) Whenever an incumbent serving as a member of the Legislature or
4 in an elective office described in Article IV, section 1 or 20, or
5 Article VII, section 3 or 10, of the Constitution of Nebraska assumes
6 another elective office, except an elective office filled at an election
7 held in conjunction with the annual meeting of a public body, the office
8 first held by the incumbent shall be deemed vacant.

9 (4) No person serving in a high elective office shall simultaneously
10 serve in any other high elective office, ~~except that a county attorney~~
11 ~~may serve as the county attorney for more than one county if appointed~~
12 ~~under subsection (2) of section 23-1201.01.~~

13 (5) Notwithstanding subsection (4) of this section, any person
14 holding more than one high elective office upon July 15, 2010, shall be
15 entitled to serve the remainder of all terms for which he or she was
16 elected or appointed.

17 (6) For purposes of this section, (a) elective office has the
18 meaning found in section 32-109 and includes an office which is filled at
19 an election held in conjunction with the annual meeting of a public body
20 created by an act of the Legislature but does not include a member of a
21 learning community coordinating council appointed pursuant to subsection
22 (5) or (7) of section 32-546.01 prior to January 5, 2017, and (b) high
23 elective office means a member of the Legislature, an elective office
24 described in Article IV, section 1 or 20, or Article VII, section 3 or
25 10, of the Constitution of Nebraska, or a county, city, community college
26 area, learning community, regional metropolitan transit authority, or
27 school district elective office.

28 Sec. 9. Section 77-5007.01, Reissue Revised Statutes of Nebraska, is
29 amended to read:

30 77-5007.01 In appeals by a county assessor in his or her official
31 capacity pursuant to section 77-5007, the county assessor may request

1 that the district court appoint an attorney to represent the county
2 assessor before the commission. Upon a showing of good cause, the
3 district court may make such an appointment by an order to be entered
4 upon the minutes of the court. Any attorney so appointed shall receive no
5 compensation from the county—except as provided for in section
6 ~~23-1204.01~~.

7 Sec. 10. Sections 2, 3, 4, 5, 6, 7, 8, 9, 11, and 12 of this act
8 become operative on January 1, 2025. The other sections of this act
9 become operative on their effective date.

10 Sec. 11. Original sections 23-1201, 23-1205, 23-1212, 23-1218,
11 23-1220, and 77-5007.01, Reissue Revised Statutes of Nebraska, and
12 sections 32-567 and 32-604, Revised Statutes Cumulative Supplement, 2022,
13 are repealed.

14 Sec. 12. The following sections are outright repealed: Sections
15 23-1201.01, 23-1201.02, 23-1204, 23-1204.01, 23-1204.03, 23-1204.04,
16 23-1204.05, 23-1204.06, 23-1206.01, 23-1206.02, 23-1209, 23-1221,
17 23-1222, 23-1223, and 32-522, Reissue Revised Statutes of Nebraska.