

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1195

Introduced by Conrad, 46.

Read first time January 12, 2024

Committee: Judiciary

1 A BILL FOR AN ACT relating to the practice of law; to amend sections
2 7-203, 23-1201.01, 23-1206.01, 23-1210, 23-3401, 23-3403, 23-3404,
3 23-3406, and 59-1608.04, Reissue Revised Statutes of Nebraska; to
4 change the definition of designated legal profession shortage area
5 under the Legal Education for Public Service and Rural Practice Loan
6 Repayment Assistance Act; to change provisions relating to county
7 attorneys and public defenders; to provide for payment of certain
8 expenses for certain county attorneys, public defenders, coroners,
9 and attorneys employed by such offices; to change provisions
10 relating to the State Settlement Cash Fund; to transfer funds; 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. Section 7-203, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 7-203 For purposes of the Legal Education for Public Service and
4 Rural Practice Loan Repayment Assistance Act:

5 (1) Board means the Legal Education for Public Service and Rural
6 Practice Loan Repayment Assistance Board;

7 (2) Designated legal profession shortage area means a rural area
8 located within any county in Nebraska having a population of less than
9 seventy-five ~~fifteen~~ thousand inhabitants and not included within a
10 metropolitan statistical area as defined by the United States Department
11 of Commerce, Bureau of the Census, and determined by the board to be
12 underserved by available legal representation;

13 (3) Educational loans means loans received as an educational
14 benefit, scholarship, or stipend toward a juris doctorate degree and
15 either (a) made, insured, or guaranteed by a governmental unit or (b)
16 made under a program funded in whole or in part by a governmental unit or
17 nonprofit institution; and

18 (4) Public legal service means providing legal service to indigent
19 persons while employed by a tax-exempt charitable organization.

20 Sec. 2. Section 23-1201.01, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 23-1201.01 (1) Except as provided in subsection (2) of this section,
23 a qualified person need not be a resident of the county when he or she
24 files for election as county attorney, but if elected as county attorney,
25 such person shall reside in a county for which he or she holds office,
26 except that a county attorney serving in a county which does not have a
27 city of the metropolitan, primary, or first class may reside in an
28 adjoining Nebraska county.

29 (2) If there is no county attorney elected pursuant to section
30 32-522 or if a vacancy occurs for any other reason, the county board of
31 such county may appoint a qualified attorney from any Nebraska county to

1 the office of county attorney. In making such appointment, the county
2 board shall negotiate a contract with the attorney. Such ~~such~~ contract
3 shall ~~to~~ specify the terms and conditions of the appointment, including
4 the compensation of the attorney. Such ~~which~~ compensation shall not be
5 subject to sections 23-1114.02 to 23-1114.06. Such contract shall provide
6 for funds to pay for the annually required continuing legal education of
7 the attorney.

8 Sec. 3. Section 23-1206.01, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 23-1206.01 (1)(a) ~~In counties having a population of two hundred~~
11 ~~thousand inhabitants or more, the county attorney and all deputy county~~
12 ~~attorneys shall devote their full time to the legal work of such county~~
13 ~~and shall not engage in the private practice of law directly or~~
14 ~~indirectly, nor shall any county attorney, deputy county attorney, or~~
15 ~~employee of the county attorney of any such county directly or indirectly~~
16 ~~refer any legal matter or civil or criminal litigation to any lawyer or~~
17 ~~either directly or indirectly recommend or suggest to any person the~~
18 ~~employment of any particular lawyer or lawyers to counsel in, conduct,~~
19 ~~defend, or prosecute any action, case, claim, demand, or legal~~
20 ~~proceeding, whether in litigation or otherwise. In counties having a~~
21 ~~population of two hundred thousand inhabitants or more, the county~~
22 ~~attorney may appoint deputy county attorneys to serve without pay and~~
23 ~~when so appointed shall not be subject to the provisions of this section.~~

24 (b) ~~In counties with sixty thousand or more but less than one~~
25 ~~hundred thousand inhabitants, the county attorney shall receive a salary~~
26 ~~of not less than twenty-seven thousand five hundred dollars per annum.~~

27 (c) ~~In counties with one hundred thousand or more but less than two~~
28 ~~hundred thousand inhabitants, the county attorney shall receive a salary~~
29 ~~of not less than thirty-two thousand five hundred dollars per annum. The~~
30 ~~county attorneys of such counties shall not engage in private practice.~~
31 ~~The deputy county attorneys in such counties may engage in private~~

1 ~~practice.~~

2 ~~The (2) In any county not specifically provided for under subsection~~
3 ~~(1) of this section, the county board of any county may adopt a~~
4 resolution not less than sixty days prior to the deadline for filing for
5 the office of county attorney providing that the county attorney shall
6 devote his or her full time to the legal work of the county and shall not
7 engage in the private practice of law directly or indirectly and shall
8 not directly or indirectly refer any legal matter or civil or criminal
9 litigation to any lawyer nor directly or indirectly recommend or suggest
10 to any person the employment of any particular lawyer or lawyers to
11 counsel in, conduct, defend, or prosecute any action, case, claim,
12 demand, or legal proceeding, whether in litigation or otherwise. The
13 full-time county attorney shall receive an annual salary, to be set by
14 the county board, to be paid periodically out of the general fund the
15 same as the salaries of other employees, ~~except that in a county having~~
16 ~~a population of twenty thousand inhabitants or more or when two or more~~
17 ~~contiguous counties jointly employ one county attorney and have a~~
18 ~~combined population of twenty thousand inhabitants or more, the county~~
19 ~~attorney for the county or counties shall receive an annual salary of not~~
20 ~~less than twenty thousand dollars.~~

21 Sec. 4. Section 23-1210, Reissue Revised Statutes of Nebraska, is
22 amended to read:

23 23-1210 (1) The county attorney shall perform all of the duties
24 enjoined by law upon the county coroner and the county attorney shall be
25 the ex officio county coroner. The county attorney shall receive no
26 additional fees for the performance of duties prescribed by statutes for
27 county coroner but shall be reimbursed for all actual necessary expenses
28 incurred by him or her in the performance of such duties, including
29 expenses incurred for coroner or deputy coroner training as required by
30 section 23-1213.03, and with reimbursement for mileage to be made at the
31 rate provided in section 81-1176.

1 (2) The county attorney may delegate to the county sheriff, deputy
2 county sheriff, or any other peace officer that part of the coroner's
3 duties as now prescribed by statute which relates to viewing dead bodies
4 and serving papers, except that in cases when there may be occasion to
5 serve papers upon the sheriff, the county attorney may delegate such duty
6 to the county clerk.

7 Sec. 5. Section 23-3401, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 23-3401 (1) There is hereby created the office of public defender in
10 counties that have or that attain a population in excess of one hundred
11 thousand inhabitants and in other counties upon approval by the county
12 board. The public defender shall be elected as provided in the Election
13 Act.

14 (2) The public defender shall be a lawyer licensed to practice law
15 in this state. He or she shall take office after election and
16 qualification at the same time that other county officers take office,
17 except that upon the creation of such office in any county, a qualified
18 person may be appointed by the county board to serve as public defender
19 until such office can be filled by an election in accordance with section
20 32-523.

21 (3) In any county, the county board may adopt a resolution not less
22 than sixty days prior to the deadline for filing for the office of public
23 defender providing that the public defender shall devote his or her full
24 time to the legal work of the county and shall not engage in the private
25 practice of law directly or indirectly and shall not directly or
26 indirectly refer any legal matter or civil or criminal litigation to any
27 lawyer nor directly or indirectly recommend or suggest to any person the
28 employment of any particular lawyer or lawyers to counsel in, conduct,
29 defend, or prosecute any action, case, claim, demand, or legal
30 proceeding, whether in litigation or otherwise. The full-time public
31 defender shall receive an annual salary, to be set by the county board,

1 to be paid periodically out of the general fund the same as the salaries
2 of other employees.

3 ~~(3) In counties having a population of more than one hundred seventy~~
4 ~~thousand inhabitants, the public defender shall devote his or her full~~
5 ~~time to the legal work of the office of the public defender and shall not~~
6 ~~engage in the private practice of law.~~

7 (4) A county board may determine that some or all assistant public
8 defenders of such county shall serve in their roles in a full-time
9 capacity. Such full-time All assistant public defenders ~~in such counties~~
10 shall devote their full time to the legal work of such office of the
11 public defender and shall not engage in the private practice of law, so
12 long as each such full-time assistant public defender receives the same
13 annual salary as each deputy county attorney of comparable ability and
14 experience receives in such county ~~counties~~.

15 (5) ~~(4)~~ No public defender or assistant public defender shall
16 solicit or accept any fee for representing a criminal defendant in a
17 prosecution in which the public defender or assistant is already acting
18 as the defendant's court-appointed counsel.

19 (6) ~~(5)~~ A public defender elected after November 1986 need not be a
20 resident of the county when he or she files for election as public
21 defender, but a public defender shall reside in a county for which he or
22 she holds office, except that in counties with a population of one
23 hundred thousand or less inhabitants, the public defender shall not be
24 required to reside in the county in which he or she holds office.

25 Sec. 6. Section 23-3403, Reissue Revised Statutes of Nebraska, is
26 amended to read:

27 23-3403 The public defender may appoint as many assistant public
28 defenders, who shall be attorneys licensed to practice law in this state,
29 secretaries, law clerks, investigators, and other employees as are
30 reasonably necessary to permit him or her to effectively and competently
31 represent the clients of the office subject to the approval and consent

1 of the county board which shall fix the compensation of all such persons.
2 The county board shall also determine as well as the budget for office
3 space, furniture, furnishings, fixtures, supplies, law books, and court
4 costs; ~~and~~ brief-printing, investigative, expert, and travel expenses;
5 tuition, fees, and other expenses incurred to meet attorney licensure
6 requirements and for the annually required continuing legal education of
7 the attorneys in the area of criminal law; ~~and~~ other miscellaneous
8 expenses reasonably necessary to enable the public defender to
9 effectively and competently represent the clients of the office.

10 Sec. 7. Section 23-3404, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 23-3404 (1) In a county having a population of less than one hundred
13 ~~thirty-five~~ thousand inhabitants which does not have an elected public
14 defender, the county board of such county may appoint a qualified
15 attorney to serve as public defender for such county. In making the
16 appointment and negotiating the contract, the county board shall comply
17 with sections 23-3405 to 23-3408.

18 (2) Nothing in sections 23-3401 to 23-3403 or 29-3901 to 29-3908
19 shall be construed to apply to sections 23-3404 to 23-3408.

20 Sec. 8. Section 23-3406, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 23-3406 (1) The contract negotiated between the county board and the
23 contracting attorney shall specify the categories of cases in which the
24 contracting attorney is to provide services.

25 (2) The contract negotiated between the county board and the
26 contracting attorney shall be awarded for at least a two-year term.
27 Removal of the contracting attorney short of the agreed term may be for
28 good cause only.

29 (3) The contract between the county board and the contracting
30 attorney may specify a maximum allowable caseload for each full-time or
31 part-time attorney who handles cases under the contract. Caseloads shall

1 allow each lawyer to give every client the time and effort necessary to
2 provide effective representation.

3 (4) The contract between the county board and the contracting
4 attorney shall provide that the contracting attorney be compensated at a
5 minimum rate which reflects the following factors:

6 (a) The customary compensation in the community for similar services
7 rendered by a privately retained counsel to a paying client or by
8 government or other publicly paid attorneys to a public client;

9 (b) The time and labor required to be spent by the attorney; and

10 (c) The degree of professional ability, skill, and experience called
11 for and exercised in the performance of the services.

12 (5) The contract between the county board and the contracting
13 attorney shall provide that the contracting attorney may decline to
14 represent clients with no reduction in compensation if the contracting
15 attorney is assigned more cases which require an extraordinary amount of
16 time and preparation than the contracting attorney can competently
17 handle.

18 (6) The contract between the contracting attorney and the county
19 board shall provide that the contracting attorney shall receive at least
20 ten hours of continuing legal education annually in the area of criminal
21 law. The contract between the county board and the contracting attorney
22 shall provide funds for the annually required continuing legal education
23 of the contracting attorney in the area of criminal law.

24 (7) The contract between the county board and the contracting
25 attorney shall require that the contracting attorney provide legal
26 counsel to all clients in a professional, skilled manner consistent with
27 minimum standards set forth by the American Bar Association and the
28 Canons of Ethics for Attorneys in the State of Nebraska. The contract
29 between the county board and the contracting attorney shall provide that
30 the contracting attorney shall be available to eligible defendants upon
31 their request, or the request of someone acting on their behalf, at any

1 time the Constitution of the United States or the Constitution of
2 Nebraska requires the appointment of counsel.

3 (8) The contract between the county board and the contracting
4 attorney shall provide for reasonable compensation over and above the
5 normal contract price for cases which require an extraordinary amount of
6 time and preparation, including capital cases.

7 Sec. 9. Section 59-1608.04, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 59-1608.04 (1) The State Settlement Cash Fund is created. The fund
10 shall be maintained by the Department of Justice and administered by the
11 Attorney General. Except as otherwise provided by law, the fund shall
12 consist of all recoveries received pursuant to the Consumer Protection
13 Act, including any money, funds, securities, or other things of value in
14 the nature of civil damages or other payment, except criminal penalties,
15 whether such recovery is by way of verdict, judgment, compromise, or
16 settlement in or out of court, or other final disposition of any case or
17 controversy, or any other payments received on behalf of the state by the
18 Department of Justice and administered by the Attorney General for the
19 benefit of the state or the general welfare of its citizens, but
20 excluding all funds held in a trust capacity where specific benefits
21 accrue to specific individuals, organizations, or governments. The fund
22 may be expended for any allowable legal purposes as determined by the
23 Attorney General. Transfers from the State Settlement Cash Fund may be
24 made at the direction of the Legislature to the Nebraska Capital
25 Construction Fund, the Legal Education for Public Service and Rural
26 Practice Loan Repayment Assistance Fund, and the General Fund. To provide
27 necessary financial accountability and management oversight, revenue from
28 individual settlement agreements or other separate sources credited to
29 the State Settlement Cash Fund may be tracked and accounted for within
30 the state accounting system through the use of separate and distinct
31 funds, subfunds, or any other available accounting mechanism specifically

1 approved by the Accounting Administrator for use by the Department of
2 Justice. Any money in the fund available for investment shall be invested
3 by the state investment officer pursuant to the Nebraska Capital
4 Expansion Act and the Nebraska State Funds Investment Act.

5 (2) The State Treasurer shall transfer two million five hundred
6 thousand dollars from the State Settlement Cash Fund to the Nebraska
7 Capital Construction Fund on July 1, 2013, or as soon thereafter as
8 administratively possible.

9 (3) The State Treasurer shall transfer eight hundred seventy-six
10 thousand nine hundred ninety-eight dollars from the State Settlement Cash
11 Fund to the General Fund on or before June 30, 2018, on such dates and in
12 such amounts as directed by the budget administrator of the budget
13 division of the Department of Administrative Services.

14 (4) The State Treasurer shall transfer one million seven hundred
15 fifty-six thousand six hundred thirty-nine dollars from the State
16 Settlement Cash Fund to the General Fund on or before June 30, 2019, on
17 such dates and in such amounts as directed by the budget administrator of
18 the budget division of the Department of Administrative Services.

19 (5) The State Treasurer shall transfer one hundred twenty-five
20 thousand dollars from the State Settlement Cash Fund to the Legal
21 Education for Public Service and Rural Practice Loan Repayment Assistance
22 Fund on or before April 30, 2018, on such dates and in such amounts as
23 directed by the budget administrator of the budget division of the
24 Department of Administrative Services.

25 (6) The State Treasurer shall transfer one hundred fifty thousand
26 dollars from the State Settlement Cash Fund to the Legal Education for
27 Public Service and Rural Practice Loan Repayment Assistance Fund on or
28 before July 9, 2018, on such dates and in such amounts as directed by the
29 budget administrator of the budget division of the Department of
30 Administrative Services.

31 (7) The State Treasurer shall transfer XXX dollars from the State

1 Settlement Cash Fund to the Legal Education for Public Service and Rural
2 Practice Loan Repayment Assistance Fund on the effective date of this
3 act, or as soon thereafter as administratively possible.

4 Sec. 10. Original sections 7-203, 23-1201.01, 23-1206.01, 23-1210,
5 23-3401, 23-3403, 23-3404, 23-3406, and 59-1608.04, Reissue Revised
6 Statutes of Nebraska, are repealed.