

LEGISLATURE OF NEBRASKA
ONE HUNDRED NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 388

FINAL READING

Introduced by DeBoer, 10; Bosn, 25; Cavanaugh, J., 9; Conrad, 46; Dungan, 26; Hallstrom, 1; McKinney, 11; Sorrentino, 39.

Read first time January 17, 2025

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to judicial nominating commissions; to amend
2 sections 24-802, 24-805, 24-806, 24-808, 24-809, 24-810, and
3 24-810.01, Reissue Revised Statutes of Nebraska, and section 24-803,
4 Revised Statutes Cumulative Supplement, 2024; to change provisions
5 relating to commission member residency requirements, terms of
6 office, powers and duties of commissioners and the Clerk of the
7 Supreme Court, appointments, vacancies, elections, and automatic
8 removals; to harmonize provisions; and to repeal the original
9 sections.
- 10 Be it enacted by the people of the State of Nebraska,

1 **Section 1.** Section 24-802, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 24-802 Except for the judge of the Supreme Court who is required to
4 be a member of a judicial nominating commission, each member or alternate
5 member of a commission shall be a resident of the judicial district or
6 area of the state served by such commission ~~except as provided in~~
7 ~~subsection (2) of section 24-806.~~ Except for the Chief Justice, the
8 member of the Supreme Court designated to serve on a particular
9 nominating commission shall not be a member who was originally selected
10 from the district served by such nominating commission.

11 **Sec. 2.** Section 24-803, Revised Statutes Cumulative Supplement,
12 2024, is amended to read:

13 24-803 (1) Except as provided in subsection (3) of this section, as
14 the term of a member of a judicial nominating commission initially
15 appointed or selected expires, the term of office of each successor
16 member shall be for a period of four years. The Governor shall appoint
17 all successor members of each nominating commission who are judges of the
18 Supreme Court and citizen members or alternate citizen members. The
19 Governor shall appoint two alternate citizen members, not of the same
20 political party, to each nominating commission. The term of office of an
21 alternate citizen member of a commission shall be for a period of four
22 years ~~except that the initial appointments shall terminate on December~~
23 ~~31, 1999.~~ The lawyers residing in the judicial district or area of the
24 state served by a judicial nominating commission shall select all
25 successor and alternate lawyer members of such commission in the manner
26 prescribed in section 24-806. The term of office of an alternate lawyer
27 member of a commission shall be for a period of four years. No member of
28 any nominating commission, including the Supreme Court member of any such
29 commission, shall serve more than a total of twelve ~~eight~~ consecutive
30 years as a member of the commission, and if such member has served for
31 more than ten ~~six~~ years as a member of the commission, he or she shall

1 not be eligible for reelection or reappointment. Alternate lawyer and
2 citizen members shall be selected to fill vacancies in their order of
3 election or appointment.

4 (2) For purposes of this section and Article V, section 21, of the
5 Constitution of Nebraska, a member of a judicial nominating commission
6 shall be deemed to have served on such commission if he or she was a
7 member of the commission at the time of the publication of the notice
8 required by subsection (1) of section 24-810.

9 (3) Members of the judicial nominating commissions for the office of
10 judge of the district court shall also serve as members of the judicial
11 nominating commissions for the office of judge of the county court for
12 counties located within the district court judicial districts served,
13 except that members of the judicial nominating commissions for district
14 judge and county judge in districts 1, 2, 3, 4, and 10 shall be appointed
15 or selected separately to serve on such commissions.

16 **Sec. 3.** Section 24-805, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 24-805 In conformity with the residency requirements of section
19 24-802, Except for the Supreme Court members of judicial nominating
20 commissions, no individual lawyer or citizen members member of any
21 judicial nominating commission may shall serve on more than one judicial
22 nominating commission at the same time. ; Provided, judicial nominating
23 commissioners for the office of district judge may also serve as judicial
24 nominating commissioners for county judge.

25 **Sec. 4.** Section 24-806, Reissue Revised Statutes of Nebraska, is
26 amended to read:

27 24-806 (1)(a) (1) Lawyer members and alternate lawyer members of any
28 judicial nominating commission shall be active members of the bar of the
29 State of Nebraska, and shall reside in the judicial district or area of
30 the state served by the commission, and shall be registered to vote
31 except as provided in subsection (2) of this section. Not more than two

1 lawyer members of each commission shall be registered members of the same
2 political party ~~or category~~, and not more than two alternate lawyer
3 members shall be registered members of the same political party ~~or~~
4 ~~category~~. Nominations for lawyer members of each commission ~~may shall~~ be
5 solicited ~~and received electronically via the Supreme Court's attorney~~
6 ~~licensure portal on or before October 1 of each even-numbered year. in~~
7 ~~writing by the Clerk of the Supreme Court from all the lawyers of the~~
8 ~~district or area served on or before September 1 of each even-numbered~~
9 ~~year. Nominations of lawyer members shall be made in writing and filed in~~
10 ~~the office of the Clerk of the Supreme Court on or before October 1 of~~
11 ~~each even-numbered year. Each nomination of a lawyer member shall be~~
12 ~~accompanied by a written consent of the nominee to serve as a member of~~
13 ~~the commission if elected.~~

14 (b) The nominations shall be listed ~~solicited and distributed~~ on the
15 ballot by the Clerk of the Supreme Court;

16 (i) ~~From from~~ the legally recognized political parties or be listed
17 as nonpartisan; and

18 (ii) In in such a manner as will permit the final selection to be
19 made in conformity with Article V, section 21, of the Constitution of
20 Nebraska within the required political party.

21 (2) If, on October 1 of an even-numbered year, solicited nominations
22 are insufficient to provide candidates from the permissible political
23 parties for each vacancy, the Executive Council of the Nebraska State Bar
24 Association, ~~within ten days after the last day for filing nominations,~~
25 shall nominate additional candidates for the position so that there shall
26 be a qualified candidate for each position. Such nominations shall be
27 made on or before November 1 of such year. ~~Such candidates need not~~
28 ~~reside in the judicial district or area served by such judicial~~
29 ~~nominating commission.~~

30 (3) The Clerk of the Supreme Court shall mail or electronically
31 deliver a ballot with the name of each nominee to all members of the bar

1 of Nebraska residing in the judicial district or area designating a date
2 at least ten days and not more than thirty ~~fourteen~~ days after the date
3 of such mailing or electronic delivery by the Clerk of the Supreme Court
4 when the ballots will be ~~opened and~~ counted. The ballots shall be counted
5 by a board consisting of the Clerk of the Supreme Court, the Secretary of
6 State, and the Attorney General or by alternates designated by any of
7 them to serve in his or her place. Whether conducted electronically or by
8 mail, the ~~The~~ Clerk of the Supreme Court shall ensure ~~insure~~ that the
9 election is so conducted as to maintain the secrecy of the ballot and the
10 validity of the results. The candidate of the required political party
11 receiving the highest number of votes shall be considered as having been
12 elected to the commission. The candidate of the required political party
13 receiving the next highest number of votes shall be considered as having
14 been elected an alternate lawyer member of the commission and shall serve
15 as a lawyer member of the commission in the event of a lawyer member
16 vacancy of the same political party or category on the commission created
17 either by resignation or disqualification. In the case of a resignation,
18 an alternate lawyer member shall continue to serve as a member of the
19 commission until the term of office of his or her predecessor expires.

20 (4) In any election when more than one lawyer member of a judicial
21 nominating commission is to be elected, the nominees shall be submitted
22 without designation of the term. Each voter shall be instructed to vote
23 for as many nominees as there are vacancies to be filled. The candidate
24 receiving the highest number of votes shall be considered as having been
25 elected for the longest term. The candidate receiving the next highest
26 number of votes shall be deemed to have been elected for next to the
27 longest term, and if an alternate lawyer member or members are to be
28 elected, the candidate or candidates receiving the third and fourth
29 highest number of votes shall be deemed elected as the alternate lawyer
30 member or members. In case of ties the determination shall be made by lot
31 by the counting board.

1 **Sec. 5.** Section 24-808, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 24-808 ~~(1) A vacancy~~ Each year, on or before September 1, the Clerk
4 of the Supreme Court shall determine what, if any, vacancies exist on any
5 judicial nominating commission and shall report the status of each
6 judicial nominating commission to the Governor. Vacancies relating to any
7 ~~member~~ members or alternate citizen ~~member~~ members of a judicial
8 ~~nominating commission~~ such commissions appointed by the Governor shall be
9 filled promptly by appointment by the Governor for the unexpired term.

10 (2) A vacancy ~~Vacancies~~ of a lawyer ~~member~~ caused by resignation
11 shall be filled promptly with the alternate lawyer member of the same
12 political party for the unexpired term. If an alternate lawyer member of
13 the same political party does not exist, then an alternate lawyer member
14 not affiliated with any political party may fill the vacancy. If there
15 are no alternates who meet such requirements, the Clerk of the Supreme
16 Court shall use the certified election results of the previous election
17 and move up the alternate member who had the highest number of votes in
18 the previous election who would not otherwise conflict with the
19 requirements of Article V, section 21, of the Constitution of Nebraska,
20 to balance political party membership. ~~members or~~

21 (3) A vacancy of an alternate lawyer ~~member~~ for an unexpired term
22 ~~members of the judicial nominating commission~~ shall be filled promptly by
23 the Executive Council of the Nebraska State Bar Association upon
24 notification by the Clerk of the Supreme Court as to the required number
25 of vacancies and the required political party affiliation or nonpartisan
26 designation. The Executive Council shall designate sufficient lawyers to
27 fill the vacancies who meet the requirements of subsection (1) of section
28 ~~24-806. a special election for the unexpired term, conducted by the Clerk~~
29 ~~of the Supreme Court in the manner applicable to the regular election of~~
30 ~~lawyer members of the commissions.~~

31 **Sec. 6.** Section 24-809, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 24-809 (1) The judge of the Supreme Court on each judicial
3 nominating commission shall be the chairperson of the commission and
4 shall preside at all of its meetings. He or she shall not be entitled to
5 vote. In selecting or rejecting judicial nominees, the members of the
6 commission shall vote by oral roll call vote. When it is determined that
7 a judicial vacancy exists in a particular district, the chairperson of
8 the commission shall determine whether there will be eight qualified
9 members of the appropriate judicial nominating commission, including
10 alternate members.

11 (2) If it is determined that there will not be eight members present
12 and capable of voting at the time the commission meets to vote, the
13 chairperson of the commission shall inform the Governor of the number of
14 citizen members which need to be appointed and shall inform the Executive
15 Director of the Nebraska State Bar Association of the number of alternate
16 lawyer members which need to be designated ~~elected~~. The Governor shall
17 promptly make such number of citizen appointments as are necessary. The
18 Executive Council of the Nebraska State Bar Association shall appoint
19 each alternate lawyer member in the same manner as in section 24-808.
20 ~~nominate at least one lawyer candidate for each vacancy on the nominating~~
21 ~~commission which needs to be filled. If the Executive Council is unable,~~
22 ~~with reasonable effort, to obtain a sufficient number of candidates for~~
23 ~~each vacancy, it may nominate candidates who do not reside in the~~
24 ~~judicial district or area served by such nominating commission. The~~
25 ~~nominations shall be sent to the Clerk of the Supreme Court, and the~~
26 ~~lawyer vacancies shall be filled by election as provided in section~~
27 ~~24-806.~~

28 (3) Vacancies of lawyer members or alternate lawyer members caused
29 by disqualification or inability to serve at a particular commission
30 meeting shall be considered temporary and shall be filled as provided in
31 this section but service as a member or alternate member shall cease

1 after the commission sends the names of the candidates to the Governor.

2 (4) There shall be eight qualified commission members present and
3 capable of voting at the time the vote is taken. In the event that a
4 nominating commission public hearing is postponed due to the lack of a
5 full complement of commission members entitled to vote, the time limits
6 specified in subsection (4) of section 24-810 shall be extended for an
7 additional thirty days for each such postponement. The chairperson of the
8 commission shall cause appropriate notice of the time and place of the
9 newly scheduled judicial nominating commission public hearing to be
10 published as provided in subsection (1) of section 24-810. The
11 postponement of a commission hearing shall not extend the initial
12 application filing deadline of twenty-one days prior to the initial
13 public hearing. Each candidate shall receive five votes from the voting
14 members of the nominating commission to have his or her name submitted to
15 the Governor.

16 **Sec. 7.** Section 24-810, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 24-810 (1)(a) ~~(1)~~ When a final determination of a district, county,
19 or separate juvenile court judicial vacancy has been made pursuant to
20 section 24-809.04 or in the event of a judicial vacancy in any other
21 court, the Clerk of the Supreme Court shall contact the chairperson of
22 the judicial nominating commission relating to such vacancy and shall
23 ascertain from him or her a time and place for the first meeting of such
24 judicial nominating commission, at which time a public hearing will be
25 held.

26 **(b)** The first public hearing shall be held within sixty days after
27 final determination of the vacancy occurs. The chairperson shall notify
28 each commission member in writing of the time and place of the meeting
29 and shall also cause appropriate notice to be published by various news
30 media of the time and place of the public hearing of the judicial
31 nominating commission and of the interest of the commission in receiving

1 applications from ~~information relating to~~ qualified candidates for the
2 judicial vacancy.

3 (c) Any lawyer meeting the statutory requirements to serve as a
4 judge who is interested in being nominated and appointed to such
5 judgeship shall signify his or her interest by filing the appropriate
6 application with the proper entity at least twenty-one days prior to the
7 public hearing.

8 (d) Any lawyer member or alternate lawyer member of the commission
9 interested in being nominated for the judgeship that is the subject of
10 the notice of public hearing and application deadline shall, in order to
11 be eligible for nomination, resign as a member or alternate member of the
12 commission before the publication of such notice.

13 (e) At least ten days prior to the public hearing, the chairperson
14 shall cause to be released ~~release~~ to the public the names of all lawyers
15 who have applied for such judgeship. Any member of the public shall be
16 entitled to attend the public hearing to express, either orally or in
17 writing, his or her views concerning candidates for the judicial vacancy.

18 (2) After the public hearing, the judicial nominating commission
19 shall hold such additional private or confidential meetings as it
20 determines to be necessary. Additional information may be submitted in
21 writing to the commission at any time prior to its selection of qualified
22 candidates to fill the vacancy. The commission shall make such
23 independent investigation and inquiry as it considers necessary or
24 expedient to determine the qualifications of candidates for the judicial
25 vacancy and shall take such action as it deems necessary or expedient to
26 encourage qualified candidates to accept judicial office or nomination
27 for judicial office.

28 (3) The judicial nominating commission may, before or after the
29 hearing provided for in subsection (1) of this section, institute a
30 search for additional candidates. If additional candidates are obtained,
31 the commission shall hold further public hearings in the same manner as

1 provided in such subsection.

2 (4) The names of candidates shall be submitted to the Governor
3 within ninety days after the date a final determination has been made of
4 a district, county, or separate juvenile court judicial vacancy or, in
5 the event of a judicial vacancy in any other court, after a judicial
6 vacancy occurred if one public hearing is held and within one hundred
7 twenty days if more than one public hearing is held.

8 **Sec. 8.** Section 24-810.01, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 24-810.01 A change in residency that results in a member not
11 satisfying the residency requirements of section 24-802 ~~(1) For purposes~~
12 ~~of sections 24-801 to 24-812.01, members and prospective members of~~
13 ~~judicial nominating commissions who are registered as independent voters~~
14 ~~shall be considered to be members of the same political party. (2)~~
15 ~~Removal from the State of Nebraska~~ or a change in party registration
16 shall automatically terminate the tenure of any member of a judicial
17 nominating commission.

18 **Sec. 9.** Original sections 24-802, 24-805, 24-806, 24-808, 24-809,
19 24-810, and 24-810.01, Reissue Revised Statutes of Nebraska, and section
20 24-803, Revised Statutes Cumulative Supplement, 2024, are repealed.