

LEGISLATURE OF NEBRASKA
ONE HUNDRED SECOND LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 617
Final Reading

Introduced by Mello, 5.

Read first time January 19, 2011

Committee: Executive Board

A BILL

1 FOR AN ACT relating to administrative rules and regulations; to amend
2 sections 84-907, 84-907.09, and 84-920, Reissue Revised
3 Statutes of Nebraska; to provide and change requirements
4 and duties relating to adoption and promulgation of rules
5 and regulations; to harmonize provisions; to repeal the
6 original sections; and to declare an emergency.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. On or after the effective date of this act,
2 when legislation is enacted requiring the adoption and promulgation
3 of rules and regulations by an agency, such agency shall adopt and
4 promulgate such rules and regulations within one year after the
5 public hearing required under subsection (2) of section 84-907. Such
6 time shall not include the time necessary for submission of the rules
7 and regulations to the Attorney General pursuant to section 84-905.01
8 or submission of the rules and regulations to the Governor pursuant
9 to section 84-908. Any agency which does not adopt and promulgate
10 such rules and regulations as required by this section shall submit a
11 written explanation to the Executive Board of the Legislative Council
12 and the standing committee of the Legislature which has subject
13 matter jurisdiction over the issue involved in the legislation,
14 stating the reasons why it has not adopted such rules and regulations
15 as required by this section, the date by which the agency expects to
16 adopt such rules and regulations, and any suggested statutory changes
17 that may enable the agency to adopt such rules and regulations.

18 The changes made to the Administrative Procedure Act by
19 this legislative bill shall not affect the validity or effectiveness
20 of a rule or regulation adopted prior to the effective date of this
21 act.

22 Sec. 2. Section 84-907, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 84-907 (1) No rule or regulation shall be adopted,
25 amended, or repealed by any agency except after public hearing on the

1 question of adopting, amending, or repealing such rule or regulation.
2 Notice of such hearing shall be given at least thirty days prior
3 thereto to the Secretary of State and by publication in a newspaper
4 having general circulation in the state. All such hearings shall be
5 open to the public.

6 (2) The public hearing on a rule or regulation that is
7 required to be adopted, amended, or repealed based upon a legislative
8 bill shall be held within twelve months after the effective or
9 operative date of the legislative bill. If there is more than one
10 applicable effective or operative date, the twelve-month period shall
11 be calculated using the latest date. In addition to the requirements
12 of section 84-906.01, draft copies or working copies of all rules and
13 regulations to be adopted, amended, or repealed by any agency shall
14 be available to the public in the office of the Secretary of State at
15 the time of giving notice. The notice shall include: ~~(1)~~ (a) A
16 declaration of availability of such draft or work copies for public
17 examination; ~~(2)~~ (b) a short explanation of the purpose of the
18 proposed rule or regulation or the reason for the amendment or repeal
19 of the rule or regulation; and ~~(3)~~ (c) a description, including an
20 estimated quantification, of the fiscal impact on state agencies,
21 political subdivisions, and persons being regulated or an explanation
22 of where the description of the fiscal impact may be inspected and
23 obtained. No person may challenge the validity of any rule or
24 regulation, the adoption, amendment, or repeal of any rule or
25 regulation, or any determination of the applicability of any rule or

1 regulation on the basis of the explanation or description provided
2 pursuant to subdivisions ~~(2) and (3)~~ (b) and (c) of this ~~section.~~
3 subsection.

4 (3) Any agency adopting, amending, or repealing a rule or
5 regulation may make written application to the Governor who may, upon
6 receipt of a written showing of good cause, waive the notice of
7 public hearing. For purposes of this ~~section,~~ subsection, good cause
8 shall include, but not be limited to, a showing by the agency that:

9 (a) Compliance with the ~~public notice~~ requirements of
10 this section would result in extreme hardship on the citizens of this
11 state;

12 (b) An emergency exists which must be remedied
13 immediately; or

14 (c) A timely filing or publication of notice of a public
15 hearing or the public hearing was prevented by some unforeseeable
16 event beyond the immediate control of the agency and that the parties
17 affected have not and will not suffer material injury as a result of
18 the agency's action.

19 (4) Whenever public notice is waived, the agency shall,
20 so far as practicable, give notice to the public of the proposed rule
21 or regulation change and of the rule or regulation as finally adopted
22 or changed.

23 Sec. 3. Section 84-907.09, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 84-907.09 Whenever an agency proposes to adopt, amend, or

1 repeal a rule or regulation, (1) at least thirty days before the
2 public hearing, when notice of a proposed rule or regulation is sent
3 out, or (2) at the same time the agency applies to the Governor for a
4 waiver of the notice of public hearing under section 84-907, the
5 agency shall provide to the Governor for review (a) a description of
6 the proposed rule or regulation and the entity or entities it will
7 impact, (b) an explanation of the necessity of the proposed rule or
8 regulation, including the identification of the ~~authorizing statute~~
9 ~~or specific legislative bill~~ if applicable, or the authorizing
10 statute when there is no legislative bill applicable, (c) a statement
11 that the proposed rule or regulation is consistent with legislative
12 intent, (d) a statement indicating whether the proposed rule or
13 regulation is the result of a state mandate on a local governmental
14 subdivision and if the mandate is funded, (e) a statement indicating
15 if the proposed rule or regulation is the result of a federal mandate
16 on state government or on a local governmental subdivision and if the
17 mandate is funded, (f) a description, including an estimated
18 quantification, of the fiscal impact on state agencies, political
19 subdivisions, and regulated persons, (g) a statement that the agency
20 will solicit public comment on the proposed rule or regulation before
21 the public hearing, and (h) a statement indicating whether or not the
22 agency has utilized the negotiated rulemaking process as provided for
23 in the Negotiated Rulemaking Act with respect to the proposed rule or
24 regulation.

25 Sec. 4. On or before July 1 of each year, each agency

1 shall provide to the Legislative Performance Audit Committee a status
2 report on all rules and regulations pending before the agency which
3 have not been adopted and promulgated. If an additional appropriation
4 was made with respect to legislation enacted to provide funding for
5 or additional staff to implement a program for which rules and
6 regulations are required to be adopted, the status report shall
7 include what the funding has been used for and what functions the
8 staff have been performing while such rules and regulations are
9 pending. The format of the report shall be established by the
10 committee no later than June 1, 2011, and shall be updated
11 thereafter.

12 Sec. 5. Section 84-920, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 84-920 Sections 84-901 to 84-920 and sections 1 and 4 of
15 this act shall be known and may be cited as the Administrative
16 Procedure Act.

17 Sec. 6. Original sections 84-907, 84-907.09, and 84-920,
18 Reissue Revised Statutes of Nebraska, are repealed.

19 Sec. 7. Since an emergency exists, this act takes effect
20 when passed and approved according to law.