

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

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 84-901, 84-905.01, 84-906.01, 84-907, 84-907.04,
3 84-907.06, 84-908, and 84-920, Reissue Revised Statutes
4 of Nebraska; to define a term; to create a legislative
5 committee and provide duties as prescribed; to change and
6 eliminate provisions relating to review of proposed rules
7 and regulations; to harmonize provisions; to repeal the
8 original sections; and to outright repeal sections
9 84-907.07 and 84-907.10, Reissue Revised Statutes of
10 Nebraska.

11 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 84-901, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 84-901 For purposes of the Administrative Procedure Act:

4 (1) Agency ~~shall mean~~ means each board, commission,
5 department, officer, division, or other administrative office or unit
6 of the state government authorized by law to make rules and
7 regulations, except the Adjutant General's office as provided in
8 Chapter 55, the courts including the Nebraska Workers' Compensation
9 Court, the Commission of Industrial Relations, the Legislature, and
10 the Secretary of State with respect to the duties imposed by the act;

11 (2) Rule or regulation ~~shall mean~~ means any rule,
12 regulation, or standard issued by an agency, including the amendment
13 or repeal thereof whether with or without prior hearing and designed
14 to implement, interpret, or make specific the law enforced or
15 administered by it or governing its organization or procedure. Rule
16 or regulation ~~shall~~ does not include (a) rules and regulations
17 concerning the internal management of the agency not affecting
18 private rights, private interests, or procedures available to the
19 public or (b) permits, certificates of public convenience and
20 necessity, franchises, rate orders, and rate tariffs and any rules of
21 interpretation thereof. For purposes of the act, every rule and
22 regulation which prescribes a penalty shall be presumed to have
23 general applicability or to affect private rights and interests;

24 (3) Contested case ~~shall mean~~ means a proceeding before
25 an agency in which the legal rights, duties, or privileges of

1 specific parties are required by law or constitutional right to be
2 determined after an agency hearing;

3 (4) Ex parte communication ~~shall mean means~~ means an oral or
4 written communication which is not on the record in a contested case
5 with respect to which reasonable notice to all parties was not given.
6 Filing and notice of filing provided under subdivision (6)(d) of
7 section 84-914 shall not be considered on the record and reasonable
8 notice for purposes of this subdivision. Ex parte communication ~~shall~~
9 does not include:

10 (a) Communications which do not pertain to the merits of
11 a contested case;

12 (b) Communications required for the disposition of ex
13 parte matters as authorized by law;

14 (c) Communications in a ratemaking or rulemaking
15 proceeding; and

16 (d) Communications to which all parties have given
17 consent; ~~and~~

18 (5) Hearing officer ~~shall mean means~~ means the person or
19 persons conducting a hearing, contested case, or other proceeding
20 pursuant to the act, whether designated as the presiding officer,
21 administrative law judge, or some other title designation; and -

22 (6) Committee means the Administrative Rules Review
23 Committee.

24 Sec. 2. The Administrative Rules Review Committee of the
25 Legislature is created. The committee shall consist of the

1 chairpersons of all the standing committees of the Legislature. The
2 chairperson and vice-chairperson of the Administrative Rules Review
3 Committee shall be elected by a majority vote of the members of the
4 committee. The Clerk of the Legislature shall serve as an ex officio
5 member of the committee. The committee shall meet as necessary to
6 review and approve or disapprove rules, regulations, or amendments
7 proposed by an agency pursuant to the Administrative Procedure Act.
8 The legal counsel for each standing committee of the Legislature
9 shall provide staff support to the Administrative Rules Review
10 Committee. In addition, the Clerk of the Legislature shall provide
11 staff assistance to the committee as required and shall coordinate
12 committee staff support for the committee.

13 Sec. 3. (1) A copy of each rule, regulation, or amendment
14 to be adopted under the Administrative Procedure Act shall, prior to
15 the date of filing with the Secretary of State, be submitted to the
16 committee for consideration as to the statutory authority of such
17 rule, regulation, or amendment and for the committee's approval or
18 disapproval.

19 (2) In addition to the copy of the rule, regulation, or
20 amendment, the agency shall provide the committee with information
21 including, but not limited to:

22 (a) All written petitions, requests, submissions, and
23 comments received by the agency and all other written materials
24 prepared by or for the agency in connection with the proposed rule,
25 regulation, or amendment;

1 (b) Any official transcript of oral presentations made in
2 a proceeding about the proposed rule, regulation, or amendment or, if
3 not transcribed, any tape recording or stenographic record for those
4 presentations, and any memoranda prepared by the hearing officer
5 summarizing the contents of those presentations; and

6 (c) A description, but not necessarily a quantification,
7 of the fiscal impact of the proposed rule, regulation, or amendment
8 on state agencies, political subdivisions, and regulated persons.

9 (3) Rules and regulations adopted pursuant to section
10 84-909 are not subject to review by the committee pursuant to this
11 section.

12 Sec. 4. If a rule, regulation, or amendment submitted to
13 the committee is approved by a majority of the members of the
14 committee, the committee shall so indicate in a written statement to
15 the agency which shall be dated and signed by the chairperson of the
16 committee. If the rule, regulation, or amendment is not approved, the
17 committee shall notify the agency, in writing, of its objections. The
18 rule, regulation, or amendment shall be returned to the agency for
19 consideration of the objections of the committee. A rule, regulation,
20 or amendment shall be deemed approved by the committee if the
21 committee takes no action to approve or disapprove the rule,
22 regulation, or amendment within thirty days after receiving it from
23 the agency.

24 Sec. 5. Section 84-905.01, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 84-905.01 A copy of each rule, regulation, or amendment
2 ~~or rule or regulation~~ to be adopted under the Administrative
3 Procedure Act, prior to the date of filing with the Secretary of
4 State, shall be submitted to the Attorney General for his or her
5 consideration as to the ~~statutory authority and~~ constitutionality of
6 such rule, regulation, or amendment ~~or rule or regulation~~ and his or
7 her approval or disapproval thereof, including a determination as to
8 whether or not the rule, ~~or~~ regulation, or amendment submitted is
9 substantially different from the published proposed rule, ~~or~~
10 regulation, or amendment. If the rule, regulation, or amendment ~~or~~
11 ~~rule or regulation~~ to be filed is approved as to legality
12 constitutionality by the Attorney General, he or she shall so
13 indicate with his or her stamp of approval which shall be dated and
14 signed.

15 Sec. 6. Section 84-906.01, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 84-906.01 (1) An agency shall maintain an official
18 rulemaking or regulationmaking record for each rule or regulation it
19 adopts or proposes by publication of a notice. The record and
20 materials incorporated by reference shall be available for public
21 inspection and shall be maintained for at least four years after the
22 effective date of the rule or regulation.

23 (2) The record shall contain:

24 (a) Copies of all publications with respect to the rule
25 or regulation;

1 (b) Copies of any portions of the public rulemaking or
2 regulationmaking docket containing entries relating to the rule or
3 regulation;

4 (c) All written petitions, requests, submissions, and
5 comments received by the agency and all other written materials
6 prepared by or for the agency in connection with the proposal or
7 adoption of the rule or regulation;

8 (d) Any official transcript of oral presentations made in
9 a proceeding about the proposed rule or regulation or, if not
10 transcribed, any tape recording or stenographic record of those
11 presentations, and any memorandum prepared by the hearing officer
12 summarizing the contents of those presentations;

13 (e) A copy of the rule or regulation and the concise
14 explanatory statement filed with the Secretary of State;

15 (f) All petitions for adoption of, exceptions to,
16 amendments of, or repeal or suspension of, the rule or regulation;

17 (g) A copy of any comments on the rule or regulation
18 filed by ~~a legislative~~ the committee; and

19 (h) A description, including an estimated quantification,
20 of the fiscal impact on state agencies, political subdivisions, and
21 regulated persons.

22 (3) Upon judicial review, the record required by this
23 section shall constitute the official agency rulemaking or
24 regulationmaking record with respect to a rule or regulation. Except
25 as provided in section 84-907.04 or as otherwise required by law, the

1 agency rulemaking or regulationmaking record need not constitute the
2 exclusive basis for agency action on that rule or regulation or for
3 judicial review thereof.

4 Sec. 7. Section 84-907, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 84-907 (1) A rule or regulation may only be adopted,
7 amended, or repealed between the date of adjournment sine die of a
8 legislative session and November 30 of the same calendar year, but an
9 agency may begin the process to adopt, amend, or repeal a rule or
10 regulation prior to the adjournment sine die of a legislative
11 session.

12 (2) No rule or regulation shall be adopted, amended, or
13 repealed by any agency except after public hearing on the question of
14 adopting, amending, or repealing such rule or regulation. Notice of
15 such hearing shall be given at least thirty days prior thereto to the
16 Secretary of State and by publication in a newspaper having general
17 circulation in the state. All such hearings shall be open to the
18 public. In addition to the requirements of section 84-906.01, draft
19 copies or working copies of all rules and regulations to be adopted,
20 amended, or repealed by any agency shall be available to the public
21 in the office of the Secretary of State at the time of giving notice.
22 The notice shall include: ~~(1)~~(a) A declaration of availability of
23 such draft or work copies for public examination; ~~(2)~~(b) a short
24 explanation of the purpose of the proposed rule or regulation or the
25 reason for the amendment or repeal of the rule or regulation; and ~~(3)~~

1 (c) a description, including an estimated quantification, of the
2 fiscal impact on state agencies, political subdivisions, and persons
3 being regulated or an explanation of where the description of the
4 fiscal impact may be inspected and obtained. No person may challenge
5 the validity of any rule or regulation, the adoption, amendment, or
6 repeal of any rule or regulation, or any determination of the
7 applicability of any rule or regulation on the basis of the
8 explanation or description provided pursuant to subdivisions ~~(2)~~ and
9 ~~(3)~~ (2)(b) and (c) of this section.

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

15 (a) Compliance with the public notice requirements of
16 this section would result in extreme hardship on the citizens of this
17 state;

18 (b) An emergency exists which must be remedied
19 immediately; or

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

25 Whenever public notice is waived, the agency shall, so

1 far as practicable, give notice to the public of the proposed rule or
2 regulation change and of the rule or regulation as finally adopted or
3 changed after such rule or regulation has been reviewed by the
4 committee. If notice is waived under this subsection, the committee
5 shall review the rule or regulation within ten days after receiving
6 it from the agency.

7 Sec. 8. Section 84-907.04, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 84-907.04 (1) At the time an agency finalizes a proposed
10 rule or regulation and prior to submission to the committee,
11 Secretary of State, Attorney General, and Governor, the agency shall
12 attach to the proposed rule or regulation a concise explanatory
13 statement containing:

14 (a) Its reasons for adopting the rule or regulation;

15 (b) An indication of any change between the text of the
16 proposed rule or regulation contained or referenced in the published
17 notice and the text of the rule or regulation to be adopted, with the
18 reasons for any change; and

19 (c) When procedural rules differ from the model rules,
20 the agency's reasons why relevant portions of the model rules were
21 impracticable under the circumstances.

22 (2) Only the reasons contained in the concise explanatory
23 statement may be used by an agency as justifications for the adoption
24 of the rule or regulation in any proceeding in which its validity is
25 at issue.

1 Sec. 9. Section 84-907.06, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 84-907.06 Whenever an agency proposes to adopt, amend, or
4 repeal a rule or regulation, (1) at least thirty days before the
5 public hearing, when notice of a proposed rule or regulation is sent
6 out, or (2) at the same time the agency applies to the Governor for a
7 waiver of the notice of public hearing, the agency shall send to the
8 ~~Executive Board of the Legislative Council~~ Clerk of the Legislature
9 (a) a copy of the hearing notice required by section 84-907, (b) if
10 applicable, a draft copy of the rule or regulation, and (c) the
11 information provided to the Governor pursuant to section 84-907.09.

12 Sec. 10. Section 84-908, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 84-908 No adoption, amendment, or repeal of any rule or
15 regulation shall become effective until the same has been approved by
16 the committee and the Governor and filed with the Secretary of State
17 after a hearing has been set on such rule or regulation pursuant to
18 section 84-907. When determining whether to approve the adoption,
19 amendment, or repeal of any rule or regulation relating to an issue
20 of unique interest to a specific geographic area, the Governor's
21 considerations shall include: ~~, but not be limited to:~~ (1) Whether
22 adequate notice of hearing was provided in the geographic area
23 affected by the rule or regulation. Adequate notice shall include,
24 but not be limited to, the availability of copies of the rule or
25 regulation at the time notice was given pursuant to section 84-907;

1 and (2) whether reasonable and convenient opportunity for public
2 comment was provided for the geographic area affected by the rule or
3 regulation. If a public hearing was not held in the affected
4 geographic area, reasons shall be provided by the agency to the
5 Governor. Any rule or regulation properly adopted by any agency shall
6 be filed with the Secretary of State.

7 Sec. 11. Section 84-920, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 84-920 Sections 84-901 to 84-920 and sections 2 to 4 of
10 this act shall be known and may be cited as the Administrative
11 Procedure Act.

12 Sec. 12. Original sections 84-901, 84-905.01, 84-906.01,
13 84-907, 84-907.04, 84-907.06, 84-908, and 84-920, Reissue Revised
14 Statutes of Nebraska, are repealed.

15 Sec. 13. The following sections are outright repealed:
16 Sections 84-907.07 and 84-907.10, Reissue Revised Statutes of
17 Nebraska.