

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 464

Introduced by Watermeier, 1.

Read first time January 17, 2017

Committee: Executive Board

1 A BILL FOR AN ACT relating to the Administrative Procedure Act; to amend
2 section 84-901.01, Reissue Revised Statutes of Nebraska, and
3 sections 84-907 and 84-907.06, Revised Statutes Cumulative
4 Supplement, 2016; to provide and change requirements and duties
5 relating to adoption and promulgation of rules and regulations; to
6 harmonize provisions; to repeal the original sections; and to
7 declare an emergency.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 84-901.01, Reissue Revised Statutes of Nebraska,
2 is amended to read:

3 84-901.01 (1) When legislation is enacted requiring the adoption and
4 promulgation of rules and regulations by an agency or when an agency
5 proposes or is required to make changes to existing rules and regulations
6 and such changes include, but are not limited to, the amendment or repeal
7 of a rule or regulation, such agency shall adopt and promulgate such
8 rules and regulations within one year after the public hearing required
9 under subsection (2) of section 84-907. Such time shall not include the
10 time necessary for submission of the rules and regulations to the
11 Attorney General pursuant to section 84-905.01 or submission of the rules
12 and regulations to the Governor pursuant to section 84-908. Any agency
13 which does not adopt and promulgate such rules and regulations as
14 required by this section shall submit an explanation to the Executive
15 Board of the Legislative Council and the standing committee of the
16 Legislature which has subject matter jurisdiction over the issue involved
17 in the legislation or the issue included in the agency's proposed or
18 required changes to existing rules and regulations, stating the reasons
19 why it has not adopted such rules and regulations as required by this
20 section, the date by which the agency expects to adopt such rules and
21 regulations, and any suggested statutory changes that may enable the
22 agency to adopt such rules and regulations.

23 (2) If such agency has not adopted and promulgated such rules and
24 regulations within three years after the operative or effective date of
25 such enacting legislation or within three years after the time it could
26 be determined that an agency should have or was required to make changes
27 to existing rules and regulations and such changes include, but are not
28 limited to, the amendment or repeal of a rule or regulation, the standing
29 committee of the Legislature which has subject matter jurisdiction over
30 the matters included in the legislation or the issue included in the
31 agency's proposed or required changes to existing rules and regulations

1 shall hold a public hearing to determine the reason that such rules and
2 regulations have not been enacted.

3 (3) The changes made to the Administrative Procedure Act by Laws
4 2011, LB617, shall not affect the validity or effectiveness of a rule or
5 regulation adopted prior to May 25, 2011.

6 (4) The changes made to this section by Laws 2013, LB242, shall
7 apply to legislation enacted before, on, or after September 6, 2013.

8 Sec. 2. Section 84-907, Revised Statutes Cumulative Supplement,
9 2016, is amended to read:

10 84-907 (1) Except as provided in section 84-901.04, no rule or
11 regulation shall be adopted, amended, or repealed by any agency except
12 after public hearing on the question of adopting, amending, or repealing
13 such rule or regulation. Notice of such hearing shall be given at least
14 thirty days prior thereto to the Secretary of State and by publication in
15 a newspaper having general circulation in the state. All such hearings
16 shall be open to the public.

17 (2) The public hearing on a rule or regulation that is required to
18 be adopted, amended, or repealed based upon a legislative bill or because
19 an agency proposes or is required to make changes to existing rules and
20 regulations and such changes include, but are not limited to, the
21 amendment or repeal of a rule or regulation shall be held within twelve
22 months after the effective or operative date of the legislative bill. If
23 there is more than one applicable effective or operative date, the
24 twelve-month period shall be calculated using the latest date. In
25 addition to the requirements of section 84-906.01, draft copies or
26 working copies of all rules and regulations to be adopted, amended, or
27 repealed by any agency shall be available to the public in the office of
28 the Secretary of State at the time of giving notice. The notice shall
29 include: (a) A declaration of availability of such draft or work copies
30 for public examination; (b) a short explanation of the purpose of the
31 proposed rule or regulation or the reason for the amendment or repeal of

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

10 (3) A change to an existing rule or regulation to (a) alter the
11 style or form of such rule or regulation, (b) correct a technical error,
12 or (c) alter a citation or reference to make such citation or reference
13 consistent with state or federal law but which does not affect the
14 substance of the rule or regulation is exempt from the requirements of
15 this section. Such change shall not alter the rights or obligations of
16 the public.

17 (4) Agencies shall be exempt from promulgating security policies and
18 procedures which, if made public, would create a substantial likelihood
19 of endangering public safety or property.

20 Sec. 3. Section 84-907.06, Revised Statutes Cumulative Supplement,
21 2016, is amended to read:

22 84-907.06 Whenever an agency proposes to adopt, amend, or repeal a
23 rule or regulation, (1) at least thirty days before the public hearing,
24 when notice of a proposed rule or regulation is sent out, or (2) at the
25 same time the agency requests approval from the Governor for an emergency
26 rule or regulation under section 84-901.04, the agency shall send to the
27 Executive Board of the Legislative Council, to the standing committee of
28 the Legislature which has subject matter jurisdiction over the issue
29 involved in the proposal, and to the Secretary of State to be made
30 available to the public by means which include, but are not limited to,
31 publication on the Secretary of State's web site, if applicable, (a) a

1 copy of the hearing notice required by section 84-907, (b) a draft copy
2 of the rule or regulation, and (c) the information provided to the
3 Governor pursuant to section 84-907.09.

4 Sec. 4. Original section 84-901.01, Reissue Revised Statutes of
5 Nebraska, and sections 84-907 and 84-907.06, Revised Statutes Cumulative
6 Supplement, 2016, are repealed.

7 Sec. 5. Since an emergency exists, this act takes effect when
8 passed and approved according to law.