

## LEGISLATIVE BILL 719

Approved by the Governor April 15, 2014

Introduced by Crawford, 45; Avery, 28; Lathrop, 12; Nordquist, 7; Mello, 5.

FOR AN ACT relating to the Administrative Procedure Act; to amend sections 84-907.04 and 84-907.10, Reissue Revised Statutes of Nebraska; to require a report and referral of the report regarding proposed rules and regulations; to change provisions regarding complaints by members of the Legislature relating to rules and regulations; and to repeal the original sections.

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

Section 1. Section 84-907.04, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

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

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

(3) The agency shall also attach to the proposed rule or regulation a written report that includes a summary of the testimony offered at the public hearing and that lists any specific issues or questions that were presented by individuals or representatives of organizations at the hearing or in written testimony submitted as part of the public hearing process. The report shall also include a response from the agency proposing the regulatory change to the questions and issues that were presented by individuals or representatives of organizations at the hearing or in written testimony submitted as part of the public hearing process. The written report shall also be submitted to the Executive Board of the Legislative Council. The chairperson of the executive board or committee staff member of the executive board shall refer each written report received pursuant to this subsection for review (a) to the chairperson of the standing committee of the Legislature which has subject matter jurisdiction over the issue involved in the rule or regulation or which has traditionally handled the issue and (b) if practicable, to the member of the Legislature who was the primary sponsor of a legislative bill that granted the agency the rulemaking authority if the member is still serving or, if the legislative bill was amended to include the rulemaking authority, to the member of the Legislature who was the primary sponsor of the amendment that granted rulemaking authority if the member is still serving.

Sec. 2. Section 84-907.10, Reissue Revised Statutes of Nebraska, is amended to read:

84-907.10 ~~(1) After an agency submits a copy of each amendment or rule or regulation pursuant to section 84-907.06, or any time thereafter, (1) If any member of the Legislature who feels aggrieved by a rule or regulation or by the proposed adoption, amendment, or repeal of a rule, or regulation pursuant to section 84-907.06 or believes that the (a) a rule or regulation or the adoption, amendment, rule, or regulation or repeal of a rule or regulation is in excess of the statutory authority or jurisdiction of the agency, is unconstitutional, or is inconsistent with the legislative intent of the authorizing statute, or creates an undue burden in a manner that significantly outweighs its benefit to the public, (b) circumstances have changed since the passage of the statute which a rule or regulation implements, or (c) a rule or regulation or an amendment or repeal overlaps, duplicates, or conflicts with federal, state, or local laws, rules, regulations, or ordinances, the member may file a complaint with the Chairperson of the Executive Board of the Legislative Council. The complaint shall explain in detail the member's contentions.~~

(2) The chairperson of the executive board or a committee staff member of the executive board shall refer the complaint to the chairperson

of the standing committee of the Legislature which has subject matter jurisdiction over the issue involved in the rule or regulation or which has traditionally handled the issue and, if practicable, to the member of the Legislature who was the primary sponsor of the legislative bill that granted the agency the rulemaking authority if the member is still serving or, if the legislative bill was amended to include the rulemaking authority, to the primary sponsor of the amendment granting rulemaking authority if the member is still serving.

(3) The standing committee and primary sponsor of the legislative bill or amendment granting rulemaking authority may consider the complaint and, if such committee or primary sponsor concludes that the complaint has merit, then such committee or primary sponsor may request a written response from the agency which shall include, but not be limited to (a) a description of the amendment or rule or regulation, (b) when applicable, a description of the legislative intent of the statute granting the agency rulemaking authority and a statement explaining how the rule or regulation or the adoption, amendment, or repeal of the ~~or rule or regulation is within the authority or jurisdiction of the agency, is constitutional, is consistent with legislative intent, or is not an undue burden,~~ (c) if the description required in subdivision (b) of this subsection is inapplicable, an explanation as to why the rule or regulation or the adoption, amendment, or repeal ~~or rule or regulation~~ is necessary, and (d) an explanation of the extent to which and how any public comment was taken into consideration by the agency with respect to the rule or regulation or the adoption, amendment, or repeal. ~~or rule or regulation.~~ The agency shall respond within sixty days of a request, and such response shall be a public record.

(4) Nothing in this section shall be construed to prohibit the adoption or promulgation of the rule or regulation in accordance with other ~~sections~~ provisions of the Administrative Procedure Act.

Sec. 3. Original sections 84-907.04 and 84-907.10, Reissue Revised Statutes of Nebraska, are repealed.