

## LEGISLATIVE BILL 617

Approved by the Governor May 24, 2011

Introduced by Mello, 5.

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

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

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

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

84-907 (1) No rule or regulation shall be adopted, amended, or repealed by any agency except after public hearing on the question of adopting, amending, or repealing such rule or regulation. Notice of such hearing shall be given at least thirty days prior thereto to the Secretary of State and by publication in a newspaper having general circulation in the state. All such hearings shall be open to the public.

(2) The public hearing on a rule or regulation that is required to be adopted, amended, or repealed based upon a legislative bill shall be held within twelve months after the effective or operative date of the legislative bill.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

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

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

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

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

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

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

84-907.09 Whenever an agency proposes to adopt, amend, or repeal a rule or regulation, (1) at least thirty days before the public hearing, when notice of a proposed rule or regulation is sent out, or (2) at the same time the agency applies to the Governor for a waiver of the notice of public hearing under section 84-907, the agency shall provide to the Governor for review (a) a description of the proposed rule or regulation and the entity or entities it will impact, (b) an explanation of the necessity of the proposed rule or regulation, including the identification of the ~~authorizing statute or~~ specific legislative bill if applicable, or the authorizing statute when there is no legislative bill applicable, (c) a statement that the proposed rule or regulation is consistent with legislative intent, (d) a statement indicating whether the proposed rule or regulation is the result of a state mandate on a local governmental subdivision and if the mandate is funded, (e) a statement indicating if the proposed rule or regulation is the result of a federal mandate on state government or on a local governmental subdivision and if the mandate is funded, (f) a description, including an estimated quantification, of the fiscal impact on state agencies, political subdivisions, and regulated persons, (g) a statement that the agency will solicit public comment on the proposed rule or regulation before the public hearing, and (h) a statement indicating whether or not the agency has utilized the negotiated rulemaking process as provided for in the Negotiated Rulemaking Act with respect to the proposed rule or regulation.

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

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

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

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

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