

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1013

Introduced by Mello, 5; Conrad, 46; Nordquist, 7.

Read first time January 17, 2012

Committee: Government, Military and Veterans Affairs

A BILL

1 FOR AN ACT relating to the Administrative Procedure Act; to amend
2 sections 84-901, 84-908, and 84-911, Reissue Revised
3 Statutes of Nebraska; to redefine a term; to provide for
4 award of attorney's fees and court costs as prescribed;
5 and to repeal the original sections.
6 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 each board, commission, department,
5 officer, division, or other administrative office or unit of the
6 state government authorized by law to make rules and regulations,
7 except the Adjutant General's office as provided in Chapter 55, the
8 courts including the Nebraska Workers' Compensation Court, the
9 Commission of Industrial Relations, the Legislature, and the
10 Secretary of State with respect to the duties imposed by the act;

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

25 (3) Contested case shall mean a proceeding before an

1 agency in which the legal rights, duties, or privileges of specific
2 parties are required by law or constitutional right to be determined
3 after an agency hearing;

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

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

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

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

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

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

23 Sec. 2. Section 84-908, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 84-908 (1) No adoption, amendment, or repeal of any rule

1 or regulation shall become effective until the same has been approved
2 by the Governor and filed with the Secretary of State after a hearing
3 has been set on such rule or regulation pursuant to section 84-907.
4 When determining whether to approve the adoption, amendment, or
5 repeal of any rule or regulation relating to an issue of unique
6 interest to a specific geographic area, the Governor's considerations
7 shall include, but not be limited to: ~~(1)~~ (a) Whether adequate notice
8 of hearing was provided in the geographic area affected by the rule
9 or regulation. Adequate notice shall include, but not be limited to,
10 the availability of copies of the rule or regulation at the time
11 notice was given pursuant to section 84-907; and ~~(2)~~ (b) whether
12 reasonable and convenient opportunity for public comment was provided
13 for the geographic area affected by the rule or regulation. If a
14 public hearing was not held in the affected geographic area, reasons
15 shall be provided by the agency to the Governor. Any rule or
16 regulation properly adopted by any agency shall be filed with the
17 Secretary of State.

18 (2) No agency shall issue, utilize, enforce, or attempt
19 to enforce any guideline, criterion, bulletin, manual, instruction,
20 standard of general applicability, or other action which is a rule or
21 regulation unless the guideline, criterion, bulletin, manual,
22 instruction, standard of general applicability, or other action has
23 been approved by the Governor and filed with the Secretary of State
24 after a hearing has been held on such rule or regulation pursuant to
25 section 84-907.

1 Sec. 3. Section 84-911, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 84-911 (1) The validity of any rule or regulation may be
4 determined upon a petition for a declaratory judgment thereon
5 addressed to the district court of Lancaster County if it appears
6 that the rule or regulation or its threatened application interferes
7 with or impairs or threatens to interfere with or impair the legal
8 rights or privileges of the petitioner. The agency shall be made a
9 party to the proceeding. The declaratory judgment may be rendered
10 whether or not the petitioner has first requested the agency to pass
11 upon the validity of the rule or regulation in question.

12 (2) The court shall declare the rule or regulation
13 invalid if it finds that it violates constitutional provisions,
14 exceeds the statutory authority of the agency, or was adopted without
15 compliance with the statutory procedures. When a rule or regulation
16 is declared invalid because it was adopted without compliance with
17 statutory procedures, the court may award reasonable attorney's fees
18 and court costs to the party who successfully challenged the rule or
19 regulation. For purposes of this subsection, statutory procedures
20 shall not include procedures provided under the Negotiated Rulemaking
21 Act.

22 Sec. 4. Original sections 84-901, 84-908, and 84-911,
23 Reissue Revised Statutes of Nebraska, are repealed.