

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:

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.