

LEGISLATURE OF NEBRASKA

ONE HUNDRED THIRD LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 637**

Introduced by Wallman, 30; Bloomfield, 17; Brasch, 16; Christensen, 44; Davis, 43; Hadley, 37; Johnson, 23; Karpisek, 32; Kolowski, 31; Mello, 5; Scheer, 19; Schilz, 47; Schumacher, 22; Seiler, 33; Sullivan, 41.

Read first time January 23, 2013

Committee:

A BILL

1 FOR AN ACT relating to the Administrative Procedure Act; to amend  
2 section 84-906.02, Reissue Revised Statutes of Nebraska,  
3 and section 84-920, Revised Statutes Cumulative  
4 Supplement, 2012; to provide for economic analysis of  
5 proposed rules and regulations from the Department of  
6 Environmental Quality; to harmonize provisions; and to  
7 repeal the original sections.

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

1           Section 1. (1) If the Department of Environmental Quality  
2 intends to adopt a rule or regulation that will impose requirements  
3 different than federal regulations or increase costs on regulated  
4 persons or entities, the department shall prepare a statement that  
5 describes the annual economic impact of the rule or regulation on all  
6 regulated persons or entities after the rule or regulation is fully  
7 implemented as described in subsection (2) of this section. The  
8 department shall solicit, receive, and consider the applicable  
9 information from the regulated persons or entities in preparation of  
10 the statement. The statement required by this section shall include:

11                   (a) An estimate of the number of regulated persons or  
12 entities, classified by industry sector, that will be subject to the  
13 proposed rule or regulation;

14                   (b) An estimate of the average annual reporting, record-  
15 keeping, and other administrative costs that regulated persons or  
16 entities will incur to comply with the proposed rule or regulation;

17                   (c) An estimate of the total annual economic impact that  
18 compliance with the proposed rule or regulation will have on all  
19 regulated persons or entities subject to the proposed rule or  
20 regulation;

21                   (d) A statement justifying any requirement or cost that  
22 is:

23                           (i) Imposed on regulated persons or entities by the  
24 proposed rule or regulation; and

25                           (ii) Not expressly required by the statute authorizing

1 the department to adopt the proposed rule or regulation or any other  
2 state or federal law.

3 The statement required by this subdivision shall include  
4 a reference to any data, studies, or analyses relied upon by the  
5 department in determining that the imposition of the requirement or  
6 cost is necessary; and

7 (e) A regulatory flexibility analysis that considers any  
8 less intrusive or less costly alternative methods of achieving the  
9 purpose of the proposed rule or regulation. The analysis shall  
10 consider the following methods of minimizing the economic impact of  
11 the proposed rule or regulation on regulated persons and entities:

12 (i) The establishment of less stringent compliance or  
13 reporting requirements for regulated persons and entities;

14 (ii) The establishment of less stringent schedules or  
15 deadlines for compliance or reporting requirements for regulated  
16 persons and entities;

17 (iii) The consolidation or simplification of compliance  
18 or reporting requirements for regulated persons and entities;

19 (iv) The establishment of performance standards for  
20 regulated persons and entities instead of design or operational  
21 standards imposed on other regulated entities by the proposed rule or  
22 regulation; and

23 (v) The exemption of regulated persons and entities from  
24 part or all of the requirements or costs imposed by the proposed rule  
25 or regulation.

1           If the department has made a preliminary determination  
2 not to implement one or more of the alternative methods considered,  
3 the department shall include a statement explaining the department's  
4 reasons for the determination, including a reference to any data,  
5 studies, or analyses relied upon by the department in making the  
6 determination. The department shall implement the least costly  
7 alternative method.

8           (2) A proposed rule or regulation will be fully  
9 implemented with respect to regulated persons or entities after:

10           (a) The conclusion of any phase-in period; and

11           (b) The rule or regulation becomes applicable to all  
12 regulated persons or entities that will be affected by the rule or  
13 regulation.

14           (3) In determining the total annual economic impact of  
15 the proposed rule or regulation, the department shall consider the  
16 annual economic impact on all regulated persons or entities beginning  
17 with the first twelve-month period after the rule or regulation is  
18 fully implemented. The department may use actual or forecasted data  
19 and may consider the actual and anticipated effects of inflation and  
20 deflation. The department shall describe any assumptions made and any  
21 data used in determining the total annual economic impact of a  
22 proposed rule or regulation.

23           (4) The department shall:

24           (a) Publish the statement required under subsection (1)  
25 of this section; and

1           (b) Deliver copies of the statement, along with the  
2 proposed rule or regulation, to the Governor's Policy Research Office  
3 not later than sixty days prior to the date of publication pursuant  
4 to section 84-907.

5           Sec. 2. (1) The Governor's Policy Research Office:

6           (a) Shall review a proposed rule or regulation from the  
7 Department of Environmental Quality that will have a total estimated  
8 economic impact greater than five hundred thousand dollars on all  
9 regulated persons or entities; and

10           (b) May review any proposed rule or regulation from the  
11 Department of Environmental Quality that imposes requirements or  
12 costs on regulated persons or entities.

13           (2) After conducting a review under this section, the  
14 office may suggest alternatives to reduce any regulatory burden that  
15 the proposed rule or regulation imposes on regulated persons or  
16 entities. The department shall respond in writing to the office  
17 concerning the comments or suggested alternatives before adopting the  
18 proposed rule or regulation.

19           (3) Before the adoption of the proposed rule or  
20 regulation, and not more than twenty-one days after receiving a  
21 proposed rule or regulation, the office shall prepare, using the data  
22 and assumptions provided by the department, along with any other data  
23 or information available to the department, a fiscal impact statement  
24 concerning the effect that compliance with the proposed rule or  
25 regulation will have on:

1           (a) The state; and

2           (b) All persons or entities regulated by the proposed  
3 rule or regulation.

4           The fiscal impact statement shall contain the total  
5 estimated economic impact of the proposed rule or regulation and a  
6 determination concerning the extent to which the proposed rule or  
7 regulation creates an unfunded mandate on a state agency or political  
8 subdivision. The fiscal impact statement is a public document. The  
9 office shall make the fiscal impact statement available to interested  
10 parties upon request. The department shall consider the fiscal impact  
11 statement as part of the rulemaking or regulationmaking process and  
12 shall provide the office with the information necessary to prepare  
13 the fiscal impact statement, including any economic impact statement  
14 prepared by the department. The office shall also receive and  
15 consider applicable information from the regulated persons affected  
16 by the rule or regulation in preparation of the fiscal impact  
17 statement.

18           (4) The Department of Environmental Quality shall give  
19 written notice to the office of the proposed date of preliminary  
20 adoption of the proposed rule or regulation not less than sixty days  
21 before that date.

22           Sec. 3. Section 84-906.02, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24           84-906.02 In addition to seeking information by other  
25 methods and before publication of a notice under section 84-907, an

1 agency is encouraged to and may solicit comments from the public on a  
2 subject matter of possible rule or regulation making by causing  
3 notice to be published in a newspaper of general circulation of the  
4 subject matter and indicating where, when, and how persons may  
5 comment. The Department of Environmental Quality shall make a  
6 proposed rule or regulation available to the public not later than  
7 sixty days prior to the date of publication under section 84-907.

8           Sec. 4. Section 84-920, Revised Statutes Cumulative  
9 Supplement, 2012, is amended to read:

10           84-920 Sections 84-901 to 84-920 and sections 1 and 2 of  
11 this act shall be known and may be cited as the Administrative  
12 Procedure Act.

13           Sec. 5. Original section 84-906.02, Reissue Revised  
14 Statutes of Nebraska, and section 84-920, Revised Statutes Cumulative  
15 Supplement, 2012, are repealed.