

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 718

Introduced by Crawford, 45; Avery, 28; Lathrop, 12; Nordquist, 7.
Read first time January 08, 2014

Committee:

A BILL

1 FOR AN ACT relating to the Administrative Procedure Act; to amend
2 sections 84-902 and 84-907.01, Reissue Revised Statutes
3 of Nebraska, and sections 84-907, 84-907.09, and 84-920,
4 Revised Statutes Cumulative Supplement, 2012; to require
5 preparation and publication of rulemaking and
6 regulationmaking agendas; to require web site publication
7 fiscal impact statements; to provide duties for agencies
8 and the Secretary of State; to harmonize provisions; and
9 to repeal the original sections.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 84-902, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 84-902 (1) Each agency shall prepare a semiannual agenda
4 for rules and regulations under development or review or planned
5 development or review. Each agency shall file in the office of the
6 Secretary of State a certified copy of the agenda within thirty days
7 following the end of each regular legislative session and by October
8 15. The Secretary of State shall keep a permanent file of all
9 agendas. Such file shall be updated and kept current upon receipt of
10 any amended agenda and shall be open to public inspection during
11 regular business hours of his or her office. The Secretary of State
12 shall specify the manner in which each agency shall prepare an
13 agenda. At a minimum, the agenda shall include a brief summary of the
14 action, the relevant legal authority, any appropriate deadlines, and
15 the name, telephone number, and means of electronic communication
16 with a knowledgeable agency official.

17 ~~(1)~~(2) Each agency shall file in the office of the
18 Secretary of State a certified copy of the rules and regulations in
19 force and effect in such agency. The Secretary of State shall keep a
20 permanent file of all such rules and regulations. Such file shall be
21 updated and kept current upon receipt of any rules and regulations
22 adopted, amended, or repealed and filed with the Secretary of State
23 as provided in the Administrative Procedure Act and shall be open to
24 public inspection during regular business hours of his or her office.
25 The Secretary of State, in order to maintain and keep such files

1 current, shall be empowered to require new and amended rules and
2 regulations to be filed as complete file pages and to remove all
3 superseded pages to a separate file.

4 ~~(2)~~(3) Rules and regulations filed with the Secretary of
5 State pursuant to the Administrative Procedure Act shall be filed in
6 the manner and form prescribed by the Secretary of State. The
7 Secretary of State shall issue instructions to all state agencies
8 setting forth the format to be followed by all agencies in submitting
9 rules and regulations to the Secretary of State. Such instructions
10 shall provide for a uniform page size, a generally uniform and clear
11 indexing system, and annotations including designation of enabling
12 legislation and court or agency decisions interpreting the particular
13 rule or regulation. For good cause shown, the Secretary of State may
14 grant exceptions to the uniform page size requirement and the general
15 indexing instructions for any agency.

16 Sec. 2. Section 84-907, Revised Statutes Cumulative
17 Supplement, 2012, is amended to read:

18 84-907 (1) No rule or regulation shall be adopted,
19 amended, or repealed by any agency except after public hearing on the
20 question of adopting, amending, or repealing such rule or regulation.
21 Notice of such hearing shall be given at least thirty days prior
22 thereto to the Secretary of State and by publication in a newspaper
23 having general circulation in the state. All such hearings shall be
24 open to the public.

25 (2) The public hearing on a rule or regulation that is

1 required to be adopted, amended, or repealed based upon a legislative
2 bill shall be held within twelve months after the effective or
3 operative date of the legislative bill. If there is more than one
4 applicable effective or operative date, the twelve-month period shall
5 be calculated using the latest date. In addition to the requirements
6 of section 84-906.01, draft copies or working copies of all rules and
7 regulations to be adopted, amended, or repealed by any agency shall
8 be available to the public in the office of the Secretary of State at
9 the time of giving notice. The notice shall include: (a) A
10 declaration of availability of such draft or work copies for public
11 examination; (b) a short explanation of the purpose of the proposed
12 rule or regulation or the reason for the amendment or repeal of the
13 rule or regulation, including the identification of the specific
14 authorizing statute and the specific statute interpreted or
15 implemented by the rule and regulation; and (c) a description,
16 including an estimated quantification, of the fiscal impact on state
17 agencies, political subdivisions, and persons being regulated or an
18 explanation of where the description of the fiscal impact may be
19 inspected and obtained. The fiscal impact statement shall be
20 available on the Secretary of State's web site. No person may
21 challenge the validity of any rule or regulation, the adoption,
22 amendment, or repeal of any rule or regulation, or any determination
23 of the applicability of any rule or regulation on the basis of the
24 explanation or description provided pursuant to subdivisions (b) and
25 (c) of this subsection.

1 (3) Any agency adopting, amending, or repealing a rule or
2 regulation may make written application to the Governor who may, upon
3 receipt of a written showing of good cause, waive the notice of
4 public hearing.

5 For purposes of this subsection, good cause shall
6 include, but not be limited to, a showing by the agency that:

7 (a) Compliance with the requirements of this section
8 would result in extreme hardship on the citizens of this state;

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

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

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

20 Sec. 3. Section 84-907.01, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 84-907.01 The Secretary of State shall establish and
23 maintain a list of subscribers who wish to receive notice of the
24 filing of an agenda for rules and regulations under development or
25 review and of public hearing on the question of adopting, amending,

1 or repealing any rule or regulation of any agency and shall provide
2 such notice to such subscribers at cost to be assessed against each
3 subscriber.

4 Sec. 4. Section 84-907.09, Revised Statutes Cumulative
5 Supplement, 2012, is amended to read:

6 84-907.09 Whenever an agency proposes to adopt, amend, or
7 repeal a rule or regulation, (1) at least thirty days before the
8 public hearing, when notice of a proposed rule or regulation is sent
9 out, or (2) at the same time the agency applies to the Governor for a
10 waiver of the notice of public hearing under section 84-907, the
11 agency shall provide to the Governor for review (a) a description of
12 the proposed rule or regulation and the entity or entities it will
13 impact, (b) an explanation of the necessity of the proposed rule or
14 regulation, including the identification of the specific legislative
15 ~~bill if applicable, or the authorizing statute when there is no~~
16 ~~legislative bill applicable, and the specific statute interpreted or~~
17 implemented by the rule and regulation, (c) a statement that the
18 proposed rule or regulation is consistent with legislative intent,
19 (d) a statement indicating whether the proposed rule or regulation is
20 the result of a state mandate on a local governmental subdivision and
21 if the mandate is funded, (e) a statement indicating if the proposed
22 rule or regulation is the result of a federal mandate on state
23 government or on a local governmental subdivision and if the mandate
24 is funded, (f) a description, including an estimated quantification,
25 of the fiscal impact on state agencies, political subdivisions, and

1 regulated persons, (g) a statement that the agency will solicit
2 public comment on the proposed rule or regulation before the public
3 hearing, and (h) a statement indicating whether or not the agency has
4 utilized the negotiated rulemaking process as provided for in the
5 Negotiated Rulemaking Act with respect to the proposed rule or
6 regulation.

7 Sec. 5. An agency may not adopt, amend, or repeal a rule
8 or regulation that is not included on an agenda filed pursuant to
9 section 84-902 except when the proposed rule or regulation or
10 amendment or repeal is:

11 (1) In response to a natural disaster or declaration of
12 emergency;

13 (2) Required by federal law;

14 (3) Related to the loss of or access to additional
15 federal funds; or

16 (4) As a result of a state or federal court decision.

17 Sec. 6. Section 84-920, Revised Statutes Cumulative
18 Supplement, 2012, is amended to read:

19 84-920 Sections 84-901 to 84-920 and section 5 of this
20 act shall be known and may be cited as the Administrative Procedure
21 Act.

22 Sec. 7. Original sections 84-902 and 84-907.01, Reissue
23 Revised Statutes of Nebraska, and sections 84-907, 84-907.09, and
24 84-920, Revised Statutes Cumulative Supplement, 2012, are repealed.