

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 1060**

Introduced by Avery, 28.

Read first time January 18, 2012

Committee: Government, Military and Veterans Affairs

A BILL

1 FOR AN ACT relating to rules and regulations; to amend sections  
2 84-906.02, 84-906.03, and 84-907.06, Reissue Revised  
3 Statutes of Nebraska, and sections 84-907 and 84-907.09,  
4 Revised Statutes Supplement, 2011; to change procedures  
5 regarding publication of notice; to provide and change  
6 powers and duties for the Secretary of State; to  
7 harmonize provisions; and to repeal the original  
8 sections.

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

1                   Section 1. Section 84-906.02, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3                   84-906.02 In addition to seeking information by other  
4 methods and before publication of a notice under section 84-907, an  
5 agency is encouraged to and may solicit comments from the public on a  
6 subject matter of possible rule or regulation making by causing  
7 notice ~~to be published in a newspaper of general circulation of the~~  
8 subject matter and ~~indicating~~ where, when, and how persons may  
9 comment to be submitted to the Secretary of State for electronic  
10 publication on the Internet web site of the Secretary of State.

11                   Sec. 2. Section 84-906.03, Reissue Revised Statutes of  
12 Nebraska, is amended to read:

13                   84-906.03 It shall be the duty of the Secretary of State:

14                   (1) To establish and cause to be compiled, indexed by  
15 subject, and published a codification system for all rules and  
16 regulations filed to be designated the Nebraska Administrative  
17 Code; -

18                   (2) To cause the Nebraska Administrative Code and  
19 proposed amendments to the code to be computerized ~~to facilitate for~~  
20 purposes of facilitating agencies in revision of their rules and  
21 regulations, providing ~~and provide~~ research capabilities, and  
22 providing notice to the regulated public; and

23                   (3)(a) To distribute a current copy of existing rules and  
24 regulations as accepted by him or her as filed to the State Library  
25 and to each county law library of the State of Nebraska making a

1 request for a copy of such rules and regulations;

2 (b) To ~~to~~ distribute, on a regular basis, copies of all  
3 modifications or amendments to agency rules and regulations as  
4 accepted by him or her as filed to the State Library and to each  
5 county law library of the State of Nebraska which requests copies of  
6 all modifications or amendments;

7 (c) To ~~to~~ distribute at least four current copies of any  
8 rules and regulations accepted by him or her as filed to the Nebraska  
9 Publications Clearinghouse to meet the needs of the Nebraska  
10 publications depository system;

11 (d) To ~~to~~ distribute on a regular basis at least four  
12 copies of all modifications or amendments to agency rules and  
13 regulations accepted by him or her as filed to the Nebraska  
14 Publications Clearinghouse to meet the needs of the Nebraska  
15 publications depository system;

16 (e) To ~~to~~ distribute a current copy of any existing rules  
17 and regulations as accepted by him or her as filed to all interested  
18 persons on request at a price fixed to cover costs of printing,  
19 handling, and mailing; and

20 (f) To ~~to~~ distribute, on a regular basis, copies of any  
21 or all modifications or amendments to agency rules and regulations as  
22 accepted by him or her as filed to all interested persons on request  
23 at a price fixed to cover costs of printing, handling, and mailing.

24 Sec. 3. Section 84-907, Revised Statutes Supplement,  
25 2011, is amended to read:

1                   84-907 (1) No rule or regulation shall be adopted,  
2 amended, or repealed by any agency except after public hearing on the  
3 question of adopting, amending, or repealing such rule or regulation.  
4 Notice of such hearing shall be given at least ~~thirty~~thirty-five  
5 days prior thereto to the Secretary of State. The Secretary of State  
6 shall, at least thirty days prior to the hearing, cause such notice  
7 to be published electronically on the Internet web site of the  
8 Secretary of State. ~~and by publication in a newspaper having general~~  
9 ~~circulation in the state.~~ All such hearings shall be open to the  
10 public.

11                   (2) The public hearing on a rule or regulation that is  
12 required to be adopted, amended, or repealed based upon a legislative  
13 bill shall be held within twelve months after the effective or  
14 operative date of the legislative bill. If there is more than one  
15 applicable effective or operative date, the twelve-month period shall  
16 be calculated using the latest date. In addition to the requirements  
17 of section 84-906.01, draft copies or working copies of all rules and  
18 regulations to be adopted, amended, or repealed by any agency shall  
19 be available to the public in the office of the Secretary of State at  
20 the time of giving notice. The notice shall include: (a) A  
21 declaration of availability of such draft or work copies for public  
22 examination; (b) a short explanation of the purpose of the proposed  
23 rule or regulation or the reason for the amendment or repeal of the  
24 rule or regulation; and (c) a description, including an estimated  
25 quantification, of the fiscal impact on state agencies, political

1 subdivisions, and persons being regulated or an explanation of where  
2 the description of the fiscal impact may be inspected and obtained.  
3 No person may challenge the validity of any rule or regulation, the  
4 adoption, amendment, or repeal of any rule or regulation, or any  
5 determination of the applicability of any rule or regulation on the  
6 basis of the explanation or description provided pursuant to  
7 subdivisions (b) and (c) of this subsection.

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

12 (b) For purposes of this subsection, good cause shall  
13 include, but not be limited to, a showing by the agency that:

14 (a)(i) Compliance with the requirements of this section  
15 would result in extreme hardship on the citizens of this state;

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

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

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

1 or changed.

2           Sec. 4. Section 84-907.06, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4           84-907.06 Whenever an agency proposes to adopt, amend, or  
5 repeal a rule or regulation, (1) at least ~~thirty~~thirty-five days  
6 before the public hearing, when notice of a proposed rule or  
7 regulation is sent out, or (2) at the same time the agency applies to  
8 the Governor for a waiver of the notice of public hearing, the agency  
9 shall send to the Executive Board of the Legislative Council (a) a  
10 copy of the hearing notice required by section 84-907, (b) if  
11 applicable, a draft copy of the rule or regulation, and (c) the  
12 information provided to the Governor pursuant to section 84-907.09.

13           Sec. 5. Section 84-907.09, Revised Statutes Supplement,  
14 2011, is amended to read:

15           84-907.09 Whenever an agency proposes to adopt, amend, or  
16 repeal a rule or regulation, (1) at least ~~thirty~~thirty-five days  
17 before the public hearing, when notice of a proposed rule or  
18 regulation is sent out, or (2) at the same time the agency applies to  
19 the Governor for a waiver of the notice of public hearing under  
20 section 84-907, the agency shall provide to the Governor for review  
21 (a) a description of the proposed rule or regulation and the entity  
22 or entities it will impact, (b) an explanation of the necessity of  
23 the proposed rule or regulation, including the identification of the  
24 specific legislative bill if applicable, or the authorizing statute  
25 when there is no legislative bill applicable, (c) a statement that

1 the proposed rule or regulation is consistent with legislative  
2 intent, (d) a statement indicating whether the proposed rule or  
3 regulation is the result of a state mandate on a local governmental  
4 subdivision and if the mandate is funded, (e) a statement indicating  
5 if the proposed rule or regulation is the result of a federal mandate  
6 on state government or on a local governmental subdivision and if the  
7 mandate is funded, (f) a description, including an estimated  
8 quantification, of the fiscal impact on state agencies, political  
9 subdivisions, and regulated persons, (g) a statement that the agency  
10 will solicit public comment on the proposed rule or regulation before  
11 the public hearing, and (h) a statement indicating whether or not the  
12 agency has utilized the negotiated rulemaking process as provided for  
13 in the Negotiated Rulemaking Act with respect to the proposed rule or  
14 regulation.

15           Sec. 6. Original sections 84-906.02, 84-906.03, and  
16 84-907.06, Reissue Revised Statutes of Nebraska, and sections 84-907  
17 and 84-907.09, Revised Statutes Supplement, 2011, are repealed.