

AMENDMENTS TO LB 617

Introduced by Flood

1           1. Strike the original sections and all amendments  
2 thereto and insert the following new sections:

3           Section 1. On or after the effective date of this act,  
4 when legislation is enacted requiring the adoption and promulgation  
5 of rules and regulations by an agency, such agency shall adopt  
6 and promulgate such rules and regulations within one year after  
7 the public hearing required under subsection (2) of section 84-907.  
8 Such time shall not include the time necessary for submission  
9 of the rules and regulations to the Attorney General pursuant to  
10 section 84-905.01 or submission of the rules and regulations to  
11 the Governor pursuant to section 84-908. Any agency which does  
12 not adopt and promulgate such rules and regulations as required by  
13 this section shall submit a written explanation to the Executive  
14 Board of the Legislative Council and the standing committee of the  
15 Legislature which has subject matter jurisdiction over the issue  
16 involved in the legislation, stating the reasons why it has not  
17 adopted such rules and regulations as required by this section,  
18 the date by which the agency expects to adopt such rules and  
19 regulations, and any suggested statutory changes that may enable  
20 the agency to adopt such rules and regulations.

21           The changes made to the Administrative Procedure Act  
22 by this legislative bill shall not affect the validity or  
23 effectiveness of a rule or regulation adopted prior to the

1 effective date of this act.

2           Sec. 2. Section 84-907, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

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5 amended, or repealed by any agency except after public hearing  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

11           (2) The public hearing on a rule or regulation that  
12 is required to be adopted, amended, or repealed based upon a  
13 legislative bill shall be held within twelve months after the  
14 effective or operative date of the legislative bill. If there  
15 is more than one applicable effective or operative date, the  
16 twelve-month period shall be calculated using the latest date. In  
17 addition to the requirements of section 84-906.01, draft copies  
18 or working copies of all rules and regulations to be adopted,  
19 amended, or repealed by any agency shall be available to the  
20 public in the office of the Secretary of State at the time of  
21 giving notice. The notice shall include: ~~(1)~~ (a) A declaration of  
22 availability of such draft or work copies for public examination;  
23 ~~(2)~~ (b) a short explanation of the purpose of the proposed rule or  
24 regulation or the reason for the amendment or repeal of the rule  
25 or regulation; and ~~(3)~~ (c) a description, including an estimated  
26 quantification, of the fiscal impact on state agencies, political  
27 subdivisions, and persons being regulated or an explanation of

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

8 (3) Any agency adopting, amending, or repealing a rule or  
9 regulation may make written application to the Governor who may,  
10 upon receipt of a written showing of good cause, waive the notice  
11 of public hearing. For purposes of this ~~section,~~ subsection, good  
12 cause shall include, but not be limited to, a showing by the agency  
13 that:

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

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

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

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

1           Sec. 3. Section 84-907.09, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           84-907.09 Whenever an agency proposes to adopt, amend,  
4 or repeal a rule or regulation, (1) at least thirty days before  
5 the public hearing, when notice of a proposed rule or regulation  
6 is sent out, or (2) at the same time the agency applies to the  
7 Governor for a waiver of the notice of public hearing under section  
8 84-907, the agency shall provide to the Governor for review (a) a  
9 description of the proposed rule or regulation and the entity or  
10 entities it will impact, (b) an explanation of the necessity of  
11 the proposed rule or regulation, including the identification of  
12 the authorizing statute or specific legislative bill if applicable,  
13 or the authorizing statute when there is no legislative bill  
14 applicable, (c) a statement that the proposed rule or regulation  
15 is consistent with legislative intent, (d) a statement indicating  
16 whether the proposed rule or regulation is the result of a state  
17 mandate on a local governmental subdivision and if the mandate  
18 is funded, (e) a statement indicating if the proposed rule or  
19 regulation is the result of a federal mandate on state government  
20 or on a local governmental subdivision and if the mandate is  
21 funded, (f) a description, including an estimated quantification,  
22 of the fiscal impact on state agencies, political subdivisions, and  
23 regulated persons, (g) a statement that the agency will solicit  
24 public comment on the proposed rule or regulation before the public  
25 hearing, and (h) a statement indicating whether or not the agency  
26 has utilized the negotiated rulemaking process as provided for in  
27 the Negotiated Rulemaking Act with respect to the proposed rule or

1 regulation.

2           Sec. 4. On or before July 1 of each year, each agency  
3 shall provide to the Legislative Performance Audit Committee a  
4 status report on all rules and regulations pending before the  
5 agency which have not been adopted and promulgated. If an  
6 additional appropriation was made with respect to legislation  
7 enacted to provide funding for or additional staff to implement a  
8 program for which rules and regulations are required to be adopted,  
9 the status report shall include what the funding has been used for  
10 and what functions the staff have been performing while such rules  
11 and regulations are pending. The format of the report shall be  
12 established by the committee no later than June 1, 2011, and shall  
13 be updated thereafter.

14           Sec. 5. Section 84-920, Reissue Revised Statutes of  
15 Nebraska, is amended to read:

16           84-920 Sections 84-901 to 84-920 and sections 1 and 4  
17 of this act shall be known and may be cited as the Administrative  
18 Procedure Act.

19           Sec. 6. Original sections 84-907, 84-907.09, and 84-920,  
20 Reissue Revised Statutes of Nebraska, are repealed.

21           Sec. 7. Since an emergency exists, this act takes effect  
22 when passed and approved according to law.