

AMENDMENTS TO LB 617

Introduced by Executive Board

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

3           Section 1. When legislation is enacted providing for the  
4 adoption and promulgation of rules and regulations by an agency,  
5 such agency shall adopt and promulgate such rules and regulations  
6 within one year after the public hearing required under section  
7 84-907. Any agency which does not adopt and promulgate such rules  
8 and regulations as provided in this section shall submit a written  
9 explanation to the Executive Board of the Legislative Council and  
10 the standing committee of the Legislature which has subject matter  
11 jurisdiction over the issue involved in the legislation, stating  
12 the reasons why it has not adopted such rules and regulations as  
13 provided in this section, the date by which the agency expects  
14 to adopt such rules and regulations, and any suggested statutory  
15 changes that may enable the agency to adopt such rules and  
16 regulations.

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

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20 amended, or repealed by any agency except after public hearing  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

1 in a newspaper having general circulation in the state. All such  
2 hearings shall be open to the public. The public hearing on a  
3 rule or regulation that is being adopted, amended, or repealed  
4 based upon a legislative bill shall be held within twelve months  
5 after the effective or operative date of the legislative bill that  
6 provides the statutory authority for the rule or regulation. If  
7 there is more than one applicable effective or operative date,  
8 the twelve-month period shall be calculated using the latest date.  
9 An agency may make written application to the Governor to extend  
10 the twelve-month period, and upon receipt of a written showing of  
11 good cause, the Governor may extend the twelve-month period for  
12 up to an additional six months. In addition to the requirements  
13 of section 84-906.01, draft copies or working copies of all rules  
14 and regulations to be adopted, amended, or repealed by any agency  
15 shall be available to the public in the office of the Secretary  
16 of State at the time of giving notice. The notice shall include:  
17 ~~(1)~~ (a) A declaration of availability of such draft or work copies  
18 for public examination; ~~(2)~~ (b) a short explanation of the purpose  
19 of the proposed rule or regulation or the reason for the amendment  
20 or repeal of the rule or regulation; and ~~(3)~~ (c) a description,  
21 including an estimated quantification, of the fiscal impact on  
22 state agencies, political subdivisions, and persons being regulated  
23 or an explanation of where the description of the fiscal impact  
24 may be inspected and obtained. No person may challenge the validity  
25 of any rule or regulation, the adoption, amendment, or repeal of  
26 any rule or regulation, or any determination of the applicability  
27 of any rule or regulation on the basis of the explanation or

1 description provided pursuant to subdivisions ~~(2)~~ and ~~(3)~~ (b) and  
2 (c) of this ~~section~~. subsection.

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

9 (a) Compliance with the ~~public notice~~ requirements of  
10 this section would result in extreme hardship on the citizens of  
11 this state;

12 (b) An emergency exists which must be remedied  
13 immediately; or

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

19 (3) Whenever public notice is waived, the agency shall,  
20 so far as practicable, give notice to the public of the proposed  
21 rule or regulation change and of the rule or regulation as finally  
22 adopted or changed.

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

25 84-907.09 Whenever an agency proposes to adopt, amend,  
26 or repeal a rule or regulation, (1) at least thirty days before  
27 the public hearing, when notice of a proposed rule or regulation

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

24           Sec. 4. On or before July 1 of each year, each agency  
25 shall provide to the Legislative Performance Audit Committee a  
26 status report on all rules and regulations pending before the  
27 agency. If an appropriation was made with respect to legislation

1 for which rules and regulations are pending to provide funding  
2 for or additional staff to implement a program, the status report  
3 shall include what the funding has been used for and what functions  
4 the staff have been performing while such rules and regulations  
5 are pending. Other content and the format of the report shall be  
6 established by the committee no later than May 1, 2011, and shall  
7 be updated thereafter.

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

10           84-920 Sections 84-901 to 84-920 and sections 1 and 4  
11 of this act shall be known and may be cited as the Administrative  
12 Procedure Act.

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

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