

LEGISLATURE OF NEBRASKA

ONE HUNDRED THIRD LEGISLATURE

FIRST SESSION

## **LEGISLATIVE BILL 242**

Final Reading

(Second)

Introduced by Howard, 9; Mello, 5.

Read first time January 16, 2013

Committee: Executive Board

### A BILL

1 FOR AN ACT relating to administrative rules and regulations; to amend  
2 section 84-908, Reissue Revised Statutes of Nebraska, and  
3 sections 81-8,245 and 84-901.01, Revised Statutes  
4 Cumulative Supplement, 2012; to provide duties for the  
5 Public Counsel; to provide for a public hearing regarding  
6 certain rules and regulations; to prohibit application of  
7 administrative rules as prescribed; and to repeal the  
8 original sections.

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

1                   Section 1. Section 81-8,245, Revised Statutes Cumulative  
2 Supplement, 2012, is amended to read:

3                   81-8,245 The Public Counsel shall have the power to:

4                   (1) Investigate, on complaint or on his or her own  
5 motion, any administrative act of any administrative agency;

6                   (2) Prescribe the methods by which complaints are to be  
7 made, received, and acted upon; determine the scope and manner of  
8 investigations to be made; and, subject to the requirements of  
9 sections 81-8,240 to 81-8,254, determine the form, frequency, and  
10 distribution of his or her conclusions, recommendations, and  
11 proposals;

12                  (3) Conduct inspections of the premises, or any parts  
13 thereof, of any administrative agency or any property owned, leased,  
14 or operated by any administrative agency as frequently as is  
15 necessary, in his or her opinion, to carry out duties prescribed  
16 under sections 81-8,240 to 81-8,254;

17                  (4) Request and receive from each administrative agency,  
18 and such agency shall provide, the assistance and information the  
19 counsel deems necessary for the discharge of his or her  
20 responsibilities; inspect and examine the records and documents of  
21 all administrative agencies notwithstanding any other provision of  
22 law; and enter and inspect premises within any administrative  
23 agency's control;

24                  (5) Issue a subpoena, enforceable by action in an  
25 appropriate court, to compel any person to appear, give sworn

1       testimony, or produce documentary or other evidence deemed relevant  
2       to a matter under his or her inquiry. A person thus required to  
3       provide information shall be paid the same fees and travel allowances  
4       and shall be accorded the same privileges and immunities as are  
5       extended to witnesses in the district courts of this state and shall  
6       also be entitled to have counsel present while being questioned;

7                     (6) Undertake, participate in, or cooperate with general  
8       studies or inquiries, whether or not related to any particular  
9       administrative agency or any particular administrative act, if he or  
10      she believes that they may enhance knowledge about or lead to  
11      improvements in the functioning of administrative agencies;

12                    (7) Make investigations, reports, and recommendations  
13      necessary to carry out his or her duties under the State Government  
14      Effectiveness Act; and

15                    (8) Carry out his or her duties under the Office of  
16      Inspector General of Nebraska Child Welfare Act. If any of the  
17      provisions of sections 81-8,240 to 81-8,254 conflict with provisions  
18      of the Office of Inspector General of Nebraska Child Welfare Act, the  
19      provisions of such act shall control; and -

20                    (9) Investigate allegations of violation of subsection  
21       (2) of section 84-908 by an administrative agency pursuant to a  
22       complaint made to his or her office and make a determination as to  
23       whether such administrative agency has violated such subsection. The  
24       Public Counsel shall report his or her determination in writing to  
25       the Governor, the Secretary of State, the Attorney General, the

1       Executive Board of the Legislative Council, and the director or chief  
2       executive officer of the agency. The report to the executive board  
3       shall be submitted electronically.

4                   Sec. 2. Section 84-901.01, Revised Statutes Cumulative  
5       Supplement, 2012, is amended to read:

6                   84-901.01 (1) When legislation is enacted requiring the  
7       adoption and promulgation of rules and regulations by an agency, such  
8       agency shall adopt and promulgate such rules and regulations within  
9       one year after the public hearing required under subsection (2) of  
10      section 84-907. Such time shall not include the time necessary for  
11      submission of the rules and regulations to the Attorney General  
12      pursuant to section 84-905.01 or submission of the rules and  
13      regulations to the Governor pursuant to section 84-908. Any agency  
14      which does not adopt and promulgate such rules and regulations as  
15      required by this section shall submit electronically an explanation  
16      to the Executive Board of the Legislative Council and the standing  
17      committee of the Legislature which has subject matter jurisdiction  
18      over the issue involved in the legislation, stating the reasons why  
19      it has not adopted such rules and regulations as required by this  
20      section, the date by which the agency expects to adopt such rules and  
21      regulations, and any suggested statutory changes that may enable the  
22      agency to adopt such rules and regulations.

23                   (2) If such agency has not adopted and promulgated such  
24       rules and regulations within three years after the operative or  
25       effective date of such enacting legislation, the standing committee

1     of the Legislature which has subject matter jurisdiction over the  
2     matters included in the legislation shall hold a public hearing to  
3     determine the reason that such rules and regulations have not been  
4     enacted.

5                 (2)—(3) The changes made to the Administrative Procedure  
6     Act by Laws 2011, LB617, shall not affect the validity or  
7     effectiveness of a rule or regulation adopted prior to May 25, 2011.

8                 (4) The changes made to this section by this legislative  
9     bill shall apply to legislation enacted before, on, or after the  
10    effective date of this act.

11                Sec. 3. Section 84-908, Reissue Revised Statutes of  
12    Nebraska, is amended to read:

13                84-908 (1) No adoption, amendment, or repeal of any rule  
14     or regulation shall become effective until the same has been approved  
15     by the Governor and filed with the Secretary of State after a hearing  
16     has been set on such rule or regulation pursuant to section 84-907.  
17     When determining whether to approve the adoption, amendment, or  
18     repeal of any rule or regulation relating to an issue of unique  
19     interest to a specific geographic area, the Governor's considerations  
20     shall include, but not be limited to: (1)—(a) Whether adequate notice  
21     of hearing was provided in the geographic area affected by the rule  
22     or regulation. Adequate notice shall include, but not be limited to,  
23     the availability of copies of the rule or regulation at the time  
24     notice was given pursuant to section 84-907; and (2)—(b) whether  
25     reasonable and convenient opportunity for public comment was provided

1 for the geographic area affected by the rule or regulation. If a  
2 public hearing was not held in the affected geographic area, reasons  
3 shall be provided by the agency to the Governor. Any rule or  
4 regulation properly adopted by any agency shall be filed with the  
5 Secretary of State.

6 (2) No agency shall utilize, enforce, or attempt to  
7 enforce any rule or regulation or proposed rule or regulation unless  
8 the rule, regulation, or proposed rule or regulation has been  
9 approved by the Governor and filed with the Secretary of State after  
10 a hearing pursuant to section 84-907.

11 Sec. 4. Original section 84-908, Reissue Revised Statutes  
12 of Nebraska, and sections 81-8,245 and 84-901.01, Revised Statutes  
13 Cumulative Supplement, 2012, are repealed.