

LEGISLATURE OF NEBRASKA  
 ONE HUNDRED THIRD LEGISLATURE  
 FIRST SESSION  
**LEGISLATIVE BILL 98**

Introduced by Mello, 5; Nordquist, 7.

Read first time January 10, 2013

Committee: Government, Military and Veterans Affairs

A BILL

1 FOR AN ACT relating to administrative rules; to amend sections 84-908  
 2 and 84-911, Reissue Revised Statutes of Nebraska, and  
 3 section 81-8,245, Revised Statutes Cumulative Supplement,  
 4 2012; to provide duties for the Public Counsel; to  
 5 prohibit application of administrative rules as  
 6 prescribed; to provide for award of attorney's fees and  
 7 court costs as prescribed; and to repeal the original  
 8 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 subdivision  
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 the act. The Public  
24 Counsel shall report his or her determination in writing to the  
25 Governor, the Secretary of State, the Attorney General, the Executive

1 Board of the Legislative Council, and the director or chief executive  
2 officer of the agency.

3           Sec. 2. Section 84-908, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5           84-908 (1) No adoption, amendment, or repeal of any rule  
6 or regulation shall become effective until the same has been approved  
7 by the Governor and filed with the Secretary of State after a hearing  
8 has been set on such rule or regulation pursuant to section 84-907.  
9 When determining whether to approve the adoption, amendment, or  
10 repeal of any rule or regulation relating to an issue of unique  
11 interest to a specific geographic area, the Governor's considerations  
12 shall include, but not be limited to: ~~(1)~~-(a) Whether adequate notice  
13 of hearing was provided in the geographic area affected by the rule  
14 or regulation. Adequate notice shall include, but not be limited to,  
15 the availability of copies of the rule or regulation at the time  
16 notice was given pursuant to section 84-907; and ~~(2)~~-(b) whether  
17 reasonable and convenient opportunity for public comment was provided  
18 for the geographic area affected by the rule or regulation. If a  
19 public hearing was not held in the affected geographic area, reasons  
20 shall be provided by the agency to the Governor. Any rule or  
21 regulation properly adopted by any agency shall be filed with the  
22 Secretary of State.

23           (2) No agency shall utilize, enforce, or attempt to  
24 enforce any rule or regulation or proposed rule or regulation unless  
25 the rule, regulation, or proposed rule or regulation has been

1 approved by the Governor and filed with the Secretary of State after  
2 a hearing pursuant to section 84-907.

3           Sec. 3. Section 84-911, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5           84-911 (1) The validity of any rule or regulation may be  
6 determined upon a petition for a declaratory judgment thereon  
7 addressed to the district court of Lancaster County if it appears  
8 that the rule or regulation or its threatened application interferes  
9 with or impairs or threatens to interfere with or impair the legal  
10 rights or privileges of the petitioner. The agency shall be made a  
11 party to the proceeding. The declaratory judgment may be rendered  
12 whether or not the petitioner has first requested the agency to pass  
13 upon the validity of the rule or regulation in question.

14           (2) The court shall declare the rule or regulation  
15 invalid if it finds that it violates constitutional provisions,  
16 exceeds the statutory authority of the agency, or was adopted without  
17 compliance with the statutory procedures. When a rule or regulation  
18 is declared invalid because it was adopted without compliance with  
19 statutory procedures, the court may award reasonable attorney's fees  
20 and court costs to the party who successfully challenged the rule or  
21 regulation. For purposes of this subsection, statutory procedures  
22 shall not include procedures provided under the Negotiated Rulemaking  
23 Act.

24           Sec. 4. Original sections 84-908 and 84-911, Reissue  
25 Revised Statutes of Nebraska, and section 81-8,245, Revised Statutes

1 Cumulative Supplement, 2012, are repealed.