

ONE HUNDRED FOURTH LEGISLATURE - SECOND SESSION - 2016
COMMITTEE STATEMENT
LB867

Hearing Date: Thursday February 04, 2016
Committee On: Government, Military and Veterans Affairs
Introducer: Legislative Performance Audit
One Liner: Change provisions relating to the Administrative Procedure Act and require the Department of Correctional Services to adopt and promulgate rules and regulations

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

| | | |
|----------------------------|---|--|
| Aye: | 7 | Senators Bloomfield, Craighead, Garrett, Groene, Hansen, Larson, Murante |
| Nay: | | |
| Absent: | 1 | Senator McCoy |
| Present Not Voting: | | |

Verbal Testimony:

Proponents:

Senator Dan Watermeier
Senator Heath Mello
Tim Texel
William Mueller

Representing:

Introducer
Legislative District 5
Nebraska Power Review Board
Nebraska State Bar Association

Opponents:

Representing:

Neutral:

John Gale
Calder Lynch
James Goddard
Stephanie Meese

Representing:

Secretary of State
Department of Health and Human Services - Medicaid
Nebraska Appleseed
Legislative Audit Office

Summary of purpose and/or changes:

LB 867 amends the Administrative Procedures Act as follows:

Section 3 amends section 84-901(2) to redefine "rule or regulation" as any "standard of general application" including repeal of a rule or regulation. It specifically exempts from this definition internal procedural documents, documents lacking the force of law, documents not relied upon by the public, forms and instructions developed by the agency, and "guidance documents."

The bill defines "guidance document" as "any statement developed by an agency which lacks the force of law but provides information or direction of general application to the public to interpret or implement statutes or such agency's rule or regulations."

The bill clarifies that a guidance document is binding on the agency that issued it, but does not have the force of law, and does not give rise to any legal right or duty or be treated as authority for any standard, requirement, or policy.

The bill exempts internal procedural documents from the definition of guidance document.

Section 4 sets forth technical requirements for guidance documents and creates an agency level appellate procedure for challenging such documents.

Section 5 gives agencies the authority to engage in emergency rulemaking. An agency that wishes to engage in emergency rulemaking must submit a written request to the Governor, along with justification. If the Governor grants the agency's request, the rules and regulations adopted or repealed are exempt from the normal notice and hearings requirements, but are only in effect for 90 days. The rules or regulations can be renewed for an additional, immediately concurrent 90 day period upon reapplication to the Governor.

Section 10 amends section 84-907 to exempt changes that alter the style or form of a rule, correct a technical error, or alter a citation or reference to federal or state law, and do not affect the substance of the rule or regulation from the normal notice and hearing requirements. The bill also exempts security policies and procedures that would create a substantial likelihood of endangering public safety or property if made public from the rulemaking process.

Section 16 allow the Department of Corrections to forego publication requirements if publication would place "the safety and security of a correctional institution . . . at imminent and substantial risk." However, if publication is lawfully foregone, the Department of Corrections must give notice to the deputy public counsel for corrections and to the Inspector General of the Nebraska Correctional System of any document not available to the public. All guidance documents and internal procedural documents shall be made available to any member of the Legislature upon request, in the manner proscribed in the bill.

Section 17 requires the Department of Correctional Services to adopt rules and regulations regarding procedures used by the department for situations where an inmate under the authority of the department is outside of a correctional facility. This requirement does not apply if publication would place the safety and security of a correctional institution at imminent and substantial risk.

Explanation of amendments:

AM1976 limits the factors an agency considers in determining whether emergency rulemaking is necessary to "imminent peril to the public health, safety, or welfare," and the "unforeseen loss of federal funding for an agency program."

Requires rules and regulations made under the emergency rulemaking procedures be filed with the Secretary of State and published on the agency's website.

Clarifies that changes to existing rules and regulations exempted from the formal rulemaking requirements under section 10 (3) of the bill are not eligible for the exemption if they "alter the rights or obligations of the public."

Adds procedures or policies used by the Department of Correctional Services where an inmate under the authority of the department is outside a contract facility (as defined in section 83-1,119) to the requirements of section 17 of the bill.

John Murante, Chairperson