

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIFTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 209**

Introduced by Watermeier, 1.

Read first time January 10, 2017

Committee: Government, Military and Veterans Affairs

- 1 A BILL FOR AN ACT relating to the Administrative Procedure Act; to amend
- 2 sections 84-901 and 84-901.03, Revised Statutes Cumulative
- 3 Supplement, 2016; to redefine a term; to change provisions relating
- 4 to an index as prescribed; and to repeal the original sections.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 84-901, Revised Statutes Cumulative Supplement,  
2 2016, is amended to read:

3 84-901 For purposes of the Administrative Procedure Act:

4 (1) Agency shall mean each board, commission, department, officer,  
5 division, or other administrative office or unit of the state government  
6 authorized by law to make rules and regulations, except the Adjutant  
7 General's office as provided in Chapter 55, the courts including the  
8 Nebraska Workers' Compensation Court, the Commission of Industrial  
9 Relations, the Legislature, and the Secretary of State with respect to  
10 the duties imposed by the act;

11 (2) Rule or regulation shall mean any standard of general  
12 application adopted by an agency in accordance with the authority  
13 conferred by statute and includes, but is not limited to, the amendment  
14 or repeal of a rule or regulation. Rule or regulation shall not include  
15 (a) internal procedural documents which provide guidance to staff on  
16 agency organization and operations, lacking the force of law, and not  
17 relied upon to bind the public, (b) guidance documents as issued by an  
18 agency in accordance with section 84-901.03, and (c) forms and  
19 instructions developed by an agency. For purposes of the act, every  
20 standard which prescribes a penalty shall be presumed to have general  
21 applicability and any standard affecting private rights, private  
22 interests, or procedures available to the public is presumed to be relied  
23 upon to bind the public. Nothing in this section shall be interpreted to  
24 require an agency to adopt and promulgate rules and regulations when  
25 statute authorizes but does not require it;

26 (3) Contested case shall mean a proceeding before an agency in which  
27 the legal rights, duties, or privileges of specific parties are required  
28 by law or constitutional right to be determined after an agency hearing;

29 (4) Ex parte communication shall mean an oral or written  
30 communication which is not on the record in a contested case with respect  
31 to which reasonable notice to all parties was not given. Filing and

1 notice of filing provided under subdivision (6)(d) of section 84-914  
2 shall not be considered on the record and reasonable notice for purposes  
3 of this subdivision. Ex parte communication shall not include:

4 (a) Communications which do not pertain to the merits of a contested  
5 case;

6 (b) Communications required for the disposition of ex parte matters  
7 as authorized by law;

8 (c) Communications in a ratemaking or rulemaking proceeding; and

9 (d) Communications to which all parties have given consent;

10 (5) Guidance document shall mean any statement developed by an  
11 agency which lacks the force of law but provides information or direction  
12 of general application to the public to interpret or implement statutes  
13 or such agency's rules or regulations. A guidance document is binding on  
14 an agency until amended by the agency. A guidance document shall not give  
15 rise to any legal right or duty or be treated as authority for any  
16 standard, requirement, or policy. Internal procedural documents which  
17 provide guidance to staff on agency organization and operations shall not  
18 be considered guidance documents; and

19 (6) Hearing officer shall mean the person or persons conducting a  
20 hearing, contested case, or other proceeding pursuant to the act, whether  
21 designated as the presiding officer, administrative law judge, or some  
22 other title designation.

23 Sec. 2. Section 84-901.03, Revised Statutes Cumulative Supplement,  
24 2016, is amended to read:

25 84-901.03 (1) Upon the issuance of a guidance document, an agency  
26 shall make such document available at one public location and on the  
27 agency's web site. The agency shall also publish on its web site an index  
28 summarizing the subject matter of all currently applicable rules and  
29 regulations and guidance documents. Such agency shall provide the index  
30 electronically to the Clerk of the Legislature ~~Executive Board of the~~  
31 ~~Legislative Council~~ by December 31 of each year.

1           (2) An agency shall ensure that the first page of each guidance  
2 document includes the following notice: This guidance document is  
3 advisory in nature but is binding on an agency until amended by such  
4 agency. A guidance document does not include internal procedural  
5 documents that only affect the internal operations of the agency and does  
6 not impose additional requirements or penalties on regulated parties or  
7 include confidential information or rules and regulations made in  
8 accordance with the Administrative Procedure Act. If you believe that  
9 this guidance document imposes additional requirements or penalties on  
10 regulated parties, you may request a review of the document.

11           (3) A person may request in writing that an agency revise or repeal  
12 a guidance document or convert a guidance document into a rule or  
13 regulation. No later than sixty calendar days after the agency receives  
14 such a request, the agency shall advise the requestor in writing of its  
15 decision to (a) revise or repeal the guidance document, (b) initiate a  
16 proceeding to consider a revision or repeal of a guidance document, (c)  
17 initiate the rulemaking or regulationmaking process to convert the  
18 guidance document into a rule or regulation, or (d) deny the request and  
19 state the reason for the denial.

20           (4) All decisions made by an agency under this section shall be made  
21 available at one public location and on the agency's web site.

22           Sec. 3. Original sections 84-901 and 84-901.03, Revised Statutes  
23 Cumulative Supplement, 2016, are repealed.