

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SIXTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 889**

FINAL READING

Introduced by Hilgers, 21.

Read first time January 09, 2020

Committee: Government, Military and Veterans Affairs

- 1 A BILL FOR AN ACT relating to administrative law; to amend section
- 2 84-917, Reissue Revised Statutes of Nebraska; to change provisions
- 3 relating to appeals under the Administrative Procedure Act; to
- 4 eliminate obsolete provisions; and to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 84-917, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3 84-917 (1) Any person aggrieved by a final decision in a contested  
4 case, whether such decision is affirmative or negative in form, shall be  
5 entitled to judicial review under the Administrative Procedure Act.  
6 Nothing in this section shall be deemed to prevent resort to other means  
7 of review, redress, or relief provided by law.

8 (2)(a)(i) Proceedings for review shall be instituted by filing a  
9 petition in the district court of the county where the action is taken  
10 within thirty days after the service of the final decision by the agency.  
11 All parties of record shall be made parties to the proceedings for  
12 review. A party of record for district court proceedings for review shall  
13 include any person who appeared either personally or through an attorney,  
14 who was a participant in the agency's contested hearing, and who was  
15 treated as a party by the agency's hearing officer. If an agency's only  
16 role in a contested case is to act as a neutral factfinding body, the  
17 agency shall not be a party of record. In all other cases, the agency  
18 shall be a party of record. Summons shall be served on the agency within  
19 thirty days of the filing of the petition in the manner provided for  
20 service of a summons in section 25-510.02. Summons on any nongovernmental  
21 parties shall be served within thirty days of the filing of the petition  
22 in the manner provided for service of summons in a civil action. If the  
23 agency whose decision is appealed from is not a party of record, the  
24 petitioner shall serve a copy of the petition and a request for  
25 preparation of the official record upon the agency within thirty days of  
26 the filing of the petition. The court, in its discretion, may permit  
27 other interested persons to intervene.

28 (ii) The filing of a petition for review shall vest in a responding  
29 party of record the right to a cross-appeal against any other party of  
30 record. A respondent shall serve its cross-appeal within thirty days  
31 after being served with the summons and petition for review.

1 (b) A petition for review shall set forth: (i) The name and mailing  
2 address of the petitioner; (ii) the name and mailing address of the  
3 agency whose action is at issue; (iii) identification of the final  
4 decision at issue together with a duplicate copy of the final decision;  
5 (iv) identification of the parties in the contested case that led to the  
6 final decision; (v) facts to demonstrate proper venue; (vi) the  
7 petitioner's reasons for believing that relief should be granted; and  
8 (vii) a request for relief, specifying the type and extent of the relief  
9 requested.

10 (3) The filing of the petition or the service of summons upon such  
11 agency shall not stay enforcement of a decision. The agency may order a  
12 stay. The court may order a stay after notice of the application therefor  
13 to such agency and to all parties of record. If the agency has found that  
14 its action on an application for stay or other temporary remedies is  
15 justified to protect against a substantial threat to the public health,  
16 safety, or welfare, the court may not grant relief unless the court finds  
17 that: (a) The applicant is likely to prevail when the court finally  
18 disposes of the matter; (b) without relief, the applicant will suffer  
19 irreparable injuries; (c) the grant of relief to the applicant will not  
20 substantially harm other parties to the proceedings; and (d) the threat  
21 to the public health, safety, or welfare relied on by the agency is not  
22 sufficiently serious to justify the agency's action in the circumstances.  
23 The court may require the party requesting such stay to give bond in such  
24 amount and conditioned as the court may direct.

25 (4) Within thirty days after service of the petition or within such  
26 further time as the court for good cause shown may allow, the agency  
27 shall prepare and transmit to the clerk of the district court in which  
28 the petition is filed a certified copy of the official record of the  
29 proceedings had before the agency. Such official record shall include:  
30 (a) Notice of all proceedings; (b) any pleadings, motions, requests,  
31 preliminary or intermediate rulings and orders, and similar

1 correspondence to or from the agency pertaining to the contested case;  
2 (c) the transcribed record of the hearing before the agency, including  
3 all exhibits and evidence introduced during such hearing, a statement of  
4 matters officially noticed by the agency during the proceeding, and all  
5 proffers of proof and objections and rulings thereon; and (d) the final  
6 order appealed from. The agency shall charge the petitioner with the  
7 reasonable direct cost or require the petitioner to pay the cost for  
8 preparing the official record for transmittal to the court in all cases  
9 except when the petitioner is not required to pay a filing fee. The  
10 agency may require payment or bond prior to the transmittal of the  
11 record. The official record shall be considered by the court without  
12 being offered and received in evidence.

13 (5)(a) ~~The~~ ~~When the petition instituting proceedings for review was~~  
14 ~~filed in the district court before July 1, 1989, the review shall be~~  
15 ~~conducted by the court without a jury on the record of the agency, and~~  
16 ~~review may not be obtained of any issue that was not raised before the~~  
17 ~~agency unless such issue involves one of the grounds for reversal or~~  
18 ~~modification enumerated in subdivision (6)(a) of this section. When the~~  
19 ~~petition instituting proceedings for review is filed in the district~~  
20 ~~court on or after July 1, 1989, the review shall be conducted by the~~  
21 ~~court without a jury de novo on the record of the agency.~~ The court may  
22 affirm, reverse, or modify the decision of the agency or remand the case  
23 for further proceedings.

24 (b)(i) If the court determines that the interest of justice would be  
25 served by the resolution of any other issue not raised before the agency,  
26 the court may remand the case to the agency for further proceedings.

27 (ii) The agency shall affirm, modify, or reverse its findings and  
28 decision in the case by reason of the additional proceedings and shall  
29 file the decision following remand with the reviewing court. The agency  
30 shall serve a copy of the decision following remand upon all parties to  
31 the district court proceedings. The agency decision following remand

1 shall become final unless a petition for further review is filed with the  
2 reviewing court within thirty days after the decision following remand  
3 being filed with the district court. The party filing the petition for  
4 further review shall serve a copy of the petition for further review upon  
5 all parties to the district court proceeding in accordance with the rules  
6 of pleading in civil actions promulgated by the Supreme Court pursuant to  
7 section 25-801.01 within thirty days after the petition for further  
8 review is filed. Within thirty days after service of the petition for  
9 further review or within such further time as the court for good cause  
10 shown may allow, the agency shall prepare and transmit to the court a  
11 certified copy of the official record of the additional proceedings had  
12 before the agency following remand.

13 ~~(6)(a) When the petition instituting proceedings for review was~~  
14 ~~filed in the district court before July 1, 1989, the court may affirm the~~  
15 ~~decision of the agency or remand the case for further proceedings, or it~~  
16 ~~may reverse or modify the decision if the substantial rights of the~~  
17 ~~petitioner may have been prejudiced because the agency decision is:~~

18 ~~(i) In violation of constitutional provisions;~~

19 ~~(ii) In excess of the statutory authority or jurisdiction of the~~  
20 ~~agency;~~

21 ~~(iii) Made upon unlawful procedure;~~

22 ~~(iv) Affected by other error of law;~~

23 ~~(v) Unsupported by competent, material, and substantial evidence in~~  
24 ~~view of the entire record as made on review; or~~

25 ~~(vi) Arbitrary or capricious.~~

26 ~~(b) When the petition instituting proceedings for review is filed in~~  
27 ~~the district court on or after July 1, 1989, the court may affirm,~~  
28 ~~reverse, or modify the decision of the agency or remand the case for~~  
29 ~~further proceedings.~~

30 ~~(6) (7)~~ The review provided by this section shall not be available  
31 in any case where other provisions of law prescribe the method of appeal.

1           Sec. 2.   Original section 84-917, Reissue Revised Statutes of  
2 Nebraska, is repealed.