

LEGISLATURE OF NEBRASKA
ONE HUNDRED NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 366

Introduced by Riepe, 12; Conrad, 46.

Read first time January 16, 2025

Committee: Executive Board

1 A BILL FOR AN ACT relating to government; to amend sections 84-901 and
2 84-901.04, Reissue Revised Statutes of Nebraska; to define terms; to
3 create the Legislative Economic Analysis Unit and the Chief
4 Economist; to provide for regulatory impact analyses and other
5 impact analyses; to change provisions relating to the adoption and
6 promulgation of rules and regulations; to provide for judicial
7 review; and to repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 **Section 1.** For purposes of sections 1 to 11 of this act:

2 (1) Agency has the same meaning as in section 84-901;

3 (2) Major rule or regulation means any rule or regulation of any
4 kind, including an emergency rule or regulation, that will result in or
5 is likely to result in:

6 (a) An economic impact of one million dollars or more over a five-
7 year period; or

8 (b) Significant adverse effects on competition, employment,
9 investment, productivity, or innovation, including significant adverse
10 effects on individual industries or regions;

11 (3) Nonmajor rule or regulation means any rule or regulation that is
12 not a major rule or regulation; and

13 (4) Rule or regulation has the same meaning as in section 84-901.

14 **Sec. 2.** (1) The Legislative Economic Analysis Unit is created
15 within the Legislature to provide independent and reliable economic
16 analysis and other information relevant to the conduct of the
17 Legislature's oversight and legislative duties.

18 (2) The Chief Economist shall be the director of the unit and shall
19 be appointed by the Speaker of the Legislature and shall serve at the
20 pleasure of the Speaker.

21 (3) The Chief Economist shall employ such other career professionals
22 as deemed necessary and appropriate, subject to the appropriations
23 provided by the Legislature. In determining the annual appropriation, the
24 Appropriations Committee of the Legislature shall use as a baseline a
25 one-percent to two-percent contribution from the budget of each agency so
26 that agencies are properly incorporating the cost of an independent
27 analysis and legislative review of their rules and regulations.

28 **Sec. 3.** The Legislative Economic Analysis Unit shall:

29 (1) Determine whether a rule or regulation or proposed rule or
30 regulation that is required to be submitted to the Legislature under
31 sections 1 to 11 of this act is a major rule or regulation if such

1 determination is requested by the Speaker of the Legislature or the
2 chairperson of any standing committee that has jurisdiction over the
3 subject matter of the rule or regulation;

4 (2) Provide a regulatory impact analysis as specified in section 5
5 of this act for any major rule or regulation or any proposed major rule
6 or regulation within fifteen legislative days after submission by an
7 agency as a major rule or regulation or within fifteen legislative days
8 after the unit's determination that any other rule or regulation is a
9 major rule or regulation;

10 (3) Provide a regulatory impact analysis for any existing rules and
11 regulations as specified in section 6 of this act; and

12 (4) Provide an impact analysis of significant grants received from
13 the federal government or from other sources external to state
14 government, when requested by the Speaker of the Legislature or the
15 chairperson of any standing committee that has jurisdiction over the
16 subject matter of the grant.

17 **Sec. 4.** The Legislative Economic Analysis Unit shall provide notice
18 that a determination has been made that a rule or regulation or proposed
19 rule or regulation submitted to the Legislature is a major rule or
20 regulation and that such rule or regulation might not be in effect
21 without a sixty-day legislative consideration or approval. The district
22 court shall have jurisdiction to conduct de novo review of whether a rule
23 or regulation is a major rule or regulation and the affect that has on
24 its effective date if not approved by the Legislature, but no such
25 determination precludes the Legislature from acting to approve,
26 disapprove, or enact other legislation regarding a rule or regulation at
27 any time.

28 **Sec. 5.** Whenever reasonably practicable, the Legislative Economic
29 Analysis Unit shall include any or all of the following in a regulatory
30 impact analysis or an impact analysis of a grant under section 3 of this
31 act:

- 1 (1) Statement of need;
- 2 (2) Legal basis for the rule, regulation, or grant;
- 3 (3) Examination of alternatives for any new rule, regulation, or
4 grant;
- 5 (4) Evaluation of costs and benefits for each alternative for any
6 new rule, regulation, or grant, including:
 - 7 (a) Estimated primary or direct benefits;
 - 8 (b) Estimated cost savings or financial benefits to society;
 - 9 (c) Estimated compliance costs for regulated entities;
 - 10 (d) Estimated secondary or indirect costs;
 - 11 (e) Estimated effect on state revenue;
 - 12 (f) Estimated effect on state expenditures, including estimated
13 administrative expenses; and
 - 14 (g) Estimated opportunity cost. The analysis shall identify the
15 opportunity cost of compliance as a result of the removal of private
16 capital from the market;
- 17 (5) Sources consulted; and
- 18 (6) Key assumptions and sources of uncertainty.

19 **Sec. 6.** The Legislative Economic Analysis Unit shall, to the extent
20 resources are available, evaluate or conduct the analysis specified in
21 section 5 of this act for specified existing rules and regulations and
22 nonmajor rules and regulations when requested by a chairperson of a
23 standing committee relating to matters within the committee's
24 jurisdiction. The unit shall undertake such a review in the order
25 requested unless, in a given legislative session, the Speaker of the
26 Legislature directs otherwise.

27 **Sec. 7.** The Legislative Economic Analysis Unit shall, upon
28 completion, make the analysis of each rule, regulation, or grant publicly
29 available. At the end of each calendar year, the Chief Economist shall
30 provide the Speaker of the Legislature with an electronic report
31 summarizing the matters evaluated that year.

1 **Sec. 8.** (1) Within one month after the effective date of a
2 legislative bill, the Legislature shall specify an email address or other
3 electronic means for the delivery of rules or regulations and other
4 information pursuant to sections 1 to 11 of this act, including during
5 times when the Legislature is not in session.

6 (2) In addition, before any agency may file a rule or regulation
7 with the Secretary of State for publication, the agency promulgating a
8 covered rule or regulation shall publish in a newspaper having general
9 circulation in the state and shall electronically submit to the
10 Legislature and to the Chief Economist a report containing:

11 (a) A copy of the rule or regulation;

12 (b) A concise general statement relating to the rule or regulation;

13 (c) A classification of the rule or regulation as a major or
14 nonmajor rule or regulation, including an explanation of why it
15 presumptively is or is not a major rule or regulation;

16 (d) A list of any other related regulatory actions intended to
17 implement the same statutory provision or regulatory objective as well as
18 the individual and aggregate economic effects of those actions; and

19 (e) The proposed effective date of the rule or regulation.

20 (3) On the date of the submission of the report, the agency
21 promulgating the rule or regulation shall submit to the Chief Economist
22 and make available to the Legislature:

23 (a) A complete copy of the cost-benefit analysis of the rule or
24 regulation, if any, including an analysis of any jobs added or lost,
25 differentiating between public and private sector jobs; and

26 (b) Any other relevant information or requirements under any other
27 statute and any relevant executive orders.

28 **Sec. 9.** The Legislative Economic Analysis Unit shall provide a
29 report on each major rule or regulation to the committee with subject
30 matter jurisdiction by the end of the fifteenth legislative day after its
31 submission or publication date, whichever is later. The report shall

1 include an assessment of the agency's compliance with procedural steps
2 required by subsection (3) of section 8 of this act, an assessment of
3 whether the major rule or regulation imposes any new limits or mandates
4 on private-sector activity, and its regulatory impact analysis. Each
5 agency shall cooperate with the unit by providing information relevant to
6 the report under this section.

7 **Sec. 10.** (1) Subject to the exceptions in this section, a major
8 rule or regulation shall not be submitted to the Secretary of State for
9 publication before the Legislature enacts a law ratifying the rule or
10 regulation or the expiration of sixty legislative days after submission
11 to the Legislature without a final vote on the rule or regulation. A
12 major rule or regulation may go into effect later than sixty legislative
13 days after submission to the Legislature if so specified in the proposed
14 rule or regulation and such rule or regulation was not disapproved by the
15 Legislature before its specified effective date.

16 (2) If the Governor believes a major rule or regulation should go
17 into effect before the passage of sixty legislative days, including when
18 the Legislature is not in session or near the end of a legislative
19 session, it is the intent of the Legislature that it should extend the
20 legislative session or the Governor should call the Legislature into
21 special session for the sole purpose of voting to approve or disapprove
22 the proposed major rule or regulation. In such cases, the Legislature
23 shall work in good faith to schedule the vote promptly as the situation
24 requires, and such debate and vote on the proposed major rule or
25 regulation shall be by such means as are specified in the Rules of the
26 Nebraska Unicameral Legislature, or in the absence of such rules, as
27 specified by the presiding officer of the Legislature.

28 **Sec. 11.** (1) The legislative procedure leading to and including a
29 final vote on a legislative bill under sections 1 to 11 of this act shall
30 not be subject to judicial review, but courts may give effect to
31 legislative bills enacted pursuant to sections 1 to 11 of this act.

1 (2) Notwithstanding subsection (1) of this section, a court may
2 determine whether an agency or the Legislature has completed the
3 necessary requirements under sections 1 to 11 of this act for a rule or
4 regulation to take effect, including de novo review of whether a rule or
5 regulation is a major rule or regulation that requires delayed
6 legislative consideration or approval by the Legislature before it takes
7 effect.

8 (3) The enactment of legislation under section 10 of this act shall
9 not be interpreted to serve as a grant or modification of statutory
10 authority by the Legislature for the adoption and promulgation of a rule
11 or regulation, shall not extinguish or affect any claim, whether
12 substantive or procedural, against any alleged defect in a rule or
13 regulation, and shall not form part of the record before the court in any
14 judicial proceeding concerning a rule or regulation except for purposes
15 of determining whether or not the rule or regulation is in effect.

16 **Sec. 12.** Section 84-901, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 84-901 For purposes of the Administrative Procedure Act:

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

26 (2) Rule or regulation shall mean any standard of general
27 application adopted by an agency in accordance with the authority
28 conferred by statute and includes, but is not limited to, the amendment
29 or repeal of a rule or regulation. Rule or regulation shall not include
30 (a) internal procedural documents which provide guidance to staff on
31 agency organization and operations, lacking the force of law, and not

1 relied upon to bind the public, (b) guidance documents as issued by an
2 agency in accordance with section 84-901.03, and (c) forms and
3 instructions developed by an agency. For purposes of the act, every
4 standard which prescribes a penalty shall be presumed to have general
5 applicability and any standard affecting private rights, private
6 interests, or procedures available to the public is presumed to be relied
7 upon to bind the public. Nothing in this section shall be interpreted to
8 require an agency to adopt and promulgate rules and regulations when
9 statute authorizes but does not require it;

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

13 (4) Ex parte communication shall mean an oral or written
14 communication which is not on the record in a contested case with respect
15 to which reasonable notice to all parties was not given. Filing and
16 notice of filing provided under subdivision (6)(d) of section 84-914
17 shall not be considered on the record and reasonable notice for purposes
18 of this subdivision. Ex parte communication shall not include:

19 (a) Communications which do not pertain to the merits of a contested
20 case;

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

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

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

25 (5) Guidance document shall mean any statement developed by an
26 agency which lacks the force of law but provides information or direction
27 of general application to the public to interpret or implement statutes
28 or such agency's rules or regulations. A guidance document is binding on
29 an agency until amended by the agency. A guidance document shall not give
30 rise to any legal right or duty or be treated as authority for any
31 standard, requirement, or policy. Internal procedural documents which

1 provide guidance to staff on agency organization and operations shall not
2 be considered guidance documents; ~~and~~

3 (6) Hearing officer shall mean the person or persons conducting a
4 hearing, contested case, or other proceeding pursuant to the act, whether
5 designated as the presiding officer, administrative law judge, or some
6 other title designation; and -

7 (7) Major rule or regulation has the same meaning as in section 1 of
8 this act.

9 **Sec. 13.** Section 84-901.04, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 84-901.04 (1) If an agency determines that the adoption, amendment,
12 or repeal of a rule or regulation is necessitated by an emergency
13 situation, the agency may adopt, amend, or repeal a rule or regulation
14 upon approval of the Governor. Such agency's request shall be submitted
15 to the Governor in writing and include a justification as to why the
16 emergency rule or regulation is necessary. Factors for the justification
17 shall include:

18 (a) Imminent peril to the public health, safety, or welfare; or

19 (b) The unforeseen loss of federal funding for an agency program.

20 (2) The Governor may approve the adoption of a major rule or
21 regulation under subsection (1) of this section only by publishing a
22 statement with the rule or regulation:

23 (a) Explaining why an emergency exists that requires an earlier
24 effective date for the rule or regulation or why a federal requirement or
25 federal funding requires an earlier effective date;

26 (b) If the Legislature is not in session, explaining why the
27 Legislature cannot be called back into session specially to consider and
28 vote on the major rule or regulation; and

29 (c) Explaining why the issuance of the major rule or regulation
30 otherwise complies with emergency powers statutes and limitations or is
31 required by federal law or for federal funding.

1 ~~(3)~~ ~~(2)~~ Any agency may use the emergency rule or regulation
2 procedure as provided in this section. However, no agency shall use such
3 procedure to avoid the consequences for failing to timely adopt and
4 promulgate rules and regulations.

5 ~~(4)~~ ~~(3)~~ Rules and regulations adopted, amended, or repealed under
6 this section shall be exempted from the notice and hearings requirements
7 of section 84-907 and the review process required under section 84-905.01
8 and shall be valid upon approval of the Governor. An emergency rule or
9 regulation shall remain in effect for a period of ninety calendar days
10 and is renewable once for a period not to exceed ninety calendar days.

11 ~~(5)~~ ~~(4)~~ Any agency which adopts, amends, or repeals a rule or
12 regulation under this section shall file such rule or regulation with the
13 Secretary of State. The agency shall also publish such rule or regulation
14 on the agency's website.

15 **Sec. 14.** Original sections 84-901 and 84-901.04, Reissue Revised
16 Statutes of Nebraska, are repealed.