

LEGISLATIVE BILL 44

Passed over the Governor's veto April 19, 1978

Introduced by Koch, 12; Bereuter, 24

AN ACT to amend sections 84-901, 84-902, 84-904, 84-908, and 84-908.01, Reissue Revised Statutes of Nebraska, 1943, relating to administrative rules and regulations; to establish the Administrative Rules and Regulations Review Committee; to prescribe powers and duties; to confer on the committee the powers and duties given to the Legislature's Committee on Administrative Agency Rules and Regulations; to provide for the legislative oversight of rules and regulations; to provide an operative date; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 84-901, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

84-901. As used in sections 84-901 to 84-916:

(1) Agency means shall mean each board, commission, department, officer, division, or other administrative office or unit of the state government authorized by law to make rules, except the Adjutant General's office as provided in Chapter 55, the courts, including the Nebraska Workmen's Compensation Court, the Court of Industrial Relations, and the Legislature;

(2) Rule means shall mean any rule, regulation, or standard issued by an agency, including the amendment or repeal thereof whether with or without prior hearing and designed to implement, interpret, or make specific the law enforced or administered by it or governing its organization or procedure but not including regulations concerning the internal management of the agency not affecting private rights, private interests, or procedures available to the public, and not including permits, certificates of public convenience and necessity, franchises, rate orders, and rate tariffs, and any rules of interpretation thereof, and for the purpose of this act every rule which shall prescribe a penalty shall be presumed to have general applicability or to affect private rights and interests; and

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

(4) Committee shall mean the Legislature's Administrative Rules and Regulations Review Committee, which shall be a standing committee.

Sec. 2. (1) There is hereby created and established the Legislature's standing committee to be known as the Administrative Rules and Regulations Review Committee, to be composed of seven members of the Legislature who shall be nominated and elected, as members and officers thereof, in the same manner as other standing committees of the Legislature.

(2) The committee shall meet (a) at the call of the chairperson, (b) upon a call signed by any two members of the committee, or (c) upon a call signed by any five members of the Legislature.

Sec. 3. (1) The committee shall promote the adoption and promulgation of adequate and proper rules and regulations by agencies and an understanding upon the part of the public respecting such rules and regulations.

(2) In carrying out its powers and duties under this act, the committee shall:

(a) Determine whether the administration of programs, created by the Legislature, are consistent with legislative intent;

(b) Inquire and determine whether legislation which created a particular program is meeting the needs that existed at the time of enactment;

(c) Recommend new legislation to correct deficiencies in law disclosed by program evaluation; and

(d) Review agency operations to determine if they are efficient, honest, and responsive to the needs of the people of this state.

Sec. 4. (1) The powers and duties conferred upon the Legislature's Committee on Administrative Agency Rules and Regulations shall be conferred upon the Administrative Rules and Regulations Review Committee on January 3, 1979. On January 3, 1979, the Legislature's Committee on Administrative Agency Rules and Regulations shall be terminated and the Administrative Rules and

Regulations Review Committee shall have its membership filled and shall begin its duties.

(2) The committee shall have the authority to receive and investigate complaints and to hold public hearings on such complaints with respect to rules and regulations if it considers such complaints meritorious and worthy of attention. The committee may, on the basis of testimony and other evidence received at such public hearings, and upon an affirmative vote of a majority of its members, recommend to the respective agency that it either amend the rule complained of to conform to the needs of the people affected by such rule or repeal the rule as not being consistent with legislative intent or responsive to the issue addressed by the enabling legislation.

Sec. 5. If an agency shall not have amended or repealed a rule or regulation complained of within thirty days after such recommendation of the committee, pursuant to section 4 of this act, and after notice and hearing, pursuant to section 84-907, the committee may, upon an affirmative vote of at least five members, suspend such rule or regulation.

Sec. 6. If any rule or regulation is suspended, the committee shall place before the Legislature, at the next regular session or at the next special session upon the consent of the Governor, a bill to repeal such suspended rule or regulation. Such legislative bill shall contain precisely and exclusively the subject matter or, whenever practicable, the text of the suspended rule or regulation and shall not be amendable.

Sec. 7. If such legislative bill is defeated or fails in enactment in any other manner, the rule or regulation shall stand and the committee shall not suspend it for at least twelve calendar months. If such legislative bill is enacted into law, the rule or regulation shall be repealed and shall not be adopted again unless a properly enacted law specifically authorizes the adoption of such rule or regulation.

Sec. 8. That section 84-902, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

84-902. (1) Each agency shall file with the Revisor of Regulations, no sooner than June 30, 1975, nor later than August 31, 1975, two certified copies of the rules in force and effect for such agency on that date. Thereafter, each agency shall file annually with the Revisor of Regulations two certified copies of any

amendments or modifications to the rules in force and effect for such agency no later than June 30 of each year. The Revisor of Regulations shall place and keep one of the certified copies in a permanent file and shall file the remaining certified copy as a library copy to be used by the Legislature.

(2) Each agency shall file forthwith in the office of the Secretary of State a certified copy of the rules in force and effect in such agency on August 10, 1945. A certified copy of any rule adopted after August 10, 1945 shall likewise be so filed. The Secretary of State shall keep a permanent file of all such rules, which shall be open to public inspection during regular business hours of his office. The Secretary of State, in order to maintain and keep such files current, shall be empowered to require new and amended rules to be filed as complete file pages and to remove all superseded pages to a separate file. Each agency shall file with the Secretary of State, no sooner than June 30, 1975, nor later than August 31, 1975, a certified copy of the rules in force and effect for such agency on that date. Each agency shall annually file with the Secretary of State a certified copy of any amendments or modifications to rules in force and effect for such agency no later than June 30 of each year.

(3) Rules filed with the Revisor of Regulations and the Secretary of State pursuant to this section shall be filed in the manner and form prescribed by the Revisor of Regulations. The Revisor of Regulations shall, no later than January 1, 1975, issue instructions to all state agencies setting forth the format to be followed by all agencies in submitting regulations to the Revisor of Regulations and the Secretary of State. Such instructions shall provide for a uniform page size, a generally uniform and clear indexing system, and annotations including designation of enabling legislation and court or agency decisions interpreting the particular rule or regulation. For good cause shown, the Revisor of Regulations, with the consent of the chairman of the ~~Legislature's Committee on~~ Administrative Agency Rules and Regulations Review Committee, ~~established under section 84-908,~~ may grant exceptions to the uniform page size requirement and the general indexing instructions for any agency.

(4) Prior to June 30, 1975, each agency shall undertake a complete and thorough review of rules in force and effect for such agency. Regulations that are outdated, inadequate, and repetitious shall be deleted or modified and all of the rules shall be recodified in conformity with instructions issued by the Revisor of

Regulations. All modifications to agency rules shall be made in conformity with section 84-907 far enough in advance of the filing deadline to insure that a final revised copy of the agency rules may be certified and filed with both the Revisor of Regulations and the Secretary of State by the filing deadline.

(5) The Clerk of the Legislature shall deliver to the Revisor of Regulations all records and materials pertaining to administrative rules and regulations on file in the clerk's office.

Sec. 9. That section 84-904, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

84-904. (1) The Revisor of Regulations shall file with the ~~legislature's Committee--on~~ Administrative Agency Rules and Regulations Review Committee, established under section 84-908, no sooner than June 30, 1975, nor later than August 31, 1975, and thereafter annually no later than January 1 a certified copy of the rules in force and effect for each agency on that date.

(2) The ~~Legislature's Committee-on~~ Administrative Agency Rules and Regulations Review Committee shall review such agency rules and regulations and shall have the power to exercise its authority and procedures pursuant to sections 3 to 7 of this act and may recommend to the Legislature that the original enabling legislation serving as authority for promulgation of such rules be repealed, changed, altered, amended, or modified in such manner as it deems advisable. Any agency rule or regulation promulgated under a statutory grant of authority shall become null and void upon the effective date of any statute which repeals, changes, alters, amends, or modifies such statutory grant of authority.

Sec. 10. That section 84-908, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

84-908. No Except as otherwise provided in sections 3 to 7 of this act, no adoption, amendment, or repeal of any rule shall become effective until the same shall have been approved by the Governor and filed with the Revisor of Regulations after a hearing has been set on such rule pursuant to section 84-907. After--such hearing, any Any rule properly adopted by any agency shall be filed with the Revisor of Regulations and by that office referred to ~~a committee of nine members of the legislature to be known as~~ the legislature's Committee-on Administrative Agency Rules and Regulations

Review Committee. which--is--hereby--created---At--the commencement-of--each--regular--session--in--odd-numbered years--the--Legislature--shall--elect--to--the--committee--three members--from--each--of--the--three--congressional--districts--as such--districts--are--constituted--on--August--24,--1975. Nominations--for--membership--on--such--committee--shall--be made--by--the--caucus--for--each--congressional--district---The committee--shall--organize--by--selecting--a--chairman--and--such officer--or--officers--as--it--may--deem--necessary---Any vacancy--on--such--committee--occasioned--by--the--fact--that--any member--thereof--is--not--a--member--of--the--next--session--of--the Legislature--shall--be--filled--by--appointment--of--the Executive--Board--from--among--members--of--the--Legislature-

Sec. 11. That section 84-908.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

84-908.01. [1] The committee created by--section 84-908 shall maintain a continuous study to evaluate the rules adopted by agencies, shall make recommendations to aid public understanding of rules and regulations, and shall make an annual report to the Legislature and the Governor of its activities during the past year, and shall include therein its recommendations for legislative action pursuant to sections 3 to 7 of this act and section 84-904, ; at the beginning of--each--session--of the--Legislature-

[2] The committee may meet and employ such personnel as may be necessary to perform its duties.

Sec. 12. This act shall become operative on January 3, 1979.

Sec. 13. That original sections 84-901, 84-902, 84-904, 84-908, and 84-908.01, Reissue Revised Statutes of Nebraska, 1943, are repealed.