

2024

STATE OF NEBRASKA

STATUTES RELATING TO

# **Administrative Procedure Act:**

**Occupational Board Reform Act  
and the  
Personal Privacy Protection Act**

**NEBRASKA**

Good Life. Great Mission.

DEPT. OF HEALTH AND HUMAN SERVICES

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Division of Public Health  
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**STATUTES PERTAINING TO THE ADMINISTRATIVE PROCEDURE ACT:  
OCCUPATIONAL BOARD REFORM ACT AND THE PERSONAL PROTECTION ACT**

**84-901. Terms, defined.**

For purposes of the Administrative Procedure Act:

- (1) Agency shall mean each board, commission, department, officer, division, or other administrative office or unit of the state government authorized by law to make rules and regulations, except the Adjutant General's office as provided in Chapter 55, the courts including the Nebraska Workers' Compensation Court, the Commission of Industrial Relations, the Legislature, and the Secretary of State with respect to the duties imposed by the act;
- (2) Rule or regulation shall mean any standard of general application adopted by an agency in accordance with the authority conferred by statute and includes, but is not limited to, the amendment or repeal of a rule or regulation. Rule or regulation shall not include (a) internal procedural documents which provide guidance to staff on agency organization and operations, lacking the force of law, and not relied upon to bind the public, (b) guidance documents as issued by an agency in accordance with section 84-901.03, and (c) forms and instructions developed by an agency. For purposes of the act, every standard which prescribes a penalty shall be presumed to have general applicability and any standard affecting private rights, private interests, or procedures available to the public is presumed to be relied upon to bind the public. Nothing in this section shall be interpreted to require an agency to adopt and promulgate rules and regulations when statute authorizes but does not require it;
- (3) Contested case 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;
- (4) Ex parte communication shall mean an oral or written communication which is not on the record in a contested case with respect to which reasonable notice to all parties was not given. Filing and notice of filing provided under subdivision (6)(d) of section 84-914 shall not be considered on the record and reasonable notice for purposes of this subdivision. Ex parte communication shall not include:
  - (a) Communications which do not pertain to the merits of a contested case;
  - (b) Communications required for the disposition of ex parte matters as authorized by law;
  - (c) Communications in a ratemaking or rulemaking proceeding; and
  - (d) Communications to which all parties have given consent;
- (5) Guidance document shall mean 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 rules or regulations. A guidance document is binding on an agency until amended by the agency. A guidance document shall not give rise to any legal right or duty or be treated as authority for any standard, requirement, or policy. Internal procedural documents which provide guidance to staff on agency organization and operations shall not be considered guidance documents; and
- (6) Hearing officer shall mean the person or persons conducting a hearing, contested case, or other proceeding pursuant to the act, whether designated as the presiding officer, administrative law judge, or some other title designation.

**Source:**Laws 1945, c. 255, § 1, p. 795; Laws 1947, c. 350, § 1, p. 1097; Laws 1951, c. 342, § 1, p. 1128; Laws 1959, c. 456, § 1, p. 1510; Laws 1974, LB 819, § 11; Laws 1978, LB 44, § 1; Laws 1981, LB 130, § 1; Laws 1986, LB 992, § 1; Laws 1987, LB 253, § 1; Laws 1994, LB 414, § 135; Laws 1994, LB 446, § 14; Laws 2016, LB867, § 4; Laws 2017, LB209, § 1.

**Annotations**

**1. Contested case**

**2. Agency subject to act or not**

**3. Rules**

**4. Miscellaneous**

**1. Contested case**

- Pursuant to subsection (3) of this section, a proceeding becomes a contested case when notice and a hearing are required. *Stoneman v. United Neb. Bank*, 254 Neb. 477, 577 N.W.2d 271 (1998).
- At a hearing before the Nebraska Liquor Control Commission on a contested case, the applicant is entitled to notice of the issues. *J K & J, Inc. v. Nebraska Liquor Control Commission*, 194 Neb. 413, 231 N.W.2d 694 (1975).
- The selection of a site for a public improvement was legislative in nature and was not a contested case. *Stones v. Plattsmouth Airport Authority*, 193 Neb. 552, 228 N.W.2d 129 (1975).
- Application of two public power districts to Nebraska Power Review Board for approval of an agreement limiting the areas in which and the customers to whom they would furnish electrical energy at wholesale, and opposition thereto by affected cities, was a contested case hereunder. *City of Lincoln v. Nebraska P.P. Dist.*, 191 Neb. 556, 216 N.W.2d 722 (1974).

- The words contested case are defined by this section. *School Dist. No. 8 v. State Board of Education*, 176 Neb. 722, 127 N.W.2d 458 (1964).

## 2. Agency subject to act or not

- A natural resources district is not an agency within the meaning of the Administrative Procedure Act. *Lingenfelter v. Lower Elkhorn NRD*, 294 Neb. 46, 881 N.W.2d 892 (2016).
- The Administrative Procedure Act does not apply to state agencies without authority to make rules and regulations affecting private rights, private interests, or procedures available to the public. *Hoiengs v. County of Adams*, 245 Neb. 877, 516 N.W.2d 223 (1994).
- The State Board of Equalization and Assessment is a state agency so as to be subject to the Administrative Procedure Act. *Pentzien, Inc. v. State*, 227 Neb. 434, 418 N.W.2d 546 (1988).
- The Administrative Procedure Act and its appeal procedures are applicable only to agencies of the state, and not to administrative agencies of municipal government, i.e., the personnel board of the City of Omaha. *Hammann v. City of Omaha*, 227 Neb. 285, 417 N.W.2d 323 (1987); *Harnett v. City of Omaha*, 188 Neb. 449, 197 N.W.2d 375 (1972).
- The State Racing Commission is an administrative agency as defined in subsection (1) of this section. *B.T. Energy Corp. v. Marcus*, 222 Neb. 207, 382 N.W.2d 616 (1986).
- The Commission of Industrial Relations is an administrative agency within the purview of the Administrative Procedure Act. *Lincoln Co. Sheriff's Emp. Assn. v. Co. of Lincoln*, 216 Neb. 274, 343 N.W.2d 735 (1984).
- Appeals taken under the Administrative Procedure Act may only be taken from agencies of the state. The Omaha Housing Authority is not such an agency. *Fisher v. Housing Auth. of City of Omaha*, 214 Neb. 499, 334 N.W.2d 636 (1983).
- Court of Industrial Relations is an agency within provisions of this section. *School Dist. of Seward Education Assn. v. School Dist. of Seward*, 188 Neb. 772, 199 N.W.2d 752 (1972).
- This case refers to a district court decision which held that a board of county commissioners is not a state agency under this and related sections. *State ex rel. Southeast Rural Fire P. Dist. v. Grossman*, 188 Neb. 424, 197 N.W.2d 398 (1972).
- State Board of Equalization and Assessment subject to this act. *County of Gage v. State Board of Equalization & Assessment*, 185 Neb. 749, 178 N.W.2d 759 (1970).
- The Nebraska Liquor Control Commission is an administrative agency as defined in this section. *The Flamingo, Inc. v. Nebraska Liquor Control Commission*, 185 Neb. 22, 173 N.W.2d 369 (1969).
- Provisions of this section disclose that act was intended to apply to the State Railway Commission. *Yellow Cab Co. v. Nebraska State Railway Commission*, 175 Neb. 150, 120 N.W.2d 922 (1963).
- Because the University of Nebraska College of Law Student-Faculty Honor Committee and the College of Law dean are not authorized by law to make rules and regulations, they are not "agencies," and thus, their decisions are not subject to judicial review under the Administrative Procedure Act. *Kerr v. Board of Regents*, 15 Neb. App. 907, 739 N.W.2d 224 (2007).

## 3. Rules

- A Department of Correctional Services policy that merely summarizes the seven statutes relevant to the release of all inmates and explains the effect of these statutes does not constitute a rule or regulation under this section. *Heist v. Nebraska Dept. of Corr. Servs.*, 312 Neb. 480, 979 N.W.2d 772 (2022).
- This section provides a definition of only the term "rule" and does not create any affirmative duties for the Public Service Commission to engage in rulemaking when interpreting a federal statute. *In re Application No. C-1889*, 264 Neb. 167, 647 N.W.2d 45 (2002).
- Subsection (2) of this section does not limit the definition of "private rights and interests" to those rights and interests that are unrelated to the workplace; if a rule or regulation prescribes a penalty, it is presumed to affect private rights and interests, regardless of whether the rights or interests at stake are those of an agency employee or some other individual. *McAllister v. Nebraska Dept. of Corr. Servs.*, 253 Neb. 910, 573 N.W.2d 143 (1998).
- To be valid, an administrative rule or regulation must be properly promulgated, approved, and filed. *Haven Home, Inc. v. Department of Pub. Welfare*, 216 Neb. 731, 346 N.W.2d 225 (1984).
- This act requires Department of Banking to establish procedural rules providing for notice and hearing. *First Fed. Sav. & Loan Assn. v. Department of Banking*, 187 Neb. 562, 192 N.W.2d 736 (1971).
- Failure of State Board of Vocational Education to promulgate rules pursuant to this section immaterial in situation where hearing and notice not required. *Chaloupka v. Area Vocational Technical School No. 2*, 184 Neb. 196, 165 N.W.2d 719 (1969).
- Rules of railway commission applied to controversy between railroads and motor carriers. *Ready Mix, Inc. v. Nebraska Railroads*, 181 Neb. 697, 150 N.W.2d 275 (1967).

- Liquor Control Commission is an administrative agency required to file rules. *Terry Carpenter, Inc. v. Nebraska Liquor Control Commission*, 175 Neb. 26, 120 N.W.2d 374 (1963).
- Administrative agencies are required to adopt regulations which have the force and effect of a statute. *Farmers Co-op. Elevator Assn. of Big Springs v. Strand*, 382 F.2d 224 (8th Cir. 1967).
- Rates of carriers are rules which are required to be filed. *Mogis v. Lyman-Richey Sand & Gravel Corp.*, 90 F.Supp. 251 (D. Neb. 1950).

#### 4. Miscellaneous

- The Nebraska Quality Jobs Board is not an "agency" subject to the Administrative Procedure Act, and an application to the Nebraska Quality Jobs Board is not a "contested case", within the meaning of this section. *Wasikowski v. Nebraska Quality Jobs Bd.*, 264 Neb. 403, 648 N.W.2d 756 (2002).
- In an action brought under the Administrative Procedure Act, it is the responsibility of the agency to provide the transcript in a timely fashion. The failure to do so subjects the agency to the disciplinary powers of the court. *James v. Harvey*, 246 Neb. 329, 518 N.W.2d 150 (1994).
- Neither the Administrative Procedure Act nor the regulations of the Department of Water Resources provide for any time limits on the rights of parties to intervene either as a matter of right or permissively. Nonetheless, the department as an agency of the State of Nebraska must have sufficient latitude in its operation in matters under its jurisdiction to exercise that jurisdiction fairly. *Basin Elec. Power Co-op. v. Little Blue N.R.D.*, 219 Neb. 372, 363 N.W.2d 500 (1985).
- It does not constitute an improper delegation of authority to permit matters of enforcement, such as the manner and the method, to be left to the reasonable discretion of administrative officers. *State v. Sprague*, 213 Neb. 581, 330 N.W.2d 739 (1983).
- Where there is a specific statute for an agency, setting out the method and scope of appeal, it should be applied instead of this act. *Duffy v. Physicians Mut. Ins. Co.*, 191 Neb. 233, 214 N.W.2d 471 (1974).
- There were practical difficulties which prevented a strict application of Administrative Procedure Act to proceedings before the State Board of Equalization and Assessment. *County of Kimball v. State Board of Equalization & Assessment*, 180 Neb. 482, 143 N.W.2d 893 (1966); *County of Blaine v. State Board of Equalization & Assessment*, 180 Neb. 471, 143 N.W.2d 880 (1966).
- Rate tariffs of telephone companies are excepted from requirements of filing in office of Secretary of State. *City of Scottsbluff v. United Telephone Co. of the West*, 171 Neb. 229, 106 N.W.2d 12 (1960).
- Under the Administrative Procedure Act, an appellate court may reverse, vacate, or modify a district court's judgment or final order for errors appearing on the record. *Murray v. Neth*, 17 Neb. App. 900, 773 N.W.2d 394 (2009).

#### **84-901.01. Adoption and promulgation of rules and regulations; time; failure to adopt and promulgate; explanation; contents; hearing by standing committee of the Legislature; effect of legislative changes.**

(1) When legislation is enacted requiring the adoption and promulgation of rules and regulations by an agency, such agency shall adopt and promulgate such rules and regulations within one year after the public hearing required under subsection (2) of section 84-907. Such time shall not include the time necessary for submission of the rules and regulations to the Attorney General pursuant to section 84-905.01 or submission of the rules and regulations to the Governor pursuant to section 84-908. Any agency which does not adopt and promulgate such rules and regulations as required by this section shall, upon request, submit an explanation to the Executive Board of the Legislative Council and the standing committee of the Legislature which has subject matter jurisdiction over the issue involved in the legislation, stating the reasons why it has not adopted such rules and regulations as required by this section, the date by which the agency expects to adopt such rules and regulations, and any suggested statutory changes that may enable the agency to adopt such rules and regulations.

(2) If such agency has not adopted and promulgated such rules and regulations within three years after the operative or effective date of such enacting legislation, the standing committee of the Legislature which has subject matter jurisdiction over the matters included in the legislation shall hold a public hearing to determine the reason that such rules and regulations have not been enacted.

(3) The changes made to the Administrative Procedure Act by Laws 2011, LB617, shall not affect the validity or effectiveness of a rule or regulation adopted prior to May 25, 2011.

(4) The changes made to this section by Laws 2013, LB242, shall apply to legislation enacted before, on, or after September 6, 2013.

**Source:**Laws 2011, LB617, § 1; Laws 2012, LB782, § 227; Laws 2013, LB222, § 42; Laws 2013, LB242, § 2; Laws 2018, LB751, § 1.

#### **84-901.02. Legislative findings.**

The Legislature finds that:

(1) The regulatory authority given to agencies has a significant impact on the people of the state;

- (2) When agencies create substantive standards by which Nebraskans are expected to abide, it is essential that those standards be adopted through the rules and regulations process to enable the public to be aware of the standards and have an opportunity to participate in the approval or repeal process;
- (3) Agencies should be encouraged to advise the public of current opinions, interpretations, approaches, and likely courses of action by means of guidance documents; and
- (4) Oversight of the regulatory authority over occupations and professions given to agencies is required to ensure respect for the fundamental right of an individual to pursue an occupation.

**Source:**Laws 2016, LB867, § 3; Laws 2018, LB299, § 17.

**84-901.03. Agency; guidance document; issuance; availability; notice; request to revise or repeal; response; agency publish index.**

- (1) Upon the issuance of a guidance document, an agency shall make such document available at one public location and on the agency's website. The agency shall also publish on its website an index summarizing the subject matter of all currently applicable rules and regulations and guidance documents. Such agency shall provide the index electronically to the Clerk of the Legislature by December 31 of each year.
- (2) An agency shall ensure that the first page of each guidance document includes the following notice: This guidance document is advisory in nature but is binding on an agency until amended by such agency. A guidance document does not include internal procedural documents that only affect the internal operations of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.
- (3) A person may request in writing that an agency revise or repeal a guidance document or convert a guidance document into a rule or regulation. No later than sixty calendar days after the agency receives such a request, the agency shall advise the requestor in writing of its decision to (a) revise or repeal the guidance document, (b) initiate a proceeding to consider a revision or repeal of a guidance document, (c) initiate the rulemaking or regulationmaking process to convert the guidance document into a rule or regulation, or (d) deny the request and state the reason for the denial.
- (4) All decisions made by an agency under this section shall be made available at one public location and on the agency's website.

**Source:**Laws 2016, LB867, § 5; Laws 2017, LB209, § 2.

**84-901.04. Emergency rule or regulation; factors; procedure; duration; renewal; filing; publication.**

- (1) If an agency determines that the adoption, amendment, or repeal of a rule or regulation is necessitated by an emergency situation, the agency may adopt, amend, or repeal a rule or regulation upon approval of the Governor. Such agency's request shall be submitted to the Governor in writing and include a justification as to why the emergency rule or regulation is necessary. Factors for the justification shall include:
  - (a) Imminent peril to the public health, safety, or welfare; or
  - (b) The unforeseen loss of federal funding for an agency program.
- (2) Any agency may use the emergency rule or regulation procedure as provided in this section. However, no agency shall use such procedure to avoid the consequences for failing to timely adopt and promulgate rules and regulations.
- (3) Rules and regulations adopted, amended, or repealed under this section shall be exempted from the notice and hearings requirements of section 84-907 and the review process required under section 84-905.01 and shall be valid upon approval of the Governor. An emergency rule or regulation shall remain in effect for a period of ninety calendar days and is renewable once for a period not to exceed ninety calendar days.
- (4) Any agency which adopts, amends, or repeals a rule or regulation under this section shall file such rule or regulation with the Secretary of State. The agency shall also publish such rule or regulation on the agency's website.

**Source:**Laws 2016, LB867, § 6.

**84-902. Agency; rules and regulations; certified copies filed with Secretary of State; manner; open to public inspection.**

(1) Each agency shall file in the office of the Secretary of State a certified copy of the rules and regulations in force and effect in such agency. The Secretary of State shall keep a permanent file of all such rules and regulations. Such file shall be updated and kept current upon receipt of any rules and regulations adopted, amended, or repealed and filed with the Secretary of State as provided in the Administrative Procedure Act and shall be open to public inspection during regular business hours of his or her office. The Secretary of State, in order to maintain and keep such files current, shall be empowered to require new and amended rules and regulations to be filed as complete chapters or sections as directed by the Secretary of State.

(2) Rules and regulations filed with the Secretary of State pursuant to the Administrative Procedure Act shall be filed in the manner and form prescribed by the Secretary of State including electronic filing if so directed by the Secretary of State. The Secretary of State shall issue instructions to all state agencies setting forth the format to be followed by all agencies in submitting rules and regulations to 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 Secretary of State may grant exceptions to the uniform page size requirement and the general indexing instructions for any agency.

**Source:**Laws 1945, c. 255, § 2, p. 795; Laws 1947, c. 350, § 2, p. 1098; Laws 1973, LB 134, § 1; Laws 1974, LB 604, § 1; Laws 1976, LB 615, § 1; Laws 1978, LB 44, § 8; Laws 1986, LB 992, § 2; Laws 1987, LB 253, § 2; Laws 2004, LB 915, § 1; Laws 2016, LB867, § 7.

**Annotations**

- The procedural rules to be applied are those in effect at time of hearing or proceeding, not those in effect when the act or violation is charged to have taken place. *Durousseau v. Nebraska State Racing Commission*, 194 Neb. 288, 231 N.W.2d 566 (1975).
- Where penal provisions of statute are operative independently of rules, failure to file any rules does not bar prosecution. *Scherer v. State*, 168 Neb. 127, 95 N.W.2d 329 (1959).
- Rates of carriers must be filed with Secretary of State as a rule to be valid. *Mogis v. Lyman-Richey Sand & Gravel Corp.*, 90 F.Supp. 251 (D. Neb. 1950).

**84-903. Agency; rules and regulations; publish.**

Each agency shall cause its rules and regulations to be published in such manner as the agency shall determine to bring, as far as practicable, the existence and scope of the rules and regulations to the attention of all persons affected thereby.

**Source:**Laws 1945, c. 255, § 3, p. 795; Laws 1987, LB 253, § 3.

**84-904. Repealed. Laws 1986, LB 992, § 11.**

**84-905. Agency; rules and regulations; availability required; price.**

Each agency shall make copies of the rules and regulations in force and effect for such agency available to all interested persons on request, at a price fixed to cover costs of publication and mailing, except that any such agency may furnish the same without charge if funds are available. No rule or regulation shall be effective unless copies thereof are available for distribution by the agency to persons requesting the same.

**Source:**Laws 1945, c. 255, § 5, p. 795; Laws 1947, c. 350, § 4, p. 1099; Laws 1967, c. 618, § 2, p. 2071; Laws 1969, c. 837, § 2, p. 3161; Laws 1973, LB 134, § 3; Laws 1987, LB 253, § 4.

**84-905.01. Rule or regulation; review by Attorney General.**

A copy of each amendment or rule or regulation to be adopted under the Administrative Procedure Act, prior to the date of filing with the Secretary of State, shall be submitted to the Attorney General for his or her consideration as to the statutory authority and constitutionality of such amendment or rule or regulation and his or her approval or disapproval thereof, including a determination as to whether or not the rule or regulation submitted is substantially different from the published proposed rule or regulation. If the amendment or rule or regulation to be filed is approved as to legality by the Attorney General, he or she shall so indicate with his or her stamp of approval which shall be dated and signed.

**Source:**Laws 1947, c. 350, § 5, p. 1099; Laws 1969, c. 837, § 3, p. 3161; Laws 1974, LB 604, § 3; Laws 1986, LB 992, § 3; Laws 1987, LB 253, § 5; Laws 1994, LB 446, § 17.

**84-906. Rule or regulation; when valid; presumption; limitation of action.**



(1) No rule or regulation of any agency shall be valid as against any person until five days after such rule or regulation has been filed with the Secretary of State except for rules and regulations adopted, amended, or repealed pursuant to section 84-901.04. No rule or regulation required under the Administrative Procedure Act to be filed with the Secretary of State shall remain valid as against any person until the certified copy of the rule or regulation has been so filed on the date designated and in the form prescribed by the Secretary of State. The filing of any rule or regulation shall give rise to a rebuttable presumption that it was duly and legally adopted.

(2) A rule or regulation adopted after August 1, 1994, shall be invalid unless adopted in substantial compliance with the provisions of the act, except that inadvertent failure to mail a notice of the proposed rule or regulation to any person shall not invalidate a rule or regulation.

(3) Any action to contest the validity of a rule or regulation on the grounds of its noncompliance with any provision of the act shall be commenced within four years after the effective date of the rule or regulation.

(4) The changes made to the act by Laws 1994, LB 446, shall not affect the validity or effectiveness of a rule or regulation adopted prior to August 1, 1994, or noticed for hearing prior to such date.

(5) The changes made to the act by Laws 2005, LB 373, shall not affect the validity or effectiveness of a rule or regulation adopted prior to October 1, 2005, or noticed for hearing prior to such date.

**Source:**Laws 1945, c. 255, § 6, p. 796; Laws 1947, c. 350, § 6, p. 1100; Laws 1973, LB 134, § 4;Laws 1986, LB 992, § 4; Laws 1987, LB 253, § 6; Laws 1994, LB 446, § 18; Laws 2005, LB 373, § 2; Laws 2016, LB867, § 8.

#### **Annotations**

- To be valid, administrative rules and regulations must be filed with the Secretary of State, and it is irrelevant whether or not an individual has actually been prejudiced by the agency's failure to do so. *McAllister v. Nebraska Dept. of Corr. Servs.*, 253 Neb. 910, 573 N.W.2d 143 (1998).
- The failure of the Department of Motor Vehicles to comply with this section's requirements regarding the filing of rules with the Secretary of State is a denial of due process. *Gausman v. Department of Motor Vehicles*, 246 Neb. 677, 522 N.W.2d 417 (1994).
- Rules of State Board of Education were not effective until filed. *School Dist. No. 228 v. State Board of Education*, 164 Neb. 148, 82 N.W.2d 8 (1957).
- Due process is denied where the rules and regulations governing the administrative license revocation procedure were not on file with the Secretary of State for at least 5 days at the time of the arrest. *Dannehl v. Department of Motor Vehicles*, 3 Neb. App. 492, 529 N.W.2d 100 (1995).
- Under former law, rates of carriers not filed with Secretary of State were invalid. *Mogis v. Lyman-Richey Sand & Gravel Corp.*, 90 F.Supp. 251 (D. Neb. 1950).

#### **84-906.01. Official rulemaking or regulation making record; agency maintain; contents.**

(1) An agency shall maintain an official rulemaking or regulationmaking record for each rule or regulation it adopts or proposes by publication of a notice. The record and materials incorporated by reference shall be available for public inspection and shall be maintained for at least four years after the effective date of the rule or regulation.

(2) The record shall contain:

(a) Copies of all publications with respect to the rule or regulation;

(b) Copies of any portions of the public rulemaking or regulationmaking docket containing entries relating to the rule or regulation;

(c) All written petitions, requests, submissions, and comments received by the agency and all other written materials prepared by or for the agency in connection with the proposal or adoption of the rule or regulation;

(d) Any official transcript of oral presentations made in a proceeding about the proposed rule or regulation or, if not transcribed, any tape recording or stenographic record of those presentations, and any memorandum prepared by the hearing officer summarizing the contents of those presentations;

(e) A copy of the rule or regulation and the concise explanatory statement filed with the Secretary of State;

(f) All petitions for adoption of, exceptions to, amendments of, or repeal or suspension of, the rule or regulation;

(g) A copy of any comments on the rule or regulation filed by a legislative committee; and

(h) A description, including an estimated quantification, of the fiscal impact on state agencies, political subdivisions, and regulated persons.

(3) Upon judicial review, the record required by this section shall constitute the official agency rulemaking or regulationmaking record with respect to a rule or regulation. Except as provided in section 84-907.04 or as otherwise required by law, the agency rulemaking or regulationmaking record need not constitute the exclusive basis for agency action on that rule or regulation or for judicial review thereof.

**Source:**Laws 1994, LB 446, § 19; Laws 2005, LB 373, § 3.

**84-906.02. Public comments; notice; agency; powers.**

In addition to seeking information by other methods and before publication of a notice under section 84-907, an agency is encouraged to and may solicit comments from the public on a subject matter of possible rule or regulation making by causing notice to be published in a newspaper of general circulation of the subject matter and indicating where, when, and how persons may comment.

**Source:**Laws 1994, LB 446, § 20.

**84-906.03. Secretary of State; duties.**

It shall be the duty of the Secretary of State:

- (1) To establish and cause to be compiled, indexed by subject, and published a codification system for all rules and regulations filed to be designated the Nebraska Administrative Code;
- (2) To cause the Nebraska Administrative Code to be computerized to facilitate agencies in revision of their rules and regulations and provide research capabilities;
- (3) To post a current copy of existing rules and regulations as accepted by the Secretary of State as filed on the website of the Secretary of State; to distribute a current copy of any existing rules and regulations as accepted by the Secretary of State as filed to all interested persons on request at a price fixed to cover costs of printing, handling, and mailing; and to distribute, on a regular basis, copies of any or all modifications or amendments to agency rules and regulations as accepted by the Secretary of State as filed to all interested persons on request at a price fixed to cover costs of printing, handling, and mailing; and
- (4) To remit fees collected pursuant to this section to the State Treasurer for credit to the Secretary of State Cash Fund.

**Source:**Laws 1973, LB 134, § 6; Laws 1975, LB 267, § 1; Laws 1980, LB 712, § 1; Laws 1981, LB 130, § 2; Laws 1982, LB 784, § 1; Laws 1986, LB 992, § 5; Laws 2016, LB867, § 9; Laws 2020, LB910, § 36.

**84-906.04. Secretary of State; maintain docket for pending proceedings; contents.**

(1) The Secretary of State shall maintain a current public rulemaking or regulationmaking docket for each pending rulemaking or regulationmaking proceeding. A rulemaking or regulationmaking proceeding is pending from the time it is commenced by publication of a notice of proposed rule or regulation making to the time it is terminated by publication of a notice of termination or the rule or regulation becoming effective.

(2) For each rulemaking or regulationmaking proceeding, the docket shall indicate:

- (a) The subject matter of the proposed rule or regulation;
- (b) The time, date, and location of the public hearing regarding the proposed rule or regulation;
- (c) The name and address of agency personnel with whom people may communicate regarding the proposed rule or regulation;
- (d) Where written comments on the proposed rule or regulation may be inspected;
- (e) The time during which written comments may be made;
- (f) Where the description of the fiscal impact may be inspected and obtained;
- (g) The current status of the proposed rule or regulation and any agency determinations with respect thereto;
- (h) Any known timetable for agency decisions or other action in the proceeding;
- (i) The date of the rule's or regulation's adoption;
- (j) The date of the rule's or regulation's filing, indexing, and publication; and
- (k) The operative date of the rule or regulation if such date is later than the effective date prescribed in sections 84-906 and 84-911.

**Source:**Laws 1994, LB 446, § 16; Laws 2016, LB867, § 10.

**84-906.05. Rule or regulation; judicial notice.**

(1) Every court of this state may take judicial notice of any rule or regulation that is signed by the Governor and filed with the Secretary of State pursuant to section 84-906.

(2) The court may inform itself of such rules and regulations in such manner as it may deem proper, and the court may call upon counsel to aid it in obtaining such information.

**Source:**Laws 1974, LB 604, § 5; Laws 1986, LB 992, § 6; Laws 1987, LB 253, § 7; Laws 1999, LB 320, § 1.

**Annotations**

- This court will take judicial notice of general rules and regulations established and published by Nebraska state agencies under authority of law. *Raben v. Dittenber*, 230 Neb. 822, 434 N.W.2d 11 (1989).

**84-906.06. Repealed. Laws 1982, LB 784, § 2.**

**84-906.07. Charitable organization; annual filing or reporting requirements.**

(1) The Legislature finds that this section is necessary to minimize burdens on the charitable sector and encourage a grantmaking environment that is free and independent from intrusive or politically motivated regulation.

(2) For purposes of this section:

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

(b) Agency includes the Secretary of State and the Attorney General.

(3) Absent the showing of a compelling state interest or federal funding requirement, an agency shall not require any annual filing or reporting by a charitable organization, whether regulated or specifically exempted from regulation, that is more burdensome than any requirements authorized by state law. Any such filing or reporting requirement shall be narrowly tailored to achieve such compelling state interest.

(4) This section shall not be construed to limit or restrict the powers, duties, remedies, or penalties available to the Attorney General or Secretary of State under statute or common law, including, but not limited to, issuance of a civil investigative demand or subpoena.

**Source:**Laws 2024, LB43, § 15.

**Operative Date: July 19, 2024**

**84-907. Rule or regulation; adoption; amendment; repeal; hearing; notice; procedure; exemption.**

(1) Except as provided in section 84-901.04, no rule or regulation shall be adopted, amended, or repealed by any agency except after public hearing on the question of adopting, amending, or repealing such rule or regulation. Notice of such hearing shall be given at least thirty days prior thereto to the Secretary of State and by publication in a newspaper having general circulation in the state. All such hearings shall be open to the public.

(2) The public hearing on a rule or regulation that is required to be adopted, amended, or repealed based upon a legislative bill shall be held within twelve months after the effective or operative date of the legislative bill. If there is more than one applicable effective or operative date, the twelve-month period shall be calculated using the latest date. In addition to the requirements of section 84-906.01, draft copies or working copies of all rules and regulations to be adopted, amended, or repealed by any agency shall be available to the public in the office of the Secretary of State at the time of giving notice. The notice shall include: (a) A declaration of availability of such draft or work copies for public examination; (b) a short explanation of the purpose of the proposed rule or regulation or the reason for the amendment or repeal of the rule or regulation; and (c) a description, including an estimated quantification, of the fiscal impact on state agencies, political subdivisions, and persons being regulated or an explanation of where the description of the fiscal impact may be inspected and obtained. No person may challenge the validity of any rule or regulation, the adoption, amendment, or repeal of any rule or regulation, or any determination of the applicability of any rule or regulation on the basis of the explanation or description provided pursuant to subdivisions (b) and (c) of this subsection.

(3) A change to an existing rule or regulation to (a) alter the style or form of such rule or regulation, (b) correct a technical error, or (c) alter a citation or reference to make such citation or reference consistent with state or federal law but which does not affect the substance of the rule or regulation is exempt from the requirements of this section. Such change shall not alter the rights or obligations of the public.

(4) Agencies shall be exempt from promulgating security policies and procedures which, if made public, would create a substantial likelihood of endangering public safety or property.

**Source:**Laws 1953, c. 359, § 1, p. 1138; Laws 1977, LB 462, § 1; Laws 1978, LB 585, § 1; Laws 1980, LB 846, § 1; Laws 1986, LB 992, § 7; Laws 1987, LB 253, § 8; Laws 1987, LB 487, § 1; Laws 1994, LB 446, § 21; Laws 2005, LB 373, § 4; Laws 2011, LB617, § 2; Laws 2016, LB867, § 11.

**Annotations**

- This section is in pari materia with section 84-901. *City of Scottsbluff v. United Telephone Co. of the West*, 171 Neb. 229, 106 N.W.2d 12 (1960).

**84-907.01. Repealed. Laws 2016, LB867, § 21.**

**84-907.02. Repealed. Laws 2016, LB867, § 21.**

**84-907.03. Repealed. Laws 2020, LB910, § 49.**

**84-907.04. Proposed rule or regulation; explanatory statement; contents; use; agency; written report; contents.**

(1) At the time an agency finalizes a proposed rule or regulation and prior to submission to the Secretary of State, Attorney General, and Governor, the agency shall attach to the proposed rule or regulation a concise explanatory statement containing:

(a) Its reasons for adopting the rule or regulation;

(b) An indication of any change between the text of the proposed rule or regulation contained or referenced in the published notice and the text of the rule or regulation to be adopted, with the reasons for any change; and

(c) When procedural rules differ from the model rules, the agency's reasons why relevant portions of the model rules were impracticable under the circumstances.

(2) Only the reasons contained in the concise explanatory statement may be used by an agency as justifications for the adoption of the rule or regulation in any proceeding in which its validity is at issue.

(3) The agency shall also attach to the proposed rule or regulation a written report that includes a summary of the testimony offered at the public hearing and that lists any specific issues or questions that were presented by individuals or representatives of organizations at the hearing or in written testimony submitted as part of the public hearing process. The report shall also include a response from the agency proposing the regulatory change to the questions and issues that were presented by individuals or representatives of organizations at the hearing or in written testimony submitted as part of the public hearing process. The written report shall also be submitted to the Executive Board of the Legislative Council. The chairperson of the executive board or committee staff member of the executive board shall refer each written report received pursuant to this subsection for review (a) to the chairperson of the standing committee of the Legislature which has subject matter jurisdiction over the issue involved in the rule or regulation or which has traditionally handled the issue and (b) if practicable, to the member of the Legislature who was the primary sponsor of a legislative bill that granted the agency the rulemaking authority if the member is still serving or, if the legislative bill was amended to include the rulemaking authority, to the member of the Legislature who was the primary sponsor of the amendment that granted rulemaking authority if the member is still serving.

**Source:**Laws 1994, LB 446, § 22; Laws 2014, LB719, § 1.

**84-907.05. Proposed rule or regulation; substantially different from published notice; considerations; limitation on agency.**

(1) An agency may not adopt a rule or regulation that is substantially different from the proposed rule or regulation contained or referenced in the published notice. An agency may terminate a rulemaking or regulationmaking proceeding and commence a new rulemaking or regulationmaking proceeding for the purpose of adopting a substantially different rule or regulation.

(2) In determining whether a rule or regulation is substantially different from the proposed rule or regulation contained or referenced in the published notice, the following shall be considered:

(a) The extent to which all persons affected by the adopted rule or regulation should have had adequate notice from the published notice and the proposed rule or regulation contained or referenced in the published notice that their interests would be affected;

(b) The extent to which the subject matter of the adopted rule or regulation or the issues determined by the rule or regulation are different from the subject matter or issues involved in the proposed rule or regulation contained or referenced in the published notice; and

(c) The extent to which the effects of the adopted rule or regulation differ from the effects of the proposed rule or regulation contained or referenced in the published notice had it been adopted instead.

**Source:**Laws 1994, LB 446, § 23.

**84-907.06. Adoption, amendment, or repeal of rule or regulation; notice to Executive Board of the Legislative Council and Secretary of State.**

Whenever an agency proposes to adopt, amend, or repeal a rule or regulation, the agency shall (1) at least thirty days before the public hearing, when notice of a proposed rule or regulation is sent out, or (2) at the same time the agency requests approval from the Governor for an emergency rule or regulation under section 84-901.04, send to the Executive Board of the Legislative Council for purposes of section 84-907.07 if applicable, to the Executive Board of the Legislative Council to be forwarded to the relevant standing committee of the Legislature for purposes of the Occupational Board Reform Act if applicable, and to the Secretary of State to be made available to the public by means which include, but are not limited to, publication on the Secretary of State's website, if applicable, the following information: A copy of the hearing notice required by section 84-907; a draft copy of the rule or regulation; and the information provided to the Governor pursuant to section 84-907.09.

**Source:**Laws 1994, LB 446, § 24; Laws 2005, LB 373, § 5; Laws 2012, LB782, § 228; Laws 2013, LB222, § 43; Laws 2016, LB867, § 12; Laws 2017, LB464, § 1; Laws 2018, LB299, § 18.

## **Cross References**

- **Occupational Board Reform Act**, see section 84-933.

### **84-907.07. Executive Board of the Legislative Council; standing committees of the Legislature; powers and duties.**

The chairperson of the Executive Board of the Legislative Council or committee staff member of the board shall refer materials received pursuant to section 84-907.06 for review (1) to the chairperson of the standing committee of the Legislature which has subject matter jurisdiction over the issue involved in the rule or regulation or which has traditionally handled the issue and (2) if practicable, to the member of the Legislature who was the primary sponsor of the legislative bill that granted the agency the rulemaking authority if the member is still serving or, if the legislative bill was amended to include the rulemaking authority, to the primary sponsor of the amendment granting rulemaking authority if the member is still serving. The committee or committee chairperson of such standing committee of the Legislature having subject matter jurisdiction may submit a written or oral statement at the public hearing on the rule or regulation or, if the Governor approves an emergency rule or regulation under section 84-901.04, may submit a written statement to the agency and to the Secretary of State to be entered in the records relating to the rule or regulation.

**Source:**Laws 1994, LB 446, § 25; Laws 2005, LB 373, § 6; Laws 2016, LB867, § 13.

### **84-907.08. Petition to adopt a rule or regulation; form; procedure.**

Any person may petition an agency requesting the adoption of a rule or regulation. Each agency shall prescribe by rule or regulation the form of the petition and the procedure for its submission, consideration, and disposition. Within sixty days after submission of a petition, the agency shall (1) deny the petition in writing, stating its reasons therefor, (2) initiate rulemaking or regulationmaking proceedings in accordance with the Administrative Procedure Act, or (3) if otherwise lawful, adopt a rule or regulation.

**Source:**Laws 1994, LB 446, § 26.

### **84-907.09. Adoption, amendment, or repeal of rule or regulation; provide information to Governor.**

Whenever an agency proposes to adopt, amend, or repeal a rule or regulation, (1) at least thirty days before the public hearing, when notice of a proposed rule or regulation is sent out, or (2) at the same time the agency requests approval from the Governor for an emergency rule or regulation under section 84-901.04, the agency shall provide to the Governor for review (a) a description of the proposed rule or regulation and the entity or entities it will impact, (b) an explanation of the necessity of the proposed rule or regulation, including the identification of the specific legislative bill if applicable, or the authorizing statute when there is no legislative bill applicable, (c) a statement that the proposed rule or regulation is consistent with legislative intent, (d) a statement indicating whether the proposed rule or regulation is the result of a state mandate on a local governmental subdivision and if the mandate is funded, (e) a statement indicating if the proposed rule or regulation is the result of a federal mandate on state government or on a local governmental subdivision and if the mandate is funded, (f) a description, including an estimated quantification, of the fiscal impact on state agencies, political subdivisions, and regulated persons, (g) a statement that the agency will solicit public comment on the proposed rule or regulation before the public hearing, and (h) a statement indicating whether or not the agency has utilized the negotiated rulemaking process as provided for in the Negotiated Rulemaking Act with respect to the proposed rule or regulation.

**Source:**Laws 2005, LB 373, § 1; Laws 2011, LB617, § 3; Laws 2016, LB867, § 14.

## **Cross References**

- **Negotiated Rulemaking Act**, see section 84-921.

### **84-907.10. Member of the Legislature; complaint; procedure.**

(1) If any member of the Legislature feels aggrieved by a rule or regulation or by the proposed adoption, amendment, or repeal of a rule or regulation pursuant to section 84-907.06 or believes that (a) a rule or regulation or the adoption, amendment, or repeal of a rule or regulation is in excess of the statutory authority or jurisdiction of the agency, is unconstitutional, is inconsistent with the legislative intent of the authorizing statute, or creates an undue burden in a manner that significantly outweighs its benefit to the public, (b) circumstances have changed since the passage of the statute which a rule or regulation implements, or (c) a rule or regulation or an amendment or repeal overlaps, duplicates, or conflicts with federal, state, or local laws, rules, regulations, or ordinances, the member may file a complaint with the Chairperson of the Executive Board of the Legislative Council. The complaint shall explain in detail the member's contentions.

(2) The chairperson of the executive board or a committee staff member of the executive board shall refer the complaint to the chairperson of the standing committee of the Legislature which has subject matter jurisdiction over the issue involved in the rule or regulation or which has traditionally handled the issue and, if practicable, to the member of the Legislature who was the primary sponsor of the legislative bill that granted the agency the rulemaking authority if the member is still serving or, if the legislative bill was amended to include the rulemaking authority, to the primary sponsor of the amendment granting rulemaking authority if the member is still serving.

(3) The standing committee and primary sponsor of the legislative bill or amendment granting rulemaking authority may consider the complaint and, if such committee or primary sponsor concludes that the complaint has merit, then such committee or primary sponsor may request a written response from the agency which shall include, but not be limited to (a) a description of the amendment or rule or regulation, (b) when applicable, a description of the legislative intent of the statute granting the agency rulemaking authority and a statement explaining how the rule or regulation or the adoption, amendment, or repeal of the rule or regulation is within the authority or jurisdiction of the agency, is constitutional, is consistent with legislative intent, or is not an undue burden, (c) if the description required in subdivision (b) of this subsection is inapplicable, an explanation as to why the rule or regulation or the adoption, amendment, or repeal is necessary, and (d) an explanation of the extent to which and how any public comment was taken into consideration by the agency with respect to the rule or regulation or the adoption, amendment, or repeal. The agency shall respond within sixty days of a request, and such response shall be a public record.

(4) Nothing in this section shall be construed to prohibit the adoption or promulgation of the rule or regulation in accordance with other provisions of the Administrative Procedure Act.

**Source:**Laws 2005, LB 373, § 7; Laws 2014, LB719, § 2.

**84-908. Rule or regulation; adoption; amendment; repeal; considerations; when effective; approval by Governor; filing.**

(1) Except as provided in section 84-901.04, no adoption, amendment, or repeal of any rule or regulation shall become effective until the same has been approved by the Governor and filed with the Secretary of State after a hearing has been set on such rule or regulation pursuant to section 84-907. When determining whether to approve the adoption, amendment, or repeal of any rule or regulation relating to an issue of unique interest to a specific geographic area, the Governor's considerations shall include, but not be limited to: (a) Whether adequate notice of hearing was provided in the geographic area affected by the rule or regulation. Adequate notice shall include, but not be limited to, the availability of copies of the rule or regulation at the time notice was given pursuant to section 84-907; and (b) whether reasonable and convenient opportunity for public comment was provided for the geographic area affected by the rule or regulation. If a public hearing was not held in the affected geographic area, reasons shall be provided by the agency to the Governor. Any rule or regulation properly adopted by any agency shall be filed with the Secretary of State.

(2) Except as provided in section 84-901.04, no agency shall utilize, enforce, or attempt to enforce any rule or regulation or proposed rule or regulation unless the rule, regulation, or proposed rule or regulation has been approved by the Governor and filed with the Secretary of State after a hearing pursuant to section 84-907.

**Source:**Laws 1953, c. 359, § 2, p. 1138; Laws 1972, LB 373, § 1; Laws 1974, LB 604, § 4; Laws 1975, LB 316, § 1; Laws 1978, LB 44, § 10; Laws 1986, LB 992, § 10; Laws 1987, LB 253, § 10; Laws 1987, LB 189, § 1; Laws 2013, LB242, § 3; Laws 2016, LB867, § 15.

**Annotations**

- Rate tariffs, and any rules of interpretation thereof, are excepted from requirements of filing with Secretary of State. *City of Scottsbluff v. United Telephone Co. of the West*, 171 Neb. 229, 106 N.W.2d 12 (1960).

**84-908.01. Repealed. Laws 1986, LB 992, § 11.**

**84-908.02. Repealed. Laws 1986, LB 992, § 11.**

**84-908.03. Repealed. Laws 1986, LB 992, § 11.**

**84-908.04. Repealed. Laws 1986, LB 992, § 11.**

**84-908.05. Repealed. Laws 1986, LB 992, § 11.**

**84-909. Agency; rules and regulations governing procedure; adoption.**

In addition to other requirements imposed by law:

(1) Each agency shall adopt rules and regulations governing the formal and informal procedures prescribed or authorized by the Administrative Procedure Act. Such rules and regulations shall include rules of practice before the agency together with forms and instructions; and

(2) To assist interested persons dealing with it, each agency shall so far as deemed practicable supplement its rules and regulations with descriptive statements of its procedures.

**Source:**Laws 1959, c. 456, § 2, p. 1511; Laws 1980, LB 846, § 2; Laws 1987, LB 253, § 11; Laws 1994, LB 446, § 33.

#### **Annotations**

- Neither the Administrative Procedure Act nor the regulations of the Department of Water Resources provide for any time limits on the rights of parties to intervene either as a matter of right or permissively. Nonetheless, the department as an agency of the State of Nebraska must have sufficient latitude in its operation in matters under its jurisdiction to exercise that jurisdiction fairly. *Basin Elec. Power Co-op. v. Little Blue N.R.D.*, 219 Neb. 372, 363 N.W.2d 500 (1985).
- This section only applicable to procedures which have not been specifically covered by statute. *Weiner v. State Real Estate Commission*, 184 Neb. 752, 171 N.W.2d 783 (1969).
- The provisions of Administrative Procedure Act may be considered with other legislation in determining whether due process of law has been afforded. *School Dist. No. 8 v. State Board of Education*, 176 Neb. 722, 127 N.W.2d 458 (1964).
- The 1959 amendment to the act prescribing rules for administrative agencies did not contain more than one subject in violation of the Constitution. *Yellow Cab Co. v. Nebraska State Railway Commission*, 175 Neb. 150, 120 N.W.2d 922 (1963).

#### **84-909.01. Model rules of procedure; Attorney General; agency; duties.**

In accordance with the rulemaking and regulationmaking requirements of the Administrative Procedure Act, the Attorney General shall prepare and promulgate model rules of procedure appropriate for use by as many agencies as possible and shall file the model rules with the Secretary of State. The model rules shall deal with all general functions and duties performed in common by several agencies. For rules of procedure adopted on or after August 1, 1994, each agency shall adopt as many of the model rules as is practicable under its circumstances. To the extent an agency adopts the model rules, it shall do so in accordance with the rulemaking and regulationmaking requirements of the act. Any agency adopting a rule of procedure that differs from the model rules shall include in the explanatory statement provided for in section 84-907.04 a finding stating the reasons why the relevant portions of the model rules were impracticable under the circumstances.

**Source:**Laws 1994, LB 446, § 15.

#### **84-910. Agency; notification to Legislative Performance Audit Committee; contents; format; notice to Executive Board of the Legislative Council.**

(1) On or before July 1 of each year, each agency shall notify the Legislative Performance Audit Committee of the status of all rules and regulations pending before the agency that are required by law and that have not been adopted and promulgated. If such rules and regulations have not been adopted and promulgated within the time required pursuant to section 84-901.01, the agency shall provide an explanation to the committee stating why the agency has not adopted and promulgated such rules and regulations. If an additional appropriation was made with respect to legislation enacted to provide funding for or additional staff to implement a program for which rules and regulations are required to be adopted, the notification shall include what the funding has been used for and what functions the staff have been performing while such rules and regulations are pending. The format of the notification shall be established by the committee and shall be updated periodically.

(2) On or before July 1 of each year, each agency shall notify the Executive Board of the Legislative Council of the status of any rule or regulation pending before the agency that constitutes an occupational regulation as defined in section 84-940 and that has not been adopted and promulgated. The executive board shall forward any notification received pursuant to this subsection to the standing committee of the Legislature with jurisdiction over such rule or regulation.

**Source:**Laws 2011, LB617, § 4; Laws 2012, LB782, § 229; Laws 2013, LB222, § 44; Laws 2018, LB299, § 19; Laws 2018, LB751, § 2; Laws 2024, LB909, § 1.

**Effective Date: March 12, 2024**

#### **84-911. Validity of rule or regulation; declaratory judgment; procedure.**

(1) The validity of any rule or regulation may be determined upon a petition for a declaratory judgment thereon addressed to the district court of Lancaster County if it appears that the rule or regulation or its threatened application interferes with or impairs or threatens to interfere with or impair the legal rights or privileges of the petitioner. The agency shall be made a party to the proceeding. The declaratory judgment may be rendered whether or not the petitioner has first requested the agency to pass upon the validity of the rule or regulation in question.

(2) The court shall declare the rule or regulation invalid if it finds that it violates constitutional provisions, exceeds the statutory authority of the agency, or was adopted without compliance with the statutory procedures. For purposes of this subsection, statutory procedures shall not include procedures provided under the Negotiated Rulemaking Act.

**Source:**Laws 1959, c. 456, § 4, p. 1511; Laws 1987, LB 253, § 13; Laws 1994, LB 446, § 34.

**Cross References**

- **Negotiated Rulemaking Act**, see section 84-921.

**Annotations**

- An agency policy that does not constitute a rule or regulation under section 84-901(2) is not subject to judicial review under this section. *Schaeffer v. Frakes*, 313 Neb. 337, 984 N.W.2d 290 (2023).
- Citizens lacked standing under the Administrative Procedure Act to challenge the validity of a regulation where they alleged an infringement of a procedural right to informed participation in the regulation-making process but did not show that the challenged regulation itself threatened or violated their rights. *Griffith v. Nebraska Dept. of Corr. Servs.*, 304 Neb. 287, 934 N.W.2d 169 (2019).
- Common-law exceptions to injury-in-fact standing do not apply in actions brought under the Administrative Procedure Act provision that permits the validity of any rule or regulation to be determined upon a petition for declaratory judgment if it appears that the rule or regulation or its threatened application interferes with legal rights or privileges of the petitioner, overruling *Project Extra Mile v. Nebraska Liquor Control Comm.*, 283 Neb. 379, 810 N.W.2d 149 (2012). *Griffith v. Nebraska Dept. of Corr. Servs.*, 304 Neb. 287, 934 N.W.2d 169 (2019).
- A taxpayer has standing to challenge a state official's failure to comply with a clear statutory duty to assess or collect taxes—as distinguished from legitimate discretion to decide whether to tax. But the taxpayer must show that the official's unlawful failure to comply with a duty to tax would otherwise go unchallenged because no other potential party is better suited to bring the action. Under this section, a taxpayer has standing to challenge an agency's unlawful regulation that negates the agency's statutory duty to assess taxes. No other potential parties are better suited than a taxpayer to claim that a state agency or official has violated a statutory duty to assess taxes when the persons or entities directly and immediately affected by the alleged violation are beneficially, instead of adversely, affected. *Project Extra Mile v. Nebraska Liquor Control Comm.*, 283 Neb. 379, 810 N.W.2d 149 (2012).
- When this section is read consistently with the declaratory judgment statutes, the only limitations placed on the relief that a plaintiff can obtain in a declaratory judgment action under this section are the limitations imposed by sovereign immunity principles. Neither this section nor sovereign immunity bars injunctive relief in a declaratory judgment action under this section when such relief would not require state officials to expend public funds. *Project Extra Mile v. Nebraska Liquor Control Comm.*, 283 Neb. 379, 810 N.W.2d 149 (2012).
- This section provides a limited statutory waiver of sovereign immunity and confers subject matter jurisdiction for a declaratory judgment concerning the validity of a state agency's rule or regulation, but does not confer jurisdiction for declaratory relief concerning judicial interpretation of a statute. *Perryman v. Nebraska Dept. of Corr. Servs.*, 253 Neb. 66, 568 N.W.2d 241 (1997).
- This section provides a limited statutory waiver of sovereign immunity and confers subject matter jurisdiction for a declaratory judgment concerning the validity of a state agency's rule or regulation. This section is limited to judicial determination of the validity of any rule or regulation of a state agency and does not confer jurisdiction for judicial resolution of a factual question pertaining to the merits of a controversy. *Riley v. State*, 244 Neb. 250, 506 N.W.2d 45 (1993).
- Under this section, which allows for a declaratory judgment on the validity of an administrative rule, such a ruling is discretionary with the court. A court may refuse to enter a declaratory judgment where it would not end or resolve the controversy. *Beatrice Manor v. Department of Health*, 219 Neb. 141, 362 N.W.2d 45 (1985).
- A court may refuse to enter a declaratory judgment on the validity of an administrative rule when the petition essentially presents a claim against the state for money. *Millard School District v. State Department of Education*, 202 Neb. 707, 277 N.W.2d 71 (1979).
- A prisoner is not entitled to a declaratory judgment under this section as to the validity of a regulation limiting the amount of property that can be possessed by an inmate, because a prisoner does not enjoy the unqualified right to possess property while in prison. *Meis v. Houston*, 19 Neb. App. 504, 808 N.W.2d 897 (2012).

**84-912. Repealed. Laws 1994, LB 446, § 40.**



**84-912.01. Petition for declaratory order; issuance by agency; duties; effect.**

(1) Any person may petition an agency for a declaratory order as to the applicability to specified circumstances of a statute, rule, regulation, or order within the primary jurisdiction of the agency. An agency shall issue a declaratory order in response to a petition for that order unless the agency determines that issuance of the order under the circumstances would be contrary to a rule or regulation adopted in accordance with subsection (2) of this section. An agency may not issue a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.

(2) Each agency shall issue rules or regulations that provide for: (a) The form, contents, and filing of petitions for declaratory orders; (b) the procedural rights of persons in relation to the petitions; (c) the disposition of the petitions; and (d) notice to necessary parties for matters set for hearing or specified proceedings. The rules or regulations shall describe the classes of circumstances in which the agency will not issue a declaratory order and be consistent with the public interest and with the general policy of the Administrative Procedure Act to facilitate and encourage agency issuance of reliable advice.

(3) Persons who qualify for intervention and file timely petitions for intervention according to agency rules and regulations may intervene in proceedings for declaratory orders.

(4) Within thirty days after receipt of a petition for a declaratory order, an agency shall, in writing:

(a) Issue an order or agree to issue a declaratory order by a specified time declaring the applicability of the statute, rule, regulation, or order in question to the specified circumstances;

(b) Set the matter for specified proceedings; or

(c) Decline to issue a declaratory order, stating the reasons for its action.

(5) A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the petitioner and any other parties.

(6) A declaratory order shall have the same status and binding effect as any other order issued in a contested case. A declaratory order shall contain the names of all parties to the proceeding on which it is based, the particular facts on which it is based, and the reasons for its conclusion.

(7) If an agency has not issued a declaratory order within sixty days after receipt of a petition therefor, the petition shall be deemed to have been denied.

**Source:**Laws 1994, LB 446, § 27.

**Annotations**

- This section did not require a hearing before the Department of Administrative Services to decide the issues raised by the petitioners, the petition for a declaratory order did not require the department to act in a quasi-judicial manner, and the proceeding was not a contested case under the Administrative Procedure Act. Kaplan v. McClurg, 271 Neb. 101, 710 N.W.2d 96 (2006).

**84-912.02. Petition for intervention; hearing officer or designee; grant petition; conditions; powers and duties; order.**

(1) A hearing officer or designee shall grant a petition for intervention if:

(a) The petition is submitted in writing to the hearing officer or designee, with copies mailed to all parties named in the hearing officer's notice of the hearing, at least five days before the hearing;

(b) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and

(c) The hearing officer or designee determines that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.

(2) The hearing officer or designee may grant a petition for intervention at any time upon determining that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.

(3) If a petitioner qualifies for intervention, the hearing officer or designee may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Conditions may include:

(a) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;

(b) Limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

(c) Requiring two or more intervenors to combine their presentation of evidence and argument, cross-examination, discovery, and other participation in the proceedings.

(4) The hearing officer or designee, at least twenty-four hours before the hearing, shall issue an order granting or denying each pending petition for intervention, specifying any conditions and briefly stating the reasons for the order. The hearing officer or designee may modify the order at any time, stating the reasons for the modification. The hearing officer or designee shall promptly give notice of an order granting, denying, or modifying intervention to the petitioner for intervention and to all parties.

**Source:**Laws 1994, LB 446, § 28.

**Annotations**

- The Administrative Procedure Act grants agencies the power to impose conditions upon an intervenor's participation, and this action is distinct from granting or denying a petition for intervention. In re Application No. OP-0003, 303 Neb. 872, 932 N.W.2d 653 (2019).
- Under the Administrative Procedure Act, an agency may modify an order imposing conditions on intervention at any time. In re Application No. OP-0003, 303 Neb. 872, 932 N.W.2d 653 (2019).

**84-912.03. Tax Equalization and Review Commission; exemption.**

Sections 84-912.01 and 84-913 to 84-919 do not apply to the Tax Equalization and Review Commission.

**Source:**Laws 1995, LB 490, § 190; Laws 2004, LB 973, § 68.

**Cross References**

- **Tax Equalization and Review Commission Act**, see section 77-5001.

**84-913. Contested cases; notice of hearing; record; transcript.**

In any contested case all parties shall be afforded an opportunity for hearing after reasonable notice. The notice shall state the time, place, and issues involved, but if, by reason of the nature of the proceeding, the issues cannot be fully stated in advance of the hearing or if subsequent amendment of the issues is necessary, they shall be fully stated as soon as practicable. Opportunity shall be afforded all parties to present evidence and argument with respect thereto. The agency shall prepare an official record, which shall include testimony and exhibits, in each contested case, but it shall not be necessary to transcribe shorthand notes unless requested for purpose of rehearing, in which event the transcript and record shall be furnished by the agency upon request and tender of the cost of preparation. Informal disposition may also be made of any contested case by stipulation, agreed settlement, consent order, or default. Each agency shall adopt appropriate rules and regulations for notice and hearing in contested cases.

**Source:**Laws 1959, c. 456, § 6, p. 1512; Laws 1969, c. 838, § 1, p. 3162; Laws 1987, LB 253, § 15.

**Annotations**

- Where the Nebraska Liquor Control Commission failed to provide the appellant with notice as required under this section and the commission's own regulations, the appellant was denied due process, and as a result of such denial, the commission's decision with regard to the appellant's liquor license did not conform to the law. *Lariat Club v. Nebraska Liquor Control Comm.*, 267 Neb. 179, 673 N.W.2d 29 (2004).
- Administrative bodies have only that authority specifically conferred upon them by statute or by construction necessary to achieve the purpose of the relevant act, and as such, the Department of Revenue is not statutorily authorized to grant motions for summary judgment. *Southeast Rur. Vol. Fire Dept. v. Neb. Dept. of Rev.*, 251 Neb. 852, 560 N.W.2d 436 (1997).
- On objection to application for liquor license, where hearing is required, the matter becomes a contested case under section 84-901(3), and notice to applicant of the issues is necessary. *J K & J, Inc. v. Nebraska Liquor Control Commission*, 194 Neb. 413, 231 N.W.2d 694 (1975).
- The procedural rules to be applied are those in effect at time of hearing or proceeding, not those in effect when the act or violation is charged to have taken place. *Durousseau v. Nebraska State Racing Commission*, 194 Neb. 288, 231 N.W.2d 566 (1975).
- Department of Banking required to establish procedural rules providing for notice and hearing. *First Fed. Sav. & Loan Assn. v. Department of Banking*, 187 Neb. 562, 192 N.W.2d 736 (1971).
- In contested case, common carriers are entitled to present argument. *Ready Mix, Inc. v. Nebraska Railroads*, 181 Neb. 697, 150 N.W.2d 275 (1967).
- In hearing before the Liquor Control Commission where no notice of hearing is required, this section would not be applicable. *City of Lincoln v. Nebraska Liquor Control Commission*, 181 Neb. 277, 147 N.W.2d 803 (1967).
- Notice of hearing in a contested case is required to state the issues involved. *County of Lancaster v. State Board of Equalization & Assessment*, 180 Neb. 497, 143 N.W.2d 885 (1966); *County of Brown v. State Board of Equalization & Assessment*, 180 Neb. 487, 143 N.W.2d 896 (1966); *County of Blaine v. State Board of Equalization & Assessment*, 180 Neb. 471, 143 N.W.2d 880 (1966).

- In contested case before administrative board, notice and hearing are required. *School Dist. No. 8 v. State Board of Education*, 176 Neb. 722, 127 N.W.2d 458 (1964).

**84-913.01. Hearing officer; prehearing conference; procedure.**

(1) The hearing officer designated to conduct the hearing may determine, subject to the agency's rules and regulations, whether a prehearing conference will be conducted. If the conference is conducted:

(a) The hearing officer shall promptly notify the agency of the determination that a prehearing conference will be conducted. The agency may assign another hearing officer for the prehearing conference; and

(b) The hearing officer for the prehearing conference shall set the time and place of the conference and give reasonable written notice to all parties and to all persons who have filed written petitions to intervene in the matter. The agency shall give notice to other persons entitled to notice.

(2) The notice shall include:

(a) The names and mailing addresses of all parties and other persons to whom notice is being given by the hearing officer;

(b) The name, official title, mailing address, and telephone number of any counsel or employee who has been designated to appear for the agency;

(c) The official file or other reference number, the name of the proceeding, and a general description of the subject matter;

(d) A statement of the time, place, and nature of the prehearing conference;

(e) A statement of the legal authority and jurisdiction under which the prehearing conference and the hearing are to be held;

(f) The name, official title, mailing address, and telephone number of the hearing officer for the prehearing conference; and

(g) A statement that a party who fails to attend or participate in a prehearing conference, hearing, or other stage of a contested case or who fails to make a good faith effort to comply with a prehearing order may be held in default under the Administrative Procedure Act.

The notice may include any other matters that the hearing officer considers desirable to expedite the proceedings.

**Source:**Laws 1994, LB 446, § 29.

**84-913.02. Hearing officer; prehearing conference; powers and duties; orders.**

(1) The hearing officer shall conduct the prehearing conference, as may be appropriate, to deal with such matters as exploration of settlement possibilities, preparation of stipulations, clarification of issues, rulings on identity and limitation of the number of witnesses, objections to proffers of evidence, determination of the extent to which direct evidence, rebuttal evidence, or cross-examination will be presented in written form and the extent to which telephone, television, or other electronic means will be used as a substitute for proceedings in person, order of presentation of evidence and cross-examination, rulings regarding issuance of subpoenas, discovery orders, and protective orders, and such other matters as will promote the orderly and prompt conduct of the hearing. The hearing officer shall issue a prehearing order incorporating the matters determined at the prehearing conference.

(2) If a prehearing conference is not held, a hearing officer for the hearing may issue a prehearing order, based on the pleadings, to regulate the conduct of the proceedings.

**Source:**Laws 1994, LB 446, § 30.

**84-913.03. Hearing officer; prehearing conference and hearing; how conducted.**

The hearing officer may conduct all or part of the prehearing conference and the hearing by telephone, television, or other electronic means if each participant in the conference or hearing has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceeding while it is taking place. This section does not apply to a prehearing conference or a hearing held under sections 60-498.01 to 60-498.04.

**Source:**Laws 1994, LB 446, § 31; Laws 2003, LB 209, § 20.

**Annotations**

- Telephonic hearings under this section are permitted when a formal "rules of evidence" hearing is requested pursuant to section 84-914(1). *Kimball v. Nebraska Dept. of Motor Vehicles*, 255 Neb. 430, 586 N.W.2d 439 (1998).
- Whether the hearing is conducted by videoconference is permissive and discretionary. *Robbins v. Neth*, 15 Neb. App. 67, 722 N.W.2d 76 (2006).

**84-913.04. Proceedings; limitation on participation.**

(1) A person who has served as investigator, prosecutor, or advocate in a contested case or in its prehearing stage may not serve as hearing officer or assist or advise a hearing officer in the same proceeding except as provided in subsection (3) of this section.

(2) A person who is subject to the authority, direction, or discretion of one who has served as investigator, prosecutor, or advocate in a contested case or in its prehearing stage may not serve as hearing officer or assist or advise a hearing officer in the same proceeding except as provided in subsection (3) of this section.

(3) If all parties consent, a person who has served as, or who is subject to the authority, direction, or discretion of one who has served as, investigator, prosecutor, or advocate in a contested case or in its prehearing stage may assist a hearing officer in the preparation of orders.

(4) A person who has participated in a determination of probable cause or other equivalent preliminary determination in a contested case may serve as hearing officer or assist or advise a hearing officer in the same proceeding.

(5) A person may serve as hearing officer at successive stages of the same contested case.

**Source:**Laws 1994, LB 446, § 32.

#### **Annotations**

- The Legislature specifically barred only prosecutors, investigators, and advocates from participating as hearing officers in administrative hearings. *City of Lincoln v. Central Platte NRD*, 263 Neb. 141, 638 N.W.2d 839 (2002).
- In this section, the Legislature has barred only prosecutors, investigators, and advocates from participating as hearing officers, or assisting hearing officers, in administrative hearings. *Saunders Cty. v. Metropolitan Utilities Dist.-A*, 11 Neb. App. 138, 645 N.W.2d 805 (2002).

#### **84-914. Contested cases; evidence; procedure; ex parte communications.**

In contested cases:

(1) An agency may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs and exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. An agency shall give effect to the rules of privilege recognized by law. Any party to a formal hearing before an agency, from which a decision may be appealed to the courts of this state, may request that the agency be bound by the rules of evidence applicable in district court by delivering to the agency at least three days prior to the holding of the hearing a written request therefor. Such request shall include the requesting party's agreement to be liable for the payment of costs incurred thereby and upon any appeal or review thereof, including the cost of court reporting services which the requesting party shall procure for the hearing. All costs of a formal hearing shall be paid by the party or parties against whom a final decision is rendered;

(2) The hearing officer or a designee, at the request of any party or upon the hearing officer's own motion, may administer oaths and issue subpoenas, discovery orders, and protective orders in accordance with the rules of civil procedure except as may otherwise be prescribed by law. Subpoenas and orders issued under this subsection may be enforced by the district court;

(3) All evidence including records and documents in the possession of the agency of which it desires to avail itself shall be offered and made a part of the record in the case. No factual information or evidence other than the record shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts or incorporated by reference;

(4) Every party shall have the right of cross-examination of witnesses who testify and shall have the right to submit rebuttal evidence;

(5) An agency may take official notice of cognizable facts and in addition may take official notice of general, technical, or scientific facts within its specialized knowledge and the rules and regulations adopted and promulgated by such agency. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of material so noticed. Parties shall be afforded an opportunity to contest facts so noticed. The record shall contain a written record of everything officially noticed. An agency may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it; and

(6)(a) No party in a contested case or other person outside the agency having an interest in the contested case shall make or knowingly cause to be made an ex parte communication to the hearing officer or to an agency head or employee who is or may reasonably be expected to be involved in the decisionmaking process of the contested case.

(b) No hearing officer or agency head or employee who is or may reasonably be expected to be involved in the decisionmaking process of the contested case shall make or knowingly cause to be made an ex parte communication to any party in a contested case or other person outside the agency having an interest in the contested case.

(c) No agency head or employee engaged in the investigation or enforcement of a contested case shall make or knowingly cause to be made an ex parte communication to a hearing officer or agency head or employee who is or may reasonably be expected to be involved in the decisionmaking process of the contested case.

(d) The hearing officer or agency head or employee who is or may reasonably be expected to be involved in the decisionmaking process of the contested case who receives or who makes or knowingly causes to be made an ex parte communication set forth in subdivisions (6)(a) through (c) of this section shall file in the record of the contested case (i) all such written communications, (ii) memoranda stating the substance of all such oral communications, and (iii) all written responses and memoranda stating the substance of all oral responses to all the ex parte communications. The filing shall be made within two working days of the receipt or making of the ex parte communication. Notice of the filing, with an opportunity to respond, shall be given to all parties of record.

(e) The prohibitions of subdivision (6) of this section shall apply beginning at the time notice for hearing is given. An agency may designate an earlier time, but such earlier time shall be required to be set forth in the agency's rules of procedure.

(f) The prohibitions contained in subdivisions (6)(a) and (b) of this section shall not apply to ex parte communications to or from an elected official. However, the disclosure requirements contained in subdivision (6)(d) of this section shall apply to ex parte communications to or from an elected official.

**Source:**Laws 1959, c. 456, § 7, p. 1513; Laws 1967, c. 618, § 3, p. 2072; Laws 1987, LB 253, § 16; Laws 1994, LB 414, § 136; Laws 1994, LB 446, § 35.

## **Annotations**

### **1. Rules of evidence**

### **2. Evidentiary and trial procedures**

### **3. Judicial notice**

### **4. Miscellaneous**

#### **1. Rules of evidence**

- The "rules of evidence applicable in district court" are the Nebraska Evidence Rules codified in Chapter 27 of the Nebraska Revised Statutes. *Kimball v. Nebraska Dept. of Motor Vehicles*, 255 Neb. 430, 586 N.W.2d 439 (1998).
- The Board of Nursing is not bound by the law of evidence unless a party so requests. *Scott v. State ex rel. Board of Nursing*, 196 Neb. 681, 244 N.W.2d 683 (1976).
- Prior to hearing before Director of Banking, protestants requested that rules of evidence applicable to the district court be made binding and district court on appeal made findings in accordance with applicable statute and affirmed order of the director. *Gateway Bank v. Department of Banking*, 192 Neb. 109, 219 N.W.2d 211 (1974).
- The Administrative Procedure Act controls the appeal of prison disciplinary cases, but not the conduct of an initial prison disciplinary hearing. An inmate is not entitled to the application of the rules of evidence at a prison disciplinary committee hearing. *Dailey v. Nebraska Dept. of Corr. Servs.*, 6 Neb. App. 919, 578 N.W.2d 869 (1998).

#### **2. Evidentiary and trial procedures**

- Evidentiary and trial procedures herein govern proceeding before Nebraska Power Review Board on application for approval of agreement between public power districts limiting areas in which and customers to whom electrical energy would be furnished at wholesale. *City of Lincoln v. Nebraska P.P. Dist.*, 191 Neb. 556, 216 N.W.2d 722 (1974).
- Section details evidentiary and trial procedures for all administrative agencies. *Weiner v. State Real Estate Commission*, 184 Neb. 752, 171 N.W.2d 783 (1969).

#### **3. Judicial notice**

- In a contested case, all evidence in possession of the agency, of which it desires to avail itself, shall be made a part of the record and applicant is also entitled to notice of any facts which will be judicially noticed by the commission. *J K & J, Inc. v. Nebraska Liquor Control Commission*, 194 Neb. 413, 231 N.W.2d 694 (1975).
- The Nebraska State Racing Commission could properly take judicial notice that the electrical device in possession of jockey was designed to increase or decrease the speed of a horse. *Durousseau v. Nebraska State Racing Commission*, 194 Neb. 288, 231 N.W.2d 566 (1975).

#### **4. Miscellaneous**

- Pursuant to subsection (5) of this section, a district court, in its de novo review of a disciplinary adjudication by the Department of Health and Human Services, properly took into consideration the expert opinions of the Director of Health and Human Services because the director was not substituting his expert knowledge for evidence in the record of the hearing; rather, the director used his experience and knowledge in evaluating the facts in the record. Pursuant to subsection (5) of this section, notification of parties is required when an agency intends to take notice of facts within its specialized knowledge; however, notification of parties is not required when an agency merely utilizes its expertise in evaluating evidence presented to it. *Langvardt v. Horton*, 254 Neb. 878, 581 N.W.2d 60 (1998).

- Policy behind this statute is to give full and fair warning of Public Service Commission's intention to take notice of a matter so as to avoid prejudice or surprise. In this case method of taking notice may have been technically improper; nonetheless, taking notice caused no unfair surprise or prejudice to the parties and therefore was permissible. In re Application of ATS Mobile Telephone, 213 Neb. 403, 330 N.W.2d 123 (1983).
- Presumed that Department of Banking offered only records or documents in its possession of which it desired to avail itself, and any not offered were not considered. Douglas County Bank v. Department of Banking, 187 Neb. 545, 192 N.W.2d 401 (1971).
- Study based on information compiled from unsworn statements and involving many judgment decisions wherein basic data used was not available at the time of hearing could not be used to sustain action of State Board of Equalization and Assessment. County of Sarpy v. State Board of Equalization & Assessment, 185 Neb. 760, 178 N.W.2d 765 (1970); County of Sioux v. State Board of Equalization & Assessment, 185 Neb. 741, 178 N.W.2d 754 (1970).
- An agency is required to make an official record containing all the factual information or evidence required to be determined after an agency hearing. County of Lancaster v. State Board of Equalization & Assessment, 180 Neb. 497, 143 N.W.2d 885 (1966); County of Brown v. State Board of Equalization & Assessment, 180 Neb. 487, 143 N.W.2d 896 (1966); County of Blaine v. State Board of Equalization & Assessment, 180 Neb. 471, 143 N.W.2d 880 (1966).
- Ex parte communications that the director of the Department of Motor Vehicles had with police officers who were potential witnesses at a motorist's administrative license revocation hearing did not violate the motorist's due process rights; neither officer was a party in the license revocation proceeding nor a person outside the Department of Motor Vehicles having an interest in the motorist's case. Walz v. Neth, 17 Neb. App. 891, 773 N.W.2d 387 (2009).

#### **84-915. Contested cases; orders; findings of fact; conclusions of law; notification.**

Every decision and order adverse to a party to the proceeding, rendered by an agency in a contested case, shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. Parties to the proceeding shall be notified of the decision and order in person or by mail. A copy of the decision and order and accompanying findings and conclusions shall be delivered or mailed upon request to each party or his or her attorney of record.

**Source:**Laws 1959, c. 456, § 8, p. 1513; Laws 1987, LB 253, § 17.

#### **Annotations**

##### **1. Sufficiency**

##### **2. Miscellaneous**

##### **1. Sufficiency**

- In order to provide a clear basis for an order granting or denying an instream flow application, the Director of Water Resources is required to discuss each of the elements listed in section 46-2,115. However, the director is not required to include, as part of his public interest analysis, to discuss forgone uses. An order which does no more than state its ultimate conclusion -- "application granted" or "application denied" -- clearly fails to provide a sufficient basis for the order. An order which fails to make findings on each required element also fails to provide a sufficient basis for the order. Central Platte NRD v. State of Wyoming, 245 Neb. 439, 513 N.W.2d 847 (1994).
- Conclusions of law found sufficient when considered with findings of fact. Douglas County Bank v. Department of Banking, 187 Neb. 545, 192 N.W.2d 401 (1971).
- Findings of fact in order entered by Director of Motor Vehicles are sufficient if they consist of a concise statement of the conclusions upon each contested issue of fact. Doran v. Johns, 186 Neb. 321, 182 N.W.2d 900 (1971).
- Findings of fact must show validity of order; failure to make findings of fact and conclusions of law in implied consent proceeding caused order to be set aside on appeal. Prigge v. Johns, 184 Neb. 103, 165 N.W.2d 559 (1969).
- Every decision under this act must be in writing, and shall make findings of fact and conclusions of law. County of Lancaster v. State Board of Equalization & Assessment, 180 Neb. 497, 143 N.W.2d 885 (1966); County of Brown v. State Board of Equalization & Assessment, 180 Neb. 487, 143 N.W.2d 896 (1966); County of Blaine v. State Board of Equalization & Assessment, 180 Neb. 471, 143 N.W.2d 880 (1966).
- State Railway Commission is required in a final order to make findings of fact and conclusions of law. Yellow Cab Co. v. Nebraska State Railway Commission, 176 Neb. 711, 127 N.W.2d 211 (1964).

- Under this section, the State Railway Commission is required to make findings of fact and conclusions of law in cases before it. *Yellow Cab Co. v. Nebraska State Railway Commission*, 175 Neb. 150, 120 N.W.2d 922 (1963).
- Findings made by State Railway Commission were sufficient to comply with this section. *Young v. Morgan Drive Away, Inc.*, 171 Neb. 784, 107 N.W.2d 752 (1961).

## **2. Miscellaneous**

- Chapter 84, article 9, applies to agencies of state government, not to city zoning board of adjustment. *South Maple Street Assn. v. Board of Adjustment*, 194 Neb. 118, 230 N.W.2d 471 (1975).
- State Railway Commission may correct findings to comply with this section without giving notice of hearing. *Petroleum Transp. Co. v. All Class I Rail Carriers*, 173 Neb. 564, 114 N.W.2d 34 (1962).
- On appeal from order of State Railway Commission, time commenced to run from date of mailing of notice of order. *Denver Chicago Transp. Co., Inc. v. Poulson*, 172 Neb. 862, 112 N.W.2d 410 (1961).
- Order of railway commission that fails to make findings of ultimate facts is irregular and will be set aside upon appeal. *Basin Truck Co. v. All Class I Rail Carriers*, 172 Neb. 28, 108 N.W.2d 388 (1961).

### **84-915.01. Official record of contested cases; agency maintain; contents; use.**

(1) An agency shall maintain an official record of each contested case under the Administrative Procedure Act for at least four years following the date of the final order.

(2) The agency record shall consist only of:

- (a) Notices of all proceedings;
- (b) Any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the agency pertaining to the contested case;
- (c) The record of the hearing before the agency, including all exhibits and evidence introduced during such hearing, a statement of matters officially noticed by the agency during the proceeding, and all proffers of proof and objections and rulings thereon; and
- (d) The final order.

(3) Except as otherwise provided by law, the physical custody of the agency record shall be maintained by the agency. The agency shall permit the parties to inspect the agency record and obtain copies of the agency record.

(4) Except as otherwise provided by law, the agency record shall constitute the exclusive basis for agency action in contested cases under the act and for judicial review thereof.

**Source:**Laws 1994, LB 446, § 36; Laws 2006, LB 1115, § 41.

### **84-916. Act; intent.**

The Administrative Procedure Act is intended to constitute an independent act establishing minimum administrative procedure for all agencies.

**Source:**Laws 1959, c. 456, § 10, p. 1514; Laws 1987, LB 253, § 18.

### **Annotations**

- The purpose of this act is to establish a minimum administrative procedure. *County of Lancaster v. State Board of Equalization & Assessment*, 180 Neb. 497, 143 N.W.2d 885 (1966); *County of Brown v. State Board of Equalization & Assessment*, 180 Neb. 487, 143 N.W.2d 896 (1966); *County of Blaine v. State Board of Equalization & Assessment*, 180 Neb. 471, 143 N.W.2d 880 (1966).

### **84-917. Contested case; appeal; right to cross-appeal; procedure.**

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

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

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

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

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

(4) Within thirty days after service of the petition or within such further time as the court for good cause shown may allow, the agency shall prepare and transmit to the clerk of the district court in which the petition is filed a certified copy of the official record of the proceedings had before the agency. Such official record shall include: (a) Notice of all proceedings; (b) any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the agency pertaining to the contested case; (c) the transcribed record of the hearing before the agency, including all exhibits and evidence introduced during such hearing, a statement of matters officially noticed by the agency during the proceeding, and all proffers of proof and objections and rulings thereon; and (d) the final order appealed from. The agency shall charge the petitioner with the reasonable direct cost or require the petitioner to pay the cost for preparing the official record for transmittal to the court in all cases except when the petitioner is not required to pay a filing fee. The agency may require payment or bond prior to the transmittal of the record. The official record shall be considered by the court without being offered and received in evidence.

(5)(a) The review shall be conducted by the court without a jury de novo on the record of the agency. The court may affirm, reverse, or modify the decision of the agency or remand the case for further proceedings.

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

(ii) The agency shall affirm, modify, or reverse its findings and decision in the case by reason of the additional proceedings and shall file the decision following remand with the reviewing court. The agency shall serve a copy of the decision following remand upon all parties to the district court proceedings. The agency decision following remand shall become final unless a petition for further review is filed with the reviewing court within thirty days after the decision following remand being filed with the district court. The party filing the petition for further review shall serve a copy of the petition for further review upon all parties to the district court proceeding in accordance with the rules of pleading in civil actions promulgated by the Supreme Court pursuant to section 25-801.01 within thirty days after the petition for further review is filed. Within thirty days after service of the petition for further review or within such further time as the court for good cause shown may allow, the agency shall prepare and transmit to the court a certified copy of the official record of the additional proceedings had before the agency following remand.

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

**Source:**Laws 1963, c. 531, § 1, p. 1664; Laws 1969, c. 838, § 2, p. 3162; Laws 1983, LB 447, § 102; Laws 1987, LB 253, § 19; Laws 1988, LB 352, § 186; Laws 1989, LB 213, § 1; Laws 1997, LB 165, § 5; Laws 2006, LB 1115, § 42; Laws 2008, LB1014, § 69; Laws 2009, LB35, § 32; Laws 2020, LB889, § 1.

#### **Annotations**

##### **1. Applicability of section**

##### **2. Review by court**

##### **3. Jurisdictional prerequisites**

##### **4. Miscellaneous**

##### **1. Applicability of section**

- An inmate's petition for the reclassification of custody level from medium custody to minimum custody did not involve a "contested case" and was thus not subject to judicial review under the Administrative Procedure Act. *Purdie v. Nebraska Dept. of Corr. Servs.*, 292 Neb. 524, 872 N.W.2d 895 (2016).



- Sections 84-917 to 84-919 govern appeals from rulings of the State Racing Commission. *B.T. Energy Corp. v. Marcus*, 222 Neb. 207, 382 N.W.2d 616 (1986).
- This section covers appeal to district court by the children of a crime victim from a denial of their application to the Nebraska Crime Victim's Reparations Board. *Lambert v. Nebraska Cr. Vict. Rep. Bd.*, 214 Neb. 817, 336 N.W.2d 320 (1983).
- Review of orders of the Department of Public Welfare is governed by the criteria of this section. *Gosney v. Department of Public Welfare*, 206 Neb. 137, 291 N.W.2d 708 (1980).
- The State Board of Education hearing appeals under section 79-1103.05 acts in a quasi-judicial capacity and, therefore either party may appeal its decision under this section or under section 25-1901. *Richardson v. Board of Education*, 206 Neb. 18, 290 N.W.2d 803 (1980).
- Section 71-1,132.34 provides a specific method of appeal to the district court for the Board of Nursing and whether this section affords an alternative method is not decided. *Scott v. State ex rel. Board of Nursing*, 196 Neb. 681, 244 N.W.2d 683 (1976).
- This section governs appeal by licensee from order of suspension by the Nebraska Liquor Control Commission. *Happy Hour, Inc. v. Nebraska Liquor Control Commission*, 186 Neb. 533, 184 N.W.2d 630 (1971).
- This section governs proper venue of an appeal from a license suspension ordered by the Nebraska Liquor Control Commission. *The Flamingo, Inc. v. Nebraska Liquor Control Commission*, 185 Neb. 22, 173 N.W.2d 369 (1969).
- Judgments rendered by an administrative agency acting in a quasi-judicial capacity are not subject to collateral attack in a separate action in county court challenging the validity of the underlying claim, but must be properly appealed pursuant to this section. *In re Guardianship of Gaube*, 14 Neb. App. 259, 707 N.W.2d 16 (2005).

## **2. Review by court**

- When reviewing an order of the district court under the Administrative Procedure Act for errors appearing on the record, the inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. Even under the ordinary standard of review for judicial review actions under the Administrative Procedure Act, an appellate court will not substitute its factual findings for those of the district court where competent evidence supports the district court's findings. An appellate court will not impose a less deferential standard for a district court's factual findings on plain error review than under ordinary standard of review for judicial review actions under the Administrative Procedure Act. *Swicord v. Police Stds. Adv. Council*, 309 Neb. 43, 958 N.W.2d 388 (2021).
- A proceeding in district court, pursuant to the Administrative Procedure Act, for review of a decision by an administrative agency is not an "appeal" in the strict sense of the term, meaning the power and authority conferred upon a superior court to reexamine and redetermine causes tried in inferior courts, but, rather, is the institution of a suit to obtain judicial branch review of a nonjudicial branch decision. *Kozal v. Nebraska Liquor Control Comm.*, 297 Neb. 938, 902 N.W.2d 147 (2017).
- In a review de novo on the record, a district court is not limited to a review subject to the narrow criteria found in subdivision (6)(a) of this section, but is required to make independent factual determinations based upon the record and reach its own independent conclusions with respect to the matters at issue. *Medicine Creek v. Middle Republican NRD*, 296 Neb. 1, 892 N.W.2d 74 (2017).
- Upon an appeal from an order of a natural resources district, a district court reviews the natural resources district's decision de novo on the record of the natural resources district. *Medicine Creek v. Middle Republican NRD*, 296 Neb. 1, 892 N.W.2d 74 (2017).
- An issue that has not been presented in a petition for judicial review has not been properly preserved for consideration by the district court. *Skaggs v. Nebraska State Patrol*, 282 Neb. 154, 804 N.W.2d 611 (2011).
- Subsection (5)(b)(i) of this section permits the district court to review only matters which were not properly raised in the proceedings before an administrative agency. *Skaggs v. Nebraska State Patrol*, 282 Neb. 154, 804 N.W.2d 611 (2011).
- In accordance with subsection (5)(a) of this section, when reviewing a final decision of an administrative agency in a contested case under the Administrative Procedure Act, a court may not take judicial notice of an adjudicative fact that was not presented to the agency, because the taking of such evidence would impermissibly expand the court's statutory scope of review de novo on the record of the agency. *Betterman v. Department of Motor Vehicles*, 273 Neb. 178, 728 N.W.2d 570 (2007).
- Under subsection (6)(b) of this section, a district court has discretion concerning the disposition of an appeal from an administrative agency. *Nebraska Liq. Distrib. v. Nebraska Liq. Cont. Comm.*, 272 Neb. 390, 722 N.W.2d 10 (2006).

- It constitutes plain error for a district court to conduct a review under subsection (6)(a) of this section where the proceedings for review of an administrative hearing are initiated after July 1, 1989. *Zwygart v. State*, 270 Neb. 41, 699 N.W.2d 362 (2005).
- An application to the Nebraska Quality Jobs Board is not a "contested case" requiring review pursuant to this section. *Wasikowski v. Nebraska Quality Jobs Bd.*, 264 Neb. 403, 648 N.W.2d 756 (2002).
- Pursuant to subsection (5)(a) of this section, the standard of review that courts without a jury must apply to clearly contested cases that are quasi-judicial in nature filed on or after July 1, 1989, is de novo on the record of the agency. *Langvardt v. Horton*, 254 Neb. 878, 581 N.W.2d 60 (1998).
- Pursuant to subsection (5) of this section, the district court's review of a decision of the Department of Insurance is de novo on the record. *Norwest Corp. v. State, Dept. of Insurance*, 253 Neb. 574, 571 N.W.2d 628 (1997).
- Pursuant to subsection (5)(a) of this section, in reviewing a final decision of an administrative agency in a contested case under the Administrative Procedure Act, a court may not take judicial notice of an adjudicative fact which was not presented to the agency because the taking of such evidence would impermissibly expand the court's statutory scope of review "de novo on the record of the agency". *Wolgammott v. Abramson*, 253 Neb. 350, 570 N.W.2d 818 (1997).
- Pursuant to this section, a district court is required to conduct a true de novo review of agency determinations on the record of the agency. *Slack Nsg. Home v. Department of Soc. Servs.*, 247 Neb. 452, 528 N.W.2d 285 (1995).
- Where the proceedings for review of an administrative hearing are initiated in the district court after July 1, 1989, the review will be conducted by the district court "without a jury de novo on the record of the agency" as required by this section. *Styskal v. Wright*, 246 Neb. 513, 519 N.W.2d 543 (1994).
- Under subsection (5)(a) of this section, an appeal to the district court of a decision by the State Personnel Board is reviewed on the record of the agency if the petition was filed in district court before July 1, 1989. *Nebraska Dept. of Correctional Servs. v. Hansen*, 238 Neb. 233, 470 N.W.2d 170 (1991).
- In an appeal from an administrative agency taken under this section of the Administrative Procedure Act, the district court's review is limited to determining whether the agency's action is (1) in violation of constitutional provisions, (2) in excess of the statutory authority or jurisdiction of the agency, (3) made upon unlawful procedure, (4) affected by other errors of law, (5) unsupported by competent, material, and substantial evidence in view of the entire record as made on review, or (6) arbitrary or capricious; however, the Nebraska Supreme Court reviews the district court's decision de novo on the record made before the agency. *Meier v. State*, 227 Neb. 376, 417 N.W.2d 771 (1988).
- Although the Supreme Court reviews an agency's decision under the Administrative Procedure Act de novo on the record, a district court's standard of review is prescribed by subsection (6) of this section. *Haeffner v. State*, 220 Neb. 560, 371 N.W.2d 658 (1985).
- Under this section, where a judicial review is made of the decision of an administrative agency, the reviewing court is authorized to consider the validity of the agency's criterion in order to assess whether the decision was within the statutory authority or jurisdiction of the agency. *Beatrice Manor v. Department of Health*, 219 Neb. 141, 362 N.W.2d 45 (1985).
- Review under sections 84-917 to 84-919 by the Supreme Court is limited to a review of the record created before the administrative agency in question. *Adams Central School Dist. v. Deist*, 214 Neb. 307, 334 N.W.2d 775 (1983).
- The district court review of order of State Personnel Board is limited to record of agency. Therefore, objections to appellant's requests in district court for discovery were properly sustained. *Devine v. Dept. of Public Institutions*, 211 Neb. 113, 317 N.W.2d 783 (1982).
- In appeal from the Liquor Control Commission, the Supreme Court determines only whether findings of the commission are supported by substantial evidence and whether district court applied the proper statutory criteria. *The 20's, Inc. v. Nebraska Liquor Control Commission*, 190 Neb. 761, 212 N.W.2d 344 (1973).
- The power of courts to review the action of a professional board of examiners in its refusal to recommend reinstatement of a revoked license is not decided, but if such power exists, it is limited to a determination based on whether or not the board's action was arbitrary or capricious. *Coil v. Department of Health*, 189 Neb. 606, 204 N.W.2d 167 (1973).
- Review under the Administrative Procedure Act is on the record of the agency only. *Harnett v. City of Omaha*, 188 Neb. 449, 197 N.W.2d 375 (1972).

- Under subdivision (5)(b) of this section, the district court has the discretion to remand a cause to the agency for resolution of issues that were not raised before the agency if the court determines that the interest of justice would be served by resolution of such issues. *Barrios v. Commissioner of Labor*, 25 Neb. App. 835, 914 N.W.2d 468 (2018).
- An assignment of error concerning a witness's testimony and evidence was not considered on appeal, because the complaining party did not raise or discuss the issue in its petition for review filed with the district court. *Nebraska Pub. Advocate v. Nebraska Pub. Serv. Comm.*, 19 Neb. App. 596, 815 N.W.2d 192 (2012).
- In a true de novo review, the district court's decision is to be made independently of the agency's prior disposition and the district court is not required to give deference to the findings of fact and the decision of the agency hearing officer. *DeBoer v. Nebraska Dept. of Motor Vehicles*, 16 Neb. App. 760, 751 N.W.2d 651 (2008).
- In an appeal under subsection (5)(a) of this section, the district court conducts a de novo review of the record of the agency. *Clark v. Tyrrell*, 16 Neb. App. 692, 750 N.W.2d 364 (2008).
- A district court conducting a review under subsection (5)(a) of this section cannot base a reversal of the agency decision under review on grounds not raised in the petition for review. *Moore v. Nebraska Dept. of Corr. Servs. Appeals Bd.*, 8 Neb. App. 69, 589 N.W.2d 861 (1999).

### **3. Jurisdictional prerequisites**

- Pursuant to subdivision (2)(a) of this section, service is required within 30 days of necessary parties to an agency action—including nongovernmental parties of record and, if the agency is a party of record, the agency through the Attorney General—in order to initiate a judicial review, and such service is an issue of subject matter jurisdiction. *Omaha Expo. & Racing v. Nebraska State Racing Comm.*, 307 Neb. 172, 949 N.W.2d 183 (2020).
- The requirement under this section that a petitioner make all "parties of record" in the agency proceeding parties to the proceeding for review is necessary to confer subject matter jurisdiction on the district court. *Kozal v. Nebraska Liquor Control Comm.*, 297 Neb. 938, 902 N.W.2d 147 (2017).
- For a district court to have jurisdiction over an administrative agency's decision, that decision must be final. *Big John's Billiards, Inc. v. Balka*, 254 Neb. 528, 577 N.W.2d 294 (1998).
- On an appeal from an adverse decision of an administrative agency, subsection (2)(a) of this section requires that a summons be served within 30 days of the filing of a petition for review as a prerequisite to the exercise by the district court of its subject matter jurisdiction. *Concordia Teachers College v. Neb. Dept. of Labor*, 252 Neb. 504, 563 N.W.2d 345 (1997).
- Under subsection (2)(a) of this section, if the agency whose decision is appealed from is not a party of record, it is a jurisdictional prerequisite that the petitioner serve a copy of the petition and a request for preparation of the official record upon the agency within 30 days of the filing of the petition. *Payne v. Nebraska Dept. of Corr. Servs.*, 249 Neb. 150, 542 N.W.2d 694 (1996).
- The filing of the petition and the service of summons are the two actions that are necessary to establish jurisdiction pursuant to the Administrative Procedure Act. The filing of the transcript is not jurisdictional. *James v. Harvey*, 246 Neb. 329, 518 N.W.2d 150 (1994).
- For district court to obtain jurisdiction under this section, petition must be filed and summonses must be issued during the appeal period. *Norris P.P. Dist. v. State ex rel. Jones*, 183 Neb. 489, 161 N.W.2d 869 (1968).
- The district court lacked subject matter jurisdiction because the petitioner failed to timely include as a party defendant the Department of Correctional Services, a necessary party under the Administrative Procedure Act. *Tlamka v. Parry*, 16 Neb. App. 793, 751 N.W.2d 664 (2008).
- If petition for review filed pursuant to this section is not timely, district court does not have jurisdiction to consider merits and can properly dismiss petition. *Roubal v. State*, 14 Neb. App. 554, 710 N.W.2d 359 (2006).
- The filing of the petition and the service of summons pursuant to this section are the two actions necessary to establish the jurisdiction of the district court to review the final decision of an administrative agency. *McLaughlin v. Jefferson Cty. Bd. of Equal.*, 5 Neb. App. 781, 567 N.W.2d 794 (1997).
- Pursuant to subsection (2)(a) of this section, timely service of a request for the preparation of the official record upon the agency is mandatory to confer jurisdiction on the district court. *Payne v. Nebraska Dept. of Corr. Servs.*, 3 Neb. App. 969, 536 N.W.2d 656 (1995).

### **4. Miscellaneous**

- When evaluating whether an agency is a neutral fact finder, appellate courts look to the agency's actions as to the dispute at issue, the statutory basis upon which the agency was acting, and the participation of the agency in the matters surrounding the dispute. *Omaha Expo. & Racing v. Nebraska State Racing Comm.*, 307 Neb. 172, 949 N.W.2d 183 (2020).
- Service on nongovernmental entities under subdivision (2)(a)(i) of this section is required within 30 days of the filing of the petition. *Candyland, LLC v. Nebraska Liquor Control Comm.*, 306 Neb. 169, 944 N.W.2d 740 (2020).
- The Administrative Procedure Act does not limit a district court's general original jurisdiction. *Webb v. Nebraska Dept. of Health & Human Servs.*, 301 Neb. 810, 920 N.W.2d 268 (2018).
- Because the Administrative Procedure Act is a procedural statute that applies to a variety of agencies and types of agency proceedings, determining which parties qualify, for purposes of this section, as "parties of record" requires looking at the nature of the administrative proceeding under review. *Kozal v. Nebraska Liquor Control Comm.*, 297 Neb. 938, 902 N.W.2d 147 (2017).
- A party is "aggrieved" within the meaning of subsection (1) of this section if it has standing to invoke a court's jurisdiction—that is, if it has a legal or equitable right, title, or interest in the subject matter of the controversy. *Central Neb. Pub. Power Dist. v. North Platte NRD*, 280 Neb. 533, 788 N.W.2d 252 (2010).
- Any aggrieved party seeking judicial review of an administrative decision under the Administrative Procedure Act must file a petition within 30 days after service of that decision, pursuant to this section. The Administrative Procedure Act makes no mention of an extended or different deadline for filing a cross-petition in the district court. *Ahmann v. Correctional Ctr. Lincoln*, 276 Neb. 590, 755 N.W.2d 608 (2008).
- Where the Public Service Commission has the authority to set conditions on certifications, resolve disputes, investigate complaints, issue orders, and enforce orders, it is not a neutral factfinding body. In *re Application of Metropolitan Util. Dist.*, 270 Neb. 494, 704 N.W.2d 237 (2005).
- Neither section 60-6,208 (transferred to section 60-498.04) nor subsection (2)(a) of this section provides that its jurisdictional provisions are exclusive. *Reiter v. Wimes*, 263 Neb. 277, 640 N.W.2d 19 (2002).
- Subsection (5)(a) of this section does not violate the separation of powers doctrine, and *Scott v. State ex rel. Board of Nursing*, 196 Neb. 681, 244 N.W.2d 683 (1976), is overruled insofar as it implies that this statute violates the separation of powers doctrine. *Langvardt v. Horton*, 254 Neb. 878, 581 N.W.2d 60 (1998).
- Subsection (3) of this section provides that upon the filing of a petition for review, an agency may order a stay or the court may order a stay. Such stay may only be granted, however, when the court finds that (1) the applicant is likely to prevail when the court finally disposes of the matter, (2) without relief, the appellant will suffer irreparable injuries, (3) the grant of relief to the applicant will not substantially harm other parties to the proceedings, and (4) the threat to the public health, safety, or welfare relied upon by the agency is not sufficiently serious to justify the agency's action in the circumstances. Under subsection (5)(a) of this section, when a petition instituting proceedings for review under the Administrative Procedure Act is filed in the district court on or after July 1, 1989, the review shall be conducted by the court without a jury *de novo* on the record of the agency. *Miller v. Horton*, 253 Neb. 1009, 574 N.W.2d 112 (1998).
- Subsection (5)(b) of this section does not empower a district court to retain jurisdiction over an action remanded by the court to an administrative agency for a new hearing. *Concordia Teachers College v. Neb. Dept. of Labor*, 252 Neb. 504, 563 N.W.2d 345 (1997).
- The phrase "county where the action is taken" in subsection (2)(a) of this section refers to the site of the first adjudicated hearing of a disputed claim. *Essman v. Nebraska Law Enforcement Training Ctr.*, 252 Neb. 347, 562 N.W.2d 355 (1997).
- The phrase "action taken," as used in subsection (2) of this section, is defined by the site of the first adjudicated hearing of a disputed claim. *Metro Renovation v. State*, 249 Neb. 337, 543 N.W.2d 715 (1996).
- This section makes no provision for reconsideration of the State Racing Commission's final decision so as to toll the thirty-day appeal time within which appellants had the opportunity to avail themselves of a judicial challenge of the commission's decision. *B.T. Energy Corp. v. Marcus*, 222 Neb. 207, 382 N.W.2d 616 (1986).
- The Tax Commissioner is not a person aggrieved and therefore does not have the right to appeal a decision of the State Board of Equalization and Assessment. *Karnes v. Wilkinson Mfg.*, 220 Neb. 150, 368 N.W.2d 788 (1985).

- Filing of a transcript, which is the duty of the state agency, is not jurisdictional for appeal under this section, and the appellant is not entitled to reversal of the agency decision merely because of the agency's failure to timely file a proper transcript, and the district court may order a supplemental transcript. Where appeals are taken under this section, the certified transcript as prepared by the administrative agency and transmitted to the court is considered to be before the court and need not be formally offered into evidence by either party. *Maurer v. Weaver*, 213 Neb. 157, 328 N.W.2d 747 (1982).
- An appeal from an order of the director of the Department of Motor Vehicles is commenced or perfected by filing a petition within thirty days of the service of the final decision of the director and causing a summons to issue on the petition and be served within six months of such filing. Making an administrative agency a party defendant in an appeal under the provisions of § 60-420 or subsection (2) of this section is not an action against the state within the meaning of § 24-319 et seq. so as to require service of summons on the Governor and Attorney General. *Leach v. Dept. of Motor Vehicles*, 213 Neb. 103, 327 N.W.2d 615 (1982).
- On appeal from State Board of Education order that county board make tuition payments for Nebraska school children attending school in South Dakota, the district court having proper jurisdiction is the one in which the state board took the action in question; that court being Lancaster County District Court. *Bd. of Ed. of Keya Paha County v. State Board of Education*, 212 Neb. 448, 323 N.W.2d 89 (1982).
- If, after a district court review, an administrative agency's decision which had fallen into legal error is remanded to the agency, new evidence can be received by the agency if it is necessary, in the agency's judgment, to discharge its duty. *Phelps County Savings Co. v. Dept. of Banking & Finance*, 211 Neb. 683, 320 N.W.2d 99 (1982).
- This section, in 1978, did not provide a right of appeal from a declaratory ruling of an administrative agency issued pursuant to section 84-912, R.R.S.1943. But see 1979 amendment to section 84-912, which provides such appeal. *Gretna Public School v. State Board of Education*, 201 Neb. 769, 272 N.W.2d 268 (1978).
- Orders of the Department of Public Welfare made pursuant to section 68-1016, may be reviewed by petition in error as well as by appeal. *Downer v. Ihms*, 192 Neb. 594, 223 N.W.2d 148 (1974).
- Prior to hearing before Director of Banking, protestants requested that rules of evidence applicable to the district court be made binding and district court on appeal made findings in accordance with applicable statute and affirmed order of the director. *Gateway Bank v. Department of Banking*, 192 Neb. 109, 219 N.W.2d 211 (1974).
- Where errors assigned require review of evidence they cannot be considered on either appeal or error proceedings in absence of a bill of exceptions. *Lanc v. Douglas County Welfare Administration*, 189 Neb. 651, 204 N.W.2d 387 (1973).
- Under subdivision (5)(b) of this section, where the district court, sitting as an intermediate appellate court for an agency decision, reverses a judgment in favor of a party and remands the matter for further proceedings, that party's substantial right has been affected, so as to make that order final for purposes of appeal. *Barrios v. Commissioner of Labor*, 25 Neb. App. 835, 914 N.W.2d 468 (2018).
- The Department of Banking and Finance is statutorily authorized to require payment for the costs of preparing the official record from the party seeking review of its decision prior to transmitting the record. *JHK, Inc. v. Nebraska Dept. of Banking & Finance*, 17 Neb. App. 186, 757 N.W.2d 515 (2008).
- Pursuant to subsection (2)(a) of this section, the phrase "county where the action is taken" is the site of the first adjudicated hearing of a disputed claim. *Yelli v. Neth*, 16 Neb. App. 639, 747 N.W.2d 459 (2008).
- The rebuttable presumption of validity regarding actions of administrative agencies which results in the burden of proof resting on the party challenging the agency's actions does not apply in cases involving the termination of the employment of a public employee. *Trackwell v. Nebraska Dept. of Admin. Servs.*, 8 Neb. App. 233, 591 N.W.2d 95 (1999).
- In order to perfect an appeal under the Administrative Procedure Act, the party instituting the proceedings for review must file a petition in the district court for the county where the action is taken within 30 days after the service of the final decision by the agency, and cause summons to be served within 30 days of the filing of the petition. *Northern States Beef v. Stennis*, 2 Neb. App. 340, 509 N.W.2d 656 (1993).

#### **84-918. District court decision; appeal.**

(1) An aggrieved party may secure a review of any judgment rendered or final order made by the district court under the Administrative Procedure Act by appeal to the Court of Appeals.

(2) When the petition instituting proceedings for review was filed in the district court before July 1, 1989, the appeal shall be taken in the manner provided by law for appeals in civil cases and shall be heard de novo on the record.

(3) When the petition instituting proceedings for review is filed in the district court on or after July 1, 1989, the appeal shall be taken in the manner provided by law for appeals in civil cases. The judgment rendered or final order made by the district court may be reversed, vacated, or modified for errors appearing on the record.

**Source:**Laws 1963, c. 531, § 2, p. 1665; Laws 1987, LB 253, § 20; Laws 1989, LB 213, § 2; Laws 1991, LB 732, § 158.

## **Annotations**

### **1. Appeal from district court**

### **2. Appeal from administrative agency**

### **3. Miscellaneous**

#### **1. Appeal from district court**

- An appellate court lacks jurisdiction to review a judgment rendered or a final order made by the district court under this section if the district court lacked jurisdiction under section 84-917 to review the underlying petition. *Swicord v. Police Stds. Adv. Council*, 314 Neb. 816, 993 N.W.2d 327 (2023).
- A judgment or final order rendered by a district court in a judicial review under the Administrative Procedure Act may be reversed, vacated, or modified by an appellate court for errors appearing on the record. When reviewing such an order, the inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. *Parker v. State ex rel. Bruning*, 276 Neb. 359, 753 N.W.2d 843 (2008).
- On an appeal under the Administrative Procedure Act, an appellate court reviews the judgment of the district court for errors appearing on the record and will not substitute its factual findings for those of the district court where competent evidence supports those findings. When reviewing an order of a district court under the Administrative Procedure Act for errors appearing on the record, the inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. *Inner Harbour Hospitals v. State*, 251 Neb. 793, 559 N.W.2d 487 (1997).
- Appeals from a district court decision involving petitions filed on or after July 1, 1989, are reviewed for errors appearing on the record. *Slack Nsg. Home v. Department of Soc. Servs.*, 247 Neb. 452, 528 N.W.2d 285 (1995).
- Under subsection (2) of this section, the standard of review on appeal from a declaratory judgment action filed under the Administrative Procedure Act in the district court prior to July 1, 1989, is de novo on the record. *Loewenstein v. State*, 244 Neb. 82, 504 N.W.2d 800 (1993).
- An appellate court, in reviewing a judgment of the district court for errors appearing on the record, will not substitute its factual findings for those of the district court where competent evidence supports those findings. *Davis v. Wright*, 243 Neb. 931, 503 N.W.2d 814 (1993).
- Appeals from the district court under the Administrative Procedure Act to the Supreme Court are reviewed de novo on the record if the district court proceeding was commenced prior to July 1, 1989. *Caudill v. Surgical Concepts, Inc.*, 236 Neb. 266, 460 N.W.2d 662 (1990).
- Supreme Court reviews de novo on the record an appeal from the district court's review of a decision of the Nebraska Equal Opportunity Commission. *Father Flanagan's Boys' Home v. Goerke*, 224 Neb. 731, 401 N.W.2d 461 (1987).
- On appeal of review by the district court of an order of the Nebraska Equal Opportunity Commission, the Supreme Court will not disturb the district court's findings if they are supported by substantial evidence. *Zalkins Peerless Co. v. Nebraska Equal Opp. Comm.*, 217 Neb. 289, 348 N.W.2d 846 (1984).
- Where district court had only cold record before it, the rule pertaining to Supreme Court's consideration of the opportunity of the trial court in equity to observe the witnesses is inapplicable. *C & L Co. v. Nebraska Liquor Control Commission*, 190 Neb. 91, 206 N.W.2d 49 (1973).
- A final order rendered by a district court in a judicial review pursuant to the Administrative Procedure Act may be reversed, vacated, or modified by an appellate court for errors appearing on the record. *Boruch v. Nebraska Dept. of Health and Human Servs.*, 11 Neb. App. 713, 659 N.W.2d 848 (2003).

#### **2. Appeal from administrative agency**

- The appropriate standard of review for the Supreme Court in an appeal from an administrative agency's decision is found in this section, which prescribes a review of an agency's decision de novo on the record without the limitation imposed on the district court under former section 84-917(6)(e) and (6)(f). *Golden Five v. Department of Soc. Serv.*, 229 Neb. 148, 425 N.W.2d 865 (1988).
- The Supreme Court's review of an administrative agency's decision is de novo on the record; as such, the court makes independent findings of fact without reference to those made by the agency whose action is being reviewed. *Dieter v. State*, 228 Neb. 368, 422 N.W.2d 560 (1988); *Department of Health v. Grand Island Health Care*, 223 Neb. 587, 391 N.W.2d 582 (1986).

- The Supreme Court reviews an administrative agency's decision de novo on the record. *Department of Health v. Lutheran Hosp. & Homes Soc.*, 227 Neb. 116, 416 N.W.2d 222 (1987); *Zybach v. State*, 226 Neb. 396, 411 N.W.2d 627 (1987); *City of Omaha v. Omaha Police Union Local 101*, 222 Neb. 197, 382 N.W.2d 613 (1986).
- The Supreme Court's review of an agency's decision under the Administrative Procedure Act is de novo on the record. *Haeffner v. State*, 220 Neb. 560, 371 N.W.2d 658 (1985).
- In appeal from the Liquor Control Commission, the Supreme Court determines only whether findings of the commission are supported by substantial evidence and whether district court applied the proper statutory criteria. *The 20's, Inc. v. Nebraska Liquor Control Commission*, 190 Neb. 761, 212 N.W.2d 344 (1973).

### **3. Miscellaneous**

- In conducting its de novo review under the provisions of this section, the Nebraska Supreme Court is required to make independent findings of fact without reference to those made by the tribunal from which the appeal was taken. *Meier v. State*, 227 Neb. 376, 417 N.W.2d 771 (1988).

#### **84-919. Act; exclusive means of judicial review.**

Except as otherwise provided by law, the Administrative Procedure Act establishes the exclusive means of judicial review of a final decision of any agency in a contested case.

**Source:**Laws 1963, c. 531, § 3, p. 1666; Laws 1987, LB 253, § 21; Laws 1988, LB 352, § 187.

#### **84-919.01. Negotiated Rulemaking Act; use by agency.**

Prior to the formal rulemaking procedure of section 84-907, agencies may use the procedures of the Negotiated Rulemaking Act to permit the direct participation of affected persons in the development of proposed rules and regulations. Negotiated rulemaking may be used to resolve controversial issues prior to the formal rulemaking of the Administrative Procedure Act. To be effective, such proposed rules and regulations shall be adopted pursuant to the Administrative Procedure Act in the form proposed by the negotiated rulemaking committee or as amended by the agency.

**Source:**Laws 1994, LB 446, § 37.

#### **Cross References**

- **Negotiated Rulemaking Act**, see section 84-921.

#### **84-919.02. Contested case; appeal; court review; de novo; deferral.**

Any court reviewing an appeal from a contested case shall interpret the statute or rule or regulation de novo on the record and shall not defer to the agency's interpretation of such statute or rule or regulation.

**Source:**Laws 2024, LB43, § 13.

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#### **84-919.03. Court on hearing officers; state agency actions.**

In actions brought by or against state agencies, after applying all customary tools of interpretation of a statute or rule or regulation, the court or hearing officer shall resolve any remaining doubt in favor of a reasonable interpretation which is consistent with an individual's fundamental constitutional rights.

**Source:**Laws 2024, LB43, § 14.

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#### **84-920. Act, how cited.**

Sections 84-901 to 84-920, the Occupational Board Reform Act, and the Personal Privacy Protection Act shall be known and may be cited as the Administrative Procedure Act.

**Source:**Laws 1987, LB 253, § 22; Laws 1994, LB 446, § 38; Laws 1995, LB 490, § 191; Laws 2005, LB 373, § 8; Laws 2011, LB617, § 5; Laws 2016, LB867, § 16; Laws 2018, LB299, § 20; Laws 2024, LB43, § 16.

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#### **Cross References**

- **Occupational Board Reform Act**, see section 84-933.
- **Personal Privacy Protection Act**, see section 20-801.