

LEGISLATIVE BILL 209

Approved by the Governor May 12, 2017

Introduced by Watermeier, 1.

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

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

84-901 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.

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

84-901.03 (1) Upon the issuance of a guidance document, an agency shall make such document available at one public location and on the agency's web site. The agency shall also publish on its web site 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 ~~Executive Board of the Legislative Council~~ 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 web site.

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 Original sections 84-901 and 84-901.03, Revised Statutes Cumulative Supplement, 2016, are repealed.