

AMENDMENTS TO LB461

(Amendments to E and R amendments, ER 39)

Introduced by Wayne, 13.

1 1. Insert the following new sections:

2 Sec. 48. Section 84-901, Revised Statutes Cumulative Supplement,
3 2022, is amended to read:

4 84-901 For purposes of the Administrative Procedure Act:

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

12 (2) Rule or regulation shall mean any standard of general
13 application adopted by an agency in accordance with the authority
14 conferred by statute and includes, but is not limited to, the amendment
15 or repeal of a rule or regulation. Rule or regulation shall not include
16 (a) internal procedural documents which provide guidance to staff on
17 agency organization and operations, lacking the force of law, and not
18 relied upon to bind the public, (b) guidance documents as issued by an
19 agency in accordance with section 84-901.03, and (c) forms and
20 instructions developed by an agency. For purposes of the act, every
21 standard which prescribes a penalty shall be presumed to have general
22 applicability and any standard affecting private rights, private
23 interests, or procedures available to the public is presumed to be relied
24 upon to bind the public. Nothing in this section shall be interpreted to
25 require an agency to adopt and promulgate rules and regulations when
26 statute authorizes but does not require it;

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

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

10 (a) Communications which do not pertain to the merits of a contested
11 case;

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

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

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

16 (5) Guidance document shall mean any statement developed by an
17 agency which lacks the force of law but provides information or direction
18 of general application to the public to interpret or implement statutes
19 or such agency's rules or regulations. A guidance document is binding on
20 an agency until amended by the agency. A guidance document shall not give
21 rise to any legal right or duty or be treated as authority for any
22 standard, requirement, or policy, except that if the agency does not
23 follow such guidance document a person aggrieved by such noncompliance
24 may bring an action for injunctive relief or for declaratory judgment
25 under the Uniform Declaratory Judgments Act; and ~~Internal procedural~~
26 ~~documents which provide guidance to staff on agency organization and~~
27 ~~operations shall not be considered guidance documents; and~~

28 (6) Hearing officer shall mean the person or persons conducting a
29 hearing, contested case, or other proceeding pursuant to the act, whether
30 designated as the presiding officer, administrative law judge, or some
31 other title designation.

1 Sec. 49. Section 84-901.03, Revised Statutes Cumulative Supplement,
2 2022, is amended to read:

3 84-901.03 (1) Upon the issuance of a guidance document, an agency
4 shall make such document available at one public location and on the
5 agency's website. The agency shall also publish on its website an index
6 summarizing the subject matter of all currently applicable rules and
7 regulations and guidance documents. Such agency shall provide the index
8 electronically to the Clerk of the Legislature by December 31 of each
9 year.

10 (2) An agency shall ensure that the first page of each guidance
11 document includes the following notice: This guidance document is
12 advisory in nature but is binding on an agency until amended by such
13 agency. A guidance document ~~does not include internal procedural~~
14 ~~documents that only affect the internal operations of the agency and~~ does
15 not impose additional requirements or penalties on regulated parties or
16 include confidential information or rules and regulations made in
17 accordance with the Administrative Procedure Act. If you believe that
18 this guidance document imposes additional requirements or penalties on
19 regulated parties, you may request a review of the document.

20 (3) A person may request in writing that an agency revise or repeal
21 a guidance document or convert a guidance document into a rule or
22 regulation. No later than sixty calendar days after the agency receives
23 such a request, the agency shall advise the requestor in writing of its
24 decision to (a) revise or repeal the guidance document, (b) initiate a
25 proceeding to consider a revision or repeal of a guidance document, (c)
26 initiate the rulemaking or regulationmaking process to convert the
27 guidance document into a rule or regulation, or (d) deny the request and
28 state the reason for the denial.

29 (4) All decisions made by an agency under this section shall be made
30 available at one public location and on the agency's website.

31 2. Renumber the remaining sections, correct internal references, and

1 correct the repealer accordingly.