

Senator Suzanne Geist
Committee Chair
P.O. Box 94604, State Capitol
Lincoln, NE 68509
402-471-2731

Legislative Performance Audit Committee

Legislative Audit Office
Martha Carter, Legislative Auditor
P.O. Box 94604, State Capitol
Lincoln, NE 68509
402-471-1282

Memorandum

To: Members of the Legislature
From: Legislative Audit Office
Date: August 27, 2021
Re: Overdue Regulations Report

Overview

Under the Nebraska Administrative Procedure Act (APA), if the Legislature passes a bill requiring an administrative agency to promulgate regulations the agency must promulgate the regulation within two years of the bill going into effect. Agencies are required to report the status of these regulations to the Legislative Audit Office (LAO) by July 1 each year. Additionally, if mandatory regulations are not promulgated within three years of a bill's effective date, the law requires the relevant legislative standing committee to hold a public hearing.

2021 Report

We received reports from 66 agencies. Three agencies, the Attorney General, the Nebraska Brand Committee, and the Dairy Industry Development Board, did not submit a report as required by law.

Of those agencies who did report, only three reported regulations that may be overdue. The Department of Correctional Services, the Department of Education, and the Public Service Commission all reported regulations required by bills passed in 2019 or earlier that have not been promulgated. Those reports are attached to this memo. As per LAO practice, the reports were forwarded to Committee Counsels and Committee chairpersons of the relevant standing committees. We did not verify whether the regulations were in fact mandatory or overdue.

**Legislative Performance Audit Committee
2021 Regulations Report**

1. Agency: Education
2. Were any bills passed **in 2021** that will require your agency to promulgate regulations?
 - Yes
 - No (If no, go to question 3.)

If yes, what is the bill number and subject of the regulation?

Year Passed	Bill Number	Subject of Regulation
2021	LB 389	Military - Teacher Certification/endorsement (Rule 21)
2021	LB 629	Safety Seizure protocol in schools (Rule 59)
2021		
2021		
2021		

3. Were any bills passed **in 2020** that required your agency to promulgate regulations?
 - Yes
 - No (If no, go to question 5.)

If yes, what is the bill number, effective date of the bill, public hearing date, and regulation status?

Year Passed	Bill Number	Subject of Regulation	Effective Date of Bill	Date of Public Hearing	Status of Regulation
2020					
2020					
2020					
2020					

2020					
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4. Did any of the bills passed **in 2020** have an appropriation?

- Yes
- No (If no, go to question 5.)

If yes, how are the funds being used while the promulgation process takes place?

Year Passed	Bill Number	Appropriation Status
2020		
2020		
2020		
2020		
2020		

5. Does your agency have any regulations required by bills passed **in 2019 or any year before 2019** that have not yet gone into effect?

- Yes
- No (If no, go to question 8.)

If yes, what is the bill number, year passed, effective date of the bill, public hearing date, and regulation status?

Year Passed	Bill Number	Subject of Regulation	Effective Date of Bill	Date of Public Hearing	Status of Regulation
2019	LB 399	Social Studies/Character Ed (Rule 10)			Revisions to Approval, Accreditation, and Accountability rules is underway with public input, and expected hearing drafts of those rules completed by the end of calendar year
2019	LB 675	Audits, Accounting, Finance (Rules 1, 2, 8)		Revisions to Rules 1 and 2, June 1, 2021	To AGO for approval

6. For any bill your agency listed in question 5, please explain why the regulation has not been promulgated. If an explanation was provided in the question five table, simply write “see above explanation”.

Year Passed	Bill Number	Explanation for Timeframe of Promulgation
		See above explanation

7. Did any of the bills passed **in 2019 or earlier** have an appropriation?

- Yes
 No

If yes, how has the agency used the funds while the promulgation process takes place?

Year Passed	Bill Number	Appropriation Status

8. Who should our office contact with questions about this report?

Name: Brian Halstead

Email address: brian.halstead@nebraska.gov

Phone number: 402-471-0732

**Legislative Performance Audit Committee
2021 Regulations Report**

1. Agency: Nebraska Public Service Commission
2. Were any bills passed **in 2021** that will require your agency to promulgate regulations?

Yes

No (If no, go to question 3.)

If yes, what is the bill number and subject of the regulation?

Year Passed	Bill Number	Subject of Regulation
2021	LB 338	Nebraska Telecommunications Universal Service Fund Support
2021		
2021		
2021		
2021		

3. Were any bills passed **in 2020** that required your agency to promulgate regulations?

Yes

No (If no, go to question 5.)

If yes, what is the bill number, effective date of the bill, public hearing date, and regulation status?

Year Passed	Bill Number	Subject of Regulation	Effective Date of Bill	Date of Public Hearing	Status of Regulation
2020	734	Transportation	11/13/2020	10/14/2020; 04/27/2021	Approved by Attorney General's Office on 6/8/2021
2020					
2020					
2020					

2020					
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4. Did any of the bills passed **in 2020** have an appropriation?

- Yes
- No (If no, go to question 5.)

If yes, how are the funds being used while the promulgation process takes place?

Year Passed	Bill Number	Appropriation Status
2020	734a	Funds Appropriated to Liquor Control Commission only.
2020		
2020		
2020		
2020		

5. Does your agency have any regulations required by bills passed **in 2019 or any year before 2019** that have not yet gone into effect?

- Yes
- No (If no, go to question 8.)

If yes, what is the bill number, year passed, effective date of the bill, public hearing date, and regulation status?

Year Passed	Bill Number	Subject of Regulation	Effective Date of Bill	Date of Public Hearing	Status of Regulation
2018	993	Technical quality assurance, training, and funding standards governing next generation 911	04/4/2018	Pending	LB 993 calls for the Commission to adopt rules and regulations necessary to carry out the 911 Service System Act. However, LB 993 also created the 911 Service System Advisory Committee which has responsibility to recommend the regulations to be adopted in order to implement Next Generation 911 service in Nebraska.

		service statewide.			<p>As required by the Act, 14 members of the Advisory Committee have been appointed, representing local government and public safety agencies from all regions of the Nebraska. The Advisory Committee has created several working groups that are actively developing recommendations for system design, funding, call center operations, call taker training, and disaster recovery. These recommendations are being developed into the technical and operational standards that will be adopted by the Commission as new rules and regulations to guide Next Generation 911 service in Nebraska. This process may require several years to fully complete.</p> <p>A preliminary draft of proposed regulations has been prepared by Commission staff. The Commission will move forward with adoption of the new rules and regulations as the 911 Service System Advisory Committee completes its recommendations and submits them to the Commission for approval.</p>

6. For any bill your agency listed in question 5, please explain why the regulation has not been promulgated. If an explanation was provided in the question five table, simply write “see above explanation”.

Year Passed	Bill Number	Explanation for Timeframe of Promulgation
		See above explanation

7. Did any of the bills passed **in 2019 or earlier** have an appropriation?

- Yes
 No

If yes, how has the agency used the funds while the promulgation process takes place?

Year Passed	Bill Number	Appropriation Status
2018	993	Cash funds were transferred into the 911Service System Fund to hire staff and consultants as well as to obtain contractual services to implement next generation 911. Funds have been used for that purpose.

8. Who should our office contact with questions about this report?

Name: Shana Knutson

Email address: Shana.Knutson@nebraska.gov

Phone number: 402-471-0232

**Legislative Performance Audit Committee
2021 Regulations Report**

1. Agency: Nebraska Department of Correctional Services
2. Were any bills passed **in 2021** that will require your agency to promulgate regulations?
 - Yes
 - No (If no, go to question 3.)

If yes, what is the bill number and subject of the regulation?

Year Passed	Bill Number	Subject of Regulation
2021		
2021		
2021		
2021		
2021		

3. Were any bills passed **in 2020** that required your agency to promulgate regulations?
 - Yes
 - No (If no, go to question 5.)

If yes, what is the bill number, effective date of the bill, public hearing date, and regulation status?

Year Passed	Bill Number	Subject of Regulation	Effective Date of Bill	Date of Public Hearing	Status of Regulation
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2020					
2020					
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2020					

4. Did any of the bills passed **in 2020** have an appropriation?

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If yes, how are the funds being used while the promulgation process takes place?

Year Passed	Bill Number	Appropriation Status
2020		
2020		
2020		
2020		
2020		

5. Does your agency have any regulations required by bills passed **in 2019 or any year before 2019** that have not yet gone into effect?

Yes

No (If no, go to question 8.)

If yes, what is the bill number, year passed, effective date of the bill, public hearing date, and regulation status?

Year Passed	Bill Number	Subject of Regulation	Effective Date of Bill	Date of Public Hearing	Status of Regulation
2019	686	Restrictive Housing	7/1/2021 & 9/01/2019	Hearing date expected to be scheduled by September 30, 2021	Since March 1, 2020, NDCS has been fully implementing the restrictive housing provisions of LB 686. The agency utilized its pre-existing regulations on restrictive housing and the statutory text to operationalize the law. Draft regulations are under review, then a hearing date will be set.
2019	690	Healthy Pregnancies for Incarcerated Women Act	9/1/2019	N/A	The agency has implemented all the required sections of the law. The Agency will seek a 2022 statute change because regulations are not needed to implement the law. The statute is self-executing.

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6. For any bill your agency listed in question 5, please explain why the regulation has not been promulgated. If an explanation was provided in the question five table, simply write "see above explanation".

Year Passed	Bill Number	Explanation for Timeframe of Promulgation
2019	686	See above explanation
2019	690	See above explanation

7. Did any of the bills passed **in 2019 or earlier** have an appropriation?

Yes

No

If yes, how has the agency used the funds while the promulgation process takes place?

Year Passed	Bill Number	Appropriation Status

8. Who should our office contact with questions about this report?

Name: Laura Strimple, Chief of Staff

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