

Senator Myron Dorn
Committee Chair
P.O. Box 94604, State Capitol
Lincoln, NE 68509
402-471-2620

Legislative Performance Audit Committee

Legislative Audit Office
Stephanie Meese, 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: 9/12/23
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.

2023 Report

All required agencies except the Brand Committee submitted a report to the Office. Four agencies reported regulations that may be overdue, the rest reported no overdue regulations. The Department of Correctional Services, the Department of Education, the Public Service Commission, and the DMV all reported regulations required by bills passed in 2021 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
Regulations Report
(Neb. Rev. Stat. § 84-910(1))**

Instructions: Complete each relevant question as instructed. Feel free to add columns to the tables if needed. When complete, please save as a PDF with the agency’s name or acronym in the document title. Reports are due by July 1. To submit, please email the report to the Legislative Audit Office at lpa@leg.ne.gov.

1. Agency: Nebraska Department of Correctional Services
2. Year: 2023
3. Did the Legislature pass any bills **requiring your agency to promulgate** regulations that went into effect **2 or more years ago**?
 - Yes
 - No (If no, there is no need to answer further questions. Please submit the report via email to the LAO.)
4. Are any of the regulations required by those bills still waiting to be fully promulgated?
 - Yes
 - No (If no, there is no need to answer further questions. Please submit the report via email to the LAO.)

If yes, please fill out the table below for each bill/regulation.

Year Passed	Bill Number	Effective Date of Bill	Subject of Regulation	Reg. Public Hearing Date	Regulation Status
2019	690	9/1/2019	Healthy Pregnancies for	N/A	The agency has implemented all the required sections of law. The agency will seek a statute

Neb. Rev. Stat. § 84-910(1) requires agencies to report on regulations that the Legislature has mandated by law. The Legislative Audit Office interprets this as only regulations where a bill specifically requires an agency to promulgate. This means the bill will contain language like “the agency shall promulgate regulations”. It does not mean a bill that allows an agency to promulgate regulations if necessary or a bill that makes changes to a program in a way that will require an agency to update existing regulations because the law has changed.

If you are unsure about whether a regulation must be reported please follow your agency process for legal questions.

			Incarcerated Women Act		change because the regulations are not needed to implement the law. The statute is self-executing.

5. Did any of the bills have an appropriation?

Yes

No

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

Year Passed	Bill Number	Appropriation Status

6. For each bill, please explain why the regulation has not been promulgated.

Year Passed	Bill Number	Explanation
2019	690	See above explanation

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

Name: Alex Timperley

Email address: alex.timperley@nebraska.gov

Phone number: (402) 479-5712

**Legislative Performance Audit Committee
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(Neb. Rev. Stat. § 84-910(1))**

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1. Agency: Education
2. Year: 2023
3. Did the Legislature pass any bills **requiring your agency to promulgate** regulations that went into effect **2 or more years ago**?
 - Yes
 - No (If no, there is no need to answer further questions. Please submit the report via email to the LAO.)
4. Are any of the regulations required by those bills still waiting to be fully promulgated?
 - Yes
 - No (If no, there is no need to answer further questions. Please submit the report via email to the LAO.)

If yes, please fill out the table below for each bill/regulation.

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

Neb. Rev. Stat. § 84-910(1) requires agencies to report on regulations that the Legislature has mandated by law. The Legislative Audit Office interprets this as only regulations where a bill specifically requires an agency to promulgate. This means the bill will contain language like “the agency shall promulgate regulations”. It does not mean a bill that allows an agency to promulgate regulations if necessary or a bill that makes changes to a program in a way that will require an agency to update existing regulations because the law has changed.

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2019	LB 399	9/1/2019	Social Studies/Character Education		Rule 10 is currently awaiting approval from the Attorney General's Office before going to the Governor's Office for his signature.
2021	LB 389	8/28/2021	Military-Teacher Cert. Endorsement		Rule 21 is currently awaiting approval from the Attorney General's Office before going to the Governor's Office for his signature.
2021	LB 639	8/28/2021	Seizure protocol in schools		A draft of Rule 59 will be posted at the beginning of next week on the Department's website for public input. A hearing is anticipated in late September or early October with approval by the State Board of Education at the December meeting.

5. Did any of the bills have an appropriation?

Yes

No

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

Year Passed	Bill Number	Appropriation Status

6. For each bill, please explain why the regulation has not been promulgated.

Year Passed	Bill Number	Explanation
2019	LB 399	Please see response above in #4
2021	LB 389	Please see response above in #4
2021	LB 639	Please see response above in #4

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

Name: Tammy Barry

Email address: tammy.barry@nebraska.gov

Phone number: 402-309-4816

**Legislative Performance Audit Committee
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(Neb. Rev. Stat. § 84-910(1))**

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1. Agency: Public Service Commission
2. Year: 2023
3. Did the Legislature pass any bills **requiring your agency to promulgate** regulations that went into effect **2 or more years ago**?
 - Yes
 - No (If no, there is no need to answer further questions. Please submit the report via email to the LAO.)
4. Are any of the regulations required by those bills still waiting to be fully promulgated?
 - Yes
 - No (If no, there is no need to answer further questions. Please submit the report via email to the LAO.)

If yes, please fill out the table below for each bill/regulation.

Neb. Rev. Stat. § 84-910(1) requires agencies to report on regulations that the Legislature has mandated by law. The Legislative Audit Office interprets this as only regulations where a bill specifically requires an agency to promulgate. This means the bill will contain language like “the agency shall promulgate regulations”. It does not mean a bill that allows an agency to promulgate regulations if necessary or a bill that makes changes to a program in a way that will require an agency to update existing regulations because the law has changed.

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Year Passed	Bill Number	Effective Date of Bill	Subject of Regulation	Reg. Public Hearing Date	Regulation Status
2021	LB 338	5/5/2021	Nebraska Telecommunications Universal Service Fund Support	11/15/2022 12/12/2022 03/14/2023 06/06/2023	Commission is considering written comments and testimony given in response to the most recent set of proposed Rule & Regulations and the hearing conducted June 6, 2023.
2018	LB 993	4/4/2018	Technical quality assurance, training, and funding standards governing Next Generation 911 service statewide	Pending	A preliminary draft of proposed regulations has been prepared and 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.

5. Did any of the bills have an appropriation?

Yes

No

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

Year Passed	Bill Number	Appropriation Status
2018	LB 993	Cash funds were transferred into the 911 Service System Fund to hire staff and consultants, and to obtain contractual services to implement Next Generation 911. The funds have been used by the agency for that purpose.

6. For each bill, please explain why the regulation has not been promulgated.

Year Passed	Bill Number	Explanation
2021	LB 338	The proposed regulations were delayed due to staff workload and turnover during 2021. The rulemaking proceeding is underway.
2018	LB 993	The 911 Service System Advisory Committee is responsible for recommending the regulations to be adopted to implement Next Generation 911 service in Nebraska. The process may require several years to complete, and the Commission will move forward with adoption of new rules and regulations as recommendations are submitted from the Committee to the Commission for approval.

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

Name: Jamie Reyes

Email address: jamie.reyes@nebraska.gov

Phone number: 402-471-0232

**Legislative Performance Audit Committee
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(Neb. Rev. Stat. § 84-910(1))**

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1. Agency: Nebraska Department of Motor Vehicles
2. Year: 2023
3. Did the Legislature pass any bills **requiring your agency to promulgate** regulations that went into effect **2 or more years ago**?
 - Yes
 - No (If no, there is no need to answer further questions. Please submit the report via email to the LAO.)
4. Are any of the regulations required by those bills still waiting to be fully promulgated?
 - Yes
 - No (If no, there is no need to answer further questions. Please submit the report via email to the LAO.)

If yes, please fill out the table below for each bill/regulation.

Year Passed	Bill Number	Effective Date of Bill	Subject of Regulation	Reg. Public Hearing Date	Regulation Status
2021	LB616	August 28, 2021	247 NAC 3 – Abandoned Vehicles	Pending	Promulgation process started, amended rule has been drafted.

Neb. Rev. Stat. § 84-910(1) requires agencies to report on regulations that the Legislature has mandated by law. The Legislative Audit Office interprets this as only regulations where a bill specifically requires an agency to promulgate. This means the bill will contain language like “the agency shall promulgate regulations”. It does not mean a bill that allows an agency to promulgate regulations if necessary or a bill that makes changes to a program in a way that will require an agency to update existing regulations because the law has changed.

If you are unsure about whether a regulation must be reported please follow your agency process for legal questions.

5. Did any of the bills have an appropriation?

Yes

No

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

Year Passed	Bill Number	Appropriation Status

6. For each bill, please explain why the regulation has not been promulgated.

Year Passed	Bill Number	Explanation
2021	LB616	Rule and regulation promulgation process has started and the rule will be promulgated in 2023.

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

Name: Kenneth Lackey, Agency Legal Counsel

Email address: kenneth.lackey@nebraska.gov

Phone number: 402-471-9595