

ONE HUNDRED EIGHTH LEGISLATURE - SECOND SESSION - 2024
COMMITTEE STATEMENT
LB43

Hearing Date: Thursday February 09, 2023
Committee On: Government, Military and Veterans Affairs
Introducer: Sanders
One Liner: Require hearing officers and judges to interpret statutes and regulations to limit agency power and maximize individual liberty

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye:	7	Senators Aguilar, Brewer, Conrad, Halloran, Lowe, Raybould, Sanders
Nay:		
Absent:	1	Senator Hunt
Present Not Voting:		

Testimony:

Proponents:

Senator Rita Sanders
Laura Ebke
Daniel Dew
Justin Hubly

Representing:

Opening Presenter
Platte Institute
Pacific Legal Foundation
Nebraska Association of Public Employees (NAPE)/AFSCME Local 61

Opponents:

Tim Hruza

Representing:

Nebraska State Bar Association

Neutral:

Phoebe Gydesen

Representing:

Nebraska Attorney General's Office

* ADA Accommodation Written Testimony

Summary of purpose and/or changes:

Summary:

This bill would direct hearing officers and judges in their interpretation of state statutes or regulations when hearing a contested case under the Administrative Procedures Act. Such adjudicators would be instructed to not defer to a state agency's interpretation and instead interpret such language de novo on the record. That means that the adjudicator could rely on the findings of fact from the agency but would not rely on the agency's legal conclusions or interpretations when analyzing the dispute.



The bill would also provide that any doubt in interpreting statutes or regulations should be resolved in favor of an interpretation that "limits agency power and maximizes individual liberty."

Explanation of amendments:

AM 2076 to LB 43

The committee amendment would revise LB 43 to clarify language in original section 2 to provided that Nebraska hearing officers and courts shall not defer to agency interpretations of either statute or agency rules and regulations.

The amendment also inserts provisions from the following bills:

- LB 41 (Hansen): This bill revises the Administrative Procedures Act. It includes legislative findings that burdens on charitable grantmaking should be free from "intrusive or politically motivated regulation." The bill defines "agency" broadly to include nearly all state executive branch agencies, the courts, and the Legislature. Such agencies would be broadly prohibited from imposing additional filing or reporting requirements on charitable organizations beyond those required by state law. Agencies could impose such filing or reporting requirements if they can show a compelling state interest and a narrowly tailored means for serving that interest. The committee amendment revises the bill to provide that agency information requests are authorized when required due to a federal funding requirement.

Testifiers on LB 41:

Proponents:

Megan Schmidt, Philanthropy Roundtable

Opponents:

Anne Hindery, Nonprofit Association of the Midlands

Neutral:

Bo Botelho, Department of Health and Human Services

- LB 277 (Brewer): This bill proposes adoption of the "First Freedom Act." It includes definitions for "exercise of religion," "person," "religious organization," "religious service," "state action," and "substantially burden." The first operative section would create a more restrictive standard for imposition of any substantial "burden on a person's right to the exercise of religion." Any such burden would have to be "essential to further a compelling government interest," and "the least restrictive means of furthering that compelling governmental interest." This section also clarifies that the Act would not prohibit state action in response to a state of emergency so long as restrictions on religious services are no greater than the restrictions on non-religious organizations and businesses. The bill provides a legal cause of action for a person whose exercise of religion or religious service has been subject to a burden or restriction. Relief under such cause of action could include actual damages, equitable relief, and attorney's fees and litigation costs. The bill explicitly states that the Act applies to the implementation of all state and local laws whenever enacted. The bill further provides that indigenous tribe members who are students in approved or accredited public schools would be authorized to wear tribal regalia at any school facility or school function, subject to rules for regulating student behavior to prevent school purposes or avoid interference with the educational process. Schools would have authority to adopt related policies to protect these students' rights, safety, and educational processes. This section also defines "tribal regalia." The bill provides similar provisions relating to public postsecondary institutions.

Testifiers on LB 277:

Proponents:

John Horsechief, Self

Sylvana Airan, Self

Solomon Mwanja, City Church

Lance Kinzer, 1st Amendment Partnership



Don Wesley, Winnebago Tribe
Christina Ellison, Nebraska State Education Association (NSEA), and Self
Grace Johnson, Self
Lestina Saul-Merdassi, Self
Gabriel Bruguier, Nebraska Commission on Indian Affairs
Greer Behnke, Ponca Tribe of Nebraska
Opponents:
Abbi Swatsworth, Out Nebraska
Luke Schroer, Self
Reverend Dr. E. Scott Jones, United Church of Christ
Hannah Wroblewski, American Atheists
Neutral:
None

- LB 297 (Sanders): This bill would prohibit state and local government agencies from requiring disclosure or disclosing information in their possession relating to supporters, volunteers or contributors to 501(c) nonprofit organizations. The measure exempts the Accountability and Disclosure Act requirements and court related actions. The bill provides for injunctive relief and damages for violations. The committee amendment adds further exceptions relating to evaluation of applications for occupational and facilities licenses, performance of criminal history record information checks where expressly authorized by statute, and the Department of Banking and Finance relating to its oversight authority. The amendment also clarifies the nature of relief authorized for claims made under the Act, to include a maximum of \$2,500 liquidated damages per violation, and appropriate preliminary, equitable, or declaratory relief.

Testifiers on LB 297:

Proponent:

Nate Grasz, Nebraska Family Alliance
Spike Eickholt, ACLU of Nebraska
Zack Pruitt, Alliance Defending Freedom

Opponent:

Korby Gilbertson, Media of Nebraska, Inc.
Anne Hindery, Nonprofit Association of the Midlands

Neutral:

Kelly Lammers, Nebraska Department of Banking

- LB 366 (Conrad): The provisions included apply to public records requests generally, and remove references to "citizens" and replace them with "residents." This section of the bill would also create a bifurcated fee structure for obtaining public records, with residents receiving more favorable treatment than nonresidents, though all news media requesters would be considered as "residents" for this purpose. Under current law, the first four hours of time spent "searching, identifying, physically redacting, or copying" in response to a records request cannot be charged to the requester, but a service charge may be assessed for requests that exceed that amount of time. This bill would move that threshold to eight hours for residents of Nebraska. Nonresident requesters would be charged for the actual added cost of fulfilling the request. This bill would require that a public custodian's estimate for fulfilling a voluminous public records request requiring more than four days to be "attested to under oath" before being provided in writing to the requester. The amendment eliminates provisions of the original LB 366 relating to police body camera recordings.

Testifiers on LB 366:

Proponent:



Larry Storer, Self
Rose Ann Shannon, Media of Nebraska
Max Kautsch, Media of Nebraska
Spike Eickholt, ACLU of Nebraska
Opponent:
Patrick Condon, Nebraska County Attorney's Association
Christy Abraham, League of Nebraska Municipalities
William Rinn, Douglas County Sheriff Office
Dan Martin, Omaha Police Officer's Association
Jim Maguire, Nebraska Fraternal Order of Police
Beth Bazyn Ferrell, Nebraska Association of County Officials (NACO)
Neutral:
None

- LB 650 (McDonnell): This bill would amend the statute relating to public records that may be withheld from the public to include records relating to "the nature, location, or function of cybersecurity by the State of Nebraska or any of its political subdivisions." The Nebraska Information Technology Commission would be required to promulgate rules and regulations to implement this change.

Testifiers on LB 650:
Proponent:
Beth Bazyn Ferrell, Nebraska Association of County Officials (NACO)
Christy Abraham, League of Nebraska Municipalities
Opponent:
None
Neutral:
None

The committee voted to adopt AM 2076 on a 7-0-1 vote
Voting Aye: Senators Aguilar, Brewer, Conrad, Halloran, Lowe, Raybould, Sanders
Voting Nay: None
Absent: Senator Hunt

Tom Brewer, Chairperson

