STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

HOUSE BILL NO. 1216 BY: McCORKELL

AS INTRODUCED

AN ACT RELATING TO STATE GOVERNMENT; AMENDING SECTION 3, CHAPTER 292, O.S.L. 1988, AS AMENDED BY SECTION 4, CHAPTER 300, O.S.L. 1990, SECTION 5, CHAPTER 300, O.S.L. 1990, AND SECTION 23, CHAPTER 207, O.S.L. 1987 AND 75 O.S. 1981, SECTION 251, AS LAST AMENDED BY SECTION 6, CHAPTER 300, O.S.L. 1990, 253, AS LAST AMENDED BY SECTION 8, CHAPTER 300, O.S.L. 1990, 303, AS LAST AMENDED BY SECTION 17, CHAPTER 300, O.S.L. 1990 (75 O.S. SUPP. 1990, SECTION 250.7, 250.9, 251, 253, 303 AND 308.2), WHICH RELATE TO THE ADMINISTRATIVE PROCEDURES ACT; MAKING RULES NOT PUBLISHED IN THE CODE VOID; ESTABLISHING AN OFFICE OF ADMINISTRATIVE RULES IN THE OFFICE OF THE SECRETARY OF STATE; PROVIDING FOR DUTIES AND STAFFING; ADDING TO POWERS AND DUTIES OF THE SECRETARY; AUTHORIZING STATE AGENCIES TO PROMULGATE RULES; REQUIRING REVIEW OF FORMATTING; MODIFYING STATUTE OF LIMITATION FOR PROCEDURAL NONCOMPLIANCE; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 3, Chapter 292, O.S.L. 1988, as amended by Section 4, Chapter 300, O.S.L. 1990 (75 O.S. Supp. 1990, Section 250.7), is amended to read as follows:

Section 250.7 A. Prior to publication of the Code or any of its supplements, in cases where there is a conflict between the finally adopted rules filed with the Office pursuant to Section 251 of Title 75 of the Oklahoma Statutes and rules published in The Oklahoma Register, the rules published in The Oklahoma Register pursuant to Section 255 of Title 75 of the Oklahoma Statutes shall govern and shall constitute the official rule of the agency.

B. The Secretary is authorized to establish procedures for correcting scrivener, citation and spelling errors in:

1. the finally adopted rules of any agency or any document submitted for publication in The Oklahoma Register or the Code; or

2. any rules or other document published in The Oklahoma Register.

C. Publication of rules in the Code and in the supplements thereto shall constitute the official <u>permanent</u> rules of the state. <u>Except as otherwise provided by this subsection, any permanent rule not published in the Oklahoma Administrative Code shall be void and of no effect. The finally adopted rules filed and published in The Oklahoma Register may be valid until publication of the next succeeding Code or code supplement following the date of its final adoption. Provided, a permanent rule which is finally adopted after the closing date for publication in a code or code supplement, as announced by the Secretary, may be valid until publication of the next succeeding code or code supplement. Thereafter the rule as published in the Code or supplements thereto shall constitute the official permanent rule.</u>

D. For any rule published after July 1, 1991, in the Code or the supplements thereto, there shall be a rebuttable presumption that such rule has been promulgated in compliance with the Administrative Procedures Act.

SECTION 2. AMENDATORY Section 5, Chapter 300, O.S.L. 1990 (75 O.S. Supp. 1990, Section 250.9), is amended to read as follows:

Section 250.9 A. All of the powers, duties and responsibilities of the Director of the Department of Libraries and the Department of Libraries relating to the publication of The Oklahoma Register and the Administrative Code are hereby transferred to the Office of the Secretary of State together with all unexpended funds, property, records, current agency rules, personnel and any outstanding financial obligations or encumbrances, exclusively or principally pertaining to such publications.

B. The Director of State Finance is hereby directed to coordinate the transfer of funds, allotments, purchase orders, outstanding financial obligations or encumbrances provided for in this section.

C. Any rules promulgated by the Director of the Department of Libraries shall be and remain in effect until amended or new rules are promulgated by the Secretary.

D. Any rules adopted by the Director of the Department of Libraries related to the administration of the Administrative Procedures Act and subject to review by the Legislature during the 1991 regular session of the Legislature may be finally adopted and promulgated by the Secretary of State pursuant to the Administrative Procedures Act.

E. There is hereby established an Office of Administrative Rules within the Office of the Secretary of State. The Office of Administrative Rules shall have the primary responsibility for publishing The Oklahoma Register and the Oklahoma Administrative

Code and otherwise implementing the provisions of Article I of the Administrative Procedures Act. The Secretary of State shall provide for the adequate staffing of the Office to implement the provisions of this section including but not limited to an editor-in-chief.

SECTION 3. AMENDATORY 75 O.S. 1981, Section 251, as last amended by Section 6, Chapter 300, O.S.L. 1990 (75 O.S. Supp. 1990, Section 251), is amended to read as follows:

Section 251. A. 1. Upon the request of the Secretary, each agency shall furnish to the Office a complete set of its permanent rules in such form as is required by the Secretary or as otherwise provided by law.

2. The Secretary shall promulgate rules to ensure the effective administration of the provisions of ~~this section~~ Article I of the Administrative Procedures Act. The rules shall include, but are not limited to, rules prescribing paper size, numbering system, and the format of documents required to be filed pursuant to the provisions of the Administrative Procedures Act or such other requirements as deemed necessary by the Secretary to implement the provisions of the Administrative Procedures Act.

B. 1. Each agency shall file the number of copies specified by the Secretary of all new rules, and all amendments, revisions or revocations of existing rules attested to by the agency, pursuant to the provisions of Section 254 of this title, with the Office within thirty (30) calendar days after they become finally adopted.

2. An agency filing rules pursuant to the provisions of this subsection:

a. shall prepare the rules in plain language which can be easily understood;

b. shall not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to effectively convey the meaning of a rule interpreting that language, the reference shall

clearly indicate the portion of the language which is statutory and the portion which is the agency's amplification or interpretation of that language;

c. shall indicate whether a rule is new, amends an existing permanent rule or repeals an existing permanent rule. If a rule amends an existing rule, the rule shall indicate the language to be deleted typed with a line through the language and language to be inserted typed with the new language underscored;

d. shall state if the rule supersedes an existing emergency rule;

e. shall include a reference to any rule requiring a new or revised form in a note to the rule. The Secretary shall insert that reference in The Oklahoma Register as a notation to the affected rule;

f. shall prepare, in plain language, an analysis of new or amended rules. The analysis shall include but not be limited to a reference to any statute that the rule interprets, any related statute or any related rule;

g. may include with its rules, brief notes, illustrations, findings of facts, and references to digests of Supreme Court cases, other court decisions, or Attorney General's opinions, and other explanatory material. Such material may be included if the material is labeled or set forth in a manner which clearly distinguishes it from the rules;

h. shall include other information, in such form and in such manner as is required by the Secretary; and

i. may change the format of existing rules without any rulemaking action by the agency in order to comply with the standard provisions established by the

Secretary for Code and register publication so long as there is no substantive change to the rule.

C. The Secretary is authorized to determine a numbering system and other standardized format for documents to be filed and may refuse to accept for publication any document that does not substantially conform to the promulgated rules of the Secretary.

D. In order to avoid unnecessary expense, an agency may use the published standards established by organizations and technical societies of recognized national standing, other state agencies, or federal agencies by incorporating the standards or rules in its rules or regulations by reference to the specific issue or issues of publications in which the standards are published, without reproducing the standards in full. The standards shall be readily available to the public for examination at the administrative offices of the agency. In addition, a copy of such standards shall be kept and maintained by the agency pursuant to the provisions of the Preservation of Essential Records Act.

E. The Secretary shall provide for the publication of all Executive Orders received pursuant to the provisions of Section 664 of Title 74 of the Oklahoma Statutes.

F. The Secretary may authorize the filing of rules or Executive Orders by or through electronic data or machine readable equipment in such form and manner as is required by the Secretary.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 250.10 of Title 75, unless there is created a duplication in numbering, reads as follows:

Except as otherwise specifically prohibited by law, any state agency shall have the duty and authority to promulgate the rules necessary to effectuate its purposes and implement its charges required by law. Such rules shall be promulgated pursuant to the Administrative Procedures Act. The provisions of this section shall

not apply to any agency which has a designated authority to promulgate rules for such agency.

SECTION 5. AMENDATORY 75 O.S. 1981, Section 253, as last amended by Section 8, Chapter 300, O.S.L. 1990 (75 O.S. Supp. 1990, Section 253), is amended to read as follows:

Section 253. A. If an agency finds that an imminent peril to the preservation of the public health, safety, welfare, or other compelling extraordinary circumstance requires an emergency rule, amendment, revision, or revocation of an existing rule, an agency may promulgate, at any time, any such rule, provided the Governor first approves such rule pursuant to the provisions of this section.

B. An emergency rule adopted by an agency shall:

1. be prepared in the format required by Section 251 of this title; and

2. be transmitted to the Governor.

C. 1. Upon the filing of an adopted emergency rule by an agency with the Governor under the provisions of subsection B of this section, the Governor shall review such rule and shall decide as to whether or not such emergency rule should be approved. <u>In cooperation with the Secretary of State, prior to approval of emergency rules, the Governor shall provide for review of proper formatting of the emergency rules.</u>

2. If the Governor disapproves the adopted emergency rule, the Governor shall return the entire document to the agency with reasons for the disapproval. If the agency elects to modify such rule, the agency shall make such modifications and resubmit the rule to the Governor for approval.

3. Emergency rules adopted by an agency or approved by the Governor shall be subject to review pursuant to the provisions of Section 306 of this title.

D. 1. Upon approval by the Governor, an emergency rule shall be considered promulgated and shall be in force immediately, or on such later date as specified therein.

2. The Governor shall have forty-five (45) calendar days to review the emergency rule. Within the forty-five-calendar day period, the Governor may approve the emergency rule or disapprove the emergency rule. Failure of the Governor to approve an emergency rule within the specified period shall constitute disapproval of the emergency rule.

E. 1. Upon approval of an emergency rule, the Governor shall immediately notify the agency and file the number of copies required by the Secretary of the written approval and the number of copies required by the Secretary of the emergency rule with the Director.

2. A copy of the Governor's approval and the emergency rule shall be submitted by the agency to the Speaker of the House of Representatives and the President Pro Tempore of the Senate.

3. The Governor's approval and the emergency rule shall be published in accordance with the provisions of Section 255 of this title in the next publication of The Oklahoma Register following the approval by the Governor.

F. An emergency rule may be promulgated when the Legislature is not in session provided such emergency rule shall be effective from the date of approval by the Governor or a later date as specified in the approved emergency rule through the first day of the next succeeding Regular Session of the Oklahoma Legislature, after the promulgation of such emergency rule, and shall be in full force and effect for the term of such session unless it is made ineffective pursuant to subsection H of this section.

G. An emergency rule may be promulgated when the Legislature is in session provided such emergency rule shall be effective from the date of approval of the emergency rule by the Governor or a later date as specified in the approved emergency rule, unless otherwise

specifically provided by the Legislature through the first day of the next succeeding Regular Session of the Oklahoma Legislature, after the promulgation of such emergency rule, and shall be in full force and effect for the term of such session unless it is made ineffective pursuant to subsection H of this section.

H. 1. If an emergency rule is of a continuing nature, the agency promulgating such emergency rule shall initiate proceedings for promulgation of a permanent rule pursuant to Sections 303 through 308.2 of this title.

2. Any promulgated emergency rule shall be made ineffective if:

a. disapproved by the Legislature;

b. superceded by the promulgation of permanent rules;

c. any adopted rules based upon such emergency rules are subsequently disapproved pursuant to Section 308 of this title; or

d. an earlier expiration date is specified by the agency in the rules.

3. Emergency rules in effect on the first day of the session shall be null and void after sine die adjournment of the Legislature unless otherwise specifically provided by the Legislature. An agency shall not adopt any emergency rule which has become null and void because of sine die adjournment of the Legislature as a new emergency rule or adopt any emergency rules of similar scope or intent as the emergency rules which became null and void because of sine die adjournment of the Legislature for the purpose of evading the requirements of the Administrative Procedures Act.

I. Emergency rules shall not become effective unless approved by the Governor pursuant to the provisions of this section.

J. 1. The requirements of Section 303 of this title relating to notice, hearing and rule impact statement shall not be applicable to emergency rules promulgated pursuant to the provisions of this section. Provided this shall not be construed to prevent an

abbreviated notice and hearing process or preparation of a rule impact statement determined to be necessary by an agency.

2. The rule report required pursuant to Sections 303.1 and 308 of this title shall not be applicable to emergency rules promulgated pursuant to the provisions of this section. Provided this shall not be construed to prevent an agency from complying with such requirements at the discretion of such agency.

3. The statement of submission required by Sections 303.1 and 308 of this title shall not be applicable to emergency rules promulgated pursuant to the provisions of this section.

SECTION 6. AMENDATORY 75 O.S. 1981, Section 303, as last amended by Section 17, Chapter 300, O.S.L. 1990 (75 O.S. Supp. 1990, Section 303), is amended to read as follows:

Section 303. A. Prior to the adoption of any rule or amendment or repeal of a rule, the agency shall:

1. Cause notice of such adoption or intended action to be published in The Oklahoma Register pursuant to subsection B of this section;

2. For at least twenty (20) days after publication of the notice of the intended rulemaking action, afford a comment period for all interested persons to submit data, views or arguments, orally or in writing. The agency shall consider fully all written and oral submissions respecting the proposed rule;

3. Hold a hearing, if required, as provided by subsection C of this section;

4. Consider the effect its intended action may have on the various types of business entities. If an agency finds that its actions may adversely affect any such entity, the agency may modify its actions to exclude that type of entity, or may "tier" its actions to allow rules, penalties, fines or reporting procedures and forms to vary according to the size of a business or its ability to comply or both; and

5. Consider the effect its intended action may have on the various types of consumer groups. If an agency finds that its actions may adversely affect such groups, the agency may modify its actions to exclude that type of activity.

B. The notice required by paragraph 1 of subsection A of this section shall include but not be limited to:

1. in simple language, a brief summary of the rule;

2. the proposed action being taken;

3. the circumstances which created the need for the rule;

4. the specific legal authority authorizing the proposed rule;

5. the intended effect of the rule;

6. the time when, the place where, and the manner in which interested persons may present their views thereon pursuant to paragraph 2 of subsection A of this section;

7. whether or not the agency intends to issue a rule impact statement according to subsection D of this section and where copies of such impact statement may be obtained for review by the public;

8. the time when, the place where, and the manner in which persons may demand a hearing on the proposed rule if the notice does not already provide for a hearing. If the notice provides for a hearing, the time and place of the hearing shall be specified in the notice; and

9. where copies of the proposed rules may be obtained for review by the public. An agency may charge persons for the actual cost of mailing a copy of the proposed rules to such persons.

The number or copies of such notice as specified by the Secretary shall be submitted to the Secretary who shall publish the notice in The Oklahoma Register pursuant to the provisions of Section 255 of this title.

Prior to or within three (3) days after publication of the notice in The Oklahoma Register, the agency shall cause a copy of the notice of the proposed rule adoption to be mailed to all persons

who have made a timely request of the agency for advance notice of its rulemaking proceedings.

C. 1. If the published notice does not already provide for a hearing, an agency shall schedule a hearing on a proposed rule if, within twenty (20) days after the published notice of the proposed rule adoption, a written request for a hearing is submitted by:

a. at least twenty-five persons,

b. a political subdivision,

c. an agency, or

d. an association having not less than twenty-five members.

At that hearing persons may present oral argument, data, and views on the proposed rule.

2. A hearing on a proposed rule may not be held earlier than twenty (20) days after notice of the hearing is published pursuant to subsection B of this section.

3. The provisions of this subsection shall not be construed to prevent an agency from holding a hearing or hearings on the proposed rule although not required by the provisions of this subsection; provided that notice of such hearing shall be published in The Oklahoma Register at least twenty (20) days prior to such hearing.

D. 1. Except as otherwise provided in this subsection, an agency shall issue a rule impact statement of a proposed rule prior to or within fifteen (15) days after the date of publication of the notice of proposed rule adoption. The rule impact statement may be modified after any hearing or comment period afforded pursuant to the provisions of this section.

2. Except as otherwise provided in this subsection, the rule impact statement shall include but not be limited to:

a. a brief description of the purpose of the proposed rule;

b. a description of the classes of persons who most likely will be affected by the proposed rule, including classes that will bear the costs of the proposed rule;

c. a description of the classes of persons who will benefit from the proposed rule;

d. a description of the probable economic impact of the proposed rule upon affected classes of persons;

e. the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues;

f. a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule; and

g. the date the rule impact statement was prepared.

3. To the extent an agency for good cause finds the preparation of a rule impact statement or the specified contents thereof are unnecessary, impracticable or contrary to the public interest in the process of adopting a particular rule, the agency may request the Governor to waive such requirement. If the Governor fails to waive such requirement prior to publication of the notice of the intended rulemaking action, the rule impact statement shall be completed. The determination to waive the rule impact statement shall not be subject to judicial review.

4. The rule shall not be invalidated on the ground that the contents of the rule impact statement are insufficient or inaccurate.

5. The rule impact statement required by this section shall not be required for emergency rules provided the provisions of this paragraph shall not be construed to prevent an agency from issuing a rule impact statement for such rules.

E. Upon completing the requirements of this section, an agency may adopt a proposed rule. No rule is valid unless adopted in substantial compliance with the provisions of this section.

~~F. A proceeding to contest any rule on the ground of noncompliance with the procedural requirements of this section must be commenced within two (2) years from the effective date of the rule.~~

SECTION 7. AMENDATORY Section 23, Chapter 207, O.S.L. 1987 (75 O.S. Supp. 1990, Section 308.2), is amended to read as follows:

Section 308.2 A. No agency rule is valid or effective against any person or party, or may be invoked by the agency for any purpose, until it has been promulgated as required in the Administrative Procedures Act.

B. A proceeding to contest any rule on the ground of noncompliance with the procedural requirements of Article I of the Administrative Procedures Act must be commenced within one (1) year from the effective date of the rule.

C. Rules shall be valid and binding on persons they affect, and shall have the force of law unless amended or revised or unless a court of competent jurisdiction determines otherwise. Except as otherwise provided by law, rules shall be prima facie evidence of the proper interpretation of the matter to which they refer.

SECTION 8. This act shall become effective July 1, 1991.

SECTION 9. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

43-1-5660 KSM