

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

COMMITTEE SUBSTITUTE

FOR HOUSE BILL NO. 2446

By: Seikel

COMMITTEE SUBSTITUTE

An Act relating to statutes and reports; amending 75 O.S. 1991, Sections 250.3, as amended by Section 2, Chapter 310, O.S.L. 1992, 253, as amended by Section 3, Chapter 310, O.S.L. 1992, 303, and 308, as amended by Section 6, Chapter 310, O.S.L. 1992 (75 O.S. Supp. 1993, Sections 250.3, 253 and 308), which relate to the Administrative Procedures Act; adding and modifying definitions; requiring certain impact statements; providing for certain exemptions; modifying certain procedures; requiring additional information; clarifying language; providing for and modifying contents; requiring certain submissions; modifying certain legislative procedures; adding to duties of the Oklahoma Advisory Committee on Intergovernmental Relations; providing for certain recommendations; requiring certain reviews; requiring certain filings; 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 75 O.S. 1991, Section 250.3, as amended by Section 2, Chapter 310, O.S.L. 1992 (75 O.S. Supp. 1993, Section 250.3), is amended to read as follows:

Section 250.3 As used in the Administrative Procedures Act:

1. "Agency" ~~means~~ includes but is not limited to any constitutionally or statutorily created state board, bureau, commission, department, authority, public trust in which the state is a beneficiary, or interstate commission, except:

- a. the Legislature or any branch, committee or officer thereof, and
- b. the courts;

2. "Rule" means any agency statement or group of related statements of general applicability and future effect that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of the agency. The term "rule" includes the amendment or revocation of an effective rule but does not include:

- a. the issuance, renewal, denial, suspension or revocation or other sanction of an individual specific license,
- b. the approval, disapproval or prescription of rates. For purposes of this subparagraph, the term "rates" shall not include fees or charges fixed by an agency for services provided by that agency including but not limited to fees charged for licensing, permitting, inspections or publications,
- c. statements and memoranda concerning only the internal management of an agency and not affecting private rights or procedures available to the public,
- d. declaratory rulings issued pursuant to Section 307 of this title,
- e. orders by an agency, or
- f. press releases or "agency news release", provided such releases are not for the purpose of interpreting, implementing or prescribing law or agency policy;

3. "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law;

4. "Rulemaking" means the process employed by an agency for the formulation of a rule;

5. "Order" means all or part of a formal or official decision made by an agency including but not limited to final agency orders;

6. "Final agency order" means an order made pursuant to subsection D of Section 309 and Sections 311 and 312 of this title and which is subject to judicial review;

7. "Individual proceeding" means the formal process employed by an agency having jurisdiction by law to resolve issues of law or fact between parties and which results in the exercise of discretion of a judicial nature;

8. "Party" means a person or agency named and participating, or properly seeking and entitled by law to participate, in an individual proceeding;

9. "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency;

10. "Adopted" means that a proposed rule has been approved by the agency but has not been reviewed by the Legislature and the Governor;

11. "Final or finally adopted" means a rule other than an emergency rule, which has been approved by the Legislature, and by the Governor or approved by the Legislature pursuant to subsection F of Section 308 of this title and otherwise complies with the requirements of the Administrative Procedures Act but has not been published pursuant to Section 255 of this title;

12. "Promulgated rule" means a finally adopted rule which has been filed and published in accordance with the provisions of the Administrative Procedures Act, an emergency rule or preemptory rule which has been approved by the Governor;

13. "Office" means the Office of the Secretary of State;

14. "Secretary" means the Secretary of State;

15. "Hearing examiner" means a person meeting the qualifications specified by Article II of the Administrative Procedures Act and who has been duly appointed by an agency to hold hearings and, as required, render proposed orders; ~~and~~

16. "Administrative head" means an official or agency body responsible pursuant to law for issuing final agency orders; and

17. "Political subdivision" means a county, city, incorporated town or school district within this state.

SECTION 2. AMENDATORY 75 O.S. 1991, Section 253, as amended by Section 3, Chapter 310, O.S.L. 1992 (75 O.S. Supp. 1993, 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. Include an impact statement similar in scope and in kind to that required by Section 303 of this title unless such impact statement is, with the consent of the Governor, waived specifically by the agency 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 promulgating an emergency rule;

3. Be transmitted to the Governor, including the information required by this subsection; and

4. One copy to be transmitted on the same day that filing occurs with the Governor to the Oklahoma Advisory Committee on Intergovernmental Relations if the emergency rule would have an impact on political subdivisions as determined by the agency in the rule impact statement. The filing shall include all information supplied to the Governor regarding such emergency rule pursuant to Sections 251 and 253 of this title.

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. Prior to approval of emergency rules, the Governor shall submit the emergency rule to the Secretary of State for review of proper formatting.

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 Within ten (10) days of the agency's receipt of the Governor's approval, a copy of the Governor's approval and the emergency rule, along with the information supplied to the Governor regarding such emergency rule pursuant to Sections 251 and 253 of this title, 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. a. Emergency rules in effect on the first day of the session shall be null and void on July 15 immediately following sine die adjournment of the Legislature unless otherwise specifically provided by the Legislature.

- b. An agency shall not adopt any emergency rule, which has become null and void pursuant to subparagraph a of this paragraph, as a new emergency rule or adopt any emergency rules of similar scope or intent as the emergency rules which became null and void pursuant to subparagraph a of this paragraph.

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, and 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 3. AMENDATORY 75 O.S. 1991, 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 any intended action to be published in The Oklahoma Register pursuant to subsection B of this section;

2. Send copies of the notice of such intended action to at least twenty-five newspapers in the metropolitan and rural areas for publication as public service announcements on the subjects involved at the discretion of the editors of such newspapers. The provisions of this paragraph shall not require an agency to pay for any such publication;

3. 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;

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

5. 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

6. 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 3 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~~;~~ or political subdivisions,
- e. the probable costs to the agency and to any other agency of the implementation and enforcement of the state proposed rule and any anticipated effect on state revenues~~;~~ , including a projected net loss or gain in such revenues if it can be projected by the agency,
- f. a determination of whether implementation of the proposed rule will have an economic impact on any political subdivisions or require their cooperation in implementing or enforcing the rule,
- g. a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule~~;~~ and
- ~~g.~~ h. 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.

SECTION 4. AMENDATORY 75 O.S. 1991, Section 308, as amended by Section 6, Chapter 310, O.S.L. 1992 (75 O.S. Supp. 1992, Section 308), is amended to read as follows:

Section 308. A. Within ten (10) days after adoption of a permanent rule, two copies of all such new rules or amendments, revisions or revocations to an existing rule proposed by an agency, and two copies of an agency rule report as required by subsection D of this section shall be filed by the agency each with the Speaker of the House of Representatives and the President Pro Tempore of the State Senate.

B. If the agency determines in the rule impact statement prepared as part of the agency rule report that the proposed rule will have an economic impact on any political subdivisions or require their cooperation in implementing or enforcing a proposed permanent rule, a copy of the proposed rule and rule report shall be filed within ten (10) days after adoption of the permanent rule with the Oklahoma Committee on Intergovernmental Cooperation for its review. Said Committee may communicate any recommendations that it may deem necessary to the Governor, the Speaker of the House of Representatives and President Pro Tempore of the Senate during the period that the permanent rules are being reviewed.

C. When the rules have been submitted to the Speaker of the House of Representatives and the President Pro Tempore of the Senate, the agency shall also submit to the Office for publication in The Oklahoma Register, a statement that the adopted rules have been submitted to the Legislature. ~~Such statement of submission required by this section shall not be required for emergency rules.~~

~~C.~~ D. The text of the adopted rules shall be submitted to the Speaker of the House of Representatives and the President Pro Tempore of the Senate in the same format as required by the Secretary pursuant to Section 251 of this title.

~~D.~~ E. The report required by subsection A of this section shall include:

1. The date the notice of the intended rulemaking action was published in The Oklahoma Register pursuant to Section 255 of this title;

2. The name and address of the agency;

3. The title and number of the rule;

4. A citation to the statutory authority for the rule;

5. A brief summary of the content of the adopted rule;

6. A statement explaining the need for the adopted rule;

7. The date and location of the meeting if held, at which such rules were adopted;

8. A summary of the comments and explanation of changes or lack of any change made in the adopted rules as a result of testimony received at public hearings or of any oral or written comments received prior to the adoption of the rule;

9. A list of persons or organizations who appeared or registered for or against the adopted rule at any public hearing held by the agency or those who have commented in writing before or after the hearing;

10. A rule impact statement if required pursuant to Section 303 of this title;

11. An incorporation by reference statement if the rule incorporates a set of rules from a body outside the state, such as a national code;

12. The members of the governing board of the agency adopting the rules and the recorded vote of each member; and

13. Any other information requested by the Speaker of the House of Representatives, the President Pro Tempore of the Senate or either rule review committee.

~~E.~~ F. Upon receipt of any adopted rules submitted pursuant to this section, the Speaker of the House of Representatives and the
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President Pro Tempore of the Senate shall assign such rules to the appropriate committees of each such house of the Legislature for review. Except as otherwise provided by this section, upon receipt of such rules, the Legislature shall have thirty (30) legislative days to review such rules.

~~F.~~ G. 1. By the adoption of a joint resolution, the Legislature may disapprove any rule, waive the thirty-legislative-day review period and approve any rule which has been transmitted as required by this section, or otherwise approve any rule submitted pursuant to this section.

2. a. (1) The Legislature may by concurrent resolution disapprove a proposed rule or a proposed amendment to a rule submitted to the Legislature pursuant to this section or an emergency rule prior to such rule having the force and effect of law.

(2) Any such proposed rule or proposed amendment to a permanent rule shall be disapproved by both houses of the Legislature prior to the termination of the legislative review period specified by this section.

(3) Any such concurrent resolution shall not require the approval of the Governor, and any such rule so disapproved shall be invalid and of no effect regardless of the approval of the Governor of such rule.

b. By adoption of a concurrent resolution, the Legislature may waive or extend the thirty-legislative-day review period for any rule which has been transmitted as required by this section, provided any extension of the thirty-day review period shall terminate on the end of the same legislative session such rules were transmitted or retransmitted.

~~G.~~ H. ~~Whenever~~ Unless otherwise authorized by the Legislature by concurrent resolution, or by law, whenever a rule is

disapproved as provided in subsection ~~F~~ G of this section, the agency adopting such rules shall not have authority to resubmit an identical rule, except during the first sixty (60) calendar days of the next regular legislative session. Rules may be disapproved in part or in whole by the Legislature. Any resolution enacted disapproving a rule shall be filed with the Secretary for publication in The Oklahoma Register.

~~H~~ I. Unless otherwise provided by specific vote of the Legislature, resolutions introduced for purposes of disapproving or approving a rule shall not be subject to regular legislative cutoff dates, shall be limited to such provisions as may be necessary for disapproval or approval of a rule, and, any such other direction or mandate regarding the rule deemed necessary by the Legislature. The resolution shall contain no other provisions.

~~I~~ J. 1. Transmission of a rule for legislative review pursuant to the provisions of this section on or before April 1 of each year shall result in the approval of such rule by the Legislature if:

- a. the Legislature is in regular session and has failed to disapprove such rule within thirty (30) legislative days after such rule has been so transmitted pursuant to subsection A of this section ~~and~~ or
- b. the Legislature has adjourned before the expiration of said thirty (30) legislative days of submission of such rules, and has failed to disapprove such rule.

2. After April 1 of each year, transmission of a rule for legislative review pursuant to the provisions of this section shall result in the approval of such rule by the Legislature only if the Legislature is in regular session and has failed to disapprove such rule within thirty (30) legislative days after such rule has been so transmitted. In the event the Legislature adjourns before the expiration of such thirty (30) legislative days, such rule shall carry over for consideration by the

Legislature during the next regular session and shall be considered to have been originally transmitted to the Legislature on the first day of said next regular session for review pursuant to this section. As an alternative, an agency may request direct legislative approval of such rules or waiver of the thirty-legislative-day review provided by subsection ~~F~~ G of this section. An agency may also adopt emergency rules under the provisions of Section 253 of this title.

~~J~~ K. Prior to final adoption of a rule, an agency may withdraw from legislative review a rule submitted pursuant to the provisions of this section. Notice of such withdrawal shall be given to the Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and to the Secretary for publication in The Oklahoma Register.

~~K~~ L. Except as otherwise provided by Sections 253, 250.4 and 250.6 of this title or as otherwise specifically provided by the Legislature, no agency shall promulgate any rule unless reviewed by the Legislature pursuant to this section. An agency may promulgate an emergency rule only pursuant to Section 253 of this title.

~~L~~ M. Any rights, privileges, or interests gained by any person by operation of an emergency rule, shall not be affected by reason of any subsequent disapproval or rejection of such rule by either house of the Legislature.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 485 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Advisory Committee on Intergovernmental Relations shall take appropriate measures to study future federal rulemaking actions, to communicate its concerns and to make recommendations to the federal government regarding future regulatory activities of federal agencies that will affect the State of Oklahoma.

B. The cabinet secretaries appointed by the Governor pursuant to Section 10.3 of this title shall review the annual Unified Regulatory Agenda published pursuant to the federal Executive

Order No. 12875 and make appropriate comments and recommendations regarding proposed regulatory actions within their cabinet responsibilities to the Oklahoma Advisory Committee on Intergovernmental Relations. The cabinet secretaries may also make recommendations to said committee regarding federal regulatory actions that should be prepared using a negotiated rulemaking process.

C. A copy of all reports prepared by the Oklahoma Advisory Committee on Intergovernmental Relations shall be filed with the Governor, the Speaker of the House of Representatives, and President Pro Tempore of the Senate.

SECTION 6. This act shall become effective July 1, 1994.

SECTION 7. 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.

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