

ENGROSSED HOUSE AMENDMENT
TO
ENGROSSED SENATE BILL NO. 328

By: Stipe of the Senate
and
Ross of the House

An Act relating to statutes and reports; amending 75 O.S. 1991, Section 311, as amended by Section 9, Chapter 310, O.S.L. 1992 (75 O.S. Supp. 1994, Section 311), which relates to the Administrative Procedures Act; authorizing designee for certain purpose; and declaring an emergency.

AMENDMENT NO. 1. Strike the title, enacting clause and entire bill and insert

"(statutes and reports - amending 75 O.S., Sections 250.4, 250.6 and 311 - Administrative Procedures Act - codification - emergency)

SECTION 1. AMENDATORY 75 O.S. 1991, Section 311, as amended by Section 9, Chapter 310, O.S.L. 1992 (75 O.S. Supp. 1994, Section 311), is amended to read as follows:

Section 311. A. ~~If~~ Except as otherwise provided by Section 2 of this act, if the administrative head of an agency has not heard the case or read the record of an individual proceeding, a final

agency order adverse to a party shall not be made until a proposed order is served upon the party, and an opportunity is afforded to the party to file exceptions and present briefs and oral argument to the administrative head who is to render the final agency order. The proposed order shall be accompanied by a statement of the reasons therefor and of each issue of fact or law necessary to the proposed order, prepared by the hearing examiner or by one who has read the record.

B. Such proposed order shall be served upon the parties at least fifteen (15) days prior to a hearing or meeting at which the administrative head is to consider or render a decision on the proposed order. At such hearing or meeting, the parties shall be afforded an opportunity to present briefs and oral arguments concerning the proposed order.

C. The parties by written stipulation may waive compliance with this section.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 311.1 of Title 75, unless there is created a duplication in numbering, reads as follows:

A. The Commissioner of the Oklahoma State Department of Health may delegate the authority to issue a final agency order adverse to a party to an agency administrative law judge if:

1. The administrative law judge has a general knowledge of the Public Health Code, and rules promulgated thereto;

2. The administrative law judge:

- a. is currently licensed to practice law by the Supreme Court of this state,
- b. has a working knowledge of the Administrative Procedures Act and administrative rules of the Oklahoma State Department of Health,
- c. is not an owner, stockholder, employee or officer of, nor has any other business relationship with, any

corporation, partnership, or other business or entity that is subject to regulation by the Oklahoma State Department of Health,

- d. is separate and apart from the legal division or office of general counsel of the Oklahoma State Department of Health,
- e. is not responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecuting functions for the Oklahoma State Department of Health, and
- f. has not been engaged in the performance of investigative or prosecuting functions for the Oklahoma State Department of Health regarding the party receiving the final agency order; and

3. The Commissioner in delegating the authority to issue final agency orders adverse to a party pursuant to this section specifically designates by written agency policy and procedure the type or category of final agency order which may be issued by the administrative law judge.

B. The provisions of this section shall not be construed to authorize or allow restraints on the authority of the Commissioner to adopt, reject, review, modify or correct the findings of fact and conclusions of law or any proposed order issued by the administrative law judge.

C. When the administrative law judge issues a final agency order, that order becomes the final order of the Oklahoma State Department of Health without further proceeding unless there is a request for rehearing, reopening, or reconsideration pursuant to Section 317 of this title or a filing for judicial review pursuant to Section 318 of this title.

SECTION 3. AMENDATORY 75 O.S. 1991, Section 250.4, as last amended by Section 1, Chapter 384, O.S.L. 1994 (75 O.S. Supp. 1994, Section 250.4), is amended to read as follows:

Section 250.4 A. 1. Except as is otherwise specifically provided in this subsection, each agency is required to comply with Article I of the Administrative Procedures Act, Section 250.3 of this title.

2. The Corporation Commission shall be required to comply with the provisions of Article I of the Administrative Procedures Act except for subsections A, B, C and F of Section 303 of this title and Section 306 of this title. To the extent of any conflict or inconsistency with Article I of the Administrative Procedures Act, pursuant to Section 35 of Article IX of the Oklahoma Constitution, it is expressly declared that Article I of the Administrative Procedures Act is an amendment to and alteration of Sections 18 through 34 of Article IX of the Oklahoma Constitution.

3. The Oklahoma Military Department shall be exempt from the provisions of Article I of the Administrative Procedures Act to the extent it exercises its responsibility for military affairs.

4. The Oklahoma Ordnance Works Authority shall be exempt from Article I of the Administrative Procedures Act.

5. The Oklahoma Transportation Commission and the Oklahoma Department of Transportation shall be exempt from Article I of the Administrative Procedures Act to the extent they exercise their authority in adopting standard specifications, special provisions, plans, design standards, testing procedures, federally imposed requirements and generally recognized standards, project planning and programming, and the operation and control of the State Highway System.

6. The Oklahoma State Regents for Higher Education shall be exempt from Article I of the Administrative Procedures Act with respect to:

- a. prescribing standards of higher education,
- b. prescribing functions and courses of study in each institution to conform to the standards,
- c. granting of degrees and other forms of academic recognition for completion of the prescribed courses,
- d. allocation of state-appropriated funds, and
- e. fees within the limits prescribed by the Legislature.

7. The Commissioner of Public Safety shall be exempt from Section 253, subsections C and D of Section 303 and Sections 303.1, 307.1, 308 and 308.1 of this title insofar as it is necessary to adopt rules under the Oklahoma Hazardous Materials Transportation and Motor Carrier Act, to maintain a current incorporation of federal motor carrier safety and hazardous material regulations for which the Commissioner has no discretion when the state is mandated to adopt rules identical to federal rules and regulations. Such rules may be adopted by the Commissioner and shall be deemed promulgated twenty (20) days after notice of adoption is published in The Oklahoma Register. Such publication need not set forth the full text of the rule but may incorporate the federal rules and regulations by reference. Provided, for any rules for which the Commissioner has discretion to allow variances, tolerances or modifications from the federal rules and regulations, the Commissioner shall fully comply with Article I of the Administrative Procedures Act.

B. As specified, the following agencies or classes of agency activities are not required to comply with the provisions of Article II of the Administrative Procedures Act:

1. The Oklahoma Tax Commission;
2. The Commission for Human Services;
3. The Oklahoma Ordnance Works Authority;
4. The Oklahoma Corporation Commission;
5. The Pardon and Parole Board;

6. The Midwestern Oklahoma Development Authority;

7. The Grand River Dam Authority;

8. The supervisory or administrative agency of any penal, mental, medical or eleemosynary institution, only with respect to the institutional supervision, custody, control, care or treatment of inmates, prisoners or patients therein; provided, that the provisions of Article II shall apply to and govern all administrative actions of the Oklahoma Alcohol Prevention, Training, Treatment and Rehabilitation Authority;

9. The Board of Regents or employees of any university, college, or other institution of higher learning, except with respect to expulsion of any student for disciplinary reasons; provided, that upon any alleged infraction by a student of rules of such institutions, with a lesser penalty than expulsion, such student shall be entitled to such due process, including notice and hearing, as may be otherwise required by law, and the following grounds of misconduct, if properly alleged in disciplinary proceedings against a student, shall be cause to be barred from the campus and be removed from any college or university-owned housing, upon conviction in a court of law:

- a. participation in a riot as defined by the penal code,
- b. possession or sale of any drugs or narcotics prohibited by the penal code, or
- c. willful destruction of or willful damage to state property;

10. The Oklahoma Horse Racing Commission, its employees or agents only with respect to hearing and notice requirements on the following classes of violations which are an imminent peril to the public health, safety and welfare:

- a. any rule regarding the running of a race,
- b. any violation of medication laws and rules,

- c. any suspension or revocation of an occupation license by any racing jurisdiction recognized by the Commission,
- d. any assault or other destructive acts within Commission-licensed premises,
- e. any violation of prohibited devices, laws and rules,
- f. any filing of false information;

11. The Commissioner of Public Safety only with respect to drivers' license hearings and hearings conducted pursuant to the provisions of Section 2-115 of Title 47 of the Oklahoma Statutes;

12. The Administrator of the Department of Securities only with respect to hearings conducted pursuant to provisions of the Oklahoma Take-over Disclosure Act of 1985;

13. Hearings conducted by a public agency pursuant to Section 962 of Title 47 of the Oklahoma Statutes;

14. The Oklahoma Military Department;

15. The Oklahoma Transportation Commission and the Oklahoma Department of Transportation until January 1, 1990; and

16. The University Hospitals Authority, including all hospitals or other institutions operated by the University Hospitals Authority; 17. The Oklahoma Health Care Authority Board and the Administrator of the Oklahoma Health Care Authority; and

18. The position audit procedure, including the impartial review process, of the Office of Personnel Management pursuant to Section 840-4.3 of Title 74 of the Oklahoma Statutes; provided, that any appeal to a court of competent jurisdiction from an impartial review determination shall be confined to the record from the position audit procedure and the impartial review process.

SECTION 4. AMENDATORY 75 O.S. 1991, Section 250.6, as amended by Section 2, Chapter 384, O.S.L. 1994 (75 O.S. Supp. 1994, Section 250.6), is amended to read as follows:

Section 250.6 A. 1. The Commission for Human Services as the rulemaking authority for the Department of Human Services and the Oklahoma Health Care Authority Board as the rulemaking authority of the Oklahoma Health Care Authority, may promulgate a preemptive rule pursuant to the provisions of this section:

- a. when the Commission for Human Services or the Oklahoma Health Care Authority Board is required by federal law, federal rules, a state law enacted pursuant to federal law or federal rule, or order of a court of competent jurisdiction to adopt a rule, or an amendment, revision or revocation of an existing rule, and
- b. which if such rule is not immediately adopted would result in the imposition of a financial penalty, or a reduction, withholding or loss of federal funds, and
- c. such preemptive rule has been certified by the Governor pursuant to this section.

2. The conditions specified in this subsection for the promulgation of a preemptive rule shall be the only conditions authorized for promulgation of such rule by the ~~Commission for Human Services~~ rulemaking authority.

B. 1. Upon the adoption of such preemptive rule by the ~~Commission~~ rulemaking authority, the Director of the Department of Human Services, or the Administrator of the Oklahoma Health Care Authority, as applicable, shall request the Governor to certify that such rules are required to comply with a federal law, federal rule, a state law enacted pursuant to federal law or rule, or order of a court of competent jurisdiction and which if such rules are not immediately adopted would result in a financial penalty, or a reduction, withholding or loss of federal funds.

2. Upon the filing of the request for certification of a preemptive rule, the Governor shall review such rule and decide as

to whether such rule should be certified. Prior to approval of a preemptive rule, the Governor shall submit the preemptive rule to the Office of the Secretary of State for review of proper formatting unless the preemptive rule has been reviewed by the Office prior to agency submission to the Governor. Failure of the Governor to certify such rule within fourteen (14) calendar days shall constitute denial of the rule as a preemptive rule.

3. Upon certification of a preemptive rule, the Governor shall immediately notify the ~~Commission~~ rulemaking authority. Upon receipt of notice of the certification of the preemptive rule, the ~~Commission~~ rulemaking authority shall file the number of copies specified by the Secretary of the certification certificate issued by the Governor and the number of copies specified by the Secretary of the preemptive rule with the Office pursuant to Section 251 of this title.

4. The Governor's certification and the preemptive rule shall be published in accordance with the provisions of Section 255 of this title in the next publication of The Oklahoma Register following adoption of the preemptive rule.

5. For informational purposes only, a copy of the Governor's certification and the preemptive rule shall be submitted by the Commission to the Speaker of the House of Representatives and the President Pro Tempore of the Senate within ten (10) days of the certification of the preemptive rule by the Governor.

6. Upon certification by the Governor, the rule shall be considered promulgated and shall be in force immediately or unless a later date is required by statute or specified in the rule, the later date is the effective date.

C. A preemptive rule shall be considered to be a permanent rule and shall remain in full force and effect unless and until specifically disapproved during the first thirty (30) calendar days of the next regular legislative session following promulgation of

such preemptive rule or unless an earlier expiration date is specified by the Commission. The Legislature may disapprove such rule pursuant to Section 308 of this title. Any resolution introduced for the purpose of disapproving such rule shall not be subject to regular legislative cut off dates.

D. Except as otherwise provided by this section, preemptive rules shall be promulgated and published in compliance with Article I of the Administrative Procedures Act. Preemptive rules promulgated pursuant to the provisions of this section shall be exempt from the provisions of Sections 253, 303, 304, 307.2, 308 and 308.1 of this title.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5007.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Health Care Authority Board may conduct hearings upon complaint or whenever appropriate for the exercise of authority granted to the Board pursuant to the Oklahoma Health Care Authority Act.

B. The Board shall have all powers granted to administrative agencies for the conduct of individual proceedings. The Board shall have power to:

1. Take and hear evidence, administer oaths and affirmations; and

2. Compel the attendance of witnesses and the production of books, papers and documents to the hearing, by subpoena.

C. Whenever any person subpoenaed to appear and give testimony or to produce such books, papers or documents as required by the subpoena refuses to appear or testify before the Board, or to answer any pertinent or proper questions, the person shall be deemed in contempt of the Board. It shall be the duty of the presiding officer of the Board to report the fact to the district court for the county in which the hearing is being held. The district court

shall issue an attachment in the form usual in the district court, directed to the sheriff of the county, commanding the sheriff to attach the person and bring the person before the district court. On the return of the attachment, and the production of the person attached, the district court shall have jurisdiction of the matter, and the person charged may be purged of contempt in the same way, and the same proceedings shall be had, and the same penalties may impose, and the same punishment inflicted as in the case of a witness subpoenaed to appear and give evidence on the trial of a civil cause before a district court of the State of Oklahoma.

D. Any member of the Board shall have power to administer oaths and issue any subpoena as provided for in this section. A subpoena may be served upon any person in Oklahoma, with the same fees and mileage by any officer authorized to serve subpoenas in civil actions, in the same manner as is prescribed by the code of civil procedure for subpoenas issued out of the district courts of this state.

E. Depositions may be taken and used in the same manner as provided for in civil cases.

F. The district court shall have jurisdiction of an appeal from the Board, and shall have power to affirm, reverse or modify the decisions of the Board. Such appeals shall be commenced by the filing with the clerk of the district court a certified copy of the order of the Board attached to the petition of the complainant, wherein the complainant, or petitioner, shall make assignments or specifications as to wherein said decision is erroneous or illegal. Upon the filing of the petition and notice given to the Board by the clerk of the court, it shall be the duty of the Board to file in the court within thirty (30) days from the date of the notice a full and complete transcript of all proceedings had in the cause. The cost of the preparation of the same shall be borne by the Board. The Board shall be deemed a party to such proceedings. The attorney of

the Board or the Attorney General shall represent the Board in such proceedings. Such appeals shall be subject to the law and practice applicable to other civil actions. Upon final determination of the appeal, in which the decision of the Board is sought to be reviewed, the Board shall make an order and decision in accordance with the decision of the court. Any party to the appeal may appeal from the decision of the district court to the Supreme Court of Oklahoma in the same manner as provided by law in other civil actions.

G. The Board shall promulgate rules prescribing procedures for determining when hearings shall be held, location of hearings, conduct of hearings and appeals pursuant to the provisions of this section.

SECTION 6. 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."

Passed the House of Representatives the 11th day of April, 1995.

Speaker of the House of
Representatives

Passed the Senate the ____ day of _____, 1995.

President of the Senate