

ENROLLED HOUSE  
BILL NO. 1136

By: Hilliard, Hiett, Piatt,  
Reese and Pope (Clay) of  
the House

and

Crutchfield of the Senate

An Act relating to administrative procedures; amending 75 O.S. 1991, Sections 253, as last amended by Section 5, Chapter 239, O.S.L. 1998, and 303, as last amended by Section 10, Chapter 239, O.S.L. 1998 (75 O.S. Supp. 1998, Sections 253 and 303), which relate to rulemaking procedures; modifying criteria for rule impact statement waivers; modifying certain notification requirements; modifying rule impact statement requirements; and providing an effective date.

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

SECTION 1. AMENDATORY 75 O.S. 1991, Section 253, as last amended by Section 5, Chapter 239, O.S.L. 1998 (75 O.S. Supp. 1998, Section 253), is amended to read as follows:

Section 253. A. If an agency finds that an imminent peril exists to the preservation of the public health, safety, or welfare, or that a compelling public interest 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;

2. Include an impact statement which meets the requirements contained in Section 303 of this title unless such impact statement is, with the prior written 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. In addition, the impact statement shall provide information on any cost impacts of the rule received by the agency from any private or public entities;

3. Be transmitted in duplicate to the Governor, the Speaker of the Oklahoma House of Representatives and the President Pro Tempore

of the Senate, including the information required by this subsection within ten (10) days after the rule is adopted; 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 this section and Section 251 of this title.

C. 1. Upon the filing of an adopted emergency rule by an agency with the Governor, the Speaker of the Oklahoma House of Representatives and the President Pro Tempore of the Senate, 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. An emergency rule shall only be applied prospectively from its effective date.

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. Upon disapproval of an emergency rule, the Governor shall notify within fifteen (15) days, in writing, the Speaker of the House of Representatives, the President Pro Tempore of the Senate and the Office of Administrative Rules.

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

2. A copy of the Governor's approval shall be submitted by the Governor to the Speaker of the House of Representatives, the President Pro Tempore of the Senate and the Office of Administrative Rules when the rulemaking agency is notified of approval.

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

the approved rules shall be retained as official records by the Office of Administrative Rules.

F. Emergency rules shall be effective from the date of approval 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 through July 14 following such session unless it is made ineffective pursuant to subsection H of this section.

G. No agency shall adopt any emergency rule which establishes or increases fees, except during such times as the Legislature is in session, unless specifically mandated by the Legislature or federal legislation, or when the failure to establish or increase fees would conflict with an order issued by a court of law.

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. If an emergency rule is superseded by another emergency rule prior to the enactment of a permanent rule, the latter emergency rule shall retain the same expiration date as the superseded emergency rule, unless otherwise authorized by the Legislature.

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

- a. disapproved by the Legislature,
- b. ~~superseded~~ superseded 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. Unless otherwise authorized by the Legislature, by concurrent resolution or by law, 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 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 determined to be necessary by an agency.

2. The rule report required pursuant to Section 303.1 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 Section 303.1 of this title shall not be applicable to emergency rules promulgated pursuant to the provisions of this section.

K. Prior to approval or disapproval of an emergency rule by the Governor, an agency may withdraw from review an emergency 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 the Office of Administrative Rules. In order to be promulgated as emergency rules, any replacement rules shall be resubmitted pursuant to the provisions of this section.

SECTION 2. AMENDATORY 75 O.S. 1991, Section 303, as last amended by Section 10, Chapter 239, O.S.L. 1998 (75 O.S. Supp. 1998, Section 303), is amended to read as follows:

Section 303. A. Prior to the adoption of any rule or amendment or revocation 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. 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 and governmental entities. Except where such modification or variance is prohibited by statute or constitutional constraints, 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 governmental entity or its ability to comply or both. For business entities, the agency shall include, ~~if practicable,~~ a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, and use quantifiable data to the extent possible, taking into account both short-term and long-term consequences; 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. If the agency determines that the rule affects business entities, a request that such entities provide the agency, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rule;

7. 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.~~ 8. 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.~~ 9. 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.~~ 10. 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 of 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 and the rule impact statement, if available, to be mailed to all persons who have made a timely request of the agency for advance notice of its rulemaking proceedings. Each agency shall maintain a listing of persons or entities requesting such notice.

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, and any information on cost impacts received by the agency from any private or public entities,
- 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, including a listing of all fee changes and, whenever possible, a separate justification for each fee change,
- e. the probable costs and benefits to the agency and to any other agency of the implementation and enforcement of the ~~state-proposed~~ proposed rule and, the source of revenue to be used for implementation and enforcement of the 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. an explanation of the measures the agency has taken to minimize compliance costs and a determination of whether there are less costly or nonregulatory methods or less intrusive methods for achieving the purpose of the proposed rule, and
- h. a determination of the effect of the proposed rule on the public health, safety and environment and, if the proposed rule is designed to reduce significant risks to the public health, safety and environment, an explanation of the nature of the risk and to what extent the proposed rule will reduce the risk,
- i. a determination of any detrimental effect on the public health, safety and environment if the proposed rule is not implemented, and
- j. the date the rule impact statement was prepared and if modified, the date modified.

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. Upon request by an agency, the Governor may also waive the rule impact statement requirements if the agency is required to implement a statute or federal requirement that does not require an agency to interpret or describe the requirements, such as federally mandated provisions which afford the agency no discretion to consider less restrictive alternatives. If the Governor fails to waive such requirement, in writing, 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.

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 3. This act shall become effective November 1, 1999.

Passed the House of Representatives the 19th day of May, 1999.

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Speaker of the House of  
Representatives

Passed the Senate the 19th day of May, 1999.

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President of the Senate