

ENGROSSED SENATE AMENDMENT
TO
ENGROSSED HOUSE
BILL NO. 1587

By: Leist of the House

and

Lawler of the Senate

(poor persons - Developmental Disabilities
Services - submissions - emergency rules -
codification -
emergency)

NOTE: EMERGENCY FAILED

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

"[poor persons - Developmental Disabilities Services -
submissions - emergency rules -
codification]

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

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 615 of Title 56, unless there is
created a duplication in numbering, reads as follows:

A. 1. There is hereby created within the Department of Human
Services the Oklahoma Rule Advisory Council on Developmental
Disabilities Services. The Council shall consist of twenty-one (21)
members.

2. Five members shall be appointed by the Governor, five
members shall be appointed by the Speaker of the House of
Representatives, five members shall be appointed by the President
Pro Tempore of the Senate, and six members shall be appointed by the
Director of the Department of Human Services.

3. a. The initial terms of the gubernatorial and legislative appointees shall be progressive for one (1) through five (5) years so that only one term expires each calendar year. The initial terms for each member appointed by the Director of the Department of Human Services shall be progressive for one (1) through six (6) years so that only one term expires each calendar year.
- b. Subsequent terms shall be for five years.
- c. Members shall continue to serve until their successors are appointed.

4. A vacancy on the Council shall be filled in the same manner as the original appointment.

B. The composition of the Council shall be as follows:

1. The Governor shall appoint five members as follows:

- a. one person who is developmentally disabled,
- b. one parent or legal guardian of a developmentally disabled person who receives services from the Developmental Disabilities Services Division of the Department of Human Services,
- c. one parent or legal guardian of a developmentally disabled person who does not receive services from the Developmental Disabilities Services Division of the Department of Human Services and who is on the waiting list for such services,
- d. one person who is employed by a community-based provider of services to the developmentally disabled in Oklahoma, and
- e. one person from the State Department of Rehabilitation Services;

2. The Speaker of the House of Representatives shall appoint five members as follows:

- a. one person who is developmentally disabled,
- b. one parent or legal guardian of a developmentally disabled person who receives services from the Developmental Disabilities Services Division of the Department of Human Services,
- c. one parent or legal guardian of a developmentally disabled person who does not receive services from the Developmental Disabilities Services Division of the Department of Human Services and who is on the waiting list for such services,
- d. one person who is employed by a community-based provider of services to the developmentally disabled in Oklahoma, and
- e. one person from the Department of Mental Health and Substance Abuse Services;

3. The President Pro Tempore of the Senate shall appoint five members as follows:

- a. one person who is developmentally disabled,
- b. one parent or legal guardian of a developmentally disabled person who receives services from the Developmental Disabilities Services Division of the Department of Human Services,
- c. one parent or legal guardian of a developmentally disabled person who does not receive services from the Developmental Disabilities Services Division of the Department of Human Services and who is on the waiting list for such services,
- d. one person who is employed by a community-based provider of services to the developmentally disabled in Oklahoma, and

- e. one person from the University Center for Excellence in Developmental Disabilities within the University of Oklahoma Health Sciences Center; and

4. The Director of the Department of Human Services shall appoint six members.

C. The Council shall elect a chair and a vice-chair from among its members. The Council shall meet as required for rule development, review and recommendation and for such other purposes specified by law. Special meetings may be called by the chair or by the concurrence of any seven members. Eleven members shall constitute a quorum.

D. The Council shall:

1. Have authority to recommend to the Commission for Human Services rules to implement the duties and responsibilities of the Department for persons with developmental disabilities. The Department shall not have standing to recommend to the Commission proposed permanent rules or changes to such rules that have not previously been submitted to the Council for action at least forty-five (45) days prior to the hearing for adoption of the rules by the Commission;

2. Before recommending any permanent rules to the Commission, give public notice, offer opportunity for public comment and conduct a public rulemaking hearing when required by the Administrative Procedures Act and rules of the Commission;

3. Have authority to make to the Commission written recommendations upon which at least a majority of the membership of the Council shall have concurred; and

4. Have the authority to provide a public forum for the discussion of issues it considers relevant to its area of jurisdiction, and to:

- a. pass nonbinding resolutions expressing the sense of the Council, and

- b. make recommendations to the Commission regarding programs related to persons with disabilities and concerning the need and the desirability of conducting public meetings, workshops and seminars.

E. The Council shall not recommend rules for promulgation by the Commission unless all applicable requirements of the Administrative Procedures Act and rules of the Commission have been followed including, but not limited to, notice, rule impact statement and rulemaking hearings. All actions of the Council with regard to rulemaking shall be deemed actions of the Commission for the purposes of complying with the Administrative Procedures Act and rules of the Commission. The Council shall advise the Commission on initiating and conducting rulemaking proceedings related to persons with developmental disabilities.

F. Members of the Council shall serve without compensation but may be reimbursed for necessary expenses incurred in the performance of their duties as provided in the State Travel Reimbursement Act. The Council is authorized to utilize the conference rooms of the Commission and obtain administrative assistance from the Commission, as required.

G. 1. Except as provided in this subsection, rules within the jurisdiction of the Council as provided by this section shall be promulgated with the advice of the Council.

2. The Commission may promulgate emergency and preemptive rules without the advice of the Council when the time constraints of the emergency or proposed preemptive rules, as determined by the Commission, do not permit timely development of recommendations by the Council; provided, an emergency rule may be promulgated only in circumstances that truly and clearly constitute an emergency pursuant to the provisions of subsection H of this section.

3. Factual support of the emergency need shall be submitted to the Legislature and the Governor by the Commission demonstrating

that an emergency pursuant to the provisions of subsection H of this section cannot be averted or remedied by any other administrative act.

4. If the Commission adopts any proposed permanent rules or promulgates any preemptive rules without the advice of the Council or that are not in accord with the advice of the Council, the Commission shall detail the reasons therefor on the rule report submitted to the Governor and the Legislature pursuant to the provisions of Article 1 of the Administrative Procedures Act.

H. The Commission may only promulgate an emergency rule related to persons with developmental disabilities if:

1. The Commission determines that:

- a. an immediate peril exists to the preservation of the public peace, health, safety or welfare,
- b. the time limitation established by the Legislature, a federal statute or regulation, or a state or federal court order requires an emergency rule, or
- c. the rule is necessary to prevent substantial harm to the public interest; and

2. The Commission attaches to the proposed permanent rule an affidavit, signed by the Director and a majority of the Commission having rulemaking authority, affirming such determination."

Passed the Senate the 24th day of April, 2003.

Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____,
2003.

Presiding Officer of the House
of Representatives