

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1018

By: Leist of the House

and

Shurden of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to statutes and reports; amending 75 O.S. 2001, Section 253, which relates to emergency administrative rules; authorizing an agency to promulgate an emergency rule provided certain conditions are met; specifying circumstances necessary for an emergency rule; requiring factual support and submission thereof; prohibiting certain circumstances from being an emergency; requiring certain notice prior to adoption of proposed emergency rule; and declaring an emergency.

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

SECTION 1. AMENDATORY 75 O.S. 2001, 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~~ Pursuant to the requirements of this section, an agency may promulgate an emergency rule, at any time, ~~any such rule~~, provided the:

1. Subject to the provisions of this section, the agency determines that:

- a. a compelling public interest exists which has an immediate impact upon the public peace, health, safety or welfare, or

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

2. The agency attaches to the proposed emergency rule an affidavit signed by the chief administrative officer and at least two-thirds (2/3) of any agency body having rulemaking authority affirming that the emergency rule is necessary to:

- a. address a compelling public interest which has an immediate impact upon the public peace, health, safety or welfare of the state, or
- b. prevent or affect an immediate peril to the preservation of the public peace, health, safety or welfare of the state, or
- c. comply with time limitations established by the Legislature, by a federal statute or regulation or by a state or federal court order; and

3. The Governor first approves ~~such~~ the rule pursuant to the provisions of this section.

B. 1. Because the exercise of emergency rulemaking power precludes the people's right to prior notice and participation in the operations of their government, it constitutes the exercise of extraordinary power requiring extraordinary safeguards against abuse. An emergency rule may be promulgated only in circumstances that truly and clearly constitute an emergency pursuant to subsection A of this section.

2. Factual support of the emergency need must be submitted to the Legislature and the Governor by the agency demonstrating that an emergency pursuant to subsection A of this section cannot be averted or remedied by any other administrative act.

3. No emergency shall be found to exist when the primary cause of the emergency is delay or inaction caused by the agency involved and the emergency situation could have been averted by timely compliance with the permanent rulemaking provisions of the Administrative Procedures Act.

C. Prior to adoption of the proposed emergency rule, the agency shall cause a summary of the proposed emergency rule and a copy of the rule impact statement, if available, to be posted on the website for the agency or to be transmitted electronically or 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 requesting notice pursuant to this subsection or paragraph 10 of subsection B of Section 303 of this title.

D. 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 paragraph 2 of subsection D of 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 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.~~ E. 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~~ D 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.~~ F. 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.~~ G. 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.~~ H. 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.~~ J. of this section.

~~G.~~ I. 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.~~ J. 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 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.

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

~~¶~~ L. 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.~~ M. 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. 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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