

EHB 1550

1 THE STATE SENATE
2 Monday, April 11, 2005

3 ENGROSSED
4 House Bill No. 1550
5 As Amended

6 ENGROSSED HOUSE BILL NO. 1550 - By: WRIGHT and WESSELHOFT of the
7 House and EASLEY of the Senate.

8 [statutes and reports - Administrative Procedures Act -
9 Administrative Code - Department of Labor -
10 noncodification - effective date]

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

12 SECTION 1. AMENDATORY 75 O.S. 2001, Section 250.4a, is
13 amended to read as follows:

14 Section 250.4a A. Any agency exempt from all or part of the
15 Administrative Procedures Act pursuant to subsection A of Section
16 250.4 of ~~Title 75 of the Oklahoma Statutes~~ this title shall maintain
17 and make available for public inspection its exempt rules at its
18 principal place of business.

19 B. It is recognized by the Oklahoma Legislature that agencies
20 specified by subsection A of this section have published rules
21 containing obsolete rules or internal policy statements or agency
22 statements which do not meet the Administrative Procedures Act
23 definition of rules. Therefore, by December 31, ~~1998~~ 2005, each
24 such agency shall conduct an internal review of its rules to
25 determine whether each of its rules is current and is a rule as such

1 term is defined by the Administrative Procedures Act. Any rule
2 determined by an agency to be obsolete or an internal policy
3 statement or any agency statement which does not meet the definition
4 of a rule pursuant to the Administrative Procedures Act shall be
5 deleted by the agency. Notice of such deletion shall be submitted
6 to the Speaker of the House of Representatives, the President Pro
7 Tempore of the Senate and the Governor for informational purposes.

8 C. The provisions of this section shall not be construed to
9 authorize any agency to amend any rule or to delete any rule which
10 affects any private rights or procedures available to the public.

11 SECTION 2. AMENDATORY 75 O.S. 2001, Section 250.6, is
12 amended to read as follows:

13 Section 250.6 A. 1. The Commission for Human Services may
14 promulgate a preemptive rule pursuant to the provisions of this
15 section:

16 a. when the Commission for Human Services is required by
17 federal law, federal rules, a state law enacted
18 pursuant to federal law or federal rule, or order of a
19 court of competent jurisdiction to adopt a rule, or an
20 amendment, revision or revocation of an existing rule,
21 and

1 b. which if such rule is not immediately adopted would
2 result in the imposition of a financial penalty, or a
3 reduction, withholding or loss of federal funds.

4 2. A preemptive rule must be approved by the Governor pursuant
5 to this section.

6 3. The conditions specified in this subsection for the
7 promulgation of a preemptive rule shall be the only conditions
8 authorized for promulgation of such rule by the Commission for Human
9 Services.

10 B. 1. Upon the adoption of such preemptive rule by the
11 Commission, the Director of the Department of Human Services shall
12 request the Governor to approve the rules on the basis that such
13 rules are required to comply with a federal law, federal rule, a
14 state law enacted pursuant to federal law or rule, or order of a
15 court of competent jurisdiction and which if such rules are not
16 immediately adopted would result in a financial penalty, or a
17 reduction, withholding or loss of federal funds.

18 2. Upon the filing of the request for approval of a preemptive
19 rule, the Governor shall review such rule and decide as to whether
20 such rule should be approved. Prior to approval of a preemptive
21 rule, the Governor shall submit the preemptive rule to the Office of
22 the Secretary of State for review of proper formatting unless the
23 preemptive rule has been reviewed by the Office prior to agency

1 submission to the Governor. Failure of the Governor to approve such
2 rule within twenty-eight (28) calendar days shall constitute denial
3 of the rule as a preemptive rule.

4 3. Upon approval of a preemptive rule, the Governor shall
5 immediately notify the Commission. Upon receipt of notice of the
6 approval of the preemptive rule, the Commission shall file the
7 number of copies specified by the Secretary of the approval issued
8 by the Governor and the number of copies specified by the Secretary
9 of the preemptive rule with the Office pursuant to Section 251 of
10 this title.

11 4. The preemptive rule shall be published in accordance with
12 the provisions of Section 255 of this title in "The Oklahoma
13 Register" following approval by the Governor. The Governor's
14 approval and the approved rules shall be retained as official
15 records by the Office of Administrative Rules.

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

21 6. Upon approval by the Governor, the rule shall be considered
22 promulgated and shall be in force immediately, or if a later date is

1 required by statute or specified in the rule, the later date is the
2 effective date.

3 C. A preemptive rule shall be considered to be a permanent rule
4 and shall remain in full force and effect unless and until
5 specifically disapproved during the first thirty (30) ~~calendar~~
6 legislative days of the next regular legislative session following
7 promulgation of such preemptive rule or unless an earlier expiration
8 date is specified by the Commission. The Legislature may disapprove
9 such rule pursuant to Section 308 of this title. Any resolution
10 introduced for the purpose of disapproving such rule shall not be
11 subject to regular legislative cut off dates.

12 D. Except as otherwise provided by this section, preemptive
13 rules shall be promulgated and published in compliance with Article
14 I of the Administrative Procedures Act. Preemptive rules
15 promulgated pursuant to the provisions of this section shall be
16 exempt from the provisions of Sections 253, 303, 303.1, 303.2, 304,
17 308 and 308.1 of this title.

18 SECTION 3. AMENDATORY 75 O.S. 2001, Section 257.1, is
19 amended to read as follows:

20 Section 257.1 A. The Secretary is authorized to enter into and
21 make reciprocal agreements with other states to allow exchanges of
22 administrative codes of such states.

1 B. 1. Each of the following offices shall be entitled to
2 receive, as soon as available from the Secretary, without cost, one
3 copy of the printed volumes of the "Code" and the supplements
4 thereto or, upon request from an office, one copy of the "Code" and
5 the supplements thereto on compact disc:

- 6 a. County clerk of each county;
- 7 b. Clerk of the Supreme Court;
- 8 c. Attorney General;
- 9 d. Governor;
- 10 e. Speaker of the House of Representatives and the
11 President Pro Tempore of the Senate;
- 12 f. the chair and vice-chair of the Government Reform,
13 Agency Oversight and Administrative Rules of the House
14 of Representatives;
- 15 g. the Research, Legal and Fiscal Divisions of the House
16 of Representatives;
- 17 ~~g.~~ h. the Legislative Division of the Senate; and
- 18 ~~h.~~ i. the Department of Libraries for the Law Library.

19 2. The Department of Libraries is authorized to obtain number
20 of copies of the "Code" and the supplements thereto necessary for
21 use for deposit with the Publications Clearinghouse pursuant to
22 Sections 3-113.1 through 3-115 of Title 65 of the Oklahoma Statutes.

1 The Secretary is authorized to retain sufficient copies for exchange
2 purposes with other states for copies of their rules.

3 SECTION 4. AMENDATORY 75 O.S. 2001, Section 303, as last
4 amended by Section 1, Chapter 317, O.S.L. 2003 (75 O.S. Supp. 2004,
5 Section 303), is amended to read as follows:

6 Section 303. A. Prior to the adoption of any rule or amendment
7 or revocation of a rule, the agency shall:

8 1. Cause notice of any intended action to be published in "The
9 Oklahoma Register" pursuant to subsection B of this section;

10 2. For at least thirty (30) days after publication of the
11 notice of the intended rulemaking action, afford a comment period
12 for all interested persons to submit data, views or arguments,
13 orally or in writing. The agency shall consider fully all written
14 and oral submissions respecting the proposed rule;

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

17 4. Consider the effect its intended action may have on the
18 various types of business and governmental entities. Except where
19 such modification or variance is prohibited by statute or
20 constitutional constraints, if an agency finds that its actions may
21 adversely affect any such entity, the agency may modify its actions
22 to exclude that type of entity, or may "tier" its actions to allow
23 rules, penalties, fines or reporting procedures and forms to vary

1 according to the size of a business or governmental entity or its
2 ability to comply or both. For business entities, the agency shall
3 include a description of the probable quantitative and qualitative
4 impact of the proposed rule, economic or otherwise, and use
5 quantifiable data to the extent possible, taking into account both
6 short-term and long-term consequences; and

7 5. Consider the effect its intended action may have on the
8 various types of consumer groups. If an agency finds that its
9 actions may adversely affect such groups, the agency may modify its
10 actions to exclude that type of activity.

11 B. The notice required by paragraph 1 of subsection A of this
12 section shall include, but not be limited to:

- 13 1. In simple language, a brief summary of the rule;
- 14 2. The proposed action being taken;
- 15 3. The circumstances which created the need for the rule;
- 16 4. The specific legal authority authorizing the proposed rule;
- 17 5. The intended effect of the rule;

18 6. If the agency determines that the rule affects business
19 entities, a request that such entities provide the agency, within
20 the comment period, in dollar amounts if possible, the increase in
21 the level of direct costs such as fees, and indirect costs such as
22 reporting, recordkeeping, equipment, construction, labor,
23 professional services, revenue loss, or other costs expected to be

1 incurred by a particular entity due to compliance with the proposed
2 rule;

3 7. The time when, the place where, and the manner in which
4 interested persons may present their views thereon pursuant to
5 paragraph 3 of subsection A of this section;

6 8. Whether or not the agency intends to issue a rule impact
7 statement according to subsection D of this section and where copies
8 of such impact statement may be obtained for review by the public;

9 9. The time when, the place where, and the manner in which
10 persons may demand a hearing on the proposed rule if the notice does
11 not already provide for a hearing. If the notice provides for a
12 hearing, the time and place of the hearing shall be specified in the
13 notice; and

14 10. Where copies of the proposed rules may be obtained for
15 review by the public. An agency may charge persons for the actual
16 cost of mailing a copy of the proposed rules to such persons.

17 The number of copies of such notice as specified by the
18 Secretary shall be submitted to the Secretary who shall publish the
19 notice in "The Oklahoma Register" pursuant to the provisions of
20 Section 255 of this title.

21 Prior to or within three (3) days after publication of the
22 notice in "The Oklahoma Register", the agency shall cause a copy of
23 the notice of the proposed rule adoption and the rule impact

1 statement, if available, to be mailed to all persons who have made a
2 timely request of the agency for advance notice of its rulemaking
3 proceedings. Provided, in lieu of mailing copies, an agency may
4 electronically notify interested persons that a copy of the proposed
5 rule and the rule impact statement, if available, may be viewed on
6 the agency's web site. If an agency posts a copy of the proposed
7 rule and rule impact statement on its web site, the agency shall not
8 charge persons for the cost of downloading or printing the proposed
9 rule or impact statement. Each agency shall maintain a listing of
10 persons or entities requesting such notice.

11 C. 1. If the published notice does not already provide for a
12 hearing, an agency shall schedule a hearing on a proposed rule if,
13 within thirty (30) days after the published notice of the proposed
14 rule adoption, a written request for a hearing is submitted by:

- 15 a. at least ~~twenty-five~~ ten persons,
- 16 b. a political subdivision,
- 17 c. an agency,
- 18 d. an association having not less than twenty-five
19 members, or
- 20 e. the Small Business Regulatory Review Committee.

21 At that hearing persons may present oral argument, data, and
22 views on the proposed rule.

1 2. A hearing on a proposed rule may not be held earlier than
2 thirty (30) days after notice of the hearing is published pursuant
3 to subsection B of this section.

4 3. The provisions of this subsection shall not be construed to
5 prevent an agency from holding a hearing or hearings on the proposed
6 rule although not required by the provisions of this subsection;
7 provided that notice of such hearing shall be published in "The
8 Oklahoma Register" at least thirty (30) days prior to such hearing.

9 D. 1. Except as otherwise provided in this subsection, an
10 agency shall issue a rule impact statement of a proposed rule prior
11 to or within fifteen (15) days after the date of publication of the
12 notice of proposed rule adoption. The rule impact statement may be
13 modified after any hearing or comment period afforded pursuant to
14 the provisions of this section.

15 2. Except as otherwise provided in this subsection, the rule
16 impact statement shall include, but not be limited to:

- 17 a. a brief description of the purpose of the proposed
18 rule,
19 b. a description of the classes of persons who most
20 likely will be affected by the proposed rule,
21 including classes that will bear the costs of the
22 proposed rule, and any information on cost impacts

- 1 received by the agency from any private or public
2 entities,
- 3 c. a description of the classes of persons who will
4 benefit from the proposed rule,
- 5 d. a description of the probable economic impact of the
6 proposed rule upon affected classes of persons or
7 political subdivisions, including a listing of all fee
8 changes and, whenever possible, a separate
9 justification for each fee change,
- 10 e. the probable costs and benefits to the agency and to
11 any other agency of the implementation and enforcement
12 of the proposed rule, the source of revenue to be used
13 for implementation and enforcement of the proposed
14 rule, and any anticipated effect on state revenues,
15 including a projected net loss or gain in such
16 revenues if it can be projected by the agency,
- 17 f. a determination of whether implementation of the
18 proposed rule will have an economic impact on any
19 political subdivisions or require their cooperation in
20 implementing or enforcing the rule,
- 21 g. a determination of whether implementation of the
22 proposed rule may have an adverse economic effect on

- 1 small business as provided by the Oklahoma Small
2 Business Regulatory Flexibility Act,
- 3 h. an explanation of the measures the agency has taken to
4 minimize compliance costs and a determination of
5 whether there are less costly or nonregulatory methods
6 or less intrusive methods for achieving the purpose of
7 the proposed rule,
 - 8 i. a determination of the effect of the proposed rule on
9 the public health, safety and environment and, if the
10 proposed rule is designed to reduce significant risks
11 to the public health, safety and environment, an
12 explanation of the nature of the risk and to what
13 extent the proposed rule will reduce the risk,
 - 14 j. a determination of any detrimental effect on the
15 public health, safety and environment if the proposed
16 rule is not implemented, and
 - 17 k. the date the rule impact statement was prepared and if
18 modified, the date modified.

19 3. To the extent an agency for good cause finds the preparation
20 of a rule impact statement or the specified contents thereof are
21 unnecessary or contrary to the public interest in the process of
22 adopting a particular rule, the agency may request the Governor to
23 waive such requirement. Upon request by an agency, the Governor may

1 also waive the rule impact statement requirements if the agency is
2 required to implement a statute or federal requirement that does not
3 require an agency to interpret or describe the requirements, such as
4 federally mandated provisions which afford the agency no discretion
5 to consider less restrictive alternatives. If the Governor fails to
6 waive such requirement, in writing, prior to publication of the
7 notice of the intended rulemaking action, the rule impact statement
8 shall be completed. The determination to waive the rule impact
9 statement shall not be subject to judicial review.

10 4. The rule shall not be invalidated on the ground that the
11 contents of the rule impact statement are insufficient or
12 inaccurate.

13 E. Upon completing the requirements of this section, an agency
14 may adopt a proposed rule. No rule is valid unless adopted in
15 substantial compliance with the provisions of this section.

16 **SECTION 5.** This act shall become effective November 1, 2005.

17 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 4-5-05 - DO PASS,
18 As Amended and Coauthored.