

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 SENATE BILL 758

By: Laughlin of the Senate

4 and

5 Blackwell of the House

6
7
8 AS INTRODUCED

9 An Act relating to the Administrative Procedures Act;
10 amending 75 O.S. 2001, Sections 303, as last amended
11 by Section 4, Chapter 227, O.S.L. 2005, and 308 (75
12 O.S. Supp. 2006, Section 303), which relate to rules;
13 requiring certain notice of proposed rules; modifying
14 certain procedures for legislative review of rules;
15 and providing an effective date.

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

17 SECTION 1. AMENDATORY 75 O.S. 2001, Section 303, as last
18 amended by Section 4, Chapter 227, O.S.L. 2005 (75 O.S. Supp. 2006,
19 Section 303), is amended to read as follows:

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

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

24 2. Concurrent with notice in the Oklahoma Register, provide
notice by mail to persons affected by a proposed rule if such rule

1 causes a fiscal impact of more than Fifty Dollars (\$50.00) to the
2 persons and the agency has a list of such persons. When a proposed
3 rule has a fiscal impact of more than Fifty Dollars (\$50.00) to
4 persons and no list of such persons is available, the agency shall
5 provide notice by publication in a newspaper of general circulation
6 in the area where the rule will impact such persons;

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

12 ~~3.~~ 4. Hold a hearing, if required, as provided by subsection C
13 of this section;

14 ~~4.~~ 5. Consider the effect its intended action may have on the
15 various types of business and governmental entities. Except where
16 such modification or variance is prohibited by statute or
17 constitutional constraints, if an agency finds that its actions may
18 adversely affect any such entity, the agency may modify its actions
19 to exclude that type of entity, or may "tier" its actions to allow
20 rules, penalties, fines or reporting procedures and forms to vary
21 according to the size of a business or governmental entity or its
22 ability to comply or both. For business entities, the agency shall
23 include a description of the probable quantitative and qualitative
24 impact of the proposed rule, economic or otherwise, and use

1 quantifiable data to the extent possible, taking into account both
2 short-term and long-term consequences; and

3 ~~5.~~ 6. Consider the effect its intended action may have on the
4 various types of consumer groups. If an agency finds that its
5 actions may adversely affect such groups, the agency may modify its
6 actions to exclude that type of activity.

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

- 9 1. In simple language, a brief summary of the rule;
- 10 2. The proposed action being taken;
- 11 3. The circumstances which created the need for the rule;
- 12 4. The specific legal authority authorizing the proposed rule;
- 13 5. The intended effect of the rule;
- 14 6. If the agency determines that the rule affects business
15 entities, a request that such entities provide the agency, within
16 the comment period, in dollar amounts if possible, the increase in
17 the level of direct costs such as fees, and indirect costs such as
18 reporting, recordkeeping, equipment, construction, labor,
19 professional services, revenue loss, or other costs expected to be
20 incurred by a particular entity due to compliance with the proposed
21 rule;
- 22 7. The time when, the place where, and the manner in which
23 interested persons may present their views thereon pursuant to
24 paragraph ~~3~~ 4 of subsection A of this section;

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

4 9. The time when, the place where, and the manner in which
5 persons may demand a hearing on the proposed rule if the notice does
6 not already provide for a hearing. If the notice provides for a
7 hearing, the time and place of the hearing shall be specified in the
8 notice; and

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

12 The number of copies of such notice as specified by the
13 Secretary shall be submitted to the Secretary who shall publish the
14 notice in "The Oklahoma Register" pursuant to the provisions of
15 Section 255 of this title.

16 Prior to or within three (3) days after publication of the
17 notice in "The Oklahoma Register", the agency shall cause a copy of
18 the notice of the proposed rule adoption and the rule impact
19 statement, if available, to be mailed to all persons who have made a
20 timely request of the agency for advance notice of its rulemaking
21 proceedings. Provided, in lieu of mailing copies, an agency may
22 electronically notify interested persons that a copy of the proposed
23 rule and the rule impact statement, if available, may be viewed on
24 the agency's web site. If an agency posts a copy of the proposed

1 rule and rule impact statement on its web site, the agency shall not
2 charge persons for the cost of downloading or printing the proposed
3 rule or impact statement. Each agency shall maintain a listing of
4 persons or entities requesting such notice.

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

- 9 a. at least ten persons,
- 10 b. a political subdivision,
- 11 c. an agency,
- 12 d. an association having not less than twenty-five
13 members, or
- 14 e. the Small Business Regulatory Review Committee.

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

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

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

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

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

- 9 a. a brief description of the purpose of the proposed
10 rule,
- 11 b. a description of the classes of persons who most
12 likely will be affected by the proposed rule,
13 including classes that will bear the costs of the
14 proposed rule, and any information on cost impacts
15 received by the agency from any private or public
16 entities,
- 17 c. a description of the classes of persons who will
18 benefit from the proposed rule,
- 19 d. a description of the probable economic impact of the
20 proposed rule upon affected classes of persons or
21 political subdivisions, including a listing of all fee
22 changes and, whenever possible, a separate
23 justification for each fee change,

- 1 e. the probable costs and benefits to the agency and to
2 any other agency of the implementation and enforcement
3 of the proposed rule, the source of revenue to be used
4 for implementation and enforcement of the proposed
5 rule, and any anticipated effect on state revenues,
6 including a projected net loss or gain in such
7 revenues if it can be projected by the agency,
- 8 f. a determination of whether implementation of the
9 proposed rule will have an economic impact on any
10 political subdivisions or require their cooperation in
11 implementing or enforcing the rule,
- 12 g. a determination of whether implementation of the
13 proposed rule may have an adverse economic effect on
14 small business as provided by the Oklahoma Small
15 Business Regulatory Flexibility Act,
- 16 h. an explanation of the measures the agency has taken to
17 minimize compliance costs and a determination of
18 whether there are less costly or nonregulatory methods
19 or less intrusive methods for achieving the purpose of
20 the proposed rule,
- 21 i. a determination of the effect of the proposed rule on
22 the public health, safety and environment and, if the
23 proposed rule is designed to reduce significant risks
24 to the public health, safety and environment, an

1 explanation of the nature of the risk and to what
2 extent the proposed rule will reduce the risk,

3 j. a determination of any detrimental effect on the
4 public health, safety and environment if the proposed
5 rule is not implemented, and

6 k. the date the rule impact statement was prepared and if
7 modified, the date modified.

8 3. To the extent an agency for good cause finds the preparation
9 of a rule impact statement or the specified contents thereof are
10 unnecessary or contrary to the public interest in the process of
11 adopting a particular rule, the agency may request the Governor to
12 waive such requirement. Upon request by an agency, the Governor may
13 also waive the rule impact statement requirements if the agency is
14 required to implement a statute or federal requirement that does not
15 require an agency to interpret or describe the requirements, such as
16 federally mandated provisions which afford the agency no discretion
17 to consider less restrictive alternatives. If the Governor fails to
18 waive such requirement, in writing, prior to publication of the
19 notice of the intended rulemaking action, the rule impact statement
20 shall be completed. The determination to waive the rule impact
21 statement shall not be subject to judicial review.

22 4. The rule shall not be invalidated on the ground that the
23 contents of the rule impact statement are insufficient or
24 inaccurate.

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

4 SECTION 2. AMENDATORY 75 O.S. 2001, Section 308, is
5 amended to read as follows:

6 Section 308. A. Upon receipt of any adopted rules, the Speaker
7 of the House of Representatives and the President Pro Tempore of the
8 Senate shall assign such rules to the appropriate committees of each
9 such house of the Legislature for review. Except as otherwise
10 provided by this section, upon receipt of such rules, the
11 Legislature shall have thirty (30) legislative days to review such
12 rules.

13 B. 1. By the adoption of a joint resolution, the Legislature
14 may disapprove any rule, waive the thirty-legislative-day review
15 period and approve any rule which has been submitted for review, or
16 otherwise approve any rule.

17 2. a. (1) The Legislature may by concurrent resolution
18 disapprove a proposed rule or a proposed
19 amendment to a rule submitted to the Legislature
20 or an emergency rule prior to such rule having
21 the force and effect of law.

22 (2) Any such proposed rule or proposed amendment to a
23 permanent rule shall be disapproved by both
24 houses of the Legislature prior to the

1 termination of the legislative review period
2 specified by this section.

3 (3) Any such concurrent resolution shall not require
4 the approval of the Governor, and any such rule
5 so disapproved shall be invalid and of no effect
6 regardless of the approval of the Governor of
7 such rule.

8 b. By adoption of a concurrent resolution, the
9 Legislature may waive the thirty-legislative-day
10 review period for any rule which has been submitted
11 for review.

12 C. Unless otherwise authorized by the Legislature by concurrent
13 resolution, or by law, whenever a rule is disapproved as provided in
14 subsection B of this section, the agency adopting such rules shall
15 not have authority to resubmit an identical rule, except during the
16 first sixty (60) calendar days of the next regular legislative
17 session. Any effective emergency rule which would have been
18 superseded by a disapproved permanent rule shall be deemed null and
19 void on the date the Legislature disapproves the permanent rule.
20 Rules may be disapproved in part or in whole by the Legislature.
21 Any resolution enacted disapproving a rule shall be filed with the
22 Secretary for publication in "The Oklahoma Register".

23 D. Unless otherwise provided by specific vote of the
24 Legislature, resolutions introduced for purposes of disapproving or

1 approving a rule shall not be subject to regular legislative cutoff
2 dates, shall be limited to such provisions as may be necessary for
3 disapproval or approval of a rule, and any such other direction or
4 mandate regarding the rule deemed necessary by the Legislature. The
5 resolution shall contain no other provisions.

6 E. ~~1. Transmission of a rule for legislative review on or~~
7 ~~before April 1 of each year shall result in the approval of such~~
8 ~~rule by the Legislature if:~~

9 a. ~~the Legislature is in regular session and has failed~~
10 ~~to disapprove such rule within thirty (30) legislative~~
11 ~~days after such rule has been submitted pursuant to~~
12 ~~Section 303.1 of this title, or~~

13 b. ~~the Legislature has adjourned before the expiration of~~
14 ~~said thirty (30) legislative days of submission of~~
15 ~~such rules, and has failed to disapprove such rule.~~

16 ~~2. After April 1 of each year, transmission of a rule for~~
17 ~~legislative review shall result in the approval of such rule by the~~
18 ~~Legislature only if the Legislature is in regular session and has~~
19 ~~failed to disapprove such rule within thirty (30) legislative days~~
20 ~~after such rule has been so transmitted. In the event the~~
21 ~~Legislature adjourns before the expiration of such thirty (30)~~
22 ~~legislative days, such rule shall carry over for consideration by~~
23 ~~the Legislature during the next regular session and shall be~~
24 ~~considered to have been originally transmitted to the Legislature on~~

1 ~~the first day of said next regular session for review pursuant to~~
2 ~~this section. As an alternative, an agency may request direct~~
3 ~~legislative approval of such rules or waiver of the thirty-~~
4 ~~legislative day review provided by subsection B of this section. An~~
5 ~~agency may also adopt emergency rules under the provisions of~~
6 ~~Section 253 of this title. Following the thirty-legislative-day~~
7 ~~review period, each house of the Legislature shall have five (5)~~
8 ~~legislative days to approve a rule by a majority vote. Failure to~~
9 ~~attain approval of a rule by both houses of the Legislature within~~
10 ~~five (5) legislative days shall be deemed disapproval of such rule.~~

11 F. Prior to final adoption of a rule, an agency may withdraw a
12 rule from legislative review. Notice of such withdrawal shall be
13 given to the Governor, the Speaker of the House of Representatives,
14 the President Pro Tempore of the Senate, and to the Secretary for
15 publication in "The Oklahoma Register".

16 G. Except as otherwise provided by Sections 253, 250.4 and
17 250.6 of this title or as otherwise specifically provided by the
18 Legislature, no agency shall promulgate any rule unless reviewed by
19 the Legislature pursuant to this section. An agency may promulgate
20 an emergency rule only pursuant to Section 253 of this title.

21 H. Any rights, privileges, or interests gained by any person by
22 operation of an emergency rule, shall not be affected by reason of
23 any subsequent disapproval or rejection of such rule by either house
24 of the Legislature.

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SECTION 3. This act shall become effective November 1, 2007.

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