

COMMITTEE AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB2852 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Adopted: _____

Amendment submitted by: John Wright _____

Reading Clerk

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 PROPOSED COMMITTEE
4 SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2852

By: Wright (John)

7 PROPOSED COMMITTEE SUBSTITUTE

8 An Act relating to statutes and reports; amending 75
9 O.S. 2001, Sections 250.3 and 253, which relate to
10 the Administrative Procedures Act; modifying
11 definitions; defining terms; modifying procedure for
12 emergency rules; and providing an effective date.

13
14 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

15 SECTION 1. AMENDATORY 75 O.S. 2001, Section 250.3, is
16 amended to read as follows:

17 Section 250.3 As used in the Administrative Procedures Act:

18 1. "Administrative head" means an official or agency body
19 responsible pursuant to law for issuing final agency orders;

20 2. "Adopted" means ~~that~~ a proposed emergency rule or permanent
21 rule which has been approved by the agency but has not been reviewed
22 by the Legislature and the Governor;

23 3. "Agency" includes but is not limited to any constitutionally
24 or statutorily created state board, bureau, commission, office,

1 authority, public trust in which the state is a beneficiary, or
2 interstate commission, except:

3 a. the Legislature or any branch, committee or officer
4 thereof, and

5 b. the courts;

6 4. "Emergency rule" means a rule that is made pursuant to
7 Section 253 of this title;

8 5. "Final" or "finally adopted" means a rule other than an
9 emergency rule, which has been approved by the Legislature and by
10 the Governor, or approved by the Legislature pursuant to subsection
11 B of Section 308 of this title and otherwise complies with the
12 requirements of the Administrative Procedures Act but has not been
13 published pursuant to Section 255 of this title;

14 ~~5.~~ 6. "Final agency order" means an order that includes
15 findings of fact and conclusions of law pursuant to Section 312 of
16 this title, is dispositive of an individual proceeding unless there
17 is a request for rehearing, reopening, or reconsideration pursuant
18 to Section 317 of this title and which is subject to judicial
19 review;

20 ~~6.~~ 7. "Hearing examiner" means a person meeting the
21 qualifications specified by Article II of the Administrative
22 Procedures Act and who has been duly appointed by an agency to hold
23 hearings and, as required, render orders or proposed orders;

24

1 ~~7.~~ 8. "Individual proceeding" means the formal process employed
2 by an agency having jurisdiction by law to resolve issues of law or
3 fact between parties and which results in the exercise of discretion
4 of a judicial nature;

5 ~~8.~~ 9. "License" includes the whole or part of any agency
6 permit, certificate, approval, registration, charter, or similar
7 form of permission required by law;

8 ~~9.~~ 10. "Office" means the Office of the Secretary of State;

9 ~~10.~~ 11. "Order" means all or part of a formal or official
10 decision made by an agency including but not limited to final agency
11 orders;

12 ~~11.~~ 12. "Party" means a person or agency named and
13 participating, or properly seeking and entitled by law to
14 participate, in an individual proceeding;

15 ~~12.~~ 13. "Permanent rule" means a rule that is made pursuant to
16 Section 303 of this title;

17 14. "Person" means any individual, partnership, corporation,
18 association, governmental subdivision, or public or private
19 organization of any character other than an agency;

20 ~~13.~~ 15. "Political subdivision" means a county, city,
21 incorporated town or school district within this state;

22 ~~14.~~ 16. "Promulgated rule" means a finally adopted rule which
23 has been filed and published in accordance with the provisions of
24

1 the Administrative Procedures Act, an emergency rule or preemptory
2 rule which has been approved by the Governor;

3 ~~15.~~ 17. "Rule" means any agency statement or group of related
4 statements of general applicability and future effect that
5 implements, interprets or prescribes law or policy, or describes the
6 procedure or practice requirements of the agency. The term "rule"
7 includes the amendment or revocation of an effective rule but does
8 not include:

9 a. the issuance, renewal, denial, suspension or
10 revocation or other sanction of an individual specific
11 license,

12 b. the approval, disapproval or prescription of rates.
13 For purposes of this subparagraph, the term "rates"
14 shall not include fees or charges fixed by an agency
15 for services provided by that agency including but not
16 limited to fees charged for licensing, permitting,
17 inspections or publications,

18 c. statements and memoranda concerning only the internal
19 management of an agency and not affecting private
20 rights or procedures available to the public,

21 d. declaratory rulings issued pursuant to Section 307 of
22 this title,

23 e. orders by an agency, or
24

1 f. press releases or "agency news releases", provided
2 such releases are not for the purpose of interpreting,
3 implementing or prescribing law or agency policy;

4 ~~16.~~ 18. "Rulemaking" means the process employed by an agency
5 for the formulation of a rule; and

6 ~~17.~~ 19 "Secretary" means the Secretary of State.

7 SECTION 2. AMENDATORY 75 O.S. 2001, Section 253, is
8 amended to read as follows:

9 Section 253. A. If an agency finds that ~~an imminent peril~~
10 ~~exists to the preservation of the public health, safety, or welfare,~~
11 ~~or that a compelling public interest requires an emergency rule,~~
12 ~~amendment, revision, or revocation of an existing rule, an agency~~
13 ~~may promulgate, at any time, any such rule, provided the Governor~~
14 ~~first approves such rule pursuant to the provisions of this section~~
15 a rule is necessary as an emergency measure, the rule may be
16 adopted, amended, revised or revoked pursuant to the provisions of
17 this section, if the rule is first approved by the Governor. The
18 Governor may not approve the adoption, amendment, revision or
19 revocation of a rule as an emergency measure if the emergency
20 situation is created due to the agency's delay or inaction and the
21 emergency situation could have been averted by timely compliance
22 with the provisions of this chapter, unless the agency submits
23 substantial evidence that the rule is necessary as an emergency
24 measure to do any of the following:

1 1. Protect the public health, safety or welfare;

2 2. Comply with deadlines in amendments to an agency's governing
3 law or federal programs;

4 3. Avoid violation of federal law or regulation or other state
5 law;

6 4. Avoid imminent budget reduction; or

7 5. Avoid serious prejudice to the public interest.

8 As used in this subsection, "substantial evidence" shall mean
9 credible evidence which is of sufficient quality and probative value
10 to enable a person of reasonable caution to support a conclusion.

11 B. An emergency rule adopted by an agency shall:

12 1. Be prepared in the format required by Section 251 of this
13 title;

14 2. Include an impact statement which meets the requirements
15 contained in Section 303 of this title unless ~~such impact statement~~
16 ~~is, with the prior written consent of the Governor, waived~~
17 ~~specifically by the agency to the extent an agency for good cause~~
18 ~~finds the preparation of a~~ waives the requirement in writing upon a
19 finding that the rule impact statement or the specified contents
20 thereof are unnecessary or contrary to the public interest ~~in the~~
21 ~~process of promulgating an emergency rule.~~ In addition, the impact
22 statement shall provide information on any cost impacts of the rule
23 received by the agency from any private or public entities;

1 3. Be transmitted ~~in duplicate~~ pursuant to Section 464 of Title
2 74 of the Oklahoma Statutes to the Governor, the Speaker of the
3 Oklahoma House of Representatives and the President Pro Tempore of
4 the Senate, ~~including~~ along with the information required by this
5 subsection within ten (10) days after the rule is adopted; and

6 4. One copy to be transmitted on the same day that filing
7 occurs with the Governor to the Oklahoma Advisory Committee on
8 Intergovernmental Relations if the emergency rule would have an
9 impact on political subdivisions as determined by the agency in the
10 rule impact statement. The filing shall include all information
11 supplied to the Governor regarding such emergency rule pursuant to
12 this section and Section 251 of this title.

13 C. 1. ~~Upon the filing of an adopted~~ Within forty-five (45)
14 calendar days of receipt of a proposed emergency rule ~~by an agency~~
15 filed with the Governor, the Speaker of the Oklahoma House of
16 Representatives and the President Pro Tempore of the Senate, ~~under~~
17 ~~the provisions of subsection B of this section,~~ the Governor shall
18 review ~~such~~ the demonstration of emergency pursuant to subsection A
19 of this section, and shall separately review the rule ~~and shall~~
20 ~~decide as to whether or not such emergency rule should be approved~~
21 in accordance with the standards prescribed in paragraph 2 of this
22 subsection. Prior to approval of emergency rules, the Governor
23 shall submit the emergency rule to the Secretary of State for review
24 of proper formatting.

1 2. ~~If the~~ The Governor disapproves the adopted shall approve
2 the proposed emergency rule, ~~the Governor shall return the entire~~
3 ~~document to the agency with reasons for the disapproval. If the~~
4 ~~agency elects to modify such rule, the agency shall make such~~
5 ~~modifications and resubmit the rule to the Governor for approval~~ as:

6 a. to form,

7 b. clear, concise and understandable,

8 c. within the power of the agency to make and within the
9 enacted legislative standards, and

10 d. made in compliance with the requirements of the
11 Administrative Procedures Act.

12 3. If the Governor disapproves the adopted emergency rule, the
13 Governor shall return the entire document to the agency with reasons
14 for the disapproval. If the agency elects to modify such rule, the
15 agency shall make such modifications and resubmit the rule to the
16 Governor for approval.

17 4. Emergency rules adopted by an agency or approved by the
18 Governor shall be subject to review pursuant to the provisions of
19 Section 306 of this title.

20 D. ~~1. Upon approval by the Governor, an emergency rule shall~~
21 ~~be considered promulgated and shall be in force immediately, or on~~
22 ~~such later date as specified therein. An emergency rule shall only~~
23 ~~be applied prospectively from its effective date.~~

1 ~~2. The Governor shall have forty five (45) calendar days to~~
2 ~~review the emergency rule. Within the forty-five-calendar-day~~
3 ~~period set forth in paragraph 1 of subsection C of this section, the~~
4 Governor may approve the emergency rule or disapprove the emergency
5 rule. Failure of the Governor to approve an emergency rule within
6 the specified period shall constitute disapproval of the emergency
7 rule. Upon disapproval of an emergency rule, the Governor shall
8 ~~notify, within fifteen (15) days, in writing, make written~~
9 notification to the Speaker of the House of Representatives, the
10 President Pro Tempore of the Senate and the Office of Administrative
11 Rules.

12 E. 1. Upon approval of an emergency rule, the Governor shall
13 immediately ~~notify~~ make written notification to the agency, the
14 Speaker of the House of Representatives, the President Pro Tempore
15 of the Senate and the Office of Administrative Rules. Upon receipt
16 of the notice of the approval, the agency shall file with the Office
17 of Administrative Rules ~~the number of copies required by the~~
18 ~~Secretary of the written approval and the emergency rule as many~~
19 copies of the notice of approval and the emergency rule as required
20 by the Secretary.

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

1 ~~3.~~ The emergency rule shall be published in accordance with the
2 provisions of Section 255 of this title in "The Oklahoma Register"
3 following the approval by the Governor. The Governor's approval and
4 the approved rules shall be retained as official records by the
5 Office of Administrative Rules.

6 F. ~~Emergency rules shall be effective from the date of approval~~
7 ~~by the Governor or a later date as specified in the approved~~
8 ~~emergency rule, unless otherwise specifically provided by the~~
9 ~~Legislature, through the first day of the next succeeding Regular~~
10 ~~Session of the Oklahoma Legislature, after the promulgation of such~~
11 ~~emergency rule, and shall be in full force and effect through July~~
12 ~~14 following such session unless it is made ineffective pursuant to~~
13 ~~subsection H of this section~~ 1. Upon approval by the Governor, an
14 emergency rule shall be considered promulgated and shall be in force
15 immediately, or on such later date as specified therein. An
16 emergency rule shall only be applied prospectively from its
17 effective date.

18 2. The emergency rule shall remain in full force and effect
19 through the first day of the next succeeding regular session of the
20 Legislature following promulgation of such emergency rule, through
21 July 14 following such session, unless it is made ineffective
22 pursuant to subsection H of this section.

23 G. No agency shall adopt any emergency rule which establishes
24 or increases fees, except during such times as the Legislature is in

1 session, unless specifically mandated by the Legislature or federal
2 legislation, or when the failure to establish or increase fees would
3 conflict with an order issued by a court of law.

4 H. 1. If an emergency rule is of a continuing nature, the
5 agency promulgating such emergency rule shall initiate proceedings
6 for promulgation of a permanent rule pursuant to Sections 303
7 through 308.2 of this title. If an emergency rule is superseded by
8 another emergency rule prior to the enactment of a permanent rule,
9 the latter emergency rule shall retain the same expiration date as
10 the superseded emergency rule, unless otherwise authorized by the
11 Legislature.

12 2. Any promulgated emergency rule shall be made ineffective if:
13 a. disapproved by the Legislature,
14 b. superseded by the promulgation of permanent rules,
15 c. any adopted rules based upon such emergency rules are
16 subsequently disapproved pursuant to Section 308 of
17 this title, or
18 d. an earlier expiration date is specified by the agency
19 in the rules.

20 3. a. Emergency rules in effect on the first day of the
21 session shall be null and void on July 15 immediately
22 following sine die adjournment of the Legislature
23 unless otherwise specifically provided by the
24 Legislature.

1 b. Unless otherwise authorized by the Legislature, by
2 concurrent resolution or by law, an agency shall not
3 adopt any emergency rule, which has become null and
4 void pursuant to subparagraph a of this paragraph, as
5 a new emergency rule or adopt any emergency rules of
6 similar scope or intent as the emergency rules which
7 became null and void pursuant to subparagraph a of
8 this paragraph.

9 I. Emergency rules shall not become effective unless approved
10 by the Governor pursuant to the provisions of this section.

11 J. 1. The requirements of Section 303 of this title relating
12 to notice and hearing shall not be applicable to emergency rules
13 promulgated pursuant to the provisions of this section. Provided
14 this shall not be construed to prevent an abbreviated notice and
15 hearing process determined to be necessary by an agency.

16 2. The rule report required pursuant to Section 303.1 of this
17 title shall not be applicable to emergency rules promulgated
18 pursuant to the provisions of this section. Provided this shall not
19 be construed to prevent an agency from complying with such
20 requirements at the discretion of such agency.

21 3. The statement of submission required by Section 303.1 of
22 this title shall not be applicable to emergency rules promulgated
23 pursuant to the provisions of this section.

1 K. Prior to approval or disapproval of an emergency rule by the
2 Governor, an agency may withdraw from review an emergency rule
3 submitted pursuant to the provisions of this section. Notice of
4 such withdrawal shall be given to the Governor, the Speaker of the
5 House of Representatives, the President Pro Tempore of the Senate in
6 accordance with the requirements set forth in Section 464 of Title
7 74 and to the Office of Administrative Rules as required by the
8 Secretary. In order to be promulgated as emergency rules, any
9 replacement rules shall be resubmitted pursuant to the provisions of
10 this section.

11 SECTION 3. This act shall become effective November 1, 2010.

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13 52-2-9979 LRB 02/22/10

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