

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 COMMITTEE SUBSTITUTE  
4 FOR  
5 HOUSE BILL NO. 1071

By: Wright (John)

6  
7 COMMITTEE SUBSTITUTE

8 An Act relating to statutes and reports; amending 75 O.S. 2001, Section 303, as  
9 last amended by Section 4, Chapter 227, O.S.L. 2005 and Section 3, Chapter  
10 495, O.S.L. 2002, as last amended by Section 1, Chapter 19, O.S.L. 2006 (75  
11 O.S. Supp. 2008, Sections 303 and 503), which relate to the Administrative  
12 Procedures Act; modifying notice requirements; modifying appointments to the  
13 Small Business Regulatory Review Committee; and providing an effective date.

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

15 SECTION 1. AMENDATORY 75 O.S. 2001, Section 303, as last amended by Section 4,  
16 Chapter 227, O.S.L. 2005 (75 O.S. Supp. 2008, Section 303), is amended to read as follows:

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

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

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

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

1 4. Consider the effect its intended action may have on the various types of business and  
2 governmental entities. Except where such modification or variance is prohibited by statute or  
3 constitutional constraints, if an agency finds that its actions may adversely affect any such entity, the  
4 agency may modify its actions to exclude that type of entity, or may "tier" its actions to allow rules,  
5 penalties, fines or reporting procedures and forms to vary according to the size of a business or  
6 governmental entity or its ability to comply or both. For business entities, the agency shall include a  
7 description of the probable quantitative and qualitative impact of the proposed rule, economic or  
8 otherwise, and use quantifiable data to the extent possible, taking into account both short-term and  
9 long-term consequences; and

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

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

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

20 6. If the agency determines that the rule affects business entities, a request that such entities  
21 provide the agency, within the comment period, in dollar amounts if possible, the increase in the level  
22 of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment,  
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1 construction, labor, professional services, revenue loss, or other costs expected to be incurred by a  
2 particular entity due to compliance with the proposed rule;

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

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

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

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

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

15 Prior to or within three (3) days after publication of the notice in "The Oklahoma Register", the  
16 agency shall provide a link to the agency's website where the proposed rule can be viewed, or cause a  
17 copy of the notice of the proposed rule adoption and the rule impact statement, if available, to be  
18 mailed to all persons who have made a timely request of the agency for advance notice of its  
19 rulemaking proceedings. Provided, in lieu of mailing copies, an agency ~~may~~ shall electronically notify  
20 interested persons that a copy of the proposed rule and the rule impact statement, if available, ~~may~~ can  
21 be viewed on the agency's website. If an agency posts a copy of the proposed rule and rule impact  
22 statement on its website, the agency shall not charge persons for the cost of downloading or printing  
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1 the proposed rule or impact statement. Each agency shall maintain a listing of persons or entities  
2 requesting such notice.

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

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

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

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

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

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

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

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- a. a brief description of the purpose of the proposed rule,
- b. a description of the classes of persons who most likely will be affected by the proposed rule, including classes that will bear the costs of the proposed rule, and any information on cost impacts received by the agency from any private or public entities,
- c. a description of the classes of persons who will benefit from the proposed rule,
- d. a description of the probable economic impact of the proposed rule upon affected classes of persons or political subdivisions, including a listing of all fee changes and, whenever possible, a separate justification for each fee change,
- e. the probable costs and benefits to the agency and to any other agency of the implementation and enforcement of the proposed rule, the source of revenue to be used for implementation and enforcement of the proposed rule, and any anticipated effect on state revenues, including a projected net loss or gain in such revenues if it can be projected by the agency,
- f. a determination of whether implementation of the proposed rule will have an economic impact on any political subdivisions or require their cooperation in implementing or enforcing the rule,
- g. a determination of whether implementation of the proposed rule may have an adverse economic effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act,
- h. an explanation of the measures the agency has taken to minimize compliance costs and a determination of whether there are less costly or nonregulatory methods or less intrusive methods for achieving the purpose of the proposed rule,

- i. a determination of the effect of the proposed rule on the public health, safety and environment and, if the proposed rule is designed to reduce significant risks to the public health, safety and environment, an explanation of the nature of the risk and to what extent the proposed rule will reduce the risk,
- j. a determination of any detrimental effect on the public health, safety and environment if the proposed rule is not implemented, and
- k. the date the rule impact statement was prepared and if modified, the date modified.

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

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

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

1 SECTION 2. AMENDATORY Section 3, Chapter 495, O.S.L. 2002, as last amended by  
2 Section 1, Chapter 19, O.S.L. 2006 (75 O.S. Supp. 2008, Section 503), is amended to read as follows:

3 Section 503. A. 1. There shall be established a Small Business Regulatory Review Committee  
4 within the Oklahoma Department of Commerce.

5 2. The duties of the Committee shall be to:

- 6 a. provide agencies with input regarding proposed permanent rules which may have  
7 an adverse economic effect upon small business and for which the notice of  
8 intended action is published by "The Oklahoma Register" on or after July 1, 2002,  
9 and  
10 b. review any rule promulgated by a state agency for which notice has been given by  
11 the agency to the Committee that the proposed rule has an adverse economic  
12 effect upon small business and make recommendations to the agency and the  
13 Legislature regarding the need for a rule or legislation as provided in Section 505  
14 of this title.

15 3. Staff support for the Committee shall be provided by the Oklahoma Department of  
16 Commerce. The Department shall act only as a coordinator for the Committee within the budgeted  
17 amount appropriated by the Legislature, not to exceed Seventy-five Thousand Dollars (\$75,000.00) per  
18 annum, to provide such services. The Department shall not be required to provide legal counsel for the  
19 Committee.

20 B. The Small Business Regulatory Review Committee shall consist of thirteen (13) members,  
21 who shall be appointed as follows:

- 22 1. Five members to be appointed by the Governor;  
23 2. Two members to be appointed by the Lieutenant Governor;  
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3. Three members to be appointed by the President Pro Tempore of the Senate; and
4. Three members to be appointed by the Speaker of the House of Representatives.

In addition, the Chair of the Business and Labor Committee of the Oklahoma Senate and the Chair of the Business and Economic Development Committee of the Oklahoma House of Representatives shall serve as nonvoting, ex officio members of the Committee.

C. 1. Appointments to the Small Business Regulatory Review Committee shall be representative of a variety of small businesses in this state. All appointed members shall be either current or former owners or officers of a small business.

2. The Governor and Lieutenant Governor shall each appoint at least one member from small businesses located in municipalities having a population of three hundred thousand (300,000) or more.

3. The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each appoint at least one member from small businesses located in municipalities having a population of less than three hundred thousand (300,000).

D. The initial appointments to the Committee shall be made within thirty (30) days from the effective date of this act. The Oklahoma Department of Commerce shall provide the name and address of each appointee to the Governor, Lieutenant Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Chair of the House Business and Economic Development Committee and the Chair of the Senate Business and Labor Committee.

E. 1. Those initially appointed by the Lieutenant Governor shall serve for terms ending December 31, 2006. Those initially appointed by the President Pro Tempore of the Senate shall serve for terms ending December 31, 2006. Those initially appointed by the Speaker of the House of Representatives shall serve for terms ending December 31, 2006. Thereafter, appointed members shall

1 serve at the pleasure of the appointing authority for four-year terms that expire on December 31 of the  
2 fourth year.

3 2. The Governor shall appoint the initial chair of the Committee from the appointed members  
4 for a term ending December 31, 2006, and shall appoint subsequent chairs of the Committee from the  
5 appointed members for four-year terms that expire on December 31 of the fourth year. Other than the  
6 initial chair of the Committee, the persons appointed by the Governor for terms that began on or after  
7 January 1, 2005, shall serve for terms ending December 31, 2008. Thereafter, appointed members  
8 shall serve for four-year terms that expire on December 31 of the fourth year.

9 3. Vacancies in any position on the Committee shall be filled by the applicable appointing  
10 authority for the remainder of the term.

11 4. Members shall not receive any compensation but shall be eligible for reimbursement by the  
12 Oklahoma Department of Commerce for necessary expenses in accordance with the State Travel  
13 Reimbursement Act; provided, however, legislative members shall be reimbursed by the legislative  
14 body in which they serve pursuant to Section 456 of Title 74 of the Oklahoma Statutes.

15 5. The Committee shall meet at least semiannually or more often if necessary as determined by  
16 the chair of the Committee.

17 6. A majority of the voting members of the Committee shall constitute a quorum to do business.  
18 The concurrence of a majority of the members of the Committee present and voting shall be necessary  
19 to make any action of the Committee valid.

20 7. No appointed Committee member shall serve more than three consecutive terms.

21 SECTION 3. This act shall become effective November 1, 2009.

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