

THE HOUSE OF REPRESENTATIVES
Monday, March 2, 2009

Committee Substitute for
House Bill No. 1071

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 1071 - By: WRIGHT (JOHN) of the House.

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

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

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

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

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

8 2. For at least thirty (30) days after publication of the notice of the intended
9 rulemaking action, afford a comment period for all interested persons to submit data,

1 views or arguments, orally or in writing. The agency shall consider fully all written and
2 oral submissions respecting the proposed rule;

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

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

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

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

19 1. In simple language, a brief summary of the rule;

20 2. The proposed action being taken;

21 3. The circumstances which created the need for the rule;

22 4. The specific legal authority authorizing the proposed rule;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 14 a. a brief description of the purpose of the proposed rule,
15 b. a description of the classes of persons who most likely will be affected
16 by the proposed rule, including classes that will bear the costs of the
17 proposed rule, and any information on cost impacts received by the
18 agency from any private or public entities,
19 c. a description of the classes of persons who will benefit from the
20 proposed rule,
21 d. a description of the probable economic impact of the proposed rule
22 upon affected classes of persons or political subdivisions, including a

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

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

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

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

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

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

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

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

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

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

7 a. provide agencies with input regarding proposed permanent rules which
8 may have an adverse economic effect upon small business and for
9 which the notice of intended action is published by “The Oklahoma
10 Register” on or after July 1, 2002, and

11 b. review any rule promulgated by a state agency for which notice has
12 been given by the agency to the Committee that the proposed rule has
13 an adverse economic effect upon small business and make
14 recommendations to the agency and the Legislature regarding the
15 need for a rule or legislation as provided in Section 505 of this title.

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

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

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

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

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

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

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

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

1 Chair of the House Business and Economic Development Committee and the Chair of the
2 Senate Business and Labor Committee.

3 E. 1. Those initially appointed by the Lieutenant Governor shall serve for terms
4 ending December 31, 2006. Those initially appointed by the President Pro Tempore of
5 the Senate shall serve for terms ending December 31, 2006. Those initially appointed by
6 the Speaker of the House of Representatives shall serve for terms ending December 31,
7 2006. Thereafter, appointed members shall serve at the pleasure of the appointing
8 authority for four-year terms that expire on December 31 of the fourth year.

9 2. The Governor shall appoint the initial chair of the Committee from the appointed
10 members for a term ending December 31, 2006, and shall appoint subsequent chairs of
11 the Committee from the appointed members for four-year terms that expire on December
12 31 of the fourth year. Other than the initial chair of the Committee, the persons
13 appointed by the Governor for terms that began on or after January 1, 2005, shall serve
14 for terms ending December 31, 2008. Thereafter, appointed members shall serve for
15 four-year terms that expire on December 31 of the fourth year.

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

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

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

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

8 COMMITTEE REPORT BY: COMMITTEE ON ADMINISTRATIVE RULES AND
9 AGENCY OVERSIGHT, dated 02-26-09 - DO PASS, As Amended.