

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 SENATE BILL 539

By: Sykes

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5
6
7 AS INTRODUCED

8 An Act relating to state agency rulemaking; amending
9 75 O.S. 2001, Sections 250, 250.2, 250.3, as amended
10 by Section 1, Chapter 174, O.S.L. 2010, 250.5, 250.8,
11 as amended by Section 1, Chapter 183, O.S.L. 2004,
12 255, 256, 302, 307 and 308a (75 O.S. Supp. 2010,
13 Sections 250.3 and 250.8), which relate to the
14 Administrative Procedures Act; requiring compliance
15 with Act; prohibiting Legislature from delegating
16 rulemaking authority to state agencies; revoking
17 previously granted authority; providing that certain
18 rules cease to have force and effect on certain date;
19 providing for continuance of certain contracts;
20 modifying rights reserved to Legislature; modifying
21 and deleting definitions; deleting provisions
22 relating to effect of permanent and emergency rules;
23 modifying duties of Secretary of State; deleting
24 references to Oklahoma Administrative Code and
Oklahoma Register; prescribing form of certain
publication; modifying duties of state agencies;
repealing 75 O.S. 2001, Sections 250.1, 250.4, as
last amended by Section 8, Chapter 176, O.S.L. 2005,
250.4a and 250.6, as amended by Sections 1 and 2,
Chapter 227, O.S.L. 2005, 250.7, 250.9, 250.10, as
amended by Section 7, Chapter 495, O.S.L. 2002, 251,
252, 253, as amended by Section 2, Chapter 174,
O.S.L. 2010, 254, 256.3, 257, 257.1, as amended by
Section 3, Chapter 227, O.S.L. 2005, 303, as last
amended by Section 4, Chapter 227, O.S.L. 2005,
303.1, 303.2, 304, 305, 306, 307.1, 308, 308.1 and
308.2 (75 O.S. Supp. 2010, Sections 250.4, 250.4a,
250.6, 250.10, 253, 257.1 and 303), which relate to
the Administrative Procedures Act; providing an
effective date; and declaring an emergency.

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

2 SECTION 1. AMENDATORY 75 O.S. 2001, Section 250, is
3 amended to read as follows:

4 Section 250. A. This section and Sections ~~250.1~~ 250.2 through
5 323 of this title shall be known and may be cited as the
6 "Administrative Procedures Act".

7 B. All statutes hereinafter enacted and codified as part of the
8 Administrative Procedures Act shall be considered and deemed part of
9 the Administrative Procedures Act.

10 C. Except as otherwise specifically provided by law, all
11 agencies shall comply with the provisions of the Administrative
12 Procedures Act.

13 SECTION 2. AMENDATORY 75 O.S. 2001, Section 250.2, is
14 amended to read as follows:

15 Section 250.2. A. Article V of the Oklahoma Constitution vests
16 in the Legislature the power to make laws, and thereby to establish
17 agencies and to designate agency functions, budgets and purposes.
18 Article VI of the Oklahoma Constitution charges the Executive Branch
19 of Government with the responsibility to implement all measures
20 which may be resolved upon by the Legislature.

21 B. In creating agencies and designating their functions and
22 purposes, the Legislature ~~may~~ shall not delegate rulemaking
23 authority to these agencies to facilitate administration of
24 legislative policy. ~~The delegation of rulemaking authority is~~

1 ~~intended to eliminate the necessity of establishing every~~
2 ~~administrative aspect of general public policy by legislation. In~~
3 ~~so doing, however, the~~ The Legislature hereby revokes any previous
4 rulemaking authority granted or delegated to agencies of the
5 Executive Branch. Any of the following rules which are in effect on
6 July 1, 2011, shall cease to have force and effect on July 1, 2012:

7 1. Any permanent or emergency rules promulgated pursuant to the
8 provisions of the Administrative Procedures Act;

9 2. Any rules promulgated by an agency but which were exempted
10 from the Administrative Procedures Act pursuant to the provisions of
11 Section 250.4 of this title;

12 3. Any preemptive rules promulgated pursuant to the provisions
13 of Section 250.6 of this title.

14 Any agency which has rules which will cease to have force and
15 effect pursuant to the provisions of this subsection may request the
16 Legislature to enact any or all provisions of such rules into law.

17 Provided, if an agency entered into a legally enforceable
18 contract which is in effect on July 1, 2011, pursuant to the
19 provisions of a rule which shall cease to have force and effect
20 pursuant to the provisions of this subsection, such contract shall
21 continue to be effective unless otherwise provided by law.

22 The Legislature further reserves to itself-

23 ~~1. The right to retract any delegation of rulemaking authority~~
24 ~~unless otherwise precluded by the Oklahoma Constitution.~~

1 ~~2. The the right to establish any aspect of general policy by~~
2 ~~legislation, notwithstanding any delegation of rulemaking authority.~~

3 ~~3. The right and responsibility to designate the method for~~
4 ~~rule promulgation, review and modification.~~

5 ~~4. The right to approve, delay, suspend, veto, or amend the~~
6 ~~implementation of any rule or proposed rule while under review by~~
7 ~~the Legislature by joint resolution.~~

8 ~~5. The right to disapprove a proposed rule or amendment to a~~
9 ~~rule during the legislative review period independent of any action~~
10 ~~by the Governor by a concurrent resolution.~~

11 ~~6. The right to disapprove a permanent or emergency rule at any~~
12 ~~time if the Legislature determines such rule to be an imminent harm~~
13 ~~to the health, safety or welfare of the public or the state or if~~
14 ~~the Legislature determines that a rule is not consistent with~~
15 ~~legislative intent.~~

16 SECTION 3. AMENDATORY 75 O.S. 2001, Section 250.3, as
17 amended by Section 1, Chapter 174, O.S.L. 2010 (75 O.S. Supp. 2010,
18 Section 250.3), is amended to read as follows:

19 Section 250.3. As used in the Administrative Procedures Act:

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

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

1 ~~3.~~ "Agency" includes but is not limited to any constitutionally
2 or statutorily created state board, bureau, commission, office,
3 authority, public trust in which the state is a beneficiary, or
4 interstate commission, except:

5 a. the Legislature or any branch, committee or officer
6 thereof, and

7 b. the courts;

8 ~~4.~~ "Emergency rule" means a rule that is made pursuant to
9 ~~Section 253 of this title;~~

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

16 ~~6.~~ 3. "Final agency order" means an order that includes
17 findings of fact and conclusions of law pursuant to Section 312 of
18 this title, is dispositive of an individual proceeding unless there
19 is a request for rehearing, reopening, or reconsideration pursuant
20 to Section 317 of this title and which is subject to judicial
21 review;

22 ~~7.~~ 4. "Hearing examiner" means a person meeting the
23 qualifications specified by ~~Article II~~ of the Administrative
24

1 Procedures Act and who has been duly appointed by an agency to hold
2 hearings and, as required, render orders or proposed orders;

3 ~~8.~~ 5. "Individual proceeding" means the formal process employed
4 by an agency having jurisdiction by law to resolve issues of law or
5 fact between parties and which results in the exercise of discretion
6 of a judicial nature;

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

10 ~~10.~~ 7. "Office" means the Office of the Secretary of State;

11 ~~11.~~ 8. "Order" means all or part of a formal or official
12 decision made by an agency including but not limited to final agency
13 orders;

14 ~~12.~~ 9. "Party" means a person or agency named and
15 participating, or properly seeking and entitled by law to
16 participate, in an individual proceeding;

17 ~~13.~~ "Permanent rule" means a rule that is made pursuant to
18 Section 303 of this title;

19 ~~14.~~ 10. "Person" means any individual, partnership,
20 corporation, association, governmental subdivision, or public or
21 private organization of any character other than an agency;

22 ~~15.~~ 11. "Political subdivision" means a county, city,
23 incorporated town or school district within this state;

24

1 ~~16. "Promulgated" means a finally adopted rule which has been~~
2 ~~filed and published in accordance with the provisions of the~~
3 ~~Administrative Procedures Act, or an emergency rule or preemptory~~
4 ~~rule which has been approved by the Governor;~~

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

11 ~~a. the issuance, renewal, denial, suspension or~~
12 ~~revocation or other sanction of an individual specific~~
13 ~~license,~~

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

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

23 ~~d. declaratory rulings issued pursuant to Section 307 of~~
24 ~~this title,~~

1 e. ~~orders by an agency, or~~

2 f. ~~press releases or "agency news releases", provided~~

3 ~~such releases are not for the purpose of interpreting,~~

4 ~~implementing or prescribing law or agency policy;~~

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

7 ~~19.~~ 12. "Secretary" means the Secretary of State.

8 SECTION 4. AMENDATORY 75 O.S. 2001, Section 250.5, is
9 amended to read as follows:

10 Section 250.5. ~~This act~~ The Administrative Procedures Act shall
11 not apply to municipalities, counties, school districts, and other
12 agencies of local government; nor to specialized agencies,
13 authorities, and entities created by the ~~legislature~~ Legislature,
14 performing essentially local functions, such as, but not limited to,
15 Urban Renewal Authorities, Port Authorities, City and City-County
16 Planning Commissions, Conservancy and other Districts, and public
17 trusts having a municipality or county, or agency thereof, as
18 beneficiary; but ~~this act~~ shall apply to public trusts having the
19 state, or any department or agency thereof, as beneficiary.

20 SECTION 5. AMENDATORY 75 O.S. 2001, Section 250.8, as
21 amended by Section 1, Chapter 183, O.S.L. 2004 (75 O.S. Supp. 2010,
22 Section 250.8), is amended to read as follows:

23 Section 250.8. In computing any period of time prescribed or
24 allowed by the Administrative Procedures Act, the day of the act, or

1 event, from which the designated period of time begins to run shall
2 not be included. The last day of the period so computed shall be
3 included, unless it is a Saturday, a Sunday, or a legal holiday as
4 defined by the Oklahoma Statutes or any other day when the receiving
5 office does not remain open for public business until 4:00 p.m., in
6 which event the period runs until the end of the next day which is
7 not a Saturday, a Sunday, or a legal holiday as defined by the
8 Oklahoma Statutes, or any other day when the receiving office does
9 not remain open for public business until 4:00 p.m.; ~~provided,~~
10 ~~permanent rules shall become effective on the tenth day after the~~
11 ~~rules are published in "The Oklahoma Register", as set forth in~~
12 ~~subsection B of Section 304 of this title, regardless of the day of~~
13 ~~the week.~~

14 SECTION 6. AMENDATORY 75 O.S. 2001, Section 255, is
15 amended to read as follows:

16 Section 255. ~~A.—1.~~ The Secretary of State is hereby
17 authorized, directed, and empowered to publish "The Oklahoma
18 Register" not less than monthly for the publication of ~~new rules,~~
19 ~~any amendment, revision or revocation of an existing rule, emergency~~
20 ~~rules,~~ any notices ~~of such rulemaking process~~ and Executive Orders
21 as are required by law to be published in "The Oklahoma Register".
22 ~~Said rules or amendments, revisions, or revocations of existing~~
23 ~~rules shall be published in the first issue of "The Oklahoma~~
24 ~~Register" published pursuant to Sections 251, 253, 256, 303, 303.1,~~

1 ~~303.2 and 308 of this title after the date of acceptance by the~~
2 ~~Secretary.~~

3 ~~2.~~ The Secretary shall cause a copy of each publication of "The
4 Oklahoma Register" to be sent to those county clerks who request it,
5 to members of the Legislature upon request, and to such other
6 agencies, libraries, and officials as the Secretary may select. The
7 Secretary may charge recipients of the publication a cost sufficient
8 to defray the cost of publication and mailing.

9 ~~3.~~ ~~The Secretary shall cause a copy of all rules, all new~~
10 ~~rules, and all amendments, revisions, or revocations of existing~~
11 ~~rules to be on file and available for public examination in the~~
12 ~~Office during normal office hours.~~

13 ~~4.~~ ~~The Secretary shall promulgate rules to systematize the~~
14 ~~designations of rules. To establish said system or to preserve~~
15 ~~uniformity of designations, the Secretary may require the agency to~~
16 ~~change the title or numbering of any rule or any amendment,~~
17 ~~revision, or revocation thereof.~~

18 ~~B.~~ ~~The Secretary is authorized to provide for the publication~~
19 ~~of rules in summary form when the rules are of such length that~~
20 ~~publication of the full text would be too costly. The summary shall~~
21 ~~be prepared by the agency submitting the rules and shall state where~~
22 ~~the full text of the rule may be obtained.~~

23 ~~C.~~ ~~The notice required pursuant to the provisions of Section~~
24 ~~303 of this title shall be published in "The Oklahoma Register"~~

1 ~~prior to the adoption of a new rule, or amendment, revision or~~
2 ~~revocation of any existing rule. The notice shall include the~~
3 ~~information required by Section 303 of this title.~~

4 SECTION 7. AMENDATORY 75 O.S. 2001, Section 256, is
5 amended to read as follows:

6 Section 256. A. ~~1.~~ The Secretary of State shall provide for
7 the codification, compilation, indexing and publication of ~~agency~~
8 ~~rules and Executive Orders which are effective pursuant to~~
9 subsection B of this section in a publication ~~which shall be known~~
10 ~~as the "Oklahoma Administrative Code" in the following manner:~~

11 a. ~~On or before January 1, 1992, the Secretary shall~~
12 ~~compile Executive Orders which are effective pursuant~~
13 ~~to paragraph 3 of subsection B of this section, and~~
14 ~~agency rules which have been submitted pursuant to the~~
15 ~~agency schedule of compliance and have been accepted~~
16 ~~as properly codified, as set forth in this section,~~
17 ~~and rules promulgated by the Secretary. Such~~
18 ~~compilation shall be maintained by the Office of~~
19 ~~Administrative Rules and shall be updated by agencies,~~
20 ~~in a manner prescribed by the Secretary, to reflect~~
21 ~~subsequent permanent rulemaking. Prior to publication~~
22 ~~of the first "Code", as set forth in subparagraph b of~~
23 ~~this paragraph, the compilation shall constitute the~~
24 ~~official permanent rules of the state. Effective~~

1 ~~January 1, 1992, any permanent rule not included in~~
2 ~~such compilation shall be void and of no effect.~~

3 ~~b. On or before December 1, 1992, the Secretary shall~~
4 ~~have indexed and published the "Oklahoma~~
5 ~~Administrative Code". To effectuate this provision,~~
6 ~~the Secretary may contract for the publishing and~~
7 ~~indexing, or both of the "Oklahoma Administrative~~
8 ~~Code". Any permanent rule not published in the "Code"~~
9 ~~shall be void and of no effect. A finally adopted~~
10 ~~rule filed and published in "The Oklahoma Register"~~
11 ~~may be valid until publication of the next succeeding~~
12 ~~"Code" or "Code" supplement following the date of its~~
13 ~~final adoption. Provided, a permanent rule which is~~
14 ~~finally adopted after the closing date for publication~~
15 ~~in a "Code" or "Code" supplement as announced by the~~
16 ~~Secretary may be valid until publication of the next~~
17 ~~succeeding "Code" or "Code" supplement. A permanent~~
18 ~~rule which is published in "The Oklahoma Register"~~
19 ~~after the closing date for publication in the first~~
20 ~~"Code", as announced by the Secretary, shall be void~~
21 ~~and of no effect upon publication of the next~~
22 ~~succeeding "Code" or "Code" supplement, if not~~
23 ~~published in the "Code" or "Code" supplement which~~
24 ~~shall be made available electronically on the website~~

1 of the Office of the Secretary of State. Such
2 publication shall be in a form prescribed by the
3 Secretary and shall be updated as often as shall be
4 deemed necessary by the Secretary. Executive Orders
5 signed by the Governor shall become effective upon the
6 date specified therein or immediately upon issuance.

7 ~~2. Compilations or revisions of the "Code" or any part thereof~~
8 ~~shall be supplemented or revised annually. The "Code" shall be~~
9 ~~organized by state agency and shall be arranged, indexed and printed~~
10 ~~in a manner to permit separate publications of portions thereof~~
11 ~~relating to individual agencies.~~

12 ~~3. Annual supplements to the "Code" shall be cumulative.~~
13 ~~Emergency rules shall not be published in the "Code" or in any~~
14 ~~supplements thereto.~~

15 ~~4. The "Code" and the supplements shall include a general~~
16 ~~subject index and an agency index of all rules and Executive Orders~~
17 ~~contained therein. "The Oklahoma Register" shall also include a~~
18 ~~sections affected index of the "Code". The "Code" and supplements~~
19 ~~shall contain such notes, cross references and explanatory materials~~
20 ~~as required by the Secretary.~~

21 ~~5. The Secretary in preparing such rules for publication in the~~
22 ~~"Code" or supplements shall omit all material shown in canceled~~
23 ~~type. The Secretary shall not prepare any rule for publication in~~
24 ~~the "Code" which amends or revises a rule unless the rule so~~

1 ~~amending or revising conforms to the provisions of the~~
2 ~~Administrative Procedures Act.~~

3 ~~6. The Secretary is authorized to determine a numbering system~~
4 ~~and other standardized format for documents to be filed and may~~
5 ~~refuse to accept for publication any document that does not~~
6 ~~substantially conform to the promulgated rules of the Secretary.~~

7 B. 1. ~~Rules submitted and accepted for publication in the~~
8 ~~"Code" by August 15 of each year shall be published in the next~~
9 ~~succeeding "Code" or supplement thereto.~~

10 2. ~~As soon as possible after August 15 of each year, the~~
11 ~~Secretary shall assemble all rules and Executive Orders, except~~
12 ~~emergency rules, promulgated after the publication of the preceding~~
13 ~~"Code" or "Code" supplement in accordance with the provisions of the~~
14 ~~Administrative Procedures Act for publication in the "Oklahoma~~
15 ~~Administrative Code". The "Code" or supplements thereto should be~~
16 ~~published as soon as possible after August 30 of each year.~~

17 3. ~~Executive Orders of previous gubernatorial administrations~~
18 ~~shall terminate ninety (90) calendar days following the inauguration~~
19 ~~of the next Governor unless otherwise terminated or continued during~~
20 ~~that time by Executive Order. Copies of all Executive Orders shall~~
21 ~~be published and indexed in the "Oklahoma Administrative Code". All~~
22 ~~Executive Orders placing agencies or employees under the State Merit~~
23 ~~System of Personnel Administration shall remain in effect unless~~
24 ~~otherwise modified by action of the Legislature.~~

1 ~~C. The Secretary is hereby authorized and empowered to publish~~
2 ~~or to contract to publish the "Oklahoma Administrative Code", and to~~
3 ~~publish or contract to publish such annual cumulative supplements so~~
4 ~~as to keep the "Code" current. All such agreements shall provide~~
5 ~~that the publisher shall make such publications in such form and~~
6 ~~arrangement as shall be approved by the Secretary. The Secretary~~
7 ~~may publish or authorize the publication of the "Code" in part.~~

8 ~~D. The Secretary is authorized to correct spelling errors in~~
9 ~~rules submitted for publication in the "Code" or any such~~
10 ~~supplements or in "The Oklahoma Register". Any other errors in~~
11 ~~rules submitted for publication in the "Code" may be noted in~~
12 ~~editorial notes provided by the Secretary.~~

13 ~~E. The Secretary shall make copies of the "Code" generally~~
14 ~~available at a cost sufficient to defray the cost of publication and~~
15 ~~mailing. Except as otherwise provided by Section 257.1 of this~~
16 ~~title, the Secretary is authorized to sell or otherwise distribute~~
17 ~~the "Code" and its supplements.~~

18 ~~F. 1. The C. Any codification system, derivations, cross~~
19 ~~references, notes of decisions, source notes, authority notes,~~
20 ~~numerical lists, and codification guides, other than the actual text~~
21 ~~of rules Executive Orders, indexes, tables and other aids relevant~~
22 ~~to the publication of the "Oklahoma Administrative Code" and "The~~
23 ~~Oklahoma Register" Executive Orders shall be the property of the~~
24 ~~state and may be reproduced only with the written consent of the~~

1 Secretary. ~~The information which appears on the same page with the~~
2 ~~text of a rule may be reproduced incidentally with the reproduction~~
3 ~~of the rule, if the reproduction is for the private use of the~~
4 ~~individual and not for resale. No person shall attempt to copyright~~
5 ~~or publish the "Oklahoma Administrative Code" or "The Oklahoma~~
6 ~~Register", in printed or electronic media, without expressed written~~
7 ~~consent of the Secretary of State. The Secretary shall notify the~~
8 ~~Speaker of the House of Representatives and the President Pro~~
9 ~~Tempore of the Senate of any requests to copyright or publish the~~
10 ~~"Oklahoma Administrative Code" or "The Oklahoma Register", prior to~~
11 ~~consent by the Secretary.~~

12 2. ~~The Secretary may provide for the electronic access to the~~
13 ~~"Oklahoma Administrative Code" and "The Oklahoma Register" by:~~

14 a. ~~subscription, or~~

15 b. ~~an exclusive or a nonexclusive contract for public and~~
16 ~~private access.~~

17 3. ~~Publications of rules by agencies are not official~~
18 ~~publications.~~

19 4. ~~The sale or resale of the "Oklahoma Administrative Code" or~~
20 ~~any part thereof by the Secretary of State shall be exempt from any~~
21 ~~requirement mandating acquisition of a resale number and payment of~~
22 ~~sales tax.~~

23 SECTION 8. AMENDATORY 75 O.S. 2001, Section 302, is
24 amended to read as follows:

1 Section 302. A. In addition to other ~~rulemaking~~ requirements
2 imposed by law, each agency ~~which has rulemaking authority,~~ shall:

3 1. ~~Promulgate as a rule a description of the organization of~~
4 ~~the agency, stating the general course and method of the operations~~
5 ~~of the agency and the methods whereby the public may obtain~~
6 ~~information or make submissions or requests;~~

7 2. ~~Promulgate rules of practice setting forth the nature and~~
8 ~~requirements of all formal and informal procedures available,~~
9 ~~including a description of all forms and instructions issued by the~~
10 ~~agency for use by the public;~~

11 3. ~~Make available for public inspection all rules and all other~~
12 ~~written statements of policy or interpretations formulated, adopted,~~
13 ~~promulgated or used by the agency in the discharge of its functions;~~
14 and

15 4. 2. Make available for public inspection pursuant to the
16 provisions of the Open Records Act all final orders, decisions and
17 opinions.

18 B. 1. ~~An agency shall maintain an official rulemaking record~~
19 ~~for each proposed rule or promulgated rule. The record and~~
20 ~~materials incorporated by reference shall be available for public~~
21 ~~inspection.~~

22 2. ~~The agency rulemaking record shall contain:~~
23
24

- 1 ~~a. copies of all publications in "The Oklahoma Register"~~
2 ~~with respect to the rule or the proceeding upon which~~
3 ~~the rule is based,~~
- 4 ~~b. copies of any portions of the agency's public~~
5 ~~rulemaking docket containing entries relating to the~~
6 ~~rule or the proceeding upon which the rule is based,~~
- 7 ~~c. all written petitions, requests, submissions, and~~
8 ~~comments received by the agency and all other written~~
9 ~~materials considered by the agency in connection with~~
10 ~~the formulation, proposal, or adoption of the rule or~~
11 ~~the proceeding upon which the rule is based,~~
- 12 ~~d. any official transcript of oral presentations made in~~
13 ~~the proceeding upon which the rule is based or, if not~~
14 ~~transcribed, any tape recording or stenographic record~~
15 ~~of those presentations, and any memorandum prepared by~~
16 ~~a presiding official summarizing the contents of those~~
17 ~~presentations,~~
- 18 ~~e. a copy of any regulatory analysis prepared for the~~
19 ~~proceeding upon which the rule is based,~~
- 20 ~~f. a copy of the rule and analysis of each such rule~~
21 ~~filed with the Office pursuant to Section 251 of this~~
22 ~~title,~~
- 23 ~~g. all petitions for exceptions to, amendments of, or~~
24 ~~repeal or suspension of, the rule,~~

1 ~~h. a copy of the rule impact statement, if made, and~~

2 ~~i. such other information concerning such rules as may be~~
3 ~~determined necessary by the agency.~~

4 ~~3. Upon judicial review, the record required by this section~~
5 ~~constitutes the official agency rulemaking record with respect to a~~
6 ~~rule. Except as otherwise required by a provision of law, the~~
7 ~~agency rulemaking record need not constitute the exclusive basis for~~
8 ~~agency action on that rule or for judicial review thereof.~~

9 ~~C. 1. By December 31, 2002, each~~ Each agency that issues
10 precedent-setting orders shall maintain and index all such orders
11 that the agency intends to rely upon as precedent. The index and
12 the orders shall be available for public inspection and copying in
13 the main office and each regional or district office of the agency.
14 The orders shall be indexed by subject.

15 ~~2. After December 31, 2002, an~~ An order shall not be relied
16 upon as precedent by an agency to the detriment of any person until
17 it has been made available for public inspection and indexed in the
18 manner described in this subsection.

19 ~~3. An agency shall consistently apply rules~~ standards to each
20 person subject to the jurisdiction of the agency regarding issuance
21 of orders.

22 ~~D. C.~~ C. An agency shall not by internal policy, memorandum, or
23 other form of action not otherwise authorized by ~~the Administrative~~
24 ~~Procedures Act~~ law:

- 1 1. Amend, interpret, implement, or repeal a statute ~~or a rule~~;
- 2 2. Expand upon or limit a statute ~~or a rule~~; and or
- 3 3. Except as authorized by the Constitution of the United
- 4 States, the Oklahoma Constitution or a statute, expand or limit a
- 5 right guaranteed by the Constitution of the United States, the
- 6 Oklahoma Constitution, or a statute, ~~or a rule~~.

7 ~~E.~~ D. Any agency memorandum, internal policy, or other form of
8 action violative of this section or the spirit thereof is null,
9 void, and unenforceable.

10 ~~F.~~ E. This section shall not be construed to prohibit an agency
11 issuing an opinion or administrative decision which is authorized by
12 statute provided that, unless such opinion or administrative
13 decision is issued pursuant to the procedures required pursuant to
14 the Administrative Procedures Act, such decision or opinion shall
15 not have the force and effect of law.

16 SECTION 9. AMENDATORY 75 O.S. 2001, Section 307, is
17 amended to read as follows:

18 Section 307. Each agency shall provide ~~by rule~~ for the filing
19 and prompt disposition of petitions for declaratory rulings as to
20 the applicability of any ~~rule or~~ order of the agency. A declaratory
21 ruling, or refusal to issue such ruling, shall be subject to a
22 judicial review in the manner provided for review of decisions in
23 individual proceedings as provided in Sections 317 through 323 of
24 this title.

1 SECTION 10. AMENDATORY 75 O.S. 2001, Section 308a, is
2 amended to read as follows:

3 Section 308a. The provisions of ~~Article II~~ of the
4 Administrative Procedures Act govern the hearing procedures of
5 agencies, and ~~does~~ do not grant jurisdiction, not otherwise provided
6 by law. The Legislature recognizes that agencies take actions and
7 make decisions, other than by individual proceedings for which the
8 right to judicial review is intended to be exercised pursuant to
9 other laws.

10 SECTION 11. REPEALER 75 O.S. 2001, Sections 250.1,
11 250.4, as last amended by Section 8, Chapter 176, O.S.L. 2005,
12 250.4a and 250.6, as amended by Sections 1 and 2, Chapter 227,
13 O.S.L. 2005, 250.7, 250.9, 250.10, as amended by Section 7, Chapter
14 495, O.S.L. 2002, 251, 252, 253, as amended by Section 2, Chapter
15 174, O.S.L. 2010, 254, 256.3, 257, 257.1, as amended by Section 3,
16 Chapter 227, O.S.L. 2005, 303, as last amended by Section 4, Chapter
17 227, O.S.L. 2005, 303.1, 303.2, 304, 305, 306, 307.1, 308, 308.1 and
18 308.2 (75 O.S. Supp. 2010, Sections 250.4, 250.4a, 250.6, 250.10,
19 253, 257.1 and 303), are hereby repealed.

20 SECTION 12. This act shall become effective July 1, 2011.

21 SECTION 13. It being immediately necessary for the preservation
22 of the public peace, health and safety, an emergency is hereby
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24

1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.

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