

SENATE CHAMBER

STATE OF OKLAHOMA

DISPOSITION BY SENATE

FLOOR AMENDMENT

No. _____

(Date)

Mr./Madame President:

I move to amend House Bill No. 2055, by striking the title, enacting clause and entire body of the bill and substituting the attached floor substitute.

Submitted by:

Senator Treat

Treat-CD-FS-Req#1730
4/18/2013 4:03 PM

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 FLOOR SUBSTITUTE
4 FOR ENGROSSED

5 HOUSE BILL NO. 2055

By: Jackson of the House

and

Treat of the Senate

6
7
8
9 FLOOR SUBSTITUTE

10 [statutes and reports - Administrative Procedures
11 Act - codification - repealer - effective date]
12

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

14 SECTION 1. AMENDATORY 75 O.S. 2011, Section 250.2, is
15 amended to read as follows:

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

22 B. In creating agencies and designating their functions and
23 purposes, the Legislature may delegate rulemaking authority to ~~these~~
24 executive branch agencies to facilitate administration of

1 legislative policy. The delegation of rulemaking authority is
2 intended to eliminate the necessity of establishing every
3 administrative aspect of general public policy by legislation. In
4 so doing, however, the Legislature reserves to itself:

5 1. The right to retract any delegation of rulemaking authority
6 unless otherwise precluded by the Oklahoma Constitution-;

7 2. The right to establish any aspect of general policy by
8 legislation, notwithstanding any delegation of rulemaking
9 authority-;

10 3. The right and responsibility to designate the method for
11 rule promulgation, review and modification-;

12 4. The right to approve, ~~delay, suspend, veto, or amend the~~
13 ~~implementation of~~ or disapprove any adopted rule ~~or proposed rule~~
14 ~~while under review by the Legislature~~ by joint resolution-

15 ~~5. The right to disapprove a proposed rule or amendment to a~~
16 ~~rule during the legislative review period independent of any action~~
17 ~~by the Governor by a concurrent resolution-;~~ and

18 ~~6.~~ 5. The right to disapprove a proposed permanent, promulgated
19 or emergency rule at any time if the Legislature determines such
20 rule to be an imminent harm to the health, safety or welfare of the
21 public or the state or if the Legislature determines that a rule is
22 not consistent with legislative intent.

23 SECTION 2. AMENDATORY 75 O.S. 2011, Section 250.3, is
24 amended to read as follows:

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

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

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

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

11 a. the Legislature or any branch, committee or officer
12 thereof, and

13 b. the courts;

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

16 5. "Final rule" or "finally adopted rule" means a rule other
17 than an emergency rule, ~~which has been approved by the Legislature~~
18 ~~and by the Governor, or approved by the Legislature pursuant to~~
19 ~~subsection B of Section 308 of this title and otherwise complies~~
20 ~~with the requirements of the Administrative Procedures Act but has~~
21 not been published pursuant to Section 255 of this title but is
22 otherwise in compliance with the requirements of the Administrative
23 Procedures Act, and is:

- 1 a. approved by the Legislature pursuant to subsection B
2 of Section 5 of this act,
- 3 b. approved by the Governor pursuant to subsection D of
4 Section 5 of this act,
- 5 c. approved by a joint resolution pursuant to subsection
6 B of Section 308 of this title, provided that any such
7 resolution becomes law in accordance with Section 11
8 of Article VI of the Oklahoma Constitution, or
- 9 d. disapproved by a joint resolution pursuant to
10 subsection B of Section 308 of this title, which has
11 been vetoed by the Governor in accordance with Section
12 11 of Article VI of the Oklahoma Constitution and the
13 veto has not been overridden;

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

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

23 8. "Individual proceeding" means the formal process employed by
24 an agency having jurisdiction by law to resolve issues of law or

1 fact between parties and which results in the exercise of discretion
2 of a judicial nature;

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

6 10. "Office" means the Office of the Secretary of State;

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

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

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

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

17 15. "Political subdivision" means a county, city, incorporated
18 town or school district within this state;

19 16. "Promulgated" means a finally adopted rule which has been
20 filed and published in accordance with the provisions of the
21 Administrative Procedures Act, or an emergency rule or preemptory
22 rule which has been approved by the Governor;

23 17. "Rule" means any agency statement or group of related
24 statements of general applicability and future effect that

1 implements, interprets or prescribes law or policy, or describes the
2 procedure or practice requirements of the agency. The term "rule"
3 includes the amendment or revocation of an effective rule but does
4 not include:

5 a. the issuance, renewal, denial, suspension or
6 revocation or other sanction of an individual specific
7 license,

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

14 c. statements and memoranda concerning only the internal
15 management of an agency and not affecting private
16 rights or procedures available to the public,

17 d. declaratory rulings issued pursuant to Section 307 of
18 this title,

19 e. orders by an agency, or

20 f. press releases or "agency news releases", provided
21 such releases are not for the purpose of interpreting,
22 implementing or prescribing law or agency policy;

23 18. "Rulemaking" means the process employed by an agency for
24 the formulation of a rule; and

1 19. "Secretary" means the Secretary of State.

2 SECTION 3. AMENDATORY 75 O.S. 2011, Section 308, is
3 amended to read as follows:

4 Section 308. A. Upon receipt of any adopted rules, the Speaker
5 of the House of Representatives and the President Pro Tempore of the
6 Senate shall assign such rules to the appropriate committees of each
7 ~~such~~ house of the Legislature for review. Except as otherwise
8 provided by this section, ~~upon receipt of:~~

9 1. If such rules are received on or before April 1, the
10 Legislature shall have ~~thirty (30) legislative days~~ until the last
11 day of the regular legislative session of that year to review such
12 rules; and

13 2. If such rules are received after April 1, the Legislature
14 shall have until the last day of the regular legislative session of
15 the next year to review such rules.

16 Provided, any rules which were received by the Legislature after
17 April 1, 2013, and prior to November 1, 2013, shall be reviewed by
18 the Legislature during the 2014 regular legislative session.

19 B. ~~1.~~ By the adoption of a joint resolution during the review
20 period specified in subsection A of this section, the Legislature
21 may disapprove or approve any rule, ~~waive the thirty legislative day~~
22 ~~review period and approve any rule which has been submitted for~~
23 ~~review, or otherwise approve any rule.~~

1 ~~session. Any effective emergency rule which would have been~~
2 ~~superseded by a disapproved permanent rule shall be deemed null and~~
3 ~~void on the date the Legislature disapproves the permanent rule.~~
4 ~~Rules may be disapproved in part or in whole by the Legislature.~~
5 ~~Any resolution enacted disapproving a rule shall be filed with the~~
6 ~~Secretary for publication in "The Oklahoma Register".~~

7 D. C. Unless otherwise provided by specific vote of the
8 Legislature, joint resolutions introduced for purposes of
9 disapproving or approving a rule or the omnibus joint resolution
10 described in Section 5 of this act shall not be subject to regular
11 legislative cutoff dates, shall be limited to such provisions as may
12 be necessary for disapproval or approval of a rule, and any such
13 other direction or mandate regarding the rule deemed necessary by
14 the Legislature. The resolution shall contain no other provisions.

15 ~~E. 1. Except as provided by subsection F of this section,~~
16 ~~transmission of a rule for legislative review on or before April 1~~
17 ~~of each year shall result in the approval of such rule by the~~
18 ~~Legislature if:~~

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

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

4 ~~2. After April 1 of each year, transmission of a rule for~~
5 ~~legislative review shall result in the approval of such rule by the~~
6 ~~Legislature only if the Legislature is in regular session and has~~
7 ~~failed to disapprove such rule within thirty (30) legislative days~~
8 ~~after such rule has been so transmitted. In the event the~~
9 ~~Legislature adjourns before the expiration of such thirty (30)~~
10 ~~legislative days, such rule shall carry over for consideration by~~
11 ~~the Legislature during the next regular session and shall be~~
12 ~~considered to have been originally transmitted to the Legislature on~~
13 ~~the first day of said next regular session for review pursuant to~~
14 ~~this section. As an alternative, an agency may request direct~~
15 ~~legislative approval of such rules or waiver of the thirty-~~
16 ~~legislative-day review provided by subsection B of this section. An~~
17 ~~agency may also adopt emergency rules under the provisions of~~
18 ~~Section 253 of this title.~~

19 ~~F. Any rule which establishes or increases fees or any rule by~~
20 ~~an agency, board, or commission created by or that receives its~~
21 ~~authority from Title 59 of the Oklahoma Statutes~~

22 ~~D. All proposed permanent rules shall require approval by the~~
23 ~~Legislature by joint resolution. If the Legislature fails to~~
24 ~~approve the rule on or before the last day of the legislative~~

1 ~~session, the rule shall be deemed disapproved~~ become effective if
2 they are:

3 1. Approved by the Legislature pursuant to subsection B of
4 Section 5 of this act;

5 2. Approved by the Governor pursuant to subsection D of Section
6 5 of this act;

7 3. Approved by a joint resolution pursuant to subsection B of
8 this section, provided that any such resolution becomes law in
9 accordance with Section 11 of Article VI of the Oklahoma
10 Constitution; or

11 4. Disapproved by a joint resolution pursuant to subsection B
12 of this section which has been vetoed by the Governor in accordance
13 with Section 11 of Article VI of the Oklahoma Constitution and the
14 veto has not been overridden.

15 ~~G. E.~~ Prior to final adoption of a rule, an agency may withdraw
16 a rule from legislative review. Notice of such withdrawal shall be
17 given to the Governor, the Speaker of the House of Representatives,
18 the President Pro Tempore of the Senate, and to the Secretary for
19 publication in "The Oklahoma Register".

20 ~~H. Except as otherwise provided by Sections 253, 250.4 and~~
21 ~~250.6 of this title or as otherwise specifically provided by the~~
22 ~~Legislature, no agency shall promulgate any rule unless reviewed by~~
23 ~~the Legislature pursuant to this section.~~

1 F. An agency may promulgate an emergency rule only pursuant to
2 Section 253 of this title.

3 ~~F.~~ G. Any rights, privileges, or interests gained by any person
4 by operation of an emergency rule, shall not be affected by reason
5 of any subsequent disapproval or rejection of such rule by either
6 house of the Legislature.

7 SECTION 4. AMENDATORY 75 O.S. 2011, Section 308.1, is
8 amended to read as follows:

9 Section 308.1. A. Upon ~~the approval by the Legislature and the~~
10 ~~Governor, or upon approval by joint resolution of the Legislature~~
11 ~~pursuant to subsection B of Section 308 of this title, a rule shall~~
12 ~~be considered finally adopted.~~ The final adoption, the agency shall
13 submit ~~such finally adopted~~ the rule to the Secretary for filing and
14 publishing such rule pursuant to Sections 251 and 255 of this title.

15 B. The text of the rule submitted for publication shall be the
16 same as the text of the rule ~~considered by the Legislature and the~~
17 ~~Governor~~ that has been finally adopted.

18 SECTION 5. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 308.3 of Title 75, unless there
20 is created a duplication in numbering, reads as follows:

21 A. The Legislature shall have an omnibus joint resolution
22 prepared for consideration each session.

23

24

1 B. The joint resolution shall be substantially in the following
2 form: "All proposed permanent rules of Oklahoma state agencies are
3 hereby approved except for the following:".

4 C. For the purpose of this section, the entire rule, a single
5 section, or any complete paragraph of a proposed permanent rule may
6 be excepted for approval in the omnibus joint resolution considered
7 by the Legislature.

8 D. 1. If an agency believes that a rule that has not been
9 approved by the Legislature should continue in full force and effect
10 and is a rule within its authorized rulemaking power, the agency may
11 seek the Governor's declaration approving the rule.

12 2. In seeking the approval of a proposed permanent rule, the
13 agency shall submit a petition to the Governor that affirmatively
14 states:

- 15 a. the rule is necessary, and
- 16 b. a citation to the source of its authority to make the
17 rule.

18 3. a. If the Governor finds that the necessity does exist,
19 and that the agency has the authority to make the
20 rule, the Governor may declare the rule to be approved
21 by publishing that declaration in "The Oklahoma
22 Register" on or before June 15 of that year.

23 b. The declaration shall set forth the rule to be
24 approved, the reasons the approval is necessary, and a

1 citation to the source of the agency's authority to
2 make the rule.

3 4. If the omnibus joint resolution fails to pass both houses of
4 the Legislature and be signed by the Governor or is found by the
5 Governor to have a technical legal defect preventing approval of
6 administrative rules intended to be approved by the Legislature, the
7 Governor may declare all rules to be approved by publishing a single
8 declaration in "The Oklahoma Register" on or before June 15 without
9 meeting requirements of paragraphs 2 and 3 of this subsection. If
10 the Governor finds that the joint resolution has a technical legal
11 defect, the Governor shall make the finding in writing and submit
12 the finding to the Legislature.

13 SECTION 6. REPEALER 75 O.S. 2011, Section 303.2, is
14 hereby repealed.

15 SECTION 7. This act shall become effective November 1, 2013.

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