

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 1913

By: Shannon

4
5
6 AS INTRODUCED

7 An Act relating to statutes and reports; amending 75
8 O.S. 2011, Sections 250.2, 250.3, 303, 303.2, 308,
9 308.1, which relate to the Administrative Procedures
10 Act; modifying legislative intent; modifying
11 definition; prohibiting the adoption of certain rules
12 until certain date; providing exemptions; modifying
approval and disapproval powers of the Governor;
13 modifying approval and disapproval powers of the
14 Legislature; requiring approval for all permanent
15 rules; modifying final adoption of rules; and
16 providing an effective date.

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

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

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

1 B. In creating agencies and designating their functions and
2 purposes, the Legislature may delegate rulemaking authority to these
3 agencies to facilitate administration of legislative policy. The
4 delegation of rulemaking authority is intended to eliminate the
5 necessity of establishing every administrative aspect of general
6 public policy by legislation. In so doing, however, the Legislature
7 reserves to itself:

8 1. The right to retract any delegation of rulemaking authority
9 unless otherwise precluded by the Oklahoma Constitution.

10 2. The right to establish any aspect of general policy by
11 legislation, notwithstanding any delegation of rulemaking authority.

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

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

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

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

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

3 Section 250.3 As used in the Administrative Procedures Act:

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

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

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

13 a. the Legislature or any branch, committee or officer
14 thereof, and

15 b. the courts;

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

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

24

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

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

10 8. "Individual proceeding" means the formal process employed by
11 an agency having jurisdiction by law to resolve issues of law or
12 fact between parties and which results in the exercise of discretion
13 of a judicial nature;

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

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

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

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

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

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

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

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

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

- 16 a. the issuance, renewal, denial, suspension or
17 revocation or other sanction of an individual specific
18 license,
- 19 b. the approval, disapproval or prescription of rates.
20 For purposes of this subparagraph, the term "rates"
21 shall not include fees or charges fixed by an agency
22 for services provided by that agency including but not
23 limited to fees charged for licensing, permitting,
24 inspections or publications,

- c. statements and memoranda concerning only the internal management of an agency and not affecting private rights or procedures available to the public,
- d. declaratory rulings issued pursuant to Section 307 of this title,
- e. orders by an agency, or
- f. press releases or "agency news releases", provided such releases are not for the purpose of interpreting, implementing or prescribing law or agency policy;

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

19. "Secretary" means the Secretary of State.

SECTION 3. AMENDATORY 75 O.S. 2011, Section 303, is amended to read as follows:

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

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

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

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

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

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

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

- 22 1. In simple language, a brief summary of the rule;
- 23 2. The proposed action being taken;
- 24 3. The circumstances which created the need for the rule;

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

2 5. The intended effect of the rule;

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

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

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

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

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

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

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

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

- 22 a. at least ten persons,
- 23 b. a political subdivision,
- 24 c. an agency,

1 d. an association having not less than twenty-five
2 members, or

3 e. the Small Business Regulatory Review Committee.

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

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

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

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

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

22 a. a brief description of the purpose of the proposed
23 rule,
24

- 1 b. a description of the classes of persons who most
2 likely will be affected by the proposed rule,
3 including classes that will bear the costs of the
4 proposed rule, and any information on cost impacts
5 received by the agency from any private or public
6 entities,
- 7 c. a description of the classes of persons who will
8 benefit from the proposed rule,
- 9 d. a description of the probable economic impact of the
10 proposed rule upon affected classes of persons or
11 political subdivisions, including a listing of all fee
12 changes and, whenever possible, a separate
13 justification for each fee change,
- 14 e. the probable costs and benefits to the agency and to
15 any other agency of the implementation and enforcement
16 of the proposed rule, the source of revenue to be used
17 for implementation and enforcement of the proposed
18 rule, and any anticipated effect on state revenues,
19 including a projected net loss or gain in such
20 revenues if it can be projected by the agency,
- 21 f. a determination of whether implementation of the
22 proposed rule will have an economic impact on any
23 political subdivisions or require their cooperation in
24 implementing or enforcing the rule,

- 1 g. a determination of whether implementation of the
2 proposed rule may have an adverse economic effect on
3 small business as provided by the Oklahoma Small
4 Business Regulatory Flexibility Act,
- 5 h. an explanation of the measures the agency has taken to
6 minimize compliance costs and a determination of
7 whether there are less costly or nonregulatory methods
8 or less intrusive methods for achieving the purpose of
9 the proposed rule,
- 10 i. a determination of the effect of the proposed rule on
11 the public health, safety and environment and, if the
12 proposed rule is designed to reduce significant risks
13 to the public health, safety and environment, an
14 explanation of the nature of the risk and to what
15 extent the proposed rule will reduce the risk,
- 16 j. a determination of any detrimental effect on the
17 public health, safety and environment if the proposed
18 rule is not implemented, and
- 19 k. the date the rule impact statement was prepared and if
20 modified, the date modified.

21 3. To the extent an agency for good cause finds the preparation
22 of a rule impact statement or the specified contents thereof are
23 unnecessary or contrary to the public interest in the process of
24 adopting a particular rule, the agency may request the Governor to

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

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

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

17 F. No agency shall adopt any rule which establishes or
18 increases fees until July 1, 2015, unless specifically mandated by
19 the Legislature or federal legislation, or when the failure to
20 establish or increase fees would conflict with an order issued by a
21 court of law.

22 SECTION 4. AMENDATORY 75 O.S. 2011, Section 303.2, is
23 amended to read as follows:

24

1 Section 303.2 ~~A.~~ The Governor shall ~~have forty five (45)~~
2 ~~calendar days from receipt of a rule to approve~~ a rule by signing
3 the Joint Resolution submitted by the Legislature or disapprove the
4 rule by vetoing the Joint Resolution submitted by the Legislature.

5 ~~1. If the Governor approves the rule, the Governor shall~~
6 ~~immediately notify the agency in writing of the approval. A copy of~~
7 ~~such approval shall be given by the Governor to the Speaker of the~~
8 ~~House of Representatives and the President Pro Tempore of the~~
9 ~~Senate. Upon receipt of the approval, the agency shall submit a~~
10 ~~notice of such approval to the Office of Administrative Rules for~~
11 ~~publication in "The Oklahoma Register".~~

12 ~~2. If the Governor disapproves the adopted rule, the Governor~~
13 ~~shall return the entire document to the agency with reasons in~~
14 ~~writing for the disapproval. Notice of such disapproval shall be~~
15 ~~given by the Governor to the Speaker of the House of Representatives~~
16 ~~and the President Pro Tempore of the Senate. Failure of the~~
17 ~~Governor to approve a rule within the specified period shall~~
18 ~~constitute disapproval of the rule by the Governor. Upon receipt of~~
19 ~~the disapproval, or upon failure of the Governor to approve the rule~~
20 ~~within the specified period, the agency shall submit a notice of~~
21 ~~such disapproval to the Office of Administrative Rules for~~
22 ~~publication in "The Oklahoma Register". Any effective emergency~~
23 ~~rule which would have been superseded by a disapproved permanent~~

1 ~~rule, shall be deemed null and void on the date the Governor~~
2 ~~disapproves the permanent rule.~~

3 ~~B. Rules not approved by the Governor pursuant to the~~
4 ~~provisions of this section shall not become effective unless~~
5 ~~otherwise approved by the Legislature by joint resolution pursuant~~
6 ~~to subsection B of Section 308 of Title 75 of the Oklahoma Statutes.~~

7 SECTION 5. AMENDATORY 75 O.S. 2011, Section 308, is
8 amended to read as follows:

9 Section 308. A. Upon receipt of any adopted rules, the Speaker
10 of the House of Representatives and the President Pro Tempore of the
11 Senate shall assign such rules to the appropriate committees of each
12 ~~such~~ house of the Legislature for review. Except as otherwise
13 provided by this section, upon receipt of such rules, the
14 Legislature shall have ~~thirty (30) legislative days~~ until the last
15 day of the legislative session to review such rules.

16 B. ~~1.~~ By the adoption of a joint resolution, the Legislature
17 may disapprove any rule, ~~waive the thirty legislative day review~~
18 ~~period and approve any rule which has been submitted for review,~~ or
19 otherwise approve any rule.

20 2. a. ~~(1) The Legislature may by concurrent resolution~~
21 ~~disapprove a proposed rule or a proposed~~
22 ~~amendment to a rule submitted to the Legislature~~
23 ~~or an emergency rule prior to such rule having~~
24 ~~the force and effect of law.~~

1 ~~(2) Any such proposed rule or proposed amendment to a~~
2 ~~permanent rule shall be disapproved by both~~
3 ~~houses of the Legislature prior to the~~
4 ~~termination of the legislative review period~~
5 ~~specified by this section.~~

6 ~~(3) Any such concurrent resolution shall not require~~
7 ~~the approval of the Governor, and any such rule~~
8 ~~so disapproved shall be invalid and of no effect~~
9 ~~regardless of the approval of the Governor of~~
10 ~~such rule.~~

11 ~~b. By adoption of a concurrent resolution, the~~
12 ~~Legislature may waive the thirty-legislative-day~~
13 ~~review period for any rule which has been submitted~~
14 ~~for review.~~

15 ~~C. Unless otherwise authorized by the Legislature by concurrent~~
16 ~~resolution, or by law, whenever a rule is disapproved as provided in~~
17 ~~subsection B of this section, the agency adopting such rules shall~~
18 ~~not have authority to resubmit an identical rule, except during the~~
19 ~~first sixty (60) calendar days of the next regular legislative~~
20 ~~session. Any effective emergency rule which would have been~~
21 ~~superseded by a disapproved permanent rule shall be deemed null and~~
22 ~~void on the date the Legislature disapproves the permanent rule.~~
23 ~~Rules may be disapproved in part or in whole by the Legislature.~~

1 ~~Any resolution enacted disapproving a rule shall be filed with the~~
2 ~~Secretary for publication in "The Oklahoma Register".~~

3 ~~D. C.~~ Unless otherwise provided by specific vote of the
4 Legislature, joint resolutions introduced for purposes of
5 disapproving or approving a rule shall not be subject to regular
6 legislative cutoff dates, shall be limited to such provisions as may
7 be necessary for disapproval or approval of a rule, and any such
8 other direction or mandate regarding the rule deemed necessary by
9 the Legislature. The resolution shall contain no other provisions.

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

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

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

21 ~~2. After April 1 of each year, transmission of a rule for~~
22 ~~legislative review shall result in the approval of such rule by the~~
23 ~~Legislature only if the Legislature is in regular session and has~~
24 ~~failed to disapprove such rule within thirty (30) legislative days~~

1 ~~after such rule has been so transmitted. In the event the~~
2 ~~Legislature adjourns before the expiration of such thirty (30)~~
3 ~~legislative days, such rule shall carry over for consideration by~~
4 ~~the Legislature during the next regular session and shall be~~
5 ~~considered to have been originally transmitted to the Legislature on~~
6 ~~the first day of said next regular session for review pursuant to~~
7 ~~this section. As an alternative, an agency may request direct~~
8 ~~legislative approval of such rules or waiver of the thirty-~~
9 ~~legislative day review provided by subsection B of this section. An~~
10 ~~agency may also adopt emergency rules under the provisions of~~
11 ~~Section 253 of this title.~~

12 ~~F. D. Any rule which establishes or increases fees or any rule~~
13 ~~by an agency, board, or commission created by or that receives its~~
14 ~~authority from Title 59 of the Oklahoma Statutes All permanent rules~~
15 ~~shall require approval by the Legislature by joint resolution. If~~
16 ~~the Legislature fails to approve the rule on or before the last day~~
17 ~~of the legislative session, the rule shall be deemed disapproved.~~

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

23 ~~H. F. Except as otherwise provided by Sections 253, 250.4, and~~
24 ~~250.6, and 253 of this title or as otherwise specifically provided~~

1 by the Legislature, no agency shall promulgate any rule unless
2 ~~reviewed~~ approved by the Legislature pursuant to this section, and
3 approved by the Governor pursuant to Section 303.2 of this title.

4 An agency may promulgate an emergency rule only pursuant to Section
5 253 of this title.

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

10 SECTION 6. AMENDATORY 75 O.S. 2011, Section 308.1, is
11 amended to read as follows:

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

19 B. The text of the rule submitted for publication shall be the
20 same as the text of the rule considered and approved by the
21 Legislature and the Governor.

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

23

24 54-1-6511 LRB 01/10/13