

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 1930

By: Jackson

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5
6 AS INTRODUCED

7 An Act relating to administrative rules; amending 75
8 O.S. 2011, Section 253, which relates to emergency
9 rules; modifying approval of emergency rules by the
10 Governor; removing waiver of rule impact statement;
11 requiring notice and hearing of emergency rules;
12 requiring rule report; and providing an effective
13 date.

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

15 SECTION 1. AMENDATORY 75 O.S. 2011, Section 253, is
16 amended to read as follows:

17 Section 253. A. 1. If an agency finds that a rule is
18 necessary as an emergency measure, the rule may be promulgated
19 pursuant to the provisions of this section, if the rule is first
20 approved by the Governor. The Governor shall not approve the
21 adoption, amendment, revision or revocation of a rule as an
22 emergency measure unless the agency submits substantial evidence
23 that the rule is necessary as an emergency measure to do ~~any~~ all of
24 the following:

a. protect the public health, safety or welfare,

- b. comply with deadlines in amendments to an agency's governing law or federal programs,
- c. avoid violation of federal law or regulation or other state law,
- d. avoid imminent reduction to the agency's budget, ~~or~~ and
- e. avoid serious prejudice to the public interest.

As used in this subsection, "substantial evidence" shall mean credible evidence which is of sufficient quality and probative value to enable a person of reasonable caution to support a conclusion.

2. ~~In determining whether a rule is necessary as an emergency measure, the~~ The Governor shall ~~consider whether the~~ not approve any emergency ~~situation~~ rule that was created due to the agency's delay or inaction ~~and~~ which could have been averted by timely compliance with the provisions of this chapter.

B. An emergency rule adopted by an agency shall:

1. Be prepared in the format required by Section 251 of this title;

2. ~~a.~~ Include an impact statement which meets the requirements set forth in subparagraph ~~b~~ a of this paragraph ~~unless the Governor waives the requirement in writing upon a finding that the rule impact statement or the specified contents thereof are unnecessary or contrary to the public interest.~~

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

22 ~~e.~~ b. The rule impact statement shall be prepared on or
23 before the date the emergency rule is adopted;
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1 3. Be transmitted pursuant to Section 464 of Title 74 of the
2 Oklahoma Statutes to the Governor, the Speaker of the Oklahoma House
3 of Representatives and the President Pro Tempore of the Senate,
4 along with the information required by this subsection within ten
5 (10) days after the rule is adopted; and

6 4. Not be invalidated on the ground that the contents of the
7 rule impact statement are insufficient or inaccurate.

8 C. 1. Within forty-five (45) calendar days of receipt of a
9 proposed emergency rule filed with the Governor, the Speaker of the
10 Oklahoma House of Representatives and the President Pro Tempore of
11 the Senate, the Governor shall review the demonstration of emergency
12 pursuant to subsection A of this section, ~~and shall separately~~
13 ~~review the rule in accordance with the standards prescribed in~~
14 ~~paragraph 3 of this subsection.~~

15 2. Prior to approval of emergency rules, the Governor shall
16 submit the emergency rule to the Secretary of State for review of
17 proper formatting.

18 ~~3. If the Governor determines the agency has established the~~
19 ~~rule is necessary as an emergency measure pursuant to subsection A~~
20 ~~of this section, the Governor shall approve the proposed emergency~~
21 ~~rule if the rule is:~~

22 a. ~~clear, concise and understandable,~~

23 b. ~~within the power of the agency to make and within the~~
24 ~~enacted legislative standards, and~~

1 e. ~~made in compliance with the requirements of the~~
2 ~~Administrative Procedures Act.~~

3 D. 1. Within the forty-five-calendar-day period set forth in
4 paragraph 1 of subsection C of this section, the Governor may
5 approve the emergency rule or disapprove the emergency rule.
6 Failure of the Governor to approve an emergency rule within the
7 specified period shall constitute disapproval of the emergency rule.

8 2. If the Governor disapproves the adopted emergency rule, the
9 Governor shall return the entire document to the agency with reasons
10 for the disapproval. If the agency elects to modify the rule, the
11 agency shall adopt the modifications, and shall file the modified
12 rule in accordance with the requirements of subsection B of this
13 section.

14 3. Upon disapproval of an emergency rule, the Governor shall,
15 within fifteen (15) days, make written notification to the Speaker
16 of the House of Representatives, the President Pro Tempore of the
17 Senate and the Office of Administrative Rules.

18 E. 1. Upon approval of an emergency rule, the Governor shall
19 immediately make written notification to the agency, the Speaker of
20 the House of Representatives, the President Pro Tempore of the
21 Senate and the Office of Administrative Rules. Upon receipt of the
22 notice of the approval, the agency shall file with the Office of
23 Administrative Rules as many copies of the notice of approval and
24 the emergency rule as required by the Secretary.

1 2. Emergency rules shall be subject to legislative review
2 pursuant to Section 308 of this title.

3 3. The emergency rule shall be published in accordance with the
4 provisions of Section 255 of this title in "The Oklahoma Register"
5 following the approval by the Governor. The Governor's approval and
6 the approved rules shall be retained as official records by the
7 Office of Administrative Rules.

8 F. 1. Upon approval by the Governor, an emergency rule shall
9 be considered promulgated and shall be in force immediately, or on
10 such later date as specified therein. An emergency rule shall only
11 be applied prospectively from its effective date.

12 2. The emergency rule shall remain in full force and effect
13 through the first day of the next succeeding regular session of the
14 Legislature following promulgation of such emergency rule until July
15 14 following such session, unless it is made ineffective pursuant to
16 subsection H of this section.

17 G. No agency shall adopt any emergency rule which establishes
18 or increases fees, except during such times as the Legislature is in
19 session, unless specifically mandated by the Legislature or federal
20 legislation, or when the failure to establish or increase fees would
21 conflict with an order issued by a court of law.

22 H. 1. If an emergency rule is of a continuing nature, the
23 agency promulgating such emergency rule shall initiate proceedings
24 for promulgation of a permanent rule pursuant to Sections 303

1 through 308.2 of this title. If an emergency rule is superseded by
2 another emergency rule prior to the enactment of a permanent rule,
3 the latter emergency rule shall retain the same expiration date as
4 the superseded emergency rule, unless otherwise authorized by the
5 Legislature.

6 2. Any promulgated emergency rule shall be made ineffective if:

7 a. disapproved by the Legislature,

8 b. superseded by the promulgation of permanent rules,

9 c. any adopted rules based upon such emergency rules are
10 subsequently disapproved pursuant to Section 308 of
11 this title, or

12 d. an earlier expiration date is specified by the agency
13 in the rules.

14 3. a. Emergency rules in effect on the first day of the
15 session shall be null and void ~~on July 15~~ immediately
16 following sine die adjournment of the Legislature
17 unless otherwise specifically provided by the
18 Legislature.

19 b. Unless otherwise authorized by the Legislature, by
20 ~~concurrent~~ joint resolution or by law, an agency shall
21 not adopt any emergency rule, which has become null
22 and void pursuant to subparagraph a of this paragraph,
23 as a new emergency rule or adopt any emergency rules
24 of similar scope or intent as the emergency rules

1 which became null and void pursuant to subparagraph a
2 of this paragraph.

3 I. Emergency rules shall not become effective unless approved
4 by the Governor pursuant to the provisions of this section.

5 J. 1. The requirements of Section 303 of this title relating
6 to notice and hearing shall ~~not~~ be applicable to emergency rules
7 promulgated pursuant to the provisions of this section. ~~Provided~~
8 ~~this shall not be construed to prevent an abbreviated notice and~~
9 ~~hearing process determined to be necessary by an agency.~~

10 2. The rule report required pursuant to Section 303.1 of this
11 title shall ~~not~~ be applicable to emergency rules promulgated
12 pursuant to the provisions of this section. ~~Provided this shall not~~
13 ~~be construed to prevent an agency from complying with such~~
14 ~~requirements at the discretion of such agency.~~

15 3. ~~The statement of submission required by Section 303.1 of~~
16 ~~this title shall not be applicable to emergency rules promulgated~~
17 ~~pursuant to the provisions of this section.~~

18 K. Prior to approval or disapproval of an emergency rule by the
19 Governor, an agency may withdraw from review an emergency rule
20 submitted pursuant to the provisions of this section. Notice of
21 such withdrawal shall be given to the Governor, the Speaker of the
22 House of Representatives, the President Pro Tempore of the Senate in
23 accordance with the requirements set forth in Section 464 of Title
24 74 and to the Office of Administrative Rules as required by the

1 Secretary. In order to be promulgated as emergency rules, any
2 replacement rules shall be resubmitted pursuant to the provisions of
3 this section.

4 L. Upon completing the requirements of this section, an agency
5 may promulgate a proposed emergency rule. No emergency rule is
6 valid unless promulgated in substantial compliance with the
7 provisions of this section.

8 M. Emergency rules adopted by an agency or approved by the
9 Governor shall be subject to review pursuant to the provisions of
10 Section 306 of this title.

11 SECTION 2. This act shall become effective November 1, 2013.

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