

1 ENGROSSED HOUSE AMENDMENT  
TO  
2 ENGROSSED SENATE BILL NO. 1236 By: Floyd of the Senate  
3 and  
4 Faught of the House  
5  
6

7 [ administrative rules - Administrative Procedures  
8 Act - emergency rules - repealer - codification -  
noncodification - effective date ]  
9  
10

11 AMENDMENT NO. 1. Strike the stricken title, enacting clause and  
12 entire bill and insert

13 "An Act relating to administrative rules; amending 75  
14 O.S. 2011, Sections 250.3, as amended by Section 2,  
Chapter 357, O.S.L. 2013, 253, as amended by Section  
15 3, Chapter 357, O.S.L. 2013, 308, as amended by  
Section 4, Chapter 357, O.S.L. 2013 and 308.1, as  
16 amended by Section 5, Chapter 357, O.S.L. 2013 (75  
O.S. Supp. 2015, Sections 250.3, 253, 308 and  
17 308.1), which relate to the Administrative  
Procedures Act; modifying definitions; modifying  
18 expiration date of emergency rules; providing for  
approval or disapproval of rule by the Governor;  
19 modifying legislative approval and disapproval of  
rules; requiring approval of certain rules;  
20 modifying final adoption of rule; repealing Section  
6, Chapter 357, O.S.L. 2013 (75 O.S. Supp. 2015,  
21 Section 308.3), which relates to the omnibus joint  
resolution; providing for codification; providing  
22 for noncodification; and providing an effective  
date.  
23

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

1 SECTION 1. AMENDATORY 75 O.S. 2011, Section 250.3, as  
2 amended by Section 2, Chapter 357, O.S.L. 2013 (75 O.S. Supp. 2015,  
3 Section 250.3), is amended to read as follows:

4 Section 250.3 As used in the Administrative Procedures Act:

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

7 2. "Adopted" means a proposed emergency rule or permanent rule  
8 which has been approved by the agency but has not been ~~approved or~~  
9 ~~disapproved~~ reviewed by the Legislature and the Governor as provided  
10 ~~by Section 253 of this title, or a proposed permanent rule which has~~  
11 ~~been approved by the agency, but has not been approved or~~  
12 ~~disapproved by the Legislature or by declaration of the Governor as~~  
13 ~~provided by subsection D of Section 6 of this act;~~

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

18 a. the Legislature or any branch, committee or officer  
19 thereof, and

20 b. the courts;

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

23 5. "Final rule" or "finally adopted rule" means a rule other  
24 than an emergency rule, which has ~~not been published pursuant to~~

1 ~~Section 255 of this title but is otherwise in compliance with the~~  
2 ~~requirements of the Administrative Procedures Act, and is:~~

3 a. ~~approved by the Legislature pursuant to Section 6 of~~  
4 ~~this act, provided that any such joint resolution~~  
5 ~~becomes law in accordance with Section 11 of Article~~  
6 ~~VI of the Oklahoma Constitution,~~

7 b. ~~approved by the Governor pursuant to subsection D of~~  
8 ~~Section 6 of this act,~~

9 c. ~~approved by a joint resolution pursuant to subsection~~  
10 ~~B of Section 308 of this title, provided that any such~~  
11 ~~resolution becomes law in accordance with Section 11~~  
12 ~~of Article VI of the Oklahoma Constitution, or~~

13 d. ~~disapproved by a joint resolution pursuant to~~  
14 ~~subsection B of Section 308 of this title or Section 6~~  
15 ~~of this act, which has been vetoed by the Governor in~~  
16 ~~accordance with Section 11 of Article VI of the~~  
17 ~~Oklahoma Constitution and the veto has not been~~  
18 ~~overridden~~

19 been approved by the Legislature and by the Governor, or approved by  
20 the Legislature pursuant to subsection B of Section 308 of this  
21 title and otherwise complies with the requirements of the  
22 Administrative Procedures Act but has not been published pursuant to  
23 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 preemptive  
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 2. AMENDATORY 75 O.S. 2011, Section 253, as amended by Section 3, Chapter 357, O.S.L. 2013 (75 O.S. Supp. 2015, Section 253), is amended to read as follows:

Section 253. A. 1. If an agency finds that a rule is necessary as an emergency measure, the rule may be promulgated pursuant to the provisions of this section, if the rule is first approved by the Governor. The Governor shall not approve the adoption, amendment, revision or revocation of a rule as an emergency measure unless the agency submits substantial evidence that the rule is necessary as an emergency measure to do any of 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
- 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 Governor shall consider whether the emergency situation was created due to the agency's delay or inaction and 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 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           b. The rule impact statement shall include, but not be  
2 limited to:

3           (1) a brief description of the proposed rule,

4           (2) a description of the persons who most likely will  
5 be affected by the proposed rule, including  
6 classes that will bear the costs of the proposed  
7 rule, and any information on cost impacts  
8 received by the agency from any private or public  
9 entities,

10          (3) a description of the classes of persons who will  
11 benefit from the proposed rule,

12          (4) a description of the probable economic impact of  
13 the proposed rule upon affected classes of  
14 persons or political subdivisions, including a  
15 listing of all fee changes and, whenever  
16 possible, a separate justification for each fee  
17 change,

18          (5) the probable costs and benefits to the agency and  
19 to any other agency of the implementation and  
20 enforcement of the proposed rule, and any  
21 anticipated effect on state revenues, including a  
22 projected net loss or gain in such revenues if it  
23 can be projected by the agency,

24

- 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 c. The rule impact statement shall be prepared on or  
23 before the date the emergency rule is adopted;  
24

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           c.     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  
15 September 14 following such session, unless it is made ineffective  
16 pursuant to 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 September 15  
16 immediately following sine die adjournment of the  
17 Legislature unless otherwise specifically provided by  
18 the Legislature.

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

1 emergency rules which became null and void pursuant to  
2 subparagraph a 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 3. NEW LAW A new section of law to be codified  
12 in the Oklahoma Statutes as Section 303.3 of Title 75, unless there  
13 is created a duplication in numbering, reads as follows:

14 A. The Governor shall have forty-five (45) calendar days from  
15 receipt of a rule to approve or disapprove the rule.

16 1. If the Governor approves the rule, the Governor shall  
17 immediately notify the agency in writing of the approval. A copy of  
18 such approval shall be given by the Governor to the Speaker of the  
19 House of Representatives and the President Pro Tempore of the  
20 Senate. Upon receipt of the approval, the agency shall submit a  
21 notice of such approval to the Office of Administrative Rules for  
22 publication in "The Oklahoma Register".

23 2. If the Governor disapproves the adopted rule, the Governor  
24 shall return the entire document to the agency with reasons in

1 writing for the disapproval. Notice of such disapproval shall be  
2 given by the Governor to the Speaker of the House of Representatives  
3 and the President Pro Tempore of the Senate. Failure of the  
4 Governor to approve a rule within the specified period shall  
5 constitute disapproval of the rule by the Governor. Upon receipt of  
6 the disapproval, or upon failure of the Governor to approve the rule  
7 within the specified period, the agency shall submit a notice of  
8 such disapproval to the Office of Administrative Rules for  
9 publication in "The Oklahoma Register". Any effective emergency  
10 rule which would have been superseded by a disapproved permanent  
11 rule shall be deemed null and void on the date the Governor  
12 disapproves the permanent rule.

13 B. Rules not approved by the Governor pursuant to the  
14 provisions of this section shall not become effective unless  
15 otherwise approved by the Legislature by joint resolution pursuant  
16 to subsection B of Section 308 of Title 75 of the Oklahoma Statutes.

17 SECTION 4. AMENDATORY 75 O.S. 2011, Section 308, as  
18 amended by Section 4, Chapter 357, O.S.L. 2013 (75 O.S. Supp. 2015,  
19 Section 308), is amended to read as follows:

20 Section 308. A. Upon receipt of any adopted rules, the Speaker  
21 of the House of Representatives and the President Pro Tempore of the  
22 Senate shall assign such rules to the appropriate committees of each  
23 house of the Legislature for review. Except as otherwise provided  
24 by this section:

1 1. If such rules are received on or before April 1, the  
2 Legislature shall have until the last day of the regular legislative  
3 session of that year to review such rules; and

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

7 B. By the adoption of a joint resolution during the review  
8 period specified in subsection A of this section, the Legislature  
9 may disapprove or approve any rule.

10 C. Unless otherwise authorized by the Legislature, whenever a  
11 rule is disapproved as provided in subsection B of this section, the  
12 agency adopting such rules shall not have authority to resubmit an  
13 identical rule, except during the first sixty (60) calendar days of  
14 the next regular legislative session. Any effective emergency rule  
15 which would have been superseded by a disapproved permanent rule  
16 shall be deemed null and void on the date the Legislature  
17 disapproves the permanent rule. Rules may be disapproved in part or  
18 in whole by the Legislature. Upon enactment of any joint resolution  
19 disapproving a rule, the agency shall file notice of such  
20 legislative disapproval with the Secretary for publication in "The  
21 Oklahoma Register".

22 D. Unless otherwise provided by specific vote of the  
23 Legislature, joint resolutions introduced for purposes of  
24 disapproving or approving a rule ~~or the omnibus joint resolution~~

1 ~~described in Section 6 of this act~~ shall not be subject to regular  
2 legislative cutoff dates, shall be limited to such provisions as may  
3 be necessary for disapproval or approval of a rule, and any such  
4 other direction or mandate regarding the rule deemed necessary by  
5 the Legislature. The resolution shall contain no other provisions.

6 E. ~~A proposed permanent rule shall be deemed finally adopted~~  
7 ~~if:~~

8 1. ~~Approved by the Legislature pursuant to Section 6 of this~~  
9 ~~act, provided that any such joint resolution becomes law in~~  
10 ~~accordance with Section 11 of Article VI of the Oklahoma~~  
11 ~~Constitution;~~

12 2. ~~Approved by the Governor pursuant to subsection D of Section~~  
13 ~~6 of this act;~~

14 3. ~~Approved by a joint resolution pursuant to subsection B of~~  
15 ~~this section, provided that any such resolution becomes law in~~  
16 ~~accordance with Section 11 of Article VI of the Oklahoma~~  
17 ~~Constitution; or~~

18 4. ~~Disapproved by a joint resolution pursuant to subsection B~~  
19 ~~of this section or Section 6 of this act which has been vetoed by~~  
20 ~~the Governor in accordance with Section 11 of Article VI of the~~  
21 ~~Oklahoma Constitution and the veto has not been overridden.~~

22 Except as provided by subsection F of this section, transmission  
23 of a rule for legislative review on or before April 1 of each year  
24 shall result in the approval of such rule by the Legislature if the

1 Legislature is in regular session and has failed to disapprove such  
2 rule before the last day of session after such rule has been  
3 submitted pursuant to Section 303.1 of this title.

4 F. Any rule which establishes or increases a fee or fees or any  
5 rule by an agency, board or commission created by or that receives  
6 its authority from Title 59 of the Oklahoma Statutes shall require  
7 approval by the Legislature by joint resolution. If the Legislature  
8 fails to approve the rule on or before the last day of the  
9 legislative session, the rule shall be deemed disapproved.

10 G. Prior to final adoption of a rule, an agency may withdraw a  
11 rule from legislative review. Notice of such withdrawal shall be  
12 given to the Governor, the Speaker of the House of Representatives,  
13 the President Pro Tempore of the Senate, and to the Secretary for  
14 publication in "The Oklahoma Register".

15 H. Except as otherwise provided by Sections 250.4, 250.6 and  
16 253 of this title or as otherwise specifically provided by the  
17 Legislature, no agency shall promulgate any rule unless reviewed by  
18 the Legislature pursuant to this section.

19 ~~G.~~ I. An agency may promulgate an emergency rule only pursuant  
20 to Section 253 of this title.

21 ~~H.~~ J. Any rights, privileges, or interests gained by any person  
22 by operation of an emergency rule, shall not be affected by reason  
23 of any subsequent disapproval or rejection of such rule by either  
24 house of the Legislature.

1 SECTION 5. AMENDATORY 75 O.S. 2011, Section 308.1, as  
2 amended by Section 5, Chapter 357, O.S.L. 2013 (75 O.S. Supp. 2015,  
3 Section 308.1), is amended to read as follows:

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

10 B. The text of the rule submitted for publication shall be the  
11 same as the text of the rule that has been finally adopted.

12 SECTION 6. NEW LAW A new section of law not to be  
13 codified in the Oklahoma Statutes reads as follows:

14 The Office of the Secretary of State may promulgate emergency  
15 rules to establish separate filing deadlines and review periods for  
16 finally adopted rules and to carry out the provisions of this act.

17 SECTION 7. REPEALER Section 6, Chapter 357, O.S.L. 2013  
18 (75 O.S. Supp. 2015, Section 308.3), is hereby repealed.

19 SECTION 8. This act shall become effective November 1, 2016."  
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