

1 ENGROSSED HOUSE
2 BILL NO. 2254

By: Faught, Russ, Roberts
(Sean), Ritze and Moore of
the House

3
4 and

Newberry of the Senate

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6
7
8 An Act relating to administrative rules; amending 75
9 O.S. 2011, Sections 250.3, as amended by Section 2,
10 Chapter 357, O.S.L. 2013, 308, as amended by Section
11 4, Chapter 357, O.S.L. 2013 and 308.1, as amended by
12 Section 5, Chapter 357, O.S.L. 2013 (75 O.S. Supp.
13 2015, Sections 250.3, 308 and 308.1), which relate to
14 the Administrative Procedures Act; modifying
15 definitions; providing for approval or disapproval of
16 rule by the Governor; modifying legislative approval
17 and disapproval of rules; requiring approval of
18 certain rules; modifying final adoption of rule;
19 repealing Section 6, Chapter 357, O.S.L. 2013 (75
20 O.S. Supp. 2015, Section 308.3), which relates to the
21 omnibus joint resolution; providing for codification;
22 providing for noncodification; and providing an
23 effective date.
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BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

Section 250.3 As used in the Administrative Procedures Act:

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

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

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

- 12 a. the Legislature or any branch, committee or officer
- 13 thereof, and
- 14 b. the courts;

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

17 5. "Final rule" or "finally adopted rule" means a rule other
18 than an emergency rule, which has ~~not been published pursuant to~~
19 ~~Section 255 of this title but is otherwise in compliance with the~~
20 ~~requirements of the Administrative Procedures Act, and is:~~

- 21 a. ~~approved by the Legislature pursuant to Section 6 of~~
22 ~~this act, provided that any such joint resolution~~
23 ~~becomes law in accordance with Section 11 of Article~~
24 ~~VI of the Oklahoma Constitution,~~

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

13 been approved by the Legislature and by the Governor, or approved by
14 the Legislature pursuant to subsection B of Section 308 of this
15 title and otherwise complies with the requirements of the
16 Administrative Procedures Act but has not been published pursuant to
17 Section 255 of this title;

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

23 7. "Hearing examiner" means a person meeting the qualifications
24 specified by Article II of the Administrative Procedures Act and who

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

3 8. "Individual proceeding" means the formal process employed by
4 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. "License" includes the whole or part of any agency permit,
8 certificate, approval, registration, charter, or similar form of
9 permission required by law;

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

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

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

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

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

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

23 16. "Promulgated" means a finally adopted rule which has been
24 filed and published in accordance with the provisions of the

1 Administrative Procedures Act, or an emergency rule or preemptive
2 rule which has been approved by the Governor;

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

9 a. the issuance, renewal, denial, suspension or
10 revocation or other sanction of an individual specific
11 license,

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

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

21 d. declaratory rulings issued pursuant to Section 307 of
22 this title,

23 e. orders by an agency, or
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1 f. press releases or "agency news releases", provided
2 such releases are not for the purpose of interpreting,
3 implementing or prescribing law or agency policy;

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

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

7 SECTION 2. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 303.3 of Title 75, unless there
9 is created a duplication in numbering, reads as follows:

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

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

19 2. If the Governor disapproves the adopted rule, the Governor
20 shall return the entire document to the agency with reasons in
21 writing for the disapproval. Notice of such disapproval shall be
22 given by the Governor to the Speaker of the House of Representatives
23 and the President Pro Tempore of the Senate. Failure of the
24 Governor to approve a rule within the specified period shall

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

9 B. Rules not approved by the Governor pursuant to the
10 provisions of this section shall not become effective unless
11 otherwise approved by the Legislature by joint resolution pursuant
12 to subsection B of Section 308 of Title 75 of the Oklahoma Statutes.

13 SECTION 3. AMENDATORY 75 O.S. 2011, Section 308, as
14 amended by Section 4, Chapter 357, O.S.L. 2013 (75 O.S. Supp. 2015,
15 Section 308), is amended to read as follows:

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

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

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

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

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

19 D. Unless otherwise provided by specific vote of the
20 Legislature, joint resolutions introduced for purposes of
21 disapproving or approving a rule ~~or the omnibus joint resolution~~
22 ~~described in Section 6 of this act~~ shall not be subject to regular
23 legislative cutoff dates, shall be limited to such provisions as may
24 be necessary for disapproval or approval of a rule, and any such

1 other direction or mandate regarding the rule deemed necessary by
2 the Legislature. The resolution shall contain no other provisions.

3 E. ~~A proposed permanent rule shall be deemed finally adopted~~
4 ~~if:~~

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

9 2. ~~Approved by the Governor pursuant to subsection D of Section~~
10 ~~6 of this act;~~

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

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

19 Except as provided by subsection F of this section, transmission
20 of a rule for legislative review on or before April 1 of each year
21 shall result in the approval of such rule by the Legislature if the
22 Legislature is in regular session and has failed to disapprove such
23 rule before the last day of session after such rule has been
24 submitted pursuant to Section 303.1 of this title.

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

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

12 H. Except as otherwise provided by Sections 253, 250.4 and
13 250.6 of this title or as otherwise specifically provided by the
14 Legislature, no agency shall promulgate any rule unless reviewed by
15 the Legislature pursuant to this section.

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

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

22 SECTION 4. AMENDATORY 75 O.S. 2011, Section 308.1, as
23 amended by Section 5, Chapter 357, O.S.L. 2013 (75 O.S. Supp. 2015,
24 Section 308.1), is amended to read as follows:

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

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

9 SECTION 5. NEW LAW A new section of law not to be
10 codified in the Oklahoma Statutes reads as follows:

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

14 SECTION 6. REPEALER Section 6, Chapter 357, O.S.L. 2013
15 (75 O.S. Supp. 2015, Section 308.3), is hereby repealed.

16 SECTION 7. This act shall become effective November 1, 2016.

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1 Passed the House of Representatives the 9th day of March, 2016.

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3 _____
4 Presiding Officer of the House
of Representatives

5 Passed the Senate the ____ day of _____, 2016.

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8 _____
9 Presiding Officer of the Senate