ENGROSSED SENATE
BILL NO. 1236 By: Floyd of the Senate

and

Faught of the House

[administrative rules - Administrative Procedures Act - emergency rules - repealer - codification - noncodification - effective date]

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;

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

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

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

b. the courts;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17. "Rule" means any agency statement or group of related statements of general applicability and future effect that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of the agency. The term "rule"

includes the amendment or revocation of an effective rule but does not include:

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

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

b. The rule impact statement shall include, but not be limited to:

(1) a brief description of the proposed rule,

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

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

(4) a description of the probable economic impact of the proposed rule upon affected classes of

persons or political subdivisions, including a listing of all fee changes and, whenever possible, a separate justification for each fee change,

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

(6) a determination of whether implementation of the proposed rule may have an adverse economic effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act,

(7) an explanation of the measures the agency has taken to minimize compliance costs and a determination of whether there are less costly or nonregulatory methods or less intrusive methods for achieving the purpose of the proposed rule,

(8) a determination of the effect of the proposed rule on the public health, safety and environment and, if the proposed rule is designed to reduce significant risks to the public health, safety and environment, an explanation of the nature of

the risk and to what extent the proposed rule will reduce the risk,

(9) a determination of any detrimental effect on the public health, safety and environment if the proposed rule is not implemented, and

(10) the date the rule impact statement was prepared and if modified, the date modified.

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

3. Be transmitted pursuant to Section 464 of Title 74 of the Oklahoma Statutes to the Governor, the Speaker of the Oklahoma House of Representatives and the President Pro Tempore of the Senate, along with the information required by this subsection within ten (10) days after the rule is adopted; and

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

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

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

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

a. clear, concise and understandable,

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

c. made in compliance with the requirements of the Administrative Procedures Act.

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

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

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

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

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

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

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

2. The emergency rule shall remain in full force and effect through the first day of the next succeeding regular session of the

Legislature following promulgation of such emergency rule until September 14 following such session, unless it is made ineffective pursuant to subsection H of this section.

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

H. 1. If an emergency rule is of a continuing nature, the agency promulgating such emergency rule shall initiate proceedings for promulgation of a permanent rule pursuant to Sections 303 through 308.2 of this title. If an emergency rule is superseded by another emergency rule prior to the enactment of a permanent rule, the latter emergency rule shall retain the same expiration date as the superseded emergency rule, unless otherwise authorized by the Legislature.

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

a. disapproved by the Legislature,

b. superseded by the promulgation of permanent rules,

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

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

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

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

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

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

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

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

K. Prior to approval or disapproval of an emergency rule by the Governor, an agency may withdraw from review an emergency rule submitted pursuant to the provisions of this section. Notice of such withdrawal shall be given to the Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate in accordance with the requirements set forth in Section 464 of Title 74 and to the Office of Administrative Rules as required by the Secretary. In order to be promulgated as emergency rules, any replacement rules shall be resubmitted pursuant to the provisions of this section.

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

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

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 303.3 of Title 75, unless there is created a duplication in numbering, reads as follows:

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

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

2. If the Governor disapproves the adopted rule, the Governor shall return the entire document to the agency with reasons in writing for the disapproval. Notice of such disapproval shall be given by the Governor to the Speaker of the House of Representatives and the President Pro Tempore of the Senate. Failure of the Governor to approve a rule within the specified period shall constitute disapproval of the rule by the Governor. Upon receipt of the disapproval, or upon failure of the Governor to approve the rule within the specified period, the agency shall submit a notice of such disapproval to the Office of Administrative Rules for publication in "The Oklahoma Register". Any effective emergency rule which would have been superseded by a disapproved permanent rule shall be deemed null and void on the date the Governor disapproves the permanent rule.

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

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

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

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

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

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

C. Unless otherwise authorized by the Legislature, whenever a rule is disapproved as provided in subsection B of this section, the agency adopting such rules shall not have authority to resubmit an

identical rule, except during the first sixty (60) calendar days of the next regular legislative session. Any effective emergency rule which would have been superseded by a disapproved permanent rule shall be deemed null and void on the date the Legislature disapproves the permanent rule. Rules may be disapproved in part or in whole by the Legislature. Upon enactment of any joint resolution disapproving a rule, the agency shall file notice of such legislative disapproval with the Secretary for publication in "The Oklahoma Register".

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

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

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

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

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

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

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

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

~~F.~~ G. Prior to final adoption of a rule, an agency may withdraw a rule from legislative review. Notice of such withdrawal shall be

given to the Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and to the Secretary for publication in "The Oklahoma Register".

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

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

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

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

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

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

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

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

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

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

Passed the Senate the 10th day of March, 2016.

_____
Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2016.

_____
Presiding Officer of the House of Representatives