

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 SENATE BILL 1130

By: Dahm

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5  
6 AS INTRODUCED

7 An Act relating to state agency rules; amending 75  
8 O.S. 2011, Sections 250.2, 250.4a, 250.10, as amended  
9 by Section 49, Chapter 227, O.S.L. 2013, 251, 253, as  
10 amended by Section 3, Chapter 357, O.S.L. 2013, 255,  
11 257.1, 302, 305, 307.1, 308 and 308.1, as amended by  
12 Sections 4 and 5, Chapter 357, O.S.L. 2013, 308.2,  
13 Section 6, Chapter 357, O.S.L. 2013 and 317 (75 O.S.  
14 Supp. 2015, Sections 250.10, 253, 308, 308.1 and  
15 308.3), which relate to the Administrative Procedures  
16 Act; modifying legislative intent; requiring state  
17 agencies and Secretary of State to publish certain  
18 documents on websites; deleting deadlines for certain  
19 duties; requiring agency response to rule review  
20 request and modifying deadline therefor; prohibiting  
21 adoption of certain emergency rules; allowing certain  
22 documents to be provided electronically or on  
23 website; allowing certain documents to be provided on  
24 certain digital media; requiring agencies to act upon  
certain petitions within certain time period;  
deleting provision relating to function of certain  
committees; modifying duties of certain committees;  
granting Legislature authority to amend or repeal  
proposed and effective agency rules with or without  
instructions; providing procedures; modifying time by  
which certain proceeding must be commenced; modifying  
duty of Legislature to have certain resolution  
prepared and modifying contents thereof; specifying  
requirements for such resolutions; modifying time for  
certain rehearings; and declaring an emergency.

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

1 SECTION 1. AMENDATORY 75 O.S. 2011, Section 250.2, as  
2 amended by Section 1, Chapter 357, O.S.L. 2013 (75 O.S. Supp. 2015,  
3 Section 250.2), is amended to read as follows:

4 Section 250.2. A. Article V of the Oklahoma Constitution vests  
5 in the Legislature the power to make laws, and thereby to establish  
6 agencies and to designate agency functions, budgets and purposes.  
7 Article VI of the Oklahoma Constitution charges the Executive Branch  
8 of Government with the responsibility to implement all measures  
9 enacted by the Legislature.

10 B. In creating agencies and designating their functions and  
11 purposes, the Legislature may delegate rulemaking authority to  
12 executive branch agencies to facilitate administration of  
13 legislative policy. The delegation of rulemaking authority is  
14 intended to eliminate the necessity of establishing every  
15 administrative aspect of general public policy by legislation. In  
16 so doing, however, the Legislature reserves to itself:

17 1. The right to retract any delegation of rulemaking authority  
18 unless otherwise precluded by the Oklahoma Constitution;

19 2. The right to establish any aspect of general policy by  
20 legislation, notwithstanding any delegation of rulemaking authority;

21 3. The right and responsibility to designate the method for  
22 rule promulgation, review and modification;

23 4. The right to approve, amend or disapprove any adopted rule  
24 by joint resolution; ~~and~~

1 5. The right to disapprove a proposed permanent, promulgated or  
2 emergency rule at any time if the Legislature determines such rule  
3 to be an imminent harm to the health, safety or welfare of the  
4 public or the state or if the Legislature determines that a rule is  
5 not consistent with legislative intent;

6 6. The right to amend any rules as they proceed through the  
7 legislative review process; and

8 7. The right to establish a new agency rule directly through  
9 enactment of a joint resolution.

10 SECTION 2. AMENDATORY 75 O.S. 2011, Section 250.4a, is  
11 amended to read as follows:

12 Section 250.4a. A. Any agency exempt from all or part of the  
13 Administrative Procedures Act pursuant to subsection A of Section  
14 250.4 of this title shall maintain and make available for public  
15 inspection its exempt rules at its principal place of business, and  
16 shall also publish its exempt rules on its website.

17 B. It is recognized by the Oklahoma Legislature that agencies  
18 specified by subsection A of this section have published rules  
19 containing obsolete rules or internal policy statements or agency  
20 statements which do not meet the Administrative Procedures Act  
21 definition of rules. Therefore, by December 31, 2005, of each year  
22 each such agency shall conduct an internal review of its rules to  
23 determine whether each of its rules is current and is a rule as such  
24 term is defined by the Administrative Procedures Act. Any rule

1 determined by an agency to be obsolete or an internal policy  
2 statement or any agency statement which does not meet the definition  
3 of a rule pursuant to the Administrative Procedures Act shall be  
4 deleted by the agency. Notice of such deletion shall be submitted  
5 to the Speaker of the House of Representatives, the President Pro  
6 Tempore of the Senate and the Governor for informational purposes.

7 C. The provisions of this section shall not be construed to  
8 authorize any agency to amend any rule or to delete any rule which  
9 affects any private rights or procedures available to the public.

10 SECTION 3. AMENDATORY 75 O.S. 2011, Section 250.10, as  
11 amended by Section 49, Chapter 227, O.S.L. 2013 (75 O.S. Supp. 2015,  
12 Section 250.10), is amended to read as follows:

13 Section 250.10. The Governor by Executive Order or either house  
14 of the Legislature or both houses of the Legislature by resolution,  
15 or a small business, may request an agency to review its rules to  
16 determine whether or not the rules in question should be amended,  
17 repealed or redrafted. The agency shall respond to such requests  
18 ~~from the Governor or the Legislature~~ within ~~ninety (90)~~ thirty (30)  
19 calendar days of such request.

20 SECTION 4. AMENDATORY 75 O.S. 2011, Section 251, is  
21 amended to read as follows:

22 Section 251. A. 1. Upon the request of the Secretary, each  
23 agency shall furnish to the Office a complete set of its permanent  
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1 rules in such form as is required by the Secretary or as otherwise  
2 provided by law.

3 2. The Secretary shall promulgate rules to ensure the effective  
4 administration of the provisions of Article I of the Administrative  
5 Procedures Act. The rules shall include, but are not limited to,  
6 rules prescribing paper size, numbering system, and the format of  
7 documents required to be filed pursuant to the provisions of the  
8 Administrative Procedures Act or such other requirements as deemed  
9 necessary by the Secretary to implement the provisions of the  
10 Administrative Procedures Act.

11 B. 1. Each agency shall file the number of copies specified by  
12 the Secretary of all new rules, and all amendments, revisions or  
13 revocations of existing rules attested to by the agency, pursuant to  
14 the provisions of Section 254 of this title, with the Office within  
15 thirty (30) calendar days after they become finally adopted.

16 2. An agency filing rules pursuant to the provisions of this  
17 subsection:

18 a. shall prepare the rules in plain language which can be  
19 easily understood,

20 b. shall not unnecessarily repeat statutory language.

21 Whenever it is necessary to refer to statutory  
22 language in order to effectively convey the meaning of  
23 a rule interpreting that language, the reference shall  
24 clearly indicate the portion of the language which is

1 statutory and the portion which is the agency's  
2 amplification or interpretation of that language,  
3 c. shall indicate whether a rule is new, amends an  
4 existing permanent rule or repeals an existing  
5 permanent rule. If a rule amends an existing rule,  
6 the rule shall indicate the language to be deleted  
7 typed with a line through the language and language to  
8 be inserted typed with the new language underscored,  
9 d. shall state if the rule supersedes an existing  
10 emergency rule,  
11 e. shall include a reference to any rule requiring a new  
12 or revised form in a note to the rule. The Secretary  
13 shall insert that reference in "The Oklahoma Register"  
14 as a notation to the affected rule,  
15 f. shall prepare, in plain language, an analysis of new  
16 or amended rules. The analysis shall include but not  
17 be limited to a reference to any statute that the rule  
18 interprets, any related statute or any related rule,  
19 g. may include with its rules, brief notes,  
20 illustrations, findings of facts, and references to  
21 digests of Supreme Court cases, other court decisions,  
22 or Attorney General's opinions, and other explanatory  
23 material. Such material may be included if the  
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1 material is labeled or set forth in a manner which  
2 clearly distinguishes it from the rules,

3 h. shall include other information, in such form and in  
4 such manner as is required by the Secretary, and

5 i. may change the format of existing rules without any  
6 rulemaking action by the agency in order to comply  
7 with the standard provisions established by the  
8 Secretary for "Code" and "The Oklahoma Register"  
9 publication so long as there is no substantive change  
10 to the rule.

11 C. The Secretary is authorized to determine a numbering system  
12 and other standardized format for documents to be filed and may  
13 refuse to accept for publication any document that does not  
14 substantially conform to the promulgated rules of the Secretary.

15 D. In order to avoid unnecessary expense, an agency may use the  
16 published standards established by organizations and technical  
17 societies of recognized national standing, other state agencies, or  
18 federal agencies by incorporating the standards or rules in its  
19 rules or regulations by reference to the specific issue or issues of  
20 publications in which the standards are published, without  
21 reproducing the standards in full. The standards shall be readily  
22 available to the public for examination at the administrative  
23 offices of the agency, and shall also be published on the agency's  
24 website. In addition, a copy of such standards shall be kept and

1 maintained by the agency pursuant to the provisions of the  
2 Preservation of Essential Records Act.

3 E. The Secretary shall provide for the publication of all  
4 Executive Orders received pursuant to the provisions of Section 664  
5 of Title 74 of the Oklahoma Statutes.

6 F. The Secretary may authorize or require the filing of rules  
7 or Executive Orders by or through electronic data or machine  
8 readable equipment in such form and manner as is required by the  
9 Secretary.

10 SECTION 5. AMENDATORY 75 O.S. 2011, Section 253, as  
11 amended by Section 3, Chapter 357, O.S.L. 2013 (75 O.S. Supp. 2015,  
12 Section 253), is amended to read as follows:

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

- 21 a. protect the public health, safety or welfare,
  - 22 b. comply with deadlines in amendments to an agency's  
23 governing law or federal programs,
- 24

- 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,

- 1 (2) a description of the persons who most likely will  
2 be affected by the proposed rule, including  
3 classes that will bear the costs of the proposed  
4 rule, and any information on cost impacts  
5 received by the agency from any private or public  
6 entities,
- 7 (3) a description of the classes of persons who will  
8 benefit from the proposed rule,
- 9 (4) a description of the probable economic impact of  
10 the proposed rule upon affected classes of  
11 persons or political subdivisions, including a  
12 listing of all fee changes and, whenever  
13 possible, a separate justification for each fee  
14 change,
- 15 (5) the probable costs and benefits to the agency and  
16 to any other agency of the implementation and  
17 enforcement of the proposed rule, and any  
18 anticipated effect on state revenues, including a  
19 projected net loss or gain in such revenues if it  
20 can be projected by the agency,
- 21 (6) a determination of whether implementation of the  
22 proposed rule may have an adverse economic effect  
23 on small business as provided by the Oklahoma  
24 Small Business Regulatory Flexibility Act,

- 1 (7) an explanation of the measures the agency has  
2 taken to minimize compliance costs and a  
3 determination of whether there are less costly or  
4 nonregulatory methods or less intrusive methods  
5 for achieving the purpose of the proposed rule,  
6 (8) a determination of the effect of the proposed  
7 rule on the public health, safety and environment  
8 and, if the proposed rule is designed to reduce  
9 significant risks to the public health, safety  
10 and environment, an explanation of the nature of  
11 the risk and to what extent the proposed rule  
12 will reduce the risk,  
13 (9) a determination of any detrimental effect on the  
14 public health, safety and environment if the  
15 proposed rule is not implemented, and  
16 (10) the date the rule impact statement was prepared  
17 and if modified, the date modified.

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

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

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

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

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

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

- 17 a. clear, concise and understandable,
- 18 b. within the power of the agency to make and within the  
19 enacted legislative standards, and
- 20 c. made in compliance with the requirements of the  
21 Administrative Procedures Act.

22 D. 1. Within the forty-five-calendar-day period set forth in  
23 paragraph 1 of subsection C of this section, the Governor may  
24 approve the emergency rule or disapprove the emergency rule.

1 Failure of the Governor to approve an emergency rule within the  
2 specified period shall constitute disapproval of the emergency rule.

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

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

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

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

22 3. The emergency rule shall be published in accordance with the  
23 provisions of Section 255 of this title in "The Oklahoma Register"  
24 following the approval by the Governor. The Governor's approval and

1 the approved rules shall be retained as official records by the  
2 Office of Administrative Rules.

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

7 2. The emergency rule shall remain in full force and effect  
8 through the first day of the next succeeding regular session of the  
9 Legislature following promulgation of such emergency rule until  
10 September 14 following such session, unless it is made ineffective  
11 pursuant to subsection H of this section.

12 G. 1. No agency shall adopt any emergency rule which  
13 establishes or increases fees, except during such times as the  
14 Legislature is in session, unless specifically mandated by the  
15 Legislature or federal legislation, or when the failure to establish  
16 or increase fees would conflict with an order issued by a court of  
17 law.

18 2. No agency shall adopt any emergency rule which is identical  
19 to or substantially similar to any rule that has been disapproved by  
20 the Legislature within the previous twenty-four (24) months.

21 H. 1. If an emergency rule is of a continuing nature, the  
22 agency promulgating such emergency rule shall initiate proceedings  
23 for promulgation of a permanent rule pursuant to Sections 303  
24 through 308.2 of this title. If an emergency rule is superseded by

1 another emergency rule prior to the enactment of a permanent rule,  
2 the latter emergency rule shall retain the same expiration date as  
3 the superseded emergency rule, unless otherwise authorized by the  
4 Legislature.

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

- 6 a. disapproved by the Legislature,
- 7 b. superseded by the promulgation of permanent rules,
- 8 c. any adopted rules based upon such emergency rules are  
9 subsequently disapproved pursuant to Section 308 of  
10 this title, or
- 11 d. an earlier expiration date is specified by the agency  
12 in the rules.

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

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

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

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

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

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

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

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

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

10 SECTION 6. AMENDATORY 75 O.S. 2011, Section 255, is  
11 amended to read as follows:

12 Section 255. A. 1. The Secretary is hereby authorized,  
13 directed, and empowered to publish "The Oklahoma Register" not less  
14 than monthly for the publication of new rules, any amendment,  
15 revision or revocation of an existing rule, emergency rules, any  
16 notices of such rulemaking process and Executive Orders as are  
17 required by law to be published in "The Oklahoma Register". Said  
18 rules or amendments, revisions, or revocations of existing rules  
19 shall be published in the first issue of "The Oklahoma Register"  
20 published pursuant to Sections 251, 253, 256, 303, 303.1, 303.2 and  
21 308 of this title after the date of acceptance by the Secretary.  
22 Such publications may be made electronically on the website of the  
23 Secretary of State.  
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1           2. The Secretary shall cause a copy of each publication of "The  
2 Oklahoma Register" to be sent to those county clerks who request it,  
3 to members of the Legislature upon request, and to such other  
4 agencies, libraries, and officials as the Secretary may select. The  
5 Secretary may charge recipients of the publication a cost sufficient  
6 to defray the cost of publication and mailing. Such copies may be  
7 be provided electronically.

8           3. The Secretary shall cause a copy of all rules, all new  
9 rules, and all amendments, revisions, or revocations of existing  
10 rules to be on file and available for public examination in the  
11 Office during normal office hours.

12           4. The Secretary shall promulgate rules to systematize the  
13 designations of rules. To establish said system or to preserve  
14 uniformity of designations, the Secretary may require the agency to  
15 change the title or numbering of any rule or any amendment,  
16 revision, or revocation thereof.

17           B. The Secretary is authorized to provide for the publication  
18 of rules in summary form when the rules are of such length that  
19 publication of the full text would be too costly. The summary shall  
20 be prepared by the agency submitting the rules and shall state where  
21 the full text of the rule may be obtained, either physically or on  
22 the website of the Secretary of State or the submitting agency.

23           C. The notice required pursuant to the provisions of Section  
24 303 of this title shall be published in "The Oklahoma Register"

1 prior to the adoption of a new rule, or amendment, revision or  
2 revocation of any existing rule. The notice shall include the  
3 information required by Section 303 of this title.

4 SECTION 7. AMENDATORY 75 O.S. 2011, Section 257.1, is  
5 amended to read as follows:

6 Section 257.1. A. The Secretary is authorized to enter into  
7 and make reciprocal agreements with other states to allow exchanges  
8 of administrative codes of such states.

9 B. 1. Each of the following offices shall be entitled to  
10 receive, as soon as available from the Secretary, without cost, one  
11 copy of the printed volumes of the "Code" and the supplements  
12 thereto or, upon request from an office, one copy of the "Code" and  
13 the supplements thereto on compact disc or other digital media:

- 14 a. County clerk of each county;
  - 15 b. Clerk of the Supreme Court;
  - 16 c. Attorney General;
  - 17 d. Governor;
  - 18 e. Speaker of the House of Representatives and the  
19 President Pro Tempore of the Senate;
  - 20 f. the Research, Legal and Fiscal Divisions of the House  
21 of Representatives;
  - 22 g. the Legislative Division of the Senate; and
  - 23 h. the Department of Libraries for the Law Library.
- 24

1           2. The Department of Libraries is authorized to obtain number  
2 of copies of the "Code" and the supplements thereto necessary for  
3 use for deposit with the Publications Clearinghouse pursuant to  
4 Sections 3-113.1 through 3-115 of Title 65 of the Oklahoma Statutes.  
5 The Secretary is authorized to retain sufficient copies for exchange  
6 purposes with other states for copies of their rules.

7           SECTION 8.           AMENDATORY           75 O.S. 2011, Section 302, is  
8 amended to read as follows:

9           Section 302. A. In addition to other rulemaking requirements  
10 imposed by law, each agency which has rulemaking authority, shall:

11           1. Promulgate as a rule a description of the organization of  
12 the agency, stating the general course and method of the operations  
13 of the agency and the methods whereby the public may obtain  
14 information or make submissions or requests;

15           2. Promulgate rules of practice setting forth the nature and  
16 requirements of all formal and informal procedures available,  
17 including a description of all forms and instructions issued by the  
18 agency for use by the public;

19           3. Make available for public inspection and publish on its  
20 website all rules and all other written statements of policy or  
21 interpretations formulated, adopted, promulgated or used by the  
22 agency in the discharge of its functions;

1           4. Make available for public inspection and publish on its  
2 website pursuant to the provisions of the Open Records Act all final  
3 orders, decisions and opinions.

4           B. 1. An agency shall maintain an official rulemaking record  
5 for each proposed rule or promulgated rule. The record and  
6 materials incorporated by reference shall be available for public  
7 inspection and shall be published on the agency's website.

8           2. The agency rulemaking record shall contain:

- 9           a. copies of all publications in "The Oklahoma Register"  
10           with respect to the rule or the proceeding upon which  
11           the rule is based,
- 12           b. copies of any portions of the agency's public  
13           rulemaking docket containing entries relating to the  
14           rule or the proceeding upon which the rule is based,
- 15           c. all written petitions, requests, submissions, and  
16           comments received by the agency and all other written  
17           materials considered by the agency in connection with  
18           the formulation, proposal, or adoption of the rule or  
19           the proceeding upon which the rule is based,
- 20           d. any official transcript of oral presentations made in  
21           the proceeding upon which the rule is based or, if not  
22           transcribed, any tape recording or stenographic record  
23           of those presentations, and any memorandum prepared by  
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1 a presiding official summarizing the contents of those  
2 presentations,

3 e. a copy of any regulatory analysis prepared for the  
4 proceeding upon which the rule is based,

5 f. a copy of the rule and analysis of each such rule  
6 filed with the Office pursuant to Section 251 of this  
7 title,

8 g. all petitions for exceptions to, amendments of, or  
9 repeal or suspension of, the rule,

10 h. a copy of the rule impact statement, if made, and

11 i. such other information concerning such rules as may be  
12 determined necessary by the agency.

13 3. Upon judicial review, the record required by this section  
14 constitutes the official agency rulemaking record with respect to a  
15 rule. Except as otherwise required by a provision of law, the  
16 agency rulemaking record need not constitute the exclusive basis for  
17 agency action on that rule or for judicial review thereof.

18 C. 1. ~~By December 31, 2002, each~~ Each agency that issues  
19 precedent-setting orders shall maintain and index all such orders  
20 that the agency intends to rely upon as precedent. The index and  
21 the orders shall be available for public inspection and copying in  
22 the main office and each regional or district office of the agency  
23 and shall be published on the agency's website. The orders shall be  
24 indexed by subject.

1           2. ~~After December 31, 2002, an~~ An order shall not be relied  
2 upon as precedent by an agency to the detriment of any person until  
3 it has been made available for public inspection ~~and~~, indexed and  
4 published in the manner described in this subsection.

5           3. An agency shall consistently apply rules to each person  
6 subject to the jurisdiction of the agency regarding issuance of  
7 orders.

8           D. An agency shall not by internal policy, memorandum, or other  
9 form of action not otherwise authorized by the Administrative  
10 Procedures Act:

11           1. Amend, interpret, implement, or repeal a statute or a rule;

12           2. Expand upon or limit a statute or a rule; and

13           3. Except as authorized by the Constitution of the United  
14 States, the Oklahoma Constitution or a statute, expand or limit a  
15 right guaranteed by the Constitution of the United States, the  
16 Oklahoma Constitution, a statute, or a rule.

17           E. Any agency memorandum, internal policy, or other form of  
18 action violative of this section or the spirit thereof is null,  
19 void, and unenforceable.

20           F. This section shall not be construed to prohibit an agency  
21 issuing an opinion or administrative decision which is authorized by  
22 statute provided that, unless such opinion or administrative  
23 decision is issued pursuant to the procedures required pursuant to  
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1 the Administrative Procedures Act, such decision or opinion shall  
2 not have the force and effect of law.

3 SECTION 9. AMENDATORY 75 O.S. 2011, Section 305, is  
4 amended to read as follows:

5 Section 305. An interested person may petition an agency  
6 requesting the promulgation, amendment, or repeal of a rule. Each  
7 agency shall prescribe by rule the form for petitions and the  
8 procedure for their submission, consideration, and disposition. The  
9 agency shall act upon said petition within a reasonable time. ~~If,~~  
10 ~~within~~ thirty (30) calendar days after submission of a petition, the  
11 ~~agency has not initiated rulemaking proceedings in accordance with~~  
12 ~~the Administrative Procedures Act, the petition shall be deemed to~~  
13 ~~have been denied.~~

14 SECTION 10. AMENDATORY 75 O.S. 2011, Section 307.1, is  
15 amended to read as follows:

16 Section 307.1. A. The Speaker of the House of Representatives  
17 and the President Pro Tempore of the Senate may each establish a  
18 rule review committee or designate standing committees of each such  
19 house to review administrative rules.

20 B. Such committees may meet separately or jointly at any time,  
21 during sessions of the Legislature and in the interim.

22 C. The function of the committees so established or designated  
23 shall be the review and promotion of adequate and proper rules by  
24

1 agencies and developing an understanding on the part of the public  
2 respecting such rules. ~~Such function shall be advisory only.~~

3 Each committee may review all adopted rules and such other rules  
4 the committee deems appropriate and may make recommendations  
5 concerning such rules to their respective house of the Legislature,  
6 or to the agency adopting the rule, or to both their respective  
7 house of the Legislature and the agency.

8 D. In addition to the review of agency-adopted rules pursuant  
9 to this act, each such committee shall have the power and duty to:

10 1. Conduct a continuous study and investigations as to whether  
11 additional legislation or changes in legislation are needed based on  
12 various factors, including but not limited to, review of proposed  
13 rules, review of existing rules including but not limited to  
14 consideration of amendments to or repeal of existing rules, the lack  
15 of rules, the ability of agencies to promulgate such rules, and the  
16 needs of administrative agencies;

17 2. Conduct a continuous study of the existing rules of each  
18 agency under its jurisdiction to determine if such rules should be  
19 amended or repealed by the Legislature as provided by law;

20 3. Conduct a continuous study of the rulemaking process of all  
21 state agencies including those agencies exempted by Section 250.4 of  
22 this title for the purpose of improving the rulemaking process;

23 ~~3.~~ 4. Conduct such other studies and investigations relating to  
24 rules as may be determined to be necessary by the committee; and

1       4. 5. Monitor and investigate compliance of agencies with the  
2 provisions of the Administrative Procedures Act, make periodic  
3 investigations of the rulemaking activities of all agencies and  
4 evaluate and report on all rules in terms of their propriety, legal  
5 adequacy, relation to statutory authorization, economic and  
6 budgetary effects and public policy.

7           SECTION 11.        AMENDATORY        75 O.S. 2011, Section 308, as  
8 amended by Section 4, Chapter 357, O.S.L. 2013 (75 O.S. Supp. 2015,  
9 Section 308), is amended to read as follows:

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

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

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

21          B.   By the adoption of a joint resolution during the review  
22 period specified in subsection A of this section, the Legislature  
23 may disapprove ~~or~~, approve, repeal or amend any rule. Any such  
24 action may apply to any rule in whole or in part. The Legislature

1 may also take any such action and provide further instructions to  
2 the agency that promulgated the rule.

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

15 D. Unless otherwise provided by specific vote of the  
16 Legislature, joint resolutions introduced for purposes of  
17 disapproving ~~or~~, approving, repealing or amending a rule or the  
18 omnibus joint resolution described in Section ~~6~~ 308.3 of this ~~act~~  
19 title shall not be subject to regular legislative cutoff dates,  
20 shall be limited to such provisions as may be necessary for  
21 disapproval ~~or~~, approval, repeal or amendment of a rule, and any  
22 such other direction or mandate regarding the rule deemed necessary  
23 by the Legislature. The resolution shall contain no other  
24 provisions.

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

3 1. Approved or amended by the Legislature pursuant to Section ~~6~~  
4 308.3 of this ~~act~~ title, provided that any such joint resolution  
5 becomes law in accordance with Section 11 of Article VI of the  
6 Oklahoma Constitution;

7 2. Approved by the Governor pursuant to subsection D of Section  
8 ~~6~~ 308.3 of this ~~act~~ title;

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

13 4. Disapproved by a joint resolution pursuant to subsection B  
14 of this section or Section ~~6~~ 308.3 of this ~~act~~ title which has been  
15 vetoed by the Governor in accordance with Section 11 of Article VI  
16 of the Oklahoma Constitution and the veto has not been overridden.

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

22 G. An agency may promulgate an emergency rule only pursuant to  
23 Section 253 of this title.  
24

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

5 SECTION 12. AMENDATORY 75 O.S. 2011, Section 308.1, as  
6 amended by Section 5, Chapter 357, O.S.L. 2013 (75 O.S. Supp. 2015,  
7 Section 308.1), is amended to read as follows:

8 Section 308.1. A. Upon final adoption, the agency shall submit  
9 the rule to the Secretary for filing and publishing such rule  
10 pursuant to Sections 251 and 255 of this title.

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

13 C. After final adoption, filing, and publication, an effective  
14 agency rule may be amended by the Legislature in a joint resolution  
15 if such resolution becomes law in accordance with Section 11 of  
16 Article VI of the Oklahoma Constitution. Unless otherwise provided  
17 by specific vote of the Legislature, joint resolutions introduced  
18 for purposes of amending a rule shall not be subject to regular  
19 legislative cutoff dates, shall be limited to such provisions as may  
20 be necessary for amendment of a rule, and any such other direction  
21 or mandate regarding the rule deemed necessary by the Legislature.  
22 The resolution shall contain no other provisions.

23 SECTION 13. AMENDATORY 75 O.S. 2011, Section 308.2, is  
24 amended to read as follows:

1 Section 308.2. A. No agency rule is valid or effective against  
2 any person or party, or may be invoked by the agency for any  
3 purpose, until it has been promulgated as required in the  
4 Administrative Procedures Act.

5 B. A proceeding to contest any promulgated rule on the ground  
6 of noncompliance with the procedural requirements of Article I of  
7 the Administrative Procedures Act ~~must be commenced within two (2)~~  
8 ~~years from the effective date of the promulgated rule~~ may be  
9 commenced at any time.

10 C. Rules shall be valid and binding on persons they affect, and  
11 shall have the force of law unless amended or revised or unless a  
12 court of competent jurisdiction determines otherwise. Except as  
13 otherwise provided by law, rules shall be prima facie evidence of  
14 the proper interpretation of the matter to which they refer.

15 SECTION 14. AMENDATORY Section 6, Chapter 357, O.S.L.  
16 2013 (75 O.S. Supp. 2015, Section 308.3), is amended to read as  
17 follows:

18 Section 308.3. A. The Legislature ~~shall~~ may have an omnibus  
19 joint resolution prepared for consideration each session.

20 B. The joint resolution shall be substantially in the following  
21 form: "All proposed permanent rules of Oklahoma state agencies  
22 filed on or before ~~April 1~~ February 1 are hereby ~~approved~~  
23 disapproved except for the following:".

1 C. For the purpose of this section, a proposed permanent rule  
2 may be disapproved, in whole or in part, repealed or amended, in the  
3 omnibus joint resolution considered by the Legislature.

4 D. 1. If an agency believes that a rule has ~~not been approved~~  
5 been disapproved by the Legislature pursuant to this section and  
6 should be approved and finally adopted, the agency may seek the  
7 Governor's declaration approving the rule.

8 2. In seeking the approval of a proposed permanent rule, the  
9 agency shall submit a petition to the Governor that affirmatively  
10 states:

- 11 a. the rule is necessary, and  
12 b. a citation to the source of its authority to make the  
13 rule.

14 3. a. If the Governor finds that the necessity does exist,  
15 and that the agency has the authority to make the  
16 rule, the Governor may declare the rule to be approved  
17 and finally adopted by publishing that declaration in  
18 "The Oklahoma Register" on or before ~~July 17~~ June 30  
19 of that year.

- 20 b. The declaration shall set forth the rule to be  
21 approved, the reasons the approval is necessary, and a  
22 citation to the source of the agency's authority to  
23 make the rule.  
24

1 4. If the omnibus joint resolution fails to pass both houses of  
2 the Legislature and be signed by the Governor or is found by the  
3 Governor to have a ~~technical legal defect~~ nonsubstantive error  
4 preventing approval of administrative rules intended to be approved  
5 by the Legislature, the Governor may declare all rules to be  
6 approved and finally adopted by publishing a single declaration in  
7 "The Oklahoma Register" on or before July 17 without meeting  
8 requirements of paragraphs 2 and 3 of this subsection. If the  
9 Governor finds that the joint resolution has a ~~technical legal~~  
10 ~~defect~~ nonsubstantive error, the Governor shall make the finding in  
11 writing and submit the finding to the Legislature.

12 SECTION 15. AMENDATORY 75 O.S. 2011, Section 317, is  
13 amended to read as follows:

14 Section 317. A. A final agency order issued by an  
15 administrative head of an agency shall be subject to rehearing,  
16 reopening or reconsideration by such administrative head. Any  
17 application or request for such rehearing, reopening or  
18 reconsideration shall be made by any party aggrieved by the final  
19 agency order within ~~ten (10)~~ thirty (30) days from the date of the  
20 entry of such final agency order. The grounds for such action shall  
21 be either:

22 1. Newly discovered or newly available evidence, relevant to  
23 the issues;  
24

1           2. Need for additional evidence adequately to develop the facts  
2 essential to proper decision;

3           3. Probable error committed by the agency in the proceeding or  
4 in its decision such as would be ground for reversal on judicial  
5 review of the final agency order;

6           4. Need for further consideration of the issues and the  
7 evidence in the public interest; or

8           5. A showing that issues not previously considered ought to be  
9 examined in order properly to dispose of the matter.

10          B. The order of the agency granting rehearing, reconsideration  
11 or review, or the petition of a party therefor, shall set forth the  
12 grounds which justify such action.

13          C. Nothing in this section shall prevent rehearing, reopening  
14 or reconsideration of a matter by any agency in accordance with  
15 other statutory provisions applicable to such agency, or, at any  
16 time, on the ground of fraud practiced by the prevailing party or of  
17 procurement of the order by perjured testimony or fictitious  
18 evidence.

19          D. On reconsideration, reopening, or rehearing, the matter may  
20 be heard by the agency, or it may be referred to a hearing examiner.  
21 The hearing shall be confined to those grounds upon which the  
22 reconsideration, reopening or rehearing was ordered.

23          E. If an application for rehearing shall be timely filed, the  
24 period within which judicial review, under the applicable statute,

1 must be sought, shall run from the final disposition of such  
2 application.

3 SECTION 16. It being immediately necessary for the preservation  
4 of the public peace, health and safety, an emergency is hereby  
5 declared to exist, by reason whereof this act shall take effect and  
6 be in full force from and after its passage and approval.

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