STATE OF OKLAHOMA

1st Session of the 55th Legislature (2015)

SENATE BILL 308 By: Dahm

AS INTRODUCED

An Act relating to agency administrative rules; amending 75 O.S. 2011, Sections 250.4a, 250.10, as amended by Section 49, Chapter 227, O.S.L. 2013, 302, 303, as amended by Section 50, Chapter 227, O.S.L. 2013, 307.1, 308 and 308.1, as amended by Sections 4 and 5, Chapter 357, O.S.L. 2013, 308.2 and Section 6, Chapter 357, O.S.L. 2013 (75 O.S. Supp. 2014, Sections 250.10, 303, 308, 308.1 and 308.3), which relate to the Administrative Procedures Act; requiring certain publication on agency websites; deleting deadlines for certain duties; modifying time by which agency required to make certain responses; stating requirements for waiver request; deleting provision relating to function of certain committees; granting Legislature authority to amend proposed and effective agency rules; providing procedures; providing that certain rights, privileges or interests not affected by subsequent amendment; modifying time by which certain proceeding must be commenced; specifying requirements for certain joint resolutions; and declaring an emergency.

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

SECTION 1. AMENDATORY 75 O.S. 2011, Section 250.4a, is amended to read as follows:

Section 250.4a. A. Any agency exempt from all or part of the Administrative Procedures Act pursuant to subsection A of Section

250.4 of this title shall maintain and make available for public inspection its exempt rules at its principal place of business, and shall also publish its exempt rules on its website.

B. It is recognized by the Oklahoma Legislature that agencies specified by subsection A of this section have published rules containing obsolete rules or internal policy statements or agency statements which do not meet the Administrative Procedures Act definition of rules. Therefore, ~~by December 31, 2005,~~ each such agency shall conduct an internal review of its rules to determine whether each of its rules is current and is a rule as such term is defined by the Administrative Procedures Act. Any rule determined by an agency to be obsolete or an internal policy statement or any agency statement which does not meet the definition of a rule pursuant to the Administrative Procedures Act shall be deleted by the agency. Notice of such deletion shall be submitted to the Speaker of the House of Representatives, the President Pro Tempore of the Senate and the Governor for informational purposes.

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

SECTION 2. AMENDATORY 75 O.S. 2011, Section 250.10, as amended by Section 49, Chapter 227, O.S.L. 2013 (75 O.S. Supp. 2014, Section 250.10), is amended to read as follows:

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

SECTION 3. AMENDATORY 75 O.S. 2011, Section 302, is amended to read as follows:

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

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

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

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

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

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

2. The agency rulemaking record shall contain:

a. copies of all publications in "The Oklahoma Register" with respect to the rule or the proceeding upon which the rule is based,

b. copies of any portions of the agency's public rulemaking docket containing entries relating to the rule or the proceeding upon which the rule is based,

c. all written petitions, requests, submissions, and comments received by the agency and all other written materials considered by the agency in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based,

d. any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, any tape recording or stenographic record of those presentations, and any memorandum prepared by

a presiding official summarizing the contents of those presentations,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

F. This section shall not be construed to prohibit an agency issuing an opinion or administrative decision which is authorized by statute provided that, unless such opinion or administrative decision is issued pursuant to the procedures required pursuant to

the Administrative Procedures Act, such decision or opinion shall not have the force and effect of law.

SECTION 4. AMENDATORY 75 O.S. 2011, Section 303, as amended by Section 50, Chapter 227, O.S.L. 2013 (75 O.S. Supp. 2014, Section 303), is amended to read as follows:

Section 303. A. Prior to the adoption of any rule or amendment or revocation of a rule, the agency shall:

1. Cause notice of any intended action to be published in "The Oklahoma Register" pursuant to subsection B of this section;

2. For at least thirty (30) days after publication of the notice of the intended rulemaking action, afford a comment period for all interested persons to submit data, views or arguments, orally or in writing. The agency shall consider fully all written and oral submissions respecting the proposed rule;

3. Hold a hearing, if required, as provided by subsection C of this section;

4. Consider the effect its intended action may have on the various types of business and governmental entities. Except where such modification or variance is prohibited by statute or constitutional constraints, if an agency finds that its actions may adversely affect any such entity, the agency may modify its actions to exclude that type of entity, or may "tier" its actions to allow rules, penalties, fines or reporting procedures and forms to vary according to the size of a business or governmental entity or its

ability to comply or both. For business entities, the agency shall include a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, and use quantifiable data to the extent possible, taking into account both short-term and long-term consequences; and

5. Consider the effect its intended action may have on the various types of consumer groups. If an agency finds that its actions may adversely affect such groups, the agency may modify its actions to exclude that type of activity.

B. The notice required by paragraph 1 of subsection A of this section shall include, but not be limited to:

1. In simple language, a brief summary of the rule;

2. The proposed action being taken;

3. The circumstances which created the need for the rule;

4. The specific legal authority authorizing the proposed rule;

5. The intended effect of the rule;

6. If the agency determines that the rule affects business entities, a request that such entities provide the agency, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rule;

7. The time when, the place where, and the manner in which interested persons may present their views thereon pursuant to paragraph 3 of subsection A of this section;

8. Whether or not the agency intends to issue a rule impact statement according to subsection D of this section and where copies of such impact statement may be obtained for review by the public;

9. The time when, the place where, and the manner in which persons may demand a hearing on the proposed rule if the notice does not already provide for a hearing. If the notice provides for a hearing, the time and place of the hearing shall be specified in the notice; and

10. Where copies of the proposed rules may be obtained for review by the public. An agency may charge persons for the actual cost of mailing a copy of the proposed rules to such persons.

The number of copies of such notice as specified by the Secretary shall be submitted to the Secretary who shall publish the notice in "The Oklahoma Register" pursuant to the provisions of Section 255 of this title.

Prior to or within three (3) days after publication of the notice in "The Oklahoma Register", the agency shall cause a copy of the notice of the proposed rule adoption and the rule impact statement, if available, to be mailed to all persons who have made a timely request of the agency for advance notice of its rulemaking proceedings. Provided, in lieu of mailing copies, an agency may

electronically notify interested persons that a copy of the proposed rule and the rule impact statement, if available, may be viewed on the agency's website. If an agency posts a copy of the proposed rule and rule impact statement on its website, the agency shall not charge persons for the cost of downloading or printing the proposed rule or impact statement. Each agency shall maintain a listing of persons or entities requesting such notice.

C. 1. If the published notice does not already provide for a hearing, an agency shall schedule a hearing on a proposed rule if, within thirty (30) days after the published notice of the proposed rule adoption, a written request for a hearing is submitted by:

a. at least ten persons,

b. a political subdivision,

c. an agency, or

d. an association having not less than twenty-five members.

At that hearing persons may present oral argument, data, and views on the proposed rule.

2. A hearing on a proposed rule may not be held earlier than thirty (30) days after notice of the hearing is published pursuant to subsection B of this section.

3. The provisions of this subsection shall not be construed to prevent an agency from holding a hearing or hearings on the proposed rule although not required by the provisions of this subsection;

provided that notice of such hearing shall be published in "The Oklahoma Register" at least thirty (30) days prior to such hearing.

D. 1. Except as otherwise provided in this subsection, an agency shall issue a rule impact statement of a proposed rule prior to or within fifteen (15) days after the date of publication of the notice of proposed rule adoption. The rule impact statement may be modified after any hearing or comment period afforded pursuant to the provisions of this section.

2. Except as otherwise provided in this subsection, the rule impact statement shall include, but not be limited to:

a. a brief description of the purpose of the proposed rule,

b. a description of the classes of 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,

c. a description of the classes of persons who will benefit from the proposed rule,

d. 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,

e. the probable costs and benefits to the agency and to any other agency of the implementation and enforcement of the proposed rule, the source of revenue to be used for 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,

f. a determination of whether implementation of the proposed rule will have an economic impact on any political subdivisions or require their cooperation in implementing or enforcing the rule,

g. 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,

h. 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,

i. 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,

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

k. the date the rule impact statement was prepared and if modified, the date modified.

3. To the extent an agency for good cause finds the preparation of a rule impact statement or the specified contents thereof are unnecessary or contrary to the public interest in the process of adopting a particular rule, the agency may request the Governor to waive such requirement. Such request shall be in writing and shall state the agency's findings and the justification for such findings. Upon request by an agency, the Governor may also waive the rule impact statement requirements if the agency is required to implement a statute or federal requirement that does not require an agency to interpret or describe the requirements, such as federally mandated provisions which afford the agency no discretion to consider less restrictive alternatives. If the Governor fails to waive such requirement, in writing, prior to publication of the notice of the intended rulemaking action, the rule impact statement shall be

completed. The determination to waive the rule impact statement shall not be subject to judicial review.

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

E. Upon completing the requirements of this section, an agency may adopt a proposed rule. No rule is valid unless adopted in substantial compliance with the provisions of this section.

SECTION 5. AMENDATORY 75 O.S. 2011, Section 307.1, is amended to read as follows:

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

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

C. The function of the committees so established or designated shall be the review and promotion of adequate and proper rules by agencies and developing an understanding on the part of the public respecting such rules. ~~Such function shall be advisory only.~~

Each committee may review all adopted rules and such other rules the committee deems appropriate and may make recommendations concerning such rules to their respective house of the Legislature,

or to the agency adopting the rule, or to both their respective house of the Legislature and the agency.

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

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

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

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

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

SECTION 6. AMENDATORY 75 O.S. 2011, Section 308, as amended by Section 4, Chapter 357, O.S.L. 2013 (75 O.S. Supp. 2014, 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 or amend any rule. Any such action may apply to any rule in whole or in part. The Legislature may also take any such action and provide further instructions to the agency that promulgated the 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 or amending a rule, the agency shall file notice of such legislative disapproval or amendment 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 or amending a rule or the omnibus joint resolution described in Section ~~6~~ 308.3 of this ~~act~~ title shall not be subject to regular legislative cutoff dates, shall be limited to such provisions as may be necessary for disapproval ~~or~~, approval or amendment 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 or amended by the Legislature pursuant to Section ~~6~~ 308.3 of this ~~act~~ title, 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~~ 308.3 of this ~~act~~ title;

3. Approved or amended 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~~ 308.3 of this ~~act~~ title 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.

F. 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".

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

H. 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 or amendment of such rule by either house of the Legislature.

SECTION 7. AMENDATORY 75 O.S. 2011, Section 308.1, as amended by Section 5, Chapter 357, O.S.L. 2013 (75 O.S. Supp. 2014, Section 308.1), is amended to read as follows:

Section 308.1. A. Upon final adoption, the agency shall submit the 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.

C. After final adoption, filing, and publication, an effective agency rule may be amended by the Legislature in a joint resolution if such resolution becomes law in accordance with Section 11 of Article VI of the Oklahoma Constitution. Unless otherwise provided by specific vote of the Legislature, joint resolutions introduced for purposes of amending a rule shall not be subject to regular legislative cutoff dates, shall be limited to such provisions as may be necessary for amendment 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.

SECTION 8. AMENDATORY 75 O.S. 2011, Section 308.2, is amended to read as follows:

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

B. A proceeding to contest any promulgated rule on the ground of noncompliance with the procedural requirements of Article I of

the Administrative Procedures Act must be commenced within ~~two (2)~~ three (3) years from the effective date of the promulgated rule.

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

SECTION 9. AMENDATORY Section 6, Chapter 357, O.S.L. 2013 (75 O.S. Supp. 2014, Section 308.3), is amended to read as follows:

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

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

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

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

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

a. the rule is necessary, and

b. a citation to the source of its authority to make the rule.

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

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

4. If the omnibus joint resolution fails to pass both houses of the Legislature and be signed by the Governor or is found by the Governor to have a ~~technical legal defect~~ nonsubstantive error preventing approval of administrative rules intended to be approved by the Legislature, the Governor may declare all rules to be approved and finally adopted by publishing a single declaration in "The Oklahoma Register" on or before July 17 without meeting requirements of paragraphs 2 and 3 of this subsection. If the

Governor finds that the joint resolution has a ~~technical legal defect~~ nonsubstantive error, the Governor shall make the finding in writing and submit the finding to the Legislature.

SECTION 10. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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