

STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

COMMITTEE SUBSTITUTE  
FOR  
SENATE BILL NO. 1130

By: Dahm of the Senate

and

Brumbaugh of the House

COMMITTEE SUBSTITUTE

[ state agency rules - Administrative Procedures Act -  
~~emergency~~ ]

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

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

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

1       B. In creating agencies and designating their functions and  
2 purposes, the Legislature may delegate rulemaking authority to  
3 executive branch agencies to facilitate administration of  
4 legislative policy. The delegation of rulemaking authority is  
5 intended to eliminate the necessity of establishing every  
6 administrative aspect of general public policy by legislation. In  
7 so doing, however, the Legislature reserves to itself:

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

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

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

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

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

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

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

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

3       Section 250.4a. A. Any agency exempt from all or part of the  
4 Administrative Procedures Act pursuant to subsection A of Section  
5 250.4 of this title shall maintain and make available for public  
6 inspection its exempt rules at its principal place of business, and  
7 shall also publish its exempt rules on its website.

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

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

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

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

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

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

17       2. The Secretary shall promulgate rules to ensure the effective  
18 administration of the provisions of Article I of the Administrative  
19 Procedures Act. The rules shall include, but are not limited to,  
20 rules prescribing paper size, numbering system, and the format of  
21 documents required to be filed pursuant to the provisions of the  
22 Administrative Procedures Act or such other requirements as deemed  
23 necessary by the Secretary to implement the provisions of the  
24 Administrative Procedures Act.

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

6       2. An agency filing rules pursuant to the provisions of this  
7 subsection:

- 8       a. shall prepare the rules in plain language which can be  
9       easily understood,
- 10      b. shall not unnecessarily repeat statutory language.  
11       Whenever it is necessary to refer to statutory  
12       language in order to effectively convey the meaning of  
13       a rule interpreting that language, the reference shall  
14       clearly indicate the portion of the language which is  
15       statutory and the portion which is the agency's  
16       amplification or interpretation of that language,
- 17      c. shall indicate whether a rule is new, amends an  
18       existing permanent rule or repeals an existing  
19       permanent rule. If a rule amends an existing rule,  
20       the rule shall indicate the language to be deleted  
21       typed with a line through the language and language to  
22       be inserted typed with the new language underscored,
- 23      d. shall state if the rule supersedes an existing  
24       emergency rule,

- 1 e. shall include a reference to any rule requiring a new  
2 or revised form in a note to the rule. The Secretary  
3 shall insert that reference in "The Oklahoma Register"  
4 as a notation to the affected rule,
- 5 f. shall prepare, in plain language, an analysis of new  
6 or amended rules. The analysis shall include but not  
7 be limited to a reference to any statute that the rule  
8 interprets, any related statute or any related rule,
- 9 g. may include with its rules, brief notes,  
10 illustrations, findings of facts, and references to  
11 digests of Supreme Court cases, other court decisions,  
12 or Attorney General's opinions, and other explanatory  
13 material. Such material may be included if the  
14 material is labeled or set forth in a manner which  
15 clearly distinguishes it from the rules,
- 16 h. shall include other information, in such form and in  
17 such manner as is required by the Secretary, and
- 18 i. may change the format of existing rules without any  
19 rulemaking action by the agency in order to comply  
20 with the standard provisions established by the  
21 Secretary for "Code" and "The Oklahoma Register"  
22 publication so long as there is no substantive change  
23 to the rule.  
24

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

5 D. In order to avoid unnecessary expense, an agency may use the  
6 published standards established by organizations and technical  
7 societies of recognized national standing, other state agencies, or  
8 federal agencies by incorporating the standards or rules in its  
9 rules or regulations by reference to the specific issue or issues of  
10 publications in which the standards are published, without  
11 reproducing the standards in full. The standards shall be readily  
12 available to the public for examination at the administrative  
13 offices of the agency, and shall also be published on the agency's  
14 website. In addition, a copy of such standards shall be kept and  
15 maintained by the agency pursuant to the provisions of the  
16 Preservation of Essential Records Act.

17 E. The Secretary shall provide for the publication of all  
18 Executive Orders received pursuant to the provisions of Section 664  
19 of Title 74 of the Oklahoma Statutes.

20 F. The Secretary may authorize or require the filing of rules  
21 or Executive Orders by or through electronic data or machine  
22 readable equipment in such form and manner as is required by the  
23 Secretary.  
24

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

4       Section 253. A. 1. If an agency finds that a rule is  
5 necessary as an emergency measure, the rule may be promulgated  
6 pursuant to the provisions of this section, if the rule is first  
7 approved by the Governor. The Governor shall not approve the  
8 adoption, amendment, revision or revocation of a rule as an  
9 emergency measure unless the agency submits substantial evidence  
10 that the rule is necessary as an emergency measure to do any of the  
11 following:

- 12           a. protect the public health, safety or welfare,
- 13           b. comply with deadlines in amendments to an agency's  
14           governing law or federal programs,
- 15           c. avoid violation of federal law or regulation or other  
16           state law,
- 17           d. avoid imminent reduction to the agency's budget, or
- 18           e. avoid serious prejudice to the public interest.

19       As used in this subsection, "substantial evidence" shall mean  
20 credible evidence which is of sufficient quality and probative value  
21 to enable a person of reasonable caution to support a conclusion.

22       2. In determining whether a rule is necessary as an emergency  
23 measure, the Governor shall consider whether the emergency situation  
24 was created due to the agency's delay or inaction and could have

1 been averted by timely compliance with the provisions of this  
2 chapter.

3 B. An emergency rule adopted by an agency shall:

4 1. Be prepared in the format required by Section 251 of this  
5 title;

6 2. a. Include an impact statement which meets the  
7 requirements set forth in subparagraph b of this  
8 paragraph unless the Governor waives the requirement  
9 in writing upon a finding that the rule impact  
10 statement or the specified contents thereof are  
11 unnecessary or contrary to the public interest.

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

- 14 (1) a brief description of the proposed rule,  
15 (2) a description of the persons who most likely will  
16 be affected by the proposed rule, including  
17 classes that will bear the costs of the proposed  
18 rule, and any information on cost impacts  
19 received by the agency from any private or public  
20 entities,  
21 (3) a description of the classes of persons who will  
22 benefit from the proposed rule,  
23 (4) a description of the probable economic impact of  
24 the proposed rule upon affected classes of

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

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

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

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

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

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

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

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

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

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

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

17 C. 1. Within forty-five (45) calendar days of receipt of a  
18 proposed emergency rule filed with the Governor, the Speaker of the  
19 Oklahoma House of Representatives and the President Pro Tempore of  
20 the Senate, the Governor shall review the demonstration of emergency  
21 pursuant to subsection A of this section, and shall separately  
22 review the rule in accordance with the standards prescribed in  
23 paragraph 3 of this subsection.  
24

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

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

- 8            a. clear, concise and understandable,
- 9            b. within the power of the agency to make and within the  
10            enacted legislative standards, and
- 11            c. made in compliance with the requirements of the  
12            Administrative Procedures Act.

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

18        2. If the Governor disapproves the adopted emergency rule, the  
19 Governor shall return the entire document to the agency with reasons  
20 for the disapproval. If the agency elects to modify the rule, the  
21 agency shall adopt the modifications, and shall file the modified  
22 rule in accordance with the requirements of subsection B of this  
23 section.  
24

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

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

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

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

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

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

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

4 G. 1. No agency shall adopt any emergency rule which  
5 establishes or increases fees, except during such times as the  
6 Legislature is in session, unless specifically mandated by the  
7 Legislature or federal legislation, or when the failure to establish  
8 or increase fees would conflict with an order issued by a court of  
9 law.

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

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

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

- 22 a. disapproved by the Legislature,  
23 b. superseded by the promulgation of permanent rules,  
24

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

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

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

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

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

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

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

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

9        K. Prior to approval or disapproval of an emergency rule by the  
10 Governor, an agency may withdraw from review an emergency rule  
11 submitted pursuant to the provisions of this section. Notice of  
12 such withdrawal shall be given to the Governor, the Speaker of the  
13 House of Representatives, the President Pro Tempore of the Senate in  
14 accordance with the requirements set forth in Section 464 of Title  
15 74 and to the Office of Administrative Rules as required by the  
16 Secretary. In order to be promulgated as emergency rules, any  
17 replacement rules shall be resubmitted pursuant to the provisions of  
18 this section.

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

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

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

6 Section 255. A. 1. The Secretary is hereby authorized,  
7 directed, and empowered to publish "The Oklahoma Register" not less  
8 than monthly for the publication of new rules, any amendment,  
9 revision or revocation of an existing rule, emergency rules, any  
10 notices of such rulemaking process and Executive Orders as are  
11 required by law to be published in "The Oklahoma Register". Said  
12 rules or amendments, revisions, or revocations of existing rules  
13 shall be published in the first issue of "The Oklahoma Register"  
14 published pursuant to Sections 251, 253, 256, 303, 303.1, 303.2 and  
15 308 of this title after the date of acceptance by the Secretary.  
16 Such publications may be made electronically on the website of the  
17 Secretary of State.

18 2. The Secretary shall cause a copy of each publication of "The  
19 Oklahoma Register" to be sent to those county clerks who request it,  
20 to members of the Legislature upon request, and to such other  
21 agencies, libraries, and officials as the Secretary may select. The  
22 Secretary may charge recipients of the publication a cost sufficient  
23 to defray the cost of publication and mailing. Such copies may be  
24 be provided electronically.

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

5        4. The Secretary shall promulgate rules to systematize the  
6 designations of rules. To establish said system or to preserve  
7 uniformity of designations, the Secretary may require the agency to  
8 change the title or numbering of any rule or any amendment,  
9 revision, or revocation thereof.

10        B. The Secretary is authorized to provide for the publication  
11 of rules in summary form when the rules are of such length that  
12 publication of the full text would be too costly. The summary shall  
13 be prepared by the agency submitting the rules and shall state where  
14 the full text of the rule may be obtained, either physically or on  
15 the website of the Secretary of State or the submitting agency.

16        C. The notice required pursuant to the provisions of Section  
17 303 of this title shall be published in "The Oklahoma Register"  
18 prior to the adoption of a new rule, or amendment, revision or  
19 revocation of any existing rule. The notice shall include the  
20 information required by Section 303 of this title.

21        SECTION 7.        AMENDATORY        75 O.S. 2011, Section 257.1, is  
22 amended to read as follows:  
23  
24

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

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

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

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

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

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

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

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

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

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

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

24       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,

- 1           h. a copy of the rule impact statement, if made, and  
2           i. such other information concerning such rules as may be  
3           determined necessary by the agency.

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

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

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

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

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

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

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

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

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

13 F. This section shall not be construed to prohibit an agency  
14 issuing an opinion or administrative decision which is authorized by  
15 statute provided that, unless such opinion or administrative  
16 decision is issued pursuant to the procedures required pursuant to  
17 the Administrative Procedures Act, such decision or opinion shall  
18 not have the force and effect of law.

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

21 Section 305. An interested person may petition an agency  
22 requesting the promulgation, amendment, or repeal of a rule. Each  
23 agency shall prescribe by rule the form for petitions and the  
24 procedure for their submission, consideration, and disposition. The

1 agency shall act upon said petition within ~~a reasonable time. If,~~  
2 ~~within~~ thirty (30) calendar days after submission ~~of a petition, the~~  
3 ~~agency has not initiated rulemaking proceedings in accordance with~~  
4 ~~the Administrative Procedures Act, the petition shall be deemed to~~  
5 ~~have been denied.~~

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

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

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

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

18 Each committee may review all adopted rules and such other rules  
19 the committee deems appropriate and may make recommendations  
20 concerning such rules to their respective house of the Legislature,  
21 or to the agency adopting the rule, or to both their respective  
22 house of the Legislature and the agency.

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

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

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

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

14        ~~3.~~ 4. Conduct such other studies and investigations relating to  
15 rules as may be determined to be necessary by the committee; and

16        ~~4.~~ 5. Monitor and investigate compliance of agencies with the  
17 provisions of the Administrative Procedures Act, make periodic  
18 investigations of the rulemaking activities of all agencies and  
19 evaluate and report on all rules in terms of their propriety, legal  
20 adequacy, relation to statutory authorization, economic and  
21 budgetary effects and public policy.

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

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

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

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

12       B. By the adoption of a joint resolution during the review  
13 period specified in subsection A of this section, the Legislature  
14 may disapprove ~~or~~, approve, repeal or amend any rule. Any such  
15 action may apply to any rule in whole or in part. The Legislature  
16 may also take any such action and provide further instructions to  
17 the agency that promulgated the rule.

18       C. Unless otherwise authorized by the Legislature, whenever a  
19 rule is disapproved as provided in subsection B of this section, the  
20 agency adopting such rules shall not have authority to resubmit an  
21 identical rule, except during the first sixty (60) calendar days of  
22 the next regular legislative session. Any effective emergency rule  
23 which would have been superseded by a disapproved permanent rule  
24 shall be deemed null and void on the date the Legislature

1 disapproves the permanent rule. Rules may be disapproved in part or  
2 in whole by the Legislature. Upon enactment of any joint resolution  
3 disapproving, repealing or amending a rule, the agency shall file  
4 notice of such legislative disapproval, repeal or amendment with the  
5 Secretary for publication in "The Oklahoma Register".

6 D. Unless otherwise provided by specific vote of the  
7 Legislature, joint resolutions introduced for purposes of  
8 disapproving ~~or~~, approving, repealing or amending a rule or the  
9 omnibus joint resolution described in Section ~~6~~ 308.3 of this ~~act~~  
10 title shall not be subject to regular legislative cutoff dates,  
11 shall be limited to such provisions as may be necessary for  
12 disapproval ~~or~~, approval, repeal or amendment of a rule, and any  
13 such other direction or mandate regarding the rule deemed necessary  
14 by the Legislature. The resolution shall contain no other  
15 provisions.

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

18 1. Approved or amended by the Legislature pursuant to Section ~~6~~  
19 308.3 of this ~~act~~ title, provided that any such joint resolution  
20 becomes law in accordance with Section 11 of Article VI of the  
21 Oklahoma Constitution;

22 2. Approved by the Governor pursuant to subsection D of Section  
23 ~~6~~ 308.3 of this ~~act~~ title;

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

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

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

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

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

20        SECTION 12.        AMENDATORY        75 O.S. 2011, Section 308.1, as  
21 amended by Section 5, Chapter 357, O.S.L. 2013 (75 O.S. Supp. 2015,  
22 Section 308.1), is amended to read as follows:  
23  
24

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

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

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

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

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

22       B. A proceeding to contest any promulgated rule on the ground  
23 of noncompliance with the procedural requirements of Article I of  
24 the Administrative Procedures Act ~~must be commenced within two (2)~~

1 ~~years from the effective date of the promulgated rule~~ may be  
2 commenced at any time.

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

8 SECTION 14. AMENDATORY Section 6, Chapter 357, O.S.L.  
9 2013 (75 O.S. Supp. 2015, Section 308.3), is amended to read as  
10 follows:

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

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

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

20 D. 1. If an agency believes that a rule has not been approved  
21 by the Legislature pursuant to this section and should be approved  
22 and finally adopted, the agency may seek the Governor's declaration  
23 approving the rule.  
24

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

- 4            a. the rule is necessary, and  
5            b. a citation to the source of its authority to make the  
6 rule.

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

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

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

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

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

6 Section 317. A. A final agency order issued by an  
7 administrative head of an agency shall be subject to rehearing,  
8 reopening or reconsideration by such administrative head. Any  
9 application or request for such rehearing, reopening or  
10 reconsideration shall be made by any party aggrieved by the final  
11 agency order within ~~ten (10)~~ thirty (30) days from the date of the  
12 entry of such final agency order. The grounds for such action shall  
13 be either:

14 1. Newly discovered or newly available evidence, relevant to  
15 the issues;

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

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

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

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

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

4 C. Nothing in this section shall prevent rehearing, reopening  
5 or reconsideration of a matter by any agency in accordance with  
6 other statutory provisions applicable to such agency, or, at any  
7 time, on the ground of fraud practiced by the prevailing party or of  
8 procurement of the order by perjured testimony or fictitious  
9 evidence.

10 D. On reconsideration, reopening, or rehearing, the matter may  
11 be heard by the agency, or it may be referred to a hearing examiner.  
12 The hearing shall be confined to those grounds upon which the  
13 reconsideration, reopening or rehearing was ordered.

14 E. If an application for rehearing shall be timely filed, the  
15 period within which judicial review, under the applicable statute,  
16 must be sought, shall run from the final disposition of such  
17 application.

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

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