

SENATE CHAMBER
STATE OF OKLAHOMA

DISPOSITION

☐ FLOOR AMENDMENT

No. _____

☐ COMMITTEE AMENDMENT

(Date)

Mr./Madame President:

I move to amend Senate Bill No. 1130, by substituting the attached floor substitute for the title, enacting clause and entire body of the measure.

Submitted by:

Senator Dahm

Dahm-MD-FS-Req#3199
3/3/2016 2:19 PM

(Floor Amendments Only) Date and Time Filed: _____

☐ Untimely

☐ Amendment Cycle Extended

☐ Secondary Amendment

STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

FLOOR SUBSTITUTE
FOR

SENATE BILL NO. 1130

By: Dahm of the Senate

and

Brumbaugh of the House

FLOOR SUBSTITUTE

[state agency rules - Administrative Procedures Act
- effective date]

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.

B. In creating agencies and designating their functions and purposes, the Legislature may delegate rulemaking authority to

1 executive branch agencies to facilitate administration of
2 legislative policy. The delegation of rulemaking authority is
3 intended to eliminate the necessity of establishing every
4 administrative aspect of general public policy by legislation. In
5 so doing, however, the Legislature reserves to itself:

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

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

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

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

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

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

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

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

1 Section 250.4a. A. Any agency exempt from all or part of the
2 Administrative Procedures Act pursuant to subsection A of Section
3 250.4 of this title shall maintain and make available for public
4 inspection its exempt rules at its principal place of business, and
5 shall also publish its exempt rules on its website. Provided, any
6 rules that are subject to copyright protection and are adopted by an
7 agency shall not be posted as provided in this act, but the agency
8 shall provide a weblink, if available, to access the protected
9 information from the owner of the copyright. If no weblink is
10 available, the contact information for the owner of the copyright
11 shall be made available.

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

1 to the Speaker of the House of Representatives, the President Pro
2 Tempore of the Senate and the Governor for informational purposes.

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

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

9 Section 250.10. The Governor by Executive Order or either house
10 of the Legislature or both houses of the Legislature by resolution,
11 or a small business, may request an agency to review its rules to
12 determine whether or not the rules in question should be amended,
13 repealed or redrafted. The agency shall respond to such requests
14 ~~from the Governor or the Legislature~~ within ~~ninety (90)~~ sixty (60)
15 calendar days of such request.

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

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

22 2. The Secretary shall promulgate rules to ensure the effective
23 administration of the provisions of Article I of the Administrative
24 Procedures Act. The rules shall include, but are not limited to,

1 rules prescribing paper size, numbering system, and the format of
2 documents required to be filed pursuant to the provisions of the
3 Administrative Procedures Act or such other requirements as deemed
4 necessary by the Secretary to implement the provisions of the
5 Administrative Procedures Act.

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

11 2. An agency filing rules pursuant to the provisions of this
12 subsection:

13 a. shall prepare the rules in plain language which can be
14 easily understood,

15 b. shall not unnecessarily repeat statutory language.

16 Whenever it is necessary to refer to statutory
17 language in order to effectively convey the meaning of
18 a rule interpreting that language, the reference shall
19 clearly indicate the portion of the language which is
20 statutory and the portion which is the agency's
21 amplification or interpretation of that language,

22 c. shall indicate whether a rule is new, amends an
23 existing permanent rule or repeals an existing
24 permanent rule. If a rule amends an existing rule,

- 1 the rule shall indicate the language to be deleted
2 typed with a line through the language and language to
3 be inserted typed with the new language underscored,
- 4 d. shall state if the rule supersedes an existing
5 emergency rule,
- 6 e. shall include a reference to any rule requiring a new
7 or revised form in a note to the rule. The Secretary
8 shall insert that reference in "The Oklahoma Register"
9 as a notation to the affected rule,
- 10 f. shall prepare, in plain language, an analysis of new
11 or amended rules. The analysis shall include but not
12 be limited to a reference to any statute that the rule
13 interprets, any related statute or any related rule,
- 14 g. may include with its rules, brief notes,
15 illustrations, findings of facts, and references to
16 digests of Supreme Court cases, other court decisions,
17 or Attorney General's opinions, and other explanatory
18 material. Such material may be included if the
19 material is labeled or set forth in a manner which
20 clearly distinguishes it from the rules,
- 21 h. shall include other information, in such form and in
22 such manner as is required by the Secretary, and
- 23 i. may change the format of existing rules without any
24 rulemaking action by the agency in order to comply

1 with the standard provisions established by the
2 Secretary for "Code" and "The Oklahoma Register"
3 publication so long as there is no substantive change
4 to the rule.

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

9 D. In order to avoid unnecessary expense, an agency may use the
10 published standards established by organizations and technical
11 societies of recognized national standing, other state agencies, or
12 federal agencies by incorporating the standards or rules in its
13 rules or regulations by reference to the specific issue or issues of
14 publications in which the standards are published, without
15 reproducing the standards in full. The standards shall be readily
16 available to the public for examination at the administrative
17 offices of the agency, and shall also be published on the agency's
18 website. Provided, any rules that are subject to copyright
19 protection and are adopted by an agency shall not be posted as
20 provided in this act, but the agency shall provide a weblink, if
21 available, to access the protected information from the owner of the
22 copyright. If no weblink is available, the contact information for
23 the owner of the copyright shall be made available. In addition, a
24 copy of such standards shall be kept and maintained by the agency

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

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

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

2 a. disapproved by the Legislature,

3 b. superseded by the promulgation of permanent rules,

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

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

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

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

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

23 J. 1. The requirements of Section 303 of this title relating
24 to notice and hearing shall not be applicable to emergency rules

1 promulgated pursuant to the provisions of this section. Provided
2 this shall not be construed to prevent an abbreviated notice and
3 hearing process determined to be necessary by an agency.

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

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

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

22 L. Upon completing the requirements of this section, an agency
23 may promulgate a proposed emergency rule. No emergency rule is
24

1 valid unless promulgated in substantial compliance with the
2 provisions of this section.

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

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

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

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

1 to defray the cost of publication and mailing. Such copies may be
2 provided electronically.

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

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

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

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

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

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. Provided, any rules that
17 are subject to copyright protection and are adopted by an agency
18 shall not be posted as provided in this act, but the agency shall
19 provide a weblink, if available, to access the protected information
20 from the owner of the copyright. If no weblink is available, the
21 contact information for the owner of the copyright shall be made
22 available;

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 Provided, any rules that are subject to copyright protection and are
9 adopted by an agency shall not be posted as provided in this act,
10 but the agency shall provide a weblink, if available, to access the
11 protected information from the owner of the copyright. If no
12 weblink is available, the contact information for the owner of the
13 copyright shall be made available.

14 2. The agency rulemaking record shall contain:

- 15 a. copies of all publications in "The Oklahoma Register"
16 with respect to the rule or the proceeding upon which
17 the rule is based,
- 18 b. copies of any portions of the agency's public
19 rulemaking docket containing entries relating to the
20 rule or the proceeding upon which the rule is based,
- 21 c. all written petitions, requests, submissions, and
22 comments received by the agency and all other written
23 materials considered by the agency in connection with
24

- 1 the formulation, proposal, or adoption of the rule or
2 the proceeding upon which the rule is based,
- 3 d. any official transcript of oral presentations made in
4 the proceeding upon which the rule is based or, if not
5 transcribed, any tape recording or stenographic record
6 of those presentations, and any memorandum prepared by
7 a presiding official summarizing the contents of those
8 presentations,
- 9 e. a copy of any regulatory analysis prepared for the
10 proceeding upon which the rule is based,
- 11 f. a copy of the rule and analysis of each such rule
12 filed with the Office pursuant to Section 251 of this
13 title,
- 14 g. all petitions for exceptions to, amendments of, or
15 repeal or suspension of, the rule,
- 16 h. a copy of the rule impact statement, if made, and
17 i. such other information concerning such rules as may be
18 determined necessary by the agency.

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

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

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

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

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

- 18 1. Amend, interpret, implement, or repeal a statute or a rule;
- 19 2. Expand upon or limit a statute or a rule; and
- 20 3. Except as authorized by the Constitution of the United
21 States, the Oklahoma Constitution or a statute, expand or limit a
22 right guaranteed by the Constitution of the United States, the
23 Oklahoma Constitution, a statute, or a rule.

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

4 F. This section shall not be construed to prohibit an agency
5 issuing an opinion or administrative decision which is authorized by
6 statute provided that, unless such opinion or administrative
7 decision is issued pursuant to the procedures required pursuant to
8 the Administrative Procedures Act, such decision or opinion shall
9 not have the force and effect of law.

10 SECTION 9. AMENDATORY 75 O.S. 2011, Section 303, as
11 amended by Section 50, Chapter 227, O.S.L. 2013 (75 O.S. Supp. 2015,
12 Section 303), is amended to read as follows:

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

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

17 2. Transmit one electronic copy of the complete text of all
18 proposed permanent rules and the notice described in subsection B of
19 this section to all members of the Legislature. Such transmission
20 shall be made using the state online filing system and shall be made
21 prior to or within three (3) days after the notice is submitted to
22 the Secretary of State for publication in "The Oklahoma Register";

23 3. For at least thirty (30) days after publication of the
24 notice of the intended rulemaking action, afford a comment period

1 for all interested persons to submit data, views or arguments,
2 orally or in writing. The agency shall consider fully all written
3 and oral submissions respecting the proposed rule;

4 ~~3.~~ 4. Hold a hearing, if required, as provided by subsection C
5 of this section;

6 ~~4.~~ 5. Consider the effect its intended action may have on the
7 various types of business and governmental entities. Except where
8 such modification or variance is prohibited by statute or
9 constitutional constraints, if an agency finds that its actions may
10 adversely affect any such entity, the agency may modify its actions
11 to exclude that type of entity, or may "tier" its actions to allow
12 rules, penalties, fines or reporting procedures and forms to vary
13 according to the size of a business or governmental entity or its
14 ability to comply or both. For business entities, the agency shall
15 include a description of the probable quantitative and qualitative
16 impact of the proposed rule, economic or otherwise, and use
17 quantifiable data to the extent possible, taking into account both
18 short-term and long-term consequences; and

19 ~~5.~~ 6. Consider the effect its intended action may have on the
20 various types of consumer groups. If an agency finds that its
21 actions may adversely affect such groups, the agency may modify its
22 actions to exclude that type of activity.

23 B. The notice required by paragraph 1 of subsection A of this
24 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

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

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

8 Prior to or within three (3) days after publication of the
9 notice in "The Oklahoma Register", the agency shall cause a copy of
10 the notice of the proposed rule adoption and the rule impact
11 statement, if available, to be mailed to all persons who have made a
12 timely request of the agency for advance notice of its rulemaking
13 proceedings. Provided, in lieu of mailing copies, an agency may
14 electronically notify interested persons that a copy of the proposed
15 rule and the rule impact statement, if available, may be viewed on
16 the agency's website. If an agency posts a copy of the proposed
17 rule and rule impact statement on its website, the agency shall not
18 charge persons for the cost of downloading or printing the proposed
19 rule or impact statement. Each agency shall maintain a listing of
20 persons or entities requesting such notice.

21 C. 1. If the published notice does not already provide for a
22 hearing, an agency shall schedule a hearing on a proposed rule if,
23 within thirty (30) days after the published notice of the proposed
24 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

1 political subdivisions or require their cooperation in
2 implementing or enforcing the rule,

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

7 h. an explanation of the measures the agency has taken to
8 minimize compliance costs and a determination of
9 whether there are less costly or nonregulatory methods
10 or less intrusive methods for achieving the purpose of
11 the proposed rule,

12 i. a determination of the effect of the proposed rule on
13 the public health, safety and environment and, if the
14 proposed rule is designed to reduce significant risks
15 to the public health, safety and environment, an
16 explanation of the nature of the risk and to what
17 extent the proposed rule will reduce the risk,

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

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

23 3. To the extent an agency for good cause finds the preparation
24 of a rule impact statement or the specified contents thereof are

1 unnecessary or contrary to the public interest in the process of
2 adopting a particular rule, the agency may request the Governor to
3 waive such requirement. Upon request by an agency, the Governor may
4 also waive the rule impact statement requirements if the agency is
5 required to implement a statute or federal requirement that does not
6 require an agency to interpret or describe the requirements, such as
7 federally mandated provisions which afford the agency no discretion
8 to consider less restrictive alternatives. If the Governor fails to
9 waive such requirement, in writing, prior to publication of the
10 notice of the intended rulemaking action, the rule impact statement
11 shall be completed. The determination to waive the rule impact
12 statement shall not be subject to judicial review.

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

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

19 SECTION 10. 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 11. 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 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 12. 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~~ Rules are to be received on or before ~~April 1~~
7 February 1, and the Legislature shall have until the last day of the
8 regular legislative session of that year to review such rules; and

9 2. If such rules are submitted by agencies that are subject to
10 federal requirements which require additional time, then such rules
11 may be received ~~after~~ on or before April 1, ~~the~~. The Legislature
12 shall have until the last day of the regular legislative session of
13 ~~the next~~ that year to review such rules. If such rules are received
14 after April 1, the Legislature shall have until the last day of the
15 regular legislative session of the next year to review such rules.

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

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

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

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

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

21 1. Approved or amended by the Legislature pursuant to Section ~~6~~
22 308.3 of this ~~act~~ title, provided that any such joint resolution
23 becomes law in accordance with Section 11 of Article VI of the
24 Oklahoma Constitution;

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

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

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

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

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

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

22 SECTION 13. AMENDATORY 75 O.S. 2011, Section 308.1, as
23 amended by Section 5, Chapter 357, O.S.L. 2013 (75 O.S. Supp. 2015,
24 Section 308.1), is amended to read as follows:

1 Section 308.1. A. Upon final adoption, the 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 14. AMENDATORY Section 6, Chapter 357, O.S.L.
17 2013 (75 O.S. Supp. 2015, Section 308.3), is amended to read as
18 follows:

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

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

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

4 D. 1. If an agency believes that a rule has not been approved
5 by the Legislature pursuant to this section and should be approved
6 and finally adopted, the agency may seek the Governor's declaration
7 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 of that
19 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. This act shall become effective November 1, 2016.

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