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February 17, 2016

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 1130

By: Dahm of the Senate

and

Brumbaugh of the House

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

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

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

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

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

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

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

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

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

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

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.
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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:
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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:

- 1 a. copies of all publications in "The Oklahoma Register"
2 with respect to the rule or the proceeding upon which
3 the rule is based,
- 4 b. copies of any portions of the agency's public
5 rulemaking docket containing entries relating to the
6 rule or the proceeding upon which the rule is based,
- 7 c. all written petitions, requests, submissions, and
8 comments received by the agency and all other written
9 materials considered by the agency in connection with
10 the formulation, proposal, or adoption of the rule or
11 the proceeding upon which the rule is based,
- 12 d. any official transcript of oral presentations made in
13 the proceeding upon which the rule is based or, if not
14 transcribed, any tape recording or stenographic record
15 of those presentations, and any memorandum prepared by
16 a presiding official summarizing the contents of those
17 presentations,
- 18 e. a copy of any regulatory analysis prepared for the
19 proceeding upon which the rule is based,
- 20 f. a copy of the rule and analysis of each such rule
21 filed with the Office pursuant to Section 251 of this
22 title,
- 23 g. all petitions for exceptions to, amendments of, or
24 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.
23
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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

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

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

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

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

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

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.~~

22 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS
23 February 17, 2016 - DO PASS AS AMENDED
24