

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

COMMITTEE SUBSTITUTE
FOR

HOUSE BILL NO. 3530

By: Jordan

COMMITTEE SUBSTITUTE

An Act relating to statutes and reports; amending 75 O.S. 2011, Sections 250.2, 250.3, as amended by Sections 1 and 2, Chapter 357, O.S.L. 2013 and 308, as amended by Section 4, Chapter 357, O.S.L. 2013 (75 O.S. Supp. 2017, Sections 250.2, 250.3 and 308), which relate to the Administrative Procedures Act; requiring inclusion of certain statutory or federal reference; modifying definitions; providing for approval and disapproval process by Governor; modifying approval and disapproval process by the Legislature; repealing Section 6, Chapter 357, O.S.L. 2013 (75 O.S. Supp. 2017, Section 308.3), which relates to the omnibus joint resolution; providing for codification; and providing an 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. 2017, 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

1 of Government with the responsibility to implement all measures
2 enacted by the Legislature.

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

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

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

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

16 4. The right to approve or disapprove any adopted rule by joint
17 resolution; and

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

23 C. All rulemaking authority delegated by the Legislature to
24 Executive Branch agencies shall be used only to implement law or

1 policy as set by the Legislature. Beginning November 1, 2018, any
2 new proposed administrative rule shall include a specific reference
3 to the state or federal statutory provision or federal regulation
4 that delegates the authority for promulgation of such rule.

5 SECTION 2. AMENDATORY 75 O.S. 2011, Section 250.3, as
6 amended by Section 2, Chapter 357, O.S.L. 2013 (75 O.S. Supp. 2017,
7 Section 250.3), is amended to read as follows:

8 Section 250.3 As used in the Administrative Procedures Act:

9 1. "Administrative head" means an official or agency body
10 responsible pursuant to law for issuing final agency orders;

11 2. "Adopted" means a proposed emergency rule or permanent rule
12 which has been approved by the agency but has not been approved or
13 disapproved reviewed by the Legislature and the Governor as provided
14 by Section 253 of this title, or a proposed permanent rule which has
15 been approved by the agency, but has not been approved or
16 disapproved by the Legislature or by declaration of the Governor as
17 provided by subsection D of Section 6 of this act;

18 3. "Agency" includes but is not limited to any constitutionally
19 or statutorily created state board, bureau, commission, office,
20 authority, public trust in which the state is a beneficiary, or
21 interstate commission, except:

- 22 a. the Legislature or any branch, committee or officer
23 thereof, and
24 b. the courts;

1 4. "Emergency rule" means a rule that is made pursuant to
2 Section 253 of this title;

3 5. "Final rule" or "finally adopted rule" means a rule other
4 than an emergency rule, which has been approved by the Legislature
5 and by the Governor, or approved by the Legislature pursuant to
6 subsection B of Section 308 of this title, and otherwise complies
7 with the requirements of the Administrative Procedures Act but has
8 not been published pursuant to Section 255 of this title ~~but is~~
9 ~~otherwise in compliance with the requirements of the Administrative~~
10 ~~Procedures Act, and is:~~

11 a. ~~approved by the Legislature pursuant to Section 6 of~~
12 ~~this act, provided that any such joint resolution~~
13 ~~becomes law in accordance with Section 11 of Article~~
14 ~~VI of the Oklahoma Constitution,~~

15 b. ~~approved by the Governor pursuant to subsection D of~~
16 ~~Section 6 of this act,~~

17 c. ~~approved by a joint resolution pursuant to subsection~~
18 ~~B of Section 308 of this title, provided that any such~~
19 ~~resolution becomes law in accordance with Section 11~~
20 ~~of Article VI of the Oklahoma Constitution, or~~

21 d. ~~disapproved by a joint resolution pursuant to~~
22 ~~subsection B of Section 308 of this title or Section 6~~
23 ~~of this act, which has been vetoed by the Governor in~~
24 ~~accordance with Section 11 of Article VI of the~~

1 ~~Oklahoma Constitution and the veto has not been~~
2 ~~overridden;~~

3 6. "Final agency order" means an order that includes findings
4 of fact and conclusions of law pursuant to Section 312 of this
5 title, is dispositive of an individual proceeding unless there is a
6 request for rehearing, reopening, or reconsideration pursuant to
7 Section 317 of this title and which is subject to judicial review;

8 7. "Hearing examiner" means a person meeting the qualifications
9 specified by Article II of the Administrative Procedures Act and who
10 has been duly appointed by an agency to hold hearings and, as
11 required, render orders or proposed orders;

12 8. "Individual proceeding" means the formal process employed by
13 an agency having jurisdiction by law to resolve issues of law or
14 fact between parties and which results in the exercise of discretion
15 of a judicial nature;

16 9. "License" includes the whole or part of any agency permit,
17 certificate, approval, registration, charter, or similar form of
18 permission required by law;

19 10. "Office" means the Office of the Secretary of State;

20 11. "Order" means all or part of a formal or official decision
21 made by an agency including but not limited to final agency orders;

22 12. "Party" means a person or agency named and participating,
23 or properly seeking and entitled by law to participate, in an
24 individual proceeding;

1 13. "Permanent rule" means a rule that is made pursuant to
2 Section 303 of this title;

3 14. "Person" means any individual, partnership, corporation,
4 association, governmental subdivision, or public or private
5 organization of any character other than an agency;

6 15. "Political subdivision" means a county, city, incorporated
7 town or school district within this state;

8 16. "Promulgated" means a finally adopted rule which has been
9 filed and published in accordance with the provisions of the
10 Administrative Procedures Act, or an emergency rule or preemptive
11 rule which has been approved by the Governor;

12 17. "Rule" means any agency statement or group of related
13 statements of general applicability and future effect that
14 implements, interprets or prescribes law or policy, or describes the
15 procedure or practice requirements of the agency. The term "rule"
16 includes the amendment or revocation of an effective rule but does
17 not include:

18 a. the issuance, renewal, denial, suspension or
19 revocation or other sanction of an individual specific
20 license,

21 b. the approval, disapproval or prescription of rates.

22 For purposes of this subparagraph, the term "rates"

23 shall not include fees or charges fixed by an agency

24 for services provided by that agency including but not

1 limited to fees charged for licensing, permitting,
2 inspections or publications,

3 c. statements and memoranda concerning only the internal
4 management of an agency and not affecting private
5 rights or procedures available to the public,

6 d. declaratory rulings issued pursuant to Section 307 of
7 this title,

8 e. orders by an agency, or

9 f. press releases or "agency news releases", provided
10 such releases are not for the purpose of interpreting,
11 implementing or prescribing law or agency policy;

12 18. "Rulemaking" means the process employed by an agency for
13 the formulation of a rule; and

14 19. "Secretary" means the Secretary of State.

15 SECTION 3. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 303.3 of Title 75, unless there
17 is created a duplication in numbering, reads as follows:

18 A. The Governor shall have forty-five (45) calendar days from
19 receipt of a rule to approve or disapprove the rule.

20 1. If the Governor approves the rule, the Governor shall
21 immediately notify the agency in writing of the approval. A copy of
22 such approval shall be given by the Governor to the Speaker of the
23 House of Representatives and the President Pro Tempore of the
24 Senate. Upon receipt of the approval, the agency shall submit a

1 notice of such approval to the Office of the Secretary of State for
2 publication in "The Oklahoma Register".

3 2. If the Governor disapproves the adopted rule, the Governor
4 shall return the entire document to the agency with reasons in
5 writing for the disapproval. Notice of such disapproval shall be
6 given by the Governor to the Speaker of the House of Representatives
7 and the President Pro Tempore of the Senate. Failure of the
8 Governor to approve a rule within the specified period shall
9 constitute disapproval of the rule by the Governor. Upon receipt of
10 the disapproval or upon failure of the Governor to approve the rule
11 within the specified period, the agency shall submit a notice of
12 such disapproval to the Office of the Secretary of State for
13 publication in "The Oklahoma Register". Any effective emergency
14 rule which would have been superseded by a disapproved permanent
15 rule, shall be deemed null and void on the date the Governor
16 disapproves the permanent rule.

17 B. Rules not approved by the Governor pursuant to the
18 provisions of this section shall not become effective unless
19 otherwise approved by the Legislature by joint resolution pursuant
20 to subsection B of Section 308 of Title 75 of the Oklahoma Statutes.

21 SECTION 4. AMENDATORY 75 O.S. 2011, Section 308, as
22 amended by Section 4, Chapter 357, O.S.L. 2013 (75 O.S. Supp. 2017,
23 Section 308), is amended to read as follows:
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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, the
7 Legislature shall have until the last day of the regular legislative
8 session of that year to review such rules; and

9 2. If such rules are received after April 1, the Legislature
10 shall have until the last day of the regular legislative session of
11 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 any rule.

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

1 legislative disapproval with the Office of the Secretary for
2 publication in "The Oklahoma Register".

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

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

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

17 2. ~~Approved by the Governor pursuant to subsection D of Section~~
18 ~~6 of this act;~~

19 3. ~~Approved by a joint resolution pursuant to subsection B of~~
20 ~~this section, provided that any such resolution becomes law in~~
21 ~~accordance with Section 11 of Article VI of the Oklahoma~~
22 ~~Constitution; or~~

23 4. ~~Disapproved by a joint resolution pursuant to subsection B~~
24 ~~of this section or Section 6 of this act which has been vetoed by~~

1 ~~the Governor in accordance with Section 11 of Article VI of the~~
2 ~~Oklahoma Constitution and the veto has not been overridden~~
3 Transmission of a rule for legislative review on or before April 1
4 of each year shall result in the approval of such rule by the
5 Legislature if the Legislature is in regular session and has failed
6 to disapprove such rule prior to the last day of the regular
7 legislative session of that year; or

8 2. After April 1 of each year, transmission of a rule for
9 legislative review shall result in the carryover for consideration
10 by the Legislature during the next regular session and shall be
11 considered to have been originally transmitted to the Legislature on
12 the first day of said next regular session for review pursuant to
13 this section. An agency may request direct legislative approval of
14 such rules provided by subsection B of this section. An agency may
15 also adopt emergency rules under the provisions of Section 253 of
16 this title.

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

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

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

5 I. Except as otherwise provided by Sections 250.4, 250.6 and
6 253 of this title or as otherwise specifically provided by the
7 Legislature, no agency shall promulgate any rule unless reviewed by
8 the Legislature pursuant to this section.

9 SECTION 5. REPEALER Section 6, Chapter 357, O.S.L. 2013
10 (75 O.S. Supp. 2017, Section 308.3), is hereby repealed.

11 SECTION 6. This act shall become effective November 1, 2018.

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