

1 ENGROSSED SENATE
2 BILL NO. 697

By: Sykes of the Senate

3 and

4 Faught of the House
5

6 An Act relating to rulemaking authority; amending 75
7 O.S. 2011, Sections 250.2 and 250.3, as amended by
8 Sections 1 and 2, Chapter 357, O.S.L. 2013 (75 O.S.
9 Supp. 2016, Sections 250.2 and 250.3), which relate
10 to legislative intent and definitions; clarifying
11 legislative intent for certain rulemaking authority;
12 requiring inclusion of certain statutory reference;
13 defining term; updating statutory reference; and
14 providing an effective date.

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

16 SECTION 1. AMENDATORY 75 O.S. 2011, Section 250.2, as
17 amended by Section 1, Chapter 357, O.S.L. 2013 (75 O.S. Supp. 2016,
18 Section 250.2), is amended to read as follows:

19 Section 250.2. A. Article V of the Oklahoma Constitution vests
20 in the Legislature the power to make laws, and thereby to establish
21 agencies and to designate agency functions, budgets and purposes.
22 Article VI of the Oklahoma Constitution charges the Executive Branch
23 of Government with the responsibility to implement all measures
24 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 or disapprove any adopted rule by joint
13 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 C. All rulemaking authority delegated by the Legislature to
20 executive branch agencies shall be used only to implement law or
21 policy as set by the Legislature. Within three (3) years of the
22 effective date of this act, all administrative rules, including
23 those already in existence, shall include a specific reference to
24

1 the statutory provision that delegates the authority for
2 promulgation of such rule.

3 SECTION 2. AMENDATORY 75 O.S. 2011, Section 250.3, as
4 amended by Section 2, Chapter 357, O.S.L. 2013 (75 O.S. Supp. 2016,
5 Section 250.3), is amended to read as follows:

6 Section 250.3. As used in the Administrative Procedures Act:

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

9 2. "Adopted" means a proposed emergency rule which has been
10 approved by the agency but has not been approved or disapproved by
11 the Governor as provided by Section 253 of this title, or a proposed
12 permanent rule which has been approved by the agency, but has not
13 been approved or disapproved by the Legislature or by declaration of
14 the Governor as provided by subsection D of Section ~~6~~ 308.3 of this
15 ~~act~~ title;

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

20 a. the Legislature or any branch, committee or officer
21 thereof, and

22 b. the courts;

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

1 5. "Final rule" or "finally adopted rule" means a rule other
2 than an emergency rule, which has not been published pursuant to
3 Section 255 of this title but is otherwise in compliance with the
4 requirements of the Administrative Procedures Act, and is:

- 5 a. approved by the Legislature pursuant to Section ~~6~~
6 308.3 of this ~~act~~ title, provided that any such joint
7 resolution becomes law in accordance with Section 11
8 of Article VI of the Oklahoma Constitution,
- 9 b. approved by the Governor pursuant to subsection D of
10 Section ~~6~~ 308.3 of this ~~act~~ title,
- 11 c. approved by a joint resolution pursuant to subsection
12 B of Section 308 of this title, provided that any such
13 resolution becomes law in accordance with Section 11
14 of Article VI of the Oklahoma Constitution, or
- 15 d. disapproved by a joint resolution pursuant to
16 subsection B of Section 308 of this title or Section ~~6~~
17 308.3 of this ~~act~~ title, which has been vetoed by the
18 Governor in accordance with Section 11 of Article VI
19 of the Oklahoma Constitution and the veto has not been
20 overridden;

21 6. "Final agency order" means an order that includes findings
22 of fact and conclusions of law pursuant to Section 312 of this
23 title, is dispositive of an individual proceeding unless there is a
24

1 request for rehearing, reopening, or reconsideration pursuant to
2 Section 317 of this title and which is subject to judicial review;

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

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

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

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

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

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

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

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

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

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

7 17. "Rule" means any agency statement or group of related
8 statements of general applicability and future effect that
9 implements, ~~interprets or prescribes~~ law or policy as delegated by
10 the Legislature, or describes the procedure or practice requirements
11 of the agency. The term "rule" includes the amendment or revocation
12 of an effective rule but does not include:

13 a. the issuance, renewal, denial, suspension or
14 revocation or other sanction of an individual specific
15 license,

16 b. the approval, disapproval or prescription of rates.
17 For purposes of this subparagraph, the term "rates"
18 shall not include fees or charges fixed by an agency
19 for services provided by that agency including but not
20 limited to fees charged for licensing, permitting,
21 inspections or publications,

22 c. statements and memoranda concerning only the internal
23 management of an agency and not affecting private
24 rights or procedures available to the public,

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

e. orders by an agency, or

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

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

19. "Secretary" means the Secretary of State.

SECTION 3. This act shall become effective in accordance with the provisions of Section 58 of Article V of the Oklahoma Constitution.

Passed the Senate the 9th day of March, 2017.

Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____,
2017.

Presiding Officer of the House
of Representatives