

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 56th Legislature (2017)

4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 697

By: Sykes of the Senate

and

Faught of the House

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10 COMMITTEE SUBSTITUTE

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

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

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

24 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.

1 Article VI of the Oklahoma Constitution charges the Executive Branch
2 of Government with the responsibility to implement all measures
3 enacted by the Legislature.

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

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

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

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

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

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

1 C. All rulemaking authority delegated by the Legislature to
2 executive branch agencies shall be used only to implement law or
3 policy as set by the Legislature. Within three (3) years of the
4 effective date of this act, all administrative rules, including
5 those already in existence, shall include a specific reference to
6 the state or federal statutory provision or federal regulation that
7 delegates the authority for promulgation of such rule.

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

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

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

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

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

1 a. the Legislature or any branch, committee or officer
2 thereof, and

3 b. the courts;

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

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

10 a. approved by the Legislature pursuant to Section ~~6~~
11 308.3 of this ~~act~~ title, provided that any such joint
12 resolution becomes law in accordance with Section 11
13 of Article VI of the Oklahoma Constitution,

14 b. approved by the Governor pursuant to subsection D of
15 Section ~~6~~ 308.3 of this ~~act~~ title,

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

20 d. disapproved by a joint resolution pursuant to
21 subsection B of Section 308 of this title or Section ~~6~~
22 308.3 of this ~~act~~ title, which has been vetoed by the
23 Governor in accordance with Section 11 of Article VI
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1 of the 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 as delegated by
15 the Legislature, or describes the procedure or practice requirements
16 of the agency. The term "rule" includes the amendment or revocation
17 of an effective rule but does 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. This act shall become effective in accordance with
16 the provisions of Section 58 of Article V of the Oklahoma
17 Constitution.

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19 COMMITTEE REPORT BY: COMMITTEE ON ADMINISTRATIVE RULES, dated
20 04/12/2017 - DO PASS, As Amended.