

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

HOUSE BILL 1944

By: Jordan

AS INTRODUCED

An Act relating to statutes and reports; amending 75 O.S. 2011, Sections 250.3, as amended by Section 2, Chapter 357, O.S.L. 2013 and 308, as amended by Section 4, Chapter 357, O.S.L. 2013 (75 O.S. Supp. 2016, Sections 250.3 and 308), which relate to the Administrative Procedures Act; 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. 2016, 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 250.3, as amended by Section 2, Chapter 357, O.S.L. 2013 (75 O.S. Supp. 2016, Section 250.3), is amended to read as follows:

Section 250.3 As used in the Administrative Procedures Act:

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

2. "Adopted" means a proposed emergency rule or permanent rule which has been approved by the agency but has not been reviewed

1 ~~approved or disapproved by the Legislature and the Governor as~~
2 ~~provided by Section 253 of this title, or a proposed permanent rule~~
3 ~~which has been approved by the agency, but has not been approved or~~
4 ~~disapproved by the Legislature or by declaration of the Governor as~~
5 ~~provided by subsection D of Section 6 of this act;~~

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

- 10 a. the Legislature or any branch, committee or officer
11 thereof, and
12 b. the courts;

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

15 5. "Final rule" or "finally adopted rule" means a rule other
16 than an emergency rule, which has been approved by the Legislature
17 and by the Governor, or approved by the Legislature pursuant to
18 subsection B of Section 308 of this title and otherwise complies
19 with the requirements of the Administrative Procedures Act but has
20 not been published pursuant to Section 255 of this title ~~but is~~
21 ~~otherwise in compliance with the requirements of the Administrative~~
22 ~~Procedures Act, and is:~~

- 23 a. ~~approved by the Legislature pursuant to Section 6 of~~
24 ~~this act, provided that any such joint resolution~~

~~becomes law in accordance with Section 11 of Article VI of the Oklahoma Constitution,~~

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

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

~~d. disapproved by a joint resolution pursuant to subsection B of Section 308 of this title or Section 6 of this act, which has been vetoed by the Governor in accordance with Section 11 of Article VI of the Oklahoma Constitution and the veto has not been overridden;~~

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

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

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

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

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

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

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

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

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

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

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

1 17. "Rule" means any agency statement or group of related
2 statements of general applicability and future effect that
3 implements, interprets or prescribes law or policy, or describes the
4 procedure or practice requirements of the agency. The term "rule"
5 includes the amendment or revocation of an effective rule but does
6 not include:

7 a. the issuance, renewal, denial, suspension or
8 revocation or other sanction of an individual specific
9 license,

10 b. the approval, disapproval or prescription of rates.
11 For purposes of this subparagraph, the term "rates"
12 shall not include fees or charges fixed by an agency
13 for services provided by that agency including but not
14 limited to fees charged for licensing, permitting,
15 inspections or publications,

16 c. statements and memoranda concerning only the internal
17 management of an agency and not affecting private
18 rights or procedures available to the public,

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

21 e. orders by an agency, or

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

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

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

4 SECTION 2. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 303.3 of Title 75, unless there
6 is created a duplication in numbering, reads as follows:

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

9 1. If the Governor approves the rule, the Governor shall
10 immediately notify the agency in writing of the approval. A copy of
11 such approval shall be given by the Governor to the Speaker of the
12 House of Representatives and the President Pro Tempore of the
13 Senate. Upon receipt of the approval, the agency shall submit a
14 notice of such approval to the Office of Administrative Rules for
15 publication in "The Oklahoma Register".

16 2. If the Governor disapproves the adopted rule, the Governor
17 shall return the entire document to the agency with reasons in
18 writing for the disapproval. Notice of such disapproval shall be
19 given by the Governor to the Speaker of the House of Representatives
20 and the President Pro Tempore of the Senate. Failure of the
21 Governor to approve a rule within the specified period shall
22 constitute disapproval of the rule by the Governor. Upon receipt of
23 the disapproval or upon failure of the Governor to approve the rule
24 within the specified period, the agency shall submit a notice of

1 such disapproval to the Office of Administrative Rules for
2 publication in "The Oklahoma Register". Any effective emergency
3 rule which would have been superseded by a disapproved permanent
4 rule, shall be deemed null and void on the date the Governor
5 disapproves the permanent rule.

6 B. Rules not approved by the Governor pursuant to the
7 provisions of this section shall not become effective unless
8 otherwise approved by the Legislature by joint resolution pursuant
9 to subsection B of Section 308 of Title 75 of the Oklahoma Statutes.

10 SECTION 3. AMENDATORY 75 O.S. 2011, Section 308, as
11 amended by Section 4, Chapter 357, O.S.L. 2013 (75 O.S. Supp. 2016,
12 Section 308), is amended to read as follows:

13 Section 308. A. Upon receipt of any adopted rules, the Speaker
14 of the House of Representatives and the President Pro Tempore of the
15 Senate shall assign such rules to the appropriate committees of each
16 house of the Legislature for review. Except as otherwise provided
17 by this section:

18 1. If such rules are received on or before April 1, the
19 Legislature shall have until the last day of the regular legislative
20 session of that year to review such rules; and

21 2. If such rules are received after April 1, the Legislature
22 shall have until the last day of the regular legislative session of
23 the next year to review such rules.

1 B. By the adoption of a joint resolution during the review
2 period specified in subsection A of this section, the Legislature
3 may disapprove or approve any rule.

4 C. Unless otherwise authorized by the Legislature, whenever a
5 rule is disapproved as provided in subsection B of this section, the
6 agency adopting such rules shall not have authority to resubmit an
7 identical rule, except during the first sixty (60) calendar days of
8 the next regular legislative session. Any effective emergency rule
9 which would have been superseded by a disapproved permanent rule
10 shall be deemed null and void on the date the Legislature
11 disapproves the permanent rule. Rules may be disapproved in part or
12 in whole by the Legislature. Upon enactment of any joint resolution
13 disapproving a rule, the agency shall file notice of such
14 legislative disapproval with the Secretary for publication in "The
15 Oklahoma Register".

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

1 E. 1. Transmission of a rule for legislative review on or
2 before April 1 of each year shall result in the approval of such
3 rule by the Legislature if the Legislature is in regular session and
4 has failed to disapprove such rule prior to the last day of the
5 regular legislative session of that year, or

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

15 ~~A proposed permanent rule shall be deemed finally adopted if:~~

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

20 ~~2. Approved by the Governor pursuant to subsection D of Section~~
21 ~~6 of this act;~~

22 ~~3. Approved by a joint resolution pursuant to subsection B of~~
23 ~~this section, provided that any such resolution becomes law in~~
24

1 ~~accordance with Section 11 of Article VI of the Oklahoma~~
2 ~~Constitution; or~~

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

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

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

14 H. Any rights, privileges, or interests gained by any person by
15 operation of an emergency rule, shall not be affected by reason of
16 any subsequent disapproval or rejection of such rule by either house
17 of the Legislature.

18 I. Except as otherwise provided by Sections 250.4, 250.6 and
19 253 of this title or as otherwise specifically provided by the
20 Legislature, no agency shall promulgate any rule unless reviewed by
21 the Legislature pursuant to this section.

22 SECTION 4. REPEALER Section 6, Chapter 357, O.S.L. 2013
23 (75 O.S. Supp. 2016, Section 308.3), is hereby repealed.
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SECTION 5. This act shall become effective November 1, 2017.

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