

<DateSubmitted>

HOUSE OF REPRESENTATIVES
CONFERENCE COMMITTEE REPORT

Mr. President:
Mr. Speaker:

The Conference Committee, to which was referred

HB1944

By: Jordan of the House and Dahm of the Senate

Title: Statutes and reports; modifying various provisions in the Administrative Procedures Act;
effective date.

Together with Engrossed Senate Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the Senate recede from its amendment; and
2. That the attached Conference Committee Substitute be adopted.

Respectfully submitted,

House Action _____ Date _____ Senate Action _____ Date _____

SENATE CONFEREES

Dahm	_____
Boggs	_____
Fry	_____
Kidd	_____
Shaw	_____
Floyd	_____
Pittman	_____

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1944

By: Jordan of the House
and
Dahm of the Senate

CONFERENCE 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. 2016, Sections 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. 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 250.2, as amended by Section 1, Chapter 357, O.S.L. 2013 (75 O.S. Supp. 2016, 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

1 agencies and to designate agency functions, budgets and purposes.
2 Article VI of the Oklahoma Constitution charges the Executive Branch
3 of Government with the responsibility to implement all measures
4 enacted by the Legislature.

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

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

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

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

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

20 5. The right to disapprove a proposed permanent, promulgated or
21 emergency rule at any time if the Legislature determines such rule
22 to be an imminent harm to the health, safety or welfare of the
23 public or the state or if the Legislature determines that a rule is
24 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. Beginning November 1, 2017, any
4 new proposed administrative rule shall include a specific reference
5 to the state or federal statutory provision or federal regulation
6 that delegates the authority for promulgation of such rule.

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

10 Section 250.3 As used in the Administrative Procedures Act:

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

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

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

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 been approved by the Legislature
8 and by the Governor, or approved by the Legislature pursuant to
9 subsection B of Section 308 of this title and otherwise complies
10 with the requirements of the Administrative Procedures Act but has
11 not been published pursuant to Section 255 of this title but is
12 ~~otherwise in compliance with the requirements of the Administrative~~
13 ~~Procedures Act, and is:~~

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

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

20 ~~c. approved by a joint resolution pursuant to subsection~~
21 ~~B of Section 308 of this title, provided that any such~~
22 ~~resolution becomes law in accordance with Section 11~~
23 ~~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;

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

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

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

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

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

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

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

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

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

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

- 1 a. the issuance, renewal, denial, suspension or
2 revocation or other sanction of an individual specific
3 license,
4 b. the approval, disapproval or prescription of rates.
5 For purposes of this subparagraph, the term "rates"
6 shall not include fees or charges fixed by an agency
7 for services provided by that agency including but not
8 limited to fees charged for licensing, permitting,
9 inspections or publications,
10 c. statements and memoranda concerning only the internal
11 management of an agency and not affecting private
12 rights or procedures available to the public,
13 d. declaratory rulings issued pursuant to Section 307 of
14 this title,
15 e. orders by an agency, or
16 f. press releases or "agency news releases", provided
17 such releases are not for the purpose of interpreting,
18 implementing or prescribing law or agency policy;

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

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

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

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

3 1. If the Governor approves the rule, the Governor shall
4 immediately notify the agency in writing of the approval. A copy of
5 such approval shall be given by the Governor to the Speaker of the
6 House of Representatives and the President Pro Tempore of the
7 Senate. Upon receipt of the approval, the agency shall submit a
8 notice of such approval to the Office of Administrative Rules for
9 publication in "The Oklahoma Register".

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

1 B. Rules not approved by the Governor pursuant to the
2 provisions of this section shall not become effective unless
3 otherwise approved by the Legislature by joint resolution pursuant
4 to subsection B of Section 308 of Title 75 of the Oklahoma Statutes.

5 SECTION 4. AMENDATORY 75 O.S. 2011, Section 308, as
6 amended by Section 4, Chapter 357, O.S.L. 2013 (75 O.S. Supp. 2016,
7 Section 308), is amended to read as follows:

8 Section 308. A. Upon receipt of any adopted rules, the Speaker
9 of the House of Representatives and the President Pro Tempore of the
10 Senate shall assign such rules to the appropriate committees of each
11 house of the Legislature for review. Except as otherwise provided
12 by this section:

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

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

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

22 C. Unless otherwise authorized by the Legislature, whenever a
23 rule is disapproved as provided in subsection B of this section, the
24 agency adopting such rules shall not have authority to resubmit an

1 identical rule, except during the first sixty (60) calendar days of
2 the next regular legislative session. Any effective emergency rule
3 which would have been superseded by a disapproved permanent rule
4 shall be deemed null and void on the date the Legislature
5 disapproves the permanent rule. Rules may be disapproved in part or
6 in whole by the Legislature. Upon enactment of any joint resolution
7 disapproving a rule, the agency shall file notice of such
8 legislative disapproval with the Secretary for publication in "The
9 Oklahoma Register".

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

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

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

24

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

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

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

11 Transmission of a rule for legislative review on or before April 1
12 of each year shall result in the approval of such rule by the
13 Legislature if the Legislature is in regular session and has failed
14 to disapprove such rule prior to the last day of the regular
15 legislative session of that year; or

16 2. After April 1 of each year, transmission of a rule for
17 legislative review shall result in the carryover for consideration
18 by the Legislature during the next regular session and shall be
19 considered to have been originally transmitted to the Legislature on
20 the first day of said next regular session for review pursuant to
21 this section. An agency may request direct legislative approval of
22 such rules provided by subsection B of this section. An agency may
23 also adopt emergency rules under the provisions of Section 253 of
24 this title.

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

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

8 H. Any rights, privileges, or interests gained by any person by
9 operation of an emergency rule, shall not be affected by reason of
10 any subsequent disapproval or rejection of such rule by either house
11 of the Legislature.

12 I. Except as otherwise provided by Sections 250.4, 250.6 and
13 253 of this title or as otherwise specifically provided by the
14 Legislature, no agency shall promulgate any rule unless reviewed by
15 the Legislature pursuant to this section.

16 SECTION 5. REPEALER Section 6, Chapter 357, O.S.L. 2013
17 (75 O.S. Supp. 2016, Section 308.3), is hereby repealed.

18 SECTION 6. This act shall become effective November 1, 2017.
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