

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

SENATE BILL 1882

By: Daniels

AS INTRODUCED

An Act relating to administrative rule procedure; amending 75 O.S. 2011, Section 303, as amended by Section 50, Chapter 227, O.S.L. 2013 and 308, as amended by Section 4, Chapter 357, O.S.L. 2013 (75 O.S. Supp. 2019, Sections 303 and 308), which relate to adoption procedure and legislative review; providing reference to certain exception; creating expedited rule repeal process; providing procedures for agencies for certain request; specifying criteria for qualification; requiring certain notice; allowing for comment period; providing for certain hearings and votes; prohibiting certain agency requests by certain date; modifying certain date for legislative rule review; 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 303, as amended by Section 50, Chapter 227, O.S.L. 2013 (75 O.S. Supp. 2019, Section 303), is amended to read as follows:

Section 303. A. ~~Prior~~ Except as provided in Section 2 of this act, prior to the adoption of any rule or amendment or revocation of a rule, the agency shall:

1 1. Cause notice of any intended action to be published in "The
2 Oklahoma Register" pursuant to subsection B of this section;

3 2. For at least thirty (30) days after publication of the
4 notice of the intended rulemaking action, afford a comment period
5 for all interested persons to submit data, views or arguments,
6 orally or in writing. The agency shall consider fully all written
7 and oral submissions respecting the proposed rule;

8 3. Hold a hearing, if required, as provided by subsection C of
9 this section;

10 4. Consider the effect its intended action may have on the
11 various types of business and governmental entities. Except where
12 such modification or variance is prohibited by statute or
13 constitutional constraints, if an agency finds that its actions may
14 adversely affect any such entity, the agency may modify its actions
15 to exclude that type of entity, or may "tier" its actions to allow
16 rules, penalties, fines or reporting procedures and forms to vary
17 according to the size of a business or governmental entity or its
18 ability to comply or both. For business entities, the agency shall
19 include a description of the probable quantitative and qualitative
20 impact of the proposed rule, economic or otherwise, and use
21 quantifiable data to the extent possible, taking into account both
22 short-term and long-term consequences; and

23 5. Consider the effect its intended action may have on the
24 various types of consumer groups. If an agency finds that its
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1 actions may adversely affect such groups, the agency may modify its
2 actions to exclude that type of activity.

3 B. The notice required by paragraph 1 of subsection A of this
4 section shall include, but not be limited to:

- 5 1. In simple language, a brief summary of the rule;
- 6 2. The proposed action being taken;
- 7 3. The circumstances which created the need for the rule;
- 8 4. The specific legal authority authorizing the proposed rule;
- 9 5. The intended effect of the rule;

10 6. If the agency determines that the rule affects business
11 entities, a request that such entities provide the agency, within
12 the comment period, in dollar amounts if possible, the increase in
13 the level of direct costs such as fees, and indirect costs such as
14 reporting, recordkeeping, equipment, construction, labor,
15 professional services, revenue loss, or other costs expected to be
16 incurred by a particular entity due to compliance with the proposed
17 rule;

18 7. The time when, the place where, and the manner in which
19 interested persons may present their views thereon pursuant to
20 paragraph 3 of subsection A of this section;

21 8. Whether or not the agency intends to issue a rule impact
22 statement according to subsection D of this section and where copies
23 of such impact statement may be obtained for review by the public;

1 9. The time when, the place where, and the manner in which
2 persons may demand a hearing on the proposed rule if the notice does
3 not already provide for a hearing. If the notice provides for a
4 hearing, the time and place of the hearing shall be specified in the
5 notice; and

6 10. Where copies of the proposed rules may be obtained for
7 review by the public. An agency may charge persons for the actual
8 cost of mailing a copy of the proposed rules to such persons.

9 The number of copies of such notice as specified by the
10 Secretary shall be submitted to the Secretary who shall publish the
11 notice in "The Oklahoma Register" pursuant to the provisions of
12 Section 255 of this title.

13 Prior to or within three (3) days after publication of the
14 notice in "The Oklahoma Register", the agency shall cause a copy of
15 the notice of the proposed rule adoption and the rule impact
16 statement, if available, to be mailed to all persons who have made a
17 timely request of the agency for advance notice of its rulemaking
18 proceedings. Provided, in lieu of mailing copies, an agency may
19 electronically notify interested persons that a copy of the proposed
20 rule and the rule impact statement, if available, may be viewed on
21 the agency's website. If an agency posts a copy of the proposed
22 rule and rule impact statement on its website, the agency shall not
23 charge persons for the cost of downloading or printing the proposed
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1 rule or impact statement. Each agency shall maintain a listing of
2 persons or entities requesting such notice.

3 C. 1. If the published notice does not already provide for a
4 hearing, an agency shall schedule a hearing on a proposed rule if,
5 within thirty (30) days after the published notice of the proposed
6 rule adoption, a written request for a hearing is submitted by:

- 7 a. at least ten persons,
- 8 b. a political subdivision,
- 9 c. an agency, or
- 10 d. an association having not less than twenty-five
11 members.

12 At that hearing persons may present oral argument, data, and
13 views on the proposed rule.

14 2. A hearing on a proposed rule may not be held earlier than
15 thirty (30) days after notice of the hearing is published pursuant
16 to subsection B of this section.

17 3. The provisions of this subsection shall not be construed to
18 prevent an agency from holding a hearing or hearings on the proposed
19 rule although not required by the provisions of this subsection;
20 provided, that notice of such hearing shall be published in "The
21 Oklahoma Register" at least thirty (30) days prior to such hearing.

22 D. 1. Except as otherwise provided in this subsection, an
23 agency shall issue a rule impact statement of a proposed rule prior
24 to or within fifteen (15) days after the date of publication of the
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1 notice of proposed rule adoption. The rule impact statement may be
2 modified after any hearing or comment period afforded pursuant to
3 the provisions of this section.

4 2. Except as otherwise provided in this subsection, the rule
5 impact statement shall include, but not be limited to:

- 6 a. a brief description of the purpose of the proposed
7 rule,
- 8 b. a description of the classes of persons who most
9 likely will be affected by the proposed rule,
10 including classes that will bear the costs of the
11 proposed rule, and any information on cost impacts
12 received by the agency from any private or public
13 entities,
- 14 c. a description of the classes of persons who will
15 benefit from the proposed rule,
- 16 d. a description of the probable economic impact of the
17 proposed rule upon affected classes of persons or
18 political subdivisions, including a listing of all fee
19 changes and, whenever possible, a separate
20 justification for each fee change,
- 21 e. the probable costs and benefits to the agency and to
22 any other agency of the implementation and enforcement
23 of the proposed rule, the source of revenue to be used
24 for implementation and enforcement of the proposed

- rule, and any anticipated effect on state revenues, including a projected net loss or gain in such revenues if it can be projected by the agency,
- f. a determination of whether implementation of the proposed rule will have an economic impact on any political subdivisions or require their cooperation in implementing or enforcing the rule,
 - g. a determination of whether implementation of the proposed rule may have an adverse economic effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act,
 - h. an explanation of the measures the agency has taken to minimize compliance costs and a determination of whether there are less costly or nonregulatory methods or less intrusive methods for achieving the purpose of the proposed rule,
 - i. a determination of the effect of the proposed rule on the public health, safety and environment and, if the proposed rule is designed to reduce significant risks to the public health, safety and environment, an explanation of the nature of the risk and to what extent the proposed rule will reduce the risk,

1 j. a determination of any detrimental effect on the
2 public health, safety and environment if the proposed
3 rule is not implemented, and

4 k. the date the rule impact statement was prepared and if
5 modified, the date modified.

6 3. To the extent an agency for good cause finds the preparation
7 of a rule impact statement or the specified contents thereof are
8 unnecessary or contrary to the public interest in the process of
9 adopting a particular rule, the agency may request the Governor to
10 waive such requirement. Upon request by an agency, the Governor may
11 also waive the rule impact statement requirements if the agency is
12 required to implement a statute or federal requirement that does not
13 require an agency to interpret or describe the requirements, such as
14 federally mandated provisions which afford the agency no discretion
15 to consider less restrictive alternatives. If the Governor fails to
16 waive such requirement, in writing, prior to publication of the
17 notice of the intended rulemaking action, the rule impact statement
18 shall be completed. The determination to waive the rule impact
19 statement shall not be subject to judicial review.

20 4. The rule shall not be invalidated on the ground that the
21 contents of the rule impact statement are insufficient or
22 inaccurate.
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1 E. Upon completing the requirements of this section, an agency
2 may adopt a proposed rule. No rule is valid unless adopted in
3 substantial compliance with the provisions of this section.

4 SECTION 2. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 303a of Title 75, unless there
6 is created a duplication in numbering, reads as follows:

7 A. Upon request by a rule-making agency, an expedited rule
8 repeal process may be utilized when such rule or rules meet the
9 criteria pursuant to this section.

10 B. Beginning on February 1, 2021, and every year thereafter, a
11 rule-making agency may initiate a request for expedited repeal of a
12 rule or rules when:

13 1. A request by the agency is submitted electronically to the
14 President Pro Tempore of the Senate and the Speaker of the House of
15 Representatives. The request shall be assigned by each house to the
16 appropriate committee designated to conduct the repeal process;

17 2. A copy of the rule or rules is provided along with a
18 statement indicating one of the following:

- 19 a. a rule is duplicate,
- 20 b. the rule is obsolete,
- 21 c. the rule is no longer enforced,
- 22 d. the rule is no longer in compliance with state or
23 federal law,
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- 1 e. the rule is no longer in compliance with federal
2 regulation, or
3 f. the rule does not affect substantive rights of the
4 regulated community;

5 3. The agency provides notice in the "Oklahoma Register", in a
6 format reasonably calculated to provide notice to those persons
7 interested in the rule; and

8 4. For at least ten (10) days after publication of the notice
9 of the intended action, afford a comment period for all interested
10 persons. The agency shall consider fully all written and oral
11 submissions respecting the proposed rule.

12 C. Upon completion of the comment period, the committees may
13 schedule a hearing and vote on the agency rule proposal. Upon
14 agreement between the agency and committees that the repeal
15 eliminates a provision that meets an item specified in paragraph 2
16 of subsection B of this section, the rule proposal shall be deemed
17 approved upon proper passage of a concurrent resolution identifying
18 the repealer or repealers by both committees and both houses.

19 No request for an expedited repeal shall be initiated after May
20 1. Upon final legislative adoption, the agency shall comply with
21 additional publication requirements as provided by law.

22 An agency, at any point prior to final legislative adoption, may
23 withdraw the expedited agency rule repeal request.
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1 SECTION 3. AMENDATORY 75 O.S. 2011, Section 308, as
2 amended by Section 4, Chapter 357, O.S.L. 2013 (75 O.S. Supp. 2019,
3 Section 308), is amended to read as follows:

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

9 1. If such rules are received on or before ~~April 1~~ March 1, the
10 Legislature shall have until the last day of the regular legislative
11 session of that year to review such rules; and

12 2. If such rules are received after ~~April 1~~ March 1, the
13 Legislature shall have until the last day of the regular legislative
14 session of the next year to review such rules.

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

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

1 disapproves the permanent rule. Rules may be disapproved in part or
2 in whole by the Legislature. Upon enactment of any joint resolution
3 disapproving a rule, the agency shall file notice of such
4 legislative disapproval with the Secretary for publication in "The
5 Oklahoma Register".

6 D. Unless otherwise provided by specific vote of the
7 Legislature, joint resolutions introduced for purposes of
8 disapproving or approving a rule or the omnibus joint resolution
9 described in Section ~~6~~ 308.3 of this ~~act~~ title shall not be subject
10 to regular legislative cutoff dates, shall be limited to such
11 provisions as may be necessary for disapproval or approval of a
12 rule, and any such other direction or mandate regarding the rule
13 deemed necessary by the Legislature. The resolution shall contain
14 no other provisions.

15 E. A proposed permanent rule shall be deemed finally adopted
16 if:

17 1. Approved by the Legislature pursuant to Section ~~6~~ 308.3 of
18 this ~~act~~ title, provided that any such joint resolution becomes law
19 in accordance with Section 11 of Article VI of the Oklahoma
20 Constitution;

21 2. Approved by the Governor pursuant to subsection D of Section
22 ~~6~~ 308.3 of this ~~act~~ title;

23 3. Approved by a joint resolution pursuant to subsection B of
24 this section, provided that any such resolution becomes law in
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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~~ 308.3 of this ~~act~~ title which has been
5 vetoed by the Governor in accordance with Section 11 of Article VI
6 of the 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 SECTION 4. This act shall become effective November 1, 2020.

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