

STATE OF OKLAHOMA

2nd Session of the 59th Legislature (2024)

HOUSE BILL 3059

By: Steagall

AS INTRODUCED

An Act relating to the Administrative Procedures Act; amending 75 O.S. 2021, Section 253, as amended by Section 2, Chapter 38, O.S.L. 2023 (75 O.S. Supp. 2023, Section 253), which relates to emergency rules; requiring an emergency under the Oklahoma Emergency Management Act of 2003 or the Catastrophic Health Emergency Powers Act; adding timing provisions; clarifying emergency rule effective dates; and declaring an emergency.

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

SECTION 1. AMENDATORY 75 O.S. 2021, Section 253, as amended by Section 2, Chapter 38, O.S.L. 2023 (75 O.S. Supp. 2023, Section 253), is amended to read as follows:

Section 253. A. 1. If an emergency declaration has been made pursuant to the Oklahoma Emergency Management Act of 2003, or the Catastrophic Health Emergency Powers Act, and an agency finds that a rule is necessary as an emergency measure, the rule may be promulgated during the declared emergency period pursuant to the provisions of this section, if the rule is first approved by the

1 Governor. The Governor shall not approve the adoption, amendment,
2 revision or revocation of a rule as an emergency measure unless the
3 agency submits substantial evidence that the rule is necessary as an
4 emergency measure to do any of the following:

- 5 a. protect the public health, safety or welfare,
- 6 b. comply with deadlines in amendments to an agency's
7 governing law or federal programs,
- 8 c. avoid violation of federal law or regulation or other
9 state law,
- 10 d. avoid imminent reduction to the agency's budget, or
- 11 e. avoid serious prejudice to the public interest.

12 As used in this subsection, "substantial evidence" shall mean
13 credible evidence which is of sufficient quality and probative value
14 to enable a person of reasonable caution to support a conclusion.

15 2. In determining whether a rule is necessary as an emergency
16 measure, the Governor shall consider whether the emergency situation
17 was created due to the agency's delay or inaction and could have
18 been averted by timely compliance with the provisions of this
19 chapter.

20 B. An emergency rule adopted by an agency shall:

21 1. Be prepared in the format required by Section 251 of this
22 title;

23 2. a. Include an impact statement which meets the
24 requirements set forth in subparagraph b of this
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1 paragraph unless the Governor waives the requirement
2 in writing upon a finding that the rule impact
3 statement or the specified contents thereof are
4 unnecessary or contrary to the public interest.

5 b. The rule impact statement shall include, but not be
6 limited to:

- 7 (1) a brief description of the proposed rule,
8 (2) a description of the persons who most likely will
9 be affected by the proposed rule, including
10 classes that will bear the costs of the proposed
11 rule, and any information on cost impacts
12 received by the agency from any private or public
13 entities,
14 (3) a description of the classes of persons who will
15 benefit from the proposed rule,
16 (4) a description of the probable economic impact of
17 the proposed rule upon affected classes of
18 persons or political subdivisions, including a
19 listing of all fee changes and, whenever
20 possible, a separate justification for each fee
21 change,
22 (5) the probable costs and benefits to the agency and
23 to any other agency of the implementation and
24 enforcement of the proposed rule, and any
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1 anticipated effect on state revenues, including a
2 projected net loss or gain in such revenues if it
3 can be projected by the agency,

4 (6) a determination of whether implementation of the
5 proposed rule may have an adverse economic effect
6 on small business as provided by the Oklahoma
7 Small Business Regulatory Flexibility Act,

8 (7) an explanation of the measures the agency has
9 taken to minimize compliance costs and a
10 determination of whether there are less costly or
11 nonregulatory methods or less intrusive methods
12 for achieving the purpose of the proposed rule,

13 (8) a determination of the effect of the proposed
14 rule on the public health, safety, and
15 environment and, if the proposed rule is designed
16 to reduce significant risks to the public health,
17 safety, and environment, an explanation of the
18 nature of the risk and to what extent the
19 proposed rule will reduce the risk,

20 (9) a determination of any detrimental effect on the
21 public health, safety, and environment if the
22 proposed rule is not implemented, and

23 (10) the date the rule impact statement was prepared
24 and if modified, the date modified.
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1 c. The rule impact statement shall be prepared on or
2 before the date the emergency rule is adopted;

3 3. Be transmitted pursuant to Section 464 of Title 74 of the
4 Oklahoma Statutes to the Governor, the Speaker of the House of
5 Representatives, the President Pro Tempore of the Senate, and the
6 chief legislative officer of each chamber, along with the
7 information required by this subsection within ten (10) days after
8 the rule is adopted; and

9 4. Not be invalidated on the ground that the contents of the
10 rule impact statement are insufficient or inaccurate.

11 C. 1. Within forty-five (45) calendar days of receipt of a
12 proposed emergency rule filed with the Governor, the Speaker of the
13 House of Representatives, the President Pro Tempore of the Senate,
14 and the chief legislative officer of each chamber, the Governor
15 shall review the demonstration of emergency pursuant to subsection A
16 of this section, and shall separately review the rule in accordance
17 with the standards prescribed in paragraph 3 of this subsection.

18 2. Prior to approval of emergency rules, the Governor shall
19 submit the emergency rule to the Secretary of State for review of
20 proper formatting.

21 3. If the Governor determines the agency filed the rule during
22 a declared emergency period and has established the rule is
23 necessary as an emergency measure pursuant to subsection A of this
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1 section, the Governor shall approve the proposed emergency rule if
2 the rule is:

- 3 a. clear, concise, and understandable,
- 4 b. within the power of the agency to make and within the
5 enacted legislative standards, and
- 6 c. made in compliance with the requirements of the
7 Administrative Procedures Act.

8 D. 1. Within the forty-five-calendar-day period set forth in
9 paragraph 1 of subsection C of this section, the Governor may
10 approve the emergency rule or disapprove the emergency rule.

11 Failure of the Governor to approve an emergency rule within the
12 specified period shall constitute disapproval of the emergency rule.

13 2. If the Governor disapproves the adopted emergency rule, the
14 Governor shall return the entire document to the agency with reasons
15 for the disapproval. If the agency elects to modify the rule, the
16 agency shall adopt the modifications, and shall file the modified
17 rule in accordance with the requirements of subsection B of this
18 section.

19 3. Upon disapproval of an emergency rule, the Governor shall,
20 within fifteen (15) days, make written notification to the Speaker
21 of the House of Representatives, the President Pro Tempore of the
22 Senate, the chief legislative officer of each chamber, and the
23 Office of Administrative Rules.

1 E. 1. Upon approval of an emergency rule, the Governor shall
2 immediately make written notification to the agency, the Speaker of
3 the House of Representatives, the President Pro Tempore of the
4 Senate, the chief legislative officer of each chamber, and the
5 Office of Administrative Rules. Upon receipt of the notice of the
6 approval, the agency shall file with the Office of Administrative
7 Rules as many copies of the notice of approval and the emergency
8 rule as required by the Secretary.

9 2. Emergency rules shall be subject to legislative review
10 pursuant to Section 308 of this title.

11 3. The emergency rule shall be published in accordance with the
12 provisions of Section 255 of this title in "The Oklahoma Register"
13 following the approval by the Governor. The Governor's approval and
14 the approved rules shall be retained as official records by the
15 Office of Administrative Rules.

16 F. 1. Upon approval by the Governor, an emergency rule shall
17 be considered promulgated and shall be in force immediately, or on
18 such later date as specified therein. An emergency rule shall only
19 be applied prospectively from its effective date.

20 2. Except as otherwise provided in this subsection, the
21 emergency rule shall remain in full force and effect through the
22 first day of the next succeeding regular session of the Legislature
23 following promulgation of such emergency rule until September 14
24 following such session, or until the declared emergency period has
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1 terminated pursuant to Section 683.9 or Section 6405 of Title 63 of
2 the Oklahoma Statutes, whichever is earlier, unless it is made
3 ineffective pursuant to subsection H of this section.

4 G. No agency shall adopt any emergency rule which establishes
5 or increases fees, except during such times as the Legislature is in
6 session, unless specifically mandated by the Legislature or federal
7 legislation, or when the failure to establish or increase fees would
8 conflict with an order issued by a court of law.

9 H. 1. If an emergency rule is of a continuing nature, the
10 agency promulgating such emergency rule shall initiate proceedings
11 for promulgation of a permanent rule pursuant to Sections 303
12 through 308.2 of this title. If an emergency rule is superseded by
13 another emergency rule prior to the enactment of a permanent rule,
14 the latter emergency rule shall retain the same expiration date as
15 the superseded emergency rule, unless otherwise authorized by the
16 Legislature.

17 2. Any promulgated emergency rule shall be made ineffective if:

- 18 a. disapproved by the Legislature,
19 b. superseded by the promulgation of permanent rules,
20 c. any adopted rules based upon such emergency rules are
21 subsequently disapproved pursuant to Section 308 of
22 this title, or
23 d. an earlier expiration date is specified by the agency
24 in the rules.
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1 3. a. Emergency rules in effect immediately upon approval by
2 the Governor or in effect on the first day of the
3 session shall be null and void on September 15
4 following sine die adjournment of the Legislature, or
5 on the date the declared emergency is terminated,
6 whichever is earlier, unless otherwise specifically
7 provided by the Legislature.

8 b. Unless otherwise authorized by the Legislature, an
9 agency shall not adopt any emergency rule, which has
10 become null and void pursuant to subparagraph a of
11 this paragraph, as a new emergency rule or adopt any
12 emergency rules of similar scope or intent as the
13 emergency rules which became null and void pursuant to
14 subparagraph a of this paragraph.

15 I. Emergency rules shall not become effective unless approved
16 by the Governor pursuant to the provisions of this section.

17 J. 1. The requirements of Section 303 of this title relating
18 to notice and hearing shall not be applicable to emergency rules
19 promulgated pursuant to the provisions of this section. Provided,
20 this shall not be construed to prevent an abbreviated notice and
21 hearing process determined to be necessary by an agency.

22 2. The rule report required pursuant to Section 303.1 of this
23 title shall not be applicable to emergency rules promulgated
24 pursuant to the provisions of this section. Provided, this shall
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1 not be construed to prevent an agency from complying with such
2 requirements at the discretion of such agency.

3 3. The statement of submission required by Section 303.1 of
4 this title shall not be applicable to emergency rules promulgated
5 pursuant to the provisions of this section.

6 K. Prior to approval or disapproval of an emergency rule by the
7 Governor, an agency may withdraw from review an emergency rule
8 submitted pursuant to the provisions of this section. Notice of
9 such withdrawal shall be given to the Governor, the Speaker of the
10 House of Representatives, the President Pro Tempore of the Senate in
11 accordance with the requirements set forth in Section 464 of Title
12 74 and to the Office of Administrative Rules as required by the
13 Secretary. In order to be promulgated as emergency rules, any
14 replacement rules shall be resubmitted pursuant to the provisions of
15 this section.

16 L. Upon completing the requirements of this section, an agency
17 may promulgate a proposed emergency rule. No emergency rule is
18 valid unless promulgated in substantial compliance with the
19 provisions of this section.

20 M. Emergency rules adopted by an agency or approved by the
21 Governor shall be subject to review pursuant to the provisions of
22 Section 306 of this title.

23 SECTION 2. It being immediately necessary for the preservation
24 of the public peace, health or safety, an emergency is hereby
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1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.
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