

1 ENGROSSED SENATE
2 BILL NO. 1024

By: Bergstrom and Jett of the
Senate

3 and

4 Kendrix of the House

5
6 An Act relating to the Administrative Procedures Act;
7 amending 75 O.S. 2021, Section 303, which relates to
8 the procedure for adopting, amending, or repealing a
9 rule; requiring agency to submit statement of scope
10 prior to rulemaking; specifying contents of
11 statement; requiring submission of statement to
12 Secretary of State; requiring determinations by
13 Secretary of State and Governor; prohibiting certain
14 actions by certain employees prior to certain
15 determination; providing for submission and
16 publication of certain approved statement;
17 establishing provisions for revision of statement of
18 scope; providing for expiration of certain statement
19 of scope; prohibiting certain rulemaking following
20 expiration; updating statutory language; providing an
21 effective date; and declaring an emergency.

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

23 SECTION 1. AMENDATORY 75 O.S. 2021, Section 303, is
24 amended to read as follows:

Section 303. A. Any agency seeking to promulgate or amend any
emergency or permanent rule or rules shall prepare a statement of
scope of the rule or rules that it plans to promulgate. The
statement shall include:

1. A description of the objective of the rule or rules;

1 2. A description of any existing policies or provisions
2 included in the rule or rules, the newly proposed policies or
3 provisions to be included in the rule or rules, and an analysis of
4 alternatives to adopting the rule or rules;

5 3. The statutory authority for promulgating the rule or rules;

6 4. Estimates of the amount of time that would be spent by state
7 employees to develop the rule or rules and of other resources that
8 would be utilized to develop the rule or rules;

9 5. A description of all of the entities, whether public or
10 private, that may be affected by the rule or rules; and

11 6. A summary and preliminary comparison of any existing or
12 proposed federal regulation that is intended to address the
13 activities to be regulated by the rule or rules proposed to be
14 promulgated.

15 B. 1. An agency that has prepared a statement of scope of any
16 proposed rule or rules shall present that statement to the Secretary
17 of State. The Secretary of State shall make a determination as to
18 whether the agency has the explicit authority to promulgate the rule
19 or rules as proposed in the statement of scope and shall report the
20 statement of scope and such determination to the Governor who, in
21 his or her discretion, may approve or reject the statement of scope.

22 2. The agency shall not begin promulgating the rule or rules
23 pursuant to the Administrative Procedures Act until the Governor
24 issues a written notice of approval of the statement of scope.

1 Except for activity necessary to prepare the statement of scope of
2 the proposed rule or rules, no state employee or official may
3 perform any activity in connection with the drafting of any proposed
4 rule or rules until the Governor approves the statement of scope.

5 C. 1. If the Governor approves a statement of scope for any
6 proposed rule or rules, the agency shall send an electronic copy of
7 the statement to the Secretary of State, in the form and manner
8 prescribed by the Secretary of State, for publication in "The
9 Oklahoma Register". The agency shall include with any statement of
10 scope sent to the Secretary of State the date of the Governor's
11 approval of the statement of scope. The Secretary of State shall
12 assign a discrete identifying number to each statement of scope and
13 shall include that number and the date of the Governor's approval in
14 the publication of the statement of scope.

15 2. On the same day that the agency sends the statement to the
16 chairs of the Administrative Rules Committees of the Senate and the
17 House of Representatives.

18 D. If at any time after a statement of scope is approved under
19 subsection B of this section, the agency changes the scope of the
20 proposed rule or rules in any meaningful or measurable way,
21 including changing the scope of the proposed rule or rules so as to
22 include in the scope any activity, business, material, or product
23 that is not specifically included in the original scope, the agency
24 shall prepare and obtain approval of a revised statement of scope in

1 the same manner as the original statement was prepared and approved
2 under subsection B of this section. No state employee may perform
3 any activity in connection with the drafting of the proposed rule or
4 rules except for an activity necessary to prepare the revised
5 statement of scope until the revised statement is approved.

6 E. A statement of scope shall expire thirty (30) months after
7 the date on which it is published in "The Oklahoma Register". After
8 a statement of scope expires, an agency may not submit a proposed
9 rule based upon that statement of scope to the Legislature for
10 review, and any such rule that has not been submitted to the
11 Legislature for review before that date shall be considered
12 withdrawn on such date. For purposes of this subsection, a revised
13 statement of scope prepared under subsection D of this section shall
14 expire on the date that is thirty (30) months after the date on
15 which the revised statement is published in "The Oklahoma Register".

16 F. Prior to the adoption of any rule or amendment or revocation
17 of a rule and except as provided for pursuant to the expedited rule
18 repeal process provided in Section 9 of this act, the agency shall:

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

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

3 3. Hold a hearing, if required, as provided by subsection E H
4 of this section;

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

18 5. Consider the effect its intended action may have on the
19 various types of consumer groups. If an agency finds that its
20 actions may adversely affect such groups, the agency may modify its
21 actions to exclude that type of activity; and

22 6. When an agency provides notice pursuant to paragraph 1 of
23 this subsection, the agency shall provide one ~~(1)~~ electronic copy of
24 the complete text of the proposed rule, amendment, or revocation and

1 a copy of the notice to the Governor and to the appropriate cabinet
2 secretary. No agency may adopt any proposed rule, amendment, or
3 revocation if, within thirty (30) days from providing notice to the
4 Governor and the appropriate cabinet secretary, the agency receives
5 express written disapproval from the Governor or the cabinet
6 secretary. If the Governor or the cabinet secretary disapproves a
7 rule, the affected agency shall be notified in writing of the
8 reasons for disapproval. If, after thirty (30) days of providing
9 the notice to the Governor and the cabinet secretary, the agency has
10 not received an express written disapproval, the agency may proceed
11 with the rulemaking process.

12 ~~B.~~ G. The notice required by paragraph 1 of subsection ~~A~~ F of
13 this section shall include, but not be limited to:

- 14 1. In simple language, a brief summary of the rule;
- 15 2. The proposed action being taken;
- 16 3. The circumstances which created the need for the rule;
- 17 4. The specific legal authority, including statutory citations,
18 authorizing the proposed rule;
- 19 5. The intended effect of the rule;
- 20 6. If the agency determines that the rule affects business
21 entities, a request that such entities provide the agency, within
22 the comment period, in dollar amounts if possible, the increase in
23 the level of direct costs such as fees, and indirect costs such as
24 reporting, recordkeeping, equipment, construction, labor,

1 professional services, revenue loss, or other costs expected to be
2 incurred by a particular entity due to compliance with the proposed
3 rule;

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

7 8. Whether or not the agency intends to issue a rule impact
8 statement according to subsection Ð I of this section and where
9 copies of such impact statement may be obtained for review by the
10 public;

11 9. The time when, the place where, and the manner in which
12 persons may demand a hearing on the proposed rule if the notice does
13 not already provide for a hearing. If the notice provides for a
14 hearing, the time and place of the hearing shall be specified in the
15 notice; and

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

19 The number of copies of such notice as specified by the
20 Secretary of State shall be submitted to the Secretary of State who
21 shall publish the notice in "The Oklahoma Register" pursuant to the
22 provisions of Section 255 of this title.

23 Prior to or within three (3) days after publication of the
24 notice in "The Oklahoma Register", the agency shall cause a copy of

1 the notice of the proposed rule adoption and the rule impact
2 statement, if available, to be mailed to all persons who have made a
3 timely request of the agency for advance notice of its rulemaking
4 proceedings. Provided, in lieu of mailing copies, an agency may
5 electronically notify interested persons that a copy of the proposed
6 rule and the rule impact statement, if available, may be viewed on
7 the agency's website. If an agency posts a copy of the proposed
8 rule and rule impact statement on its website, the agency shall not
9 charge persons for the cost of downloading or printing the proposed
10 rule or impact statement. Each agency shall maintain a listing of
11 persons or entities requesting such notice.

12 ~~C.~~ H. 1. If the published notice does not already provide for
13 a hearing, an agency shall schedule a hearing on a proposed rule if,
14 within thirty (30) days after the published notice of the proposed
15 rule adoption, a written request for a hearing is submitted by:

- 16 a. at least ten persons,
17 b. a political subdivision,
18 c. an agency, or
19 d. an association having not less than twenty-five
20 members.

21 At that hearing persons may present oral argument, data, and
22 views on the proposed rule.
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1 2. A hearing on a proposed rule may not be held earlier than
2 thirty (30) days after notice of the hearing is published pursuant
3 to subsection ~~B~~ G of this section.

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

9 ~~D~~ I. 1. Except as otherwise provided in this subsection, an
10 agency shall issue a rule impact statement of a proposed rule prior
11 to or within fifteen (15) days after the date of publication of the
12 notice of proposed rule adoption. The rule impact statement may be
13 modified after any hearing or comment period afforded pursuant to
14 the provisions of this section.

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

- 17 a. a brief description of the purpose of the proposed
18 rule,
- 19 b. a description of the classes of persons who most
20 likely will be affected by the proposed rule,
21 including classes that will bear the costs of the
22 proposed rule, and any information on cost impacts
23 received by the agency from any private or public
24 entities,

- 1 c. a description of the classes of persons who will
2 benefit from the proposed rule,
- 3 d. a description of the probable economic impact of the
4 proposed rule upon affected classes of persons or
5 political subdivisions, including a listing of all fee
6 changes and, whenever possible, a separate
7 justification for each fee change,
- 8 e. the probable costs and benefits to the agency and to
9 any other agency of the implementation and enforcement
10 of the proposed rule, the source of revenue to be used
11 for implementation and enforcement of the proposed
12 rule, and any anticipated effect on state revenues,
13 including a projected net loss or gain in such
14 revenues if it can be projected by the agency,
- 15 f. a determination of whether implementation of the
16 proposed rule will have an economic impact on any
17 political subdivisions or require their cooperation in
18 implementing or enforcing the rule,
- 19 g. a determination of whether implementation of the
20 proposed rule may have an adverse economic effect on
21 small business as provided by the Oklahoma Small
22 Business Regulatory Flexibility Act,
- 23 h. an explanation of the measures the agency has taken to
24 minimize compliance costs and a determination of

1 whether there are less costly or nonregulatory methods
2 or less intrusive methods for achieving the purpose of
3 the proposed rule,

4 i. a determination of the effect of the proposed rule on
5 the public health, safety, and environment and, if the
6 proposed rule is designed to reduce significant risks
7 to the public health, safety, and environment, an
8 explanation of the nature of the risk and to what
9 extent the proposed rule will reduce the risk,

10 j. a determination of any detrimental effect on the
11 public health, safety, and environment if the proposed
12 rule is not implemented, and

13 k. the date the rule impact statement was prepared and if
14 modified, the date modified.

15 3. To the extent an agency for good cause finds the preparation
16 of a rule impact statement or the specified contents thereof are
17 unnecessary or contrary to the public interest in the process of
18 adopting a particular rule, the agency may request the Governor to
19 waive such requirement. Such request shall be in writing and shall
20 state the agency's findings and the justification for such findings.
21 Upon request by an agency, the Governor may also waive the rule
22 impact statement requirements if the agency is required to implement
23 a statute or federal requirement that does not require an agency to
24 interpret or describe the requirements, such as federally mandated

1 provisions which afford the agency no discretion to consider less
2 restrictive alternatives. If the Governor fails to waive such
3 requirement, in writing, prior to publication of the notice of the
4 intended rulemaking action, the rule impact statement shall be
5 completed. The determination to waive the rule impact statement
6 shall not be subject to judicial review.

7 4. The rule shall not be invalidated on the ~~ground~~ grounds that
8 the contents of the rule impact statement are insufficient or
9 inaccurate.

10 ~~E.~~ J. Upon completing the requirements of this section, an
11 agency may adopt a proposed rule. No rule is valid unless adopted
12 in substantial compliance with the provisions of this section.

13 SECTION 2. This act shall become effective July 1, 2025.

14 SECTION 3. It being immediately necessary for the preservation
15 of the public peace, health or safety, an emergency is hereby
16 declared to exist, by reason whereof this act shall take effect and
17 be in full force from and after its passage and approval.

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