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April 10, 2017

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1944

By: Jordan of the House

and

Dahm of the Senate

COMMITTEE SUBSTITUTE

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[ statutes and reports - modifying various provisions
in the Administrative Procedures Act - codification -
effective date ]
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~~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 ~~approved or~~ ~~disapproved~~ reviewed by the Legislature and the Governor ~~as provided~~ by Section 253 of this title, or a proposed permanent rule which has been approved by the agency, but has not been approved or

~~disapproved by the Legislature or by declaration of the Governor as provided by subsection D of Section 6 of this act;~~

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

a. the Legislature or any branch, committee or officer thereof, and

b. the courts;

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

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

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

- 1 ~~b. approved by the Governor pursuant to subsection D of~~
2 ~~Section 6 of this act,~~
- 3 ~~e. approved by a joint resolution pursuant to subsection~~
4 ~~B of Section 308 of this title, provided that any such~~
5 ~~resolution becomes law in accordance with Section 11~~
6 ~~of Article VI of the Oklahoma Constitution, or~~
- 7 ~~d. disapproved by a joint resolution pursuant to~~
8 ~~subsection B of Section 308 of this title or Section 6~~
9 ~~of this act, which has been vetoed by the Governor in~~
10 ~~accordance with Section 11 of Article VI of the~~
11 ~~Oklahoma Constitution and the veto has not been~~
12 ~~overridden;~~

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

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

22 8. "Individual proceeding" means the formal process employed by
23 an agency having jurisdiction by law to resolve issues of law or
24

1 fact between parties and which results in the exercise of discretion
2 of a judicial nature;

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

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

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

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

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

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

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

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

23 17. "Rule" means any agency statement or group of related
24 statements of general applicability and future effect that

1 implements, interprets or prescribes law or policy, or describes the
2 procedure or practice requirements of the agency. The term "rule"
3 includes the amendment or revocation of an effective rule but does
4 not include:

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

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

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

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

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

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

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

1 rule which would have been superseded by a disapproved permanent
2 rule, shall be deemed null and void on the date the Governor
3 disapproves the permanent rule.

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

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

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

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

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

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

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

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

21 E. ~~A proposed permanent rule shall be deemed finally adopted~~
22 ~~if:~~

23 1. ~~Approved by the Legislature pursuant to Section 6 of this~~
24 ~~act, provided that any such joint resolution becomes law in~~

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

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

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

~~4. Disapproved by a joint resolution pursuant to subsection B
of this section 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~~

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

2. After April 1 of each year, transmission of a rule for
legislative review shall result in the carryover for consideration
by the Legislature during the next regular session and shall be
considered to have been originally transmitted to the Legislature on
the first day of said next regular session for review pursuant to
this section. An agency may request direct legislative approval of
such rules provided by subsection B of this section. An agency may

1 also adopt emergency rules under the provisions of Section 253 of
2 this title.

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

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

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

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

18 SECTION 4. AMENDATORY 75 O.S. 2011, Section 308.1, as
19 amended by Section 5, Chapter 357, O.S.L. 2013 (75 O.S. Supp. 2016,
20 Section 308.1), is amended to read as follows:

21 Section 308.1. A. Upon final adoption, the agency shall submit
22 the rule to the Secretary for filing and publishing such rule
23 pursuant to Sections 251 and 255 of this title.

24

1 B. The text of the rule submitted for publication shall be the
2 same as the text of the rule that has been finally adopted.

3 C. After final adoption, filing, and publication, an effective
4 agency rule may be amended by the Legislature in a joint resolution
5 if such resolution becomes law in accordance with Section 11 of
6 Article VI of the Oklahoma Constitution. Unless otherwise provided
7 by specific vote of the Legislature, joint resolutions introduced
8 for purposes of amending a rule shall not be subject to regular
9 legislative cutoff dates, shall be limited to such provisions as may
10 be necessary for amendment of a rule, and any such other direction
11 or mandate regarding the rule deemed necessary by the Legislature.
12 The resolution shall contain no other provisions.

13 SECTION 5. REPEALER Section 6, Chapter 357, O.S.L. 2013
14 (75 O.S. Supp. 2016, Section 308.3), is hereby repealed.

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

16 COMMITTEE REPORT BY: COMMITTEE ON GENERAL GOVERNMENT
17 April 10, 2017 - DO PASS AS AMENDED
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