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February 19, 2020

AS AMENDED

SENATE BILL NO. 263

By: Dahm of the Senate

and

Gann of the House

[agency administrative rules - Administrative Procedures Act - authority to amend proposed and effective agency rules -

~~emergency~~ I

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

SECTION 1. AMENDATORY 75 O.S. 2011, Section 250.4a, is amended to read as follows:

Section 250.4a. A. Any agency exempt from all or part of the Administrative Procedures Act pursuant to subsection A of Section 250.4 of this title shall maintain and make available for public inspection its exempt rules at its principal place of business, and shall also publish its exempt rules on its website.

B. It is recognized by the Oklahoma Legislature that agencies specified by subsection A of this section have published rules containing obsolete rules or internal policy statements or agency

1 statements which do not meet the Administrative Procedures Act
2 definition of rules. Therefore, ~~by December 31, 2005,~~ each such
3 agency shall conduct an internal review of its rules to determine
4 whether each of its rules is current and is a rule as such term is
5 defined by the Administrative Procedures Act. Any rule determined
6 by an agency to be obsolete or an internal policy statement or any
7 agency statement which does not meet the definition of a rule
8 pursuant to the Administrative Procedures Act shall be deleted by
9 the agency. Notice of such deletion shall be submitted to the
10 Speaker of the House of Representatives, the President Pro Tempore
11 of the Senate and the Governor for informational purposes.

12 C. The provisions of this section shall not be construed to
13 authorize any agency to amend any rule or to delete any rule which
14 affects any private rights or procedures available to the public.

15 SECTION 2. AMENDATORY 75 O.S. 2011, Section 250.10, as
16 amended by Section 49, Chapter 227, O.S.L. 2013 (75 O.S. Supp. 2019,
17 Section 250.10), is amended to read as follows:

18 Section 250.10. The Governor by Executive Order or either house
19 of the Legislature or both houses of the Legislature by resolution,
20 or a small business, may request an agency to review its rules to
21 determine whether or not the rules in question should be amended,
22 repealed or redrafted. The agency shall respond to requests from
23 the Governor or the Legislature within ~~ninety (90)~~ thirty (30)

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1 calendar days of such request and shall respond to requests from a
2 small business within ninety (90) calendar days of such request.

3 SECTION 3. AMENDATORY 75 O.S. 2011, Section 302, is
4 amended to read as follows:

5 Section 302. A. In addition to other rulemaking requirements
6 imposed by law, each agency which has rulemaking authority, shall:

7 1. Promulgate as a rule a description of the organization of
8 the agency, stating the general course and method of the operations
9 of the agency and the methods whereby the public may obtain
10 information or make submissions or requests;

11 2. Promulgate rules of practice setting forth the nature and
12 requirements of all formal and informal procedures available,
13 including a description of all forms and instructions issued by the
14 agency for use by the public;

15 3. Make available for public inspection and publish on its
16 website all rules and all other written statements of policy or
17 interpretations formulated, adopted, promulgated or used by the
18 agency in the discharge of its functions;

19 4. Make available for public inspection and publish on its
20 website pursuant to the provisions of the Open Records Act all final
21 orders, decisions and opinions.

22 B. 1. An agency shall maintain an official rulemaking record
23 for each proposed rule or promulgated rule. The record and
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1 materials incorporated by reference shall be available for public
2 inspection and shall be published on the agency's website.

3 2. The agency rulemaking record shall contain:

- 4 a. copies of all publications in "The Oklahoma Register"
5 with respect to the rule or the proceeding upon which
6 the rule is based,
- 7 b. copies of any portions of the agency's public
8 rulemaking docket containing entries relating to the
9 rule or the proceeding upon which the rule is based,
- 10 c. all written petitions, requests, submissions, and
11 comments received by the agency and all other written
12 materials considered by the agency in connection with
13 the formulation, proposal, or adoption of the rule or
14 the proceeding upon which the rule is based,
- 15 d. any official transcript of oral presentations made in
16 the proceeding upon which the rule is based or, if not
17 transcribed, any tape recording or stenographic record
18 of those presentations, and any memorandum prepared by
19 a presiding official summarizing the contents of those
20 presentations,
- 21 e. a copy of any regulatory analysis prepared for the
22 proceeding upon which the rule is based,

- 1 f. a copy of the rule and analysis of each such rule
2 filed with the Office pursuant to Section 251 of this
3 title,
4 g. all petitions for exceptions to, amendments of, or
5 repeal or suspension of, the rule,
6 h. a copy of the rule impact statement, if made, and
7 i. such other information concerning such rules as may be
8 determined necessary by the agency.

9 3. Upon judicial review, the record required by this section
10 constitutes the official agency rulemaking record with respect to a
11 rule. Except as otherwise required by a provision of law, the
12 agency rulemaking record need not constitute the exclusive basis for
13 agency action on that rule or for judicial review thereof.

14 C. 1. ~~By December 31, 2002, each~~ Each agency that issues
15 precedent-setting orders shall maintain and index all such orders
16 that the agency intends to rely upon as precedent. The index and
17 the orders shall be available for public inspection and copying in
18 the main office and each regional or district office of the agency
19 and shall be published on the agency's website. The orders shall be
20 indexed by subject.

21 2. ~~After December 31, 2002, an~~ An order shall not be relied
22 upon as precedent by an agency to the detriment of any person until
23 it has been made available for public inspection ~~and,~~ indexed, and
24 published in the manner described in this subsection.

1 3. An agency shall consistently apply rules to each person
2 subject to the jurisdiction of the agency regarding issuance of
3 orders.

4 D. An agency shall not by internal policy, memorandum, or other
5 form of action not otherwise authorized by the Administrative
6 Procedures Act:

7 1. Amend, interpret, implement, or repeal a statute or a rule;

8 2. Expand upon or limit a statute or a rule; and

9 3. Except as authorized by the Constitution of the United
10 States, the Oklahoma Constitution or a statute, expand or limit a
11 right guaranteed by the Constitution of the United States, the
12 Oklahoma Constitution, a statute, or a rule.

13 E. Any agency memorandum, internal policy, or other form of
14 action violative of this section or the spirit thereof is null,
15 void, and unenforceable.

16 F. This section shall not be construed to prohibit an agency
17 issuing an opinion or administrative decision which is authorized by
18 statute provided that, unless such opinion or administrative
19 decision is issued pursuant to the procedures required pursuant to
20 the Administrative Procedures Act, such decision or opinion shall
21 not have the force and effect of law.

22 SECTION 4. AMENDATORY 75 O.S. 2011, Section 303, as
23 amended by Section 50, Chapter 227, O.S.L. 2013 (75 O.S. Supp. 2019,
24 Section 303), is amended to read as follows:

1 Section 303. A. Prior to the adoption of any rule or amendment
2 or revocation of a rule, the agency shall:

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

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

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

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

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

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

7 1. In simple language, a brief summary of the rule;

8 2. The proposed action being taken;

9 3. The circumstances which created the need for the rule;

10 4. The specific legal authority authorizing the proposed rule;

11 5. The intended effect of the rule;

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

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

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

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

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

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

16 Prior to or within three (3) days after publication of the
17 notice in "The Oklahoma Register", the agency shall cause a copy of
18 the notice of the proposed rule adoption and the rule impact
19 statement, if available, to be mailed to all persons who have made a
20 timely request of the agency for advance notice of its rulemaking
21 proceedings. Provided, in lieu of mailing copies, an agency may
22 electronically notify interested persons that a copy of the proposed
23 rule and the rule impact statement, if available, may be viewed on
24 the agency's website. If an agency posts a copy of the proposed

1 rule and rule impact statement on its website, the agency shall not
2 charge persons for the cost of downloading or printing the proposed
3 rule or impact statement. Each agency shall maintain a listing of
4 persons or entities requesting such notice.

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

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

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

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

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

23 D. 1. Except as otherwise provided in this subsection, an
24 agency shall issue a rule impact statement of a proposed rule prior

1 to or within fifteen (15) days after the date of publication of the
2 notice of proposed rule adoption. The rule impact statement may be
3 modified after any hearing or comment period afforded pursuant to
4 the provisions of this section.

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

7 a. a brief description of the purpose of the proposed
8 rule,

9 b. a description of the classes of persons who most
10 likely will be affected by the proposed rule,
11 including classes that will bear the costs of the
12 proposed rule, and any information on cost impacts
13 received by the agency from any private or public
14 entities,

15 c. a description of the classes of persons who will
16 benefit from the proposed rule,

17 d. a description of the probable economic impact of the
18 proposed rule upon affected classes of persons or
19 political subdivisions, including a listing of all fee
20 changes and, whenever possible, a separate
21 justification for each fee change,

22 e. the probable costs and benefits to the agency and to
23 any other agency of the implementation and enforcement
24 of the proposed rule, the source of revenue to be used

- 1 for implementation and enforcement of the proposed
2 rule, and any anticipated effect on state revenues,
3 including a projected net loss or gain in such
4 revenues if it can be projected by the agency,
- 5 f. a determination of whether implementation of the
6 proposed rule will have an economic impact on any
7 political subdivisions or require their cooperation in
8 implementing or enforcing the rule,
- 9 g. a determination of whether implementation of the
10 proposed rule may have an adverse economic effect on
11 small business as provided by the Oklahoma Small
12 Business Regulatory Flexibility Act,
- 13 h. an explanation of the measures the agency has taken to
14 minimize compliance costs and a determination of
15 whether there are less costly or nonregulatory methods
16 or less intrusive methods for achieving the purpose of
17 the proposed rule,
- 18 i. a determination of the effect of the proposed rule on
19 the public health, safety and environment and, if the
20 proposed rule is designed to reduce significant risks
21 to the public health, safety and environment, an
22 explanation of the nature of the risk and to what
23 extent the proposed rule will reduce the risk,
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- j. a determination of any detrimental effect on the public health, safety and environment if the proposed rule is not implemented, and
- k. the date the rule impact statement was prepared and if modified, the date modified.

3. To the extent an agency for good cause finds the preparation of a rule impact statement or the specified contents thereof are unnecessary or contrary to the public interest in the process of adopting a particular rule, the agency may request the Governor to waive such requirement. Such request shall be in writing and shall state the agency's findings and the justification for such findings. Upon request by an agency, the Governor may also waive the rule impact statement requirements if the agency is required to implement a statute or federal requirement that does not require an agency to interpret or describe the requirements, such as federally mandated provisions which afford the agency no discretion to consider less restrictive alternatives. If the Governor fails to waive such requirement, in writing, prior to publication of the notice of the intended rulemaking action, the rule impact statement shall be completed. The determination to waive the rule impact statement shall not be subject to judicial review.

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

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 5. AMENDATORY 75 O.S. 2011, Section 307.1, is
5 amended to read as follows:

6 Section 307.1. A. The Speaker of the House of Representatives
7 and the President Pro Tempore of the Senate may each establish a
8 rule review committee or designate standing committees of each such
9 house to review administrative rules.

10 B. Such committees may meet separately or jointly at any time,
11 during sessions of the Legislature and in the interim.

12 C. The function of the committees so established or designated
13 shall be the review and promotion of adequate and proper rules by
14 agencies and developing an understanding on the part of the public
15 respecting such rules. ~~Such function shall be advisory only.~~

16 Each committee may review all adopted rules and such other rules
17 the committee deems appropriate and may make recommendations
18 concerning such rules to their respective house of the Legislature,
19 or to the agency adopting the rule, or to both their respective
20 house of the Legislature and the agency.

21 D. In addition to the review of agency-adopted rules pursuant
22 to ~~this act~~ Section 250 et seq. of this title, each such committee
23 shall have the power and duty to:

1 1. Conduct a continuous study and investigations as to whether
2 additional legislation or changes in legislation are needed based on
3 various factors, including but not limited to, review of proposed
4 rules, review of existing rules including but not limited to
5 consideration of amendments to or repeal of existing rules, the lack
6 of rules, the ability of agencies to promulgate such rules, and the
7 needs of administrative agencies;

8 2. Conduct a continuous study of the rulemaking process of all
9 state agencies including those agencies exempted by Section 250.4 of
10 this title for the purpose of improving the rulemaking process;

11 3. Conduct such other studies and investigations relating to
12 rules as may be determined to be necessary by the committee; and

13 4. Monitor and investigate compliance of agencies with the
14 provisions of the Administrative Procedures Act, make periodic
15 investigations of the rulemaking activities of all agencies and
16 evaluate and report on all rules in terms of their propriety, legal
17 adequacy, relation to statutory authorization, economic and
18 budgetary effects and public policy.

19 SECTION 6. AMENDATORY 75 O.S. 2011, Section 308, as
20 amended by Section 4, Chapter 357, O.S.L. 2013 (75 O.S. Supp. 2019,
21 Section 308), is amended to read as follows:

22 Section 308. A. Upon receipt of any adopted rules, the Speaker
23 of the House of Representatives and the President Pro Tempore of the
24 Senate shall assign such rules to the appropriate committees of each

1 house of the Legislature for review. Except as otherwise provided
2 by this section:

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

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

9 B. By the adoption of a joint resolution during the review
10 period specified in subsection A of this section, the Legislature
11 may disapprove ~~or~~, approve or amend any rule. Any such action may
12 apply to any rule in whole or in part. The Legislature may also
13 take any such action and provide further instructions to the agency
14 that promulgated the rule.

15 C. Unless otherwise authorized by the Legislature, whenever a
16 rule is disapproved as provided in subsection B of this section, the
17 agency adopting such rules shall not have authority to resubmit an
18 identical rule, except during the first sixty (60) calendar days of
19 the next regular legislative session. Any effective emergency rule
20 which would have been superseded by a disapproved permanent rule
21 shall be deemed null and void on the date the Legislature
22 disapproves the permanent rule. Rules may be disapproved in part or
23 in whole by the Legislature. Upon enactment of any joint resolution
24 disapproving or amending a rule, the agency shall file notice of

1 such legislative disapproval or amendment with the Secretary for
2 publication in "The Oklahoma Register".

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

12 E. A proposed permanent rule shall be deemed finally adopted
13 if:

14 1. Approved or amended by the Legislature pursuant to Section ~~6~~
15 308.3 of this ~~act~~ title, provided that any such joint resolution
16 becomes law in accordance with Section 11 of Article VI of the
17 Oklahoma Constitution;

18 2. Approved by the Governor pursuant to subsection D of Section
19 ~~6~~ 308.3 of this ~~act~~ title;

20 3. Approved or amended by a joint resolution pursuant to
21 subsection B of this section, provided that any such resolution
22 becomes law in accordance with Section 11 of Article VI of the
23 Oklahoma Constitution; or
24

1 4. Disapproved by a joint resolution pursuant to subsection B
2 of this section or Section ~~6~~ 308.3 of this ~~act~~ title which has been
3 vetoed by the Governor in accordance with Section 11 of Article VI
4 of the Oklahoma Constitution and the veto has not been overridden.

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

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

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

16 SECTION 7. AMENDATORY 75 O.S. 2011, Section 308.1, as
17 amended by Section 5, Chapter 357, O.S.L. 2013 (75 O.S. Supp. 2019,
18 Section 308.1), is amended to read as follows:

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

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

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

11 SECTION 8. AMENDATORY 75 O.S. 2011, Section 308.2, is
12 amended to read as follows:

13 Section 308.2. A. No agency rule is valid or effective against
14 any person or party, or may be invoked by the agency for any
15 purpose, until it has been promulgated as required in the
16 Administrative Procedures Act.

17 B. A proceeding to contest any promulgated rule on the ground
18 of noncompliance with the procedural requirements of Article I of
19 the Administrative Procedures Act must be commenced within ~~two (2)~~
20 three (3) years from the effective date of the promulgated rule.

21 C. Rules shall be valid and binding on persons they affect, and
22 shall have the force of law unless amended or revised or unless a
23 court of competent jurisdiction determines otherwise. Except as
24

1 otherwise provided by law, rules shall be prima facie evidence of
2 the proper interpretation of the matter to which they refer.

3 SECTION 9. AMENDATORY Section 6, Chapter 357, O.S.L.
4 2013 (75 O.S. Supp. 2019, Section 308.3), is amended to read as
5 follows:

6 Section 308.3. A. The Legislature shall have an omnibus joint
7 resolution prepared for consideration each session.

8 B. The joint resolution shall be substantially in the following
9 form: "All proposed permanent rules of Oklahoma state agencies
10 filed on or before April 1 are hereby approved except for the
11 following:".

12 C. For the purpose of this section, a proposed permanent rule
13 may be disapproved, in whole or in part, or amended, in the omnibus
14 joint resolution considered by the Legislature.

15 D. 1. If an agency believes that a rule has not been approved
16 by the Legislature pursuant to this section and should be approved
17 and finally adopted, the agency may seek the Governor's declaration
18 approving the rule.

19 2. In seeking the approval of a proposed permanent rule, the
20 agency shall submit a petition to the Governor that affirmatively
21 states:

22 a. the rule is necessary, and

23 b. a citation to the source of its authority to make the
24 rule.

1 3. a. If the Governor finds that the necessity does exist,
2 and that the agency has the authority to make the
3 rule, the Governor may declare the rule to be approved
4 and finally adopted by publishing that declaration in
5 "The Oklahoma Register" on or before July 17 of that
6 year.

7 b. The declaration shall set forth the rule to be
8 approved, the reasons the approval is necessary, and a
9 citation to the source of the agency's authority to
10 make the rule.

11 4. If the omnibus joint resolution fails to pass both houses of
12 the Legislature and be signed by the Governor or is found by the
13 Governor to have a ~~technical legal defect~~ non-substantive error
14 preventing approval of administrative rules intended to be approved
15 by the Legislature, the Governor may declare all rules to be
16 approved and finally adopted by publishing a single declaration in
17 "The Oklahoma Register" on or before July 17 without meeting
18 requirements of paragraphs 2 and 3 of this subsection. If the
19 Governor finds that the joint resolution has a ~~technical legal~~
20 ~~defect~~ non-substantive error, the Governor shall make the finding in
21 writing and submit the finding to the Legislature.

22 ~~**SECTION 10. It being immediately necessary for the preservation**~~
23 ~~**of the public peace, health or safety, an emergency is hereby**~~
24

~~declared to exist, by reason whereof this act shall take effect and
be in full force from and after its passage and approval.~~

COMMITTEE REPORT BY: COMMITTEE ON RULES
February 19, 2020 - DO PASS AS AMENDED