

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

SENATE BILL 180

By: Bergstrom

AS INTRODUCED

An Act relating to the Administrative Procedures Act; amending 75 O.S. 2021, Sections 250.2 and 250.3, which relate to legislative powers and definitions; clarifying scope of rulemaking authority delegated by the Legislature; requiring inclusion of statutory authority with administrative rules within specified time period; modifying definition; updating statutory language; updating statutory reference; and providing an effective date.

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

SECTION 1. AMENDATORY 75 O.S. 2021, Section 250.2, is amended to read as follows:

Section 250.2. A. Article V of the Oklahoma Constitution vests in the Legislature the power to make laws, and thereby to establish agencies and to designate agency functions, budgets and purposes. Article VI of the Oklahoma Constitution charges the Executive Branch of Government with the responsibility to implement all measures enacted by the Legislature.

B. In creating agencies and designating their functions and purposes, the Legislature may delegate rulemaking authority to

1 executive branch agencies to facilitate administration of
2 legislative policy. The delegation of rulemaking authority is
3 intended to eliminate the necessity of establishing every
4 administrative aspect of general public policy by legislation. In
5 so doing, however, the Legislature reserves to itself:

6 1. The right to retract any delegation of rulemaking authority
7 unless otherwise precluded by the Oklahoma Constitution;

8 2. The right to establish any aspect of general policy by
9 legislation, notwithstanding any delegation of rulemaking authority;

10 3. The right and responsibility to designate the method for
11 rule promulgation, review, repeal and modification;

12 4. The right to approve or disapprove or repeal any adopted
13 rule by joint resolution; and

14 5. The right to disapprove a proposed permanent, promulgated or
15 emergency rule at any time if the Legislature determines such rule
16 to be an imminent harm to the health, safety or welfare of the
17 public or the state or if the Legislature determines that a rule is
18 not consistent with legislative intent.

19 C. All rulemaking authority delegated by the Legislature to
20 executive branch agencies shall be used only to implement law or
21 policy as set by the Legislature. Within three (3) years of the
22 effective date of this act, all administrative rules, including
23 rules approved prior to the effective date of this act, shall
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1 include a specific reference to the statutory provision that
2 delegates the authority for promulgation of such rule.

3 SECTION 2. AMENDATORY 75 O.S. 2021, Section 250.3, is
4 amended to read as follows:

5 Section 250.3. As used in the Administrative Procedures Act:

6 1. "Administrative head" means an official or agency body
7 responsible pursuant to law for issuing final agency orders;

8 2. "Adopted" means a proposed emergency rule which has been
9 approved by the agency but has not been approved or disapproved by
10 the Governor as an emergency rule as provided by Section 253 of this
11 title, or a proposed permanent rule which has been approved by the
12 agency and not disapproved by the Governor pursuant to paragraph 6
13 of subsection A of Section 303 of this title, but has not been
14 finally approved or disapproved by the Legislature or the Governor;

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

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

21 b. the courts;

22 4. "Concurrent majority" means a majority of members on the
23 Joint Committee on Administrative Rules from both the ~~Oklahoma~~
24 Senate and the ~~Oklahoma~~ House of Representatives;

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

3 6. "Expedited repeal" means the procedure utilized by a rule-
4 making agency as specified in Section ~~9~~ 303a of this ~~act~~ title;

5 7. "Final rule" or "finally adopted rule" means a rule other
6 than an emergency rule, which has not been published pursuant to
7 Section 255 of this title but is otherwise in compliance with the
8 requirements of the Administrative Procedures Act, and is:

9 a. approved by the Legislature pursuant to Section 308.3
10 of this title, provided that any such joint resolution
11 becomes law in accordance with Section 11 of Article
12 VI of the Oklahoma Constitution,

13 b. approved by the Governor pursuant to subsection C of
14 Section 308.3 of this title,

15 c. approved by a joint resolution pursuant to subsection
16 B of Section 308 of this title, provided that any such
17 resolution becomes law in accordance with Section 11
18 of Article VI of the Oklahoma Constitution, or

19 d. disapproved by a joint resolution pursuant to
20 subsection B of Section 308 of this title or Section
21 308.3 of this title, which has been vetoed by the
22 Governor in accordance with Section 11 of Article VI
23 of the Oklahoma Constitution and the veto has not been
24 overridden;

1 8. "Final agency order" means an order that includes findings
2 of fact and conclusions of law pursuant to Section 312 of this
3 title, is dispositive of an individual proceeding unless there is a
4 request for rehearing, reopening, or reconsideration pursuant to
5 Section 317 of this title and which is subject to judicial review;

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

10 10. "Individual proceeding" means the formal process employed
11 by an agency having jurisdiction by law to resolve issues of law or
12 fact between parties and which results in the exercise of discretion
13 of a judicial nature;

14 11. "License" includes the whole or part of any agency permit,
15 certificate, approval, registration, charter, or similar form of
16 permission required by law;

17 12. "Office" means the Office of the Secretary of State;

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

20 14. "Party" means a person or agency named and participating,
21 or properly seeking and entitled by law to participate, in an
22 individual proceeding;

23 15. "Permanent rule" means a rule that is made pursuant to
24 Section 303 of this title;

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

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

6 18. "Promulgated" means a finally adopted rule which has been
7 filed and published in accordance with the provisions of the
8 Administrative Procedures Act, or an emergency rule or preemptive
9 rule which has been approved by the Governor;

10 19. "Rule" means any agency statement or group of related
11 statements of general applicability and future effect that
12 ~~implements, interprets or prescribes~~ law or policy as delegated by
13 the Legislature, or describes the procedure or practice requirements
14 of the agency. The term "rule" includes the amendment or revocation
15 of an effective rule but does not include:

- 16 a. the issuance, renewal, denial, suspension or
17 revocation or other sanction of an individual specific
18 license,
19 b. the approval, disapproval or prescription of rates.
20 For purposes of this subparagraph, the term "rates"
21 shall not include fees or charges fixed by an agency
22 for services provided by that agency including but not
23 limited to fees charged for licensing, permitting,
24 inspections or publications,

- 1 c. statements and memoranda concerning only the internal
2 management of an agency and not affecting private
3 rights or procedures available to the public,
4 d. declaratory rulings issued pursuant to Section 307 of
5 this title,
6 e. orders by an agency, or
7 f. press releases or "agency news releases", provided
8 such releases are not for the purpose of interpreting,
9 implementing or prescribing law or agency policy;

10 20. "Rulemaking" means the process employed by an agency for
11 the formulation of a rule;

12 21. "Secretary" means the Secretary of State;

13 22. "Small business" means a for-profit enterprise consisting
14 of fifty or fewer full-time or part-time employees; and

15 23. "Technical legal defect" means an error that would
16 otherwise invalidate an action by a court of law.

17 SECTION 3. This act shall become effective November 1, 2023.

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