

1 ENGROSSED SENATE AMENDMENT
TO
2 ENGROSSED HOUSE
BILL NO. 2254

By: Faught, Russ, Roberts
(Sean), Ritze and Moore of
the House

and

Newberry of the Senate

8 An Act relating to administrative rules; amending 75
9 O.S. 2011, Sections 250.3, as amended by Section 2,
Chapter 357, O.S.L. 2013, 308, as amended by Section
10 4, Chapter 357, O.S.L. 2013 and 308.1, as amended by
Section 5, Chapter 357, O.S.L. 2013 (75 O.S. Supp.
11 2015, Sections 250.3, 308 and 308.1), which relate to
the Administrative Procedures Act; modifying
12 definitions; providing for approval or disapproval of
rule by the Governor; modifying legislative approval
13 and disapproval of rules; requiring approval of
certain rules; modifying final adoption of rule;
14 repealing Section 6, Chapter 357, O.S.L. 2013 (75
O.S. Supp. 2015, Section 308.3), which relates to the
15 omnibus joint resolution; providing for codification;
providing for noncodification; and providing an
16 effective date.

18 AUTHOR: Add the following Senate Coauthor: Allen

19 AMENDMENT NO. 1. Page 1, strike the title to read

20 "[administrative rules - Administrative Procedures
21 Act - approval of certain rules - repealer -
codification - noncodification - effective date]"

1 Passed the Senate the 13th day of April, 2016.

2
3 _____
4 Presiding Officer of the Senate

5 Passed the House of Representatives the ____ day of _____,
6 2016.

7
8 _____
9 Presiding Officer of the House
10 of Representatives

1 ENGROSSED HOUSE
2 BILL NO. 2254

By: Faught, Russ, Roberts (Sean), Ritze
and Moore of the House

3 and

4 Newberry of the Senate

5
6
7
8 An Act relating to administrative rules; amending 75 O.S. 2011, Sections
9 250.3, as amended by Section 2, Chapter 357, O.S.L. 2013, 308, as
10 amended by Section 4, Chapter 357, O.S.L. 2013 and 308.1, as
11 amended by Section 5, Chapter 357, O.S.L. 2013 (75 O.S. Supp. 2015,
12 Sections 250.3, 308 and 308.1), which relate to the Administrative
13 Procedures Act; modifying definitions; providing for approval or
14 disapproval of rule by the Governor; modifying legislative approval and
15 disapproval of rules; requiring approval of certain rules; modifying final
16 adoption of rule; repealing Section 6, Chapter 357, O.S.L. 2013 (75 O.S.
17 Supp. 2015, Section 308.3), which relates to the omnibus joint resolution;
18 providing for codification; providing for noncodification; and providing an
19 effective date.

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

21 SECTION 1. AMENDATORY 75 O.S. 2011, Section 250.3, as amended by Section
22 2, Chapter 357, O.S.L. 2013 (75 O.S. Supp. 2015, Section 250.3), is amended to read as
23 follows:

24 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

1 ~~Legislature and the Governor as provided by Section 253 of this title, or a proposed~~
2 ~~permanent rule which has been approved by the agency, but has not been approved or~~
3 ~~disapproved by the Legislature or by declaration of the Governor as provided by subsection D~~
4 ~~of Section 6 of this act;~~

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

- 8 a. the Legislature or any branch, committee or officer thereof, and
- 9 b. the courts;

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

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

- 14 a. ~~approved by the Legislature pursuant to Section 6 of this act, provided that~~
15 ~~any such joint resolution becomes law in accordance with Section 11 of~~
16 ~~Article VI of the Oklahoma Constitution,~~
- 17 b. ~~approved by the Governor pursuant to subsection D of Section 6 of this~~
18 ~~act,~~
- 19 c. ~~approved by a joint resolution pursuant to subsection B of Section 308 of~~
20 ~~this title, provided that any such resolution becomes law in accordance~~
21 ~~with Section 11 of Article VI of the Oklahoma Constitution, or~~
- 22 d. ~~disapproved by a joint resolution pursuant to subsection B of Section 308~~
23 ~~of this title or Section 6 of this act, which has been vetoed by the Governor~~

1 ~~in accordance with Section 11 of Article VI of the Oklahoma Constitution~~
2 ~~and the veto has not been overridden~~

3 been approved by the Legislature and by the Governor, or approved by the Legislature
4 pursuant to subsection B of Section 308 of this title and otherwise complies with the
5 requirements of the Administrative Procedures Act but has not been published pursuant to
6 Section 255 of this title;

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

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

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

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

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

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

22 12. "Party" means a person or agency named and participating, or properly seeking
23 and entitled by law to participate, in an individual proceeding;
24

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

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

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

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

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

- 13 a. the issuance, renewal, denial, suspension or revocation or other sanction
14 of an individual specific license,
- 15 b. the approval, disapproval or prescription of rates. For purposes of this
16 subparagraph, the term "rates" shall not include fees or charges fixed by
17 an agency for services provided by that agency including but not limited to
18 fees charged for licensing, permitting, inspections or publications,
- 19 c. statements and memoranda concerning only the internal management of
20 an agency and not affecting private rights or procedures available to the
21 public,
- 22 d. declaratory rulings issued pursuant to Section 307 of this title,
- 23 e. orders by an agency, or
24

1 f. press releases or "agency news releases", provided such releases are not
2 for the purpose of interpreting, implementing or prescribing law or agency
3 policy;

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

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

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

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

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

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

1 Administrative Rules for publication in "The Oklahoma Register". Any effective emergency
2 rule which would have been superseded by a disapproved permanent rule shall be deemed
3 null and void on the date the Governor disapproves the permanent rule.

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

7 SECTION 3. AMENDATORY 75 O.S. 2011, Section 308, as amended by Section
8 4, Chapter 357, O.S.L. 2013 (75 O.S. Supp. 2015, Section 308), is amended to read as
9 follows:

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

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

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

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

20 C. Unless otherwise authorized by the Legislature, whenever a rule is disapproved as
21 provided in subsection B of this section, the agency adopting such rules shall not have
22 authority to resubmit an identical rule, except during the first sixty (60) calendar days of the
23 next regular legislative session. Any effective emergency rule which would have been
24

1 superseded by a disapproved permanent rule shall be deemed null and void on the date the
2 Legislature disapproves the permanent rule. Rules may be disapproved in part or in whole
3 by the Legislature. Upon enactment of any joint resolution disapproving a rule, the agency
4 shall file notice of such legislative disapproval with the Secretary for publication in "The
5 Oklahoma Register".

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

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

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

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

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

20 ~~4. Disapproved by a joint resolution pursuant to subsection B of this section or Section~~
21 ~~6 of this act which has been vetoed by the Governor in accordance with Section 11 of Article~~
22 ~~VI of the Oklahoma Constitution and the veto has not been overridden.~~

1 Except as provided by subsection F of this section, transmission of a rule for legislative
2 review on or before April 1 of each year shall result in the approval of such rule by the
3 Legislature if the Legislature is in regular session and has failed to disapprove such rule
4 before the last day of session after such rule has been submitted pursuant to Section 303.1
5 of this title.

6 F. Any rule which establishes or increases a fee or fees or any rule by an agency,
7 board or commission created by or that receives its authority from Title 59 of the Oklahoma
8 Statutes shall require approval by the Legislature by joint resolution. If the Legislature fails to
9 approve the rule on or before the last day of the legislative session, the rule shall be deemed
10 disapproved.

11 ~~F.~~ G. Prior to final adoption of a rule, an agency may withdraw a rule from legislative
12 review. Notice of such withdrawal shall be given to the Governor, the Speaker of the House
13 of Representatives, the President Pro Tempore of the Senate, and to the Secretary for
14 publication in "The Oklahoma Register".

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

18 ~~G.~~ I. An agency may promulgate an emergency rule only pursuant to Section 253 of
19 this title.

20 ~~H.~~ J. Any rights, privileges, or interests gained by any person by operation of an
21 emergency rule, shall not be affected by reason of any subsequent disapproval or rejection of
22 such rule by either house of the Legislature.
23
24

1 SECTION 4. AMENDATORY 75 O.S. 2011, Section 308.1, as amended by Section
2 5, Chapter 357, O.S.L. 2013 (75 O.S. Supp. 2015, Section 308.1), is amended to read as
3 follows:

4 Section 308.1 A. Upon ~~final adoption~~, the approval by the Legislature and the
5 Governor, or upon approval by joint resolution of the Legislature pursuant to subsection B of
6 Section 308 of this title, a rule shall be considered finally adopted. The agency shall submit
7 the such finally adopted rule to the Secretary for filing and publishing such rule pursuant to
8 Sections 251 and 255 of this title.

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

11 SECTION 5. NEW LAW A new section of law not to be codified in the Oklahoma
12 Statutes reads as follows:

13 The Office of the Secretary of State may promulgate emergency rules to establish
14 separate filing deadlines and review periods for finally adopted rules and to carry out the
15 provisions of this act.

16 SECTION 6. REPEALER Section 6, Chapter 357, O.S.L. 2013 (75 O.S. Supp.
17 2015, Section 308.3), is hereby repealed.

18 SECTION 7. This act shall become effective November 1, 2016.
19
20
21
22
23
24

1 Passed the House of Representatives the 9th day of March, 2016.

2
3 _____
4 Presiding Officer of the House
5 of Representatives

6 Passed the Senate the ____ day of _____, 2016.

7
8 _____
9 Presiding Officer of the Senate