

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 SENATE BILL 1543

By: McCortney

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5
6 AS INTRODUCED

7 An Act relating to administrative rule review;
8 amending 75 O.S. 2011, Sections 303, as amended by
9 Section 50, Chapter 227, O.S.L. 2013 and 308, as
10 amended by Section 4, Chapter 357, O.S.L. 2013 (75
11 O.S. Supp. 2019, Sections 303 and 308), which relate
12 to adoption and review of administrative rules;
13 clarifying type of legal authority to be included in
14 certain notice; adding notarized document to be
15 included in certain notice; specifying contents of
16 document; stating certain result for noncompliance;
17 modifying certain date for legislative review;
18 updating statutory references; providing an effective
19 date; and declaring an emergency.

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

21 SECTION 1. AMENDATORY 75 O.S. 2011, Section 303, as
22 amended by Section 50, Chapter 227, O.S.L. 2013 (75 O.S. Supp. 2019,
23 Section 303), is amended to read as follows:

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

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

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

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

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

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

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

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

4 2. The proposed action being taken;

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

6 4. The specific legal authority authorizing the proposed rule,
7 which shall include statutory citations;

8 5. The intended effect of the rule;

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

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

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

23 9. The time when, the place where, and the manner in which
24 persons may demand a hearing on the proposed rule if the notice does
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1 not already provide for a hearing. If the notice provides for a
2 hearing, the time and place of the hearing shall be specified in the
3 notice; ~~and~~

4 10. Where copies of the proposed rules may be obtained for
5 review by the public. An agency may charge persons for the actual
6 cost of mailing a copy of the proposed rules to such persons; and

7 11. A notarized statement executed by the agency director
8 affirming the legal authority cited in paragraph 4 of this
9 subsection and a statement of whether or not the subject of the
10 proposed rule or rules has been included in any filed bill of the
11 Legislature within the last two regular legislative sessions. If
12 the subject matter of the proposed rule or rules did appear in filed
13 legislation, the bill number shall be included in the statement.

14 When notice provided in this section does not contain the
15 information pursuant to paragraph 11 of this subsection or the
16 information is deemed inaccurate, the rule or rules shall be
17 invalidated.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 3. To the extent an agency for good cause finds the preparation
15 of a rule impact statement or the specified contents thereof are
16 unnecessary or contrary to the public interest in the process of
17 adopting a particular rule, the agency may request the Governor to
18 waive such requirement. Upon request by an agency, the Governor may
19 also waive the rule impact statement requirements if the agency is
20 required to implement a statute or federal requirement that does not
21 require an agency to interpret or describe the requirements, such as
22 federally mandated provisions which afford the agency no discretion
23 to consider less restrictive alternatives. If the Governor fails to
24 waive such requirement, in writing, prior to publication of the

1 notice of the intended rulemaking action, the rule impact statement
2 shall be completed. The determination to waive the rule impact
3 statement shall not be subject to judicial review.

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

7 E. Upon completing the requirements of this section, an agency
8 may adopt a proposed rule. No rule is valid unless adopted in
9 substantial compliance with the provisions of this section.

10 SECTION 2. AMENDATORY 75 O.S. 2011, Section 308, as
11 amended by Section 4, Chapter 357, O.S.L. 2013 (75 O.S. Supp. 2019,
12 Section 308), is amended to read as follows:

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

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

21 2. If such rules are received after ~~April~~ December 1, the
22 Legislature shall have all of the upcoming legislative session and
23 until the last day of the regular legislative session of the next
24 year to review such rules.

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

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

16 D. Unless otherwise provided by specific vote of the
17 Legislature, joint resolutions introduced for purposes of
18 disapproving or approving a rule or the omnibus joint resolution
19 described in Section ~~6 of this act~~ 308.3 of this title shall not be
20 subject to regular legislative cutoff dates, shall be limited to
21 such provisions as may be necessary for disapproval or approval of a
22 rule, and any such other direction or mandate regarding the rule
23 deemed necessary by the Legislature. The resolution shall contain
24 no other provisions.

1 E. A proposed permanent rule shall be deemed finally adopted
2 if:

3 1. Approved by the Legislature pursuant to Section ~~6 of this~~
4 ~~act~~ 308.3 of this title, provided that any such joint resolution
5 becomes law in accordance with Section 11 of Article VI of the
6 Oklahoma Constitution;

7 2. Approved by the Governor pursuant to subsection D of Section
8 ~~6 of this act~~ 308.3 of this title;

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

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

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

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

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

SECTION 3. This act shall become effective July 1, 2020.

SECTION 4. It being immediately necessary for the preservation of the public peace, health or safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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