

An Act

ENROLLED SENATE
BILL NO. 697

By: Sykes of the Senate

and

Faught of the House

An Act relating to rulemaking authority; amending 75 O.S. 2011, Sections 250.2 and 250.3, as amended by Sections 1 and 2, Chapter 357, O.S.L. 2013 (75 O.S. Supp. 2016, Sections 250.2 and 250.3), which relate to legislative intent and definitions; clarifying legislative intent for certain rulemaking authority; requiring inclusion of certain statutory or federal reference; defining term; updating statutory reference; and providing an effective date.

SUBJECT: Rulemaking procedures

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

SECTION 1. AMENDATORY 75 O.S. 2011, Section 250.2, as amended by Section 1, Chapter 357, O.S.L. 2013 (75 O.S. Supp. 2016, 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

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

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

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

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

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

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

C. All rulemaking authority delegated by the Legislature to executive branch agencies shall be used only to implement law or policy as set by the Legislature. Within three (3) years of the effective date of this act, all administrative rules, including those already in existence, shall include a specific reference to the state or federal statutory provision or federal regulation that delegates the authority for promulgation of such rule.

SECTION 2. 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 which has been approved by the agency but has not been approved or disapproved by 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~~ 308.3 of this ~~act~~ title;

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 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~~ 308.3 of this ~~act~~ title, provided that any such joint resolution becomes law in accordance with Section 11 of Article VI of the Oklahoma Constitution,
- b. approved by the Governor pursuant to subsection D of Section ~~6~~ 308.3 of this ~~act~~ title,
- c. approved by a joint resolution pursuant to subsection B of Section 308 of this title, provided that any such resolution becomes law in accordance with Section 11 of Article VI of the Oklahoma Constitution, or
- d. disapproved by a joint resolution pursuant to subsection B of Section 308 of this title or Section ~~6~~ 308.3 of this ~~act~~ title, 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;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19. "Secretary" means the Secretary of State.

SECTION 3. This act shall become effective in accordance with the provisions of Section 58 of Article V of the Oklahoma Constitution.

Passed the Senate the 10th day of May, 2017.

Presiding Officer of the Senate

Passed the House of Representatives the 19th day of April, 2017.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____