An Act

ENROLLED HOUSE
BILL NO. 2852

By: Wright (John), Reynolds and Faught of the House

and

Aldridge of the Senate

An Act relating to statutes and reports; amending 75 O.S. 2001, Sections 250.3 and 253, which relate to the Administrative Procedures Act; modifying definitions; defining terms; modifying procedure for emergency rules; and providing an effective date.

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

SECTION 1. AMENDATORY 75 O.S. 2001, 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 ~~that~~ a proposed emergency rule or permanent rule which has been approved by the agency but has not been reviewed by the Legislature and the Governor;

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" or "finally adopted" means a rule other than an emergency rule, which has been approved by the Legislature and by the Governor, or approved by the Legislature pursuant to subsection B of Section 308 of this title and otherwise complies with the requirements of the Administrative Procedures Act but has not been published pursuant to Section 255 of this title;

~~5.~~ 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;

~~6.~~ 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;

~~7.~~ 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;

~~8.~~ 9. "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law;

~~9.~~ 10. "Office" means the Office of the Secretary of State;

~~10.~~ 11. "Order" means all or part of a formal or official decision made by an agency including but not limited to final agency orders;

~~11.~~ 12. "Party" means a person or agency named and participating, or properly seeking and entitled by law to participate, in an individual proceeding;

~~12.~~ 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;

~~13.~~ 15. "Political subdivision" means a county, city, incorporated town or school district within this state;

~~14.~~ 16. "Promulgated ~~rule~~" 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 preemptory rule which has been approved by the Governor;

~~15.~~ 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, 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;

~~16.~~ 18. "Rulemaking" means the process employed by an agency for the formulation of a rule; and

~~17.~~ 19. "Secretary" means the Secretary of State.

SECTION 2. AMENDATORY 75 O.S. 2001, Section 253, is amended to read as follows:

Section 253. A. 1. If an agency finds that ~~an imminent peril exists to the preservation of the public health, safety, or welfare, or that a compelling public interest requires an emergency rule, amendment, revision, or revocation of an existing rule, an agency may promulgate, at any time, any such rule, provided the Governor first approves such rule pursuant to the provisions of this section~~ a rule is necessary as an emergency measure, the rule may be promulgated pursuant to the provisions of this section, if the rule is first approved by the Governor. The Governor shall not approve the adoption, amendment, revision or revocation of a rule as an emergency measure unless the agency submits substantial evidence that the rule is necessary as an emergency measure to do any of the following:

a. protect the public health, safety or welfare,

b. comply with deadlines in amendments to an agency's governing law or federal programs,

c. avoid violation of federal law or regulation or other state law,

d. avoid imminent reduction to the agency's budget, or

e. avoid serious prejudice to the public interest.

As used in this subsection, "substantial evidence" shall mean credible evidence which is of sufficient quality and probative value to enable a person of reasonable caution to support a conclusion.

2. In determining whether a rule is necessary as an emergency measure, the Governor shall consider whether the emergency situation was created due to the agency's delay or inaction and could have been averted by timely compliance with the provisions of this chapter.

B. An emergency rule adopted by an agency shall:

1. Be prepared in the format required by Section 251 of this title;

2. a. Include an impact statement which meets the requirements ~~contained in Section 303 of this title~~ set forth in subparagraph b of this paragraph unless ~~such impact statement is, with the prior written consent of~~ the Governor~~, waived~~ ~~specifically by the agency to the extent an agency for good cause finds the preparation of a~~ waives the requirement in writing upon a finding that the rule impact statement or the specified contents thereof are unnecessary or contrary to the public interest ~~in the process of promulgating an emergency rule. In addition, the impact statement shall provide information on any cost impacts of the rule received by the agency from any private or public entities~~.

b. The rule impact statement shall include, but not be limited to:

(1) a brief description of the proposed rule,

(2) a description of the persons who most likely will be affected by the proposed rule, including classes that will bear the costs of the proposed rule, and any information on cost impacts received by the agency from any private or public entities,

(3) a description of the classes of persons who will benefit from the proposed rule,

(4) a description of the probable economic impact of the proposed rule upon affected classes of persons or political subdivisions, including a listing of all fee changes and, whenever possible, a separate justification for each fee change,

(5) the probable costs and benefits to the agency and to any other agency of the implementation and enforcement of the proposed rule, and any anticipated effect on state revenues, including a projected net loss or gain in such revenues if it can be projected by the agency,

(6) a determination of whether implementation of the proposed rule may have an adverse economic effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act,

(7) an explanation of the measures the agency has taken to minimize compliance costs and a determination of whether there are less costly or nonregulatory methods or less intrusive methods for achieving the purpose of the proposed rule,

(8) a determination of the effect of the proposed rule on the public health, safety and environment and, if the proposed rule is designed to reduce significant risks to the public health, safety and environment, an explanation of the nature of the risk and to what extent the proposed rule will reduce the risk,

(9) a determination of any detrimental effect on the public health, safety and environment if the proposed rule is not implemented, and

(10) the date the rule impact statement was prepared and if modified, the date modified.

c. The rule impact statement shall be prepared on or before the date the emergency rule is adopted;

3. Be transmitted ~~in duplicate~~ pursuant to Section 464 of Title 74 of the Oklahoma Statutes to the Governor, the Speaker of the Oklahoma House of Representatives and the President Pro Tempore of the Senate, ~~including~~ along with the information required by this subsection within ten (10) days after the rule is adopted; and

4. ~~One copy to be transmitted on the same day that filing occurs with the Governor to the Oklahoma Advisory Committee on Intergovernmental Relations if the emergency rule would have an impact on political subdivisions as determined by the agency in the rule impact statement. The filing shall include all information supplied to the Governor regarding such emergency rule pursuant to this section and Section 251 of this title~~ Not be invalidated on the ground that the contents of the rule impact statement are insufficient or inaccurate.

C. 1. ~~Upon the filing of an adopted~~ Within forty-five (45) calendar days of receipt of a proposed emergency rule ~~by an agency~~ filed with the Governor, the Speaker of the Oklahoma House of Representatives and the President Pro Tempore of the Senate, ~~under the provisions of subsection B of this section,~~ the Governor shall review ~~such~~ the demonstration of emergency pursuant to subsection A of this section, and shall separately review the rule ~~and shall decide as to whether or not such emergency rule should be approved~~ in accordance with the standards prescribed in paragraph 3 of this subsection.

2. Prior to approval of emergency rules, the Governor shall submit the emergency rule to the Secretary of State for review of proper formatting.

~~2.~~ 3. If the Governor ~~disapproves the adopted emergency rule~~ determines the agency has established the rule is necessary as an emergency measure pursuant to subsection A of this section, the Governor shall ~~return the entire document to the agency with reasons for the disapproval. If the agency elects to modify such rule, the agency shall make such modifications and resubmit the rule to the Governor for approval~~ approve the proposed emergency rule if the rule is:

a. clear, concise and understandable,

b. within the power of the agency to make and within the enacted legislative standards, and

c. made in compliance with the requirements of the Administrative Procedures Act.

~~3. Emergency rules adopted by an agency or approved by the Governor shall be subject to review pursuant to the provisions of Section 306 of this title.~~

D. 1. ~~Upon approval by the Governor, an emergency rule shall be considered promulgated and shall be in force immediately, or on such later date as specified therein. An emergency rule shall only be applied prospectively from its effective date.~~

~~2. The Governor shall have forty-five (45) calendar days to review the emergency rule.~~ Within the forty-five-calendar-day period set forth in paragraph 1 of subsection C of this section, the Governor may approve the emergency rule or disapprove the emergency

rule. Failure of the Governor to approve an emergency rule within the specified period shall constitute disapproval of the emergency rule.

2. If the Governor disapproves the adopted emergency rule, the Governor shall return the entire document to the agency with reasons for the disapproval. If the agency elects to modify the rule, the agency shall adopt the modifications, and shall file the modified rule in accordance with the requirements of subsection B of this section.

3. Upon disapproval of an emergency rule, the Governor shall ~~notify~~, within fifteen (15) days, ~~in writing,~~ make written notification to the Speaker of the House of Representatives, the President Pro Tempore of the Senate and the Office of Administrative Rules.

E. 1. Upon approval of an emergency rule, the Governor shall immediately ~~notify~~ make written notification to the agency, the Speaker of the House of Representatives, the President Pro Tempore of the Senate and the Office of Administrative Rules. Upon receipt of the notice of the approval, the agency shall file with the Office of Administrative Rules ~~the number of copies required by the Secretary of the written approval and the emergency rule~~ as many copies of the notice of approval and the emergency rule as required by the Secretary.

2. ~~A copy of the Governor's approval shall be submitted by the Governor to the Speaker of the House of Representatives, the President Pro Tempore of the Senate and the Office of Administrative Rules when the rulemaking agency is notified of approval~~ Emergency rules shall be subject to legislative review pursuant to Section 308 of this title.

3. The emergency rule shall be published in accordance with the provisions of Section 255 of this title in "The Oklahoma Register" following the approval by the Governor. The Governor's approval and the approved rules shall be retained as official records by the Office of Administrative Rules.

F. ~~Emergency rules shall be effective from the date of approval by the Governor or a later date as specified in the approved emergency rule, unless otherwise specifically provided by the Legislature, through the first day of the next succeeding Regular Session of the Oklahoma Legislature, after the promulgation of such~~

~~emergency rule, and shall be in full force and effect through July 14 following such session unless it is made ineffective pursuant to subsection H of this section~~ 1. Upon approval by the Governor, an emergency rule shall be considered promulgated and shall be in force immediately, or on such later date as specified therein. An emergency rule shall only be applied prospectively from its effective date.

2. The emergency rule shall remain in full force and effect through the first day of the next succeeding regular session of the Legislature following promulgation of such emergency rule until July 14 following such session, unless it is made ineffective pursuant to subsection H of this section.

G. No agency shall adopt any emergency rule which establishes or increases fees, except during such times as the Legislature is in session, unless specifically mandated by the Legislature or federal legislation, or when the failure to establish or increase fees would conflict with an order issued by a court of law.

H. 1. If an emergency rule is of a continuing nature, the agency promulgating such emergency rule shall initiate proceedings for promulgation of a permanent rule pursuant to Sections 303 through 308.2 of this title. If an emergency rule is superseded by another emergency rule prior to the enactment of a permanent rule, the latter emergency rule shall retain the same expiration date as the superseded emergency rule, unless otherwise authorized by the Legislature.

2. Any promulgated emergency rule shall be made ineffective if:

a. disapproved by the Legislature,

b. superseded by the promulgation of permanent rules,

c. any adopted rules based upon such emergency rules are subsequently disapproved pursuant to Section 308 of this title, or

d. an earlier expiration date is specified by the agency in the rules.

3. a. Emergency rules in effect on the first day of the session shall be null and void on July 15 immediately following sine die adjournment of the Legislature

unless otherwise specifically provided by the Legislature.

b. Unless otherwise authorized by the Legislature, by concurrent resolution or by law, an agency shall not adopt any emergency rule, which has become null and void pursuant to subparagraph a of this paragraph, as a new emergency rule or adopt any emergency rules of similar scope or intent as the emergency rules which became null and void pursuant to subparagraph a of this paragraph.

I. Emergency rules shall not become effective unless approved by the Governor pursuant to the provisions of this section.

J. 1. The requirements of Section 303 of this title relating to notice and hearing shall not be applicable to emergency rules promulgated pursuant to the provisions of this section. Provided this shall not be construed to prevent an abbreviated notice and hearing process determined to be necessary by an agency.

2. The rule report required pursuant to Section 303.1 of this title shall not be applicable to emergency rules promulgated pursuant to the provisions of this section. Provided this shall not be construed to prevent an agency from complying with such requirements at the discretion of such agency.

3. The statement of submission required by Section 303.1 of this title shall not be applicable to emergency rules promulgated pursuant to the provisions of this section.

K. Prior to approval or disapproval of an emergency rule by the Governor, an agency may withdraw from review an emergency rule submitted pursuant to the provisions of this section. Notice of such withdrawal shall be given to the Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate in accordance with the requirements set forth in Section 464 of Title 74 and to the Office of Administrative Rules as required by the Secretary. In order to be promulgated as emergency rules, any replacement rules shall be resubmitted pursuant to the provisions of this section.

L. Upon completing the requirements of this section, an agency may promulgate a proposed emergency rule. No emergency rule is

valid unless promulgated in substantial compliance with the provisions of this section.

M. Emergency rules adopted by an agency or approved by the Governor shall be subject to review pursuant to the provisions of Section 306 of this title.

SECTION 3. This act shall become effective November 1, 2010.

Passed the House of Representatives the 11th day of March, 2010.

Presiding Officer of the House of Representatives

Passed the Senate the 20th day of April, 2010.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Governor this 21st **day of** April, **20**10, **at** 3:07 **o'clock** P **M.**

By:

Approved by the Governor of the State of Oklahoma the 26th **day of** April, **20**10, **at** 5:25 **o'clock** P **M.**

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this 27th **day of** April, **20**10, **at** 3:02 **o'clock** P **M.**

By: