

ENGROSSED HOUSE  
BILL NO. 2369

BY: STEIDLEY of the HOUSE

and

SMITH of the SENATE

AN ACT RELATING TO STATUTES AND REPORTS; AMENDING 75  
O.S. 1991, SECTIONS 250.3, 308, 309, 311, 312, 314,  
315, 317, 318 AND 320, WHICH RELATE TO THE  
ADMINISTRATIVE PROCEDURES ACT; MODIFYING AND ADDING  
TO TERMS; MODIFYING PROCEDURE FOR LEGISLATIVE  
REVIEW OF RULES; PROVIDING FOR CERTAIN RIGHTS TO  
JUDICIAL REVIEW; MODIFYING PROCEDURES FOR  
INDIVIDUAL PROCEEDINGS; REQUIRING RECORDING OF  
CERTAIN PROCEEDINGS; MODIFYING RECORD OF  
PROCEEDING; PROVIDING FOR AND CLARIFYING PROPOSED  
ORDERS; PROVIDING FOR AND MODIFYING FINAL AGENCY  
ORDERS; SPECIFYING INDIVIDUAL PROCEEDINGS FOR  
CERTAIN LICENSING REVOCATION, ANNULMENT,  
WITHDRAWAL, OR NONRENEWAL PROCEDURES; MODIFYING  
POWER OF AGENCIES AT INDIVIDUAL PROCEEDINGS;  
REMOVING OUT-OF-DATE LANGUAGE; MAKING CERTAIN  
ORDERS FINAL AGENCY ORDERS; PROVIDING PROCEDURES  
FOR REHEARING, REOPENING OR RECONSIDERATION;  
MODIFYING APPEAL PROCEDURES; PROVIDING FOR RECORD;  
PROVIDING FOR CODIFICATION; AND PROVIDING AN  
EFFECTIVE DATE.

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

SECTION 1. AMENDATORY 75 O.S. 1991, Section 250.3, is amended to read as follows:

Section 250.3 As used in the Administrative Procedures Act:

1. "Agency" means any constitutionally or statutorily created state board, bureau, commission, department, authority, public trust in which the state is a beneficiary, or interstate commission, except:

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

2. "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~~;~~ or,

- e. ~~orders resulting from individual proceedings, by an~~  
agency, or
- f. press releases or "agency news release", provided such  
releases are not for the purpose of interpreting,  
implementing or prescribing law or agency policy;

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

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

5. "Order" means all or part of ~~the final or intermediate decision, whether affirmative, negative, injunctive or declaratory in form, by an agency in any matter other than rulemaking, or rulings on motions or objections made during the course of a hearing, or the exclusion described in subparagraph d of paragraph 2 of this section~~ a formal or official decision made by an agency including but not limited to final agency orders;

6. "Final agency order" means an order made pursuant to subsection D of Section 309 and Sections 311 and 312 of this title and which is subject to judicial review;

7. "Individual proceeding" means the formal process employed by an agency ~~for the formulation of an order~~ 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;

~~7.~~ 8. "Party" means a person or agency named and participating, or properly seeking and entitled by law to participate, in an individual proceeding;

~~8.~~ 9. "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency;

~~9.~~ 10. "Adopted" means that a proposed rule has been approved by the agency but has not been reviewed by the Legislature and the Governor;

~~10.~~ 11. "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 F 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;

~~11.~~ 12. "Promulgated rule" means a finally adopted rule which has been filed and published in accordance with the provisions of the Administrative Procedures Act, an emergency rule or preemptory rule which has been approved by the Governor;

~~12.~~ 13. "Office" means the Office of the Secretary of State;  
and

~~13.~~ 14. "Secretary" means the Secretary of State-;

15. "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 proposed orders; and

16. "Administrative head" means an official or agency body responsible pursuant to law for issuing final agency orders.

SECTION 2. AMENDATORY 75 O.S. 1991, Section 308, is amended to read as follows:

Section 308. A. Within ten (10) days after adoption of a permanent rule, two copies of all such new rules or amendments, revisions or revocations to an existing rule proposed by an agency, and two copies of an agency rule report as required by subsection D of this section shall be filed by the agency each with the Speaker of the House of Representatives and the President Pro Tempore of the State Senate.

B. When the rules have been submitted to the Speaker of the House of Representatives and the President Pro Tempore of the Senate, the agency shall also submit to the Office for publication in The Oklahoma Register, a statement that the adopted rules have been submitted to the Legislature. Such statement of submission required by this section shall not be required for emergency rules.

C. The text of the adopted rules shall be submitted to the Speaker of the House of Representatives and the President Pro Tempore of the Senate in the same format as required by the Secretary pursuant to Section 251 of this title.

D. The report required by subsection A of this section shall include:

1. the date the notice of the intended rulemaking action was published in The Oklahoma Register pursuant to Section 255 of this title;

2. the name and address of the agency;

3. the title and number of the rule;

4. a citation to the statutory authority for the rule;

5. a brief summary of the content of the adopted rule;

6. a statement explaining the need for the adopted rule;

7. the date and location of the meeting if held, at which such rules were adopted;

8. a summary of the comments and explanation of changes or lack of any change made in the adopted rules as a result of testimony received at public hearings or of any oral or written comments received prior to the adoption of the rule;

9. a list of persons or organizations who appeared or registered for or against the adopted rule at any public hearing held by the agency or those who have commented in writing before or after the hearing;

10. a rule impact statement if required pursuant to Section 303 of this title;

11. an incorporation by reference statement if the rule incorporates a set of rules from a body outside the state, such as a national code;

12. the members of the governing board of the agency adopting the rules and the recorded vote of each member; and

13. any other information requested by the Speaker of the House of Representatives, the President Pro Tempore of the Senate or either rule review committee.

E. Upon receipt of any adopted rules submitted pursuant to this section, the Speaker of the House of Representatives and the President Pro Tempore of the Senate shall assign such rules to the appropriate committees of each such house of the Legislature for review. Except as otherwise provided by this section, upon receipt of such rules, the Legislature shall have thirty (30) legislative days to review such rules.

F. 1. By the adoption of a joint resolution, the Legislature may disapprove any rule, ~~waive the thirty legislative day review period and approve any rule~~ which has been transmitted as required by this section or otherwise approve any rule submitted pursuant to this section.

2. a. The Legislature may by concurrent resolution disapprove a proposed rule or a proposed amendment to a rule submitted to the Legislature pursuant to this section prior to such rule having the force and effect of law. Any such rule shall be disapproved by both houses of the Legislature prior to the termination of the legislative review period specified by this section. Such concurrent resolution shall not require the approval of the Governor, and any such rule so disapproved shall be invalid and of no effect regardless of the approval of the Governor of such

rule. ~~A concurrent resolution may also be used to waive the thirty legislative day review period.~~

- b. By adoption of a concurrent resolution, the Legislature may waive the thirty legislative day review period and approve any rule which has been transmitted as required by this section.

G. Whenever a rule is disapproved as provided in subsection F of this section, the agency adopting such rules shall not have authority to resubmit an identical rule, except during the first sixty (60) calendar days of the next regular legislative session. Rules may be disapproved in part or in whole by the Legislature. Any resolution enacted disapproving a rule shall be filed with the Secretary for publication in The Oklahoma Register.

H. Unless otherwise provided by specific vote of the Legislature, resolutions introduced for purposes of disapproving or approving a rule shall not be subject to regular legislative cutoff dates, shall be limited to such provisions as may be necessary for disapproval or approval of a rule and, shall contain no other provisions.

I. 1. Transmission of a rule for legislative review pursuant to the provisions of this section on or before April 1 of each year shall result in the approval of such rule by the Legislature if:

- a. the Legislature is in regular session and has failed to disapprove such rule within thirty (30) legislative days after such rule has been so transmitted pursuant to subsection A of this section; or
- b. the Legislature has adjourned before the expiration of said thirty (30) legislative days of submission of such rules, and has failed to disapprove such rule.

2. After April 1 of each year, transmission of a rule for legislative review pursuant to the provisions of this section shall result in the approval of such rule by the Legislature only if the

Legislature is in regular session and has failed to disapprove such rule within thirty (30) legislative days after such rule has been so transmitted. In the event the Legislature adjourns before the expiration of such thirty (30) legislative days, such rule shall carry over for consideration by the Legislature during the next regular session and shall be considered to have been originally transmitted to the Legislature on the first day of said next regular session for review pursuant to this section. As an alternative, an agency may request direct legislative approval of such rules and the Legislature may approve such rule as provided by ~~paragraph 1 of~~ subsection F of this section. An agency may also adopt emergency rules under the provisions of Section 253 of this title.

J. Prior to final adoption of a rule, an agency may withdraw from legislative review a 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, and to the Secretary for publication in The Oklahoma Register.

K. Except as otherwise provided by Sections 253, 250.4 and 250.6 of this title or as otherwise specifically provided by the Legislature, no agency shall promulgate any rule unless reviewed by the Legislature pursuant to this section. An agency may promulgate an emergency rule only pursuant to Section 253 of this title.

L. 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. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 308a of Title 75, unless there is created a duplication in numbering, reads as follows:

The provisions of Article II of the Administrative Procedures Act govern the hearing procedures of agencies, and does not grant

jurisdiction, not otherwise provided by law. The Legislature recognizes that agencies take actions and make decisions, other than by individual proceedings for which the right to judicial review is intended to be exercised pursuant to other laws.

SECTION 4. AMENDATORY 75 O.S. 1991, Section 309, is amended to read as follows:

Section 309. ~~(a)~~ A. In an individual proceeding, all parties shall be afforded an opportunity for hearing after reasonable notice.

~~(b)~~ B. The notice shall include:

~~(1)~~ a 1. A statement of the time, place and nature of the hearing;

~~(2)~~ a 2. A statement of the legal authority and jurisdiction under which the hearing is to be held;

~~(3)~~ a 3. A reference to the particular sections of the statutes and rules involved; and

~~(4)~~ a 4. A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon application a more definite and detailed statement shall be furnished.

~~(e)~~ C. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

~~(d)~~ D. Unless precluded by law, informal disposition may be made of any individual proceeding by stipulation, agreed settlement, consent order, or default.

~~(e)~~ E. The record in an individual proceeding shall include:

~~(1)~~ all 1. All pleadings, motions and intermediate rulings;

~~(2)~~ evidence 2. Evidence received or considered at the individual proceeding;

~~(3)~~ a 3. A statement of matters officially noticed;

~~(4) questions~~ 4. Questions and offers of proof, objections, and rulings thereon;

~~(5) proposed~~ 5. Proposed findings and exceptions;

~~(6) any~~ 6. Any decision, opinion, or report by the officer presiding at the hearing; and

~~(7) all staff memoranda~~ 7. All other evidence or data submitted to the hearing ~~officer~~ examiner or ~~members of the agency~~ administrative head in connection with their consideration of the case provided all parties have had access to such evidence.

~~(f) F.~~ F. Oral proceedings ~~or any part thereof~~ shall be ~~transcribed on request of any party~~ electronically recorded. Such recordings shall be maintained for such time so as to protect the record through judicial review. Copies of the recordings shall be provided by the agency at the request of any party to the proceeding. Costs of transcription of the recordings shall be borne by the party requesting the transcription. For judicial review, electronic recordings of an individual proceeding, as certified by the agency, may be submitted to the reviewing court by the agency as part of the record of the proceedings under review without transcription unless otherwise required to be transcribed by the reviewing court. In such case, the expense of transcriptions shall be taxed and assessed against the nonprevailing party. Parties to any proceeding may have the proceedings transcribed by a court reporter at their own expense.

~~(g) G.~~ G. Findings of fact shall be based exclusively on the evidence received and on matters officially noticed in the individual proceeding unless otherwise agreed upon by the parties on the record.

SECTION 5. AMENDATORY 75 O.S. 1991, Section 311, is amended to read as follows:

Section 311. ~~When in an individual proceeding a majority of the officials of~~ A. If the administrative head of an agency who are to

~~render the final decision have~~ has not heard the case or read the record of an individual proceeding, ~~the decision, if adverse to a party to the proceeding other than the agency itself,~~ a final agency order adverse to a party shall not be made until a proposed order is served upon the ~~parties~~ party, and an opportunity is afforded to each ~~the~~ party adversely affected to file exceptions and present briefs and oral argument to the ~~officials~~ administrative head who ~~are~~ is to render the ~~decision~~ final agency order. The proposed order shall be accompanied by a statement of the reasons therefor and of each issue of fact or law necessary to the proposed order, prepared by the ~~person who conducted the hearing~~ hearing examiner or by one who has read the record.

B. Such proposed order which is adverse to a party shall be served upon the parties at least fifteen (15) days prior to a hearing or meeting at which the administrative head is to consider or render a decision on the proposed order. At such hearing or meeting, the parties shall be afforded an opportunity to present briefs and oral arguments concerning the proposed order.

C. The parties by written stipulation may waive compliance with this section.

SECTION 6. AMENDATORY 75 O.S. 1991, Section 312, is amended to read as follows:

Section 312. A. A final agency order adverse to a party ~~in an individual proceeding~~ shall be:

1. Be in writing ~~or stated in the record. A final order shall include;~~ and

2. Include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the final agency order shall include a ruling upon each proposed finding.

B. Parties shall be notified either personally or by certified mail, return receipt requested, of any final agency order. Upon request, a copy of the order shall be delivered or mailed forthwith to each party and to his attorney of record.

SECTION 7. AMENDATORY 75 O.S. 1991, Section 314, is amended to read as follows:

Section 314. ~~(a) When the grant, denial, or renewal of a license is required to be preceded by notice and opportunity for hearing, the provisions of this act concerning individual proceedings apply~~ A. Except as otherwise specifically provided by law, the issuance or denial of a new license shall not require an individual proceeding.

~~(b) When~~ B. Except as otherwise prohibited by law, if a licensee has made timely and sufficient application for renewal of a license or a new license with reference to any transfer of an activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in. In case the application for renewal or for a new license with reference to any transfer of an activity of a continuing nature is denied or the terms of the new license limited, the existing license does not expire until the last day for seeking review of the final agency order or a later date fixed by order of the reviewing court.

~~(c) No revocation, suspension, annulment, or withdrawal of any license is lawful~~ C. 1. Unless otherwise provided by law, an existing license shall not be revoked, suspended, annulled, withdrawn or nonrenewed unless, prior to the institution of such final agency proceedings order, the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention or renewal of the license.

2. If the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

SECTION 8. AMENDATORY 75 O.S. 1991, Section 315, is amended to read as follows:

Section 315. ~~(1)~~ A. 1. The agency conducting any individual proceeding ~~subject to this act~~ shall have power to require the furnishing of such information, the attendance of such witnesses, and the production of such books, records, papers or other objects as may be necessary and proper for the purposes of the proceeding.

2. The agency, or any party to a proceeding before it, may take the depositions of witnesses, within or without the state, in the same manner as is provided by law for the taking of depositions in civil actions in courts of record. Depositions so taken shall be admissible in any proceeding affected by this act. Provided, however, all or any part of the deposition may be objected to at time of hearing, and may be received in evidence or excluded from the evidence by the agency or individual conducting the hearing in accordance with the law with reference to evidence in this act or with reference to evidence in courts of record under the law of the State of Oklahoma.

~~(2)~~ B. In furtherance of the powers granted by subsection ~~(1)~~ hereof A of this section, any agency, administrative head, hearing examiner or any other duly authorized member or employee thereof, upon its own motion may, and upon the request of any party appearing in an individual proceeding shall ~~issue:~~

1. Issue subpoenas for witnesses ~~or;~~

2. Issue subpoenas duces tecum to compel the production of books, records, papers or other objects, which may be served by the

marshal of the agency or by any person in any manner prescribed for the service of a subpoena in a civil action; or

3. Quash a subpoena or subpoenas duces tecum so issued; provided, prior to quashing a subpoena or subpoenas duces tecum the agency shall give notice to all parties. A subpoena or subpoenas duces tecum may not be quashed if any party objects.

~~(3)~~ C. 1. In case of disobedience to any subpoena issued and served under this section or to any lawful agency requirement for information, or of the refusal of any person to testify to any matter regarding which he may be interrogated lawfully in a proceeding before an agency, the agency may apply to the district or superior court of the county of such person's residence or to any judge thereof for an order to compel compliance with the subpoena or the furnishing of information or the giving of testimony. Forthwith the court or the judge shall cite the respondent to appear and shall hear the matter as expeditiously as possible.

2. If ~~the~~ the disobedience or refusal is found to be unlawful, the court, or the judge, shall enter an order requiring compliance. Disobedience of such an order shall be punished as contempt of court in the same manner and by the same procedure as is provided for like conduct committed in the course of judicial proceedings.

~~(4) Nothing in this section shall limit or abridge in any way the powers of the Corporation Commission in respect to contempt proceedings or of any other agency which may possess the authority to punish for contempt.~~

SECTION 9. AMENDATORY 75 O.S. 1991, Section 317, is amended to read as follows:

Section 317. ~~A decision in an individual proceeding~~ A. A final agency order issued by an administrative head of an agency shall be subject to rehearing, reopening or reconsideration by the agency, such administrative head. Application or request for such rehearing, reopening or reconsideration shall be made by any party

aggrieved by the final agency order within ten (10) days from the date of ~~its~~ the entry of such final agency order. The grounds for such action shall be either:

~~(a) newly~~ 1. Newly discovered or newly available evidence, relevant to the issues;

~~(b) need~~ 2. Need for additional evidence adequately to develop the facts essential to proper decision;

~~(c) probable~~ 3. Probable error committed by the agency in the proceeding or in its decision such as would be ground for reversal on judicial review of the final agency order;

~~(d) need~~ 4. Need for further consideration of the issues and the evidence in the public interest; or

~~(e) a~~ 5. A showing that issues not previously considered ought to be examined in order properly to dispose of the matter.

B. The order of the agency granting rehearing, reconsideration or review, or the petition of a party therefor, shall set forth the grounds which justify such action.

C. Nothing in this section shall prevent rehearing, reopening or reconsideration of a matter by any agency in accordance with other statutory provisions applicable to such agency, or, at any time, on the ground of fraud practiced by the prevailing party or of procurement of the order by perjured testimony or fictitious evidence.

D. On reconsideration, reopening, or rehearing, the matter may be heard by the agency, or it may be referred to a hearing examiner. The hearing shall be confined to those grounds upon which the reconsideration, reopening or rehearing was ordered.

E. If an application for rehearing shall be timely filed, the period within which judicial review, under the applicable statute, must be sought, shall run from the final disposition of such application.

SECTION 10. AMENDATORY 75 O.S. 1991, Section 318, is amended to read as follows:

Section 318. ~~(1)~~ A. 1. Any ~~person or~~ party aggrieved ~~or~~ ~~adversely affected~~ by a final agency order in an individual proceeding, ~~whether such order is affirmative or negative in form,~~ is entitled to certain, speedy, adequate and complete judicial review thereof ~~under this act, but nothing in this~~ pursuant to the provisions of this section and Sections 319, 320, 321, 322 and 323 of this title.

2. This section shall not prevent resort to other means of review, redress, relief or trial de novo, available because of constitutional provisions.

3. Neither a motion for new trial nor an application for rehearing shall be prerequisite to secure judicial review.

~~(2)~~ B. 1. The judicial review prescribed by this section for final agency orders, as to ~~orders rendered in individual proceedings~~ ~~by~~ agencies whose final agency orders are made subject to review, under constitutional or statutory provisions, by appellate proceedings in the Supreme Court of Oklahoma, shall be afforded by such proceedings taken in accordance with the procedure and under the conditions otherwise provided by law, but subject to the applicable provisions of Sections 319 through 324 of this title, and the rules of the Supreme Court.

2. In all other instances, proceedings for review shall be instituted by filing a petition, in the district court of the county in which the party seeking review resides or at the option of such party where the property interest affected is situated, within thirty (30) days after the appellant is notified of the final agency order as provided in Section 312 of this title.

C. Copies of the petition shall be served upon the agency and all other parties of record, and proof of such service shall be filed in the court within ten (10) days after the filing of the

petition. The court, in its discretion, may permit other interested persons to intervene.

SECTION 11. AMENDATORY 75 O.S. 1991, Section 320, is amended to read as follows:

Section 320. Within thirty (30) days after service of the petition for review or equivalent process upon it, or within such further time as the reviewing court, upon application for good cause shown, may allow, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review; ~~but, by.~~ For purposes of this section, "record" shall include such information as specified by Section 309 of this title. By stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs resulting therefrom. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

SECTION 12. This act shall become effective September 1, 1992.

Passed the House of Representatives the 11th day of March, 1992.

Speaker of the House of  
Representatives

Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 1992.

President of the Senate