

STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

HOUSE BILL NO. 2247

By: Weese

AS INTRODUCED

An Act relating to the Oklahoma Administrative Procedures Act; amending 75 O.S. 1991, Sections 250.3, as last amended by Section 1, Chapter 182, O.S.L. 1994 and 309, as last amended by Section 12, Chapter 384, O.S.L. 1994 (75 O.S. Supp. 1995, Sections 250.3 and 309), which relate to definitions and individual proceedings; modifying definition; providing for permissive intervention; providing for intervention as a matter of right; prescribing standard for determination; providing decisions subject to judicial review; 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, as last amended by Section 1, Chapter 182, O.S.L. 1994 (75 O.S. Supp. 1995, Section 250.3), is amended to read as follows:

Section 250.3 As used in the Administrative Procedures Act:

1. "Agency" includes but is not limited to 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 Legislature or any branch, committee or officer thereof, and
- b. 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,
- e. orders 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 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 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. "Party" means a person or agency named and participating, or properly seeking and entitled by law to participate, in an individual proceeding. For purposes of the Oklahoma Administrative Procedures Act, a person alleging that action proposed by an agency or that action to be taken by another entity pursuant to an order of an agency poses a significant risk to a personal or economic interest that may occur in the future, but which is not easily quantifiable, may make application to the relevant agency pursuant to Section 309 of this title for permission to intervene in an individual proceeding;

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

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

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;

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;

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

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;

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

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

SECTION 2. AMENDATORY 75 O.S. 1991, Section 309, as last amended by Section 12, Chapter 384, O.S.L. 1994 (75 O.S. Supp. 1995, Section 309), is amended to read as follows:

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

B. The notice shall include:

1. A statement of the time, place and nature of the hearing;

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

3. A reference to the particular sections of the statutes and rules involved; and

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.

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

D. A person who is not a named party to a proceeding being conducted by an agency:

1. May make application to the agency for permission to intervene as a party if the applicant demonstrates to the agency, or its designated hearing officer, that the person would be permitted to be joined as a person needed for just adjudication pursuant to the standard established for proceedings in district courts provided by subsection A of Section 2020 of Title 12 of the Oklahoma Statutes; or

2. Shall be joined as a party if the applicant demonstrates to the agency, or its designated hearing officer, that the person would be entitled to joinder as a matter of right pursuant to the standard established for proceedings in district courts provided by subsection A of Section 2019 of Title 12 of the Oklahoma Statutes.

An order of an agency pursuant to this subsection shall be a final order of the agency and shall be subject to judicial review pursuant to Section 318 of this title.

E. Deliberations by administrative heads, hearing examiners, and other persons authorized by law may be held in executive session pursuant to paragraph 8 of subsection B of Section 307 of Title 25 of the Oklahoma Statutes.

~~E.~~ F. Unless precluded by law, informal disposition may be made of any individual proceeding by stipulation, agreed settlement, consent order, or default.

~~F.~~ G. The record in an individual proceeding shall include:

1. All pleadings, motions and intermediate rulings;

2. Evidence received or considered at the individual proceeding;

3. A statement of matters officially noticed;

4. Questions and offers of proof, objections, and rulings thereon;

5. Proposed findings and exceptions;

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

7. All other evidence or data submitted to the hearing examiner or administrative head in connection with their consideration of the case provided all parties have had access to such evidence.

~~G.~~ H. Oral proceedings shall be 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.

~~H.~~ I. 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 3. This act shall become effective November 1, 1996.

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