ENGROSSED SENATE
BILL NO. 803

By: Henry and Snyder of the Senate

and

Braddock of the House

[administrative law - Administrative Hearings Act - Administrative Hearings Panel of Oklahoma - repealing - codification -

effective date]

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 351 of Title 75, unless there is created a duplication in numbering, reads as follows:

SHORT TITLE

Sections 1 through 18 of this act shall be known and may be cited as the "Administrative Hearings Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 352 of Title 75, unless there is created a duplication in numbering, reads as follows:

PURPOSE

The purpose of this act is to ensure that all persons involved in an administrative adjudication receive a fair and impartial hearing before an independent, disinterested, and impartial administrative hearing officer in the most efficient and least costly manner possible.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 353 of Title 75, unless there is created a duplication in numbering, reads as follows:

DEFINITIONS

As used in this act:

1. "Administrative agency" means, except as otherwise provided in this act, any board, bureau, agency, commission, department, or other governmental entity of the Executive Branch of this state, whether under the control of one or more elected or appointed officers, and which has any of the judicial power of the state pursuant to Section 1 of Article VII of the Oklahoma Constitution or which is otherwise subject to the provisions of this act;

2. "Administrative hearing" means:

a. an individual proceeding conducted by an administrative hearing officer pursuant to the Administrative Procedures Act and the rules of the Administrative Hearings Panel, and

b. any other proceeding referable to the Administrative Hearings Panel and to be conducted by an administrative hearing officer;

3. "Administrative hearing officer" means a permanent or temporary employee of the Administrative Hearings Panel having the qualifications prescribed by Section 8 of this act and authorized to preside over an administrative hearing and includes the Chief Presiding Officer and the Administrator whenever either is acting as an administrative hearing officer, unless the context otherwise requires;

4. "Administrator" means the chief administrative officer of the Administrative Hearings Panel;

5. "Referring agency" means any administrative agency which may or must refer any matter to the Administrative Hearings Panel; and

6. "Temporary administrative hearing officer" means an administrative hearing officer retained by the Administrative Hearings Panel by contract because of a high caseload, because of disqualification of other administrative hearing officers, or for any other reason when approved by the Chief Presiding Officer.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 354 of Title 75, unless there is created a duplication in numbering, reads as follows:

CREATION; HEADQUARTERS; EXEMPTION FROM SUNSET REVIEW; OPEN RECORDS; RECORDS MANAGEMENT AND ARCHIVES; OPEN HEARINGS; TRAVEL EXPENSES

A. There is hereby created the Administrative Hearings Panel of Oklahoma which shall be in the Executive Department and shall exercise the judicial authority of the various boards, agencies, and commissions of this state as provided in this act and Article VII, Section 1 of the Oklahoma Constitution.

B. The Panel shall maintain its headquarters office at the seat of government, but may establish permanent and temporary offices and hearing facilities in other areas of the state as may be determined by the Administrator or as otherwise provided by law. When obtaining office space and other facilities in areas other than the seat of government, the Administrator shall, by agreement, utilize existing state, county, or municipal property when and where appropriate.

C. The Panel shall not be subject to review under the Oklahoma Sunset Review Act.

D. Records of the Panel shall be subject to the Oklahoma Open Records Act, except the following:

1. Notes, memoranda, draft opinions, and other work papers of the administrative hearing officers and their staff; and

2. Records and evidence relating to matters before an administrative hearing officer which have been sealed pursuant to the rules of the Panel.

E. Records of the Panel shall be subject to the Records Management Act and the Archives and Records Commission.

F. Administrative hearings of the Panel shall not be subject to the Oklahoma Open Meeting Act, but shall be conducted in public unless required by law to be closed or unless otherwise closed by

the administrative hearing officer pursuant to the rules of the Panel.

G. Employees and administrative hearing officers of the Panel shall be entitled to reimbursement for travel expenses approved by the Chief Presiding Officer or Administrator in accordance with the State Travel Reimbursement Act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 355 of Title 75, unless there is created a duplication in numbering, reads as follows:

APPOINTMENT, TERM, REMOVAL, QUALIFICATIONS, AND COMPENSATION OF THE CHIEF PRESIDING OFFICER

A. The Chief Presiding Officer of the Administrative Hearings Panel shall be appointed for a six-year term by the Governor with the advice and consent of the Senate. Any vacancy in the office shall be filled in the same manner.

B. The Chief Presiding Officer of the Panel shall:

1. Be a resident and qualified elector of this state;

2. Be an attorney licensed to practice law in this state for at least ten (10) years at the time of his or her appointment; and

3. Have demonstrated knowledge of administrative law.

C. The Chief Presiding Officer of the Panel may be removed from office as provided by Section 1181 et seq. of Title 22 of the Oklahoma Statutes.

D. The Chief Presiding Officer shall receive a salary which is equal to ninety percent (90%) of the salary of a judge of the district court. The Chief Presiding Officer shall also be entitled to benefits as a state employee.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 356 of Title 75, unless there is created a duplication in numbering, reads as follows:

POWERS AND DUTIES OF THE CHIEF PRESIDING OFFICER

The Chief Presiding Officer of the Administrative Hearings Panel shall, on behalf of the Panel:

1. Employ administrative hearing officers;

2. Employ an administrator of the Panel;

3. Adopt rules of procedure in compliance with the Administrative Procedures Act;

4. Adopt a schedule of fees which may be imposed by administrative hearing officers in compliance with the Administrative Procedures Act;

5. Approve or disapprove contracts and other agreements; and

6. Have such other powers and perform such other duties as may be necessary and proper to implement the provisions of this act.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 357 of Title 75, unless there is created a duplication in numbering, reads as follows:

POWERS AND DUTIES OF THE ADMINISTRATOR; COMPENSATION

A. Subject to the approval of the Chief Presiding Officer of the Administrative Hearings Panel, the Administrator shall, on behalf of the Panel:

1. Employ support personnel including, but not limited to, court reporters, legal assistants, law clerks, and interns, and set the duties, qualifications, and compensation for such personnel;

2. Enter into contracts and other agreements;

3. When the Administrator meets the qualifications for an administrative hearing officer, at the request of the Chief Presiding Officer, perform the duties of an administrative hearing officer; and

4. Have such other powers and perform such other duties as the Chief Presiding Officer may prescribe.

B. The compensation of the Administrator shall be set by the Chief Presiding Officer in an amount which does not exceed ninety percent (90%) of the salary of the Chief Presiding Officer,

exclusive of benefits. The Administrator shall also be entitled to benefits as a state employee.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 358 of Title 75, unless there is created a duplication in numbering, reads as follows:

QUALIFICATIONS AND COMPENSATION OF ADMINISTRATIVE HEARINGS OFFICERS; CLASSIFICATION UNDER THE MERIT SYSTEM OF PERSONNEL ADMINISTRATION

A. An administrative hearing officer employed by or performing services pursuant to a contract with the Administrative Hearings Panel shall:

1. Be an attorney licensed to practice law in this state for at least five (5) years;

2. Be a resident and qualified elector of this state;

3. Have demonstrated knowledge of administrative law; and

4. Have such other qualifications as the Chief Presiding Officer shall prescribe by rule.

B. The compensation of administrative hearing officers shall be set by the Chief Presiding Officer, but shall not exceed ninety percent (90%) of the compensation provided for a special judge of the district court, exclusive of benefits. Administrative hearing officers shall also be entitled to benefits as state employees.

C. Administrative hearing officers employed by the Panel shall be classified employees under the Merit System of Personnel Administration.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 359 of Title 75, unless there is created a duplication in numbering, reads as follows:

RETENTION OF TEMPORARY ADMINISTRATIVE HEARING OFFICERS

A. Whenever the Chief Presiding Officer determines that there is a need for a temporary administrative hearing officer, the Chief Presiding Officer may enter into a contract with an individual to

serve as a temporary administrative hearing officer or, if the Chief Presiding Officer is disqualified or otherwise delegates the authority to the Administrator, the Administrator may enter into a contract with an individual to serve as a temporary administrative hearing officer.

B. Temporary administrative hearing officers shall meet the qualifications for administrative hearing officers pursuant to Section 8 of this act.

C. Active retired district court judges may serve as temporary administrative hearing officers.

D. Temporary administrative hearing officers shall not be members of a retirement system or be entitled to any other benefit.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 360 of Title 75, unless there is created a duplication in numbering, reads as follows:

ATTENTION TO DUTIES; OUTSIDE EMPLOYMENT; CODE OF JUDICIAL CONDUCT

A. The Chief Presiding Officer of the Administrative Hearings Panel and all permanent administrative hearing officers shall devote full time to the duties of their office and shall not practice law while in office nor be a partner, associate, shareholder, or otherwise interested in a firm for the practice of law.

B. The Chief Presiding Officer and all permanent administrative hearing officers shall be subject to the Code of Judicial Conduct.

C. Temporary administrative hearing officers shall be subject to the Code of Judicial Conduct to the extent the Code is made applicable to them by the rules of the Panel or by rule or order of the Supreme Court of Oklahoma.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 361 of Title 75, unless there is created a duplication in numbering, reads as follows:

ASSIGNMENT OF CASES AND OTHER MATTERS; DISQUALIFICATION

OF ADMINISTRATIVE HEARING OFFICERS

A. Any case or other matter referred to the Administrative Hearings Panel shall be assigned by the Administrator to an administrative hearing officer by rotation, except when:

1. The Administrator knows or has reason to believe after inquiry, that the rotation will result in the assignment of a case or other matter to an administrative hearing officer who would be disqualified to participate;

2. In the opinion of the Administrator, the workload of an administrative hearing officer might delay or otherwise impair the progress of the case or other matter, in which case, the Chief Presiding Officer may remove the administrative hearing officer from the rotation as the workload of the administrative hearing officer warrants; and

3. The Administrator determines that a case or other matter is so related to another case or other matter that they should be heard by the same administrative hearing officer, whether because of the same or similar parties, subject matter, or other considerations.

B. Whenever an administrative hearing officer determines that he or she must disqualify himself or herself from hearing a case or other matter due to personal interest or for any other just cause, the administrative hearing officer shall notify the Administrator who shall assign the case or other matter to another administrative hearing officer in rotation.

C. Whenever all administrative hearing officers have been disqualified from hearing a case or other matter, the Administrator shall assign the case or other matter to a temporary administrative hearing officer.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 362 of Title 75, unless there is created a duplication in numbering, reads as follows:

REVOLVING FUND

There is hereby created in the State Treasury a revolving fund for the Administrative Hearings Panel to be designated as the "Administrative Hearings Panel Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of appropriations by the Legislature, transferred funds pursuant to Section 19 of this act, and fees, fines, penalties, and other costs collected by the Panel as otherwise provided by law. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the Administrative Hearings Panel for any authorized purpose. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 363 of Title 75, unless there is created a duplication in numbering, reads as follows:

JURISDICTION

The Administrative Hearings Panel shall have jurisdiction over all cases and other matters which are:

1. Confided to it by law or by an administrative rule of a referring agency; or

2. Referred to it by an administrative agency required to refer cases and other matters to the Panel or which have discretion to refer cases and other matters to a hearing officer.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 364 of Title 75, unless there is created a duplication in numbering, reads as follows:

VENUE

Venue for all administrative hearings shall be as provided by rule of the Administrative Hearings Panel, unless otherwise provided by law.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 365 of Title 75, unless there is created a duplication in numbering, reads as follows:

PLEADINGS

The Administrative Hearings Panel may adopt rules for pleadings filed with the Panel, but such rules and pleadings shall be construed liberally and leave to amend shall be liberally granted especially when a party is not represented by counsel.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 366 of Title 75, unless there is created a duplication in numbering, reads as follows:

HEARING PROCEDURES

Hearings conducted by an administrative hearing officer shall be held pursuant to the Administrative Procedures Act, the rules of the Administrative Hearings Panel, and other applicable law.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 367 of Title 75, unless there is created a duplication in numbering, reads as follows:

AUTHORITY OF ADMINISTRATIVE HEARING OFFICER TO GRANT RELIEF; FINAL DECISIONS

A. After hearing, on default, or by agreement of the parties, an administrative hearing officer may take any action with relation to a party which could have been taken before the effective date of this act by the agency or agencies involved in the hearing.

B. Every final decision of an administrative hearing officer shall be in writing and shall include findings of fact and conclusions of law sufficient to apprise the parties and the public of the basis for the decision.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 368 of Title 75, unless there is created a duplication in numbering, reads as follows:

TRANSITION

A. Any case or other matter referred for an administrative hearing on or after the effective date of this act shall be referred to the Administrative Hearings Panel.

B. Any case or other matter which is pending prior to the effective date of this act shall be subject to the procedure in effect prior to the effective date of this act.

C. All files, notes, memoranda, papers, evidence, and other materials of whatever kind relating to a pending case or other matter which is necessary or useful in completing the case or other matter shall be transferred to the Panel unless otherwise determined by the Chief Presiding Officer.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 369 of Title 75, unless there is created a duplication in numbering, reads as follows:

TRANSFER OF EMPLOYEES AND EQUIPMENT

A. Every state employee who has exclusively or principally conducted or presided over hearings for a state agency prior to June 1, 1999, and who is qualified to serve as an administrative hearings officer pursuant to this act, shall be transferred to the Administrative Hearings Panel.

B. Every state employee who has exclusively or principally served as support staff for those employees transferred under subsection A of this section shall be transferred to the Panel, unless the Director of the Office of State Finance, in consultation with the head of the transferring agency and the Chief Presiding Officer, determines that an employee should not be transferred.

C. All equipment or other tangible property in possession of state agencies, used or held exclusively or principally by personnel transferred under subsections A and B of this section, shall be transferred to the Panel, unless the Director of the Office of State Finance, in consultation with the head of the transferring agency

and the Chief Presiding Officer, determines that the equipment or property should not be transferred.

D. All unexpended funds, including unpaid and unearned salaries, personnel records, accrued leave, and accrued benefits relating to an employee transferred pursuant to subsections A and B of this section shall be transferred to the Panel.

E. The Director of the Office of State Finance shall coordinate the transfer of funds, property, personnel, allotments, purchases, outstanding financial obligations, and encumbrances required by this act.

SECTION 20. AMENDATORY 75 O.S. 1991, Section 323, is amended to read as follows:

Section 323. An aggrieved party~~,~~ or the agency, without any motion for a new trial, may secure a review of any final judgment of ~~a district or superior court under this act~~ an administrative hearing officer by appeal to the Supreme Court. ~~Such~~ An appeal from a decision of an administrative hearing officer shall be taken in the manner and time provided by law for appeal to the Supreme Court from the district court in civil actions. An agency taking an appeal shall not be required to give bond.

SECTION 21. REPEALER 75 O.S. 1991, Section 318, as amended by Section 14, Chapter 310, O.S.L. 1992 (75 O.S. Supp. 1998, Section 318), is hereby repealed.

SECTION 22. This act shall become effective January 1, 2000.

Passed the Senate the 10th day of March, 1999.

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President of the Senate

Passed the House of Representatives the ____ day of _____ , 1999.

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Speaker of the House of Representatives