

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 1315

By: Covey

COMMITTEE SUBSTITUTE

An Act relating to administrative law; enacting the State Office of Administrative Hearings Act; stating purpose; defining terms; providing for exceptions to act; creating the State Office of Administrative Hearings; providing powers and duties; providing for the appointment of the Chief Administrative Law Judge of the State Office of Administrative Hearings; providing for powers and duties of the Chief Administrative Law Judge; providing for compensation of Chief Administrative Law Judge; providing for the adoption of rules pursuant to the Administrative Procedures Act; establishing qualifications, responsibilities and compensation of administrative law judges; providing for the jurisdiction of the State Office of Administrative Hearings; providing for appeal from a decision of an administrative law judge; creating the State Office of Administrative Hearings Revolving Fund; providing for the administration of the fund; providing for the transfer of personnel, equipment, and pending cases to the State Office of Administrative Procedures; providing that the transfer of funds, personnel, allotments, purchases, outstanding financial obligations and encumbrances be coordinated by the Director of the Office of State Finance; requiring Chief Administrative Law Judge promulgate rules, establish procedure, and obtain necessary personnel and equipment to assure smooth transition process; amending 75 O.S. 1991, Section 250.3, as last amended by Section 1, Chapter 239, O.S.L. 1998, 310, as amended by Section 1, Chapter 46, O.S.L. 1999, 311, as last amended by Section 16, Chapter 239, O.S.L. 1998, Section 2, Chapter 317, O.S.L. 1995, 313, 315, as amended by Section 12, Chapter 310, O.S.L. 1992, 316, as last amended by Section 2, Chapter 62, O.S.L. 1998, 317, as amended by Section 13, Chapter 310, O.S.L. 1992, 318, as amended by Section 14, Chapter 310, O.S.L. 1992, 319, 320, as amended by Section 15, Chapter 310, O.S.L. 1992, 321, 322 and 323 (75 O.S. Supp. 2000, Sections 250.3, 310, 311, 311.1, 315, 316, 317, 318 and 320), which relate to the Administrative Procedures Act; modifying the Administrative Procedures Act to conform with the State Office of Administrative Hearings Act; providing for codification; providing for noncodification; and providing effective dates.

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:

Sections 1 through 12 of this act shall be known and may be cited as the "State Office of 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:

The purpose of the State Office of Administrative Hearings Act is to create a state agency to serve as an independent forum for administrative adjudicative hearings in the Executive Department and to separate this adjudicative function from the investigative, prosecutorial and policy-making functions in the Executive Department to ensure that all persons involved in an administrative adjudication receive a fair and impartial hearing before an independent, disinterested and impartial administrative law judge 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:

As used in the State Office of Administrative Hearings Act:

1. "Act" means the State Office of Administrative Hearings Act;
2. "Administrative agency" means any board, bureau, agency, commission, or other governmental entity of the Executive Department 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 Constitution of the State of Oklahoma or which is otherwise subject to the provisions of the State Office of Administrative Hearings Act;
3. "Administrative hearing" means:

- a. an individual proceeding conducted pursuant to the Administrative Procedures Act, this act, and the rules of the State Office of Administrative Hearings,
- b. an individual proceeding arising from administrative agency action and necessary to comply with the requirements of due process, and
- c. any other proceeding referable to the State Office of Administrative Hearings and to be conducted by an administrative law judge;

4. "Administrative law judge" means an individual who presides at an administrative hearing, unless the context otherwise requires; provided, that an administrative law judge may be either a "full-time administrative law judge" or a "part-time administrative law judge";

5. "Chief Administrative Law Judge" means the chief presiding officer of the State Office of Administrative Hearings;

6. "Full-time administrative law judge" means an administrative law judge appointed by the Chief Administrative Law Judge and who is required to devote full time to the duties of the Office;

7. "Office" means the State Office of Administrative Hearings;

8. "Part-time administrative law judge" means an administrative law judge retained by the Chief Administrative Law Judge by contract to assist with the Office's high caseload, because of disqualification of other administrative law judges, or for any other reason; and

9. "Principally" means more than fifty percent (50%). When referring to a state employee's time, the employee is "principally" engaged in an activity if more than fifty percent (50%) of the employee's annual state work time was devoted to a specified activity in the calendar year prior to June 1, 2001.

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:

A. The State Office of Administrative Hearings Act shall not apply to:

1. An agency of the Legislative Department; or
2. An agency of the Judicial Department.

B. Except as an Executive Department agency may choose to apply this act to itself by contract pursuant to the provisions of Section 6 of this act, the State Office of Administrative Hearings Act shall not apply to:

1. The Governor;
2. The Lieutenant Governor;
3. The Attorney General;
4. The State Auditor and Inspector;
5. The State Treasurer;
6. The Corporation Commission;
7. The Oklahoma Real Estate Commission;
8. The Oklahoma Employment Security Commission; or
9. A hearing principally concerning licensing and conducted by an agency acting pursuant to its professional or occupational licensing functions prescribed in Title 59 of the Oklahoma Statutes.

C. Except as provided in subsections A and B of this section, the State Office of Administrative Hearings Act shall apply to each administrative agency.

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:

A. There is hereby created the State Office of Administrative Hearings which shall be in the Executive Department and shall exercise the judicial authority of various boards, agencies and

commissions of this state as provided in this act and Section 1 of Article VII of the Constitution of the State of Oklahoma.

B. The Office shall maintain its headquarters at the seat of government, but may establish full-time and part-time offices and hearing facilities in other areas of the state as may be determined by the Chief Administrative Law Judge or as otherwise provided by law. When obtaining office space and other facilities in areas other than the seat of government, the Chief Administrative Law Judge shall, by agreement, utilize existing state or political subdivision property when and where appropriate.

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

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

1. Notes, memoranda, draft opinions and other work papers created for adjudicative purposes of the administrative law judges and their staff; and

2. Records and evidence relating to matters before an administrative law judge which are required by law to be confidential.

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

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

G. Employees, the Chief Administrative Law Judge, and administrative law judges of the Office shall be entitled to reimbursement for travel expenses approved by the Chief Administrative Law Judge in accordance with the State Travel Reimbursement Act.

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:

A. The State Office of Administrative Hearings shall be headed by the Chief Administrative Law Judge, who shall:

1. Be appointed by the Governor, with the advice and consent of the Senate, for a term of six (6) years;

2. Be removed from office only as provided by Section 1181 et seq. of Title 22 of the Oklahoma Statutes;

3. Devote full time to the duties of the Office and shall not engage in the practice of law;

4. Be subject to the Code of Judicial Conduct;

5. Be a resident and qualified elector of this state admitted to practice law in this state for at least five (5) years; and

6. Receive a salary equal to ninety percent (90%) of the salary provided by law for a district court judge.

B. The Chief Administrative Law Judge shall:

1. Supervise the State Office of Administrative Hearings;

2. Appoint and remove administrative law judges;

3. Assign administrative law judges to preside over cases;

4. Establish and implement standards and specialized training programs and provide materials for administrative law judges;

5. Adopt rules of procedure and other guidelines for administrative hearings;

6. Monitor the quality of state administrative hearings;

7. Submit an annual report on the activities of the Office to the Governor and the Legislature; and

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

C. The Chief Administrative Law Judge may:

1. Serve as an administrative law judge;

2. Contract on behalf of the Office with Executive Department agencies that are not subject to the State Office of Administrative Hearings Act to provide administrative hearing services;

3. Contract on behalf of the Office with a qualified individual to serve as part-time administrative law judge whenever the need for such an administrative law judge arises because of the Office's caseload, disqualification of full-time administrative law judges, the need for special expertise, or for other reasons;

4. Contract on behalf of the Office with public or private entities or individuals to carry out the purposes of the State Office of Administrative Hearings Act;

5. Employ such support personnel as are necessary to carry out the purposes of this act; and

6. Promulgate rules pursuant to the Administrative Procedures Act to implement the State Office of Administrative Hearings 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:

A. A full-time administrative law judge shall:

1. Be appointed by the Chief Administrative Law Judge;

2. Be removed, suspended, or demoted by the Chief Administrative Law Judge only for good cause shown, after notice and an opportunity to be heard;

3. Be subject to supervision by the Chief Administrative Law Judge;

4. Devote full time to the duties of the Office and shall not engage in the practice of law;

5. Be subject to the Code of Judicial Conduct;

6. Receive a salary as determined by the Chief Administrative Law Judge but not greater than ninety percent (90%) of the salary provided by law for the Chief Administrative Law Judge; and

7. Be entitled to benefits as a state employee.

B. A part-time administrative law judge shall:

1. Be appointed by the Chief Administrative Law Judge;

2. Be removed by the Chief Administrative Law Judge from a case over which the part-time administrative law judge is presiding only for good cause shown;

3. Be subject to supervision by the Chief Administrative Law Judge;

4. Be subject to the Code of Judicial Conduct to the same extent as a part-time special judge of the district court during the pendency of any case over which the part-time administrative law judge is presiding;

5. Receive compensation as determined by the Chief Administrative Law Judge but not greater than Five Hundred Dollars (\$500.00) per day during the time that a hearing in the case over which the part-time administrative law judge presides is in session; provided, that a part-time administrative law judge shall never receive compensation from the Office in any fiscal year greater than the maximum salary provided for a full-time administrative law judge; and

6. Not be a member of a state retirement system or entitled to any other benefits.

C. An administrative law judge shall not:

1. Be responsible to or subject to the supervision or direction of an officer, employee, or agent engaged in the performance of investigative, prosecuting, or advisory functions for an agency;

2. Perform duties inconsistent with the duties and responsibilities of an administrative law judge; and

3. Be subject to the requirements of the State Merit System of Employment.

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:



A. Except as provided in Section 4 of this act, the State Office of Administrative Hearings, acting through its administrative law judges, shall have jurisdiction of all matters subject to administrative hearing and shall conduct all administrative hearings.

B. The administrative law judge shall have final decision-making responsibility in any administrative hearing over which the administrative law judge presides. The administrative law judge's decision 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.

C. Hearings shall be conducted by the administrative law judge pursuant to the Administrative Procedures Act, the rules of the State Office of Administrative Hearings, and other applicable law.

D. Administrative law judges shall have the power to issue subpoenas and subpoenas duces tecum, administer oaths, and perform other necessary and appropriate acts in the performance of their duties.

E. Venue for administrative hearings shall be as provided by rule of the State Office of Administrative Hearings, unless otherwise provided by law. If not otherwise provided, venue shall be in Oklahoma County at the offices of the State Office of Administrative Hearings.

F. The rules of procedure for administrative hearings promulgated by the State Office of Administrative Hearings shall be construed liberally and leave to amend pleadings shall be liberally granted to effectuate the ends of justice.

G. Except as provided in the rules of the State Office of Administrative Hearings, no party to an administrative hearing may select or reject a particular administrative law judge for a particular proceeding.

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:

A. Appeal from the decision of an administrative law judge shall be to a panel of three administrative law judges appointed by the Chief Administrative Law Judge for the purpose of deciding the appeal on the record made at the administrative hearing. The decision of a majority of the panel shall be final. The panel's decision shall be in writing sufficient to apprise the parties and the public of the basis for the decision.

B. Appeal from the decision of an administrative law judge panel shall be to the Oklahoma Supreme Court on the record made.

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:

There is hereby created in the State Treasury a revolving fund for the State Office of Administrative Hearings to be designated as the "State Office of Administrative Hearings 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 12 of this act, and costs of administrative hearings collected by the Office as provided by law. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the Office 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 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:

A. All administrative agencies shall cooperate with the Chief Administrative Law Judge in the discharge of the duties of the Office.

B. On or before October 1, 2001, each administrative agency subject to this act shall inform the Intergovernmental Relations Committee of the House of Representatives in writing of:

1. The names, job titles, and annual salaries of all personnel who will transfer to the State Office of Administrative Hearings pursuant to Section 12 of this act. If an agency believes that no personnel will transfer, the agency shall so inform the Committee in writing; and

2. All equipment and property that will transfer to the State Office of Administrative Hearings pursuant to Section 12 of this act. If an agency believes that no equipment or property will transfer, the agency shall so inform the Committee in writing.

C. On January 2, 2002, each administrative agency subject to this act shall inform the Intergovernmental Relations Committee of the House of Representatives and the Chief Administrative Law Judge in writing of the case name, case number, assigned administrative law judge or hearing officer, and deadline for determination, if any, of all matters the administrative agency is transferring to the Office pursuant to subsection D of this section.

D. Any matter requiring an administrative hearing and that is pending before an administrative agency on January 2, 2002, shall be transferred to the State Office of Administrative Hearings for hearing and determination. The procedural rules of the transferring agency shall apply to such matters unless and until the assigned administrative law judge issues an order changing the procedural rules pursuant to the rules of the State Office of Administrative Hearings.

E. Any matter that requires determination by rule, statute, or court order prior to January 15, 2002, and that is pending before an

administrative agency on December 23, 2001, shall be decided by that agency on or before December 31, 2001.

F. Any administrative agency that will transfer a pending matter to the State Office of Administrative Hearings shall organize all files, notes, memoranda, papers, evidence, and other materials of whatever kind relating to that pending matter and transfer them to the Office.

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:

A. Every state employee who exclusively or principally conducted or presided over hearings for an administrative agency prior to June 1, 2001, shall be transferred to the State Office of Administrative Hearings.

B. Every state employee who exclusively or principally served as support staff for those employees transferred under subsection A of this section shall be transferred to the Office, unless the Director of the Office of State Finance, in consultation with the head of the transferring agency and the Chief Administrative Law Judge, 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 Office, unless the Director of the Office of State Finance, in consultation with the head of the transferring agency and the Chief Administrative Law Judge, 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 Office.

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 13. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

A. The Governor shall appoint the Chief Administrative Law Judge on or before October 1, 2001. Service as Chief Administrative Law Judge shall not dispense with Senate consent of the appointee after the legislative session resumes.

B. The Chief Administrative Law Judge shall promulgate rules, establish procedures, obtain necessary equipment, secure office and hearing space, and work with agencies transferring cases, personnel and equipment to assure a smooth transition to the administrative hearing system established by the State Office of Administrative Hearings Act.

C. The Chief Administrative Law Judge may hire one clerical employee prior to January 1, 2002.

SECTION 14. AMENDATORY 75 O.S. 1991, Section 250.3, as last amended by Section 1, Chapter 239, O.S.L. 1998 (75 O.S. Supp. 2000, 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 rule 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. "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. "Final agency order" or "final 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~~ appellate review;

6. "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. "Individual proceeding" means the formal process employed by the State Office of Administrative Hearings or 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. "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law;

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

10. "Order" means all or part of a formal or official decision made by an administrative law judge of the State Office of Administrative Hearings or an agency including but not limited to final agency orders;

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

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

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

14. "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;

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

17. "Secretary" means the Secretary of State.

SECTION 15. AMENDATORY 75 O.S. 1991, Section 310, as amended by Section 1, Chapter 46, O.S.L. 1999 (75 O.S. Supp. 2000, Section 310), is amended to read as follows:

Section 310. In individual proceedings:

1. Agencies not subject to the State Office of Administrative Hearings Act or an administrative law judge within the State Office of Administrative Hearings may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. They shall give effect to the rules of privilege recognized by law in respect to: self-incrimination; confidential communications between husband and wife during the subsistence of the marriage relation; communication between attorney and client, made in that relation; confessions made to a clergyman or priest in his or her professional capacity in the course of discipline enjoined by the church to which he or she belongs; communications made by a patient to a licensed practitioner of one of the healing arts with reference to any physical or supposed physical disease or of knowledge gained by a practitioner through a physical examination of a patient made in a professional capacity; records and files of any official or agency of any state or of the United States which, by any statute of a state or of the United States are made confidential and privileged. No greater exclusionary effect shall be given any such rule or privilege than would obtain in an action in court. Agencies not subject to the State Office of Administrative Hearings Act or an



administrative law judge within the State Office of Administrative Hearings may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form;

2. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original;

3. A party may conduct cross-examinations required for a full and true disclosure of the facts;

4. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's or administrative law judge's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence-;

5. Any party shall at all times have the right to counsel, provided that such counsel must be duly licensed to practice law by the Supreme Court of Oklahoma, and provided further that counsel shall have the right to appear and act for and on behalf of the party represented-; and

6. A party may request the exclusion of witnesses to the extent and for the purposes stated in Section 2615 of Title 12 of the Oklahoma Statutes. Exclusion of a witness shall not be a violation of the Oklahoma Open Meeting Act.

SECTION 16. AMENDATORY 75 O.S. 1991, Section 311, as last amended by Section 16, Chapter 239, O.S.L. 1998 (75 O.S. Supp. 2000, Section 311), is amended to read as follows:

Section 311. A. Except as otherwise provided by Section 311.1 of this title, if the administrative head of an agency not subject to the State Office of Administrative Hearings Act has not heard the case or read the record of an individual proceeding, a final agency order adverse to a party shall not be made until a proposed order is served upon the party, and an opportunity is afforded to the party to file exceptions and present briefs and oral argument to the administrative head who is to render the 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 hearing examiner or by one who has read the record.

B. Such proposed order 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 17. AMENDATORY Section 2, Chapter 317, O.S.L. 1995 (75 O.S. Supp. 2000, Section 311.1), is amended to read as follows:

Section 311.1 A. ~~The~~ For professional and occupational licensing matters as provided in Section 4 of the State Office of Administrative Hearings Act, the Commissioner of the State Department of Health may delegate the authority to issue a final agency order adverse to a party to an agency administrative law judge if:

1. The administrative law judge has a general knowledge of the Public Health Code, and rules promulgated thereto;

2. The administrative law judge:

- a. is currently licensed to practice law by the Supreme Court of this state,
- b. has a working knowledge of the Administrative Procedures Act and administrative rules of the State Department of Health,
- c. is not an owner, stockholder, employee or officer of, nor has any other business relationship with, any corporation, partnership, or other business or entity that is subject to regulation by the State Department of Health,
- d. is separate and apart from the legal division or office of general counsel of the State Department of Health,
- e. is not responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecuting functions for the State Department of Health, and
- f. has not been engaged in the performance of investigative or prosecuting functions for the State Department of Health regarding the party receiving the final agency order; and

3. The Commissioner in delegating the authority to issue final agency orders adverse to a party pursuant to this section specifically designates by written agency policy and procedure the type or category of final agency order which may be issued by the administrative law judge.

B. The provisions of this section shall not be construed to authorize or allow restraints on the authority of the Commissioner to adopt, reject, review, modify or correct the findings of fact and

conclusions of law or any proposed order issued by the administrative law judge.

C. When the administrative law judge issues a final agency order, that order becomes the final order of the State Department of Health without further proceeding unless there is a request for rehearing, reopening, or reconsideration pursuant to Section 317 of ~~Title 75 of the Oklahoma Statutes~~ this title or a filing for judicial review pursuant to Section 318 of ~~Title 75 of the Oklahoma Statutes~~ this title.

SECTION 18. AMENDATORY 75 O.S. 1991, Section 313, is amended to read as follows:

Section 313. Unless required for the disposition of ex parte matters authorized by law, an administrative law judge of the State Office of Administrative Hearings and members or employees of an agency not subject to the State Office of Administrative Hearings Act assigned to render a decision or to make findings of fact and conclusions of law in an individual proceeding shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or ~~his~~ a representative of any party, except upon notice and opportunity for all parties to participate. An agency member ~~(1)~~ may ~~communicate~~:

1. Communicate with other members of the agency, ~~and~~ ~~(2)~~ ~~may~~ have

2. Have the aid and advice of one or more personal assistants.

An administrative law judge may communicate with the Chief Administrative Law Judge of the State Office of Administrative Hearings and other administrative law judges and employees of that office.

SECTION 19. AMENDATORY 75 O.S. 1991, Section 315, as amended by Section 12, Chapter 310, O.S.L. 1992 (75 O.S. Supp. 2000, Section 315), is amended to read as follows:

Section 315. A. 1. The agency or administrative law judge of the State Office of Administrative Hearings conducting any individual proceeding 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 administrative law judge of the State Office of Administrative Hearings, 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.

B. In furtherance of the powers granted by subsection A of this section, any administrative law judge of the State Office of Administrative Hearings or agency, not subject to the State Office of Administrative Hearings Act acting through an 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:

1. Issue subpoenas for witnesses;

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.

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 or she may be interrogated lawfully in a proceeding before an agency or administrative law judge of the State Office of Administrative Hearings, the agency or administrative law judge 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 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.

SECTION 20. AMENDATORY 75 O.S. 1991, Section 316, as last amended by Section 2, Chapter 62, O.S.L. 1998 (75 O.S. Supp. 2000, Section 316), is amended to read as follows:

Section 316. ~~A~~ An administrative law judge of the State Office of Administrative Hearings, hearing examiner or agency member shall withdraw from any individual proceeding in which he or she cannot accord a fair and impartial hearing or consideration. Any party may request the disqualification of ~~a~~ an administrative law judge of the State Office of Administrative Hearings, hearing examiner or agency member, on the ground of ~~his~~ an inability to give a fair and impartial hearing, by filing an affidavit, promptly upon discovery of the alleged disqualification, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing

cannot be accorded. The issue shall be determined promptly by the administrative head of the agency, or, if it affects a member or members of the agency, by the remaining members thereof, if a quorum, or by the Chief Administrative Law Judge of the State Office of Administrative Hearings if the issue involves an administrative law judge of that office. Upon the entry of an order of disqualification affecting an administrative law judge of the State Office of Administrative Hearings or a hearing examiner, the Chief Administrative Law Judge or the agency, as appropriate, shall assign another in his stead or shall conduct the hearing itself. Upon the disqualification of a member of an agency, the agency shall proceed with the proceeding if a quorum remains. If a quorum no longer exists, by virtue of the member's disqualification, the Governor immediately shall appoint a member pro tempore to sit in place of the disqualified member in that proceeding. In further action, after the disqualification of a member of an agency, the provisions of Section 311 of this title shall apply.

SECTION 21. AMENDATORY 75 O.S. 1991, Section 317, as amended by Section 13, Chapter 310, O.S.L. 1992 (75 O.S. Supp. 2000, Section 317), is amended to read as follows:

Section 317. A. A final order issued by an administrative law judge of the State Office of Administrative Hearings or a final agency order issued by an administrative head of an agency not subject to the State Office of Administrative Hearings Act shall be subject to rehearing, reopening or reconsideration by the State Office of Administrative Hearings or by such administrative head. Any 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 the entry of such ~~final agency~~ order. The grounds for such action shall be either:

1. Newly discovered or newly available evidence, relevant to the issues;

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

3. Probable error committed by the administrative law judge or the agency not subject to the State Office of Administrative Hearings Act in the proceeding or in ~~its~~ the decision such as would be ground for reversal on review by an administrative law judge panel or judicial review of the ~~final agency~~ order;

4. Need for further consideration of the issues and the evidence in the public interest; or

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

B. The order of an administrative law judge of the State Office of Administrative Hearings or of the agency granting rehearing, reconsideration or review, or on 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 the State Office of Administrative Hearings or any agency not subject to the State Office of Administrative Hearings Act 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 either the same or a different administrative law judge or, in the case of an agency not subject to the State Office of Administrative Hearings Act, 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 22. AMENDATORY 75 O.S. 1991, Section 318, as amended by Section 14, Chapter 310, O.S.L. 1992 (75 O.S. Supp. 2000, Section 318), is amended to read as follows:

Section 318. A. 1. Any party aggrieved by a final ~~agency~~ order issued by an administrative law judge of the State Office of Administrative Hearings or by a final order issued by an agency not subject to the State Office of Administrative Hearings Act in an individual proceeding is entitled to certain, speedy, adequate and complete ~~judicial~~ appellate review thereof 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~~ appellate review.

B. 1. The ~~judicial~~ appellate review prescribed by this section for final agency orders, as to 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~~ For final agency orders of agencies not subject to the State Office of Administrative Hearings Act, 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.

3. Appellate review of a final order issued by an administrative law judge of the State Office of Administrative Hearings shall be instituted by filing a petition with the Chief Administrative Law Judge within thirty (30) days after the appellant is notified of the administrative law judge's order as provided in Section 312 of this title. Appellate review of a final order issued under authority of the State Office of Administrative Hearings Act shall be governed by Section 9 of the State Office of Administrative Hearings Act.

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 or with the Chief Administrative Law Judge, wherever the petition is filed, within ten (10) days after the filing of the petition. The court, ~~in its~~ or the Chief Administrative Law Judge, in the court or the Chief Administrative Law Judge's discretion, may permit other interested persons to intervene.

D. In any proceedings for appellate review brought by a party aggrieved by ~~a final agency~~ an order,~~,~~

~~1. The agency whose final agency order was made subject to review~~ the prevailing party may be entitled to recover against ~~such aggrieved the losing party any court costs, witness and fees, and including~~ reasonable attorney fees, if the court or State Office of Administrative Hearings determines that the proceeding brought by the losing party is frivolous or was brought to delay the effect of ~~said final agency~~ the order.

~~2. The party aggrieved by the final agency order may be entitled to recover against such agency any court costs, witness fees, and reasonable attorney fees if the court determines that the proceeding brought by the agency is frivolous.~~

SECTION 23. AMENDATORY 75 O.S. 1991, Section 319, is amended to read as follows:

Section 319. ~~(1)~~ A. The filing of a proceeding for appellate review shall not stay enforcement of ~~the agency decision;~~ an order, but ~~the agency may do so, or~~ the reviewing court or administrative law judge panel constituted under the State Office of Administrative Hearings Act may order a stay upon such terms as it deems proper, and shall do so whenever required by subsection ~~(2)~~ B of this section.

~~(2)~~ B. In every proceeding in any court or administrative law judge panel constituted under the State Office of Administrative Hearings Act for the review of an order ~~of an agency~~ under this act, upon the filing of an application, supported by verified statements of material fact establishing that the enforcement of the order pending final decision would result in present, continuous and irreparable impairment of the constitutional rights of the applicant, a stay of the enforcement of such order and of the accrual of penalties thereunder shall be entered upon the condition that:

~~(a)~~ injury 1. Injury to adverse parties or to the public, as the case may be, can be obviated through the furnishing of security adequate to compensate for any loss which may be suffered as a result of the stay in the event the order is affirmed, in whole or in part; and

~~(b)~~ a 2. A supersedeas bond, in the amount and with sureties prescribed and approved by the reviewing court or administrative law judge panel constituted under the State Office of Administrative Hearings Act, in its sound judicial or quasi-judicial discretion, as adequate to meet the requirement ~~(a)~~ of paragraph 1 of this subsection, be filed with such court or administrative law judge panel. If an application for supersedeas hereunder, accompanied by a proposal for a supersedeas bond, is not acted upon by the court or administrative law judge panel within forty-five (45) days from the filing thereof, the order appealed from thereupon shall be

automatically superseded and stayed, during the pendency of the appeal, upon the filing of the bond proposed in the application;7; provided, however, that the court or administrative law judge panel thereafter may reasonably modify the terms of the supersedeas as to amount and surety whereupon the appellant shall comply with such modification in order to maintain the supersedeas in effect;; provided further, that any order otherwise required by law to be stayed without a supersedeas bond during the pendency of an appeal shall be stayed without bond.

SECTION 24. AMENDATORY 75 O.S. 1991, Section 320, as amended by Section 15, Chapter 310, O.S.L. 1992 (75 O.S. Supp. 2000, Section 320), is amended to read as follows:

Section 320. A. 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. 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.

B. Transmittal of the record of the hearing before an administrative law judge under the State Office of Administrative Hearings Act to an administrative law judge panel shall be accomplished pursuant to the State Office of Administrative Hearings Act and the rules promulgated thereunder.

SECTION 25. AMENDATORY 75 O.S. 1991, Section 321, is amended to read as follows:

Section 321. A. The review shall be conducted by the court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the agency, not shown in the record, testimony thereon may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

B. The review shall be conducted by the administrative law judge panel pursuant to the State Office of Administrative Hearings Act and the rules promulgated thereunder.

SECTION 26. AMENDATORY 75 O.S. 1991, Section 322, is amended to read as follows:

Section 322. ~~(1)~~ A. In any proceeding for the review of an ~~agency order under this act,~~ the Supreme Court, ~~or~~ the district court, or administrative law judge panel constituted under the State Office of Administrative Hearings Act, as the case may be, in the exercise of proper judicial discretion or authority, may set aside or modify the order, or reverse it and remand it to the ~~agency~~ appropriate entity for further proceedings, if it determines that the substantial rights of the appellant or petitioner for review have been prejudiced because the agency or administrative law judge findings, inferences, conclusions or decisions, are:

~~(a) in~~ 1. In violation of constitutional provisions; or

~~(b) in~~ 2. In excess of the statutory authority or jurisdiction of the agency; or

~~(c) made~~ 3. Made upon unlawful procedure; or

~~(d) affected~~ 4. Affected by other error of law; or

~~(e) clearly~~ 5. Clearly erroneous in view of the reliable, material, probative and substantial competent evidence, as defined in Section ~~10~~ 310 of this ~~act~~ title, including matters properly noticed by the agency upon examination and consideration of the entire record as submitted; but without otherwise substituting its

judgment as to the weight of the evidence for that of the agency on question of fact; or

~~(f)~~ ~~arbitrary~~ 6. Arbitrary or capricious; or

~~(g)~~ ~~because~~ 7. Because findings of fact, upon issues essential to the decision, were not made although requested.

~~(2)~~ B. The reviewing court or administrative law judge panel, also in the exercise of proper judicial discretion or authority, may remand the case to the ~~agency~~ appropriate entity for the taking and consideration of further evidence, if it is deemed essential to a proper disposition of the issue.

~~(3)~~ C. The reviewing court or administrative law judge panel shall affirm the order and decision of the agency or State Office of Administrative Hearings, if it is found to be valid and the proceedings are free from prejudicial error to the appellant.

SECTION 27. 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~~ the Administrative Procedures Act or final decision of an administrative law judge panel under this act and the State Office of Administrative Hearings Act by appeal to the Supreme Court. Such appeal 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 28. Sections 3, 6, 10, 11 and 13 of this act shall become effective September 1, 2001.

SECTION 29. Sections 1, 2, 4, 5, 7 through 9, 12, and 14 through 27 of this act shall become effective January 1, 2002.

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