

ENGROSSED HOUSE
BILL NO. 2600

By: Wright of the House

and

Easley of the Senate

An Act relating to statutes and reports; specifying certain powers of Administrative Law Judges; amending 75 O.S. 2001, Section 310, which relates to the Administrative Procedures Act; providing for expedition of certain cases; modifying the appellate process; repealing 75 O.S. 2001, Section 311.1, which relates to the Administrative Procedures Act; providing for codification; and providing an 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 309.1 of Title 75, unless there is created a duplication in numbering, reads as follows:

A. In any individual proceeding the administrative head of an agency may delegate authority to decide the case, including all issues of law or fact arising therefrom which may be within the jurisdiction of the agency, and issue a final agency order. The terms "designee" and "administrative law judge" refer to any person to whom such authority is delegated.

B. A designee or administrative law judge sits in the place of the agency head and during the course of the individual proceeding is invested with the same authority and obligation of oversight as is the agency head. In contested matters where the agency is a party, deference shall be given to the evidence produced by agency investigative or enforcement staff. Once the agency has met its burden of production of substantial evidence, the burden of persuasion shall be upon the opposing party. The designee or administrative law judge shall ensure that a plenary proceeding is

conducted, and that as complete an evidentiary record as is reasonable under the circumstances of the proceeding is compiled.

C. The administrative law judge shall have working knowledge of the Administrative Procedures Act, the enabling statutes for the agency in which employed, and the rules promulgated by the agency. In addition, the administrative law judge shall:

1. Be currently licensed to practice law by the Supreme Court of this state;

2. Not be an owner, stockholder, employee or officer of, nor have any other business relationship with, any corporation, partnership, or other business or entity that is subject to regulation by the agency in which employed;

3. Be separate and apart from the legal division or office of general counsel of the agency;

4. Not be 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 agency; and

5. Not have been engaged in the performance of investigative or prosecuting functions for the agency regarding the party receiving the final agency order.

D. Any final agency order issued by a designee or administrative law judge shall become the order of the agency head without further proceeding, unless there is a request for rehearing, reopening, or reconsideration pursuant to Section 317 of Title 75 of the Oklahoma Statutes or a filing for judicial review pursuant to Section 318 of Title 75 of the Oklahoma Statutes.

E. The provisions of this section shall not be construed to authorize or allow restraints upon the authority of the agency head to adopt, reject, review, modify or correct the findings of fact and conclusions of law or any order issued by the administrative law judge. The agency head, in delegating the authority to issue final agency orders adverse to a party pursuant to this section, may

specifically designate, by written agency policy or procedure, the type or category of final agency order which may be issued by the administrative law judge. The dismissal of any portion of allegations of an agency against a respondent, or the grant of summary adjudication to the agency of any part of its allegations, shall be immediately eligible for appeal by the opposing party to the agency head.

SECTION 2. AMENDATORY 75 O.S. 2001, Section 310, is amended to read as follows:

Section 310. In individual proceedings:

1. Agencies 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 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, which includes the receipt of evidence in digital form or by means of other electronic media which may be approved by the administrative law judge;

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 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~~;~~;

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; and

7. Each individual proceeding shall be set for an initial hearing on a date certain, but not more than one hundred twenty (120) days following the date that the document initiating the proceeding was filed with the agency. All prehearing procedures,

including motions and discovery, if any, shall be completed at least ten (10) days prior to the hearing date. These time limits shall not be extended unless all parties consent, or upon application of one or more of the parties and for good cause shown; provided, the grant of an enlargement of time by an administrative law judge of any of these limits may be reviewed and modified by the agency head.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 328 of Title 75, unless there is created a duplication in numbering, reads as follows:

A. While any individual proceeding is pending, upon motion of a party or upon its own motion, the agency may certify a question of law to the state district court for the county in which the individual proceeding is being held. Certification shall be ordered by the administrative law judge only if:

1. The pending litigation involves a question of law which cannot be jurisdictionally decided by the agency;
2. The answer to the question may be determinative of an issue in the pending individual proceeding; and
3. The question is one for which an answer is not provided by a controlling appellate decision, constitutional provision, or statute.

B. When certifying a question of law to the district court under this section, the parties shall generally follow the procedures outlined in Sections 1601 through 1611 of Title 20 of the Oklahoma Statutes for certified questions of law to the Oklahoma Supreme Court.

C. Other prehearing or hearing proceedings shall continue while a question of law is certified unless the administrative law judge finds that answer to the certified question is necessary to any further proceeding; provided, that if all proceedings are stayed pending answer of the certified question, then any other time

limitations provided in the Administrative Procedures Act or by agency rule will be extended by the time necessary to certify a question of law under this section.

SECTION 4. REPEALER 75 O.S. 2001, Section 311.1, is hereby repealed.

SECTION 5. This act shall become effective November 1, 2006.

Passed the House of Representatives the 15th day of March, 2006.

Presiding Officer of the House of
Representatives

Passed the Senate the ____ day of _____, 2006.

Presiding Officer of the Senate