



1 necessary personnel and equipment to assure smooth  
2 transition process; amending 75 O.S. 2011, Sections  
3 250.3, 310, 311, 311.1, 313, 315, 316, 317, 318, 319,  
4 320, 321, 322 and 323, which relate to the  
5 Administrative Procedures Act; modifying the  
6 Administrative Procedures Act to conform with the  
7 State Office of Administrative Hearings Act;  
8 providing for codification; providing for  
9 noncodification; and providing effective dates.

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

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

14 Sections 1 through 13 of this act shall be known and may be  
15 cited as the "State Office of Administrative Hearings Act".

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

19 The purpose of the State Office of Administrative Hearings Act  
20 is to create a state agency to serve as an independent forum for  
21 administrative adjudicative hearings in the Executive Department and  
22 to separate this adjudicative function from the investigative,  
23 prosecutorial and policy-making functions in the Executive

1 Department to ensure that all persons involved in an administrative  
2 adjudication receive a fair and impartial hearing before an  
3 independent, disinterested and impartial administrative law judge in  
4 the most efficient and least costly manner possible.

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

8 As used in the State Office of Administrative Hearings Act:

9 1. "Administrative agency" means any board, bureau, agency,  
10 commission, or other governmental entity of the Executive Department  
11 of this state, whether under the control of one or more elected or  
12 appointed officers, and which has any of the judicial power of the  
13 state pursuant to Section 1 of Article VII of the Constitution of  
14 the State of Oklahoma or which is otherwise subject to the  
15 provisions of the State Office of Administrative Hearings Act;

16 2. "Administrative hearing" means:

17 a. an individual proceeding conducted pursuant to the  
18 Administrative Procedures Act, the State Office of  
19 Administrative Hearings Act, and the rules of the  
20 State Office of Administrative Hearings,

21 b. an individual proceeding arising from administrative  
22 agency action and necessary to comply with the  
23 requirements of due process, and  
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1 c. any other proceeding referable to the State Office of  
2 Administrative Hearings and to be conducted by an  
3 administrative law judge;

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

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

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

14 6. "Office" means the State Office of Administrative Hearings;

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

20 8. "Principally" means more than fifty percent (50%). When  
21 referring to a state employee's time, the employee is "principally"  
22 engaged in an activity if more than fifty percent (50%) of the  
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1 employee's annual state work time was devoted to a specified  
2 activity in the calendar year prior to October 1, 2012.

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

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

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

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

- 14 1. The Governor;
- 15 2. The Lieutenant Governor;
- 16 3. The Attorney General;
- 17 4. The State Auditor and Inspector;
- 18 5. The State Treasurer;
- 19 6. The Corporation Commission;
- 20 7. The Oklahoma Real Estate Commission;
- 21 8. The Oklahoma Employment Security Commission;
- 22 9. The State Department of Rehabilitation Services; or

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1 10. A hearing principally concerning licensing and conducted by  
2 an agency acting pursuant to its professional or occupational  
3 licensing functions prescribed in Title 59 of the Oklahoma Statutes.

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

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

10 A. There is hereby created the State Office of Administrative  
11 Hearings which shall be in the Executive Department and shall  
12 exercise the judicial authority of various boards, agencies and  
13 commissions of this state as provided in the State Office of  
14 Administrative Hearings Act and Section 1 of Article VII of the  
15 Constitution of the State of Oklahoma.

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

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

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

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

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

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

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

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

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

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

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

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

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

9 4. Be subject to the Code of Judicial Conduct;

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

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

14 B. The Chief Administrative Law Judge shall:

15 1. Supervise the State Office of Administrative Hearings;

16 2. Appoint and remove administrative law judges;

17 3. Assign administrative law judges to preside over cases;

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

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

22 6. Monitor the quality of state administrative hearings;  
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1 7. Submit an annual report on the activities of the Office to  
2 the Governor and the Legislature; and

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

5 C. The Chief Administrative Law Judge may:

6 1. Serve as an administrative law judge;

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

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

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

18 5. Employ such support personnel as are necessary to carry out  
19 the purposes of the State Office of Administrative Hearings Act; and

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

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

4 A. A full-time administrative law judge shall:

5 1. Be appointed by the Chief Administrative Law Judge;

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

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

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

13 5. Be subject to the Code of Judicial Conduct;

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

17 7. Be entitled to benefits as a state employee.

18 B. A part-time administrative law judge shall:

19 1. Be appointed by the Chief Administrative Law Judge;

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

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

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

7 5. Receive compensation as determined by the Chief  
8 Administrative Law Judge, but not greater than Five Hundred Dollars  
9 (\$500.00) per day during the time that a hearing in the case over  
10 which the part-time administrative law judge presides is in session;  
11 provided, that a part-time administrative law judge shall never  
12 receive compensation from the Office in any fiscal year greater than  
13 the maximum salary provided for a full-time administrative law  
14 judge; and

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

17 C. An administrative law judge shall not:

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

21 2. Perform duties inconsistent with the duties and  
22 responsibilities of an administrative law judge; and  
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1 3. Be subject to the requirements of the State Merit System of  
2 Employment.

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

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

11 B. The administrative law judge shall have final decision-  
12 making responsibility in any administrative hearing over which the  
13 administrative law judge presides. The administrative law judge's  
14 decision shall be in writing and shall include findings of fact and  
15 conclusions of law sufficient to apprise the parties and the public  
16 of the basis for the decision.

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

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

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

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

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

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

17 A. Appeal from the decision of an administrative law judge  
18 shall be to a panel of three (3) administrative law judges appointed  
19 by the Chief Administrative Law Judge for the purpose of deciding  
20 the appeal on the record made at the administrative hearing. The  
21 decision of a majority of the panel shall be final. The panel's  
22 decision shall be in writing sufficient to apprise the parties and  
23 the public of the basis for the decision.

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

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

6 There is hereby created in the State Treasury a revolving fund  
7 for the State Office of Administrative Hearings to be designated as  
8 the "State Office of Administrative Hearings Revolving Fund". The  
9 fund shall be a continuing fund, not subject to fiscal year  
10 limitations, and shall consist of appropriations by the Legislature,  
11 transferred funds pursuant to Section 12 of this act, and costs of  
12 administrative hearings collected by the Office as provided by law.  
13 All monies accruing to the credit of the fund are hereby  
14 appropriated and may be budgeted and expended by the Office for any  
15 authorized purpose. Expenditures from the fund shall be made upon  
16 warrants issued by the State Treasurer against claims filed as  
17 prescribed by law with the Director of State Finance for approval  
18 and payment.

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

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

4 B. On or before October 1, 2012, each administrative agency  
5 subject to the State Office of Administrative Hearings Act shall  
6 inform the House of Representatives and the Senate in writing of:

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

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

17 C. On January 2, 2013, each administrative agency subject to  
18 the State Office of Administrative Hearings Act shall inform the  
19 House of Representatives, the Senate and the Chief Administrative  
20 Law Judge in writing of the case name, case number, assigned  
21 administrative law judge or hearing officer, and deadline for  
22 determination, if any, of all matters the administrative agency is  
23 transferring to the Office pursuant to subsection D of this section.

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1 D. Any matter requiring an administrative hearing and that is  
2 pending before an administrative agency on January 2, 2013, shall be  
3 transferred to the State Office of Administrative Hearings for  
4 hearing and determination. The procedural rules of the transferring  
5 agency shall apply to such matters unless and until the assigned  
6 administrative law judge issues an order changing the procedural  
7 rules pursuant to the rules of the State Office of Administrative  
8 Hearings.

9 E. Any matter that requires determination by rule, statute, or  
10 court order prior to January 15, 2013, and that is pending before an  
11 administrative agency on December 21, 2012, shall be decided by that  
12 agency on or before December 31, 2012.

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

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

21 A. Every state employee who exclusively or principally  
22 conducted or presided over hearings for an administrative agency  
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1 prior to January 1, 2013, shall be transferred to the State Office  
2 of Administrative Hearings.

3 B. Every state employee who exclusively or principally served  
4 as support staff for those employees transferred under subsection A  
5 of this section shall be transferred to the Office, unless the  
6 Director of the Office of State Finance, in consultation with the  
7 head of the transferring agency and the Chief Administrative Law  
8 Judge, determines that an employee should not be transferred.

9 C. Every state employee transferred pursuant to subsection A or  
10 B of this section shall retain any annual, sick and compensatory  
11 leave earned and any retirement and longevity benefits that have  
12 accrued.

13 D. All equipment or other tangible property in possession of  
14 state agencies, used or held exclusively or principally by personnel  
15 transferred under subsections A and B of this section, shall be  
16 transferred to the Office, unless the Director of the Office of  
17 State Finance, in consultation with the head of the transferring  
18 agency and the Chief Administrative Law Judge, determines that the  
19 equipment or property should not be transferred.

20 E. All unexpended funds, including unpaid and unearned  
21 salaries, personnel records, accrued leave, and accrued benefits  
22 relating to an employee transferred pursuant to subsections A, B and  
23 C of this section shall be transferred to the Office.

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1 F. The Director of the Office of State Finance shall coordinate  
2 the transfer of funds, property, personnel, allotments, purchases,  
3 outstanding financial obligations, and encumbrances required by the  
4 State Office of Administrative Hearings Act.

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

7 A. The Governor shall appoint the Chief Administrative Law  
8 Judge on or before October 1, 2012. Service as Chief Administrative  
9 Law Judge shall not dispense with Senate consent of the appointee  
10 after the legislative session resumes.

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

17 C. The Chief Administrative Law Judge may hire one clerical  
18 employee prior to January 1, 2013.

19 SECTION 14. AMENDATORY 75 O.S. 2011, Section 250.3, is  
20 amended to read as follows:

21 Section 250.3 As used in the Administrative Procedures Act:

22 1. "Administrative head" means an official or agency body  
23 responsible pursuant to law for issuing final agency orders;

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1           2. "Adopted" means a proposed emergency rule or permanent rule  
2 which has been approved by the agency but has not been reviewed by  
3 the Legislature and the Governor;

4           3. "Agency" includes but is not limited to any constitutionally  
5 or statutorily created state board, bureau, commission, office,  
6 authority, public trust in which the state is a beneficiary, or  
7 interstate commission, except:

8                 a. the Legislature or any branch, committee or officer  
9                         thereof, and

10                b. the courts;

11           4. "Emergency rule" means a rule that is made pursuant to  
12 Section 253 of this title;

13           5. "Final" or "finally adopted" means a rule other than an  
14 emergency rule, which has been approved by the Legislature and by  
15 the Governor, or approved by the Legislature pursuant to subsection  
16 B of Section 308 of this title and otherwise complies with the  
17 requirements of the Administrative Procedures Act but has not been  
18 published pursuant to Section 255 of this title;

19           6. "Final agency order" or "final order" means an order that  
20 includes findings of fact and conclusions of law pursuant to Section  
21 312 of this title, is dispositive of an individual proceeding unless  
22 there is a request for rehearing, reopening, or reconsideration  
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1 pursuant to Section 317 of this title and which is subject to  
2 ~~judicial~~ appellate review;

3 7. "Hearing examiner" means a person meeting the qualifications  
4 specified by Article II of the Administrative Procedures Act and who  
5 has been duly appointed by an agency to hold hearings and, as  
6 required, render orders or proposed orders;

7 8. "Individual proceeding" means the formal process employed by  
8 an agency having jurisdiction by law to resolve issues of law or  
9 fact between parties and which results in the exercise of discretion  
10 of a judicial nature;

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

14 10. "Office" means the Office of the Secretary of State;

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

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

22 13. "Permanent rule" means a rule that is made pursuant to  
23 Section 303 of this title;

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

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

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

10 17. "Rule" means any agency statement or group of related  
11 statements of general applicability and future effect that  
12 implements, interprets or prescribes law or policy, or describes the  
13 procedure or practice requirements of the agency. The term "rule"  
14 includes the amendment or revocation of an effective rule but does  
15 not include:

16 a. the issuance, renewal, denial, suspension or  
17 revocation or other sanction of an individual specific  
18 license,

19 b. the approval, disapproval or prescription of rates.  
20 For purposes of this subparagraph, the term "rates"  
21 shall not include fees or charges fixed by an agency  
22 for services provided by that agency including but not  
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1 limited to fees charged for licensing, permitting,  
2 inspections or publications,

3 c. statements and memoranda concerning only the internal  
4 management of an agency and not affecting private  
5 rights or procedures available to the public,

6 d. declaratory rulings issued pursuant to Section 307 of  
7 this title,

8 e. orders by an agency, or

9 f. press releases or "agency news releases", provided  
10 such releases are not for the purpose of interpreting,  
11 implementing or prescribing law or agency policy;

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

14 19. "Secretary" means the Secretary of State.

15 SECTION 15. AMENDATORY 75 O.S. 2011, Section 310, is  
16 amended to read as follows:

17 Section 310. In individual proceedings:

18 1. Agencies not subject to the State Office of Administrative  
19 Hearings Act or an administrative law judge within the State Office  
20 of Administrative Hearings may admit and give probative effect to  
21 evidence which possesses probative value commonly accepted by  
22 reasonably prudent persons in the conduct of their affairs. They  
23 shall give effect to the rules of privilege recognized by law in

1 | respect to: self-incrimination; confidential communications between  
2 | husband and wife during the subsistence of the marriage relation;  
3 | communication between attorney and client, made in that relation;  
4 | confessions made to a clergyman or priest in his or her professional  
5 | capacity in the course of discipline enjoined by the church to which  
6 | he or she belongs; communications made by a patient to a licensed  
7 | practitioner of one of the healing arts with reference to any  
8 | physical or supposed physical disease or of knowledge gained by a  
9 | practitioner through a physical examination of a patient made in a  
10 | professional capacity; records and files of any official or agency  
11 | of any state or of the United States which, by any statute of a  
12 | state or of the United States are made confidential and privileged.  
13 | No greater exclusionary effect shall be given any such rule or  
14 | privilege than would obtain in an action in court. Agencies not  
15 | subject to the State Office of Administrative Hearings Act or an  
16 | administrative law judge within the State Office of Administrative  
17 | Hearings may exclude incompetent, irrelevant, immaterial, and unduly  
18 | repetitious evidence. Objections to evidentiary offers may be made  
19 | and shall be noted in the record. Subject to these requirements,  
20 | when a hearing will be expedited and the interests of the parties  
21 | will not be prejudiced substantially, any part of the evidence may  
22 | be received in written form;

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

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

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

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

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

3 SECTION 16. AMENDATORY 75 O.S. 2011, Section 311, is  
4 amended to read as follows:

5 Section 311. A. Except as otherwise provided by Section 311.1  
6 of this title, if the administrative head of an agency not subject  
7 to the State Office of Administrative Hearings Act has not heard the  
8 case or read the record of an individual proceeding, a final agency  
9 order adverse to a party shall not be made until a proposed order is  
10 served upon the party, and an opportunity is afforded to the party  
11 to file exceptions and present briefs and oral argument to the  
12 administrative head who is to render the final agency order. The  
13 proposed order shall be accompanied by a statement of the reasons  
14 therefore and of each issue of fact or law necessary to the proposed  
15 order, prepared by the hearing examiner or by one who has read the  
16 record.

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

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

3 SECTION 17. AMENDATORY 75 O.S. Supp. 2011, Section  
4 311.1, is amended to read as follows:

5 Section 311.1 A. The For professional and occupational  
6 licensing matters as provided in Section 4 of this act, the State  
7 Commissioner of ~~the State Department of~~ Health may delegate the  
8 authority to issue a final agency order adverse to a party to an  
9 agency administrative law judge if:

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

12 2. The administrative law judge:

- 13 a. is currently licensed to practice law by the Supreme  
14 Court of this state,
- 15 b. has a working knowledge of the Administrative  
16 Procedures Act and administrative rules of the State  
17 Department of Health,
- 18 c. is not an owner, stockholder, employee or officer of,  
19 nor has any other business relationship with, any  
20 corporation, partnership, or other business or entity  
21 that is subject to regulation by the State Department  
22 of Health,

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- 1 d. is separate and apart from the legal division or  
2 office of general counsel of the State Department of  
3 Health,  
4 e. is not responsible to or subject to the supervision or  
5 direction of an employee or agent engaged in the  
6 performance of investigative or prosecuting functions  
7 for the State Department of Health, and  
8 f. has not been engaged in the performance of  
9 investigative or prosecuting functions for the State  
10 Department of Health regarding the party receiving the  
11 final agency order; and

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

17 B. The provisions of this section shall not be construed to  
18 authorize or allow restraints on the authority of the Commissioner  
19 to adopt, reject, review, modify or correct the findings of fact and  
20 conclusions of law or any proposed order issued by the  
21 administrative law judge.

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

6 SECTION 18. AMENDATORY 75 O.S. 2011, Section 313, is  
7 amended to read as follows:

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

- 19 1. Communicate with other members of the agency~~;~~ and ~~(2)~~ ~~may~~  
20 ~~have~~  
21 2. Have the aid and advice of one or more personal assistants.

22 An administrative law judge may communicate with the Chief  
23 Administrative Law Judge of the State Office of Administrative

1 Hearings and other administrative law judges and employees of that  
2 Office.

3 SECTION 19. AMENDATORY 75 O.S. 2011, Section 315, is  
4 amended to read as follows:

5 Section 315. A. 1. The agency or administrative law judge of  
6 the State Office of Administrative Hearings conducting any  
7 individual proceeding shall have power to require the furnishing of  
8 such information, the attendance of such witnesses, and the  
9 production of such books, records, papers or other objects as may be  
10 necessary and proper for the purposes of the proceeding.

11 2. The agency or administrative law judge of the State Office  
12 of Administrative Hearings, or any party to a proceeding before it,  
13 may take the depositions of witnesses, within or without the state,  
14 in the same manner as is provided by law for the taking of  
15 depositions in civil actions in courts of record. Depositions so  
16 taken shall be admissible in any proceeding affected by this act.  
17 Provided, however, all or any part of the deposition may be objected  
18 to at time of hearing, and may be received in evidence or excluded  
19 from the evidence by the agency or individual conducting the hearing  
20 in accordance with the law with reference to evidence in this act or  
21 with reference to evidence in courts of record under the law of the  
22 State of Oklahoma.

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1 B. In furtherance of the powers granted by subsection A of this  
2 section, any administrative law judge of the State Office of  
3 Administrative Hearings or agency~~7~~ not subject to the State Office  
4 of Administrative Hearings Act acting through an administrative  
5 head, hearing examiner or any other duly authorized member or  
6 employee thereof, upon its own motion may, and upon the request of  
7 any party appearing in an individual proceeding shall:

8 1. Issue subpoenas for witnesses;

9 2. Issue subpoenas duces tecum to compel the production of  
10 books, records, papers or other objects, which may be served by the  
11 marshal of the agency or by any person in any manner prescribed for  
12 the service of a subpoena in a civil action; or

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

17 C. 1. In case of disobedience to any subpoena issued and  
18 served under this section or to any lawful agency requirement for  
19 information, or of the refusal of any person to testify to any  
20 matter regarding which he or she may be interrogated lawfully in a  
21 proceeding before an agency or administrative law judge of the State  
22 Office of Administrative Hearings, the agency or administrative law  
23 judge may apply to the district ~~or superior~~ court of the county of

1 such person's residence or to any judge thereof for an order to  
2 compel compliance with the subpoena or the furnishing of information  
3 or the giving of testimony. Forthwith the court or the judge shall  
4 cite the respondent to appear and shall hear the matter as  
5 expeditiously as possible.

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

11 SECTION 20. AMENDATORY 75 O.S. 2011, Section 316, is  
12 amended to read as follows:

13 Section 316. ~~A~~ An administrative law judge of the State Office  
14 of Administrative Hearings, hearing examiner or agency member shall  
15 withdraw from any individual proceeding in which ~~he~~ that person  
16 cannot accord a fair and impartial hearing or consideration. Any  
17 party may request the disqualification of ~~a~~ an administrative law  
18 judge of the State Office of Administrative Hearings, hearing  
19 examiner or agency member, on the ground of ~~his~~ an inability to give  
20 a fair and impartial hearing, by filing an affidavit, promptly upon  
21 discovery of the alleged disqualification, stating with  
22 particularity the grounds upon which it is claimed that a fair and  
23 impartial hearing cannot be accorded. The issue shall be determined

1 promptly by the administrative head of the agency, or, if it affects  
2 a member or members of the agency, by the remaining members thereof,  
3 if a quorum, or by the Chief Administrative Law Judge of the State  
4 Office of Administrative Hearings if the issue involves an  
5 administrative law judge of that Office. Upon the entry of an order  
6 of disqualification affecting an administrative law judge of the  
7 State Office of Administrative Hearings or a hearing examiner, the  
8 Chief Administrative Law Judge or the agency, as appropriate, shall  
9 assign another in his stead or shall conduct the hearing itself.  
10 Upon the disqualification of a member of an agency, the agency shall  
11 proceed with the proceeding if a quorum remains. If a quorum no  
12 longer exists, by virtue of the member's disqualification, the  
13 Governor immediately shall appoint a member pro tempore to sit in  
14 place of the disqualified member in that proceeding. In further  
15 action, after the disqualification of a member of an agency, the  
16 provisions of Section 311 of this title shall apply.

17 SECTION 21. AMENDATORY 75 O.S. 2011, Section 317, is  
18 amended to read as follows:

19 Section 317. A. A final order issued by an administrative law  
20 judge of the State Office of Administrative Hearings or a final  
21 agency order issued by an administrative head of an agency not  
22 subject to the State Office of Administrative Hearings Act shall be  
23 subject to rehearing, reopening or reconsideration by the State

1 Office of Administrative Hearings or by such administrative head.  
2 Any application or request for such rehearing, reopening or  
3 reconsideration shall be made by any party aggrieved by the ~~final~~  
4 ~~agency~~ order within ten (10) days from the date of the entry of such  
5 ~~final agency~~ order. The grounds for such action shall be either:  
6 1. Newly discovered or newly available evidence~~7~~ relevant to  
7 the issues;  
8 2. Need for additional evidence ~~adequately~~ to develop  
9 adequately the facts essential to proper decision;  
10 3. Probable error committed by the administrative law judge or  
11 the agency not subject to the State Office of Administrative  
12 Hearings Act in the proceeding or in ~~its~~ the decision such as would  
13 be ~~ground~~ grounds for reversal on review by an administrative law  
14 judge panel or judicial review of the ~~final agency~~ order;  
15 4. Need for further consideration of the issues and the  
16 evidence in the public interest; or  
17 5. A showing that issues not previously considered ought to be  
18 examined in order properly to dispose of the matter.  
19 B. The order of an administrative law judge of the State Office  
20 of Administrative Hearings or of the agency granting rehearing,  
21 reconsideration or review, ~~or~~ on the petition of a party therefore,  
22 shall set forth the grounds which justify such action.

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1 C. Nothing in this section shall prevent rehearing, reopening  
2 or reconsideration of a matter by the State Office of Administrative  
3 Hearings or any agency not subject to the State Office of  
4 Administrative Hearings Act in accordance with other statutory  
5 provisions ~~applicable to such agency~~, or, at any time, on the ground  
6 of fraud practiced by the prevailing party or of procurement of the  
7 order by perjured testimony or fictitious evidence.

8 D. On reconsideration, reopening, or rehearing, the matter may  
9 be heard by either the same or a different administrative law judge  
10 or, in the case of an agency not subject to the State Office of  
11 Administrative Hearings Act, by the agency, ~~or it may be referred to~~  
12 a hearing examiner. The hearing shall be confined to those grounds  
13 upon which the reconsideration, reopening or rehearing was ordered.

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

18 SECTION 22. AMENDATORY 75 O.S. 2011, Section 318, is  
19 amended to read as follows:

20 Section 318. A. 1. Any party aggrieved by a final ~~agency~~  
21 order issued by an administrative law judge of the State Office of  
22 Administrative Hearings or by a final order issued by an agency not  
23 subject to the State Office of Administrative Hearings Act in an  
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1 individual proceeding is entitled to certain, speedy, adequate and  
2 complete ~~judicial~~ appellate review thereof pursuant to the  
3 provisions of this section and Sections 319, 320, 321, 322 and 323  
4 of this title.

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

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

10 B. 1. The ~~judicial~~ appellate review prescribed by this section  
11 for final agency orders, as to agencies whose final agency orders  
12 are made subject to review, under constitutional or statutory  
13 provisions, by appellate proceedings in the Supreme Court of  
14 Oklahoma, shall be afforded by such proceedings taken in accordance  
15 with the procedure and under the conditions otherwise provided by  
16 law, but subject to the applicable provisions of Sections 250.5 and  
17 319 through ~~324~~ 323 of this title, and the rules of the Supreme  
18 Court.

19 2. ~~In all other instances~~ For final agency orders of agencies  
20 not subject to the State Office of Administrative Hearings Act,  
21 proceedings for review shall be instituted by filing a petition, in  
22 the district court of the county in which the party seeking review  
23 resides or at the option of such party where the property interest

1 affected is situated, naming as respondents only the agency, such  
2 other party or parties in the administrative proceeding as may be  
3 named by the petitioner or as otherwise may be allowed by law,  
4 within thirty (30) days after the appellant is notified of the final  
5 agency order as provided in Section 312 of this title.

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

14 C. Copies of the petition shall be delivered in person or  
15 mailed, postage prepaid, to the agency and all other parties of  
16 record, and proof of such delivery or mailing shall be filed in the  
17 court, if the petition was filed pursuant to paragraph 2 of  
18 subsection B of this section, or with the Chief Administrative Law  
19 Judge, if the petition was filed pursuant to paragraph 3 of  
20 subsection B of this section, within ten (10) days after the filing  
21 of the petition. Any party not named as a respondent in the  
22 petition is entitled to respond within ten (10) days of receipt of  
23 service. The court, ~~in its~~ or the Chief Administrative Law Judge,  
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1 has the discretion, ~~may~~ to permit other interested persons to  
2 intervene.

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

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

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

16 SECTION 23. AMENDATORY 75 O.S. 2011, Section 319, is  
17 amended to read as follows:

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

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

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

17 ~~(b) a~~ 2. A supersedeas bond, in the amount and with sureties  
18 prescribed and approved by the reviewing court or administrative law  
19 judge panel constituted under the State Office of Administrative  
20 Hearings Act, in its sound judicial or quasi-judicial discretion, as  
21 adequate to meet the requirement ~~(a)~~ of paragraph 1 of this  
22 subsection, be filed with such court or administrative law judge  
23 panel. If an application for supersedeas hereunder, accompanied by  
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1 a proposal for a supersedeas bond, is not acted upon by the court or  
2 administrative law judge panel within forty-five (45) days from the  
3 filing thereof, the order appealed from thereupon shall be  
4 automatically superseded and stayed, during the pendency of the  
5 appeal, upon the filing of the bond proposed in the application;  
6 provided, however, that the court or administrative law judge panel  
7 thereafter may reasonably modify the terms of the supersedeas as to  
8 amount and surety whereupon the appellant shall comply with such  
9 modification in order to maintain the supersedeas in effect;  
10 provided further, that any order otherwise required by law to be  
11 stayed without a supersedeas bond during the pendency of an appeal  
12 shall be stayed without bond.

13 SECTION 24. AMENDATORY 75 O.S. 2011, Section 320, is  
14 amended to read as follows:

15 Section 320. A. Within sixty (60) days after service of the  
16 petition for review or equivalent process upon it, or within such  
17 further time as the reviewing court, upon application for good cause  
18 shown, may allow, the agency shall transmit to the reviewing court  
19 the original or a certified copy of the entire record of the  
20 proceeding under review. For purposes of this section, "record"  
21 shall include such information as specified by Section 309 of this  
22 title. By stipulation of all parties to the review proceeding, the  
23 record may be shortened. Any party unreasonably refusing to  
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1 stipulate to limit the record may be taxed by the court for the  
2 additional costs resulting therefrom. The court may require or  
3 permit subsequent corrections or additions to the record when deemed  
4 desirable.

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

10 SECTION 25. AMENDATORY 75 O.S. 2011, Section 321, is  
11 amended to read as follows:

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

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

21 SECTION 26. AMENDATORY 75 O.S. 2011, Section 322, is  
22 amended to read as follows:

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

- 11 ~~(a)~~ in 1. In violation of constitutional provisions; or  
12 ~~(b)~~ in 2. In excess of the statutory authority or jurisdiction  
13 of the agency; or  
14 ~~(c)~~ made 3. Made upon unlawful procedure; or  
15 ~~(d)~~ affected 4. Affected by other error of law; or  
16 ~~(e)~~ clearly 5. Clearly erroneous in view of the reliable,  
17 material, probative and substantial competent evidence, as defined  
18 in Section ~~10~~ 310 of this ~~act~~ title, including matters properly  
19 noticed by the agency upon examination and consideration of the  
20 entire record as submitted; but without otherwise substituting its  
21 judgment as to the weight of the evidence for that of the agency on  
22 question of fact; or  
23 ~~(f)~~ arbitrary 6. Arbitrary or capricious; or  
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1 ~~(g)~~ because 7. Because findings of fact, upon issues essential  
2 to the decision, were not made although requested.

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

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

12 SECTION 27. AMENDATORY 75 O.S. 2011, Section 323, is  
13 amended to read as follows:

14 Section 323. An aggrieved party, or the agency, without any  
15 motion for a new trial, may secure a review of any final judgment of  
16 a district ~~or superior~~ court under ~~this act~~ the Administrative  
17 Procedures Act or final decision of an administrative law judge  
18 panel under the State Office of Administrative Hearings Act and the  
19 State Office of Administrative Hearings Act by appeal to the Supreme  
20 Court. Such appeal shall be taken in the manner and time provided  
21 by law for appeal to the Supreme Court from the district court in  
22 civil actions. An agency taking an appeal shall not be required to  
23 give bond.

1 SECTION 28. Sections 3, 6, 10, 11 and 13 of this act shall  
2 become effective September 1, 2012.

3 SECTION 29. Sections 1, 2, 4, 5, 7 through 9, 12 and 14 through  
4 27 of this act shall become effective January 1, 2013.

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6 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02/28/2012 - DO  
7 PASS, As Coauthored.

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