

1 STATE OF OKLAHOMA

2 2nd Session of the 54th Legislature (2014)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 2999

6 By: Stiles

7 COMMITTEE SUBSTITUTE

8 An Act relating to the Administrative Procedures Act;
9 amending 75 O.S. 2011, Section 309, which relates to
10 individual proceedings; prohibiting presence of
11 certain persons in executive session; limiting
12 assistance of counsel to proposed conclusions of law;
13 modifying contents of the records; providing
14 additional notice and opportunity to present
15 evidence; prohibiting consideration of the case
16 unless all parties are present; requiring access to
17 certain information; proscribing communication after
18 evidentiary record is concluded; requiring disclosure
19 if additional information is received; providing for
20 evidentiary hearing to be reopened; requiring
21 withdrawal and disqualification for failing to
22 disclose information; prescribing information be
23 maintained and provided in compliance with the
24 Oklahoma Open Records Act; and providing an effective
date.

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

SECTION 1. AMENDATORY 75 O.S. 2011, Section 309, is
amended to read as follows:

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

B. The notice shall include:

- 1 1. A statement of the time, place and nature of the hearing;
- 2 2. A statement of the legal authority and jurisdiction under
3 which the hearing is to be held;
- 4 3. A reference to the particular sections of the statutes and
5 rules involved; and
- 6 4. A short and plain statement of the matters asserted. If the
7 agency or other party is unable to state the matters in detail at
8 the time the notice is served, the initial notice may be limited to
9 a statement of the issues involved. Thereafter upon application a
10 more definite and detailed statement shall be furnished.

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

13 D. Deliberations by ~~administrative heads, hearing examiners,~~
14 ~~and other persons authorized by law~~ the agency rendering the final
15 decision may be held in executive session pursuant to paragraph 8 of
16 subsection B of Section 307 of Title 25 of the Oklahoma Statutes.
17 The executive session shall be held only by the members of the
18 agency rendering the final decision and without the presence or
19 participation of agency employees, contractors or attorneys, except
20 that the agency rendering the final decision may have the assistance
21 of counsel who has not served as or advised a hearing officer,
22 prosecutor or participant at any hearing prior to the final action
23 before the agency board, for the purpose of advising the agency
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1 rendering the final decision in consideration of proposed
2 conclusions of law.

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

6 F. The record in an individual proceeding shall include:

7 1. All pleadings, motions and intermediate rulings;

8 2. Evidence received or considered at the individual
9 proceeding;

10 3. A statement of matters officially noticed on the record
11 after notice is given to the parties and there is an opportunity for
12 all parties to present evidence to support or refute the statement;

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

15 5. Proposed findings and exceptions; and

16 6. Any ruling, decision, opinion, or report by the officer
17 presiding at the hearing, ~~and~~.

18 ~~7. G.~~ All other evidence, or data and communications submitted
19 to, received by or conducted with the hearing examiner ~~or~~,
20 administrative head or agency rendering the final decision prior to,
21 during or after the proceeding in connection with their
22 consideration of the case ~~provided all~~ outside the presence of all
23 parties is prohibited. All parties shall have ~~had~~ access to such
24 evidence, data and communications during the evidentiary stage of

1 the hearing and shall be afforded an opportunity to respond and
2 present evidence and arguments on the record of the proceeding.
3 After the evidentiary record is concluded, the hearing examiner,
4 administrative head or agency rendering the final decision shall not
5 communicate, directly or indirectly, nor receive data or evidence on
6 any matter connected with the hearing or the consideration of the
7 decision with anyone, including but not limited to, any party or
8 interested person, or any staff, contractors or representatives of
9 the agency that is assigned to render the decision or is a party to
10 the proceeding. If any communication, data or evidence is received
11 by the hearing examiner, administrative head or agency rendering the
12 final decision, or any member thereof, the hearing examiner,
13 administrative head or agency rendering the final decision shall
14 stay the proceeding and promptly disclose in detail to all parties
15 to the proceeding all communications, data or evidence received,
16 including by providing documents, records and notes, whether
17 electronic or on paper, connected with the parties, all of which
18 shall be preserved by the agency head or hearing examiner for this
19 purpose. The administrative head, hearing examiner or agency
20 rendering the final decision shall then reopen the evidentiary
21 hearing and provide an opportunity for any parties to support or
22 contest on the record of the proceeding all of the evidence, data or
23 communications, including by the presentation of additional relevant
24 evidence. Any administrative head, hearing examiner or member of an

1 agency rendering the final decision who solicits or intentionally
2 allows the receipt of communications, data or evidence without
3 promptly disclosing it to all the parties shall withdraw from the
4 proceeding and be disqualified from any further participation in the
5 proceeding. All communications, data or evidence in any form are
6 subject to and shall be maintained, preserved and provided to any
7 person upon request in compliance with the provisions of the
8 Oklahoma Open Records Act in Section 24A.5 of Title 51 of the
9 Oklahoma Statutes.

10 G. H. Oral proceedings shall be electronically recorded. Such
11 recordings shall be maintained for such time so as to protect the
12 record through judicial review. Copies of the recordings shall be
13 provided by the agency at the request of any party to the
14 proceeding. Costs of transcription of the recordings shall be borne
15 by the party requesting the transcription. For judicial review,
16 electronic recordings of an individual proceeding, as certified by
17 the agency, may be submitted to the reviewing court by the agency as
18 part of the record of the proceedings under review without
19 transcription unless otherwise required to be transcribed by the
20 reviewing court. In such case, the expense of transcriptions shall
21 be taxed and assessed against the nonprevailing party. Parties to
22 any proceeding may have the proceedings transcribed by a court
23 reporter at their own expense.

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1 ~~H.~~ I. Findings of fact shall be based exclusively on the
2 evidence received and on matters officially noticed in the
3 individual proceeding unless otherwise ~~agreed upon~~ stipulated by all
4 of the parties ~~on~~ to the ~~record~~ proceeding.

5 SECTION 2. This act shall become effective November 1, 2014.

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7 54-2-10196 EK 02/19/14

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