SENATE FLOOR VERSION
April 1, 2014

ENGROSSED HOUSE
BILL NO. 2999 By: Stiles of the House

and

Crain of the Senate

An Act relating to the Administrative Procedures Act; amending 75 O.S. 2011, Section 309, which relates to individual proceedings; prohibiting presence of certain persons in executive session; limiting assistance of counsel to proposed conclusions of law; modifying contents of the records; providing additional notice and opportunity to present evidence; prohibiting consideration of the case unless all parties are present; requiring access to certain information; proscribing communication after evidentiary record is concluded; requiring disclosure if additional information is received; providing for evidentiary hearing to be reopened; requiring withdrawal and disqualification for failing to disclose information; prescribing information be maintained and provided in compliance with the 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. A statement of the time, place and nature of the hearing;

2. A statement of the legal authority and jurisdiction under which the hearing is to be held;

3. A reference to the particular sections of the statutes and rules involved; and

4. A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon application a more definite and detailed statement shall be furnished.

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

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

rendering the final decision in consideration of proposed conclusions of law.

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

F. The record in an individual proceeding shall include:

1. All pleadings, motions and intermediate rulings;

2. Evidence received or considered at the individual proceeding;

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

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

5. Proposed findings and exceptions; and

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

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

the hearing and shall be afforded an opportunity to respond and present evidence and arguments on the record of the proceeding. After the evidentiary record is concluded, the hearing examiner, administrative head or agency rendering the final decision shall not communicate, directly or indirectly, nor receive data or evidence on any matter connected with the hearing or the consideration of the decision with anyone, including but not limited to any party or interested person, or any staff, contractors or representatives of the agency that is assigned to render the decision or is a party to the proceeding. If any communication, data or evidence is received by the hearing examiner, administrative head or agency rendering the final decision, or any member thereof, the hearing examiner, administrative head or agency rendering the final decision shall stay the proceeding and promptly disclose in detail to all parties to the proceeding all communications, data or evidence received, including by providing documents, records and notes, whether electronic or on paper, connected with the parties, all of which shall be preserved by the agency head or hearing examiner for this purpose. The administrative head, hearing examiner or agency rendering the final decision shall then reopen the evidentiary hearing and provide an opportunity for any parties to support or contest on the record of the proceeding all of the evidence, data or communications, including by the presentation of additional relevant evidence. Any administrative head, hearing examiner or member of an

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

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

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

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

COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
April 1, 2014 - DO PASS