

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 2999

By: Stiles

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6 AS INTRODUCED

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

22 any of the parties or with anyone otherwise connected with the

23 proceeding or the matters under consideration, for the purpose of

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1 advising the agency rendering the final decision in consideration of
2 proposed 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 agency staff, contractors or
9 representatives of the agency that is assigned to render the
10 decision or is a party to the proceeding. If any communication,
11 data or evidence is received by the hearing examiner, administrative
12 head or agency rendering the final decision, or any member thereof,
13 the hearing examiner, administrative head or agency rendering the
14 final decision shall stay the proceeding and promptly disclose in
15 detail to all parties to the proceeding all of the communications,
16 data or evidence received, including by providing all documents,
17 records and notes, whether electronic or on paper, connected with
18 the parties, all of which shall be preserved by the agency head or
19 hearing examiner for this purpose. The administrative head, hearing
20 examiner or agency rendering the final decision shall then reopen
21 the evidentiary hearing and provide an opportunity for any parties
22 to support or contest on the record of the proceeding all of the
23 evidence, data or communications, including by the presentation of
24 additional relevant evidence. Any administrative head, hearing

1 examiner or member of an agency rendering the final decision who
2 solicits or intentionally allows the receipt of communications, data
3 or evidence without promptly disclosing it to all the parties shall
4 withdraw from the proceeding and be disqualified from any further
5 participation in the proceeding. All communications, data or
6 evidence in any form are subject to and shall be maintained,
7 preserved and provided to any person upon request in compliance with
8 the provisions of the Oklahoma Open Records Act in Section 24A.5 of
9 Title 51 of the 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 54-2-8781 EK 12/27/13

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