

STATE OF OKLAHOMA

2nd Session of the 59th Legislature (2024)

HOUSE BILL 3139

By: Humphrey

AS INTRODUCED

An Act relating to administrative law; creating the Administrative Hearings Reform Act; amending 75 O.S. 2021, Sections 308a, 309, 310, 312, 315, 316, 317, and 323, which relate to individual proceedings; creating jurisdiction of district judges regarding individual proceedings; prohibiting agencies from conducting individual proceedings; preventing the hiring of hearing officers and administrative law judges; disallowing individual proceedings at executive sessions; eliminating recording requirement; clarifying evidentiary procedures; clarifying final order provisions; changing production and subpoena language to provide for district courts; changing disqualification language from agencies to district judges; construing rehearing, reopening, and reconsideration provisions to apply to district judges; providing for stay of order during rehearing, reopening, or reconsideration under certain circumstances; clarifying review and appeal language; repealing 75 O.S. 2021, Sections 311, 311.1, 311.2, as amended by Section 26, Chapter 243, O.S.L. 2022, 313, 318, 319, 320, 321, and 322 (75 O.S. Supp. 2023, Section 311.2) which relate to individual proceedings; 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 not to be codified in the Oklahoma Statutes reads as follows:

1 This act shall be known and may be cited as the "Administrative
2 Hearings Reform Act".

3 SECTION 2. AMENDATORY 75 O.S. 2021, Section 308a, is
4 amended to read as follows:

5 Section 308a. The provisions of Article II of the
6 Administrative Procedures Act govern the hearing procedures of
7 agencies, and does not grant jurisdiction, not otherwise provided by
8 law. The Legislature recognizes that agencies take actions and make
9 decisions, other than ~~by~~ through the individual proceedings ~~for~~
10 ~~which the right to judicial review is intended to be exercised~~
11 ~~pursuant to other laws~~ process.

12 SECTION 3. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 308b of Title 75, unless there
14 is created a duplication in numbering, reads as follows:

15 A. No agency shall conduct an individual proceeding, quasi-
16 judicial hearing, or other process of a judicial or quasi-judicial
17 nature to resolve complaints between parties, to review decisions
18 made by an agency against an individual, corporation, or entity, to
19 review pending applications of an individual, corporation, or
20 entity, or to hear evidence brought by affected parties to any
21 proposed applications. All complaints between an agency and another
22 party, or individual proceedings as prescribed by the Oklahoma
23 Statutes, shall be filed and adjudicated in the applicable district
24 court in accordance with the Oklahoma Statutes.

1 B. All agencies are prohibited from hiring administrative law
2 judges or hearing examiners to conduct proceedings and hearings as
3 described by this section or to resolve disputes between parties.

4 C. Oklahoma district courts shall have exclusive jurisdiction
5 over all disputes arising from or related to state agency actions.

6 D. Unless otherwise provided by law, individual proceedings or
7 other administrative disputes as described in this section shall be
8 filed in the district court of the county in which the alleged
9 decision, conduct, or violation occurred.

10 E. District courts shall issue final orders in accordance with
11 Section 312 of this title.

12 F. All parties involved in an administrative dispute shall have
13 the right to present their case before a judge and seek remedies
14 available under applicable law.

15 G. Any administrative judges or hearing examiners currently
16 employed by state agencies shall be reassigned to other roles within
17 the respective agencies or phased out in accordance with existing
18 employment policies.

19 SECTION 4. AMENDATORY 75 O.S. 2021, Section 309, is
20 amended to read as follows:

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

23 B. The notice shall include:

24 1. A statement of the time, place, and nature of the hearing;
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1 2. A statement of the legal authority and jurisdiction under
2 which the hearing is to be held;

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

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

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

12 ~~D. Deliberations by administrative heads, hearing examiners,~~
13 ~~and other persons authorized by law may be held in executive session~~
14 ~~pursuant to paragraph 8 of subsection B of Section 307 of Title 25~~
15 ~~of the Oklahoma Statutes.~~

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

19 ~~F.~~ E. The record in an individual proceeding shall include:

- 20 1. All pleadings, motions, and intermediate rulings;
21 2. Evidence received or considered at the individual
22 proceeding;
23 3. A statement of matters officially noticed;
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1 4. Questions and offers of proof, objections, and rulings
2 thereon;

3 5. Proposed findings and exceptions;

4 6. Any decision, ~~opinion, or report by the officer presiding at~~
5 ~~the hearing~~ or opinion of the district judge; and

6 7. All other evidence or data submitted to the ~~hearing examiner~~
7 ~~or administrative head~~ district judge in connection with their
8 consideration of the case, provided all parties have had access to
9 such evidence.

10 G. F. ~~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. G. 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 by the parties on
4 the record.

5 SECTION 5. AMENDATORY 75 O.S. 2021, Section 310, is
6 amended to read as follows:

7 Section 310. In individual proceedings:

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

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

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

14 4. Notice may be taken of judicially cognizable facts. In
15 addition, notice may be taken of generally recognized technical or
16 scientific facts within the agency's specialized knowledge. Parties
17 shall be notified either before or during the hearing, or by
18 reference in preliminary reports or otherwise, of the material
19 ~~noticed~~ to be proposed for judicial notice, including any staff
20 memoranda or data, and they shall be afforded an opportunity to
21 contest the material ~~so~~ if noticed. The agency's experience,
22 technical competence, and specialized knowledge may be utilized in
23 the evaluation of the evidence.
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1 5. Any party shall at all times have the right to counsel,
2 provided that such counsel must be duly licensed to practice law by
3 the Supreme Court of Oklahoma, and provided further that counsel
4 shall have the right to appear and act for and on behalf of the
5 party represented.

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

10 SECTION 6. AMENDATORY 75 O.S. 2021, Section 312, is
11 amended to read as follows:

12 Section 312. A. A final ~~agency order adverse to a party~~ of
13 the district court on an individual proceeding or other hearing
14 under this act shall:

15 1. Be in writing; and

16 2. Include findings of fact and conclusions of law, separately
17 stated. Findings of fact, if set forth in statutory language, shall
18 be accompanied by a concise and explicit statement of the underlying
19 facts supporting the findings. ~~If, in accordance with agency rules,~~
20 a party submitted proposed findings of fact, the final ~~agency~~ order
21 shall include a ruling upon each proposed finding.

22 B. Parties shall be notified either personally or by certified
23 mail, return receipt requested, of any final ~~agency~~ order. Upon
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1 request, a copy of the order shall be delivered or mailed forthwith
2 to each party and to his or her attorney of record.

3 C. When the district judge issues a final order, that order
4 shall be binding on all parties and becomes the final order of the
5 applicable agency without further proceeding unless there is a
6 request for rehearing, reopening, or reconsideration pursuant to
7 Section 317 of this title.

8 SECTION 7. AMENDATORY 75 O.S. 2021, Section 315, is
9 amended to read as follows:

10 Section 315. A. 1. ~~The agency conducting any~~ parties subject
11 to an individual proceeding or agency investigation shall have power
12 to require the furnishing of such information, the attendance of
13 such witnesses, and the production of such books, records, papers or
14 other objects as may be necessary and proper for the purposes of the
15 proceeding or investigation.

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

3 B. In furtherance of the powers granted by subsection A of this
4 section, any agency, administrative head, ~~hearing examiner or~~ any
5 other duly authorized member or employee thereof, ~~upon its own~~
6 ~~motion may, and upon the request of any party appearing in~~ subject
7 to an individual proceeding, or district judge ~~shall~~ may:

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. C. Quash~~ The district judge may quash a subpoena or
14 subpoenas duces tecum so issued; provided, prior to quashing a
15 subpoena or subpoenas duces tecum the ~~agency~~ court shall give notice
16 to all parties. A subpoena or subpoenas duces tecum may not be
17 quashed if any party objects.

18 ~~C. D.~~ 1. In case of disobedience to any subpoena issued and
19 served under this section or to any lawful agency requirement for
20 information, or of the refusal of any person to testify to any
21 matter regarding which he or she may be interrogated lawfully in a
22 proceeding ~~before an agency~~, the agency may apply to the district ~~or~~
23 ~~superior court of the county of such person's residence or to any~~
24 ~~judge thereof~~ for an order to compel compliance with the subpoena or

1 the furnishing of information or the giving of testimony.

2 Forthwith, the court or the judge shall cite the respondent to
3 appear and shall hear the matter as expeditiously as possible.

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

9 SECTION 8. AMENDATORY 75 O.S. 2021, Section 316, is
10 amended to read as follows:

11 Section 316. A ~~hearing examiner or agency member~~ district
12 judge shall withdraw from any individual proceeding in which he
13 cannot accord a fair and impartial hearing or consideration. Any
14 party may request the disqualification of a ~~hearing examiner or~~
15 ~~agency member~~ district judge, on the ground of his or her inability
16 to give a fair and impartial hearing, by filing ~~an affidavit~~ a
17 motion, promptly upon discovery of the alleged disqualification,
18 stating with particularity the grounds upon which it is claimed that
19 a fair and impartial hearing cannot be accorded. ~~The issue shall be~~
20 ~~determined promptly by the administrative head of the agency, or, if~~
21 ~~it affects a member or members of the agency, by the remaining~~
22 ~~members thereof, if a quorum. Upon the entry of an order of~~
23 ~~disqualification affecting a hearing examiner, the agency shall~~
24 ~~assign another in his stead or shall conduct the hearing itself.~~
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1 ~~Upon the disqualification of a member of an agency, the agency shall~~
2 ~~proceed with the proceeding if a quorum remains. If a quorum no~~
3 ~~longer exists, by virtue of the member's disqualification, the~~
4 ~~Governor immediately shall appoint a member pro tempore to sit in~~
5 ~~place of the disqualified member in that proceeding. In further~~
6 ~~action, after the disqualification of a member of an agency, the~~
7 ~~provisions of Section 311 of this title shall apply. The~~
8 disqualification shall be addressed in accordance with Rule 15 of
9 Title 12 of the Oklahoma Statutes.

10 SECTION 9. AMENDATORY 75 O.S. 2021, Section 317, is
11 amended to read as follows:

12 Section 317. A. A final ~~agency~~ order issued by an
13 ~~administrative head of an agency~~ a district judge for an individual
14 proceeding shall be subject to rehearing, reopening or
15 reconsideration by such ~~administrative head~~ district judge. Any
16 application or request for such rehearing, reopening or
17 reconsideration shall be made by any party aggrieved by the final
18 ~~agency~~ order within ten (10) days from the date of the entry of such
19 final ~~agency~~ order and shall state the grounds for the requested
20 action. The grounds for such action shall be either:

21 1. Newly discovered or newly available evidence, relevant to
22 the issues;

23 2. Need for additional evidence adequately to develop the facts
24 essential to proper decision;

1 3. Probable error committed by the ~~agency~~ judge in the
2 proceeding or in its decision such as would be ground for reversal
3 on ~~judicial review of the final agency order~~ appeal of the final
4 order;

5 4. Need for further consideration of the issues and the
6 evidence in the public interest; or

7 5. A showing that issues not previously considered ought to be
8 examined in order properly to dispose of the matter.

9 B. The order of the ~~agency~~ court granting or denying rehearing,
10 reconsideration or review, ~~or the petition of a party therefor,~~
11 shall set forth the grounds which justify such action.

12 C. Nothing in this section shall prevent rehearing, reopening
13 or reconsideration of a matter ~~by any agency~~ in accordance with
14 other statutory provisions applicable to such agency, or, at any
15 time, on the ground of fraud practiced by the prevailing party or of
16 procurement of the order by perjured testimony or fictitious
17 evidence.

18 D. On reconsideration, reopening, or rehearing, the matter ~~may~~
19 ~~be heard by the agency, or it may be referred to a hearing examiner~~
20 shall be heard by the district court judge who conducted the initial
21 proceedings. The hearing shall be confined to those grounds upon
22 which the reconsideration, reopening or rehearing was ordered.

23 ~~E. If an application for rehearing shall be timely filed, the~~
24 ~~period within which judicial review, under the applicable statute,~~
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1 ~~must be sought, shall run from the final disposition of such~~
2 ~~application.~~

3 E. The filing of a proceeding for reconsideration, reopening,
4 or rehearing shall not stay enforcement of the final order but the
5 court may order a stay upon such terms as it deems proper, and shall
6 do so whenever required by subsection F of this section.

7 F. In an individual proceeding in any court for the
8 reconsideration, reopening, or rehearing of a final order, upon the
9 filing of an application, supported by verified statements of
10 material fact establishing that the enforcement of the order pending
11 review of the application would result in present, continuous, and
12 irreparable impairment of the constitutional rights of the
13 applicant, a stay of the enforcement of such order and of the
14 accrual of penalties thereunder shall be entered upon the condition
15 that:

16 1. Injury to adverse parties or to the public, as the case may
17 be, can be obviated through the furnishing of security adequate to
18 compensate for any loss which may be suffered as a result of the
19 stay in the event the order is affirmed, in whole or in part;

20 2. A supersedeas bond, in the amount and with sureties
21 prescribed and approved by the court, in its sound judicial
22 discretion, as adequate to meet requirement 1, be filed with such
23 court. If an application for supersedeas hereunder, accompanied by
24 a proposal for a supersedeas bond, is not acted upon by the court

1 within forty-five (45) days from the filing thereof, the order
2 appealed from thereupon shall be automatically superseded and
3 stayed, during the pendency of the appeal, upon the filing of the
4 bond proposed in the application; provided, however, that the court
5 thereafter may reasonably modify the terms of the supersedeas as to
6 amount and surety whereupon the appellant shall comply with such
7 modification in order to maintain the supersedeas in effect.

8 SECTION 10. AMENDATORY 75 O.S. 2021, Section 323, is
9 amended to read as follows:

10 Section 323. An aggrieved party, or the agency, without any
11 motion for a new trial, may secure a review of any final order or
12 judgment of a district ~~or superior~~ court under this act by appeal to
13 the Supreme Court. Such appeal shall be taken in the manner and
14 time provided by law for appeal to the Supreme Court from the
15 district court in civil actions. An agency taking an appeal shall
16 not be required to give bond.

17 SECTION 11. REPEALER 75 O.S. 2021, Section 311, is
18 hereby repealed.

19 SECTION 12. REPEALER 75 O.S. 2021, Section 311.1, is
20 hereby repealed.

21 SECTION 13. REPEALER 75 O.S. 2021, Section 311.2, as
22 last amended by Section 26, Chapter 243, O.S.L. 2022 (75 O.S. Supp.
23 2023, Section 311.2), is hereby repealed.
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1 SECTION 14. REPEALER 75 O.S. 2021, Section 313, is
2 hereby repealed.

3 SECTION 15. REPEALER 75 O.S. 2021, Section 318, is
4 hereby repealed.

5 SECTION 16. REPEALER 75 O.S. 2021, Section 319, is
6 hereby repealed.

7 SECTION 17. REPEALER 75 O.S. 2021, Section 320, is
8 hereby repealed.

9 SECTION 18. REPEALER 75 O.S. 2021, Section 321, is
10 hereby repealed.

11 SECTION 19. REPEALER 75 O.S. 2021, Section 322, is
12 hereby repealed.

13 SECTION 20. This act shall become effective November 1, 2024.

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