

State of Arkansas
90th General Assembly
Regular Session, 2015

A Bill

HOUSE BILL 1435

By: Representative Branscum

For An Act To Be Entitled

AN ACT TO CHANGE THE TITLE OF "ADMINISTRATIVE HEARING OFFICER" FOR THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION TO "ADMINISTRATIVE LAW JUDGE"; AND FOR OTHER PURPOSES.

Subtitle

TO CHANGE THE TITLE OF "ADMINISTRATIVE HEARING OFFICER" FOR THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION TO "ADMINISTRATIVE LAW JUDGE".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 8-1-203(c)(1) and (2), concerning the powers and responsibilities of the Arkansas Pollution Control and Ecology Commission, are amended to read as follows:

(c)(1)(A) In providing for adjudicatory review as contemplated by subdivisions (b)(4) and (5) of this section, the commission may appoint one (1) or more administrative ~~hearing officers~~ law judges.

(B) ~~The administrative hearing officers~~ An administrative law judge shall at all times serve as ~~agents~~ an agent of the commission.

(2) In hearings upon appeals of permitting or grants decisions by the director or contested administrative enforcement or emergency actions initiated by the director, the administrative ~~hearing officer~~ law judge shall administer the hearing in accordance with procedures adopted by the commission and, after due deliberation, submit his or her recommended decision to the commission.



SECTION 2. Arkansas Code § 8-1-203(c)(3)(A)(i), concerning the powers and responsibilities of the Arkansas Pollution Control and Ecology Commission, is amended to read as follows:

(3)(A)(i) Commission review of any appealed or contested matter shall be upon the record compiled by the administrative ~~hearing officer~~ law judge and his or her recommended decision.

SECTION 3. Arkansas Code § 8-1-204 is amended to read as follows:

8-1-204. Administrative ~~hearing officer~~ law judge.

(a) The Arkansas Pollution Control and Ecology Commission shall employ a full-time administrative ~~hearing officer~~ law judge to perform ~~such~~ functions and duties ~~as~~ that the commission shall direct and, in particular, to advise the commission on matters of law and procedure that may arise during the conduct of commission duties and responsibilities as outlined in §§ 8-1-203, 8-4-201, 8-4-202, 8-4-311, 8-5-205, and 8-6-207, or as otherwise provided by law.

(b) The administrative ~~hearing officer~~ law judge shall be selected and hired by the commission and shall be independent of and not an employee of the Arkansas Department of Environmental Quality.

(c) The expenses of the administrative ~~hearing officer~~ law judge shall be paid from the Arkansas Department of Environmental Quality Fee Trust Fund or from other sources as provided by law.

(d) The office space for the ~~hearing officer~~ administrative law judge shall be at a location other than the offices of the department.

(e) ~~The~~ An administrative assistant II shall be supervised by and provide assistance to the administrative ~~hearing officer~~ law judge authorized in this section.

(f) The disbursing officer of the department shall disburse the funds appropriated for the commission's ~~hearing officer~~ administrative law judge.

SECTION 4. Arkansas Code § 8-4-205(c)(1)-(5), concerning the hearings upon denial, revocation, or modification and other permit actions before the Arkansas Pollution Control and Ecology Commission, are amended to read as follows:

(c)(1)(A) Within thirty (30) days of the date the request for a

hearing is filed with the commission secretary, a preliminary hearing will be conducted in the name of the commission by the commission's authorized ~~hearing officer~~ administrative law judge.

(B) Within a reasonable time after the preliminary hearing, the ~~hearing officer~~ administrative law judge shall enter a written decision determining whether the parties qualify as proper parties under subdivision (b)(1) of this section and whether the request conforms with the requirements under subdivisions (b)(2) and (3) of this section.

(C) ~~Any~~ A party aggrieved by the decision entered ~~pursuant to~~ under this subsection may, within ten (10) business days, request review by the commission.

(2)(A) ~~Any~~ A contested decision and any final recommended decision of the ~~hearing officer~~ administrative law judge shall be transmitted to the commission.

(B) The commission shall consider the recommended decision of the ~~hearing officer~~ administrative law judge and shall either affirm the decision in whole or in part or reverse the decision in whole or in part.

(3) At this preliminary hearing, the ~~hearing officer~~ administrative law judge shall weigh the equities of any request for expedited review and advance the case on the administrative docket as circumstances permit.

(4) The commission shall review the director's decision de novo.

(5) The ~~hearing officer~~ administrative law judge shall schedule the hearing and other proceedings ~~such~~ so that the appeal will be submitted to the commission for final commission action within one hundred twenty (120) days after the preliminary hearing unless the parties mutually agree to a longer period of time or the ~~hearing officer~~ administrative law judge establishes a longer period of time for just cause.

SECTION 5. Arkansas Code § 8-4-210(d), concerning investigations and hearings before the Arkansas Pollution Control and Ecology Commission, is amended to read as follows:

(d)(1) In case of contumacy or refusal to obey a subpoena issued under this section or refusal to testify, the circuit court of the county where the proceeding is pending or in which the person guilty of ~~such~~ the contumacy or refusal to obey is found or resides shall have jurisdiction, upon application

of the commission or its authorized member, employee, agent, or ~~hearing officer~~ administrative law judge, to issue to the person an order requiring him or her to appear and testify or produce evidence, as the case may require.

(2) ~~Any~~ A failure to obey the order of the court may be punished by the court as contempt.

SECTION 6. Arkansas Code § 8-4-219(b), concerning hearings before the Arkansas Pollution Control and Ecology Commission, is amended to read as follows:

(b) ~~The hearings~~ A hearing may be conducted by the commission or its ~~hearing officer~~ administrative law judge, who shall have the power and authority to conduct hearings in the name of the commission at any time and place.

SECTION 7. Arkansas Code § 15-58-210(a), concerning hearings before the Arkansas Pollution Control and Ecology Commission, is amended to read as follows:

(a) The following persons shall preside at an adjudicatory public hearing:

(1) One (1) or more members of the Arkansas Pollution Control and Ecology Commission; or

(2) One (1) or more examiners or referees designated by the commission or the commission's administrative law judge.

SECTION 8. DO NOT CODIFY. (a) A position appropriated and authorized by the General Assembly as an Arkansas Pollution Control and Ecology Commission hearing officer may be used for an administrative law judge position.

(b) This section is effective only from July 1, 2015 to June 30, 2016.