

1 State of Arkansas  
2 90th General Assembly  
3 Regular Session, 2015  
4

# A Bill

HOUSE BILL 1435

5 By: Representative Branscum  
6

## For An Act To Be Entitled

8 AN ACT TO CHANGE THE TITLE OF "ADMINISTRATIVE HEARING  
9 OFFICER" FOR THE ARKANSAS POLLUTION CONTROL AND  
10 ECOLOGY COMMISSION TO "ADMINISTRATIVE LAW JUDGE"; AND  
11 FOR OTHER PURPOSES.  
12  
13

## Subtitle

14 TO CHANGE THE TITLE OF "ADMINISTRATIVE  
15 HEARING OFFICER" FOR THE ARKANSAS  
16 POLLUTION CONTROL AND ECOLOGY COMMISSION  
17 TO "ADMINISTRATIVE LAW JUDGE".  
18  
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
22

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

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

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

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



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

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

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

10 8-1-204. Administrative ~~hearing officer~~ law judge.

11 (a) The Arkansas Pollution Control and Ecology Commission shall employ  
12 a full-time administrative ~~hearing officer~~ law judge to perform ~~such~~  
13 functions and duties ~~as~~ that the commission shall direct and, in particular,  
14 to advise the commission on matters of law and procedure that may arise  
15 during the conduct of commission duties and responsibilities as outlined in  
16 §§ 8-1-203, 8-4-201, 8-4-202, 8-4-311, 8-5-205, and 8-6-207, or as otherwise  
17 provided by law.

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

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

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

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

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

31  
32 SECTION 4. Arkansas Code § 8-4-205(c)(1)-(5), concerning the hearings  
33 upon denial, revocation, or modification and other permit actions before the  
34 Arkansas Pollution Control and Ecology Commission, are amended to read as  
35 follows:

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

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

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

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

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

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

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

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

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

29  
30 SECTION 5. Arkansas Code § 8-4-210(d), concerning investigations and  
31 hearings before the Arkansas Pollution Control and Ecology Commission, is  
32 amended to read as follows:

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

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

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

7  
 8 SECTION 6. Arkansas Code § 8-4-219(b), concerning hearings before the  
 9 Arkansas Pollution Control and Ecology Commission, is amended to read as  
 10 follows:

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

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

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

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

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

25  
 26 SECTION 8. DO NOT CODIFY. (a) A position appropriated and authorized  
 27 by the General Assembly as an Arkansas Pollution Control and Ecology  
 28 Commission hearing officer may be used for an administrative law judge  
 29 position.

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