

GOVERNMENT CODE  
CHAPTER 2003. STATE OFFICE OF ADMINISTRATIVE HEARINGS  
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2003.001. DEFINITIONS. In this chapter:

(1) "Administrative law judge" means an individual who presides at an administrative hearing held under Chapter 2001.  
(2) "Alternative dispute resolution procedure" has the meaning assigned by Section 2009.003.  
(3) "Office" means the State Office of Administrative Hearings.

(4) "State agency" means:  
(A) a state board, commission, department, or other agency that is subject to Chapter 2001; and  
(B) to the extent provided by Title 5, Labor Code, the Texas Department of Insurance, as regards proceedings and activities under Title 5, Labor Code, of the department, the commissioner of insurance, or the commissioner of workers' compensation.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 3.01, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 934, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 19.02(9), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1352, Sec. 7, eff. Sept. 1, 1999; Acts 2005, 79th Leg., ch. 265, Sec. 6.009, eff. Sept. 1, 2005.

SUBCHAPTER B. STATE OFFICE OF ADMINISTRATIVE HEARINGS

Sec. 2003.021. OFFICE. (a) The State Office of Administrative Hearings is a state agency created to serve as an independent forum for the conduct of adjudicative hearings in the executive branch of state government. The purpose of the office is to separate the adjudicative function from the investigative, prosecutorial, and policymaking functions in the executive branch in relation to hearings that the office is authorized to conduct.

(b) The office:

(1) shall conduct all administrative hearings in contested cases under Chapter 2001 that are before a state agency that does not employ an individual whose only duty is to preside as a hearings officer over matters related to contested cases before the agency;

(2) shall conduct administrative hearings in matters for which the office is required to conduct the hearing under other law;

(3) shall conduct alternative dispute resolution procedures that the office is required to conduct under law; and

(4) may conduct, for a fee and under a contract, administrative hearings or alternative dispute resolution procedures in matters voluntarily referred to the office by a governmental entity.

(c) The office shall conduct hearings under Title 5, Labor Code, as provided by that title. In conducting hearings under Title 5, Labor Code, the office shall consider the applicable substantive rules and policies of the division of workers' compensation of the Texas Department of Insurance regarding workers' compensation claims. The office and the Texas Department of Insurance shall enter into an interagency contract under Chapter 771 to pay the costs incurred by the office in implementing this subsection.

(d) The office shall conduct hearings under the Agriculture Code as provided under Section 12.032, Agriculture Code. In conducting hearings under the Agriculture Code, the office shall consider the applicable substantive rules and policies of the Department of Agriculture.

(e) The office shall conduct all hearings in contested cases under Chapter 2001 that are before the commissioner of public health or the Texas Board of Health or Texas Department of Health.

(f) The office may adopt a seal to authenticate the official acts of the office and of its administrative law judges.

(g) The office shall conduct all hearings in contested cases under Chapter 2001 that are before the Texas Department of Licensing and Regulation under Chapter 51, Occupations Code.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 419, Sec. 3.29, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 980, Sec. 3.02, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 934, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 85, Sec. 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1411, Sec. 1.01, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(65), eff. Sept. 1, 2001; Acts 2003,

78th Leg., ch. 1215, Sec. 2, eff. Sept. 1, 2003; Acts 2005, 79th Leg., ch. 265, Sec. 6.010, eff. Sept. 1, 2005.

Sec. 2003.022. CHIEF ADMINISTRATIVE LAW JUDGE. (a) The office is under the direction of a chief administrative law judge appointed by the governor for a two-year term. The chief administrative law judge is eligible for reappointment.

(b) To be eligible for appointment as chief administrative law judge, an individual must:

(1) be licensed to practice law in this state; and

(2) for at least five years, have:

(A) practiced administrative law;

(B) conducted administrative hearings under Chapter 2001; or

(C) engaged in a combination of the two activities listed in Paragraphs (A) and (B).

(c) The chief administrative law judge may not engage in the practice of law while serving as chief administrative law judge. The chief administrative law judge serves in a full-time position.

(d) The chief administrative law judge shall:

(1) supervise the office;

(2) protect and ensure the decisional independence of each administrative law judge;

(3) adopt a code of conduct for administrative law judges that may be modeled on the Code of Judicial Conduct; and

(4) monitor the quality of administrative hearings conducted by the office.

(e) The appointment of the chief administrative law judge shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 212, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 85, Sec. 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1215, Sec. 3, eff. Sept. 1, 2003.

Sec. 2003.0221. REMOVAL OF CHIEF ADMINISTRATIVE LAW JUDGE. It is a ground for removal from the position of chief administrative law judge that an appointee:

(1) does not have at the time of taking office the qualifications required by Section 2003.022(b);

(2) does not maintain during service as chief administrative law judge a license to practice law in this state;

(3) is ineligible to hold the position under Section 2003.0225;

(4) cannot, because of illness or disability, discharge the appointee's duties for a substantial part of the appointee's term; or

(5) engages in the practice of law in violation of Section 2003.022(c).

Added by Acts 2003, 78th Leg., ch. 1215, Sec. 4, eff. Sept. 1, 2003.

Sec. 2003.0225. CONFLICT OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not hold the position of chief administrative law judge and may not be employed by the office in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in any field regulated by an agency for which the office is required to conduct administrative hearings; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in any field regulated by an agency for which the office is required to conduct administrative hearings.

(c) A person may not hold the position of chief administrative law judge or act as the general counsel to the chief administrative law judge or the office if the person is required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a profession related to the operation of the office, including a profession that is

licensed by an agency for which the office is required to conduct administrative hearings.

Added by Acts 2003, 78th Leg., ch. 1215, Sec. 5, eff. Sept. 1, 2003.

Sec. 2003.0226. INFORMATION REGARDING REQUIREMENTS FOR EMPLOYMENT AND STANDARDS OF CONDUCT. The chief administrative law judge or the chief administrative law judge's designee shall provide to office employees, as often as necessary, information regarding the requirements for employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state employees.

Added by Acts 2003, 78th Leg., ch. 1215, Sec. 5, eff. Sept. 1, 2003.

Sec. 2003.023. SUNSET PROVISION. The State Office of Administrative Hearings is subject to review under Chapter 325 (Texas Sunset Act), but is not abolished under that chapter. The office shall be reviewed during the periods in which state agencies abolished in 2015 and every 12th year after 2015 are reviewed.

Added by Acts 1997, 75th Leg., ch. 210, Sec. 1, eff. Sept. 1, 1997;

Acts 1997, 75th Leg., ch. 1169, Sec. 2.04, eff. Sept. 1, 1997.

Amended by Acts 2003, 78th Leg., ch. 1215, Sec. 6, eff. Sept. 1, 2003.

Sec. 2003.024. INTERAGENCY CONTRACTS; ANTICIPATED HOURLY USAGE AND COST ESTIMATES. (a) If a state agency referred matters to the office during any of the three most recent state fiscal years for which complete information about the agency's hourly usage is available and the costs to the office of conducting hearings and alternative dispute resolution procedures for the state agency are not to be paid by appropriations to the office during a state fiscal biennium, the office and the agency shall enter into an interagency contract for the biennium under which the referring agency pays the office, at the start of each fiscal year of the biennium, a lump-sum amount to cover the costs of conducting all hearings and procedures during the fiscal year. The lump-sum amount paid to the office under the contract must be based on:

(1) an hourly rate that is set by the office in time for the rate to be reviewed by the legislature as part of the legislature's review of the office's legislative appropriations request for the biennium; and

(2) the anticipated hourly usage of the office's services by the referring agency for each fiscal year of the biennium, as estimated by the office under Subsection (a-1).

(a-1) Before the beginning of each state fiscal biennium, the office shall estimate for each fiscal year of the biennium the anticipated hourly usage for each state agency that referred matters to the office during any of the three most recent state fiscal years for which complete information about the agency's hourly usage is available. The office shall estimate an agency's anticipated hourly usage by evaluating:

(1) the number of hours spent by the office conducting hearings or alternative dispute resolution procedures for the state agency during the three most recent state fiscal years for which complete information about the agency's hourly usage is available; and

(2) any other relevant information, including information provided to the office by the state agency, that suggests an anticipated increase or decrease in the agency's hourly usage of the office's services during the state fiscal biennium, as compared to past usage.

(a-2) If a state agency did not refer matters to the office during any of the three state fiscal years preceding a state fiscal biennium for which complete information about the agency's hourly usage would have been available and did not provide information to the office sufficient for the office to reasonably and timely estimate anticipated usage and enter into a contract with the agency before the start of the state fiscal biennium, and the costs to the office of conducting hearings and alternative dispute resolution procedures for the state agency are not paid by appropriations to the office for the state fiscal biennium, the referring agency shall pay the office the costs of conducting hearings or procedures for the agency based on the hourly rate that is set by the office under Subsection (a) and on the agency's actual usage of the office's services.

(b) If the costs to the office of conducting hearings and alternative dispute resolution procedures for a state agency that refers matters to the office are anticipated to be paid by a

lump-sum appropriation to the office for a state fiscal biennium, the office shall timely provide to the legislature the information described by Subsection (c).

(c) Each state fiscal biennium, the office as part of its legislative appropriation request shall file:

(1) information, as estimated under Subsection (a-1), related to the anticipated hourly usage of each state agency that refers matters to the office for which the costs of hearings and alternative dispute resolution procedures are anticipated to be paid by appropriations to the office; and

(2) an estimate of its hourly costs in conducting each type of hearing or dispute resolution procedure. The office shall estimate the hourly cost based on the average cost per hour during the preceding state fiscal year of:

(A) the salaries of its administrative law judges;

(B) the travel expenses, hearing costs, and telephone charges directly related to the conduct of a hearing or procedure; and

(C) the administrative costs of the office, including docketing costs and the administrative costs of the division of the office that conducts the hearing or procedure.

(d) This section does not apply to hearings conducted:

(1) by the natural resource conservation division or the utility division; or

(2) under the administrative license revocation program.

Added by Acts 1999, 76th Leg., ch. 85, Sec. 3, eff. Sept. 1, 2000. Amended by Acts 2003, 78th Leg., ch. 1215, Sec. 7, eff. Sept. 1, 2003.

#### SUBCHAPTER C. STAFF AND ADMINISTRATION

Sec. 2003.041. EMPLOYMENT OF ADMINISTRATIVE LAW JUDGES. (a) The chief administrative law judge shall employ administrative law judges to conduct hearings for state agencies subject to this chapter.

(b) To be eligible for employment with the office as an administrative law judge, an individual must be licensed to practice law in this state and meet other requirements prescribed by the chief administrative law judge.

(c) An administrative law judge employed by the office is not responsible to or subject to the supervision, direction, or indirect influence of any person other than the chief administrative law judge or a senior or master administrative law judge designated by the chief administrative law judge. In particular, an administrative law judge employed by the office is not responsible to or subject to the supervision, direction, or indirect influence of an officer, employee, or agent of another state agency who performs investigative, prosecutorial, or advisory functions for the other agency.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 85, Sec. 4, eff. Sept. 1, 1999.

Sec. 2003.0411. SENIOR AND MASTER ADMINISTRATIVE LAW JUDGES. (a) The chief administrative law judge may appoint senior or master administrative law judges to perform duties assigned by the chief administrative law judge.

(b) To be appointed a senior administrative law judge, a person must have at least six years of general legal experience, must have at least five years of experience presiding over administrative hearings or presiding over hearings as a judge or master of a court, and must meet other requirements as prescribed by the chief administrative law judge.

(c) To be appointed a master administrative law judge, a person must have at least 10 years of general legal experience, must have at least six years of experience presiding over administrative hearings or presiding over hearings as a judge or master of a court, and must meet other requirements as prescribed by the chief administrative law judge.

Added by Acts 1999, 76th Leg., ch. 85, Sec. 5, eff. Sept. 1, 1999.

Sec. 2003.0412. EX PARTE CONSULTATIONS. (a) Except as provided by Subsection (b), the provisions of Section 2001.061 apply in relation to a matter before the office without regard to whether the matter is considered a contested case under Chapter 2001.

(b) The provisions of Section 2001.061 do not apply to a matter before the office to the extent that the office is conducting

an alternative dispute resolution procedure in relation to the matter. The chief administrative law judge shall adopt rules that prescribe the types of alternative dispute resolution procedures in which ex parte consultations are prohibited and the types of alternative dispute resolution procedures in which ex parte consultations are allowed. For alternative dispute resolution procedures in which ex parte consultations are prohibited, the chief administrative law judge in adopting rules under this subsection shall model the prohibition after Section 2001.061 but may vary the extent of the prohibition if necessary to take into account the nature of alternative dispute resolution procedures. Added by Acts 1999, 76th Leg., ch. 85, Sec. 5, eff. Sept. 1, 1999.

Sec. 2003.042. POWERS OF ADMINISTRATIVE LAW JUDGE. (a) An administrative law judge employed by the office or a temporary administrative law judge may:

- (1) administer an oath;
- (2) take testimony;
- (3) rule on a question of evidence;
- (4) issue an order relating to discovery or another hearing or prehearing matter, including an order imposing a sanction;

- (5) issue an order that refers a case to an alternative dispute resolution procedure, determines how the costs of the procedure will be apportioned, and appoints an impartial third party as described by Section 2009.053 to facilitate that procedure;

- (6) issue a proposal for decision that includes findings of fact and conclusions of law;

- (7) if expressly authorized by a state agency rule adopted under Section 2001.058(f), make the final decision in a contested case;

- (8) serve as an impartial third party as described by Section 2009.053 for a dispute referred by an administrative law judge, unless one of the parties objects to the appointment; and

- (9) serve as an impartial third party as described by Section 2009.053 for a dispute referred by a government agency under a contract.

(b) An administrative law judge may not serve as an impartial third party for a dispute that the administrative law judge refers to an alternative dispute resolution procedure.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 605, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 934, Sec. 4, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1167, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 19.02(10), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1352, Sec. 8, eff. Sept. 1, 1999.

Sec. 2003.0421. SANCTIONS. (a) An administrative law judge employed by the office or a temporary administrative law judge, on the judge's own motion or on motion of a party and after notice and an opportunity for a hearing, may impose appropriate sanctions as provided by Subsection (b) against a party or its representative for:

- (1) filing a motion or pleading that is groundless and brought:

- (A) in bad faith;
- (B) for the purpose of harassment; or
- (C) for any other improper purpose, such as to cause unnecessary delay or needless increase in the cost of the proceeding;

- (2) abuse of the discovery process in seeking, making, or resisting discovery; or

- (3) failure to obey an order of the administrative law judge or of the state agency on behalf of which the hearing is being conducted.

(b) A sanction imposed under Subsection (a) may include, as appropriate and justified, issuance of an order:

- (1) disallowing further discovery of any kind or of a particular kind by the offending party;

- (2) charging all or any part of the expenses of discovery against the offending party or its representatives;

- (3) holding that designated facts be considered admitted for purposes of the proceeding;

- (4) refusing to allow the offending party to support or oppose a designated claim or defense or prohibiting the party from introducing designated matters in evidence;

(5) disallowing in whole or in part requests for relief by the offending party and excluding evidence in support of those requests; and

(6) striking pleadings or testimony, or both, in whole or in part.

(c) This section applies to any contested case hearing conducted by the office, except hearings conducted on behalf of the Texas Natural Resource Conservation Commission or the Public Utility Commission of Texas which are governed by Sections 2003.047 and 2003.049.

Added by Acts 1997, 75th Leg., ch. 605, Sec. 2, eff. Sept. 1, 1997.

Sec. 2003.043. TEMPORARY ADMINISTRATIVE LAW JUDGE. (a) The chief administrative law judge may contract with a qualified individual to serve as a temporary administrative law judge if an administrative law judge employed by the office is not available to hear a case within a reasonable time.

(b) The chief administrative law judge shall adopt rules relating to the qualifications of a temporary judge.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2003.044. STAFF. The chief administrative law judge may hire staff as required to perform the powers and duties of the office.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2003.045. OVERSIGHT OF ADMINISTRATIVE LAW JUDGES. The chief administrative law judge may designate senior or master administrative law judges to oversee the training, evaluation, discipline, and promotion of administrative law judges employed by the office.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1999, 76th Leg., ch. 85, Sec. 6, eff. Sept. 1, 1999.

Sec. 2003.0451. TRAINING. (a) The office shall provide at least 30 hours of continuing legal education and judicial training to each new administrative law judge employed by the office who has less than three years of presiding experience. The office shall provide the training required by this subsection during the administrative law judge's first year of employment with the office. The office may provide the training through office personnel or through external sources, including state and local bar associations, the Texas Center for the Judiciary, and the National Judicial College. The training may include the following areas:

- (1) conducting fair and impartial hearings;
- (2) ethics;
- (3) evidence;
- (4) civil trial litigation;
- (5) administrative law;
- (6) managing complex litigation;
- (7) conducting high-volume proceedings;
- (8) judicial writing;
- (9) effective case-flow management;
- (10) alternative dispute resolution methods; and
- (11) other areas that the office considers to be

relevant to the work of an administrative law judge.

(b) The office shall provide continuing legal education and advanced judicial training for other administrative law judges employed by the office to the extent that money is available for this purpose.

(c) Subsection (a) does not apply to a temporary administrative law judge.

Added by Acts 1997, 75th Leg., ch. 371, Sec. 1, eff. Sept. 1, 1997.

Amended by Acts 1999, 76th Leg., ch. 85, Sec. 7, eff. Sept. 1, 1999.

Sec. 2003.046. CENTRAL HEARINGS PANEL. (a) A central hearings panel in the office is composed of administrative law judges and senior or master administrative law judges assigned to the panel by the chief administrative law judge.

(b) The chief administrative law judge may create teams or divisions within the central panel, including an administrative license revocation division, according to the subject matter or types of hearings conducted by the central panel.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1999, 76th Leg., ch. 85, Sec. 8, eff. Sept. 1, 1999.

Sec. 2003.047. NATURAL RESOURCE CONSERVATION DIVISION. (a) The office shall establish a natural resource conservation division to perform the contested case hearings for the Texas Natural Resource Conservation Commission.

(b) The division shall conduct hearings relating to contested cases before the commission, other than a hearing conducted by one or more commissioners. The commission by rule may delegate to the division the responsibility to hear any other matter before the commission if consistent with the responsibilities of the division.

(c) Only an administrative law judge in the division may conduct a hearing on behalf of the commission. An administrative law judge in the division may conduct hearings for other state agencies as time allows. The office may transfer an administrative law judge to the division on a permanent or temporary basis and may contract with qualified individuals to serve as temporary administrative law judges as necessary.

(d) To be eligible to preside at a hearing on behalf of the commission, an administrative law judge, regardless of temporary or permanent status, must be licensed to practice law in this state and have the expertise necessary to conduct hearings regarding technical or other specialized subjects that may come before the commission.

(e) In referring a matter for hearing, the commission shall provide to the administrative law judge a list of disputed issues. The commission shall specify the date by which the administrative law judge is expected to complete the proceeding and provide a proposal for decision to the commission. The administrative law judge may extend the proceeding if the administrative law judge determines that failure to grant an extension would deprive a party of due process or another constitutional right. The administrative law judge shall establish a docket control order designed to complete the proceeding by the date specified by the commission.

(f) Except as otherwise provided by this subsection, the scope of the hearing is limited to the issues referred by the commission. On the request of a party, the administrative law judge may consider an issue that was not referred by the commission if the administrative law judge determines that:

- (1) the issue is material;
- (2) the issue is supported by evidence; and
- (3) there are good reasons for the failure to supply available information regarding the issue during the public comment period.

(g) The scope of permissible discovery is limited to:

- (1) any matter reasonably calculated to lead to the discovery of admissible evidence regarding any issue referred to the administrative law judge by the commission or that the administrative law judge has agreed to consider; and

- (2) the production of documents:

- (A) reviewed or relied on in preparing application materials or selecting the site of the proposed facility; or

- (B) relating to the ownership of the applicant or the owner or operator of the facility or proposed facility.

(h) The commission by rule shall:

- (1) provide for subpoenas and commissions for depositions; and

- (2) require that discovery be conducted in accordance with the Texas Rules of Civil Procedure, except that the commission by rule shall determine the level of discovery under Rule 190, Texas Rules of Civil Procedure, appropriate for each type of case considered by the commission, taking into account the nature and complexity of the case.

(i) The office and the commission jointly shall adopt rules providing for certification to the commission of an issue that involves an ultimate finding of compliance with or satisfaction of a statutory standard the determination of which is committed to the discretion or judgment of the commission by law. The rules must address, at a minimum, the issues that are appropriate for certification and the procedure to be used in certifying the issue. Each agency shall publish the jointly adopted rules.

(j) An administrative law judge hearing a case on behalf of the commission, on the judge's own motion or on motion of a party and after notice and an opportunity for a hearing, may impose appropriate sanctions as provided by Subsection (k) against a party or its representative for:

- (1) filing a motion or pleading that is groundless and brought:

- (A) in bad faith;

(B) for the purpose of harassment; or  
(C) for any other improper purpose, such as to cause unnecessary delay or needless increase in the cost of the proceeding;

(2) abuse of the discovery process in seeking, making, or resisting discovery; or

(3) failure to obey an order of the administrative law judge or the commission.

(k) A sanction imposed under Subsection (j) may include, as appropriate and justified, issuance of an order:

(1) disallowing further discovery of any kind or of a particular kind by the offending party;

(2) charging all or any part of the expenses of discovery against the offending party or its representatives;

(3) holding that designated facts be considered admitted for purposes of the proceeding;

(4) refusing to allow the offending party to support or oppose a designated claim or defense or prohibiting the party from introducing designated matters in evidence;

(5) disallowing in whole or in part requests for relief by the offending party and excluding evidence in support of those requests; and

(6) striking pleadings or testimony, or both, in whole or in part.

(l) After hearing evidence and receiving legal argument, an administrative law judge shall make findings of fact, conclusions of law, and any ultimate findings required by statute, all of which shall be separately stated. The administrative law judge shall make a proposal for decision to the commission and shall serve the proposal for decision on all parties. An opportunity shall be given to each party to file exceptions to the proposal for decision and briefs related to the issues addressed in the proposal for decision. The commission shall consider and act on the proposal for decision.

(m) Except as provided in Section 361.0832, Health and Safety Code, the commission shall consider the proposal for decision prepared by the administrative law judge, the exceptions of the parties, and the briefs and argument of the parties. The commission may amend the proposal for decision, including any finding of fact, but any such amendment thereto and order shall be based solely on the record made before the administrative law judge. Any such amendment by the commission shall be accompanied by an explanation of the basis of the amendment. The commission may also refer the matter back to the administrative law judge to reconsider any findings and conclusions set forth in the proposal for decision or take additional evidence or to make additional findings of fact or conclusions of law. The commission shall serve a copy of the commission's order, including its finding of facts and conclusions of law, on each party.

(n) The provisions of Chapter 2001 shall apply to contested case hearings for the commission to the extent not inconsistent with this section.

(o) An administrative law judge hearing a case on behalf of the commission may not, without the agreement of all parties, issue an order referring the case to an alternative dispute resolution procedure if the commission has already conducted an unsuccessful alternative dispute resolution procedure. If the commission has not already conducted an alternative dispute resolution procedure, the administrative law judge shall consider the commission's recommendation in determining whether to issue an order referring the case to the procedure.

Added by Acts 1995, 74th Leg., ch. 106, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 934, Sec. 5, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1350, Sec. 6, eff. Sept. 1, 1999.

Sec. 2003.048. NATURAL RESOURCE CONSERVATION COMMISSION HEARINGS FEE. The office shall charge the Texas Natural Resource Conservation Commission a fixed annual fee rather than an hourly rate for services rendered by the office to the commission. The amount of the fee may not be less than the amount appropriated to the Texas Natural Resource Conservation Commission in the General Appropriations Act for payment to the natural resource conservation division to conduct commission hearings. The amount of the fee shall be based on the costs of conducting the hearings, the costs of travel expenses and telephone charges directly related to the hearings, docketing costs, and other applicable administrative



costs of the office including the administrative costs of the natural resource conservation division. The office and the Texas Natural Resource Conservation Commission shall negotiate the amount of the fixed fee biennially, subject to the approval of the governor, to coincide with the commission's legislative appropriations request.

Added by Acts 1995, 74th Leg., ch. 106, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 85, Sec. 9, eff. Sept. 1, 2000.

Sec. 2003.049. UTILITY DIVISION. (a) The office shall establish a utility division to perform the contested case hearings for the Public Utility Commission of Texas as prescribed by the Public Utility Regulatory Act of 1995 and other applicable law.

(b) The utility division shall conduct hearings relating to contested cases before the commission, other than a hearing conducted by one or more commissioners. The commission by rule may delegate the responsibility to hear any other matter before the commission if consistent with the duties and responsibilities of the division.

(c) Only an administrative law judge in the utility division may conduct a hearing on behalf of the commission. An administrative law judge in the utility division may conduct hearings for other state agencies as time allows. The office may transfer an administrative law judge into the division on a temporary or permanent basis and may contract with qualified individuals to serve as temporary administrative law judges as necessary.

(d) To be eligible to preside at a hearing, an administrative law judge, regardless of temporary or permanent status, must be licensed to practice law in this state and have not less than five years of general experience or three years of experience in utility regulatory law.

(e) At the time the office receives jurisdiction of a proceeding, the commission shall provide to the administrative law judge a list of issues or areas that must be addressed. In addition, the commission may identify and provide to the administrative law judge at any time additional issues or areas that must be addressed.

(f) The office and the commission shall jointly adopt rules providing for certification to the commission of an issue that involves an ultimate finding of compliance with or satisfaction of a statutory standard the determination of which is committed to the discretion or judgment of the commission by law. The rules must address, at a minimum, the issues that are appropriate for certification and the procedure to be used in certifying the issue. Each agency shall publish the jointly adopted rules.

(g) Notwithstanding Section 2001.058, the commission may change a finding of fact or conclusion of law made by the administrative law judge or vacate or modify an order issued by the administrative law judge only if the commission:

(1) determines that the administrative law judge:

(A) did not properly apply or interpret applicable law, commission rules or policies, or prior administrative decisions; or

(B) issued a finding of fact that is not supported by a preponderance of the evidence; or

(2) determines that a commission policy or a prior administrative decision on which the administrative law judge relied is incorrect or should be changed.

(h) The commission shall state in writing the specific reason and legal basis for its determination under Subsection (g).

(i) An administrative law judge, on the judge's own motion or on motion of a party and after notice and an opportunity for a hearing, may impose appropriate sanctions as provided by Subsection (j) against a party or its representative for:

(1) filing a motion or pleading that is groundless and brought:

(A) in bad faith;

(B) for the purpose of harassment; or

(C) for any other improper purpose, such as to cause unnecessary delay or needless increase in the cost of the proceeding;

(2) abuse of the discovery process in seeking, making, or resisting discovery; or

(3) failure to obey an order of the administrative law judge or the commission.

(j) A sanction imposed under Subsection (i) may include, as appropriate and justified, issuance of an order:

(1) disallowing further discovery of any kind or of a particular kind by the offending party;

(2) charging all or any part of the expenses of discovery against the offending party or its representative;

(3) holding that designated facts be deemed admitted for purposes of the proceeding;

(4) refusing to allow the offending party to support or oppose a designated claim or defense or prohibiting the party from introducing designated matters in evidence;

(5) disallowing in whole or in part requests for relief by the offending party and excluding evidence in support of such requests;

(6) punishing the offending party or its representative for contempt to the same extent as a district court;

(7) requiring the offending party or its representative to pay, at the time ordered by the administrative law judge, the reasonable expenses, including attorney's fees, incurred by other parties because of the sanctionable behavior; and

(8) striking pleadings or testimony, or both, in whole or in part, or staying further proceedings until the order is obeyed.

(k) Hearings conducted for the commission by the office shall be held in hearing rooms provided by the commission. The commission shall also provide the utility division access to its computer systems, databases, and library resources.

(l) The office shall charge the commission a fixed annual fee rather than an hourly rate for services rendered by the utility division to the commission. The amount of the fee may not be less than the amount appropriated to the commission in the General Appropriations Act for payment to the utility division to conduct commission hearings. The amount of the fee shall be based on the costs of conducting the hearings, the costs of travel expenses and telephone charges directly related to the hearings, docketing costs, and other applicable administrative costs of the office including the administrative costs of the utility division. The office and the commission shall negotiate the amount of the fixed fee biennially, subject to the approval of the governor, to coincide with the commission's legislative appropriations request. Added by Acts 1995, 74th Leg., ch. 765, Sec. 1.35, eff. Sept. 1, 1995. Renumbered from V.T.C.A., Government Code Sec. 2003.047 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(49), eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 85, Sec. 10, eff. Sept. 1, 2000.

Sec. 2003.050. PROCEDURAL RULES. (a) The chief administrative law judge shall adopt rules that govern the procedures, including the discovery procedures, that relate to a hearing conducted by the office.

(b) Notwithstanding other law, the procedural rules of the state agency on behalf of which the hearing is conducted govern procedural matters that relate to the hearing only to the extent that the chief administrative law judge's rules adopt the agency's procedural rules by reference.

(c) The rules of the office regarding the participation of a witness by telephone must include procedures to verify the identity of the witness who is to appear by telephone.

Added by Acts 1997, 75th Leg., ch. 605, Sec. 3, eff. Jan. 1, 1998. Amended by Acts 2003, 78th Leg., ch. 1215, Sec. 8, eff. Sept. 1, 2003.

Sec. 2003.051. ROLE OF REFERRING AGENCY. Except in connection with interim appeals of orders or questions certified to an agency by an administrative law judge, as permitted by law, a state agency that has referred a matter to the office in which the office will conduct a hearing may not take any adjudicative action relating to the matter until the office has issued its proposal for decision or otherwise concluded its involvement in the matter. The state agency may exercise its advocacy rights in the matter before the office in the same manner as any other party.

Added by Acts 1999, 76th Leg., ch. 85, Sec. 11, eff. Sept. 1, 1999.

Sec. 2003.052. HANDLING OF COMPLAINTS. (a) The office shall maintain a file on each written complaint filed with the office. The file must include:

(1) the name of the person who filed the complaint;

- (2) the date the complaint is received by the office;
- (3) the subject matter of the complaint;
- (4) the name of each person contacted in relation to the complaint;
- (5) a summary of the results of the review or investigation of the complaint; and
- (6) an explanation of the reason the file was closed, if the office closed the file without taking action other than to investigate the complaint.

(b) The office shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the office's policies and procedures relating to complaint investigation and resolution.

(c) The office, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

Added by Acts 2003, 78th Leg., ch. 1215, Sec. 9, eff. Sept. 1, 2003.

Sec. 2003.053. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) The chief administrative law judge or the chief administrative law judge's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the office to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the office's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

(c) The policy statement must:

(1) be updated annually;

(2) be reviewed by the state Commission on Human Rights for compliance with Subsection (b)(1); and

(3) be filed with the governor's office.

Added by Acts 2003, 78th Leg., ch. 1215, Sec. 9, eff. Sept. 1, 2003.

Sec. 2003.054. STATE EMPLOYEE INCENTIVE PROGRAM. The chief administrative law judge or the chief administrative law judge's designee shall provide to office employees information and training on the benefits and methods of participation in the state employee incentive program.

Added by Acts 2003, 78th Leg., ch. 1215, Sec. 9, eff. Sept. 1, 2003.

Sec. 2003.055. EFFECTIVE USE OF TECHNOLOGY. The chief administrative law judge shall develop and implement a policy requiring the chief administrative law judge and office employees to research and propose appropriate technological solutions to improve the office's ability to perform its functions. The technological solutions must:

(1) ensure that the public is able to easily find information about the office on the Internet;

(2) ensure that persons who want to use the office's services are able to:

(A) interact with the office through the Internet; and

(B) access any service that can be provided effectively through the Internet; and

(3) be cost-effective and developed through the office's planning processes.

Added by Acts 2003, 78th Leg., ch. 1215, Sec. 9, eff. Sept. 1, 2003.

Sec. 2003.056. ALTERNATIVE DISPUTE RESOLUTION POLICY. The chief administrative law judge shall develop and implement a policy to encourage the use of alternative dispute resolution procedures where appropriate to assist in the internal and external resolution of disputes within the office's jurisdiction.

Added by Acts 2003, 78th Leg., ch. 1215, Sec. 9, eff. Sept. 1, 2003.

Sec. 2003.057. HEARING TRANSLATOR. If a translator is requested for all or part of a hearing conducted by the office, the office shall provide an appropriate translator for that purpose.

Added by Acts 2003, 78th Leg., ch. 1215, Sec. 10, eff. Sept. 1, 2003.