

1 **DEPARTMENT OF ENVIRONMENTAL QUALITY**
2 **ADJUDICATIVE PROCEEDINGS AMENDMENTS**

3 2023 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Michael K. McKell**

6 House Sponsor: Brady Brammer

8 **LONG TITLE**

9 **General Description:**

10 This bill addresses adjudicative proceedings of the Department of Environmental
11 Quality.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ modifies the criteria for appointing an administrative law judge; and
- 15 ▶ makes technical changes.

16 **Money Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **19-1-301**, as last amended by Laws of Utah 2018, Chapter 281

24 *Be it enacted by the Legislature of the state of Utah:*

25 Section 1. Section **19-1-301** is amended to read:

26 **19-1-301. Adjudicative proceedings.**

27 (1) As used in this section, "dispositive action" means a final agency action that:

28 (a) the executive director takes following an adjudicative proceeding on a request for
29 agency action; and

30 (b) is subject to judicial review under Section 63G-4-403.

31 (2) This section governs adjudicative proceedings that are not special adjudicative
32 proceedings as defined in Section 19-1-301.5.

33 (3) (a) The department and its boards shall comply with the procedures and
34 requirements of Title 63G, Chapter 4, Administrative Procedures Act.

35 (b) The procedures for an adjudicative proceeding conducted by an administrative law
36 judge are governed by:

37 (i) Title 63G, Chapter 4, Administrative Procedures Act;

38 (ii) this title;

39 (iii) rules adopted by the department under:

40 (A) Subsection 63G-4-102(6); or

41 (B) this title; and

42 (iv) the Utah Rules of Civil Procedure, in the absence of a procedure established under
43 Subsection (3)(b)(i), (ii), or (iii).

44 (4) Except as provided in Section 19-2-113, an administrative law judge shall hear a
45 party's request for agency action.

46 (5) The executive director shall appoint an administrative law judge who:

47 [~~(a) is a member in good standing of the Utah State Bar;~~]

48 [~~(b)~~] (a) has a minimum of:

49 (i) 10 years of experience practicing law; and

50 (ii) five years of experience practicing in the field of:

51 (A) environmental compliance;

52 (B) natural resources;

53 (C) regulation by an administrative agency; or

54 (D) a field related to a field listed in Subsections [~~(5)(b)(ii)(A)~~] (5)(a)(ii)(A) through

55 (C); and

56 [~~(e)~~] (b) has a working knowledge of the federal laws and regulations and state statutes
57 and rules applicable to a request for agency action.

58 (6) In appointing an administrative law judge who meets the qualifications described in
59 Subsection (5), the executive director may:

60 (a) compile a list of persons who may be engaged as an administrative law judge pro
61 tempore by mutual consent of the parties to an adjudicative proceeding;

62 (b) appoint an assistant attorney general as an administrative law judge pro tempore; or

63 (c) (i) appoint an administrative law judge as an employee of the department; and

64 (ii) assign the administrative law judge responsibilities in addition to conducting an
65 adjudicative proceeding.

66 (7) (a) An administrative law judge:

67 (i) shall conduct an adjudicative proceeding;

68 (ii) may take any action that is not a dispositive action; and

69 (iii) shall submit to the executive director a proposed dispositive action, including:

70 (A) written findings of fact;

71 (B) written conclusions of law; and

72 (C) a recommended order.

73 (b) The executive director may:

74 (i) approve, approve with modifications, or disapprove a proposed dispositive action
75 submitted to the executive director under Subsection (7)(a); or

76 (ii) return the proposed dispositive action to the administrative law judge for further
77 action as directed.

78 (c) In making a decision regarding a dispositive action, the executive director may seek
79 the advice of, and consult with:

80 (i) the assistant attorney general assigned to the department; or

81 (ii) a special master who:

82 (A) is appointed by the executive director; and

83 (B) is an expert in the subject matter of the proposed dispositive action.

84 (d) The executive director shall base a final dispositive action on the record of the
85 proceeding before the administrative law judge.

86 (8) To conduct an adjudicative proceeding, an administrative law judge may:

87 (a) compel:

88 (i) the attendance of a witness; and

89 (ii) the production of a document or other evidence;

90 (b) administer an oath;

91 (c) take testimony; and

92 (d) receive evidence as necessary.

93 (9) A party may appear before an administrative law judge in person, through an agent
94 or employee, or as provided by department rule.

95 (10) (a) Except as provided in Subsection (10)(b), an administrative law judge or the
96 executive director may not participate in an ex parte communication with a party to an
97 adjudicative proceeding regarding the merits of the adjudicative proceeding unless notice and
98 an opportunity to be heard are afforded to all parties.

99 (b) The executive director may discuss ongoing operational matters that require the
100 involvement of a division director without violating Subsection (10)(a).

101 (c) Upon receiving an ex parte communication from a party to a proceeding, an
102 administrative law judge or the executive director shall place the communication in the public
103 record of the proceeding and afford all parties to the proceeding with an opportunity to
104 comment on the communication.

105 (d) If an administrative law judge or the executive director receives an ex parte
106 communication, the person who receives the ex parte communication shall place the
107 communication into the public record of the proceedings and afford all parties an opportunity
108 to comment on the information.

109 (11) Nothing in this section limits a party's right to an adjudicative proceeding under
110 Title 63G, Chapter 4, Administrative Procedures Act.