

# STATE OF CONNECTICUT

## DEPARTMENT OF PUBLIC HEALTH



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Commissioner

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### **TESTIMONY PRESENTED BEFORE THE JOINT COMMITTEE ON THE JUDICIARY March 24, 2006**

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### **Senate Bill 432 – An Act Establishing a Demonstration Project for an Office of Administrative Hearings**

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#### **The Department of Public Health opposes Senate Bill 432.**

This proposal would create a centralized Office of Administrative Hearings (OAH) to preside over hearings that are presently the responsibility of the Commission on Human Rights and Opportunities, the Department of Education, the Department of Children and Families, the Department of Social Services, and the Department of Transportation. While the bill does not include the Department of Public Health, presumably, since it is characterized as a “demonstration project,” DPH may be part of a “Phase 2.”

The proposal states that its purpose is, in part, “separating the adjudicatory function from the investigatory, prosecutorial and policy-making functions of agencies in the Executive Department. . . .” In fact, the Uniform Administrative Procedures Act (UAPA) already requires that agencies separate adjudicatory functions from investigatory and prosecutorial functions; and, failure to adhere to this requirement could result in a decision being reversed. The Courts provide adequate checks and balances to ensure the fairness of the system. Moreover, there are perfectly legitimate and appropriate times when an adjudications office should be involved in policy-making functions of an agency (*e.g.*, when a case requires the articulation of an agency policy based on an agency’s expertise or when a hearing officer identifies an issue that needs to be addressed by the agency, *etc.*).

The proposal also states that its purpose is to promote the impartial administration and conduct of hearings. In fact, the proposed legislation would have the opposite effect, and would eventually result in an unfair advantage to those who are subject to enforcement actions. For example, while initially the Administrative Law judges (ALJs) will have subject-matter expertise since they will consist of agency hearing officers who are transferred to the centralized office, over time, that expertise will become diluted and lost. Newly hired ALJs will lack an understanding of an agency’s procedures, expertise, and policies, and may well be impressed with spurious arguments made by respondents’ attorneys.

On the other hand, hearing officers housed within a state agency may draw upon their knowledge and understanding of an agency’s internal procedures in deciding a case, and may access staff within the agency’s programs to acquire generalized knowledge in a subject matter. Indeed, on appeal, administrative agency decisions are given great deference by the courts



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because it is assumed that the agency has exercised subject matter expertise in rendering a decision. This proposal would significantly weaken state agencies' ability to exercise that expertise and enforce their statutes and regulations.

This bill also far exceeds what might reasonably be considered a "demonstration project." For example, several agencies would have their adjudicative offices entirely disassembled; the Chief ALJ is charged with the responsibility of creating an entire Office with ALJs, support staff, etc.; the volume of cases may be quite significant, for the five impacted agencies, requiring the appointment of Deputy Chief ALJs to serve as heads of units within the office; and, the Chief is charged with developing job duties and a program of evaluation of the ALJs, preparing an annual report, developing recommendations to promote various goals, promulgating regulations, creating a program to train and educate ALJs and ancillary personnel, and developing a code of conduct, among other things. These are enormous and costly undertakings for a "demonstration project."

The proposal is also vague and confusing as drafted. For example, the bill does not specify when an ALJ will issue a proposed decision, and when s/he will issue a final decision. It also appears that after a proposed decision is issued, the agency has 21 days within which it must hear oral argument and issue a final decision. This is simply not reasonable. Parties are often unable to agree upon a date within such a short time period. On the one hand, the bill declares that no ALJ may be assigned to hear a case in any matter where the head of the agency or one or more members of a multimember agency presides over hearings (Sec. 7, (b)(2)), and in another section, it declares that any agency or head of an agency that is not required to refer cases to the centralized office may, nevertheless, refer cases to the centralized office (Sec. 7, (c)).

Finally, there is simply no data suggesting that this proposal would be any more effective than the existing system. Agency hearing officers are presently experienced in administrative law and processes, have agency expertise, are highly qualified, and engage in peer consultation and ongoing training.

Based on the foregoing, the Department of Public Health opposes this proposal and urges the Committee not to support Raised Bill 432. Thank you for your consideration of the Department's comments.