



Senate

General Assembly

File No. 669

January Session, 2007

Substitute Senate Bill No. 1431

Senate, May 1, 2007

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT ESTABLISHING A DEMONSTRATION PROJECT FOR AN OFFICE OF ADMINISTRATIVE HEARINGS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2007*) There shall be within the
2 Executive Department an Office of Administrative Hearings for the
3 purpose of separating the adjudicatory function from the investigatory
4 and prosecutorial functions of agencies in the Executive Department
5 and to perform the impartial administration and conduct of hearings
6 of contested cases in accordance with the provisions of sections 1 to 11,
7 inclusive, and 23 of this act and chapter 54 of the general statutes. The
8 central office of the Office of Administrative Hearings shall be
9 established within Hartford County.

10 Sec. 2. (NEW) (*Effective July 1, 2007*) (a) A Chief Administrative Law
11 Judge shall be appointed by the Governor, to serve a term expiring on
12 March 1, 2008. Thereafter, the Governor shall, with the advice and
13 consent of the General Assembly, appoint the Chief Administrative
14 Law Judge to serve for a four-year term or until a successor has been

15 appointed and qualified. To be eligible for appointment, the Chief
16 Administrative Law Judge shall have been admitted to the practice of
17 law in this state for at least ten years and shall be knowledgeable on
18 the subject of administrative law. The Chief Administrative Law Judge
19 shall take the oath of office provided in section 1-25 of the general
20 statutes prior to commencing his or her duties, shall devote full time to
21 the duties of the office of Chief Administrative Law Judge and shall
22 not engage in the private practice of law. The Chief Administrative
23 Law Judge shall be eligible for reappointment.

24 (b) The Chief Administrative Law Judge may be removed during
25 his or her term by the Governor for good cause shown.

26 (c) The Chief Administrative Law Judge shall be exempt from the
27 classified service.

28 (d) The Chief Administrative Law Judge, administrative law judges,
29 assistants and other employees of the Office of Administrative
30 Hearings shall be entitled to the fringe benefits applicable to other state
31 employees, shall be included under the provisions of chapters 65 and
32 66 of the general statutes regarding disability and retirement of state
33 employees and shall receive full retirement credit for each year or
34 portion thereof for which retirement benefits are paid for service as
35 such Chief Administrative Law Judge, administrative law judge,
36 assistant or other employee.

37 Sec. 3. (NEW) (*Effective July 1, 2007*) (a) The Chief Administrative
38 Law Judge shall be the chief executive officer of the Office of
39 Administrative Hearings and shall:

40 (1) Have all of the powers specifically granted in the general statutes
41 and any additional powers that are reasonable and necessary to enable
42 the Chief Administrative Law Judge to carry out the duties of his or
43 her office, including, but not limited to, the powers and duties
44 specified in section 4-8 of the general statutes;

45 (2) Assign administrative law judges in all cases referred to the

46 Office of Administrative Hearings, provided, in assigning an
47 administrative law judge to a case, the Chief Administrative Law
48 Judge shall, whenever practicable, assign an administrative law judge
49 who has expertise in the legal issues or general subject matter of the
50 proceeding;

51 (3) Have all the powers and duties of an administrative law judge;

52 (4) Prepare an edited version of a proposed final decision and final
53 decision that shall not disclose protected information in any case
54 where any provision of the general statutes, federal law, state or
55 federal regulations or an order of a court of competent jurisdiction bars
56 the disclosure of the identity of any person or party or bars the
57 disclosure of any other information;

58 (5) Collect, compile and prepare statistics and other data with
59 respect to the operations of the Office of Administrative Hearings and
60 submit annually to the Governor and the General Assembly a report
61 on such operations, including, but not limited to, the number of
62 hearings initiated, the number of proposed final decisions rendered,
63 the number of partial or total reversals of such decisions by the
64 agencies, the number of final decisions rendered and the number of
65 proceedings pending;

66 (6) Study the subject of administrative adjudication in all its aspects
67 and develop recommendations to promote the goals of impartiality,
68 fairness, uniformity and cost-effectiveness in the administration and
69 conduct of hearings of contested cases;

70 (7) Adopt regulations, in accordance with chapter 54 of the general
71 statutes, to carry out the provisions of sections 1 to 11, inclusive, and
72 23 of this act and sections 4-176e to 4-181a, inclusive, of the general
73 statutes, as amended by this act, and the policies of the Office of
74 Administrative Hearings in connection therewith. Such regulations,
75 with respect to contested cases heard by said office, shall supersede
76 any inconsistent agency regulations, policies or procedures, except
77 those mandated by the general statutes or federal law, and shall

78 include, but not be limited to, standards related to time limits for
79 agency action in contested cases pursuant to applicable provisions of
80 the general statutes, and standards for the giving of notices of
81 hearings, for the scheduling of hearings and for the assignment of
82 administrative law judges;

83 (8) Develop, in consultation with each agency subject to the
84 provisions of section 8 of this act and with the appropriate committee
85 or section of the Connecticut Bar Association, a program for the
86 continuing training and education of administrative law judges and
87 ancillary personnel, and implement such program; and

88 (9) Index, by name and subject, all written orders and final decisions
89 and make all indices, proposed final decisions and final decisions
90 available for public inspection and copying electronically and to the
91 extent required by the Freedom of Information Act, as defined in
92 section 1-200 of the general statutes.

93 (b) Any Deputy Chief Administrative Law Judge of the Office of
94 Administrative Hearings shall be appointed by the Chief
95 Administrative Law Judge from among the administrative law judges.

96 Sec. 4. (NEW) (*Effective October 1, 2007*) (a) Notwithstanding any
97 provision of the general statutes, each full-time employee or
98 permanent part-time employee of an agency subject to the provisions
99 of section 8 of this act whose primary duties (1) are to conduct hearings
100 in contested cases and issue final decisions or proposed final decisions,
101 including, but not limited to, human rights referees, hearing
102 adjudicators and hearing officers, or (2) relate to providing
103 administrative services required for conducting such hearings and
104 issuing such decisions, shall be transferred to the Office of
105 Administrative Hearings, in accordance with the provisions of this
106 section and sections 4-38d, 4-38e and 4-39 of the general statutes.

107 (b) Persons transferred to the Office of Administrative Hearings
108 pursuant to this section and persons appointed by the Chief
109 Administrative Law Judge pursuant to chapter 67 of the general

110 statutes shall be in the classified service and subject to the provisions
111 of chapter 68 of the general statutes. Persons transferred to the Office
112 of Administrative Hearings pursuant to this section who are members
113 of an employee organization, as defined in section 5-270 of the general
114 statutes, at the time of their transfer shall continue to be represented by
115 such employee organization.

116 (c) The salaries, seniority and benefits of persons transferred to the
117 Office of Administrative Hearings pursuant to this section shall not be
118 reduced as a result of the transfer.

119 (d) No promotions governed by any existing and applicable
120 memorandum of understanding between the Office of Labor Relations
121 and any collective bargaining representative for state employees shall
122 be denied, delayed, impaired or eliminated by the implementation of
123 sections 1 to 11, inclusive, of this act.

124 (e) (1) Persons transferred to the Office of Administrative Hearings
125 pursuant to this section who are members of a collective bargaining
126 unit at the time of their transfer shall (A) not lose the job classification
127 in which they are placed at the time of their transfer as a result of the
128 transfer, and (B) remain the beneficiaries of any existing and applicable
129 memorandum of understanding between the Office of Labor Relations
130 and any collective bargaining representative for state employees.

131 (2) Persons transferred to the Office of Administrative Hearings
132 pursuant to this section who are not members of a collective
133 bargaining unit at the time of their transfer, and persons appointed by
134 the Chief Administrative Law Judge, shall (A) have a job classification
135 commensurate with persons who are members of a collective
136 bargaining unit at the time of their transfer, and (B) be subject to and
137 become the beneficiaries of the terms of any existing and applicable
138 memorandum of understanding between the Office of Labor Relations
139 and any collective bargaining representative for state employees.

140 (f) Time served in other agencies by persons transferred to the
141 Office of Administrative Hearings pursuant to this section shall be

142 recognized as qualifying experience and time in the Office of
143 Administrative Hearings and shall count as successful and satisfactory
144 performance for career progression under any existing and applicable
145 memorandum of understanding between the Office of Labor Relations
146 and any collective bargaining representative for state employees.

147 (g) An administrative law judge, assistant or other employee of the
148 Office of Administrative Hearings who is removed, suspended,
149 demoted or subjected to disciplinary action or other adverse
150 employment action may appeal such action in accordance with the
151 applicable collective bargaining agreement.

152 Sec. 5. (NEW) (*Effective October 1, 2007*) (a) Each administrative law
153 judge shall have been admitted to the practice of law in this state for at
154 least two years, except that such requirement shall not apply to any
155 administrative law judge transferred pursuant to section 4 of this act.
156 Each administrative law judge shall be knowledgeable on the subject
157 of administrative law.

158 (b) An administrative law judge shall have the powers granted to
159 hearing officers and presiding officers pursuant to sections 1 to 11,
160 inclusive, and 23 of this act and chapter 54 of the general statutes.

161 Sec. 6. (NEW) (*Effective October 1, 2007*) (a) All hearings in contested
162 cases conducted by the Office of Administrative Hearings shall be
163 conducted by an administrative law judge assigned by the Chief
164 Administrative Law Judge and shall be conducted in accordance with
165 sections 1 to 11, inclusive, and 23 of this act and sections 4-176e to 4-
166 181a, inclusive, of the general statutes, as amended by this act.

167 (b) Unless different time limits are provided by any provision of the
168 general statutes for contested cases before an agency, the time limits
169 provided in sections 4-176e to 4-181a, inclusive, of the general statutes,
170 as amended by this act, apply to all contested cases conducted by the
171 Office of Administrative Hearings.

172 Sec. 7. (NEW) (*Effective October 1, 2007*) An administrative law judge

173 may conduct hearings, mediations and settlement negotiations held by
174 the Office of Administrative Hearings. If a contested case is not
175 resolved through mediation or settlement, either party may proceed to
176 a hearing. An administrative law judge who attempted to settle or
177 mediate a matter may not thereafter be assigned to hear the matter. If a
178 contested case is resolved by stipulation, agreed settlement or consent
179 order to the administrative law judge, the administrative law judge
180 shall issue an order dismissing the contested case. The order shall
181 incorporate by reference such stipulation, agreed settlement or consent
182 order which shall be attached thereto. The order shall further provide
183 that no findings of fact or conclusions of law have been made
184 regarding any alleged violations of the law. The order and stipulation,
185 agreed settlement or consent order may be enforceable by any party in
186 Superior Court. A party may petition the superior court for the judicial
187 district of New Britain for enforcement of the order and stipulation,
188 agreed settlement or consent order and for appropriate temporary
189 relief or a restraining order.

190 Sec. 8. (NEW) (*Effective October 1, 2007*) (a) Notwithstanding any
191 provision of the general statutes, and except as otherwise provided in
192 sections 9 and 10 of this act, on and after the effective date of this
193 section, the Office of Administrative Hearings shall conduct hearings
194 and render proposed final decisions or, if authorized or required by
195 law, final decisions in contested cases:

196 (1) Pursuant to subdivision (3) of subsection (b) of section 4-61dd of
197 the general statutes;

198 (2) Brought by or before the Department of Children and Families;

199 (3) Brought by or before the Department of Transportation; and

200 (4) Brought by or before the Commission on Human Rights and
201 Opportunities.

202 (b) Notwithstanding any provision of the general statutes, and
203 except as otherwise provided in sections 9 and 10 of this act, on and

204 after February 1, 2008, the Office of Administrative Hearings shall
205 conduct hearings and render proposed final decisions or, if authorized
206 or required by law, final decisions in contested cases brought by or
207 before the Department of Motor Vehicles pursuant to section 14-36g,
208 14-40c, 14-44, 14-46g, 14-52, 14-52a, 14-64, 14-67c, 14-67p, 14-72, 14-74,
209 14-79, 14-111, 14-111f, 14-111g, 14-111q, 14-134, 14-163c, 14-163d, 14-
210 191 or 14-253a of the general statutes.

211 (c) The powers, functions and duties of conducting hearings and
212 issuing decisions in contested cases enumerated in subsections (a) and
213 (b) of this section shall, on the applicable dates specified in said
214 subsections, be transferred to the Office of Administrative Hearings in
215 accordance with the provisions of sections 4-38d, 4-38e and 4-39 of the
216 general statutes.

217 (d) Any hearing officer under contract with an agency to conduct
218 hearings and issue decisions in contested cases enumerated in
219 subsections (a) and (b) of this section shall, on and after the applicable
220 dates specified in said subsections, continue to serve until all such
221 cases assigned to such hearing officer are completed, unless the Chief
222 Administrative Law Judge determines that the case shall be reassigned
223 to an administrative law judge.

224 (e) Nothing in this section shall be construed to apply to the State
225 Board of Mediation and Arbitration or the State Board of Labor
226 Relations.

227 Sec. 9. (NEW) (*Effective July 1, 2007*) No administrative law judge
228 may be assigned by the Chief Administrative Law Judge to hear a
229 contested case with respect to:

230 (1) Any hearing that is required by federal law to be conducted by a
231 specific agency or other hearing authority; or

232 (2) Any matter where the head of the agency, or one or more of the
233 members of a multimember agency, presides at the hearing in a
234 contested case.

235 Sec. 10. (NEW) (*Effective July 1, 2007*) On and after October 1, 2010,
236 the Governor, at the request of the head of any agency subject to the
237 provisions of section 8 of this act and for good cause shown, may
238 exempt such agency from the requirements of said section.

239 Sec. 11. (NEW) (*Effective July 1, 2007*) The Chief Administrative Law
240 Judge may contract with any political subdivision of this state to
241 provide an administrative law judge to the political subdivision for the
242 purpose of conducting hearings, mediations and settlements, but not
243 including hearings, mediations and settlements concerning labor
244 relations or collective bargaining with any collective bargaining unit
245 organized under sections 7-467 to 7-477, inclusive, section 10-153a or
246 chapter 561 of the general statutes.

247 Sec. 12. Subsection (e) of section 2c-2b of the general statutes is
248 amended by adding subdivision (21) as follows (*Effective July 1, 2007*):

249 (NEW) (21) The Office of Administrative Hearings established
250 under section 1 of this act.

251 Sec. 13. Section 4-166 of the general statutes is repealed and the
252 following is substituted in lieu thereof (*Effective October 1, 2007*):

253 As used in this chapter and sections 1 to 11, inclusive, and 23 of this
254 act, unless the context otherwise requires:

255 (1) "Agency" means each state board, commission, department or
256 officer authorized by law to make regulations or to determine
257 contested cases, but does not include either house or any committee of
258 the General Assembly, the courts, the Council on Probate Judicial
259 Conduct, the Governor, Lieutenant Governor or Attorney General, or
260 town or regional boards of education, or automobile dispute
261 settlement panels established pursuant to section 42-181;

262 (2) "Contested case" means a proceeding, including but not
263 restricted to rate-making, price fixing and licensing, in which the legal
264 rights, duties or privileges of a party are required by state statute or
265 regulation to be determined by an agency or by the Office of

266 Administrative Hearings after an opportunity for hearing or in which a
267 hearing is in fact held, but does not include proceedings on a petition
268 for a declaratory ruling under section 4-176, as amended by this act,
269 hearings referred to in section 4-168 or hearings conducted by the
270 Department of Correction or the Board of Pardons and Paroles;

271 (3) "Final decision" means (A) the [agency] determination in a
272 contested case made pursuant to section 4-179, as amended by this act,
273 section 23 of this act and section 4-180, as amended by this act, (B) a
274 declaratory ruling issued by an agency pursuant to section 4-176, as
275 amended by this act, or (C) [an agency] a decision made after
276 reconsideration of a final decision. The term does not include a
277 preliminary or intermediate ruling or order, [of an agency,] or a ruling
278 [of an agency] granting or denying a petition for reconsideration;

279 (4) "Hearing officer" means an individual appointed by an agency to
280 conduct a hearing in an agency proceeding that is not conducted by an
281 administrative law judge pursuant to section 8 of this act. Such
282 individual may be a staff employee of the agency;

283 (5) "Intervenor" means a person, other than a party, granted status
284 as an intervenor by an agency in accordance with the provisions of
285 subsection (d) of section 4-176 or subsection (b) of section 4-177a, as
286 amended by this act;

287 (6) "License" includes the whole or part of any agency permit,
288 certificate, approval, registration, charter or similar form of permission
289 required by law, but does not include a license required solely for
290 revenue purposes;

291 (7) "Licensing" includes the agency process respecting the grant,
292 denial, renewal, revocation, suspension, annulment, withdrawal or
293 amendment of a license;

294 (8) "Party" means each person (A) whose legal rights, duties or
295 privileges are required by statute to be determined by an agency
296 proceeding and who is named or admitted as a party, (B) who is

297 required by law to be a party in an agency proceeding, or (C) who is
298 granted status as a party under subsection (a) of section 4-177a, as
299 amended by this act;

300 (9) "Person" means any individual, partnership, corporation, limited
301 liability company, association, governmental subdivision, agency or
302 public or private organization of any character, but does not include
303 the agency conducting the proceeding;

304 (10) "Presiding officer" means the head of the agency presiding at a
305 hearing, the member of [an] a multimember agency or the hearing
306 officer designated by the head of the agency to preside at [the] a
307 hearing, or an administrative law judge presiding at a hearing;

308 (11) "Proposed final decision" means a final decision proposed by an
309 agency or a presiding officer under section 4-179, as amended by this
310 act, or section 23 of this act;

311 (12) "Proposed regulation" means a proposal by an agency under
312 the provisions of section 4-168 for a new regulation or for a change in,
313 addition to or repeal of an existing regulation;

314 (13) "Regulation" means each agency statement of general
315 applicability, without regard to its designation, that implements,
316 interprets, or prescribes law or policy, or describes the organization,
317 procedure, or practice requirements of any agency. The term includes
318 the amendment or repeal of a prior regulation, but does not include
319 (A) statements concerning only the internal management of any
320 agency and not affecting private rights or procedures available to the
321 public, (B) declaratory rulings issued pursuant to section 4-176, as
322 amended by this act, or (C) intra-agency or interagency memoranda;

323 (14) "Regulation-making" means the process for formulation and
324 adoption of a regulation;

325 (15) "Administrative law judge" means an administrative law judge
326 transferred or appointed in accordance with sections 2 to 5, inclusive,
327 of this act;

328 (16) "Head of the agency" means the individual or group of
329 individuals constituting the highest authority within an agency.

330 Sec. 14. Subsection (g) of section 4-176 of the general statutes is
331 repealed and the following is substituted in lieu thereof (*Effective*
332 *October 1, 2007*):

333 (g) If the agency conducts a hearing in a proceeding for a
334 declaratory ruling, the provisions of [subsection (b) of section 4-177c,]
335 section 4-178, as amended by this act, and section 4-179, as amended
336 by this act, shall apply to the hearing.

337 Sec. 15. Section 4-176e of the general statutes is repealed and the
338 following is substituted in lieu thereof (*Effective October 1, 2007*):

339 Except as otherwise required by the general statutes, a [hearing in
340 an agency proceeding may be held before (1)] contested case shall be
341 heard by (1) an administrative law judge, (2) the head of the agency,
342 (3) one or more of the members of a multimember agency, or (4) one or
343 more hearing officers, provided no individual who has personally
344 carried out the function of an investigator in a contested case may
345 serve as a hearing officer in that case, [, or (2) one or more of the
346 members of the agency.]

347 Sec. 16. Section 4-177 of the general statutes is repealed and the
348 following is substituted in lieu thereof (*Effective October 1, 2007*):

349 (a) In a contested case, all parties shall be afforded an opportunity
350 for hearing after reasonable notice from the agency.

351 (b) The notice shall be in writing and shall include: (1) A statement
352 of the time, place [,] and nature of the hearing or, if the contested case
353 has been referred to the Office of Administrative Hearings, a statement
354 that the matter has been referred to the Office of Administrative
355 Hearings and that the time and place of the hearing will be set by an
356 administrative law judge; (2) a statement of the legal authority and
357 jurisdiction under which the hearing is to be held; (3) a reference to the
358 particular sections of the statutes and regulations involved; and (4) a

359 short and plain statement of the matters asserted. If the agency or
360 party is unable to state the matters in detail at the time the notice is
361 served, the initial notice may be limited to a statement of the issues
362 involved. Thereafter, upon application, a more definite and detailed
363 statement shall be furnished.

364 (c) After an agency refers a contested case to the Office of
365 Administrative Hearings, the agency shall certify the official record in
366 such contested case to the Office of Administrative Hearings. The
367 Office of Administrative Hearings shall issue a notice in writing to all
368 parties that shall include a statement of the time, place and nature of
369 the hearing. Thereafter, a party shall file all documents that are to
370 become part of such record with the Office of Administrative
371 Hearings. The filing of such documents with the agency rather than
372 with the Office of Administrative Hearings shall not be a jurisdictional
373 defect and shall not be grounds for termination of the proceeding,
374 provided the administrative law judge may assess appropriate costs
375 and sanctions against a party who misfiles such documents on a
376 showing of prejudice resulting from a wilful misfiling. The Office of
377 Administrative Hearings shall maintain the official record of a
378 contested case referred to said office.

379 [(c)] (d) Unless precluded by law, a contested case may be resolved
380 by stipulation, agreed settlement [,] or consent order or by the default
381 of a party.

382 [(d)] (e) The record in a contested case shall include: (1) Written
383 notices related to the case; (2) all petitions, pleadings, motions and
384 intermediate rulings; (3) evidence received or considered; (4) questions
385 and offers of proof, objections and rulings thereon; (5) the official
386 transcript, if any, of proceedings relating to the case, or, if not
387 transcribed, any recording or stenographic record of the proceedings;
388 (6) proposed final decisions and exceptions thereto; and (7) the final
389 decision.

390 [(e)] (f) Any recording or stenographic record of the proceedings
391 shall be transcribed on request of any party. The requesting party shall

392 pay the cost of such transcript, unless otherwise provided by law.
393 Nothing in this section shall relieve an agency of its responsibility
394 under section 4-183, as amended by this act, to transcribe the record for
395 an appeal.

396 Sec. 17. Section 4-177a of the general statutes is repealed and the
397 following is substituted in lieu thereof (*Effective October 1, 2007*):

398 (a) The presiding officer shall grant a person status as a party in a
399 contested case if [that] such officer finds that: (1) Such person has
400 submitted a written petition to the agency or presiding officer, and
401 mailed copies to all parties, at least five days before the date of
402 hearing; and (2) the petition states facts that demonstrate that the
403 petitioner's legal rights, duties or privileges shall be specifically
404 affected by [the agency's] a decision in the contested case.

405 (b) The presiding officer may grant any person status as an
406 intervenor in a contested case if [that] such officer finds that: (1) Such
407 person has submitted a written petition to the agency or presiding
408 officer, and mailed copies to all parties, at least five days before the
409 date of hearing; and (2) the petition states facts that demonstrate that
410 the petitioner's participation is in the interests of justice and will not
411 impair the orderly conduct of the proceedings.

412 (c) The five-day requirement in subsections (a) and (b) of this
413 section may be waived at any time before or after commencement of
414 the hearing by the presiding officer on a showing of good cause.

415 (d) If a petition is granted pursuant to subsection (b) of this section,
416 the presiding officer may limit the intervenor's participation to
417 designated issues in which the intervenor has a particular interest as
418 demonstrated by the petition and shall define the intervenor's rights to
419 inspect and copy records, physical evidence, papers and documents, to
420 introduce evidence [,] and to argue and cross-examine on those issues.
421 The presiding officer may further restrict the participation of an
422 intervenor in the proceedings, including the rights to inspect and copy
423 records, to introduce evidence and to cross-examine, so as to promote

424 the orderly conduct of the proceedings.

425 Sec. 18. Section 4-177b of the general statutes is repealed and the
426 following is substituted in lieu thereof (*Effective October 1, 2007*):

427 In a contested case, the presiding officer may administer oaths, take
428 testimony under oath relative to the case, subpoena witnesses and
429 require the production of records, physical evidence, papers and
430 documents to any hearing held in the case. If any person disobeys the
431 subpoena or, having appeared, refuses to answer any question put to
432 [him] such person or to produce any records, physical evidence,
433 papers and documents requested by the presiding officer, the
434 administrative law judge or, if the hearing is conducted by the agency,
435 the agency may apply to the superior court for the judicial district of
436 [Hartford] New Britain or for the judicial district in which the person
437 resides, or to any judge of that court if it is not in session, setting forth
438 the disobedience to the subpoena or refusal to answer or produce, and
439 the court or judge shall cite the person to appear before the court or
440 judge to show cause why the records, physical evidence, papers and
441 documents should not be produced or why a question put to [him]
442 such person should not be answered. Nothing in this section shall be
443 construed to limit the authority of the agency, the administrative law
444 judge or any party as otherwise allowed by law.

445 Sec. 19. Section 4-177c of the general statutes is repealed and the
446 following is substituted in lieu thereof (*Effective October 1, 2007*):

447 [(a)] In a contested case, each party and the agency, including an
448 agency conducting the proceeding, shall be afforded the opportunity
449 (1) to inspect and copy relevant and material records, papers and
450 documents not in the possession of the party or such agency, except as
451 otherwise provided by federal law or any other provision of the
452 general statutes, and (2) at a hearing, to respond, to cross-examine
453 other parties, intervenors [] and witnesses, and to present evidence
454 and argument on all issues involved.

455 [(b)] Persons not named as parties or intervenors may, in the

456 discretion of the presiding officer, be given an opportunity to present
457 oral or written statements. The presiding officer may require any such
458 statement to be given under oath or affirmation.]

459 Sec. 20. Section 4-178 of the general statutes is repealed and the
460 following is substituted in lieu thereof (*Effective October 1, 2007*):

461 In contested cases: (1) Any oral or documentary evidence may be
462 received, but the [agency] presiding officer shall, as a matter of policy,
463 provide for the exclusion of irrelevant, immaterial or unduly
464 repetitious evidence; (2) [agencies shall give effect to] the rules of
465 privilege recognized by law shall be given effect; (3) when a hearing
466 will be expedited and the interests of the parties will not be prejudiced
467 substantially, any part of the evidence may be received in written
468 form; (4) documentary evidence may be received in the form of copies
469 or excerpts, if the original is not readily available, and upon request,
470 parties and the agency, including an agency conducting the
471 proceeding, shall be given an opportunity to compare the copy with
472 the original; (5) a party and [such] the agency, including an agency
473 conducting the proceeding, may conduct cross-examinations required
474 for a full and true disclosure of the facts; (6) notice may be taken of
475 judicially cognizable facts; [and of] (7) in a proceeding conducted by
476 the agency or in an agency review of a proposed final decision, notice
477 may be taken of generally recognized technical or scientific facts
478 within the agency's specialized knowledge; [(7)] (8) parties shall be
479 notified in a timely manner of any material noticed, including any
480 agency memoranda or data, and they shall be afforded an opportunity
481 to contest the material so noticed; and [(8) the agency's] (9) in a
482 proceeding conducted by the agency or in an agency review of a
483 proposed final decision, the agency may use its experience, technical
484 competence [,] and specialized knowledge [may be used] in the
485 evaluation of the evidence.

486 Sec. 21. Section 4-178a of the general statutes is repealed and the
487 following is substituted in lieu thereof (*Effective October 1, 2007*):

488 If a hearing in a contested case or in a declaratory ruling proceeding

489 is held before a hearing officer or before less than a majority of the
490 members of the agency who are authorized by law to render a final
491 decision, a party, if permitted by regulation and before rendition of the
492 final decision, may request a review by a majority of the members of
493 the agency, of any preliminary, procedural or evidentiary ruling made
494 at the hearing. The majority of the members may make an appropriate
495 order, including the reconvening of the hearing. The provisions of this
496 section do not apply to a hearing conducted by an administrative law
497 judge.

498 Sec. 22. Section 4-179 of the general statutes is repealed and the
499 following is substituted in lieu thereof (*Effective October 1, 2007*):

500 (a) When, in an agency proceeding that is not conducted by an
501 administrative law judge, a majority of the members of the agency
502 who are to render the final decision have not heard the matter or read
503 the record, the decision, if adverse to a party, shall not be rendered
504 until a proposed final decision is served upon the parties, and an
505 opportunity is afforded to each party adversely affected to file
506 exceptions and present briefs and oral argument to the members of the
507 agency who are to render the final decision.

508 (b) A proposed final decision made under this section shall be in
509 writing and [contain a statement of the reasons for the decision and a
510 finding of facts and conclusion of law on each issue of fact or law
511 necessary to the decision] shall comply with the requirements of
512 subsection (c) of section 4-180, as amended by this act.

513 (c) Except when authorized by law to render a final decision for an
514 agency, a hearing officer shall, after hearing a matter, make a proposed
515 final decision.

516 (d) The parties and the agency conducting the proceeding, by
517 written stipulation, may waive compliance with this section.

518 Sec. 23. (NEW) (*Effective October 1, 2007*) (a) A proposed final
519 decision rendered by an administrative law judge shall be delivered

520 promptly to each party or the party's authorized representative, and to
521 the agency, personally or by United States mail, certified or registered,
522 postage prepaid, return receipt requested. After such proposed final
523 decision is rendered, the record in the contested case shall be delivered
524 promptly to the agency.

525 (b) A proposed final decision rendered by an administrative law
526 judge shall become a final decision of the agency unless the head of the
527 agency, not later than twenty-one days following the date the
528 proposed final decision is delivered or mailed to the agency, modifies
529 or rejects the proposed final decision, provided the head of the agency
530 may, before expiration of such time period and for good cause, certify
531 the extension of such time period for not more than an additional
532 twenty-one days. If the head of the agency modifies or rejects the
533 proposed final decision, the head of the agency shall state the reason
534 for the modification or rejection on the record. In reviewing a proposed
535 final decision rendered by an administrative law judge, the head of the
536 agency may afford each party, including the agency, an opportunity to
537 present briefs and may afford each party, including the agency, an
538 opportunity to present oral argument.

539 (c) If, within the time period provided in subsection (b) of this
540 section, the head of the agency, in reviewing a proposed final decision
541 rendered by an administrative law judge, determines that additional
542 evidence is necessary, the head of the agency shall refer the matter to
543 the Office of Administrative Hearings. The Chief Administrative Law
544 Judge shall assign the administrative law judge who rendered such
545 proposed final decision to take the additional evidence unless such
546 administrative law judge is unavailable. After taking the additional
547 evidence, the administrative law judge shall, not later than thirty days
548 following such referral, prepare a proposed final decision as provided
549 in this section based on such additional evidence and the record of the
550 prior hearing.

551 (d) A proposed final decision made under this section shall be in
552 writing and shall comply with the requirements of subsection (c) of

553 section 4-180 of the general statutes, as amended by this act.

554 Sec. 24. Section 4-180 of the general statutes is repealed and the
555 following is substituted in lieu thereof (*Effective October 1, 2007*):

556 (a) Each agency and administrative law judge shall proceed with
557 reasonable dispatch to conclude any matter pending before [it] such
558 agency or administrative law judge and, in all hearings of contested
559 cases conducted by the agency or the administrative law judge, shall
560 render a final decision within ninety days following the close of
561 evidence or the due date for the filing of briefs, whichever is later. [, in
562 such proceedings.]

563 (b) If, in any contested case, any agency or administrative law judge
564 fails to comply with the provisions of subsection (a) of this section, [in
565 any contested case, any party thereto] any party to such contested case
566 may apply to the superior court for the judicial district of [Hartford]
567 New Britain for an order requiring the agency or administrative law
568 judge to render a proposed final decision or a final decision forthwith.
569 The court, after hearing, shall issue an appropriate order.

570 (c) A final decision in a contested case shall be in writing or, if there
571 is no proposed final decision, orally stated on the record. [and, if
572 adverse to a party,] A proposed final decision and a final decision in a
573 contested case shall include [the agency's] findings of fact and
574 conclusions of law necessary to [its] the decision and shall be made by
575 applying all pertinent provisions of law. Findings of fact shall be based
576 exclusively on the evidence in the record and on matters noticed. The
577 [agency shall state in] proposed final decision and the final decision
578 shall contain the name of each party and the most recent mailing
579 address, provided to the agency, of the party or [his] the party's
580 authorized representative. If the final decision is orally stated on the
581 record, each such name and mailing address shall be included in the
582 record.

583 (d) The final decision shall be delivered promptly to each party or
584 [his] the party's authorized representative and, in the case of a final

585 decision by an administrative law judge authorized by law to render
586 such decision, to the agency, personally or by United States mail,
587 certified or registered, postage prepaid, return receipt requested. [The]
588 An agency rendering a final decision shall immediately transmit a
589 copy of such decision to the Office of Administrative Hearings. A
590 proposed final decision that becomes a final decision because of
591 agency inaction, as provided in subsection (b) of section 23 of this act,
592 shall become effective at the expiration of the time period specified in
593 said subsection or on a later date specified in such proposed final
594 decision. Any other final decision shall be effective when personally
595 delivered or mailed or on a later date specified [by the agency] in such
596 final decision. The date of delivery or mailing of a proposed final
597 decision and a final decision shall be endorsed on the front of the
598 decision or on a transmittal sheet included with the decision.

599 Sec. 25. Subsection (a) of section 4-181 of the general statutes is
600 repealed and the following is substituted in lieu thereof (*Effective*
601 *October 1, 2007*):

602 (a) Unless required for the disposition of ex parte matters
603 authorized by law, no hearing officer, administrative law judge or
604 member of an agency who, in a contested case, is to render a final
605 decision or to make a proposed final decision shall communicate,
606 directly or indirectly, in connection with any issue of fact, with any
607 person or party, or, in connection with any issue of law, with any party
608 or the party's representative, without notice and opportunity for all
609 parties to participate.

610 Sec. 26. Section 4-181a of the general statutes is repealed and the
611 following is substituted in lieu thereof (*Effective October 1, 2007*):

612 (a) (1) Unless otherwise provided by law, a party or the agency in a
613 contested case may, within fifteen days after the personal delivery or
614 mailing of the final decision or within fifteen days after the date that a
615 proposed final decision becomes a final decision because of agency
616 inaction, as provided in subsection (b) of section 23 of this act, file with
617 the [agency] authority that rendered the final decision a petition for

618 reconsideration of the decision on the ground that: (A) An error of fact
619 or law should be corrected; (B) new evidence has been discovered
620 which materially affects the merits of the case and which for good
621 reasons was not presented in the agency proceeding; or (C) other good
622 cause for reconsideration has been shown. Within twenty-five days of
623 the filing of the petition, [the agency] such authority shall decide
624 whether to reconsider the final decision. The failure of [the agency]
625 such authority to make [that] such determination within twenty-five
626 days of such filing shall constitute a denial of the petition.

627 (2) Within forty days of the personal delivery or mailing of the final
628 decision, the [agency] authority that rendered the final decision,
629 regardless of whether a petition for reconsideration has been filed,
630 may decide to reconsider the final decision.

631 (3) If the [agency] authority that rendered the final decision decides
632 to reconsider [a] the final decision, pursuant to subdivision (1) or (2) of
633 this subsection, [the agency] such authority shall proceed in a
634 reasonable time to conduct such additional proceedings as may be
635 necessary to render a decision modifying, affirming or reversing the
636 final decision, provided such decision made after reconsideration shall
637 be rendered not later than ninety days following the date on which
638 [the agency] such authority decides to reconsider the final decision. If
639 [the agency] such authority fails to render such decision made after
640 reconsideration within such ninety-day period, the original final
641 decision shall remain the final decision in the contested case for
642 purposes of any appeal under the provisions of section 4-183, as
643 amended by this act.

644 (4) Except as otherwise provided in subdivision (3) of this
645 subsection, [an agency] a decision made after reconsideration pursuant
646 to this subsection shall become the final decision in the contested case
647 in lieu of the original final decision for purposes of any appeal under
648 the provisions of section 4-183, as amended by this act, including, but
649 not limited to, an appeal of (A) any issue decided by the [agency]
650 authority that rendered the final decision in its original final decision

651 that was not the subject of any petition for reconsideration or [the
652 agency's] such authority's decision made after reconsideration, (B) any
653 issue as to which reconsideration was requested but not granted, and
654 (C) any issue that was reconsidered but not modified by [the agency]
655 such authority from the determination of such issue in the original
656 final decision.

657 (b) On a showing of changed conditions, the [agency] authority that
658 rendered the final decision may reverse or modify the final decision, at
659 any time, at the request of any person or on [the agency's] such
660 authority's own motion. The procedure set forth in this chapter for
661 contested cases shall be applicable to any proceeding in which such
662 reversal or modification of any final decision is to be considered. The
663 party or parties who were the subject of the original final decision, or
664 their successors, if known, and intervenors in the original contested
665 case, shall be notified of the proceeding and shall be given the
666 opportunity to participate in the proceeding. Any decision to reverse
667 or modify a final decision shall make provision for the rights or
668 privileges of any person who has been shown to have relied on such
669 final decision.

670 (c) The [agency] authority that rendered the final decision may,
671 without further proceedings, modify a final decision to correct any
672 clerical error. A person may appeal [that] such modification under the
673 provisions of section 4-183, as amended by this act, or, if an appeal is
674 pending when the modification is made, may amend the appeal.

675 (d) For the purposes of this section and section 4-183, as amended
676 by this act, in the case of a proposed final decision that becomes a final
677 decision because of agency inaction, as provided in subsection (b) of
678 section 23 of this act, the authority that rendered the final decision
679 shall be deemed to be the agency.

680 Sec. 27. Section 4-183 of the general statutes is repealed and the
681 following is substituted in lieu thereof (*Effective October 1, 2007*):

682 (a) A person who has exhausted all administrative remedies

683 available within the agency and who is aggrieved by a final decision
684 may appeal to the Superior Court as provided in this section. The filing
685 of a petition for reconsideration is not a prerequisite to the filing of
686 such an appeal.

687 (b) A person may appeal a preliminary, procedural or intermediate
688 agency action or ruling to the Superior Court if (1) it appears likely that
689 the person will otherwise qualify under this chapter to appeal from the
690 final agency action or ruling, and (2) postponement of the appeal
691 would result in an inadequate remedy.

692 (c) (1) Within forty-five days after mailing of the final decision
693 under section 4-180, as amended by this act, or, if there is no mailing,
694 within forty-five days after personal delivery of the final decision
695 under said section, or (2) within forty-five days after the [agency]
696 authority that rendered the final decision denies a petition for
697 reconsideration of the final decision pursuant to subdivision (1) of
698 subsection (a) of section 4-181a, as amended by this act, or (3) within
699 forty-five days after mailing of the final decision made after
700 reconsideration pursuant to subdivisions (3) and (4) of subsection (a)
701 of section 4-181a, as amended by this act, or, if there is no mailing,
702 within forty-five days after personal delivery of the final decision
703 made after reconsideration pursuant to said subdivisions, or (4) within
704 forty-five days after the expiration of the ninety-day period required
705 under subdivision (3) of subsection (a) of section 4-181a, as amended
706 by this act, if [the agency] such authority decides to reconsider the final
707 decision and fails to render a decision made after reconsideration
708 within such period, or (5) if a proposed final decision becomes a final
709 decision because of agency inaction, as provided in subsection (b) of
710 section 23 of this act, within forty-five days after the decision becomes
711 final, whichever is applicable and is later, a person appealing as
712 provided in this section shall serve a copy of the appeal on the agency
713 [that rendered the final decision] at its office or at the office of the
714 Attorney General in Hartford and file the appeal with the clerk of the
715 superior court for the judicial district of New Britain or for the judicial
716 district wherein the person appealing resides or, if [that] such person is

717 not a resident of this state, with the clerk of the court for the judicial
718 district of New Britain. An appeal of a final decision under this section
719 shall be taken within such applicable forty-five-day period regardless
720 of the effective date of the final decision. Within [that] such time, the
721 person appealing shall also serve a copy of the appeal on each party
722 listed in the final decision at the address shown in the decision,
723 provided failure to make such service within forty-five days on parties
724 other than the agency [that rendered the final decision] shall not
725 deprive the court of jurisdiction over the appeal. Service of the appeal
726 shall be made by United States mail, certified or registered, postage
727 prepaid, return receipt requested, without the use of a state marshal or
728 other officer, or by personal service by a proper officer or indifferent
729 person making service in the same manner as complaints are served in
730 ordinary civil actions. If service of the appeal is made by mail, service
731 shall be effective upon deposit of the appeal in the mail.

732 (d) The person appealing, not later than fifteen days after filing the
733 appeal, shall file or cause to be filed with the clerk of the court an
734 affidavit, or the state marshal's return, stating the date and manner in
735 which a copy of the appeal was served on each party and on the
736 agency [that rendered the final decision,] and, if service was not made
737 on a party, the reason for failure to make service. If the failure to make
738 service causes prejudice to any party to the appeal or to the agency, the
739 court, after hearing, may dismiss the appeal.

740 (e) If service has not been made on a party, the court, on motion,
741 shall make such orders of notice of the appeal as are reasonably
742 calculated to notify each party not yet served.

743 (f) The filing of an appeal shall not, of itself, stay enforcement of [an
744 agency] a final decision. An application for a stay may be made to the
745 agency, to the court or to both. Filing of an application with the agency
746 shall not preclude action by the court. A stay, if granted, shall be on
747 appropriate terms.

748 (g) Within thirty days after the service of the appeal, or within such
749 further time as may be allowed by the court, the agency shall

750 transcribe any portion of the record that has not been transcribed and
751 transmit to the reviewing court the original or a certified copy of the
752 entire record of the proceeding appealed from, which shall include the
753 [agency's] findings of fact and conclusions of law, separately stated. By
754 stipulation of all parties to such appeal proceedings, the record may be
755 shortened. A party unreasonably refusing to stipulate to limit the
756 record may be taxed by the court for the additional costs. The court
757 may require or permit subsequent corrections or additions to the
758 record.

759 (h) If, before the date set for hearing on the merits of an appeal,
760 application is made to the court for leave to present additional
761 evidence, and it is shown to the satisfaction of the court that the
762 additional evidence is material and that there were good reasons for
763 failure to present it in the proceeding before the [agency] authority that
764 rendered the final decision, the court may order that the additional
765 evidence be taken before [the agency] such authority upon conditions
766 determined by the court. [The agency] Such authority may modify its
767 findings and decision by reason of the additional evidence and shall
768 file [that] such evidence and any modifications, new findings [,] or
769 decisions with the reviewing court.

770 (i) [The] Except as otherwise provided by law, the appeal shall be
771 conducted by the court without a jury and shall be confined to the
772 record. If alleged irregularities in procedure before the [agency]
773 presiding officer are not shown in the record or if facts necessary to
774 establish aggrievement are not shown in the record, proof limited
775 thereto may be taken in the court. The court, upon request, shall hear
776 oral argument and receive written briefs.

777 (j) [The] Unless a different standard of review is provided by law,
778 the court shall not substitute its judgment for that of the [agency]
779 authority that rendered the final decision as to the weight of the
780 evidence on questions of fact. The court shall affirm the final decision
781 [of the agency] unless the court finds that substantial rights of the
782 person appealing have been prejudiced because the administrative

783 findings, inferences, conclusions [,] or decisions are: (1) In violation of
784 constitutional or statutory provisions; (2) in excess of the statutory
785 authority of the agency; (3) made upon unlawful procedure; (4)
786 affected by other error of law; (5) clearly erroneous in view of the
787 reliable, probative [,] and substantial evidence on the whole record; or
788 (6) arbitrary or capricious or characterized by abuse of discretion or
789 clearly unwarranted exercise of discretion. If the court finds such
790 prejudice, [it] the court shall sustain the appeal and, if appropriate,
791 may render a judgment under subsection (k) of this section or remand
792 the case for further proceedings. For the purposes of this section, a
793 remand is a final judgment.

794 (k) If a particular agency action is required by law, the court, on
795 sustaining the appeal, may render a judgment that modifies the
796 [agency] final decision, orders the particular agency action, or orders
797 the agency to take such action as may be necessary to effect the
798 particular action.

799 (l) In all appeals taken under this section, costs may be taxed in
800 favor of the prevailing party in the same manner, and to the same
801 extent, that costs are allowed in judgments rendered by the Superior
802 Court. No costs shall be taxed against the state, except as provided in
803 section 4-184a.

804 (m) In any case in which a person appealing claims that [he] such
805 person cannot pay the costs of an appeal under this section, [he] such
806 person shall, within the time permitted for filing the appeal, file with
807 the clerk of the court to which the appeal is to be taken an application
808 for waiver of payment of such fees, costs and necessary expenses,
809 including the requirements of bond, if any. The application shall
810 conform to the requirements prescribed by rule of the judges of the
811 Superior Court. After such hearing as the court determines is
812 necessary, the court shall render its judgment on the application,
813 which judgment shall contain a statement of the facts the court has
814 found, with its conclusions thereon. The filing of the application for the
815 waiver shall toll the time limits for the filing of an appeal until such

816 time as a judgment on such application is rendered.

817 Sec. 28. Subsection (e) of section 1-82a of the general statutes is
818 repealed and the following is substituted in lieu thereof (*Effective*
819 *October 1, 2007*):

820 (e) The judge trial referee shall make public a finding of probable
821 cause not later than five business days after any such finding. At such
822 time the entire record of the investigation shall become public, except
823 that the Office of State Ethics may postpone examination or release of
824 such public records for a period not to exceed fourteen days for the
825 purpose of reaching a stipulation agreement pursuant to subsection
826 [(c)] (d) of section 4-177, as amended by this act. Any such stipulation
827 agreement or settlement shall be approved by a majority of those
828 members present and voting.

829 Sec. 29. Subsection (e) of section 1-93a of the general statutes is
830 repealed and the following is substituted in lieu thereof (*Effective*
831 *October 1, 2007*):

832 (e) The judge trial referee shall make public a finding of probable
833 cause not later than five business days after any such finding. At such
834 time, the entire record of the investigation shall become public, except
835 that the Office of State Ethics may postpone examination or release of
836 such public records for a period not to exceed fourteen days for the
837 purpose of reaching a stipulation agreement pursuant to subsection
838 [(c)] (d) of section 4-177, as amended by this act. Any stipulation
839 agreement or settlement entered into for a violation of this part shall be
840 approved by a majority of its members present and voting.

841 Sec. 30. (*Effective July 1, 2007*) On or before February 6, 2008, the
842 Chief Administrative Law Judge appointed pursuant to section 2 of
843 this act shall submit to the joint standing committee of the General
844 Assembly having cognizance of matters relating to the judiciary a
845 feasibility analysis and implementation plan for the transfer of
846 contested cases conducted by the Department of Social Services to the
847 Office of Administrative Hearings.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2007</i>	New section
Sec. 2	<i>July 1, 2007</i>	New section
Sec. 3	<i>July 1, 2007</i>	New section
Sec. 4	<i>October 1, 2007</i>	New section
Sec. 5	<i>October 1, 2007</i>	New section
Sec. 6	<i>October 1, 2007</i>	New section
Sec. 7	<i>October 1, 2007</i>	New section
Sec. 8	<i>October 1, 2007</i>	New section
Sec. 9	<i>July 1, 2007</i>	New section
Sec. 10	<i>July 1, 2007</i>	New section
Sec. 11	<i>July 1, 2007</i>	New section
Sec. 12	<i>July 1, 2007</i>	2c-2b(e)
Sec. 13	<i>October 1, 2007</i>	4-166
Sec. 14	<i>October 1, 2007</i>	4-176(g)
Sec. 15	<i>October 1, 2007</i>	4-176e
Sec. 16	<i>October 1, 2007</i>	4-177
Sec. 17	<i>October 1, 2007</i>	4-177a
Sec. 18	<i>October 1, 2007</i>	4-177b
Sec. 19	<i>October 1, 2007</i>	4-177c
Sec. 20	<i>October 1, 2007</i>	4-178
Sec. 21	<i>October 1, 2007</i>	4-178a
Sec. 22	<i>October 1, 2007</i>	4-179
Sec. 23	<i>October 1, 2007</i>	New section
Sec. 24	<i>October 1, 2007</i>	4-180
Sec. 25	<i>October 1, 2007</i>	4-181(a)
Sec. 26	<i>October 1, 2007</i>	4-181a
Sec. 27	<i>October 1, 2007</i>	4-183
Sec. 28	<i>October 1, 2007</i>	1-82a(e)
Sec. 29	<i>October 1, 2007</i>	1-93a(e)
Sec. 30	<i>July 1, 2007</i>	New section

JUD *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 08 \$	FY 09 \$
New State Agency - Office of Administrative Hearings	GF - Cost	231,500	228,000
State Comptroller - Fringe Benefits	GF - Cost	44,600	107,000
Children & Families, Dept.; Human Rights & Opportunities, Com.; Department of Motor Vehicles; Department of Transportation	GF - Transfer from	Over 1,000,000	Over 1,000,000
New State Agency - Office of Administrative Hearings	GF - Transfer to	Over 1,000,000	Over 1,000,000
Children & Families, Dept.	GF - Potential Revenue Loss	69,000	69,000

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill: (1) creates an Office of Administrative Hearings to coordinate and oversee the conduct of certain administrative proceedings by Administrative Law Judges; (2) establishes credentials for Administrative Law Judges and requires that they receive certain training; (3) grants the Office of Administrative Hearings jurisdiction over certain types of administrative proceedings; and (4) reassigns personnel and transfers resources from state agencies that presently conduct these proceedings to the Office of Administrative Hearings (OAH).¹

¹ It should be noted that since the Department of Children and Families claims federal Title IV-E reimbursement on its expenditures, a potential loss of revenue of approximately \$69,000 would result unless the Department developed an agreement with the new agency, established a claiming process, and modified Connecticut's Title IV-E cost allocation plan.

The creation of the OAH would necessitate two additional full time positions (Chief and Deputy Chief) to provide policy guidance to the system of administrative proceedings under the agency's jurisdiction. Associated expenses to establish and operate a centralized office for the new agency would also be incurred. Further costs would be needed to: (1) provide higher salaries to Administrative Law Judges than they make as hearing officers; and (2) enhance training and legal resources available to Administrative Law Judges. In sum, these costs are estimated to be \$470,000 annually.²

Establishment of the OAH is expected to yield efficiencies in the processing of cases. However, it is uncertain to what extent this will yield budgetary savings to offset the certain costs indicated above.

Section 11 of the bill allows the Chief Administrative Law Judge to contract with political subdivisions of the state to provide an administrative law judge for purposes of conducting hearings, mediations and settlements. The extent to which this would occur is uncertain. Revenues from these services would be deposited into the General Fund.

The bill would result in a transfer from the Commission on Human Rights and Opportunities (CHRO) to the Office of Administrative Hearings (OAH), established under the bill. The positions that would be transferred from CHRO's Office of Public Hearings (OPH) to OAH appear in the table below:

Item:	FY 08 (\$)	FY 09 (\$)
1 Chief Human Rights Referee	100,000	103,000
6 Human Rights Referees	516,000	531,480
1 Secretary II	36,193	37,279
Other Expenses	20,568	21,185
Total	672,761	692,944

² Note: this estimate assumes: (1) that two secretarial positions and two professional positions (caseload coordinator and manager) with the central office of the OAH are filled through a transfer of personnel from other state agencies; and (2) adjudicatory expenses (e.g., transcripts) are met through a reallocation of resources. In particular, if positions are not able to be transferred, the net personnel and fringe cost associated with establishment of the new agency could be twice as high as estimated above.

Additional Information

At CHRO, OPH is responsible for scheduling and conducting all phases of the public hearing process in contested discrimination cases under the Commission's jurisdiction and in certain types of whistleblower retaliation cases. Within OPH, the Chief Human Rights Referee administers the operations of the unit and assigns cases to the other Human Rights Referees. All of the referees are gubernatorial appointees, subject to legislative approval, who function independently from the rest of the Commission.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future, subject to the scheduled sunset of OAH in 2012.

OLR Bill Analysis**sSB 1431*****AN ACT ESTABLISHING A DEMONSTRATION PROJECT FOR AN OFFICE OF ADMINISTRATIVE HEARINGS.*****SUMMARY:**

This bill establishes an Office of Administrative Hearings (OAH) that conducts contested case hearings for the Commission on Human Rights and Opportunities and the departments of children and families, transportation, and motor vehicles. With respect to the Department of Motor Vehicles, the OAH does not hear per se cases. The bill transfers personnel from these agencies to OAH.

The office's central office is in Hartford County. The office terminates on July 1, 2012 unless it is reestablished.

The bill requires the office to conduct the hearings in accordance with the bill and the Uniform Administrative Procedures Act (UAPA). However, the bill specifies that provisions in the UAPA allowing for action by a majority of the members of a multi-member agency do not apply to hearings conducted by OAH. Actions to (1) enforce an order of dismissal, stipulation, settlement agreement, or consent or (2) require a proposed or final decision in a contested case may be brought in the New Britain, rather than Hartford, Superior Court.

The bill makes several changes to the UAPA, including allowing an agency or OAH to enforce a subpoena by filing a complaint in New Britain, rather than Hartford, Superior Court and eliminating the authority of a presiding officer in a contested case to allow people who are not parties or intervenors in the case to present statements.

Lastly, the bill makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2007, except the provisions (1)

establishing the OAH, (2) requiring the appointment of a chief administrative law judge and spelling out his or her duties, (3) prohibiting the office from hearing certain cases, (4) authorizing the governor to exempt certain agencies from the referral requirement, (5) permitting the chief administrative law judge to contract with political subdivisions, (6) requiring the office to terminate, and (7) requiring the Judiciary report are effective July 1, 2007.

OFFICE OF ADMINISTRATIVE HEARINGS

Staff

Chief Administrative Law Judge. The bill requires the governor to appoint a chief administrative law judge (ALJ) to serve as the office's full-time chief executive officer for an initial term that expires March 1, 2008. Thereafter, she must appoint the chief ALJ, with legislative approval, to a four-year term or until a successor is appointed and qualified. The chief ALJ must take the same oath of office as legislators and executive and judicial officers. A sitting chief ALJ is eligible for reappointment. The governor may remove the chief ALJ for good cause.

The chief ALJ must be admitted to the Connecticut bar for at least 10 years, have knowledge of administrative law, and refrain from the private practice of law. The chief ALJ is exempt from the classified service.

The chief ALJ has all of the powers specifically granted by law and any additional powers that are reasonable and necessary for him or her to carry out his or her duties, including the powers and duties of executive branch agency department heads. Additionally, the chief ALJ also has all of the powers and duties of an ALJ.

The chief ALJ must:

1. assign an ALJ to hear each case referred to OAH and, where practicable, base the assignment on expertise in the legal issues or general subject matter of the proceeding;

2. prepare a proposed final decision and final decision that keeps protected information, including the identity of any person or party, confidential if state or federal law or regulations or a court order requires it;
3. collect, compile, and prepare statistics and other data on OAH's operations and annually report to the governor and the legislature on such operations, including the number of (a) hearings initiated, (b) proposed final decisions rendered, (c) partial or total reversals of such decisions by the agencies, (d) final decisions rendered, and (e) proceedings pending;
4. study all aspects of administrative adjudication and develop recommendations to promote the goals of impartiality, fairness, uniformity, and cost-effectiveness in the administration and conduct of contested cases;
5. adopt implementing regulations, including regulations to carry out applicable provisions of the UAPA regarding contested case hearings and the related OAH policies;
6. develop, in consultation with each agency that transfers its contested cases to the office and with the appropriate committee or section of the Connecticut Bar Association, a program for the continuing training and education of administrative law judges and ancillary personnel, and implement such program; and
7. index, by name and subject, all written orders and final decisions and make all indices, proposed final decisions, and final decisions available for public inspection and copying electronically as required by the Freedom of Information Act.

The bill specifies that any regulations the office adopts regarding contested cases it hears supersede any inconsistent agency regulations, policies, or procedures, except those mandated by state or federal law. The regulations must include standard time limits for agency action in contested cases and standards for the giving of notices of hearings, for

the scheduling of hearings, and for the assignment of administrative law judges.

Other Staff. As the office's chief executive officer, the chief ALJ can hire staff, including a deputy. The bill requires the chief ALJ to appoint any deputy from among the ALJs. It transfers to OAH certain full-time and permanent part-time employees from the agencies whose cases the office will hear. The transferred employees are those primarily responsible for (1) conducting hearings in contested cases and issuing final decisions or proposed final decisions, or (2) providing administrative services required for conducting such hearings and issuing such decisions.

Each ALJ, other than those transferred from other agencies, must be admitted to the practice of law in this state for at least two years. All ALJs must be knowledgeable in administrative law. ALJs have the powers granted to hearing officers and presiding officers.

Job Classifications and Benefits. The chief ALJ, ALJs, assistants and other OAH employees (1) are entitled to the same fringe benefits as other state employees, (2) are included in state employees' disability and retirement programs, and (3) receive full retirement credit for work completed each year or portion thereof for which retirement benefits are paid.

Transferees and chief ALJ appointees are in the classified service and covered by collective bargaining. Those transferred employees who are members of an employee organization at the time of their transfer continue to be represented by that organization.

Transferred employees cannot lose their job classification or receive reduced salaries, seniority, or benefits because of the transfer. They get credit for time served in other agencies.

Transferred employees who are members of a collective bargaining unit at the time of their transfer remain the beneficiaries of any existing and applicable memorandum of understanding between the Office of

Labor Relations and any collective bargaining representative for state employees. These employees' promotions cannot be denied, delayed, impaired, or eliminated because of the transfer.

Transferees who are not members of a collective bargaining unit at the time of their transfer and chief ALJ appointees must (1) have the same job classifications as transferees who are members of a collective bargaining unit at the time of their transfer and (2) be subject to and become the beneficiaries of the terms of any existing and applicable memorandum of understanding between the Office of Labor Relations and any collective bargaining representative for state employees.

An ALJ, assistant, or other OAH employee who is removed, suspended, demoted, or subjected to disciplinary action or other adverse employment action may appeal the action in accordance with the applicable collective bargaining agreement.

Types of Cases Heard

The chief ALJ may, by contract, provide ALJs to conduct hearings, mediations, and settlements in cases, other than labor relations or collective bargaining, for political subdivisions of the state.

Beginning October 1, 2007, the bill requires OAH to conduct hearings and render proposed final decisions or, if authorized or required by law, final decisions in contested cases brought by or before the:

1. Department of Children and Families;
2. Department of Transportation; and
3. Commission on Human Rights and Opportunities, including allegations of retaliation against whistleblowers.

Beginning February 1, 2008, OAH must conduct hearings and render proposed final decisions or, if authorized or required by law, final decisions in contested cases brought by or before the Department of Motor Vehicles regarding restrictions on teenage drivers; license

denials, restrictions, suspension, or revocation; safety regulation violations; suspensions or revocations of certificates of title or special plates or placards for the disabled; or requirements for drivers' training programs.

The bill specifies that its section on the types of transferred cases OAH hears, the people allowed to hear them, and their powers and duties do not apply to the State Board of Mediation and Arbitration or the State Board of Labor Relations.

By February 6, 2008, the bill requires the chief ALJ to submit to the Judiciary Committee a feasibility analysis and implementation plan for the transfer of contested cases conducted by the Department of Social Services to OAH. Beginning October 1, 2010, the governor may, for good cause, exempt an agency from the requirement for OAH to hear their contested cases.

The bill prohibits the chief ALJ from assigning an ALJ to hear (1) a contested case that federal law requires to be conducted by a specific agency or other hearing authority or (2) any matter conducted by an agency head or at least one member of a multimember agency.

Referred Cases

The bill requires any hearing officer under contract with an agency to conduct hearings and issue decisions in contested cases of the type to be referred to complete their cases unless the chief ALJ decides to reassign the cases to ALJs.

The bill requires agencies that refer their cases to OAH to certify the official record in each case, and give the parties notice of the referral and that an ALJ will set the time and place of the hearings. OAH must give the notice and also include in it the nature of the hearing. Thereafter, a party must file all documents that are to become part of such record with OAH. Filing these documents with the agency, rather than with OAH, is not a jurisdictional defect and is not grounds for termination of the proceeding. However, the ALJ may assess appropriate costs and sanctions against a party who misfiles such

documents on a showing of prejudice resulting from a willful misfiling. OAH must maintain the official record of a contested case referred to it.

Hearings

An ALJ assigned by the chief ALJ must hear, mediate, or settle any contested case held by OAH. The ALJ must conduct hearings in accordance with the bill and the UAPA. This means, among other things, that the UAPA's definitions and, unless otherwise provided by law, time limits apply to all contested cases conducted by OAH.

These time limits include the time to (1) notice a hearing (reasonable time before hearing), (2) petition to intervene (at least five days before the hearing unless waived), (3) provide notice of evidence (timely manner), (4) render a final decision (within 90 days after all evidence presented or briefs are filed, whichever is later), (5) petition for reconsideration (within 15 days after the final decision is personally delivered or mailed), and (6) decide whether to reconsider a matter (within 25 days after a petition is received or within 40 days after the final decision is delivered).

If a contested case is not resolved through mediation or settlement, either party may proceed to a hearing. An ALJ who attempts to settle or mediate a matter may not thereafter be assigned to hear it. An ALJ must dismiss any case resolved by stipulation, agreed settlement, or consent order. The order of dismissal must incorporate by reference and have attached to it the stipulation, agreed settlement, or consent order. The order must further provide that no findings of fact or conclusions of law have been made regarding any alleged violations of the law. The order and stipulation, agreed settlement, or consent order may be enforceable by any party in Superior Court.

Proposed and Final Decisions

An ALJ's proposed final decision must be in writing, comply with the UAPA's requirement for final decisions, and delivered, either personally or by registered or certified mail, return receipt requested,

promptly to each party or the party's authorized representative and to the agency. After the ALJ renders the proposed final decision, the case records must be delivered promptly to the agency.

An ALJ's proposed final decision becomes the agency's final decision unless the agency head modifies or rejects it within 21 days after it is delivered or mailed. The agency head may, before the expiration of the period and for good cause, extend the 21-day deadline for 21 additional days. In the event of agency inaction, the proposed final decision is effective not later than 21 days after it is mailed or received or at a later date specified in the proposed final decision. In this case, a party or the authority that rendered the final decision has 15 days after the proposed decision becomes final to ask for reconsideration. A person appealing the decision has 45 days after it becomes final to serve a copy of the appeal on the agency or the attorney general's Hartford office and file the appeal.

When reviewing an ALJ's proposed final decision, the head of the agency may give the parties, including the agency, an opportunity to present briefs and present oral argument. If the agency head determines that additional evidence is necessary, he or she must refer the matter to OAH. The chief ALJ must assign the ALJ who rendered the proposed decision to take the additional evidence unless the ALJ is unavailable. The ALJ has 30 days after the referral to take the additional evidence and prepare a proposed final decision based on it and the record of the prior hearing.

If the head of the agency modifies or rejects the proposed final decision, he or she must state the reason for doing so on the record.

UAPA PROVISION ON PROPOSED AND FINAL DECISIONS

The bill makes several changes to the UAPA. Specifically, it:

1. allows a party to a contested case who does not receive a final decision within 90 days after the close of evidence of the filing of briefs, whichever is later, to apply to the New Britain Superior for an order requiring the authority presiding over the

- case to render a proposed final decision right away (the law already permits the agency to demand a final decision);
2. allows a final decision to be stated orally on the record as opposed to written only in cases where there is no proposed final decision;
 3. requires all proposed final and final decisions, instead of just final decisions adverse to a party, to apply pertinent laws and include the findings of fact and conclusions of law;
 4. requires ALJs to deliver their final decisions to the applicable agency either personally or by registered or certified mail, return receipt requested;
 5. requires an agency rendering a final decision to immediately transmit a copy to OAH, regardless to whether the new office has jurisdiction; and
 6. requires that the date a proposed final or final decision is delivered or mailed be endorsed on the front of the decision or on a transmittal sheet included with it.

The bill allows for jury trials in appeals from final decisions if provided by law. Currently, all appeals must be conducted by the court without a jury. The bill also allows a court to substitute its judgment for that of the authority that rendered the final decision if the law provides a different standard of review.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 40 Nay 0 (04/11/2007)