



STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

TESTIMONY PRESENTED BEFORE THE JUDICIARY COMMITTEE March 16, 2007

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Senate Bill 1431 – An Act Establishing a Demonstration Project for an Office of Administrative Hearings

The Department of Public Health opposes Senate Bill 1431.

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, and the Department of Education, the Department of Children and Families.

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 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.

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Under this bill, 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, promulgating regulations, creating a program to train and educate ALJs and ancillary personnel, among other things. These are enormous and costly undertakings.

The proposal is also vague and confusing as drafted. For example, it is not clear when the Chief ALJ will issue a proposed decision and when he or she will issue a final decision. It also appears that after a proposed decision is issued, the agency has 21 days (with one possible extension) within which it may hear oral argument and must issue a final decision, or the proposed decision becomes final. This is simply not reasonable. Parties are often unable to agree upon a date within such a short time period. While the proposal permits the agency to remand a case back to the ALJ to take further evidence, it does not specify whether the agency may reject a case on other grounds (e.g., for legal errors, because the proposed penalty is too harsh or lenient, etc.), and if so, the mechanism for doing so. It is also not clear whether the ALJ will include a proposed penalty as part of the proposed decision.

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.

Thank you for your consideration of the Department's views on this bill.