

# STATE OF CONNECTICUT

## DEPARTMENT OF PUBLIC HEALTH



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### **TESTIMONY PRESENTED BEFORE THE JOINT COMMITTEE ON GOVERNMENT ADMINISTRATION AND ELECTIONS COMMITTEE**

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### **Senate Bill 201 – An Act Establishing a Demonstration Project for an Office of Administrative Hearings**

The Department of Public Health provides the following information regarding Senate Bill 201.

This proposal would create a centralized Office of Administrative Hearings (OAH) to preside over hearings for the Commission on Human Rights and Opportunities, the Department of Children and Families, 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 future project.

The raised bill states that its purpose is, in part, “separating the adjudicatory function from the investigatory and prosecutorial functions of agencies in the executive branch . . . .” In fact, the Uniform Administrative Procedures Act (UAPA) already requires that agencies separate these functions, and the appeal process to the Courts ensures that agencies do so.

Unlike prior similar bills, this bill eliminates the stated intent of separating agencies’ policy making function from agencies’ adjudicatory, investigatory and prosecutorial functions. However, the bill also accomplishes this unstated consequence since (1) agencies would have no adequate opportunity to consider decisions before they become final, and (2) hearing officers in a centralized office would lack the expertise of hearing officers working within a state agency.

Under this bill, agencies would have only 21 days, with a single 21 day extension (Sec. 22), to read an entire transcript (which could be voluminous), invite the parties to write briefs and present oral argument, and consider new issues raised by the briefs and arguments. This timeframe is simply not reasonable. If an agency fails to modify or reject a proposed decision within this time frame, the decision becomes final (Sec. 23 (d)). Given this inadequate time frame, agencies would, as a practical matter, be unable to carefully consider the issues and evidence, and articulate agency policy in a decision, based on an agency’s expertise.

Administrative Law Judges (ALJs) in a central office will also be unable to articulate agency knowledge and expertise. While initially the 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. Additionally, subject matter expertise changes over time. Only hearing officers housed within



**an agency will have the ability to maintain current knowledge of ever-changing standards and internal policies and procedures. 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. While the proposal 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.**

**This bill also far exceeds what might reasonably be considered a "demonstration project:" the named agencies would have their adjudicative offices entirely disassembled; the Chief ALJ is required to create an entire office with ALJs, support staff, *etc.*; the complexity of cases heard by the subject agencies, would require a tremendous learning curve for any Chief ALJ; and, the volume of cases may be quite significant, requiring the appointment of Deputy Chief ALJs to serve as heads of units within the office. The Chief is also charged with preparing an annual report; adopting regulations *which will supersede any inconsistent agency regulations, policies or procedures*; developing and implementing a training program; and, indexing decisions, 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. The bill requires that cases be "dismissed" when they are resolved by a stipulation, settlement, or consent order. This requirement is contrary to existing law and practice which treats consent orders (which are "settlements") as final orders resolving an administrative matter and do not require a "dismissal" of the underlying action. In amending §4-166 of the General Statutes, the bill also deletes the ability of a member of an agency to preside over hearings, requiring instead that all hearings be presided over by the "head of [an] agency," a member of a multimember agency, designated hearing officer, or an ALJ (para. (10; *see, also*, Sec. 14). The bill changes existing law by permitting an ALJ to order costs and sanctions (Sec. 15, (c)), and eliminating a hearing officer's discretion to hear from persons who are not parties or intervenors (Sec. 18 (b)). It is often important to hear from the public, and this ability should not be eliminated. While the proposal permits an agency to exercise its expertise when reviewing a proposed decision (Sec. 19, (9)), this ability is eroded by the fact that the agency lacks sufficient time under the proposal to do so, as discussed above. Finally, by eliminating a party's ability to request that final decisions makers review preliminary, procedural, or evidentiary rulings made by a hearing officer or a panel, Sec. 20 of the proposal eliminates a procedure that may result in efficiencies within the process.**

**There are significant costs associated with this proposal, and there is simply no data suggesting that this proposal has any advantages over the existing system. Indeed, the proposal is not only unnecessary, but it will actually undermine the fairness, efficiency, and effectiveness of hearing offices within state agencies.**

**Thank you for your consideration of the Department's comments.**