



STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

TESTIMONY PRESENTED BEFORE THE GOVERNMENT ADMINISTRATION AND ELECTIONS COMMITTEE

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Raised Bill 1117 – An Act Establishing a Demonstration Project for an Office of Administrative Hearings

The Department of Public Health opposes Raised Bill 201.

This proposal would create a centralized Office of Administrative Hearings (OAH) to preside over “whistleblower” hearings and 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,” the Department may be part of a “Phase 2.”

As a part of this ‘demonstration project’ the bill would:

- Disassemble the adjudicative offices of the named agencies and consolidate former offices under new Office of Administrative Hearings (OAH)
- Create a new agency head, the Chief Administrative Law Adjudicator (ALA)
- Require appropriations for additional ALAs and administrative support staff and the necessary equipment to perform their adjudicatory and administrative functions
- Require the OAH to prepare an annual report, adopt regulations which will supersede any inconsistent agency regulations, policies or procedures, develop and implement a training program and, indexing decisions, among other things
- Allow only 21 days, with a single 21 day extension, for an agency to respond to a proposed decision of the OAH

The stated purpose is to, “separate[e] the adjudicatory function from the investigatory and prosecutorial functions of agencies in the executive department and to perform the impartial administration and conduct of hearings . . .”

MAJOR CONCERNS WITH SB 1117

This provisions of this bill

- Amount to a major immediate fiscal impact to the State of Connecticut
- Lack any data establishing the need or effectiveness of the proposed legislation
- Create a variety of policy concerns (as outlined below)

Intended Purpose of Legislation Is Unfounded

The premise of the bill would appear to be undermined by the fact that the Uniform Administrative Procedures Act (UAPA) already requires the separation of such functions, and claims of “unfairness” are addressed by the Courts on appeal. This bill, in fact, would result in agencies having no adequate opportunity to consider decisions before they become final, and cases being decided by hearing officers who lack the expertise of their agencies.

Subject Matter Expertise of Adjudicators Will Be Lost

While initially the ALAs may have subject-matter expertise (since it is likely that 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 ALAs 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. Instead of accomplishing the stated purpose of promoting the impartial administration and conduct of hearings, the proposed legislation would have the opposite effect of giving an unfair advantage to those who are subject to enforcement actions. Additionally, the complexity of cases would require a tremendous learning curve for any Chief ALA; and, the case volume may well require Deputy Chief ALAs to serve as heads of units within the office.



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Agency Period of Review is Unrealistic

The 21-day period of review, with a single 21-day extension, created under this bill is not enough time to accomplish the required task. 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 in 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. As a practical matter, agencies would be unable to carefully consider the issues and evidence, and articulate agency policy in a decision, based on an agency's expertise – which the ALA would lack.

Many Provisions of Proposal Are Vague and Confusing As Currently Drafted

For example, the bill does not specify when an ALA will issue a proposed decision versus a final decision. The bill requires that cases be "dismissed" when they are resolved by a stipulation, settlement, or consent order. Under existing law, settlements do not require a "dismissal" of the underlying action; the settlement simply becomes a final order. Also, in amending §4-166 of the General Statutes, the bill 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 ALA. The bill changes existing law by permitting an ALA to order costs and sanctions, and eliminating a hearing officer's discretion to hear from persons who are not parties or interveners. It is often important to hear from the public, and this ability should not be eliminated. While the bill would permit an agency to exercise its expertise when reviewing a proposed decision, 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, Section 20 of the proposal eliminates a procedure that may result in efficiencies within the process.

Given the significant costs associated with this proposal, the lack of data establishing the need for this legislation, and the fact that this proposal would undermine the fairness and efficiency of the hearing processes as they presently exist, the Department of Public Health opposes this proposal and urges the Committee not to support SB 1117.

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