



# Senate

General Assembly

**File No. 517**

February Session, 2010

Substitute Senate Bill No. 284

*Senate, April 13, 2010*

The Committee on Government Administration and Elections reported through SEN. SLOSSBERG of the 14th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

## ***AN ACT CREATING A DIVISION OF ADMINISTRATIVE HEARINGS.***

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

1 Section 1. (NEW) (*Effective October 1, 2010*) There shall be established  
2 a Division of Administrative Hearings within the Commission on  
3 Human Rights and Opportunities. The Division of Administrative  
4 Hearings shall conduct impartial hearings of contested cases in  
5 accordance with the provisions of sections 2 to 9, inclusive, and section  
6 20 of this act and chapter 54 of the general statutes.

7 Sec. 2. (NEW) (*Effective October 1, 2010*) (a) For purposes of sections 2  
8 to 9, inclusive, and section 20 of this act, (1) "administrative law  
9 adjudicator" means a person whose primary duties are to conduct  
10 hearings in contested cases and issue final decisions or proposed final  
11 decisions and who is transferred to the Division of Administrative  
12 Hearings pursuant to section 4 of this act or appointed by the Chief  
13 Administrative Law Adjudicator pursuant to chapter 67 of the general  
14 statutes; and (2) "Chief Administrative Law Adjudicator" means the

15 administrative law adjudicator designated by the executive director of  
16 the Commission on Human Rights and Opportunities to serve as Chief  
17 Administrative Law Adjudicator for a term of two years.

18 (b) The Chief Administrative Law Adjudicator, administrative law  
19 adjudicators, assistants and other employees of the Division of  
20 Administrative Hearings shall be entitled to the fringe benefits  
21 applicable to other state employees, shall be included under the  
22 provisions of chapters 65 and 66 of the general statutes regarding  
23 disability and retirement of state employees, and shall receive full  
24 retirement credit for each year or portion thereof for which retirement  
25 benefits are paid for service as such Chief Administrative Law  
26 Adjudicator, administrative law adjudicator, assistant or other  
27 employee.

28 Sec. 3. (NEW) (*Effective October 1, 2010*) The Chief Administrative  
29 Law Adjudicator shall be the chief executive officer of the Division of  
30 Administrative Hearings and shall:

31 (1) Have all of the powers specifically granted in the general statutes  
32 and any additional powers that are reasonable and necessary to enable  
33 the Chief Administrative Law Adjudicator to carry out the duties of his  
34 or her office;

35 (2) Assign administrative law adjudicators in all cases referred to  
36 the Division of Administrative Hearings, provided, in assigning an  
37 administrative law adjudicator to a case, the Chief Administrative Law  
38 Adjudicator shall, whenever practicable, assign an administrative law  
39 adjudicator who has expertise in the legal issues or general subject  
40 matter of the proceeding;

41 (3) Have all the powers and duties of an administrative law  
42 adjudicator;

43 (4) Prepare an edited version of a proposed final decision and final  
44 decision that shall not disclose protected information in any case  
45 where any provision of the general statutes, federal law, state or

46 federal regulations, or an order of a court of competent jurisdiction  
47 bars the disclosure of the identity of any person or party or bars the  
48 disclosure of any other information;

49 (5) Collect, compile and prepare statistics and other data with  
50 respect to the operations of the Division of Administrative Hearings  
51 and, not later than January first of each year, submit to the Governor  
52 and the General Assembly a report on such operations, including, but  
53 not limited to, the number of hearings held set forth according to  
54 subject matter, the number of proposed final decisions rendered, the  
55 number of partial or total reversals of such decisions by the agencies,  
56 the number of final decisions rendered, the number of proceedings  
57 pending and the amount of time devoted to each subject matter by the  
58 division;

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

63 (7) Develop a program for the continuing education of  
64 administrative law adjudicators in procedural due process and in the  
65 substantive law of the agencies that are subject to the provisions of  
66 section 8 of this act and training for ancillary personnel and implement  
67 such program; and

68 (8) Index, by name and subject, all written orders and final decisions  
69 and make all indices, proposed final decisions and final decisions  
70 available for public inspection, and copying electronically and to the  
71 extent required by the Freedom of Information Act, as defined in  
72 section 1-200 of the general statutes.

73 Sec. 4. (NEW) (*Effective October 1, 2010*) (a) Notwithstanding any  
74 provision of the general statutes, each full-time employee or  
75 permanent part-time employee of an agency subject to the provisions  
76 of section 8 of this act whose primary duties (1) are to conduct hearings  
77 in contested cases and issue final decisions or proposed final decisions,

78 including, but not limited to, human rights referees, staff attorneys,  
79 hearing adjudicators and hearing officers, or (2) relate to providing  
80 administrative services required for conducting such hearings and  
81 issuing such decisions, shall be transferred to the Division of  
82 Administrative Hearings, in accordance with the provisions of this  
83 section and sections 4-38d, 4-38e and 4-39 of the general statutes.

84 (b) Persons transferred to the Division of Administrative Hearings  
85 pursuant to this section and persons appointed by the Chief  
86 Administrative Law Adjudicator pursuant to chapter 67 of the general  
87 statutes shall be in the classified service, represented by the collective  
88 bargaining representative of an employee organization and subject to  
89 the provisions of chapter 68 of the general statutes. Persons transferred  
90 to the Division of Administrative Hearings pursuant to this section  
91 who are members of an employee organization, as defined in section 5-  
92 270 of the general statutes, at the time of their transfer shall continue to  
93 be represented by such employee organization.

94 (c) The salaries, seniority and benefits of persons transferred to the  
95 Division of Administrative Hearings pursuant to this section shall not  
96 be reduced as a result of the transfer.

97 (d) No promotions governed by any existing and applicable  
98 memorandum of understanding between the Office of Labor Relations  
99 and any collective bargaining representative for state employees shall  
100 be denied, delayed, impaired or eliminated by the implementation of  
101 sections 1 to 9, inclusive, of this act.

102 (e) (1) Persons transferred to the Division of Administrative  
103 Hearings pursuant to this section who are members of a collective  
104 bargaining unit at the time of their transfer shall (A) not lose the job  
105 classification in which they are placed at the time of their transfer as a  
106 result of the transfer, and (B) remain the beneficiaries of any existing  
107 and applicable memorandum of understanding between the Office of  
108 Labor Relations and any collective bargaining representative for state  
109 employees. The rights and obligations contained in any memorandum  
110 of understanding that applies to staff attorneys shall apply to

111 administrative law adjudicators transferred to the Division of  
112 Administrative Hearings and appointed by the Chief Administrative  
113 Law Adjudicator.

114 (2) Persons transferred to the Division of Administrative Hearings  
115 pursuant to this section who are not members of a collective  
116 bargaining unit at the time of their transfer, and persons appointed by  
117 the Chief Administrative Law Adjudicator, shall (A) have a job  
118 classification commensurate with persons who are members of a  
119 collective bargaining unit at the time of their transfer, and (B) be  
120 subject to and become the beneficiaries of the terms of any existing and  
121 applicable memorandum of understanding between the Office of  
122 Labor Relations and any collective bargaining representative for state  
123 employees, including the rights and obligations contained in any  
124 memorandum of understanding that applies to staff attorneys.

125 (f) Time served in other agencies by persons transferred to the  
126 Division of Administrative Hearings pursuant to this section shall be  
127 recognized as qualifying experience and time in the Division of  
128 Administrative Hearings shall count as successful and satisfactory  
129 performance for career progression under any existing and applicable  
130 memorandum of understanding between the Office of Labor Relations  
131 and any collective bargaining representative for state employees.

132 (g) An administrative law adjudicator, assistant or other employee  
133 of the Division of Administrative Hearings who is removed,  
134 suspended, demoted or subjected to disciplinary action or other  
135 adverse employment action may appeal such action in accordance  
136 with the applicable collective bargaining agreement.

137 Sec. 5. (NEW) (*Effective October 1, 2010*) (a) Each administrative law  
138 adjudicator shall have been admitted to the practice of law in this state  
139 for at least two years, except that such requirement shall not apply to  
140 any administrative law adjudicator transferred pursuant to section 4 of  
141 this act.

142 (b) An administrative law adjudicator shall have the powers

143 granted to hearing officers and presiding officers pursuant to sections  
144 1 to 9, inclusive, section 20 of this act and chapter 54 of the general  
145 statutes.

146 Sec. 6. (NEW) (*Effective October 1, 2010*) (a) All hearings in contested  
147 cases conducted by the Division of Administrative Hearings shall be  
148 conducted by an administrative law adjudicator assigned by the Chief  
149 Administrative Law Adjudicator and shall be conducted in accordance  
150 with sections 1 to 9, inclusive, and section 20 of this act and sections 4-  
151 176e to 4-181a, inclusive, of the general statutes, as amended by this  
152 act.

153 (b) Unless different time limits are provided by any provision of the  
154 general statutes for contested cases before an agency, the time limits  
155 provided in sections 4-176e to 4-181a, inclusive, of the general statutes,  
156 as amended by this act, shall apply to all contested cases conducted by  
157 the Division of Administrative Hearings.

158 Sec. 7. (NEW) (*Effective October 1, 2010*) An administrative law  
159 adjudicator may conduct hearings and settlement negotiations held by  
160 the Division of Administrative Hearings. If a contested case is not  
161 resolved through settlement negotiations, either party may proceed to  
162 a hearing. An administrative law adjudicator who attempts to settle a  
163 matter may not thereafter be assigned to hear the matter. If a contested  
164 case is resolved by stipulation, agreed settlement or consent order, the  
165 administrative law adjudicator shall issue an order dismissing the  
166 contested case. The order shall incorporate by reference such  
167 stipulation, agreed settlement or consent order which shall be attached  
168 thereto. The order shall further provide that no findings of fact or  
169 conclusions of law have been made regarding any alleged violations of  
170 the law. The order and stipulation, agreed settlement or consent order  
171 may be enforceable by any party in Superior Court. A party may  
172 petition the superior court for the judicial district of New Britain for  
173 enforcement of the order and stipulation, agreed settlement or consent  
174 order and for appropriate temporary relief or a restraining order.

175 Sec. 8. (NEW) (*Effective October 1, 2010*) (a) Notwithstanding any

176 provision of the general statutes, and except as otherwise provided in  
177 section 9 of this act, on and after October 1, 2010, the Division of  
178 Administrative Hearings shall conduct hearings and render proposed  
179 final decisions or, if authorized or required by law, final decisions in  
180 contested cases:

181 (1) Pursuant to subdivision (3) of subsection (b) of section 4-61dd of  
182 the general statutes, as amended by this act;

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

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

185 (4) Brought by or before the Commission on Human Rights and  
186 Opportunities; and

187 (5) Brought by or before the Department of Motor Vehicles.

188 (b) Any agency that is not required to refer contested cases to the  
189 Division of Administrative Hearings pursuant to this section may,  
190 with the consent of the Chief Administrative Law Adjudicator, refer  
191 any contested case brought by or before such agency, to the Division of  
192 Administrative Hearings for purposes of settlement or a full  
193 adjudication of the contested case by an administrative law  
194 adjudicator. If an agency requests a full adjudication of the contested  
195 case, the agency shall specify whether the decision shall be a final  
196 decision or a proposed final decision. The agency referring the  
197 contested case shall incur the cost of transcripts if the Chief  
198 Administrative Law Adjudicator requests transcription services for the  
199 hearing. Upon issuance of the final decision or proposed final decision,  
200 the Chief Administrative Law Adjudicator shall forward the record to  
201 the referring agency. The Chief Administrative Law Adjudicator, the  
202 presiding officer and the Commission on Human Rights and  
203 Opportunities shall not be parties to any appeal of a decision or  
204 settlement conducted pursuant to this section.

205 (c) The powers, functions and duties of conducting hearings and  
206 issuing decisions in contested cases enumerated in subsections (a) and

207 (b) of this section shall, on the date specified in subsection (a) of this  
208 section or the date of referral in subsection (b) of this section, be  
209 transferred to the Division of Administrative Hearings in accordance  
210 with the provisions of sections 4-38d, 4-38e and 4-39 of the general  
211 statutes.

212 (d) Any hearing officer under contract with an agency to conduct  
213 hearings and issue decisions in contested cases enumerated in  
214 subsections (a) and (b) of this section shall, on and after the date  
215 specified in subsection (a) of this section or the date of referral in  
216 subsection (b) of this section, continue to serve until all such cases  
217 assigned to such hearing officer are completed, unless the Chief  
218 Administrative Law Adjudicator determines that the case shall be  
219 reassigned to an administrative law adjudicator.

220 (e) Nothing in this section shall be construed to apply to the State  
221 Board of Mediation and Arbitration or the State Board of Labor  
222 Relations.

223 (f) The Department of Children and Families shall execute any  
224 requisite contract with the Division of Administrative Hearings that is  
225 necessary to maintain and secure any federal or state funding or  
226 reimbursement.

227 Sec. 9. (NEW) (*Effective October 1, 2009*) No administrative law  
228 adjudicator may be assigned by the Chief Administrative Law  
229 Adjudicator to hear a 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. Section 4-166 of the general statutes is repealed and the  
236 following is substituted in lieu thereof (*Effective October 1, 2010*):

237 As used in this chapter and sections 1 to 9, inclusive, and section 20  
238 of this act, unless the context otherwise requires:

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

246 (2) "Contested case" means a proceeding, including but not  
247 restricted to rate-making, price fixing and licensing, in which the legal  
248 rights, duties or privileges of a party are required by state statute or  
249 regulation to be determined by an agency or by the Division of  
250 Administrative Hearings after an opportunity for hearing or in which a  
251 hearing is in fact held, but does not include proceedings on a petition  
252 for a declaratory ruling under section 4-176, as amended by this act,  
253 hearings referred to in section 4-168 or hearings conducted by the  
254 Department of Correction or the Board of Pardons and Paroles;

255 (3) "Final decision" means (A) the [agency] determination in a  
256 contested case made pursuant to section 4-179, as amended by this act,  
257 section 20 of this act and section 4-180, as amended by this act, (B) a  
258 declaratory ruling issued by an agency pursuant to section 4-176, as  
259 amended by this act, or (C) [an agency] a decision made after  
260 reconsideration of a final decision. The term does not include a  
261 preliminary or intermediate ruling or order, [of an agency,] or a ruling  
262 [of an agency] granting or denying a petition for reconsideration;

263 (4) "Hearing officer" means an individual appointed by an agency to  
264 conduct a hearing in an agency proceeding that is not conducted by an  
265 administrative law adjudicator pursuant to section 8 of this act. Such  
266 individual may be a staff employee of the agency;

267 (5) "Intervenor" means a person, other than a party, granted status  
268 as an intervenor by an agency in accordance with the provisions of

269 subsection (d) of section 4-176 or subsection (b) of section 4-177a, as  
270 amended by this act;

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

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

278 (8) "Party" means each person (A) whose legal rights, duties or  
279 privileges are required by statute to be determined by an agency  
280 proceeding and who is named or admitted as a party, (B) who is  
281 required by law to be a party in an agency proceeding, or (C) who is  
282 granted status as a party under subsection (a) of section 4-177a, as  
283 amended by this act;

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

288 (10) "Presiding officer" means the head of the agency presiding at a  
289 hearing, the member of [an] a multimember agency, [or] the hearing  
290 officer designated by the head of the agency to preside at [the] a  
291 hearing or an administrative law adjudicator presiding at a hearing;

292 (11) "Proposed final decision" means a final decision proposed by an  
293 agency or a presiding officer under section 4-179, as amended by this  
294 act, or section 20 of this act;

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

298 (13) "Regulation" means each agency statement of general

299 applicability, without regard to its designation, that implements,  
300 interprets, or prescribes law or policy, or describes the organization,  
301 procedure, or practice requirements of any agency. The term includes  
302 the amendment or repeal of a prior regulation, but does not include  
303 (A) statements concerning only the internal management of any  
304 agency and not affecting private rights or procedures available to the  
305 public, (B) declaratory rulings issued pursuant to section 4-176, as  
306 amended by this act, or (C) intra-agency or interagency memoranda;

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

309 (15) "Administrative law adjudicator" has the same meaning as  
310 provided in section 2 of this act; and

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

313 Sec. 11. Subsection (g) of section 4-176 of the general statutes is  
314 repealed and the following is substituted in lieu thereof (*Effective*  
315 *October 1, 2010*):

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

320 Sec. 12. Section 4-176e of the general statutes is repealed and the  
321 following is substituted in lieu thereof (*Effective October 1, 2010*):

322 Except as otherwise required by the general statutes, a [hearing in  
323 an agency proceeding may be held before (1)] contested case shall be  
324 heard by (1) an administrative law adjudicator, (2) the head of the  
325 agency, (3) one or more of the members of a multimember agency, or  
326 (4) one or more hearing officers, provided no individual who has  
327 personally carried out the function of an investigator in a contested  
328 case may serve as a hearing officer in that case.], or (2) one or more of  
329 the members of the agency.]

330 Sec. 13. Section 4-177 of the general statutes is repealed and the  
331 following is substituted in lieu thereof (*Effective October 1, 2010*):

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

334 (b) The notice shall be in writing and shall include: (1) A statement  
335 of the time, place [,] and nature of the hearing or, if the contested case  
336 has been referred to the Division of Administrative Hearings, a  
337 statement that the matter has been referred to the Division of  
338 Administrative Hearings and that the time and place of the hearing  
339 will be set by an administrative law adjudicator; (2) a statement of the  
340 legal authority and jurisdiction under which the hearing is to be held;  
341 (3) a reference to the particular sections of the statutes and regulations  
342 involved; and (4) a short and plain statement of the matters asserted. If  
343 the agency or party is unable to state the matters in detail at the time  
344 the notice is served, the initial notice may be limited to a statement of  
345 the issues involved. Thereafter, upon application, a more definite and  
346 detailed statement shall be furnished.

347 (c) After an agency refers a contested case to the Division of  
348 Administrative Hearings, the agency shall certify the official record in  
349 such contested case to the Division of Administrative Hearings. The  
350 Division of Administrative Hearings shall issue a notice in writing to  
351 all parties that shall include a statement of the time, place and nature  
352 of the hearing. Thereafter, a party shall file all documents that are to  
353 become part of such record with the Division of Administrative  
354 Hearings. The filing of such documents with the agency rather than  
355 with the Division of Administrative Hearings shall not be a  
356 jurisdictional defect and shall not be grounds for termination of the  
357 proceeding, provided the administrative law adjudicator may assess  
358 appropriate costs and sanctions against a party who misfiles such  
359 documents on a showing of prejudice resulting from a wilful misfiling.  
360 The Division of Administrative Hearings shall maintain the official  
361 record of a contested case referred to said division.

362 [(c)] (d) Unless precluded by law, a contested case may be resolved

363 by stipulation, agreed settlement [,] or consent order or by the default  
364 of a party.

365 [(d)] (e) The record in a contested case shall include: (1) Written  
366 notices related to the case; (2) all petitions, pleadings, motions and  
367 intermediate rulings; (3) evidence received or considered; (4) questions  
368 and offers of proof, objections and rulings thereon; (5) the official  
369 transcript, if any, of proceedings relating to the case, or, if not  
370 transcribed, any recording or stenographic record of the proceedings;  
371 (6) proposed final decisions and exceptions thereto; and (7) the final  
372 decision.

373 [(e)] (f) Any recording or stenographic record of the proceedings  
374 shall be transcribed on request of any party. The requesting party shall  
375 pay the cost of such transcript, unless otherwise provided by law.  
376 Nothing in this section shall relieve an agency of its responsibility  
377 under section 4-183, as amended by this act, to transcribe the record for  
378 an appeal.

379 Sec. 14. Section 4-177a of the general statutes is repealed and the  
380 following is substituted in lieu thereof (*Effective October 1, 2010*):

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

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

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

398 (d) If a petition is granted pursuant to subsection (b) of this section,  
399 the presiding officer may limit the intervenor's participation to  
400 designated issues in which the intervenor has a particular interest as  
401 demonstrated by the petition and shall define the intervenor's rights to  
402 inspect and copy records, physical evidence, papers and documents, to  
403 introduce evidence [.] and to argue and cross-examine on those issues.  
404 The presiding officer may further restrict the participation of an  
405 intervenor in the proceedings, including the rights to inspect and copy  
406 records, to introduce evidence and to cross-examine, so as to promote  
407 the orderly conduct of the proceedings.

408 Sec. 15. Section 4-177b of the general statutes is repealed and the  
409 following is substituted in lieu thereof (*Effective October 1, 2010*):

410 In a contested case, the presiding officer may administer oaths, take  
411 testimony under oath relative to the case, subpoena witnesses and  
412 require the production of records, physical evidence, papers and  
413 documents to any hearing held in the case. If any person disobeys the  
414 subpoena or, having appeared, refuses to answer any question put to  
415 [him] such person or to produce any records, physical evidence,  
416 papers and documents requested by the presiding officer, the  
417 administrative law adjudicator or, if the hearing is conducted by the  
418 agency, the agency, may apply to the superior court for the judicial  
419 district of [Hartford] New Britain or for the judicial district in which  
420 the person resides, or to any judge of that court if it is not in session,  
421 setting forth the disobedience to the subpoena or refusal to answer or  
422 produce, and the court or judge shall cite the person to appear before  
423 the court or judge to show cause why the records, physical evidence,  
424 papers and documents should not be produced or why a question put  
425 to [him] such person should not be answered. Nothing in this section  
426 shall be construed to limit the authority of the agency, the  
427 administrative law adjudicator or any party as otherwise allowed by

428 law.

429 Sec. 16. Section 4-177c of the general statutes is repealed and the  
430 following is substituted in lieu thereof (*Effective October 1, 2010*):

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

439 [(b) Persons not named as parties or intervenors may, in the  
440 discretion of the presiding officer, be given an opportunity to present  
441 oral or written statements. The presiding officer may require any such  
442 statement to be given under oath or affirmation.]

443 Sec. 17. Section 4-178 of the general statutes is repealed and the  
444 following is substituted in lieu thereof (*Effective October 1, 2010*):

445 In contested cases: (1) Any oral or documentary evidence may be  
446 received, but the [agency] presiding officer shall, as a matter of policy,  
447 provide for the exclusion of irrelevant, immaterial or unduly  
448 repetitious evidence; (2) [agencies shall give effect to] the rules of  
449 privilege recognized by law shall be given effect; (3) when a hearing  
450 will be expedited and the interests of the parties will not be prejudiced  
451 substantially, any part of the evidence may be received in written  
452 form; (4) documentary evidence may be received in the form of copies  
453 or excerpts, if the original is not readily available, and upon request,  
454 parties and the agency, including an agency conducting the  
455 proceeding, shall be given an opportunity to compare the copy with  
456 the original; (5) a party and [such] the agency, including an agency  
457 conducting the proceeding, may conduct cross-examinations required  
458 for a full and true disclosure of the facts; (6) notice may be taken of  
459 judicially cognizable facts; [and of] (7) in a proceeding conducted by

460 the agency or in an agency review of a proposed final decision, notice  
461 may be taken of generally recognized technical or scientific facts  
462 within the agency's specialized knowledge; [(7)] (8) parties shall be  
463 notified in a timely manner of any material noticed, including any  
464 agency memoranda or data, and they shall be afforded an opportunity  
465 to contest the material so noticed; and [(8) the agency's] (9) in a  
466 proceeding conducted by the agency or in an agency review of a  
467 proposed final decision, the agency may use its experience, technical  
468 competence [,] and specialized knowledge [may be used] in the  
469 evaluation of the evidence.

470 Sec. 18. Section 4-178a of the general statutes is repealed and the  
471 following is substituted in lieu thereof (*Effective October 1, 2010*):

472 If a hearing in a contested case or in a declaratory ruling proceeding  
473 is held before a hearing officer or before less than a majority of the  
474 members of the agency who are authorized by law to render a final  
475 decision, a party, if permitted by regulation and before rendition of the  
476 final decision, may request a review by a majority of the members of  
477 the agency, of any preliminary, procedural or evidentiary ruling made  
478 at the hearing. The majority of the members may make an appropriate  
479 order, including the reconvening of the hearing. The provisions of this  
480 section shall not apply to a hearing conducted by an administrative  
481 law adjudicator.

482 Sec. 19. Section 4-179 of the general statutes is repealed and the  
483 following is substituted in lieu thereof (*Effective October 1, 2010*):

484 (a) When, in an agency proceeding that is not conducted by an  
485 administrative law adjudicator, a majority of the members of the  
486 agency who are to render the final decision have not heard the matter  
487 or read the record, the decision, if adverse to a party, shall not be  
488 rendered until a proposed final decision is served upon the parties,  
489 and an opportunity is afforded to each party adversely affected to file  
490 exceptions and present briefs and oral argument to the members of the  
491 agency who are to render the final decision.

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

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

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

502 Sec. 20. (NEW) (*Effective October 1, 2010*) (a) A proposed final  
503 decision rendered by an administrative law adjudicator shall be  
504 delivered promptly to each party or the party's authorized  
505 representative, and to the agency, personally or by United States mail,  
506 certified or registered, postage prepaid, return receipt requested. After  
507 such proposed final decision is rendered, the record in the contested  
508 case shall be delivered promptly to the agency.

509 (b) A proposed final decision rendered by an administrative law  
510 adjudicator shall become a final decision of the agency unless the head  
511 of the agency, not later than twenty-one days following the date the  
512 proposed final decision is delivered or mailed to the agency, modifies  
513 or rejects the proposed final decision, provided the head of the agency  
514 may, before expiration of such time period and for good cause, certify  
515 the extension of such time period for not more than an additional  
516 twenty-one days. If the head of the agency modifies or rejects the  
517 proposed final decision, the head of the agency shall state the reason  
518 for the modification or rejection on the record. In reviewing a proposed  
519 final decision rendered by an administrative law adjudicator, the head  
520 of the agency may afford each party, including the agency, an  
521 opportunity to present briefs and may afford each party, including the  
522 agency, an opportunity to present oral argument.

523 (c) If, within the time period provided in subsection (b) of this

524 section, the head of the agency, in reviewing a proposed final decision  
525 rendered by an administrative law adjudicator, determines that  
526 additional evidence is necessary, the head of the agency shall refer the  
527 matter to the Division of Administrative Hearings. The Chief  
528 Administrative Law Adjudicator shall assign the administrative law  
529 adjudicator who rendered such proposed final decision to take the  
530 additional evidence unless such administrative law adjudicator is  
531 unavailable. After taking the additional evidence, the administrative  
532 law adjudicator shall, not later than thirty days following such referral,  
533 prepare a proposed final decision as provided in this section based on  
534 such additional evidence and the record of the prior hearing.

535 (d) A proposed final decision made under this section shall be in  
536 writing and shall comply with the requirements of subsection (c) of  
537 section 4-180 of the general statutes, as amended by this act.

538 Sec. 21. Section 4-180 of the general statutes is repealed and the  
539 following is substituted in lieu thereof (*Effective October 1, 2010*):

540 (a) Each agency and administrative law adjudicator shall proceed  
541 with reasonable dispatch to conclude any matter pending before [it]  
542 such agency or administrative law adjudicator and, in all hearings of  
543 contested cases conducted by the agency or the administrative law  
544 adjudicator, shall render a final decision within ninety days following  
545 the close of evidence or the due date for the filing of briefs, whichever  
546 is later. [, in such proceedings.]

547 (b) If, in any contested case, any agency or administrative law  
548 adjudicator fails to comply with the provisions of subsection (a) of this  
549 section, [in any contested case, any party thereto] any party to such  
550 contested case may apply to the superior court for the judicial district  
551 of [Hartford] New Britain for an order requiring the agency or  
552 administrative law adjudicator to render a proposed final decision or a  
553 final decision forthwith. The court, after hearing, shall issue an  
554 appropriate order.

555 (c) A final decision in a contested case shall be in writing or, if there

556 is no proposed final decision, orally stated on the record. [and, if  
557 adverse to a party,] A proposed final decision and a final decision in a  
558 contested case shall include [the agency's] findings of fact and  
559 conclusions of law necessary to [its] the decision and shall be made by  
560 applying all pertinent provisions of law. Findings of fact shall be based  
561 exclusively on the evidence in the record and on matters noticed. The  
562 [agency shall state in] proposed final decision and the final decision  
563 shall contain the name of each party and the most recent mailing  
564 address, provided to the agency, of the party or [his] the party's  
565 authorized representative. If the final decision is orally stated on the  
566 record, each such name and mailing address shall be included in the  
567 record.

568 (d) The final decision shall be delivered promptly to each party or  
569 [his] the party's authorized representative and, in the case of a final  
570 decision by an administrative law adjudicator authorized by law to  
571 render such decision, to the agency, personally or by United States  
572 mail, certified or registered, postage prepaid, return receipt requested.  
573 [The] An agency rendering a final decision shall immediately transmit  
574 a copy of such decision to the Division of Administrative Hearings. A  
575 proposed final decision that becomes a final decision because of  
576 agency inaction, as provided in subsection (b) of section 20 of this act,  
577 shall become effective at the expiration of the time period specified in  
578 said subsection or on a later date specified in such proposed final  
579 decision. Any other final decision shall be effective when personally  
580 delivered or mailed or on a later date specified [by the agency] in such  
581 final decision. The date of delivery or mailing of a proposed final  
582 decision and a final decision shall be endorsed on the front of the  
583 decision or on a transmittal sheet included with the decision.

584 Sec. 22. Subsection (a) of section 4-181 of the general statutes is  
585 repealed and the following is substituted in lieu thereof (*Effective*  
586 *October 1, 2010*):

587 (a) Unless required for the disposition of ex parte matters  
588 authorized by law, no hearing officer, administrative law adjudicator

589 or member of an agency who, in a contested case, is to render a final  
590 decision or to make a proposed final decision shall communicate,  
591 directly or indirectly, in connection with any issue of fact, with any  
592 person or party, or, in connection with any issue of law, with any party  
593 or the party's representative, without notice and opportunity for all  
594 parties to participate.

595 Sec. 23. Section 4-181a of the general statutes is repealed and the  
596 following is substituted in lieu thereof (*Effective October 1, 2010*):

597 (a) (1) Unless otherwise provided by law, a party or the agency in a  
598 contested case may, within fifteen days after the personal delivery or  
599 mailing of the final decision or within fifteen days after the date that a  
600 proposed final decision becomes a final decision because of agency  
601 inaction, as provided in subsection (b) of section 20 of this act, file with  
602 the [agency] authority that rendered the final decision a petition for  
603 reconsideration of the decision on the ground that: (A) An error of fact  
604 or law should be corrected; (B) new evidence has been discovered  
605 which materially affects the merits of the case and which for good  
606 reasons was not presented in the agency proceeding; or (C) other good  
607 cause for reconsideration has been shown. Within twenty-five days of  
608 the filing of the petition, [the agency] such authority shall decide  
609 whether to reconsider the final decision. The failure of [the agency]  
610 such authority to make [that] such determination within twenty-five  
611 days of such filing shall constitute a denial of the petition.

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

616 (3) If the [agency] authority that rendered the final decision decides  
617 to reconsider [a] the final decision, pursuant to subdivision (1) or (2) of  
618 this subsection, [the agency] such authority shall proceed in a  
619 reasonable time to conduct such additional proceedings as may be  
620 necessary to render a decision modifying, affirming or reversing the  
621 final decision, provided such decision made after reconsideration shall

622 be rendered not later than ninety days following the date on which  
623 [the agency] such authority decides to reconsider the final decision. If  
624 [the agency] such authority fails to render such decision made after  
625 reconsideration within such ninety-day period, the original final  
626 decision shall remain the final decision in the contested case for  
627 purposes of any appeal under the provisions of section 4-183, as  
628 amended by this act.

629 (4) Except as otherwise provided in subdivision (3) of this  
630 subsection, [an agency] a decision made after reconsideration pursuant  
631 to this subsection shall become the final decision in the contested case  
632 in lieu of the original final decision for purposes of any appeal under  
633 the provisions of section 4-183, as amended by this act, including, but  
634 not limited to, an appeal of (A) any issue decided by the [agency]  
635 authority that rendered the final decision in its original final decision  
636 that was not the subject of any petition for reconsideration or [the  
637 agency's] such authority's decision made after reconsideration, (B) any  
638 issue as to which reconsideration was requested but not granted, and  
639 (C) any issue that was reconsidered but not modified by [the agency]  
640 such authority from the determination of such issue in the original  
641 final decision.

642 (b) On a showing of changed conditions, the [agency] authority that  
643 rendered the final decision may reverse or modify the final decision, at  
644 any time, at the request of any person or on [the agency's] such  
645 authority's own motion. The procedure set forth in this chapter for  
646 contested cases shall be applicable to any proceeding in which such  
647 reversal or modification of any final decision is to be considered. The  
648 party or parties who were the subject of the original final decision, or  
649 their successors, if known, and intervenors in the original contested  
650 case, shall be notified of the proceeding and shall be given the  
651 opportunity to participate in the proceeding. Any decision to reverse  
652 or modify a final decision shall make provision for the rights or  
653 privileges of any person who has been shown to have relied on such  
654 final decision.

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

660 (d) For the purposes of this section and section 4-183, as amended  
661 by this act, in the case of a proposed final decision that becomes a final  
662 decision because of agency inaction, as provided in subsection (b) of  
663 section 20 of this act, the authority that rendered the final decision  
664 shall be deemed to be the agency.

665 Sec. 24. Section 4-183 of the general statutes is repealed and the  
666 following is substituted in lieu thereof (*Effective October 1, 2010*):

667 (a) A person who has exhausted all administrative remedies  
668 available within the agency and who is aggrieved by a final decision  
669 may appeal to the Superior Court as provided in this section. The filing  
670 of a petition for reconsideration is not a prerequisite to the filing of  
671 such an appeal.

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

677 (c) (1) Within forty-five days after mailing of the final decision  
678 under section 4-180, as amended by this act, or, if there is no mailing,  
679 within forty-five days after personal delivery of the final decision  
680 under said section, or (2) within forty-five days after the [agency]  
681 authority that rendered the final decision denies a petition for  
682 reconsideration of the final decision pursuant to subdivision (1) of  
683 subsection (a) of section 4-181a, as amended by this act, or (3) within  
684 forty-five days after mailing of the final decision made after  
685 reconsideration pursuant to subdivisions (3) and (4) of subsection (a)  
686 of section 4-181a, as amended by this act, or, if there is no mailing,

687 within forty-five days after personal delivery of the final decision  
688 made after reconsideration pursuant to said subdivisions, or (4) within  
689 forty-five days after the expiration of the ninety-day period required  
690 under subdivision (3) of subsection (a) of section 4-181a, as amended  
691 by this act, if [the agency] such authority decides to reconsider the final  
692 decision and fails to render a decision made after reconsideration  
693 within such period, or (5) if a proposed final decision becomes a final  
694 decision because of agency inaction, as provided in subsection (b) of  
695 section 20 of this act, within forty-five days after the decision becomes  
696 final, whichever is applicable and is later, a person appealing as  
697 provided in this section shall serve a copy of the appeal on the agency  
698 [that rendered the final decision] at its office or at the office of the  
699 Attorney General in Hartford and file the appeal with the clerk of the  
700 superior court for the judicial district of New Britain or for the judicial  
701 district wherein the person appealing resides or, if [that] such person is  
702 not a resident of this state, with the clerk of the court for the judicial  
703 district of New Britain. An appeal of a final decision under this section  
704 shall be taken within such applicable forty-five-day period regardless  
705 of the effective date of the final decision. Within [that] such time, the  
706 person appealing shall also serve a copy of the appeal on each party  
707 listed in the final decision at the address shown in the decision,  
708 provided failure to make such service within forty-five days on parties  
709 other than the agency [that rendered the final decision] shall not  
710 deprive the court of jurisdiction over the appeal. Service of the appeal  
711 shall be made by United States mail, certified or registered, postage  
712 prepaid, return receipt requested, without the use of a state marshal or  
713 other officer, or by personal service by a proper officer or indifferent  
714 person making service in the same manner as complaints are served in  
715 ordinary civil actions. If service of the appeal is made by mail, service  
716 shall be effective upon deposit of the appeal in the mail.

717 (d) The person appealing, not later than fifteen days after filing the  
718 appeal, shall file or cause to be filed with the clerk of the court an  
719 affidavit, or the state marshal's return, stating the date and manner in  
720 which a copy of the appeal was served on each party and on the  
721 agency [that rendered the final decision,] and, if service was not made

722 on a party, the reason for failure to make service. If the failure to make  
723 service causes prejudice to any party to the appeal or to the agency, the  
724 court, after hearing, may dismiss the appeal.

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

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

733 (g) Within thirty days after the service of the appeal, or within such  
734 further time as may be allowed by the court, the agency shall  
735 transcribe any portion of the record that has not been transcribed and  
736 transmit to the reviewing court the original or a certified copy of the  
737 entire record of the proceeding appealed from, which shall include the  
738 [agency's] findings of fact and conclusions of law, separately stated. By  
739 stipulation of all parties to such appeal proceedings, the record may be  
740 shortened. A party unreasonably refusing to stipulate to limit the  
741 record may be taxed by the court for the additional costs. The court  
742 may require or permit subsequent corrections or additions to the  
743 record.

744 (h) If, before the date set for hearing on the merits of an appeal,  
745 application is made to the court for leave to present additional  
746 evidence, and it is shown to the satisfaction of the court that the  
747 additional evidence is material and that there were good reasons for  
748 failure to present it in the proceeding before the [agency] authority that  
749 rendered the final decision, the court may order that the additional  
750 evidence be taken before [the agency] such authority upon conditions  
751 determined by the court. [The agency] Such authority may modify its  
752 findings and decision by reason of the additional evidence and shall  
753 file [that] such evidence and any modifications, new findings [,] or  
754 decisions with the reviewing court.

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

762 (j) [The] Unless a different standard of review is provided by law,  
763 the court shall not substitute its judgment for that of the [agency]  
764 authority that rendered the final decision as to the weight of the  
765 evidence on questions of fact. The court shall affirm the final decision  
766 [of the agency] unless the court finds that substantial rights of the  
767 person appealing have been prejudiced because the administrative  
768 findings, inferences, conclusions [,] or decisions are: (1) In violation of  
769 constitutional or statutory provisions; (2) in excess of the statutory  
770 authority of the agency; (3) made upon unlawful procedure; (4)  
771 affected by other error of law; (5) clearly erroneous in view of the  
772 reliable, probative [,] and substantial evidence on the whole record; or  
773 (6) arbitrary or capricious or characterized by abuse of discretion or  
774 clearly unwarranted exercise of discretion. If the court finds such  
775 prejudice, [it] the court shall sustain the appeal and, if appropriate,  
776 may render a judgment under subsection (k) of this section or remand  
777 the case for further proceedings. For the purposes of this section, a  
778 remand is a final judgment.

779 (k) If a particular agency action is required by law, the court, on  
780 sustaining the appeal, may render a judgment that modifies the  
781 [agency] final decision, orders the particular agency action, or orders  
782 the agency to take such action as may be necessary to effect the  
783 particular action.

784 (l) In all appeals taken under this section, costs may be taxed in  
785 favor of the prevailing party in the same manner, and to the same  
786 extent, that costs are allowed in judgments rendered by the Superior  
787 Court. No costs shall be taxed against the state, except as provided in

788 section 4-184a.

789 (m) In any case in which a person appealing claims that [he] such  
790 person cannot pay the costs of an appeal under this section, [he] such  
791 person shall, within the time permitted for filing the appeal, file with  
792 the clerk of the court to which the appeal is to be taken an application  
793 for waiver of payment of such fees, costs and necessary expenses,  
794 including the requirements of bond, if any. The application shall  
795 conform to the requirements prescribed by rule of the judges of the  
796 Superior Court. After such hearing as the court determines is  
797 necessary, the court shall render its judgment on the application,  
798 which judgment shall contain a statement of the facts the court has  
799 found, with its conclusions thereon. The filing of the application for the  
800 waiver shall toll the time limits for the filing of an appeal until such  
801 time as a judgment on such application is rendered.

802 Sec. 25. Subsection (e) of section 1-82a of the general statutes is  
803 repealed and the following is substituted in lieu thereof (*Effective*  
804 *October 1, 2010*):

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

814 Sec. 26. Subsection (e) of section 1-93a of the general statutes is  
815 repealed and the following is substituted in lieu thereof (*Effective*  
816 *October 1, 2010*):

817 (e) The judge trial referee shall make public a finding of probable  
818 cause not later than five business days after any such finding. At such  
819 time, the entire record of the investigation shall become public, except

820 that the Office of State Ethics may postpone examination or release of  
 821 such public records for a period not to exceed fourteen days for the  
 822 purpose of reaching a stipulation agreement pursuant to subsection  
 823 [(c)] (d) of section 4-177, as amended by this act. Any stipulation  
 824 agreement or settlement entered into for a violation of this part shall be  
 825 approved by a majority of its members present and voting.

826 Sec. 27. (*Effective October 1, 2010*) On or before January 1, 2012, the  
 827 Legislative Program Review and Investigations Committee shall  
 828 submit to the joint standing committee of the General Assembly  
 829 having cognizance of matters relating to the judiciary a feasibility  
 830 analysis and implementation plan for the transfer of contested cases  
 831 conducted by the Department of Social Services to the Division of  
 832 Administrative Hearings.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2010</i>	New section
Sec. 2	<i>October 1, 2010</i>	New section
Sec. 3	<i>October 1, 2010</i>	New section
Sec. 4	<i>October 1, 2010</i>	New section
Sec. 5	<i>October 1, 2010</i>	New section
Sec. 6	<i>October 1, 2010</i>	New section
Sec. 7	<i>October 1, 2010</i>	New section
Sec. 8	<i>October 1, 2010</i>	New section
Sec. 9	<i>October 1, 2009</i>	New section
Sec. 10	<i>October 1, 2010</i>	4-166
Sec. 11	<i>October 1, 2010</i>	4-176(g)
Sec. 12	<i>October 1, 2010</i>	4-176e
Sec. 13	<i>October 1, 2010</i>	4-177
Sec. 14	<i>October 1, 2010</i>	4-177a
Sec. 15	<i>October 1, 2010</i>	4-177b
Sec. 16	<i>October 1, 2010</i>	4-177c
Sec. 17	<i>October 1, 2010</i>	4-178
Sec. 18	<i>October 1, 2010</i>	4-178a
Sec. 19	<i>October 1, 2010</i>	4-179
Sec. 20	<i>October 1, 2010</i>	New section
Sec. 21	<i>October 1, 2010</i>	4-180

Sec. 22	<i>October 1, 2010</i>	4-181(a)
Sec. 23	<i>October 1, 2010</i>	4-181a
Sec. 24	<i>October 1, 2010</i>	4-183
Sec. 25	<i>October 1, 2010</i>	1-82a(e)
Sec. 26	<i>October 1, 2010</i>	1-93a(e)
Sec. 27	<i>October 1, 2010</i>	New section

**GAE**      *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Effect	FY 11 \$	FY 12 \$
Human Rights & Opportunities, Com.	GF - Cost	Approximately 75,000	Approximately 100,000
Human Rights & Opportunities, Com.	GF - Savings	Potential	Potential
Various State Agencies	GF/TF - Transfer from	Approximately \$1 million	Approximately \$1 million
Human Rights & Opportunities, Com.	GF - Transfer to	Approximately \$1 million	Approximately \$1 million

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

The bill creates the Division of Administrative Hearings (DAH) within the Commission of Human Rights and Opportunities (CHRO) and transfers the responsibilities and staff for administrative hearings in CHRO, the Department of Children and Families (DCF), the Department of Motor Vehicles (DMV), and the Department of Transportation (DOT) to DAH. The bill would result in a transfer of \$1,340,078 from DCF, DOT, and DMV to CHRO.

Requiring the DCF to execute any necessary contract with the Department of Administrative Services in order to maintain and secure any federal or state funding or reimbursement will ensure continued federal Title IV-E reimbursements collected against eligible costs, post transfer of hearings staff.

It is anticipated that a state cost would be incurred to raise the salaries of hearing officers once they are designated as administrative law adjudicators under the bill and subject to the bill's stricter

credentials.

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

***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

**OLR Bill Analysis****sSB 284*****AN ACT CREATING A DIVISION OF ADMINISTRATIVE HEARINGS.*****SUMMARY:**

This bill establishes a Division of Administrative Hearings (DAH) within the Commission on Human Rights and Opportunities (CHRO). The bill requires DAH to impartially hear contested cases for CHRO and the departments of Children and Families, Transportation, and Motor Vehicles. It transfers certain personnel, including hearing officers, from these agencies to DAH.

The bill requires the division to conduct the hearings in accordance with the bill and the Uniform Administrative Procedure Act (UAPA), including the time limits under the UAPA, unless otherwise provided by law. After the hearings, the bill requires DAH to issue a proposed final decision or a final decision, if allowed or required by law. Any proposed final decision may be rejected, modified, or accepted by the referring agency. It becomes final if the agencies fail to act within a specified period.

The bill makes several changes in the UAPA, most of which are conforming ones made necessary by the new division's role in contested cases.

Lastly, the bill makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2010

**DIVISION OF ADMINISTRATIVE HEARINGS*****Staff (§§ 2-5)***

***Chief Administrative Law Adjudicator.*** The bill requires the CHRO executive director to designate a chief administrative law

adjudicator (ALA) to serve as the division's full-time chief executive officer for a term of two years.

The chief ALA has all the powers specifically granted by law and any additional powers reasonable and necessary for him or her to carry out his or her duties. Additionally, the chief ALA has all the powers and duties of an ALA. An ALA is someone (1) primarily responsible for conducting contested case hearings and issuing final decisions or proposed final decisions, and (2) (a) transferred to DAH pursuant to the bill or (b) appointed by the chief ALA.

The chief ALA must:

1. assign an ALA to hear each case referred to DAH 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 or, where applicable, a final decision, that keeps protected information, including the identity of any person or party, confidential if required by law, regulations, or court order;
3. study all aspects of administrative adjudication and develop recommendations to promote impartiality, fairness, uniformity, and cost-effectiveness in the administration and conduct of contested case hearings;
4. develop and implement a program for (a) the continuing education of ALAs in procedural due process and the substantive law of their referring agencies and (b) training ancillary personnel; and
5. 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 to the extent the Freedom of Information Act requires.

In addition, he or she must collect, compile, and prepare statistics and other data on DAH's operations and, by January 1 annually, report to the governor and the legislature on such operations, including the number of (1) hearings held, according to subject matter; (2) proposed final decisions rendered; (3) partial or total reversals of such decisions by the agencies; (4) final decisions rendered; and (5) proceedings pending. It must also include the amount of time devoted to each subject matter.

**Other Staff.** As the division's chief executive officer, the chief ALA can hire staff. The bill transfers to DAH certain full-time and permanent part-time employees from the agencies whose cases the division will hear. The transferred employees are those primarily responsible for (1) conducting hearings in contested cases and issuing final decisions or proposed final decisions, including human rights referees, staff attorneys, hearing adjudicators, and hearing officers and (2) providing administrative services related to conducting the hearings and issuing the decisions.

Each ALA, other than those transferred from other agencies, must be admitted to the practice of law in this state for at least two years. ALAs have the powers granted to hearing officers and presiding officers by law and the bill.

**Job Classifications and Benefits.** The chief ALA, ALAs, assistants, and other DAH 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 ALA 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 have their seniority, salaries, or

benefits reduced 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 (MOU) between the Office of Labor Relations and any collective bargaining representative for state employees. These employees cannot lose the job classifications they had when they were transferred. And no promotions governed by any existing MOU between the Office of Labor Relations and any collective bargaining representative for these employees can be denied, delayed, impaired, or eliminated because of DAH's establishment or the transfer of personnel to it. MOU provisions on the rights and obligations of staff attorneys also apply to transferred ALAs.

Transferees who are not members of a collective bargaining unit at the time of their transfer and employees the chief ALA hires 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 MOU between the Office of Labor Relations and any collective bargaining representative for state employees, including the rights and obligations contained in any MOU that applies to staff attorneys.

An ALA, assistant, or other DAH 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 (§§ 8 & 27)***

Beginning October 1, 2010, the bill requires DAH 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 (DCF);

2. Department of Transportation;
3. Department of Motor Vehicles; and
4. CHRO, including allegations of retaliation against whistleblowers.

On that same date, the powers, functions, and duties of the referring agencies with respect to their contested cases transfer to DAH. Additionally, DCF must execute any requisite contract with DAH necessary to maintain and secure any federal or state funding or reimbursement. However, the bill requires any hearing officer under contract with an agency to continue to conduct hearings and issue decisions in contested cases of the type referred until they are completed, unless the chief ALA decides to reassign the cases to ALAs.

Any other agency can, with the chief ALA's consent, refer contested cases to DAH for settlement or a full adjudication. Any agency that requests a full adjudication of the contested case must specify whether the decision will be a final decision or a proposed final decision. The agency referring the contested case incurs the cost of transcripts if the chief ALA requests transcription services for the hearing. Upon issuance of the final decision or proposed final decision, the chief ALA must forward the record to the referring agency. The powers, functions, and duties of these agencies to conduct hearings transfer on the dates of the referrals.

The chief ALA, the presiding officer, and CHRO cannot be parties to any appeal of a decision or settlement DAH conducts.

By January 1, 2012, the bill requires the Program Review and Investigations Committee 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 DAH.

The bill specifies that its section on the types of transferred cases DAH 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.

***Hearings (§§ 7, 9, & 13)***

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

An ALA assigned by the chief ALA must hear or settle any contested case before DAH. But the bill prohibits the chief ALA from assigning an ALA 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 presided over by an agency head or at least one member of a multimember agency.

The bill requires ALAs to conduct hearings in accordance with the bill and the UAPA. This means, among other things, that the UAPA's definitions apply to all contested cases conducted by DAH.

If a contested case is not resolved through settlement negotiations, either party may proceed to a hearing. An ALA who attempts to settle a matter may not thereafter be assigned to hear it. An ALA 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. A

party may petition the New Britain Superior Court to enforce the order and stipulation, agreed settlement, or consent order and for appropriate temporary relief or a restraining order.

***Proposed and Final Decisions (§§ 20, 22 & 23)***

An ALA's proposed final decision must be in writing, comply with the UAPA's requirement for final decisions, and be 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 ALA renders the proposed final decision, the case records must be delivered promptly to the agency.

An ALA'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 this period and for good cause, extend the 21-day deadline for up to 21 additional days. In the event of agency inaction, the proposed final decision is effective not later than 21 days after it is delivered or mailed or at a later date specified in the proposed final decision. In this case, a party or the agency 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 (see below).

When reviewing an ALA's proposed final decision, the head of the agency may give the parties, including the agency, an opportunity to present briefs and oral argument. If the agency head determines that additional evidence is necessary, he or she must refer the matter to DAH. The chief ALA must assign the ALA who rendered the proposed decision to take the additional evidence unless the ALA is unavailable. The ALA 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. An agency must immediately transmit to DAH a copy of any final decision it renders, apparently regardless of whether the new division has jurisdiction over the matter.

**Definitions (§ 10)**

The bill amends the definition of terms defined under the UAPA as necessary to conform to the bill, extends the definitions to the bill unless the context requires otherwise, and defines ALA and head of agency under the UAPA. For example, a “contested case,” in addition to being a proceeding in which the legal rights, duties, or privileges of a party are required by state statute or regulation to be determined by an agency, also means such proceedings determined by DAH. “Hearing officer” continues to mean a person appointed by an agency to conduct a hearing in an agency proceeding unless the proceeding is conducted by an ALA. “Final decision” means, among other things, an agency or DAH determination in a contested case.

**Nonparties (§§ 11 & 16)**

The bill eliminates the authority of a presiding officer in a contested case or a hearing in a proceeding for a declaratory ruling to allow people not named as parties or intervenors to present oral or written statements.

**Contested Cases (§§ 15, 17-19, & 21)**

The bill makes numerous changes to the UAPA's provisions on contested cases. Specifically, the bill:

1. extends to agencies reviewing proposed final decisions the authority agencies hearing contested cases have to (a) take notice of generally recognized technical or scientific facts within their specialized knowledge and (b) use their experience, technical competence, and specialized knowledge when evaluating evidence;
2. creates an exception for hearings conducted by DAH to provisions of the UAPA regarding decisions made by fewer

- than all members of multi-member agencies (e.g. , authorizing parties to request a majority of the members to review preliminary, procedural, or evidentiary rulings before a final decision or proposed final decisions);
3. allows agencies or DAH to enforce a subpoena by filing a complaint in New Britain, rather than Hartford, Superior Court;
  4. allows a party to a contested case who does not receive a final decision within 90 days after the close of evidence or the filing of briefs, whichever is later, to apply to the New Britain, rather than Hartford, Superior Court for an order requiring the authority presiding over the case to render a proposed final decision right away;
  5. requires a final decision to be stated orally on the record, as opposed to written, only in cases where there is no proposed final decision, and requires the record of oral decisions to include the names and addresses of all parties;
  6. 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; and
  7. 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.

### **APPEALING A FINAL DECISION (§§ 23 & 24)**

By law, a party in a contested case may file a petition with the deciding agency for reconsideration or modification of a final decision, or file an appeal to Superior Court after exhausting all administrative remedies. In cases of agency inaction, the bill specifies that the agency that issued the final decision is the agency with which the petition must be filed and where all administrative processes must be exhausted. In the case of proposed final decisions issued by DAH, this means the agency for which DAH issued the proposed decision.

The UAPA contains several dates from which a party has 45 days to appeal a final decision to Superior Court. The bill specifies that appeals must be taken within the applicable 45-day period regardless of a final decision's effective date.

The bill also adds another date to the list of dates to address decisions issued by DAH. When DAH issues a proposed final decision that becomes a final decision due to agency inaction, the bill gives parties 45 days after the decision becomes final to file an appeal.

Lastly, under current law, all appeals must be conducted by the court without a jury and the court cannot substitute its judgment for that of the authority that rendered the final decision. The bill allows (1) for jury trials in appeals from final decisions if provided by law and (2) substitutions if the law provides a different standard of review.

**COMMITTEE ACTION**

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 15    Nay 0    (03/26/2010)