



Senate

General Assembly

File No. 654

February Session, 2010

Substitute Senate Bill No. 284

Senate, April 28, 2010

The Committee on Transportation reported through SEN. DEFRONZO of the 6th 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; and

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

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

204 (c) The powers, functions and duties of conducting hearings and
205 issuing decisions in contested cases enumerated in subsections (a) and
206 (b) of this section shall, on the date specified in subsection (a) of this
207 section or the date of referral in subsection (b) of this section, be

208 transferred to the Division of Administrative Hearings in accordance
209 with the provisions of sections 4-38d, 4-38e and 4-39 of the general
210 statutes.

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

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

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

226 Sec. 9. (NEW) (*Effective October 1, 2009*) No administrative law
227 adjudicator may be assigned by the Chief Administrative Law
228 Adjudicator to hear a contested case with respect to:

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

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

234 Sec. 10. Section 4-166 of the general statutes is repealed and the
235 following is substituted in lieu thereof (*Effective October 1, 2010*):

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

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

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

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

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

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

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

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

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

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

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

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

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

297 (13) "Regulation" means each agency statement of general
298 applicability, without regard to its designation, that implements,
299 interprets, or prescribes law or policy, or describes the organization,
300 procedure, or practice requirements of any agency. The term includes

301 the amendment or repeal of a prior regulation, but does not include
302 (A) statements concerning only the internal management of any
303 agency and not affecting private rights or procedures available to the
304 public, (B) declaratory rulings issued pursuant to section 4-176, as
305 amended by this act, or (C) intra-agency or interagency memoranda;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

394 (c) The five-day requirement in subsections (a) and (b) of this
395 section may be waived at any time before or after commencement of

396 the hearing by the presiding officer on a showing of good cause.

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

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

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

428 Sec. 16. Section 4-177c of the general statutes is repealed and the

429 following is substituted in lieu thereof (*Effective October 1, 2010*):

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

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

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

444 In contested cases: (1) Any oral or documentary evidence may be
445 received, but the [agency] presiding officer shall, as a matter of policy,
446 provide for the exclusion of irrelevant, immaterial or unduly
447 repetitious evidence; (2) [agencies shall give effect to] the rules of
448 privilege recognized by law shall be given effect; (3) when a hearing
449 will be expedited and the interests of the parties will not be prejudiced
450 substantially, any part of the evidence may be received in written
451 form; (4) documentary evidence may be received in the form of copies
452 or excerpts, if the original is not readily available, and upon request,
453 parties and the agency, including an agency conducting the
454 proceeding, shall be given an opportunity to compare the copy with
455 the original; (5) a party and [such] the agency, including an agency
456 conducting the proceeding, may conduct cross-examinations required
457 for a full and true disclosure of the facts; (6) notice may be taken of
458 judicially cognizable facts; [and of] (7) in a proceeding conducted by
459 the agency or in an agency review of a proposed final decision, notice
460 may be taken of generally recognized technical or scientific facts
461 within the agency's specialized knowledge; [(7)] (8) parties shall be

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

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

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

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

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

491 (b) A proposed final decision made under this section shall be in
492 writing and [contain a statement of the reasons for the decision and a
493 finding of facts and conclusion of law on each issue of fact or law

494 necessary to the decision] shall comply with the requirements of
495 subsection (c) of section 4-180, as amended by this act.

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

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

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

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

522 (c) If, within the time period provided in subsection (b) of this
523 section, the head of the agency, in reviewing a proposed final decision
524 rendered by an administrative law adjudicator, determines that
525 additional evidence is necessary, the head of the agency shall refer the

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

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

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

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

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

554 (c) A final decision in a contested case shall be in writing or, if there
555 is no proposed final decision, orally stated on the record. [and, if
556 adverse to a party,] A proposed final decision and a final decision in a
557 contested case shall include [the agency's] findings of fact and

558 conclusions of law necessary to [its] the decision and shall be made by
559 applying all pertinent provisions of law. Findings of fact shall be based
560 exclusively on the evidence in the record and on matters noticed. The
561 [agency shall state in] proposed final decision and the final decision
562 shall contain the name of each party and the most recent mailing
563 address, provided to the agency, of the party or [his] the party's
564 authorized representative. If the final decision is orally stated on the
565 record, each such name and mailing address shall be included in the
566 record.

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

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

586 (a) Unless required for the disposition of ex parte matters
587 authorized by law, no hearing officer, administrative law adjudicator
588 or member of an agency who, in a contested case, is to render a final
589 decision or to make a proposed final decision shall communicate,
590 directly or indirectly, in connection with any issue of fact, with any

591 person or party, or, in connection with any issue of law, with any party
592 or the party's representative, without notice and opportunity for all
593 parties to participate.

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

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

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

615 (3) If the [agency] authority that rendered the final decision decides
616 to reconsider [a] the final decision, pursuant to subdivision (1) or (2) of
617 this subsection, [the agency] such authority shall proceed in a
618 reasonable time to conduct such additional proceedings as may be
619 necessary to render a decision modifying, affirming or reversing the
620 final decision, provided such decision made after reconsideration shall
621 be rendered not later than ninety days following the date on which
622 [the agency] such authority decides to reconsider the final decision. If
623 [the agency] such authority fails to render such decision made after

624 reconsideration within such ninety-day period, the original final
625 decision shall remain the final decision in the contested case for
626 purposes of any appeal under the provisions of section 4-183, as
627 amended by this act.

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

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

654 (c) The [agency] authority that rendered the final decision may,
655 without further proceedings, modify a final decision to correct any
656 clerical error. A person may appeal [that] such modification under the

657 provisions of section 4-183, as amended by this act, or, if an appeal is
658 pending when the modification is made, may amend the appeal.

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

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

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

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

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

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

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

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

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

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

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

754 (i) [The] Except as otherwise provided by law, the appeal shall be
755 conducted by the court without a jury and shall be confined to the
756 record. If alleged irregularities in procedure before the [agency]

757 presiding officer are not shown in the record or if facts necessary to
758 establish aggrievement are not shown in the record, proof limited
759 thereto may be taken in the court. The court, upon request, shall hear
760 oral argument and receive written briefs.

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

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

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

788 (m) In any case in which a person appealing claims that [he] such
789 person cannot pay the costs of an appeal under this section, [he] such

790 person shall, within the time permitted for filing the appeal, file with
791 the clerk of the court to which the appeal is to be taken an application
792 for waiver of payment of such fees, costs and necessary expenses,
793 including the requirements of bond, if any. The application shall
794 conform to the requirements prescribed by rule of the judges of the
795 Superior Court. After such hearing as the court determines is
796 necessary, the court shall render its judgment on the application,
797 which judgment shall contain a statement of the facts the court has
798 found, with its conclusions thereon. The filing of the application for the
799 waiver shall toll the time limits for the filing of an appeal until such
800 time as a judgment on such application is rendered.

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

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

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

816 (e) The judge trial referee shall make public a finding of probable
817 cause not later than five business days after any such finding. At such
818 time, the entire record of the investigation shall become public, except
819 that the Office of State Ethics may postpone examination or release of
820 such public records for a period not to exceed fourteen days for the
821 purpose of reaching a stipulation agreement pursuant to subsection
822 [(c)] (d) of section 4-177, as amended by this act.

823 agreement or settlement entered into for a violation of this part shall be
824 approved by a majority of its members present and voting.

825 Sec. 27. (*Effective October 1, 2010*) On or before January 1, 2012, the
826 Legislative Program Review and Investigations Committee shall
827 submit to the joint standing committee of the General Assembly
828 having cognizance of matters relating to the judiciary a feasibility
829 analysis and implementation plan for the transfer of contested cases
830 conducted by the Department of Social Services to the Division of
831 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	October 1, 2010	New section
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TRA *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 - Transfer from	Approximately \$750,000	Approximately \$750,000
Human Rights & Opportunities, Com.	GF - Transfer to	Approximately \$750,000	Approximately \$750,000

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), and the Department of Transportation (DOT) to DAH. The bill would result in a transfer of approximately \$750,000 from DCF and DOT 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 and Transportation. It transfers certain personnel, including hearing officers, from these agencies to DAH.

The bill requires the division to conduct hearings in accordance with the bill and the Uniform Administrative Procedure Act (UAPA), including the latter's time limits, 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 agency fails 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 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 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 administering and conducting 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 electronically for public inspection and copying 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, by 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 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.

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

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 who are union members when they 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. They 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 their collective bargaining representative 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 when they transfer and employees the chief ALA hires must (1) have the same job classifications as transferees who are union members 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; and

3. 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. An agency that requests a full adjudication of the contested case must specify whether the decision will be a final or a proposed final decision. The referring agency incurs the cost of transcripts if the chief ALA requests transcription services for the hearing. When the final or proposed final decision is issued, 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 transferring contested cases conducted by the Department of Social Services to DAH.

The bill specifies that its provisions 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 notify the parties of the referral and that an ALA will set the time and place of the hearings. DAH must give this notice and 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 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 this period ends and for good cause, extend the 21-day deadline for up to 21 more 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 DAH 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 decision);
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.

BACKGROUND

Legislative History

The Senate referred the bill (File 517) to the Transportation Committee, which reported a substitute that removes the prior bill’s applicability to contested cases heard by the Department of Motor Vehicles.

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable Substitute
Yea 15 Nay 0 (03/26/2010)

Transportation Committee

Joint Favorable Substitute
Yea 35 Nay 0 (04/26/2010)