



# Senate

General Assembly

**File No. 573**

*January Session, 2011*

Substitute Senate Bill No. 1188

*Senate, April 18, 2011*

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 ESTABLISHING THE 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, 2011*) (a) There shall be  
2 established a Division of Administrative Hearings within the  
3 Department of Administrative Services, for administrative purposes  
4 only. The Division of Administrative Hearings shall conduct impartial  
5 hearings of contested cases in accordance with the provisions of  
6 sections 2 to 9, inclusive, section 20 of this act and chapter 54 of the  
7 general statutes. The Chief Administrative Law Adjudicator shall be  
8 the chief executive officer of the Division of Administrative Hearings.

9 (b) For purposes of sections 2 to 9, inclusive, and section 20 of this  
10 act, (1) "administrative law adjudicator" means a person whose  
11 primary duties are to conduct hearings in contested cases and issue  
12 final decisions or proposed final decisions and who is transferred to  
13 the Division of Administrative Hearings pursuant to section 4 of this

14 act or appointed by the Chief Administrative Law Adjudicator  
15 pursuant to chapter 67 of the general statutes; and (2) "Chief  
16 Administrative Law Adjudicator" means the administrative law  
17 adjudicator nominated by the Governor in accordance with section 2 of  
18 this act to serve as Chief Administrative Law Adjudicator.

19 Sec. 2. (NEW) (*Effective October 1, 2011*) (a) On or after October 1,  
20 2011, the Governor shall appoint the Chief Administrative Law  
21 Adjudicator to serve a term expiring on March 1, 2012. Thereafter, the  
22 Governor shall, with the advice and consent of both houses of the  
23 General Assembly, nominate the Chief Administrative Law  
24 Adjudicator, who shall serve a term of six years, or until a successor is  
25 qualified. Any person nominated under this section shall have been  
26 admitted to the practice of law in the state for at least ten years, shall  
27 be knowledgeable on the subject of administrative law and shall be a  
28 resident of the state.

29 (b) Each nomination made by the Governor to the General  
30 Assembly for Chief Administrative Law Adjudicator shall be referred,  
31 without debate, to the committee on the judiciary, which shall report  
32 on such nomination not later than thirty legislative days after the time  
33 of reference, but not later than seven legislative days before the  
34 adjourning of the General Assembly.

35 (c) Each appointment of the Chief Administrative Law Adjudicator  
36 shall be by concurrent resolution. The action on the passage of each  
37 such resolution in the House of Representatives and in the Senate shall  
38 be by vote taken on the electrical roll-call device. No resolution shall  
39 contain the name of more than one nominee.

40 (d) The Governor shall, within five days after receiving notice that a  
41 nomination made pursuant to this section has failed to be approved by  
42 the affirmative concurrent action of both houses of the General  
43 Assembly, make another nomination to such office.

44 (e) The Chief Administrative Law Adjudicator shall take an oath of  
45 office in accordance with section 1-25 of the general statutes prior to

46 commencing his or her duties, shall perform such duties full time and  
47 shall not engage in the private practice of law. The Chief  
48 Administrative Law Adjudicator may be renominated following the  
49 same process set forth in this section for initial nominations.

50 (f) The Governor may remove the Chief Administrative Law  
51 Adjudicator during his or her term for good cause.

52 (g) Notwithstanding the provisions of section 4-19 of the general  
53 statutes, no vacancy in the position of Chief Administrative Law  
54 Adjudicator shall be filled by the Governor when the General  
55 Assembly is not in session unless, prior to such filling, the Governor  
56 submits the name of the proposed vacancy appointee to the committee  
57 on the judiciary. Not later than forty-five days after such submission,  
58 the committee on the judiciary may, upon the call of either chairman,  
59 hold a special meeting for the purpose of approving or disapproving  
60 such proposed vacancy appointee by majority vote. The Governor  
61 shall not administer the oath of office to such proposed vacancy  
62 appointee until the committee has approved such proposed vacancy  
63 appointee. If the committee determines that it cannot act on such  
64 proposed vacancy appointee within such forty-five-day period, it may  
65 extend such period by an additional fifteen days. The committee shall  
66 notify the Governor in writing of any such extension. Failure of the  
67 committee to act on such proposed vacancy appointee within such  
68 forty-five-day period or any fifteen-day extension period shall be  
69 deemed to be an approval.

70 Sec. 3. (NEW) (*Effective October 1, 2011*) (a) The Chief Administrative  
71 Law Adjudicator shall:

72 (1) Have all of the powers specifically granted in the general statutes  
73 and any additional powers that are reasonable and necessary to enable  
74 the Chief Administrative Law Adjudicator to carry out the duties of his  
75 or her office, including, but not limited to, the powers set forth in  
76 section 4-8 of the general statutes;

77 (2) Assign administrative law adjudicators in all cases referred to

78 the Division of Administrative Hearings, provided, in assigning an  
79 administrative law adjudicator to a case, the Chief Administrative Law  
80 Adjudicator shall, whenever practicable, assign an administrative law  
81 adjudicator who has expertise in the legal issues or general subject  
82 matter of the proceeding;

83 (3) Have all the powers and duties of an administrative law  
84 adjudicator;

85 (4) Prepare an edited version of a proposed final decision and final  
86 decision that shall not disclose protected information in any case  
87 where any provision of the general statutes, federal law, state or  
88 federal regulations, or an order of a court of competent jurisdiction  
89 bars the disclosure of the identity of any person or party or bars the  
90 disclosure of any other information;

91 (5) Collect, compile and prepare statistics and other data with  
92 respect to the operations of the Division of Administrative Hearings  
93 and, not later than January first of each year, submit to the Governor  
94 and the General Assembly, in accordance with the provisions of  
95 section 11-4a of the general statutes, a report on such operations,  
96 including, but not limited to, the number of hearings initiated, the  
97 number of proposed final decisions rendered, the number of partial or  
98 total reversals of such decisions by the agencies, the number of final  
99 decisions rendered and the number of proceedings pending;

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

104 (7) Develop a program for the continuing education of  
105 administrative law adjudicators in procedural due process and in the  
106 substantive law of the agencies that are subject to the provisions of  
107 section 8 of this act and training for ancillary personnel and implement  
108 such program; and

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

114 (b) The Chief Administrative Law Adjudicator shall be exempt from  
115 the classified service.

116 (c) The Chief Administrative Law Adjudicator, administrative law  
117 adjudicators, assistants and other employees of the Division of  
118 Administrative Hearings shall be entitled to the fringe benefits  
119 applicable to other state employees, shall be included under the  
120 provisions of chapters 65 and 66 of the general statutes regarding  
121 disability and retirement of state employees, and shall receive full  
122 retirement credit for each year or portion thereof for which retirement  
123 benefits are paid for service as such Chief Administrative Law  
124 Adjudicator, administrative law adjudicator, assistant or other  
125 employee.

126 (d) The Chief Administrative Law Adjudicator shall adopt  
127 regulations in accordance with the provisions of chapter 54, to carry  
128 out the provisions of section 1 to 9, inclusive, and section 20 of this act,  
129 and sections 4-176e to 4-181a of the general statutes, as amended by  
130 this act. Such regulations, with respect to contested cases heard by the  
131 Division of Administrative Hearings, shall supersede any inconsistent  
132 agency regulations, policies or procedures, including, but not limited  
133 to, provisions related to time limits for agency action in contested  
134 cases, notices of hearings, the scheduling of hearings and the  
135 assignment of administrative law adjudicators except the regulations  
136 may not supersede any provisions of agency regulations mandated by  
137 the general statutes or federal law.

138 Sec. 4. (NEW) (*Effective October 1, 2011*) (a) Notwithstanding any  
139 provision of the general statutes, each full-time employee or  
140 permanent part-time employee of an agency subject to the provisions  
141 of section 8 of this act whose primary duties (1) are to conduct hearings

142 in contested cases and issue final decisions or proposed final decisions,  
143 or (2) relate to providing administrative services required for  
144 conducting such hearings and issuing such decisions, shall be  
145 transferred to the Division of Administrative Hearings, in accordance  
146 with the provisions of this section and sections 4-38d, 4-38e and 4-39 of  
147 the general statutes.

148 (b) Persons transferred to the Division of Administrative Hearings  
149 pursuant to this section and persons appointed by the Chief  
150 Administrative Law Adjudicator pursuant to chapter 67 of the general  
151 statutes shall be in the classified service, represented by the collective  
152 bargaining representative of an employee organization and subject to  
153 the provisions of chapter 68 of the general statutes. Persons transferred  
154 to the Division of Administrative Hearings pursuant to this section  
155 who are members of an employee organization at the time of their  
156 transfer shall continue to be represented by such employee  
157 organization. For the purposes of this subsection "employee  
158 organization" has the same meaning as in section 5-270 of the general  
159 statutes.

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

163 (d) No promotions governed by any existing and applicable  
164 memorandum of understanding between the State Board of Labor  
165 Relations and any collective bargaining representative for state  
166 employees shall be denied, delayed, impaired or eliminated by the  
167 implementation of sections 1 to 9, inclusive, of this act.

168 (e) (1) Persons transferred to the Division of Administrative  
169 Hearings pursuant to this section who are members of a collective  
170 bargaining unit at the time of their transfer shall (A) not lose the job  
171 classification in which they are placed at the time of their transfer as a  
172 result of the transfer, and (B) remain the beneficiaries of any existing  
173 and applicable memorandum of understanding between the State  
174 Board of Labor Relations and any collective bargaining representative

175 for state employees. The rights and obligations contained in any  
176 memorandum of understanding that applies to staff attorneys shall  
177 apply to administrative law adjudicators transferred to the Division of  
178 Administrative Hearings and appointed by the Chief Administrative  
179 Law Adjudicator.

180 (2) Persons transferred to the Division of Administrative Hearings  
181 pursuant to this section who are not members of a collective  
182 bargaining unit at the time of their transfer, and persons appointed by  
183 the Chief Administrative Law Adjudicator, shall (A) have a job  
184 classification commensurate with persons who are members of a  
185 collective bargaining unit at the time of their transfer, and (B) be  
186 subject to and become the beneficiaries of the terms of any existing and  
187 applicable memorandum of understanding between the State Board of  
188 Labor Relations and any collective bargaining representative for state  
189 employees, including the rights and obligations contained in any  
190 memorandum of understanding that applies to staff attorneys. Persons  
191 transferred to the Division of Administrative Hearings pursuant to this  
192 section who are not members of a collective bargaining unit at the time  
193 of their transfer shall be assigned to the appropriate collective  
194 bargaining unit as determined by the State Board of Labor Relations.

195 (f) Time served in other agencies by persons transferred to the  
196 Division of Administrative Hearings pursuant to this section shall be  
197 recognized as qualifying experience and time in the Division of  
198 Administrative Hearings shall count as successful and satisfactory  
199 performance for career progression under any existing and applicable  
200 memorandum of understanding between the State Board of Labor  
201 Relations and any collective bargaining representative for state  
202 employees.

203 (g) An administrative law adjudicator, assistant or other employee  
204 of the Division of Administrative Hearings who is removed,  
205 suspended, demoted or subjected to disciplinary action or other  
206 adverse employment action may appeal such action in accordance  
207 with the applicable collective bargaining agreement.

208       Sec. 5. (NEW) (*Effective January 1, 2012*) (a) Each administrative law  
209 adjudicator shall have been admitted to the practice of law in this state  
210 for at least two years, except such requirement shall not apply to any  
211 administrative law adjudicator transferred pursuant to section 4 of this  
212 act. Each administrative law adjudicator shall be knowledgeable on the  
213 subject of administrative law, competent, impartial, objective and free  
214 from inappropriate influence.

215       (b) An administrative law adjudicator shall have the powers  
216 granted to hearing officers and presiding officers pursuant to sections  
217 1 to 9, inclusive, section 20 of this act and chapter 54 of the general  
218 statutes.

219       (c) An administrative law adjudicator appointed to the Division of  
220 Administrative Hearings may engage in the private practice of law as  
221 long as (1) such administrative law adjudicator discloses the nature  
222 and scope of his or her private law practice to the Chief Administrative  
223 Law Adjudicator, and (2) the Chief Administrative Law Adjudicator  
224 determines that no conflict of interest exists arising from such law  
225 practice that would create an actual or perceived conflict of interest or  
226 bias for the administrative law adjudicator to act or perform his or her  
227 adjudicative duties assigned by the Chief Administrative Law  
228 Adjudicator.

229       Sec. 6. (NEW) (*Effective January 1, 2012*) (a) All hearings in contested  
230 cases conducted by the Division of Administrative Hearings shall be  
231 conducted by an administrative law adjudicator assigned by the Chief  
232 Administrative Law Adjudicator and shall be conducted in accordance  
233 with sections 1 to 9, inclusive, and section 20 of this act and sections 4-  
234 176e to 4-181a, inclusive, of the general statutes, as amended by this  
235 act.

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

241 Sec. 7. (NEW) (*Effective January 1, 2012*) An administrative law  
242 adjudicator may conduct hearings and settlement negotiations held by  
243 the Division of Administrative Hearings. If a contested case is not  
244 resolved through settlement negotiations, either party may proceed to  
245 a hearing. An administrative law adjudicator who attempts to settle a  
246 matter may not thereafter be assigned to hear the matter. If a contested  
247 case is resolved by stipulation, agreed settlement or consent order, the  
248 administrative law adjudicator shall issue an order dismissing the  
249 contested case. The order shall incorporate by reference such  
250 stipulation, agreed settlement or consent order which shall be attached  
251 to such order. The order shall further provide that no findings of fact  
252 or conclusions of law have been made regarding any alleged violations  
253 of the law. The order and stipulation, agreed settlement or consent  
254 order may be enforceable by any party in the superior court for the  
255 judicial district of New Britain. A party may petition said court for  
256 enforcement of the order and stipulation, agreed settlement or consent  
257 order and for appropriate temporary relief or a restraining order.

258 Sec. 8. (NEW) (*Effective January 1, 2012*) (a) Notwithstanding any  
259 provision of the general statutes, and except as otherwise provided in  
260 section 9 of this act, on and after January 1, 2012, the Division of  
261 Administrative Hearings shall conduct hearings and render proposed  
262 final decisions or, if authorized or required by law, final decisions in  
263 contested cases:

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

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

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

268 (4) Brought by or before the Commission on Human Rights and  
269 Opportunities;

270 (5) Brought by or before the Department of Motor Vehicles; and

271 (6) Brought by or before the Department of Consumer Protection.

272 (b) Any agency that is not required to refer contested cases to the  
273 Division of Administrative Hearings pursuant to this section may,  
274 with the consent of the Chief Administrative Law Adjudicator, refer  
275 any contested case brought by or before such agency, to the Division of  
276 Administrative Hearings for purposes of settlement or a full  
277 adjudication of the contested case by an administrative law  
278 adjudicator. If an agency requests a full adjudication of the contested  
279 case, the agency shall specify whether the decision shall be a final  
280 decision or a proposed final decision. The agency referring the  
281 contested case shall incur the cost of transcripts if the Chief  
282 Administrative Law Adjudicator requests transcription services for the  
283 hearing. Upon issuance of the final decision or proposed final decision,  
284 the Chief Administrative Law Adjudicator shall forward the record to  
285 the referring agency.

286 (c) The powers, functions and duties of conducting hearings and  
287 issuing decisions in contested cases enumerated in subsections (a) and  
288 (b) of this section shall, on the date specified in subsection (a) of this  
289 section or on the date of referral in accordance with subsection (b) of  
290 this section, be transferred to the Division of Administrative Hearings  
291 in accordance with the provisions of sections 4-38d, 4-38e and 4-39 of  
292 the general statutes.

293 (d) The Division of Administrative Hearings shall render final  
294 decisions for all cases described in subdivisions (1) and (2) of  
295 subsection (a) of this section.

296 (e) If the administrative law adjudicator issues a proposed final  
297 decision and the agency modifies the proposed final decision, the  
298 agency shall identify such modifications and provide an explanation to  
299 the parties of why the agency made each modification.

300 (f) If the administrative law adjudicator issues a proposed final  
301 decision and the agency modifies a finding of fact of such adjudicator,  
302 in any appeal of a final decision by a party to the Superior Court, the  
303 Superior Court shall review the record. If the Superior Court finds that  
304 the administrative law adjudicator's finding of fact is supported by

305 substantial evidence in the record, the court shall remand the matter to  
306 the agency for entry of an order consistent with the court's judgment.

307 (g) Except as provided in subsection (h) of this section, any hearing  
308 officer under contract with an agency to conduct hearings and issue  
309 decisions in contested cases enumerated in subsections (a) and (b) of  
310 this section shall, on and after the date specified in subsection (a) of  
311 this section or on and after the date of referral in accordance with  
312 subsection (b) of this section, continue to serve until all such cases  
313 assigned to such hearing officer are completed, unless the Chief  
314 Administrative Law Adjudicator determines that the case shall be  
315 reassigned to an administrative law adjudicator.

316 (h) Any hearing officer under contract with the Department of  
317 Motor Vehicles to conduct hearings and issue decisions in contested  
318 cases shall, on and after January 1, 2012, serve under contract with the  
319 Division of Administrative Hearings to conduct hearings brought by  
320 or before the Department of Motor Vehicles. Any vacancies in such  
321 positions shall be filled by persons appointed by the Chief  
322 Administrative Law Adjudicator pursuant to chapter 67 of the general  
323 statutes. Persons appointed by the Chief Administrative Law  
324 Adjudicator to fill such vacancies shall (1) be in the classified service,  
325 (2) be represented by the collective bargaining representative of an  
326 employee organization, as defined in section 5-270 of the general  
327 statutes, and (3) be subject to the provisions of chapter 68 of the  
328 general statutes.

329 (i) Nothing in this section shall be construed to apply to the State  
330 Board of Mediation and Arbitration or the State Board of Labor  
331 Relations.

332 (j) Agencies whose contested cases are conducted by the Division of  
333 Administrative Hearings, including, but not limited to, the  
334 Department of Children and Families, shall execute any requisite  
335 contract with the Division of Administrative Hearings that is necessary  
336 to maintain and secure any federal or state funding or reimbursement.

337 Sec. 9. (NEW) (*Effective January 1, 2012*) No administrative law  
338 adjudicator may be assigned by the Chief Administrative Law  
339 Adjudicator to hear a contested case with respect to:

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

342 (2) Any matter where the head of the agency, or one or more of the  
343 members of a multimember agency, presides at the hearing in a  
344 contested case; or

345 (3) Any matter involving issues, claims or subject matter associated,  
346 related or connected with the administrative law adjudicator's private  
347 law practice where the assignment would create an actual or perceived  
348 conflict of interest, perception of bias or lack of impartiality.

349 Sec. 10. Section 4-166 of the general statutes is repealed and the  
350 following is substituted in lieu thereof (*Effective January 1, 2012*):

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

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

360 (2) "Contested case" means a proceeding, including but not  
361 restricted to rate-making, price fixing and licensing, in which the legal  
362 rights, duties or privileges of a party are required by state statute or  
363 regulation to be determined by an agency or by the Division of  
364 Administrative Hearings after an opportunity for hearing or in which a  
365 hearing is in fact held, but does not include proceedings on a petition  
366 for a declaratory ruling under section 4-176, as amended by this act,  
367 hearings referred to in section 4-168 or hearings conducted by the

368 Department of Correction or the Board of Pardons and Paroles;

369 (3) "Final decision" means (A) the [agency] determination in a  
370 contested case made pursuant to section 4-179, as amended by this act,  
371 section 20 of this act and section 4-180, as amended by this act, (B) a  
372 declaratory ruling issued by an agency pursuant to section 4-176, as  
373 amended by this act, or (C) [an agency] a decision made after  
374 reconsideration of a final decision. The term does not include a  
375 preliminary or intermediate ruling or order, [of an agency,] or a ruling  
376 [of an agency] granting or denying a petition for reconsideration;

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

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

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

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

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

398 (9) "Person" means any individual, partnership, corporation, limited

399 liability company, association, governmental subdivision, agency or  
400 public or private organization of any character, but does not include  
401 the agency conducting the proceeding;

402 (10) "Presiding officer" means the head of the agency presiding at a  
403 hearing, the member of [an] a multimember agency, [or] the hearing  
404 officer designated by the head of the agency to preside at [the] a  
405 hearing or an administrative law adjudicator presiding at a hearing;

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

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

412 (13) "Regulation" means each agency statement of general  
413 applicability, without regard to its designation, that implements,  
414 interprets, or prescribes law or policy, or describes the organization,  
415 procedure, or practice requirements of any agency. The term includes  
416 the amendment or repeal of a prior regulation, but does not include  
417 (A) statements concerning only the internal management of any  
418 agency and not affecting private rights or procedures available to the  
419 public, (B) declaratory rulings issued pursuant to section 4-176, as  
420 amended by this act, or (C) intra-agency or interagency memoranda;

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

423 (15) "Administrative law adjudicator" has the same meaning as  
424 provided in section 1 of this act; and

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

427 Sec. 11. Subsection (g) of section 4-176 of the general statutes is  
428 repealed and the following is substituted in lieu thereof (*Effective*

429 January 1, 2012):

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

434 Sec. 12. Section 4-176e of the general statutes is repealed and the  
435 following is substituted in lieu thereof (*Effective January 1, 2012*):

436 Except as otherwise required by the general statutes, a [hearing in  
437 an agency proceeding may be held before (1)] contested case shall be  
438 heard by (1) an administrative law adjudicator, (2) the head of the  
439 agency, (3) one or more of the members of a multimember agency, or  
440 (4) one or more hearing officers, provided no individual who has  
441 personally carried out the function of an investigator in a contested  
442 case may serve as a hearing officer in that case. [, or (2) one or more of  
443 the members of the agency.]

444 Sec. 13. Section 4-177 of the general statutes is repealed and the  
445 following is substituted in lieu thereof (*Effective January 1, 2012*):

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

448 (b) The notice shall be in writing and shall include: (1) A statement  
449 of the time, place [,] and nature of the hearing or, if the contested case  
450 has been referred to the Division of Administrative Hearings, a  
451 statement that the matter has been referred to the Division of  
452 Administrative Hearings and that the time and place of the hearing  
453 will be set by an administrative law adjudicator; (2) a statement of the  
454 legal authority and jurisdiction under which the hearing is to be held;  
455 (3) a reference to the particular sections of the statutes and regulations  
456 involved; and (4) a short and plain statement of the matters asserted. If  
457 the agency or party is unable to state the matters in detail at the time  
458 the notice is served, the initial notice may be limited to a statement of  
459 the issues involved. Thereafter, upon application, a more definite and

460 detailed statement shall be furnished.

461 (c) After an agency refers a contested case to the Division of  
462 Administrative Hearings, the agency shall certify the official record in  
463 such contested case to the Division of Administrative Hearings. The  
464 Division of Administrative Hearings shall issue a notice in writing to  
465 all parties that shall include a statement of the time, place and nature  
466 of the hearing. Thereafter, a party shall file all documents that are to  
467 become part of such record with the Division of Administrative  
468 Hearings. The filing of such documents with the agency rather than  
469 with the Division of Administrative Hearings shall not be a  
470 jurisdictional defect and shall not be grounds for termination of the  
471 proceeding, provided the administrative law adjudicator may assess  
472 appropriate costs and sanctions against a party who misfiles such  
473 documents on a showing of prejudice resulting from a wilful misfiling.  
474 The Division of Administrative Hearings shall maintain the official  
475 record of a contested case referred to said division.

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

479 ~~[(d)]~~ (e) The record in a contested case shall include: (1) Written  
480 notices related to the case; (2) all petitions, pleadings, motions and  
481 intermediate rulings; (3) evidence received or considered; (4) questions  
482 and offers of proof, objections and rulings thereon; (5) the official  
483 transcript, if any, of proceedings relating to the case, or, if not  
484 transcribed, any recording or stenographic record of the proceedings;  
485 (6) proposed final decisions and exceptions thereto; and (7) the final  
486 decision.

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

493 Sec. 14. Section 4-177a of the general statutes is repealed and the  
494 following is substituted in lieu thereof (*Effective January 1, 2012*):

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

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

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

512 (d) If a petition is granted pursuant to subsection (b) of this section,  
513 the presiding officer may limit the intervenor's participation to  
514 designated issues in which the intervenor has a particular interest as  
515 demonstrated by the petition and shall define the intervenor's rights to  
516 inspect and copy records, physical evidence, papers and documents, to  
517 introduce evidence [,] and to argue and cross-examine on those issues.  
518 The presiding officer may further restrict the participation of an  
519 intervenor in the proceedings, including the rights to inspect and copy  
520 records, to introduce evidence and to cross-examine, so as to promote  
521 the orderly conduct of the proceedings.

522 Sec. 15. Section 4-177b of the general statutes is repealed and the  
523 following is substituted in lieu thereof (*Effective January 1, 2012*):

524 In a contested case, the presiding officer may administer oaths, take  
525 testimony under oath relative to the case, subpoena witnesses and  
526 require the production of records, physical evidence, papers and  
527 documents to any hearing held in the case. If any person disobeys the  
528 subpoena or, having appeared, refuses to answer any question put to  
529 [him] such person or to produce any records, physical evidence,  
530 papers and documents requested by the presiding officer, the  
531 administrative law adjudicator or, if the hearing is conducted by the  
532 agency, the agency, may apply to the superior court for the judicial  
533 district of [Hartford] New Britain or for the judicial district in which  
534 the person resides, or to any judge of that court if it is not in session,  
535 setting forth the disobedience to the subpoena or refusal to answer or  
536 produce, and the court or judge shall cite the person to appear before  
537 the court or judge to show cause why the records, physical evidence,  
538 papers and documents should not be produced or why a question put  
539 to [him] such person should not be answered. Nothing in this section  
540 shall be construed to limit the authority of the agency, the  
541 administrative law adjudicator or any party as otherwise allowed by  
542 law.

543 Sec. 16. Section 4-177c of the general statutes is repealed and the  
544 following is substituted in lieu thereof (*Effective January 1, 2012*):

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

553 (b) Persons not named as parties or intervenors may, in the  
554 discretion of the presiding officer, be given an opportunity to present  
555 oral or written statements. The presiding officer may require any such  
556 statement to be given under oath or affirmation.

557 Sec. 17. Section 4-178 of the general statutes is repealed and the  
558 following is substituted in lieu thereof (*Effective January 1, 2012*):

559 In contested cases: (1) Any oral or documentary evidence may be  
560 received, but the [agency] presiding officer shall, as a matter of policy,  
561 provide for the exclusion of irrelevant, immaterial or unduly  
562 repetitious evidence; (2) [agencies] the presiding officer shall give  
563 effect to the rules of privilege recognized by law; (3) when a hearing  
564 will be expedited and the interests of the parties will not be prejudiced  
565 substantially, any part of the evidence may be received in written  
566 form; (4) documentary evidence may be received in the form of copies  
567 or excerpts, if the original is not readily available, and upon request,  
568 parties and the agency, including an agency conducting the  
569 proceeding, shall be given an opportunity to compare the copy with  
570 the original; (5) a party and [such] the agency, including an agency  
571 conducting the proceeding, may conduct cross-examinations required  
572 for a full and true disclosure of the facts; (6) notice may be taken of  
573 judicially cognizable facts; [and of] (7) in a proceeding conducted by  
574 the agency or in an agency review of a proposed final decision, the  
575 agency may take notice of generally recognized technical or scientific  
576 facts within the agency's specialized knowledge; [(7)] (8) parties shall  
577 be notified in a timely manner of any material noticed, including any  
578 agency memoranda or data, and they shall be afforded an opportunity  
579 to contest the material so noticed; and [(8) the agency's] (9) in a  
580 proceeding conducted by the agency or in an agency review of a  
581 proposed final decision, the agency may use its experience, technical  
582 competence [,] and specialized knowledge [may be used] in the  
583 evaluation of the evidence.

584 Sec. 18. Section 4-178a of the general statutes is repealed and the  
585 following is substituted in lieu thereof (*Effective January 1, 2012*):

586 If a hearing in a contested case or in a declaratory ruling proceeding  
587 is held before a hearing officer or before less than a majority of the  
588 members of the agency who are authorized by law to render a final  
589 decision, a party, if permitted by regulation and before rendition of the

590 final decision, may request a review by a majority of the members of  
591 the agency, of any preliminary, procedural or evidentiary ruling made  
592 at the hearing. The majority of the members may make an appropriate  
593 order, including the reconvening of the hearing. The provisions of this  
594 section shall not apply to a hearing conducted by an administrative  
595 law adjudicator.

596 Sec. 19. Section 4-179 of the general statutes is repealed and the  
597 following is substituted in lieu thereof (*Effective January 1, 2012*):

598 (a) When, in an agency proceeding that is not conducted by an  
599 administrative law adjudicator, a majority of the members of the  
600 agency who are to render the final decision have not heard the matter  
601 or read the record, the decision, if adverse to a party, shall not be  
602 rendered until a proposed final decision is served upon the parties,  
603 and an opportunity is afforded to each party adversely affected to file  
604 exceptions and present briefs and oral argument to the members of the  
605 agency who are to render the final decision.

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

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

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

616 Sec. 20. (NEW) (*Effective January 1, 2012*) (a) A proposed final  
617 decision rendered by an administrative law adjudicator shall be  
618 delivered promptly to each party or the party's authorized  
619 representative, and to the agency, personally or by United States mail,  
620 certified or registered, postage prepaid. After such proposed final

621 decision is rendered, the record in the contested case shall be delivered  
622 promptly to the agency.

623 (b) A proposed final decision rendered by an administrative law  
624 adjudicator shall become a final decision of the agency unless the head  
625 of the agency, not later than twenty-one days following the date the  
626 proposed final decision is delivered or mailed to the agency, modifies  
627 or rejects the proposed final decision, provided the head of the agency  
628 may, before expiration of such time period and for good cause, certify  
629 the extension of such time period for not more than an additional  
630 twenty-one days. If the head of the agency modifies or rejects the  
631 proposed final decision, the head of the agency shall state the reason  
632 for the modification or rejection on the record. In reviewing a proposed  
633 final decision rendered by an administrative law adjudicator, the head  
634 of the agency may afford each party, including the agency, an  
635 opportunity to present briefs and may afford each party, including the  
636 agency, an opportunity to present oral argument.

637 (c) If, within the time period provided in subsection (b) of this  
638 section, the head of the agency, in reviewing a proposed final decision  
639 rendered by an administrative law adjudicator, determines that  
640 additional evidence is necessary, the head of the agency shall refer the  
641 matter to the Division of Administrative Hearings. The Chief  
642 Administrative Law Adjudicator shall assign the administrative law  
643 adjudicator who rendered such proposed final decision to take the  
644 additional evidence unless such administrative law adjudicator is  
645 unavailable. After taking the additional evidence, the administrative  
646 law adjudicator shall, not later than thirty days following such referral,  
647 prepare a proposed final decision as provided in this section based on  
648 such additional evidence and the record of the prior hearing.

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

652 Sec. 21. Section 4-180 of the general statutes is repealed and the  
653 following is substituted in lieu thereof (*Effective January 1, 2012*):

654 (a) Each agency and administrative law adjudicator shall proceed  
655 with reasonable dispatch to conclude any matter pending before [it]  
656 such agency or administrative law adjudicator and, in all hearings of  
657 contested cases conducted by the agency or the administrative law  
658 adjudicator, shall render a final decision [within] not later than ninety  
659 days following the close of evidence or the due date for the filing of  
660 briefs, whichever is later. [, in such proceedings.]

661 (b) If, in any contested case, any agency or administrative law  
662 adjudicator fails to comply with the provisions of subsection (a) of this  
663 section, [in any contested case, any party thereto] any party to such  
664 contested case may apply to the superior court for the judicial district  
665 of [Hartford] New Britain for an order requiring the agency or  
666 administrative law adjudicator to render a proposed final decision or a  
667 final decision forthwith. The court, after hearing, shall issue an  
668 appropriate order.

669 (c) A final decision in a contested case shall be in writing or, if there  
670 is no proposed final decision, orally stated on the record. [and, if  
671 adverse to a party,] A proposed final decision and a final decision in a  
672 contested case shall include [the agency's] findings of fact and  
673 conclusions of law necessary to [its] the decision and shall be made by  
674 applying all pertinent provisions of law. Findings of fact shall be based  
675 exclusively on the evidence in the record and on matters noticed. The  
676 [agency shall state in] proposed final decision and the final decision  
677 shall contain the name of each party and the most recent mailing  
678 address, provided to the agency, of the party or [his] the party's  
679 authorized representative. If the final decision is orally stated on the  
680 record, each such name and mailing address shall be included in the  
681 record.

682 (d) The final decision shall be delivered promptly to each party or  
683 [his] the party's authorized representative and, in the case of a final  
684 decision by an administrative law adjudicator authorized by law to  
685 render such decision, to the agency, personally or by United States  
686 mail, certified or registered, postage prepaid, return receipt requested.

687 [The] An agency rendering a final decision shall immediately transmit  
688 a copy of such decision to the Division of Administrative Hearings. A  
689 proposed final decision that becomes a final decision because of  
690 agency inaction, as provided in subsection (b) of section 20 of this act,  
691 shall become effective at the expiration of the time period specified in  
692 said subsection or on a later date specified in such proposed final  
693 decision. Any other final decision shall be effective when personally  
694 delivered or mailed or on a later date specified [by the agency] in such  
695 final decision. The date of delivery or mailing of a proposed final  
696 decision and a final decision shall be endorsed on the front of the  
697 decision or on a transmittal sheet included with the decision.

698 Sec. 22. Subsection (a) of section 4-181 of the general statutes is  
699 repealed and the following is substituted in lieu thereof (*Effective*  
700 *January 1, 2012*):

701 (a) Unless required for the disposition of ex parte matters  
702 authorized by law, no hearing officer, administrative law adjudicator  
703 or member of an agency who, in a contested case, is to render a final  
704 decision or to make a proposed final decision shall communicate,  
705 directly or indirectly, in connection with any issue of fact, with any  
706 person or party, or, in connection with any issue of law, with any party  
707 or the party's representative, without notice and opportunity for all  
708 parties to participate.

709 Sec. 23. Section 4-181a of the general statutes is repealed and the  
710 following is substituted in lieu thereof (*Effective January 1, 2012*):

711 (a) (1) Unless otherwise provided by law, a party or the agency in a  
712 contested case may, [within] not later than fifteen days after the  
713 personal delivery or mailing of the final decision or not later than  
714 fifteen days after the date that a proposed final decision becomes a  
715 final decision because of agency inaction, as provided in subsection (b)  
716 of section 20 of this act, file with the [agency] authority that rendered  
717 the final decision a petition for reconsideration of the decision on the  
718 ground that: (A) An error of fact or law should be corrected; (B) new  
719 evidence has been discovered which materially affects the merits of the

720 case and which for good reasons was not presented in the agency  
721 proceeding; or (C) other good cause for reconsideration has been  
722 shown. [Within] Not later than twenty-five days [of] after the filing of  
723 the petition, [the agency] such authority shall decide whether to  
724 reconsider the final decision. The failure of [the agency] such authority  
725 to make [that] such determination within twenty-five days of such  
726 filing shall constitute a denial of the petition.

727 (2) [Within] Not later than forty days of the personal delivery or  
728 mailing of the final decision, the [agency] authority that rendered the  
729 final decision, regardless of whether a petition for reconsideration has  
730 been filed, may decide to reconsider the final decision.

731 (3) If the [agency] authority that rendered the final decision decides  
732 to reconsider [a] the final decision, pursuant to subdivision (1) or (2) of  
733 this subsection, [the agency] such authority shall proceed in a  
734 reasonable time to conduct such additional proceedings as may be  
735 necessary to render a decision modifying, affirming or reversing the  
736 final decision, provided such decision made after reconsideration shall  
737 be rendered not later than ninety days following the date on which  
738 [the agency] such authority decides to reconsider the final decision. If  
739 [the agency] such authority fails to render such decision made after  
740 reconsideration within such ninety-day period, the original final  
741 decision shall remain the final decision in the contested case for  
742 purposes of any appeal under the provisions of section 4-183, as  
743 amended by this act.

744 (4) Except as otherwise provided in subdivision (3) of this  
745 subsection, [an agency] a decision made after reconsideration pursuant  
746 to this subsection shall become the final decision in the contested case  
747 in lieu of the original final decision for purposes of any appeal under  
748 the provisions of section 4-183, as amended by this act, including, but  
749 not limited to, an appeal of (A) any issue decided by the [agency]  
750 authority that rendered the final decision in its original final decision  
751 that was not the subject of any petition for reconsideration or [the  
752 agency's] such authority's decision made after reconsideration, (B) any

753 issue as to which reconsideration was requested but not granted, and  
754 (C) any issue that was reconsidered but not modified by [the agency]  
755 such authority from the determination of such issue in the original  
756 final decision.

757 (b) On a showing of changed conditions, the [agency] authority that  
758 rendered the final decision may reverse or modify the final decision, at  
759 any time, at the request of any person or on [the agency's] such  
760 authority's own motion. The procedure set forth in this chapter for  
761 contested cases shall be applicable to any proceeding in which such  
762 reversal or modification of any final decision is to be considered. The  
763 party or parties who were the subject of the original final decision, or  
764 their successors, if known, and intervenors in the original contested  
765 case, shall be notified of the proceeding and shall be given the  
766 opportunity to participate in the proceeding. Any decision to reverse  
767 or modify a final decision shall make provision for the rights or  
768 privileges of any person who has been shown to have relied on such  
769 final decision.

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

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

780 Sec. 24. Section 4-183 of the general statutes is repealed and the  
781 following is substituted in lieu thereof (*Effective January 1, 2012*):

782 (a) A person who has exhausted all administrative remedies  
783 available within the agency and who is aggrieved by a final decision  
784 may appeal to the Superior Court as provided in this section. The filing

785 of a petition for reconsideration is not a prerequisite to the filing of  
786 such an appeal.

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

792 (c) (1) [Within] Not later than forty-five days after mailing of the  
793 final decision under section 4-180, as amended by this act, or, if there is  
794 no mailing, [within] not later than forty-five days after personal  
795 delivery of the final decision under said section, or (2) [within] not  
796 later than forty-five days after the [agency] authority that rendered the  
797 final decision denies a petition for reconsideration of the final decision  
798 pursuant to subdivision (1) of subsection (a) of section 4-181a, as  
799 amended by this act, or (3) [within] not later than forty-five days after  
800 mailing of the final decision made after reconsideration pursuant to  
801 subdivisions (3) and (4) of subsection (a) of section 4-181a, as amended  
802 by this act, or, if there is no mailing, [within] not later than forty-five  
803 days after personal delivery of the final decision made after  
804 reconsideration pursuant to said subdivisions, or (4) [within] not later  
805 than forty-five days after the expiration of the ninety-day period  
806 required under subdivision (3) of subsection (a) of section 4-181a, as  
807 amended by this act, if [the agency] such authority decides to  
808 reconsider the final decision and fails to render a decision made after  
809 reconsideration within such period, or (5) if a proposed final decision  
810 becomes a final decision because of agency inaction, as provided in  
811 subsection (b) of section 20 of this act, not later than forty-five days  
812 after the decision becomes final, whichever is applicable and is later, a  
813 person appealing as provided in this section shall serve a copy of the  
814 appeal on the agency [that rendered the final decision] at its office or at  
815 the office of the Attorney General in Hartford and file the appeal with  
816 the clerk of the superior court for the judicial district of New Britain or  
817 for the judicial district wherein the person appealing resides or, if  
818 [that] such person is not a resident of this state, with the clerk of the

819 court for the judicial district of New Britain. An appeal of a final  
820 decision under this section shall be taken within such applicable forty-  
821 five-day period regardless of the effective date of the final decision.  
822 Within [that] such time, the person appealing shall also serve a copy of  
823 the appeal on each party listed in the final decision at the address  
824 shown in the decision, provided failure to make such service within  
825 forty-five days on parties other than the agency [that rendered the final  
826 decision] shall not deprive the court of jurisdiction over the appeal.  
827 Service of the appeal shall be made by United States mail, certified or  
828 registered, postage prepaid, return receipt requested, without the use  
829 of a state marshal or other officer, or by personal service by a proper  
830 officer or indifferent person making service in the same manner as  
831 complaints are served in ordinary civil actions. If service of the appeal  
832 is made by mail, service shall be effective upon deposit of the appeal in  
833 the mail.

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

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

845 (f) The filing of an appeal shall not, of itself, stay enforcement of [an  
846 agency] a final decision. An application for a stay may be made to the  
847 [agency] authority that rendered the final decision, to the court or to  
848 both. Filing of an application with [the agency] such authority shall not  
849 preclude action by the court. A stay, if granted, shall be on appropriate  
850 terms.

851 (g) Within thirty days after the service of the appeal, or within such

852 further time as may be allowed by the court, the agency shall  
853 transcribe any portion of the record that has not been transcribed and  
854 transmit to the reviewing court the original or a certified copy of the  
855 entire record of the proceeding appealed from, which shall include the  
856 [agency's] findings of fact and conclusions of law, separately stated. By  
857 stipulation of all parties to such appeal proceedings, the record may be  
858 shortened. A party unreasonably refusing to stipulate to limit the  
859 record may be taxed by the court for the additional costs. The court  
860 may require or permit subsequent corrections or additions to the  
861 record.

862 (h) If, before the date set for hearing on the merits of an appeal,  
863 application is made to the court for leave to present additional  
864 evidence, and it is shown to the satisfaction of the court that the  
865 additional evidence is material and that there were good reasons for  
866 failure to present it in the proceeding before the [agency] authority that  
867 rendered the final decision, the court may order that the additional  
868 evidence be taken before [the agency] such authority upon conditions  
869 determined by the court. [The agency] Such authority may modify its  
870 findings and decision by reason of the additional evidence and shall  
871 file [that] such evidence and any modifications, new findings [,] or  
872 decisions with the reviewing court.

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

880 (j) [The] Unless a different standard of review is provided by law,  
881 the court shall not substitute its judgment for that of the [agency]  
882 authority that rendered the final decision as to the weight of the  
883 evidence on questions of fact. The court shall affirm the final decision  
884 [of the agency] unless the court finds that substantial rights of the

885 person appealing have been prejudiced because the administrative  
886 findings, inferences, conclusions [,] or decisions are: (1) In violation of  
887 constitutional or statutory provisions; (2) in excess of the statutory  
888 authority of the agency; (3) made upon unlawful procedure; (4)  
889 affected by other error of law; (5) clearly erroneous in view of the  
890 reliable, probative [,] and substantial evidence on the whole record; or  
891 (6) arbitrary or capricious or characterized by abuse of discretion or  
892 clearly unwarranted exercise of discretion. If the court finds such  
893 prejudice, [it] the court shall sustain the appeal and, if appropriate,  
894 may render a judgment under subsection (k) of this section or remand  
895 the case for further proceedings. For the purposes of this section, a  
896 remand is a final judgment.

897 (k) If a particular agency action is required by law, the court, on  
898 sustaining the appeal, may render a judgment that modifies the  
899 [agency] final decision, orders the particular agency action, or orders  
900 the agency to take such action as may be necessary to effect the  
901 particular action.

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

907 (m) In any case in which a person appealing claims that [he] such  
908 person cannot pay the costs of an appeal under this section, [he] such  
909 person shall, within the time permitted for filing the appeal, file with  
910 the clerk of the court to which the appeal is to be taken an application  
911 for waiver of payment of such fees, costs and necessary expenses,  
912 including the requirements of bond, if any. The application shall  
913 conform to the requirements prescribed by rule of the judges of the  
914 Superior Court. After such hearing as the court determines is  
915 necessary, the court shall render its judgment on the application,  
916 which judgment shall contain a statement of the facts the court has  
917 found, with its conclusions thereon. The filing of the application for the

918 waiver shall toll the time limits for the filing of an appeal until such  
919 time as a judgment on such application is rendered.

920 Sec. 25. Subsection (e) of section 1-82a of the general statutes is  
921 repealed and the following is substituted in lieu thereof (*Effective*  
922 *January 1, 2012*):

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

932 Sec. 26. Subsection (e) of section 1-93a of the general statutes is  
933 repealed and the following is substituted in lieu thereof (*Effective*  
934 *January 1, 2012*):

935 (e) The judge trial referee shall make public a finding of probable  
936 cause not later than five business days after any such finding. At such  
937 time, the entire record of the investigation shall become public, except  
938 that the Office of State Ethics may postpone examination or release of  
939 such public records for a period not to exceed fourteen days for the  
940 purpose of reaching a stipulation agreement pursuant to subsection  
941 [(c)] (d) of section 4-177, as amended by this act. Any stipulation  
942 agreement or settlement entered into for a violation of this part shall be  
943 approved by a majority of its members present and voting.

944 Sec. 27. Subsection (b) of section 4-61dd of the general statutes is  
945 repealed and the following is substituted in lieu thereof (*Effective*  
946 *January 1, 2012*):

947 (b) (1) No state officer or employee, as defined in section 4-141, no  
948 quasi-public agency officer or employee, no officer or employee of a

949 large state contractor and no appointing authority shall take or  
950 threaten to take any personnel action against any state or quasi-public  
951 agency employee or any employee of a large state contractor in  
952 retaliation for such employee's or contractor's disclosure of  
953 information to (A) an employee of the Auditors of Public Accounts or  
954 the Attorney General under the provisions of subsection (a) of this  
955 section; (B) an employee of the state agency or quasi-public agency  
956 where such state officer or employee is employed; (C) an employee of  
957 a state agency pursuant to a mandated reporter statute or pursuant to  
958 subsection (b) of section 17a-28; or (D) in the case of a large state  
959 contractor, an employee of the contracting state agency concerning  
960 information involving the large state contract.

961 (2) If a state or quasi-public agency employee or an employee of a  
962 large state contractor alleges that a personnel action has been  
963 threatened or taken in violation of subdivision (1) of this subsection,  
964 the employee may notify the Attorney General, who shall investigate  
965 pursuant to subsection (a) of this section.

966 (3) [(A)] Not later than thirty days after learning of the specific  
967 incident giving rise to a claim that a personnel action has been  
968 threatened or has occurred in violation of subdivision (1) of this  
969 subsection, a state or quasi-public agency employee, an employee of a  
970 large state contractor or the employee's attorney may file a complaint  
971 concerning such personnel action with the Chief [Human Rights  
972 Referee designated under section 46a-57] Administrative Law  
973 Adjudicator. The Chief [Human Rights Referee] Administrative Law  
974 Adjudicator shall assign the complaint to [a human rights referee  
975 appointed under section 46a-57] an administrative law adjudicator,  
976 who shall conduct a hearing and issue a decision concerning whether  
977 the officer or employee taking or threatening to take the personnel  
978 action violated any provision of this section. If the [human rights  
979 referee] administrative law adjudicator finds such a violation, the  
980 [referee] adjudicator may award the aggrieved employee reinstatement  
981 to the employee's former position, back pay and reestablishment of  
982 any employee benefits for which the employee would otherwise have

983 been eligible if such violation had not occurred, reasonable attorneys'  
984 fees, and any other damages. For the purposes of this subsection, such  
985 [human rights referee] administrative law adjudicator shall act as an  
986 independent hearing officer. The decision of [a human rights referee]  
987 an administrative law adjudicator under this subsection may be  
988 appealed by any person who was a party at such hearing, in  
989 accordance with the provisions of section 4-183, as amended by this  
990 act.

991 [(B) The Chief Human Rights Referee shall adopt regulations, in  
992 accordance with the provisions of chapter 54, establishing the  
993 procedure for filing complaints and noticing and conducting hearings  
994 under subparagraph (A) of this subdivision.]

995 (4) As an alternative to the provisions of subdivisions (2) and (3) of  
996 this subsection: (A) A state or quasi-public agency employee who  
997 alleges that a personnel action has been threatened or taken may file an  
998 appeal not later than thirty days after learning of the specific incident  
999 giving rise to such claim with the Employees' Review Board under  
1000 section 5-202, or, in the case of a state or quasi-public agency employee  
1001 covered by a collective bargaining contract, in accordance with the  
1002 procedure provided by such contract; or (B) an employee of a large  
1003 state contractor alleging that such action has been threatened or taken  
1004 may, after exhausting all available administrative remedies, bring a  
1005 civil action in accordance with the provisions of subsection (c) of  
1006 section 31-51m.

1007 (5) In any proceeding under subdivision (2), (3) or (4) of this  
1008 subsection concerning a personnel action taken or threatened against  
1009 any state or quasi-public agency employee or any employee of a large  
1010 state contractor, which personnel action occurs not later than one year  
1011 after the employee first transmits facts and information concerning a  
1012 matter under subsection (a) of this section to the Auditors of Public  
1013 Accounts or the Attorney General, there shall be a rebuttable  
1014 presumption that the personnel action is in retaliation for the action  
1015 taken by the employee under subsection (a) of this section.

1016 (6) If a state officer or employee, as defined in section 4-141, a quasi-  
 1017 public agency officer or employee, an officer or employee of a large  
 1018 state contractor or an appointing authority takes or threatens to take  
 1019 any action to impede, fail to renew or cancel a contract between a state  
 1020 agency and a large state contractor, or between a large state contractor  
 1021 and its subcontractor, in retaliation for the disclosure of information  
 1022 pursuant to subsection (a) of this section to any agency listed in  
 1023 subdivision (1) of this subsection, such affected agency, contractor or  
 1024 subcontractor may, not later than ninety days after learning of such  
 1025 action, threat or failure to renew, bring a civil action in the superior  
 1026 court for the judicial district of Hartford to recover damages, attorney's  
 1027 fees and costs.

1028 Sec. 28. (*Effective October 1, 2011*) Not later than January 1, 2013, the  
 1029 Chief Administrative Law Adjudicator shall submit a report in  
 1030 accordance with the provisions of section 11-4a of the general statutes  
 1031 to the joint standing committee of the General Assembly having  
 1032 cognizance of matters relating to government administration. Such  
 1033 report shall include a feasibility analysis and implementation plan for  
 1034 the transfer of contested cases conducted by the Department of Social  
 1035 Services to the Division of Administrative Hearings.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2011</i>	New section
Sec. 2	<i>October 1, 2011</i>	New section
Sec. 3	<i>October 1, 2011</i>	New section
Sec. 4	<i>October 1, 2011</i>	New section
Sec. 5	<i>January 1, 2012</i>	New section
Sec. 6	<i>January 1, 2012</i>	New section
Sec. 7	<i>January 1, 2012</i>	New section
Sec. 8	<i>January 1, 2012</i>	New section
Sec. 9	<i>January 1, 2012</i>	New section
Sec. 10	<i>January 1, 2012</i>	4-166
Sec. 11	<i>January 1, 2012</i>	4-176(g)
Sec. 12	<i>January 1, 2012</i>	4-176e
Sec. 13	<i>January 1, 2012</i>	4-177

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Sec. 14	<i>January 1, 2012</i>	4-177a
Sec. 15	<i>January 1, 2012</i>	4-177b
Sec. 16	<i>January 1, 2012</i>	4-177c
Sec. 17	<i>January 1, 2012</i>	4-178
Sec. 18	<i>January 1, 2012</i>	4-178a
Sec. 19	<i>January 1, 2012</i>	4-179
Sec. 20	<i>January 1, 2012</i>	New section
Sec. 21	<i>January 1, 2012</i>	4-180
Sec. 22	<i>January 1, 2012</i>	4-181(a)
Sec. 23	<i>January 1, 2012</i>	4-181a
Sec. 24	<i>January 1, 2012</i>	4-183
Sec. 25	<i>January 1, 2012</i>	1-82a(e)
Sec. 26	<i>January 1, 2012</i>	1-93a(e)
Sec. 27	<i>January 1, 2012</i>	4-61dd(b)
Sec. 28	<i>October 1, 2011</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:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 12 \$</b>	<b>FY 13 \$</b>
Various State Agencies	GF/TF - Transfer from	(2 million)	(2.7 million)
Dept. of Administrative Services - Division of Administrative Hearings	GF/TF - Transfer to	2 million	2.7 million
<b>Net Impact</b>	<b>GF/TF</b>	<b>0</b>	<b>0</b>
Dept. of Administrative Services - Division of Administrative Hearings	GF/TF - Potential Cost	At least 102,000 to 116,000	At least 136,000 to 155,000

Note: GF=General Fund; TF=Transportation Fund

**Municipal Impact:** None

### **Explanation**

The bill creates a Division of Administrative Hearings (DAH) within the Department of Administrative Services (DAS). The bill transfers the responsibilities and personnel for hearing administrative cases from the departments of Children and Families (DCF), Consumer Protection (DCP), Motor Vehicles (DMV) and Transportation (DOT) and the Commission on Human Rights and Opportunities (CHRO) to DAH. The movement of these 33 full-time equivalent (FTE) positions, effective October 1, 2011, results in a transfer from these agencies of \$2 million in FY 12 and \$2.7 million annualized in FY 13.

The bill requires the Governor to appoint a chief administrative law adjudicator (ALA). To the extent that this individual is a new hire as opposed to being promoted from within DAH, this would result in an annual salary and fringe benefit cost ranging from approximately \$136,000 to \$155,000. In addition, it is anticipated that a potential state cost may be incurred to raise the salaries of certain hearing officers

(such as per diems) if they are designated as administrative law adjudicators under the bill and subject to the bill's stricter credentials.

One of the positions to be transferred is currently financed through a federal grant for an on-going DVM - Federal pilot program. The pilot program corroborates police records used in the Department's administrative per se hearings. It is unclear whether the transfer of this position would result in the loss of this federal funding.

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 1188*****AN ACT ESTABLISHING THE DIVISION OF ADMINISTRATIVE HEARINGS.*****SUMMARY:**

This bill establishes a Division of Administrative Hearings (DAH) within the Department of Administrative Services (DAS) for administrative purposes only. The bill requires DAH to impartially hear contested cases for the departments of Children and Families, Consumer Protection, Motor Vehicles, and Transportation and the Commission on Human Rights and Opportunities (CHRO), including allegations by whistleblowers of retaliation. 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 UAPA's time limits, unless otherwise provided by law (§ 6). For the Department of Children and Families (DCF) and whistleblower allegations of retaliation, the bill requires DAH to issue a final decision. For the other agencies, 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 and made necessary by the new division's role in contested cases.

Lastly, the bill makes other technical and conforming changes.

EFFECTIVE DATE: January 1, 2012, except the provisions (1)

establishing DAH and its staff and (2) establishing a reporting requirement, including a feasibility analysis, which are effective October 1, 2011.

## **DIVISION OF ADMINISTRATIVE HEARINGS**

### ***Staff (§§ 2-5 & 8)***

***Chief Administrative Law Adjudicator.*** The bill requires the governor to appoint a chief administrative law adjudicator (ALA) to serve as the division's initial chief executive officer for a term ending March 1, 2012. Thereafter, the bill requires the governor to nominate the chief ALA for a term of six years or until a successor is qualified. The governor may remove the chief ALA for good cause.

The chief ALA is a fulltime, nonclassified position. The chief ALA may not engage in private practice and must (1) have been admitted to the Connecticut Bar for at least 10 years, (2) be knowledgeable about administrative law, and (3) be a state resident.

The bill subjects the appointee to the existing nomination process for certain judicial nominees. Under this process, the governor sends the nomination to the General Assembly, which immediately refers it to the Judiciary Committee. The committee must report its recommendations to the General Assembly within 30 legislative days but no later than seven legislative days before adjournment. Both chambers must approve the nomination.

The governor may not fill a vacancy when the General Assembly is not in session unless he first submits the proposed appointee's name to the Judiciary Committee. Within 45 days of this submission, the committee may hold a special meeting to approve or disapprove the proposed appointee by majority vote. The governor may not administer the oath of office to the appointee until the committee approves the appointment. If the committee cannot complete its investigation and act on it within the 45-day period, it may extend the period by 15 days, but it must notify the governor in writing of the extension. The committee is deemed to have approved the

appointment if it fails to act within the 45-day or 15-day extension period.

The chief ALA has all the powers specifically granted by law, including those of a department head, 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 bill requires the chief ALA to adopt regulations to carry out its provisions concerning DAH's establishment. These regulations supersede any inconsistent agency regulations, policies, or procedures, including those covering contested cases, except regulations mandated by state or federal law.

In addition, 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.

By January 1 annually, the chief ALA must collect, compile, and prepare statistics and other data on DAH's operations and report to the governor and the legislature on these operations, including the number of (1) hearings initiated; (2) proposed final decisions rendered; (3) partial or total reversals of such decisions by the agencies; (4) final decisions rendered; and (5) proceedings pending.

**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 and (2) providing administrative services related to conducting the hearings and issuing the decisions.

The bill specifically requires the chief ALA to fill any hearing officer vacancy within the Department of Motor Vehicles (DMV). Anyone the chief ALA appoints to this position must be (1) in classified service, (2) a member of an employee organization, and (3) subject to collective bargaining.

Each ALA, other than those transferred from other agencies, must be admitted to the practice of law in Connecticut for at least two years. They must be knowledgeable on administrative law, competent, impartial, objective, and free from inappropriate influence. ALAs have the powers granted to hearing officers and presiding officers by law and the bill.

Unlike the chief ALA, the bill permits an appointed ALA to engage in private practice if (1) he or she discloses to the chief ALA the nature and scope of his or her law practice and (2) the chief ALA determines

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that no actual or perceived conflict of interest or bias exists.

**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 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 State Board 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 State Board 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 State Board 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. In addition, the bill requires the State Board of Labor Relations to determine the appropriate collective bargaining unit for these individuals and assign them accordingly.

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 & 27-28)***

Beginning January 1, 2012, 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 Transportation;
2. DMV;
3. Department of Consumer Protection; and
4. CHRO.

On the same date, the bill requires DAH to begin conducting hearings and render final decisions in (1) contested cases brought by or before DCF and (2) allegations by whistleblowers of retaliation, which CHRO hears under current law.

On this date, the powers, functions, and duties of the referring agencies with respect to their contested cases transfer to DAH. These agencies must execute any requisite contract with DAH necessary to maintain and secure any federal or state funding or reimbursement. With one exception, 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. But a hearing

officer under contract with DMV must serve under contract with DAH to conduct hearings and issue decisions in DMV's contested cases.

Any other agency can, with the chief ALA's consent, refer contested cases to DAH for settlement or a full adjudication. The powers, functions, and duties of these agencies to conduct hearings transfer on the dates of the referrals. Any 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 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 or proposed final decision, the chief ALA must forward the record to the referring agency.

By January 1, 2013, the bill requires the chief ALA to submit to the Government Administration and Elections 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 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. (If the contested case originates in DAH, it must give parties notice 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 terminating the proceeding. However, the ALA may assess appropriate costs and sanctions against a party who is shown to have willfully misfiled the documents. 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 a specific agency or other hearing authority to conduct; (2) any matter presided over by an agency head or at least one member of a multimember agency; or (3) any matter involving issues, claims, or a subject associated, related, or connected with the ALA's private law practice if the assignment would create an actual or perceived conflict of interest, perception of bias, or lack of impartiality.

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 (§§ 8, 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, 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 bill requires the agency to identify and explain the modifications. The agency head may, before this period expires and for good cause, extend the 21-day deadline for up to 21 additional days. If the agency does not act, 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 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.

**Definitions (§ 10)**

The bill amends the definition of terms defined under the UAPA to conform to the bill, extends these 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 state statute or regulation requires an agency to determine the legal rights, duties, or privileges of a party. Under the bill 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 by the 90<sup>th</sup> day 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 (§§ 8 & 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 authority that issued the final decision is the authority with which the petition was filed and where all administrative processes were exhausted. In the case of proposed final decisions that DAH issues, this means the agency for which DAH issues 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 no later than the applicable 45-day period, regardless of a final decision's effective date.

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.

Under current law, the court must conduct all appeals without a jury and 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.

Lastly, the bill specifies that if an ALA issues a proposed final decision and the agency modifies a finding of fact, the court must review the record on appeal. If the court finds that the record supports the ALA's finding of fact, it must remand the matter to the agency, which must enter an order consistent with the court's judgment.

**BACKGROUND**

***Related Bill***

sSB 1192, which the Judiciary Committee reported favorably, reduces the time period during which parties to a complaint before CHRO may request a release to bring an action in Superior Court and adds failure to attend a fact finding conference to the reasons a respondent may be subject to a default order.

**COMMITTEE ACTION**

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 13 Nay 1 (03/30/2011)