
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 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 90th 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)