



Senate

General Assembly

File No. 388

February Session, 2014

Substitute Senate Bill No. 410

Senate, April 7, 2014

The Committee on Human Services 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 CONCERNING ADMINISTRATIVE HEARINGS CONDUCTED
BY THE DEPARTMENT OF SOCIAL SERVICES.***

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

1 Section 1. Section 17b-60 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2014*):

3 (a) An aggrieved person or any other person authorized by law to
4 request [a fair hearing on] an administrative hearing concerning a
5 decision of the [Commissioner] Department of Social Services [or the
6 conservator of any such person on his behalf may make application
7 for] may request such hearing [in writing over his signature to the
8 commissioner and shall state in such application in simple language
9 the reasons why he claims to be aggrieved. Such application shall be
10 mailed to the commissioner within sixty days after the rendition of
11 such decision. The commissioner shall thereupon hold a fair hearing
12 within thirty days from receipt thereof and shall, at least ten days prior
13 to the date of such hearing, mail a notice, giving the time and place
14 thereof, to such aggrieved person, or if the application concerns a

15 denial of or failure to provide emergency housing, the commissioner
16 shall hold a fair hearing within four business days from receipt thereof,
17 and shall make all reasonable efforts to provide notice of the time and
18 place of the fair hearing to such aggrieved person at least one business
19 day prior to said hearing. A reasonable period of continuance may be
20 granted for good cause. The aggrieved person shall appear personally
21 at the hearing, unless his physical or mental condition precludes
22 appearing in person, and may be represented by an attorney or other
23 authorized representative. A stenographic or mechanical record shall
24 be made of each hearing, but need not be transcribed except (1) in the
25 event of an appeal from the decision of the hearing officer or (2) if a
26 copy is requested by the aggrieved person, in either of which cases it
27 shall be furnished by the Commissioner of Social Services without
28 charge. The Commissioner of Social Services and any person
29 authorized by him to conduct any hearing under the provisions of this
30 section shall have power to administer oaths and take testimony under
31 oath relative to the matter of the hearing and may subpoena witnesses
32 and require the production of records, papers and documents
33 pertinent to such hearing. No witness under subpoena authorized to
34 be issued by the provisions of this section shall be excused from
35 testifying or from producing records, papers or documents on the
36 ground that such testimony or the production of such records or other
37 documentary evidence would tend to incriminate him, but such
38 evidence or the records or papers so produced shall not be used in any
39 criminal proceeding against him. If any person disobeys such process
40 or, having appeared in obedience thereto, refuses to answer any
41 pertinent question put to him by the commissioner or his authorized
42 agent or to produce any records and papers pursuant thereto, the
43 commissioner or his agent may apply to the superior court for the
44 judicial district of Hartford or for the judicial district wherein the
45 person resides, or to any judge of said court if the same is not in
46 session, setting forth such disobedience to process or refusal to answer,
47 and said court or such judge shall cite such person to appear before
48 said court or such judge to answer such question or to produce such
49 records and papers and, upon his refusal to do so, shall commit such

50 person to a community correctional center until he testifies, but not for
51 a longer period than sixty days. Notwithstanding the serving of the
52 term of such commitment by any person, the commissioner or his
53 agent may proceed with such inquiry and examination as if the
54 witness had not previously been called upon to testify. Officers who
55 serve subpoenas issued by the commissioner or under his authority
56 and witnesses attending hearings conducted by him hereunder shall
57 receive like fees and compensation as officers and witnesses in the
58 courts of this state to be paid on vouchers of the commissioner on
59 order of the Comptroller.] by mail, telephone or electronic means
60 determined acceptable to the department. For purposes of this section,
61 "person authorized by law to request an administrative hearing"
62 includes (1) any person with legal authority to act on behalf of the
63 aggrieved person, including a conservator of estate, a legal guardian, a
64 person with power of attorney, if permitted under the terms of the
65 designation of power of attorney, or, for a deceased person, an
66 executor or administrator of estate; and (2) an authorized
67 representative who meets the requirements set forth in state and
68 federal law.

69 (b) There shall be established, within the Department of Social
70 Services, an Office of Administrative Appeals, independent from legal
71 counsel for the Department of Social Services and any other division of
72 the department, which shall conduct all administrative appeals from
73 decisions made by the Commissioner of Social Services or such
74 commissioner's designee in accordance with chapter 54. The
75 administrator of this office shall report directly to the Commissioner of
76 Social Services and shall only be removed from office by the
77 commissioner for cause.

78 (c) The request for an administrative hearing shall include the
79 reasons why the person claims to be aggrieved and shall be made to
80 the Department of Social Services. No hearing shall be held by the
81 department unless the department receives the request not later than
82 sixty-five days after the date of a decision issued by the department,
83 unless otherwise prescribed by federal law. The department shall hold

84 an administrative hearing not later than forty-five days after the date
85 of receipt of the request for a hearing and shall, at least ten days prior
86 to the date of such hearing, provide notice, giving the time and place
87 thereof, to the aggrieved person and, if applicable, the person who
88 requested the hearing on such person's behalf, or, if the request
89 concerns a denial of or failure to provide a special need benefit for
90 emergency housing pursuant to section 17b-808, the department shall
91 hold a hearing not later than four business days from the date of
92 receipt of the request for a hearing, and shall make all reasonable
93 efforts to provide notice of the time and place of the hearing to the
94 aggrieved person and, if applicable, the person who requested the
95 hearing on such person's behalf, at least one business day prior to such
96 hearing. A reasonable period of continuance of a hearing scheduled
97 pursuant to this section may be granted for good cause, provided not
98 more than three continuances shall be granted.

99 (d) The aggrieved person, the person's legal representative or
100 authorized representative shall appear at the administrative hearing,
101 except that, if the aggrieved person is represented by legal counsel
102 who is present at the hearing, and the hearing officer determines that
103 testimony of the aggrieved person or the legal representative or
104 authorized representative is not required in order to properly
105 adjudicate the hearing, no such appearance shall be required. At the
106 hearing officer's discretion, testimony by the aggrieved person, such
107 person's legal representative or authorized representative or by other
108 witness by telephone may be accepted in lieu of personal appearance.

109 (e) Notwithstanding the provisions of section 4-181, if the
110 Department of Social Services is conducting a hearing in a contested
111 case and it also has an interest adverse to any party in the proceeding,
112 the hearing officer may not communicate with any other employee of
113 the agency, including its counsel, directly or indirectly, in connection
114 with any issue of fact or law involved in that hearing, without advance
115 notice and opportunity for all parties to participate on the record.

116 (f) A stenographic or mechanical recording shall be made of each

117 administrative hearing, but need not be transcribed, except (1) in the
118 event of an appeal from the decision of the hearing officer, or (2) if a
119 copy is requested by the aggrieved person, in which case it shall be
120 furnished by the Department of Social Services without charge.

121 (g) The Commissioner of Social Services and any person authorized
122 by the commissioner to conduct any administrative hearing under the
123 provisions of this section shall have the power to administer oaths and
124 take testimony under oath relative to the matter of the hearing and
125 may subpoena witnesses and require the production of records, papers
126 and documents pertinent to such hearing. No witness under subpoena
127 authorized to be issued by the provisions of this section shall be
128 excused from testifying or from producing records, papers or
129 documents on the ground that such testimony or the production of
130 such records or other documentary evidence would tend to
131 incriminate such person, but such evidence or the records or papers so
132 produced shall not be used in any criminal proceeding against such
133 person. If any person disobeys such process or, having appeared in
134 obedience thereto, refuses to answer any pertinent question put to
135 such person by the commissioner or the commissioner's authorized
136 agent or to produce any records and papers pursuant thereto, the
137 commissioner or the commissioner's agent may apply to the superior
138 court for the judicial district of Hartford or for the judicial district
139 wherein the person resides, or to any judge of said court if the same is
140 not in session, setting forth such disobedience to process or refusal to
141 answer, and said court or such judge shall cite such person to appear
142 before said court or such judge to answer such question or to produce
143 such records and papers and, upon his or her refusal to do so, shall
144 commit such person to a community correctional center until such
145 person testifies, but not for a longer period than sixty days.
146 Notwithstanding the serving of the term of such commitment by any
147 person, the commissioner or the commissioner's agent may proceed
148 with such inquiry and examination as if the witness had not previously
149 been called upon to testify. Officers who serve subpoenas issued by the
150 commissioner or under the commissioner's authority and witnesses
151 attending hearings conducted by the commissioner or the

152 commissioner's agent shall receive like fees and compensation as
153 officers and witnesses in the courts of this state to be paid on vouchers
154 of the commissioner on order of the Comptroller.

155 Sec. 2. Section 17b-61 of the general statutes is repealed and the
156 following is substituted in lieu thereof (*Effective October 1, 2014*):

157 (a) Not later than sixty days after [such] the date on which the
158 record closes in an administrative hearing, or three business days after
159 the date on which the record closes if the hearing concerns a denial of
160 or failure to provide a special need benefit for emergency housing [,
161 the commissioner or his] pursuant to section 17b-808, the
162 Commissioner of Social Services or the commissioner's designated
163 hearing officer shall [render] issue a final decision based upon all the
164 evidence introduced before him or her and [applying] all pertinent
165 provisions of law, regulations and departmental policy. [, and such]
166 The final decision shall be issued not later than ninety days after the
167 date on which the hearing request was made, pursuant to section 17b-
168 60, as amended by this act, and shall supersede the decision made
169 without a hearing. [, provided final definitive administrative action
170 shall be taken by the commissioner or his designee within ninety days
171 after the request of such hearing pursuant to section 17b-60. Notice]
172 The commissioner or the commissioner's designee shall mail a copy of
173 such final decision [shall be given] to the aggrieved person [by mailing
174 him a copy thereof within] and, if applicable, the person who
175 requested the hearing on such person's behalf not later than one
176 business day [of its rendition] after the date it is issued. Such decision
177 [after hearing] shall be final except as provided in subsections (b) and
178 (c) of this section.

179 (b) The [applicant for such hearing, if] aggrieved [,] person may
180 appeal therefrom in accordance with section 4-183. Appeals from
181 decisions of [said commissioner] the Department of Social Services
182 shall be privileged cases to be heard by the court as soon after the
183 return day as shall be practicable.

184 (c) The commissioner may, for good cause shown by an aggrieved

185 person, extend the time for filing an appeal to Superior Court beyond
186 the time limitations of section 4-183, as set forth below:

187 (1) Any aggrieved person who is authorized to appeal a decision of
188 the [commissioner] department, pursuant to subsection (b) of this
189 section, but who fails to serve or file a timely appeal to the Superior
190 Court pursuant to section 4-183, may, as provided in this subsection,
191 petition that the commissioner, for good cause shown, extend the time
192 for filing any such appeal. Such a petition [must] shall be filed with the
193 commissioner in writing and contain a complete and detailed
194 explanation of the reasons that precluded the petitioner from serving
195 or filing an appeal within the statutory time period. Such petition
196 [must] shall also be accompanied by all available documentary
197 evidence that supports or corroborates the reasons advanced for the
198 extension request. In no event shall a petition for extension be
199 considered or approved if filed later than ninety days after the date of
200 rendition of the final decision. The decision as to whether to grant an
201 extension shall be made consistent with the provisions of subdivision
202 (2) of this subsection and shall be final and not subject to judicial
203 review.

204 (2) In determining whether to grant a good cause extension, as
205 provided for in this subsection, the commissioner, or [his] the
206 commissioner's authorized designee, shall, without the necessity of
207 further hearing, review and, as necessary, verify the reasons advanced
208 by the petition in justification of the extension request. A
209 determination that good cause prevented the filing of a timely appeal
210 shall be issued in writing and shall enable the petitioner to serve and
211 file an appeal within the time provisions of section 4-183, from the date
212 of the decision granting an extension. The circumstances that
213 precluded the petitioner from filing a timely appeal, and which may be
214 deemed good cause for purposes of granting an extension petition,
215 include, but are not limited to: (A) Serious illness or incapacity of the
216 petitioner which has been documented as materially affecting the
217 conduct of personal affairs; (B) a death or serious illness in the
218 petitioner's immediate family that has been documented as precluding

219 the petitioner from perfecting a timely appeal; (C) incorrect or
220 misleading information given to the petitioner by the agency, relating
221 to the appeal time period, and shown to have been materially relied on
222 by the petitioner as the basis for failure to file a timely appeal; (D)
223 evidence that the petitioner did not receive notice of the agency
224 decision; and (E) other unforeseen and unavoidable circumstances of
225 an exceptional nature which prevented the filing of a timely appeal.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2014</i>	17b-60
Sec. 2	<i>October 1, 2014</i>	17b-61

HS *Joint Favorable Subst.*

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

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 15 \$	FY 16 \$
Social Services, Dept.	GF - Cost	134,443	140,553
State Comptroller - Fringe Benefits ¹	GF - Cost	49,287	51,527

Municipal Impact: None

Explanation

The bill will result in a cost of \$183,730 (\$134,443 in salary and \$49,287 in fringe benefits) in FY 15 and \$192,080 (\$140,553 in salary and \$51,527 in fringe benefits) to the Department of Social Services (DSS) and the State Comptroller's-Fringe Benefits to hire an administrator for the Office of Administrative Appeals (OAA) established by the bill.² It is anticipated current DSS administrative hearings officers will be consolidated into the OAA under the new director; no additional staff or resources are anticipated for the consolidation.

The bill makes other technical and administrative changes which are not anticipated to result in a fiscal impact.

The Out Years

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

¹The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 36.66% of payroll in FY 15 and FY 16.

² Salary is based on salary grade MP-70 as reported for the job classification of Legal Director. (Source: *Department of Administrative Services*). FY 16 assumes a 3% general wage increase (GWI) and a 3% annual increment (AI); AI effective date of January 1st.

OLR Bill Analysis**sSB 410*****AN ACT CONCERNING ADMINISTRATIVE HEARINGS
CONDUCTED BY THE DEPARTMENT OF SOCIAL SERVICES.*****SUMMARY:**

This bill establishes an Office of Administrative Appeals (OAA) within the Department of Social Services (DSS), independent of DSS' legal counsel and any other department division, to conduct all administrative appeals from DSS decisions. The OAA administrator must report directly to the DSS commissioner, who may remove the administrator from office only for cause. (Presumably, the DSS commissioner appoints the administrator.) Current law requires the DSS commissioner or anyone he authorizes to hold fair hearings for all such appeals.

Under the bill, if OAA is hearing a contested case and DSS has an adverse interest to any party in the proceeding, the hearing officer cannot communicate directly or indirectly with any other DSS employee, including counsel, about any issue of fact or law in the hearing without advance notice and opportunity for all parties to participate on the record.

The bill also makes a number of changes in the hearing process. Specifically, it:

1. allows more people to request a hearing;
2. makes it easier to request a hearing by allowing such requests to be made by mail, telephone, or any electronic means DSS determines acceptable, rather than just in writing;
3. lengthens, from 30 to 45, the number of days within which DSS must hold a hearing after receiving a request;

4. caps at three the number of allowable continuances; and
5. broadens the circumstances in which the aggrieved person may be excused from appearing personally at the hearing.

The bill also makes several minor, technical, and conforming changes.

EFFECTIVE DATE: October 1, 2014

HEARING REQUESTS AND NOTICE

The law allows an aggrieved person or his or her conservator to request an administrative hearing on a DSS decision. The bill broadens the list of those who may request such a hearing to include (1) an authorized representative who meets state and federal legal requirements and (2) anyone with legal authority to act on the aggrieved person's behalf. This includes, in addition to a conservator, a legal guardian; a person with power of attorney if permitted under the terms of the designation; or, for a deceased person, an estate executor or administrator. The bill allows hearing requests to be filed by mail, telephone, or any electronic means that DSS determines acceptable. Currently, such requests may only be made in writing. The request must be made to DSS and include the reasons why the person claims to be aggrieved.

Current law requires an aggrieved person or his or her conservator to mail a hearing request to the commissioner within 60 days after the department rendered its decision. The bill instead prohibits DSS from holding a hearing unless it receives the request within 65 days of the department's decision. The bill also lengthens, from 30 to 45, the number of days within which DSS must hold a hearing after receiving a request. It requires DSS to notify the aggrieved person and, if applicable, the person who requested the hearing on his or her behalf of the hearing time and place. Currently, DSS must provide the notice only to the aggrieved person.

APPEARANCE AT HEARING

Currently, the aggrieved person must appear personally at the hearing unless his or her physical or mental condition precludes him or her from doing so. The bill instead excuses the aggrieved person from appearing personally at the hearing if (1) he or she is represented by legal counsel who appears at the hearing and (2) the hearing officer determines that the person's or his or her representative's testimony is not required. Under the bill, the aggrieved person's or his or her representative's testimony may be accepted by phone in lieu of personal appearance at the hearing officer's discretion.

HEARING DECISION

Current law requires the commissioner or hearing officer to render a final decision within 60 days of a hearing, based on the evidence introduced before him and applying all pertinent provisions of the law, regulations, and department policy, and that the final decision supersedes the decision made without a hearing. It also requires the commissioner or his designee to take final definitive administrative action within 90 days after the hearing is requested. The bill requires the department to issue the final decision within 60 days after the hearing's record closes and within 90 days after the hearing request. (Although it appears that DSS may exceed 90 days and still stay within the bill's time limits for holding a hearing after receiving a request and issuing a final decision after the record closes.)

The bill does not change the process for appealing such decisions.

COMMITTEE ACTION

Human Services Committee

Joint Favorable Substitute
Yea 17 Nay 0 (03/20/2014)