



# House of Representatives

General Assembly

**File No. 207**

January Session, 2015

Substitute House Bill No. 6908

*House of Representatives, March 25, 2015*

The Committee on Human Services reported through REP. ABERCROMBIE of the 83rd Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## ***AN ACT CONCERNING FAIR HEARINGS.***

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 Section 17b-60 of the general statutes is repealed and the  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 July 1, 2015*):

3 (a) There is established, within the Department of Social Services, an  
4 Office of Administrative Appeals, independent from legal counsel for  
5 the Department of Social Services and any other division of the  
6 department. The Office of Administrative Appeals shall conduct all  
7 administrative appeals from decisions made by the Commissioner of  
8 Social Services, or the commissioner's designee, in accordance with  
9 chapter 54. The commissioner shall appoint an administrator of the  
10 Office of Administrative Appeals and such administrator shall report  
11 directly to the commissioner. The commissioner may only remove the  
12 administrator for cause.

13 (b) An aggrieved person authorized by law to request a fair hearing

14 on a decision of the Commissioner of Social Services or the conservator  
15 of any such person on [his] such person's behalf may make application  
16 for such hearing in writing over [his] such person's signature to the  
17 [commissioner] Office of Administrative Appeals and shall state in  
18 such application in simple language the reasons [why he claims to be  
19 aggrieved] for aggrievement. Such application shall be mailed to the  
20 [commissioner within] Office of Administrative Appeals not later than  
21 sixty days after the [rendition] date of such decision. The  
22 [commissioner] Office of Administrative Appeals shall thereupon hold  
23 a fair hearing [within] not later than thirty days from the date of  
24 receipt thereof and shall, at least ten days prior to the date of such  
25 hearing, mail a notice, giving the time and place thereof, to such  
26 aggrieved person, or if the application concerns a denial of or failure to  
27 provide emergency housing, the [commissioner] office shall hold a fair  
28 hearing [within] not later than four business days from the date of  
29 receipt thereof, and shall make all reasonable efforts to provide notice  
30 of the time and place of the fair hearing to such aggrieved person at  
31 least one business day prior to said hearing. A reasonable period of  
32 continuance may be granted for good cause. The aggrieved person  
33 shall appear personally at the hearing, unless [his] such person's  
34 physical or mental condition precludes appearing in person, and may  
35 be represented by an attorney or other authorized representative. [A  
36 stenographic or mechanical record shall be made of each hearing, but  
37 need not be transcribed except (1) in the event of an appeal from the  
38 decision of the hearing officer or (2) if a copy is requested by the  
39 aggrieved person, in either of which cases it shall be furnished by the  
40 Commissioner of Social Services without charge. The Commissioner of  
41 Social Services and any person authorized by him to conduct any  
42 hearing under the provisions of this section shall have power to  
43 administer oaths and take testimony under oath relative to the matter  
44 of the hearing and may subpoena witnesses and require the  
45 production of records, papers and documents pertinent to such  
46 hearing. No witness under subpoena authorized to be issued by the  
47 provisions of this section shall be excused from testifying or from  
48 producing records, papers or documents on the ground that such

49 testimony or the production of such records or other documentary  
50 evidence would tend to incriminate him, but such evidence or the  
51 records or papers so produced shall not be used in any criminal  
52 proceeding against him. If any person disobeys such process or,  
53 having appeared in obedience thereto, refuses to answer any pertinent  
54 question put to him by the commissioner or his authorized agent or to  
55 produce any records and papers pursuant thereto, the commissioner or  
56 his agent may apply to the superior court for the judicial district of  
57 Hartford or for the judicial district wherein the person resides, or to  
58 any judge of said court if the same is not in session, setting forth such  
59 disobedience to process or refusal to answer, and said court or such  
60 judge shall cite such person to appear before said court or such judge  
61 to answer such question or to produce such records and papers and,  
62 upon his refusal to do so, shall commit such person to a community  
63 correctional center until he testifies, but not for a longer period than  
64 sixty days. Notwithstanding the serving of the term of such  
65 commitment by any person, the commissioner or his agent may  
66 proceed with such inquiry and examination as if the witness had not  
67 previously been called upon to testify. Officers who serve subpoenas  
68 issued by the commissioner or under his authority and witnesses  
69 attending hearings conducted by him hereunder shall receive like fees  
70 and compensation as officers and witnesses in the courts of this state to  
71 be paid on vouchers of the commissioner on order of the Comptroller.]

72 (c) If the Office of Administrative Appeals plans to conduct a  
73 hearing via remote computer access, the office shall provide written  
74 notification to any person requesting such hearing of (1) the right to  
75 have an in-person hearing if there is a specific need for such hearing,  
76 and (2) the need to request such in-person hearing.

77 (d) The hearing officers and the administrator of the Office of  
78 Administrative Appeals shall have power to administer oaths and take  
79 testimony under oath relative to the matter of the hearing and may  
80 subpoena witnesses and require the production of records, papers and  
81 documents pertinent to such hearing. No witness under subpoena  
82 authorized to be issued by the provisions of this section shall be

83 excused from testifying or from producing records, papers or  
84 documents on the ground that such testimony or the production of  
85 such records or other documentary evidence would tend to  
86 incriminate such witness, but such evidence or the records or papers so  
87 produced shall not be used in any criminal proceeding against such  
88 witness.

89 (e) If any person refuses to comply with the provisions of subsection  
90 (d) of this section or, having appeared in obedience thereto, refuses to  
91 answer any pertinent question put to such person by the Office of  
92 Administrative Appeals or produce any records or papers pursuant  
93 thereto, the Office of Administrative Appeals may apply to the  
94 superior court for the judicial district of Hartford or for the judicial  
95 district wherein the person resides, or to any judge of such court if the  
96 court is not in session, setting forth such disobedience to process or  
97 refusal to answer. Such court or judge shall order such person to  
98 appear to answer such question or to produce such records and  
99 papers. If such person refuses the order, such court or judge shall  
100 commit such person to a community correctional center until such  
101 person testifies, but not for more than sixty days.

102 (f) Notwithstanding any term of commitment served pursuant to  
103 subsection (e) of this section, the Office of Administrative Appeals may  
104 proceed with the inquiry and examination as if the witness had not  
105 previously been called upon to testify. Officers who serve subpoenas  
106 issued by the Office of Administrative Appeals and witnesses  
107 attending hearings conducted by said office shall receive like fees and  
108 compensation as officers and witnesses in the courts of this state to be  
109 paid on vouchers of said office on order of the Comptroller.

110 (g) A stenographic or mechanical record shall be made of each  
111 hearing, but need not be transcribed except (1) in the event of an  
112 appeal from the decision of the hearing officer, or (2) if a copy of the  
113 transcript is requested by the aggrieved person, in either of which  
114 cases the transcript shall be furnished by the Office of Administrative  
115 Appeals without charge.

116 Sec. 2. Section 17b-61 of the general statutes is repealed and the  
117 following is substituted in lieu thereof (*Effective July 1, 2015*):

118 (a) Not later than sixty days after such hearing, or three business  
119 days if the hearing concerns a denial of or failure to provide  
120 emergency housing, the [commissioner or his designated hearing  
121 officer] Office of Administrative Appeals shall render a final decision  
122 based upon all the evidence introduced before [him] the office and  
123 applying all pertinent provisions of law, regulations and departmental  
124 policy, and such final decision shall supersede the decision made  
125 without a hearing, provided final definitive administrative action shall  
126 be taken by the [commissioner or his designee] office within ninety  
127 days after the request of such hearing pursuant to section 17b-60, as  
128 amended by this act. Notice of such final decision shall be given to the  
129 aggrieved person by mailing [him] such person a copy thereof within  
130 one business day of [its rendition] the date of decision. Such decision  
131 after hearing shall be final except as provided in subsections (b) and (c)  
132 of this section.

133 (b) The applicant for such hearing, if aggrieved, may appeal  
134 therefrom in accordance with section 4-183. Appeals from decisions of  
135 [said commissioner] the Office of Administrative Appeals shall be  
136 privileged cases to be heard by the court as soon after the return day as  
137 shall be practicable.

138 (c) The [commissioner] Office of Administrative Appeals may, for  
139 good cause shown by an aggrieved person, extend the time for filing  
140 an appeal to Superior Court beyond the time limitations of section 4-  
141 183, as set forth below:

142 (1) Any aggrieved person who is authorized to appeal a decision of  
143 the [commissioner] Office of Administrative Appeals, pursuant to  
144 subsection (b) of this section, but who fails to serve or file a timely  
145 appeal to the Superior Court pursuant to section 4-183, may, as  
146 provided in this subsection, petition that the [commissioner] office, for  
147 good cause shown, extend the time for filing any such appeal. Such a  
148 petition must be filed with the [commissioner] office in writing and

149 contain a complete and detailed explanation of the reasons that  
150 precluded the petitioner from serving or filing an appeal within the  
151 statutory time period. Such petition must also be accompanied by all  
152 available documentary evidence that supports or corroborates the  
153 reasons advanced for the extension request. In no event shall a petition  
154 for extension be considered or approved if filed later than ninety days  
155 after the [rendition] date of the final decision. The decision as to  
156 whether to grant an extension shall be made consistent with the  
157 provisions of subdivision (2) of this subsection and shall be final and  
158 not subject to judicial review.

159 (2) In determining whether to grant a good cause extension, as  
160 provided for in this subsection, the [commissioner, or his authorized  
161 designee,] Office of Administrative Appeals shall, without the  
162 necessity of further hearing, review and, as necessary, verify the  
163 reasons advanced by the petition in justification of the extension  
164 request. A determination that good cause prevented the filing of a  
165 timely appeal shall be issued in writing and shall enable the petitioner  
166 to serve and file an appeal within the time provisions of section 4-183,  
167 from the date of the decision granting an extension. The circumstances  
168 that precluded the petitioner from filing a timely appeal, and which  
169 may be deemed good cause for purposes of granting an extension  
170 petition, include, but are not limited to: (A) Serious illness or  
171 incapacity of the petitioner which has been documented as materially  
172 affecting the conduct of personal affairs; (B) a death or serious illness  
173 in the petitioner's immediate family that has been documented as  
174 precluding the petitioner from perfecting a timely appeal; (C) incorrect  
175 or misleading information given to the petitioner by the agency,  
176 relating to the appeal time period, and shown to have been materially  
177 relied on by the petitioner as the basis for failure to file a timely appeal;  
178 (D) evidence that the petitioner did not receive notice of the agency  
179 decision; and (E) other unforeseen and unavoidable circumstances of  
180 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>July 1, 2015</i>	17b-60
Sec. 2	<i>July 1, 2015</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:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 16 \$</b>	<b>FY 17 \$</b>
Social Services, Dept.	GF - Cost	\$144,021	\$150,227
State Comptroller - Fringe Benefits <sup>1</sup>	GF - Cost	\$55,664	\$58,063

**Municipal Impact:** None

### **Explanation**

The bill will result in a cost of \$199,685 (\$144,021 in salary and \$55,664 in fringe benefits) in FY 16 and \$208,290 (\$150,227 in salary and \$58,063 in fringe benefits) in FY 17 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.<sup>2</sup> 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

<sup>1</sup>The 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 38.65% of payroll in FY 16 and FY 17.

<sup>2</sup> Salary is based on salary grade MP-70 as reported for the job classification of Legal Director. (Source: Department of Administrative Services). FY 17 assumes a 3% general wage increase (GWI) and a 3% annual increment (AI); AI effective date of January 1<sup>st</sup>.

continue into the future subject to wage increases.

**OLR Bill Analysis****sHB 6908*****AN ACT CONCERNING FAIR HEARINGS.*****SUMMARY:**

This bill establishes an Office of Administrative Appeals (OAA) in the Department of Social Services (DSS), independent of DSS' legal counsel and any other DSS division, to conduct administrative appeals from DSS decisions. The office is led by an administrator appointed by the DSS commissioner. The administrator reports to the commissioner and may be removed by him only for cause.

The bill applies to hearings requested by a person aggrieved by a DSS decision or his or her conservator (i.e., "fair hearings"). Presumably, it also applies to DSS hearings requested by other entities (e.g., Medicaid providers.) The bill also requires OAA, when it plans to conduct a fair hearing by remote computer access, to provide the requestor with written notice of the (1) right to have an in-person hearing if there is a specific need for one and (2) need to request such an in-person hearing.

Lastly, the bill makes technical changes.

EFFECTIVE DATE: July 1, 2015

**FAIR HEARINGS**

The bill replaces provisions in current law that require the DSS commissioner, or anyone he authorizes, to hold fair hearings, which are hearings requested by people aggrieved by a DSS decision (e.g., a person denied temporary cash assistance).

To conform to this change, the bill shifts from DSS to OAA the authority to:

1. administer oaths and take testimony;
2. subpoena witnesses and require production of pertinent records, papers, and documents;
3. apply for a Superior Court order to compel testimony or produce records;
4. provide free hearing transcripts to aggrieved people upon request;
5. render final decisions that supersede the original administrative decisions; and
6. extend, beyond 45 days, the deadline for filing an appeal to Superior Court after the final decision is delivered or mailed.

The bill requires OAA to conduct appeals in accordance with the Uniform Administrative Procedure Act (UAPA) (CGS § 4-176e *et seq.*) However, the UAPA establishes deadlines and procedures that differ from those in existing law for DSS fair hearings (e.g., final decisions must be rendered within 90 days after a hearing under the UAPA, but within 60 days under existing fair hearings law). It is unclear which procedures OAA would be required to follow for fair hearings.

#### **COMMITTEE ACTION**

Human Services Committee

Joint Favorable Substitute

Yea 18 Nay 0 (03/12/2015)