

6063

2011-2012 Regular Sessions

I N A S S E M B L Y

March 4, 2011

Introduced by M. of A. LENTOL -- read once and referred to the Committee
on Governmental Operations

AN ACT to amend the executive law and the state administrative procedure
act, in relation to the creation of an office of administrative hear-
ings

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Legislative findings. New York's system of administrative
2 adjudication is fragmented, and offers the appearance of unfairness to
3 those who seek access to relief from administrative actions that they
4 consider unfair or unfounded.
5 The state's administrative adjudication responsibilities are not
6 unified because the system provides for the conduct of administrative
7 hearings in each of the state agencies which enforce laws, rules and
8 regulations. The result is duplication of functions, inconsistencies in
9 procedures and policies, and confusion for those who seek to make use of
10 the process. At the same time, lodging the responsibility for adjudicat-
11 ing cases in the agencies which are responsible for bringing enforcement
12 actions can create the appearance of unfairness to those who may feel
13 that their accuser is also judging their acts.
14 In contrast to New York's agency based system, a number of states have
15 adopted a different model for their administrative adjudication proc-
16 esses, which centralizes the responsibility for hearing contested admin-
17 istrative adjudications in a single office. This alternative model
18 offers savings from the elimination of duplicative responsibilities,
19 consistency in processes, and fairness for those who seek relief from
20 administrative rulings with which they disagree.
21 This act creates a process by which New York state will implement a
22 central system of administrative hearings.
23 S 2. The executive law is amended by adding a new article 26-A to read
24 as follows:

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD09510-01-1

ARTICLE 26-A

OFFICE OF ADMINISTRATIVE HEARINGS

SECTION 720. DEFINITIONS.

721. OFFICE OF ADMINISTRATIVE HEARINGS.

722. CHIEF ADMINISTRATIVE LAW JUDGE; FUNCTIONS, POWERS AND DUTIES.

723. HEARINGS.

724. HEARING OFFICERS; QUALIFICATIONS, POWERS AND DUTIES.

725. ADJUDICATORY PROCEEDINGS TO WHICH HEARING OFFICERS ARE NOT ASSIGNABLE; EXCEPTIONS.

726. CONSTRUCTION; SEVERABILITY.

S 720. DEFINITIONS. WHEN USED IN THIS ARTICLE UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "AGENCY" MEANS ANY DEPARTMENT, BOARD, BUREAU, COMMISSION, DIVISION, OFFICE, COUNCIL, COMMITTEE OR OFFICER OF THE STATE, OR A PUBLIC BENEFIT CORPORATION OR PUBLIC AUTHORITY, A MAJORITY OF THE GOVERNING BOARD MEMBERS OF WHICH ARE EITHER APPOINTED BY THE GOVERNOR OR SERVE AS MEMBERS BY VIRTUE OF THEIR SERVICE AS AN OFFICER OF A STATE DEPARTMENT, DIVISION, AGENCY, BOARD OR BUREAU OR COMBINATION THEREOF AUTHORIZED BY LAW TO MAKE RULES OR TO MAKE FINAL DECISIONS IN ADJUDICATORY PROCEEDINGS BUT SHALL NOT INCLUDE THE GOVERNOR, AGENCIES IN THE LEGISLATIVE AND JUDICIAL BRANCHES, AGENCIES CREATED BY INTERSTATE COMPACT OR INTERNATIONAL AGREEMENT OR THE DIVISION OF MILITARY AND NAVAL AFFAIRS TO THE EXTENT IT EXERCISES ITS RESPONSIBILITY FOR MILITARY AND NAVAL AFFAIRS, THE DIVISION OF STATE POLICE, THE IDENTIFICATION AND INTELLIGENCE UNIT OF THE DIVISION OF CRIMINAL JUSTICE SERVICES, THE STATE INSURANCE FUND, THE UNEMPLOYMENT INSURANCE APPEALS BOARD, THE WORKERS' COMPENSATION BOARD, THE STATE DIVISION OF PAROLE, THE DEPARTMENT OF CORRECTIONAL SERVICES, THE DIVISION OF TAX APPEALS, THE PUBLIC EMPLOYMENT RELATIONS BOARD, THE EMPLOYMENT RELATIONS BOARD, THE NEW YORK STATE ETHICS COMMISSION OR THE DEPARTMENT OF FAMILY ASSISTANCE.

2. "AGENCY MEMBER" MEANS AND INCLUDES THE INDIVIDUAL OR GROUP OF INDIVIDUALS CONSTITUTING THE HIGHEST AUTHORITY WITHIN ANY AGENCY AUTHORIZED OR REQUIRED BY LAW TO MAKE FINAL DECISIONS IN AN ADJUDICATORY PROCEEDING.

3. "ADJUDICATORY PROCEEDING" MEANS ANY ACTIVITY, INCLUDING LICENSING ACTIVITY, AS DEFINED IN ARTICLE ONE OF THE STATE ADMINISTRATIVE PROCEDURE ACT AND HEARINGS OF THE DEPARTMENT OF MOTOR VEHICLES PURSUANT TO ARTICLE TWO-A OF THE VEHICLE AND TRAFFIC LAW, BEFORE AN AGENCY IN WHICH A DETERMINATION OF THE LEGAL RIGHTS, DUTIES, OBLIGATIONS, PRIVILEGES, BENEFITS OR OTHER LEGAL RELATIONS OF NAMED PARTIES THERETO IS REQUIRED BY LAW OR PURSUANT TO A CONTRACT TO WHICH AN AGENCY IS A PARTY WHERE SUCH CONTRACT INCLUDES ADJUDICATORY DETERMINATIONS CONDUCTED BY AN AGENCY TO BE MADE ONLY AFTER AN OPPORTUNITY FOR A HEARING ON THE RECORD, BUT SHALL NOT INCLUDE RULE MAKING PROCEEDINGS AS DEFINED IN ARTICLE ONE OF THE STATE ADMINISTRATIVE PROCEDURE ACT INCLUDING RATE MAKING PROCEEDINGS OR OTHER ACTIONS AS DEFINED BY PARAGRAPH (A) OF SUBDIVISION TWO OF SECTION ONE HUNDRED TWO OF THE STATE ADMINISTRATIVE PROCEDURE ACT, AN EMPLOYEE DISCIPLINARY ACTION, PROFESSIONAL LICENSING OR STUDENT DISCIPLINARY ACTION OR A PROCEEDING CONDUCTED BY THE AMERICAN ARBITRATION ASSOCIATION OR ANY SIMILAR NEUTRAL ADJUDICATORY ENTITY.

4. "CHIEF ADMINISTRATIVE LAW JUDGE" MEANS THE DIRECTOR OF ADMINISTRATIVE HEARINGS.

5. "HEARING OFFICER" MEANS A PERSON APPOINTED BY THE CHIEF ADMINISTRATIVE LAW JUDGE TO CONDUCT OR PRESIDE OVER CONTESTED ADJUDICATORY PROCEEDINGS IN ACCORDANCE WITH THIS ARTICLE.

1 6. "CONTESTED ADJUDICATORY PROCEEDING" MEANS AN ADJUDICATORY PROCEED-
2 ING IN WHICH A REQUEST FOR A HEARING ON DISPUTED ISSUES IS MADE.

3 7. "UNCONTESTED ADJUDICATORY PROCEEDING" MEANS AN ADJUDICATORY
4 PROCEEDING IN WHICH NO REQUEST FOR A HEARING IS RECEIVED AFTER NOTICE IS
5 GIVEN.

6 8. "OFFICE" MEANS THE OFFICE OF ADMINISTRATIVE HEARINGS.

7 S 721. OFFICE OF ADMINISTRATIVE HEARINGS. 1. THERE IS HEREBY CREATED
8 IN THE EXECUTIVE DEPARTMENT AN OFFICE OF ADMINISTRATIVE HEARINGS. THE
9 OFFICE SHALL BE INDEPENDENT OF STATE ADMINISTRATIVE AGENCIES AND SHALL,
10 NOTWITHSTANDING THE PROVISIONS OF ANY OTHER GENERAL OR SPECIAL LAW, BE
11 RESPONSIBLE FOR IMPARTIAL ADMINISTRATION OF ADJUDICATORY PROCEEDINGS IN
12 ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE OTHER THAN THOSE EXEMPTED
13 ELSEWHERE IN THIS ARTICLE. THE CENTRAL OFFICE OF THE OFFICE SHALL BE
14 LOCATED IN ALBANY, AND REGIONAL OFFICES SHALL BE ESTABLISHED AND MAIN-
15 TAINED BY THE OFFICE AS THE CHIEF ADMINISTRATIVE LAW JUDGE MAY DETERMINE
16 AND FOR WHICH APPROPRIATIONS ARE MADE THEREFOR.

17 2. THE HEAD OF THE OFFICE, WHO SHALL BE ITS CHIEF EXECUTIVE OFFICER,
18 SHALL BE THE CHIEF ADMINISTRATIVE LAW JUDGE WHO SHALL BE APPOINTED BY
19 THE GOVERNOR BY AND WITH THE CONSENT OF THE SENATE TO SERVE FOR A TERM
20 OF SIX YEARS. SUCH PERSON SHALL BE KNOWLEDGEABLE ON THE SUBJECT OF
21 ADMINISTRATIVE LAW AND PROCEDURES AND SKILLED IN MATTERS PERTAINING
22 THERETO. ONCE APPOINTED AND CONFIRMED, THE CHIEF ADMINISTRATIVE LAW
23 JUDGE SHALL SERVE UNTIL HIS OR HER TERM EXPIRES OR UNTIL HIS OR HER
24 SUCCESSOR HAS BEEN APPOINTED AND HAS BEEN QUALIFIED. A VACANCY IN THE
25 OFFICE OF CHIEF ADMINISTRATIVE LAW JUDGE OCCURRING OTHERWISE THAN BY
26 EXPIRATION OF TERM SHALL BE FILLED FOR THE UNEXPIRED TERM IN THE SAME
27 MANNER AS ORIGINAL APPOINTMENTS. THE CHIEF ADMINISTRATIVE LAW JUDGE MAY,
28 AFTER NOTICE AND AN OPPORTUNITY TO BE HEARD, BE REMOVED BY THE GOVERNOR
29 FOR NEGLECT OF DUTY OR MISFEASANCE IN OFFICE, AND THE CHIEF ADMINISTRA-
30 TIVE LAW JUDGE MAY BE REMOVED FOR OTHER CAUSE BY THE SENATE ON THE
31 RECOMMENDATION OF THE GOVERNOR. THE CHIEF ADMINISTRATIVE LAW JUDGE SHALL
32 DEVOTE HIS OR HER ENTIRE TIME TO THE DUTIES OF THE OFFICE. THE CHIEF
33 ADMINISTRATIVE LAW JUDGE SHALL RECEIVE A SALARY IN THE SAME AMOUNT AS
34 THAT RECEIVED BY A STATE OFFICER DESIGNATED IN PARAGRAPH (C) OF SUBDIVI-
35 SION ONE OF SECTION ONE HUNDRED SIXTY-NINE OF THIS CHAPTER.

36 S 722. CHIEF ADMINISTRATIVE LAW JUDGE; FUNCTIONS, POWERS AND DUTIES.
37 THE CHIEF ADMINISTRATIVE LAW JUDGE SHALL HAVE THE FOLLOWING FUNCTIONS,
38 POWERS AND DUTIES:

39 1. TO ESTABLISH, CONSOLIDATE, ALTER OR ABOLISH ANY BUREAU IN THE
40 OFFICE; TO APPOINT THE HEAD OF SUCH BUREAUS AND FIX THEIR DUTIES; SUCH
41 BUREAUS MAY BE ESTABLISHED FOR THE PURPOSE OF PROVIDING SPECIALIZED
42 HEARINGS FOR ANY GIVEN SUBJECT AREA.

43 2. SUBJECT TO THE CIVIL SERVICE LAW AND THE APPLICABLE COLLECTIVE
44 BARGAINING AGREEMENT, TO APPOINT, REMOVE OR TRANSFER DEPUTIES, OFFICERS,
45 ASSISTANTS, HEARING OFFICERS, COUNSELS AND OTHER EMPLOYEES AS MAY BE
46 NECESSARY FOR THE EXERCISE OF THE POWERS AND PERFORMANCE OF THE DUTIES
47 OF THE OFFICE; AND TO PRESCRIBE THEIR DUTIES, AND FIX THEIR COMPENSATION
48 WITHIN THE AMOUNTS APPROPRIATED THEREFOR.

49 3. WHEN REGULARLY APPOINTED HEARING OFFICERS ARE NOT AVAILABLE OR WHEN
50 THE CHIEF ADMINISTRATIVE LAW JUDGE FINDS THAT THE CHARACTER OF A SPECIF-
51 IC CASE REQUIRES THE UTILIZATION OF A DIFFERENT PROCEDURE FOR ASSIGNING
52 HEARING OFFICERS, THE CHIEF ADMINISTRATIVE LAW JUDGE, PURSUANT TO APPLI-
53 CABLE COLLECTIVE BARGAINING AGREEMENTS, MAY CONTRACT WITH QUALIFIED
54 INDIVIDUALS TO SERVE AS HEARING OFFICERS. SUCH INDIVIDUALS SHALL BE
55 COMPENSATED FOR THEIR SERVICES ON A CONTRACTUAL BASIS FOR EACH HEARING
56 PURSUANT TO A REASONABLE FEE SCHEDULE ESTABLISHED IN ADVANCE BY THE

1 CHIEF ADMINISTRATIVE LAW JUDGE. THE CHIEF ADMINISTRATIVE LAW JUDGE MAY
2 NOT CONTRACT WITH ANY INDIVIDUAL WHO IS AT THAT TIME AN OFFICER OR
3 EMPLOYEE OF THE STATE. TEMPORARY HEARING OFFICERS SHALL HAVE THE SAME
4 QUALIFICATIONS FOR APPOINTMENT AS PERMANENT HEARING OFFICERS.

5 4. TO DEVELOP AND IMPLEMENT A PROGRAM OF EVALUATION TO AID THE CHIEF
6 ADMINISTRATIVE LAW JUDGE IN THE PERFORMANCE OF HIS OR HER DUTIES, AND TO
7 ASSIST IN THE MAKING OF PROMOTIONS, DEMOTIONS OR REMOVALS. THIS PROGRAM
8 OF EVALUATION SHALL FOCUS ON THREE AREAS OF PERFORMANCE: COMPETENCE,
9 PRODUCTIVITY AND DEMEANOR. IT SHALL INCLUDE CONSIDERATION OF: INDUSTRY
10 AND PROMPTNESS IN ADHERING TO SCHEDULES, MAKING RULINGS AND RENDERING
11 DECISIONS; TOLERANCE, COURTESY, PATIENCE, ATTENTIVENESS, AND SELF
12 CONTROL IN DEALING WITH LITIGANTS, WITNESSES AND REPRESENTATIVES, AND IN
13 PRESIDING OVER ADJUDICATORY PROCEEDINGS; SKILLS AND KNOWLEDGE OF THE
14 SUBJECT OF ADMINISTRATIVE LAW AND PROCEDURES AND NEW DEVELOPMENTS THERE-
15 IN; ANALYTICAL TALENTS AND WRITING ABILITIES; SETTLEMENT SKILLS; QUANTI-
16 TY, NATURE AND QUALITY OF CASE LOAD DISPOSITION; IMPARTIALITY AND
17 CONSCIENTIOUSNESS. THE CHIEF ADMINISTRATIVE LAW JUDGE SHALL DEVELOP
18 STANDARDS AND PROCEDURES FOR THIS PROGRAM, WHICH SHALL INCLUDE TAKING
19 COMMENTS FROM SELECTED LITIGANTS AND REPRESENTATIVES WHO HAVE APPEARED
20 BEFORE A HEARING OFFICER. THE METHODS USED BY A HEARING OFFICER BUT NOT
21 THE RESULTS ARRIVED AT BY THE HEARING OFFICER IN ANY CASE MAY BE USED IN
22 EVALUATING A HEARING OFFICER. BEFORE IMPLEMENTING ANY ACTION BASED UPON
23 THE FINDING OF THE EVALUATION PROGRAM, THE CHIEF ADMINISTRATIVE LAW
24 JUDGE SHALL DISCUSS THE FINDINGS AND PROPOSED ACTION WITH THE AFFECTED
25 HEARING OFFICER; PROVIDED HOWEVER THAT THE CHIEF ADMINISTRATIVE LAW
26 JUDGE'S AUTHORITY PURSUANT TO THIS SUBDIVISION IS SUBJECT TO THE
27 PROVISIONS OF THE CIVIL SERVICE LAW AND THE APPLICABLE COLLECTIVE
28 BARGAINING AGREEMENT.

29 5. TO THE EXTENT PERMITTED BY LAW, TO PUBLISH AND MAKE AVAILABLE TO
30 THE PUBLIC ALL RECOMMENDED DECISIONS RENDERED BY A HEARING OFFICER AND
31 ALL DECISIONS RENDERED BY AN AGENCY AFTER A REVIEW OF A HEARING OFFI-
32 CER'S RECOMMENDED DECISION. THE CHIEF ADMINISTRATIVE LAW JUDGE MAY
33 CHARGE A REASONABLE FEE FOR A COPY OF SUCH DETERMINATION OR DECISION.
34 WHENEVER ANY LAW OF CONFIDENTIALITY PREVENTS THE PUBLICATION OF THE
35 IDENTITY OF ANY OF THE PARTIES, AN EDITED VERSION OF THE RECOMMENDED
36 DECISION AND DECISION OF THE AGENCY SHALL BE PREPARED WHICH SHALL NOT
37 DISCLOSE THE IDENTITIES OF THE PROTECTED PARTIES.

38 6. TO COLLECT, COMPILE AND PREPARE FOR PUBLICATION STATISTICS AND
39 OTHER DATA WITH RESPECT TO THE OPERATIONS AND DUTIES OF THE OFFICE, AND
40 TO SUBMIT ANNUALLY TO THE GOVERNOR, THE TEMPORARY PRESIDENT AND MINORITY
41 LEADER OF THE SENATE AND THE SPEAKER AND MINORITY LEADER OF THE ASSEMBLY
42 A REPORT ON SUCH OPERATIONS INCLUDING BUT NOT LIMITED TO, THE NUMBER OF
43 HEARINGS INITIATED, THE NUMBER OF RECOMMENDED DECISIONS RENDERED, THE
44 NUMBER OF PARTIAL OR TOTAL REVERSALS BY THE AGENCIES, THE NUMBER OF
45 PROCEEDINGS PENDING, AND ON ANY RECOMMENDATIONS OF THE OFFICE OF STATU-
46 TORY OR REGULATORY AMENDMENTS.

47 7. TO STUDY THE SUBJECT OF ADMINISTRATIVE ADJUDICATION IN ALL ITS
48 ASPECTS, AND TO DEVELOP RECOMMENDATIONS INCLUDING ALTERNATE DISPUTE
49 RESOLUTION INCLUDING PRELIMINARY OR PREHEARING CONFERENCES OR MEDIATION
50 WHICH WOULD PROMOTE THE GOALS OF FAIRNESS, UNIFORMITY AND COST-EFFEC-
51 TIVENESS. AGENCIES SHALL GIVE THE OFFICE READY ACCESS TO THEIR RECORDS
52 AND FULL INFORMATION AND REASONABLE ASSISTANCE IN ANY MATTER OF RESEARCH
53 REQUIRING RECOURSE TO THEM OR TO ANY DATA WITHIN THEIR KNOWLEDGE OR
54 CONTROL. SUCH ACCESS, INFORMATION AND ASSISTANCE SHALL NOT BE REQUIRED
55 WHERE IT WOULD BE WITHIN EXISTING REQUIREMENTS OF CONFIDENTIALITY.

1 8. TO ADOPT, PROMULGATE, AMEND AND RESCIND RULES AND REGULATIONS TO
2 CARRY OUT THE PROVISIONS OF THIS ARTICLE AND THE POLICIES OF THE OFFICE
3 IN CONNECTION THEREWITH. SUCH RULES AND REGULATIONS SHALL BE CONSISTENT
4 WITH THE STATE ADMINISTRATIVE PROCEDURE ACT, SHALL SUPERSEDE ANY INCON-
5 SISTENT AGENCY RULES, AND SHALL INCLUDE, BUT NOT BE LIMITED TO, UNIFORM
6 STANDARDS AND PROCEDURES, RULES OF PRACTICE, RULES OF EVIDENCE, STAND-
7 ARDS FOR DETERMINING WHEN AN EXPEDITED HEARING WILL BE CONDUCTED, STAND-
8 ARDS FOR UNCONTESTED PROCEEDINGS, STANDARDS AND GUIDELINES RELATED TO
9 TIME LIMITS FOR AGENCY ACTION PURSUANT TO THE PROVISIONS OF SUBDIVISION
10 ONE OF SECTION THREE HUNDRED SEVEN OF THE STATE ADMINISTRATIVE PROCEDURE
11 ACT, STANDARDS FOR THE ASSIGNMENT OF HEARING OFFICERS AND THEIR REMOVAL
12 FROM CASES, AND FOR THE MAINTENANCE OF RECORDS IN ORDER THAT, WHERE
13 AUTHORIZED BY LAW, THE COSTS OF A HEARING MAY BE ALLOCATED TO A PARTY OR
14 TO THE FEDERAL GOVERNMENT.

15 9. TO SECURE, COMPILE AND MAINTAIN ALL REPORTS OF HEARING OFFICERS
16 ISSUED PURSUANT TO THIS ARTICLE, AND SUCH REFERENCE MATERIALS AND
17 SUPPORTING INFORMATION AS MAY BE APPROPRIATE AND TO ESTABLISH APPROPRI-
18 ATE MANAGEMENT INFORMATION SYSTEMS.

19 10. TO DEVELOP AND MAINTAIN A PROGRAM FOR THE CONTINUING TRAINING AND
20 EDUCATION OF HEARING OFFICERS AND ANCILLARY PERSONNEL.

21 11. TO SUBMIT TO THE GOVERNOR, THE TEMPORARY PRESIDENT AND MINORITY
22 LEADER OF THE SENATE AND THE SPEAKER AND MINORITY LEADER OF THE ASSEMBLY
23 AN EVALUATION OF THE EFFECTIVENESS OF THE OFFICE IN ATTAINING THE OBJEC-
24 TIVES SPECIFIED IN THIS ARTICLE PREPARED BY AN ENTITY INDEPENDENT OF THE
25 OFFICE. SUCH EVALUATION SHALL BE SUBMITTED BY NOVEMBER THIRTIETH, TWO
26 THOUSAND THIRTEEN AND BY SEPTEMBER FIRST EVERY TWO YEARS THEREAFTER.

27 S 723. HEARINGS. 1. THE OFFICE SHALL BE VESTED WITH EXCLUSIVE JURIS-
28 DICTION TO HEAR CASES WHICH COME BEFORE IT AND ALL CONTESTED ADJUDICATO-
29 RY PROCEEDINGS REQUIRED TO BE CONDUCTED UNDER THIS ARTICLE SHALL BE
30 CONDUCTED BY A HEARING OFFICER ASSIGNED BY THE CHIEF ADMINISTRATIVE LAW
31 JUDGE.

32 2. IF THE CHIEF ADMINISTRATIVE LAW JUDGE DEEMS IT APPROPRIATE, A HEAR-
33 ING OFFICER MAY BE ASSIGNED BY THE CHIEF ADMINISTRATIVE LAW JUDGE TO
34 CONDUCT OR ASSIST IN ADMINISTRATIVE DUTIES AND PROCEEDINGS OTHER THAN
35 THOSE RELATED TO CONTESTED ADJUDICATORY PROCEEDINGS, INCLUDING BUT NOT
36 LIMITED TO, RULE MAKING AND INVESTIGATIVE HEARINGS IF REQUESTED BY AN
37 AGENCY.

38 3. ADJUDICATORY PROCEEDINGS SHALL BE SCHEDULED FOR SUITABLE LOCATIONS
39 EITHER AT THE OFFICES OF THE OFFICE OR ELSEWHERE IN THE STATE, TAKING
40 INTO CONSIDERATION THE CONVENIENCE OF THE WITNESSES AND PARTIES, AS WELL
41 AS THE NATURE OF THE PROCEEDINGS.

42 4. HEARING OFFICERS SHALL BE ASSIGNED TO CONDUCT HEARINGS BY THE CHIEF
43 ADMINISTRATIVE LAW JUDGE WHO SHALL, WHENEVER PRACTICAL, USE PERSONNEL
44 HAVING EXPERTISE IN THE FIELD OR SUBJECT MATTER OF THE HEARING AND
45 ASSIGN HEARING OFFICERS PRIMARILY TO THE HEARINGS OF PARTICULAR AGENCIES
46 ON A LONG TERM BASIS.

47 5. ALL HEARINGS SHALL BE CONDUCTED IN CONFORMANCE WITH THE STATE
48 ADMINISTRATIVE PROCEDURE ACT.

49 6. UPON RECEIPT OF A REQUEST FOR A HEARING, AN AGENCY SHALL WITHIN TEN
50 BUSINESS DAYS GIVE NOTICE TO THE OFFICE AND REQUEST THE ASSIGNMENT OF A
51 HEARING OFFICER TO THE PROCEEDING. THE CHIEF ADMINISTRATIVE LAW JUDGE
52 SHALL COMMENCE A HEARING WITHIN THE TIME PERIOD REQUIRED BY LAW OR IF NO
53 SUCH PERIOD IS REQUIRED, WITHIN THIRTY BUSINESS DAYS OF SUCH NOTICE. IF
54 THE CHIEF ADMINISTRATIVE LAW JUDGE, FOR GOOD CAUSE, CANNOT COMMENCE SUCH
55 HEARING WITHIN THE STATED PERIOD OF TIME, HE OR SHE SHALL PROVIDE NOTICE
56 TO ALL PARTIES, WITH SUCH CAUSE SHOWN, WITHIN TEN BUSINESS DAYS OF

1 RECEIPT OF THE REQUEST FOR SUCH HEARING AND SHALL SCHEDULE SUCH HEARING
2 WITHIN TEN ADDITIONAL BUSINESS DAYS OF SUCH REQUEST.

3 7. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO DEPRIVE AN AGENCY
4 MEMBER OF THE AUTHORITY TO DETERMINE WHETHER A DISPUTED ISSUE EXISTS OR
5 TO ADOPT, REJECT OR MODIFY THE FINDINGS OF FACT AND CONCLUSIONS OF LAW
6 OF ANY HEARING OFFICER.

7 S 724. HEARING OFFICERS; QUALIFICATIONS, POWERS AND DUTIES. 1. THE
8 CHIEF ADMINISTRATIVE LAW JUDGE SHALL APPOINT HEARING OFFICERS WHO SHALL
9 BE AUTHORIZED TO CONDUCT ANY HEARING OR MOTION PRACTICE AUTHORIZED TO BE
10 HELD BY THE OFFICE. HEARING OFFICERS SHALL BE IN THE COMPETITIVE CLASS
11 OF THE CLASSIFIED CIVIL SERVICE.

12 2. UNLESS OTHERWISE AUTHORIZED BY LAW AND EXCEPT AS PROVIDED IN SUBDI-
13 VISION THREE OF THIS SECTION, A HEARING OFFICER SHALL NOT COMMUNICATE IN
14 CONNECTION WITH ANY ISSUE THAT RELATES IN ANY WAY TO THE MERITS OF AN
15 ADJUDICATORY PROCEEDING PENDING BEFORE THE HEARING OFFICER WITH ANY
16 PERSON EXCEPT UPON NOTICE AND OPPORTUNITY FOR ALL PARTIES TO PARTIC-
17 IPATE.

18 3. A HEARING OFFICER MAY CONSULT ON QUESTIONS OF LAW AND MINISTERIAL
19 MATTERS WITH HIS OR HER SUPERVISOR, OTHER HEARING OFFICERS, AND SUPPORT
20 STAFF OF THE OFFICE, PROVIDED THAT SUCH SUPERVISORS, HEARING OFFICERS OR
21 SUPPORT STAFF HAVE NOT BEEN ENGAGED IN INVESTIGATIVE OR PROSECUTORIAL
22 FUNCTIONS IN CONNECTION WITH THE ADJUDICATORY PROCEEDING UNDER CONSIDER-
23 ATION OR A FACTUALLY RELATED ADJUDICATORY PROCEEDING.

24 4. A HEARING OFFICER SHALL NOT PARTICIPATE IN ANY PROCEEDING TO WHICH
25 HE OR SHE IS A PARTY; IN WHICH HE OR SHE HAS BEEN ATTORNEY, COUNSEL OR
26 REPRESENTATIVE; IN WHICH HE OR SHE IS INTERESTED; OR IF HE OR SHE IS
27 RELATED BY CONSANGUINITY OR AFFINITY TO ANY PARTY TO THE CONTROVERSY
28 WITHIN THE SIXTH DEGREE.

29 5. HEARING OFFICERS SHALL:

30 (A) HAVE ALL OF THE POWERS AND DUTIES OF PRESIDING OFFICERS AS AUTHOR-
31 IZED BY ARTICLE THREE OF THE STATE ADMINISTRATIVE PROCEDURE ACT.

32 (B) ADVISE AN AGENCY, AS TO THE LOCATION AT WHICH AND THE TIME DURING
33 WHICH A HEARING SHOULD BE HELD SO AS TO ALLOW FOR PARTICIPATION BY ALL
34 AFFECTED INTERESTS.

35 (C) CONDUCT ONLY HEARINGS FOR WHICH PROPER NOTICE HAS BEEN GIVEN.

36 (D) SEE TO IT THAT ALL HEARINGS ARE CONDUCTED IN A FAIR AND IMPARTIAL
37 MANNER.

38 (E) ISSUE A RECOMMENDED DECISION TO AN AGENCY STATING FINDINGS OF FACT
39 AND CONCLUSIONS OF LAW.

40 6. NOTWITHSTANDING THE REQUIREMENTS OF PARAGRAPH (E) OF SUBDIVISION
41 FIVE OF THIS SECTION, HEARING OFFICERS SHALL RENDER DETERMINATIONS
42 CONCERNING CHARGES PURSUANT TO ARTICLE TWO-A OF THE VEHICLE AND TRAFFIC
43 LAW.

44 S 725. ADJUDICATORY PROCEEDINGS TO WHICH HEARING OFFICERS ARE NOT
45 ASSIGNABLE; EXCEPTIONS. UNLESS A REQUEST IS MADE BY THE AGENCY, NO HEAR-
46 ING OFFICER SHALL BE ASSIGNED BY THE CHIEF ADMINISTRATIVE LAW JUDGE TO
47 HEAR AN ADJUDICATORY PROCEEDING WITH RESPECT TO:

48 1. THE DIVISION OF MILITARY AND NAVAL AFFAIRS TO THE EXTENT IT EXER-
49 CISES ITS RESPONSIBILITY FOR MILITARY AND NAVAL AFFAIRS, THE DIVISION OF
50 STATE POLICE, THE IDENTIFICATION AND INTELLIGENCE UNIT OF THE DIVISION
51 OF CRIMINAL JUSTICE SERVICES, THE STATE INSURANCE FUND, THE UNEMPLOYMENT
52 INSURANCE APPEALS BOARD, THE WORKERS' COMPENSATION BOARD, THE STATE
53 DIVISION OF PAROLE, THE DEPARTMENT OF CORRECTIONAL SERVICES, THE DIVI-
54 SION OF TAX APPEALS, THE PUBLIC EMPLOYMENT RELATIONS BOARD AND THE
55 EMPLOYMENT RELATIONS BOARD, THE NEW YORK STATE ETHICS COMMISSION OR THE
56 DEPARTMENT OF FAMILY ASSISTANCE.

1 2. ANY PROCEEDING RELATING TO INDIVIDUALS IN THE CARE OR CUSTODY OF A
2 MEDICAL, MENTAL, REHABILITATIVE OR CUSTODIAL PROGRAM OPERATED BY AN
3 AGENCY.

4 3. UNCONTESTED ADJUDICATORY PROCEEDINGS.

5 4. ANY MATTER WHERE AN AGENCY MEMBER, COMMISSIONER OR SEVERAL COMMIS-
6 SIONERS ARE REQUIRED TO CONDUCT, OR DETERMINE TO CONDUCT, THE HEARINGS
7 DIRECTLY AND INDIVIDUALLY.

8 5. ANY HEARING WHICH MUST, BY THE REQUIREMENTS OF FEDERAL LAW, BE
9 CONDUCTED BY ANOTHER STATE AGENCY.

10 S 726. CONSTRUCTION; SEVERABILITY. 1. THE PROVISIONS OF THIS ARTICLE
11 SHALL NOT BE CONSTRUED TO LIMIT OR REPEAL ADDITIONAL REQUIREMENTS
12 IMPOSED BY LAW.

13 2. IF ANY PROVISION OF THIS ARTICLE OR THE APPLICATION THEREOF TO ANY
14 PERSON OR CIRCUMSTANCES IS ADJUDGED INVALID BY A COURT OF COMPETENT
15 JURISDICTION, SUCH JUDGMENT SHALL NOT AFFECT OR IMPAIR THE VALIDITY OF
16 THE OTHER PROVISIONS OF THIS ARTICLE OR THE APPLICATION THEREOF TO OTHER
17 PERSONS OR CIRCUMSTANCES.

18 S 3. Subdivision 2 of section 301 of the state administrative proce-
19 dure act, as amended by chapter 675 of the laws of 1986, is amended to
20 read as follows:

21 2. All parties shall be given reasonable WRITTEN notice of such hear-
22 ing, which notice shall include (a) a statement of the time, place, and
23 nature of the hearing; (b) a statement of the legal authority and juris-
24 diction under which the hearing is to be held; (c) a reference to the
25 particular sections of the statutes and rules involved, where possible;
26 (d) a short and plain statement of matters asserted; and (e) a statement
27 that interpreter services shall be made available to deaf persons, at no
28 charge, pursuant to this section. Upon application of any party, a more
29 definite and detailed statement shall be furnished whenever the agency
30 finds that the statement is not sufficiently definite or not sufficient-
31 ly detailed. The finding of the agency as to the sufficiency of defin-
32 iteness or detail of the statement or its failure or refusal to furnish
33 a more definite or detailed statement shall not be subject to judicial
34 review. Any statement furnished shall be deemed, in all respects, to be
35 a part of the notice of hearing.

36 S 4. Subdivision 6 of section 301 of the state administrative proce-
37 dure act, as amended by chapter 703 of the laws of 1991, is amended to
38 read as follows:

39 6. Whenever any deaf person is a party OR A WITNESS THEREIN, to an
40 adjudicatory proceeding before an agency[,] or [a witness therein] THE
41 OFFICE OF ADMINISTRATIVE HEARINGS IN THE EXECUTIVE DEPARTMENT, AS THE
42 CASE MAY BE, such agency OR SUCH OFFICE OF ADMINISTRATIVE HEARINGS in
43 all instances shall appoint a qualified interpreter who is certified by
44 a recognized national or New York state credentialing authority to
45 interpret the proceedings to, and the testimony of, such deaf person.
46 The agency OR SUCH OFFICE OF ADMINISTRATIVE HEARINGS conducting the
47 adjudicatory proceeding shall determine a reasonable fee for all such
48 interpreting services which shall be a charge upon the agency. WHERE THE
49 ADJUDICATORY HEARING IS BEFORE A HEARING OFFICER ASSIGNED BY THE CHIEF
50 ADMINISTRATIVE LAW JUDGE OF SUCH OFFICE OF ADMINISTRATIVE HEARINGS, THE
51 CHIEF ADMINISTRATIVE LAW JUDGE SHALL DETERMINE A REASONABLE FEE FOR ALL
52 SUCH INTERPRETING SERVICES AND MAY CHARGE THE AGENCY FOR SUCH SERVICES,
53 BUT IN NO INSTANCE SHALL SUCH DEAF PERSONS BE CHARGED FOR SUCH SERVICES.

54 S 5. Subdivision 1 of section 302 of the state administrative proce-
55 dure act, as amended by chapter 250 of the laws of 1985, is amended to
56 read as follows:

1 1. The record in an adjudicatory proceeding shall include: (a) all
2 notices, pleadings, motions, intermediate rulings; (b) evidence
3 presented; (c) a statement of matters officially noticed except matters
4 so obvious that a statement of them would serve no useful purpose; (d)
5 questions and offers of proof, objections thereto, and rulings thereon;
6 (e) proposed findings and exceptions, if any; (f) any findings of fact,
7 conclusions of law or other recommendations made by a presiding officer;
8 and (g) any decision, RECOMMENDED DECISION, determination, opinion,
9 order or report rendered.

10 S 6. The opening paragraph of subdivision 2 of section 302 of the
11 state administrative procedure act is designated paragraph (a) and a new
12 paragraph (b) is added to read as follows:

13 (B) WHERE THE ADJUDICATORY HEARING IS BEFORE A HEARING OFFICER
14 ASSIGNED BY THE CHIEF ADMINISTRATIVE LAW JUDGE OF THE OFFICE OF ADMINIS-
15 TRATIVE HEARINGS IN THE EXECUTIVE DEPARTMENT, THE CHIEF ADMINISTRATIVE
16 LAW JUDGE SHALL MAKE A COMPLETE RECORD OF ALL ADJUDICATORY PROCEEDINGS.
17 FOR THIS PURPOSE, UNLESS OTHERWISE PROVIDED BY STATUTE, THE CHIEF ADMIN-
18 ISTRATIVE LAW JUDGE MAY USE WHATEVER MEANS HE OR SHE DEEMS APPROPRIATE,
19 INCLUDING BUT NOT LIMITED TO, THE USE OF STENOGRAPHIC TRANSCRIPTIONS OR
20 ELECTRONIC RECORDING DEVICES. UPON REQUEST MADE BY ANY PARTY UPON THE
21 AGENCY WITHIN A REASONABLE TIME, BUT PRIOR TO THE TIME FOR COMMENCEMENT
22 OF JUDICIAL REVIEW, OF ITS GIVING NOTICE OF ITS DECISION, DETERMINATION,
23 OPINION OR ORDER, THE AGENCY SHALL SECURE A COPY OF THE FINAL RECORD
24 TOGETHER WITH ANY TRANSCRIPT OF PROCEEDINGS FROM THE CHIEF ADMINIS-
25 TRATIVE LAW JUDGE WITHIN A REASONABLE TIME AND SHALL FURNISH A COPY OF THE
26 RECORD AND TRANSCRIPT OR ANY PART THEREOF TO ANY PARTY AS HE OR SHE MAY
27 REQUEST. EXCEPT WHEN ANY STATUTE PROVIDES OTHERWISE, THE CHIEF ADMINIS-
28 TRATIVE LAW JUDGE IS AUTHORIZED TO CHARGE THE AGENCY NOT MORE THAN ITS
29 COST FOR THE PREPARATION AND FURNISHING OF SUCH RECORD OR TRANSCRIPT OR
30 ANY PART THEREOF, AND THE AGENCY MAY PASS ANY SUCH CHARGE ON TO THE
31 PERSON REQUESTING THE RECORD.

32 S 7. Section 307 of the state administrative procedure act, subdivi-
33 sion 3 as added by chapter 504 of the laws of 1983 and paragraph (a) of
34 subdivision 3 as amended by chapter 645 of the laws of 1995, is amended
35 to read as follows:

36 S 307. Decisions, determinations and orders. 1. WHERE THE ADMINISTRA-
37 TIVE HEARING IS BEFORE A HEARING OFFICER ASSIGNED BY THE CHIEF ADMINIS-
38 TRATIVE LAW JUDGE OF THE OFFICE OF ADMINISTRATIVE HEARINGS IN THE EXECU-
39 TIVE DEPARTMENT:

40 (A) AFTER THE HEARING, THE HEARING OFFICER SHALL ISSUE A RECOMMENDED
41 DECISION BASED ON FINDINGS OF FACT AND CONCLUSIONS OF LAW WHICH SHALL BE
42 SUBMITTED TO THE AGENCY, TO THE PARTIES TO THE PROCEEDING AND THEIR
43 REPRESENTATIVES WITHIN REASONABLE TIME LIMITS PROVIDED FOR BY STATUTE,
44 OR, IF NO TIME LIMIT IS SO PROVIDED FOR, WITHIN THIRTY DAYS AFTER
45 SUBMISSION OF BRIEFS SUBSEQUENT TO THE COMPLETION OF THE HEARING OR, IF
46 BRIEFS ARE NOT SUBMITTED, THEN WITHIN THIRTY DAYS AFTER COMPLETION OF
47 THE HEARING, PROVIDED HOWEVER, THAT SUCH THIRTY DAY TIME LIMIT MAY BE
48 EXTENDED IN COMPLEX CASES FOR GOOD CAUSE SHOWN FOR AN ADDITIONAL THIRTY
49 DAY PERIOD UPON APPROVAL BY THE CHIEF ADMINISTRATIVE LAW JUDGE OF AN
50 APPLICATION FOR EACH SUCH EXTENSION FILED THEREFOR BY THE HEARING OFFI-
51 CER. THE AGENCY MAY ADOPT THE RECOMMENDED DECISION IN ITS ENTIRETY OR IN
52 PART, OR ISSUE ITS OWN DECISION. UPON RECEIPT OF THE RECOMMENDED DECI-
53 SION OF THE HEARING OFFICER, THE AGENCY SHALL ADOPT OR ISSUE ITS FINAL
54 DECISION WITHIN FIFTEEN BUSINESS DAYS. SHOULD THE AGENCY FAIL TO ADOPT
55 OR ISSUE ITS FINAL DECISION WITHIN FIFTEEN DAYS, THE RECOMMENDED DECI-
56 SION SHALL BECOME FINAL.

(B) WHERE THE AGENCY DIFFERS FROM A FINDING OF FACT OR CONCLUSION OF LAW MADE BY THE HEARING OFFICER IN THE RECOMMENDED DECISION, THE AGENCY SHALL MAKE A WRITTEN EXCEPTION TO SUCH FINDING AND STATE WHY IT HAS MADE SUCH EXCEPTION, WHICH SHALL BE MADE PART OF THE RECORD. THE AGENCY SHALL TRANSMIT A COPY OF EACH FINAL DECISION TO THE OFFICE OF ADMINISTRATIVE HEARINGS IN THE EXECUTIVE DEPARTMENT.

(C) IF THE AGENCY DETERMINES THAT ADDITIONAL EVIDENCE IS NECESSARY, THE MATTER SHALL BE REFERRED TO SUCH OFFICE OF ADMINISTRATIVE HEARINGS. IF THE SAME HEARING OFFICER IS UNAVAILABLE, A DIFFERENT HEARING OFFICER SHALL BE ASSIGNED BY THE CHIEF ADMINISTRATIVE LAW JUDGE OF SUCH OFFICE. AFTER TAKING THE ADDITIONAL EVIDENCE, THE HEARING OFFICER SHALL PREPARE A RECOMMENDED DECISION AS PROVIDED IN PARAGRAPH (A) OF THIS SUBDIVISION UPON THE ADDITIONAL EVIDENCE AND THE RECORD OF THE PRIOR HEARING. A COPY OF SUCH RECOMMENDED DECISION SHALL BE SUBMITTED TO THE AGENCY AND TO THE PARTIES AND THEIR REPRESENTATIVES AS PROVIDED IN SUCH PARAGRAPH.

2. A final decision, determination or order adverse to a party in an adjudicatory proceeding shall be in writing or stated in the record and shall include findings of fact and conclusions of law or reasons for the decision, determination or order. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If [, in accordance with agency rules,] a party submitted proposed findings of fact, [the] A RECOMMENDED OR FINAL decision, determination or order shall include a ruling upon each proposed finding. A copy of the decision, determination or order shall be delivered or mailed forthwith to each party and to his OR HER attorney of record.

[2] 3. Unless required for the disposition of ex parte matters authorized by law, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in an adjudicatory proceeding shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his OR HER representative, except upon notice and opportunity for all parties to participate. Any such agency member (a) may communicate with other members of the agency, and (b) may have the aid and advice of agency staff other than staff which has been or is engaged in the investigative or prosecuting functions in connection with the case under consideration or factually related case.

This subdivision does not apply (a) in determining applications for initial licenses for public utilities or carriers; or (b) to proceedings involving the validity or application of rates, facilities, or practices of public utilities or carriers.

[3] 4. (a) Each agency shall maintain an index by name and subject of all written RECOMMENDED AND final decisions, determinations and orders rendered by the agency in adjudicatory proceedings. For purposes of this subdivision, such index shall also include by name and subject all written RECOMMENDED OR final decisions, determinations and orders rendered by the agency pursuant to a statute providing any party an opportunity to be heard, other than a rule making. Such index and the text of any such written RECOMMENDED OR final decision, determination or order shall be available for public inspection and copying. Each RECOMMENDED AND FINAL decision, determination and order shall be indexed within sixty days after having been rendered.

(b) An agency may delete from any such index, RECOMMENDED OR FINAL decision, determination or order any information that, if disclosed, would constitute an unwarranted invasion of personal privacy under the

provisions of subdivision two of section eighty-nine of the public officers law and may also delete at the request of any person all references to trade secrets that, if disclosed, would cause substantial injury to the competitive position of such person. Information which would reveal confidential material protected by federal or state statute, shall be deleted from any such index, RECOMMENDED OR FINAL decision, determination or order.

S 8. Transfer of employees. 1. On or before January 1, 2012, the chief administrative law judge of the office of administrative hearings in the executive department, with the approval of the director of the budget, shall file with the chairpersons of the senate finance and assembly ways and means committees an implementation plan that indicates which positions are to be transferred (and from which agencies) in order to implement the organization of such office of administrative hearings and the structure of the program required to be administered pursuant to article 26-A of the executive law.

2. Upon the filing of an approved plan as provided for in subdivision 1 of this section, the chief administrative law judge of such office is authorized, subject to the approval of the director of the budget and in accordance with the provisions of section 70 of the civil service law to transfer to such office such employees as he or she may deem necessary. An employee so transferred shall not within a period of two years from the date of his or her transfer be subject to an involuntary assignment which would require a relocation.

3. A transferred employee shall remain in the same collective bargaining unit as was the case prior to his or her transfer; successor employees to the positions held by such transferred employees shall, consistent with the provisions of article 14 of the civil service law, be included in the same unit as their predecessors. Employees serving in positions in newly created titles shall be assigned to the appropriate bargaining unit. Nothing contained in article 26-A of the executive law shall be construed to affect: (a) the rights of employees pursuant to a collective bargaining agreement; (b) the representational relationships among employee organizations or the bargaining relationships between the state and an employee organization; or (c) existing law with respect to an application to the public employment relations board seeking designation by the board that certain persons are managerial or confidential.

S 9. Transfer of records. The records and files of all hearings pending in and unheard by agencies as of September 1, 2012 shall be transferred to the office of administrative hearings in the executive department.

S 10. Evaluations. 1. By July 1, 2013, a preliminary program evaluation of the following items shall be undertaken by an entity independent of government, selected by the office of administrative hearings in the executive department through a request for proposal process. The evaluation shall assess:

(a) The effectiveness of such office to date in meeting legislative objectives in program design and funding and its efficiency in performing its functions;

(b) Any changes needed in organization or processes, or in program design, to provide adjudicatory services more effectively and efficiently.

Such evaluation shall be completed no later than November 30, 2013, and shall be submitted to the governor, the temporary president of the senate, the speaker of the assembly, the minority leaders of the senate

1 and the assembly, and the chairpersons of the senate finance committee
2 and the assembly ways and means committee.

3 2. By July 1, 2015, program evaluations of the following issues shall
4 be undertaken:

5 (a) The extent to which such office has operated efficiently;

6 (b) Changes needed in office organization or processes, or in program
7 design, to provide adjudicatory services more efficiently;

8 (c) The effectiveness of the office in meeting legislative objectives
9 in program design and funding;

10 (d) Changes needed in the organization or processes, or in program
11 design to deliver the program more effectively; and

12 (e) An assessment of alternative mechanisms which could provide adju-
13 dicatory services, taking into account potential effectiveness and effi-
14 ciency.

15 3. Program evaluations shall be undertaken by: (a) the state comp-
16 troller; and (b) an entity independent of government, selected by such
17 office of administrative hearings through a request for proposal proc-
18 ess. Each review shall be completed no later than November 30, 2015, and
19 shall be submitted to the governor, the temporary president of the
20 senate, the speaker of the assembly, the minority leaders of the senate
21 and the assembly, and the chairpersons of the senate finance committee
22 and the assembly ways and means committee.

23 S 11. This act shall take effect immediately; provided however, that
24 section two of this act shall take effect September 1, 2012; and further
25 provided that this act shall be applicable only to those adjudicatory
26 proceedings pending or unheard on or after September 1, 2012.