

# STATE OF NEW YORK

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2041

2017-2018 Regular Sessions

## IN ASSEMBLY

January 17, 2017

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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 hearings

The People of the State of New York, represented in Senate and Assembly, 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 § 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.

LBD03408-01-7

ARTICLE 26-AOFFICE OF ADMINISTRATIVE HEARINGSSection 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.

§ 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 corrections and community supervision, 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 § 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 § 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 nineteen and by September first every two years thereafter.

27     § 723. Hearings. 1. The office shall be vested with exclusive juris-  
28 isdiction 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 § 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 § 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 corrections and community super-  
54 vision, the division of tax appeals, the public employment relations  
55 board and the employment relations board, the New York state ethics  
56 commission or the 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 § 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 § 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 § 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[7] 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 § 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 § 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 administra-  
25 tive 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 § 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 § 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

1 provisions of subdivision two of section eighty-nine of the public offi-  
2 cers law and may also delete at the request of any person all references  
3 to trade secrets that, if disclosed, would cause substantial injury to  
4 the competitive position of such person. Information which would reveal  
5 confidential material protected by federal or state statute, shall be  
6 deleted from any such index, recommended or final decision, determi-  
7 nation or order.

8 § 8. Transfer of employees. 1. On or before January 1, 2018, the chief  
9 administrative law judge of the office of administrative hearings in the  
10 executive department, with the approval of the director of the budget,  
11 shall file with the chairpersons of the senate finance and assembly ways  
12 and means committees an implementation plan that indicates which posi-  
13 tions are to be transferred (and from which agencies) in order to imple-  
14 ment the organization of such office of administrative hearings and the  
15 structure of the program required to be administered pursuant to article  
16 26-A of the executive law.

17 2. Upon the filing of an approved plan as provided for in subdivision  
18 1 of this section, the chief administrative law judge of such office is  
19 authorized, subject to the approval of the director of the budget and in  
20 accordance with the provisions of section 70 of the civil service law to  
21 transfer to such office such employees as he or she may deem necessary.  
22 An employee so transferred shall not within a period of two years from  
23 the date of his or her transfer be subject to an involuntary assignment  
24 which would require a relocation.

25 3. A transferred employee shall remain in the same collective bargain-  
26 ing unit as was the case prior to his or her transfer; successor employ-  
27 ees to the positions held by such transferred employees shall, consist-  
28 ent with the provisions of article 14 of the civil service law, be  
29 included in the same unit as their predecessors. Employees serving in  
30 positions in newly created titles shall be assigned to the appropriate  
31 bargaining unit. Nothing contained in article 26-A of the executive law  
32 shall be construed to affect: (a) the rights of employees pursuant to a  
33 collective bargaining agreement; (b) the representational relationships  
34 among employee organizations or the bargaining relationships between the  
35 state and an employee organization; or (c) existing law with respect to  
36 an application to the public employment relations board seeking desig-  
37 nation by such board that certain persons are managerial or confiden-  
38 tial.

39 § 9. Transfer of records. The records and files of all hearings pend-  
40 ing in and unheard by agencies as of September 1, 2018 shall be trans-  
41 ferred to the office of administrative hearings in the executive depart-  
42 ment.

43 § 10. Evaluations. 1. By July 1, 2019, a preliminary program evalu-  
44 ation of the following items shall be undertaken by an entity independ-  
45 ent of government, selected by the office of administrative hearings in  
46 the executive department through a request for proposal process. The  
47 evaluation shall assess:

48 (a) The effectiveness of such office to date in meeting legislative  
49 objectives in program design and funding and its efficiency in perform-  
50 ing its functions;

51 (b) Any changes needed in organization or processes, or in program  
52 design, to provide adjudicatory services more effectively and efficient-  
53 ly.

54 Such evaluation shall be completed no later than November 30, 2019,  
55 and shall be submitted to the governor, the temporary president of the  
56 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, 2021, 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, 2021, 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 § 11. This act shall take effect immediately; provided however, that  
24 section two of this act shall take effect September 1, 2018; and further  
25 provided that this act shall be applicable only to those adjudicatory  
26 proceedings pending or unheard on or after September 1, 2018.