

THE GENERAL ASSEMBLY OF PENNSYLVANIA

# HOUSE BILL

No. 1498 Session of  
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TRELLO AND M. COHEN, MAY 12, 1999

REFERRED TO COMMITTEE ON JUDICIARY, MAY 12, 1999

## AN ACT

1 Establishing the Office of Administrative Hearings as an  
2 independent administrative agency to provide an impartial  
3 tribunal for contested cases in certain agencies; providing  
4 for the appointment of a chief administrative law judge and  
5 administrative law judges; and providing for powers and  
6 duties.

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13 The General Assembly of the Commonwealth of Pennsylvania  
14 hereby enacts as follows:

15 CHAPTER 1  
16 GENERAL PROVISIONS

17 Section 101. Short title.

18 This act shall be known and may be cited as the Office of  
19 Administrative Hearings Act.

20 Section 102. Definitions.

21 The following words and phrases when used in this act shall  
22 have the meanings given to them in this section unless the  
23 context clearly indicates otherwise:

24 "Administrative law judge" or "ALJ." A person who is  
25 appointed and performs the duties of an administrative law judge  
26 under this act.

27 "Agency." Any executive agency or independent agency as  
28 defined in the act of October 15, 1980 (P.L.950, No.164), known  
29 as the Commonwealth Attorneys Act.

30 "Chief." The chief administrative law judge.

1 "Contested case." A proceeding before an agency that  
2 involves the personal or property rights of a person subject to  
3 the jurisdiction of the agency, and in which there are  
4 prosecutorial or investigatory functions and an adjudicatory  
5 function to be performed by the agency under the laws of this  
6 Commonwealth.

7 "Final decision." A written decision of the office in a  
8 contested case that consists of findings of fact, a legal  
9 discussion, conclusions of law and a final order signed by the  
10 administrative law judge assigned to the contested case.

11 "General rules of administrative practice and procedure."  
12 The rules prescribed by 1 Pa. Code Part II (relating to general  
13 rules of administrative practice and procedure).

14 "Office." The Office of Administrative Hearings established  
15 under this act.

16 "Recommended decision." A written decision of the office in  
17 a contested case that consists of findings of fact, a legal  
18 discussion, conclusions of law and a recommended order for the  
19 signature of the head of the agency.

## 20 CHAPTER 3

### 21 OFFICE OF ADMINISTRATIVE HEARINGS

22 Section 301. Purpose and functions.

23 (a) Establishment.--There is created an Office of  
24 Administrative Hearings as an independent administrative agency.  
25 For the purpose of conducting impartial and fair hearings in  
26 contested cases where there is a need to separate the  
27 investigatory or prosecutorial function from the adjudicatory  
28 function. The office shall provide for the issuance of  
29 recommended decisions and final decisions in all contested cases  
30 referred to it under this act.

1 (b) Powers of office.--In addition to the powers granted by  
2 other sections of this act, the office shall have the powers  
3 necessary or convenient to carry out this act, including, but  
4 not limited, the power to:

5 (1) Ensure and protect the independence and impartiality  
6 of its decisions.

7 (2) Create and enforce a code of conduct for  
8 administrative law judges and personnel.

9 (3) Enter into contracts with any entity of State  
10 government for the adjudication of a claim, case or  
11 controversy that is not a contested case.

12 (4) Contract for goods and services and engage and  
13 employ personnel, except as otherwise provided for under this  
14 act.

15 (5) Charge and collect administrative fees and charges  
16 in connection with a contested case.

17 (6) Promulgate regulations.

18 (7) Accept and expend funds, grants, bequests and  
19 services, which are related to the purpose of the office,  
20 from any public or private source.

21 (8) Enter into agreements and contracts with public or  
22 private agencies or educational institutions.

23 Section 302. Referrals.

24 (a) Mandatory referrals.--Except as otherwise provided by  
25 law, an agency shall refer a contested case to the office under  
26 this act.

27 (b) Voluntary referrals.--

28 (1) An agency may refer other cases, which are not  
29 required to be referred to the office under this act or the  
30 laws of this Commonwealth for a hearing, other proceeding,

1 final decision or recommended decision in accordance with  
2 this act. In those cases, the agency shall enter into a  
3 contract with the office for the functions to be performed by  
4 the office and the contract may state that the cost of  
5 performing the functions shall be paid by the agency.

6 (2) The office shall not consider the referral of a  
7 legislative matter, including, but not limited to, rulemaking  
8 and policy statements.

## 9 CHAPTER 5

### 10 COMPOSITION OF OFFICE

11 Section 501. Chief administrative law judge.

12 (a) Appointment.--The office shall be headed by a chief  
13 administrative law judge who shall be appointed by the Governor  
14 with the advice and consent of the simple majority of the Senate  
15 for a term of six years. The chief shall continue in office  
16 until a successor is appointed unless the chief has been removed  
17 for good cause under this act. The chief may be reappointed in  
18 the same manner upon the expiration of his term.

19 (b) Removal.--The chief may be removed by the Governor only  
20 on a finding of good cause. Prior to removal, the chief shall be  
21 given notice and an opportunity to be heard at an adjudicatory  
22 hearing under the general rules of administrative practice and  
23 procedure by an impartial hearing officer who shall determine  
24 whether good cause exists for removal.

25 (c) Qualifications.--No person shall be appointed and serve  
26 as chief unless that person:

27 (1) Is licensed to practice law in this Commonwealth.

28 (2) Has been licensed to practice law for a minimum of  
29 five years.

30 (3) Is prohibited from engaging in the private practice

1 of law while serving as chief.

2 (4) Takes an oath of office as required by law prior to  
3 the commencement of duties as chief.

4 (5) Agrees to be subject to and comply with a code of  
5 conduct for administrative law judges.

6 (d) Salary.--The chief shall receive an annual salary to be  
7 determined by the Executive Board.

8 (e) Duties.--The chief shall perform the following duties:

9 (1) Execute all contracts on behalf of the office.

10 (2) Prepare a code of conduct for administrative law  
11 judges.

12 (3) Employ professional, technical and clerical  
13 personnel necessary to conduct the duties of the office and  
14 determine their salaries or rates of compensation.

15 (4) Assign administrative law judges to contested cases.

16 (5) Coordinate and supervise hearings and other  
17 proceedings conducted by the office in contested cases.

18 (6) Monitor the quality of hearings and other  
19 proceedings conducted by the office.

20 (7) Promote uniformity in the structure and form of  
21 recommended decisions and final decisions.

22 (8) Establish and implement standards and specialized  
23 training programs and provide materials for administrative  
24 law judges.

25 (9) Provide and coordinate continuing education programs  
26 and services for administrative law judges, including  
27 research, technical assistance, technical and professional  
28 publications, compiling and disseminating information, and  
29 advise of changes in the law relative to their duties.

30 (10) Submit an annual report to the Governor, the

1 Chairman of the Judiciary Committee of the Senate and the  
2 Chairman of the Judiciary Committee of the House of  
3 Representatives concerning the activities of the office.

4 Section 502. Administrative law judges.

5 (a) Selection.--Administrative law judges shall be selected  
6 and appointed by the Governor on the recommendation of a  
7 nomination committee consisting of: the President pro tempore of  
8 the Senate, the Speaker of the House of Representatives, the  
9 chairman and minority chairman of the Judiciary Committee of the  
10 Senate, the chairman and minority chairman of the Judiciary  
11 Committee of the House of Representatives, the president of the  
12 Pennsylvania Bar Association or their designees.

13 (b) Removal.--An administrative law judge may be removed,  
14 suspended, demoted or subjected to disciplinary action by the  
15 Governor only on a finding of good cause. Prior to the action,  
16 the administrative law judge shall be given notice and an  
17 opportunity to be heard at an adjudicatory hearing under the  
18 general rules of administrative practice and procedure by an  
19 impartial hearing officer who shall determine whether good cause  
20 exists for the action.

21 (c) Qualifications.--No person shall be appointed and serve  
22 as an administrative law judge unless that person:

23 (1) Is licensed to practice law in this Commonwealth.

24 (2) Has been licensed to practice law for a minimum of  
25 five years.

26 (3) Refrains from engaging in the private practice of  
27 law while employed by the office as an administrative law  
28 judge, unless serving as an alternate administrative law  
29 judge under section 503.

30 (4) Takes an oath of office as required by law prior to

1 the commencement of duties as administrative law judge.

2 (5) Agrees to be subject to and comply with a code of  
3 conduct for administrative law judges.

4 (d) Salary.--An administrative law judge shall receive an  
5 annual salary as determined by the Executive Board.

6 (e) Duties.--An administrative law judge shall have the  
7 following powers and duties:

8 (1) Report to the chief on request.

9 (2) Conduct hearings and other proceedings that are  
10 assigned from the chief in contested cases.

11 (3) Control the course of the hearings and other  
12 proceedings.

13 (4) Issue subpoenas to compel the production of  
14 documents or the appearance of persons in contested cases.

15 (5) Administer oaths regarding testimony to be given  
16 during hearings and other proceedings.

17 (6) Engage in or encourage the use of alternative  
18 dispute resolution methodologies as appropriate.

19 (7) Prepare and issue recommended decisions and final  
20 decisions.

21 (8) Comply with the code of conduct for administrative  
22 law judges.

23 (9) Perform other necessary and appropriate acts in the  
24 performance of their duties.

25 (f) Status of hearing examiners.--A hearing examiner,  
26 hearing officer or administrative law judge employed by an  
27 agency for contested cases on the effective date of this act  
28 shall become an employee of the office and shall be transferred  
29 as provided under this act.

30 Section 503. Alternate designation.



1 (a) General rule.--If for any reason no administrative law  
2 judge can be assigned to a contested case, the chief may  
3 designate a person to function as the administrative law judge  
4 in the case. The person shall meet the qualifications for and  
5 shall have the powers and duties of an administrative law judge  
6 under this act.

7 (b) Status.--The person shall not become an employee of the  
8 office while functioning as an administrative law judge and may  
9 be removed by the chief for any cause.

10 Section 504. Chief as administrative law judge.

11 The chief may perform the duties of an administrative law  
12 judge in a contested case referred to the office, provided that  
13 the duties of the chief are not impaired or in conflict with the  
14 duties of the administrative law judge in the contested case.  
15 After serving as chief, an individual may continue to serve as  
16 an administrative law judge unless he has been removed for good  
17 cause under this act.

## 18 CHAPTER 7

### 19 HEARINGS AND PROCEEDINGS

20 Section 701. Assignment.

21 Except in arbitration or similar proceedings or as provided  
22 by law, this act or regulations of the office, no agency may  
23 request, select or reject the administrative law judge assigned  
24 by the chief to a contested case. The assignment of an  
25 administrative law judge shall be at the sole discretion of the  
26 chief, and nothing in this act shall prohibit the chief from  
27 assigning certain types of contested cases to a particular  
28 administrative law judge based on the experience or expertise of  
29 that administrative law judge.

30 Section 702. Recusal.

1       Notwithstanding section 701, an agency may petition the  
2 assigned administrative law judge or the chief for the recusal  
3 of an administrative law judge assigned to a contested case in  
4 appropriate circumstances. The decision of the chief on the  
5 petition shall be final.

6       Section 703. Cooperation by agency.

7       An agency shall cooperate with the chief and administrative  
8 law judge assigned to a contested case during the discharge of  
9 their duties under this act.

10       Section 704. Independence.

11       Neither the chief nor an administrative law judge shall be  
12 responsible or subject to the supervision, direction or  
13 influence, either directly or indirectly, of an officer,  
14 employee or agent of an agency or the head of an agency during  
15 the performance of any duties in contested cases before the  
16 office. The chief and administrative law judges shall at all  
17 times maintain their independence and impartiality in conducting  
18 hearings and other proceedings and in issuing recommended  
19 decisions and final decisions.

20       Section 705. Ex parte communications.

21       Neither the chief nor an administrative law judge shall  
22 initiate or engage in any ex parte communications, either  
23 directly or indirectly, during or concerning a contested case  
24 referred to the office by an agency.

25       Section 706. Decisions of office.

26       (a) Final decisions.--The office shall issue a final  
27 decision after conclusion of the hearing or other proceedings in  
28 a contested case referred to the office by an agency. If the  
29 agency is required by law to make a final decision or order in  
30 the contested case, the office shall issue a recommended

1 decision.

2 (b) Recommended decisions.--Except as provided in subsection  
3 (a), the office shall issue a recommended decision to the agency  
4 in a contested case. The agency shall accept the findings of  
5 fact contained in the recommended decision unless a finding is  
6 not supported by substantial and competent evidence in the  
7 record. An agency may adopt, modify, reject or reverse the  
8 rationale and conclusions of law contained in the recommended  
9 decision and may remand the contested case to the office.

10 (c) Interlocutory review.--Nothing in this section shall be  
11 construed to prevent an appropriate interlocutory review of the  
12 contested case by an agency.

13 Section 707. Rules and regulations.

14 A hearing or other proceeding in a contested case shall be  
15 conducted by the office in accordance with the general rules of  
16 administrative practice and procedure, and the office shall  
17 promulgate regulations to carry out its duties under this  
18 chapter.

19 CHAPTER 15

20 MISCELLANEOUS PROVISIONS

21 Section 1501. General transfers to office.

22 (a) General provisions.--All personnel, allocations,  
23 equipment, files, records, contracts, agreements, obligations  
24 and other materials which are used, employed or expended in  
25 connection with the powers, duties or functions transferred by  
26 this act to the Office of Administrative Hearings are hereby  
27 transferred to the Office of Administrative Hearings with the  
28 same force and effect as if the appropriations had been made to  
29 and the items had been the property of the Office of  
30 Administrative Hearings in the first instance and as if the

1 contracts, agreements and obligations had been incurred or  
2 entered into by the Office of Administrative Hearings.

3 (b) Division of general administrative personnel and  
4 materials.--The personnel, appropriations, equipment and other  
5 items and materials transferred by this section shall include an  
6 appropriate portion of the general administrative, overhead and  
7 supporting personnel, appropriations, equipment and other  
8 materials of each agency involved and shall also include, where  
9 applicable, Federal grants and funds and other benefits from any  
10 Federal program.

11 (c) Retention of civil service status.--All personnel  
12 transferred under this act shall retain any civil service  
13 employment status assigned to the personnel.

14 Section 1502. Repeals.

15 All acts and parts of acts are repealed insofar as they are  
16 inconsistent with this act.

17 Section 1503. Applicability.

18 This act shall apply to any contested case of an agency  
19 initiated or commenced after 180 days of the effective date of  
20 this act.

21 Section 1504. Effective date.

22 This act shall take effect as follows:

23 (1) Sections 302 and 1501 shall take effect in 180 days.

24 (2) This section shall take effect immediately.

25 (3) The remainder of this act shall take effect in 60  
26 days.