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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 56 Session of  
2013

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INTRODUCED BY ALLOWAY, FONTANA AND RAFFERTY, JANUARY 4, 2013

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REFERRED TO STATE GOVERNMENT, JANUARY 4, 2013

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AN ACT

1 Amending Title 2 (Administrative Law and Procedure) of the  
2 Pennsylvania Consolidated Statutes, extensively revising  
3 provisions on practice and procedure and judicial review of  
4 administrative adjudications; and establishing the Office of  
5 Administrative Hearings.

6 The General Assembly of the Commonwealth of Pennsylvania  
7 hereby enacts as follows:

8 Section 1. Section 101 of Title 2 of the Pennsylvania  
9 Consolidated Statutes is amended by adding definitions to read:

10 § 101. Definitions.

11 Subject to additional definitions contained in subsequent  
12 provisions of this title which are applicable to specific  
13 provisions of this title, the following words and phrases when  
14 used in this title shall have, unless the context clearly  
15 indicates otherwise, the meanings given to them in this section:

16 \* \* \*

17 "Agency action." Any of the following:

18 (1) The whole or part of an order or regulation.

19 (2) The failure to issue an order or promulgate a  
20 regulation.

1           (3) Performing or failing to perform a function required  
2           by law.

3           "Agency head." The individual in whom, or one or more  
4           members of the body of individuals in which, the ultimate legal  
5           authority of an agency is vested.

6           "Agency record." Any of the following:

7           (1) The hearing record under section 506 (relating to  
8           hearing record).

9           (2) The record for review compiled under section 707(b)  
10           (relating to agency record on judicial review; exceptions).

11           \* \* \*

12           "Contested case." An adjudication in which an opportunity  
13           for an evidentiary hearing is required by the Constitution of  
14           the United States, a Federal statute, the Constitution of  
15           Pennsylvania or a statute.

16           \* \* \*

17           "Electronic." Relating to technology having electrical,  
18           digital, magnetic, wireless, optical, electromagnetic or similar  
19           capabilities.

20           "Emergency adjudication." An adjudication in a contested  
21           case when the public health, safety or welfare requires  
22           immediate action.

23           "Evidentiary hearing." A hearing for the receipt of evidence  
24           on issues on which a decision of the presiding officer may be  
25           made in a contested case.

26           \* \* \*

27           "Final agency action." An act of an agency which, as a  
28           result of an administrative proceeding, imposes an obligation,  
29           grants or denies a right, confers a benefit or determines a  
30           legal relationship. The term does not include failure to act.

1 "Final decision maker." The person with the power to issue a  
2 final order in an adjudication.

3 "Final order." The order issued:

4 (1) by the agency head sitting as the presiding officer  
5 in a contested case;

6 (2) following the agency head review of a recommended  
7 order;

8 (3) following the agency head review of an initial  
9 order; or

10 (4) by the presiding officer when the presiding officer  
11 has been delegated final decisional authority with no  
12 subsequent agency head review.

13 \* \* \*

14 "Index." A searchable list in a record of subjects and  
15 titles with page numbers, hyperlinks or other connectors which  
16 link each index entry to the text to which it refers.

17 "Initial order." An order which:

18 (1) is issued by a presiding officer with final  
19 decisional authority; but

20 (2) is subject to discretionary review by the agency.

21 \* \* \*

22 "Notice." A record containing information required to be  
23 sent to a person by this title.

24 "Notify." To take steps reasonably required to inform a  
25 person, regardless of whether the person actually comes to know  
26 of the information.

27 "Office." The Office of Administrative Hearings established  
28 in section 601 (relating to establishment and function).

29 "Order." An agency decision that determines or declares the  
30 rights, duties, privileges, immunities or other interests of a

1 specific person. The term includes a final order, an initial  
2 order and a recommended order.

3 \* \* \*

4 "Proceeding." A formal or informal agency process commenced  
5 or conducted by an agency. The term includes an adjudication, a  
6 rulemaking and an investigation.

7 "Recommended order." An order which:

8 (1) is issued by a presiding officer without final  
9 decisional authority; and

10 (2) is subject to review by the agency head.

11 "Record." Information that is inscribed on a tangible medium  
12 or that is stored in an electronic or other medium and is  
13 retrievable in perceivable form.

14 "Regulation." As follows:

15 (1) The whole or a part of an agency statement of  
16 general applicability which:

17 (i) implements, interprets or prescribes law or  
18 policy or the organization, procedure or practice  
19 requirements of an agency; and

20 (ii) has the force of law.

21 (2) The term includes the amendment or repeal of an  
22 existing regulation.

23 (3) The term does not include any of the following:

24 (i) A statement which:

25 (A) concerns only the internal management of an  
26 agency; and

27 (B) does not affect private rights or procedures  
28 available to the public.

29 (ii) An intergovernmental or interagency memorandum,  
30 directive or communication which does not affect private

1 rights or procedures available to the public.

2 (iii) An opinion of the Attorney General.

3 (iv) A statement which establishes criteria or  
4 guidelines if all of the following clauses apply:

5 (A) The criteria or guidelines are to be used by  
6 the staff of an agency in:

7 (I) performing audits, investigations or  
8 inspections;

9 (II) settling commercial disputes;

10 (III) negotiating commercial arrangements;

11 or

12 (IV) defending, prosecuting or settling  
13 cases.

14 (B) Disclosure of the criteria or guidelines  
15 would enable persons violating the law to:

16 (I) avoid detection;

17 (II) facilitate disregard of requirements  
18 imposed by law; or

19 (III) give an improper advantage to persons  
20 that are in an adverse position to the  
21 Commonwealth.

22 (v) A form developed by an agency to implement or  
23 interpret agency law or policy.

24 (vi) A guidance document.

25 "Rulemaking." The process for the adoption of a new  
26 regulation or the amendment or deletion of an existing  
27 regulation.

28 "Sign." With present intent to authenticate or adopt a  
29 record:

30 (1) to execute or adopt a tangible symbol; or

1 (2) to attach to or logically associate with the record  
2 an electronic symbol, sound or process.

3 \* \* \*

4 "Writing." A record inscribed on a tangible medium.

5 Section 2. Subchapter A of Chapter 5 of Title 2 is amended  
6 to read:

7 SUBCHAPTER A  
8 PRACTICE AND PROCEDURE OF  
9 COMMONWEALTH AGENCIES

10 [Sec.

11 501. Scope of subchapter.

12 502. Representation.

13 503. Discipline.

14 504. Hearing and record.

15 505. Evidence and cross-examination.

16 505.1. Interpreters for the deaf (Deleted by amendment).

17 506. Briefs and oral argument.

18 507. Contents and service of adjudications.

19 508. Notice to Department of Justice.

20 § 501. Scope of subchapter.

21 (a) General rule.--Except as provided in subsection (b),  
22 this subchapter shall apply to all Commonwealth agencies.

23 (b) Exception.--None of the provisions of this subchapter  
24 shall apply to:

25 (1) Proceedings before the Department of Revenue,  
26 Auditor General or Board of Finance and Revenue, involving  
27 the original settlement, assessment or determination or  
28 resettlement, reassessment or redetermination, review or  
29 refund of taxes, interest or payments made into the  
30 Commonwealth treasury.

1 (2) Proceedings before the Secretary of the Commonwealth  
2 under the act of June 3, 1937 (P.L.1333, No.320), known as  
3 the Pennsylvania Election Code.

4 (3) Proceedings before the Department of Transportation  
5 involving matters reviewable under 42 Pa.C.S. § 933 (relating  
6 to appeals from government agencies).

7 (4) Proceedings before the State System of Higher  
8 Education involving student discipline.

9 § 502. Representation.

10 Any party may be represented before a Commonwealth agency.

11 § 503. Discipline.

12 Any Commonwealth agency may, upon hearing and good cause  
13 shown, preclude any person from practice before it.

14 § 504. Hearing and record.

15 No adjudication of a Commonwealth agency shall be valid as to  
16 any party unless he shall have been afforded reasonable notice  
17 of a hearing and an opportunity to be heard. All testimony shall  
18 be stenographically recorded and a full and complete record  
19 shall be kept of the proceedings.

20 § 505. Evidence and cross-examination.

21 Commonwealth agencies shall not be bound by technical rules  
22 of evidence at agency hearings, and all relevant evidence of  
23 reasonably probative value may be received. Reasonable  
24 examination and cross-examination shall be permitted.

25 § 506. Briefs and oral argument.

26 All parties shall be afforded opportunity to submit briefs  
27 prior to adjudication by a Commonwealth agency. Oral argument  
28 upon substantial issues may be heard by the agency.

29 § 507. Contents and service of adjudications.

30 All adjudications of a Commonwealth agency shall be in

1 writing, shall contain findings and the reasons for the  
2 adjudication, and shall be served upon all parties or their  
3 counsel personally, or by mail.

4 § 508. Notice to Department of Justice.

5 Before notice of any hearing leading to an adjudication is  
6 given by a Commonwealth agency (except the Pennsylvania Public  
7 Utility Commission), the agency shall submit the matter to its  
8 representative in the Department of Justice who shall pass upon  
9 the legality of the proposed action or defense. Failure of the  
10 agency to submit the matter to the department shall not  
11 invalidate any adjudication.]

12 Sec.

13 501. Scope of subchapter.

14 502. Presiding officer.

15 503. Procedure.

16 504. Evidence.

17 505. Notice in adjudication.

18 506. Hearing record.

19 507. Emergency adjudication procedure.

20 508. Ex parte communications.

21 509. Intervention.

22 510. Subpoenas.

23 511. Discovery.

24 512. Default.

25 513. Orders.

26 514. Agency review of initial order.

27 515. Agency review of recommended order.

28 516. Reconsideration.

29 517. Stay.

30 518. Availability of orders; index.



1 § 501. Scope of subchapter.

2 This subchapter applies to an adjudication made by an agency.

3 § 502. Presiding officer.

4 (a) Requirement.--A presiding officer must be one of the  
5 following:

6 (1) An administrative law judge.

7 (2) The agency head.

8 (b) Prohibition.--

9 (1) This subsection applies to an individual who:

10 (i) at any stage in a matter subject to an  
11 adjudication, has served as investigator, prosecutor or  
12 advocate; or

13 (ii) is subject to the authority, direction or  
14 discretion of an individual identified in subparagraph  
15 (i).

16 (2) Except as set forth in paragraph (3), an individual  
17 under paragraph (1) may not serve as the presiding officer in  
18 an adjudication of the matter.

19 (3) An agency head who has participated in a  
20 determination of probable cause or other preliminary  
21 determination in an adjudication may serve as the presiding  
22 officer or final decision maker in the adjudication unless a  
23 party demonstrates grounds for disqualification under  
24 subsection (c).

25 (c) Disqualification.--

26 (1) A presiding officer or agency head acting as a final  
27 decision maker is subject to disqualification for:

28 (i) bias;

29 (ii) prejudice;

30 (iii) financial interest;

1 (iv) violation of section 508 (relating to ex parte  
2 communications); or

3 (v) any other factor which would cause a reasonable  
4 person to question the impartiality of the presiding  
5 officer or agency head.

6 (2) A presiding officer or agency head, after making a  
7 reasonable inquiry, shall disclose to the parties any known  
8 facts related to grounds for disqualification which are  
9 material to the impartiality of the presiding officer or  
10 agency head in the proceeding.

11 (d) Petition for the disqualification.--

12 (1) A party must petition for the disqualification of a  
13 presiding officer or agency head:

14 (i) upon notice that the individual will preside; or

15 (ii) upon discovering facts establishing a ground  
16 for disqualification.

17 (2) The petition must state with particularity the  
18 ground on which it is claimed that a fair and impartial  
19 hearing cannot be accorded or the applicable rule or canon of  
20 practice or ethics that requires disqualification.

21 (3) The petition may be denied if the party fails to  
22 exercise due diligence in requesting disqualification after  
23 discovering a ground for disqualification.

24 (e) Decision on disqualification.--A presiding officer or  
25 agency head whose disqualification is requested shall decide  
26 whether to grant the petition and state in a record facts and  
27 reasons for the decision. The decision to deny disqualification  
28 is not subject to interlocutory judicial review.

29 (f) Substitute presiding officer.--If a substitute presiding  
30 officer is required, the substitute shall be appointed by:

1       (1) the Governor, if the original presiding officer is  
2       an elected official; or

3       (2) the appointing authority, if the original presiding  
4       officer is an appointed official.

5       (g) Participation of agency head.--If participation of the  
6       agency head is necessary to enable the agency to take action,  
7       the agency head may continue to participate notwithstanding a  
8       ground for disqualification or exclusion.

9       § 503. Procedure.

10      (a) Scope.--

11           (1) Except as set forth in paragraph (2), this section  
12           states the procedural requirements for an adjudication.

13           (2) This section does not apply to an adjudication under  
14           section 507 (relating to emergency adjudication procedure).

15      (b) Notice.--

16           (1) An agency shall give notice of the agency decision  
17           to a person when the agency takes an action as to which the  
18           person has a right to a hearing.

19           (2) The notice must:

20                   (i) be in writing;

21                   (ii) set forth the agency action;

22                   (iii) inform the person of the right, procedure and  
23                   time limit to file a pleading; and

24                   (iv) provide a copy of the agency procedures  
25                   governing the adjudication.

26      (c) Authority of presiding officer.--

27           (1) The presiding officer shall give all parties a  
28           timely opportunity to file pleadings, motions and objections.

29           (2) The presiding officer may give all parties the  
30           opportunity to file:

1           (i) briefs;  
2           (ii) proposed findings of fact and conclusions of  
3           law; and  
4           (iii) proposed recommended orders, initial orders  
5           and final orders.

6           (3) The presiding officer, with the consent of all  
7           parties, may refer the parties in an adjudication to  
8           mediation or other dispute resolution procedure.

9           (d) Duty of presiding officer.--To the extent necessary for  
10          full disclosure of all relevant facts and issues, the presiding  
11          officer shall give all parties the opportunity to do all of the  
12          following:

- 13           (1) Respond.
- 14           (2) Present evidence and argument.
- 15           (3) Conduct cross-examination.
- 16           (4) Submit rebuttal evidence.

17          (e) Means for conduct of hearing.--

18           (1) Except as otherwise provided by law other than this  
19          title, the presiding officer may conduct all or part of an  
20          evidentiary hearing or a prehearing conference by telephone,  
21          television, video conference or other electronic means. The  
22          hearing may be conducted by telephone or other method by  
23          which the witnesses may not be seen only if all parties  
24          consent or the presiding officer finds that this method will  
25          not impair reliable determination of the credibility of  
26          testimony.

27           (2) Each party shall be given an opportunity to attend,  
28          hear and be heard at the proceeding as it occurs.

29           (3) This subsection does not prevent an agency from  
30          providing by regulation for electronic hearings.

1 (f) Open to the public.--Except as otherwise provided in  
2 subsection (g), a hearing shall be open to the public. A hearing  
3 conducted by telephone, television, video conference or other  
4 electronic means is open to the public if members of the public  
5 have an opportunity to attend the hearing at the place where the  
6 presiding officer is located or to hear the proceeding as it  
7 occurs.

8 (g) Closing of a hearing.--A presiding officer may close a  
9 hearing to the public:

10 (1) on a ground on which a court could close a judicial  
11 proceeding to the public; or

12 (2) under a statute other than this title.

13 (h) Rights of parties.--Unless prohibited by statute other  
14 than this title, a party, at the party's expense, may be  
15 represented by counsel or may be advised, accompanied or  
16 represented by another individual.

17 (i) Hearing record.--

18 (1) A presiding officer shall ensure that a hearing  
19 record is established. The hearing record must contain all of  
20 the following:

21 (i) A recording of the proceeding.

22 (ii) Notice of the proceeding.

23 (iii) Prehearing orders.

24 (iv) Motions, pleadings, briefs, petitions, requests  
25 and intermediate rulings.

26 (v) Evidence admitted.

27 (vi) A statement of a matter officially noticed.

28 (vii) A proffer of proof and objection and ruling on  
29 the objection.

30 (viii) Any proposed finding, requested order and

1 exception.

2 (ix) A transcript under paragraph (2).

3 (x) Any recommended order, final order or order on  
4 reconsideration.

5 (xi) A matter placed on the hearing record under  
6 section 508(f) (relating to ex parte communications).

7 (2) The agency may prepare a transcript of the  
8 proceeding.

9 (j) Basis of decision.--

10 (1) The decision in an adjudication must be based on the  
11 hearing record and contain a statement of the factual and  
12 legal bases of the decision.

13 (2) If a finding of fact is set forth in language of a  
14 statute other than this title, it must be accompanied by a  
15 concise and explicit statement of the underlying facts  
16 supporting the finding of fact.

17 (3) The decision shall be prepared electronically and,  
18 on request, made available in writing.

19 (k) Protection of party rights.--The following may include  
20 provisions more protective than the requirements of this section  
21 of the rights of parties other than the agency:

22 (1) Regulations by which an agency conducts an  
23 adjudication.

24 (2) The provisions of 1 Pa. Code Pt. II (relating to  
25 general rules of administrative practice and procedure).

26 (l) Case disposition.--Unless prohibited by statute other  
27 than this title, an agency may dispose of an adjudication  
28 without a hearing by stipulation, agreed settlement, consent  
29 order or default.

30 § 504. Evidence.

1 The following apply:

2 (1) Except as otherwise provided in paragraph (2), all  
3 relevant evidence is admissible, including hearsay evidence,  
4 if it is of a type commonly relied on by a reasonably prudent  
5 individual in the conduct of the affairs of the individual.

6 (2) Exclusion of evidence is as follows:

7 (i) This paragraph applies to evidence which is:

8 (A) irrelevant, immaterial or unduly  
9 repetitious; or

10 (B) excludable on:

11 (I) constitutional grounds;

12 (II) statutory grounds; or

13 (III) the basis of a judicially recognized  
14 evidentiary privilege.

15 (ii) The presiding officer may exclude evidence  
16 subject to subparagraph (i) in the absence of an  
17 objection.

18 (iii) The presiding officer shall exclude evidence  
19 subject to subparagraph (i) if objection is made at the  
20 time the evidence is offered.

21 (3) If the presiding officer excludes evidence with or  
22 without objection, the offering party may make an offer of  
23 proof before further evidence is presented or at a later time  
24 determined by the presiding officer.

25 (4) Evidence may be received in a hearing record if  
26 doing so will expedite the hearing without substantial  
27 prejudice to a party. Documentary evidence may be received in  
28 the form of a copy if the original is not readily available  
29 or by incorporation by reference. On request, parties shall  
30 be given an opportunity to compare the copy with the

1 original.

2 (5) Testimony shall be made under oath or affirmation.

3 (6) Evidence shall be made part of the hearing record.

4 Information or evidence may not be considered in determining  
5 the case unless it is part of the hearing record. If the  
6 hearing record contains information which is confidential,  
7 the presiding officer may do all of the following:

8 (i) Conduct a closed hearing to discuss the  
9 information.

10 (ii) Issue a necessary protective order.

11 (iii) Seal all or part of the hearing record.

12 (7) The presiding officer may take official notice of  
13 facts of which judicial notice may be taken and of  
14 scientific, technical or other facts within the specialized  
15 knowledge of the agency. A party shall be notified at the  
16 earliest practicable time of the facts proposed to be noticed  
17 and their source, including staff memoranda or data. The  
18 party shall be afforded an opportunity to contest any  
19 officially noticed fact before the decision becomes final.

20 (8) The experience, technical competence and specialized  
21 knowledge of the presiding officer may be used in evaluating  
22 the evidence in the hearing record.

23 § 505. Notice in adjudication.

24 (a) Requirement.--Except as otherwise set forth in section  
25 507 (relating to emergency adjudication procedure), an agency  
26 shall give notice which complies with this section.

27 (b) Contents.--

28 (1) In an adjudication initiated by a person other than  
29 an agency, not later than five days after filing, the agency  
30 shall give notice to all parties that the case has been



1 commenced. The notice must contain all of the following:

2 (i) The official file or other reference number, the  
3 name of the proceeding and a general description of the  
4 subject matter.

5 (ii) Contact information for communicating with the  
6 agency. This subparagraph includes the agency mailing  
7 address, electronic mail address, facsimile number and  
8 telephone number.

9 (iii) A statement of the date, time, place and  
10 nature of a prehearing conference or hearing.

11 (iv) The name, official title, mailing address,  
12 electronic mail address, facsimile number and telephone  
13 number of an attorney or employee who has been designated  
14 to represent the agency.

15 (v) The names and last known addresses of all  
16 parties and other persons that are being given notice by  
17 the agency.

18 (vi) Other matters that the presiding officer  
19 considers desirable to expedite the proceedings.

20 (2) In an adjudication initiated by an agency, the  
21 agency shall give notice to the party against which the  
22 action is brought. The notice must contain all of the  
23 following:

24 (i) A statement that a case that may result in an  
25 order has been commenced against the party.

26 (ii) A short and plain statement of the matters  
27 asserted. This subparagraph includes a statement of the  
28 issues involved.

29 (iii) A statement of the legal authority under which  
30 the hearing will be held citing statutes and regulations

1 involved.

2 (iv) The official file or other reference number and  
3 the name of the proceeding.

4 (v) The name, official title, mailing address,  
5 electronic mail address, facsimile number and telephone  
6 number of the presiding officer of the agency's  
7 representative.

8 (vi) A statement that a party that fails to attend  
9 or participate in a subsequent proceeding in the case may  
10 be held in default.

11 (vii) A statement that the party served may request  
12 a hearing. This subparagraph includes instructions about  
13 how to request a hearing.

14 (viii) The names and last known addresses of all  
15 parties and other persons that are being given notice by  
16 the agency.

17 (ix) Other matters that the presiding officer  
18 considers desirable to expedite the proceedings.

19 (c) Hearings and conferences.--When a hearing or prehearing  
20 conference is scheduled, the agency shall give parties notice  
21 which contains the information required by subsection (b) at  
22 least 30 days before the hearing or prehearing conference.

23 § 506. Hearing record.

24 (a) Retention.--An agency shall maintain the hearing record  
25 under section 503(i) (relating to procedure).

26 (b) Basis.--The hearing record constitutes the exclusive  
27 basis for agency action in an adjudication.

28 § 507. Emergency adjudication procedure.

29 (a) Authorization.--Unless prohibited by statute other than  
30 this title, an agency may conduct an emergency adjudication in

1 an adjudication under this section.

2 (b) Justification.--An agency may take action and issue an  
3 order under this section only to deal with an imminent peril to  
4 the public health, safety or welfare.

5 (c) Due process.--Before issuing an order under this  
6 section, an agency, if practicable, shall give notice and an  
7 opportunity to be heard to the person to which the agency action  
8 is directed. The notice of the hearing and the hearing may be  
9 oral or written and may be by telephone, facsimile or other  
10 electronic means.

11 (d) Order.--An order issued under this section must briefly  
12 explain the factual and legal reasons for using emergency  
13 adjudication procedures.

14 (e) Notice of order.--An agency must give notice to the  
15 person to whom the agency action is directed that an order has  
16 been issued.

17 (f) Hearing.--After issuing an order under this section, an  
18 agency shall proceed as soon as practicable to provide notice  
19 and an opportunity for a hearing following the procedure under  
20 section 503 (relating to procedure) to determine the issues  
21 underlying the order.

22 (g) Effectiveness.--

23 (1) An order under this section takes effect when signed  
24 by the agency head or the designee of the agency head.

25 (2) An order issued under this section terminates upon  
26 the earlier of:

27 (i) 180 days after it takes effect under paragraph

28 (1); or

29 (ii) the termination date specified in the order.

30 § 508. Ex parte communications.

1 (a) Scope.--For the purpose of this section, an adjudication  
2 is pending from the earlier of:  
3 (1) the issuance of the agency's pleading; or  
4 (2) an application for an agency decision.  
5 (b) Due process.--While an adjudication is pending under  
6 subsection (a), all of the following apply:  
7 (1) Except as set forth in paragraph (3) or in  
8 subsection (c), (d) or (e), the presiding officer may not  
9 communicate with any person concerning the case without  
10 notice and opportunity for all parties to participate in the  
11 communication.  
12 (2) Except as set forth in paragraph (3) or in  
13 subsection (c), (d) or (e), the final decision maker may not  
14 communicate with any person concerning the case without  
15 notice and opportunity for all parties to participate in the  
16 communication.  
17 (3) If a presiding officer is a member of a multimember  
18 body of individuals who constitute the agency head, the  
19 presiding officer may communicate with the other members of  
20 that body when sitting as the presiding officer and final  
21 decision maker.  
22 (c) Statutory authorization or uncontested procedure.--A  
23 presiding officer or final decision maker may communicate about  
24 a pending adjudication if any of the following apply:  
25 (1) The communication is required for the disposition of  
26 ex parte matters authorized by statute.  
27 (2) The communication concerns an uncontested procedural  
28 issue.  
29 (d) Legal and ministerial communications.--A presiding  
30 officer or final decision maker may communicate about a pending

1 adjudication if all of the following paragraphs apply:

2 (1) The communication:

3 (i) is with an individual authorized by law to  
4 provide legal advice to the presiding officer or final  
5 decision maker; or

6 (ii) is on ministerial matters with an individual  
7 who serves on the administrative staff of the presiding  
8 officer or final decision maker.

9 (2) The individual referred to in paragraph (1) has not  
10 served as investigator, prosecutor or advocate in any stage  
11 of the case.

12 (3) The communication does not augment, diminish or  
13 modify the evidence in the hearing record.

14 (e) Staff communications.--An agency head who is the  
15 presiding officer or final decision maker in a pending  
16 adjudication may communicate about that case with an employee or  
17 representative of the agency if all of the following paragraphs  
18 apply:

19 (1) The employee or representative has not served as  
20 investigator, prosecutor or advocate at any stage of the  
21 case.

22 (2) The employee or representative has not otherwise had  
23 a communication with any person about the case other than a  
24 communication authorized under subsection (c) or (d) or this  
25 subsection.

26 (3) The communication does not augment, diminish or  
27 modify the evidence in the hearing record.

28 (4) The communication is:

29 (i) an explanation of the technical or scientific  
30 basis of, or technical or scientific terms in, the

1 evidence in the hearing record;

2 (ii) an explanation of the precedent, policies or  
3 procedures of the agency; or

4 (iii) a communication which does not address:

5 (A) the quality, sufficiency or weight of the  
6 evidence in the hearing record; or

7 (B) the credibility of witnesses.

8 (f) Documentation.--If a presiding officer or final decision  
9 maker makes or receives a communication in violation of this  
10 section, the following apply:

11 (1) If the communication is in a record, the presiding  
12 officer or final decision maker shall do all of the  
13 following:

14 (i) Make the record of the communication a part of  
15 the hearing record.

16 (ii) Prepare and make part of the hearing record a  
17 memorandum which contains:

18 (A) the response of the presiding officer or  
19 final decision maker to the communication; and

20 (B) the identity of the person that  
21 communicated.

22 (2) If the communication is oral, the presiding officer  
23 or final decision maker shall prepare a memorandum which  
24 contains:

25 (i) the substance of the verbal communication;

26 (ii) the response of the presiding officer or final  
27 decision maker to the communication; and

28 (iii) the identity of the person that communicated.

29 (g) Response.--If a communication prohibited by this section  
30 is made, the presiding officer or final decision maker:

1           (1) shall notify all parties of the prohibited  
2 communication;

3           (2) shall permit parties to respond in a record not  
4 later than 15 days after the notice is given; and

5           (3) for good cause, may permit additional testimony in  
6 response to the prohibited communication.

7           (h) Remedial action.--If necessary to eliminate the effect  
8 of a communication received in violation of this section, all of  
9 the following apply:

10           (1) The presiding officer or final decision maker may be  
11 disqualified under section 502(c) (relating to presiding  
12 officer).

13           (2) The parts of the hearing record pertaining to the  
14 communication may be sealed by protective order.

15           (3) Other appropriate relief may be granted. This  
16 paragraph includes an adverse ruling on the merits of the  
17 case or dismissal of the application.

18 § 509. Intervention.

19           (a) Mandatory.--A presiding officer shall grant a timely  
20 petition for intervention in an adjudication, with notice to all  
21 parties, if any of the following apply:

22           (1) The petitioner has a right under statute other than  
23 this title to initiate or to intervene in the case.

24           (2) The petitioner has an interest which may be  
25 adversely affected by the outcome of the case, and that  
26 interest is not adequately represented by existing parties.

27           (b) Discretionary.--Subject to subsection (d), a presiding  
28 officer may grant a timely petition for intervention in an  
29 adjudication, with notice to all parties, if any of the  
30 following apply:

1           (1) The petitioner has a permissive right to intervene  
2           under statute other than this title.

3           (2) The petitioner's claim or defense is based on the  
4           same transaction or occurrence as the case.

5           (c) Conditions.--A presiding officer may impose conditions  
6           at any time on an intervener's participation in the  
7           adjudication.

8           (d) Provisional intervention.--A presiding officer may  
9           permit intervention under subsection (b) provisionally and, at  
10           any time later in the adjudication or at the end of the case,  
11           may revoke the provisional intervention.

12           (e) Hearing.--The presiding officer may hold a hearing on  
13           the intervention petition on:

14           (1) request by:

15           (i) a petitioner; or

16           (ii) a party;

17           (2) volition of the presiding officer.

18           (f) Notice.--A presiding officer shall promptly give notice  
19           of an order granting, denying or revoking intervention to the  
20           petitioner for intervention and to the parties. The notice must  
21           allow parties a reasonable time to prepare for the hearing on  
22           the merits.

23           § 510. Subpoenas.

24           (a) Issuance.--On a request in a hearing record by a party  
25           in an adjudication, the presiding officer, on a showing of  
26           general relevance and reasonable scope of the evidence sought  
27           for use at the hearing, shall issue a subpoena for the  
28           attendance of a witness and the production of books, records and  
29           other documentary evidence.

30           (b) Enforcement.--If a party does not comply with a



1 subpoena, the agency may do any of the following:

2 (1) Seek an injunction in Commonwealth Court to enforce  
3 the subpoena.

4 (2) Impose sanctions similar to those under Pa.R.C.P.  
5 No. 4019 (relating to sanctions).

6 § 511. Discovery.

7 (a) Scope.--This section does not apply to a hearing under  
8 section 507 (relating to emergency adjudication procedure).

9 (b) Authorization.--

10 (1) Unless otherwise provided by agency regulation under  
11 subsection (e), a party, on written notice to another party  
12 at least 30 days before an evidentiary hearing, may do all of  
13 the following:

14 (i) Obtain the names and addresses of witnesses the  
15 other party will present at the hearing to the extent  
16 known to the other party.

17 (ii) Inspect and copy any of the following material  
18 in the possession, custody or control of the other party:

19 (A) Evidence the other party proposes to offer.

20 (B) Statements of parties and witnesses proposed  
21 to be called by the other party.

22 (C) Records, including reports of mental,  
23 physical and blood examinations.

24 (D) Investigative reports made by or on behalf  
25 of the agency or other party pertaining to the  
26 subject matter of the adjudication.

27 (E) Exculpatory material in the possession of  
28 the agency.

29 (F) Other materials for good cause.

30 (2) Parties to an adjudication shall supplement

1 responses under paragraph (1) to include information acquired  
2 after the case, to the extent that the information will be  
3 relied on in the hearing.

4 (c) Protective orders.--On petition, the presiding officer  
5 may issue a protective order as to discovery of any of the  
6 following:

7 (1) Material which, by statute other than this title, is  
8 exempt, privileged or otherwise made confidential or  
9 protected from disclosure.

10 (2) Material the disclosure of which would result in  
11 annoyance, embarrassment, oppression or undue burden or  
12 expense to a person.

13 (d) Compulsion.--

14 (1) On petition, the presiding officer shall issue an  
15 order compelling discovery for refusal to comply with a  
16 discovery request unless good cause exists for refusal.

17 (2) If a party does not comply with an order under  
18 paragraph (1), the agency may do any of the following:

19 (i) Seek an injunction in Commonwealth Court to  
20 enforce the subpoena.

21 (ii) Impose sanctions similar to those under  
22 Pa.R.C.P. No. 4019 (relating to sanctions).

23 (e) Exemptions.--An agency may provide by regulation that  
24 some or all discovery procedures under this section do not apply  
25 to a specified program or category of cases if it finds all of  
26 the following:

27 (1) Availability of discovery would unduly complicate or  
28 interfere with the hearing process in its regulatory program,  
29 because of the volume of the applicable caseload and the need  
30 for expedition and informality in that process.

1           (2) Alternative procedures for the sharing of relevant  
2 information are sufficient to ensure the fundamental fairness  
3 of the proceedings.

4           (f) Definition.--As used in this section, the term  
5 "statement" includes a record of a person's written statement  
6 signed by the person and a record which summarizes an oral  
7 statement made by the person.

8 § 512. Default.

9           (a) Authorization.--Unless otherwise provided by statute  
10 other than this title, if a party without good cause fails to  
11 attend or participate in a prehearing conference or hearing in  
12 an adjudication, the presiding officer may issue a default  
13 order.

14           (b) Effect.--If a default order is issued, the presiding  
15 officer:

16                 (1) may conduct any further proceedings necessary to  
17 complete the adjudication without the defaulting party; and

18                 (2) shall determine all issues in the adjudication,  
19 including those affecting the defaulting party.

20           (c) Basis of order.--

21                 (1) A recommended order, an initial order or a final  
22 order issued against a defaulting party may be based on the  
23 defaulting party's admissions or other evidence which may be  
24 used without notice to the defaulting party.

25                 (2) If the burden of proof is on the defaulting party to  
26 establish that the party is entitled to the agency action  
27 sought, the presiding officer may issue a recommended order,  
28 an initial order or a final order without taking evidence.

29           (d) Vacation of order.--

30                 (1) Not later than 15 days after notice to a party

1 subject to a default order that a recommended order, an  
2 initial order or a final order has been rendered against the  
3 party, the party must petition the presiding officer to  
4 vacate the recommended order, initial order or final order.

5 (2) After a petition under paragraph (1), the following  
6 apply:

7 (i) If good cause is shown for the party's failure  
8 to appear, the presiding officer shall:

9 (A) vacate the decision; and

10 (B) after proper service of notice, conduct  
11 another evidentiary hearing.

12 (ii) If good cause is not shown for the party's  
13 failure to appear, the presiding officer shall deny the  
14 motion to vacate.

15 § 513. Orders.

16 (a) Final orders.--If the presiding officer is the agency  
17 head, the presiding officer shall issue a final order.

18 (b) Recommended and initial orders.--Except as otherwise  
19 provided by statute other than this title, the following apply:

20 (1) The presiding officer shall issue a recommended  
21 order if the presiding officer:

22 (i) is not the agency head; and

23 (ii) has not been delegated final decisional  
24 authority.

25 (2) The presiding officer shall issue an initial order  
26 if the presiding officer:

27 (i) is not the agency head; and

28 (ii) has been delegated final decisional authority.

29 (3) An initial order under paragraph (2) shall become a  
30 final order 30 days after issuance unless the order is

1 reviewed by the agency head on:

2 (i) the initiative of the agency head under section  
3 514(a) (relating to agency review of initial order); or

4 (ii) petition of a party under section 514(b).

5 (c) Contents.--

6 (1) A recommended order, an initial order or a final  
7 order shall separately state all of the following:

8 (i) Findings of fact on material issues. The  
9 presiding officer may permit a party to submit proposed  
10 findings of fact under this subparagraph.

11 (ii) Conclusions of law on material issues. The  
12 presiding officer may permit a party to submit proposed  
13 conclusions of law under this subparagraph.

14 (iii) Exercise of discretion.

15 (iv) Remedy prescribed.

16 (v) Action taken on a petition for a stay.

17 (vi) Available procedures and time limits for  
18 seeking reconsideration or other administrative relief.

19 (vii) Time limits for seeking judicial review.

20 (2) A recommended order or an initial order shall state  
21 the circumstances under which it may, without further notice,  
22 become a final order.

23 (d) Findings of fact.--Findings of fact must be based  
24 exclusively on the evidence and matters officially noticed in  
25 the hearing record in the adjudication.

26 (e) Hearsay evidence.--Hearsay evidence may be used to  
27 supplement or explain other evidence, but, on timely objection,  
28 is not sufficient by itself to support a finding of fact unless  
29 it would be admissible over objection in a civil action.

30 (f) Issuance of orders.--An order is issued under this

1 section when it is signed by the agency head, the presiding  
2 officer or an individual authorized by statute other than this  
3 title.

4 (g) Service.--

5 (1) Except as set forth in paragraph (2), a recommended  
6 order, an initial order or a final order shall be served in a  
7 hearing record on each party and the agency head within 90  
8 days of the later of:

9 (i) the end of the hearing;

10 (ii) the closing of the hearing record; or

11 (iii) the last date for submission of memoranda,  
12 briefs or proposed findings.

13 (2) The presiding officer may extend the time under  
14 paragraph (1) by stipulation, waiver or a finding of good  
15 cause.

16 (h) Effective date of final order.--

17 (1) Except as set forth in paragraph (2), a final order  
18 is effective 30 days after all parties are notified of the  
19 order.

20 (2) Paragraph (1) does not apply if action is taken  
21 under:

22 (i) section 516 (relating to reconsideration); or

23 (ii) section 517 (relating to stay).

24 § 514. Agency review of initial order.

25 (a) Review on initiative of agency head.--

26 (1) An agency head may review an initial order on the  
27 initiative of the agency head.

28 (2) In a review under this subsection, all of the  
29 following apply:

30 (i) The agency head shall give notice in a record to

1 the parties that it intends to review the order.

2 (ii) Except as set forth in subparagraph (iii), the  
3 notice shall be given not later than 15 days after the  
4 parties are notified of the order.

5 (iii) The time period in subparagraph (ii) is tolled  
6 by the submission of a timely petition under section 516  
7 (relating to reconsideration). A new time period under  
8 subparagraph (ii) begins on disposition of the petition  
9 for reconsideration.

10 (b) Review on petition by a party.--

11 (1) A party must petition for review of an initial  
12 order.

13 (2) All of the following apply to petition under this  
14 subsection:

15 (i) The party must file the petition with:

16 (A) the agency head; or

17 (B) a person designated by agency regulation.

18 (ii) Except as set forth in subparagraph (iii), the  
19 petition must be filed not later than 15 days after  
20 notice to the parties of the order.

21 (iii) The time period in subparagraph (ii) is tolled  
22 by the submission of a timely petition under section 516.  
23 A new time period under subparagraph (ii) begins on  
24 disposition of the petition for reconsideration.

25 (3) On petition under paragraph (2), the agency head  
26 may:

27 (i) deny the petition; or

28 (ii) review the initial order.

29 (c) Tolling.--If an order is subject both to a petition  
30 under subsection (b) and a petition under section 516, the

1 petition under section 516 shall be disposed of first unless the  
2 agency head determines that action on that petition has been  
3 unreasonably delayed.

4 (d) Duties of agency head.--

5 (1) In reviewing an initial order, the following apply:

6 (i) Except as set forth in subparagraph (ii), the  
7 agency head shall exercise the decision-making power that  
8 the agency head would have had if the agency head had  
9 conducted the hearing which produced the order.

10 (ii) Subparagraph (i) does not apply to the extent  
11 that the issues subject to review are limited by:

12 (A) statute other than this title; or

13 (B) order of the agency head on notice to the  
14 parties.

15 (2) In reviewing findings of fact in an initial order,  
16 the agency head shall consider the presiding officer's  
17 opportunity to observe the witnesses and to determine the  
18 credibility of witnesses.

19 (3) The agency head shall consider the hearing record or  
20 parts of the hearing record designated by the parties.

21 (4) On remanding a matter, the agency head may order  
22 temporary relief as authorized and appropriate.

23 (e) Contents, delivery and notice.--A final order or an  
24 order remanding the matter for further proceedings shall comply  
25 with all of the following:

26 (1) The order shall identify any difference between the  
27 order and the initial order and state all of the following:

28 (i) The fact in the hearing record which supports a  
29 difference in a finding of fact. Findings of fact under  
30 this subparagraph must be based exclusively on the



1 evidence and matters officially noticed in the hearing  
2 record in the adjudication.

3 (ii) The law which supports a difference in a  
4 conclusion of law.

5 (iii) The policy which supports a difference in the  
6 exercise of discretion.

7 (2) A final order under this section shall include, or  
8 incorporate by express reference to the initial order, the  
9 matters required by section 513(c) (relating to orders).

10 (3) The agency head shall deliver the order to the  
11 presiding officer and notify the parties of the order.

12 (f) Disposition.--

13 (1) If an agency head reviews an initial order, the  
14 agency head must, not later than 120 days after the decision  
15 to review the initial order:

16 (i) issue a final order disposing of the proceeding;  
17 or

18 (ii) remand the matter for further proceedings with  
19 instructions to the presiding officer who issued the  
20 initial order.

21 (2) The initial order becomes a final order under  
22 section 513(b) (3) if all of the following subparagraphs  
23 apply:

24 (i) There is no initiative under subsection (a).

25 (ii) There is:

26 (A) no filing under subsection (b) (1) and (2);

27 (B) a denial under subsection (b) (3) (i); or

28 (C) failure to comply with the time limit under  
29 paragraph (1).

30 § 515. Agency review of recommended order.

1 (a) Duty of agency head.--An agency head shall review a  
2 recommended order under this section.

3 (b) Discretion.--

4 (1) In reviewing an initial order, the following apply:

5 (i) Except as set forth in subparagraph (ii), the  
6 agency head shall exercise the decision-making power that  
7 the agency head would have had if the agency head had  
8 conducted the hearing which produced the order.

9 (ii) Subparagraph (i) does not apply to the extent  
10 that the issues subject to review are limited by:

11 (A) statute other than this title; or

12 (B) order of the agency head on notice to the  
13 parties.

14 (2) In reviewing findings of fact in an initial order,  
15 the agency head shall consider the presiding officer's  
16 opportunity to observe the witnesses and to determine the  
17 credibility of witnesses.

18 (3) The agency head shall consider the hearing record or  
19 parts of the hearing record designated by the parties.

20 (c) Authority of agency head.--

21 (1) An agency head may:

22 (i) render a final order disposing of the  
23 proceeding; or

24 (ii) remand the matter for further proceedings with  
25 instructions to the presiding officer who rendered the  
26 recommended order.

27 (2) On remanding a matter, the agency head may order  
28 temporary relief as authorized and appropriate.

29 (d) Contents, delivery and notice.--A final order or an  
30 order remanding the matter for further proceedings shall comply

1 with all of the following:

2 (1) The order shall identify any difference between the  
3 order and the initial order and state all of the following:

4 (i) The fact in the hearing record which supports a  
5 difference in a finding of fact. Findings of fact under  
6 this subparagraph must be based exclusively on the  
7 evidence and matters officially noticed in the hearing  
8 record in the adjudication.

9 (ii) The law which supports a difference in a  
10 conclusion of law.

11 (iii) The policy which supports a difference in the  
12 exercise of discretion.

13 (2) A final order under this section shall include, or  
14 incorporate by express reference to the initial order, the  
15 matters required by section 513(c) (relating to orders).

16 (3) The agency head shall deliver the order to the  
17 presiding officer and notify the parties of the order.

18 § 516. Reconsideration.

19 (a) Petition for reconsideration.--A party may seek  
20 reconsideration as follows:

21 (1) The party must prepare a petition for  
22 reconsideration, stating the specific grounds on which relief  
23 is requested.

24 (2) The party must file the petition within 15 days  
25 after notice to the parties that a final order has been  
26 issued.

27 (3) The party must file the petition in accordance with:

28 (i) agency regulations; and

29 (ii) requirements stated in the final order.

30 (b) Time for filing petition for judicial review.--

1       (1) If the conditions in paragraph (2) are met, the time  
2 for filing a petition for judicial review does not begin  
3 until the agency disposes of the petition for reconsideration  
4 as provided in section 503(1) (relating to procedure).

5       (2) Paragraph (1) applies if all of the following apply:

6           (i) A petition for reconsideration is timely filed.

7           (ii) The petitioner has complied with the agency's  
8 procedural regulations for reconsideration.

9       (c) Decision maker.--Not later than 20 days after a petition  
10 is filed under subsection (a), the decision maker shall issue a  
11 written order doing one of the following:

12           (1) Denying the petition.

13           (2) Granting the petition. An order under this paragraph  
14 must state findings of facts, conclusions of law and the  
15 reasons for granting the petition. The order shall:

16           (i) dissolve or modify the final order; or

17           (ii) set the matter for further proceedings.

18       (d) Deemed denial.--If the decision maker fails to respond  
19 to the petition not later than 30 days after filing, or a longer  
20 period agreed to by the parties, the petition is deemed denied.

21 § 517. Stay.

22       (a) Request.--Except as otherwise provided by statute other  
23 than this title, a party, not later than seven days after the  
24 parties are notified of the order, may request the agency to  
25 stay a final order pending judicial review.

26       (b) Grant.--

27           (1) The agency may grant the request for a stay pending  
28 judicial review if the agency finds that justice requires.

29           (2) The agency may grant or deny the request for stay of  
30 the order before, on or after the effective date of the

1 order.

2 § 518. Availability of orders; index.

3 (a) Index.--Except as otherwise provided in subsections (b)  
4 and (c), an agency shall create an index of all final orders in  
5 adjudications and make the index and all final orders available  
6 for public inspection and copying, at cost, in its principal  
7 offices.

8 (b) Records not included in the index.--Except as otherwise  
9 provided in subsection (c), final orders that are exempt,  
10 privileged or otherwise made confidential or protected from  
11 disclosure by the act of February 14, 2008 (P.L.6, No.3), known  
12 as the Right-to-Know Law, are not public records and may not be  
13 indexed. The final order may be excluded from an index and  
14 disclosed only by order of the presiding officer with a written  
15 statement of reasons attached to the order.

16 (c) Redaction.--If the presiding officer determines it is  
17 possible to redact a final order which is exempt, privileged or  
18 otherwise made confidential or protected from disclosure by  
19 statute other than this title so that it complies with the  
20 requirements of that statute, the redacted order may be placed  
21 in the index and published.

22 (d) Reliance on final orders.--An agency may not rely on a  
23 final order adverse to a party other than the agency as  
24 precedent in future adjudications unless all of the following  
25 apply:

26 (1) The agency designates the order as a precedent.

27 (2) The order has been published, placed in an index,  
28 and made available for public inspection.

29 Section 3. Title 2 is amended by adding a chapter to read:

30 CHAPTER 6

1 OFFICE OF ADMINISTRATIVE HEARINGS

2 Sec.

3 601. Establishment and function.

4 602. Organization.

5 603. Administrative law judges.

6 604. Chief administrative law judge.

7 605. Cooperation.

8 § 601. Establishment and function.

9 (a) Establishment.--The Office of Administrative Hearings is  
10 established as an independent office in the Executive Department  
11 of State government.

12 (b) Function.--The office shall administer the resolution of  
13 all contested cases unless the agency head hears the case  
14 without delegation or assignment to an administrative law judge.

15 § 602. Organization.

16 (a) Head.--The office is headed by a chief administrative  
17 law judge appointed by the Governor with the advice and consent  
18 of two-thirds of the members of the Senate.

19 (b) Qualifications.--The chief administrative law judge must  
20 meet all of the following:

21 (1) Have been an attorney at law for at least five  
22 years.

23 (2) Be an attorney at law in good standing with the  
24 Supreme Court.

25 (3) Have substantial experience in administrative law.

26 (c) Tenure.--

27 (1) The chief administrative law judge shall serve a  
28 term of five years and until a successor is appointed and  
29 qualifies for office. A chief administrative law judge may be  
30 reappointed.

1           (2) The chief administrative law judge may be removed  
2 from office only for cause and only after notice and hearing.  
3 This paragraph is subject to Chs. 5 Subch. A (relating to  
4 practice and procedure of Commonwealth agencies) and 7 Subch.  
5 A (relating to judicial review of Commonwealth agency  
6 action).

7           (d) Salary.--The salary of the chief administrative law  
8 judge shall be set under section 709 of the act of April 9, 1929  
9 (P.L.177, No.175), known as The Administrative Code of 1929.

10          (e) Obligations.--

11           (1) The chief administrative law judge shall devote full  
12 time to the duties of the office and may not engage in the  
13 private practice of law.

14           (2) The chief administrative law judge is subject to the  
15 code of conduct under section 604(8) (relating to chief  
16 administrative law judge).

17           (f) Oath.--The chief administrative law judge must take the  
18 oath of office required by law before beginning duties as an  
19 administrative law judge.

20 § 603. Administrative law judges.

21          (a) Appointment.--

22           (1) The chief administrative law judge shall appoint  
23 administrative law judges under the act of August 5, 1941  
24 (P.L.752, No.286), known as the Civil Service Act.

25           (2) An administrative law judge is a management  
26 employee:

27           (i) subject to the administrative supervision of the  
28 chief administrative law judge; and

29           (ii) entitled to employment security under the Civil  
30 Service Act.

1 (b) Qualifications.--To be eligible for appointment as an  
2 administrative law judge, an individual must comply with all of  
3 the following:

4 (1) Meet the requirements of the Civil Service Act.

5 (2) Have been an attorney at law for at least three  
6 years.

7 (3) Be an attorney at law in good standing with the  
8 Supreme Court.

9 (c) Oath.--An administrative law judge must take the oath of  
10 office required by law before beginning duties as an  
11 administrative law judge.

12 (d) Code of conduct.--An administrative law judge is subject  
13 to the code of conduct for administrative law judges adopted  
14 under section 604(8) (relating to chief administrative law  
15 judge).

16 (e) Compensation.--An administrative law judge is entitled  
17 to the compensation under section 709 of the act of April 9,  
18 1929 (P.L.177, No.175), known as The Administrative Code of  
19 1929.

20 (f) Prohibition.--An administrative law judge may not  
21 perform an act inconsistent with the duties and responsibilities  
22 of an administrative law judge.

23 (g) Powers and duties.--

24 (1) In a contested case, the following apply:

25 (i) The chief administrative law judge shall assign  
26 an administrative law judge to be the presiding officer.

27 (ii) If the administrative law judge is delegated  
28 final decisional authority, the administrative law judge  
29 shall issue a final order.

30 (iii) If the administrative law judge is not



1 delegated final decisional authority, the administrative  
2 law judge shall issue to the agency head a recommended  
3 order in the contested case.

4 (2) Except as otherwise provided by statute other than  
5 this chapter, if a contested case is referred to the office  
6 by an agency, the agency may not take further action with  
7 respect to the proceeding, except as a party, until a  
8 recommended, initial or final order is issued.

9 (3) An administrative law judge may perform duties  
10 authorized by statute other than this chapter.

11 § 604. Chief administrative law judge.

12 (a) Powers and duties.--The chief administrative law judge  
13 has the following powers and duties:

14 (1) Supervise and manage the office.

15 (2) Serve as an administrative law judge in a contested  
16 case referred to the office.

17 (3) Assign an administrative law judge in a contested  
18 case referred to the office.

19 (4) Assure the decisional independence of each  
20 administrative law judge.

21 (5) Establish and implement standards for equipment,  
22 supplies and technology for administrative law judges.

23 (6) Provide and coordinate continuing education programs  
24 and services for administrative law judges and advise them of  
25 changes in the law concerning their duties.

26 (7) Promulgate regulations to implement this chapter.

27 (8) Adopt a code of conduct for administrative law  
28 judges.

29 (9) Monitor the quality of orders issued by  
30 administrative law judges.

1           (10) If necessary, establish classifications for case  
2 assignment on the basis of subject matter, expertise and case  
3 complexity.

4           (11) Promulgate necessary amendments to 1 Pa. Code Pt.  
5 II (relating to general rules of administrative practice and  
6 procedure) and issue policy statements on administrative  
7 hearings.

8           (12) Discipline, under the act of August 5, 1941  
9 (P.L.752, No.286), known as the Civil Service Act,  
10 administrative law judges who do not meet appropriate  
11 standards of conduct and competence.

12           (13) Accept grants and gifts for the benefit of the  
13 office.

14           (14) Contract with other Commonwealth agencies for  
15 services provided by the office.

16           (15) Assess reasonable fees to cover administrative  
17 expenses of the office. Fees under this paragraph shall not  
18 be charged to:

19               (i) Commonwealth agencies; or

20               (ii) petitioners who are determined by the office to  
21 be unable to pay the fees.

22           (16) Furnish administrative law judges on a contractual  
23 basis to political subdivisions and municipal authorities and  
24 instrumentalities.

25           (b) Report.--The chief administrative law judge shall submit  
26 an annual report on the activities of the office to the  
27 Governor, the Secretary of the Senate and the Chief Clerk of the  
28 House of Representatives.

29 § 605. Cooperation.

30           (a) General rule.--Commonwealth agencies shall cooperate

1 with the chief administrative law judge in the discharge of the  
2 duties of the office.

3 (b) Rejection of administrative law judge.--(Reserved).

4 Section 4. Subchapter A of Chapter 7 of Title 2 is amended  
5 to read:

6 SUBCHAPTER A

7 JUDICIAL REVIEW OF COMMONWEALTH

8 AGENCY ACTION

9 [Sec.

10 701. Scope of subchapter.

11 702. Appeals.

12 703. Scope of review.

13 704. Disposition of appeal.

14 § 701. Scope of subchapter.

15 (a) General rule.--Except as provided in subsection (b),  
16 this subchapter shall apply to all Commonwealth agencies  
17 regardless of the fact that a statute expressly provides that  
18 there shall be no appeal from an adjudication of an agency, or  
19 that the adjudication of an agency shall be final or conclusive,  
20 or shall not be subject to review.

21 (b) Exceptions.--None of the provisions of this subchapter  
22 shall apply to:

23 (1) Any matter which is exempt from Subchapter A of  
24 Chapter 5 (relating to practice and procedure of Commonwealth  
25 agencies).

26 (2) Any appeal from a Commonwealth agency which may be  
27 taken initially to the courts of common pleas under 42  
28 Pa.C.S. § 933 (relating to appeals from government agencies).

29 § 702. Appeals.

30 Any person aggrieved by an adjudication of a Commonwealth

1 agency who has a direct interest in such adjudication shall have  
2 the right to appeal therefrom to the court vested with  
3 jurisdiction of such appeals by or pursuant to Title 42  
4 (relating to judiciary and judicial procedure).

5 § 703. Scope of review.

6 (a) General rule.--A party who proceeded before a  
7 Commonwealth agency under the terms of a particular statute  
8 shall not be precluded from questioning the validity of the  
9 statute in the appeal, but such party may not raise upon appeal  
10 any other question not raised before the agency (notwithstanding  
11 the fact that the agency may not be competent to resolve such  
12 question) unless allowed by the court upon due cause shown.

13 (b) Equitable relief.--The remedy at law provided by  
14 subsection (a) shall not in any manner impair the right to  
15 equitable relief heretofore existing, and such right to  
16 equitable relief is hereby continued notwithstanding the  
17 provisions of subsection (a).

18 § 704. Disposition of appeal.

19 The court shall hear the appeal without a jury on the record  
20 certified by the Commonwealth agency. After hearing, the court  
21 shall affirm the adjudication unless it shall find that the  
22 adjudication is in violation of the constitutional rights of the  
23 appellant, or is not in accordance with law, or that the  
24 provisions of Subchapter A of Chapter 5 (relating to practice  
25 and procedure of Commonwealth agencies) have been violated in  
26 the proceedings before the agency, or that any finding of fact  
27 made by the agency and necessary to support its adjudication is  
28 not supported by substantial evidence. If the adjudication is  
29 not affirmed, the court may enter any order authorized by 42  
30 Pa.C.S. § 706 (relating to disposition of appeals).]

1 Sec.

2 701. Right to judicial review; final agency action reviewable.

3 702. Relation to other judicial review law and rules.

4 703. Time to seek judicial review of agency action;

5     limitations.

6 704. Stays pending appeal.

7 705. Standing.

8 706. Exhaustion of administrative remedies.

9 707. Agency record on judicial review; exceptions.

10 708. Scope of review.

11 § 701. Right to judicial review; final agency action

12     reviewable.

13     (a) Judicial review.--Except to the extent that a statute  
14 other than this title limits or precludes judicial review, a  
15 person that meets the requirements of this subchapter is  
16 entitled to judicial review of a final agency action.

17     (b) Judicial review of a final agency action.--A person  
18 entitled to judicial review under subsection (a) is entitled to  
19 judicial review of an agency action which is not final if  
20 postponement of judicial review would result in an inadequate  
21 remedy or irreparable harm that outweighs the public benefit  
22 derived from postponing judicial review.

23     (c) Authority of court.--A court may compel an agency to  
24 take action that is unlawfully withheld or unreasonably delayed.

25 § 702. Relation to other judicial review law and rules.

26     (a) Procedural rules.--Judicial review of final agency  
27 action must be taken only as provided by the Pennsylvania Rules  
28 of Appellate Procedure.

29     (b) Review.--This subchapter does not limit use of or the  
30 scope of judicial review available under other means of review,

1 redress, relief or trial de novo provided by statute other than  
2 this title. Except to the extent that prior, adequate and  
3 exclusive opportunity for judicial review is available under  
4 this subchapter or under statute other than this title, final  
5 agency action is subject to judicial review in civil or criminal  
6 proceedings for judicial enforcement.

7 § 703. Time to seek judicial review of agency action;  
8 limitations.

9 (a) Commencement of action.--

10 (1) Judicial review of a regulation on the grounds of  
11 noncompliance with the procedural requirements of this title  
12 must be commenced not later than two years after the  
13 effective date of the regulation.

14 (2) Judicial review of an order or other final agency  
15 action other than a regulation must be commenced not later  
16 than 30 days after the date the parties are notified of the  
17 order or other agency action.

18 (b) Tolling.--The time for seeking judicial review under  
19 this section is tolled during the time a party pursues before  
20 the agency an administrative remedy which must be exhausted as a  
21 condition of judicial review.

22 § 704. Stays pending appeal.

23 A petition for judicial review does not automatically stay an  
24 agency decision. A challenging party must request the reviewing  
25 court for a stay on the same basis as stays are granted under  
26 the Pennsylvania Rules of Appellate Procedure, and the reviewing  
27 court may grant a stay regardless of whether the challenging  
28 party first sought a stay from the agency.

29 § 705. Standing.

30 The following persons have standing to obtain judicial review

1 of a final agency action:

2 (1) A person aggrieved or adversely affected by the  
3 agency action.

4 (2) A person that has standing under statute other than  
5 this title.

6 § 706. Exhaustion of administrative remedies.

7 (a) Requirement.--Subject to subsection (c) or statute other  
8 than this title which provides that a person need not exhaust  
9 administrative remedies, a person may file a petition for  
10 judicial review under this title only after exhausting all  
11 administrative remedies available within:

12 (1) the agency the action of which is being challenged;  
13 and

14 (2) any other agency authorized to exercise  
15 administrative review.

16 (b) Effect of certain filings.--Filing a petition for  
17 reconsideration or a stay of proceedings is not a prerequisite  
18 for seeking judicial review.

19 (c) Authority of court.--The court may relieve a petitioner  
20 of the requirement to exhaust an administrative remedy to the  
21 extent that:

22 (1) the administrative remedy is inadequate; or

23 (2) the requirement would result in irreparable harm.

24 § 707. Agency record on judicial review; exceptions.

25 (a) Scope of court review.--If an agency was required by  
26 statute other than this title to maintain an agency record  
27 during the proceeding that gave rise to the action under review,  
28 the court review is confined to that record and to matters  
29 arising from that record.

30 (b) Record for review.--If subsection (a) does not apply,

1 the record for review consists of the unprivileged materials  
2 that agency decision makers directly or indirectly considered,  
3 or which were submitted for consideration by any person, in  
4 connection with the action under review, including information  
5 that is adverse to the agency's position. If the agency action  
6 was ministerial or was taken on the basis of a minimal or no  
7 administrative record, the court may receive evidence relating  
8 to the agency's basis for taking the action.

9 (c) Authority of court.--The court may supervise an agency's  
10 compilation of the agency record. If a challenging party makes a  
11 substantial showing of need, the court may allow discovery or  
12 other evidentiary proceedings and consider evidence outside the  
13 agency record to:

14 (1) ensure that the agency record is complete as  
15 required by this title and other applicable law;

16 (2) adjudicate allegations of procedural error not  
17 disclosed by the record; or

18 (3) prevent manifest injustice.

19 § 708. Scope of review.

20 (a) Rules.--Except as provided by statute other than this  
21 title, in judicial review of an agency action, the following  
22 apply:

23 (1) The burden of demonstrating the invalidity of agency  
24 action is on the party asserting invalidity.

25 (2) The court shall make a ruling on each material issue  
26 on which the court's decision is based.

27 (3) The court may grant relief only if it determines  
28 that a person seeking judicial review has been prejudiced by  
29 any of the following:

30 (i) The agency erroneously interpreted the law.



1           (ii) The agency committed an error of procedure.

2           (iii) The agency action is arbitrary, capricious, an  
3 abuse of discretion or otherwise not in accordance with  
4 law.

5           (iv) An agency determination of fact in a contested  
6 case is not supported by substantial evidence in the  
7 record as a whole.

8           (v) To the extent that the facts are subject to a  
9 trial de novo by the reviewing court, the action was  
10 unwarranted by the facts.

11 (b) Duties of court.--In making a determination under this  
12 section, the court shall review the agency record or the parts  
13 designated by the parties and shall apply the rule of harmless  
14 error.

15       Section 5. This act shall apply as follows:

16           (1) Except as provided under paragraph (2), this act  
17 shall apply to administrative proceedings commenced on or  
18 after the effective date of this section.

19           (2) Paragraph (1) shall not apply to the following  
20 provisions:

21           (i) The addition of the definition of "office" in 2  
22 Pa.C.S. § 101.

23           (ii) The addition of 2 Pa.C.S. Ch. 6.

24       Section 6. This act shall take effect as follows:

25           (1) The following provisions shall take effect in 180  
26 days:

27           (i) The addition of the definition of "office" in 2  
28 Pa.C.S. § 101.

29           (ii) The addition of 2 Pa.C.S. Ch. 6.

30           (2) This section shall take effect immediately.

1           (3) The remainder of this act shall take effect in 60  
2    days.