

Legislative History for Connecticut Act

SB 209 PA 317 1988
House 7319-7337, 7771-7781 (30)
Senate 920, 2472-2482, 3538-3540,
3556-3557 (17)
Judiciary 176, 185-189, 192-194, 204, 219,
224-225, 262-265, 268, 277-279,
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House of Representatives

Monday, May 2, 1988

House Bill 5001, as amended by House Amendments
"A", "B", "C", "D", "F" and "G".

Total Number Voting	151
Necessary for Passage	76
Those Voting Yea	150
Those Voting Nay	1
Those absent and not Voting	0

DEPUTY SPEAKER LAVINE:

The bill is passed. Will the Clerk please call
Calendar 607?

CLERK:

Page 7, Calendar 607, Substitute for Senate Bill
209, AN ACT CONCERNING AMENDMENTS TO THE UNIFORM
ADMINISTRATIVE PROCEDURE ACT. (As amended by Senate "A")
Favorable Report of the Committee on G.A.E.

DEPUTY SPEAKER LAVINE:

Representative Looney.

REP. LOONEY: (96th)

Thank you, Mr. Speaker. Mr. Speaker, I move
acceptance of the Joint Committee's Favorable Report
and passage of the bill in concurrence with the Senate.

SPEAKER STOLBERG:

Will you remark, sir?

REP. LOONEY: (96th)

Yes, Mr. Speaker, I will. This bill, Mr. Speaker,

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is the result of...

DEPUTY SPEAKER LAVINE:

Representative Looney, ladies and gentlemen, this is a significant piece of legislation, and I would ask that the Chamber please give its attention to the distinguished Chairman of the G.A.E. Committee. Will you proceed, sir?

REP. LOONEY: (96th)

Thank you, Mr. Speaker. Mr. Speaker, this bill is the result of nearly three years of review and study of the law revision commission, which in 1985 began a review of amendments to the uniform administrative procedures act proposed by the administrative law section of the Connecticut Bar Association.

The law of administrative procedure has developed rapidly over the years, and this project is the first comprehensive review of the UAPA since its adoption in 1971. Interest in revising the UAPA has been engendered in part by the adoption of the 1981 model state administrative procedure act by the uniform law commissioners.

The review is an ongoing one. For nearly two or three years there was a bill in the last session which was substantively very much similar to the one before us. It was not enacted upon near the end of the

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session partly because of its length and complexity, the belief that more time was needed for review.

Briefly to summarize the bill, it sets standards for intervention by interested parties in a declaratory ruling proceeding and in a contested case, allows regulation making to begin after passage of a public act, but before its effective date, so that the regulation can become effective immediately on that effective date.

There is a problem, as we all know sometimes, in harmonizing the statute and the regulations in terms of time. The bill would also clarify the authority of hearing officers to conduct hearings. It delineates what information constitutes the record of the contested case.

It clarifies the effective date of and notice required of a final decision, clarifies when ex-party contacts are allowed, clarifies when a final decision can be reconsidered or modified, permits full agency review of preliminary rulings where necessary, clarifies the requirements for service and filing of appeals, and clarifies when the UAPA applies to an agency proceeding.

At this time, Mr. Speaker, I would also like to indicate that the Clerk has in his possession a Senate

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Amendment which was LCO 3657. It was previously designated as Senate Amendment "A". I would ask the Clerk to call this amendment and then may I be given leave to summarize?

DEPUTY SPEAKER LAVINE:

Will the Clerk please call LCO 3657, designated Senate Amendment "A"?

CLERK:

LCO 3657, designated Senate "A", offered by Senator Maloney.

DEPUTY SPEAKER LAVINE:

The gentleman is seeking permission to summarize. Is there objection? Hearing none, you may proceed.

REP. LOONEY: (96th)

Thank you, Mr. Speaker. This amendment, Mr. Speaker, clarifies in the first part of the amendment, lines 44 through 47, that a hearing officer may be an agency staff employee. Then makes section 2 of the bill consistent with section 7, on the effective date of regulations. Also removes section 8 of the bill which has already been passed in a separate item before this Legislature. Creates a procedure that to send notice to interested parties in a declaratory ruling proceeding, at lines 825 and 826 of the bill. Allows the agency discretion in granting party status and

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declaratory hearing procedures. In line 831 of the bill clarifies also that, not only a party, but also the agency itself, has certain rights to obtain evidence and that both the party and the agency must consent to a stipulation.

That's in lines 955 and thereafter as referenced from the amendment, and then provides also that in a contested case hearing, but not with respect to regulation making, if the hearing officer is allowed a non-party or a non-intervener, that to make the statement it's within the hearing officers discretion to permit cross examination of that person or rebuttal of the statement, and it corrects language to retain the proper exemption for the Department of Labor, and then changes the effective date of the act from October 1st, 1988 to January 1st, 1989. Mr. Speaker, there will also be a subsequent amendment to extend that effective date even further.

At this point, that summarizes the amendment, Mr. Speaker, and I would move adoption.

DEPUTY SPEAKER LAVINE:

Motion's on adoption. Will you remark? Will you remark? Representative Krawiecki.

REP. KRAWIECKI: (78th)

Thank you, Mr. Speaker. Question, through you, to

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Representative Looney, please.

DEPUTY SPEAKER LAVINE:

Will you proceed?

REP. KRAWIECKI: (78th)

Representative Looney, in looking at lines 18 and 19 of the amendment, and trying to read it with the file, I think the language now for hearing officer is as follows: Hearing officer means an individual appointed by an agency to conduct a hearing in an agency proceeding. Such an individual may be a staff employee of the agency, but not a member of the agency.

So, through you, Mr. Speaker, can you tell me what that means, Representative Looney. I mean, I don't understand whether, how a person can be a staff employee of the agency, but not be a member of that agency.

DEPUTY SPEAKER LAVINE:

Representative Looney.

REP. LOONEY: (96th)

Yes, through you, Mr. Speaker, it would also involve the commissioner himself.

DEPUTY SPEAKER LAVINE:

Representative Krawiecki.

REP. KRAWIECKI: (78th)

I'm sorry I didn't catch.

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DEPUTY SPEAKER LAVINE:

Representative Looney.

REP. LOONEY: (96th)

Yes, through you, Mr. Speaker, it would include the commissioner of the agency himself would not necessarily be otherwise designated as a member or employee of the agency perhaps.

DEPUTY SPEAKER LAVINE:

Representative Krawiecki.

REP. KRAWIECKI: (78th)

Through you, Mr. Speaker, but isn't the...even if it were just the commissioner that you're seeking to identify, it seems to me that that person would still be a staff employee. Let me ask you this. Is the commissioner an employee of an agency? Through you, Mr. Speaker.

DEPUTY SPEAKER LAVINE:

Representative Looney.

REP. LOONEY: (96th)

Yes, through you, Mr. Speaker, my understanding is that it would mean that a hearing officer would mean any individual appointed by the agency to conduct a hearing and an agency proceeding. It would be a person other than a member of the agency meaning perhaps necessarily a member of its board.

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REP. KRAWIECKI: (78th)

Through you, Mr. Speaker, who is a member of the agency then?

DEPUTY SPEAKER LAVINE:

Representative Looney.

REP. LOONEY: (96th)

Through you, Mr. Speaker, Representative Krawiecki, it is my understanding that it is the commissioner or commissioners.

DEPUTY SPEAKER LAVINE:

Representative Krawiecki.

REP. KRAWIECKI: (78th)

Through you, then, Mr. Speaker, then all we're...I'm confused, I guess, but we're indicating that commissioners could not serve as the hearing officer? Through you, Mr. Speaker, is that what we're doing with that new language?

DEPUTY SPEAKER LAVINE:

Representative Looney.

REP. LOONEY: (96th)

Yes, through you, Mr. Speaker, commissioners hold hearings themselves. This would designate hearing officer other than the commissioner.

DEPUTY SPEAKER LAVINE:

Representative Krawiecki.

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REP. KRAWIECKI: (78th)

Members of the Chamber, I guess I'm just plain confused by the language. We're now defining what a hearing officer can be. The hearing officer means an individual other than a member of the agency. I'm sorry. A hearing officer means an individual appointed by an agency to conduct the hearing in an agency proceeding, but such individual may be a staff employee of the agency, but not a member of the agency.

I find...I'm not quite at all sure what we're trying to do there. I find the language extraordinarily confusing. I suppose I won't oppose the amendment, but I'm just wondering whether we aren't in fact creating a real problem, because when you look back in line 8 under the definition of an agency, it says that an agency means each state board, commission, department, or officer, and it just seems to me that where we are now plugging in the definition for what a hearing officer is, tying it back to a member of the agency, they don't seem to dovetail at all to me.

Now maybe I just am having a hard time understanding and reading it, but it seems rather confusing to me and it's a substantial bill. I don't mean to hold the bill up over something like that, but it appears to have not been thought about perhaps when

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the Senators brought out their amendment. I don't understand what they were trying to do here.

DEPUTY SPEAKER LAVINE:

Would you remark further?

REP. LOONEY: (96th)

Yes, just to clarify, through you, to Representative Krawiecki. My understanding is that it is the intent in discussing the definition of hearing officer, lines 44 and thereafter, to characterize someone who would conduct an agency hearing as the designee of the commissioner apart from the commissioner.

DEPUTY SPEAKER LAVINE:

Would you remark further? If not, Representative Ward.

REP. WARD: (86th)

Very quickly, to follow up on that, Mr. Speaker. Through you, is there anything then in this change that will prevent a member of the agency from acting as a hearing officer, and I guess I'll be specific. The Freedom of Information Commission, the common practice is that one FOI Commissioner acts at the hearing officer. Is that practice still permissible with this amendment?

DEPUTY SPEAKER LAVINE:

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Representative Looney.

REP. LOONEY: (96th)

Through you, Mr. Speaker, that practice is still permissible.

DEPUTY SPEAKER LAVINE:

Representative Ward. Will you remark further? If not, Representative Belden.

REP. BELDEN: (113th)

Thank you, Mr. Speaker. Through you, to Representative Looney, if I might, I still don't...who's a member of an agency? I think that's the problem that we're having difficulty understanding. Agency is defined in the beginning talks about each state board, commission, department or officer, so if in fact they are the agency, then I would assume that the commissioner would come under that umbrella of the determination of "agency". When you look at Senate "A", it talks about a staff employee of the agency, but not a member.

I would assume that would exclude the commissioner or I'm not sure who else from conducting hearings. It's very, very confusing. Through you, Mr. Speaker, perhaps Representative Looney could elaborate a little further on that.

DEPUTY SPEAKER LAVINE:

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Representative Looney, will you pause for a just a moment? There are not many members in the Chamber now, and some questions have been asked now several times. Thank you. Representative Looney.

REP. LOONEY: (96th)

Yes, Mr. Speaker. Through you, the members of the agency would normally be the commissioners or commissioner or others empowered to take final action for the agency. This section of the bill attempts to define hearing officer as some other agent of that agency, designated to hold a hearing who then reports back to the agency members, commissioner or commissioners and is not in a sense an employee with final discretion.

The hearing officer is defined as someone other than a member of the agency other than the commissioner, other than someone with final decision making authority.

REP. BELDEN: (113th)

Thank you, Representative Looney. Then, through you, Mr. Speaker, would I assume that reading Senate "A", "such individual may be a staff employee of the agency, but a not a member of the agency", that the words that say "but not a member of the agency" don't mean what they say there, because to me, when you read

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the whole paragraph, it would appear that a member of the agency cannot hold hearings.

DEPUTY SPEAKER LAVINE:

Are you posing a question, sir?

REP. BELDEN: (113th)

Yes, I am, Mr. Speaker.

DEPUTY SPEAKER LAVINE:

Representative Looney.

REP. LOONEY: (96th)

Yes, through you, Mr. Speaker, members - is that equal to commissioners? Members already hold hearings. This is an attempt to define those other persons connected with the agency who are not members, not commissioners, and so in that sense, the whole section is then "individual may be a staff employee of the agency but not a member of the agency". A member is a commissioner someone who is in the position to make final policy decisions.

DEPUTY SPEAKER LAVINE:

Representative Belden.

REP. BELDEN: (113th)

Thank you, Representative Looney. If I might just read the amended subsection 4 as amended: "Hearing officer means an individual appointed by an agency to conduct a hearing in an agency proceeding. Such

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individual may be a staff employee of the agency, but not a member of the agency."

I believe when you read the whole thing in its context, unless you're a staff member of the agency, you will not be allowed to conduct public hearings. Mr. Speaker, I'm not going to debate this issue any more. I think it will be back again at another time to be straightened out.

DEPUTY SPEAKER LAVINE:

Thank you, sir. I think it's been noted that there is, at least another shot at this one. Representative Krawiecki.

REP. KRAWIECKI: (78th)

Mr. Speaker, and I don't mean to belabor this either, but in listening to the discussion in the last couple of minutes, I think I'm beginning to understand why Representative Looney would like to draw a distinction between an agency, whatever we call an agency, and a commission, so, through you, Mr. Speaker, is that one of the things that you're attempting to do at this point, Representative Looney, in answering Representative Belden's questions?

DEPUTY SPEAKER LAVINE:

Representative Looney.

REP. LOONEY: (96th)

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Through you, Mr. Speaker, no that's not what I'm attempting to do, Representative Krawiecki. It's just to try to describe the process under which a commissioner may appoint some other staff person to conduct hearings as a hearing officer. The commissioners or members of the agency in an agency where there are multiple commissioners or multiple members can designate other agency personnel to conduct hearings as hearing officers. That's the attempt to get at this here, to distinguish the other personnel from commissioners or members.

DEPUTY SPEAKER LAVINE:

Representative Krawiecki.

REP. KRAWIECKI: (78th)

Representative Looney, another question then. I'm going to back to the comment that Representative Ward made a few moments ago. He asked you whether the process that is established with the Freedom of Information Commission would still continue, and just to refresh your memory on that what happens in the Freedom of Information Commission, the commission will designate one of its members, I assume a member of the agency in the definition that is now laid out in your amendment, one of the members of the agency who happens to be a commissioner is going to hold a hearing, and it

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seems to me that now you're prohibiting that action.

I believe also DPUC uses the same mechanism to have a hearing. They'll appoint a member of the commission to hold the hearing, and I'm frightened that you may very well be barring those commissions, and probably others. Those two come to mind quickly, barring them from being able to conduct hearings in the process in which they have been accustomed, and I go back to what you are defining on page 1, on line 8, an agency to mean, that an agency means each state board, commission, department or officer.

Now I can understand if you're trying to draw a line between a commissioner who in the traditional sense, may be the Department of Transportation Commissioner. You know, Department of Health or somebody commissioner, but when you start talking about commissions, everybody who sits on the commission is a commissioner, unless you're drawing a new definition, and those people all the time do hearings, and I can't say in every board and commission, but quite often they do, and it seems to me that this new language says "such individual may be a staff employee of the agency".

Now a commissioner of FOI, for example, is not an employee of the agency to the best of my knowledge, but

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they are a member of the agency, but your language, but not a member of the agency, so I don't know how they're going to continue to do the hearings that

Representative Ward asked you about a while ago. I don't mean to belabor the point, but I think it can't be both ways, so am I misunderstanding this, Representative Looney? Through you, Mr. Speaker.

REP. LOONEY: (96th)

Yes, Mr. Speaker, through you, there is a separate provision that discusses the agency members and their capacity to hold hearings, so this is in a sense to add in additional personnel to hold hearings. There's a section that provides when an agency member, if only one member of a multi-member agency holds a hearing, that that decision of that one member acting as a hearing officer is subject to the review of the other members.

That has not interfered with by this section. It is in a sense clarifying how other agency personnel other than the members, can hold and act as hearing officers without interfering with the capacity of members to conduct hearings as they have been doing.

REP. KRAWIECKI: (78th)

Through you, Mr. Speaker, is that provision in this new statute, through you, Mr. Speaker, and if so where?

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DEPUTY SPEAKER LAVINE:

Representative Looney.

REP. LOONEY: (96th)

Through you, Mr. Speaker, I believe it is section 17 on page 23 of the bill around lines 1031 and thereafter.

REP. KRAWIECKI: (78th)

Through you, Mr. Speaker, however I understand section 17 to be when there is a contested case. In other words, the hearing has occurred. I don't like the decision of the hearing, and now I want to contest the decision of the hearing officer. I understand section 17 to kick in and I understand how that works, but I don't think that deals with the situation that I raise, where you have an active Freedom of Information Commission where they designate one of the officers to do the hearing, and I don't want to belabor the point.

I would just suggest that maybe we reject the amendment, and maybe in the bounce back upstairs somebody can take another look see at this, and do some repair on it, but it just seems to me that section 17 is not dealing with the question that I'm raising back in section 1 or 2 of the bill. It seems to raise a real question, and I think you ought to just take another look at it, and make sure that you're doing

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what you really want to do with that language.

REP. BALDUCCI: (27th)

Mr. Speaker?

DEPUTY SPEAKER LAVINE:

Representative Balducci.

REP. BALDUCCI: (27th)

Thank you, Mr. Speaker. I think this is an important piece of legislation, one that I think is needed, and I think since the questions are here, we probably should take a look to see if we can clarify those before we move forward with it, and at this time would move that the item be passed temporarily.

DEPUTY SPEAKER LAVINE:

Motion is to pass temporarily. Is there objection?

Hearing none, it is so ordered.

DEPUTY SPEAKER LAVINE:

Will the Clerk please call Calendar 615?

CLERK:

Calendar 615, on Page 9, Substitute for Senate Bill 459, AN ACT ESTABLISHING SAFETY STANDARDS FOR TRUCK BRAKES (As amended by Senate "A") Favorable Report of the Committee on JUDICIARY.

DEPUTY SPEAKER LAVINE:

Representative Lyons.

REP. LYONS: (146th)

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vote is properly recorded? If all members have voted, the machine will be locked and the Clerk will take a tally.

Will the Clerk please announce the tally.

CLERK:

House Bill 6121, as amended by House Amendment Schedule "B".

Total number voting	143
Necessary for passage	72
Those voting yea	143
Those voting nay	0
Those absent and not voting	8

DEPUTY SPEAKER CIBES:

The bill is passed.

CLERK:

Please turn to Page 5, Calendar 607, Substitute for Senate Bill 209, AN ACT CONCERNING AMENDMENT TO THE UNIFORM ADMINISTRATION PROCEDURE ACT, as amended by Senate Amendment Schedule "A" Favorable Report of the Committee on Government Administration and Elections.

DEPUTY SPEAKER CIBES:

Representative Martin Looney.

REP. LOONEY: (96th)

Thank you, Mr. Speaker. Mr. Speaker, I move acceptance of the Joint Committee's Favorable Report

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and passage of the bill in concurrence with the Senate.

DEPUTY SPEAKER CIBES:

The question is on acceptance and passage. Will you remark, Sir?

REP. LOONEY: (96th)

Yes, Mr. Speaker, I will. The Clerk has an amendment, a Senate Amendment previously designated Senate Amendment Schedule "A". I believe it's LCO 3657. If the Clerk may please call the amendment.

DEPUTY SPEAKER CIBES:

The Clerk is in possession of an amendment, LCO No. 3657, designated Senate Amendment Schedule "A". Will the Clerk please call.

CLERK:

LCO 3657, designated Senate Amendment Schedule "A"
offered by Senator Maloney.

SEN. MALONEY: (24th)

The gentleman has requested permission to summarize. Is there objection?

REP. LOONEY: (96th)

I would move rejection of the amendment, Mr. Speaker, the one previously discussed last evening.

DEPUTY SPEAKER CIBES:

Could you quickly summarize, Sir?

REP. LOONEY: (96th)

Yes, I will summarize. It is the amendment, Mr. Speaker, that was under discussion when the bill was before us last evening. It makes some primarily technical changes to the file copy, one of which proved to be lacking in sufficient clarity, the section having to do with the definition of a hearing officer, for one. The other sections of the amendment is that it will make some language in the bill consistent as far as effective is concerned. It creates a procedure to send notice to interested parties and a declaratory ruling proceeding.

It allows the agency discretion in granting party status in declaratory hearing procedures. It clarifies not only a party, but also the agency has certain rights to obtain evidence. It provides that in a contested case hearing, but not with respect to regulation making, if the hearing officer is allowed a non-party or a non-intervener to make a statement, it's within the hearing officer's discretion to permit cross-examination.

It corrects language to retain the proper exemption for the Department of Labor. It changes the effective date of the act from October 1, 1988 to January 1, 1989. All of this language is included in the House Amendment which I will be offering subsequently,

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together with the change that we're suggest. So I move rejection of this amendment, Mr. Speaker.

DEPUTY SPEAKER CIBES:

The question is on rejection of Senate Amendment Schedule "A". Will you remark further on rejection? If not, all those in favor of rejection please indicate by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER CIBES:

Those opposed indicate by saying no.

The ayes have it. Senate Amendment Schedule "A" is rejected. Will you remark further on the bill?

REP. LOONEY: (96th)

Yes, thank you, Mr. Speaker, the Clerk has in her possession another amendment, LCO 4645. If the Clerk may please call that amendment and may I be given permission to summarize.

DEPUTY SPEAKER CIBES:

The Clerk is in possession of LCO No. 4645, designated House Amendment Schedule "A". Will the Clerk please call.

CLERK:

LCO 4645, designated House Amendment Schedule "A"
offered by Representative Looney, et al.

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DEPUTY SPEAKER CIBES:

The gentleman has requested permission to summarize. Is there objection? Hearing none, Sir, please proceed.

REP. LOONEY: (96th)

Thank you, Mr. Speaker. Mr. Speaker, this amendment contains all of the provisions of the amendment previously discussed and rejected in Senate Amendment Schedule "A" with the exception of the changed language in line 47 of the amendment which clarifies the discussion we had last night. It clarifies that a hearing officer, such individual may be a staff employee of the agency, omits the language in the Senate Amendment that said "and not a member" to avoid any possible confusion with the roles of hearing officers and members of agencies in the capacity of conducting agency hearings.

I move adoption of this amendment, Mr. Speaker.

DEPUTY SPEAKER CIBES:

The question is on adoption of House Amendment Schedule "A". Will you remark? Will you remark further on House Amendment Schedule "A"? If not, all those in favor indicate by saying aye.

REPRESENTATIVES:

Aye.

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DEPUTY SPEAKER CIBES:

Those opposed indicate by saying no.

The ayes have it. House Amendment Schedule "A" is adopted.

* * * * *

House Amendment Schedule "A".

In line 44, strike out the comma

In line 45, strike out the words "OTHER THAN A MEMBER OF THE AGENCY,"

In line 47, after the word "PROCEEDING" and before the semicolon, insert the following: ". SUCH INDIVIDUAL MAY BE A STAFF EMPLOYEE OF THE AGENCY"

In line 133, before the word "valid" insert an opening bracket, after the word "effective" insert a closing bracket and after the closing bracket insert the word "ENFORCEABLE"

Strike out Section 8 in its entirety, strike out all references to section 8, and renumber the remaining sections accordingly

Strike out lines 825 and 826 in their entirety and insert the following in lieu thereof: "TO ALL PERSONS WHO HAVE REQUESTED NOTICE OF DECLARATORY RULING PETITIONS ON THE SUBJECT MATTER OF THE PETITION"

In line 831, strike out the word "SHALL" AND INSERT "MAY" in lieu thereof

In line 955, after the word "party" insert the following: "and the agency conducting the proceeding"

In line 957, after the word "party" insert the following: "or such agency"

In line 969, strike out the word "shall" and insert "may" in lieu thereof

In line 970, after the word "parties", insert the following: "and the agency conducting the proceeding"

In line 990, after the word "parties", insert the following: "AND THE AGENCY CONDUCTING THE PROCEEDING"

In line 991, after the word "party", insert "AND SUCH AGENCY"

In line 1061, after the word "parties", insert the following: "AND THE AGENCY CONDUCTING THE PROCEEDING,"

In line 1061, after the word "stipulation", insert a comma

In line 1729, delete the bracket before the word "Except" and insert an opening bracket before the word "for"

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In line 1730, after the closing bracket, insert the following: "AS PROVIDED IN SUBSECTIONS (a) and (c) OF SECTION 4-186, AS AMENDED BY SECTION 26 OF THIS ACT,"

In line 1732, strike out the words "MADE PURSUANT TO CHAPTER 566"

In line 5028, strike out the word "October" and insert "January" in lieu thereof

In line 5029, strike out "1988" and insert "1989" in lieu thereof

* * * * *

DEPUTY SPEAKER CIBES:

Will you remark further on the bill?

REP. LOONEY: (96th)

Thank you, Mr. Speaker. The Clerk has another amendment, LCO No. 4763. If the Clerk may please call that amendment and read the amendment, Mr. Speaker.

DEPUTY SPEAKER CIBES:

The Clerk is in possession of an amendment, LCO No. 4763, designated House Amendment Schedule "B". Will the Clerk please call and read.

CLERK:

LCO 4763, designated House Amendment Schedule "B"
offered by Representative Tulisano.

Delete lines 5028 to 5030, inclusive, in their entirety and substitute the following in lieu thereof:

"Sec. 108. This act shall take effect July 1, 1989, and shall be applicable to all agency proceedings commenced on or after such date."

DEPUTY SPEAKER CIBES:

The amendment is in your possession, Sir. What is

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your pleasure?

REP. LOONEY: (96th)

I move adoption, Mr. Speaker.

DEPUTY SPEAKER CIBES:

The question is on adoption of House "B". Will you remark?

REP. LOONEY: (96th)

Yes, Mr. Speaker. Briefly, the amendment is self-explanatory. It just makes the effective date July 1, 1989 and because of the great complexity of the subject matter, it was believed that delaying the effective date by one year would provide additional time for review and for becoming familiar with the procedures changed, amended and outlined in the bill.

I urge adoption.

DEPUTY SPEAKER CIBES:

Will you remark further on House Amendment Schedule "B"? Representative Robert Ward.

REP. WARD: (86th)

Mr. Speaker, I do support it, but I think it's worth noting to the Chamber that essentially what we've done is that we've got a complicated bill. It's tough to know just what it's going to do. Make sure we've read it carefully, make sure it's in order. So it would make it effective a year later so that we've got

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a year to figure out if we did the right thing. It's kind of an unusual to legislate. Maybe at this late date that's the only thing to do with this bill, but I hope we don't get into a habit of adopting complicated legislation a year later so that we can read the bill carefully.

DEPUTY SPEAKER CIBES:

Will you remark further on House Amendment Schedule "B"? If not, all those in favor of adoption please indicate by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER CIBES:

Those opposed indicate by saying no.

The ayes have it 3 to 0. The amendment is adopted.

Will you remark further on the bill as amended?

Will you remark further on the bill as amended?

Representative John Woodcock.

REP. WOODCOCK: (14th)

Thank you, Mr. Speaker. Members of the House, I rise to support the bill. I have frequently been critical of it in the past and have always voted against it. I'd like to commend Representative Looney and his committee for putting together a fair proposal that balances all interest and provides for some

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protection to those who are in a very private and serious situation.

So I urge the House to support the bill. I think we've finally seen the day where this bill will receive approval. Thank you, Mr. Speaker.

DEPUTY SPEAKER CIBES:

Will you remark further on the bill? If not, staff and guests to the well of the House. Members please be seated. The machine will be opened.

CLERK:

The House of Representatives is voting by roll call. Will all members return to the Chamber. The House is voting by roll. Members report to the Chamber please.

SPEAKER STOLBERG:

Have all the people voted? If all the members have voted, the machine will be locked and the Clerk will take a tally.

Will the Clerk please announce the tally.

CLERK:

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Senate Bill 209, as amended by House Amendment
Schedules "A" and "B".

Total number voting	148
Necessary for passage	75
Those voting yea	148
Those voting nay	0
Those absent and not voting	3

SPEAKER STOLBERG:

The bill is passed.

The Clerk please continue with the Call of the
Calendar.

CLERK:

Please turn to Page 9, Calendar 360, House Bill No. 6087, AN ACT CONCERNING THE CONVEYANCE OF A PORTION OF HOLCOMB FARM IN GRANBY TO THE TOWN OF GRANBY, as amended by Senate Amendment Schedule "A". Favorable Report of the Committee on Finance, Revenue and Bonding.

SPEAKER STOLBERG:

Representative Joe Gordes.

REP. GORDES: (62nd)

Mr. Speaker, I move acceptance of the Joint Committee's Favorable Report and passage of the bill in concurrence with the Senate.

SPEAKER STOLBERG:

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Government Administration and Elections

Subst. SB 385 AN ACT CONCERNING THE ABSENTEE
BALLOT PROCESS.

Transportation

Subst. SB 431 AN ACT CONCERNING THE PROVISION OF
AIR COMPRESSORS.

Environment

Subst. SB 333 AN ACT CONCERNING ANIMALS IN THE
CHARGE OF THE CONNECTICUT HUMANE SOCIETY AND THE
REGULATION OF THE SALE OF DOGS OR CATS BY PET SHOPS.

Planning and Development

SB 491 AN ACT CONCERNING THE URBAN HOMESTEADING
PROGRAM.

Labor and Public Employees

SB 20 AN ACT CONCERNING THE APPOINTMENT OF AN
EXECUTIVE DIRECTOR TO THE CONNECTICUT SITING COUNCIL.

3. SENATE BILLS FAVORABLY REPORTED WITH A CHANGE OF
REFERENCE - to be referred to committees indicated

Judiciary

Subst. SB 209 AN ACT CONCERNING AMENDMENTS TO THE
UNIFORM ADMINISTRATIVE PROCEDURE ACT.

REFERRED TO: Government Administration and
Elections

Education

Subst. SB 366 AN ACT CONCERNING REGIONAL

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privilege? Ready to proceed, Mr. Clerk.

THE CLERK:

Senate Calendar for Thursday, April 28, 1988,
Favorable Reports, Calendar Page 2, Calendar No. 374,
File 519, Substitute for Senate Bill 209, AN ACT
CONCERNING AMENDMENTS TO THE UNIFORM ADMINISTRATIVE
PROCEDURES ACT. Favorable Report of the Committee on
GOVERNMENT ADMINISTRATION AND ELECTIONS. Clerk is in
possession of an amendment.

THE CHAIR:

Senator Maloney.

SENATOR MALONEY:

Thank you, Mr. President. Yes, I would move for
approval of the Joint Committee's Favorable Report and
passage of the bill.

THE CHAIR:

Clerk, please call the amendment.

THE CLERK:

LCO 3657 designated Senate Amendment Schedule "A"
offered by Senator Maloney of the 24th District.

THE CHAIR:

Senator Maloney.

SENATOR MALONEY:

Thank you, Mr. President. What this amendment...

THE CHAIR:

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Do you move for adoption?

SENATOR MALONEY:

Yes, thank you, Mr. President, I move adoption of the amendment.

THE CHAIR:

Do you wish to explain?

SENATOR MALONEY:

Yes, Mr. President, if I may have leave to summarize.

THE CHAIR:

Without objection, you may proceed.

SENATOR MALONEY:

Thank you, sir. What this amendment does is first of all make some purely technical changes. In addition to that it provides a further time for our state agencies to become used to the new procedures and processes in this bill and then also clarifies the relationship between a staff employee of the agency who may participate in certain functions as opposed to a member of the agency who is the body making the decision in these matters.

THE CHAIR:

Further remarks on the amendment? All those in favor....excuse me, Senator Gunther.

SENATOR GUNTHER:

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Mr. President, through you, a question.

THE CHAIR:

You may proceed.

SENATOR GUNTHER:

Does this provide for cross examination at public hearings?

THE CHAIR:

Senator Maloney, if you care to respond.

SENATOR MALONEY:

The amendment does not affect that provision.

THE CHAIR:

Senator Gunther.

SENATOR GUNTHER:

Through you again, Mr. President. Then who does the cross examination in the process? Who has the authority.

THE CHAIR:

Senator Maloney.

SENATOR MALONEY:

Yes, the amendment does provide, does change the subject language from shall to may, which makes the hearing officer the authority to indicate the extent and nature of any cross examination.

THE CHAIR:

Senator Gunther.

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SENATOR GUNTHER:

Again, through you, Mr. President. Who does the cross examination?

SENATOR MALONEY:

The cross examination would be conducted by the parties of interest before the hearing.

THE CHAIR:

Senator Gunther.

SENATOR GUNTHER:

Again, for a matter of clarification on my part, Mr. President, because I have great concern over this, because the bill as it lay in the file, I think would have made it a horrendous, while very lengthy hearings out of some of the processes that it does involve. I get very concerned. I have been on regulation review for some 20 years. We never had these proposals brought before the Commission. The people who are actually involved in this and then we read about these recommendations being made by the Judicial Review Committee.

So about the only thing that I see in the original bill is the business of allowing the agencies to start to promulgate the regulations before the law became effective. Now other than that I would have stripped the whole damn thing but that, but seeing we had a

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regulation, an amendment coming aboard here, I have some great reservations about opening up some of these processes through the cross examination.

Now, if it is going to be allowed anybody who is entered in as an intervener and he is to do the cross examination which is what I am trying to develop here through the Senator. If I might, maybe I am not coaching the question properly. If I may, through you, Mr. President, again.

THE CHAIR:

Let's try again, Senator Gunther.

SENATOR GUNTHER:

Actually, what I am trying to develop here is who does the interrogation. The people who would just enter as an intervener. Are they able to? Is it just the agency people? Is it the staff of the agency? Are the agency heads disqualified? I don't know if this is broad enough...

THE CHAIR:

Senator Maloney, do you care to respond?

SENATOR MALONEY:

Thank you, Mr. President. I think from Senator Gunther's remarks I believe the important distinction here is the cross examination applies to contestant case hearings. It does not apply to hearings on the

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development of regulations. So in regard to the regulatory, the regulation making process, that does not apply to this instance. In regard to contestant cases, any party who is represented can cross examine, governed, however, by the discretion lodged in the hearing office to allow the cross examination.

THE CHAIR:

Further questions?

SENATOR GUNTHER:

Mr. President, I still have some reservations on this particular bill. I know that many of the agencies that I have talked to have been very concerned over the process that would be implemented here. Frankly, I think it is something we should take a damn good look at and in my book I would like to oppose the regulation based on that and ask for a roll call vote when it is taken.

THE CHAIR:

We are talking about the amendment, Senate. Are you objecting to the amendment?

SENATOR GUNTHER:

Well, the amendment might improve it, but I am talking the bill...

THE CHAIR:

About the bill as a whole with this amendment. The

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question is on the adoption of Amendment "A", LCO No. 3657. Further remarks on the amendment? Senator Meotti.

SENATOR MEOTTI:

Thank you, Mr. President. I just have a question about whether or not the amendment deals with the issue, some of the issues that Senator Gunther has raised, which I would like to put to the Senator from the 24th District, through you, Mr. President, in the form of a hypothetical situation. As Chairman of the Environment Committee, I am familiar with many regulations proposed by that Department which draw substantial numbers of members to the public to testify in front of hearing officers appointed by the DEP. It is not a contested case, it is merely a hearing on proposed regulations. I have heard that some people are concerned that provisions of the bill or the amendment would require members of the public speaking at a public hearing on a proposed regulation would require these people to be under oath, sworn under oath.

I am wondering if, through you, Mr. President, if we could get a response as to whether that is correct?

THE CHAIR:

The Senate will stand at ease. Senator Maloney.

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SENATOR MALONEY:

Thank you, Mr. President. The clarification on that is that the cross examination, again, in the regulation making hearings in which Senator Meotti refers, that is not a cross examination situation. The person would merely give testimony. The other piece of the question, I believe, was whether or not the person would be under oath in making a testimony. The answer to that is yes, that is correct.

THE CHAIR:

Senator Meotti.

SENATOR MEOTTI:

They would be required to be sworn under oath in order to testify at a public hearing, but that then would not subject them to cross examination by anyone else who happened to be present at the public hearing. I think that is the critical issue that we want to address and we want to make sure that at a public hearing on a regulation that the swearing in of witnesses does not subject them to them having the public hearing become an opportunity for anyone of perhaps 100 people up there then cross examine each and every public citizen who is sharing their comments or thoughts with the Commissioner.

THE CHAIR:

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Is that a form of question now, Senator Meotti?

SENATOR MEOTTI:

Yes, Mr. President.

THE CHAIR:

Senator Maloney.

SENATOR MALONEY:

Mr. President, that is correct.

THE CHAIR:

Further remarks on the amendment? All those in favor of the amendment signify by saying aye.

SENATORS:

Aye.

THE CHAIR:

Opposed? The amendment is adopted. Further amendments?

THE CLERK:

Mr. President, it is my understanding that all of the other amendments that have been filed are not to be called.

THE CHAIR:

Senator Gunther has also asked now, if there are no further amendments, has asked for a roll call. All those in favor of a roll call indicate by saying aye.

SENATORS:

Aye.

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THE CHAIR:

Sufficient number has been attained. Roll call will be issued. We are now on the bill as amended. Senator Maloney.

SENATOR MALONEY:

Thank you, Mr. President. This is an important piece of legislation. What this bill does is greatly enhance the administrative practices in the State of Connecticut and enhance them from the point of view of the consumer, the public. It provides that regulations, that the regulatory process will be structured in a way that allows for the parties to effectively contest the cases. It allows for certainty in terms of the body of law to be utilized by requiring the agencies to rely only on decisions that they have formally made available.

It provides an opportunity to seek and receive the claritory rulings on regulations or issues that may be in question. It provides certainty in terms of appeal dates, making the dates for appeals uniform throughout the law. And it provides the public parties with information in regard to the record or the formulation and thinking of an agency and preparing and setting forth regulations.

So what this does is help to provide the consumer

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who is using our administrative processes with the same kind of level playing field equity that one would have in using our judicial system.

THE CHAIR:

Further remarks on the bill as amended? Clerk please make an announcement for immediate roll call.

THE CLERK:

Immediate roll call has been ordered in the Senate.
Will all Senators please return to the Chamber.
Immediate roll call has been ordered in the Senate.
Will all Senators please return to the Chamber.

THE CHAIR:

Question before the Chamber is a motion to adopt Calendar 374, Substitute for Senate Bill 209, File No. 519. The machine is open. Please record your vote. Has everyone voted? The machine is closed. Clerk please tally the vote.

The result of the vote.

32 Yea

4 Nay

The bill is adopted.

THE CLERK:

Calendar Page 3, Calendar 383, File 529, Substitute for Senate Bill 228 AN ACT CONCERNING RELATIVE PLACEMENT. Favorable Report of the Committee on

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lot of care and forethought down this Chamber has gone by the wayside. But I do believe in order to get the rest of what came out of, not only Program Review, but the Insurance Committee. That we have to accept that. And I certainly hope that Senator Powers and Senator Atkin next year will pursue this amendment and pursue helping the consumers in this state, in terms of understanding why insurance is costing so much and how we can try and bring down the lid on this.

I will support, obviously, what the House has done. Thank you.

THE CHAIR:

Further remarks? Senator Atkin.

SENATOR ATKIN:

If there are no further remarks, Mr. President, I would ask that this item be placed on the Consent Calendar.

THE CHAIR:

Without objection, so ordered. The next item please.

THE CLERK:

Calendar 417. Returning to Calendar Page 3, Calendar No. 374, File 519, Substitute for Senate Bill 209. AN ACT CONCERNING AMENDMENTS TO THE UNIFORM ADMINISTRATIVE PROCEDURES ACT. (As amended by Senate

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Amendment Schedules "A" and House Amendment Schedules "A" and "B"). Favorable Report of the Committee on GOVERNMENT ADMINISTRATION AND ELECTIONS. The House rejected Senate Amendment Schedule "A" on May 3rd.

THE CHAIR:

Senator Maloney.

SENATOR MALONEY:

Thank you, Mr. President. Yes, I would move acceptance of the Joint Committee's Favorable Report and passage of the bill in concurrence with the House.

THE CHAIR:

Will you remark?

SENATOR MALONEY:

Thank you, Mr. President. The House amendments merely extended the effective date of the Act to give agencies a little more time to get ready for the changes that it brings. And also clarify the ability of hearing offices in regard to their appointment or status with an agency.

So, neither of the two amendments that the House made are fundamental to the bill and I recommend that the bill be passed here in this Chamber in concurrence with the House.

THE CHAIR:

Further remarks? Senator Maloney.

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SENATOR MALONEY:

Thank you, Mr. President. If there is no objection, I would move the matter to the Consent Calendar.

THE CHAIR:

Without objection, so ordered.

THE CLERK:

Calendar Page 4, Calendar 417, File 589, Substitute for Senate Bill 338, AN ACT CONCERNING THE LICENSING OF REAL ESTATE APPRAISERS. (As amended by House Amendment Schedule "A"). Favorable Report of the Committee on APPROPRIATIONS.

THE CHAIR:

Senator Powers.

SENATOR POWERS:

Thank you, Mr. President. I move acceptance of the Joint Committee's Favorable Report and passage of the bill in concurrence with the House.

THE CHAIR:

Will you remark?

SENATOR POWERS:

Yes, Mr. President. The amendment in the House would require them when regulations were being promulgated as called for already in the legislation, that included in that will be information on people

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Calendar. Mr. Clerk.

THE CLERK:

First Consent Calendar begins on Page 2 of today's
Calendar. Calendar No. 589, Substitute for House Bill
5607. Calendar 592, Substitute for House Bill 5905.

Calendar Page 3, Calendar No. 214, Substitute for
Senate Bill 333. Calendar 301, Substitute for Senate
Bill 366. Calendar 374, Substitute for Senate Bill
209.

Calendar Page 4, Calendar No. 390, Substitute for
Senate Bill 300. Calendar 417, Substitute for Senate
Bill 338. Calendar 418, Substitute for Senate Bill
534. Calendar 449, Senate Bill 138,

Calendar Page 5, the Report of the Committee on
Conference for Calendar No. 322, Substitute for Senate
Bill 247.

Mr. President, that completes today's first Consent
Calendar.

THE CHAIR:

Any changes or omissions? The machine is open,
please record your vote.

Senator DiBella, Senator Matthews, Senator Daniels,
Senator Avallone, Senator Maloney.

The machine is closed. The Clerk please tally the
vote.

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The result of the vote.

33 Yea

0 Nay

The Consent Calendar is adopted.

The Senate will stand at ease.

Senator O'leary.

SENATOR O'LEARY:

Thank you, Mr. President. I move suspension of the rules for immediate transmittal of those items being referred to the House.

THE CHAIR:

Without objection, so ordered. Senator O'Leary.

SENATOR O'LEARY:

Yes, Mr. President, we would like to recess the Senate until 3:00 o'clock. At 3:00 o'clock we will announce a Senate Caucus, Democratic Caucus. At 3:30 we will reconvene the Senate and continue with the House Agendas.

THE CHAIR:

Thank you. Senator Matthews.

SENATOR MATTHEWS:

Thank you, Mr. President. I would like to be recorded in the affirmative on the Consent Calendar. I happened to be absent on the vote.

THE CHAIR:

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JUDICIARY

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FAITH MANDELL: In opposition to the auditor's report. They recommend that right now it's unclear how to deal with it. What we have been (inaudible) amount but I can't remember what point of time, but they said it was a public act. My understanding, that changed how we should deposit. We did not interpret that act to make that change. So we would like to continue our common practice and set that forth in the statute.

SEN. AVALLONE: But, you think that would then meet the auditor's...

FAITH MANDELL: If it's in the statute, I think as long as there's something there clarifying, but of course, they did recommend, I'd like to state for the record, that we should segregate the funds. We would like to continue our practice and they had suggested an audit report that we should segregate.

The next bill I'd like to briefly address is Senate Bill 209, AN ACT CONCERNING AMENDMENTS TO THE UNIFORM ADMINISTRATIVE PROCEDURE ACT. We would just like to state for the record that it is very difficult at this point in time to determine the impact of this bill, particularly two sections of it. Sections 11 and 24.

These two sections appear to permit appeals to the Superior Court from declaratory (inaudible) and (inaudible). This would be a substantial departure from the current practice.

SEN. AVALLONE: What sections were those again?

FAITH MANDELL: 11 and 24. So we just want to state that we don't know what the impact on the courts at this time will be.

The next bill I would like to briefly address is Senate Bill 67, AN ACT CONCERNING THE EXCLUSION OF NONCONVICTION INFORMATION FROM PRESENTENCE REPORTS. This bill as drafted prohibits probation officers from including in the presentence investigation report any information which reflects matters for which the defendant has not been convicted.

The officer of adult probation has brought to my

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Senator for the 13th District. I'll be very brief because there are other testifiers from my District who will be coming before you.

I am here to testify on Senate Bill 27, a Bill incorporating the Bail Commission with Office of Adult Probation. I am opposed to this Bill because the poor and minorities are taxpayers who would be most negatively affected. In my contacts with GA 7 I found that bail cannot be set for the purpose of imposition of punishment prior to conviction, and is therefore not an alternative by its very definition.

The primary function of the Bail Commission is to provide bond clerk and verify the information with respect to setting of pretrial conditions of release. I respectfully urge the Committee to oppose this Bill. Thank you very much for your time.

REP. TULISANO: David Bitlen.

DAVID BITLEN: Good afternoon, my name is David Bitlen, and I am Executive Director of the Connecticut Law Revision Commission, and I am here to speak on behalf of Bill No. 209, AN ACT CONCERNING AMENDMENTS TO THE UNIFORM ADMINISTRATIVE PROCEDURE ACT. With me today are attorneys John Solomon, Robert Hurdle, and David Silverstone, and also I think I saw Joseph (inaudible) of New Haven here. Because of the number of bills you have here today our (interruption - laughter).

In 1985 the (inaudible) began looking at the Uniform Administrative Act, and the Procedure Act, looking at the material the Connecticut Bar Association had worked on four years previous to that. This was the first comprehensive review of the UAPA since its adoption in 1971, and as you know since 1971 it legislated laws its founded and changed in Connecticut to meet the various new legislative directives.

Also last year, the GAE Committee raised this Bill and sent it to Judiciary Committee, and Senator Maloney who was the Co-chairman of the GAE Committee asked me today to let you know that the GAE Committee is again interested in this Bill, and

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would be glad to cooperate with the Judiciary Committee in working with it.

As you see its a large Bill, its over 100 pages long, but in fact the UAPA sections are only the first thirty sections. The other seventy sections are confirming provisions of the other administrative agencies where their statutes interact with the UAPA.

Let me just give you a couple of examples of problems that these amendments attempt to address in the UAPA. First of all it allows regulation making to begin when a public act has been adopted in the legislature, but before its actual affected date. This take care of problems that are currently in existence whereby a public act becomes affective, but the affective regulations cannot be put in place until six, nine months or a year after that public act becomes affective.

Also we've worked on the service in filing requirements on appeal, an example of that on a state agency level the set of problems that you are now wrestling with on a local level, whereby a local and zoning appeal was dismissed for failure to assuage each person in that appeal. At least on the state level this act would avoid that sort of problem.

I also like to clarify one comment that was made by a representative of the Judicial Department. I think in the (inaudible) Act, they suggested that interrogator rules are currently not appealable, in fact they are repealable. If you look at line 988 of this draft they are appealable, and the new language which is line 1010 it simply laws out standards under which the Judge can make a determination whether to grant or deny that appeal. But its not a new law at all, it currently exists under the UAPA.

I have also received a couple of other minor comments concerning this Act since it was printed last week, and we hope to get back to you about those comments. The study that you have before you gives you a better outline of the kind of changes that we proposed, and David Silverstone and I would briefly outline the sort of process we use to get

to this Act.

DAVID SILVERSTONE: Thank you Bob, Mr. Chairman and members of the Committee. Beginning in 1984 the Administrative Law section of the Bar Association

Revised since 1971, and to make changes to it. Involved in that process were dozens of attorneys active in that section representing a whole cross section of different interests. Large companies have been before the administrative agencies, individuals, assistant attorney general, state agencies, and so on.

Subsequent to that it was taken over by the Law Revision Commission as a project, and there was an advisory committee of thirteen lawyers, again representing a whole cross section of interest, as well as, three members of the Law Revision Commission, representing Judicial, assistant attorney general, large companies, small companies, legal services, state agencies, and so on. I might add that had they taken a vow of silence at that time as they have today, this process would have been a lot shorter, but they didn't, and there were various debates on these issues.

The Bar Association again endorsed the Bill with the some modifications that you have before you today. Not surprisingly not every provision is unanimously supported by everyone of those (inaudible) in that process. I think the real question, however, to the Committee is does the Bill on the whole moves us forward in terms of reforming our Administrative Procedures Act. I think the answer to that has to be a resounding yes.

You are concerned and has always been with given the fragility of this coalition which supports the Bill on the whole that if parts start to change or if different (inaudible) start asking for different changes that could get some people off of the coalition which we will hate to see. I think the key issue is on the whole are we better off, and certainly the practitioners, and I would suggest the clients are better off.

One other quick comment. The representative from

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the Judiciary Department talked about Section 11 and the giving of additional rights of appeal from declaratory rules of state agencies. Again, I think there is a slight misreading of the current law. Under the current law you can appeal a declaratory rule in the state agency under some circumstances. If you don't take an appeal, you can also initiate declaratory ruling option in court.

Indeed this revision will simply the procedures that require appeal as oppose to independent action. I think the upshot of the whole thing would be expeditious, and save the Judicial time not cost in time. Thank you very much. If you have any questions, I am sure these gentlemen would be happy to answer them.

SEN. AVALLONE: No, I just want to make a comment. Because this bill did not initiate in the Judiciary Committee, but certainly this Committee has cognizance over many of the things, no one, to my knowledge, was a participant, from this Committee, in those discussions and the give and the take.

You have a bill of 100 pages, 30 of which are extremely relevant to the work of this Committee. Before... As a personal comment, before I am prepared to commit myself to the passage of such a wide-ranging and broad bill, I would like, if you can summarize for me, not today, those elements where the parties were significantly in agreement and those elements, those major elements where there was disagreement.

For example: in talking to some members of the Bar Association, they indicated that there was substantial disagreement on some of the sections on this bill. I understand that it is hard to get four lawyers to agree that today is Friday. But, I would like to have those specific sections where there was substantial disagreement.

DAVID SILVERSTONE: I think, among us, we can provide you that.

SEN. AVALLONE: That's fine.

DAVID SILVERSTONE: Not now, certainly.

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SEN. AVALLONE: No, I understand. We will be here until tomorrow.

DAVID SILVERSTONE: Thank you very much.

SEN. AVALLONE: Jack Kelly?

CHIEF STATE'S ATTORNEY JOHN KELLY: Good afternoon, John Kelly, Chief State's Attorney, Division of Criminal Justice. I am here to testify briefly on a number of bills.

I have a very brief testimony, less than a page in length, concerning Raised Bill 5321, which is AN ACT CONCERNING THE WRIT OF HABEAS CORPUS. The testimony is self-explanatory. The Raised Committee Bill would seek to curb the abuse of habeas corpus by imposing reasonable limits on its scope and availability. I understand that there may be one concern as to the one year limitation period for the filing of these.

We could live with the bill with that deleted, but I don't think we can avoid the drastic nature of the problem that we face in the habeas situations. As an example, in my office at the present time, there is one attorney who spends full time on habeas corpus matters, two attorneys who spend approximately half a time solely on state habeas corpus matters, and one other attorney, as needed, who also does the same.

I was able to check with the State's Attorney's Office in New Haven. They have 47 state habeas corpus, pending appeals. The problem is not that we mind litigating those that have merit. It is the inmates who repeatedly raise the same issues by a very slight change and one which can tie up a legitimate habeas cases from being heard by a judge.

We have strong reason to believe that there may be a federal suit filed very shortly, concerning the back log of habeas corpus cases at the Tolland Judicial District. The claim will be that some people are failing to get a speedy habeas civil hearing. It will be somewhat similar to the claim filed previously in federal court, you will recall,

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spelled out also, to read that we would have a copy of it, not merely access to it.

Raised Committee Bill No. 5081, AN ACT CONCERNING PUBLIC ACCESS TO TRANSCRIPTS OF COURT TRIALS: The Division is in support of that proposal. And, Raised Committee Bill No. 5083, AN ACT INCREASING THE PENALTY FOR FAILURE TO ABATE FIRE HAZARDS: we agree the penalties should be increased. But, you may want to consider, rather than merely increasing it from \$10 to \$50, to make it far in excess of \$50, perhaps \$250 or \$500. If there really is a public safety hazard here, there should be an appropriate remedy for the same. I would think an increase in the amount would be justified.

Finally, Raised Committee Bill No. 5084, AN ACT CONCERNING A CONDITIONAL PLEA OF NO LO CONTENDERE: The Division is in favor also of that proposal. I know I have gone rather quickly because of your crowded schedule, but if there are any questions, I would be glad to answer them.

Thank you very much.

SEN. AVALONE: Thank you, Jack. Larry Berliner?

ATTY LARRY BERLINER: Members of the Committee, good afternoon. I am Larry Berliner, Staff Attorney for the Office of Protection and Advocacy for Handicapped and Development of Disabled Persons, appearing on behalf of Elliot Dover, the Executive Director, who is unable to be here this afternoon.

I am testifying on Senate Bill 209, involving amendments to the Uniform Administrative Procedures Act. We are here today to generally support the bill and would like to commend the efforts of the Law Revision Commission, regarding their efforts concerning the amendment in Committee Bill 209.

However, I believe this bill requires some additional changes if the concept of due process of law is going to be fully incorporated into contested administrative proceedings. In addition, it is our position that appeals hear by the State Codes and Standards Committee, within the Department of Public Safety, should be expressly incorporated into the UAPA, as well as certain

programs administered by the Department of Children and Youth Services, set out in Section 14-19 of the General Statutes, and Section 17-44b (c) of the General Statutes.

In the case of due process, it has been my experience as an administrative law practitioner that often agencies will not convene a hearing within the time frames or the framework set out by statute. I believe agency inaction or agency intransigence should be grounds for an appeal to court. A state agency should be required to provide an adequate amount of advance notice of a hearing, as well as the provisions of a case summary of the evidence that an agency intends to use at a contested hearing.

These changes would ensure that due process of law, as espoused by our Connecticut Supreme Court, is in fact a reality. Moreover, these statutory revisions would ensure uniformity amongst the various state agencies, since some agencies already provide such notice and summaries, whereas others do not. The costs associated with these changes would be minimal at best.

I have attached a letter dated August 11, 1987, along with my testimony. That letter sets our suggested statutory language which should be incorporated into Sections 1(2), Section 13a, b and c, Section 18, Section 20, Section 26, Section 56, and I have suggested additional Sections 101, 102, and 103 which would be added...

REP. TULISANO: Excuse me. Have you talked to the Law Revision Commission about these amendments, ever?

ATTY. LARRY BERLINER: Yes, these...

REP. TULISANO: They have copies of this?

ATTY. LARRY BERLINER: The letter dated August 11th was sent to the Law Revision Commission.

REP. TULISANO: Okay.

ATTY. LARRY BERLINER: ...at that time. The letter sets out in greater specificity, and I won't take the Committee's time this afternoon.

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We believe that if such changes were enacted by the General Assembly, the UAPA would truly be uniform amongst all state agencies and the process employed at administrative proceedings would be both just and fair.

I would like to thank you for your time and consideration, and I am prepared to answer any questions of the Committee.

SEN. AVALLONE: Thank you.

ATTY. LARRY BERLINER: Thank you very much.

SEN. AVALLONE: Art Rocque?

ART ROCQUE: Thank you, Senator Avallone. It is actually simpler than it looks. It's Art Rocque, believe it or not. I am Director of Planning, Department of Environmental Protection, and I am here to testify on House Bill 5025, AN ACT CONCERNING MARINA CONDOMINIUMS.

The Department of Environmental Protection supports the concept of 5025 as a means of addressing the growing trend toward declaring boating facilities as common interest communities. In fact, DEP has drafted legislation and submitted it both last session and this session, addressing this very topic.

We have several comments, however, aimed at strengthening the proposed bill, and one suggested change which we believe is necessary and vital to the utility of the bill. Our conceptual support for this bill is based on the need to address the issues which arise from the practice of organizing and selling boat slips and docking facilities as common interest communities. Those issues include the following.

First, consumers believe they are purchasing or have rights to submerged lands which are, in fact, state-owned and held in trust for the public. This raises the need to protect both state property interests and consumers.

Second, all structures in the coastal, tidal and

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proposals, but he favors it.

Essentially, it provides for mediation in visitation disputes in custody matters, if mediation is requested by one of the parties. It also allows there to arise a presumption, in the event that there are multiple contempts on visitation orders. There is a presumption that a change in custody would be in the best interests of the child, and we support that bill. That is 5087.

The other bill I wanted to testify on briefly is Senate Bill 209, Uniform Administrative Procedures Act Amendments. First of all, again, as last year, our office applauds the efforts of the Law Review Commission and all the other people who were responsible for drafting this proposal.

Last session, our office opposed a very similar bill in G.A.E. Committee, where it died, on a variety of bases. After the hearing, we negotiated a number of points with the authors of the bill, and after these negotiations, a number of the points were resolved so that we could withdraw our objections.

Several objections remain, but most of these really go to the fiscal impact that this bill might have on state agencies, and we feel that we should bring that to your attention. If the fiscal side of this is appropriately provided for by the Legislature, we don't really have any opposition to the bill as it stands, except to say that this is really a substantial departure from our present law in many particulars. And, it is just not clear really how it is going to work.

REP. TULISANO: Thank you.

ATTY. GORDON HALL: Thank you.

SEN. AVALLONE: Any questions?

REP. PRAGUE: I have a question, Senator?

SEN. AVALLONE: Representative Prague.

REP. PRAGUE: Thank you, Senator Avallone. I have a

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A mechanism for strengthening this aspect of the bill would be to couple a fining procedure as it presently exists with the warning system that you have put in. We support that warning system. We think that that is probably a very good idea, coupled with that mandatory inspection.

We would like the incentive, however, for people to get into the station. The program only works if people get into the station. And, if they find that they don't have to get to the station, the program will indeed fall. We would support your bill, with a change, that would include some greater incentive to get into that inspection station.

Thank you.

REP. TULISANO: Thank you. Phil Murphy?

SEN. AVALLONE: And then Janet...Carnavali.

ATTY. PHILIP MURPHY: Good afternoon, Members of the Judiciary Committee. My name is Philip A. Murphy, Jr. I am Commission Counsel for the Commission on Human Rights and Opportunities. I am here to testify with regard to three bills, House Bill 5009, AN ACT CONCERNING PROHIBITION AGAINST SEX DISCRIMINATION IN INSURANCE RATES, Senate Bill 209, Amendments to the Administrative Procedures Act, and House Bill 5319, AN ACT CONCERNING CHARITABLE NURSING HOMES.

REP. TULISANO: Do we have testimony on 5319 today?

ATTY. PHILIP MURPHY: 5319.

REP. TULISANO: I haven't heard about that yet.

ATTY. PHILIP MURPHY: With regard to this bill, it would create another exemption in the public accommodations law. We haven't, as far as I know, seen any cases on this particular topic before the Commission. I am not quite sure what the intent, or what problem the intent, the bill is intended to solve.

It would exempt nursing homes from their provisions

discrimination by them we believe to be prohibited. There is also statute that requires the, again, which was inferred in the comments by the lobbyist for the nursing homes. The State Code of Fair Practices requires all state agencies, including the insurance commissioner, to not discriminate on the basis of sex or marital status, and they are regulatory responsibilities.

In response to what the industry said, that we shouldn't be doing public policy matters, that this should just be a matter of economics, we note that the Legislature, in Sections 38-150 and 151, has prohibited companies from using race as a factor in rating life insurance. Previously, the insurance companies did use this.

Now, I agree that the language in 38-150 and 151 is very much out of date, referring to persons of African descent. That should be updated. But, nonetheless, there is a precedent for the Legislature taking action with regard to enforcing the public policy of the state. And, sex is a prohibited classification in the State Constitution, Article 1, Section 20.

In conclusion, we believe that sex or marital status discrimination by insurance companies is presently legal. It is reinforced by the vote of the people in support of Article 1, Section 20 to include sex, and that discrimination should be made explicitly illegal.

With regard to Senate Bill 209, we have concerns with Section 1, 2, 9, 10, 11, 14, 17, 18, 19, and 24. As the proponents for the bill indicated, there was considerable debate. While the Administrative Law Section, which I am a member of, did vote to support this bill, there is considerable concern among the members, and that bill was certainly was not unanimous in terms of supporting the bill as it is now.

I think the declaratory judgement provisions are... I think the testimony of the courts earlier on is going to allow additional matters to go into court, and therefore create additional need for further resources within the Judicial Department.

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SEN. AVALLONE: Okay. Let me cut you, because we have a lot of people here to go, and we are going to try and set some time limits. Did you testify before G.A.E., where this bill originated?

ATTY. PHILIP MURPHY: No. My understanding was that they held a pro forma hearing.

SEN. AVALLONE: Because this came to us last year from G.A.E.

ATTY. PHILIP MURPHY: Right. No, we did not testify before G.A.E. last year.

SEN. AVALLONE: They didn't hold a public hearing?

ATTY. PHILIP MURPHY: I am not sure that they did this year.

SEN. AVALLONE: Not this year, last year.

ATTY. PHILIP MURPHY: No, we did not testify before G.A.E. last year.

SEN. AVALLONE: But, there was a public hearing.

ATTY. PHILIP MURPHY: I understood that... Yes, I believe that they did hold a public hearing.

SEN. AVALLONE: All right. In light of the number of sections that you have a disagreement on, I would suggest that you contact us, put your objections down in writing, because we are going to try and work something out on this bill.

But, if you are going to go through all of those...

ATTY. PHILIP MURPHY: No, what I was trying to highlight just a couple, but I will be glad to put my comments in writing.

SEN. AVALLONE: Why don't we do it that way, because we are going to try to get all these comments and put this thing together. Okay?

ATTY. PHILIP MURPHY: All right. Very good. Thank you.

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that. I happen to know that there are insurance companies who market unisex insurance and market other insurance so I'm not sure that it would affect them at all. I imagine they would sell gender based insurance where they could and...

REP. O'NEILL: Turn to the example of the State of Montana where I understand this is still in a bill.

TERRY FERGUSON: Yes, I only saw very briefly a writeup from the state auditor from the State of Montana and what it basically suggested from what I saw was rates went up a lot higher for women than they came down for men and I was wondering myself who was making the money there? If you change a law and you say that now the rates will be unisex, they will not be gender based and then the rates go way up for women and they don't come down very much for men, then that suggests to me that perhaps it was an opportunity for them to profit themselves.

I don't want to make any statements that I would say they weren't fair or anything but it's at least what came into my mind.

SEN. UPSON: Just very generally. What you're suggesting is that you think it would be fairer for unisex insurance that eventually the market would take care of its place and whatever you heard before will work itself out.

TERRY FERGUSON: Well, that's right because that's the way it usually does, if the market takes over.

SEN. UPSON: Even though temporarily there may be some increase.

TERRY FERGUSON: Yes, it's conceivable.

SEN. UPSON: Thank you.

STEVE FRAZZINI: Good evening. My name is Steve Frazzini, and I'm the Executive Director of the Legal Aid Society in Hartford County. I'm here tonight to testify with regard to Senate Bill 209, the proposal to amend the Uniform Administrative Procedure Act.

I was a member of the advisory group that worked

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many, many hours trying to amend the Administrative Procedure Act for the State of Connecticut. As you know, that deals both with what the practices agencies have to follow and also with the roles for appealing actions of agencies to court if one disagrees with them. I want to make a couple of general comments and then talk in particular about my perspective as a practicing lawyer who has done a lot of administrative work and as a services lawyer.

The basic crux of what we did was that you have a lot of people of a variety of practice in administrative law and most of what's represented in this bill is basically working out problems into the reason being the development of the act and the way the act has been brought on since 1971 some of them are really minor, some of them are major and you get what you see, basically we agreed on most parts but there are some compromises in some areas.

But I can't emphasize to you how diverse and I know you've already heard from some people, the group of esquires that worked on it from legal aid to private corporate, private lawyers representing groups that are regulated to a lawyer representing the regulators, to a professor from the law school.

Now I don't want to talk about a couple of things that I feel very strongly about. Those of this committee who are lawyers or anyone who reads the Connecticut Law Journal or the Connecticut Law Tribune, know that the current laws of about appealing Administrative Agency decisions are a trap for the unwary.

I wish I hadn't been a witness today in a proceeding where I could have done this, but if you simply went through the last three months worth of law tribunes, what it said to most of us the ridiculous reasons why appeals were dismissed by were dismissed by the courts, would be obvious. Basically the courts have taken the position that there's no right to appeal from Administrative Agency decision except by statute and if the statute isn't followed in every detail, then you're thrown out of court with regard to your department's filing the appeal.

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The problem is that the present statute is very hard to follow. I don't know how many times I have seen lawyers who have thought that they could file the appeal within 45 days and they were safe. The present section has two different filing deadlines. You have to file it, you have to serve the appeal on the agency within 30 days after the decision and then within another 15 days, you have to file the appeal with court.

But the number of people who do both within 45 days is legion, and I think it's really unfair that the appeal process is so difficult to understand and to comply with. What this bill does is it makes senators' things simpler. For example, one 45-day appeal period, serve the party, serve the agency both. No confusion or how long you've got to do for what you've got to do.

Secondly, the number of cases where appeals have been dismissed because some supposedly vital party, not the agency, but someone else were not served are also far too frequent. What this bill says is that if you serve the agency on time, then the authority to serve anybody else who's concerned at the time isn't critical as long as you do serve them and as long as that party isn't prejudiced by your serving them late.

That's very important. It also seems that the appeals that our State have lived with very strict rules have basically resulted in a lot of (inaudible) choice appeals being thrown out of court and I am saying that the Attorney General has an obligation to defend appeals who use all the ritual they have. But I think what we seen under the same law is for the courts to overturn those that are not meritorious decisions and allow those that are correct to follow.

So that's the most important thing that really even makes what you do to appeal agency decision simpler and fairer. The second problem that I would like to address very simply is that I deal with the welfare agencies a lot and I hear the complaints from them many times that a bill gets passed and yet they can't pass regulations until the effective date of the bill.

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This legislation allows the agency who wants to (inaudible) to begin the bill making process because as you all know many bills aren't effective until October 1. Then they'd be one bill of several months. To get those regulations started, the regulation making procedure is still too cumbersome, even under this act to reach the outer cut three or four months they can get going.

The final thing that it does is, that I'd like to call your attention is again back to the appeal process. Let's say that you are dissatisfied with an agency decision, that you think you can get the agency to change its mind because it's overlooked a point. You ask for reconsideration. Could law allow you to ask for reconsideration, but it doesn't make clear what the standards are, what the agency, what standards of the agency should apply or many of the procedures related to reconsideration.

We realize that that was true and we tried to set up some standards in the act for how an agency reconsiders its decision once it's issued a final decision, and how will then appeals from that decision if you still don't like the reconsidered decision.

I would like to basically just urge you to pass this. It's not perfect. I could give you a list of several things I wish I'd gotten, but it's a reasonable and balanced compromise and there's nothing that's really horrible about the bill and it's substantial improvement, not from my perspective as a Legal Aid lawyer, but from my perspective as a member of the Bar.

SEN. AVALONE: Thank you. Frank Stark? Of is it Stanck? I'm sorry. Joseph Sakaro? Raph Podolsky. We're going to change the rules. You've got two minutes, not five.

RAPHAEL PODOLSKY: One is gone. That's because I listed more than one bill.

SEN. AVALONE: That's right I saw you listed your name twice, more than once.

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I will begin to suggest that you make the changes in Sections 1 and 2 I've discussed before, but I do not think it is appropriate to assume that because there are problems with visitation there should be a change in the burden of proof on custody, which is a very, very different issue and raises different concerns. Clearly something should be done about the visitation problem.

On Senate Bill 209 which deals with the Uniform Administrative Procedures Act, I was a member of the Law Revision Commission Committee that worked on that. I generally would say I am in support of that bill. There are three minor changes, really technical changes, I would encourage you to make. I will put them in my written testimony and unless you want to talk about them I won't itemize them here.

Finally, House Bill 5250 which now deals with the withholding of lottery winnings. I've submitted testimony to you on that based on what the bill says. (inaudible) Commissioner of Human Resources testimony which greatly changes the bill, the major problem of the bill has been solved. I would, however, call to your attention one other problem that should be explored.

The way the bill now works if you once were on welfare, but no longer are and therefore you are on a child support by your ex-spouse, and if your ex-spouse is in arrears on that payment, so that you are off welfare and there's an arrearance you owe, and now under the theory of this bill, your ex-husband strikes it rich and wins the lottery, that money will be grabbed by the State to pay for the welfare benefits you got when you were on welfare rather than first paying off your arrearage which you now need to live in and then paying the state off.

I would suggest that you look at the possibility of redrafting that. I was not aware of that until I heard testimony from another witness today. Those are the bills I wanted to speak on. Is there any questions? I'd be happy to answer, particularly on the first bill if there are questions. Thanks very much.

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high value on my children and those other children and I only hope that we can come up with some solution that helps them, and so far in the system in the time that I have spent in the last three years sitting in on the system and watching it work, it has let them down more than not, and I would sincerely hope that you give it very serious consideration and consider that these children are the ones that are being pulled apart.

REP. WOLLENBERG: I have to disagree. I don't think it's let them down more often than not. I agree it has let children down.

PAT D'ANGELO: I think the ones that didn't let the children down are the parents that were mature enough to handle the divorce and not play tug of war, and they're the ones that make the system work.

REP. WOLLENBERG: You ought to beat up on the parents a little bit.

PAT D'ANGELO: That's fine. Have a good evening.

REP. TULISANO: Stephen Miltimore? Will the record show that Roderick O'Connor was here in favor of 5320 and 5323?

STEPHEN MILTIMORE: Good evening, I'm Stephen Miltimore, Senior Administrator and Hearings Attorney at the Department of Health Services. We are grateful for the opportunity to present our views before the Judiciary Committee. I would like to address three points in Raised Committee Bill 209, an Act concerning amendments to the Uniform Administrative Procedure Act.

The Health Department opposes just the following three provisions. We are opposed to Section 14A which is discovery in contested cases because it is another step in making administrative hearings more procedurally similar to Superior Court actions.

Extensive discovery motions could be used by parties with lawyers to detain, to delay arguable merits. Such a provision would countermand one of the chief purposes of administrative law adjudication, that is to be

simple and flexible enough so the parties can present the merits of their case in a form that is not so highly structured as to require specialized legal expertise.

Furthermore employees can already obtain much of this information, much of the material through the Freedom of Information Act. Another issue and the Department's concern is that this would greatly delay the issuance of a final agency decision, and the resolution of possible public health threats. Therefore the Department of Health Services recommends that this Committee delete Section 14A.

The Department is opposed to Section 19 requiring agencies to index all written orders and final decisions and prohibiting agencies from relying on a written order or final decision as precedent until that case has been indexed. This provision may actually result in the principal of (inaudible) being ignored.

Given current resources indexing the great number of written orders and final decisions that the Department of Health Services has issued over the years cannot be done. Suppose a point of law that needs to be resolved in a pending case and that issue had been addressed and an agency decision which was not yet indexed, it then must be decided anew. There will be no logical development of administrative jurisprudence if agency law keeps changing without regard for precedent.

The fundamental fairness of making several points of agency law conveniently available to the public is obvious. The Department of Health Services, however, urges that this Committee modify Section 19 to promote reliance on publicly available case log. Specifically we urge that the General Assembly appropriate funds for necessary staff to accomplish this indexing before the statute's effective date, and pull out the indexing mandate for one year.

The Department opposes Section 23 which provides that a party before a final decision is issued may request to review a preliminary procedural or evidential rulings made at a hearing. The majority of members of the agency are authorized to render a

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final decision made in the appropriate order including reconvening the hearings. One basis for the Department's opposition to this interrogatory appeal is undue delay.

If a party takes an appeal from a procedural or evidential ruling at a hearing, the whole proceeding apparently stops. That is the hearing must be recessed until this point of law gets argued before the Commissioner or a majority of members of the licensing board are commissioned, and this issue gets decided.

In reality the Commissioner will likely obtain the legal counsel of an Assistant Attorney General to evaluate written or possible oral arguments. Once the ruling is reached then the hearing begins anew after reasonable notice, from the point of that objection. Hearings would be delayed unreasonably permitting possible public health threats to persist longer.

Also involving volunteer licensing board members in such procedural appeals discourages them from volunteering. The final ground of our opposition to this type of appeal is that this further formalization of the administrative law process can benefit regulated industries and not the municipalities to the relative disadvantage of individual private citizens.

Who is likely to file such an appeal? Parties who can afford to be represented by an attorney rather than individuals acting per se. Therefore the department recommends that you remove Section 23. Thank you again for your time and your attentive listening. Do you have any questions?

REP. TULISANO: Thank you. Mr. York? The man left. Gail? (Inaudible - laughter)

GAIL HAMM: You're giving me a message about what you think of the bill or you knew I was staying for the committee.

REP. TULISANO: No, I really like this, you can go on and monitor what we're doing and all that sort of thing.

JOINT
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JUDICIARY
PART 2
280-615

1988

State of Connecticut
JUDICIAL DEPARTMENT
OFFICE OF THE CHIEF COURT ADMINISTRATOR
Drawer N, Station A
Hartford, Connecticut 06106

TESTIMONY OF FAITH A. MANDELL
JUDICIARY COMMITTEE PUBLIC HEARING
FEBRUARY 19, 1988

S.B. 209 - AN ACT CONCERNING AMENDMENTS TO THE UNIFORM
ADMINISTRATIVE PROCEDURE ACT

I would like to state for the record, on behalf of the Judicial Department, that it is very difficult at this point in time to determine the impact of the provisions of this proposal, particularly sections 11 and 24. These two sections appear to permit appeals to the superior court from declaratory rulings of agencies and preliminary, procedural or intermediate agency actions or rulings (interlocutory rulings of agencies). This would be a substantial departure from current practice. The department recognizes that there will be an impact on the courts and on the handling of administrative appeals but the extent of such impact cannot yet be determined.



STATE OF CONNECTICUT
OFFICE OF PROTECTION AND ADVOCACY FOR HANDICAPPED
AND DEVELOPMENTALLY DISABLED PERSONS

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August 11, 1987

Connecticut Law Revision Commission
20 Trinity Street
Hartford, CT 06106

RE: Amendments to the Uniform Administrative Procedures Act (SB 209)

Dear Sir or Madam:

Pursuant to your recent request, this agency has reviewed the proposed amendments to Chapter 54. Overall, the amendments appear to be satisfactory. However, we believe that some revisions, albeit technical, are necessary. The following may be construed as our comments:

Section 1(2) - Contested case - should be defined as "...a proceeding, including but not restricted to rate-making, price fixing and licensing, in which the legal rights, duties or privileges of a party are required by statute OR REGULATION to be determined by an agency after an opportunity for a hearing, OR IN WHICH A HEARING IS REQUIRED BY STATUTE OR REGULATION, BUT NOT PROVIDED BY THE AGENCY; or in which a hearing is in fact held" COMMENT - This amendment is proposed to circumvent an agency's intransigence in providing a hearing. This agency has requested many hearings from certain agencies which were not granted. An appeal pursuant to Section 4-183 was then filed. The agency then files a motion to dismiss which alleges that the court lacks jurisdiction on the grounds that the plaintiff has not filed an appeal from a contested case. This change should expand the grounds for an appeal to include the denial of a hearing itself.

Section 13(c) - intra-agency or inter-agency memoranda EXPRESSLY EXEMPTED FROM THIS SUBSECTION. COMMENT - This language is suggested to clear up any agency misunderstanding or misapplication of this section. An agency is required to promulgate regulations and cannot circumvent that process through the use of intra-agency or inter-agency memoranda.

Section 13(a) - In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice, WHICH SHALL BE AT LEAST FIVE BUSINESS DAYS BEFORE THE HEARING DATE. COMMENT - The suggested language which allows a party at least five days notice. The party would have adequate time to prepare for the hearing, review documents, interview witnesses,

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retain counsel, etc. This provision would allow a party a stated minimum amount of time to prepare.

Section 13(b)(4) SHALL CONTAIN A CASE SUMMARY WHICH SHALL INCLUDE AT LEAST A SUMMARY OF THE EVIDENCE THAT THE AGENCY INTENDS TO USE AT THE HEARING AND a short and plain statement of the matters asserted. COMMENT - The suggested language would require the agency to disclose, in advance, the information which it intends to use at the hearing. This disclosure would allow a party to prepare a response to the agency, in advance of the hearing date.

Section 18(b) - The court, after hearing, shall issue an appropriate order AND MAY AWARD A PARTY, OTHER THAN AN AGENCY, COSTS AND A REASONABLE ATTORNEY'S FEE, IF IT IS ESTABLISHED THAT THE AGENCY'S ACTIONS WERE UNWARRANTED. COMMENT- The suggested language would provide an incentive to an agency to issue a decision in a timely manner. This agency has been involved in many cases where an agency has exceeded the ninety day time limit. The only remedy for a party is to file an action under Section 4-180. However, the costs of such action, especially where the agency's inaction is not justified or warranted, should be shifted to the agency.

Section 20(e) (NEW SECTION) - THE BURDEN SHALL BE UPON THE AGENCY TO ESTABLISH THAT IT WAS COMPLIED WITH THIS SECTION. COMMENT - The suggested language would incorporate language in recently decided Supreme Court case. Henderson v. Department of Motor Vehicles 202 Conn. 453, 460 (1987).

Section 26(b) - ...HOWEVER, THE DISPOSITION OF A CONTESTED CASE SHALL BE GOVERNED BY SECTIONS 4-177 TO 4-181 INCLUSIVE. COMMENT - The suggested language would allow one basic legal standard to dispose of contested cases. The language would still preserve the special procedures to appeal from these decisions to the Superior Court.

Section 26(d) Strike ADOPTION REVIEW BOARD. COMMENT - Section 17-44b(c) expressly provides that appeals shall be in accordance with Chapter 54. The suggested language would simply allow the UAPA amendments to comport to the existing statutory framework.

Section 56(3) - THE COURT SHALL HAVE THE AUTHORITY TO ENTER APPROPRIATE ORDERS PURSUANT TO PUBLIC LAW 99-327, as amended. COMMENT - The suggested language would authorize the Superior Court to make awards which conform to the Handicapped Children's Protection Act. Public Law 99-327. 20 U.S.C. §1415(e).

Section 101 (NEW) - Section 29-266(b) is repealed and the following is substituted in lieu thereof:

(b) When the building official rejects or refuses to approve the mode or manner of construction proposed to be followed or the materials to be used in the erection or alteration of a building or structure, or when it is claimed that the provisions of the code do not apply or that an equally good or more desirable form of construction can be employed in a specific case, or when it is claimed that the true intent and meaning of the code and regulations have been misconstrued or wrongly interpreted, the permit, in whole or in part, having been refused by the building official, the owner of such building or structure, whether already erected or to be erected, or his authorized agent may appeal in writing from the decision of the building official to the board of appeals. When a person other than such owner claims to be aggrieved by any decision of the building official, such person or his authorized agent may appeal, in writing, from the decision of the building official to the board of appeals, and before determining the merits of such appeal the board of appeals shall first determine whether such person has a right to appeal. Upon receipt of an appeal from an owner or his representative or approval of an appeal by a person other than the owner, the chairman of the board of appeals shall appoint a panel of not less than three members of such board to hear such appeal. Such appeal shall be heard in the municipality for which the building official serves within five days, exclusive of Saturdays, Sundays and legal holidays, after the date of receipt of such appeal. Such panel shall render a decision upon the appeal and file the same with the building official from whom such appeal has been taken not later than five days, exclusive of Saturdays, Sundays and legal holidays, following the day of the hearing thereon. A copy of such decision shall be mailed, prior to such filing, to the party taking such appeal. Any person aggrieved by the decision of a panel may appeal to the codes and standards committee within seven days after the filing of the decision with the building official. Any determination made by the local panel shall be subject to review de novo by said committee. A HEARING SHALL BE PROVIDED IN A MANNER AS PROVIDED FOR IN SECTIONS 4-177 TO 4-180, INCLUSIVE, AS AMENDED BY SECTIONS 13, 17 and 18 OF THIS ACT AND IN ACCORDANCE WITH THE PROVISIONS OF SECTIONS 12, 14, 16, 19, 21 AND 23 OF THIS ACT.

COMMENT - The suggested language would require the Codes and Standards Committee to conduct hearings in contested matters in a manner consistent with Chapter 54.

Section 102 (NEW) - Section 29-266(d) is repealed and the following is substituted in lieu thereof:

(d) Any person aggrieved by any ruling of the the codes and standards committee may appeal to the superior court for the judicial district where such building or structure has been or is being erected. APPEALS PURSUANT TO THIS SECTION SHALL BE MADE PURSUANT TO THE PROVISIONS OF CHAPTER 54, AS AMENDED.

COMMENT - The suggested language would require appeals from the Codes and Standards Committee to follow the procedure set out in Chapter 54, as amended.

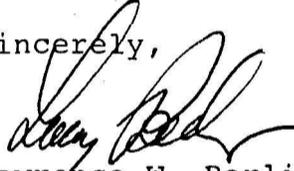
Section 103 (NEW) - 17-419(c) is repealed and the following is substituted in lieu thereof:

The commissioner shall adopt regulations describing the documentation required for voluntary admissions to facilities under his jurisdiction and for an informal administrative case review, upon request, of a denial of an applicant for voluntary admissions. APPEALS SHALL BE PROVIDED IN A MANNER AS PROVIDED FOR IN CHAPTER 54, AS AMENDED.

COMMENT - The suggested language would clear up any ambiguity between the statute and regulations adopted therein.

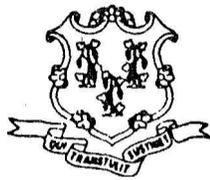
If there are any questions related to the comments herein, I hope that you will feel free to contact my office.

Sincerely,


Lawrence W. Berliner
Staff Attorney

LWB:lp

State of Connecticut



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Report and Recommendations of the
 Law Revision Commission
 Concerning
 the Uniform Administrative Procedure Act
Senate Bill 209

February 1988

Introduction

In January 1985, the Law Revision Commission began a review of amendments to the Uniform Administrative Procedure Act (UAPA) proposed by the Administrative Law Section of the Connecticut Bar Association. The law of administrative procedure has developed rapidly as state governments have relied increasingly on administration of the law through its agencies. In particular, there is an awareness that the law must both allow effective regulation and ensure due process to those who are regulated.

This project is the first comprehensive review of the UAPA since its adoption in 1971. Interest in revising the UAPA has been engendered, in part, by adoption of the 1981 Model State Administrative Procedure Act by the Uniform Law Commissioners.

The Law Revision Commission conducted its review in conjunction with numerous legal authorities with private, corporate, and governmental experience in administrative law. The Commission has concluded that revision of the UAPA is warranted in the interest of fair and effective administration of the laws. A version of the Commission's recommendations for revision was submitted to the 1987 legislative session as Senate Bill 1111. The bill was favorably reported by the Government Administration and Elections Committee but died on reference to the Judiciary Committee. The Commission recommends enactment of a revised version of that bill in this session.

Brief Summary

Briefly, the bill:

- o Sets standards for intervention by interested parties in a declaratory ruling proceeding and in a contested case. See sections 11 and 21.

- o Allows regulation-making to begin after passage of a Public Act, but before its effective date, so that the regulation can become effective immediately on that effective date. See section 3.
- o Clarifies the authority of hearing officers to conduct hearings. See section 16.
- o Delineates what information constitutes the record of a contested case. See section 13(d).
- o Clarifies the effective date of and notice required of a final decision. See section 18.
- o Requires indexing of final decisions. See section 19.
- o Clarifies when ex parte contacts are allowed. See section 20.
- o Clarifies when a final decision can be reconsidered or modified. See section 22.
- o Permits full agency review of preliminary rulings, where necessary. See section 23.
- o Clarifies the requirements for service and filing of appeals. See section 24.
- o Clarifies when the UAPA applies to an agency proceeding. See section 25.

Detailed Summary

More specifically, the bill would do the following:

Section 1. (Section 4-166 of the General Statutes). Definitions.

This section amends section 4-166 as follows:

(1) Agency. The definition of "agency" in subsection (a) was rewritten for style and to clarify that, not only is the legislature, as a whole, an exempt body, but also that each house and all legislative committees are exempt.

(2) Contested case. This definition has been amended to clarify that a proceeding on a petition for a declaratory ruling is not a contested case.

(3) Final decision. The term is defined for the first time. "Final decision" includes the final agency action in a contested case, a declaratory ruling, or a decision made after reconsideration. A "final decision" does not include an intermediate agency order.

(4) Hearing officer. The term is defined for the first time.

(5) Intervenor. The term is defined as a person permitted to participate in an agency proceeding under section 11 or section 21. Some agencies already have regulations concerning the status of intervenors.

(8) Party. The term is restated to more usefully determine who should be a party and how parties are, in practice, identified. The consumer counsel is an example of a party identified under subsection (8)(B) but not under (8)(A). An agency, unless it is the presiding agency, may be a party. See definition of "person."

(9) Person. An agency, unless it is the presiding agency, is included within the meaning of "person."

(10) Presiding officer. The term is defined for the first time.

(11) Proposed final decision. The term, as used in section 17, is now defined.

(14) Regulation-making. The term is now defined.

Section 2. (Section 4-167). Organization description to be adopted. Rules of practice. Public inspection of regulations.

The deleted portions of this section referring to final decisions have been transferred to section 19.

Subsection (b) is amended to provide that a regulation may not be enforced against a person without notice or knowledge of its contents until it has been available for inspection and has been published or a notice of it has been published in the Law Journal.

Section 3. (Section 4-168). Regulation-making procedure.

This section amends and reorganizes part of section 4-168.

Subsection (c) permits an agency to begin the regulation-making process between the date of enactment of the enabling legislation and the legislation's effective date. It may be important that implementing regulations be in place, or nearly in place, on the effective date of a public act. Agencies presently may not have this necessary regulation-making authority before the effective date of the enabling public act.

Section 7. (Section 4-172). Filing with secretary of the state. Certified copies. Effective date. Publication.

This section amends section 4-172(b)(2) and assures that, although a regulation may be adopted before the effective date of a public act, the regulation cannot take effect until the act's effective date. See section 3.

Section 9. (NEW). Regulation-making record.

This section requires each agency to maintain a regulation-making record for each regulation it adopts. The record is to be kept as public information to facilitate a more structured and rational consideration of proposed regulations, and to assist the judicial review of the validity of regulations. Subsection (c) makes clear that the requirement of such a record does not mean that the regulations made must be based exclusively on the regulation-making record or judicially reviewed exclusively on the basis of that record. See section 3-112 of the Model State Administrative Procedure Act (1981) and the comment thereto.

Section 10. (Section 4-175). Declaratory judgment. Availability and procedure.

Section 4-175 is amended by removing the requirement that a declaratory judgment may be sought only in the Hartford-New Britain judicial district.

A declaratory judgment may be sought if the agency fails to take an action required by section 11 with sixty days, or fails to issue a declaratory ruling within 180 days, or declines to issue a ruling. The regulation-making record must be before the court when it is determining the validity or applicability of a regulation.

Section 11. (Section 4-176). Declaratory rulings.

This section expands and clarifies the declaratory ruling provisions of section 4-176. Although a proceeding for a declaratory ruling is not a contested case (section 1(2)), a declaratory ruling is a final decision that may be appealed to the court--the decision, facts and reasoning, and record are available for judicial review.

A declaratory ruling is used to determine the applicability of a regulation or final decision, or, in a new provision, the validity of a regulation. The validity of a regulation may be questioned, for example, when doubtful procedures are used in adopting the regulation.

Agencies are required to adopt regulations outlining the administrative process for requesting a declaratory ruling. The act requires notice of the petition for the ruling and notice of the agency action. A process for intervening is set forth.

Within sixty days of receiving a petition for a declaratory ruling, the agency must take one of five specified actions regarding the petition. The agency is deemed to have declined to issue a declaratory ruling if one is not made within 180 days. Under section 11, if the agency fails to take one of the five actions required within sixty days, or declines, specifically or by inaction, to issue an order, the petitioner may seek a declaratory judgment in the superior court. Since, in this case there is no decision and record to review, the superior court action is de novo.

This section is based, in part, on section 2-103 of the Model State Administrative Procedure Act (1981).

Section 12. (NEW). Hearings before agency or hearing officer.

This section specifies that a hearing can be held before either hearing officers or agency members.

Section 13. (Section 4-177). Contested case: Notice of hearing, default, informal disposition, record.

The act amends section 4-177, transferring former subsection (c) to section 14 and describing participation in a hearing in more detail.

New subsection (c) (former subsection (d)) has been rewritten. The term "informal disposition," when used to describe a "stipulation, agreed settlement, consent order, or default" is confusing and has been removed.

Former subsection (e) (now (d)) expands the list of items to be included in the record to give a more complete picture of the contested case.

Former subsection (g) is transferred to section 18.

See section 4-221 of the Model State Administrative Procedure Act (1981).

Section 14. (NEW). Contested case: Hearing procedure and participation.

This section expands on contested case procedures that are briefly addressed in section 4-177(c). This section, together with section 21, explicitly describes a

presiding officer's authority over a hearing. In particular, the presiding officer may permit persons other than parties or intervenors to make statements. Such statements must be under oath or affirmation and if the presiding officer plans to consider such a statement, parties may rebut the statement and cross-examine the person making the statement.

Part of this section is based on section 4-211 of the Model State Administrative Procedure Act (1981).

Section 16. (NEW). Contested case: Subpoenas and production of records, physical evidence, papers and documents.

The UAPA does not presently describe the presiding officer's authority over the hearing and the agency's right to seek superior court enforcement of the presiding officer's orders. This section, together with section 14, explicitly provides the presiding officer and agency with those necessary powers.

Section 17. (Section 4-179). Contested Case: Proposed final decision. When required.

The act amends section 4-179, requiring that a proposed final decision be made prior to rendition of the final decision if the matter is heard by (1) a hearing officer who is not empowered to make a final decision, or (2) an agency if a majority of the persons who are to render the final decision have not attended the hearing or read the record. A final decision adverse to a party may not be made until the parties have been served with the proposed final decision and have been given an opportunity to "file exceptions and present briefs and oral argument."

A proposed final decision must be written and contain the reasons for the decision and the issues of fact and conclusions of law necessary for the decision.

Section 18. (Section 4-180). Contested case: Final decision; effective date.

The act amends section 4-180 and includes section 4-177(g) in the first sentence of subsection (c).

In subsection (a), the agency's time to render a final decision is changed from ninety days after "the close of evidence and the filing of briefs" to ninety days after the later of the close of evidence or the filing of briefs.

Under subsection (b), an "interested person" may no longer request a court order that the agency render a final decision. Only a "party" may seek such an order.

If a final decision is adverse to a party, it must contain findings and conclusions. The name of each party and most recent mailing address furnished to the agency by the party must be noted in the decision. Under section 24, notice of an appeal must be given only to listed parties at the addresses shown.

The decision must be personally delivered or sent by prepaid mail, certified with return receipt. The decision is effective when personally delivered or mailed, or at a specified later date. The required use of certified or registered mail should make it easier to establish the mailing date of a decision.

Section 19. (NEW). Final decisions: Public inspection and indexing.

This section incorporates the public inspection requirement of section 4-167. An agency may not rely on a final decision unless it is available and indexed. The indexing requirement is new. The section is based on section 2-102 of the Model State Administrative Procedure Act (1981).

Section 20. (Section 4-181). Contested case: Ex parte communications.

This section expands section 4-181 to include concepts found in section 4-213 of the Model State Administrative Procedure Act (1981). In particular, ex parte contacts in contested cases are forbidden not only with agency members who are to render a decision but also with hearing officers, parties, other agencies, and interested persons.

An agency member may communicate with other members and may receive assistance from those staff who have not received ex parte communications forbidden under subsection (a). The section is not intended to prohibit a party or intervenor from discussing purely procedural matters, such as the date, time, or place of a hearing, with the hearing officer or the agency.

Section 21. (NEW). Contested case: Parties and intervenors.

The UAPA currently fails to address when a person may intervene in a contested case, although section 4-166(5) implies such a right. This section allows a person who has a legitimate interest, but insufficient to justify full party status, to participate. If the conditions of subsection (a) are met, the presiding officer must grant a person status as a party.

If the conditions of subsection (b) are met, the presiding officer may grant the person status as an intervenor and, under subsection (d), limit participation in the proceeding.

The five-day requirement of subsections (a) and (b) may be waived by the presiding officer on the showing of good cause.

The section is based on section 4-209 of the Model State Administrative Procedure Act (1981).

Section 22. (NEW). Contested case: Reconsideration and modification of final decision.

Under section 4-183(b), the UAPA currently mentions reconsideration of a final decision only in context of determining the time for seeking judicial review. Under section 4-183(e), the UAPA currently addresses agency modification of its decision only if an agency is considering additional evidence at the direction of a court on appeal. The act permits easier application of these procedures by setting detailed standards for reconsideration of final decisions and by allowing modification of a decision in two new circumstances.

Subsection (a) of the act permits reconsideration of a final decision to correct a problem discovered within fifteen days of the mailing or delivery of the decision. After receiving a timely petition for reconsideration, the agency uses a two-step process. The agency has twenty-five days after the filing of a petition to decide whether to reconsider the final decision. If the agency decides to reconsider, it then has a reasonable time to issue a new final decision affirming, modifying or reversing the original final decision.

A petition for reconsideration is not a prerequisite for seeking judicial review (section 24) and does not stay the time to appeal. If, however, the reconsideration petition is granted, the agency's subsequent action affirming, modifying, or reversing the final decision is, under section 1(3), a new final decision to which a new appeal period applies.

If, at some later date, conditions change, subsection (b) permits modification of the decision at that time. Any such modification must, of course, adequately consider the rights of persons who have acted in reliance on the original final decision. Subsection (c) permits an agency to make clerical corrections in the final decision.

Section 23. (NEW). Review of preliminary, procedural or evidentiary rulings made at hearing.

This section permits a majority of the agency decision-makers to review a preliminary, procedural, or evidentiary ruling made at a hearing conducted by a hearing officer or by less than a majority of the agency decision-makers. Such a review could be conducted only if it were permitted by agency regulation and if review were sought before the final decision were rendered.

Section 24. (Section 4-183). Appeal to superior court.

Right of appeal. The filing of a petition for reconsideration is not a prerequisite to filing an appeal. The provision giving preeminence to federal time periods for appeals is removed.

Interlocutory appeals. Section 4-183(a) currently provides for an interlocutory appeal if a later review "would not provide an adequate remedy." The act requires a two-part test to permit such an interim appeal. An appeal is permitted if (1) it appears likely that the person will qualify to appeal the final decision, and (2) postponement of the appeal would result in an inadequate remedy.

Procedure for filing appeal and affidavit of service or sheriff's return. The term "appeal" is substituted for "petition." Service of the appeal on the agency and parties may be made either by mail or by sheriff within forty-five days of the mailing or personal delivery of the final decision. Failure to serve parties other than the agency that rendered the final decision within the forty-five days is not a jurisdictional defect. Such failure to serve does, however, subject the appeal to dismissal on a showing of prejudice. The persons appealing must serve the parties listed in the final decision at the addresses listed.

The appeal must also be filed in the court within forty-five days. Use of the forty-five day period for agencies, parties and the court should reduce some of the confusion inherent in the present thirty-day and forty-five-day periods. In extending the appeal period fifteen days, the advisory committee decided to eliminate the fifteen-day grace period that is permitted in some circumstances under present section 52-49 (see section 30).

Within fifteen days of filing the appeal in court, the person appealing must file with the court a description of the service actually made. On a showing of prejudice to a party not served, the court may dismiss the appeal.

Record for judicial review. The agency must transcribe for the court the entire record of the agency proceeding.

Review confined to record. Under present law, the only exception to the rule that the review must be confined to the record is when an irregularity not shown in the record is alleged. The act adds one more topic where proof may be taken in court - where "facts necessary to establish aggrievement are not shown in the record." Because agency proceedings do not ordinarily treat this topic specifically, agency records may not disclose sufficient facts to permit a reviewing court to determine the issue. Because the issue of aggrievement does not reflect on the agency's decision, the court, itself, should be able to take the evidence without returning the case to the agency.

Scope of review; if agency action required by law. Subsections (j) and (k) rewrite former subsection (g) for clarity, but the standards for sustaining an appeal - formerly in subsection (g) - are not changed. A court must affirm the agency's decision unless substantial rights of the person appealing have been prejudiced in one of six circumstances. If the court finds such prejudice, it must sustain the appeal. Ordinarily, the court would take no other action. The court may, however, remand the case to the agency for further proceedings (such a remand is a final judgment), or, if a particular action is required by law, modify the agency decision or order a particular agency action. (See Watson v. Howard, 138 Conn. 464 (1952).) A decision ordering a "remand for further proceedings in accordance with this opinion" "merely summarizes the consequences of the trial court's decision sustaining the appeal, i.e., that the appeal having been sustained, it is the duty of the administrative agency to proceed according to law." Hartford v. Hartford Electric Light Co., 172 Conn. 13, 14 (1976).

Section 25. (Section 4-185). Applicability of chapter.

This section describes how the act applies to pending administrative cases, provides that all agencies are subject to the UAPA unless explicitly exempted in the act.

Section 26. (Section 4-186). Exemptions from chapter and applicability in special circumstances.

This section gathers from various scattered places throughout the statutes references to the various boards and agencies that are exempt from the UAPA and describes how the UAPA is applicable to other agencies in special circumstances.

Section 28. (Section 51-197b). Administrative appeals.

The scope of review provisions of this section differ from the scope of review in UAPA appeals (section 26; section 4-183(j)). Thus, to eliminate the conflict, this section is amended to make it inapplicable to UAPA appeals.

Section 29. (Section 52-49). Appeals from administrative agencies, when returnable.

The return day provision of this section is unnecessary in the light of Practice Book Section 256 which treats administrative appeals as civil actions and section 52-48 which governs civil action return days.

Section 30. (Section 52-593a). Right of action not lost where process served after statutory period, when.

This section is designed to prevent the loss of a cause or right of action when process has been timely delivered to an authorized officer for service, but such service was not effected by that officer until after the time limited by law within which such action may be brought. This section with its fifteen-day grace period, is made inapplicable to administrative appeals because the time to file such an administrative appeal has been extended for fifteen days under section 24 (section 4-183).

Sections 31 through 98.

These sections of the General Statutes contain cross-reference language to the provisions of the UAPA. These references must be modified to reflect the changes made in the UAPA.

Section 97. Repealer.

Section 4-170a (Review of old regulations), section 4-185a (Validation of certain actions), and section 4-189 (Repeal of inconsistent sections) are repealed as unnecessary. The provisions of section 4-187 (Unemployment compensation, employment security and manpower appeals), section 4-188 (Employment security division and the board of mediation and arbitration exempt), and 4-188a (Requirements for exemption of constituent units of state system of higher education) are included within section 4-186 (Exemptions from chapter and applicability in special circumstances) and thus are repealed.

Connecticut Law Revision Commission

UAPA Amendments Committee
1985-1988Committee:

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Raphael L. Podolsky, Esq.
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February 19, 1988

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RAPHAEL L. PODOLSKY
Attorney at Law

S.B. 209 -- Amendments to the Uniform Administrative Procedure Act

-- prepared by Raphael L. Podolsky

Recommended Committee action: SUPPORT (with minor amendments)

This bill, which was prepared by the Law Revision Commission based on the work of a broad-based advisory committee, recodifies and amends the Uniform Administrative Procedure Act. In approving the bill, the Judiciary Committee should make the following minor changes to the bill:

(1) Adoption of regulations: Existing law requires agencies to publish a notice of intent to adopt regulations within five months of the effective date of a new act. The law assumes that by then the agency will have written a draft of a regulation on which the public can comment; but some agencies have published the notice before a draft has been prepared, thereby making the notice meaningless. The following underlined language should be added in l. 181-184:

...or by the time specified in [such] THE public act,
SHALL PREPARE A DRAFT OF SUCH REGULATIONS AND SHALL
PUBLISH IN THE CONNECTICUT LAW JOURNAL THE NOTICE REQUIRED
BY SUBSECTION (a) OF ITS INTENT TO ADOPT REGULATIONS. IF
THE AGENCY FAILS TO PREPARE THE DRAFT AND PUBLISH THE
NOTICE WITHIN SUCH FIVE-MONTH PERIOD...

(2) Citation in appeal papers: Section 24(c) expands present law which allows an administrative appeal to be served by mail. There are court cases, however, which say that an appeal is defective if it lacks a citation, even though it can be served without a sheriff. There is no apparent need for a citation in such appeals. Section 24 should be amended to clarify whether a citation is or is not needed.

(3) Fee waivers in administrative appeals: Section 24(m) deals with fee waivers for indigent appellants. The obscure "deprived of a right to which he is entitled" language in l. 1117-1118 is redundant at best and could improperly be interpreted to narrow the eligibility of an indigent appellant for a fee waiver. No such ambiguity appears in the general fee waiver statute (§52-259b). Lines 1115-1118 should be changed by deleting the language that is underlined and bracketed below:

In any case in which [an aggrieved party] A PERSON
APPEALING claims that he cannot pay the costs of an appeal
under this section [and will thereby be deprived of a
right to which he is entitled], he shall...



STATE OF CONNECTICUT
OFFICE OF PROTECTION AND ADVOCACY FOR HANDICAPPED
AND DEVELOPMENTALLY DISABLED PERSONS

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TESTIMONY OF ATTORNEY LAWRENCE BERLINER
REGARDING COMMITTEE BILL No. 209

Good Afternoon,

I am Lawrence W. Berliner, Esquire, Staff Attorney for the Office of Protection and Advocacy for Handicapped and Developmentally Disabled Persons, appearing on behalf of Eliot J. Dober, Executive Director.

I would like to commend the efforts of the Law Revision Commission regarding their efforts concerning the amendment to the Uniform Administrative Procedures Act as set out in Committee Bill No. 209. However, I believe that this bill requires additional changes if the concept of due process of law is going to be fully incorporated into contested administrative proceedings. In addition, it is our position that appeals heard by the State Codes and Standards Committee should be incorporated into the U.A.P.A. as well as certain programs administered by the Department of children and Youth Services set out in Section 17-419 of the General Statutes, and Section 17-44b(c) of the General Statutes.

In the case of due process, it has been my experience as an administrative law practitioner that often agencies will not convene a hearing within the timelines or framework of a statute. Agency inaction or intransigence should be grounds for an appeal.

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A state agency should be required to provide adequate advance notice of a hearing, as well as the provision of a summary of the evidence that an agency intends to use at the contested hearing. These changes would ensure that due process of law, as espoused by our Connecticut Supreme Court is in fact a reality. Moreover, these statutory revisions would ensure uniformity between state agencies since some agencies already provide such notice and summary, whereas others would not. The costs associated with these changes would be minimal.

I have attached a letter dated August 11, 1987, with my testimony. That letter sets out suggested statutory language which should be incorporated into Section 1(2), Sections 13(a), (b)(4), and (c), Section 18(b), Section 20(e), Section 26(b), Section 26(d), Section 56(3), (new) Section 101, 102, and 103 of Committee Bill 209. We believe that if such changes were enacted by the General Assembly, the UAPA would be truly uniform amongst all state agencies and the process employed at administrative proceedings fair and just.

Thank you for your time and consideration of these comments.

GOOD AFTERNOON. I AM STEPHEN MILTIMORE, SENIOR ADMINISTRATIVE
HEARINGS OFFICER WITH THE DEPARTMENT OF HEALTH SERVICES. WE ARE
GRATEFUL FOR THE OPPORTUNITY TO PRESENT OUR VIEWS BEFORE THE JUDICIARY
COMMITTEE. I WOULD LIKE TO ADDRESS THREE POINTS IN RAISED COMMITTEE
BILL #209, AN ACT CONCERNING AMENDMENTS TO THE UNIFORM ADMINISTRATIVE
PROCEDURE ACT.

THE DEPARTMENT OPPOSES THREE PROVISIONS.

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WE ARE OPPOSED TO SECTION 14(a) (DISCOVERY IN CONTESTED CASES) BECAUSE IT IS ANOTHER STEP IN MAKING ADMINISTRATIVE HEARINGS MORE PROCEDURALLY SIMILAR TO SUPERIOR COURT ACTIONS. EXTENSIVE DISCOVERY MOTIONS COULD BE USED BY PARTIES WITH LAWYERS TO DELAY ARGUING THE MERITS. SUCH A PROVISION WOULD COUNTERMAND ONE OF THE CHIEF PURPOSES OF ADMINISTRATIVE LAW ADJUDICATION - i.e., TO BE SIMPLE AND FLEXIBLE ENOUGH SO THAT PARTIES CAN PRESENT THE MERITS OF THEIR CASE IN AN FORUM WHICH IS NOT SO HIGHLY STRUCTURED AS TO REQUIRE SPECIAL LEGAL EXPERTISE. FURTHERMORE, PARTIES CAN ALREADY OBTAIN MUCH OF THIS MATERIAL THROUGH THE FREEDOM OF INFORMATION ACT.

ANOTHER ISSUE IS THE DEPARTMENT'S CONCERN THAT THIS WOULD GREATLY DELAY THE ISSUANCE OF A FINAL AGENCY DECISION AND THE RESOLUTION OF A POSSIBLE PUBLIC HEALTH THREAT. THEREFORE THE DEPARTMENT OF HEALTH SERVICES RECOMMENDS THAT THIS COMMITTEE DELETE SECTION 14(a).

THE DEPARTMENT IS OPPOSED TO SECTION 19 (REQUIRING AGENCIES TO INDEX ALL WRITTEN ORDERS AND FINAL DECISIONS AND FURTHER PROHIBITING AN AGENCY FROM RELYING ON A WRITTEN ORDER OR FINAL DECISION AS PRECEDENT UNTIL THE CASE HAS BEEN INDEXED), BECAUSE THIS PROVISION MAY ACTUALLY RESULT IN THE PRINCIPLE OF STARE DECISIS BEING IGNORED. GIVEN PRESENT RESOURCES INDEXING THE GREAT NUMBER OF WRITTEN ORDERS AND FINAL DECISIONS THAT THE DEPARTMENT ISSUED OVER THE YEARS CAN NOT BE DONE. SUPPOSE A POINT OF LAW NEEDS TO BE RESOLVED IN A PENDING CASE, AND THAT ISSUE HAD BEEN ADDRESSED IN AN AGENCY DECISION WHICH WAS NOT YET INDEXED MUST BE DECIDED DE NOVO. THERE WILL BE NO LOGICAL DEVELOPMENT OF ADMINISTRATIVE JURISPRUDENCE IF AGENCY LAW KEEPS CHANGING WITHOUT REGARD FOR PRECEDENT.

THE FUNDAMENTAL FAIRNESS OF MAKING SETTLED POINTS OF AGENCY LAW CONVENIENTLY ACCESSIBLE TO THE PUBLIC IS OBVIOUS. THE DEPARTMENT OF HEALTH SERVICES URGES THIS COMMITTEE TO MODIFY SECTION 19 TO PROMOTE RELIANCE ON PUBLICLY-AVAILABLE CASE LAW. SPECIFICALLY, WE URGE THAT THE GENERAL ASSEMBLY APPROPRIATE FUNDS FOR THE NECESSARY STAFF TO ACCOMPLISH THIS INDEXING BEFORE THIS STATUTE'S EFFECTIVE DATE, AND PUT OFF THE INDEXING MANDATE FOR ONE YEAR.

THE DEPARTMENT OF HEALTH SERVICES OPPOSED SECTION 23 PROVIDES THAT A PARTY, BEFORE A FINAL DECISION IS ISSUED, MAY REQUEST A REVIEW OF ANY PRELIMINARY, PROCEDURAL OR EVIDENTIARY RULING MADE AT A HEARING. THE MAJORITY OF MEMBERS OF THE AGENCY WHO ARE AUTHORIZED TO RENDER A FINAL DECISION MAY THE MAKE AN APPROPRIATE ORDER, INCLUDING RECONVENING THE HEARING.

ONE BASIS FOR THE DEPARTMENT'S OPPOSITION TO THIS INTERLOCUTORY APPEAL IS UNDUE DELAY. IF A PARTY TAKES AN APPEAL FROM A PROCEDURAL OR EVIDENTIARY RULING AT A HEARING, THE WHOLE PROCEEDING APPARENTLY STOPS i.e. (HEARING MUST BE RECESSED) UNTIL THIS POINT OF LAW GETS ARGUED BEFORE THE COMMISSIONER OR DEPUTY COMMISSIONER, AND DECIDED. IN REALITY, THE COMMISSIONER WILL LIKELY OBTAIN THE LEGAL COUNSEL OF AN ASSISTANT ATTORNEY GENERAL TO EVALUATE WRITTEN - OR POSSIBLY, ORAL- ARGUMENTS. ONCE A RULING IS REACHED, THEN THE HEARING BEGINS AGAIN (AFTER REASONABLE NOTICE) FROM THE POINT OF THAT OBJECTION HEARINGS COULD BE DELAYED UNREASONABLY. WHO IS LIKELY TO FILE SUCH APPEALS? PARTIES WHO CAN AFFORD TO BE REPRESENTED BY AN ATTORNEY, RATHER THAN INDIVIDUALS ACTING PRO SE.

A THIRD GROUND FOR OUR POSITION IS THAT THIS FURTHER FORMALIZATION OF THE ADMINISTRATIVE LAW PROCESS WILL BENEFIT REGULATED INDUSTRIES AND LARGER MUNICIPALITIES TO THE RELATIVE DISADVANTAGE OF INDIVIDUAL PRIVATE CITIZENS. IT WILL ALSO, IN SOME CASES, PERMIT PUBLIC HEALTH HAZARDS TO PERSIST LONGER. THUS, THE DEPARTMENT RECOMMENDS THAT YOU REMOVE SECTION 23.

THANK YOU AGAIN FOR YOUR TIME AND FOR LISTENING ATTENTIVELY. DO YOU
HAVE ANY QUESTIONS?

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HEARINGS

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The Commission wishes to go on record as supporting this bill. The Attorney General's office has also filed a statement with the Committee supporting this bill and Assistant Attorney General Teed is here in case there are questions of the Attorney General's office with regard to the bill.

The purpose of the proposed legislation is to clarify and simplify the procedures for the appeal and enforcement of decisions of hearing officers appointed by the Governor by separating these provisions from the present appeal provisions.

Secondly, the bill will consolidate the present separate provisions for discriminatory employment and housing injunctions thereby establishing a uniform procedure and standards for their issuance. Appeals under this bill will be separated from enforcement provisions and governed in accordance with the uniform administrative procedure act provisions for appeals for administrative agencies.

This section is basically already in the law and adds Section 46A-95J. But because we are separating out of the computers is new language. These enforcement procedures are utilized when a respondent, either doesn't appeal or when an appeal filed by a respondent has been dismissed. The second portion, as I indicated, consolidates the present injunction procedures. This will eliminate the confusion that presently exists as to the proper procedure for the various injunctions thereby eliminating delays, paperwork and confusion among attorneys in the courts as to the correct statutory procedures.

The enforcement provisions, Section 46A-95 was primarily an enforcement provision, however, an appeal section has been tacked on to the end of it which incorporates the rest of the section. This is caused confusion. We hope by separating it to avoid this confusion and have a standard enforcement procedure. This is consistent with a number of other statutes which are cited in my testimony. I won't repeat them again because of the number of people here today.

SEN. AVALLONE: Let me ask you a question. Have you (SB 209)

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been following the recommended changes in the Administrative Procedures Act?

PHILIP MURPHY: Yes we have and I sent you and Chairman Tulisano a letter earlier this week pursuant to your request at your hearing on February 19th. I have also met with the Law Revision Commission and they have agreed to make a number of changes that we proposed...concerns that we had...

SEN. AVALONE: We are on the same track with these changes?

PHILIP MURPHY: Right. What this bill does is incorporate 4-183 so that in 4-183 asks the UAPA amendments proposed to change it will not interfere with this bill. Yes we have tracked that with this bill and it will not have..(inaudible).

I could go through each of the separate changes, but they are set forth in the testimony, so rather than doing that, I would be happy to answer questions.

SEN. AVALONE: Are there any questions? Thank you. Leslie Carothers.

COMM. LESLIE CAROTHERS: Hi. I'm sorry, I didn't hear you.

SEN. AVALONE: I'm not projecting well.

COMM. LESLIE CAROTHERS: Hi. I am here to testify on two bills. Do you have a preference as to the order?

SEN. AVALONE: No. Unless one is a Senate Bill. We always take preference to a Senate Bill.

COMM. LESLIE CAROTHERS: I know I don't...this one just says bill. Why don't I start with the one regarding the number I have is House Bill 5894, AN ACT PROHIBITING THE OPERATION OF A VESSEL BY A PERSON UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR ANY DRUG. We have copies of the testimony and the summary of the legislation. I don't intend to read this statement. I will highlight our reasons for requesting legislation in this area.