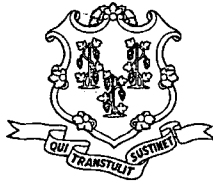


2006

Connecticut General Assembly



SENATE BILLS

Bill No. 432

Resolutions \_\_\_\_\_

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General Assembly

February Session, 2006

Raised Bill No. 432

LCO No. 2115



Referred to Committee on JUDICIARY

Introduced by:  
(JUD)

**AN ACT ESTABLISHING A DEMONSTRATION PROJECT FOR AN OFFICE OF ADMINISTRATIVE HEARINGS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (Effective October 1, 2006) There shall be within the  
2 Executive Department an Office of Administrative Hearings for the  
3 purpose of separating the adjudicatory function from the  
4 investigatory, prosecutorial and policy-making functions of agencies in  
5 the Executive Department and to perform the impartial administration  
6 and conduct of hearings of contested cases in accordance with the  
7 provisions of sections 1 to 7, inclusive, and 19 of this act and chapter 54  
8 of the general statutes. A central office shall be established and, within  
9 available appropriations, one or more regional offices may be  
10 established and maintained as the Chief Administrative Law Judge  
11 may determine.

12 Sec. 2. (NEW) (Effective July 1, 2006) (a) A Chief Administrative Law  
13 Judge shall be appointed by the Governor, to serve a term expiring on  
14 March 1, 2007. Thereafter, the Governor shall, with the advice and  
15 consent of the General Assembly, appoint the Chief Administrative  
16 Law Judge to serve for a four-year term or until a successor has been

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17 appointed and qualified. To be eligible for appointment, the Chief  
18 Administrative Law Judge shall have been admitted to the practice of  
19 law in this state for at least ten years and shall be knowledgeable on  
20 the subject of administrative law. The Chief Administrative Law Judge  
21 shall take the oath of office provided in section 1-25 of the general  
22 statutes prior to commencing his or her duties, shall devote full time to  
23 the duties of the office of Chief Administrative Law Judge and shall  
24 not engage in the private practice of law. The Chief Administrative  
25 Law Judge shall be eligible for reappointment.

26 (b) The Chief Administrative Law Judge may be removed during  
27 his or her term by the Governor for good cause shown.

28 (c) The Chief Administrative Law Judge shall be exempt from the  
29 classified service, shall receive an annual salary in the amount of  
30 eighty-five per cent of the annual salary received by a judge of the  
31 Superior Court and shall be eligible for longevity payments under  
32 section 5-213 of the general statutes.

33 (d) The Chief Administrative Law Judge, administrative law judges,  
34 assistants and other employees of the Office of Administrative  
35 Hearings shall be entitled to the fringe benefits applicable to other state  
36 employees, shall be included under the provisions of chapters 65 and  
37 66 of the general statutes regarding disability and retirement of state  
38 employees and shall receive full retirement credit for each year or  
39 portion thereof for which retirement benefits are paid for service as  
40 such Chief Administrative Law Judge, administrative law judge,  
41 assistant or other employee.

42 Sec. 3. (NEW) (*Effective October 1, 2006*) (a) The Chief Administrative  
43 Law Judge shall be the chief executive officer of the Office of  
44 Administrative Hearings and shall:

45 (1) Have all of the powers specifically granted in the general statutes  
46 and any additional powers that are reasonable and necessary to enable  
47 the Chief Administrative Law Judge to carry out the duties of his or

48 her office, including, but not limited to, the powers and duties  
49 specified in section 4-8 of the general statutes;

50 (2) Have the power to administer the Office of Administrative  
51 Hearings, establish, consolidate, alter or abolish any division or other  
52 unit in said office, appoint the heads of such units and fix their duties,  
53 and establish, consolidate or alter any position in said office;

54 (3) Have the power to (A) appoint, prescribe the duties of and,  
55 subject to the provisions of subsection (e) of section 4 of this act,  
56 remove for cause such administrative law judges, assistants and other  
57 employees as may be necessary for the Office of Administrative  
58 Hearings, and (B) assign administrative law judges in all cases referred  
59 to the Office of Administrative Hearings, provided, in assigning an  
60 administrative law judge to a case, the Chief Administrative Law  
61 Judge shall, whenever practicable, assign an administrative law judge  
62 who has expertise in the legal issues or general subject matter of the  
63 proceeding;

64 (4) Have all the powers and duties of an administrative law judge;

65 (5) Develop and implement a program of evaluation of  
66 administrative law judges, including consideration of competence,  
67 productivity and demeanor, to aid the Chief Administrative Law  
68 Judge in the performance of his or her duties and to assist in the  
69 promotion, demotion, removal or transfer of administrative law  
70 judges;

71 (6) Prepare an edited version of a proposed final decision and final  
72 decision that shall not disclose protected information in any case  
73 where any provision of the general statutes, federal law, state or  
74 federal regulations or an order of a court of competent jurisdiction bars  
75 the disclosure of the identity of any person or party or bars the  
76 disclosure of any other information;

77 (7) Collect, compile and prepare statistics and other data with

78 respect to the operations of the Office of Administrative Hearings and  
79 submit annually to the Governor and the General Assembly a report  
80 on such operations, including, but not limited to, the number of  
81 hearings initiated, the number of proposed final decisions rendered,  
82 the number of partial or total reversals of such decisions by the  
83 agencies, the number of final decisions rendered and the number of  
84 proceedings pending;

85 (8) Study the subject of administrative adjudication in all its aspects  
86 and develop recommendations to promote the goals of impartiality,  
87 fairness, uniformity and cost-effectiveness in the administration and  
88 conduct of hearings of contested cases;

89 (9) Adopt regulations, in accordance with chapter 54 of the general  
90 statutes, to carry out the provisions of sections 1 to 7, inclusive, and 19  
91 of this act and sections 4-176e to 4-181a, inclusive, of the general  
92 statutes, as amended by this act, and the policies of the Office of  
93 Administrative Hearings in connection therewith. Such regulations,  
94 with respect to contested cases heard by said office, shall supersede  
95 any inconsistent agency regulations, policies or procedures, except  
96 those mandated by the general statutes or federal law, and shall  
97 include, but not be limited to, standards related to time limits for  
98 agency action in contested cases pursuant to applicable provisions of  
99 the general statutes, and standards for the giving of notices of  
100 hearings, for the scheduling of hearings and for the assignment of  
101 administrative law judges;

102 (10) Develop, in consultation with each agency subject to the  
103 provisions of subsection (a) of section 7 of this act and with the  
104 appropriate committee or section of the Connecticut Bar Association, a  
105 program for the continuing training and education of administrative  
106 law judges and ancillary personnel, and implement such program;

107 (11) Index, by name and subject, all written orders and final  
108 decisions and make all indices, proposed final decisions and final  
109 decisions available for public inspection and copying electronically

110 and to the extent required by the Freedom of Information Act, as  
 111 defined in section 1-200 of the 2006 supplement to the general statutes;

112 (12) Develop and be subject to a code of conduct for administrative  
 113 law judges; and

114 (13) In the discretion of the Chief Administrative Law Judge, assign  
 115 to an administrative law judge, who has been transferred to the Office  
 116 of Administrative Hearings pursuant to subsection (a) of section 4 of  
 117 this act but who has not been admitted to the practice of law in this  
 118 state for at least five years, matters and duties consistent with the  
 119 experience and expertise of such administrative law judge, including,  
 120 but not limited to, finding facts, conducting hearings, making  
 121 recommended decisions for approval by an administrative law judge  
 122 designated by the Chief Administrative Law Judge, and making  
 123 proposed final decisions and final decisions.

124 (b) Any Deputy Chief Administrative Law Judge of the Office of  
 125 Administrative Hearings shall be appointed by the Chief  
 126 Administrative Law Judge from among the administrative law judges.

127 Sec. 4. (NEW) (*Effective October 1, 2006*) (a) Notwithstanding any  
 128 provision of the general statutes, each full-time employee or  
 129 permanent part-time employee of an agency subject to the provisions  
 130 of subsection (a) of section 7 of this act whose primary duties are to  
 131 conduct hearings in contested cases and issue final decisions or  
 132 proposed final decisions, including, but not limited to, human rights  
 133 referees, hearing adjudicators and hearing officers, shall be transferred  
 134 to and become administrative law judges of the Office of  
 135 Administrative Hearings, in accordance with the provisions of sections  
 136 4-38d, 4-38e and 4-39 of the general statutes. Each administrative law  
 137 judge transferred pursuant to this subsection shall receive an annual  
 138 salary that shall not be less than the annual salary that such  
 139 administrative law judge received on the effective date of this section  
 140 at the agency subject to the provisions of subsection (a) of section 7 of  
 141 this act that employed such administrative law judge on the effective

142 date of this section. The provisions of subsection (b) of this section do  
143 not apply to any administrative law judge transferred pursuant to this  
144 subsection.

145 (b) Each administrative law judge of the Office of Administrative  
146 Hearings shall be appointed by the Chief Administrative Law Judge.  
147 Each administrative law judge shall have been admitted to the practice  
148 of law in this state for at least five years and shall be knowledgeable on  
149 the subject of administrative law.

150 (c) The position of administrative law judge shall be in the classified  
151 service. An administrative law judge may not engage in the private  
152 practice of law.

153 (d) An administrative law judge assigned to hear matters pursuant  
154 to section 10-76h of the general statutes shall receive training in  
155 administrative hearing procedures, including due process, applicable  
156 to the special education needs of children.

157 (e) An administrative law judge, assistant or other employee of the  
158 Office of Administrative Hearings removed, suspended, demoted or  
159 subjected to disciplinary action or other adverse employment action  
160 may appeal such action in accordance with an applicable collective  
161 bargaining agreement.

162 (f) An administrative law judge shall have the powers granted to  
163 hearing officers and presiding officers pursuant to sections 1 to 7,  
164 inclusive, and 19 of this act and chapter 54 of the general statutes.

165 (g) An administrative law judge shall be subject to the code of  
166 conduct for administrative law judges developed by the Chief  
167 Administrative Law Judge pursuant to subdivision (12) of subsection  
168 (a) of section 3 of this act.

169 Sec. 5. (NEW) (Effective October 1, 2006) (a) All hearings in contested  
170 cases conducted by the Office of Administrative Hearings shall be  
171 conducted by an administrative law judge assigned by the Chief

172 Administrative Law Judge and shall be conducted in accordance with  
173 sections 1 to 7, inclusive, and 19 of this act and sections 4-176e to 4-  
174 181a of the general statutes, as amended by this act.

175 (b) The Chief Administrative Law Judge shall assign an  
176 administrative law judge to conduct each proceeding that the Office of  
177 Administrative Hearings is required to conduct by any provision of  
178 the general statutes. The Chief Administrative Law Judge may assign  
179 an administrative law judge, if requested by an agency or a  
180 municipality, to conduct or assist in a proceeding other than a  
181 proceeding that said office is required to conduct. Any proceeding  
182 conducted for a municipality pursuant to any requirement of the  
183 general statutes or by agreement shall be on a contract basis with the  
184 municipality.

185 (c) Unless different time limits are provided by any provision of the  
186 general statutes for contested cases before an agency, the time limits  
187 provided in sections 4-176e to 4-181a of the general statutes, as  
188 amended by this act, apply to all contested cases conducted by the  
189 Office of Administrative Hearings.

190 Sec. 6. (NEW) (*Effective October 1, 2006*) An administrative law judge  
191 may conduct hearings, mediations and settlement negotiations held by  
192 the Office of Administrative Hearings. If a contested case is not  
193 resolved through mediation or settlement, either party may proceed to  
194 a hearing. An administrative law judge who attempted to settle or  
195 mediate a matter may not thereafter be assigned to hear the matter. If a  
196 contested case is resolved by stipulation, agreed settlement or consent  
197 order to the administrative law judge, the administrative law judge  
198 shall issue an order dismissing the contested case. The order shall  
199 incorporate by reference such stipulation, agreed settlement or consent  
200 order which shall be attached thereto. The order shall further provide  
201 that no findings of fact or conclusions of law have been made  
202 regarding any alleged violations of the law. The order and stipulation,  
203 agreed settlement or consent order may be enforceable by any party in



204 Superior Court. A party may petition the superior court for the judicial  
205 district of New Britain for enforcement of the order and stipulation,  
206 agreed settlement or consent order and for appropriate temporary  
207 relief or a restraining order.

208 Sec. 7. (NEW) (*Effective October 1, 2006*) (a) Notwithstanding any  
209 provision of the general statutes, and except as otherwise provided in  
210 this subsection and subsection (c) of this section, the Office of  
211 Administrative Hearings shall conduct hearings and render proposed  
212 final decisions or, if authorized or required by law, final decisions in  
213 contested cases: (1) Pursuant to subdivision (3) of subsection (b) of  
214 section 4-61dd of the 2006 supplement to the general statutes or section  
215 10-76h, subdivision (2) of subsection (b) of section 10-186 or section 10-  
216 187 of the general statutes; or (2) brought by or before the Department  
217 of Children and Families, the Department of Social Services, the  
218 Department of Transportation or the Commission on Human Rights  
219 and Opportunities. On and after October 1, 2009, the Governor, at the  
220 request of the head of any agency subject to the provisions of this  
221 subsection and for good cause shown, may exempt such agency from  
222 the requirements of this subsection.

223 (b) No administrative law judge may be assigned by the Chief  
224 Administrative Law Judge to hear a contested case with respect to:

225 (1) Any hearing that is required by federal law to be conducted by a  
226 specific agency or other hearing authority;

227 (2) Any matter where the head of the agency, or one or more of the  
228 members of a multimember agency, presides at the hearing in a  
229 contested case; or

230 (3) Any matter exempted under sections 4-186 and 4-188a of the  
231 general statutes, as amended by this act, unless a request is made by an  
232 agency and agreed to by the Chief Administrative Law Judge.

233 (c) Notwithstanding any provision of the general statutes, any

234 agency or head of the agency that is not required to refer contested  
235 cases to the Office of Administrative Hearings pursuant to this section  
236 or any other provision of the general statutes may refer any contested  
237 case brought by or before such agency to the Office of Administrative  
238 Hearings for purposes of a full adjudication of the contested case by an  
239 administrative law judge.

240 (d) Nothing in this section shall preclude any agency or  
241 municipality from referring any matter pending before such agency or  
242 municipality to the Office of Administrative Hearings, with the  
243 consent of the Chief Administrative Law Judge, for purposes of  
244 mediation or settlement before such matter becomes a contested case.

245 Sec. 8. Subsection (d) of section 2c-2b of the general statutes is  
246 amended by adding subdivision (29) as follows (*Effective October 1,*  
247 *2006*):

248 (NEW) (29) The Office of Administrative Hearings established  
249 under section 1 of this act.

250 Sec. 9. Section 4-166 of the general statutes is repealed and the  
251 following is substituted in lieu thereof (*Effective October 1, 2006*):

252 As used in this chapter and sections 1 to 7, inclusive, and 19 of this  
253 act, unless the context otherwise requires:

254 (1) "Agency" means each state board, commission, department or  
255 officer authorized by law to make regulations or to determine  
256 contested cases, but does not include either house or any committee of  
257 the General Assembly, the courts, the Council on Probate Judicial  
258 Conduct, the Governor, Lieutenant Governor or Attorney General, or  
259 town or regional boards of education, or automobile dispute  
260 settlement panels established pursuant to section 42-181;

261 (2) "Contested case" means a proceeding, including but not  
262 restricted to rate-making, price fixing and licensing, in which the legal  
263 rights, duties or privileges of a party are required by state statute or

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264 regulation to be determined by an agency or by the Office of  
265 Administrative Hearings after an opportunity for hearing or in which a  
266 hearing is in fact held, but does not include proceedings on a petition  
267 for a declaratory ruling under section 4-176, as amended by this act,  
268 hearings referred to in section 4-168, as amended, or hearings  
269 conducted by the Department of Correction or the Board of Pardons  
270 and Paroles;

271 (3) "Final decision" means (A) the [agency] determination in a  
272 contested case made pursuant to section 4-179, as amended by this act,  
273 section 19 of this act and section 4-180, as amended by this act, (B) a  
274 declaratory ruling issued by an agency pursuant to section 4-176, as  
275 amended by this act, or (C) [an agency] a decision made after  
276 reconsideration of a final decision. The term does not include a  
277 preliminary or intermediate ruling or order, [of an agency,] or a ruling  
278 [of an agency] granting or denying a petition for reconsideration;

279 (4) "Hearing officer" means an individual appointed by an agency to  
280 conduct a hearing in an agency proceeding that is not conducted by an  
281 administrative law judge pursuant to section 7 of this act. Such  
282 individual may be a staff employee of the agency;

283 (5) "Intervenor" means a person, other than a party, granted status  
284 as an intervenor by an agency in accordance with the provisions of  
285 subsection (d) of section 4-176 or subsection (b) of section 4-177a, as  
286 amended by this act;

287 (6) "License" includes the whole or part of any agency permit,  
288 certificate, approval, registration, charter or similar form of permission  
289 required by law, but does not include a license required solely for  
290 revenue purposes;

291 (7) "Licensing" includes the agency process respecting the grant,  
292 denial, renewal, revocation, suspension, annulment, withdrawal or  
293 amendment of a license;

294 (8) "Party" means each person (A) whose legal rights, duties or  
295 privileges are required by statute to be determined by an agency  
296 proceeding and who is named or admitted as a party, (B) who is  
297 required by law to be a party in an agency proceeding, or (C) who is  
298 granted status as a party under subsection (a) of section 4-177a, as  
299 amended by this act;

300 (9) "Person" means any individual, partnership, corporation, limited  
301 liability company, association, governmental subdivision, agency or  
302 public or private organization of any character, but does not include  
303 the agency conducting the proceeding;

304 (10) "Presiding officer" means the head of the agency presiding at a  
305 hearing, the member of [an] a multimember agency or the hearing  
306 officer designated by the head of the agency to preside at [the] a  
307 hearing, or an administrative law judge presiding at a hearing;

308 (11) "Proposed final decision" means a final decision proposed [by  
309 an agency or a presiding officer] under section 4-179, as amended by  
310 this act, or section 19 of this act;

311 (12) "Proposed regulation" means a proposal by an agency under  
312 the provisions of section 4-168, as amended, for a new regulation or for  
313 a change in, addition to or repeal of an existing regulation;

314 (13) "Regulation" means each agency statement of general  
315 applicability, without regard to its designation, that implements,  
316 interprets, or prescribes law or policy, or describes the organization,  
317 procedure, or practice requirements of any agency. The term includes  
318 the amendment or repeal of a prior regulation, but does not include  
319 (A) statements concerning only the internal management of any  
320 agency and not affecting private rights or procedures available to the  
321 public, (B) declaratory rulings issued pursuant to section 4-176, as  
322 amended by this act, or (C) intra-agency or interagency memoranda;

323 (14) "Regulation-making" means the process for formulation and

324 adoption of a regulation;

325 (15) "Administrative law judge" means an administrative law judge  
326 transferred or appointed in accordance with section 4 of this act;

327 (16) "Head of the agency" means the individual or group of  
328 individuals constituting the highest authority within an agency.

329 Sec. 10. Subsection (g) of section 4-176 of the general statutes is  
330 repealed and the following is substituted in lieu thereof (*Effective*  
331 *October 1, 2006*):

332 (g) If the agency conducts a hearing in a proceeding for a  
333 declaratory ruling, the provisions of subsection [(b)] (e) of section [4-  
334 177c] 4-177a, as amended by this act, section 4-178, as amended by this  
335 act, and section 4-179, as amended by this act, shall apply to the  
336 hearing.

337 Sec. 11. Section 4-176e of the general statutes is repealed and the  
338 following is substituted in lieu thereof (*Effective October 1, 2006*):

339 Except as otherwise required by the general statutes, a [hearing in  
340 an agency proceeding may be held before (1)] contested case shall be  
341 heard by (1) an administrative law judge, (2) the head of the agency,  
342 (3) one or more of the members of a multimember agency, or (4) one or  
343 more hearing officers, provided no individual who has personally  
344 carried out the function of an investigator in a contested case may  
345 serve as a hearing officer in that case, [ or (2) one or more of the  
346 members of the agency.]

347 Sec. 12. Section 4-177 of the general statutes is repealed and the  
348 following is substituted in lieu thereof (*Effective October 1, 2006*):

349 (a) In a contested case, all parties shall be afforded an opportunity  
350 for hearing after reasonable notice from the agency.

351 (b) The notice shall be in writing and shall include: (1) A statement

352 of the time, place [,] and nature of the hearing or, if the contested case  
 353 has been referred to the Office of Administrative Hearings, a statement  
 354 that the matter has been referred to the Office of Administrative  
 355 Hearings, that the time and place of the hearing will be set by an  
 356 administrative law judge and that describes the nature of the hearing;  
 357 (2) a statement of the legal authority and jurisdiction under which the  
 358 hearing is to be held; (3) a reference to the particular sections of the  
 359 statutes and regulations involved; and (4) a short and plain statement of  
 360 the matters asserted. If the agency or party is unable to state the  
 361 matters in detail at the time the notice is served, the initial notice may  
 362 be limited to a statement of the issues involved. Thereafter, upon  
 363 application, a more definite and detailed statement shall be furnished.

364 (c) After an agency refers a contested case to the Office of  
 365 Administrative Hearings, the agency shall certify the official record in  
 366 such contested case to the Office of Administrative Hearings.  
 367 Thereafter, a party shall file all documents that are to become part of  
 368 such record with the Office of Administrative Hearings. The filing of  
 369 such documents with the agency rather than with the Office of  
 370 Administrative Hearings shall not be a jurisdictional defect and shall  
 371 not be grounds for termination of the proceeding, provided the  
 372 administrative law judge may assess appropriate costs and sanctions  
 373 against a party who misfiles such documents on a showing of  
 374 prejudice resulting from a wilful misfiling. The Office of  
 375 Administrative Hearings shall maintain the official record of a  
 376 contested case referred to said office.

377 [(c)] (d) Unless precluded by law, a contested case may be resolved  
 378 by stipulation, agreed settlement [,] or consent order or by the default  
 379 of a party.

380 [(d)] (e) The record in a contested case shall include: (1) Written  
 381 notices related to the case; (2) all petitions, pleadings, motions and  
 382 intermediate rulings; (3) evidence received or considered; (4) questions  
 383 and offers of proof, objections and rulings thereon; (5) the official

384 transcript, if any, of proceedings relating to the case, or, if not  
385 transcribed, any recording or stenographic record of the proceedings;  
386 (6) proposed final decisions and exceptions thereto; and (7) the final  
387 decision.

388 [(e)] (f) Any recording or stenographic record of the proceedings  
389 shall be transcribed on request of any party. The requesting party shall  
390 pay the cost of such transcript, unless otherwise provided by law.  
391 Nothing in this section shall relieve an agency of its responsibility  
392 under section 4-183, as amended by this act, to transcribe the record for  
393 an appeal.

394 Sec. 13. Section 4-177a of the general statutes is repealed and the  
395 following is substituted in lieu thereof (*Effective October 1, 2006*):

396 (a) The presiding officer shall grant a person status as a party in a  
397 contested case if [that] such officer finds that: (1) Such person has  
398 submitted a written petition to the agency or presiding officer and  
399 mailed copies to all parties, at least five days before the date of  
400 hearing; and (2) the petition states facts that demonstrate that the  
401 petitioner's legal rights, duties or privileges shall be specifically  
402 affected by [the agency's] a decision in the contested case.

403 (b) The presiding officer may grant any person status as an  
404 intervenor in a contested case if [that] such officer finds that: (1) Such  
405 person has submitted a written petition to the agency or presiding  
406 officer and mailed copies to all parties, at least five days before the  
407 date of hearing; and (2) the petition states facts that demonstrate that  
408 the petitioner's participation is in the interests of justice and will not  
409 impair the orderly conduct of the proceedings.

410 (c) The five-day requirement in subsections (a) and (b) of this  
411 section may be waived at any time before or after commencement of  
412 the hearing by the presiding officer on a showing of good cause.

413 (d) If a petition is granted pursuant to subsection (b) of this section,

414 the presiding officer may limit the intervenor's participation to  
415 designated issues in which the intervenor has a particular interest as  
416 demonstrated by the petition and shall define the intervenor's rights to  
417 inspect and copy records, physical evidence, papers and documents, to  
418 introduce evidence, and to argue and cross-examine on those issues.  
419 The presiding officer may further restrict the participation of an  
420 intervenor in the proceedings, including the rights to inspect and copy  
421 records, to introduce evidence and to cross-examine, so as to promote  
422 the orderly conduct of the proceedings.

423 (e) Persons not named as parties or intervenors may, in the  
424 discretion of the presiding officer, be given an opportunity to present  
425 oral or written statements. The presiding officer may require any such  
426 statement to be given under oath or affirmation.

427 Sec. 14. Section 4-177b of the general statutes is repealed and the  
428 following is substituted in lieu thereof (*Effective October 1, 2006*):

429 In a contested case, the presiding officer may administer oaths, take  
430 testimony under oath relative to the case, subpoena witnesses and  
431 require the production of records, physical evidence, papers and  
432 documents to any hearing held in the case. If any person disobeys the  
433 subpoena or, having appeared, refuses to answer any question put to  
434 [him] such person or to produce any records, physical evidence,  
435 papers and documents requested by the presiding officer, the  
436 administrative law judge or, if the hearing is conducted by the agency,  
437 the agency may apply to the superior court for the judicial district of  
438 Hartford or for the judicial district in which the person resides, or to  
439 any judge of that court if it is not in session, setting forth the  
440 disobedience to the subpoena or refusal to answer or produce, and the  
441 court or judge shall cite the person to appear before the court or judge  
442 to show cause why the records, physical evidence, papers and  
443 documents should not be produced or why a question put to [him]  
444 such person should not be answered. Nothing in this section shall be  
445 construed to limit the authority of the agency, the administrative law



446 judge or any party as otherwise allowed by law.

447 Sec. 15. Section 4-177c of the general statutes is repealed and the  
448 following is substituted in lieu thereof (*Effective October 1, 2006*):

449 [(a)] In a contested case, each party and the agency, including an  
450 agency conducting the proceeding, shall be afforded the opportunity  
451 (1) to inspect and copy relevant and material records, papers and  
452 documents not in the possession of the party or such agency, except as  
453 otherwise provided by federal law or any other provision of the  
454 general statutes, and (2) at a hearing, to respond, to cross-examine  
455 other parties, intervenors, and witnesses, and to present evidence and  
456 argument on all issues involved.

457 [(b) Persons not named as parties or intervenors may, in the  
458 discretion of the presiding officer, be given an opportunity to present  
459 oral or written statements. The presiding officer may require any such  
460 statement to be given under oath or affirmation.]

461 Sec. 16. Section 4-178 of the general statutes is repealed and the  
462 following is substituted in lieu thereof (*Effective October 1, 2006*):

463 In contested cases: (1) Any oral or documentary evidence may be  
464 received, but the [agency] presiding officer shall, as a matter of policy,  
465 provide for the exclusion of irrelevant, immaterial or unduly  
466 repetitious evidence; (2) [agencies shall give effect to] the rules of  
467 privilege recognized by law shall be given effect; (3) when a hearing  
468 will be expedited and the interests of the parties will not be prejudiced  
469 substantially, any part of the evidence may be received in written  
470 form; (4) documentary evidence may be received in the form of copies  
471 or excerpts, if the original is not readily available, and upon request,  
472 parties and the agency, including an agency conducting the  
473 proceeding, shall be given an opportunity to compare the copy with  
474 the original; (5) a party and [such] the agency, including an agency  
475 conducting the proceeding, may conduct cross-examinations required  
476 for a full and true disclosure of the facts; (6) notice may be taken of

477 judicially cognizable facts; [and of] (7) in a proceeding conducted by  
 478 the agency or in an agency review of a proposed final decision, notice  
 479 may be taken of generally recognized technical or scientific facts  
 480 within the agency's specialized knowledge; [(7)] (8) parties shall be  
 481 notified in a timely manner of any material noticed, including any  
 482 agency memoranda or data, and they shall be afforded an opportunity  
 483 to contest the material so noticed; and [(8) the agency's] (9) in a  
 484 proceeding conducted by the agency or in an agency review of a  
 485 proposed final decision, the agency may use its experience, technical  
 486 competence [.] and specialized knowledge [may be used] in the  
 487 evaluation of the evidence.

488 Sec. 17. Section 4-178a of the general statutes is repealed and the  
 489 following is substituted in lieu thereof (*Effective October 1, 2006*):

490 If a hearing in a contested case or in a declaratory ruling proceeding  
 491 is held before a hearing officer or before less than a majority of the  
 492 members of the agency who are authorized by law to render a final  
 493 decision, a party, if permitted by regulation and before rendition of the  
 494 final decision, may request a review by a majority of the members of  
 495 the agency, of any preliminary, procedural or evidentiary ruling made  
 496 at the hearing. The majority of the members may make an appropriate  
 497 order, including the reconvening of the hearing. The provisions of this  
 498 section do not apply to a hearing conducted by an administrative law  
 499 judge.

500 Sec. 18. Section 4-179 of the general statutes is repealed and the  
 501 following is substituted in lieu thereof (*Effective October 1, 2006*):

502 (a) When, in an agency proceeding that is not conducted by an  
 503 administrative law judge, a majority of the members of the agency  
 504 who are to render the final decision have not heard the matter or read  
 505 the record, the decision, if adverse to a party, shall not be rendered  
 506 until a proposed final decision is served upon the parties, and an  
 507 opportunity is afforded to each party adversely affected to file  
 508 exceptions and present briefs and oral argument to the members of the

1067

509 agency who are to render the final decision.

510 (b) A proposed final decision made under this section shall be in  
511 writing and [contain a statement of the reasons for the decision and a  
512 finding of facts and conclusion of law on each issue of fact or law  
513 necessary to the decision] shall comply with the requirements of  
514 subsection (c) of section 4-180, as amended by this act.

515 (c) Except when authorized by law to render a final decision for an  
516 agency, a hearing officer shall, after hearing a matter, make a proposed  
517 final decision.

518 (d) The parties and the agency conducting the proceeding, by  
519 written stipulation, may waive compliance with this section.

520 Sec. 19. (NEW) (Effective October 1, 2006) (a) Unless a shorter time  
521 period is otherwise required by law, an administrative law judge shall  
522 render a proposed final decision or, if required by law, a final decision  
523 in a contested case not later than forty-five days following the close of  
524 evidence or the due date for the filing of briefs, whichever is later,  
525 provided such time period may, for good cause, be extended for not  
526 more than an additional forty-five days with the approval of the Chief  
527 Administrative Law Judge. An application for any such extension shall  
528 be filed by the administrative law judge with the Chief Administrative  
529 Law Judge, and any such approval shall be granted, before the  
530 expiration of the initial forty-five-day time period.

531 (b) A proposed final decision rendered by an administrative law  
532 judge shall be delivered promptly to each party or the party's  
533 authorized representative, and to the agency, personally or by United  
534 States mail, certified or registered, postage prepaid, return receipt  
535 requested. After such proposed final decision is rendered, the record in  
536 the contested case shall be delivered promptly to the agency.

537 (c) A proposed final decision rendered by an administrative law  
538 judge shall become a final decision of the agency unless the head of the

539 agency, not later than twenty-one days following the date the  
540 proposed final decision is delivered or mailed to the agency, modifies  
541 or rejects the proposed final decision, provided the head of the agency  
542 may, before expiration of such time period and for good cause, certify  
543 the extension of such time period for not more than an additional  
544 twenty-one days. If the head of the agency modifies or rejects the  
545 proposed final decision, the head of the agency shall state the reason  
546 for the modification or rejection on the record. In reviewing a proposed  
547 final decision rendered by an administrative law judge, the head of the  
548 agency shall afford each party, including the agency, an opportunity to  
549 present briefs and may afford each party, including the agency, an  
550 opportunity to present oral argument.

551 (d) If, within the time period provided in subsection (c) of this  
552 section, the head of the agency, in reviewing a proposed final decision  
553 rendered by an administrative law judge, determines that additional  
554 evidence is necessary, the head of the agency shall refer the matter to  
555 the Office of Administrative Hearings. The Chief Administrative Law  
556 Judge shall assign the administrative law judge who rendered such  
557 proposed final decision to take the additional evidence unless such  
558 administrative law judge is unavailable. After taking the additional  
559 evidence, the administrative law judge shall, not later than thirty days  
560 following such referral, prepare a proposed final decision as provided  
561 in this section based on such additional evidence and the record of the  
562 prior hearing.

563 (e) A proposed final decision made under this section shall be in  
564 writing and shall comply with the requirements of subsection (c) of  
565 section 4-180 of the general statutes, as amended by this act.

566 Sec. 20. Section 4-180 of the general statutes is repealed and the  
567 following is substituted in lieu thereof (*Effective October 1, 2006*):

568 (a) Each agency shall proceed with reasonable dispatch to conclude  
569 any matter pending before it and, in all hearings of contested cases  
570 conducted by the agency, shall render a final decision within ninety

571 days following the close of evidence or the due date for the filing of  
572 briefs, whichever is later, [ in such proceedings.]

573 (b) If, in any contested case, any agency fails to comply with the  
574 provisions of subsection (a) of this section [in any contested case] or  
575 subsection (a) of section 4-179, as amended by this act, or if any agency  
576 or administrative law judge fails to comply with the provisions of  
577 section 19 of this act, any party [thereto] to such contested case may  
578 apply to the superior court for the judicial district of [Hartford] New  
579 Britain for an order requiring the agency or administrative law judge  
580 to render a final decision or proposed final decision forthwith. The  
581 court, after hearing, shall issue an appropriate order.

582 (c) A final decision in a contested case shall be in writing or, if there  
583 is no proposed final decision, orally stated on the record. [and, if  
584 adverse to a party,] A proposed final decision and a final decision in a  
585 contested case shall include [the agency's] findings of fact and  
586 conclusions of law necessary to [its] the decision and shall be made by  
587 applying all pertinent provisions of law. Findings of fact shall be based  
588 exclusively on the evidence in the record and on matters noticed. The  
589 [agency shall state in] proposed final decision and the final decision  
590 shall contain the name of each party and the most recent mailing  
591 address, provided to the agency, of the party or [his] the party's  
592 authorized representative. If the final decision is orally stated on the  
593 record, each such name and mailing address shall be included in the  
594 record.

595 (d) The final decision shall be delivered promptly to each party or  
596 [his] the party's authorized representative and, in the case of a final  
597 decision by an administrative law judge authorized by law to render  
598 such decision, to the agency, personally or by United States mail,  
599 certified or registered, postage prepaid, return receipt requested. [The]  
600 An agency rendering a final decision shall immediately transmit a  
601 copy of such decision to the Office of Administrative Hearings. A  
602 proposed final decision that becomes a final decision because of

603 agency inaction, as provided in subsection (c) of section 19 of this act,  
604 shall become effective at the expiration of the time period specified in  
605 said subsection or on a later date specified in such proposed final  
606 decision. Any other final decision shall be effective when personally  
607 delivered or mailed or on a later date specified [by the agency] in such  
608 final decision. The date of delivery or mailing of a proposed final  
609 decision and a final decision shall be endorsed on the front of the  
610 decision or on a transmittal sheet included with the decision.

611 Sec. 21. Subsection (a) of section 4-180a of the general statutes is  
612 repealed and the following is substituted in lieu thereof (*Effective*  
613 *October 1, 2006*):

614 (a) In addition to other requirements imposed by any provision of  
615 law, each agency shall index, by name and subject, all written orders  
616 and final decisions rendered on or after October 1, 1989, and shall  
617 make [them] all proposed final decisions and final decisions available  
618 for public inspection and copying, to the extent required by the  
619 Freedom of Information Act, as defined in section 1-200, as amended.

620 Sec. 22. Subsection (a) of section 4-181 of the general statutes is  
621 repealed and the following is substituted in lieu thereof (*Effective*  
622 *October 1, 2006*):

623 (a) Unless required for the disposition of ex parte matters  
624 authorized by law, no hearing officer, administrative law judge or  
625 member of an agency who, in a contested case, is to render a final  
626 decision or to make a proposed final decision shall communicate,  
627 directly or indirectly, in connection with any issue of fact, with any  
628 person or party, or, in connection with any issue of law, with any party  
629 or the party's representative, without notice and opportunity for all  
630 parties to participate.

631 Sec. 23. Section 4-181a of the general statutes is repealed and the  
632 following is substituted in lieu thereof (*Effective October 1, 2006*):

633 (a) (1) Unless otherwise provided by law, a party or the agency in a  
 634 contested case may, within fifteen days after the personal delivery or  
 635 mailing of the final decision or within fifteen days after the date that a  
 636 proposed final decision becomes a final decision because of agency  
 637 inaction, as provided in subsection (c) of section 19 of this act, file with  
 638 the [agency] authority that rendered the decision a petition for  
 639 reconsideration of the decision on the ground that: (A) An error of fact  
 640 or law should be corrected; (B) new evidence has been discovered  
 641 which materially affects the merits of the case and which for good  
 642 reasons was not presented in the agency proceeding; or (C) other good  
 643 cause for reconsideration has been shown. Within twenty-five days of  
 644 the filing of the petition, the [agency] authority that rendered the  
 645 decision shall decide whether to reconsider the final decision. The  
 646 failure of the [agency] authority that rendered the decision to make  
 647 [that] such determination within twenty-five days of such filing shall  
 648 constitute a denial of the petition.

649 (2) Within forty days of the personal delivery or mailing of the final  
 650 decision, the [agency] authority that rendered the decision, regardless  
 651 of whether a petition for reconsideration has been filed, may decide to  
 652 reconsider the final decision.

653 (3) If the [agency] authority that rendered the decision decides to  
 654 reconsider a final decision, pursuant to subdivision (1) or (2) of this  
 655 subsection, the [agency] authority that rendered the decision shall  
 656 proceed in a reasonable time to conduct such additional proceedings  
 657 as may be necessary to render a decision modifying, affirming [,] or  
 658 reversing the final decision.

659 (b) On a showing of changed conditions, the [agency] authority that  
 660 rendered the decision may reverse or modify the final decision, at any  
 661 time, at the request of any person or on [the agency's own] motion of  
 662 the authority that rendered the decision. The procedure set forth in this  
 663 chapter for contested cases shall be applicable to any proceeding in  
 664 which such reversal or modification of any final decision is to be

665 considered. The party or parties who were the subject of the original  
 666 final decision, or their successors, if known, and intervenors in the  
 667 original contested case, shall be notified of the proceeding and shall be  
 668 given the opportunity to participate in the proceeding. Any decision to  
 669 reverse or modify a final decision shall make provision for the rights or  
 670 privileges of any person who has been shown to have relied on such  
 671 final decision.

672 (c) The [agency] authority that rendered the decision may, without  
 673 further proceedings, modify a final decision to correct any clerical  
 674 error. A person may appeal [that] such modification under the  
 675 provisions of section 4-183, as amended by this act, or, if an appeal is  
 676 pending when the modification is made, may amend the appeal.

677 (d) For the purposes of this section and section 4-183, as amended  
 678 by this act, in the case of a proposed final decision that becomes a final  
 679 decision because of agency inaction, as provided in subsection (c) of  
 680 section 19 of this act, the authority that rendered the decision shall be  
 681 deemed to be the agency.

682 Sec. 24. Section 4-183 of the general statutes is repealed and the  
 683 following is substituted in lieu thereof (*Effective October 1, 2006*):

684 (a) A person who has exhausted all administrative remedies  
 685 available within the agency and who is aggrieved by a final decision  
 686 may appeal to the Superior Court as provided in this section. The filing  
 687 of a petition for reconsideration is not a prerequisite to the filing of  
 688 such an appeal.

689 (b) A person may appeal a preliminary, procedural or intermediate  
 690 agency action or ruling to the Superior Court if (1) it appears likely that  
 691 the person will otherwise qualify under this chapter to appeal from the  
 692 final agency action or ruling, and (2) postponement of the appeal  
 693 would result in an inadequate remedy.

694 (c) Within forty-five days after mailing of the final decision under



695 section 4-180, as amended by this act, or, if there is no mailing, within  
 696 forty-five days after personal delivery of the final decision under said  
 697 section or, if a proposed final decision becomes a final decision because  
 698 of agency inaction, as provided in subsection (c) of section 19 of this  
 699 act, within forty-five days after the decision becomes final, a person  
 700 appealing as provided in this section shall serve a copy of the appeal  
 701 on the agency [that rendered the final decision] at its office or at the  
 702 office of the Attorney General in Hartford and file the appeal with the  
 703 clerk of the superior court for the judicial district of New Britain or for  
 704 the judicial district wherein the person appealing resides or, if that  
 705 person is not a resident of this state, with the clerk of the court for the  
 706 judicial district of New Britain. An appeal of a final decision under this  
 707 section shall be taken within such applicable forty-five-day period  
 708 regardless of the effective date of the final decision. Within [that] such  
 709 time, the person appealing shall also serve a copy of the appeal on  
 710 each party listed in the final decision at the address shown in the  
 711 decision, provided failure to make such service within forty-five days  
 712 on parties other than the agency [that rendered the final decision] shall  
 713 not deprive the court of jurisdiction over the appeal. Service of the  
 714 appeal shall be made by (1) United States mail, certified or registered,  
 715 postage prepaid, return receipt requested, without the use of a state  
 716 marshal or other officer, or (2) personal service by a proper officer or  
 717 indifferent person making service in the same manner as complaints  
 718 are served in ordinary civil actions. If service of the appeal is made by  
 719 mail, service shall be effective upon deposit of the appeal in the mail.

720 (d) The person appealing, not later than fifteen days after filing the  
 721 appeal, shall file or cause to be filed with the clerk of the court an  
 722 affidavit, or the state marshal's return, stating the date and manner in  
 723 which a copy of the appeal was served on each party and on the  
 724 agency [that rendered the final decision,] and, if service was not made  
 725 on a party, the reason for failure to make service. If the failure to make  
 726 service causes prejudice to any party to the appeal or to the agency, the  
 727 court, after hearing, may dismiss the appeal.

728 (e) If service has not been made on a party, the court, on motion,  
 729 shall make such orders of notice of the appeal as are reasonably  
 730 calculated to notify each party not yet served.

731 (f) The filing of an appeal shall not, of itself, stay enforcement of [an  
 732 agency] a final decision. An application for a stay may be made to the  
 733 agency, to the court or to both. Filing of an application with the agency  
 734 shall not preclude action by the court. A stay, if granted, shall be on  
 735 appropriate terms.

736 (g) Within thirty days after the service of the appeal, or within such  
 737 further time as may be allowed by the court, the agency shall  
 738 transcribe any portion of the record that has not been transcribed and  
 739 transmit to the reviewing court the original or a certified copy of the  
 740 entire record of the proceeding appealed from, which shall include the  
 741 [agency's] findings of fact and conclusions of law, separately stated. By  
 742 stipulation of all parties to such appeal proceedings, the record may be  
 743 shortened. A party unreasonably refusing to stipulate to limit the  
 744 record may be taxed by the court for the additional costs. The court  
 745 may require or permit subsequent corrections or additions to the  
 746 record.

747 (h) If, before the date set for hearing on the merits of an appeal,  
 748 application is made to the court for leave to present additional  
 749 evidence, and it is shown to the satisfaction of the court that the  
 750 additional evidence is material and that there were good reasons for  
 751 failure to present it in the proceeding before the [agency] authority that  
 752 rendered the decision, the court may order that the additional  
 753 evidence be taken before the [agency] authority that rendered the  
 754 decision upon conditions determined by the court. The [agency]  
 755 authority that rendered the decision may modify its findings and  
 756 decision by reason of the additional evidence and shall file [that] such  
 757 evidence and any modifications, new findings [,] or decisions with the  
 758 reviewing court.

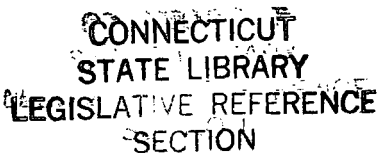
759 (i) [The] Except as otherwise provided by law, the appeal shall be

760 conducted by the court without a jury and shall be confined to the  
761 record. If alleged irregularities in procedure before the [agency]  
762 presiding officer are not shown in the record or if facts necessary to  
763 establish aggrievement are not shown in the record, proof limited  
764 thereto may be taken in the court. The court, upon request, shall hear  
765 oral argument and receive written briefs.

766 (j) [The] Unless a different standard of review is provided by law,  
767 the court shall not substitute its judgment for that of the [agency]  
768 authority that rendered the decision as to the weight of the evidence  
769 on questions of fact. The court shall affirm the final decision [of the  
770 agency] unless the court finds that substantial rights of the person  
771 appealing have been prejudiced because the administrative findings,  
772 inferences, conclusions [,] or decisions are: (1) In violation of  
773 constitutional or statutory provisions; (2) in excess of the statutory  
774 authority of the agency; (3) made upon unlawful procedure; (4)  
775 affected by other error of law; (5) clearly erroneous in view of the  
776 reliable, probative [,] and substantial evidence on the whole record; or  
777 (6) arbitrary or capricious or characterized by abuse of discretion or  
778 clearly unwarranted exercise of discretion. If the court finds such  
779 prejudice, [it] the court shall sustain the appeal and, if appropriate,  
780 may render a judgment under subsection (k) of this section or remand  
781 the case for further proceedings. For the purposes of this section, a  
782 remand is a final judgment.

783 (k) If a particular agency action is required by law, the court, on  
784 sustaining the appeal, may render a judgment that modifies the  
785 [agency] final decision, orders the particular agency action, or orders  
786 the agency to take such action as may be necessary to effect the  
787 particular action.

788 (l) In all appeals taken under this section, costs may be taxed in  
789 favor of the prevailing party in the same manner, and to the same  
790 extent, that costs are allowed in judgments rendered by the Superior  
791 Court. No costs shall be taxed against the state, except as provided in



792 section 4-184a.

793 (m) In any case in which a person appealing claims that [he] such  
 794 person cannot pay the costs of an appeal under this section, [he] such  
 795 person shall, within the time permitted for filing the appeal, file with  
 796 the clerk of the court to which the appeal is to be taken an application  
 797 for waiver of payment of such fees, costs and necessary expenses,  
 798 including the requirements of bond, if any. The application shall  
 799 conform to the requirements prescribed by rule of the judges of the  
 800 Superior Court. After such hearing as the court determines is  
 801 necessary, the court shall render its judgment on the application,  
 802 which judgment shall contain a statement of the facts the court has  
 803 found, with its conclusions thereon. The filing of the application for the  
 804 waiver shall toll the time limits for the filing of an appeal until such  
 805 time as a judgment on such application is rendered.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2006	New section
Sec. 2	July 1, 2006	New section
Sec. 3	October 1, 2006	New section
Sec. 4	October 1, 2006	New section
Sec. 5	October 1, 2006	New section
Sec. 6	October 1, 2006	New section
Sec. 7	October 1, 2006	New section
Sec. 8	October 1, 2006	2c-2b(d)
Sec. 9	October 1, 2006	4-166
Sec. 10	October 1, 2006	4-176(g)
Sec. 11	October 1, 2006	4-176e
Sec. 12	October 1, 2006	4-177
Sec. 13	October 1, 2006	4-177a
Sec. 14	October 1, 2006	4-177b
Sec. 15	October 1, 2006	4-177c
Sec. 16	October 1, 2006	4-178
Sec. 17	October 1, 2006	4-178a
Sec. 18	October 1, 2006	4-179
Sec. 19	October 1, 2006	New section

[106]

Raised Bill No. 432

Sec. 20	October 1, 2006	4-180
Sec. 21	October 1, 2006	4-180a(a)
Sec. 22	October 1, 2006	4-181(a)
Sec. 23	October 1, 2006	4-181a
Sec. 24	October 1, 2006	4-183

**Statement of Purpose:**

To establish a demonstration project for an Office of Administrative Hearings for purposes of ensuring the impartial administration and conduct of hearings of contested cases.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*

CONNECTICUT  
STATE LIBRARY  
LEGISLATIVE REFERENCE  
SECTION