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LAW/RWH

P.L.2013, CHAPTER 236, *approved January 17, 2014*

Assembly, No. 1521 (*Third Reprint*)

1 AN ACT concerning contested case hearings by the Office of
2 Administrative Law and amending P.L.1978, c.67, and amending
3 and supplementing P.L.1968, c.410.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. Section 9 of P.L.1968, c.410 (C.52:14B-9) is amended to
9 read as follows:

10 9. (a) In a contested case, all parties shall be afforded an
11 opportunity for hearing after reasonable notice.

12 (b) The notice shall include in addition to such other
13 information as may be deemed appropriate:

14 (1) A statement of the time, place, and nature of the hearing;

15 (2) A statement of the legal authority and jurisdiction under
16 which the hearing is to be held;

17 (3) A reference to the particular sections of the statutes and
18 rules involved;

19 (4) A short and plain statement of the matters asserted. If the
20 agency or other party is unable to state the matters in detail at the
21 time the notice is served, the initial notice may be limited to a
22 statement of the issues involved. Thereafter upon application a
23 more definite and detailed statement shall be furnished.

24 (c) Opportunity shall be afforded all parties to respond, appear
25 and present evidence and argument on all issues involved.

26 Pre-hearing conferences may be conducted, as prescribed by the
27 director.

28 Witnesses may be permitted to testify, and motions may be
29 considered, by means of a telephone or video conference call, as
30 prescribed by the director and when the judge finds there is good
31 cause for permitting the witness to testify by telephone or video
32 conference.

33 (d) Unless precluded by law, informal disposition may be made
34 of any contested case by stipulation, agreed settlement, or consent
35 order.

36 (e) Oral proceedings or any part thereof shall be transcribed on
37 request of any party at the expense of such party.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined **thus** is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly floor amendments adopted October 18, 2012.

²Senate SSG committee amendments adopted December 12, 2013.

³Senate floor amendments adopted January 9, 2014.

1 (f) Findings of fact shall be based exclusively on the evidence
2 and on matters officially noticed.

3 (g) Unless otherwise provided by any law, agencies may place
4 on any party the responsibility of requesting a hearing if the agency
5 notifies him in writing of his right to a hearing and of his
6 responsibility to request the hearing.

7 (cf: P.L.1968, c.410, s.9)

8

9 2. Section 10 of P.L.1968, c.410 (C.52:14B-10) is amended to
10 read as follows:

11 10. In ²a² contested ²[cases] case² :

12 (a) ²(1)² The parties shall not be bound by rules of evidence
13 whether statutory, common law, or adopted formally by the Rules
14 of Court. All relevant evidence is admissible, except as otherwise
15 provided herein. The administrative law judge may ²,² in his
16 discretion ²,² exclude any evidence if he finds that its probative
17 value is substantially outweighed by the risk that its admission will
18 either ²[(i)]² necessitate undue consumption of time or ²[(ii)]²
19 create substantial danger of undue prejudice or confusion. The
20 administrative law judge shall give effect to the rules of privilege
21 recognized by law. Any party in a contested case may present his
22 case or defense by oral and documentary evidence, submit rebuttal
23 evidence and conduct such cross-examination as may be required,
24 in the discretion of the administrative law judge, for a full and true
25 disclosure of the facts.

26 ²(2) Where the case involves a permitting or licensing decision
27 of the Department of Environmental Protection, the department
28 shall be required to produce and certify a permitting record within
29 30 days after the filing of the contested case. This deadline may be
30 extended by an administrative law judge upon the unanimous
31 agreement of the parties. The production and certification of the
32 department's permitting record, in accordance with this paragraph,
33 shall not limit the ability of the parties to further supplement the
34 record.²

35 (b) Notice may be taken of judicially noticeable facts. In
36 addition, notice may be taken of generally recognized technical or
37 scientific facts within the specialized knowledge of the agency or
38 administrative law judge. Parties shall be notified either before or
39 during the hearing, or by reference in preliminary reports or
40 otherwise, of the material noticed, including any staff memoranda
41 or data, and they shall be afforded an opportunity to contest the
42 material so noticed. The experience, technical competence, and
43 specialized knowledge of the agency or administrative law judge
44 may be utilized in the evaluation of the evidence, provided this is
45 disclosed of record.

46 (c) All hearings of a State agency required to be conducted as a
47 contested case under this act or any other law shall be conducted by

1 an administrative law judge assigned by the Director and Chief
2 Administrative Law Judge of the Office of Administrative Law,
3 except as provided by this amendatory and supplementary act. A
4 recommended report and decision which contains recommended
5 findings of fact and conclusions of law and which shall be based
6 upon sufficient, competent, and credible evidence shall be filed, not
7 later than 45 days after the hearing is concluded, with the agency in
8 such form that it may be adopted as the decision in the case and
9 delivered or mailed, to the parties of record with an indication of
10 the date of receipt by the agency head; and an opportunity shall be
11 afforded each party of record to file exceptions, objections, and
12 replies thereto, and to present argument to the head of the agency or
13 a majority thereof, either orally or in writing, as the agency may
14 direct.

15 Unless the head of the agency or a party requests that the
16 recommended report and decision be filed in writing, the
17 recommended report and decision of the administrative law judge
18 may be filed orally in such appropriate cases as prescribed by the
19 director and if a transcript has been requested pursuant to
20 subsection (e) of section 9 of P.L.1968, c.410 (C.52:14B-9).

21 An administrative law judge may file a recommended report and
22 decision in the form of a checklist in such appropriate cases and
23 formats as prescribed by the director after consultation with each
24 State agency.

25 The head of the agency, upon a review of the record submitted
26 by the administrative law judge, shall adopt, reject or modify the
27 recommended report and decision no later than 45 days after receipt
28 of such recommendations. In reviewing the decision of an
29 administrative law judge, the agency head may reject or modify
30 findings of fact, conclusions of law or interpretations of agency
31 policy in the decision, but shall state clearly the reasons for doing
32 so. The agency head may not reject or modify any findings of fact
33 as to issues of credibility of lay witness testimony unless it is first
34 determined from a review of the record that the findings are
35 arbitrary, capricious or unreasonable or are not supported by
36 sufficient, competent, and credible evidence in the record. In
37 rejecting or modifying any findings of fact, the agency head shall
38 state with particularity the reasons for rejecting the findings and
39 shall make new or modified findings supported by sufficient,
40 competent, and credible evidence in the record. Unless the head of
41 the agency modifies or rejects the report within such period, the
42 decision of the administrative law judge shall be deemed adopted as
43 the final decision of the head of the agency. The recommended
44 report and decision shall be a part of the record in the case. For
45 good cause shown, upon certification by the director and the agency
46 head, the time limits established herein may be subject to 'a single'
47 extension ¹of not more than 45 days. Any additional extension of

1 time shall be subject to, and contingent upon, the unanimous
2 agreement of the parties¹.

3 (d) A final decision or order adverse to a party in a contested
4 case shall be in writing or stated in the record. A final decision
5 shall include findings of fact and conclusions of law, separately
6 stated and shall be based only upon the evidence of record at the
7 hearing, as such evidence may be established by rules of evidence
8 and procedure promulgated by the director.

9 Findings of fact, if set forth in statutory language, shall be
10 accompanied by a concise and explicit statement of the underlying
11 facts supporting the findings. The final decision may incorporate
12 by reference any or all of the recommendations of the
13 administrative law judge. Parties shall be notified either personally
14 or by mail of any decision or order. Upon request a copy of the
15 decision or order shall be delivered or mailed forthwith by
16 registered or certified mail to each party and to his attorney of
17 record.

18 (e) Except where otherwise provided by law, the administrative
19 adjudication of the agency shall be effective on the date of delivery
20 or on the date of mailing, of the final decision to the parties of
21 record whichever shall occur first, or shall be effective on any date
22 after the date of delivery or mailing, as the agency may provide by
23 general rule or by order in the case. The date of delivery or mailing
24 shall be stamped on the face of the decision.

25 (f) The head of an agency may order that, in certain appropriate
26 cases, the recommended report and decision of the administrative
27 law judge shall be deemed adopted, immediately on filing thereof
28 with the agency, as the final decision of the ²head of the² agency
29 ²head² . The appropriate cases shall be described in a written
30 order issued by the ²head of the² agency ²head² , filed with the
31 director, and made available to the public as a government record.
32 The order shall not include ²[(1)]² any contested case for which the
33 ²head of the² agency ²head² is specifically required by State or
34 federal law to review the recommended report and decision and
35 adopt the final decision ²[(1)]², or (2) any contested cases specified in
36 subsection (g) of this section]² . The head of the agency may revise
37 or revoke an order, issued pursuant to this subsection, whenever it
38 is deemed appropriate. The order shall apply to all appropriate
39 contested cases commenced with the agency after the order's
40 issuance and until the order is rescinded or modified. In such
41 appropriate contested cases, the head of the agency shall not have
42 the opportunity to reject or modify the administrative law judge's
43 recommended report and decision pursuant to subsection (c) of this
44 section and the final decision by the administrative law judge shall
45 comply with the requirements of and shall be given the same effect
46 as a final decision of the head of the agency pursuant to subsection
47 (d) of this section.

1 (g) ²With regard to contested cases commenced with an agency
2 on or after the effective date of P.L. , c. (pending before the
3 Legislature as this bill) that are described in this subsection, the
4 report and decision of the administrative law judge shall be the final
5 decision upon the filing thereof with the agency, notwithstanding
6 any other provision of State law to the contrary. In such contested
7 cases, the head of the agency shall not have the opportunity to reject
8 or modify the administrative law judge's report and decision
9 pursuant to subsection (c) of this section and the final decision by
10 the administrative law judge shall comply with the requirements of
11 and shall be given the same effect as a final decision of the head of
12 the agency pursuant to subsection (d) of this section. Any reference
13 in statutes, orders, documents, or other records to a final decision
14 by the head of an agency shall mean the decision rendered by the
15 administrative law judge as provided in this subsection. This
16 subsection shall apply to any contested case from:

17 (1) the Department of Community Affairs;

18 (2) the Department of Education;

19 (3) the Department of Environmental Protection;

20 (4) the Department of Children and Families involving
21 placement on a child abuse registry;

22 (5) the Department of Health ¹and Senior Services¹ involving
23 placement on the nurse aid registry, and penalty matters;

24 (6) the Division of Family Development in the Department of
25 Human Services;

26 (7) the Division of Civil Rights in the Department of Law and
27 Public Safety;

28 (8) the New Jersey Motor Vehicle Commission;

29 (9) the Civil Service Commission; and

30 (10) the Department of Law and Public Safety under P.L.1988,
31 c.123 (C.56:12-29 et seq.).¹ Whenever the parties in a contested
32 case stipulate to the factual record, and agree that there are no
33 genuine issues of material fact to be adjudicated, the head of the
34 agency may, in his discretion, render a final agency decision on the
35 matter without obtaining the prior input of, or a recommended
36 report and decision from, an administrative law judge.²

37 (cf: P.L.2001, c.5, s.4)

38
39 3. Section 5 of P.L.1978, c.67 (C.52:14F-5) is amended to read
40 as follows:

41 5. The Director and Chief Administrative Law Judge of the
42 Office of Administrative Law shall:

43 a. Administer and cause the work of the office to be performed
44 in such manner and pursuant to such program as may be required or
45 appropriate;

46 b. Organize and reorganize the office, and establish such
47 bureaus as may be required or appropriate;

- 1 c. Except as otherwise provided in subsections l. and t., below,
2 appoint, pursuant to the provisions of Title 11A of the New Jersey
3 Statutes, such clerical assistants and other personnel as may be
4 required for the conduct of the office;
- 5 d. Assign and reassign personnel to employment within the
6 office;
- 7 e. Develop uniform standards, rules of evidence, and
8 procedures, including but not limited to standards for determining
9 whether a summary or plenary hearing should be held to regulate
10 the conduct of contested cases and the rendering of administrative
11 adjudications;
- 12 f. Promulgate and enforce such rules for the prompt
13 implementation and coordinated administration of the
14 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
15 seq.) as may be required or appropriate;
- 16 g. Administer and supervise the procedures relating to the
17 conduct of contested cases and the making of administrative
18 adjudications, as defined by section 2 of P.L.1968, c.410
19 (C.52:14B-2), ³and³ develop and implement an electronic filing
20 system for the conduct of contested cases in such a manner and
21 within such a time period as deemed practicable within available
22 resources ³, and at the discretion of the director and the chief
23 administrative law judge, charge a filing fee for the development
24 and implementation of the electronic filing system in appropriate
25 cases ³;
- 26 h. Advise agencies concerning their obligations under the
27 Administrative Procedure Act, subject to the provisions of
28 subsections b. and e. of section 4 of P.L.1944, c.20 (C.52:17A-4);
- 29 **[I.]** i. Assist agencies in the preparation, consideration,
30 publication and interpretation of administrative rules required or
31 appropriate pursuant to the "Administrative Procedure Act,"
32 P.L.1968, c.410 (C.52:14B-1 et seq.);
- 33 j. Employ the services of the several agencies and of the
34 employees thereof in such manner and to such extent as may be
35 agreed upon by the director and the chief executive officer of such
36 agency;
- 37 k. Have access to information concerning the several agencies
38 to assure that they properly promulgate all rules required by law;
- 39 l. Assign permanent administrative law judges at supervisory
40 and other levels who are qualified in the field of administrative law
41 or in subject matter relating to the hearing functions of a State
42 agency.
- 43 Administrative law judges shall receive such salaries as provided
44 by section 4 of P.L.1978, c.67 (C.52:14F-4), as amended by
45 P.L.1999, c.380, shall not engage in the practice of law and shall
46 devote full time to their judicial duties.

1 Administrative law judges appointed after the effective date of
2 this amendatory act shall have been attorneys-at-law of this State
3 for a minimum of five years. An administrative law judge
4 appointed prior to the effective date of this amendatory act shall not
5 be required to be an attorney or, if an attorney, shall not be required
6 to have been an attorney-at-law for five years in order to be
7 reappointed;

8 m. Appoint additional administrative law judges, qualified in
9 the field of administrative law or in a subject matter relating to the
10 hearing functions of a State agency, on a temporary or case basis as
11 may be necessary during emergency or unusual situations for the
12 proper performance of the duties of the office, pursuant to a
13 reasonable fee schedule established in advance by the director.
14 Administrative law judges appointed pursuant to this procedure
15 shall have the same qualifications for appointment as permanent
16 administrative law judges;

17 n. Assign administrative law judges to conduct contested cases
18 as required by sections 9 and 10 of P.L.1968, c.410 (C.52:14B-9
19 and 52:14B-10). Proceedings shall be scheduled for suitable
20 locations, either at the offices of the Office of Administrative Law
21 or elsewhere in the State, taking into consideration the convenience
22 of the witnesses and parties, as well as the nature of the cases and
23 proceedings;

24 o. Assign an administrative law judge or other personnel, if so
25 requested by the head of an agency and if the director deems
26 appropriate, to any agency to conduct or assist in administrative
27 duties and proceedings other than those related to contested cases or
28 administrative adjudications, including but not limited to rule-
29 making and investigative hearings;

30 p. Assign an administrative law judge not engaged in the
31 conduct of contested cases to perform other duties vested in or
32 required of the office;

33 q. Secure, compile and maintain all reports of administrative
34 law judges issued pursuant to this act, and such reference materials
35 and supporting information as may be appropriate;

36 r. Develop and maintain a program for the continuing training
37 and education of administrative law judges and agencies in regard
38 to their responsibilities under this act;

39 s. Develop and implement a program of judicial evaluation to
40 aid himself in the performance of his duties, and to assist in the
41 making of reappointments under section 4 of P.L.1978, c.67
42 (C.52:14F-4). This program of evaluation shall focus on three areas
43 of judicial performance: competence, productivity, and demeanor.
44 It shall include consideration of: industry and promptness in
45 adhering to schedules, making rulings and rendering decisions;
46 tolerance, courtesy, patience, attentiveness, and self-control in
47 dealing with litigants, witnesses and counsel, and in presiding over

1 contested cases; legal skills and knowledge of the law and new legal
2 developments; analytical talents and writing abilities; settlement
3 skills; quantity, nature and quality of caseload disposition;
4 impartiality and conscientiousness. The director shall develop
5 standards and procedures for this program, which shall include
6 taking comments from selected litigants and lawyers who have
7 appeared before a judge. The methods used by the judge but not the
8 result arrived at by the judge in any case may be used in evaluating
9 a judge. Before implementing any action based on the findings of
10 the evaluation program, the director shall discuss the findings and
11 the proposed action with the affected judge. The evaluation by the
12 director and supporting data shall be submitted to the Governor at
13 least 90 days before the expiration of any term. These documents
14 shall remain confidential and shall be exempted from the
15 requirements of P.L.1963, c.73 (C.47:1A-1 et seq.);

16 t. Promulgate and enforce rules for reasonable sanctions,
17 including assessments of costs and attorneys' fees which may be
18 imposed on a party, and attorney or other representative of a party
19 who, without just excuse, fails to comply with any procedural order
20 or with any standard or rule applying to a contested case and
21 including the imposition of a fine not to exceed \$1,000.00 for
22 misconduct which obstructs or tends to obstruct the conduct of
23 contested cases;

24 u. Have power in connection with contested case hearings (1)
25 to administer oaths to any and all persons, (2) to compel by
26 subpoena the attendance of witnesses and the production of books,
27 records, accounts, papers, and documents of any person or persons,
28 (3) to entertain objections to subpoenas, and (4) to rule upon
29 objections to subpoenas except, that any orders of administrative
30 law judges regarding these objections may be reviewed by the
31 agency head before the completion of the contested case in
32 accordance with procedural rules, adopted by the Director and Chief
33 Administrative Law Judge of the Office of Administrative Law.
34 Misconduct by any party, attorney or representative of a party or
35 witness which obstructs or tends to obstruct the conduct of a
36 contested case or the failure of any witness, when duly subpoenaed
37 to attend, give testimony or produce any record, or the failure to pay
38 any sanction assessed pursuant to subsection t. of this section, shall
39 be punishable by the Superior Court in the same manner as such
40 failure is punishable by such court in a case pending therein; **[and]**

41 v. Assign any judge recalled pursuant to section 4 of P.L.1978,
42 c.67 (C.52:14F-4) and fix the per diem allowance;

43 w. Assign an administrative law judge or other personnel to
44 conduct arbitration, mediation, and other forms of alternative
45 dispute resolution with regard to any contested case or any
46 proceeding other than that related to a contested case or
47 administrative adjudication; and

1 x. Schedule hearings in an expeditious and efficient manner
2 taking into account the significance of the issues, the needs of the
3 parties, available resources, costs to the parties, and other relevant
4 factors. The director may, on a temporary basis when required by
5 exigent circumstances, schedule hearings notwithstanding deadlines
6 otherwise set forth in statute.

7 (cf: P.L.2005, c.6, s.2)

8

9 4. (New section) Each State agency shall develop and
10 implement a process for the consideration and settlement of a
11 contested case. The process shall be set forth in writing and filed
12 with the Director of the Office of Administrative Law. The director
13 shall assist each State agency in the development of the process to
14 ensure uniformity to the extent practicable. The head of an agency
15 is hereby authorized to compromise and settle, at the discretion of
16 the agency head, any penalty pursuant to such a settlement process
17 as may appear appropriate and equitable under all of the
18 circumstances, unless the compromise is specifically prohibited by
19 State or federal law.

20

21 5. This act shall take effect on the 60th day following
22 enactment.

23

24

25

26

27 _____

28 Modifies process for contested case hearings by OAL with
29 regard to telephone and video conferences, delegation of final
30 decision authority, oral decisions, checklist decisions, electronic
filings, and settlements.

ASSEMBLY, No. 1521

STATE OF NEW JERSEY

215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:

Assemblyman JOHN J. BURZICHELLI
District 3 (Cumberland, Gloucester and Salem)
Assemblyman SCOTT T. RUMANA
District 40 (Bergen, Essex, Morris and Passaic)
Assemblywoman ANNETTE QUIJANO
District 20 (Union)
Assemblyman RALPH R. CAPUTO
District 28 (Essex)
Assemblyman RUBEN J. RAMOS, JR.
District 33 (Hudson)

Co-Sponsored by:

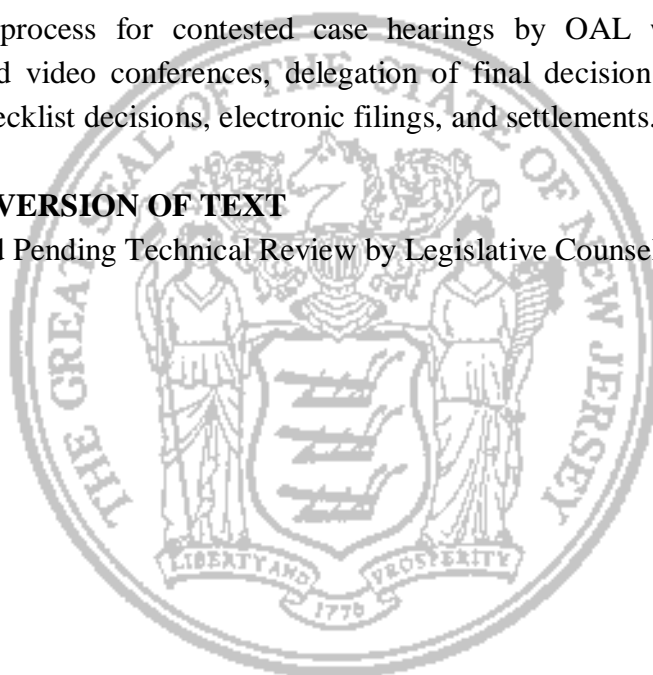
Assemblymen Chiusano and Coughlin

SYNOPSIS

Modifies process for contested case hearings by OAL with regard to telephone and video conferences, delegation of final decision authority, oral decisions, checklist decisions, electronic filings, and settlements.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 3/16/2012)

A1521 BURZICHELLI, RUMANA

2

1 AN ACT concerning contested case hearings by the Office of
2 Administrative Law and amending P.L.1978, c.67, and amending
3 and supplementing P.L.1968, c.410.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 9 of P.L.1968, c.410 (C.52:14B-9) is amended to
9 read as follows:

10 9. (a) In a contested case, all parties shall be afforded an
11 opportunity for hearing after reasonable notice.

12 (b) The notice shall include in addition to such other
13 information as may be deemed appropriate:

14 (1) A statement of the time, place, and nature of the hearing;

15 (2) A statement of the legal authority and jurisdiction under
16 which the hearing is to be held;

17 (3) A reference to the particular sections of the statutes and
18 rules involved;

19 (4) A short and plain statement of the matters asserted. If the
20 agency or other party is unable to state the matters in detail at the
21 time the notice is served, the initial notice may be limited to a
22 statement of the issues involved. Thereafter upon application a
23 more definite and detailed statement shall be furnished.

24 (c) Opportunity shall be afforded all parties to respond, appear
25 and present evidence and argument on all issues involved.

26 Pre-hearing conferences may be conducted, as prescribed by the
27 director.

28 Witnesses may be permitted to testify, and motions may be
29 considered, by means of a telephone or video conference call, as
30 prescribed by the director and when the judge finds there is good
31 cause for permitting the witness to testify by telephone or video
32 conference.

33 (d) Unless precluded by law, informal disposition may be made
34 of any contested case by stipulation, agreed settlement, or consent
35 order.

36 (e) Oral proceedings or any part thereof shall be transcribed on
37 request of any party at the expense of such party.

38 (f) Findings of fact shall be based exclusively on the evidence
39 and on matters officially noticed.

40 (g) Unless otherwise provided by any law, agencies may place
41 on any party the responsibility of requesting a hearing if the agency
42 notifies him in writing of his right to a hearing and of his
43 responsibility to request the hearing.

44 (cf: P.L.1968, c.410, s.9)

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 2. Section 10 of P.L.1968, c.410 (C.52:14B-10) is amended to
2 read as follows:

3 10. In contested cases:

4 (a) The parties shall not be bound by rules of evidence whether
5 statutory, common law, or adopted formally by the Rules of Court.
6 All relevant evidence is admissible, except as otherwise provided
7 herein. The administrative law judge may in his discretion exclude
8 any evidence if he finds that its probative value is substantially
9 outweighed by the risk that its admission will either (i) necessitate
10 undue consumption of time or (ii) create substantial danger of
11 undue prejudice or confusion. The administrative law judge shall
12 give effect to the rules of privilege recognized by law. Any party in
13 a contested case may present his case or defense by oral and
14 documentary evidence, submit rebuttal evidence and conduct such
15 cross-examination as may be required, in the discretion of the
16 administrative law judge, for a full and true disclosure of the facts.

17 (b) Notice may be taken of judicially noticeable facts. In
18 addition, notice may be taken of generally recognized technical or
19 scientific facts within the specialized knowledge of the agency or
20 administrative law judge. Parties shall be notified either before or
21 during the hearing, or by reference in preliminary reports or
22 otherwise, of the material noticed, including any staff memoranda
23 or data, and they shall be afforded an opportunity to contest the
24 material so noticed. The experience, technical competence, and
25 specialized knowledge of the agency or administrative law judge
26 may be utilized in the evaluation of the evidence, provided this is
27 disclosed of record.

28 (c) All hearings of a State agency required to be conducted as a
29 contested case under this act or any other law shall be conducted by
30 an administrative law judge assigned by the Director and Chief
31 Administrative Law Judge of the Office of Administrative Law,
32 except as provided by this amendatory and supplementary act. A
33 recommended report and decision which contains recommended
34 findings of fact and conclusions of law and which shall be based
35 upon sufficient, competent, and credible evidence shall be filed, not
36 later than 45 days after the hearing is concluded, with the agency in
37 such form that it may be adopted as the decision in the case and
38 delivered or mailed, to the parties of record with an indication of
39 the date of receipt by the agency head; and an opportunity shall be
40 afforded each party of record to file exceptions, objections, and
41 replies thereto, and to present argument to the head of the agency or
42 a majority thereof, either orally or in writing, as the agency may
43 direct.

44 Unless the head of the agency or a party requests that the
45 recommended report and decision be filed in writing, the
46 recommended report and decision of the administrative law judge
47 may be filed orally in such appropriate cases as prescribed by the

1 director and if a transcript has been requested pursuant to
2 subsection (e) of section 9 of P.L.1968, c.410 (C.52:14B-9).

3 An administrative law judge may file a recommended report and
4 decision in the form of a checklist in such appropriate cases and
5 formats as prescribed by the director after consultation with each
6 State agency.

7 The head of the agency, upon a review of the record submitted
8 by the administrative law judge, shall adopt, reject or modify the
9 recommended report and decision no later than 45 days after receipt
10 of such recommendations. In reviewing the decision of an
11 administrative law judge, the agency head may reject or modify
12 findings of fact, conclusions of law or interpretations of agency
13 policy in the decision, but shall state clearly the reasons for doing
14 so. The agency head may not reject or modify any findings of fact
15 as to issues of credibility of lay witness testimony unless it is first
16 determined from a review of the record that the findings are
17 arbitrary, capricious or unreasonable or are not supported by
18 sufficient, competent, and credible evidence in the record. In
19 rejecting or modifying any findings of fact, the agency head shall
20 state with particularity the reasons for rejecting the findings and
21 shall make new or modified findings supported by sufficient,
22 competent, and credible evidence in the record. Unless the head of
23 the agency modifies or rejects the report within such period, the
24 decision of the administrative law judge shall be deemed adopted as
25 the final decision of the head of the agency. The recommended
26 report and decision shall be a part of the record in the case. For
27 good cause shown, upon certification by the director and the agency
28 head, the time limits established herein may be subject to extension.

29 (d) A final decision or order adverse to a party in a contested
30 case shall be in writing or stated in the record. A final decision
31 shall include findings of fact and conclusions of law, separately
32 stated and shall be based only upon the evidence of record at the
33 hearing, as such evidence may be established by rules of evidence
34 and procedure promulgated by the director.

35 Findings of fact, if set forth in statutory language, shall be
36 accompanied by a concise and explicit statement of the underlying
37 facts supporting the findings. The final decision may incorporate
38 by reference any or all of the recommendations of the
39 administrative law judge. Parties shall be notified either personally
40 or by mail of any decision or order. Upon request a copy of the
41 decision or order shall be delivered or mailed forthwith by
42 registered or certified mail to each party and to his attorney of
43 record.

44 (e) Except where otherwise provided by law, the administrative
45 adjudication of the agency shall be effective on the date of delivery
46 or on the date of mailing, of the final decision to the parties of
47 record whichever shall occur first, or shall be effective on any date

1 after the date of delivery or mailing, as the agency may provide by
2 general rule or by order in the case. The date of delivery or mailing
3 shall be stamped on the face of the decision.

4 (f) The head of an agency may order that, in certain appropriate
5 cases, the recommended report and decision of the administrative
6 law judge shall be deemed adopted, immediately on filing thereof
7 with the agency, as the final decision of the agency head. The
8 appropriate cases shall be described in a written order issued by the
9 agency head, filed with the director, and made available to the
10 public as a government record. The order shall not include (1) any
11 contested case for which the agency head is specifically required by
12 State or federal law to review the recommended report and decision
13 and adopt the final decision, or (2) any contested cases specified in
14 subsection (g) of this section. The head of the agency may revise or
15 revoke an order, issued pursuant to this subsection, whenever it is
16 deemed appropriate. The order shall apply to all appropriate
17 contested cases commenced with the agency after the order's
18 issuance and until the order is rescinded or modified. In such
19 appropriate contested cases, the head of the agency shall not have
20 the opportunity to reject or modify the administrative law judge's
21 recommended report and decision pursuant to subsection (c) of this
22 section and the final decision by the administrative law judge shall
23 comply with the requirements of and shall be given the same effect
24 as a final decision of the head of the agency pursuant to subsection
25 (d) of this section.

26 (g) With regard to contested cases commenced with an agency
27 on or after the effective date of P.L. , c. (pending before the
28 Legislature as this bill) that are described in this subsection, the
29 report and decision of the administrative law judge shall be the final
30 decision upon the filing thereof with the agency, notwithstanding
31 any other provision of State law to the contrary. In such contested
32 cases, the head of the agency shall not have the opportunity to reject
33 or modify the administrative law judge's report and decision
34 pursuant to subsection (c) of this section and the final decision by
35 the administrative law judge shall comply with the requirements of
36 and shall be given the same effect as a final decision of the head of
37 the agency pursuant to subsection (d) of this section. Any reference
38 in statutes, orders, documents, or other records to a final decision
39 by the head of an agency shall mean the decision rendered by the
40 administrative law judge as provided in this subsection. This
41 subsection shall apply to any contested case from:

- 42 (1) the Department of Community Affairs;
- 43 (2) the Department of Education;
- 44 (3) the Department of Environmental Protection;
- 45 (4) the Department of Children and Families involving
46 placement on a child abuse registry;

1 (5) the Department of Health and Senior Services involving
2 placement on the nurse aid registry, and penalty matters;

3 (6) the Division of Family Development in the Department of
4 Human Services;

5 (7) the Division of Civil Rights in the Department of Law and
6 Public Safety;

7 (8) the New Jersey Motor Vehicle Commission;

8 (9) the Civil Service Commission; and

9 (10) the Department of Law and Public Safety under P.L.1988,
10 c.123 (C.56:12-29 et seq.).

11 (cf: P.L.2001, c.5, s.4)

12
13 3. Section 5 of P.L.1978, c.67 (C.52:14F-5) is amended to read
14 as follows:

15 5. The Director and Chief Administrative Law Judge of the
16 Office of Administrative Law shall:

17 a. Administer and cause the work of the office to be performed
18 in such manner and pursuant to such program as may be required or
19 appropriate;

20 b. Organize and reorganize the office, and establish such
21 bureaus as may be required or appropriate;

22 c. Except as otherwise provided in subsections l. and t., below,
23 appoint, pursuant to the provisions of Title 11A of the New Jersey
24 Statutes, such clerical assistants and other personnel as may be
25 required for the conduct of the office;

26 d. Assign and reassign personnel to employment within the
27 office;

28 e. Develop uniform standards, rules of evidence, and
29 procedures, including but not limited to standards for determining
30 whether a summary or plenary hearing should be held to regulate
31 the conduct of contested cases and the rendering of administrative
32 adjudications;

33 f. Promulgate and enforce such rules for the prompt
34 implementation and coordinated administration of the
35 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
36 seq.) as may be required or appropriate;

37 g. Administer and supervise the procedures relating to the
38 conduct of contested cases and the making of administrative
39 adjudications, as defined by section 2 of P.L.1968, c.410
40 (C.52:14B-2), develop and implement an electronic filing system
41 for the conduct of contested cases in such a manner and within such
42 a time period as deemed practicable within available resources, and
43 at the discretion of the director and the chief administrative law
44 judge, charge a filing fee for the development and implementation
45 of the electronic filing system in appropriate cases;

1 h. Advise agencies concerning their obligations under the
2 Administrative Procedure Act, subject to the provisions of
3 subsections b. and e. of section 4 of P.L.1944, c.20 (C.52:17A-4);

4 **[I.]** i. Assist agencies in the preparation, consideration,
5 publication and interpretation of administrative rules required or
6 appropriate pursuant to the "Administrative Procedure Act,"
7 P.L.1968, c.410 (C.52:14B-1 et seq.);

8 j. Employ the services of the several agencies and of the
9 employees thereof in such manner and to such extent as may be
10 agreed upon by the director and the chief executive officer of such
11 agency;

12 k. Have access to information concerning the several agencies
13 to assure that they properly promulgate all rules required by law;

14 l. Assign permanent administrative law judges at supervisory
15 and other levels who are qualified in the field of administrative law
16 or in subject matter relating to the hearing functions of a State
17 agency.

18 Administrative law judges shall receive such salaries as provided
19 by section 4 of P.L.1978, c.67 (C.52:14F-4), as amended by
20 P.L.1999, c.380, shall not engage in the practice of law and shall
21 devote full time to their judicial duties.

22 Administrative law judges appointed after the effective date of
23 this amendatory act shall have been attorneys-at-law of this State
24 for a minimum of five years. An administrative law judge
25 appointed prior to the effective date of this amendatory act shall not
26 be required to be an attorney or, if an attorney, shall not be required
27 to have been an attorney-at-law for five years in order to be
28 reappointed;

29 m. Appoint additional administrative law judges, qualified in
30 the field of administrative law or in a subject matter relating to the
31 hearing functions of a State agency, on a temporary or case basis as
32 may be necessary during emergency or unusual situations for the
33 proper performance of the duties of the office, pursuant to a
34 reasonable fee schedule established in advance by the director.
35 Administrative law judges appointed pursuant to this procedure
36 shall have the same qualifications for appointment as permanent
37 administrative law judges;

38 n. Assign administrative law judges to conduct contested cases
39 as required by sections 9 and 10 of P.L.1968, c.410 (C.52:14B-9
40 and 52:14B-10). Proceedings shall be scheduled for suitable
41 locations, either at the offices of the Office of Administrative Law
42 or elsewhere in the State, taking into consideration the convenience
43 of the witnesses and parties, as well as the nature of the cases and
44 proceedings;

45 o. Assign an administrative law judge or other personnel, if so
46 requested by the head of an agency and if the director deems
47 appropriate, to any agency to conduct or assist in administrative

- 1 duties and proceedings other than those related to contested cases or
2 administrative adjudications, including but not limited to rule-
3 making and investigative hearings;
- 4 p. Assign an administrative law judge not engaged in the
5 conduct of contested cases to perform other duties vested in or
6 required of the office;
- 7 q. Secure, compile and maintain all reports of administrative
8 law judges issued pursuant to this act, and such reference materials
9 and supporting information as may be appropriate;
- 10 r. Develop and maintain a program for the continuing training
11 and education of administrative law judges and agencies in regard
12 to their responsibilities under this act;
- 13 s. Develop and implement a program of judicial evaluation to
14 aid himself in the performance of his duties, and to assist in the
15 making of reappointments under section 4 of P.L.1978, c.67
16 (C.52:14F-4). This program of evaluation shall focus on three areas
17 of judicial performance: competence, productivity, and demeanor.
18 It shall include consideration of: industry and promptness in
19 adhering to schedules, making rulings and rendering decisions;
20 tolerance, courtesy, patience, attentiveness, and self-control in
21 dealing with litigants, witnesses and counsel, and in presiding over
22 contested cases; legal skills and knowledge of the law and new legal
23 developments; analytical talents and writing abilities; settlement
24 skills; quantity, nature and quality of caseload disposition;
25 impartiality and conscientiousness. The director shall develop
26 standards and procedures for this program, which shall include
27 taking comments from selected litigants and lawyers who have
28 appeared before a judge. The methods used by the judge but not the
29 result arrived at by the judge in any case may be used in evaluating
30 a judge. Before implementing any action based on the findings of
31 the evaluation program, the director shall discuss the findings and
32 the proposed action with the affected judge. The evaluation by the
33 director and supporting data shall be submitted to the Governor at
34 least 90 days before the expiration of any term. These documents
35 shall remain confidential and shall be exempted from the
36 requirements of P.L.1963, c.73 (C.47:1A-1 et seq.);
- 37 t. Promulgate and enforce rules for reasonable sanctions,
38 including assessments of costs and attorneys' fees which may be
39 imposed on a party, and attorney or other representative of a party
40 who, without just excuse, fails to comply with any procedural order
41 or with any standard or rule applying to a contested case and
42 including the imposition of a fine not to exceed \$1,000.00 for
43 misconduct which obstructs or tends to obstruct the conduct of
44 contested cases;
- 45 u. Have power in connection with contested case hearings (1)
46 to administer oaths to any and all persons, (2) to compel by
47 subpoena the attendance of witnesses and the production of books,

1 records, accounts, papers, and documents of any person or persons,
2 (3) to entertain objections to subpoenas, and (4) to rule upon
3 objections to subpoenas except, that any orders of administrative
4 law judges regarding these objections may be reviewed by the
5 agency head before the completion of the contested case in
6 accordance with procedural rules, adopted by the Director and Chief
7 Administrative Law Judge of the Office of Administrative Law.
8 Misconduct by any party, attorney or representative of a party or
9 witness which obstructs or tends to obstruct the conduct of a
10 contested case or the failure of any witness, when duly subpoenaed
11 to attend, give testimony or produce any record, or the failure to pay
12 any sanction assessed pursuant to subsection t. of this section, shall
13 be punishable by the Superior Court in the same manner as such
14 failure is punishable by such court in a case pending therein; **[and]**

15 v. Assign any judge recalled pursuant to section 4 of P.L.1978,
16 c.67 (C.52:14F-4) and fix the per diem allowance;

17 w. Assign an administrative law judge or other personnel to
18 conduct arbitration, mediation, and other forms of alternative
19 dispute resolution with regard to any contested case or any
20 proceeding other than that related to a contested case or
21 administrative adjudication; and

22 x. Schedule hearings in an expeditious and efficient manner
23 taking into account the significance of the issues, the needs of the
24 parties, available resources, costs to the parties, and other relevant
25 factors. The director may, on a temporary basis when required by
26 exigent circumstances, schedule hearings notwithstanding deadlines
27 otherwise set forth in statute.

28 (cf: P.L.2005, c.6, s.2)

29

30 4. (New section) Each State agency shall develop and
31 implement a process for the consideration and settlement of a
32 contested case. The process shall be set forth in writing and filed
33 with the Director of the Office of Administrative Law. The director
34 shall assist each State agency in the development of the process to
35 ensure uniformity to the extent practicable. The head of an agency
36 is hereby authorized to compromise and settle, at the discretion of
37 the agency head, any penalty pursuant to such a settlement process
38 as may appear appropriate and equitable under all of the
39 circumstances, unless the compromise is specifically prohibited by
40 State or federal law.

41

42 5. This act shall take effect on the 60th day following
43 enactment.

STATEMENT

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This bill makes various changes to the process used for the contested case hearings handled by the Office of Administrative Law (OAL), some of which were included in the report of the Red Tape Review Group entitled “Findings & Recommendations,” issued April 19, 2010.

The bill provides that, as prescribed by the Director and Chief Administrative Law Judge of the Office of Administrative Law (OAL), an administrative law judge (ALJ) may: (1) use pre-hearing conferences, and consider motions and hear witness testimony by means of telephone or video conference calls; (2) issue oral decisions in certain appropriate contested cases if one of the parties orders a transcript of the proceedings and the State agency does not request a written decision; and (3) issue decisions in the form of a checklist in certain appropriate contested cases, after consultation with each State agency.

The bill authorizes the heads of State agencies to issue an order that, in certain appropriate cases, provides for the recommended report and decision of the ALJ to be deemed adopted, immediately upon filing with the agency, as the final decision of the agency head. The appropriate cases are to be described in a written order issued by the agency head, filed with the Director and Chief ALJ, and made available to the public as a government record. The head of the agency may revise or revoke an order whenever it is deemed appropriate. The order would apply to all appropriate contested cases filed after the order’s issuance and until the order is rescinded or modified.

In addition, the bill provides that the decision of an ALJ will be the final decision in all contested cases from:

- (1) the Department of Community Affairs;
- (2) the Department of Education;
- (3) the Department of Environmental Protection;
- (4) the Department of Children and Families involving placement on a child abuse registry;
- (5) the Department of Health and Senior Services involving placement on the nurse aid registry, and penalty matters;
- (6) the Division of Family Development in the Department of Human Services;
- (7) the Division of Civil Rights in the Department of Law and Public Safety;
- (8) the New Jersey Motor Vehicle Commission;
- (9) the Civil Service Commission; and
- (10) the Department of Law and Public Safety pursuant to P.L.1988, c.123 (C.56:12-29 et seq.), commonly referred to as the “lemon law.”

1 The bill also expands the responsibilities of the Director and
2 Chief ALJ by requiring: (1) the development and implementation
3 of an electronic filing system for the conduct of contested cases, in
4 a manner and within a time frame deemed practicable within
5 available resources; (2) assignment of an ALJ or other personnel to
6 conduct arbitration, mediation, and other forms of alternative
7 dispute resolution with regard to any contested case or any
8 proceeding other than that related to a contested case or
9 administrative adjudication; and (3) the scheduling of hearings in an
10 expeditious and efficient manner taking into account the
11 significance of the issues, the needs of the parties, available
12 resources, costs to the parties, and other relevant factors, and
13 providing that the Director and Chief ALJ may, on a temporary
14 basis when required by exigent circumstances, schedule hearings
15 notwithstanding deadlines otherwise set forth in law.

16 Lastly, section 4 of the bill directs State agencies to develop and
17 implement a process for the settlement of contested cases. Further,
18 the bill would authorize State agencies to compromise and settle, at
19 their discretion, any penalty as may appear appropriate and
20 equitable under all of the circumstances, unless the compromise is
21 specifically prohibited by State or federal law.

ASSEMBLY REGULATORY OVERSIGHT AND GAMING
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1521

STATE OF NEW JERSEY

DATED: JUNE 7, 2012

The Assembly Regulatory Oversight and Gaming Committee reports favorably Assembly Bill No. 1521.

This bill makes various changes to the process used for the contested case hearings handled by the Office of Administrative Law (OAL), some of which were included in the report of the Red Tape Review Group entitled "Findings & Recommendations," issued April 19, 2010.

The bill provides that, as prescribed by the Director and Chief Administrative Law Judge of the Office of Administrative Law (OAL), an administrative law judge (ALJ) may: (1) use pre-hearing conferences, and consider motions and hear witness testimony by means of telephone or video conference calls; (2) issue oral decisions in certain appropriate contested cases if one of the parties orders a transcript of the proceedings and the State agency does not request a written decision; and (3) issue decisions in the form of a checklist in certain appropriate contested cases, after consultation with each State agency.

The bill authorizes the heads of State agencies to issue an order that, in certain appropriate cases, provides for the recommended report and decision of the ALJ to be deemed adopted, immediately upon filing with the agency, as the final decision of the agency head. The appropriate cases are to be described in a written order issued by the agency head, filed with the Director and Chief ALJ, and made available to the public as a government record. The head of the agency may revise or revoke an order whenever it is deemed appropriate. The order would apply to all appropriate contested cases filed after the order's issuance and until the order is rescinded or modified.

In addition, the bill provides that the decision of an ALJ will be the final decision in all contested cases from:

- (1) the Department of Community Affairs;
- (2) the Department of Education;
- (3) the Department of Environmental Protection;
- (4) the Department of Children and Families involving placement on a child abuse registry;

(5) the Department of Health and Senior Services involving placement on the nurse aid registry, and penalty matters;

(6) the Division of Family Development in the Department of Human Services;

(7) the Division of Civil Rights in the Department of Law and Public Safety;

(8) the New Jersey Motor Vehicle Commission;

(9) the Civil Service Commission; and

(10) the Department of Law and Public Safety pursuant to P.L.1988, c.123 (C.56:12-29 et seq.), commonly referred to as the “lemon law.”

The bill also expands the responsibilities of the Director and Chief ALJ by requiring: (1) the development and implementation of an electronic filing system for the conduct of contested cases, in a manner and within a time frame deemed practicable within available resources; (2) assignment of an ALJ or other personnel to conduct arbitration, mediation, and other forms of alternative dispute resolution with regard to any contested case or any proceeding other than that related to a contested case or administrative adjudication; and (3) the scheduling of hearings in an expeditious and efficient manner taking into account the significance of the issues, the needs of the parties, available resources, costs to the parties, and other relevant factors, and providing that the Director and Chief ALJ may, on a temporary basis when required by exigent circumstances, schedule hearings notwithstanding deadlines otherwise set forth in law.

Lastly, section 4 of the bill directs State agencies to develop and implement a process for the settlement of contested cases. Further, the bill would authorize State agencies to compromise and settle, at their discretion, any penalty as may appear appropriate and equitable under all of the circumstances, unless the compromise is specifically prohibited by State or federal law.

This bill was pre-filed for introduction in the 2012-2013 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

STATEMENT TO
ASSEMBLY, No. 1521

with Assembly Floor Amendments
(Proposed by Assemblyman BURZICHELLI)

ADOPTED: OCTOBER 18, 2012

This floor amendment would amend the provision of law that authorizes an agency head's adoption, rejection, or modification of an administrative law judge's recommendations and decisions. While the law currently provides that an administrative law judge's recommendations and decisions will be deemed to be the final decision of an agency if the agency head does not modify or reject the recommendations or decisions within 45 days after receipt thereof, the law also provides for unlimited extensions of this time period for good cause, and upon certification by the Director of the Office of Administrative Law and the agency head. The floor amendment would eliminate the provision authorizing the unlimited extension of this 45-day time period, and provide, instead, for a single extension of no more than 45 days for good cause shown, and upon certification by the director and agency head. Any further extension would be subject to, and contingent upon, the unanimous agreement of the parties.

The floor amendment would also make a technical correction to reflect the appropriate name of the Department of Health.

SENATE STATE GOVERNMENT, WAGERING, TOURISM &
HISTORIC PRESERVATION COMMITTEE

STATEMENT TO
[First Reprint]
ASSEMBLY, No. 1521

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 9, 2013

The Senate State Government, Wagering, Tourism and Historic Preservation Committee reports favorably and with committee amendments Assembly Bill No. 1521(1R).

As amended by the committee, this bill makes various changes to the process used for contested case hearings handled by the Office of Administrative Law (OAL). Some of these changes were identified as suggestions in the report of the Red Tape Review Group entitled "Findings & Recommendations," which was issued on April 19, 2010.

As amended, the bill provides that, as prescribed by the Director and Chief Administrative Law Judge of the Office of Administrative Law (OAL), an administrative law judge (ALJ) may: (1) engage in pre-hearing conferences, and consider motions and hear witness testimony by means of telephone or video conference calls; (2) issue oral decisions in certain appropriate contested cases if one of the parties orders a transcript of the proceedings and the State agency does not request a written decision; and (3) issue decisions in the form of a checklist in certain appropriate contested cases, after consultation with each State agency.

In terms of the evidence that must be proffered at a contested case hearing involving a permitting or licensing decision of the Department of Environmental Protection, the bill, as amended, requires the department to produce and certify a permitting record within 30 days after the contested case is filed, or within such extended time period as may be authorized by an ALJ upon the agreement of the parties. This provision would not limit the ability of the parties to supplement the record as necessary.

In terms of the final decision issued in a contested case, the bill, as amended, authorizes the head of each State agency to issue an order that provides, in certain appropriate cases, for the recommended report and decision of the ALJ to be deemed adopted, immediately upon filing with the agency, as the final decision of the agency head. The appropriate cases are to be described in a written order issued by the

agency head, filed with the Director and Chief ALJ, and made available to the public as a government record. The order would apply to all appropriate contested cases filed after the order's issuance and until the order is rescinded or modified. The head of the agency would be authorized, moreover, to revise or revoke such an order whenever it is deemed appropriate.

In addition, the bill, as amended, provides that if the parties in a contested case stipulate to the factual record, and agree that there are no genuine issues of material fact to be adjudicated, the head of the agency may, in his discretion, render a final agency decision on the matter without obtaining the prior input of, or a recommended report and decision from, an ALJ.

The bill, as amended, also expands the responsibilities of the Director and Chief ALJ by requiring: (1) the development and implementation of an electronic filing system for the conduct of contested cases, in a manner and within a time frame deemed practicable within available resources; (2) assignment of an ALJ or other personnel to conduct arbitration, mediation, and other forms of alternative dispute resolution with regard to any contested case or any proceeding other than that related to a contested case or administrative adjudication; and (3) the scheduling of hearings in an expeditious and efficient manner, and, on a temporary basis, and when required by exigent circumstances, the scheduling of hearings notwithstanding the deadlines otherwise set forth in law.

Finally, the bill, as amended, directs State agencies to develop and implement a process for the settlement of contested cases, and it authorizes State agencies to compromise and settle any penalty, at their discretion, in a manner that is deemed thereby to be appropriate and equitable under all of the circumstances, unless the compromise is specifically prohibited by State or federal law.

Assembly Bill No. 1521 (1R) is identical to Senate Bill No. 2555.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

- 1) eliminate a provision that would have prohibited certain specified agencies from rejecting or modifying the decision of an ALJ;
- 2) insert a provision requiring the Department of Environmental Protection to produce and certify a permitting record, in appropriate cases, within a defined time frame; and
- 3) insert a provision authorizing the head of an agency to render a final agency decision without input from an ALJ if facts are not contested.

STATEMENT TO
[Second Reprint]
ASSEMBLY, No. 1521

with Senate Floor Amendments
(Proposed by Senator VAN DREW)

ADOPTED: JANUARY 9, 2014

These Floor Amendments remove language that would have allowed the director and the chief administrative law judge, at their discretion, to charge a filing fee for the development and implementation of the electronic filing system in appropriate cases.

SENATE, No. 2555

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED FEBRUARY 7, 2013

Sponsored by:

Senator JEFF VAN DREW

District 1 (Atlantic, Cape May and Cumberland)

SYNOPSIS

Modifies process for contested case hearings by OAL with regard to telephone and video conferences, delegation of final decision authority, oral decisions, checklist decisions, electronic filings, and settlements.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning contested case hearings by the Office of
2 Administrative Law and amending P.L.1978, c.67, and amending
3 and supplementing P.L.1968, c.410.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. Section 9 of P.L.1968, c.410 (C.52:14B-9) is amended to
9 read as follows:

10 9. (a) In a contested case, all parties shall be afforded an
11 opportunity for hearing after reasonable notice.

12 (b) The notice shall include in addition to such other
13 information as may be deemed appropriate:

14 (1) A statement of the time, place, and nature of the hearing;

15 (2) A statement of the legal authority and jurisdiction under
16 which the hearing is to be held;

17 (3) A reference to the particular sections of the statutes and
18 rules involved;

19 (4) A short and plain statement of the matters asserted. If the
20 agency or other party is unable to state the matters in detail at the
21 time the notice is served, the initial notice may be limited to a
22 statement of the issues involved. Thereafter upon application a
23 more definite and detailed statement shall be furnished.

24 (c) Opportunity shall be afforded all parties to respond, appear
25 and present evidence and argument on all issues involved.

26 Pre-hearing conferences may be conducted, as prescribed by the
27 director.

28 Witnesses may be permitted to testify, and motions may be
29 considered, by means of a telephone or video conference call, as
30 prescribed by the director and when the judge finds there is good
31 cause for permitting the witness to testify by telephone or video
32 conference.

33 (d) Unless precluded by law, informal disposition may be made
34 of any contested case by stipulation, agreed settlement, or consent
35 order.

36 (e) Oral proceedings or any part thereof shall be transcribed on
37 request of any party at the expense of such party.

38 (f) Findings of fact shall be based exclusively on the evidence
39 and on matters officially noticed.

40 (g) Unless otherwise provided by any law, agencies may place
41 on any party the responsibility of requesting a hearing if the agency
42 notifies him in writing of his right to a hearing and of his
43 responsibility to request the hearing.

44 (cf: P.L.1968, c.410, s.9)

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 2. Section 10 of P.L.1968, c.410 (C.52:14B-10) is amended to
2 read as follows:

3 10. In contested cases:

4 (a) The parties shall not be bound by rules of evidence whether
5 statutory, common law, or adopted formally by the Rules of Court.
6 All relevant evidence is admissible, except as otherwise provided
7 herein. The administrative law judge may in his discretion exclude
8 any evidence if he finds that its probative value is substantially
9 outweighed by the risk that its admission will either (i) necessitate
10 undue consumption of time or (ii) create substantial danger of
11 undue prejudice or confusion. The administrative law judge shall
12 give effect to the rules of privilege recognized by law. Any party in
13 a contested case may present his case or defense by oral and
14 documentary evidence, submit rebuttal evidence and conduct such
15 cross-examination as may be required, in the discretion of the
16 administrative law judge, for a full and true disclosure of the facts.

17 (b) Notice may be taken of judicially noticeable facts. In
18 addition, notice may be taken of generally recognized technical or
19 scientific facts within the specialized knowledge of the agency or
20 administrative law judge. Parties shall be notified either before or
21 during the hearing, or by reference in preliminary reports or
22 otherwise, of the material noticed, including any staff memoranda
23 or data, and they shall be afforded an opportunity to contest the
24 material so noticed. The experience, technical competence, and
25 specialized knowledge of the agency or administrative law judge
26 may be utilized in the evaluation of the evidence, provided this is
27 disclosed of record.

28 (c) All hearings of a State agency required to be conducted as a
29 contested case under this act or any other law shall be conducted by
30 an administrative law judge assigned by the Director and Chief
31 Administrative Law Judge of the Office of Administrative Law,
32 except as provided by this amendatory and supplementary act. A
33 recommended report and decision which contains recommended
34 findings of fact and conclusions of law and which shall be based
35 upon sufficient, competent, and credible evidence shall be filed, not
36 later than 45 days after the hearing is concluded, with the agency in
37 such form that it may be adopted as the decision in the case and
38 delivered or mailed, to the parties of record with an indication of
39 the date of receipt by the agency head; and an opportunity shall be
40 afforded each party of record to file exceptions, objections, and
41 replies thereto, and to present argument to the head of the agency or
42 a majority thereof, either orally or in writing, as the agency may
43 direct.

44 Unless the head of the agency or a party requests that the
45 recommended report and decision be filed in writing, the
46 recommended report and decision of the administrative law judge
47 may be filed orally in such appropriate cases as prescribed by the

1 director and if a transcript has been requested pursuant to
2 subsection (e) of section 9 of P.L.1968, c.410 (C.52:14B-9).

3 An administrative law judge may file a recommended report and
4 decision in the form of a checklist in such appropriate cases and
5 formats as prescribed by the director after consultation with each
6 State agency.

7 The head of the agency, upon a review of the record submitted
8 by the administrative law judge, shall adopt, reject or modify the
9 recommended report and decision no later than 45 days after receipt
10 of such recommendations. In reviewing the decision of an
11 administrative law judge, the agency head may reject or modify
12 findings of fact, conclusions of law or interpretations of agency
13 policy in the decision, but shall state clearly the reasons for doing
14 so. The agency head may not reject or modify any findings of fact
15 as to issues of credibility of lay witness testimony unless it is first
16 determined from a review of the record that the findings are
17 arbitrary, capricious or unreasonable or are not supported by
18 sufficient, competent, and credible evidence in the record. In
19 rejecting or modifying any findings of fact, the agency head shall
20 state with particularity the reasons for rejecting the findings and
21 shall make new or modified findings supported by sufficient,
22 competent, and credible evidence in the record. Unless the head of
23 the agency modifies or rejects the report within such period, the
24 decision of the administrative law judge shall be deemed adopted as
25 the final decision of the head of the agency. The recommended
26 report and decision shall be a part of the record in the case. For
27 good cause shown, upon certification by the director and the agency
28 head, the time limits established herein may be subject to a single
29 extension of not more than 45 days. Any additional extension of
30 time shall be subject to, and contingent upon, the unanimous
31 agreement of the parties .

32 (d) A final decision or order adverse to a party in a contested
33 case shall be in writing or stated in the record. A final decision
34 shall include findings of fact and conclusions of law, separately
35 stated and shall be based only upon the evidence of record at the
36 hearing, as such evidence may be established by rules of evidence
37 and procedure promulgated by the director.

38 Findings of fact, if set forth in statutory language, shall be
39 accompanied by a concise and explicit statement of the underlying
40 facts supporting the findings. The final decision may incorporate
41 by reference any or all of the recommendations of the
42 administrative law judge. Parties shall be notified either personally
43 or by mail of any decision or order. Upon request a copy of the
44 decision or order shall be delivered or mailed forthwith by
45 registered or certified mail to each party and to his attorney of
46 record.

47 (e) Except where otherwise provided by law, the administrative
48 adjudication of the agency shall be effective on the date of delivery

1 or on the date of mailing, of the final decision to the parties of
2 record whichever shall occur first, or shall be effective on any date
3 after the date of delivery or mailing, as the agency may provide by
4 general rule or by order in the case. The date of delivery or mailing
5 shall be stamped on the face of the decision.

6 (f) The head of an agency may order that, in certain appropriate
7 cases, the recommended report and decision of the administrative
8 law judge shall be deemed adopted, immediately on filing thereof
9 with the agency, as the final decision of the agency head. The
10 appropriate cases shall be described in a written order issued by the
11 agency head, filed with the director, and made available to the
12 public as a government record. The order shall not include (1) any
13 contested case for which the agency head is specifically required by
14 State or federal law to review the recommended report and decision
15 and adopt the final decision, or (2) any contested cases specified in
16 subsection (g) of this section. The head of the agency may revise or
17 revoke an order, issued pursuant to this subsection, whenever it is
18 deemed appropriate. The order shall apply to all appropriate
19 contested cases commenced with the agency after the order's
20 issuance and until the order is rescinded or modified. In such
21 appropriate contested cases, the head of the agency shall not have
22 the opportunity to reject or modify the administrative law judge's
23 recommended report and decision pursuant to subsection (c) of this
24 section and the final decision by the administrative law judge shall
25 comply with the requirements of and shall be given the same effect
26 as a final decision of the head of the agency pursuant to subsection
27 (d) of this section.

28 (g) With regard to contested cases commenced with an agency
29 on or after the effective date of P.L. , c. (pending before the
30 Legislature as this bill) that are described in this subsection, the
31 report and decision of the administrative law judge shall be the final
32 decision upon the filing thereof with the agency, notwithstanding
33 any other provision of State law to the contrary. In such contested
34 cases, the head of the agency shall not have the opportunity to reject
35 or modify the administrative law judge's report and decision
36 pursuant to subsection (c) of this section and the final decision by
37 the administrative law judge shall comply with the requirements of
38 and shall be given the same effect as a final decision of the head of
39 the agency pursuant to subsection (d) of this section. Any reference
40 in statutes, orders, documents, or other records to a final decision
41 by the head of an agency shall mean the decision rendered by the
42 administrative law judge as provided in this subsection. This
43 subsection shall apply to any contested case from:

- 44 (1) the Department of Community Affairs;
- 45 (2) the Department of Education;
- 46 (3) the Department of Environmental Protection;
- 47 (4) the Department of Children and Families involving
48 placement on a child abuse registry;

- 1 (5) the Department of Health involving placement on the nurse
2 aid registry, and penalty matters;
3 (6) the Division of Family Development in the Department of
4 Human Services;
5 (7) the Division of Civil Rights in the Department of Law and
6 Public Safety;
7 (8) the New Jersey Motor Vehicle Commission;
8 (9) the Civil Service Commission; and
9 (10) the Department of Law and Public Safety under P.L.1988,
10 c.123 (C.56:12-29 et seq.).
11 (cf: P.L.2001, c.5, s.4)

12
13 3. Section 5 of P.L.1978, c.67 (C.52:14F-5) is amended to read
14 as follows:

15 5. The Director and Chief Administrative Law Judge of the
16 Office of Administrative Law shall:

17 a. Administer and cause the work of the office to be performed
18 in such manner and pursuant to such program as may be required or
19 appropriate;

20 b. Organize and reorganize the office, and establish such
21 bureaus as may be required or appropriate;

22 c. Except as otherwise provided in subsections l. and t., below,
23 appoint, pursuant to the provisions of Title 11A of the New Jersey
24 Statutes, such clerical assistants and other personnel as may be
25 required for the conduct of the office;

26 d. Assign and reassign personnel to employment within the
27 office;

28 e. Develop uniform standards, rules of evidence, and
29 procedures, including but not limited to standards for determining
30 whether a summary or plenary hearing should be held to regulate
31 the conduct of contested cases and the rendering of administrative
32 adjudications;

33 f. Promulgate and enforce such rules for the prompt
34 implementation and coordinated administration of the
35 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
36 seq.) as may be required or appropriate;

37 g. Administer and supervise the procedures relating to the
38 conduct of contested cases and the making of administrative
39 adjudications, as defined by section 2 of P.L.1968, c.410
40 (C.52:14B-2), develop and implement an electronic filing system
41 for the conduct of contested cases in such a manner and within such
42 a time period as deemed practicable within available resources, and
43 at the discretion of the director and the chief administrative law
44 judge, charge a filing fee for the development and implementation
45 of the electronic filing system in appropriate cases;

46 h. Advise agencies concerning their obligations under the
47 Administrative Procedure Act, subject to the provisions of
48 subsections b. and e. of section 4 of P.L.1944, c.20 (C.52:17A-4);

- 1 **[I.]** i. Assist agencies in the preparation, consideration,
2 publication and interpretation of administrative rules required or
3 appropriate pursuant to the "Administrative Procedure Act,"
4 P.L.1968, c.410 (C.52:14B-1 et seq.);
- 5 j. Employ the services of the several agencies and of the
6 employees thereof in such manner and to such extent as may be
7 agreed upon by the director and the chief executive officer of such
8 agency;
- 9 k. Have access to information concerning the several agencies
10 to assure that they properly promulgate all rules required by law;
- 11 l. Assign permanent administrative law judges at supervisory
12 and other levels who are qualified in the field of administrative law
13 or in subject matter relating to the hearing functions of a State
14 agency.
- 15 Administrative law judges shall receive such salaries as provided
16 by section 4 of P.L.1978, c.67 (C.52:14F-4), as amended by
17 P.L.1999, c.380, shall not engage in the practice of law and shall
18 devote full time to their judicial duties.
- 19 Administrative law judges appointed after the effective date of
20 this amendatory act shall have been attorneys-at-law of this State
21 for a minimum of five years. An administrative law judge
22 appointed prior to the effective date of this amendatory act shall not
23 be required to be an attorney or, if an attorney, shall not be required
24 to have been an attorney-at-law for five years in order to be
25 reappointed;
- 26 m. Appoint additional administrative law judges, qualified in
27 the field of administrative law or in a subject matter relating to the
28 hearing functions of a State agency, on a temporary or case basis as
29 may be necessary during emergency or unusual situations for the
30 proper performance of the duties of the office, pursuant to a
31 reasonable fee schedule established in advance by the director.
32 Administrative law judges appointed pursuant to this procedure
33 shall have the same qualifications for appointment as permanent
34 administrative law judges;
- 35 n. Assign administrative law judges to conduct contested cases
36 as required by sections 9 and 10 of P.L.1968, c.410 (C.52:14B-9
37 and 52:14B-10). Proceedings shall be scheduled for suitable
38 locations, either at the offices of the Office of Administrative Law
39 or elsewhere in the State, taking into consideration the convenience
40 of the witnesses and parties, as well as the nature of the cases and
41 proceedings;
- 42 o. Assign an administrative law judge or other personnel, if so
43 requested by the head of an agency and if the director deems
44 appropriate, to any agency to conduct or assist in administrative
45 duties and proceedings other than those related to contested cases or
46 administrative adjudications, including but not limited to rule-
47 making and investigative hearings;

- 1 p. Assign an administrative law judge not engaged in the
2 conduct of contested cases to perform other duties vested in or
3 required of the office;
- 4 q. Secure, compile and maintain all reports of administrative
5 law judges issued pursuant to this act, and such reference materials
6 and supporting information as may be appropriate;
- 7 r. Develop and maintain a program for the continuing training
8 and education of administrative law judges and agencies in regard
9 to their responsibilities under this act;
- 10 s. Develop and implement a program of judicial evaluation to
11 aid himself in the performance of his duties, and to assist in the
12 making of reappointments under section 4 of P.L.1978, c.67
13 (C.52:14F-4). This program of evaluation shall focus on three areas
14 of judicial performance: competence, productivity, and demeanor.
15 It shall include consideration of: industry and promptness in
16 adhering to schedules, making rulings and rendering decisions;
17 tolerance, courtesy, patience, attentiveness, and self-control in
18 dealing with litigants, witnesses and counsel, and in presiding over
19 contested cases; legal skills and knowledge of the law and new legal
20 developments; analytical talents and writing abilities; settlement
21 skills; quantity, nature and quality of caseload disposition;
22 impartiality and conscientiousness. The director shall develop
23 standards and procedures for this program, which shall include
24 taking comments from selected litigants and lawyers who have
25 appeared before a judge. The methods used by the judge but not the
26 result arrived at by the judge in any case may be used in evaluating
27 a judge. Before implementing any action based on the findings of
28 the evaluation program, the director shall discuss the findings and
29 the proposed action with the affected judge. The evaluation by the
30 director and supporting data shall be submitted to the Governor at
31 least 90 days before the expiration of any term. These documents
32 shall remain confidential and shall be exempted from the
33 requirements of P.L.1963, c.73 (C.47:1A-1 et seq.);
- 34 t. Promulgate and enforce rules for reasonable sanctions,
35 including assessments of costs and attorneys' fees which may be
36 imposed on a party, and attorney or other representative of a party
37 who, without just excuse, fails to comply with any procedural order
38 or with any standard or rule applying to a contested case and
39 including the imposition of a fine not to exceed \$1,000.00 for
40 misconduct which obstructs or tends to obstruct the conduct of
41 contested cases;
- 42 u. Have power in connection with contested case hearings (1)
43 to administer oaths to any and all persons, (2) to compel by
44 subpoena the attendance of witnesses and the production of books,
45 records, accounts, papers, and documents of any person or persons,
46 (3) to entertain objections to subpoenas, and (4) to rule upon
47 objections to subpoenas except, that any orders of administrative
48 law judges regarding these objections may be reviewed by the

1 agency head before the completion of the contested case in
2 accordance with procedural rules, adopted by the Director and Chief
3 Administrative Law Judge of the Office of Administrative Law.
4 Misconduct by any party, attorney or representative of a party or
5 witness which obstructs or tends to obstruct the conduct of a
6 contested case or the failure of any witness, when duly subpoenaed
7 to attend, give testimony or produce any record, or the failure to pay
8 any sanction assessed pursuant to subsection t. of this section, shall
9 be punishable by the Superior Court in the same manner as such
10 failure is punishable by such court in a case pending therein; [and]

11 v. Assign any judge recalled pursuant to section 4 of P.L.1978,
12 c.67 (C.52:14F-4) and fix the per diem allowance;

13 w. Assign an administrative law judge or other personnel to
14 conduct arbitration, mediation, and other forms of alternative
15 dispute resolution with regard to any contested case or any
16 proceeding other than that related to a contested case or
17 administrative adjudication; and

18 x. Schedule hearings in an expeditious and efficient manner
19 taking into account the significance of the issues, the needs of the
20 parties, available resources, costs to the parties, and other relevant
21 factors. The director may, on a temporary basis when required by
22 exigent circumstances, schedule hearings notwithstanding deadlines
23 otherwise set forth in statute.

24 (cf: P.L.2005, c.6, s.2)

25

26 4. (New section) Each State agency shall develop and
27 implement a process for the consideration and settlement of a
28 contested case. The process shall be set forth in writing and filed
29 with the Director of the Office of Administrative Law. The director
30 shall assist each State agency in the development of the process to
31 ensure uniformity to the extent practicable. The head of an agency
32 is hereby authorized to compromise and settle, at the discretion of
33 the agency head, any penalty pursuant to such a settlement process
34 as may appear appropriate and equitable under all of the
35 circumstances, unless the compromise is specifically prohibited by
36 State or federal law.

37

38 5. This act shall take effect on the 60th day following
39 enactment.

40

41

42

STATEMENT

43

44 This bill makes various changes to the process used for the
45 contested case hearings handled by the Office of Administrative
46 Law (OAL), some of which were included in the report of the Red
47 Tape Review Group entitled "Findings & Recommendations,"
48 issued April 19, 2010.

1 The bill provides that, as prescribed by the Director and Chief
2 Administrative Law Judge of the Office of Administrative Law
3 (OAL), an administrative law judge (ALJ) may: (1) use pre-hearing
4 conferences, and consider motions and hear witness testimony by
5 means of telephone or video conference calls; (2) issue oral
6 decisions in certain appropriate contested cases if one of the parties
7 orders a transcript of the proceedings and the State agency does not
8 request a written decision; and (3) issue decisions in the form of a
9 checklist in certain appropriate contested cases, after consultation
10 with each State agency.

11 The bill authorizes the heads of State agencies to issue an order
12 that, in certain appropriate cases, provides for the recommended
13 report and decision of the ALJ to be deemed adopted, immediately
14 upon filing with the agency, as the final decision of the agency
15 head. The appropriate cases are to be described in a written order
16 issued by the agency head, filed with the Director and Chief ALJ,
17 and made available to the public as a government record. The head
18 of the agency may revise or revoke an order whenever it is deemed
19 appropriate. The order would apply to all appropriate contested
20 cases filed after the order's issuance and until the order is rescinded
21 or modified.

22 In addition, the bill provides that the decision of an ALJ will be
23 the final decision in all contested cases from:

- 24 (1) the Department of Community Affairs;
- 25 (2) the Department of Education;
- 26 (3) the Department of Environmental Protection;
- 27 (4) the Department of Children and Families involving
28 placement on a child abuse registry;
- 29 (5) the Department of Health and Senior Services involving
30 placement on the nurse aid registry, and penalty matters;
- 31 (6) the Division of Family Development in the Department of
32 Human Services;
- 33 (7) the Division of Civil Rights in the Department of Law and
34 Public Safety;
- 35 (8) the New Jersey Motor Vehicle Commission;
- 36 (9) the Civil Service Commission; and
- 37 (10) the Department of Law and Public Safety pursuant to
38 P.L.1988, c.123 (C.56:12-29 et seq.), commonly referred to as the
39 "lemon law."

40 The bill also expands the responsibilities of the Director and
41 Chief ALJ by requiring: (1) the development and implementation
42 of an electronic filing system for the conduct of contested cases, in
43 a manner and within a time frame deemed practicable within
44 available resources; (2) assignment of an ALJ or other personnel to
45 conduct arbitration, mediation, and other forms of alternative
46 dispute resolution with regard to any contested case or any
47 proceeding other than that related to a contested case or
48 administrative adjudication; and (3) the scheduling of hearings in an

1 expeditious and efficient manner taking into account the
2 significance of the issues, the needs of the parties, available
3 resources, costs to the parties, and other relevant factors, and
4 providing that the Director and Chief ALJ may, on a temporary
5 basis when required by exigent circumstances, schedule hearings
6 notwithstanding deadlines otherwise set forth in law.

7 Lastly, section 4 of the bill directs State agencies to develop and
8 implement a process for the settlement of contested cases. Further,
9 the bill would authorize State agencies to compromise and settle, at
10 their discretion, any penalty as may appear appropriate and
11 equitable under all of the circumstances, unless the compromise is
12 specifically prohibited by State or federal law.

SENATE STATE GOVERNMENT, WAGERING, TOURISM &
HISTORIC PRESERVATION COMMITTEE

STATEMENT TO
SENATE, No. 2555

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 9, 2013

The Senate State Government, Wagering, Tourism & Historic Preservation Committee reports favorably and with committee amendments Senate Bill No. 2555.

As amended by the committee, this bill makes various changes to the process used for contested case hearings handled by the Office of Administrative Law (OAL). Some of these changes were identified as suggestions in the report of the Red Tape Review Group entitled "Findings & Recommendations," which was issued on April 19, 2010.

As amended, the bill provides that, as prescribed by the Director and Chief Administrative Law Judge of the Office of Administrative Law (OAL), an administrative law judge (ALJ) may: (1) engage in pre-hearing conferences, and consider motions and hear witness testimony by means of telephone or video conference calls; (2) issue oral decisions in certain appropriate contested cases if one of the parties orders a transcript of the proceedings and the State agency does not request a written decision; and (3) issue decisions in the form of a checklist in certain appropriate contested cases, after consultation with each State agency.

In terms of the evidence that must be proffered at a contested case hearing involving a permitting or licensing decision of the Department of Environmental Protection, the bill, as amended, requires the department to produce and certify a permitting record within 30 days after the contested case is filed, or within such extended time period as may be authorized by an ALJ upon the agreement of the parties. This provision would not limit the ability of the parties to supplement the record as necessary.

In terms of the final decision issued in a contested case, the bill, as amended, authorizes the head of each State agency to issue an order that provides, in certain appropriate cases, for the recommended report and decision of the ALJ to be deemed adopted, immediately upon filing with the agency, as the final decision of the agency head. The appropriate cases are to be described in a written order issued by the agency head, filed with the Director and Chief ALJ, and made

available to the public as a government record. The order would apply to all appropriate contested cases filed after the order's issuance and until the order is rescinded or modified. The head of the agency would be authorized, moreover, to revise or revoke such an order whenever it is deemed appropriate.

In addition, the bill, as amended, provides that if the parties in a contested case stipulate to the factual record, and agree that there are no genuine issues of material fact to be adjudicated, the head of the agency may, in his discretion, render a final agency decision on the matter without obtaining the prior input of, or a recommended report and decision from, an ALJ.

The bill, as amended, also expands the responsibilities of the Director and Chief ALJ by requiring: (1) the development and implementation of an electronic filing system for the conduct of contested cases, in a manner and within a time frame deemed practicable within available resources; (2) assignment of an ALJ or other personnel to conduct arbitration, mediation, and other forms of alternative dispute resolution with regard to any contested case or any proceeding other than that related to a contested case or administrative adjudication; and (3) the scheduling of hearings in an expeditious and efficient manner, and, on a temporary basis, and when required by exigent circumstances, the scheduling of hearings notwithstanding the deadlines otherwise set forth in law.

Finally, the bill, as amended, directs State agencies to develop and implement a process for the settlement of contested cases, and it authorizes State agencies to compromise and settle any penalty, at their discretion, in a manner that is deemed thereby to be appropriate and equitable under all of the circumstances, unless the compromise is specifically prohibited by State or federal law.

Senate Bill No. 2555 is identical to Assembly Bill No 1521 (1R).

COMMITTEE AMENDMENTS:

The committee amended the bill to:

- 1) eliminate a provision that would have prohibited certain specified agencies from rejecting or modifying the decision of an ALJ;
- 2) insert a provision requiring the Department of Environmental Protection to produce and certify a permitting record, in appropriate cases, within a defined time frame; and
- 3) insert a provision authorizing the head of an agency to render a final agency decision without input from an ALJ if facts are not contested.

STATEMENT TO
[First Reprint]
SENATE, No. 2555

with Senate Floor Amendments
(Proposed by Senator VAN DREW)

ADOPTED: JANUARY 9, 2014

These Floor Amendments remove language that would have allowed the director and the chief administrative law judge, at their discretion, to charge a filing fee for the development and implementation of the electronic filing system in appropriate cases.