

52:14F-1 et al

LEGISLATIVE HISTORY CHECKLIST

(Establishes Office of Administrative Law)

HJSA 52:14F-1 et al

LAWS OF 1978

CHAPTER 67

Bill No. S766

Sponsor(s) Yates, Weiss

Date Introduced January 30, 1978

Committee: Assembly State Gov't, Federal & Interstate Relations & Veterans Affairs

Senate State Gov't, Federal & Interstate Relations & Veterans Affairs, Revenue, Finance & Appropriations

Amended during passage Yes ~~XX~~ Amendments during passage denoted by asterisks

Date of Passage: Assembly May 8, 1978

Senate June 26, 1978

Date of approval July 6, 1978

Following statements are attached if available:

Sponsor statement	Yes	XX
Committee Statement: Assembly	XX	No
Senate	Yes	XX 5-1-78 & 5-4-78
Fiscal Note	XX	No
Veto Message	XX	No
Message on signing	Yes	XX

Following were printed:

Reports	XX	No
Hearings	Yes	XX

974.90 N.J. Legislature. Senate. State Government,
R424 Federal & Interstate Relations and Veterans Affairs Committee.
1978 Public hearing on S766, held
March 20, 1978. Trenton

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(over)

9/1/78

Earlier hearings on similar legislation:

974.90 N.J. Legislature. Senate. Committee on State
R424 Government, Federal & Interstate Relations and
1977a Veterans Affairs.
Public hearing on S1550 and S1811,
held February 24, 1977. Trenton.

CHAPTER 67 LAWS OF N. J. 19 78
APPROVED 7-6-78

[OFFICIAL COPY REPRINT]

SENATE, No. 766

STATE OF NEW JERSEY

INTRODUCED JANUARY 30, 1978

By Senators YATES and WEISS

Referred to Committee on State Government, Federal and
Interstate Relations and Veterans Affairs

AN ACT to establish an independent Office of Administrative Law
in the Executive Branch of State Government, to transfer to it
the functions of, and to reallocate the existing Division of Admin-
istrative Procedure, to amend and supplement P. L. 1968, c. 410,
to repeal section 6 thereof and to appropriate certain sums.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. (New section) There is hereby established in the Executive
2 Branch of the State Government the Office of Administrative Law.
3 For the purpose of complying with the provisions of Article V,
4 Section IV, paragraph 1 of the New Jersey Constitution, the Office
5 of Administrative Law is hereby allocated within the Department
6 of State, but notwithstanding said allocation, the office shall be
7 independent of any supervision or control by the department or
8 by any personnel thereof. As used in this act, "office" shall mean
9 the Office of Administrative Law.

1 2. (New section) All the functions, powers and duties heretofore
2 exercised by the Division of Administrative Procedure in the
3 Department of State pursuant to the Administrative Procedure
4 Act, P. L. 1968, c. 410 (C. 52:14B-1 et seq.) are transferred to and
5 vested in the Office of Administrative Law created by this amend-
6 atory and supplementary act.

1 3. (New section) The head of the office shall be the director, who
2 shall be an attorney-at-law of this State. The director and the
3 full-time administrative judges shall be appointed by the Governor
4 with the advice and consent of the Senate.

5 The director shall serve for a term of 6 years. As used in this
6 act, "director" shall mean the Director of the Office of Adminis-
7 trative Law.

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

8 The director shall devote his entire time to the duties of his office
9 and shall receive a salary as provided by law. Any vacancy occur-
10 ring in the office of the director shall be filled in the same manner
11 as the original appointment, but for the unexpired term only.

1 4. (New section) The Governor shall appoint the full-time
2 administrative judges who shall serve for terms of 5 years and until
3 the appointment and qualification of their successors. A vacancy
4 in the office of full-time administrative judge shall be filled in the
5 same manner as the original appointment for the unexpired term
6 only.

1 5. (New section) The Director of the Office of Administrative
2 Law shall:

3 a. Administer and cause the work of the office to be performed in
4 such manner and pursuant to such program as may be required
5 or appropriate;

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

8 c. Except as otherwise provided in subsection 1, below, appoint,
9 pursuant to the provisions of Title 11 of the Revised Statutes, such
10 clerical assistants and other personnel as may be required for the
11 conduct of the office;

12 d. Assign and reassign personnel to employment within the
13 office;

14 e. Develop uniform standards, rules of evidence, and procedures,
15 including but not limited to standards for determining whether a
16 summary or plenary hearing should be held to regulate the conduct
17 of contested cases and the rendering of administrative adjudica-
18 tions;

19 f. Promulgate and enforce such rules for the prompt implemen-
20 tation and coordinated administration of the Administrative Pro-
21 cedure Act, P. L. 1968, c. 410 (C. 52:14B-1 et seq.) as may be
22 required or appropriate;

23 g. Administer and supervise the procedures relating to the con-
24 duct of contested cases and the making of administrative adjudi-
25 cations, as defined by section 2 of P. L. 1968, c. 410 (C. 52:14B-2);

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

29 i. Assist agencies in the preparation, consideration, publication
30 and interpretation of administrative rules required or appropriate
31 pursuant to the Administrative Procedure Act, P. L. 1968, c. 410
32 (C. 52:14B-1 et seq.);

33 j. Employ the services of the several agencies and of the em-
34 ployees thereof in such manner and to such extent as may be agreed
35 upon by the director and the chief executive officer of such agency;

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

38 l. Assign full-time administrative law judges at supervisory and
39 other levels who are qualified in the field of administrative law
40 or in subject matter relating to the hearing functions of a State
41 agency. A full-time administrative law judge shall not hold other
42 employment.

43 Administrative law judges shall receive such salaries as provided
44 by law.

45 Administrative law judges shall be attorneys-at-law of this
46 State, or any persons who are not attorneys-at-law, but who, in
47 the judgment of the Governor or the director are qualified in the
48 field of administrative law, administrative hearings and proceed-
49 ings in subject matter relating to the hearing functions of a
50 particular State agency;

51 m. Appoint such additional administrative law judges, qualified
52 in the field of administrative law or in subject matter relating to
53 the hearing functions of a State agency, on a temporary or case
54 basis as may be necessary for the proper performance of the duties
55 of the office, pursuant to a reasonable fee schedule established in
56 advance by the director. Temporary administrative law judges
57 shall have the same qualifications for appointment as permanent
58 administrative law judges.

59 n. Assign an administrative law judge to any agency empowered
60 to conduct contested cases to preside over such proceedings in
61 contested cases as are required by sections 9 and 10 of P. L. 1968,
62 c. 410 (C. 52:14B-9 and 52:14B-10);

63 o. Assign an administrative law judge or other personnel to
64 any agency to conduct or assist in administrative duties and
65 proceedings other than those related to contested cases or adminis-
66 trative adjudications, including but not limited to rule-making and
67 investigative hearings, if so requested by the head of an agency
68 and if the director deems appropriate;

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

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

75 r. Develop and maintain a program for the continuing training
76 and education of administrative law judges and agencies in regard
77 to their responsibilities under this act.

1 6. (New section) a. Administrative law judges shall be assigned
2 by the director from the office to an agency to preside over con-
3 tested cases in accordance with the special expertise of the
4 administrative law judge;

5 b. A person who is not an employee of the office may be specially
6 appointed and assigned by the director to an agency to preside
7 over a specific contested case, if the director certifies in writing
8 the reasons why the character of the case requires utilization of
9 a different procedure for assigning administrative law judges than
10 is established by this amendatory and supplementary act.

1 7. Section 5 of P. L. 1968, c. 410 (C. 52:14B-5) is amended to
2 read as follows:

3 5. (a) Each agency shall file [in the office of the Secretary of
4 State] *with the Director of the Office of Administrative Law* a
5 certified copy of each rule adopted by it.

6 (b) Each rule hereafter adopted is effective upon filing with the
7 [Secretary of State] *director*.

8 (c) The [Secretary of State] *director* shall: (1) accept for filing
9 or publication any rule duly adopted and submitted by any agency
10 pursuant to this act; (2) endorse upon the certified copy of each
11 rule accepted for filing pursuant to this act the date and time upon
12 which such rule was filed; and (3) maintain the certified copy of
13 each rule so filed in a permanent register open to public inspection.

14 (d) The filing of a certified copy of any rule shall be deemed to
15 establish the rebuttable presumptions that: (1) it was duly
16 adopted; (2) it was duly submitted for prepublication and made
17 available for public inspection at the hour and date endorsed upon
18 it; (3) all requirements of this act and of interagency rules of the
19 [Secretary of State] *director* relative to such rule have been
20 complied with; (4) its text is the text of the rule as adopted.
21 Judicial notice shall be taken of the text of each rule, duly filed.

22 (e) The publication of a rule in the New Jersey Administrative
23 Code or the New Jersey Register shall be deemed to establish the
24 rebuttable presumption that the rule was duly filed and that the
25 text of the rule as so published is the text of the rule adopted.
26 Judicial notice shall be taken of the text of each rule published
27 in the New Jersey Administrative Code or the New Jersey Register.

1 8. 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 **[presiding]** *administrative law judge* may in his
8 discretion exclude any evidence if he finds that its probative value
9 is substantially outweighed by the risk that its admission will
10 either (i) necessitate undue consumption of time or (ii) create
11 substantial danger of undue prejudice or confusion. The **[presid-**
12 **ing]** *administrative law judge* shall give effect to the rules of
13 privilege recognized by law. **[Every party shall have the right to]**
14 *Any party in a contested case may present his case or defense by*
15 *oral and documentary evidence, [to] submit rebuttal evidence and*
16 *[to] conduct such cross-examination as may be required, in the*
17 *discretion of the administrative law judge, for a full and true dis-*
18 *closure of the facts.*

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

30 (c) **[When a person not empowered to render an administrative**
31 **adjudication is designated by the head of the agency as the presid-**
32 **ing officer, his]** *All hearings of a State agency required to be con-*
33 *ducted as a contested case under this act or any other law shall be*
34 *conducted by an administrative law judge assigned by the Director*
35 *of the Office of Administrative Law, except as provided by this*
36 *amendatory and supplementary act. A recommended report and*
37 *decision [containing] which contains recommended findings of*
38 *fact and conclusions of law [shall be filed] and which shall be*
38A *based upon sufficient, competent, and credible evidence shall be*
39 *filed, not later than 45 days after the hearing is concluded, with*
40 *the agency in such form that it may be adopted as the decision in*
41 *the case and delivered or mailed, to the parties of record with an*
42 *indication of the date of receipt by the agency head; and an oppor-*
42A *tunity shall be afforded each party of record to file exceptions,*
43 *objections, and replies thereto, and to present argument to the*

44 head of the agency or a majority thereof, either orally or in writ-
45 ing, as the agency may [order] direct. The head of the agency,
46 upon a review of the record submitted by the administrative law
47 judge, shall adopt, reject or modify the recommended report and
48 decision no later than 45 days after receipt of such recommenda-
49 tions. Unless the head of the agency modifies or rejects the report
50 within such period, the decision of the administrative law judge
51 shall be deemed adopted as the final decision of the head of the
52 agency. The recommended report and decision shall be a part of
53 the record in the case. For good cause shown, upon certification by
54 the director and the agency head, the time limits established herein
55 may be subject to extension.

56 (d) A final decision or order adverse to a party in a contested
57 case shall be in writing or stated in the record. A final decision
58 shall include findings of fact and conclusions of law, separately
59 stated and shall be based only upon the evidence of record at the
60 hearing, as such evidence may be established by rules of evidence
61 and procedure promulgated by the director.

62 Findings of fact, if set forth in statutory language, shall be
63 accompanied by a concise and explicit statement of the underlying
64 facts supporting the findings. [If, in accordance with agency
65 rules, a party submitted proposed findings of fact, the decision shall
66 include a ruling upon each proposed finding.] The final decision
67 may incorporate by reference any or all of the recommendations
68 of the administrative law judge. Parties shall be notified either
69 personally or by mail of any decision or order. Upon request a
70 copy of the decision or order shall be delivered or mailed forth-
71 with by registered or certified mail to each party and to his
72 attorney of record.

73 (e) Except where otherwise provided by law, the administrative
74 adjudication of the agency shall be effective on the date of delivery
75 or on the date of mailing, of the final decision to the parties of
76 record, whichever shall occur first, or shall be effective on any
77 date after the date of delivery or mailing, as the agency may
78 provide by general rule or by order in the case. The date of
79 delivery or mailing shall be stamped on the face of the decision.

1 9. (New section) a. Nothing in this amendatory and supple-
2 mentary act shall be construed to deprive the head of any agency
3 of the authority pursuant to section 10 of P. L. 1968, c. 410
4 (C. 52:14B-10) to determine whether a case is contested or to
5 adopt, reject or modify the findings of fact and conclusions of law
6 of any administrative law judge.

7 b. Nothing in this amendatory and supplementary act shall be
8 construed to affect the conduct of any contested case initiated prior
9 to the effective date of this act, or the making of any administrative
10 adjudication in such contested case.

1 10. (New section) Unless a specific request is made by the
2 agency, no administrative law judge shall be assigned by the
3 director to hear contested cases with respect to:

4 a. The State Board of Parole, the Public Employment Relations
5 Commission, the Division of Workers' Compensation, the Division
6 of Tax Appeals, or to any agency not within section 2 (a) of P. L.
7 1968, c. 410 (C. 52:14B-2 (a));

8 b. Any matter where the head of the agency, a commissioner or
9 several commissioners, are required to conduct, or determine to
10 conduct the hearing directly and individually.

1 11. (New section) This act shall be subject to the provisions of
2 the State Agency Transfer Act, P. L. 1971, c. 375 (C. 52:14D-1
3 et seq.).

1 12. (New section) Section 6 of P. L. 1968, c. 410 (C. 52:14B-6) is
2 repealed.

1 13. (New section) All acts and parts of acts inconsistent with
2 any of the provisions of this amendatory and supplementary act
3 are, to the extent of such inconsistency, superseded and repealed.

1 14. (New section) To prepare for the implementation and
2 operation of this act there is appropriated to the Division of Ad-
3 ministrative Procedure in the Department of State the sum of
4 *~~[\$500,000.00]~~ *\$100,000.00*, the obligation and expenditure of
5 which shall be subject to the approval of the Director of the Divi-
6 sion of Budget and Accounting.

1 15. (New section) If any provision of this act or the application
2 thereof to any person or circumstance is held invalid, such in-
3 validity shall not affect other provisions or applications of the act
4 which can be given effect without the invalid provision or applica-
5 tion and to this end the provisions of this act are declared to be
6 severable.

1 16. (New section) This act shall remain inoperative until 6
2 months following its enactment, except with respect to the making
3 of appointments and the taking of preparatory actions, which may
4 take effect immediately upon enactment.

SENATE, No. 766

STATE OF NEW JERSEY

INTRODUCED JANUARY 30, 1978

By Senators YATES and WEISS

Referred to Committee on State Government, Federal and
Interstate Relations and Veterans Affairs

AN ACT to establish an independent Office of Administrative Law
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7 independent of any supervision or control by the department or
8 by any personnel thereof. As used in this act, "office" shall mean
9 the Office of Administrative Law.

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4 with the advice and consent of the Senate.

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

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11 conduct of the office;

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72 q. Secure, compile and maintain all reports of administrative
73 law judges issued pursuant to this act, and such reference materials
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7 [Secretary of State] *director*.

8 (c) The [Secretary of State] *director* shall: (1) accept for filing
9 or publication any rule duly adopted and submitted by any agency
10 pursuant to this act; (2) endorse upon the certified copy of each
11 rule accepted for filing pursuant to this act the date and time upon
12 which such rule was filed; and (3) maintain the certified copy of
13 each rule so filed in a permanent register open to public inspection.

14 (d) The filing of a certified copy of any rule shall be deemed to
15 establish the rebuttable presumptions that: (1) it was duly
16 adopted; (2) it was duly submitted for prepublication and made
17 available for public inspection at the hour and date endorsed upon
18 it; (3) all requirements of this act and of interagency rules of the
19 [Secretary of State] *director* relative to such rule have been
20 complied with; (4) its text is the text of the rule as adopted.
21 Judicial notice shall be taken of the text of each rule, duly filed.

22 (e) The publication of a rule in the New Jersey Administrative
23 Code or the New Jersey Register shall be deemed to establish the
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52 agency. The recommended report and decision shall be a part of
53 the record in the case. For good cause shown, upon certification by
54 the director and the agency head, the time limits established herein
55 may be subject to extension.

56 (d) A final decision or order adverse to a party in a contested
57 case shall be in writing or stated in the record. A final decision
58 shall include findings of fact and conclusions of law, separately
59 stated and shall be based only upon the evidence of record at the
60 hearing, as such evidence may be established by rules of evidence
61 and procedure promulgated by the director.

62 Findings of fact, if set forth in statutory language, shall be
63 accompanied by a concise and explicit statement of the underlying
64 facts supporting the findings. [If, in accordance with agency
65 rules, a party submitted proposed findings of fact, the decision shall
66 include a ruling upon each proposed finding.] The final decision
67 may incorporate by reference any or all of the recommendations
68 of the administrative law judge. Parties shall be notified either
69 personally or by mail of any decision or order. Upon request a
70 copy of the decision or order shall be delivered or mailed forth-
71 with by registered or certified mail to each party and to his
72 attorney of record.

73 (e) Except where otherwise provided by law, the administrative
74 adjudication of the agency shall be effective on the date of delivery
75 or on the date of mailing, of the final decision to the parties of
76 record, whichever shall occur first, or shall be effective on any
77 date after the date of delivery or mailing, as the agency may
78 provide by general rule or by order in the case. The date of
79 delivery or mailing shall be stamped on the face of the decision.

1 9. (New section) a. Nothing in this amendatory and supple-
2 mentary act shall be construed to deprive the head of any agency
3 of the authority pursuant to section 10 of P. L. 1968, c. 410
4 (C. 52:14B-10) to determine whether a case is contested or to
5 adopt, reject or modify the findings of fact and conclusions of law
6 of any administrative law judge.

7 b. Nothing in this amendatory and supplementary act shall be
8 construed to affect the conduct of any contested case initiated prior
9 to the effective date of this act, or the making of any administrative
10 adjudication in such contested case.

1 10. (New section) Unless a specific request is made by the
2 agency, no administrative law judge shall be assigned by the
3 director to hear contested cases with respect to:

4 a. The State Board of Parole, the Public Employment Relations
5 Commission, the Division of Workers' Compensation, the Division
6 of Tax Appeals, or to any agency not within section 2 (a) of P. L.
7 1968, c. 410 (C. 52:14B-2 (a));

8 b. Any matter where the head of the agency, a commissioner or
9 several commissioners, are required to conduct, or determine to
10 conduct the hearing directly and individually.

1 11. (New section) This act shall be subject to the provisions of
2 the State Agency Transfer Act, P. L. 1971, c. 375 (C. 52:14D-1
3 et seq.).

1 12. (New section) Section 6 of P. L. 1968, c. 410 (C. 52:14B-6) is
2 repealed.

1 13. (New section) All acts and parts of acts inconsistent with
2 any of the provisions of this amendatory and supplementary act
3 are, to the extent of such inconsistency, superseded and repealed.

1 14. (New section) To prepare for the implementation and opera-
2 tion of this act there is appropriated to the Division of Administra-
3 tive Procedure in the Department of State the sum of \$500,000.00,
4 the obligation and expenditure of which shall be subject to the
5 approval of the Director of the Division of Budget and Accounting.

1 15. (New section) If any provision of this act or the application
2 thereof to any person or circumstance is held invalid, such in-
3 validity shall not affect other provisions or applications of the act
4 which can be given effect without the invalid provision or applica-
5 tion and to this end the provisions of this act are declared to be
6 severable.

1 16. (New section) This act shall remain inoperative until 6
2 months following its enactment, except with respect to the making
3 of appointments and the taking of preparatory actions, which may
4 take effect immediately upon enactment.

STATEMENT

This bill provides for a full-time corps of trained, skilled administrative law judges to expedite the process by which State administrative agencies decide contested cases, and to inject greater impartiality into that process. It provides for a standardization of procedures used in the conduct of contested cases and the making of administrative adjudications, incorporating concepts first urged by Justice Nathan L. Jacobs, dissenting in *Mazza v. Caviocchia*, 15 N. J. 498, 536 (1954).

Presently, the Administrative Procedure Act requires that all contested cases involving State agencies be heard by a hearing officer. The existing system of part-time hearing officers has caused delay in the disposition of cases, and unnecessary expense to the State. In many instances, the Attorney General experiences difficulty defending in court the hearing officer reports, as adopted by the agency head, because they are not expertly prepared. Further, hearing officers employed by the various agencies involved in the decisions being rendered are often not impartial, an ill created in part by the fact that the agency head selected them in the first place. The concept of due process of law is also undermined by the combination of investigative, prosecutorial and hearing functions, all being administered by the same agency and sometimes by the same individual. Finally, the employment by the State of part-time hearing officers who are attorneys representing clients before other State agencies raises serious issues under the conflicts of interest law, because paid hearing officers, even those serving part-time, are State officers or employees subject to the most stringent conflicts law requirements.

Under the provisions of this bill, the director of the office will be appointed by the Governor for a 6-year term. Hearing officers, appointed by the Governor, and related employees appointed by the director shall be deemed to be employees of an independent office of administrative law, allocated to the Department of State. Provision is made for non-attorney hearing officers in cases where technical expertise is more required than legal expertise. As another means of ensuring that administrative law judges possess expertise in the technical field in which they are hearing matters, they will not be rotated among agencies, but rather will, perform duties for a single agency. In addition, the director may assign an individual who is not an employee of the office if the director certifies the reasons why the character of the case requires a different procedure for assigning the administrative law judge.

The use of full-time administrative law judges will reduce the delays which have resulted from part-time officers having to respond to the demands of their private careers.

Administrative law judges will have to forward final recommendations to department heads no later than 45 days after the hearing has been completed and the department will have to render a final decision no later than 45 days of receipt of the administrative law judge's report. Unless the agency head modifies or rejects the administrative law judge's report, that report will take effect 45 days after its receipt by the agency head, unless good cause for extension is certified by the hearing officer and the agency head.

This bill eliminates nearly all questions of conflict of interest. The time-honored concept of due process of law will be assured by the independent nature of the new hearing officer function. As under existing law, however, the head of an agency will himself exercise the ultimate options of adopting, rejecting or modifying the setting proceedings. Also as under existing law, single members of multimember bodies such as the Board of Public Utilities will be able to conduct contested cases.

An appropriation of \$500,000.00 is included for administrative expenses. It is anticipated that in the implementation of this new act, a substantial portion of the operating budget will be derived from the budgets of existing departments and agencies the hearings of which will now be undertaken by the new division of administrative law.

SENATE STATE GOVERNMENT, FEDERAL AND
INTERSTATE RELATIONS AND VETERANS AFFAIRS
COMMITTEE

STATEMENT TO
SENATE, No. 766

STATE OF NEW JERSEY

DATED: MAY 1, 1978

The purpose of this legislation is to improve the quality of justice with respect to administrative hearings. In many agencies hearing officers serve on a part-time basis. They are either self-employed persons who are paid per diem to hold hearings for State agencies or they are State employees who also perform other duties for their agency in addition to holding hearings. In both instances, a hearing officer frequently presides over cases in which his own employer is an interested party. In some agencies the back-log of cases is extensive and some administrative hearings have been cited as examples of faulty procedure.

The legislative goal embodied in this bill is to create a central independent agency staffed by professionals with the sole function of conducting administrative hearings. This will tend to eliminate conflict of interests for hearing officers, promote due process, expedite the just conclusion of contested cases and generally improve the quality of administrative justice.

The bill amends and supplements the "Administrative Procedure Act," (P. L. 1968, c. 410, C. 52:14B-1 et seq.) and repeals section 6 of that act. The legislation creates an Office of Administrative Law "in but not of" the Department of State. It transfers the "functions, powers and duties" of the Division of Administrative Procedure created pursuant to the "Administrative Procedure Act" to the Office of Administrative Law. The legislation creates the position of "Administrative Law Judge."

The Office of Administrative Law is headed by a director appointed for a 6-year term by the Governor with the advice and consent of the Senate. In addition, the present bill provides that full-time Administrative Law Judges are to be appointed for a 5-year term by the Governor, with Senatorial advice and consent.

The bill provides that administrative law judges be attorneys-at-law of the State but that persons who are not attorneys-at-law, but who, "in the judgment of the Governor or the director," have a special area of expertise, may be appointed to the office.

In order to insure expertise and sensitivity to the special needs of the agencies and to those of client groups, administrative law judges will not be rotated among agencies but will be permanently assigned according to their area of expertise. The bill does provide that persons who are not employees of the Office of Administrative Law may be specially appointed by the director to preside over a specific contested case.

The bill provides that a report and decision, which contains recommended findings of fact and conclusions of law on evidence presented at a hearing conducted pursuant to its provisions, must be filed not later than 45 days after a hearing is concluded. The head of the agency involved in the hearing is given 45 days to modify the recommended report and decision. However, provision is made for an extension of the time limits "for good cause shown."

The bill excludes the State Board of Parole, the Public Employment Relations Commission, the Division of Workers' Compensation and the Division of Tax Appeals from the jurisdiction of the Office of Administrative Law. This exclusion is based on the grounds that these agencies are specialized entities devoted solely to hearings in highly specialized areas.

As provided by present law, heads of agencies, and single members of multimember agencies, will be able to preside over contested cases.

Section 11 of the bill stipulates that all affected employees are protected by the provisions of the "State Agency Transfer Act," P. L. 1971, c. 375 (C. 52:14D-1 et seq.). The application of the provisions of the "State Agency Transfer Act" would "grandfather in" present employees of agencies whose functions are being transferred to the new office. This "grandfathering" would be inclusive of those employees presently serving as hearing officers.

The bill appropriates \$500,000.00 to provide the additional funding required by the creation of the office. The provisions of the bill are "inoperative" until six months following date of enactment however appointments can be made and "preparatory actions" taken immediately upon enactment.

SENATE REVENUE, FINANCE AND APPROPRIATIONS
COMMITTEE

STATEMENT TO
SENATE, No. 766
with committee amendments

STATE OF NEW JERSEY

DATED: MAY 4, 1978

The Senate Revenue, Finance and Appropriations Committee concurs in the statement on this bill by the Senate Committee on State Government, Federal and Interstate Relations and Veterans Affairs.

COMMITTEE AMENDMENTS

It is anticipated that in the implementation of this act a substantial portion of the operating budget will be derived from the budgets of agencies from which functions are transferred. Recognizing this and the effective date of the act, being 6 months after enactment, except for appointments and preparatory actions as may be necessary, the appropriation is reduced from \$500,000.00 to \$100,000.00.

SENATE COMMITTEE AMENDMENT TO

SENATE, No. 766

STATE OF NEW JERSEY

ADOPTED MAY 4, 1978

Amend page 7, section 14, line 3, delete "\$500,000.00", and insert "\$100,000.00".

CHAPTER

APPROVED

FROM THE OFFICE OF THE GOVERNOR

JULY 6, 1978

FOR FURTHER INFORMATION

FOR IMMEDIATE RELEASE

ANNE BURNS

Governor Brendan Byrne today signed into law S-766, sponsored by Senator Charles Yates (D-Burlington) and Laurence Weiss (D-Middlesex) which creates an Office of Administrative Law in the Department of State.

"This legislation has been a prime goal of this Administration," Governor Byrne said. "It will standardize hearing procedures and help eliminate delays in the disposition of many cases."

The new office will furnish administrative law judges, appointed by the Governor with the advice and consent of the Senate for five-year terms, to conduct hearings in contested administrative cases. These cases are currently being conducted by approximately 99 hearing officers employed by and under the direction of individual agencies.

The bill also transfers all the functions of the present Division of Administrative Procedures in the Department of State to the new office.

Under the legislation, the Governor may appoint, with the advice and consent of the Senate, a Director of the Office of Administrative Law who must be an attorney at law of New Jersey. The director's term will be six years.

Among other duties, the director is given the authority to develop rules and regulations governing procedures in the new office; assign supervisory judges and assign administrative law judges to conduct or assist in administrative duties.

The legislation requires administrative law judges to file a report with the agency within 45 days after a hearing is completed. The head of the agency then has 45 days in which to adopt, reject or modify the recommendations.

The State Board of Parole, the Public Employment Relations Commission, the Division of Worker's Compensation and the Division of Tax Appeals are exempt from the jurisdiction of this act.

The bill appropriates \$100,000 to fund the central management of the office. All other costs for the salaries of administrative law judges and ancillary services will be provided for by transfer of funds from the individual departments which currently carry on administrative hearings. ###