

52:14B-2

**LEGISLATIVE HISTORY CHECKLIST**  
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(Office of Administrative  
Law--amendments)

**NJSA:** 52:14B-2

**LAWS OF:** 1993 **CHAPTER:** 343

**BILL NO:** A2110

**SPONSOR(S)** Stuhltrager

**DATE INTRODUCED:** Judiciary

**COMMITTEE:** **ASSEMBLY:** Judiciary

**SENATE:** State Government

**AMENDED DURING PASSAGE:** Yes Amendments during passage  
First reprint enacted denoted by superscript numbers

**DATE OF PASSAGE:** **ASSEMBLY:** February 8, 1993

**SENATE:** December 13, 1993

**DATE OF APPROVAL:** December 27, 1993

**FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:**

**SPONSOR STATEMENT:** Yes

**COMMITTEE STATEMENT:** **ASSEMBLY:** Yes

**SENATE:** Yes

**FISCAL NOTE:** No

**VETO MESSAGE:** No

**MESSAGE ON SIGNING:** No

**FOLLOWING WERE PRINTED:**

**REPORTS:** No

**HEARINGS:** No

KBG:pp

P.L.1993, CHAPTER 343, approved December 27, 1993  
1992 Assembly No. 2110 (First Reprint)

1 **AN ACT** concerning administrative law judges, clarifying the  
2 authority of the Office of Administrative Law, and amending  
3 P.L.1968, c.410 and P.L.1978, c.67.

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

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

9 2. As used in this act:

10 (a) "State agency" or "agency" shall include each of the  
11 principal departments in the executive branch of the State  
12 Government, and all boards, divisions, commissions, agencies,  
13 departments, councils, authorities, offices or officers within any  
14 such departments now existing or hereafter established and  
15 authorized by statute to make, adopt or promulgate rules or  
16 adjudicate contested cases, except the office of the Governor.

17 (b) "Contested case" means a proceeding, including any  
18 licensing proceeding, in which the legal rights, duties, obligations,  
19 privileges, benefits or other legal relations of specific parties are  
20 required by constitutional right or by statute to be determined by  
21 an agency by decisions, determinations, or orders, addressed to  
22 them or disposing of their interests, after opportunity for an  
23 agency hearing, but shall not include any proceeding in the  
24 Division of Taxation, Department of the Treasury, which is  
25 reviewable de novo by the Tax Court.

26 (c) "Administrative adjudication" or "adjudication" includes  
27 any and every final determination, decision or order made or  
28 rendered in any contested case.

29 (d) "The head of the agency" means and includes the individual  
30 or group of individuals constituting the highest authority within  
31 any agency authorized or required by law to render an  
32 adjudication in a contested case.

33 (e) "Administrative rule" or "rule," when not otherwise  
34 modified, means each agency statement of general applicability  
35 and continuing effect that implements or interprets law or policy,  
36 or describes the organization, procedure or practice requirements  
37 of any agency. The term includes the amendment or repeal of  
38 any rule, but does not include: (1) statements concerning the  
39 internal management or discipline of any agency; (2) intraagency  
40 and interagency statements; and (3) agency decisions and findings  
41 in contested cases.

**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:  
Assembly AJL committee amendments adopted January 17, 1993.

1 (f) "License" includes the whole or part of any agency license,  
2 permit, certificate, approval, chapter, registration or other form  
3 of permission required by law.

4 (g) "Secretary" means the Secretary of State.

5 (h) "Director" means the Director and Chief Administrative  
6 Law Judge of the Office of Administrative Law, unless otherwise  
7 indicated by context.

8 (cf: P.L.1981, c.511, s.21)

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

11 5. (a) Each agency shall file with the Director and Chief  
12 Administrative Law Judge of the Office of Administrative Law a  
13 certified copy of each rule adopted by it.

14 (b) No rule hereafter adopted shall be effective unless it has  
15 been deemed to be approved by the Legislature pursuant to  
16 section 3 of this amendatory and supplementary act.

17 (c) The director shall: (1) accept for filing or publication any  
18 rule duly adopted and submitted by any agency pursuant to this  
19 act; (2) endorse upon the certified copy of each rule accepted for  
20 filing pursuant to this act the date and time upon which such rule  
21 was filed; and (3) maintain the certified copy of each rule so filed  
22 in a permanent register open to public inspection.

23 (d) The filing of a certified copy of any rule shall be deemed to  
24 establish the rebuttable presumptions that: (1) it was duly  
25 adopted; (2) it was duly submitted for prepublication and made  
26 available for public inspection at the hour and date endorsed upon  
27 it; (3) all requirements of this act and of interagency rules of the  
28 director relative to such rule have been complied with; (4) its  
29 text is the text of the rule as adopted. Judicial notice shall be  
30 taken of the text of each rule, duly filed.

31 (e) The publication of a rule in the New Jersey Administrative  
32 Code or the New Jersey Register shall be deemed to establish the  
33 rebuttable presumption that the rule was duly filed and that the  
34 text of the rule as so published is the text of the rule adopted.  
35 Judicial notice shall be taken of the text of each rule published in  
36 the New Jersey Administrative Code or the New Jersey Register.

37 (cf: P.L.1981, c.27, s.12)

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

40 10. In contested cases:

41 (a) The parties shall not be bound by rules of evidence whether  
42 statutory, common law, or adopted formally by the Rules of  
43 Court. All rules of evidence shall apply unless otherwise  
44 provided herein. The administrative law judge may in his  
45 discretion exclude any evidence if he finds that its probative  
46 value is substantially outweighed by the risk that its admission  
47 will either (i) necessitate undue consumption of time or (ii) create  
48 substantial danger of undue prejudice or confusion. The  
49 administrative law judge shall give effect to the rules of privilege  
50 recognized by law. Any party in a contested case may present his  
51 case or defense by oral and documentary evidence, submit  
52 rebuttal evidence and conduct such cross-examination as may be  
53 required, in the discretion of the administrative law judge, for a  
54 full and true disclosure of the facts.

1 (b) Notice may be taken of judicially noticeable facts. In  
2 addition, notice may be taken of generally recognized technical  
3 or scientific facts within the specialized knowledge of the agency  
4 or administrative law judge. Parties shall be notified either  
5 before or during the hearing, or by reference in preliminary  
6 reports or otherwise, of the material noticed, including any staff  
7 memoranda or data, and they shall be afforded an opportunity to  
8 contest the material so noticed. The experience, technical  
9 competence, and specialized knowledge of the agency or  
10 administrative law judge may be utilized in the evaluation of the  
11 evidence, provided this is disclosed of record.

12 (c) All hearings of a State agency required to be conducted as a  
13 contested case under this act or any other law shall be conducted  
14 by an administrative law judge assigned by the Director and Chief  
15 Administrative Law Judge of the Office of Administrative Law,  
16 except as provided by this amendatory and supplementary act. A  
17 recommended report and decision which contains recommended  
18 findings of fact and conclusions of law and which shall be based  
19 upon sufficient, competent, and credible evidence shall be filed,  
20 not later than 45 days after the hearing is concluded, with the  
21 agency in such form that it may be adopted as the decision in the  
22 case and delivered or mailed, to the parties of record with an  
23 indication of the date of receipt by the agency head; and an  
24 opportunity shall be afforded each party of record to file  
25 exceptions, objections, and replies thereto, and to present  
26 argument to the head of the agency or a majority thereof, either  
27 orally or in writing, as the agency may direct. The head of the  
28 agency, upon a review of the record submitted by the  
29 administrative law judge, shall adopt, reject or modify the  
30 recommended report and decision no later than 45 days after  
31 receipt of such recommendations. Unless the head of the agency  
32 modifies or rejects the report within such period, the decision of  
33 the administrative law judge shall be deemed adopted as the final  
34 decision of the head of the agency. The recommended report and  
35 decision shall be a part of the record in the case. For good cause  
36 shown, upon certification by the director and the agency head,  
37 the time limits established herein may be subject to extension.

38 (d) A final decision or order adverse to a party in a contested  
39 case shall be in writing or stated in the record. A final decision  
40 shall include findings of fact and conclusions of law, separately  
41 stated and shall be based only upon the evidence of record at the  
42 hearing, as such evidence may be established by rules of evidence  
43 and procedure promulgated by the director.

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

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

1 delivery or on the date of mailing, of the final decision to the  
2 parties of record whichever shall occur first, or shall be effective  
3 on any date after the date of delivery or mailing, as the agency  
4 may provide by general rule or by order in the case. The date of  
5 delivery or mailing shall be stamped on the face of the decision.  
6 (cf: P.L.1978, c.67, s.8)

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

9 3. The head of the office shall be the director who shall be an  
10 attorney-at-law of this State for a minimum of five years. The  
11 director shall be appointed by the Governor with the advice and  
12 consent of the Senate.

13 The director shall serve for a term of 6 years. As used in this  
14 act, "director" shall mean the Director of the Office of  
15 Administrative Law <sup>1</sup>and Chief Administrative Law Judge<sup>1</sup>.

16 The director shall devote <sup>1</sup>[his entire] full<sup>1</sup> time to the duties  
17 of <sup>1</sup>[his] the<sup>1</sup> office and shall receive a salary as provided by  
18 law. Any vacancy occurring in the office of the director shall be  
19 filled in the same manner as the original appointment, but for the  
20 unexpired term only.

21 (cf: P.L.1981, c.202, s.1)

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

24 5. The Director and Chief Administrative Law Judge of the  
25 Office of Administrative Law shall:

26 a. Administer and cause the work of the office to be  
27 performed in such manner and pursuant to such program as may  
28 be required or appropriate;

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

31 c. Except as otherwise provided in [subsection] subsections l.  
32 and t. below, appoint, pursuant to the provisions of Title [11] 11A  
33 of the [Revised Statutes] New Jersey Statutes, such clerical  
34 assistants and other personnel as may be required for the conduct  
35 of the office;

36 d. Assign and reassign personnel to employment within the  
37 office;

38 e. Develop uniform standards, rules of evidence, and  
39 procedures, including but not limited to standards for determining  
40 whether a summary or plenary hearing should be held to regulate  
41 the conduct of contested cases and the rendering of  
42 administrative adjudications;

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

47 g. Administer and supervise the procedures relating to the  
48 conduct of contested cases and the making of administrative  
49 adjudications, as defined by section 2 of P.L.1968, c.410  
50 (C.52:14B-2);

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

- 1 i. Assist agencies in the preparation, consideration, publication  
2 and interpretation of administrative rules required or appropriate  
3 pursuant to the Administrative Procedure Act, P.L.1968, c.410  
4 (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  
8 such 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  
13 law or in subject matter relating to the hearing functions of a  
14 State agency. [The entire time of a permanent administrative  
15 law judge shall be devoted to the duties of the office.]  
16 Administrative law judges shall receive such salaries as  
17 provided by law, shall not engage in the practice of law and shall  
18 devote full time to their judicial duties.  
19 [Administrative law judges shall be attorneys-at-law of this  
20 State, or any persons who are not attorneys-at-law, but who, in  
21 the judgment of the Governor or the director are qualified in the  
22 field of administrative law, administrative hearings and  
23 proceedings in subject matter relating to the hearing functions of  
24 a particular State agency] Administrative law judges appointed  
25 after the effective date of this amendatory act shall have been  
26 attorneys-at-law of this State for a minimum of five years. An  
27 administrative law judge appointed prior to the effective date of  
28 this amendatory act shall not be required to be an attorney or, if  
29 an attorney, shall not be required to have been an  
30 attorney-at-law for five years in order to be reappointed;
- 31 m. Appoint additional administrative law judges, qualified in  
32 the field of administrative law or in a subject matter relating to  
33 the hearing functions of a State agency, on a temporary or case  
34 basis as may be necessary during emergency or unusual situations  
35 for the proper performance of the duties of the office, pursuant  
36 to a reasonable fee schedule established in advance by the  
37 director. [Temporary administrative] Administrative law judges  
38 appointed pursuant to this procedure shall have the same  
39 qualifications for appointment as permanent administrative law  
40 judges;
- 41 n. Assign [an] administrative law [judge] judges [to any agency  
42 empowered] to conduct contested cases [to preside over such  
43 proceedings in contested cases] as [are] required by sections 9 and  
44 10 of P.L.1968, c.410 (C.52:14B-9 and 52:14B-10). Proceedings  
45 shall be scheduled for suitable locations, either at the offices of  
46 the Office of Administrative Law or elsewhere in the State,  
47 taking into consideration the convenience of the witnesses and  
48 parties, as well as the nature of the cases and proceedings;
- 49 o. Assign an administrative law judge or other personnel, if so  
50 requested by the head of an agency and if the director deems  
51 appropriate, to any agency to conduct or assist in administrative  
52 duties and proceedings other than those related to contested  
53 cases or administrative adjudications, including but not limited to  
54 rule-making and investigative hearings, if so requested by the

1 head of an agency and if the director deems appropriate];

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

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

8 r. Develop and maintain a program for the continuing training  
9 and education of administrative law judges and agencies in regard  
10 to their responsibilities under this act; [ and]

11 s. Develop and implement a program of judicial evaluation to  
12 aid himself in the performance of his duties, and to assist in the  
13 making of reappointments under section 4 of P.L.1978, c.67  
14 (C.52:14F-4). This program of evaluation shall focus on three  
15 areas of judicial performance: competence, productivity, and  
16 demeanor. It shall include consideration of: industry and  
17 promptness in adhering to schedules, making rulings and rendering  
18 decisions; tolerance, courtesy, patience, attentiveness, and  
19 self-control in dealing with litigants, witnesses and counsel, and  
20 in presiding over contested cases; legal skills and knowledge of  
21 the law and new legal developments; analytical talents and  
22 writing abilities; settlement skills; quantity, nature and quality of  
23 caseload disposition; impartiality and conscientiousness. The  
24 director shall develop standards and procedures for this program,  
25 which shall include taking comments from selected litigants and  
26 lawyers who have appeared before a judge. The methods used by  
27 the judge but not the result arrived at by the judge in any case  
28 may be used in evaluating a judge. Before implementing any  
29 action based on the findings of the evaluation program, the  
30 director shall discuss the findings and the proposed action with  
31 the affected judge. The evaluation by the director and supporting  
32 data shall be submitted to the Governor at least 90 days before  
33 the expiration of any term. These documents shall remain  
34 confidential and shall be exempted from the requirements of  
35 P.L.1963, c.73 (C.47:1A-1 et seq.).

36 t. Promulgate and enforce rules for reasonable sanctions,  
37 including assessments of costs and attorneys fees which may be  
38 imposed on a party, and attorney or other representative of a  
39 party who, without just excuse, fails to comply with any  
40 procedural order or with any standard or rule applying to a  
41 contested case and including the imposition of a fine not to  
42 exceed \$1,000.00 for misconduct which obstructs or tends to  
43 obstruct the conduct of contested cases; and

44 u. Have power in connection with contested case hearings (1)  
45 to administer oaths to any and all persons, <sup>1</sup>[(3)] (2)<sup>1</sup> to compel by  
46 subpoena the attendance of witnesses and the production of  
47 books, records, accounts, papers, and documents of any person or  
48 persons, (3) to entertain <sup>1</sup>[and rule upon]<sup>1</sup> objections to  
49 subpoenas, and (4) <sup>1</sup>[in ruling] to rule<sup>1</sup> upon objections to  
50 subpoenas <sup>1</sup>[, to decide all questions of fact and law which any  
51 tribunal of this State is authorized to decide,]<sup>1</sup> except, that any  
52 orders of administrative law judges <sup>1</sup>[which grant or deny the  
53 issuance of administrative subpoenas,] regarding these  
54 objections<sup>1</sup> may be reviewed by the agency head before the

1 completion of the contested case in accordance with procedural  
2 rules, adopted by the Director and Chief Administrative Law  
3 Judge of the Office of Administrative Law. Misconduct by any  
4 party, attorney or representative of a party or witness which  
5 obstructs or tends to obstruct the conduct of a contested case or  
6 the failure of any witness, when duly subpoenaed to attend, give  
7 testimony or produce any record, or the failure to pay any  
8 sanction assessed pursuant to subsection u. 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.

11 (cf: P.L.1981, c.202, s.3)

12 6. Section 6 of P.L.1978, c.67 (C.52:14F-6) is amended to read  
13 as follows:

14 6. a. Administrative law judges shall be assigned by the  
15 director from the office to an agency to preside over contested  
16 cases in accordance with the special expertise of the  
17 administrative law judge;

18 b. A person who is not an employee of the office may be  
19 specially appointed and assigned by the director [to an agency] to  
20 preside over a specific contested case, if the director certifies in  
21 writing the reasons why the character of the case requires  
22 utilization of a different procedure for assigning administrative  
23 law judges than is established by this amendatory and  
24 supplementary act.

25 c. Each administrative law judge shall have and exercise the  
26 powers conferred upon the director to the extent that the  
27 director shall delegate them by rule.

28 (cf: P.L.1978, c.67, s.6)

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

31 7. (a) The director shall compile, index, and publish a  
32 publication to be known as the "New Jersey Administrative  
33 Code," containing all effective rules adopted by each agency.  
34 The code shall be periodically supplemented or revised, and shall  
35 remain under the control and direction of the Office of  
36 Administrative Law regardless of the method or medium chosen  
37 to store, maintain or distribute it.

38 (b) The director shall publish a [monthly] bulletin, at least  
39 monthly, to be known as the "New Jersey Register" setting  
40 forth: (1) the text of all rules filed during the preceding month,  
41 and (2) such notices as shall have been submitted pursuant to this  
42 act.

43 (c) The director shall issue annually a schedule for the filing of  
44 documents for publication in the New Jersey Register. The  
45 director may omit from the New Jersey Register or compilation  
46 any rule the publication of which would be unduly cumbersome,  
47 expensive, or otherwise inexpedient, if the rule in printed or  
48 processed form is made available by the adopting agency on  
49 application thereto, and if the register or code contains a notice  
50 stating the general subject matter of the omitted rule and stating  
51 the manner in which a copy thereof may be obtained. [He] The  
52 director may include within the New Jersey Register and the New  
53 Jersey Administrative Code any document, material or  
54 information which [he in his discretion] the director may deem



1 appropriate and convenient.

2 (d) At least one copy of the New Jersey Administrative Code  
3 and copies of the New Jersey Register and compilations shall be  
4 made available upon request to the Governor, the head of each  
5 principal department, the Office of Legislative Services  
6 Agency, the State Library and to such other State agencies and  
7 public officials as the director may designate free of charge [and  
8 to other persons at prices fixed by the director to cover mailing  
9 and publication costs]. The director shall provide for the  
10 publication, sale and distribution of the Code and Register to the  
11 public by whatever means, including entering into contractual or  
12 licensing arrangements, most likely to ensure the widest  
13 dissemination possible.

14 (e) [To facilitate uniformity in the compilation and indexing of  
15 all agency rules, the director, in collaboration with the Director  
16 of the Division of the State Library, Archives and History, shall  
17 formulate and distribute to all agencies standards for the form,  
18 arrangement, numbering and indexing of agency rules and shall  
19 consult with each agency in the preparation of compilations of its  
20 rules.] (Deleted by amendment, P.L. , c. ).

21 (f) The director may determine the order in which such rules  
22 or any parts thereof are to be presented in the New Jersey  
23 Register and the New Jersey Administrative Code; [he] the  
24 director may number or renumber the parts, paragraphs and  
25 sections into which such rules may be divided; [he] the director  
26 may further divide or combine existing parts, paragraphs and  
27 sections and [he] may provide for appropriate digests, indices and  
28 other related material. [He] The director shall not, however,  
29 change the language of any existing rule excepting a title or  
30 explanatory caption; but [he] shall recommend any such changes  
31 as [he] the director may deem advisable to the administrative  
32 agency authorized to adopt such rule. The director may  
33 periodically review the New Jersey Administrative Code for  
34 expired rules and shall remove such rules upon notice to the  
35 appropriate agency head.

36 (g) The director is hereby authorized and empowered to  
37 promulgate and enforce interagency rules for the implementation  
38 and administration of this act.<sup>1</sup>

39 (cf: P.L. 1973, c. 227, s. 1)

40 <sup>1</sup>[7.] §. 1 This act shall take effect immediately.

41

42

43

44

45 Makes sundry changes to the statute establishing the Office of  
46 Administrative Law.

[FIRST REPRINT]  
ASSEMBLY, No. 2110

STATE OF NEW JERSEY

INTRODUCED DECEMBER 17, 1992

By Assemblyman STUHLTRAGER

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2 authority of the Office of Administrative Law, and amending  
3 P.L.1968, c.410 and P.L.1978, c.67.

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

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8 read as follows:

9 2. As used in this act:

10 (a) "State agency" or "agency" shall include each of the  
11 principal departments in the executive branch of the State  
12 Government, and all boards, divisions, commissions, agencies,  
13 departments, councils, authorities, offices or officers within any  
14 such departments now existing or hereafter established and  
15 authorized by statute to make, adopt or promulgate rules or  
16 adjudicate contested cases, except the office of the Governor.

17 (b) "Contested case" means a proceeding, including any  
18 licensing proceeding, in which the legal rights, duties, obligations,  
19 privileges, benefits or other legal relations of specific parties are  
20 required by constitutional right or by statute to be determined by  
21 an agency by decisions, determinations, or orders, addressed to  
22 them or disposing of their interests, after opportunity for an  
23 agency hearing, but shall not include any proceeding in the  
24 Division of Taxation, Department of the Treasury, which is  
25 reviewable de novo by the Tax Court.

26 (c) "Administrative adjudication" or "adjudication" includes  
27 any and every final determination, decision or order made or  
28 rendered in any contested case.

29 (d) "The head of the agency" means and includes the individual  
30 or group of individuals constituting the highest authority within  
31 any agency authorized or required by law to render an  
32 adjudication in a contested case.

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14 (b) No rule hereafter adopted shall be effective unless it has  
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17 (c) The director shall: (1) accept for filing or publication any  
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20 filing pursuant to this act the date and time upon which such rule  
21 was filed; and (3) maintain the certified copy of each rule so filed  
22 in a permanent register open to public inspection.

23 (d) The filing of a certified copy of any rule shall be deemed to  
24 establish the rebuttable presumptions that: (1) it was duly  
25 adopted; (2) it was duly submitted for prepublication and made  
26 available for public inspection at the hour and date endorsed upon  
27 it; (3) all requirements of this act and of interagency rules of the  
28 director relative to such rule have been complied with; (4) its  
29 text is the text of the rule as adopted. Judicial notice shall be  
30 taken of the text of each rule, duly filed.

31 (e) The publication of a rule in the New Jersey Administrative  
32 Code or the New Jersey Register shall be deemed to establish the  
33 rebuttable presumption that the rule was duly filed and that the  
34 text of the rule as so published is the text of the rule adopted.  
35 Judicial notice shall be taken of the text of each rule published in  
36 the New Jersey Administrative Code or the New Jersey Register.

37 (cf: P.L.1981, c.27, s.12)

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

40 10. In contested cases:

41 (a) The parties shall not be bound by rules of evidence whether  
42 statutory, common law, or adopted formally by the Rules of  
43 Court. All relevant evidence is admissible, except as otherwise  
44 provided herein. The administrative law judge may in his  
45 discretion exclude any evidence if he finds that its probative  
46 value is substantially outweighed by the risk that its admission  
47 will either (i) necessitate undue consumption of time or (ii) create  
48 substantial danger of undue prejudice or confusion. The  
49 administrative law judge shall give effect to the rules of privilege  
50 recognized by law. Any party in a contested case may present his  
51 case or defense by oral and documentary evidence, submit  
52 rebuttal evidence and conduct such cross-examination as may be  
53 required, in the discretion of the administrative law judge, for a  
54 full and true disclosure of the facts.

1 (b) Notice may be taken of judicially noticeable facts. In  
2 addition, notice may be taken of generally recognized technical  
3 or scientific facts within the specialized knowledge of the agency  
4 or administrative law judge. Parties shall be notified either  
5 before or during the hearing, or by reference in preliminary  
6 reports or otherwise, of the material noticed, including any staff  
7 memoranda or data, and they shall be afforded an opportunity to  
8 contest the material so noticed. The experience, technical  
9 competence, and specialized knowledge of the agency or  
10 administrative law judge may be utilized in the evaluation of the  
11 evidence, provided this is disclosed of record.

12 (c) All hearings of a State agency required to be conducted as a  
13 contested case under this act or any other law shall be conducted  
14 by an administrative law judge assigned by the Director and Chief  
15 Administrative Law Judge of the Office of Administrative Law,  
16 except as provided by this amendatory and supplementary act. A  
17 recommended report and decision which contains recommended  
18 findings of fact and conclusions of law and which shall be based  
19 upon sufficient, competent, and credible evidence shall be filed,  
20 not later than 45 days after the hearing is concluded, with the  
21 agency in such form that it may be adopted as the decision in the  
22 case and delivered or mailed, to the parties of record with an  
23 indication of the date of receipt by the agency head; and an  
24 opportunity shall be afforded each party of record to file  
25 exceptions, objections, and replies thereto, and to present  
26 argument to the head of the agency or a majority thereof, either  
27 orally or in writing, as the agency may direct. The head of the  
28 agency, upon a review of the record submitted by the  
29 administrative law judge, shall adopt, reject or modify the  
30 recommended report and decision no later than 45 days after  
31 receipt of such recommendations. Unless the head of the agency  
32 modifies or rejects the report within such period, the decision of  
33 the administrative law judge shall be deemed adopted as the final  
34 decision of the head of the agency. The recommended report and  
35 decision shall be a part of the record in the case. For good cause  
36 shown, upon certification by the director and the agency head,  
37 the time limits established herein may be subject to extension.

38 (d) A final decision or order adverse to a party in a contested  
39 case shall be in writing or stated in the record. A final decision  
40 shall include findings of fact and conclusions of law, separately  
41 stated and shall be based only upon the evidence of record at the  
42 hearing, as such evidence may be established by rules of evidence  
43 and procedure promulgated by the director.

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

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

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

6 (cf: P.L.1978, c.67, s.8)

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

9 3. The head of the office shall be the director who shall be an  
10 attorney-at-law of this State for a minimum of five years. The  
11 director shall be appointed by the Governor with the advice and  
12 consent of the Senate.

13 The director shall serve for a term of 6 years. As used in this  
14 act, "director" shall mean the Director of the Office of  
15 Administrative Law <sup>1</sup>and Chief Administrative Law Judge<sup>1</sup>.

16 The director shall devote <sup>1</sup>[his entire] full<sup>1</sup> time to the duties  
17 of <sup>1</sup>[his] the<sup>1</sup> office and shall receive a salary as provided by  
18 law. Any vacancy occurring in the office of the director shall be  
19 filled in the same manner as the original appointment, but for the  
20 unexpired term only.

21 (cf: P.L.1981, c.202, s.1)

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

24 5. The Director and Chief Administrative Law Judge of the  
25 Office of Administrative Law shall:

26 a. Administer and cause the work of the office to be  
27 performed in such manner and pursuant to such program as may  
28 be required or appropriate;

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

31 c. Except as otherwise provided in [subsection] subsections l.  
32 and t., below, appoint, pursuant to the provisions of Title [11] 11A  
33 of the [Revised Statutes] New Jersey Statutes, such clerical  
34 assistants and other personnel as may be required for the conduct  
35 of the office;

36 d. Assign and reassign personnel to employment within the  
37 office;

38 e. Develop uniform standards, rules of evidence, and  
39 procedures, including but not limited to standards for determining  
40 whether a summary or plenary hearing should be held to regulate  
41 the conduct of contested cases and the rendering of  
42 administrative adjudications;

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

47 g. Administer and supervise the procedures relating to the  
48 conduct of contested cases and the making of administrative  
49 adjudications, as defined by section 2 of P.L.1968, c.410  
50 (C.52:14B-2);

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

- 1 i. Assist agencies in the preparation, consideration, publication  
2 and interpretation of administrative rules required or appropriate  
3 pursuant to the Administrative Procedure Act, P.L.1968, c.410  
4 (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  
8 such 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  
13 law or in subject matter relating to the hearing functions of a  
14 State agency. [The entire time of a permanent administrative  
15 law judge shall be devoted to the duties of the office.]
- 16 Administrative law judges shall receive such salaries as  
17 provided by law, shall not engage in the practice of law and shall  
18 devote full time to their judicial duties.
- 19 [Administrative law judges shall be attorneys-at-law of this  
20 State, or any persons who are not attorneys-at-law, but who, in  
21 the judgment of the Governor or the director are qualified in the  
22 field of administrative law, administrative hearings and  
23 proceedings in subject matter relating to the hearing functions of  
24 a particular State agency] Administrative law judges appointed  
25 after the effective date of this amendatory act shall<sup>1</sup> have been  
26 attorneys-at-law of this State for a minimum of five years. An  
27 administrative law judge appointed prior to the effective date of  
28 this amendatory act shall<sup>1</sup> not be required to be an attorney or, if  
29 an attorney, shall not be required to have been an  
30 attorney-at-law for five years in order to be reappointed;
- 31 m. Appoint additional administrative law judges, qualified in  
32 the field of administrative law or in a subject matter relating to  
33 the hearing functions of a State agency, on a temporary or case  
34 basis as may be necessary during emergency or unusual situations  
35 for the proper performance of the duties of the office, pursuant  
36 to a reasonable fee schedule established in advance by the  
37 director. [Temporary administrative] Administrative law judges  
38 appointed pursuant to this procedure shall have the same  
39 qualifications for appointment as permanent administrative law  
40 judges;
- 41 n. Assign [an] administrative law [judge] judges [to any agency  
42 empowered] to conduct contested cases [to preside over such  
43 proceedings in contested cases] as [are] required by sections 9 and  
44 10 of P.L.1968, c.410 (C.52:14B-9 and 52:14B-10). Proceedings  
45 shall be scheduled for suitable locations, either at the offices of  
46 the Office of Administrative Law or elsewhere in the State,  
47 taking into consideration the convenience of the witnesses and  
48 parties, as well as the nature of the cases and proceedings;
- 49 o. Assign an administrative law judge or other personnel, if so  
50 requested by the head of an agency and if the director deems  
51 appropriate, to any agency to conduct or assist in administrative  
52 duties and proceedings other than those related to contested  
53 cases or administrative adjudications, including but not limited to  
54 rule-making and investigative hearings[, if so requested by the

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

1 completion of the contested case in accordance with procedural  
2 rules, adopted by the Director and Chief Administrative Law  
3 Judge of the Office of Administrative Law. Misconduct by any  
4 party, attorney or representative of a party or witness which  
5 obstructs or tends to obstruct the conduct of a contested case or  
6 the failure of any witness, when duly subpoenaed to attend, give  
7 testimony or produce any record, or the failure to pay any  
8 sanction assessed pursuant to subsection u. 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.

11 (cf: P.L.1981, c.202, s.3)

12 6. Section 6 of P.L.1978, c.67 (C.52:14F-6) is amended to read  
13 as follows:

14 6. a. Administrative law judges shall be assigned by the  
15 director from the office to an agency to preside over contested  
16 cases in accordance with the special expertise of the  
17 administrative law judge;

18 b. A person who is not an employee of the office may be  
19 specially appointed and assigned by the director [to an agency] to  
20 preside over a specific contested case, if the director certifies in  
21 writing the reasons why the character of the case requires  
22 utilization of a different procedure for assigning administrative  
23 law judges than is established by this amendatory and  
24 supplementary act.

25 c. Each administrative law judge shall have and exercise the  
26 powers conferred upon the director to the extent that the  
27 director shall delegate them by rule.

28 (cf: P.L.1978, c.67, s.6)

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

31 7. (a) The director shall compile, index, and publish a  
32 publication to be known as the "New Jersey Administrative  
33 Code," containing all effective rules adopted by each agency.  
34 The code shall be periodically supplemented or revised, and shall  
35 remain under the control and direction of the Office of  
36 Administrative Law regardless of the method or medium chosen  
37 to store, maintain or distribute it.

38 (b) The director shall publish a [monthly] bulletin, at least  
39 monthly, to be known as the "New Jersey Register" setting  
40 forth: (1) the text of all rules filed during the preceding month,  
41 and (2) such notices as shall have been submitted pursuant to this  
42 act.

43 (c) The director shall issue annually a schedule for the filing of  
44 documents for publication in the New Jersey Register. The  
45 director may omit from the New Jersey Register or compilation  
46 any rule the publication of which would be unduly cumbersome,  
47 expensive, or otherwise inexpedient, if the rule in printed or  
48 processed form is made available by the adopting agency on  
49 application thereto, and if the register or code contains a notice  
50 stating the general subject matter of the omitted rule and stating  
51 the manner in which a copy thereof may be obtained. [He] The  
52 director may include within the New Jersey Register and the New  
53 Jersey Administrative Code any document, material or  
54 information which [he in his discretion] the director may deem



1 appropriate and convenient.

2 (d) At least one copy of the New Jersey Administrative Code  
3 and copies of the New Jersey Register and compilations shall be  
4 made available upon request to the Governor, the head of each  
5 principal department, the Office of Legislative Services  
6 [Agency], the State Library and to such other State agencies and  
7 public officials as the director may designate free of charge [and  
8 to other persons at prices fixed by the director to cover mailing  
9 and publication costs]. The director shall provide for the  
10 publication, sale and distribution of the Code and Register to the  
11 public by whatever means, including entering into contractual or  
12 licensing arrangements, most likely to ensure the widest  
13 dissemination possible.

14 (e) [To facilitate uniformity in the compilation and indexing of  
15 all agency rules, the director, in collaboration with the Director  
16 of the Division of the State Library, Archives and History, shall  
17 formulate and distribute to all agencies standards for the form,  
18 arrangement, numbering and indexing of agency rules and shall  
19 consult with each agency in the preparation of compilations of its  
20 rules.] (Deleted by amendment, P.L. , c. ).

21 (f) The director may determine the order in which such rules  
22 or any parts thereof are to be presented in the New Jersey  
23 Register and the New Jersey Administrative Code; [he] the  
24 director may number or renumber the parts, paragraphs and  
25 sections into which such rules may be divided; [he] the director  
26 may further divide or combine existing parts, paragraphs and  
27 sections and [he] may provide for appropriate digests, indices and  
28 other related material. [He] The director shall not, however,  
29 change the language of any existing rule excepting a title or  
30 explanatory caption; but [he] shall recommend any such changes  
31 as [he] the director may deem advisable to the administrative  
32 agency authorized to adopt such rule. The director may  
33 periodically review the New Jersey Administrative Code for  
34 expired rules and shall remove such rules upon notice to the  
35 appropriate agency head.

36 (g) The director is hereby authorized and empowered to  
37 promulgate and enforce interagency rules for the implementation  
38 and administration of this act.<sup>1</sup>

39 (cf: P.L.1973, c.227, s.1)

40 <sup>1</sup>[7.] 8.<sup>1</sup> This act shall take effect immediately.

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43

44

45 Makes sundry changes to the statute establishing the Office of  
46 Administrative Law.

1 representative of a party or witness which obstructs or tends to  
2 obstruct the conduct of a contested case or the failure of any  
3 witness, when duly subpoenaed to attend, give testimony or  
4 produce any record, or the failure to pay any sanction assessed  
5 pursuant to subsection u. of this section, shall be punishable by  
6 the Superior Court in the same manner as such failure is  
7 punishable by such court in a case pending therein.

8 (cf: P.L.1981, c.202, s.3)

9 6. Section 6 of P.L.1978, c.67 (C.52:14F-6) is amended to read  
10 as follows:

11 6. a. Administrative law judges shall be assigned by the  
12 director from the office to an agency to preside over contested  
13 cases in accordance with the special expertise of the  
14 administrative law judge;

15 b. A person who is not an employee of the office may be  
16 specially appointed and assigned by the director [to an agency] to  
17 preside over a specific contested case, if the director certifies in  
18 writing the reasons why the character of the case requires  
19 utilization of a different procedure for assigning administrative  
20 law judges than is established by this amendatory and  
21 supplementary act.

22 c. Each administrative law judge shall have and exercise the  
23 powers conferred upon the director to the extent that the  
24 director shall delegate them by rule.

25 (cf: P.L.1978, c.67, s.6)

26 7. This act shall take effect immediately.

27  
28  
29 **STATEMENT**

30  
31 This bill makes various changes to the statute which  
32 established the Office of Administrative Law. It provides that  
33 the agency's director shall also be the chief administrative law  
34 judge and authorizes that person and other administrative law  
35 judges to impose sanctions and penalties upon uncooperative  
36 parties to contested cases and their attorneys or other  
37 representatives, and to compel the attendance of witnesses and  
38 the production of records by subpoena. The bill further requires  
39 that future administrative law judges must have been  
40 attorneys-at-law at least five years prior to appointment.

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46 Makes sundry changes to the statute establishing the Office of  
Administrative Law.

ASSEMBLY JUDICIARY, LAW AND PUBLIC SAFETY  
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2110

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 11, 1993

The Assembly Judiciary, Law and Public Safety Committee reports favorably and with committee amendments Assembly Bill No. 2110.

This bill makes various changes to the statute which established the Office of Administrative Law. It provides that the agency's director shall also be the chief administrative law judge and authorizes that person and other administrative law judges to impose sanctions and penalties upon uncooperative parties to contested cases and their attorneys or other representatives, and to compel the attendance of witnesses and the production of records by subpoena. The bill further requires that future administrative law judges must have been attorneys-at-law at least five years prior to appointment.

Some of the committee amendments are technical in nature. The amendments in section 4 of the bill include the reference to "Chief Administrative Law Judge" in the definition of "Director" as is done in other sections of the bill and make other language in that section gender neutral. The amendments in section 5 correct language which was omitted during drafting. That language clarifies that any administrative law judge appointed after the effective date of the bill must be an attorney for at least five years. Persons appointed as administrative law judges prior to the effective date may be reappointed regardless of whether they are attorneys or have the five year minimum.

The committee amendments also make changes in the language in subsection u. of section 5 concerning subpoenas. As amended, that subsection provides in part that administrative law judges have the power to rule upon objections to subpoenas except, that any orders of administrative law judges regarding these objections may be reviewed by the agency head. The committee amendments add a new section 7 to the bill concerning the publication of the "New Jersey Administrative Code".

ASSEMBLY AIL COMMITTEE

AMENDMENTS

to

ADOPTED

14N 11 1993

Assembly, No. 2110

(Sponsored by Assemblyman Stuhltrager)

REPLACE SECTION 4 TO READ:

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

3. The head of the office shall be the director who shall be an attorney-at-law of this State for a minimum of five years. The director shall be appointed by the Governor with the advice and consent of the Senate.

The director shall serve for a term of 6 years. As used in this act, "director" shall mean the Director of the Office of Administrative Law <sup>1</sup>and Chief Administrative Law Judge<sup>1</sup>.

The director shall devote <sup>1</sup>[his entire] full<sup>1</sup> time to the duties of <sup>1</sup>[his] the<sup>1</sup> office and shall receive a salary as provided by law. Any vacancy occurring in the office of the director shall be filled in the same manner as the original appointment, but for the unexpired term only.

(cf: P.L.1981, c.202, s.1)

REPLACE SECTION 5 TO READ:

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

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

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

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

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

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

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

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

g. Administer and supervise the procedures relating to the conduct of contested cases and the making of administrative adjudications, as defined by section 2 of P.L.1968, c.410 (C.52:14B-2);

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

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

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

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

l. Assign permanent administrative law judges at supervisory and other levels who are qualified in the field of administrative law or in subject matter relating to the hearing functions of a State agency. [The entire time of a permanent administrative law judge shall be devoted to the duties of the office.]

Administrative law judges shall receive such salaries as provided by law, shall not engage in the practice of law and shall devote full time to their judicial duties.

[Administrative law judges shall be attorneys-at-law of this State, or any persons who are not attorneys-at-law, but who, in the judgment of the Governor or the director are qualified in the field of administrative law, administrative hearings and proceedings in subject matter relating to the hearing functions of a particular State agency] Administrative law judges appointed after the effective date of this amendatory act shall<sup>1</sup> have been attorneys-at-law of this State for a minimum of five years. An administrative law judge appointed prior to the effective date of this amendatory act shall<sup>1</sup> not be required to be an attorney or, if an attorney, shall not be required to have been an attorney-at-law for five years in order to be reappointed;

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

n. Assign [an] administrative law [judge] judges [to any agency empowered] to conduct contested cases [to preside over such proceedings in contested cases] as [are] required by sections 9 and 10 of P.L.1968, c.410 (C.52:14B-9 and 52:14B-10). Proceedings shall be scheduled for suitable locations, either at the offices of the Office of Administrative Law or elsewhere in the State, taking into consideration the convenience of the witnesses and parties, as well as the nature of the cases and proceedings;

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

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

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

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

s. Develop and implement a program of judicial evaluation to aid himself in the performance of his duties, and to assist in the making of reappointments under section 4 of P.L.1978, c.67 (C.52:14F-4). This program of evaluation shall focus on three areas of judicial performance: competence, productivity, and demeanor. It shall include consideration of: industry and promptness in adhering to schedules, making rulings and rendering decisions; tolerance, courtesy, patience, attentiveness, and self-control in dealing with litigants, witnesses and counsel, and in presiding over contested cases; legal skills and knowledge of the law and new legal developments; analytical talents and writing abilities; settlement skills; quantity, nature and quality of caseload disposition; impartiality and conscientiousness. The director shall develop standards and procedures for this program, which shall include taking comments from selected litigants and lawyers who have appeared before a judge. The methods used by the judge but not the result arrived at by the judge in any case may be used in evaluating a judge. Before implementing any action based on the findings of the evaluation program, the director shall discuss the findings and the proposed action with the affected judge. The evaluation by the director and supporting data shall be submitted to the Governor at least 90 days before the expiration of any term. These documents shall remain confidential and shall be exempted from the requirements of P.L.1963, c.73 (C.47:1A-1 et seq.).

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

*to rule*

u. Have power in connection with contested case hearings (1) to administer oaths to any and all persons, <sup>1</sup>[(3)] (2) <sup>1</sup> to compel by subpoena the attendance of witnesses and the production of books, records, accounts, papers, and documents of any person or persons, (3) to entertain and rule upon objections to subpoenas, and (4) ~~to entertain~~ upon objections to subpoenas, <sup>1</sup>[to decide all questions of fact and law which any tribunal of this State is authorized to decide,] <sup>1</sup> except, that any orders of administrative law judges <sup>1</sup>[which grant or deny the issuance of administrative subpoenas,] regarding these objections <sup>1</sup> may be reviewed by the agency head before the completion of the contested case in accordance with procedural rules, adopted by the Director and Chief Administrative Law Judge of the Office of Administrative Law. Misconduct by any party, attorney or representative of a party or witness which obstructs or tends to obstruct the conduct of a contested case or the failure of any witness, when duly subpoenaed to attend, give testimony or produce any record, or the failure to pay any sanction assessed pursuant to subsection u. of this section, shall be punishable by the Superior Court in the same manner as such failure is punishable by such court in a case pending therein.

*Can ruling? to rule*

(cf: P.L.1981, c.202, s.3)

**INSERT NEW SECTION 7 TO READ:**

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

7. (a) The director shall compile, index, and publish a publication to be known as the "New Jersey Administrative Code," containing all effective rules adopted by each agency. The code shall be periodically supplemented or revised, and shall remain under the control and direction of the Office of Administrative Law regardless of the method or medium chosen to store, maintain or distribute it.

(b) The director shall publish a [monthly] bulletin, at least monthly, to be known as the "New Jersey Register" setting forth: (1) the text of all rules filed during the preceding month, and (2) such notices as shall have been submitted pursuant to this act.

(c) The director shall issue annually a schedule for the filing of documents for publication in the New Jersey Register. The director may omit from the New Jersey Register or compilation any rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the rule in printed or processed form is made available by the adopting agency on application thereto, and if the register or code contains a notice stating the general subject matter of the omitted rule and stating the manner in which a copy thereof may be obtained. [He] The director may include within the New Jersey Register and the New Jersey Administrative Code any document, material or information which [he in his discretion] the director may deem appropriate and convenient.

(d) At least one copy of the New Jersey Administrative Code and copies of the New Jersey Register and compilations shall be made available upon request to the Governor, the head of each principal department, the Office of Legislative Services [Agency], the State Library and to such other State agencies and public officials as the director may designate free of charge [and to other persons at prices fixed by the director to cover mailing and publication costs]. The director shall provide for the publication, sale and distribution of the Code and Register to the public by whatever means, including entering into contractual or licensing arrangements, most likely to ensure the widest dissemination possible.

(e) [To facilitate uniformity in the compilation and indexing of all agency rules, the director, in collaboration with the Director of the Division of the State Library, Archives and History, shall formulate and distribute to all agencies standards for the form, arrangement, numbering and indexing of agency rules and shall consult with each agency in the preparation of compilations of its rules.] [Deleted by amendment, P.L. , c. ]

(f) The director may determine the order in which such rules or any parts thereof are to be presented in the New Jersey Register and the New Jersey Administrative Code; [he] the director may number or renumber the parts, paragraphs and sections into which such rules may be divided; [he] the director may further divide or combine existing parts, paragraphs and sections and [he] may provide for appropriate digests, indices and other related material. [He] The director shall not, however, change the language of any existing rule excepting a title or explanatory caption; but [he] shall recommend any such changes as [he] the director may deem advisable to the administrative agency authorized to adopt such rule. The director may periodically review the New Jersey Administrative Code for expired rules and shall remove such rules upon notice to the appropriate agency head.

(g) The director is hereby authorized and empowered to promulgate and enforce interagency rules for the implementation and administration of this act.

(cf: P.L.1973, c.227, s.1) †

RENUMBER SECTION 7 AS SECTION 8

NOTE TO BPO: REPLACE  
"SUBPENA" with "SUBPOENA" -  
no underlining, no superscripts  
per MWT



SENATE STATE GOVERNMENT COMMITTEE

STATEMENT TO

[FIRST REPRINT]

ASSEMBLY, No. 2110

STATE OF NEW JERSEY

DATED: JUNE 24, 1993

The Senate State Government Committee reports favorably Assembly Bill No. 2110 [1R].

This bill provides that the director of the Office of Administrative Law shall also be the office's chief administrative law judge. It gives administrative law judges the power to: (1) impose sanctions, including the assessment of costs and attorneys fees, upon a party, attorney or other representative who fails to comply with a procedural order or any standard or rule; (2) impose fines, including the imposition of a fine not to exceed \$1,000 for misconduct which obstructs a contested case; and (3) compel by subpoena the attendance of witnesses and the production of records.

The bill provides that the director shall issue annually a schedule for the filing of documents for publication in the New Jersey Register. It also provides that the director may periodically review the New Jersey Administrative Code for expired rules and remove such rules.

The bill requires that future administrative law judges must have been attorneys-at-law for at least five years prior to appointment.