

1 HB517
2 117514-1
3 By Representative Ball
4 RFD: Government Appropriations
5 First Read: 09-FEB-10

2
3
4
5
6
7
8 SYNOPSIS: This bill would establish an Office of
9 Administrative Hearings as an independent unit in
10 the executive branch of government to conduct
11 administrative hearings currently conducted by the
12 Administrative Law Judge Division.

13 This bill would create the State Advisory
14 Council on Administrative Hearings that, along with
15 the chief administrative law judge, would
16 promulgate rules.

17 This bill would provide for the compensation
18 of the employees of the Office of Administrative
19 Hearings.

20 This bill would subject all hearings to
21 Alabama's open meetings laws unless otherwise
22 provided by law and due process and apply the
23 Canons of Judicial Ethics to all administrative law
24 judges.

25 This bill would establish the powers and
26 duties of the chief administrative law judge and an
27 administrative law judge.

1
2 A BILL
3 TO BE ENTITLED
4 AN ACT
5

6 To consolidate into one office the administrative
7 law judges and hearing officers; to provide for the
8 appointment of a chief administrative law judge and
9 administrative law judges; to provide for qualifications,
10 compensation, powers, and duties of the office and positions;
11 and to provide funding for the office through an appropriation
12 from the State General Fund, Education Trust Fund, and other
13 funds for the fiscal year ending September 30, 2011.

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

15 Section 1. There is hereby created the Office of
16 Administrative Hearings as an independent unit in the
17 executive branch of state government. All employees of the
18 Office of the Attorney General's Administrative Law Judge
19 Division and employees of the Department of Human Resources
20 assigned to the division on January 1, 2010, and employees of
21 other agencies assigned to the division, shall be transferred
22 to the Office of Administrative Hearings on October 1, 2010,
23 with all duties and responsibilities remaining unchanged.

24 Section 2. (a) There is created the State Advisory
25 Council on Administrative Hearings. The council shall consist
26 of the following members:

27 (1) The Chief Justice of the Alabama Supreme Court.

1 (2) The Presiding Judge of the Alabama Court of
2 Civil Appeals.

3 (3) The Presiding Circuit Judge of the Fifteenth
4 Judicial Circuit.

5 (4) The President of the Alabama State Bar.

6 (5) The Attorney General.

7 (b) The State Advisory Council on Administrative
8 Hearings, within 30 days of the effective date of this act,
9 shall appoint a chief administrative law judge, who may be any
10 person who meets the qualifications for the position set forth
11 below. The State Advisory Council on Administrative Hearings,
12 in consultation with the chief administrative law judge,
13 pursuant to the Administrative Procedure Act, Sections 41-21-1
14 et seq., Code of Alabama 1975, within 90 days of the effective
15 date of this act, shall promulgate rules governing hearings by
16 the administrative law judges. The rules shall be adopted by a
17 vote of the quorum of the council members. For purposes of
18 this act and the adoption of the rules, a quorum shall be a
19 majority of the members of the advisory council.

20 Section 3. (a) Except as provided in subsection (b),
21 all employees of the Administrative Law Judge Division of the
22 Office of the Attorney General and employees of the Department
23 of Human Resources assigned to the Administrative Law Judge
24 Division as of January 1, 2010, shall be appointed on the
25 effective date of this act into a Merit System position by the
26 chief of that division.

1 (b) The State Advisory Council on Administrative
2 Hearings shall appoint a chief administrative law judge to
3 begin his or her six-year term when a vacancy occurs. The
4 appointment shall be by a majority of a quorum of the council
5 members.

6 (c) If the chief administrative law judge is
7 appointed from a Merit System position and is not reappointed,
8 he or she may revert to the Merit System position held prior
9 to the appointment.

10 (d) In order to be eligible for appointment as the
11 chief administrative law judge, a person shall be a member of
12 the Alabama State Bar in good standing and engaged in the
13 practice of law for 10 years next preceding the appointment.
14 The person shall have served as an administrative law judge or
15 a district judge, circuit judge, or appellate judge in Alabama
16 for not less than five years and shall be versed in Alabama
17 administrative procedures and practice.

18 (e) A person appointed as the chief administrative
19 law judge shall devote his or her full time to the duties of
20 the office and may not engage in activities inconsistent with
21 the duties and responsibilities of an administrative law
22 judge. The chief administrative law judge shall serve a
23 six-year term and shall continue to serve until a successor is
24 appointed and qualified.

25 (f) Any person serving as chief administrative law
26 judge may be removed for good cause by four-fifths vote of the
27 advisory council created in subsection (a) of Section 2.

1 Section 4. Except as provided in this act, the
2 Office of Administrative Hearings shall hear all contested
3 cases or other hearings from the various state agencies which
4 are to be heard by a hearing officer or administrative law
5 judge. This act shall apply to all contested cases or other
6 hearings before any hearing officer or administrative law
7 judge in any state agency unless otherwise exempted in this
8 act.

9 Section 5. (a) This act shall not apply to any of
10 the following branches of government, boards, commissions, or
11 departments:

- 12 (1) Legislative branch.
- 13 (2) Judicial branch.
- 14 (3) The Office of the Governor.
- 15 (4) Board of Pardons and Paroles.
- 16 (5) Public Service Commission.
- 17 (6) Department of Industrial Relations.
- 18 (7) State Oil and Gas Board.
- 19 (8) Board of Medical Examiners.
- 20 (9) Medical Licensure Board.
- 21 (10) Department of Revenue.

22 (b) Except as provided in subsection (a), this act
23 shall apply to each agency that employs or engages one or more
24 hearing officers or administrative law judges, either full or
25 part time, to adjudicate contested cases.

26 Section 6. (a) The chief administrative law judge
27 shall do all of the following:

1 (1) Supervise the Office of Administrative Hearings.

2 (2) Appoint, employ, hire, and remove administrative
3 law judges and other staff as necessary pursuant to the state
4 Merit System and pursuant to this act. Those persons serving
5 as of October 1, 2010, in the Administrative Law Judge
6 Division of the Office of the Attorney General and the
7 Department of Human Resources employees assigned to the
8 Administrative Law Judge Division shall be appointed on the
9 effective date of this act, into a Merit System position by
10 the chief of that division.

11 (3) Assign administrative law judges to conduct
12 hearings in contested cases. The chief may enter into personal
13 service contracts with outside attorneys on a part-time basis
14 if the caseload of the office will require the case to be
15 heard more than six months after the case is docketed.
16 Administrative law judges under contract shall be compensated
17 at a rate determined in accordance with the existing legal
18 rate paid by the state.

19 (4) Establish classifications for case assignment on
20 the basis of subject matter, expertise, and case complexity.

21 (5) Establish and implement standards and
22 specialized training programs and provide materials for
23 administrative law judges.

24 (6) Provide and coordinate continuing education
25 programs and services for administrative law judges, including
26 mediation training, alternative dispute resolution, research,
27 technical assistance, technical and professional publications,

1 compilation and dissemination of information, and notice of
2 changes in the law relating to the duties of administrative
3 law judge.

4 (7) Develop or adopt model rules of procedure and
5 other guidelines for administrative hearings. These rules
6 shall require that any public hearing of any contested case
7 before an administrative law judge pursuant to this act shall
8 begin within 30 days of assignment to an administrative law
9 judge, be completed within 90 days, and the administrative law
10 judge shall issue a recommended order within 45 days of
11 completion of the hearing transcript, unless such periods are
12 extended by consent of all parties.

13 (8) Monitor the quality of state administrative
14 hearings.

15 (9) Submit an annual report on the activities of the
16 office to the State Advisory Council created in subsection (a)
17 of Section 2.

18 (10) Meet and confer regularly with the Advisory
19 Council on Administrative Hearings.

20 (b) The chief administrative law judge may do any of
21 the following:

22 (1) Serve as an administrative law judge in a
23 contested case.

24 (2) Furnish administrative law judges on a contract
25 basis to other governmental entities, but the costs shall not
26 exceed the existing rate established by the state, except by
27 agreement and approval of the state agency.

1 (3) Accept and expend funds, grants, gifts,
2 appropriations, and services from any public or private source
3 to administer the office subject to existing law.

4 (4) Enter into agreements and personal service
5 contracts with any public or private agency or educational
6 institution subject to the Contract Review Permanent
7 Legislative Oversight Committee. This bill does not affect any
8 agency's ability to contract with attorneys, other than to act
9 as administrative law judges, with specialized knowledge
10 within the field of the agency at the expense of the agency.

11 (5) Adopt rules and regulations to implement this
12 act pursuant to the Administrative Procedure Act, Sections
13 41-22-1 et seq., Code of Alabama 1975.

14 (6) Mediate cases in controversy.

15 (7) Remove from a case or controversy any
16 administrative law judge for good cause shown.

17 (8) Negotiate and enter into settlement agreements.

18 (9) Exercise the reasonable and necessary powers and
19 duties to effectively administer this act.

20 Section 7. (a) The chief administrative law judge
21 shall appoint administrative law judges pursuant to the Merit
22 System lists of eligible applicants submitted to the chief by
23 the State Personnel Department.

24 (b) Persons appointed as administrative law judges
25 shall be licensed to practice law in this state and shall
26 receive the compensation designated by the chief from the
27 salary range established for the appropriate position as

1 established by the State Personnel Department. Persons
2 assigned to a proceeding from the State Health Planning and
3 Development Agency shall have at least five years experience
4 in health care law.

5 (c) Persons appointed as full-time administrative
6 law judges shall devote full time to the duties of the
7 position and may not engage in activities inconsistent with
8 the duties and responsibilities of an administrative law
9 judge.

10 (d) An administrative law judge may not be
11 responsible to or subject to the supervision, influence, or
12 directions of an officer, employee, or agent engaged in the
13 performance of investigative, prosecutive, or advisory
14 functions of any state agency other than the Office of
15 Administrative Hearings.

16 (e) The Rules of Professional Conduct applicable to
17 lawyers and the Canons of Judicial Ethics applicable to judges
18 shall apply to all administrative law judges employed
19 contractually or otherwise by the Office of Administrative
20 Hearings.

21 Section 8. The Chief Administrative Law Judge and
22 administrative law judges may administer oaths to any person
23 appearing before them in a contested case or hearing.

24 Section 9. (a) An administrative law judge may
25 summon witnesses, may require testimony, and require the
26 production of books, documents, records, papers, or other
27 tangible things at any hearing before the office, upon any

1 matter within its jurisdiction throughout the state. Witnesses
2 may be summoned by any party to the proceeding in the same
3 manner, be paid the same fees, and be subject to the same
4 penalties as witnesses in civil cases before any circuit court
5 in this state. An administrative law judge may issue orders of
6 discovery pursuant to the Alabama Rules of Civil Procedure.

7 (b) An administrative law judge may apply, upon
8 affidavit, to any circuit court judge for an order, returnable
9 in not less than two nor more than five days, to show cause
10 why a person should not be committed to jail for refusal to
11 comply with an order issued pursuant to this section. If the
12 circuit court judge hearing the matter determines that the
13 person is guilty of refusing to comply with the order of the
14 administrative law judge, the circuit court judge may commit
15 the offender to jail or provide otherwise as in cases of civil
16 contempt.

17 Section 10. An administrative law judge may issue a
18 stay of any order or decision of any agency to protect the
19 jurisdiction of the office or to prevent a miscarriage of
20 justice. The issuance of any stay shall be in effect until a
21 hearing is held or to allow an appeal to be made to the proper
22 reviewing court.

23 Section 11. (a) All units and agencies of state
24 government shall cooperate with the chief administrative law
25 judge in the discharge of the duties of the office.

26 (b) The office shall be subject to audit and
27 examination by the Office of Examiners of Public Accounts.

1 Section 12. If the office is unable to assign an
2 administrative law judge in response to a request from an
3 agency within the time period allowed in this act, the chief
4 administrative law judge shall designate in writing an
5 individual who meets the qualifications for an administrative
6 law judge in a proceeding before the agency. The Offices of
7 Administrative Hearings shall develop qualifications for
8 attorneys in the private practice of law to be appointed as
9 administrative law judges or hearing officers. Any attorney in
10 private practice appointed to act as an administrative law
11 judge or hearing officer in any case involving health law,
12 shall be required to show five years experience in health law.

13 Section 13. The office shall be bound by any agency
14 regulation, declaratory ruling, prior adjudication, case law,
15 or other settled preexisting policy, to the same extent as the
16 agency is or would have been bound if it were hearing the
17 case. In all matters before the office due process shall be
18 applied. All hearings will be conducted without unreasonable
19 delay and in compliance with the Alabama Administrative
20 Procedure Act or departmental statute if applicable and shall
21 be subject to the Alabama Open Meetings Act, unless otherwise
22 provided by law.

23 Section 14. (a) Unless otherwise provided by law or
24 by designation of any agency, the office shall make proposed
25 findings or decisions to any agency.

1 (b) Where authorized by law or as designated by the
2 state agency, the office shall have final decision-making
3 responsibility in these hearings.

4 (c) If a hearing is delegated to the office by an
5 agency, the agency may not rescind, withdraw, or modify its
6 delegation after the office has received the delegation.

7 Section 15. In the hearing of a proposed decision or
8 order received from the office, the chief executive or
9 governing body of the agency may adopt the recommended order
10 as the final order of the agency. The agency in its final
11 order may reject or modify the conclusions of law over which
12 it has substantive jurisdiction and interpretation of
13 administrative rules over which it has substantive
14 jurisdiction. When rejecting or modifying such conclusion of
15 law or interpretation of administrative rule, the agency must
16 state with particularity its reasons for rejecting or
17 modifying such conclusion of law or interpretation of
18 administrative rule and must make a finding that its
19 substituted conclusion of law or interpretation of
20 administrative rule is as or more reasonable than that which
21 was rejected or modified. Rejection or modification of
22 conclusions of law may not form the basis for rejection or
23 modification of findings of fact. The agency may not reject or
24 modify the findings of fact unless the agency first determines
25 from a review of the entire record, and states with
26 particularity in the order, that the findings of fact were not
27 based upon competent substantial evidence or that the

1 proceedings on which the findings were based did not comply
2 with essential requirements of law. The agency may accept the
3 recommended penalty in a recommended order, but may not reduce
4 or increase it without a review of the complete record and
5 without stating with particularity its reasons therefor in the
6 order, by citing to the record in justifying the action. This
7 act shall permit an agency to require that parties involved in
8 a contested case be required to reimburse the agency for the
9 costs of providing an administrative law judge. Each agency
10 may prorate these costs based upon rules adopted by the
11 agency.

12 Section 16. The Office of Space Management of the
13 Department of Finance shall provide the office with office
14 space; provided, however, the office shall not be housed in
15 the Office of the Attorney General.

16 Section 17. (a) On or after the effective date of
17 this act, any full-time hearing officer or administrative law
18 judge meeting the qualifications for administrative law judge
19 under this act and serving as an administrative law judge or
20 hearing officer on January 1, 2010, in an agency covered by
21 this act shall be administratively transferred to the office.

22 (b) Any person transferred pursuant to this section
23 shall be continued in the same classification which he or she
24 held under the state Merit System prior to the transfer. Any
25 person transferred pursuant to this section now serving in a
26 classification of chief administrative law judge shall
27 continue in the same salary range, but under the designation

1 of a senior administrative law judge, unless appointed as the
2 chief administrative law judge pursuant to this act. Within
3 the same time restrictions, all full-time staff of the covered
4 agencies who have exclusively or principally served as support
5 staff for administrative hearings, at the discretion of the
6 chief, may be administratively transferred to the office. Any
7 employee transferred to the office pursuant to this section,
8 in the event of layoffs due to a lack of or insufficiency of
9 funding, shall be entitled to revert to the position and the
10 agency the employee held prior to transfer to the office. All
11 equipment or other tangible property in possession of covered
12 agencies which is used or held exclusively or principally by
13 personnel transferred under this section may be transferred to
14 the office within the same time period, subject to the
15 discretion of the chief.

16 (c) All funds appropriated or otherwise received by
17 the office shall be deposited into a separate fund in the
18 State Treasury, to be named the Office of Administrative
19 Hearings Fund, to be expended by the office at the direction
20 of the chief for the administration and enforcement of this
21 act. No monies shall be expended or withdrawn from the Office
22 of Administrative Hearings Fund for any purposes unless
23 appropriated by the Legislature. At the end of each fiscal
24 year, any unexpended or unencumbered monies or funds deposited
25 in the fund from any source shall remain in the fund, except
26 for any appropriations from the Education Trust Fund or the
27 State General Fund, which shall revert to their respective

1 fund. Any funds or monies appropriated to any agency for the
2 payment of salaries, benefits, or other expenses for any
3 hearing officers and employees transferred to the office
4 pursuant to this act, shall be transferred to the Office of
5 Administrative Hearings Fund as appropriations for purposes of
6 this act.

7 (d) For the fiscal year ending September 30, 2011,
8 there is hereby appropriated from the State General Fund the
9 amount of four hundred fifty thousand dollars (\$450,000) and
10 from the Education Trust Fund the amount of four hundred fifty
11 thousand dollars (\$450,000) for the implementation of the
12 provisions of this act. All funds received by the Office of
13 Administrative Hearings during the fiscal year ending
14 September 30, 2011, are hereby appropriated to the Office of
15 Administrative Hearings for use in the conduct of the
16 functions of that office as provided in this act.

17 (e) The appropriations provided by subsection (d)
18 shall be deposited into the Office of Administrative Hearings
19 Fund in accordance with the Budget Management Act.

20 (f) No funds shall be withdrawn or expended except
21 as budgeted and allotted according to Sections 41-4-80 to
22 41-4-96, inclusive, and 41-19-1 to 41-19-12, inclusive, Code
23 of Alabama 1975, and only in amounts as stipulated in the
24 general appropriations act or other appropriation acts.

25 Section 18. The office shall begin operations on
26 October 1, 2010.

1 Section 19. The provisions of this act shall be
2 substituted into and become a part of those laws which make
3 reference to the conduct of hearings by the Administrative Law
4 Judge Division of the Office of the Attorney General.

5 Section 20. The provisions of this act are
6 severable. If any part of this act is declared invalid or
7 unconstitutional, that declaration shall not affect the part
8 which remains.

9 Section 21. This act shall become effective on
10 October 1 of that year described in Section 18 of this act
11 following its passage and approval by the Governor, or its
12 otherwise becoming law.