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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 774 Session of  
2017

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INTRODUCED BY ALLOWAY, FOLMER, RAFFERTY, MENSCH AND STEFANO,  
JUNE 16, 2017

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REFERRED TO STATE GOVERNMENT, JUNE 16, 2017

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AN ACT

1 Amending Titles 2 (Administrative Law and Procedure), 4  
2 (Amusements) and 13 (Commercial Code) of the Pennsylvania  
3 Consolidated Statutes, extensively revising provisions on  
4 practice and procedure of Commonwealth agencies; establishing  
5 the Office of Administrative Hearings; extensively revising  
6 provisions on judicial review of Commonwealth agency action;  
7 making editorial changes; and making an appropriation.

8 The General Assembly of the Commonwealth of Pennsylvania  
9 hereby enacts as follows:

10 Section 1. Sections 101 and 103 heading and subsection (a)  
11 of Title 2 of the Pennsylvania Consolidated Statutes are amended  
12 to read:

13 § 101. Definitions.

14 Subject to additional definitions contained in subsequent  
15 provisions of this title which are applicable to specific  
16 provisions of this title, the following words and phrases when  
17 used in this title shall have, unless the context clearly  
18 indicates otherwise, the meanings given to them in this section:

19 "Adjudication." Any final order, decree, decision,  
20 determination or ruling by an agency affecting personal or

1 property rights, privileges, immunities, duties, liabilities or  
2 obligations of any or all of the parties to the proceeding in  
3 which the adjudication is made. The term does not include any  
4 order [based upon a proceeding before a court or] which involves  
5 the seizure or forfeiture of property, paroles, pardons or  
6 releases from mental institutions.

7 "Adjudicative body." A Commonwealth agency comprised of a  
8 board or commission which is authorized by law to conduct a  
9 hearing and to issue an adjudication.

10 "Administrative appeal." An appeal from a subordinate  
11 officer to an agency head or adjudicative board or commission.

12 "Administrative law judge." An individual appointed under  
13 section 603(a) (relating to administrative law judges).

14 "Administrative proceeding." Any proceeding other than a  
15 judicial proceeding, the outcome of which is required to be  
16 based on a record or documentation prescribed by law or in which  
17 law or regulation is [particularized in application to  
18 individuals] applied to a party in a contested case. The term  
19 includes an administrative appeal.

20 "Agency." A government agency.

21 "Agency action." Any of the following:

22 (1) An order.

23 (2) The failure to issue an order within a time required  
24 by a statute other than this title or within a reasonable  
25 time.

26 "Agency head." The individual in whom, or one or more  
27 members of the body of individuals in which, the ultimate legal  
28 authority of an agency is vested.

29 "Appeal." Includes proceedings on petition for review.

30 "Certified interpreter." A person who:

1 (1) is readily able to interpret; and

2 (2) either:

3 (i) is certified by the Department of Labor and  
4 Industry in accordance with Subchapter C of Chapter 5  
5 (relating to administrative proceeding interpreters for  
6 persons with limited English proficiency); or

7 (ii) is certified by the Department of Labor and  
8 Industry in accordance with Subchapter D of Chapter 5  
9 (relating to administrative proceeding interpreters for  
10 persons who are deaf) or is registered with the  
11 department pursuant to the act of July 2, 2004 (P.L.492,  
12 No.57), known as the Sign Language Interpreter and  
13 Transliterator State Registration Act.

14 "Commonwealth agency." Any executive agency or independent  
15 agency.

16 "Commonwealth government." The government of the  
17 Commonwealth, including the courts and other officers or  
18 agencies of the unified judicial system, the General Assembly,  
19 and its officers and agencies, the Governor, and the  
20 departments, boards, commissions, authorities and officers and  
21 agencies of the Commonwealth, but the term does not include any  
22 political subdivision, municipal or other local authority, or  
23 any officer or agency of any such political subdivision or local  
24 authority.

25 "Contested case." An administrative proceeding in which an  
26 opportunity to be heard is required by law.

27 "Court Administrator of Pennsylvania." The court  
28 administrator appointed by the Supreme Court under section 10(b)  
29 of Article V of the Constitution of Pennsylvania and 42 Pa.C.S.  
30 § 1901 (relating to Court Administrator of Pennsylvania).

1 "Deaf." An impairment of hearing or speech which creates an  
2 inability to understand or communicate the spoken English  
3 language.

4 "Department." The Department of Labor and Industry of the  
5 Commonwealth.

6 "Executive agency." The Governor and the departments,  
7 boards, commissions, authorities and other officers and agencies  
8 of the Commonwealth government, but the term does not include  
9 any court or other officer or agency of the unified judicial  
10 system, the General Assembly and its officers and agencies, or  
11 any independent agency.

12 "Final decision maker." The person with the power to issue  
13 an adjudication.

14 "Final order." The order issued:

15 (1) by the agency head sitting as the presiding officer  
16 in a contested case;

17 (2) following the agency head review of a recommended  
18 order; or

19 (3) by the presiding officer when the presiding officer  
20 has been delegated final decisional authority with no  
21 subsequent agency head review.

22 "General rule." As defined in 42 Pa.C.S. § 102 (relating to  
23 definitions).

24 "Government agency." Any Commonwealth agency or any  
25 political subdivision or municipal or other local authority, or  
26 any officer or agency of any such political subdivision or local  
27 authority.

28 "Government unit." The General Assembly and its officers and  
29 agencies, any government agency or any court or other officer or  
30 agency of the unified judicial system.

1 "Hearing." An administrative proceeding on issues in which a  
2 decision of the presiding officer may be made in a contested  
3 case.

4 "Independent agency." Boards, commissions, authorities and  
5 other agencies and officers of the Commonwealth government which  
6 are not subject to the policy supervision and control of the  
7 Governor, but the term does not include any court or other  
8 officer or agency of the unified judicial system or the General  
9 Assembly and its officers and agencies.

10 "Index." A searchable list of adjudications maintained by an  
11 agency of the office under section 606 (relating to index of  
12 adjudications).

13 "Interpret." Either one of the following:

14 (1) For purposes of Subchapter C of Chapter 5 (relating  
15 to administrative proceeding interpreters for persons with  
16 limited English proficiency), to convey spoken and written  
17 English into the language of the person with limited English  
18 proficiency and to convey oral and written statements by the  
19 person into spoken English.

20 (2) For purposes of Subchapter D of Chapter 5 (relating  
21 to administrative proceeding interpreters for persons who are  
22 deaf), to convey spoken English in a manner understood by the  
23 person who is deaf and to convey statements made by the  
24 person who is deaf into English through, but not limited to,  
25 American Sign Language and transliteration or the use of  
26 computer-aided real-time captioning (CART) or similar  
27 procedure.

28 "Interpreter." Includes both a certified interpreter and an  
29 otherwise qualified interpreter.

30 "Judicial proceeding." An "action," "appeal" or "proceeding"

1 in any "court" of this Commonwealth as those terms are defined  
2 in 42 Pa.C.S. § 102 (relating to definitions).

3 "Limited ability to speak or understand English." The  
4 ability to speak exclusively or primarily a language other than  
5 English and the inability to sufficiently speak or understand  
6 English.

7 "Local agency." A government agency other than a  
8 Commonwealth agency.

9 "Matter." Action, proceeding or appeal.

10 "Office." The Office of Administrative Hearings established  
11 in section 601 (relating to establishment and function).

12 "Otherwise qualified interpreter." A person who:

13 (1) For purposes of Subchapter C of Chapter 5 (relating  
14 to administrative proceeding interpreters for persons with  
15 limited English proficiency):

16 (i) is readily able to interpret; and

17 (ii) has read, understands and agrees to abide by  
18 the code of professional conduct for administrative  
19 proceeding interpreters for persons with limited English  
20 proficiency as established by the Department of Labor and  
21 Industry in accordance with Subchapter C of Chapter 5.

22 (2) For purposes of Subchapter D of Chapter 5 (relating  
23 to administrative proceeding interpreters for persons who are  
24 deaf):

25 (i) is readily able to interpret;

26 (ii) is certified by the National Association of the  
27 Deaf, the Registry of Interpreters for the Deaf or  
28 similar registry; and

29 (iii) has read, understands and agrees to abide by  
30 the code of professional conduct for administrative

1 proceeding interpreters for persons who are deaf as  
2 established by the Department of Labor and Industry in  
3 accordance with Subchapter D of Chapter 5.

4 "Party." Any person [who] that appears in a proceeding  
5 [before an agency who] and has a direct interest in the subject  
6 matter of [such proceeding] an agency action.

7 "Person." Includes a government unit [or an agency of the  
8 Federal Government].

9 "Person who is deaf." A party or witness who is deaf.

10 "Person with limited English proficiency." A party or a  
11 witness who has limited ability to speak or understand English.

12 "Presiding officer." An individual [appointed by an agency  
13 to preside] who presides at an administrative proceeding.

14 "Proceeding." A formal or informal agency process commenced  
15 or conducted by an agency.

16 "Recommended order." An order which:

17 (1) is issued by a presiding officer without final  
18 decisional authority; and

19 (2) is subject to review by the agency head.

20 "Transliteration." To convey spoken or written English in an  
21 English-based sign system and the process of conveying an  
22 English-based sign system in spoken or written English.

23 "Witness." A person who testifies in a proceeding before an  
24 agency.

25 § 103. [Administrative Agency Law.] Administrative Procedure  
26 Act.

27 (a) General rule.--The provisions of Subchapter A of Chapter  
28 5 (relating to practice and procedure of Commonwealth agencies)  
29 and Subchapter A of Chapter 7 (relating to judicial review of  
30 Commonwealth agency action) shall be known and may be cited as

1 the ["Administrative Agency Law."] Administrative Procedure Act.

2 \* \* \*

3 Section 2. Subchapter A of Chapter 5 of Title 2 is amended  
4 to read:

5 SUBCHAPTER A

6 PRACTICE AND PROCEDURE OF

7 COMMONWEALTH AGENCIES

8 [Sec.

9 501. Scope of subchapter.

10 502. Representation.

11 503. Discipline.

12 504. Hearing and record.

13 505. Evidence and cross-examination.

14 506. Briefs and oral argument.

15 507. Contents and service of adjudications.

16 508. Notice to Department of Justice.

17 § 501. Scope of subchapter.

18 (a) General rule.--Except as provided in subsection (b),  
19 this subchapter shall apply to all Commonwealth agencies.

20 (b) Exception.--None of the provisions of this subchapter  
21 shall apply to:

22 (1) Proceedings before the Department of Revenue,  
23 Auditor General or Board of Finance and Revenue, involving  
24 the original settlement, assessment or determination or  
25 resettlement, reassessment or redetermination, review or  
26 refund of taxes, interest or payments made into the  
27 Commonwealth treasury.

28 (2) Proceedings before the Secretary of the Commonwealth  
29 under the act of June 3, 1937 (P.L.1333, No.320), known as  
30 the Pennsylvania Election Code.



1 (3) Proceedings before the Department of Transportation  
2 involving matters reviewable under 42 Pa.C.S. § 933 (relating  
3 to appeals from government agencies).

4 (4) Proceedings before the State System of Higher  
5 Education involving student discipline.

6 § 502. Representation.

7 Any party may be represented before a Commonwealth agency.

8 § 503. Discipline.

9 Any Commonwealth agency may, upon hearing and good cause  
10 shown, preclude any person from practice before it.

11 § 504. Hearing and record.

12 No adjudication of a Commonwealth agency shall be valid as to  
13 any party unless he shall have been afforded reasonable notice  
14 of a hearing and an opportunity to be heard. All testimony shall  
15 be stenographically recorded and a full and complete record  
16 shall be kept of the proceedings.

17 § 505. Evidence and cross-examination.

18 Commonwealth agencies shall not be bound by technical rules  
19 of evidence at agency hearings, and all relevant evidence of  
20 reasonably probative value may be received. Reasonable  
21 examination and cross-examination shall be permitted.

22 § 506. Briefs and oral argument.

23 All parties shall be afforded opportunity to submit briefs  
24 prior to adjudication by a Commonwealth agency. Oral argument  
25 upon substantial issues may be heard by the agency.

26 § 507. Contents and service of adjudications.

27 All adjudications of a Commonwealth agency shall be in  
28 writing, shall contain findings and the reasons for the  
29 adjudication, and shall be served upon all parties or their  
30 counsel personally, or by mail.

1 § 508. Notice to Department of Justice.

2 Before notice of any hearing leading to an adjudication is  
3 given by a Commonwealth agency (except the Pennsylvania Public  
4 Utility Commission), the agency shall submit the matter to its  
5 representative in the Department of Justice who shall pass upon  
6 the legality of the proposed action or defense. Failure of the  
7 agency to submit the matter to the department shall not  
8 invalidate any adjudication.]

9 Sec.

10 501. Scope of subchapter.

11 502. Presiding officer.

12 503. Procedure.

13 504. Evidence.

14 505. Notice.

15 506. Emergency adjudication procedure.

16 507. Ex parte communications.

17 508. Absent parties.

18 509. Decisions and orders.

19 510. Reconsideration.

20 511. Stays pending appeal.

21 § 501. Scope of subchapter.

22 (a) Eligibility.--This subchapter applies to an  
23 administrative proceeding by a Commonwealth agency.

24 (b) Notice and hearing.--No adjudication of a Commonwealth  
25 agency shall be valid as to a person unless the person has been  
26 afforded reasonable notice of a hearing and an opportunity to be  
27 heard under this subchapter.

28 (c) Exceptions.--This subchapter does not apply to any of  
29 the following:

30 (1) Proceedings before the Department of Transportation

1 involving matters reviewable under 42 Pa.C.S. § 933 (relating  
2 to appeals from government agencies).

3 (2) Proceedings before the State System of Higher  
4 Education involving student discipline.

5 § 502. Presiding officer.

6 (a) Eligibility.--A presiding officer must be one of the  
7 following:

8 (1) An administrative law judge.

9 (2) An agency head.

10 (3) One or more members of an adjudicative body.

11 (b) Prior involvement.--

12 (1) This subsection applies to an individual who:

13 (i) at any stage in a matter subject to an  
14 adjudication, has served as investigator, prosecutor or  
15 advocate; or

16 (ii) is subject to the authority, direction or  
17 discretion of an individual identified in subparagraph  
18 (i).

19 (2) Except as specified in paragraph (3), an individual  
20 under paragraph (1) may not serve as the presiding officer in  
21 an administrative proceeding related to the matter.

22 (3) An agency head who has participated in a  
23 determination of probable cause or other preliminary  
24 determination in an administrative proceeding may serve as  
25 presiding officer or final decision maker in the  
26 administrative proceeding unless a party demonstrates grounds  
27 for disqualification under subsection (c).

28 (c) Disqualification.--

29 (1) Except as specified in subsection (g), a presiding  
30 officer or agency head is subject to disqualification for:

- 1           (i) bias;  
2           (ii) prejudice;  
3           (iii) financial interest;  
4           (iv) violation of section 507 (relating to ex parte  
5 communications); or  
6           (v) any other factor which would cause a reasonable  
7 person to question the impartiality of the presiding  
8 officer or agency head.

9           (2) A presiding officer or agency head, after making a  
10 reasonable inquiry, shall disclose to the parties any known  
11 facts related to grounds for disqualification which are  
12 material to the impartiality of the presiding officer or  
13 agency head in the proceeding.

14 (d) Petition for disqualification.--

15           (1) A party must petition for disqualification of a  
16 presiding officer or an agency head upon:

- 17           (i) notice that the individual will preside; or  
18           (ii) discovering facts establishing a ground for  
19 disqualification.

20           (2) The petition must state with particularity the  
21 grounds on which it is claimed that a fair and impartial  
22 hearing cannot be accorded or the applicable rule or canon of  
23 practice or ethics that requires disqualification.

24           (3) The petition may be denied if the party fails to  
25 exercise due diligence in requesting disqualification after  
26 discovering a ground for disqualification.

27 (e) Decision on disqualification.--A presiding officer or an  
28 agency head whose disqualification is requested shall decide  
29 whether to grant the petition and state in a record facts and  
30 reasons for the decision. The decision to deny disqualification

1 is not subject to interlocutory judicial review.

2 (f) Substitute presiding officer.--If a presiding officer is  
3 disqualified or becomes unavailable, a substitute presiding  
4 officer shall be appointed as required by law or, if no law  
5 governs, by:

6 (1) the Governor if the original presiding officer is an  
7 elected official; or

8 (2) the appointing authority if the original presiding  
9 officer is an appointed official.

10 (g) Participation of agency head.--If participation of the  
11 agency head is necessary to enable the agency to take action,  
12 the agency head may continue to participate notwithstanding a  
13 ground for disqualification or exclusion.

14 (h) Powers.--A presiding officer may do all of the  
15 following:

16 (1) Regulate the course of hearings, including:

17 (i) the scheduling of hearings;

18 (ii) the recessing, reconvening and adjournment of  
19 hearings; and

20 (iii) the conduct of parties, attorneys, witnesses  
21 and others in attendance at a hearing.

22 (2) Administer oaths and affirmations.

23 (3) Issue subpoenas for witnesses and documents at  
24 hearings or in discovery.

25 (4) Rule upon offers of proof and to receive evidence.

26 (5) Take or cause depositions to be taken.

27 (6) Hold appropriate conferences before or during  
28 hearings.

29 (7) Dispose of procedural matters and motions.

30 (8) If the presiding officer is not the agency head:

1           (i) certify a question to the agency head for  
2           consideration and disposition; and

3           (ii) submit final or recommended decisions under  
4           section 509(a) (relating to decisions and orders).

5           (9) Impose sanctions for:

6           (i) misconduct at the hearing; or

7           (ii) a violation of procedural orders, including  
8           subpoenas and orders for depositions and discovery.

9           (10) Take other action necessary or appropriate to the  
10          discharge of the duties vested in a presiding officer,  
11          consistent with the law under which the agency functions.

12          (i) Delegation.--

13           (1) An agency head or adjudicative body may delegate the  
14           function of a presiding officer to an administrative law  
15           judge.

16           (2) The delegation shall specify whether the  
17           administrative law judge is authorized to issue a recommended  
18           or a final order.

19           (3) The administrative law judge may not exercise any  
20           authority required by law to be performed by the agency head  
21           or adjudicative body.

22   § 503. Procedure.

23          (a) Scope of section.--This section does not apply to an  
24          administrative proceeding under section 506 (relating to  
25          emergency adjudication procedure).

26          (b) Notice.--

27           (1) An agency shall give notice to a person of an agency  
28           action as to which the person has a right to a hearing.

29           (2) The notice must:

30           (i) be in writing;

1           (ii) describe the agency action; and  
2           (iii) inform the person of the right, procedure and  
3           time limit to file a pleading.

4           (c) Authority of presiding officer.--

5           (1) The presiding officer shall give all parties a  
6           timely opportunity to present pleadings, motions and  
7           objections.

8           (2) The presiding officer may give all parties the  
9           opportunity to file:

10           (i) briefs;

11           (ii) proposed findings of fact and conclusions of  
12           law; and

13           (iii) proposed recommended orders and final orders.

14           (3) The presiding officer, with the consent of all  
15           parties, may refer the parties in an adjudication to  
16           mediation or other dispute resolution procedure.

17           (d) Duty of presiding officer.--To the extent necessary for  
18           full disclosure of all relevant facts and issues, the presiding  
19           officer shall give all parties the opportunity to present the  
20           party's case, including all of the following:

21           (1) Filing documents.

22           (2) Presenting evidence and argument.

23           (3) Examining and cross-examining witnesses.

24           (e) Conduct of hearing.--Except as otherwise provided by law  
25           other than this title:

26           (1) Subject to paragraph (2), the presiding officer may  
27           conduct all or part of an evidentiary hearing or a prehearing  
28           conference by telephone, television, video conference or  
29           other electronic means.

30           (2) The hearing may be conducted by telephone or other

1 method by which witnesses may not be seen only if:

2 (i) all parties consent; or

3 (ii) if directed by the presiding officer. The  
4 presiding officer must consider whether the method will  
5 impair the reliability of the determinations of the  
6 credibility.

7 (3) Each party shall be given an opportunity to attend,  
8 hear and be heard at the proceeding as it occurs.

9 (f) Open to public.--Except as otherwise provided in  
10 subsection (g), a hearing shall be open to the public. A hearing  
11 conducted by telephone, television, video conference or other  
12 electronic means is open to the public if members of the public  
13 have an opportunity to attend the hearing at the place where the  
14 presiding officer is located or to hear the proceeding as it  
15 occurs.

16 (g) Closed to public.--The presiding officer may close a  
17 hearing to the public:

18 (1) on a ground on which a court could close a judicial  
19 proceeding to the public; or

20 (2) under a statute other than this title.

21 (h) Representation.--

22 (1) A party may be represented by an attorney at law at  
23 the party's expense.

24 (2) A party may be advised or accompanied by an  
25 individual who is not an attorney at law.

26 (i) Hearing record.--

27 (1) The presiding officer shall ensure that a hearing  
28 record is established. The hearing record must contain all of  
29 the following:

30 (i) A recording of the administrative proceeding.



1           (ii) Notice of the administrative proceeding.

2           (iii) A prehearing order.

3           (iv) A motion, pleading, brief, petition, request  
4 and intermediate ruling.

5           (v) Evidence admitted.

6           (vi) A statement of matters officially noticed under  
7 section 504(b) (9) (relating to evidence).

8           (vii) An offer of proof under section 504(b) (4).

9           (viii) A proposed finding, requested order and  
10 exception.

11           (ix) A transcript under paragraph (2).

12           (x) A recommended order, final order and order on  
13 reconsideration.

14           (xi) A matter under section 507(g) or (h) (relating  
15 to ex parte communications).

16           (2) An agency may prepare a transcript of the  
17 administrative proceeding.

18           (3) The agency must maintain the hearing record as part  
19 of the agency's record.

20           (j) Basis of decision.--

21           (1) An adjudication must be based on the hearing record  
22 and contain a statement of the factual and legal bases of the  
23 decision. This paragraph requires:

24           (i) Separately enumerated findings of fact, with  
25 citations to the hearing record, and the factors  
26 considered in evaluating evidence as described in section  
27 504(b) (10). If a finding of fact is described in language  
28 of a statute other than this title, it must be  
29 accompanied by an explicit statement of the underlying  
30 facts supporting the finding of fact.

1           (ii) Legal analysis, with citation to applicable  
2           legal authority.

3           (iii) Separately enumerated conclusions of law.

4           (iv) An order.

5           (2) The adjudication:

6           (i) shall be issued in writing; and

7           (ii) if a party consents, may be issued  
8           electronically to the party.

9           (k) Protection of party rights.--Regulations promulgated by  
10          a Commonwealth agency or the chief administrative law judge to  
11          implement this subchapter may include provisions more protective  
12          than the requirements of this section of the rights of parties  
13          other than the agency.

14          (l) Case disposition.--Unless prohibited by statute other  
15          than this title, a presiding officer may dispose of an  
16          administrative proceeding without a hearing by:

17           (1) stipulation;

18           (2) agreed settlement or consent order;

19           (3) default;

20           (4) withdrawal; or

21           (5) dismissal or summary relief.

22          § 504. Evidence.

23          (a) Rules.--In an administrative proceeding:

24           (1) the Pennsylvania Rules of Evidence do not apply; and

25           (2) all relevant evidence of reasonably probative value  
26          may be received.

27          (b) Admissibility.--

28           (1) Except as specified in paragraph (2), all relevant  
29          evidence is admissible, including hearsay evidence, if it is  
30          of a type commonly relied on by a reasonably prudent

1 individual in the conduct of the affairs of the individual.

2 (2) Evidence may be ruled inadmissible if the evidence:

3 (i) Is irrelevant, immaterial or unduly repetitious.

4 (ii) Is excludable on:

5 (A) constitutional grounds;

6 (B) statutory grounds; or

7 (C) the basis of a judicially recognized  
8 evidentiary privilege.

9 (3) The presiding officer:

10 (i) shall rule evidence inadmissible under paragraph

11 (2) if objection is made at the time the evidence is  
12 offered; and

13 (ii) may rule evidence under paragraph (2)  
14 inadmissible in the absence of an objection.

15 (4) If the presiding officer rules evidence inadmissible  
16 under paragraph (3), the offering party may make an offer of  
17 proof before further evidence is presented or at a later time  
18 determined by the presiding officer.

19 (5) Evidence may be received in a hearing record if  
20 doing so will expedite the hearing without substantial  
21 prejudice to a party. Documentary evidence may be received in  
22 the form of a copy if the original is not readily available  
23 or by incorporation by reference. On request, parties shall  
24 be given an opportunity to compare the copy with the  
25 original.

26 (6) Testimony shall be made under oath or affirmation.

27 (7) Evidence shall be made part of the hearing record.  
28 Information or evidence may not be considered in determining  
29 the case unless it is part of the hearing record.

30 (8) If the hearing record contains confidential

1 information, the presiding officer may do all of the  
2 following:

3 (i) Conduct a closed hearing to discuss the  
4 information.

5 (ii) Issue a necessary protective order.

6 (iii) Seal all or part of the hearing record.

7 (9) The presiding officer may take official notice of  
8 facts of which judicial notice may be taken and of  
9 scientific, technical or other facts within the specialized  
10 knowledge of the agency. The presiding officer shall notify  
11 the parties at the earliest practicable time of the facts  
12 proposed to be noticed and their source, including staff  
13 memoranda or data. Each party shall be afforded an  
14 opportunity to contest an officially noticed fact before the  
15 decision becomes final.

16 (10) The experience, technical competence and  
17 specialized knowledge of the presiding officer may be used in  
18 evaluating the evidence in the hearing record.

19 (c) Hearsay evidence.--

20 (1) Hearsay evidence is not competent evidence to  
21 support a finding of fact if it is properly objected to.

22 (2) Hearsay evidence that is admitted without objection  
23 will be given its natural probative effect and may support a  
24 finding of fact if it is corroborated by competent evidence,  
25 but a finding of fact may not be based solely on hearsay  
26 evidence.

27 § 505. Notice.

28 (a) Requirement.--Except as otherwise specified in section  
29 506 (relating to emergency adjudication procedure), an agency  
30 shall give notice which complies with this section.

1 (b) Contents.--

2 (1) In an administrative proceeding initiated by a  
3 person other than an agency, not later than five days after  
4 filing, the agency shall give notice to all parties that the  
5 case has been commenced. The notice must contain all of the  
6 following:

7 (i) Docketing information of the administrative  
8 proceeding and a general description of the subject  
9 matter.

10 (ii) Contact information for communicating with the  
11 agency.

12 (iii) Name, official title and contact information  
13 of the attorney or employee who has been designated to  
14 represent the agency.

15 (iv) Names and last known addresses of all parties  
16 and other persons that are being given actual notice by  
17 the agency.

18 (2) In an administrative proceeding initiated by an  
19 agency, the agency shall give notice to the person against  
20 which the action is brought. The notice must contain all of  
21 the following:

22 (i) A statement that a case that may result in an  
23 order has been commenced against the party.

24 (ii) A statement of the matters asserted and the  
25 issues involved.

26 (iii) A statement of the legal authority under which  
27 the hearing will be held, citing statutes and regulations  
28 involved.

29 (iv) Docketing information of the administrative  
30 proceeding.

1           (v) Name, official title and contact information of  
2           the presiding officer and of the agency's representative.

3           (vi) A statement that a party that fails to attend  
4           or participate in a proceeding in the case may be held in  
5           default.

6           (vii) A statement that the party served may request  
7           a hearing and instructions about how to request a  
8           hearing.

9           (viii) Names and last known addresses of all parties  
10           and other persons that are being given actual notice by  
11           the agency.

12           (3) A notice under this subsection may include other  
13           matters that the agency or presiding officer considers  
14           desirable to expedite the proceedings.

15           (c) Time.--The agency must give parties notice under this  
16           section at least 30 days before a hearing or prehearing  
17           conference.

18           § 506. Emergency adjudication procedure.

19           (a) Authorization.--Unless prohibited by statute other than  
20           this title, an agency may conduct an emergency proceeding under  
21           this section.

22           (b) Justification.--An agency may take action and issue an  
23           order under this section only to deal with an imminent peril to  
24           the public health, safety or welfare.

25           (c) Due process.--Before issuing an order under this  
26           section, an agency, if practicable, must give notice and an  
27           opportunity to be heard to the person to which the agency action  
28           is directed. The notice of the hearing and the hearing may be  
29           oral or written and may be by telephone, facsimile or other  
30           electronic means.

1 (d) Order.--

2 (1) An order issued under this section must briefly  
3 explain the factual and legal reasons for using emergency  
4 adjudication procedures.

5 (2) An agency must give notice to the person to whom the  
6 agency action is directed that an order has been issued.

7 (e) Hearing.--After issuing an order under this section, an  
8 agency shall proceed as soon as practicable to provide notice  
9 and an opportunity for a hearing following the procedure under  
10 section 503 (relating to procedure) to determine the issues  
11 underlying the order.

12 (f) Effectiveness.--

13 (1) An order under this section takes effect when signed  
14 by the agency head or the designee of the agency head.

15 (2) Subject to section 511 (relating to stays pending  
16 appeal), an order issued under this section terminates upon  
17 the earlier of:

18 (i) 180 days after it takes effect under paragraph

19 (1); or

20 (ii) the termination date specified in the order.

21 § 507. Ex parte communications.

22 (a) Scope of section.--For the purpose of this section, an  
23 administrative proceeding is pending from the issuance of notice  
24 under section 505 (relating to notice).

25 (b) Due process.--When an administrative proceeding is  
26 pending, except as specified in subsection (c), (d), (e) or (f),  
27 the presiding officer or final decision maker may not  
28 communicate with a person concerning the case without notice and  
29 opportunity for all parties to participate in the communication.

30 (c) Multimember body.--If a presiding officer is a member of

1 a multimember body of individuals who constitute the final  
2 decision maker, the presiding officer may communicate with the  
3 other members of that body when sitting as the presiding officer  
4 and final decision maker.

5 (d) Statutory authorization or uncontested procedure.--A  
6 presiding officer or final decision maker may communicate about  
7 a pending administrative proceeding if any of the following  
8 apply:

9 (1) The communication is required for the disposition of  
10 ex parte matters authorized by law.

11 (2) The communication concerns an uncontested procedural  
12 issue.

13 (e) Legal and ministerial communications.--A presiding  
14 officer or final decision maker may communicate about a pending  
15 administrative proceeding if all of the following paragraphs  
16 apply:

17 (1) The communication is:

18 (i) on legal issues, with an individual authorized  
19 by law to provide legal advice to the presiding officer  
20 or final decision maker; or

21 (ii) on ministerial matters with an individual who  
22 serves on the administrative staff of the presiding  
23 officer or final decision maker.

24 (2) The individual referred to in paragraph (1) has not  
25 served as investigator, prosecutor, advocate or advisor  
26 related to the matter.

27 (f) Staff communications.--An agency head who is the  
28 presiding officer or final decision maker in a pending  
29 administrative proceeding may communicate about that matter with  
30 an employee or representative of the agency if all of the



1 following paragraphs apply:

2 (1) The employee or representative has not served and  
3 will be precluded from serving as investigator, prosecutor,  
4 advocate or witness relating to the matter.

5 (2) The employee or representative has not otherwise had  
6 a communication with a person about the case other than a  
7 communication authorized under subsection (d) or (e) or this  
8 subsection.

9 (3) The communication is an explanation of:

10 (i) the technical or scientific basis of, or  
11 technical or scientific terms in, the evidence in the  
12 hearing record; or

13 (ii) the precedent, policies or procedures of the  
14 agency.

15 (g) Disclosure.--If a presiding officer or final decision  
16 maker makes or receives a communication in violation of this  
17 section, the presiding officer shall disclose it to the parties.

18 (h) Response.--If a communication prohibited by this section  
19 is made, the presiding officer or final decision maker shall  
20 permit parties to respond to the prohibited communication.

21 (i) Remedial action.--The presiding officer or final  
22 decision maker may be disqualified under section 502(c)  
23 (relating to presiding officer) if the presiding officer or  
24 final decision maker is culpable in participating in the  
25 prohibited communication. Other appropriate relief may be  
26 granted, including an adverse ruling on the merits of the case  
27 against a party or agency that culpably participated in the  
28 prohibited communication.

29 § 508. Absent parties.

30 (a) Authorization.--Unless otherwise provided by statute

1 other than this title, if a party without good cause fails to  
2 attend or participate in a prehearing conference or hearing in  
3 an administrative proceeding, the presiding officer:

4 (1) may conduct further proceedings necessary to  
5 complete the adjudication without the absent party; and

6 (2) shall determine all issues in the administrative  
7 proceeding, including those affecting the absent party.

8 (b) Basis of order.--

9 (1) An order issued against the party must be based on  
10 the party's admissions or other evidence which may be used  
11 without notice to the party.

12 (2) If the burden of proof is on the absent party to  
13 establish that the party is entitled to the agency action  
14 sought, the presiding officer may issue an order without  
15 taking evidence.

16 (c) Vacation of order.--

17 (1) Not later than 30 days after notice to a party that  
18 an order has been issued under subsection (a), the party may  
19 petition the presiding officer to vacate the order.

20 (2) Upon consideration of a petition submitted under  
21 paragraph (1), the presiding officer may vacate the order  
22 upon a showing of good cause for the party's failure to  
23 appear.

24 § 509. Decisions and orders.

25 (a) Filing recommended decision.--If the presiding officer  
26 is not delegated final decision-making authority by the agency  
27 head, the presiding officer shall file and serve on the parties  
28 and the agency head a recommended decision and a list of all  
29 documents and other evidence submitted by the parties and made  
30 part of the hearing record. A recommended decision shall

1 include:

2 (1) findings of fact;

3 (2) analysis of the issues;

4 (3) conclusions of law with citation to legal authority;

5 and

6 (4) a proposed order.

7 (b) Procedure after recommended decision.--

8 (1) A party must file with the agency head exceptions to  
9 the recommended decision no later than 30 days after the  
10 filing date of the recommended decision. The exceptions must  
11 be served on any other party and the presiding officer.

12 (2) Exceptions must specify the errors in the presiding  
13 officer's recommended decision. Exceptions must be  
14 accompanied by a brief.

15 (3) A response to the exceptions must be filed and  
16 served on the other party and the presiding officer within 14  
17 days of the filing date of the exceptions. The time for  
18 response may be extended by agreement of the parties with the  
19 approval of the agency head. A response must be accompanied  
20 by a brief.

21 (4) Within 30 days of the filing of the recommended  
22 decision, the presiding officer shall file with the agency  
23 head the record of the proceeding.

24 (5) If exceptions are filed, the agency head may:

25 (i) adopt or modify the recommended decision in  
26 whole or in part; or

27 (ii) recommit the matter to the presiding officer  
28 with instructions.

29 (6) If the agency head does not adopt a finding of fact  
30 made by the presiding officer or modifies a finding of fact

1 made by the presiding officer, the agency head shall describe  
2 the reasons for the action in the final decision. In  
3 reviewing findings of fact in a recommended decision, the  
4 agency head shall consider the presiding officer's  
5 opportunity to observe the witnesses and to determine the  
6 credibility of the witnesses.

7 (7) Upon review of exceptions or if no exceptions are  
8 filed, the agency head shall:

9 (i) Act under paragraph (5).

10 (ii) Issue an adjudication which may:

11 (A) adopt the recommended decision; or

12 (B) state that, in the absence of exceptions,  
13 the recommended decision is entered as the agency  
14 head's final order.

15 (8) Findings of fact and conclusions of law in a  
16 presiding officer's recommended decision are not controlling  
17 in a subsequent proceeding unless expressly adopted by the  
18 agency head.

19 (9) Unless otherwise ordered by the agency head, failure  
20 to file a timely exception to a finding of fact or conclusion  
21 of law in a recommended decision adopted without material  
22 modification shall be deemed a waiver of further appeal as to  
23 that finding or conclusion.

24 (c) Final orders.--The presiding officer shall issue a final  
25 order if the presiding officer:

26 (1) is the agency head; or

27 (2) has been delegated final decision-making authority.

28 (d) Issuance of orders.--An order is issued under this  
29 section when it is signed by the agency head, the presiding  
30 officer or an individual authorized by statute other than this

1 title.

2 (e) Service.--

3 (1) Except as specified in paragraph (2), a recommended  
4 order or final order shall be served in a hearing record on  
5 each party and the agency head within 90 days of the later  
6 of:

7 (i) the end of the hearing;

8 (ii) the closing of the hearing record; or

9 (iii) the last date for submission of memoranda,  
10 briefs or proposed findings.

11 (2) The presiding officer may extend the time under  
12 paragraph (1) by stipulation, waiver or a finding of good  
13 cause.

14 (f) Effective date of final order.--

15 (1) Except as specified in paragraph (2), a final order  
16 is effective 30 days after all parties are notified of the  
17 order.

18 (2) Paragraph (1) does not apply if action is taken  
19 under:

20 (i) section 510 (relating to reconsideration); or

21 (ii) section 511 (relating to stays pending appeal).

22 § 510. Reconsideration.

23 (a) Petition for reconsideration.--A party may seek  
24 reconsideration by filing a petition stating the specific  
25 grounds on which relief is requested within 15 days after notice  
26 to the parties that a final order has been issued.

27 (b) Time for filing petition for judicial review.--

28 (1) If the conditions in paragraph (2) are met, the time  
29 for filing a petition for judicial review begins when the  
30 agency disposes of the petition for reconsideration.

1           (2) Paragraph (1) applies if all of the following apply:

2           (i) A petition for reconsideration is timely filed.

3           (ii) The petitioner has complied with the agency's  
4           procedural regulations for reconsideration.

5           (c) Order maker.--Not later than 20 days after a petition is  
6           filed under subsection (a), the decision maker shall issue a  
7           written order doing one of the following:

8           (1) Denying the petition.

9           (2) Granting the petition. An order under this  
10          paragraph:

11          (i) must state findings of facts, conclusions of law  
12          and the reasons for granting the petition; and

13          (ii) shall:

14                  (A) dissolve or modify the final order; or

15                  (B) set the matter for further proceedings.

16          (d) Deemed denial.--If the decision maker fails to respond  
17          to the petition within the time period under subsection (c), the  
18          petition is deemed denied.

19          § 511. Stays pending appeal.

20          (a) Request.--Except as otherwise provided by statute other  
21          than this title, a party may request the agency head to stay a  
22          final order pending judicial review. The request must be made  
23          not later than seven days after the parties are notified of the  
24          order.

25          (b) Grant.--The agency head may grant the request for a stay  
26          pending judicial review if all of the following apply:

27                  (1) The party demonstrates a strong likelihood of  
28                  success on the merits of the appeal.

29                  (2) The denial of the stay will cause irreparable harm.

30                  (3) The stay will not substantially harm other

1 interested parties.

2 (4) The stay will not substantially harm the public  
3 interest.

4 (c) Appellate review.--The agency head may take other action  
5 authorized by Pa.R.A.P. Ch. 17 (relating to effect of appeals;  
6 supersedeas and stays).

7 Section 3. Title 2 is amended by adding a chapter to read:

8 CHAPTER 6

9 OFFICE OF ADMINISTRATIVE HEARINGS

10 Sec.

11 601. Establishment and function.

12 602. Organization.

13 603. Administrative law judges.

14 604. Chief administrative law judge.

15 605. Cooperation.

16 606. Index of adjudications.

17 § 601. Establishment and function.

18 (a) Establishment.--The Office of Administrative Hearings is  
19 established as an independent office in the Executive  
20 Department.

21 (b) Function.--The office shall administer all  
22 administrative proceedings unless the agency head or an  
23 adjudicative board or commission that is not an agency head  
24 hears the matter without delegation or assignment. If a matter  
25 is heard without delegation or assignment, a multimember agency  
26 head or an adjudicative board or commission may designate a  
27 member to be the presiding officer.

28 § 602. Organization.

29 (a) Chief administrative law judge.--The powers and duties  
30 of the office shall be vested in a chief administrative law

1 judge appointed by the Governor with the advice and consent of  
2 two-thirds of the members elected to the Senate.

3 (b) Qualifications.--The chief administrative law judge must  
4 meet all of the following:

5 (1) Have been an attorney at law for at least five  
6 years.

7 (2) Be an attorney at law in good standing with the  
8 Supreme Court.

9 (3) Have substantial experience in administrative law.

10 (c) Tenure.--

11 (1) The chief administrative law judge shall serve a  
12 term of five years and until a successor is appointed and  
13 qualifies for office.

14 (2) A chief administrative law judge may be reappointed  
15 subject to confirmation under subsection (a).

16 (3) The chief administrative law judge may be removed  
17 from office only for cause. A removal may be contested by a  
18 petition for review which has been filed within 30 days under  
19 42 Pa.C.S. § 761(a)(1) (relating to original jurisdiction).

20 (d) Salary.--The salary of the chief administrative law  
21 judge shall be set under section 709(a) of the act of April 9,  
22 1929 (P.L.177, No.175), known as The Administrative Code of  
23 1929.

24 (e) Obligations.--

25 (1) The chief administrative law judge shall devote full  
26 time to the duties of the office and may not engage in the  
27 private practice of law.

28 (2) The chief administrative law judge is subject to the  
29 code of conduct under section 604(a)(7)(i) (relating to chief  
30 administrative law judge).



1 (f) Oath.--The chief administrative law judge must take the  
2 oath of office required by law before beginning duties as an  
3 administrative law judge.

4 (g) Deputies and acting chief.--

5 (1) The chief administrative law judge may designate  
6 administrative law judges as deputy chief administrative law  
7 judges.

8 (2) If a vacancy occurs in the office of chief  
9 administrative law judge, the Governor shall designate in  
10 writing an administrative law judge to exercise the powers  
11 and perform the duties of chief administrative law judge  
12 until the vacancy is filled.

13 § 603. Administrative law judges.

14 (a) Appointment.--

15 (1) The chief administrative law judge shall appoint  
16 administrative law judges.

17 (2) An administrative law judge is a management employee  
18 subject to the administrative supervision of the chief  
19 administrative law judge and may be removed only for cause.

20 (b) Qualifications.--To be eligible for appointment as an  
21 administrative law judge, an individual must meet all of the  
22 following:

23 (1) Have been an attorney at law for at least five  
24 years.

25 (2) Be an attorney at law in good standing with the  
26 Supreme Court.

27 (3) Have substantial experience in administrative law.

28 (c) Oath.--An administrative law judge must take the oath of  
29 office required by law before beginning duties as an  
30 administrative law judge.

1 (d) Code of conduct.--An administrative law judge is subject  
2 to the code of conduct for administrative law judges adopted  
3 under section 604(a)(7)(i) (relating to chief administrative law  
4 judge).

5 (e) Compensation.--An administrative law judge is entitled  
6 to the compensation set under section 709(a) of the act of April  
7 9, 1929 (P.L.177, No.175), known as The Administrative Code of  
8 1929.

9 (f) Powers and duties.--

10 (1) In an administrative proceeding, the following  
11 apply:

12 (i) The chief administrative law judge shall assign  
13 an administrative law judge to be the presiding officer.

14 (ii) If the administrative law judge is delegated  
15 final decisional authority, the administrative law judge  
16 shall issue a final order.

17 (iii) If the administrative law judge is not  
18 delegated final decisional authority, the administrative  
19 law judge shall issue to the agency head a recommended  
20 order in the administrative proceeding.

21 (2) Except as otherwise provided by statute other than  
22 this chapter, if an administrative proceeding is referred to  
23 the office by an agency, the agency may not take further  
24 action with respect to the proceeding, except as a party,  
25 until a final order is issued.

26 (3) An administrative law judge may perform duties  
27 authorized by statute other than this chapter.

28 § 604. Chief administrative law judge.

29 (a) Powers and duties.--The chief administrative law judge  
30 has the following powers and duties:

- 1           (1) Supervise and manage the office.
- 2           (2) Serve as an administrative law judge in an  
3 administrative proceeding.
- 4           (3) Assign an administrative law judge in an  
5 administrative proceeding.
- 6           (4) Assure the decisional independence of each  
7 administrative law judge.
- 8           (5) Establish and implement standards for equipment,  
9 supplies and technology for administrative law judges.
- 10           (6) Provide and coordinate continuing education programs  
11 and services for administrative law judges and advise them of  
12 changes in the law concerning their duties.
- 13           (7) Promulgate regulations to implement this chapter,  
14 including the following:
- 15                 (i) A code of conduct for administrative law judges.
- 16                 (ii) General rules of administrative practice and  
17 procedure governing administrative proceedings before  
18 administrative law judges.
- 19           (8) Adopt policy statements on administrative hearings.
- 20           (9) Set reasonable filing fees to cover the  
21 administrative expenses of the office. Fees under this  
22 paragraph shall not be charged to:
- 23                 (i) Commonwealth agencies; or
- 24                 (ii) petitioners who are determined by the office to  
25 be unable to pay the fees.
- 26           (10) Monitor the work of administrative law judges and  
27 discipline administrative law judges who do not meet  
28 appropriate standards of conduct and competence.
- 29           (11) Establish necessary classifications for case  
30 assignment on the basis of subject matter, expertise and case

1 complexity.

2 (12) Accept money for the benefit of the office and  
3 deposit the money into the State Treasury subject to future  
4 appropriation.

5 (13) Contract with other Commonwealth agencies for  
6 services provided by the office.

7 (14) Furnish administrative law judges on a contractual  
8 basis to political subdivisions and municipal authorities and  
9 instrumentalities.

10 (15) Appoint a chief counsel and assistant counsel.  
11 Section 301 of the act of October 15, 1980 (P.L.950, No.164),  
12 known as the Commonwealth Attorneys Act, does not apply to  
13 the office.

14 (16) Create and maintain a public docket of  
15 administrative proceedings administered by the office.

16 (b) Report.--The chief administrative law judge shall submit  
17 an annual report on the activities of the office to the  
18 Governor, the Secretary of the Senate and the Chief Clerk of the  
19 House of Representatives.

20 § 605. Cooperation.

21 Commonwealth agencies shall cooperate with the chief  
22 administrative law judge in the discharge of the duties of the  
23 office.

24 § 606. Index of adjudications.

25 (a) Index.--

26 (1) Except as specified in subsection (b), the office  
27 shall create an index of adjudications and make the index and  
28 the adjudications available to the public. Reasonable costs  
29 may be charged.

30 (2) The index shall be searchable in a manner that

1 permits public access.

2 (b) Records not included in index.--

3 (1) Except as specified in paragraph (2), an  
4 adjudication which is exempt, privileged or otherwise made  
5 confidential or protected from disclosure by the act of  
6 February 14, 2008 (P.L.6, No.3), known as the Right-to-Know  
7 Law, is not a public record and may not be indexed. An  
8 adjudication under this paragraph shall be excluded from an  
9 index and disclosed only by order of the agency head with a  
10 written statement of reasons attached to the order.

11 (2) If the agency head determines it is possible to  
12 redact an adjudication which is exempt, privileged or  
13 otherwise made confidential or protected from disclosure by  
14 statute other than this title so that it complies with  
15 applicable law, the redacted adjudication may be placed in  
16 the index and published.

17 Section 4. Subchapter A of Chapter 7 of Title 2 is amended  
18 to read:

19 SUBCHAPTER A

20 JUDICIAL REVIEW OF COMMONWEALTH

21 AGENCY ACTION

22 [Sec.

23 701. Scope of subchapter.

24 702. Appeals.

25 703. Scope of review.

26 704. Disposition of appeal.

27 § 701. Scope of subchapter.

28 (a) General rule.--Except as provided in subsection (b),  
29 this subchapter shall apply to all Commonwealth agencies  
30 regardless of the fact that a statute expressly provides that

1 there shall be no appeal from an adjudication of an agency, or  
2 that the adjudication of an agency shall be final or conclusive,  
3 or shall not be subject to review.

4 (b) Exceptions.--None of the provisions of this subchapter  
5 shall apply to:

6 (1) Any matter which is exempt from Subchapter A of  
7 Chapter 5 (relating to practice and procedure of Commonwealth  
8 agencies).

9 (2) Any appeal from a Commonwealth agency which may be  
10 taken initially to the courts of common pleas under 42  
11 Pa.C.S. § 933 (relating to appeals from government agencies).

12 § 702. Appeals.

13 Any person aggrieved by an adjudication of a Commonwealth  
14 agency who has a direct interest in such adjudication shall have  
15 the right to appeal therefrom to the court vested with  
16 jurisdiction of such appeals by or pursuant to Title 42  
17 (relating to judiciary and judicial procedure).

18 § 703. Scope of review.

19 (a) General rule.--A party who proceeded before a  
20 Commonwealth agency under the terms of a particular statute  
21 shall not be precluded from questioning the validity of the  
22 statute in the appeal, but such party may not raise upon appeal  
23 any other question not raised before the agency (notwithstanding  
24 the fact that the agency may not be competent to resolve such  
25 question) unless allowed by the court upon due cause shown.

26 (b) Equitable relief.--The remedy at law provided by  
27 subsection (a) shall not in any manner impair the right to  
28 equitable relief heretofore existing, and such right to  
29 equitable relief is hereby continued notwithstanding the  
30 provisions of subsection (a).

1 § 704. Disposition of appeal.

2 The court shall hear the appeal without a jury on the record  
3 certified by the Commonwealth agency. After hearing, the court  
4 shall affirm the adjudication unless it shall find that the  
5 adjudication is in violation of the constitutional rights of the  
6 appellant, or is not in accordance with law, or that the  
7 provisions of Subchapter A of Chapter 5 (relating to practice  
8 and procedure of Commonwealth agencies) have been violated in  
9 the proceedings before the agency, or that any finding of fact  
10 made by the agency and necessary to support its adjudication is  
11 not supported by substantial evidence. If the adjudication is  
12 not affirmed, the court may enter any order authorized by 42  
13 Pa.C.S. § 706 (relating to disposition of appeals).]

14 Sec.

15 701. Scope of subchapter.

16 702. Standing.

17 703. Preservation of issues.

18 704. Disposition of appeal.

19 705. Time limitation.

20 706. Stays pending appeal.

21 707. Exhaustion of administrative remedies.

22 § 701. Scope of subchapter.

23 (a) Coverage.--Except as specified in subsection (b), this  
24 subchapter shall apply to adjudications of Commonwealth agencies  
25 regardless of an express statutory provision:

26 (1) precluding appeal or review; or

27 (2) declaring an adjudication final or conclusive.

28 (b) Exceptions.--This subchapter does not apply to any of  
29 the following:

30 (1) A matter which is exempt under section 501(c)

1 (relating to scope of subchapter).

2 (2) An appeal from a Commonwealth agency which may be  
3 taken initially to the courts of common pleas under 42  
4 Pa.C.S. § 933(a)(1) (relating to appeals from government  
5 agencies).

6 § 702. Standing.

7 A person aggrieved by an adjudication of a Commonwealth  
8 agency that has a direct interest in the adjudication may appeal  
9 from the agency under 42 Pa.C.S. § 763(a)(1) (relating to direct  
10 appeals from government agencies).

11 § 703. Preservation of issues.

12 (a) Waiver.--Except as specified in subsection (b), a party  
13 must raise an issue before the Commonwealth agency in order to  
14 preserve the issue for appeal.

15 (b) Exceptions.--

16 (1) A party that proceeded before a Commonwealth agency  
17 under a particular statute may challenge the statute's  
18 validity in the appeal.

19 (2) The court, for cause shown, may allow a party to  
20 raise on appeal an issue not raised before the Commonwealth  
21 agency.

22 (c) Equitable relief.--The remedy at law provided by  
23 subsections (a) and (b) shall not impair the right to equitable  
24 relief.

25 § 704. Disposition of appeal.

26 (a) Scope of review.--The court shall hear the appeal on the  
27 record certified by the Commonwealth agency.

28 (b) Standard of review.--

29 (1) The court shall affirm the adjudication unless it  
30 finds one of the following:



1           (i) The adjudication is in violation of a  
2           constitutional right of the appellant.

3           (ii) The adjudication is not in accordance with law.

4           (iii) There was a violation of Ch. 5 Subch. A  
5           (relating to practice and procedure of Commonwealth  
6           agencies).

7           (iv) A finding of fact made by the Commonwealth  
8           agency and necessary to support its adjudication is not  
9           supported by substantial evidence.

10          (v) The adjudication is arbitrary, capricious or an  
11          abuse of discretion.

12          (2) This subsection shall not apply if it conflicts with  
13          a statute other than this title.

14          (c) Order.--The court may enter an order authorized by 42  
15          Pa.C.S. § 706 (relating to disposition of appeals).  
16          § 705. Time limitation.

17          The time limit for taking an appeal from an adjudication is  
18          subject to 42 Pa.C.S. § 5571(b) (relating to appeals generally).  
19          § 706. Stays pending appeal.

20          During pendency of a petition for review, a party may obtain  
21          a stay under the Pennsylvania Rules of Appellate Procedure.  
22          § 707. Exhaustion of administrative remedies.

23          (a) Effect of certain filings.--Filing a petition for  
24          reconsideration or a stay of proceedings is not a prerequisite  
25          for seeking judicial review.

26          (b) Authority of court.--The court may relieve a petitioner  
27          of a requirement to exhaust an administrative remedy to the  
28          extent that:

29               (1) the administrative remedy is inadequate; or

30               (2) the requirement would result in irreparable harm.

1 Section 5. Sections 1205(a) and 13A14(a) of Title 4 are  
2 amended to read:

3 § 1205. License or permit application hearing process; public  
4 input hearings.

5 (a) General rule.--The board's consideration and resolution  
6 of all license or permit applications shall be conducted in  
7 accordance with 2 Pa.C.S. (relating to administrative law and  
8 procedure) or with procedures adopted by order of the board.  
9 Notwithstanding the requirements of 2 Pa.C.S. [§§ 504 (relating  
10 to hearing and record) and 505 (relating to evidence and cross-  
11 examination)] Ch. 5 (relating to practice and procedure) as they  
12 relate to the conduct of oral hearings, the board may adopt  
13 procedures to provide parties before it with a documentary  
14 hearing, and the board may resolve disputed material facts  
15 without conducting an oral hearing where constitutionally  
16 permissible.

17 \* \* \*

18 § 13A14. Table game authorization hearing process; public input  
19 hearings.

20 (a) General rule.--The board's consideration and resolution  
21 of all petitions to conduct table games shall be conducted in  
22 accordance with 2 Pa.C.S. (relating to administrative law and  
23 procedure) or with procedures adopted by order of the board.  
24 Notwithstanding the requirements of 2 Pa.C.S. [§§ 504 (relating  
25 to hearing and record) and 505 (relating to evidence and cross-  
26 examination)] Ch. 5 (relating to practice and procedure) as they  
27 relate to the conduct of oral hearings, the board may adopt  
28 procedures to provide parties before it with a documentary  
29 hearing, and the board may resolve disputed material facts  
30 without conducting an oral hearing where constitutionally

1 permissible.

2 \* \* \*

3 Section 6. Section 9518(f)(1)(iv) of Title 13 is amended to  
4 read:

5 § 9518. Claim concerning inaccurate or wrongfully filed record.

6 \* \* \*

7 (f) Fraudulent financing statements.--

8 (1) The Department of State may conduct an  
9 administrative hearing to determine if an initial financing  
10 statement was fraudulently filed in accordance with the  
11 following:

12 \* \* \*

13 (iv) A person adversely affected by a determination  
14 of the department under paragraph (i) may appeal the  
15 determination in accordance with 2 Pa.C.S. § [702] 704  
16 (relating to [appeals] disposition of appeal).

17 \* \* \*

18 Section 7. Applicability is as follows:

19 (1) The following provisions shall not apply to  
20 administrative proceedings commenced prior to the effective  
21 date of this paragraph:

22 (i) The amendment of 2 Pa.C.S. Ch. 5 Subch. A.

23 (ii) The addition of 2 Pa.C.S. Ch. 6.

24 (2) The amendment of 2 Pa.C.S. Ch. 7 Subch. A shall not  
25 apply to appeals filed prior to the effective date of this  
26 paragraph.

27 Section 8. The following apply to agencies subject to 2  
28 Pa.C.S. Ch. 6:

29 (1) For reorganization, the chief administrative law  
30 judge shall do all of the following by December 31, 2018:

1 (i) Review and assess the hearing officer  
2 organization for reorganization. This subparagraph  
3 includes personnel and staffing, budgetary needs and  
4 considerations, operations and statutory and regulatory  
5 enforcement requirements for the purpose of determining  
6 the organizational structure and staffing.

7 (ii) In accordance with the review and assessment  
8 under subparagraph (i), submit a reorganization plan to  
9 carry out the reorganization to the executive board for  
10 approval under section 709(b) and (h) of the act of April  
11 9, 1929 (P.L.177, No.175), known as The Administrative  
12 Code of 1929.

13 (2) For personnel actions, notwithstanding the  
14 reorganization plan under paragraph (1)(ii), after December  
15 31, 2018, hiring, promotion and termination of personnel  
16 requires approval of the chief administrative law judge.

17 (3) For budgeting and procurement, after December 31,  
18 2018, and before July 1, 2019, without the approval of the  
19 chief administrative law judge, an agency may not:

20 (i) expend funds, other than for payroll, related to  
21 the administration of hearing officer functions; nor

22 (ii) procure goods and services related to the  
23 administration of hearing officer functions.

24 Section 9. The following apply to transfer:

25 (1) The Office of Administrative Hearings shall assume  
26 the functions vested in it under 2 Pa.C.S. Ch. 5 Subch. A and  
27 Ch. 6 exercised prior to the effective date of this paragraph  
28 by the agencies within the scope of 2 Pa.C.S. Ch. 5 Subch. A  
29 and Ch. 6.

30 (2) The assumption under paragraph (1) has the same

1 effect as if the functions had originally been those of the  
2 office.

3 (3) There shall be a transfer of personnel, allocations,  
4 appropriations, equipment, supplies, records, contracts and  
5 rights and obligations, which are expended or used in  
6 connection with the functions transferred to the office under  
7 paragraph (1).

8 (4) The transfer under paragraph (3) has the same effect  
9 as if the subjects of transfer had originally been those of  
10 the office.

11 Section 10. In addition to the sums referred to in section  
12 9(3), an additional sum of \$ , is hereby appropriated to the  
13 Office of Administrative Hearings for the fiscal year July 1,  
14 2018, to June 30, 2019, to carry out the provisions of this act.

15 Section 11. This act shall take effect as follows:

16 (1) The following provisions shall take effect  
17 immediately:

18 (i) Section 8 of this act.

19 (ii) Section 10 of this act.

20 (iii) This section.

21 (2) The remainder of this act shall take effect January  
22 1, 2019.