

1 SB577  
2 120865-1  
3 By Senator Smitherman  
4 RFD: Judiciary  
5 First Read: 30-MAR-10

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8 SYNOPSIS: This bill would establish an Office of  
9 Administrative Hearings as an independent unit in  
10 the judicial 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 which, along  
15 with 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  
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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 judicial  
17 branch of state government. All employees of the Office of the  
18 Attorney General's Administrative Law Judge Division and  
19 employees of the Department of Human Resources assigned to the  
20 division on January 1, 2010, shall be transferred to the  
21 Office of Administrative Hearings on October 1, 2010, with all  
22 duties and responsibilities remaining unchanged, except that  
23 the chief administrative law judge shall not retain that  
24 position unless reappointed by the State Advisory Council on  
25 Administrative Hearings as provided below.

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

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

5           (2) The Presiding Circuit Judge of the Fifteenth  
6 Judicial Circuit.

7           (3) The Chair of the Judiciary Committee of the  
8 Alabama Senate.

9           (4) The Chair of the Judiciary Committee of the  
10 Alabama House of Representatives.

11          (5) The Attorney General.

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

25          Section 3. (a) Except as provided in subsection (b),  
26 all employees of the Administrative Law Judge Division of the  
27 Office of the Attorney General and employees of the Department

1 of Human Resources assigned to the Administrative Law Judge  
2 Division as of January 1, 2010, shall be appointed on the  
3 effective date of this act into a Merit System position by the  
4 chief of that division.

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

10 (c) If the chief administrative law judge is  
11 appointed from a Merit System position and is not reappointed,  
12 he or she may revert to the Merit System position held prior  
13 to the appointment.

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

22 (e) A person appointed as the chief administrative  
23 law judge shall devote his or her full time to the duties of  
24 the office and may not engage in activities inconsistent with  
25 the duties and responsibilities of an administrative law  
26 judge. The chief administrative law judge shall serve a

1 six-year term and shall continue to serve until a successor is  
2 appointed and qualified.

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

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

14 Section 5. (a) This act shall not apply, except for  
15 employee termination appeals as provided for in Section  
16 36-26-27, et seq., Code of Alabama 1975, to any of the  
17 following branches of government, boards, commissions, or  
18 departments:

19 (1) The Legislative branch.

20 (2) The Judicial branch.

21 (3) The Office of the Governor.

22 (4) The Board of Pardons and Paroles.

23 (5) The Public Service Commission.

24 (6) The Department of Industrial Relations.

25 (7) The Department of Revenue.

26 (8) The Food Assistance Division of the Department  
27 of Human Resources.

1           (b) Except as provided in subsection (a), this act  
2 shall apply to each agency that employs or engages either full  
3 or part-time one or more hearing officers or administrative  
4 law judges, who are licensed attorneys to adjudicate contested  
5 cases.

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

8           (1) Supervise the Office of Administrative Hearings.

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

18           (3) Assign administrative law judges to conduct  
19 hearings in contested cases. The chief may enter into  
20 contracts with outside attorneys on a part-time basis as the  
21 caseload dictates and with the consent of the parties in a  
22 contested case. Administrative law judges under contract shall  
23 be compensated at a rate determined in accordance with the  
24 existing legal rate paid by the state.

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

1                   (5) Establish and implement standards and  
2 specialized training programs and provide materials for  
3 administrative law judges.

4                   (6) Provide and coordinate continuing education  
5 programs and services for administrative law judges, including  
6 mediation training, alternative dispute resolution, research,  
7 technical assistance, technical and professional publications,  
8 compilation and dissemination of information, and notice of  
9 changes in the law relating to the duties of administrative  
10 law judges.

11                   (7) Develop or adopt model rules of procedure and  
12 other guidelines for administrative hearings to be approved by  
13 the State Advisory Council on Administrative Hearings.

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

16                   (9) Submit an annual report on the activities of the  
17 office to the State Advisory Council on Administrative  
18 Hearings, the Governor, the Clerk of the House of  
19 Representatives, and the Secretary of the Senate.

20                   (10) Meet and confer not less than quarterly with  
21 the Advisory Council on Administrative Hearings.

22                   (b) The chief administrative law judge may do any of  
23 the following:

24                   (1) Serve as an administrative law judge in a  
25 contested case.

26                   (2) Furnish administrative law judges on a contract  
27 basis to other governmental entities.



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 contracts with any  
5           public or private agency or educational institution subject to  
6           the Contract Review Permanent Legislative Oversight Committee.  
7           The chief may approve contracts between agencies and lawyers  
8           with specialized knowledge and practice within the field of  
9           the agency at the expense of the agency. These specialized  
10          fields of practice will be designated by the chief  
11          administrative law judge.

12          (5) Adopt rules and regulations to implement this  
13          act pursuant to the Administrative Procedure Act, Sections  
14          41-22-1 et seq., Code of Alabama 1975.

15          (6) Mediate cases in controversy or assign outside  
16          mediators with the consent of the parties.

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

19          (8) Negotiate and enter into settlement agreements.

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

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

26          (b) Persons appointed as administrative law judges  
27          shall be licensed to practice law in this state and shall

1 receive the compensation designated by the chief from the  
2 salary range established for the appropriate position as  
3 established by the State Personnel Department.

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

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

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

20 (f) The appointment of administrative law judges  
21 shall be inclusive and reflect the racial and gender diversity  
22 of the state.

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

26 Section 9. (a) An administrative law judge, through  
27 issuance of a subpoena, may summon witnesses, may require

1 testimony, and require the production of books, documents,  
2 records, papers, or other tangible things at any hearing  
3 before the office, upon any matter within its jurisdiction  
4 throughout the state. Witnesses may be summoned by any party  
5 to the proceeding in the same manner, be paid the same fees,  
6 and be subject to the same penalties as witnesses in civil  
7 cases before any circuit court in this state. An  
8 administrative law judge may issue orders of discovery  
9 pursuant to the Alabama Rules of Civil Procedure.

10 (b) An administrative law judge may apply, upon  
11 affidavit, to any circuit court judge for an order, returnable  
12 in not less than two nor more than five days, to show cause  
13 why a person should not face sanctions pursuant to the Rules  
14 of Civil Procedure for refusal to comply with an order issued  
15 pursuant to this section. If the circuit court judge hearing  
16 the matter determines that the person is guilty of refusing to  
17 comply with the order of the administrative law judge, the  
18 circuit court judge may order the penalties as are otherwise  
19 provided for in cases of civil contempt.

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

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

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

6           Section 12. If the office is unable to assign an  
7 administrative law judge in response to a request from an  
8 agency, the chief administrative law judge shall designate in  
9 writing an individual who meets the qualifications for an  
10 administrative law judge in a proceeding before the agency  
11 within 45 days.

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

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

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

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

4 Section 15. In the hearing of a proposed decision or  
5 order received from the office, the chief executive or  
6 governing body of the agency may adopt the recommended order  
7 as the final order of the agency, except for employee  
8 termination appeals as provided for in Section 36-26-27, et  
9 seq., Code of Alabama 1975, which shall be heard by the State  
10 Personnel Board. The agency in its final order may reject or  
11 modify the conclusions of law over which it has substantive  
12 jurisdiction and interpretation of administrative rules over  
13 which it has substantive jurisdiction. When rejecting or  
14 modifying such conclusion of law or interpretation of  
15 administrative rule, the agency must state with particularity  
16 its reasons for rejecting or modifying such conclusion of law  
17 or interpretation of administrative rule and must make a  
18 finding that its substituted conclusion of law or  
19 interpretation of administrative rule is as or more reasonable  
20 than that which was rejected or modified. Rejection or  
21 modification of conclusions of law may not form the basis for  
22 rejection or modification of findings of fact. The agency may  
23 not reject or modify the findings of fact unless the agency  
24 first determines from a review of the entire record, and  
25 states with particularity in the order, that the findings of  
26 fact were not based upon competent substantial evidence or  
27 that the proceedings on which the findings were based did not

1 comply with essential requirements of law. The agency may  
2 accept the recommended penalty in a recommended order, but may  
3 not reduce or increase it without a review of the complete  
4 record and without stating with particularity its reasons  
5 therefor in the order, by citing to the record in justifying  
6 the action.

7 Section 16. The Office of Space Management of the  
8 Department of Finance shall provide the office with office  
9 space; provided, however, the office shall not be housed in  
10 the Office of the Attorney General.

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

17 (b) Any person transferred pursuant to this section  
18 shall be continued in the same classification which he or she  
19 held under the state Merit System prior to the transfer. Any  
20 person transferred pursuant to this section now serving in a  
21 classification of chief administrative law judge shall  
22 continue in the same salary range, but under the designation  
23 of a senior administrative law judge, unless appointed as the  
24 chief administrative law judge pursuant to this act. Within  
25 the same time restrictions, all full-time staff of the covered  
26 agencies who have exclusively or principally served as support  
27 staff for administrative hearings, at the discretion of the

1 chief, may be administratively transferred to the office. Any  
2 employee transferred to the office pursuant to this section,  
3 in the event of layoffs due to a lack of or insufficiency of  
4 funding, shall be entitled to revert to the position and the  
5 agency the employee held prior to transfer to the office. All  
6 equipment or other tangible property in possession of covered  
7 agencies which is used or held exclusively or principally by  
8 personnel transferred under this section may be transferred to  
9 the office within the same time period, subject to the  
10 discretion of the chief.

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

1 Administrative Hearings Fund as appropriations for purposes of  
2 this act.

3 (d) For the fiscal year ending September 30, 2011,  
4 there is hereby appropriated from the State General Fund the  
5 amount of \$\_\_\_\_\_ and from the Education Trust Fund the  
6 amount of \$\_\_\_\_\_ for the implementation of the provisions of  
7 this act. All funds received by the Office of Administrative  
8 Hearings during the fiscal year ending September 30, 2010, are  
9 hereby appropriated to the Office of Administrative Hearings  
10 for use in the conduct of the functions of that office as  
11 provided in this act. For all fiscal years after the fiscal  
12 year ending September 30, 2011, the Office of Administrative  
13 Hearings shall be funded from the General Fund and the  
14 Education Trust Fund on a pro rata basis based upon the ratio  
15 of cases submitted from General Fund agencies and Education  
16 Trust Fund agencies from the prior fiscal year.

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, upon the appropriation of the necessary funds  
27 to the office for its operation. If funds are not



1       appropriated, the office shall begin operation on October 1 of  
2       the year in which funds are appropriated or otherwise become  
3       available.

4               Section 19. The Code Commissioner, as appropriate,  
5       shall substitute this act into and make it a part of those  
6       laws which make reference to the conduct of hearings by the  
7       Administrative Law Judge Division of the Office of the  
8       Attorney General.

9               Section 20. The provisions of this act are  
10       severable. If any part of this act is declared invalid or  
11       unconstitutional, that declaration shall not affect the part  
12       which remains.

13              Section 21. This act shall become effective on  
14       October 1, 2010, following its passage and approval by the  
15       Governor, or its otherwise becoming law.