

**REPORT ON UNIFORM
ADMINISTRATIVE HEARING PROCEDURES**

RESEARCH MEMORANDUM NO. 461

LEGISLATIVE RESEARCH COMMISSION

January, 1992



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Prepared by:

Michael Greer

Research Memorandum No. 461

**Legislative Research Commission
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MEMORANDUM

TO: Vic Hellard, Jr.
Director

FROM: Michael Greer, Committee Staff Administrator
Business Organizations and Professions

SUBJECT: Study of Uniform Administrative Hearing Procedures

DATE: January 15, 1992

The attached study was completed to satisfy 1988 HCR 114, which directed a study of administrative hearing processes in Kentucky. This study includes a review of federal and state law, Kentucky law and regulations, and applicable case law. It also includes recommended legislation, as directed.

Research assistance on Kentucky statutes was provided by Jeff Kell and on administrative regulations by Michelle Rogers. The text of the report was typed by Sue Chadwell.

A number of individuals volunteered their time to serve on a Technical Advisory Group to provide input on research issues and bill drafts. On behalf of the Legislative Research Commission, I would like to express gratitude for their assistance.

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MG/sc

UNIFORM ADMINISTRATIVE HEARING PROCEDURES

BACKGROUND

The term administrative procedures relates generally to the processes and systems employed by government agencies in administering government programs. The legislative interest in standardizing administrative procedures has focused on two main areas; administrative rule-making (promulgation of regulations) and adjudication (conduct of administrative hearings).

Interest in uniform procedures first arose in the 1930's.¹ The proliferation of New Deal programs enacted during the Depression significantly enhanced the power of government agencies. Broad grants of authority given to agencies were perceived by many as creating a potential for abuse of authority. Standardizing the procedures by which these powers were carried out was seen as a way of imposing safeguards against potential excesses.

Several efforts were undertaken between 1934 and 1940 to document alleged abuses and develop remedial legislation. One such effort by the American Bar Association led to the passage of federal legislation in 1940.² This act was vetoed by President Roosevelt on the grounds it would unduly impede government administration. Before further legislation could be considered, the country was at war and the matter was put on hold. In 1946, following the end of World War II, a Federal Administrative Procedures Act was enacted by Congress.

Also in 1946, the National Conference of Commissioners for Uniform State Laws published a Model State Administrative Procedures Act.³ The model act provided guidelines for states interested in standardizing both rule-making and hearing procedures. Its development reflected a concern and resultant activity at the state level that paralleled federal efforts.

In 1974, the Kentucky General Assembly addressed the rule-making part of administrative procedures. Legislation was enacted to establish a uniform procedure for the promulgation of administrative regulations, codified as KRS Chapter 13A.⁴ A subcommittee of the Interim Joint Committee on State Government was then appointed to work during the 1974-75 interim to develop companion legislation for administrative hearings. The resulting legislation⁵ was based on the then current version of the Model State APA. It was defeated in the 1976 session, due in large part to state agency opposition.

Further work on uniform administrative hearings was undertaken during the 1984-85 interim by the Subcommittee on Occupations and Professions of the Interim Joint Committee on Business Organizations and Professions. The Subcommittee perceived a need to standardize hearings for licensing boards and requested legislation be drafted.⁶ When the lack of a state uniform hearings law was noted by the Subcommittee, the bill draft was revised to apply to all state agencies. With the expanded scope came increased agency opposition, and the bill was not introduced. Opposition was not, however, as widespread as in 1976, and many agencies supported the legislation.

The subject of uniform hearing procedures arose again in the 1988 General Assembly with the passage of a resolution directing a study be conducted.⁷ The study was to include a review of current Kentucky law, state and federal administrative procedure acts, and case law relating to constitutional issues. The resolution also called for a recommendation concerning enactment of appropriate legislation in Kentucky.

Further impetus for uniform hearing procedures came from another study commissioned in 1988.⁸ A special commission was created to conduct a comprehensive study of the structure and function of state agencies. The final report of this group recommended, "The General Assembly should enact an Administrative Procedures Act so that hearing procedures throughout the state would be consistent."⁹

This recommendation was referred to the Interim Joint Committee on State Government for study and consideration during the 1990-91 interim. In September, 1991, staff involved in uniform hearings research presented findings and proposed legislation to the Subcommittee on General Government. Support for establishing uniform hearing procedures was expressed by the subcommittee, and a bill draft was requested.¹⁰ The draft was then considered and prefiled by the full Interim Joint Committee on State Government at its November, 1991 meeting.

PROCEDURAL DUE PROCESS

Constitution

The Fourteenth Amendment to the U.S. Constitution guarantees all citizens due process and equal protection of law.

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.¹¹

Out of this has evolved a constitutional right to procedural due process which applies to the conduct of administrative hearings. The courts have recognized three basic elements in providing constitutional due process:

1. Right to notice.
2. Right to appear and present evidence.
3. Right to a fair hearing.

Case Law

Constitutional rights have been further defined by the courts, but in general the courts have not mandated any particular set of standards. Recognizing a need for

government agencies to act expediently, the courts have allowed agencies considerable flexibility in conducting hearings. The due process standards imposed by the courts vary, depending on the complexity and relative importance of the issues involved. This has produced a wide range of acceptable procedures.

On one end of the spectrum are procedures that recognize only the rudiments of due process. In such cases the interests to be determined are not judged sufficient to warrant formal procedure, and informal procedures have been permitted. In a case involving a brief suspension of a student from school, the court stated that adequate and timely notice and the opportunity for the individual to informally tell his side of the story were sufficient to provide due process.¹²

At the other end of the spectrum are requirements imposing formal, trial-type hearings. These requirements are very close to what is required in a judicial proceeding. While individual requirements had been imposed in a wide variety of cases over the years, most were consolidated in a landmark 1975 New York case involving the revocation of welfare benefits.¹³ The full list of procedural requirements imposed in this case are:

1. Timely and adequate notice;
2. Confronting adverse witnesses;
3. Oral presentation of arguments;
4. Oral presentation of evidence;
5. Cross-examination of adverse witnesses;
6. Disclosure to the claimant of opposing evidence;
7. The right to retain an attorney;
8. A determination on the record of the hearing;
9. A statement of reasons for the determination and an indication of the evidence relied on; and
10. An impartial decision-maker.¹⁴

The following is a brief discussion of case law relating to due process standards recognized in formal hearings by federal courts.

Notice

There are two elements generally recognized in the right to notice. The first is that a person be given "timely" notice. This is general construed as notice of time, date and place of the hearing and notice sufficiently in advance that he has adequate time to prepare a case.¹⁵ The second element is that the notice be "adequate". In this regard it must state the charges and/or issues being heard in sufficient specificity to allow the person to prepare his case.¹⁶ The courts have not mandated any particular time frame for notice, with the length of notice varying with the type of agency hearing involved.

Appearance

A person must be afforded the opportunity to appear at a hearing and present evidence in his behalf.¹⁷ As an extension of this right, he has the right to cross examine

witnesses and rebut evidence presented against him.¹⁸ He also has the right to be represented by counsel,¹⁹ if he so chooses, but the courts have not required the appointment of an attorney if he cannot afford one, as has been mandated for criminal proceedings.

Hearing

A person must be afforded a fair and impartial tribunal.²⁰ Fairness is a somewhat vague issue, but case law seems to revolve around the evidence on the record and its relation to the decision-making process, and the impartiality of the person conducting the hearing. The courts have ruled that a formal record of proceedings be maintained.²¹ Decision-making must be based on evidence in the record and on that alone.²² In related decisions, the courts have disallowed decisions based on communications not a part of the formal record (ex parte communications).²³

There are two tests that are generally applied to determine the impartiality of the presiding officer. The first is whether the presiding officer has a vested interest, such as a pecuniary interest, in the matter to be considered.²⁴ The second test is whether the hearing officer possesses an inherent prejudice or dislike of a party to the proceeding that would bias decision-making.²⁵ Decisions on personal bias would appear to be more focused on specific facts of a case and, as such, have limited application.

The courts have not recognized potential systemic biases which appear to be prejudiced on their face. For example, the courts have allowed the combination of investigative/prosecutorial and hearing functions routinely within the same agency and even with the same individual.²⁶ The combination of these functions is not inherently biased, in the view of the courts.

Kentucky Case Law

The Kentucky Constitution does not have a provision similar to the Fourteenth Amendment, but Section 2 of the Kentucky Constitution has been interpreted by the Kentucky courts as conveying the same basic rights of due process as contained in the Fourteenth Amendment. Section 2 reads:

Absolute and arbitrary power over the lives, liberty and property of free men exists nowhere in a republic, not even in the largest majority.²⁷

Kentucky courts have interpreted procedural rights granted by this section to be essentially the same as those granted under the Fourteenth Amendment. The courts have ruled that Section 2 was intended to protect citizens against actions that are unjust, unequal or in excess of the legitimate interest of the people.²⁸ The scope of Section 2 includes both equal protection and due process.²⁹ Also under Section 2, an administrative agency is prohibited from acting in an arbitrary manner.³⁰

Like the federal courts, Kentucky courts have detailed procedural requirements in certain cases but have not established a uniform standard. There are several major cases which generally flesh out these rights. Where there is a dispute as to adjudicative

facts, a trial-type hearing is required.³¹ The key elements of a “formal hearing” are the right to know the charges, present competent evidence, and be heard by counsel upon the evidence and applicable law.³² In general, Kentucky courts have required agencies to provide basic due process and, within that context, adhere to procedure as prescribed in applicable statutes.³³

Notice

Adequacy of notice has been addressed by Kentucky courts. In one previously cited case, the court ruled that a “formal hearing” included the right to reasonably know the charges. In another decision, the court ruled that charges in a proceeding must be specific enough to allow a person to prepare a defense.³⁴

On timeliness of notice, Kentucky courts have said that an agency must abide by statutory requirements and that an agency does not have authority to change statutorily prescribed time-frames.³⁵ In some cases, the courts have ruled on the general issue of reasonableness, where the facts of the case pertain to notifications that are in the extreme.³⁶

Evidence

Kentucky courts have ruled that proceedings that do not afford a person the right to be heard are arbitrary and unconstitutional.³⁷ Kentucky courts have recognized the right to appear and present evidence, including the right to cross examine,³⁸ and the right to representation by counsel.³⁹

Hearing

Kentucky courts have ruled in a number of cases that hearing decisions must be based on findings of facts and that this is essential in supporting a decision, particularly on review.⁴⁰ There does not appear to be any case law dealing specifically with impartiality and fairness of the presiding officer.

FEDERAL AND STATE LAW

Federal APA

The Federal Administrative Procedures Act⁴¹ applies to any adjudicatory hearing conducted by a federal agency pursuant to statute, with very limited exception. While the Federal APA has undergone some revision over the years, it remains relatively the same as enacted. The Federal APA provides procedural standards as defined by courts for trial-type adjudications. Comparative detail about the Federal APA is contained in a subsequent section dealing with draft legislation.

Model State APA

Since its enactment in 1946, the Model State Administrative Procedures Act has undergone revisions in 1961 and again in 1981. Each revision incorporated changes based

on administrative practices and a body of law accruing over the years preceding the revision. As might be expected, the 1981 revision is more detailed than earlier versions.

The standard product of the Commissioners on Uniform State Law is a uniform statute which is supposed to be enacted verbatim by states. The state APA, however, is a "model" act, which is to serve only as a guideline for states. A model act recognizes differences among states and allows more flexibility in legislating. This is reflected in the variety of content found in state administrative procedures acts.

State APA'S

North Dakota enacted the first state administrative procedures act in 1941. Two other states also adopted acts which pre-date the Federal APA and the Model State APA: California and Missouri (1945).⁴² There are currently 47 states (plus the District of Columbia) with administrative procedures acts that establish uniform standards for hearings. Only Kentucky, Pennsylvania and Texas lack uniform hearing laws. (See Table 1).

Of the states with APA's, 31 are based on the Model State APA. Most of these (28), are based on the 1961 version.⁴³ Only two states, Washington and New Hampshire, have adopted the 1981 Model APA, and a third state, Arizona, has adopted some provisions of it. Some state laws that are supposedly based on the Model State APA bear little resemblance to it, while other states' laws that do not claim to be, bear a striking resemblance to the Model. It is not clear what criteria the Commission on Uniform State Laws used in making this determination.

State APA's vary considerably in scope and detail. They range from a very simple, two-provision act (Mississippi), to acts establishing very elaborate procedures (Washington). Most states have attempted to achieve a workable balance between basic procedure and trial-type detail. Not surprisingly, there is a direct correlation between the amount of detail and the scope of the acts. The more detail included, the more exemptions there are to the application of the act. Those acts which merely reiterate basic constitutional requirements generally have broad application.

STATES WITH UNIFORM ADMINISTRATIVE PROCEDURES ACTS

Jurisdiction	Year Enacted	Statutory Citation	Based on Model Act	Centralized Hearings
Alabama	1981	Code 1975, §§41-22-1 to 41-22-27	Yes	No
Alaska	1959	AS §§44.62.010 to 44.62.570	No	No
Arizona	1970	A.E.S. §§41-1001 to 41.1066	Yes	No
Arkansas	1967	A.C.A. §25-15-201 to 25-15-214	Yes	No
California	1945	Cal. Codes, §11500 to 11528	No	Yes
Colorado	1959	CRS 24-3-101 to 24-4-108	No	Yes
Connecticut	1971	C.G.S.A. §§ 4-166 to 4-189	Yes	No
Delaware	1960	Del. Law, 29 §10101 to 29 §10161	No	No
District of Columbia	1968	D.C. Code 1981, §§1-1501 to 1.1510	Yes	No
Florida	1961	FSA §120.50 to §120.72	No	Yes
Georgia	1964	O.C.G.A. §§50-13-1 to 50-13-22	Yes	No
Hawaii	1961	HRS §§91-1 to 91-18	Yes	No
Idaho	1965	I.C. §§67-5201 to 67-5218	Yes	No
Illinois	1975	S.H.A. ch. 127, para. 1001 to 1021	Yes	No
Indiana	1986	ISA §§4-21.5-3-1 to 4-21.53-37	No	No
Iowa	1974	I.C.A. §§17A.1 to 17A.23	Yes	No
Kansas	1984	K.S.A. §§77-501 to 77-627	No	No
Kentucky				
Louisiana	1966	LSA.-R.S. 49:950 to 49:970	Yes	No
Maine	1977	5 M.R.S.A. §§8001 to 11008	Yes	No
Maryland	1957	Code, St.Gov't., §10-201 et seq.	Yes	No
Massachusetts	1954	M.G.L.A. Ch. 30A §1 to 30A §17	No	No
Michigan	1969	M.C.L.A., §§24.201 to 24.315	Yes	No
Minnesota	1984	M.S.A., 14.01 to 14.70	No	Yes
Mississippi	1976	Code 1972, §§25-43-1 to 25-43-19	Yes	No
Missouri	1945	V.A.M.S. §§536.010 to 536.150	Yes	No
Montana	1971	MCA 2-4-101 to 2-4-711	Yes	No
Nebraska	1945	R.R.S. 1943, §§84-901 to 84-920	Yes	No
Nevada	1965	N.R.S. 2338.010 to 2338.150	Yes	No
New Hampshire	1973	RSA 541-A:1 to 541-A:22	Yes	No
New Jersey	1969	N.J.S.A., 52:14B-1 to 52:14B-15	No	Yes
New Mexico	1953	NMSA, §§12-8-1 to 12-8-25	No	No
New York	1975	McKinney's State APA §100 et seq.	Yes	No
North Carolina	1973	N.C.A., §§150B-1 to 150B-64	No	Yes
North Dakota	1941	N.D. C.C., §§28-32-01 to 28-32-22	No	No
Ohio	1979	O.R.C., §§119.01 to 119.13	No	No
Oklahoma	1963	75 Okl.-St. Ann. §§250.3 to 250.5, 302 to 323	Yes	No
Oregon	1957	ORS 183.310 et seq.	Yes	No
Pennsylvania				
Rhode Island	1962	Gen. Laws 1956, §§42-35-1 to 42-35-18	Yes	No
South Carolina	1977	S.C. Code, §§1-23-310 to 1-23-400	No	No
South Dakota	1966	S.D.C.L., §§1-26-1 to 1-26-41	Yes	No
Tennessee	1974	T.C.A. §§4-5-101 et seq.	Yes	Yes
Texas				
Utah	1953	U.C.A., §§63-46a-1 to 63-46a-16	No	No
Vermont	1967	3 V.S.A. §§801 to 849	Yes	No
Virginia	1975	Va. Code §§ 9-6.14:1 to 9-6.14:25	No	Yes
Washington	1959	West's RCWA 34.05.001 to 34.05.902	Yes	Yes
West Virginia	1964	Code, 29A-1-1 to 29A-7-4	Yes	No
Wisconsin	1955	W.S.A. 227.01 to 227.60	Yes	No
Wyoming	1965	W.S. 1977, §§16.3.101 to 16-3-115	Yes	No
TOTALS	48		31	9

SOURCES: State Statutes & Uniform Laws Annotated

KENTUCKY LAW

Statutes

As part of this research, a search of the Kentucky Revised Statutes was conducted to identify statutes that would authorize or prescribe hearing procedures. The LRC computerized data base was queried for any statutes containing the word "hearing". Statutes identified were then reviewed and edited, to eliminate any in which the word hearing was used in a non-adjudicatory context. A complete listing of hearing statutes is contained in Appendix B. Statutes are listed in numerical order, accompanied by the name of the agency and the type of hearing identified.

Through this statute search, a total of 450 different hearing processes was identified, encompassing 1,089 statutes. Of these 450 processes, 265 are processes of state agencies in the executive branch of government. Of the remaining, 7 are legislative branch hearings, 57 are judicial hearings, and 121 related to hearings conducted by various jurisdictions of local government.

Not all these hearing processes are purely adjudicatory in nature. Some appear to be "public hearings," while others appear to have elements of both. Kentucky courts have accorded certain procedural rights in public hearings where the courts have perceived that rights are being adjudicated.⁴⁴ It was not always possible to distinguish the truly adjudicatory proceedings, and for this reason, all hearing processes identified were listed in the compilation.

While the list of hearing processes is quite extensive, it is not complete. In all probability these are statutes authorizing hearings that were not detected in the computer search. The computer would not locate any statute in which discussion of the right to hearing does not include the word "hearing". For example, a statute could say a person has "a right to administrative appeal", or "a decision is appealable within the agency". Most statutes conferring hearing rights do, however, contain the word hearing somewhere in the text, and the compilation prepared would appear to contain the vast majority of hearing processes.

Much like state APA's, statutory hearing processes in Kentucky cover a wide range of program focus and detail of procedure. On one end of the spectrum are single statutes merely authorizing an agency to conduct hearings, such as KRS 253.110, granting general hearing authority to the Commissioner of Agriculture. On the other end of the spectrum are statutes establishing detailed procedures, such as those for workers' compensation hearings under the Worker's Compensation Board (KRS 342.020 to 342.345). In between are statutes which contain the basic provisions of constitutional due process, an example of which is the license revocation hearing under the Motor Vehicle Dealers Licensing Commission (KRS 190.040).

Regulations

Additional hearing procedures are contained in the *Kentucky Administrative Regulations*. A listing of hearing regulations is contained in Appendix C. Some of these detail procedures where a basic authorization but no procedure is contained in the statutes. Others supplement basic procedures outlined in statutes. (Statutes that have corresponding regulations are noted by an asterisk in the compilation in Appendix B.) Still others specify procedures where no specific statutory hearing authority exists. In most of these cases, the statutory authority cited is a general authority of the agency head to execute the assigned responsibilities of the agency.

NEED FOR UNIFORM PROCEDURES

The study resolution under which this research was conducted, called for determination to be made of whether a uniform procedure for administrative hearings is "required". This is not an easy question to answer with a yes or no. Basic due process of law is required, but uniform procedures in providing due process are not required.

There was no information developed during this study indicating that basic due process is being denied in hearings before Kentucky agencies. Most hearing processes appear to provide basic due process, either by statute or by regulations. It must be kept in mind, however, that basic procedural rights are indeed basic, e.g., adequate notice, ability to present case, and a fair hearing generally. In addition, the courts have allowed government agencies a great deal of latitude in applying basic due process.

There are also certain indirect indicators which suggest that basic due process is present and that there is a general satisfaction with the hearing processes. In 1989-90, there were only 195 appeals to Circuit Court from agency hearings.⁴⁵ This represents a very small percentage of the thousands of hearings that are conducted annually by state agencies. It also represents little more than .2% of the 78,616 Circuit Court cases filed that year.⁴⁶

The review of Kentucky case law revealed that appeals are generally on substantive points and not on procedure. With the few procedural cases, it is usually a matter of an agency not following statutory procedure, rather than a denial of due process. A review of the appeals process would suggest that if basic procedural due process were being denied, it would be reflected in these statistics.

There is, however, no guarantee that basic procedural due process is being provided in all cases. There are some hearing processes that are authorized by statute but the procedures to be followed are not specifically prescribed in statute or regulation. These hearings may very well comply with procedural requirements in their conduct, but without any written procedures to review, it is not possible to make a definite decision in this regard. A uniform hearings law would ensure that basic due process is provided across the board.

Necessity is not, however, the sole justification for enacting uniform procedures. Just as important is the need to improve the operation of government. All government

processes need periodic improvement, and it is through this incremental improvement that progress is made. While uniform procedures may not be constitutionally required, they are generally viewed as highly desirable in establishing an effective level of procedural safeguards. The phrasing of the study resolution suggests that a broader look at need was the intent of the study so the remainder of this section will address the general need for uniform procedures and the benefits that would accrue from having them.

Benefits

The first benefit would be to establish consistent procedures for all state agencies. With uniform procedures, a person would have the same expectation for procedural treatment regardless of the agency involved. This assurance would eliminate confusion and possibly some frustration, and would appear overall to be more fair. In addition, it would assist attorneys in practicing administrative law because they would have only one set of procedures to follow. Likewise, it would assist circuit judges by standardizing the grounds and process for appeal. Providing a consistent standard and a sense of equal treatment were stressed in interim committee hearings as important issues.

A second benefit would be to create a more efficient hearing system. Inefficiency often results from a lack of specified procedure or from differences in procedures. Where differences exist, resources are wasted in delays caused by lack of familiarity with different procedural requirements. Where little or no procedure exists, time and money are often wasted by haggling over procedures. Uniform procedures should not only improve agency efficiency, they should also make a more efficient system for legal representation. There may be some minor costs involved in converting to new procedures initially, but uniform procedures should result in long-term cost savings to state agencies.

A third benefit is that a uniform law would provide procedural standards higher than basic due process. Standards included in proposed legislation are generally regarded as important and desirable procedural safeguards. For example, one such provision involves the separation of the investigative/prosecutorial function from that of the hearing officer. This is not constitutionally required, but it is prudent procedure and something that is incorporated in the Federal APA, as well as most state APA's. Some Kentucky agencies recognize this separation of functions as a matter of practice, but many do not.

There are numerous other benefits which will not be discussed at length here but should at least be mentioned. Uniform procedures would improve training of hearing officers through standardization and coordination of training efforts. They would promote greater agency cooperation by encouraging the sharing of hearing officers. They would standardize reporting, which would allow on-going oversight and evaluation of the hearing process. Finally, enactment of uniform procedures would result in the consolidation or repeal of hundreds of statutes and regulations, significantly reducing the amount of bureaucracy.

One additional argument for a uniform law should be mentioned. Enactment of legislation by other jurisdictions is not in itself justification to adopt laws, but the fact that the federal government and 47 states have adopted uniform hearing procedures makes

a persuasive argument that states and the federal government have found uniformity to be desirable.

DRAFT LEGISLATION

Drafting Process

Based on the need documented in the preceding chapter, a bill was drafted to establish uniform administrative hearing procedures for Kentucky. The text of this bill is contained in Appendix D. The bill is based on the 1961 Model State APA, with elements of the 1981 Model and the Federal APA incorporated as appropriate. The intent of this bill is to provide a workable and cost-effective procedural framework for state agencies conducting hearings. To accomplish this, it attempts to strike a balance between the competing interests of procedural safeguards and administrative expediency.

A Technical Advisory Group was assembled to provide input during the drafting process. This group consisted of twelve volunteers, mostly attorneys, with considerable expertise in the administrative procedure area. The membership included attorneys who currently work for state agencies, attorneys in private practice who practice before state agencies, and two attorneys who had done both. Large agencies and small agencies were represented, as well as program agencies and regulatory boards. Several members of the advisory group also serve on the Task Force on Administrative Procedures of the Kentucky Bar Association, and one member was recommended by the Kentucky Academy of Trial Attorneys.

Major Provisions

A detailed breakdown of the proposed legislation will not be provided. Most of the provisions are clearly written and self-explanatory. There are, however, key provisions which need some explanation. In detailing these provisions, differences with the Model APA and the Federal APA will be noted and reasons stated.

Scope

The proposed draft deals only with hearing procedures. It does not attempt to impose hearing rights where hearing rights are not now granted by law. The issue of when a hearing is to be granted is more a matter of policy than of procedure, and a body of statutes, regulations and case law which impose hearing rights has evolved over the years. The proposed draft does not attempt to state when a hearing is to be held, but rather how it is to be conducted. In the matter of hearing rights, it defers to existing law, and in this regard it is similar to the Federal APA.

The Model APA states that it is procedural only but it contains a provision (§4-101) which could be interpreted as redefining hearing rights. This language was not included in the proposed draft because of the uncertain impact it could have on hearing rights and thus on agency hearing liability. Such language could be used to argue for broader

hearing rights, which could increase significantly the number of hearings held and the costs of hearings. The intent of the legislation, clearly stated in Section 2(1), is to standardize procedure, not to extend rights.

Types of Hearing

The 1981 Model APA provides for three hearing levels, and it contains a mechanism for converting from one to another, as necessary. The purpose of this was to accommodate types of hearings that required more abbreviated procedures. In doing this, the model has created a process that appears to be more elaborate than necessary and potentially more costly. Apparently most other states concur with this assessment, since only two have adopted the 1981 model.

The draft legislation provides for only one type of formal hearing. Informal procedures are permitted, and in fact encouraged, in several ways. First, general information gathering and fact-finding activities are excluded in Section 2(2). Under Section 6, a hearing officer may convene a prehearing conference to, among other things, explore settlement possibilities or develop more informal proceedings. Subsection (3) of Section 6 encourages informal settlement and gives an agency authority to specify informal procedures by regulation.

Exemptions

Realistically, there will be hearing procedures that cannot or should not be conformed to uniform procedures. Our review of state laws found that only the simplest and most basic laws had across the board application. The more elaborate the law, the greater the number of exemptions. Avenues for exemption are provided in the draft, to be administered in a judicious manner.

The first exemptions are provided in the definition of "agency". Legislative and judicial hearings are exempted, as well as hearings related to jurisdictions of local government. These are standard exemptions that are included in the Model APA and most state laws, because the focus of such laws is state administrative agencies. In addition, legislative proceedings are generally not adjudicative in nature, while judicial proceedings are adjudicatory by definition and treated fully under the rules of the courts.

In Section 2 (3), certain categorical exemptions are enumerated. At this point, only two obvious exemptions are included as examples, but others may be added through a review process established in Section 17. A delayed effective date for the act is provided, and agencies are given an opportunity to petition for a categorical exemption, to be reviewed the interim following enactment. If an exemption is sufficiently justified, it would be included in a conforming amendment to be considered in the next General Assembly.

Exemptions may also be granted on a provision-by-provision basis through the Attorney General's office. If exemption is necessary to meet federal requirements, or if compliance with the uniform act would actually impede due process, an exemption may be granted by the Attorney General. In any such case, alternate procedures consistent with the intent of the uniform act must be promulgated by administrative regulation and will be subject to legislative review. This particular provision serves as a safety valve.

Centralization

One issue that is frequently raised with regard to administrative hearings is the desirability of centralization of hearing functions. The Model State APA calls for centralized hearings. There appears to be, however, limited support for centralized hearings in Kentucky, and no data justifying centralization was reviewed during this research.

Even though the Model APA endorses centralized hearings, only 9 states have adopted this approach. Within these 9 states, none has a truly centralized process, since large numbers of agencies are exempted from application of the acts in these states. In California, for example, two thirds of all hearings are conducted outside of the central agency. What has in actuality occurred in these states is a "clustering" of hearings. In major program agencies, hearings are internally centralized, with the smaller, regulatory agencies clustered under a central hearing agency.

There also does not appear to be any cost justification for centralizing hearings. Hypothetically, an argument can be made that centralization would reduce costs through "economy of scale". In reality, however, centralized hearings would create additional levels of bureaucracy, which could protract the hearing process and could increase costs. One study from California compared the costs of hearings in the centralized agency with those of other agencies and found the centralized hearings to be nearly twice as costly.⁴⁷ Some of the added cost was attributed to the use of Administrative Law Judges, which were required to be attorneys.

The proposed draft does not centralize hearing functions and hearings remain the purview of the responsible agencies. It does, however, in Section 16, create a Division of Administrative Hearings in the Attorney General's office, to employ and provide hearing officers on request of an agency. This provision does not create something new but merely statutorily recognizes what is current practice. For several years the Attorney General's office has been providing hearing officers for a growing number of agencies, primarily small, regulatory agencies. A clustering effect, similar to what has been experienced in other states, is occurring in Kentucky by virtue of budgetary necessity. This provision also gives some focus to hearing officer qualifications, training, reporting and general hearing oversight.

This treatment of centralized hearings through the Attorney General's office is similar to the approach of the Federal APA. Under federal law, the qualifications and pay for Administrative Law Judges (hearing officers) is determined by the Office of Personnel Management, but they are employed by, and work under, specific program agencies. The federal Office of Personnel Management is authorized, however, to employ a pool of ALJ's which may be made available to an agency on request.

Hearing Officers

The proposed draft calls for hearing officers to possess law degrees, but it allows agencies, in conjunction with the Department of Personnel and the Attorney General's office, to establish other appropriate qualifications [Section 3(3)]. This exception would accommodate a number of program areas, such as Unemployment Insurance, where individuals with program backgrounds, not attorneys, have been used effectively as hearing

officers. Also under subsection (3), members of licensing boards and other collegial bodies would be permitted to continue serving as hearing officers, as has been customary with many of the boards.

All hearing officers would, however, be required to receive training necessary to prepare them to conduct a competent hearing [Section 3(4)]. Training, in conjunction with uniform procedures, would appear to be the keys to competent hearings, rather than the qualifications of hearing officers. Under the proposal, training standards are to be developed by the Attorney General's office, but training may be provided by an agency or any other approved entity.

Separation of Functions/Disqualification

A separation of the prosecutorial and adjudicatory functions is required under Section 6, subsection (5). A person may not serve as an investigator or prosecutor and a hearing officer for the same proceeding. He may, however, participate in a determination of probable cause. This separation of function is not required for due process, but it would seem to constitute prudent procedure. It would appear to be extremely difficult for a person to investigate or prosecute a case and also sit as an impartial judge. Separation is required in the Model APA and the laws of most states, as well as the Federal APA.

There is also provision in subsection (6) for disqualification of a hearing officer who cannot provide a fair and impartial hearing. Disqualification may be initiated by petition of a party or voluntarily, by action of the hearing officer. Under Section 14, prejudice of a hearing officer is grounds for appeal.

Ex Parte Communication

Section 9 prohibits communication off the record of any substantive issue in a pending hearing. It does not prohibit communication of procedural matters or routine communication among agency staff, as long as the communication does not entail passing along ex parte communications. It also permits communication among members of a collegial body, such as a licensing board, in serving as hearing officers and making a determination in a case.

This section recognizes, however, that ex parte communication will inevitably occur. When it does, the hearing officer must make a judgement whether the communication will have a substantive bearing on the outcome of the case. If it would appear to, he must place it on the record. Otherwise, he would merely note it for the record. Ex parte communication would also be grounds for appeal, under Section 14.

Judicial Review

The proposed draft standardizes the procedure under which hearing decisions (final orders) are to be appealed. Section 13 specifies the procedure and time-frame to be followed, while Section 14 states specific grounds for judicial review. Under Section 14, the court of jurisdiction could not substitute its own judgement for that of the agency but could remand the case to the agency of jurisdiction for reconsideration.

Appeals are to be to Circuit Court, but venue is not stated. Venue remains as provided in current statutes. Venue is another area that appears to be more of a policy matter, and venue for hearings has been decided over the years as part of the debate on program legislation establishing hearing rights. There does not appear to be any good reason to disturb the current equilibrium. Currently, about half of all agency appeals are to Franklin Circuit Court and half to other Circuit Courts around the state. The Model APA does not state venue; therefore, what has been included in the proposed draft is consistent with the Model.

CONCLUSION

The fact that Kentucky does not have uniform hearing procedures does not mean that Kentucky has a bad hearing system. All indications are that state agencies generally do a commendable job with hearings. The issue, therefore, is not one of bad versus good, but of good versus better. Having uniform procedures would insure the delivery of required due process in all cases and would provide other benefits which would improve the hearing process.

In conducting this research, two tangential issues were touched on which may bear further study. The first is the potential standardization of hearing procedures for local government. Local governments were exempted by definition in the proposed draft and are exempted in most state laws. There may, however, be a value in either extending state law to local jurisdictions or in developing uniform procedures especially for local government. The matter should receive further study.

The second issue involves the investigative function of regulatory agencies. In discharging its enforcement responsibility, a regulatory agency must have procedures for processing complaints and investigating allegations of wrongdoing. These functions precede the hearing process and the effectiveness of the overall enforcement program depends as much on good investigative procedures as it does on good hearings. There may be some benefit to having uniform procedures for complaint handling and investigation, and this matter also should be explored further.



FOOTNOTES

1. Charles H. Koch, Jr., *Administrative Law and Practice* (St. Paul Minn: West publishing Co., 1985), p. 20.
2. Ibid, p. 21.
3. National Conference of Commissioners on Uniform State Laws, *Uniform Laws Annotated*, v. 14, (St. Paul, minn.: West Publishing Co., 1990 Supplementary Pamphlet), p. 72.
4. 1974 SB 172, sponsored by Sen. Moloney.
5. 1976 HB 137, prefiled by the Interim Joint Committee on State Government.
6. 1986 BR 971.
7. 1988 HCR 114, see appendix A.
8. 1988 SCR 83.
9. *Report of the Commission on Kentucky's Government, Research Report No. 254*, (Frankfort: Legislative Research Commission, March, 1991), p. 10.
10. 1992 BR 859.
11. U.S. Constitution, Amendment 14, Section 1.
12. *Cross v Lopez*, 419 U.S. 565 (1975).
13. *Goldbery v Kelly*, 397 U.S. 254 (1970).
14. Richard J. Pierce, Jr., Sidney A. Shapiro and Paul R. Verkiul, *Administrative Law and Process*, (Mincola, N.Y.: The Foundation Press, Inc., 1985), p. 337.
15. *Burgoyne v. Lukhard*, 363 F. Suppl. 831 (E.D.Va. 1973).
16. *Abrams v. Daugherty*, 212 p. 942, 944 (Cal. App. 1922).
17. *Morgan v. United States*, 304 U.S. 1, 18 (1938).
18. *Greene v. McElroy*, 360 U.S. 474, 497 (1959).

19. *Goldberg v. Kelly*.
20. *Withrow v. Larkin*, 421 U.S. 35(1975).
21. *Brown v. United States*, 377 F. Supp. 530 (N.D. Tex. 1974).
22. *Mazza v. Carricchia* 105A. 2nd. 545, 554 (N.J. 1954).
23. *Sangomon Valley Television Corp. v. United States*, 269 F. 2nd. 221 (D.C. Cir. 1959).
24. *Gibson v. Berryfield*, 411 U. S. 564 (1973).
25. *Berger v. United States*, 255 U.S. 22 (1921).
26. *Withrow v. Larkin*, 421 U.S. 35 (1975).
27. Constitution of Kentucky, §2.
28. *Louisville Shopping Center, Inc. v. City of St. Matthews*, 635 S.W. 2nd. 307 (Ky. 1982).
29. *Kentucky Milk Marketing and Antimonopoly Commission v. Kroger Co.*, 691 S.W. 2nd 893 (Ky. 1985).
30. *Bunch v. Personnel Bd.*, 719 S.W. 2nd. 8 (Ky. Ct. App. 1986).
31. *City of Louisville v. McDonald*, 470 S.W. 2nd. 173. (Ky. 1964).
32. *Mayfield Gas Co. v. Public Service Commission*, 259 S.W. 2nd 8 (Ky. 1953).
33. *Southern Bell Tel. and Tel. Co. v. City of Louisville*, 96 S.W. 2nd. 695 (Ky. 1936).
34. *Personnel Board v. Heck*, 725 S.W. 2nd. 13 (Ky. App. 1986).
36. *Curtis v. Belden Electronic Wire and Cable*, 760 S.W. 2nd. 97 (Ky. App. 5988).
36. *Kentland Coal Corp. v. Yates*, 743 S.W. 2nd 47 (Ky. App. 1968).
37. *American Beauty Homes Corp. v. Louisville and Jefferson County Planning and Zoning Commission*, 379 S.W. 2nd 450 (Ky. 1964).

38. *Mayfield Gas Co. v. Public Service Commission.*
39. *American Tobacco Co. v. Salee*, 409 S.W. 2nd 160 (Ky. 1967).
40. *Simms v. Angel*, 513 S.W. 2nd 176 (Ky. 1974).
Pearl v. Marshall, 491 S.W. 2nd. 837 (Ky. 1973).
Shields v. Pittsburgh and Midway Coal Min. Co., 634 S.W. 2nd. 440 (Ky. App. 1982).
41. United States Code, Title 5, §§551-706 and 3105, 5372 and 3344.
42. Uniform Code Annotated, p. 72.
43. Ibid, p. 160.
44. *Mayfield Gas Co. v. Public Service Commission.*
45. Data supplied by the Administrative Office of the Courts.
46. Ibid.
47. *Administrative Hearing Options in California State Government*, Sacramento, Ca.: Legislative Analyst (1984).

APPENDIX A



GENERAL ASSEMBLY
COMMONWEALTH OF KENTUCKY

REGULAR SESSION 1988

HOUSE CONCURRENT RESOLUTION NO. 114

THURSDAY, MARCH 10, 1988

The following concurrent resolution was reported to the Senate from the House and ordered to be printed.

A CONCURRENT RESOLUTION directing a study of the statutes in the KRS relating to administrative hearings.

WHEREAS, there are few statutes governing the conduct of administrative hearings by administrative bodies of the Commonwealth; and

WHEREAS, existing statutes do not provide for a uniform procedure for the conduct of administrative hearings; and,

WHEREAS, the administrative hearings procedures established by administrative regulations are inconsistent, have been repeatedly amended, and require individuals and entities subject to such administrative regulations to comply with a confusing variety of procedures, standards, rights and duties; and

WHEREAS, administrative hearings determine the rights, privileges and obligations of a great number of citizens of the Commonwealth, and have an economic impact on them; and

WHEREAS, a detailed analysis of such statutes would provide the General Assembly with information required in order to make decisions regarding amendment, recodification or repeal of existing statutes, and to provide a uniform procedure for administrative hearings;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the

General Assembly of the Commonwealth of Kentucky, the
Senate concurring therein:

1 Section 1. That the Legislative Research Commission
2 through its Administrative Regulation Review Subcommittee
3 conduct a study of administrative hearings held by
4 administrative bodies of the Commonwealth in order to make
5 recommendations concerning the amendment or enactment of
6 statutes governing administrative hearings.

7 Section 2. This study shall include, but not be
8 limited to, a determination of the following:

9 (1) A review of existing statutes and administrative
10 regulations governing administrative hearings;

11 (2) A review of statutes and procedures followed by
12 other state and federal administrative bodies;

13 (3) A review of state and federal case law relating
14 to constitutional requirements for administrative
15 hearings; and,

16 (4) Whether a uniform procedure for administrative
17 hearings is required.

18 Section 3. A report of the findings and
19 recommendations shall be submitted to the Legislative
20 Research Commission no later than August 31, 1989.

21 Section 4. Staff services to be utilized in this
22 study are estimated to cost \$75,000. Services and staff
23 support are to be provided by the Legislative Research

1 Commission from the regular Commission budget, subject to
2 the limitations and other research responsibilities of the
3 Commission.

APPENDIX B

ADMINISTRATIVE HEARINGS STUDY

<u>NAME OF AGENCY</u>	<u>TYPE OF HEARING (Agency Program)</u>	<u>STATUTE REFERENCE</u>
Board of Ethics	Hearings (Board)	6.820*
Capital Planning Advisory Board of the Kentucky General Assembly	General Powers Hearings (Board)	7A.130
All Administrative Departments	Hearings (All 3 Branches)	12.120
LRC	Administrative Regulations Hearings (Review Committee)	13A.080 13A.347
Administrative Body	Administrative Regulations Hearings (Agencies)	13A.100 13A.125 13A.140 13A.160 13A.200 13A.220 13A.270 13A.280 13A.315 13A.320
Dept. of Law	Hearings (Attorney General)	15.243
Dept. of Law	Complaints/Hearings Against Police Officers (Local units of government)	15.520
Justice Cabinet	Removal/Discipline of State Police Officers, Employees Hearings (Commissioner, State Police)	16.140 16.150
Personnel Board	Confirmation Hearings (Senate or Joint Committee on State Government)	18A.050

ADMINISTRATIVE HEARINGS STUDY

NAME OF AGENCY	TYPE OF HEARING (Agency Program)	STATUTE REFERENCE
Personnel Board	General powers Hearings (Board)	18A.065
Personnel Board	State Employee Duties/Grievance Hearings (Board)	18A.0751* 18A.090 18A.095 18A.100 18A.170 18A.175
Kentucky Bar Association	Attorney Disciplinary Hearings (Authorized by Supreme Court)	21A.150
District Court	Small Claims Hearings (Court)	24A.280 24A.290 24A.320 24A.330
Courts	Hearing to Determine Need for Interpreter (Judge)	30A.400 30A.410
Court-Martial/Command- ing Officer	Bail Hearing (Convening authority)	35.050 35.195
Court-Martial/Command- ing Officer	Probation Hearing (Officer with jurisdiction)	35.340
Division of Disaster and Emergency Services	Evaluation of Service Organiza- tions (Executive Director)	39.480
Adjutant General	Discretionary Hearing/ Veterans Bonus Hearing (Administrator)	40.080 40.090 40.480 40.490
Department of Local Government	Public Hearings (Local government economic assistance program)	42.455
State Auditor	LRC Hearings (Auditor)	43.050

ADMINISTRATIVE HEARINGS STUDY

<u>NAME OF AGENCY</u>	<u>TYPE OF HEARING (Agency Program)</u>	<u>STATUTE REFERENCE</u>
State Auditor	Motor vehicle and Motorboat Tax Receipts Hearing (3-member Panel)	43.071
Board of Claims	Asbestos-related Hearings (Board/Hearing Officer)	44.070 44.084 44.086 44.140
LRC	Block Grant Application Hearings (Review Committee)	45.352
Courts	Hearing on Failure of State-Paid Officers to Perform Duty (Court)	61.120
Political Subdivisions	Hearing on Termination of Approved Plans (State Agencies)	61.460
Board of Medical Examiners	Disability Hearings (Retirement System)	61.665
Registry of Election Finance	Violations in Reporting Hearings (Registry)	61.760 61.770
Senate	Impeachment Hearing (Senate)	63.040
Governor	Hearing on Removal of Peace Officers for Neglect (Governor)	63.100 63.110
Commonwealth Attorneys	Hearing on Removal of Non- Elected Peace Officer (Circuit Court)	63.180
Special Districts	Removal of Appointed Members Hearing (Appointing Authority)	65.007
Fiscal Court	Hearing on Expansion or Dissolu- tion of Special District (Fiscal Court)	65.162 65.166

ADMINISTRATIVE HEARINGS STUDY

NAME OF AGENCY	TYPE OF HEARING (Agency Program)	STATUTE REFERENCE
Fiscal Court	Creation of Taxing District Hearing (Fiscal Court)	65.182
		65.192
Fiscal Court	Creation of Non-Taxing Special District Hearing (Fiscal Court)	65.810
County Debt Commission	General Powers Hearing (Commission)	66.300
County	Indebtedness Hearing (State local finance officer)	66.310
County Fiscal Court	Fire Department Hearings (Court)	67.323
Charter County Government	Hearing on Dissolution of Incorporated Cities and Special Districts (Chief Executive Officer)	67.845
Urban-County Govt.	Designation of Urban-Rural areas Hearing (Urban-County Government)	67A.050
Urban-County Govt.	Personnel Hearing (Secretary, civil service commission)	67A.280
Urban-County Govt.	First Ordinance Hearing (Designated Official)	67A.730
		67A.735
Urban-County Govt.	Extension of Urban Services Hearing (Designated Government Official)	67A.860
		67A.875
		67A.876
		67A.878
		67A.879
Urban-County Board of Commissioners	Parking Facility Hearing (Authority to legislative body)	67A.918

ADMINISTRATIVE HEARINGS STUDY

<u>NAME OF AGENCY</u>	<u>TYPE OF HEARING (Agency Program)</u>	<u>STATUTE REFERENCE</u>
County Fiscal Court Metro Correctional Services Department	Personnel Hearings (Merit System)	67B.060
County Fiscal Court	Tax Rate Hearing (Court)	68.245 68.248
Water District	Water Supply Hearing (Water Association)	74.012
County Judge/Executive	Hearing on Limits of Established Water Districts (County Judge/Executive)	74.110
Water District Board of Commissioners	Water System Report Hearing (County Judge/Executive)	74.140 74.150 74.160 74.200
Public Service Commission	Water District Merger Hearing (Commission)	74.361
County Judge/Executive	Water District Discontinuance Hearings (County Judge/Executive)	74.367
Public Service Commission	Water District Expansion Hearing (Commission)	74.395
County Judge/Executive	Establishment of Gas Distribu- tion System Hearing (County Judge/Executive)	74.400
County Judge/Executive	Creation of Water Commission (County Judge/Executive)	74.440
Water Commission	Removal of Commissioners Hearing (County Judge/Executive)	74.450 74.455
Water Commission	Expansion Hearing (County Judge/Executive)	74.500

ADMINISTRATIVE HEARINGS STUDY

<u>NAME OF AGENCY</u>	<u>TYPE OF HEARING (Agency Program)</u>	<u>STATUTE REFERENCE</u>
Fire Protection District	Territorial Limits Hearing (County Judge/Executive)	75.020
Metro Sewer Districts	Board Members/Employees Removal Hearing (County Judge/Executive)	76.030 76.060
Metro Sewer Districts	Construction Subdistrict Establishment Hearing (District/Hearing officer)	76.241 76.246
Sanitation Tax District	Board Member Removal Hearing (County Judge/Executive)	76.277
Sewer Construction District	Establishment Hearing (County Judge/Executive)	76.305
Sewer Construction District Commission	Construction Feasibility Hearing (Commission)	76.335
Sewer Construction District Commission	Classification Benefits Hearing (County Court Clerk)	76.345
County Fiscal Court/ City of 1st or 2nd Class	Air Pollution Control District Hearing (Legislative Body)	77.020 77.025 77.030 77.035
Air Pollution Control Board	Board Members/Employees Removal Hearing (City Legislative Body)	77.070 77.085 77.105
Air Pollution Control Board	Permit Suspension Hearing (Air Pollution Control Officer)	77.220 77.225 77.230

ADMINISTRATIVE HEARINGS STUDY

NAME OF AGENCY	TYPE OF HEARING (Agency Program)	STATUTE REFERENCE
Air Pollution Hearing Board	Variances Hearing (Board)	77.245
		77.250
		77.260
		77.265
		77.270
		77.275
		77.280
		77.285
		77.290
		77.295
County Police Force Merit Board	Personnel Hearings (Board)	77.300
		77.305
		78.405
		78.440
		78.450
Municipal Housing Authorities	Member Removal Hearing (Appointing Officer)	78.455
		78.460
County	Regional Housing Authority Hearing (County Clerk)	80.090
Regional Housing Authority	Member Removal Hearing (Authority)	80.400
City Housing Authority	Extension of Powers Hearing (City Clerk)	80.480
County Clerk	City Incorporation Hearing (Circuit Court)	80.580
City of First Class	Annex Territory Hearing (Board of Aldermen)	81.050
		81.060
		81A.510
City of 1st-4th Classes	Parking Citation/Impoundment Hearing (Hearing Board/Hearing Officer)	82.600
		82.615
		82.620
		82.625
		82.630

ADMINISTRATIVE HEARINGS STUDY

NAME OF AGENCY	TYPE OF HEARING (Agency Program)	STATUTE REFERENCE
City	Overlay District (Legislative body)	82.670
Board of Commissioners	Elected Officers/City Manager Removal Hearing (Board)	83A.040 83A.150
Civil Service Boards, First Class Cities	General Powers Hearings (Board)	90.110
Civil Service Boards, First Class Cities	Removal of Board Members/ Personnel Director/Employees Hearings (Board)	90.120 90.140 90.160 90.190 90.220
Civil Service Commission	Employee Actions Hearings (Commission)	90.360
Cities of 1st Class	Management District Establishment Hearing (Legislative body)	91.756
City	Property Improvement Hearing (Legislative body)	91A.250 91A.260 91A.565
City Parking Authority	Removal of Commissioners Hearing (Appointing authority)	94.815
Cities of 2nd & 3rd Classes and Urban- County Governments	Police or Fire Personnel Actions (Legislative body)	95.450 95.460 95.765
Waterworks, 1st Class Cities	Extension of Facilities Hearing (Board of Waterworks)	96.315
City Electric Utilities	Rate Hearings (City)	96.534
City of 6th Class	Transfer of Utility System Hearing (Legislative body)	96.5405

ADMINISTRATIVE HEARINGS STUDY

NAME OF AGENCY	TYPE OF HEARING (Agency Program)	STATUTE REFERENCE
City	Sewer Hearing (Governing body)	96.922
		96.923
		96.924
Transit Authority Board	Member Removal Hearing (Board)	96A.040
City Planning Commission	Development Plan Hearing (Commission)	99.050
City	Sale of Real Property Hearing (Legislative body)	99.290
City Council, Fiscal Court	Hearing on Removal of Members of Urban Renewal and Community Development Agency (Agency)	99.350
Community Agency	Redevelopment/Urban Renewal Hearing (Agency)	99.370
		99.390
		99.500
		99.530
1st and 2nd Class Cities and Urban-County Govt. Development Agencies	Removal of Commissioners Hearing (City Governing Board)	99.635
Local Govt.	Redevelopment Zone Establishment Hearing (Legislative Body)	99A.020
Local Government	Comprehensive Plan Hearing (Planning Commission)	100.193
		100.197
Cities and Counties	Zoning Amendment Hearing (Planning Commission)	100.203
		100.207
		100.209
		100.211
		100.2111
		100.212
		100.214

ADMINISTRATIVE HEARINGS STUDY

NAME OF AGENCY	TYPE OF HEARING (Agency Program)	STATUTE REFERENCE
Local Government Board of Adjustments	Conditional Use Permit/ Non-Compliance Hearings (Board)	100.221
		100.237
		100.261
		100.263
Local Government Board of Adjustments	Subdivision Regulations Hearing (Planning Commission)	100.281
Local Government Planning Commission	Comprehensive Plan Hearing (Planning Commission)	100.297
Local Government	Planning and Zoning Public Hearing Procedures (Presiding body)	100.345
Corrections Cabinet	Penal/Correctional Facility Location Hearing (Secretary or Designee)	100.361
Kentucky Private Activity Bond Allocation Committee	Project Approval Hearing (Committee)	103.2101
City	Proposed Wastewater Project Hearing (Designated Official)	107.030
		107.040
		107.050
		107.085
Political Subdivision	Privatization Contract/Service Agreement Hearings (Executive Authority)	107.720
		107.730
Urban Services Districts; Ambulance Service Districts	Hearing on Removal of District Council Director (Council)	108.040
County Board of Elections	Eligibility to Vote Hearing (Board)	116.112*
State Board of Elections	Removal of Election Officer Hearing (Board)	117.045*

ADMINISTRATIVE HEARINGS STUDY

NAME OF AGENCY	TYPE OF HEARING (Agency Program)	STATUTE REFERENCE
Political Party County Committee	Election Challenge Hearings (County Judge/Executive)	117.315
Board for Determining Contest of Election of Governor or Lt. Governor	Election Contest Hearing (Board)	120.205
Registry of Election Finance	General Powers/Violation Hearings (Registry)	121.120* 121.140
Revenue Cabinet	Taxpayer Rights Hearing (Cabinet)	131.081 131.190
Kentucky Board of Tax Appeals	Board Member Removal/ Taxpayer Hearings (Majority of Board)	131.320 131.355
Kentucky State Agencies	Tax Refund Hearing (Claimant Agency)	131.565 131.570
Certain Taxing Districts	Compensating Tax Rate Hearings (Taxing District)	132.023 132.024 132.025 132.027 132.029
County Board of Assessment Appeals	Assessment Protest Hearing (County Judge/Executive)	132.310
Kentucky Board of Tax Appeals	PVA Hearing (Board)	132.620
Board of Assessment Appeals	Taxpayer Assessment Appeal Hearing (Board)	133.030 133.120
County Board of Supervisors	Property Assessment Hearings (County Judge/Executive)	133.170
County Judge/Executive	Sheriff Bond Hearing (County Judge/Executive)	134.230

ADMINISTRATIVE HEARINGS STUDY

<u>NAME OF AGENCY</u>	<u>TYPE OF HEARING (Agency Program)</u>	<u>STATUTE REFERENCE</u>
Revenue Cabinet	License Revocation Hearing (Appointed Conferee)	138.195
Revenue Cabinet	Dealer/Transporter License Hearing (Cabinet)	138.320 138.330 138.340 138.355
Revenue Cabinet	Use of Public Highway Bond Hearing (Cabinet)	138.665 138.670
Natural Resources and Environmental Protec- tion Cabinet	Wild Rivers System Hearings (Secretary)	146.270* 146.290
Nature Preserves Commission	General Powers Hearings (Commission)	146.485*
Area Planning Commission	Alteration/Dissolution Hearing (Fiscal Court)	147.620
Area Planning Comm.	Application Filing Requirement Hearing (Commission)	147.673
Property Valuation Administrator	Timberland Hearing (County Judge/Executive)	149.600
Natural Resources and Environmental Protec- tion Cabinet	Flood Control and Water Resources Hearings (Secretary)	151.125*
Natural Resources and Environmental Protec- tion Cabinet	Permit Hearing (Hearing Officer)	151.182 151.184 151.186
Natural Resources and Environmental Protec- tion Cabinet	Dam/Water Barrier Hearing (Cabinet)	151.297
Flood Control Advisory Commission	Water Resources Hearings (Commission)	151.570

ADMINISTRATIVE HEARINGS STUDY

NAME OF AGENCY	TYPE OF HEARING (Agency Program)	STATUTE REFERENCE
Kentucky River Authority	Unified Basin Plan Hearing (Authority)	151.720
State Board for Adult and Technical Education	Employee Status Hearings (Department for Adult and Technical Education)	151B.035* 151B.055 151B.060
Kentucky Rural Economic Development Authority	General Powers Hearings (Authority)	152.266
Economic Development Cabinet Business Information Clearinghouse	Licensing Hearings for New Grocery Stores (Clearinghouse)	152.959
Arts Council	General Powers Hearings (Council)	153.220
Kentucky Center for the Arts Corporation	Member Removal Hearing (Governor)	153.410
State Lottery	Appointment Hearings (Senate or IJC on St. Govt)	154A.030
State Lottery	Complaints/Violations Hearings (Board of Directors)	154A.050 154A.090
State Lottery	Contractual Problem Hearing (President of Corporation)	154A.410
State Board for Elementary and Secondary Education	Suspension of district board member or superintendent of schools (State Board)	156.132*
Department of Education	Compliance Hearing Re Local School District Basketball Programs for Girls (Department)	157.350

ADMINISTRATIVE HEARINGS STUDY

NAME OF AGENCY	TYPE OF HEARING (Agency Program)	STATUTE REFERENCE
State Board for Elementary and Secondary Education	Hearings on Amendments to Approved School Facility Plans (Board)	157.620
District School Boards	Pupil Misconduct Hearing (Board)	158.150
Transportation Cabinet	Student Drivers License Hearing (District Court)	159.051
State Board for Elementary and Secondary Education	Transfer of Property Hearing (Chief State School Officer)	160.045*
District School Boards	Public Hearing on Proposed Code of Student Rights (Committee of students, parents and faculty members)	160.295
District School Boards	Hearing on Tax Levies Exceeding Compensatory Tax Rate (Boards)	160.470
District School Boards	Tax Levy Hearing (Boards)	160.603 160.614
Education Professional Standards Board	Hearing on Revocation of Certificates Issued to School Board Employees (Board)	161.120
District School Boards	Hearing on Demotion of Administrative Personnel (Boards)	161.765
District School Boards	Leave of Absence Hearings (Board)	161.770
State Board for Elementary and Secondary Education	Teacher Contract Termination Hearings (3-Member Tribunal Appointed by Chief State School Officer)	161.790

ADMINISTRATIVE HEARINGS STUDY

NAME OF AGENCY	TYPE OF HEARING (Agency Program)	STATUTE REFERENCE
Council on Higher Education	Campus Hearings (Council Committees)	164.020*
State Board for Proprietary Education	Claimant/Standards Hearing (Board)	165A.360 165A.370
Board for Certification of Librarians	Certification Revocation Hearing (Board)	171.290
Kentucky Historic Preservation Review Board	National Register Hearing (Board and Kentucky Heritage Commission)	171.382
Local Government	Road/Bridge State Tax Expenditures Hearing (Unit of government)	174.100
Department of Highways	Certificate Hearing (Department)	176.190
Department of Highways	Closing Ingress/Egress Ramp Hearing (Department)	177.020
Department of Highways	Approval of Railroad Crossings Hearings (Department)	177.130 177.150 177.190
Department of Highways	Public Hearings Prior to Adoption of Rules Affecting Automobile, Vehicle, Machinery or Material Recycling Establishments (Department)	177.935 177.940 177.945 177.950
Fiscal Courts	Discontinuance or Alteration/Establishment of County Road Hearing (County Judge/Executive)	178.070 178.080
Fiscal Courts	County Roads/Railroads Unsafe Conditions Hearing (Appointed Committee)	178.310

ADMINISTRATIVE HEARINGS STUDY

NAME OF AGENCY	TYPE OF HEARING (Agency Program)	STATUTE REFERENCE
Fiscal Courts	Hearing on Change or Elimination of Railroad Grade Crossings, Overpass, Underpass (Fiscal Court)	178.355 178.360 178.375
Fiscal Courts	Removal of County Engineer Hearing (County Judge/Executive)	179.060
County Judge/Executive Planning and Zoning Commission	Name of County Road Hearing (County Engineer/Commission)	179.330
Fiscal Courts	Road Maintenance Hearing (Court)	179.470
Fiscal Courts	Limits of Subdivision Road Districts Hearing (County Judge/Executive)	179.710
Tennessee-Tom Bigbee Waterway Development Authority	General Powers Hearings (Waterway Development Authority)	182.300
Transportation Cabinet	Air Transportation Permit Hearing (Cabinet)	183.549 183.560 183.570 183.590 183.620
Airport Zoning Comm.	Regulations Hearing (Commission)	183.871
Transportation Cabinet	Overweight Commercial Vehicle Hearing (Cabinet)	186.059
Transportation Cabinet	Drivers License/Seizure Condition Hearing (Cabinet)	186.411
Transportation Cabinet	Drivers License Denial Hearing (Cabinet)	186.565 186.570

ADMINISTRATIVE HEARINGS STUDY

NAME OF AGENCY	TYPE OF HEARING (Agency Program)	STATUTE REFERENCE
Transportation Cabinet	Habitual Violator Hearing (Court)	186.644
Transportation Cabinet	Self-Insurance Certificate Cancellation Hearing (Cabinet)	187.600
District School Boards	Contract Cancellation Hearing (Responsible Officers)	189.540
Motor Vehicle Dealers Licensing Commission	License Revocation Hearing (Commission)	190.040
Motor Vehicle Dealers Licensing Commission	Motor Vehicle Sales Franchise Hearing (Commission)	190.047
Department of Vehicle Regulation	License Violation Hearing (Department/Motor Vehicle Commission)	190.053
Motor Vehicle Dealers Licensing Commission	Hearings/General Powers (Hearing Examiner)	190.057 190.058*
Cabinet for Human Resources	Hearings/General Powers (Secretary/Designated Representatives)	194.025*
Cabinet for Human Resources	Unemployment Insurance Benefit Appeals Hearings (Department for Employment Services)	194.030*
Kentucky State Corrections Commission	Public Hearings (Not specified)	196.081
Corrections Cabinet	Administrative Hearing (Not specified)	197.440
Department of Housing, Buildings and Construction	Review of Inspector's Procedures Hearings (Department)	198B.060

ADMINISTRATIVE HEARINGS STUDY

NAME OF AGENCY	TYPE OF HEARING (Agency Program)	STATUTE REFERENCE
Local Government	Local Building Official Hearings (Local Appeals Board)	198B.070
Department of Housing, Buildings and Construc- tion	Passenger Elevator Change of Plans, Construction Hearings (Department)	198B.480
Department of Housing, Buildings and Construc- tion	Commissioners' General Powers Hearings (Department)	198B.555
Courts	Adoption Hearing (Not Specified)	199.515 199.520 199.540
Cabinet for Human Resources	Child Caring License Revocation Hearing (Cabinet)	199.670
Board for Jefferson County Children's Home	Custody Hearings (Board)	201.100
Courts	Involuntary Hospitalization Hearing (Court)	202A.041 202A.051 202A.053 202A.056 202A.071 202A.076 202A.081 202A.091 202A.121 202A.131 202A.196
Corrections Cabinet	Mentally Ill Inmates Hearing (Cabinet)	202A.201 202A.231

ADMINISTRATIVE HEARINGS STUDY

NAME OF AGENCY	TYPE OF HEARING (Agency Program)	STATUTE REFERENCE
Courts	Involuntary Admission to ICF/MR Hearings (Court)	202B.100
		202B.110
		202B.120
		202B.150
		202B.160
		202B.170
		202B.180
		202B.210
		202B.220
		202B.245
202B.250		
Cabinet for Human Resources	Public Assistance Payments Eligibility, Overpayments, Underpayments Hearings (Hearing Officer)	205.200
		205.211
Cabinet for Human Resources	Public Assistance Hearing (Hearing Officer)	205.231
Department for Medicaid Services	Indigent Care Assurance Program, Hospital Determinations Hearings (Department)	205.575
Cabinet for Human Resources	Personal Care Assistance Appeals Hearing (Hearing Officers/Appeal Board)	205.915
Finance and Adminis- tration Cabinet	Pension Hearing (Secretary)	206.160
Labor Cabinet	Unfair Employment Practice Hearing (Department for Work- place Standards)	207.210
Cabinet for Human Resources	Protective Services Hearing (Court)	209.110
		209.120
		209.130
Cabinet for Human Resources	Reclassification or Transfer Hearing (3-Member Panel)	210.270

ADMINISTRATIVE HEARINGS STUDY

NAME OF AGENCY	TYPE OF HEARING (Agency Program)	STATUTE REFERENCE
Cabinet for Human Resources	Funds Transfer Hearing (Secretary)	210.440
Cabinet for Human Resources	DATE Center Permit Hearing (Cabinet/Agent)	210.640 210.650
Revenue Cabinet	Combustion Technology Tax Exemption Hearing (Cabinet)	211.392
Cabinet for Human Resources	Utilization Review/Appeal Hearings (Cabinet)	211.464
Commission for Handicapped Children	Hearing Risk Certificate Hearing (Commission)	211.647
Cabinet for Human Resources/ Natural Resources and Environmental Protection Cabinet	Nuclear Waste Disposal Facility Hearing (Cabinets)	211.852 211.896
Central Midwest Interstate Low-Level Radioactive Waste Compact	Public Hearings Prior to Adoption of Regional Management Plan (Compact Commission)	211.859
Cabinet for Human Resources	School Building Erection Hearing (Circuit Court)	212.210
First Class City, Department of Health	Director of Health Removal Hearing (Board of Health)	212.420
Local Boards of Health	Violation Hearings (Board)	212.610
Urban-County Board of Health	Hearing on Removal of Commissioner of Health, District Director of Health, (Board)	212.635 212.790

ADMINISTRATIVE HEARINGS STUDY

NAME OF AGENCY	TYPE OF HEARING (Agency Program)	STATUTE REFERENCE
Cabinet for Human Resources	Long Term Care Facility Hearings (Cabinet)	216.567* 216.570
Kentucky Board of Licensure for Nursing Home Administrators	Hearing/General Powers (Board or Designee)	216A.070*
Cabinet for Human Resources/Commission for Health Economics Control	Certificate of Need/General References Hearing (Commission)	216B.015 216B.020 216B.040* 216B.062 216B.085 216B.086 216B.095
Cabinet for Human Resources/Commission for Health Economics Control	License Revocation Hearing (Commission)	216B.105
Cabinet for Human Resources	Application for Drug Sales Hearing (Cabinet)	217.075
Cabinet for Human Resources	Food Processing Permit Hearing (Cabinet/Local Health Department)	217.126
Cabinet for Human Resources	Food Care Violation Hearing (Cabinet)	217.380 217.390
Department of Agriculture	Pesticides Coloration Hearing (Department)	217.550 217.570 217.572
Department of Agriculture	General Powers Hearing (Department)	217.580 217B.220
Department of Agriculture	Pest Control Consultant License Hearing (Department)	217B.103
Department of Agriculture	License Revocation Hearing (Department)	217B.120

ADMINISTRATIVE HEARINGS STUDY

NAME OF AGENCY	TYPE OF HEARING (Agency Program)	STATUTE REFERENCE
Department of Agriculture	Grievance Hearing (Franklin Circuit Court)	217B.200
Pest Control Advisory Board	License Hearings (Board)	217B.510 217B.540 217B.545
Cabinet for Human Resources	Seizure of Property Hearing (Court)	218A.415 218A.460
Cabinet for Human Resources	Hotel Permit Revocation Hearing (Cabinet/Local Health Department)	219.031
Cabinet for Human Resources	Sanitary Park Operation Hearings (Cabinet)	219.370 219.380
Sanitation Districts	District Establishment Objection Hearing (Court)	220.100 220.537
Sanitation Districts	Subdistrict Establishment Objection Hearings (District)	220.553 220.561
Cabinet for Human Resources	Frozen Food Locker Plant Hearing (Secretary)	221.030 221.040
Cabinet for Human Resources	Alcohol/Drug Treatment Facility Hearings (Hearing Officer)	222.230
Natural Resources and Environmental Protection Cabinet	Certificate Hearings (Kentucky Water Well Certi- fication Board)	223.410
Natural Resources and Environmental Protection Cabinet	General Powers Hearings (Cabinet)	224.033* 224.071 224.083 224.085
Environmental Quality Commission	General Powers Hearings (Commission)	224.045*

ADMINISTRATIVE HEARINGS STUDY

NAME OF AGENCY	TYPE OF HEARING (Agency Program)	STATUTE REFERENCE
Natural Resources and Environmental Protection Cabinet	Exemption Hearing (Division of Air and Water)	224.073
Natural Resources and Environmental Protection Cabinet	Complaint Hearing (Cabinet)	224.081
Ohio River Valley Water Sanitation Commission	Waste Discharge Hearings (Commission)	224.190
Tennessee River Basin Water Pollution Control Commission	Water Quality Standards Hearings (Commission)	224.195
Kentucky Regional Integrated Waste Treatment and Disposal Facility Siting Board	Certificates of Environmental Safety and Public Necessity Hearings (Board)	224.2205 224.2207
Natural Resources and Environmental Protection Cabinet	Air Pollution Control District Hearing (Cabinet)	224.450
Natural Resources and Environmental Protection Cabinet	Vehicle Emission Control Program Hearing (Cabinet)	224.478
Interstate Air Pollution Control Commission	General Powers Hearings (Commission)	224.510
Natural Resources and Environmental Protection Cabinet	Noise Variance Petition Hearing (Cabinet)	224.750
Revenue Cabinet	Pollution Control Tax Exemption Certificate Hearing (Cabinet)	224.852
Natural Resources and Environmental Protection Cabinet	Waste Disposal Permit Hearing (County Judge/Executive or Urban-County Government)	224.855

ADMINISTRATIVE HEARINGS STUDY

NAME OF AGENCY	TYPE OF HEARING (Agency Program)	STATUTE REFERENCE
Natural Resources and Environmental Protection Cabinet	Hazardous Waste Facilities Closure Hearing (Cabinet Administrative Hearing Officer)	224.866
Department of Housing, Buildings and Construction	Fire Hazard Hearings (State Fire Marshal)	227.220
		227.280
		227.310
		227.330
		227.331
		227.332
		227.333
		227.334
227.335		
227.340		
Mobile Home Certification and Licensure Board	Mobile Home Certificate Hearings (Board)	227.560
Recreational Vehicle Certification and Licensure Board	Recreational Vehicle Certificate Hearings (Board)	227.565
Office of the State Fire Marshal	Mobile Home Manufacturer License Hearing (Fire Marshal)	227.640
Boxing Commission	Grievance Hearing (Commission/Court)	229.220
Kentucky State Racing Commission	Stay of Imposition Hearing (Commission or Hearing Officer)	230.320
Kentucky State Racing Commission	General Powers Hearings (Commission/Hearing Officers)	230.355
		230.370
		230.394
		230.730
Local Government	Place of Entertainment Permit Hearing (County Judge/Executive)	231.080
Local Government	House of Prostitution Petition Hearing (Court)	233.050

ADMINISTRATIVE HEARINGS STUDY

NAME OF AGENCY	TYPE OF HEARING (Agency Program)	STATUTE REFERENCE
Revenue Cabinet	Liquefied Petroleum Gas License Hearing (Cabinet)	234.340
Natural Resources and Environmental Protection Cabinet	Motor Boat Dealer/Manufacturer License Hearing (Department for Natural Resources)	235.220
Natural Resources and Environmental Protection Cabinet	Cabinet Final Order Appeal Hearing (Franklin Circuit Court)	235.480
Department of Housing, Buildings and Construction	Inspector Appointment Hearing (Department)	236.100
Department of Housing, Buildings and Construction	Grievance Hearing (Commissioner)	236.150
Board of Boiler and Pressure Vessel Rules	Violations Hearing (Board)	236.220 236.990
State Alcoholic Beverage Control Board	General Powers Hearing (Board)	241.060*
Local Government	Local Option Wet/Dry Hearing (County Judge/Executive)	242.070
Second Class Cities	Alcoholic Beverage Sale Hearings (Governing Body of the City)	242.1292
Local Government	Nuisance Hearing (Court)	242.350
Local Government	Liquor Transportation Vehicle Sale Hearing (Peace officer)	242.360
Alcoholic Beverage Control Board	License Hearing (Board)	243.410 243.470 243.520 243.550 243.570

ADMINISTRATIVE HEARINGS STUDY

NAME OF AGENCY	TYPE OF HEARING (Agency Program)	STATUTE REFERENCE
Department of Agriculture	Spray Painters License Hearing (Commissioner)	246.550
Governor's Council on Agriculture	General Powers Hearing (Council)	247.420
Revenue Cabinet	Alcohol Production Tax Exemption Hearing (Cabinet)	247.920
Local Government	Canada Thistle Hearing (Fiscal Court)	249.183
Department of Agriculture	Seed Violation Hearing (Agricultural Experiment Station)	250.160
Department of Agriculture	Fertilizer Hearing (Agricultural Experiment Station)	250.366 250.431 250.446
Department of Insurance	Ammonia Hearings (Division of Fire Prevention)	250.483 250.488
Department of Agriculture	Registration Hearing (Commissioner)	250.710
State Board of Agriculture	Grain Warehouses Hearing (State Board)	251.310 251.320 251.330 251.440 251.510
Department of Agriculture	Grain Buying License Hearing (Commissioner)	251.720 251.730
Department of Agriculture	Bee Quarantine Hearing (Commissioner)	252.200 252.210
State Board of Agriculture	Hearings/General Powers (Board)	253.110
Department of Agriculture	Regulations/Permit Hearings (Livestock Sanitary Division)	257.380 257.440 257.530

ADMINISTRATIVE HEARINGS STUDY

NAME OF AGENCY	TYPE OF HEARING (Agency Program)	STATUTE REFERENCE
Local Government	Dog Complaint Hearing (District Court)	258.235
Department of Agriculture	Agricultural Products Grading, Marketing Hearings (Department)	260.033 260.036 260.560 260.715* 260.725 260.740
Creamery License Board	General Powers Hearings (Director, Agricultural Experiment Station, UK)	260.830 260.840
Conservation Commission	District Creation Hearing (Commission)	262.110 262.130 262.160
Local Soil and Water Conservation District Board of Supervisors	Land Use, District, Watershed Project Hearings (Board of Adjustment)	262.350 262.460 262.500 262.510 262.530 262.705 262.720 262.748 262.750 262.778
Local Soil and Water Conservation District Board of Supervisors	Land Annexation/Condemnation Hearings (Board)	262.780 262.785 262.791 262.850
Inter-agency Farmland Advisory Committee	Project Hearings (Committee)	262.875
Department of Agriculture	Dead Animal Hearings (Department)	263.100
Board of Drainage Commissioners	Assessment Hearings (County Clerk/County Judge)	267.300 267.350 267.570

ADMINISTRATIVE HEARINGS STUDY

NAME OF AGENCY	TYPE OF HEARING (Agency Program)	STATUTE REFERENCE
Board of Drainage Commissioners	Appraiser's Report Hearing (Board)	268.280
Board of Drainage Commissioners	Plan/Improvement/Complaint/ Bonds Hearing (Court/Board/County Judge)	268.610 268.650 269.030 269.150 269.220 269.260
Attorney General	Corporate Receivorship/ Liquidation Hearings (Court)	271B.14- 310 271B.14- 320 271B.14- 330 273.333
Local Government	Community Action Agency Designation Hearing (Designated Political Subdivision)	273.435
State Administering Agency	Community Action Agency Funding Hearings (State Administering Agency)	273.451
Shareholders	Corporate Redemption of Stock Hearing (Court)	274.095
Railroad Commission	General Powers/Rate Hearing (Commission)	276.100 276.170 276.180 276.310 276.320 276.340 276.360
Railroad Commission	Judicial Review Hearings (Courts)	276.375
Railroad Commission	Repairs or Improvements Hearing (Attorney General)	276.410

ADMINISTRATIVE HEARINGS STUDY

NAME OF AGENCY	TYPE OF HEARING (Agency Program)	STATUTE REFERENCE
Railroad Commission	Passenger Service Abandonment Hearing (Commission)	276.480
Court	Reorganization Plan Hearing (Court)	277.140
Public Service Commission	Certified Territory Hearing (Commission)	278.017 278.018
Public Service Commission	Certificate of Convenience Hearing (Commission)	278.020 278.025 278.027
Public Service Commission	General Powers Hearings (Commissioners or Hearing Examiners)	278.080 278.110
Public Service Commission	Assessments, Complaints or Rate Hearings (Commission)	278.130 278.190 278.200 278.250 278.260 278.270 278.280 278.290
Public Service Commission	General Powers Hearings (Commission, Commissioner, or Court)	278.310 278.350 278.360 278.400 278.440
Public Service Commission	Telephone Line Consolidation Hearings (Commission)	278.510 278.530
Public Service Commission	Dual Party Relay Service Hearing (Commission)	278.548
Rural Telephone Cooperative Corporations	General Powers Hearings (Utility Regulatory Commission)	279.360

ADMINISTRATIVE HEARINGS STUDY

NAME OF AGENCY	TYPE OF HEARING (Agency Program)	STATUTE REFERENCE
Department of Highways	Necessity/Certificate for Ferry or Bridge Hearing (Department)	280.030
		280.100
		280.110
Department of Highways	Common Carrier CON Hearing (Department)	281.620
		281.624
		281.625
		281.626
		281.630
		281.633
Department of Vehicle Regulation	City and Charter Bus Certificate Hearing (Department)	281.635
		281.637
Department of Vehicle Regulation	General Powers/Rates & Service Hearings (Department/Hearing Examiner)	281.640
		281.645
		281.665
		281.670
		281.690
		281.695
		281.700
281.775		
Department of Vehicle Regulation	Appeal Hearing (Franklin Circuit Court)	281.780
Department of Vehicle Regulation	Utility Trailer Permit Hearing (Department)	281.850
Transportation Cabinet	Commercial Drivers License Hearing (Cabinet)	281A.140
		281A.190
		281A.220
Department of Financial Institutions	Bank/Credit Union Procedures Hearings (Commissioner/Depart- ment)	287.061
		287.062
		287.135
		287.690
		287.868
		288.610*
		288.630
		289.740
289.780		

ADMINISTRATIVE HEARINGS STUDY

NAME OF AGENCY	TYPE OF HEARING (Agency Program)	STATUTE REFERENCE
		290.092
		296.450
		296.700
Department of Financial Institutions	Investment Company/Industrial Loan Corporation Hearings (Department)	291.530* 291.550 291.560 291.570
Department of Financial Institutions	Broker/Agent/Advisor Registration Hearing (Director, Division of Securities)	292.330 292.360 292.390 292.410 292.420 292.490 292.500
Kentucky Savings Bond Authority	Commissioner Removal Hearings (Governor)	293.050
Department of Financial Institutions	Mortgage Loan Company/Loan Brokers/General Powers Hearings (Commissioner or Designee)	294.140 294.180 294.190 294.200 294.210
Department of Insurance	Cooperative or Assessment Plan Insurance Hearings (Commissioner)	299.190 299.210
Department of Insurance	Burial Association Dissolution Hearings (Court)	303.150
Department of Insurance	General Powers Hearings (Commissioner)	304.2-260* 304.2-310 304.2-320 304.2-330 304.2-340 304.2-350 304.2-360 304.2-370

ADMINISTRATIVE HEARINGS STUDY

NAME OF AGENCY	TYPE OF HEARING (Agency Program)	STATUTE REFERENCE
Department of Insurance	Certificate of Authority Hearing (Commissioner)	304.3-080
		304.3-190
		304.3-200
Department of Insurance	Casualty Insurance Hearings (Commissioner)	304.6-030
		304.6-100
		304.99-090
Department of Insurance	Agent License Hearing (Commissioner)	304.9-440
Department of Insurance	Open Lines Hearing (Commissioner)	304.10-060
Department of Insurance	Unauthorized Insurers Hearings (Commissioner)	304.11-040
Department of Insurance	Trade Practice and Fraud Hearings (Commissioner)	304.12-120
		304.12-130
Department of Insurance	Rates/Rating Organization Hearings (Commissioner)	304.13-041
		304.13-043
		304.13-051
		304.13-055
		304.13-071
		304.13-091
		304.13-151
		304.13-161
		304.13-320
304.13-365		
Department of Insurance	Health Insurance Contract Hearing (Commissioner)	304.17-383
Department of Insurance	Credit Insurance Hearing (Commissioner)	304.19-130
Department of Insurance	Casualty Insurance Hearings (Commissioner)	304.20-040

ADMINISTRATIVE HEARINGS STUDY

NAME OF AGENCY	TYPE OF HEARING (Agency Program)	STATUTE REFERENCE
Department of Insurance	Domestic Stock Hearings (Commissioner)	304.24-170
		304.24-280
		304.24-360
		304.24-380
		304.24-390
		304.24-400
		304.24-410
Department of Insurance	Fraternal Benefit Society Hearings (Court)	304.29-301
Department of Insurance	Insurance Premium Finance Company Hearings (Commissioner)	304.30-030
		304.30-040
		304.30-050
		304.99-140
Department of Insurance	Non-Profit Health Service Corporation Hearings (Commis- sioner)	304.32-160 304.32-230
Department of Insurance	Insurers Rehab and Liquidation Hearings (Commissioner)	304.33-110
		304.33-120
		304.33-130
		304.33-140
		304.33-160
		304.33-200
		304.33-240
		304.33-310
		304.33-340
		304.33-400
304.33-570		
Department of Insurance	Bail Bondsmen Hearings (Commissioner)	304.34-080 304.34-100
Department of Insurance	Fair Plan Hearings (Commissioner)	304.35-050
Kentucky Insurance Guaranty Association	Plan of Operation Hearing (Commissioner)	304.36-090
		304.36-100

ADMINISTRATIVE HEARINGS STUDY

NAME OF AGENCY	TYPE OF HEARING (Agency Program)	STATUTE REFERENCE
Department of Insurance	Insurance Holding Company Hearings (Commissioner)	304.37-090
Department of Insurance	Health Maintenance Organization Hearings (Commissioner)	304.38-050 304.38-130
Department of Insurance	Motor Vehicle Reparatons Hearing (Commissioner)	304.39-330
Department of Insurance	Health Care Malpractice Hearings (Commissioner)	304.40-030
Department of Insurance	Legal Professional Liability Hearings (Commissioner)	304.41-030
Kentucky Life and Health Guaranty Association	Plan of Operation Hearings (Commissioner)	304.42-100 304.42-110
Department of Insurance	Prepaid Dental Plan Hearings (Commissioner)	304.43-100
Department of Insurance	Product Liability Hearings (Commissioner)	304.45-110
Department of Insurance	Commercial Insurance Hearings (Commissioner)	304.46-020
Cabinet for Human Resources	Private Review Agent Certificate Hearing (Cabinet)	311.138
State Board of Podiatry	Podiatry License Hearing (Board)	311.490* 311.510
State Board of Medical Licensure	Medical Licensure Hearings (Hearing officers/Hearing Panel)	311.565* 311.571 311.572 311.575 311.591 311.592 311.593 311.599

ADMINISTRATIVE HEARINGS STUDY

NAME OF AGENCY	TYPE OF HEARING (Agency Program)	STATUTE REFERENCE
District or Circuit Court	Abortion Hearings (Court)	311.732
State Board of Medical Licensure	Athletic Trainer Certificate Hearings (Board)	311.922
State Board of Chiropractic Examiners	License Hearings (Board)	312.150 312.155 312.160 312.163
KY Board of Dentistry	License Hearings (Board)	313.150 313.160 313.330
KY Board of Nursing	License/School Approval/ General Powers Hearings (Hearing Panel)	314.089 314.091 314.111 314.131*
KY Board of Respiratory Care	General Powers Hearing (Board)	314A.205 314A.225
KY Board of Pharmacy	License/General Powers Hearing (Board/Hearing Officer)	315.120 315.131 315.155 315.191
State Board of Embalmers and Funeral Directors	License Hearing (Board)	316.155
KY Board of Barbering	License Hearing (Board)	317.460
KY Board of Hairdressers and Cosmetologists	License Hearing (Board)	317A.070*
Department of Housing, Buildings & Construction	License/Code and Examination Hearings (Department)	318.066 318.077 318.080

ADMINISTRATIVE HEARINGS STUDY

NAME OF AGENCY	TYPE OF HEARING (Agency Program)	STATUTE REFERENCE
Board of Examiners of Psychology	General Powers Hearings (Board)	319.020
		319.032*
		319.082
		319.092
KY Occupational Therapy Board	License/General Powers Hearings (Board)	319A.030
		319A.070
		319A.190*
KY Board of Optometric Examiners	Disciplinary Hearings (Board/Hearing Officer)	320.295
		320.321
KY Board of Veterinary Examiners	License Hearings (Board)	321.360
		321.370*
		321.390
		321.410
		321.450
Board of Registration for Professional Engineers and Land Surveyors	Hearings on Charges (Board)	322.200*
State Board of Examiners and Registration of Architects of Kentucky	Disciplinary Action Hearings (Board/Hearing Officer)	323.130
		323.140
		323.145
State Board of Examiners and Registration of Landscape Architects of Kentucky	License Hearings (Board/Court)	323A.120
		323A.130
		323A.140
Real Estate Commission	General Powers/License Hearing (Commission)	324.151
		324.160
		324.170
		324.190
		324.281
Real Estate Commission	Administrative Hearing (Real Estate Education, Research and Recovery Fund)	324.410
		324.420

ADMINISTRATIVE HEARINGS STUDY

<u>NAME OF AGENCY</u>	<u>TYPE OF HEARING (Agency Program)</u>	<u>STATUTE REFERENCE</u>
Real Estate Appraisers Board	General Powers/Disciplinary Hearings (Board/Real Estate Commission staff)	324A.020 324A.055
State Board of Accountancy	Certifications, Permits, Violations Hearings (Board/Attorney General)	325.230 325.340 325.350 325.360 325.370
State Board of Ophthalmic Dispensers	License Hearings (Board)	326.100
State Board of Physical Therapy	License/General Powers Hearings (Board)	327.040 327.070 327.075
Justice Cabinet	Polygraph Examiner License Hearings (Cabinet)	329.100 329.110 329.120
Board of Auctioneers	License/General Powers Hearings (Board)	330.130 330.140 330.150 330.160
Board of Auctioneers	Claims Hearings (Board)	330.192
Justice Cabinet	Driver Training School License Hearings (Secretary)	332.070
Cabinet for Human Resources	Medical Laboratory License Hearing (Hearing Officer)	333.200
Board for Licensing Hearing Aid Dealers	License Hearings (Board/Attorney General)	334.120
KY Board of Speech-Language Pathology and Audiology	License/General Powers Hearings (Board)	334A.080* 334A.180

ADMINISTRATIVE HEARINGS STUDY

NAME OF AGENCY	TYPE OF HEARING (Agency Program)	STATUTE REFERENCE
State Board of Examiners of Social Work of KY	License/General Powers Hearings (Board)	335.050
		335.070
		335.150
State Agencies	Licensing and Public Employment Qualification Hearings (Agency/Franklin Circuit Court)	335B.030
		335B.050
Labor Cabinet	General Powers/Collective Bargaining Hearings (Department of Workplace Standards)	336.060
		336.130
Labor Cabinet	Prevailing Wage Review Hearings (Department of Workplace Standards)	337.415
		337.425
		337.522
		337.548
		337.550
KY Occupational Safety and Health Review Commission	General Powers Hearings (Hearing Officer)	338.071
		338.081
Labor Cabinet	Occupational Safety and Health Hearings (Department of Workplace Standards/Review Commission)	338.101
		338.141
		338.153
Cabinet for Human Resources	Unemployment Compensation Hearings (Unemployment Insurance Commission/Secretary)	341.115
		341.145
		341.200
		341.420
		341.440
Workers' Compensation Board	Compensation Hearings (Board/Administrative Law Judges)	341.990
		342.020
		342.065
		342.215
		342.230
		342.270
		342.275
342.316		
		342.345

ADMINISTRATIVE HEARINGS STUDY

NAME OF AGENCY	TYPE OF HEARING (Agency Program)	STATUTE REFERENCE
Workers' Compensation Board (continued)		342.710
		342.990
Department of Workplace Standards	Complaint Hearings (Supervisor of Apprenticeship and Training)	343.070
Commission on Human Rights	Civil Rights Hearings (Commission)	344.160
		344.180
		344.190*
		344.210
		344.240
		344.250
		344.280
		344.320
All Agencies	Sex Discrimination Hearings (All agencies)	344.555
		344.560
State Labor Relations Board	Collective Bargaining Hearings (Board/Governor)	345.060
		345.070
		345.080
		345.120*
Crime Victims Compensation Board	Crime Victims Compensation Hearings (Board)	346.040
		346.080
Natural Resources and Environmental Protection Cabinet	Surface Mining Hearings (Cabinet/Department for Surface Mining/Hearing Officer)	350.028*
		350.029
		350.032
		350.050
		350.053
		350.069
		350.070
		350.085
		350.090
		350.093
		350.130
		350.255*
		350.465*
350.570		
350.600		
350.610*		

ADMINISTRATIVE HEARINGS STUDY

NAME OF AGENCY	TYPE OF HEARING (Agency Program)	STATUTE REFERENCE
Department of Mines and Minerals	Mine Safety/Permit/License Hearings (Department/Board of Miner Training)	351.030
		351.070
		351.075
		351.102
		351.105
		351.177
		351.192
		351.315
		351.335
		351.345
		352.390
		352.430
		352.510
Department of Mines and Minerals	Oil and Gas Hearings (Department/Kentucky Oil and Gas Conservation Commission)	353.060
		353.200
		353.565
		353.593
		353.620
		353.630
		353.640
		353.651
		353.652
		353.670
353.680		
353.690		
353.700		
Courts	Usury Hearings (Courts)	360.040
Department of Agriculture	Weights and Measures Hearings (Court)	360.810
Revenue Cabinet	Trade Practices Hearings (Cabinet/County Judge-Executive/ District Court)	365.370
		365.435
		365.685
		365.888
Department of Banking and Securities	Check Sale License Hearings (Department)	366.140

ADMINISTRATIVE HEARINGS STUDY

NAME OF AGENCY	TYPE OF HEARING (Agency Program)	STATUTE REFERENCE
Department of Law	Consumer Protection Hearings (Circuit Court)	367.190
		367.250
		367.290
		367.360
		367.474
		367.865
		367.867
Courts	Statutory Lien Hearings (Master Commissioner)	376.120
		376.130
Courts	Voluntary Assignment Hearings (District Court)	379.060
Revenue Cabinet	Property Restriction Hearings (City/County/Urban-County Governments)	381.770
Courts	Trust Registration Hearings (Courts)	386.665
District Courts	Guardian Hearings (District Court)	387.025
		387.185
		387.320
		387.530
		387.540
		387.550
		387.570
		387.580
		387.590
District Courts	Guardianship Hearings (District Court/Administrator of Veterans Affairs)	387.620
		387.740
		388.200
		388.230
		388.280
		388.300
		388.320
		388.340
		388.350

ADMINISTRATIVE HEARINGS STUDY

NAME OF AGENCY	TYPE OF HEARING (Agency Program)	STATUTE REFERENCE
District Court	Real Estate Hearings (Court)	389A.010
District Court	Descent and Distribution Hearings (Court)	391.035
Revenue Cabinet	Escheat Hearings (Secretary)	393.280
Revenue Cabinet	Intestacy/Settlement Hearings (Court)	395.015 395.016 395.326 395.620 395.625 395.630
Courts	Marriage/Custody Hearings (Court)	403.160 403.170 403.280 403.300 403.310 403.320 403.330 403.350 403.440 403.450 403.580 403.600 403.740 403.745 403.750 403.760 403.780
Cabinet for Human Resources	Child Support Hearings (Hearing officer)	405.440 405.450 405.460 405.467 405.490

ADMINISTRATIVE HEARINGS STUDY

NAME OF AGENCY	TYPE OF HEARING (Agency Program)	STATUTE REFERENCE
Cabinet for Human Resources	Child Support Uniform Reciprocal Act Hearings (Court)	407.250
		407.380
		407.390
		407.400
		407.410
		407.420
Courts	Arbitration Hearings (Court)	417.090
		417.100
		417.110
		417.160
		417.190
		417.210
Courts	Habeas Corpus Hearings (Courts)	419.080
		419.100
		419.110
		419.120
		419.130
Courts	Witness Hearings (Courts)	421.240
		421.350
		421.500
		421.510
		421.610
		421.620
Courts	Lost Evidence Hearings (Court/Commissioner)	422.110
		422.240
		422.270
		422.300
Courts	Evidence Admissibility Hearings (Courts)	422A.0103
		422A.0104
		422A.0412
		422A.0612
		422A.0703
		422A.0801
		422A.0801A
		422A.0804
		422A.0901
		422A.1004
422A.1101		

ADMINISTRATIVE HEARINGS STUDY

NAME OF AGENCY	TYPE OF HEARING (Agency Program)	STATUTE REFERENCE
Agencies	Legal Notice Hearings (Agencies)	424.130
		424.140
		424.300
		424.310
Courts	Writ of Possession Hearings (Courts)	425.011
		425.012
		425.031
		425.036
		425.066
		425.081
		425.301
Courts	Probation and Parole Hearings (Courts)	425.302
		425.307
		439.177
		439.265
Parole Board	Parole Hearings (Board)	439.267
		439.315
		439.320
		439.330
		439.340*
Governor	Extradition Hearing (Executive Authority)	439.341
		439.370
		439.390
		440.250
Cabinet for Human Resources	Jail Hearings (County Jailer, County Judge)	441.075*
Courts	Change of Venue Hearing (Court)	452.030
		452.230
Courts	Court Proceedings Hearings (Commissioner/Hearing Officer)	454.050
		454.350
Courts	Commitment Hearings (Court)	504.080
		504.100
		504.110

ADMINISTRATIVE HEARINGS STUDY

NAME OF AGENCY	TYPE OF HEARING (Agency Program)	STATUTE REFERENCE
Courts	Presentence/Sentence Hearings (Court)	532.025
		532.055
		532.210
Courts	Probation Violation/ Community Service Hearings (Court)	533.030
		533.050
		533.070
Cabinet for Human Resources	Hearings on Children Committed to the Cabinet (Court/Probation Officer)	605.060
		605.090
Courts	Juvenile Hearings (Court)	610.030
		610.060
		610.070
		610.080
		610.100
		610.160
		610.180
		610.250
		610.265
		610.280
		610.290
		610.310
		610.320
610.330		
Interstate Compact on Juveniles	Custody Hearings (Court)	615.010
Interstate Compact on Placement of Children	Placement Hearings (Court)	615.030
Courts	Child Removal Hearings (Court)	620.060
		620.080
		620.090
		620.100
		620.110
		620.120

ADMINISTRATIVE HEARINGS STUDY

NAME OF AGENCY	TYPE OF HEARING (Agency Program)	STATUTE REFERENCE
Cabinet for Human Resources	Child Commitment Hearings (Cabinet/Court)	620.170
		620.180
		620.250
		620.280
		620.525
Circuit Court	Parental Rights Termination Hearings (Circuit Court)	625.042 625.080
Courts	Juvenile Detention Facility Hearings (Court)	630.070
		630.080
		630.090
		630.100
		630.110
		630.120
Cabinet for Human Resources	Supervised Placement Hearings (3-member board)	630.150
		635.100
Courts	Juvenile Public Offense Hearings (Court)	635.010
		635.020
		635.060
Circuit Court	Youthful Offender Hearings (Court)	640.010
		640.060
		640.070
Courts	Child's Mental Health Hearings (Court)	645.060
		645.070
		645.080
		645.090
		645.100
		645.105
		645.110
		645.170
		645.210
		645.230
		645.240

APPENDIX C

HEARING PROCEDURES BY REGULATION

NAME OF AGENCY	TYPE OF HEARING (Agency Program)	KRS	ADM. REGISTER REF.
Board of Ethics	Hearings (Board)	6.820*	2 KAR 1:020
Ky. Higher Ed. Assistance Auth.	Set off of authority claims (Authority)	13A.100	11 KAR 4:050
Ky. Real Estate Commission	Complaint Hearings (Commission)	13A.100	201 KAR 11:190
Transportation Cab.	Public Hearing (Cabinet)	13A.100	600 KAR 1:030
Transportation Cab.	Contract Claims Hearing (Dept. of Highways)	13A.100	603 KAR 2:015
Cabinet for Human Resources	Appeals (Dept. for Employ. Serv.)	13A.100	903 KAR 5:130
Personnel Bd.	Employee Appeals & Hearing (Board)	18A.0751	101 KAR 1:365
State Bd. of Elections	Removal of Election Officer Hearing (Board)	117.045	31 KAR 4:050
Registry of Election Finance	Complaint Hearing (Registry)	18A.0751	101 KAR 1:365
Natural Resources and Environmental Protect Cabinet	Wild Rivers System Hearings (Cabinet)	146.270	401 KAR 4:130
Nature Preserves Commission	Hearing and Appeals (Commission)	146.485	400 KAR 2:100
Natural Resources & Environmental Protect Cabinet	Hearings (Cabinet)	151.125	400 KAR 1:030
Natural Resources & Environmental Protect Cabinet	Hearings (Cabinet)	151.125	400 KAR 1:050
State Board for Adult & Technical Ed.	Employee Status Hearings (Dept. for Adult & Technical Ed.)	151 B.035	780 KAR 3:120
State Board for Adult & Technical Ed.	Employee Status Hearings (Dept. for Adult & Technical Ed.)	151 B.035	780 KAR 6:110

HEARING PROCEDURES BY REGULATION

<u>NAME OF AGENCY</u>	<u>TYPE OF HEARING (Agency Program)</u>	<u>KRS</u>	<u>ADM. REGISTER REF.</u>
State Bd. for Elem. & Secondary Ed.	Suspension of Dist. Bd. Member or Superintendent of Schools (State Bd.)	156.132	701 KAR 5:050
Ed. & Humanities Cab.	Transfer of Annexed Property Hearing (Dept. of Ed. Office of District Support Services)	160.045	702 KAR 1:080
Council of Higher Education	Campus Hearings (Council Committees)	164.020	13 KAR 2:020
Council of Higher Education	Campus Hearings (Council Committees)	164.020	13 KAR 2:045
Ky. Higher Ed. Assistance Auth.	Student Appeals Process (KHEAA)	164.748	11 KAR 4:030
Transportation Cab.	Hearing (Airport Zoning Commission)	183.861	602 KAR 50:120
Motor Vehicle Dealers Licensing Comm.	Hearings (Hearing Examiner)	190.058	605 KAR 1:130
Cabinet for Human Resources	Hearing (Secretary/ Designated Represent.)	194.025	907 KAR 1:075
Cabinet for Human Resources	Unemployment Insurance Benefit Appeals Hearing (Department for Employment Services)	194.030	906 KAR 1:060
Corrections Cabinet	Competency to be Executed Hearings (Secretary of Cabinet)	196.035	501 KAR 8:010
Cabinet for Human Resources	Long-Term Care Facility Hearings (Cabinet)	216.567	900 KAR 2:020
Cabinet for Human Resources, Comm. for Health Economics Control	License Revocation Hearing	216B.040	902 KAR 20:006
Cabinet for Human Resources, Comm.	License Revocation Hearing	217B.050	302 KAR 31:010

HEARING PROCEDURES BY REGULATION

NAME OF AGENCY	TYPE OF HEARING (Agency Program)	KRS	ADM. REGISTER REF.
for Health Economics Control			
Dept. of Agriculture	License Revocation Hearings (Pest Control Advisory Bd.)	217B.050	302 KAR 31:010
Natural Resources and Environmental Protection Cabinet	Hearings (Cabinet)	224.033	400 KAR 1:030
Natural Resources and Environmental Protection Cabinet	Review for KPDES (Cabinet) (Cabinet)	224.033	401 KAR 5:075
Natural Resources and Environmental Protection Cabinet	Hazardous Waste Hearing (Cabinet)	224.033	401 KAR 40:030
Natural Resources and Environmental Protection (Div. for Air Quality)	Permit Revocation Hearings (Cabinet)	224.033	401 KAR 50:060
Natural Resources and Environmental Cab.	Coal Mining Hearings (Cabinet)	224.033	405 KAR 7:090
Nat. Resources & Env. Protection Cab./Dept. for Environmental Protection/Div. of Waters	Wild River Hearing (Cabinet)	224.045	401 KAR 4:130
Alcoholic Beverage Control Board	Hearings (Board)	241.060	804 KAR 6:010
Dept. of Ag., Egg Marketing Bd.	Appeals (Board)	260.580	302 KAR 10:050
Dept. of Agriculture Milk Marketing Bd.	Hearings (Board)	260.715	302 KAR 25:095
Transportation Cab./ Dept. of Vehicle Reg/Division of Motor Carriers	Hearings (Dept. of Vehicle Reg.)	281.600	601 KAR 1:030
Dept. of Financial Institutions	Hearings (Commissioners on his Designee)	288.610	808 KAR 1:070

HEARING PROCEDURES BY REGULATION

NAME OF AGENCY	TYPE OF HEARING (Agency Program)	KRS	ADM. REGISTER REF.
Dept. of Financial Institutions	Hearings (Commissioners or his Designee)	291.530	808 KAR 1:070
Dept. of Insurance	Public Hearings (Commissioner)	304.2-260	806 KAR 2:080
Bd. of Podiatry	License Revocation Hearings (Board)	311.410	201 KAR 25:051
Bd. of Podiatry	Disciplinary Proceedings (Board)	311.490	201 KAR 25:051
Bd. of Medical Licensure	Disciplinary Proceedings (Board)	311.565	201 KAR 9:081
Bd. of Chiropractic Examiners	Charges and Complaints (Board)	312.019	201 KAR 21:051
Bd. of Dentistry	Disciplinary Hearings (Board)	313.220	201 KAR 8:410
Bd. of Nursing	Disciplinary Hearings (Board)	314.131	201 KAR 20:162
Bd. of Hairdressers & Cosmetologists	License Hearing (Board)	317A.070	201 KAR 12:180
Bd. of Examiners of Psychology	Disciplinary Hearings (Board)	319.032	201 KAR 26.140
Ky. Occupational Therapy Board	Disciplinary Proceedings (Board)	319A.190 321.370	201 KAR 28:150
Ky. Occupational Therapy Board	Disciplinary Proceedings (Board)	319A.190 321.370	201 KAR 28:160
Board of Veterinary Examiners	License Hearings	321.240	201 KAR 16:060
Board of Engineers and Land Surveyors	Hearings on Charges (Board)	322.200	201 KAR 18:130
Board of Speech Language Pathology and Audiology	License Hearings (Board)	334A.080	201 KAR 17:080
State Labor Relations Board	Collective Bargaining Hearings (Board)	345.120	803 KAR 3:030

HEARING PROCEDURES BY REGULATION

NAME OF AGENCY	TYPE OF HEARING (Agency Program)	KRS	ADM. REGISTER REF.
Natural Resources and Environmental Protect Agency	Hearings (Cabinet)	350.255 350.465	400 KAR 1:030
Natural Resources and Environmental Protect Agency	Discovery (Cabinet)	350.255 350.465	400 KAR 1:040
Natural Resources and Environmental Protect Agency	Burden of Proof	350.255 350.465	400 KAR 1:050
Natural Resources and Environmental Protect NREPA/Dept. for Surface Mining Reclamation & Enforce	Hearings (Cabinet)	350.255	405 KAR 1:090
Natural Resources and Environmental Protect NREPA/Dept. for Surface Mining Reclamation & Enforce	Hearings (Cabinet)	350.465	405 KAR 24:030
Natural Resources and Environmental Protect NREPA/Dept. for Surface Mining Reclamation & Enforce	Hearings (Cabinet)	350.610	405 KAR 7:090
Parole Board	Parole Hearings (Board)	439.340	501 KAR 1:040
Cabinet for Human Resources	Juvenile Holding Facilities (Cabinet)	441.075	501 KAR 9:150

APPENDIX D

AN ACT relating to administrative hearings.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

1 SECTION 1. A NEW CHAPTER KRS 13B IS ESTABLISHED AND
2 A NEW SECTION IS CREATED TO READ AS FOLLOWS:

3 As used in this chapter, unless the context requires
4 otherwise:

5 (1) "Administrative agency" or "agency" means each
6 state board, bureau, cabinet, commission, department,
7 authority, officer, or other entity authorized by law to
8 conduct administrative hearings. The term does not include
9 any unit in the legislative or judicial branches or any
10 unit of local government.

11 (2) "Administrative hearing" or "hearing" means any
12 type of administrative proceeding conducted by an agency
13 as required or permitted by statute or regulation to
14 adjudicate the legal rights, duties, privileges or
15 immunities of a named person.

16 (3) "Party" means:

17 (a) The named person whose legal rights, duties,
18 privileges, or immunities are being adjudicated in the
19 administrative hearing;

20 (b) Any other person who is duly granted
21 intervention in an administrative hearing; and

1 (c) Any agency named as a party to the adjudicatory
2 proceeding or entitled or permitted by the law being
3 enforced to participate fully in the administrative
4 hearing.

5 (4) "Agency head" means the individual or collegial
6 body in an agency that is responsible for entry of a final
7 order.

8 (5) "Recommended order" means the whole or part of a
9 preliminary hearing report to an agency head for the
10 disposition of an administrative hearing.

11 (6) "Final order" means the whole or part of the
12 final disposition of an administrative hearing, whenever
13 made effective by an agency head, whether affirmative,
14 negative, injunctive, declaratory, agreed, or imperative
15 in form.

16 (7) "Hearing officer" means the individual, duly
17 qualified and employed pursuant to this chapter, assigned
18 by an agency head or the division of administrative
19 hearings as presiding officer for an administrative
20 hearing or the presiding member of the agency head.

21 SECTION 2. A NEW SECTION OF KRS CHAPTER 13B IS
22 CREATED TO READ AS FOLLOWS:

23 (1) The provisions of this chapter shall apply to
24 all administrative hearings conducted by an agency, with
25 the exception of those specifically exempted under this
26 section. This chapter creates only procedural rights and

1 shall not be construed to confer upon any person a right
2 to hearing not expressly provided by law.

3 (2) The provisions of this chapter shall not apply
4 to investigations or any other type of information
5 gathering or fact finding activities.

6 (3) The following administrative hearings shall be
7 exempt from application of this chapter:

8 (a) Public hearings required in KRS Chapter 13A for
9 the promulgation of administrative regulations;

10 (b) Military adjudicatory proceedings conducted in
11 accordance with KRS Chapter 35; and

12 (c) Any administrative hearing or portion thereof
13 certified as exempt by the Attorney General when:

14 1. The provisions of this chapter conflict with any
15 provision of federal law or regulation with which the
16 agency must comply, or with any federal law or regulation
17 with which the agency must comply to permit the agency or
18 persons within the Commonwealth to receive federal tax
19 benefits or federal funds or other benefits; or

20 2. Conformity with the requirement of this chapter
21 from which exemption is sought would be so unreasonable or
22 so impractical as to deny due process because of undue
23 delay in the conduct of administrative hearings.

24 (4) The Attorney General shall not exempt an agency
25 from any requirement of this chapter until the agency
26 establishes alternative procedures, by administrative

1 regulation, which insofar as practical shall be consistent
2 with the intent and purpose of this chapter. When
3 regulations for alternative procedures are submitted to
4 the Administrative Regulation Review Subcommittee, they
5 shall be accompanied by the request for exemption and the
6 approval of exemption from the Attorney General. The
7 decision of the Attorney General, whether affirmative or
8 negative, shall be subject to judicial review in the
9 Franklin Circuit Court within thirty (30) days of the date
10 of issuance. The court shall not overturn a decision of
11 the Attorney General unless the decision was arbitrary or
12 capricious or contrary to law.

13 (5) Except to the extent precluded by another
14 provision of law, a person may waive any procedural right
15 conferred upon that person by this chapter.

16 SECTION 3. A NEW SECTION OF KRS CHAPTER 13B IS
17 CREATED TO READ AS FOLLOWS:

18 (1) An agency head may exercise all powers conferred
19 on an agency relating to the conduct of administrative
20 hearings, and he may delegate conferred powers to a
21 hearing officer or a member of a collegial body that
22 serves as an agency head. An agency head may not, however,
23 delegate the power to issue a final order unless
24 specifically authorized by statute.

25 (2) In securing hearing officers as necessary to
26 conduct administrative hearings under the jurisdiction of

1 the agency, an agency may:

2 (a) Employ hearing officers:

3 (b) Contract with the Office of Attorney General,
4 Division of Administrative Hearings, for hearing officers:

5 (c) Contract with another agency for hearing
6 officers; or

7 (d) Contract with private attorneys through personal
8 service contract.

9 (3) A hearing officer shall possess a degree from an
10 accredited college of law or meet other qualifications as
11 the Department of Personnel, the employing agency, and the
12 Office of Attorney General may find necessary to assure
13 competency in the conduct of an administrative hearing.
14 The qualifications in this subsection shall not, however,
15 apply to a member of a board, commission, or other
16 collegial body who may serve as a hearing officer in his
17 capacity as a member of the collegial body.

18 (4) All hearing officers, including members of
19 collegial bodies who serve as hearing officers, shall
20 receive training necessary to prepare them to conduct a
21 competent administrative hearing. The training shall
22 pertain to the conduct of administrative hearings
23 generally and to the applications of the provisions of
24 this chapter, specifically. The Office of Attorney
25 General, Division of Administrative Hearings, shall
26 establish by administrative regulation minimum standards

1 concerning the length of training, course content, and
2 instructor qualifications. Actual training may be
3 conducted by the division, an agency, or any other
4 organization, providing the training program offered has
5 been approved by the division as meeting minimal standards.

6 (5) A person who has served as an investigator or
7 prosecutor in an administrative hearing or in its
8 pre-adjudicative stage, shall not serve as hearing officer
9 or assist or advise a hearing officer in the same
10 proceeding. This shall not be construed as preventing a
11 person who has participated in a determination of probable
12 cause or other equivalent preliminary determination, from
13 serving as a hearing officer in the same proceeding.

14 (6) A hearing officer, agency head, or member of an
15 agency head who is serving as a hearing officer, shall
16 voluntarily disqualify himself and withdraw from any case
17 in which he cannot afford a fair and impartial hearing or
18 consideration. Any party may request the disqualification
19 of a hearing officer, agency head, or member of the agency
20 head by filing an affidavit, upon discovery of facts
21 establishing grounds for a disqualification, stating the
22 particular grounds upon which he claims that a fair and
23 impartial hearing cannot be accorded. The request for
24 disqualification and the disposition of the request shall
25 be a part of the official record of the proceeding.

26 SECTION 4. A NEW SECTION OF KRS CHAPTER 13B IS

1 CREATED TO READ AS FOLLOWS:

2 (1) In any administrative hearing, the agency shall
3 conduct the hearing as soon as practicable and shall give
4 notice of the hearing to the parties not less than twenty
5 (20) days in advance of the date set for the hearing. An
6 agency shall make every effort to schedule a hearing or a
7 date and at a location that is convenient to the parties
8 involved.

9 (2) The notice required by subsection (1) of this
10 section shall be served on the parties by certified mail,
11 return receipt requested, to the last known address of the
12 parties. When any indispensable and necessary party to an
13 adjudicatory proceeding consists of a large class, the
14 notice may be served on a reasonable number thereof as
15 representatives of the class.

16 (3) The notice required by this section shall be in
17 plain language and shall include:

18 (a) A statement of the date, time, place, and nature
19 of the hearing;

20 (b) The name, official title, mailing address, and
21 phone number of the hearing officer;

22 (c) The names, official titles, mailing addresses,
23 and phone numbers of all parties to the hearing, including
24 the counsel or representative of the agency;

25 (d) A statement of the issues involved in sufficient
26 detail to give the parties reasonable opportunity to

1 prepare evidence and argument;

2 (e) A reference to the specific statutes and
3 regulations which relate to the issues involved;

4 (f) A statement advising the person of his right to
5 legal counsel;

6 (g) A statement of the parties' right to examine any
7 evidence to be used at the hearing and any exculpatory
8 information in the agency's possession; and

9 (h) A statement advising that any party who fails to
10 attend or participate as required at any stage of the
11 administrative hearing process may be held in default
12 under this chapter.

13 (4) If an agency decides not to conduct an
14 administrative hearing in response to a petition, the
15 agency shall notify the petitioner of its decision in
16 writing, with a brief statement of the agency's reasons
17 and any administrative review available to the petitioner.

18 SECTION 5. A NEW SECTION OF KRS CHAPTER 13B IS
19 CREATED TO READ AS FOLLOWS:

20 The hearing officer shall grant a petition for
21 intervention if:

22 (a) The petition is submitted in writing to the
23 hearing officer, with copies mailed to all parties named
24 in the notice of the hearing, at least seven (7) days
25 before the hearing;

26 (b) The petition states facts demonstrating that the

1 petitioner's legal rights, duties, privileges, immunities,
2 or other legal interests may be substantially affected by
3 the proceeding or that the petitioner qualifies as an
4 intervenor under any provision of law; and

5 (c) The hearing officer determines that the
6 interests of justice and the orderly and prompt conduct of
7 the proceedings will not be impaired by allowing the
8 intervention.

9 (2) The hearing officer may grant a petition for
10 intervention upon determining that the intervention sought
11 is in the interest of justice and will not impair the
12 orderly and prompt conduct of the proceedings.

13 (3) If a petitioner qualifies for intervention, the
14 hearing officer may impose conditions upon the
15 intervenor's participation in the proceedings, either at
16 the time that intervention is granted or at any subsequent
17 time. Conditions may include:

18 (a) Limiting the intervenor's participation to
19 designated issues in which the intervenor has a particular
20 interest demonstrated by the petition;

21 (b) Limiting the intervenor's use of discovery,
22 cross-examination, and other procedures so as to promote
23 the orderly and prompt conduct of the proceedings; and

24 (c) Requiring two (2) or more intervenors to combine
25 their presentations of evidence and argument,
26 cross-examination, discovery, and other participation in

1 the proceedings.

2 (4) The hearing officer, at least three (3) days
3 before the hearing, shall issue an order granting or
4 denying each pending petition for intervention, specifying
5 any conditions, and briefly stating the reasons for the
6 order. The hearing officer shall promptly give notice of
7 an order granting, denying, or modifying intervention to
8 the petitioner for intervention and to all parties.

9 SECTION 6. A NEW SECTION OF KRS CHAPTER 13B IS
10 CREATED TO READ AS FOLLOWS:

11 (1) A hearing officer may convene and conduct a
12 prehearing conference upon reasonable notice to all
13 parties to deal with exploration of settlement
14 possibilities, preparation of stipulations, clarification
15 of issues, rulings on witnesses, taking of evidence,
16 issuance of subpoenas and orders, and other matters as
17 will promote the orderly and prompt conduct of the hearing.

18 (2) Upon conclusion of a prehearing conference, the
19 hearing officer shall issue a prehearing order
20 incorporating all matters determined at the prehearing
21 conference. If a prehearing conference is not held, the
22 hearing officer may issue a prehearing order, based on the
23 pleadings, to regulate the conduct of the hearing.

24 (3) Except to the extent precluded by another
25 provision of law, informal settlement of matters that may
26 make unnecessary more elaborate proceedings under this

1 chapter is encouraged. Agencies shall establish by
2 administrative regulation specific procedures to
3 facilitate informal settlement of matters. This subsection
4 shall not be construed, however, as requiring any party or
5 other person to settle a matter pursuant to informal
6 procedures.

7 SECTION 7. A NEW SECTION OF KRS CHAPTER 13B IS
8 CREATED TO READ AS FOLLOWS:

9 (1) A hearing officer shall preside over the conduct
10 of an administrative hearing and shall regulate the course
11 of the proceedings in a manner which will promote the
12 orderly and prompt conduct of the hearing. When a
13 prehearing order has been issued, the hearing officer
14 shall regulate the hearing in conformity with the
15 prehearing order.

16 (2) The hearing officer, at appropriate stages of
17 the proceedings, shall give all parties full opportunity
18 to file pleadings, motions, objections, and offers of
19 settlement. The hearing officer, at appropriate stages of
20 the proceedings, may give all parties full opportunity to
21 file briefs, proposed findings of fact and conclusions of
22 law, and proposed recommended or final orders. A party
23 shall serve copies of any filed item on all parties by
24 mail or any other means prescribed by agency regulation.

25 (3) The hearing officer may issue subpoenas and
26 discovery orders upon his own motion or when requested by

1 a party. When an order is disobeyed, any party may apply
2 to the Circuit Court of the judicial circuit in which the
3 administrative hearing is held for an order requiring
4 obedience. Failure to comply with an order of the court
5 shall be cause for punishment as a contempt of the court.

6 (4) To the extent necessary for the full disclosure
7 of all relevant facts and issues, the hearing officer
8 shall afford all parties the opportunity to respond,
9 present evidence and argument, conduct cross-examination,
10 and submit rebuttal evidence, except as restricted by
11 limited grant of intervention or a prehearing order.

12 (5) Any party to an administrative hearing may
13 participate in person or be represented by counsel. If the
14 party is a corporation or other artificial person, a duly
15 authorized representative may participate.

16 (6) If a party fails to attend or participate in a
17 prehearing conference, hearing, or other stage of the
18 administrative hearing process, the hearing officer may
19 adjourn the proceedings and issue a default order or may
20 continue the proceedings without the participation of the
21 defaulting party, having due regard for the interests of
22 justice and the orderly and prompt conduct of the
23 proceedings. A default order shall be considered a
24 recommended order and shall be processed as provided in
25 Section 10 of this Act.

26 (7) A hearing officer may conduct all or part of an

1 administrative hearing, or a prehearing conference, by
2 telephone, television, or other electronic means, if each
3 party to the hearing has an opportunity to hear, and, if
4 technically feasible, to see, the entire proceeding as it
5 occurs.

6 (8) An administrative hearing shall be open to the
7 public unless specifically closed pursuant to a provision
8 of law. If an administrative hearing is conducted by
9 telephone, television, or other electronic means, and is
10 not closed, public access shall be satisfied by giving the
11 public an opportunity, at reasonable times, to hear or
12 inspect the agency's record.

13 SECTION 8. A NEW SECTION OF KRS CHAPTER 13B IS
14 CREATED TO READ AS FOLLOWS:

15 (1) In an administrative hearing, findings of fact
16 shall be based exclusively on the evidence on the record.
17 The hearing officer shall exclude evidence that is
18 irrelevant, immaterial, unduly repetitious, or excludable
19 on constitutional or statutory grounds or on the basis of
20 evidentiary privilege recognized in the courts of this
21 Commonwealth. Hearsay evidence may be admissible but it
22 shall not be sufficient in itself for support an agency's
23 findings of facts unless it would be admissible over
24 objections in civil actions.

25 (2) All testimony shall be made under oath or
26 affirmation. Any part of the evidence may be received in

1 written form if doing so will expedite the hearing without
2 substantial prejudice to the interests of any party. Any
3 party shall have the right to inspect the documentary or
4 tangible evidence relating to an administrative hearing
5 either in person or by counsel. Copies of documentary
6 evidence may be obtained upon the payment of a fee, except
7 documents protected from disclosure by state or federal
8 law. Nothing in this section shall be construed as giving
9 a party the right to examine or copy the personal notes,
10 observations or conclusions of the agency staff, nor shall
11 it be construed as allowing access to the work product of
12 counsel for the agency. Conditions for examining and
13 copying agency records, fees to be charged, and other
14 matters pertaining to access to these records shall be
15 governed by KRS 61.870 to 61.884.

16 (3) Objections to evidentiary offers may be made by
17 any party and shall be noted in the record.

18 (4) The hearing officer may take official notice of
19 facts which are not in dispute or of generally recognized
20 technical or scientific facts within the agency's
21 specialized knowledge. The hearing officer shall notify
22 all parties, either before or during the hearing, or in
23 preliminary reports or otherwise, of any facts so noticed
24 and their source. All parties shall be given an
25 opportunity to contest facts officially noticed.

26 (5) The agency shall cause all testimony in a

1 hearing to be accurately and completely recorded. Any
2 person, upon request, may receive a copy of the recording
3 or a copy of the transcript, if the hearing has been
4 transcribed at the discretion of the agency. The agency
5 may prepare a transcript of a hearing or a portion of a
6 hearing upon request but the party making the request
7 shall be responsible for the transcription costs. The form
8 of all requests and fees charged shall be consistent with
9 KRS 61.870 to 61.884.

10 SECTION 9. A NEW SECTION OF KRS CHAPTER 13B IS
11 CREATED TO READ AS FOLLOWS:

12 (1) Unless required for the disposition of ex parte
13 matters specifically authorized by statute, a hearing
14 officer shall not communicate off the record with any
15 party to the hearing or any other person who has a direct
16 or indirect interest in the outcome of the hearing,
17 concerning any substantive issue, while the hearing is
18 pending.

19 (2) The prohibition stated in subsection (1) shall
20 not apply to:

21 (a) Communication with other agency staff, if the
22 communication is not an ex parte communication received by
23 staff; and

24 (b) Communication among members of a collegial body
25 or panel which by law is serving as a hearing officer.

26 (3) When an ex parte communication occurs, the

1 hearing officer shall note the occurrence for the record,
2 and, if in the opinion of the hearing officer, the nature
3 of the communication could have a substantive bearing on
4 the outcome of the hearing, he shall place on the record a
5 copy of the communication, if it was written, or a
6 memorandum of the substance of the communication, if it
7 was oral.

8 SECTION 10. A NEW SECTION OF KRS CHAPTER 13B IS
9 CREATED TO READ AS FOLLOWS:

10 (1) The hearing officer shall complete and submit to
11 the agency head, no later than sixty (60) days after
12 receiving a copy of the official record of the proceeding,
13 a written recommended order which shall include his
14 findings of fact, conclusion of law, and recommended
15 disposition of the hearing, including recommended
16 penalties, if any.

17 (2) If an extension of time is needed by the hearing
18 officer to complete and submit his recommended order to
19 the agency head, the hearing officer shall show good cause
20 to the agency head, in writing, and based upon substantial
21 proof, that an extension of time is needed.

22 (3) If the agency head, after a showing of good
23 cause, grants the hearing officer an extension of time,

24 (a) The extension shall not exceed thirty (30) days
25 from the date the extension was granted; and

26 (b) The statement granting the extension shall be

1 included in the record of the hearing.

2 (4) A copy of the hearing officer's recommended
3 order shall also be sent to each party in the hearing and
4 each party shall have fifteen (15) days within which to
5 file exceptions to the recommendations with the agency
6 head. Transmittal of a recommended order shall be in the
7 same manner as provided for notification in Section 4 of
8 this Act.

9 SECTION 11. A NEW SECTION OF KRS CHAPTER 13B IS
10 CREATED TO READ AS FOLLOWS:

11 (1) In making the final order, the agency head shall
12 consider the whole record or those portions of the record
13 as may be cited by the parties, and any exceptions duly
14 filed to a recommended order.

15 (2) The agency head may accept the recommended order
16 of the hearing officer and adopt it as the agency's final
17 order, or it may reject or modify all or part of the
18 recommended order.

19 (3) The final order in an administrative hearing
20 shall be in writing and stated in the record if the final
21 order differs from the recommended order, it shall include
22 separate statements of findings of fact and conclusions of
23 law. The final order shall also include the effective date
24 of the order and a statement advising parties fully of
25 available appeal rights.

26 (4) The agency head shall render a final order in an

1 administrative hearing within ninety (90) days after:

2 (a) The conclusion of the hearing in which there was
3 no hearing officer; or

4 (b) The hearing officer submits a recommended order
5 to the agency head.

6 (5) Unless waived by the party, a copy of the final
7 order shall be transmitted to each party or to his
8 attorney of record in the same manner as provided in
9 Section 7.

10 (6) This section shall not apply to disposition
11 pursuant to subsection (3) of Section 6 of this Act.

12 (7) If, pursuant to statute, an agency may review
13 the final order of another agency, the review is deemed to
14 be a continuous proceeding as if before a single agency.
15 The final order of the first agency is treated as a
16 recommended order and the second agency functions as
17 though it were reviewing a recommended order in accordance
18 with Section 11.

19 SECTION 12. A NEW SECTION OF KRS CHAPTER 13B IS
20 CREATED TO READ AS FOLLOWS:

21 (1) In each administrative hearing, an agency shall
22 keep an official record of the proceedings which shall
23 consist of:

24 (a) All notices, pleadings, motions, and
25 intermediate rulings;

26 (b) Any prehearing orders;

1 (c) Evidence received and considered;

2 (d) A statement of matters officially noticed;

3 (e) Proffers of proof and objections and rulings
4 thereon;

5 (f) Proposed findings, requested orders, and
6 exemptions;

7 (g) A copy of the recommended order, exceptions
8 filed to the recommended order, and a copy of the final
9 order;

10 (h) All requests by the hearing officer for an
11 extension of time, and the response of the agency head;

12 (i) Ex parte communications placed upon the record
13 by the hearing officer; and

14 (j) A recording or transcript of the proceedings.

15 SECTION 13. A NEW SECTION OF KRS CHAPTER 13B IS
16 CREATED TO READ AS FOLLOWS:

17 (1) All final orders of an agency shall be subject
18 to judicial review in accordance with the provisions of
19 this chapter. A party shall initiate an appeal by filing a
20 petition in the Circuit Court of venue as provided in the
21 agency's enabling statutes within thirty (30) days after
22 the final order of the agency is mailed or delivered by
23 personal service. Copies of the petition shall be served
24 by the petitioner upon the agency and all parties of
25 record. The petition shall include the names and addresses
26 of all parties to the proceeding and the agency involved.

1 and a statement of the grounds on which the review is
2 requested. The petition shall be accompanied by a copy of
3 the final order.

4 (2) A party may file a petition for judicial review
5 only after the party has exhausted all administrative
6 remedies available within the agency whose action is being
7 challenged and within any other agency authorized to
8 exercise administrative review. A court may relieve a
9 petitioner of the requirement to exhaust any or all
10 administrative remedies, to the extent that the
11 administrative remedies are inadequate, or requiring their
12 exhaustion would result in irreparable harm
13 disproportionate to the public benefit derived from
14 requiring exhaustion.

15 (3) Within twenty (20) days after the service of the
16 petition, or within further time allowed by the court, the
17 agency shall transmit to the reviewing court the original
18 or a certified copy of the official record of the
19 proceeding under review. By stipulation of all parties to
20 the review proceedings, the record may be shortened. A
21 party unreasonably refusing to stipulate to limit the
22 record may be taxed by the court for the additional costs.
23 The court may require or permit subsequent correction or
24 additions to the official record.

25 (4) A petition for judiciary review shall not
26 automatically stay a final order pending the outcome of

1 the review but, the petitioner may request a stay.

2 SECTION 14. A NEW SECTION OF KRS CHAPTER 13B IS
3 CREATED TO READ AS FOLLOWS:

4 (1) Review of a final order shall be conducted by
5 the court without a jury and shall be confined to the
6 record. The court, upon request, may hear oral argument
7 and receive written briefs.

8 (2) The court shall not substitute its judgment for
9 that of the agency as to the weight of the evidence on
10 questions of fact. The court may affirm the final order or
11 it may reverse the final order in whole or in part, and
12 remand the case for further hearing if it finds the
13 agency's final order is:

14 (a) In violation of constitutional or statutory
15 provisions;

16 (b) In excess of the statutory authority of the
17 agency;

18 (c) Clearly without support of substantial evidence
19 on the whole record;

20 (d) Arbitrary, capricious, or characterized by abuse
21 of discretion;

22 (e) Based on an ex parte communication which
23 substantially prejudiced the rights of any party and
24 likely affected the outcome of the hearing; or

25 (f) Prejudiced by a failure of the person conducting
26 a proceeding to be disqualified pursuant to subsection (6)

1 of Section 3 of this Act.

2 SECTION 15. A NEW SECTION OF KRS CHAPTER 13B IS
3 CREATED TO READ AS FOLLOWS:

4 Any aggrieved party may appeal any final judgment of
5 the Circuit Court under this chapter to the Court of
6 Appeals in accordance with the Kentucky Rules of Civil
7 Procedure.

8 SECTION 16. A NEW SECTION OF KRS CHAPTER 15 IS
9 CREATED TO READ AS FOLLOWS:

10 (1) The Division of Administrative Hearings is
11 created in the Office of Attorney General.

12 (2) This division shall have the following
13 responsibilities:

14 (a) Employing and maintaining a pool of hearing
15 officers for assignment to the individual agencies at
16 their request, for the conduct of administrative hearings.
17 The Attorney General's office may charge an agency a
18 reasonable amount for services provided under this
19 section, not to exceed the amount allowed for a sole
20 practitioner under personal service contract. The Attorney
21 General's office may also employ other staff as necessary
22 to carry out functions and responsibilities assigned by
23 KRS Chapter 13B:

24 (b) Reviewing and approving or disapproving requests
25 from agencies for waivers for provisions of KRS Chapter
26 13B:

1 (c) Providing training in administrative hearing
2 procedure for hearing officers as required in Section 3,
3 either by developing and offering the training, or by
4 contracting with appropriate organizations for the
5 provision of training, or by approving training developed
6 and submitted by the agencies;

7 (d) Consulting with the Department of Personnel and
8 employing agencies in the establishment of relevant and
9 appropriate qualification for classes of hearing officers;

10 (e) Establishing, in cooperation with the Division
11 of Consumer Protection, a clearinghouse for complaints
12 concerning the administrative hearing process in Kentucky.
13 Each complaint received shall be referred to the agency
14 that is the subject of the complaint and the action of the
15 agency to resolve the complaint shall be noted and
16 reported to the division;

17 (f) Reporting to the Legislative Research Commission
18 by July 1 of each odd-numbered year, the status of the
19 administrative hearing process in Kentucky. The report
20 shall include a compilation of statistical data and other
21 information necessary to assess the effectiveness and
22 efficiency of hearing procedures and recommendations for
23 making improvements to the system. Agencies shall provide
24 the information requested by the Division of
25 Administrative Hearings necessary to complete the report.

26 Section 17. (1) All of this Act except for Section

1 16 shall become effective on the normal effective date for
2 legislation enacted by the 19 Regular Session of the
3 General Assembly. Section 16 of this Act shall have the
4 normal effective for legislation enacted by this session
5 of the General Assembly.

6 (2) By no later than September 30, 19 , each
7 administrative agency, as defined by Section 1 of this
8 Act, shall submit to the Division of Administrative
9 Hearings in the Office of the Attorney General a statement
10 of which existing statutes need to be repealed or amended
11 to conform to the procedures established by this Act. If
12 the agency believes that its unique circumstances warrant
13 its being excluded from the provisions of this Act, it
14 shall also provide the division with a statement to that
15 effect, including a detailed justification for exclusion,
16 but the submission of a statement requesting exclusion
17 shall not eliminate the obligation of submitting the
18 statement relating to conformance.

19 (3) If an agency has not submitted the statement of
20 conformance required by subsection (2) of this section on
21 or before September 30, 19 , the Division of
22 Administrative Hearings shall immediately notify the
23 secretary of the Finance and Administration Cabinet and
24 the State Treasurer, and no state funds shall be released
25 to that agency beginning October 15, 19 , until the
26 Division of Administrative Hearings certifies to these

1 officials that the statement has been received.

2 (4) With the assistance of the staff of the
3 Legislative Research Commission, the Division of
4 Administrative Hearings shall develop a bill draft
5 incorporating the statements of conformance received and
6 making recommendations on exclusions from the operation of
7 this Act. This bill draft shall be completed and
8 submitted to the Legislative Research Commission by no
9 later than June 30, 19 . The Legislative Research
10 Commission shall thereupon refer this draft to the
11 appropriate interim joint committee for its consideration
12 and action prior to the 19... Regular Session of the
13 General Assembly.

14 (5) An agency may adopt the provisions of this Act
15 by administrative regulation prior to their effective
16 date, provided the provisions do not conflict with
17 existing statutes.

