# HOUSE . . . . . No. 1807

By Mr. Mofenson of Newton, petition of David J. Mofenson John G. King and John J. McGlynn for legislation to provide for appeal hearings before the Department of Public Welfare and for a change in the law relative to the Administrative Procedures Act. Social Welfare.

## The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy-Three.

AN ACT PROVIDING FOR APPEAL HEARINGS BEFORE THE DEPARTMENT OF PUBLIC WELFARE AND MATTERS SUBJECT TO THE ADMINISTRATIVE PROCEDURES ACT.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. Section 4 of chapter 18 of the General Laws is hereby amended by striking out the first paragraph and inserting in place thereof the following: –

The commissioner shall appoint a deputy commissioner and may appoint such assistant commissioners as the commissioner shall from time to time determine, not to exceed six in number, who shall be assigned areas of responsibility to be specified by the commissioner, one of whom shall be responsible for administration, one for research and planning, one for field operations, one for social services, one for medical assist – and one for appeals. The deputy commissioner, at the time of his appointment, shall be qualified by having a master's degree from an accredited graduate school of social work or business or by having a degree in law and by having professional experience of not less than ten years in the practice of social work or commensurate experience in law or business at least five of which shall have been as an administrator. The deputy commissioner shall receive a salary of twenty-six thousand six hundred and six dollars.

SECTION 2. Said section 4 of said chapter 18 is hereby further amended by inserting after the sixth paragraph the

The assistant commissioner for appeals shall be at the time of his appointment qualified by having a master's degree from an accredited graduate school of social work or by having a commensurate degree in allied behavioral sciences, or by having a degree in law, or by having ten years experience in the field of social work, at least five of which shall have been as an administrator. The assistant commissioner for appeals shall receive a salary of twenty-one thousand seven hundred and thirty dollars. He shall be responsible for the fair and efficient operation of the appeals division in conformity with state and federal laws and regulations; including the training of referees, scheduling of hearings and the compiling of decisions. Neither he nor any other employee of the department shall review, interfere with, change or attempt to influence any hearing decision by a referee.

SECTION 3. Section 16 of said chapter 18 is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph: –

Any person aggrieved by the failure of the department to render adequate aid or assistance under any program of aid or assistance administered by the department, or to approve or reject an application for aid or assistance thereunder within thirty days after receiving such application, or aggrieved by the withdrawal of such aid or assistance, or by coercive or otherwise improper conduct on the part of his social worker, shall have a right to a hearing, after due notice, upon appeal to the assistant commissioner for appeals. Such hearing shall be conducted by a referee designated by said assistant commissioner at a location convenient to the person appealing and shall be conducted as an adjudicatory proceeding under chapter thirty A. Any referee so designated is hereby empowered to subpoena witnesses, administer oaths, take testimony and secure the production of such books, papers, records and documents as may be relevant to such hearing. The person appealing shall have the opportunity to confront and cross-examine all adverse witnesses and to question or refute any testimony, evidence, materials, or legal arguments. The referee shall base his decision solely on the testimony, evidence, materials, and legal rules adduced at the hearing. The decision of the referee shall be the decision of the department.

SECTION 4. Chapter 18 of the General Laws is hereby amended by inserting after section 16 the following new section: –

*Section 16A.* The referee shall render and issue his decision within sixty days from the date of the filing the aggrieved person's appeal to the assistant commissioner for appeals. If a decision is rendered within said sixty days, the decision of the department shall be subject to review in accordance with the provision of chapter thirty A. If a decision is not rendered within said sixty days, the aggrieved person may file a petition for judicial review in accordance with the provisions of chapter thirty A except that the action or failure to act of the department aggrieving said person which is the subject matter of his appeal shall be deemed, for purposes of this section, a final decision of the department in an adjudicatory proceeding this is adverse to said person. If the referee fails to render his decision within thirty days of the filing of said petition, the petition shall be taken for confessed and the court shall enter a final decree, subject to the law and rules governing equity decrees, granting the relief sought in the petition. If the referee renders his decision within thirty days of the filing of said petition, the petitioner shall, if he desires judicial review of such decision, have thirty days to amend his petition to reflect the referee's decision, and the time within which the department shall file the original or certified copy of the record of the hearing pursuant to section 14 (4) of chapter thirty A shall expire forty days after service upon it of a copy of the amended petition for review.

SECTION 5. Section 21 of chapter 117 of the General Laws, as appearing in chapter 908 of the acts of 1971, is hereby amended by striking out the second paragraph.