

2013 SENATE APPROPRIATIONS

SB 2017

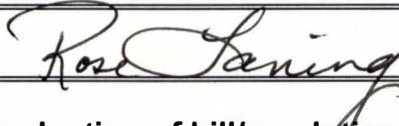
2013 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

SB 2017
January 24, 2013
Job # 17707

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the office of administrative hearings.

Minutes:

Testimony attached # 1

Legislative Council - Sheila M. Sandness

OMB - Sheila Peterson & Laney Herauf

Chairman Holmberg opened the hearing on SB 2017. All committee members were present.

Allen C. Hoberg, Director, Office of Administrative Hearings

Testified in favor of SB 2017

Testimony attached # 1.

(14:49) **Senator Gary Lee:** Is fiscal 2013 on Attachment D, it says "files received 503" and if you compare that to attachment A, you're at 510 in 2012. You're talking about the increase in volume. If those are comparative numbers, I was wondering where the increase was.

Allen Hoberg: Attachment A is for both calendar years - 516. If you look at the bottom, it's 516 and 510, a total of 1026. I didn't include in my attachments for previous two calendar years. I refer to those in my written comments - were considerably lower, but Attachment D would be for this biennium to date, so only for 18 months. That would be 736. If you extrapolate that out, it's probably going to be more than 10,026 for those two calendar years. We do our case numbering by calendar year, but we also keep track of statistics for the biennium so we know how we're doing in the biennium. Our numbers do not correlate to a biennium, they correlate to calendar years.

(16:41) **Senator Kilzer:** This morning you mentioned two budgets don't go through the filter. Has this budget been through the filter?

Chairman Holmberg: This budget has been through OMB and governor's recommendation is there.

Senator Kilzer: Out of these total cases that you have listed in Attachment B, how many went on to district court.

Allen Hoberg: I don't know that off the top of my head. A fair percentage go on to district court. It tends to be Workforce Safety and Insurance hearings, and Department of Human Services hearings. Those two agencies get appealed the most frequently to district court. Based on my experience, I'm guessing somewhere between 10 - 15% of the WSI cases go to district court - probably fewer than that for Human Services.

Chairman Holmberg closed the hearing on SB 2017.

The subcommittee will be **Senators Kilzer, Carlisle and Warner**.

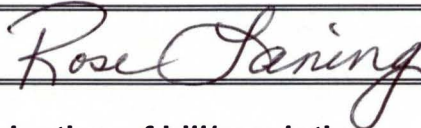
2013 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

SB 2017 subcommittee
January 30, 2013
Job # 18019

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

This is a subcommittee hearing on the Office of Administrative Hearings.

Minutes:

Testimony attached - # 1

Senator Kilzer opened the hearing on the SB 2017 subcommittee. Also present are **Senator Carlisle** and **Senator Warner**.

Legislative Council - Sheila M. Sandness
OMB - Laney Herauf

Allen C. Hoberg, Director, Office of Administrative Hearings

Senator Kilzer asked if Mr. Hoberg wanted to add anything from his testimony to the full committee? Answer: No.

Senator Kilzer commented that there were several scheduled requests and then the hearings were not held. What happens that they are cancelled?

Allen Holberg: There could be several things that happen. The appellate could withdraw. The agency could drop the complaint if it's a complaint hearing or the parties could settle before the hearing.

Senator Kilzer: Are a lot of the requests near a statutory deadline of some kind?

Allen Hoberg: Some agencies have deadlines, especially the Dept. of Human Services, for example Medicaid, food stamps hearings, and food stamp fraud hearings too. They either have a deadline at the beginning, like food stamps within 60 days of their request for food stamps if it's an application. Medicaid - 90 days within the request for an appeal from an application for Medicaid, if it's a denial. Food stamp fraud - the decision has to be issued so many days after the hearing is held. The Dept. of Public Instruction, the special education hearings have various deadlines. They have a 45 day deadline from the time the person makes a request for a hearing, although there are some other deadlines under expedited process where certain things happen - like if there's a determination in regard to disciplinary problems in school.

Senator Kilzer: So a deadline to you means the time between the request for the hearing and the time that the hearing is actually scheduled?

Allen Hoberg: No. The deadline has to do with the agency and we don't always get the request in time from the agency. Sometimes we get a request from the agency when the deadline is almost up. We try to hold the hearing as soon as we can. It doesn't always work that way. Sometimes the parties waive the deadline. There's that provision with everything but food stamp hearings where the parties can waive the hearings for various reasons if they're represented by counsel. With food stamp hearings, you can only delay it for so long because somebody might be depending on food stamps. So you have to make that determination whether they're eligible within a certain time.

Senator Kilzer noticed that his largest number of requests and cases are Dept. of Human Services. Is there one particular dispute that comes in within the DHS that is so predominant in numbers? Or is it just across all eleven divisions of the DHS?

Allen Hoberg: There are three that are predominant: Medicaid eligibility, food stamp fraud hearings, and child abuse neglect hearings. The child abuse neglect hearings are on the increase.

Senator Kilzer asked if there is anything that could be improved by any type of legislation among those three.

Allen Hoberg: Food stamp and Medicaid are federal. The department has rules that implement the federal, so I don't see anything there. Child abuse and neglect - that is problematic. Those are difficult things. This is an administrative hearing which is different than the criminal child abuse and neglect which has a different standard. The department is doing two things; getting the people services that they need and putting their name on the child abuse and neglect index which is the big thing that causes hearings. There is a good reason for placing the name on the index. If you are applying for a job where how you treat people might be a factor. With the release of information, businesses and government want to know that sort of thing. That's a tough question. Legislatively, I don't know. There is a reason for that law and I think it's a good reason. It's a matter of should the department be enforcing that or not. The answer is probably yes.

Senator Kilzer: Are your cases on the internet - like the court system?

Allen Hoberg: Some of them are. A lot of our cases are confidential - almost all the DHS are. A lot of our cases involve medical records with Workforce Safety Insurance, so they are not.

Senator Warner: Could you elaborate more on the trigger mechanism between administrative hearings and the criminal court system? What sort of indicators do you look for in when it crosses the threshold?

Allen Hoberg: We don't make that determination as to when it crosses the threshold. When reported child abuse neglect comes in, the department has to investigate it and by law, has to do an assessment on it. A large number of those don't result in a hearing

because there are no services required or services recommended. It's only if services are required and your name goes on the index that it has to go to a hearing if the person appeals it. A lot of those get referred to the states attorneys for criminal prosecution. There's a different burden of proof in criminal cases because it's beyond a reasonable doubt. With some frequency, the states attorneys don't want to take the cases because of that different burden of proof. Ours is just the preponderance of the greater weight of the evidence and an administrative hearing to determine whether or not physical abuse occurred or physical neglect. We have to decide by the greater weight of the evidence, did that occur or not. If it occurred, we rule for the department. If it didn't occur, we rule against the department and then the name doesn't go on the index. There's a pretty big difference between those two standards to decide whether or not you're going to take it criminally.

Senator Warner: So the department is the one doing the investigations?

Allen Hoberg: Yes. An attorney from the attorney generals office represents the department at child abuse neglect hearings and prosecutes the case. When the department comes in, they have to prove the allegation of child abuse by the greater weight of the evidence. More and more of the defendants have attorneys these days - maybe half of them. The other half are representing themselves.

Senator Warner: Is there an equivalent to the administrative courts for the administrative hearings process? There is no obligation to provide legal counsel for those who don't have it? Answer: No.

Senator Carlisle asked if he could put the three items in a summary form and break that down with the \$900,000 that is requested and how you arrived at that?

Allen Hoberg: It's not just those three. We were also seeing increase in Workforce Safety and Insurance (WSI) and the Public Service Commission too. We started the biennium with 6 contract ALJs (administrative law judge) doing part time work for us doing almost exclusively WSI. We don't have any fulltime people doing WSI and Bonnie Fetch (PSC) was also gone for six months. So I contracted with a person to do primarily PSC hearings and then some WSI hearings and also another person to be out in Dickinson as well as another person to do the DHS hearings. All of these are part time.

Senator Carlisle: If you could break it down and say here's the top three but here are other things where our workload is coming from. Put it in a form that shows where you are putting the \$900,000.

Allen Hoberg: The top three are DHS, WSI, and PSC. I don't know that we're getting increases from anyone else, but those three. We have Bonnie Fetch back, but those three agencies will continue to see increases. This January is one of our biggest months and we aren't done with the month yet.

Senator Kilzer mentioned that Mr. Hoberg's testimony (to the full committee) details a review of the filings.

Senator Carlisle said that should be sufficient and it shows where they are getting the cases from.

Senator Kilzer: I would like to discuss the FTEs. It's gone from eight to five and then it's stayed at five. This is probably exclusive of your contracts or part time employees. If I were to see another graph, I would like to include the contracted people.

Allen Hoberg said that the last sheet of his testimony (Attachment E) shows all of their fulltime and contract people.

Senator Kilzer: I'd like to go back to the 2007-2009 period like you've shown on the green sheet (attachment 1).

Allen Hoberg: In 2007-2009 we had five fulltime ALJs. If you recall the problem with Workforce Safety Insurance who was a voluntary user at that time, decided not to use us. We came into an agreement with them and they came back because of the initiated measure whereby we would use contract ALJs to conduct their hearings. During that period from 2007-2009, it was probably two-thirds fulltime people conducting their hearings and one third contract. We were down to three or four contract ALJs at that time.

Senator Kilzer: (to Sheila M. Sandness) I'd like to see a chart that shows that - with a footnote about the initiated measure.

Senator Kilzer asked when that would be ready and **Allen Hoberg** said probably by tomorrow.

Senator Kilzer said they will schedule another subcommittee hearing after they receive next week's hearing schedule. He closed the hearing on SB 2017.

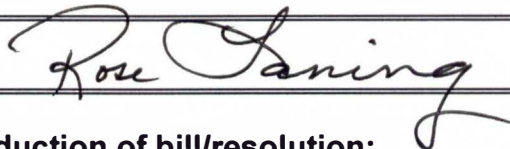
2013 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

SB 2017 subcommittee
February 5, 2013
Job # 18345

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

This is a subcommittee hearing on the Office of Administrative Hearings.

Minutes:

Legislative Council - Sheila M. Sandness
OMB - Laney Herauf

Senator Kilzer opened the hearing on SB 2017. **Senator Carlisle** and **Senator Warner** were present.

Senator Kilzer: We should take note of the budget of \$2.8 M which is a modest increase over the previous budget.

Senator Carlisle: Their increase was for contracting work. Allen said it fluctuates but the caseloads are expected to go?

Allen C. Hoberg, Director, Office of Administrative Hearings: We expect to go up higher because of the west.

Senator Kilzer: And your building requirements are satisfactory?

Allen C. Hoberg: We are in the Kirkwood bank building by Space Aliens and they are satisfactory. We have a small and large hearing room and probably 75% of hearings statewide are held there either by phone or otherwise.

Senator Kilzer: Do you take depositions over in the Kirkwood bank building?

Allen C. Hoberg: It's always handled by the attorneys prior to the hearing and they can have that in their offices or in the bank building - wherever they can find a place for a deposition.

Senator Kilzer: Any questions of committee members? I'm getting ready to accept the executive budget. I'm satisfied.

Senator Warner moved to accept the governor's budget as recommended.

Senator Carlisle seconded the motion.

Senator Kilzer said we all agree on bringing this forward.

Senator Carlisle volunteered and will carry it to the committee and to the floor.

Senator Kilzer closed the hearing on SB 2017.

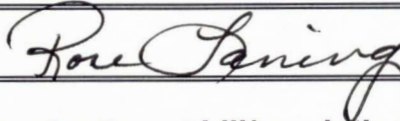
2013 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

SB 2017
February 7, 2013
Job # 18520

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

This was a vote on the budget for the Office of Administrative Hearings.

Minutes:

You may make reference to "attached testimony."

Chairman Holmberg opened the hearing on SB 2017.

Senator Kilzer: They have a budget of about \$2.8M in their proposal and that's up from \$1.9M, not because they had more FTEs but because they had more business and contracts. That's what they do with their extra. The subcommittee made no changes in the executive budget and I would move that we accept it.

Senator Kilzer moved Do Pass.
Senator Carlisle seconded the motion.

A roll call vote was taken. Yea: 13 Nay: 0 Absent: 0

Senator Kilzer will carry the bill on the floor.

Date: 2-7-13

Roll Call Vote # 1

**2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES**

BILL/RESOLUTION NO. 2017

Senate Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do pass

Motion Made By Kilzer Seconded By Carlisle

| Senators | Yes | No | Senator | Yes | No |
|------------------------------|-----|----|-------------------------|-----|----|
| Chairman Ray Holmberg | ✓ | | Senator Tim Mathern | ✓ | |
| Co-Vice Chairman Bill Bowman | ✓ | | Senator David O'Connell | ✓ | |
| Co-Vice Chair Tony Grindberg | ✓ | | Senator Larry Robinson | ✓ | |
| Senator Ralph Kilzer | ✓ | | Senator John Warner | ✓ | |
| Senator Karen Krebsbach | ✓ | | | | |
| Senator Robert Erbele | ✓ | | | | |
| Senator Terry Wanzek | ✓ | | | | |
| Senator Ron Carlisle | ✓ | | | | |
| Senator Gary Lee | ✓ | | | | |
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Total (Yes) 13 No 0

Absent 0

Floor Assignment Kilzer

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2017: Appropriations Committee (Sen. Holmberg, Chairman) recommends **DO PASS**
(13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2017 was placed on the
Eleventh order on the calendar.

2013 HOUSE APPROPRIATIONS

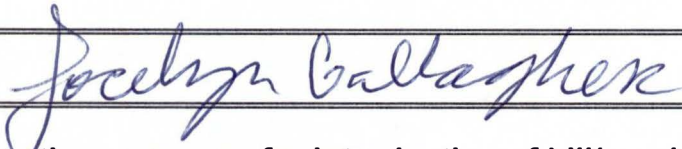
SB 2017

2013 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Human Resources Division Sakakawea Room, State Capitol

SB 2017
March 7, 2013
Job 19556

☐ Conference Committee



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the office of administrative hearings.

Minutes:

Handout 1

Chairman Pollert: Opened hearing on SB 2017.

Sheila Sandness, LC: The only change to this agency budget was to correct the executive compensation package.

Rep. Bellew: How did OMB do that?

Lori Laschkewitsch, OMB: With new directive of how you wanted compensation calculated we were unable to do it with a computer so it was manually calculated and there was an error in the formula for the non-classified employees.

Allen Hoberg, Director of the Office of Administrative Hearings: (2:24) (handout 1) Provided testimony in support of SB 2017, our 2013-2015 operating budget request. He mentioned agencies that use their service with Dept. of Human Services and WSI being the largest and PSC starting to use them more frequently. Provide a wide variety of hearings for state and local entities. We have permanent FTEs, besides the full time staff we have contracted with 9 contract hearing officers, ALJs.

Chairman Pollert: (10:15) What does PSC entail for your services?

Allen Hoberg: We do a wide variety of hearings for them and it's usually a procedural hearing officer, the commission is sitting there with us. As an ALJ, their hearing officer, I would conduct all the pre- hearing. The commission would be issuing their own decision. Lately, they've been asking us to do substantive hearing officer where we issue a recommended decision, as they wouldn't be there and then they would issue a final decision. That happens for citing hearing and reclamation hearings.

Chairman Pollert: With MinDaK power line going through, someone from your office was present at those hearings?

Allen Hoberg: Yes, it was three different hearings from our office.
(12:34) Continues with testimony.

Rep. Bellew: What types of hearings do you conduct for DHS?

Allen Hoberg: We probably do 25 types of hearings for DHS.

Rep. Bellew: As a private citizen would I have the right to say I would like a hearing on this?

Allen Hoberg: **(13:41)** He provided a day care example to answer question.

Rep. Bellew: They would appeal to your office rather than to a court?

Allen Hoberg: Yes, with most things that has to do with government have an administrative hearings requirement before it goes to the courts. But the important part is the hearing or trial at administrative level.

Rep. Nelson: If the day care provider appeals that decision, is there recipient liability involved with that? Is there any cost to that provider?

Allen Hoberg: No, the cost of the hearing is with this department.

Allen Hoberg: **(15:49)** Went into the budget portion of the handout.

Rep. Nelson: After the reconsideration hearing is there a mix of the ability to go to district court or is that restricted in some of these areas?

Allen Hoberg: In reconsideration, you may or may not have a hearing.

Rep. Nelson: Do you have numbers as to appeals you have to the court system in your testimony?

Allen Hoberg: I don't in my testimony, I can get it.

Rep. Nelson: In the reconsideration hearing is that a different administrative judge that sits in on the reconsideration?

Allen Hoberg: No, it would be the same judge.

Chairman Pollert: Talking about the 900,000 increase, were your fees higher in 11-13 than what we had budgeted?

Allen Hoberg: We did not ask for enough in the last biennium for operating costs for contract ALJs. However, we do have continuing appropriation authority.

Rep. Nelson: You underestimated your costs last time; your agency didn't show up in the deficiency appropriation?

Allen Hoberg: No it did not because of the continuing appropriation authority.

Rep. Nelson: Explain how the continuing appropriation process works?

Allen Hoberg: (21:15) He explained the process.

Rep. Nelson: Where does it show up on the books?

Allen Hoberg: It shows up on our appropriation.

Chairman Pollert: We will see it.

Allen Hoberg: I'm not sure how it shows up in DHS's budget.

Lori Laschkewitsch: It would probably be under the operating fees as far as their legal services.

Rep. Holman: Where does the authority for that show up in code?

Allen Hoberg: It shows up in our chapter that established us and to hire contract ALJs. (23:32) Continued on with handout.

Chairman Pollert: Any questions?

Rep. Hollman: The topic of most hearings, is it about money or policy?

Allen Hoberg: It's about work load, money, policy, all of those.

Rep. Hollman: If a claimant is rejected do they have the ability to go the next level if they get a bad decision?

Allen Hoberg: There is an appeals process for almost any hearing.

Chairman Pollert: You alluded to the attachments; do you want to go through them?

Allen Hoberg: It shows we do a lot of work for those two agencies and PSC and the infrequent users.

Rep. Hollman: You have 1000 requests and 500 hearings, is that typical? Do you say they can't have a hearing?

Allen Hoberg: We don't say they can't have a hearing. (32:01) Gave example.

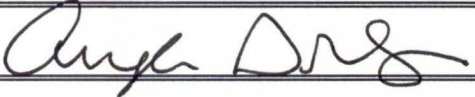
Chairman Pollert: In recess till 2:00, hearing closed.

2013 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Human Resources Division Sakakawea Room, State Capitol

SB 2017
March 15, 2013
Job 19979

☐ Conference Committee



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the office of administrative hearings.

Minutes:

Testimony 1, 2

Chairman Pollert called the meeting to order.

Allen Hoberg, Director, Office of Administrative Hearings testified in support of the bill (Testimony 1).

Rep. Kreidt: Do you have a lot of individuals in your department close to retirement?

Allen: To my knowledge, no one is considering retirement.

Rep. Wieland: How many offices do you have?

Allen: We have one main office in Bismarck and the administrative law judge in West Fargo works out of her home and telecommutes.

Rep. Wieland: Does she get compensated additionally for using her home as an office?

Allen: No, she has a separate, secure area in her home. We don't pay her rent on it.

Rep. Wieland: How many square feet is your office here and what is your rent?

Allen: I don't have those figures with me, but can get it for you. We're in the Kirkwood Bank building.

Rep. Wieland: Regarding data processing, can you explain what is involved in that cost?

Allen: We bill all of the agencies that we provide services for. We have a time-keeping system and a case management system to identify and store all the cases. The data

processing includes running those and computer word processing for 5 FTEs. We do a fair number of telephone hearings so we have a substantial telecommunications bill.

Rep. Bellew: In regards to the increase for professional services, is this just spending authority? You don't get this money until you actually hear the cases, correct?

Allen: That's true. When we do a case for an agency, we get paid for it. If we don't get cases, we don't get paid.

Rep. Bellew: So this is spending authority so you can hire those extra people?

Allen: Correct.

Chairman Pollert: It looks like you are getting yourself ready in case you get some IT software. But it looks like you don't use it unless you need it.

Allen: Our time-keeping case management system needs to be replaced. A good chunk of that money may go to a new system. The problem with them is it was done by a consultant and we've had to make so many changes to it that it's barely workable.


Chairman Pollert adjourned the meeting.

2013 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Human Resources Division
Sakakawea Room, State Capitol

SB 2017
April 3, 2013
Job 20807

☐ Conference Committee



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the office of administrative hearings.

Minutes:

Chairman Pollert reviewed amendment 02001.

Rep. Kreidt moved the amendment.

Rep. Wieland seconded.

Roll Call Vote: Yes: 6, No: 0, Absent: 0. Motion carried.

Rep. Kreidt moved a Do Pass as amended.

Rep. Nelson seconded.

Roll Call Vote: Yes: 6, No: 0, Absent: 0. Motion carried.

Rep. Kreidt carried the bill.

Chairman Pollert recessed the committee.

2013 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Committee Roughrider Room, State Capitol

SB 2017

4/9/13

Job 21019

☐ Conference Committee

Committee Clerk Signature

Meredith Traholt

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the office of administrative hearings.

Minutes:

You may make reference to "attached testimony."

Rep. Kreidt: This is all special funds; the dollars for this budget are received by money charged for doing the hearings out of this office. Went over amendment .02001. He moved adoption of amendment .02001, seconded by **Rep. Bellew**.

04:10

Chairman Delzer: This is authority, but the only time they spend the money is if they have the actual duty, and the money coming in from somebody else?

Rep. Kreidt: That's correct. This is all special funds. If they don't have the need or number of hearings, the money is not spent.

Chairman Delzer: Further discussion? The motion carried on a voice vote.

Rep. Kreidt moved Do Pass as Amended, seconded by **Rep. Bellew**.

Chairman Delzer: Discussion? Seeing none, a roll call vote was done. The motion carried 21 Yes, 0 No, 1 Absent. **Rep. Kreidt** will be the carrier.

VK
4/9/13

Fiscal No. 1

March 18, 2013

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2017

Page 1, replace line 10 with:

| | | | |
|------------------------|-----------|----------|-------------|
| "Salaries and wages | \$978,182 | \$60,251 | \$1,038,433 |
| Accrued leave payments | 0 | 10,698 | 10,698" |

Page 1, replace line 12 with:

| | | | |
|----------------------|-------------|-----------|--------------|
| "Total special funds | \$1,827,199 | \$970,955 | \$2,798,154" |
|----------------------|-------------|-----------|--------------|

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

Senate Bill No. 2017 - Office of Administrative Hearings - House Action

| | Executive Budget | Senate Version | House Changes | House Version |
|------------------------|---------------------|-------------------|------------------|------------------|
| Salaries and wages | \$1,075,272 | \$1,082,165 | (\$43,732) | \$1,038,433 |
| Operating expenses | 1,749,023 | 1,749,023 | | 1,749,023 |
| Accrued leave payments | | | 10,698 | 10,698 |
| Total all funds | \$2,824,295 | \$2,831,188 | (\$33,034) | \$2,798,154 |
| Less estimated income | 2,824,295 | 2,831,188 | (33,034) | 2,798,154 |
| General fund | \$0 | \$0 | \$0 | \$0 |
| FTE | 5.00 | 5.00 | 0.00 | 5.00 |

Department No. 140 - Office of Administrative Hearings - Detail of House Changes

| | Adjusts State Employee Compensation and Benefits Package ¹ | Provides Separate Line Item for Accrued Leave Payments ² | Total House Changes |
|------------------------|---|---|------------------------|
| Salaries and wages | (\$33,034) | (\$10,698) | (\$43,732) |
| Operating expenses | | | |
| Accrued leave payments | | 10,698 | 10,698 |
| Total all funds | (\$33,034) | \$0 | (\$33,034) |
| Less estimated income | (33,034) | 0 | (33,034) |
| General fund | \$0 | \$0 | \$0 |
| FTE | 0.00 | 0.00 | 0.00 |

¹This amendment adjusts the state employee compensation and benefits package as follows:

- Reduces the performance component from 3 to 5 percent per year to 2 to 4 percent per year.
- Reduces the market component from 2 to 4 percent per year for employees below the midpoint of their salary range to up to 2 percent for employees in the first quartile of their salary range for the first year of the biennium only.
- Removes funding for additional retirement contribution increases.

²A portion of salaries and wages funding from other funds for permanent employees' compensation and benefits is reallocated to an accrued leave payments line item for paying annual leave and sick leave for eligible employees.

Date: 04.03.13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB2017

House House Appropriations - Human Resources Division Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 02001

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Kreidt Seconded By Wieland

| Representatives | Yes | No | Representatives | Yes | No |
|------------------------|-----|----|-----------------------|-----|----|
| Chairman Pollert | X | | Representative Holman | X | |
| Representative Bellew | X | | | | |
| Representative Kreidt | X | | | | |
| Representative Nelson | X | | | | |
| Representative Wieland | X | | | | |
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Total (Yes) 6 No 0

Absent —

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

*adjusted pay package, amendment for
accrued leave payments*

Date: 04-03-12
Roll Call Vote #: 2

**2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB2017**

House House Appropriations - Human Resources Division Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Kreidt Seconded By Nelson

| Representatives | Yes | No | Representatives | Yes | No |
|------------------------|-----|----|-----------------------|-----|----|
| Chairman Pollert | X | | Representative Holman | X | |
| Representative Bellew | X | | | | |
| Representative Kreidt | X | | | | |
| Representative Nelson | X | | | | |
| Representative Wieland | X | | | | |
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Total (Yes) 6 No 0

Absent 1

Floor Assignment Rep. Kreidt

If the vote is on an amendment, briefly indicate intent:

Date: 4/9/13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2017

House Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number .02001

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Kreidt Seconded By Rep. Bellew

| Representatives | Yes | No | Representatives | Yes | No |
|-------------------------|-----|----|-----------------|-----|----|
| Chairman Delzer | | | Rep. Streyle | | |
| Vice Chairman Kempenich | | | Rep. Thoreson | | |
| Rep. Bellew | | | Rep. Wieland | | |
| Rep. Brandenburg | | | | | |
| Rep. Dosch | | | | | |
| Rep. Grande | | | Rep. Boe | | |
| Rep. Hawken | | | Rep. Glassheim | | |
| Rep. Kreidt | | | Rep. Guggisberg | | |
| Rep. Martinson | | | Rep. Holman | | |
| Rep. Monson | | | Rep. Williams | | |
| Rep. Nelson | | | | | |
| Rep. Pollert | | | | | |
| Rep. Sanford | | | | | |
| Rep. Skarphol | | | | | |

Total Yes _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

voice vote carries

Date: 4/9/13
Roll Call Vote #: 2

**2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2017**

House Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Kreidt Seconded By Rep. Bellew

| Representatives | Yes | No | Representatives | Yes | No |
|-------------------------|-----|----|-----------------|-----|----|
| Chairman Delzer | X | | Rep. Streyle | X | |
| Vice Chairman Kempenich | X | | Rep. Thoreson | X | |
| Rep. Bellew | X | | Rep. Wieland | X | |
| Rep. Brandenburg | X | | | | |
| Rep. Dosch | X | | | | |
| Rep. Grande | X | | Rep. Boe | X | |
| Rep. Hawken | X | | Rep. Glassheim | X | |
| Rep. Kreidt | X | | Rep. Guggisberg | X | |
| Rep. Martinson | X | | Rep. Holman | X | |
| Rep. Monson | X | | Rep. Williams | X | |
| Rep. Nelson | X | | | | |
| Rep. Pollert | | | | | |
| Rep. Sanford | X | | | | |
| Rep. Skarphol | X | | | | |

Total Yes 21 No 0

Absent 1

Floor Assignment Rep. Kreidt

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2017, as engrossed: Appropriations Committee (Rep. Delzer, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (21 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2017 was placed on the Sixth order on the calendar.

Page 1, replace line 10 with:

| | | | |
|------------------------|-----------|----------|-------------|
| "Salaries and wages | \$978,182 | \$60,251 | \$1,038,433 |
| Accrued leave payments | 0 | 10,698 | 10,698" |

Page 1, replace line 12 with:

| | | | |
|----------------------|-------------|-----------|--------------|
| "Total special funds | \$1,827,199 | \$970,955 | \$2,798,154" |
|----------------------|-------------|-----------|--------------|

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

Senate Bill No. 2017 - Office of Administrative Hearings - House Action

| | Executive Budget | Senate Version | House Changes | House Version |
|------------------------|------------------|----------------|---------------|---------------|
| Salaries and wages | \$1,075,272 | \$1,082,165 | (\$43,732) | \$1,038,433 |
| Operating expenses | 1,749,023 | 1,749,023 | | 1,749,023 |
| Accrued leave payments | | | 10,698 | 10,698 |
| Total all funds | \$2,824,295 | \$2,831,188 | (\$33,034) | \$2,798,154 |
| Less estimated income | 2,824,295 | 2,831,188 | (33,034) | 2,798,154 |
| General fund | \$0 | \$0 | \$0 | \$0 |
| FTE | 5.00 | 5.00 | 0.00 | 5.00 |

Department No. 140 - Office of Administrative Hearings - Detail of House Changes

| | Adjusts State Employee Compensation and Benefits Package ¹ | Provides Separate Line Item for Accrued Leave Payments ² | Total House Changes |
|------------------------|---|---|---------------------|
| Salaries and wages | (\$33,034) | (\$10,698) | (\$43,732) |
| Operating expenses | | | |
| Accrued leave payments | | 10,698 | 10,698 |
| Total all funds | (\$33,034) | \$0 | (\$33,034) |
| Less estimated income | (33,034) | 0 | (33,034) |
| General fund | \$0 | \$0 | \$0 |
| FTE | 0.00 | 0.00 | 0.00 |

¹This amendment adjusts the state employee compensation and benefits package as follows:

- Reduces the performance component from 3 to 5 percent per year to 2 to 4 percent per year.
- Reduces the market component from 2 to 4 percent per year for employees below the midpoint of their salary range to up to 2 percent for employees in the first quartile of their salary range for the first year of the biennium only.
- Removes funding for additional retirement contribution increases.

²A portion of salaries and wages funding from other funds for permanent employees' compensation and benefits is reallocated to an accrued leave payments line item for paying annual leave and sick leave for eligible employees.

2013 CONFERENCE COMMITTEE

SB 2017

2013 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee
Harvest Room, State Capitol

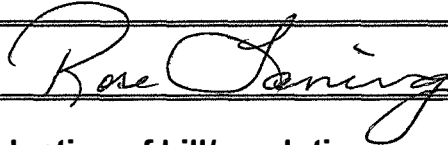
SB 2017 conference committee

April 18, 2013

Job # 21231

☒ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the office of administrative hearings.

Minutes:

Legislative Council - absent

OMB - Sheila Peterson & Laney Herauf

Senator Kilzer opened the conference committee hearing on SB 2017. **Senators Carlisle** and **Warner** were present as well as **Representatives Kreidt, Wieland** and **Holman**.

Senator Kilzer said the only matter before this conference committee is the salary issue. People getting paid better than us will be making that decision so unless there is any other activity, we will adjourn until we hear from higher up. At that point, we'll meet again. He also thanked Mr. Hoberg for coming.

Senator Kilzer closed the hearing.

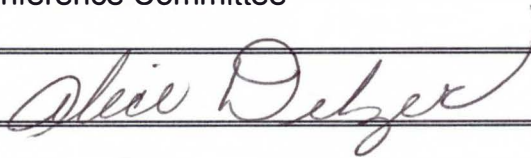
2013 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

SB 2017
04-23-2013
Job # 21430

☒ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A Conference Committee hearing for the office of Administrative Hearings

Minutes:

Attachment

Senator Kilzer called the Conference Committee hearing together Tuesday, April 23, 2013 at 10:30 am in the Harvest Room. Let the record show that all conferees are present.

SENATE: Senators: Ralph Kilzer, Chair; Ron Carlisle, John Warner

HOUSE: Representatives: Gary Kreidt, Alon Wieland and Rick Holman

Joe Morrisette - OMB

Sheila M. Sandness - Legislative Council

Senator Kilzer: We have an amendment before us. Amendment # 13.8167.02002, attached.

Sheila M. Sandness: The only difference in this budget between the House and Senate was the compensation package and so we drafted these amendments based on the new compensation agreement the two. The only changes that this amendment makes are to adjust the state employee compensation benefits package, which reduces the salary amount and to separate the accrued payment line item.

Representative Kreidt: I have had time to review the amendment and it looks like everything is in place. I move the amendment # 13.8167.02002.

Senator Carlisle: Seconded the motion.

Sheila M. Sandness: The way the motion would go would be for the House to recede from their amendments.

Senator Kilzer: This will come to the floor of each House. It goes to the Senate first and then to the House.

Representative Kreidt: In the motion we would have to include that the House recedes from their amendments.

Senator Kilzer: All in favor say aye, opposed say nay. We will close the hearing

Handwritten: 4-23-13
1042

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2017

That the House recede from its amendments as printed on pages 1313 and 1314 of the Senate Journal and pages 1378 and 1379 of the House Journal and that Engrossed Senate Bill No. 2017 be amended as follows:

Page 1, replace line 10 with:

| | | | |
|------------------------|-----------|----------|-------------|
| "Salaries and wages | \$978,182 | \$80,993 | \$1,059,175 |
| Accrued leave payments | 0 | 10,698 | 10,698" |

Page 1, replace line 12 with:

| | | | |
|----------------------|-------------|-----------|--------------|
| "Total special funds | \$1,827,199 | \$991,697 | \$2,818,896" |
|----------------------|-------------|-----------|--------------|

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

Senate Bill No. 2017 - Office of Administrative Hearings - Conference Committee Action

| | Executive Budget | Senate Version | Conference Committee Changes | Conference Committee Version | House Version | Comparison to House |
|------------------------|------------------|----------------|------------------------------|------------------------------|---------------|---------------------|
| Salaries and wages | \$1,075,272 | \$1,082,165 | (\$22,990) | \$1,059,175 | \$1,038,433 | \$20,742 |
| Operating expenses | 1,749,023 | 1,749,023 | | 1,749,023 | 1,749,023 | |
| Accrued leave payments | | | 10,698 | 10,698 | 10,698 | |
| Total all funds | \$2,824,295 | \$2,831,188 | (\$12,292) | \$2,818,896 | \$2,798,154 | \$20,742 |
| Less estimated income | 2,824,295 | 2,831,188 | (12,292) | 2,818,896 | 2,798,154 | 20,742 |
| General fund | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| FTE | 5.00 | 5.00 | 0.00 | 5.00 | 5.00 | 0.00 |

Department No. 140 - Office of Administrative Hearings - Detail of Conference Committee Changes

| | Adjusts State Employee Compensation and Benefits Package ¹ | Provides Separate Line Item for Accrued Leave Payments ² | Total Conference Committee Changes |
|------------------------|---|---|------------------------------------|
| Salaries and wages | (\$12,292) | (\$10,698) | (\$22,990) |
| Operating expenses | | | |
| Accrued leave payments | | 10,698 | 10,698 |
| Total all funds | (\$12,292) | \$0 | (\$12,292) |
| Less estimated income | (12,292) | 0 | (12,292) |
| General fund | \$0 | \$0 | \$0 |
| FTE | 0.00 | 0.00 | 0.00 |

¹ This amendment adjusts the state employee compensation and benefits package as follows:

- Reduces the performance component from 3 to 5 percent per year to 3 to 5 percent for the first year of the biennium and 2 to 4 percent for the second year of the biennium.
- Reduces the market component from 2 to 4 percent per year to 1 to 2 percent per year for

2 of 2

employees below the midpoint of their salary range.

- Reduces funding for retirement contribution increases to provide for a 1 percent state and 1 percent employee increase beginning in January 2014 and no increase in January 2015.

² A portion of salaries and wages funding from other funds for permanent employees' compensation and benefits is reallocated to an accrued leave payments line item for paying annual leave and sick leave for eligible employees.

Date _____

Roll Call Vote # 1-4.23-13

**2013 SENATE CONFERENCE COMMITTEE
ROLL CALL VOTES**

Amendment
#13.8167.02002

BILL/RESOLUTION NO. 2017 as (re) engrossedSenate Appropriations CommitteeAction Taken ☐ SENATE accede to House Amendments☐ SENATE accede to House Amendments and further amends☐ HOUSE recede from House amendments☒ HOUSE recede from House amendments and amends as follows☐ **Unable to agree**, recommends that the committee be discharged and a new committee be appointedMotion Made by: Kreidt Seconded by: Carlisle

| Senators | <u>4/18/13</u> | <u>4/23/13</u> | Yes | No | | Representatives | <u>4/18/13</u> | <u>4/23/13</u> | Yes | No |
|-------------------|----------------|----------------|-----|----|--|-----------------|----------------|----------------|-----|----|
| Senator Kilzer | ✓ | ✓ | ✓ | | | Rep. Kreidt | ✓ | ✓ | ✓ | |
| Carlisle | ✓ | ✓ | ✓ | | | Wieland | ✓ | ✓ | ✓ | |
| Warner | ✓ | ✓ | ✓ | | | Holman | ✓ | ✓ | ✓ | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| Total Senate Vote | | | | | | Total Rep. Vote | | | | |

Vote Count Yes: 6 No: 0 Absent: 0Senate Carrier Kilzer House Carrier KreidtLC Number 13.8167 . 02002 of amendmentLC Number 13.8167 . 02000 of engrossment

REPORT OF CONFERENCE COMMITTEE

SB 2017, as engrossed: Your conference committee (Sens. Kilzer, Carlisle, Warner and Reps. Kreidt, Wieland, Holman) recommends that the **HOUSE RECEDE** from the House amendments as printed on SJ pages 1313-1314, adopt amendments as follows, and place SB 2017 on the Seventh order:

That the House recede from its amendments as printed on pages 1313 and 1314 of the Senate Journal and pages 1378 and 1379 of the House Journal and that Engrossed Senate Bill No. 2017 be amended as follows:

Page 1, replace line 10 with:

| | | | |
|------------------------|-----------|----------|-------------|
| "Salaries and wages | \$978,182 | \$80,993 | \$1,059,175 |
| Accrued leave payments | 0 | 10,698 | 10,698" |

Page 1, replace line 12 with:

| | | | |
|----------------------|-------------|-----------|--------------|
| "Total special funds | \$1,827,199 | \$991,697 | \$2,818,896" |
|----------------------|-------------|-----------|--------------|

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

Senate Bill No. 2017 - Office of Administrative Hearings - Conference Committee Action

| | Executive Budget | Senate Version | Conference Committee Changes | Conference Committee Version | House Version | Comparison to House |
|------------------------|------------------|----------------|------------------------------|------------------------------|---------------|---------------------|
| Salaries and wages | \$1,075,272 | \$1,082,165 | (\$22,990) | \$1,059,175 | \$1,038,433 | \$20,742 |
| Operating expenses | 1,749,023 | 1,749,023 | | 1,749,023 | 1,749,023 | |
| Accrued leave payments | | | 10,698 | 10,698 | 10,698 | |
| Total all funds | \$2,824,295 | \$2,831,188 | (\$12,292) | \$2,818,896 | \$2,798,154 | \$20,742 |
| Less estimated income | 2,824,295 | 2,831,188 | (12,292) | 2,818,896 | 2,798,154 | 20,742 |
| General fund | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| FTE | 5.00 | 5.00 | 0.00 | 5.00 | 5.00 | 0.00 |

Department No. 140 - Office of Administrative Hearings - Detail of Conference Committee Changes

| | Adjusts State Employee Compensation and Benefits Package ¹ | Provides Separate Line Item for Accrued Leave Payments ² | Total Conference Committee Changes |
|------------------------|---|---|------------------------------------|
| Salaries and wages | (\$12,292) | (\$10,698) | (\$22,990) |
| Operating expenses | | | |
| Accrued leave payments | | 10,698 | 10,698 |
| Total all funds | (\$12,292) | \$0 | (\$12,292) |
| Less estimated income | (12,292) | 0 | (12,292) |
| General fund | \$0 | \$0 | \$0 |
| FTE | 0.00 | 0.00 | 0.00 |

¹ This amendment adjusts the state employee compensation and benefits package as follows:

- Reduces the performance component from 3 to 5 percent per year to 3 to 5 percent for the first year of the biennium and 2 to 4 percent for the second year of the biennium.
- Reduces the market component from 2 to 4 percent per year to 1 to 2 percent per

- year for employees below the midpoint of their salary range.
- Reduces funding for retirement contribution increases to provide for a 1 percent state and 1 percent employee increase beginning in January 2014 and no increase in January 2015.

² A portion of salaries and wages funding from other funds for permanent employees' compensation and benefits is reallocated to an accrued leave payments line item for paying annual leave and sick leave for eligible employees.

Engrossed SB 2017 was placed on the Seventh order of business on the calendar.

**2013 TESTIMONY
SB 2017**



OFFICE OF ADMINISTRATIVE HEARINGS

STATE OF NORTH DAKOTA
2911 North 14th Street - Suite 303
Bismarck, North Dakota 58503


#1

Allen C. Hoberg
DIRECTOR

701-328-3200
Fax 701-328-3254
oah@nd.gov
www.nd.gov/oah

MEMORANDUM

TO: Sixty-third Legislative Assembly
State of North Dakota
Senate Appropriations Committee

FROM: Allen C. Hoberg, Director 
Office of Administrative Hearings

RE: OAH 2013-2015 Operating Budget Request
Senate Bill No. 2017

DATE: January 24, 2013

The 2011-2013 biennium has been a relatively good biennium for the Office of Administrative Hearings ("OAH"). The number of requests for hearing received from all of OAH's user agencies, boards, commissions, and local entities continues to increase. OAH continues to be very busy and based on what our client agencies tell us, we will continue to see increases in the number of hearing requests during the 2013-2015 biennium, possibly substantial increases. Pursuant to performance guidelines implemented for all of its user state agencies, boards, and commissions, OAH issued its second biennial report for the 2009-2011 biennium in November 2011.

OAH continues to receive requests to conduct administrative hearings from many different state agencies, boards, and commissions, and from local entities. Over the

years, OAH has conducted hearings for over 70 different state and local government agencies or entities. Some agencies make many requests for hearing each year, while others have made only a few requests for hearing since OAH was established in 1991. For example, in calendar year 2011, 24 different agencies or entities made 516 requests for hearing, and in calendar year 2012, 26 different agencies or entities made 510 requests for hearing, a total of 1026 requests by 34 different agencies or entities in those two years. (See Attachment "A.") For comparison, in calendar year 2009, OAH received 415 requests for hearing and in calendar year 2010 OAH received 437 requests for hearing. OAH numbers its cases by calendar year; e.g., 20130001 would be the first request for a hearing received in 2013. Attachment "B" shows the number of hearings actually held for calendar years 2011 and 2012, 312 in 2011 and 262 in 2012, a total of 574 hearings. Thus, about 56 percent of the hearing requests made actually went to hearing in those two years. Historically, between 45 percent and 55 percent of hearing requests have gone to hearing. Attachment "C" shows the number of prehearing conferences actually held for calendar years 2011 and 2012. Prehearing conferences are usually held for the more complex hearings. 325 prehearing conferences were held during those two years.

For the first 18 months of this biennium, statistically, through December 31, 2012, 32 different agencies or entities have made 763 requests for hearing. (See Attachment

"D.") As you can see from the attachments, the bulk of requests for hearing this biennium have come from two agencies, the Department of Human Services and Workforce Safety and Insurance; that is typical for most biennia. Another frequent OAH user, much more so in the last few years, is the Public Service Commission.

OAH conducts hearings for state and local agencies and entities that are required to use OAH (see N.D.C.C. §§ 54-57-03(1), 40-51.2-12, 40-47-01.1, and 15.1-15-08); for state agencies that voluntarily use OAH, *e.g.*, the Public Service Commission, the Insurance Department, the Industrial Commission, the Department of Transportation for dealer licensing hearings, Student Loans of North Dakota for student loan hearings, colleges and universities for personnel hearings, and occasionally Job Service North Dakota for conflict unemployment compensation hearings; as well as for local entities that voluntarily use OAH, *e.g.*, cities and counties that use OAH to conduct such hearings as employee discipline, tobacco sales enforcement, or public nuisance abatement hearings.

OAH's structure for conducting hearings is five permanent FTEs - three ALJs and two support staff - and nine part-time, contract ALJs. (See attached organizational chart, Attachment "E.") Seven of OAH's contract ALJs conduct almost exclusively WSI hearings; three are located in Fargo, two in Bismarck, one in Minot, and one in

Dickinson. One contract ALJ conducts almost exclusively PSC hearings; he is located in Bismarck. One contract ALJ conducts almost exclusively DHS hearings; he is located in Bismarck. OAH's three full-time permanent ALJs conduct a mixture of different agency hearings but, primarily, DHS, PSC, HRMS state employee grievance hearings, and occupational licensing hearings. OAH proposes to move forward into the 2013-2015 biennium with the same structure. However, workload considerations may require more part-time, contract ALJs. At some time in the future OAH will likely want to employ more full-time, permanent ALJs and fewer contract ALJs, but it is probably wise to wait to do so until caseloads level off, so that we can more accurately assess our needs.

BUDGET ANALYSIS

OAH's 2011-2013 budget for administrative hearings shows funding at \$1,827,199. The governor is recommending a budget for OAH of \$2,824,295 for the 2013-2015 biennium. For the coming biennium, OAH is requesting an increase of \$900,006 in operating expenses, primarily for payments to contract ALJs. OAH has seen its caseload substantially increase over the last two calendar years, and we believe it will continue to increase. The increase for this biennium has been primarily in DHS, PSC, and WSI hearings and that increase has been handled mostly by contract ALJs. Additionally, the workload for WSI hearings, for workers compensation matters, has

increased due to an increasing number of cases being handled by attorneys for claimants (complexity increase) and an increasing number of requests for reconsideration, mostly by attorneys, after the ALJ issues a final decision. Also, ALJ Bonny Fetch spent six months as a PSC commissioner and OAH had to cover for her, mostly with contract ALJs. OAH did not ask for enough funding for operating for payments to contract ALJs for the 2011-2013 biennium and has had to rely on requests for increases in spending authority because it has continuing appropriation authority. With fluctuating caseloads, usually on the increase, it is highly desirable for OAH to have continuing appropriation authority. Again, OAH expects the increases in caseload to continue through the next biennium.

Additionally, the governor is recommending an increase in salaries and wages of \$97,090 for OAH.

OAH requested a budget of \$2,746,849 to the governor for the 2013-2015 biennium. This included a \$19,644 increases in salaries for OAH to cover the 2011-2013 salary increases passed last session for all state agencies. Other than this increase, OAH salaries remain the same in OAH's budget request to the governor. There are no special equity salary increases included in OAH's budget request. The governor's executive budget recommendation for OAH includes the compensation package the governor

recommended for all state agencies. Thus, the governor's recommendation for salary increases for OAH staff totals \$97,090 (OAH's requested increase of \$19,644 plus the governor's compensation package of \$77,446). We realize that there may be changes to the governor's recommendation for a salary package for OAH, but we do support the executive recommendation for OAH.

OAH continues to perform a vital task for state and local agencies, boards, commissions, and other governmental entities, both for mandatory and voluntary users of OAH's services, holding a wide variety of types of administrative hearings for these users. We believe that with OAH's current structure and the governor's executive budget recommendation, OAH will continue to meet the administrative hearing requirements of all those users of OAH's services which depend on OAH to conduct their hearings. Having a separate entity such as OAH for conducting administrative hearings allows for the fair and impartial conduct of these hearings for state and local government and for the citizens of North Dakota.

Finally, I believe the rest of our budget information and budget narratives are accurate and informative, as of the date of the submission of our proposed budget to OMB. However, I did want to update you on two of the agency major accomplishments in our proposed budget. First, former temporary PSC Commissioner Bonny Fetch has

resumed her duties as an OAH ALJ. She served the PSC from July 1, 2012, through December 31, 2012, at the governor's request. I understand that she performed well as a commissioner but we are glad to have her back as an ALJ to share in the increased workload. Second, one accomplishment mentioned was not finally secured as of the submission of our proposed budget but I can now tell you that OAH and North Dakota will host the Central Panel Directors Conference in Bismarck in September 2014. The Central Panel Directors Conference is a major conference involving my director and chief ALJ counterparts from about 25 states, with attendance also by some deputy directors and deputy chief ALJs, and some support staff. We are very happy to be able to host this conference and look forward to doing so.

fz

Total Requests Received by Agency

Files Received Between January 1, 2011, and December 31, 2012

Office of Administrative Hearings

| Agency | Total | % of Total | 2011 | 2012 |
|--|-------------|------------|------------|------------|
| Addiction Counseling Examiners Board | 1 | 0.1% | 1 | 0 |
| Agriculture Commissioner | 1 | 0.1% | 0 | 1 |
| Animal Health, Board of | 1 | 0.1% | 0 | 1 |
| Attorney General, Office of | 4 | 0.4% | 3 | 1 |
| BND, Student Loans of North Dakota | 8 | 0.8% | 7 | 1 |
| Chiropractic Examiners, State Board of | 2 | 0.2% | 2 | 0 |
| County, Burleigh | 1 | 0.1% | 1 | 0 |
| Dental Examiners, Board of | 1 | 0.1% | 0 | 1 |
| DHS, Human Services, Department of | 435 | 42.4% | 225 | 210 |
| FI, Banking Board | 1 | 0.1% | 1 | 0 |
| FI, Financial Institutions, Department of | 1 | 0.1% | 0 | 1 |
| Game and Fish Department | 3 | 0.3% | 1 | 2 |
| Health, Department of | 3 | 0.3% | 1 | 2 |
| Human Resource Management Services | 12 | 1.2% | 6 | 6 |
| IC, Insurance Commissioner | 9 | 0.9% | 2 | 7 |
| Industrial Commission | 5 | 0.5% | 4 | 1 |
| Job Service North Dakota | 2 | 0.2% | 1 | 1 |
| Labor, Dept. of | 5 | 0.5% | 1 | 4 |
| Medical Examiners, State Board of | 10 | 1.0% | 6 | 4 |
| Minot State University | 4 | 0.4% | 3 | 1 |
| Pharmacy, State Board of | 3 | 0.3% | 0 | 3 |
| Professional Engineers & Land Surveyors Board | 1 | 0.1% | 0 | 1 |
| PSC, Public Service Commission | 58 | 5.7% | 35 | 23 |
| Psychologist Examiners, State Board of | 1 | 0.1% | 1 | 0 |
| Public Employees Retirement Board | 1 | 0.1% | 0 | 1 |
| Public Instruction - Richardton-Taylor School District | 1 | 0.1% | 0 | 1 |
| Public Instruction, Department of | 22 | 2.1% | 9 | 13 |
| Real Estate Commission | 2 | 0.2% | 1 | 1 |
| State, Secretary of | 2 | 0.2% | 2 | 0 |
| Transportation, Department of | 1 | 0.1% | 0 | 1 |
| University System, N.D. | 1 | 0.1% | 1 | 0 |
| Valley City, ND, City of | 4 | 0.4% | 4 | 0 |
| Veterans Affairs, Department of | 1 | 0.1% | 0 | 1 |
| Water Commission, State/State Engineer | 5 | 0.5% | 2 | 3 |
| Workforce Safety & Insurance | 414 | 40.4% | 196 | 218 |
| Grand Totals: | 1026 | | 516 | 510 |

1/8/2013

Hearings Held by Agency

Hearings Held Between January 1, 2011, and December 31, 2012

Office of Administrative Hearings

| Agency | Total | % of Total | 2011 | 2012 |
|--|------------|------------|------------|------------|
| Addiction Counseling Examiners Board | 1 | 0.2% | 1 | 0 |
| Attorney General, Office of | 2 | 0.3% | 2 | 0 |
| BND, Student Loans of North Dakota | 4 | 0.7% | 4 | 0 |
| Chiropractic Examiners, State Board of | 1 | 0.2% | 1 | 0 |
| Dental Examiners, Board of | 1 | 0.2% | 0 | 1 |
| DHS, Human Services, Department of | 242 | 42.2% | 134 | 108 |
| Game and Fish Department | 3 | 0.5% | 1 | 2 |
| Health, Department of | 1 | 0.2% | 1 | 0 |
| Human Resource Management Services | 5 | 0.9% | 3 | 2 |
| IC, Insurance Commissioner | 1 | 0.2% | 1 | 0 |
| Job Service North Dakota | 2 | 0.3% | 1 | 1 |
| Medical Examiners, State Board of | 7 | 1.2% | 4 | 3 |
| Minot State University | 3 | 0.5% | 2 | 1 |
| PSC, Public Service Commission | 46 | 8.0% | 25 | 21 |
| Public Employees Retirement Board | 1 | 0.2% | 0 | 1 |
| Public Instruction, Department of | 20 | 3.5% | 7 | 13 |
| Real Estate Commission | 2 | 0.3% | 1 | 1 |
| Transportation, Department of | 1 | 0.2% | 0 | 1 |
| University System, N.D. | 1 | 0.2% | 1 | 0 |
| Valley City, ND, City of | 4 | 0.7% | 4 | 0 |
| Water Commission, State/State Engineer | 1 | 0.2% | 0 | 1 |
| Workforce Safety & Insurance | 225 | 39.2% | 119 | 106 |
| Grand Totals: | 574 | | 312 | 262 |

1/8/2013

Prehearing Conferences Held by Agency

Prehearing Conferences Held Between January 1, 2011, and December 31, 2012

Office of Administrative Hearings

| Agency | Total | % of Total | 2011 | 2012 |
|--|------------|------------|------------|------------|
| Addiction Counseling Examiners Board | 1 | 0.3% | 1 | 0 |
| Agriculture Commissioner | 1 | 0.3% | 0 | 1 |
| Attorney General, Office of | 2 | 0.6% | 2 | 0 |
| BND, Student Loans of North Dakota | 5 | 1.5% | 4 | 1 |
| Chiropractic Examiners, State Board of | 3 | 0.9% | 3 | 0 |
| County, Burleigh | 1 | 0.3% | 1 | 0 |
| DHS, Human Services, Department of | 117 | 36.0% | 64 | 53 |
| Health, Department of | 1 | 0.3% | 0 | 1 |
| Human Resource Management Services | 18 | 5.5% | 12 | 6 |
| IC, Insurance Commissioner | 10 | 3.1% | 3 | 7 |
| Industrial Commission | 3 | 0.9% | 3 | 0 |
| Labor, Dept. of | 6 | 1.8% | 1 | 5 |
| Medical Examiners, State Board of | 5 | 1.5% | 4 | 1 |
| Minot State University | 4 | 1.2% | 4 | 0 |
| PSC, Public Service Commission | 13 | 4.0% | 9 | 4 |
| Psychologist Examiners, State Board of | 1 | 0.3% | 1 | 0 |
| Public Instruction - Richardton-Taylor School District | 1 | 0.3% | 0 | 1 |
| Public Instruction, Department of | 5 | 1.5% | 3 | 2 |
| State, Secretary of | 4 | 1.2% | 4 | 0 |
| University System, N.D. | 2 | 0.6% | 2 | 0 |
| Valley City, ND, City of | 4 | 1.2% | 4 | 0 |
| Veterans Affairs, Department of | 1 | 0.3% | 0 | 1 |
| Water Commission, State/State Engineer | 8 | 2.5% | 3 | 5 |
| Workforce Safety & Insurance | 109 | 33.5% | 53 | 56 |
| Grand Totals: | 325 | | 181 | 144 |

1/8/2013

Total Requests Received by Agency

Files Received Between July 1, 2011, and December 31, 2012

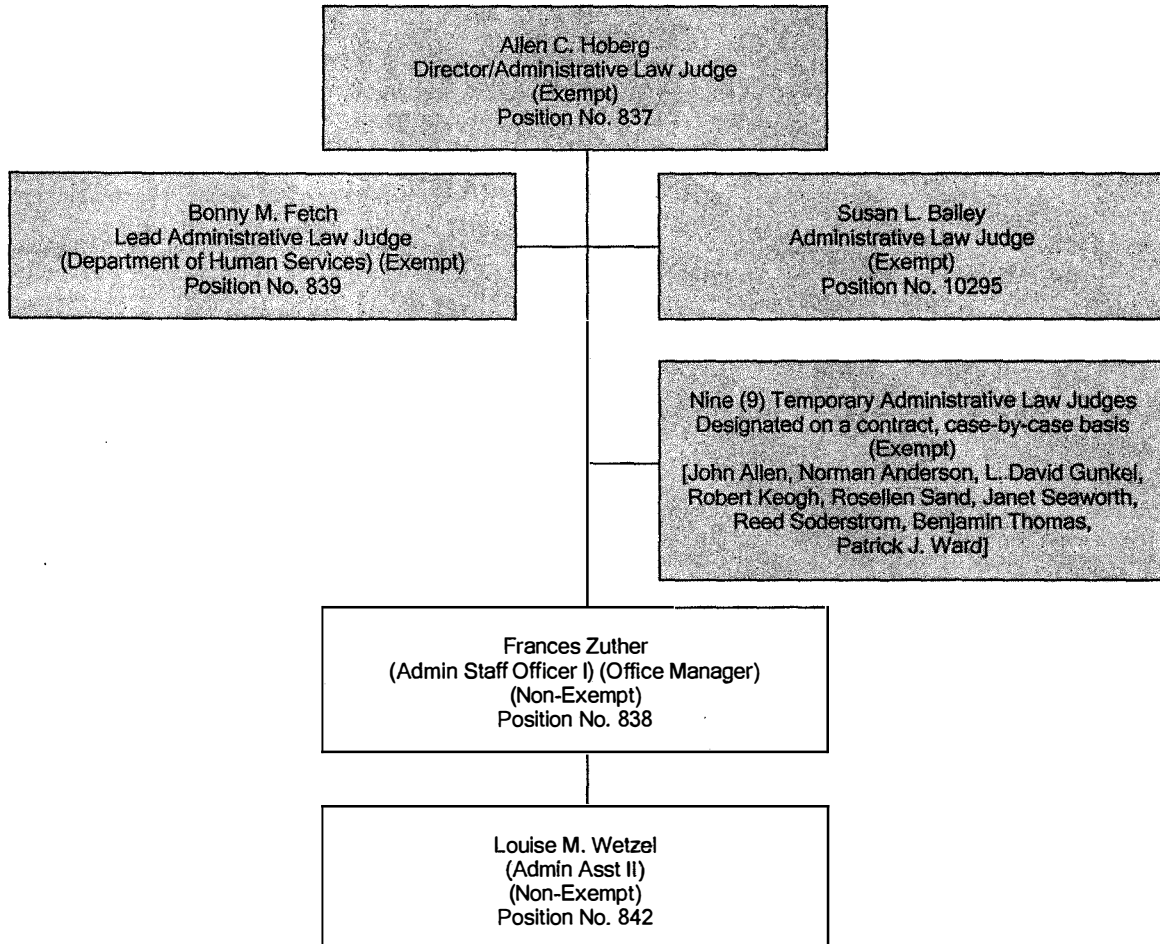
Office of Administrative Hearings

| Agency | Total | % of Total | FY 2012 | FY 2013 |
|--|------------|------------|------------|------------|
| Addiction Counseling Examiners Board | 1 | 0.1% | 0 | 1 |
| Agriculture Commissioner | 1 | 0.1% | 1 | 0 |
| Animal Health, Board of | 1 | 0.1% | 0 | 1 |
| Attorney General, Office of | 3 | 0.4% | 1 | 2 |
| BND, Student Loans of North Dakota | 6 | 0.8% | 0 | 6 |
| Chiropractic Examiners, State Board of | 1 | 0.1% | 0 | 1 |
| Dental Examiners, Board of | 1 | 0.1% | 1 | 0 |
| DHS, Human Services, Department of | 321 | 42.1% | 101 | 220 |
| FI, Banking Board | 1 | 0.1% | 0 | 1 |
| FI, Financial Institutions, Department of | 1 | 0.1% | 0 | 1 |
| Game and Fish Department | 3 | 0.4% | 2 | 1 |
| Health, Department of | 2 | 0.3% | 2 | 0 |
| Human Resource Management Services | 8 | 1.0% | 4 | 4 |
| IC, Insurance Commissioner | 8 | 1.0% | 5 | 3 |
| Industrial Commission | 3 | 0.4% | 1 | 2 |
| Job Service North Dakota | 1 | 0.1% | 1 | 0 |
| Labor, Dept. of | 5 | 0.7% | 3 | 2 |
| Medical Examiners, State Board of | 8 | 1.0% | 1 | 7 |
| Minot State University | 3 | 0.4% | 1 | 2 |
| Pharmacy, State Board of | 3 | 0.4% | 0 | 3 |
| Professional Engineers & Land Surveyors Board | 1 | 0.1% | 0 | 1 |
| PSC, Public Service Commission | 44 | 5.8% | 8 | 36 |
| Psychologist Examiners, State Board of | 1 | 0.1% | 0 | 1 |
| Public Employees Retirement Board | 1 | 0.1% | 1 | 0 |
| Public Instruction - Richardton-Taylor School District | 1 | 0.1% | 0 | 1 |
| Public Instruction, Department of | 17 | 2.2% | 9 | 8 |
| Real Estate Commission | 1 | 0.1% | 0 | 1 |
| State, Secretary of | 2 | 0.3% | 0 | 2 |
| Transportation, Department of | 1 | 0.1% | 1 | 0 |
| University System, N.D. | 1 | 0.1% | 0 | 1 |
| Veterans Affairs, Department of | 1 | 0.1% | 1 | 0 |
| Water Commission, State/State Engineer | 5 | 0.7% | 0 | 5 |
| Workforce Safety & Insurance | 306 | 40.1% | 116 | 190 |
| Grand Totals: | 763 | | 260 | 503 |

1/8/2013

OFFICE OF ADMINISTRATIVE HEARINGS
ORGANIZATIONAL CHART

January 1, 2013

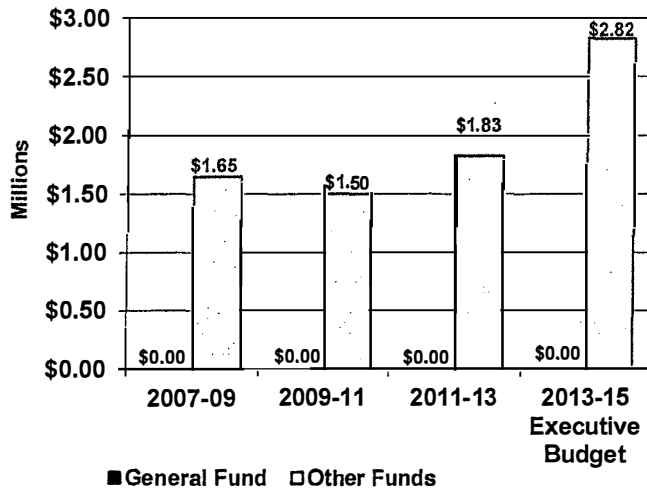


Department 140 - Office of Administrative Hearings
Senate Bill No. 2017

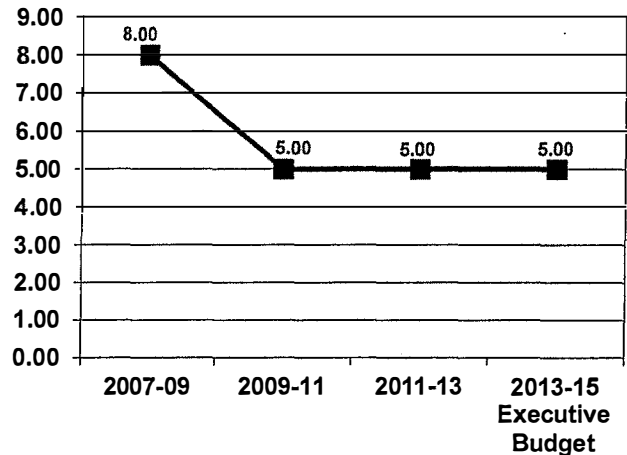
Allen Hoberg
1-30-13 Subcommittee
SB 2017

| | FTE Positions | General Fund | Other Funds | Total |
|------------------------------------|---------------|--------------|-------------|-------------|
| 2013-15 Executive Budget | 5.00 | \$0 | \$2,824,295 | \$2,824,295 |
| 2011-13 Legislative Appropriations | 5.00 | 0 | 1,827,199 | 1,827,199 |
| Increase (Decrease) | 0.00 | \$0 | \$997,096 | \$997,096 |

Agency Funding



FTE Positions



Executive Budget Highlights

| | General Fund | Other Funds | Total |
|--|--------------|-------------|-----------|
| 1. Increases professional fees due to an increase in Workforce Safety and Insurance (WSI) caseload and an increase in the number of the WSI cases being handled by administrative law judges | | \$900,006 | \$900,006 |
| 2. Provides funding for state employee salary increases, of which \$47,125 relates to performance increases and \$11,178 is for market equity adjustments | | \$58,303 | \$58,303 |

Continuing Appropriations

There are no continuing appropriations for this agency.

Significant Audit Findings

There are no significant audit findings for this agency.

Major Related Legislation

At this time, no major legislation has been introduced affecting this agency.

NDLA, S APP ASST - Laning, Rose

From: Sandness, Sheila M.
Sent: Monday, February 04, 2013 10:11 AM
To: Kilzer, Ralph L.; Carlisle, Ron; Warner, John M.
Cc: NDLA, S APP ASST - Laning, Rose
Subject: Office of Administrative Hearings - Contract Administrative Law Judges Schedule REVISED
Attachments: Office of Administrative Hearings Contract ALJs (Amended).pdf

Senate Appropriations Subcommittee on Senate Bill No. 2017:

Mr. Hoberg has asked that we forward the attached revision to the information the subcommittee requested from the Office of Administrative Hearings regarding contract Administrative Law Judges. He has revised the schedule to include an additional footnote paragraph. If you have any questions, or need additional information from Mr. Hoberg, please feel free to contact me.

Sheila M. Sandness
Senior Fiscal Analyst
North Dakota Legislative Council
600 E. Boulevard Avenue
Bismarck, ND 58505
701.328.2916
smsandness@nd.gov

Allen Hobert
SB 2017
2-4-13

OAH CONTRACT ALJ POSITIONS (AMENDED)

| | | | | |
|-------|---------------------------------|---------------|---------------|---------------|
| 9.0 | | | X | X |
| 8.0 | | | | |
| 7.0 | | X | | |
| 6.0 | | | | |
| 5.0 | | | | |
| 4.0 | | | | |
| 3.0 | X | | | |
| 2.0 | | | | |
| 1.0 | | | | |
| 0.0 | | | | |
| <hr/> | | | | |
| | 2007-2009 (1) | 2009-2011 (2) | 2011-2013 (3) | 2013-2015 (4) |
| | Executive Budget Recommendation | | | |

(1) OAH started the 2007-2009 biennium with 5 full-time ALJs and 4 part-time, contract ALJs. One contract ALJ left very early in the biennium and is not counted in the chart above as that person accounted for only .01 FTE for the biennium. When WSI left OAH in November 2007, OAH gradually reduced its full-time ALJs to 3 and contract ALJs from 3 to 2. When WSI came back to OAH in August 2008, OAH stayed at 3 full-time ALJs and had 7 contract ALJs, 6 conducting WSI hearings and 1 conducting PSC hearings. 2 full-time ALJs were conducting WSI hearings prior to WSI leaving OAH but when WSI came back to OAH only 1 full-time ALJ conducted a few WSI hearings. From approximately November 2007 through July 2008, OAH's caseload was in a state of fluctuation because although WSI had left, OAH ALJs were completing WSI cases already assigned but those cases eventually ended. Because of this fluctuation, the ALJ FTEs for the biennium, for full-time ALJs, ended up being 3 full-time, plus 1 ALJ was at .33 FTE and 1 ALJ was at .46 FTE. The FTEs for the 10 contract ALJs working for OAH during the biennium were approximately as follows: 1 - 0.1 FTE, 4 - .05 FTE, 2 - 0.7 FTE, 1 - .10 FTE, 1 - .13 FTE, and 1 - .20 FTE for a total of .78 FTE for the biennium. Thus, the total FTE for OAH for the entire biennium, counting both full-time employees and part-time, contract ALJs, was 4.57 FTE.

(2) During the 2009-2011 biennium, OAH essentially was at 3 full-time ALJs and 7 contract ALJs. One contract ALJ, an eighth contract ALJ, was with OAH only a very short period of time (.02 FTE for the biennium) and is not counted in the chart above. The total FTEs for the 7 contract ALJs was 1.11 FTE for the biennium, with individual ALJs ranging from .08 FTE to .30 FTE. Thus, counting both contract ALJ FTEs and full-time ALJ FTEs, OAH had a total of 4.13 ALJ FTEs for the biennium.

(3) During the 2011-2013 biennium, OAH started with 3 full-time ALJs and 7 contract ALJs but gradually increased to 9 contract ALJs, adding 1 contract ALJ in Dickinson to conduct some western North Dakota hearings and adding 1 contract ALJ in Bismarck to conduct some DHS hearings. The FTEs for the first 18 months of the biennium for the 9 contract ALJs totaled 1.76 FTEs, ranging for individual ALJs from .03 FTE to .38 FTE. Thus, counting both contract ALJ FTEs and full-time ALJ FTEs, OAH had a total of 4.76 ALJ FTEs for the biennium.

(4) OAH proposes to go into the 2013-2015 biennium with 3 full-time ALJs and 9 contract ALJs but with the anticipated caseload increases OAH will likely approach or exceed a total of 5 FTEs sometime in the biennium, counting both the contract ALJ FTEs and the full-time ALJ FTEs. It may be necessary to contract with more ALJs during the biennium because the contract ALJs are only part-time and all either have other work or are semi-retired.

(Added paragraph) Although the above comparisons are reasonably accurate, they do not tell the entire story. OAH bills its client agencies only for actual ALJ work on their cases. However, OAH's full-time ALJs record all of their time, both time spent working on client agency cases and their administrative time (annual leave, sick leave, training time, time spent on timekeeping, supervisory time, legislative time, rulemaking time, etc.). Contract ALJs only record their time for actual work on client agency cases. They do not bill for and we do not pay them for any administrative time, except for a small amount of client agency approved training time. Of necessity, a full-time ALJ's administrative time is part of their OAH work experience, however a contract ALJs administrative time, while it may be part of their work experience, is their own time. The above comparisons were based on total recorded time. Thus, the above comparisons are not accurate as to what percentage of OAH's total client agency billable time is handled by contract ALJs. For example, the above numbers for the 2009-2011 biennium seem to indicate that the ratio of work, full-time ALJs to contract ALJs would be 3 to 1.13, but, in reality, if administrative time is excluded for full-time ALJs, the ratio of billable agency work, full-time ALJs to contract ALJs, is approximately 3 to 2. The ratio for the 2007-2009 biennium was approximately 3 to 1; the ratio for the 2011-2013 biennium (18 months) is approximately 3 to 3. This shows that the actual hearings workload of the contract ALJs is increasing with the increases in the OAH caseload. This is not surprising because the number of OAH full-time ALJs has remained the same for two biennia.

Finally, it should be noted that already this biennium OAH has spent \$759,052.48 on part-time, contract ALJs, with 5 months left to go in the biennium. With expected increases in costs and expected increases in caseload, a budget of \$1,500,000 for professional services, which includes both payments to contract ALJs and payments for other professional services, such as costs for attorney general representation, is not excessive. If OAH's caseload does not increase as expected, OAH will not be billing agencies for ALJ

services as expected and will not have the expected expenditures for professional services. OAH is only able to spend what it takes in billing agencies for its ALJ services.



Allen C. Hoberg
DIRECTOR

OFFICE OF ADMINISTRATIVE HEARINGS

STATE OF NORTH DAKOTA
2911 North 14th Street - Suite 303
Bismarck, North Dakota 58503

MEMORANDUM

701-328-3200
Fax 701-328-3254
oah@nd.gov
www.nd.gov/oah

TO: Sixty-third Legislative Assembly
State of North Dakota
House Appropriations Committee
Human Resources Division

FROM: Allen C. Hoberg, Director
Office of Administrative Hearings

RE: 2013-2015 Operating Budget Request
Senate Bill No. 2017

DATE: March 7, 2013

The 2011-2013 biennium has been a relatively good biennium for the Office of Administrative Hearings ("OAH"). The number of requests for hearing received from all of OAH's user agencies, boards, commissions, and local entities continues to increase. OAH continues to be very busy and, based on what our client agencies tell us and what we have experienced so far in 2013, we will continue to see increases in the number of hearing requests during the 2013-2015 biennium, possibly substantial increases. Pursuant to performance guidelines implemented for all of its user state agencies, boards, and commissions, OAH issued its second biennial report for the 2009-2011 biennium in November 2011.

OAH continues to receive requests to conduct administrative hearings from many different state agencies, boards, and commissions, and from local entities. Over the

SB 2017
March 7, 2013
1 of 13 pages

years, OAH has conducted hearings for over 70 different state and local government agencies or entities. Some agencies make many requests for hearing each year, while others have made only a few requests for hearing since OAH was established in 1991. For example, in calendar year 2011, 24 different agencies or entities made 516 requests for hearing, and in calendar year 2012, 26 different agencies or entities made 510 requests for hearing, a total of 1026 requests by 34 different agencies or entities in those two years. (See Attachment "A.") For comparison, in calendar year 2009, OAH received 415 requests for hearing and in calendar year 2010 OAH received 437 requests for hearing. OAH numbers its cases by calendar year; e.g., 20130001 would be the first request for a hearing received in 2013. Attachment "B" shows the number of administrative hearings actually held for calendar years 2011 and 2012, 312 in 2011 and 262 in 2012, a total of 574 hearings. Thus, about 56 percent of the hearing requests made actually went to hearing in those two years. Historically, between 45 percent and 55 percent of hearing requests have gone to hearing. Attachment "C" shows the number of prehearing conferences actually held for calendar years 2011 and 2012. Prehearing conferences are usually held for the more complex hearings. 325 prehearing conferences were held during those two years.

For the first 18 months of this biennium, statistically, through December 31, 2012, 32 different agencies or entities have made 763 requests for hearing. (See Attachment

"D.") That is an average of just over 42 per month. In January 2013, OAH received 57 requests for hearing. In February 2013, OAH received 38 requests for hearing. Those two months averaged 47.5 requests. Based on those numbers one might expect that OAH will receive about 570 requests in calendar year 2013, compared to 510 for 2012.

As you can see from the attachments, the bulk of requests for hearing this biennium have come from two agencies, the Department of Human Services and Workforce Safety and Insurance; that is typical for most biennia and will likely be true for the coming biennium. Another frequent OAH user agency, much more so in the last few years, is the Public Service Commission.

OAH conducts hearings for a large number of state and local agencies and entities that are required to use OAH (see N.D.C.C. §§ 54-57-03(1), 40-51.2-12, 40-47-01.1, and 15.1-15-08); for state agencies that voluntarily use OAH, *e.g.*, the Public Service Commission, the Insurance Department, the Industrial Commission, the Department of Transportation for dealer licensing hearings, Student Loans of North Dakota for student loan hearings, colleges and universities for personnel hearings, and occasionally Job Service North Dakota for conflict unemployment compensation hearings; as well as for local entities that voluntarily use OAH, *e.g.*, cities and counties that use OAH to conduct

such hearings as employee discipline, tobacco sales enforcement, or public nuisance abatement hearings.

OAH's current structure for conducting hearings is five permanent FTEs - three ALJs and two support staff - and nine part-time, contract ALJs. (See attached organizational chart, Attachment "E.") Seven of OAH's contract ALJs conduct almost exclusively WSI hearings; three are located in Fargo, two in Bismarck, one in Minot, and one in Dickinson. One contract ALJ conducts almost exclusively PSC hearings; he is located in Bismarck. One contract ALJ conducts almost exclusively DHS hearings; he is located in Bismarck. OAH's three full-time, permanent ALJs conduct a mixture of different agency hearings but, primarily, DHS, PSC, HRMS state employee grievance hearings, and occupational licensing hearings. One of OAH's full-time ALJs is located in West Fargo, two are located in Bismarck. OAH proposes to move forward into the 2013-2015 biennium with the same structure, with no new FTEs.

BUDGET ANALYSIS

OAH's 2011-2013 budget for administrative hearings shows funding at \$1,827,199. The governor recommended a budget for OAH of \$2,824,295 for the 2013-2015 biennium; that was marked up in the Senate to \$2,831,188. For the coming biennium, OAH is requesting an increase of \$900,006 in operating expenses, primarily for payments to

contract ALJs. OAH has seen its caseload substantially increase over the last two calendar years, and we believe it will continue to increase. The increase for this biennium has been primarily in DHS, PSC, and WSI hearings and that increase has been handled mostly by contract ALJs. Additionally, the workload for WSI hearings, for workers compensation matters, has increased due to an increasing number of cases being handled by attorneys for claimants (complexity increase) and an increasing number of requests for reconsideration, mostly by attorneys, after the ALJ issues a final decision. Also, ALJ Bonny Fetch spent six months as a PSC commissioner and OAH had to cover for her, partly with contract ALJs and partly with permanent ALJs.

OAH did not ask for enough funding for operating, for payments to contract ALJs for the 2011-2013 biennium, and has had to rely on requests for increases in spending authority because it has continuing appropriation authority. With fluctuating caseloads, usually on the increase, it is highly desirable for OAH to have continuing appropriation authority. Again, OAH expects the increases in caseload to continue through the next biennium.

Additionally, the governor recommended an increase in salaries and wages of \$97,090 for OAH. That was marked up in the Senate by \$6,893. The total increase is now \$103,983.

OAH requested a budget of \$2,746,849 to the governor for the 2013-2015 biennium. This included a \$19,644 increases in salaries for OAH to cover the 2011-2013 salary increases passed last session for all state agencies. Other than this increase, OAH salaries remain the same in OAH's budget request to the governor. There are no special equity salary increases included in OAH's budget request. The governor's executive budget recommendation for OAH included the compensation package the governor recommended for all state agencies. Thus, the governor's recommendation for salary increases for OAH staff initially totaled \$97,090 (OAH's requested increase of \$19,644 plus the governor's compensation package of \$77,446). Again, that was marked up in the Senate to \$103,983. We realize that there may be changes to the governor's recommendation for a salary package for OAH, but we do support the executive recommendation for OAH as marked up. OAH employees have worked hard to handle the increased caseload these last few years, an increased workload mostly attributable to the oil boom. We believe the governor's compensation package is a fair package that recognizes the hard work of OAH employees and other state employees.

OAH continues to perform a vital task for state and local agencies, boards, commissions, and other governmental entities, both for mandatory and voluntary users of OAH's services, holding a wide variety of types of administrative hearings for these

users. We believe that with OAH's current structure and the governor's executive budget recommendation, as marked up, OAH will continue to meet the administrative hearing requirements of all those users of OAH's services which depend on OAH to conduct their hearings. Having a separate entity such as OAH for conducting administrative hearings allows for the fair and impartial conduct of these hearings for state and local government and for the citizens of North Dakota.

Finally, I believe the rest of our budget information and budget narratives are accurate and informative, as of the date of the submission of our proposed budget to OMB. However, I did want to update you on two of the agency major accomplishments in our proposed budget. First, former temporary PSC Commissioner Bonny Fetch has resumed her duties as an OAH ALJ. She served the PSC from July 1, 2012, through December 31, 2012, at the governor's request. I understand that she performed well as a commissioner but we are glad to have her back as an ALJ to share in the increased workload. Second, one accomplishment mentioned was not finally secured as of the submission of our proposed budget but I can now tell you that OAH and North Dakota will host the Central Panel Directors Conference in Bismarck in September 2014. The Central Panel Directors Conference is a major conference involving my director and chief ALJ counterparts from about 25 states, with attendance also by some deputy

Sixty-third Legislative Assembly
State of North Dakota
Senate Appropriations Committee
March 7, 2013
Page 8

directors and deputy chief ALJs, and some support staff. We are very happy to be able to host this conference and look forward to doing so.

fz

Total Requests Received by Agency

Files Received Between January 1, 2011, and December 31, 2012

Office of Administrative Hearings

| Agency | Total | % of Total | 2011 | 2012 |
|--|-------------|------------|------------|------------|
| Addiction Counseling Examiners Board | 1 | 0.1% | 1 | 0 |
| Agriculture Commissioner | 1 | 0.1% | 0 | 1 |
| Animal Health, Board of | 1 | 0.1% | 0 | 1 |
| Attorney General, Office of | 4 | 0.4% | 3 | 1 |
| BND, Student Loans of North Dakota | 8 | 0.8% | 7 | 1 |
| Chiropractic Examiners, State Board of | 2 | 0.2% | 2 | 0 |
| County, Burleigh | 1 | 0.1% | 1 | 0 |
| Dental Examiners, Board of | 1 | 0.1% | 0 | 1 |
| DHS, Human Services, Department of | 435 | 42.4% | 225 | 210 |
| FI, Banking Board | 1 | 0.1% | 1 | 0 |
| FI, Financial Institutions, Department of | 1 | 0.1% | 0 | 1 |
| Game and Fish Department | 3 | 0.3% | 1 | 2 |
| Health, Department of | 3 | 0.3% | 1 | 2 |
| Human Resource Management Services | 12 | 1.2% | 6 | 6 |
| IC, Insurance Commissioner | 9 | 0.9% | 2 | 7 |
| Industrial Commission | 5 | 0.5% | 4 | 1 |
| Job Service North Dakota | 2 | 0.2% | 1 | 1 |
| Labor, Dept. of | 5 | 0.5% | 1 | 4 |
| Medical Examiners, State Board of | 10 | 1.0% | 6 | 4 |
| Minot State University | 4 | 0.4% | 3 | 1 |
| Pharmacy, State Board of | 3 | 0.3% | 0 | 3 |
| Professional Engineers & Land Surveyors Board | 1 | 0.1% | 0 | 1 |
| PSC, Public Service Commission | 58 | 5.7% | 35 | 23 |
| Psychologist Examiners, State Board of | 1 | 0.1% | 1 | 0 |
| Public Employees Retirement Board | 1 | 0.1% | 0 | 1 |
| Public Instruction - Richardton-Taylor School District | 1 | 0.1% | 0 | 1 |
| Public Instruction, Department of | 22 | 2.1% | 9 | 13 |
| Real Estate Commission | 2 | 0.2% | 1 | 1 |
| State, Secretary of | 2 | 0.2% | 2 | 0 |
| Transportation, Department of | 1 | 0.1% | 0 | 1 |
| University System, N.D. | 1 | 0.1% | 1 | 0 |
| Valley City, ND, City of | 4 | 0.4% | 4 | 0 |
| Veterans Affairs, Department of | 1 | 0.1% | 0 | 1 |
| Water Commission, State/State Engineer | 5 | 0.5% | 2 | 3 |
| Workforce Safety & Insurance | 414 | 40.4% | 196 | 218 |
| Grand Totals: | 1026 | | 516 | 510 |

1/8/2013

Hearings Held by Agency

Hearings Held Between January 1, 2011, and December 31, 2012

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| BND, Student Loans of North Dakota | 4 | 0.7% | 4 | 0 |
| Chiropractic Examiners, State Board of | 1 | 0.2% | 1 | 0 |
| Dental Examiners, Board of | 1 | 0.2% | 0 | 1 |
| DHS, Human Services, Department of | 242 | 42.2% | 134 | 108 |
| Game and Fish Department | 3 | 0.5% | 1 | 2 |
| Health, Department of | 1 | 0.2% | 1 | 0 |
| Human Resource Management Services | 5 | 0.9% | 3 | 2 |
| IC, Insurance Commissioner | 1 | 0.2% | 1 | 0 |
| Job Service North Dakota | 2 | 0.3% | 1 | 1 |
| Medical Examiners, State Board of | 7 | 1.2% | 4 | 3 |
| Minot State University | 3 | 0.5% | 2 | 1 |
| PSC, Public Service Commission | 46 | 8.0% | 25 | 21 |
| Public Employees Retirement Board | 1 | 0.2% | 0 | 1 |
| Public Instruction, Department of | 20 | 3.5% | 7 | 13 |
| Real Estate Commission | 2 | 0.3% | 1 | 1 |
| Transportation, Department of | 1 | 0.2% | 0 | 1 |
| University System, N.D. | 1 | 0.2% | 1 | 0 |
| Valley City, ND, City of | 4 | 0.7% | 4 | 0 |
| Water Commission, State/State Engineer | 1 | 0.2% | 0 | 1 |
| Workforce Safety & Insurance | 225 | 39.2% | 119 | 106 |
| 1/8/2013 | Grand Totals: | 574 | 312 | 262 |

Prehearing Conferences Held by Agency

Prehearing Conferences Held Between January 1, 2011, and December 31, 2012

Office of Administrative Hearings

| Agency | Total | % of Total | 2011 | 2012 |
|--|------------|------------|------------|------------|
| Addiction Counseling Examiners Board | 1 | 0.3% | 1 | 0 |
| Agriculture Commissioner | 1 | 0.3% | 0 | 1 |
| Attorney General, Office of | 2 | 0.6% | 2 | 0 |
| BND, Student Loans of North Dakota | 5 | 1.5% | 4 | 1 |
| Chiropractic Examiners, State Board of | 3 | 0.9% | 3 | 0 |
| County, Burleigh | 1 | 0.3% | 1 | 0 |
| DHS, Human Services, Department of | 117 | 36.0% | 64 | 53 |
| Health, Department of | 1 | 0.3% | 0 | 1 |
| Human Resource Management Services | 18 | 5.5% | 12 | 6 |
| IC, Insurance Commissioner | 10 | 3.1% | 3 | 7 |
| Industrial Commission | 3 | 0.9% | 3 | 0 |
| Labor, Dept. of | 6 | 1.8% | 1 | 5 |
| Medical Examiners, State Board of | 5 | 1.5% | 4 | 1 |
| Minot State University | 4 | 1.2% | 4 | 0 |
| PSC, Public Service Commission | 13 | 4.0% | 9 | 4 |
| Psychologist Examiners, State Board of | 1 | 0.3% | 1 | 0 |
| Public Instruction - Richardton-Taylor School District | 1 | 0.3% | 0 | 1 |
| Public Instruction, Department of | 5 | 1.5% | 3 | 2 |
| State, Secretary of | 4 | 1.2% | 4 | 0 |
| University System, N.D. | 2 | 0.6% | 2 | 0 |
| Valley City, ND, City of | 4 | 1.2% | 4 | 0 |
| Veterans Affairs, Department of | 1 | 0.3% | 0 | 1 |
| Water Commission, State/State Engineer | 8 | 2.5% | 3 | 5 |
| Workforce Safety & Insurance | 109 | 33.5% | 53 | 56 |
| Grand Totals: | 325 | | 181 | 144 |

1/8/2013

Total Requests Received by Agency

Files Received Between July 1, 2011, and December 31, 2012

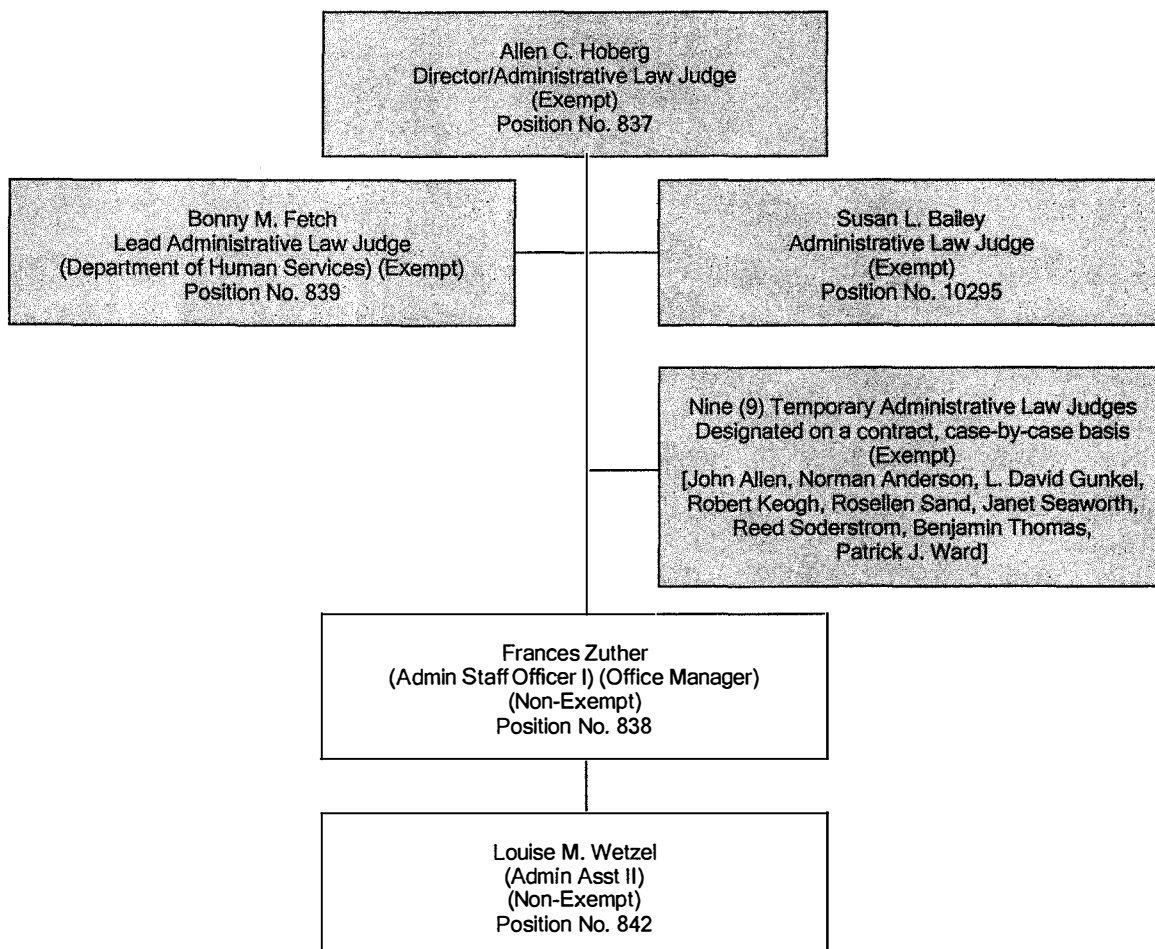
Office of Administrative Hearings

| Agency | Total | % of Total | FY 2012 | FY 2013 |
|--|------------|------------|------------|------------|
| Addiction Counseling Examiners Board | 1 | 0.1% | 0 | 1 |
| Agriculture Commissioner | 1 | 0.1% | 1 | 0 |
| Animal Health, Board of | 1 | 0.1% | 0 | 1 |
| Attorney General, Office of | 3 | 0.4% | 1 | 2 |
| BND, Student Loans of North Dakota | 6 | 0.8% | 0 | 6 |
| Chiropractic Examiners, State Board of | 1 | 0.1% | 0 | 1 |
| Dental Examiners, Board of | 1 | 0.1% | 1 | 0 |
| DHS, Human Services, Department of | 321 | 42.1% | 101 | 220 |
| FI, Banking Board | 1 | 0.1% | 0 | 1 |
| FI, Financial Institutions, Department of | 1 | 0.1% | 0 | 1 |
| Game and Fish Department | 3 | 0.4% | 2 | 1 |
| Health, Department of | 2 | 0.3% | 2 | 0 |
| Human Resource Management Services | 8 | 1.0% | 4 | 4 |
| IC, Insurance Commissioner | 8 | 1.0% | 5 | 3 |
| Industrial Commission | 3 | 0.4% | 1 | 2 |
| Job Service North Dakota | 1 | 0.1% | 1 | 0 |
| Labor, Dept. of | 5 | 0.7% | 3 | 2 |
| Medical Examiners, State Board of | 8 | 1.0% | 1 | 7 |
| Minot State University | 3 | 0.4% | 1 | 2 |
| Pharmacy, State Board of | 3 | 0.4% | 0 | 3 |
| Professional Engineers & Land Surveyors Board | 1 | 0.1% | 0 | 1 |
| PSC, Public Service Commission | 44 | 5.8% | 8 | 36 |
| Psychologist Examiners, State Board of | 1 | 0.1% | 0 | 1 |
| Public Employees Retirement Board | 1 | 0.1% | 1 | 0 |
| Public Instruction - Richardton-Taylor School District | 1 | 0.1% | 0 | 1 |
| Public Instruction, Department of | 17 | 2.2% | 9 | 8 |
| Real Estate Commission | 1 | 0.1% | 0 | 1 |
| State, Secretary of | 2 | 0.3% | 0 | 2 |
| Transportation, Department of | 1 | 0.1% | 1 | 0 |
| University System, N.D. | 1 | 0.1% | 0 | 1 |
| Veterans Affairs, Department of | 1 | 0.1% | 1 | 0 |
| Water Commission, State/State Engineer | 5 | 0.7% | 0 | 5 |
| Workforce Safety & Insurance | 306 | 40.1% | 116 | 190 |
| Grand Totals: | 763 | | 260 | 503 |

1/8/2013

OFFICE OF ADMINISTRATIVE HEARINGS
ORGANIZATIONAL CHART

January 1, 2013






Allen C. Hoberg
DIRECTOR

Testimony 1, 3B 2017, 03-15-13
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF NORTH DAKOTA
2911 North 14th Street - Suite 303
Bismarck, North Dakota 58503

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oah@nd.gov
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MEMORANDUM

TO: Sixty-third Legislative Assembly
State of North Dakota
House Appropriations Committee
Human Resources Division

FROM: Allen C. Hoberg, Director
Office of Administrative Hearings 

RE: 2013-2015 Operating Budget Request
Senate Bill No. 2017 - Budget Detail

DATE: March 15, 2013

BUDGET DETAIL

OAH's 2013-2015 budget for administrative hearings shows funding at \$2,831,188 after the governor's recommended budget was marked up in the Senate.

For the coming biennium, the only operating expense increase OAH is requesting is \$900,006 for professional services, which is primarily for payments to contract administrative law judges (ALJs). OAH has seen its caseload substantially increase over the last two calendar years, and we believe our caseload will continue to increase in the foreseeable future. The increase in caseload has been and will be handled mostly by contract ALJs because OAH added no permanent ALJs, no FTEs, in the last legislative session and OAH is asking for no additional FTEs in this session.

OAH did not ask for enough funding for operating expenses, for payments for professional services, for the 2011-2013 biennium. The budget for professional services is \$599,994 for this biennium and OAH has had to rely on requests for increases in spending authority under its continuing appropriation authority. As of the end of January 2013, OAH has already spent \$759,052.08 on contract ALJ services for this biennium. Again, OAH expects increases in its caseload to continue through the next biennium. Although we will probably not quite reach \$1,000,000 in expenditures for contract ALJs in this biennium, OAH does have some expenses for other professional services too, and we may well approach \$1,500,000 for professional services expenditures in the 2013-2015 biennium.

OAH is a special fund agency. We bill client agencies for ALJ services to obtain all of our revenues. If ALJ billings are up we have more monies to spend, if they are down, we have less to spend. We must continually watch our revenues and expenditures and be cautious with expenditures to make certain we have the monies we need to operate through the biennium.

The only other increase in our budget is that the governor recommended an increase in salaries and wages of \$97,090 for OAH. That was marked up in the Senate by \$6,893.

Sixty-third Legislative Assembly
State of North Dakota
House Appropriations Committee
March 15, 2013
Page 3

The total increase is now \$103,983. The governor's recommendation included a \$19,644 increase in salaries for OAH to cover the 2011-2013 salary increases passed last session for all state agencies, plus the governor's compensation package of \$77,446 for this biennium. There are no special equity salary increases included in OAH's budget request.

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| Agency | | Office of Administrative Hearings | | | | | |
|----------------------------------|-------------|--|--|---|-------------------------------|--------------------------------|----------|
| Program | | 140 Administrative Hearings Office | | | | | |
| Reporting Level | | 00-140-000-00-00-00-00000000 | | | | | |
| 1 Object/Revenue | | 2 2009-11 Biennium Expenditures | 3 2011-13 First Year Expenditures | 4 2011-13 Biennium Appropriation | 5 2013-15 Total Changes | 6 2013-15 Recommendation | 7 |
| Description | Code | | | | | | |
| EXPENDITURES | | | | | | | |
| Salaries - Permanent | 511000 | 684,315 | 361,018 | 732,867 | 10,829 | 743,696 | 0 |
| Salary Budget Adjustment | 511900 | 0 | 0 | 0 | 58,303 | 58,303 | 0 |
| Overtime | 514000 | 0 | 0 | 5,000 | 1 | 5,001 | 0 |
| Fringe Benefits | 516000 | 212,368 | 116,750 | 240,315 | 8,814 | 249,129 | 0 |
| Health Increase | 599161 | 0 | 0 | 0 | 0 | 11,407 | 0 |
| Retirement Increase | 599162 | 0 | 0 | 0 | 0 | 7,736 | 0 |
| Salaries and Wages | 10 | 896,683 | 477,768 | 978,182 | 77,947 | 1,075,272 | 0 |
| Travel | 521000 | 17,775 | 11,028 | 24,100 | 0 | 24,100 | 0 |
| Supplies - IT Software | 531000 | 1,509 | 682 | 15,200 | 0 | 15,200 | 0 |
| Supply/Material-Professional | 532000 | 174 | 2 | 2,244 | 0 | 2,244 | 0 |
| Bldg, Ground, Maintenance | 534000 | 22 | 0 | 0 | 0 | 0 | 0 |
| Miscellaneous Supplies | 535000 | 243 | 0 | 3,235 | 0 | 3,235 | 0 |
| Office Supplies | 536000 | 1,852 | 1,373 | 7,292 | 0 | 7,292 | 0 |
| Postage | 541000 | 9,176 | 5,157 | 11,400 | 0 | 11,400 | 0 |
| Printing | 542000 | 2,251 | 0 | 2,860 | 0 | 2,860 | 0 |
| IT Equip Under \$5,000 | 551000 | 0 | 0 | 13,000 | 0 | 13,000 | 0 |
| Office Equip & Furn Supplies | 553000 | 6,868 | 1,059 | 9,950 | 0 | 9,950 | 0 |
| Utilities | 561000 | 291 | 21 | 400 | 0 | 400 | 0 |
| Insurance | 571000 | 935 | 390 | 1,010 | 0 | 1,010 | 0 |
| Rentals/Leases-Equip & Other | 581000 | 3,010 | 1,138 | 5,579 | 0 | 5,579 | 0 |
| Rentals/Leases - Bldg/Land | 582000 | 52,931 | 33,503 | 68,006 | 0 | 68,006 | 0 |
| Repairs | 591000 | 284 | 75 | 2,000 | 0 | 2,000 | 0 |
| IT - Data Processing | 601000 | 37,856 | 21,572 | 48,727 | 0 | 48,727 | 0 |
| IT - Communications | 602000 | 9,105 | 4,346 | 15,020 | 0 | 15,020 | 0 |
| IT Contractual Svcs and Rprs | 603000 | 304 | 0 | 1,000 | 0 | 1,000 | 0 |
| Professional Development | 611000 | 6,310 | 3,217 | 15,000 | 0 | 15,000 | 0 |
| Operating Fees and Services | 621000 | 1,052 | 2,018 | 3,000 | 0 | 3,000 | 0 |
| Fees - Professional Services | 623000 | 628,505 | 506,148 | 599,994 | 900,006 | 1,500,000 | 0 |
| Non-Operating Expenses | 671000 | 289 | 0 | 0 | 0 | 0 | 0 |
| Operating Expenses | 30 | 780,742 | 591,729 | 849,017 | 900,006 | 1,749,023 | 0 |
| MEANS OF FUNDING | | | | | | | |
| Administrative Hearings Fund 266 | 266 | 1,677,425 | 1,069,497 | 1,827,199 | 977,953 | 2,824,295 | 0 |
| Special Funds | SPEC | 1,677,425 | 1,069,497 | 1,827,199 | 977,953 | 2,824,295 | 0 |
| AUTHORIZED EMPLOYEES | | | | | | | |
| FTE | | 5.00 | 5.00 | 5.00 | 0.00 | 5.00 | 0.00 |

140 - OAH - 2012-14 Quartile Charts

