

FISCAL NOTE
Requested by Legislative Council
03/23/2007

REVISION

Amendment to: Engrossed
SB 2375

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$769,706	\$0	\$769,706
Expenditures	\$0	\$0	\$0	\$769,706	\$0	\$769,706
Appropriations	\$0	\$0	\$0	\$769,706	\$0	\$769,706

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill transfers all DOT hearings to OAH and transfers four persons to OAH, but no equipment or supplies. OAH will hire support staff and provide the equipment, supplies, training, and travel funds required to conduct these DOT hearings.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

All the provisions of this bill are included to accomplish a complete transfer of all DOT hearings and DOT hearing officers to OAH and to require OAH ALJs to conduct those hearings. This bill will require an increase in OAH's appropriation which is the focus of this fiscal note and DOT states that it will also require an increase in its appropriation if this bill passes. See C. below*.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

OAH receives no general funds. All of its budget is special funds obtained by billing its user agencies. OAH ALJs bill user agencies for each .1 hr. worked on conducting a hearing and writing a decision, and related matters. OAH ALJs keep daily time records and, based on those time records, each month OAH sends a billing statement to agencies requiring payment for hearing services provided to them. OAH would do the same for DOT hearings. It would not be necessary to transfer any moneys from DOT's budget to OAH's budget. DOT would simply devote moneys in its current budget to pay for OAH billings for providing ALJs to conduct DOT hearings. However, DOT states that it will be necessary to increase DOT's budget for additional costs of legal representation at hearings. See C. below*. It is necessary to increase OAH's budget to provide spending authority to enable OAH to pay for conducting DOT hearings. (See B. and C. below.) OAH's billing rate for all agencies for the current biennium is based on the actual expenditures OAH incurs for providing hearing services to all agencies in the previous biennium. OAH will likely base DOT's billing rate for OAH ALJs providing hearing services to DOT in the 2007-2009 biennium on OAH's proposed budget under this bill and an estimate of time to be spent in providing hearing services; and, thereafter, in future biennia, on actual expenditures and actual time spent (i.e. the DOT billing rate for the 2009-2011 biennium will be based on OAH's actual expenditures for the 2007-2009 biennium). The engrossed bill as amended requires that the four full-time hearing officers from DOT be transferred to OAH and become OAH ALJs. OAH plans to locate those

hearing officers in the state's four major cities. These ALJs will work out of their home, telecommuting with OAH. OAH plans to hire one support staff as secretarial support for these four ALJs. OAH anticipates adding one support staff person to provide secretarial support for the four ALJs in the nature of scheduling hearings, making travel arrangements, case management, billing, and other secretarial support. Apparently, DOT hearing officers now perform most, if not all, of their necessary secretarial support themselves. If OAH provides the necessary secretarial support for these new ALJs they should be free to devote more time to conducting hearings and writing decisions. Currently, DOT also contracts with two part-time, temporary hearing officers to conduct hearings. It is OAH's plan that with support staff, the four transferred hearing officers will be able to do all of the hearings they formerly did plus the hearings of the temporary, contract hearing officers. Any work that they are not able to do, OAH will hire temporary, contract ALJs to do that work, just as DOT did. But, also, if it develops that with support staff the four new ALJs are able to do more work than just conducting all of DOT's hearings, OAH will then be able to use these four new ALJs to do some of the work OAH now assigns to its current temporary, contract ALJs, for other agencies, thus, potentially saving OAH some money.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

DOT currently employs 4 full-time and 2 part-time hearing officers to conduct all of its hearing. This approximates between 4 1/2 and 4 2/3 FTEs. But, OAH will attempt to use only four ALJs, the former four DOT hearing officers, supported with one support staff person, to conduct all DOT hearings. Any time remaining to the four new ALJs after conducting DOT hearings will be spent conducting other agency hearings. But, if the four new ALJs are not able to handle all of the DOT hearings, OAH will be required to contract additionally with temporary, contract ALJs on an as-needed basis to conduct some of the DOT hearings.

By law, OAH ALJs are all classified employees, at Grade 16. The minimum salary that OAH may pay its ALJs is \$51,240/yr. Thus, with the 4%/4% executive recommendation for salary increases, the minimum that OAH may pay an ALJ is \$57,471/yr. OAH proposes to pay its four new ALJs hired to conduct DOT hearings at this rate. All current DOT ALJs are paid less than this amount. The total amount of salaries to be paid the four new ALJs is \$459,768. The total amount of benefits to be paid the four new ALJs is \$160,920. The total amount of salaries and benefits to be paid for the four ALJs based on the proposed salary is \$620,688. OAH proposes to pay a support staff person at \$25,850 (with the 4%/4% salary increase included). Salary and benefits for that person will total \$69,795. Additionally, OAH will require \$79,222 in operating funds to provide for equipment, supplies, travel, training, and miscellaneous monthly office expenses necessary for the ALJs and support staff to do these hearings. OAH already has some office space and equipment for use by a new support staff person. See C below

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

OAH will likely locate the four new ALJs in the four large cities around the state (Bismarck, Fargo, Grand Forks, and Minot), as telecommute ALJs working out of their own homes. The hearings conducted by these ALJs will be held in available rooms at various government buildings around North Dakota. OAH will hire one new support staff person for secretarial support for the four new ALJs. That person will be centrally located at OAH offices in Bismarck. This bill will result in the addition of five new FTEs to OAH. The appropriation detail for accomplishing this is as follows:

Salary per ALJ - \$51,240(current) + \$6231 (4%/4%) = \$57,471 per ALJ
Total ALJ salaries for 4 ALJs for two years = \$459,768
Benefits per ALJ per year = \$20,115
Total ALJ benefits for 4 ALJs for two years = \$ 160,920
Salary for one support staff person \$25,850
Total Salary for one support staff person for two years = \$51,700
Benefits for one support staff person per year = \$9048
Total benefits for one support staff person for two years = \$18,096
Total salaries and benefits = \$690,484

Equipment per telecommute ALJ (desk, chair, computer, digital recorder, printer, etc.) = \$5250
Total equipment expenses = \$21,000

Miscellaneous monthly expenses (postage, phone lines, computer connection, etc.) = 235/ mo./ALJ
Total monthly expenses = \$22,560

Travel to hearings and other travel (mileage, lodging, meals, etc.) per ALJ = \$5,000
Total travel expenses = \$20,000

Training and CLE costs per ALJ (all ALJs are attorneys) = \$3,000
Total Training and CLE costs = \$12,000

Supplies, equipment, and expenses for one support staff person = \$3,662 (chair, computer, software, misc. monthly expenses)

Total salaries and benefits = \$690,484
Total operating costs = \$ 79,222
Total Appropriation = \$769,706

Note: In written testimony to the House Transportation Committee DOT estimated that it spends approximately \$720,000 on its DOT hearings. But, OAH is required to pay ALJs at a Grade 16 level as opposed to the DOT grade level of 12 for its hearing officers. And, OAH is hiring a support staff person to adequately support the four new ALJs. OAH does not plan to use temporary, contract ALJs, if it can avoid doing so, thus saving some money. The difference between the actual salaries of the current four DOT hearing officers and the current minimum salary under a Grade 16 for four ALJs is \$42,048. It appears that the only significant difference in estimated costs, then, is the difference in the ALJ salaries.

Although equipment expenses will likely be less in the 2009-2011 biennium, other operating costs are likely to increase. This fiscal note lists the same cost for both the 2007-2009 biennium and the 2009-2022 biennium, because except for any legislative increases in salaries and benefits, the other costs are likely to be about the same in the two biennia.

* DOT says that it will require DOT to spend \$450,000 more in other funds if DOT hearings are transferred to OAH and its hearing officers conduct DOT hearings as OAH ALJs. DOT says that based on Highway Patrol statements made to them and the House Transportation Committee, legal representation for law enforcement will be required for many if not most of the hearings being transferred to OAH. The DOT estimate for the costs of legal representation is \$450,000. It is unclear to OAH why, when legal representation is not currently required for many if not most of these hearings, it will be required when the same hearings are conducted by OAH ALJs, who were transferred to OAH from DOT hearing officer positions. In any event, this expenditure for legal representation must be included as an appropriation in the DOT budget so that DOT, not OAH, may pay these costs as they arise. It is the agency, not OAH, that retains legal representation for administrative hearings when the agency believes it is necessary. OAH provides the ALJ to preside and issue a decision.

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