

1999 HOUSE APPROPRIATIONS

HB 1018

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1018

House Appropriations Committee
Education and Environment Division

Conference Committee

Hearing Date January 20, 1999

Tape Number	Side A	Side B	Meter #
1	x		0-11.8
Committee Clerk Signature <i>Casey Davis</i>			

Minutes:

CHAIRWOMAN WENTZ called the hearing for HB 1018 to order with all members present. HB 1018 is a bill for an act to provide an appropriation for defraying the expenses of the office of administrative hearings.

1A: 1.0 JUDGE ALLEN HOBERG, Office of Administrative Hearings, testified in support of the bill on behalf of OAH. (See attached testimony.)

1A: 10.2 REP. AARSVOLD asked why OAH required \$74,000 from the Emergency Commission. Judge Hoberg replied that on July 1, 1998, the amounts they had traditionally paid to contractors increased.

1A: 11.0 REP. MONSON noted that OAH is asking for an increase of \$5 per hour for law judges, and asked what they are currently being paid. Judge Hoberg said that the hourly contract just increased from \$75 to \$80 per hour.

1A: 11.8 CHAIRWOMAN WENTZ adjourned the hearing of HB 1018.

General Discussion

- Committee on Committees
- Rules Committee
- Confirmation Hearings
- Delayed Bills Committee
- House Appropriations
- Senate Appropriations
- Other

Date February 5, 1999			
Tape Number	Side A	B Side	Meter #
1	x		0-6.7
Committee Clerk Signature <i>Casey Davis</i>			

Minutes:

HB 1018

CHAIR WENTZ called the meeting for discussion on HB 1018 to order.

1A: 0.8 REP. CARLSON presented the recommendation for a Do Pass of HB 1018 along with the proposed amendments. He and Rep. Boehm had discussed the Office of Administrative Hearings' budget in depth, and are having amendments drawn up by Legislative Council. Rep. Carlson explained that they have made two changes to the budget. The first is to remove 1 FTE, which will decrease the budget \$44,879 for this biennium. The second change is in the technology budget which went from \$37,000 to \$62,000. Included in this is the \$28,500 line item for contract services. The amendment would reduce this line item to \$25,000.

1A: 4.8 The committee agreed to adopt the amendments once they are drawn up and received from Legislative Council.

CHAIR WENTZ closed the meeting for discussion on HB 1018.

General Discussion

- Committee on Committees
- Rules Committee
- Confirmation Hearings
- Delayed Bills Committee
- House Appropriations
- Senate Appropriations
- Other

Date February 8, 1999			
Tape Number	Side A	B Side	Meter #
1	x		0-5.9
Committee Clerk Signature <i>Casey Davis</i>			

Minutes:

HB 1018

CHAIR WENTZ called the meeting for discussion on HB 1018 to order with all members present.

1A: 1.0 REP. CARLSON presented the amendment 0101 for HB 1018 that he and Rep. Boehm had drawn up. Rep. Carlson made a motion to adopt the amendments, and the motion was seconded by Rep. Boehm. A voice vote was taken and the motion carried unanimously.

CHAIR WENTZ closed discussion on HB 1018.

1A: 2.3 ACTION ON BILL Rep. Carlson moved for a Do Pass of HB 1018 as amended. The motion was seconded by Rep. Boehm. A roll call vote was taken and the motion carried with 7 yeas and 0 nays.

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1018

House Appropriations Committee

Conference Committee

Hearing Date 2/9/99

Tape Number	Side A	Side B	Meter #
1	x		23.2-30.0
Committee Clerk Signature <i>Kevin Kauh</i>			

Minutes:

(23.2) Chairman Dalrymple opened the hearing on HB 1018 in the Roughrider Room.

(24.0) Amendment .0101 was proposed, with Rep. Carlson moving to pass the amendments and Rep. Aarsvold, seconding the motion.

The motion to Pass the amendments, carried.

Rep. Carlson moved a DO PASS AS AMENDED on HB 1018, which was seconded by Rep. Gulleason.

HB 1018 was moved as a DO PASS.

Date: 2/19/99
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 618

House _____ Committee _____

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____ .0101

Action Taken Do Pass

Motion Made By Carlson Seconded By Aarsvold

Representatives	Yes	No	Representatives	Yes	No
Chairman Dalrymple			Nichols		
Vice-Chairman Byerly			Poolman		
Aarsvold			Svedjan		
Bernstein			Timm		
Boehm			Tollefson		
Carlson			Wentz		
Carlisle					
Delzer					
Gulleson					
Hoffner					
Huether					
Kerzman					
Lloyd					
Monson					

Total (Yes) 20 *Click here to type Yes Vote* No 0 *Click here to type No Vote*

Absent _____

Floor Assignment *Click here to type Floor Assignment*

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

Date: 2/2/99
 Roll Call Vote #: (

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1018

House _____ Committee _____

Subcommittee on _____

or

Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended

Motion Made By Carlson Seconded By Gulleson

Representatives	Yes	No	Representatives	Yes	No
Chairman Dalrymple	X		Nichols	X	
Vice-Chairman Byerly	X		Poolman	X	
Aarsvold	X		Svedjan	X	
Bernstein	X		Timm	X	
Boehm	X		Tollefson	X	
Carlson	X		Wentz	X	
Carlisle	X				
Delzer		X			
Gulleson	X				
Hoffner	X				
Huether	X				
Kerzman	X				
Lloyd	X				
Monson	X				

Total (Yes) 19 *Click here to type Yes Vote* No 1 *Click here to type No Vote*

Absent 0

Floor Assignment Click here to type Floor Assignment Carlson

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

REPORT OF STANDING COMMITTEE

HB 1018: Appropriations Committee (Rep. Dalrymple, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (19 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1018 was placed on the Sixth order on the calendar.

Page 1, line 9, replace "660,378" with "605,464"

Page 1, line 10, replace "794,197" with "790,697"

Page 1, line 12, replace "1,480,925" with "1,422,511"

Re-number accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

DEPARTMENT 140 - OFFICE OF ADMINISTRATIVE HEARINGS

HOUSE - This amendment makes the following changes:

	EXECUTIVE BUDGET	HOUSE CHANGES	HOUSE VERSION
Salaries and wages	\$660,378	(\$54,914)	\$605,464
Operating expenses	794,197	(3,500)	790,697
Equipment	26,350		26,350
Major improvements			
Grants			
Total all funds	\$1,480,925	(\$58,414)	\$1,422,511
Less special funds	<u>1,480,925</u>	<u>(58,414)</u>	<u>1,422,511</u>
General fund	\$0	\$0	\$0
FTE	7.00	(1.00)	6.00

Detail of House changes to the executive budget includes:

	REDUCE COMPENSATION PACKAGE TO 2/2	ADJUST HEALTH INSURANCE COST	DELAY DIRECTORS MARKET ADJUSTMENT TO JANUARY 1, 2001 ¹	REMOVE VACANT FTE POSITION	REDUCE INFORMATION TECHNOLOGY CONTRACT SERVICES	TOTAL HOUSE CHANGES
Salaries and wages	(\$8,632)	\$1,995	(\$3,398)	(\$44,879)		(\$54,914)
Operating expenses					(\$3,500)	(3,500)
Equipment						
Major improvements						
Grants						
Total all funds	(\$8,632)	\$1,995	(\$3,398)	(\$44,879)	(\$3,500)	(\$58,414)
Less special funds	<u>(8,632)</u>	<u>1,995</u>	<u>(3,398)</u>	<u>(44,879)</u>	<u>(3,500)</u>	<u>(58,414)</u>
General fund	\$0	\$0	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	(1.00)	0.00	(1.00)

House changes narrative:

¹ In addition to the two percent annual salary adjustment, provides a market adjustment of \$155.42/month for the director.

1999 SENATE APPROPRIATIONS

HB 1018

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1018

Senate Appropriations Committee

Conference Committee

Hearing Date 2-24-99

Tape Number	Side A	Side B	Meter #
1		X	2396-6000
2	X		1-1360
3/18/99 2	X		822-1935
Committee Clerk Signature <i>Kathleen C. Kottelrock</i>			

Minutes:

SENATOR NETHING: Opened hearing on HB 1018; A BILL FOR AN ACT TO PROVIDE AN APPROPRIATION FOR DEFRAYING THE EXPENSES OF THE OFFICE OF ADMINISTRATIVE HEARINGS.

ALLEN HOBERG: Director of the Office of Administrative Hearings to testify in support of HB 1018 (testimony attached (tape 1, side B, meter 2396 - 4275).

SENATOR NETHING: Let's just walk through some of these exhibits.

ALLEN HOBERG: Allen explained the attachments (tape 1, side B, meter 4275-5414).

SENATOR BOWMAN: In the technology portion of the budget, were you supposed to have a plan complete for the \$3,500? What did you do with the funding?

ALLEN HOBERG: We used it on our case management system. We have been working on it all biennium and it is not to the point where we need it to be. We spent all the money that was designated in our last budget for that technology plan. We can use it but the project still needs work.

SENATOR ST. AUBYN: Do you have any statutory requirements on decisions from after the hearings to the time that the decision is made?

ALLEN HOBERG: Yes, in several cases there are federal guidelines or disposition deadlines mostly in the human services area. There may be a general requirement in state law that decisions be issued within 30 days after final hearing closure. There is no absolute, fixed deadline.

SENATOR KRAUTER: Let's go to page 15, walk us through some of these situations. I find some conflict when I try to understand these.

ALLEN HOBERG: A Workers Compensation case comes to the office with several issues. If it does come with two issues, the ALJ may issue a decision that is for the bureau on both issues, against on both issues, or for one issue and against another and etc. (tape 2, side A, meter 75-440).

SENATOR KRAUTER: Over 34% of the files are from Human Services and 52% are from the bureau, that is 80%. Section 2 of the bill, you are asking for the authority to borrow money so that you can pay your bills because the agencies are not paying you in a quick enough time. Have you communicated with the 2 agencies?

ALLEN HOBERG: It is those 2 agencies. They want to make sure they are paying for what they get. Sometimes it takes longer than expected. Yes, we have communicated with them.

SENATOR KRAUTER: That item is listed as a General Fund expenditure, but in the amendment there is nothing listed. When I look at the executive budget it says zero dollars. When I look at the House version, it is \$150,000.

JIM SMITH: Representing Legislative Council. The way that it is projected, is consistent with the last biennium. That's why it is reflected as such.

SENATOR ANDRIST: For the \$150,000, why is the general fund the banker for this and not the Bank of North Dakota?

ALLEN HOBERG: I cannot explain why.

SENATOR NETHING: Jim, in 1997 we set it up to come from the general fund, is that because of the interest that we did not want to pay it?

JIM SMITH: The conference committee settled on that issue. It was simpler to do it with the general fund.

SENATOR TOMAC: Is there any follow through on how many times the agency accepted your decision and issued a decision in agreement with yours?

ALLEN HOBERG: Currently no, there will be when our case management system is completed.

SENATOR ROBINSON: In reference to the December billings from the bureau that remain unpaid, is it true to assume that the work started a month before that? Is that quite common where you have 60 and 90-day time periods where the payment is not forthcoming or is it periodic?

ALLEN HOBERG: We bill every month for the work that is done on the cases.

SENATOR NETHING: On page 15, and then going to the last page, Files Pending by Agency, there are all these numbers, and then on page 1 there is a new number that says 149. There is no correlation between the two. Is that because there is a group of new files that have come in?

ALLEN HOBERG: Files Pending by Agency are cases that are still open. As of January 19, 1999, there were 149 cases that were still pending from July 1997 - December 1998.

SENATOR NETHING: Senator Grindberg, contact the House Appropriations members and try and determine what their objectives were as they made their reductions. Also, I would like to have you work with the Legislative Council to do some checking on why we are taking that money from the general fund as opposed to handling that through the Bank of ND. If you don't mind. Closed the hearing on HB 1018.

3/18/99

Tape 1, Side A, Meter 822-1935

SENATOR NETHING: Reopened the hearing on HB1018.

SENATOR GRINDBERG: You asked me to do some background work with the council on this bill. Two questions that were asked; the basis and the objectives for the cuts the House made and the loan process that the department has versus taking money from the General Fund or the Bank of North Dakota. The removal of the FTE, the vacant position. That position has been vacant for eighteen months. Legislative Council's understanding is that they do not intend to fill that position. Brought out in testimony, the House reduced \$35,000 in technology with really no rational and the Director would like that reinstated. The General Fund loan of \$150,000 which allows them to borrow from the Bank of North Dakota to do investigations and hearing work for different state agencies. One of the things brought out was; do we want to continue to allow that to happen or draft amendments that require the Administrative Hearings to borrow from Bank of North Dakota rather than the General Fund and allowing the Administrative Hearings Department

3-18-99

to charge interest back to those state agencies as an incentive to get them to pay faster for the services provided.

SENATOR NETHING: The vacant position resolves itself. The question on the technology contracts.

SENATOR HOLMBERG: \$3,500 out of \$794,000 doesn't appear to be excessive. Let's save the money.

SENATOR NETHING: The question of borrowing. There were two agencies they have difficulty in receiving payment. The problem is that it ties up the budget. How do you bill it back administratively?

SENATOR ROBINSON: The executive budget didn't have the \$150,000 in it but, the House version does. What are they doing currently without the \$150,000?

PAUL KRAMER: Legislative Council. They have the \$150,000 authority currently. The executive budget looks at it differently than we do. Because it's borrowing authority, they do not look at it as an appropriation and then General Fund revenues. When we reflect it in budget status, we add in \$150,000 of revenues for them to repay what they borrow and we show it as a \$150,000 appropriation to that agency.

SENATOR SOLBERG: I've got a problem with borrowing from the General Fund when none of their appropriation is General Fund money. It seems to me we had another agency that was borrowing like that and we made a provision where they would go to the Bank of North Dakota and borrow those funds. Office of Hearings have no General Fund Appropriation but, this will authorization them to borrow from the General Fund?

PAUL KRAMER: That's correct.

SENATOR NETHING: Obviously they need a source.

SENATOR SOLBERG: Moved that they be given authority from the Bank of North Dakota up to \$150,000. They can charge the interest back.

SENATOR GRINDBERG: Seconded the motion.

SENATOR TOMAC: I guess I support the motion. I think we're not addressing the problem. The problem is they are not getting paid on time. It puts up a red flag in my mind that if our own state agencies are not paying our other state agencies on time, what are we doing to the general public? That's the nature of the problem. Borrowing will give them the cashflow they need but, if they have a thirty day turnaround, that would resolve the issue.

3-18-99

SENATOR SOLBERG: On a situation like this, if they start charging interest back to the departments, they may get a message to speed this up a tad.

SENATOR NETHING: Paul, are we going to have any problem if they borrow from the Bank of North Dakota, they get paid by the client, that money goes to the General Fund or does it go back into their own fund.

PAUL KRAMER: It goes back into their fund and they would use their fund to repay their operating line at the bank. One issue that was raised, the question of whether or not Human Services could use Federal program dollars to pay interest on something like this.

SENATOR NETHING: If we were to have language to say that this office may charge or pass on the interest, service fee or delinquent fee, etc. They ought to pay their bills.

SENATOR ST. AUBYN: They may not be able to use Federal dollars but, likewise they are not paying their bills on time, and it's coming out of their General Fund, perhaps that is enough of an incentive on their own that they will start paying it. If they can't do Federal funds they have to do it in General Funds and they are hurting themselves anyway. I don't see a problem.

SENATOR ROBINSON: We are going to have these bills in conference and I think it's an opportunity to remind them we have some concern and to clean their house up in the next two years.

SENATOR NETHING: Paul, we need an amendment to do the Bank of North Dakota and to give them permissive authority to charge interest on delinquent accounts.

SENATOR KRAUTER: How do they define interest?

PAUL KRAMER: I don't know that we would need to add in specific language for them to charge interest. The way they would base their rates to the agencies would be based on their costs.

ROLL CALL: UNANIMOUS VOICE VOTE CARRIED.

SENATOR TOMAC: Moved a Do Pass as amended on HB1018.

SENATOR HOLMBERG: Seconded the motion.

ROLL CALL: YEAS 14; 0 NAYS; 0 ABSENT & NOT VOTING.

CARRIER: SENATOR TOMAC

SENATOR NETHING: Closed the hearing on HB1018.

Date: 3/18-99
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1018

Senate APPROPRIATIONS Committee

Subcommittee on _____
or
 Conference Committee

✓ Legislative Council Amendment Number 98018.0202

Action Taken DO PASS

Motion Made By Senator SOLBERG Seconded By Senator BOWMAN

Senators	Yes	No	Senators	Yes	No
Senator Nething, Chairman					
Senator Naaden, Vice Chairman					
Senator Solberg					
Senator Lindaas					
Senator Tallackson					
Senator Tomac					
Senator Robinson					
Senator Krauter					
Senator St. Aubyn					
Senator Grindberg					
Senator Holmberg					
Senator Kringstad					
Senator Bowman					
Senator Andrist					

Total (Yes) UNANIMOUS No _____

Absent _____

Floor Assignment Senator _____

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

Date: 3-18-99
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB1018

Senate APPROPRIATIONS Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number 98018.0202

Action Taken DO PASS AS AMENDED

Motion Made By SENATOR TOMAC Seconded By SENATOR HOLMBERG

Senators	Yes	No	Senators	Yes	No
Senator Nething, Chairman	✓				
Senator Naaden, Vice Chairman	✓				
Senator Solberg	✓				
Senator Lindaas	✓				
Senator Tallackson	✓				
Senator Tomac	✓				
Senator Robinson	✓				
Senator Krauter	✓				
Senator St. Aubyn	✓				
Senator Grindberg	✓				
Senator Holmberg	✓				
Senator Kringstad	✓				
Senator Bowman	✓				
Senator Andrist	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment SENATOR TOMAC

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

REPORT OF STANDING COMMITTEE

HB 1018, as engrossed: Appropriations Committee (Sen. Nething, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1018 was placed on the Sixth order on the calendar.

Page 1, line 2, after "hearings" insert "; and to authorize a loan from the Bank of North Dakota"

Page 1, line 13, replace "STATE" with "BANK OF NORTH DAKOTA"

Page 1, line 14, remove "GENERAL FUND"

Page 1, line 16, replace "general fund" with "Bank of North Dakota"

Page 1, line 19, replace "general fund" with "Bank of North Dakota"

Page 1, line 21, after the period insert "The office of administrative hearings may include any related interest costs in agency billings for services."

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

DEPARTMENT 140 - OFFICE OF ADMINISTRATIVE HEARINGS

SENATE - This amendment changes the Office of Administrative Hearings loan from the general fund to the Bank of North Dakota and allows the agency to pass on any related interest costs to agencies billed for services.

1999 TESTIMONY

HB 1018

Department 140 - Office of Administrative Hearings
 House Bill No. 1018

	FTE Positions	General Fund	Other Funds	Total
1999-2001 Executive Budget	7.00	\$0	\$1,480,925	\$1,480,925
1997-99 Legislative Appropriations	7.00	100,000 *	1,350,161	1,450,161
Increase (Decrease)	0.00	(\$100,000)	\$130,764	\$30,764

* This amount reflects the authority provided by the 1997 Legislative Assembly for the agency to borrow up to \$100,000 from the general fund to be repaid by June 30, 1999. The executive budget recommends the same authority be provided for the 1999-2001 biennium in the amount of \$150,000. However, the amount is not reflected as a general fund appropriation or the repayment as general fund revenue.

Major Items Affecting the Office of Administrative Hearings 1999-2001 Budget

	General Fund	Other Funds	Total
1. Provides funding for a \$5 per hour increase in rate paid temporary law judges related to Worker Compensation Bureau hearings effective July 1, 1998		\$74,000	\$74,000
2. Provides funding for the adjustment of elected and appointed officials' salaries		4,356	4,356

Major Legislation Affecting the Office of Administrative Hearings

No major legislation has been introduced at this time affecting this agency.



OFFICE OF ADMINISTRATIVE HEARINGS


STATE OF NORTH DAKOTA
1707 North 9th Street
Bismarck, North Dakota 58501-1882

Allen C. Hoberg
Director

701-328-3260
FAX 701-328-3254

MEMORANDUM

TO: Fifty-sixth Legislative Assembly
State of North Dakota
House Appropriations Committee
Education and Environment Division

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

RE: OAH 1999-2001 Operating Budget Request
House Bill No. 1018

DATE: January 20, 1999

BACKGROUND INFORMATION

The Office of Administrative Hearings' ("OAH") work consists almost exclusively of conducting administrative hearings for a number of state agencies on a variety of administrative matters (e.g., complaint [enforcement] hearings, application hearings [for benefits or license], appeals hearings from various agency actions). OAH provides administrative law judges (ALJs) to conduct hearings that were formerly conducted by in-house agency hearing officers, assistant attorneys general, or agency contract hearing officers. Now, a large percentage of administrative hearings throughout the state are conducted by OAH full-time independent ALJs, or OAH temporary, contract ALJs.

Since OAH began operations on July 1, 1991, it has conducted hearings for about 65 different state and local government agencies or entities. Most state agencies are required to use the services of OAH under N.D.C.C. Chapter 54-57. N.D.C.C. § 54-57-03(1) lists those state agencies exempted. Some exempted state agencies, including the Workers Compensation Bureau (the "Bureau"), the Insurance Department, and the Public Service Commission voluntarily use the services of OAH, contracting with OAH to do so. Additionally, some local government agencies have used the services of OAH for such hearings as tobacco sales enforcement and public nuisance abatement. These local entities also contract with OAH. Contract arrangements like those between OAH and other state and local agencies or entities is common in other states, too.

From July 1, 1991, until September 1, 1995, OAH operated with a permanent full-time staff of five (three ALJ FTEs and two support staff FTEs), conducting hearings, the vast majority of which were from agencies required to use OAH services. (OAH occasionally contracted with temporary, contract ALJs to conduct a few hearings on an as-needed basis.) On September 1, 1995, OAH began conducting all of the administrative hearings for the Bureau, pursuant to agency agreement. OAH uses both permanent ALJs and temporary, contract ALJs to provide services for the bureau. However, OAH uses temporary, contract ALJs to conduct the bulk of Bureau hearings.

Since the 1997-99 biennium, OAH's budget has had a second component under its one major program, for conducting Bureau hearings by means of temporary, contract ALJs. However, both components of OAH's one major program are engaged in the same program activity, *i.e.*, providing ALJ services to conduct hearings for state agencies and local entities.

In order to be able to provide the Bureau with the necessary temporary ALJs, OAH contracts with attorneys in the private practice of law. It became necessary because of different billing rates to keep the two component parts separate for expenditure and revenue purposes. Therefore, the two separate components were created in OAH's budget under its one cost center. Although OAH has kept these separate components in preparing its 1999-2001 operating request proposal, it has submitted only a combined proposal under its one major program, using only one cost center, Cost Center 1000.

It is important to remember that the Bureau is not required to use OAH to provide any of its ALJs. However, it has used OAH since September 1995, by agreement, and it wishes to continue to do so for the 1999-2001 biennium. This will be a reasonably foreseeable continuation; thus, two component parts remain in OAH's one major program.

Besides the increases proposed in the Executive Recommendation, OAH has requested increases in data processing related to technology plan costs; in operating expenses, primarily due to an increase in the Workers Compensation Bureau temporary administrative law judge contract rate; and in additional software costs, again pursuant to OAH's technology plan.

The Executive Recommendation is for an increase of \$36,316 over OAH's request for an additional \$94,448. All of the additional increase in the Executive Recommendation is based on increased compensation. The overall total increase is \$130,764. In reality, \$74,000 of this increase has already occurred this biennium. In November 1998 the Emergency Commission appropriated a \$74,000 increase in OAH operating expenses due to the cost of providing temporary administrative law judges for the Bureau's caseload. This \$74,000 increase in operating for the Bureau's caseload is partially offset in this budget by a \$17,000 decrease in the cost of other professional services.

All of OAH's appropriation is other funds obtained by OAH billing user agencies for hearing officer services. OAH receives no general funds, but has been authorized to borrow up to \$100,000 for interim payment of bills until agencies make payment to OAH. For the 1999-2001 biennium OAH has asked for a \$50,000 increase in borrowing authority, up to a total of \$150,000 in borrowing authority.

In short, under the Executive Recommendation, OAH's mission and functions remain essentially the same, with a goal to continue the services provided to its traditional program, as well as to be able to continue to provide quality services through an ongoing temporary program to the Bureau. OAH's budget proposal is essentially the same as last biennium's budget with the increased costs noted above. Under this recommendation, OAH will continue to have a proposed staff configuration as follows:

- 1 full-time Director/ALJ
- 2 full-time ALJs
- 4 full-time support staff (2 administrative assistants, 2 administrative secretaries)
- 12-15 temporary, contract ALJs, as necessary, to do mostly WCB hearings, as well as some other agencies' hearings.
- Total of 7 full-time FTEs, 12-15 temporary, contract ALJs.

Although OAH currently has a vacancy for one support staff FTE, it asked OMB to be able to keep that FTE. It was included in the Executive Recommendation. That FTE was filled for six months this biennium and will likely be filled again, at least on a half-time basis, next biennium, though it will not likely be filled again this biennium.

Since we began conducting workers compensation cases in September 1995, the caseload has been a fluctuating caseload. It was because of fluctuating caseload that

OAH vacated the position on January 1, 1998. Decreases in caseload for about seven months in 1997 caused OAH to vacate it. However, OAH may need it again on July 1, 1999. OAH is close to needing it again, now, at least a half-time position. OAH will watch this situation closely. Because OAH bills agencies and can only spend what it takes in, it will not fill this position unless it's really needed. OAH has no general fund monies to pay for it. For now, OAH believes it would be wise to keep this FTE.

BUDGET ANALYSIS

OAH's present 1997-99 budget shows a total funding of \$1,350,161. However, this amount was submitted in the budget proposal before OAH's November Emergency Commission's request of \$74,000 relating to additional special funds for Bureau work. OAH's total adjusted current existing funding authority is \$1,424,161 in special funds or other funds. The total Executive Recommendation (\$1,480,925) is, therefore, a total of \$55,764 more than what is currently appropriated. This is about \$20,000 more than the total of the Executive Recommendation for compensation package adjustments (\$36,316). Specifically, the total of OAH's \$55,764 increase over its 1997-99 adjusted budget is mostly related to salaries and benefits, including the executive compensation package adjustments and additional monies for computer/programming needs.

This budget proposal contains nothing that is really new. OAH believes the amounts recommended in the Executive Recommendation for OAH are appropriate. Essentially, OAH will maintain its operations as it has since September 1995, for at least the next biennium, if no new legislation is passed expanding or reducing its jurisdiction. None is anticipated. OAH will continue to bill all agencies that use its services on an hourly rate, determined by our billing consultants, to fund all of its budget.

In summary, with the budget proposed under Executive Recommendation, OAH should be able to fulfill its mission, *i.e.*, providing quality, independent hearing officer services to all state agencies required to use its services and to all state or local entities wishing, for whatever reason, to engage an independent administrative judge. OAH respectfully requests that the House approve OAH's 1999-2001 operating budget request, as contained in the Executive Recommendation.

Attached to this memorandum are various statistical documents for OAH for the first 18 months of the current biennium (July 1, 1997, through December 31, 1998), including a breakdown of requests received by agency, disposition of files, and overall caseload assignment in progress.

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Attachments

Requests Received by Agency (Including Remands)

July 1, 1997, through December 31, 1998

Office of Administrative Hearings
Hearing Statistics

19-Jan-99

Agency	Total Requests (% Grand Total)	New Requests (% Grand Total)	Remands (% Grand Total)
Accountancy, State Board of Public	1 0.10%	1 0.10%	
Administrators Professional Practices Board	2 0.20%	2 0.20%	
Agriculture Commissioner	11 1.10%	11 1.10%	
Animal Health, Board of	1 0.10%	1 0.10%	
Attorney General, Office of	2 0.20%	2 0.20%	
Auditor, State	1 0.10%	1 0.10%	
BND, Student Loans of North Dakota	1 0.10%	1 0.10%	
Central Personnel Division	19 1.91%	18 1.81%	1 0.10%
Chiropractic Examiners, State Board of	1 0.10%	1 0.10%	
Corrections - Parole & Probation	3 0.30%	3 0.30%	
Cosmetology, Board of	1 0.10%	1 0.10%	
Dental Examiners, Board of	1 0.10%	1 0.10%	
DHS, Human Services, Department of	339 34.04%	338 33.94%	1 0.10%
Education Standards & Practices Board	6 0.60%	6 0.60%	
Electrical Board, N.D. State	3 0.30%	3 0.30%	
Health, Department of	4 0.40%	4 0.40%	
IC, Insurance Commissioner	7 0.70%	7 0.70%	
Job Service North Dakota	1 0.10%	1 0.10%	

Agency	Total Requests (% Grand Total)	New Requests (% Grand Total)	Remands (% Grand Total)
Medical Examiners, State Board of	6 0.60%	6 0.60%	
Milk Marketing Board	7 0.70%	7 0.70%	
Minot State University - Bottineau Campus	1 0.10%	1 0.10%	
Minot, ND, City of	3 0.30%	3 0.30%	
Nursing, State Board of	14 1.41%	14 1.41%	
Pharmacy Board	3 0.30%	3 0.30%	
Professional Engineers & Land Surveyors Board	2 0.20%	2 0.20%	
PSC, Public Service Commission	10 1.00%	10 1.00%	
Psychologist Examiners, State Board of	2 0.20%	2 0.20%	
Public Instruction, Department of	13 1.31%	13 1.31%	
Real Estate Commission	5 0.50%	5 0.50%	
Securities Commissioner	2 0.20%	2 0.20%	
Tax Commissioner, State	3 0.30%	3 0.30%	
Veterans Affairs, Department of	2 0.20%	2 0.20%	
Veterinary Medical Examiners	1 0.10%	1 0.10%	
Water Commission, State/State Engineer	2 0.20%	2 0.20%	
Workers Compensation Bureau	516 51.81%	509 51.10%	7 0.70%
Grand Total:	996 100.00%	987 99.10%	9 0.90%

Disposition of Files

July 1, 1997, through December 31, 1998

Office of Administrative Hearings
Hearing Statistics

20-Jan-1999

Other Dispositions

Abandoned	37	
Dismissed	8	
File included with new request	2	
File closed, disposition not identified	1	
Order of District Court Judge	2	
Procedural Hearing Officer	30	
- PHO hearing held	(21)	
- PHO returned to agency	(3)	
- PHO settled	(6)	
Remand/returned to agency for reconsideration/redetermination	7	
Returned to agency	25	
Settled	183	
Waiver	22	
Withdrawn	130	
TOTAL OTHER DISPOSITIONS		447

Decisions Issued

Against the Agency	147	
Default Order	2	
Dismissal Order	18	
Findings of Fact, conclusions of law only	2	
For the Agency	<u>377</u>	
TOTAL DECISIONS ISSUED		<u>546</u>
TOTAL FILES DISPOSED OF		993

Recapitulation

Pending files from previous period	253
Plus requests received this period	996
Less total files closed this period	<u>993</u>
Pending files remaining this period	256

Disposition of Files by Agency
July 1, 1997, through December 31, 1998
Office of Administrative Hearings
Hearing Statistics

Accountancy, State Board of Public

Disposition by Means Other Than Decision	# of Files Closed	% of Agency Grand Total
Settled by parties	1	100.00%
	1	100.00%
	(Decision Level Total) (% of Agency Total)	

Accountancy, State Board of Public 1 0.10%
(Agency Grand Total) (% of Overall Total)

Addiction Counseling Examiners Board

Disposition by Means Other Than Decision	# of Files Closed	% of Agency Grand Total
Withdrawn	1	100.00%
	1	100.00%
	(Decision Level Total) (% of Agency Total)	

Addiction Counseling Examiners Board 1 0.10%
(Agency Grand Total) (% of Overall Total)

Administrators Professional Practices Board

Decisions Issued	# of Files Closed	% of Agency Grand Total
Against the Agency	1	100.00%
	1	100.00%
	(Decision Level Total) (% of Agency Total)	

Administrators Professional Practices Board 1 0.10%
(Agency Grand Total) (% of Overall Total)

Disposition of Files by Agency
July 1, 1997, through December 31, 1998

Office of Administrative Hearings
Hearing Statistics

BND, Student Loans of North Dakota

Disposition by Means Other Than Decision	# of Files Closed	% of Agency Grand Total
Withdrawn	1	100.00%
	1	100.00%
	(Decision Level Total) (% of Agency Total)	

BND, Student Loans of North Dakota **1** **0.10%**
(Agency Grand Total) (% of Overall Total)

Central Personnel Division

Decisions Issued	# of Files Closed	% of Agency Grand Total
Against the Agency	2	11.11%
Order of Dismissal (Recommended or Final)	9	50.00%
For the Agency	5	27.78%
	16	88.89%
	(Decision Level Total) (% of Agency Total)	

Disposition by Means Other Than Decision	# of Files Closed	% of Agency Grand Total
Withdrawn	1	5.56%
Disposed of by judge's order	1	5.56%
	2	11.11%
	(Decision Level Total) (% of Agency Total)	

Central Personnel Division **18** **1.81%**
(Agency Grand Total) (% of Overall Total)

Chiropractic Examiners, State Board of

Decisions Issued	# of Files Closed	% of Agency Grand Total
Order of Dismissal (Recommended or Final)	1	100.00%
	1	100.00%
	(Decision Level Total) (% of Agency Total)	

Chiropractic Examiners, State Board of **1** **0.10%**
(Agency Grand Total) (% of Overall Total)

Disposition of Files by Agency

July 1, 1997, through December 31, 1998

Office of Administrative Hearings
Hearing Statistics

Corrections - Parole & Probation

Decisions Issued	# of Files Closed	% of Agency Grand Total
For the Agency	1	33.33%
No recommended order issued (FOF, COL only)	2	66.67%
	3	100.00%
	(Decision Level Total) (% of Agency Total)	

Corrections - Parole & Probation

3	0.30%
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(Agency Grand Total) (% of Overall Total)

Cosmetology, Board of

Disposition by Means Other Than Decision	# of Files Closed	% of Agency Grand Total
Settled by parties	1	100.00%
	1	100.00%
	(Decision Level Total) (% of Agency Total)	

Cosmetology, Board of

1	0.10%
---	-------

(Agency Grand Total) (% of Overall Total)

Counselor Examiners, Board of

Decisions Issued	# of Files Closed	% of Agency Grand Total
Against the Agency	1	100.00%
	1	100.00%
	(Decision Level Total) (% of Agency Total)	

Counselor Examiners, Board of

1	0.10%
---	-------

(Agency Grand Total) (% of Overall Total)

Disposition of Files by Agency

July 1, 1997, through December 31, 1998

Office of Administrative Hearings
Hearing Statistics

DHS, Human Services, Department of

Decisions Issued	# of Files Closed	% of Agency Grand Total
Order of Dismissal (Recommended or Final)	3	0.89%
For the Agency	153	45.40%
Against the Agency	19	5.64%
Both for and against the agency	1	0.30%
	176	62.23%

(Decision Level Total) (% of Agency Total)

Disposition by Means Other Than Decision	# of Files Closed	% of Agency Grand Total
Dismissed by agency	6	1.78%
File returned to agency	8	2.37%
Abandoned by Appellant/Applicant (including no show)	35	10.39%
Settled by parties	16	4.75%
Waiver - hrg. waived by respondent/applicant/appellant	21	6.23%
Withdrawn	75	22.26%
	161	47.77%

(Decision Level Total) (% of Agency Total)

DHS, Human Services, Department of **337** **33.94%**
(Agency Grand Total) (% of Overall Total)

Education Standards & Practices Board

Decisions Issued	# of Files Closed	% of Agency Grand Total
Against the Agency	3	50.00%
For the Agency	2	33.33%
	5	83.33%

(Decision Level Total) (% of Agency Total)

Disposition by Means Other Than Decision	# of Files Closed	% of Agency Grand Total
Withdrawn	1	16.67%
	1	16.67%

(Decision Level Total) (% of Agency Total)

Education Standards & Practices Board **6** **0.60%**
(Agency Grand Total) (% of Overall Total)

Disposition of Files by Agency

July 1, 1997, through December 31, 1998

Office of Administrative Hearings
Hearing Statistics

Electrical Board, N.D. State

Decisions Issued	# of Files Closed	% of Agency Grand Total
For the Agency	2	66.67%
	2	66.67%
	(Decision Level Total) (% of Agency Total)	

Disposition by Means Other Than Decision	# of Files Closed	% of Agency Grand Total
Settled by parties	1	33.33%
	1	33.33%
	(Decision Level Total) (% of Agency Total)	

Electrical Board, N.D. State **3** **0.30%**
(Agency Grand Total) (% of Overall Total)

Game and Fish Department

Disposition by Means Other Than Decision	# of Files Closed	% of Agency Grand Total
Settled by parties	1	100.00%
	1	100.00%
	(Decision Level Total) (% of Agency Total)	

Game and Fish Department **1** **0.10%**
(Agency Grand Total) (% of Overall Total)

Health, Department of

Decisions Issued	# of Files Closed	% of Agency Grand Total
For the Agency	3	60.00%
Against the Agency	2	40.00%
	5	100.00%
	(Decision Level Total) (% of Agency Total)	

Health, Department of **5** **0.50%**
(Agency Grand Total) (% of Overall Total)

Disposition of Files by Agency
July 1, 1997, through December 31, 1998
Office of Administrative Hearings
Hearing Statistics

IC, Insurance Commissioner

Decisions Issued	# of Files Closed	% of Agency Grand Total
For the Agency	3	42.86%
	3	42.86%
	(Decision Level Total) (% of Agency Total)	

Disposition by Means Other Than Decision	# of Files Closed	% of Agency Grand Total
Procedural hearing held	1	14.29%
Settled by parties	2	28.57%
Withdrawn	1	14.29%
	4	57.14%
	(Decision Level Total) (% of Agency Total)	

IC, Insurance Commissioner	7	0.70%
	(Agency Grand Total) (% of Overall Total)	

Job Service North Dakota

Decisions Issued	# of Files Closed	% of Agency Grand Total
For the Agency	1	100.00%
	1	100.00%
	(Decision Level Total) (% of Agency Total)	

Job Service North Dakota	1	0.10%
	(Agency Grand Total) (% of Overall Total)	

Disposition of Files by Agency

July 1, 1997, through December 31, 1998

Office of Administrative Hearings
Hearing Statistics

Medical Examiners, State Board of

Decisions Issued	# of Files Closed	% of Agency Grand Total
Against the Agency	1	16.67%
Both for and against the agency	1	16.67%
For the Agency	3	50.00%
	5	83.33%
	(Decision Level Total) (% of Agency Total)	

Disposition by Means Other Than Decision	# of Files Closed	% of Agency Grand Total
Settled by parties	1	16.67%
	1	16.67%
	(Decision Level Total) (% of Agency Total)	

Medical Examiners, State Board of

6	0.60%
(Agency Grand Total) (% of Overall Total)	

Milk Marketing Board

Disposition by Means Other Than Decision	# of Files Closed	% of Agency Grand Total
Withdrawn	1	20.00%
File was included with new request received	2	40.00%
Procedural hearing held	1	20.00%
Settled by parties	1	20.00%
	5	100.00%
	(Decision Level Total) (% of Agency Total)	

Milk Marketing Board

5	0.50%
(Agency Grand Total) (% of Overall Total)	

Disposition of Files by Agency

July 1, 1997, through December 31, 1998

Office of Administrative Hearings
Hearing Statistics

Minot, ND, City of

Decisions Issued	# of Files Closed	% of Agency Grand Total
Order of Dismissal (Recommended or Final)	1	50.00%
	1	50.00%
	(Decision Level Total) (% of Agency Total)	
Disposition by Means Other Than Decision	# of Files Closed	% of Agency Grand Total
Waiver - hrg. waived by respondent/applicant/appellant	1	50.00%
	1	50.00%
	(Decision Level Total) (% of Agency Total)	
Minot, ND, City of	2	0.20%
	(Agency Grand Total) (% of Overall Total)	

Nursing, State Board of

Decisions Issued	# of Files Closed	% of Agency Grand Total
For the Agency	1	9.09%
	1	9.09%
	(Decision Level Total) (% of Agency Total)	
Disposition by Means Other Than Decision	# of Files Closed	% of Agency Grand Total
Abandoned by Appellant/Applicant (including no show)	1	9.09%
Procedural hearing held	2	18.18%
Procedural hearing matter settled	3	27.27%
Settled by parties	4	36.36%
	10	90.91%
	(Decision Level Total) (% of Agency Total)	
Nursing, State Board of	11	1.11%
	(Agency Grand Total) (% of Overall Total)	

Disposition of Files by Agency

July 1, 1997, through December 31, 1998

Office of Administrative Hearings
Hearing Statistics

Pharmacy Board

Disposition by Means Other Than Decision	# of Files Closed	% of Agency Grand Total
Procedural hearing held	3	100.00%
	3	100.00%
	(Decision Level Total) (% of Agency Total)	
Pharmacy Board	3	0.30%
	(Agency Grand Total) (% of Overall Total)	

Professional Engineers & Land Surveyors Board

Disposition by Means Other Than Decision	# of Files Closed	% of Agency Grand Total
Procedural hearing held	1	100.00%
	1	100.00%
	(Decision Level Total) (% of Agency Total)	
Professional Engineers & Land Surveyors Board	1	0.10%
	(Agency Grand Total) (% of Overall Total)	

PSC, Public Service Commission

Decisions Issued	# of Files Closed	% of Agency Grand Total
Order of Dismissal (Recommended or Final)	1	10.00%
	1	10.00%
	(Decision Level Total) (% of Agency Total)	
Disposition by Means Other Than Decision	# of Files Closed	% of Agency Grand Total
Withdrawn	2	20.00%
Procedural hearing matter settled	1	10.00%
Procedural hearing held	4	40.00%
Procedural hearing matter returned to agency	2	20.00%
	9	90.00%
	(Decision Level Total) (% of Agency Total)	
PSC, Public Service Commission	10	1.01%
	(Agency Grand Total) (% of Overall Total)	

Disposition of Files by Agency

July 1, 1997, through December 31, 1998

Office of Administrative Hearings
Hearing Statistics

Psychologist Examiners, State Board of

Decisions Issued	# of Files Closed	% of Agency Grand Total
For the Agency	1	50.00%
	1	50.00%
	(Decision Level Total) (% of Agency Total)	
Disposition by Means Other Than Decision	# of Files Closed	% of Agency Grand Total
File returned to agency	1	50.00%
	1	50.00%
	(Decision Level Total) (% of Agency Total)	
Psychologist Examiners, State Board of	2	0.20%
	(Agency Grand Total) (% of Overall Total)	

Public Instruction, Department of

Decisions Issued	# of Files Closed	% of Agency Grand Total
Against the Agency	2	15.38%
For the Agency	1	7.69%
	3	23.08%
	(Decision Level Total) (% of Agency Total)	
Disposition by Means Other Than Decision	# of Files Closed	% of Agency Grand Total
Procedural hearing held	7	53.85%
Procedural hearing matter settled	2	15.38%
Settled by parties	1	7.69%
	10	76.92%
	(Decision Level Total) (% of Agency Total)	
Public Instruction, Department of	13	1.31%
	(Agency Grand Total) (% of Overall Total)	

Disposition of Files by Agency

July 1, 1997, through December 31, 1998

Office of Administrative Hearings
Hearing Statistics

Real Estate Commission

Disposition by Means Other Than Decision	# of Files Closed	% of Agency Grand Total
File returned to agency	2	40.00%
Procedural hearing matter returned to agency	1	20.00%
Procedural hearing held	2	40.00%
	5	100.00%
	(Decision Level Total) (% of Agency Total)	
Real Estate Commission	5	0.50%
	(Agency Grand Total) (% of Overall Total)	

Securities Commissioner

Decisions Issued	# of Files Closed	% of Agency Grand Total
Against the Agency	1	20.00%
For the Agency	1	20.00%
	2	40.00%
	(Decision Level Total) (% of Agency Total)	
Disposition by Means Other Than Decision	# of Files Closed	% of Agency Grand Total
Disposed of by judge's order	1	20.00%
Settled by parties	2	40.00%
	3	60.00%
	(Decision Level Total) (% of Agency Total)	
Securities Commissioner	5	0.50%
	(Agency Grand Total) (% of Overall Total)	

Disposition of Files by Agency
July 1, 1997, through December 31, 1998
Office of Administrative Hearings
Hearing Statistics

Tax Commissioner, State

Decisions Issued	# of Files Closed	% of Agency Grand Total
For the Agency	2	66.67%
	2	66.67%
	(Decision Level Total) (% of Agency Total)	

Disposition by Means Other Than Decision	# of Files Closed	% of Agency Grand Total
Dismissed by agency	1	33.33%
	1	33.33%
	(Decision Level Total) (% of Agency Total)	

Tax Commissioner, State **3** **0.30%**
(Agency Grand Total) (% of Overall Total)

University System, N.D.

Decisions Issued	# of Files Closed	% of Agency Grand Total
For the Agency	1	100.00%
	1	100.00%
	(Decision Level Total) (% of Agency Total)	

University System, N.D. **1** **0.10%**
(Agency Grand Total) (% of Overall Total)

Veterans Affairs, Department of

Decisions Issued	# of Files Closed	% of Agency Grand Total
For the Agency	2	100.00%
	2	100.00%
	(Decision Level Total) (% of Agency Total)	

Veterans Affairs, Department of **2** **0.20%**
(Agency Grand Total) (% of Overall Total)

Disposition of Files by Agency

July 1, 1997, through December 31, 1998

Office of Administrative Hearings
Hearing Statistics

Veterinary Medical Examiners

Disposition by Means Other Than Decision	# of Files Closed	% of Agency Grand Total
Withdrawn	1	100.00%
	1	100.00%
	(Decision Level Total) (% of Agency Total)	
Veterinary Medical Examiners	1	0.10%
	(Agency Grand Total) (% of Overall Total)	

Water Commission, State/State Engineer

Decisions Issued	# of Files Closed	% of Agency Grand Total
For the Agency	1	50.00%
	1	50.00%
	(Decision Level Total) (% of Agency Total)	
Disposition by Means Other Than Decision	# of Files Closed	% of Agency Grand Total
Settled by parties	1	50.00%
	1	50.00%
	(Decision Level Total) (% of Agency Total)	
Water Commission, State/State Engineer	2	0.20%
	(Agency Grand Total) (% of Overall Total)	

Disposition of Files by Agency

July 1, 1997, through December 31, 1998

Office of Administrative Hearings
Hearing Statistics

Workers Compensation Bureau

Decisions Issued	# of Files Closed	% of Agency Grand Total
	1	0.19%
	1	0.19%
(Decision Level Total) (% of Agency Total)		

Decisions Issued	# of Files Closed	% of Agency Grand Total
Against the Agency	105	20.08%
Both for and against the agency	14	2.68%
For the Agency	184	35.18%
Order of Dismissal (Recommended or Final)	2	0.38%
	306	68.32%
(Decision Level Total) (% of Agency Total)		

Disposition by Means Other Than Decision	# of Files Closed	% of Agency Grand Total
Withdrawn	46	8.80%
Abandoned by Appellant/Applicant (including no show)	1	0.19%
Default Order issued along w/Notice of Default	2	0.38%
Dismissed by agency	1	0.19%
File returned to agency	14	2.68%
Remand to Agency	7	1.34%
Settled by parties	146	27.92%
	217	41.49%
(Decision Level Total) (% of Agency Total)		

Workers Compensation Bureau 523 52.67%
(Agency Grand Total) (% of Overall Total)

Grand Total: 993

Files Pending by Agency
for Files Received through December 31,
1998

19-Jan-99

Agency	#
Administrators Professional Practices Board	1
Agriculture Commissioner	3
Animal Health, Board of	1
Attorney General, Office of	1
Audiology & Speech-Language Pathology, Board of	1
Central Personnel Division	4
Dental Examiners, Board of	1
DHS, Human Services, Department of	69
Education Standards & Practices Board	1
Hearing Instrument Dispensers, Board of	1
IC, Insurance Commissioner	1
Medical Examiners, State Board of	1
Milk Marketing Board	2
Minot State University - Bottineau Campus	1
Minot, ND, City of	1
Nursing, State Board of	4
Professional Engineers & Land Surveyors Board	1
PSC, Public Service Commission	4
Public Instruction, Department of	1
Securities Commissioner	1
Social Work Examiners Board	1
Tax Commissioner, State	5
Veterans Affairs, Department of	1
Workers Compensation Bureau	149

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OFFICE OF ADMINISTRATIVE HEARINGS


STATE OF NORTH DAKOTA
1707 North 9th Street
Bismarck, North Dakota 58501-1882

Allen C. Hoberg
Director

701-328-3260
FAX 701-328-3254

MEMORANDUM

TO: Fifty-sixth Legislative Assembly
State of North Dakota
Senate Appropriations Committee

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

RE: OAH 1999-2001 Operating Budget Request
House Bill No. 1018

DATE: February 24, 1999

BACKGROUND INFORMATION

The Office of Administrative Hearings' ("OAH") work consists almost exclusively of conducting administrative hearings for a number of state agencies on a variety of administrative matters (e.g., complaint [enforcement] hearings, application hearings [for benefits or license], appeals hearings from various agency actions). OAH provides independent administrative law judges (ALJs) to conduct hearings that were formerly conducted by in-house agency hearing officers, assistant attorneys general, or agency contract hearing officers. Now, a large percentage of administrative hearings throughout the state are conducted for state agencies by OAH full-time ALJs or OAH temporary, contract ALJs.

Since OAH began operations on July 1, 1991, it has conducted hearings for about 65 different state and local government agencies or entities. Most state agencies are required to use the services of OAH under N.D.C.C. Chapter 54-57. N.D.C.C. § 54-57-03(1) lists those state agencies exempted. Some exempted state agencies, including the Workers Compensation Bureau (the "Bureau"), the Insurance Department, and the Public Service Commission voluntarily use the services of OAH, contracting with OAH to do so. Additionally, some local government agencies have used the services of OAH for such hearings as tobacco sales enforcement and public nuisance abatement. These local entities also contract with OAH. Contract arrangements like those between OAH and other state or local agencies or entities is common in other states, too.

From July 1, 1991, until September 1, 1995, OAH operated with a permanent full-time staff of five (three ALJ FTEs and two support staff FTEs), conducting hearings, the vast majority of which were from agencies required to use OAH services. (OAH occasionally contracted with temporary, contract ALJs to conduct a few hearings on an as-needed basis.) On September 1, 1995, OAH began conducting all of the administrative hearings for the Bureau, pursuant to agency agreement. OAH uses both permanent ALJs and temporary, contract ALJs to provide services for the bureau. However, OAH uses temporary, contract ALJs to conduct the bulk of Bureau hearings.

Since the 1997-99 biennium, OAH's budget has had a second component under its one major program, for conducting Bureau hearings by means of temporary, contract ALJs. However, both components of OAH's one major program are engaged in the same program activity, *i.e.*, providing ALJ services to conduct hearings for state agencies and local entities.

In order to be able to provide the Bureau with the necessary temporary ALJs, OAH contracts with attorneys in the private practice of law. It became necessary because of different billing rates to keep the two component parts separate for expenditure and revenue purposes. Therefore, the two separate components were created in OAH's budget under its one cost center. Although OAH has kept these separate components in preparing its 1999-2001 operating request proposal, it has submitted only a combined proposal under its one major program, using only one cost center, Cost Center 1000.

It is important to remember that the Bureau is not required to use OAH to provide any of its ALJs. However, it has used OAH since September 1995, by agreement, and it wishes to continue to do so for the 1999-2001 biennium. This will be a reasonably foreseeable continuation; thus, two component parts remain in OAH's one major program.

For the 1999-2001 biennium, besides the increases proposed in the Executive Recommendation, OAH has requested increases in operating expenses for data processing related to technology plan costs; for professional services, due to an increase in the Workers Compensation Bureau temporary administrative law judge contract rate; for additional software costs, again pursuant to OAH's technology plan; and for increases in equipment expenses, related to OAH's technology plan, for hardware replacement.

The Executive Recommendation was for an increase of \$36,316 over OAH's request for an additional \$94,448. All of the additional increase in the Executive Recommendation was based on the Executive Recommendation for increased compensation.

In reality, \$74,000 of OAH's requested \$94,448 increase has already occurred this biennium. In November 1998 the Emergency Commission appropriated a \$74,000 increase in OAH operating expenses due to the cost of providing temporary administrative law judges for the Bureau's caseload. This \$74,000 increase in operating for the Bureau's caseload is partially offset in this budget by a \$17,000 decrease in the cost of other professional services.

All of OAH's appropriation is funds obtained by OAH billing user agencies for hearing officer services. OAH receives no general funds, but has been authorized to borrow up to \$100,000 for interim payment of bills until agencies make payment to OAH. For the 1999-2001 biennium OAH has asked for a \$50,000 increase in borrowing authority, up to a total of \$150,000 in borrowing authority.

In short, under the Executive Recommendation, OAH's mission and functions remain essentially the same, with a goal to continue the services provided to its traditional program, as well as to be able to continue to provide quality services through an ongoing temporary program to the Bureau. OAH's budget proposal is essentially the same as last biennium's budget with the increased costs noted above. Under this recommendation, OAH proposed a staff configuration as follows:

- 1 full-time Director/ALJ
- 2 full-time ALJs
- 4 full-time support staff (2 administrative assistants, 2 administrative secretaries)
- 12-15 temporary, contract ALJs, as necessary, to do mostly WCB hearings, as well as some other agencies' hearings.
- Total of 7 full-time FTEs, 12-15 temporary, contract ALJs.

The House removed OAH's currently vacant support staff FTE, which was included in the Executive Recommendation. That FTE was filled for six months this biennium but

will not likely be filled again this biennium, though some extra work remains related to the workers compensation caseload.

Since OAH began conducting workers compensation cases in September 1995, that caseload has been a fluctuating caseload. It was because of fluctuating caseload that OAH vacated the position on January 1, 1998. Decreases in caseload for about seven months in 1997 caused OAH to vacate it. However, thereafter, the Workers Compensation caseload increased again, some, and now seems to have leveled off.

OAH needs to watch the Bureau's caseload closely. We believe we may need some support staff help in this area again next biennium. OAH will not try to build a case for a full-time FTE, though it is possible that OAH could use a half-time FTE, at least, for next biennium.

Rather than ask for reinstatement of a half-time or full-time FTE, OAH respectfully requests that the Senate increase OAH's salaries and wages line item another \$20,000 for temporary or overtime monies for support staff that OAH may need to obtain on a contract basis next biennium. OAH's budget currently includes about \$10,000 in temporary, overtime salaries and wages for its main program. It contains nothing, however, for temporary or overtime salaries for our workers compensation program. Yet, that is an area where we are likely to need help. Attached is a proposed

amendment to Engrossed House Bill No. 1018 to include this additional \$20,000 for additional support staff help, temporary or overtime, on an as-needed basis. Please include this in our budget. We are likely to need it. If OAH does not need it, there will be nothing to spend anyway because OAH likely won't have the funds available for it from billing the Bureau.

Also, the House removed \$3,500 from OAH's operating expenses related to OAH's technology plan. As we understand it, the \$3,500 removed was \$3,500 OAH had budgeted for contract services for systems maintenance/operations on our current case management system and billing program. To date, this biennium, we have spent \$1,760 on contract services for system maintenance/operations for our case management system and billing program. However, our case management system, though expected to be complete this biennium, is not yet complete. We have exhausted our funds available for this project this biennium. Our case management system is currently usable, but barely usable. We hope to have enough money in our technology plan budget to fully complete our case management system next biennium. This system is a custom case management system being built by a contract provider just for OAH. Because we will spend at least \$1760 on contract systems maintenance next biennium, and likely more, and because of uncertainty about how much more we will need to spend to complete our case management system, and how much of our

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1999-2001 technology budget (unplanned for) must be devoted to that, we urge you to restore this \$3,500 in our budget.

OAH does not know why the House removed this amount. We were asked no specific questions about contract services for systems maintenance. ISD does not do the system maintenance for our case management system and billings programs because they were not involved in their design. Our contract provider was involved; it does the system maintenance.

OAH will spend all of its data processing budget for the current biennium. I am confident that OAH will also need to spend all of the amounts we have proposed for the 1999-2001 data processing budget. OAH's technology plan is very small, all things considered. We do not believe we have been excessive in our technology plan budgeting. OMB did not believe so either, as the plan was approved.

Please include this \$3,500 in our budget. The amendment I have attached also adds \$3,500 back in to OAH's operating expenses to restore this necessary amount.

BUDGET ANALYSIS

OAH's present 1997-99 budget shows a total funding of \$1,350,161. However, this amount was submitted in the budget proposal before OAH's November Emergency

Commission's request of \$74,000 relating to additional special funds for Bureau work. OAH's total adjusted current existing funding authority is \$1,424,161 in special funds or other funds. The total Executive Recommendation for the 1999-2001 budget was \$1,480,925. That was \$56,764 more than what is currently appropriated. That is only about \$20,000 more than the original total of the Executive Recommendation for compensation package adjustments (\$36,316).

With the reductions made by the House, but with the inclusions I am requesting today, OAH's budget is \$12,946 more in the operating line item, mostly attributable to technology plan need increases. It is \$5,750 more in the equipment line item. It is about \$20,000 less in the salaries and wages line item, with the removal of the one vacant full-time FTE, but the addition of \$20,000 in temporary overtime salaries for support staff help. This decrease does not count the Executive Recommendation for increased salaries and wages, or whatever the Legislative Assembly decides will be the appropriate salaries and wages increase for all state agencies.

Therefore, with the removal of OAH's vacant FTE, even restoring the \$20,000 and \$3,500 I request today, OAH's proposed budget, without the Executive Recommendation for compensation, is about the same or slightly smaller than the previous biennium.

This budget proposal contains nothing that is really new. Essentially, OAH will maintain its operations as it has since September 1995, for at least the next biennium, if no new legislation is passed expanding or reducing its jurisdiction. None is anticipated. OAH will continue to bill all agencies that use its services on an hourly rate, determined by our billing consultants, to fund all of its budget.

In summary, with the budget proposed today, OAH should be able to fulfill its mission, *i.e.*, providing quality, independent hearing officer services to all state agencies required to use its services and to all state or local entities wishing, for whatever reason, to engage an independent administrative judge. OAH respectfully requests that the House approve OAH's 1999-2001 operating budget request, with the amendments to Engrossed House Bill No. 1018 proposed today.

Also attached to this memorandum, for the Committee's information, are various statistical documents for OAH for the first 18 months of the current biennium (July 1, 1997, through December 31, 1998), including a breakdown of requests received by agency, disposition of files, and overall caseload assignment in progress.

Attachments

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1018

Page 1, line 9, replace "\$605,464" with "\$625,464"

Page 1, line 12, replace "\$790,697" with "\$794,197"

Renumber Accordingly.