

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1455

2001 HOUSE JUDICIARY

HB 1455

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1455

House Judiciary Committee

Conference Committee

Hearing Date 02-05-01

Tape Number	Side A	Side B	Meter #
TAPE III		x	391 to 3640
Committee Clerk Signature <i>Joan Davis</i>			

Minutes: Chairman DeKrey opened the hearing on HB 1455. Relating to finality of decisions of administrative law judges in adjudicative proceedings of administrative agencies.

Rep Koppleman: District 13 of west Fargo This bill deals with area of the resolution that was brought before the house, but in a different way, it is the Office of Administrative Hearings. The deck is sort of stacked against the person who has a dispute with a state agency, a finding is made, the agency then says yes or no and then can set aside the ruling. HB 1455 would take a look at this and make it fair, a judge makes the ruling and it is binding.

Allen Hoberg: Director of Office of Administrative Hearing (see attached testimony)

Rep Klemin: In the court, if we don't like the judge, we can challenge the judge, can you do that now.

Allen Hoberg: No, we can not.

Rep Mahoney: How would this change the procedure.

Allen Hoberg: For some it would change, for others it would. He then goes on to explain.

Rep Mahoney: Under current law that would apply.

Allen Hoberg: the final decision of the agency head is the one that goes to court.

Rep Mahoney: What is in this bill?

Allen Hoberg: In this bill there would be no more recommended decisions.

Rep Klemin: We are not changing the scope of the review.

Allen Hoberg: That is correct.

Rep Klemin: So we still have the situation that it would apply, but the court would have to affirm the decision unless it comes in one of the six situations.

Allen Hoberg: That is correct.

Chairman DeKrey: If there are no questions, thank you for appearing.

Shelly Peterson: President of North Dakota Long term Association (see attached testimony)

Rep Mahoney: The concern about bias, judges don't know much about the rate setting procedures weighed in on the agency, how would this help.

Shelly Peterson: we feel many cases are not brought forward, because of the bias.

Chairman DeKrey: If there are no further questions, thank you for appearing. If there anyone who wishes to testify, for against or neutral.

Rick Clayburn: State tax Commissioner, I am neutral on the bill. I would like to point out the concerns of the tax department. The office of administrative hearing does provide a valuable service to the citizens of the state of North Dakota. In the tax department, we do not do many hearings at all. In making the hearing judges finding as final, we want to insure that it is a finding of fact, we are not asking to make the tax department exempt, but need to know that we have someone who is knowledgeable of tax law that reach beyond the state.

Rep Klemin: One of the grounds of the scope of review is if the findings of fact are not supported by the evidence, if you have the right to appeal wouldn't this be one of the grounds.

Rick Clayburn: One negative is that both parties would have to go to court and that costs both sides money.

Rep Klemin: I can understand that, but we want to have the findings of fact correct and what I am saying is that the scope of review is grounds for appeal.

Rick Clayburn: That is correct.

Dan Rause: legal council for the tax commissioner, the objective that we have, is that if we believe that there is a miss statement of finding of fact, the opportunity in the way of a recommended decision gives the agency head in a cost effective way to correct that record.

Rep Klemin: The agency believes that the finding of fact is not correct, would you not have the right to request reconsideration before it goes to court.

Dan Rause: That option is already available.

Rep Klemin: You could take care of the problem without going to court.

Dan Rause: It could.

Chairman DeKrey: If there are no further questions, thank you for appearing.

Rick Clayburn: That is the point, we may be looking for a problem that does not exist, but we do not want to have our hands tied.

Chairman DeKrey: makes a comment.

Rick Clayburn: We have utilized that less of late and have done more settling.

Chairman DeKrey: If there are no other questions, thank you for appearing.

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Melissa Hauer: Director Legal Advisory Unit for Department of Human services (see attached testimony) the department opposed the bill.

Chairman DeKrey: asks a question about this law and how it effects federal law.

Melissa Hauer continues.

Rep Klemm: The alternative would be to exempt for the federal law.

Melissa Hauer: That would be one way of doing it.

Rep Klemm: The other side of this is that you have only rejected 16 of the decisions, so that would indicate that the system is working.

Melissa Hauer: I can agree.

Chairman DeKrey: Are there any questions, if not thank you for appearing.

Francis Swentz: from the Department of Health. The department is concerned with the delegation from the federal government and so they have those concerns.

Chairman DeKrey: Any one have questions, anyone wishing to testify, if not thank you for appearing.

Rep Koppelman: One comment, I asked the governors office if they had any issues that they wished to address before you pass out this bill.

Chairman DeKrey: we will not be acting on this bill at this time. We will close the hearing on HB 1455.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1455a

House Judiciary Committee

Conference Committee

Hearing Date 02-14-01

Tape Number	Side A	Side B	Meter #
TAPE II	x		4241 to 6258
TAPE II		x	01 to 211
Committee Clerk Signature <i>Jean Diers</i>			

Minutes: Chairman DeKrey called the committee to order on HB 1455.

Shelly Peterson: (see attached testimony)

Leslie Oliver: Shelly Peterson explained to you, the nursing home industry in this state, and probably in every other state, is regulated by the Department of Human Services. They take care of the Medicare and Medicaid programs in the state. Every step of the industry is impacted by the Department. There is no place for a voice by the industry except in Administrative process. Presently, nursing homes who wish to challenge rates, which establishes the budget for the nursing home for the year, they say yes or no, mostly they say no. You can ask the Department to look at it again and generally they will come back unfavorable. You then go to an Administrative hearing, where an independent hearing officer listens to evidence from both sides and makes a determination and then the agency has the discretion to be checked or to change the decision as made by the hearing officer. From the perspective of the nursing home industry, there is no place except the Administrative hearing, the fair hearing process, for administrators and owners of

nursing homes, to voice their opinion and be heard. It is really not due process for those people unless this bill passes. The memorandum that has been passed out, addresses two things, first the testimony that was offered by the Department of Human Services.. What I have gleaned from the testimony is that if this bill passes, the state will lose all of their Medicaid dollars because of the requirements of agency hearings. Having looked at the state budgeting plan and the federal regulations that underlie that, the state has to have a fair hearing process, but it doesn't require that the agency gets to control the entire process. In fact the federal regulations suggest that the administrative hearings would be provided by an impartial hearing officer and the decision would be made by the hearing officer. No where in the federal regulations is there the discretion of the agency to go back and object the decision.

Chairman DeKrey: It may surprise you to know that there are two ways to kill a bill, fiscal note and the threat of loss of federal funds.

Leslie Oliver: I am not suggesting that 1455 is right or wrong for the entire , all programs of the Department of Human Services administers. from the perspective of the nursing homes, it is essentially follows the administrative practices act. There is a separate statute on nursing home hearings. Ms Hauer's testimony should not be heard as applying to every program that the department administers. It does not pertain to nursing homes. The department has a separate obligation under its own state plan to nursing homes the way that it hears their appeals and it also has separate federal regulations, which provide for the terms of 1455.

Chairman DeKrey: Are there any questions, thank you for appearing. Rep Klemm, you have some amendments you want to present?

Rep Klemm: Reviews two sets of amendments, 10522.0101 and 10522.0102

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DISCUSSION

COMMITTEE ACTION

Rep Klemin moved both amendments. Rep Wrangham seconded the amendments.

Chairman DeKrey: Voice vote on the amendments, amendments carry. What are the wishes of the committee? Rep Klemin moved a DO PASS as amend, Rep Kingsbury seconded. The clerk will call the roll on a DO PASS as amend on HB 1455. The motion passes with 10 YES, 2 NO and 3 ABSENT. Carrier Rep Klemin.

FISCAL NOTE
 Requested by Legislative Council
 04/12/2001

Bill/Resolution No.:

Amendment to: Engrossed
 HB 1466

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.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

With the conference committee amendments this bill should have no significant fiscal impact on agencies, local governing bodies, courts, or OAH. The amendments that required the first two fiscal notes (after the original fiscal note on the original bill) have been removed. With this version now being considered, there will be no de novo review of agency and local governing body decisions, thus the impact on the district courts previously stated will be removed, as well as the impact on agencies and local governing bodies from de novo review. See 2/20/01 fiscal note. The Senate amendment that removed the Tax Commissioner from OAH jurisdiction has also been removed in this version, thus there will be no impact on OAH as previously stated in the 3/26/01 fiscal note.

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.*

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.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the*

executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

Name:	Allen C. Hoberg	Agency:	Office of Administrative Hearings
Phone Number:	328-3260	Date Prepared:	04/12/2001

FISCAL NOTE
 Requested by Legislative Council
 03/23/2001

Bill/Resolution No.:

Amendment to: Engrossed
 HB 1455

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.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				(\$2,268)		(\$2,268)
Expenditures				\$0		\$0
Appropriations				\$0		\$0

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

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

There are really two different scenarios concerning the Tax Commissioner's office and OAH. The first is the period between July 1, 1991 (when OAH began operations) and June 30, 1997. The second is the period between July 1, 1997, and the present. During the first period OAH received general funds that funded the provision of hearing officer services for the Tax Commissioner and many other "general fund" agencies. During this period, the Tax Commissioner's office was fairly active in requesting hearing officer services from OAH, i.e. it had a number of administrative tax cases scheduled to go to hearing each year. The average number of hours OAH ALJs spent on work for the Tax Commissioner's office was 135.6 hours per biennium. During the second period OAH did not receive any general funds for the provision of hearing officer services to any agency. In 1997 the Legislative Assembly removed all general funds from OAH's budget. Since July 1, 1997, OAH has billed all agencies to which it provides hearing officer services. For the biennium 1997-99, OAH billed the Tax Commissioner for only 28.4 hours of services provided. For the current biennium, to date, OAH has billed the Tax Commissioner for only 10.1 hours of services provided. OAH had only four requests for hearing officer services from the Tax Commissioner for the 1997-99 biennium, i.e. there had been only four administrative tax cases scheduled to go to hearing, and it has had only one request for hearing officer services for the current biennium. Currently, OAH bills agencies such as the Tax Commissioner at a rate of \$79.52/hour for hearing officer services. OAH anticipates that this amount will increase some in the next two biennia, but this fiscal note reflects the current billing rate. OAH's billing rate is determined by a billing consultant based, essentially, on the previous two years actual expenditures. Therefore, the rate for the 2001-2003 biennium will be based on OAH's actual expenditures for the current biennium.

