

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2375

2007 SENATE JUDICIARY

SB 2375

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2375**

### Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 29, 2007

Recorder Job Number: 2143

Committee Clerk Signature *Maria L Solberg*

**Minutes:** Relating to the transfer of administrative hearings from the department of transportation to the office of administrative hearings.

**Senator David Nething**, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

#### **Testimony In Support of Bill:**

**Sen. Bob Stenehjem**, Dist. #30 Introduced the bill (meter 0:10) Gave testimony Att. #1. This bill does not change the process it only changes the physical location.

**Sen. Nething** drew **Sen. Stenehjem's** attention to the fiscal note. He responded that if there is a person doing the administrative work in one location and is moved to do the same thing at another location the fiscal note should be a wash.

**Sen. David O'Connel**, Dist. #6 Gave Testimony (meter 2:46) Att. #2 stated that this sounds like "Death by Fiscal", every place that I have spoke today the fiscal note has doubled since two years ago!

**Bob Harms**, ND Hospitality Assoc. (meter 3:24) gave testimony – Att. #3.

**Tom Balzer**, ND Motor Carriers Assoc. (meter 7:52) We have a high respect for the dept. of trans. The administrative ruling adds an interesting twist. We are governed by the Federal Motor Carriers Safety Assoc. and the State of ND.- Stated how the you can get two different

results from the same offence. Administrative hearing process has a 90% win ratio. He discussed the process and how it affects the industry.

**Testimony in Opposition of the Bill:**

Bonnie Thatch, Office of Administrative Hearings (meter 10:44) Read Allen Hoberg – Directors Testimony – Att. #4.

**Tim Horners**, Deputy Director of Business Support for D.O.T. (meter 14:20) Att. #5.

**Sen. Nething** asked how many hearing officers were currently working? 4 permanent and 2 Temp.

**Testimony Neutral to the Bill:**

**Paul Seado**, reviewed the current staff (meter 19:36)

**Sen. Fiebiger** questioned that if the current process was fair and partial why was he hear on a neutral and not against the bill. Mr. Seado stated that we are here to do what the legislature request not what he thinks. He responded that he personally knows the staff and does not think the staff is the problem, but the process. If people do not like what is going on then they need to change the system, not the staff.

**Sen. Nelson** questioned if the current staff is doing a good job then would you not want to transfer the staff to the new department? Yes spoke of other cases the dept. handles.

**Senator David Nething**, Chairman closed the hearing.

**Sen. Fiebiger** made the motion to Do Pass SB 2375 and **Sen. Marcellais** seconded the motion. All members were in favor and the motion passes.

Carrier: **Sen. Fiebiger**.

**Senator David Nething**, Chairman closed the hearing.

# 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
<b>Revenues</b>	\$0	\$0	\$0	\$769,706	\$0	\$769,706
<b>Expenditures</b>	\$0	\$0	\$0	\$769,706	\$0	\$769,706
<b>Appropriations</b>	\$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.

<b>Name:</b>	Allen C. Hoberg	<b>Agency:</b>	Office of Administrative Hearings
<b>Phone Number:</b>	328-3260	<b>Date Prepared:</b>	03/26/2007

# FISCAL NOTE

Requested by Legislative Council

03/14/2007

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
<b>Revenues</b>	\$0	\$0	\$0	\$769,706	\$0	\$769,706
<b>Expenditures</b>	\$0	\$0	\$0	\$769,706	\$0	\$769,706
<b>Appropriations</b>	\$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 to OAH and to require OAH ALJs to conduct those hearings.

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, it will be 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 will likely 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 Operating costs = \$79,222

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 current 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 salaries. In fact, even though OAH is proposing to hire a support staff person, it appears that OAH's estimate of costs is less than DOT's estimate, when salaries and benefits for the four new ALJs are excluded.

Also, although equipment expenses will likely be less in the 2009-2011 biennium, salary and benefits will likely increase and 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.

<b>Name:</b>	Allen C. Hoberg	<b>Agency:</b>	Office of Administrative Hearings
<b>Phone Number:</b>	328-3260	<b>Date Prepared:</b>	03/15/2007

# FISCAL NOTE

Requested by Legislative Council

02/20/2007

## REVISION

Amendment to: 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
<b>Revenues</b>	\$0	\$0	\$0	\$943,766	\$0	\$943,766
<b>Expenditures</b>	\$0	\$0	\$0	\$943,766	\$0	\$943,766
<b>Appropriations</b>	\$0	\$0	\$0	\$943,766	\$0	\$943,766

**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 but does not transfer any persons or equipment. OAH must hire ALJs and support staff and provide the equipment, supplies, training, and travel funds required to conduct these hearings. The amendments to the bill do not change the fiscal impact.

**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 to OAH and to require OAH ALJs to conduct those hearings.

**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, it would be 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). DOT is required by the bill, as amended, to request OAH to provide ALJs to conduct all of its hearings, not just those under sections 39-06.2-10.6 and 39-20-05, as under the bill as introduced. But, the original fiscal note anticipated that OAH ALJs would provide to DOT all of the hearing services now provided by its in-house hearing officers, and that DOT would voluntarily request OAH to provide ALJs to conduct its other, miscellaneous hearings, because DOT would no longer have any hearing officers to conduct hearings. Therefore, just as in the original fiscal note, OAH would still be required to hire five ALJs and locate them in the state's four major cities. These ALJs will work out of their home, telecommuting with OAH. However, neither the original fiscal note nor the first revised fiscal note provided for any support staff as secretarial support for the five ALJs. This revised fiscal

note anticipates adding one support staff person to provide secretarial support for the five ALJs in the nature of scheduling hearings, making travel arrangements, case management, billing, and other secretarial support. Apparently, DOT hearing officers perform most, if not all, of their necessary secretarial support for themselves, now. If OAH provides the necessary secretarial support for these new ALJs they will be free to devote more time to conducting hearings and writing decisions. OAH will then be able to use these five new ALJs to replace even more of the work OAH now assigns to temporary, contract ALJs, thus saving OAH money in the long run. OAH should be able to considerably reduce the amount it currently spends on temporary, contract ALJs by providing support staff for these ALJs.

**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. OAH will hire 5 new ALJs to conduct DOT hearings. Any time remaining to the 5 new ALJs after conducting DOT hearings will be spent conducting other agency hearings. OAH currently extensively uses temporary, contract ALJs on an as-needed basis to conduct some of its hearings. The work performed by the 5 new ALJs in this regard will replace the work of some of OAH's temporary, contract ALJs. AS noted above, these 5 new ALJs should be able to replace even more of the work of OAH's temporary, contract ALJs if a support staff person is hired to provide secretarial support. 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 five 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 five new ALJs is \$574,710. The total amount of benefits to be paid for the five ALJs based on the proposed salary is \$201,149. 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 \$98,112 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 proposes to hire 5 new ALJs to conduct DOT hearings and locate them in the four large cities around the state (Bismarck, Fargo, Grand Forks, and Minot), as telecommute ALJs working out of their own homes. OAH will advertise these 5 new positions and, certainly, any of the current DOT hearing officers may apply for these new positions. It is likely that at least one of the former DOT hearing officers will be hired by OAH. 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 5 new ALJs. That person will be centrally located at OAH offices in Bismarck. 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 5 ALJs for two years = \$574,710  
Benefits per ALJ per year = \$20,115 (at 35%)  
Total ALJ benefits for 5 ALJs for two years = \$ 201,149  
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 (at 35%)  
Total benefits for one support staff person for two years = \$18,095  
Total salaries and benefits = \$845,654

Equipment per telecommute ALJ (desk, chair, computer, digital recorder, printer, etc.) = \$5250  
Total equipment expenses = \$26,250

Miscellaneous monthly expenses (postage, phone lines, computer connection, etc.) = 235/ mo./ALJ  
Total monthly expenses = \$28,200

Travel to hearings and other travel (mileage, lodging, meals, etc.) per ALJ = \$5,000  
Total travel expenses = \$25,000

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

Total Training and CLE costs = \$15,000

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

Total salaries and benefits = \$845,654

Total operating costs = \$ 98,112

Total Appropriation = \$943,766

<b>Name:</b>	Allen C. Hoberg	<b>Agency:</b>	Office of Administrative Hearings
<b>Phone Number:</b>	328-3260	<b>Date Prepared:</b>	02/21/2007

**FISCAL NOTE**  
**Requested by Legislative Council**  
02/07/2007

Amendment to: 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
<b>Revenues</b>	\$0	\$0	\$0	\$841,570	\$0	\$841,570
<b>Expenditures</b>	\$0	\$0	\$0	\$841,570	\$0	\$841,570
<b>Appropriations</b>	\$0	\$0	\$0	\$841,580	\$0	\$841,570

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. It does not transfer any persons or equipment. Therefore, OAH must hire new ALJs and provide equipment, supplies, training, and travel funds for the ALJs required to conduct these hearings. The amendments to the bill do not change the fiscal impact.

**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 certain DOT hearings to OAH and to require OAH ALJs to conduct those hearings.

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, it would be 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). DOT is required by the bill, as amended, to request OAH to provide ALJs to conduct all of its hearings, not just those under sections 39-06.2-10.6 and 39-20-05, as under the bill as introduced. But, the original fiscal note anticipated that OAH ALJs would provide to DOT all of the hearing services now provided by its in-house hearing officers, and that DOT would voluntarily request OAH to provide ALJs to conduct its other, miscellaneous hearings, because DOT would no longer have any hearing officers to conduct hearings. Therefore, just as in the original fiscal note, OAH would still be required to hire five ALJs and locate them in the state's four major cities. These ALJs will work out of their home, telecommuting with OAH.

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. OAH will hire 5 new ALJs to conduct DOT hearings. Any time remaining to the 5 new ALJs after conducting DOT hearings will be spent conducting other agency hearings. OAH currently extensively uses temporary, contract ALJs on an as-needed basis to conduct some of its hearings. The work performed by the 5 new ALJs in this regard will replace the work of some of OAH's temporary, contract ALJs. 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 five 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 five new ALJs is \$574,710. The total amount of benefits to be paid for the five ALJs based on the proposed salary is \$172,410. Additionally, OAH will require \$94,450 in operating funds to provide for equipment, supplies, travel, training, and miscellaneous monthly office expenses necessary to do these hearings. 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 proposes to hire 5 new ALJs to conduct DOT hearings and locate them in the four large cities around the state (Bismarck, Fargo, Grand Forks, and Minot), as telecommute ALJs working out of their own homes. OAH will advertise these 5 new positions and, certainly, any of the current DOT hearing officers may apply for these new positions. It is likely that at least one of the former DOT hearing officers will be hired by OAH. The hearings conducted by these ALJs will be held in available rooms at various government buildings around North Dakota. 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 5 ALJs for two years = \$574,710  
Benefits per ALJ = \$17,241  
Total ALJ benefits for 5 ALJs for two years = \$ 172,410  
Total salaries and benefits = \$747,120

Equipment per telecommute ALJ (desk, chair, computer, digital recorder, printer, etc.) = \$5250  
Total equipment expenses = \$26,250

Miscellaneous monthly expenses (postage, phone lines, computer connection, etc.) = 235/ mo./ALJ  
Total monthly expenses = \$28,200

Travel to hearings and other travel (mileage, lodging, meals, etc.) per ALJ = \$5,000  
Total travel expenses = \$25,000

Training and CLE costs per ALJ (all ALJs are attorneys) = \$3,000  
Total Training and CLE costs = \$15,000

Total salaries and benefits = \$747,120  
Total operating costs = \$ 94,450  
Total Appropriation = \$841,570

<b>Name:</b>	Allen C. Hoberg	<b>Agency:</b>	Office of Administrative Hearings
<b>Phone Number:</b>	328-3260	<b>Date Prepared:</b>	02/07/2007

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/23/2007

Bill/Resolution No.: 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
<b>Revenues</b>	\$0	\$0	\$0	\$841,570	\$0	\$841,570
<b>Expenditures</b>	\$0	\$0	\$0	\$841,570	\$0	\$841,570
<b>Appropriations</b>	\$0	\$0	\$0	\$841,580	\$0	\$841,570

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 DOT hearings under sections 39-06.2-10.6 and 39-20-05 from DOT to OAH. The bill does not transfer any persons or equipment from DOT to OAH. Therefore, OAH is required to hire ALJs and provide equipment, supplies, training, and travel funds required to conduct these 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 certain DOT hearings to OAH and to require OAH ALJs to conduct those hearings.

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's billing rate 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 first 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. Without any hearing officers of its own, it is likely that DOT will voluntarily request OAH to provide ALJs to conduct other, miscellaneous hearings not included in this bill. This fiscal note anticipates that OAH ALJs will provide to DOT all of the hearing services now provided by its in-house hearing officers. To that end, OAH will hire five ALJs and locate them in the state's four major cities. These ALJs will work out of their home, telecommuting with OAH.

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. OAH will hire 5 new ALJs to conduct DOT hearings. Any time remaining to the 5 new ALJs after conducting DOT hearings will be spent working on DHS and WSI hearings. OAH currently extensively uses temporary, contract ALJs to conduct some of its DHS and WSI hearings. The work performed by the 5 new ALJs in



