

FISCAL NOTE

Requested by Legislative Council

2/20/2001

Bill/Resolution No.:

Amendment to: 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

Expenditures

Appropriations

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.*

For the Office of Administrative Hearings, the amendments to H.B. 1455 would have no additional fiscal impact. The amendments have to do with requests for de novo review in the courts. This is an appellate level review beyond the hearings level with OAH and the agency. Therefore, it is anticipated that there would be no additional effect on OAH and the original fiscal note OAH filed for this bill would still be applicable, as to OAH.

However, the amendments to H.B. 1455 have the potential for substantial fiscal impact on numerous other state agencies, local governments or agencies, and the court system. Approximately 200 administrative matters are appealed to the district courts every year. With the language of the amendments, however, this number could increase significantly. With the opportunity for de novo review, substantially more parties from the both the state and local administrative hearings level may wish to appeal. It is impossible to guess how many. But, even if just 50% more would appeal there would be 300 cases on appeal as opposed to 200. Just how much of a financial burden this would place upon the courts is unknown. Of course, what makes for potentially great fiscal impact in the court system is that if in even 50% of these 300 cases on appeal the appellant asks for de novo review, 150 cases in the court system likely must have de novo hearings (a new trial) in the district court. This would

involve the use of considerable resources in the court system.

Yet, just what de novo review means and whether it needs to be granted upon request are questions that may need to be clearly answered. De novo review may mean a new hearing or trial. However, it may only mean just a new look by the district court at the administrative hearing record already in existence and making a new decision based on that record, disregarding the final decision of the agency. It may not mean that a new hearing or trial is required. Either way, considerable resources of the courts would be involved.

Not only would the impact on the courts be great but the impact on state agencies, including the Attorney General's office, would be great. If 150 cases went to a new trial in the district courts, the state would need additional legal representation in those cases. Even if a new trial would not be required, additional legal representation would be involved for these 150 cases. This would require that substantial time of assistant attorneys general and special assistant attorneys general be spent on representation for the agencies involved. The fiscal impact on the Attorney General's office (both for agencies for which it bills and those for which it does not) could be great. The fiscal impact on all of the state agencies whose final administrative orders are appealed under N.D.C.C. ch. 28-32 could also be great.

There would be fiscal impact on the local level similar to the impact at the state agency level, although the numbers of cases from the local level is not known. New trials or a new look at the case would be required for the de novo review process from the local level, too.

As a word of caution, this fiscal note does not estimate the potential costs to all of the state agencies, local agencies, and courts that may be involved. Even for those entities to make such an estimate may be more of a guess because the numbers of requests for de novo review that will be made is not something that can be known with any certainty. Again, there may be more appeals of administrative orders with these amendments. Just how many, no one knows for certain. Then, of all the cases appealed, it is impossible to say how many appellants would request de novo review. Such review could be costly to the appellant, as well as to the appellee. There may be other considerations, too, affecting the decision whether to request de novo review or standard appellate review.

Therefore, although this fiscal note states no additional impact on OAH, there would most certainly be a substantial fiscal impact of undetermined amount on numerous state agencies, on local agencies, and on the court system.

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.*

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Agency: Office of Administrative Hearings
Date 02/20/2001
Prepared: