

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1017

2007 HOUSE APPROPRIATIONS

HB 1017

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1017

House Appropriations Committee
Human Resources Division

☐ Check here for Conference Committee

Hearing Date: January 15, 2007

Recorder Job Number: 1017

Committee Clerk Signature

Minutes:

Rep. Chet Pollert, Chairman opened the hearing on **HB 1017**, A Bill for an Act to provide an appropriation for defraying the expenses of the office of administrative hearings. All division members present: **Representatives Larry Bellew, Vice Chairman, James Kerzman, Ralph Metcalf, Mary Ekstrom, Jon Nelson, Gary Kreltdt, and Alon Wieland.**

Allen Hoberg, Director of the Office of Administrative Hearings, testified in support of the bill. (Copy of written testimony attached) It was stated the office's work consists almost exclusively of conducting administrative hearings for numerous state and local agencies or entities on a wide variety of administrative matters, including complaint or enforcement hearings, application hearings for a license or benefits, and appeals of various types of governmental actions. OAH provides independent administrative law judges to conduct hearings that were formerly conducted by in-house agency hearing officers, assistant attorneys general, or agency contract hearing officers.

Question asked and it was stated that the office is strictly a special fund agency. Questions asked about digital equipment, what is the authority of the agency, what kind of administrative hearings with WSI, salaries, number of hearings held, if OAR's granted ... increase to agency?

Question asked if the agency bills by the hour ... answer: bill currently at \$95.25 an hour.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1017

House Appropriations Committee
Human Resources Division

☐ Check here for Conference Committee

Hearing Date: February 1, 2007 Time: 10 am

Recorder Job Number: 2502

Committee Clerk Signature

Donna Kramer

Minutes:

Rep. Chet Pollert, Chairman opened the hearing on **HB 1017**, A Bill for an Act to provide an appropriation for defraying the expenses of the office of administrative hearings. All division members present: **Representatives Larry Bellew, Vice Chairman, James Kerzman, Ralph Metcalf, Mary Ekstrom, Jon Nelson, Gary Kreidt, and Alon Wieland.**

Chairman Pollert: Explained that the agency overview had already been heard and now the spend down would be reviewed.

Allen Hoberg, Director of the Office of Administrative Hearings, provided an **Addendum.** He explained that his agency uses federal funds and special funds. Very few general funds. Discussion on salaries increases, \$100,000 for increased caseload, estimated workload goes down - shift of funds, equity pool increases, work of temporary staff, and 4 and 4 salaries plus equity.

Adjournment.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1017

House Appropriations Committee
Human Resources Division

☐ Check here for Conference Committee

Hearing Date: February 5, 2007

Recorder Job Number: 2834

Committee Clerk Signature

Minutes:

Rep. Chet Pollert, Chairman opened the hearing on **HB 1017**, A Bill for an Act to provide an appropriation for defraying the expenses of the office of administrative hearings. All division members present: **Representatives Larry Bellew, Vice Chairman, Ralph Metcalf, Mary Ekstrom, Jon Nelson, Gary Kreidt, and Alon Wieland.** **Absent: Jim Kerzman.**

Representative Bellew: Made a motion to accept the amendment **78017.0101** on HB 1017.

Representative Wieland: Seconded the motion.

Representative Bellew: Explained the intent of the amendment as: "Takes away the special funds for the line item #2 on the Green Sheet ... "Adds funding for professional fees for temporary law judges due to anticipated increase in caseload for the Office of Administrative Hearings." Representative Bellew stated that was his understanding that this amount of money was not needed in their budget.

Chairman Pollert: Stated there had been a jump in caseload, but now it is coming back to normal and that is where the \$50,000 is coming from.

Allen Hoberg, Director of the Office of Administrative Hearings, stated they had put the optional request in because they thought they could use it. "It is not absolutely necessary, I think we can get by without it."

Page 2
House Appropriations Committee
Human Resources Division
Bill/Resolution No. 1017
Hearing Date: February 5, 2007

Discussion:

Representative Ekstrom: "My understanding is that they will come back to the Emergency Commission when they need this money."

Chairman Pollert: "That is correct."

Roll call on the Amendment 78017.0101 for a "Do Pass": 5 yes, 2 no and 1 absent.

Carrier: Representative Nelson

Representative Bellew: Motion to pass HB 1017 as amended.

Representative Kreidt: Seconded the motion.

Roll call for a "Do Pass as amended" on HB 1017: Yes - 5, no - 2, and 1 absent.

Carrier: Representative Nelson

Adjourned.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1017

House Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: February 8, 2007

Recorder Job Number: 3249

Committee Clerk Signature

Minutes:

Chairman Svedjan opened the hearing on HB 1017, budget bill for the Office of Administrative Hearings.

Rep. Nelson reviewed the Department 140 – Office of Administrative Hearings green sheet and described the changes made to the Executive recommendation.

Rep. Nelson motioned a Do Pass and then withdrew the motion until the amendment was adopted.

Amendment .0101 is distributed and Rep. Nelson points out that all the amendment does is remove the \$50,000 funding for law judges from the executive recommendation.

Rep. Nelson motioned the adoption of amendment .0101, **Rep. Metcalf** seconded the motion. The motion carried by voice vote and the amendment was adopted.

Rep. Nelson motions a Do Pass as amended. **Rep. Bellew** seconded the motion. The motion carried by a roll call vote of 22 ayes, 1 nay, and 1 absent and not voting. **Rep. Nelson** was designated to carry the bill.

Date: 02/05/07

Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1017

House HUMAN RESOURCES DIVISION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 78017.0101

Action Taken Do Pass

Motion Made By Rep. Bellew Seconded By Rep. Wieland

Representatives	Yes	No	Representatives	Yes	No
Chairman Pollet	x		Rep. Nelson	x	
Vice Chairman Bellew	x		Rep. Kerzman		
Rep. Wieland	x		Rep. Metcalf		x
Rep. Kreidt	x		Rep. Ekstrom		x

Total (Yes) 5 No 2

Absent 1

Floor Assignment _____

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

Takes away the special funds for the line item #2 on the Green Sheet.

Date: 02/05/07

Roll Call Vote #: 2

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1017

House HUMAN RESOURCES DIVISION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as amended

Motion Made By Rep. Bellew Seconded By Rep. Kreidt

Representatives	Yes	No	Representatives	Yes	No
Chairman Pollet	x		Rep. Nelson	x	
Vice Chairman Bellew	x		Rep. Kerzman		
Rep. Wieland	x		Rep. Metcalf		x
Rep. Kreidt	x		Rep. Ekstrom		x

Total (Yes) 5 No 2

Absent 1

Floor Assignment Representative Nelson

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

Date: 2/8/07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1017

House Appropriations Full Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number withdrawn

Action Taken No Pass

Motion Made By Rep. Nelson Seconded By Ekstrom

Representatives	Yes	No	Representatives	Yes	No
Chairman Svedjan					
Vice Chairman Kempenich					
Representative Wald			Representative Aarsvold		
Representative Monson			Representative Gulleson		
Representative Hawken					
Representative Klein					
Representative Martinson					
Representative Carlson			Representative Glassheim		
Representative Carlisle			Representative Kroeber		
Representative Skarphol			Representative Williams		
Representative Thoreson					
Representative Pollert			Representative Ekstrom		
Representative Bellew			Representative Kerzman		
Representative Kreidt			Representative Metcalf		
Representative Nelson					
Representative Wieland					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Date: 2/8/07
Roll Call Vote #: 2

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1017

House Appropriations Full Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 78017.0101

Action Taken No Pass as Amended by 0101

Motion Made By Nelson Seconded By Bellew

Representatives	Yes	No	Representatives	Yes	No
Chairman Svedjan	✓				
Vice Chairman Kempenich	✓				
Representative Wald	✓		Representative Aarsvold	✓	
Representative Monson	✓		Representative Gulleason	✓	
Representative Hawken	✓				
Representative Klein	✓				
Representative Martinson	✓				
Representative Carlson	✓		Representative Glassheim	✓	
Representative Carlisle	✓		Representative Kroeber	✓	
Representative Skarphol		✓	Representative Williams	✓	
Representative Thoreson	✓				
Representative Pollert	✓		Representative Ekstrom		
Representative Bellew	✓		Representative Kerzman	✓	
Representative Kreidt	✓		Representative Metcalf	✓	
Representative Nelson	✓				
Representative Wieland	✓				

Total (Yes) 22 No 1

Absent 1

Floor Assignment 4 Nelson

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

REPORT OF STANDING COMMITTEE

HB 1017: Appropriations Committee (Rep. Svedjan, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (22 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). HB 1017 was placed on the Sixth order on the calendar.

Page 1, line 15, replace "157,500" with "107,500"

Page 1, line 16, replace "384,247" with "334,247"

Page 1, line 22, replace "424,417" with "374,417"

Page 1, line 23, replace "1,694,091" with "1,644,091"

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1017 - Office of Administrative Hearings - House Action

	EXECUTIVE BUDGET	HOUSE CHANGES	HOUSE VERSION
Salaries and wages	\$1,269,674		\$1,269,674
Operating expenses	<u>424,417</u>	<u>(\$50,000)</u>	<u>374,417</u>
Total all funds	\$1,694,091	(\$50,000)	\$1,644,091
Less estimated income	<u>1,694,091</u>	<u>(50,000)</u>	<u>1,644,091</u>
General fund	\$0	\$0	\$0
FTE	8.00	0.00	8.00

Dept. 140 - Office of Administrative Hearings - Detail of House Changes

	DECREASES FUNDING FOR PROFESSIONAL SERVICES ¹	TOTAL HOUSE CHANGES
Salaries and wages		
Operating expenses	<u>(\$50,000)</u>	<u>(\$50,000)</u>
Total all funds	(\$50,000)	(\$50,000)
Less estimated income	<u>(50,000)</u>	<u>(50,000)</u>
General fund	\$0	\$0
FTE	0.00	0.00

¹ Decreases funding for professional fees for temporary law judges.

2007 SENATE APPROPRIATIONS

HB 1017

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1017

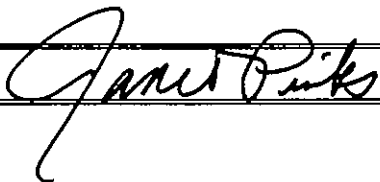
Senate Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: 3-12-07

Recorder Job Number: 4856

Committee Clerk Signature



Minutes:

Chairman Holmberg opened the hearing on HB 1017 indicating the subcommittee would be the same as that of DOT. He indicated we want to make sure that if the bill on hearings all fits together.

Allen Hoberg, Director, Office of Administrative Hearings, distributed written testimony and testified in support of HB 1017 indicating the work of the department consists of conducting administrative hearings from state and local agencies. He described the department hearings and the percentages coming from different agencies, the budget analysis, the professional services, the salaries and benefits and equity increases, the digital recordings, statistics, and the effect of Senate Bill 2375.

Chairman Holmberg asked if the salaries are the typical 4/4 or if this was in addition to. The response was yes, the 4/4.

Chairman Holmberg asked about the 4/4 increase at \$120,000 plus and the equity and whether he had any idea how much would be reduced. The response was he has no idea of the numbers.

Chairman Holmberg indicated he assumed that if that bill passes, in the end it will work out. The response was that he thought the appropriation would work with that bill rather than this bill.

Chairman Holmberg indicated SB 2375 will be back here if they make a recommendation and will be in conference committee.

Senator Mathem questioned who pays the tab when the PSC has a hearing. The response was that most hearings come out of the utility fund established by the utility fees and not the general fund. All agencies are billed for services.

Chairman Holmberg closed the hearing on HB 1017

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1017

Senate Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: 03-22-07

Recorder Job Number: 5484

Committee Clerk Signature



Minutes:

Chairman Holmberg opened the hearing on HB 1017 at 5:30 pm on March 22, 2003 regarding the Office of Administrative Hearings.

Senator Wardner distributed the amendments and explained them to the committee. He moved a do pass on the amendments, seconded by Senator Christmann, the amendment carried.

Senator Krauter had a questions asked about the FTE's, and the fee for services and where the money goes from these fees. Senator Wardner told him the money stays with DOT.

Senator Wardner moved a DO PASS AS AMENDED, Seconded by Senator Christmann.

A roll call vote was taken resulting in 14 yeas, 0 nays, 0 absent. The motion carried.

Senator Wardner will carry the bill.

The hearing on HB 1017 closed.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1017

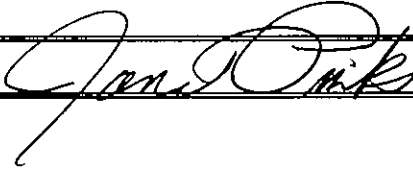
Senate Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: 04-05-07

Recorder Job Number: 5779

Committee Clerk Signature



Minutes:

Chairman Holmberg opened the hearing on HB 1017 on 04-05-07 distributing amendments which take the provisions of SB 2375 which we feel the House should have another chance to look at and make the effective date of the transfer August 1, 2008. In other words give an additional year for the agencies to meld and mesh together.

Senator Wardner moved to reconsider the action by which we passed, Senator Seymour seconded. No discussion. An oral vote was taken resulting in the motion passing.

Senator Wardner moved we reconsidered the action by which we amended and we amend further with these amendments, Senator Fischer seconded. Discussion was held.

Senator Mathern asked this to be explained again.

Senator Wardner indicated we are taking the hearings out of DOT and into the Office of Administrative Hearings. The funding is already in SB 2375 which was killed in the House.

Senator Mathern asked what we did on the original SB 2375.

Senator Wardner indicated we passed it out and here we moved up the date to August 1, 2008.

Chairman Holmberg indicated one issue in the House is with a change like this in four months was a little to much. This gives them a year. The argument on the bill was the same agency that is the judge is also the jury.

Senator Krauter indicated there is no reduction of FTE in DOT but there is the addition of one FTE in the Office of Administrative Hearings, correct?

Senator Wardner indicated there should be a reduction of FTE's in DOT and they are moved to the Office of Administrative Hearings. What really happens is when hearings take place then the Office of Administrative Hearings bills DOT.

Senator Krauter asked where the FTE is located in the amendment.

Allan Knudson indicated that when the bill was passed, there was no reduction of FTE's because these bills are still in limbo so no changes were made yet.

Chairman Holmberg indicated the same conferees will be on HB 1017 and DOT.

Senator Tallackson indicated there won't be a saving of FTE's because DOT has to stay in part way.

Senator Wardner did say we will need more administrative money but actually five FTE's will go to administrative hearings but the money stays with DOT and when the hearing comes up DOT transfers funds.

Senator Mathern asked why not have wording in here that it takes 5 FTE's out of DOT.

Senator Fischer is there other duties that the people have at DOT because they can't be taken out?

Senator Wardner indicated it is his understanding that is all they do; they are hearing officers over there and that is all they do. But as Senator Tallackson mentioned, DOT has to field this and pass it on to the Office of Administrative Hearing so they feel they may have to hire a half time person in order to facilitate that even though the hearings are over there they still have some requirements.

An oral vote was taken resulting in the amendment being approved.

Senator Fischer moved a do pass on HB 1017 as amended, Senator Wardner seconded. A roll call vote was taken resulting in 9 yes, 4 no, and 1 absent. The motion carried and Senator Wardner will carry the bill.

Chairman Holmberg closed the hearing on HB 1017.

JB
3-22-07

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1017

Page 1, line 14, replace "226,747" with "917,231"

Page 1, line 15, replace "107,500" with "186,722"

Page 1, line 16, replace "334,247" with "1,103,953"

Page 1, line 21, replace "1,269,674" with "1,960,158"

Page 1, line 22, replace "374,417" with "453,639"

Page 1, line 23, replace "1,644,091" with "2,413,797"

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1017 - Office of Administrative Hearings - Senate Action

	EXECUTIVE BUDGET	HOUSE VERSION	SENATE CHANGES	SENATE VERSION
Salaries and wages	\$1,269,674	\$1,269,674	\$690,484	\$1,960,158
Operating expenses	<u>424,417</u>	<u>374,417</u>	<u>79,222</u>	<u>453,639</u>
Total all funds	\$1,694,091	\$1,644,091	\$769,706	\$2,413,797
Less estimated income	<u>1,694,091</u>	<u>1,644,091</u>	<u>769,706</u>	<u>2,413,797</u>
General fund	\$0	\$0	\$0	\$0
FTE	8.00	8.00	5.00	13.00

Dept. 140 - Office of Administrative Hearings - Detail of Senate Changes

	ADDS FUNDING FOR DEPARTMENT OF TRANSPORTATION HEARINGS ¹	TOTAL SENATE CHANGES
Salaries and wages	\$690,484	\$690,484
Operating expenses	<u>79,222</u>	<u>79,222</u>
Total all funds	\$769,706	\$769,706
Less estimated income	<u>769,706</u>	<u>769,706</u>
General fund	\$0	\$0
FTE	5.00	5.00

¹ The Senate added funding relating to Senate Bill No. 2375, which transfers Department of Transportation hearings responsibility to the Office of Administrative Hearings.

Date: 3/22/07
Roll Call Vote #:

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1017

Senate Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number Amends 0201

Action Taken _____

Motion Made By Wardner Seconded By Christmann

Senators	Yes	No	Senators	Yes	No
Senator Ray Holmberg, Chrm			Senator Aaron Krauter		
Senator Bill Bowman, V Chrm			Senator Elroy N. Lindaas		
Senator Tony Grindberg, V Chrm			Senator Tim Mathern		
Senator Randel Christmann			Senator Larry J. Robinson		
Senator Tom Fischer			Senator Tom Seymour		
Senator Ralph L. Kilzer			Senator Harvey Tallackson		
Senator Karen K. Krebsbach					
Senator Rich Wardner					

Total (Yes) Carried No _____

Absent _____

Floor Assignment _____

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

Date: 3/22/07
Roll Call Vote #:

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1017

Senate Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken do pass as amended

Motion Made By Wardner Seconded By Christmann

Senators	Yes	No	Senators	Yes	No
Senator Ray Holmberg, Chrm	✓		Senator Aaron Krauter	✓	
Senator Bill Bowman, V Chrm	✓		Senator Elroy N. Lindaas	✓	
Senator Tony Grindberg, V Chrm	✓		Senator Tim Mathern	✓	
Senator Randel Christmann	✓		Senator Larry J. Robinson	✓	
Senator Tom Fischer	✓		Senator Tom Seymour	✓	
Senator Ralph L. Kilzer	✓		Senator Harvey Tallackson	✓	
Senator Karen K. Krebsbach	✓				
Senator Rich Wardner	✓				

Total (Yes) 14 No _____

Absent _____

Floor Assignment Wardner

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

REPORT OF STANDING COMMITTEE

HB 1017, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1017 was placed on the Sixth order on the calendar.

Page 1, line 14, replace "226,747" with "917,231"

Page 1, line 15, replace "107,500" with "186,722"

Page 1, line 16, replace "334,247" with "1,103,953"

Page 1, line 21, replace "1,269,674" with "1,960,158"

Page 1, line 22, replace "374,417" with "453,639"

Page 1, line 23, replace "1,644,091" with "2,413,797"

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1017 - Office of Administrative Hearings - Senate Action

	EXECUTIVE BUDGET	HOUSE VERSION	SENATE CHANGES	SENATE VERSION
Salaries and wages	\$1,269,674	\$1,269,674	\$690,484	\$1,960,158
Operating expenses	<u>424,417</u>	<u>374,417</u>	<u>79,222</u>	<u>453,639</u>
Total all funds	\$1,694,091	\$1,644,091	\$769,706	\$2,413,797
Less estimated income	<u>1,694,091</u>	<u>1,644,091</u>	<u>769,706</u>	<u>2,413,797</u>
General fund	\$0	\$0	\$0	\$0
FTE	8.00	8.00	5.00	13.00

Dept. 140 - Office of Administrative Hearings - Detail of Senate Changes

	ADDS FUNDING FOR DEPARTMENT OF TRANSPORTATION HEARINGS ¹	TOTAL SENATE CHANGES
Salaries and wages	\$690,484	\$690,484
Operating expenses	<u>79,222</u>	<u>79,222</u>
Total all funds	\$769,706	\$769,706
Less estimated income	<u>769,706</u>	<u>769,706</u>
General fund	\$0	\$0
FTE	5.00	5.00

¹ The Senate added funding relating to Senate Bill No. 2375, which transfers Department of Transportation hearings responsibility to the Office of Administrative Hearings.

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4-5-7
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PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1017

In lieu of the amendments adopted by the Senate as printed on page 953 of the Senate Journal, Engrossed House Bill No. 1017 is amended as follows:

Page 1, line 2, after "hearings" insert "; to amend and reenact sections 39-01-16, 39-02-03.1, 39-06-34, 39-06.1-11, 39-06.2-10.6, 39-06.2-10.7, and 39-06.2-10.8, subsection 1 of section 39-20-03.1, section 39-20-03.2, subsection 1 of section 39-20-04, sections 39-20-05 and 39-20-06, and subsection 1 of section 54-57-03 of the North Dakota Century Code, relating to the transfer of administrative hearings from the department of transportation to the office of administrative hearings; to provide for transition; and to provide an effective date"

Page 1, line 14, replace "226,747" with "571,989"

Page 1, line 15, replace "107,500" with "159,442"

Page 1, line 16, replace "334,247" with "731,431"

Page 1, line 21, replace "1,269,674" with "1,614,916"

Page 1, line 22, replace "374,417" with "426,359"

Page 1, line 23, replace "1,644,091" with "2,041,275"

Page 1, after line 23, insert:

"SECTION 4. AMENDMENT. Section 39-01-16 of the North Dakota Century Code is amended and reenacted as follows:

39-01-16. Hearing on alleged violations.

1. Any person having information that a licensed dealer has violated any provisions of this title may file with the director an affidavit specifically ~~setting forth each~~ stating the facts of the violation. Upon receipt of ~~such~~ the affidavit, the director shall investigate the violation alleged in the affidavit. If, after investigation, the director determines that the dealer's license will be revoked or suspended, a notice of intent to revoke or suspend the license must be mailed to the dealer by certified mail. The notice must provide the dealer with an opportunity for a hearing ~~prior to~~ before the effective date of the license revocation or suspension. A record of ~~such hearings~~ the hearing must be made by stenographic notes or use of an electronic recording device.
2. If after ~~such~~ the hearing the ~~director~~ administrative law judge finds the violation charged in the affidavit has been proved by the evidence, an order must be served on the licensee revoking or suspending the dealer's license for a period of time to be determined by the director. ~~Such~~ The action may be appealed to the district court by following the appeal procedure set forth in chapter 28-32, except that the order revoking or suspending the license is ineffective while the appeal is pending.

~~The director has the power to appoint an administrative hearing officer to conduct the hearing, administer oaths, and subpoena and examine witnesses. The~~

2 of 11

~~administrative hearing officer shall submit the findings to the director for consideration and final decision.~~

3. Any witness called by the prosecution, except a peace officer while on duty, ~~shall~~ must receive the same fees and mileage as a witness in a civil case in district court.

SECTION 5. AMENDMENT. Section 39-02-03.1 of the North Dakota Century Code is amended and reenacted as follows:

39-02-03.1. Director to provide notice and opportunity for hearing ~~prior to~~ before cancellation, revocation, suspension, or rescission of a motor vehicle registration or a certificate of title to a motor vehicle. ~~Whenever, under~~ Under the laws pertaining to the cancellation, revocation, suspension, or rescission of a registration of a motor vehicle or a certificate of title to a motor vehicle, if a determination has been made to cancel, revoke, suspend, or rescind either the registration or certificate of title, or both, the director shall provide the legal and registered owner with notice of ~~such~~ the cancellation, revocation, suspension, or rescission and the opportunity for a hearing. ~~Such~~ The notice must be sent by registered or certified mail, return receipt requested, not less than ten days ~~prior to~~ before the effective date of the cancellation, revocation, suspension, or rescission.

SECTION 6. AMENDMENT. Section 39-06-34 of the North Dakota Century Code is amended and reenacted as follows:

39-06-34. Director may require reexamination. In addition to other powers set forth in this chapter, the director, having good cause to believe that a licensed operator is incompetent or otherwise not qualified to be licensed, may upon written notice of at least five days to the licensee require the licensee to submit to such physical, mental, or driver's examination as may be deemed necessary. If the director has good cause to believe that the licensed operator presents an immediate danger to the motoring public, the director may immediately, and without prior notice, suspend the operator's license pending the examination. The notice of suspension must provide the operator with the opportunity for a hearing within five days of the receipt of the notice of suspension. When a hearing is requested it must be conducted under section 39-06-33 and the ~~hearing officer's~~ administrative law judge's recommended decision must be rendered within two days of the conclusion of the hearing. Upon the conclusion of such examination the director shall take action as may be appropriate and may suspend or revoke the license of such person or permit the licensee to retain the license, or may issue a license subject to restrictions as permitted under section 39-06-17. Refusal or neglect of the licensee to submit to such examination shall be grounds for suspension or revocation of the license.

SECTION 7. AMENDMENT. Section 39-06.1-11 of the North Dakota Century Code is amended and reenacted as follows:

39-06.1-11. Temporary restricted license - Ignition Interlock device.

1. Except as provided under subsection 2, if the director has suspended a license under section 39-06.1-10 or has extended a suspension or revocation under section 39-06-43, upon receiving written application from the offender affected, the director may for good cause issue a temporary restricted operator's license valid for the remainder of the suspension period after seven days of the suspension period have passed.
2. If the director has suspended a license under chapter 39-20, or after a violation of section 39-08-01 or equivalent ordinance, upon written application of the offender the director may issue for good cause a temporary restricted license that takes effect after thirty days of the suspension have been served after a first offense under section 39-08-01

or chapter 39-20. The director may not issue a temporary restricted license to any offender whose operator's license has been revoked under section 39-20-04 or suspended upon a second or subsequent offense under section 39-08-01 or chapter 39-20, except that a temporary restricted license may be issued for good cause if the offender has not committed an offense for a period of two years before the date of the filing of a written application that must be accompanied by a report from an addiction facility or if the offender is participating in the drug court program and has not committed an offense for a period of three hundred sixty-five days before the date of the filing of a written application that must be accompanied by a recommendation from the district court. The director may ~~conduct~~ request a hearing for the purposes of obtaining information, reports, and evaluations from courts, law enforcement, and citizens to determine the offender's conduct and driving behavior during the prerequisite period of time. The director may also require that an ignition interlock device be installed in the offender's vehicle.

3. The director may not issue a temporary restricted license for a period of license revocation or suspension imposed under subsection 5 of section 39-06-17, section 39-06-31, or subsection 3.1 of section 39-06.1-10. A temporary restricted license may be issued for suspensions ordered under subsection 7 of section 39-06-32 if it could have been issued had the suspension resulted from in-state conduct.
4. A restricted license issued under this section is solely for the use of a motor vehicle during the licensee's normal working hours and may contain any other restrictions authorized by section 39-06-17. Violation of a restriction imposed according to this section is deemed a violation of section 39-06-17.

SECTION 8. AMENDMENT. Section 39-06.2-10.6 of the North Dakota Century Code is amended and reenacted as follows:

39-06.2-10.6. Administrative hearing on request.

1. Before issuing an order of suspension, revocation, or disqualification under section 39-06.2-10, the director shall afford that person an opportunity for a hearing as provided by section 39-20-05, if the person mails a request for the hearing to the director within ten days after the date of issuance of the temporary driver's permit.
2. If the issue to be determined by the hearing concerns license suspension for operating a commercial motor vehicle while having an alcohol concentration of at least four one-hundredths of one percent by weight, the hearing must be before ~~a hearing officer assigned by the director~~ an administrative law judge and at a time and place designated by the director of the office of administrative hearings. The hearing must be recorded and its scope may cover only the issues of whether the arresting officer had reasonable grounds to believe the person had been driving or was in actual physical control of a commercial motor vehicle in violation of section 39-06.2-10.1, whether the person was lawfully detained, whether the person was tested in accordance with section 39-06.2-10.2, and whether the test results show the person had an alcohol concentration of at least four one-hundredths of one percent by weight. For purposes of this section, a copy of a certified copy of an analytical report of a blood or urine sample from the office of the director of the state crime laboratory or the director's designee, or a certified copy of the checklist and test records from a certified breath test operator establish prima facie the alcohol concentration shown therein. Whether the person was warned that the

privilege to drive might be suspended based on the results of the test is not an issue.

3. If the issue to be determined by the hearing concerns license revocation for refusing to submit to a test under section 39-06.2-10.2, the hearing must be before a ~~hearing officer assigned by the director~~ an administrative law judge at a time and place designated by the director of the office of administrative hearings. The hearing must be recorded. The scope of a hearing for refusing to submit to a test under section 39-06.2-10.2 may cover only the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a commercial motor vehicle in violation of section 39-06.2-10.1, whether the person was lawfully detained, and whether that person refused to submit to the test or tests. The scope of a hearing for refusing to submit to a test under subsection 3 of section 39-06.2-10.4 may cover only the issues of whether the law enforcement officer had reason to believe the person committed a moving traffic violation or was involved in a traffic accident as a driver, whether in conjunction with the violation or the accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol and, whether the person refused to submit to the onsite screening test. Whether the person was warned that the privilege to drive would be revoked or denied for refusal to submit to the test or tests is not an issue.
4. At a hearing under this section, the regularly kept records of the director may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, the following are deemed regularly kept records of the director: any copy of a certified copy of an analytical report of a blood or urine sample received by the director from the director of the state crime laboratory or the director's designee or a law enforcement officer, a certified copy of the checklist and test records received by the director from a certified breath test operator, and any copy of a certified copy of a certificate of the director of the state crime laboratory or the director's designee relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol concentration received by the director from the director of the state crime laboratory or the director's designee, or the recorder, unless the board of county commissioners has designated a different official to maintain the certificate.
5. At the close of the hearing, the ~~hearing officer~~ administrative law judge shall notify the person of the ~~hearing officer's~~ administrative law judge's findings of fact, conclusions of law, and decision based on the findings and conclusions and shall immediately deliver to the person a copy of the decision. If the ~~hearing officer~~ administrative law judge does not find in favor of the person, the copy of the decision serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state. If the ~~hearing officer~~ administrative law judge finds, based on a preponderance of the evidence, that the person refused a test under section 39-06.2-10.2 or that the person had an alcohol concentration of at least four one-hundredths of one percent by weight, the ~~hearing officer shall~~ administrative law judge immediately shall take possession of the person's temporary driver's permit issued under this chapter. If the ~~hearing officer~~ administrative law judge does not find against the person, the ~~hearing officer~~ administrative law judge shall sign, date, and mark on the person's permit an extension of driving privileges for the next twenty days and shall return the permit to the person. The ~~hearing officer~~ administrative law judge shall report the findings, conclusions, and decisions to the director within ten days of the conclusion of the hearing. If the ~~hearing officer~~ administrative law judge has determined in favor of the

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person, the director shall return the person's commercial driver's license by regular mail to the address on file with the director under section 39-06.2-08.

6. If the person who requested a hearing under this section fails to appear at the hearing without justification, the right to the hearing is waived, and the ~~hearing officer's~~ administrative law judge's determination on license revocation, suspension, or denial will be based on the written request for hearing, law enforcement officer's report, and other evidence as may be available. On the date for which the hearing is scheduled, the ~~hearing officer~~ administrative law judge shall mail to the person, by regular mail, at the address on file with the director under section 39-06-20, or at any other address for the person or the person's legal representative supplied in the request for hearing, a copy of the decision which serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state. Even if the person for whom the hearing is scheduled fails to appear at the hearing, the hearing is deemed to have been held on the date for which it is scheduled for purposes of appeal under section 39-06.2-10.7.
7. An administrative law judge assigned by the director of the office of administrative hearings to conduct a hearing under this section shall maintain and secure all related documents and evidence to maintain the privacy of records that have been affirmed which contain personal information.

SECTION 9. AMENDMENT. Section 39-06.2-10.7 of the North Dakota Century Code is amended and reenacted as follows:

39-06.2-10.7. Judicial review. ~~Any person whose commercial driver's license or privilege has been suspended, revoked, or denied~~ party adversely affected by the decision of the ~~hearing officer~~ administrative law judge under section 39-06.2-10.6 may appeal within seven days after the date of the hearing under section 39-06.2-10.6 as shown by the date of the ~~hearing officer's~~ administrative law judge's decision, section 28-32-42 notwithstanding, by serving on the director and filing a notice of appeal and specifications of error in the district court in the county where the events occurred for which the demand for a test was made, or in the county in which the administrative hearing was held. The court shall set the matter for hearing, and the petitioner shall give twenty days' notice of the hearing to the director and to the ~~hearing officer who rendered the decision.~~ Neither the director nor the The court may not stay the decision pending decision on appeal. Within twenty days after receipt of the notice of appeal, the director or the ~~hearing officer who rendered the decision~~ shall file in the office of the clerk of court to which the appeal is taken a certified transcript of the testimony and all other proceedings. It is the record on which the appeal must be determined. No The court may not hear additional evidence may be heard. The court shall affirm the decision of the ~~director or hearing officer~~ administrative law judge unless ~~it the court~~ finds the evidence insufficient to warrant the conclusion reached by the ~~director or hearing officer~~ administrative law judge. The court may direct that the matter be returned to the ~~director or hearing officer~~ administrative law judge for rehearing and the presentation of additional evidence.

SECTION 10. AMENDMENT. Section 39-06.2-10.8 of the North Dakota Century Code is amended and reenacted as follows:

39-06.2-10.8. Temporary driver's permit. A temporary driver's permit extends driving privileges for twenty-five days, unless earlier terminated by the decision of a ~~hearing officer~~ an administrative law judge under section 39-06.2-10.6. The law enforcement officer must sign and note the date of issuance on the temporary driver's permit. The temporary driver's permit serves as the director's official notification to the driver of the director's intent to revoke, suspend, or deny driving privileges in this state.

No A temporary driver's permit may not be issued for the period covered by an out-of-service order.

SECTION 11. AMENDMENT. Subsection 1 of section 39-20-03.1 of the North Dakota Century Code is amended and reenacted as follows:

1. The law enforcement officer shall immediately take possession of the person's operator's license if it is then available and shall immediately issue to that person a temporary operator's permit if the person then has valid operating privileges, extending driving privileges for the next twenty-five days, or until earlier terminated by the decision of ~~a hearing officer~~ an administrative law judge under section 39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke, suspend, or deny driving privileges in this state.

SECTION 12. AMENDMENT. Section 39-20-03.2 of the North Dakota Century Code is amended and reenacted as follows:

39-20-03.2. Action following test result or on refusing test by nonresident operator. If a person licensed in another state refuses in this state to submit to a test provided under section 39-20-01 or 39-20-14, or who submits to a test under section 39-20-01, 39-20-02, or 39-20-03 and the test results show the person to have an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight at the time of performance of a test within two hours after driving or being in physical control of a motor vehicle, the following procedures apply:

1. Without taking possession of the person's out-of-state operator's license, the law enforcement officer shall issue to the person a notification of the test results and a temporary operator's permit extending nonresident operating privileges in this state for twenty-five days from the date of issuance or until earlier terminated by the decision of ~~a hearing officer~~ an administrative law judge under section 39-20-05. The temporary permit must be signed and dated by the officer and serves as the director's official notification to the person of the director's intent to revoke, suspend, or deny driving privileges in this state, and of the hearing procedures under this chapter.
2. If the test was administered by saliva or urine sample or by drawing blood, the law enforcement officer, on reviewing the alcohol concentration analysis showing the person had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, shall mail or issue to the person a notification of the test results, a temporary operator's permit extending nonresident operating privileges in this state for twenty-five days from the date of mailing or issuance or until earlier terminated by the decision of ~~a hearing officer~~ an administrative law judge under section 39-20-05, and notice of the intent to revoke, suspend, or deny driving privileges in this state, together with the notice provided under section 39-06.1-07 of the procedures available under this chapter. The temporary operator's permit must be signed and dated by the officer.
3. The law enforcement officer, within five days of issuing the temporary operator's permit, shall forward to the director a certified written report in the form required by the director and a certified copy of the operational checklist and test records of a breath test and a copy of the certified copy

of the analytical report for a blood, saliva, or urine test for all tests administered at the direction of the officer. If the person was issued a temporary operator's permit because of the person's refusal to submit to a test under sections 39-20-01 and 39-20-14, the report must include information as provided in section 39-20-04. If the person was issued a temporary operator's permit because of the results of a test, the report must show that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01, or equivalent ordinance, that the person was lawfully arrested, that the person was tested for alcohol concentration under this chapter, and that the results of the test show that the person had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight.

SECTION 13. AMENDMENT. Subsection 1 of section 39-20-04 of the North Dakota Century Code is amended and reenacted as follows:

1. If a person refuses to submit to testing under section 39-20-01 or 39-20-14, none may be given, but the law enforcement officer shall immediately take possession of the person's operator's license if it is then available and shall immediately issue to that person a temporary operator's permit, if the person then has valid operating privileges, extending driving privileges for the next twenty-five days or until earlier terminated by a decision of a ~~hearing officer~~ an administrative law judge under section 39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke driving privileges in this state and of the hearing procedures under this chapter. The director, upon the receipt of that person's operator's license and a certified written report of the law enforcement officer in the form required by the director, forwarded by the officer within five days after issuing the temporary operator's permit, showing that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01 or equivalent ordinance or, for purposes of section 39-20-14, had reason to believe that the person committed a moving traffic violation or was involved in a traffic accident as a driver, and in conjunction with the violation or accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol, that the person was lawfully arrested if applicable, and that the person had refused to submit to the test or tests under section 39-20-01 or 39-20-14, shall revoke that person's license or permit to drive and any nonresident operating privilege for the appropriate period under this section, or if the person is a resident without a license or a permit to operate a motor vehicle in this state, the director shall deny to the person the issuance of a license or permit for the appropriate period under this section after the date of the alleged violation, subject to the opportunity for a prerevocation hearing and postrevocation review as provided in this chapter. In the revocation of the person's operator's license the director shall give credit for time in which the person was without an operator's license after the day of the person's refusal to submit to the test except that the director may not give credit for time in which the person retained driving privileges through a temporary operator's permit issued under this section or section 39-20-03.2. The period of revocation or denial of issuance of a license or permit under this section is:
 - a. One year if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license has not previously been suspended, revoked, or

issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.

- b. Three years if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license has been once previously suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
- c. Four years if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license has at least twice previously been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any combination of the same, and the suspensions, revocations, or denials resulted from at least two separate arrests.

SECTION 14. AMENDMENT. Section 39-20-05 of the North Dakota Century Code is amended and reenacted as follows:

39-20-05. Administrative hearing on request.

1. Before issuing an order of suspension, revocation, or denial under section 39-20-04 or 39-20-04.1, the director shall afford that person an opportunity for a hearing if the person mails or communicates by other means authorized by the director a request for the hearing to the director within ten days after the date of issuance of the temporary operator's permit. The hearing must be held within thirty days after the date of issuance of the temporary operator's permit. If ~~no~~ a hearing is not requested within the time limits in this section, and ~~no~~ an affidavit is not submitted within the time limits under subsection 2 of section 39-20-04, the expiration of the temporary operator's permit serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state.
2. If the issue to be determined by the hearing concerns license suspension for operating a motor vehicle while having an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, the hearing must be before ~~a hearing officer assigned by the director~~ an administrative law judge and at a time and place designated by the director of the office of administrative hearings. The hearing must be recorded and its scope may cover only the issues of whether the arresting officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance or, with respect to a person under twenty-one years of age, the person had been driving or was in actual physical control of a vehicle while having an alcohol concentration of at least two one-hundredths of one percent by weight; whether the person was placed under arrest, unless the person was under twenty-one years of age and the alcohol concentration was less than eight one-hundredths of one percent by weight, then arrest is not required and is not an issue under any provision of this chapter; whether the person was tested in accordance with section 39-20-01 or 39-20-03 and, if applicable, section 39-20-02; and whether the test results show the person had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight. For purposes of this section, a copy of a certified copy of an analytical report of a blood, urine, or saliva sample from the director of the

state crime laboratory or the director's designee or a certified copy of the checklist and test records from a certified breath test operator establish prima facie the alcohol concentration shown therein. Whether the person was informed that the privilege to drive might be suspended based on the results of the test is not an issue.

3. If the issue to be determined by the hearing concerns license revocation for refusing to submit to a test under section 39-20-01 or 39-20-14, the hearing must be before ~~a hearing officer assigned by the director~~ an administrative law judge at a time and place designated by the director of the office of administrative hearings. The hearing must be recorded. The scope of a hearing for refusing to submit to a test under section 39-20-01 may cover only the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance or, with respect to a person under twenty-one years of age, the person had been driving or was in actual physical control of a vehicle while having an alcohol concentration of at least two one-hundredths of one percent by weight; whether the person was placed under arrest; and whether that person refused to submit to the test or tests. The scope of a hearing for refusing to submit to a test under section 39-20-14 may cover only the issues of whether the law enforcement officer had reason to believe the person committed a moving traffic violation or was involved in a traffic accident as a driver, whether in conjunction with the violation or the accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol and, whether the person refused to submit to the onsite screening test. Whether the person was informed that the privilege to drive would be revoked or denied for refusal to submit to the test or tests is not an issue.
4. At a hearing under this section, the regularly kept records of the director may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, the following are deemed regularly kept records of the director: any copy of a certified copy of an analytical report of a blood, urine, or saliva sample received by the director from the director of the state crime laboratory or the director's designee or a law enforcement officer, a certified copy of the checklist and test records received by the director from a certified breath test operator, and any copy of a certified copy of a certificate of the director of the state crime laboratory or the director's designee relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol concentration received by the director from the director of the state crime laboratory, the director's designee, or the recorder, unless the board of county commissioners has designated a different official to maintain the certificate.
5. At a hearing under this section, the administrative law judge may introduce records, conduct examinations, and present evidence relating to the issues to be determined at the hearing. The department may be represented by legal counsel at any hearing under this section.
6. At the close of the hearing, the ~~hearing officer~~ administrative law judge shall notify the person of the ~~hearing officer's~~ administrative law judge's findings of fact, conclusions of law, and decision based on the findings and conclusions and shall immediately deliver to the person a copy of the decision. If the ~~hearing officer~~ administrative law judge does not find in favor of the person, the copy of the decision serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state. If the ~~hearing officer~~ administrative law judge finds, based on a preponderance of the evidence, that the person refused a test

under section 39-20-01 or 39-20-14 or that the person had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, the ~~hearing officer shall~~ administrative law judge immediately shall take possession of the person's temporary operator's permit issued under this chapter. If the ~~hearing officer~~ administrative law judge does not find against the person, the ~~hearing officer~~ administrative law judge shall sign, date, and mark on the person's permit an extension of driving privileges for the next twenty days and shall return the permit to the person. The ~~hearing officer~~ administrative law judge shall report the findings, conclusions, and decisions to the director within ten days of the conclusion of the hearing. If the ~~hearing officer~~ administrative law judge has determined in favor of the person, the director shall return the person's operator's license by regular mail to the address on file with the director under section 39-06-20.

6. 7. If the person who requested a hearing under this section fails to appear at the hearing without justification, the right to the hearing is waived, and the ~~hearing officer's~~ administrative law judge's determination on license revocation, suspension, or denial will be based on the written request for hearing, law enforcement officer's report, and other evidence as may be available. The ~~hearing officer shall~~ administrative law judge, on the date for which the hearing is scheduled, shall mail to the person, by regular mail, at the address on file with the director under section 39-06-20, or at any other address for the person or the person's legal representative supplied in the request for hearing, a copy of the decision which serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state. Even if the person for whom the hearing is scheduled fails to appear at the hearing, the hearing is deemed to have been held on the date for which it is scheduled for purposes of appeal under section 39-20-06.

SECTION 15. AMENDMENT. Section 39-20-06 of the North Dakota Century Code is amended and reenacted as follows:

39-20-06. Judicial review. Any person whose operator's license or privilege has been suspended, revoked, or denied partly adversely affected by the decision of the ~~hearing officer~~ administrative law judge under section 39-20-05 may appeal within seven days after the date of the hearing under section 39-20-05 as shown by the date of the ~~hearing officer's~~ administrative law judge's decision, section 28-32-42 notwithstanding, by serving on the director and filing a notice of appeal and specifications of error in the district court in the county where the events occurred for which the demand for a test was made, or in the county in which the administrative hearing was held. The court shall set the matter for hearing, and the petitioner shall give twenty days' notice of the hearing to the director ~~and to the hearing officer who rendered the decision.~~ Neither the director nor the. The court may not stay the decision pending decision on appeal. Within twenty days after receipt of the notice of appeal, the director ~~or the hearing officer who rendered the decision~~ shall file in the office of the clerk of court to which the appeal is taken a certified transcript of the testimony and all other proceedings. It is the record on which the appeal must be determined. ~~No~~ The court may not hear additional evidence may be heard. The court shall affirm the decision of the ~~director or hearing officer~~ administrative law judge unless ~~it the court~~ finds the evidence insufficient to warrant the conclusion reached by the ~~director or hearing officer~~ administrative law judge. The court may direct that the matter be returned to the ~~director or hearing officer~~ administrative law judge for rehearing and the presentation of additional evidence.

SECTION 16. AMENDMENT. Subsection 1 of section 54-57-03 of the North Dakota Century Code is amended and reenacted as follows:

- 112611
1. Notwithstanding the authority granted in chapter 28-32 allowing agency heads or other persons to preside in an administrative proceeding, all adjudicative proceedings of administrative agencies under chapter 28-32, except those of the public service commission, the industrial commission, the insurance commissioner, workforce safety and insurance, the state engineer, ~~the department of transportation~~, job service North Dakota, and the labor commissioner, must be conducted by the office of administrative hearings in accordance with the adjudicative proceedings provisions of chapter 28-32 and any rules adopted pursuant to chapter 28-32. ~~But, appeals~~ Appeals hearings pursuant to section 61-03-22 and drainage appeals from water resource boards to the state engineer pursuant to chapter 61-32 must be conducted by the office of administrative hearings. ~~Additionally, hearings~~ Hearings of the department of corrections and rehabilitation for the parole board in accordance with chapter 12-59; regarding parole violations; job discipline and dismissal appeals to the board of higher education; Individuals With Disabilities Education Act and section 504 due process hearings of the superintendent of public instruction; and chapter 37-19.1 veterans' preferences hearings for any agency must be conducted by the office of administrative hearings in accordance with applicable laws.

SECTION 17. TRANSITION. The office of administrative hearings shall consider first hiring as employees all full-time department of transportation hearing officer employees who currently conduct hearings for the department of transportation.

SECTION 18. EFFECTIVE DATE. Sections 4 through 17 of this Act become effective on August 1, 2008."

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1017 - Office of Administrative Hearings - Senate Action

	EXECUTIVE BUDGET	HOUSE VERSION	SENATE CHANGES	SENATE VERSION
Salaries and wages	\$1,269,674	\$1,269,674	\$345,242	\$1,614,916
Operating expenses	<u>424,417</u>	<u>374,417</u>	<u>51,942</u>	<u>426,359</u>
Total all funds	\$1,694,091	\$1,644,091	\$397,184	\$2,041,275
Less estimated income	<u>1,694,091</u>	<u>1,644,091</u>	<u>397,184</u>	<u>2,041,275</u>
General fund	\$0	\$0	\$0	\$0
FTE	8.00	8.00	5.00	13.00

Dept. 140 - Office of Administrative Hearings - Detail of Senate Changes

	ADDS FUNDING FOR DEPARTMENT OF TRANSPORTATION HEARINGS ¹	TOTAL SENATE CHANGES
Salaries and wages	\$345,242	\$345,242
Operating expenses	<u>51,942</u>	<u>51,942</u>
Total all funds	\$397,184	\$397,184
Less estimated income	<u>397,184</u>	<u>397,184</u>
General fund	\$0	\$0
FTE	5.00	5.00

¹ The Senate added funding relating to the transfer of Department of Transportation hearings to the Office of Administrative Hearings effective August 1, 2008.

The Senate incorporated the provisions of Senate Bill No. 2375, which transfers Department of Transportation hearings responsibility to the Office of Administrative Hearings, into House Bill No. 1017. The effective date of the transfer is August 1, 2008.

Date:
Roll Call Vote #:

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1017

Senate Appropriations

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken

DP as Amend

Motion Made By

Fischer

Seconded By

Ward

Senators	Yes	No	Senators	Yes	No
Senator Ray Holmberg, Chrm	✓		Senator Aaron Krauter		✓
Senator Bill Bowman, V Chrm	✓		Senator Elroy N. Lindaas		✓
Senator Tony Grindberg, V Chrm	✓		Senator Tim Mathern		✓
Senator Randel Christmann	✓		Senator Larry J. Robinson		✓
Senator Tom Fischer	✓		Senator Tom Seymour	✓	
Senator Ralph L. Kilzer	✓		Senator Harvey Tallackson		✓
Senator Karen K. Krebsbach	✓				
Senator Rich Wardner	✓				

Total (Yes)

9

No

4

Absent

1

Floor Assignment

Wardner

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

REPORT OF STANDING COMMITTEE

HB 1017, as engrossed and amended: Appropriations Committee (Sen. Holmberg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1017, as amended, was placed on the Sixth order on the calendar.

In lieu of the amendments adopted by the Senate as printed on page 953 of the Senate Journal, Engrossed House Bill No. 1017 is amended as follows:

Page 1, line 2, after "hearings" insert "; to amend and reenact sections 39-01-16, 39-02-03.1, 39-06-34, 39-06.1-11, 39-06.2-10.6, 39-06.2-10.7, and 39-06.2-10.8, subsection 1 of section 39-20-03.1, section 39-20-03.2, subsection 1 of section 39-20-04, sections 39-20-05 and 39-20-06, and subsection 1 of section 54-57-03 of the North Dakota Century Code, relating to the transfer of administrative hearings from the department of transportation to the office of administrative hearings; to provide for transition; and to provide an effective date"

Page 1, line 14, replace "226,747" with "571,989"

Page 1, line 15, replace "107,500" with "159,442"

Page 1, line 16, replace "334,247" with "731,431"

Page 1, line 21, replace "1,269,674" with "1,614,916"

Page 1, line 22, replace "374,417" with "426,359"

Page 1, line 23, replace "1,644,091" with "2,041,275"

Page 1, after line 23, insert:

"SECTION 4. AMENDMENT. Section 39-01-16 of the North Dakota Century Code is amended and reenacted as follows:

39-01-16. Hearing on alleged violations.

1. Any person having information that a licensed dealer has violated any provisions of this title may file with the director an affidavit specifically ~~setting forth such~~ stating the facts of the violation. Upon receipt of ~~such~~ the affidavit, the director shall investigate the violation alleged in the affidavit. If, after investigation, the director determines that the dealer's license will be revoked or suspended, a notice of intent to revoke or suspend the license must be mailed to the dealer by certified mail. The notice must provide the dealer with an opportunity for a hearing ~~prior to~~ before the effective date of the license revocation or suspension. A record of ~~such hearings~~ the hearing must be made by stenographic notes or use of an electronic recording device.
2. If after ~~such~~ the hearing the ~~director~~ administrative law judge finds the violation charged in the affidavit has been proved by the evidence, an order must be served on the licensee revoking or suspending the dealer's license for a period of time to be determined by the director. ~~Such~~ The action may be appealed to the district court by following the appeal procedure set forth in chapter 28-32, except that the order revoking or suspending the license is ineffective while the appeal is pending.

~~The director has the power to appoint an administrative hearing officer to conduct the hearing, administer oaths, and subpoena and examine witnesses. The administrative hearing officer shall submit the findings to the director for consideration and final decision.~~

3. Any witness called by the prosecution, except a peace officer while on duty, ~~shall~~ must receive the same fees and mileage as a witness in a civil case in district court.

SECTION 5. AMENDMENT. Section 39-02-03.1 of the North Dakota Century Code is amended and reenacted as follows:

39-02-03.1. Director to provide notice and opportunity for hearing ~~prior to~~ before cancellation, revocation, suspension, or rescision of a motor vehicle registration or a certificate of title to a motor vehicle. ~~Whenever, under~~ Under the laws pertaining to the cancellation, revocation, suspension, or rescision of a registration of a motor vehicle or a certificate of title to a motor vehicle, ~~if~~ a determination has been made to cancel, revoke, suspend, or rescind either the registration or certificate of title, or both, the director shall provide the legal and registered owner with notice of ~~such the~~ cancellation, revocation, suspension, or rescision and the opportunity for a hearing. ~~Such~~ The notice must be sent by registered or certified mail, return receipt requested, not less than ten days ~~prior to~~ before the effective date of the cancellation, revocation, suspension, or rescision.

SECTION 6. AMENDMENT. Section 39-06-34 of the North Dakota Century Code is amended and reenacted as follows:

39-06-34. Director may require reexamination. In addition to other powers set forth in this chapter, the director, having good cause to believe that a licensed operator is incompetent or otherwise not qualified to be licensed, may upon written notice of at least five days to the licensee require the licensee to submit to such physical, mental, or driver's examination as may be deemed necessary. If the director has good cause to believe that the licensed operator presents an immediate danger to the motoring public, the director may immediately, and without prior notice, suspend the operator's license pending the examination. The notice of suspension must provide the operator with the opportunity for a hearing within five days of the receipt of the notice of suspension. When a hearing is requested it must be conducted under section 39-06-33 and the ~~hearing officer's~~ administrative law judge's recommended decision must be rendered within two days of the conclusion of the hearing. Upon the conclusion of such examination the director shall take action as may be appropriate and may suspend or revoke the license of such person or permit the licensee to retain the license, or may issue a license subject to restrictions as permitted under section 39-06-17. Refusal or neglect of the licensee to submit to such examination shall be grounds for suspension or revocation of the license.

SECTION 7. AMENDMENT. Section 39-06.1-11 of the North Dakota Century Code is amended and reenacted as follows:

39-06.1-11. Temporary restricted license - Ignition interlock device.

1. Except as provided under subsection 2, if the director has suspended a license under section 39-06.1-10 or has extended a suspension or revocation under section 39-06-43, upon receiving written application from the offender affected, the director may for good cause issue a temporary restricted operator's license valid for the remainder of the suspension period after seven days of the suspension period have passed.

2. If the director has suspended a license under chapter 39-20, or after a violation of section 39-08-01 or equivalent ordinance, upon written application of the offender the director may issue for good cause a temporary restricted license that takes effect after thirty days of the suspension have been served after a first offense under section 39-08-01 or chapter 39-20. The director may not issue a temporary restricted license to any offender whose operator's license has been revoked under section 39-20-04 or suspended upon a second or subsequent offense under section 39-08-01 or chapter 39-20, except that a temporary restricted license may be issued for good cause if the offender has not committed an offense for a period of two years before the date of the filing of a written application that must be accompanied by a report from an addiction facility or if the offender is participating in the drug court program and has not committed an offense for a period of three hundred sixty-five days before the date of the filing of a written application that must be accompanied by a recommendation from the district court. The director may ~~conduct~~ request a hearing for the purposes of obtaining information, reports, and evaluations from courts, law enforcement, and citizens to determine the offender's conduct and driving behavior during the prerequisite period of time. The director may also require that an ignition interlock device be installed in the offender's vehicle.
3. The director may not issue a temporary restricted license for a period of license revocation or suspension imposed under subsection 5 of section 39-06-17, section 39-06-31, or subsection 3.1 of section 39-06.1-10. A temporary restricted license may be issued for suspensions ordered under subsection 7 of section 39-06-32 if it could have been issued had the suspension resulted from in-state conduct.
4. A restricted license issued under this section is solely for the use of a motor vehicle during the licensee's normal working hours and may contain any other restrictions authorized by section 39-06-17. Violation of a restriction imposed according to this section is deemed a violation of section 39-06-17.

SECTION 8. AMENDMENT. Section 39-06.2-10.6 of the North Dakota Century Code is amended and reenacted as follows:

39-06.2-10.6. Administrative hearing on request.

1. Before issuing an order of suspension, revocation, or disqualification under section 39-06.2-10, the director shall afford that person an opportunity for a hearing as provided by section 39-20-05, if the person mails a request for the hearing to the director within ten days after the date of issuance of the temporary driver's permit.
2. If the issue to be determined by the hearing concerns license suspension for operating a commercial motor vehicle while having an alcohol concentration of at least four one-hundredths of one percent by weight, the hearing must be before ~~a hearing officer assigned by the director~~ an administrative law judge and at a time and place designated by the director of the office of administrative hearings. The hearing must be recorded and its scope may cover only the issues of whether the arresting officer had reasonable grounds to believe the person had been driving or was in actual physical control of a commercial motor vehicle in violation of section 39-06.2-10.1, whether the person was lawfully detained, whether the person was tested in accordance with section 39-06.2-10.2, and

whether the test results show the person had an alcohol concentration of at least four one-hundredths of one percent by weight. For purposes of this section, a copy of a certified copy of an analytical report of a blood or urine sample from the office of the director of the state crime laboratory or the director's designee, or a certified copy of the checklist and test records from a certified breath test operator establish prima facie the alcohol concentration shown therein. Whether the person was warned that the privilege to drive might be suspended based on the results of the test is not an issue.

3. If the issue to be determined by the hearing concerns license revocation for refusing to submit to a test under section 39-06.2-10.2, the hearing must be before ~~a hearing officer assigned by the director~~ an administrative law judge at a time and place designated by the director of the office of administrative hearings. The hearing must be recorded. The scope of a hearing for refusing to submit to a test under section 39-06.2-10.2 may cover only the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a commercial motor vehicle in violation of section 39-06.2-10.1, whether the person was lawfully detained, and whether that person refused to submit to the test or tests. The scope of a hearing for refusing to submit to a test under subsection 3 of section 39-06.2-10.4 may cover only the issues of whether the law enforcement officer had reason to believe the person committed a moving traffic violation or was involved in a traffic accident as a driver, whether in conjunction with the violation or the accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol and, whether the person refused to submit to the onsite screening test. Whether the person was warned that the privilege to drive would be revoked or denied for refusal to submit to the test or tests is not an issue.
4. At a hearing under this section, the regularly kept records of the director may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, the following are deemed regularly kept records of the director: any copy of a certified copy of an analytical report of a blood or urine sample received by the director from the director of the state crime laboratory or the director's designee or a law enforcement officer, a certified copy of the checklist and test records received by the director from a certified breath test operator, and any copy of a certified copy of a certificate of the director of the state crime laboratory or the director's designee relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol concentration received by the director from the director of the state crime laboratory or the director's designee, or the recorder, unless the board of county commissioners has designated a different official to maintain the certificate.
5. At the close of the hearing, the ~~hearing officer~~ administrative law judge shall notify the person of the ~~hearing officer's~~ administrative law judge's findings of fact, conclusions of law, and decision based on the findings and conclusions and shall immediately deliver to the person a copy of the decision. If the ~~hearing officer~~ administrative law judge does not find in favor of the person, the copy of the decision serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state. If the ~~hearing officer~~ administrative law judge finds, based on a preponderance of the evidence, that the person refused a test under section 39-06.2-10.2 or that the person had an alcohol

concentration of at least four one-hundredths of one percent by weight, the ~~hearing officer shall~~ administrative law judge immediately shall take possession of the person's temporary driver's permit issued under this chapter. If the ~~hearing officer~~ administrative law judge does not find against the person, the ~~hearing officer~~ administrative law judge shall sign, date, and mark on the person's permit an extension of driving privileges for the next twenty days and shall return the permit to the person. The ~~hearing officer~~ administrative law judge shall report the findings, conclusions, and decisions to the director within ten days of the conclusion of the hearing. If the ~~hearing officer~~ administrative law judge has determined in favor of the person, the director shall return the person's commercial driver's license by regular mail to the address on file with the director under section 39-06.2-08.

6. If the person who requested a hearing under this section fails to appear at the hearing without justification, the right to the hearing is waived, and the ~~hearing officer's~~ administrative law judge's determination on license revocation, suspension, or denial will be based on the written request for hearing, law enforcement officer's report, and other evidence as may be available. On the date for which the hearing is scheduled, the ~~hearing officer~~ administrative law judge shall mail to the person, by regular mail, at the address on file with the director under section 39-06-20, or at any other address for the person or the person's legal representative supplied in the request for hearing, a copy of the decision which serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state. Even if the person for whom the hearing is scheduled fails to appear at the hearing, the hearing is deemed to have been held on the date for which it is scheduled for purposes of appeal under section 39-06.2-10.7.
7. An administrative law judge assigned by the director of the office of administrative hearings to conduct a hearing under this section shall maintain and secure all related documents and evidence to maintain the privacy of records that have been affirmed which contain personal information.

SECTION 9. AMENDMENT. Section 39-06.2-10.7 of the North Dakota Century Code is amended and reenacted as follows:

39-06.2-10.7. Judicial review. ~~Any person whose commercial driver's license or privilege has been suspended, revoked, or denied~~ party adversely affected by the decision of the ~~hearing officer~~ administrative law judge under section 39-06.2-10.6 may appeal within seven days after the date of the hearing under section 39-06.2-10.6 as shown by the date of the ~~hearing officer's~~ administrative law judge's decision, section 28-32-42 notwithstanding, by serving on the director and filing a notice of appeal and specifications of error in the district court in the county where the events occurred for which the demand for a test was made, or in the county in which the administrative hearing was held. The court shall set the matter for hearing, and the petitioner shall give twenty days' notice of the hearing to the director ~~and to the hearing officer who rendered the decision. Neither the director nor the~~ The court may not stay the decision pending decision on appeal. Within twenty days after receipt of the notice of appeal, the director ~~or the hearing officer who rendered the decision~~ shall file in the office of the clerk of court to which the appeal is taken a certified transcript of the testimony and all other proceedings. It is the record on which the appeal must be determined. ~~No~~ The court may not hear additional evidence may be heard. The court shall affirm the decision of the ~~director or hearing officer~~ administrative law judge unless ~~it~~ the court finds the evidence insufficient to warrant the conclusion reached by

the ~~director or hearing officer~~ administrative law judge. The court may direct that the matter be returned to the ~~director or hearing officer~~ administrative law judge for rehearing and the presentation of additional evidence.

SECTION 10. AMENDMENT. Section 39-06.2-10.8 of the North Dakota Century Code is amended and reenacted as follows:

39-06.2-10.8. Temporary driver's permit. A temporary driver's permit extends driving privileges for twenty-five days, unless earlier terminated by the decision of ~~a hearing officer~~ an administrative law judge under section 39-06.2-10.6. The law enforcement officer must sign and note the date of issuance on the temporary driver's permit. The temporary driver's permit serves as the director's official notification to the driver of the director's intent to revoke, suspend, or deny driving privileges in this state. ~~No~~ A temporary driver's permit may not be issued for the period covered by an out-of-service order.

SECTION 11. AMENDMENT. Subsection 1 of section 39-20-03.1 of the North Dakota Century Code is amended and reenacted as follows:

1. The law enforcement officer shall immediately take possession of the person's operator's license if it is then available and shall immediately issue to that person a temporary operator's permit if the person then has valid operating privileges, extending driving privileges for the next twenty-five days, or until earlier terminated by the decision of ~~a hearing officer~~ an administrative law judge under section 39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke, suspend, or deny driving privileges in this state.

SECTION 12. AMENDMENT. Section 39-20-03.2 of the North Dakota Century Code is amended and reenacted as follows:

39-20-03.2. Action following test result or on refusing test by nonresident operator. If a person licensed in another state refuses in this state to submit to a test provided under section 39-20-01 or 39-20-14, or who submits to a test under section 39-20-01, 39-20-02, or 39-20-03 and the test results show the person to have an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight at the time of performance of a test within two hours after driving or being in physical control of a motor vehicle, the following procedures apply:

1. Without taking possession of the person's out-of-state operator's license, the law enforcement officer shall issue to the person a notification of the test results and a temporary operator's permit extending nonresident operating privileges in this state for twenty-five days from the date of issuance or until earlier terminated by the decision of ~~a hearing officer~~ an administrative law judge under section 39-20-05. The temporary permit must be signed and dated by the officer and serves as the director's official notification to the person of the director's intent to revoke, suspend, or deny driving privileges in this state, and of the hearing procedures under this chapter.
2. If the test was administered by saliva or urine sample or by drawing blood, the law enforcement officer, on reviewing the alcohol concentration analysis showing the person had an alcohol concentration of at least eight

one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, shall mail or issue to the person a notification of the test results, a temporary operator's permit extending nonresident operating privileges in this state for twenty-five days from the date of mailing or issuance or until earlier terminated by the decision of a ~~hearing officer~~ an administrative law judge under section 39-20-05, and notice of the intent to revoke, suspend, or deny driving privileges in this state, together with the notice provided under section 39-06.1-07 of the procedures available under this chapter. The temporary operator's permit must be signed and dated by the officer.

3. The law enforcement officer, within five days of issuing the temporary operator's permit, shall forward to the director a certified written report in the form required by the director and a certified copy of the operational checklist and test records of a breath test and a copy of the certified copy of the analytical report for a blood, saliva, or urine test for all tests administered at the direction of the officer. If the person was issued a temporary operator's permit because of the person's refusal to submit to a test under sections 39-20-01 and 39-20-14, the report must include information as provided in section 39-20-04. If the person was issued a temporary operator's permit because of the results of a test, the report must show that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01, or equivalent ordinance, that the person was lawfully arrested, that the person was tested for alcohol concentration under this chapter, and that the results of the test show that the person had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight.

SECTION 13. AMENDMENT. Subsection 1 of section 39-20-04 of the North Dakota Century Code is amended and reenacted as follows:

1. If a person refuses to submit to testing under section 39-20-01 or 39-20-14, none may be given, but the law enforcement officer shall immediately take possession of the person's operator's license if it is then available and shall immediately issue to that person a temporary operator's permit, if the person then has valid operating privileges, extending driving privileges for the next twenty-five days or until earlier terminated by a decision of ~~a hearing officer~~ an administrative law judge under section 39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke driving privileges in this state and of the hearing procedures under this chapter. The director, upon the receipt of that person's operator's license and a certified written report of the law enforcement officer in the form required by the director, forwarded by the officer within five days after issuing the temporary operator's permit, showing that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01 or equivalent ordinance or, for purposes of section 39-20-14, had reason to believe that the person committed a moving traffic violation or was involved in a traffic accident as a driver, and in conjunction with the violation or accident the officer has, through the officer's observations, formulated an opinion that the person's body

contains alcohol, that the person was lawfully arrested if applicable, and that the person had refused to submit to the test or tests under section 39-20-01 or 39-20-14, shall revoke that person's license or permit to drive and any nonresident operating privilege for the appropriate period under this section, or if the person is a resident without a license or a permit to operate a motor vehicle in this state, the director shall deny to the person the issuance of a license or permit for the appropriate period under this section after the date of the alleged violation, subject to the opportunity for a prerevocation hearing and postrevocation review as provided in this chapter. In the revocation of the person's operator's license the director shall give credit for time in which the person was without an operator's license after the day of the person's refusal to submit to the test except that the director may not give credit for time in which the person retained driving privileges through a temporary operator's permit issued under this section or section 39-20-03.2. The period of revocation or denial of issuance of a license or permit under this section is:

- a. One year if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license has not previously been suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
- b. Three years if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license has been once previously suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
- c. Four years if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license has at least twice previously been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any combination of the same, and the suspensions, revocations, or denials resulted from at least two separate arrests.

SECTION 14. AMENDMENT. Section 39-20-05 of the North Dakota Century Code is amended and reenacted as follows:

39-20-05. Administrative hearing on request.

1. Before issuing an order of suspension, revocation, or denial under section 39-20-04 or 39-20-04.1, the director shall afford that person an opportunity for a hearing if the person mails or communicates by other means authorized by the director a request for the hearing to the director within ten days after the date of issuance of the temporary operator's permit. The hearing must be held within thirty days after the date of issuance of the temporary operator's permit. If ~~no~~ a hearing is not requested within the time limits in this section, and ~~no~~ an affidavit is not submitted within the time limits under subsection 2 of section 39-20-04, the expiration of the temporary operator's permit serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state.
2. If the issue to be determined by the hearing concerns license suspension for operating a motor vehicle while having an alcohol concentration of at

least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, the hearing must be before ~~a hearing officer assigned by the director~~ an administrative law judge and at a time and place designated by the director of the office of administrative hearings. The hearing must be recorded and its scope may cover only the issues of whether the arresting officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance or, with respect to a person under twenty-one years of age, the person had been driving or was in actual physical control of a vehicle while having an alcohol concentration of at least two one-hundredths of one percent by weight; whether the person was placed under arrest, unless the person was under twenty-one years of age and the alcohol concentration was less than eight one-hundredths of one percent by weight, then arrest is not required and is not an issue under any provision of this chapter; whether the person was tested in accordance with section 39-20-01 or 39-20-03 and, if applicable, section 39-20-02; and whether the test results show the person had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight. For purposes of this section, a copy of a certified copy of an analytical report of a blood, urine, or saliva sample from the director of the state crime laboratory or the director's designee or a certified copy of the checklist and test records from a certified breath test operator establish prima facie the alcohol concentration shown therein. Whether the person was informed that the privilege to drive might be suspended based on the results of the test is not an issue.

3. If the issue to be determined by the hearing concerns license revocation for refusing to submit to a test under section 39-20-01 or 39-20-14, the hearing must be before ~~a hearing officer assigned by the director~~ an administrative law judge at a time and place designated by the director of the office of administrative hearings. The hearing must be recorded. The scope of a hearing for refusing to submit to a test under section 39-20-01 may cover only the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance or, with respect to a person under twenty-one years of age, the person had been driving or was in actual physical control of a vehicle while having an alcohol concentration of at least two one-hundredths of one percent by weight; whether the person was placed under arrest; and whether that person refused to submit to the test or tests. The scope of a hearing for refusing to submit to a test under section 39-20-14 may cover only the issues of whether the law enforcement officer had reason to believe the person committed a moving traffic violation or was involved in a traffic accident as a driver, whether in conjunction with the violation or the accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol and, whether the person refused to submit to the onsite screening test. Whether the person was informed that the privilege to drive would be revoked or denied for refusal to submit to the test or tests is not an issue.
4. At a hearing under this section, the regularly kept records of the director may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, the following are deemed regularly kept records of the director: any copy of a certified copy

of an analytical report of a blood, urine, or saliva sample received by the director from the director of the state crime laboratory or the director's designee or a law enforcement officer, a certified copy of the checklist and test records received by the director from a certified breath test operator, and any copy of a certified copy of a certificate of the director of the state crime laboratory or the director's designee relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol concentration received by the director from the director of the state crime laboratory, the director's designee, or the recorder, unless the board of county commissioners has designated a different official to maintain the certificate.

5. At a hearing under this section, the administrative law judge may introduce records, conduct examinations, and present evidence relating to the issues to be determined at the hearing. The department may be represented by legal counsel at any hearing under this section.
6. At the close of the hearing, the ~~hearing officer~~ administrative law judge shall notify the person of the ~~hearing officer's~~ administrative law judge's findings of fact, conclusions of law, and decision based on the findings and conclusions and shall immediately deliver to the person a copy of the decision. If the ~~hearing officer~~ administrative law judge does not find in favor of the person, the copy of the decision serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state. If the ~~hearing officer~~ administrative law judge finds, based on a preponderance of the evidence, that the person refused a test under section 39-20-01 or 39-20-14 or that the person had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, the ~~hearing officer shall~~ administrative law judge immediately shall take possession of the person's temporary operator's permit issued under this chapter. If the ~~hearing officer~~ administrative law judge does not find against the person, the ~~hearing officer~~ administrative law judge shall sign, date, and mark on the person's permit an extension of driving privileges for the next twenty days and shall return the permit to the person. The ~~hearing officer~~ administrative law judge shall report the findings, conclusions, and decisions to the director within ten days of the conclusion of the hearing. If the ~~hearing officer~~ administrative law judge has determined in favor of the person, the director shall return the person's operator's license by regular mail to the address on file with the director under section 39-06-20.
- 6- 7. If the person who requested a hearing under this section fails to appear at the hearing without justification, the right to the hearing is waived, and the ~~hearing officer's~~ administrative law judge's determination on license revocation, suspension, or denial will be based on the written request for hearing, law enforcement officer's report, and other evidence as may be available. The ~~hearing officer shall~~ administrative law judge, on the date for which the hearing is scheduled, shall mail to the person, by regular mail, at the address on file with the director under section 39-06-20, or at any other address for the person or the person's legal representative supplied in the request for hearing, a copy of the decision which serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state. Even if the person for whom the hearing is scheduled fails to appear at the hearing, the

hearing is deemed to have been held on the date for which it is scheduled for purposes of appeal under section 39-20-06.

SECTION 15. AMENDMENT. Section 39-20-06 of the North Dakota Century Code is amended and reenacted as follows:

39-20-06. Judicial review. Any ~~person whose operator's license or privilege has been suspended, revoked, or denied~~ party adversely affected by the decision of the ~~hearing officer~~ administrative law judge under section 39-20-05 may appeal within seven days after the date of the hearing under section 39-20-05 as shown by the date of the ~~hearing officer's~~ administrative law judge's decision, section 28-32-42 notwithstanding, by serving on the director and filing a notice of appeal and specifications of error in the district court in the county where the events occurred for which the demand for a test was made, or in the county in which the administrative hearing was held. The court shall set the matter for hearing, and the petitioner shall give twenty days' notice of the hearing to the director ~~and to the hearing officer who rendered the decision.~~ Neither the director nor the ~~hearing officer~~. The court may not stay the decision pending decision on appeal. Within twenty days after receipt of the notice of appeal, the director ~~or the hearing officer who rendered the decision~~ shall file in the office of the clerk of court to which the appeal is taken a certified transcript of the testimony and all other proceedings. It is the record on which the appeal must be determined. ~~No~~ The court may not hear additional evidence ~~may be heard~~. The court shall affirm the decision of the ~~director or hearing officer~~ administrative law judge unless it the court finds the evidence insufficient to warrant the conclusion reached by the ~~director or hearing officer~~ administrative law judge. The court may direct that the matter be returned to the ~~director or hearing officer~~ administrative law judge for rehearing and the presentation of additional evidence.

SECTION 16. AMENDMENT. Subsection 1 of section 54-57-03 of the North Dakota Century Code is amended and reenacted as follows:

1. Notwithstanding the authority granted in chapter 28-32 allowing agency heads or other persons to preside in an administrative proceeding, all adjudicative proceedings of administrative agencies under chapter 28-32, except those of the public service commission, the industrial commission, the insurance commissioner, workforce safety and insurance, the state engineer, ~~the department of transportation~~, job service North Dakota, and the labor commissioner, must be conducted by the office of administrative hearings in accordance with the adjudicative proceedings provisions of chapter 28-32 and any rules adopted pursuant to chapter 28-32. ~~But,~~ Appeals ~~appeals~~ hearings pursuant to section 61-03-22 and drainage appeals from water resource boards to the state engineer pursuant to chapter 61-32 must be conducted by the office of administrative hearings. ~~Additionally, hearings~~ Hearings of the department of corrections and rehabilitation for the parole board in accordance with chapter 12-59; regarding parole violations; job discipline and dismissal appeals to the board of higher education; Individuals With Disabilities Education Act and section 504 due process hearings of the superintendent of public instruction; and chapter 37-19.1 veterans' preferences hearings for any agency must be conducted by the office of administrative hearings in accordance with applicable laws.

SECTION 17. TRANSITION. The office of administrative hearings shall consider first hiring as employees all full-time department of transportation hearing officer employees who currently conduct hearings for the department of transportation.

SECTION 18. EFFECTIVE DATE. Sections 4 through 17 of this Act become effective on August 1, 2008."

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1017 - Office of Administrative Hearings - Senate Action

	EXECUTIVE BUDGET	HOUSE VERSION	SENATE CHANGES	SENATE VERSION
Salaries and wages	\$1,269,674	\$1,269,674	\$345,242	\$1,614,916
Operating expenses	<u>424,417</u>	<u>374,417</u>	<u>51,942</u>	<u>426,359</u>
Total all funds	\$1,694,091	\$1,644,091	\$397,184	\$2,041,275
Less estimated income	<u>1,694,091</u>	<u>1,644,091</u>	<u>397,184</u>	<u>2,041,275</u>
General fund	\$0	\$0	\$0	\$0
FTE	8.00	8.00	5.00	13.00

Dept. 140 - Office of Administrative Hearings - Detail of Senate Changes

	ADDS FUNDING FOR DEPARTMENT OF TRANSPORTATION HEARINGS ¹	TOTAL SENATE CHANGES
Salaries and wages	\$345,242	\$345,242
Operating expenses	<u>51,942</u>	<u>51,942</u>
Total all funds	\$397,184	\$397,184
Less estimated income	<u>397,184</u>	<u>397,184</u>
General fund	\$0	\$0
FTE	5.00	5.00

¹ The Senate added funding relating to the transfer of Department of Transportation hearings to the Office of Administrative Hearings effective August 1, 2008.

The Senate incorporated the provisions of Senate Bill No. 2375, which transfers Department of Transportation hearings responsibility to the Office of Administrative Hearings, into House Bill No. 1017. The effective date of the transfer is August 1, 2008.

2007 HOUSE APPROPRIATIONS

CONFERENCE COMMITTEE

HB 1017

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1017

House Appropriations Committee
Human Resource Division

☒ Check here for Conference Committee

Hearing Date: April 20, 2007

Recorder Job Number: 6200

Committee Clerk Signature

Minutes:

Chm. Carlson called the Conference Committee on HB 1017 to order. All conferees were present including, Reps. Carlson, Ruby and Glassheim and Sens. Wardner, Krebsbach and Tallackson.

Chm. Carlson: My understanding is that there was only one change added in the Senate.

Sen. Wardner referred to amendment 78017.0203 (Attachment A).

Sen. Wardner: These amendments transfer the Dept. of Transportation (DOT) hearings to the Office of Administrative Hearings (OAH). Five FTEs will be transferred from the DOT to the OAH. The cost of this move is \$769,706. This bill gives the OAH the authority to receive and spend these funds from the DOT. It's my understanding that the monies at the DOT, as you have those hearings the OAH they chargeback, they assess back to the DOT for that hearing that affects one of their issues.

Sen. Wardner referred the Committee to p. 11 of Attachment A and reviewed the Senate changes.

Chm. Carlson: Is that the right number? You said \$769, 706 to begin with and there's another amendment with a different number in it which is dated before this.

Roxanne Woeste, Legislative Council: The \$700,000 figure was an earlier amendment adopted by the Senate. This amendment, .0203, is the most current with the most current amounts in there, \$397,184.

Chm. Carlson: \$397?

Sen. Wardner: Yes, it is. It was downsized, but there are five FTEs with that that will go over. The Senate added funding related to the transfer of the DOT hearings to the OAH effective August 1, 2008. That's why it got split in half.

Chm. Carlson: Is anybody here from OAH? Do you have any comments you would like to make on this transfer?

Allen Hoberg, Director, Office of Administrative Hearings: As I have testified previously on this bill, this is not a change we have sought. I have also testified that if this change is made we can do it. I think the funding that's provided in here would be adequate to do it for the remaining one year of the biennium. Personally, I think all hearings should be conducted by independent hearing officers but as I said we haven't sought this change, we were neutral in both the House and the Senate on this. If the legislature wishes us to do these hearings, we'd be glad to do them.

Chm. Carlson: Let's talk about how this is done today. If I'm picked up for – this is mostly for DUI – is it not?

Mr. Hoberg: Correct.

Chm. Carlson: If I'm picked up for DUI and I'm going to challenge it, what happens to me today?

Mr. Hoberg: You might be better off asking DOT.

Chm. Carlson: Is there anyone here from DOT who can explain? This is the point of contention – do you want to move it or do you not?

Tim Horner, Deputy Director for Business Support, Department of Transportation: At this time when a DUI does occur, the person charged does have the right to ask for a secondary hearing. That hearing is conducted by the DOT. Our hearing officers conduct the hearings, it's with the driver and almost all the time with their attorney in place. That occurs roughly 1,400 times per year. There are many other suspensions, but those 1,400 are those who elect to have a hearing. The ruling is made, which could be appealed . . .

Chm. Carlson: But then it goes to district court, does it not? It can if they appeal it.

Mr. Horner: Correct.

Chm. Carlson: So they get picked up, they come in – who's going to be there when they get there?

Mr. Horner: It will be our hearing officer,

Chm. Carlson: Is the patrolman usually present? Whoever the arresting officer was?

Mr. Horner: Yes.

Chm. Carlson: And it's at your office?

Mr. Horner: Yes. It can be in the district office as well, it's not only in the central office.

Chm. Carlson: If I was picked up in Fargo, I could have it in Fargo instead of having to drive out here for that if I appealed it?

Mr. Horner: Yes.

Chm. Carlson: OAH, how would you do it?

Mr. Hoberg: I think we would do it essentially the same. We'd have administrative officers around the state conducting the hearing.

Chm. Carlson: So it would again be in the locations, not out here?

Mr. Hoberg: We would be in the location where the event occurred. The only difference would be that we would be independent hearing officers as opposed to being from the department.

There was testimony at the other hearings that if we conduct the hearings they would want some representation for counsel there. I don't completely understand why that would be necessary in every case but that was the testimony.

Chm. Carlson: I'm not following.

Mr. Hoberg: Counsel representing the state, the agency, because we would be an independent hearing officer we would not be employed by the department.

Chm. Carlson: But the way this bill is written, it could still be the same person, he just moved offices, he's still paid the same way other than his check is from you instead of the DOT, correct?

Mr. Hoberg: That is correct. It could be.

Chm. Carlson: I'm sure there were concerns about the FTEs losing their positions because those people over at DOT have been there for years. What would be your intent? I know there's a little intent language that says you will first consider hiring . . . do you have enough people already to do this or would you need the five new people?

Mr. Hoberg: We don't have enough. We would have to hire five new people. Certainly we'd give, as the language says in the bill, we'd give them every consideration the people that are over there. I wouldn't be required to hire them. I can't say for a fact that I would hire them. I would be foolish not to hire at least some of them because they know what they're doing over there.

Rep. Glassheim: Would they get the same pay in both departments?

Mr. Hoberg: I think the pay would be slightly more.

Rep. Glassheim: I have heard that (inaudible) likely be paying for a state lawyer to represent the state's case. Why do you think that is not likely? It could be quite expensive if you're going to send lawyers all over the state to be at these hearings.

Chm. Carlson: That's why it's called an administrative hearing instead of a trial.

Mr. Hoberg: The contention would be that for most if not all of the hearings because it's conducted in front of a neutral agency. You would need to have representation to represent the state's side. However, we do lots of other hearings for other departments, especially Human Services, where there are no attorney's present. I can't tell that for every case there doesn't need to be an attorney. There may need to be for some. I have difficulty understanding why just because we're conducting a hearing pretty much the same you have to have representation for every case.

Rep. Glassheim: Do the people appealing to your hearing officers bring their own attorneys? Sometimes? Often? At all?

Mr. Horner: In almost all cases there is an attorney present with the DUI accused.

Chm. Carlson: But you don't have a staff attorney that sits with your hearing judge?

Mr. Horner: Our hearing officers are attorneys.

Chm. Carlson: But you don't have a state appointed attorney from the Attorney General's office there?

Mr. Horner: No. Where it did come up was during the hearing in the Transportation Committee. The Highway Patrol testified that if it changed to another location, it would be likely that the officers who were presenting their side would like to have representation. That's how that issue arose. That representation isn't for the state – I don't think that statement is correct. It's more for the jurisdiction that is bringing forth the case.

Chm. Carlson: That could happen with any violation they have. There was a point of conflict there whether it was properly following the laws by the officer I guess that could happen in any situation, could it not?

Mr. Horner: I assume yes.

Chm. Carlson: The Senate passed SB 2375 which was this bill. Correct?

Mr. Horner: Correct.

Chm. Carlson: The House Transportation Committee had the bill, it came to the House floor and I believe it was defeated. Rep. Ruby, I need your input as to the rationale of where this should be.

Rep. Ruby: The discussion taking place is similar to what we heard. When this got steered into the discussion about representation that was an issue for us because as we looked at that the number that was brought to us for possible costs, and I have an amendment to put that on, would be \$450,000 for representation. It's not just DUI. It's dealership license suspensions as well. From the policy committee standpoint, we had a couple of people speaking in support of the bill, and we asked them, what is the rationale for this? Do you expect any different outcome? We asked to be shown the differences, some examples of abuses, of problems – a list of cases that have been overturned in the district courts because of wrong decisions in the administrative hearing process. None of that was brought. It was all presented to us on a basis of the perception of it being independent. Basically, for perception, we thought the cost that this change would have made just for perception when there was not one example of a change of outcome or proof of an abuse was why we defeated the bill. It got a 21-68 vote in the House. There were three different fiscal notes on this – one with an appropriation of \$841,580, one with \$943,766 and one with \$769,706. With all those numbers and from what we were told, this was for perception. We didn't think it was the right way to go. I was interested in finding out why we should do this other than because of perception of the independence.

Sen. Wardner: The \$400,000 is for the state to be represented? We would have to pay that much for counsel for those people?

Rep. Ruby distributed amendment .0204 (Attachment B) which describes the \$450,000 appropriation to the DOT for representation.

Chm. Carlson: What was the reason for the money? I haven't followed the train of thought as to why an attorney is required and it's never been required before.

Rep. Ruby: At this point the administrative hearing officer, not necessarily being the person that just defends the DOT's position on it, they look at it and the way they look at the issues and the cases that come before them, they are checking to see at all the procedures are done right within DOT. The department hasn't needed to have someone defend their case. I imagine that if the patrol officers are there they are explaining what they're doing. When you put it in another office they need somebody to explain and show the DOT's procedures to administrative hearing judges who, in the beginning may be the same people that were hearing officers at the time but may be different people in the future. DOT felt that it would be best to have some representation. The Highway Patrol feels that it would be better to have someone represent their position on this and we agreed. If you're going to have an attorney on one side and a defendant, you're going to have somebody who's going to represent the case for the arresting officers and for the decisions DOT is making they should have somebody representing them.

Chm. Carlson: But this is not a full fledged trial. This is taking the existing evidence, is it not? Now we're adding a mini trial when you set another attorney on so you have an independent administrative hearing officer and you have an attorney for one side, . . . that's a lawsuit. Now you have attorneys on both sides and you've lost the focus of getting the job done without having to do that. I think that's the reason for setting up the administrative hearings process years ago was to not do that.

Chm. Carlson asked Mr. Hoberg to approach the podium.

Chm. Carlson: You represent lots of agencies in state government, correct?

Mr. Hoberg: Correct.

Chm. Carlson: Are they all coming with their own attorney?

Mr. Hoberg: No. Some they come with no attorney. Some there is an attorney for one side and others we have attorneys on both sides.

Chm. Carlson: But it's not required that each side have an attorney?

Mr. Hoberg: It's not required.

Chm. Carlson: Are you an arbitrator? A final decision maker? How would you view your position as an independent hearing agency?

Mr. Hoberg: We're a decision maker. We make mostly recommended decisions to the agency head. Sometimes final decisions. We're not an arbitrator. We're not a mediator. I believe in these cases they would be final decisions. We would not be making a recommendation to the Highway Dept.

Rep. Glassheim: It all has to do with license suspensions.

Chm. Carlson: But you're addressing what we have in statute already and you're giving the defendant an opportunity to defend himself.

Mr. Hoberg: These are administrative matters only. There may be a corresponding criminal matter going on, but we're not dealing with those here.

Chm. Carlson: You are only dealing with the code violation they were cited for.

Rep. Glassheim: It only has to do with the DUI license suspension.

Mr. Hoberg: That's correct. There are other types of hearings.

Mr. Horner: There are other hearings – 300 per year.

Chm. Carlson: Everything would transfer from DOT to OAH?

Mr. Horner: That's our understanding.

Rep. Ruby: A lot of times there is a criminal case being heard. This is almost like a civil case where you don't need "beyond a reasonable doubt." They go by "the preponderance of the evidence."

Sen. Wardner: Do you feel the DOT would have to defend their rules?

Mr. Horner: The basis of the representation is more about the procedural activities that went on at the DUI arrest. If an attorney for the DUI questions anything it's not going to be the BAC level, it's going to be the procedures that led up to it. Our hearing officers at this time are very well trained in those aspects and very knowledgeable about case law of what is an acceptable argument and what isn't. In this transfer, we envision that the law enforcement officer would need to answer those questions.

Chm. Carlson: But you've been doing this for years and you haven't had a second attorney all these years.

Mr. Horner: We have not. We've been representing our department and the DUI process at the same time. It's going to be an independent agency that's going to be representing the hearing process in that new situation.

Rep. Glassheim: Out of the 1,400 or 1,700 appeals, how many are overturned?

Mr. Horner: I can't tell you off hand.

Chm. Carlson: We are not here to pit two agencies against each other. It's not to say that either one of you would not do a good job.

Mr. Horner: I appreciate that statement. Our concerns are that our staff would be transferred. They are very experienced. The second issue has to do with the financing. In our current situation, we do not need to appeal our own rulings. But if this moves to OAH, that would be a ruling of another agency. So then the DOT doesn't have the appeal capability. That was an

issue we raised in our testimony. An amendment was offered indicating that we would like the appeal capability.

Sen. Wardner: Wouldn't it be the Highway Patrol, shouldn't their troopers get the money to defend their officers?

Chm. Carlson: It could be a county sheriff, local law enforcement officer – it's just not the highway patrol.

Sen. Tallackson: I oppose this move. I can't help but believe that it's doubling up of efforts. I can't see where this doesn't cost more money to do this.

Chm. Carlson: If the appeal process is applied to one side it also should be applied to the other.

Mr. Hoberg: When we conduct hearings for an agency, we're conducting the agency hearing. We issue the final decision for the Highway Department and I think the way the bill is written it would be a Highway Department decision. Even though it's a final decision, there's case law that says an agency can appeal that. So I disagree that they can't be appeal by the department.

Sen. Krebsbach: If the money is to go to the law enforcement how is that different from what they're doing today? They're not be renumarated today are they?

Chm. Carlson: Not that I'm aware of. Our citizens deserve an opportunity to defend themselves if they feel they are wronged. There is some perception that the judge, jury and the executioner are all in one place. Whether it's true or not, that is the perception. That should be our debate. We're not arguing over budget. We're only going to meet one more time.

Chm. Carlson adjourned the meeting.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1017

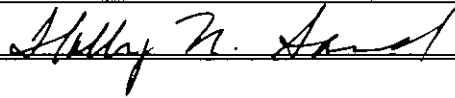
House Appropriations Committee
Human Resource Division

☒ Check here for Conference Committee

Hearing Date: April 20, 2007

Recorder Job Number: 6227

Committee Clerk Signature



Minutes:

Chm. Carlson called the Conference Committee on HB 1017 to order. The following conferees were present: Reps. Carlson, Owens, Glassheim and Sens. Wardner, Krebsbach and Tallackson.

Chm. Carlson: The only confusion I had was the fiscal note that Rep. Ruby brought in with another appropriation of \$450,000. I still don't understand how it can cost more money when it's the same people doing the same thing. But now he wants other representation.

Rep. Glassheim: My understanding was the state will have to have lawyers to represent their side. The \$450,000 is for new costs to represent the state in the hearing in from of the ALJ.

Chm. Carlson asked OAH rep to approach the podium. You do hearings for all sorts of agencies. Who do you represent during the hearing?

Allen Hoberg, Director, Office of Administrative Hearings: We sit as the hearing officer for the agency. Some hearings have attorneys on both sides, some have an attorney for only one side, sometimes there are no attorneys. It is the opinion that if we conduct these hearings they would need attorneys to represent their interests.

Chm. Carlson: We don't do that for any other department.

Mr. Hoberg: The Attorney General does provide legal representation for some cases that come before us.

Chm. Carlson: And would he not do the same thing for DOT?

Mr. Hoberg: He probably would, but he would probably bill them for it.

Chm. Carlson: In essence, you are the hearing officer for the DOT?

Mr. Hoberg: Yes.

Chm. Carlson: That \$450,000 seems to me to try and kill something with a fiscal note.

Rep. Owens: It's in reference to p. 8 of bill .0400, lines 2 and 12 and that is duplicated in another location. The current code references "any person whose privileges have been suspended." What we're talking about here is if we take it out of DOT then giving them the ability to appeal. That's why that was changed to "any party adversely affected" meaning the state or the individual being charged. DOT did not say they would require representation in all cases just that they may do it in some. Based on the 1,800 they do, they have an idea of what they might use.

Chm. Carlson: The \$450,000 proves to me that it probably should be moved out of DOT if they don't need one when they're the judge and the jury but they need one when they're not, then I'm not so sure that's the right logic to ask for more money.

Sen. Wardner: It wouldn't be the \$450,000 because there's a delayed implementation in this bill. It would be half that.

Chm. Carlson: So it would be half of that amount if necessary. The addition then is the \$397,000 to this budget and it's been removed in some language somewhere else from DOT?

Sen. Wardner: The money is at DOT and they pay it in this bill. This amendment gave OAH the right to bill DOT for services and use the money they receive that way and appropriate it to salaries.

Chm. Carlson: So there's no change. It's the same dollars.

Francis Ziegler, Director, North Dakota Department of Transportation: The money is still in the DOT and needs to stay there because we will be billed for the services of those hearings. It's in a different place. Right now it's in the salary line item but will ultimately have to be moved into contracts or fees as we get billed by the OAH. We expect that bill to be in the neighborhood of \$600,000.

Chm. Carlson: In the biennium.

Mr. Ziegler: Over the years the process has developed. As this moves over, we have always said that the DOT is relatively neutral on this thing with the exception that we have great people on staff. All I've ever heard is that the reason for this bill is that it's a perception that it may not be fair since it's in the DOT and the DOT officers are the ones hearing the case. We have asked that the employees that we have be allowed to move with the process and that there be adequate funding. We don't know if the employees aren't moved and there needs to be some sort of start up and that costs money. As we go into writing fiscal notes, it's difficult to pin down what the amounts need to be. If the people are moved over, that's going to be a lot less than the \$450,000. We also requested an appeal process and I believe that's been put into the amendments.

Chm. Carlson: Why would you need an appeal process now and you don't need one when you're doing the same thing at your place?

Mr. Ziegler: Because what we have done over the years is train these employees, . . . , as Deputy Director Keith Magnusson has said, there are time he would have liked to appeal but, we learn from what we do and we look forward to the next case.

Chm. Carlson: I struggle with your last two points – why you need money for attorneys and why you need an appeal process when you didn't need one before. I do agree with you about

the employees. I don't know what discussion there was in the Senate. I notice there's an amendment here that says, "shall consider first hiring." I don't know what that means.

Rep. Owens: That was one of the questions I'd written down that I remembered hearing was the transfer of personnel. It was in the bill that came to the floor of the House and it was twofold: Because we didn't want to just throw them out and they had all this experience. During testimony in the House we got conflicting statements on the current personnel because we had in written testimony that they would go out and hire new people and yet we were told verbally on record that they wouldn't hire new people, by two different people. That was confusing. There was an amendment in that bill that talked about the transfer of personnel.

Rep. Glassheim: One of the five different versions of the bill had that they "will be" transferred. But now it says they will be considered first.

Chm. Carlson: Senator, do you remember your conversations?

Sen. Wardner: It didn't come through Appropriations. It was tacked onto an Appropriations bill. If you wonder why we are so quiet, that's why. We have no problem amending it to say that those employees from DOT have to go along – make that part of the motion.

Mr. Hoberg: We don't have any problem with that. I didn't propose the amendment that changed it from having to hire them to giving them consideration. If I had my druthers, I'd rather be able to hire, but I don't have a problem with you transferring them all over to us.

Chm. Carlson: I don't want to add money in here from retraining people and starting over.

Rep. Glassheim: I came down here ready to defend transferring because conceptually it's right to have arms length. It's better to have somebody who's neutral rather than somebody who's being paid by the agency directly and in the same building. But I asked them to give me the numbers and the hearing officer in DOT handles 1,470 appeals from the arrests. They overturned 348 of those (24%) and my conclusion from that is that one out of four get the

patrolman's finding overturned on hearing and I consider that to be pretty fair. That number shows that they're not biased. There's still the appearance of bias. I'm now, I guess I'll go either way anyway it goes, but that convinces me that maybe it's easier just to let it stand the way it is and that if 24 percent of the people are having the thing overturned, . . . , and then of the 800 or so who are not overturned, 147 appeal to district court and of those 12 (8%) are affirmed. I could see leaving it where it is although conceptually I prefer all hearings be done by a neutral party.

Rep. Owens: The perception is what this bill is all about. Another question is that I didn't get a clear answer on was the location of these hearings. It was expressed to us that the OAH in some cases borrows facilities. But if we're going to increase the numbers by 1,470 where are they going to be done? If they're planning on doing them in the same location, does that not create the same problem with perception?

Mr. Hoberg: There are a lot of public buildings out there and I think we'd be able to find hearing space for all of them, But you're right, if we couldn't we'd have to probably hold them in department offices. You would have a little bit of that perception being in the same office although you wouldn't have the perception of having the department hearing officer there.

Rep. Owens: My concern is that I'm not so sure that some of those people would, if it's still in the same building, would relate that part of the perception had been eliminated.

Chm. Carlson: I think you would agree with that?

Mr. Hoberg: I'd agree with that because when we first started a lot of time people would say, "Oh, I thought you were with the department." There might still be that perception.

Sen. Krebsbach: Out of these cases, how many are done on site in Bismarck or out in other locations?

Mr. Ziegler: I don't have the numbers. We have four locations: Bismarck, Fargo, Grand Forks and Minot. If we could make an assumption, there are about one fourth around the state.

(Inaudible) We have 1,470 DUI cases. We heard another 300+, so approximately 1,800 total.

It's our hearing officers that overturn the patrols or the police officer's action.

Chm. Carlson: There are five positions, are they all administrative judges at your place? Or is there an administrator as well?

Mr. Ziegler: There's not an administrator. Our legal counsel handles the administration.

Chm. Carlson: So legal counsel for the whole DOT handles the administration? The other five are all the judges that are in these hearings?

Mr. Ziegler: That's correct. There are four of them.

Chm. Carlson: So why is it five FTEs?

Mr. Ziegler: We only have four FTEs in this situation.

Mr. Hoberg: There are four full time hearing officers and you use two part time people which amounts to about four and two-thirds people. It would be our motion to just have four people but to have support staff for them. So the fifth person would not be a hearing officer.

Chm. Carlson: So it's five FTEs total – four of them being judges and one being support.

Sen. Wardner motioned for the House to Accede to the Senate amendment and further amend so it would say that the OAH "shall transfer" the employees, all full-time DOT hearing officers.

Chm. Carlson: That's why they put the words "full time" in there because it gave you the authority to get your other support staff to go with it.

Sen. Krebsbach seconded the motion.

Chm. Carlson: We have a motion by Sen. Wardner, seconded by Sen. Krebsbach, that the House Accede to the Senate amendments and then further amend Section 17 of the bill. Is that the right number, Don?

Don Wolf, Legislative Council: Yes. I think technically though, since we're changing a portion of Section 17, we have to still recede and further amend.

The motion was changed to reflect the suggestion by council that the Senate recede and further amend.

Chm. Carlson: The motion would be that we agree to the bill as it came to us with that change in Section 17 that they shall hire their employees and perception becomes reality.

Rep. Glassheim: Do we need to do anything about the salary lines? Or do they have the ability to transfer it themselves?

Chm. Carlson: You assume that it would be at your administrative salary levels?

Mr. Hoberg: That's what the appropriation is.

Chm. Carlson: The salary level's at your level?

Rep. Glassheim: DOT. DOT needs to transfer ...

Chm. Carlson: We could do that within their budget when we have that one I'm assuming. How do you handle that Don? DOT made the comment that they would remove it from their salary line and put it into either contracts or fees.

Mr. Wolf: If you could do it in the DOT budget that would be the cleanest way. You could do it either place though.

Chm. Carlson: O.K.

Sen. Warder: We can do that, can't we?

Chm. Carlson: We can do it in that budget.

The motion carried by a roll call vote of 5 ayes, 0 nays and 1 absent and not voting.

Chm. Carlson: I feel more comfortable knowing those people are moving over. The carrier will be the original carrier of the bill. I will give any supplemental information as needed.

Chm. Carlson adjourned the meeting.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1017

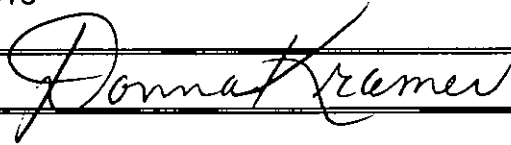
House Appropriations Committee
Human Resources Division

☒ Check here for Conference Committee

Hearing Date: April 24, 2007

Recorder Job Number: 6313

Committee Clerk Signature



Minutes:

Chairman Carlson opened the Conference Committee hearing on HB 1017, A Bill for an Act to provide an appropriation for defraying the expenses of the office of administrative hearings. Present were: Representatives Ruby, Glassheim and Senators Wardner, Kresbach, and Tallackson.

Chairman Carlson stated the House took up 1017 today which is the budget for the office of the administrative hearings. In addition to the budget was added the language from SB 2375 which moved the hearing responsibility from the DOT to Office of Administrative Hearings. In the House there was no disagreement over the budget. The only disagreement was over the fact of moving. The bill sits before with the amendment in it and it did not pass on the floor. Any new motions will prevail as the committee report failed. Open to discussion.

Senator Wardner: What was the count?

Chairman Carlson: It was 60 something to 33 - it was a very lopsided vote. The biggest problem that they seem to have was the fact that they are convinced there will be a lot more money spent than what's in this budget because of the fact they were going to expect these hearing people to keep their records at their homes. They had a long litany of things ... Rep. Ruby could explain those better than I can or what he heard in his transportation committee.

Representative Ruby: We did hear about not knowing that portion of what their plans were.

At this time the DOT has these meetings ... across the state. One thing that was brought up on the floor was where are they going to have these meetings. Quite a few meetings at this time. Use the same buildings? There's going to be some costs there. It was mentioned that they would have a home office and that those records would be there. Certainly not a secure place when you have these all over the state. Increased costs for the attorneys to defend their position because of the way the people are affiliated ... knowledgeable about the rules and the case law under the administrative hearings. Once this is set up ... change of people over a period of time and they're not going to be dealing with these issues ... quite a variety of things.

Refer: 04:55 The biggest issue that we had ... there was never any real reason as to why this was going to result in any real change as far as the independence was going to improve any outcomes. Whether there were abuses that were so egregious that there is always appeals overturned in district court. There is no proof brought to us ... that we should set this up differently. It came to an issue of just perception ... nothing substantial - nothing ever brought to us to prove that what they were doing was not on par with the law. Refer: 06:20

It was more that it was just being done for perception and to make this radical of a change for that wasn't acceptable.

Chairman Carlson asked someone from the DOT to step to the podium and stated there was a lot of discussion on the floor of the House that it could cost up to \$400,000 more to move those hearings judges to the Administrative Hearing office. Tell me where those numbers are coming from. Because I see \$397,000 in there - the same as it would have cost you in your budget.

Tim Horner, Deputy Director of Business Support, DOT, stated in the past they have said that the current process costs the DOT about \$720,000 per biennium. The fiscal notes were

done by House Administrative Hearings regarding different environment. But still similar as far as the staffing, but then as far as the location. I would have to go into the fiscal notes to talk about all the change in cost. The value for the representation, I believe you are asking that question, as well.

Chairman Carlson: Give what you estimate to be the total cost. We have \$345,000 coming across from you to the Office of Administrative Hearings. Is that number right?

Tim Horner: Imagine that is about the cost of the biennium for the staff costs.

Chairman Carlson: You have the salaries and wages at \$345,000 and operating expenses of \$51,900. So that makes it \$397,000 in this fiscal note. And you're saying it is 700 and something?

Tim Horner: That is what our testimony was in March when we checked with our finance division as to all the costs that go into the hearing process.

Chairman Carlson: So where is the difference? Looks to me like we're saving a lot of money moving them. It came back to us today that there was some \$400,000 extra in the costs.

Rep. Glassheim: One year or two?

Tim Horner: One year's worth.

Chairman Carlson: What I am hearing is the number is right.

Sen. Tallackson: Never thought this was a good idea. What can we do?

Chairman Carlson: It is hard for me to make motions from up here. We're back to the way the bill came from the Senate. We can do just about whatever we want to this bill and pass it out here.

Senator Wardner: I move changing the implementation date to July 1, 2009. Delay it until next biennium.

Rep. Ruby: Tim, what are total costs across the state?

Tim Horner: What the costs include are staff costs, travel, communications, IT costs. It doesn't include meeting room costs because that's part of our fixed costs within the organization. So, I don't have a cost to equate to that.

Rep. Ruby: Envision there would be costs on top of these dollars by having to set up meeting rooms or places all across the state to do the same thing you already do in your existing buildings. Correct?

Tim Horner: Do believe the testimony given in earlier hearings did state that the office environments would be created throughout the state and in home offices, that type of thing. So, there would be some rental costs ...earlier fiscal notes did have provisions for that.

Chairman Carlson: You do have \$100,000 in there for the biennium for operating expenses. So there is some money in there already for housing these people.

Senator Krebsbach: Seconded the motion.

Chairman Carlson: A motion and a second to delay the implementation date to July 1, 2009. Any further discussion?

Representative Ruby: Speaking for our body, don't know that would alleviate any of the concerns we had with it. It is still for perception and that is what we have a problem with ... not so much the implementation or the money. Part is part of the issue because we do think it is going to cost more, but that wasn't the main issue. The main issue was what result is it and why is it being done for just perception. It just did not seem to make sense. So, I would be opposing the motion.

Roll Call Vote: Chairman Carlson - yes, Rep. Ruby - no, Rep. Glasshelm - no, Sen.

Wardner - yes, Sen. Kresbach - yes, Sen. Tallackson - yes.

Motion failed.

Chairman Carlson: I hate to hold this budget ransom, but we have to decide what we're doing here.

Rep. Glassheim: If I wanted to make a motion without the transfers, what do I do?

Don Wolf of Legislative Council: The motion would be that the Senate recede from the Senate amendments and you'd be back to the House version because that's all the Senate did was add.

Rep. Glassheim: I came into this conference committee thinking I was going to vote for it. Because, in general, I agree arm's length communication is good. What I found that 25% of the appeals were upheld by the hearing officers. I thought that's pretty open minded. I don't care what the perception is - the reality is you get a fair shake. Twenty-five percent overturning the highway patrol seems to be a fair shake. Refer: 15:20 - 16:40

Made a motion the Senate recede from the Senate amendments.

Senator Tallackson: Seconded the motion.

Representative Ruby: Representative Price made the point that there is a very low turnover rate in the district court level on these. I think they are doing a good job.

Senator Wardner: Oppose it to see if we can't come up with another solution.

Roll Call Vote: Chairman Carlson - no, Rep. Ruby - yes, Rep. Glasheim - yes, Sen.

Wardner - no, Sen. Krebsbach - no, Sen Tallackson - yes.

Motion Fails.

Adjournment.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1017

House Appropriations Committee
Human Resources Division

☒ Check here for Conference Committee

Hearing Date: April 24, 2007

Recorder Job Number: 6316

Committee Clerk Signature

Shelly N. Lund for Dana Peterson

Minutes:

Chairman Carlson: Let the record show all present.

Sen. Wardner: I move that the Senate recede from Senate amendments.

Sen. Krebsbach: Seconded.

Chairman Carlson: We have a motion and a second that the Senate recede from their amendments. Further discussion. So we're just taking the bill back to the budget. Clerk call roll.

6 YES 0 NO 0 ABSENT

SENATE RECEDE FROM SENATE AMENDMENTS

78017.0204
Title.

Prepared by the Legislative Council staff for
Representative Ruby
April 20, 2007

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1017

That the Senate recede from its amendments as printed on pages 1485-1494 of the House Journal and pages 1295-1304 of the Senate Journal and that Engrossed House Bill No. 1017 be amended as follows:

Page 1, line 2, after "hearings" insert "; and to provide an appropriation to the department of transportation"

Page 1, after line 23, insert:

"SECTION 4. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$450,000, or so much of the sum as may be necessary, to the department of transportation for the purposes of representation at administrative hearings and other costs incurred in the transfer of hearings to the office of administrative hearings, for the biennium beginning July 1, 2007, and ending June 30, 2009."

Renumber accordingly

REPORT OF CONFERENCE COMMITTEE (ACCEDE/RECEDE)

Bill Number 1017 (, as (re)engrossed): Date: 4/20/07

Your Conference Committee House Appropriations

For the Senate:

For the House:

	YES / NO	YES / NO
P Sen. Wardner	Y	Rep. Carlson Y #
P Sen. Kubitach	Y	Rep. Owens Y P
A Sen. Jellackson		Rep. Glassheim Y P

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) 1485 -- 1494

____, and place _____ on the Seventh order.

☒ , adopt (further) amendments as follows, and place H.B. 1017 on the Seventh order:

____, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

DATE: 4/20/07
CARRIER: _____

*DAH shall transfer
in DOT FTEs.
Section 17.*

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: Wardner

SECONDED BY: Kubitach

VOTE COUNT 5 YES 0 NO 1 ABSENT

Revised 4/1/05

REPORT OF CONFERENCE COMMITTEE

HB 1017, as engrossed: Your conference committee (Sens. Wardner, Krebsbach, Tallackson and Reps. Carlson, Owens, Glassheim) recommends that the **SENATE RECEDE** from the Senate amendments on HJ pages 1485-1494, adopt amendments as follows, and place HB 1017 on the Seventh order:

That the Senate recede from its amendments on pages 1485-1494 of the House Journal and pages 1295-1304 of the Senate Journal and that Engrossed House Bill No. 1017 be amended as follows:

Page 1, line 2, after "hearings" insert "; to amend and reenact sections 39-01-16, 39-02-03.1, 39-06-34, 39-06.1-11, 39-06.2-10.6, 39-06.2-10.7, and 39-06.2-10.8, subsection 1 of section 39-20-03.1, section 39-20-03.2, subsection 1 of section 39-20-04, sections 39-20-05 and 39-20-06, and subsection 1 of section 54-57-03 of the North Dakota Century Code, relating to the transfer of administrative hearings from the department of transportation to the office of administrative hearings; to provide for transition; and to provide an effective date"

Page 1, line 14, replace "226,747" with "571,989"

Page 1, line 15, replace "107,500" with "159,442"

Page 1, line 16, replace "334,247" with "731,431"

Page 1, line 21, replace "1,269,674" with "1,614,916"

Page 1, line 22, replace "374,417" with "426,359"

Page 1, line 23, replace "1,644,091" with "2,041,275"

Page 1, after line 23, insert:

"SECTION 4. AMENDMENT. Section 39-01-16 of the North Dakota Century Code is amended and reenacted as follows:

39-01-16. Hearing on alleged violations.

1. Any person having information that a licensed dealer has violated any provisions of this title may file with the director an affidavit specifically ~~setting forth such~~ stating the facts of the violation. Upon receipt of ~~such~~ the affidavit, the director shall investigate the violation alleged in the affidavit. If, after investigation, the director determines that the dealer's license will be revoked or suspended, a notice of intent to revoke or suspend the license must be mailed to the dealer by certified mail. The notice must provide the dealer with an opportunity for a hearing ~~prior to~~ before the effective date of the license revocation or suspension. A record of ~~such hearings~~ the hearing must be made by stenographic notes or use of an electronic recording device.
2. If after ~~such~~ the hearing the ~~director~~ administrative law judge finds the violation charged in the affidavit has been proved by the evidence, an order must be served on the licensee revoking or suspending the dealer's license for a period of time to be determined by the director. ~~Such~~ The action may be appealed to the district court by following the appeal procedure set forth in chapter 28-32, except that the order revoking or suspending the license is ineffective while the appeal is pending.

~~The director has the power to appoint an administrative hearing officer to conduct the hearing, administer oaths, and subpoena and examine witnesses. The administrative hearing officer shall submit the findings to the director for consideration and final decision.~~

3. Any witness called by the prosecution, except a peace officer while on duty, ~~shall~~ must receive the same fees and mileage as a witness in a civil case in district court.

SECTION 5. AMENDMENT. Section 39-02-03.1 of the North Dakota Century Code is amended and reenacted as follows:

39-02-03.1. Director to provide notice and opportunity for hearing ~~prior to~~ before cancellation, revocation, suspension, or rescision of a motor vehicle registration or a certificate of title to a motor vehicle. ~~Whenever, under~~ Under the laws pertaining to the cancellation, revocation, suspension, or rescision of a registration of a motor vehicle or a certificate of title to a motor vehicle, ~~if~~ a determination has been made to cancel, revoke, suspend, or rescind either the registration or certificate of title, or both, the director shall provide the legal and registered owner with notice of ~~such the~~ cancellation, revocation, suspension, or rescision and the opportunity for a hearing. ~~Such The~~ notice must be sent by registered or certified mail, return receipt requested, not less than ten days ~~prior to~~ before the effective date of the cancellation, revocation, suspension, or rescision.

SECTION 6. AMENDMENT. Section 39-06-34 of the North Dakota Century Code is amended and reenacted as follows:

39-06-34. Director may require reexamination. In addition to other powers set forth in this chapter, the director, having good cause to believe that a licensed operator is incompetent or otherwise not qualified to be licensed, may upon written notice of at least five days to the licensee require the licensee to submit to such physical, mental, or driver's examination as may be deemed necessary. If the director has good cause to believe that the licensed operator presents an immediate danger to the motoring public, the director may immediately, and without prior notice, suspend the operator's license pending the examination. The notice of suspension must provide the operator with the opportunity for a hearing within five days of the receipt of the notice of suspension. When a hearing is requested it must be conducted under section 39-06-33 and the ~~hearing officer's~~ administrative law judge's recommended decision must be rendered within two days of the conclusion of the hearing. Upon the conclusion of such examination the director shall take action as may be appropriate and may suspend or revoke the license of such person or permit the licensee to retain the license, or may issue a license subject to restrictions as permitted under section 39-06-17. Refusal or neglect of the licensee to submit to such examination shall be grounds for suspension or revocation of the license.

SECTION 7. AMENDMENT. Section 39-06.1-11 of the North Dakota Century Code is amended and reenacted as follows:

39-06.1-11. Temporary restricted license - Ignition Interlock device.

1. Except as provided under subsection 2, if the director has suspended a license under section 39-06.1-10 or has extended a suspension or revocation under section 39-06-43, upon receiving written application from the offender affected, the director may for good cause issue a temporary restricted operator's license valid for the remainder of the suspension period after seven days of the suspension period have passed.

2. If the director has suspended a license under chapter 39-20, or after a violation of section 39-08-01 or equivalent ordinance, upon written application of the offender the director may issue for good cause a temporary restricted license that takes effect after thirty days of the suspension have been served after a first offense under section 39-08-01 or chapter 39-20. The director may not issue a temporary restricted license to any offender whose operator's license has been revoked under section 39-20-04 or suspended upon a second or subsequent offense under section 39-08-01 or chapter 39-20, except that a temporary restricted license may be issued for good cause if the offender has not committed an offense for a period of two years before the date of the filing of a written application that must be accompanied by a report from an addiction facility or if the offender is participating in the drug court program and has not committed an offense for a period of three hundred sixty-five days before the date of the filing of a written application that must be accompanied by a recommendation from the district court. The director may ~~conduct~~ request a hearing for the purposes of obtaining information, reports, and evaluations from courts, law enforcement, and citizens to determine the offender's conduct and driving behavior during the prerequisite period of time. The director may also require that an ignition interlock device be installed in the offender's vehicle.
3. The director may not issue a temporary restricted license for a period of license revocation or suspension imposed under subsection 5 of section 39-06-17, section 39-06-31, or subsection 3.1 of section 39-06.1-10. A temporary restricted license may be issued for suspensions ordered under subsection 7 of section 39-06-32 if it could have been issued had the suspension resulted from in-state conduct.
4. A restricted license issued under this section is solely for the use of a motor vehicle during the licensee's normal working hours and may contain any other restrictions authorized by section 39-06-17. Violation of a restriction imposed according to this section is deemed a violation of section 39-06-17.

SECTION 8. AMENDMENT. Section 39-06.2-10.6 of the North Dakota Century Code is amended and reenacted as follows:

39-06.2-10.6. Administrative hearing on request.

1. Before issuing an order of suspension, revocation, or disqualification under section 39-06.2-10, the director shall afford that person an opportunity for a hearing as provided by section 39-20-05, if the person mails a request for the hearing to the director within ten days after the date of issuance of the temporary driver's permit.
2. If the issue to be determined by the hearing concerns license suspension for operating a commercial motor vehicle while having an alcohol concentration of at least four one-hundredths of one percent by weight, the hearing must be before ~~a hearing officer assigned by the director~~ an administrative law judge and at a time and place designated by the director of the office of administrative hearings. The hearing must be recorded and its scope may cover only the issues of whether the arresting officer had reasonable grounds to believe the person had been driving or was in actual physical control of a commercial motor vehicle in violation of section 39-06.2-10.1, whether the person was lawfully detained, whether the person was tested in accordance with section 39-06.2-10.2, and

whether the test results show the person had an alcohol concentration of at least four one-hundredths of one percent by weight. For purposes of this section, a copy of a certified copy of an analytical report of a blood or urine sample from the office of the director of the state crime laboratory or the director's designee, or a certified copy of the checklist and test records from a certified breath test operator establish prima facie the alcohol concentration shown therein. Whether the person was warned that the privilege to drive might be suspended based on the results of the test is not an issue.

3. If the issue to be determined by the hearing concerns license revocation for refusing to submit to a test under section 39-06.2-10.2, the hearing must be before ~~a hearing officer assigned by the director~~ an administrative law judge at a time and place designated by the director of the office of administrative hearings. The hearing must be recorded. The scope of a hearing for refusing to submit to a test under section 39-06.2-10.2 may cover only the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a commercial motor vehicle in violation of section 39-06.2-10.1, whether the person was lawfully detained, and whether that person refused to submit to the test or tests. The scope of a hearing for refusing to submit to a test under subsection 3 of section 39-06.2-10.4 may cover only the issues of whether the law enforcement officer had reason to believe the person committed a moving traffic violation or was involved in a traffic accident as a driver, whether in conjunction with the violation or the accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol and, whether the person refused to submit to the onsite screening test. Whether the person was warned that the privilege to drive would be revoked or denied for refusal to submit to the test or tests is not an issue.
4. At a hearing under this section, the regularly kept records of the director may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, the following are deemed regularly kept records of the director: any copy of a certified copy of an analytical report of a blood or urine sample received by the director from the director of the state crime laboratory or the director's designee or a law enforcement officer, a certified copy of the checklist and test records received by the director from a certified breath test operator, and any copy of a certified copy of a certificate of the director of the state crime laboratory or the director's designee relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol concentration received by the director from the director of the state crime laboratory or the director's designee, or the recorder, unless the board of county commissioners has designated a different official to maintain the certificate.
5. At the close of the hearing, the ~~hearing officer~~ administrative law judge shall notify the person of the ~~hearing officer's~~ administrative law judge's findings of fact, conclusions of law, and decision based on the findings and conclusions and shall immediately deliver to the person a copy of the decision. If the ~~hearing officer~~ administrative law judge does not find in favor of the person, the copy of the decision serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state. If the ~~hearing officer~~ administrative law judge finds, based on a preponderance of the evidence, that the person refused a test under section 39-06.2-10.2 or that the person had an alcohol

concentration of at least four one-hundredths of one percent by weight, the ~~hearing officer shall~~ administrative law judge immediately shall take possession of the person's temporary driver's permit issued under this chapter. If the ~~hearing officer~~ administrative law judge does not find against the person, the ~~hearing officer~~ administrative law judge shall sign, date, and mark on the person's permit an extension of driving privileges for the next twenty days and shall return the permit to the person. The ~~hearing officer~~ administrative law judge shall report the findings, conclusions, and decisions to the director within ten days of the conclusion of the hearing. If the ~~hearing officer~~ administrative law judge has determined in favor of the person, the director shall return the person's commercial driver's license by regular mail to the address on file with the director under section 39-06.2-08.

6. If the person who requested a hearing under this section fails to appear at the hearing without justification, the right to the hearing is waived, and the ~~hearing officer's~~ administrative law judge's determination on license revocation, suspension, or denial will be based on the written request for hearing, law enforcement officer's report, and other evidence as may be available. On the date for which the hearing is scheduled, the ~~hearing officer~~ administrative law judge shall mail to the person, by regular mail, at the address on file with the director under section 39-06-20, or at any other address for the person or the person's legal representative supplied in the request for hearing, a copy of the decision which serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state. Even if the person for whom the hearing is scheduled fails to appear at the hearing, the hearing is deemed to have been held on the date for which it is scheduled for purposes of appeal under section 39-06.2-10.7.
7. An administrative law judge assigned by the director of the office of administrative hearings to conduct a hearing under this section shall maintain and secure all related documents and evidence to maintain the privacy of records that have been affirmed which contain personal information.

SECTION 9. AMENDMENT. Section 39-06.2-10.7 of the North Dakota Century Code is amended and reenacted as follows:

39-06.2-10.7. Judicial review. Any ~~person whose commercial driver's license or privilege has been suspended, revoked, or denied~~ party adversely affected by the decision of the ~~hearing officer~~ administrative law judge under section 39-06.2-10.6 may appeal within seven days after the date of the hearing under section 39-06.2-10.6 as shown by the date of the ~~hearing officer's~~ administrative law judge's decision, section 28-32-42 notwithstanding, by serving on the director and filing a notice of appeal and specifications of error in the district court in the county where the events occurred for which the demand for a test was made, or in the county in which the administrative hearing was held. The court shall set the matter for hearing, and the petitioner shall give twenty days' notice of the hearing to the director ~~and to the hearing officer who rendered the decision.~~ Neither the director nor the The court may not stay the decision pending decision on appeal. Within twenty days after receipt of the notice of appeal, the director ~~or the hearing officer who rendered the decision~~ shall file in the office of the clerk of court to which the appeal is taken a certified transcript of the testimony and all other proceedings. It is the record on which the appeal must be determined. ~~No~~ The court may not hear additional evidence may be heard. The court shall affirm the decision of the ~~director or hearing officer~~ administrative law judge unless ~~the court~~ the court finds the evidence insufficient to warrant the conclusion reached by

the ~~director or hearing officer~~ administrative law judge. The court may direct that the matter be returned to the ~~director or hearing officer~~ administrative law judge for rehearing and the presentation of additional evidence.

SECTION 10. AMENDMENT. Section 39-06.2-10.8 of the North Dakota Century Code is amended and reenacted as follows:

39-06.2-10.8. Temporary driver's permit. A temporary driver's permit extends driving privileges for twenty-five days, unless earlier terminated by the decision of ~~a hearing officer~~ an administrative law judge under section 39-06.2-10.6. The law enforcement officer must sign and note the date of issuance on the temporary driver's permit. The temporary driver's permit serves as the director's official notification to the driver of the director's intent to revoke, suspend, or deny driving privileges in this state. ~~No~~ A temporary driver's permit may not be issued for the period covered by an out-of-service order.

SECTION 11. AMENDMENT. Subsection 1 of section 39-20-03.1 of the North Dakota Century Code is amended and reenacted as follows:

1. The law enforcement officer shall immediately take possession of the person's operator's license if it is then available and shall immediately issue to that person a temporary operator's permit if the person then has valid operating privileges, extending driving privileges for the next twenty-five days, or until earlier terminated by the decision of ~~a hearing officer~~ an administrative law judge under section 39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke, suspend, or deny driving privileges in this state.

SECTION 12. AMENDMENT. Section 39-20-03.2 of the North Dakota Century Code is amended and reenacted as follows:

39-20-03.2. Action following test result or on refusing test by nonresident operator. If a person licensed in another state refuses in this state to submit to a test provided under section 39-20-01 or 39-20-14, or who submits to a test under section 39-20-01, 39-20-02, or 39-20-03 and the test results show the person to have an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight at the time of performance of a test within two hours after driving or being in physical control of a motor vehicle, the following procedures apply:

1. Without taking possession of the person's out-of-state operator's license, the law enforcement officer shall issue to the person a notification of the test results and a temporary operator's permit extending nonresident operating privileges in this state for twenty-five days from the date of issuance or until earlier terminated by the decision of ~~a hearing officer~~ an administrative law judge under section 39-20-05. The temporary permit must be signed and dated by the officer and serves as the director's official notification to the person of the director's intent to revoke, suspend, or deny driving privileges in this state, and of the hearing procedures under this chapter.
2. If the test was administered by saliva or urine sample or by drawing blood, the law enforcement officer, on reviewing the alcohol concentration analysis showing the person had an alcohol concentration of at least eight

one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, shall mail or issue to the person a notification of the test results, a temporary operator's permit extending nonresident operating privileges in this state for twenty-five days from the date of mailing or issuance or until earlier terminated by the decision of a ~~hearing officer~~ an administrative law judge under section 39-20-05, and notice of the intent to revoke, suspend, or deny driving privileges in this state, together with the notice provided under section 39-06.1-07 of the procedures available under this chapter. The temporary operator's permit must be signed and dated by the officer.

3. The law enforcement officer, within five days of issuing the temporary operator's permit, shall forward to the director a certified written report in the form required by the director and a certified copy of the operational checklist and test records of a breath test and a copy of the certified copy of the analytical report for a blood, saliva, or urine test for all tests administered at the direction of the officer. If the person was issued a temporary operator's permit because of the person's refusal to submit to a test under sections 39-20-01 and 39-20-14, the report must include information as provided in section 39-20-04. If the person was issued a temporary operator's permit because of the results of a test, the report must show that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01, or equivalent ordinance, that the person was lawfully arrested, that the person was tested for alcohol concentration under this chapter, and that the results of the test show that the person had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight.

SECTION 13. AMENDMENT. Subsection 1 of section 39-20-04 of the North Dakota Century Code is amended and reenacted as follows:

1. If a person refuses to submit to testing under section 39-20-01 or 39-20-14, none may be given, but the law enforcement officer shall immediately take possession of the person's operator's license if it is then available and shall immediately issue to that person a temporary operator's permit, if the person then has valid operating privileges, extending driving privileges for the next twenty-five days or until earlier terminated by a decision of ~~a hearing officer~~ an administrative law judge under section 39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke driving privileges in this state and of the hearing procedures under this chapter. The director, upon the receipt of that person's operator's license and a certified written report of the law enforcement officer in the form required by the director, forwarded by the officer within five days after issuing the temporary operator's permit, showing that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01 or equivalent ordinance or, for purposes of section 39-20-14, had reason to believe that the person committed a moving traffic violation or was involved in a traffic accident as a driver, and in conjunction with the violation or accident the officer has, through the officer's observations, formulated an opinion that the person's body

contains alcohol, that the person was lawfully arrested if applicable, and that the person had refused to submit to the test or tests under section 39-20-01 or 39-20-14, shall revoke that person's license or permit to drive and any nonresident operating privilege for the appropriate period under this section, or if the person is a resident without a license or a permit to operate a motor vehicle in this state, the director shall deny to the person the issuance of a license or permit for the appropriate period under this section after the date of the alleged violation, subject to the opportunity for a prerevocation hearing and postrevocation review as provided in this chapter. In the revocation of the person's operator's license the director shall give credit for time in which the person was without an operator's license after the day of the person's refusal to submit to the test except that the director may not give credit for time in which the person retained driving privileges through a temporary operator's permit issued under this section or section 39-20-03.2. The period of revocation or denial of issuance of a license or permit under this section is:

- a. One year if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license has not previously been suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
- b. Three years if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license has been once previously suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
- c. Four years if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license has at least twice previously been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any combination of the same, and the suspensions, revocations, or denials resulted from at least two separate arrests.

SECTION 14. AMENDMENT. Section 39-20-05 of the North Dakota Century Code is amended and reenacted as follows:

39-20-05. Administrative hearing on request.

1. Before issuing an order of suspension, revocation, or denial under section 39-20-04 or 39-20-04.1, the director shall afford that person an opportunity for a hearing if the person mails or communicates by other means authorized by the director a request for the hearing to the director within ten days after the date of issuance of the temporary operator's permit. The hearing must be held within thirty days after the date of issuance of the temporary operator's permit. If ~~no~~ a hearing is not requested within the time limits in this section, and ~~no~~ an affidavit is not submitted within the time limits under subsection 2 of section 39-20-04, the expiration of the temporary operator's permit serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state.
2. If the issue to be determined by the hearing concerns license suspension for operating a motor vehicle while having an alcohol concentration of at

least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, the hearing must be before ~~a hearing officer assigned by the director~~ an administrative law judge and at a time and place designated by the director of the office of administrative hearings. The hearing must be recorded and its scope may cover only the issues of whether the arresting officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance or, with respect to a person under twenty-one years of age, the person had been driving or was in actual physical control of a vehicle while having an alcohol concentration of at least two one-hundredths of one percent by weight; whether the person was placed under arrest, unless the person was under twenty-one years of age and the alcohol concentration was less than eight one-hundredths of one percent by weight, then arrest is not required and is not an issue under any provision of this chapter; whether the person was tested in accordance with section 39-20-01 or 39-20-03 and, if applicable, section 39-20-02; and whether the test results show the person had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight. For purposes of this section, a copy of a certified copy of an analytical report of a blood, urine, or saliva sample from the director of the state crime laboratory or the director's designee or a certified copy of the checklist and test records from a certified breath test operator establish prima facie the alcohol concentration shown therein. Whether the person was informed that the privilege to drive might be suspended based on the results of the test is not an issue.

3. If the issue to be determined by the hearing concerns license revocation for refusing to submit to a test under section 39-20-01 or 39-20-14, the hearing must be before ~~a hearing officer assigned by the director~~ an administrative law judge at a time and place designated by the director of the office of administrative hearings. The hearing must be recorded. The scope of a hearing for refusing to submit to a test under section 39-20-01 may cover only the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance or, with respect to a person under twenty-one years of age, the person had been driving or was in actual physical control of a vehicle while having an alcohol concentration of at least two one-hundredths of one percent by weight; whether the person was placed under arrest; and whether that person refused to submit to the test or tests. The scope of a hearing for refusing to submit to a test under section 39-20-14 may cover only the issues of whether the law enforcement officer had reason to believe the person committed a moving traffic violation or was involved in a traffic accident as a driver, whether in conjunction with the violation or the accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol and, whether the person refused to submit to the onsite screening test. Whether the person was informed that the privilege to drive would be revoked or denied for refusal to submit to the test or tests is not an issue.
4. At a hearing under this section, the regularly kept records of the director may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, the following are deemed regularly kept records of the director: any copy of a certified copy

of an analytical report of a blood, urine, or saliva sample received by the director from the director of the state crime laboratory or the director's designee or a law enforcement officer, a certified copy of the checklist and test records received by the director from a certified breath test operator, and any copy of a certified copy of a certificate of the director of the state crime laboratory or the director's designee relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol concentration received by the director from the director of the state crime laboratory, the director's designee, or the recorder, unless the board of county commissioners has designated a different official to maintain the certificate.

5. At a hearing under this section, the administrative law judge may introduce records, conduct examinations, and present evidence relating to the issues to be determined at the hearing. The department may be represented by legal counsel at any hearing under this section.
6. At the close of the hearing, the ~~hearing officer~~ administrative law judge shall notify the person of the ~~hearing officer's~~ administrative law judge's findings of fact, conclusions of law, and decision based on the findings and conclusions and shall immediately deliver to the person a copy of the decision. If the ~~hearing officer~~ administrative law judge does not find in favor of the person, the copy of the decision serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state. If the ~~hearing officer~~ administrative law judge finds, based on a preponderance of the evidence, that the person refused a test under section 39-20-01 or 39-20-14 or that the person had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, the ~~hearing officer shall~~ administrative law judge immediately shall take possession of the person's temporary operator's permit issued under this chapter. If the ~~hearing officer~~ administrative law judge does not find against the person, the ~~hearing officer~~ administrative law judge shall sign, date, and mark on the person's permit an extension of driving privileges for the next twenty days and shall return the permit to the person. The ~~hearing officer~~ administrative law judge shall report the findings, conclusions, and decisions to the director within ten days of the conclusion of the hearing. If the ~~hearing officer~~ administrative law judge has determined in favor of the person, the director shall return the person's operator's license by regular mail to the address on file with the director under section 39-06-20.
6. 7. If the person who requested a hearing under this section fails to appear at the hearing without justification, the right to the hearing is waived, and the ~~hearing officer's~~ administrative law judge's determination on license revocation, suspension, or denial will be based on the written request for hearing, law enforcement officer's report, and other evidence as may be available. The ~~hearing officer shall~~ administrative law judge, on the date for which the hearing is scheduled, shall mail to the person, by regular mail, at the address on file with the director under section 39-06-20, or at any other address for the person or the person's legal representative supplied in the request for hearing, a copy of the decision which serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state. Even if the person for whom the hearing is scheduled fails to appear at the hearing, the

hearing is deemed to have been held on the date for which it is scheduled for purposes of appeal under section 39-20-06.

SECTION 15. AMENDMENT. Section 39-20-06 of the North Dakota Century Code is amended and reenacted as follows:

39-20-06. Judicial review. Any ~~person whose operator's license or privilege has been suspended, revoked, or denied~~ party adversely affected by the decision of the ~~hearing officer~~ administrative law judge under section 39-20-05 may appeal within seven days after the date of the hearing under section 39-20-05 as shown by the date of the ~~hearing officer's~~ administrative law judge's decision, section 28-32-42 notwithstanding, by serving on the director and filing a notice of appeal and specifications of error in the district court in the county where the events occurred for which the demand for a test was made, or in the county in which the administrative hearing was held. The court shall set the matter for hearing, and the petitioner shall give twenty days' notice of the hearing to the director ~~and to the hearing officer who rendered the decision. Neither the director nor the~~. The court may not stay the decision pending decision on appeal. Within twenty days after receipt of the notice of appeal, the director ~~or the hearing officer who rendered the decision~~ shall file in the office of the clerk of court to which the appeal is taken a certified transcript of the testimony and all other proceedings. It is the record on which the appeal must be determined. ~~No~~ The court may not hear additional evidence ~~may be heard~~. The court shall affirm the decision of the ~~director or hearing officer~~ administrative law judge unless it the court finds the evidence insufficient to warrant the conclusion reached by the ~~director or hearing officer~~ administrative law judge. The court may direct that the matter be returned to the ~~director or hearing officer~~ administrative law judge for rehearing and the presentation of additional evidence.

SECTION 16. AMENDMENT. Subsection 1 of section 54-57-03 of the North Dakota Century Code is amended and reenacted as follows:

1. Notwithstanding the authority granted in chapter 28-32 allowing agency heads or other persons to preside in an administrative proceeding, all adjudicative proceedings of administrative agencies under chapter 28-32, except those of the public service commission, the industrial commission, the insurance commissioner, workforce safety and insurance, the state engineer, ~~the department of transportation~~, job service North Dakota, and the labor commissioner, must be conducted by the office of administrative hearings in accordance with the adjudicative proceedings provisions of chapter 28-32 and any rules adopted pursuant to chapter 28-32. ~~But, appeals~~ Appeals hearings pursuant to section 61-03-22 and drainage appeals from water resource boards to the state engineer pursuant to chapter 61-32 must be conducted by the office of administrative hearings. ~~Additionally, hearings~~ Hearings of the department of corrections and rehabilitation for the parole board in accordance with chapter 12-59; regarding parole violations; job discipline and dismissal appeals to the board of higher education; Individuals With Disabilities Education Act and section 504 due process hearings of the superintendent of public instruction; and chapter 37-19.1 veterans' preferences hearings for any agency must be conducted by the office of administrative hearings in accordance with applicable laws.

SECTION 17. TRANSITION. The office of administrative hearings shall hire as employees all full-time department of transportation hearing officer employees who currently conduct hearings for the department of transportation.

SECTION 18. EFFECTIVE DATE. Sections 4 through 17 of this Act become effective on August 1, 2008."

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1017 - Office of Administrative Hearings - Conference Committee Action

	EXECUTIVE BUDGET	HOUSE VERSION	CONFERENCE COMMITTEE CHANGES	CONFERENCE COMMITTEE VERSION	SENATE VERSION	COMPARISON TO SENATE
Salaries and wages	\$1,269,674	\$1,269,674	\$345,242	\$1,614,916	\$1,614,916	
Operating expenses	<u>424,417</u>	<u>374,417</u>	<u>51,942</u>	<u>426,359</u>	<u>426,359</u>	
Total all funds	\$1,694,091	\$1,644,091	\$397,184	\$2,041,275	\$2,041,275	\$0
Less estimated income	<u>1,694,091</u>	<u>1,644,091</u>	<u>397,184</u>	<u>2,041,275</u>	<u>2,041,275</u>	
General fund	\$0	\$0	\$0	\$0	\$0	\$0
FTE	8.00	8.00	5.00	13.00	13.00	0.00

Dept. 140 - Office of Administrative Hearings - Detail of Conference Committee Changes

	ADDS FUNDING FOR DEPARTMENT OF TRANSPORTATION HEARINGS ¹	TOTAL CONFERENCE COMMITTEE CHANGES
Salaries and wages	\$345,242	\$345,242
Operating expenses	<u>51,942</u>	<u>51,942</u>
Total all funds	\$397,184	\$397,184
Less estimated income	<u>397,184</u>	<u>397,184</u>
General fund	\$0	\$0
FTE	5.00	5.00

¹ The Senate added funding relating to the transfer of Department of Transportation hearings to the Office of Administrative Hearings effective August 1, 2008. The conference committee agreed with this action.

The Senate incorporated the provisions of Senate Bill No. 2375, which transfers Department of Transportation hearings responsibility to the Office of Administrative Hearings, into House Bill No. 1017. The effective date of the transfer is August 1, 2008. The conference committee agreed with this action and provided that the Office of Administrative Hearings shall hire as employees the four full-time Department of Transportation hearing officer employees who currently conduct hearings for the Department of Transportation.

Engrossed HB 1017 was placed on the Seventh order of business on the calendar.

①

REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)

Bill Number 1017 (, as (re)engrossed):

Date: 04-24-07

Your Conference Committee Human Resources

For the Senate:

For the House:

YES / NO		YES / NO	
Sen. Wardner P		Chairman Rep. Carlson P	
Sen. Krebsbach P		Rep. Ruby P	
Sen. Tallackson P		Rep. Glassheim P	

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) _____ - _____

____, and place _____ on the Seventh order.

____, adopt (further) amendments as follows, and place _____ on the Seventh order:

____, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

DATE: _____

CARRIER: _____

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: _____

SECONDED BY: _____

VOTE COUNT YES NO ABSENT

(2)

**REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)**

Bill Number 1017 (, as (re)engrossed):

Date: 04-24-07

Your Conference Committee Human Resources

For the Senate:

For the House:

YES / NO		YES / NO	
Sen. Wardner	X	Chairman Rep. Carlson	X
Sen. Krebsbach	X	Rep. Ruby	X
Sen. Tallackson	X	Rep. Glassheim	X

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) _____ -- _____

_____, and place _____ on the Seventh order.

_____, adopt (further) amendments as follows, and place _____ on the
Seventh order:

_____, having been unable to agree, recommends that the committee be discharged
and a new committee be appointed.

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

DATE: _____

CARRIER: _____

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: _____

SECONDED BY: _____

VOTE COUNT ___ YES ___ NO ___ ABSENT

3

REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)

Bill Number 1017 (, as (re)engrossed):

Date: 04-24-07

Your Conference Committee Human Resources

For the Senate:

For the House:

YES / NO		YES / NO	
Sen. Wardner	☒	Chairman Rep. Carlson	☒
Sen. Krebsbach	☒	Rep. Ruby	☒
Sen. Tallackson	☒	Rep. Glassheim	☒

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) _____ -- _____

_____, and place _____ on the Seventh order.

_____, adopt (further) amendments as follows, and place _____ on the
Seventh order:

_____, having been unable to agree, recommends that the committee be discharged
and a new committee be appointed.

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

DATE: _____

CARRIER: _____

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: _____

SECONDED BY: _____

VOTE COUNT __ YES __ NO __ ABSENT

REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)

Bill Number 1017 (, as (re)engrossed):

Date: 04-24-07

Your Conference Committee House Appropriations

For the Senate:

For the House:

YES / NO		YES / NO	
Sen. Wardner	☒	Chairman Rep. Carlson	☒
Sen. Kresbach	☒	Rep. Ruby	☒
Sen. Tallackson	☒	Rep. Glassheim	☒

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) 1485 -- 1494

____, and place _____ on the Seventh order.

____, adopt (further) amendments as follows, and place _____ on the Seventh order:

____, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

DATE: _____

CARRIER: _____

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: Wardner

SECONDED BY: Kresbach

VOTE COUNT 1 YES ____ NO ____ ABSENT

REPORT OF CONFERENCE COMMITTEE

HB 1017, as engrossed: Your conference committee (Sens. Wardner, Krebsbach, Tallackson and Reps. Carlson, Ruby, Glassheim) recommends that the **SENATE RECEDE** from the Senate amendments on HJ pages 1485-1494 and place HB 1017 on the Seventh order.

Engrossed HB 1017 was placed on the Seventh order of business on the calendar.

2007 TESTIMONY

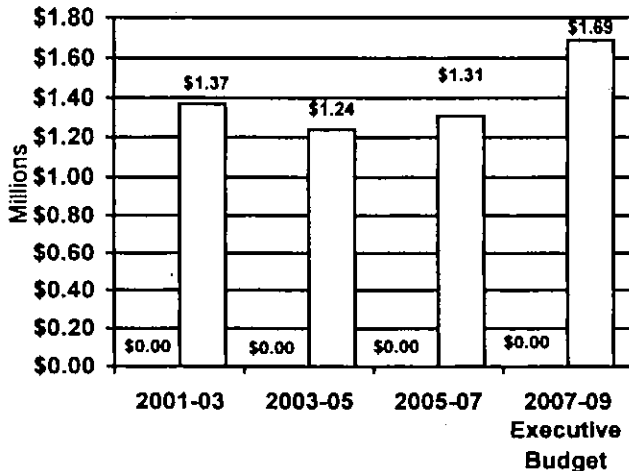
HB 1017

**Department 140 - Office of Administrative Hearings
House Bill No. 1017**

	FTE Positions	General Fund	Other Funds	Total
2007-09 Executive Budget	8.00	\$0	\$1,694,091	\$1,694,091
2005-07 Legislative Appropriations	8.00	0	1,309,844	1,309,844 ¹
Increase (Decrease)	0.00	\$0	\$384,247	\$384,247

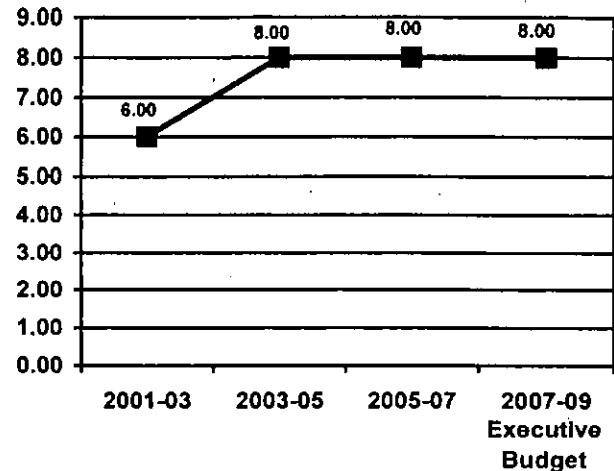
¹The 2005-07 appropriation amounts do not include \$100,000 of additional special funds authority resulting from Emergency Commission action during the 2005-07 biennium.

Agency Funding



■ General Fund □ Other Funds

FTE Positions



Executive Budget Highlights

	General Fund	Other Funds	Total
1. Adds funding for equity salary adjustments for administrative law judges		\$120,528	\$120,528
2. Adds funding for professional fees for temporary law judges due to anticipated increase in caseload for the Office of Administrative Hearings		\$50,000	\$50,000
3. Provides funding for digital recording equipment for hearing procedures		\$7,500	\$7,500

Continuing Appropriations

No continuing appropriations for this agency.

Major Related Legislation

At this time, no major legislation has been introduced affecting this agency.



OFFICE OF ADMINISTRATIVE HEARINGS

STATE OF NORTH DAKOTA
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Bismarck, North Dakota 58501-1882

Allen C. Hoberg
DIRECTOR

701-328-3260
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www.nd.gov/oah

MEMORANDUM

TO: Sixtieth Legislative Assembly
State of North Dakota
House Appropriations Committee - Human Resources Division

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

RE: OAH 2007-2009 Operating Budget Request
House Bill No. 1017

DATE: January 12, 2007

See testimony on 1-19-07 & 3-12-07 for OAH memo

The Office of Administrative Hearings' work consists almost exclusively of conducting administrative hearings for numerous state and local agencies or entities on a wide variety of administrative matters, including complaint or enforcement hearings, application hearings for a license or benefits, and appeals of various types of governmental 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.

Since OAH began operations in 1991, it has received requests to conduct hearings from about 70 different state and local government agencies or entities. Some agencies make many requests for hearings each year, while others have made only a few requests for hearings since 1991. For example, in calendar year 2005, 26 agencies or entities made requests, and in 2006, 25. In those two years combined, 34 different

agencies or entities made requests. The bulk of requests for hearings each year come from two agencies, the Department of Human Services and Workforce Safety and Insurance. See Attachment 1, a list of requests for hearings received by OAH in calendar years 2005 and 2006, listing each requesting agency and the number of requests made by each. Attachment 1.

Under N.D.C.C. ch. 54-57, most state agencies are required to use the services of OAH. N.D.C.C. § 54-57-03(1) lists those state agencies exempted. However, some exempted agencies, including WSI, the Insurance Commissioner, the Bank of North Dakota, and the Public Service Commission, voluntarily use the services of OAH for some or all of their hearings. Additionally, some local government entities use the services of OAH for such administrative hearings as employee discipline, tobacco sales enforcement, annexation, and public nuisance abatement.

OAH conducts hearings using both full-time ALJs and temporary, contract ALJs. N.D.C.C. § 54-57-02 gives OAH specific authority to contract with temporary ALJs on an as-needed basis. This authority is necessary because OAH is completely dependent on agency requests for hearings. The number of requests can change over time, sometimes quickly, with changes in either state or federal statutes or rules, changes in state or federal agency policy, or a local entity's desire to use OAH. Since July 1, 2003,

OAH has used fewer temporary, contract ALJs to conduct hearings. OAH received two new full-time ALJ positions in 2003 to replace the work of eight temporary, contract ALJs. Yet, OAH still requires considerable help from temporary ALJs. Attachment 2 is the OAH current staff configuration. OAH has 8 FTEs; five full-time ALJs and three support staff; and we contract with 4 temporary ALJs on an as-needed basis.

BUDGET ANALYSIS

OAH's 2005-2007 budget for administrative hearings shows a total funding of \$1,309,884. However, in July 2006 OAH received \$100,000 in additional spending authority from the Emergency Commission in its operating expenses line item to pay for additional temporary ALJ services. With that additional \$100,000 still necessary, OAH asked for a budget of \$1,436,741 for the 2007-2009 biennium. But, with the executive recommendation, OAH's budget is considerably more. The difference is, essentially, three OAH optional budget requests plus the executive recommendation for 4 percent/4 percent salary increases for the 2007-2009 biennium.

Optional Budget Request - Professional Services

The operating expenses line item portion of OAH's 2005-2007 appropriation was requested based on mid-2004 statistics for agency hearings. OAH's projection for agency hearings was considerably lower than what actually happened. The final

number of agency requests for hearings in 2004 was 475, 523 in 2005, and 502 in 2006. But, for the 2005-2007 biennium, OAH had estimated only 425 to 450 agency requests per year. Based on those lower projections, OAH requested only \$50,000 for temporary ALJ (professional) services.

OAH spent \$261,699 on temporary ALJ services during the 2001-2003 biennium, but because we received 2 new full-time ALJs in 2003, OAH spent only \$78,256 on temporary ALJ services for the 2003-2005 biennium. It likely would have spent less but for the increase in requests in 2004. To date, in 2005-2007, OAH has spent \$147,428 on temporary ALJ services and will likely spend at least \$200,000 before the biennium is over. This is entirely due to the increased caseload that OAH did not expect. Each biennium OAH expects to spend some monies on temporary ALJs. Again, OAH only requested \$50,000 for temporary ALJ services in its 2005-2007 biennium, but is spending much more.

Although OAH ALJs have worked hard during this biennium to handle at least some of the additional requests, OAH needed to turn often to its temporary ALJ authority and contract with temporary ALJs much more frequently than it expected. In July 2006, OAH asked the Emergency Commission for an additional \$100,000 in special funds authority to pay for additional temporary ALJ services provided to our user agencies. For the

2007-2009 biennium, OAH is asking for an additional \$50,000 in special fund authority as OAH's caseload remains high (a total of \$200,000 in spending authority for professional services).

OAH has considered whether, alternatively, it should be asking for an additional FTE so that we do not have to spend so much on temporary ALJ services, but we believe it is wise to wait one more biennium to make certain that our caseload stays high. Caseload numbers could return to the lower numbers of 2002 and 2003. See attachment 1. Though we do not expect them to drop significantly, in this business you never know for certain. OAH will likely be asking for another FTE to hire another full-time ALJ in the next legislative session if caseload numbers remain high at least another year. But, for the 2007-2009 biennium, as an additional optional expenditure OAH has requested, and the governor has included in our budget, an additional \$50,000 for operating expenses to hire temporary ALJ, as needed. If the number of requests would drop, OAH will not use the additional authority.

Optional Budget Request - Salaries and Benefits - Equity Increases

The other large additional optional expenditure included by the governor in his executive recommendation for OAH's budget is \$120,528 in special fund monies for salary and benefits increases for administrative law judges ("ALJs").

Since its establishment in 1991, OAH has never asked for additional salary money above the standard percentage increases recommended by the governor for all state employees. OAH has sometimes used its small budget surpluses to give minimal merit raises, as it did in 2006, but we have not been able to keep pace. Several of our ALJs are now far below where they should be according to state classification pay grade guidelines. All OAH ALJs, except the director, are under the state classification system. Also, all of OAH's ALJs are on the lower end of what attorneys working for the state are being paid in North Dakota, according to years of legal experience and years of service with the state. But, we have an even bigger concern than not having kept pace with either the pay grade guidelines or the salaries of attorneys employed by the state. We are also no longer able to satisfactorily compete in the general market for attorneys in North Dakota. That means that not only will assistant attorneys general be hesitant to apply for open ALJ positions, but other attorneys in North Dakota, those in private practice, will also be hesitant. For a long time we have been unable to attract attorneys from other states, but now we will be unable to attract attorneys in North Dakota without these salary increases. Even with these equity increases, I believe we will still barely be competitive.

ALJs are classified at Grade 16 in the state classification system. In that grade, currently, their salaries can range from a minimum of \$51,240 per year to a maximum of

\$85,392 per year. OAH ALJs' actual salaries currently range from \$56,700 to \$64,941. The ALJ with the least experience has 10 years legal experience and one year ALJ experience. The ALJ with the greatest experience has 22 years experience as an ALJ or hearing officer and 34 years experience as a state employee. Three of OAH's ALJs should be at or near the maximum of the Grade 16 salary range but all are currently under \$65,000. Although the director's position is comparable to a presiding judge of the district court, his salary is well below that. In fact, in many states the comparison of ALJ positions is not to other attorneys in state government but to state trial court judges. OAH ALJs' salaries are far below North Dakota trial judges' salaries.

In New Jersey, ALJs are paid 100 percent of a district court judge's salary. In North Carolina, ALJs are paid 90 percent of a district court judge's salary, and the director is paid 100 percent. In Minnesota, ALJs are paid 88.6 percent of a district court judge's salary. I am not advocating that ALJs' salaries be tied to the salaries of district court judges, as a percentage of their salaries, but I do believe that the Minnesota comparison is about right. ALJs in North Dakota should at least be paid around 85 percent of a district judge's salary.

Compared to a current district judge's salary, without the increase the courts are requesting for this biennium, an ALJ salary of \$75,000 would be 76 percent of a district

judge's salary (67 percent compared to the requested salary for 2007-2009). A director's salary of \$85,000 would be 84 percent of a current presiding district judge's salary (74 percent compared to the requested salary for 2007-2009)

When OAH's most recent addition as an ALJ was hired in February 2006, we interviewed 12 qualified applicants who were all very interested in the position. All but one expressed concern about the salary offered (\$56,700). Two applicants said that they did not want to be further considered unless the salary would be considerably more. They were not further considered. One applicant at first said that he would not accept the offered salary but then said he might. When we did make an offer, the top applicant, who had said he may still be interested at our offered salary, turned us down, citing low salary. The second ranked applicant was the one who said he might accept after first saying he would not accept. We did not offer the position to him. The third ranked applicant was offered the position and she accepted but again expressed reservations about the salary. OAH is required to hire attorneys with at least five years hearings or trial experience. I believe that in the future, without these equity increases, it will be very, very difficult to hire qualified attorneys to become ALJs.

Additionally, I am very concerned about losing at least one very able ALJ who has been with OAH since 2003 and with the state for a considerable period of time, if ALJ salaries aren't increased considerably.

OAH ALJs were part of an HRMS salary survey of attorneys working in state government. We did not fare very well when our salaries were compared to other attorneys in state government. Moreover, by either regional or national comparison to ALJs in other states, OAH ALJs' salaries are very low. By any comparison, OAH ALJs are severely underpaid. I go into much more detail in the budget narrative supporting our optional budget request and I encourage you to read that if you want more information.

Please include the additional salary increases of OAH's optional budget request in OAH's budget. The governor sees the need for it because he included it in our appropriation. It is very much needed. The work of ALJs is very difficult and demanding. It is work comparable to a trial judge's work. In fact, the administrative hearing is the trial for administrative law cases; there is no trial in district court when an administrative hearing has been held. I fear for the future of the agency, in regard to ALJs leaving, and in regard to the quality of attorneys we may be able to attract, unless ALJ salaries are increased at least as much as we are requesting.

Of final note in regard to ALJ salaries, the equity increases in OAH salaries budgeted for the 2007-2009 biennium will not affect OAH's billing rate for state agencies until the following biennium, 2009-2011, because OAH's billing rate for 2007-2009 is based on actual expenditures for the 2005-2007 biennium. And, again, OAH is not asking for general funds for these increases; all the moneys will be special funds generated by OAH billing its user agencies.

Optional Budget Request - Digital Recording

The final additional optional expenditure included by the governor in his executive recommendation for OAH's budget is \$7,500 for digital recorders to replace existing analog recorders OAH is currently using. It is likely that OAH will need to go to digital recording in the 2007-2009 biennium, because some agencies are already requesting it. Digital recording is widely used in the courts and by our counterparts in other states. It will be better for OAH to use digital recording because digital recording is the current standard and the technology will better assist ALJs in reviewing the hearing record and writing decisions.

I also want to go on record as supporting the governor's proposed 4 percent/4 percent raises for all state employees with an equity pool. I believe that proposed increase is necessary for all state employees to keep pace with the general workplace market.

Sixtieth Legislative Assembly
State of North Dakota
House Appropriations Committee - Human Resources Division
January 12, 2007
Page 11

I have also attached for your information some additional statistical information regarding the number of hearings held by OAH. Attachment 3. If you wish we can provide a great deal more statistical information from our case management system. I have also attached a summary of the results of our 2005-2006 OAH service survey which is a compilation of responses from those who use our hearing officer services - attorneys, agency representatives, and citizens. Generally, there seems to be a high level of satisfaction with the services provided by OAH. Attachment 4.

In summary, with the budget proposed today, under the Executive Recommendation, OAH will be able to fulfill its mission to provide quality, independent hearing officer services to all state agencies required to use its services and to all state and local entities that want to use its services. OAH respectfully requests that the House approve OAH's 2007-2009 operating budget request for administrative hearings as proposed today and as recommended by the Governor in his executive recommendation.

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Encl.



Allen C. Hoberg
DIRECTOR

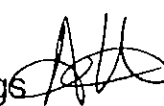
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MEMORANDUM

TO: Sixtieth Legislative Assembly
State of North Dakota
House Appropriations Committee - Human Resources Division

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

RE: OAH 2007-2009 Operating Budget Request - Addendum
House Bill No. 1017

DATE: January 19, 2007

Pursuant to the Committee's request, OAH is providing an addendum to its written testimony presented on January 15, 2007. See January 12, 2007, Memorandum.

Requests for Hearing - Attachment 1

In Attachment 1 to the January 12 Memorandum, the "totals" column for agency hearing requests for the years 2002 through 2006, did not match the sum of those individual years. Upon reviewing the attachment and the query from the OAH case management system that was used to produce that attachment, it was discovered that the query contained one year

previous to those listed in the attachment (2001), so that the totals for the years listed in the attachment were not just from those years but included the additional year. Therefore, the individual numbers for each year in the attachment were correct but the total of all the years was incorrect because it also included agency hearing requests from 2001. The attachment has now been corrected so that the totals are the totals for the years 2002 through 2006. The corrected attachment is attached as a replacement for the original. Attachment 1A.

Spend Down Budget

Attachment 2A is the OAH Spend Down Budget requested by the Committee.

Office of Administrative Hearings Salaries

The Committee also asked for a listing of all of the current salaries of OAH staff. Attachment 3A is a chart showing all of OAH's staff and their current position, as well as their current salary, expected salary under their classification, and the executive recommendation for equity increases.

Again, these equity increases are in addition to the executive recommendation for a 4 percent/4 percent general increase. The amount of that 4 percent/4 percent general increase in OAH's budget was determined based on OAH's current salaries, not the salaries after the optional equity increases. Because OAH ALJs are far below where they should be under their expected classified salary, for three of the four classified ALJs getting increases, granting these equity increases still does not place their salaries within the expected classified salary for these individuals. But, granting these equity increases should decrease the amount of OAH's share in any general equity pool moneys under the executive salary recommendation for these three individuals.

Of course, OAH's director, though he also functions as an ALJ, is not a classified employee and he will not participate in the general equity pool for all state employees contained in the executive recommendation for salary increases.

OAH's support staff were not included in the optional equity increase request but some of them may share in the general equity pool.

OAH originally expressed its interest in pursuing increased ALJ salaries to the State Advisory Council for Administrative Hearings ("SAC"). The SAC is comprised of attorneys in private practice, state agency attorneys, and other attorneys appointed by the president of the State Bar Association of North Dakota. The SAC advises OAH on rulemaking and policy matters. Although the SAC took no formal vote on the matter, the SAC expressed consensus was that improved salaries for ALJs is an important goal for OAH.

Also provided for the committee's information is a chart prepared by OAH showing salaries for North Dakota's judges and salaries for ALJs in regional states, to provide for a comparison to OAH's requested equity increases. Attachment 4A.

Also provided is a chart prepared by OAH, based on the 2006 HRMS attorney salary survey, showing salaries of attorneys in state government, for further comparison. Attachment 5A.

OAH believes that this information demonstrates a clear need for its optional budget request for equity increases in ALJ salaries that was approved in the executive recommendation for OAH's 2007-2009 operating budget.

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*Requests by Year**Files Received Between January 1, 2002, and December 31, 2006**Office of Administrative Hearings*

<i>Agency</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>	<i>2005</i>	<i>2006</i>	<i>Totals</i>
Addiction Counseling Examiners Board	1	0	0	0	0	1
Agriculture Commissioner	2	4	1	4	2	13
Animal Health, Board of	2	0	0	0	2	4
Architecture, State Board of	1	0	1	0	0	2
Attorney General, Office of	1	4	2	1	1	9
Attorney General, Racing Commission	0	0	1	0	0	1
Bismarck State College	0	0	0	1	0	1
BND, Student Loans of North Dakota	4	8	3	3	12	30
Corrections - Parole & Probation	0	1	0	0	3	4
Corrections & Rehabilitation - Dept. of	0	0	0	1	0	1
County, Burleigh	0	4	1	1	1	7
County, Morton	0	1	1	0	0	2
County, Stark	0	0	0	1	0	1
Dental Examiners, Board of	1	0	0	0	2	3
DHS, Human Services, Department of	197	145	219	211	217	989
Dickinson State University	0	0	0	1	0	1
Education Standards & Practices Board	0	4	2	0	0	6
FI, Banking Board	0	2	0	0	0	2
FI, Financial Institutions, Department of	0	2	0	1	1	4
Game and Fish Department	3	2	5	4	2	16
Hazen, ND, City of	0	1	0	0	0	1
Health, Department of	1	1	2	4	3	11
Human Resource Management Services	6	9	15	12	2	44
IC, Insurance Commissioner	1	0	1	0	0	2
Industrial Commission	0	0	0	0	1	1
Labor Commissioner	0	0	1	5	1	7
Medical Examiners, State Board of	2	14	6	3	3	28
Minot State University	0	1	0	1	0	2

Requests by Year

Files Received Between January 1, 2002, and December 31, 2006

Office of Administrative Hearings

Agency	2002	2003	2004	2005	2006	Totals
Minot State University - Bottineau Campus	0	0	0	0	1	1
Minot, ND, City of	1	0	1	0	0	2
Nursing, State Board of	3	0	5	0	2	10
OMB - Central Services	0	0	1	0	0	1
Peace Officers Standards and Training Board	0	1	0	0	0	1
Pharmacy, State Board of	2	0	0	1	1	4
Professional Engineers & Land Surveyors Board	0	0	1	0	0	1
PSC, Public Service Commission	4	8	10	18	8	48
Public Employees Retirement Board	0	0	0	1	0	1
Public Instruction, Department of	7	13	4	6	10	40
Real Estate Appraisers, Board of	0	0	1	0	0	1
Real Estate Commission	5	0	3	3	5	16
RIO, Retirement & Investment Office	0	0	0	1	0	1
School for the Deaf	0	0	0	0	1	1
Securities Department	3	18	4	6	4	35
Tax Commissioner, State	4	1	0	2	1	8
UND, University of North Dakota	0	0	1	1	0	2
Veterans Affairs, Department of	0	1	0	0	0	1
Water Commission, State/State Engineer	2	1	0	0	2	5
West Fargo, ND, City of	0	0	0	1	0	1
Workforce Safety & Insurance	193	185	183	229	214	1004
Grand Totals	446	431	475	523	502	2377

REQUEST FOR BIDDING

Object Description	Object Code	Expenditures 2003-05		Expenditures 2005-2007		Present Budget		Total Present Budget		2007-2009		Executive Recommendation		Percent Change
		Biennium	(thru 12/31/06)	2005-2007	2007 Biennium	Balance	2007 Biennium	2007-2009	2007-2009	2007-2009	2007-2009	2007-2009		
SALARIES AND WAGES														
Salaries	511000	693,037	579,149	-	-	207,437	786,586	-	-	30,612	817,198	4%		
Salaries - Other	512000	-	-	-	-	-	-	-	-	120,528	120,528	-		
Temporary Salaries	513000	-	1,154	1,346	2,500	1,346	2,500	0	0	0	2,500	0%		
Overtime	514000	-	1,469	1,031	2,500	1,031	2,500	0	0	0	2,500	0%		
Benefits	516000	204,902	171,999	-	-	79,342	251,341	-	-	17,513	268,854	7%		
Salary Increase	599110	-	-	-	-	-	-	-	-	49,687	49,687	-		
Benefit Increase	599160	-	-	-	-	-	-	-	-	8,407	8,407	-		
TOTAL		897,939	753,771			289,156	1,042,927			226,747	1,269,674			
OPERATING EXPENSES														
IT - Data Processing	601000	25,796	21,809	-	-	26,938	48,747	-	-	0	48,747	0%		
IT - Telephone	602000	10,680	7,061	-	-	6,939	14,000	-	-	1,000	15,000	7%		
Travel	521000	19,764	17,355	-	-	4,645	22,000	-	-	0	22,000	0%		
IT - Software/Supplies *	531000	9,889	2,288	-	-	6,712	9,000	-	-	3,000	12,000	33%		
Postage	541000	9,648	8,092	-	-	1,908	10,000	-	-	1,400	11,400	14%		
IT - Contractual Services	603000	455	600	-	-	400	1,000	-	-	0	1,000	0%		
Lease/Rent - Equipment **	581000	4,320	3,192	-	-	3,533	6,725	-	-	(886)	5,839	-13%		
Lease/Rent - Bldg/Land	582000	42,709	46,154	-	-	736	46,890	-	-	1,486	48,376	3%		
Dues & Professional Develop.	611000	9,111	9,111	-	-	5,889	15,000	-	-	0	15,000	0%		
Operating Fees & Services	621000	76	702	-	-	1,298	2,000	-	-	0	2,000	0%		
Utilities	561000	272	106	-	-	294	400	-	-	0	400	0%		
Repairs ***	591000	156	35	-	-	2,965	3,000	-	-	(1,000)	2,000	-33%		
Professional Services ****	623000	107,214	148,514	-	-	101,486	250,000	-	-	(50,000)	200,000	-20%		
Insurance	571000	1,645	1,449	-	-	(6)	1,443	-	-	0	1,443	0%		
Office Supplies	536000	5,392	2,763	-	-	4,520	7,283	-	-	0	7,283	0%		
Printing	542000	2,505	521	-	-	2,479	3,000	-	-	0	3,000	0%		
Professional Supplies	532000	870	587	-	-	1,657	2,244	-	-	0	2,244	0%		
Miscellaneous Supplies	535000	488	157	-	-	5,078	5,235	-	-	(2,000)	3,235	-38%		
Office Equipment - Under \$5000	553000	4,996	2,639	-	-	8,811	11,450	-	-	(1,500)	9,950	-13%		
IT - Equipment Under \$5000 *****	551000	17,025	122	-	-	7,378	7,500	-	-	6,000	13,500	80%		
TOTAL		273,011	273,258			193,659	466,917			(42,500)	424,417			
Total Expenditures	TOTAL	1,170,950	1,027,029			482,815	1,509,844			184,247	1,694,091			

* Increase includes \$3,000 optional increase for digital recording project software.

** New copier lease resulted in lower monthly rental charges.

*** Reduction due to lower than anticipated expenses in 2005-07.

**** Original appropriation was \$50,000. On 7/27/06, Emergency Commission increased by \$100,000, to \$150,000. \$100,000 added through use of continuing appropriation. Total is \$250,000.

Actual request is for \$150,000 plus \$50,000 optional increase.

***** Increase includes \$4500 optional increase for digital recording project equipment.

Office of Administrative Hearings Salaries- Optional Request -Attachment 3A

Name	position	current salary	expected classified salary	proposed equity increase (executive recommendation)
Allen Hoberg	Director/ALJ	77,777/yr	NA ¹	85,000/yr (+7223)
Bonny Fetch ²	Lead ALJ	64,941	76,860-85,392 Grade 16	75,000 (+10,059)
Al Wahl ³	Lead ALJ	61,301	76,860-85,392 Grade 16	75,000 (+13,699)
Rosellen Sand ⁴	ALJ	57,888	76,860-85,392 Grade 16	70,000 (+12,112)
Susan Bailey ⁵	ALJ	56,700	59,785-68,316 Grade 16	65,000 (+8,300)
Frances Zuther ⁶	Office Manager	37,580	38,076-42,300 Grade 9	none
Elizabeth Patterson ⁷	Support Staff	28,056	20,952-29,616 Grade 7	none
Louise Wetzel ⁸	Support Staff	24,368	20,952-29,616 Grade 7	none

OAH also has 4 temporary, contract ALJs who are each paid \$85.00/hr, as needed.

¹ Appointed official, not classified. 28 years legal experience; 26 years experience as state employee - 3 years with Legislative Council - 7 years as assistant attorney general - 16 years as Director/ALJ with OAH.

² Supervisory ALJ. 34 years experience as state employee - 6 1/2 as Central Personnel Division hearing officer - 16 years experience as ALJ for OAH.

³ Supervisory ALJ. 37 years legal experience - 25 years in private law practice; 12 years experience as state employee, all as OAH ALJ.

⁴ 25 years legal experience; 25 years experience as state employee - 21 years as assistant attorney general - 4 years as OAH ALJ.

⁵ 10 years legal experience including as city judge and assistant states attorney. 16 months as OAH ALJ

⁶ Administrative Staff Officer I - 28 years of work experience; 17 years experience as state employee - 16 years at OAH with 10 years as OAH office manager

⁷ Administrative Assistant II - 9 1/2 years work experience; 2 1/2 years experience as state employee all with OAH.

⁸ Administrative Assistant II - 23 years work experience; 23 months experience as state employee all with OAH.

Comparison of ALJ Salaries to Judges and other ALJs - Attachment 4A

1. Supreme Court Judge's salaries - current - requested for 2007-2009

Chief Justice	\$110,346	116,966 and 125,154 ¹
Justice	\$107,210	113,642 and 121,597

2. District Court Judge's salaries - current - requested for 2007-2009

Presiding Judge	\$100,960	106,017 and 114,508
Judge	\$98,070	103,954 and 111,230

3. ALJ salaries in the region²

Minnesota: Director - \$117,686; all ALJs paid the same - \$104,756

Wisconsin: Director, range \$41,562-112,579 (depending upon experience); ALJs, range \$41,562 - 105,571 (depending upon experience)³

Iowa: Director, range \$76,460 - \$106,080 (depending upon experience); ALJs, range from \$66,394 to 92,185 (depending upon experience)

Wyoming: Director, range \$60,000 - 77,000 (depending upon experience); ALJs, range from \$54,000 - 71,000 (depending upon experience).

4. ALJ salaries nationwide:⁴ The range for ALJs nationwide in 2005 ranged from a low of \$50,500 in Oregon to a high of \$116,816 in Florida. The range for supervisor ALJs ranged from a low of \$56,390 in Oregon to a high of \$122,350 in New Jersey. The range for directors was from a low of \$64,200 in Oregon to a high of \$123,699 in New Jersey.

¹ The salary increases for the courts are proposed to occur in two years, on July 1, 2007 and July 1, 2008. A total of a 13.4% increase is proposed for both the supreme court and the district courts.

² There is no comprehensive salary survey of ALJs newer than a 2001 survey by the National Association of Administrative Law Judges (NAALJ), but a partial survey conducted by an officer of the NAALJ provided some helpful information, using 2005 statistics. The salary information given in this category is for other central panel states. Not all states are central panel states, but North Dakota is one of about 28 that is a central panel state. South Dakota information was not provided. In 2001, SD ALJs were paid slightly less than ND ALJs, but SD has a very small central panel with very limited jurisdiction. Montana does not have a central panel.

³ Unlike North Dakota ALJs who must have 5 years of hearing or trial experience to be an ALJ, Wisconsin's central panel may hire ALJs who have no legal experience, thus the lower starting salaries. This is true in several states though many others have a five year requirement like North Dakota.

⁴ NAALJ has not conducted a comprehensive nationwide salary survey since 2001. Louisiana conducted an informal survey in 2005 of central panel states and released the information to other central panels. The above numbers are based on that survey.

Attorneys in State Government - Salaries¹ - Attachment 5A

1. 25+ years legal experience	years of state experience	actual salaries (range)	number of salaries above \$70,000
(no. of attys) 13	5.2-35.3	53,040-78,985	7
2. 15-25 years legal experience	years of state experience	actual salaries (range)	number of salaries above \$70,000
20	0.3 - 23.4	44,878 - 82,417	3
3. 10-15 years legal experience	years of state experience	actual salaries (range)	number of salaries above \$65,000
22	0.1 - 14.4	38,712 - 80,208	2
4. 5-10 years legal experience	years of state experience	actual salaries (range)	number of salaries above \$65,000
10	1.7 - 12.3 ²	46,687 - 73,357	1
5. 0-5 years legal experience	years of state experience	actual salaries (range)	number of salaries above \$60,000
7	0.3 - 2.0	42,432 - 51,480	0

Directors, supervisors, or general counsel ³

Number of attorneys ⁴	years of state experience	actual salaries (range)	number above \$80,000
22	0.2 - 38.8	56,100 - 109,585	12 ⁵

¹ Statistics taken from the 2006 HRMS Attorney Salary Survey. Salary numbers for the HRMS survey were provided before the 4% raise to state employees on July 1, 2006. The salary numbers shown are from the survey but 4% has been added to show the likely salary of these attorneys after the 4% increase on July 1, 2006, and so that salary comparisons to current ALJ and Attorney salaries as of July 1, 2006, would be more fair and accurate.

² One person had some state experience not as an attorney, thus had more state experience than legal experience

³ This group includes a few people who are attorneys but are in positions where a law degree is helpful but not required.

⁴ The number of years does not appear to be much of a factor - the years of legal experience ranges from 8.5 to 40.8 years - 16 had 20+ years of legal experience.

⁵ 6 were above \$100,000.



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MEMORANDUM

TO: Sixtieth Legislative Assembly
State of North Dakota
Senate Appropriations Committee

FROM: Allen C. Hoberg - Director
Office of Administrative Hearings *AH*

RE: OAH 2007-2009 Operating Budget Request
House Bill No. 1017

DATE: March 12, 2007

See testimony on 1-19-07 for all attachments

The Office of Administrative Hearings' work consists almost exclusively of conducting administrative hearings for numerous state and local agencies or entities on a wide variety of administrative matters, including complaint or enforcement hearings, application hearings for a license or benefits, and appeals of various types of governmental 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.

Since OAH began operations in 1991, it has received requests to conduct hearings from about 70 different state and local government agencies or entities. Some agencies make many requests for hearings each year, while others have made only a few requests for hearings since 1991. For example, in calendar year 2005, 26 agencies or

entities made requests, and in 2006, 25. In those two years combined, 34 different agencies or entities made requests. During those two years, approximately 43 percent of the requests for hearings came from Workforce Safety and Insurance, and 42 percent came from the Department of Human Services. See Attachment 1, a list of requests for hearings received by OAH in calendar years 2002 through 2006, listing each requesting agency and the number of requests made by each.

Under N.D.C.C. ch. 54-57, most state agencies are required to use the services of OAH. N.D.C.C. § 54-57-03(1) lists those state agencies exempted. However, some exempted agencies, including WSI, the Insurance Commissioner, the Bank of North Dakota, and the Public Service Commission, voluntarily use the services of OAH for some or all of their hearings. Additionally some local government entities use the services of OAH for such administrative hearings as employee discipline, tobacco sales enforcement, annexation, and public nuisance abatement.

OAH conducts hearings using both full-time ALJs and temporary, contract ALJs. N.D.C.C. § 54-57-02 gives OAH specific authority to contract with temporary ALJs on an as-needed basis. This authority is necessary because OAH is completely dependent on agency request for hearings. The number of requests can change over time, sometimes quickly, with changes in either state or federal statutes or rules, or changes in state or

federal agency policy. Since June 1, 2003, OAH has used fewer temporary, contract ALJs to conduct hearings. OAH received two new full-time ALJ positions in 2003 to replace the work of eight temporary, contract ALJs. But, because of recent increasing caseloads, OAH still requires considerable help from temporary ALJs. Attachment 2 is the OAH current staff configuration. OAH has eight FTEs; five ALJs and three support staff; and we contract with four temporary ALJs on an as-needed basis.

BUDGET ANALYSIS

OAH's 2005-2007 budget for administrative hearings shows a total funding of \$1,309,884. However, OAH received \$100,000 in additional spending authority from the Emergency Commission in July 2006 in its operating expenses line item to pay for additional temporary ALJ services. With that additional \$100,000 still necessary, OAH asked for a budget of \$1,436,741 for the 2007-2009 biennium. But, with the Executive recommendation, OAH's budget request was considerably more. The difference, essentially, was three OAH optional budget requests plus the executive recommendation for 4 percent / 4 percent salary increases for the 2007-2009 biennium. Attachment 3 is the requested detail I prepared for the House, our "spend down" budget.

Professional Services

OAH began the 2005-2007 biennium with an appropriation of \$1,309,844. The operating expenses line item portion of that appropriation was requested based on mid-2004 statistics for agency hearings. OAH's projections for agency hearings was considerably lower than what actually happened. The final number of agency requests for hearings in 2004 was 475, 523 in 2005, and 502 in 2006. But, for the 2005-2007 biennium, OAH had estimated only 425 to 450 agency requests per year, and, really, anything over approximately 425 each year OAH planned on handling with temporary ALJs. Based on those lower projections, OAH requested only \$50,000 for temporary ALJ (professional) services.

OAH spent \$261,699 on temporary ALJ services during the 2001-2003 biennium, but because we received two new full-time ALJs in 2003, OAH spent only \$78,256 on temporary ALJ services for the 2003-2005 biennium. To date, in 2005-2007, OAH has spent \$171,621 on temporary ALJ services and will likely spend at least \$200,000 before the biennium is over. This is entirely due to the increased caseload that OAH did not expect. Each biennium OAH expects to spend some moneys on temporary ALJs. Again, OAH originally requested \$50,000 for temporary ALJ services in its 2005-2007 biennium, but is spending much more.

Although OAH ALJs have worked hard during this biennium to handle at least some of the additional requests, OAH needed to contract with temporary ALJs much more frequently than it expected. In July 2006, OAH asked the Emergency Commission for an additional \$100,000 in special funds authority to pay for additional temporary ALJ services provided to our user agencies. For the 2007-2009 biennium OAH asked for \$150,000 for temporary ALJ services but it also asked for an additional \$50,000 in special fund authority as an optional request because OAH's caseload may well remain high (a total of \$200,000 in spending authority for professional services). The \$50,000 optional request was included in the Executive Recommendation for OAH's budget, but that optional request was removed by the House from OAH's budget. I testified in the House that although our belief is that we will likely need that additional \$50,000 next biennium, it is possible that we will not, and if we do there are other options to obtain it, such as an Emergency Commission request.

For you information, OAH has considered whether, alternatively, it should be asking for an additional FTE so that we do not have to spend so much on temporary ALJ services, but we believe it is wise to wait one more biennium to make certain that our caseload stays high. Caseload numbers could return to the lower numbers of 2002 and 2003. See attachment 1. Though we do not expect them to drop significantly, in this business you never know for certain. If caseload numbers remain high at least another two

years, then in the next legislative session, OAH may be asking for another FTE to hire another full-time ALJ.

Salaries and Benefits - Equity Increases

The other large additional optional expenditure, included by the Governor in his executive recommendation and retained by the House in OAH's budget, is for \$120,528 in special fund moneys for salary and benefits increases for administrative law judges.

Since its establishment in 1991, OAH has never asked for additional salary money above the standard percentage increases recommended by the governor for all state employees. OAH has sometimes used its small budget surpluses to give minimal merit raises, as it did in 2006, but we have not been able to keep pace for ALJs. All OAH ALJs, except the director, are under the state classification system. Several of our ALJs salaries are now far below where they should be according to state classification pay grade guidelines. Also, all of OAH's ALJs are on the lower end of what attorneys working for the state are being paid in North Dakota, according to years of legal experience and years of service with the state. But, we have an even bigger concern than not having kept pace with either the pay grade guidelines or the salaries of attorneys employed by the state. We are also no longer able to satisfactorily compete in the general market for attorneys in North Dakota. That means that not only will assistant

attorneys general be hesitant to apply for open ALJ positions, and I believe they have been hesitant, but other attorneys in North Dakota, in private practice, will also be hesitant. For a long time we have been unable to attract attorneys from other states, but, now, I believe, we will be unable to attract attorneys in North Dakota without these salary increases. Even with these equity increases, I believe, we will only barely be competitive because assistant attorneys general and other attorneys in state government will also be getting pay increases this coming biennium.

ALJs are classified at Grade 16 in the state classification system. In that grade, their salaries can range from a minimum of \$51,240 per year to a maximum of \$85,392 per year. The present actual salaries of OAH ALJs range from \$56,700 to \$64,941. The ALJ with the least experience has 10 years legal experience and 16 months ALJ experience. The ALJ with the greatest experience has 22 years experience as an ALJ or hearing officer and 34 years experience as a state employee. Three of OAH's ALJs should be at or near the maximum of the Grade 16 salary range but all are under \$65,000. Although the director's position is comparable to a presiding judge of the district court position, his salary is well below that. In fact, in many states the comparison of ALJ positions is not to other attorneys in state government but to state trial court judges. OAH ALJs' salaries are far below North Dakota trial judges' salaries.

In New Jersey, ALJs are paid 100 percent of a district court judge's salary. In North Carolina ALJs are paid 90 percent of a district court judge's salary, and the director is paid 100 percent. In Minnesota, ALJs are paid 88.6 percent of a district court judge's salary. I am not advocating that ALJ's salaries be tied to the salaries of district court judges, as a percentage of their salaries, but I do believe that the Minnesota comparison is about right. ALJs in North Dakota should at least be paid around 85 percent of a district judge's salary.

Compared to a current district judge's salary, without the increase the courts are receiving for this biennium, an ALJ salary of \$75,000 would be only 76 percent of a district judge's salary; a director's salary of \$85,000 would be 84 percent of a current presiding district judge's salary. I have provided attachments for additional statistical information which clearly shows the need for these equity increases. Attachments 4, 5, and 6.

The last two times OAH hired a new ALJ, beginning salary has been a concern with applicants, especially so this last time. When OAH's most recent addition as an ALJ was hired in February 2006, we interviewed 12 qualified applicants who were all very interested in the position. All but one expressed concern about the salary offered (\$56,700). Two of the better applicants said that they did not want to be further

considered unless the salary would be considerably more. They were not further considered. Another very good applicant at first said that he would not accept the offered salary but then said he might. When we did make an offer, the top remaining applicant, who had said he may still be interested at our offered salary, turned us down, citing low salary. The second ranked of the remaining applicants was the one who said he might accept after first saying he would not accept. We did not offer the position to him. The third ranked applicant was offered the position and she accepted but again expressed reservations about the salary. OAH is required to hire attorneys with at least five years hearings or trial experience. I believe that in the future, without these equity increases, it will be very, very difficult to hire qualified attorneys to become ALJs.

Additionally, I am very concerned about losing at least one very able ALJ who has been with OAH since 2003 and with the state for a considerable period of time if ALJ salaries aren't increased considerably.

OAH ALJs were part of an Human Resource Management Services salary survey of attorneys working in state government. We did not fare very well when our salaries were compared to other attorneys in state government. See attachment 6. Moreover, by regional or national comparison to ALJs in other states, OAH ALJs' salaries are very low. See attachment 5. By any fair comparison, OAH ALJs are severely underpaid.

Please include the additional salary increases for ALJs in OAH's optional budget request in OAH's budget. Even with these optional equity increases, three of the four OAH classified ALJs are still below where they should be in expected classified salary. See attachment 4. The governor saw the need for these equity increases as he included them in the executive recommendation for our appropriation. The House saw the need for them as they kept them in our budget. These equity increases are very much needed. The work of ALJs is very difficult and demanding. It is work comparable to a trial judge's work. In fact, the administrative hearing is the trial level for administrative law cases; there is no trial in district court when an administrative hearing has been held. I fear for the future of the agency, in regard to ALJs leaving, and in regard to the quality of attorneys we may be able to attract, unless ALJ salaries are increased as we are requesting.

OAH originally expressed its interest in pursuing increased ALJ salaries to the State Advisory Council for Administrative Hearings ("SAC"). The SAC is comprised of attorneys in private practice, state agency attorneys, and other attorneys appointed by the president of the State Bar Association of North Dakota under N.D.C.C. section 54-57-08. The SAC advises OAH on rulemaking and policy matters. Although the SAC took no formal vote on the actual amount of OAH's proposed optional budget

request for equity increases for ALJS, the SAC's expressed consensus was that improved salaries for ALJs is an important goal for OAH.

Of final note in regard to ALJ salaries, the equity increases in OAH salaries budgeted for the 2007-2009 biennium will not affect OAH's billing rate for state agencies until the 2009-2011 biennium because OAH's billing rate for 2007-2009 will be based on actual expenditures for the 2005-2007 biennium. And, again, OAH is not asking for any general funds for these increases; all the moneys will be special funds generated by OAH billing its user agencies.

Digital Recording

The final additional optional expenditure included by the Governor in his executive recommendation for OAH's budget is \$7,500 for digital recorders to replace existing analog recorders OAH is currently using. It is likely that OAH will need to go to digital recording in the 2007-2009 biennium, because some agencies are already requesting it. Digital recording is widely used in the courts and by our counterparts in other states. It will be better for OAH to use digital recording because digital recording is the current standard and the technology will better assist ALJs in reviewing the hearing record and writing decisions.

Additional Statistics

I have also attached for your information some additional statistical information regarding the number of hearings and prehearing conferences held by OAH. Attachment 7. If you wish, we can provide a great deal more statistical information about OAH from our case management system. I have also attached a summary of the results of our 2005-2006 OAH service survey which is a compilation of responses from those who use are hearing officer services - attorneys, agency representatives, and citizens. Attachment 8. Generally, there seems to be a high level of satisfaction with the services provided by OAH.

Effect of Senate Bill 2375

As you know, Senate Bill 2375 passed the Senate, and as amended, that bill requires OAH to conduct all of the hearings of the Department of Transportation. Although OAH issued a fiscal note in regard to that legislation, no appropriation was included in the bill. OAH has requested that an appropriation be added in the House to SB 2375 in line with what OAH indicated in the fiscal note. We prefer to deal with that legislation separately because it may not pass in the House and it seems wiser to us to keep the implementing legislation and the appropriation to make it possible in the same bill.

Sixtieth Legislative Assembly
State of North Dakota
Senate Appropriations Committee
March 12, 2007
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In summary, with the budget proposed today, under the Executive Recommendation, as amended and approved by the House, OAH will be able to fulfill its mission to provide quality, independent hearing officer services to all state agencies required to use its services and to all state and local entities that voluntarily want to use services. OAH respectfully requests that the Senate approve OAH's 2007-2009 operating budget request for administrative hearings as proposed today.

Requests by Year

ATTACHMENT 1

Files Received Between January 1, 2002, and December 31, 2006

of Administrative Hearings

Agency	2002	2003	2004	2005	2006	Totals
Addiction Counseling Examiners Board	1	0	0	0	0	1
Agriculture Commissioner	2	4	1	4	2	13
Animal Health, Board of	2	0	0	0	2	4
Architecture, State Board of	1	0	1	0	0	2
Attorney General, Office of	1	4	2	1	1	9
Attorney General, Racing Commission	0	0	1	0	0	1
Bismarck State College	0	0	0	1	0	1
BND, Student Loans of North Dakota	4	8	3	3	12	30
Corrections - Parole & Probation	0	1	0	0	3	4
Corrections & Rehabilitation - Dept. of	0	0	0	1	0	1
County, Burleigh	0	4	1	1	1	7
County, Morton	0	1	1	0	0	2
County, Stark	0	0	0	1	0	1
Dental Examiners, Board of	1	0	0	0	2	3
DHS, Human Services, Department of	197	145	219	211	217	989
Dickinson State University	0	0	0	1	0	1
Education Standards & Practices Board	0	4	2	0	0	6
Electrical Board, N.D. State	0	0	0	0	0	0
FI, Banking Board	0	2	0	0	0	2
FI, Financial Institutions, Department of	0	2	0	1	1	4
Game and Fish Department	3	2	5	4	2	16
Garrison Diversion Conservancy District	0	0	0	0	0	0
Hazen, ND, City of	0	1	0	0	0	1
Health, Department of	1	1	2	4	3	11
Human Resource Management Services	6	9	15	12	2	44
IC, Insurance Commissioner	1	0	1	0	0	2
Industrial Commission	0	0	0	0	1	1
Labor Commissioner	0	0	1	5	1	7

Monday, March 12, 2007

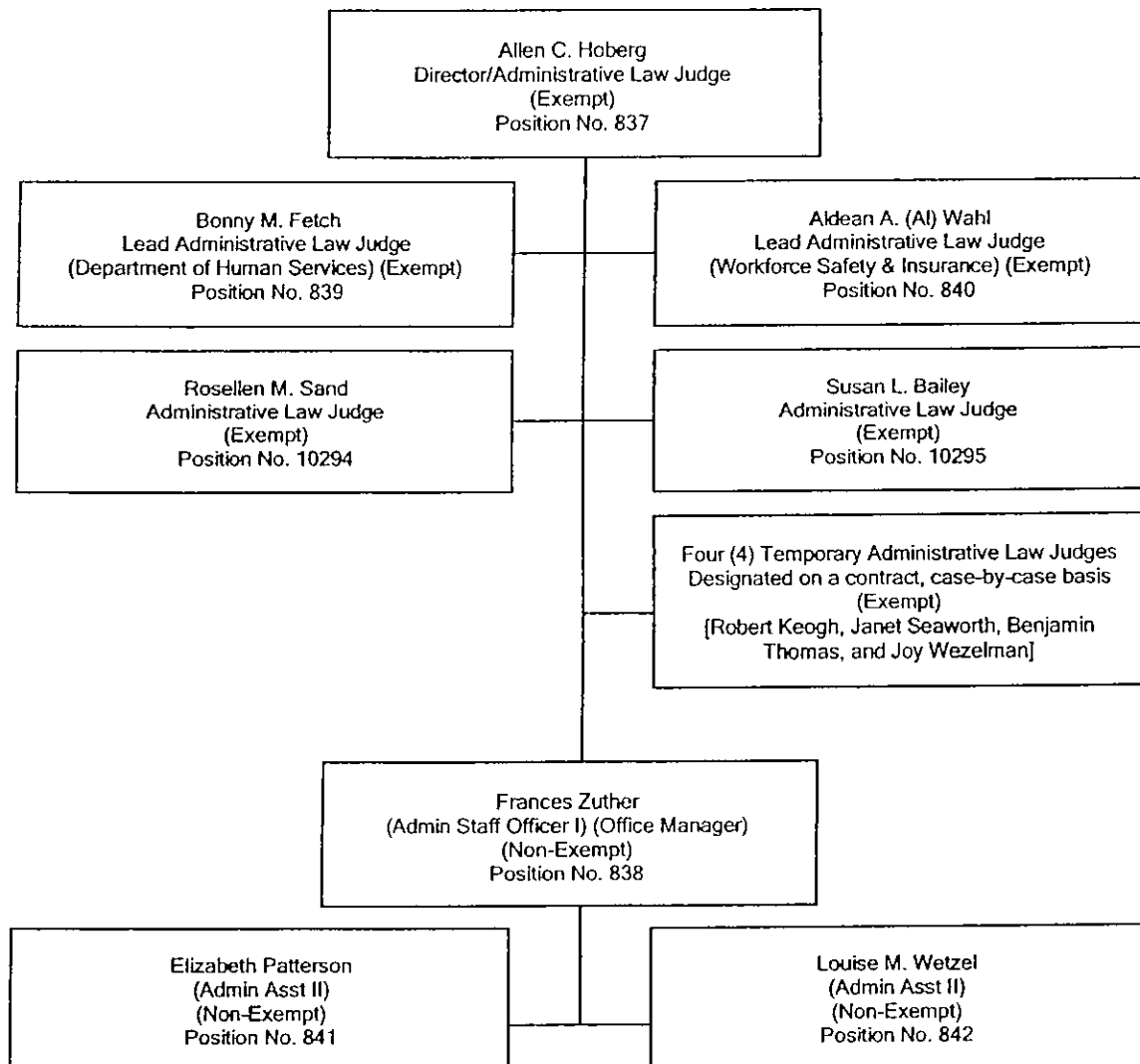
Page 1 of 2

See p. 2 on 1/15/07

OFFICE OF ADMINISTRATIVE HEARINGS
CURRENT STAFF CONFIGURATION

- 1 - Full-time Director/ALJ in central office in Bismarck
 - 4 - Full-time ALJs
 - 2 ALJs in central office in Bismarck
 - 2 ALJs telecommute, located in Fargo and West Fargo
 - 4 - Temporary, contract ALJs used only on an as-needed basis
 - 1 Temporary ALJ in Fargo
 - 2 Temporary ALJs in Bismarck
 - 1 Temporary ALJ in Dickinson
 - 3 - Full-time support staff in central office in Bismarck
- (See August 1, 2006, Organization chart, attached.)

OFFICE OF ADMINISTRATIVE HEARINGS
ORGANIZATIONAL CHART
August 1, 2006



Hearings Held (Quarterly) - All Agencies

ATTACHMENT 7

Office of Administrative Hearings

<i>Year</i>	<i>Total</i>	<i>Qtr 1</i>	<i>Qtr 2</i>	<i>Qtr 3</i>	<i>Qtr 4</i>
2002	214	45	63	47	59
2003	239	40	76	74	49
2004	243	63	48	63	69
2005	295	84	67	76	68
2006	249	54	81	66	48
<i>Grand Total</i>	1240				

Prehearing Conferences Held (Quarterly) - All Agencies

Office of Administrative Hearings

<i>Year</i>	<i>Total</i>	<i>Qtr 1</i>	<i>Qtr 2</i>	<i>Qtr 3</i>	<i>Qtr 4</i>
2002	80	22	26	17	15
2003	115	28	25	37	25
2004	224	39	44	74	67
2005	241	54	63	59	65
2006	191	42	46	49	54
<i>Grand Total</i>	851				

OAH SURVEYS

334 surveys sent July 1, 2005, through December 31, 2006
 147 surveys returned July 1, 2005, through December 31, 2006

Section One1.) *Availability of OAH staff to assist you*

138 satisfactory 8 unsatisfactory 1 unanswered

2.) *Helpfulness, courtesy, and professionalism of OAH staff assisting you*

141 satisfactory 5 unsatisfactory 1 unanswered

3.) *Knowledge of OAH staff assisting you*

138 satisfactory 6 unsatisfactory 1 unanswered 1 check between the two boxes

4.) *Promptness of response to your request for information from OAH staff*

140 satisfactory 6 unsatisfactory 1 unanswered

5.) *Accuracy of information received by you from OAH staff*

139 satisfactory 7 unsatisfactory 1 unanswered

Comments:

- Almost 3 months to issue recommended decision from date of hearing too long.
- Can't think of anything at this time except that the whole process is very long!!
- Keep telling WSI that OAH – not WSI – controls the hearing process! Maintain your independence, even (especially) at the cost [?] of WSI "firing" OAH!
- I have enjoyed having Rosellen M. Sand as the Administrative Law Judge at 2 appeals of mine.
- We consistently find OAH staff to be helpful and efficient.
- I was very satisfied. Thank you for all you have done.
- Judge Sand did a remarkable job under very difficult circumstances.
- Dealing with OHA [sic] is always a pleasant experience. Because we are located in Mandan, we prefer in-person hearings instead of telephone hearings, and your office has accommodated this request.
- Give more resources to your ALJs so they have the research capability. They need to do their job.
- I was very pleased with the quick responses from the staff and the quickness of the decision of the ALJ.
- Do to ledgeslater [sic] error in letting WFSI make their own laws no one can really help.

- Per Administrative Law Judge should never have been referred for hearing by DHS as not an appealable issue. DHS needs to study these more carefully. Hearing was not actually held.
- Hearing was on speaker phone, so I wasn't sure what was being presented to Judge. Only in writeing [sic] from the Judge to Ms. Carole [sic] K. Olson did I have knowledge what Cindy Hehn presended [sic] to the Judge sure wasn't presended [sic] in Hearing.
- I think it would be a good idea to orientate lay people on the system ie rules of order, evidence, etc.
- I think the hearings was fair because I got hurt at work and they said I dint not get hurt at work it was a work ?? ??.
- Return phone calls promptly

Section Two

1.) *Were you a party represented by an attorney?*

33 unanswered 46 yes 68 no 0 uncertain

Comments:

- I am the attorney [twice]
- Couldn't get one
- Couldn't afford one
- WSI atty

2.) *Were OAH brochures, forms, correspondence, and instructions clear, understandable and helpful?*

58 unanswered 65 yes 7 no 17 uncertain

3.) *Was the Notice of Hearing clear and understandable?*

30 unanswered 114 yes 2 no 1 uncertain

4.) *Was your case mediated or arbitrated?*

34 unanswered 6 yes 93 no 14 uncertain

Comments:

- Formal hearing

5.) *Was the time between the date of the request for hearing and the hearing acceptable?*

23 unanswered 111 yes 11 no 2 uncertain

Comments:

- Given the law, it was okay (stay put delays)

- 1 ½ yrs later
- Ok

6.) *Did you understand the hearing procedures?*

24 unanswered 114 yes 6 no 3 uncertain

7.) *Was your case concluded within a reasonable time?*

23 unanswered 104 yes 16 no 4 uncertain

Comments:

- ALJ said would get decision out w/in 30 days but did not meet that
- Should get recommended decision out w/in 30 days of hearing

8.) *Do you believe you received fair and impartial treatment from the presiding ALJ?*

25 unanswered 113 yes 5 no 4 uncertain

Comments:

- Absolutely
- In this case but certainly not always!

9.) *Was the hearing location convenient to you?*

28 unanswered 115 yes 3 no 1 uncertain

Comments:

- Phone conference

10.) *Was the hearing facility comfortable?*

30 unanswered 106 yes 9 no 2 uncertain

Comments:

- Weird room
- Phone conference

11.) *Was there adequate parking?*

42 unanswered 99 yes 5 no 1 uncertain

Comments:

- Charged

12.) *If you participated in the hearing via telephone, did you encounter any problems with the hearing because of the use of a telephone connection? (Please specify in space provided for comments.)*

101 unanswered 11 yes 33 no 2 uncertain

Comments:

- Not because of the connection, but allowing witnesses to appear by phone is a problem.
- I wasn't always able to hear all parties

13.) *Did you require accommodation for a disability?*

33 unanswered 4 yes 110 no 0 uncertain

Comments:

- Other party did

14.) *If yes, was the facility adequate to meet your needs?*

126 unanswered 18 yes 1 no 2 uncertain

Comments:

- Had to wait way too long for hearing – Applied in 10/05 for TANF, hearing at end of 12/05 – decision not given until 2/06.
- I have been very pleased with Rosellen M. Sand, Administrative Law Judge. She has been exceptionally good at making the hearing comfortable and very informative [sic].
- I feel 30 plus days were allowed to WC attorney to compile add'l info. & feel it should not have been presented only. These hearings are not for the injured disabled employees but are for WC benefit. I couldn't afford counsel & can't afford this permanent disability either. Had to file bankruptcy due to leg expenses. There is something wrong with the system. Felt judge was fair until he asked WC attorney for info. & he allowed them an awful long time to get info. back to him. (Very unfair.)
- Just keep on providing a fair and impartial opportunity for both sides to be heard. This hearing was extremely well-handled. Far superior to a BIA Hearing in which I recently participated.
- Transcripts should be ordered.
- I thought I understood everything but somehow I missed that the deadline for exhibits were 30 days prior to the hearing or they could be objected – from what I read it looked like 10 days or even five – that part was confusing and I didn't see 30 days! Keep up the good work!
- I was not able to afford a lawyer. How can this be a fair hearing when I am not even aware of how the system works. The opposing agency had a lawyer who knew the

rules. If you have money, you can access justice otherwise you do not have a chance for a fair hearing. What services?

- Get better hearing sites. Use court rooms whenever possible. Avoid court reporter offices (except Norm Mark).
- State of N.D. or W.S.I. had attorney pre determined to represent -- the employees do not have the pre determined legal expertise available.
- Case submitted June 15, 2006. Should not take over 2 months for recommended decision.
- No specific needs for improvement are noted.
- Phone cutting out -- was ok -- spoke louder.
- The severity of our health concerns were not fully communicated in the O.A.H. since they were not applicable.
- For this particular case, a Jobs sanction was imposed for the month of 7-04 -- hearing sched for 9-15-04 -- final decision on this was not rec'd until 4-28-05 -- in my opinion there's no excuse for the length of time this took -- this is by no means fair to the clients we serve -- the OAH needs to have a faster process than this -- I understand how busy they are but perhaps there needs to be more ALJ's on staff
- ALJ had a hard time hearing the client. I believe this was due to soft voice.
- I think the claimant should be allowed to have a say other than answer the questions.
- No improvements needed. Excellent, as always.
- Yes; being in person and NOT on speaker phone.
- None
- ALJ Bailey provided a timely recommended decision -- which is much appreciated.
- Small hearing room is cramped at times. Better phone equipment would be nice.
- You need to give you [sic] ALJ's better access to legal research materials, i.e., those outside of Bismarck
- I believe we have had a few instances in which evidence (case file materials, notices, etc.) for some reason did not find its way from DHS to your office, but we are dealing with DHS on this matter.
- Everyone has always been very helpful and very easy to work with.
- Bigger hearing rooms, more "courtroom-like" design. It's difficult handling exhibits, files, examiners, witnesses, etc. Court reporters had difficulty hearing witnesses at time.
- There really isn't anything you can do -- you follow the law. The changes need to be made with the laws.
- ALJs need to understand they are INDEPENDENT ALJs -- Not mouthpieces for the agency that pays OAH! PS -- If you want me to complete anymore of these -- provide a stamped envelope.
- I think when a person get hurt at work I ?? ?? be ?? for it.
- Great turn around on rec'd decision
- Recommended decision was well-reasoned but inexcusably late -- 89 days from close of hearing record on 9/6/06 to decision on 12/4/06.
- Issue options [sic] within the the [sic] suggested 30 day period.

Type of case

- 25 unanswered
- 34 Department of Human Services
- 67 Workforce Safety and Insurance
- 2 Department of Public Instruction
- 1 Tax Department
- 3 Agriculture Department
- 2 Burleigh County (employee grievance)
- 2 Board of Medical Examiners
- 4 Board of Nursing
- 4 Game & Fish Department
- 3 Health Department
- 1 Education Standards and Practices Board

Survey completed by

- 23 unanswered
- 18 citizen
- 22 agency representatives
- 35 attorneys representing private parties
- 49 attorneys representing agencies