

# FISCAL NOTE

Requested by Legislative Council  
02/20/2007

## REVISION

Amendment to: SB 2375

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

|                       | 2005-2007 Biennium |             | 2007-2009 Biennium |             | 2009-2011 Biennium |             |
|-----------------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
|                       | General Fund       | Other Funds | General Fund       | Other Funds | General Fund       | Other Funds |
| <b>Revenues</b>       | \$0                | \$0         | \$0                | \$943,766   | \$0                | \$943,766   |
| <b>Expenditures</b>   | \$0                | \$0         | \$0                | \$943,766   | \$0                | \$943,766   |
| <b>Appropriations</b> | \$0                | \$0         | \$0                | \$943,766   | \$0                | \$943,766   |

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

| 2005-2007 Biennium |        |                  | 2007-2009 Biennium |        |                  | 2009-2011 Biennium |        |                  |
|--------------------|--------|------------------|--------------------|--------|------------------|--------------------|--------|------------------|
| Counties           | Cities | School Districts | Counties           | Cities | School Districts | Counties           | Cities | School Districts |
| \$0                | \$0    | \$0              | \$0                | \$0    | \$0              | \$0                | \$0    | \$0              |

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

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

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

All the provisions of this bill are included to accomplish a complete transfer of all DOT hearings to OAH and to require OAH ALJs to conduct those hearings.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

OAH receives no general funds. All of its budget is special funds obtained by billing its user agencies. OAH ALJs bill user agencies for each .1 hr. worked on conducting a hearing and writing a decision, and related matters. OAH ALJs keep daily time records and, based on those time records, each month OAH sends a billing statement to agencies requiring payment for hearing services provided to them. OAH would do the same for DOT hearings. It would not be necessary to transfer any moneys from DOT's budget to OAH's budget. DOT would simply devote moneys in its current budget to pay for OAH billings for providing ALJs to conduct DOT hearings. However, it would be necessary to increase OAH's budget to provide spending authority to enable OAH to pay for conducting DOT hearings. (See B. and C. below.) OAH's billing rate for all agencies for the current biennium is based on the actual expenditures OAH incurs for providing hearing services to all agencies in the previous biennium. OAH will likely base DOT's billing rate for OAH ALJs providing hearing services to DOT in the 2007-2009 biennium on OAH's proposed budget under this bill and an estimate of time to be spent in providing hearing services; and, thereafter, in future biennia, on actual expenditures and actual time spent (i.e. the DOT billing rate for the 2009-2011 biennium will be based on OAH's actual expenditures for the 2007-2009 biennium). DOT is required by the bill, as amended, to request OAH to provide ALJs to conduct all of its hearings, not just those under sections 39-06.2-10.6 and 39-20-05, as under the bill as introduced. But, the original fiscal note anticipated that OAH ALJs would provide to DOT all of the hearing services now provided by its in-house hearing officers, and that DOT would voluntarily request OAH to provide ALJs to conduct its other, miscellaneous hearings, because DOT would no longer have any hearing officers to conduct hearings. Therefore, just as in the original fiscal note, OAH would still be required to hire five ALJs and locate them in the state's four major cities. These ALJs will work out of their home, telecommuting with OAH. However, neither the

original fiscal note nor the first revised fiscal note provided for any support staff as secretarial support for the five ALJs. This revised fiscal note anticipates adding one support staff person to provide secretarial support for the five ALJs in the nature of scheduling hearings, making travel arrangements, case management, billing, and other secretarial support. Apparently, DOT hearing officers perform most, if not all, of their necessary secretarial support for themselves, now. If OAH provides the necessary secretarial support for these new ALJs they will be free to devote more time to conducting hearings and writing decisions. OAH will then be able to use these five new ALJs to replace even more of the work OAH now assigns to temporary, contract ALJs, thus saving OAH money in the long run. OAH should be able to considerably reduce the amount it currently spends on temporary, contract ALJs by providing support staff for these ALJs.

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

DOT currently employs 4 full-time and 2 part-time hearing officers to conduct all of its hearing. This approximates between 4 1/2 and 4 2/3 FTEs. OAH will hire 5 new ALJs to conduct DOT hearings. Any time remaining to the 5 new ALJs after conducting DOT hearings will be spent conducting other agency hearings. OAH currently extensively uses temporary, contract ALJs on an as-needed basis to conduct some of its hearings. The work performed by the 5 new ALJs in this regard will replace the work of some of OAH's temporary, contract ALJs. AS noted above, these 5 new ALJs should be able to replace even more of the work of OAH's temporary, contract ALJs if a support staff person is hired to provide secretarial support. By law, OAH ALJs are all classified employees, at Grade 16. The minimum salary that OAH may pay its ALJs is \$51,240/yr. Thus, with the 4%/4% executive recommendation for salary increases, the minimum that OAH may pay an ALJ is \$57,471/yr. OAH proposes to pay its five new ALJs hired to conduct DOT hearings at this rate. All current DOT ALJs are paid less than this amount. The total amount of salaries to be paid the five new ALJs is \$574,710. The total amount of benefits to be paid for the five ALJs based on the proposed salary is \$201,149. OAH proposes to pay a support staff person at \$25,850 (with the 4%/4% salary increase included). Salary and benefits for that person will total \$69,795. Additionally, OAH will require \$98,112 in operating funds to provide for equipment, supplies, travel, training, and miscellaneous monthly office expenses necessary for the ALJs and support staff to do these hearings. OAH already has some office space and equipment for use by a new support staff person. See C below

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

OAH proposes to hire 5 new ALJs to conduct DOT hearings and locate them in the four large cities around the state (Bismarck, Fargo, Grand Forks, and Minot), as telecommute ALJs working out of their own homes. OAH will advertise these 5 new positions and, certainly, any of the current DOT hearing officers may apply for these new positions. It is likely that at least one of the former DOT hearing officers will be hired by OAH. The hearings conducted by these ALJs will be held in available rooms at various government buildings around North Dakota. OAH will hire one new support staff person for secretarial support for the 5 new ALJs. That person will be centrally located at OAH offices in Bismarck. The appropriation detail for accomplishing this is as follows:

Salary per ALJ - \$51,240(current) + \$6231 (4%/4%) = \$57,471 per ALJ  
Total ALJ salaries for 5 ALJs for two years = \$574,710  
Benefits per ALJ per year = \$20,115 (at 35%)  
Total ALJ benefits for 5 ALJs for two years = \$ 201,149  
Salary for one support staff person \$25,850  
Total Salary for one support staff person for two years = \$51,700  
Benefits for one support staff person per year = \$9048 (at 35%)  
Total benefits for one support staff person for two years = \$18,095  
Total salaries and benefits = \$845,654

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

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

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

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

Total Training and CLE costs = \$15,000

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

Total salaries and benefits = \$845,654

Total operating costs = \$ 98,112

Total Appropriation = \$943,766

|                      |                 |                       |                                   |
|----------------------|-----------------|-----------------------|-----------------------------------|
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