

FISCAL NOTE

(Return original and 10 copies)

Bill/Resolution No.: \_\_\_\_\_ Amendment to: Eng. HB 1089

Requested by Legislative Council Date of Request: 3-22-95

1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, and cities.

Narrative:

See attached narrative.

2. State fiscal effect in dollar amounts:

	<u>1993-95</u> <u>Biennium</u>		<u>1995-97</u> <u>Biennium</u>		<u>1997-99</u> <u>Biennium</u>	
	<u>General</u> <u>Fund</u>	<u>Special</u> <u>Funds</u>	<u>General</u> <u>Fund</u>	<u>Special</u> <u>Funds</u>	<u>General</u> <u>Fund</u>	<u>Special</u> <u>Funds</u>
Revenues:	0	0	0	0	0	\$617,048
Expenditures:	0	0	0	0	0	\$617,048

3. What, if any, is the effect of this measure on the appropriation for your agency or department:

a. For rest of 1993-95 biennium: \_\_\_\_\_

b. For the 1995-97 biennium: \_\_\_\_\_

c. For the 1997-99 biennium: \_\_\_\_\_

4. County and City fiscal effect in dollar amounts:

	<u>1993-95</u> <u>Biennium</u>		<u>1995-97</u> <u>Biennium</u>		<u>1997-99</u> <u>Biennium</u>	
	<u>Counties</u>	<u>Cities</u>	<u>Counties</u>	<u>Cities</u>	<u>Counties</u>	<u>Cities</u>

If additional space is needed, attach a supplemental sheet.

Signed Allen C. Hoberg

Typed Name Allen C. Hoberg

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Date Prepared: 3-23-95

## FISCAL NOTE NARRATIVE

### AMENDMENT TO ENGROSSED HOUSE BILL 1089

Originally, and after amendments in the House, HB 1089 did not require a fiscal note. With amendments in the Senate, however, there are three potential areas where a fiscal note may be indicated.

First is the amendment requiring the director to employ only attorneys as administrative law judges. The fiscal impact of this amendment is neutral. It will not, in and of itself, change the current classification system (and corresponding pay grades) for administrative law judges which is already based on qualifications or requirements to be an attorney or a hearing officer with considerable experience.

The second indication of possible fiscal impact are the changes in the Securities law. Here, too, the fiscal impact is neutral. The Office of Administrative Hearings (OAH) already conducts hearings for the Securities Commissioner and will continue to do so.

The third indication does have a fiscal impact but not for the 1995-1997 biennium. This results from the language added requiring the Department of Transportation (DOT) to plan for all of its administrative hearings to be conducted by the Office of Administrative Hearings effective August 1, 1997. If planning would show that those hearings should be conducted by the Office of Administrative Hearings and legislation was submitted and passed

requiring that, there would be considerable fiscal impact in the 1997-1999 biennium on both DOT and OAH.

ATTACHED (Attachment A) is a fiscal note submitted by Keith Magnusson of DOT to be included in this fiscal note. It shows a fiscal impact of \$1,400,000 on DOT in 1997-1999, and \$518,000 on the cities and counties in 1997-1999. Without seeing more of the "thorough study" upon which these estimates were based, OAH cannot say that it agrees that the fiscal impact will be that significant.

First of all, the hearing officer costs per hour of hearing, for OAH hearings, will go down considerably from the roughly \$50.00 an hour cost that DOT used in making these estimates (OAH's current rate). All five DOT hearing officers are classified at Grade 26, whereas OAH's current \$50.00 per hour cost is based on salaries for a director/hearing officer and two hearing officers classified at Grade 34. Therefore, although it is not known exactly what the per hour costs will be, it will be considerably less. It will be determined by a consultant based on actual costs.

Second, DOT estimates an additional \$700 cost per hearing which, OAH believes, is based primarily on the fact that DOT anticipates having to hire attorneys to represent the Department if hearings are conducted by OAH hearing officers. Currently, however, there are no attorneys representing the Department at DOT hearings. Yet,

DOT claims that its hearing officers are not controlled by the Department and are, in essence, independent decision makers (presumably, no ex parte contacts are being made to those independent decision makers during the course and conduct of DOT hearings). Of course, OAH hearing officers, too, would be independent decision makers, but not employed by the Department. OAH does not understand why attorney representation will be needed for the same hearing officers (grandfathered in and now employed by OAH) when none was needed before. OAH believes that these same hearing officers will continue to conduct DOT hearings just as they have done in the past, only now as independent hearing officers not employed by the Department. The only possible reason that DOT could want attorney representation when OAH hearing officers conduct the hearings is that DOT currently exerts some kind of control over their hearing officers, which it cannot do when OAH hearing officers conduct the hearings. If such control currently is now actually exerted, is it proper? If it does not occur, then, certainly, additional attorney representation will not be needed, because it is not needed now. If one subtracts \$700,000 from DOT's estimate, that leaves a DOT fiscal impact of \$700,000 much closer to OAH's estimate.

OAH estimates, using the top end of the salary range for Grade 26 classifications, that it will require \$507,048 in salaries and benefits for the five hearing officers and one support staff (an

additional support staff person is required), an additional \$100,000 in operating costs (operating costs could be more because OAH has no information about travel costs), and an additional \$10,000 in equipment costs, for a total of \$617,048 in total revenues. These revenues will be obtained by billing DOT for hearing officer services at a rate to be determined by OAH's consultant. OAH then intends to expend roughly the same amount to provide the needed hearing officer services. At the mid-range of Grade 26 classifications, the total amount required in revenues and expenditures for OAH will be \$532,531. In reality, the amount is likely to be somewhere between \$532,531 and \$617,048 (again, it could be more if transportation costs are higher). The \$617,048 high end estimate comports with a rough estimate given OAH by DOT, i.e. that they currently spend about \$500,000, excluding travel costs and in-house support costs, in providing hearing officer services. It could be that they spend more (\$700,000)?

If the hearing officers were transferred to OAH, then, and no attorneys are required for hearings (to represent the department), then the fiscal impact, excluding additional costs to cities and counties, should be neutral or close to neutral, when all the true costs of providing these services in-house in DOT are considered. Again, OAH bills agencies based on actual costs. While this does include some administrative overhead, DOT, certainly, has such costs now, too.

OAH does not know the source of DOT's estimate that this will be an additional \$518,000 cost to cities and counties. It is not a cost now, apparently. OAH does not understand how it will be a cost when the hearing officers are merely changed from one employer to another, but performing the same duties.

kab