

Testimony
Senate Bill No. 2296
Senate Judiciary Committee
Senator Diane Larson, Chairman
February 1, 2023

Chairman Larson, and members of the Senate Judiciary Committee, I am Jonathan Alm, the Chief Legal Officer with the Department of Health and Human Services (Department). The Department is providing testimony in opposition of Senate Bill 2296.

The Department is concerned with a couple of different areas of this Bill. The first concern is on page 1, lines 16 and 17, that limits the Department's ability to rewrite the findings of facts, conclusions of law, and order. The two reasons why the Department rewrites the findings of fact, conclusions of law, and proposed orders is for clarification purposes or misinterpretation of the law purposes. If page 1, lines 16 and 17, remains as is, the Department will have a fiscal impact of \$65,700 for the 2023-25 biennium as the Department would be required to appeal the final decisions to District Court instead of rewriting the findings of facts, conclusions of law, and order.

The Department currently uses a hybrid approach before the Office of Administrative Hearings. In 2021 and 2022, the Office of Attorney General provided legal representation on approximately 41% of the cases and in the other approximately 59% of the cases, the Department or Human Service Zone eligibility workers appeared on behalf of the Department. If page 1, lines 16 and 17, remains as is, the Department will be using the Office of Attorney General for 100% of all cases before

the Office of Administrative Hearings as it would no longer be able to rely on rewriting a decision when necessary. Legal representation would assure that the proper legal argument and facts are made before the Office of Administrative Hearings. The Department's proposed budget to pay the Office of Attorney General would need to be increased by \$458,252 for the 2023-25 biennium. The Office of Attorney General charges the Department \$140.91 per hour for legal representation. The Department anticipates the Office of Attorney General will need additional staff to represent the Department. The Department must also pay the Office of Administrative Hearings to conduct hearings and issue findings of fact, conclusions of law, and order at \$195.00 per hour. The Department anticipates needing an additional \$120,938 which reflects a 15% increase in its proposed budget to pay the Office of Administrative Hearings as the Department expects the Office of Administrative Hearings will be spending more time on cases. Page 1, lines 16 and 17, will also increase the time and costs for individual's appealing a decision made by the Department as the case before the Office of Administrative Hearings will become more formal.

The second concern is on page 1, lines 22 through 24, and page 2, lines 1 through 3. As written, this would overturn long standing federal and state case law that allows deference for an agency's interpretation of laws and rules. If this language remains, the Department will need an additional full-time equivalent position for an attorney as it will need to greatly expand administrative rules and proposed legislation to make sure the Department's intent and interpretation is clear. The Department also expects to conduct additional rulemaking at a cost of \$20,000 for public notices. Removing agency deference may lead to federal audit findings, individuals receiving assistance when they are not legally entitled to the

assistance, and it will increase the potential need to use the State's general funds to pay back the Federal government for improper spending of federal funds. In addition, the language regarding the "administrative law judge shall exercise doubt in favor of a reasonable interpretation that limits agency power and maximizes individual liberty" will most likely increase the need for additional appropriation as it may increase the number of individuals receiving assistance and services through programs and services offered by the Department.

This concludes my testimony. Thank you.