




NORTH
Dakota | Administrative Hearings
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MEMORANDUM

TO: Sixty-ninth Legislative Assembly
State of North Dakota
Senate Appropriations Committee
Human Resources Division

FROM: Hope L Hogan, Director 
Office of Administrative Hearings

RE: OAH 2025-2027 Operating Budget Request
Senate Bill No. 2017

DATE: January 13, 2025

The mission of the Office of Administrative Hearings (OAH) is to conduct orderly, fair, and impartial hearings and to issue prompt, reasoned recommended or final decisions. If a person receives a benefit or license from the state, the person is entitled to a hearing under the Due Process Clause of the Constitution. OAH provides substantive due process by deciding justly with well-reasoned decisions in accordance with the law. OAH also provides procedural due process by providing a neutral and unbiased tribunal that is independent from the governmental entity that provides the benefit or license. OAH listens to both sides of a dispute and allows each party the right to present evidence and cross-examine the other party's evidence. If the governmental entity that provides the benefit or license were to

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make the determination, there is the perception of bias. OAH provides experienced, professional, and neutral judges.

STAFF:

The prior director, Tim Dawson, retired on January 3, 2025. OAH currently has two full-time administrative law judges (ALJs) - Jessica Binder, who started with our office in July 2021; and myself, who started in November 2018. OAH has two additional FTEs - our office manager Frances Zuther and administrative assistant Louise Wetzel. OAH also contracts with four part-time, as-needed ALJs. The contracted ALJs primarily handle Workforce Safety and Insurance (WSI) hearings. Three of these ALJs work, or are located, in Fargo, and one is in Bismarck.

The full-time, permanent ALJs conduct a mixture of different agency hearings but, primarily, Department of Health and Human Services (DHHS), Public Service Commission (PSC), Workforce Safety and Insurance (WSI), Human Resource Management Services - state employee grievance hearings, and occupational licensing hearings. For 2024, I, Judge Hogan, had primarily a full workload of WSI hearings. The other two full-time ALJs conducted mainly DHHS hearings and other agency hearings. OAH will go forward into the 2025-2027 biennium with the same structure. Workload considerations and the need for the replacement of contract ALJs may require new contract ALJs at some time in the future as caseloads increase. Another option to handle additional caseload would be for OAH to employ more full-time, permanent ALJs. Currently, OAH does not have that authority.

CASELOAD:

OAH conducts hearings for:

- State and local agencies and entities that are required to use OAH (*see* N.D.C.C. §§ 54-57-03(1), 40-51.2-12, 40-47-01.1, and 15.1-15-08);
- State agencies that voluntarily use OAH, such as the PSC, the Insurance Department, the Industrial Commission, the Department of Water Resources, colleges and universities for personnel hearings, UND Title IX hearings, and occasionally Job Service North Dakota for conflict unemployment compensation hearings; and
- Local entities such as cities or counties that voluntarily use OAH to conduct such hearings as employee discipline.

Over the years, OAH has conducted hearings for over 100 different state and local government agencies or entities. Some agencies make many requests for hearing each year, while others have made only a few requests for hearing since OAH was established. The table below shows the number of requests by year:

<u>Year</u>	<u>Hearing Requests</u>
2016	717
2017	663
2018	646
2019	482
2020	432
2021	364
2022	404
2023	446
2024	449

For calendar year 2023, 27 different agencies or entities made 446 requests for hearing. For calendar year 2024, 22 different agencies or entities made 499 requests for hearing. Combined, OAH had 945 requested hearings from 34 different agencies or entities. *See Attachment "A."* This is an increase from the prior two years (2021 and 2022) where OAH had 768 requested hearings from 39 different agencies or entities.

For the first 18 months of this biennium (July 1, 2023, through December 31, 2024), 26 different agencies or entities have made 720 requests for hearing. *See Attachment "B."* As you can see from the attachments, the bulk of requests for hearing have come from two agencies, DHHS and WSI, which is typical for most biennia. Another increasingly frequent OAH user in the last few years is the PSC. OAH has also started conducting Title IX hearings for the University of North Dakota.

OAH does not hold a hearing for every request made. Some cases settle prior to hearing; some requests are withdrawn or abandoned; and on occasion, matters are disposed of by prehearing motion. Attachment "C" shows the number of hearings held for calendar years 2023 and 2024. Approximately 65 percent of hearing requests went to hearing. In the previous two years (2021 and 2022), 66 percent of the hearing requests went to hearing. Historically, between 45 percent and 55 percent of hearing requests go to hearing.

While not for all cases, OAH routinely holds prehearing conferences. This is an opportunity to confer with the parties prior to the hearing; answer questions or address concerns; and pick a hearing date, location, and prehearing deadlines. Prehearing conferences are usually held for the more complex cases. Attachment "D" shows 341 prehearing conferences held for calendar years 2023 and 2024, down slightly from 387 for

calendar years 2021 and 2022. As a percentage of hearings requested, the percentage of prehearing conferences is downward somewhat at about 36 percent.

As our caseload evolves, another way to gauge our activity is to look at billable hours:

<u>Year</u>	<u>Billable Hours</u>
2021	5373.2
2022	4957.8
2023	4538.4
2024	4206.2

See Attachment “E.” As you can see, our billable hours for DHHS have remained steady and have rebounded since COVID, but our billable hours attributed to WSI cases are significantly down.

BUDGET:

- The OAH budget is funded completely through special funds and with no federal funds.
- OAH has a continuing appropriation under North Dakota Century Code Section 54-57-07.
- The OAH budget has little to no change from last biennium.
- The OAH budget is two lines; one for salaries and benefits for the 5 FTEs and one for operating. Of the operating line, 78 percent is to pay contract ALJs for work completed, 7 percent for IT, and 5.7 percent for office space.
- OAH charges an hourly fee for its service to the entities requesting hearings. The rate of \$215 per hour has been in place since July 1, 2023. As of January 2025, the rate

was increased to \$265 to account for decreased billable hours. OAH contracts with WSI, so the rate for WSI will not increase until the start of the next biennium.

ACCOMPLISHMENTS AND CHALLENGES

- **WSI Case Processing.** Under N.D.C.C. § 54-57-09, OAH is required to track processing time of WSI cases. The goal is to average 215 days or less from the date the case is received by OAH to the date the decision issued. OAH must track this on a monthly, rolling six-month average. OAH has adopted case processing standards to meet this goal. OAH reports to the state advisory council each quarter.

Attachment “F” shows the rolling average for the current biennium. OAH has reduced the average number of days to process a case from 290 to around 150 days. This is a reduction of at least 135 days or about 53 percent and is below the goal of under 215 days.

- **Conducting Hearings.** With CARES Act money, OAH equipped its hearing rooms with equipment to conduct video conferences for hearings and improved audio recording equipment to help facilitate these hearings. OAH conducts remote hearings when requested using this technology.

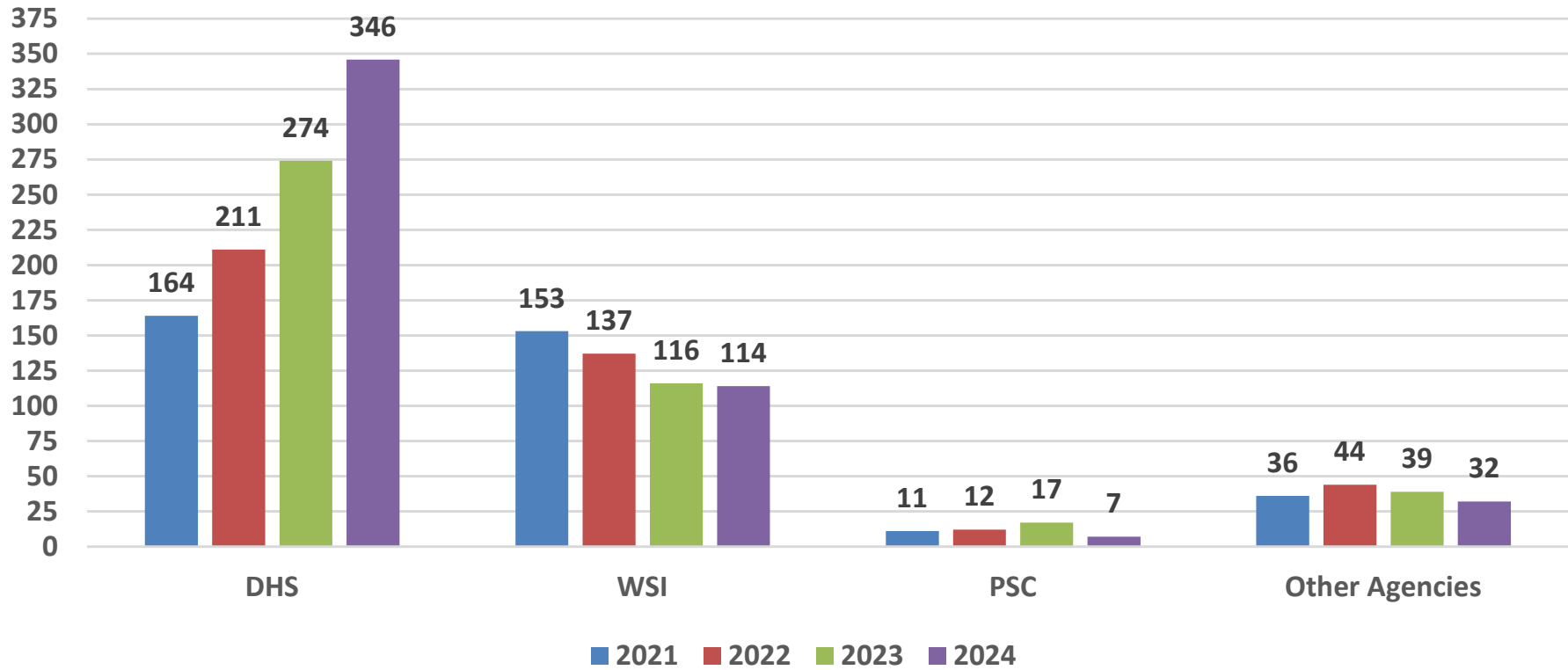
OAH also conducts in-person hearings both in OAH hearing rooms and in remote locations across the state. In-person hearings are common for WSI hearings and cases concerning professional licensure matters and parental rights. Sometimes a hearing involves credibility issues. It is advantageous to judge demeanor and credibility when hearing testimony face-to-face. In addition to credibility issues, OAH continues to conduct in-person hearings for complex cases or when requested by the parties. Being able to talk

directly to the ALJ reflects well on the accessibility of government, and this value exceeds the increased cost and inconvenience to the ALJ and agency involved.

- OAH continues to explore other ways to incorporate technology and make our office more accessible. One priority is to adopt procedures for submitting documents electronically.

- **Funding.** Our biggest current challenge is funding. While our hearing requests increased this past year by 53, our billable time has decreased by 327.5 hours. There are many reasons for the decrease in billable hours, such as an increase in the number of cases that settle, many DHHS cases do not generate many billable hours per case, more hearings being held by video conference versus traveling for the hearing, and more efficient ALJs. OAH has eliminated as many expenses as possible to address the decrease in billable hours. At the end of the year, OAH eliminated Westlaw, research software, and a program called Logikcull, which transcribes hearings. OAH does not intend to fill the FTE vacated by Director Dawson's retirement and will handle as many hearings as possible with our permanent, full-time ALJs to cut down on the cost of the contract ALJs. Because OAH is funded by special funds, it is dependent on a sufficient caseload to cover our expenses. In a span of eight years, our caseload had decreased by over 200 cases, causing funding to be an ongoing concern.

Requests Received 2021 through 2024



Hearing Requests Received by Agency

Requests Received Between 01/01/2021 and 12/31/2024

Office of Administrative Hearings

Agency	2021	2022	2023	2024	Total
1 Alexander Public School District	0 0.0%	0 0.0%	0 0.0%	1 0.2%	1 0.1%
2 Attorney General, Office of	0 0.0%	0 0.0%	0 0.0%	1 0.2%	1 0.1%
3 Beach Public School District No. 3	0 0.0%	1 0.2%	0 0.0%	0 0.0%	1 0.1%
4 Belcourt Public School District	0 0.0%	1 0.2%	0 0.0%	0 0.0%	1 0.1%
5 Chiropractic Examiners, State Board of	0 0.0%	0 0.0%	1 0.2%	0 0.0%	1 0.1%
6 Cosmetology, Board of	0 0.0%	1 0.2%	0 0.0%	0 0.0%	1 0.1%
7 DHS, Human Services, Department of	164 45.1%	211 52.2%	274 61.4%	346 69.3%	995 58.1%
8 Dickinson State University	0 0.0%	1 0.2%	0 0.0%	0 0.0%	1 0.1%
9 Dunseith Public School District	0 0.0%	0 0.0%	1 0.2%	0 0.0%	1 0.1%
10 Education Standards & Practices Board	0 0.0%	1 0.2%	0 0.0%	1 0.2%	2 0.1%
11 Electrical Board, N.D. State	0 0.0%	0 0.0%	1 0.2%	1 0.2%	2 0.1%
12 Fargo Public Schools	0 0.0%	1 0.2%	0 0.0%	0 0.0%	1 0.1%
13 FI, Banking Board	0 0.0%	0 0.0%	0 0.0%	1 0.2%	1 0.1%
14 Game and Fish Department	1 0.3%	1 0.2%	1 0.2%	2 0.4%	5 0.3%
15 Grand Forks Public School District	0 0.0%	0 0.0%	1 0.2%	0 0.0%	1 0.1%
16 Health, Department of	2 0.5%	1 0.2%	1 0.2%	2 0.4%	6 0.4%
17 Health, Health Facilities	0 0.0%	0 0.0%	1 0.2%	0 0.0%	1 0.1%
18 Horace, City of	1 0.3%	0 0.0%	0 0.0%	0 0.0%	1 0.1%
19 Human Resource Management Services	0 0.0%	5 1.2%	3 0.7%	5 1.0%	13 0.8%
20 IC, Insurance Commissioner	1 0.3%	1 0.2%	1 0.2%	2 0.4%	5 0.3%
21 Industrial Commission	4 1.1%	5 1.2%	1 0.2%	1 0.2%	11 0.6%
22 Job Service North Dakota	0 0.0%	1 0.2%	0 0.0%	0 0.0%	1 0.1%
23 Labor and Human Rights, Department of	1 0.3%	4 1.0%	0 0.0%	1 0.2%	6 0.4%
24 Lake Region State College	1 0.3%	0 0.0%	0 0.0%	0 0.0%	1 0.1%
25 Maddock School District	1 0.3%	0 0.0%	0 0.0%	0 0.0%	1 0.1%
26 Mandaree Public School District #36	1 0.3%	0 0.0%	0 0.0%	1 0.2%	2 0.1%
27 Massage Therapy, ND Board of	0 0.0%	1 0.2%	0 0.0%	1 0.2%	2 0.1%
28 Medicine, Board of	0 0.0%	0 0.0%	2 0.4%	0 0.0%	2 0.1%
29 Milnor Public School District	1 0.3%	0 0.0%	0 0.0%	0 0.0%	1 0.1%
30 Minot Public School District	0 0.0%	0 0.0%	1 0.2%	0 0.0%	1 0.1%
31 Minot State University	0 0.0%	1 0.2%	0 0.0%	0 0.0%	1 0.1%
32 Munich Public School District No. 19	0 0.0%	1 0.2%	0 0.0%	0 0.0%	1 0.1%
33 New Rockford-Sheyenne School District	0 0.0%	0 0.0%	1 0.2%	0 0.0%	1 0.1%
34 New Town Public School District	0 0.0%	1 0.2%	1 0.2%	0 0.0%	2 0.1%
35 Nursing, State Board of	1 0.3%	0 0.0%	1 0.2%	0 0.0%	2 0.1%
36 Parshall Public School District	0 0.0%	0 0.0%	1 0.2%	0 0.0%	1 0.1%
37 Pingree-Buchanan Public School	0 0.0%	1 0.2%	0 0.0%	0 0.0%	1 0.1%
38 Professional Engineers & Land Surveyors Board	1 0.3%	0 0.0%	2 0.4%	1 0.2%	4 0.2%
39 PSC, Public Service Commission	11 3.0%	12 3.0%	17 3.8%	7 1.4%	47 2.7%
40 Public Employees Retirement Board	1 0.3%	0 0.0%	1 0.2%	0 0.0%	2 0.1%

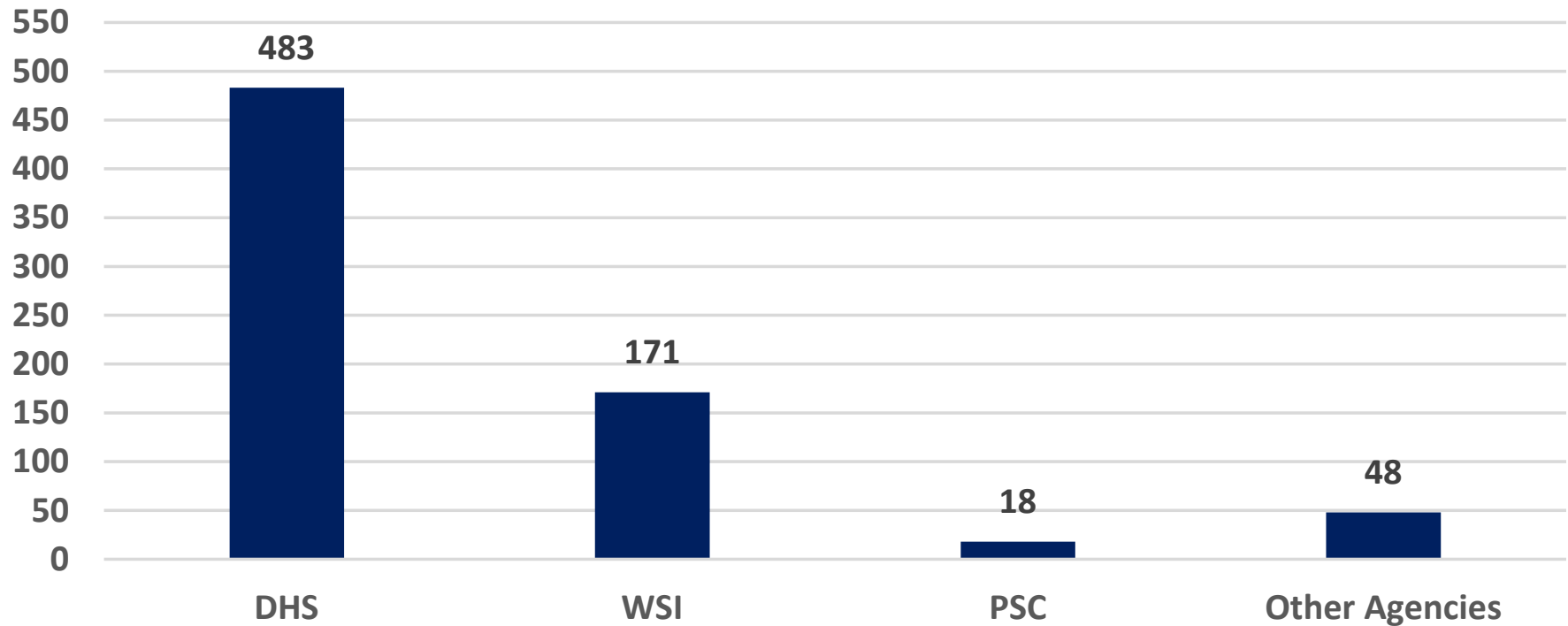
Hearing Requests Received by Agency

Requests Received Between 01/01/2021 and 12/31/2024

Office of Administrative Hearings

Agency	2021	2022	2023	2024	Total
41 Public Instruction, Department of	4 1.1%	6 1.5%	6 1.3%	4 0.8%	20 1.2%
42 Real Estate Appraiser Qualifications and Ethics Boar	2 0.5%	0 0.0%	0 0.0%	0 0.0%	2 0.1%
43 Real Estate Commission	0 0.0%	0 0.0%	2 0.4%	0 0.0%	2 0.1%
44 Securities Department	0 0.0%	1 0.2%	2 0.4%	1 0.2%	4 0.2%
45 UND, University of North Dakota	9 2.5%	5 1.2%	4 0.9%	3 0.6%	21 1.2%
46 Valley City State University	1 0.3%	0 0.0%	0 0.0%	0 0.0%	1 0.1%
47 Veterans Affairs, Department of	2 0.5%	0 0.0%	1 0.2%	1 0.2%	4 0.2%
48 Wahpeton Public School District	0 0.0%	0 0.0%	1 0.2%	0 0.0%	1 0.1%
49 Washburn Public School District #4	0 0.0%	1 0.2%	0 0.0%	0 0.0%	1 0.1%
50 Water Resources, Department of	1 0.3%	1 0.2%	1 0.2%	2 0.4%	5 0.3%
51 Williston Basin School District #1	0 0.0%	1 0.2%	0 0.0%	0 0.0%	1 0.1%
52 Workforce Safety & Insurance	153 42.0%	137 33.9%	116 26.0%	114 22.8%	520 30.4%
Grand Total:	364	404	446	499	1713

Requests Received July 2023 - December 2024



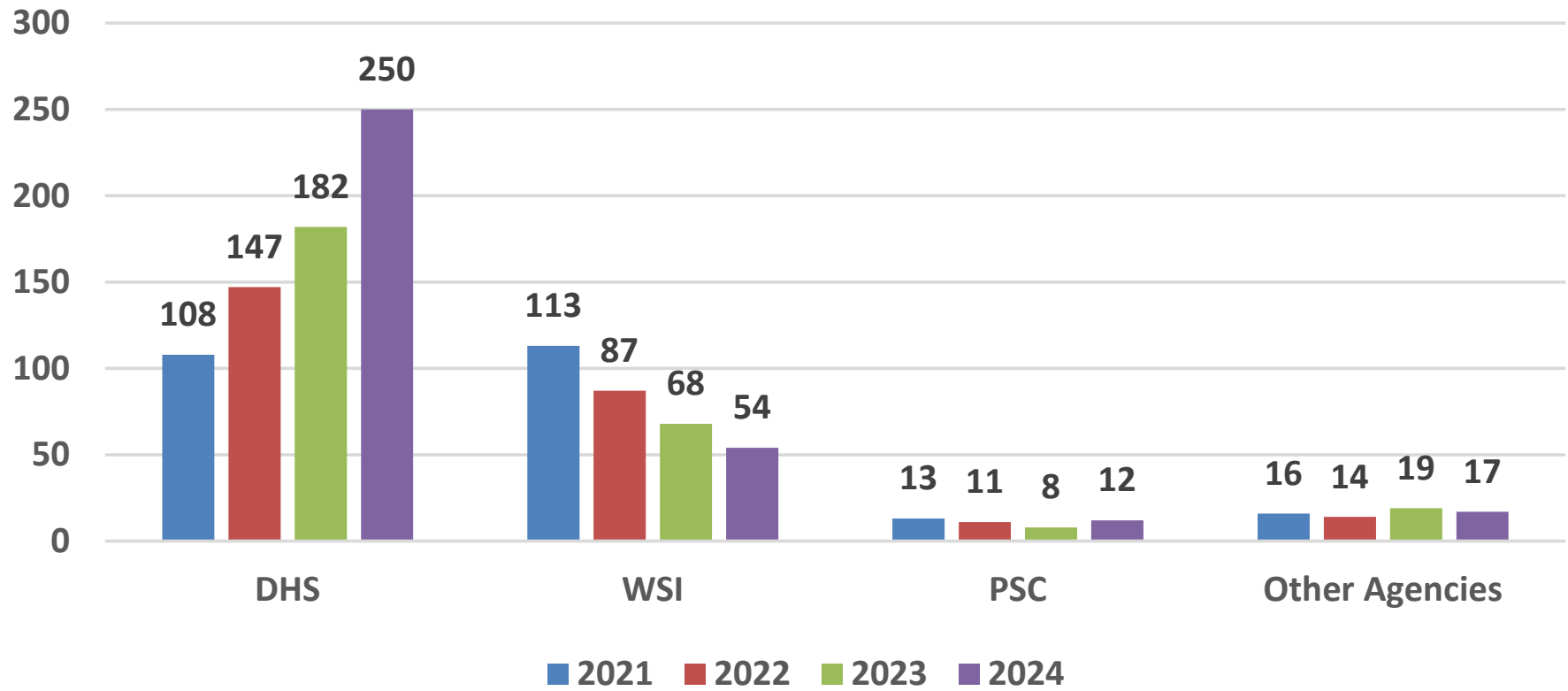
Total Requests Received by Agency

Files Received Between 07-01-2023 and 12-31-2024

Office of Administrative Hearings

Agency	# of Files Received	
1 Alexander Public School District	1	0.14%
2 Attorney General, Office of	1	0.14%
3 Department of Water Resources	3	0.42%
4 DHS, Human Services, Department of	483	67.08%
5 Education Standards & Practices Board	1	0.14%
6 Electrical Board, N.D. State	2	0.28%
7 FI, Banking Board	1	0.14%
8 Game and Fish Department	3	0.42%
9 Grand Forks Public School District	1	0.14%
10 Health, Department of	3	0.42%
11 Human Resource Management Services	7	0.97%
12 IC, Insurance Commissioner	3	0.42%
13 Industrial Commission	1	0.14%
14 Labor, Dept. of	1	0.14%
15 Mandaree Public School District #36	1	0.14%
16 Massage, North Dakota Board of	1	0.14%
17 Medicine, Board of	1	0.14%
18 Parshall Public School District	1	0.14%
19 Professional Engineers & Land Surveyors Board	2	0.28%
20 PSC, Public Service Commission	18	2.50%
21 Public Employees Retirement Board	1	0.14%
22 Public Instruction, Department of	7	0.97%
23 Securities Department	1	0.14%
24 UND, University of North Dakota	4	0.56%
25 Veterans Affairs, Department of	1	0.14%
26 Workforce Safety & Insurance	171	23.75%
Grand Total:	720	

Hearings Held 2021 through 2024



Hearings Held

Hearings Held Between 01/01/2021 and 12/31/2024

Office of Administrative Hearings

Agency	2021	2022	2023	2024	Total
1 Addiction Counseling Examiners Board	1 0.4%	0 0.0%	0 0.0%	0 0.0%	2 0.2%
2 Belcourt Public School District	0 0.0%	1 0.4%	0 0.0%	0 0.0%	1 0.1%
3 DHS, Human Services, Department of	108 43.2%	147 56.8%	182 65.7%	250 75.1%	545 48.7%
4 Dickinson State University	0 0.0%	1 0.4%	0 0.0%	0 0.0%	1 0.1%
5 Education Standards & Practices Board	0 0.0%	1 0.4%	0 0.0%	0 0.0%	1 0.1%
6 Electrical Board, N.D. State	0 0.0%	0 0.0%	0 0.0%	1 0.3%	0 0.0%
7 Fargo Public Schools	0 0.0%	1 0.4%	0 0.0%	0 0.0%	1 0.1%
8 Game and Fish Department	1 0.4%	1 0.4%	0 0.0%	2 0.6%	3 0.3%
9 Grand Forks Public School District	0 0.0%	0 0.0%	0 0.0%	1 0.3%	0 0.0%
10 Health, Department of	1 0.4%	0 0.0%	1 0.4%	0 0.0%	3 0.3%
11 Health, Health Facilities	0 0.0%	0 0.0%	1 0.4%	0 0.0%	1 0.1%
12 Human Resource Management Services	0 0.0%	0 0.0%	1 0.4%	1 0.3%	1 0.1%
13 IC, Insurance Commissioner	1 0.4%	0 0.0%	0 0.0%	1 0.3%	2 0.2%
14 Industrial Commission	0 0.0%	1 0.4%	0 0.0%	0 0.0%	1 0.1%
15 Labor and Human Rights, Department of	1 0.4%	0 0.0%	1 0.4%	0 0.0%	3 0.3%
16 New Rockford-Sheyenne School District	0 0.0%	0 0.0%	1 0.4%	0 0.0%	1 0.1%
17 Nursing, State Board of	0 0.0%	1 0.4%	0 0.0%	0 0.0%	1 0.1%
18 Physical Therapy, North Dakota Board of	2 0.8%	0 0.0%	0 0.0%	0 0.0%	4 0.4%
19 Pingree-Buchanan Public School	0 0.0%	1 0.4%	0 0.0%	0 0.0%	1 0.1%
20 Professional Engineers & Land Surveyors Board	0 0.0%	0 0.0%	2 0.7%	1 0.3%	2 0.2%
21 PSC, Public Service Commission	13 5.2%	11 4.2%	8 2.9%	12 3.6%	45 4.0%
22 Public Employees Retirement Board	0 0.0%	0 0.0%	0 0.0%	1 0.3%	0 0.0%
23 Public Instruction, Department of	4 1.6%	1 0.4%	7 2.5%	4 1.2%	16 1.4%
24 Real Estate Appraiser Qualifications and Ethics Boar	0 0.0%	2 0.8%	0 0.0%	0 0.0%	2 0.2%
25 Real Estate Commission	0 0.0%	0 0.0%	2 0.7%	0 0.0%	2 0.2%
26 Securities Department	0 0.0%	1 0.4%	1 0.4%	0 0.0%	2 0.2%
27 UND, University of North Dakota	3 1.2%	2 0.8%	2 0.7%	2 0.6%	10 0.9%
28 Veterans Affairs, Department of	2 0.8%	0 0.0%	0 0.0%	0 0.0%	4 0.4%
29 Water Resources, Department of	0 0.0%	0 0.0%	0 0.0%	3 0.9%	0 0.0%
30 Workforce Safety & Insurance	113 45.2%	87 33.6%	68 24.5%	54 16.2%	381 34.0%
Grand Total:	250	259	277	333	1119

Prehearing Conferences Held*Prehearing Conferences Held Between 01-01-2023 and 12-31-2024**Office of Administrative Hearings*

Agency	2023		2024		Total	
1 Alexander Public School District	0	0.0%	1	0.6%	1	0.3%
2 Attorney General, Office of	0	0.0%	1	0.6%	1	0.3%
3 Beach Public School District No. 3	1	0.6%	0	0.0%	1	0.3%
4 Chiropractic Examiners, State Board of	1	0.6%	0	0.0%	1	0.3%
5 Department of Water Resources	1	0.6%	3	1.7%	4	1.2%
6 DHS, Human Services, Department of	24	14.2%	32	18.6%	56	16.4%
7 Dunseith Public School District	1	0.6%	0	0.0%	1	0.3%
8 Electrical Board, N.D. State	1	0.6%	1	0.6%	2	0.6%
9 FI, Banking Board	0	0.0%	1	0.6%	1	0.3%
10 FI, Financial Institutions, Department of	0	0.0%	2	1.2%	2	0.6%
11 Game and Fish Department	0	0.0%	1	0.6%	1	0.3%
12 Grand Forks Public School District	1	0.6%	0	0.0%	1	0.3%
13 Health, Department of	2	1.2%	1	0.6%	3	0.9%
14 Human Resource Management Services	4	2.4%	6	3.5%	10	2.9%
15 IC, Insurance Commissioner	0	0.0%	3	1.7%	3	0.9%
16 Industrial Commission	1	0.6%	0	0.0%	1	0.3%
17 Labor, Dept. of	1	0.6%	3	1.7%	4	1.2%
18 Mandaree Public School District #36	0	0.0%	1	0.6%	1	0.3%
19 Massage, North Dakota Board of	0	0.0%	1	0.6%	1	0.3%
20 Medicine, Board of	1	0.6%	0	0.0%	1	0.3%
21 Minot Public School District	2	1.2%	0	0.0%	2	0.6%
22 New Rockford-Sheyenne School District	1	0.6%	0	0.0%	1	0.3%
23 New Town Public School District	3	1.8%	0	0.0%	3	0.9%
24 Nursing Home Administrators, Board of Examiners for	2	1.2%	0	0.0%	2	0.6%
25 Parshall Public School District	1	0.6%	0	0.0%	1	0.3%
26 PSC, Public Service Commission	4	2.4%	1	0.6%	5	1.5%
27 Public Employees Retirement Board	1	0.6%	0	0.0%	1	0.3%
28 Public Instruction, Department of	3	1.8%	0	0.0%	3	0.9%
29 Real Estate Commission	2	1.2%	0	0.0%	2	0.6%
30 Securities Department	5	3.0%	4	2.3%	9	2.6%
31 UND, University of North Dakota	4	2.4%	4	2.3%	8	2.3%
32 Veterans Affairs, Department of	1	0.6%	1	0.6%	2	0.6%
33 Wahpeton Public School District	1	0.6%	0	0.0%	1	0.3%

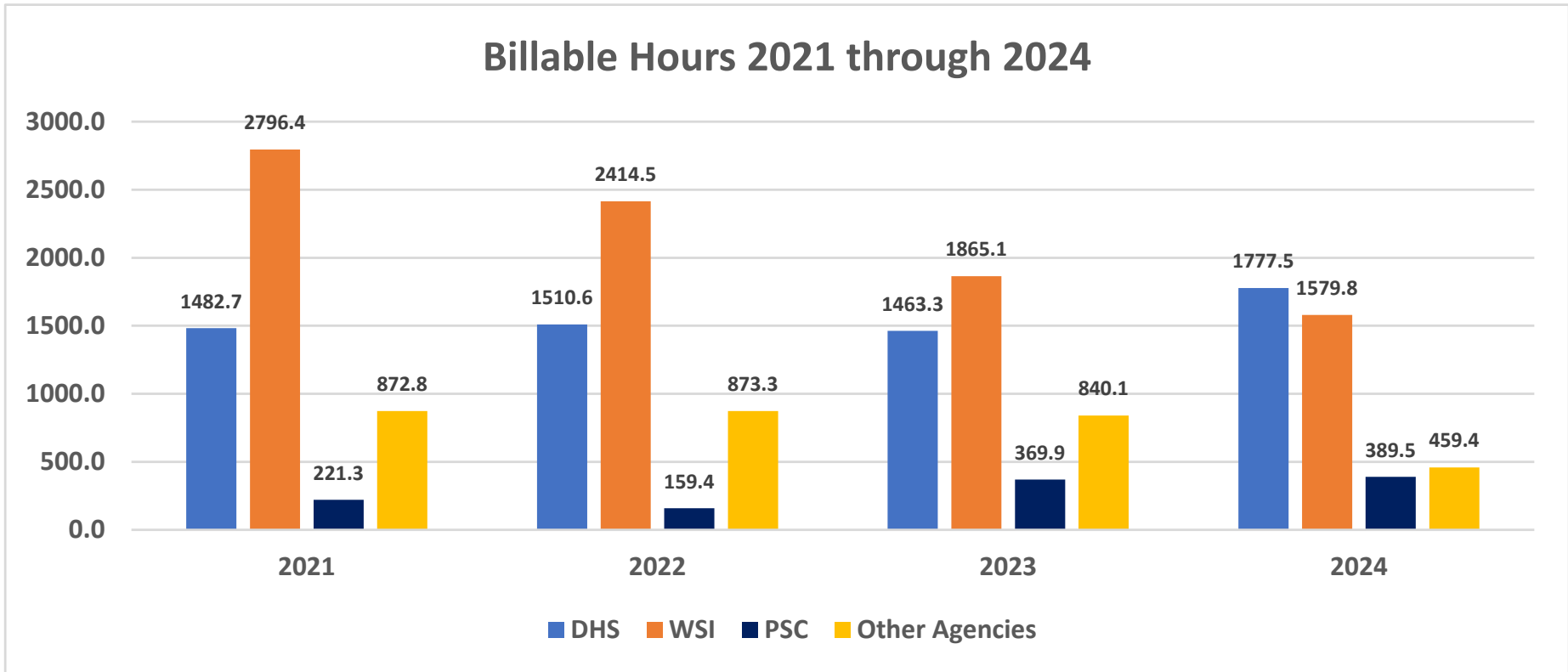
Prehearing Conferences Held

Prehearing Conferences Held Between 01-01-2023 and 12-31-2024

Office of Administrative Hearings

<i>Agency</i>	<i>2023</i>		<i>2024</i>		<i>Total</i>	
34 Workforce Safety & Insurance	100	59.2%	105	61.0%	205	60.1%
	169		172		341	

Billable Hours 2021 through 2024



OFFICE OF ADMINISTRATIVE HEARINGS
Average Days to ALJ Decision
Decisions Issued from 08/01/2023 through 12/31/2024

	Number of Matters	Request for ALJ to ALJ Decision Issued			Hearing Held to ALJ Decision Issued		
		Average	Median	Range	Average	Median	Range
August 1, 2023 - January 31, 2024	34	156	151	30 - 281	21	22	2 - 40
September 1, 2023 - February 29, 2024	37	160	153	30 - 281	22	23	1 - 45
October 1, 2023 - March 31, 2024	38	158	151	30 - 281	22	23	1 - 45
November 1, 2023 - April 30, 2024	41	154	149	30 - 270	23	23	1 - 45
December 1, 2023 - May 31, 2024	35	156	145	30 - 270	23	23	1 - 45
January 1, 2024 - June 30, 2024	31	157	147	30 - 270	24	24	1 - 45
February 1, 2024 - July 31, 2024	26	147	140	85 - 269	26	26	1 - 45
March 1, 2024 - August 31, 2024	25	141	140	85 - 193	23	23	6 - 34
April 1, 2024 - September 30, 2024	26	142	138	101 - 193	21	22	6 - 34
May 1, 2024 - October 31, 2024	30	149	140	93 - 219	21	22	6 - 34
June 1, 2024 - November 30, 2024	30	155	140	93 - 329	21	22	5 - 34
July 1, 2024 - December 31, 2024	29	152	140	86 - 329	20	20	5 - 34

*Includes initial decisions for workers benefits only; does not include reconsiderations, settlements, dismissals, stipulations.
Consolidated files are counted as one unit, not separate units.*