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ROLL NUMBER

DESCRIPTION

1018

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Operator's Signature

Deanna Bell

10/30/03

Date

2003 HOUSE APPROPRIATIONS

HB 1018

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Deanna G. Hall
Operator's Signature

10/30/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1018

House Appropriations Committee
Education and Environment Division

☐ Check here for Conference Committee

Hearing Date January 17, 2003

Tape Number	Side A	Side B	Meter #
1	X		
Committee Clerk Signature <i>Collette Keller</i>			

Minutes:

Chairman Martinson opened the hearing on HB 1018. All members of the committee were present.

Allen Hoberg Director, Office of Administrative Hearings, testified in favor of HB 1018 and provided prepared testimony in support thereof.

Rep. Wald Are all of these judges law trained?

Hoberg All of the temporary judges are. One is not law trained, that person was grandfathered in. The law now requires that anyone hired has to be law trained.

Rep. Wald What are the Administrative Law Judges (ALJs) doing for office space in the eastern and western North Dakota locations?

Hoberg The ALJ in the east is working out of the home, the ALJ in the west is working out of the home and telecommuting.

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10/30/03
Date

Page 2

Education and Environment Division

Bill/Resolution Number 1018

Hearing Date January 17, 2003

Rep. Wald Where would the hearings take place?

Hoberg Always in a government office or a court reporter's office.

Rep. Wald Where do you intend to house one in the western part of the state?

Hoberg I don't know. It could be anywhere.

Dave Thiele Representing North Dakota Worker's Compensation Bureau testified in favor of HB 1018. His biggest concern is quality. If quality counsel is hired, there will be better decisions overall.

Rep. Aarsvold had a question with regards to the possible passing of HB 1044 relating to the office of administrative hearings and indigent defense contract.

Allen Hoberg We are now testifying in favor of this bill. We would be managing it. It would be a contract with us instead of with the courts.

Rep. Aarsvold There seems to be a thread of continuity between judge services and indigent defense.

Hoberg When the judge appoints, they appear in front of the judges a lot.

Chairman Martinson closed the hearing on HB 1018.

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1018

House Appropriations Committee
Education and Environment Division

☐ Check here for Conference Committee

Hearing Date February 5, 2003

Tape Number	Side A	Side B	Meter #
1		X	
Committee Clerk Signature <i>Celeste Keller</i>			

Minutes:

Chairman Martinson opened discussion on HB 1018, Office of Administrative Hearings. See Standing Committee Roll Call Votes.

Rep. Aarsvold 1044 also becomes intertwined here and I am wondering if we want to consider them together?

Chairman Martinson What was 1044?

Rep. Aarsvold Apparently they are going to be hiring fewer part-time administrative hearing judges and going to more in house. They think they can do that more economically.

Chairman Martinson If we have a motion on 1018, I think we can probably act on it and send it to the full committee.

Rep. Aarsvold I think the fiscal note reflects the increase of 2 FTE's, but then that is the result of the 1044 request. I would move a do pass on HB 1018.

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Deanna Hall
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10/30/03
Date

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Education and Environment Division
Bill/Resolution Number 1018
Hearing Date February 5, 2003

Chairman Martinson Is there a second?

Rep. Wald Second.

Chairman Martinson Is there any discussion? Asked clerk to call the roll.

Clerk called the roll.

ROLL CALL VOTES

7 YES 0 NO 0 ABSENT

Chairman Martinson Who would present this to the full committee?

Rep. Aarsvold I will.

Chairman Martinson closed discussion on HB 1018.

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Deanna Gallant
Operator's Signature

10/30/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1018

House Appropriations Committee

☐ Conference Committee

Hearing Date 02-17-03

Tape Number	Side A	Side B	Meter #
1	X		0.0-8.0
Committee Clerk Signature <i>Chris Nye</i>			

Minutes:

Chairman Svedjan Opened HB 1018 for discussion. A quorum was present.

Rep. Martinson I move a Do Pass As Amended. 2nd by Rep. Bruzegaard. Motion Carries

22-0-1. Rep. Aarsvold will carry this bill on the floor.

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Deanna Skelton
Operator's Signature

10/30/03
Date

38018.0105
Title.0200
Fiscal No. 4

Prepared by the Legislative Council staff for ^{VK} 2/17/03
Representative Aarsvold
February 14, 2003

HOUSE AMENDMENTS TO HOUSE BILL NO. 1018 Approp 2-17-03

Page 1, line 5, after "moneys" insert "in the general fund in the state treasury, not otherwise appropriated, and"

Page 1, line 9, replace "949,968" with "1,092,106"

Page 1, line 10, replace "313,621" with "3,299,168"

Page 1, line 11, replace "special funds appropriation" with "all funds" and replace "1,263,589" with "4,391,274"

Less estimated income
Total general fund appropriation

1,248,095
\$3,143,179

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1018 - Office of Administrative Hearings - House Action

	EXECUTIVE BUDGET	HOUSE CHANGES	HOUSE VERSION
Salaries and wages	\$949,968	\$142,138	\$1,092,106
Operating expenses	313,621	2,985,547	3,299,168
Total all funds	\$1,263,589	\$3,127,685	\$4,391,274
Less estimated income	<u>1,263,589</u>	<u>(15,494)</u>	<u>1,248,095</u>
General fund	\$0	\$3,143,179	\$3,143,179
FTE	8.00	1.00	9.00

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

	REMOVES RECOMMENDED SALARY INCREASE ¹	INCREASES SALARIES AND ADDS FTE ²	ADDS FUNDING FOR INDIGENT DEFENSE FEES ³	DECREASES FUNDING FOR COMPUTER MAINTENANCE CONTRACT ⁴	TOTAL HOUSE CHANGES
Salaries and wages	(\$10,494)	\$152,632			\$142,138
Operating expenses			\$2,990,547	(\$5,000)	2,985,547
Total all funds	(\$10,494)	\$152,632	\$2,990,547	(\$5,000)	\$3,127,685
Less estimated income	<u>(10,494)</u>			<u>(5,000)</u>	<u>(15,494)</u>
General fund	\$0	\$152,632	\$2,990,547	\$0	\$3,143,179
FTE	0.00	1.00	0.00	0.00	1.00

¹ This amendment removes the Governor's recommendation for state employee salary increases.

² This amendment increases funding for salaries and wages and adds an FTE position for administering the indigent defense contracts.

³ This amendment adds funding for indigent defense fees, relating to the provisions of House Bill No. 1044, which transfers these responsibilities from the judicial branch.

⁴ This amendment decreases the operating line item by \$5,000 relating to a computer maintenance contract.

Date: February 5, 2003
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1018

House Appropriations Education and Environment Division Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep. Aarsvold Seconded By Rep. Wald

Representatives	Yes	No	Representatives	Yes	No
Representative Martinson	X				
Representative Brusegaard	X				
Representative Monson	X				
Representative Rennerfeldt	X				
Representative Wald	X				
Representative Aarsvold	X				
Representative Gulleason	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Rep. Aarsvold

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

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Deanna Gulleason
Operator's Signature

10/30/03
Date

REPORT OF STANDING COMMITTEE (410)
February 17, 2003 4:02 p.m.

Module No: HR-30-2979
Carrier: Aarsvold
Insert LC: 38018.0105 Title: .0200

REPORT OF STANDING COMMITTEE

HB 1018: Appropriations Committee (Rep. Svedjan, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (22 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1018 was placed on the Sixth order on the calendar.

Page 1, line 5, after "moneys" Insert "in the general fund in the state treasury, not otherwise appropriated, and"

Page 1, line 9, replace "949,968" with "1,092,106"

Page 1, line 10, replace "313,621" with "3,299,168"

Page 1, line 11, replace "special funds appropriation" with "all funds" and replace "1,263,589" with "4,391,274"

Less estimated income 1,248,095
Total general fund appropriation \$3,143,179

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1018 - Office of Administrative Hearings - House Action

	EXECUTIVE BUDGET	HOUSE CHANGES	HOUSE VERSION
Salaries and wages	\$949,968	\$142,138	\$1,092,106
Operating expenses	313,621	2,985,547	3,299,168
Total all funds	\$1,263,589	\$3,127,685	\$4,391,274
Less estimated income	1,263,589	(15,494)	1,248,095
General fund	\$0	\$3,143,179	\$3,143,179
FTE	8.00	1.00	9.00

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

	REMOVES RECOMMENDED SALARY INCREASE 1	INCREASES SALARIES AND ADDS FTE 2	ADDS FUNDING FOR INDIGENT DEFENSE FEES 3	DECREASES FUNDING FOR COMPUTER MAINTENANCE CONTRACT 4	TOTAL HOUSE CHANGES
Salaries and wages	(\$10,494)	\$152,632			\$142,138
Operating expenses			\$2,990,547	(\$5,000)	2,985,547
Total all funds	(\$10,494)	\$152,632	\$2,990,547	(\$5,000)	\$3,127,685
Less estimated income	(10,494)			(5,000)	(15,494)
General fund	\$0	\$152,632	\$2,990,547	\$0	\$3,143,179
FTE	0.00	1.00	0.00	0.00	1.00

1 This amendment removes the Governor's recommendation for state employee salary increases.

2 This amendment increases funding for salaries and wages and adds an FTE position for administering the indigent defense contracts.

3 This amendment adds funding for indigent defense fees, relating to the provisions of House Bill No. 1044, which transfers these responsibilities from the judicial branch.

4 This amendment decreases the operating line item by \$5,000 relating to a computer maintenance contract.

(2) DESK, (3) COMM

Page No. 1

HR-30-2979

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10/30/03
Date

2003 SENATE APPROPRIATIONS

HB 1018

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Deanna G. Smith
Operator's Signature

10/30/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1018

Senate Appropriations Committee

☐ Conference Committee

Hearing Date 2-27-03

Tape Number	Side A	Side B	Meter #
2		X	5280-end
3	X		0-500
Committee Clerk Signature <i>Sandra Danson</i>			

Minutes: Chairman Holmberg opened the hearing to HB 1018. A bill relating to provide an appropriation for defraying the expenses of the office of administrative hearings.

(Meter 5280) Allen Hoberg, Director of the Office of Administrative Hearings: See written testimony Exhibit 1.

Tape 3 Side A

Allen Hoberg continued his testimony. No questions were asked.

(Meter 500) Chairman Holmberg closed the hearing to HB 1018.

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Deanna O'Fallon
Operator's Signature

10/30/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1018 Vote

Senate Appropriations Committee

☐ Conference Committee

Hearing Date 4-3-03

Tape Number	Side A	Side B	Meter #
1	X		3990-4500
Committee Clerk Signature <i>Sandra Dawson</i>			

Minutes: CHAIRMAN HOLMBERG opened the hearing to vote on HB 1018. A bill relating to provide an appropriation for defraying the expenses of the office of administrative hearings.

(Meter 3990) CHAIRMAN HOLMBERG passed out amendment (38018.0202) and explained.

SENATOR ROBINSON stated this amendment takes out \$\$152,000 out for indigent defense and the health insurance.

CHAIRMAN HOLMBERG stated their budget went through the roof because of moving the indigent defense.

(Meter 4038) A motion to adopt the amendments were made by SENATOR ANDRIST and seconded by SENATOR THANE. A voice vote passed the amendment.

(Meter 4072) A motion of DO PASS AS AMENDED by SENATOR THANE and seconded by SENATOR ANDRIST.

Discussion

Deanna Ballantyne
Operator's Signature

10/30/03
Date

Page 2
Senate Appropriations Committee
Bill/Resolution Number HB 1018
Hearing Date 4-3-03

(Meter 4089) SENATOR KRAUTER stated in the office of administrative hearings, their special fund payments come from payments from other agencies who receive general fund dollars. These are general fund dollars that are basically paying for these through the second door. Is there a constancy or inconstancy of what is being done with IT. Why aren't we reducing IT here and we are doing it on other agencies?

(Meter 4260) SENATOR CHRISTMANN stated that if they took \$3,450, then it would be charged more to other agencies.

A voice vote passed the amendment.

(Meter) A motion of DO PASS AS AMENDED was made by SENATOR THANE and seconded by SENATOR ANDRIST The will passed with a vote of 11 yeas, 0 nays, and 3 absent. SENATOR ANDRIST to carry the bill.

CHAIRMAN HOLMBERG closed the hearing to HB 1018. (Meter 4426)

38018.0202
Title.
Fiscal No. 3

Prepared by the Legislative Council staff for
Senate Appropriations
April 3, 2003

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1018

Page 1, line 9, replace "1,092,106" with "938,648"

Page 1, line 10, replace "3,299,168" with "308,621"

Page 1, line 11, replace "all funds" with "special funds appropriation" and replace "4,391,274" with "1,247,269"

Page 1, remove lines 12 and 13

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1018 - Office of Administrative Hearings - Senate Action

	EXECUTIVE BUDGET	HOUSE VERSION	SENATE CHANGES	SENATE VERSION
Salaries and wages	\$949,968	\$1,092,106	(\$153,458)	\$938,648
Operating expenses	313,621	3,299,168	(2,990,547)	308,621
Total all funds	\$1,263,589	\$4,391,274	(\$3,144,005)	\$1,247,269
Less estimated income	1,263,589	1,248,095	(826)	1,247,269
General fund	\$0	\$3,143,179	(\$3,143,179)	\$0
FTE	8.00	9.00	(1.00)	8.00

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

	REMOVES FUNDING FOR INDIGENT DEFENSE FEES ¹	REMOVES SALARIES AND FTE POSITION ²	REDUCES RECOMMENDED FUNDING FOR HEALTH INSURANCE ³	TOTAL SENATE CHANGES
Salaries and wages		(\$152,632)	(\$826)	(\$153,458)
Operating expenses	(\$2,990,547)			(2,990,547)
Total all funds	(\$2,990,547)	(\$152,632)	(\$826)	(\$3,144,005)
Less estimated income			(826)	(826)
General fund	(\$2,990,547)	(\$152,632)	\$0	(\$3,143,179)
FTE	0.00	(1.00)	0.00	(1.00)

¹ This amendment removes the funding for indigent defense fees and the related responsibilities which were transferred from the judicial branch by the House pursuant to House Bill No. 1044. The indigent defense program will be funded in House Bill No. 1002 (Judicial Branch).

² This amendment removes the salaries and wages and related FTE position for administering the indigent defense contracts.

³ This amendment reduces funding for state employee health insurance premiums from \$493 per month to \$488.70 per month.

Amend
Andrist
Thane passed

Date: 4-3-03
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1018

Senate Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 38018.0202

Action Taken Do Pass As Amend

Motion Made By Thane Seconded By Andrist

Senators	Yes	No	Senators	Yes	No
Senator Holmberg, Chairman	✓				
Senator Bowman, Vice Chair	✓				
Senator Grindberg, Vice Chair	✓				
Senator Andrist	✓				
Senator Christmann	✓				
Senator Kilzer	✓				
Senator Krauter	✓				
Senator Kringstad					
Senator Lindaas	✓				
Senator Mathern	✓				
Senator Robinson	✓				
Senator Schobinger					
Senator Tallackson					
Senator Thane	✓				

Total (Yes) 11 No

Absent 3

Floor Assignment Andrist

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

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Deanna Hall
Operator's Signature

10/30/03
Date

REPORT OF STANDING COMMITTEE (410)
April 3, 2003 4:18 p.m.

Module No: SR-60-6710
Carrier: Andrist
Insert LC: 38018.0202 Title: .0300

REPORT OF STANDING COMMITTEE

HB 1018, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (11 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). Engrossed HB 1018 was placed on the Sixth order on the calendar.

Page 1, line 9, replace "1,092,106" with "938,648"

Page 1, line 10, replace "~~3,299,168~~" with "308,621"

Page 1, line 11, replace "all funds" with "special funds appropriation" and replace "4,391,274" with "1,247,269"

Page 1, remove lines 12 and 13

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1018 - Office of Administrative Hearings - Senate Action

	EXECUTIVE BUDGET	HOUSE VERSION	SENATE CHANGES	SENATE VERSION
Salaries and wages	\$949,968	\$1,092,106	(\$153,458)	\$938,648
Operating expenses	<u>313,621</u>	<u>3,299,168</u>	<u>(2,990,547)</u>	<u>308,621</u>
Total all funds	\$1,263,589	\$4,391,274	(\$3,144,005)	\$1,247,269
Less estimated income	<u>1,263,589</u>	<u>1,248,095</u>	<u>(826)</u>	<u>1,247,269</u>
General fund	\$0	\$3,143,179	(\$3,143,179)	\$0
FTE	8.00	9.00	(1.00)	8.00

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

	REMOVES FUNDING FOR INDIGENT DEFENSE FEES ¹	REMOVES SALARIES AND FTE POSITION ²	REDUCES RECOMMENDED FUNDING FOR HEALTH INSURANCE ³	TOTAL SENATE CHANGES
Salaries and wages		(\$152,832)	(\$826)	(\$153,458)
Operating expenses	<u>(\$2,990,547)</u>			<u>(2,990,547)</u>
Total all funds	(\$2,990,547)	(\$152,832)	(\$826)	(\$3,144,005)
Less estimated income			<u>(826)</u>	<u>(826)</u>
General fund	(\$2,990,547)	(\$152,832)	\$0	(\$3,143,179)
FTE	0.00	(1.00)	0.00	(1.00)

¹ This amendment removes the funding for indigent defense fees and the related responsibilities which were transferred from the judicial branch by the House pursuant to House Bill No. 1044. The indigent defense program will be funded in House Bill No. 1002 (Judicial Branch).

² This amendment removes the salaries and wages and related FTE position for administering the indigent defense contracts.

³ This amendment reduces funding for state employee health insurance premiums from \$493 per month to \$468.70 per month.

2003 HOUSE APPROPRIATIONS

CONFERENCE COMMITTEE

HB 1018

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Deanna Ballantyne
Operator's Signature

10/30/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1018

House Appropriations Committee
Education and Environment Division

☒ Check here for Conference Committee

Hearing Date April 10, 2003

Tape Number	Side A	Side B	Meter #
1	X		4.9
Committee Clerk Signature <i>Criste Kelly</i>			

Minutes:

Chairman Wald opened the conference committee on HB 1018, Office of Administrative Hearings. All members of the conference committee were present. Rep. Wald asked Don from Legislative Council to explain the Senate changes to the House bill.

Don, LC The changes are pretty simple. They removed the health insurance based on the decrease from the \$493 to the \$488.70 per month. The other change was related to the indigent defense and that will remain in the judicial branch so the funding for the indigent defense, the salaries and the FTE's associated with that were both removed from the bill.

Chairman Wald What would the net change be, increased or decreased, in the funding in 1018?

Don, LC There would be a \$3,144,000 decrease as a result of the Senate changes.

Chairman Wald And that is reflected in the judicial budget?

Don, LC The offset of the \$2.99 million and the \$152 thousand would be in the judicial branch.

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Donna Ball
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10/30/03
Date

Page 2
Education and Environment Division
Bill/Resolution Number 1018
Hearing Date April 10, 2003

Chairman Wald So the spending limit is about the same?

Don. LC Overall, yes.

Senator Andrist On behalf of the appropriations committee, responding primarily to the two judiciary committees, they decided that this was not a good home as they had expected for the indigent defense so they are putting it back in judiciary and they are probably going to spend another two years figuring out if they can't find a better home than the judiciary. They would like to separate the two initiatives.

Senator Traynor I served on both of the judiciary committees and at that time the court expressed dissatisfaction with the operation of the indigent defense program because the judges felt that there is a possibility of conflict when the judge appoints an attorney to represent a defendant and later had to rule whether that representation was adequate or inadequate. They felt that that was not correct. When we got the matter in the Senate judiciary committee, our committee thought that a better home for the indigent defense program was to remain with the court because the court has an apparatus all over the state. If there is a conflict because of an appointment in Wahpeton, they could bring in a judge from Devils Lake. I think they can resolve that problem. We found as we were looking at HB 1088 that there was a great deal of dissatisfaction among the firms that are handling these indigent defense contracts. HB 1088 is the money vehicle. The problem with the contracts was under funding to the extent of about \$750,000 over and above what the court had budgeted which was something over \$3 million. The problem was how do we find the \$750,000, do we just look to the general fund or do we find some other funding mechanism. The Senate judiciary passed HB 1088 and the Senate has passed it and it is in the House to impose administrative fees. The judges have the right to do that in

Deanna G. Hall
Operator's Signature

10/30/03
Date

Page 3
Education and Environment Division
Bill/Resolution Number 1018
Hearing Date April 10, 2003

criminal cases. HB 1088 provides that the courts access administrative fees at a fixed level for each category of crime starting with class B misdemeanors at \$125 and rising on the scale up to class A felonies and AA felonies at \$900. Those fees go to the general fund. Last year, without any mandate from the legislature, the courts raised \$565,000 in the year 2002 by imposing administrative fees. So we felt that there was ample room there to fund the indigent defense program deficit of \$750,000 and the courthouse facilities program. Another bill provided there be an imposed, I believe a \$10 increase in civil filing fees to fund the court facilities in courthouses around the state. The feeling of the counties was, now the courts are the state's responsibility. In response to that, this bill sets up a committee, so to speak, to supervise how this is distributed. HB 1088 is the funding mechanism for that because it provides, in addition to the amount imposed for each category of crime which goes to the general fund, the court must impose an additional \$100 in each criminal case. I think in the last biennium there were 25,000 class B misdemeanors, so if you add \$100 a case even if you get 50% of that, you've got enough money to take care of these problems. HB 1088 provides the funding mechanism for the indigent defense program and the court facilities program and specifies that the first \$750,000 generated from the \$100 assessed in each criminal case be spent for indigent defense. The next \$460,000 is spent for court facilities. Any amount over that is divided equally between the two programs. I think the fiscal note is conservative as to the amount of money that would be raised. The plan now is there is a study resolution that will study this program for the next biennium and the ultimate objective is to have an independent department handle the indigent defense so the court does not have the possibility of conflict. We think for the present time the indigent defense

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Education and Environment Division
Bill/Resolution Number 1018
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program should remain with the court. We are not prepared at this time to create this independent department.

Rep. Aarsvold What collection mechanisms does the court have at its disposal?

Senator Traynor The court has vast collection powers. If the defendant is capable of paying and doesn't pay it, it operates just as a judgment. The court can issue an order to show cause citing the defendant to come in before the court and show cause why he or she has not paid the administrative fees. That is pretty persuasive. If the defendant refuses, the court can lock them up.

Rep. Aarsvold The source of the funding will be ultimately with the state general fund for the indigent defense, is that correct?

Senator Traynor There is a separate fund set up. In HB 1088 there is a separate fund for indigent defense and a separate fund for the court facilities. Those do not go into the general fund as I understand it. When those two funds are fully funded, overage is divided equally between them, that is as to the \$100 in each criminal case. The amounts that the Senate put in for each crime, for instance a class B misdemeanor is \$125, if somebody appears on a DUI, the administrative fee would be \$225 because you would add the additional \$100 to it.

Rep. Aarsvold It seems to me that the general fund would be a better source for indigent defense, it would insulate the process more. Is there some rationale to that thought?

Senator Traynor I agree, but there wasn't enough money in there. The \$3 million was not enough so we had to get \$750,000 some place else.

Chairman Wald Mr. Holmberg are you comfortable with the Senate changes?

Senator Holmberg Yes.

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Education and Environment Division
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Hearing Date April 10, 2003

Rep. Aarsvold made a motion that the House accede to the Senate amendments and Rep.

Rennerfeldt seconded.

**ROLL CALL VOTES ON A MOTION THAT THE HOUSE ACCEDE TO THE SENATE
AMENDMENTS**

6 YES 0 NO 0 ABSENT

As chairman, Rep. Wald will carry the bill, but will refer to Rep. Aarsvold on the floor.

Senator Traynor I was asked why the first \$750,000 generated from these administrative fees went to indigent defense. I replied that the critical need is there.

Chairman Wald adjourned the hearing on HB 1018, Office of Administrative Hearings.

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1018

House Appropriations Committee
Government Operations Division

☒ Conference Committee

Hearing Date April 21, 2003

Tape Number	Side A	Side B	Meter #
1	xx		
Committee Clerk Signature			

Minutes: Conference Committee

Chairman Skarphol called the committee to order, those in attendance included **Rep.**

Skarphol, Rep. Svedjan, Rep. Glassheim, Sen. Schobinger, Sen. Christmann and Sen. Robinson.

Chairman Skarphol noted the bill was returned for IT adjustments as shown on amendment 38018.0203,

Sen. Robinson moved the amendment, and a DO PASS ON HB 1018, second by **Rep. Svedjan.**

OMB noted the amount was related to the maintenance agreement on the Billing and Encasement System within the agency.

Sen. Robinson asked about the list of agencies being compiled that fell outside the line with special funds.

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Page 2

Government Operations Division

Bill/Resolution Number HB 1018

Hearing Date April 21, 2003

Rep. Svedjan noted conferees have been asked recall any reductions that had previously been assessed, and identify any critical cuts.

Sen. Robinson to be fair and equitable, we need to address the compounding in regards to a small agency.

Rep. Skarphol noted the this is a 3M budget and \$4,300 reduction. They have transfer authority. We asked members of the conference committees to advise us of IT issues that need to be resolved.

Sen. Robinson noted concern was stressed by one of the conference committee members.

A roll call vote was taken on HB 1018, 4 yeah, 2 nay (Robinson/Glassheim)

MOTION CARRIES.

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Date

Date: April 10, 2003
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1018

House Appropriations Education and Environment Division Committee

☒ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken HOUSE ACCEDE TO SENATE AMENDMENTS

Motion Made By Rep. Aarsvold Seconded By Rep. Rennerfeldt

Representatives	Yes	No	Representatives	Yes	No
Rep. Wald	X				
Rep. Rennerfeldt	X				
Rep. Aarsvold	X				
Senator Andrist	X				
Senator Traynor	X				
Senator Lindaas	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment As chairman, Rep. Wald will carry the bill, but will refer to Rep. Aarsvold on the floor.

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

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REPORT OF CONFERENCE COMMITTEE (420)
April 10, 2003 11:55 a.m.

Module No: SR-65-7320

Insert LC: .

REPORT OF CONFERENCE COMMITTEE

HB 1018, as engrossed: Your conference committee (Sens. Andrist, Traynor, Lindaas and Reps. Wald, Rennerfeldt, Aarsvold) recommends that the **HOUSE ACCEDE** to the Senate amendments on HJ pages 1280-1281 and place HB 1018 on the Seventh order.

Engrossed HB 1018 was placed on the Seventh order of business on the calendar.

(2) DESK, (2) COMM

Page No. 1

SR-65-7320

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10/30/03
Date

REPORT OF CONFERENCE COMMITTEE (420)
April 22, 2003 12:06 p.m.

Module No: HR-72-8086

Insert LC: 38018.0204

REPORT OF CONFERENCE COMMITTEE

HB 1018, as engrossed: Your conference committee (Sens. Schobinger, Chrismann, Robinson and Reps. Skarphol, Svedjan, Glasshelm) recommends that the **SENATE RECEDE** from the Senate amendments on HJ pages 1280-1281, adopt amendments as follows, and place HB 1018 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1280 and 1281 of the House Journal and page 1093 of the Senate Journal and that Engrossed House Bill No. 1018 be amended as follows:

Page 1, line 5, remove "out of any moneys in the general fund in the state"

Page 1, line 6, remove "treasury, not otherwise appropriated, and"

Page 1, line 9, replace "1,092,106" with "938,648"

Page 1, line 10, replace "3,299,168" with "304,310"

Page 1, line 11, replace "all funds" with "special funds appropriation" and replace "4,391,274" with "1,242,958"

Page 1, remove lines 12 and 13

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1018 - 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	\$948,968	\$1,092,106	(\$153,458)	\$938,648	\$938,648	
Operating expenses	<u>313,621</u>	<u>3,299,168</u>	<u>(2,994,858)</u>	<u>304,310</u>	<u>306,621</u>	<u>(\$4,311)</u>
Total all funds	\$1,263,589	\$4,391,274	(\$3,148,316)	\$1,242,958	\$1,247,269	<u>(\$4,311)</u>
Less estimated income	<u>1,263,589</u>	<u>1,248,095</u>	<u>(5,137)</u>	<u>1,242,958</u>	<u>1,247,269</u>	<u>(4,311)</u>
General fund	\$0	\$3,143,179	(\$3,143,179)	\$0	\$0	\$0
FTE	8.00	9.00	(1.00)	8.00	8.00	0.00

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

	REMOVES FUNDING FOR INDIGENT DEFENSE FEES ¹	REMOVES SALARIES AND FTE POSITION ²	REDUCES RECOMMENDED FUNDING FOR HEALTH INSURANCE ³	REDUCES FUNDING FOR INFORMATION TECHNOLOGY COSTS ⁴	TOTAL CONFERENCE COMMITTEE CHANGES
Salaries and wages		(\$152,832)	(\$826)		(\$153,458)
Operating expenses	<u>(\$2,990,547)</u>			<u>(\$4,311)</u>	<u>(2,994,858)</u>
Total all funds	(\$2,990,547)	(\$152,832)	(\$826)	(\$4,311)	(\$3,148,316)
Less estimated income			<u>(826)</u>	<u>(4,311)</u>	<u>(5,137)</u>
General fund	(\$2,990,547)	(\$152,832)	\$0	\$0	(\$3,143,179)
FTE	0.00	(1.00)	0.00	0.00	(1.00)

¹ This amendment removes the funding for indigent defense fees and the related responsibilities which were transferred from the judicial branch by the House pursuant to House Bill No. 1044. The indigent defense program will be funded in House Bill No. 1002 (Judicial Branch).

(2) DESK, (2) COMM

Page No. 1

HR-72-8086

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REPORT OF CONFERENCE COMMITTEE (420)
April 22, 2003 12:06 p.m.

Module No: HR-72-8086

Insert LC: 38018.0204

- 2 This amendment removes the salaries and wages and related FTE position for administering the indigent defense contracts.
- 3 This amendment reduces funding for state employee health insurance premiums from \$493 to \$455.70 per month.
- 4 This amendment reduces funding for information technology by \$4,311 from special funds, which represents a reduction in information technology funding of approximately 5 percent.

Engrossed HB 1018 was placed on the Seventh order of business on the calendar.

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2003 TESTIMONY

HB 1018

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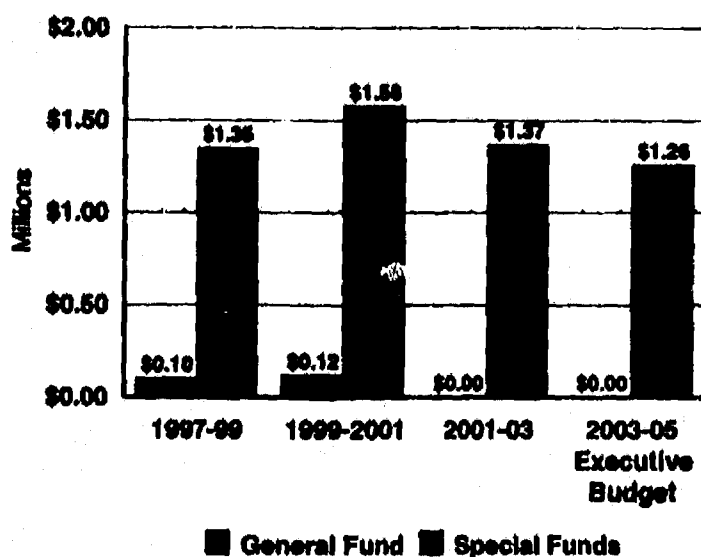
10/30/03
Date

**Department 140 - Department of Administrative Hearings
House Bill No. 1018**

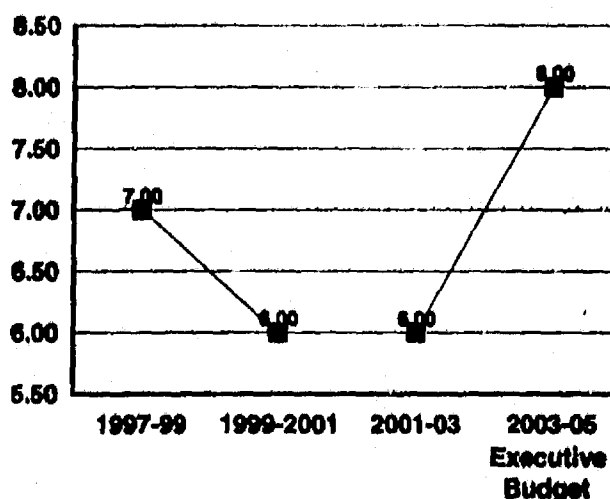
	FTE Positions	General Fund	Other Funds	Total
2003-05 Executive Budget	8.00	\$0	\$1,263,589	\$1,263,589
2001-03 Legislative Appropriations	6.00	0	1,374,820	1,374,820 ¹
Increase (Decrease)	2.00	\$0	(\$111,231)	(\$111,231)

¹ The 2001-03 appropriation amounts include \$3,528 of other funds for the agency's share of the \$5 million funding pool appropriated to the Office of Management and Budget for special market equity adjustments for classified employees.

Agency Funding



FTE Positions



Executive Budget Highlights

	General Fund	Other Funds	Total
1. Moves funding from the operating expenses line item for temporary administrative law judges to the salaries and wages line item (\$261,104) for an additional 2 FTE administrative law judges primarily to conduct Workers Compensation Bureau hearings			\$0
2. Reduces operating expenses, primarily for professional services, to achieve the 95 percent budget request		(\$137,836)	(\$137,836)

Major Related Legislation

House Bill No. 1044 - This bill transfers the responsibility of contracting for legal services for indigents from the judicial branch to the Office of Administrative Hearings. Based on the fiscal note for House Bill No. 1044, the Office of Administrative Hearings would incur \$152,632 in additional general fund expenditures during the 2003-05 biennium to hire an attorney and pay for operating and equipment expenses to administer the program. In addition, \$2,990,547 of general fund money and \$42,900 from the indigent defense administration fund within the Supreme Court budget for indigent defense attorneys contract services expenses would need to be transferred to the Office of Administrative Hearings. The bill does not provide an appropriation to the Office of Administrative Hearings.

House Bill No. 1045 - This bill requires the state, rather than counties, to pay for indigent defense costs for mental illness commitment proceedings, civil commitment of sexual predators, and for guardian ad litem services.

04/10/03

STATEMENT OF PURPOSE OF AMENDMENT:**House Bill No. 1018 - Funding Summary**

	Executive Budget	House Version	Senate Changes	Senate Version
Office of Administrative Hearings				
Salaries and wages	\$949,968	\$1,092,106	(\$153,458)	\$938,648
Operating expenses	313,621	3,299,168	(2,990,547)	308,621
Total all funds	\$1,263,589	\$4,391,274	(\$3,144,005)	\$1,247,269
Less estimated income	1,263,589	1,248,095	(826)	1,247,269
General fund	\$0	\$3,143,179	(\$3,143,179)	\$0
FTE	8.00	9.00	(1.00)	8.00
Bill Total				
Total all funds	\$1,263,589	\$4,391,274	(\$3,144,005)	\$1,247,269
Less estimated income	1,263,589	1,248,095	(826)	1,247,269
General fund	\$0	\$3,143,179	(\$3,143,179)	\$0
FTE	8.00	9.00	(1.00)	8.00

House Bill No. 1018 - Office of Administrative Hearings - House Action

	Executive Budget	House Changes	House Version
Salaries and wages	\$949,968	\$142,138	\$1,092,106
Operating expenses	313,621	2,985,547	3,299,168
Total all funds	\$1,263,589	\$3,127,685	\$4,391,274
Less estimated income	1,263,589	(15,494)	1,248,095
General fund	\$0	\$3,143,179	\$3,143,179
FTE	8.00	1.00	9.00

Department No. 140 - Office of Administrative Hearings - Detail of House Changes

	Removes Recommended Salary Increase ¹	Increases Salaries and Adds FTE ²	Adds Funding for Indigent Defense Fees ³	Decreases Funding for Computer Maintenance Contract ⁴	Total House Changes
Salaries and wages	(\$10,494)	\$152,632			\$142,138
Operating expenses			2,990,547	(5,000)	2,985,547
Total all funds	(\$10,494)	\$152,632	\$2,990,547	(\$5,000)	\$3,127,685
Less estimated income	(10,494)	0	0	(5,000)	(15,494)
General fund	\$0	\$152,632	\$2,990,547	\$0	\$3,143,179
FTE	0.00	1.00	0.00	0.00	1.00

¹ This amendment removes the Governor's recommendation for state employee salary increases.² This amendment increases funding for salaries and wages and adds an FTE position for administering the indigent defense contracts.

10/30/03

04/10/03

³ This amendment adds funding for indigent defense fees, relating to the provisions of House Bill No. 1044, which transfers these responsibilities from the judicial branch.

⁴ This amendment decreases the operating line item by \$5,000 relating to a computer maintenance contract.

House Bill No. 1018 - Office of Administrative Hearings - Senate Action

	Executive Budget	House Version	Senate Changes	Senate Version
Salaries and wages	\$949,968	\$1,092,106	(\$153,458)	\$938,648
Operating expenses	313,621	3,299,168	(2,990,547)	308,621
Total all funds	\$1,263,589	\$4,391,274	(\$3,144,005)	\$1,247,269
Less estimated income	1,263,589	1,248,095	(826)	1,247,269
General fund	\$0	\$3,143,179	(\$3,143,179)	\$0
FTE	8.00	9.00	(1.00)	8.00

Department No. 140 - Office of Administrative Hearings - Detail of Senate Changes

	Removes Funding For Indigent Defense Fees ¹	Removes Salaries and FTE Position ²	Reduces Recommended Funding for Health Insurance ³	Total Senate Changes
Salaries and wages		(\$152,632)	(\$826)	(\$153,458)
Operating expenses	(2,990,547)			(2,990,547)
Total all funds	(\$2,990,547)	(\$152,632)	(\$826)	(\$3,144,005)
Less estimated income	0	0	(826)	(826)
General fund	(\$2,990,547)	(\$152,632)	\$0	(\$3,143,179)
FTE	0.00	(1.00)	0.00	(1.00)

¹ This amendment removes the funding for indigent defense fees and the related responsibilities which were transferred from the judicial branch by the House pursuant to House Bill No. 1044. The indigent defense program will be funded in House Bill No. 1002 (Judicial Branch).

² This amendment removes the salaries and wages and related FTE position for administering the indigent defense contracts.

³ This amendment reduces funding for state employee health insurance premiums from \$493 per month to \$488.70 per month.

Deanna G. Ball
Operator's Signature

10/30/03
Date



Allen C. Hoberg
DIRECTOR


OFFICE OF ADMINISTRATIVE HEARINGS

STATE OF NORTH DAKOTA
1707 North 9th Street
Bismarck, North Dakota 58501-1882

701-328-3260
Fax 701-328-3254
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www.state.nd.us/oah

MEMORANDUM

TO: Fifty-eighth Legislative Assembly
State of North Dakota
House Appropriations Committee (Education and Environment)

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

RE: OAH 2003-2005 Operating Budget Request
House Bill No. 1018

DATE: January 17, 2003

BACKGROUND INFORMATION

The Office of Administrative Hearings work consists almost exclusively of conducting administrative hearings for numerous state and local agencies on a variety of administrative matters, including complaint or enforcement hearings, application hearings for a license or benefits, and appeals from various types of agency 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 it began operations on July 1, 1991, OAH has received requests to conduct hearings from almost 70 different state and local government agencies or entities. Some

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Fifty-eighth Legislative Assembly
State of North Dakota
House Appropriations Committee (Education and Environment)
January 17, 2003
Page 2

agencies have many hearings each year, while others have made only a few requests for hearings since 1991. For example, in 2001 and 2002 only 32 agencies or entities made requests for OAH services. The bulk of those requests came from two agencies, the Department of Human Services and the Workers Compensation Bureau.

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 the Workers Compensation Bureau, the Insurance Commissioner, the Bank of North Dakota, and the Public Service Commission voluntarily use the services of OAH, contracting with OAH to do so. Additionally, some local government entities use the services of OAH for such hearings as employee discipline, tobacco sales enforcement, and public nuisance abatement. These local entities also contract with OAH. Contract arrangements like those between OAH and other state or local agencies or entities is common in other states, too.

From July 1991 until September 1995, OAH operated with a permanent full-time staff of five FTEs (three ALJs and two support staff), conducting hearings, the majority of which were for agencies required to use OAH. During that time period, OAH occasionally contracted with temporary ALJs on an as-needed basis. In September 1995, OAH began conducting all of the administrative hearings for the Workers Compensation

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Fifty-eighth Legislative Assembly
State of North Dakota
House Appropriations Committee (Education and Environment)
January 17, 2003
Page 3

Bureau. OAH uses both permanent ALJs and temporary, contract ALJs to provide services for the Bureau. However, temporary ALJs conduct the bulk of Bureau hearings for OAH.

At the peak of providing services to the Bureau, OAH contracted with 11 temporary ALJs in several cities around the state. In late 1997, after the reduction of a huge backlog of Bureau cases, the Bureau's caseload began to decline, and continued to decline until about the beginning of the 2001-2003 biennium. During this biennium the Bureau's caseload leveled off and even rose some during 2002. See attached comparison of calendar year 2001 to 2002 agency hearing requests (only the Bureau and DHS had substantial increases in caseloads from 2001 to 2002). OAH now contracts with eight temporary ALJs located in three cities.

With a leveling-off of its caseload, the Bureau has now asked OAH to conduct its hearings using full-time OAH ALJs rather than temporary, contract ALJs. The Bureau has asked OAH to return to full-time ALJs because it believes that the overall cost will be less, full-time ALJs will be better trained, and permanent ALJs will be easier to manage. OAH agrees with the Bureau that these are likely consequences of making this change. Also, OAH believes that a permanent presence of OAH ALJs in eastern North Dakota may help reduce travel costs for other agencies as OAH occasionally uses the

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State of North Dakota
House Appropriations Committee (Education and Environment)
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Page 4

ALJ to conduct other agencies' hearings. There will also still be an occasional need to contract with temporary ALJs on an as-needed basis.

Since the 1997-99 biennium, OAH's budget has had a second component under its one major program, for conducting Bureau hearings by means of temporary, contract ALJs. Different billing rates were established for OAH temporary work for the Bureau and for all other OAH ALJ work. OAH kept these separate components through this biennium (2001-2003) but with its 2003-2005 proposed budget will return to a budget with only one component under one major program, using one cost center. OAH will also return to one billing rate for providing all of its hearing officer services.

OAH estimates that the fiscal result of this change from temporary ALJs to permanent, full-time ALJs will be decreased costs. Overall, OAH proposed a reduction of \$137,836 from its 2001-2003 budget, a 10% decrease. The Governor's recommendation, with the proposed statewide salary adjustments is a reduction of \$111,231, an 8.1% decrease. See Budget Analysis below for detail.

Specifically, to accomplish this change OAH will require two new FTEs, and it will fill its current vacant FTE. With the two new FTEs OAH will hire two full-time ALJs to conduct, primarily, Bureau hearings. Both of these ALJs will telecommute. One will be located in

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Date

eastern North Dakota and one will be located in western North Dakota. The current vacant FTE is a support staff FTE and it will be filled to provide secretarial and administrative support for the two new ALJs.

The following is a comparison of the proposed 2003-2005 OAH staff configuration to the existing staff configuration.

<u>2001-2003</u>	<u>2003-2005</u>
1 full-time Director/ALJ	1 full-time Director/ALJ
2 full-time ALJs	4 full-time ALJs
3 full-time support staff (one vacant)	3 full-time support staff
8 temporary, contract ALJs	a few temporary ALJs used only on an as-needed basis
Total: 6 full-time FTEs, 8 contract ALJs	Total: 8 full-time FTEs, a few contract ALJs used infrequently

BUDGET ANALYSIS

OAH's present 2001-2003 budget shows a total funding of \$1,374,820. OAH is asking for a budget of \$1,236,984, with the Governor's recommendations, for 2003-2005. This is a decrease of 8.1%. OAH's 1999-2001 budget was \$1,426,016. OAH's request for 2003-2005 is just over 13% less than that budget. This rather large reduction over a four year period is due to the decrease in the Bureau's caseload and the corresponding decrease in the cost of providing fewer hearing officer services to the Bureau, and is also due to the decreased costs of providing the Bureau services using full-time ALJs

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rather than temporary ALJs under the proposed 2003-2005 budget. OAH and the Bureau propose that two full-time ALJs will provide the hearing services for the Bureau that eight temporary ALJs previously provided.

This increase in FTEs will result in an increase of \$289,581 in salaries and wages [plus benefits], but a decrease in \$400,812 in total operating, despite an increase of \$18,100 in equipment and \$13,870 in information technology expenditures. Again, overall, with the Governor's recommendations OAH's budget is decreased by \$111,231, an 8.1% decrease.

The huge decrease in total operating will occur because OAH will no longer pay for temporary, contract ALJs on an hourly basis. Paying OAH full-time ALJs a salary will be cheaper than paying eight contract ALJs on an hourly basis. Also, OAH will pay a full-time salary to the support staff person for these two new ALJs. Under the current system, temporary ALJs provide their own support staff. Under the proposed system a new support staff person filling the vacant position is necessary to fill the void left with the replacement of temporary ALJs who had their own office support. With both the two new full-time ALJs and their secretarial support, the cost will still be less than having to pay for eight contract ALJs on an hourly basis.

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Other than the change from temporary ALJs to full-time ALJs, this budget contains nothing that is really new. OAH will maintain its operations essentially as it has since September 1995, conducting Bureau hearings and the hearings of other voluntary user agencies, as well as conducting the hearings of all other agencies required to use OAH. OAH is aware of no new legislation that will expand or contract OAH's jurisdiction, and voluntary users are happy with the services provided by OAH and intend to continue to use OAH. OAH will continue to bill all user agencies at an hourly rate, determined by our billing consultant, to fund all of its budget. For this proposed budget, however, the billing rate will be the same for all agencies.

In summary, with the budget proposed today, OAH should be able to fulfill its mission of providing quality, independent hearing officer services to all state agencies required to use its services and to all state or local entities voluntarily requesting an independent ALJ to conduct hearings. OAH respectfully requests that the House approve OAH's 2003-2005 operating budget request as proposed today.

Attached to this memorandum are various statistical documents of OAH, including a breakdown of requests received by agency, and the number of hearings and prehearing conferences held. The documents should be self explanatory. Other statistics can be provided if the Committee desires.

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Finally, the committee should know that there is a bill introduced by the Judiciary A Committee of the Legislative Council that would place the management of all indigent defense counsel services in North Dakota within OAH. See HB 1044. This legislation would require an increase in OAH's budget of \$3,143,179 in general funds and \$42,900 in special funds for the 2003-2005 biennium, if the bill is amended as proposed by OAH (the North Dakota Supreme Court supports these amendments). It would also require OAH's FTEs to be further increased by one more FTE. If HB 1044 passes and is signed by the Governor, OAH would likely have two separate major programs, with two cost centers. OAH's current cost center 1000 would continue to be funded only by billing agencies, but the new cost center would have to be funded by general funds and other funds restricted to the provision of indigent defense counsel services as authorized under HB 1044. Much of the money for this program would be money transferred to OAH from the budget of the courts, but \$152,632 would be new general fund money. Of course, the committee will need to watch the progress of HB 1044 and act accordingly in adjusting OAH's budget, if necessary. A detailed explanation of the effects and requirements of HB 1044 is given in the fiscal note to HB 1044.

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**Prehearing Conferences Held
01/01/2001 through 12/31/2002**

Office of Administrative Hearings	Total PHOs Held	2001	2002
Agriculture Commissioner	3		3
Animal Health, Board of	2	1	1
BND, Student Loans of North Dakota	4	2	2
Central Personnel Division	20	14	6
DHS, Human Services, Department of	48	26	20
Game and Fish Department	2	1	1
Health, Department of	4	2	2
IO, Insurance Commissioner	3		3
Medical Examiners, State Board of	3	2	1
Minot State University	1	1	
Nursing, State Board of	9	5	4
Professional Engineers & Land Surveyors Board	1	1	
Public Instruction, Department of	5	5	
Securities Commissioner	12	9	3
Tax Commissioner, State	7	3	4
University System, N.D.	1		1
Water Commission, State/State Engineer	7	2	5
Workers Compensation Bureau	57	35	22
Totals	187	109	78

Friday, January 10, 2003

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10/30/03

Exhibit 1



Allen C. Hoberg
DIRECTOR

OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF NORTH DAKOTA
1707 North 9th Street
Bismarck, North Dakota 58501-1882

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MEMORANDUM

TO: Fifty-eighth Legislative Assembly
State of North Dakota
Senate Appropriations Committee

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

RE: OAH 2003-2005 Operating Budget Request
House Bill No. 1018

DATE: February 27, 2003

BACKGROUND INFORMATION

The Office of Administrative Hearings' (OAH) work currently consists almost exclusively of conducting administrative hearings for numerous state agencies on a variety of administrative matters, including complaint (enforcement) hearings, application hearings (for a license or benefits), and appeals from various types of agency 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 on July 1, 1991, it has received requests to conduct hearings from almost 70 different state and local government agencies or entities. Some agencies have many hearings each year, while others have made only a few

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requests for a hearing since 1991. For example, in 2001 and 2002 only 32 agencies or entities made requests for OAH services. The bulk of those requests came from two agencies, the Department of Human Services and the Workers Compensation Bureau.

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 state agencies, including the Workers Compensation Bureau, the Insurance Commissioner, the Bank of North Dakota, and the Public Service Commission voluntarily use the services of OAH, contracting with OAH to do so. Additionally, some local government entities use the services of OAH for such hearings as employee discipline, tobacco sales enforcement, and public nuisance abatement. These local entities also contract with OAH. Contract arrangements like those between OAH and other state or local agencies or entities is common in other states, too.

From July 1991 until September 1995, OAH operated with a permanent full-time staff of five FTEs (three ALJs and two support staff), conducting hearings, the majority of which were from agencies required to use OAH. During that time period, OAH occasionally contracted with temporary ALJs on an as-needed basis. In September 1995, OAH began conducting all of the administrative hearings for the Workers Compensation Bureau. OAH uses both permanent ALJs and temporary, contract ALJs to provide

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services for the Bureau. However, temporary ALJs conduct the bulk of Bureau hearings for OAH.

At the peak of providing services to the Bureau, OAH contracted with 19 temporary ALJs in six cities around the state. In late 1997, after the reduction of a huge backlog of Bureau cases, the Bureau's caseload began to decline, and continued to decline until about the beginning of this biennium (2001-2003). During this biennium, the Bureau's caseload leveled off and even rose some during 2002. See attached comparison of calendar year 2001 to 2002 agency hearing requests (only the Bureau and DHS had substantial increases in caseloads from 2001 to 2002). OAH now contracts with eight temporary ALJs located in three cities.

With a leveling off of its caseload, the Bureau has now asked OAH to return to conducting its hearings using primarily full-time OAH ALJs rather than primarily temporary, contract ALJs. The Bureau has asked OAH to return to full-time ALJs because it believes that the overall cost will be less and the full-time, permanent ALJs will be better trained and easier to manage. OAH agrees with the Bureau that these are likely consequences of making this change. Also, OAH believes that a permanent presence of OAH ALJs in eastern North Dakota may help reduce travel costs for other agencies as OAH occasionally uses an ALJ not only for Bureau hearings but also for

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some other agencies' hearings. There will still be an occasional need to contract with temporary ALJs on an as-needed basis, however.

Since the 1997-99 biennium, OAH's budget has had a second component under its one major program, for conducting Bureau hearings by means of temporary, contract ALJs. A different billing rate was established for OAH temporary work for the Bureau. OAH kept these separate components through this biennium but with its 2003-2005 proposed budget will return to a budget with only one component for its administrative hearings work, using one cost center. OAH will also return to one billing rate for providing all of its hearing officer services.

OAH estimates that the fiscal result of this change from temporary ALJs to permanent, full-time ALJs will result in decreased costs. Overall, OAH proposed a reduction of \$137,836 from its 2001-2003 budget, a 10% decrease. The Governor's recommendation, with the proposed statewide salary adjustments was a reduction of \$111,231, an 8.1% decrease. See Budget Analysis below for detail. The Governor's recommendation for salary increases was taken out of OAH's budget in the House. OAH's salary line item was reduced \$10, 494. Also, OAH's operating line item was reduced \$5,000 for contract, technology services. The budget proposed in the House is a 9.2% decrease.

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Specifically, to accomplish the change requested by the Bureau, OAH will require two new FTEs, and it will fill its vacant FTE. With the two new FTEs, OAH will hire two full-time ALJs to conduct, primarily, Bureau hearings. Both of these ALJs will telecommute. One will be located in eastern North Dakota and one will be located in western North Dakota. The vacant FTE is a support staff FTE and it will be filled to provide secretarial and administrative support for the two new ALJs. The support staff person will be located in Bismarck at OAH's main office.

The following is a comparison of the proposed 2003-2005 OAH staff configuration to the existing staff configuration.

2001-2003

1 full-time Director/ALJ
2 full-time ALJs
3 full-time support staff (one vacant)
8 temporary, contract ALJs

Total of 6 full-time FTEs, 8 contract ALJs

2003-2005

1 full-time Director/ALJ
2 full-time ALJs
3 full-time support staff
A few temporary ALJs used only on an as-needed basis

Total of 8 full-time FTEs, a few contract ALJs used infrequently.

BUDGET ANALYSIS

OAH's present 2001-2003 budget for administrative hearings shows a total funding of \$1,374,820. OAH asked for a budget of \$1,236,984 for 2003-2005. With the Governor's recommendations, OAH's proposed budget is \$1,263,589, a decrease of 8.1% from the

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previous biennium. The budget that was approved in the House is a budget of \$1,248,095, a decrease of 9.2%. OAH's 1999-2001 budget was \$1,426,016. The Governor's request for OAH for 2003-2005 is just over 11% less than that budget. The amount approved by the House is 12.5 % less than that budget. This rather large reduction in OAH's budget over a four year period is due to the decrease in the Workers Compensation Bureau's caseload and the corresponding decrease in the cost of providing fewer hearing officer services to the Bureau, and is also due to the decreased costs of providing the Bureau services using full-time ALJs rather than temporary ALJs under the proposed 2003-2005 budget. OAH and the Bureau propose that two full-time ALJs will provide the hearing services for the Bureau that eight temporary ALJs previously provided.

This increase in FTEs will result in the House version in an increase of \$279,087 in salaries and wages [plus benefits], but a decrease in \$405,812 in total operating, despite an increase of \$18,100 in equipment and \$8,870 in information technology expenditures. Again, with the House's amendments OAH's total budget is decreased by \$126,725, a 9.2 % decrease.

The huge decrease in total operating will occur because OAH will no longer pay large amounts for temporary, contract ALJs on an hourly basis for Bureau work. Paying OAH full-time ALJs a salary will be cheaper than paying 8 contract ALJs on an hourly basis.

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Also, OAH will pay a full-time salary to the support staff person for these two new ALJs. Under the current system, temporary ALJs provide their own support staff. Under the proposed system a new support staff person (filling the vacant position) is necessary to fill the void left with the replacement of temporary ALJs who had their own office support. With both the two new full-time ALJs and their secretarial support, the cost will still be less than having to pay for 8 contract ALJs on an hourly basis.

Other than the change from temporary ALJs to full-time ALJs, this budget for administrative hearings contains nothing that is really new. OAH will maintain its operations for administrative hearings work essentially as it has since September 1995, conducting Bureau hearings and the hearings of other voluntary users and conducting the hearings of all other agencies required to use OAH. OAH is aware of no new legislation that will expand or contract OAH's jurisdiction. Voluntary users are happy with the services provided by OAH and intend to continue to use OAH. OAH will continue to bill all user agencies at an hourly rate, determined by our billing consultant, to fund all of its administrative hearings budget. For this proposed budget, however, the billing rate will be the same for all agencies.

In summary, with the budget proposed today, OAH should be able to fulfill its mission of providing quality, independent hearing officer services to all state agencies required to use its services and to all state or local entities wishing, for whatever reason, to engage

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an independent ALJ to conduct its hearings. OAH respectfully requests that the Senate approve OAH's 2003-2005 operating budget request for administrative hearings as proposed today.

Attached to this memorandum, for the Committee's information, are various statistical documents of OAH, including a break down of requests received by agency, and the number of hearings and prehearing conferences held. The documents should be self explanatory. Other statistics can be provided if the Committee desires.

Finally, I have kept separate from the budget analysis of the administrative hearings work of OAH, the results of the passage of House Bill 1044 in the House. House Bill 1044 was introduced by the Judiciary A Committee of the Legislative Council and it would place the management of all indigent defense counsel services in North Dakota within the operations of OAH. See HB 1044, as amended (Reengrossed House Bill No. 1044). This legislation requires an increase in OAH's budget of \$3,143,179 in general funds for 2003-2005. Additionally, OAH will have the use of an estimated \$42,900 in special funds from the indigent defense administrative fund for the 2003-2005 biennium. The estimated \$42,900, is a continuing appropriation of the indigent defense administration fund to OAH which does not need to appear in OAH's budget. See section 3 of Reengrossed House Bill No. 1044 (amendment to subsection 4 of section 29-07-01.1 of the North Dakota Century Code).

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HB 1044 would also require OAH's FTEs to be further increased by another 1 FTE, for a total of 9 FTEs. This additional FTE is required to hire a person to manage the indigent defense counsel services in North Dakota.

If HB 1044 passes and is signed by the Governor, OAH would take over management of indigent defense counsel services from the courts on January 1, 2004. OAH would then likely have two completely separate major programs, with two cost centers. OAH's current Cost Center 1000 would continue to be funded only for administrative hearings by billing agencies, but another cost center would have to be funded by general funds and other funds all of which are restricted to the provision of indigent defense counsel services as authorized under HB 1044. All of the general fund money for this program is transferred to OAH from the budget for the courts. Again, the special fund moneys is a continuing appropriation to OAH. A detailed explanation of the effects and requirements of HB 1044 is given in the fiscal note OAH submitted for HB 1044.

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Hearings Held
01/01/2001 through 12/31/2002

Office of Administrative Hearings	Total Hearings Held	2001	2002
Agriculture Commissioner	6	5	1
Animal Health, Board of	2	1	1
Architecture, State Board of	1		1
Attorney General, Office of	3	2	1
BND, Student Loans of North Dakota	3	2	1
Central Personnel Division	9	5	4
Corrections - Parole & Probation	1	1	
DHS, Human Services, Department of	221	96	125
FI, Banking Board	2	2	
Game and Fish Department	3	1	2
Garrison Diversion Conservancy District	1	1	
Medical Examiners, State Board of	3		3
Minot, ND, City of	1		1
Nursing, State Board of	4	1	3
Pharmacy Board	1	1	
Private Investigative and Security Board	1	1	
Professional Engineers & Land Surveyors Board	1	1	
PSO, Public Service Commission	18	10	8
Public Instruction, Department of	9	4	5
Real Estate Commission	3	2	1
Securities Commissioner	1	1	
Seed Department	2	2	
University System, N.D.	1		1
Water Commission, State/State Engineer	2		2
Workers Compensation Bureau	181	94	87
Totals	480	233	247

Wednesday, February 26, 2003

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Requests Received
01/01/2001 through 12/31/2002

<i>Office of Administrative Hearings</i>	<i>Total</i>	<i>2001:</i>	<i>2002:</i>	<i>Change from 2001 to 2002</i>
Addiction Counseling Examiners Board	1	0	1	1
Agriculture Commissioner	12	10	2	-8
Animal Health, Board of	3	1	2	1
Architecture, State Board of	1	0	1	1
Attorney General, Office of	3	2	1	-1
BND, Student Loans of North Dakota	10	6	4	-2
Central Personnel Division	18	12	6	-6
Corrections - Parole & Probation	3	3	0	-3
Dental Examiners, Board of	1	0	1	1
DHS, Human Services, Department of	359	162	197	35
Electrical Board, N.D. State	1	1	0	-1
FI, Banking Board	2	2	0	-2
FI, Financial Institutions, Department of	1	1	0	-1
Game and Fish Department	5	2	3	1
Garrison Diversion Conservancy District	1	1	0	-1
Health, Department of	2	1	1	0
IC, Insurance Commissioner	1	0	1	1
Medical Examiners, State Board of	5	3	2	-1
Minot State University	1	1	0	-1
Minot, ND, City of	1	0	1	1
Nursing, State Board of	11	8	3	-5
Pharmacy Board	3	1	2	1
Professional Engineers & Land Surveyors Board	1	1	0	-1
PSO, Public Service Commission	15	11	4	-7
Public Instruction, Department of	17	10	7	-3
Real Estate Commission	7	2	5	3
Securities Commissioner	15	12	3	-9
Seed Department	1	1	0	-1
Tax Commissioner, State	7	3	4	1
University System, N.D.	1	1	0	-1
Water Commission, State/State Engineer	4	2	2	0
Workers Compensation Bureau	341	148	193	45
<i>Totals</i>	<i>854</i>	<i>408</i>	<i>446</i>	<i>38</i>

Wednesday, February 26, 2003

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**Prehearing Conferences Held
01/01/2001 through 12/31/2002**

<i>Office of Administrative Hearings</i>	<i>Total PHCs Held</i>	<i>2001</i>	<i>2002</i>
Agriculture Commissioner	3		3
Animal Health, Board of	2	1	1
BND, Student Loans of North Dakota	4	2	2
Central Personnel Division	20	14	6
DHS, Human Services, Department of	47	26	21
Game and Fish Department	2	1	1
Health, Department of	4	2	2
IC, Insurance Commissioner	3		3
Medical Examiners, State Board of	3	2	1
Minot State University	1	1	
Nursing, State Board of	9	5	4
Professional Engineers & Land Surveyors Board	1	1	
Public Instruction, Department of	5	5	
Securities Commissioner	12	9	3
Tax Commissioner, State	7	3	4
University System, N.D.	1		1
Water Commission, State/State Engineer	7	2	5
Workers Compensation Bureau	57	35	22
Totals	188	109	79

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