

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2375

2007 SENATE JUDICIARY

SB 2375

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2375**

Senate **Judiciary Committee**

☐ Check here for Conference Committee

Hearing Date: January 29, 2007

Recorder Job Number: 2143

Committee Clerk Signature *Maria L Solberg*

Minutes: Relating to the transfer of administrative hearings from the department of transportation to the office of administrative hearings.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

Testimony In Support of Bill:

Sen. Bob Stenehjem, Dist. #30 Introduced the bill (meter 0:10) Gave testimony Att. #1. This bill does not change the process it only changes the physical location.

Sen. Nething drew **Sen. Stenehjem's** attention to the fiscal note. He responded that if there is a person doing the administrative work in one location and is moved to do the same thing at another location the fiscal note should be a wash.

Sen. David O'Connel, Dist. #6 Gave Testimony (meter 2:46) Att. #2 stated that this sounds like "Death by Fiscal", every place that I have spoke today the fiscal note has doubled since two years ago!

Bob Harms, ND Hospitality Assoc. (meter 3:24) gave testimony – Att. #3.

Tom Balzer, ND Motor Carriers Assoc. (meter 7:52) We have a high respect for the dept. of trans. The administrative ruling adds an interesting twist. We are governed by the Federal Motor Carriers Safety Assoc. and the State of ND.- Stated how the you can get two different

results from the same offence. Administrative hearing process has a 90% win ratio. He discussed the process and how it affects the industry.

Testimony in Opposition of the Bill:

Bonnie Thatch, Office of Administrative Hearings (meter 10:44) Read Allen Hoberg – Directors Testimony – Att. #4.

Tim Horners, Deputy Director of Business Support for D.O.T. (meter 14:20) Att. #5.

Sen. Nething asked how many hearing officers were currently working? 4 permanent and 2 Temp.

Testimony Neutral to the Bill:

Paul Seado, reviewed the current staff (meter 19:36)

Sen. Fiebiger questioned that if the current process was fair and partial why was he hear on a neutral and not against the bill. Mr. Seado stated that we are here to do what the legislature request not what he thinks. He responded that he personally knows the staff and does not think the staff is the problem, but the process. If people do not like what is going on then they need to change the system, not the staff.

Sen. Nelson questioned if the current staff is doing a good job then would you not want to transfer the staff to the new department? Yes spoke of other cases the dept. handles.

Senator David Nething, Chairman closed the hearing.

Sen. Fiebiger made the motion to Do Pass SB 2375 and **Sen. Marcellais** seconded the motion. All members were in favor and the motion passes.

Carrier: **Sen. Fiebiger**.

Senator David Nething, Chairman closed the hearing.

FISCAL NOTE

Requested by Legislative Council

03/23/2007

REVISION

Amendment to: Engrossed
SB 2375

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

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$769,706	\$0	\$769,706
Expenditures	\$0	\$0	\$0	\$769,706	\$0	\$769,706
Appropriations	\$0	\$0	\$0	\$769,706	\$0	\$769,706

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

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

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

This bill transfers all DOT hearings to OAH and transfers four persons to OAH, but no equipment or supplies. OAH will hire support staff and provide the equipment, supplies, training, and travel funds required to conduct these DOT hearings.

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

All the provisions of this bill are included to accomplish a complete transfer of all DOT hearings and DOT hearing officers to OAH and to require OAH ALJs to conduct those hearings. This bill will require an increase in OAH's appropriation which is the focus of this fiscal note and DOT states that it will also require an increase in its appropriation if this bill passes. See C. below*.

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

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

OAH receives no general funds. All of its budget is special funds obtained by billing its user agencies. OAH ALJs bill user agencies for each .1 hr. worked on conducting a hearing and writing a decision, and related matters. OAH ALJs keep daily time records and, based on those time records, each month OAH sends a billing statement to agencies requiring payment for hearing services provided to them. OAH would do the same for DOT hearings. It would not be necessary to transfer any moneys from DOT's budget to OAH's budget. DOT would simply devote moneys in its current budget to pay for OAH billings for providing ALJs to conduct DOT hearings. However, DOT states that it will be necessary to increase DOT's budget for additional costs of legal representation at hearings. See C. below*. It is necessary to increase OAH's budget to provide spending authority to enable OAH to pay for conducting DOT hearings. (See B. and C. below.) OAH's billing rate for all agencies for the current biennium is based on the actual expenditures OAH incurs for providing hearing services to all agencies in the previous biennium. OAH will likely base DOT's billing rate for OAH ALJs providing hearing services to DOT in the 2007-2009 biennium on OAH's proposed budget under this bill and an estimate of time to be spent in providing hearing services; and, thereafter, in future biennia, on actual expenditures and actual time spent (i.e. the DOT billing rate for the 2009-2011 biennium will be based on OAH's actual expenditures for the 2007-2009 biennium). The engrossed bill as amended requires that the four full-time hearing officers from DOT be transferred to OAH and become OAH ALJs. OAH plans to locate those hearing officers in the state's four major cities. These ALJs will work out of their home, telecommuting with OAH. OAH

plans to hire one support staff as secretarial support for these four ALJs. OAH anticipates adding one support staff person to provide secretarial support for the four ALJs in the nature of scheduling hearings, making travel arrangements, case management, billing, and other secretarial support. Apparently, DOT hearing officers now perform most, if not all, of their necessary secretarial support themselves. If OAH provides the necessary secretarial support for these new ALJs they should be free to devote more time to conducting hearings and writing decisions. Currently, DOT also contracts with two part-time, temporary hearing officers to conduct hearings. It is OAH's plan that with support staff, the four transferred hearing officers will be able to do all of the hearings they formerly did plus the hearings of the temporary, contract hearing officers. Any work that they are not able to do, OAH will hire temporary, contract ALJs to do that work, just as DOT did. But, also, if it develops that with support staff the four new ALJs are able to do more work than just conducting all of DOT's hearings, OAH will then be able to use these four new ALJs to do some of the work OAH now assigns to its current temporary, contract ALJs, for other agencies, thus, potentially saving OAH some money.

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

DOT currently employs 4 full-time and 2 part-time hearing officers to conduct all of its hearing. This approximates between 4 1/2 and 4 2/3 FTEs. But, OAH will attempt to use only four ALJs, the former four DOT hearing officers, supported with one support staff person, to conduct all DOT hearings. Any time remaining to the four new ALJs after conducting DOT hearings will be spent conducting other agency hearings. But, if the four new ALJs are not able to handle all of the DOT hearings, OAH will be required to contract additionally with temporary, contract ALJs on an as-needed basis to conduct some of the DOT hearings.

By law, OAH ALJs are all classified employees, at Grade 16. The minimum salary that OAH may pay its ALJs is \$51,240/yr. Thus, with the 4%/4% executive recommendation for salary increases, the minimum that OAH may pay an ALJ is \$57,471/yr. OAH proposes to pay its four new ALJs hired to conduct DOT hearings at this rate. All current DOT ALJs are paid less than this amount. The total amount of salaries to be paid the four new ALJs is \$459,768. The total amount of benefits to be paid the four new ALJs is \$160,920. The total amount of salaries and benefits to be paid for the four ALJs based on the proposed salary is \$620,688. OAH proposes to pay a support staff person at \$25,850 (with the 4%/4% salary increase included). Salary and benefits for that person will total \$69,795. Additionally, OAH will require \$79,222 in operating funds to provide for equipment, supplies, travel, training, and miscellaneous monthly office expenses necessary for the ALJs and support staff to do these hearings. OAH already has some office space and equipment for use by a new support staff person. See C below

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

OAH will likely locate the four new ALJs in the four large cities around the state (Bismarck, Fargo, Grand Forks, and Minot), as telecommute ALJs working out of their own homes. The hearings conducted by these ALJs will be held in available rooms at various government buildings around North Dakota. OAH will hire one new support staff person for secretarial support for the four new ALJs. That person will be centrally located at OAH offices in Bismarck. This bill will result in the addition of five new FTEs to OAH. The appropriation detail for accomplishing this is as follows:

Salary per ALJ - \$51,240(current) + \$6231 (4%/4%) = \$57,471 per ALJ
Total ALJ salaries for 4 ALJs for two years = \$459,768
Benefits per ALJ per year = \$20,115
Total ALJ benefits for 4 ALJs for two years = \$ 160,920
Salary for one support staff person \$25,850
Total Salary for one support staff person for two years = \$51,700
Benefits for one support staff person per year = \$9048
Total benefits for one support staff person for two years = \$18,096
Total salaries and benefits = \$690,484

Equipment per telecommute ALJ (desk, chair, computer, digital recorder, printer, etc.) = \$5250
Total equipment expenses = \$21,000

Miscellaneous monthly expenses (postage, phone lines, computer connection, etc.) = 235/ mo./ALJ
Total monthly expenses = \$22,560

Travel to hearings and other travel (mileage, lodging, meals, etc.) per ALJ = \$5,000
Total travel expenses = \$20,000

Training and CLE costs per ALJ (all ALJs are attorneys) = \$3,000
Total Training and CLE costs = \$12,000

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

Total salaries and benefits = \$690,484
Total operating costs = \$ 79,222
Total Appropriation = \$769,706

Note: In written testimony to the House Transportation Committee DOT estimated that it spends approximately \$720,000 on its DOT hearings. But, OAH is required to pay ALJs at a Grade 16 level as opposed to the DOT grade level of 12 for its hearing officers. And, OAH is hiring a support staff person to adequately support the four new ALJs. OAH does not plan to use temporary, contract ALJs, if it can avoid doing so, thus saving some money. The difference between the actual salaries of the current four DOT hearing officers and the current minimum salary under a Grade 16 for four ALJs is \$42,048. It appears that the only significant difference in estimated costs, then, is the difference in the ALJ salaries.

Although equipment expenses will likely be less in the 2009-2011 biennium, other operating costs are likely to increase. This fiscal note lists the same cost for both the 2007-2009 biennium and the 2009-2022 biennium, because except for any legislative increases in salaries and benefits, the other costs are likely to be about the same in the two biennia.

* DOT says that it will require DOT to spend \$450,000 more in other funds if DOT hearings are transferred to OAH and its hearing officers conduct DOT hearings as OAH ALJs. DOT says that based on Highway Patrol statements made to them and the House Transportation Committee, legal representation for law enforcement will be required for many if not most of the hearings being transferred to OAH. The DOT estimate for the costs of legal representation is \$450,000. It is unclear to OAH why, when legal representation is not currently required for many if not most of these hearings, it will be required when the same hearings are conducted by OAH ALJs, who were transferred to OAH from DOT hearing officer positions. In any event, this expenditure for legal representation must be included as an appropriation in the DOT budget so that DOT, not OAH, may pay these costs as they arise. It is the agency, not OAH, that retains legal representation for administrative hearings when the agency believes it is necessary. OAH provides the ALJ to preside and issue a decision.

Name:	Allen C. Hoberg	Agency:	Office of Administrative Hearings
Phone Number:	328-3260	Date Prepared:	03/26/2007

FISCAL NOTE
Requested by Legislative Council
03/14/2007

Amendment to: Engrossed
 SB 2375

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

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$769,706	\$0	\$769,706
Expenditures	\$0	\$0	\$0	\$769,706	\$0	\$769,706
Appropriations	\$0	\$0	\$0	\$769,706	\$0	\$769,706

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

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

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

This bill transfers all DOT hearings to OAH and transfers four persons to OAH, but no equipment or supplies. OAH will hire support staff and provide the equipment, supplies, training, and travel funds required to conduct these DOT hearings.

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

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

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

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

OAH receives no general funds. All of its budget is special funds obtained by billing its user agencies. OAH ALJs bill user agencies for each .1 hr. worked on conducting a hearing and writing a decision, and related matters. OAH ALJs keep daily time records and, based on those time records, each month OAH sends a billing statement to agencies requiring payment for hearing services provided to them. OAH would do the same for DOT hearings. It would not be necessary to transfer any moneys from DOT's budget to OAH's budget. DOT would simply devote moneys in its current budget to pay for OAH billings for providing ALJs to conduct DOT hearings. However, it will be necessary to increase OAH's budget to provide spending authority to enable OAH to pay for conducting DOT hearings. (See B. and C. below.) OAH's billing rate for all agencies for the current biennium is based on the actual expenditures OAH incurs for providing hearing services to all agencies in the previous biennium. OAH will likely base DOT's billing rate for OAH ALJs providing hearing services to DOT in the 2007-2009 biennium on OAH's proposed budget under this bill and an estimate of time to be spent in providing hearing services; and, thereafter, in future biennia, on actual expenditures and actual time spent (i.e. the DOT billing rate for the 2009-2011 biennium will be based on OAH's actual expenditures for the 2007-2009 biennium). The engrossed bill as amended requires that the four full-time hearing officers from DOT be transferred to OAH and become OAH ALJs. OAH will likely locate those hearing officers in the state's four major cities. These ALJs will work out of their home, telecommuting with OAH. OAH plans to hire one support staff as secretarial support for these four ALJs. OAH anticipates adding one support staff person to provide secretarial support for the four ALJs in the nature of scheduling hearings, making travel arrangements, case management, billing, and other secretarial support. Apparently, DOT hearing officers now perform most, if not all, of their necessary secretarial support themselves. If OAH provides the necessary secretarial support for these new ALJs

they should be free to devote more time to conducting hearings and writing decisions. Currently, DOT also contracts with two part-time, temporary hearing officers to conduct hearings. It is OAH's plan that with support staff, the four transferred hearing officers will be able to do all of the hearings they formerly did plus the hearings of the temporary, contract hearing officers. Any work that they are not able to do, OAH will hire temporary, contract ALJs to do that work, just as DOT did. But, also, if it develops that with support staff the four new ALJs are able to do more work than just conducting all of DOT's hearings, OAH will then be able to use these four new ALJs to do some of the work OAH now assigns to its current temporary, contract ALJs, for other agencies, thus, potentially saving OAH some money.

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

DOT currently employs 4 full-time and 2 part-time hearing officers to conduct all of its hearing. This approximates between 4 1/2 and 4 2/3 FTEs. But, OAH will attempt to use only four ALJs, the former four DOT hearing officers, supported with one support staff person, to conduct all DOT hearings. Any time remaining to the four new ALJs after conducting DOT hearings will be spent conducting other agency hearings. But, if the four new ALJs are not able to handle all of the DOT hearings, OAH will be required to contract additionally with temporary, contract ALJs on an as-needed basis to conduct some of the DOT hearings.

By law, OAH ALJs are all classified employees, at Grade 16. The minimum salary that OAH may pay its ALJs is \$51,240/yr. Thus, with the 4%/4% executive recommendation for salary increases, the minimum that OAH may pay an ALJ is \$57,471/yr. OAH proposes to pay its four new ALJs hired to conduct DOT hearings at this rate. All current DOT ALJs are paid less than this amount. The total amount of salaries to be paid the four new ALJs is \$459,768. The total amount of benefits to be paid the four new ALJs is \$160,920. The total amount of salaries and benefits to be paid for the four ALJs based on the proposed salary is \$620,688. OAH proposes to pay a support staff person at \$25,850 (with the 4%/4% salary increase included). Salary and benefits for that person will total \$69,795. Additionally, OAH will require \$79,222 in operating funds to provide for equipment, supplies, travel, training, and miscellaneous monthly office expenses necessary for the ALJs and support staff to do these hearings. OAH already has some office space and equipment for use by a new support staff person. See C below

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

OAH will likely locate the four new ALJs in the four large cities around the state (Bismarck, Fargo, Grand Forks, and Minot), as telecommute ALJs working out of their own homes. The hearings conducted by these ALJs will be held in available rooms at various government buildings around North Dakota. OAH will hire one new support staff person for secretarial support for the four new ALJs. That person will be centrally located at OAH offices in Bismarck. This bill will result in the addition of five new FTEs to OAH. The appropriation detail for accomplishing this is as follows:

Salary per ALJ - \$51,240(current) + \$6231 (4%/4%) = \$57,471 per ALJ

Total ALJ salaries for 4 ALJs for two years = \$459,768

Benefits per ALJ per year = \$20,115

Total ALJ benefits for 4 ALJs for two years = \$ 160,920

Salary for one support staff person \$25,850

Total Salary for one support staff person for two years = \$51,700

Benefits for one support staff person per year = \$9048

Total benefits for one support staff person for two years = \$18,096

Total salaries and benefits = \$690,484

Equipment per telecommute ALJ (desk, chair, computer, digital recorder, printer, etc.) = \$5250

Total equipment expenses = \$21,000

Miscellaneous monthly expenses (postage, phone lines, computer connection, etc.) = 235/ mo./ALJ

Total monthly expenses = \$22,560

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

Total travel expenses = \$20,000

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

Total Training and CLE costs = \$12,000

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

Total Operating costs = \$79,222

Total salaries and benefits = \$690,484

Total operating costs = \$ 79,222

Total Appropriation = \$769,706

Note: In written testimony to the House Transportation Committee DOT estimated that it spends approximately \$720,000 on its DOT hearings. But, OAH is required to pay ALJs at a Grade 16 level as opposed to the DOT grade level of 12 for its hearing officers. And, OAH is hiring a support staff person to adequately support the four new ALJs. OAH does not plan to use temporary, contract ALJs, if it can avoid doing so, thus saving some money. The difference between the current actual salaries of the current four DOT hearing officers and the current minimum salary under a Grade 16 for four ALJs is \$42,048. It appears that the only significant difference in estimated costs, then, is the difference in the salaries. In fact, even though OAH is proposing to hire a support staff person, it appears that OAH's estimate of costs is less than DOT's estimate, when salaries and benefits for the four new ALJs are excluded.

Also, although equipment expenses will likely be less in the 2009-2011 biennium, salary and benefits will likely increase and other operating costs are likely to increase. This fiscal note lists the same cost for both the 2007-2009 biennium and the 2009-2022 biennium, because, except for any legislative increases in salaries and benefits, the other costs are likely to be about the same in the two biennia.

Name:	Allen C. Hoberg	Agency:	Office of Administrative Hearings
Phone Number:	328-3260	Date Prepared:	03/15/2007

FISCAL NOTE

Requested by Legislative Council
02/20/2007

REVISION

Amendment to: SB 2375

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

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$943,766	\$0	\$943,766
Expenditures	\$0	\$0	\$0	\$943,766	\$0	\$943,766
Appropriations	\$0	\$0	\$0	\$943,766	\$0	\$943,766

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

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

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

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

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

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

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

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

OAH receives no general funds. All of its budget is special funds obtained by billing its user agencies. OAH ALJs bill user agencies for each .1 hr. worked on conducting a hearing and writing a decision, and related matters. OAH ALJs keep daily time records and, based on those time records, each month OAH sends a billing statement to agencies requiring payment for hearing services provided to them. OAH would do the same for DOT hearings. It would not be necessary to transfer any moneys from DOT's budget to OAH's budget. DOT would simply devote moneys in its current budget to pay for OAH billings for providing ALJs to conduct DOT hearings. However, it would be necessary to increase OAH's budget to provide spending authority to enable OAH to pay for conducting DOT hearings. (See B. and C. below.) OAH's billing rate for all agencies for the current biennium is based on the actual expenditures OAH incurs for providing hearing services to all agencies in the previous biennium. OAH will likely base DOT's billing rate for OAH ALJs providing hearing services to DOT in the 2007-2009 biennium on OAH's proposed budget under this bill and an estimate of time to be spent in providing hearing services; and, thereafter, in future biennia, on actual expenditures and actual time spent (i.e. the DOT billing rate for the 2009-2011 biennium will be based on OAH's actual expenditures for the 2007-2009 biennium). DOT is required by the bill, as amended, to request OAH to provide ALJs to conduct all of its hearings, not just those under sections 39-06.2-10.6 and 39-20-05, as under the bill as introduced. But, the original fiscal note anticipated that OAH ALJs would provide to DOT all of the hearing services now provided by its in-house hearing officers, and that DOT would voluntarily request OAH to provide ALJs to conduct its other, miscellaneous hearings, because DOT would no longer have any hearing officers to conduct hearings. Therefore, just as in the original fiscal note, OAH would still be required to hire five ALJs and locate them in the state's four major cities. These ALJs will work out of their home, telecommuting with OAH. However, neither the original fiscal note nor the first revised fiscal note provided for any support staff as secretarial support for the five ALJs. This revised fiscal

note anticipates adding one support staff person to provide secretarial support for the five ALJs in the nature of scheduling hearings, making travel arrangements, case management, billing, and other secretarial support. Apparently, DOT hearing officers perform most, if not all, of their necessary secretarial support for themselves, now. If OAH provides the necessary secretarial support for these new ALJs they will be free to devote more time to conducting hearings and writing decisions. OAH will then be able to use these five new ALJs to replace even more of the work OAH now assigns to temporary, contract ALJs, thus saving OAH money in the long run. OAH should be able to considerably reduce the amount it currently spends on temporary, contract ALJs by providing support staff for these ALJs.

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

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

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

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

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

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

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

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

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

Total Training and CLE costs = \$15,000

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

Total salaries and benefits = \$845,654

Total operating costs = \$ 98,112

Total Appropriation = \$943,766

Name:	Allen C. Hoberg	Agency:	Office of Administrative Hearings
Phone Number:	328-3260	Date Prepared:	02/21/2007

FISCAL NOTE

Requested by Legislative Council
02/07/2007

Amendment to: SB 2375

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

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$841,570	\$0	\$841,570
Expenditures	\$0	\$0	\$0	\$841,570	\$0	\$841,570
Appropriations	\$0	\$0	\$0	\$841,580	\$0	\$841,570

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

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

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

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

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

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

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

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

OAH receives no general funds. All of its budget is special funds obtained by billing its user agencies. OAH ALJs bill user agencies for each .1 hr. worked on conducting a hearing and writing a decision, and related matters. OAH ALJs keep daily time records and, based on those time records, each month OAH sends a billing statement to agencies requiring payment for hearing services provided to them. OAH would do the same for DOT hearings. It would not be necessary to transfer any moneys from DOT's budget to OAH's budget. DOT would simply devote moneys in its current budget to pay for OAH billings for providing ALJs to conduct DOT hearings. However, it would be necessary to increase OAH's budget to provide spending authority to enable OAH to pay for conducting DOT hearings. (See B. and C. below.) OAH's billing rate for all agencies for the current biennium is based on the actual expenditures OAH incurs for providing hearing services to all agencies in the previous biennium. OAH will likely base DOT's billing rate for OAH ALJs providing hearing services to DOT in the 2007-2009 biennium on OAH's proposed budget under this bill and an estimate of time to be spent in providing hearing services; and, thereafter, in future biennia, on actual expenditures and actual time spent (i.e. the DOT billing rate for the 2009-2011 biennium will be based on OAH's actual expenditures for the 2007-2009 biennium). DOT is required by the bill, as amended, to request OAH to provide ALJs to conduct all of its hearings, not just those under sections 39-06.2-10.6 and 39-20-05, as under the bill as introduced. But, the original fiscal note anticipated that OAH ALJs would provide to DOT all of the hearing services now provided by its in-house hearing officers, and that DOT would voluntarily request OAH to provide ALJs to conduct its other, miscellaneous hearings, because DOT would no longer have any hearing officers to conduct hearings. Therefore, just as in the original fiscal note, OAH would still be required to hire five ALJs and locate them in the state's four major cities. These ALJs will work out of their home, telecommuting with OAH.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line*

item, and fund affected and the number of FTE positions affected.

DOT currently employs 4 full-time and 2 part-time hearing officers to conduct all of its hearing. This approximates between 4 1/2 and 4 2/3 FTEs. OAH will hire 5 new ALJs to conduct DOT hearings. Any time remaining to the 5 new ALJs after conducting DOT hearings will be spent conducting other agency hearings. OAH currently extensively uses temporary, contract ALJs on an as-needed basis to conduct some of its hearings. The work performed by the 5 new ALJs in this regard will replace the work of some of OAH's temporary, contract ALJs. By law, OAH ALJs are all classified employees, at Grade 16. The minimum salary that OAH may pay its ALJs is \$51,240/yr. Thus, with the 4%/4% executive recommendation for salary increases, the minimum that OAH may pay an ALJ is \$57,471/yr. OAH proposes to pay its five new ALJs hired to conduct DOT hearings at this rate. All current DOT ALJs are paid less than this amount. The total amount of salaries to be paid the five new ALJs is \$574,710. The total amount of benefits to be paid for the five ALJs based on the proposed salary is \$172,410. Additionally, OAH will require \$94,450 in operating funds to provide for equipment, supplies, travel, training, and miscellaneous monthly office expenses necessary to do these hearings. See C below

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

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

Salary per ALJ - \$51,240(current) + \$6231 (4%/4%) = \$57,471 per ALJ

Total ALJ salaries for 5 ALJs for two years = \$574,710

Benefits per ALJ = \$17,241

Total ALJ benefits for 5 ALJs for two years = \$ 172,410

Total salaries and benefits = \$747,120

Equipment per telecommute ALJ (desk, chair, computer, digital recorder, printer, etc.) = \$5250

Total equipment expenses = \$26,250

Miscellaneous monthly expenses (postage, phone lines, computer connection, etc.) = 235/ mo./ALJ

Total monthly expenses = \$28,200

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

Total travel expenses = \$25,000

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

Total Training and CLE costs = \$15,000

Total salaries and benefits = \$747,120

Total operating costs = \$ 94,450

Total Appropriation = \$841,570

Name:	Allen C. Hoberg	Agency:	Office of Administrative Hearings
Phone Number:	328-3260	Date Prepared:	02/07/2007

FISCAL NOTE
Requested by Legislative Council
01/23/2007

Bill/Resolution No.: SB 2375

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

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$841,570	\$0	\$841,570
Expenditures	\$0	\$0	\$0	\$841,570	\$0	\$841,570
Appropriations	\$0	\$0	\$0	\$841,580	\$0	\$841,570

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

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

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

This bill transfers DOT hearings under sections 39-06.2-10.6 and 39-20-05 from DOT to OAH. The bill does not transfer any persons or equipment from DOT to OAH. Therefore, OAH is required to hire ALJs and provide equipment, supplies, training, and travel funds required to conduct these hearings.

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

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

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

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

OAH receives no general funds. All of its budget is special funds obtained by billing its user agencies. OAH ALJs bill user agencies for each .1 hr. worked on conducting a hearing and writing a decision, and related matters. OAH ALJs keep daily time records, and based on those time records, each month OAH sends a billing statement to agencies requiring payment for hearing services provided to them. OAH's billing rate is based on the actual expenditures OAH incurs for providing hearing services to all agencies in the previous biennium. OAH will likely base DOT's billing rate for OAH ALJs providing hearing services to DOT in the first biennium on OAH's proposed budget under this bill and an estimate of time to be spent in providing hearing services; and, thereafter, in future biennia, on actual expenditures and actual time spent. Without any hearing officers of its own, it is likely that DOT will voluntarily request OAH to provide ALJs to conduct other, miscellaneous hearings not included in this bill. This fiscal note anticipates that OAH ALJs will provide to DOT all of the hearing services now provided by its in-house hearing officers. To that end, OAH will hire five ALJs and locate them in the state's four major cities. These ALJs will work out of their home, telecommuting with OAH.

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

DOT currently employs 4 full-time and 2 part-time hearing officers to conduct all of its hearing. This approximates between 4 1/2 and 4 2/3 FTEs. OAH will hire 5 new ALJs to conduct DOT hearings. Any time remaining to the 5 new ALJs after conducting DOT hearings will be spent working on DHS and WSI hearings. OAH currently extensively uses temporary, contract ALJs to conduct some of its DHS and WSI hearings. The work performed by the 5 new ALJs in

this regard will replace the work of some of OAH's temporary, contract ALJs. By law, OAH ALJs are all classified employees, at Grade 16. The minimum salary that OAH may pay its ALJs is \$51,240/yr. Thus, with the 4%/4% executive recommendation for salary increases, the minimum that OAH may pay an ALJ is \$57,471/yr. OAH proposes to pay its five new ALJs hired to conduct DOT hearings at this rate. All current DOT ALJs are paid less than this amount. The total amount of salaries to be paid the five ALJs is \$574,710. The total amount of benefits to be paid for the five ALJs based on the proposed salary is \$172,410. Additionally, OAH will require \$94,450 in operating funds to provide for equipment, supplies, travel, training, and miscellaneous monthly office expenses necessary to do these hearings. See C below

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

OAH proposes to hire 5 new ALJs to conduct DOT hearings and locate them in the four large cities around the state (Bismarck, Fargo, Grand Forks, and Minot), as telecommute ALJs working out of their own homes. The hearings conducted by these ALJs will be held at available rooms in various government buildings around North Dakota. The appropriation detail for accomplishing this is as follows:

Salary per ALJ - \$51,240(current) + \$6231 (4%/4%) = \$57,471 per ALJ

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Equipment per telecommute ALJ (desk, chair, computer, digital recorder, printer, etc.) = \$5250

Total equipment expenses = \$26,250

Miscellaneous monthly expenses (postage, phone lines, computer connection, etc.) = 235/ mo./ALJ

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

Total travel expenses = \$25,000

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

Total Training and CLE costs = \$15,000

Total salaries and benefits = \$747,120

Total operating costs = \$ 94,450

Total Appropriation = \$841,570

Name:	Allen C. Hoberg	Agency:	Office of Administrative Hearings
Phone Number:	328-3260	Date Prepared:	01/26/2007

Date: /

Roll Call Vote # 1-29-07

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2375

Senate _____ Judiciary _____ Committee _____

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Sen. Fiebigger Seconded By Sen. Marcellais

Senators	Yes	No	Senators	Yes	No
Sen. Nething	✓		Sen. Fiebigger	✓	
Sen. Lyson	✓		Sen. Marcellais	✓	
Sen. Olafson	✓		Sen. Nelson	✓	

Total Yes 6 No 0

Absent 0

Floor Assignment Sen. Fiebigger

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

REPORT OF STANDING COMMITTEE

SB 2375: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS and BE REREFERRED to the Appropriations Committee (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2375 was rereferred to the Appropriations Committee.

2007 SENATE APPROPRIATIONS

SB 2375

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2375

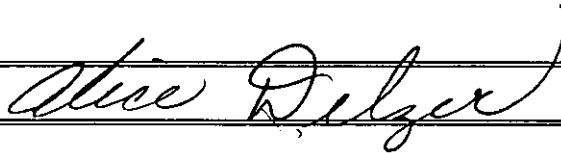
Senate Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: 02-01-07

Recorder Job Number: 2508

Committee Clerk Signature



Minutes:

Chairman Holmberg opened the hearing on SB 2375 at 10:00 a.m. on February 1, 2007 in relating to the transfer of administrative hearings from the department of transportation to the office of administrative hearings.

Senator Bob Stenehjem, District 30 Bismarck gave oral testimony in support of the bill.

Paul Seado, General Counsel, on behalf of Tim Horner, Deputy Director for Business Support at Department of Transportation (DOT) provided written testimony (1) and gave oral testimony stating the DOT is neutral in regards to this bill. He stated they are here this morning to provide information on the Department's processing of impaired driver hearings as well as to provide some information that should be considered in advancing SB 2375. He said the Department wanted to make it clear that it is supportive of this policy discussion and believe it is good to consider from time to time what constitutes adequate due process regarding impacts to driver's licenses. He brought out several points of interest regarding the DOT's activities in relation to this bill:

1. We believe the Department's current hearing process is not only fair and impartial, but is also efficient and cost effective.
2. The Department processes almost 6 hearings per day.

3. The majority of other states use a process similar to North Dakota in which the hearing process resides in the same agency as Drivers License.
4. The hearing process is often about law enforcement practices and law enforcement's application of driving laws.

Senator Bowman asked information regarding the FTE's transferred from DOT to their Department and was informed by Mr. Seado that he did not know that information.

Senator Wardner Would you say money from DOT would have to pay for these hearings? The response was it depended on how they operate. He referred to page 2 of written testimony.

Chairman Holmberg made comments regarding the Sub-committee for this bill being the same as DOT to avoid miscommunication,

Senator Fischer requested information regarding the number of hearings as a result of a Court decision. Discussion followed regarding involvement of the Court system.

Senator Tallackson asked where hearings are held now. The response was in Minot, Bismarck, Grand Forks and Fargo. They will cluster hearings in the smaller towns like Dickinson to cut down on travel time for the Administrative Hearing Officers.

Senator Kilzer had questions regarding the fiscal note.

Senator Christmann requested information regarding the DUI cases, what ramifications these people face if found innocent in Court, and questions regarding the criminal aspect and civil aspect in relation to their Department,.

Paul Seado stated it is a separate process; usually the criminal side has to do with fines, jail time; the administrative side deals with the Driver's license itself, suspension time. A person could be found not guilty in Court, or have case dismissed and still be required to do the Administrative hearing and still have consequences to their license.

Page 3

Senate Appropriations Committee

Bill/Resolution No. 2375

Hearing Date: 02-01-07

Senator Krauter had questions regarding where the hearing should be held, with DOT or their Department, and information requested regarding FTE's.

Senator Lindaas had questions regarding the fiscal note and wanted explanations regarding the bill. .

Paul Seado stated this bill has nothing to do whether someone loses his license or not. No matter who conducts the Administrative hearing, DOT will get the report.

Chairman Holmberg closed the hearing on SB 2375.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2375

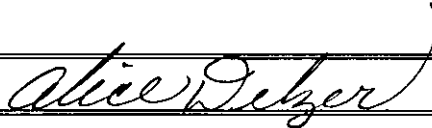
Senate Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: 02-05-07

Recorder Job Number: 2823

Committee Clerk Signature



Minutes:

Chairman Holmberg opened the hearing on SB 2375 on February 5, 2007 regarding Transfer of Administrative Hearings for DOT to Office of Administrative Hearings.

Tim Dawson, Legislative Council explained the amendments to the committee.

Senator Robinson asked if we transfer to the Administrative Hearings, how does this affect the DOT and their work load.

Chairman Holmberg explained one of the arguments we went through was the fiscal note came from the office of Administrative Hearing and one of the reasons why, and we are kind of wringing our hands if we would have had that budget and DOT we could have melded them together just to see how it all interfaces. With or without this amendment it would be a work in progress. It would not be complete, it still needs further work. But the basic question is once you transfer it out the DUI over to Office of Administrative Hearings, which is what the bill did, then you've got less than half the hearings, the biggest number has to do with DUI and once you've taken them all away you've taken the basic work load away.

Senator Bowman stated the bottom line is that when you move or transfer this responsibility over to Administrative Hearings does the money follow the transfer. Therefore, the money they have in the budget should be moved to the other budget. He was told they will bill DOT.

Senator Tallackson stated he thinks they are doubling up here.

Chairman Holmberg stated part of the testimony was that even the appearance of being not unbiased when you have the same agency that is putting together all the reasons why you should be sanctioned because of doing the bad things they're the ones who sit down and are also the judge and jury on that same situation. He asked what the committee wanted to do about the amendments. Senator Grindberg did a do pass on the amendment, seconded by Senator Christmann. He asked if there was more discussion on the amendment.

Senator Krauter asked what other hearings there are besides DUI hearings.

Tim Dawson stated anytime there is a revocation or suspension of license or they do anything with your license that is a negative action against it you can request a hearing.

Senator Lindaas asked if DOT is also at the hearing to represent their side. He was told one of the reasons for the bill is because the guy sitting up there judging is judging his co-worker. That was the reason for the bill, there is two from the same office; one is the judge, one is the prosecutor.

Senator Krauter had questions regarding the fiscal note and feels there needs to be an interim study with all the facts on the table. There are too many unknowns right now.

Senator Lindaas said he fails to see the problem and does not see the value in this bill.

Chairman Holmberg asked all in favor of amendment say aye. The amendment passed. Can we have a motion on the bill.

Senator Christmann moved a **DO PASS AS AMENDED**, Seconded by **Senator Bowman**. He asked for discussion.

Senator Krauter asked about the fiscal note. He was informed there will be a new fiscal note put on as soon as the amendment is done. He also asked for a fiscal note from both agencies involved. He was told by Legislative Council that typically only one agency prepares it.

Page 3

Senate Appropriations Committee

Bill/Resolution No. 2375

Hearing Date: 02-05-07

Chairman Holmberg told Legislative Council to have OMB and the offices work together. A roll call vote was taken resulting in 7 yeas, 7 nays, 0 absent.

Chairman Holmberg stated the motion failed so the bill is still here. Do you want to send it up to the floor and let the body decide? What is the committee's wish?

Senator Krebsbach moved we send it to the floor without committee recommendation as amended. Seconded by Senator Bowman. A roll call vote was taken for A WITHOUT COMMITTEE RECOMMENDATION AS AMENDED resulting in 13 yeas, 1 nay, 0 absent.

Chairman Holmberg stated he will carry the amendments and visit with the Chairman of Judiciary whether they want to carry the bill or not. Chairman Holmberg did carry the bill.

The hearing closed on SB 2375.

Date: 2.5-07
Roll Call Vote #: 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2375

Senate Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken do pass as Amended.

Motion Made By Christmann Seconded By Bowman

Senators	Yes	No	Senators	Yes	No
Senator Ray Holmberg, Chrm	✓		Senator Aaron Krauter		✓
Senator Bill Bowman, V Chrm	✓		Senator Elroy N. Lindaas		✓
Senator Tony Grindberg, V Chrm	✓		Senator Tim Mathern		✓
Senator Randel Christmann	✓		Senator Larry J. Robinson		✓
Senator Tom Fischer	✓		Senator Tom Seymour	✓	
Senator Ralph L. Kilzer	✓		Senator Harvey Tallackson		✓
Senator Karen K. Krebsbach		✓			
Senator Rich Wardner	✓				

Total (Yes) 7 No 7

Absent _____

Floor Assignment _____

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

Date: 2-5-07
Roll Call Vote #: 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2345

Senate Appropriations

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 70826.0101 title 0200

Action Taken w/o committee recommendation as amended

Motion Made By Krebsbach Seconded By Bowman

Senators	Yes	No	Senators	Yes	No
Senator Ray Holmberg, Chrm	✓		Senator Aaron Krauter	✓	
Senator Bill Bowman, V Chrm	✓		Senator Elroy N. Lindaas	✓	
Senator Tony Grindberg, V Chrm	✓		Senator Tim Mathern		✓
Senator Randel Christmann	✓		Senator Larry J. Robinson	✓	
Senator Tom Fischer	✓		Senator Tom Seymour	✓	
Senator Ralph L. Kilzer	✓		Senator Harvey Tallackson	✓	
Senator Karen K. Krebsbach	✓				
Senator Rich Wardner	✓				

Total (Yes) 13 No 1

Absent _____

Floor Assignment C Holmberg will carry Amendments & Vote

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

Chair of Sub if they
want Carry Bill.

REPORT OF STANDING COMMITTEE

SB 2375: Appropriations Committee (Sen. Holmberg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **BE PLACED ON THE CALENDAR WITHOUT RECOMMENDATION** (13 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2375 was placed on the Sixth order on the calendar.

Page 1, line 1, after "sections" insert "39-01-16, 39-02-03.1, 39-06-34, 39-06.1-11,"

Page 1, after line 6, insert:

"SECTION 1. AMENDMENT. Section 39-01-16 of the North Dakota Century Code is amended and reenacted as follows:

39-01-16. Hearing on alleged violations.

1. Any person having information that a licensed dealer has violated any provisions of this title may file with the director an affidavit specifically ~~setting forth such~~ stating the facts of the violation. Upon receipt of ~~such~~ the affidavit, the director shall investigate the violation alleged in the affidavit. If, after investigation, the director determines that the dealer's license will be revoked or suspended, a notice of intent to revoke or suspend the license must be mailed to the dealer by certified mail. The notice must provide the dealer with an opportunity for a hearing ~~prior to~~ before the effective date of the license revocation or suspension. A record of ~~such hearings~~ the hearing must be made by stenographic notes or use of an electronic recording device.
2. If after ~~such~~ the hearing the ~~director~~ administrative law judge finds the violation charged in the affidavit has been proved by the evidence, an order must be served on the licensee revoking or suspending the dealer's license for a period of time to be determined by the director. ~~Such~~ The action may be appealed to the district court by following the appeal procedure set forth in chapter 28-32, except that the order revoking or suspending the license is ineffective while the appeal is pending.

~~The director has the power to appoint an administrative hearing officer to conduct the hearing, administer oaths, and subpoena and examine witnesses. The administrative hearing officer shall submit the findings to the director for consideration and final decision.~~

3. Any witness called by the prosecution, except a peace officer while on duty, ~~shall~~ must receive the same fees and mileage as a witness in a civil case in district court.

SECTION 2. AMENDMENT. Section 39-02-03.1 of the North Dakota Century Code is amended and reenacted as follows:

39-02-03.1. Director to provide notice and opportunity for hearing ~~prior to~~ before cancellation, revocation, suspension, or rescision of a motor vehicle registration or a certificate of title to a motor vehicle. ~~Whenever, under~~ Under the laws pertaining to the cancellation, revocation, suspension, or rescision of a registration of a motor vehicle or a certificate of title to a motor vehicle, if a determination has been made to cancel, revoke, suspend, or rescind either the registration or certificate of title, or both, the director shall provide the legal and registered owner with notice of ~~such~~ the cancellation, revocation, suspension, or rescision and the opportunity for a hearing. ~~Such~~ The notice must be sent by registered or certified mail, return receipt requested,

not less than ten days ~~prior to~~ before the effective date of the cancellation, revocation, suspension, or rescission.

SECTION 3. AMENDMENT. Section 39-06-34 of the North Dakota Century Code is amended and reenacted as follows:

39-06-34. Director may require reexamination. In addition to other powers set forth in this chapter, the director, having good cause to believe that a licensed operator is incompetent or otherwise not qualified to be licensed, may upon written notice of at least five days to the licensee require the licensee to submit to such physical, mental, or driver's examination as may be deemed necessary. If the director has good cause to believe that the licensed operator presents an immediate danger to the motoring public, the director may immediately, and without prior notice, suspend the operator's license pending the examination. The notice of suspension must provide the operator with the opportunity for a hearing within five days of the receipt of the notice of suspension. When a hearing is requested it must be conducted under section 39-06-33 and the ~~hearing officer's~~ administrative law judge's recommended decision must be rendered within two days of the conclusion of the hearing. Upon the conclusion of such examination the director shall take action as may be appropriate and may suspend or revoke the license of such person or permit the licensee to retain the license, or may issue a license subject to restrictions as permitted under section 39-06-17. Refusal or neglect of the licensee to submit to such examination shall be grounds for suspension or revocation of the license.

SECTION 4. AMENDMENT. Section 39-06.1-11 of the North Dakota Century Code is amended and reenacted as follows:

39-06.1-11. Temporary restricted license - Ignition interlock device.

1. Except as provided under subsection 2, if the director has suspended a license under section 39-06.1-10 or has extended a suspension or revocation under section 39-06-43, upon receiving written application from the offender affected, the director may for good cause issue a temporary restricted operator's license valid for the remainder of the suspension period after seven days of the suspension period have passed.
2. If the director has suspended a license under chapter 39-20, or after a violation of section 39-08-01 or equivalent ordinance, upon written application of the offender the director may issue for good cause a temporary restricted license that takes effect after thirty days of the suspension have been served after a first offense under section 39-08-01 or chapter 39-20. The director may not issue a temporary restricted license to any offender whose operator's license has been revoked under section 39-20-04 or suspended upon a second or subsequent offense under section 39-08-01 or chapter 39-20, except that a temporary restricted license may be issued for good cause if the offender has not committed an offense for a period of two years before the date of the filing of a written application that must be accompanied by a report from an addiction facility or if the offender is participating in the drug court program and has not committed an offense for a period of three hundred sixty-five days before the date of the filing of a written application that must be accompanied by a recommendation from the district court. The director may ~~conduct~~ request a hearing for the purposes of obtaining information, reports, and evaluations from courts, law enforcement, and citizens to determine the offender's conduct and driving behavior during the prerequisite period of time. The director may also require that an ignition interlock device be installed in the offender's vehicle.

3. The director may not issue a temporary restricted license for a period of license revocation or suspension imposed under subsection 5 of section 39-06-17, section 39-06-31, or subsection 3.1 of section 39-06.1-10. A temporary restricted license may be issued for suspensions ordered under subsection 7 of section 39-06-32 if it could have been issued had the suspension resulted from in-state conduct.
4. A restricted license issued under this section is solely for the use of a motor vehicle during the licensee's normal working hours and may contain any other restrictions authorized by section 39-06-17. Violation of a restriction imposed according to this section is deemed a violation of section 39-06-17."

Page 13, line 14, overstrike "the department of"

Page 13, line 15, overstrike "transportation,"

Page 13, line 22, overstrike the comma

Page 13, line 25, remove the overstrike over "and"

Page 13, line 26, remove ": and hearings of the department of"

Page 13, line 27, remove "transportation under sections 39-06.2-10.6 and 39-20-05"

Renumber accordingly

2007 HOUSE TRANSPORTATION

SB 2375

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2375

House Transportation Committee

☐ Check here for Conference Committee

Hearing Date: 03-08-2007

Recorder Job Number: 4669

Committee Clerk Signature

Sam M. Thomas

Minutes:

Chairman Weisz opened the hearing on SB 2375. SB 2375 relates to the transfer of administrative hearings from the Department of Transportation to the office of Administrative Hearings. Rep. Dosch was absent.

Senator Stenehjem introduced the bill. See written testimony.

Rep. Weisz: I notice the language changes the hearing offices of administrative law judge. It is my understanding that not all the hearing officers in the OAH are not administrative law judges.

Sen. Stenehjem: That technicality I cannot answer.

Senator O'Connell spoke in support of the bill as well. See written testimony.

Rep. Owens: It says in your testimony that no person or equipment are transferred yet OAH will have to hire five new people. I am curious why the bill didn't just transfer people from DOT that are currently doing these hearings.

Rep. O'Connell: I was under the impression and maybe I misspoke there but that was my feeling that there would not be people added. That was the impression I was under when I signed on the bill, they would be transferred.

Robert Harms, NDHA, spoke in support of the bill. See written testimony.

Rep. Gruchalla: Do you think that the present system is unfair?

Harms: I think that there is perception that the hearing officers themselves are all now lawyers and I think they do a good job at trying to be objective and fair to the system, but I think there is a perception that when you come before a tribunal and the tribunal is actively engaged in essentially putting on the case that affects your rights I think there is a perception of fundamental unfairness.

Rep. Gruchalla: Do you think they are unfair or is it the perception that is unfair?

Harms: I think they are unfair and perceived to be unfair both.

Rep. Schmidt: In this committee we have dealt many hours on prosecution and DUI cases and the repetitiveness that we are seeing out there, could you explain how this is going to help reduce the repetitiveness of DUI cases?

Harms: I can't say that this lessens repetition in a DUI case. I think it is a balancing of the couple of different principles. One is the interest in public of having safe highways and keeping drunk drivers off of the highways and the other part being the broader principle that is a objective fair treatment that citizens in a legal proceeding and their perception as to how they were treated by the courts in administrative hearings such as the ones that are happening now.

Rep. Thorpe: If I am hearing you that moving this will bring more fairness and we are all for fairness, but we certainly have to look at fairness of our public out there on the roads and dealing with DUI's. Is this going to mean less prosecution on DUI's?

Harms: I would say no to the amount of prosecution for DUI's. I don't see that this bill will affect the number of cases brought. I think it is designed to simply, those court cases with DUI charges that will be brought will occur like usual. The process on the civil side will be handled by the OAH as opposed to the ND DOT.

Rep. Thorpe: You feel this would address the civil issue?

Harms: That's exactly right. This bill should not have any affect on the criminal prosecutions and DUI's.

Rep. Weisz: I am a little curious as to why your association is in front of us. I didn't realize you took such an interest in administrative hearings. By your own testimony you support moving all administrative hearings into OAH, is that correct?

Harms: Administrative hearings with respect to DUI's we think would be appropriately handled by the OAH.

Rep. Weisz: Okay, then your testimony is not correct.

Harms: I am not certain.

Rep. Weisz: You are talking about allowing precognitive efficiencies by moving all administrative hearing functions associated in one agency, so I assume you support all administrative hearings going into OAH, correct?

Harms: I think that is appropriate function with in the OAH that has been moving in state government for the last decade or more and I don't know that there is a many state agencies that retain their own administrative hearing function.

Rep. Weisz: How many people that come before, other than approximately four hundred hearings, are innocent?

Harms: I can't answer that. I think in the Senate side we had testimony from the department that ninety percent plus of persons who go through the civil proceedings have their licenses suspended. I am not second guessing those decisions.

Rep. Weisz: I thought you just had second guessing five minutes ago when you said they weren't fair and I guess by fair that has to mean that somebody's license was suspended that shouldn't have been. That is the only way I can interpret what is fair and what isn't.

Harms: I don't think the end result is the determination of fairness, I think it is the process. If you are in front of a tribunal and that tribunal is essentially sets the hearing up, brings the evidence with him, introduces and examines the witnesses and studies the case that he has just put together and then writes the decision. I think that is the fairness issue that we are talking about. I think there is a fundamental perception in the public that's an unfair process and citizens could have a position for and schedule just like anyone and have it be more objective.

Rep. Weisz: The testimony seems to be that if the DOT vs. public but I guess it was my understanding that it was the state that decided to have administrative process. It was the state that decided we want a hearing. So by that nature, I guess I misunderstand, why DOT is biased? It is a state policy that we want to do this and you might argue this that however when they left they were more, just because we shifted everything to a different policy.

Harms: First of all, I agree with you whole heartedly that this is the state's policy and it's been the law in ND since the early 1980's. The legislature has seen fit to place the responsibility with the department of transportation. You are absolutely right in the regard. I think and all I can do is go back to the basic point that the DOT is perceived as being actively involved in prosecuting the case that is also being responsible for making the decision so we think that handing the responsibility off to an agency that is number one, regularly involved in conducting administrative hearings with an administrative law judge and taking it out of the responsibility of the DOT and highway safety, I think is a step in the right direction.

Rep. Ruby: You talk about the perception of unfairness and with fourteen hundred cases a year to facilitate a smooth transition, I would perceive that the administrative judges that the DOT has now would be retained and moved into this other agency. So what is really going to

change? The same people are going to hear the same cases and other than the perception of it being somewhat independent than from DOT, what has really changed?

Harms: I don't know that the bill addresses the specific implementation of transition. I don't know that it adequately addresses that. I think you raise a good point and that has been raised earlier in another hearing. I think that is something that maybe you can look at. I don't know that the hearing officers that are working for DOT necessarily will be the ones that go to work for OAH. I think there is some evaluation of the FTE's and how many are required to do the functions that are being performed by the DOT because there is some discretion there.

Rep. Ruby: You are right, the bill does not go into the detail of how this transition will take place, but with fourteen hundred cases something has to move really quickly to get them all in.

Maybe it doesn't move real quickly and they just continue doing it until they have a smoother transition. I guess if it is going to be done immediately that would have to be the people that already have the experience of hearing these types of cases?

Harms: The answer to your question is yes. They would have the experience.

Rep. Kelsch: We talk about perception, so is it perceived that if you are in and we move these administrative hearings to OAH that the findings then are based more on law? If they continue to be administrative hearings within the DOT that perhaps there is a perception of bias? Is that kind of what I am hearing?

Harms: If you can put yourself in any one of the number of ND citizens who have had this experience, we are not condoning drinking and driving. That is not the issue. But if you are going into that situation and it is going to affect a substantial right to drive on ND highways that is in jeopardy and you go into that hearing and the DOT is there typically it is one person and the law enforcement officer who made the arrest or the stop and then that citizen goes through the process that I described in my testimony. At the end, ninety percent plus of those cases

result in that hearing officer handing you a decision that says your driving privileges are now suspended under ND law. Then the citizen leaves that hearing with the distinct feeling that in fact, yes, there was bias in that proceeding and that is part of the reason.

Rep. Kelsch: So the result may be the same. In the end maybe the citizen ends up with you know the same end result, but the bottom line is that the citizen feels as though they are treated more fairly.

Harms: That is exactly my point.

Rep. Price: Driving isn't a right, it is a privilege in ND that we earn or lose, but I guess my question is two things. First off, I find it strange that the Hospitality Association is on the issue at all and why would your members want to put themselves in this position?

Harms: This has been an issue with the NDHA my understanding for a number of legislative sessions. The Hospitality Assoc. members have viewed this and had this come up in their discussions over a number of years and it has remained on their legislative agenda as a result. It is a topic of discussion within the membership and they have regularly been involved in this issue a past number of sessions.

Rep. Price: I have been on this committee since 1991 and I have never gotten a complaint on how somebody's hearing was wrong. And many times, someone plead down to reckless driving first time out and they don't even make it to this process all the time and trust me I get complaints from all the way up to district judges people complain for a variety of reasons and I have never gotten a complaint, so you haven't proved to me that the system is broke.

Harms: I don't I guess the only thing I can tell you is that I know from personal experience when I was in practice, we did this for twelve years and often times, at the end of the hearing, when you walk out with your client they shook their head and the common street description would be a railroad job.

Rep. Price: In that case, how many times were they innocent?

Harms: I would say that the ninety percent number has not changed much. In other words, ninety percent of those cases that we handled then got their licenses suspended.

Rep. Price: That wasn't my question, had they been drinking?

Harms: I am saying that was the conclusion.

Rep. Price: But they had been drinking?

Harms: Sure.

Rep. Gruchalla: The fact that you are here, leads me to believe the percentage of the convictions is going to drop when this system moves over. Is that your opinion?

Harms: I can't guess as to what the result will be on the administrative civil side. Going back to

Rep. Prices question, it really isn't so much about whether the person was drinking, or whether they were convicted in court or whether they should have their driver's license suspended at the end of the administrative process. That is really not the issue. The issue really is how our citizens view the process and what it does to their view with respect to the law. They respect our law and how they view the process. That is really the issue. Will it result in less suspension? I would only speculate.

Rep. Owens: An opinion question if you will. You talk about perception. Perception is a powerful thing for the person. You are talking about it is perceived to be by the individual in some cases a railroad job. Based on that then, shouldn't we put them all under this? The industrial commission, the public service commission, the insurance commission, workforce safety and insurance, the state engineer, job service, the labor commissioner, why just DOT? Why not everybody?

Harms: That is what I was saying. It has been a while since I have done an inventory but I think those agencies that I listed I believe all of those and Mr. Hoberg can answer this better than I, but I think all of those agencies have administrative hearings conducted by the OAH.

Rep. Owens: Not currently. According to the law the way it is written right now, they have the same exemptions as DOT under the OAH so that is why I was asking. Why wouldn't we just starting on line twelve of page sixteen after exceptions, line through the rest of that?

Harms: Now I think I understand the chairman's question. I wasn't aware that all those agencies are specifically exempted from and conducted. I have been at a job service hearing and had the same feeling that there is some unfairness, so I guess the answer, from a policy standpoint, I think that makes good sense. From a citizen's standpoint, it is difficult to appear before any agency that is intending to eliminate a right or reduce a privilege that you have and they are both the prosecutor and the tribunal. That is a policy issue.

Rep. Weisz: You mentioned that you have been in private practice for twelve years where you did some of that, of those that you were there, how many did you appeal and how many were overturned?

Harms: I never had one overturned. We did appeal some of those.

Rep. Ruby: Don't you think that the person involved is going to always feel that it is somewhat unfair because there are the two systems; you have the criminal and the civil. This is the civil. Under the criminal, if they are not found guilty, they say they are innocent. We had a bill dealing with that last session. If they weren't guilty then they couldn't be punished under this, but under the civil, there is a lower burden of proof. They are always going to feel that hey, why when a court says I am not guilty, I am still guilty by administrative hearing, no matter who is doing it. There is always going to be that view by them that it was unfair?

Harms: I think some of that may be true. Placing the process of an agency outside of the ND DOT will reduce that.

Rep. Schmidt: I am having a hard time getting a handle on this. The DOT, when they have the hearing that is about DUI's and such. The other OAH do they ever deal with DUI's?

Harms: The answer to that question is no.

Rep. Schmidt: They deal with embezzlements and things like that. The DOT is what they are talking about and driving while drunk, and why should they move to the OAH who deals with embezzlement? I am having a hard time with this.

Harms: The OAH, Mr. Hoberg is the director, he can answer those questions, but I guess the OAH handles a host of things.

Rep. Thorpe: I was putting myself in the place of the defendant getting charged and going through the civil process. The DOT they furnish us the roads and maintain them and the highway patrol out there and try to keep them as safe as they can for us to drive. We get our license plates from DOT. We get our driver's license. Everything seems to me where transportation has been through the DOT and you could be right about the perception. Driving is a privilege and if there is a perception, personally, I would like to keep that perception because if I am out there driving and I am intoxicated, I better have that perception that DOT could take my driving privileges away, so why would that perception bother me?

Harms: I guess I think you are right in terms of the perception of the public about the potential consequence of driving under the influence. I think that is a good message for the public to have. I think that is exactly the perception that we want the public to have. What we don't want them to have, this perception that they are accused of violating the law that they are treated unfairly in criminal law. That the law treats them with fairness and objectively so that when they

are through that experience, at least they have had a fair day in court.

Tom Balzer, ND Motor Carriers Association, spoke in support of the bill.

Balzer: NDMCA commends this committee on how well they look after the safety of North Dakotans and the roads. This issue is a little more than DUI. The administrative hearing office hears more than just DUI cases. They also hear reckless driving and all this other stuff. The issue of where it matters to our organization is that the Federal Motor Carriers Association has laws on the books that say if a CDL driver is convicted two times or more, that they lose their CDL privileges for life. The concern that we have is that the state law defines the administrative law judge or hearings findings as a conviction, so if somebody gets a DUI a driver with a CDL and they go to the administrative hearing and get convicted and lose their license. Then they go to the criminal proceeding and they plead down, or they are found not guilty, but the administrative still stands as a conviction in the eyes of the Federal Motor Carrier's Administration and there is their one strike and then within ten years they get a second strike. Then they have now lost their livelihood for life. That is our concern. We are not saying that driving under the influence is right. Our industry does not condone that. In fact it is very difficult to find one guy with a DUI on his record that is insurable. We want the process to be fair.

Rep. Owens: Thank you for acknowledging that we are not just talking about DUI's. We are talking about reckless driving, everything. The issue that you bring up is far as the administrative law decisions counting as strike one and strike two. This bill doesn't affect, but you did reference the perception of unfairness, so I will ask you for your opinion on that same question. What about all these other agencies?

Balzer: They are dealing with the same struggle right now. I have been hearing a lot of things this session with WSI and Job Service and I think that the move, especially when you are

dealing with decisions that are being made. The move toward making them as independent as possible is a good move if you are asking my opinion. I think in this case it is a move in the right direction.

Rep. Ruby: What is your association doing on the federal level to alleviate some of the restrictions they have on those two strikes and you are out?

Balzer: Not a whole lot because we don't disagree with the fact that if you made a mistake they will give you the one, but if you are a professional driver, who not only puts your life and the lives of others in your own hands, if you make two mistakes, you probably shouldn't be on the road. Our insurances that we have and there are only seven insurance companies nationally that insure trucking companies, really will not underwrite a driver with two or more DUI's, so from the insurance standpoint, we don't want them there.

Rep. Ruby: I am talking about directly driving and all the other areas that could be used as a strike against the license that are not DUI.

Balzer: I think in that regard we run into a lot of the same issues, federal law is set and there is always that constant work towards making that position as clear as possible. The infractions that they refer to that put this into effect is two strikes and you are out.

Rep. Gruchalla: Again, your position is that the present system is fair; it's just the perception that it is not fair?

Balzer: I would agree with that statement. We don't really think that the ninety percent of conviction will decline. We just look at it as when these people walk in for the administrative hearing they are walking into the DOT's building and if they walk into an independent neutral site if you will or if that perception is that they are getting a fair shake and that is what these folks are looking for.

Neutral testimony was taken at this time.

Allen Hoberg, OAH, spoke neutrally regarding the bill. See written testimony.

Rep. Weisz: You said you don't have any idea what you are going to bill, but in reality you need a fiscal note from DOT showing what the cost is going to be from you.

Hoberg: In my own mind, I have an idea of what I would bill. It would be substantially less than what we are doing in our agency because the cost would be less, this is a guess, and it would probably be around fifty to sixty dollars an hour. It would be based on the proposed budget plus a guestimate of time on how much we would spend on their hearings and we would get that from the DOT based on the number of hours that they currently use.

Rep. Schmidt: Can you move those hearings to Maddock?

Hoberg: The hearings that we do and types that we do we use a lot of different buildings depending on what is available and depending on the size of the community. For example, for a WSI hearing, you might use a courthouse, you might use the court reporters office some times you might use another government office sometimes, even the DOT and Job Service buildings. There are a lot of rooms that are available on a 'no cost basis'. We try to access those without having to go to someplace that might charge us for the use.

Rep. Gruchalla: So there are sometimes administrative hearings in the DOT buildings?

Hoberg: We have held a few hearings, not DOT hearings obviously, but we have held a few hearings in the DOT building.

Rep. Gruchalla: It is possible that these hearings might be held in the DOT building like they are now?

Hoberg: It is possible.

Rep. Gruchalla: The WSI bill I am hearing they have the Office of Independent Review but when that is appealed it goes to your entity now?

Hoberg: That is correct. Voluntarily. We entered into an agreement with WSI back in 1995. Prior to that time we had done a few hearings for them when they had contest or whatever. Since then WSI has voluntarily used us for all of their hearings.

Rep. Weisz: How many hearings do you hear in a year now?

Hoberg: I think I supplied that information to you. I don't have it on me. It is roughly average of somewhere between fifty-five and sixty percent of our requests. We get so many requests that they just have been running between 475 and 525 is the numbers requested from other agencies and roughly depending on the agency, about fifty-five or sixty percent of those, we will be hearing. The rest of them settle or someone withdraws their request because they realize they don't have a case or whatever but we have all different types of hearings. They are not the same as the DOT hearings. Many of ours are much more complex than that. Some of ours are the same complexity as theirs but a lot of ours are much more complex and might run several days a hearing where a DOT hearing probably runs at most a couple of hours.

Rep. Weisz: Could you supply the committee of all the agencies and the numbers?

Hoberg: Yes.

Rep. Owens: If you would, add the number of administrative law judges you currently use to adjudicate those cases.

Hoberg: We have five full time administrative law judges counting myself and I work pretty much full time besides being the administrator as to the number of cases I do. And then we have four temporary contract ALJ's. We use them on an as needed basis because our case load fluctuates so much. We use these four temporary ALJ's that do mostly WSI hearings for us.

Rep. Owens: Based on the average hearings, somewhere in the neighborhood of seventeen hundred hearings a year and you are talking about adding five, maybe four? I guess I am

looking for your opinion on your ability to administer that many new hearings, even though they wouldn't be as long as some of the others that you currently do with that.

Hoberg: I don't see a problem with that really, for example if I did hire most or all of the DOT ALJ's, they all have experience with those types of hearings and it's a matter of case management and scheduling those types of hearings. It would be a matter of adding support staff to ride heard over them.

Rep. Weisz: How many of your ALJ's are attorneys?

Hoberg: One of them is not. One of the ALJ's who has been with us since the beginning is grandfathered in, she is not an attorney, however she has hundreds of hours of training at the national judicial college and training and certified. She does as well as any of our ALJ's. By law, I cannot hire anybody else now that isn't an attorney.

Rep. Price: That would lead into my question, what is the training differences in the current hearing officers vs. the ALJ's?

Hoberg: The training between the DOT officers and ours?

Rep. Price: What are the qualification requirements, differences?

Hoberg: I believe their qualifications are that you have to be an attorney and that is the same for our office. I believe their qualifications are they have to have two years of experience and we require five years of experience as an attorney or asst. attorney general or a judge or a hearing officer with another agency. Similar but ours require a little bit more experience. Part of the reason we do that is because we have such a broad range of types of hearings whereas they deal with one type of hearing.

Rep. Price: So basically, the education is the same, but they are specialized?

Hoberg: Correct.

Opposition was heard at this time.

Mary Ellen Varvel spoke in opposition to the bill. See attached testimony.

Rep. Kelsch: I was reading a testimony handed out by Francis Ziegler and one of the things that he has on his final page of the testimony is an amendment that would transfer all hearing officers who currently conduct hearings for the DOT to become employees of the OAH, if that would be the case, would you still be opposed to the bill and technically yes, you know you said you are here as a private citizen but you know it's pretty hard for me to sit here and you know look at you as a private citizen you know given the fact that you are a hearing officer. So would it be more comforting to you to know that you know Francis believes that the hearing officers that are currently employed should be transferred over to the OAH?

Varvel: That would answer one of the three concerns that I have but it does not answer everything. It also doesn't answer the problem of being required to go searching for hearing rooms and I do recall what it is like if you don't already have a place available. It is a time consuming problem that involves extra travel and extra time for someone arranging the rooms. I appreciate and was not aware of the information that you mentioned, but that would answer only one small part of my concern. I am very much concerned about the cost to the state and that is as a private citizen. I am concerned about the additional time being spent and I believe we should handle things as fairly and as expeditiously as possible.

Rep. Delmore: How many hearings do you do a day?

Varvel: The number of hearings per day varies considerably. I have handled and from none to as many as four in one day and that is not an easy thing. Much of the time spent is other than the hearing.

Rep. Weisz: How many cases that you have handled that have been appealed and how many were overturned?

Varvel: I don't know the exact number, quite frankly, I don't believe the department has records going back as far as I have been around and any records I myself may have had, drowned the flood of 1997 in Grand Forks. I know that some of my cases, my decisions, have been appealed and a few of those have resulted in reversal, I'm sorry, I don't have the numbers.

There were no further questions from the committee. The hearing was not closed due to a continuation the following day, March 9, 2007.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2375

House Transportation Committee

☐ Check here for Conference Committee

Hearing Date: 03-09-2007

Recorder Job Number: 4809

Committee Clerk Signature

Jim M Thomas

Minutes:

Chairman Weisz continued the hearing on SB 2375.

Francis Ziegler, Director of the ND DOT, spoke regarding the bill from a neutral standpoint.

See attached testimony.

Rep. Weisz: Of the one hundred and five appeals, were any of those, that you appealed the decision or were they all appealed by the citizen?

Ziegler: They were all appealed by the defendant.

Rep. Ruby: Who makes the original decision?

Ziegler: asks Paul Siedle, General Council for the DOT, to answer the question for him.

Paul: The process is that, after the stop and we get the information from the officer, we request the license.

Rep. Ruby: Who requests that?

Paul: The DOT.

Rep. Delmore: I have some questions on the fiscal note which seems very interesting. Right now, you've got four hundred to five hundred thousand dollars in here for the hearings and the highway patrol. Why, especially if we adopted the amendment for your own employees, would

we need to do that if we transferred them somewhere else? You are not currently doing this are you?

Ziegler: As this process goes on, we created the fiscal note, based on our testimony. If some of the other amendments are accepted then our fiscal note would change. The amendment is accepted that we would not have representation then the four hundred and fifty thousand would not be correct at this time.

Rep. Delmore: I don't think that the problem has ever been with people thinking things are necessarily unfair but I think this actually becomes a reality and I have had numerous contacts in my district and talked to other legislators who have and sometimes just because of your size you are very overwhelming. As I look at this fiscal note I am not sure where the OAH billings are nine hundred and forty-three thousand when our fiscal note says eight hundred and forty-one thousand either. I am just curious and I'm not an appropriations member.

Ziegler: The difference between fiscal notes that the OAH presented and what the DOT presented, Paul will answer that.

Rep. Ruby: The people that requested hearings and then go through the process, do they pay a fee or cost for that?

Ziegler: I don't know what that fee is. There is a reinstatement fee to get the license fee.

Rep. Ruby: So it is just reinstatement of their license if they win that or when the time has come to get the license back?

Ziegler: If they prevail at the hearing, if they lose the license is taken and then reinstated.

Rep. Ruby: Is that what you use to cover the cost of the administrative hearing?

Ziegler: One hundred dollars is a lot of paperwork that gets used and the drivers license and one hundred dollars is not going to cover very much.

Rep. Dosch: Of the appeals, twenty out of one hundred and five were overturned. That is one out of every five. Twenty percent is high. WSI appeal rates are like three percent that were eventually overturned, doesn't twenty percent seem high to you?

Ziegler: I will let Paul answer that. He is an attorney, he probably has a better handle on that.

Paul: A good example of one of those cases is out of Williston. A law enforcement officer observed someone going ten miles an hour in an urban area and stopped the person. It seemed reasonable to stop the person going ten miles an hour. The hearing officer agreed with law enforcement in that case. The Supreme Court disagreed. The district court agreed. Therefore it was overturned. Some of those questions and maybe a high number, but it is just a judgment call.

Rep. Gruchalla: In your opinion, if this is moved out of the DOT, number one, is it going to cost more and number two, will the process be improved?

Ziegler: In my opinion, I don't believe the process will change. I don't believe the cost is going to change and the second point and until we have more negotiations with the OAH to get this cost, we are not going to be exactly sure on the cost. That is the cost we believe.

Rep. Price: They are proposing to have the staff work out of their homes and quite honestly, if I was one of the people whose file was in somebody's home, I would be very concerned about privacy issues and those types of things.

Ziegler: When I saw that actually I was concerned because it appears that they are going to have to rent some facilities to have the hearing. In addition to the privacy issue, I am not sure if I was a defendant I would want to go into a private home, so I assume they are going to be renting a facility and if they do that would also add to the cost.

Rep. Price: That was to my next question. These currently being held in the DOT building, is that correct?

Ziegler: That is correct.

Rep. Price: So there is no cost to rent right now?

Ziegler: No.

Rep. Price: Because we are getting mixed messages from the bill sponsor in which they felt they were going to continue to be held in those buildings and that wasn't the problem. Some of those testifying feel that's part of the perception.

Ziegler: We haven't talked to them about how they would be handling it.

Rep. Weisz: You still haven't answered the first question about the privacy issue of the files in homes?

Ziegler: The system that we have in place is of high degree of security. They would have to come up with something similar to what we have got. We would have to take those files and electronically move them.

Lt. Kelly Rogers, spoke in opposition to the bill.

Rogers: The North Dakota Highway Patrol and law enforcement does not have a position on the location of the hearings. Our concern is frankly, the unknown, what process is going to happen. Currently law enforcement initiates the process and most of these hearings and follows through with the hearings if they are requested as witnesses. Our concern in a new process is that if a perception is that this hearing is somehow unfair or too many hats being worn by the hearing officer, if we go to the OAH and the DOT is not represented by counsel we haven't solved the issue. The hearing officer is the one that is conducting the hearing is also introducing evidence and that person was the same, that issue is not going to be resolved.

With that, I would recommend you take a close look at the fiscal note. We do not want to go into the hearings without some sort of representation as to getting evidence introduced.

Rep. Delmore: Are there not some hearings now where there really isn't other representation and the hearing officer is pretty much the judge and jury?

Rogers: Absolutely in one hundred percent of the cases that I have been involved with, the state's attorney's do not attend the hearings. Law enforcement goes in there and on their own, but the hearing officer goes through the process to introduce evidence and ask questions.

Rep. Delmore: If we were to adopt the amendment and keep the same people, was that part of the objection, do you think it would change because the hearing officers would be different and wouldn't be as prepared, whatever?

Rogers: That is one concern. We don't know how the OAH handles their hearings.

The hearing was closed. No action was taken at this time.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2375

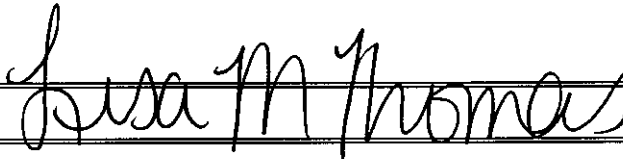
House Transportation Committee

☐ Check here for Conference Committee

Hearing Date: 03-09-2007

Recorder Job Number: 4811

Committee Clerk Signature



Minutes:

Chairman Weisz allowed committee discussion on SB 2375. Rep. Kelsch was absent.

Rep. Owens introduced several amendments. See attached.

Rep. Owens: We got varying testimony. We were told in testimony, Sen. O'Connell said that the employees would be moved over but in his testimony it says they wouldn't. Then in the testimony of OAH, it says they will hire new people. I don't understand why they won't transfer.

Rep. Weisz: By doing the amendment, the employees then do become at the will of OAH. Someone had raised that concern to me. If you transfer them, now they are stuck with them and what if it doesn't work out or whatever of what if there is some conflict? OAH would be stuck with these employees. When I read the amendment, it doesn't say that to me, but I guess if anyone else can expound on that.

Rep. Owens: I did think about that. I am not trying to do this without thinking of their side and I did think about that from that aspect but I don't believe these employees are going to care about this bill moving them if they are still employed. I personally don't think there will be an issue, but now we are back to perception.

Rep. Ruby: I am for moving the FTE's over so that we know that those FTE's are going to be retained. I would rather that the language said something that they "shall consider" retaining

the employees that are with the DOT because of their reason. If I buy out a company and they have a certain number of employees and under the provisions of that company I have to keep those employees, well, for how long? What if I don't need that many for efficiencies? What if certain ones are not as dedicated as the others? It takes away my flexibility. I would rather see some flexibility that they shall consider those positions and those people for those positions. What if they don't like them and fire them and they can't because the law says they have to have them here.

Rep. Weisz: That happens all the time in businesses. Employees go with the deal. It just says they become employees. Then they are employed like anybody else in OAH and OAH has to have cause to terminate any employee they have. It doesn't say they have to remain employees because they have been transferred and become employees. The more I look at it, we don't mandate that they stay employed, we say they are moving. We can say "shall consider" but then what is the point of the amendment.

Rep. Owens: I don't disagree with Rep. Ruby's point of view, as far as his application to business and company, but just based on the testimony alone, if we put consider in there, we may as well not have the amendment because we already know what they are going to do. They have already said in their testimony, third, DOT hearing officers will not be transferred. They have already made their decision if they have a choice.

Rep. Owens moved the amendment. Rep. Price seconded.

Voice Vote: 10 yes. 2 no. 1 absent.

Motion carried. Amendment was adopted.

Rep. Owens: On page seven, line fourteen and fifteen, page fourteen line twelve after five insert "at a hearing..." and the department "may". I think everybody in the process should

have the option of representation. I don't understand that so I think it should be the department may. Then on page fifteen line twenty and twenty-one, the information we were just talking about. **Rep. Owens moved the following amendments.**

Rep. Delmore seconded.

Rep. Weisz: So everybody understands, the first part of the amendment would add the part that says the DOT could appeal a decision, currently or under the scenario we were looking at, they wouldn't be able to appeal and adverse decision by and administrative law judge. That puts that in there and the second part is does allow ALJ's could introduce the records so for example, if the DOT isn't there, the ALJ could introduce the evidence and the records from law enforcement. The third part says it would allow the department may be represented by legal counsel. That would be changed to say they may be represented by legal counsel at hearings under this section. Then the next part changes it to party adversely affected by instead of person who has an operator license or privilege so that is a language change, it doesn't change anything. Does everybody understand the amendment?

Rep. Dosch: So right now the DOT doesn't have options?

Rep. Weisz: They don't under OAH. They do under their own. Currently they can under their system but the way the bill was written they couldn't. This allows them again to appeal the decision.

Voice Vote: Unanimous. Motion carried and the amendment was adopted.

Rep. Owens: I would like to move an amendment on page seven to insert a new subparagraph that reads All ALJ's assigned by the director of the OAH will maintain and secure all relating documents and evidence to guarantee the privacy of the official records containing personal information.

Rep. Price seconded.

Rep. Schmidt: That still doesn't take care of the people dragging those records home with them and working out of their home, does it?

Rep. Weisz: It is an issue that they are kind of trying to get at that says if you do that you are on the hook if something would happen to that information. Yes, it doesn't directly address that it's an attempt to try to ensure that they address it.

Rep. Owens: Exactly what I was doing there is I was putting it on the ALJ.

Rep. Weisz: So OAH is going to have to figure out how they are going to ensure the privacy.

Rep. Dosch: It seems to me that they have had some guidelines in place for the stuff that they already have and I can't believe that they wouldn't.

Rep. Weisz: Part of the issue is because of the way the driver's records and the electronic and some of the laws we passed that they treat it a little different than some of the other stuff that can be public information. I am not sure how that will fit in here with OAH and there may not be a problem I couldn't say for sure but we do have some very specific guidelines on how we deal with the driving records and all of that information and some of that schedule with CDL and what is published and what isn't. Whether that is a problem, I have no idea. They may have rules in place that would address it, I don't know.

Rep. Dosch: Wouldn't the amendment be a little better then if they, to say something to the affect that they will follow the same privacy rules as they do on the DOT or something?

Rep. Price: My big concern is that they are talking about doing this out of their home office. There is a computer, there is possibly teenagers, friends, whatever at the house, there is a whole lot of potential here that would put these people on the hook.

Rep. Owens: I don't disagree with Rep. Dosch. They probably have some procedures, I just wanted to put that in as not to assume they have them.

Voice Vote: Unanimous. Motion carried and the amendments were adopted.

Rep. Owens: I would like to move an amendment. On line four of page seven, paragraph eight, under the paragraph seven that we just amended after line eleven. Since we are dealing with perception here all transportation related hearings must be administered at a site not owned or under the control of the DOT or Highway Patrol.

Rep. Delmore: I understand where you are going but we want to add on that all these places have to be built then? There are places where it's a convenience. I think people's objections are who are running the hearings perceived to be DOT NOT because of the location. I will oppose that amendment.

Rep. Owens: Just to respond, I went ahead and offered this for conversation.

Rep. Delmore: I just think that regardless of what happens to this bill, this discussion needed to be heard.

There was no second on the motion.

Motion failed and the amendment was NOT adopted.

Rep. Price: One of the messages from the Hospitality Association, one of their messages was that they are walking into the lion's den and they said that. The second thing, I am really concerned that they think they are going to be able to just find this space for this amount of hearings. They are going to have to set a permanent location for these hearings because the numbers are much higher than what they are used to dealing with. They better have a set place.

Rep. Weisz: There is no question they are not going to be able to use the sheriff's office if they are hearing every day. The number of hearings is going up and they will go up again.

Rep. Ruby: I think that's where the hidden part of the fiscal note is going to be. I think that the cost here, the DOT is going to say it's not in our place anymore; they may bill OAH for the use of the building. I think there is an additional fiscal note here that we are going to get. But DOT

can say if OAH is going to charge them for the hearing, then DOT is going to charge OAH for the place to do it.

Rep. Weisz: Just for the committee's information, the fiscal note that was handed out and I think DOT also handed it out that's not an official fiscal note because you have two fiscal notes on the same bill. What will happen is if this bill comes out with a DO PASS from committee and rereferred to Appropriations, because either way there is a fiscal effect. Then the two fiscal notes will be blended into one.

Rep. Owens: I would like to further amend the bill for clarification to make sure that people understand and the ALJ's understand what it is because we are talking about something brand new to the OAH. Page four, line twenty four and this continues on page nine, line seven, page ten line eighteen, page twelve, line eighteen. After "judge" you insert with transportation law violation experience. In other words, we want somebody who has some experience in doing this because right now, since everything has been handled at DOT for years, none of the ALJ's at OAH has experience in this.

Rep. Delmore: There had to have been some of those people who were not born to that position that have come in and been trained. I don't think those same people have been there since conception.

Rep. Thorpe seconded the amendment.

Rep. Price: They have got to get experience some how. They obviously need to be trained.

Rep. Weisz: There is a difference between having training and vs. experience. I don't think you can have everybody with experience from day one.

Voice Vote: Motion failed.

Rep. Owens moved a DO PASS AS AMENDED and rerefer to appropriations.

Rep. Delmore seconded.

Rep. Gruchalla: For what it is worth, I have been to a couple hundred of these admin.

Hearings. When it first started they had people who were administrative hearing judges who were not legally trained and since then the process has evolved to where it's a very good process. You don't always get the ruling you want, but I always thought they were fair. This bill seems to have a lot of unknowns where they will be held and the cost and I just think there are so many unknowns that I am afraid of it.

Rep. Weisz: I don't think there is an issue of fairness. I think it's obvious if you lose, it was unfair. That is a given. The reason you appealed it was because your hope was to get the sanction overturned.

Roll Call Vote: 7 yes. 5 no. 1 absent.

Motion carried.

Carrier: Rep. Owens.

Date: 3-09-07
Roll Call Vote #: #1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES 2375
BILL/RESOLUTION NO. _____

House Transportation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken to Amend voice vote

Motion Made By Owens Seconded By Price

Representatives	Yes	No	Representatives	Yes	No
Chairman Weisz	✓		Rep. Delmore	✓	
Vice Chairman Ruby		X	Rep. Gruchalla	✓	
Rep. Dosch	✓		Rep. Myxter	✓	
Rep. Kelsch	(A)		Rep. Schmidt	✓	
Rep. Owens			Rep. Thorpe	✓	X
Rep. Price					
Rep. Sukut					
Rep. Vigesaa					

Total Yes 10 No 2

Absent 1

Floor Assignment motion carried

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

transfer employees

Date: 3-09-07
Roll Call Vote #: 2375

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2375

House Transportation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken "Department May" (see below)

Motion Made By Owens Seconded By Delmore

Representatives	Yes	No	Representatives	Yes	No
Chairman Welsz			Rep. Delmore		
Vice Chairman Ruby			Rep. Gruchalla		
Rep. Dosch			Rep. Myxter		
Rep. Kelsch	Absent		Rep. Schmidt		
Rep. Owens			Rep. Thorpe		
Rep. Price					
Rep. Sukut					
Rep. Vigesaa					

Total Yes Unanimous No _____

Absent _____

Floor Assignment Motion Carried

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

- * add "DOT could appeal a decision"
- * allow ALJ to introduce record
- * allow "Dept. be represented by legal council"
- * changes it to "Party adversely affected by"

Date: 3-09-07
Roll Call Vote #: #3

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2375

House Transportation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Amend (see below)

Motion Made By Owens Seconded By Price

Representatives	Yes	No	Representatives	Yes	No
Chairman Weisz			Rep. Delmore		
Vice Chairman Ruby			Rep. Gruchalla		
Rep. Dosch			Rep. Myxter		
Rep. Kelsch		Absent	Rep. Schmidt		
Rep. Owens			Rep. Thorpe		
Rep. Price					
Rep. Sukut					
Rep. Vigesaa					

Total Yes Unanimous No _____

Absent _____

Floor Assignment _____

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

page 7 insert new subject subsection-subparagraph
*all ALJ ~~that~~ assigned by director of OAH will
(after line 11) maintain & secure all documents
(OAH ensure privacy)

Date: 3-09-07
Roll Call Vote #: 4

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES 2375
BILL/RESOLUTION NO. _____

House Transportation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Amend (see below)

Motion Made By Owens Seconded By No Second

Representatives	Yes	No	Representatives	Yes	No
Chairman Weisz			Rep. Delmore		
Vice Chairman Ruby			Rep. Gruchalla		
Rep. Dosch			Rep. Myxter		
Rep. Kelsch			Rep. Schmidt		
Rep. Owens			Rep. Thorpe		
Rep. Price					
Rep. Sukut					
Rep. Vigasaa					

Total Yes _____ No _____

Absent Motion failed

Floor Assignment _____

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

page 1 paragraph 8
* All trans. related hearing must not be at a site
under the control of DOT or Highway Patrol

Date: 3-09-07
Roll Call Vote #: # 5

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2375

House Transportation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Amend (see below)

Motion Made By Owens Seconded By Thorpe

Representatives	Yes	No	Representatives	Yes	No
Chairman Weisz	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Rep. Delmore	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Vice Chairman Ruby	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Rep. Gruchalla	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Rep. Dosch	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Rep. Myxter	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Rep. Kelsch	Absent	<input checked="" type="checkbox"/>	Rep. Schmidt	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Rep. Owens	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Rep. Thorpe	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Rep. Price	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			
Rep. Sukut	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			
Rep. Vigesaa	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			

Total Yes _____ No _____

Absent Motion failed

Floor Assignment _____

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

page 4 line 24
page 9
page 11
12

after "judge" an ALJ w/ trans. law violation
experience

Date: 3-09-07
Roll Call Vote #: #6

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2375

House Transportation

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Do Pass As Amended & refer to Approp

Motion Made By

Owens

Seconded By

Delmore

Representatives	Yes	No	Representatives	Yes	No
Chairman Weisz	✓	✓	Rep. Delmore	✓	
Vice Chairman Ruby		✓	Rep. Gruchalla		✓
Rep. Dosch	✓		Rep. Myxter		✓
Rep. Ketsch	Absent		Rep. Schmidt		✓
Rep. Owens	✓		Rep. Thorpe		✓
Rep. Price	✓				
Rep. Sukut	✓				
Rep. Vigasaa	✓				

Total Yes

7

No

5

Absent

1

Floor Assignment

Owens

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

REPORT OF STANDING COMMITTEE

SB 2375, as engrossed: Transportation Committee (Rep. Weisz, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS and BE REREFERRED to the Appropriations Committee (7 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2375 was placed on the Sixth order on the calendar.

Page 1, line 6, after "hearings" insert "; and to provide for transition"

Page 7, after line 11, insert:

"7. An administrative law judge assigned by the director of the office of administrative hearings to conduct a hearing under this section shall maintain and secure all related documents and evidence to maintain the privacy of records that have been affirmed which contain personal information."

Page 7, line 14, overstrike "person whose commercial driver's license or"

Page 7, line 15, overstrike "privilege has been suspended, revoked, or denied by" and immediately thereafter "party adversely affected by"

Page 14, line 12, after "5." insert "At a hearing under this section, the administrative law judge may introduce records, conduct examinations, and present evidence relating to the issues to be determined at the hearing. The department may be represented by legal counsel at any hearing under this section."

6."

Page 15, line 4, overstrike "6." and insert immediately thereafter "7."

Page 15, line 20, overstrike "person whose operator's license or privilege has been"

Page 15, line 21, overstrike "suspended, revoked, or denied by" and insert immediately thereafter "party adversely affected by"

Page 16, after line 27, insert:

"SECTION 14. TRANSITION. All full-time department of transportation hearing officer employees who currently conduct hearings for the department of transportation are transferred to and become employees of the office of administrative hearings."

Renumber accordingly

2007 HOUSE APPROPRIATIONS

SB 2375

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2375

House Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: March 16, 2007

Recorder Job Number: 5182

Committee Clerk Signature

Minutes:

Chm. Svedjan opened the hearing on SB 2375.

Rep. Robin Weisz, Chairman, House Transportation Committee, spoke in support of SB 2375. Rep. Weisz distributed a fiscal note dated 3/8/07 which he requested (Attachment A).

Rep. Weisz explained that SB 2375 takes out all the administrative hearings within the DOT and moves them into the OAH. The fiscal note dated 3/14/07 which the Appropriations Committee has was not available when the Transportation Committee met. The fiscal note dated 3/14/07 is \$200,000 less than the fiscal note Transportation had available. Rep. Weisz also explained that fiscal note 3/14/07 is not a fiscal note for the DOT. The fiscal note Rep. Weisz distributed is a DOT fiscal note and reflects the fiscal note the Transportation Committee had when they met.

Rep. Weisz expressed that it would probably be appropriate that the fiscal notes should be combined and a new fiscal note drafted. (Ref. 3:17). Rep. Weisz continued with a discussion of the fiscal effects of the fiscal notes. The reason you have this bill has nothing to do with the system not working, it has everything to do with perception. The testimony presented to the Transportation Committee was that people did not want to go into the DOT building to have a DOT hearing. OAH will have to lease space for hearings.

Rep. Kempenich: Was it brought up in your Committee that this is not a right? That's why I have a problem with this bill.

Rep. Weisz followed up with statistics on numbers of hearings and reiterated that the reason for the bill deals with the perception of fairness (Ref. 8:23).

Chm. Svedjan: DOT fiscal note (cost of \$673,000) – and a fiscal note from OAH (cost of \$769,000). Is this going to cost us \$1.4 million?

Rep. Weisz: No. The latest fiscal note (3/14/07) shows that OAH is going to bill the DOT \$769,000 to do the hearings (Ref. 10:44). Currently it costs the DOT \$720,000 to hold hearings, but now OAH has to hire representation to hold hearings.

Chm. Svedjan: So the net cost of this is \$670,000.

Rep. Weisz: Or \$500,000 if you use the latest fiscal note. If you look at the fiscal note from OAH, there's nothing for office space and the safety of the transfer of data is not addressed. OAH will have to develop a system.

Chm. Svedjan: If OAH is right in their projection of \$769,000, it would reduce the impact by \$174,000.

Rep. Weisz: That's correct.

Rep. Kempenich: Any discussion of having automatic repeal unless it's an opt out?

Rep. Weisz: No discussion and it would increase costs dramatically.

Rep. Nelson: In the fiscal note dated 3/8/07, \$450,000 for Highway Patrol to testify at these hearings and I don't see that in 3/14/07 fiscal note. Are we accounting for the Highway Patrol testifying if it moves over to OAH? And is there any accounting currently for the Highway Patrol to testify at these hearings under DOT?

Rep. Weisz: The Highway Patrol does not get reimbursement. They don't get paid. It's just the time it costs. The concern is that currently the DOT represents the Highway Patrol within that

hearing – that's built in the \$720,000. If we go over to OAH, the Highway Patrol officer no longer represents the state's side on the issue. That's why there's the \$450,000 cost.

Rep. Nelson: So the value of the current system – the current DOT officer in charge to the state's case must be \$450,000 (Ref. 20:39)

Rep. Weisz: You could make that assumption.

Rep. Carlson: This money has always been paid out of the highway fund. The perception is that the judge and jury are the same people and that he or she will not get a fair hearing (Ref: 20:59).

Chm. Svedjan: I'm still trying to discern the compelling reason for doing this.

Rep. Weisz: No one testified that there was any bias but the perception is there.

Rep. Skarphol: I think we are discussing something that we should consider another alternative altogether and that is to do something similar to what South Dakota is doing (Ref. 23:19). Rep. Skarphol described the program.

Rep. Gulleeson: I think the premise of this bill is sound, but if that's the case we should expand it to Workforce Safety. It's the exact same scenario with someone who requests a hearing from an injured worker. Their hearing is in front of WSI in their facilities with their people. There's no separation. So if we do it here, we need to expand it.

Rep. Klein moved a Do Not Pass to SB 2375 (70826.0300). Rep. Wald seconded the motion. The motion carried by a roll call vote of 18 ayes, 4 nays and 2 absent and not voting. Rep. Klein was designated to carry the bill.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2375**

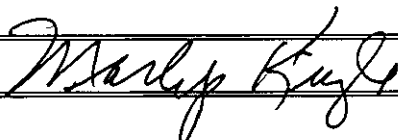
House Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: 3/23/07

Recorder Job Number: #5555

Committee Clerk Signature



Minutes:

Chairman Svedjan asked if a motion to reconsider SB 2375.

Rep Kempensich: Made a motion to reconsider the motion on SB 2375.

It was seconded by Rep Nelson.

Voice vote was taken and a need for a roll call vote was taken and was uncertain so a Roll Call

Vote was taken.

5 Yes, 13 no and 6 absent.

The motion failed.

Date: 3/16/07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2375

House Appropriations Full Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Klein Seconded By Wild

Representatives	Yes	No	Representatives	Yes	No
Chairman Svedjan	✓				
Vice Chairman Kempenich	✓				
Representative Wald	✓		Representative Aarsvold		✓
Representative Monson	✓		Representative Gulleason	✓	
Representative Hawken	✓				
Representative Klein	✓				
Representative Martinson	✓				
Representative Carlson		✓	Representative Glassheim		✓
Representative Carlisle			Representative Kroeber	✓	
Representative Skarphol	✓		Representative Williams		
Representative Thoreson	✓				
Representative Pollert	✓		Representative Ekstrom	✓	
Representative Bellew	✓		Representative Kerzman	✓	
Representative Kreidt	✓		Representative Metcalf	✓	
Representative Nelson		✓			
Representative Wieland	✓				

Total (Yes) 18 No 4

Absent 2

Floor Assignment Klein

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

REPORT OF STANDING COMMITTEE (410)
March 16, 2007 11:15 a.m.

Module No: HR-50-5534
Carrier: Klein
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2375, as engrossed and amended: Appropriations Committee (Rep. Svedjan, Chairman) recommends DO NOT PASS (18 YEAS, 4 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2375, as amended, was placed on the Fourteenth order on the calendar.

Date: 3/23/07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2375

House Appropriations Full Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Reconsider 2375

Motion Made By Kempenich Seconded By Nelson

Representatives	Yes	No	Representatives	Yes	No
Chairman Svedjan	✓				
Vice Chairman Kempenich	✓				
Representative Wald		✓	Representative Aarsvold		✓
Representative Monson		✓	Representative Gulleeson		
Representative Hawken		✓			
Representative Klein		✓			
Representative Martinson		✓			
Representative Carlson		✓	Representative Glassheim	✓	
Representative Carlisle		✓	Representative Kroeber		
Representative Skarphol	✓		Representative Williams		
Representative Thoreson		✓			
Representative Pollert		✓	Representative Ekstrom		✓
Representative Bellew		✓	Representative Kerzman		✓
Representative Kreidt		✓	Representative Metcalf		✓
Representative Nelson	✓				
Representative Wieland		✓			

Total (Yes) 5 No 13

Absent 6

Floor Assignment 1

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

*Vice Vote - uncertain
+ then took a roll
call vote*

REPORT OF STANDING COMMITTEE (410)
March 27, 2007 3:36 p.m.

Module No: HR-50-6415
Carrier: Klein
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2375, as engrossed and amended: Appropriations Committee (Rep. Svedjan, Chairman) recommends **DO NOT PASS** (18 YEAS, 4 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2375, as amended, was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

SB 2375


HTT # 1
1-2907

NORTH DAKOTA SENATE

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



Majority Leader



Senator Bob Stenehjem
District 30
7475 41st Street SE
Bismarck, ND 58504-3200
bstenehj@state.nd.us

Testimony on SB 2375
Senate Judiciary Committee
January 29, 2007

Mister Chairman and members of the Committee,

SB 2375 moves administrative hearings on driving issues out of the Department of Transportation and into the office of administrative hearings.

When a citizen appears before a hearing officer assigned by the Director of Transportation on a driving issue, he or she often perceives a conflict of interest. By shifting the hearing to an administrative law judge in the office of administrative hearings, the public perceives that they will have a more objective hearing.

Most other hearings that occur in state government have been consolidated in the office of administrative hearings. This bill would ensure that the citizens receive impartiality and consistency, no matter what state agency they are dealing with.

I urge you to recommend SB 2375 for passage.

A# #2

1-29-07

Senate Bill 2375 Summary

Senator David P. O'Connell

A bill that transfers hearings from the department of transportation to the office of administrative hearings.

Hearings, once held before a hearing officer assigned by the director, will be held before an administrative law judge.

Hearing times and dates will be determined by the director of the office of administrative hearings.

AH #3
1-29-07

Judiciary Committee
North Dakota Senate
January 29, 2007

SB 2375 (DUI Administrative Hearings from DOT to OAH)

Chairman Nething and members of the Committee, for the record, my name is Robert Harms. I am the lobbyist for the North Dakota Hospitality Association. We have 350 members in North Dakota engaged in the hospitality industry. **We support SB 2327.**

SB 2375 simply moves the function of conducting the 1400 or so, administrative hearings in DUI proceedings from DOT to the Office of Administrative Hearings. Recall the dual system of DUI proceedings described in hearing SB 2327--the bill to "expunge" the administrative suspension in the absence of a criminal conviction from the same event.

There are three reasons for this bill, fundamental fairness, respect for the law and administrative efficiency in state government.

Fundamental fairness: As was described in the earlier hearing, NDDOT conducts the administrative hearing in the "civil proceedings" brought against a citizen to suspend driving privileges. These proceedings are fundamentally unfair. The State's attorneys no longer attend the proceedings to prosecute. Instead the NDDOT "hearing officer":

- sets the time and place for hearing (provides continuances if necessary)
- conducts the hearing (as judge)
- prosecutes the case (as an active participant)

- brings much of the "evidence" to be "received" with him
- puts witnesses under oath; examines the officer; "introduces" evidence
- receives the evidence
- makes the decision (after deliberation)
- and issues the order, by handing it to the citizen (most often resulting in the suspension of his or her driving privileges).

In short, the NDDOT "hearing officer" acts and prosecutes and judges in a proceeding that has huge impacts upon our citizens and offends basic principles of objectivity and fairness.

Respect for law: Our society functions more effectively when citizens have confidence and respect for the law under which we all function. It helps to create more law abiding citizens and is a key to a civil society. However, the experience I just described above leaves a citizen with the distinct impression that the process was unfair, that deck was "stacked against them" and they had little chance of winning. This experience creates disrespect for the process and the law, instead of instilling in our citizens an understanding of law and a respect for it.

Administrative efficiencies: Moving the hearing officer to the Office of Administrative Hearings (OAH) should foster administrative efficiencies in state government. OAH is well versed in administrative proceedings and conducts hearings for much of the State, including WSI, ND Job Service, Securities, Insurance, Human Services and DOT. Placing the DUI administrative hearing with OAH should allow DOT to eliminate hearing officers in that agency, and allow for economies of scale and efficiencies to prevail by having all administrative hearing functions located in one agency.

For these reasons we ask for a DO PASS recommendation on SB 2375.

AH #4
1-29-07



OFFICE OF ADMINISTRATIVE HEARINGS

STATE OF NORTH DAKOTA

1707 North 9th Street

Bismarck, North Dakota 58501-1882

Allen C. Hoberg
DIRECTOR

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www.nd.gov/oah

MEMORANDUM

TO: Sixtieth Legislative Assembly
State of North Dakota
Senate Judiciary Committee

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

A handwritten signature in black ink, appearing to be "AH", written over the printed name of the Director.

RE: Senate Bill No. 2375 - Transfer of Administrative Hearings from the
Department of Transportation to the Office of Administrative Hearings

DATE: January 29, 2007

The position of the Office of Administrative Hearings on this bill is neutral. This is in keeping with advice given to OAH by its State Advisory Council for Administrative Hearings ("SAC"). Since OAH's inception in 1991, the SAC has advised OAH not to actively seek increased jurisdiction for OAH by legislative means, but to encourage voluntary increases in jurisdiction by welcoming state and local agencies who wish to use OAH's hearing officer services. OAH has followed that advice. Several state agencies and local governmental entities do voluntarily use the services of OAH, including the Public Service Commission, Workforce Safety and Insurance, the Bank of North Dakota, some Boards of County Commissioners, some cities, and some district health units. OAH has not sought to require by legislation any governmental entity to use its services since it was established in 1991.

Obviously, then, over the years, OAH has not sought by legislation to include DOT hearings within its jurisdiction. We have not even encouraged those who seek such legislation, but neither have we discouraged them. Personally, I believe that all administrative hearings in state and local government should be conducted by independent hearing officers not employed by the agency or entity whose hearings they conduct.

Accordingly, if the DOT hearings included in SB 2375 are transferred to OAH, OAH will do its best to provide efficient, independent hearing officer services to DOT, just as it endeavors to do so for many, many other state and local entities; but we are not in favor of or opposed to the bill.

Because SB 2375 does not require the transfer of any staff or equipment from DOT to OAH, OAH has assumed that the bill requires OAH to hire new staff and provide the required equipment and supplies needed for carrying out the duties required by SB 2375. Based on information we obtained from DOT, OAH asks for five FTEs to hire five new ALJs to meet the requirements of this bill. OAH intends to have these five ALJs telecommute from their homes in the four large cities around the state. The fiscal note OAH has provided is a recognition of this approach. If OAH was also to provide office

Sixtieth Legislative Assembly
State of North Dakota
Senate Judiciary Committee
January 29, 2007
Page 3

space for ALJs in lieu of telecommuting, the fiscal note would be somewhat more. OAH intends to use available rooms in various state and local government buildings around the state to conduct hearings under SB 2375.

fz

SENATE JUDICIARY COMMITTEE

January 29, 2007

**North Dakota Department of Transportation
Tim Horner, Deputy Director for Business Support**

SB 2375

Good morning Mr. Chairman and members of the committee. My name is Tim Horner and I'm the Deputy Director for Business Support at the North Dakota Department of Transportation. I have with me Paul Seado, who is General Counsel for the NDDOT. We're here this morning to provide information on the Department's processing of impaired driver hearings as well as to provide some information that should be considered in advancing SB 2375.

The Department wants to make it clear that it is supportive of this policy discussion and believe it is good to consider from time to time what constitutes adequate due process regarding impacts to driver's licenses. The Department is and always has been interested in a hearing process that is not only in fact fair and objective, but also appears to be fair and objective by all persons involved, which includes the public in general, the drivers whose license is at issue, their attorneys, law enforcement and the courts. We've taken the statutory assignment of handling these hearings seriously.

We believe the Department's current hearing process works very well. NDDOT has worked very hard to hire, train and retain extremely competent hearing officers who provide fair and impartial hearings. All Department hearing officers are licensed attorneys; a policy instituted within the past dozen years or so. We believe the current process is not only fair and impartial, but is also efficient and cost effective; Department staff know their jobs and work hard at perfecting the procedures they employ to schedule and conduct hearings.

We'd like to point out several additional items of information:

1. The Department processed 1,470 DUI hearings in 2006, which was a record year as was 2005, so the number of hearings continues to grow. This equates to the processing of almost 6 hearings per day.
2. The majority of other states use a process similar to North Dakota in which the hearing process resides in the same agency as Drivers License.
3. The hearing process is often about law enforcement practices and law enforcement's application of driving laws. Since the Department has little control over law enforcement policies or training, the hearing is often a review of the law enforcement's decision process, not the Department's processes. A high level of

expertise is necessary for hearing officers to interpret the significance of variations in enforcement steps in order to make a final decision.

4. When appealed, a large percentage of the Department's hearing officers' decisions are affirmed by the courts.

Ultimately, the Department sees 5 major objectives it would like to see considered in advancing a decision on SB 2375. The objectives are as follows:

1. The Department wishes to see adequate due process is provided for the property interest at hand and the citizens involved.
2. If increased costs are incurred for transferring the current and growing number of hearings, the Department is interested in seeing an additional funding source provided so as not to impact its ability to provide infrastructure and services for the citizens of North Dakota.
3. The Department wishes to see adequate expertise provided in the hearing process to ensure a technically correct processing of the large number of hearings. The most experienced DUI hearing officers in North Dakota are currently employed with NDDOT.
4. The NDDOT suggests that logistical issues of electronic data management be incorporated into the fiscal analysis including the logistics of secure file management and transfer from in-home offices.
5. And lastly, that the process continues to support our mission of providing a transportation system that safely moves people and goods.

Thank you. Paul Seado and I are available to answer questions if you wish.

From the desk of:
Representative Robin Weisz

To: House Majority Leader Rick Berg

Rick
~~Mr. Berg:~~

Listed below are a few reasons why SB 2375 should be assigned to the House Transportation Committee.

Having all of our bills scheduled, our committee has an adequate amount of time to review the complicated issues.

SB 2375 deals with revoking all DOT administrative hearings and moving them to the Office of Administrative Hearings. This has many implications for both the Department of Transportation and the Office of Administrative Hearings.

Also, our committee has dealt with similar issues in the past and is best prepared to deal with this issue.

Some of the questions that need to be addressed include recommended dispositions versus final dispositions, Moving eighteen hundred hearings from DOT to OAH, which only hears two hundred and fifty cases per year, is also an issue that needs to be addressed.

We also need to look at ensuring that we do not weaken our current DUI convictions, etc.

In closing, our committee has always dealt with DUI laws and DOT, so regardless of other persons desire to redirect the assignment of this bill; ^{I believe} ~~it is felt~~ that this bill should be assigned to the House Transportation Committee.

Thank you very much for your time and attention to this matter.

Sincerely,

Representative Robin Weisz

#1

Sen. Stenehjem Intro

NORTH DAKOTA SENATE

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



Majority Leader

Senator Bob Stenehjem
District 30
7475 41st Street SE
Bismarck, ND 58504-3200
bstenehj@state.nd.us

Testimony on SB 2375
House Transportation Committee
Ft. Totten Room
March 8, 2007

Mister Chairman and members of the Committee,

SB 2375 moves administrative hearings on driving issues out of the Department of Transportation and into the office of administrative hearings.

When a citizen appears before a hearing officer assigned by the Director of Transportation on a driving issue, he or she often perceives a conflict of interest. By shifting the hearing to an administrative law judge in the office of administrative hearings, the public perceives that they will have a more objective hearing.

Most other hearings that occur in state government have been consolidated in the office of administrative hearings. This bill would ensure that the citizens receive impartiality and consistency, no matter what state agency they are dealing with.

I do have a few amendments. First, on page 7, lines 14 and 15 would be changed to say, "Any party adversely affected by the decision of the administrative law judge may appeal within seven days..."

Page 2

Secondly, on page 14, after the number 5, insert, "At a hearing under this section, the administrative law judge may introduce records, conduct examinations, and present evidence towards the issues to be determined at the hearing. The department shall not be represented by legal counsel at hearings under this section."

Under the current system, the Department of Transportation does not send an attorney to the hearings because the administrative law judge already works for the Department. To ensure that neither the Department nor the Attorney General's office will incur legal fees, the law specifies that no DOT legal counsel will be present. In other words, the evidence should speak for itself. The "6." indicates to renumber accordingly.

Third, on page 15, lines 20 and 21, again overstrike "person whose operator's license or privilege has been suspended, revoked or denied by" and insert "party adversely affected by", just as was done on page 7.

I urge you to recommend SB 2375 for passage.

Amendments to Engrossed SB 2375

Page 7, line 14, overstrike "person whose commercial driver's license or" and after "or" insert "party adversely affected by"

Page 7, line 15, overstrike "privilege has been suspended, revoked, or denied by"

Page 14, line 12, after "5."; insert "At a hearing under this section, the administrative law judge may introduce records, conduct examinations, and present evidence towards the issues to be determined at the hearing. The department shall not be represented by legal counsel at hearings under this section."

6."

Page 15, line 20, overstrike "person whose operator's license or privilege has been" and after "been"; insert "party adversely affected by"

Page 15, line 21, overstrike "suspended, revoked, or denied by"

Renumber accordingly.

Senate Bill 2375 Summary

Senator David P. O'Connell

A bill that transfers hearings from the department of transportation to the office of administrative hearings

This bill transfers all DOT hearings to the Office of Administrative Hearings but does not transfer any persons or equipment. The Office Administrative Hearings must hire administrative law judges and support staff and provide the equipment, supplies, training, and travel funds required to conduct these hearings.

DOT currently employs 4 full-time and 2 part-time hearing officers to conduct all of its hearing. OAH will hire 5 new ALJs to conduct DOT hearings and locate them in the four large cities around the state (Bismarck, Fargo, Grand Forks, and Minot), as telecommute ALJs working out of their own homes.

Any time remaining to the 5 new ALJs after conducting DOT hearings will be spent conducting other agency hearings. OAH currently extensively uses temporary, contract ALJs on an as-needed basis to conduct some of its hearings. The work performed by the 5 new ALJs in this regard will replace the work of some of OAH's temporary, contract ALJs.

The minimum salary that OAH may pay its ALJs is \$51,240/yr. Thus, with the 4%/4% executive recommendation for salary increases, the minimum that OAH may pay an ALJ is \$57,471/yr. OAH proposes to pay its five new ALJs hired to conduct DOT hearings at this rate. All current DOT ALJs are paid less than this amount.

The total amount of salaries to be paid the five new ALJs is \$574,710. The total amount of benefits to be paid for the five ALJs based on the proposed salary is \$201,149.

OAH proposes to pay a support staff person at \$25,850 (with the 4%/4% salary increase included). Salary and benefits for that person will total \$69,795.

Additionally, OAH will require \$98,112 in operating funds to provide for equipment, supplies, travel, training, and miscellaneous monthly office expenses necessary for the ALJs and support staff to do these hearings.

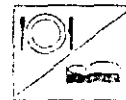
Total salaries and benefits = \$845,654

Total operating costs = \$ 98,112

Total Appropriation = \$943,766

North Dakota Hospitality Association

ND's Restaurant, Lodging & Beverage Association



Transportation Committee P.O. Box 428 • Bismarck, ND 58502 • Phone: 701-223-3313 • Fax: 701-223-0215
ND Restaurant, Lodging & Beverage Association E-mail: ndha@btinet.net • www.ndhospitality.com

February 8, 2007

SB 2375 (DUI Administrative Hearings from DOT to OAH)

Chairman Weisz and members of the Committee, for the record, my name is Robert Harms. I am the lobbyist for the North Dakota Hospitality Association. We have 350 members in North Dakota engaged in the hospitality industry. **We support SB 2375.**

SB 2375 simply moves the function of conducting the 1400 or so, administrative hearings in DUI proceedings from DOT to the Office of Administrative Hearings. There are three reasons for this bill: fundamental fairness, respect for the law and administrative efficiency in state government.

Fundamental fairness: As you know, NDDOT conducts the administrative hearing in the "civil proceedings" brought against a citizen to suspend driving privileges. These proceedings are fundamentally unfair. The State's attorneys no longer attend the proceedings to prosecute. Instead the NDDOT "hearing officer":

- sets the time and place for hearing (provides continuances if necessary)
- conducts the hearing (as judge)
- prosecutes the case (as an active participant)
- brings much of the "evidence" to be "received" with him
- puts witnesses under oath; examines the officer; "introduces" evidence
- receives the evidence
- makes the decision (after deliberation)
- and issues the order, by handing it to the citizen (most often resulting in the

suspension of his or her driving privileges).

In short, the NDDOT "hearing officer" acts and prosecutor and judge in a proceeding that has huge impacts upon our citizens and offends basic principles of objectivity and fairness.

Respect for law: Our society functions more effectively when citizens have confidence and respect for the law under which we all function. It helps to create more law abiding citizens and is a key to a civil society. However, the experience I just described above leaves a citizen with the distinct impression that the process was unfair, that deck was "stacked against them" and they had little chance of winning. This experience creates disrespect for the process and the law, instead of instilling in our citizens an understanding of law and a respect for it.

Administrative efficiencies: Moving the hearing officer to the Office of Administrative Hearings (OAH) should foster administrative efficiencies in state government. OAH is well versed in administrative proceedings and conducts hearings for much of the State, including WSI, ND Job Service, Securities, Insurance, Human Services and DOT. Placing the DUI administrative hearing with OAH should allow DOT to eliminate hearing officers in that agency, and allow for economies of scale and efficiencies to prevail by having all administrative hearing functions located in one agency.

For these reasons we ask for a DO PASS recommendation on SB 2375.

#3



Allen C. Hoberg
DIRECTOR

OFFICE OF ADMINISTRATIVE HEARINGS

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MEMORANDUM

TO: Sixtieth Legislative Assembly
State of North Dakota
House Transportation Committee

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

RE: Senate Bill No. 2375 - Transfer of Administrative Hearings from the
Department of Transportation to the Office of Administrative Hearings

DATE: March 8, 2007

The position of the Office of Administrative Hearings on Engrossed Senate Bill 2375 is neutral. This is in keeping with the advice given to OAH by its State Advisory Council for Administrative Hearings ("SAC"). Since OAH's inception in 1991, the SAC has advised OAH not to actively seek increased jurisdiction for OAH by legislative means, but to encourage voluntary increases in jurisdiction by welcoming state and local agencies who wish to use OAH's hearing officer services. OAH has followed that advice. Several state agencies and local governmental entities voluntarily use the services of OAH, including the Public Service Commission, Workforce Safety and Insurance, the Bank of North Dakota, some Boards of County Commissioners, some cities, and some district health units. OAH has not sought to require by legislation any governmental entity to use its services since it was established in 1991.

Obviously, then, over the years, OAH has not sought by legislation to include DOT hearings within its jurisdiction. We have not even encouraged those who seek such legislation, but neither have we discouraged them. Yet, personally, I believe that all administrative hearings in state and local government should be conducted by independent hearing officers not employed by the agency or entity whose hearings they conduct.

Accordingly, if all DOT hearings are transferred to OAH as proposed by Engrossed SB 2375, OAH will do its best to provide efficient, independent hearing officer services to DOT, just as it endeavors to do so for many, many other state and local agencies and entities; but we are not in favor of or opposed to the bill.

Because Engrossed SB 2375 does not require the transfer of any staff or equipment from DOT to OAH, OAH will be required to hire new staff and provide the required equipment and supplies needed for carrying out the duties required by SB 2375. Based on information we obtained from DOT, OAH prepared a fiscal note asking for five FTEs to hire five new ALJs to meet the requirements of this bill. OAH intends to have these five ALJs telecommute from their homes in the four large cities around the state. OAH intends to use available rooms in various state and local government buildings around

the state to conduct DOT hearings under SB 2375. The original fiscal note was a recognition of this approach.

But, OAH did not ask for any money in the original fiscal note to hire support staff to assist the ALJs. OAH's current support staff assists its ALJs with scheduling hearings, arranging for travel, writing decisions, issuing prehearing correspondence and orders, entering timekeeping, preparing billing statements for agencies, maintaining a case management system, and several other aspects of normal office support. DOT tells OAH that there is currently very little, if any, office support for its hearing officers, except in preparing transcripts for appeals. But, OAH intends to support these new ALJs conducting DOT hearings by providing support for scheduling hearings, arranging for travel, preparing timekeeping and billing statements, maintaining OAH's case management system, and other normal office support. Little support would be needed for these new ALJs in decision writing and issuing prehearing correspondence and orders because of the nature of DOT hearings. We believe it would be wise to provide through support staff (at a lesser salary) some of the work obviously now done by each DOT hearing officer in supporting their own hearing activities. OAH operates differently than DOT and there will be considerable support staff work to do incorporating and maintaining five new ALJs in OAH's structure. But, again, OAH anticipates that it will

require only one additional support staff person to support all five of these new ALJ positions. (OAH's current support staff ratio is three support staff to five full-time ALJs and four temporary ALJs - though OAH temporary ALJs provide a good deal of their own support).

Engrossed Senate Bill 2375, then, as amended and passed by the Senate, requires OAH to conduct all of the hearings of the Department of Transportation. But, House Bill 1017, OAH's appropriation for its operating budget for the 2007-2009 biennium does not include any appropriation for OAH to conduct DOT hearings. Therefore, if SB 2375 is passed by the House, it needs to be amended to include an appropriation to allow for OAH to conduct DOT hearings, *i.e.*, to provide an appropriation for OAH to implement the legislation. Again, SB 2375 does not transfer any persons or equipment to OAH to allow it to conduct DOT hearings. Accordingly, OAH needs an appropriation to conduct DOT hearings.

OAH receives no general funds. All of its budget is special funds obtained by billing user agencies. If the bill passes, OAH would also bill DOT for ALJ time spent in conducting DOT hearings and issuing DOT decisions as a result of those hearings. It would not be necessary to transfer any moneys from DOT's budget. Of course, DOT would need to

devote moneys currently in its budget to pay for OAH billings for providing ALJs to conduct all of DOT's hearings.

DOT currently employs four full-time and two part-time contract hearing officers to conduct all of its hearings. This approximates between $4\frac{1}{2}$ and $4\frac{2}{3}$ FTEs. OAH proposes to hire five new ALJs to conduct DOT hearings. Any time remaining to the five new ALJs after conducting DOT hearings will be spent by them conducting other agencies' hearings. OAH currently extensively uses temporary, contract ALJs on an as-needed basis to conduct some of its hearings for other agencies. The work performed by the five new ALJs in this regard will replace some of the work currently done by OAH's temporary, contract ALJs. Again, OAH has proposed to support these five ALJs by hiring one new support staff person. Because that support staff person will undertake some of the tasks currently undertaken by each DOT hearing officer (primarily in scheduling hearings, making travel arrangements, and issuing notices of hearing), the five new ALJs should have some additional time to conduct hearings. Exactly how much additional time they will have remains to be seen, but, again, OAH extensively uses temporary ALJs currently, and OAH would have plenty of work to shift over to these new five ALJs to keep them busy. Thus, if SB 2375 passes, OAH will likely spend less on temporary ALJ services this next biennium.

Alternatively, OAH could hire just four new ALJs to conduct DOT hearings and support those four ALJs with one support staff, but then OAH would likely have to depend even more heavily on temporary ALJs more than it currently does. We would prefer authority to hire five new ALJs and one support staff person, thereby, likely reducing the number of temporary ALJ hours necessary both for DOT work and the work of other OAH agency hearings now conducted by temporary ALJs. But, again, we believe OAH could make this work with hiring just four new ALJs and one support staff person.

If this bill passes, OAH will need to determine a billing rate for the DOT hearings. This will be done by OAH's billing consultant. OAH's billing rate for all agencies for which it currently conducts hearings is based on OAH's actual expenditures for providing hearing officer services to all agencies in the previous biennium. In other words, OAH's billing rate for the current biennium is based on actual expenditures for the 2003-2005 biennium. Its billing rate for the 2007-2009 biennium will be based on actual expenditures for the 2005-2007 biennium. But for DOT, OAH will likely, initially, provide a new, separate billing rate based on OAH's budget for providing hearing officer services to DOT and an estimate of ALJ time worked in providing hearing services. Thereafter, in future biennia, OAH will base DOT's billing rate on actual expenditures and actual time worked from the previous biennium.

To be able to conduct DOT hearings OAH proposes to hire either four or five new ALJs and locate them in the four large cities in North Dakota (Bismarck, Fargo, Grand Forks, and Minot). OAH proposes that these ALJs telecommute with OAH, working out of their homes. OAH currently has two ALJs working out of their homes in Fargo and West Fargo. Telecommuting seems to work well for OAH. DOT hearings will be conducted in available rooms in various government buildings around North Dakota. OAH proposes that the one support staff person be located in its central office to support these five ALJs in their telecommuting operations.

The appropriation necessary to accomplish hiring five ALJs and one support staff is an appropriation of \$943,766, in special fund moneys. Attachment A shows how this amount is determined. The alternative approach, hiring four new ALJs and one support staff and relying more on temporary ALJ services is shown in Attachment B.

In summary, although OAH is neutral on this bill, if it passes, we believe it needs to be amended to provide OAH with an appropriation of special fund moneys necessary to do this work. If this bill passes, with an appropriation as OAH suggests, OAH can provide the hearing services DOT will need to conduct all of its hearings.

ATTACHMENT A

Salary per ALJ - \$57,471 per ALJ per year (this includes the 4 percent / 4 percent salary increases of SB 2189).

Salary for one support staff person - \$25,850 per year (this includes the 4 percent / 4 percent salary increases of SB 2189).

Total salaries for 5 ALJs and 1 support staff for the biennium = \$626,410

Total benefits for 5 ALJs for the biennium = \$219,244

Total salaries and benefits for the biennium = \$845,654

Equipment per telecommute ALJ (desk, chair, computer, digital recorder, printer, etc.) = \$5250

Total equipment expenses = \$26,250

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

Total monthly expenses = \$28,200

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

Total travel expenses = \$25,000

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

Total Training and CLE costs = \$15,000

Supplies, equipment, and expenses for one support staff person - \$3,662 (chair, computer, software, monthly expenses, misc.). Although OAH does not have space to centrally locate five ALJs, and neither does it want to, it does have space to centrally locate an additional support staff person, and it has some equipment already available.

Total salaries and benefits = \$845,654

Total operating costs = \$98,112

Total appropriation = \$943,766

[This option is \$174,062 more than Attachment B.]

ATTACHMENT B

Salary per ALJ - \$57,471 per ALJ per year (this includes the 4 percent / 4 percent salary increases of SB 2189).

Salary for one support staff person - \$25,850 per year (this includes the 4%/4% salary increases of SB 2189).

Total salaries for 4 ALJs and 1 support staff for the biennium = \$511,468

Total benefits for 4 ALJs and 1 support staff for the biennium = \$179,014

Total salaries and benefits for the biennium = \$690,482

Equipment per telecommute ALJ (desk, chair, computer, digital recorder, printer, etc.) = \$5250

Total equipment expenses = \$21,000

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

Total monthly expenses = \$22,560

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

Total travel expenses = \$20,000

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

Total Training and CLE costs = \$12,000

Supplies, equipment, and expenses for one support staff person - \$3,662 (chair, computer, software, monthly expenses, misc.). Although OAH does not have space to centrally locate five ALJs, and neither does it want to, it does have space to centrally locate an additional support staff person, and it has some equipment already available.

Total salaries and benefits = \$690,482

Total operating costs = \$79,222

Total appropriation = \$769,704

[This option is \$174,062 less than Attachment A.]

#5

Testimony of Mary Ellen Varvel
In opposition to SB 2375
House Transportation Committee of the North Dakota Legislature
March 8, 2007

Mr. Chairman and members of the Committee:

My name is Mary Ellen Varvel. I am here as a private citizen on my own time. What I say does not represent the North Dakota Department of Transportation (NDDOT) or its position in any way.

I am a licensed attorney with over 20 years of experience as a hearing officer at NDDOT. I have personally handled well over 5000 implied consent cases plus hundreds of other cases. As chief hearing officer I have reviewed and assigned over 6000 implied consent cases plus hundreds of other cases.

I strongly favor fairness to all citizens, prompt and timely responses to hearing requests, and fiscal responsibility in the handling of administrative hearings. I oppose SB 2375 for three reasons:

First, the cost per hearing would be much higher if NDDOT hearings were to be transferred to the Office of Administrative Hearings (OAH). In 2006, NDDOT handled over 1800 cases, and the average cost per case was around \$200. The cost at OAH would include OAH's requested appropriation (\$943,766), plus OAH's hourly charges to NDDOT, plus NDDOT's costs for case preparation and prosecution.

Second, there would be additional steps and thus additional time required if NDDOT hearings were to be transferred to OAH. Implied consent hearings must be held within 30 days of the issuance of the temporary permit. If a case cannot be heard within the 30-day time limit, it must be dismissed. As the driver has ten days to mail a request for a hearing, half or more of the 30-day period may have passed before NDDOT receives the request.

Third, NDDOT hearing officers would not be transferred to OAH. Instead, OAH plans to hire new administrative law judges (ALJs) and require them to have their offices in their own homes. NDDOT hearing officers are attorneys who have expertise in implied consent law, yet SB 2375 would throw away the benefit of their knowledge and experience.

#4 not present on 38-07
Present on 39-07

HOUSE TRANSPORTATION COMMITTEE
March 8, 2007

North Dakota Department of Transportation
Francis G. Ziegler, P.E., Director

SB 2375

Good morning Mr. Chairman and members of the committee. My name is Francis Ziegler and I'm Director of the North Dakota Department of Transportation. I'm here this morning to provide information on the Department's processing of impaired driver hearings as well as to provide some information that should be considered in advancing SB 2375.

The Department wants to make it clear that it is supportive of this policy discussion and we believe it is good to consider what constitutes adequate due process regarding impacts to driver's licenses. The Department is and always has been interested in a hearing process that is not only in fact fair and objective, but also appears to be fair and objective by all persons involved. We've taken the statutory assignment of handling these hearings very seriously and have worked continuously to provide a fair and efficient process for handling hearings.

We believe the Department's current hearing process works well. NDDOT has worked very hard to hire, train and retain extremely competent hearing officers who provide fair and impartial hearings. The Department has implemented significant improvements the past dozen years or so. For example, all Department hearing officers are now licensed attorneys. In addition, the Department has spent considerable time and resources on training and we are continuously evaluating and improving our hearing processes and procedures.

We'd like to point out several additional items of information along with some suggestions:

1. The Department processed 1,470 DUI hearings in 2006, which was a record year as was 2005, so the number of hearings continues to grow. This equates to the processing of almost 6 hearings per day. The 1,470 hearings were a subset of approximately 5,299 suspensions, revocations, and cancellations for DUI's in 2006. Of those 5,299 files, 3,829 impaired drivers did not request a hearing.
2. When appealed, a large percentage of the Department's hearing officers' decisions are affirmed by the courts. In 2005, 105 DUI hearing rulings were appealed with 85 of the hearing officer decisions upheld and 20 reversed.
3. The NDDOT hearing process currently costs approximately \$720,000 per biennium.
4. The hearing process is often about law enforcement practices and law enforcement's application of driving laws. Since the Department has little control over law enforcement policies or training, the hearing is often a review of the law

enforcement's decision process, not the Department's processes. A high level of expertise is necessary for hearing officers to interpret the significance of variations in enforcement steps in order to make a final decision. If SB 2375 is passed as proposed, I respectfully recommend transfer of current NDDOT hearing officers to the Office of Administrative Hearings to provide for a more seamless and efficient transition to the new hearing process. In this regard, we have attached a draft amendment for the Committee's consideration.

5. NDDOT DUI hearings are often conducted without separate department legal representation but discussions with Highway Patrol indicate that Department representation of law enforcement would be preferred should all NDDOT hearings be transferred to the Office of Administrative Hearings. It is estimated that 3 legal representatives would be required to provide this representation. NDDOT would not ask for FTE's but would request additional budget authority and the decision to either contract the service, or add FTE's, which would be handled through the emergency commission process. Using the OAH fiscal note, this would result in an additional cost of approximately \$400,000 to \$500,000 per biennium.
6. The NDDOT currently does not have clear statutory authority to appeal its own rulings but it can appeal rulings by district courts overturning past NDDOT rulings. It is logical for NDDOT to have the right to appeal Office of Administrative Hearings decisions, should these hearings be transferred. This bill should be amended to address this issue.
7. The hearing record is currently filed electronically in a secure NDDOT environment as part of the driver's license record system. Since the OAH proposes to implement HB 2375 by having staff work out of their homes, an additional cost should be anticipated over the current fiscal note, for electronic filing of this information. It is estimated that this will increase the cost for OAH operations and subsequent NDDOT billings by approximately \$50,000 per biennium

In summary, NDDOT supports the concept of reviewing current driver's license hearing processes to ensure appropriate levels of due process are provided for those involved.

Thank you! We are available to answer any questions you may have at this time.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2375

Page 1, line 6, after "hearings" insert "; and to provide for transition"

Page 16, after line 27, insert:

"SECTION 14. TRANSITION. All full time Department of Transportation hearing officer employees that currently conduct hearings for the Department of Transportation are transferred to and become the employees of the office of administrative hearings."

Renumber accordingly