

2009 SENATE APPROPRIATIONS

SB 2017

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2017

Senate Appropriations Committee

Check here for Conference Committee

Hearing Date: 01-20-09

Recorder Job Number: 7347

Committee Clerk Signature



Minutes:

V. Chair Bowman called the committee hearing to order at 3:00 pm in regards to SB 2017 concerning the Office of Administrative Hearings (OAH).

Allen C. Hoberg, Director, Office of Administrative Hearings

(Written testimony # 1)

12:36

The actual need for using temporary administrative law judges ("ALJs") exceeds the anticipated need. OAHs operating expenses may exceed

V. Chair Bowman: Have you prepared amendments?

Allen C. Hoberg: Yes, they're in the back of the testimony. I have consulted with the budget analyst at OMB about the correct amounts.

Senator Kilzer: Was it 2 or 4 years ago that DOT took on the duties or they brought their own ALJs in house?

Allen C. Hoberg: Two years ago, there was a bill to bring the DOT hearing officers under the office of administrative hearings. They have been separate ever since they were established in 1981. I think there may have been 2-4 bills over that period of time to bring them under the OAH, but as you know, that didn't happen this last session. We have been talking with them about that possibility again, but nothing is coming of it.

Senator Fischer expressed a concern about real estate appraisals and asked if he could get a summary of the action or outcome of the Board of Real Estate Appraisers has been before you since 2004.

Allen C. Hoberg: I think we've only had the one. We also have one that's currently in existence that hasn't come to committee.

Senator Fischer: All of these boards do have ability to reject your decision, correct? Is there anyone that doesn't have that authority?

Allen C. Hoberg: Of boards and commissions, they all have the ability to either accept, to not accept or to modify our decisions.

V. Chair Bowman asked for any other questions. Hearing none, he closed the hearing.

Note –

The Office of Administrative Hearings supplied the information on Real Estate Appraiser Qualifications requested by Senator Fischer. (Attachment #2)

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2017

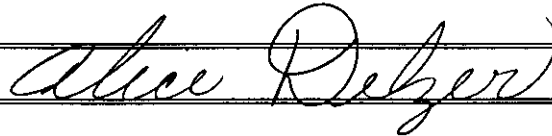
Senate Appropriations Committee

Check here for Conference Committee

Hearing Date: 02-09-09

Recorder Job Number: 8989

Committee Clerk Signature



Minutes:

Chairman Holmberg opened the discussion on SB 2017 in regards to the Office of Administrative hearings. (05.36)

Senator Wardner explained the amendment on 2017 removes two FTE's and these services will be provided. It is all special funds. No general funds in the budget. They have to put some money back in for operating increases in the contract for the temporaries. There is a savings there. There is a reduction from 8 FTE's to 5 FTE's for the agency.

Senator Wardner moved to adopt the amendments to SB 2017. Seconded by Senator Christmann .

Chairman Holmberg stated we have a motion and a second.

Senator Krauter questioned the operating expense.

Senator Wardner indicated he didn't know. They had the amendments drawn up.

Chairman Holmberg asked either OMB or the Council if they have knowledge of the discrepancy. There was no comment. Chairman Holmberg called for an oral vote on the amendment. 98036.0101 all in favor stated aye. None opposed. The motion carried.

Senator Wardner moved Do Pass on SB 2017 as amended. Seconded by Senator Christmann . Roll call was taken. Yea: 13; Nays: 0; Absent 1. Senator Wardner will carry the bill.

Chairman Holmberg closed the hearing on SB 2017.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2017

Page 1, line 11, replace "\$185,042" with "(\$350,058)" and replace "1,453,488" with "918,388"

Page 1, line 12, replace "8,200" "217,700" and replace "382,617" with "592,117"

Page 1, line 13, replace "\$193,242" with "(\$132,358)" and replace "1,836,105" with "1,510,505"

Page 1, line 14, replace "0.00" with "(3.00)" and replace the second "8.00" with "5.00"

Renumber accordingly

A copy of the statement of purpose of amendment is attached.

STATEMENT OF PURPOSE OF AMENDMENT:

Senate Bill No. 2017 - Office of Administrative Hearings - Senate Action

	Executive Budget	Senate Changes	Senate Version
Salaries and wages	\$1,453,488	(\$535,100)	\$918,388
Operating expenses	382,617	209,500	592,117
Total all funds	\$1,836,105	(\$325,600)	\$1,510,505
Less estimated income	1,836,105	(325,600)	1,510,505
General fund	\$0	\$0	\$0
FTE	8.00	(3.00)	5.00

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

	Removes 3 FTE Positions¹	Provides Funding for Contract ALJs²	Total Senate Changes
Salaries and wages	(\$535,100)		(\$535,100)
Operating expenses		209,500	209,500
Total all funds	(\$535,100)	\$209,500	(\$325,600)
Less estimated income	(535,100)	209,500	(325,600)
General fund	\$0	\$0	\$0
FTE	(3.00)	0.00	(3.00)

¹ Removes 2 FTE administrative law judge positions and 1 FTE administrative assistant position. Services will be provided by temporary contract administrative law judges.

² Increases operating expenses to provide additional funding for temporary contract administrative law judges.

Date: 2/9/01
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2011

Senate _____ Committee _____

Check here for Conference Committee

Legislative Council Amendment Number -0101

Action Taken dp the Amendment

Motion Made By Wardner Seconded By Christmann

Representatives	Yes	No	Representatives	Yes	No
Senator Wardner			Senator Robinson		
Senator Fischer			Senator Lindaas		
V. Chair Bowman			Senator Warner		
Senator Krebsbach			Senator Krauter		
Senator Christmann			Senator Seymour		
Chairman Holmberg			Senator Mathern		
Senator Kilzer					
V. Chair Grindberg					

Total Yes 13 No 0

Absent 1

Floor Assignment _____

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

Date: 2/9/09
Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2017

Senate _____ Committee _____

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken dp with amendments

Motion Made By Wardner Seconded By Christmann

Representatives	Yes	No	Representatives	Yes	No
Senator Krebsbach	✓		Senator Seymour	✓	
Senator Fischer	✓		Senator Lindaas	✓	
Senator Wardner	✓		Senator Robinson	✓	
Senator Kilzer	✓		Senator Warner	✓	
V. Chair Bowman	✓		Senator Warner		
Senator Christmann	✓		Senator Krauter	✓	
V. Chair Grindberg	✓		Senator Mathern	✓	
Chairman Holmberg	✓				

Total Yes 13 No 0

Absent 1

Floor Assignment Wardner

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

REPORT OF STANDING COMMITTEE

SB 2017: Appropriations Committee (Sen. Holmberg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2017 was placed on the Sixth order on the calendar.

Page 1, line 11, replace "\$185,042" with "(\$350,058)" and replace "1,453,488" with "918,388"

Page 1, line 12, replace "8,200" with "217,700" and replace "382,617" with "592,117"

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Page 1, line 14, replace "0.00" with "(3.00)" and replace the second "8.00" with "5.00"

Renumber accordingly

A copy of the statement of purpose of amendment is on file in the Legislative Council Office.
attached.

2009 HOUSE APPROPRIATIONS

SB 2017

2009 HOUSE STANDING COMMITTEE MINUTES

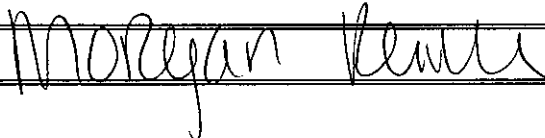
Bill/Resolution No. SB 2017

House Appropriations Committee
Human Resources Division

Check here for Conference Committee

Hearing Date: 3/12/09

Recorder Job Number: 10856

Committee Clerk Signature 

Minutes:

Chairman Pollert: Opened the hearing on SB 2017.

Allen Hoberg: Testimony Handout (Attachment A)

Chairman Pollert: I have one question. The only change that you have was originally the salary equity issue. Has that been addressed as well when you went from 8 down to 5?

Allen Hoberg: Yes it has.

Representative Kerzman: How can you old 9 part time trainees or whatever you call them. You would think they would move on or get tired of waiting around.

Allen Hoberg: Four of these people are new people. When we started doing WSI hearings back in 1995 we started with like 19 temporary ALJ's. At that time you may recall that there was a huge backload of WSI cases. We reduced that backlog in about 2 years. I had to let some people go. One person wanted to leave. Most people don't want to stop conducting these hearings. They find it rewarding and they like the atmosphere. We don't have trouble keeping people. Two of the three people that were with us previously before WSI left have been with us from the beginning. These people tend to stay. Four of these people are new people and they do need some more training. We have had in house training for them and we have had a lead ALJ who is very experienced but they do need more training.

Representative Kerzman: Do you provide any kind of benefits for the temporaries?

Allen Hoberg: No it is an hourly rate. There are independent contractors. One of them is in semi retirement. The others have things they are doing. They do this on a contract basis. Some do a couple hearings a month. Some of them are 1/3 time.

Chairman Pollert: I don't see much happening but we will get it out next week.

Representative Bellew: I move a do pass.

Representative Kreidt: I will second that.

Chairman Pollert: We will take the roll call on a do pass on SB 2063. The motion passes 8-0-0.

Representative Kerzman: I will carry this to the floor.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2017

House Appropriations Committee

Check here for Conference Committee

Hearing Date: April 1, 2009

Recorder Job Number: 11578

Committee Clerk Signature

Shirley Branning

Minutes:

Chairman Svedjan: Brought forth SB 2017 for action.

Rep. Kerzman: We did not have any amendments. There is \$11,000 for equity. The Senate removed 3 FTEs. The workload has dropped. They have gone from 8 employees to 5.

Rep. Kerzman: Moved to remove the equity funding.

Rep. Wieland: Second.

The motion carried by voice vote and the amendment was adopted.

Chm. Svedjan: Is this agency impacted because of WSI?

Rep. Kerzman: Move to Do Pass on SB 2017. They did about 60 hearings.

Rep. Wald: What is the status of HB 1464 that deals with the WSI issue?

Chm. Svedjan: I don't know.

Rep. Wald: It's on the green sheets on the bottom.

Roxanne Woeste, Legislative Council Representative: It's on the Senate's calendar.

Chm. Svedjan: Were there amendments and if so what did they do to it?

Ms. Woeste: It was a Do Pass out of Senate Industry, Business and Labor.

Rep. Wieland: Second.

Chm. Svedjan: Further discussion? Seeing none on the motion for a **Do Pass As Amended** for SB 2017. Take a roll call vote.

Vote: 20 Yes 0 No 5 Absent Motion carries. Carrier: Rep. Kerzman.

98036.0201
Title.0300
Fiscal No. 1

Prepared by the Legislative Council staff for
House Appropriations
April 1, 2009

VR
4/2/09
1082

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2017

Page 1, line 11, replace "\$350,058" with "\$361,851" and replace "918,388" with "906,595"

Page 1, line 13, replace "\$132,358" with "\$144,151" and replace "1,510,505" with
"1,498,712"

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT - LC 98036.0201 FN 1

A copy of the statement of purpose of amendment is attached.

STATEMENT OF PURPOSE OF AMENDMENT:

Senate Bill No. 2017 - Office of Administrative Hearings - House Action

	Executive Budget	Senate Version	House Changes	House Version
Salaries and wages	\$1,453,488	\$918,388	(\$11,793)	\$906,595
Operating expenses	382,617	592,117		592,117
Total all funds	\$1,836,105	\$1,510,505	(\$11,793)	\$1,498,712
Less estimated income	1,836,105	1,510,505	(11,793)	1,498,712
General fund	\$0	\$0	\$0	\$0
FTE	8.00	5.00	0.00	5.00

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

	Removes Salary Equity Funding¹	Total House Changes
Salaries and wages	(\$11,793)	(\$11,793)
Operating expenses		
Total all funds	(\$11,793)	(\$11,793)
Less estimated income	(11,793)	(11,793)
General fund	\$0	\$0
FTE	0.00	0.00

¹ This amendment removes funding added in the executive budget for state employee salary equity adjustments.

Date: 4/1/09
 Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2017

Full House Appropriations Committee

Check here for Conference Committee

Legislative Council Amendment Number TBD

Action Taken Remove equity funds

Motion Made By Kerzman Seconded By Wieland

Representatives	Yes	No	Representatives	Yes	No
Chairman Svedjan					
Vice Chairman Kemperich					
Rep. Skarphol			Rep. Kroeber		
Rep. Wald			Rep. Onstad		
Rep. Hawken			Rep. Williams		
Rep. Klein					
Rep. Martinson					
Rep. Delzer			Rep. Glasheim		
Rep. Thoreson			Rep. Kaldor		
Rep. Berg			Rep. Meyer		
Rep. Dosch					
Rep. Pollert			Rep. Ekstrom		
Rep. Bellew			Rep. Kerzman		
Rep. Kreidt			Rep. Metcalf		
Rep. Nelson					
Rep. Wieland					

Total (Yes) _____ No _____

Absent _____

Floor Assignment Voice Vote - Carries

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

Date: 4/1/09
 Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2017

Full House Appropriations Committee

Check here for Conference Committee

Legislative Council Amendment Number TBD

Action Taken Do Pass As Amended

Motion Made By Kernan Seconded By Wieland

Representatives	Yes	No	Representatives	Yes	No
Chairman Svedjan	✓				
Vice Chairman Kempenich					
Rep. Skarphol	✓		Rep. Kroeber	✓	
Rep. Wald	✓		Rep. Onstad	✓	
Rep. Hawken	✓		Rep. Williams	✓	
Rep. Klein	✓				
Rep. Martinson	✓				
Rep. Delzer	✓		Rep. Glasheim	✓	
Rep. Thoreson			Rep. Kaldor		
Rep. Berg			Rep. Meyer	✓	
Rep. Dosch	✓				
Rep. Pollert	✓		Rep. Ekstrom		
Rep. Bellew	✓		Rep. Kerzman	✓	
Rep. Kreidt	✓		Rep. Metcalf	✓	
Rep. Nelson	✓				
Rep. Wieland	✓				

Total (Yes) 20 No 0

Absent 5

Floor Assignment Rep. Kernan

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

REPORT OF STANDING COMMITTEE

SB 2017, as engrossed: Appropriations Committee (Rep. Svedjan, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (20 YEAS, 0 NAYS, 5 ABSENT AND NOT VOTING). Engrossed SB 2017 was placed on the Sixth order on the calendar.

Page 1, line 11, replace "\$350,058" with "\$361,851" and replace "918,388" with "906,595"

Page 1, line 13, replace "\$132,358" with "\$144,151" and replace "1,510,505" with "1,498,712"

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT - LC 98036.0201 FN 1

A copy of the statement of purpose of amendment is on file in the Legislative Council Office.

2009 SENATE APPROPRIATIONS

CONFERENCE COMMITTEE

SB 2017

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2017 conference committee

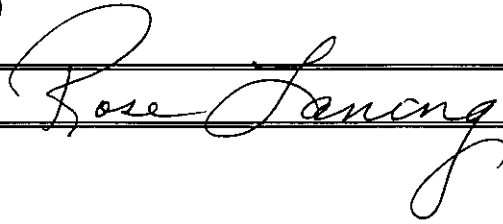
Senate Appropriations Committee

Check here for Conference Committee

Hearing Date: April 21, 2009

Recorder Job Number: 12059

Committee Clerk Signature



Minutes:

Senator Wardner called the conference committee hearing to order on SB 2017 which is an appropriation for the Office of Administrative Hearings. Roll call was taken. Committee members present were: **Senator Holmberg, Senator Seymour, Rep. Nelson, Rep. Kreidt, and Rep. Kerzman.**

Senator Wardner: We have one issue and one issue only which we have chewed over many times and I don't suppose there is resolution at this time.

Rep. Nelson: Again, the only issue that is in dispute is the equity position and as far as I know, there has been no resolution between the House and the Senate on that particular issue. So our hands are bound by our leadership. We can discuss everything except equity until that's resolved.

Senator Wardner: I'm going to ask the scheduler to hold this one until this issue is done. Those of us on the Senate side, especially if we have other bills that we should be meeting on and we can do some work on. We'll save this one and when the time is right, we'll come in and be done in five minutes. Isn't that right?

Rep. Nelson: Sounds like a deal.

Senator Wardner recessed the hearing until we are called by the chair.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2017

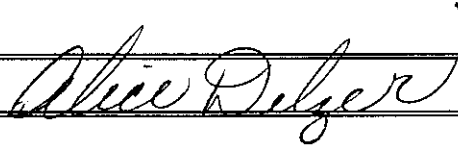
Senate Appropriations Committee

Check here for Conference Committee

Hearing Date: 04-24-09

Recorder Job Number: 12193

Committee Clerk Signature



Minutes:

Chairman (Chm) Wardner called the conference committee to order at 11:00 am in reference to SB 2017. Let the record show all conferees were present. They are as follows: Senators Holmberg, Seymour; Representatives Nelson, Kreidt, Kerzman. Tammy Dolan with OMB and Sheila Sandness, Legis. Council were also present.

Chm. Wardner This is the budget bill for Office of Administrative Hearings. I would entertain a motion.

Senator Holmberg made the motion. Seconded by Representative Nelson.

Chm. Wardner asked for any discussion. There was none.

The roll call vote was taken resulting in 6 yeas, 0 nays, 0 absent. Chm. Wardner will carry the bill. The meeting was adjourned.

**REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)**

Bill Number 2017 (, as ~~(re)~~ engrossed): Date: 4-24-09

Your Conference Committee Senate Appropriations

For the Senate:

For the House:

	<u>4/24</u> YES / NO				<u>4/20</u> YES / NO		
<u>Wardner</u>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Nelson</u>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Holmberg</u>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Kreidt</u>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Seymour</u>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Kergman</u>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (S/J/HJ) page(s) 1248-1249

and place 2017 on the Seventh order.

_____, adopt (further) amendments as follows, and place _____ on the Seventh order:

_____, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

DATE: 4/24/09
CARRIER: Wardner

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: Holmberg

SECONDED BY: Nelson

VOTE COUNT 6 YES 0 NO 0 ABSENT

REPORT OF CONFERENCE COMMITTEE

SB 2017, as engrossed: Your conference committee (Sens. Wardner, Holmberg, Seymour and Reps. Nelson, Kreidt, Kerzman) recommends that the **SENATE ACCEDE** to the House amendments on SJ pages 1248-1249 and place SB 2017 on the Seventh order.

Engrossed SB 2017 was placed on the Seventh order of business on the calendar.

2009 TESTIMONY

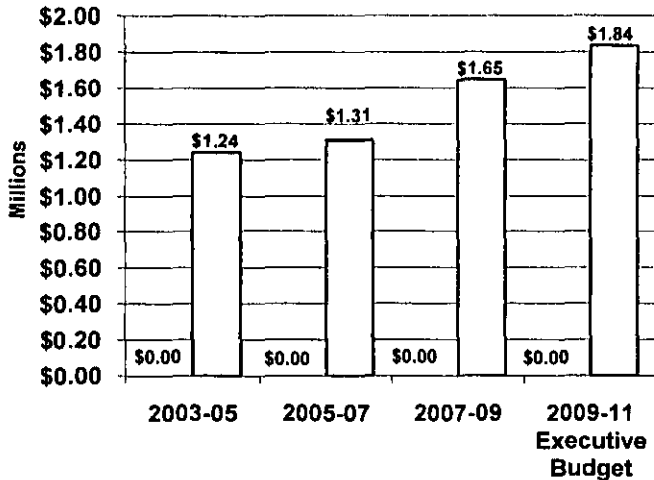
SB 2017

**Department 140 - Office of Administrative Hearings
 Senate Bill No. 2017**

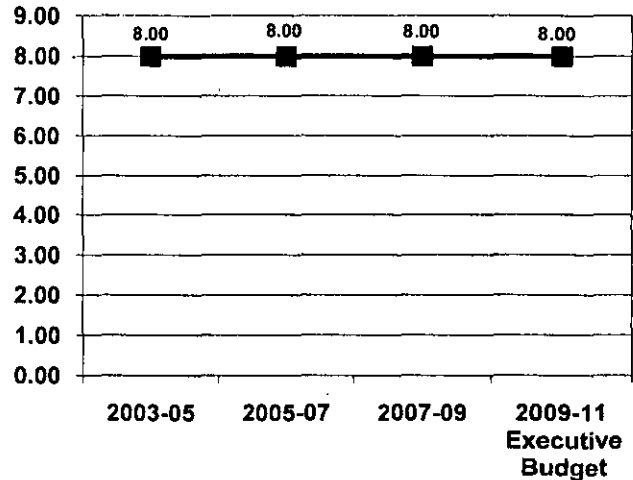
	FTE Positions	General Fund	Other Funds	Total
2009-11 Executive Budget	8.00	\$0	\$1,836,105	\$1,836,105
2007-09 Legislative Appropriations	8.00	0	1,646,699	1,646,699 ¹
Increase (Decrease)	0.00	\$0	\$189,406	\$189,406

¹The 2007-09 appropriation amounts include \$3,836 of other funds for the agency's share of the \$10 million funding pool appropriated to the Office of Management and Budget for special market equity adjustments for classified employees.

Agency Funding



FTE Positions



■ General Fund □ Other Funds

First House Action

The Senate did not change the executive budget recommendation for the Office of Administrative Hearings. Attached is a summary of first house changes.

Executive Budget Highlights

	General Fund	Other Funds	Total
1. Provides funding to address salary equity issues, including \$1,200 for the related second-year salary increase		\$11,793	\$11,793

Continuing Appropriations

No continuing appropriations for this agency.

Major Related Legislation

House Bill No. 1113 - This bill relates to state employee complaint appeals.

House Bill No. 1464 - This bill relates to Workforce Safety and Insurance administrative hearings.

Senate Bill No. 2357 - This bill relates to discharge for cause hearings.

ATTACH:1

STATEMENT OF PURPOSE OF AMENDMENT:**Senate Bill No. 2017 - Funding Summary**

	Executive Budget	Senate Changes	Senate Version
Office of Administrative Hearings			
Salaries and wages	\$1,453,488	(\$535,100)	\$918,388
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Bill Total			
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Department 140 - Office of Administrative Hearings - Detail of Senate Changes

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¹ Removes 2 FTE administrative law judge positions and 1 FTE administrative assistant position. Services will be provided by temporary contract administrative law judges.

² Increases operating expenses to provide additional funding for temporary contract administrative law judges.

1



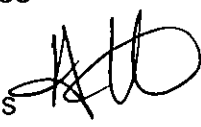
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF NORTH DAKOTA
1707 North 9th Street
Bismarck, North Dakota 58501-1882

Allen C. Hoberg
DIRECTOR

701-328-3260
Fax 701-328-3254
oah@nd.gov
www.nd.gov/oah

MEMORANDUM

TO: Sixty-first Legislative Assembly
State of North Dakota
Senate Appropriations Committee

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

RE: OAH 2009-2011 Operating Budget Request
Senate Bill No. 2017

DATE: January 20, 2009

The 2007-2009 biennium has been both difficult and satisfying for OAH. As you know, in November 2007, Workforce Safety and Insurance ("WSI") left OAH and began contracting with its own hearing officers to conduct workers compensation hearings. This meant that in the following months OAH had to reduce its permanent staff by two administrative law judges ("ALJs") and one support staff person. However, in August 2008, WSI returned to using OAH ALJs to conduct its hearings. This was a result of talks between WSI and OAH and interventions by both the Governor and the Attorney General. After the interim director started at WSI, WSI and OAH were able to come to an agreement about a contract for OAH to conduct WSI hearings for the remainder of this biennium, and, with the passage of Initiated Measure No. 4, WSI is now required to

contract with OAH to conduct its administrative hearings and OAH ALJs are now required to issue final decisions for WSI hearings.

Thus, there was a period of nine months when OAH received no new WSI hearings to conduct but OAH did continue to conduct WSI hearings for requests received prior to November 1, 2007, until those matters were completed. Accordingly, it was a gradual process in late 2007 and into 2008 of winding down WSI work and then, beginning in August 2008, gearing up to again conduct WSI hearings.

The agreement between OAH and WSI is for OAH, beginning in August 2008, to contract with most of the temporary hearing officers that contracted with WSI from November to August, to continue conducting WSI hearings but as ALJs under an OAH "Lead ALJ." OAH, then, supervises, trains, and evaluates these new temporary, contract ALJs. Some of these people originally were temporary, contract ALJs with OAH before WSI left OAH. OAH conducted in-house training for these ALJs in August and again in December 2008, after the initiated measure passed. OAH proposes to continue contracting with these temporary ALJs during the 2009-2011 biennium.

But, of course, WSI is not the only agency for which OAH conducts hearings. Since OAH began operations in 1991, it has received requests to conduct hearings from over

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OAH conducts hearings for state and local agencies and entities that are required to use OAH (see N.D.C.C. §§ 54-57-03 (1); 40-51.2-12; 40-47-01.1), for state agencies that voluntarily use OAH (e.g., the Public Service Commission, the Insurance Department, the Industrial Commission, the Department of Transportation for dealer licensing hearings, and Student Loans of North Dakota for student loan hearings), and for local entities that voluntarily use OAH (cities and counties that use OAH to conduct

employee discipline, tobacco sales enforcement, or public nuisance abatement hearings).

OAH's structure for conducting hearings at the start of this biennium was eight permanent FTEs (five ALJs and three support staff) and four temporary, contract ALJs. By May 2008 we were down to three permanent ALJs and two support staff, as one support staff person resigned and two ALJs took early retirement, as well as three temporary ALJs. Then, since August 1, 2008, OAH's structure has been five permanent FTEs (three ALJs and two support staff) and nine temporary ALJs. See attached organizational chart, Attachment "C." Again, OAH proposes to move forward into the 2009-2011 biennium with five full-time, permanent FTEs (three permanent ALJs and two support staff) and nine temporary, contract ALJs. Seven of those temporary ALJs will conduct, primarily WSI hearings. The other two will conduct other agency hearings, as needed. Most hearings for other agencies, besides WSI hearings, will be conducted by OAH's three permanent ALJs.

BUDGET ANALYSIS

OAH's 2007-2009 budget for administrative hearings shows a total funding of \$1,646,699. When OAH submitted its proposed 2009-2011 budget to OMB there remained uncertainty as to how OAH would continue its operations. Along with its

proposed budget for five FTEs, OAH submitted an optional budget that included maintaining its eight full-time, permanent FTEs from the previous biennium. The governor's recommended budget for OAH includes the optional budget of eight FTEs, and recommends a budget of \$1,836,105 for the coming biennium. OAH has consulted with the State Advisory Council for Administrative Hearings, WSI, and the Governor's office and decided that it will not to go forward with the optional budget which would maintain the 8 FTEs, but will stay with its proposed budget which would reduce FTEs to five and increase its operating budget to allow for more temporary, contract ALJs. Since we made that decision, we have further consulted with OMB and believe we must amend SB 2017, making the following adjustments to OAH's proposed budget as recommended by the Governor. See Attachment "D," Proposed Amendments to Senate Bill No. 2017.

Those amendments would:

1. Reduce FTEs from eight to five.
2. Reduce salaries and wages by \$501,496
3. Increase operating expenses by \$217,700.

Thus, OAH's salaries and wages for 2009-2011 should be \$918,388 (with Governor's proposed five percent/five percent increase) and OAH's operating expenses should be \$592,117. The decrease in salaries and wages is because of three fewer FTEs. The

increase in operating is because of the increase in temporary, contract ALJ costs (professional services fees) which are paid to ALJs on an hourly rate basis out of OAH's operating expenses budget. The increased operating expenses budget also includes \$15,000 that is for additional training moneys for temporary ALJs. One of WSI's recent audits stressed the need for additional training for its temporary, contract hearing officers. Some of those former hearing officers who are now with OAH still need additional training; thus the increase in OAH's training budget.

The attached proposed amendment to SB 2017 decreases the salaries and wages line item from \$1,453,488 to \$918,388 and increases the operating expenses line item from \$382,617 to \$592,117. The overall decrease in the governor's recommendation is \$325,600. The total budget for OAH for the upcoming biennium will then be \$1,510,565, which is lower than OAH's 2007-2009 budget of \$1,646,699. However, it should be noted that OAH could exceed the 2007-2009 budget amount, in operating expenses, if the actual need for using temporary ALJs exceeds the anticipated need. In other words, it is quite possible that OAH's operating expenses will exceed \$592,117 because of more use of temporary ALJs than is currently anticipated.

With the return to temporary, contract ALJs primarily conducting WSI hearings for the 2009-2011 biennium, OAH will be returning to its operating structure that existed from

Sixty-first Legislative Assembly
State of North Dakota
Senate Appropriations Committee
January 20, 2009
Page 7

1995-2003. We believe that this structure will allow OAH to continue to meet the hearing requirements of all agencies and entities for which OAH conducts hearings and will allow for the fair and independent conduct of all of these hearings.

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Request Comparison by Year

Files Received Between July 1, 2007, and December 31, 2008

Office of Administrative Hearings

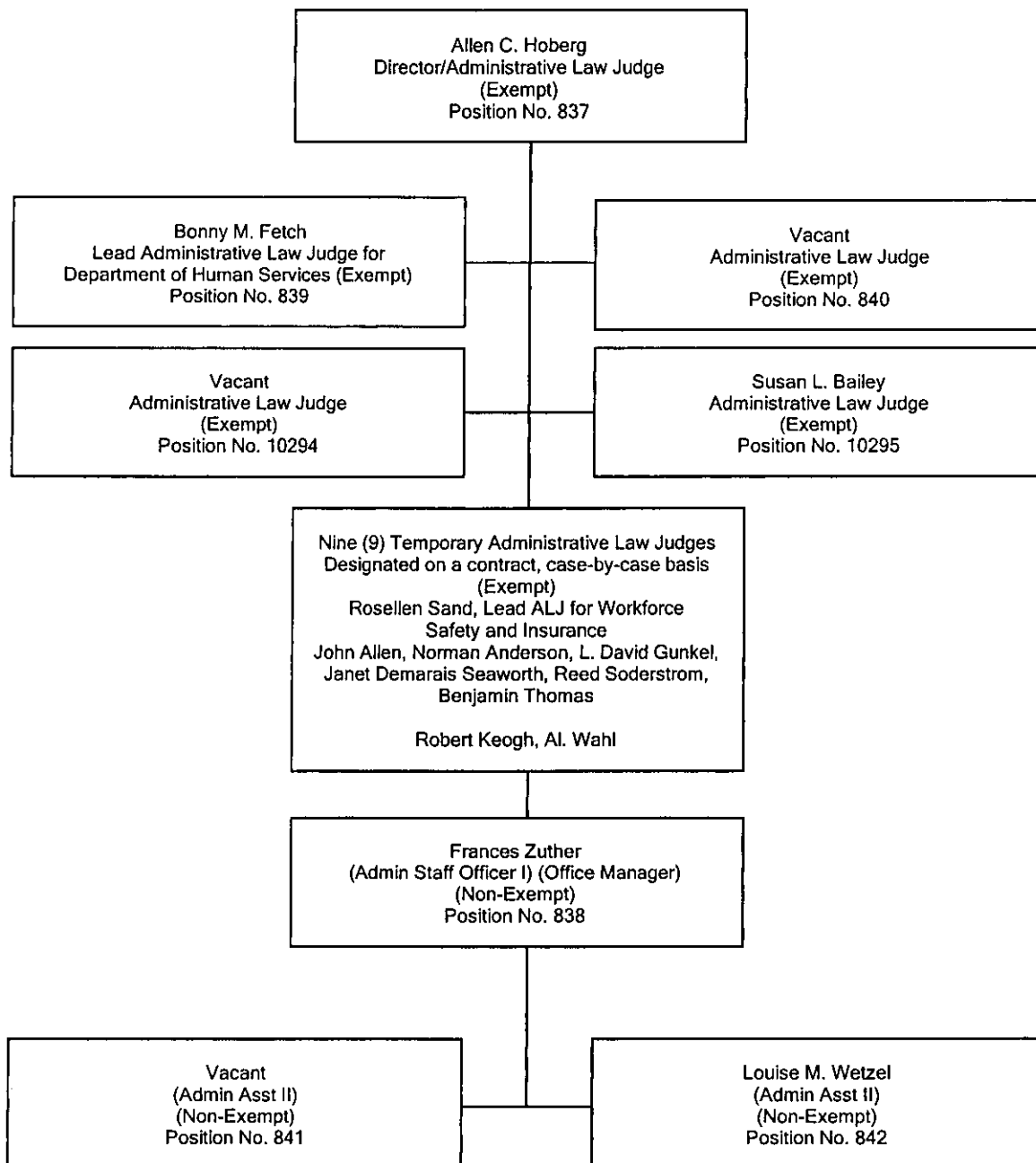
July 1, 2007,
through
June 30, 2008July 1, 2008,
through
Dec. 31, 2008

Agency	TOTALS	July 1, 2007, through June 30, 2008	July 1, 2008, through Dec. 31, 2008
Agriculture Commissioner	1	1	0
Attorney General, Office of	3	3	0
BND, Student Loans of North Dakota	6	3	3
County, Burleigh	1	1	0
DHS, Human Services, Department of	286	203	83
Game and Fish Department	7	5	2
Health, Department of	1	0	1
Human Resource Management Services	11	8	3
IC, Insurance Commissioner	5	2	3
Labor Commissioner	1	1	0
Mandan, ND, City of	1	1	0
Medical Examiners, State Board of	5	3	2
Minot Public School District	1	1	0
Nursing, State Board of	3	3	0
Pharmacy, State Board of	1	1	0
Professional Engineers & Land Surveyors Board	3	2	1
PSC, Public Service Commission	23	18	5
Public Instruction, Department of	4	4	0
Racing Commission	1	1	0
Real Estate Appraisers, Board of	1	0	1
Real Estate Commission	8	4	4
RIO, Retirement & Investment Office	1	0	1
Securities Department	1	1	0
Transportation, Department of	3	1	2
Veterans Affairs, Department of	1	0	1
Veterans Home	1	1	0
Water Commission, State/State Engineer	2	2	0
Williston, ND, City of	1	1	0
Workforce Safety & Insurance	131	60	71
Grand Totals	514	331	183

Hearings Held (by Calendar Year)*Hearings Held Between January 1, 2007, and December 31, 2008**Office of Administrative Hearings**Jan. 1, 2007,
through
Dec. 31, 2007**Jan. 1, 2008,
through
Dec. 31, 2008*

<i>Agency</i>	<i>TOTALS</i>	<i>Jan. 1, 2007, through Dec. 31, 2007</i>	<i>Jan. 1, 2008, through Dec. 31, 2008</i>
1 Attorney General, Office of	1	1	0
2 BND, Student Loans of North Dakota	3	1	2
3 Dental Examiners, Board of	1	1	0
4 DHS, Human Services Department of	16	75	86
5 Electrical Board, N.D. State	1	1	0
6 FI, Banking Board	4	4	0
7 Game and Fish Department	3	2	1
8 Human Resource Management Services	2	0	2
9 IC, Insurance Commissioner	1	1	0
10 Industrial Commission	1	1	0
11 Labor Commissioner	1	1	0
12 Mandan, ND, City of	1	0	1
13 Medical Examiners, State Board of	3	1	2
14 Milk Marketing Board	1	1	0
15 Minot Public School District	1	0	1
16 NDSU, North Dakota State University	1	1	0
17 Nursing, State Board of	1	0	1
18 Professional Engineers & Land Surveyors Board	2	1	1
19 PSC, Public Service Commission	20	7	13
20 Public Instruction, Department of	10	6	4
21 Racing Commission	1	1	0
22 Real Estate Appraisers, Board of	1	1	0
23 Real Estate Commission	5	2	3
24 RIO, Retirement & Investment Office	1	0	1
25 Transportation, Department of	1	0	1
26 Williston, ND, City of	1	0	1
27 Workforce Safety & Insurance	167	136	31
Grand Totals	396	245	151

OFFICE OF ADMINISTRATIVE HEARINGS
 ORGANIZATIONAL CHART
 November 19, 2008



PROPOSED AMENDMENTS TO SENATE BILL NO. 2017

Page 1, line 11, replace "\$185,042" with "\$350,058" and replace "\$1,453,488" with "\$918,388"

Page 1, line 12, replace "8,200" with "217,700" and replace "382,617" with "592,117"

Page 1, line 13, replace "\$193,242" with "\$132,358" and replace "\$1,836,105" with "\$1,510,505"

Page 1, line 14, replace "0.00" with "(3.00)", and replace the second "8.00" with "5.00"

#2



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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Fax 701-328-3254
oah@nd.gov
www.nd.gov/oah

MEMORANDUM

TO: Senate Appropriations Committee

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

RE: Additional testimony on SB No. 2017 –
Real Estate Appraiser Qualifications and Ethics Board hearings

DATE: January 21, 2009

According to information obtained from the OAH case management system, OAH has conducted one hearing for the Real Estate Appraiser Qualifications and Ethics Board ("Board"). There may have been much earlier cases that do not appear on our current case management system, but I do not believe so. There is also currently one active case before the Board that is scheduled for a January 27, 2009, hearing to be conducted by an OAH administrative law judge.

The following is a summary of the one hearing held before the Board, which is the denial of an application by Stefan H. Olafson.

Olafson applied to the Board for a Certified General Real Property Appraiser Permit under N.D.C.C. ch. 43-23.3. On September 20, 2006, the Board issued a Denial of Application and Right to Request Hearing, stating that Olafson's

Sixty-first Legislative Assembly
State of North Dakota
Real Estate Appraiser Qualifications and Ethics Board hearings
January 21, 2009
Page 2

appraisal reports submitted for review with his application did not meet Uniform Standards of Professional Appraisal Practice (“USPAP”). Olafson filed a request for hearing. On January 24, 2007, the Board requested the designation of an OAH ALJ to preside.

Olafson’s administrative hearing was held on March 13 and 14, 2007. Both the Board and Olafson were represented by counsel. At the hearing, there were several witnesses called to testify and numerous exhibits offered and admitted as evidence. The Board also called one expert witness to testify for it and Olafson called two expert witnesses to testify for him. All three were highly qualified USPAP experts.

The ALJ issued a recommended decision (Recommended Findings of Fact, Conclusions of Law, and Order) to the Board on May 14, 2007, after briefs were filed by the attorneys representing Olafson and the Board. The last brief was filed on April 20, 2007. The Board accepted much of the ALJ’s recommended decision but rejected or modified some of it and issued its own Findings of Fact, Conclusions of Law and Order on July 2, 2007.

The ALJ found that the Board's denial of Olafson's application was inappropriate and not in accordance with law and Board policy. He did not determine whether Olafson's appraisal reports complied with USPAP. Rather, he recommended that the Board order reconsideration of Olafson's application based on him submitting more recent appraisal reports for the Board's review according to a recommended procedure for a new reviewer to consider the appraisals and issue a report. The

Board found that its denial of Olafson's application was appropriate and in accordance with law and Board policy but agreed that it would reconsider Olafson's application based on more recent appraisal reports submitted by Olafson. The Board's final order was a modification of the ALJ's proposed final order and the ALJ's recommended procedure for reconsidering Olafson's application.

Olafson did not appeal the Board's final order. But, he did submit a new log of appraisal reports to the Board for it to consider in accordance with their final order and their agreement to reconsider his application. Appraisal reports from his log were selected by the Board for review by a new Board appointed review appraiser. That person reviewed Olafson's newly submitted appraisal reports and stated that

Sixty-first Legislative Assembly
State of North Dakota
Real Estate Appraiser Qualifications and Ethics Board hearings
January 21, 2009
Page 4

the appraisal reports submitted by Olafson did not comply with USPAP. On December 12, 2007, the Board issued another Notice of Denial of Application and Right to Request Hearing to Olafson. It was served on Olafson on December 17, 2007, but Olafson did not request a hearing on this denial of his application.

Please let me know if you want more detailed information about the Olafson hearing.



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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MEMORANDUM

TO: Sixty-first Legislative Assembly
State of North Dakota
House Appropriations Committee - Human Resources Division
FROM: Allen C. Hoberg, Director
Office of Administrative Hearings
RE: OAH 2009-2011 Operating Budget Request
Senate Bill No. 2017
DATE: March 12, 2009

Handwritten note: Same attachments C, B, A given to Senate

The 2007-2009 biennium has been both difficult and satisfying for OAH. As you know, in November 2007, Workforce Safety and Insurance ("WSI") left OAH and began contracting with its own hearing officers to conduct workers compensation hearings. This meant that in the following months OAH had to reduce its permanent staff by two administrative law judges ("ALJs") and one support staff person. However, in August 2008, WSI returned to using OAH ALJs to conduct its hearings. This was a result of talks between WSI and OAH and interventions by both the Governor and the Attorney General. After the interim director started at WSI, WSI and OAH were able to come to an agreement about a contract for OAH to conduct WSI hearings for the remainder of this biennium, and, with the passage of Initiated Measure No. 4, WSI is now required to

contract with OAH to conduct its administrative hearings and OAH ALJs are now required to issue final decisions for WSI hearings.

Thus, there was a period of nine months when OAH received no new WSI hearings to conduct but OAH did continue to conduct WSI hearings for requests received prior to November 1, 2007, until those matters were completed. Accordingly, it was a gradual process in late 2007 and into 2008 of winding down WSI work and then, beginning in August 2008, gearing up to again conduct WSI hearings.

The agreement between OAH and WSI is for OAH, beginning in August 2008, to contract with most of the temporary hearing officers that contracted with WSI from November to August, to continue conducting WSI hearings but as ALJs under an OAH "Lead ALJ." OAH, then, supervises, trains, and evaluates these new temporary, contract ALJs. Some of these people originally were temporary, contract ALJs with OAH before WSI left OAH. OAH conducted in-house training for these ALJs in August and again in December 2008, after the initiated measure passed. OAH proposes to continue contracting with these temporary ALJs during the 2009-2011 biennium.

But, of course, WSI is not the only agency for which OAH conducts hearings. Since OAH began operations in 1991, it has received requests to conduct hearings from over

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OAH's structure for conducting hearings at the start of this biennium was eight permanent FTEs (five ALJs and three support staff) and four temporary, contract ALJs. By May 2008 we were down to three permanent ALJs and two support staff, as one support staff person resigned and two ALJs took early retirement, as well as three temporary ALJs. Then, since August 1, 2008, OAH's structure has been five permanent FTEs (three ALJs and two support staff) and nine temporary ALJs. See attached organizational chart, Attachment "C." Again, OAH proposes to move forward into the 2009-2011 biennium with five full-time, permanent FTEs (three permanent ALJs and two support staff) and nine temporary, contract ALJs. Seven of those temporary ALJs will conduct, primarily, WSI hearings. The other two will conduct other agency hearings, as needed. Most hearings for other agencies, besides WSI hearings, will be conducted by OAH's three permanent ALJs.

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The proposed amendments were adopted in the Senate:

1. Reduced FTEs from eight to five.
2. Reduced salaries and wages by \$535,100.
3. Increased operating expenses by \$209,500.

Thus, with the Senate amendments, OAH's salaries and wages for 2009-2011 will be \$918,388 and OAH's operating expenses will be \$592,117. The decrease in salaries and wages is because of three fewer FTEs. The increase in operating is because of the

increase in temporary, contract ALJ costs (professional services fees) which are paid to temporary ALJs on an hourly rate basis out of OAH's operating expenses budget. The increased operating expenses budget also includes \$15,000 that is for additional training moneys for temporary ALJs. One of WSI's recent audits stressed the need for additional training for its temporary, contract hearing officers. Some of those former WSI hearing officers who are now with OAH still need additional training; thus the increase in OAH's training budget.

Engrossed Senate Bill 2017 decreases the salaries and wages line item for OAH from \$1,453,488 to \$918,388 and increases the operating expenses line item from \$382,617 to \$592,117. The overall decrease in the governor's recommendation is \$325,600. The total budget for OAH for the upcoming biennium will then be \$1,510,505, which is lower than OAH's 2007-2009 budget of \$1,646,699. However, it should be noted that OAH could exceed the 2007-2009 budget amount in operating expenses, if the actual need for using temporary ALJs exceeds the anticipated need. In other words, it is quite possible that OAH's operating expenses will exceed \$592,117 because temporary ALJs are used more than is currently anticipated.

With the return to temporary, contract ALJs primarily conducting WSI hearings for the 2009-2011 biennium, OAH will be returning to its operating structure that existed from

Sixty-first Legislative Assembly
State of North Dakota
Senate Appropriations Committee
March 12, 2009
Page 7

1995-2003. We believe that this structure will allow OAH to continue to meet the hearing requirements of all agencies and entities for which OAH conducts hearings and will allow for the fair and independent conduct of all of these hearings.

Finally, there are some bills pending this session that may increase the number of hearings conducted by OAH ALJs. Senate Bill Nos. 2357 and 2027, and House Bill Nos. 1113 and 1554 hold that possibility. However, the anticipated increase in hearings with the passage of these bills should not be great, and with the structure proposed by OAH in its amended budget for SB 2017, OAH should be able to handle the increased workload.

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