

2011 HOUSE APPROPRIATIONS

HB 1017

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Human Resources Division  
Roughrider Room, State Capitol

HB 1017  
January 20, 2011  
13176

Conference Committee

Committee Clerk Signature

*Meredith Tracholt*

## Explanation or reason for introduction of bill/resolution:

To provide an appropriation for defraying the expenses of the Office of Administrative Hearings

## Minutes:

**Chairman Pollert** called meeting to order on HB 1017.

**Allen C. Hoberg, Director of the Office of Administrative Hearings**, provided testimony which is labeled as attachment ONE. He went over this document with committee members interjecting with questions as follows.

**Representative Kreidt:** Regarding the Dept of Human Services (DHS) hearings, are the majority of those with disputes in regards to rates with nursing home residents?

**Hoberg:** We get very few of those actually. Within DHS, there are 25-30 different types of hearings. Probably the most common are child abuse/neglect hearing, followed mostly by Medicaid appeals.

**Chairman Pollert:** What would be the public service commission hearings?

**Hoberg:** Those would be hearings such as rate setting, informal and formal hearings, and compliant hearings. We do all the prehearing work with the commission actually at the hearing.

**Vice Chairman Bellew:** OAH is a special funded organization. Are those special funds general fund from other organizations?

**Hoberg:** The majority are special funds, including all our big users such as WSI, Human Services. A lot of it comes pass-through for the different applicants that are applying for PSC approval. A lot is also federal funds, especially Human Services.

**Representative Nelson:** Could you walk me through your salary package again? I understand the permanent positions and the compensation package. Do your five temps participate in the increase, and if they do, what levels of fringe do they participate in?

**Hoberg:** They're under a contract rate which is set by the agency, such as WSI, and us, and it is on a case by case basis.

**Representative Nelson:** Is that contract rate changing in the next biennium for those folks?

**Hoberg:** That's under discussion with WSI, it may be. That's a separate matter entirely. That would all come under the professional services, which is why I am asking for the increase. When we started in the last biennium, we were under a different structure. We underestimated the number of contract services we'd have under WSI.

**Representative Kreidt:** Periodically the administrative law judge will rule in favor of the facility, and then the department can go back and overrule the administrative law judge. I don't believe that's correct, but they have that power. Do the administrative law judges feel, why did I go through all this if the department can throw everything out that we've worked on and spent a lot of time and money doing. Do they ever make comments in regard to that?

**Hoberg:** Probably half the hearings that we conduct, including WSI hearings, the ALJs issue final decisions. For almost all of the Human Services hearings we do issue recommended decisions. They accept the vast majority of them. But even if they don't, they see somebody else's perspective, and sometimes they change things. And sometimes when they overrule us, it goes up to the courts and they get overruled. But yes, it can be frustrating sometimes.

**Representative Kreidt:** Going into district court there are additional expenses, which a lot of times individuals won't pursue because they can't afford to do that. I did look at the statutes and played at putting in a bill where the ALJ's decision would be final, but I didn't pursue it.

**Hoberg:** You might want to speak with Representative Koppelman. He approached me about the same thing you were asking about. I believe he's considering a study. Keep in mind some of the Human Services case load is under federal guidelines, that at least some people have interpreted to mean there has to be recommended decisions. But there are a lot of Human Services decisions that aren't under federal guidelines that could be final decisions. It's something that could be looked at.

**Chairman Pollert:** If you take on a case from DHS, roughly a third or half is general funds. If there's a case, is it because of an outside third party, and they would have paid into that fund, whether it be a rate or something or other?

**Hoberg:** It would depend on the case. If it's an application for a wind farm, yes, part of their application is paying for the hearing process. If it's a complaint by the PSC against somebody, then it wouldn't be part of the application fee. If it's a reclamation case where there was a notice of violation, it would be more like a complaint and would not come out of the company either. There's a difference between the application process, where it for sure comes out of the company, and the other types of cases.

**Vice Chairman Bellew:** Committee, do you think we need to do a detail? I don't believe it is really necessary for him to come back (next week) as long as we get the report from Office of Management and Budget.

**Chairman Pollert:** Is it correct to say that a lot of the increase in your budget is due to the initiated measure that passed?

**Hoberg:** It is an indirect result of that. The initiated measure requires WSI to use us. We run the operation, but it's by agreement by WSI and us. Probably 85% of it is handled by the contract ALJs and 15% by our permanent staff. However, three of those contract ALJs have been with us since 1995 doing WSI hearings.

**Chairman Pollert:** There has been no change in scope, we're on a steady course for this session?

**Hoberg:** Correct. Unless something else comes up, caseload will stay essentially the same as the last session.

**Chairman Pollert:** This is one of the quickest budgets ever, there being no further questions from the committee. We'll be at ease until the next section starts.

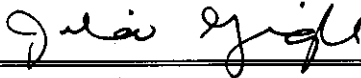
# 2011 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Human Resources Division  
Roughrider Room, State Capitol

HB 1017  
February 10, 2011  
14314

Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

To provide an appropriation for defraying the expenses of the Office of Administrative Hearings

## Minutes:

**Chairman Pollert** opened hearing on HB 1017 and asked committee for any amendments. No amendments being brought forth and no discussion ensued.

**Vice Chairman Bellew:** I move for a do pass on HB 1017 (governor's proposed budget)  
**Representative Kreidt:** second

Due to no further discussion, vote taken, resulting in 6 yes, 1 no and 1 absent. **Representative Kreidt** will bring bill to full committee. HB 1017 was recommended as do pass by committee.

**Chairman Pollert** closed hearing on HB 1017.

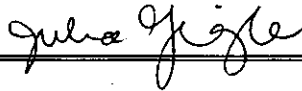
# 2011 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Committee  
Roughrider Room, State Capitol

HB 1017  
2/17/11  
14648

Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the office of administrative hearings.

## Minutes:

**Chairman Delzer:** We'll open discussion on HB 1017

**Representative Kreidt:** this is the budget for the Office of Administrative Hearings. This is all special funds for a total of \$1,827,199. They've got 5 FTEs. The change in this budget was the operating expenses. They had previously been housed in the Land Dept and the Land Dept needed the room. Thus they had to move and incurred an expense of \$17,600 to rent a new space and get moved over there. They had an increase in their operating expenses of \$256,900. This is due to the fact that they now have to conduct a number of hearings with WSI, thus they need to bring on extra help, contract help. We didn't do any changes on the budget. I move a Do Pass on HB 1017.

**Representative Bellew:** second

Due to no further discussion, roll call vote taken, resulting in 21 yes, 0 no, and 0 absent, thus motion carried. **Representative Kreidt** was assigned as carrier of the bill. Hearing closed on HB 1017.

Date: 2/10/11  
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1017

House Appropriations Human Resources Division Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Rep. Bellew Seconded By Rep. Kreidt

Representatives	Yes	No	Representatives	Yes	No
Chairman Chet Pollert	✓		Rep. Lee Kaldor	✓	
Vice Chairman Larry Bellew	✓		Rep. Ralph Metcalf		
Rep. Gary Kreidt	✓				
Rep. Jon Nelson	✓				
Rep. Alon Wiedland	✓				

Total (Yes) 6 No 0

Absent 1

Floor Assignment Rep Kreidt

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

Date: 2/17  
 Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1017

House Appropriations Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Rep. Kreidt Seconded By Rep. Bellew

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer	X		Representative Nelson	X	
Vice Chairman Kempenich	X		Representative Wieland	X	
Representative Pollert	X				
Representative Skarphol	X				
Representative Thoreson	X		Representative Glassheim	X	
Representative Bellew	X		Representative Kaldor	X	
Representative Brandenburg	X		Representative Kroeber	X	
Representative Dahl	X		Representative Metcalf	X	
Representative Dosch	X		Representative Williams	X	
Representative Hawken	X				
Representative Klein	X				
Representative Kreidt	X				
Representative Martinson	X				
Representative Monson	X				

Total (Yes) 21 No 0

Absent 0

Floor Assignment Rep. Kreidt

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



**REPORT OF STANDING COMMITTEE**

**HB 1017: Appropriations Committee (Rep. Delzer, Chairman) recommends DO PASS**  
(21 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1017 was placed on the  
Eleventh order on the calendar.

2011 SENATE APPROPRIATIONS

HB 1017

# 2011 SENATE STANDING COMMITTEE MINUTES

## Senate Appropriations Committee Harvest Room, State Capitol

HB 1017  
March 3, 2011  
Job # 14930

Conference Committee

Committee Clerk Signature *Greta Nelson for Alice Delzer*

### Explanation or reason for introduction of bill/resolution:

A Bill for an appropriation for the Office of Administrative Hearings.

### Minutes:

Attachment: #1

**Chairman Holmberg:** Meeting called back to order on Thursday, March 3, 2011 at 3:45 pm in reference to HB 1017 for the Office of Administrative Hearings (OAH) Tad H. Torgerson, OMB; and Sheila M Sandness. Legislative Council present.

**Allen C. Hoberg:** Director of the Office of Administrative Hearing testified in favor of HB 1017. (Attachment #1) His testimony contains information regarding the number of hearings the department heard and also the budget analysis. (An organizational chart is Attachment G.) This bill came out of the House without any amendments.

**Chairman Holmberg:** You might be interested to note that 20-15 which is the OMB budget had in its language, telling agencies how to pay out the money. That has a 4 in1 ....so the budget itself would not be changed because the dollar amounts are the same.

**Allen Hoberg:** Continuing testimony.

**Senator Kilzer:** With the increasing costs, are you able to pass some of these costs on to your clients.....particularly the DHS and WSI?

**Allen Hoberg:** Yes and no. We bill all agencies that we provide services for .....we don't have any general funds. Our billing rate is based on the previous biennium, so the next biennium billing rate will be based on cost this biennium. We have to be very careful on how we spend our monies and how we spend our time to make sure we are able to cover all our costs. The increases will be passed on, but somewhat difficult for us. Sometimes it will be involving considerable working hours, but as long as the cases flow in, and we are able to provide those services, we have been able to cover the cost of increase, salaries, etc.

**Senator Warner:** What is the nature of hearing you do for DHS?

**Allen Hoberg:** We do about 30 different types of hearings, Medicaid, Day Care, Child abuse and neglect, development disabilities, etc. We do not do child support. Child Support is done by administrative offices. Our case load is increasing in DHS .....a large part is due to a big increase in child abuse and neglect type hearings. Our counter parts in other states along with us are seeing a large increase of those types of hearings.

**Senator Wanzek:** What are minimum requirements of an ALJ?

**Allen Hoberg:** The law currently states that the ALJ must be a member of the State Bar and a graduate of law school and has the bar exam in the state of ND. We have one administrative law judge who is grandfathered- in who is not a lawyer, but I am required by law, the next judge I would hire would have to be an lawyer. That person who is grandfathered- in has 30 years in of hearing experience and operates much like an attorney. She does a very good job.

**Senator Grindberg:** Why does this country and region have such an increase of child abuse?

**Allen Hoberg:** Some of it is a focus on what is going on within the families; probably what is being discovered now that wasn't discovered before. The social problems these days, drugs and other things have multiple factors. That question could be answered better by the social people who deal with that on a daily bases. In the hearings, we try to decide if someone did abuse, the causes, multiple causes in many cases.

**Chairman Holmberg:** Close the meeting.

# 2011 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee  
Harvest Room, State Capitol

HB 1017  
03-18-2011  
Job # 15661

Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

A ROLL CALL VOTE FOR A DO PASS ON THE BUDGET FOR THE OFFICE OF ADMINISTRATIVE HEARINGS.

## Minutes:

You may make reference to "attached testimony."

**Chairman Holmberg** called the committee to order on Friday, March 18, 2011 in reference to HB 1017. All committee members were present except Senator Warner. Sara Chamberlin, Legislative Council and Tammy R. Dolan, OMB were present.

**Chairman Holmberg:** We have a motion for a DO PASS by Senator Wardner. Seconded by Senator Robinson. Would you call the roll on a DO PASS on 1017 on Administrative Hearings.

**A ROLL CALL VOTE WAS TAKEN ON A DO PASS ON 1017. YEA: 11; NAY: 1; ABSENT: 0. Senator Robinson will carry the bill. The hearing on HB 1017 was closed.**

Date: 3-18-11  
 Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1017

Senate Appropriations Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Wardner Seconded By Robinson

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg	✓		Senator Warner a.		
Senator Bowman	✓		Senator O'Connell	✓	
Senator Grindberg	✓		Senator Robinson	✓	
Senator Christmann	✓				
Senator Wardner	✓				
Senator Kilzer	✓				
Senator Fischer		✓			
Senator Krebsbach	✓				
Senator Erbele	✓				
Senator Wanzek	✓				

Total (Yes) 11 No 1

Absent 1

Floor Assignment Robinson

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

**REPORT OF STANDING COMMITTEE**

**HB 1017: Appropriations Committee (Sen. Holmberg, Chairman) recommends DO PASS (11 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING). HB 1017 was placed on the Fourteenth order on the calendar.**

2011 TESTIMONY

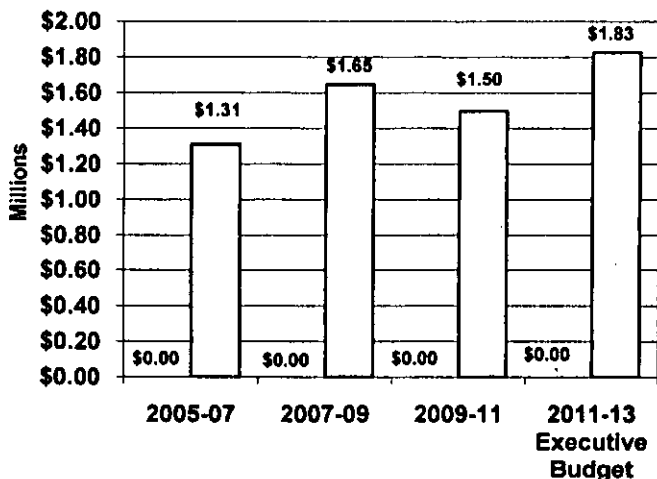
HB 1017



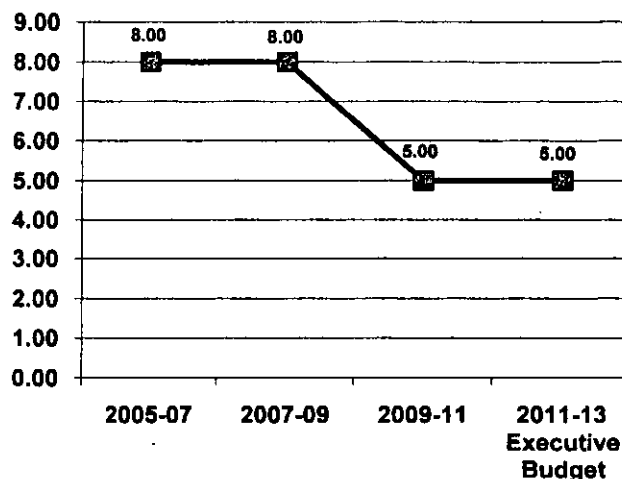
**Department 140 - Office of Administrative Hearings  
 House Bill No. 1017**

	FTE Positions	General Fund	Other Funds	Total
2011-13 Executive Budget	5.00	\$0	\$1,827,199	\$1,827,199
2009-11 Legislative Appropriations	5.00	0	1,498,712	1,498,712
Increase (Decrease)	0.00	\$0	\$328,487	\$328,487

**Agency Funding**



**FTE Positions**



■ General Fund □ Other Funds

**Executive Budget Highlights**

	General Fund	Other Funds	Total
1. Adds funding for additional professional services to accommodate an anticipated increase in the hearing caseload relating to Workforce Safety and Insurance		\$239,300	\$239,300
2. Adds funding for additional rent due to an anticipated move from the Land Department building to another location at the end of the 2009-11 biennium		\$17,600	\$17,600

**Continuing Appropriations**

No continuing appropriations for this agency.

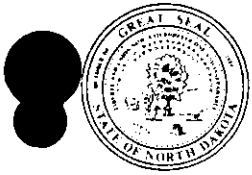
**Significant Audit Findings**

There are no significant audit findings for this agency.

**Major Related Legislation**

At this time, no major legislation has been introduced affecting this agency.

HB 1017  
Attachment ONE  
January 20, 2011



**OFFICE OF ADMINISTRATIVE HEARINGS**


STATE OF NORTH DAKOTA  
2911 North 14th Street - Suite 303  
Bismarck, North Dakota 58503

Allen C. Hoberg  
DIRECTOR

**MEMORANDUM**

701-328-3200  
Fax 701-328-3254  
oah@nd.gov  
www.nd.gov/oah

TO: Sixty-second Legislative Assembly  
State of North Dakota  
House Appropriations Committee - Human Resources Division

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

RE: OAH 2011-2013 Operating Budget Request  
House Bill No. 1017

DATE: January 20, 2011

The 2009-2011 biennium has been a relatively good biennium for the Office of Administrative Hearings ("OAH"), a return to normal operations plus some improvements. For the entire biennium OAH has again been conducting Workforce Safety and Insurance ("WSI") administrative hearings, unlike last biennium when WSI left OAH and then came back to OAH with the passage of 2008 Initiated Measure No. 4. The number of requests for hearings received from all of OAH's user agencies, boards, commissions, and local entities has increased. OAH now has hearing performance guidelines implemented for all of its user state agencies, boards, and commissions. OAH issued its first biennial report for the 2007-2009 biennium in December 2009.

OAH continues to receive requests to conduct administrative hearings from many different state agencies, boards and commission, and from local entities. Over the

years, OAH has conducted hearings for over 70 different state and local government agencies or entities. Some agencies make many requests for hearings each year, while others have made only a few requests for hearings since OAH was established in 1991. For example, in calendar year 2009, 22 different agencies or entities made 415 requests for hearings (Attachment "A"), and in calendar year 2010, 23 different agencies or entities made 436 requests for hearings (Attachment "B"). For comparison, in calendar year 2008, 24 different entities made 344 requests for hearings (Attachment "C"). In 2009 and 2010 combined, 30 different agencies or entities made 851 requests for hearings. OAH numbers its cases by calendar year; e.g., 20110001 would be the first request for a hearing received in 2011. Attachment "D" shows the number of hearings actually held for calendar years 2009 and 2010, 423. Thus, about half of the hearing requests actually went to hearing in those two years. Attachment "E" shows the number of prehearing conferences actually held for calendar years 2009 and 2010. Prehearing conferences are usually held for the more complex hearings. 195 prehearing conferences were held during those two years.

For the first 18 months of this biennium, through December 31, 2010, 25 different agencies or entities have made 651 requests for hearings. See attachment "E." As you can see, the bulk of requests for hearings each biennium come from two agencies, the

Department of Human Services and WSI. Another frequent OAH user, much more so recently, is the Public Service Commission.

OAH conducts hearings for state and local agencies and entities that are required to use OAH (see N.D.C.C. §§ 54-57-03(1); 40-51.2-12; 40-47-01.1; and 15.1-15-08), 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 such hearings as employee discipline, tobacco sales enforcement, or public nuisance abatement hearings).


OAH's structure for conducting hearings is five permanent FTEs - 3 ALJs and 2 support staff, and seven temporary, contract ALJs. See attached organizational chart, Attachment "G." Six of OAH's contract ALJs conduct almost entirely WSI hearings. One contract ALJ conducts entirely PSC hearings. OAH's three full-time permanent ALJs conduct a mixture of different agency hearings but, primarily, DHS and PSC hearings. OAH proposes to move forward into the 2011-2013 biennium with the same structure.

### BUDGET ANALYSIS

OAH's 2009-2011 budget for administrative hearings shows funding at \$1,498,712. When OAH submitted its requested 2009-2011 budget to the governor there remained uncertainty as to how OAH would continue its operations, under what structure as to the use of contract ALJs. As a result, the amount requested in operating expenses for payments to contract ALJs was underestimated. We have exceeded that estimated amount for the 2000-20011 biennium already. Thus, for the coming biennium OAH is requesting an increase of \$239,300 for payments to contract ALJs. OAH is also asking for an increase in operating expenses for building rent. OAH has now moved to a new location, effective January 1, 2011, because of Land Department staff expansion in our previous location in the Land Department building where OAH had been located since 1997. OAH anticipated this move and asked for a \$17,600 increase in building rental for this next biennium. The total increase in operating expenses for OAH for the coming biennium is \$256,900. I noted in my budget analysis last biennium that it was quite possible that OAH would exceed its operating budget appropriation because of increased use of contract ALJs to conduct WSI hearings, and that is what happened. We were alerted to the possibility of having to move from the Land Department building after the start of this biennium and now we have had to move.

OAH requested a budget of \$1,775,367 to the governor for the 2011-2013 biennium. This included a \$19,755 (2.2 percent) increase in salaries to address the 5 percent increase that was only funded for half of the current biennium under the phased-in 5 percent/5 percent increase passed last session for all state agencies. Other than this increase, OAH salaries remain the same in the budget OAH requested to the governor. There were no special equity salary increases included in OAH's budget request. The governor's executive budget recommendation for OAH does include the compensation package the governor recommended for all state agencies. Thus, the governor's recommendation for salary increases for OAH staff totals \$71,587 (OAH's requested increase of \$19,755 plus the governor's compensation package of \$51,832). The governor's total executive recommendation for OAH is \$1,827,199.

OAH continues to perform a vital task for state and local agencies, boards, commissions, and other governmental entities, both for mandatory and voluntary users of OAH's services, holding a wide variety of types of administrative hearings for these users. We believe that with OAH's current structure and the governor's executive budget recommendation, OAH will continue to meet the administrative hearing requirements of all those users of OAH's services which depend on OAH to conduct their hearings. Having a separate entity such as OAH for conducting administrative



Sixty-second Legislative Assembly  
State of North Dakota  
House Appropriations Committee - Human Resources Division  
January 20, 2011  
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hearings allows for the fair and independent conduct of these hearings for government  
and for the citizens of North Dakota.

fz



## Total Requests Received by Agency

Files Received Between 01-01-2009 and 12-31-2009

Office of Administrative Hearings

Agency	# of Files Received	
BND, Student Loans of North Dakota	4	0.96%
Corrections - Parole & Probation	1	0.24%
Corrections & Rehabilitation - Dept. of	1	0.24%
DHS, Human Services, Department of	205	49.40%
Game and Fish Department	5	1.20%
Health, Department of	3	0.72%
Human Resource Management Services	7	1.69%
IC, Insurance Commissioner	2	0.48%
Labor, Dept. of	3	0.72%
Medical Examiners, State Board of	6	1.45%
Nursing, State Board of	2	0.48%
Peace Officers Standards and Training Board	2	0.48%
Pharmacy, State Board of	2	0.48%
PSC, Public Service Commission	22	5.30%
Psychologist Examiners, State Board of	1	0.24%
Public Instruction, Department of	3	0.72%
Real Estate Commission	1	0.24%
State, Secretary of	1	0.24%
Transportation, Department of	1	0.24%
Velva Public School District	1	0.24%
Water Commission, State/State Engineer	2	0.48%
Workforce Safety & Insurance	140	33.73%
<b>Grand Total:</b>	<b>415</b>	



## Total Requests Received by Agency

Files Received Between 01-01-2010 and 12-31-2010

Office of Administrative Hearings

Agency	# of Files Received	
Agriculture Commissioner	1	0.23%
Attorney General, Office of	2	0.46%
BND, Student Loans of North Dakota	2	0.46%
DHS, Human Services, Department of	182	41.74%
FI, Financial Institutions, Department of	1	0.23%
Game and Fish Department	3	0.69%
Grand Forks Public School District	1	0.23%
Health, Department of	1	0.23%
Human Resource Management Services	9	2.06%
IC, Insurance Commissioner	9	2.06%
Industrial Commission	1	0.23%
Medical Examiners, State Board of	5	1.15%
Milk Marketing Board	1	0.23%
Minot State University	1	0.23%
Nursing, State Board of	2	0.46%
Peace Officers Standards and Training Board	1	0.23%
Pharmacy, State Board of	12	2.75%
PSC, Public Service Commission	31	7.11%
Public Instruction, Department of	6	1.38%
Securities Department	1	0.23%
Transportation, Department of	1	0.23%
Water Commission, State/State Engineer	2	0.46%
Workforce Safety & Insurance	161	36.93%
Grand Total:	436	

## Total Requests Received by Agency

Files Received Between 01-01-2008 and 12-31-2008

Office of Administrative Hearings

Agency	# of Files Received	
Agriculture Commissioner	1	0.29%
Attorney General, Office of	2	0.58%
BND, Student Loans of North Dakota	5	1.45%
County, Burleigh	1	0.29%
DHS, Human Services, Department of	208	60.47%
Game and Fish Department	2	0.58%
Health, Department of	1	0.29%
Human Resource Management Services	4	1.16%
IC, Insurance Commissioner	4	1.16%
Medical Examiners, State Board of	4	1.16%
Minot Public School District	1	0.29%
Nursing, State Board of	1	0.29%
Pharmacy, State Board of	1	0.29%
Professional Engineers & Land Surveyors Board	2	0.58%
PSC, Public Service Commission	16	4.65%
Public Instruction, Department of	4	1.16%
Real Estate Appraisers, Board of	1	0.29%
Real Estate Commission	5	1.45%
RIO, Retirement & Investment Office	1	0.29%
Transportation, Department of	2	0.58%
Veterans Affairs, Department of	1	0.29%
Water Commission, State/State Engineer	2	0.58%
Williston, ND, City of	1	0.29%
Workforce Safety & Insurance	74	21.51%
<b>Grand Total:</b>	<b>344</b>	

# Hearings Held (by Calendar Year)

ATTACHMENT "D"

Held Between January 1, 2009, and December 31, 2010

Office of Administrative Hearings

Agency	TOTALS	Jan. 1, 2009, through Dec. 31, 2009	Jan. 1, 2010, through Dec. 31, 2010
1 BND, Student Loans of North Dakota	3	3	0
2 Corrections - Parole & Probation	1	1	0
3 DHS, Human Services, Department of	186	103	83
4 Game and Fish Department	7	4	3
5 Grand Forks Public School District	1	0	1
6 Health, Department of	4	3	1
7 Human Resource Management Services	7	3	4
8 IC Insurance Commissioner	5	2	3
9 Labor, Dept. of	2	2	0
10 Medical Examiners, State Board of	2	2	0
11 Nursing, State Board of	1	0	1
12 Pharmacy, State Board of	4	0	4
13 PSC, Public Service Commission	35	13	22
14 Public Instruction, Department of	6	2	4
15 Real Estate Appraisers, Board of	1	1	0
16 Real Estate Commission	1	1	0
17 Transportation, Department of	2	2	0
18 Veterans Affairs, Department of	1	1	0
19 Water Commission, State/State Engineer	1	0	1
20 Workforce Safety & Insurance	153	77	76
<b>Grand Totals</b>	<b>423</b>	<b>220</b>	<b>203</b>

# Prehearing Conferences Held (by Calendar Year)

ATTACHMENT "E"

Held Between January 1, 2009, and December 31, 2010

Office of Administrative Hearings

Jan. 1, 2009,  
through  
Dec. 31, 2009

Jan. 1, 2010,  
through  
Dec. 31, 2010

Agency	TOTALS	Jan. 1, 2009, through Dec. 31, 2009	Jan. 1, 2010, through Dec. 31, 2010
1 Agriculture Commissioner	1	0	1
2 Attorney General, Office of	1	0	1
3 BND, Student Loans of North Dakota	2	0	2
4 Corrections & Rehabilitation - Dept. of	1	1	0
5 DHS, Human Services, Department of	76	43	33
6 Health, Department of	3	2	1
7 Human Resource Management Services	12	5	7
8 IC, Insurance Commissioner	6	0	6
9 Industrial Commission	1	0	1
10 Labor, Dept. of	2	2	0
11 Medical Examiners, State Board of	2	0	2
12 Minot State University	1	0	1
13 Nursing, State Board of	1	1	0
14 PSC, Public Service Commission	1	1	0
15 Psychologist Examiners, State Board of	1	1	0
16 Public Instruction, Department of	1	0	1
17 Securities Department	1	0	1
18 Transportation, Department of	1	0	1
19 Veterans Affairs, Department of	1	1	0
20 Water Commission, State/State Engineer	3	1	2
21 Workforce Safety & Insurance	77	44	33
<b>Grand Totals</b>	<b>195</b>	<b>102</b>	<b>93</b>

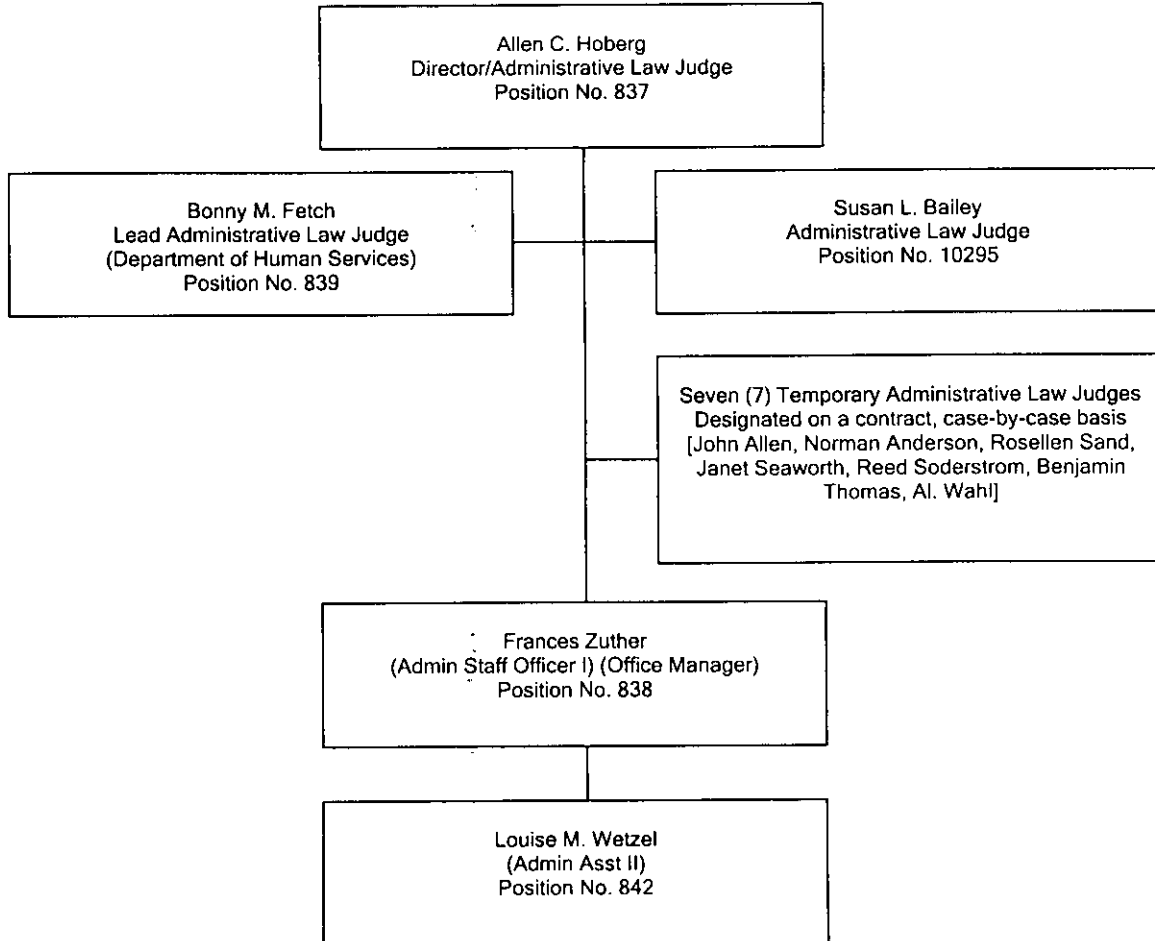
**Request Comparison by Year**

Files Received Between July 1, 2009, and December 31, 2010

Office of Administrative Hearings

Agency	TOTALS	July 1, 2009, through June 30, 2010	July 1, 2010, through Dec. 31, 2010
Agriculture Commissioner	1	1	0
Attorney General, Office of	2	2	0
BND, Student Loans of North Dakota	6	5	1
DHS, Human Services, Department of	290	189	101
FI, Financial Institutions, Department of	1	0	1
Game and Fish Department	8	8	0
Grand Forks Public School District	1	0	1
Health, Department of	1	1	0
Human Resource Management Services	14	10	4
IC, Insurance Commissioner	11	7	4
Industrial Commission	1	0	1
Medical Examiners, State Board of	8	7	1
Milk Marketing Board	1	0	1
Minot State University	1	1	0
Nursing, State Board of	3	1	2
Peace Officers Standards and Training Board	1	0	1
Pharmacy, State Board of	14	5	9
PSC, Public Service Commission	43	29	14
Public Instruction, Department of	7	6	1
Securities Department	1	1	0
State, Secretary of	1	1	0
Transportation, Department of	2	2	0
Velva Public School District	1	1	0
Water Commission, State/State Engineer	3	2	1
Workforce Safety & Insurance	229	137	92
<b>Grand Totals</b>	<b>651</b>	<b>416</b>	<b>235</b>

OFFICE OF ADMINISTRATIVE HEARINGS  
ORGANIZATIONAL CHART  
January 1, 2011



Description	Revenue Code	2007-2009 Biennium Expenditures	2009-2011 Expenditures through 12/31/2010	2009-2011 Biennium Balance	2009-2011 Biennium Appropriation	2011-2013 Total Changes	2011-2013 Recommendation
<b>10 SALARIES AND WAGES</b>							
Salaries - Permanent	511000	764,388	509,064	175,253	684,317	16,688	701,005
Salaries - Other	512000	0	0	2,500	2,500	(2,500)	0
Temporary Salaries	513000	0	0	2,500	2,500	(2,500)	0
Overtime	514000	0	0	0	0	5,001	5,001
Fringe Benefits	516000	280,122	157,675	59,603	217,278	3,066	220,344
Salary Increase	599110	0	0	0	0	31,861	31,861
Benefit Increase	599160	0	0	0	0	5,389	5,389
Health Increase	599161	0	0	0	0	7,277	7,277
Retirement Increase	599162	0	0	0	0	7,292	7,292
EAP Increase	599163	0	0	0	0	13	13
TOTAL		1,044,510	666,738	239,857	906,595	71,587	978,182
<b>MEANS OF FUNDING</b>							
Administrative Hearings Fund 266	266	1,044,510	666,738	239,857	906,595	71,587	978,182
Special Funds Total		1,044,510	666,738	239,857	906,595	71,587	978,182
TOTAL		1,044,510	666,738	239,857	906,595	71,587	978,182
<b>30 OPERATING EXPENSES</b>							
Travel	521000	22,057	13,587	8,413	22,000	0	22,000
Supplies - IT Software	531000	3,686	918	14,282	15,200	0	15,200
Supply/Material Professional	532000	442	174	2,070	2,244	0	2,244
Miscellaneous Supplies	535000	0	0	3,235	3,235	0	3,235
Office Supplies	536000	3,260	1,377	5,906	7,283	0	7,283
Opostage	541000	8,537	6,620	4,780	11,400	0	11,400
Printing	542000	413	819	2,030	2,849	0	2,849
IT Equip under \$5,000	551000	4,545	0	13,000	13,000	0	13,000
Office Equip & Furn Supplies	553000	3,431	300	9,650	9,950	0	9,950
Utilities	561000	0	233	167	400	0	400
Insurance	571000	1,120	935	76	1,010	0	1,010
Rentals/leases - Equip & Other	581000	3,126	2,286	3,293	5,579	0	5,579
Rentals/Leases - Bldd / Land	582000	48,520	52,271	-3,751	48,520	17,600	66,120
Repairs	591000	0	134	1,866	2,000	0	2,000
IT - Data Processing	601000	29,614	23,841	24,906	48,747	0	48,747
IT - Communications	602000	8,948	6,314	8,686	15,000	0	15,000
IT Contractual Svcs and Repairs	603000	462	0	1,000	1,000	0	1,000
Professional Development	611000	10,475	5,713	9,288	15,000	0	15,000
Operating Fees and Services	621000	2,169	701	1,299	2,000	0	2,000
Fees - Professional Services	623000	364,675	407,797	(42,097)	365,700	239,300	605,000
Non-Operating Expenses	671000	1,438	0	0	0	0	0
TOTAL		516,918	524,019	68,098	592,117	256,900	849,017
<b>MEANS OF FUNDING</b>							
Administrative Hearings Fund 266	266	516,918	524,019	68,098	592,117	256,900	849,017
Special Funds Total		516,918	524,019	68,098	592,117	256,900	849,017
TOTAL		516,918	524,019	68,098	592,117	256,900	849,017

Description	Revenue Code	2007-2009 Biennium Expenditures	2009-2011 Expenditures through 12/31/2010	2009-2011 Biennium Balance	2009-2011 Biennium Appropriation	2011-2013 Total Changes	2011-2013 Recommendation
<b>AGENCY TOTALS</b>							
TOTAL EXPENDITURES		1,561,428	1,190,758	307,954	1,498,712	328,487	1,827,199
<b>SPECIAL FUNDS</b>							
Administrative Hearings Fund 266	266	1,561,428	1,190,758	307,954	1,498,712	328,487	1,827,199
TOTAL		1,561,428	1,190,758	307,954	1,498,712	328,487	1,827,199
<b>AUTHORIZED EMPLOYEES</b>							
FTE		8.00	5.00	0.00	5.00	0.00	5.00
TOTAL AUTHORIZED EMPLOYEES		8.00	5.00	0.00	5.00	0.00	5.00

**ADDITIONAL NOTES RE THE OFFICE OF ADMINISTRATIVE HEARINGS:**

The Office of Administrative Hearings had to relocate to a new site on December 30, 2010, due to staff expansion at the State Land Department, where OAH formerly had its offices for 13.5 years. As a result, OAH incurred costs not reflected in the above figures, but which include the following. Also not reflected are billings from ITD that are move-related, not yet received.

Conference room tables (2)	1,900.00
Conference room chairs (12)	3,300.00
Coat racks and equipment cabinet	918.00
Table and four (4) chairs	100.00
Signage at new location	395.00
Moving company	1,456.00
Locksmith	13.00
Bulletin board bars (didn't previously need)	40.65
Surplus of property no longer needed	15.00
New letterhead and envelopes	709.00
	<u>8,846.65</u>





**OFFICE OF ADMINISTRATIVE HEARINGS**

STATE OF NORTH DAKOTA  
2911 North 14th Street - Suite 303  
Bismarck, North Dakota 58503

#1

Allen C. Hoberg  
DIRECTOR

**MEMORANDUM**

701-328-3200  
Fax 701-328-3254  
oah@nd.gov  
www.nd.gov/oah

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

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

RE: OAH 2011-2013 Operating Budget Request  
House Bill No. 1017

DATE: March 3, 2011

The 2009-2011 biennium has been a relatively good biennium for the Office of Administrative Hearings ("OAH"), a return to normal operations plus some improvements. For the entire biennium OAH has again been conducting Workforce Safety and Insurance ("WSI") administrative hearings, unlike last biennium when WSI left OAH and then came back to OAH with the passage of 2008 Initiated Measure No. 4. The number of requests for hearings received from all of OAH's user agencies, boards, commissions, and local entities has increased. OAH now has hearing performance guidelines implemented for all of its user state agencies, boards, and commissions. OAH issued its first biennial report for the 2007-2009 biennium in December 2009.

OAH continues to receive requests to conduct administrative hearings from many different state agencies, boards and commission, and from local entities. Over the

years, OAH has conducted hearings for over 70 different state and local government agencies or entities. Some agencies make many requests for hearings each year, while others have made only a few requests for hearings since OAH was established in 1991. For example, in calendar year 2009, 22 different agencies or entities made 415 requests for hearings (Attachment "A"), and in calendar year 2010, 23 different agencies or entities made 436 requests for hearings (Attachment "B"). For comparison, in calendar year 2008, 24 different entities made 344 requests for hearings (Attachment "C"). In 2009 and 2010 combined, 30 different agencies or entities made 851 requests for hearings. OAH numbers its cases by calendar year; e.g., 20110001 would be the first request for a hearing received in 2011. Attachment "D" shows the number of hearings actually held for calendar years 2009 and 2010, 423. Thus, about half of the hearing requests actually went to hearing in those two years. Attachment "E" shows the number of prehearing conferences actually held for calendar years 2009 and 2010. Prehearing conferences are usually held for the more complex hearings. 195 prehearing conferences were held during those two years.

For the first 18 months of this biennium, through December 31, 2010, 25 different agencies or entities have made 651 requests for hearings. See attachment "F." As you can see, the bulk of requests for hearings each biennium come from two agencies, the

Department of Human Services and WSI. Another frequent OAH user, much more so recently, is the Public Service Commission.

OAH conducts hearings for state and local agencies and entities that are required to use OAH (see N.D.C.C. §§ 54-57-03(1); 40-51.2-12; 40-47-01.1; and 15.1-15-08), 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 such hearings as employee discipline, tobacco sales enforcement, or public nuisance abatement hearings).


OAH's structure for conducting hearings is five permanent FTEs - three ALJs and two support staff, and seven part-time, contract ALJs. See attached organizational chart, Attachment "G." Six of OAH's contract ALJs conduct almost exclusively WSI hearings. One contract ALJ conducts exclusively PSC hearings. OAH's three full-time permanent ALJs conduct a mixture of different agency hearings but, primarily, DHS, PSC, and HRMS employee grievance hearings. OAH proposes to move forward into the 2011-2013 biennium with the same structure.

BUDGET ANALYSIS

OAH's 2009-2011 budget for administrative hearings shows funding at \$1,498,712. When OAH submitted its requested 2009-2011 budget to the governor, there remained uncertainty as to how OAH would continue its operations, under what structure as to the use of contract ALJs. As a result, the amount requested in operating expenses for payments to contract ALJs was underestimated. We have exceeded that estimated amount for the 2000-2011 biennium already. Thus, for the coming biennium OAH is requesting an increase of \$239,300 for payments to contract ALJs. OAH is also asking for an increase in operating expenses for building rent. OAH has now moved to a new location, effective January 1, 2011, because of Land Department staff expansion in our previous location in the Land Department building where OAH had been located since 1997. OAH anticipated this move and asked for a \$17,600 increase in building rental for this next biennium. The total increase in operating expenses for OAH for the coming biennium is \$256,900. I noted in my budget analysis last biennium that it was quite possible that OAH would exceed its operating budget appropriation because of increased use of contract ALJs to conduct WSI hearings, and that is what happened. We were alerted to the possibility of having to move from the Land Department building after the start of this biennium and now we have had to move.

OAH requested a budget of \$1,775,367 to the governor for the 2011-2013 biennium. This included a \$19,755 (2.2 percent) increase in salaries to address the 5 percent increase that was only funded for half of the current biennium under the phased-in 5 percent/5 percent increase passed last session for all state agencies. Other than this increase, OAH salaries remain the same in the budget OAH requested to the governor. There are no special equity salary increases included in OAH's budget request. The governor's executive budget recommendation for OAH does include the compensation package the governor recommended for all state agencies. Thus, the governor's recommendation for salary increases for OAH staff totals \$71,587 (OAH's requested increase of \$19,755 plus the governor's compensation package of \$51,832). The governor's total executive recommendation for OAH is \$1,827,199. We understand that there may be changes to the governor's recommendation as to the salary package for OAH but HB 1017 did come out of the House without any amendments to it.

OAH continues to perform a vital task for state and local agencies, boards, commissions, and other governmental entities, both for mandatory and voluntary users of OAH's services, holding a wide variety of types of administrative hearings for these users. We believe that with OAH's current structure and the governor's executive budget recommendation, OAH will continue to meet the administrative hearing requirements of all those users of OAH's services which depend on OAH to conduct



Sixty-second Legislative Assembly  
State of North Dakota  
House Appropriations Committee - Human Resources Division  
March 3, 2011  
Page 6

their hearings. Having a separate entity such as OAH for conducting administrative hearings allows for the fair and independent conduct of these hearings for government and for the citizens of North Dakota.

fz



## Total Requests Received by Agency

Files Received Between 01-01-2009 and 12-31-2009

Office of Administrative Hearings

Agency	# of Files Received	
BND, Student Loans of North Dakota	4	0.96%
Corrections - Parole & Probation	1	0.24%
Corrections & Rehabilitation - Dept. of	1	0.24%
DHS, Human Services, Department of	205	49.40%
Game and Fish Department	5	1.20%
Health, Department of	3	0.72%
Human Resource Management Services	7	1.69%
IC, Insurance Commissioner	2	0.48%
Labor, Dept. of	3	0.72%
Medical Examiners, State Board of	6	1.45%
Nursing, State Board of	2	0.48%
Peace Officers Standards and Training Board	2	0.48%
Pharmacy, State Board of	2	0.48%
PSC, Public Service Commission	22	5.30%
Psychologist Examiners, State Board of	1	0.24%
Public Instruction, Department of	3	0.72%
Real Estate Commission	1	0.24%
State, Secretary of	1	0.24%
Transportation, Department of	1	0.24%
Velva Public School District	1	0.24%
Water Commission, State/State Engineer	2	0.48%
Workforce Safety & Insurance	140	33.73%
<b>Grand Total:</b>	<b>415</b>	

## Total Requests Received by Agency

Files Received Between 01-01-2010 and 12-31-2010

Office of Administrative Hearings

Agency	# of Files Received	
Agriculture Commissioner	1	0.23%
Attorney General, Office of	2	0.46%
BND, Student Loans of North Dakota	2	0.46%
DHS, Human Services, Department of	182	41.74%
FI, Financial Institutions, Department of	1	0.23%
Game and Fish Department	3	0.69%
Grand Forks Public School District	1	0.23%
Health, Department of	1	0.23%
Human Resource Management Services	9	2.06%
IC, Insurance Commissioner	9	2.06%
Industrial Commission	1	0.23%
Medical Examiners, State Board of	5	1.15%
Milk Marketing Board	1	0.23%
Minot State University	1	0.23%
Nursing, State Board of	2	0.46%
Peace Officers Standards and Training Board	1	0.23%
Pharmacy, State Board of	12	2.75%
PSC, Public Service Commission	31	7.11%
Public Instruction, Department of	6	1.38%
Securities Department	1	0.23%
Transportation, Department of	1	0.23%
Water Commission, State/State Engineer	2	0.46%
Workforce Safety & Insurance	161	36.93%
<b>Grand Total:</b>	<b>436</b>	



## Total Requests Received by Agency

Files Received Between 01-01-2008 and 12-31-2008

Office of Administrative Hearings

Agency	# of Files Received	
Agriculture Commissioner	1	0.29%
Attorney General, Office of	2	0.58%
BND, Student Loans of North Dakota	5	1.45%
County, Burleigh	1	0.29%
DHS, Human Services, Department of	208	60.47%
Game and Fish Department	2	0.58%
Health, Department of	1	0.29%
Human Resource Management Services	4	1.16%
IC, Insurance Commissioner	4	1.16%
Medical Examiners, State Board of	4	1.16%
Minot Public School District	1	0.29%
Nursing, State Board of	1	0.29%
Pharmacy, State Board of	1	0.29%
Professional Engineers & Land Surveyors Board	2	0.58%
PSC, Public Service Commission	16	4.65%
Public Instruction, Department of	4	1.16%
Real Estate Appraisers, Board of	1	0.29%
Real Estate Commission	5	1.45%
RIO, Retirement & Investment Office	1	0.29%
Transportation, Department of	2	0.58%
Veterans Affairs, Department of	1	0.29%
Water Commission, State/State Engineer	2	0.58%
Williston, ND, City of	1	0.29%
Workforce Safety & Insurance	74	21.51%
<b>Grand Total:</b>	<b>344</b>	

**Hearings Held (by Calendar Year)**  
**Held Between January 1, 2009, and December 31, 2010**

ATTACHMENT "D"

Office of Administrative Hearings

Agency	TOTALS	Jan. 1, 2009, through Dec. 31, 2009	Jan. 1, 2010, through Dec. 31, 2010
1 BND, Student Loans of North Dakota	3	3	0
2 Corrections - Parole & Probation	1	1	0
3 DHS, Human Services, Department of	186	103	83
4 Game and Fish Department	7	4	3
5 Grand Forks Public School District	1	0	1
6 Health, Department of	4	3	1
7 Human Resource Management Services	7	3	4
8 IC, Insurance Commissioner	5	2	3
9 Labor, Dept. of	2	2	0
10 Medical Examiners, State Board of	2	2	0
11 Nursing, State Board of	1	0	1
12 Pharmacy, State Board of	4	0	4
13 PSC, Public Service Commission	35	13	22
14 Public Instruction, Department of	6	2	4
Real Estate Appraisers, Board of	1	1	0
Real Estate Commission	1	1	0
17 Transportation, Department of	2	2	0
18 Veterans Affairs, Department of	1	1	0
19 Water Commission, State/State Engineer	1	0	1
20 Workforce Safety & Insurance	153	77	76
<b>Grand Totals</b>	<b>423</b>	<b>220</b>	<b>203</b>

# Prehearing Conferences Held (by Calendar Year)

ATTACHMENT "E"

Held Between January 1, 2009, and December 31, 2010

Department of Administrative Hearings

Jan. 1, 2009,  
through  
Dec. 31, 2009

Jan. 1, 2010,  
through  
Dec. 31, 2010

Agency	TOTALS	Jan. 1, 2009, through Dec. 31, 2009	Jan. 1, 2010, through Dec. 31, 2010
1 Agriculture Commissioner	1	0	1
2 Attorney General, Office of	1	0	1
3 BND, Student Loans of North Dakota	2	0	2
4 Corrections & Rehabilitation, Dept. of	1	1	0
5 DHS, Human Services, Department of	76	43	33
6 Health, Department of	3	2	1
7 Human Resource Management Services	12	5	7
8 IC, Insurance Commissioner	6	0	6
9 Industrial Commission	1	0	1
10 Labor, Dept. of	2	2	0
11 Medical Examiners, State Board of	2	0	2
12 Minn. State University	1	0	1
13 Nursing, State Board of	1	1	0
14 PSC, Public Service Commission	1	1	0
Psychologist Examiners, State Board of	1	1	0
Public Instruction, Department of	1	0	1
17 Securities Department	1	0	1
18 Transportation, Department of	1	0	1
19 Veterans Affairs, Department of	1	1	0
20 Water Commission, State/State Engineer	3	1	2
21 Workforce Safety & Insurance	77	44	33
<b>Grand Totals</b>	<b>195</b>	<b>102</b>	<b>93</b>

# Request Comparison by Year

ATTACHMENT "F"

Files Received Between July 1, 2009, and December 31, 2010

Number of Administrative Hearings

Agency	TOTALS	July 1, 2009, through June 30, 2010	July 1, 2010, through Dec. 31, 2010
Agriculture Commissioner	1	1	0
Attorney General, Office of	2	2	0
BND, Student Loans of North Dakota	6	5	1
DHS, Human Services, Department of	290	189	101
FI, Financial Institutions, Department of	1	0	1
Game and Fish Department	8	8	0
Grand Forks Public School District	1	0	1
Health, Department of	1	1	0
Human Resource Management Services	14	10	4
IC, Insurance Commissioner	11	7	4
Industrial Commission	1	0	1
Medical Examiners, State Board of	8	7	1
Milk Marketing Board	1	0	1
Minot State University	1	1	0
Parole and Pardon, State Board of	3	1	2
Police Officers Standards and Training Board	1	0	1
Pharmacy, State Board of	14	5	9
PSC, Public Service Commission	43	29	14
Public Instruction, Department of	7	6	1
Securities Department	1	1	0
State, Secretary of	1	1	0
Transportation, Department of	2	2	0
Velva Public School District	1	1	0
Water Commission, State/State Engineer	3	2	1
Workforce Safety & Insurance	229	137	92
<b>Grand Totals</b>	<b>651</b>	<b>416</b>	<b>235</b>

OFFICE OF ADMINISTRATIVE HEARINGS  
ORGANIZATIONAL CHART  
January 1, 2011

