

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2018

2001 SENATE APPROPRIATIONS

SB 2018

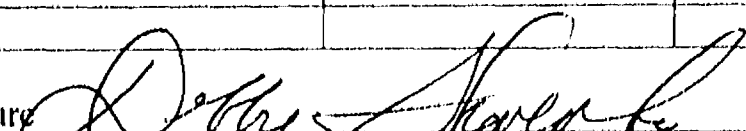
2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2018

Senate Appropriations Committee

☐ Conference Committee

Hearing Date: January 12, 2001

Tape Number	Side A	Side B	Meter #
1	Ofc. Admin Hrgs		0.0-16.6
Committee Clerk Signature 			

Minutes: Tape #1, Side A, 0.0

Senator Nething opened the hearing for Office of Administrative Hearings, SB 2018.

Allen C. Hoberg, Director of the Office of Administrative Hearings (OAH), (testimony attached) gave testimony for their upcoming budget for 2001-2003. Most state agencies (65) are required to use administrative law judges (ALJ) from the Office of Administrative Hearings. There are exceptions, Workers Compensation Bureau, Insurance Department and Public Service Commission. Additionally, some local government agencies have used the services of OAH for tobacco sales enforcement and public nuisance abatement. OAH has operated with a permanent full time staff of five (three ALJ FTEs and two support staff FTEs) for conducting hearings. In September 1, 1995, OAH began conducting administration hearings for the Workers Compensation Bureau (Bureau) pursuant to agency agreement. In order to be able to provide the Bureau with the necessary temporary ALJs, OAH contracts with attorneys in private practice of law. Billing rates for OAH temporary ALJ work and for all other OAH ALJ work, and to keep

the two component parts separate for expenditure and revenue purposes. We now have two separate components which were created for OAH's budget under it one cost center. For 2001-2003 biennium we are using only one cost center, Cost Center 1000. OAH is asking for \$47,890 more for salaries and wages, \$97,614 less in operating expenses, and \$5,000 less in equipment. The only new item for this biennium is the return to borrowing from the General Fund (\$100,000 in borrowing authority) and not the Bank of North Dakota as we are unable to recover the interest.

Senator Nething: To Legislative Council, if making the change in borrowing fund from Bank of North Dakota to General Fund, how would this show in projections?

OMB: It is a net zero type situation; zero affect.

Senator Nething: Explain billing consultant.

Allen Hoberg: We are a cost basis operation; our billing rate same as for federal agencies.

Senator Bowman: When doing hearings for WCB; you pay your help and you get paid?

Allen Hoberg: We charge a flat rate; number of hours on cases.

Senator Tallackson: What is a typical case, say from Human Services.

Allen Hoberg: We have a variety of cases through Human Services; ranging from neglect, welfare, child abuse, etc.

Senator Solberg: Looking at your handout; explain number of hearings.

Allen Hoberg: Our cases and hearing varies; 50-60% of hearing are either settled or withdrawn.

Senator Tomac: I can't understand the less appropriation you are asking for with a deficiency?

Allen Hoberg: Mainly it is the interest that we can't collect from borrowing and also the declining case load. We have to pay off the Bank of ND this biennium.

Hearing closed. Tape #1, Side A, meter 16.6

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Senate Appropriations Committee

Bill/Resolution Number 2018

Hearing Date : ~~January 13, 2001~~

January 23, 2001

Appropriations Committee was reconvened by Senator Nething.

Provide an appropriation for defraying the expenses of the Office of Administrative Hearings;
and to authorize a loan from the general fund. Senator Robinson moved a DO PASS, seconded
by Senator Lindaas; no discussion requested. Roll Call vote: 12 yes, 0 no, 2 absent. Senator
Tomic accepted the floor assignment.

Tape #1, Side A, 0.0-23.4

Date: 1-23-01

Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2018

Senate Appropriations Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Pass

Motion Made By Sen Robinson Seconded By Sen Lindgren

Senators	Yes	No	Senators	Yes	No
Dave Nething, Chairman	✓				
Ken Solberg, Vice-Chairman	✓				
Randy A. Schobinger	✓				
Elroy N. Lindaas	✓				
Harvey Tallackson	✓				
Larry J. Robinson	✓				
Steven W. Tomac	✓				
Joel C. Heitkamp	✓				
Tony Grindberg					
Russell T. Thane	✓				
Ed Kringstad	✓				
Ray Holmberg					
Bill Bowman	✓				
John M. Andrist	✓				

Total Yes 12 No 0

Absent 2

Floor Assignment Sen Tomac

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

REPORT OF STANDING COMMITTEE (410)
January 23, 2001 3:02 p.m.

Module No: SR-11-1460
Carrier: Tomac
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2018: Appropriations Committee (Sen. Nething, Chairman) recommends **DO PASS**
(12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2018 was placed on the
Eleventh order on the calendar.

2001 HOUSE APPROPRIATIONS

SB 2018

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2018

House Appropriations Committee
Education and Environment Division

☐ Conference Committee

Hearing Date March 12, 2001

Tape Number	Side A	Side B	Meter #
1 of 1	x		1,330
Committee Clerk Signature <i>Judy Schock</i>			

Minutes:

Representatives Aarsvold, Boehm, Guleson, Martinson, Monson, Wald, Wentz.

Representative Wentz: We will call the committee to order and open the hearing on SB2018.

Allen Hoberg: (155) Director of the office of Administrative Hearings. See attached.

Representative Wentz: Give us more information on the 100,000 that you need to repay to the bank and the purpose for the borrowing authority you are asking from the general fund.

Allen Hoberg: The 100,000 from the general fund is appropriated because when OAH begins every new biennium because we bill agencies for all of our services we don't receive any moneys for them until at times three months into the biennium. So we need to have borrowing authority for operations until we actually receive those moneys.

Representative Guleson: You mentioned your salary increase is worth 7.9 percent. Is that based on the 3 & 2 that has been put forth for other state employees. What is included in that percent?

Also how do you determine your rates?

Allen Hoberg: That includes strictly the increases purposed by the Governor's recommendation as well as performances increases that were carried over the second year of the biennium from last biennium. Our rates for services are strictly on a cost bases. We take all of our expenses from the previous biennium and divide that by the number of hours of services we provided during that biennium to get a billing rate. That is done by a billing consultant pursuant into a federal formula that meets federal guidelines.

Representative Aarsvold: (1090) Aren't you really asking the state to pick up interest on that borrowed sum?

Allen Hoberg: Essentially that is right. We tried in the last biennium to include that interest rate within our billings rate. Billing all the agencies for the amounts plus interest, and found out after the session was over last time we could not bill the federal agencies interest.

Representative Wald: Didn't you have money in efficiency appropriation bill? How did we miss the mark so bad last biennium in regard you needing 150,000?

Allen Hoberg: That is correct. It was 120,000 dollars. That was to pay back the Bank of ND loan interest and a couple other items. We missed the case load, it was decreasing the last four years, so it falls short. Plus the interest we owe the Bank of ND this biennium is going to be about 20,000 dollars.

Representative Wald: Have you adjusted your fee schedule?

Allen Hoberg: Yes, we have adjusted it. We adjusted it this last biennium and will again this biennium. All of the budget will be covered by the fees that we charge.

Representative Wentz: Does anyone else wish to appear in opposition of SB2018? Seeing none we will close the hearing on SB2018.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2018

House Appropriations Committee
Education and Environment Division

☐ Conference Committee

Hearing Date March 27, 2001

Tape Number	Side A	Side B	Meter #
1 of 1	x		1,015
Committee Clerk Signature <i>Judy Schrock</i>			

Minutes:

Representatives Aarsvold, Boehm, Gulleeson, Martinson, Monson, Wald, Wentz.

Representative Wentz: Are there any bills we can act on?

Representative Wald: Reports on SB2017. Talks about amendments he is drawing up and not to move some of the programs into ED and F at this time. My only question is about the 2,250,000 that was added to work force 2000. Just wondering if that isn't a bit high. I think we should trim that a little bit, so I am not ready to act on it.

Representative Boehm: We are meeting on SB2021 this afternoon to work on that one. We need a few more days.

Representative Wentz: I think SB2003 University Systems we will be working on amendments this week where we can bring it all together. Does anyone have issues with SB2018? Some discussion about borrowing in the beginning. Are we ready to act on this? It is just the basic budget as it came to us.

Representative Monson: (625) If we have to appropriate 120,000 in this emergency measure, or deficiency appropriation how do we expect them to get along with 150,00 less besides from what they were appropriated last time. In fact 204,000. I am wondering how big the deficiency next time will be.

Representative Gulleason: Page 4 on the testimony provided by (?) it speaks why they are requesting less money.

Representative Wald: (725) The language of section 2 of the bill, borrow from the general fund. Don't we usually borrow from the bank of ND?

Celest OMB: You have done both.

Representative Gulleason: When they borrow from the general fund, is there any interest paid on that? Would that be the incentive to borrow from general fund verses Bank of ND?

Representative Aarsvold: Seems to me the agencies that are requesting the service should be the folks that should be making the loan, should they not?

Celest OMB: When this agency was established, it was recognition that you have the up front expenses and then as those hearings proceed the department is repaid, so it's paid at the end of the hearings. I believe ever since this has been initiated there has been some sort of borrowing up front for the operations of the agency, and paid off from their hearing proceedings. I think it always depends on the nature of their work. That would be the function of timing.

Representative Wald: On the pink sheets. I look at the bill and it says introduced by appropriations and yet it is a request of the Governor. This is not an engrossed bill it is the original bill. Why would the language be there when we have not changed the bill?

Celest OMB: In this item 1, it is saying that the bill as it was prepared by the Governor gave the authority to borrow from the general fund. In previous biennium they borrowed through the

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Education and Environment Division

Bill/Resolution Number SB2018

Hearing Date March 27, 2001

Bank of ND. That is a change from the way the agency is operating today. So L.C. is reporting the Schafer recommendation changes in that item from the current biennium.

Representative Wald: I make a motion for a do pass.

Representative Monson: I second the motion.

Representative Wentz: Any discussion on do pass motion? The motion is carried with 7 yes, 0 no, and 0 absent. Rep Gulleason to carry the bill to the floor.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2018

House Appropriations Committee

☐ Conference Committee

Hearing Date March 30, 2001

Tape Number	Side A	Side B	Meter #
03-30-01 tape #1		4355 - 5070	
Committee Clerk Signature <i>Kelli Hall</i>			

Minutes:

The committee was called to order, and opened committee work on SB 2018, the Office of Administrative Hearings.

Rep. Guleson: Explained the bill. This is a small agency and neither the subcommittee nor the Senate amended the bill. Moves DO PASS. Seconded by Rep. Wald.

(Some committee discussion).

Vote on Do Pass : 19 yes, 2 no, 0 absent and not voting.

Rep. Guleson is assigned to carry this bill to the floor.

Date: 3/27/01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. Appropriations Education and Environment Division

House S.B. 2018 Committee _____

☒ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken No pass

Motion Made By Rep. Wald Seconded By Rep. Monson

Representatives	Yes	No	Representatives	Yes	No
Rep. Janet Wentz -Chairman	✓				
Rep. James Boehm - Vice Chairman	✓				
Rep. Ole Aarsvold	✓				
Rep. Pam Gulletson	✓				
Rep. Bob Martinson	✓				
Rep. David Monson	✓				
Rep. Francis J. Wald	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Rep. Gulletson

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

Date: 3-30-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB2018

House APPROPRIATIONS

Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep. Gullison Seconded By Rep. Wald

Representatives	Yes	No	Representatives	Yes	No
Timm - Chairman	✓				
Wald - Vice Chairman	✓				
Rep - Aarsvold	✓		Rep - Koppelman	✓	
Rep - Boehm	✓		Rep - Martinson	✓	
Rep - Byerly	✓		Rep - Monson	✓	
Rep - Carlisle	✓		Rep - Skarphol		✓
Rep - Delzer		✓	Rep - Svedjan	✓	
Rep - Glassheim	✓		Rep - Thorsen	✓	
Rep - Gullison	✓		Rep - Warner	✓	
Rep - Huether	✓		Rep - Wentz	✓	
Rep - Kempenich	✓				
Rep - Kerzman	✓				
Rep - Kliniske	✓				

Total (Yes) 19 No 2

Absent _____

Floor Assignment Rep. Gullison

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

2001 TESTIMONY

SB 2018

**Department 140 - Office of Administrative Hearings
Senate Bill No. 2018**

	FTE Positions	General Fund	Other Funds	Total
2001-03 Executive Budget	6.00	\$0	\$1,371,292	\$1,371,292
1999-2001 Legislative Appropriations	6.00	0	1,576,016	1,576,016
Increase (Decrease)	0.00	\$0	(\$204,724)	(\$204,724)

The 1999-2001 appropriation amounts include \$3,079 of other funds for the agency's share of the \$5.4 million funding pool appropriated to the Office of Management and Budget (OMB) for special market equity adjustments for classified employees and \$426 of other funds for the agency's share of the \$1.4 million funding pool appropriated to OMB for assisting agencies in providing the \$35 per month minimum salary increases in July 1999 and July 2000.

Major Items Affecting Office of Administrative Hearings 2001-03 Budget

	General Fund	Other Funds	Total
1. Removes authorization for the Bank of North Dakota loan line item, replaced by a loan from the general fund.		(\$150,000)	(\$150,000)
2. Reduces funding for equipment to reflect decrease in need for new equipment as per the information technology plan.		(\$5,000)	(\$5,000)
3. Decrease in operations to reflect a hold-even budget.		(\$97,614)	(\$97,614)

Major Legislation Affecting the Office of Administrative Hearings

Section 2 of Senate Bill No. 2018 authorizes the Office of Administrative Hearings to borrow up to \$100,000 from the general fund during the 2001-03 biennium for cash flow purposes. Any loan made to the Office of Administrative Hearings must be repaid to the general fund by June 30, 2003.

House Bill No. 1026 provides for a general fund deficiency appropriation for the 1999-2001 biennium to the Office of Administrative Hearings for operating expenses of \$120,000. (emergency measure)

**Department 140 - Office of Administrative Hearings
Senate Bill No. 2018**

	FTE Positions	General Fund	Other Funds	Total
2001-03 Schafer Executive Budget	6.00	\$0	\$1,371,292	\$1,371,292
1999-2001 Legislative Appropriations	6.00	0	1,576,016	1,576,016 ¹
Increase (Decrease)	0.00	\$0	(\$204,724)	(\$204,724)

2001-03 Hoeven Executive Budget	6.00	\$0	\$1,371,292	\$1,371,292
Hoeven Increase (Decrease) to Schafer	0.00	\$0	\$0	\$0

¹ The 1999-2001 appropriation amounts include \$3,079 of other funds for the agency's share of the \$5.4 million funding pool appropriated to the Office of Management and Budget (OMB) for special market equity adjustments for classified employees and \$426 of other funds for the agency's share of the \$1.4 million funding pool appropriated to OMB for assisting agencies in providing the \$35 per month minimum salary increases in July 1999 and July 2000.

Major Schafer Recommendations Affecting Office of Administrative Hearings 2001-03 Budget

	General Fund	Other Funds	Total
1. Removes authorization for the Bank of North Dakota loan line item, replaced by a loan from the general fund.		(\$150,000)	(\$150,000)
2. Reduces funding for equipment to reflect decrease in need for new equipment as per the information technology plan.		(\$5,000)	(\$5,000)
3. Decrease in operations to reflect a hold-even budget.		(\$97,614)	(\$97,614)

**Major Hoeven Recommendations Affecting Office of Administrative Hearings 2001-03 Budget
Compared to the Bill as Introduced (Schafer Budget)**

The Hoeven recommendation does not change the Schafer recommendation.

Major Legislation Affecting the Office of Administrative Hearings

Section 2 of Senate Bill No. 2018 authorizes the Office of Administrative Hearings to borrow up to \$100,000 from the general fund during the 2001-03 biennium for cash flow purposes. Any loan made to the Office of Administrative Hearings must be repaid to the general fund by June 30, 2003.

House Bill No. 1026 provides for a general fund deficiency appropriation for the 1999-2001 biennium to the Office of Administrative Hearings for operating expenses of \$120,000. (emergency measure)

Department 140 - Office of Administrative Hearings
Senate Bill No. 2013

	FTE Positions	General Fund	Other Funds	Total
2001-03 Schafer Executive Budget	6.00	\$0	\$1,371,292	\$1,371,292
1999-2001 Legislative Appropriations	6.00	0	1,576,016	1,576,016
Increase (Decrease)	0.00	\$0	(\$204,724)	(\$204,724)

2001-03 Hoeven Executive Budget	6.00	\$0	\$1,371,292	\$1,371,292
Hoeven Increase (Decrease) to Schafer	0.00	\$0	\$0	\$0

The 1999-2001 appropriation amounts include \$3,079 of other funds for the agency's share of the \$5.4 million funding pool appropriated to the Office of Management and Budget (OMB) for special market equity adjustments for classified employees and \$426 of other funds for the agency's share of the \$1.4 million funding pool appropriated to OMB for assisting agencies in providing the \$35 per month minimum salary increases in July 1999 and July 2000.

Major Schafer Recommendations Affecting Office of Administrative Hearings 2001-03 Budget

	General Fund	Other Funds	Total
1. Removes authorization for the Bank of North Dakota loan line item, replaced by a loan from the general fund.		(\$150,000)	(\$150,000)
2. Reduces funding for equipment to reflect decrease in need for new equipment as per the information technology plan.		(\$5,000)	(\$5,000)
Decrease in operations to reflect a hold-even budget.		(\$97,614)	(\$97,614)

**Major Hoeven Recommendations Affecting Office of Administrative Hearings 2001-03 Budget
Compared to the Bill as Introduced (Schafer Budget)**

The Hoeven recommendation does not change the Schafer recommendation.

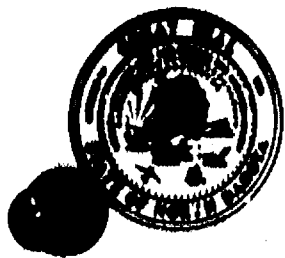
Major Legislation Affecting the Office of Administrative Hearings

Section 2 of Senate Bill No. 2013 authorizes the Office of Administrative Hearings to borrow up to \$100,000 from the general fund during the 2001-03 biennium for cash flow purposes. Any loan made to the Office of Administrative Hearings must be repaid to the general fund by June 30, 2003.

House Bill No. 1026 provides for a general fund deficiency appropriation for the 1999-2001 biennium to the Office of Administrative Hearings for operating expenses of \$120,000. (emergency measure) (This bill has passed the House.)

Summary of Legislative Changes Resulting From First House Action

See Statement of Purpose of Amendment (attached).



Allen C. Hoberg
Director

SB 2018
OFFICE OF ADMINISTRATIVE HEARINGS

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

701-328-3260
FAX 701-328-3254

MEMORANDUM

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

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

RE: OAH 2001-2003 Operating Budget Request
Senate Bill No. 2018

DATE: January 12, 2001

BACKGROUND INFORMATION

The Office of Administrative Hearings (OAH) work consists almost exclusively of conducting administrative hearings for a number of state agencies on a variety of administrative matters (e.g., complaint [enforcement] hearings, application hearings [for license or benefits], appeals hearings from various agency actions). OAH provides independent administrative law judges (ALJs) to conduct hearings that were formerly conducted by in-house agency hearing officers, assistant attorneys general, or agency contract hearing officers.

Since OAH began operations on July 1, 1991, it has conducted hearings for about 65 different state and local government agencies or entities. Most state agencies are required to use the services of OAH under N.D.C.C. chapter 54-57. N.D.C.C. § 54-57-03(1) lists those state agencies exempted. Some exempted state agencies, including the Workers Compensation Bureau (the "Bureau"), the Insurance Commissioner, and the Public Service Commission have voluntarily used the services of OAH, contracting with OAH to do so. Additionally, some local government agencies have used the services of OAH for such hearings as tobacco sales enforcement and public nuisance abatement. These local entities also contract with OAH. Contract arrangements like those between OAH and other state or local agencies or entities is common in other states, too.

From July 1, 1991, until September 1, 1995, OAH operated with a permanent full-time staff of five (three ALJ FTEs and two support staff FTEs), conducting hearings, the vast majority of which were from agencies required to use OAH services. (Even from the outset, however, OAH occasionally contracted with temporary, contract ALJs to conduct a few hearings on an as-needed basis.) On September 1, 1995, OAH began conducting all of the administrative hearings for the Workers Compensation Bureau, pursuant to agency agreement. OAH uses both permanent ALJs and temporary, contract ALJs to provide services for the

Bureau. However, OAH uses temporary, contract ALJs to conduct the bulk of Bureau hearings.

Since the 1997-99 biennium, then, OAH's budget has had a second component under its one major program, for conducting Bureau hearings by means of temporary, contract ALJs. However, both components of OAH's one major program are engaged in the same program activity, *i.e.*, providing hearing officer services to conduct hearings for state agencies and local entities.

In order to be able to provide the Bureau with the necessary temporary ALJs, OAH contracts with attorneys in the private practice of law. It became necessary to establish different billing rates for OAH temporary ALJ work and for all other OAH ALJ work, and to keep the two component parts separate for expenditure and revenue purposes. Therefore, the two separate components were created in OAH's budget under its one cost center. Although OAH has kept these separate components in preparing its 2001-2003 operating request proposal, it has submitted a combined budget proposal under its one major program, using only one cost center, Cost Center 1000.

It is important to remember that the Workers Compensation Bureau and other voluntary users of OAH hearing officer services are not required to use OAH for any hearing officer services. However, the Bureau has used OAH exclusively since September 1995, by agreement, and it wishes to continue to do so for the 2001-2003 biennium. Thus, the two component parts of OAH's one major program will continue for the foreseeable future. Other voluntary user agencies, such as the Insurance Commissioner, the Public Service Commission, and the Bank of North Dakota (student loan hearings), apparently will continue using OAH, too. However, these agencies are included under OAH's main component; OAH permanent ALJs conduct their hearings.

For the 2001-2003 biennium, OAH has requested a small (2.7%) increase in salaries and wages (based on performance increases in the current biennium). The original and the revised executive recommendation is for a 7.9 % increase in salaries and wages. Otherwise, OAH's budget is decreasing. OAH is asking for a \$97,611 decrease in operating expenses, primarily due to a decrease in the need for temporary hearing officer services for Workers Compensation Bureau hearings, and a \$5,000 equipment expenses decrease. The only relatively large increase in OAH's operating expenses for the coming biennium is a \$8,740 increase in information technology and data processing expenses.

The executive recommendation for OAH is for an increase of \$31,316 over OAH's request for \$85,959 less in total expenditures. All of the additional increase in the executive recommendation is based on the executive recommendation for the increased compensation package of salaries and benefits.

In short, under the executive recommendation, OAH's mission and functions remain essentially the same, with a goal to continue the services to its traditional program, as well as to be able to continue to provide quality services through an ongoing temporary program to the Workers Compensation Bureau, and to continue to provide quality services to other voluntary user agencies and to local entities.

OAH proposes essentially the same staff configuration as for the 1999-2001 biennium.

- 1 full-time Director/ALJ
- 2 full-time ALJs

- 3 full-time support staff (three administrative assistants -one for the WCB caseload)
- 10 temporary, contract ALJs, to do mostly WCB hearings, as well as some other agency hearings, as needed (this is down from 15 at the beginning of the current biennium)
- Total of 6 full-time FTEs, 10 temporary, contract ALJs.

BUDGET ANALYSIS

OAH's present 1999-2001 budget shows a total funding of \$1,576,016 when a \$150,000 loan from the Bank of North Dakota is included, but OAH must pay back that loan (with interest) before the end of the current biennium. OAH does not ask for authority to borrow from the Bank again this biennium. Therefore, OAH's current budget is really \$1,426,016. It is asking for a budget (executive recommendation) of \$1,371,292. An overall decrease of \$54, 724.

More specifically, under the executive recommendation. OAH is asking for \$47,890 more under the salaries and wages line item (including benefits), \$97,614 less in operating expenses, and \$5,000 less in equipment. Under operating expenses, OAH is asking for \$8,740 more in IT-data processing,

Fifty-seventh Legislative Assembly
State of North Dakota
Senate Appropriations Committee
January 12, 2001
Page 7

\$1,225 more in IT-telephone, \$615 more in postage, and \$50 more in printing. The remainder of OAH's operating expense line items are reduced or remain the same. There are substantial reductions in professional services (\$80,900), operating fees and services (\$17,200), dues and professional development (\$4,638), travel (\$2,000), and repairs (\$2,000).

This proposed budget contains nothing that is really new. The only new item for this biennium is the return to borrowing from the general fund (\$100,000 in borrowing authority) rather than borrowing from the Bank of North Dakota. This will mean that OAH will no longer have to repay interest which it cannot recover in its billing process. Otherwise, OAH will maintain its operations essentially as it has since September 1995, with reduced caseloads, especially in Workers Compensation cases. Of course, this assumes that no new legislation is passed expanding or reducing OAH's jurisdiction. None is anticipated by OAH. However, OAH is currently engaged in talks with state agencies aimed at possibly expanding voluntary use of OAH. OAH will continue to bill all agencies that use its services on an hourly rate, determined by our billing consultants, to fund all of its budget.

Fifty-seventh Legislative Assembly
State of North Dakota
Senate Appropriations Committee
January 12, 2001
Page 8

In summary, with the budget proposed today, OAH should be able to fulfill its mission, *i.e.*, providing quality, independent hearing officer services to all state agencies required to use its services and to all state or local entities wishing, for whatever reason, to engage an independent administrative law judge to conduct its hearings. OAH respectfully requests that the Senate approve OAH's 2001-2003 operating budget request as proposed today.

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

ACH:klp

Enclosures

Total Cases Received by Agency

From 07-01-1991 to 12-31-2000

Agency	# of Files Received Pre-Jul-91-Jun-93	# of Files Received Jul-93-Jun-95	# of Files Received Jul-95-Jun-97	# of Files Received Jul-97-Jun-99	# of Files Received Jul-99-Dec-00	Total Files Received Pre-Jul-91 - 12-31-00	Percentage of Total
Accountancy, State Board of Public	9	5	0	1	0	15	0.26%
Addition Counseling Examiners Board	2	1	1	0	1	5	0.09%
Administrators Professional Practices Board	0	0	0	2	1	3	0.05%
Aeronautics Commission	0	0	2	0	0	2	0.03%
Agriculture Commissioner	52	29	15	12	15	123	2.10%
Animal Health, Board of	0	1	0	1	0	2	0.03%
Attorney General, Office of	144	33	6	2	0	185	3.15%
Attorney General, Racing Commission	0	0	3	0	0	3	0.05%
Audiology & Speech-Language Pathology, Board of	0	0	1	0	1	2	0.03%
BRI, Banking and Financial Institutions, Dept. of	6	3	4	0	1	14	0.24%
BRI, Banking Board	7	6	5	1	0	20	0.34%
BRI, Credit Union Board	2	3	0	0	2	7	0.12%
BRI, Student Loans of North Dakota	2	0	0	1	0	3	0.05%
Central Personnel Division	30	46	27	27	20	148	2.52%
Chiropractic Examiners, State Board of	3	1	0	1	0	5	0.09%
Corrections - Parole & Probation	35	9	9	5	2	60	1.02%
Cosmetology, Board of	0	4	0	2	0	6	0.10%
Counselor Examiners, Board of	0	0	1	0	0	1	0.02%
County, Burrough	0	0	1	0	0	1	0.02%
Credit Review Board	0	0	1	0	2	3	0.05%
Dental Examiners, Board of	1	0	0	0	0	1	0.02%
DHS, Human Services, Department of	3	1	0	1	0	5	0.09%
Education Standards & Practices Board	591	562	486	440	293	2372	40.44%
Electrical Board, N.D. State	0	0	4	6	0	10	0.17%
Funeral Service, State Board of	0	0	0	3	0	3	0.05%
Game and Fish Department	0	0	1	0	0	1	0.02%
Health, Department of	8	7	6	5	2	28	0.44%
Hearing Instrument Dispensers, Board of	1	0	1	0	0	2	0.03%
Industrial Commission	0	2	0	0	0	2	0.03%
IC, Insurance Commissioner	6	6	9	7	6	34	0.58%
Job Service North Dakota	1	2	1	1	2	7	0.12%
Labor Department	1	0	1	0	0	2	0.03%
Lake Region District Health Unit	0	0	0	0	0	0	0.00%
Medical Examiners, State Board of	14	4	9	9	7	43	0.73%
Milk Marketing Board	6	2	0	8	2	18	0.31%
Minot, ND, City of	0	0	0	4	2	6	0.10%
Nursing Home Administrators, Board of Examiners for	0	0	0	1	0	1	0.02%
Nursing, State Board of	11	14	19	17	8	69	1.18%
Peace Officers Standards and Training Board	0	0	0	0	1	1	0.02%
Pembina County Public Health	0	0	1	0	0	1	0.02%
Pharmacy Board	0	0	1	5	4	10	0.17%

Total Cases Received by Agency

From 07-01-1991 to 12-31-2000

Agency	# of Files Received Pre-Jul-91-Jun-93	# of Files Received Jul-93-Jun-95	# of Files Received Jul-95-Jun-97	# of Files Received Jul-97-Jun-99	# of Files Received Jul-99-Dec-00	Total Files Received Pre-Jul-91-12-31-00	Percentage of Total
Public Examiners Board	0	1	0	0	0	1	0.02%
Private Investigative and Security Board	0	0	0	2	2	4	0.07%
Professional Engineers & Land Surveyors Board	0	0	0	2	1	3	0.05%
REC, Public Service Commission	28	38	8	14	21	109	1.86%
Psychologist Examiners, State Board of	0	2	0	2	0	4	0.07%
Public Employees Retirement Board	0	0	1	0	0	1	0.02%
Public Instruction, Department of	74	62	39	16	15	206	3.51%
Real Estate Appraisers, Board of	1	0	1	1	0	3	0.05%
Real Estate Commission	4	13	7	6	4	34	0.58%
Respiratory Care Examining Board	0	0	1	0	0	1	0.02%
Securities Commissioner	0	26	5	8	7	46	0.78%
Seed Department	0	0	1	1	0	2	0.03%
Social Work Examiners Board	0	3	1	1	1	6	0.10%
State, Secretary of	1	1	2	0	0	4	0.07%
Supreme Court	1	0	0	0	0	1	0.02%
Tax Commissioner, State	29	13	11	4	1	58	0.99%
Transportation, Department of	1	0	0	0	0	1	0.02%
University System, N.D.	1	7	3	1	1	13	0.22%
Veterans Affairs, Department of	8	5	10	2	0	25	0.43%
Veterinary Medical Examiners	1	0	1	1	0	3	0.05%
Vocational Education, Board of	1	0	0	0	0	1	0.02%
Water Commission, State/State Engineer	5	6	1	3	0	15	0.26%
Water Well Contractors, State Board of	3	0	0	0	1	4	0.07%
Workers Compensation Bureau	16	175	915	668	303	2077	35.41%
Totals	1109	1093	1623	1294	747	5866	100.00%

Number of Cases Received and Hearings Held by Year (All Agencies)

	7/1/95 - 6/30/96	7/1/96 - 6/30/97	7/1/97 - 6/30/98	7/1/98 - 6/30/99	7/1/99 - 6/30/00	7/1/00 - 12/31/00	Total
Number of Cases Received	830	793	678	616	552	195	3664
Number of Hearings Held			184	372	310	102	968
Ratio of Hearings to Cases			27%	60%	56%	52%	
NOTE: Computerized hearing statistics began sometime in 1997-1998 fiscal year. This is not all the hearings held during this biennium. It is likely closer to 50%.							

Number of Cases Received and Hearings Held by Agency

July 1, 1997 - June 30, 1998

	Cases Received	Hearings Held
Accountancy, State Board of Public	1	
Administrators Professional Practices	2	1
Aeronautics Commission		
Agriculture Commissioner	5	
Attorney General, Office of	1	1
Attorney General, Racing Commission		
Banking and Financial Institutions		
Banking Board		
Central Personnel Division	15	7
Chiropractic Examiners, State Board	1	1
Corrections - Parole & Probation	3	3
Cosmetology, Board of	1	
County, Burleigh		
DHS, Human Services, Dept. of	217	114
Education Standards & Practices Board	5	5
Electrical Board, N.D. State	3	1
Funeral Service, State Board of		
Game and Fish Department		1
Health, Department of	4	4
Hearing Instrument Dispensers, Board		1
Insurance Commissioner	5	3
Job Service North Dakota	1	1
Lake Region District Health Unit		
Medical Examiners, State Board of	5	3
Milk Marketing Board	7	1
Minot, City of	1	
Nursing, State Board of	8	1
Pharmacy Board	3	3
Professional Engineers & Land Surveyors	1	1
Psychologist Examiners, State Board of	2	
Public Service Commission	8	5
Public Instruction, Department of	10	10
Real Estate Commission	3	1
Securities Commissioner	2	1
Seed Department		
Tax Commissioner, State	2	
University System, N.D.	1	1
Veterans Affairs, Department of	1	1
Veterinary Medical Examiners		
Water Commission/State Engineer	2	
Workers Compensation Bureau	358	184
Total	678	184

Number of Cases Received and Hearings Held by Agency

July 1, 1998 to June 30, 1999

	Cases Received	Hearings Held
Accountancy, State Board of Public		
Administrators Professional Practices		
Aeronautics Commission		
Agriculture Commissioner	7	4
Animal Health, Board of	1	1
Attorney General, Office of	1	1
Attorney General, Racing Commission		
Audiology & Speech-Language Pathology		1
Banking and Financial Institutions		1
Banking Board	1	
BND, Student Loans of North Dakota	1	
Central Personnel Division	12	3
Chiropractic Examiners, State Board		
Corrections - Parole & Probation	2	2
Cosmetology, Board of	1	
County, Burleigh		
Dental Examiners, Board of	1	
DHS, Human Services, Dept. of	223	145
Education Standards & Practices Board	1	1
Electrical Board, N.D. State		1
Funeral Service, State Board of		
Game and Fish Department		
Health, Department of	1	1
Hearing Instrument Dispensers, Board		
Insurance Commissioner	2	2
Job Service North Dakota		
Lake Region District Health Unit		
Medical Examiners, State Board of	4	2
Milk Marketing Board	1	2
Minot, City of	3	3
Nursing Home Administrators, Board of Examiners for	1	
Nursing, State Board of	9	5
Pharmacy Board	2	1
Private Investigative and Security Board	2	
Professional Engineers & Land Surveyors	1	
Psychologist Examiners, State Board of		
Public Service Commission	6	1
Public Instruction, Department of	6	2
Real Estate Appraisers, Board of	1	
Real Estate Commission	3	
Securities Commissioner	6	
Seed Department	1	1
Social Work Examiners Board	1	
Tax Commissioner, State	2	

Number of Cases Received and Hearings Held by Agency

July 1, 1998 to June 30, 1999

University System, N.D.				1
Veterans Affairs, Department of		1		1
Veterinary Medical Examiners		1		
Water Commission/State Engineer		1		1
Workers Compensation Bureau		310		189
Total		616		372

Number of Cases Received and Hearings Held by Agency

July 1, 1999 to June 30, 2000

	Cases Received	Hearings Held
Accountancy, State Board of Public		
Addiction Counseling Examiners Board	1	
Administrators Professional Practices	1	
Aeronautics Commission		
Agriculture Commissioner	12	2
Animal Health, Board of		
Attorney General, Office of		
Attorney General, Racing Commission		
Audiology & Speech-Language Pathology	1	
BFI, Banking and Financial Institutions	1	
BFI, Banking Board		
BFI, Credit Union Board	1	1
BND, Student Loans of North Dakota	12	3
Central Personnel Division	14	5
Chiropractic Examiners, State Board		
Corrections - Parole & Probation	2	1
Cosmetology, Board of		
County, Burleigh	2	1
Dental Examiners, Board of		
DHS, Human Services, Dept. of	214	138
Education Standards & Practices Board		
Electrical Board, N.D. State		
Funeral Service, State Board of		
Game and Fish Department	1	1
Health, Department of		
Hearing Instrument Dispensers, Board		
Insurance Commissioner	6	2
Job Service North Dakota	2	1
Lake Region District Health Unit		
Medical Examiners, State Board of	6	4
Milk Marketing Board	2	3
Minot, City of	2	2
Nursing Home Administrators, Board of Examiners for		
Nursing, State Board of	7	4
Peace Officers Standards and Training Board	1	1
Pharmacy Board	2	1
Private Investigative and Security Board	1	
Professional Engineers & Land Surveyors	1	
Psychologist Examiners, State Board of		
Public Service Commission	13	10
Public Instruction, Department of	14	8
Real Estate Appraisers, Board of		
Real Estate Commission		
Securities Commissioner	4	

Number of Cases Received and Hearings Held by Agency

July 1, 1999 to June 30, 2000

Seed Department			
Social Work Examiners Board		1	
Tax Commissioner, State			
University System, N.D.			
Veterans Affairs, Department of			
Veterinary Medical Examiners			
Water Commission/State Engineer			1
Water Well Contractors, State Board		1	1
Workers Compensation Bureau		227	120
Total		552	310

Number of Cases Received and Hearings Held by Agency

July 1, 2000 to December 31, 2000

	Cases Received	Hearings Held
Accountancy, State Board of Public		
Addiction Counseling Examiners Board		
Administrators Professional Practices		
Aeronautics Commission		
Agriculture Commissioner	3	2
Animal Health, Board of		
Attorney General, Office of		
Attorney General, Racing Commission		
Audiology & Speech-Language Pathology		
BFI, Banking and Financial Institutions		
BFI, Banking Board		
BFI, Credit Union Board	1	1
BND, Student Loans of North Dakota	8	1
Central Personnel Division	4	2
Chiropractic Examiners, State Board		
Corrections - Parole & Probation		
Cosmetology, Board of		
County, Burleigh		
Dental Examiners, Board of		
DHS, Human Services, Dept. of	79	51
Education Standards & Practices Board		
Electrical Board, N.D. State		
Funeral Service, State Board of		
Game and Fish Department	1	
Health, Department of		
Hearing Instrument Dispensers, Board		
Insurance Commissioner		2
Job Service North Dakota		
Lake Region District Health Unit		
Medical Examiners, State Board of	1	1
Milk Marketing Board		
Minot, City of		
Nursing Home Administrators, Board of Examiners for		
Nursing, State Board of	1	1
Peace Officers Standards and Training Board		
Pharmacy Board	2	1
Private Investigative and Security Board	1	
Professional Engineers & Land Surveyors		
Psychologist Examiners, State Board of		
Public Service Commission	8	8
Public Instruction, Department of	1	1
Real Estate Appraisers, Board of		
Real Estate Commission	4	2
Securities Commissioner	3	

Number of Cases Received and Hearings Held by Agency

July 1, 2000 to December 31, 2000

Seed Department			
Social Work Examiners Board			
Tax Commissioner, State		1	
University System, N.D.		1	
Veterans Affairs, Department of			
Veterinary Medical Examiners			
Water Commission/State Engineer			
Water Well Contractors, State Board			
Workers Compensation Bureau		76	29
Total		195	102

1995-2000

NOTE: Computerized records on Prehearing Conferences were not maintained prior to 1998.

Total Cases Received for Workers Compensation

Pre-07/01/91 to 12/31/00 (9-1/2 years)	09/01/95 to 12/31/00 (5-1/2 years)	07/01/95 to 06/30/97 (2 years)	07/01/97 to 12/31/00 (3-1/2 years)
2077	1869	915	971

01/11/01



Allen C. Hoberg
DIRECTOR

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MEMORANDUM

TO: Fifty-seventh Legislative Assembly
State of North Dakota
House Appropriations Committee

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

RE: OAH 2001-03 Operating Budget Request
Senate Bill No. 2018

DATE: March 12, 2001

BACKGROUND INFORMATION

The Office of Administrative Hearings (OAH) work consists almost exclusively of providing independent administrative law judges to conduct administrative hearings for a number of state agencies on a variety of administrative matters, e.g., complaint (enforcement) hearings, application hearings for license or benefits, appeals hearings from various agency actions. Since OAH began operations on July 1, 1991, it has conducted hearings for about 65 different state and local government agencies or entities. Most state agencies are required to use the services of OAH under N.D.C.C. chapter 54-57. N.D.C.C. § 54-57-03(1) lists those state agencies exempted. Some exempted state agencies, including the Workers Compensation Bureau, the Insurance Commissioner, the Bank of

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

From July 1, 1991, until September 1, 1995, OAH operated with a permanent full-time staff of five (three ALJ FTEs and two support staff FTEs), conducting hearings, the vast majority of which were from agencies required to use OAH services. From the outset, however, OAH occasionally contracted with temporary, contract ALJs to conduct a few hearings on an as-needed basis. On September 1, 1995, OAH began conducting all of the administrative hearings for the Workers Compensation Bureau, pursuant to agency agreement. OAH uses both permanent ALJs and temporary, contract ALJs to provide services for the Bureau. However, OAH uses temporary, contract ALJs to conduct the bulk of Bureau hearings.

Since the 1997-99 biennium, then, OAH's budget has had a second component under its one major program, for conducting Bureau hearings by means of

temporary, contract ALJs. However, both components of OAH's one major program are engaged in the same program activity, *i.e.*, providing hearing officer services to conduct hearings for state agencies and local entities. Although OAH has kept these separate components in preparing its 2001-2003 operating request proposal, it has submitted a combined budget proposal under its one major program, using only one cost center.

It is important to remember that the Workers Compensation Bureau and other voluntary users of OAH hearing officer services are not required to use OAH for any hearing officer services. However, the Bureau has used OAH exclusively since September 1995, by agreement, and it wishes to continue to do so for the 2001-2003 biennium. Thus, the two component parts of OAH's one major program will continue for the foreseeable future. Other voluntary user agencies, such as the Insurance Commissioner, the Public Service Commission, and the Bank of North Dakota, apparently will continue using OAH, too. However, these agencies are included under OAH's main component; OAH permanent ALJs conduct their hearings.

For the 2001-2003 biennium, the original and the revised executive recommendation is for a 7.9 % increase in salaries and wages. Otherwise,

OAH's budget is decreasing. OAH is asking for a \$97,614 decrease in operating expenses, primarily due to a decrease in the need for temporary hearing officer services for Workers Compensation Bureau hearings, and a \$5,000 equipment expenses decrease. The only relatively large increase in OAH's operating expenses for the coming biennium is a \$8,740 increase in information technology and data processing expenses.

Under the executive recommendation, OAH's mission and functions remain essentially the same, with a goal to continue the services to its traditional program, as well as to be able to continue to provide quality services through an ongoing temporary program to the Workers Compensation Bureau, and to continue to provide quality services to other voluntary user agencies and to local entities.

OAH proposes essentially the same staff configuration as for the 1999-2001 biennium.

- 1 full-time Director/ALJ
- 2 full-time ALJs

- 3 full-time support staff (three administrative assistants -one for the WCB caseload)
- 10 temporary, contract ALJs, to do mostly WCB hearings, as well as some other agency hearings, as needed (this is down from 15 at the beginning of the current biennium)
- Total of 6 full-time FTEs, 10 temporary, contract ALJs.

BUDGET ANALYSIS

OAH's present 1999-2001 budget shows a total funding of \$1,576,016 when a \$150,000 loan from the Bank of North Dakota is included, but OAH must pay back that loan, with interest, before the end of the current biennium. OAH does not ask for authority to borrow from the Bank again this biennium. Therefore, OAH's current budget is really \$1,426,016. It is asking for a budget of \$1,371,292. An overall decrease of \$54,724.

More specifically, under the executive recommendation, OAH is asking for \$47,890 more under the salaries and wages line item, including benefits; \$97,614 less in operating expenses; and \$5,000 less in equipment. Under operating expenses, OAH is asking for \$8,740 more in IT-data processing, \$1,225 more in IT-telephone, \$615 more in postage, and \$50 more in printing. The remainder of

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OAH's operating expense line items are reduced or remain the same. There are substantial reductions in professional services (\$80,900), operating fees and services (\$17,200), dues and professional development (\$4,638), travel (\$2,000), and repairs (\$2,000).

This proposed budget contains nothing that is really new. The only new item for this biennium is the return to borrowing from the general fund rather than borrowing from the Bank of North Dakota. OAH is asking for \$100,000 in borrowing authority from the general fund. This will mean that OAH will no longer have to repay interest which it cannot recover in its billing process. Otherwise, OAH will maintain its operations essentially as it has since September 1995, with reduced caseloads, especially in Workers Compensation cases. Of course, this assumes that no new legislation is passed expanding or reducing OAH's jurisdiction. OAH will continue to bill all agencies that use its services on an hourly rate to fund all of its budget.

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

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its hearings. OAH respectfully requests that the House approve OAH's 2001-2003 operating budget request as proposed today.

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

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Enclosures