

FISCAL NOTE

Requested by Legislative Council
01/22/2003

Amendment to: HB 1044

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

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$152,632	\$0	\$151,135	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

Narrative:

House Bill No. 1044 requires the Office of Administrative Hearings to establish, implement, and administer a process of contracting for the legal counsel services for indigents which are required to be provided by law. Currently, the process is within the court system accomplished by judges and court administrative and secretarial staff. The bill contemplates that OAH will establish, implement, and administer a process to include reimbursement for those expenses of attorneys under contract and for those expenses of attorneys outside of the contract. OAH will determine the attorneys providing services and make payment to those providing services. Under the amendments, OAH may also employ full-time or part-time attorneys to provide services. However, the courts will retain the ability to determine who is eligible for and in need of indigent defense services, i.e. the application process. OAH is required to periodically review the application process.

The whole process is now completely handled by the courts, encompassing fiscal

administration and contract administration at the state level and district level administration in the state's seven judicial districts. The state level work includes establishing contracts in an accounting system, processing monthly contract counsel bills, processing bills for cases handled outside of contracts, legal review of contracts, contract interpretation, statewide recruitment advertisement, miscellaneous contract administration issues, and preparation of reports, statistics, and budget. The district level work includes bill processing, report generation, recruitment, contract preparation, and overall administration. If OAH is to establish and implement a statewide system, besides the work currently being done it will have to establish new statewide policies, which may include hiring some attorneys, draft new administrative rules, and review current programs, forms and reports and modify them as appropriate, as well as periodically review the application process and make recommendations to the courts regarding that process. In order to allow OAH time to establish new policies, hire personnel, draft new rules, and do all that is necessary to establish a workable new process, OAH asked for and received an amendment to have a delayed effective date for actually beginning the new process. The effective date for the legislation, that is the date when OAH assumes full control of the process is January 1, 2004. Yet, there will be much for OAH to do during the time from July 1, 2003 until implementation of the process on January 1, 2004. The amendments to the bill provide for a transition.

The courts estimate the work currently involves about a total of 3/4 time FTE spread out over seven districts and the state level, including legal, fiscal, secretarial, and general administrative duties of both a ministerial and professional or management type. Additionally, the first six months of the 2003-05 biennium will require considerable work establishing new policies, drafting new rules, and other initial transitional work, possibly involving work in contract drafting, accounting, programming, and advertising to establish a new process and incorporate what should be retained of the old process. Therefore, OAH believes that a full-time new position (1 FTE) will be required to do this work. The position will be filled by an attorney who should be experienced and knowledgeable about the work of indigent defense contracting. The attorney filling this position will be responsible for drafting new policy and rules and for implementing them by January 1, 2003; for establishing all of the systems required to begin and maintain a new process, including form drafting, accounting, bill processing, report generation, and budgeting; for advertising for and hiring new personnel, if necessary, and from January 1, for review of legal contracts, contract interpretation, recruitment and advertising, preparing reports, statistics, and budget, and preparing legal contracts; for supervising the monthly processing of bills

and other monthly ministerial work being done with regard to the process; for answering questions and responding to complaints from attorneys and judges; for making determinations about paying for out-of-contract expenses; for reviewing the application process retained by the courts and making recommendations to the courts about the application process; and for overall administration of the process. The attorney filling this position will essentially be the deputy director in OAH responsible for indigent defense contract administration. The person will report to the director of OAH and will, along with the Director, report to the State Advisory Council, the Legislative Council, and any other entity that maintains a advisory relationship with OAH regarding indigent defense contract administration.

An amendment to HB 1044 requires that all (100%) of the moneys in the indigent defense administration fund be appropriated on a continuing basis to the Office of Administrative Hearings to be used in indigent defense administration. This money will be used as operating funds to allow OAH to contract for secretarial work and to pay other expenses of the establishment of the new process (e.g. expenses of drafting rules, the expenses of recruitment and advertising, if necessary, new computer programming, including new billing programming, if necessary, etc.). OAH is not certain how much time will initially be required for secretarial work or other work to support the full-time work of the administrative person. OAH would rather contract for that work for the first biennium and then reassess both the administrative and supervisory work, and establish positions for the 2005-07 biennium based on actual experience. It may be at that time that OAH will seek something more permanent in additional support, perhaps an additional 1/2 time support position. In any event, all of the moneys from the indigent defense administration fund should be used for the purpose of contracting for secretarial support and other support, and for various expenses, foreseen and unforeseen, in establishing a new process.

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

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

OAH is now funded totally with special funds. OAH bills client agencies for work performed in providing administrative hearing services. OAH's caseload has increased by about forty cases this calendar year from last calendar year. OAH can not absorb any cost of the work required by HB 1044, at least not without raising the hourly billing rate

to its user agencies. However, the additional work required by HB 1044 is work not at all related to the hearings work OAH currently does for its client agencies. Therefore, the funds for the work required by HB 1044 must come from sources other than billing client agencies.

OAH estimates that HB 1044 will require an additional \$152,632 in general fund appropriations as well as an appropriation of \$42,900 in other fund appropriations to accomplish the work of HB 1044. Additionally, the amount of \$2,990,547 from the Supreme Court proposed budget for indigent defense contracts must be transferred to OAH to pay for attorney contracts for adults and juveniles, and to pay for non-contract (outside of the contract) work, for the last three quarters of the 2003-2005 biennium. The Supreme Court will retain \$996,849, one fourth of the amount currently existing in the Supreme Court proposed budget, for the first six months of the biennium until the delayed effective date. The Supreme Court has also retained \$325,000 of the total amount currently in the 2003-05 Supreme Court budget for indigent defense contract services for it to continue to pay for guardian ad litem contracts for the biennium. See page 1 of Engrossed HB 1044 - N.D.C.C. § 27-20-49(2).

Revenues: Approximately \$42,900 in OAH revenues for this work will come from the indigent defense administration fund which is a fund totally dependent on moneys collected by the courts from indigent defendants appointed contract counsel. The amount of this money will vary depending upon the number of applicants for appointment, the number of those determined eligible and receiving appointed counsel services, and the amounts reimbursed by those receiving appointed counsel services. In other words, this amount is subject to conditions outside of the control of OAH, still within the control of the courts. It is estimated that the fund will collect about \$42,900 for the 2001-2003 biennium and, if conditions remain about the same under the new process, the amount should be about the same for the 2003-2005 biennium.

\$152,632 in new general fund moneys will be required to hire the attorney to fill one position that will need to be authorized for OAH and to pay for operating expenses and equipment for the 2003-2005 biennium. The amount for the 2005-2007 biennium is somewhat less because of fewer equipment requirements.

\$ 2,990,547 will be required to be transferred from the Supreme Court budget to allow OAH to pay indigent defense attorneys under the contract for adult and juvenile defense contract work provided by them statewide and to allow for OAH to pay indigent

defense attorneys for work done by them outside of the contract. This amount plus the \$996,849 retained by the Supreme Court for the first six months of the biennium is the amount proposed in the 2003-2005 Supreme Court budget for this work (\$4,312,396 total budget, less \$325,000 for guardian ad litem, less \$996,849 for the first six months = \$2,990,547).

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

Again, \$42,900, or whatever amount is available from the indigent defense administration fund, will be spent on contract support (secretarial/ministerial support) for the professional, administrative position as well as on various foreseen and unforeseen operating expenses in establishing the new process.

\$128,987 will be spent on salary and fringe benefits for the attorney filling the new administrative position. \$5393 will be spent on start-up equipment (office furniture, computer, etc.). \$18,252 will be spent on continuing operating costs for the biennium for this position (phone, copying, postage, office supplies, travel, rent, insurance, professional development, printing, and other recurring office expenses). The total expenditures are \$152,632 for the biennium (03-05). The total recurring expenditures for the next biennium (05-07) are \$151,135.

\$3,987,396 will be spent by the Supreme Court and OAH during the full biennium on paying contract attorneys pursuant to the contract and for work performed outside of the contract. The current Supreme Court proposed budget allows \$167,800 for non-contract work, \$128,450 for services for juvenile work and \$3,691,146 for contract work.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

This appropriation is a best estimate. Although OAH has obtained information from the courts for input into this fiscal note, this is new ground for OAH. New policies and procedures, or possibly new personnel, may result in unforeseen expenses or work requirements. This estimated appropriation should allow OAH to adequately provide

the work required under HB 1044. It may be that change will have to be made in the 2005-2007 OAH budget for this work. Time and experience will tell. The total appropriation for this addition to the OAH budget for the next biennium is estimated to be \$3,186,079. Again, of this, \$42,900 will be other funds obtained by OAH each biennium from the indigent defense administration fund; \$152, 632 will be new general fund money this biennium (\$151,135 next biennium); and \$2,990,547 will be general fund moneys transferred from the proposed budget of the Supreme Court. For 2005-2007, the full amount of \$3,987.396 will be part of OAH's budget, and its total budget is estimated to be \$4,181,431.

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