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SENATE JUDICIARY COMMITTEE
FEBRUARY 1, 2023

TESTIMONY OF COURTNEY R. TITUS
OFFICE OF ATTORNEY GENERAL
SENATE BILL NO. 2296

Madam Chair, members of the Committee.

I am Courtney R. Titus, Deputy Solicitor General, and I appear on behalf of the Attorney General in opposition of Senate Bill 2296. Because this bill confuses the administrative hearing process and significantly increases the time and cost of administrative proceedings for both the State and the individuals appearing before the administrative agency, the Office of Attorney General recommends a do not pass on Senate Bill 2296.

Section 1 of the bill entirely modifies the manner in which administrative hearings are conducted by the Office of Administrative Hearings. The language in this section is ambiguous and unclear, which would result in a substantial increase in appeals from administrative matters. The language of Section 1 renders every decision of an administrative law judge as final and appealable, which means that at multiple stages of the proceedings either party would be able to appeal the matter to district court and the supreme court. Further, this bill fails to address how federal laws, regulations, or program rules that agencies are required to comply with, will be interpreted. With this bill, a final decision by an administrative law judge that does not properly address federal requirements, may place an agency in jeopardy of violating those applicable federal laws, regulations, or program rules and instead of having the ability to address these issues through amending a recommended decision, the agency has no choice but to appeal. This

would significantly increase the amount of time and cost to each agency for every administrative case. Additionally, this bill does not amend the preexisting sections of chapter 28-32, every administrative agency's relevant statutes, and so there are conflicting areas of law that will need to be worked out through litigation, all at the significant expense of both the State and the responding parties.

Section 2 of the bill seeks to remove deference to an administrative agency's interpretation of its statute or rule, upending decades of existing case law and precedent from the Supreme Court. Again, this section will result in either a substantial number of cases being appealed to district court by either party, or by the State choosing to avoid the administrative proceeding and file a lawsuit directly in district court instead; either of these options are significantly detrimental to both the State and the responding party. It would also possibly render the Office of Administrative Hearings obsolete if district court is preferred and pursued. Subsection 2 of section 2 directs the administrative law judge to essentially rule in each case in a manner that limits agency power and "maximizes individual liberty," however, there is no specification as to whose individual liberty is to be protected. Often times an agency is acting on the information of or on behalf of a complaining person. Is it their liberty or the respondent's liberty that should be given preferential treatment? In other instances, the respondent may be a private company, such as in Department of Labor cases where a hearing is requested pursuant to the request of a complaining individual. In those instances, subsection 2 of section 2 would require the administrative law judge to maximize the individual liberty of the private company because it would limit agency power, at the expense of the complaining individual. These are areas that the current draft of the bill leaves ambiguous, which will result in additional legal challenges.

The Civil Litigation Division of the Office of Attorney General represents most state agencies, boards, and commissions in administrative proceedings. Currently, there are seven

attorneys which represent the state in not only administrative proceedings, but also state and federal court cases and appellate proceedings. To put the effects of this bill into perspective, currently of the seven attorneys the Civil Litigation Division has, two are dedicated to the Department of Health and Human Services (DHHS) portfolio – they are full-time portfolios. We currently only receive 34% of DHHS' cases. To address the additional workload of just the DHHS, the Civil Litigation Division would require two additional FTEs devoted solely to that agency because of the sheer volume of cases we would receive. This does not address the additional workload of other agencies, boards and commissions the Civil Litigation Division would pursuant to its statutory duty, represent in these matters.

This bill creates significant ambiguities in the law and increases the cost and amount of litigation for both state agencies and the responding individuals. For these reasons, the Office of Attorney recommends a do not pass. Thank you for your time and consideration, and I would stand for any questions.