
AGENCY OVERVIEW

140 Office of Administrative Hearings

Date: 12/07/2012

Time: 13:41:11

Statutory Authority

North Dakota Century Code Sections 12-59, 37-19.1, 28-32-31, 40-51.2, 40-47-01.1, 54-57-03, and 61-03-22.

Agency Description

The Office of Administrative Hearings is an executive branch agency that provides independent administrative law judges to preside over state and local administrative hearings and related proceedings. Hearings are conducted under authority from the Administrative Agencies Practices Act (North Dakota Century Code Chapter 28-32), specific agency statutes, agency procedural rules, and the Uniform Rules of Administrative Procedure for Adjudicative Proceedings (North Dakota Administrative Code Article 98-02).

Agency Mission Statement

The Office of Administrative Hearings ("OAH") is an executive branch agency that provides independent administrative law judges ("ALJs") to preside as hearing officers over state and local administrative hearings and related proceedings. The mission is to:

- provide ALJs for all state ch. 28-32 agencies required to use OAH services.
- provide ALJs for those state agencies not under ch. 28-32 and units of local government that are required to use OAH services.
- provide ALJs, upon request, for those state agencies that are not required to use OAH services.
- provide ALJs, upon request, for state agency rules hearings.
- provide ALJs, upon request, for any unit of local government.
- provide ALJs, upon request, for any tribal government in this state.
- provide ALJs, upon request, for the judicial branch.

OAH ALJs preside as procedural or substantive ALJs for all state agencies required to use OAH services. A procedural ALJ conducts the hearing and related proceedings, but the agency head, who must be present at the hearing, issues the findings of fact, conclusions of law, and order. A substantive ALJ conducts the hearing and related proceedings and issues recommended findings of fact and conclusions of law, and a recommended order. The agency head issues the final order. For many agency matters, OAH ALJs conduct the hearing and issue the final order. OAH ALJs also preside as procedural or substantive ALJs for those state agencies and units of local government that are not required to use OAH services. They also preside at agency rules hearings, conducting the hearing only.

OAH ALJs conduct hearings under authority from the Administrative Agencies Practices Act, North Dakota Century Code Chapter 28-32, specific agency statutes, agency procedural rules, the Uniform Rules of Administrative Procedure for Adjudicative Proceedings, North Dakota Administrative Article 98-02, and federal statutes and rules.

Agency Performance Measures

Performance measures have been implemented for all agencies for which OAH conducts hearings. Essentially, the performance measures are case processing guidelines, measuring the length of time to "process" various components of administrative proceedings. Although performance measures for conducting administrative hearings are a helpful management tool, because of the inherent variability in hearings, they should be considered as guidelines and not strict performance measures. See 2009-11 Office of Administrative Hearings Biennial Report for the most recent OAH ALJ performance.

Major Accomplishments

1. Established performance measures for conducting hearings for all user agencies.
2. Continued active participation in national administrative law judge and hearing officer organizations, including the National Association of Hearing Officials, the National Association of Administrative Law Judiciary, and the Central Panel Directors Conference. OAH is seeking approval the Central Panel Directors Conference for hosting its 2014 meeting in North Dakota.
3. ALJ Bonny Fetch served as a public service commissioner from July 1, 2012, through December 31, 2012, while on temporary leave of absence from OAH.

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Future Critical Issues

The scope of OAH jurisdiction (expansion of jurisdiction), i.e., whether independent ALJs should be required for other state agencies besides those now under OAH jurisdiction, continues to be an issue. See "Future Critical Issues" in 2005-07, 2007-09, 2009-11, and 2011-13 budget proposals. Legislation has been introduced in the Legislative Assembly over the years to require some exempt agencies to use OAH. A successful initiated measure in 2008 required WSI to use OAH. Legislation has been passed to expand OAH jurisdiction for some local entities. OAH is not proposing any legislation for expansion of jurisdiction; however, OAH needs to continue to be concerned about whether voluntary agency users will continue to voluntarily use OAH.

Another continuing critical issue is whether OAH ALJs should issue final decisions for more agency hearings. OAH now issues final decisions for approximately 50.0 percent of its hearings.

Another critical issue is whether parties in administrative hearings ought to be able to disqualify a designated ALJ or hearing officer once without showing cause for disqualification.

REQUEST SUMMARY

140 Office of Administrative Hearings
Biennium: 2013-2015

Bill#: SB2017

Date: 12/07/2012

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Description	Expenditures 2009-2011 Biennium	Present Budget 2011-2013	Budget Request Change	Requested Budget 2013-2015 Biennium	Optional Budget Request
By Major Program					
Office of Administrative Hearings Services	1,677,425	1,827,199	919,650	2,746,849	0
Total Major Program	1,677,425	1,827,199	919,650	2,746,849	0
By Line Item					
Salaries and Wages	896,683	978,182	19,644	997,826	0
Operating Expenses	780,742	849,017	900,006	1,749,023	0
Total Line Items	1,677,425	1,827,199	919,650	2,746,849	0
By Funding Source					
General Fund					
Federal Funds					
Special Funds	1,677,425	1,827,199	919,650	2,746,849	0
Total Funding Source	1,677,425	1,827,199	919,650	2,746,849	0
Total FTE	5.00	5.00	0.00	5.00	0.00

REQUEST DETAIL

140 Office of Administrative Hearings

Bill#: SB2017

Date: 12/07/2012

Time: 13:41:11

Biennium: 2013-2015

Description	Expenditures 2009-2011 Biennium	Present Budget 2011-2013	Budget Request Change	Requested Budget 2013-2015 Biennium	Optional Budget Request
Salaries and Wages					
Salaries - Permanent	684,315	732,867	10,829	743,696	0
Overtime	0	5,000	1	5,001	0
Fringe Benefits	212,368	240,315	8,814	249,129	0
Salary Increase	0	0	0	0	0
Benefit Increase	0	0	0	0	0
Total	896,683	978,182	19,644	997,826	0
Salaries and Wages					
General Fund	0	0	0	0	0
Federal Funds	0	0	0	0	0
Special Funds	896,683	978,182	19,644	997,826	0
Total	896,683	978,182	19,644	997,826	0
Operating Expenses					
Travel	17,775	24,100	0	24,100	0
Supplies - IT Software	1,509	15,200	0	15,200	0
Supply/Material-Professional	174	2,244	0	2,244	0
Bldg, Ground, Maintenance	22	0	0	0	0
Miscellaneous Supplies	243	3,235	0	3,235	0
Office Supplies	1,852	7,292	0	7,292	0
Postage	9,176	11,400	0	11,400	0
Printing	2,251	2,860	0	2,860	0
IT Equip Under \$5,000	0	13,000	0	13,000	0
Office Equip & Furn Supplies	6,868	9,950	0	9,950	0
Utilities	291	400	0	400	0
Insurance	935	1,010	0	1,010	0
Rentals/Leases-Equip & Other	3,010	5,579	0	5,579	0
Rentals/Leases - Bldg/Land	52,931	68,006	0	68,006	0
Repairs	284	2,000	0	2,000	0
IT - Data Processing	37,856	48,727	0	48,727	0
IT - Communications	9,105	15,020	0	15,020	0
IT Contractual Srvcs and Rprs	304	1,000	0	1,000	0
Professional Development	6,310	15,000	0	15,000	0
Operating Fees and Services	1,052	3,000	0	3,000	0
Fees - Professional Services	628,505	599,994	900,006	1,500,000	0
Non-Operating Expenses	289	0	0	0	0
Total	780,742	849,017	900,006	1,749,023	0
Operating Expenses					

Operating Expenses

REQUEST DETAIL

140 Office of Administrative Hearings
 Biennium: 2013-2015

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Description	Expenditures 2009-2011 Biennium	Present Budget 2011-2013	Budget Request Change	Requested Budget 2013-2015 Biennium	Optional Budget Request
General Fund	0	0	0	0	0
Federal Funds	0	0	0	0	0
Special Funds	780,742	849,017	900,006	1,749,023	0
Total	780,742	849,017	900,006	1,749,023	0

Funding Sources

General Fund	0	0	0	0	0
Federal Funds	0	0	0	0	0
Special Funds	1,677,425	1,827,199	919,650	2,746,849	0
Total Funding Sources	1,677,425	1,827,199	919,650	2,746,849	0

CHANGE PACKAGE SUMMARY

140 Office of Administrative Hearings

Biennium: 2013-2015

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Description	Priority	FTE	General Fund	Federal Funds	Special Funds	Total Funds
Base Budget Changes						
Ongoing Budget Changes						
A-A 1 Professional Services		0.00	0	0	900,006	900,006
Base Payroll Change		0.00	0	0	19,644	19,644
Total Ongoing Budget Changes		0.00	0	0	919,650	919,650
Total Base Budget Changes		0.00	0	0	919,650	919,650

BUDGET CHANGES NARRATIVE

140 Office of Administrative Hearings

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Change Group: A	Change Type: A	Change No: 1	Priority: 1
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Professional Services - Increase in requests for professional services.

An increase in WSI caseload (hearing), coupled with an increase in the handling of WSI hearings by contract ALJs has resulted in substantial increases in expenditures by OAH for professional services. Professional service expenditures are almost entirely payments to contract ALJs. Additionally, besides an increase in the WSI caseload, there has been an increase in the requests for reconsideration of WSI final decisions, especially by claimant's attorneys. Requests for reconsideration require additional work by the assigned ALJ, and thus the costs for the hearing and, correspondingly, OAH's expenditures increase. Contract ALJs now handle virtually 100 percent of the WSI caseload, whereas previously they handled approximately between 85 and 90 percent of the WSI caseload.

Change Group: R	Change Type: A	Change No: 100	Priority:
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Executive Compensation Package Adjustment

This budget change provides funding for recommended 2013-15 compensation adjustments. Compensation adjustment for each agency were calculated following the recommendations of the Hay Group developed through the 2011 study of the state's classified employee compensation system. Pursuant to those recommendations, compensation adjustments were calculated to provide funding to allow for both performance-based salary adjustments and market-based salary adjustments. This funding allows for increases of 2% to 4% for employees in the first quartile of the pay range and 1% to 2% for those in the second quartile of the range. For employees in the third and fourth quartiles, which are above the market policy position, no market policy increase is funded. Performance-based increases are assumed to be 3% for employees meeting performance standards and up to 5% for employees exceeding performance standards. No performance-based increases are provided for employees that fail to meet performance standards.