

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1963-01
Bill No.: SB 548
Subject: Courts; Judges; Administrative Law
Type: Original
Date: March 7, 2005

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
General Revenue	\$0	\$0	\$0
Total Estimated Net Effect on General Revenue Fund	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Highway	\$0	\$0	\$0
Worker's Compensation	\$0	\$0	\$0
Unemployment Compensation Trust	\$0	\$0	\$0
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 11 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Various Federal	\$0	\$0	\$0
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Natural Resources** (DNR) assume the proposal would establish the Office of Administrative Hearings, located within the Office of Administration. The office would conduct administrative hearings currently held by or within executive branch departments. Administrative hearings within the legislative and judicial branches would be exempted. All current references to the Administrative Hearing Commission would be interpreted to mean the new office. The Office of Administrative Hearings is given rulemaking authority to implement the Act.

The proposal requires that any internal hearing procedure established by law for any department or agency would be held by the Office of Administrative Hearings in lieu of the department or agency. Depending on how the "internal hearing procedure" is defined this bill could potentially impact a number of areas in the department. Due to this uncertainty, the department is unable to determine the long range impact of this legislation.

ASSUMPTIONS (continued)

Officials from the **Office of Administration, Administrative Hearing Commission (AHC)** assume the proposal would create a new central panel, the Office of Administrative Hearings, which would have jurisdiction over every contested case filed in Missouri. We assume that the AHC would be merged into the OAH. Fiscal impact is unknown. Reallocation of existing resources may or may not be sufficient. This proposal creates one agency who is independent of all other agencies to handle the hearing functions for those agencies.

Officials from the **Department of Revenue (DOR)** assume the proposal would create one agency who is independent of all other agencies to handle the hearing functions for those agencies. DOR assumes the proposal would result in higher cost to provide administrative hearings.

General Counsel's Office

Since the administrative alcohol hearing officers currently offer the paper file at the administrative hearing, no additional DOR representative is required. There is no staff currently in place to make such presentations. The proposal would re-allocate 6 current legal counsels to the new agency, and DOR would have no staff to present evidence at such hearings or represent the department at the present administrative hearing commission.

DOR estimated a need for approximately 6 senior associate counsels to advocate the department's position at such hearing. Since statute now provides for in person hearings in the county of arrest and that section is not being changed, 1 of the 6 would have to be located in the Clayton field office; 1 in the Independence field office, and 4 in the Jefferson City office. Since there appears to still be judicial review beyond the hearing; and the statute providing for the de novo review is not being modified; the attorneys currently employed to handle the de novo review would still be required.

As noted above, moving the current legal counsel positions to the new administrative hearing agency and creating six new legal counsel positions will not create a need for additional staff for the General Counsel's Office. Therefore, the attached worksheets will not reflect the new positions although they are required.

ASSUMPTIONS (continued)

Division of Motor Vehicle and Drivers Licensing, Driver and Vehicle Services Bureau

The Driver and Vehicle Services Bureau (DVSB) assumes the proposal would require all hearings to be held by the Office of Administrative Hearings, and that all hearing officers would be transferred to that office effective January 1, 2006.

The proposal would affect three (3) FTE in the DVSB. These employees presently conduct administrative hearings from motor vehicle accidents, mandatory insurance sampling, third party testers for issuance of a license, and commercial driver license misrepresentation. DVSB is assuming these three employees would be transferred to and become employees of the Office of Administrative Hearings.

DVSB would require one (1) additional FTE to duplicate files for administrative hearings; copies would need to be made for the administrative law judges in order to have all the information available for the hearing. The DVSB anticipates one FTE to handle all requirements for file copies relating to motor vehicle accidents, mandatory insurance sampling, third party tester and commercial driver license misrepresentation hearings. DOR assumes all costs would be appropriated from the general revenue fund. Through the appropriations process, the general assembly could also appropriate any amounts permissible from highway and other funds to offset the general revenue fund cost shown in this fiscal note.

Officials from the **Office of the Secretary of State** (SOS) assume that the proposal would create the "Office of Administrative Hearings." The chief administrative law judge has the authority to promulgate rules. These rules will be published by our division in the Missouri Register and the Code of State Regulations. Based on experience with other divisions, the rules, regulations and forms issued by the chief administrative law judge could require as many as 18 pages in the Code of State Regulations. The estimated cost of a page in the Code of State Regulations is \$27.00. For any given rule, roughly half again as many pages are published in the Missouri Register as in the Code because cost statements, fiscal notes and the like are not repeated in the Code. The estimated cost of a page in the Missouri Register is \$23.00. The impact of this legislation in future years is unknown and depends upon the frequency and length of rules filed, amended, rescinded or withdrawn. $((18 \times \$27) + (24 \times \$23) = \$1,038)$

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process. Any decisions to raise fees to defray costs would likely be made in subsequent fiscal years.

ASSUMPTIONS (continued)

Although they did not respond to our request for information, officials from the **Department of Social Services** (DOS) stated in response to a similar proposal in a prior session that the department had 33 hearings officers which handle the spectrum of adjudicative, contested cases from the program divisions of the DOS. Total salaries for the 33 hearings officers for fiscal year 2000 was \$1,179,649.

Although they did not respond to our request for information, officials from the **Office of the Attorney General** assumed in response to a similar proposal in a prior session that any costs related to the proposed legislation could be absorbed by their agency.

Officials from the **Department of Labor and Industrial Relations** (DOL) noted the proposal does not indicate whether the appeal referees, who are transferred from the DOL-Division of Employment Security's Appeals Section to the new agency, would remain under an approved merit system as required. Federal standards require "the establishment and maintenance of personnel standards on a merit basis". If the United States Department of Labor (USDOL) would determine the transferred referees no longer met the merit staffing requirements and the fair hearing requirements, certification for payment of administrative grants to the DOL-DES would be withheld by the Secretary of labor. The result could be an estimated loss of \$40 million in federal funding. DOL assumes the positions would remain merit.

In response to a similar proposal in a prior session, officials from the **Department of Transportation** (DHT) indicated their agency has four types of contest case hearings: utility relocation, post-termination, outdoor advertising, and relocation assistance hearings. Under the current DHT procedures, in all hearings except for relocation assistance hearings, the hearing examiner prepares a draft findings of fact, conclusions of law and order for the commission to make a final decision. In the case of relocation assistance hearings, the commission has delegated its decision-making authority to an appeal board. In the case of utility relocation hearings, Section 227.240.2, RSMo 1994 requires the commission to make findings and order after the hearing. Likewise, Section 226.090, RSMo 1994, gives the commission the power to remove any officer or employee. Allowing the final decision in post-termination hearings to be made by the administrative law judge appears to be in conflict with the commission's power. DHT assumes their agency would not be required to reimburse the Office of Administrative Hearings for conducting hearings. It is also assumed that new hires would replace transferred hearings officers resulting in no fiscal impact to the agency.

ASSUMPTIONS (continued)

In response to a similar proposal in a prior session, officials from the **Department of Conservation** assumed the proposed legislation could increase litigation costs for their agency. The proposal impinges on Commission authority to revoke licenses. Fiscal impact is unknown.

Officials from the **Department of Economic Development, Division of Professional Registration, and Public Service Commission**, did not respond to our request for information.

Oversight assumes the proposal would result in overall net costs for conducting administrative hearings which would not be significantly greater than current procedures, and could be less.

<u>FISCAL IMPACT - State Government</u>	FY 2006 (10 Mo.)	FY 2007	FY 2008
GENERAL REVENUE FUND			
<u>Cost Savings</u> -Department of Revenue Personal service	Unknown	Unknown	Unknown
<u>Cost Savings</u> - Department of Mental Health Personal service	Unknown	Unknown	Unknown
<u>Cost Savings</u> - Department of Social Services Personal Service	Unknown	Unknown	Unknown
<u>Cost Savings</u> - Other agencies Personal Service	Unknown	Unknown	Unknown
<u>Costs</u> - Office of Administrative Hearings Personal Service	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

<u>FISCAL IMPACT - State Government</u>	FY 2006 (10 Mo.)	FY 2007	FY 2008
HIGHWAY FUND			
<u>Cost Savings</u> - Department of Transportation			
Personal service	Unknown	Unknown	Unknown
<u>Cost Savings</u> - Other agencies			
Personal Service	Unknown	Unknown	Unknown
<u>Costs</u> - Office of Administrative Hearings			
Personal services	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON HIGHWAY FUND	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
WORKERS' COMPENSATION FUND			
<u>Cost Savings</u> - Department of Labor and Industrial Relations			
Personal services	Unknown	Unknown	Unknown
<u>Costs</u> - Office of Administrative Hearings			
Personal services	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON WORKERS' COMPENSATION FUND	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

<u>FISCAL IMPACT - State Government</u>	FY 2006 (10 Mo.)	FY 2007	FY 2008
UNEMPLOYMENT COMPENSATION TRUST FUND			
<u>Cost Savings</u> - Department of Labor and Industrial Relations			
Personal Service	Unknown	Unknown	Unknown
<u>Costs</u> - Office of Administrative Hearings			
Personal services	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON UNEMPLOYMENT COMPENSATION FUND			
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
FEDERAL FUNDS			
<u>Cost Savings</u> - Department of Labor and Industrial Relations			
Personal service	Unknown	Unknown	Unknown
<u>Cost Savings</u> - Other agencies			
Personal Service	Unknown	Unknown	Unknown
<u>Costs</u> - Office of Administrative Hearings			
Personal services	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON FEDERAL FUNDS			
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
<u>FISCAL IMPACT - Local Government</u>			
	FY 2006 (10 Mo.)	FY 2007	FY 2008
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

DESCRIPTION

This proposal would replace all state administrative institutions' hearings with a new Office of Administrative Hearings within the Office of Administration.

- Administrative law judges would be selected and appointed by the governor upon screening and recommendation of a judicial nominating commission.
- The hearing officers and administrative law judges, employed as of January 1, 2006, would be transferred to and become employees of the Office of Administrative Hearings.
- The office would be headed by a Chief Administrative Law Judge selected by the Governor with the advice and consent of the Senate. The Chief Administrative Law Judge would serve a term of four years, could be removed only for good cause following notice and an opportunity for an adjudicative hearing, and would continue in office until a successor is appointed.
- The Chief Administrative Law Judge would also take an oath of office as required by law prior to the commencement of duties; devote full time to the duties of the office; could not engage in the practice of law; would be eligible for reappointment; and would be licensed to practice law in the state for a minimum of five years; and be subject to the code of conduct for administrative law judges.
- The Chief Administrative Law Judge would employ any necessary staff, subject to appropriations.
- All agencies of state government would cooperate with the Chief Administrative Law Judge in the discharge of the duties of the office.
- Except in arbitration or similar proceedings as provided by law or in this section or by regulation, an agency could not select or reject a particular Administrative Law Judge for a particular proceeding.

DESCRIPTION (continued)

- If the office is unable to assign an Administrative Law Judge in response to an agency referral, the Chief Administrative Law Judge could designate in writing an individual to serve as an Administrative Law Judge in a particular proceeding before the agency if the individual meets the qualifications for an Administrative Law Judge established by the office and is subject to the Code of Judicial Conduct.
- The assigned Administrative Law Judge would render the final decision of the agency not subject to agency review, in all appropriate hearings.
- No Administrative Law Judge or Chief Administrative Law Judge could, for two years after termination of his or her employment, perform any service for compensation for any person, firm, or corporation to influence the decision or action of the office; provided, however, that he or she may, after termination of his or her office or employment, perform such service for consideration in any adversary proceeding or in the preparation or filing of any public document or conference thereon unless he or she participated directly in that matter or in the receipt or analysis of that document while he or she was serving as a member.

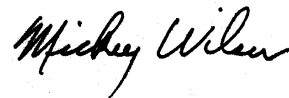
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of the Secretary of State
Office of Administration
 Administrative Hearing Commission
Department of Labor and Industrial Relations
Department of Natural Resources
Department of Revenue

NOT RESPONDING

Office of the Attorney General
Department of Economic Development
 Division of Professional Registration
 Public Service Commission
Department of Social Services



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