

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. NO.: 3129-04
BILL NO.: SB 970
SUBJECT: Administrative Law
TYPE: Original
DATE: February 23, 2000

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2001	FY 2002	FY 2003
General Revenue	\$0	\$0	\$0
Highway	\$0	\$0	\$0
Worker's Compensation	\$0	\$0	\$0
Unemployment Compensation Trust	\$0	\$0	\$0
Total Estimated Net Effect on <u>All</u> State Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2001	FY 2002	FY 2003
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 2001	FY 2002	FY 2003
Local Government	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 13 pages.

FISCAL ANALYSIS

Officials from the **Coordinating Board of Higher Education** indicated their agency does not employ or contract with administrative hearing officers, and thus would not be impacted by this proposal. The Missouri Student Loan Program has a contract with an administrative hearing officer to assist in resolving disputes in three areas - administrative wage garnishment, federal tax offsets, and state tax offsets. The administrative wage garnishment and federal tax offsets are governed by federal law and regulations and thus would not be impacted by this proposed legislation. State tax offsets are governed by state law and would be relocated to the Office of Administrative Hearings. However, challenges to state tax offsets are rare (1 in past 3 years) and the resulting fiscal impact from the availability of the Office of Administrative Hearings would be negligible.

Officials from the **Department of Public Safety** assumed the proposed legislation would have no fiscal impact on their agency since the DPS does not have any administrative law judges or hearing officers.

Officials from the **Department of Elementary and Secondary Education (DES)** indicated existing staff currently perform approximately 30 hearings per year dealing with the revocation or suspension of a teacher's license. These hearings will be handled by the FTE hired by the newly created Office of Administrative Hearings. DES assumes no staff savings because hearings have been handled by existing staff in the School Laws and Professional Conduct and Investigations sections of the department.

Officials from the **Department of Revenue (DOR)** assume the proposed legislation would reallocated 6 current legal counsels to the Office of Administrative Hearings and DOR would have no staff to present the evidence at such hearings or represent the department with pleadings, etc. such as occurs at the present Administrative Hearing Commission. This would create the need for approximately 6 attorneys to advocate the department's position at such hearings and the associated costs for these FTE. Since statute now provides for in person hearings in the county of arrest and that section of the law 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 a judicial review beyond the hearing and the statute providing for the de novo review is not being modified, the present attorneys employed to handle the de novo review would still be required. DOR assumes moving the current legal counsel positions to the new Office of Administrative Hearings and creating six new legal counsel positions will have a net effect fiscal impact of \$0 for the General Counsel's Office.

ASSUMPTION (continued)

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The DOR assumes the proposed legislation would affect 3 FTE in the Drivers License Bureau. These employees presently conduct administrative hearings from motor vehicle accident, mandatory insurance sampling, third party testers for issuance of a license and commercial driver license misrepresentation. The DOR assumes these three employees would be transferred to the Office of Administrative Hearings. One additional FTE will be required to handle the duplication of files for administrative hearings; copy files will need to be made for the administrative law judges in order to have all the information available for the hearing.

Oversight assumes the position duties and responsibilities would be transferred with the positions to the Office of Administrative Hearings.

Officials from the **Personnel Advisory Board (PAB)** assume the proposed legislation transfers hearing officers and administrative law judges from all agencies which have them to the Office of Administrative Hearings. The PAB already serves the function of providing an impartial tribunal for disciplinary actions taken by state merit agencies and those nonmerit agencies that adopt the PAB's procedures. The PAB employs hearings officers to hold its hearings and make recommendations to the Board. Section 36.390, RSMo Supp. 1999, grants the final decision-making authority to the Board. The proposed legislation transfers the hearings officers to the Office of Administrative Hearings and empowers the administrative law judges to make final decisions in the PAB's cases. The proposal would result in cost savings of one Chief Hearings Officer, one Hearings Officer, and a Principal Assistant for the PAB.

Officials from the **Department of Social Services (DOS)** indicated the department currently has 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 would be \$1,179,649.

Officials from the **Office of the Attorney General** assume any costs related to the proposed legislation could be absorbed by their agency.

Officials from the **Department of Economic Development - Division of Motor Carrier and Railroad Safety (DED-DMCRS)** indicated the proposed legislation would result in cost savings of 2 FTE for administrative law judges and 1 FTE for the clerk typist II that works for the judges. The Division will also save on the accompanying fringe benefits and expense and equipment related to these positions.

Officials from the **Department of Mental Health (DMH)** assume the one Hearings Officer employed by the department would be transferred to the new Office of Administrative Hearings.
ASSUMPTION (continued)

The cost savings resulting from the proposed legislation would be the salary and fringe benefits

of the Hearings Officer whose annual salary is currently \$46,080.

Officials from the **Department of Natural Resources (DNR)** assume the proposed legislation would require any internal hearing procedure established by law for the department to be held by the Office of Administrative Hearings (OAH). Due to the uncertain meaning of "internal hearing procedure," the scope of the legislation and the nature and scope of the rules the Office might adopt, it is difficult to estimate a fiscal impact.

The DNR's various boards and commission's authority to hold rulemaking hearings are established by law. If this is considered an "internal hearing procedure," the assigned administrative law judge would make the final decision, not subject to agency review, on all issues raised at the hearing. The same would be true for variances, exemptions and appeals hearings.

For example, pursuant to sections 643.050, 640.100, 644.026, 260.370, 444.535, 640.010 and 278.080, RSMo., the DNR has the authority to hold public hearings during the rulemaking process. Current law allows for either the various commissions presiding over the hearings or the commissions may hire a hearing officer. In either situation, the commissions have the final decision making authority.

Additionally, pursuant to sections 643.075, 640.100, 644.079, 260.410, 444.600, 640.010 and 278.080, RSMo., the DNR's various boards and commissions currently have the authority to hear any appeals brought before them. If the appeals process is reviewed as an "internal hearing procedure", this process would be affected as well.

The proposed legislation requires all agencies that have an investigatory, prosecutorial, or policy-making function with respect to the subject matter of the hearing to utilize the OAH. The OAH will assign an administrative law judge to each referral from the agencies. As a result, the department's rulemaking process could be lengthened if the DNR is unable to get an administrative law judge assigned in a timely manner.

Officials from the **Department of Labor and Industrial Relations (DOL)** assume the organizational structure of 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. Under 303(a)(1), SSA, "methods relating to the establishment and maintenance of personnel standards on a merit basis"

ASSUMPTION (continued)

are required. This is a necessary factor in providing for an "opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment compensation are

denied” as indicated under, 303(a)(3), SSA. If the 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. The DOL-DES assumes the positions would remain merit.

The DOL-DES currently has approximately 37 appeal referees statewide. It appears 13 do not meet the qualifications for administrative law judges as set forth in the proposed legislation. The DOL-DES assumes these referees will be grandfathered in. If this is not correct, and the 13 referees remain with the DOL-DES, then some employees may be laid off. However, the DOL-DES as a reimbursable employer could sustain costs of as much as \$ 79,430 (current maximum benefit amount in one benefit year is \$6,110 x 13 = \$79,430) in the payment of unemployment insurance (UI) benefits to the individuals laid off. This amount could be more or less depending on the number laid off, the number of weeks paid and if qualifications for a subsequent benefit year were met. If the 13 are not transferred to the new agency, then it is assumed the 13 positions open with the new agency would need to be filled to meet the current work load. So, funding would not change in this respect. Financial Management estimates the average annual salary rate for an appeals referee is \$ 48,120 + \$14,436 (30% for fringe benefits) = \$62,556. The estimated salary rate for an administrative law judge (90% of an associate circuit judge \$99,000) is \$89,100 + \$26,730 (30% for fringe benefits)= \$115,830. This would be an increase of \$53,274 annually. For 37 referees the increase cost potentially charged to the DOL-DES by the OAH could be \$1,971,138 annually. Unless other savings would occur, these increased cost would negatively impact other UI services delivered to UI claimants.

The DOL-DES is also assuming the estimated 32 clerical support staff statewide in the Appeals Section would be transferred to the OAH. If this is not correct and new support staff are hired by the OAH to perform these duties, then the DOL-DES may be forced to lay these employees off. The amount of this impact could be as much as \$195,520 in the payment of UI benefits.

It appears the proposal removes the Labor and Industrial Relations Commission (LIRC) from the appeals process. This could result in a savings to the DOL-DES. The FY 2001 budget provides funding to the LIRC in the amount of \$287,950.

The Legal Section has estimated the DOL-DES appealed for a review to the LIRC less than 20 determinations in 1999. Removing the LIRC from the appeal process could increase the time charged and costs incurred for legal representation for the DOL-DES in circuit court. Legal

ASSUMPTION (continued)

estimates this could increase to one and one-half of 1999 costs. Financial Management reports this amount was \$239,345 for 1999. This would be an increase of at least \$119,672. This

amount could be more or less depending on the time spent on each case and the number of cases appealed to the circuit court by the DOL-DES.

The DOL-DES assumes the Appeals Sections in Kansas City, Springfield, St. Louis and Jefferson City would remain at the same locations. If this is not correct, then the OAH could incur additional costs for office space and equipment for the 69 transferred employees. It is assumed this cost could reflect in an increase of charges to the DOL-DES. This amount is not known.

Assuming all employees in the Appeals Section are transferred, remain in the merit system, continue operating at the same locations, the LIRC is removed, referees are paid the same as ALJs, and legal hours charged to DOL-DES increase due to circuit court appeals, the DOL-DES estimates an impact of at least \$1,802,860 or more with 4% increases each year thereafter.

The administration of the UI program is financed by federal funding. The DOL-DES would not receive any new funds to cover these additional costs and assumes general revenue would be needed.

There are numerous assumptions the Division of Workers' Compensation makes in this fiscal note.

The DOL-DWC has a statutory duty under § 287.640, RSMo, to maintain offices in several locations around the state. Since the adjudication function is transferred under the bill, the DOL-DWC assumes the requirement to maintain offices in separate locations will be repealed.

The DOL-DWC assumes legal advisors will be transferred as part of this proposal. The legal advisors act as associate administrative law judges in performing their duties.

The DOL-DWC assumes all support staff in the local offices will also be transferred as part of the adjudication staff. These persons staff the local offices and make it possible for the adjudication staff to perform their jobs. The DOL-DWC has 17 court reporter IIs, 1 court reporter supervisor, 1 clerk IV, 10 clerk typist IIIs, 6 clerk typist IIs, 6 clerk IIIs, and 2 clerk IIs.

The DOL-DWC assumes all costs for rent and other equipment and expenses will be transferred to the Office of Administration.

ASSUMPTION (continued)

The DOL-DWC has safety staff in three of the its local offices. The DOL-DWC assumes office space will be made available for these persons under the current rental agreements.

The DOL-DWC assumes it will bear the same cost for the salaries and expenses outlined in items 2 through 5. These monies will be transferred to the Office of Administration to pay the salaries and expenses of the adjudication staff. These costs are:

Administrative law judges(17)-	\$ 2,143,003
Chief administrative law judges(8)-	\$ 1,048,472
Legal advisors(18)-	\$ 2,016,936
Court Reporter II(17)-	\$ 891,174
Court Reporter Supervisor(1)	\$ 58,285
Clerk Typist II(6)-	\$ 154,128
Clerk Typist III(6)-	\$ 177,774
Clerk II(2)-	\$ 49,506
Clerk III(10)-	\$ 292,690
Clerk IV(1)-	\$ 33,595
Total Salaries-	\$ 6,865,563
Rent	\$ 386,376
Equipment and Expenses	\$ 342,448
Total	\$ 7,594,387

The DOL-DWC assumes since the costs will pass through to the Office of Administration, there will be no fiscal impact. The funds will go to the new Office of Administrative Hearings.

Officials from the **Office of Administration - Administrative Hearing Commission (COA-AHC)** assume the Office of Administrative Hearings would replace their agency. As a result, the fiscal impact of the proposed legislation would be the entire budget of the COA-AHC, with its jurisdiction over appeals in the areas of professional licensing, tax, Missouri Ethics Commission, social services licensing, Medicaid reimbursement, and vehicle and motorcycle franchise cases.

Officials from the **Office of the Secretary of State** assume the rules, regulations, and forms issued by the Office of Administrative Hearings created by the proposal could require as many as 26 pages in the *Code of State Regulations*. 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 \$22.50. The estimated cost of a page in the *Code of State Regulations* is \$26.50. The impact of this legislation in future years is unknown and depends on the frequency and length of rules filed,
ASSUMPTION (continued)

amended, rescinded, and withdrawn.

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 appropriations process. Any decisions to raise fees to defray costs would likely be made in subsequent fiscal years.

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.

Officials from the **Department of Conservation** assume 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 Health, Office of the State Auditor, Office of the State Treasurer, Department of Agriculture, and State Tax Commission** assume the proposed legislation would have no fiscal impact on their agencies.

Oversight assumes that unknown efficiencies may be realized by the Office of Administrative Hearings once the agency becomes operational and are not reflected in this fiscal note.

<u>FISCAL IMPACT - State Government</u>	FY 2001 (6 Mo.)	FY 2002	FY 2003
GENERAL REVENUE FUND			
<u>Office of Administrative Hearings</u>			
<u>Costs - Personal Service</u>			
Total Cost - OAH	(\$1,632,040)	(\$3,203,111)	(\$3,279,795)

<u>FISCAL IMPACT - State Government</u>	FY 2001 (6 Mo.)	FY 2002	FY 2003
<u>Department of Revenue</u>			
<u>Cost Savings</u> - Personal Service (6 FTE)	\$108,999	\$223,448	\$229,034
<u>Personnel Advisory Board</u>			
<u>Cost Savings</u> - Personal Service (3 FTE)	\$65,425	\$134,119	\$137,471
Fringe Benefits	<u>\$13,131</u>	<u>\$26,919</u>	<u>\$27,591</u>
Total Cost Savings - PAB	<u>\$78,556</u>	<u>\$161,038</u>	<u>\$165,062</u>
<u>Department of Social Services</u>			
<u>Cost Savings</u> - Personal Service (33 FTE)	\$604,570	\$1,239,368	\$1,270,352
Fringe Benefits	<u>\$185,905</u>	<u>\$381,106</u>	<u>\$390,633</u>
Total Cost Savings - DOS	<u>\$790,475</u>	<u>\$1,620,474</u>	<u>\$1,660,985</u>
<u>Department of Mental Health</u>			
<u>Cost Savings</u> - Personal Service (1 FTE)	\$23,040	\$47,232	\$48,413
Fringe Benefits	<u>\$7,085</u>	<u>\$14,524</u>	<u>\$14,887</u>
Total Cost Savings - DMH	<u>\$30,125</u>	<u>\$61,756</u>	<u>\$63,300</u>
<u>Department of Labor and Industrial Relations</u>			
<u>Cost Savings</u> - Personal Service and Fringe Benefits	Unknown	Unknown	Unknown
<u>Office of Administration - Administrative Hearing Commission</u>			
<u>Cost Savings</u> - Personal Service (18 FTE)	\$373,310	\$765,287	\$784,422
Fringe Benefits	\$114,793	\$235,326	\$241,210
Expense and Equipment	<u>\$135,782</u>	<u>\$135,782</u>	<u>\$135,782</u>
Total Cost Savings - COA-AHC	<u>\$623,885</u>	<u>\$1,136,395</u>	<u>\$1,161,414</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
HIGHWAY FUND			
<u>Office of Administrative Hearings</u>			
Costs - Personal services	(\$197,386)	(\$404,714)	(\$414,910)

<u>FISCAL IMPACT - State Government</u>	FY 2001 (6 Mo.)	FY 2002	FY 2003
<u>Department of Revenue - Drivers License Bureau</u>			
<u>Cost Savings - Personal Service (3 FTE)</u>	\$54,500	\$111,724	\$114,517
<u>DED - Division of Motor Carrier and Railroad Safety</u>			
<u>Cost Savings - Personal Service (3 FTE)</u>	\$103,546	\$212,268	\$217,575
Fringe Benefits	\$31,840	\$65,272	\$66,904
Expense and Equipment	<u>\$7,500</u>	<u>\$15,450</u>	<u>\$15,914</u>
Total Cost Savings - DED-DMCRS	<u>\$142,886</u>	<u>\$292,990</u>	<u>\$300,393</u>
ESTIMATED NET EFFECT ON HIGHWAY FUND	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

WORKERS' COMPENSATION FUND

<u>Office of Administrative Hearings</u>			
<u>Costs - Personal services</u>	(\$3,797,194)	(\$7,766,026)	(\$7,941,956)
<u>Cost Savings - Personal Service (86 FTE)</u>	\$3,432,782	\$7,037,202	\$7,213,132
Expense and Equipment	<u>\$364,412</u>	<u>\$728,824</u>	<u>\$728,824</u>
Total Cost Savings - DOL-DWC	<u>\$3,797,194</u>	<u>\$7,766,026</u>	<u>\$7,941,956</u>

ESTIMATED NET EFFECT ON WORKERS' COMPENSATION FUND	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
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UNEMPLOYMENT COMPENSATION TRUST FUND

<u>Office of Administrative Hearings</u>			
<u>Costs - Personal services</u>	(Unknown)	(Unknown)	(Unknown)
<u>Cost Savings - Personal Service</u>	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>

<u>FISCAL IMPACT - State Government</u>	FY 2001 (6 Mo.)	FY 2002	FY 2003
ESTIMATED NET EFFECT ON UNEMPLOYMENT COMPENSATION FUND	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FEDERAL FUNDS

<u>Office of Administrative Hearings</u> Costs - Personal services and Fringe Benefist	(\$1,800,000 to Unknown)	(\$1,800,000 to Unknown)	(\$1,800,000 to Unknown)
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<u>Department of Labor and Industrial Relations</u> Cost Savings - Personal Service and Fringe Benefits	<u>\$1,800,000 to Unknown</u>	<u>\$1,870,000 to Unknown</u>	<u>\$1,940,000 to Unknown</u>
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ESTIMATED NET EFFECT ON FEDERAL FUNDS	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
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<u>FISCAL IMPACT - Local Government</u>	FY 2001 (6 Mo.)	FY 2002	FY 2003
	<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

The proposed legislation replaces most administrative hearings held by or within executive branch departments with a newly created Office of Administrative Hearings, located within the

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Office of Administration. Administrative hearings within the legislative and judicial branches are exempted. Administrative Law Judges (ALJ) are appointed by the Governor. They then select a chief ALJ. Administrative Law Judges would be compensated at 90% of an associate circuit judge. The chief ALJ receives an additional \$5,000. The chief ALJ is responsible for setting hearing procedures and other rules. Administrative Law Judges may not be employed to influence the office for two years after termination. However, they may practice law before another ALJ within those two years. All current department procedures regarding hearings (evidence, notice, limitations) still apply. All current references to the Administrative Hearing Commission shall be interpreted to mean this new office. The proposal would become effective January 1, 2001.

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 Attorney General
Office of Administration - Administrative Hearing Commission
Coordinating Board of Higher Education
Department of Agriculture
Department of Elementary and Secondary Education
Department of Transportation
Department of Mental Health
Department of Natural Resources
Department of Health
Department of Labor and Industrial Relations
Department of Revenue
Department of Social Services
Department of Public Safety
Department of Conservation

SOURCES OF INFORMATION (continued)

Office of the State Auditor
Office of the Secretary of State
Office of the State Treasurer
State Tax Commission

NOT RESPONDING: Department of Corrections and Department of Insurance

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A handwritten signature in black ink, appearing to read "Jeanne Jarrett". The signature is written in a cursive style with a large initial "J".

Jeanne Jarrett, CPA
Director
February 23, 2000