

FISCAL NOTE

Requested by Legislative Council
03/23/2001

Bill/Resolution No.:

Amendment to: Engrossed
 HB 1455

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.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				(\$2,258)		(\$2,258)
Expenditures				\$0		\$0
Appropriations				\$0		\$0

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

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

There are really two different scenarios concerning the Tax Commissioner's office and OAH. The first is the period between July 1, 1991 (when OAH began operations) and June 30, 1997. The second is the period between July 1, 1997, and the present. During the first period OAH received general funds that funded the provision of hearing officer services for the Tax Commissioner and many other "general fund" agencies. During this period, the Tax Commissioner's office was fairly active in requesting hearing officer services from OAH, i.e. it had a number of administrative tax cases scheduled to go to hearing each year. The average number of hours OAH ALJs spent on work for the Tax Commissioner's office was 135.6 hours per biennium. During the second period OAH did not receive any general funds for the provision of hearing officer services to any agency. In 1997 the Legislative Assembly removed all general funds from OAH's budget. Since July 1, 1997, OAH has billed all agencies to which it provides hearing officer services. For the biennium 1997-99, OAH billed the Tax Commissioner for only 28.4 hours of services provided. For the current biennium, to date, OAH has billed the Tax Commissioner for only 10.1 hours of services provided. OAH had only four requests for hearing officer services from the Tax Commissioner for the 1997-99 biennium, i.e. there had been only four administrative tax cases scheduled to go to hearing, and it has had only one request for hearing officer services for the current biennium. Currently, OAH bills agencies such as the Tax Commissioner at a rate of \$79.52/hour for hearing officer services. OAH anticipates that this amount will increase some in the next two biennia, but this fiscal note reflects the current billing rate. OAH's billing rate is determined by a billing consultant based, essentially, on the previous two years actual expenditures. Therefore, the rate for the 2001-2003 biennium will be based on OAH's actual expenditures for the current biennium.

However, OAH believes that this biennium is not likely the norm for the Tax Commissioner's office, in regard to the number of requests for hearing officer services. The 1997-99 biennium is more likely closer to the norm in the current climate of billing the Tax Commissioner for services. Therefore, this fiscal note is based on the number of hours required for providing hearing officer services for the 1997-99 biennium. Actually, though, the number of hours for the Tax Commissioner, as for any agency, could easily be significantly higher. For the past four years not one of the Tax Commissioner's administrative hearing requests has actually gone to hearing. All have either been informally settled or have been decided based upon a stipulation of facts and the submission of briefs. The designated ALJ has not had to conduct a hearing. If even one Tax Commissioner case in a biennium was decided based on a hearing, it is quite possible that the number of hours for hearing officer services required for such a case could reach 30 hours or more. Therefore, although the numbers provided for this fiscal note, based on historical averages, are accurate, they do not tell the story about what could easily happen if just one Tax Commissioner case went to hearing. Of course, if two or more cases went to hearing, the impact would be considerably more. In other words, the Tax Commissioner's office under the right circumstances could be a more significant revenue producer for OAH in the 2001-2003 or 2003-2005 bienniums if more hearings were actually held.

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.*

Based on the 1997-99 biennium number of hours, and based on OAH's current billing rate, if the Tax Commissioner's office were exempted from OAH jurisdiction, and if the Tax Commissioner did not voluntarily use any hearing officer services from OAH, OAH would lose \$2258.37 in revenues. It would lose the same amount of revenues for the 2003-2005 biennium. Again, this does not include any increases in billing rate that OAH is likely to experience during the next two biennia. Again, also, depending upon whether a case actually goes to hearing, the number of hours actually required to complete a case could vary considerably.

If OAH lost this revenue, OAH's billing rate would go up very slightly to make up for this lost revenue because OAH's expenditures would not be affected. See below.

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.*

Because the Tax Commissioner's office is currently such a small portion of OAH's total business, the impact on expenditures for OAH is practically nothing. All of OAH's expenditures would remain the same.

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.*

Also, the impact on OAH's overall appropriation may be practically nothing. If just one other case OAH received from another agency amounted to about 28 hours in the next biennium, the lost revenues from the Tax Commissioner's office could easily be replaced. However, OAH is experiencing a period of declining caseloads for

its user agencies, both for most of its mandatory and most of its voluntary user agencies. Therefore, it is safe to assume that a loss of the Tax Commissioner's caseload would have a very minor impact on OAH's revenues and the remainder of OAH's user agencies would be impacted in a very minor way through increased billings because OAH's expenditures and appropriation would remain the same.

Name: Allen C. Hoberg
Phone Number: 328-3260

Agency: Office of Administrative Hearings
Date 03/26/2001
Prepared: