

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2279

2001 SENATE JUDICIARY

SB 2279

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2279

Senate Judiciary Committee

Conference Committee

Hearing Date JANUARY 31ST, 2001

Tape Number	Side A	Side B	Meter #
1	X	X	51.6-END/31.5

Committee Clerk Signature

Minutes: **Senator Traynor** opened the hearin on SB 2279: A BILL FOR AN ACT TO AMEND AND REENACT SUBSECTION 1 OF SECTION 28-32-08.1 AND SUBSECTION 4 OF SECTION 54-57-03 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO THE QUALIFICATIONS OF HEARING OFFICERS AND ADMINISTRATIVE LAW JUDGES.

Senator Fischer, representing district 46 of Fargo. supports SB 2279. Asking deliberation over amendment. Discussed about expertise. Does believe we owe it to agencies that administer law judge has same expertise in what they are doing.

Senator Traynor, the long period of time that was agrivating.

Senator Fischer, yes the whole process went back and forth. When expert testimony is taken in court the person judging should too.

Senator Traynor, was lack of knowledge the problem?

Senator Fischer, partially.

Senator Traynor, case was then appealed to the district court?

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Senator Fischer, yes to district court then to the supreme court then back again.

Senator Dever, expertise, what about competence?

Senator Fischer, I don't have an objection to change expertise.

Senator Trenbeath, it's already in the law it can't get...

Tape 1 side B

Senator Nelson testifies in support of SB 2279. Believes people need to know what they are talking about and need to understand what they are judging. Sites example of piano.

Senator Trenbeath, I think your analogy is flawed. There are very few district judges that have expertise in medicine.

Senator Watne, on the fiscal note, it values the expertise of its judges.

Senator Traynor, as we know district courts, they are the trial courts. I don't know if they need experience.

Allen C. Hoberg, Director for Office of Administrative Hearings opposes SB 2279. (testimony attached)

Senator Lyson, I didn't understand your testimony.

Senator Traynor, what's your view of section 2 of the Bill. Wouldn't it do the same thing, if we didn't pass section 1, but passed section 2. Are you familiar with Senator Fischer's case?

Allen Holberg, it would be conflicting. Yes, I am familiar with Senator Fischer's case. It was a very long complex case. The factors of the case were also Federal.

Senator Traynor, did ruling in Federal case establish rules? What's the time interval between hearing and ruling?

Allen Holberg, to some extent it did. 30 days, but this is sometimes not possible.

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Bob Ruter, director of special education, shares the view of a satisfied customer. In special education we work with 13 district areas which require expertise. We feel the system is working. We provide training for our people.

Alana Footjackson, public service commissison, monitoring bill. Supports Mr. Holbergs testimony.

Senator Traynor closed the hearing on SB 2279.

SENATOR NELSON MOTIONED TO DO NOT PASS, SECONDED BY SENATOR BERCIER. VOTED INDICATED 7 YEAS, 0 NAYS AND 0 ABSENT AND NOT VOTING.

FISCAL NOTE
 Requested by Legislative Council
 01/22/2001

Bill/Resolution No.: SB 2279

Amendment to:

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				\$27,242		\$13,671
Expenditures		\$13,671		\$13,671		\$13,671
Appropriations		\$13,671		\$13,671		\$13,671

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.*

Although this bill is almost certain to have a fiscal impact on the Office of Administrative Hearings, and possibly on other agencies too, it is very difficult to quantify the amount of that fiscal impact for two reasons. First the interpretation of the word expertise is not known. If expertise in the subject matter of the proceeding can be gained by in-house types of training sessions, the fiscal impact may be rather light. However, if expertise means significant other training or education and/or significant experience in the subject matter of the proceeding, than the fiscal impact may be rather heavy. It may even require that additional hearing officers, whether full-time or temporary, be hired by OAH so that the required expertise is available to the agency, if such hearing officers with the requisite education and experience are available. When OAH is required to fill any vacancies in its full-time ALJ staff, or even in its Cadre of temporary ALJs, it may require substantial training to obtain the requisite expertise, because OAH conducts hearings for about 65 different agencies and several of them have more than one type of hearing (some have many different types of hearings, involving many different subject matters). OAH already engages in some cross training, but would have to undertake considerably more if additional in-house training were required before an ALJ could conduct an agency's hearing. If additional training besides in-house training were necessary, that would add to the burden.

Although OAH already values the expertise of its ALJs by attempting to assign the ALJ with portfolio experience in a particular type of hearing, because of the number of types of hearings, and the timing of agency requests, over which OAH has no control, that is not always possible. Therefore, again depending

on the type of expertise required, significant cross training may be required.

Because OAH bills agencies for all hearing officer services provided by its ALJs, based on the previous two years actual expenditures, OAH would have to absorb the costs this biennium, somehow (if this is just training requirements), even though it might be built in to OAH's budget. Then, the next biennium, OAH billing rates would be adjusted accordingly for the increased training expenses incurred. If the increase would result in OAH having to hire a new ALJ or to contract with some different temporary ALJs with the requisite expertise, then, OAH would have to build those costs into its budget and the billing rate would, again, be adjusted the next to years to reflect those additional costs.

The revenues and expenditure shown above do not include any increased costs for additional hiring of or contracting with either full-time or temporary ALJs in order to meet the expertise requirements of this bill. Again, it is difficult to determine whether the caseload would require additional full-time ALJs or just contracting with additional expert temporary ALJs depending on the timing and nature of the requests for services received from the 65 different agencies for which OAH conducts hearings. The revenues and expenditures above only show an estimate of what the cross-training costs of this bill may require, again, assuming additional cross-training meets the expertise requirements of this bill. The estimates do not show any increases for other types of training that may be necessary.

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.*

OAH bills all agencies for hearing officer services. It bill all agencies \$79.52/ hour for agency hearings conducted by full-time OAH ALJs. It bills the Workers Compensation Bureau \$95.00/hour for Bureau hearings conducted by OAH temporary, contract ALJs. OAH would not recover any of the costs of training to obtain the requisite expertise in the 2001-2003 biennium because its billing rate is determined based on the previous two years actual costs. The costs of additional training would not be incurred until 2001-2003. Those additional costs would be recovered by revenues in 2003-2005 (due to increased billing rates).

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.*

The expenditures of cross training necessary to meet the requirements of expertise for every hearing for every agency is just a estimate. Again, it is impossible to anticipate the timing and numbers of different types of hearings that an ALJ may not have the required expertise. However, for this fiscal note, OAH estimates that it may require that each of OAH's three full-time ALJs each receive 20 hours of additional cross-training. At \$79.52/ hour the cost is \$4771. The costs could be more, however. It is even more difficult to determine the additional training requirements for temporary ALJs. Again, it depends on the timing and the types of hearings requested and when full-time ALJs would not be available with the required expertise. It may require up to 10 hours of training each for about 10 different temporary ALJs. Assuming that they could be obtained using OAH's regular full-time rate, the cost would be \$7952. It would be \$9500 at a \$95/hour rate. The later figure is probably more accurate since that is the rate it currently costs OAH to obtain temporary ALJs for the Bureau. Again, the expenditures would be considerably more

if this bill resulted in OAH to train other than by in-house means, or if OAH had to hire additional full-time ALJs with the requisite education and experience, and to contract with temporary ALJs with the requisite education and experience.

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.*

As seen above, the estimate for additional appropriation for the 2001-2003 biennium, and for each succeeding biennium would be \$13,671 for requisite cross-training only, assuming that OAH's billing rate does not otherwise increase, too. Again, this fiscal note does not attempt to estimate the cost of other training or of additional full-time FTEs, if this bill would require the hiring of additional full-time ALJs or additional contracts with temporary ALJs with the requisite education and experience under a more strict interpretation of the word "expertise" in this bill.

Name:	Allen C. Hoberg	Agency:	Office of Administrative Hearings
Phone Number:	328-3260	Date Prepared:	01/22/2001

