

DA.11
Office of Administrative Hearings

Operating Budget Data

(\$ in Thousands)

| | FY 00 | FY 01 | FY 02 | | % Change |
|--------------------|----------------|-----------------|------------------|---------------|-------------------|
| | <u>Actual</u> | <u>Working</u> | <u>Allowance</u> | <u>Change</u> | <u>Prior Year</u> |
| General Fund | \$119 | \$24 | \$25 | \$1 | 4.2% |
| Special Fund | 11 | 6 | 6 | 0 | |
| Reimbursable Fund | <u>9,769</u> | <u>10,380</u> | <u>10,865</u> | <u>485</u> | <u>4.7%</u> |
| Total Funds | \$9,899 | \$10,410 | \$10,896 | \$486 | 4.7% |

Personnel Data

| | FY 00 | FY 01 | FY 02 | |
|------------------------|---------------|----------------|------------------|---------------|
| | <u>Actual</u> | <u>Working</u> | <u>Allowance</u> | <u>Change</u> |
| Regular Positions | 144.00 | 142.00 | 141.00 | (1.00) |
| Contractual FTEs | <u>0.00</u> | <u>0.00</u> | <u>0.00</u> | <u>0.00</u> |
| Total Personnel | 144.00 | 142.00 | 141.00 | (1.00) |

Vacancy Data: Regular

| | | |
|---------------------------------|-------|--------|
| Budgeted Turnover: FY 02 | 6.35 | 4.50% |
| Positions Vacant as of 12/31/00 | 15.50 | 10.92% |

Note: Numbers may not sum to total due to rounding.

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Analysis in Brief

Issues

Legislative Audit Reveals Late Decisions and Inaccurate Caseload Data: A representative from the Office of Administrative Hearings (OAH) should brief the committees on the results of new measures to monitor case status and ensure timely case resolution.

Proposed Legislation Mandates Regional Offices and Provides for Gubernatorial Appointment of Administrative Law Judges: To assure that the services of the office are conveniently available statewide, HB 133 of 2001 mandates the establishment of regional offices. HB 133 also strips the Chief Administrative Law Judge of authority to hire and remove administrative law judges, instead providing for appointment by the Governor with the advice and consent of the Senate. **A representative from OAH should brief the budget committees on the fiscal and administrative impact of this proposed legislation on OAH operations.**

Recommended Actions

1. Add budget bill language to the appropriation for the Office of Administrative Hearings requiring an annual accounting of reimbursable funds and calculations.

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Office of Administrative Hearings

Operating Budget Analysis

Program Description

The Office of Administrative Hearings (OAH) holds hearings in contested cases involving State agencies. The office was created in 1989 to centralize the hearing functions in various units of State government. Cases are heard by administrative law judges (ALJs) who are trained to hear a variety of cases. Most cases are generated by the Motor Vehicle Administration; the Inmate Grievance Office; the Department of Health and Mental Hygiene; the Department of Human Resources; the Department of Labor, Licensing, and Regulation; and the Department of Budget and Management (DBM). Funding comes primarily from agencies which reimburse the OAH based on the amount of time spent on the cases.

The Chief Administrative Law Judge is the administrative head of the agency. The State Advisory Council on Administrative Hearings oversees all activities of the agency and provides guidance and direction to the Chief Administrative Law Judge.

Governor's Proposed Budget

The fiscal 2002 allowance for OAH is \$10.9 million, increasing \$486,387, or 4.7%, over the fiscal 2001 working appropriation. A \$580,332 increase in personnel expenses accounts for more than the overall increase in fiscal 2002. Personnel expenses are \$8.8 million in the fiscal 2002 allowance and represent 80% of the agency's fiscal 2002 expenses. OAH receives no new positions in this allowance. **Exhibit 1** shows the expenses contributing to the increase in the fiscal 2002 allowance.

Increasing Vacancy Rate

The average vacancy rate for fiscal 2001 is 10.2%, a significant increase over the agency's average fiscal 1999 vacancy rate of 7.76%. The agency's vacancy rate has been steadily increasing since fiscal 1999; its December 31, 2000, rate of 10.92% represents the highest vacancy rate in the last three and a half fiscal years. OAH expects to hire six ALJs in March 2001, reducing the agency's vacancy rate to 6.69%.

A representative of OAH should brief the budget committees on the reasons for the agency's increasing vacancy rate and its efforts to reduce staff turnover.

Exhibit 1

**Governor's Proposed Budget
Office of Administrative Hearings
(\$ in Thousands)**

| How Much It Grows: | General Fund | Special Fund | Reimbursable Fund | Total |
|--|-------------------------|-------------------------|------------------------------|---------------|
| 2001 Working Appropriation | \$24 | \$6 | \$10,380 | \$10,410 |
| 2002 Governor's Allowance | <u>25</u> | <u>6</u> | <u>10,865</u> | <u>10,896</u> |
| Amount Change | \$1 | \$0 | \$485 | \$486 |
| Percent Change | 4.2% | 0.0% | 4.7% | 4.7% |
| Where It Goes: | | | | |
| Personnel Expenses | | | | |
| Abolished position | | | | (32) |
| Fiscal 2002 general salary increase | | | | 150 |
| Increments, fiscal 2001 increase phase-in and other | | | | 178 |
| Employee and retiree health insurance rate change | | | | 110 |
| Retirement contribution rate change | | | | (65) |
| Workers compensation premium assessment | | | | (3) |
| Turnover adjustments; turnover decreased from 5.00% to 4.50% | | | | 131 |
| Other fringe benefit adjustments | | | | 110 |
| Additional Operating Expenses | | | | |
| Westlaw contract | | | | 21 |
| Decrease in rent costs | | | | (43) |
| Decreased costs for court reporters and interpreters | | | | (22) |
| Development of new case management system in fiscal 2001 | | | | (26) |
| Capital lease payments: decline in current leases is offset by new leases for replacement equipment in fiscal 2002 | | | | (17) |
| Miscellaneous | | | | (6) |
| Total | | | | \$486 |

Note: Numbers may not sum to total due to rounding.

Reimbursable Funds

Reimbursable funds comprise 99.7% of the OAH's fiscal 2002 allowance. The OAH receives reimbursable funds from agencies who refer contested cases for OAH resolution. These agencies receive an appropriation based upon billing information provided to DBM by OAH. OAH bills agencies as illustrated by the formula below. An agency's fiscal 2002 allowance for OAH expenses will be determined by that agency's fiscal 2000 OAH caseload, the average length of time each case takes to resolve, and by OAH's projected fiscal 2002 expenses. Essentially, OAH bills each agency for its share of OAH operating expenses proportionate to its use of OAH time.

OAH Agency Billing Procedure for Fiscal 2002

$$\frac{(\# \text{ of Fiscal 2000 cases } \times \text{ average hours/case})}{\text{total hours}} \times \text{Fiscal 2002 expenditures} = \text{Agency Charge}$$

OAH periodically completes a time-per-case survey for each agency to determine the average number of hours needed to resolve each kind of case.

Exhibit 2 shows the caseload and case hours used to determine reimbursable funding for fiscal 2002. The final columns show the percentage increase in case hours and reimbursable charges over the fiscal 2001 appropriation. It is apparent that an agency's OAH charges can increase even if its use of OAH time decreases. This apparent anomaly occurs because OAH operating costs increase and because an agency's proportionate use of OAH time (relative to other agencies), not its absolute use of OAH time, forms the basis of its allocated cost. Exhibit 2 illustrates that total case hours are projected to increase by 4.9% over fiscal 2001 and reimbursable funds increase correspondingly by 4.7%.

To review OAH billing practices requires accurate, updated information on actual case hours as compared to estimated case hours for each agency. Such a review also ultimately requires review of OAH efficiency, as timely completion of cases affects actual case hours which drive agency billing. While this billing practice may be the most reasonable way to allocate OAH costs, it creates an inherent conflict between timely resolution of cases and justifying cost allocation based on case hours. This conflict underscores the importance of OAH developing meaningful measures for timely resolution of cases and highlights the seriousness of the audit findings discussed in the issues section of this analysis.

OAH currently does not report its billing calculations or its time-per-case survey results to the General Assembly. Because the agency is supported almost entirely by reimbursable funds determined by its billing calculations, this supporting information is important to understanding the OAH budget. It is also important to understanding the appropriations of those agencies who receive an annual general fund appropriation to reimburse for OAH services. **In order to provide a complete accounting of OAH operations, DLS recommends the following budget bill language: provided that OAH submit with its annual budget request to DBM an accounting of actual annual case load and case hours attributable to each agency from which OAH received reimbursable funds, in addition to documentation of its reimbursable funds calculation for each agency.**

Exhibit 2

**Caseload and Reimbursable Fund Distribution
Office of Administrative Hearings
Fiscal 2002 Allowance**

| | <u>Cases</u> | <u>Total Hours</u> | <u>% of Total Court Time</u> | <u>Reimb. Funds</u> | <u>% of Total Reimb. Funds</u> | <u>% Chg. in Case Hours over FY01</u> | <u>% Chg. in Reimb. Funds over FY01</u> |
|----------------------------------|---------------|--------------------|------------------------------|---------------------|--------------------------------|---------------------------------------|---|
| Attorney General | 8 | 132 | .25% | 27,694 | .25% | 22.2% | 35.6% |
| Board of Public Works | 1 | 26 | .05% | 5,455 | .05% | 0.0% | 11.0% |
| Human Relations Commission | 7 | 420 | .81% | 88,118 | .81% | 250.0% | 288.4% |
| Md. Insurance Administration | 409 | 842 | 1.63% | 176,656 | 1.63% | 0.0% | 11.0% |
| Budget and Management | 301 | 3,221 | 6.22% | 675,782 | 6.22% | -14.0% | -4.6% |
| Retirement and Pension | 32 | 640 | 1.24% | 134,275 | 1.24% | 0.0% | 11.0% |
| Transportation | 23,172 | 12,287 | 23.73% | 2,577,770 | 23.73% | -1.5% | 7.9% |
| Natural Resources | 36 | 272 | .52% | 56,962 | .52% | 142.9% | 170.2% |
| Health and Mental Hygiene | 1,899 | 4,270 | 8.25% | 895,868 | .8.25% | -15.1% | -5.7% |
| Human Resources | 1,402 | 15,421 | 29.78% | 3,235,300 | 29.78% | 33.3% | -1.3% |
| Labor, Licensing, and Regulation | 326 | 7,689 | 14.85% | 1,613,191 | 14.85% | -4.3% | 4.9% |
| Inmate Grievances -- DPSCS | 349 | 524 | 1.01% | 109,833 | 1.01% | -2.1% | 8.5% |
| Department of Education | 466 | 5,421 | 10.47% | 1,137,354 | 10.47% | -1.4% | 5.5% |
| Environment | 11 | 550 | 1.06% | 115,393 | 1.06% | 0.0% | 11.0% |
| MD State Police | 68 | 73 | 0.14% | 15,316 | 0.14% | 0.0% | 11.0% |
| Total | 28,487 | 51,786 | 100.0% | 10,864,967 | 100.0% | 4.9% | 4.7% |

Source: Department of Budget and Management

Performance Analysis: Managing for Results

Managing for Results Submission Needs Improvement

OAH's Managing for Results submission consists of two goals: to reduce case processing time and to conduct professional and competent hearings. OAH has not articulated goals related to any other aspect of its work. It reports only one method for determining professional and competent hearing practice, a customer satisfaction survey. The MFR submission does not include objectives related to administrative oversight, performance evaluations, or personnel training, although some of these activities are discussed in the agency's strategies. **The OAH should provide a more complete picture of its activities and quality of performance.**

The goal of timeliness is well supported with numerous objectives related to each stage of case processing from receipt through hearing scheduling to the issuance of written decisions. OAH has also submitted a variety of strategies which detail how the agency will improve efficiency. An important component is the upgrade of its case management system from MSDOS to Windows. The OAH expects the upgraded system to provide better case management data. A recently reported legislative audit found inaccuracies in the current case management system related to timely processing of cases. The audit also found that some cases were not processed within the required time frames. These findings are discussed in more detail in the issues section of this analysis. Given the findings of legislative auditors, timeliness and an improved case management system are appropriate priorities for OAH.

Last year, OAH was criticized for not having provided baseline information from which to evaluate progress. This information is still lacking. The agency expects its upgraded case management system to provide baseline data from which it will set goals for improvement and identify sources of inefficiency. The upgrade will be complete by the end of calendar 2001. It is highly unlikely that meaningful baseline data will be available in time for the fiscal 2003 budget submission. Unfortunately, the result will be that OAH will enter the fifth fiscal year of Managing for Results without information necessary to evaluate its performance.

In the meantime, the OAH has developed a customer satisfaction survey which does measure many aspects of OAH performance and for which a full year of data should be available in time for the fiscal 2003 budget submission. The survey polls all hearing participants -- agency representatives, counsel, and individuals -- on the full range of a participant's experience from the convenience of the hearing location through the conduct of the hearing to the quality of the decision. It includes space for comments and suggestions. This survey promises to provide a thorough picture of participants' assessment of OAH performance and should assist the agency in identifying areas for improvement.

Performance Analysis: Cases Carried Forward Increase in 2000

Exhibit 3 provides caseload data for OAH. After three years of decline, the number of cases carried over into 2001 increased significantly, from a three-year low of 6,346 at the beginning of 2000 to a three-year high of 8,510 at year's end. Last year, OAH predicted a continuing decline in its caseload backlog through 2001; it estimated it would carry over only 6,046 cases. An increasing backlog has a direct

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bearing on the OAH's goal to improve timeliness. **A representative of OAH should discuss the reasons for the sharp increases in cases carried forward in 2001 and explain how it will ensure that the estimated decline for 2002 occurs.**

Exhibit 3

**Program Measurement Data
Office of Administrative Hearings
Fiscal 1997 through 2002**

| | <u>Actual 1997</u> | <u>Actual 1998</u> | <u>Actual 1999</u> | <u>Actual 2000</u> | <u>Est. 2001</u> | <u>Est. 2002</u> | <u>Ann. Chg. 98-00</u> | <u>Ann. Chg. 00-02</u> |
|-----------------------|------------------------|------------------------|------------------------|------------------------|----------------------|----------------------|--------------------------------|--------------------------------|
| Cases carried over | 7,546 | 6,997 | 7,109 | 6,346 | 8,510 | 7,710 | -4.8% | 10.2% |
| Cases received | 41,556 | 41,088 | 41,754 | 44,501 | 42,700 | 42,700 | 4.1% | -2.0% |
| Cases disposed | 42,105 | 40,976 | 42,517 | 42,337 | 43,500 | 43,500 | 1.6% | 1.4% |
| Cases carried forward | 6,997 | 7,109 | 6,346 | 8,510 | 7,710 | 6,910 | 9.4% | -9.9% |

Note: Numbers may not sum due to rounding.

Source: Office of Administrative Hearings

Issues

1. Legislative Audit Reveals Late Decisions and Inaccurate Caseload Data

The Office of Legislative Audits audited OAH for the period beginning October 25, 1996, and ending October 25, 1999. It issued its audit report in April 2000. The audit found that the office did not issue a number of hearing decisions in a timely manner and that information recorded on the case management system regarding timeliness and case status was inaccurate.

Specifically, the auditors' test disclosed that hearing decisions in 8 of 45 closed cases were untimely; five of these decisions were issued at least 30 days after their due date as determined by the applicable Code of Maryland Regulations. Three of the untimely-decided cases were improperly recorded in the office's case management system as having been timely issued. In addition, of 25 sampled cases in the case management system, five were reported as open which had been closed for periods ranging up to five months.

The office's written response noted that it is in the process of upgrading its case management system. The written response also noted that the office has established a "data unit" to insure accountability for the accuracy of data entered into the case management system. It has instituted a bi-monthly docket review to double-check case status and decision due dates. In addition, the office's revised MFR submission focuses almost exclusively on timeliness.

The audit also revealed problems with internal controls over disbursement transactions and with corporate purchasing card assignment. These problems appear to have been corrected, according to the office's written response.

A representative from OAH should brief the committees on the results of new measures to monitor case status and ensure timely case resolution.

2. Proposed Legislation Mandates Regional Offices and Provides for Gubernatorial Appointment of Administrative Law Judges

HB 133 of 2001 portends significant changes for OAH. To assure that the services of the office are conveniently available statewide, the proposed legislation mandates the establishment of at least one regional office in each of four identified regions comprising essentially Western Maryland, the Eastern Shore, Central Maryland, and Southern Maryland. The office currently maintains satellite offices in two of these regions, Cumberland in Western Maryland (with two assigned judges) and Salisbury on the Eastern Shore (with one assigned judge). Its headquarters is located in Hunt Valley. In addition, OAH recently opened an office in the Prince George's/Montgomery County area. The OAH also reports that it holds involuntary nursing home discharge hearings, Child in Need of Assistance hearings, and inmate grievance hearings throughout the State. As a consequence of its diverse caseload, OAH holds hearings at numerous locations in each county in the State. The variety of hearing locations depends in large part on the type of case involved. Some kinds of hearings are conducted at locations statewide. Others appear to have more limited location options.

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A representative from OAH should brief the budget committees on its assessment of the need for additional hearing locations, including a discussion of the differing needs of parties in different kinds of cases. OAH should discuss its current hearing location scheduling practice and its policies regarding accommodating parties' hearing location needs. The office should discuss the potential fiscal impact of enactment of this legislation.

HB 133 also provides that administrative law judges be:

- appointed by the Governor with the advise and consent of the Senate;
- removed for cause by the Governor; and
- serve a term of ten years.

Currently, administrative law judges are hired and removed by the Chief Administrative Law Judge. The proposed legislation would also set the qualifications for an administrative law judge in statute; currently, the Chief Administrative Law Judge sets the qualifications. The statute adds a residency requirement and appears to eliminate the three years' attorney experience requirement and the requirement that candidates demonstrate familiarity with relevant law. Providing for gubernatorial appointment could lay the groundwork for an increase in ALJ salaries by conferring upon them more judicial-like stature.

While promoting increased ALJ independence, the legislation may also undermine the ability of the OAH to supervise the quality and timeliness of ALJ decisions, as appointed ALJs' employment would no longer be determined by the Chief Administrative Law Judge.

A representative from OAH should brief the budget committees on the potential effect of the appointment component of the proposed legislation on ALJ recruiting, supervision, and independence.

Recommended Actions

1. Add the following language:

Provided that the Office of Administrative Hearings (OAH) submit with its annual budget request to the Department of Budget Management (DBM) an accounting of actual annual case load and case hours attributable to each agency from which OAH receives reimbursable funds, in addition to documentation of its reimbursable funds calculation for each agency.

Explanation: OAH is supported almost entirely by reimbursable funds determined by its estimation of each agency's proportionate use of OAH total case hours. Annual documentation of actual case hours for each agency in addition to reimbursable fund calculation methods will provide necessary information for review of the OAH budget. This budget bill language mandates such documentation be submitted with the annual budget request.

| Information Request | Authors | Due Date |
|--|----------------|---|
| Accounting of actual annual agency case hours and reimbursable funds calculation methods | OAH | September 1, 2001, and annually thereafter. |

Current and Prior Year Budgets

Current and Prior Year Budgets Office of Administrative Hearing (\$ in Thousands)

| | <u>General Fund</u> | <u>Special Fund</u> | <u>Federal Fund</u> | <u>Reimb. Fund</u> | <u>Total</u> |
|----------------------------------|-------------------------|-------------------------|-------------------------|------------------------|-----------------|
| Fiscal 2000 | | | | | |
| Legislative Appropriation | \$24 | \$6 | \$0 | \$9,739 | \$9,769 |
| Deficiency Appropriation | 35 | 0 | 0 | 0 | 35 |
| Budget Amendments | 60 | 8 | 0 | 30 | 98 |
| Reversions and Cancellations | 0 | (3) | 0 | 0 | (\$3) |
| Actual Expenditures | \$119 | \$11 | \$0 | \$9,769 | \$9,899 |
| Fiscal 2001 | | | | | |
| Legislative Appropriation | \$24 | \$6 | \$0 | \$10,258 | \$10,288 |
| Budget Amendments | 0 | 0 | 0 | 122 | 122 |
| Working Appropriation | \$24 | \$6 | \$0 | \$10,380 | \$10,410 |

Note: Numbers may not sum to total due to rounding.

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Fiscal 2000 Deficiency

OAH received a \$35,000 fiscal 2000 deficiency for costs associated with a new pay plan.

Fiscal 2000 Amendments and Reversions

General funds:

Statewide deferred compensation reimbursement amendment. \$60,000

Special funds:

Contract with Anne Arundel County public schools to conduct special education hearings. 8,000

Funds reverted due to lower than estimated cost of special education hearings. (3,384)

Reimbursable funds:

Contract with Maryland State Department of Education to provide mediation training for special education hearings. 30,000

**Object/Fund Difference Report
Office of Administrative Hearings**

| <u>Object/Fund</u> | FY00 | FY01 | FY02 | FY01 - FY02 | Percent <u>Change</u> |
|--------------------------|---------------------|----------------------------------|----------------------|----------------------|--------------------------|
| | <u>Actual</u> | <u>Working Appropriation</u> | <u>Allowance</u> | <u>Amount Change</u> | |
| Positions | | | | | |
| 01 Regular | 144.00 | 142.00 | 141.00 | (1.00) | (0.7%) |
| Total Positions | 144.00 | 142.00 | 141.00 | (1.00) | (0.7%) |
| Objects | | | | | |
| 01 Salaries and Wages | \$ 7,557,890 | \$ 8,241,402 | \$ 8,821,734 | \$ 580,332 | 7.0% |
| 02 Technical & Spec Fees | 26,790 | 0 | 0 | 0 | 0.0% |
| 03 Communication | 194,792 | 224,831 | 223,403 | (1,428) | (0.6%) |
| 04 Travel | 107,616 | 91,800 | 87,841 | (3,959) | (4.3%) |
| 06 Fuel & Utilities | 84,326 | 87,518 | 88,838 | 1,320 | 1.5% |
| 07 Motor Vehicles | 48,174 | 56,012 | 59,610 | 3,598 | 6.4% |
| 08 Contractual Services | 566,293 | 586,833 | 554,136 | (32,697) | (5.6%) |
| 09 Supplies & Materials | 141,411 | 123,925 | 120,871 | (3,054) | (2.5%) |
| 10 Equip - Replacement | 0 | 0 | 83,100 | 83,100 | N/A |
| 11 Equip - Additional | 332,793 | 117,354 | 17,655 | (99,699) | (85.0%) |
| 13 Fixed Charges | 838,675 | 879,905 | 838,779 | (41,126) | (4.7%) |
| Total Objects | \$ 9,898,760 | \$ 10,409,580 | \$ 10,895,967 | \$ 486,387 | 4.7% |
| Funds | | | | | |
| 01 General Fund | \$ 119,000 | \$ 24,000 | \$ 25,000 | \$ 1,000 | 4.2% |
| 03 Special Fund | 10,616 | 6,000 | 6,000 | 0 | 0% |
| 09 Reimbursable Fund | 9,769,144 | 10,379,580 | 10,864,967 | 485,387 | 4.7% |
| Total Funds | \$ 9,898,760 | \$ 10,409,580 | \$ 10,895,967 | \$ 486,387 | 4.7% |

Note: Full-time and contractual positions and salaries are reflected for operating budget programs only.