

D99A11
Office of Administrative Hearings

Operating Budget Data

(\$ in Thousands)

	<u>FY 02</u>	<u>FY 03</u>	<u>FY 04</u>	<u>FY 02-04</u> <u>Change</u>	<u>FY 05</u>	<u>FY 04-05</u> <u>Change</u>
Operations	\$10,162	\$10,201	\$10,195	\$34	\$10,337	\$141
Contractual Services	762	740	556	-206	558	2
Grants	0	0	0	0	0	0
Contingent & Back of Bill Reductions	0	0	0	0	-56	-56
Adjusted Grand Total	\$10,923	\$10,941	\$10,752	-\$172	\$10,838	\$87
General Funds	25	0	0	-25	0	0
Special Funds	20	10	6	-14	6	0
Reimbursable Funds	10,878	10,931	10,746	-133	10,832	87
Adjusted Grand Total	\$10,923	\$10,941	\$10,752	-\$172	\$10,838	\$87
Annual % Change		0.2%	-1.7%		0.8%	

- Office of Administrative Hearings (OAH) is level funded with no increase in workload assumed.

Personnel Data

	<u>FY 02</u>	<u>FY 03</u>	<u>FY 04</u>	<u>FY 02-04</u> <u>Change</u>	<u>FY 05</u>	<u>FY 04-05</u> <u>Change</u>
Regular Positions	141.0	133.0	126.0	-15.0	126.0	0.0
Contractual FTEs	0.0	0.0	0.0	0.0	0.0	0.0
Total Personnel	141.0	133.0	126.0	-15.0	126.0	0.0

Vacancy Data: Regular Positions

Turnover Expectancy	2.52	2.00%
Positions Vacant as of 12/31/03	1.00	0.79%

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

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- The Board of Public Works approved abolishing three vacant administrative law judge positions in December 2003. Four vacant positions were abolished the previous year.

Analysis in Brief

Major Trends

Improved Performance of Nonbench Decisions: OAH has successfully reduced the average number of days between appeal and disposition of Department of Human Resources cases where a written opinion is required.

Issues

Motor Vehicle Driving While Intoxicated/Driving under the Influence (DWI/DUI) License Suspension Cases: The largest agency allocation of OAH's budget (\$3,549,592) is for Motor Vehicle Administration cases. **It is recommended that the appeal fee imposed for OAH DWI/DUI license suspension cases be increased from the existing \$15 to \$125 in the Budget Reconciliation and Financing Act of 2004 so that the fee covers the OAH costs to handle these cases.**

One-grade Increase for Administrative Law Judges (ALJ) in Annual Salary Review (ASR): The Department of Budget and Management includes approximately \$200,000 for a one-grade increase in ALJs. **It is recommended that OAH discuss the justification for the ASR.**

Recommended Actions

1. Add budget bill language to delete State match funds for deferred compensation.

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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. Most cases originate from the Motor Vehicle Administration (MVA); the Inmate Grievance Office; the Department of Health and Mental Hygiene (DHMH); the Department of Human Resources (DHR); the Department of Labor, Licensing, and Regulation (DLLR); and the Department of Budget and Management (DBM). Funding primarily comes from those agencies that use OAH services. These agencies reimburse OAH based on the proportion of time spent on their cases.

OAH decisions may be appealed on the record to the circuit court. In certain cases the OAH decision is advisory, and the originating agency can overrule or reject the OAH ruling. When an agency has rejected the OAH decision, recourse again is with the circuit court.

The Chief Administrative Law Judge (ALJ) 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 ALJ.

Performance Analysis: Managing for Results

OAH has two significant goals: to reduce the number of days from filing to disposition and to increase the number of cases that are resolved through alternative dispute resolution (ADR) where appropriate. The key indicators for the five agencies that constitute 87% of OAH cases are depicted in **Exhibit 1**. OAH hearings fall within two broad categories: oral bench decisions and written decisions where the ALJ does not issue a decision at the hearing.

ALJs conclude the vast majority of cases with oral decisions. Examples include driver's license suspensions and revocations and involuntary admissions into psychiatric facilities. In these cases, timely decisions are a necessity. In driver's license hearings, the individual's need for a driver's license must be weighed against the safety of the public. In psychiatric hearings, State law provides that an individual may not be deprived of liberty and committed to a psychiatric facility without a hearing. State law requires a hearing be held within 10 days of an involuntary admission and allows for one, seven-day postponement. Exhibit 1 indicates that case disposition performance on MVA/Maryland Department of Transportation (MDOT) cases which constitute 33% of the workload

Exhibit 1
Program Measurement Data
Office of Administrative Hearings
Fiscal 2001 – 2005

	<u>Actual</u> <u>2001</u>	<u>Actual</u> <u>2002</u>	<u>Actual</u> <u>2003</u>	<u>Est.</u> <u>2004</u>	<u>Est.</u> <u>2005</u>	<u>Ann.</u> <u>Chg.</u> <u>01-03</u>	<u>Ann.</u> <u>Chg.</u> <u>03-05</u>
Average Number of Days between Appeal and Disposition							
Mostly Bench Decisions							
MVA/MDOT	58	62	68	64	60	8.4%	-6.2%
DHMH	31	41	36	35	35	8.1%	-1.7%
Mostly Nonbench Written Decisions							
DHR	111	89	71	71	71	-20.2%	0.2%
MSDE	38	42	42	39	37	5.5%	-6.5%
DLLR	197	225	225	215	210	6.8%	-3.3%
Alternative Dispute Resolution							
Total Cases Scheduled	55,833	53,485	61,226	56,800	53,800	4.7%	-6.3%
Total Hearings Held	26,172	24,537	30,078	26,800	26,800	7.2%	-5.6%
Hearings with Nonbench Decisions	2,988	3,169	3,429	3,000	3,000	7.1%	-6.5%
Mediation Cases	378	379	473	520	550	11.9%	7.8%
Mediation Success Rates	66.4%	66.6%	73.4%	75.5%	78.5%	5.1%	3.4%

- MVA = Motor Vehicle Administration
- MDOT = Maryland Department of Transportation
- DHMH = Department of Health and Mental Hygiene
- DHR = Department of Human Resources
- MSDE = Maryland State Department of Education
- DLLR = Department of Labor, Licensing, and Regulation

Source: Office of Administrative Hearings

deteriorated from an average of 58 days in fiscal 2001 to 68 days in fiscal 2003 but is projected to improve to 60 days in fiscal 2005. DHMH case disposition performance, which constitutes 9.3% of the OAH workload, has improved from 41 days in fiscal 2002 to 36 days in fiscal 2003 and is projected at 35 days in fiscal 2005.

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Nonbench decision cases from three agencies (DHR, MSDE, and DLLR) comprise nearly 38.7% of the OAH workload. OAH has significantly reduced the time between the scheduling of a hearing and the disposition of DHR cases. Results continue to be mixed, however, with respect to MSDE and DLLR cases.

OAH intends to rely less on ADR hearings and rely more on ADR mediation. While ADR will have little or no impact in oral decision cases, it can significantly impact nonbench decision cases in three ways – less time for a formal hearing is required, the parties to the dispute write the decision, and there is no appeal to the circuit court. ADR cases have increased by nearly 23% between fiscal 2002 and 2003, but decreases in ADR cases are projected for both fiscal 2004 and 2005. On the other hand, mediation cases increased from 379 in fiscal 2002 to 473 in fiscal 2003 and are projected to increase in both fiscal 2004 and 2005. One additional benefit of ADR is the ability of OAH to meet its responsibilities under cost containment with fewer ALJs.

Fiscal 2004 Actions

Impact of Cost Containment

Three vacant ALJ positions were abolished in December, but no funds were deducted.

Governor's Proposed Budget

Exhibit 2 indicates the OAH allowance increases \$86,918, nearly all of which may be attributed to the increase in salaries. The allowance includes \$129,618 for increments but basically funds the increments with increased turnover of \$94,518 after increments are calculated. The result is a real turnover expectancy rate of 3.6% verses the indicated rate of 2%.

Impact of Cost Containment

The fiscal 2005 allowance reflects the elimination of the \$56,000 appropriation for matching employee deferred compensation contributions up to \$600 contingent upon enactment of a provision in the budget reconciliation legislation.

Reimbursable Funds

OAH receives reimbursable funds from State agencies that have contested cases referred to OAH for resolution. DBM allocates funds to these agencies to cover the OAH assessment based on prior year experience. The agency assessment continues to be based on the case formula methodology. A caseload formula is used to calculate the OAH agency assessment based on the average case time in

Exhibit 2
Governor's Proposed Budget
Office of Administrative Hearings
(\$ in Thousands)

	<u>FY 03</u> <u>Actual</u>	<u>FY 04</u> <u>Approp.</u>	<u>FY 05</u> <u>Allowance</u>	<u>FY 04-05</u> <u>Change</u>	<u>FY 04-05</u> <u>% Change</u>
Special Funds	\$10	\$6	\$6	\$0	0.0%
Reimbursable Funds	\$10,931	\$10,746	\$10,888	\$143	1.3%
Contingent & Back of Bill Reductions	0	0	-56	-56	
Adjusted Reimbursable Funds	\$10,931	\$10,746	\$10,832	\$87	0.8%
Adjusted Grand Total	\$10,941	\$10,752	\$10,838	\$87	0.8%

Where It Goes:

Personnel Expenses

Increments and other compensation	\$130
Employee and retiree health insurance	71
Turnover adjustments	-95
Other fringe benefit adjustments	-7

Other Changes

Supplies and materials	11
Capital leases	-29
Other changes	6

Total **\$87**

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

hours for each agency case category in the prior year (fiscal 2003) multiplied by the projected caseload for each category in the allowance year. The percentage of the total caseload hours is applied to the total budget to calculate the individual agency assessment. **Exhibit 3** indicates average case times for fiscal 2003, the projected fiscal 2005 caseload, and the fiscal 2005 assessment.

Exhibit 3
Office of Administrative Hearings
Cost Allocation Fiscal 2005

	<u>Avg. Case Time (Hours)</u>	<u>Est. No. of Cases</u>	<u>Total Case Hours</u>	<u>% of Total</u>	<u>Allocation FY 2005</u>
MDOT					
Motor Vehicle Administration	0.55	28,530	15,692	32.96%	\$3,549,592
Miscellaneous	7.50	5	38	0.08%	8,483
Total – MDOT		28,535	15,729	33.04%	\$3,558,075
DHMH					
Not Criminally Responsible (NCR)	3.00	223	669	1.41%	151,334
Involuntary Admissions (IVA)	0.94	1,215	1,142	2.40%	258,356
Medical Assistance	4.00	331	1,324	2.78%	299,504
Physician Quality Assurance	88.00	14	1,232	2.59%	278,692
Developmentally Disabled Administration	1.00	0	0	0.00%	0
Patient Bill of Rights	2.00	23	46	0.10%	10,406
Licensing	40.00	0	0	0.00%	0
Nursing Home Appeal Board	40.00	0	0	0.00%	0
Total – DHMH		1,806	4,413	9.27%	\$998,292
DLLR					
Home Improvement Commission	24.00	188	4,512	9.48%	1,020,665
Real Estate Commission	24.00	43	1,032	2.17%	233,450
Maryland Occupational Safety Health	15.00	5	75	0.16%	16,966
Miscellaneous	24.00	6	144	0.30%	32,574
Total – DLLR		242	5,763	12.11%	\$1,303,655
DBM					
Office of Personnel Services	11.00	311	3,421	7.19%	773,868
Central Collections	2.00	4	8	0.02%	1,810
Total – DBM		315	3,429	7.20%	\$775,678
DHR					
Child Support Enforcement	1.50	19	29	0.06%	6,447
Income Maintenance	3.50	498	1,743	3.66%	394,286
Child Abuse and Neglect	24.00	377	9,048	19.01%	2,046,758
Total – DHR		894	10,820	22.73%	\$2,447,491

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	<u>Avg. Case Time (Hours)</u>	<u>Est. No. of Cases</u>	<u>Total Case Hours</u>	<u>% of Total</u>	<u>Allocation FY 2005</u>
DNR					
Hearings	20.00	13	260	0.55%	58,815
Settlements	0.50	27	14	0.03%	3,054
Total – DNR		40	274	0.57%	\$61,869
MSDE					
Mediations	3.00	298	894	1.88%	247,233
Hearings	30.00	110	3,300	6.93%	781,497
Total – MSDE		408	4,194	8.81%	\$1,028,730
OAG					
Consumer Protection	20.00	8	160	0.34%	36,194
Securities Division	16.00	3	48	0.10%	10,858
Total – OAG		11	208	0.44%	\$47,052
Department of the Environment	50.00	14	700	1.47%	158,348
Retirement and Pension	20.00	30	600	1.26%	135,727
Human Relations Commission	60.00	2	120	0.25%	27,145
Maryland State Police	2.50	12	30	0.06%	6,786
Board of Public Works	26.00	-	-	0.00%	0
Inmate Grievance Office	1.50	510	765	1.61%	173,052
Maryland Insurance Administration	1.50	373	560	1.18%	126,565
Higher Education Labor Relations Board	62.50	3	188		40,000
Total		33,195	47,792	100.00%	\$10,888,465

Source: Office of Administrative Hearings

Issues

1. Motor Vehicle Driving While Intoxicated/Driving under the Influence (DWI/DUI) License Suspension Cases

The Governor's Commission on the Structure and Efficiency of Government (The Mandel Commission) has made five recommendations concerning OAH. One recommendation deals with Motor Vehicle DWI/DUI license suspension hearings and a second recommendation deals with fees for OAH hearings.

Motor Vehicle License DWI/DUI Suspensions

The largest agency allocation of OAH's budget (\$3,549,592) is for MVA cases. Most of these hearings result from the failure of a blood alcohol test by those suspected of DWI, DUI, or their refusal to submit to such a test. In cases of a person taking a breath test and having blood alcohol content over 0.08, a suspension of 45 days is imposed for the first offense; 90 days for a second or subsequent offense. Drivers who agree to the breath test but fail are eligible for a work-restricted license during their 45-day suspension. Currently, such restricted licenses are available only after an OAH hearing.

The Mandel Commission has recommended that MVA offer first offenders the option of requesting a work-restricted license via the mail with adequate proof of need instead of a hearing before OAH. The Mandel Commission report notes that approximately 5,000 of the 22,000 MVA hearings currently conducted are first offenders. The Mandel Commission also recommends that the fee for MVA and Child Support hearings be increased from \$15 to \$30.

OAH in response has rejected the mail-in recommendations for first offenders as counterproductive to the State's past efforts to curb drunk driving and would be sending the wrong message to the general public. However, it should be noted that the fiscal 2005 MVA allocation in Exhibit 3 indicates an estimate of \$3,549,592 for an estimated 28,530 MVA cases or a cost of \$125 per case.

The Administration has proposed increasing the appeal fee from \$15 to \$50 under State Government Article 9-1604 (vi) 1.

It is recommended that the appeal fee imposed for OAH DWI/DUI license suspension cases be increased from the existing \$15 to \$125 in the Budget Reconciliation and Financing Act of 2004 so that the fee covers the OAH costs to handle these cases.

2. One-grade Increase for Administrative Law Judges (ALJ) in Annual Salary Review (ASR)

The DBM ASR includes a one-grade increase for ALJs. The ASR will cost approximately \$200,000 and increase the salary of the 58 ALJs by 6%. **It is recommended that OAH discuss the justification for the ASR with the budget committees.**

Recommended Actions

1. Add the following language:

1. **Section 43 Office of Administrative Hearings Reallocation of Funds**

Add the following language:

SECTION 43. AND BE IT FURTHER ENACTED, That:

- (1) a reduction of \$56,000 is made in this budget for Office of Administrative Hearings' (OAH) services (Comptroller object 0172);
- (2) the Governor shall develop a schedule for allocating this reduction across the various State departments and agencies that utilize OAH's services and across all funds appropriated for the purpose of conducting administrative hearings based upon the percentage of cases referred to OAH by these departments and agencies; and
- (3) the reduction under this section shall equal at least the amounts indicated for the budgetary fund types listed:

<u>Fund</u>	<u>Amount</u>
<u>General</u>	<u>\$26,182</u>
<u>Special</u>	<u>18,727</u>
<u>Federal</u>	<u>11,091</u>

Explanation: Budget bill language reduces the Office of Administrative Hearings' (OAH) fiscal 2005 allowance by \$56,000 to reflect deleting the State deferred compensation 401(k) match consistent with State policy. This budget bill language directs the Governor to develop a schedule for reallocating funds resulting from this reduction to the various State departments and agencies that refer administrative hearing cases to OAH for adjudication. This reallocation schedule should be based on the percent of cases that each department or agency contributes to OAH's total caseload. Furthermore, the total reduction should be split as indicated above among general, special, and federal funds.

Current and Prior Year Budgets

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

	<u>General Fund</u>	<u>Special Fund</u>	<u>Federal Fund</u>	<u>Reimb. Fund</u>	<u>Total</u>
Fiscal 2003					
Legislative Appropriation	\$0	\$6	\$0	\$10,791	\$10,797
Deficiency Appropriation	0	0	0	0	0
Budget Amendments	0	6	0	151	157
Cost Containment	0	0	0	0	0
Reversions and Cancellations	0	-2	0	-11	-13
Actual Expenditures	\$0	\$10	\$0	\$10,931	\$10,941
Fiscal 2004					
Legislative Appropriation	\$0	\$6	\$0	\$10,807	\$10,813
Cost Containment	0	0	0	0	0
Budget Amendments	0	0	0	-62	-62
Working Appropriation	\$0	\$6	\$0	\$10,745	\$10,751

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

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Fiscal 2003

OAH received an additional \$151,000 from two agencies for salaries (\$81,000) to conduct mediations, hearings, and contractual services; and (\$70,000) for transcripts, training, and on-line research related to the mediation and hearings. MSDE awarded a \$100,000 grant for hearings, training, and clerical support related to special education programs. The Higher Education Labor Relations Board contracted (\$51,000) with OAH to conduct their hearings.

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

<u>Object/Fund</u>	<u>FY03 Actual</u>	<u>FY04 Working Appropriation</u>	<u>FY05 Allowance</u>	<u>FY04 - FY05 Amount Change</u>	<u>Percent Change</u>
Positions					
01 Regular	133.00	126.00	126.00	0	0%
Total Positions	133.00	126.00	126.00	0	0%
Objects					
01 Salaries and Wages	\$ 8,569,265	\$ 8,679,274	\$ 8,834,380	\$ 155,106	1.8%
02 Technical & Spec Fees	83,946	87,041	85,849	-1,192	-1.4%
03 Communication	193,299	163,561	171,447	7,886	4.8%
04 Travel	106,882	98,104	100,555	2,451	2.5%
06 Fuel & Utilities	79,704	83,642	82,095	-1,547	-1.8%
07 Motor Vehicles	32,167	26,234	22,646	-3,588	-13.7%
08 Contractual Services	740,270	556,075	557,847	1,772	0.3%
09 Supplies & Materials	155,465	136,050	146,712	10,662	7.8%
10 Equip - Replacement	32,080	77,397	48,120	-29,277	-37.8%
11 Equip - Additional	106,125	0	0	0	0.0%
13 Fixed Charges	841,699	844,169	844,814	645	0.1%
Total Objects	\$ 10,940,902	\$ 10,751,547	\$ 10,894,465	\$ 142,918	1.3%
Funds					
03 Special Fund	\$ 9,868	\$ 6,000	\$ 6,000	\$ 0	0%
09 Reimbursable Fund	10,931,034	10,745,547	10,888,465	142,918	1.3%
Total Funds	\$ 10,940,902	\$ 10,751,547	\$ 10,894,465	\$ 142,918	1.3%

Note: The fiscal 2004 appropriation does not include deficiencies, and the fiscal 2005 allowance does not reflect contingent reductions.