



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873
Email: fiscal.bureau@legis.wisconsin.gov • Website: <http://legis.wisconsin.gov/lfb>

May 14, 2015

Joint Committee on Finance

Paper #120

Hearings and Appeals Consolidation and Funding (DOA -- Hearings and Appeals)

[LFB 2015-17 Budget Summary: Page 41, #1]

CURRENT LAW

The Division of Hearings and Appeals within the Department of Administration (DOA) conducts contested case hearings and appeals for many state agencies and is provided base funding of \$2,602,100 GPR and 22.1 GPR positions in 2014-15 for general program operations. In addition, the Division is provided \$3,329,500 PR and 29.85 PR positions in 2014-15 for services to specific agencies, which may be assessed for the cost to provide services.

GOVERNOR

Eliminate DOA's hearings and appeals general program operations appropriation and associated funding and position authority of \$2,447,200 GPR in 2015-16 and \$2,447,300 in 2016-17 and 22.1 GPR positions annually. Provide \$2,447,200 PR in 2015-16 and \$2,447,300 in 2016-17 and 22.1 PR positions annually to DOA's hearings and appeals fees appropriation. Specify that the PR hearings and appeals fees appropriation is provided for the general program operations of the Division of Hearings and Appeals, rather than for services to specific state agencies. Specify that all moneys received from fees charged for hearings and appeals services provided to state agencies be credited to the appropriation.

DISCUSSION POINTS

1. Under current law, a person aggrieved by an administrative decision of a state agency may obtain a contested case hearing under administrative procedure laws in Chapter 227 of the statutes. Base funding and standard budget adjustments for the Division of Hearings and Appeals

total \$5,883,400 (\$2,447,200 GPR and \$3,436,200 PR) in 2015-16 and \$5,887,000 (\$2,447,300 GPR and \$3,439,700 PR) in 2016-17. The following agencies are specifically identified as agencies DOA may assess for the cost of providing hearings and appeals services: (a) Department of Natural Resources (DNR); (b) Department of Transportation (DOT); (c) Department of Public Instruction (DPI); (d) Department of Health Services (DHS); (e) Department of Children and Families (DCF); and (f) an agency that is not prohibited from contracting with a third party for contested case hearing services and has requested that DOA provide the services. The Department of Administration must assess DHS and DCF for the full cost to provide hearings and appeals services, and must assess DNR, DOT, and DPI for any cost to provide services that is not covered by DOA's GPR-funded general program operations appropriation for hearings and appeals. According to DOA, of the agencies specified in statute, DNR is the only agency that does not pay any assessments for hearings and appeals services conducted by DOA.

2. The Division of Hearings and Appeals has offices in Madison and Milwaukee and is organized into three subunits: (a) General Government (DHS cases regarding nursing home regulation; DNR cases; Department of Justice (DOJ) cases; DOT cases; DPI cases; Department of Employee Trust Funds cases; Department of Workforce Development (DWD) cases regarding vocational rehabilitation; and Department of Safety and Professional Services cases); (b) Corrections (cases regarding revocation of probation, parole, and extended supervision); and (c) Work and Family Services (DHS cases regarding FoodShare, medical assistance, foster homes, day care center licensing, medical care facility licensing, certification or penalty issues, and Medicaid rate-setting and recoupment; DCF cases regarding adoption, child care, and foster care; and DOA cases regarding low-income energy assistance). In addition, the Division provides support to the Waste Facility Siting Board relating to the arbitration and negotiation process utilized by businesses and municipalities in siting landfills and hazardous waste facilities.

3. Although DOA is authorized to assess specific agencies, and any agency with which it enters into an agreement, for the cost of services provided, assessment practices are not uniform across agencies. According to DOA, the following agencies receive at least some hearings and appeals services for which they are not assessed: (a) Corrections (most of the cost of services); (b) DNR (all services); (c) DOT (services not relating to motor vehicle bonds); (d) Historical Society (all services); (e) DOJ (all services); and (f) DHS (services relating to nursing home regulation).

4. According to the Budget in Brief, the Governor recommends that DOA conduct all administrative hearings for state agencies, with the exception of the Public Service Commission and unemployment insurance. Under other bill provisions, the following agencies are specifically identified with regard to hearings and appeals services fees payable to DOA: (a) Historical Society; (b) Office of the Commissioner of Insurance; (c) DOJ; and (d) DWD. In addition, the administration indicates that it intends to assess the Department of Corrections for hearings and appeals services.

5. Table 1 below shows estimates provided by DOA of the percentage of hearings and appeals staff time spent serving a specific work unit, type of hearing, or agency. In addition, an estimate of full-time equivalent positions is provided based on the percentages provided by DOA and total position authority of 51.15 FTE positions for hearings and appeals (taking into account the deletion of a 0.8 PR position under a separate budget provision which would eliminate positions

which have been vacant 12 months or more).

TABLE 1

**Department of Administration Hearings and Appeals
Staff Time by Hearing Type, 2014-15**

<u>Hearing Type</u>	<u>Staff Time Estimate</u>	<u>FTE Positions Estimate</u>
Work and Family Services Unit*	42.59%	21.78
Corrections	42.22	21.60
Safety and Professional Services	3.07	1.57
Natural Resources	2.81	1.44
Public Instruction	2.22	1.14
Commissioner of Insurance	1.57	0.80
Transportation - General	1.09	0.56
Transportation - Motor Vehicle Bonds	1.09	0.56
Workforce Development - Vocational Rehabilitation	1.08	0.55
Employee Trust Funds	0.98	0.50
Justice	0.69	0.35
Agriculture, Trade and Consumer Protection	0.44	0.23
Health Services - Nursing Homes	0.10	0.05
Historical Society	<u>0.05</u>	<u>0.03</u>
Total	100.00%	51.15

*Includes: Health Services - General; Children and Families; and Administration - Energy Services

6. Of the estimated 21.6 FTE positions for Corrections cases in Table 1, 2.0 are PR positions for which DOA currently assesses the Department of Corrections for the budgeted cost of salaries, fringe benefits, and supplies and services. Therefore, Corrections cases are primarily funded from DOA's GPR appropriation for hearings and appeals. Corrections cases also account for the largest share of GPR-funded hearings and appeals services conducted by DOA. Revenue and expenditures associated with the 2.0 PR positions supporting Corrections cases are shown in Table 2 below.

TABLE 2

**Hearings and Appeals Program Revenue and PR Expenditures,
Corrections Cases 2011-12 through 2013-14**

<u>Fiscal Year</u>	<u>Revenue</u>	<u>Expenditures</u>
2011-12	\$461,200	\$246,500
2012-13	260,200	243,100
2013-14	199,500	231,500

7. As noted above, cases associated with Corrections revocations occupy the time of an estimated 21.6 FTE positions. If this relative proportion were applied to the number of positions and total amount of funding provided to the Division under the budget (not including Justice or Vocational Rehabilitation hearings, which are addressed under separate budget provisions), revocation hearings would account for approximately \$2.3 million in costs not currently assessed. However, it should be noted that actual assessments could be higher or lower than this amount. According to the administration, assessments to Corrections would "in large part be driven by work associated with caseload." No funding adjustment would be provided to the Department of Corrections in association with this budget provision.

8. Table 3 below provides an estimate of assessments that agencies could be charged, based on the estimated share of positions for each hearing type applied to the total budget of the Division. It should be noted that agencies currently funded from GPR would be assessed if the budget provision were approved. Further, given that the assessments are estimated based on staff time, actual assessments could differ.

TABLE 3

**Department of Administration Hearings and Appeals
Funding and Positions Estimates, 2015-17***

<u>Hearing Type</u>	<u>Estimated FTE Positions*</u>	<u>Percentage DHA Staff*</u>	<u>Current Fund Source</u>	<u>2015-16</u>	<u>2016-17</u>
Work and Family Services Unit**	21.78	43.4%	PR	\$2,550,900	\$2,552,500
Corrections	21.60	43.0	GPR, PR	2,528,700	2,530,300
Safety and Professional Services	1.57	3.1	PR	183,900	184,000
Natural Resources	1.44	2.9	GPR	168,300	168,400
Public Instruction	1.14	2.3	PR	133,000	133,000
Commissioner of Insurance	0.80	1.6	PR	94,000	94,100
Transportation - General	0.56	1.1	GPR	65,300	65,300
Transportation - Motor Vehicle Bonds	0.56	1.1	PR	65,300	65,300
Employee Trust Funds	0.50	1.0	PR	58,700	58,700
Agriculture, Trade and Consumer Protection	0.23	0.4	PR	26,300	26,400
Health Services - Nursing Homes	0.05	0.1	GPR	6,000	6,000
Historical Society	<u>0.03</u>	<u>0.1</u>	GPR	<u>3,000</u>	<u>3,000</u>
Total	50.24	100.0%		\$5,883,400	\$5,887,000

*Does not include positions or funding for Justice or Vocational Rehabilitation hearings, which are addressed as separate budget provisions.

**Includes: Health Services - General; Children and Families; and Administration - Energy Services

9. The Department of Corrections indicates that it would likely utilize a combination of funds from the following appropriations to pay assessments for DOA hearings and appeals: (a) services for community corrections (GPR); and (b) probation, parole, and extended supervision (PR

-- assessments to offenders). However, Corrections also indicates that it would not have sufficient funding in either or both of these appropriations to pay for a more conservative estimate of 50% to 75% of current GPR funding for DOA hearings and appeals (between \$1.2 million and \$1.8 million). Therefore, if Corrections is assessed an additional \$2.3 million annually (the difference between \$2.5 million and the PR assessment Corrections currently pays) it is possible that the assessments could not be paid within the agency's existing resources.

10. When an offender violates the conditions of probation, parole, or extended supervision, or commits a new violation, the supervising agent must investigate and make a decision as to whether to recommend revocation of the individual's supervision. An offender has the right to have a revocation hearing held before an administrative law judge (ALJ) under DOA's Division of Hearings and Appeals. The ALJ determines, based on the evidence presented, whether or not the revocation is appropriate. Evidence may include testimony, witness accounts, and documents. Parties may question witnesses and testimony is recorded. After a revocation hearing, the ALJ enters a written order which is provided to the offender's attorney and supervising agent within 10 working days. A decision not to revoke results in continued supervision in the community, in some cases under additional rules.

11. The administration indicates that the primary reason for the budget provision is that "some agencies get charged for their hearings and others assume the cost is covered" by the GPR appropriation for hearings and appeals. In particular, DOA indicates that revocation hearings for Corrections have increased over time, without a proportionate increase in GPR funding, which "has required pulling ALJs and resources from other agencies to conduct Corrections hearings." It should be noted that DOA did not request additional funding in its agency budget request for the Division of Hearings and Appeals (DHA). Further, no additional expenditure authority is provided under the bill relating to revocation hearings and appeals.

12. In addition, the administration indicates that the provision is intended to assign responsibility for funding the costs of hearings and appeals to all agencies individually because "some agencies believe that it is DHA's job to do hearings for these agencies without regard to cost or caseload and without evaluating drivers behind the demand for DHA services." The administration argues that if agencies were assessed for the services provided to them, the agencies would have an incentive to take action to reduce the number of contested cases for which hearings and appeals are conducted. To the extent that Corrections aims to lower caseloads with regard to the number of probation, parole, and extended supervision revocations due to agency funding constraints, some concerns could arise regarding public safety if revocations are not recommended by supervising agents when they otherwise may have been.

13. On one hand, it could be argued that, in general, assessments to individual agencies for hearings and appeals services could provide motivation for agencies to evaluate and attempt to address drivers of cost to reduce the number of contested cases for which assessments would be charged by DOA. The Committee could approve the Governor's recommendation to convert all GPR funding and positions for DOA's Division of Hearings and Appeals to PR funding and positions. [Alternative 1]

14. On the other hand, an immediate increase in assessments to Corrections from \$199,500

in 2013-14 to an estimated \$2.5 million annually over the biennium could raise public safety concerns by adversely impacting the agency's ability to fund correctional services through its appropriations for community corrections and probation, parole, and extended supervision, as well as provide a financial incentive to reduce the number of revocations of probation, parole, and extended supervision. Further, the proposal may be viewed by some as a de facto budget reduction. Therefore, the Committee could address potential concerns by retaining \$2.3 million GPR and 19.6 GPR positions annually under the Division's GPR appropriation to continue funding hearings and appeals services for the Department of Corrections, and providing \$147,200 PR in 2015-16 and \$147,300 PR in 2016-17 and 2.5 PR positions to DOA's hearings and appeals fees appropriation to assess all other state agencies for the cost of services [Alternative 2].

15. Alternatively, the Committee could provide full GPR funding and GPR position authority for Corrections cases in 2015-16 and convert some or all of the funding to PR in the second year to provide support for Corrections cases and allow the agency time to prepare for an increase in assessments. Under this alternative, the GPR appropriation would be retained with funding of \$2,300,000 and 19.6 positions associated with Corrections cases in 2015-16, and the following funding and positions would be provided in 2016-17: (a) \$1,725,000 GPR and 14.7 GPR positions (25% reduction and conversion of \$722,300 and 4.7 positions) [Alternative 3a]; (b) \$1,150,000 GPR and 9.8 GPR positions (50% reduction and conversion of \$1,297,300 and 12.3 positions) [Alternative 3b]; (c) \$575,000 GPR and 4.9 GPR positions (75% reduction and conversion of \$1,872,300 and 17.2 positions) [Alternative 3c]; or (d) repeal the GPR appropriation for hearings and appeals, delete associated GPR funding and positions, and provide \$2,447,300 PR and 22.1 PR positions to DOA's hearings and appeals fees appropriation [Alternative 3d].

16. If the provision were deleted, current law funding and position authority would be retained by DHA. As a result, hearings and appeals services currently funded from GPR (Corrections, DNR, DOT, DHS -- nursing homes, and the Historical Society) would continue to be funded under DHA's GPR appropriation. To the extent that DHA experiences workload increases that need to be addressed prior to the 2017-19 budget to efficiently and effectively provide hearings and appeals services, funding could be requested by DHA under s. 16.505/515 of the statutes for its PR appropriation or s. 13.10 of the statutes for its GPR appropriation. [Alternative 4]

ALTERNATIVES

1. Approve the Governor's recommendation to: (a) delete DOA's appropriation for hearings and appeals general program operations and associated expenditure and position authority of \$2,447,200 in 2015-16 GPR and \$2,447,300 in 2016-17 and 22.1 GPR positions annually; (b) provide \$2,447,200 PR in 2015-16 and \$2,447,300 in 2016-17 and 22.1 PR positions annually to DOA's hearings and appeals fees appropriation; and (c) specify that the PR hearings and appeals fees appropriation is provided for the general program operations of the Division of Hearings and Appeals, rather than for services for specific state agencies.

2. Delete provision. Instead, delete \$147,200 GPR in 2015-16 and \$147,300 GPR in 2016-17 and 2.5 GPR positions annually from DOA's hearings and appeals GPR appropriation associated with services other than Corrections hearings and appeals. In addition, provide \$147,200

PR in 2015-16 and \$147,300 PR in 2016-17 and 2.5 PR positions annually to DOA's hearings and appeals fees appropriation.

ALT 2	Change to Bill	
	Funding	Positions
GPR	\$4,600,000	19.60
PR	<u>- 4,600,000</u>	<u>- 19.60</u>
Total	\$0	0.00

3. Delete provision. Instead, in 2015-16 delete \$147,200 GPR and 2.5 GPR positions in 2015-16 from DOA's hearings and appeals GPR appropriation associated with services other than Corrections hearings and appeals and provide \$147,200 PR and 2.5 PR positions to DOA's hearings and appeals fees appropriation. In addition:

a. In 2016-17, delete \$722,300 GPR and 7.4 GPR positions from DOA's hearings and appeals GPR appropriation and provide PR funding and position authority of the same amounts to DOA's hearings and appeals fees appropriation.

ALT 3a	Change to Bill	
	Funding	Positions
GPR	\$4,025,000	14.70
PR	<u>- 4,025,000</u>	<u>- 14.70</u>
Total	\$0	0.00

b. In 2016-17, delete \$1,297,300 GPR and 12.3 GPR positions from DOA's hearings and appeals GPR appropriation and provide PR funding and position authority of the same amounts to DOA's hearings and appeals fees appropriation.

ALT 3b	Change to Bill	
	Funding	Positions
GPR	\$3,450,000	9.80
PR	<u>- 3,450,000</u>	<u>- 9.80</u>
Total	\$0	0.00

c. In 2016-17, delete \$1,872,300 GPR and 17.2 GPR positions from DOA's hearings and appeals GPR appropriation and provide PR funding and position authority of the same amounts to DOA's hearings and appeals fees appropriation.

ALT 3c	Change to Bill	
	Funding	Positions
GPR	\$2,875,000	4.90
PR	<u>- 2,875,000</u>	<u>- 4.90</u>
Total	\$0	0.00

d. In 2016-17, repeal the GPR appropriation for hearings and appeals and delete associated funding and positions. Provide \$2,447,000 PR and 22.1 PR positions to DOA's hearings and appeals fees appropriation.

ALT 3d	Change to Bill	
GPR	\$2,300,000	
PR	<u>- 2,300,000</u>	
Total	\$0	

4. Delete provision.

	Change to Bill	
	Funding	Positions
GPR	\$4,894,500	22.10
PR	<u>- 4,894,500</u>	<u>- 22.10</u>
Total	\$0	0.00

Prepared by: Rachel Janke