



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #100

Division of Hearings and Appeals Electronic Records (Administration -- General Agency Provisions)

[LFB 2017-19 Budget Summary: Page 26, #6]

CURRENT LAW

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. 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); (f) Wisconsin Historical Society; (g) Office of the Commissioner of Insurance; (h) Department of Justice; and (i) Department of Workforce Development; and (j) 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 Division of Hearings and Appeals (DHA) within the Department of Administration (DOA) conducts contested case hearings and appeals for many state agencies and is provided funding of \$7,721,900 PR in 2015-16 and \$9,519,500 PR in 2016-17 and 83.15 PR positions annually to DOA's hearings and appeals fees appropriation.

Under current law, DHA must type or print the record of a proceeding under Chapter 227 within 30 days after the service on an agency of a petition for judicial review of agency action.

GOVERNOR

Delete \$50,000 PR annually for anticipated savings associated with Hearings and Appeals

staff time. Create statutory authority to allow transmission of a copy of DHA electric audio and visual recordings of the agency's administrative proceeding (records) from the agency responsible for the recording to the Court in lieu of preparing a transcript within 30 days after the service on an agency of a petition for judicial review of agency action, unless the court requests a transcript. This provision would first apply to petitions for review submitted on the effective date of the bill.

DISCUSSION POINTS

1. The Division of Hearings and Appeals has offices in Madison and Milwaukee and is organized into four 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); (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); and (d) beginning in 2016, the Office of Worker's Compensation Hearings conducts hearings for the DWD Worker's Compensation Division. 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.

2. The electronic records provision would generally affect cases under two subunits: (a) General Government and (b) Work and Family Services. The Division has various agreements with different agencies regarding the responsibility for maintenance of the record. Therefore, whichever agency has responsibility for the record would be responsible for providing the record to the Court if appealed.

3. Transcription (making a record by listening to a recording of a hearing or proceeding) is done by eight legal associates at DHA. According to the administration, this duty accounts for less than 5% of their overall position description for these positions. Under the bill, the eight legal associate positions would continue to transcribe the court-ordered Chapter 227 hearings. In addition, the associates will continue to transcribe all appealed revocation cases and DWD cases. Of the 3,400 Corrections hearings and the 3,800 Foodshare, Medicaid, and other public benefit hearings conducted with a digital recording in 2015-16, fewer than 150 cases were appealed to circuit court and, therefore, needed to be transcribed.

4. The Division believes that \$50,000 PR annually in savings from electronic records can be generated through more efficient use of staff time, but will not result in a position reduction. As there is no single position from which the savings were derived and the workload is split across positions, the workload after the elimination of the typewritten or printed transcript requirement can be shifted. The Division hopes that over time as Courts become more used to this provision the necessity for transcription services will continue to decrease. Given this, the Committee may choose

to approve the Governor's recommendation. [Alternative 1] As a result, the Committee would create statutory authority to allow transmission of a copy of DHA recordings of the agency's administrative proceeding to the court in lieu of preparing a transcript within 30 days after service on an agency of a petition for judicial review of agency action, unless the court requests a transcript and reduce DHA's spending authority by \$50,000 PR annually.

5. Courts may request a paper transcript even after the requirement is eliminated. In addition, Courts may still enter into memoranda of understanding (MOU's) with DHA to provide transcripts in cases. For example, Milwaukee County has a standing requirement that DHA produce written transcripts and 38 percent (27 out of 73) writs of certiorari in 2016 were in Milwaukee County. It could be argued that since Courts will still request transcripts, the reduction of employee time is uncertain. Given that Courts may and do still request printed transcripts, the Committee may wish to maintain current law. [Alternative 2] As a result, DHA would continue to be responsible for transcribing appealed Chapter 227 hearings.

6. According to the administration, this provision was offered as DHA's response to 2015 Act 201 that required each agency to submit a five percent reduction and was intended to meet that requirement. In general, the workload could be reduced through the implementation of this provision, but it will not eliminate the need for all transcription or transcripts. Given that the DHA's reduction of expenditure authority is not directly associated with any particular decrease in workload, the Committee may choose to keep the reduction in order to help DHA meet their fiscal goals, but delete the statutory language. [Alternative 3]

ALTERNATIVES

1. Approve the Governor's recommendation to create statutory authority to allow transmission of a copy of DHA recordings of the agency's administrative proceeding to the court in lieu of preparing a transcript within 30 days after service on an agency of a petition for judicial review of agency action, unless the court requests a transcript and reduce DHA's spending authority by \$50,000 PR annually.

ALT 1	Change to	
	Bill	Base
PR	\$0	- \$100,000

2. Maintain current law.

ALT 2	Change to	
	Bill	Base
PR	- \$100,000	\$0

3. Approve the Governor's recommendation to reduce DHA's spending authority by

\$50,000 PR annually and maintain statutory authority.

ALT 3	Change to	
	Bill	Base
PR	\$0	- \$100,000

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