

# oppaga Special Examination

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Report No. 02-70



## Division of Administrative Hearings Method of Assessing Fees Needs Significant Revision

### *at a glance*

The Division of Administrative Hearings method for assessing fees is expedient but does not accurately charge state agencies for their use of services. The division tracks whether cases meet deadlines but not how much time its employees spend on individual state agency cases. The division uses a proxy (scheduled hearing hours) as the basis of assessments, which provides agencies with no accountability for the actual time spent on their workload. The assessment method also passes on costs to state agencies for services provided to other entities.

The division should change its system for charging state agencies by tracking the time administrative law judges actually spend on cases and using this information when prorating its budget among state agencies. The division also should bill other entities at rates that cover its costs.

The Legislature should authorize the Division of Administrative Hearings to charge for all hearing services and require the Workers' Compensation Appeals Program to fund the program's share of the division's indirect administration and support costs.

Implementing these changes would reduce state agency costs to support the division by an estimated \$1.3 million annually, of which \$199,000 would be general revenue.

### Introduction

Pursuant to s. 11.511, *Florida Statutes*, the Director of OPPAGA initiated this project in response to a legislative request to examine whether the Division of Administrative Hearings (DOAH) utilizes an equitable method to assess fees to state agencies for adjudication of disputes. This report discusses DOAH's current fee assessment methods and presents several recommendations to more accurately assess the users of DOAH's services.

### Background

The Division of Administrative Hearings was created in 1974 to improve the fairness of state agency administrative proceedings under Ch. 120, *Florida Statutes* (the Administrative Procedure Act). The purpose of the division is to provide a uniform, impartial, efficient, accessible, and affordable forum for resolving conflicts between private citizens or organizations and state agencies.

#### *Program organization*

DOAH is administratively housed within the Department of Management Services, but is not subject to the control, supervision, or direction of the department. DOAH's division director, or chief administrative law judge, is its agency head.

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DOAH is divided into two units: the Adjudication of Disputes Program and the Workers' Compensation Appeals Program. The Adjudication of Disputes Program employs administrative law judges to conduct administrative hearings.<sup>1</sup> The program's hearings cover two primary types of cases: rule challenges and disputes between agencies and persons whose substantial interests will be affected by an agency's decision other than a rule. DOAH also conducts hearings for other types of cases as specified in law, such as Baker Act cases.<sup>2</sup>

The subjects of DOAH hearings include a wide variety of topics, such as professional licensing and disciplinary action, environmental permitting, public procurement, growth management, and certificates of need for health care facilities. Depending on the type of case, DOAH administrative law judges issue either a recommended or final order subsequent to the conclusion of an administrative hearing.<sup>3</sup>

The Workers' Compensation Appeals Program is composed of the Office of the Judges of Compensation Claims, which was transferred to DOAH from the Department of Labor and Employment Security on October 1, 2001. The

office resolves workers' compensation disputes by determining the obligations of employers and insurance companies to injured workers. The office operates as a separate unit under the supervision of the DOAH chief administrative law judge.

### *Program resources*

DOAH is entirely trust funded. DOAH's Fiscal Year 2002-03 appropriation for the Adjudication of Disputes Program was \$8,499,748 and 80 full-time equivalent positions (FTEs).<sup>4</sup> The program is primarily funded from a fee assessment to state agencies as part of the legislative appropriations process. A small portion of DOAH's budget may be funded from its cash reserve each year.

The division's Workers' Compensation Appeals Program was appropriated \$16,185,130 and 197 FTEs for Fiscal Year 2002-03. The program is budgeted separately from the Adjudication of Disputes Program and receives funding from an assessment on workers' compensation insurance premiums.

## DOAH fee assessment method for the Adjudication of Disputes Program

The DOAH Adjudication of Disputes Program provides services to state agencies and other entities. DOAH assesses fees in a different manner for these two groups of users.

**State agency fee assessment.** DOAH's current method of assessing fees to state agencies dates from Fiscal Year 1988-89. According to division documents, DOAH's current fee assessment method was the result of meetings between the division, Department of Professional Regulation, Executive Office of the Governor, and House

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<sup>1</sup> An administrative hearing is similar to a court proceeding, except that juries are not used. Private citizens or organizations may request hearings to resolve conflicts with state agencies. If the matter does not involve disputed facts, the agency will often conduct a proceeding and render a decision. If an affected person disputes facts upon which a proposed agency action is based, the agency ordinarily refers the case to DOAH for an administrative hearing. In a DOAH hearing, both parties have the right to use legal counsel to file pleadings and present their case to the administrative law judge. After the hearing, the parties may provide "proposed orders" to the administrative law judge for the content of the judge's decision. If either party is dissatisfied with the judge's decision, either may appeal the decision to a district court of appeal.

<sup>2</sup> Baker Act hearings are conducted for persons involuntarily committed to mental institutions under the Baker Act, or the Florida Mental Health Act, s. 394.467, *F.S.* The Baker Act affords these persons an administrative hearing at least every six months to determine if involuntary placement will continue.

<sup>3</sup> A recommended order is an official recommendation of an administrative law judge or any other duly authorized presiding officer, other than an agency head or member of an agency head, for the final disposition of a proceeding under ss. 120.569 and 120.57, *F.S.* For certain types of cases, DOAH administrative law judges issue recommended orders. The agency then has the authority to accept, modify, or reject the administrative law judge's recommendations in an agency final order. In other types of cases, DOAH has the authority to issue a final order. The administrative law judges' decisions in these cases are directly appealable to a district court of appeal.

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<sup>4</sup> DOAH's Fiscal Year 2002-03 budget has been increased to \$8,536,622 to reflect legislatively authorized adjustments for the employee pay package, health insurance premium increases, retirement rate reductions, and risk management insurance premium reductions. In Fiscal Year 2002-03, appropriated agency transfers equaled \$8,596,239. The additional \$59,617 will fund other amendments made to DOAH's budget throughout the fiscal year. Any remaining funds from the transfer will remain in the trust fund.

and Senate staff, as well as cost apportionment studies conducted by DOAH.<sup>5</sup>

The division prorates its annual budget request among state agencies using data on the number of hearing hours scheduled during the fiscal year two years prior to the fiscal year being budgeted. After DOAH submits its budget request, the annual general appropriations act charges an assessment to each state agency based on DOAH's budget request. Agencies transfer assessment amounts to DOAH during the current fiscal year. For example, based on the hearing hours scheduled on their behalf during Fiscal Year 2000-01, state agencies funded

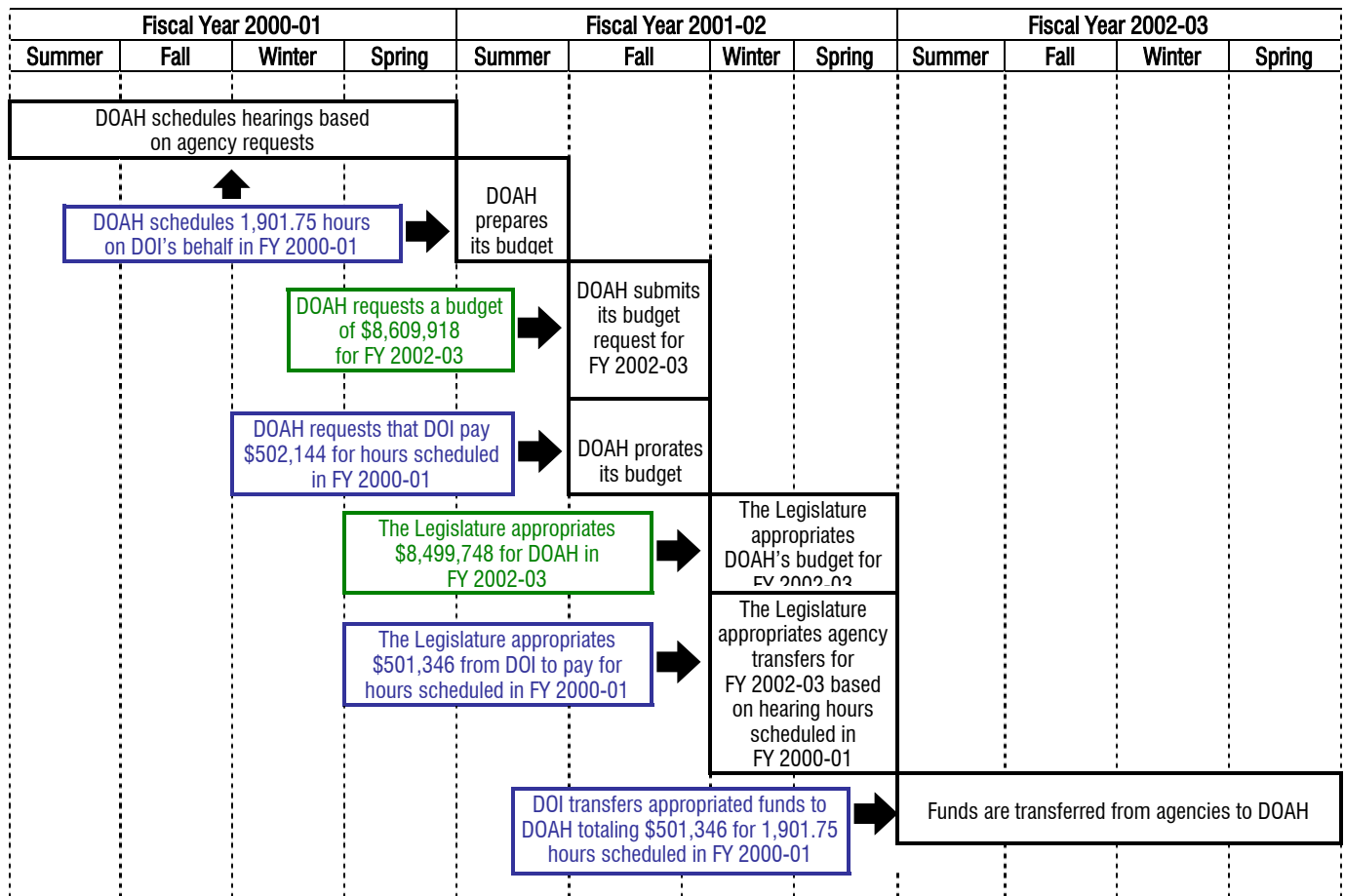
DOAH's Fiscal Year 2002-03 budget of \$8,499,748.<sup>6</sup>

Exhibit 1 illustrates how the number of scheduled hearing hours for a past year serves as the basis for DOAH's budget request for a future year, using the Department of Insurance as an example. Appendix A shows scheduled hearing hours for Fiscal Year 2000-01 by state agency and the requested and actual amounts they will pay through funding transfers during Fiscal Year 2002-03.

<sup>5</sup> Prior to Fiscal Year 1988-89, the division's primary funding source was general revenue. Only the Departments of Professional Regulation and Transportation were required to pay for DOAH's services.

<sup>6</sup> In October 2002, the state began to phase in implementation of the administrative establishment of child support obligations. DOAH has responsibility for conducting hearings in cases in which the Department of Revenue does not receive parental consent to its proposed child support obligation orders. Depending on the volume of these cases filed with DOAH, it may be necessary to modify DOAH's current cost apportionment process to cover the cost of administering these cases.

**Exhibit 1**  
**Billing Process for DOAH Hearings**  
**Example Agency – Department of Insurance (DOI)**



Source: OPPAGA analysis of data obtained from DOAH.

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**Other entity fee assessment.** There are three categories of other entities that pay fees to DOAH.

- Local government entities that contract with DOAH for administrative hearing services pay an hourly rate plus travel and teleconferencing expenses. Examples of these entities are the City of Clearwater, Leon County, and the Pinellas County Sheriff's Civil Service Board.<sup>7</sup>
- Certain entities specified in law must pay fees at an amount not less than the local government contract rate.<sup>8</sup> These entities include water management districts, regional planning councils, school districts, postsecondary educational institutions, and the Florida School for the Deaf and Blind.<sup>9</sup>
- Certain other legally specified entities must pay a filing fee for DOAH's hearing services. This category includes the Florida Birth-Related Neurological Injury Compensation Association and entities seeking state certification for sites upon which they intend to build electrical power plants.<sup>10</sup> Section 766.305(2), *Florida Statutes*, requires the claimant in cases involving the Florida Birth-Related Neurological Injury Compensation Association to pay DOAH a \$15 filing fee. Section 403.518, *Florida Statutes*, requires the Department of Environmental Protection to provide DOAH with a portion of the application fee for certifying a site for an electrical power plant.<sup>11</sup>

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<sup>7</sup> In calendar year 2001, 10 entities in this group requested the services of DOAH's administrative law judges.

<sup>8</sup> This requirement is contained each year in the General Appropriations Act.

<sup>9</sup> In calendar year 2001, 49 entities in this group requested the services of DOAH's administrative law judges.

<sup>10</sup> The Florida Birth-Related Neurological Injury Compensation Association is an independent board established by the Legislature to provide compensation, on a no-fault basis, for a limited class of catastrophic injuries that result in unusually high costs for custodial care and rehabilitation. DOAH administrative law judges are responsible for hearing and determining whether these claims are compensable. For electrical power plant site certification, DOAH judges conduct land use and certification hearings.

<sup>11</sup> The amount of funding provided to DOAH from this source varies based on the situation. For example, DOAH receives 20% of the application fee or \$25,000, whichever is greater, from the application fee the department collects for certifying a site for an

DOAH tracks the time administrative law judges spend on cases for entities in the first two categories and bills them \$100 per hour for this time. This hourly rate has not been changed since 1990. DOAH also bills these entities for travel and teleconferencing expenses incurred on their behalf. The filing fees for the Florida Birth-Related Neurological Injury Compensation Association and cases involving certification of electrical power plant sites have been in effect since 1988 and 1993, respectively, when they were originally established. During Fiscal Year 2001-02, DOAH collected \$424,292 from entities in the three categories.

## Evaluation of DOAH Fee Assessment System

We examined DOAH's method for assessing fees to state agencies and obtained input from state agencies affected by the fee assessment system. We concluded that DOAH's current system is expedient and provides timely information for the legislative appropriations process. However, the system is not based on the actual time spent serving agencies.

### The fee assessment method does not accurately assess state agencies for their use of services

DOAH's fee assessment method does not accurately assess state agencies in two respects.

- DOAH uses scheduled hearing hours as the basis for assessments, which provides no accountability for the actual time spent on state agency cases.
- The fee assessment method passes on costs to state agencies for services provided to other entities.

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electrical power plant site.

***DOAH uses scheduled hearing hours as the basis for assessments, which provides no accountability for the actual time spent on state agency cases***

Ideally, DOAH should assess user fees based on actual services used. Although DOAH employees track whether cases meet deadlines, they do not track the actual time spent on state agency cases. Instead, DOAH prorates its budget among state agencies using data on scheduled hearing hours. Scheduled hearing hours include hours for pre-hearing conferences, motion hearings, final hearings, and hearings that were cancelled or continued without a 30-day notice.<sup>12</sup>

According to DOAH administrators, DOAH policy is to charge for hearing hours that were cancelled or continued with less than 30 days notice because the cancelled hours cannot be used to schedule a hearing to meet the needs of other agencies.<sup>13</sup> This policy is intended to discourage agencies from requesting delays or canceling hearings when the hearings are imminent. If a continuance or settlement were discussed earlier in the process, DOAH would be able to more efficiently use the available time to hold hearings for other agencies.

However, using scheduled hearing hours to assess state agencies for services may not accurately reflect the actual time spent on state agency cases. As a result, DOAH is not accountable to state agencies for the actual time spent on their workload. State agencies have no means of determining how much time DOAH spends on their cases and whether they are being fairly assessed for their portion of DOAH's costs. Our interviews and surveys of state agency administrators confirmed that this is one

of their primary concerns. In comparison, DOAH tracks the time administrative law judges spend on cases for other entities subject to the contract rate and provides these entities with bills based on the hours spent.

Not tracking the time spent on cases also diminishes DOAH's accountability to the Legislature for state resources. The salary and benefit cost of a DOAH administrative law judge is significant (\$132,227 annually). In the absence of time data, DOAH managers cannot assure the Legislature that they have evaluated whether current judges are productively and efficiently spending their time. Therefore, DOAH cannot adequately justify requests to fund more judges to meet increased demands for services.

The problems inherent in not tracking the actual time spent on cases are demonstrated by recent allegations that led to an investigation by the Governor's chief inspector general. One allegation was that DOAH's workload does not support the number of positions authorized. The chief inspector general investigated and found the allegation to be inconclusive. The chief inspector general, however, recommended that an outside entity conduct a management review of DOAH employee workload.<sup>14</sup> OPPAGA will conduct an analysis of DOAH workload in 2003.

***DOAH fee assessment method passes on costs to state agencies for services provided to other entities***

Several entities do not pay the full cost for services they receive. Because DOAH prorates its entire budget for the Adjudication of Disputes Program among state agencies, the cost of providing services to other entities is passed on to state agencies in three ways.

- The rates DOAH charges to other entities do not fully recover its costs of providing these services.
- DOAH does not charge selected entities for administrative hearings.
- The Adjudication of Disputes Program budget is financing oversight and support

<sup>12</sup> A "cancelled" hearing is never held. A "continued" hearing is rescheduled to a later date or held in abeyance (not yet rescheduled) due to a request by one of the parties to delay the hearing. The administrative law judge responsible for the hearing must approve the request for delay.

<sup>13</sup> By statute, DOAH must give at least 14 days' notice of a scheduled hearing date. Therefore, if less than 30 days' notice is given of a cancellation, DOAH has approximately two weeks or less to find another case in which both the state agency and the affected party are willing to take the hearing date with short notice. According to DOAH administrators, two weeks is normally an insufficient time to prepare for a hearing, and thus they cannot find anyone else to take the hearing date.

<sup>14</sup> Executive Office of the Governor, Chief Inspector General's Office, Office of Investigations, Case No. 200106130001, Division of Administrative Hearings, October 22, 2001.

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services that DOAH provides to the Workers' Compensation Appeals Program.

**DOAH does not fully recover costs in the contract rates it charges to other entities.** DOAH's contract rates do not fully recover its costs for providing hearing services to other entities, resulting in state agencies subsidizing these services. As discussed earlier, DOAH bills these entities a flat rate of \$100 an hour for administrative law judge time incurred on their behalf, plus travel and teleconferencing expenses. This rate, which has been in effect since 1990, was not based on an analysis of the cost to provide services and was not intended to fully cover the costs.<sup>15</sup>

DOAH administrators stated that \$100 an hour does not cover all of DOAH's costs.<sup>16</sup> We agree. Because DOAH's entire budget is prorated among state agencies, state agencies are bearing any uncovered costs for providing services to other entities.

To estimate DOAH's cost of providing services to entities subject to the contract rate, we assumed that DOAH's method of using scheduled hearing hours for state agencies accurately reflects use of services. DOAH scheduled 4,755.5 hearing hours for entities subject to the contract rate in Fiscal Year 2000-01, or 12.59% of the total hearing hours scheduled. If these entities had been billed for the number of scheduled hearing hours (the same basis as state agencies) they would have paid \$1,069,871 for services in Fiscal Year 2002-03, or \$225 per scheduled hearing hour.<sup>17</sup> Instead, DOAH estimates that these entities will pay \$371,997, a difference of \$697,874.

**DOAH does not charge for some types of hearings.** State agencies also are bearing the cost of several types of hearings for which DOAH receives little or no compensation. These

include Baker Act hearings and hearings conducted on behalf of the State Board of Administration, the Pinellas County Construction Licensing Board, and the Florida Birth-Related Neurological Injury Compensation Association. DOAH administrators stated that they have no statutory or appropriations authorization to fund these types of cases in another manner.<sup>18</sup> Since DOAH does not assess fees for these hearings, it passes on these costs to state agencies when prorating its budget. This results in unrelated state programs paying for the cost of services provided to others.

For example, DOAH does not charge for Baker Act hearings. Baker Act hearings accounted for 1,945 (39%) of the requests for hearings DOAH received in Fiscal Year 2000-01.<sup>19</sup> DOAH does not track scheduled hearing hours or actual time spent on Baker Act hearings. However, DOAH administrators estimated that four administrative law judges spend 20% of their time on activities related to Baker Act hearings. The estimated direct salary and benefit cost of this time is \$105,782 annually.<sup>20</sup>

**The Adjudication of Disputes Program budget is funding oversight and support services DOAH provides to the Workers' Compensation Appeals Program.** DOAH also passes on costs to state agencies that it incurs administering and providing support services to the Workers' Compensation Appeals Program (Office of the Judges of Compensation Claims). The Workers' Compensation Appeals Program, which was transferred to DOAH on October 1, 2001, is separately budgeted and has a separate funding source than DOAH funding for the Adjudication of Disputes Program.

Although the Legislature transferred four administrative positions to DOAH along with the Workers' Compensation Appeals Program,

<sup>15</sup> DOAH's initial hourly charge was \$20 in 1977, and DOAH management raised it to \$30 in 1984, then to \$60 in 1986, and then to \$100 in 1990.

<sup>16</sup> These costs would include administrative law judge time, support personnel time, travel time, and general overhead.

<sup>17</sup> DOAH's total budget for Fiscal Year 2002-03 was \$8,499,748. If other entities subject to the contract rate paid 12.59% of the total budget, they would have paid \$1,069,871. This calculation is based on the assumption that these other entities would pay for services received in Fiscal Year 2000-01 during Fiscal Year 2002-03, as will state agencies.

<sup>18</sup> DOAH receives a \$15 filing fee from the claimant for cases involving the Florida Birth-Related Neurological Injury Compensation Association, but this fee would not begin to cover DOAH's cost for handling these cases. DOAH receives no compensation from the entities involved in the other types of hearings listed.

<sup>19</sup> DOAH also received 6 requests for hearing for the State Board of Administration, 50 for the Florida Birth-Related Neurological Injury Compensation Association, and 12 for the Pinellas County Construction Licensing Board in Fiscal Year 2000-01.

<sup>20</sup> This estimate does not include overhead costs.

DOAH administrators stated that these positions did not provide adequate oversight and support for the program. Therefore, 16 DOAH personnel funded from the Adjudication of Disputes Program budget also provide oversight and support services to the Workers' Compensation Appeals Program.<sup>21</sup> DOAH has not attempted to allocate the cost incurred for the personnel providing these services to the Workers' Compensation Appeals Program. Since DOAH's budget for Adjudication of Disputes is prorated among state agencies, state agencies are bearing these costs.

DOAH does not track the time its employees spend providing oversight and support to the Workers' Compensation Appeals Program. However, DOAH administrators estimated that 10% to 100% of these employees' time was spent on duties relating to the Workers' Compensation Appeals Program in Fiscal Year 2001-02. Based on the time estimates from DOAH, we estimated that the direct salary and benefit cost of these services was \$586,799.<sup>22</sup>

## Changes to Improve DOAH Fee Assessment System —

We researched ways by which DOAH could improve its system for assessing fees to state agencies by reviewing literature, interviewing and surveying state agency administrators, and surveying administrative hearing programs in other states. Using only general revenue to directly fund DOAH is not a desirable option because this would not capture revenues from numerous trust funds available to finance this cost of state government. Therefore, DOAH's Adjudication of Disputes Program should continue to be funded from fees assessed to its users.

<sup>21</sup> These personnel are the chief judge, a deputy chief judge, two administrative law judges, the executive assistant, the budget director, the clerk, the purchasing agent, the administrative services director, the personnel officer, the information systems director, the software support chief, and four administrative clerks.

<sup>22</sup> This would not include overhead costs such as rent and other expenses. A full cost recovery assessment should include all overhead costs.

We identified four changes to the fee assessment system that would more accurately charge the users of DOAH services.

- DOAH could track the time judges spend on cases and assess state agencies based on actual hours.
- DOAH could raise contract rates to recover full costs incurred on behalf of other entities and account for these revenues when assessing state agencies.
- DOAH could implement a filing fee to recover the administrative costs of opening case files and scheduling hearings.
- The Legislature could authorize DOAH to bill for the cost of hearings currently conducted at little or no charge.
- The Legislature could assess the Workers' Compensation Appeals Program for its portion of DOAH's indirect costs for administration and support.

### *DOAH could track the time judges spend on cases and assess state agencies based on actual hours*

This change would require DOAH administrators to track the time that administrative law judges spend on state agency cases and use this information as the basis for charges to the agencies.<sup>23</sup>

Basing state agency assessments on the actual time administrative law judges spend on cases would have several advantages. Agencies would pay rates that more accurately reflect use of services and would receive better accountability for the amounts they must pay. Another important advantage is that DOAH could use time data to measure the cost of providing services to both state and other entities with greater precision.

A disadvantage of tracking time is that DOAH administrative law judges would need to spend time recording time. DOAH administrators oppose requiring administrative law judges to track actual hours spent on state agency cases. Although judges must track the time spent on

<sup>23</sup> The salary and benefit cost of administrative law judges is a significant portion of DOAH's budget. The cost for support personnel, managers, and other expenses could be covered by an hourly overhead assessment.

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other entity cases as the basis for billing for these cases, the chief judge opposed requiring a similar system for state cases. The judge's rationale was that data on scheduled hearings is more reliable and can be documented. We do not believe that tracking time spent on all cases would overburden judges and assert that actual time is more defensible and a common and generally accepted practice in law firms.

### ***DOAH could raise contract rates to recover full costs incurred on behalf of other entities and account for these costs when assessing state agencies***

Raising contract rates to cover the cost of services to other entities would require DOAH to calculate each year a cost per hour for administrative law judge time and division overhead and track direct costs for services to other entities. DOAH would need to revise its contracts to allow for an annual calculation of hourly rates.

DOAH also would need to account for revenues from this source and annually subtract these revenues from the portion of its budget charged to state agencies for adjudication of disputes. DOAH could use a portion of its trust fund cash balance as a proxy for the revenues from other entities.<sup>24</sup>

An advantage of this change is that state agencies would be more accurately charged for DOAH's services because they would no longer be subsidizing the costs of services provided to other entities. This change would have resulted in an estimated \$697,874 reduction in the amount of DOAH's costs that state agencies will subsidize during Fiscal Year 2002-03.<sup>25</sup>

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<sup>24</sup> Appropriations committee staff evaluates DOAH's trust fund cash balance when reviewing DOAH's funding request. We identified two instances in which appropriations staff used a portion of that cash balance to fund some of DOAH's budget before appropriating state agency transfers. In Fiscal Years 2000-01 and 2001-02, this resulted in reductions of \$894,545 and \$2,074,701, respectively, which reduced the amounts state agencies transferred to DOAH. Unless cash balances are annually subtracted from DOAH's prorated budget, agencies will not benefit from a cost reduction due to other sources of revenue until some later date.

<sup>25</sup> As discussed earlier, to estimate DOAH's cost of providing services to entities subject to the contract rate, we assumed that DOAH's method of using scheduled hearing hours for state agencies accurately reflects use of services. DOAH scheduled

The main disadvantage of this option is that the state may encounter resistance from the entities that are currently paying an artificially deflated rate for services. On the other hand, these entities may just compare DOAH's costs to the cost of obtaining hearing services from the private sector or in-house, and select the most economical source of services. Another disadvantage is that DOAH employees would have to spend time conducting a cost analysis to determine the hourly charges for other entities.

### ***DOAH could implement a filing fee to recover the administrative costs of opening case files and scheduling hearings***

DOAH incurs administrative costs opening case files even if a request for hearing is withdrawn and no or minimal administrative law judge time is spent on the case. For example, employees in DOAH's clerk's office spend time reviewing incoming hearing requests to make sure the requests are complete and calling the appropriate parties to obtain additional information if needed. Clerks also separate time-critical requests that need expeditious handling and enter cases into DOAH's case tracking system. DOAH employees also schedule a time and place for the hearing and block out this time on the applicable judge's calendar, preventing other hearings from being scheduled during that time.

To further align fees with the cost of providing services, DOAH could charge a filing fee to both state and non-state entities to cover the average cost of opening a case file and scheduling a hearing. If implemented, DOAH would need to conduct a cost analysis to determine how much to charge. DOAH would need to subtract these revenues when determining the portion of its Adjudication of Disputes Program budget to pro-rate among state agencies.<sup>26</sup>

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4,755.5 hearing hours for entities subject to the contract rate in Fiscal Year 2000-01, or 12.59% of the total hearing hours scheduled. If these entities paid 12.59% of the DOAH's budget for Fiscal Year 2002-03, they would have paid \$1,069,871. Instead, DOAH estimates that these entities will pay \$371,997, a difference of \$697,874.

<sup>26</sup> The amount of funding state agencies provide to DOAH would be their total filing fees for a prior year plus their assessments to cover DOAH's budget. DOAH would also need to revise its contracts at the time of renewal to include a filing fee.



The primary advantage of a filing fee is better alignment of fees with the services provided. A filing fee would also ensure that agencies are assessed for the administrative cost of scheduling a hearing and then canceling it.<sup>27</sup>

***The Legislature could authorize DOAH to bill for the cost of hearings currently conducted at little or no charge***

Under this option, the Legislature could use the general appropriations act to authorize DOAH to assess the Department of Children and Families for the cost of Baker Act hearings and revise statutes to authorize DOAH to bill for other hearings for which it is not recovering costs through some other means. For example, patients and hospitals are not expected to pay the cost for Baker Act hearings, but these costs could be assigned to the Department of Children and Families because it administers mental health programs. The estimated direct salary and benefit cost of this time is \$105,782 annually. The Legislature could revise Ch. 120, *Florida Statutes*, to authorize DOAH to bill other entities for which appropriation authorization is not feasible, such as the State Board of Administration. The Legislature could also revise s. 766.305(2), *Florida Statutes*, to authorize DOAH to bill the Florida Birth-Related Neurological Injury Compensation Association for the full cost of its cases rather than charging a \$15 filing fee.

Although charging for Baker Act hearings would not result in a reduction in the amount of DOAH's costs that are prorated among state agencies, charging fees to all entities receiving services would more accurately distribute DOAH's costs among users. Unrelated state agencies would no longer bear the cost of hearing services provided to other entities.

A disadvantage of charging for Baker Act hearings is that the Department of Children and Families receives 44% of its funding from general revenue, and this change would increase its assessments from DOAH. Also, Department of Children and Families officials believe that

<sup>27</sup> If DOAH implements a time tracking system and uses it as the basis of state agency assessments, agencies would not incur costs for scheduling hearings unless an administrative law judge charges time to the case. A filing fee would address these costs.

increasing the department's assessments from DOAH could reduce the department's capacity to provide services. We did not identify a disadvantage to eliminating free services to other entities.

***The Legislature could assess the Workers' Compensation Appeals Program for its portion of DOAH's indirect costs for administration and support***

Under this option, DOAH would calculate the indirect costs of providing services to the Workers' Compensation Appeals Program, and the Legislature would transfer these costs to DOAH as part of the appropriations process. DOAH would then subtract these costs before prorating its budget among state agencies.

An advantage of this change is that state agencies would be more accurately charged for DOAH's services because they would no longer be subsidizing the costs of services provided to another program. State agencies subsidize an estimated \$586,799 annually in costs DOAH incurs providing support to the Workers' Compensation Appeals Program. This program is funded from the Workers' Compensation Administration Trust Fund, which receives its revenue from an assessment on workers' compensation insurance premiums. This assessment can be increased as necessary to cover the cost of providing oversight and support for the Workers' Compensation Appeals Program.<sup>28</sup>

A disadvantage of this change is that DOAH employees would need to spend time calculating these costs.

## Conclusions and Recommendations

DOAH's method of assessing fees is expedient but does not accurately charge state agencies for their use of services. DOAH tracks whether

<sup>28</sup> As provided in s. 440.51, *F.S.*, the assessment rate is based on anticipated expenses for the administration of the Workers' Compensation Law, which includes the Workers' Compensation Appeals Program. The Department of Insurance estimates total expenses annually and this amount is prorated among the carriers writing compensation insurance in the state and self-insurers.

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cases meet deadlines, but not how much time its employees spend on individual state agency cases. The division's use of a proxy (scheduled hearing hours) as the basis of assessments provides agencies with no accountability for the actual time spent on their workload. DOAH's fee assessment method passes on costs to state agencies for services provided to other entities, which results in unrelated state agencies subsidizing the cost of services provided to others.

We identified various ways to improve the system DOAH uses to charge state agencies for the Adjudication of Disputes Program. Implementing these changes would reduce state agency costs to support DOAH by an estimated \$1,284,673 annually, of which \$199,124 would be general revenue.<sup>29</sup> We therefore recommend that DOAH and the Legislature take actions described below.

- DOAH should implement a timekeeping system to track the time administrative law judges actually spend on state agencies' cases and provide quarterly statements to these agencies showing the time spent.
- DOAH should use actual time data to prorate its budget for the Adjudication of Disputes Program among state agencies. Each agency's prorated portion of DOAH's budget should be based on the percentage of time the agency used out of the total time tracked by DOAH's administrative law judges in a prior fiscal year.
- DOAH should annually analyze its costs and bill other entities at rates that more accurately reflect the real hourly cost of providing them with services. To implement this recommendation, DOAH will need to revise its hourly rate each year as it renews its annual contracts with these entities. Using DOAH's current method of determining state agency assessments (with scheduled hearing hours used as a proxy), we estimate that state agencies will subsidize an estimated \$697,874 during Fiscal Year

2002-03 in costs DOAH incurs providing services to other entities.

- DOAH should analyze its costs and establish a filing fee that covers the average administrative cost of opening case files and scheduling hearings. DOAH should charge the filing fee to all state agencies and subtract this revenue before calculating state agency assessments. DOAH should also revise its annual contracts with other entities at the time of renewal to include the filing fees.
- The Legislature should authorize DOAH in the general appropriations act to assess the Department of Children and Families for time spent on Baker Act hearings, as mental health services are funded through the department's budget.
- To allow DOAH to recover costs from other entities, the Legislature should revise Ch. 120, *Florida Statutes*, to authorize DOAH to bill for the cost of hearing services that it is not recovering through other means and s. 766.305(2), *Florida Statutes*, to authorize DOAH to bill the Florida Birth-Related Neurological Injury Compensation Association for the full cost of its cases.
- DOAH should account for and deduct all revenues received from other entities before prorating its annual budget among state agencies. To align these revenues with budget years, DOAH could either use prior year revenues or a portion of its cash balance as the amount to subtract from the portion of its budget prorated among state agencies.
- The Legislature should assess the Workers' Compensation Appeals Program budget category for its portion of DOAH's indirect costs for administration and support. DOAH should calculate and subtract this amount before prorating its budget among state agencies. DOAH's Adjudication of Disputes Program incurs estimated salary and benefit costs of \$586,799 annually providing support to the Workers' Compensation Appeals Program.

<sup>29</sup> General revenue will account for 15.5% of agency transfers to DOAH in Fiscal Year 2002-03. This estimate assumes that the same percentage of the state cost savings will be general revenue, or 15.5% of \$1,284,673.

## Agency Response \_\_\_\_\_

In accordance with the provisions of s. 11.51(5), *Florida Statutes*, a draft of our report was submitted to the director of the Division of Administrative Hearings for her review and response. Her written response is reprinted herein (see Appendix B, pages 13-14).

## Appendix A

# Fiscal Year 2000-01 Scheduled Hearing Hours Used as the Basis to Prorate DOAH Fiscal Year 2002-03 Budget

State Agency	Actual Hearing Hours <sup>1</sup>	Hours for Hearings Cancelled or Continued Without 30-Day Notice	Percentage of Total Hours Cancelled or Continued Without a 30-day Notice	Total Scheduled Hearing Hours	Percentage of Total Scheduled Hearing Hours	Prorated Budget Request Amount for Fiscal Year 2002-03	Amount Transferred in General Appropriations Act
Department of Health	824.00	7,740.00	90.40%	8,564.00	26.26%	\$2,261,265	\$2,257,673
Agency for Health Care Administration	801.00	4,852.00	85.80%	5,653.00	17.34%	1,492,636	1,490,264
Department of Business and Professional Regulation	583.75	3,681.00	86.30%	4,264.75	13.08%	1,126,078	1,124,289
Department of Environmental Protection	180.00	1,762.00	90.70%	1,942.00	5.96%	512,772	511,957
Department of Insurance	233.75	1,668.00	87.70%	1,901.75	5.83%	502,144	501,346
Department of Management Services <sup>2</sup>	407.75	1,378.00	77.20%	1,785.75	5.48%	471,515	470,766
Department of Education	256.75	1,451.00	85.00%	1,707.75	5.24%	450,920	450,203
Department of Children and Families	359.50	1,137.00	76.00%	1,496.50	4.59%	395,140	394,513
Department of Community Affairs	220.75	741.50	77.10%	962.25	2.95%	254,075	253,672
Office of the Comptroller	150.00	796.00	84.10%	946.00	2.90%	249,785	249,388
Department of Transportation	119.25	770.00	86.60%	889.25	2.73%	234,800	234,427
Department of Revenue	66.25	442.00	87.00%	508.25	1.56%	134,200	133,987
Department of Highway Safety and Motor Vehicles	121.00	369.00	75.30%	490.00	1.50%	129,381	129,176
Department of Agriculture and Consumer Services	16.50	363.00	95.70%	379.50	1.16%	100,204	100,045
Department of Labor and Employment Security	115.25	204.00	63.90%	319.25	0.98%	84,296	84,162
Department of Law Enforcement	32.75	105.00	76.20%	137.75	0.42%	36,372	36,314
Fish and Wildlife Conservation Commission	25.25	112.00	81.60%	137.25	0.42%	36,240	36,182
Department of Corrections	36.00	80.00	69.00%	116.00	0.36%	30,629	30,580
Ethics Commission	29.50	72.00	70.90%	101.50	0.31%	26,800	26,758
Department of Juvenile Justice	23.75	36.00	60.30%	59.75	0.18%	15,777	15,752
Department of Legal Affairs <sup>3</sup>	4.00	55.00	93.20%	59.00	0.18%	15,579	15,554
Department of State	9.25	48.00	83.80%	57.25	0.18%	15,116	15,092
Executive Office of the Governor	22.50	28.00	55.40%	50.50	0.15%	13,334	13,313
Public Service Commission	28.50	8.00	21.90%	36.50	0.11%	9,638	9,622
Department of Veterans' Affairs	2.50	24.00	90.60%	26.50	0.08%	6,997	6,986
Department of Lottery	0.00	16.00	100.00%	16.00	0.05%	4,225	4,218
Department of Elder Affairs	0.00	0.00	N/A	0.00	N/A	0	0
<b>Totals</b>	<b>4,669.50</b>	<b>27,938.50</b>	<b>85.68%</b>	<b>32,608.00</b>	<b>100.00%</b>	<b>\$8,609,918</b>	<b>\$8,596,239<sup>4</sup></b>

<sup>1</sup> Actual hearing hours include hours for pre-hearing conferences, motion hearings, and final hearings.

<sup>2</sup> Includes scheduled hearing hours for the Commission on Human Relations, which accounted for 1,448.50 of the department's total hearing hours in Fiscal Year 2000-01. The Legislature appropriated \$371,296 in the general appropriations act for these hours.

<sup>3</sup> The Department of Legal Affairs is also referred to as the Office of the Attorney General.

<sup>4</sup> DOAH's Fiscal Year 2002-03 budget has been increased to \$8,536,622 to reflect legislatively authorized adjustments for the employee pay package, health insurance premium increases, retirement rate reductions, and risk management insurance premium reductions. In Fiscal Year 2002-03, appropriated agency transfers equaled \$8,596,239. The additional \$59,617 will fund other amendments made to DOAH's budget throughout the fiscal year. Any remaining funds from the transfer will remain in the trust fund.

Source: OPPAGA analysis of DOAH data.

*Appendix B*

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State of Florida  
Division of Administrative Hearings

Sharyn L. Smith  
Director and Chief Judge  
Ann Cole  
Clerk of the Division



The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida  
32399-3060

December 19, 2002

Mr. John Turcotte  
OPPAGA Director  
Office of Program Policy Analysis  
and Government Accountability  
111 West Madison Street, Suite 312  
Tallahassee, Florida 32399-1475

Dear Mr. Turcotte:

Enclosed is the response by the Division of Administrative Hearings to OPPAGA's draft special examination of the division's funding methodology. Please advise if I may be of further assistance.

Sincerely,

/s/  
SHARYN L. SMITH  
Director and Chief Judge

/mrl  
Enclosure

## *Special Examination*

### **AGENCY RESPONSE**

OPPAGA Special Examination  
Division of Administrative Hearings Method of  
Assessing Fees Needs Significant Revision

December 19, 2002

The Division of Administrative Hearings (DOAH) offers the following clarifications on several issues contained in OPPAGA's report:

The report does not state that the 1987 Legislature mandated that DOAH conduct the study that resulted in the current method of apportioning its budget among those state agencies utilizing its services. The policy decision to adopt this funding methodology was made after careful analysis (by both legislative and gubernatorial staff) of DOAH's mission, available sources of funding, and the impact of apportioning costs on the basis of scheduled hearing hours.

The report states that implementing the proposed revisions to the division's current funding methodology would reduce state agency costs to support the division by an estimated \$1.3 million annually. It is important to note that changing the formula currently used to prorate the division's budget among state agencies would not impact the division's costs or its funding level. Although the total amount transferred to the division by state agencies would change, this proposal actually results in a cost shift to both state and local entities.

The statement that DOAH managers cannot assure the Legislature that current judges are productively and efficiently working because they do not track time spent on individual cases, and therefore cannot adequately justify requests for additional judges, is not accurate. DOAH managers collect and analyze data on caseload, as well as all judges' performance, on an ongoing basis. Data that tracks the speed with which judges process their cases is collected through the use of a custom-designed computer program. The Legislature evaluates DOAH's performance on how quickly it adjudicates disputes, as evidenced by the large number of mandated timeframes throughout the Florida Statutes. Thus, all of its performance measures and standards are related to the timeliness of scheduling hearings and closing cases. In FY 2001-02, DOAH exceeded all of its outcome performance standards.



## The Florida Legislature

# *Office of Program Policy Analysis and Government Accountability*

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[Florida Government Accountability Report \(FGAR\)](#) is an Internet encyclopedia of Florida state government. FGAR offers concise information about state programs, policy issues, and performance. Check out the ratings of the accountability systems of 13 state programs.

- [Best Financial Management Practices Reviews of Florida school districts](#). In accordance with the *Sharpening the Pencil Act*, OPPAGA and the Auditor General jointly conduct reviews to determine if a school district is using best financial management practices to help school districts meet the challenge of educating their students in a cost-efficient manner.

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