

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2017

Legislative Fiscal Note

BILL NUMBER: Senate Bill 29 (First Edition)

SHORT TITLE: ALJ Review of DPS Civil Penalties.

SPONSOR(S): Senator Jackson

| FISCAL IMPACT | | | | | |
|----------------------------------------------------------------|-----------------------------------------|-----------------------------|------------------------------------------------|--------------------|--------------------|
| | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> No Estimate Available | | |
| | FY 2017-18 | FY 2018-19 | FY 2019-20 | FY 2020-21 | FY 2021-22 |
| State Impact | | | | | |
| General Fund Revenues: | \$2,715.00 | \$3,620.00 | \$3,620.00 | \$3,620.00 | \$3,620.00 |
| General Fund Expenditures: | (\$48,790.00) | (\$65,053.00) | (\$65,053.00) | (\$65,053.00) | (\$65,053.00) |
| Special Fund Revenues: | | | | | |
| Special Fund Expenditures: | | | | | |
| State Positions: | -1.04 | -1.04 | -1.04 | -1.04 | -1.04 |
| NET STATE IMPACT | \$51,505.00 | \$68,673.00 | \$68,673.00 | \$68,673.00 | \$68,673.00 |
| Local Impact | | | | | |
| Revenues: | | | | | |
| Expenditures: | | | | | |
| NET LOCAL IMPACT | \$0.0 | \$0.0 | \$0.0 | \$0.0 | \$0.0 |
| PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: | | | | | |
| Department of Public Safety, Office of Administrative Hearings | | | | | |
| EFFECTIVE DATE: October 1, 2017 | | | | | |
| TECHNICAL CONSIDERATIONS: None | | | | | |

BILL SUMMARY:

Senate Bill 29 amends G.S. 20-178.1: Motor Vehicle Act of 1937, by transferring the appeals process for civil penalties imposed by the Department of Public Safety (DPS) from an internal DPS process to a contested case filing process with the Office of Administrative Hearings (OAH) subject to Article 3 of Chapter 150B of the General Statutes. In addition, any person who is dissatisfied with the OAH final decision may seek judicial review in accordance with G.S. 150B-45 via the Superior Court of Wake County or in the superior court in which the civil penalty was assessed.

ASSUMPTIONS AND METHODOLOGY:

Estimated Financial Impact to OAH

Based on information provided and the estimated number of appeals, OAH can absorb the workload and cost of handling the DPS civil penalty appeal process without additional resources. In addition, OAH can expect an increase in revenue related to filing fees of approximately \$3,620 annually. This estimates that approximately 181 appeals will be filed annually with a \$20 per case filing fee. All filing fees collected by OAH are deposited to the General Fund.

Appeals Assumption

During 2007, the General Assembly made OAH responsible for this function from January 1, 2008 until October 1, 2009. Unlike the internal DPS process, all OAH contested cases commence by paying a filing fee and by filing a petition with OAH.

The following chart shows the annual number of DPS civil penalty appeals from 2009 through 2016 and reflects that when OAH had responsibility, there were a greatly reduced number of appeals. DPS resumed responsibility for this function in 2009.

| Number of DPS Civil Penalty Appeals 2009-2016 | | |
|----------------------------------------------------------|-------------|--------------|
| Agency | Year | Total |
| OAH | 2009 * | 181 |
| DPS | 2010 | 2,049 |
| DPS | 2011 | 1,839 |
| DPS | 2012 | 1,830 |
| DPS | 2013 | 1,514 |
| DPS | 2014 | 1,680 |
| DPS | 2015 | 1,249 |
| DPS | 2016 | 1,413 |
| • <i>October 1, 2008-October 1, 2009</i> | | |

As the preceding chart shows, OAH handled 181 DPS contested cases during 2009. While the chart shows a much higher number of cases for DPS reviews, transferring the function to OAH will most likely result in a significantly lower case load due to the following reasons:

1. There is no cost to request an administrative review with DPS whereas OAH charges a filing fee of \$20 (unless the amount in controversy exceeds \$50,000 in which case the filing fee would be \$125).
2. The vehicle owner does not have to appear before the DPS administrative review committee while OAH requires that the petitioner or their legal counsel appear in person.
3. OAH's prior experience with contested cases is that vehicle owners typically only file an appeal if they have a real belief that an agency has done something improper.

Additionally, not all of the filed cases in OAH resulted in an evidentiary hearing, many were withdrawn, dismissed, or summary judgment was granted. A randomly selected review of 40 of the 181 DPS contested cases filed in OAH during this time period showed only 15% had an evidentiary hearing.

In summary, based on past history and information presented above, OAH anticipates there would be only an additional 30 contested cases requiring an evidentiary hearing annually. This figure assumes that a small percentage (approximately 15%) of actual filings will result in an ALJ decision following an evidentiary hearing. The fiscal impact to OAH is based on that assumption.

Estimated Impact – DPS

There are currently 13 DPS employees who are involved, in part, with investigating and processing the administrative review of citations. Of the 13 employees, six are funded by General Fund appropriations and seven are federally funded. According to DPS, of the appropriated positions, there are 1.04 FTEs that perform the work associated with administrative review – the personal service costs associated with this function total \$65,053. Of the federally funded positions, there is only .34 of one FTE participating in this activity which equals \$21,820 in personal service costs. Therefore, moving this function to OAH could result in overall reduced expenditures of \$86,873 at DPS. See the chart below showing the breakout of time assigned for this activity and personal services costs.

| Breakdown of DPS Costs Attributable Solely to Civil Penalty Appeals | | | | | | |
|----------------------------------------------------------------------------|-----------------------|--------------------------------|----------------------|--------------------------------|------------------------|------------------------------------|
| Position | Funding Source | % Time Spent on Protest | Annual Salary | Salary Spent on Protest | Fringe Benefits | Total Salary & Benefits |
| Lieutenant - Size & Weight | Appropriated | 3% | \$82,804 | \$2,484 | \$890 | \$3,374 |
| First Sergeant - Size & Weight | Appropriated | 1% | \$75,634 | \$756 | \$276 | \$1,032 |
| Sergeant - Size & Weight | Appropriated | 25% | \$69,213 | \$17,303 | \$6,430 | \$23,733 |
| Processing Assistant III | Appropriated | 30% | \$36,412 | \$10,924 | \$4,318 | \$15,242 |
| Processing Assistant IV | Appropriated | 30% | \$30,612 | \$9,184 | \$3,901 | \$13,085 |
| Processing Unit Supervisor V | Appropriated | 15% | \$41,610 | \$6,242 | \$2,346 | \$8,588 |
| Appropriated Positions | | 1.04 FTE | | \$46,892 | \$18,161 | \$65,053 |
| Position | Funding Source | % Time Spent on Protest | Annual Salary | Salary Spent on Protest | Fringe Benefits | Total Salary & Benefits |
| Captain - MCSAP | Federal | 1% | \$90,648 | \$906 | \$319 | \$1,225 |
| Lieutenant - MCSAP | Federal | 1% | \$82,804 | \$828 | \$297 | \$1,125 |
| First Sergeant - MCSAP | Federal | 2% | \$75,634 | \$1,513 | \$552 | \$2,065 |
| Sergeant - MCSAP | Federal | 5% | \$69,213 | \$3,461 | \$1,286 | \$4,747 |
| Data Entry Operator - MCSAP | Federal | 5% | \$33,687 | \$1,684 | \$687 | \$2,371 |
| Data Entry Operator II - MCSAP | Federal | 5% | \$33,888 | \$1,694 | \$690 | \$2,384 |
| Information Processing Asst. - MCSAP | Federal | 15% | \$37,926 | \$5,689 | \$2,213 | \$7,902 |
| Federal Positions | | .34 FTE | | \$15,776 | \$6,044 | \$21,820 |
| Total for all Positions | | 1.38 FTE | | \$62,668 | \$24,205 | \$86,873 |

SOURCES OF DATA: Office of Administrative Services, Department of Public Safety

TECHNICAL CONSIDERATIONS: OAH should notify DPS of final disposition of contested cases.

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DATE: April 5, 2017



Signed Copy Located in the NCGA Principal Clerk's Offices