

LEGISLATIVE APPROPRIATIONS REQUEST
FOR FISCAL YEARS 2010 AND 2011

**Submitted to the
Governor's Office of Budget, Planning and Policy
and the Legislative Budget Board**

By

STATE OFFICE OF ADMINISTRATIVE HEARINGS

August 6, 2008



CERTIFICATE

Agency Name

STATE OFFICE OF ADMINISTRATIVE HEARINGS (#360)

This is to certify that the information contained in the agency Legislative Appropriations Request filed with the Legislative Budget Board (LBB) and the Governor's Office of Budget, Planning and Policy (GOBPP) is accurate to the best of my knowledge and that the electronic submission to the LBB via the Automated Budget and Evaluation System of Texas (ABEST) and the bound paper copies are identical.

Additionally, should it become likely at any time that unexpended balances will accrue for any account, the LBB and the GOBPP will be notified in writing in accordance with Article IX, Section 7.01 (2008-09 GAA).

Chief Administrative Law Judge

Signature

Cathleen Parsley
Printed Name

Chief Administrative Law Judge

Title

Date

August 5, 2008

Chief Financial Officer

Signature

Linda L. Duncan
Printed Name

Chief Operating Officer

Title

Date

August 5, 2008

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81st Regular Session, Agency Submission, Version 1
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ADMINISTRATOR'S STATEMENT

History, Jurisdiction and Oversight

The State Office of Administrative Hearings (SOAH) was created in 1991 by the 72nd Texas Legislature to be a neutral, independent agency for the resolution of conflicts and disputes between Texas agencies or governmental entities and private citizens, corporations, or other entities regulated by or doing business with or in the state. SOAH is headed by a Chief Administrative Law Judge (ALJ), who is a gubernatorial appointee; it does not have a governing or advisory board or commission. The agency's mission is to conduct fair, prompt, and efficient hearings and alternative dispute resolution proceedings, and to provide fair, logical, and timely decisions. The duties and responsibilities of the Chief ALJ and SOAH are defined in Chapter 2003 of the Texas Government Code, and SOAH hearings are conducted under the Administrative Procedure Act, Tex. Gov't Code Chapter 2001. To date, SOAH has had three Chief ALJs. The appointment of the current Chief ALJ was effective July 1, 2008.

Since it began conducting hearings in April 1992, the volume, nature, and scope of SOAH's case work has increased as a result of legislatively mandated transfers of additional jurisdiction and voluntary transfers of hearings and dispute resolution activities by agencies and governmental entities. Most recently, the 80th Legislature transferred to SOAH the hearings of the Comptroller of Public Accounts, the Motor Vehicle Division of the Texas Department of Transportation, and the Texas Real Estate Commission. Examples of voluntary transfers include the Title IV-D administrative license suspension cases from the Child Support Division of the Office of the Attorney General. SOAH ALJs preside in hearings covering a wide range of subjects, including professional licensing and regulation; insurance, workers' compensation and retirement benefits; child support; child abuse and neglect; elder care; health and medical services; transportation; land ownership; environment and natural resources; public safety; financial and utility regulation; and contract claims against the state. Generally, SOAH ALJs prepare and submit detailed recommendations called proposals for decision to the referring agencies, which then make the final decision appealable to the courts. In some cases, ALJs prepare and issue the final, appealable decisions.

SOAH ALJ Eligibility Requirements

To be eligible for employment as a SOAH ALJ, an individual must be licensed to practice law in Texas and meet other requirements prescribed by the Chief ALJ. ALJs on the Natural Resources Team who hear cases referred from the Texas Commission on Environmental Quality (TCEQ) must also have the expertise necessary to conduct hearings regarding technical or other specialized subjects that may come before the TCEQ. ALJs on the Utility Team, which hears cases from the Public Utility Commission (PUC), must have not less than five years of general (legal) experience or three years of experience in utility regulatory law. ALJs hearing tax cases referred from the Comptroller of Public Accounts must have been licensed to practice law for at least seven years, have substantial experience in tax cases in making a record suitable for administrative review, and have devoted at least 75% of his/her legal practice to Texas state tax law in five of the last ten years before the date the person is employed to work in SOAH's tax division. Additional requirements for ALJ I, II, III and Master I and II are specified in job descriptions adopted by the Chief ALJ.

Office Locations and Case Load

SOAH is headquartered in Austin with field offices in Corpus Christi, Dallas, El Paso, Fort Worth, Houston, Lubbock, San Antonio, and Waco. SOAH also operates 29 remote sites necessary for administrative license suspension (ALR) hearings. During FY 2007, SOAH worked on 5,744 General Docket (non-ALR) cases and 28,871 ALR cases for 49 state agencies and governmental entities. Through the end of the third quarter of FY 2008, SOAH worked on 4,685 General Docket cases and 24,786 ALR cases. Annualized projections for FY 2008 indicate SOAH will handle 6,247 General Docket and 33,048 ALR cases.

Full-time Equivalent (FTE) Positions and Impact of Workload

SOAH was authorized 114 FTEs for the FY 2008-09 biennium, including 59 ALJ positions (excluding the Chief ALJ). In this legislative appropriations request, SOAH is requesting it be authorized an additional 13 FTEs, all told, specified as follows:

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SOAH has included an exceptional item to allow it to hire one additional FTE for its Austin support staff. SOAH is most fortunate to have a loyal, dedicated, professional, and hardworking support staff, and they are critical to SOAH's ability to achieve its mission. The current ALJ-to-administrative assistant ratio in Austin is four and five to one, and the administrative assistants are at maximum capacity at current workload levels. The projected increase in caseload from agencies other than the Texas Department of Insurance Division of Workers' Compensation (DWC), the Department of Family and Protective Services (DFPS), and the Texas Department of Transportation's Motor Vehicle Division (MVD) (see below) will have an impact on the staff's ability to produce work in timely fashion. An additional FTE in hearings support would be of great benefit. The method of finance proposed for this FTE is general revenue.

SOAH also requests it be authorized to hire up to an additional 11 FTEs (eight ALJs and three support staff) to handle the projected increase in caseload in the 2010-2011 biennium, funded via reimbursements for work performed pursuant to interagency contracts, i.e., SOAH is not requesting additional general revenue with which to hire these additional authorized employees. Although workload projections for the 2010-2011 biennium trend up overall, estimates from DWC and DFPS indicate significant increases. In addition, SOAH has experienced in FY 2008 a substantial increase in workload and travel as a result of the consumer affairs (lemon law) hearings from the MVD. SOAH expects no diminution of the lemon law cases for 2010-2011. It also notes that it received no FTEs as a result of the transfer of the MVD cases to SOAH in the 79th Regular Session. SOAH projects an average of approximately 11,000 additional hours per year from interagency contract referrals, principally from DWC, DFPS, and MVD. From all referrals, SOAH expects an additional approximately 13,000 hours per year in the next biennium.

In addition, according to information from DWC, there are approximately 1,391 additional cases at Travis County District Court that could be remanded to DWC and subsequently to SOAH in the 2010-2011 biennium. Given the uncertainty as to whether those cases will materialize for SOAH, SOAH is not requesting permanent ALJ FTEs to help address the workload spike resulting from the potential remand. Rather, SOAH proposes to use temporary ALJs (TALJs) to deal with what would be a temporary workload increase. It is envisioned that the TALJs would be assigned to hear a variety of cases across the SOAH spectrum and would not be assigned exclusively to workers' compensation hearings.

SOAH notes that any excess ALJ capacity that might be available in the Tax team is not easily or practically usable by SOAH to address any other workload of the agency, including simple but important assignments such as ALR. Tex. Gov't Code § 2003.101.

Finally, SOAH also requests authority to hire one FTE in FY 2011, also funded through interagency contract reimbursements, for its docketing staff. The FTE's duties will be associated with the electronic filing system SOAH is implementing that will allow parties to file case documents electronically and will allow parties and the public to search for and review non-confidential case files via the internet. Also, the ALJs' non-confidential decisions and orders will be posted to the system, and they will likewise be searchable and viewable. Email volume in the electronic system will be sizable. Parties will still be able to file hard copy documents via hand delivery, mail, or facsimile, and those documents will have to be scanned and the files converted so they can be placed into the electronic system. An additional FTE will be necessary to provide day-to-day document imaging and file indexing and routing, which are critical components of the electronic document management system.

Electronic Filing System

SOAH is working toward the implementation of an electronic filing system, which it has so far funded and proposes to continue to fund with reimbursements for work performed under interagency contracts. It is asking for an increase in its capital budget for FY 2010 to complete the acquisition of necessary equipment. The system should be fully operational in FY 2011. The system will allow parties to submit case filings electronically, and case filings in non-confidential cases will be retrievable and searchable by parties and the public via the internet. The ALJs' non-confidential decisions and orders will also be posted to the system and will be searchable and viewable, as well.

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SOAH Chief ALJ Salary

On September 1, 2008, as a result of the 2% salary increase for state employees, one of the ALJs transferred to SOAH from the Office of the Comptroller to conduct tax hearings will receive a salary greater than that of the SOAH Chief ALJ. SOAH respectfully submits that the head of the agency should receive the highest salary in the agency. It is not good precedent for any of the employees to be better paid than the person who leads the agency and is responsible for its management and policy. SOAH has included an exceptional request to increase the Chief ALJ's salary to an amount commensurate with the duties and that should permit the salary to remain the agency's highest for the 2010-2011 biennium. The Chief ALJ's salary is currently in salary Group 5 and will remain in this group with this increase.

Background Checks

SOAH has authority to conduct criminal background checks only on information technology employees. Tex. Gov't Code § 411.1405(b). SOAH does not conduct criminal background checks on these employees, and so does not have a policy on criminal background checks.

SOAH does contact prior employers during its reference checking process for potential new employees. Also, it verifies that attorneys applying for ALJ positions are in good standing with the State Bar of Texas, and all ALJ employees are expected to maintain good standing. SOAH also checks driver's license records for potential ALJs. SOAH also verifies any necessary certifications, such as for Certified Public Accountants.

SOAH Method of Finance

SOAH is funded through a combination of the following: general revenue and State Highway Fund 006 direct appropriations; and interagency contracts, with reimbursements to SOAH paid on either a lump sum or hourly billing basis. SOAH's current hourly rate is \$100 per hour, approved by the 80th Legislature.

Externalities Affecting Operations

One of the most significant external factors affecting SOAH's operations is the uncertainty of service demands. Like a court, SOAH does not initiate work, but instead must respond as work is generated externally. Workload projections are generally made using historical data, if available, adjusted for anticipated changes identified by referring agencies. Because SOAH does not control the work referred, SOAH's overall service demand, or the demand from any individual referring agency, may fluctuate significantly from one time period to the next. This requires SOAH to carry out its mission while maintaining flexibility to respond to changing circumstances beyond its control and preparing adequately to manage peak demand but avoiding overstaffing during non-peak periods.

Internal Operations

Essential to SOAH's ability to perform its mission and meet demands are maintenance of a dedicated and skilled ALJ and support workforce able to adapt and successfully handle a variety of subject areas; and continued efforts to maximize use of existing resources, maintain efficient hearings and ADR processes, and to effectuate cost savings whenever possible. One example of increased efficiency is the use of videoconferencing for hearings, as appropriate, and meetings. This system was implemented in FY 2003. Time, travel, and fuel savings have been realized by SOAH and public participants in hearings and meetings. Through July 31 of FY 2008, SOAH alone realized approximately \$7,765 in travel cost savings through use of videoconferencing.

Impact of 10% General Revenue Budget Reduction

SOAH has included the schedule reflecting a 10% reduction in its general revenue budget. To reach the 10%, SOAH would eliminate maintenance and repair contracts for copiers, printers, fax machines, the videoconferencing system, and computer hardware and software; reduce its contract with its internal auditor by 50%; forgo the hiring of any temporary ALJs; and eliminate two FTE positions (one ALJ and one paralegal). SOAH projects a significant increase in workload in the next biennium – approximately

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13,000 hours per year over the current biennium, not including the hours that might result from any remand of workers' compensation cases. Without the remand, the projected increase equates to the workload of approximately nine additional ALJ FTEs. With the remand, it could be a workload of up to 12 – 14 additional ALJs. Decreasing the number of FTEs directly devoted to hearings, as ALJs and paralegals are, and/or having inadequate ALJ resources available to handle the work will impair SOAH's ability to perform its responsibilities effectively and efficiently, and will mean delays in hearing and deciding contested cases.

Participant Satisfaction

SOAH works continuously to identify more effective ways to manage its increased responsibilities and to provide quality customer service. One of SOAH's key measures is the percentage of participants surveyed satisfied with the overall process. Satisfaction rates for FYs 2007 and 2008 were 76% and 92%, respectively. The survey response rate for these years was 10% in FY 2007 and 11% in FY 2008. The response rate fluctuates from year to year for reasons not clear to SOAH. In FY 2003, the response rate was 16%; in FY 2005, it was 6%.

SOAH is proud of the high satisfaction rate for FY 2008 and constantly strives to provide quality customer service. It will continue to do so in the coming biennium. However, it notes that, given its nature as a quasi-judicial tribunal with winners and losers in each case, the receipt of some negative responses is always to be expected. In addition, some of the negative responses complain of things outside SOAH's control, such as traffic and parking at SOAH's Austin office (in the Capitol complex). Nevertheless, SOAH will make every effort to address any complaints that are within its power to address, whether by adopting new processes or procedures, applying advancements in technology, or modifying facilities or upgrading equipment. Moreover, SOAH makes every effort to, and will continue to, treat every party and every member of the public fairly, professionally, politely, and respectfully so that each person's experience with the agency is a good one, no matter the context in which it occurs.

Exceptional Item Requests and Rider Changes Summary

Exceptional Item Request 1: An appropriation of \$43,450 in FY 2010 and \$37,800 in FY 2011 for one administrative assistant FTE to meet workload demands, accomplished by a general revenue appropriation.

Exceptional Item Request 2: Authority to increase SOAH's full-time employees by up to 11 (eight ALJs and three support staff) to handle the projected workload increase of approximately 13,000 hours in the 2010-2011 biennium. Over 11,000 of those additional hours are driven by projections from three agencies: Texas Department of Insurance Division of Workers' Compensation; Texas Department of Transportation Motor Vehicle Division; and Department of Family and Protective Services. SOAH is reimbursed for work performed by all three agencies via interagency contract. Therefore, the additional FTEs contemplated by this rider will be funded by interagency contract reimbursement.

Exceptional Item Request 3: Authority to increase SOAH's full-time employees in FY 2011 by one for its docketing staff. The electronic filing system will be operational in FY 2011, and a docketing FTE will be needed to provide day-to-day document imaging and routing and indexing of files. SOAH proposes to fund this FTE through interagency contract reimbursement.

Exceptional Item Request 4: A general revenue appropriation of \$3,500 in FY 2010 and \$3,500 in FY 2011 to increase the Chief Administrative Law Judge's salary so that it is the highest in the agency.

Appropriation Rider Amendments:

Rider 2 Capital Budget - Include \$151,705 for FY 2010 to expand and complete the case management system to provide for electronic filing and \$26,800 in FY2010 and

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\$84,800 in FY 2011 for personal computers.

Rider 3 Renegotiation of Lump Sum Contract - Amend to refer to the FY 2010-2011 biennium.

Rider 5 Contingency Appropriation for Expanded Jurisdiction – Amend to refer to the Eighty-first Legislature.

Rider 7 Interagency Contract for Administrative Law Judge Training - Amend the dates to refer to August 31, 2010, and September 1, 2010.

Rider 8 Contingency for Additional Self-directed Semi-independent Agency Pilot Projects – Amend to refer to the FY 2010-2011 biennium.

Rider 9 Billing Rate for Workload, Subparagraph a – Amend to refer to the Eighty-first Legislature.

Rider 9 Billing Rate for Workload, Subparagraph c(1) – Amend to refer to the Texas Real Estate Commission instead of the Appraiser Licensing and Certification Board.

Rider 9 Billing Rate for Workload, Subparagraph c(9) – Amend to refer to Board of Nursing.

Rider 9 Billing Rate for Workload, Subparagraph c(34) – Amend to read Texas Department of Transportation (not including the Motor Vehicle Division).

Conclusion

Throughout its more than 16-year history, SOAH has actively sought ways to increase efficiencies and streamline operations. Though it is committed to achieving maximum efficiencies, SOAH is equally dedicated to maintaining a professional, first-class workforce that provides outstanding service to parties and the public, and to providing employees with the support and resources to do their jobs well. The philosophy of the agency is to “provide objective decision-making, independent of any improper influence. We will provide cost savings for Texans through the efficiencies of consolidation, stewardship of resources, effective use of technology, and management accountability. We will strive for excellence in the performance of our mission and demonstrate impartiality, teamwork and timeliness. We will show respect to each other and those we serve, and will act with personal integrity, trust and professionalism.” Granting SOAH’s Legislative Appropriations Request, including the exceptional items set out herein, will help SOAH accomplish these goals and commitments.

**GOVERNOR
STATE OF TEXAS**

**STATE OFFICE OF ADMINISTRATIVE HEARINGS
ORGANIZATIONAL CHART**

