

## Department of Planning and Budget 2015 Fiscal Impact Statement

**1. Bill Number:** SB1282-ES1-Revised

**House of Origin**    ☐ Introduced    ☒ Substitute    ☐ Engrossed  
**Second House**    ☒ In Committee    ☐ Substitute    ☐ Enrolled

**2. Patron:** Edwards, J.

**3. Committee:** General Laws

**4. Title:** Administrative Process Act; formal hearings.

**5. Summary:** Amends the disciplinary process under the Administrative Process Act by (i) establishing a process for the disqualification of presiding officers and hearing officers, and (ii) establishing a process for discovery relating to formal hearings.

**6. Budget Amendment Necessary:** Yes.

**7. Fiscal Impact Estimates:** Preliminary, see Item 8.

**7a. Expenditure Impact:**

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2015	-	-	-
2016	\$779,817	8.7	General
2016	\$251,022	4.0	Nongeneral
2017	\$779,817	8.7	General
2017	\$251,022	4.0	Nongeneral
2018	\$779,817	8.7	General
2018	\$251,022	4.0	Nongeneral

**8. Fiscal Implications:** The language concerning discovery would add additional response requirements for Office of the Attorney General (OAG) attorneys who work on Administrative Process Act cases. OAG states that trying to accurately estimate how much discovery will be requested under the new rule and how much work that it will create is not realistically possible. OAG believes that at a minimum it will require 4.7 additional attorneys (\$456,000) and 2 additional support staff (\$150,000).

For the Department of Medical Assistance Services (DMAS), the discovery portion of the bill would cause a significant increase in document production. The bill would allow the appealing provider/attorney to “inspect and copy” essentially any material relevant to the appeal. It also requires ongoing monitoring of documents in order to “supplement responses” for information acquired after the initial discovery occurs. DMAS staff is not currently adequate to meet these needs. Currently, the Appeals Division utilizes one wage attorney to

serve as a liaison on Freedom of Information Act requests that involve appeals issues and also to respond to subpoenas for documents issued during the appeals process.

Almost all of DMAS' appeals include large volumes of documents that contain protected health information ("PHI") that would not be releasable under the Health Insurance Portability and Accountability Act ("HIPAA"). Additionally, the appeals frequently include privileged information, such as documents containing attorney-client confidential information or work-product privileged information that is protected by law. Therefore, all documents subject to discovery under the proposed Bill would need to be reviewed for PHI, have the PHI redacted, and also evaluated for possible privilege. This task requires someone with legal training, which is why DMAS' currently has a wage attorney for the FOIA and subpoena issues currently faced. The discovery in the bill will likely be utilized in every formal appeal DMAS handles and would require significantly more staff than DMAS currently has.

DMAS reports that at least 1 full-time attorney (\$113,567) would be needed to review for PHI and privilege. An additional 2 paralegals (\$156,044) would be needed to schedule the discovery inspections, monitor for any required additional documents to supplement the initial discovery, and assist with applying redactions. Finally, at least 1 full-time staff administrative member (\$78,022) would be necessary to retrieve files from archive, copy documents, mail documents, and respond to telephone/e-mail inquiries.

The Department of Motor Vehicles (DMV) would incur estimated annual costs of \$77,205. The estimated cost includes the addition of one full-time employee and one P-14 employee to help provide the additional information associated with the discovery provisions.

- 9. Specific Agency or Political Subdivisions Affected:** The Office of the Attorney General, the Supreme Court, the Department of Medical Assistance Services, the Department of Motor Vehicles, and all other state agencies that hold hearings and are not exempt from the Administrative Process Act.

**10. Technical Amendment Necessary:** No.

**11. Other Comments:** None.

Date: 2/13/15