

Comparison of Court and Tax Appeal Board Workload and Costs
For the Senate Joint Resolution No. 23 Study

Prepared for the Revenue and Transportation Interim Committee
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This report compares the workload and costs of the State Tax Appeal Board, the Workers' Compensation Court, and the Water Court for the Revenue and Transportation Interim Committee's Senate Joint Resolution No. 23 study of the taxpayer appeal process.

State Tax Appeal Board

The State Tax Appeal Board hears property valuation appeals from the 56 county tax appeal boards and direct appeals from final decisions of the Department of Revenue that involve the valuation of centrally assessed property as well as income taxes, corporate income taxes, and other taxes administered by the Department.

State Tax Appeal Board Workload

The following two tables provide data on the number of appeals to help understand the State Tax Appeal Board caseload.

Table 1 shows the total number of appeals heard by the State Tax Appeal Board for calendar years 2003-2013. The appeals are divided into two categories: appeals of county tax appeal board decisions and appeals filed directly with the State Tax Appeal Board.

Table 1: Appeals Filed with the State Tax Appeal Board by Calendar Year, 2003-2013

| Calendar Year | Appeals of a CTAB Decision | Direct Appeals | Total Appeals |
|---------------|----------------------------|----------------|---------------|
| 2013 | 21 | 12 | 33 |
| 2012 | 44 | 19 | 63 |
| 2011 | 20 | 20 | 40 |
| 2010 | 21 | 16 | 37 |
| 2009* | 159 | 36 | 195 |
| 2008 | 16 ¹ | 9 | 25 |
| 2007 | - | 94 | 94 |
| 2006 | - | 29 | 29 |
| 2005 | 15 | 11 | 26 |
| 2004 | 18 | 10 | 28 |
| 2003* | 128 | 12 | 140 |

*Reappraisal year

¹ The figures provided on appeals of a county tax appeal board decision filed with the State Tax Appeal Board are combined for the years 2006-2008 and appear in the data for 2008.

The Revenue and Transportation Interim Committee heard one proposal to create a tax court for centrally assessed and industrial property valuation appeals. Table 2 shows the number of centrally assessed and industrial property valuation appeals filed with the State Tax Appeal Board by calendar year.

Centrally assessed appeals originate with the State Tax Appeal Board. Industrial property appeals, however, are first filed with a county tax appeal board. The industrial property appeals in Table 2 only represent those industrial property appeals that are appeals of county tax appeal board decisions. The State Tax Appeal Board does not track county tax appeal board cases by type of property appealed.

Table 2: Centrally Assessed and Industrial Property Appeals Filed with the State Tax Appeal Board, 2003-2013

| Calendar Year | Centrally Assessed Property Appeals | Industrial Property Appeals | Total Centrally Assessed and Industrial Property Appeals |
|---------------|-------------------------------------|-----------------------------|--|
| 2013 | 3 | 1 | 4 |
| 2012 | 4 | 1 | 5 |
| 2011 | 4 | 1 | 5 |
| 2010 | 4 | 1 | 5 |
| 2009* | 11 | 0 | 11 |
| 2008 | 5 | 0 | 5 |
| 2007 | 10 | 0 | 10 |
| 2006 | 12 | 1 | 13 |
| 2005 | 9 | 1 | 10 |
| 2004 | 6 | 3 | 9 |
| 2003* | 10 | 4 | 14 |

*Reappraisal year

State Tax Appeal Board Costs

The State Tax Appeal Board is fully funded with general fund revenue. There is no filing fee to access the county or state tax appeal boards. The fiscal year 2013 appropriation was \$544,342 divided into three categories: personal services, operating expenses, and local assistance. The State Tax Appeal Board budget includes certain expenses associated with the operation of the 56 county tax appeal boards. Each county provides office space and equipment, but per diem expenses and training costs for county board members are part of the State Tax Appeal Board budget, as are clerical-related expenses such as office supplies and postage. Table 3 shows the number of appeals filed with county tax appeal boards for the years 2003-2013.

Table 3: Number of Appeals Filed with County Tax Appeal Boards by Year, 2003-2013

| Calendar Year | Appeals Filed with County Tax Appeal Boards |
|----------------------|--|
| 2013 | 253 |
| 2012 | 298 |
| 2011 | 397 |
| 2010 | 454 |
| 2009* | 2,879 |
| 2008 | 46 ² |
| 2007 | - |
| 2006 | - |
| 2005 | 35 |
| 2004 | 67 |
| 2003* | 341 |

*Reappraisal year

The State Tax Appeal Board has 7.50 FTE, which includes 3 FTE for the board members, 2 FTE for administrative staff located in the Helena office, and 2.5 FTE for secretarial support for the county tax appeal boards. The State Tax Appeal Board members are state employees with the job title of administrative law judge. As of 2014, the total salary of the three board members was \$239,387.³ In comparison, the salary of a district court judge is \$117,582.

See the “Program Budget Comparison for the State Tax Appeal Board” (attached) for more detailed information about the State Tax Appeal Board budget.

Workers’ Compensation Court

The Worker’s Compensation Court hears disputes that arise under the Workers’ Compensation Act and Occupational Disease Act and disputes involving independent contractor exemptions, civil penalties for theft of workers’ compensation benefits, and the two-year return to work preference. The Court also acts as an appellate court for workers’ compensation regulatory matters over which the Department of Labor and Industry has original jurisdiction.

Workers’ Compensation Court Workload

The following tables provide data aimed at understanding the Workers’ Compensation Court’s workload. There are four tables: one for total petitions received, one for settlements, one that covers hearings, and a third that breaks down court decisions. The data is from the Workers’ Compensation Court [website](#) and is presented by fiscal year.

Table 4 provides an overview of the total number of petitions received by the Workers’ Compensation Court for the fiscal years 2003-2013.⁴ Original jurisdiction appeals are appeals that arise under the

² The figures provided on appeals filed with a county tax appeal board are combined for the years 2006-2008 and appear in the data for 2008.

³ State Employee Data, available from <http://employeepay.mt.gov>, accessed April 10, 2014. The amount cited includes base pay and longevity pay.

⁴ The years examined are 2009-2013

Workers' Compensation Act or Occupational Disease Act. Appeals from the Department of Labor and Industry are regulatory matters over which the Court has appellate jurisdiction.

Table 4: Total Workers' Compensation Court Petitions Received by Fiscal Year, 2003-2013

| Fiscal Year | Original Jurisdiction | Appeals from DLI | Total Petitions Received |
|--------------------|------------------------------|-------------------------|---------------------------------|
| 2013 | 213 | 4 | 217 |
| 2012 | 202 | 0 | 202 |
| 2011 | 226 | 0 | 226 |
| 2010 | 226 | 1 | 227 |
| 2009 | 203 | 0 | 203 |
| 2008 | 206 | 0 | 206 |
| 2007 | 240 | 0 | 240 |
| 2006 | 306 | 1 | 307 |
| 2005 | 261 | 1 | 262 |
| 2004 | 254 | 1 | 255 |
| 2003 | 226 | 0 | 226 |

Table 5 gives an overview of the total number of settlement conferences held each fiscal year and the number of cases that settled. A settlement conference is an option that may be requested by the parties. During a settlement conference, the law clerks employed by the Workers' Compensation Court act as mediators.

Table 5: Workers' Compensation Court Settlement Conferences by Fiscal Year, 2003-2013

| Fiscal Year | Cases Settled | Total Settlement Conferences |
|--------------------|----------------------|-------------------------------------|
| 2013 | 5 | 5 |
| 2012 | 2 | 4 |
| 2011 | 0 | 1 |
| 2010 | 12 | 15 |
| 2009 | 14 | 16 |
| 2008 | 2 | 2 |
| 2007 | 2 | 2 |
| 2006 | 45 | 51 |
| 2005 | 60 | 71 |
| 2004 | 37 | 51 |
| 2003 | 28 | 32 |

Table 6 provides detail on the types of trials and hearings. The category Regular Trials counts regular trials in the following way: each trial is counted once under "Regular Days" and each trial that takes more than one day has each additional day counted as "Additional Days." For example, the five "additional trial days" for fiscal year 2013 include two trials that lasted three days each (one day for

each is listed as “regular days” and the other two days for each trial are counted as “additional trial days”) and a third trial that lasted two days (one day of “additional trial days” and one day of “regular days”). The Regular Trials category includes hearings that result in the Workers’ Compensation Judge issuing a ruling or partial ruling from the bench.

Other types of hearings, such as evidentiary hearings or conferences for which a court reporter is present, are counted separately. The final column provides a total figure for trials and hearings, including additional trial days. One case may be counted in both categories if there is an evidentiary hearing or conference call and a regular trial.

Table 6: Workers’ Compensation Court Trial Days and Hearings by Fiscal Year, 2003-2013

| Fiscal Year | Regular Trials (incl. Bench Rulings) | | Oral Arguments or Conferences with Court Reporter and Evidentiary Hearings | Total Trials and Hearings |
|-------------|--------------------------------------|-----------------|--|---------------------------|
| | Regular Days | Additional Days | | |
| 2013 | 39 | 5 | 30 | 74 |
| 2012 | 57 | 12 | 53 | 122 |
| 2011 | 33 | 6 | 60 | 99 |
| 2010 | 31 | 3 | 47 | 81 |
| 2009 | 32 | 4 | 32 | 68 |
| 2008 | 27 | 1 | 19 | 47 |
| 2007 | 45 | 2 | 36 | 83 |
| 2006 | 24 | 3 | 14 | 41 |
| 2005 | 34 | 5 | 16 | 55 |
| 2004 | 51 | 5 | 12 | 68 |
| 2003 | 27 | 15 | 16 | 58 |

The Workers’ Compensation Court also tracks data on conference calls without a court reporter. For fiscal year 2013, there were two conference calls without a court reporter. This figure is lower than the number for many previous years, which ranged from a high of 82 in fiscal year 2005 to a low of seven in fiscal year 2012.

Table 7 provides data on the numbers and types of decisions that arise in the course of Workers’ Compensation Court cases. The parties to a case may pursue outside mediation after filing an action with the Workers’ Compensation Court and the Workers’ Compensation Judge may help the parties reach an agreement. These types of outcomes are reflected in the “Petitions Dismissed by Agreement” data point.

There may be multiple decisions in a case before it is resolved. The final column totals the decisions by fiscal year.

Table 7: Workers' Compensation Court Decisions by Fiscal Year, 2003-2013

| Fiscal Year | Decisions & Miscellaneous Judgments ⁵ | Orders on Appeals from DLI | Substantive Orders | Attorney Fee Orders | Orders on Costs | Petitions Dismissed by Agreement | Total Decisions |
|-------------|--|----------------------------|--------------------|---------------------|-----------------|----------------------------------|-----------------|
| 2013 | 199 | 3 | 40 | 5 | 7 | 40 | 294 |
| 2012 | 170 | 0 | 13 | 0 | 4 | 42 | 229 |
| 2011 | 168 | 0 | 28 | 1 | 3 | 41 | 241 |
| 2010 | 181 | 1 | 26 | 3 | 6 | 46 | 263 |
| 2009 | 145 | 0 | 43 | 0 | 3 | 51 | 242 |
| 2008 | 170 | 0 | 68 | 2 | 6 | 46 | 292 |
| 2007 | 166 | 0 | 19 | 2 | 5 | 80 | 272 |
| 2006 | 183 | 1 | 27 | 2 | 2 | 96 | 311 |
| 2005 | 164 | 1 | 41 | 2 | 2 | 83 | 293 |
| 2004 | 159 | 0 | 30 | 7 | 4 | 88 | 288 |
| 2003 | 145 | 0 | 32 | 5 | 15 | 72 | 269 |

Table 8 lists the number of Workers' Compensation Court decisions that are appealed to the Montana Supreme Court by fiscal year.

Table 8: Workers' Compensation Court Cases Appealed to the Supreme Court by Fiscal Year, 2003-2013

| Fiscal Year | Appeals to Supreme Court |
|-------------|--------------------------|
| 2013 | 7 |
| 2012 | 8 |
| 2011 | 12 |
| 2010 | 7 |
| 2009 | 17 |
| 2008 | 25 |
| 2007 | 18 |
| 2006 | 12 |
| 2005 | 10 |
| 2004 | 23 |
| 2003 | 11 |

Workers' Compensation Court Costs

The Workers' Compensation Court is entirely funded with state special revenue from a fee charged to workers' compensation carriers in Montana. Businesses pay the fee as part of their workers' compensation premiums.

⁵ Includes the following decisions: findings of fact and conclusions of law, orders on remand, declaratory judgments, summary judgments, stipulated settlements, and bench rulings without a written decision.

The fiscal year 2013 appropriation for the Workers' Compensation Court was \$672,289 divided into two categories: personal services and operating expenses. The Court has 7 FTE: the judge, two law clerks, a clerk of court, a deputy clerk of court, a deputy clerk, and a court reporter. The Workers' Compensation Judge is paid the same annual salary as a district court judge: \$117,582.

See the "Workers' Compensation Court Program Budget Comparison" (attached) for more detailed information about the Workers' Compensation Court budget.

Water Court

The Water Court adjudicates water rights claims with a pre-July 1973 priority date.⁶ The goal is "to systematically categorize and confirm most significant uses of water within the boundaries of the state."⁷ The 1979 Legislature created the Water Court to speed up the claims process. The 2005 Legislature provided additional resources to further expedite the process. A 2010 legislative performance audit predicts that the litigation phase of water rights adjudication is likely to continue until 2028 or later.⁸

Water Court Workload

The adjudication process begins with the Water Court ordering examination of a basin. The Department of Natural Resources and Conservation (DNRC) performs the examination by working with water users to check each claim for accuracy, completeness, and inconsistencies. DNRC then prepares a summary report for the basin that contains an abstract of every claim.

The Water Court reviews the summary report, makes findings of fact and conclusions of law, and issues a temporary preliminary or preliminary decree. All water users in the basin are given notice of the findings and a copy of their claim abstract. Water users can also review other users' claims. At this point water users may offer objections and counter objections. Related objections are consolidated into cases. The Water Court schedules hearings and administers the cases much like other courts address civil litigation. The Court also encourages settling cases through stipulated agreements.

A case is settled with a Water Master's report. A Water Master is an attorney specializing in water law and employed by the Water Court. After all claims in a basin have been settled, the claims are combined into a final decree. Water users may appeal the final decree to the Supreme Court.⁹

As of May 2013, the Water Court had 14,409 open claims.¹⁰ Table 9 shows the total number of claims in basins recently considered and the objection rates for the years 2003 to 2012.

⁶ Water claims after this date are handled under a separate permitting process.

⁷ Legislative Audit Division, "[Performance Audit: Water Rights Adjudication](#)," June 2010, p. 1.

⁸ Legislative Audit Division, "[Performance Audit: Water Rights Adjudication](#)," June 2010, p. S-2.

⁹ Legislative Audit Division, "[Performance Audit: Water Rights Adjudication](#)," June 2010, p. 4.

¹⁰ "[Caseload Summary](#)," Water Court Statistics, accessed April 15, 2014.

Table 9: Water Court Basin Objection Rates by Year, 2003-2012¹¹

| Basin | Year Issued | Total Claims in Decree | Claims with Objections | Claims with Issue Remarks Only | Claims to Resolve | % of All Claims in Decree to Resolve |
|-------|-------------|------------------------|------------------------|--------------------------------|-------------------|--------------------------------------|
| 40H | 2003 | 827 | 311 | 40 | 351 | 42.4% |
| 42KJ | 2003 | 4,775 | 568 | 515 | 1,083 | 22.7% |
| 41O | 2005 | 2,524 | 547 | 1,501 | 1,623 | 64.3% |
| 41D | 2007 | 3,892 | 1,518 | 1,706 | 2,233 | 57.4% |
| 41QJ | 2008 | 2,584 | 301 | 556 | 857 | 33.2% |
| 42B | 2008 | 1,345 | 457 | 109 | 566 | 42.1% |
| 42C | 2008 | 4,710 | 343 | 573 | 916 | 19.4% |
| 40M | 2009 | 2,942 | 843 | 621 | 1,464 | 49.8% |
| 43E | 2010 | 629 | 476 | 12 | 488 | 77.6% |
| 43O | 2010 | 1,176 | 1,131 | 4 | 1,135 | 96.5% |
| 40R | 2010 | 2,029 | 481 | 247 | 728 | 35.9% |
| 41Q | 2010 | 4,127 | 166 | 905 | 1,071 | 26.0% |
| 40J | 2010 | 12,897 | 1,479 | 3,319 | 4,789 | 37.1% |
| 40B | 2011 | 3,677 | 198 | 1,221 | 1,419 | 38.6% |
| 76F | 2011 | 3,717 | 800 | 546 | 1,346 | 36.2% |
| 41R | 2011 | 2,179 | 195 | 653 | 848 | 38.9% |

The Water Court also tracks its workload by the number of claims closed each month. Table 10 shows the average number of claims closed each month and the total closed each year for the years 2008-2013.

Table 10: Water Court Average and Total Claims Closed, 2008-2013¹²

| Year | Average Claims Closed Per Month | Total Claims Closed Per Year |
|-------|---------------------------------|------------------------------|
| 2008 | 214 | 2,575 |
| 2009 | 324 | 3,891 |
| 2010 | 411 | 4,943 |
| 2011 | 268 | 3,221 |
| 2012 | 365 | 4,379 |
| 2013* | 326 | 1,794 |

*Data is provided through May 2013.

The 2010 legislative audit offers some additional information on workload. The Water Court provides timeframes that water users must adhere to when lodging objections and counter objections. The auditors examined the amount of time it took the Water Court to review the DNRC report and to resolve

¹¹ ["Basin Objection Rates,"](#) Water Court Statistics, accessed April 15, 2014.

¹² ["Claim Closing by Month Comparison, 2008-2013,"](#) Water Court Statistics, accessed April 15, 2014.

objections and counter objections for 21 basins. The average time to review the DNRC report was 2.1 months and the average time to resolve objections and counter objections was 20.9 months.¹³

Water Court Costs

The Water Court is funded with state special revenue from the natural resources operations account and the water adjudication account. The appropriation for fiscal year 2013 was \$1,894,578 divided into the following categories: personal services, operating expenses, and equipment and intangible assets. In fiscal year 2014, there was a transfer of 3.0 FTE from the Department of Natural Resources and Conservation to the Water Court. This change combined with present law adjustments increased the budget for fiscal year 2014 to \$2,108,515.

With the increase of 3.0 FTE, there are now 24.5 FTE for the Water Court. This includes the Chief Water Judge, the Associate Water Judge, 10.25 FTE for Water Masters, 2 Senior Water Masters, a senior law clerk, a law clerk, a clerk supervisor, 6.25 FTE for deputy water court clerks, and a district court administrator. The Chief Water Judge and the Associate Water Judge are each paid the annual salary of a district court judge: \$117,582.

See the “Water Court Program Budget Comparison” (attached) for more detailed information about the Water Court budget.

Workload of District Courts

Information on district court workloads was not specifically requested along with the workload information discussed above. However, the committee may be interested in a report that used time reporting by district court judges to measure judge workload. The National Center for State Courts’ report [“Montana District Courts Judicial Workload Assessment Study”](#) was released January 2007.

¹³ Legislative Audit Division, [“Performance Audit: Water Rights Adjudication,”](#) June 2010, p. 20.