

# HOUSE RESEARCH

## Bill Summary

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**Version:** As Introduced

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**Subject:** Impaired Driving; Transfer of the Implied Consent Hearings to the Office of the Administrative Hearings

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### Overview

When a driver is arrested for driving while impaired (DWI), he or she faces both criminal prosecution and (typically) civil sanctions, beginning with driver's license revocation based upon the implied consent violation – i.e., the test failure or test refusal. Violators with a qualified prior impaired driving incident on record, or with a high test reading or child in the vehicle, generally also face license plate impoundment, another type of civil sanction.

The law requires that upon arrest and license revocation (and plate impoundment), the driver must be informed that he or she has the right *to judicially appeal* these civil sanctions (revocation and impoundment) by petitioning the district court for review.

**This bill would transfer *the judicial review function (i.e., the implied consent hearings) from the courts to the Office of Administrative Hearings (OAH), positioned within the executive branch of government. There, it would be required that the hearings be conducted according to the contested case procedures of the Administrative Hearing Act (Minn. Stat §§ 14.57 to 14.69).***

Apart from having the implied consent hearings being conducted within the OAH in front of an administrative law judge (ALJ), many things would remain the same as under current law.

For example, it would continue to be the case that the Attorney General would represent the state in those implied consent hearings within OAH, and that any appeals from those hearings would themselves be heard by the Minnesota Court of Appeals.

It would also continue to be the case: that a person would have 30 days from issuance of the notice of revocation within which to file a petition for an implied consent hearing; that the hearing must be held within 60 days following the filing; and that the decision (the order sustaining or rescinding the license revocation or plate impoundment) must be issued with 14 days following the hearing.

Furthermore, the scope of the hearings would remain unchanged.

**One new feature of the hearings, however, is that the OAH would be authorized to receive testimony and argument by means of interactive television from regional offices** (thereby possibly facilitating the hearing schedule in remote communities, while also reducing travel time for the Attorney General staff).

**The bill would also authorize the OAH to charge a filing fee of \$310 to a person filing a petition for an administrative review.** Revenues from this fee must be deposited into the State General Fund.

The OAH would have rulemaking authority under the bill. The rules must include, at a minimum, the procedure for hearings in regional offices, and the use of teleconferencing and highly qualified hearing officers.

The effective date for sections of the bill providing for the implied consent hearings by the OAH is January 1, 2011.

## Section

**1 Implied Consent Law – Notice of right to review.** Conforming language.

**2 Implied Consent Law – Right to Review.**

**Subd. 1.** Conforming.

**Subd. 2.** Directs that in place of judicial review in district court, a person receiving administrative license revocation (or license plate impoundment) for an implied consent violation would have the right to an *administrative review hearing* in front of an administrative law judge in the *Office of Administrative Hearings (OAH)*, under the *contested case procedures* of the Administrative Procedures Act.

**Subd. 3.** It would continue to be the case: that a person would have 30 days from issuance of the notice of revocation within which to file a petition for an implied consent hearing; that the hearing must be held within 60 days following the filing; and that the decision (the order sustaining or rescinding the license revocation or plate impoundment) must be issued with 14 days following the hearing.

Furthermore, the scope of the hearings would remain unchanged, and it would continue to be the case that the administrative review hearing within the OAH shall not give rise to an estoppels on any issues arising from the same set of circumstances in any criminal prosecution.

Under the contested case procedures of the Administrative Procedures Act, any person aggrieved by a final decision in a contested case is entitled to judicial review by the Minnesota Court of Appeals. Filing of the appeal must be done within 30 days of receipt of the decision.

**3 License Plate Impoundment Law – Administrative Review Hearing.** Conforming changes regarding providing notice regarding a person’s right to an administrative hearing review within the OAH. It continues to be the case that the same 30-day, 60-day, and 14-day time limits apply for the appeal of the license plate impoundment as for the appeal of the driver’s license revocation. (See Section 2, Subdivision 3 above.)

**4 Office of Administrative Hearings; Fee.** Authorizes the OAH to charge and collect a fee

of \$310 for a request for an administrative hearing of the driver's license revocation or license plate impoundment under implied consent law.

- 5** **Rulemaking Authority.** Authorizes rulemaking. Requires rulemaking for the use of teleconferencing and highly qualified hearing officers.

**Effective date.** January 1, 2011 for the sections of the bill authorizing OAH hearings of appeals to driver's license revocations and license plate impoundments under implied consent law. Rulemaking authority would be effective the day following enactment.