

**Testimony in Support of SB 52  
Before the Senate Judiciary Committee**

February 4, 2013

Dear Chair Prozanski and members of the committee:

Thank you for allowing the Administrative Law Section of the Oregon State Bar to provide testimony in support of SB 52. The Administrative Law Section is composed of attorneys who represent private citizens and public agencies, as well as administrative law judges.

SB 52 addresses the need to publish important agency final orders in an online law library. Agency final orders are analogous to decisions by the appellate courts. Agency final orders interpret and apply agency rules and statutes. Final orders are crucial to understanding agency policy, practice, and procedures. Final orders are public records. Currently, it is very difficult for agency staff, attorneys, and administrative law judges to find and then search these public records for relevant information.

SB 52 addresses this problem by using existing information technology to provide an online library of important agency decisions through the Oregon State Bar. Agencies provide the data; the bar provides the IT.

SB 52 has two main features: 1) to facilitate publication of these orders by using the agency's existing word-processing format; and 2) to reduce costs by limiting the bill's scope to some of the most important final orders that agencies produce.

SB 52 facilitates publication of final orders by having agencies retain the word processing format in which the agencies already create their orders. This approach makes it easy for agencies to provide and redact final orders by using their existing software. This format also makes the database easier to publish online.

In order to be cost-effective, SB 52 excludes high-volume agency orders that are generally considered fact-specific. These orders do not reveal significant agency policy for users and their volume makes these orders burdensome and costly to publish. SB 52 also excludes high-volume agency orders that require extensive redaction of confidential information, not easily accomplished through electronic means.

In addition to limiting the number of orders published, SB 52 includes other measures to reduce costs and agency staff work. SB 52 requires that agencies provide their final orders only twice a year for orders issued after the legislation's effective date. The agency is not required to provide a large body of prior orders for publication or constantly update the database.

SB 52 relieves agencies from providing the technology and expertise to make the database accessible through agency-provided search engines, since this technology would be provided by the online library used by the Oregon State Bar. As the library grows, agencies would not have to respond to individual public records requests for final orders from practitioners on a piecemeal basis. The online library would obviate additional agency staff time to identify and provide pertinent case law being requested as public

records. Users requesting these public records would do their own online search and reproduction of these public records, without incurring agency fees. Administrative law judges, agency staff attorneys and their lawyers, as well as private practitioners, would have a far more efficient and effective way of finding and following agency policy and precedent that interprets agency rules and applicable statutes.

SB 52 is the outgrowth of the section's pilot project that explored the issues presented when the section started publishing final orders for six agencies. Currently, the online library is successfully publishing final orders for the Oregon Liquor Control Commission, Oregon Board of Dentistry, Oregon State Board of Nursing, Oregon Medical Board, Oregon Board of Pharmacy, and Oregon Physical Therapist Licensing Board.

SB 52 is an important step to making agency policies, as interpreted and applied in their decisions, available as searchable public records for lawyers and administrative law judges.

Respectfully submitted by Janice Krem, Attorney at Law  
On behalf of the Administrative Law Section of the Oregon State Bar

**Oregon State Bar proposed amendments to SB 52**

On page 1 of SB 52, in line 5, after “order” insert “in a contested case”.

In line 12, after “orders” insert “in contested cases”.

In line 20, after “order” insert “in a contested case”.

In line 24, after “orders” insert “in contested cases”.

On page 2, in line 8, after (L), insert “Except as provided in subsection (6) of this section,”

After line 9, insert: “(6) This section applies to final orders in contested cases issued by the Department of Human Services that relate to licensing; certification; eligibility for Medicaid funded services as defined in ORS 410.040(10) and as described in OAR Chapter 411, as determined by the Aging and People with Disabilities programs of the Department of Human Services; or the involuntary transfer or move out of residents from long term care facilities, as defined in ORS 442.015, from residential facilities, as defined in ORS 443.400, and from adult foster homes as defined in ORS 443.705.”