



Oregon

John A. Kitzhaber, MD, Governor

Department of Public Safety Standards and Training

4190 Aumsville Hwy SE

Salem, OR 97317-8981

(503) 378-2100

<http://www.dpsst.state.or.us>

DATE: March 12, 2013

TO: House Judiciary Committee
Jeff Barker, Chair
Chris Garrett, Vice-Chair
Wayne Krieger, Vice-Chair
Brent Barton
Kevin Cameron
Wally Hicks
Andy Olson
Carolyn Tomei
Jennifer Williamson

FROM: Eriks Gabliks, Director

SUBJECT: House Bill 2771

Summary: House Bill 2771 would require the Department of Public Safety Standards and Training (DPSST) to issue a final order no later than 30 days after the issuance of a proposed order or form of order, and to adopt the administrative law judge's (ALJ's) finding of historical facts when the ALJ issues an order approving application or certification of instructor or public safety officer.

Background: This bill language stems from a singular incident in which a contested case process was significantly delayed and a proposed order issued by an ALJ substantively changed by DPSST on the recommendation of legal counsel. This particular situation, while unfortunate, was purely a delay in process and is not the norm. Throughout this case, which is currently being reviewed by the Oregon Court of Appeals as allowed by the Administrative Procedures Act (APA), the officer involved has remained certified and employed.

DPSST handles contested cases in a manner which is consistent with standard processes prescribed by the Administrative Procedures Act (APA). Since the time when the orders in this case were issued, APA rules have been amended to outline time frames within which amended orders need to be written and served. These changes will prevent similar process delays in contested case proceedings in the future.

DPSST rarely amends proposed orders substantively. The few occasions when Orders have been amended have only occurred when the agency and legal counsel believed there were significant legal or factual errors in the proposed order. Currently an officer who disagrees with an ALJ's decision may file exceptions and a subsequent appeal with the Court of Appeals. DPSST may not currently file exceptions to an ALJ's proposed order. The only avenue available to DPSST to correct a record is to amend a proposed order, which is the course that was taken in the case of concern. The final order can then be appealed through the standard appellate process.



Current Discussions: This bill as written would preclude DPSST's ability to make important corrections to an ALJ's proposed order and have those arguments heard by the Court of Appeals. DPSST has met with the bill's proponents to discuss these concerns. Both parties are willing to work together to develop language that would address any remaining concerns while helping to ensure that DPSST, as well as affected officers, continue to be able to utilize all of the legal remedies outlined in the Administrative Procedures Act.