

# Testimony before the House Consumer Protection and Government Effectiveness Committee HB 2438

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*February 19, 2015*

## **Introduction**

The Oregon Employment Department (OED) supports House Bill (HB) 2438 which transfers the administrative support for the Office of Administrative Hearings (OAH) from OED to the Oregon Department of Administrative Services (DAS). HB 2438 will help improve citizen perceptions that the OAH is independent from agencies, and that Administrative Law Judges (ALJs) assigned to conduct hearings will do so fairly, independent of influence from agencies.

## **Transfer of Administrative Support**

Currently, ORS Chapter 183 establishes the OAH within the OED and requires the OED to provide administrative services to the OAH, including budget services, accounting services, procurement services, contracting services, human resources services and information technology services. The OAH is required to reimburse the OED for the costs of the services provided.

HB 2438 amends ORS 183.605 by changing establishment of the OAH from within the OED to within DAS. There would be no physical move of the OAH, only a transfer of administration from OED to DAS. There would be no budget impact to the OED or DAS. The OAH bills agencies for the costs of services. The spending limitation and position authority for the OAH would simply be transferred from OED to DAS to administer. All employees will remain with the OAH in the transfer.

## **Independence of the OAH**

This and the following section of testimony is drawn in large part from an article by State Representative Lane Shetterly in the April, 2004 Office of Administrative Hearings Newsletter (see attachment). At that time Representative Shetterly was Chair of the Office of Administrative Hearings Oversight Committee, which was established to oversee the OAH and make recommendations to the Governor and Legislature in matters pertaining to the OAH. That Committee is currently chaired by State Representative Paul Holvey.

The OAH was created by House Bill (HB) 2525 in 1999 in response to a perception by the citizens of Oregon that there was not a level playing field in their disputes with agencies, and that ALJs were not independent in their decision making from the agencies that employed them. Because of that perception, ALJs and support staff from nine separate agencies, over 100 employees, were consolidated into a central panel now called the Office of Administrative Hearings. ALJs from the OAH were to conduct hearings, insulated from the influence of agencies.

With the creation of the OAH, agencies were required to use ALJs assigned from the OAH to conduct contested case hearings unless specifically exempted under ORS Chapter 183. The position of chief administrative law judge (CALJ)

was created to manage the OAH and the CALJ was required by ORS 183.610 (3) to, “take all actions necessary to protect and ensure the independence of each administrative law judge assigned from the office.”

### **Continuing perceptual problems of OAH independence**

HB 2525 was a compromise between the aspirations of citizens for fairness, and a loss of control fear by agencies. HB 2525 created a central hearings panel that was set to sunset on January 1, 2004. Under HB 2525, the chief administrative law judge would be appointed by the Director of OED as an at-will appointment.

By 2003, the OAH had achieved significant improvement in the quality of hearings, leading to House Bill 2526 which repealed the sunset provision, and while keeping the OAH in the OED, restructured the position of the CALJ from being an appointee at-will of the Director of the OED to an appointee for a four-year term, terminable only for cause. The committee felt additional protection for the CALJ was necessary because of the potential conflicts of interest created by the OAH remaining in the OED, the largest user of OAH hearing services. In 2013 the CALJ became an appointee by the Governor, terminable only for cause.

Currently, citizens continue to hold perceptions that the OAH is not independent from the OED. OAH staff receive calls daily from citizens who are upset that their unemployment benefits have been denied, and believe it was the OAH who denied their benefits. Even when told that the OAH is separate from the OED, citizens frequently do not believe what the staff tell them. In addition, ALJs who conduct hearings on behalf of the OED must spend time at the beginning of each hearing trying to convince citizens that while the OAH is within the OED and ALJs are technically employees of the OED, the ALJs are independent from the OED. With the OAH processing and holding nearly 20,000 hearings a year for the OED, this is confusing for many citizens, and time consuming for OAH staff and ALJs.

Transferring administration of the OAH to DAS would reduce citizen confusion and improve the perception that the OAH is independent from the agencies for which its ALJs conduct hearings. In the past year, ALJs have conducted nearly 20,000 hearings involving the OED. They have conducted less than 10 hearings involving DAS.

Finally, in addition to concerns about the perception of bias by ALJs in favor of the OED, in 2013, as part of the State of Oregon Workforce System Redesign, it was recommended that the OAH separate from the OED as part of the redesign process.

### **Recommendation**

The OED recommends passage of HB 2438 in order to improve the public perception of fairness and that the OAH is independent from agencies for which the ALJs conduct hearings, in particular, the OED. This would place OAH administrative support in an agency for which the OAH holds few hearings and which is established in large part, for the purpose of providing administrative support to other agencies.

### **Attachment**

*Governor Signs House Bill 2526, article by Rep. Lane Shetterly, Office of Administrative Hearings News Letter, April, 2004*

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