



OFFICE OF ADMINISTRATIVE HEARINGS NEWSLETTER

Last Updated
April, 2004

Topics of Interest:

- **Articles**
 - **Governor Signs HB 22526**
 - **Welcome**
 - **OAH Training**
 - **Employee Highlights**
 - **OAAJ Lunch**
 - **Customer Satisfaction Survey**

Questions or comments? Contact us, we want to hear from you.

Call or email -

Rema Bergin, Editor 503.378.5070

Rema.a.bergin@state.or.us

Website: <http://oah.state.or.us>

Governor Signs House Bill 2526

by Rep. Lane Shetterly

In a quiet ceremony on May 22, 2003, Governor Kulongoski signed HB 2526. This bill repealed the sunset provision of HB 2525 (1999), and made permanent the Office of Administrative Hearings (formerly the Hearing Officer Panel).

It has been a long journey. Beginning in the early 1980s, there were repeated but unsuccessful attempts to create an independent central panel to hear state agency contested cases. These efforts gained new momentum in 1997, when Senator Neal Bryant and I sponsored House Bill 2948, which would have created an office of administrative hearings as a separate and independent state agency.



Governor Kulongoski signing House Bill 2526. From left to right, Thomas E. Ewing, Chief Administrative Law Judge, Rep. Lane Shetterly, Governor Kulongoski, and Judge David Schuman.

That bill, although passed overwhelmingly by both chambers of the Oregon Legislature, was vetoed by the Governor. Nevertheless, he authorized a work group to study the idea. In a remarkable exercise of legislative and executive cooperation, David Schuman of the Department of Justice, Chip Lazenby of the Governor's Office, and I worked to craft new legislation, HB 2525. That bill created the Hearing Officer Panel as a pilot project, due to sunset on January 1, 2004. It proved to be a solid compromise between the aspirations of citizens for fairness on the one hand, and the fears of agencies for loss of control on the other. When the Panel began operations on

January 1, 2000, there was a great deal of agency foreboding. Many agency heads feared—some perhaps hoped—that this pilot would fail. In retrospect, it may have been good fortune that the Panel began with such low expectations. When auditors from the Legislative Fiscal Office (LFO) reviewed Panel operations at the end of 2002, one agency director said that it “has been more successful than we thought it would be.” In 1999, agency heads and trade associations lined up either to oppose HB 2525 or, at a minimum, to request exemption. In 2003, by contrast, there was not a single voice of dissent in testimony before the House or the Senate Judiciary Committees. Indeed, LFO's audit, adopted by the Joint Legislative Audit Committee, reported that agencies had seen significant improvement in the quality of hearings over the last three years. It is no surprise, then, that the House passed HB 2526 by a vote of 53 to 2, and the Senate by 21 to 1.

HB 2525 had established an Oversight Committee to review Panel operations, and to make recommendations to the Legislature and the Governor. It was comprised of Senators Peter Courtney and Roger Beyer; Representative Phil Barnhart; Assistant Attorneys General Philip Schradle and Kelly Knivila; gubernatorial appointees Peter Bragdon and Chess Tretthewy; Chief Hearing Officer Thomas Ewing (serving *ex officio*); and me as Chair. The Committee met occasionally between 2000 and 2002. In December 2002, after considering the LFO audit, it engaged in closer discussions on the Panel's future.

Out of those discussions emerged the following recommendations: (1) Repeal the sunset provision. (2) Change the name “Hearing Officer Panel” to “Office of Administrative Hearings” (a name that has gained currency in other states' central panels). (3) Keep the OAH in the Employment Department, at least for the next two years. (4) Change the title “hearing officer” to “administrative law judge,” and “chief hearing officer” to “chief administrative law judge.” (5) Restructure the position of the chief ALJ from being an appointee at-will of the Director of the Employment Department to an appointee for a four-year term, terminable only for cause. The commit-

SIGNING OF HB 2526 (CONTINUED)

tee felt that additional protection for the chief was necessary because of the potential conflicts of interest created by the OAH remaining in the Department, which is the largest user of its hearing services. And, (6), retain the present number of agencies subject to the OAH.

Looking to the future, the Oversight Committee will continue to play an important role. Much work has yet to be done. For example, the OAH was left in the Employment Department; however, some committee members expressed concern that this creates perceptual problems of independence. There is the question whether other agencies should be included in the OAH, and whether some agencies now in it should be exempted. There is also the question whether agencies should meet a tougher standard when changing OAH proposed orders.



This has been a very difficult legislative session. But, for me, one of the brightest moments has been passage of HB 2526. After three years of operation, the OAH has proven itself. Citizens of our state now have a level playing field in their disputes with state agencies. The OAH is significantly more efficient, and less costly, than the previous system of seven separate hearings units. There has been new emphasis on training and professionalism for administrative law judges.

Finally, I would be remiss not to signal the contributions of the Administrative Law Section and Janice Krem. On the passage of House Bill 2525, Krem pushed for the creation of this section. Over the last three years, its executive committee has provided valuable counsel both to me and to the Chief Administrative Law Judge Thomas Ewing. I hope that the section will continue to promote the objectives of the OAH and of administrative law in Oregon generally. This article appeared in the Summer 2003 Administrative Law Newsletter, OSB

