

Oregon House Bill 2438
Testimony Before the Oregon House Committee on Consumer Protection and
Government Effectiveness
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Testimony by:
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**Title of HB 2438: Transfers Office of Administrative Hearings from
Employment Department to Oregon Department of Administrative Services.
Declares emergency, effective on passage.**

Dear Representatives:

My position on House Bill 2438: **Against**

Position Details:

I must object to the transfer of the Oregon Office of Administrative Hearings (OAH) from the Employment Department of Oregon (ED) to the Oregon Department of Administrative Services (DAS) on several counts, general, specific, and incidental.

1. Inasmuch as the OAH serves a judiciary function of sorts, it does not serve justice well to place a body which can operate as a judiciary under the name of our under the umbrella of the Executive branch of government. This arrangement has not served justice well in the past nor will its continued placement under an office of the Executive Branch serve justice. The American way and as well, the Oregon way of government depends upon a clear separation of powers. Any judiciary body or "quasi-judiciary" body, or any body which gives the appearance of being a judiciary body in Oregon, can not be held answerable to a body which often functions under Administrative Law as the prosecutor of Oregon citizens, no matter the citizens' role or roles in our society.
2. As stands, Oregon Administrative Law has a major flaw. It is a matter of a Conflict of Interest which should not be overlooked nor considered lightly. The Conflict is profound. Some, but not all Oregon Boards and Commissions operating under the Department of Administrative Services are allowed to function simultaneously as 1) Policemen, 2) Prosecutors, and 3) Judges. To be more specific, these several

agencies are able to, under current law, generate a complaint (or choose to pursue the complaint of a citizen) at their own sole discretion. They may also decline to generate a complaint or to open a case based upon the complaint as a citizen. In pursuing a complaint the agency, articulates a prosecutorial position. That is, they take a stance on their view of the truth. I think it goes without saying that in doing so, they wish to prevail. If a person responding to the complaint (the respondent, or "the accused") does not wish to accept the view of the prosecuting agency, or wishes to contest the sentence issued by the agency (a disciplinary action, a civil penalty, or sanctions against a license), generally, they are afforded a right to a hearing by an Administrative Law Judge (ALJ) from the Office of Administrative Hearings. What follows is the fundamental flaw in Administrative law as it stands at present in our great state of Oregon. After the Administrative Law judge issues a decision or verdict, there are numerous agencies, who, by standing law, may ignore, reverse, or over rule the ALJ's verdict in favor of the very position they held as prosecutors prior to the hearing.

It has been stated by one of the state's Assistant Attorney Generals (AAG) who serves as counsel to one of our state healthcare regulatory boards that the agency reserves the right to overrule the decision of the ALJ because, and here, I crudely paraphrase, "the agency knows better than the judge."

I think it goes without saying that all parties in any contested case anywhere would wish that could simply rule in their own favor based on the belief that "they know better than the judge." It is an affront to justice everywhere in America and in Oregon that this understandable fantasy is a reality with real consequences to a vanquished party - a party which has been denied the fundamental constitutionally guaranteed right to due process through a fair hearing before an IMPARTIAL judicial entity.

I am aware of the history of the Office of Administrative Hearings. Organized councils of Administrative Law Judges fought valiantly to preserve basic justice in Oregon and to shoot down the efforts of the Department of Justice (DOJ) to retain a prosecutorial right to overrule the decision of judges. This needs to be revisited and there is no time better than now to revisit it.

When a person makes a residential move from one house to another, it is often a time as well, for house cleaning. One does not take accumulated unwanted things from the old house and place them in the new. We as Oregonians do now want to allow these injustices to make the move from one department to another. Now is the time to take the garbage out.

Conclusion:

I ask that this bill not be passed until the matter of these injustices is addressed and the provisions for executive branch overrule of the decisions of ALJ's in the OAH are eliminated. There is work to be done and systemic injustices to be answered to.

Although I especially object to OAH being placed under the direction of the DAS to to the overtly inherent Conflict of Interests such would entail, I ask that OAH be moved entirely out of the executive branch of government and into the oversight of our states judicial branch of government.

Thank you, Representatives for your time and sober consideration of this important matter.

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