

**Testimony Before the House Committee on Consumer Protection
and Government Effectiveness**

HB 2250

On behalf of the Oregon State Bar Administrative Law Section

March 12, 2015

Chair Fagan, members of the committee:

Thank you for allowing the Administrative Law Section of the Oregon State Bar to share their concerns with HB 2250, as drafted. The Administrative Law Section's membership includes attorneys who represent private citizens and public agencies, as well as administrative law judges. The section works to ensure the public's access to administrative justice and reflects a cross-section of administrative law practitioners.

HB 2250 addresses fitness determinations made by the Department of Administrative Services, and the use of fingerprint captures in making those determinations. The Administrative Law Section has no objections to the intent of the bill, but is concerned about one issue.

In seeking to create uniformity for fitness determinations, HB 2250 deletes a current statutory provision providing for a contested case hearing. Instead of this provision, the bill authorizes the Department of Administrative Services to provide--by rule--the process for challenging an initial fitness determination. Under the statute, if a person is determined to be unfit, then that person may not hold a position, provide services or be employed, licensed, certified or registered.

Ensuring access to hearings and administrative justice is a core value of the section. This bill deletes the statutory right in ORS 181.534 to a contested case hearing challenging an adverse fitness determination. Instead, Section 2 amends ORS 181.547 to authorize the Department of Administrative Services to provide, by rule, how an aggrieved person may challenge an initial fitness determination. The bill does not ensure by statute that the department's process comport with ORS chapter 183's contested case hearing process, as it currently does. The loss of the right to work because of an agency's determination is a substantial deprivation, and it is important to ensure that aggrieved parties have an adequate method of having these determinations reviewed.

As part of the uniformity provided by this bill, there should be a uniform right to a contested case hearing, held according to the Administrative Procedures Act, as minimum due process.

Respectfully submitted,

Janice Krem, Chair, and Judith Parker, 2016 Chair-Elect
On behalf of the Administrative Law Section of the Oregon State Bar