

HOUSE BILL 2544 — TESTIMONY IN OPPOSITION
GERRY THOMPSON, EXECUTIVE ASSISTANT TO GOVERNOR ATIYEH
Tuesday, March 22, 1983

I am here today on behalf of Governor Atiyeh to express the Governor's strong opposition to House Bill 2544.

The very basic issue is the bill's confusion over what a hearings officer is. Let us remind ourselves of that right now.

State agency decisions on contested cases in Oregon must be based on the record. The job of the hearings officer is to compile that record. Hearings officers may rule on the evidence, but they have virtually no decision-making authority. At most, they may recommend findings of fact and conclusions of law to the responsible agency. Basically, however, hearings officers are merely agents for the agency for the purpose of hearing testimony and developing the record.

Decisions, ultimately, are made by the agency head on the basis of the record developed by a hearings officer. Those decisions may then, in most instances, be appealed by an aggrieved party to a court of law. Separating an agency and its expertise from the record upon which it must base its decision thus does nothing to enhance the legal recourse available to an affected party, and may serve only to enhance the possibility for error, oversight, and expensive future litigation.

It is vital to distinguish the role of a hearings officer from that of a judge in a court of law.

Under the Oregon Administrative Procedures Act, it is agency heads and commissions who are required to make the decisions based upon the evidence gathered in a case.

It has also been the practice, which the Governor encourages, for hearings officers to make recommendations to an agency based on that evidence. Nevertheless, the use of hearings officers does not relieve an agency head or commission from the responsibility for making ultimate decisions. By calling hearings officers "administrative law judges" — a term that House Bill 2544 seeks to enshrine — we are not only being inaccurate, we are in fact seriously misleading citizens who might suppose that an agency head is bound to accept a hearings officer's recommendations.

Furthermore, the Oregon APA encourages a process that is meant to be not only fair, but flexible and expeditious. This process has been deliberately designed to be less complex and time-consuming than a formal judicial inquiry. It cannot fulfill this goal if every contested case hearing is handled by a separate department, without full access to agency expertise, and conducted like a court trial by hearings officers who call themselves "judges."

That is why the Governor opposes House Bill 2544, just as he opposed its earlier version in 1979. He believes that the bill as written will serve only to overcomplicate and prolong the Oregon administrative process, increase the cost and lower the quality of contested case hearings, isolate the information-gathering function from agency expertise, lead to less informed agency decisions and more expensive litigation, and mislead the public about the true role of hearings officers in the administrative process.

Thank you.

#