

72nd OREGON LEGISLATIVE ASSEMBLY-2003 Regular Session  
**B-Engrossed**  
**House Bill 2526**

Ordered by the Senate April 14 Including House  
Amendments dated March 10 and Senate Amendments  
dated April 14

Sponsored by Representative SHETTERLY; Representative BARNHART, Senators BEYER,  
COURTNEY (at the request of Hearing Officer Panel Oversight Committee)

**SUMMARY**

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editoras brief statement of the essential features of the measure.

Repeals sunset on laws creating Hearing Officer Panel.  
Changes name of Hearing Officer Panel to Office of Administrative Hearings.  
Changes title of hearing officer to administrative law judge.  
Changes title of chief hearing officer to chief administrative law judge. Provides that chief administrative law judge serves four-year term and may be removed only for inefficiency, incompetence, neglect of duty, malfeasance in office, unfitness to render effective service or failure to continue to meet criteria for appointment. Allows chief administrative law judge to make temporary appointments of student law clerks to assist administrative law judges. **Prohibits student law clerks from acting as administrative law judges or conducting hearings.**

Declares emergency, effective on passage.

**Be It Enacted by the People of the State of Oregon:**

**OFFICE OF ADMINISTRATIVE HEARINGS**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type. LC 1796 B-Eng. HB 2526

SECTION 1. Section 2, chapter 849, Oregon Laws 1999, is amended to read:

Sec. 2. For the purposes of sections 2 to 21, **chapter 849, Oregon Laws 1999** *[of this 1999 Act]*:

(1) "Chief *[hearing officer]* **administrative law judge**" means the person employed under section **4, chapter 849, Oregon Laws 1999**, *[of this 1999 Act]* to organize and manage the *[Hearing Officer Panel]* **Office of Administrative Hearings**.

(2) *["Panel" means the Hearing Officer Panel established under section 3 of this 1999 Act.]*

**"Office" means the Office of Administrative Hearings established under section 3, chapter 849, Oregon Laws 1999.**

SECTION 2. Section 3, chapter 849, Oregon Laws 1999, is amended to read: Sec. 3. (1) The *[Hearing Officer Panel]* **Office of Administrative Hearings** is established within the Employment Department. The *[panel]* **office** shall be managed by the chief *[hearing officer]* **administrative law judge** employed under section 4, **chapter 849, Oregon Laws 1999** *[of this 1999 Act]*. The *[panel]* office shall make *[hearing officers]* **administrative law judges** available to agencies under sections 2 to 21, **chapter 849, Oregon Laws 1999** *[of this 1999 Act]*. *[Hearing*

*officers*) **Administrative law judges** assigned from the *[panel]* **office** under sections 2 to 21, **chapter 849, Oregon Laws 1999**, *[of this 1999 Act]* may:

- (a) Conduct contested case proceedings on behalf of agencies in the manner provided by sections 2 to 21, **chapter 849, Oregon Laws 1999** *[of this 1999 Act]*;
  - (b) Perform such other services, as may be requested by an agency, that are appropriate for the resolution of disputes arising out of the conduct of agency business; and
  - (c) Perform such other duties as may be authorized under sections 2 to 21, **chapter 849, Oregon Laws 1999** *[of this 1999 Act]*.
- (2) All persons serving *[on the panel]* **as administrative law judges in the office** must meet the standards and training requirements of section 19, **chapter 849, Oregon Laws 1999** *[of this 1999 Act]*.

**SECTION 3.** Section 4, chapter 849, Oregon Laws 1999, is amended to read: Sec. 4. (1) The Director of the Employment Department shall employ a person to serve as chief *[hearing officer]* **administrative law judge** for the *[Hearing Officer Panel established under section 3 of this 1999 Act.]* **Office of Administrative Hearings. The director shall consider recommendations by the Office of Administrative Hearings Oversight Committee in hiring a chief administrative law judge.** The person employed to serve as chief *[hearing officer]* **administrative law judge** must be an active member of the Oregon State Bar. The chief *[hearing officer].;* **administrative law judge** has all the powers necessary and convenient to organize and manage the *[panel]* **office**. Subject to the State Personnel Relations Law, the chief *[hearing officer]* **administrative law judge** shall employ all persons necessary *[to]* for the administration of the *[panel]* **office**, prescribe the duties of those employees and fix their compensation. **The chief administrative law judge shall serve for a term of four years. Notwithstanding ORS 236.140, the chief administrative law judge may be removed during a term only for inefficiency, incompetence, neglect of duty, malfeasance in office, unfitness to render effective service or failure to continue to meet the criteria for appointment.**

(2) The chief *[hearing officer]* **administrative law judge** shall employ *[hearing officers to serve on the panel]* **administrative law judges.** The chief *[hearing officer]* **administrative law judge** shall ensure that *[hearing officers on the panel]* **administrative law judges employed for the office** receive all training necessary to meet the standards required under the program created under section [2] 19, **chapter 849, Oregon Laws 1999** *[of this 1999 Act]*.

(3) The chief *[hearing officer]* **administrative law judge** shall take all actions necessary to protect and ensure the independence of each *[hearing officer]* **administrative law judge** assigned from the *[panel]* **office**.

**SECTION 4.** Section 5, chapter 849, Oregon Laws 1999, is amended to read: Sec. 5. (1) *[A hearing officer]* **An administrative law judge** employed by or contracting with the chief *[hearing officer]* **administrative law judge** shall conduct hearings on behalf of agencies as assigned by the chief *[hearing officer]* **administrative law judge.** *[A hearing officer]* **An administrative law judge** shall be impartial in the performance of the *[hearing officers]* **administrative law judge's** duties and shall remain fair in all hearings conducted by the *[hearing officer]* **administrative law judge.**

(2) Only persons who have a knowledge of administrative law and procedure may be employed by the chief *[hearing officer]* **administrative law judge** as *[hearing officers]* **administrative law judges.** The chief *[hearing officer]* **administrative law judge** by rule may establish additional qualifications for *[hearing officers serving on the Hearing Officer Panel]* **administrative law judges employed for the office.**

**SECTION 5.** Section 6, chapter 849, Oregon Laws 1999, is amended to read:  
Sec. 6. (1) The chief *[hearing officer]* **administrative law judge** for the *[Hearing Officer Panel]*

**Office of Administrative Hearings** may contract for the services of persons to act as *[hearing officers]* **administrative law judges**.

(2) Contract *[hearing officers]* **administrative law judges** shall meet the same qualifications as *[hearing officers]* **administrative law judges** regularly employed by the chief *[hearing officer]* **administrative law judge** and shall be paid at an hourly rate comparable to the per hour cost of salary and benefits for *[hearing officers]* **administrative law judges** regularly employed by the chief *[hearing officer]* **administrative law judge** and conducting similar hearings.

**SECTION 6.** Section 7, chapter 849, Oregon Laws 1999, is amended to read: Sec. 7. (1) In assigning *[a hearing officer]* **an administrative law judge** to conduct hearings on behalf of an agency, the chief *[hearing officer]* **administrative law judge** shall, whenever practicable, assign *[a hearing officer]* **an administrative law judge** that has expertise in the legal issues or general subject matter of the proceeding.

(2) Notwithstanding any other provision of state law, any agency that is required to use *[hearing officers]* **administrative law judges** assigned from the *[Hearing Officer Panel]* **Office of Administrative Hearings** to conduct hearings must delegate responsibility for the conduct of the hearing to *[a hearing officer]* **an administrative law judge** assigned from the *[Hearing Officer Panel]* **Office of Administrative Hearings**, and the hearing may not be conducted by the administrator, director, board, commission or other person or body charged with administering the agency.

(3) Any agency may authorize *[a hearing officer]* **an administrative law judge** assigned to conduct a hearing on behalf of the agency under this section to enter a final order for the agency.

(4) An agency that is not required to use *[hearing officers]* **administrative law judges** assigned from the *[panel]* **office** may contract with the chief *[hearing officer]* **administrative law judge** for the assignment of *[a hearing officer]* **an administrative law judge** from the *[panel]* office for the purpose of conducting one or more contested cases on behalf of the agency.

**SECTION 7.** Section 8, chapter 849, Oregon Laws 1999, is amended to read: Sec. 8. (1) Except as provided in subsection (2) of this section, all contested case hearings conducted by *[hearing officers]* **administrative law judges** assigned from the *[Hearing Officer Panel]* *established under section 3 of this 1999 Act]* **Office of Administrative Hearings** must be conducted pursuant to the model rules of procedure prepared by the Attorney General under ORS 183.341 if the hearing is subject to the procedural requirements for contested case proceedings.

(2) The Attorney General, after consulting with the chief *[hearing officer for the panel]* **administrative law judge**, may exempt an agency or a category of cases from the requirements of subsection (1) of this section. The exemption may be from all or part of the model rules adopted by the Attorney General. Any exemption granted under this subsection must be made in writing.

(3) Except as may be expressly granted by the agency to *[a hearing officer]* **an administrative law judge** assigned from the *[panel]* office, or as may be expressly provided for by law, *[a hearing officer]* **an administrative law judge** conducting a hearing for an agency under sections 2 to 21, **chapter 849, Oregon Laws 1999, [of this 1999 Act]** may not authorize a party to take a deposition that is to be paid for by the agency.

**SECTION 8.** Section 9, chapter 849, Oregon Laws 1999, as amended by section 46, chapter 900, Oregon Laws 2001, is amended to read:

Sec. 9. (1) Except as provided in this section, all agencies must use *[hearing officers]* **administrative law judges** assigned from the *[Hearing Officer Panel]* **Office of Administrative Hearings** established under section 3, chapter 849, Oregon Laws 1999, to conduct contested case hearings, without regard to whether those hearings are subject to the procedural requirements for contested case hearings.

(2) The following agencies need not use *[hearing officers]* **administrative law judges** assigned from the *[panel]* **office**:

- (a) The Department of Education, the State Board of Education and the Superintendent of Public Instruction.
- (b) Employment Appeals Board.
- (c) Employment Relations Board.
- (d) Public Utility Commission.
- (e) Bureau of Labor and Industries and the Commissioner of the Bureau of Labor and Industries.
- (f) Land Conservation and Development Commission.
- (g) Land Use Board of Appeals.
- (h) Department of Revenue.
- (i) Local government boundary commissions created pursuant to ORS 199.425 or 199.430.
- (j) State Accident Insurance Fund Corporation.
- (k) Psychiatric Security Review Board.
- (L) State Board of Parole and Post-Prison Supervision.
- (m) Department of Corrections.
- (n) Energy Facility Siting Council.
- (o) Department of Human Services for vocational rehabilitation services cases under 29 U.S.C. 722(c) and disability determination cases under 42 U.S.C. 405.
- (p) Secretary of State.
- (q) State Treasurer.
- (r) Attorney General.
- (s) Fair Dismissal Appeals Board.
- (t) Department of State Police.
- (u) Oregon Youth Authority.
- (v) Boards of stewards appointed by the Oregon Racing Commission.
- (w) The Department of Higher Education and the institutions of higher education listed in ORS 352.002.
- (x) The Governor.
- (y) State Land Board.
- (z) **Wage and Hour Commission.**
- (aa) **State Apprenticeship and Training Council.**

(3) The Workers' Compensation Board is exempt from using *[hearing officers]* **administrative law judges** assigned from the *[panel]* **office** for any hearing conducted by the board under ORS chapters 147, 654 and 656. The Director of the Department of Consumer and Business Services must use *[hearing officers]* **administrative law judges** assigned from the *[panel]* **office** for all contested case hearings regarding matters other than those concerning a claim under ORS chapter 656, as provided in ORS 656.704 (2). Except as specifically provided in this subsection, the Department of Consumer and Business Services must use *[hearing officers]* **administrative law judges** assigned from the *[panel]* **office** only for contested cases arising out of the department's powers and duties under:

- (a) ORS chapter 59;
- (b) ORS 200.005 to 200.075;
- (c) ORS chapter 455;
- (d) ORS chapter 674;
- (e) ORS chapters 706 to 716;
- (f) ORS chapter 717;
- (g) ORS chapters 722, 723, 725 and 726; and
- (h) ORS chapters 731, 732, 733, 734, 735, 737, 742, 743, 744, 746, 748 and 750.

(4) Notwithstanding any other provision of law, in any proceeding in which an agency is required to use *[a hearing officer]* **an administrative law judge** assigned from the *[panel]* **office**, an

officer or employee of the agency may not conduct the hearing on behalf of the agency.

(5) Notwithstanding any other provision of sections 2 to 21, chapter 849, Oregon Laws 1999, *[no]* an agency *[shall be]* is not required to use *[a hearing officer]* **an administrative law judge** assigned from the *[panel]* office if:

(a) Federal law requires that a different **administrative law judge or** hearing officer be used; or

(b) Use of *[a hearing officer]* **an administrative law judge** from the *[panel]* office could result in a loss of federal funds.

(6) Notwithstanding any other provision of this section, the Department of Environmental Quality must use *[hearing officers]* **administrative law judges** assigned from the *[panel]* office only for contested case hearings conducted under the provisions of ORS 183.413 to 183.470.

**SECTION 9.** Section 10, chapter 849, Oregon Laws 1999, is amended to read:

Sec. 10. (1) Upon request of an agency, the chief *[hearing officer]* **administrative law judge for the [Hearing Officer Panel] Office of Administrative Hearings** may assign *[hearing officers]* **administrative law judges** from the *[panel]* office to conduct contested case proceedings on behalf of agencies that are exempted from mandatory use of *[panel hearing officers]* **administrative law judges assigned from the office** under section 9, **chapter 849, Oregon Laws 1999 [of this 1999 Act].**

(2) The chief *[hearing officer]* **administrative law judge** may contract with any political subdivision of this state to provide *[hearing officer]* the services **of administrative law judges to** the political subdivision for the purpose of conducting quasi-judicial hearings on behalf of the political subdivision.

**SECTION 10.** Section 11, chapter 849, Oregon Laws 1999, as amended by section 8, chapter 294, Oregon Laws 2001, is amended to read:

Sec. 11. (1) After assignment of *[a hearing officer]* **an administrative law judge** from the *[Hearing Officer Panel] Office of Administrative Hearings* to conduct a hearing on behalf of an agency, the chief *[hearing officer]* **administrative law judge** shall assign a different *[hearing officer]* **administrative law judge** for the hearing upon receiving a written request from any party in the contested case or from the agency. The chief *[hearing officer]* **administrative law judge** may by rule establish time limitations and procedures for requests under this section.

(2) Only one request for a change of assignment of *[hearing officer]* **administrative law judge** under subsection (1) of this section may be granted by the chief *[hearing officer]* **administrative law judge** without a showing of good cause. If a party or agency fails to make a request under subsection (1) of this section within the time allowed, or if a party or agency objects to *[a hearing officer]* **an administrative law judge** assigned after a request for a different *[hearing officer]* **administrative law judge** has been granted under subsection (1) of this section, the chief *[hearing officer]* **administrative law judge** shall assign a different *[hearing officer]* **administrative law judge** only upon a showing of good cause.

(3) Notwithstanding subsection (1) of this section, a different *[hearing officer]* **administrative law judge** may not be assigned for a hearing provided under ORS 813.410 or 813.440 on suspension of driving privileges, except upon a showing of good cause.

**SECTION 11.** Section 12, chapter 849, Oregon Laws 1999, is amended to read: Sec. 12. (1) In any contested case hearing conducted by *[a hearing officer]* **an administrative law judge** assigned from the *[Hearing Officer Panel] Office of Administrative Hearings*, the *[hearing officer]* **administrative law judge** shall prepare and serve on the agency and all parties to the hearing a form of order, including recommended findings of fact and conclusions of law. The *[hearing officer]* **administrative law judge** shall also prepare and serve a proposed order in

the manner provided by ORS 183.464 unless the agency or hearing is exempt from the requirements of ORS 183.464.

(2) If the *[hearing officer]* **administrative law judge** assigned from the *[panel]* office will not enter the final order in a contested case proceeding, and the agency modifies the form of order issued by the *[hearing officer]* **administrative law judge** in any substantial manner, the agency must identify the modifications and provide an explanation to the parties to the hearing as to why the agency made the modifications.

(3) An agency conducting a contested case hearing may modify a finding of historical fact made by the *[hearing officer]* **administrative law judge** assigned from the *[Hearing Officer Panel]* **Office of Administrative Hearings** only if the agency determines that the finding of historical fact made by the *[hearing officer]* **administrative law judge** is not supported by a preponderance of the evidence in the record. For the purposes of this section, *[a hearing officer]* **an administrative law judge** makes a finding of historical fact if the *[hearing officer]* **administrative law judge** determines that an event did or did not occur in the past or that a circumstance or status did or did not exist either before the hearing or at the time of the hearing.

(4) If a party seeks judicial review of an agency's modification of a finding of historical fact under subsection (3) of this section, the court shall make an independent finding of the fact in dispute by conducting a review de novo of the record viewed as a whole. If the court decides that the agency erred in modifying the finding of historical fact made by the *[hearing officer]* **administrative law judge**, the court shall remand the matter to the agency for entry of an order consistent with the court's judgment.

**SECTION 12.** Section 13, chapter 849, Oregon Laws 1999, is amended to read: Sec. 13. The chief *[hearing officer]* **administrative law judge** for the *[Hearing Officer Panel]* **Office of Administrative Hearings** shall establish a schedule of fees for services rendered by *[hearing officers]* **administrative law judges** assigned from the *[panel]* office. The fee charged shall be in an amount calculated to recover the cost of providing the *[hearing officer]* **administrative law judge**, the cost of conducting the hearing and all associated administrative costs. All fees collected by the chief *[hearing officer]* **administrative law judge** under this section shall be paid into the *[Hearing Officer Panel]* **Office of Administrative Hearings** Operating Account created under section 14, **chapter 849, Oregon Laws 1999** *[of this 1999 Act]*.

**SECTION 13.** Section 14, chapter 849, Oregon Laws 1999, is amended to read:

Sec. 14. (1) The *[Hearing Officer Panel]* **Office of Administrative Hearings** Operating Account is created within the General Fund. The account shall consist of moneys paid into the account under section 13, **chapter 849, Oregon Laws 1999** *[of this 1999 Act]*. Moneys credited to the account are continuously appropriated to the chief *[hearing officer]* **administrative law judge** for the *[Hearing Officer Panel]* Office of Administrative Hearings created under section 3, **chapter 849, Oregon Laws 1999**, *[of this 1999 Act]* for the purpose of paying expenses incurred in the administration of the *[panel]* office.

(2) At the discretion of the chief *[hearing officer]* **administrative law judge**, petty cash funds may be established and maintained for the purpose of administering the duties of the *[panel]* **office**.

**SECTION 14.** Section 15, chapter 849, Oregon Laws 1999, is amended to read:

Sec. 15. The chief *[hearing officer]* **administrative law judge** for the *[Hearing Officer Panel]* **Office of Administrative Hearings** shall estimate in advance the expenses that the *[panel]* **office** will incur during each biennium and shall notify each agency required to use the *[panels]* office's services of the agency's share of the anticipated expenses for periods within the biennium.

**SECTION 15.** Section 16, chapter 849, Oregon Laws 1999, is amended to read: Sec. 16. Subject to the provisions of the State Personnel Relations Law, the chief *[hearing officer]* **administrative law judge** for the *[Hearing Officer Panel]* **Office of Administrative Hearings** may adopt rules to:

- (1) Organize and manage the *[Hearing Officer Panel]* **Office of Administrative Hearings** established under section 3, **chapter 849, Oregon Laws 1999** *[of this 1999 Act]*.
- (2) Facilitate the performance of the duties of *[hearing officers]* **administrative law judges** assigned from the *[panel]* **office**.
- (3) Establish qualifications for persons *[serving as hearing officers on the panel]* **employed as administrative law judges by the office**.
- (4) Establish standards and procedures for the evaluation and training of *[hearing officers on the panel]* **administrative law judges employed by the office**, consistent with standards and training requirements established under section 19, **chapter 849, Oregon Laws 1999** *[of this 1999 Act]*.

**SECTION 16.** Section 16a, chapter 849, Oregon Laws 1999, is amended to read: Sec. 16a. Sections 2 to **21, chapter 849, Oregon Laws 1999**, *[of this 1999 Act]* do not limit in any way the ability of any agency to use alternative dispute resolution, including mediation or arbitration, to resolve disputes without conducting a contested case hearing or without requesting assignment of *[a hearing officer from the Hearing Officer Panel]* **an administrative law judge from the Office of Administrative Hearings**.

**SECTION 17.** Section 19, chapter 849, Oregon Laws 1999, is amended to read: Sec. 19. (1) The chief *[hearing officer]* **administrative law judge** for the *[Hearing Officer Panel]* **Office of Administrative Hearings**, working in coordination with the Attorney General, shall design and implement a standards and training program for *[hearing officers on the panel]* **administrative law judges employed by the office** and for persons seeking to *[serve as hearing officers on the panel]* **be employed as administrative law judges by the office**. The program shall include:

- (a) The establishment of an ethical code for persons *[serving as hearing officers on the panel]* **employed as administrative law judges by the office**.
- (b) Training for *[hearing officers on the panel]* **administrative law judges employed by the office** that is designed to assist in identifying cases that are appropriate for the use of alternative dispute resolution processes.
- (2) The program established by the chief *[hearing officer]* **administrative law judge** under this section may include:
  - (a) The conducting of courses on administrative law, evidence, hearing procedures and other issues that arise in presiding over administrative hearings, including courses designed to provide any training required by the chief *[hearing officer]* **administrative law judge** for *[hearing officers on the panel]* **administrative law judges employed by the office**.
  - (b) The certification of courses offered by other persons for the purpose of any training required by the chief *[hearing officer]* **administrative law judge** for *[hearing officers on the panel]* **administrative law judges employed by the office**.
  - (c) The provision of specialized training for *[hearing officers']* **administrative law judges** in subject matter areas affecting particular agencies required to use *[hearing officers]* **administrative law judges** assigned from the *[panel]* **office**.
- (3) The chief *[hearing officer]* **administrative law judge** is bound by the ethical code established under this section and must satisfactorily complete training required of *[hearing officers on the panel]* **administrative law judges employed by the office** other than specialized training in subject matter areas affecting particular agencies.

**SECTION 18.** Section 20, chapter 849, Oregon Laws 1999, is amended to read: Sec. 20. (1) *[A hearing officer]* **An administrative law judge** assigned from the *[Hearing Officer Panel]* **Office of Administrative Hearings** who is presiding in a contested case proceeding and who receives an ex parte communication described in subsections (3) and (4) of this section shall place in the record of the pending matter:

(a) The name of each person from whom the *[hearing officer]* **administrative law judge** received an ex parte communication;

(b) A copy of any ex parte written communication received by the *[hearing officer]* **administrative law judge;**

(c) A copy of any written response to the communication made by the *[hearing officer]* **administrative law judge;**

(d) A memorandum reflecting the substance of any ex parte oral communication made to the *[hearing officer]* **administrative law judge; and**

(e) A memorandum reflecting the substance of any oral response made by the *[hearing officer]* **administrative law judge** to an ex parte oral communication.

(2) Upon making a record of an ex parte communication under subsection (1) of this section, *[a hearing officer]* **an administrative law judge** shall advise the agency and all parties in the proceeding that an ex parte communication has been made a part of the record. The *[hearing officer]* **administrative law judge** shall allow the agency and parties an opportunity to respond to the ex parte communication.

(3) Except as otherwise provided in this section, the provisions of this section apply to communications that:

(a) Relate to a legal or factual issue in a contested case proceeding;

(b) Are made directly or indirectly to *[a hearing officer]* **an administrative law judge** while the proceeding is pending; and

(c) Are made without notice and opportunity for the agency and all parties to participate in the communication.

(4) The provisions of this section apply to any ex parte communication made directly or indirectly to *[a hearing officer]* **an administrative law judge**, or to any agent of *[a hearing officer]* **an administrative law judge**, by:

(a) A party;

(b) A party's representative or legal adviser;

(c) Any other person who has a direct or indirect interest in the outcome of the proceeding;

(d) Any other person with personal knowledge of the facts relevant to the proceeding; or

(e) Any officer, employee or agent of the agency that is using the *[hearing officer]*

**administrative law judge** to conduct the hearing.

(5) The provisions of this section do not apply to:

(a) Communications made to *[a hearing officer]* **an administrative law judge** by other *[hearing officers]* **administrative law judges;**

(b) Communications made to *[a hearing officer]* **an administrative law judge** by any person employed by the *[panel]* **office** to assist the *[hearing officer]* **administrative law judge;** or

(c) Communications made to *[a hearing officer]* **an administrative law judge** by an assistant attorney general if the communications are made in response to a request from the *[hearing officer]* **administrative law judge** and the assistant attorney general is not advising the agency that is conducting the hearing.

**SECTION 19.** Section 21, chapter 849, Oregon Laws 1999, is amended to read:

Sec. 21. (1) The *[Hearing Officer Panel]* **Office of Administrative Hearings** Oversight Committee is created. The committee consists of nine members, as follows:

(a) The President of the Senate and the Speaker of the House of Representatives shall appoint four legislators to the committee. Two shall be Senators appointed by the President. Two shall be

Representatives appointed by the Speaker.

(b) The Governor shall appoint two members to the committee. At least one of the members appointed by the Governor shall be an active member of the Oregon State Bar with experience in representing parties who are not agencies in contested case hearings.

(c) The Attorney General shall appoint two members to the committee.

(d) The chief *[hearing officer]* **administrative law judge** for the *[Hearing Officer Panel]* **Office of Administrative Hearings** employed under section 4, **chapter 849, Oregon Laws 1999**, *[of this 1999 Act]* shall serve as an ex officio member of the committee. The chief *[hearing officer]* **administrative law judge** may cast a vote on a matter before the committee if the votes of the other members are equally divided on the matter.

(2) The term of a legislative member of the committee shall be two years. If a person appointed by the President of the Senate or by the Speaker of the House ceases to be a Senator or Representative during the person's term on the committee, the person may continue to serve as a member of the committee for the balance of the member's term on the committee. The term of all other appointed members shall be four years. Appointed members of the committee may be reappointed. If a vacancy occurs in one of the appointed positions for any reason during the term of membership, the official who appointed the member to the vacated position shall appoint a new member to serve the remainder of the term. An appointed member of the committee may be removed from the committee at any time by the official who appointed the member.

(3)(a) The members of the committee shall select from among themselves a chairperson and a vice chairperson.

(b) The committee shall meet at such times and places as determined by the chairperson.

(4) Legislative members shall be entitled to payment of per diem and expense reimbursement under ORS 171.072, payable from funds appropriated to the Legislative Assembly.

(5) The committee shall:

(a) Study *[the implementation and]* operation of the *[Hearing Officer Panel established under section 3 of this 1999 Act]* **Office of Administrative Hearings**;

(b) Make any recommendations to the Governor and the Legislative Assembly that the committee deems necessary to increase the effectiveness, fairness and efficiency of the operations of the *[Hearing Officer Panel]* **Office of Administrative Hearings**;

(c) Make any recommendations for additional legislation governing the operations of the *[Hearing Officer Panel]* **Office of Administrative Hearings**; and

(d) Conduct such other studies as necessary to accomplish the purposes of this subsection.

(6) The Employment Department shall provide the committee with staff, subject to availability of funding for that purpose.

## **EMPLOYMENT OF LAW CLERKS**

**SECTION 20.** ORS 240.309 is amended to read:

240.309. (1) Temporary employment shall be used for the purpose of meeting emergency, nonrecurring or short-term workload needs of the state.

(2) A temporary employee may be given a nonstatus appointment without open competition and consideration only for the purposes enumerated in this section. Temporary appointments shall not be used to defeat the open competition and consideration system.

(3) A temporary employee may not be employed in a permanent, seasonal, intermittent or limited duration position except to replace an employee during an approved leave period.

(4) Employment of a temporary employee for the same workload need, other than for leave, may not exceed six calendar months. The decision to extend the period of employment may be delegated by the Personnel Division of the Oregon Department of Administrative Services to other state agencies. Approval to extend shall be allowed only upon an appointing authority's finding that the original emergency continues to exist and that there is no other reasonable means

to meet the emergency. Agency actions under this subsection are subject to post-audit review by the Oregon Department of Administrative Services as provided in ORS 240.311.

(5) Employment of a temporary employee for different workload needs shall not exceed the equivalent of six calendar months in a 12-month period.

(6) A temporary employee shall not be denied permanent work because of the temporary status. Temporary service shall not be used as any portion of a required trial service period.

(7) The Personnel Division of the Oregon Department of Administrative Services shall report the use of temporary employees, by agency, once every six months, including the duration and reason for use or extensions, if any, of temporary appointments.

(8) The Department of Justice may use temporary status appointments for student law clerks for a period not to exceed 24 months.

**(9) The chief administrative law judge of the Office of Administrative Hearings may use temporary status appointments for student law clerks for a period not to exceed 24 months. Student law clerks appointed under this subsection may not act as administrative law judges or conduct hearings for the Office of Administrative Hearings. [(9)]** (10) A state agency may use temporary status appointments for a period not to exceed 48 months for student interns who are enrolled in high school or who are under 19 years of age and are training to receive a General Educational Development (GED) certificate. Student interns are not eligible for benefits under ORS 243.105 to 243.285.

#### **REMOVAL OF SUNSET**

**SECTION 21. Sections 26,29, 40, 45, 50, 53, 59, 62, 71, 80, 83, 86, 89, 92, 95, 98,101,104, 104d, 109,114,121,121f, 129,134,139,142,145,152,159,162,168,171,174,177,180,183, 186,192,195,198, 201 and 214, chapter 849, Oregon Laws 1999, section 6, chapter 1067, Oregon Laws 1999, section 15b, chapter 1084, Oregon Laws 1999, sections 2 and 3, chapter 163, Oregon Laws 2001, section 5, chapter 198, Oregon Laws 2001, section 82b, chapter 249, Oregon Laws 2001, section 11, chapter 294, Oregon Laws 2001, section 7c, chapter 414, Oregon Laws 2001, and sections 4 and 9, chapter 455, Oregon Laws 2001, are repealed.**