

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

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FISCAL IMPACT STATEMENT

LS 6680

BILL NUMBER: HB 1436

NOTE PREPARED: Jan 11, 2021

BILL AMENDED:

SUBJECT: Administrative Proceedings and State Agencies.

FIRST AUTHOR: Rep. Thompson

BILL STATUS: As Introduced

FIRST SPONSOR:

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State

Summary of Legislation: *Attorney's Fees in Administrative Actions:* The bill provides that, in an adjudicative administrative proceeding concerning an agency action, the administrative law judge (ALJ) shall order the agency to pay the reasonable attorney's fees incurred by the party challenging the agency action if the administrative law judge makes a finding that the agency action was:

- (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
- (2) contrary to constitutional right, power, privilege, or immunity;
- (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
- (4) without observance of procedure required by law; or
- (5) not supported by substantial evidence.

Construction in a Floodway Permits: The bill also requires the director of the Department of Natural Resources (DNR) to issue a permit for the construction of a structure in a floodway if the director determines that the structure will not:

- (1) adversely affect the efficiency of or unduly restrict the capacity of the floodway;
- (2) constitute an unreasonable hazard to the safety of life or property; or
- (3) result in unreasonably detrimental effects upon fish, wildlife, or botanical resources.

It eliminates the provision of current law under which the director may not issue the permit unless the applicant clearly proves that the structure will not do any of those three things. It prohibits the director from determining that the construction of a structure in a floodway will adversely affect the efficiency of the floodway or unduly restrict the capacity of the floodway if the construction of the structure would increase the regulatory flood elevation of the floodway by less than fifteen-hundredths of a foot.

Effective Date: July 1, 2021.

Explanation of State Expenditures: *Attorney's Fees in Administrative Actions:* State expenditures could increase if an ALJ finds that a state agency action was arbitrary, capricious, contrary to constitutional right, in excess of statutory jurisdiction, without observance of procedure required by law, or not supported by substantial evidence, as the bill requires the ALJ to order a state agency to pay the reasonable attorney's fees incurred by the party challenging the agency action.

Construction in a Floodway Permits: Current law requires an applicant for a permit for a structure, obstruction, deposit, or excavation in a floodway to clearly prove several items before the director of the DNR is required to issue a permit. The bill puts the burden of proof on the DNR [for structure permits, not for obstruction, deposit, or excavation permits], which could increase their workload.

Additional Information: The bill codifies the definitions from 312 IAC 10-2-3 which states: “ ‘adversely affect the efficiency of, or unduly restrict the capacity of, the floodway’ means an increase in the elevation of the regulatory flood of at least fifteen-hundredths (0.15) of a foot as determined by comparing the regulatory flood elevation under the project condition to that under the base condition.”

Explanation of State Revenues: *Construction in a Floodway Permits:* If the permitting process becomes easier for applicants by not requiring the applicant to prove no adverse affects of or restrictions to the floodway, the number of permit applications could increase. The Land and Water Resources Fund received \$85,915 in revenue for floodway permits in FY 2020 (which includes \$10, \$50, and \$200 permits).

Explanation of Local Expenditures:

Explanation of Local Revenues:

State Agencies Affected: Department of Natural Resources; Office of Administrative Law Proceedings; potentially all state agencies.

Local Agencies Affected:

Information Sources: Auditor's database.

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