



Reprinted
March 5, 2024

ENGROSSED HOUSE BILL No. 1003

DIGEST OF HB 1003 (Updated March 4, 2024 3:02 pm - DI 149)

Citations Affected: IC 1-1; IC 4-15; IC 4-21.5; IC 4-22; IC 13-14; IC 13-15; IC 13-17; IC 13-18; IC 13-19; IC 13-20; IC 13-23; IC 13-24; IC 13-25; IC 13-30; IC 14-10; IC 14-34; IC 34-52; noncode.

Synopsis: Administrative law. Makes the office of administrative law proceedings the ultimate authority in any administrative proceeding under its jurisdiction. Provides certain exceptions. Provides that the bill applies to certain proceedings filed after June 30, 2024. Specifies when a state agency may be required to pay reasonable attorney's fees for judicial review proceedings. Outlines procedures for the ultimate
(Continued next page)

Effective: July 1, 2024; July 1, 2025.

Steuerwald, Jeter, Meltzer, Bartels

(SENATE SPONSORS — CARRASCO, KOCH, GARTEN, DORIOT)

January 8, 2024, read first time and referred to Committee on Judiciary.
January 18, 2024, amended, reported — Do Pass.
January 22, 2024, read second time, ordered engrossed. Engrossed.
January 23, 2024, read third time, passed. Yeas 85, nays 10.

SENATE ACTION

February 5, 2024, read first time and referred to Committee on Judiciary.
February 29, 2024, amended, reported favorably — Do Pass.
March 4, 2024, read second time, amended, ordered engrossed.

EH 1003—LS 6926/DI 151



Digest Continued

authority regarding nonfinal orders and procedures to file objections to final orders. Permits a final order to be corrected by means of a motion to correct error. Provides that the court shall decide all questions of law, including any interpretation of a federal or state constitutional provision, state statute, or agency rule, without deference to any previous interpretation made by the state agency. Provides that a court is not bound by a finding of fact made by the ultimate authority if the finding of fact is not supported by the record. Requires the state agency to transmit the agency record to the court for judicial review. Eliminates the office of environmental adjudication and transfers proceedings to the office of administrative law proceedings. Creates requirements for administrative law judges that are assigned to certain environmental matters. Provides that until the office of administrative law proceedings adopts or amends rules related to environmental matters, it must continue to follow and implement rules under 315 IAC. Requires the office of administrative law proceedings to continue to index and make publicly available, in a substantially similar online searchable format, the final orders of contested appeals currently maintained by the office. Makes conforming changes.

EH 1003—LS 6926/DI 151



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March 5, 2024

Second Regular Session of the 123rd General Assembly (2024)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2023 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1003

A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 1-1-5.5-24 IS ADDED TO THE INDIANA CODE
2 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2025]: **Sec. 24. (a) Except as provided in subsection (b), a**
4 **SECTION of HEA 1003-2024 does not apply to an administrative**
5 **proceeding or a proceeding for judicial review pending on June 30,**
6 **2024.**
7 **(b) A SECTION of HEA 1003-2024 applies to:**
8 **(1) an administrative proceeding or a proceeding for judicial**
9 **review commenced after June 30, 2024; or**
10 **(2) an administrative proceeding conducted after June 30,**
11 **2024, on remand from a court.**
12 **(c) After June 30, 2024, any reference to a duty of an ultimate**
13 **authority with respect to an administrative proceeding or**
14 **proceeding for judicial review shall be construed as a duty of the**
15 **office of administrative legal proceedings if the office of**
16 **administrative legal proceedings is the ultimate authority for that**
17 **agency.**

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1 SECTION 2. IC 4-15-10.5-2, AS ADDED BY P.L.205-2019,
 2 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2024]: Sec. 2. This chapter does not apply to:

- 4 (1) the department of workforce development;
 5 (2) the unemployment insurance review board of the department
 6 of workforce development;
 7 (3) the worker's compensation board of Indiana;
 8 (4) the Indiana utility regulatory commission;
 9 (5) the department of state revenue;
 10 (6) the department of local government finance;
 11 (7) the Indiana board of tax review;
 12 (8) the natural resources commission;
 13 ~~(9) the office of environmental adjudication;~~
 14 ~~(10) (9)~~ the Indiana education employment relations board;
 15 ~~(11) (10)~~ the state employees appeals commission; or
 16 ~~(12) (11)~~ before July 1, 2022, any other agency or category of
 17 proceeding determined by the governor to be exempt from this
 18 chapter for good cause.

19 SECTION 3. IC 4-15-10.5-12, AS ADDED BY P.L.205-2019,
 20 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 21 JULY 1, 2024]: Sec. 12. (a) ~~Beginning July 1, 2020, and~~ Except as
 22 provided in sections 1 and 2 of this chapter, the office has jurisdiction
 23 over all administrative proceedings concerning agency administrative
 24 actions under:

- 25 (1) IC 4-21.5; or
 26 (2) any other statute that requires or allows the office to take
 27 action.

28 ~~(b) Notwithstanding anything in this chapter or any other statute to~~
 29 ~~the contrary:~~

30 ~~(1) the office shall not be considered the ultimate authority in any~~
 31 ~~administrative proceeding; and~~

32 ~~(2) a decision by the office in an administrative proceeding is not~~
 33 ~~a final agency action;~~

34 unless expressly designated by the agency. This subsection may not be
 35 construed as preventing the rescission of an agency's delegation.

36 **(b) Except as provided in subsection (c), the office is the ultimate**
 37 **authority in any administrative proceeding under its jurisdiction.**
 38 **Judicial review under IC 4-21.5 shall be taken directly from a final**
 39 **decision of the office.**

40 **(c) The office is not the ultimate authority if:**

- 41 **(1) a particular agency or agency action is exempted under**
 42 **Indiana law; or**



- 1 **(2) an agency is required by federal mandate, as a condition**
 2 **of federal funding, to conduct or render a final order in an**
 3 **adjudication.**
- 4 SECTION 4. IC 4-21.5-1-3 IS AMENDED TO READ AS
 5 FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 3. "Agency" means any
 6 officer, board, commission, department division, bureau, or committee
 7 of state government that is responsible for any stage of a proceeding
 8 under this article. ~~Except as provided in IC 4-21.5-7,~~ The term does not
 9 include the judicial department of state government, the legislative
 10 department of state government, or a political subdivision.
- 11 SECTION 5. IC 4-21.5-1-15 IS AMENDED TO READ AS
 12 FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 15. **Subject to**
 13 **IC 4-15-10.5-12,** "ultimate authority" means:
- 14 **(1) for an administrative proceeding under the office of**
 15 **administrative law proceedings, the office of administrative**
 16 **law proceedings; or**
- 17 **(2) for any other purpose,** an individual or panel of individuals
 18 in whom the final authority of an agency is vested by law or
 19 executive order.
- 20 SECTION 6. IC 4-21.5-3-9, AS AMENDED BY P.L.13-2021,
 21 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 22 JULY 1, 2024]: Sec. 9. (a) Except to the extent that a statute other than
 23 this article limits an agency's discretion to select an administrative law
 24 judge, the ultimate authority ~~for an agency~~ may:
- 25 (1) act as an administrative law judge;
 26 (2) designate one (1) or more members of the ultimate authority
 27 (if the ultimate authority is a panel of individuals) to act as an
 28 administrative law judge; or
 29 (3) before July 1, 2020, designate one (1) or more:
 30 (A) attorneys licensed to practice law in Indiana; or
 31 (B) persons who served as administrative law judges for a state
 32 agency before January 1, 2014;
 33 to act as an administrative law judge. After June 30, 2020, the
 34 ultimate authority ~~for an agency~~ may request assignment of an
 35 administrative law judge by the office of administrative law
 36 proceedings.
- 37 A person designated under subdivision (3) is not required to be an
 38 employee of the agency. A designation under subdivision (2) or (3)
 39 may be made in advance of the commencement of any particular
 40 proceeding for a generally described class of proceedings or may be
 41 made for a particular proceeding. A general designation may provide
 42 procedures for the assignment of designated individuals to particular



1 proceedings.

2 **(b) If the case involves:**

3 **(1) adjudication of:**

4 **(A) air pollution control laws (as defined in IC 13-11-2-6);**

5 **(B) water pollution control laws (as defined in**
6 **IC 13-11-2-261);**

7 **(C) environmental management laws (as defined in**
8 **IC 13-11-2-71); or**

9 **(D) solid waste and hazardous waste management laws**
10 **under IC 13-19;**

11 **(2) rules of a board described in IC 13-14-9-1;**

12 **(3) the financial assurance board created by IC 13-23-11-1; or**

13 **(4) any agency action of the department of environmental**
14 **management;**

15 the administrative law judge assigned by the office of
16 administrative law proceedings must meet the requirements listed
17 under subsection (c).

18 **(c) An administrative law judge assigned under subsection (b)**
19 **must:**

20 **(1) be a citizen of Indiana;**

21 **(2) be an attorney in good standing admitted to practice in**
22 **Indiana;**

23 **(3) have at least five (5) years of experience practicing**
24 **environmental or administrative law;**

25 **(4) be independent of the agency;**

26 **(5) meet the qualifications specific to environmental law as**
27 **determined by the office of administrative law proceedings'**
28 **training program; and**

29 **(6) be one (1) of three (3) administrative law judges in the**
30 **office of administrative law proceedings designated to hear**
31 **environmental matters.**

32 ~~(b)~~ **(d) An agency A person** may not knowingly assign an individual
33 to serve alone or with others as an administrative law judge who is
34 subject to disqualification under this chapter.

35 ~~(c)~~ **(e) If the administrative law judge assigned to the proceeding**
36 **believes that the judge's impartiality might reasonably be questioned,**
37 **or believes that the judge's personal bias, prejudice, or knowledge of a**
38 **disputed evidentiary fact might influence the decision, the**
39 **administrative law judge shall:**

40 **(1) withdraw as the administrative law judge; or**

41 **(2) inform the parties of the potential basis for disqualification,**
42 **place a brief statement of this basis on the record of the**



- 1 proceeding, and allow the parties an opportunity to petition for
 2 disqualification under subsection ~~(d)~~: **(f)**.
- 3 ~~(d)~~ **(f)** Any party to a proceeding may petition for the
 4 disqualification of an administrative law judge upon discovering facts
 5 establishing grounds for disqualification under this chapter. The
 6 administrative law judge assigned to the proceeding shall determine
 7 whether to grant the petition, stating facts and reasons for the
 8 determination.
- 9 ~~(e)~~ **(g)** If the administrative law judge ruling on the disqualification
 10 issue is not the ultimate authority, ~~for the agency~~, the party petitioning
 11 for disqualification may petition the ultimate authority, or, if the
 12 administrative law judge is employed or contracted with the office of
 13 administrative law proceedings, the director of the office of
 14 administrative law proceedings, in writing for review of the ruling
 15 within ten (10) days after notice of the ruling is served. The ultimate
 16 authority shall:
- 17 (1) conduct proceedings described by section 28 of this chapter;
 18 or
 19 (2) request that the director of the office of administrative law
 20 proceedings conduct proceedings described by section 28 of this
 21 chapter;
- 22 to review the petition and affirm, modify, or dissolve the ruling within
 23 thirty (30) days after the petition is filed. A determination by the
 24 ultimate authority or the director of the office of administrative law
 25 proceedings under this subsection is a final order subject to judicial
 26 review under IC 4-21.5-5.
- 27 ~~(f)~~ **(h)** If a substitute is required for an administrative law judge who
 28 is disqualified or becomes unavailable for any other reason, the
 29 substitute must be appointed in accordance with subsection (a).
- 30 ~~(g)~~ **(i)** Any action taken by a duly appointed substitute for a
 31 disqualified or unavailable administrative law judge is as effective as
 32 if taken by the latter.
- 33 ~~(h)~~ **(j)** If there is a reasonable likelihood that the ultimate authority
 34 will be called upon to:
- 35 (1) review; or
 36 (2) issue a final order with respect to;
 37 a matter pending before or adjudicated by an administrative law judge,
 38 the provisions of section 11 of this chapter that apply to an
 39 administrative law judge or to a person communicating with an
 40 administrative law judge apply to a member of the ultimate authority
 41 and to a person communicating with a member of the ultimate
 42 authority.



1 SECTION 7. IC 4-21.5-3-10, AS AMENDED BY THE
 2 TECHNICAL CORRECTIONS BILL OF THE 2024 GENERAL
 3 ASSEMBLY, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 4 JULY 1, 2024]: Sec. 10. (a) An administrative law judge is subject to
 5 disqualification for:

- 6 (1) bias, prejudice, or interest in the outcome of a proceeding;
 7 (2) failure to dispose of the subject of a proceeding in an orderly
 8 and reasonably prompt manner after a written request by a party;
 9 (3) unless waived or extended with the written consent of all
 10 parties or for good cause shown, failure to issue an order not later
 11 than ninety (90) days after the latest of:

12 (A) the filing of a motion to dismiss or a motion for summary
 13 judgment under section 23 of this chapter that is filed after
 14 June 30, 2011;

15 (B) the conclusion of a hearing that begins after June 30, 2011;
 16 or

17 (C) the completion of any schedule set for briefing or for
 18 submittal of proposed findings of fact and conclusions of law
 19 for a disposition under clauses (A) or (B); or

- 20 (4) any cause for which a judge of a court may be disqualified.

21 Before July 1, 2020, nothing in this subsection prohibits an individual
 22 who is an employee of an agency from serving as an administrative law
 23 judge.

24 (b) This subsection does not apply to a proceeding concerning a
 25 regulated occupation (as defined in IC 25-1-7-1), except for a
 26 proceeding concerning a water well driller (as described in IC 25-39-3)
 27 or an out of state mobile health care entity regulated by the Indiana
 28 department of health. An individual who is disqualified under
 29 subsection (a)(2) or (a)(3) shall provide the parties a list of at least
 30 three (3) special administrative law judges who meet the requirements
 31 of:

32 ~~(1) IC 4-21.5-7-6, if the case is pending in the office of~~
 33 ~~environmental adjudication;~~

34 **(1) section 9(c) of this chapter, if the case involves an**
 35 **environmental matter described in section 9(b) of this**
 36 **chapter;**

37 (2) IC 14-10-2-2, if the case is pending before the division of
 38 hearings of the natural resources commission; or

39 (3) subject to subsection (d), any other statute or rule governing
 40 qualification to serve an agency other than those described in
 41 subdivision (1) or (2).

42 Subject to subsection (c), the parties may agree to the selection of one



1 (1) individual from the list.

2 (c) If the parties do not agree to the selection of an individual as
 3 provided in subsection (b) not later than ten (10) days after the parties
 4 are provided a list of judges under subsection (b), a special
 5 administrative law judge who meets the requirements of subsection (b)
 6 shall be selected under the procedure set forth in Trial Rule 79(D).
 7 ~~79(E), or 79(F).~~

8 (d) This subsection applies after June 30, 2020, to an agency whose
 9 proceedings are subject to the jurisdiction of the office of
 10 administrative law proceedings. If an administrative law judge is
 11 disqualified under this section, the director of the office of
 12 administrative law proceedings shall assign another administrative law
 13 judge.

14 SECTION 8. IC 4-21.5-3-27 IS AMENDED TO READ AS
 15 FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 27. (a) If the
 16 administrative law judge is the ultimate authority for the agency, the
 17 ultimate authority's order disposing of a proceeding is a final order. If
 18 the administrative law judge is not the ultimate authority, the
 19 administrative law judge's order disposing of the proceeding becomes
 20 a final order when affirmed under section 29 of this chapter. Regardless
 21 of whether the order is final, it must comply with this section.

22 (b) This subsection applies only to an order not subject to subsection
 23 (c). The order must include, separately stated, findings of fact for all
 24 aspects of the order, including the remedy prescribed and, if applicable,
 25 the action taken on a petition for stay of effectiveness. Findings of
 26 ultimate fact must be accompanied by a concise statement of the
 27 underlying basic facts of record to support the findings. The order must
 28 also include a statement of the available procedures and time limit for
 29 seeking administrative review of the order (if administrative review is
 30 available) **and the procedures and time limits for seeking judicial
 31 review of the order under IC 4-21.5-5.**

32 (c) This subsection applies only to an order of the ultimate authority
 33 entered under IC 13, IC 14, or IC 25. The order must include separately
 34 stated findings of fact and, if a final order, conclusions of law for all
 35 aspects of the order, including the remedy prescribed and, if applicable,
 36 the action taken on a petition for stay of effectiveness. Findings of
 37 ultimate fact must be accompanied by a concise statement of the
 38 underlying basic facts of record to support the findings. Conclusions of
 39 law must consider prior final orders (other than negotiated orders) of
 40 the ultimate authority under the same or similar circumstances if those
 41 prior final orders are raised on the record in writing by a party and must
 42 state the reasons for deviations from those prior orders. The order must



1 also include a statement of the available procedures and time limit for
 2 seeking administrative review of the order (if administrative review is
 3 available) **and the procedures and time limits for seeking judicial**
 4 **review of the order under IC 4-21.5-5.**

5 (d) Findings must be based exclusively upon the evidence of record
 6 in the proceeding and on matters officially noticed in that proceeding.
 7 Findings must be based upon the kind of evidence that is substantial
 8 and reliable. The administrative law judge's experience, technical
 9 competence, and specialized knowledge may be used in evaluating
 10 evidence.

11 (e) A substitute administrative law judge may issue the order under
 12 this section upon the record that was generated by a previous
 13 administrative law judge.

14 (f) The administrative law judge may allow the parties a designated
 15 amount of time after conclusion of the hearing for the submission of
 16 proposed findings.

17 (g) An order under this section shall be issued in writing within
 18 ninety (90) days after conclusion of the hearing or after submission of
 19 proposed findings in accordance with subsection (f), unless this period
 20 is waived or extended with the written consent of all parties or for good
 21 cause shown.

22 (h) The administrative law judge shall have copies of the order
 23 under this section delivered to each party and to the ultimate authority
 24 for the agency (if it is not rendered by the ultimate authority).

25 SECTION 9. IC 4-21.5-3-27.5, AS AMENDED BY P.L.249-2023,
 26 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 27 JULY 1, 2024]: Sec. 27.5. (a) In a proceeding under this chapter
 28 concerning an agency action, the administrative law judge shall order
 29 the agency to pay the reasonable attorney's fees incurred in the
 30 proceeding by the prevailing party challenging the agency action if:

31 (1) the party challenging the agency action proves, by a
 32 preponderance of the evidence, that:

33 (A) the agency's action was frivolous or groundless; or

34 (B) the agency pursued the action in bad faith;

35 (2) the agency action was ~~based on an invalid~~ **unsupported by a**
 36 **statute or a valid** rule, as provided in IC 4-22-2-44; or

37 (3) the agency has failed to demonstrate that the agency acted
 38 within its legal authority.

39 (b) **Except as provided in subsection (c) and subject to**
 40 **IC 34-52-2-1.5, in a judicial review proceeding, the court shall**
 41 **order the agency to pay the other party's reasonable attorney's fees**
 42 **if:**



1 (1) the other party prevailed before an administrative law
2 judge;

3 (2) the agency initiated the proceeding for judicial review;
4 and

5 (3) the other party prevailed in the judicial review proceeding.

6 (c) In a judicial review proceeding, the court may not award
7 attorney's fees against an agency under this section if:

8 (1) the agency's only involvement in the case resulted from the
9 agency's role as an arbiter of the legal rights, duties,
10 immunities, privileges, or other legal interests of two (2) or
11 more parties; or

12 (2) the position of the agency as a party became unjustified as
13 a result of an intervening change in applicable law.

14 SECTION 10. IC 4-21.5-3-29 IS AMENDED TO READ AS
15 FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 29. (a) This section
16 does not apply if the administrative law judge issuing an order under
17 section 27 of this chapter is the ultimate authority for the agency.

18 (b) After an administrative law judge issues ~~an~~ a **nonfinal** order
19 under section 27 of this chapter, the ultimate authority or its designee
20 shall issue: a ~~final~~ order:

21 (1) a **final order** affirming the **administrative law judge's**
22 **order**;

23 (2) a **final order** modifying the **administrative law judge's**
24 **order**; or

25 (3) ~~dissolving the administrative law judge's order. The ultimate~~
26 ~~authority or its designee may remand an order remanding the~~
27 ~~matter, with or without instructions, to an administrative law~~
28 ~~judge for further proceedings.~~

29 (c) In the absence of an objection or notice under subsection (d) or
30 (e), ~~the ultimate authority or its designee shall affirm the order. The~~
31 **order is final and the agency issuing the nonfinal order shall issue**
32 **a notice of final order within thirty (30) days after the deadline to**
33 **file a notice under subsection (e).**

34 (d) To preserve an objection to an order of an administrative law
35 judge for judicial review, a party must not be in default under this
36 chapter and must object to the order in a writing that:

37 (1) identifies the basis of the objection with reasonable
38 particularity; and

39 (2) is filed with the ultimate authority responsible for reviewing
40 the order.

41 **The written objection must be served on all parties and the agency**
42 **issuing the nonfinal order** within fifteen (15) days (or any longer



1 period set by statute) after the order is served on the petitioner.

2 (e) Without an objection under subsection (d), the ultimate authority
3 or its designee may serve written notice of its intent to review any issue
4 related to the order. The notice shall be served on all parties, **the**
5 **agency issuing the nonfinal order**, and all other persons described by
6 section 5(d) of this chapter **within sixty (60) days after the nonfinal**
7 **order is served on the parties**. The notice **of intent to review** must
8 identify the issues that the ultimate authority or its designee intends to
9 review.

10 (f) A final order disposing of a proceeding or an order remanding an
11 order to an administrative law judge for further proceedings shall be
12 issued within sixty (60) days after the latter of:

- 13 (1) the date that the order was issued under section 27 of this
14 chapter;
15 (2) the receipt of briefs; or
16 (3) the close of oral argument;

17 unless the period is waived or extended with the written consent of all
18 parties or for good cause shown.

19 (g) After remand of an order under this section to an administrative
20 law judge, the judge's order is also subject to review under this section.

21 SECTION 11. IC 4-21.5-3-31 IS AMENDED TO READ AS
22 FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 31. (a) An **agency**
23 **ultimate authority** has jurisdiction to modify a final order under this
24 section before the earlier of the following:

- 25 (1) Thirty (30) days after the agency has served the final order
26 under section 27, 29, or 30 of this chapter.
27 (2) Another agency assumes jurisdiction over the final order
28 under section 30 of this chapter.
29 (3) A court assumes jurisdiction over the final order under
30 IC 4-21.5-5.

31 (b) A party may petition the ultimate authority for an agency for a
32 stay of effectiveness of a final order. The ultimate authority or its
33 designee may, before or after the order becomes effective, stay the final
34 order in whole or in part.

35 (c) A party may petition the ultimate authority for an agency for a
36 rehearing of a final order. The ultimate authority or its designee may
37 grant a petition for rehearing only if the petitioning party demonstrates
38 that:

- 39 (1) the party is not in default under this chapter;
40 (2) newly discovered material evidence exists; and
41 (3) the evidence could not, by due diligence, have been
42 discovered and produced at the hearing in the proceeding.



1 The rehearing may be limited to the issues directly affected by the
 2 newly discovered evidence. If the rehearing is conducted by a person
 3 other than the ultimate authority, section 29 of this chapter applies to
 4 review of the order resulting from the rehearing.

5 (d) ~~Clerical mistakes and other errors resulting from oversight or~~
 6 ~~omission~~ **Errors** in a final order or other part of the record of a
 7 proceeding may be corrected by an ultimate authority or its designee on
 8 the motion of any party or on the motion of the ultimate authority or its
 9 designee.

10 (e) An action of a petitioning party or an agency under this section,
 11 **neither including a motion to correct error**, tolls the period in which
 12 a party may object to a second agency under section 30 of this chapter
 13 ~~nor and~~ tolls the period in which a party may petition for judicial
 14 review under IC 4-21.5-5. ~~However, if a rehearing is granted under~~
 15 ~~subsection (c), these periods are tolled and a new period begins on the~~
 16 ~~date that a new final order is served. A new period begins to run on~~
 17 **the date a motion to correct error is denied or a new order is**
 18 **issued. A motion to correct error or motion for a rehearing is**
 19 **deemed denied thirty (30) days after it was filed if there is no ruling**
 20 **on the motion or no hearing is set on the motion.**

21 SECTION 12. IC 4-21.5-5-11 IS AMENDED TO READ AS
 22 FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 11. (a) Judicial review
 23 of disputed issues of fact must be confined to the agency record for the
 24 agency action supplemented by additional evidence taken under section
 25 12 of this chapter. ~~The court may not try the cause de novo or substitute~~
 26 ~~its judgment for that of the agency. A court is not bound by a finding~~
 27 **of fact made by the ultimate authority if the finding of fact is not**
 28 **supported by the record.**

29 (b) **The court shall decide all questions of law, including any**
 30 **interpretation of a federal or state constitutional provision, state**
 31 **statute, or agency rule, without deference to any previous**
 32 **interpretation made by the agency.**

33 SECTION 13. IC 4-21.5-5-13 IS AMENDED TO READ AS
 34 FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 13. (a) ~~Within Not~~
 35 **later than thirty (30) days after the filing of the petition, after receipt**
 36 **of the petition for judicial review served under section 8 of this**
 37 **chapter** or within further time allowed by the court or by other law, the
 38 ~~petitioner~~ **office or ultimate authority** shall transmit to the court the
 39 original or a certified copy of the agency record for judicial review of
 40 the agency action.

41 (b) ~~consisting~~ **The record consists of:**
 42 (1) any agency documents expressing the agency action;



1 (2) other documents identified by the agency as having been
 2 considered by it before its action and used as a basis for its action;
 3 and

4 (3) any other material described in this article as the agency
 5 record for the type of agency action at issue, subject to this
 6 section.

7 ~~(b)~~ (c) An extension of time in which to file the record shall be
 8 granted by the court for good cause shown. Inability **of the office or**
 9 **ultimate authority** to **obtain compile** the record ~~from the responsible~~
 10 ~~agency~~ within the time permitted by this section is good cause. ~~Failure~~
 11 ~~to file the record within the time permitted by this subsection, including~~
 12 ~~any extension period ordered by the court, is cause for dismissal of the~~
 13 ~~petition for review by the court, on its own motion, or on petition of any~~
 14 ~~party of record to the proceeding.~~

15 ~~(c)~~ (d) Upon a written request by the petitioner, the agency taking
 16 the action being reviewed shall prepare the agency record for the
 17 petitioner. If part of the record has been preserved without a transcript,
 18 the agency shall prepare a transcript for inclusion in the record
 19 transmitted to the court, except for portions that the parties to the
 20 judicial review proceeding stipulate to omit in accordance with
 21 subsection ~~(e)~~. (f).

22 ~~(d)~~ (e) Notwithstanding IC 5-14-3-8, the agency shall charge the
 23 petitioner with the reasonable cost of preparing any necessary copies
 24 and transcripts for transmittal to the court, unless a person files with the
 25 court, under oath and in writing, the statement described by
 26 IC 33-37-3-2.

27 ~~(e)~~ (f) By stipulation of all parties to the review proceedings, the
 28 record may be shortened, summarized, or organized.

29 ~~(f)~~ (g) The court may tax the cost of preparing transcripts and copies
 30 for the record:

31 (1) against a party to the judicial review proceeding who
 32 unreasonably refuses to stipulate to shorten, summarize, or
 33 organize the record; or

34 (2) in accordance with the rules governing civil actions in the
 35 courts or other law.

36 ~~(g)~~ (h) Additions to the record concerning evidence received under
 37 section 12 of this chapter must be made as ordered by the court. The
 38 court may require or permit subsequent corrections or additions to the
 39 record.

40 SECTION 14. IC 4-21.5-5-14 IS AMENDED TO READ AS
 41 FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 14. (a) The burden of
 42 demonstrating the invalidity of agency action is on the party to the



1 judicial review proceeding asserting invalidity.

2 (b) The validity of agency action shall be determined in accordance
3 with the standards of review provided in this section, as applied to the
4 agency action at the time it was taken.

5 (c) The court shall make findings of fact on each material issue on
6 which the court's decision is based.

7 (d) The court shall grant relief under section 15 of this chapter only
8 if it determines that a person seeking judicial relief has been prejudiced
9 by an agency action that is:

10 (1) arbitrary, capricious, an abuse of discretion, or otherwise not
11 in accordance with law;

12 (2) contrary to constitutional right, power, privilege, or immunity;

13 (3) in excess of statutory jurisdiction, authority, or limitations, or
14 short of statutory right;

15 (4) without observance of procedure required by law; or

16 (5) unsupported by ~~substantial~~ **a preponderance of the evidence**.

17 SECTION 15. IC 4-21.5-7 IS REPEALED [EFFECTIVE JULY 1,
18 2024]. (Environmental Adjudication).

19 SECTION 16. IC 4-22-2-19.6, AS ADDED BY P.L.249-2023,
20 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
21 JULY 1, 2024]: Sec. 19.6. (a) A rule adopted under this article or
22 IC 13-14-9 that includes a fee, fine, or civil penalty must comply with
23 this section. Subsections (b), (c), and (d) do not apply to a rule that
24 must be adopted in a certain form to comply with federal law.

25 (b) For each fee, fine, or civil penalty imposed by an agency that is
26 not set as a specific amount in a state law, a rule must describe the
27 circumstances for which the agency will assess a fee, fine, or civil
28 penalty and set forth the amount of the fee, fine, or civil penalty:

29 (1) as a specific dollar amount;

30 (2) under a formula by which a specific dollar amount can be
31 reasonably calculated by persons regulated or otherwise affected
32 by the rule; or

33 (3) as a range of potential dollar amounts, stating the factors that
34 the agency will utilize to set a specific dollar amount in an
35 individual case with sufficient certainty that a review of an agency
36 action under IC 4-21.5 or comparable process can evaluate
37 whether the amount was reasonable.

38 A rule concerning fines or civil penalties does not prohibit an agency
39 to enter into a settlement agreement with a person against whom a fine
40 or civil penalty is being assessed to determine the fine or civil penalty
41 to be paid for a violation.

42 (c) The amount of a fee must be reasonably based on the amount



- 1 necessary to carry out the purposes for which the fee is imposed.
- 2 (d) An agency setting a fine or civil penalty shall consider the
- 3 following:
- 4 (1) Whether the violation has a major or minor impact on the
- 5 health, safety, or welfare of a person, the health or safety of
- 6 animals or natural resources, or other facts set forth in the
- 7 agency's rule.
- 8 (2) The number of previous violations committed by the offender
- 9 of laws, rules, or programs administered by the agency.
- 10 (3) The need for deterrence of future violations.
- 11 (4) Whether the conduct, if proved beyond a reasonable doubt,
- 12 would constitute a criminal offense, and the level of penalty set by
- 13 law for the criminal offense.
- 14 (e) An agency is not liable for a fee, fine, or civil penalty that is not
- 15 in conformity with this section if:
- 16 (1) the fee, fine, or civil penalty was included in a rule that
- 17 became effective before January 1, 2023, and that otherwise
- 18 complies with subsection (b);
- 19 (2) the fee, fine, or civil penalty was:
- 20 (A) set by an agency before January 1, 2023;
- 21 (B) reviewed by the budget committee:
- 22 (i) in the case of the department of environmental
- 23 management, the boards listed in IC 13-14-9-1, ~~the office of~~
- 24 ~~environmental adjudication~~, the natural resources
- 25 commission, the department of natural resources, the
- 26 Indiana gaming commission, and the Indiana horse racing
- 27 commission, before December 31, 2023; and
- 28 (ii) in the case of an agency not described in item (i), before
- 29 July 1, 2024; and
- 30 (C) included in a rule that complies with this section and
- 31 becomes effective before:
- 32 (i) in the case of the department of environmental
- 33 management, the boards listed in IC 13-14-9-1, ~~the office of~~
- 34 ~~environmental adjudication~~, the natural resources
- 35 commission, the department of natural resources, the
- 36 Indiana gaming commission, and the Indiana horse racing
- 37 commission, December 31, 2024; and
- 38 (ii) in the case of an agency not described in item (i), July 1,
- 39 2025; or
- 40 (3) the agency withdraws or otherwise ceases to enforce or apply
- 41 the fee, fine, or civil penalty before:
- 42 (A) in the case of the department of environmental



1 management, the boards listed in IC 13-14-9-1, ~~the office of~~
 2 ~~environmental adjudication~~, the natural resources commission,
 3 the department of natural resources, the Indiana gaming
 4 commission, and the Indiana horse racing commission,
 5 December 31, 2023; and
 6 (B) in the case of an agency not described in clause (A), July
 7 1, 2024.

8 Readoption without changes under IC 4-22-2.6 of a nonconforming fee,
 9 fine, or civil penalty that meets the requirements of subdivision (1) or
 10 (2) does not invalidate the nonconforming fee, fine, or civil penalty.

11 (f) Beginning January 1, 2024, an agency shall post on its website
 12 a schedule of fines and civil penalties that apply to violations of laws,
 13 rules, and requirements of federal programs administered by the
 14 agency.

15 SECTION 17. IC 13-14-8-11 IS AMENDED TO READ AS
 16 FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec.11. (a) A person
 17 affected by a decision of the commissioner under sections 8 and 9 of
 18 this chapter may, within fifteen (15) days after receipt of notice of the
 19 decision, appeal the decision to the office of ~~environmental~~
 20 ~~adjudication~~ **administrative law proceedings**. All proceedings under
 21 this section to appeal the commissioner's decision are governed by
 22 IC 4-21.5.

23 (b) The commissioner's decision to grant a variance does not take
 24 effect until available administrative remedies are exhausted.

25 SECTION 18. IC 13-15-6-1 IS AMENDED TO READ AS
 26 FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 1. (a) Not later than
 27 fifteen (15) days after being served the notice provided by the
 28 commissioner under IC 13-15-5-3:

29 (1) the permit applicant; or

30 (2) any other person aggrieved by the commissioner's action;

31 may appeal the commissioner's action to the office of ~~environmental~~
 32 ~~adjudication~~ **administrative law proceedings** and request that an
 33 ~~environmental administrative~~ law judge hold an adjudicatory hearing
 34 concerning the action under IC 4-21.5-3 and ~~IC 4-21.5-7~~ **IC 4-15-10.5**.

35 (b) Notwithstanding subsection (a) and IC 4-21.5-3-7(a)(3), a person
 36 may file an appeal of the commissioner's action in issuing an initial
 37 permit under the operating permit program under 42 U.S.C. 7661
 38 through 7661f not later than thirty (30) days after the date the person
 39 received the notice provided under IC 13-15-5-3, for a permit issued
 40 after April 30, 1999.

41 SECTION 19. IC 13-15-6-3 IS AMENDED TO READ AS
 42 FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 3. (a) Not later than



1 thirty (30) days after being served a request for an adjudicatory hearing,
 2 an ~~environmental~~ **administrative** law judge under ~~IC 4-21.5-7~~
 3 **IC 4-15-10.5** shall, if the ~~environmental~~ **administrative** law judge
 4 determines that:

- 5 (1) the request was properly submitted; and
 - 6 (2) the request establishes a jurisdictional basis for a hearing;
- 7 assign the matter for a hearing.

8 (b) Upon assigning the matter for a hearing, an ~~environmental~~
 9 **administrative** law judge may stay the force and effect of the
 10 following:

- 11 (1) A contested permit provision.
- 12 (2) A permit term or condition the ~~environmental~~ **administrative**
 13 law judge considers inseverable from a contested permit
 14 provision.

15 (c) After a final hearing under this section, a final order of an
 16 ~~environmental~~ **administrative** law judge on a permit application is
 17 subject to review under IC 4-21.5-5.

18 SECTION 20. IC 13-15-7-3 IS AMENDED TO READ AS
 19 FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 3. A person aggrieved
 20 by the revocation or modification of a permit may appeal the revocation
 21 or modification to the office of ~~environmental adjudication~~
 22 **administrative law proceedings** for an administrative review under
 23 IC 4-21.5-3. Pending the decision resulting from the hearing under
 24 IC 4-21.5-3 concerning the permit revocation or modification, the
 25 permit remains in force. However, the commissioner may seek
 26 injunctive relief with regard to the activity described in the permit
 27 while the decision resulting from the hearing is pending.

28 SECTION 21. IC 13-17-3-7 IS AMENDED TO READ AS
 29 FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 7. (a) The
 30 commissioner may enter into agreed orders as provided in
 31 IC 13-30-3-6.

32 (b) An ~~environmental~~ **administrative** law judge under ~~IC 4-21.5-7~~
 33 **IC 4-15-10.5** shall review orders and determinations of the
 34 commissioner.

35 SECTION 22. IC 13-17-6-10 IS AMENDED TO READ AS
 36 FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 10. (a) If the
 37 commissioner finds that an asbestos project is not being performed in
 38 accordance with air pollution control laws or rules adopted under air
 39 pollution control laws, the commissioner may enjoin further work on
 40 the asbestos project without prior notice or hearing by delivering a
 41 notice to:

- 42 (1) the asbestos contractor engaged in the asbestos project; or



- 1 (2) the agent or representative of the asbestos contractor.
- 2 (b) A notice issued under this section must:
- 3 (1) specifically enumerate the violations of law that are occurring
- 4 on the asbestos project; and
- 5 (2) prohibit further work on the asbestos project until the
- 6 violations enumerated under subdivision (1) cease and the notice
- 7 is rescinded by the commissioner.
- 8 (c) Not later than ten (10) days after receiving written notification
- 9 from a contractor that violations enumerated in a notice issued under
- 10 this section have been corrected, the commissioner shall issue a
- 11 determination whether or not to rescind the notice.
- 12 (d) An asbestos contractor or any other person aggrieved or
- 13 adversely affected by the issuance of a notice under subsection (a) may
- 14 obtain a review of the commissioner's action under IC 4-21.5 and
- 15 ~~IC 4-21.5-7~~-**IC 4-15-10.5**.
- 16 SECTION 23. IC 13-18-3-4 IS AMENDED TO READ AS
- 17 FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 4. (a) The
- 18 commissioner may enter into agreed orders as provided in
- 19 IC 13-30-3-6.
- 20 (b) An ~~environmental~~ **administrative** law judge under ~~IC 4-21.5-7~~
- 21 **IC 4-15-10.5** shall review orders and determinations of the
- 22 commissioner.
- 23 SECTION 24. IC 13-18-11-8, AS AMENDED BY P.L.159-2011,
- 24 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 25 JULY 1, 2024]: Sec. 8. (a) The commissioner may suspend or revoke
- 26 the certificate of an operator issued under this chapter, following a
- 27 hearing under IC 13-15-7-3 and IC 4-21.5, if any of the following
- 28 conditions are found:
- 29 (1) The operator has practiced fraud or deception in any state or
- 30 other jurisdiction.
- 31 (2) Reasonable care, judgment, or the application of the operator's
- 32 knowledge or ability was not used in the performance of the
- 33 operator's duties.
- 34 (3) The operator is incompetent or unable to properly perform the
- 35 operator's duties.
- 36 (4) A certificate of the operator issued:
- 37 (A) under this chapter; or
- 38 (B) by any other state or jurisdiction for a purpose comparable
- 39 to the purpose for which a certificate is issued under this
- 40 chapter;
- 41 has been revoked.
- 42 (5) The operator has been convicted of a crime related to a



1 certificate of the operator issued:

2 (A) under this chapter; or

3 (B) by any other state or jurisdiction for a purpose comparable
4 to the purpose for which a certificate is issued under this
5 chapter.

6 (b) A hearing and further proceedings shall be conducted in
7 accordance with ~~IC 4-21.5-7~~. **IC 4-15-10.5.**

8 SECTION 25. IC 13-19-3-2 IS AMENDED TO READ AS
9 FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 2. (a) The
10 commissioner may enter into agreed orders as provided in
11 IC 13-30-3-6.

12 (b) An ~~environmental~~ **administrative** law judge under ~~IC 4-21.5-7~~
13 **IC 4-15-10.5** shall review orders and determinations of the
14 commissioner.

15 SECTION 26. IC 13-20-13-5.5, AS AMENDED BY P.L.263-2013,
16 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
17 JULY 1, 2024]: Sec. 5.5. (a) A certificate of registration issued by the
18 department under this chapter may be revoked or modified by the
19 commissioner, or by a designated staff member of the department, after
20 notification in writing is sent in accordance with IC 13-14-2-1 to the
21 holder of the certificate for:

22 (1) failure to disclose all relevant facts;

23 (2) making a misrepresentation in obtaining the registration; or

24 (3) failure to correct, within the time established by the
25 department:

26 (A) a violation of a condition of the registration; or

27 (B) a violation of this chapter or a rule adopted by the board
28 under section 11 of this chapter.

29 (b) A person aggrieved by the revocation or modification of a
30 certificate of registration may appeal the revocation or modification to
31 the office of ~~environmental adjudication~~ **administrative law**
32 **proceedings** under ~~IC 4-21.5-7~~. **IC 4-15-10.5.** Pending the decision
33 resulting from a hearing under IC 4-21.5-3 concerning the revocation
34 or modification, the registration remains in force. However, subsequent
35 to revocation or modification, the commissioner may seek injunctive
36 relief concerning the activity described in the registration.

37 SECTION 27. IC 13-20-14-5.6, AS AMENDED BY P.L.263-2013,
38 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
39 JULY 1, 2024]: Sec. 5.6. (a) A certificate of registration issued by the
40 department under this chapter may be revoked or modified by the
41 commissioner, or by a designated staff member of the department, after
42 notification in writing is sent in accordance with IC 13-14-2-1 to the



1 holder of the certificate, for:

- 2 (1) failure to disclose all relevant facts;
 3 (2) making a misrepresentation in obtaining the registration; or
 4 (3) failure to correct, within the time established by the
 5 department, a violation of:
 6 (A) a condition of the registration;
 7 (B) this chapter; or
 8 (C) a rule adopted by the board under section 6 of this chapter.

9 (b) A person aggrieved by the revocation or modification of a
 10 certificate of registration may appeal the revocation or modification to
 11 the office of ~~environmental adjudication~~ **administrative law**
 12 **proceedings** under ~~IC 4-21.5-7~~ **IC 4-15-10.5**. Pending the decision
 13 resulting from a hearing under IC 4-21.5-3 concerning the revocation
 14 or modification, the registration remains in force. However, subsequent
 15 to revocation or modification, the commissioner may seek injunctive
 16 relief concerning the activity described in the registration.

17 SECTION 28. IC 13-23-9-4, AS AMENDED BY P.L.96-2016,
 18 SECTION 37, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 19 JULY 1, 2024]: Sec. 4. If the administrator denies an ELTF claim
 20 under this chapter, the claimant may appeal the denial under IC 4-21.5
 21 to the office of ~~environmental adjudication~~ **administrative law**
 22 **proceedings** under ~~IC 4-21.5-7~~ **IC 4-15-10.5**.

23 SECTION 29. IC 13-24-1-4 IS AMENDED TO READ AS
 24 FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 4. (a) Except where an
 25 owner or operator can prove that a release from a petroleum facility
 26 was caused by:

- 27 (1) an act of God;
 28 (2) an act of war;
 29 (3) negligence on the part of a local government, the state
 30 government, or the federal government;
 31 (4) except as provided in subsection (b), an act or omission of a
 32 responsible person; or
 33 (5) a combination of the causes set forth in subdivisions (1)
 34 through (4);

35 the owner or operator is liable to the state for the reasonable costs of
 36 any response or remedial action taken under section 2 of this chapter
 37 involving the petroleum facility. A responsible person is liable to the
 38 state for the reasonable costs of any response or remedial action taken
 39 under section 2 of this chapter involving the petroleum facility.

40 (b) The owner, operator, or responsible person is entitled to all
 41 rights of the state to recover from another responsible person all or a
 42 part of the costs described in subsection (a) incurred or paid to the state



1 by the owner, operator, or responsible person in an action brought in a
 2 circuit or superior court with jurisdiction in the county in which the
 3 release occurred.

4 (c) Money recovered by the state under this section in connection
 5 with a removal or remedial action undertaken with respect to a release
 6 of petroleum shall be deposited in the hazardous substances response
 7 trust fund.

8 (d) The state may recover removal or remedial action costs under
 9 this section as follows:

10 (1) Commence an action under IC 13-14-2-6 or IC 13-14-2-7.

11 (2) Impose a lien under IC 13-25-4-11 on the property on which
 12 the removal or the remedial action was undertaken.

13 (e) In an administrative action brought under this chapter, an
 14 ~~environmental~~ **administrative** law judge shall apportion the costs of
 15 a response or a remedial action in proportion to each party's
 16 responsibility for a release.

17 SECTION 30. IC 13-25-4-20 IS AMENDED TO READ AS
 18 FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 20. (a) Before the date
 19 on which the state intends to impose a lien on real property under
 20 section 11 of this chapter, the owner of the real property may request
 21 that a hearing be conducted under IC 4-21.5. A hearing conducted
 22 under this section and IC 4-21.5 shall be limited to determining if there
 23 is probable cause to believe that:

24 (1) a removal or a remedial action was conducted on the real
 25 property under:

26 (A) this chapter; or

27 (B) IC 13-24-1; and

28 (2) if the removal or the remedial action was conducted under this
 29 chapter, the owner of the real property would be subject to
 30 liability under 42 U.S.C. 9607 (Section 107 of the federal
 31 Comprehensive Environmental Response, Compensation, and
 32 Liability Act).

33 (b) For the purposes of a hearing conducted under this section and
 34 IC 4-21.5, an ~~environmental~~ **administrative** law judge is the ultimate
 35 authority.

36 SECTION 31. IC 13-30-3-5 IS AMENDED TO READ AS
 37 FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 5. (a) Except as
 38 otherwise provided in:

39 (1) a notice issued under section 4 of this chapter; or

40 (2) a law relating to emergency orders;

41 an order of the commissioner under this chapter takes effect twenty
 42 (20) days after the alleged violator receives the notice, unless the



1 alleged violator requests under subsection (b) a review of the order
2 before the twentieth day after receiving the notice.

3 (b) To request a review of the order, the alleged violator must:

4 (1) file a written request with the office of ~~environmental~~
5 ~~adjudication~~ **administrative law proceedings** under ~~IC 4-21.5-7;~~
6 **IC 4-15-10.5**; and

7 (2) serve a copy of the request on the commissioner.

8 (c) If a review of an order is requested under this section, the office
9 of ~~environmental adjudication~~ **administrative law proceedings**
10 established under ~~IC 4-21.5-7~~ **IC 4-15-10.5** shall review the order
11 under IC 4-21.5.

12 SECTION 32. IC 13-30-3-6 IS AMENDED TO READ AS
13 FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 6. If an alleged violator
14 who has requested a review of an order of the commissioner under
15 section 5 of this chapter agrees to resolve the controversy concerning
16 the order in a manner satisfactory to the commissioner before a final
17 order is issued by the office of ~~environmental adjudication~~;
18 **administrative law proceedings**, the commissioner may approve an
19 agreed order based on the agreement.

20 SECTION 33. IC 13-30-3-7 IS AMENDED TO READ AS
21 FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 7. A final order of an
22 ~~environmental~~ **administrative** law judge is subject to judicial review
23 under IC 4-21.5-5.

24 SECTION 34. IC 14-10-2-2.5, AS ADDED BY P.L.84-2008,
25 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
26 JULY 1, 2024]: Sec. 2.5. (a) A person who is the party in a hearing
27 under this title or ~~IC 4-21.5-7~~ **IC 4-15-10.5** may move to have the:

28 (1) ~~environmental~~ **administrative** law judge appointed under
29 ~~IC 4-21.5-7;~~ **IC 4-15-10.5**; or

30 (2) administrative law judge appointed under section 2 of this
31 chapter;

32 consolidate multiple proceedings that are subject to the jurisdiction of
33 both the office of ~~environmental adjudication~~ **administrative law**
34 **proceedings** and the division of hearings.

35 (b) ~~The environmental law judge or the An~~ administrative law judge
36 shall grant the motion made under subsection (a) if the following
37 findings are made:

38 (1) The proceedings include the following:

39 (A) Common questions of law or fact.

40 (B) At least one (1) person, other than the department or the
41 department of environmental management, who is a party to
42 all the proceedings.



- 1 (C) Issues of water quality, water quantity, or both.
 2 (2) Consolidation may support administrative efficiency.
 3 (c) If a motion to consolidate proceedings has been granted under
 4 subsection (b), the hearing must be conducted by a panel that consists
 5 of at least ~~one (1) environmental law judge and one (1) two (2)~~
 6 administrative law ~~judge.~~ **judges**. The panel is the ultimate authority
 7 for matters authorized under IC 4-21.5-7-5 and this title. Any party,
 8 including the department and the department of environmental
 9 management, may petition an appropriate court for judicial review of
 10 a final determination of the panel.
 11 (d) The office of ~~environmental adjudication~~ **administrative law**
 12 **proceedings** and the division of hearings shall adopt joint rules to
 13 implement this section.
 14 SECTION 35. IC 14-34-2-2, AS AMENDED BY P.L.84-2008,
 15 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 16 JULY 1, 2024]: Sec. 2. (a) The commission shall appoint the following:
 17 (1) An administrative law judge to conduct proceedings under
 18 IC 4-21.5. An administrative law judge is subject to IC 14-10-2-2.
 19 (2) A hearing officer to conduct proceedings under IC 4-22-2.
 20 (b) An administrative law judge is the ultimate authority for the
 21 department for any administrative review proceeding under this article,
 22 except for the following:
 23 (1) Proceedings concerning the approval or disapproval of a
 24 permit application or permit renewal under IC 14-34-4-13.
 25 (2) Proceedings for suspension or revocation of a permit under
 26 IC 14-34-15-7.
 27 (3) Proceedings consolidated with the office of ~~environmental~~
 28 ~~adjudication~~ **administrative law proceedings** under
 29 IC 14-10-2-2.5.
 30 (c) An order made by an administrative law judge granting or
 31 denying temporary relief from a decision of the director is a final order
 32 of the department.
 33 (d) Judicial review of a final order made by an administrative law
 34 judge under subsection (b) or (c) or under IC 13-4.1-2-1(c) or
 35 IC 13-4.1-2-1(d) (before their repeal) may be taken under IC 4-21.5-5.
 36 SECTION 36. IC 34-52-2-1.5, AS ADDED BY P.L.249-2023,
 37 SECTION 82, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 38 JULY 1, 2024]: Sec. 1.5. (a) In a proceeding **conducted** under
 39 IC 4-21.5-5, ~~to judicially review a final order made by a state agency,~~
 40 the court shall apply the ~~same~~ **same** standard as an administrative law judge
 41 ~~under described in~~ **under described in** IC 4-21.5-3-27.5 regarding an order for the
 42 payment of attorney's fees.



1 (b) An order for the payment of attorney's fees under this section is
2 not subject to sections 2, 3, and 4 of this chapter.

3 SECTION 37. [EFFECTIVE JULY 1, 2024] (a) As used in this
4 SECTION, "office" means the office of environmental adjudication
5 established under IC 4-21.5-7.

6 (b) As used in this SECTION, "office of administrative law
7 proceedings" means the office of administrative law proceedings
8 established under IC 4-15-10.5.

9 (c) On July 1, 2024, all agreements and liabilities of the office
10 are transferred to the office of administrative law proceedings, as
11 the successor agency.

12 (d) On July 1, 2024, all records and property of the office,
13 including appropriations and other funds under the control or
14 supervision of the office, are transferred to the office of
15 administrative law proceedings, as the successor agency.

16 (e) After July 1, 2024, any amounts owed to the office before
17 July 1, 2024, are considered to be owed to the office of
18 administrative law proceedings, as the successor agency.

19 (f) After July 1, 2024, a reference to the office in a statute, rule,
20 or other document is considered a reference to the office of
21 administrative law proceedings, as the successor agency.

22 (g) After July 1, 2024, a reference to an environmental law
23 judge is considered a reference to an administrative law judge
24 under IC 4-15-10.5.

25 (h) All powers, duties, agreements, and liabilities of the office
26 with respect to bonds issued by the office in connection with any
27 trust agreement or indenture securing those bonds are transferred
28 to the office of administrative law proceedings, as the successor
29 agency.

30 (i) The director and employees of the office on June 30, 2024,
31 become employees of the office of administrative law proceedings
32 on July 1, 2024, without change in compensation, seniority, or
33 benefits, and are entitled to have their service under the office
34 included for purposes of computing any applicable employment
35 and retirement benefits.

36 (j) After July 1, 2024, all pending proceedings of the office are
37 transferred to the office of administrative law proceedings.

38 (k) Until the office of administrative law proceedings adopts or
39 amends rules related to environmental matters, the office must
40 continue to follow and implement rules under 315 IAC.

41 (l) The office of administrative law proceedings must continue
42 to index and make publicly available, in a substantially similar



1 **online searchable format, the final orders of contested appeals**
2 **currently maintained by the office.**

3 **(m) This SECTION expires July 1, 2025.**



COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1003, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, between lines 26 and 27, begin a new paragraph and insert:

"(b) If the case involves:

(1) adjudication of:

(A) air pollution control laws (as defined in IC 13-11-2-6);

(B) water pollution control laws (as defined in IC 13-11-2-261);

(C) environmental management laws (as defined in IC 13-11-2-71); or

(D) solid waste and hazardous waste management laws under IC 13-19;

(2) rules of a board described in IC 13-14-9-1;

(3) the financial assurance board created by IC 13-23-11-1; or

(4) any agency action of the department of environmental management;

the administrative law judge assigned by the office of administrative law proceedings must meet the requirements listed under subsection (c).

(c) An administrative law judge assigned under subsection (b) must:

(1) be a citizen of Indiana;

(2) be an attorney in good standing admitted to practice in Indiana;

(3) have at least five (5) years of experience practicing environmental or administrative law;

(4) be independent of the agency;

(5) meet the qualifications specific to environmental law as determined by the office of administrative law proceedings' training program; and

(6) be one (1) of three (3) administrative law judges in the office of administrative law proceedings designated to hear environmental matters."

Page 3, line 27, strike "(b)" and insert "(d)".

Page 3, line 30, strike "(c)" and insert "(e)".

Page 3, line 39, strike "(d)." and insert "(f)".

Page 3, line 40, strike "(d)" and insert "(f)".

Page 4, line 3, strike "(e)" and insert "(g)".

Page 4, line 21, strike "(f)" and insert "(h)".

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Page 4, line 24, strike "(g)" and insert "(i)".

Page 4, line 27, strike "(h)" and insert "(j)".

Page 5, between lines 27 and 28, begin a new line block indented and insert:

"(1) section 9(c) of this chapter, if the case involves an environmental matter described in section 9(b) of this chapter;".

Page 5, line 28, reset in roman "(2)".

Page 5, line 28, delete "(1)".

Page 5, line 30, reset in roman "(3)".

Page 5, line 30, delete "(2)".

Page 7, line 24, after "frivolous" delete ";".

Page 7, line 24, reset in roman "or groundless;".

Page 10, line 22, delete "agency" and insert "**office or ultimate authority**".

Page 10, line 35, delete "If the petitioner is the agency, failure" and insert "Failure".

Page 10, line 38, after "court," insert "**unless good cause is shown**".

Page 10, line 39, after "proceeding." insert "**The inability to obtain the record from the office or ultimate authority within the time permitted by this section is good cause.**".

Page 21, between lines 34 and 35, begin a new paragraph and insert:

"(k) Until the office of administrative law proceedings adopts or amends rules related to environmental matters, the office must continue to follow and implement rules under 315 IAC.

(l) The office of administrative law proceedings must continue to index and make publicly available, in a substantially similar online searchable format, the final orders of contested appeals currently maintained by the office."

Page 21, line 35, delete "(k)" and insert "(m)".

and when so amended that said bill do pass.

(Reference is to HB 1003 as introduced.)

JETER

Committee Vote: yeas 11, nays 0.



COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred House Bill No. 1003, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 1-1-5.5-24 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2025]: **Sec. 24. (a) Except as provided in subsection (b), a SECTION of HEA 1003-2024 does not apply to an administrative proceeding or a proceeding for judicial review pending on June 30, 2024.**

(b) A SECTION of HEA 1003-2024 applies to:

- (1) an administrative proceeding or a proceeding for judicial review commenced after June 30, 2024; or**
- (2) an administrative proceeding conducted after June 30, 2024, on remand from a court.**

(c) After June 30, 2024, any reference to a duty of an ultimate authority with respect to an administrative proceeding or proceeding for judicial review shall be construed as a duty of the office of administrative legal proceedings if the office of administrative legal proceedings is the ultimate authority for that agency."

Page 8, delete lines 8 through 36, begin a new paragraph and insert:

"SECTION 8. IC 4-21.5-3-27.5, AS AMENDED BY P.L.249-2023, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: **Sec. 27.5.** In a proceeding under this chapter concerning an agency action, the administrative law judge shall order the agency to pay the reasonable attorney's fees incurred in the proceeding by the prevailing party challenging the agency action if:

- (1) the party challenging the agency action proves, by a preponderance of the evidence, that:**
 - (A) the agency's action was frivolous or groundless; or**
 - (B) the agency pursued the action in bad faith;**
- (2) the agency action was based on an invalid unsupported by a statute or a valid rule, as provided in IC 4-22-2-44; or**
- (3) the agency has failed to demonstrate that the agency acted within its legal authority."**

Page 10, line 28, strike "Clerical mistakes and other errors resulting from oversight or".

Page 10, line 29, strike "omission" and insert "**Errors**".

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Page 10, line 32, after "section" insert ",".

Page 10, line 33, strike "neither" and insert "**including a motion to correct error,**".

Page 10, line 34, strike "nor" and insert "**and**".

Page 10, line 35, strike "However, if a".

Page 10, strike line 36.

Page 10, line 37, strike "a new period begins on the date that a new final order is served." and insert "**A new period begins to run on the date a motion to correct error is denied or a new order is issued. A motion to correct error or motion for a rehearing is deemed denied thirty (30) days after it was filed if there is no ruling on the motion or no hearing is set on the motion.**".

Page 11, line 1, after "agency." insert "**The court shall decide all questions of fact based on the record developed during the administrative hearing independent of any previous factual finding made by the agency.**".

Page 11, line 8, delete ":".

Page 11, line 9, delete "(1)".

Page 11, line 9, strike "after the filing of the petition," and insert "**after receipt of the petition for judicial review served under section 8 of this chapter**".

Page 11, line 9, delete "if the petitioner is the agency;".

Page 11, delete lines 10 through 12.

Page 11, run in lines 8 through 13.

Page 11, delete lines 25 through 34, begin a new paragraph and insert:

~~"(b)~~ **(c)** An extension of time in which to file the record shall be granted by the court for good cause shown. Inability **of the office or ultimate authority** to **obtain compile** the record ~~from the responsible agency~~ within the time permitted by this section is good cause. ~~Failure to file the record within the time permitted by this subsection, including any extension period ordered by the court, is cause for dismissal of the petition for review by the court, on its own motion, or on petition of any party of record to the proceeding.~~

Page 12, between lines 17 and 18, begin a new paragraph and insert:

"SECTION 15. IC 4-21.5-5-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 14. (a) The burden of demonstrating the invalidity of agency action is on the party to the judicial review proceeding asserting invalidity.

(b) The validity of agency action shall be determined in accordance with the standards of review provided in this section, as applied to the agency action at the time it was taken.



(c) The court shall make findings of fact on each material issue on which the court's decision is based.

(d) The court shall grant relief under section 15 of this chapter only if it determines that a person seeking judicial relief has been prejudiced by an agency action that is:

- (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) unsupported by ~~substantial~~ **a preponderance of the** evidence.

(e) In a proceeding in which a nonapplicant petitions as a third party to challenge an agency's issuance of a license, permit, or approval, the court may only grant relief under section 15 of this chapter if the nonapplicant has been prejudiced by an agency action that is:

- (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) unsupported by substantial evidence."**

Page 21, between lines 36 and 37, begin a new paragraph and insert:

"SECTION 36. IC 34-52-2-1.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: **Sec. 1.7. (a) Except as provided in subsection (b), in a judicial review proceeding under IC 4-21.5-5, the court shall order the agency to pay the other party's reasonable attorney's fees if:**

- (1) the party prevailed before an administrative law judge;**
- (2) the agency initiated the proceeding for judicial review;**
- and**
- (3) the party prevailed in the judicial review proceeding.**

(b) In a judicial review proceeding, the court may not award attorney's fees against an agency under this section if:

- (1) the agency's only involvement in the case resulted from the agency's role as an arbiter of the legal rights, duties, immunities, privileges, or other legal interests of two (2) or more parties; or**



(2) the position of the agency as a party became unjustified as a result of an intervening change in applicable law.

(c) An order for the payment of attorney's fees under this section is not subject to section 2, 3, or 4 of this chapter."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1003 as printed January 18, 2024.)

BROWN L, Chairperson

Committee Vote: Yeas 8, Nays 3.

SENATE MOTION

Madam President: I move that Engrossed House Bill 1003 be amended to read as follows:

Page 8, line 27, after "27.5." insert **"(a)"**.

Page 8, between lines 38 and 39, begin a new paragraph and insert:

"(b) Except as provided in subsection (c) and subject to IC 34-52-2-1.5, in a judicial review proceeding, the court shall order the agency to pay the other party's reasonable attorney's fees if:

- (1) the other party prevailed before an administrative law judge;**
- (2) the agency initiated the proceeding for judicial review;**
- and**
- (3) the other party prevailed in the judicial review proceeding.**

(c) In a judicial review proceeding, the court may not award attorney's fees against an agency under this section if:

- (1) the agency's only involvement in the case resulted from the agency's role as an arbiter of the legal rights, duties, immunities, privileges, or other legal interests of two (2) or more parties; or**
- (2) the position of the agency as a party became unjustified as a result of an intervening change in applicable law."**

Page 11, line 9, delete "The court shall decide all" and insert **"A court is not bound by a finding of fact made by the ultimate authority if the finding of fact is not supported by the record."**

Page 11, delete lines 10 through 12.

Page 13, delete lines 1 through 13.

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Page 22, delete lines 33 through 42, begin a new paragraph and insert:

"SECTION 36. IC 34-52-2-1.5, AS ADDED BY P.L.249-2023, SECTION 82, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 1.5. (a) In a proceeding **conducted** under IC 4-21.5-5, ~~to judicially review a final order made by a state agency;~~ the court shall apply the ~~same~~ standard as an administrative law judge ~~under described in~~ IC 4-21.5-3-27.5 regarding an order for the payment of attorney's fees.

(b) An order for the payment of attorney's fees under this section is not subject to sections 2, **3**, and 4 of this chapter."

Page 23, delete lines 1 through 10.

Renumber all SECTIONS consecutively.

(Reference is to EHB 1003 as printed March 1, 2024.)

CARRASCO

