

## SENATE BILL No. 296

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 1-1-5.5-24; IC 4-15-10.5-12; IC 4-21.5.

**Synopsis:** Administrative proceedings. Provides that the office of administrative legal proceedings (OALP) is the ultimate authority for agencies subject to the jurisdiction of the OALP. Provides that a court conducting a judicial review hearing shall review questions of law and fact de novo. Makes conforming amendments.

**Effective:** July 1, 2025.

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**Garten, Baldwin, Koch, Holdman,  
Brown L, Freeman, Glick, Gaskill,  
Buck, Niemeyer, Alexander, Raatz,  
Charbonneau, Rogers, Bassler,  
Buchanan, Walker K, Donato, Doriot,  
Messmer, Zay, Crane, Tomes, Byrne,  
Johnson T, Deery, Carrasco, Maxwell**

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January 16, 2024, read first time and referred to Committee on Judiciary.

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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.

# SENATE BILL No. 296



A BILL FOR AN ACT to amend the Indiana Code concerning administrative law.

*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 this act does not apply to an administrative**
- 5 **proceeding or a proceeding for judicial review pending on June 30,**
- 6 **2025.**
- 7 **(b) A SECTION of this act applies to:**
- 8 **(1) an administrative proceeding or a proceeding for judicial**
- 9 **review commenced after June 30, 2025; and**
- 10 **(2) an administrative proceeding conducted after June 30,**
- 11 **2025, on remand from a court.**
- 12 **(c) After June 30, 2025, any reference to an act that an agency**
- 13 **in its capacity as the ultimate authority:**
- 14 **(1) may take;**
- 15 **(2) shall take;**
- 16 **(3) may not take; or**
- 17 **(4) shall not take;**



1 shall be construed as a reference to an act that, as applicable, may,  
 2 shall, may not, or shall not be taken by the office of administrative  
 3 legal proceedings if the office of administrative legal proceedings  
 4 is the ultimate authority for that agency.

5 SECTION 2. IC 4-15-10.5-12, AS ADDED BY P.L.205-2019,  
 6 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 7 JULY 1, 2025]: Sec. 12. (a) ~~Beginning July 1, 2020, and~~ Except as  
 8 provided in sections 1 and 2 of this chapter, the office has jurisdiction  
 9 over all administrative proceedings concerning agency administrative  
 10 actions under:

11 (1) IC 4-21.5; or

12 (2) any other statute that requires or allows the office to take  
 13 action.

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

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

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

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

22 **(b) Except as provided in subsection (c), the office is the ultimate**  
 23 **authority in any administrative proceedings under its jurisdiction.**  
 24 **Judicial review under IC 4-21.5 shall be taken directly from a final**  
 25 **decision of the office.**

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

27 **(1) a particular agency or agency action is exempted under**  
 28 **Indiana law; or**

29 **(2) an agency is required by federal mandate, as a condition**  
 30 **of federal funding, to conduct or render a final order in an**  
 31 **adjudication.**

32 SECTION 3. IC 4-21.5-1-15 IS AMENDED TO READ AS  
 33 FOLLOWS [EFFECTIVE JULY 1, 2025]: Sec. 15. **Subject to**  
 34 **IC 4-15-10.5-12, "ultimate authority" means:**

35 **(1) for an administrative proceeding under the office of**  
 36 **administrative law proceedings, the office of administrative**  
 37 **law proceedings; or**

38 **(2) for any other purpose, an individual or panel of individuals**  
 39 **in whom the final authority of an agency is vested by law or**  
 40 **executive order.**

41 SECTION 4. IC 4-21.5-3-9, AS AMENDED BY P.L.13-2021,  
 42 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



1 JULY 1, 2025]; Sec. 9. (a) Except to the extent that a statute other than  
 2 this article limits an agency's discretion to select an administrative law  
 3 judge, the ultimate authority for an agency may:

- 4 (1) act as an administrative law judge;  
 5 (2) designate one (1) or more members of the ultimate authority  
 6 (if the ultimate authority is a panel of individuals) to act as an  
 7 administrative law judge; or  
 8 (3) before July 1, 2020, designate one (1) or more:  
 9 (A) attorneys licensed to practice law in Indiana; or  
 10 (B) persons who served as administrative law judges for a state  
 11 agency before January 1, 2014;

12 to act as an administrative law judge. After June 30, 2020, the  
 13 ultimate authority for an agency may request assignment of an  
 14 administrative law judge by the office of administrative law  
 15 proceedings.

16 A person designated under subdivision (3) is not required to be an  
 17 employee of the agency. A designation under subdivision (2) or (3)  
 18 may be made in advance of the commencement of any particular  
 19 proceeding for a generally described class of proceedings or may be  
 20 made for a particular proceeding. A general designation may provide  
 21 procedures for the assignment of designated individuals to particular  
 22 proceedings.

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

26 (c) If the administrative law judge assigned to the proceeding  
 27 believes that the judge's impartiality might reasonably be questioned,  
 28 or believes that the judge's personal bias, prejudice, or knowledge of a  
 29 disputed evidentiary fact might influence the decision, the  
 30 administrative law judge shall:

- 31 (1) withdraw as the administrative law judge; or  
 32 (2) inform the parties of the potential basis for disqualification,  
 33 place a brief statement of this basis on the record of the  
 34 proceeding, and allow the parties an opportunity to petition for  
 35 disqualification under subsection (d).

36 (d) Any party to a proceeding may petition for the disqualification  
 37 of an administrative law judge upon discovering facts establishing  
 38 grounds for disqualification under this chapter. The administrative law  
 39 judge assigned to the proceeding shall determine whether to grant the  
 40 petition, stating facts and reasons for the determination.

41 (e) If the administrative law judge ruling on the disqualification  
 42 issue is not the ultimate authority for the agency, the party petitioning



1 for disqualification may petition the ultimate authority, or, if the  
 2 administrative law judge is employed or contracted with the office of  
 3 administrative law proceedings, the director of the office of  
 4 administrative law proceedings, in writing for review of the ruling  
 5 within ten (10) days after notice of the ruling is served. The ultimate  
 6 authority shall:

7 (1) conduct proceedings described by section 28 of this chapter;

8 or

9 (2) request that the director of the office of administrative law  
 10 proceedings conduct proceedings described by section 28 of this  
 11 chapter;

12 to review the petition and affirm, modify, or dissolve the ruling within  
 13 thirty (30) days after the petition is filed. A determination by the  
 14 ultimate authority or the director of the office of administrative law  
 15 proceedings under this subsection is a final order subject to judicial  
 16 review under IC 4-21.5-5.

17 (f) If a substitute is required for an administrative law judge who is  
 18 disqualified or becomes unavailable for any other reason, the substitute  
 19 must be appointed in accordance with subsection (a).

20 (g) Any action taken by a duly appointed substitute for a  
 21 disqualified or unavailable administrative law judge is as effective as  
 22 if taken by the latter.

23 (h) If there is a reasonable likelihood that the ultimate authority will  
 24 be called upon to:

25 (1) review; or

26 (2) issue a final order with respect to;

27 a matter pending before or adjudicated by an administrative law judge,  
 28 the provisions of section 11 of this chapter that apply to an  
 29 administrative law judge or to a person communicating with an  
 30 administrative law judge apply to a member of the ultimate authority  
 31 and to a person communicating with a member of the ultimate  
 32 authority.

33 SECTION 5. IC 4-21.5-3-27 IS AMENDED TO READ AS  
 34 FOLLOWS [EFFECTIVE JULY 1, 2025]: Sec. 27. (a) If the  
 35 administrative law judge is the ultimate authority for the agency, the  
 36 ultimate authority's order disposing of a proceeding is a final order. If  
 37 the administrative law judge is not the ultimate authority, the  
 38 administrative law judge's order disposing of the proceeding becomes  
 39 a final order when affirmed under section 29 of this chapter. Regardless  
 40 of whether the order is final, it must comply with this section.

41 (b) This subsection applies only to an order not subject to subsection  
 42 (c). The order must include, separately stated, findings of fact for all



1 aspects of the order, including the remedy prescribed and, if applicable,  
2 the action taken on a petition for stay of effectiveness. Findings of  
3 ultimate fact must be accompanied by a concise statement of the  
4 underlying basic facts of record to support the findings. The order must  
5 also include a statement of the available procedures and time limit for  
6 seeking administrative review of the order (if administrative review is  
7 available) **and the procedures and time limits for seeking judicial**  
8 **review of the order under IC 4-21.5-5.**

9 (c) This subsection applies only to an order of the ultimate authority  
10 entered under IC 13, IC 14, or IC 25. The order must include separately  
11 stated findings of fact and, if a final order, conclusions of law for all  
12 aspects of the order, including the remedy prescribed and, if applicable,  
13 the action taken on a petition for stay of effectiveness. Findings of  
14 ultimate fact must be accompanied by a concise statement of the  
15 underlying basic facts of record to support the findings. Conclusions of  
16 law must consider prior final orders (other than negotiated orders) of  
17 the ultimate authority under the same or similar circumstances if those  
18 prior final orders are raised on the record in writing by a party and must  
19 state the reasons for deviations from those prior orders. The order must  
20 also include a statement of the available procedures and time limit for  
21 seeking administrative review of the order (if administrative review is  
22 available) **and the procedures and time limits for seeking judicial**  
23 **review of the order under IC 4-21.5-5.**

24 (d) Findings must be based exclusively upon the evidence of record  
25 in the proceeding and on matters officially noticed in that proceeding.  
26 Findings must be based upon the kind of evidence that is substantial  
27 and reliable. The administrative law judge's experience, technical  
28 competence, and specialized knowledge may be used in evaluating  
29 evidence.

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

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

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

41 (h) The administrative law judge shall have copies of the order  
42 under this section delivered to each party and to the ultimate authority



1 for the agency (if it is not rendered by the ultimate authority).

2 SECTION 6. IC 4-21.5-3-31 IS AMENDED TO READ AS  
3 FOLLOWS [EFFECTIVE JULY 1, 2025]: Sec. 31. (a) An ~~agency~~  
4 **ultimate authority** has jurisdiction to modify a final order under this  
5 section before the earlier of the following:

6 (1) Thirty (30) days after the agency has served the final order  
7 under section 27, 29, or 30 of this chapter.

8 (2) Another agency assumes jurisdiction over the final order  
9 under section 30 of this chapter.

10 (3) A court assumes jurisdiction over the final order under  
11 IC 4-21.5-5.

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

16 (c) A party may petition the ultimate authority for an agency for a  
17 rehearing of a final order. The ultimate authority or its designee may  
18 grant a petition for rehearing only if the petitioning party demonstrates  
19 that:

20 (1) the party is not in default under this chapter;

21 (2) newly discovered material evidence exists; and

22 (3) the evidence could not, by due diligence, have been  
23 discovered and produced at the hearing in the proceeding.

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

28 (d) Clerical mistakes and other errors resulting from oversight or  
29 omission in a final order or other part of the record of a proceeding may  
30 be corrected by an ultimate authority or its designee on the motion of  
31 any party or on the motion of the ultimate authority or its designee.

32 (e) An action of a petitioning party or an agency under this section  
33 neither tolls the period in which a party may object to a second agency  
34 under section 30 of this chapter nor tolls the period in which a party  
35 may petition for judicial review under IC 4-21.5-5. However, if a  
36 rehearing is granted under subsection (c), these periods are tolled and  
37 a new period begins on the date that a new final order is served.

38 SECTION 7. IC 4-21.5-5-11 IS AMENDED TO READ AS  
39 FOLLOWS [EFFECTIVE JULY 1, 2025]: Sec. 11. (a) Judicial review  
40 of disputed issues of fact must be confined to the agency record for the  
41 agency action supplemented by additional evidence taken under section  
42 12 of this chapter. ~~The court may not try the cause de novo or substitute~~



1 its judgment for that of the agency. The court shall decide all  
2 questions of fact de novo based on the record developed during the  
3 administrative hearing.

4 (b) The court shall decide all questions of law de novo, including  
5 any interpretation of a federal or state constitutional provision,  
6 state statute, or agency rule, without deference to any previous  
7 interpretation made by the agency.

