

# PROPOSED AMENDMENT

## HB 1003 # 12

### DIGEST

Administrative actions. Provides that the bill applies to certain proceedings filed after June 30, 2024, and specifies that certain references to an agency acting in its capacity as the ultimate authority shall be construed as references to the office of administrative legal proceedings. Moves provisions concerning attorney's fees in judicial review proceedings to Title 34. Permits a final order to be corrected by means of a motion to correct error. Specifies the standard of review for certain factual findings on judicial review. Requires the ultimate authority to compile the agency record and transmit the record to the court not later than 30 days after receipt of service of the petition for judicial review. Establishes a standard for a court to grant relief on a petition filed by a nonapplicant as a third party to challenge an agency's issuance of a license, permit, or approval. Makes other changes and conforming amendments.

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- 1           Page 1, between the enacting clause and line 1, begin a new  
2 paragraph and insert:  
3           "SECTION 1. IC 1-1-5.5-24 IS ADDED TO THE INDIANA CODE  
4 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
5 1, 2025]: **Sec. 24. (a) Except as provided in subsection (b), a**  
6 **SECTION of HEA 1003-2024 does not apply to an administrative**  
7 **proceeding or a proceeding for judicial review pending on June 30,**  
8 **2024.**  
9           **(b) A SECTION of HEA 1003-2024 applies to:**  
10           **(1) an administrative proceeding or a proceeding for judicial**  
11           **review commenced after June 30, 2024; or**  
12           **(2) an administrative proceeding conducted after June 30,**  
13           **2024, on remand from a court.**  
14           **(c) After June 30, 2024, any reference to a duty of an ultimate**  
15 **authority with respect to an administrative proceeding or**  
16 **proceeding for judicial review shall be construed as a duty of the**  
17 **office of administrative legal proceedings if the office of**  
18 **administrative legal proceedings is the ultimate authority for that**  
19 **agency."**  
20           Page 8, delete lines 8 through 36, begin a new paragraph and insert:  
21           "SECTION 8. IC 4-21.5-3-27.5, AS AMENDED BY P.L.249-2023,

1 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
2 JULY 1, 2024]: Sec. 27.5. In a proceeding under this chapter  
3 concerning an agency action, the administrative law judge shall order  
4 the agency to pay the reasonable attorney's fees incurred in the  
5 proceeding by the prevailing party challenging the agency action if:

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

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

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

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

12 (3) the agency has failed to demonstrate that the agency acted  
13 within its legal authority."

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

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

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

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

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

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

22 Page 10, strike line 36.

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

29 Page 11, line 1, after "agency." insert "**The court shall decide all**  
30 **questions of fact based on the record developed during the**  
31 **administrative hearing without deference to any previous factual**  
32 **finding made by the agency.**".

33 Page 11, line 8, delete ":".

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

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

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

39 Page 11, delete lines 10 through 12.

40 Page 11, run in lines 8 through 13.

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

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

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

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

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

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

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

- 24 (1) arbitrary, capricious, an abuse of discretion, or otherwise not
- 25 in accordance with law;
- 26 (2) contrary to constitutional right, power, privilege, or immunity;
- 27 (3) in excess of statutory jurisdiction, authority, or limitations, or
- 28 short of statutory right;
- 29 (4) without observance of procedure required by law; or
- 30 (5) unsupported by ~~substantial~~ **a preponderance of the** evidence.

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

- 36 **(1) arbitrary, capricious, an abuse of discretion, or otherwise**
- 37 **not in accordance with law;**
- 38 **(2) contrary to constitutional right, power, privilege, or**
- 39 **immunity;**
- 40 **(3) in excess of statutory jurisdiction, authority, or limitations**

- 1           **or short of statutory right;**  
 2           **(4) without observance of procedure required by law; or**  
 3           **(5) unsupported by substantial evidence."**

4           Page 21, between lines 36 and 37, begin a new paragraph and insert:  
 5           "SECTION 36. IC 34-52-2-1.7 IS ADDED TO THE INDIANA  
 6           CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
 7           [EFFECTIVE JULY 1, 2024]: **Sec. 1.7. (a) Except as provided in**  
 8           **subsection (b), in a judicial review proceeding under IC 4-21.5-5,**  
 9           **the court shall order the agency to pay the other party's reasonable**  
 10          **attorney's fees if:**

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

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

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

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

25          Renumber all SECTIONS consecutively.

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