Reprinted
January 17, 2014

# HOUSE BILL No. 1121

DIGEST OF HB 1121 (Updated January 16, 2014 11:14 am - DI 75)

**Citations Affected:** IC 4-21.5; IC 4-22.

**Synopsis:** Administrative adjudication. Authorizes an agency to share an administrative law judge with another agency. Requires an agency to adopt rules establishing a code of judicial conduct for administrative law judges. Provides that if an administrative law judge who is not the ultimate authority or a member of the ultimate authority is not an attorney licensed to practice law in Indiana, any review of the administrative law judge's proceedings must be de novo. Prohibits the ultimate authority from communicating with certain persons, including: (1) a party; (2) a person with an interest in the outcome; or (3) a person who presided at an earlier stage of the proceeding; concerning a matter pending before or adjudicated by an administrative law judge if there is a reasonable likelihood that the ultimate authority will be called upon to review or issue a final order with respect to the matter. Specifies when a party has standing to obtain judicial review of an agency action. Requires that an agency's rulemaking docket must contain certain additional information.

**Effective:** July 1, 2014.

## Koch

January 9, 2014, read first time and referred to Committee on Government and Regulatory Reform.
January 14, 2014, reported — Do Pass.
January 16, 2014, read second time, amended, ordered engrossed.

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Second Regular Session 118th General Assembly (2014)

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 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

# HOUSE BILL No. 1121

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:*

SECTION 1. IC 4-21.5-3-8.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 8.5. (a) An agency may share an administrative law judge with another agency:**

**(1) to avoid bias, prejudice, interest in the outcome, or another conflict of interest;**

**(2) if a party requests a change of administrative law judge;**

**(3) to ease scheduling difficulties; or**

**(4) for another good cause.**

**An agency may adopt rules under IC 4-22-2 to implement this subsection.**

**(b) An agency shall adopt rules under IC 4-22-2 establishing a code of judicial conduct for administrative law judges, including an ultimate authority acting as an administrative law judge.**

**(c) To the extent practicable, an administrative law judge must have expertise in the area of law being adjudicated.**

SECTION 2. IC 4-21.5-3-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 9. (a) Except to the extent that a statute other than this article limits an agency's discretion to select an administrative law judge, the ultimate authority for an agency may:

(1) act as an administrative law judge;

(2) designate one (1) or more members of the ultimate authority (if the ultimate authority is a panel of individuals) to act as an administrative law judge; or

(3) designate one (1) or more other individuals, not necessarily employees of the agency, to act as an administrative law judge.

A designation under subdivision (2) or (3) may be made in advance of the commencement of any particular proceeding for a generally described class of proceedings or may be made for a particular proceeding. A general designation may provide procedures for the assignment of designated individuals to particular proceedings.

**(b) If a designation under subsection (a)(3) does not include at least one (1) attorney licensed to practice law in Indiana, any review of the administrative law judge's proceedings shall be de novo.**

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

~~(c)~~ **(d)** If the judge believes that the judge's impartiality might reasonably be questioned, or believes that the judge's personal bias, prejudice, or knowledge of a disputed evidentiary fact might influence the decision, an individual assigned to serve alone or with others as an administrative law judge shall:

(1) withdraw as the administrative law judge; or

(2) inform the parties of the potential basis for disqualification, place a brief statement of this basis on the record of the proceeding, and allow the parties an opportunity to petition for disqualification under subsection (d).

~~(d)~~ **(e)** Any party to a proceeding may petition for the disqualification of an individual serving alone or with others as an administrative law judge upon discovering facts establishing grounds for disqualification under this chapter. The administrative law judge assigned to the proceeding shall determine whether to grant the petition, stating facts and reasons for the determination. If the administrative law judge ruling on the disqualification issue is not the ultimate authority for the agency, the party petitioning for disqualification may petition the ultimate authority in writing for

review of the ruling within ten (10) days after notice of the ruling is served. The ultimate authority shall conduct proceedings described by section 28 of this chapter to review the petition and affirm, modify, or dissolve the ruling within thirty (30) days after the petition is filed. A determination by the ultimate authority under this subsection is a final order subject to judicial review under IC 4-21.5-5.

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

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

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

**(1) review; or**

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

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

SECTION 3. IC 4-21.5-3-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 24. (a) At any stage of a proceeding, if a party fails to:

(1) **satisfy the requirements of section 7(a) of this chapter;**

**(2)** file a responsive pleading required by statute or rule;

~~(2)~~ **(3)** attend or participate in a prehearing conference, hearing, or other stage of the proceeding; or

~~(3)~~ **(4)** take action on a matter for a period of sixty (60) days, if the party is responsible for taking the action;

the administrative law judge may serve upon all parties written notice of a proposed default or dismissal order, including a statement of the grounds.

(b) Within seven (7) days after service of a proposed default or dismissal order, the party against whom it was issued may file a written motion requesting that the proposed default order not be imposed and stating the grounds relied upon. During the time within which a party may file a written motion under this subsection, the administrative law judge may adjourn the proceedings or conduct them without the participation of the party against whom a proposed default order was issued, having due regard for the interest of justice and the orderly and

prompt conduct of the proceedings.

(c) If the party has failed to file a written motion under subsection (b), the administrative law judge shall issue the default or dismissal order. If the party has filed a written motion under subsection (b), the administrative law judge may either enter the order or refuse to enter the order.

(d) After issuing a default order, the administrative law judge shall conduct any further proceedings necessary to complete the proceeding without the participation of the party in default and shall determine all issues in the adjudication, including those affecting the defaulting party. The administrative law judge may conduct proceedings in accordance with section 23 of this chapter to resolve any issue of fact.

SECTION 4. IC 4-21.5-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 1. Except as provided in IC 22-9 and IC 22-9.5, **and subject to IC 4-21.5-3-9(b),** this chapter establishes the exclusive means for judicial review of an agency action. However, a subpoena, discovery order, or protective order issued under this article may be contested only in an action for civil enforcement under IC 4-21.5-6-2.

SECTION 5. IC 4-21.5-5-3, AS AMENDED BY P.L.219-2007, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 3. (a) The following have standing to obtain judicial review of an agency action:

(1) A person to whom the **final** agency action is specifically directed.

(2) A person who was a party to the ~~agency~~ proceedings **of the ultimate authority** that led to the **final** agency action, **including the agency whose order was under review in the proceeding.**

(3) A person eligible for standing under a law applicable to the **final** agency action.

(4) A person otherwise aggrieved or adversely affected by the **final** agency action.

(b) A person has standing under subsection (a)(4) only if:

(1) the **final** agency action has prejudiced or is likely to prejudice the interests of the person;

(2) the person:

(A) was eligible for an initial notice of an order or proceeding under this article, was not notified of the order or proceeding in substantial compliance with this article, and did not have actual notice of the order or proceeding before the last date in the proceeding that the person could object or otherwise intervene to contest the agency action; or

(B) was qualified to intervene to contest an agency action under IC 4-21.5-3-21(a), petitioned for intervention in the proceeding, and was denied party status;

(3) the person's asserted interests are among those that the agency was required to consider when it engaged in the agency action challenged; and

(4) a judgment in favor of the person would substantially eliminate or redress the prejudice to the person caused or likely to be caused by the **final** agency action.

SECTION 6. IC 4-21.5-5-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 11. Judicial review of disputed issues of fact must be confined to the agency record for the agency action supplemented by additional evidence taken under section 12 of this chapter. **Except as provided in IC 4-21.5-3-9(b),** the court may not try the cause de novo or substitute its judgment for that of the agency.

SECTION 7. IC 4-22-2-22.5, AS ADDED BY P.L.152-2012, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 22.5. (a) This section applies to a rule that an agency intends to adopt under sections 24 through 36 of this chapter.

(b) **As used in this section, "pending rulemaking action" means any rulemaking action in which:**

**(1) either:**

**(A) a notice of intent has been published under section 23 of this chapter; or**

**(B) a rulemaking action has been commenced under IC 13-14-9; and**

**(2) the rule has not become effective under section 36 of this chapter.**

**(c)** Each agency shall maintain a current rulemaking docket that is indexed.

~~(c)~~ **(d)** A current rulemaking docket must list each pending rulemaking ~~proceeding~~ **action.** The docket must state or contain:

(1) the subject matter of the proposed rule;

(2) notices related to the proposed rule, **or links to the Indiana Register where these notices may be viewed;**

(3) how comments may be made;

(4) the time within which comments may be made;

(5) where comments **and the agency's written response to those comments** may be inspected;

(6) ~~requests for a~~ **the date, time, and place where a** public hearing **required under:**

**(A) section 26 of this chapter; or**

**(B) IC 13-14-9;**

**will be held;**

~~(7) appropriate information about a public hearing, if any, including the names of the persons making the request;~~

~~(8)~~ **(7)** a description of relevant scientific and technical findings related to the proposed rule, **if applicable;** and

~~(9)~~ **(8) a reasonable estimate of** the timetable for action, **updated periodically as circumstances change, if necessary.**

~~(d)~~ **(e)** The agency shall maintain the rulemaking docket on the agency's Internet web site. The information must be in an open format that can be easily searched and downloaded. Access to the docket shall, to the extent feasible and permitted by law, provide an opportunity for public comment on the pertinent parts of the rulemaking docket, including relevant scientific and technical findings. Upon request, the agency shall provide a written rulemaking docket.

COMMITTEE REPORT

MR. SPEAKER:

Your Committee on Government and Regulatory Reform, to which was referred House Bill 1121, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

(Reference is to HB 1121 as introduced.)

Committee Vote: Yeas 13, Nays 0

Representative Mahan

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1121 be amended to read as follows:

Page 2, line 10, reset in roman "other individuals".

Page 2, line 10, after "individuals" insert ",".

Page 2, line 10, delete "attorneys".

Page 2, line 11, delete "licensed to practice law in Indiana,".

Page 2, between lines 17 and 18, begin a new paragraph and insert:

"**(b) If a designation under subsection (a)(3) does not include at least one (1) attorney licensed to practice law in Indiana, any review of the administrative law judge's proceedings shall be de novo.**".

Page 2, line 18, strike "(b)" and insert "**(c)**".

Page 2, line 21, strike "(c)" and insert "**(d)**".

Page 2, line 31, strike "(d)" and insert "**(e)**".

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

Page 3, line 7, strike "(f)" and insert "**(g)**".

Page 3, line 10, delete "(g)" and insert "**(h)**".

Page 4, between lines 9 and 10, begin a new paragraph and insert:

"SECTION 4. IC 4-21.5-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 1. Except as provided in IC 22-9 and IC 22-9.5, **and subject to IC 4-21.5-3-9(b),** this chapter establishes the exclusive means for judicial review of an agency action. However, a subpoena, discovery order, or protective order issued under this article may be contested only in an action for civil enforcement under IC 4-21.5-6-2.".

Page 4, between lines 41 and 42, begin a new paragraph and insert:

"SECTION 6. IC 4-21.5-5-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 11. Judicial review of disputed issues of fact must be confined to the agency record for the agency action supplemented by additional evidence taken under section 12 of this chapter. **Except as provided in IC 4-21.5-3-9(b),** the court may not try the cause de novo or substitute its judgment for that of the agency.".

Renumber all SECTIONS consecutively.

(Reference is to HB 1121 as printed January 14, 2014.)

KOCH