

# SENATE MOTION

**MADAM PRESIDENT:**

**I move** that Engrossed House Bill 1280 be amended to read as follows:

- 1           Page 5, delete lines 6 through 23, begin a new paragraph and insert:  
2           "SECTION 5. IC 4-21.5-1-3 IS AMENDED TO READ AS  
3           FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 3. **(a)** "Agency" means,  
4           **except as provided in subsection (b)**, any officer, board, commission,  
5           department, division, bureau, or committee of state government that is  
6           responsible for any stage of a proceeding under this article. Except as  
7           provided in IC 4-21.5-7, the term does not include the judicial  
8           department of state government, the legislative department of state  
9           government, or a political subdivision.  
10          **(b) "Agency", for purposes of IC 4-21.5-2-8 and IC 4-21.5-2.7,**  
11          **means any officer, board, commission, department, division,**  
12          **bureau, or committee of state government in the executive**  
13          **department of state government, including the administrative**  
14          **department.**  
15          SECTION 6. IC 4-21.5-1-13 IS AMENDED TO READ AS  
16          FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 13. **(a)** "Proceeding"  
17          refers, **except as provided in subsection (b)**, to a proceeding under  
18          this article.  
19          **(b) "Proceeding", for purposes of IC 4-21.5-2.7, means any part**  
20          **of:**  
21                 **(1) a preliminary proceeding required to issue an order after**  
22                 **giving notice of the proposed order to the affected party; or**  
23                 **(2) a proceeding conducted to administratively review an**  
24                 **affected person's petition to review an order;**  
25          **including the consideration of related motions.**  
26          SECTION 7. IC 4-21.5-2-8 IS ADDED TO THE INDIANA CODE  
27          AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
28          1, 2012]: Sec. 8. **Notwithstanding sections 4, 5, and 6 of this chapter,**  
29          **IC 4-21.5-2.7 applies to all agencies in the executive department of**  
30          **state government, including the administrative department.**

1 SECTION 8. IC 4-21.5-2.7 IS ADDED TO THE INDIANA CODE  
2 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2012]:

4 **Chapter 2.7. Qualifications of Administrative Law Judge or**  
5 **Other Hearing Officer**

6 **Sec. 1. This chapter applies to all agencies notwithstanding any**  
7 **law enacted before April 1, 2012.**

8 **Sec. 2. This chapter does not apply to the following:**

9 (1) **The ultimate authority for an agency, or a member of the**  
10 **ultimate authority for an agency when the ultimate authority**  
11 **is a panel of individuals.**

12 (2) **An individual who is hired by an agency as a full-time**  
13 **administrative law judge or other hearing officer before April**  
14 **1, 2012, and is continuously employed by the agency as a**  
15 **full-time administrative law judge or other hearing officer**  
16 **after March 31, 2012.**

17 **Sec. 3. The administrative law judge or other hearing officer for**  
18 **a proceeding must be an attorney licensed to practice law in**  
19 **Indiana.**

20 **Sec. 4. An agency may not knowingly assign an individual to**  
21 **serve alone or with others as an administrative law judge or other**  
22 **hearing officer if the individual is subject to disqualification under**  
23 **this chapter.**

24 **Sec. 5. If an individual appointed as an administrative law judge**  
25 **or other hearing officer believes that the individual is disqualified**  
26 **under this chapter from serving as an administrative law judge or**  
27 **other hearing officer, the individual shall withdraw as the**  
28 **administrative law judge or other hearing officer.**

29 **Sec. 6. Any party to a proceeding may petition for the**  
30 **disqualification of an individual serving alone or with others as an**  
31 **administrative law judge or other hearing officer upon discovering**  
32 **facts establishing grounds for disqualification under this chapter.**  
33 **The administrative law judge or other hearing officer assigned to**  
34 **the proceeding shall determine whether to grant the petition,**  
35 **stating facts and reasons for the determination. If the**  
36 **administrative law judge or other hearing officer ruling on the**  
37 **disqualification issue is not the ultimate authority for the agency,**  
38 **the party petitioning for disqualification may petition the ultimate**  
39 **authority in writing for review of the ruling not later than ten (10)**  
40 **days after notice of the ruling is served. The ultimate authority**  
41 **shall conduct proceedings described by IC 4-21.5-3-28 to review**  
42 **the petition and affirm, modify, or dissolve the ruling not later than**  
43 **thirty (30) days after the petition is filed. A determination by the**  
44 **ultimate authority under this section is a final order subject to**  
45 **judicial review under IC 4-21.5-5.**

46 **Sec. 7. If a substitute is required for an administrative law judge**  
47 **or other hearing officer who is disqualified or becomes unavailable**

1 for any other reason, the substitute must be appointed by the  
 2 ultimate authority for the agency. Any action taken by an  
 3 appointed substitute for a disqualified or unavailable  
 4 administrative law judge or other hearing officer is as effective as  
 5 if taken by the administrative law judge or other hearing officer.

6 SECTION 9. IC 4-21.5-3-9 IS AMENDED TO READ AS  
 7 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 9. (a) Except to the  
 8 extent that a statute other than this article limits an agency's discretion  
 9 to select an administrative law judge, the ultimate authority for an  
 10 agency may:

- 11 (1) act as an administrative law judge;
- 12 (2) designate one (1) or more members of the ultimate authority  
 13 (if the ultimate authority is a panel of individuals) to act as an  
 14 administrative law judge; or
- 15 (3) designate one (1) or more other individuals, not necessarily  
 16 employees of the agency, to act as an administrative law judge.

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

22 **(b) This subsection does not apply to an individual who is hired**  
 23 **by an agency as a full-time administrative law judge before April**  
 24 **1, 2012, and is continuously employed by the agency as a full-time**  
 25 **administrative law judge after March 31, 2012. An individual**  
 26 **designated under subsection (a)(3) must be an attorney licensed to**  
 27 **practice law in Indiana.**

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

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

- 36 (1) withdraw as the administrative law judge; or
- 37 (2) inform the parties of the potential basis for disqualification,  
 38 place a brief statement of this basis on the record of the  
 39 proceeding, and allow the parties an opportunity to petition for  
 40 disqualification under subsection ~~(d)~~: (e).

41 ~~(d)~~ (e) Any party to a proceeding may petition for the  
 42 disqualification of an individual serving alone or with others as an  
 43 administrative law judge upon discovering facts establishing grounds  
 44 for disqualification under this chapter. The administrative law judge  
 45 assigned to the proceeding shall determine whether to grant the  
 46 petition, stating facts and reasons for the determination. If the

1 administrative law judge ruling on the disqualification issue is not the  
2 ultimate authority for the agency, the party petitioning for  
3 disqualification may petition the ultimate authority in writing for  
4 review of the ruling within ten (10) days after notice of the ruling is  
5 served. The ultimate authority shall conduct proceedings described by  
6 section 28 of this chapter to review the petition and affirm, modify, or  
7 dissolve the ruling within thirty (30) days after the petition is filed. A  
8 determination by the ultimate authority under this subsection is a final  
9 order subject to judicial review under IC 4-21.5-5.

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

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

16 Renumber all SECTIONS consecutively.

(Reference is to EHB 1280 as printed February 24, 2012.)

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Senator BRODEN