

1 **Administrative Procedures Act Amendments**

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karianne Lisonbee

2
3 **LONG TITLE**

4 **Committee Note:**

5 The Judiciary Interim Committee recommended this bill.

6 Legislative Vote: 12 voting for 0 voting against 5 absent

7 **General Description:**

8 This bill modifies provisions of the Administrative Procedures Act.

9 **Highlighted Provisions:**

10 This bill:

- 11 ▶ provides cross references;
- 12 ▶ describes when an order or decree constitutes a final agency action; and
- 13 ▶ makes technical changes.

14 **Money Appropriated in this Bill:**

15 None

16 **Other Special Clauses:**

17 None

18 **Utah Code Sections Affected:**

19 **AMENDS:**

20 **19-1-301.5**, as last amended by Laws of Utah 2018, Chapter 281

21 **59-1-205**, as last amended by Laws of Utah 2003, Chapter 80

22 **63G-4-302**, as renumbered and amended by Laws of Utah 2008, Chapter 382

23 **63G-4-401**, as last amended by Laws of Utah 2023, Chapter 433

24 **63G-4-403**, as last amended by Laws of Utah 2024, Chapter 158

25 **78A-3-102**, as last amended by Laws of Utah 2009, Chapter 344

26 **78A-4-103**, as last amended by Laws of Utah 2023, Chapter 516

28 *Be it enacted by the Legislature of the state of Utah:*

29 Section 1. Section **19-1-301.5** is amended to read:

30 **19-1-301.5 . Permit review adjudicative proceedings.**

31 (1) As used in this section:

- 32 (a) "Dispositive action" means a final agency action that:
- 33 (i) the executive director takes as part of a special adjudicative proceeding; and
- 34 (ii) is subject to judicial review, in accordance with Subsection (16).
- 35 (b) "Dispositive motion" means a motion that is equivalent to:
- 36 (i) a motion to dismiss under Utah Rules of Civil Procedure, Rule 12(b)(6);
- 37 (ii) a motion for judgment on the pleadings under Utah Rules of Civil Procedure,
- 38 Rule 12(c); or
- 39 (iii) a motion for summary judgment under Utah Rules of Civil Procedure, Rule 56.
- 40 (c) "Financial assurance determination" means a decision on whether a facility, site,
- 41 plan, party, broker, owner, operator, generator, or permittee has met financial
- 42 assurance or financial responsibility requirements as determined by the director of the
- 43 Division of Waste Management and Radiation Control.
- 44 (d) "Party" means:
- 45 (i) the director who issued the permit order or financial assurance determination that
- 46 is being challenged in the special adjudicative proceeding under this section;
- 47 (ii) the permittee;
- 48 (iii) the person who applied for the permit, if the permit was denied;
- 49 (iv) the person who is subject to a financial assurance determination; or
- 50 (v) a person granted intervention by the administrative law judge.
- 51 (e) "Permit" means any of the following issued under this title:
- 52 (i) a permit;
- 53 (ii) a plan;
- 54 (iii) a license;
- 55 (iv) an approval order; or
- 56 (v) another administrative authorization made by a director.
- 57 (f)(i) "Permit order" means an order issued by a director that:
- 58 (A) approves a permit;
- 59 (B) renews a permit;
- 60 (C) denies a permit;
- 61 (D) modifies or amends a permit; or
- 62 (E) revokes and reissues a permit.
- 63 (ii) "Permit order" does not include an order terminating a permit.
- 64 (g) "Special adjudicative proceeding" means a proceeding under this section to resolve a
- 65 challenge to a:

- 66 (i) permit order; or
67 (ii) financial assurance determination.
- 68 (2) This section governs special adjudicative proceedings.
- 69 (3) Except as expressly provided in this section, the provisions of Title 63G, Chapter 4,
70 Administrative Procedures Act, do not apply to a special adjudicative proceeding under
71 this section.
- 72 (4) If a public comment period was provided during the permit application process or the
73 financial assurance determination process, a person who challenges an order or
74 determination may only raise an issue or argument during the special adjudicative
75 proceeding that:
- 76 (a) the person raised during the public comment period; and
77 (b) was supported with information or documentation that is cited with reasonable
78 specificity and sufficiently enables the director to fully consider the substance and
79 significance of the issue.
- 80 (5)(a) Upon request by a party, the executive director shall issue a notice of
81 appointment appointing an administrative law judge, in accordance with Subsections
82 19-1-301(5) and (6), to conduct a special adjudicative proceeding under this section.
- 83 (b) The executive director shall issue a notice of appointment within 30 days after the
84 day on which a party files a request.
- 85 (c) A notice of appointment shall include:
- 86 (i) the agency's file number or other reference number assigned to the special
87 adjudicative proceeding;
88 (ii) the name of the special adjudicative proceeding; and
89 (iii) the administrative law judge's name, title, mailing address, email address, and
90 telephone number.
- 91 (6)(a) Only the following may file a petition for review of a permit order or financial
92 assurance determination:
- 93 (i) a party; or
94 (ii) a person who is seeking to intervene under Subsection (7).
- 95 (b) A person who files a petition for review of a permit order or a financial assurance
96 determination shall file the petition for review within 30 days after the day on which
97 the permit order or the financial assurance determination is issued.
- 98 (c) The department may, in accordance with Title 63G, Chapter 3, Utah Administrative
99 Rulemaking Act, make rules allowing the extension of the filing deadline described

- 100 in Subsection (6)(b).
- 101 (d) A petition for review shall:
- 102 (i) be served in accordance with department rule;
- 103 (ii) include the name and address of each person to whom a copy of the petition for
- 104 review is sent;
- 105 (iii) if known, include the agency's file number or other reference number assigned to
- 106 the special adjudicative proceeding;
- 107 (iv) state the date on which the petition for review is served;
- 108 (v) include a statement of the petitioner's position, including, as applicable:
- 109 (A) the legal authority under which the petition for review is requested;
- 110 (B) the legal authority under which the agency has jurisdiction to review the
- 111 petition for review;
- 112 (C) each of the petitioner's arguments in support of the petitioner's requested relief;
- 113 (D) an explanation of how each argument described in Subsection (6)(d)(v)(C)
- 114 was preserved;
- 115 (E) a detailed description of any permit condition to which the petitioner is
- 116 objecting;
- 117 (F) any modification or addition to a permit that the petitioner is requesting;
- 118 (G) a demonstration that the agency's permit decision is based on a finding of fact
- 119 or conclusion of law that is clearly erroneous;
- 120 (H) if the agency director addressed a finding of fact or conclusion of law
- 121 described in Subsection (6)(d)(v)(G) in a response to public comment, a
- 122 citation to the comment and response that relates to the finding of fact or
- 123 conclusion of law and an explanation of why the director's response was
- 124 clearly erroneous or otherwise warrants review; and
- 125 (I) a claim for relief.
- 126 (e) A person may not raise an issue or argument in a petition for review unless the issue
- 127 or argument:
- 128 (i) was preserved in accordance with Subsection (4); or
- 129 (ii) was not reasonably ascertainable before or during the public comment period.
- 130 (f) To demonstrate that an issue or argument was preserved in accordance with
- 131 Subsection (4), a petitioner shall include the following in the petitioner's petition for
- 132 review:
- 133 (i) a citation to where the petitioner raised the issue or argument during the public

- 134 comment period; and
- 135 (ii) for each document upon which the petitioner relies in support of an issue or
- 136 argument, a description that:
- 137 (A) states why the document is part of the administrative record; and
- 138 (B) demonstrates that the petitioner cited the document with reasonable specificity
- 139 in accordance with Subsection (4)(b).
- 140 (7)(a) A person who is not a party may not participate in a special adjudicative
- 141 proceeding under this section unless the person is granted the right to intervene under
- 142 this Subsection (7).
- 143 (b) A person who seeks to intervene in a special adjudicative proceeding under this
- 144 section shall, within 30 days after the day on which the permit order or the financial
- 145 assurance determination being challenged was issued, file:
- 146 (i) a petition to intervene that:
- 147 (A) meets the requirements of Subsection 63G-4-207(1); and
- 148 (B) demonstrates that the person is entitled to intervention under Subsection
- 149 (7)(d)(ii); and
- 150 (ii) a timely petition for review.
- 151 (c) In a special adjudicative proceeding to review a permit order, the permittee is a party
- 152 to the special adjudicative proceeding regardless of who files the petition for review
- 153 and does not need to file a petition to intervene under Subsection (7)(b).
- 154 (d) An administrative law judge shall grant a petition to intervene in a special
- 155 adjudicative proceeding, if:
- 156 (i) the petition to intervene is timely filed; and
- 157 (ii) the petitioner:
- 158 (A) demonstrates that the petitioner's legal interests may be substantially affected
- 159 by the special adjudicative proceeding;
- 160 (B) demonstrates that the interests of justice and the orderly and prompt conduct
- 161 of the special adjudicative proceeding will not be materially impaired by
- 162 allowing the intervention; and
- 163 (C) in the petitioner's petition for review, raises issues or arguments that are
- 164 preserved in accordance with Subsection (4).
- 165 (e) An administrative law judge:
- 166 (i) shall issue an order granting or denying a petition to intervene in accordance with
- 167 Subsection 63G-4-207(3)(a); and

- 168 (ii) may impose conditions on intervenors as described in Subsections
169 63G-4-207(3)(b) and (c).
- 170 (f) The department may, in accordance with Title 63G, Chapter 3, Utah Administrative
171 Rulemaking Act, make rules allowing the extension of the filing deadline described
172 in Subsection (7)(b).
- 173 (8)(a) Unless the parties otherwise agree, or the administrative law judge otherwise
174 orders, a special adjudicative proceeding shall be conducted as follows:
- 175 (i) the director shall file and serve the administrative record within 40 days after the
176 day on which the executive director issues a notice of appointment, unless
177 otherwise ordered by the administrative law judge;
- 178 (ii) any dispositive motion shall be filed and served within 15 days after the day on
179 which the administrative record is filed and served;
- 180 (iii) the petitioner shall file and serve an opening brief of no more than 30 pages:
181 (A) within 30 days after the day on which the director files and serves the
182 administrative record; or
183 (B) if a party files and serves a dispositive motion, within 30 days after the day on
184 which the administrative law judge issues a decision on the dispositive motion,
185 including a decision to defer the motion;
- 186 (iv) each responding party shall file and serve a response brief of no more than 30
187 pages within 15 days after the day on which the petitioner files and serves the
188 opening brief;
- 189 (v) the petitioner may file and serve a reply brief of not more than 15 pages within 15
190 days after the day on which the response brief is filed and served; and
- 191 (vi) if the petitioner files and serves a reply brief, each responding party may file and
192 serve a surreply brief of no more than 15 pages within five business days after the
193 day on which the petitioner files and serves the reply brief.
- 194 (b)(i) A reply brief may not raise an issue that was not raised in the response brief.
195 (ii) A surreply brief may not raise an issue that was not raised in the reply brief.
- 196 (9)(a) An administrative law judge shall conduct a special adjudicative proceeding
197 based only on the administrative record and not as a trial de novo.
- 198 (b) To the extent relative to the issues and arguments raised in the petition for review,
199 the administrative record consists of the following items, if they exist:
- 200 (i)(A) for review of a permit order, the permit application, draft permit, and final
201 permit; or

- 202 (B) for review of a financial assurance determination, the proposed financial
203 assurance determination from the owner or operator of the facility, the draft
204 financial assurance determination, and the final financial assurance
205 determination;
- 206 (ii) each statement of basis, fact sheet, engineering review, or other substantive
207 explanation designated by the director as part of the basis for the decision relating
208 to the permit order or the financial assurance determination;
- 209 (iii) the notice and record of each public comment period;
- 210 (iv) the notice and record of each public hearing, including oral comments made
211 during the public hearing;
- 212 (v) written comments submitted during the public comment period;
- 213 (vi) responses to comments that are designated by the director as part of the basis for
214 the decision relating to the permit order or the financial assurance determination;
- 215 (vii) any information that is:
- 216 (A) requested by and submitted to the director; and
- 217 (B) designated by the director as part of the basis for the decision relating to the
218 permit order or the financial assurance determination;
- 219 (viii) any additional information specified by rule;
- 220 (ix) any additional documents agreed to by the parties; and
- 221 (x) information supplementing the record under Subsection (9)(c).
- 222 (c)(i) There is a rebuttable presumption against supplementing the record.
- 223 (ii) A party may move to supplement the record described in Subsection (9)(b) with
224 technical or factual information.
- 225 (iii) The administrative law judge may grant a motion to supplement the record
226 described in Subsection (9)(b) with technical or factual information if the moving
227 party proves that:
- 228 (A) good cause exists for supplementing the record;
- 229 (B) supplementing the record is in the interest of justice; and
- 230 (C) supplementing the record is necessary for resolution of the issues.
- 231 (iv) The department may, in accordance with Title 63G, Chapter 3, Utah
232 Administrative Rulemaking Act, make rules permitting further supplementation of
233 the record.
- 234 (10)(a) Except as otherwise provided by this section, the administrative law judge shall
235 review and respond to a petition for review in accordance with Subsections

- 236 63G-4-201(3)(d) and (e), following the relevant procedures for formal adjudicative
237 proceedings.
- 238 (b) The administrative law judge shall require the parties to file responsive briefs in
239 accordance with Subsection (8).
- 240 (c) If an administrative law judge enters an order of default against a party, the
241 administrative law judge shall enter the order of default in accordance with Section
242 63G-4-209.
- 243 (d) The administrative law judge, in conducting a special adjudicative proceeding:
244 (i) may not participate in an ex parte communication with a party to the special
245 adjudicative proceeding regarding the merits of the special adjudicative
246 proceeding unless notice and an opportunity to be heard are afforded to all parties;
247 and
248 (ii) shall, upon receiving an ex parte communication, place the communication in the
249 public record of the proceeding and afford all parties an opportunity to comment
250 on the information.
- 251 (e) In conducting a special adjudicative proceeding, the administrative law judge may
252 take judicial notice of matters not in the administrative record, in accordance with
253 Utah Rules of Evidence, Rule 201.
- 254 (f) An administrative law judge may take any action in a special adjudicative proceeding
255 that is not a dispositive action.
- 256 (11)(a) A person who files a petition for review has the burden of demonstrating that an
257 issue or argument raised in the petition for review has been preserved in accordance
258 with Subsection (4).
- 259 (b) The administrative law judge shall dismiss, with prejudice, any issue or argument
260 raised in a petition for review that has not been preserved in accordance with
261 Subsection (4).
- 262 (12) In response to a dispositive motion, within 45 days after the day on which oral
263 argument takes place, or, if there is no oral argument, within 45 days after the day on
264 which the reply brief on the dispositive motion is due, the administrative law judge shall:
265 (a) submit a proposed dispositive action to the executive director recommending full or
266 partial resolution of the special adjudicative proceeding, that includes:
267 (i) written findings of fact;
268 (ii) written conclusions of law; and
269 (iii) a recommended order; or

- 270 (b) if the administrative law judge determines that a full or partial resolution of the
271 special adjudicative proceeding is not appropriate, issue an order that explains the
272 basis for the administrative law judge's determination.
- 273 (13) For each issue or argument that is not dismissed or otherwise resolved under
274 Subsection (11)(b) or (12), the administrative law judge shall:
- 275 (a) provide the parties an opportunity for briefing and oral argument in accordance with
276 this section;
- 277 (b) conduct a review of the director's order or determination, based on the record
278 described in Subsections (9)(b), (9)(c), and (10)(e); and
- 279 (c) within 60 days after the day on which the reply brief on the dispositive motion is due,
280 submit to the executive director a proposed dispositive action, that includes:
- 281 (i) written findings of fact;
- 282 (ii) written conclusions of law; and
- 283 (iii) a recommended order.
- 284 (14)(a) When the administrative law judge submits a proposed dispositive action to the
285 executive director, the executive director may:
- 286 (i) adopt, adopt with modifications, or reject the proposed dispositive action; or
287 (ii) return the proposed dispositive action to the administrative law judge for further
288 action as directed.
- 289 (b) On review of a proposed dispositive action, the executive director shall uphold all
290 factual, technical, and scientific agency determinations that are not clearly erroneous
291 based on the petitioner's marshaling of the evidence.
- 292 (c) In reviewing a proposed dispositive action during a special adjudicative proceeding,
293 the executive director may take judicial notice of matters not in the record, in
294 accordance with Utah Rules of Evidence, Rule 201.
- 295 (d) The executive director may use the executive director's technical expertise in making
296 a determination.
- 297 (15)(a) Except as provided in Subsection (15)(b), the executive director may not
298 participate in an ex parte communication with a party to a special adjudicative
299 proceeding regarding the merits of the special adjudicative proceeding, unless notice
300 and opportunity to be heard are afforded to all parties involved in the proceeding.
- 301 (b) The executive director may discuss ongoing operational matters that require the
302 involvement of a division director without violating Subsection (15)(a).
- 303 (c) Upon receiving an ex parte communication from a party to a proceeding, the

304 executive director shall place the communication in the public record of the
305 proceeding and afford all parties to the proceeding with an opportunity to comment
306 on the communication.

307 (16)(a) A party may seek judicial review in the Utah Court of Appeals of a dispositive
308 action in a special adjudicative proceeding, in accordance with Sections 63G-4-401,
309 63G-4-403, and 63G-4-405.

310 (b) An appellate court shall limit its review of a dispositive action of a special
311 adjudicative proceeding under this section to:

312 (i) the record described in Subsections (9)(b), (9)(c), (10)(e), and (14)(c); and
313 (ii) the record made by the administrative law judge and the executive director during
314 the special adjudicative proceeding.

315 (c) During judicial review of a dispositive action, the appellate court shall:

316 (i) review all agency determinations in accordance with Subsection [~~63G-4-403(4)~~
317 63G-4-403(5)], recognizing that the agency has been granted substantial discretion
318 to interpret its governing statutes and rules; and

319 (ii) uphold all factual, technical, and scientific agency determinations that are not
320 clearly erroneous based upon the petitioner's marshaling of the evidence.

321 (17)(a) The filing of a petition for review does not:

322 (i) stay a permit order or a financial assurance determination; or

323 (ii) delay the effective date of a permit order or a portion of a financial assurance
324 determination.

325 (b) A permit order or a financial assurance determination may not be stayed or delayed
326 unless a stay is granted under this Subsection (17).

327 (c) The administrative law judge shall:

328 (i) consider a party's motion to stay a permit order or a financial assurance
329 determination during a special adjudicative proceeding; and

330 (ii) within 45 days after the day on which the reply brief on the motion to stay is due,
331 submit a proposed determination on the stay to the executive director.

332 (d) The administrative law judge may not recommend to the executive director a stay of
333 a permit order or a financial assurance determination, or a portion of a permit order
334 or a portion of a financial assurance determination, unless:

335 (i) all parties agree to the stay; or

336 (ii) the party seeking the stay demonstrates that:

337 (A) the party seeking the stay will suffer irreparable harm unless the stay is issued;

- 338 (B) the threatened injury to the party seeking the stay outweighs whatever damage
 339 the proposed stay is likely to cause the party restrained or enjoined;
 340 (C) the stay, if issued, would not be adverse to the public interest; and
 341 (D) there is a substantial likelihood that the party seeking the stay will prevail on
 342 the merits of the underlying claim, or the case presents serious issues on the
 343 merits, which should be the subject of further adjudication.

344 (e) A party may appeal the executive director's decision regarding a stay of a permit
 345 order or a financial assurance determination to the Utah Court of Appeals, in
 346 accordance with Section 78A-4-103.

347 (18)(a) Subject to Subsection (18)(c), the administrative law judge shall issue a written
 348 response to a non-dispositive motion within 45 days after the day on which the reply
 349 brief on the non-dispositive motion is due or, if the administrative law judge grants
 350 oral argument on the non-dispositive motion, within 45 days after the day on which
 351 oral argument takes place.

352 (b) If the administrative law judge determines that the administrative law judge needs
 353 more time to issue a response to a non-dispositive motion, the administrative law
 354 judge may issue a response after the deadline described in Subsection (18)(a) if,
 355 before the deadline expires, the administrative law judge gives notice to the parties
 356 that includes:

- 357 (i) the amount of additional time that the administrative law judge requires; and
 358 (ii) the reason the administrative law judge needs the additional time.

359 (c) If the administrative law judge grants oral argument on a non-dispositive motion, the
 360 administrative law judge shall hold the oral argument within 30 days after the day on
 361 which the reply brief on the non-dispositive motion is due.

362 Section 2. Section **59-1-205** is amended to read:

363 **59-1-205 . Chairman -- Quorum -- Voting -- Sessions.**

364 (1) The governor shall designate one of the members of the commission as chairperson.

365 (2)(a) Three members of the commission constitute a quorum for the transaction of
 366 business.

367 (b) A quorum of the commission must participate in any order that constitutes a final
 368 agency action, as described in Section 63G-4-403, on:

- 369 (i) a formal adjudicative proceeding over which the commission has jurisdiction;
 370 (ii) an informal adjudicative proceeding over which the commission has jurisdiction;

371 or

- 372 (iii) an initial hearing conducted pursuant to Section 59-1-502.5.
- 373 (c) If a commission vote results in a tie vote on any matter described in Subsection (2)(b),
374 the position of the taxpayer is considered to have prevailed.
- 375 (3) The commission shall be in session and open for the transaction of business during
376 ordinary business hours each day.
- 377 (4) The commission may hold sessions or conduct investigations at any place in the state to
378 facilitate the performance of its duties.

379 Section 3. Section **63G-4-302** is amended to read:

380 **63G-4-302 . Agency review -- Reconsideration.**

- 381 (1)(a) Within 20 days after the date that an order is issued for which review by the
382 agency or by a superior agency under Section 63G-4-301 is unavailable, and if the
383 order would otherwise constitute final agency action as described in Section
384 63G-4-403, any party may file a written request for reconsideration with the agency,
385 stating the specific grounds upon which relief is requested.
- 386 (b) Unless otherwise provided by statute, the filing of the request is not a prerequisite for
387 seeking judicial review of the order.
- 388 (2) The request for reconsideration shall be filed with the agency and one copy shall be
389 mailed to each party by the person making the request.
- 390 (3)(a) The agency head, or a person designated for that purpose, shall issue a written
391 order granting the request or denying the request.
- 392 (b) If the agency head or the person designated for that purpose does not issue an order
393 within 20 days after the filing of the request, the request for reconsideration shall be
394 considered to be denied.

395 Section 4. Section **63G-4-401** is amended to read:

396 **63G-4-401 . Judicial review -- Exhaustion of administrative remedies -- Petition**
397 **for judicial review.**

- 398 (1) A party aggrieved may obtain judicial review of final agency action, as described in
399 Section 63G-4-403, except in actions where judicial review is expressly prohibited by
400 statute.
- 401 (2) A party may seek judicial review only after exhausting all administrative remedies
402 available, except that:
- 403 (a) a party seeking judicial review need not exhaust administrative remedies if this
404 chapter or any other statute states that exhaustion is not required;
- 405 (b) the court may relieve a party seeking judicial review of the requirement to exhaust

- 406 any or all administrative remedies if:
- 407 (i) the administrative remedies are inadequate; or
- 408 (ii) exhaustion of remedies would result in irreparable harm disproportionate to the
- 409 public benefit derived from requiring exhaustion.
- 410 (3)(a) Except as provided in Subsection (3)(c), a party shall file a petition for judicial
- 411 review of final agency action within 30 days after the day on which the order:
- 412 (i) constituting the final agency action is issued; or
- 413 (ii) is considered to have been issued under Subsection 63G-4-302(3)(b).
- 414 (b) The petition shall:
- 415 (i) name the agency and all other appropriate parties as respondents; and
- 416 (ii) meet the form requirements specified in this chapter.
- 417 (c) If a party files a petition for judicial review of a final agency action resulting from a
- 418 formal adjudicative proceeding within the 30-day time period described in
- 419 Subsection (3)(a), any other party to the action may file a petition for judicial review
- 420 if the petition is filed within the time period permitted for a cross petition under Rule
- 421 14 of the Utah Rules of Appellate Procedure.

422 Section 5. Section **63G-4-403** is amended to read:

423 **63G-4-403 . Judicial review -- Formal adjudicative proceedings - Final agency**
 424 **action.**

- 425 (1) As provided by statute, the Supreme Court or the Court of Appeals has jurisdiction to
- 426 review ~~[aH]~~ a final agency action resulting from a formal adjudicative ~~[proceedings as]~~
 427 proceeding originating from an entity described in Sections 78A-3-102 and 78A-4-103.
- 428 (2) An order or decree from a formal adjudicative proceeding is a final agency action if:
- 429 (a) the administrative decision-making has reached a stage where judicial review will
 430 not disrupt the orderly process of adjudication;
- 431 (b) rights or obligations have been determined by, or legal consequences flow from, the
 432 order or decree; and
- 433 (c) the order or decree, in whole or in part, is not preliminary, preparatory, procedural, or
 434 intermediate with regard to subsequent agency action.
- 435 ~~[(2)]~~ (3)(a) To seek judicial review of final agency action resulting from formal
- 436 adjudicative proceedings, the petitioner shall file a petition for review of agency
- 437 action with the appropriate appellate court in the form required by the appellate rules
- 438 of the appropriate appellate court.
- 439 (b) The appellate rules of the appropriate appellate court shall govern all additional

440 filings and proceedings in the appellate court.

441 [~~(3)~~] (4) The contents, transmittal, and filing of the agency's record for judicial review of
 442 formal adjudicative proceedings are governed by the Utah Rules of Appellate Procedure,
 443 except that:

444 (a) all parties to the review proceedings may stipulate to shorten, summarize, or organize
 445 the record; and

446 (b) the appellate court may tax the cost of preparing transcripts and copies for the record:

447 (i) against a party who unreasonably refuses to stipulate to shorten, summarize, or
 448 organize the record; or

449 (ii) according to any other provision of law.

450 [~~(4)~~] (5) The appellate court shall grant relief only if, on the basis of the agency's record, it
 451 determines that a person seeking judicial review has been substantially prejudiced by
 452 any of the following:

453 (a) the agency action, or the statute or rule on which the agency action is based, is
 454 unconstitutional on its face or as applied;

455 (b) the agency has acted beyond the jurisdiction conferred by any statute;

456 (c) the agency has not decided all of the issues requiring resolution;

457 (d) the agency has erroneously interpreted or applied the law;

458 (e) the agency has engaged in an unlawful procedure or decision-making process, or has
 459 failed to follow prescribed procedure;

460 (f) the persons taking the agency action were illegally constituted as a decision-making
 461 body or were subject to disqualification;

462 (g) the agency action is based upon a determination of fact, made or implied by the
 463 agency, that is not supported by substantial evidence when viewed in light of the
 464 whole record before the court; or

465 (h) the agency action is:

466 (i) an abuse of the discretion delegated to the agency by statute;

467 (ii) contrary to a rule of the agency;

468 (iii) contrary to the agency's prior practice, unless the agency justifies the
 469 inconsistency by giving facts and reasons that demonstrate a fair and rational basis
 470 for the inconsistency; or

471 (iv) otherwise arbitrary or capricious.

472 Section 6. Section **78A-3-102** is amended to read:

473 **78A-3-102 . Supreme Court jurisdiction.**

- 474 (1) The Supreme Court has original jurisdiction to answer questions of state law certified
475 by a court of the United States.
- 476 (2) The Supreme Court has original jurisdiction to issue all extraordinary writs and
477 authority to issue all writs and process necessary to carry into effect its orders,
478 judgments, and decrees or in aid of its jurisdiction.
- 479 (3) The Supreme Court has appellate jurisdiction, including jurisdiction of interlocutory
480 appeals, over:
- 481 (a) a judgment of the Court of Appeals;
- 482 (b) cases certified to the Supreme Court by the Court of Appeals prior to final judgment
483 by the Court of Appeals;
- 484 (c) discipline of lawyers;
- 485 (d) final orders of the Judicial Conduct Commission;
- 486 (e) ~~[final orders and decrees in formal adjudicative proceedings]~~ a final agency action, as
487 described in Section 63G-4-403, in a formal adjudicative proceeding originating [with]
488 from:
- 489 (i) the Public Service Commission;
- 490 (ii) the State Tax Commission;
- 491 (iii) the School and Institutional Trust Lands Board of Trustees;
- 492 (iv) the Board of Oil, Gas, and Mining;
- 493 (v) the state engineer; or
- 494 (vi) the executive director of the Department of Natural Resources reviewing actions
495 of the Division of Forestry, Fire, and State Lands;
- 496 (f) final orders and decrees of the district court review of informal adjudicative
497 proceedings of agencies under Subsection (3)(e);
- 498 (g) a final judgment or decree of any court of record holding a statute of the United
499 States or this state unconstitutional on its face under the Constitution of the United
500 States or the Utah Constitution;
- 501 (h) interlocutory appeals from any court of record involving a charge of a first degree or
502 capital felony;
- 503 (i) appeals from the district court involving a conviction or charge of a first degree
504 felony or capital felony;
- 505 (j) orders, judgments, and decrees of any court of record over which the Court of
506 Appeals does not have original appellate jurisdiction; and
- 507 (k) appeals from the district court of orders, judgments, or decrees ruling on legislative

508 subpoenas.

509 (4) The Supreme Court may transfer to the Court of Appeals any of the matters over which
510 the Supreme Court has original appellate jurisdiction, except:

511 (a) capital felony convictions or an appeal of an interlocutory order of a court of record
512 involving a charge of a capital felony;

513 (b) election and voting contests;

514 (c) reapportionment of election districts;

515 (d) retention or removal of public officers;

516 (e) matters involving legislative subpoenas; and

517 (f) those matters described in Subsections (3)(a) through (d).

518 (5) The Supreme Court has sole discretion in granting or denying a petition for writ of
519 certiorari for the review of a Court of Appeals adjudication, but the Supreme Court shall
520 review those cases certified to it by the Court of Appeals under Subsection (3)(b).

521 (6) The Supreme Court shall comply with the requirements of Title 63G, Chapter 4,
522 Administrative Procedures Act, in its review of agency adjudicative proceedings.

523 Section 7. Section **78A-4-103** is amended to read:

524 **78A-4-103 . Court of Appeals jurisdiction.**

525 (1) As used in this section, "adjudicative proceeding" does not include a proceeding under
526 Title 63G, Chapter 2, Part 4, Appeals, that precedes judicial review under Section
527 63G-2-404.

528 (2) The Court of Appeals has jurisdiction to issue all extraordinary writs and to issue all
529 writs and process necessary:

530 (a) to carry into effect its judgments, orders, and decrees; or

531 (b) in aid of its jurisdiction.

532 (3) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory
533 appeals, over:

534 (a)(i) a final [~~order or decree resulting from~~] agency action, as described in Section
535 63G-4-403, originating from:

536 (A) a formal adjudicative proceeding of a state agency;

537 (B) a special adjudicative proceeding, as described in Section 19-1-301.5; or

538 (C) a hearing before a local school board or the State Board of Education as
539 described in Section 53G-11-515; or

540 (ii) an appeal from the district court review of an informal adjudicative proceeding of
541 an agency other than the following:

- 542 (A) the Public Service Commission;
- 543 (B) the State Tax Commission;
- 544 (C) the School and Institutional Trust Lands Board of Trustees;
- 545 (D) the Division of Forestry, Fire, and State Lands, for an action reviewed by the
- 546 executive director of the Department of Natural Resources;
- 547 (E) the Board of Oil, Gas, and Mining; or
- 548 (F) the state engineer;
- 549 (b) appeals from the district court review of:
- 550 (i) adjudicative proceedings of agencies of political subdivisions of the state or other
- 551 local agencies; and
- 552 (ii) a challenge to agency action under Section 63G-3-602;
- 553 (c) appeals from the juvenile courts;
- 554 (d) interlocutory appeals from any court of record in criminal cases, except those
- 555 involving a charge of a first degree or capital felony;
- 556 (e) appeals from a court of record in criminal cases, except those involving a conviction
- 557 or charge of a first degree felony or capital felony;
- 558 (f) appeals from orders on petitions for extraordinary writs sought by persons who are
- 559 incarcerated or serving any other criminal sentence, except petitions constituting a
- 560 challenge to a conviction of or the sentence for a first degree or capital felony;
- 561 (g) appeals from the orders on petitions for extraordinary writs challenging the decisions
- 562 of the Board of Pardons and Parole except in cases involving a first degree or capital
- 563 felony;
- 564 (h) appeals from district court involving domestic relations cases, including, but not
- 565 limited to, divorce, annulment, property division, child custody, support, parent-time,
- 566 visitation, adoption, and paternity;
- 567 (i) appeals from the Utah Military Court; and
- 568 (j) cases transferred to the Court of Appeals from the Supreme Court.
- 569 (4) The Court of Appeals upon its own motion only and by the vote of four judges of the
- 570 court may certify to the Supreme Court for original appellate review and determination
- 571 any matter over which the Court of Appeals has original appellate jurisdiction.
- 572 (5) The Court of Appeals shall comply with the requirements of Title 63G, Chapter 4,
- 573 Administrative Procedures Act, in its review of agency adjudicative proceedings.

574 Section 8. **Effective Date.**

575 This bill takes effect on May 7, 2025.