

Part 4 Judicial Review

63G-4-401 Judicial review -- Exhaustion of administrative remedies.

- (1) A party aggrieved may obtain judicial review of final agency action, except in actions where judicial review is expressly prohibited by statute.
- (2) A party may seek judicial review only after exhausting all administrative remedies available, except that:
 - (a) a party seeking judicial review need not exhaust administrative remedies if this chapter or any other statute states that exhaustion is not required;
 - (b) the court may relieve a party seeking judicial review of the requirement to exhaust any or all administrative remedies if:
 - (i) the administrative remedies are inadequate; or
 - (ii) exhaustion of remedies would result in irreparable harm disproportionate to the public benefit derived from requiring exhaustion.
- (3)
 - (a) A party shall file a petition for judicial review of final agency action within 30 days after the date that the order constituting the final agency action is issued or is considered to have been issued under Subsection 63G-4-302(3)(b).
 - (b) The petition shall name the agency and all other appropriate parties as respondents and shall meet the form requirements specified in this chapter.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-4-402 Judicial review -- Informal adjudicative proceedings.

- (1)
 - (a) The district courts have jurisdiction to review by trial de novo all final agency actions resulting from informal adjudicative proceedings, except that the juvenile courts have jurisdiction over all state agency actions relating to:
 - (i) the removal or placement of children in state custody;
 - (ii) the support of children under Subsection (1)(a)(i) as determined administratively under Section 78A-6-1106; and
 - (iii) substantiated findings of abuse or neglect made by the Division of Child and Family Services, after an evidentiary hearing.
 - (b) Venue for judicial review of informal adjudicative proceedings shall be as provided in the statute governing the agency or, in the absence of such a venue provision, in the county where the petitioner resides or maintains the petitioner's principal place of business.
- (2)
 - (a) The petition for judicial review of informal adjudicative proceedings shall be a complaint governed by the Utah Rules of Civil Procedure and shall include:
 - (i) the name and mailing address of the party seeking judicial review;
 - (ii) the name and mailing address of the respondent agency;
 - (iii) the title and date of the final agency action to be reviewed, together with a copy, summary, or brief description of the agency action;
 - (iv) identification of the persons who were parties in the informal adjudicative proceedings that led to the agency action;
 - (v) a copy of the written agency order from the informal proceeding;

- (vi) facts demonstrating that the party seeking judicial review is entitled to obtain judicial review;
 - (vii) a request for relief, specifying the type and extent of relief requested; and
 - (viii) a statement of the reasons why the petitioner is entitled to relief.
- (b) All additional pleadings and proceedings in the district court are governed by the Utah Rules of Civil Procedure.
- (3)
- (a) The court, without a jury, shall determine all questions of fact and law and any constitutional issue presented in the pleadings.
 - (b) The Utah Rules of Evidence apply in judicial proceedings under this section.

Amended by Chapter 208, 2011 General Session

63G-4-403 Judicial review -- Formal adjudicative proceedings.

- (1) As provided by statute, the Supreme Court or the Court of Appeals has jurisdiction to review all final agency action resulting from formal adjudicative proceedings.
- (2)
- (a) To seek judicial review of final agency action resulting from formal adjudicative proceedings, the petitioner shall file a petition for review of agency action with the appropriate appellate court in the form required by the appellate rules of the appropriate appellate court.
 - (b) The appellate rules of the appropriate appellate court shall govern all additional filings and proceedings in the appellate court.
- (3) The contents, transmittal, and filing of the agency's record for judicial review of formal adjudicative proceedings are governed by the Utah Rules of Appellate Procedure, except that:
- (a) all parties to the review proceedings may stipulate to shorten, summarize, or organize the record;
 - (b) the appellate court may tax the cost of preparing transcripts and copies for the record:
 - (i) against a party who unreasonably refuses to stipulate to shorten, summarize, or organize the record; or
 - (ii) according to any other provision of law.
- (4) The appellate court shall grant relief only if, on the basis of the agency's record, it determines that a person seeking judicial review has been substantially prejudiced by any of the following:
- (a) the agency action, or the statute or rule on which the agency action is based, is unconstitutional on its face or as applied;
 - (b) the agency has acted beyond the jurisdiction conferred by any statute;
 - (c) the agency has not decided all of the issues requiring resolution;
 - (d) the agency has erroneously interpreted or applied the law;
 - (e) the agency has engaged in an unlawful procedure or decision-making process, or has failed to follow prescribed procedure;
 - (f) the persons taking the agency action were illegally constituted as a decision-making body or were subject to disqualification;
 - (g) the agency action is based upon a determination of fact, made or implied by the agency, that is not supported by substantial evidence when viewed in light of the whole record before the court;
 - (h) the agency action is:
 - (i) an abuse of the discretion delegated to the agency by statute;
 - (ii) contrary to a rule of the agency;
 - (iii) contrary to the agency's prior practice, unless the agency justifies the inconsistency by giving facts and reasons that demonstrate a fair and rational basis for the inconsistency; or

- (iv) otherwise arbitrary or capricious.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-4-404 Judicial review -- Type of relief.

- (1)
 - (a) In either the review of informal adjudicative proceedings by the district court or the review of formal adjudicative proceedings by an appellate court, the court may award damages or compensation only to the extent expressly authorized by statute.
 - (b) In granting relief, the court may:
 - (i) order agency action required by law;
 - (ii) order the agency to exercise its discretion as required by law;
 - (iii) set aside or modify agency action;
 - (iv) enjoin or stay the effective date of agency action; or
 - (v) remand the matter to the agency for further proceedings.
- (2) Decisions on petitions for judicial review of final agency action are reviewable by a higher court, if authorized by statute.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-4-405 Judicial review -- Stay and other temporary remedies pending final disposition.

- (1) Unless precluded by another statute, the agency may grant a stay of its order or other temporary remedy during the pendency of judicial review, according to the agency's rules.
- (2) Parties shall petition the agency for a stay or other temporary remedies unless extraordinary circumstances require immediate judicial intervention.
- (3) If the agency denies a stay or denies other temporary remedies requested by a party, the agency's order of denial shall be mailed to all parties and shall specify the reasons why the stay or other temporary remedy was not granted.
- (4) If the agency has denied a stay or other temporary remedy to protect the public health, safety, or welfare against a substantial threat, the court may not grant a stay or other temporary remedy unless it finds that:
 - (a) the agency violated its own rules in denying the stay; or
 - (b)
 - (i) the party seeking judicial review is likely to prevail on the merits when the court finally disposes of the matter;
 - (ii) the party seeking judicial review will suffer irreparable injury without immediate relief;
 - (iii) granting relief to the party seeking review will not substantially harm other parties to the proceedings; and
 - (iv) the threat to the public health, safety, or welfare relied upon by the agency is not sufficiently serious to justify the agency's action under the circumstances.

Renumbered and Amended by Chapter 382, 2008 General Session