

REFERENCE TITLE: administrative law judge decisions; review

State of Arizona  
House of Representatives  
Fifty-fourth Legislature  
Second Regular Session  
2020

## **HB 2722**

Introduced by  
Representative Lawrence

AN ACT

AMENDING SECTIONS 12-910 AND 41-1092.08, ARIZONA REVISED STATUTES;  
RELATING TO ADMINISTRATIVE LAW JUDGES DECISIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
2       Section 1. Section 12-910, Arizona Revised Statutes, is amended to  
3 read:

4           12-910. Scope of review

5       A. An action to review a final administrative decision shall be  
6 heard and determined with convenient speed. If requested by a party to an  
7 action within thirty days after filing a notice of appeal, the court shall  
8 hold an evidentiary hearing, including testimony and argument, to the  
9 extent necessary to make the determination required by subsection E of  
10 this section. The court may hear testimony from witnesses who testified  
11 at the administrative hearing and witnesses who were not called to testify  
12 at the administrative hearing.

13       B. Relevant and admissible exhibits and testimony that were not  
14 offered during the administrative hearing shall be admitted, and  
15 objections that a party failed to make to evidence offered at the  
16 administrative hearing shall be considered, unless either of the following  
17 is true:

18           1. The exhibit, testimony or objection was withheld for purposes of  
19 delay, harassment or other improper purpose.

20           2. Allowing admission of the exhibit or testimony or consideration  
21 of the objection would cause substantial prejudice to another party.

22       C. For review of final administrative decisions of agencies that  
23 are exempt from sections 41-1092.03 through 41-1092.11, pursuant to  
24 section 41-1092.02, the trial shall be de novo if trial de novo is  
25 demanded in the notice of appeal or motion of an appellee other than the  
26 agency and if a hearing was not held by the agency or the proceedings  
27 before the agency were not stenographically reported or mechanically  
28 recorded so that a transcript might be made. On demand of any party, if a  
29 trial de novo is available under this section, it may be with a jury,  
30 except that a trial of an administrative decision under section 25-522  
31 shall be to the court.

32       D. The record in the superior court shall consist of the record of  
33 the administrative proceeding, and the record of any evidentiary hearing,  
34 or the record of the trial de novo.

35       E. After reviewing the administrative record and supplementing  
36 evidence presented at the evidentiary hearing, the court may affirm,  
37 reverse, modify or vacate and remand the ~~agency action~~ WRITTEN DECISION OF  
38 THE ADMINISTRATIVE LAW JUDGE. The court shall affirm the ~~agency action~~  
39 WRITTEN DECISION OF THE ADMINISTRATIVE LAW JUDGE unless the court  
40 ~~concludes that the agency's action is contrary to law, is not supported by~~  
41 ~~substantial evidence, is arbitrary and capricious or is an abuse of~~  
42 ~~discretion~~ FINDS BY CLEAR AND CONVINCING EVIDENCE THAT THE WRITTEN  
43 DECISION IS ERRONEOUS. In a proceeding brought by or against the  
44 regulated party, the court shall decide all questions of law, including  
45 the interpretation of a constitutional or statutory provision or a rule

1 adopted by an agency, without deference to any previous determination that  
2 may have been made on the question by the agency. Notwithstanding any  
3 other law, this subsection applies in any action for judicial review of  
4 any agency action that is authorized by law.

5 F. Notwithstanding subsection E of this section, if the action  
6 arises out of title 20, chapter 15, article 2, the court shall affirm the  
7 agency action unless after reviewing the administrative record and  
8 supplementing evidence presented at the evidentiary hearing the court  
9 concludes that the action is not supported by substantial evidence, is  
10 contrary to law, is arbitrary and capricious or is an abuse of discretion.

11 G. This section does not apply to any agency action by an agency  
12 that is created pursuant to article XV, Constitution of Arizona.

13 Sec. 2. Section 41-1092.08, Arizona Revised Statutes, is amended to  
14 read:

15 **41-1092.08. Administrative law judge decisions: review:**  
16 **exception**

17 A. The administrative law judge of the office shall issue a written  
18 decision within twenty days after the hearing is concluded. The written  
19 decision shall contain a concise explanation of the reasons supporting the  
20 decision, including the findings of fact and conclusions of law. The  
21 administrative law judge shall serve a copy of the decision on the agency.  
22 On request of the agency, the office shall also transmit to the agency the  
23 record of the hearing as described in section 12-904, except as provided  
24 in section 41-1092.01, subsection F.

25 ~~B. Within thirty days after the date the office sends a copy of the  
26 administrative law judge's decision to the head of the agency, executive  
27 director, board or commission, the head of the agency, executive director,  
28 board or commission may review the decision and accept, reject or modify  
29 it. If the head of the agency, executive director, board or commission  
30 declines to review the administrative law judge's decision, the agency  
31 shall serve a copy of the decision on all parties. If the head of the  
32 agency, executive director, board or commission rejects or modifies the  
33 decision, the agency head, executive director, board or commission must  
34 file with the office, except as provided in section 41-1092.01,  
35 subsection F, and serve on all parties a copy of the administrative law  
36 judge's decision with the rejection or modification and a written  
37 justification setting forth the reasons for the rejection or modification  
38 of each finding of fact or conclusion of law. If there is a rejection or  
39 modification of a conclusion of law, the written justification shall be  
40 sent to the president of the senate and the speaker of the house of  
41 representatives.~~

42 ~~C. A board or commission whose members are appointed by the  
43 governor may review the decision of the agency head, as provided by law,  
44 and make the final administrative decision.~~

1       D. Except as otherwise provided in this subsection, if the head of  
2 the agency, the executive director or a board or commission does not  
3 accept, reject or modify the administrative law judge's decision within  
4 thirty days after the date the office sends a copy of the administrative  
5 law judge's decision to the head of the agency, executive director, board  
6 or commission, as evidenced by receipt of such action by the office by the  
7 thirtieth day, the office shall certify the administrative law judge's  
8 decision as the final administrative decision. If the board or commission  
9 meets monthly or less frequently, if the office sends the administrative  
10 law judge's decision at least thirty days before the next meeting of the  
11 board or commission and if the board or commission does not accept, reject  
12 or modify the administrative law judge's decision at the next meeting of  
13 the board or commission, as evidenced by receipt of such action by the  
14 office within five days after the meeting, the office shall certify the  
15 administrative law judge's decision as the final administrative decision.

16       E. For the purposes of subsections B and D of this section, a copy  
17 of the administrative law judge's decision is sent on personal delivery of  
18 the decision or five days after the decision is mailed to the head of the  
19 agency, executive director, board or commission.

20       F. The decision of the agency head is the final administrative  
21 decision unless either:

22           1. The agency head, executive director, board or commission does  
23 not review the administrative law judge's decision pursuant to  
24 subsection B of this section or does not reject or modify the  
25 administrative law judge's decision as provided in subsection D of this  
26 section, in which case the administrative law judge's decision is the  
27 final administrative decision.

28           2. The decision of the agency head is subject to review pursuant to  
29 subsection C of this section.

30       G. If a board or commission whose members are appointed by the  
31 governor makes the final administrative decision as an administrative law  
32 judge or on review of the decision of the agency head, the decision is not  
33 subject to review by the head of the agency.

34       H. B. A party may appeal ~~a final administrative~~ THE WRITTEN  
35 decision OF THE ADMINISTRATIVE LAW JUDGE pursuant to title 12, chapter 7,  
36 article 6, except as provided in section 41-1092.09, subsection B and  
37 except that if a party has not requested a hearing on receipt of a notice  
38 of appealable agency action pursuant to section 41-1092.03, the appealable  
39 agency action is not subject to judicial review.

40       I. C. This section does not apply to the Arizona peace officer  
41 standards and training board established by section 41-1821.

42       Sec. 3. Conforming legislation

43       The legislative council staff shall prepare proposed legislation  
44 conforming the Arizona Revised Statutes to the provisions of this act for  
45 consideration in the fifty-fifth legislature, first regular session.