

QUESTION PRESENTED

What standards do other states use for judicial review of agency decisions?

ANSWER

The vast majority of states have some form of an administrative procedure statute that precludes the court from substituting its judgment for that of the agency as to the weight of the evidence on questions of fact.

SUMMARY

Generally, in the vast majority of states, the court can affirm or reverse and remand the final order (whole or in part) of an agency if it finds the decision is:

- 1) In violation of constitutional or statutory provisions;
- 2) In excess of the statutory authority of the agency;
- 3) Made upon unlawful procedure;
- 4) Affected by other error of law;
- 5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- 6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

For states that do not enumerate when the court may reverse or remand the agency's final order, the statutory language "determine whether there was substantial evidence before the administrative agency on the record as a whole to support its conclusions" is largely included.

Examples of statutory language related to judicial review of agency decision that may be persuasive to the Commonwealth are:

<i>Maryland</i>	MD. STATE GOV'T CODE ANN. § 10-222 (2012) - In reviewing actions of administrative agencies, an appellate court's task is to determine whether there was substantial evidence before the administrative agency on the record as a whole to support its conclusions; in making this determination, the appellate court may not substitute its judgment for that of the agency, as the test is a deferential one, requiring restrained and disciplined judicial judgment so as not to interfere with the agency's factual conclusions.
<i>North Carolina</i>	N.C. GEN. STAT. § 150B-51 (2012) - The court reviewing a final decision may affirm the decision or remand the case for further proceedings. It may also reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the findings, inferences, conclusions, or decisions are: (1) In violation of constitutional provisions; (2) In excess of the statutory authority or jurisdiction of the agency or administrative law judge; (3) Made upon unlawful procedure; (4) Affected by other error of law; (5) Unsupported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31 in view of the entire record as submitted; or (6) Arbitrary, capricious, or an abuse of discretion.
<i>South Carolina</i>	S.C. CODE ANN. § 1-23-380 (2011) - The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) affected by other error of law; (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.
<i>West Virginia</i>	W. VA. CODE § 29A-5-4 (2012) - The court may affirm the order or decision of the agency or remand the case for further proceedings. It shall reverse, vacate or modify the order or decision of the agency if the substantial rights of the petitioner or petitioners have been prejudiced because the administrative findings, inferences, conclusions, decision or order are: (1) In violation of constitutional or statutory provisions; or (2) In excess of the statutory authority or jurisdiction of the agency; or (3) Made upon unlawful procedures; or (4) Affected by other error of law; or (5) Clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.
<i>Texas</i>	TEX. GOV'T CODE § 2001.174 (2012) - If the law authorizes review of a decision in a contested case under the substantial evidence rule or if the law does not define the scope of judicial review, a court may not substitute its judgment for the judgment of the state agency on the weight of the evidence on questions committed to agency discretion but: (1) may affirm the agency decision in whole or in part; and (2) shall reverse or remand the case for further proceedings if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (A) in violation of a constitutional or statutory provision; (B) in excess of the agency's statutory authority; (C) made through unlawful procedure; (D) affected by other error of law; (E) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; or (F) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

STATE SUMMARY OF ADMINISTRATIVE PROCEDURE ACT

State	APA	Language	Related Case Law
Alabama	Code of Ala. § 41-22-20 (2012)	<p>Except where judicial review is by trial de novo, the agency order shall be taken as prima facie just and reasonable and the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact, except where otherwise authorized by statute. The court may affirm the agency action or remand the case to the agency for taking additional testimony and evidence or for further proceedings. The court may reverse or modify the decision or grant other appropriate relief from the agency action, equitable or legal, including declaratory relief, if the court finds that the agency action is due to be set aside or modified under standards set forth in appeal or review statutes applicable to that agency or if substantial rights of the petitioner have been prejudiced because the agency action is any one or more of the following:</p> <ol style="list-style-type: none"> (1) In violation of constitutional or statutory provisions; (2) In excess of the statutory authority of the agency; (3) In violation of any pertinent agency rule; (4) Made upon unlawful procedure; (5) Affected by other error of law; (6) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (7) Unreasonable, arbitrary, or capricious, or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion. <p>(l) Unless the court affirms the decision of the agency, the court shall set out in writing, which writing shall become a part of the record, the reasons for its decision.</p>	
Alaska	Alaska Stat. § 44.62.570 (2012)	<p>(c) The court may exercise its independent judgment on the evidence. If it is claimed that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by</p> <ol style="list-style-type: none"> (1) the weight of the evidence; or (2) substantial evidence in the light of the whole record. <p>(d) The court may augment the agency record in whole or in part, or hold a hearing de novo. If the court finds that there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing, the court may</p> <ol style="list-style-type: none"> (1) enter judgment as provided in (c) of this section and remand the case to be reconsidered in the light of that evidence; or (2) admit the evidence at the appellate hearing without remanding the case. <p>(e) The court shall enter judgment setting aside, modifying, remanding, or affirming the order or decision, without limiting or controlling in any way the discretion legally vested in the agency.</p>	
Arizona	Arizona Revised Statutes § 41-1092.12 (2012)	<p>If an agency takes an action against a party that is arbitrary, capricious or not in accordance with law, the action is an appealable agency action</p> <p>The court may affirm the decision of the agency or remand the case for further proceedings. It may reverse or modify the decision if the substantial rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:</p> <ol style="list-style-type: none"> (1) In violation of constitutional or statutory provisions; (2) In excess of the agency's statutory authority; (3) Made upon unlawful procedure; (4) Affected by other error or law; (5) Not supported by substantial evidence of record; or (6) Arbitrary, capricious, or characterized by abuse of discretion. 	
Arkansas	Arkansas Code Annotated § 25-15-212		
California	Cal Gov Code § 11523 (2012)		

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Colorado	Colorado Revised Statutes 24-4-106 (2012)	If the court finds no error, it shall affirm the agency action. If it finds that the agency action is arbitrary or capricious, a denial of statutory right, contrary to constitutional right, power, privilege, or immunity, in excess of statutory jurisdiction, authority, purposes, or limitations, not in accord with the procedures or procedural limitations of this article or as otherwise required by law, an abuse or clearly unwarranted exercise of discretion, based upon findings of fact that are clearly erroneous on the whole record, unsupported by substantial evidence when the record is considered as a whole, or otherwise contrary to law, then the court shall hold unlawful and set aside the agency action and shall restrain the enforcement of the order or rule under review, compel any agency action to be taken which has been unlawfully withheld or unduly delayed, remand the case for further proceedings, and afford such other relief as may be appropriate. In making the foregoing determinations, the court shall review the whole record or such portions thereof as may be cited by any party. In all cases under review, the court shall determine all questions of law and interpret the statutory and constitutional provisions involved and shall apply such interpretation to the facts duly found or established.	
Connecticut	Conn. Gen. Stat. § 4-183 (2012)	The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court shall affirm the decision of the agency unless the court finds that substantial rights of the person appealing have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (1) In violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. If the court finds such prejudice, it shall sustain the appeal and, if appropriate, may render a judgment under subsection (k) of this section or remand the case for further proceedings. For purposes of this section, a remand is a final judgment.	
Delaware	29 Del. C. § 10142 (2012)	Review of case decisions (a) Any party against whom a case decision has been decided may appeal such decision to the Court. (b) The appeal shall be filed within 30 days of the day the notice of the decision was mailed. (c) The appeal shall be on the record without a trial de novo. If the Court determines that the record is insufficient for its review, it shall remand the case to the agency for further proceedings on the record. (d) The Court, when factual determinations are at issue, shall take due account of the experience and specialized competence of the agency and of the purposes of the basic law under which the agency has acted. The Court's review, in the absence of actual fraud, shall be limited to a determination of whether the agency's decision was supported by substantial evidence on the record before the agency.	
District of Columbia	D.C. Code § 2-510 (2012)	The review of all administrative orders and decisions by the Court shall be limited to such issues of law or fact as are subject to review on appeal under applicable statutory law, other than this subchapter. In all other cases the review by the Court of administrative orders and decisions shall be in accordance with the rules of law which define the scope and limitations of review of administrative proceedings. Such rules shall include, but not be limited to, the power of the Court: (1) So far as necessary to decision and where presented, to decide all relevant questions of law, to interpret constitutional and statutory provisions, and to determine the meaning or applicability of the terms of any action; (2) To compel agency action unlawfully withheld or unreasonably delayed; and (3) To hold unlawful and set aside any action or findings and conclusions found to be: (A) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) Contrary to constitutional right, power, privilege, or immunity; (C) In excess of statutory jurisdiction, authority, or limitations or short of statutory jurisdiction, authority, or limitations or short of statutory rights; (D) Without observance of procedure required by law, including any applicable procedure provided by this subchapter; or (E) Unsupported by substantial evidence in the record of the proceedings before the Court.	

STATE SUMMARY OF ADMINISTRATIVE PROCEDURE ACT

State	APA	Language	Related Case Law
		<p>The court shall remand a case to the agency for further proceedings consistent with the court's decision or set aside agency action, as appropriate, when it finds that:</p> <p>(a) There has been no hearing prior to agency action and the reviewing court finds that the validity of the action depends upon disputed facts;</p> <p>(b) The agency's action depends on any finding of fact that is not supported by competent, substantial evidence in the record of a hearing conducted pursuant to ss. 120.569 and 120.57; however, the court shall not substitute its judgment for that of the agency as to the weight of the evidence on any disputed finding of fact;</p> <p>(c) The fairness of the proceedings or the correctness of the action may have been impaired by a material error in procedure or a failure to follow prescribed procedure;</p> <p>(d) The agency has erroneously interpreted a provision of law and a correct interpretation compels a particular action; or</p> <p>(e) The agency's exercise of discretion was:</p> <ol style="list-style-type: none"> 1. Outside the range of discretion delegated to the agency by law; 2. Inconsistent with agency rule; 3. Inconsistent with officially stated agency policy or a prior agency practice, if deviation therefrom is not explained by the agency; or 4. Otherwise in violation of a constitutional or statutory provision; 	
Florida	Fla. Stat. § 120.68 (2012)	but the court shall not substitute its judgment for that of the agency on an issue of discretion.	
Georgia	O.C.G.A. § 50-13-19 (2012)	<p>The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:</p> <ol style="list-style-type: none"> (1) In violation of constitutional or statutory provisions; (2) In excess of the statutory authority of the agency; (3) Made upon unlawful procedure; (4) Affected by other error of law; (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. 	
Hawaii			
Idaho			
Illinois			
Indiana	Ind. Code Ann. § 4-21.5-5-14 (2012)	<p>The court shall grant relief under section 15 [IC 4-21.5-5-15] of this chapter only if it determines that a person seeking judicial relief has been prejudiced by an agency action that is:</p> <ol style="list-style-type: none"> (1) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) Contrary to constitutional right, power, privilege, or immunity; (3) In excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) Without observance of procedure required by law; or (5) Unsupported by substantial evidence. 	

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State	APA	Language	Related Case Law
Iowa	Iowa Code § 17A.19 (2012)	The court may affirm the agency action or remand to the agency for further proceedings. The court shall reverse, modify, or grant other appropriate relief from agency action, equitable or legal and including declaratory relief, if it determines that substantial rights of the person seeking judicial relief have been prejudiced because the agency action is any of the following: a. Unconstitutional on its face or as applied or is based upon a provision of law that is unconstitutional on its face or as applied. b. Beyond the authority delegated to the agency by any provision of law or in violation of any provision of law. c. Based upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency. d. Based upon a procedure or decision-making process prohibited by law or was taken without following the prescribed procedure or decision-making process. e. The product of decision making undertaken by persons who were improperly constituted as a decision-making body, were motivated by an improper purpose, or were subject to disqualification. f. Based upon a determination of fact clearly vested by a provision of law in the discretion of the agency that is not supported by substantial evidence in the record before the court when that record is viewed as a whole. For purposes of this paragraph, the following terms have the following meanings:	
Kansas			
Kentucky	KRS § 13B.150 (2012)	The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the final order or it may reverse the final order, in whole or in part, and remand the case for further proceedings if it finds the agency's final order is: (a) In violation of constitutional or statutory provisions; (b) In excess of the statutory authority of the agency; (c) Without support of substantial evidence on the whole record; (d) Arbitrary, capricious, or characterized by abuse of discretion; (e) Based on an ex parte communication which substantially prejudiced the rights of any party and likely affected the outcome of the hearing; (f) Prejudiced by a failure of the person conducting a proceeding to be disqualified pursuant to KRS 13B.040(2); or (g) Deficient as otherwise provided by law.	
Louisiana			
Maine			
Maryland	Md. STATE GOVERNMENT Code Ann. § 10-222	In reviewing actions of administrative agencies, an appellate court's task is to determine whether there was substantial evidence before the administrative agency on the record as a whole to support its conclusions; in making this determination, the appellate court may not substitute its judgment for that of the agency, as the test is a deferential one, requiring restrained and disciplined judicial judgment so as not to interfere with the agency's factual conclusions.	Young v. Board of Physician Quality Assur., 111 Md. App. 721 (1996) - When agency's decision is predicated solely on an error of law, no deference is appropriate and the reviewing court may substitute its judgment for that of the agency. Strother v. Board of Educ., 96 Md. App. 99, 108, (1993). In ascertaining the propriety of an agency's legal conclusions, our cases have articulated a three-fold analysis: (1) court must determine whether the agency recognized and applied the correct principles of law governing the case; (2) reviewing court next examines the agency's factual findings to determine if they are supported by substantial evidence; (3) Court must examine how the agency applied the law to the facts. This is a judgmental process involving a mixed question of law and fact, and <u>great deference must be accorded to the agency.</u>
Massachusetts			
Michigan			
Minnesota			
Mississippi			
Missouri			
Montana			

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State	APA	Language	Related Case Law
Nebraska		The court shall not substitute its judgment for that of the agency as to the weight of evidence on a question of fact. The court may remand or affirm the final decision or set it aside in whole or in part if substantial rights of the petitioner have been prejudiced because the final decision of the agency is: (a) In violation of constitutional or statutory provisions; (b) In excess of the statutory authority of the agency; (c) Made upon unlawful procedure; (d) Affected by other error of law; (e) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or (f) Arbitrary or capricious or characterized by abuse of discretion.	
Nevada	Nev. Rev. Stat. Ann. § 233B.135 (2012)		
New York			
New Hampshire			
New Jersey			
New Mexico			
North Carolina	N.C. Gen. Stat. § 150B-51 (2012)	The court reviewing a final decision may affirm the decision or remand the case for further proceedings. It may also reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the findings, inferences, conclusions, or decisions are: (1) In violation of constitutional provisions; (2) In excess of the statutory authority or jurisdiction of the agency or administrative law judge; (3) Made upon unlawful procedure; (4) Affected by other error of law; (5) Unsupported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31 in view of the entire record as submitted; or (6) Arbitrary, capricious, or an abuse of discretion.	
North Dakota			
Ohio		The court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record and any additional evidence the court has admitted, that the order is supported by reliable, probative, and substantial evidence and is in accordance with law. In the absence of this finding, it may reverse, vacate, or modify the order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law. The court shall award compensation for fees in accordance with section 2335.39 of the Revised Code to a prevailing party, other than an agency, in an appeal filed pursuant to this section.	
Oklahoma			
Oregon			
Pennsylvania	2 Pa.C.S. § 704 (2012)	The court shall hear the appeal without a jury on the record certified by the Commonwealth agency. After hearing, the court shall affirm the adjudication unless it shall find that the adjudication is in violation of the constitutional rights of the appellant, or is not in accordance with law, or that the provisions of Subchapter A of Chapter 5 (relating to practice and procedure of Commonwealth agencies) have been violated in the proceedings before the agency, or that any finding of fact made by the agency and necessary to support its adjudication is not supported by substantial evidence. If the adjudication is not affirmed, the court may enter any order authorized by 42 Pa.C.S. § 706 (relating to disposition of appeals).	
Rhode Island			

STATE SUMMARY OF ADMINISTRATIVE PROCEDURE ACT

State	APA	Language	Related Case Law
South Carolina South Dakota	S.C. Code Ann. § 1-23-380 (2011)	<p>The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:</p> <p>(a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) affected by other error of law; (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.</p>	
Tennessee	Tenn. Code Ann. § 4-5-322 (2012)	<p>The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are:</p> <p>(1) In violation of constitutional or statutory provisions; (2) In excess of the statutory authority of the agency; (3) Made upon unlawful procedure; (4) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or (5) (A) Unsupported by evidence that is both substantial and material in the light of the entire record.</p>	
Texas Utah Vermont	Tex. Gov't Code § 2001.174	<p>If the law authorizes review of a decision in a contested case under the substantial evidence rule or if the law does not define the scope of judicial review, a court may not substitute its judgment for the judgment of the state agency on the weight of the evidence on questions committed to agency discretion but:</p> <p>(1) may affirm the agency decision in whole or in part; and (2) shall reverse or remand the case for further proceedings if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:</p> <p>(A) in violation of a constitutional or statutory provision; (B) in excess of the agency's statutory authority; (C) made through unlawful procedure; (D) affected by other error of law; (E) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; or (F) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.</p>	
VIRGINIA Washington	Va. Code Sec. 2.2 -4027	<p>When the decision on review is to be made on the agency record, the duty of the court with respect to issues of fact shall be limited to ascertaining whether there was substantial evidence in the agency record upon which the agency as the trier of the facts could reasonably find them to be as it did . . . Whether the fact issues are reviewed on the agency record or one made in the review action, the court shall take due account of the presumption of official regularity, the experience and specialized competence of the agency, and the purposes of the basic law under which the agency has acted.</p>	

STATE SUMMARY OF ADMINISTRATIVE PROCEDURE ACT

State	APA	Language	Related Case Law
	W. Va. Code § 29A-5-4 (2012)	<p>The court may affirm the order or decision of the agency or remand the case for further proceedings. It shall reverse, vacate or modify the order or decision of the agency if the substantial rights of the petitioner or petitioners have been prejudiced because the administrative findings, inferences, conclusions, decision or order are:</p> <ul style="list-style-type: none"> (1) In violation of constitutional or statutory provisions; or (2) In excess of the statutory authority or jurisdiction of the agency; or (3) Made upon unlawful procedures; or (4) Affected by other error of law; or (5) Clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. 	
West Virginia			
Wisconsin			
Wyoming			