

CHAPTER 112**(SB 84)**

AN ACT relating to judicial review of state agency action.

WHEREAS, in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), the United States Supreme Court ruled that the federal judiciary's deference to the interpretation of statutes by federal agencies as articulated in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 487 U.S. 837 (1984), and its progeny was unlawful; and

WHEREAS, the opinions in several cases decided by the Kentucky Supreme Court, including without limitation, *Metzinger v. Kentucky Retirement Systems*, 299 S.W. 3d 541 (Ky. 2009), and *Kentucky Occupational Safety and Health Review Commission v. Estill County Fiscal Court*, 503 S.W. 3d 924 (Ky. 2016), appeared to adopt the deference articulated in the *Chevron* decision as a model for the review by the Kentucky Court of Justice of a state agency's interpretation of statutes; and

WHEREAS, the General Assembly does not create state agencies with an expectation that those agencies will possess a proficiency in interpreting a statute that is superior to that of the Court of Justice; and

WHEREAS, the General Assembly does not believe that any state agency possesses a proficiency in interpreting a statute that is superior to that of the Court of Justice; and

WHEREAS, the General Assembly believes that judicial deference to a state agency's interpretation of a statute is inconsistent with the role of the Court of Justice within the separation of powers provisions of the Constitution of Kentucky; and

WHEREAS, the General Assembly declares that *de novo* review is the only appropriate standard for judicial review of a state agency's interpretation of a statute or regulation;

NOW, THEREFORE,

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 13A IS CREATED TO READ AS FOLLOWS:

- (1) ***An administrative body shall not interpret a statute or administrative regulation with the expectation that the interpretation of the administrative body is entitled to deference from a reviewing court.***
- (2) ***The interpretation of a statute or administrative regulation by an administrative body shall not be entitled to deference from a reviewing court.***

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 446 IS CREATED TO READ AS FOLLOWS:

A court reviewing an administrative body's action, including without limitation a petition for judicial review of an administrative body's rulemaking or adjudicatory actions, shall apply de novo review to the administrative body's interpretation of statutes, administrative regulations, and other questions of law.

➔Section 3. KRS 13B.150 is amended to read as follows:

- (1) Except as provided in KRS 452.005, review of a final order shall be conducted by the court without a jury and shall be confined to the record, unless there is fraud or misconduct involving a party engaged in administration of this chapter. The court, upon request, may hear oral argument and receive written briefs. Challenges to the constitutionality of a final order shall be reviewed in accordance with KRS 452.005.
- (2) 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.
- (3) *The court shall apply de novo review of the agency's final order on questions of law. An agency's interpretation of a statute or administrative regulation shall not be entitled to deference from a reviewing court.*

Veto Overridden March 27, 2025.