



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB2471

Introduced 2/15/2008, by Sen. John J. Cullerton

SYNOPSIS AS INTRODUCED:

See Index

Amends the Illinois Administrative Procedure Act to create the Office of Administrative Hearings. Provides that the Office shall conduct administrative hearings for agencies under the jurisdiction of the Governor, except for the Illinois Public Labor Relations Board, the Illinois Educational Labor Relations Board, the Illinois Commerce Commission, the Illinois Workers' Compensation Commission, the Civil Service Commission, the Pollution Control Board, the Illinois State Police Merit Board, the Property Tax Appeal Board, the Human Rights Commission, and the State Board of Elections. Provides for the appointment of a Chief Administrative Law Judge by the Governor with the advice and consent of the Senate. Sets the powers and duties of the Chief Administrative Law Judge. Sets qualifications for administrative law judges employed by the Office. Sets out procedures for the conduct of administrative hearings by the Office. Provides for the transfer of personnel and property to the Office from State agencies. Amends the Personnel Code to exempt employees of the Office from the provisions of the Code. Effective immediately.

LRB095 18166 JAM 44249 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning administrative hearings.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Administrative Procedure Act is
5 amended by changing Sections 1-5, 1-15, 1-30, 10-5, 10-15,
6 10-20, 10-25, 10-45, 10-50, 10-60, and 10-65 and adding
7 Sections 1-13 and 10-3 and 12-5, 12-10, 12-15, 12-20, 12-25,
8 12-30, 12-35, 12-40, and Article 12 as follows:

9 (5 ILCS 100/1-5) (from Ch. 127, par. 1001-5)

10 Sec. 1-5. Applicability.

11 (a) This Act applies to every agency as defined in this
12 Act. Beginning January 1, 1978, in case of conflict between the
13 provisions of this Act and the Act creating or conferring power
14 on an agency, this Act shall control. ~~If, however, an agency~~
15 ~~(or its predecessor in the case of an agency that has been~~
16 ~~consolidated or reorganized) has existing procedures on July 1,~~
17 ~~1977, specifically for contested cases or licensing, those~~
18 ~~existing provisions control, except that this exception~~
19 ~~respecting contested cases and licensing does not apply if the~~
20 ~~Act creating or conferring power on the agency adopts by~~
21 ~~express reference the provisions of this Act.~~ Where the Act
22 creating or conferring power on an agency establishes
23 administrative procedures not covered by this Act, those

1 procedures shall remain in effect.

2 (b) The provisions of this Act do not apply to (i)
3 preliminary hearings, investigations, or practices where no
4 final determinations affecting State funding are made by the
5 State Board of Education, (ii) legal opinions issued under
6 Section 2-3.7 of the School Code, (iii) as to State colleges
7 and universities, their disciplinary and grievance
8 proceedings, academic irregularity and capricious grading
9 proceedings, and admission standards and procedures, and (iv)
10 the class specifications for positions and individual position
11 descriptions prepared and maintained under the Personnel Code.
12 Those class specifications shall, however, be made reasonably
13 available to the public for inspection and copying. The
14 provisions of this Act do not apply to hearings under Section
15 20 of the Uniform Disposition of Unclaimed Property Act.

16 (c) Section 5-35 of this Act relating to procedures for
17 rulemaking does not apply to the following:

18 (1) Rules adopted by the Pollution Control Board that,
19 in accordance with Section 7.2 of the Environmental
20 Protection Act, are identical in substance to federal
21 regulations or amendments to those regulations
22 implementing the following: Sections 3001, 3002, 3003,
23 3004, 3005, and 9003 of the Solid Waste Disposal Act;
24 Section 105 of the Comprehensive Environmental Response,
25 Compensation, and Liability Act of 1980; Sections 307(b),
26 307(c), 307(d), 402(b)(8), and 402(b)(9) of the Federal

1 Water Pollution Control Act; and Sections 1412(b),
2 1414(c), 1417(a), 1421, and 1445(a) of the Safe Drinking
3 Water Act.

4 (2) Rules adopted by the Pollution Control Board that
5 establish or amend standards for the emission of
6 hydrocarbons and carbon monoxide from gasoline powered
7 motor vehicles subject to inspection under Section 13A-105
8 of the Vehicle Emissions Inspection Law and rules adopted
9 under Section 13B-20 of the Vehicle Emissions Inspection
10 Law of 1995.

11 (3) Procedural rules adopted by the Pollution Control
12 Board governing requests for exceptions under Section 14.2
13 of the Environmental Protection Act.

14 (4) The Pollution Control Board's grant, pursuant to an
15 adjudicatory determination, of an adjusted standard for
16 persons who can justify an adjustment consistent with
17 subsection (a) of Section 27 of the Environmental
18 Protection Act.

19 (5) Rules adopted by the Pollution Control Board that
20 are identical in substance to the regulations adopted by
21 the Office of the State Fire Marshal under clause (ii) of
22 paragraph (b) of subsection (3) of Section 2 of the
23 Gasoline Storage Act.

24 (d) Pay rates established under Section 8a of the Personnel
25 Code shall be amended or repealed pursuant to the process set
26 forth in Section 5-50 within 30 days after it becomes necessary

1 to do so due to a conflict between the rates and the terms of a
2 collective bargaining agreement covering the compensation of
3 an employee subject to that Code.

4 (e) Section 10-45 of this Act shall not apply to any
5 hearing, proceeding, or investigation conducted under Section
6 13-515 of the Public Utilities Act.

7 (f) Article 10 of this Act does not apply to any hearing,
8 proceeding, or investigation conducted by the State Council for
9 the State of Illinois created under Section 3-3-11.05 of the
10 Unified Code of Corrections or by the Interstate Commission for
11 Adult Offender Supervision created under the Interstate
12 Compact for Adult Offender Supervision.

13 (g) This Act is subject to the provisions of Article XXI of
14 the Public Utilities Act. To the extent that any provision of
15 this Act conflicts with the provisions of that Article XXI, the
16 provisions of that Article XXI control.

17 (Source: P.A. 95-9, eff. 6-30-07; 95-331, eff. 8-21-07.)

18 (5 ILCS 100/1-13 new)

19 Sec. 1-13. "Administrative hearing" means any hearing
20 required to comply with the provisions of this Act concerning a
21 contested case.

22 (5 ILCS 100/1-15) (from Ch. 127, par. 1001-15)

23 Sec. 1-15. "Administrative law judge" means the presiding
24 officer or officers at the initial administrative hearing

1 before each agency and each continuation of that administrative
2 hearing. The term also includes but is not limited to hearing
3 examiners, hearing officers, referees, and arbitrators.

4 (Source: P.A. 87-823.)

5 (5 ILCS 100/1-30) (from Ch. 127, par. 1001-30)

6 Sec. 1-30. "Contested case" means an adjudicatory
7 proceeding (not including ratemaking, rulemaking, or
8 quasi-legislative, informational, or similar proceedings) in
9 which the individual legal rights, duties, or privileges of a
10 party are required by law to be determined by an agency only
11 after an opportunity for an administrative a hearing.

12 (Source: P.A. 87-823.)

13 (5 ILCS 100/10-3 new)

14 Sec. 10-3. Applicability. This Article applies to all
15 agencies not covered by Article 12.

16 (5 ILCS 100/10-5) (from Ch. 127, par. 1010-5)

17 Sec. 10-5. Rules required for hearings. All agencies shall
18 adopt rules establishing procedures for administrative
19 ~~contested case~~ hearings.

20 (Source: P.A. 87-823.)

21 (5 ILCS 100/10-15) (from Ch. 127, par. 1010-15)

22 Sec. 10-15. Standard of proof. Unless otherwise provided

1 by law or stated in the agency's rules, the standard of proof
2 in any administrative ~~contested case~~ hearing conducted under
3 this Act by an agency shall be the preponderance of the
4 evidence.

5 (Source: P.A. 87-823.)

6 (5 ILCS 100/10-20) (from Ch. 127, par. 1010-20)

7 Sec. 10-20. Qualifications of administrative law judges.
8 ~~All~~ Agencies shall adopt rules concerning the minimum
9 qualifications of administrative law judges for administrative
10 ~~contested case~~ hearings not subject to Article 12 of this Act.
11 The agency head or an attorney licensed to practice law in
12 Illinois may act as an administrative law judge or panel for an
13 agency without adopting any rules under this Section. ~~The~~ These
14 rules may be adopted using the procedures in either Section
15 5-15 or 5-35.

16 (Source: P.A. 87-823.)

17 (5 ILCS 100/10-25) (from Ch. 127, par. 1010-25)

18 Sec. 10-25. Notice of contested cases; administrative
19 ~~notice~~ hearing.

20 (a) In a contested case, all parties shall be afforded an
21 opportunity for an administrative ~~a~~ hearing after reasonable
22 notice. The notice shall be served personally or by certified
23 or registered mail or as otherwise provided by law upon the
24 parties or their agents appointed to receive service of process

1 and shall include the following:

2 (1) A statement of the time, place, and nature of the
3 administrative hearing.

4 (2) A statement of the legal authority and jurisdiction
5 under which the administrative hearing is to be held.

6 (3) A reference to the particular Sections of the
7 substantive and procedural statutes and rules involved.

8 (4) Except where a more detailed statement is otherwise
9 provided for by law, a short and plain statement of the
10 matters asserted, the consequences of a failure to respond,
11 and the official file or other reference number.

12 (5) The names and mailing addresses of the
13 administrative law judge, all parties, and all other
14 persons to whom the agency gives notice of the
15 administrative hearing unless otherwise confidential by
16 law.

17 (b) An opportunity shall be afforded all parties to be
18 represented by legal counsel and to respond and present
19 evidence and argument.

20 (c) Unless precluded by law, disposition may be made of any
21 contested case by stipulation, agreed settlement, consent
22 order, or default.

23 (Source: P.A. 87-823.)

24 (5 ILCS 100/10-45) (from Ch. 127, par. 1010-45)

25 Sec. 10-45. Proposal for decision. Except where otherwise

1 expressly provided by law, when in a contested case a majority
2 of the officials of the agency who are to render the final
3 decision has not heard the case or read the record, the
4 decision, if adverse to a party to the proceeding other than
5 the agency, shall not be made until a proposal for decision is
6 served upon the parties and an opportunity is afforded to each
7 party adversely affected to file exceptions and to present a
8 brief and, if the agency so permits, oral argument to the
9 agency officials who are to render the decision. The proposal
10 for decision shall contain a statement of the reasons therefor
11 and of each issue of fact or law necessary to the proposed
12 decision and shall be prepared by the persons who conducted the
13 administrative hearing or one who has read the record.

14 (Source: P.A. 87-823.)

15 (5 ILCS 100/10-50) (from Ch. 127, par. 1010-50)

16 Sec. 10-50. Decisions and orders.

17 (a) A final decision or order adverse to a party (other
18 than the agency) in a contested case shall be in writing or
19 stated on ~~in~~ the record. A final decision shall include
20 findings of fact and conclusions of law, separately stated.
21 Findings of fact, if set forth in statutory language, shall be
22 accompanied by a concise and explicit statement of the
23 underlying facts supporting the findings. If, in accordance
24 with agency rules, a party submitted proposed findings of fact,
25 the decision shall include a ruling upon each proposed finding.

1 Parties or their agents appointed to receive service of process
2 shall be notified either personally or by registered or
3 certified mail of any decision or order. Upon request a copy of
4 the decision or order shall be delivered or mailed forthwith to
5 each party and to each ~~his~~ attorney of record.

6 (b) All agency orders shall specify whether they are final
7 and subject to the Administrative Review Law.

8 (c) A decision by any agency in a contested case under this
9 Act shall be void unless the proceedings are conducted in
10 compliance with the provisions of this Act relating to
11 contested cases, except to the extent those provisions are
12 waived under Section 10-70 ~~and except to the extent the agency~~
13 ~~has adopted its own rules for contested cases as authorized in~~
14 ~~Section 1-5.~~

15 (Source: P.A. 92-16, eff. 6-28-01.)

16 (5 ILCS 100/10-60) (from Ch. 127, par. 1010-60)

17 Sec. 10-60. Ex parte communications.

18 (a) Except in the disposition of matters that agencies are
19 authorized by law to entertain or dispose of on an ex parte
20 basis, agency heads, agency employees, and administrative law
21 judges shall not, after notice of hearing in a contested case
22 or licensing to which the procedures of a contested case apply
23 under this Act, communicate, directly or indirectly, in
24 connection with any issue of fact, with any person or party, or
25 in connection with any other issue with any party or the

1 representative of any party, without ~~except upon~~ notice and
2 opportunity for all parties to participate.

3 (b) However, an agency member may communicate with other
4 members of the agency, and an agency member or administrative
5 law judge may have the aid and advice of one or more personal
6 assistants.

7 (c) An ex parte communication received by any agency head,
8 agency employee, or administrative law judge shall be made a
9 part of the record of the pending matter, including all written
10 communications, all written responses to the communications,
11 and a memorandum stating the substance of all oral
12 communications and all responses made and the identity of each
13 person from whom the ex parte communication was received.

14 (d) Communications regarding matters of procedure and
15 practice, such as the format of pleadings, number of copies
16 required, manner of service, scheduling, and status of
17 proceedings, are not considered ex parte communications under
18 this Section.

19 (Source: P.A. 87-823.)

20 (5 ILCS 100/10-65) (from Ch. 127, par. 1010-65)

21 Sec. 10-65. Licenses.

22 (a) When any licensing is required by law to be preceded by
23 notice and an opportunity for an administrative ~~a~~ hearing, the
24 provisions of this Act concerning contested cases shall apply.

25 (b) When a licensee has made timely and sufficient

1 application for the renewal of a license or a new license with
2 reference to any activity of a continuing nature, the existing
3 license shall continue in full force and effect until the final
4 agency decision on the application has been made unless a later
5 date is fixed by order of a reviewing court.

6 (c) Except as provided in Section 1-27 of the Department of
7 Natural Resources Act, an application for the renewal of a
8 license or a new license shall include the applicant's social
9 security number. Each agency shall require the licensee to
10 certify on the application form, under penalty of perjury, that
11 he or she is not more than 30 days delinquent in complying with
12 a child support order. Every application shall state that
13 failure to so certify shall result in disciplinary action, and
14 that making a false statement may subject the licensee to
15 contempt of court. The agency shall notify each applicant or
16 licensee who acknowledges a delinquency or who, contrary to his
17 or her certification, is found to be delinquent or who after
18 receiving notice, fails to comply with a subpoena or warrant
19 relating to a paternity or a child support proceeding, that the
20 agency intends to take disciplinary action. Accordingly, the
21 agency shall provide written notice of the facts or conduct
22 upon which the agency will rely to support its proposed action
23 and the applicant or licensee shall be given an opportunity for
24 an administrative ~~a~~ hearing in accordance with the provisions
25 of the Act concerning contested cases. Any delinquency in
26 complying with a child support order can be remedied by

1 arranging for payment of past due and current support. Any
2 failure to comply with a subpoena or warrant relating to a
3 paternity or child support proceeding can be remedied by
4 complying with the subpoena or warrant. Upon a final finding of
5 delinquency or failure to comply with a subpoena or warrant,
6 the agency shall suspend, revoke, or refuse to issue or renew
7 the license. In cases in which the Department of Healthcare and
8 Family Services (formerly Department of Public Aid) has
9 previously determined that an applicant or a licensee is more
10 than 30 days delinquent in the payment of child support and has
11 subsequently certified the delinquency to the licensing
12 agency, and in cases in which a court has previously determined
13 that an applicant or licensee has been in violation of the
14 Non-Support Punishment Act for more than 60 days, the licensing
15 agency shall refuse to issue or renew or shall revoke or
16 suspend that person's license based solely upon the
17 certification of delinquency made by the Department of
18 Healthcare and Family Services (formerly Department of Public
19 Aid) or the certification of violation made by the court.
20 Further process, hearings, or redetermination of the
21 delinquency or violation by the licensing agency shall not be
22 required. The licensing agency may issue or renew a license if
23 the licensee has arranged for payment of past and current child
24 support obligations in a manner satisfactory to the Department
25 of Healthcare and Family Services (formerly Department of
26 Public Aid) or the court. The licensing agency may impose

1 conditions, restrictions, or disciplinary action upon that
2 license.

3 (d) Except as provided in subsection (c), no agency shall
4 revoke, suspend, annul, withdraw, amend materially, or refuse
5 to renew any valid license without first giving written notice
6 to the licensee of the facts or conduct upon which the agency
7 will rely to support its proposed action and an opportunity for
8 an administrative ~~a~~ hearing in accordance with the provisions
9 of this Act concerning contested cases. At the administrative
10 hearing, the licensee shall have the right to show compliance
11 with all lawful requirements for the retention, continuation,
12 or renewal of the license. If, however, the agency finds that
13 the public interest, safety, or welfare imperatively requires
14 emergency action, and if the agency incorporates a finding to
15 that effect in its order, summary suspension of a license may
16 be ordered pending proceedings for revocation or other action.
17 Those proceedings shall be promptly instituted and determined.

18 (e) Any application for renewal of a license that contains
19 required and relevant information, data, material, or
20 circumstances that were not contained in an application for the
21 existing license shall be subject to the provisions of
22 subsection (a).

23 (Source: P.A. 94-40, eff. 1-1-06; 95-331, eff. 8-21-07.)

24 (5 ILCS 100/Art. 12 heading new)

25 ARTICLE 12. OFFICE OF ADMINISTRATIVE HEARINGS

1 (5 ILCS 100/12-5 new)

2 Sec. 12-5. Applicability. This Article applies to all
3 agencies under the jurisdiction of the Governor other than the
4 following:

5 (a) Illinois Labor Relations Boards created under the
6 Illinois Public Labor Relations Act;

7 (b) Illinois Educational Labor Relations Board;

8 (c) Illinois Commerce Commission;

9 (d) Illinois Workers' Compensation Commission;

10 (e) Civil Service Commission;

11 (f) Pollution Control Board;

12 (g) Illinois State Police Merit Board;

13 (h) Property Tax Appeal Board;

14 (i) Human Rights Commission; and

15 (j) State Board of Elections.

16 (5 ILCS 100/12-10 new)

17 Sec. 12-10. Office of Administrative Hearings.

18 (a) The Office of Administrative Hearings, hereinafter
19 referred to as the Office, is established for the purpose of
20 improving public trust and confidence in administrative
21 adjudication by:

22 (1) separating the adjudicatory function from the
23 investigatory, prosecutory, and policy-making functions of
24 agencies in the executive branch;

1 (2) establishing a professional corp of administrative
2 law judges;

3 (3) establishing greater uniformity in the rules of
4 procedure and evidence in administrative adjudication; and

5 (4) eliminating unnecessary and duplicative costs in
6 administrative adjudication.

7 (b) The Office is an independent State agency in the
8 executive branch and is responsible for conducting
9 administrative hearings in accordance with the legislative
10 intent expressed by this Act.

11 (c) The Office is under the administration, supervision,
12 and direction of a Chief Administrative Law Judge, appointed by
13 the Governor, by and with the advice and consent of the Senate.
14 The Chief Administrative Law Judge, as a condition of
15 appointment, must have been admitted to practice law in the
16 State of Illinois for at least 10 years, must have substantial
17 knowledge and experience suitable to the duties of the Office,
18 and may be removed only for good cause following notice and an
19 opportunity for an adjudicative hearing.

20 (d) The Chief Administrative Law Judge must maintain his or
21 her principal office in Springfield and may maintain any other
22 offices that may be necessary.

23 (e) The Office may purchase or lease any equipment and
24 supplies that may be necessary to carry out its duties and must
25 maintain records and files of the work of the Office.

26 (f) The Office of Administrative Hearings by and through

1 the Chief Administrative Law Judge and any Administrative Law
2 Judge under this Article is empowered to subpoena and bring
3 before it, him, or her any person in this State and to take
4 testimony, in person or by telephone, upon payment of the same
5 fees, and in the same manner as is prescribed by law for
6 judicial proceedings in civil cases in the courts of this
7 State. The term "Administrative Law Judge" as used in this
8 Article means an administrative law judge as defined in 5 ILCS
9 100/1-15 who is an employee of the Office.

10 (g) The Office may enter into an interagency agreement with
11 any agency to furnish administrative law judges to conduct
12 administrative hearings not otherwise required to be conducted
13 by the Office. The Office may also enter into an agreement with
14 a unit of local government or school district to furnish
15 administrative law judges to conduct administrative hearings.

16 (h) Any finding, determination, ruling or order issued as
17 result of any hearing conducted for any public entity subject
18 to or contracted for under this Article shall have the same
19 status and be subject to the same conditions and limitations as
20 if conducted by that public entity. That entity shall remain
21 the proper party named and served in any action in
22 administrative review under the provisions of the
23 Administrative Review Law or other review or appeal provision
24 provided by law.

25 (i) The Office must develop and institute a program of
26 continuing education and training for administrative law

1 judges and may permit administrative law judges and hearing
2 examiners employed by other agencies to participate in its
3 program. The Office shall also develop and implement a code of
4 professional conduct for its administrative law judges,
5 incorporating the provisions of the Rules of Judicial Conduct
6 whenever possible. The Office may develop and institute other
7 educational programs in the area of administrative law and
8 procedure for the benefit of State employees and those who
9 participate in administrative hearings.

10 (5 ILCS 100/12-15 new)

11 Sec. 12-15. Term of office and salary.

12 (a) The Chief Administrative Law Judge shall serve for a
13 term of 6 years, provided that he or she shall hold office
14 until a successor is appointed.

15 (b) The Chief Administrative Law Judge shall receive an
16 annual salary as set by the Governor of Illinois from time to
17 time or the amount established by the Compensation Review
18 Board, whichever is greater.

19 (5 ILCS 100/12-20 new)

20 Sec. 12-20. Oath. Each prospective Chief Administrative
21 Law Judge, before taking office, must take and subscribe to the
22 oath or affirmation prescribed by Section 3 of Article XIII of
23 the Illinois Constitution, an executed copy of which must be
24 filed with the Secretary of State.

1 (5 ILCS 100/12-25 new)

2 Sec. 12-25. Powers and Duties of the Chief Administrative
3 Law Judge. The Chief Administrative Law Judge has the following
4 powers and duties:

5 (a) The Chief Administrative Law Judge may employ
6 Administrative Law Judges that are necessary to carry out the
7 purposes of this Article.

8 (b) Administrative Law Judges and their immediate
9 supervisors shall be subject to Jurisdiction A, B, and C of the
10 Personnel Code, except that provisions contained in 20 ILCS
11 415/8b.18 and 19 shall not apply.

12 (c) Except as otherwise provided in Section 12-40 of this
13 Article, an Administrative Law Judge must have been admitted to
14 practice as an attorney in this State for at least 5 years and
15 must have a demonstrated knowledge of and experience in
16 administrative law and procedure that is suitable to the duties
17 of the Office. Supervisors of Administrative Law Judges must be
18 experienced administrative law judges.

19 (d) The Chief Administrative Law Judge may contract for the
20 services of an attorney to serve as a special administrative
21 law judge when necessary.

22 (e) The Chief Administrative Law Judge must adopt a code of
23 conduct and rules concerning the discipline and termination of
24 Office Administrative Law Judges and the resolution of
25 grievances, subject to any collective bargaining agreement.

1 (f) The Chief Administrative Law Judge may employ and
2 direct other staff, including administrative, supervisory,
3 clerical, and other specialized or technical personnel that may
4 be necessary to carry out the purposes of this Article.

5 (g) The Chief Administrative Law Judge must assign an
6 administrative law judge for any proceeding that is required by
7 this Article to be conducted by the Office and for any
8 proceeding for which the Office has agreed to furnish an
9 administrative law judge as provided in Section 12-10 of this
10 Act.

11 (h) Any administrative law judge so assigned does not
12 become an employee of the agency during the assignment and is
13 not subject to the direction or the supervision of the agency
14 to whose proceeding the administrative law judge has been
15 assigned.

16 (i) In assigning administrative law judges, the Chief
17 Administrative Law Judge must, when possible, use personnel
18 having knowledge, training, or experience in the field or
19 subject matter of the hearing and assign administrative law
20 judges primarily to the hearings of particular agencies on a
21 long-term basis. The Chief Administrative Law Judge may act as
22 an administrative law judge in a particular case when
23 appropriate under law.

24 (j) The Chief Administrative Law Judge shall adopt uniform
25 rules of procedure and evidence governing hearings conducted by
26 the Office of Administrative Hearings. Rules adopted by the

1 Chief Administrative Law Judge shall supersede any contrary
2 rules adopted by agencies subject to this Article except to the
3 extent required by federal law or State statute. The Chief
4 Administrative Law Judge may adopt such additional rules as
5 necessary to carry out the powers and duties of the Office of
6 Administrative Hearings.

7 (k) The Chief Administrative Law Judge must:

8 (1) annually collect information on administrative law
9 and procedure in Illinois and must study administrative law
10 and procedure for the purpose of improving the fairness,
11 efficiency, and uniformity of administrative adjudicatory
12 proceedings in Illinois;

13 (2) monitor the quality and cost of State
14 administrative hearings; and

15 (3) annually report his or her findings and
16 recommendations to the Governor and to the General Assembly
17 no later than March 15 of each year.

18 (5 ILCS 100/12-30 new)

19 Sec. 12-30. Proceedings. Beginning on January 1, 2010, an
20 administrative law judge of the Office shall preside over any
21 administrative hearing of any agency subject to this Article,
22 except that an administrative hearing in a contested case
23 commenced before January 1, 2010, and pending before an
24 administrative law judge not transferred to the Office of
25 Administrative Hearings by operation of Section 12-40 of this

1 Article shall not be heard by an administrative law judge of
2 the Office without the agreement of the parties.

3 (5 ILCS 100/12-35 new)

4 Sec. 12-35. Administrative Hearing Procedures.

5 (a) Time and place of hearing. The Office must consult the
6 agency and determine the place and the time of commencement of
7 the administrative hearing.

8 (b) Powers of administrative law judge. The administrative
9 law judge presides at the administrative hearing and may:

10 (1) administer oaths and affirmations;

11 (2) rule on offers of proof and receive relevant
12 evidence;

13 (3) regulate the schedule and the course of the
14 hearing;

15 (4) dispose of procedural requests or similar matters;

16 (5) sign and issue subpoenas in the name of the agency
17 requiring attendance and giving of testimony by witnesses
18 and the production of books, papers, and other documentary
19 evidence;

20 (6) exercise any other powers relating to the conduct
21 of the administrative hearing that are lawfully delegated
22 to him or her by the agency or by the examining, advisory,
23 or disciplinary board. Whenever, after an agency head or an
24 examining, advisory, or disciplinary board has commenced
25 hearing a case with an administrative law judge presiding,

1 a quorum no longer exists, the administrate law judge who
2 is presiding must complete the hearing as if sitting alone
3 and must render a proposed decision in accordance with
4 subsection (e) of this Section; and

5 (7) perform other necessary and appropriate acts in the
6 performance of his or her duties.

7 (c) Disqualifications.

8 (1) Administrative Law Judges shall be assigned to
9 hearings in accordance with the procedures set forth by the
10 Chief Administrative Law Judge. No agency may select any
11 individual administrative law judge for any proceeding or
12 reject any individual administrative law judge. In cases
13 where the agency is a party to the hearing, it shall have
14 all rights and privileges and be subject to the same
15 limitations as all other parties to the hearing.

16 (2) An administrative law judge of the Office must
17 voluntarily disqualify himself or herself and withdraw
18 from any case for bias, prejudice, interest, or any other
19 cause for which, under the laws of this State, a State
20 court judge is disqualified from hearing a particular case.
21 An administrative law judge should perform the duties of
22 the Office impartially and diligently.

23 (3) Any party may petition for the disqualification of
24 any administrative law judge by filing an affidavit stating
25 with particularity the grounds upon which it is claimed
26 that a fair and impartial hearing cannot be accorded. The

1 affidavit must be filed before the taking of evidence or,
2 if evidence has already been taken, promptly upon
3 discovering facts establishing grounds for
4 disqualification.

5 (4) The administrative law judge whose
6 disqualification is requested shall determine whether to
7 grant the petition, stating facts and reasons for the
8 determination.

9 (5) If an administrative law judge becomes unavailable
10 as a result of recusal or any other reasons, the Chief
11 Administrative Law Judge must assign another
12 administrative law judge to preside at the administrative
13 hearing.

14 (d) Ex parte communications. Except in disposition of
15 matters that are authorized by law to be disposed of on an ex
16 parte basis, no administrative law judge of the Office may,
17 after notice of an administrative hearing in a contested case,
18 communicate, directly or indirectly, in connection with any
19 issue of fact, with any person or party, or in connection with
20 any other issue with any party or his or her representative,
21 without notice and opportunity for all parties to participate.
22 An administrative law judge, however, may communicate with
23 other employees of the Office. No member of the Office may
24 communicate regarding pending matters to any member of an
25 agency or of an examining, advisory, or disciplinary board if
26 the agency or board is hearing the case with the administrative

1 law judge. An administrative law judge may have the aid and
2 advice of one or more assistants.

3 (e) Proposed decisions. When a majority of the members of
4 an agency or of an examining, advisory, or disciplinary board
5 has not heard a case with the administrative law judge, any
6 proposed decision prepared by an administrative law judge of
7 the Office is subject to this subsection (e) and Section 10-45
8 of this Act.

9 (1) When an administrative law judge hears a case
10 alone, he or she must prepare a decision. The
11 administrative law judge must submit the decision to the
12 agency or, in the case of proceedings that an examining,
13 advisory, or disciplinary board is authorized by an Act to
14 hear and make a recommended decision, to the examining,
15 advisory, or disciplinary board.

16 (2) When an administrative law judge hears a case with
17 an agency head or with an examining, advisory, or
18 disciplinary board, the administrative law judge must be
19 present during the consideration of the case and must, if
20 requested by the agency or by the board, prepare a proposed
21 decision and submit it to the agency or board.

22 (3) In reviewing a proposed decision submitted by an
23 administrative law judge of the Office, an agency head or
24 an examining, advisory, or disciplinary board is not bound
25 by the proposed decision and may adopt all, some, or none
26 of the proposed decision as its recommended decision. If

1 the agency head or examining, advisory, or disciplinary
2 board does not adopt the proposed decision in its entirety,
3 it must either (i) recommend a decision in the case based
4 upon the record, including transcript, or (ii) remand the
5 case to the same administrative law judge to take
6 additional evidence.

7 (4) If a case has been remanded to an administrative
8 law judge to take additional evidence or to include more
9 detailed findings of fact or conclusions of law, the
10 administrative law judge must prepare a proposed decision
11 upon the additional evidence and upon the transcript and
12 other papers that are part of the record of the prior
13 hearing and must submit the proposed decision to the agency
14 or to the examining, advisory, or disciplinary board. If
15 the administrative law judge who heard the case originally
16 is unavailable to take the additional evidence, by reason
17 of illness or other disability or because he or she is no
18 longer employed by the Office, the Chief Administrative Law
19 Judge must assign a different administrative law judge to
20 take the additional evidence.

21 (5 ILCS 100/12-40 new)

22 Sec. 12-40. Transition.

23 (a) The Governor must appoint a Chief Administrative Law
24 Judge to take office on July 1, 2009.

25 (b) No later than July 1, 2009, each agency must provide to

1 the Chief Administrative Law Judge all relevant information
2 concerning hearings, number of hearings, personnel used as
3 hearing officers and support staff, and actual expenditures for
4 contracted hearing officer services, equipment, and travel.

5 (c) All full-time administrative law judges used
6 principally to preside over administrative hearings conducted
7 by an agency subject to the provisions of this Act for at least
8 one year before July 1, 2009 must be administratively
9 transferred to the Office no later than January 1, 2010.

10 (d) All full-time employees who have principally served as
11 support staff of those employees transferred under subsection
12 (c) of this Section must be administratively transferred to the
13 Office no later than January 1, 2010.

14 (e) All equipment or other tangible property, in possession
15 of agencies, used or held principally by personnel transferred
16 under this Section must be transferred to the Office not later
17 than January 1, 2010, unless the head of the agency and the
18 Chief Administrative Law Judge determine that the equipment or
19 property will be more efficiently used by the agency if not
20 transferred.

21 Section 10. The Personnel Code is amended by changing
22 Section 4c as follows:

23 (20 ILCS 415/4c) (from Ch. 127, par. 63b104c)

24 Sec. 4c. General exemptions. The following positions in

1 State service shall be exempt from jurisdictions A, B, and C,
2 unless the jurisdictions shall be extended as provided in this
3 Act:

4 (1) All officers elected by the people.

5 (2) All positions under the Lieutenant Governor,
6 Secretary of State, State Treasurer, State Comptroller,
7 State Board of Education, Clerk of the Supreme Court,
8 Attorney General, and State Board of Elections.

9 (3) Judges, and officers and employees of the courts,
10 and notaries public.

11 (4) All officers and employees of the Illinois General
12 Assembly, all employees of legislative commissions, all
13 officers and employees of the Illinois Legislative
14 Reference Bureau, the Legislative Research Unit, and the
15 Legislative Printing Unit.

16 (5) All positions in the Illinois National Guard and
17 Illinois State Guard, paid from federal funds or positions
18 in the State Military Service filled by enlistment and paid
19 from State funds.

20 (6) All employees of the Governor at the executive
21 mansion and on his immediate personal staff.

22 (7) Directors of Departments, the Adjutant General,
23 the Assistant Adjutant General, the Director of the
24 Illinois Emergency Management Agency, members of boards
25 and commissions, and all other positions appointed by the
26 Governor by and with the consent of the Senate.

1 (8) The presidents, other principal administrative
2 officers, and teaching, research and extension faculties
3 of Chicago State University, Eastern Illinois University,
4 Governors State University, Illinois State University,
5 Northeastern Illinois University, Northern Illinois
6 University, Western Illinois University, the Illinois
7 Community College Board, Southern Illinois University,
8 Illinois Board of Higher Education, University of
9 Illinois, State Universities Civil Service System,
10 University Retirement System of Illinois, and the
11 administrative officers and scientific and technical staff
12 of the Illinois State Museum.

13 (9) All other employees except the presidents, other
14 principal administrative officers, and teaching, research
15 and extension faculties of the universities under the
16 jurisdiction of the Board of Regents and the colleges and
17 universities under the jurisdiction of the Board of
18 Governors of State Colleges and Universities, Illinois
19 Community College Board, Southern Illinois University,
20 Illinois Board of Higher Education, Board of Governors of
21 State Colleges and Universities, the Board of Regents,
22 University of Illinois, State Universities Civil Service
23 System, University Retirement System of Illinois, so long
24 as these are subject to the provisions of the State
25 Universities Civil Service Act.

26 (10) The State Police so long as they are subject to

1 the merit provisions of the State Police Act.

2 (11) The scientific staff of the State Scientific
3 Surveys and the Waste Management and Research Center.

4 (12) The technical and engineering staffs of the
5 Department of Transportation, the Department of Nuclear
6 Safety, the Pollution Control Board, and the Illinois
7 Commerce Commission, and the technical and engineering
8 staff providing architectural and engineering services in
9 the Department of Central Management Services.

10 (13) All employees of the Illinois State Toll Highway
11 Authority.

12 (14) The Secretary of the Illinois Workers'
13 Compensation Commission.

14 (15) All persons who are appointed or employed by the
15 Director of Insurance under authority of Section 202 of the
16 Illinois Insurance Code to assist the Director of Insurance
17 in discharging his responsibilities relating to the
18 rehabilitation, liquidation, conservation, and dissolution
19 of companies that are subject to the jurisdiction of the
20 Illinois Insurance Code.

21 (16) All employees of the St. Louis Metropolitan Area
22 Airport Authority.

23 (17) All investment officers employed by the Illinois
24 State Board of Investment.

25 (18) Employees of the Illinois Young Adult
26 Conservation Corps program, administered by the Illinois

1 Department of Natural Resources, authorized grantee under
2 Title VIII of the Comprehensive Employment and Training Act
3 of 1973, 29 USC 993.

4 (19) Seasonal employees of the Department of
5 Agriculture for the operation of the Illinois State Fair
6 and the DuQuoin State Fair, no one person receiving more
7 than 29 days of such employment in any calendar year.

8 (20) All "temporary" employees hired under the
9 Department of Natural Resources' Illinois Conservation
10 Service, a youth employment program that hires young people
11 to work in State parks for a period of one year or less.

12 (21) All hearing officers of the Human Rights
13 Commission.

14 (22) All employees of the Illinois Mathematics and
15 Science Academy.

16 (23) All employees of the Kankakee River Valley Area
17 Airport Authority.

18 (24) The commissioners and employees of the Executive
19 Ethics Commission.

20 (25) The Executive Inspectors General, including
21 special Executive Inspectors General, and employees of
22 each Office of an Executive Inspector General.

23 (26) The commissioners and employees of the
24 Legislative Ethics Commission.

25 (27) The Legislative Inspector General, including
26 special Legislative Inspectors General, and employees of

1 the Office of the Legislative Inspector General.

2 (28) The Auditor General's Inspector General and
3 employees of the Office of the Auditor General's Inspector
4 General.

5 (29) All employees of the Office of Administrative
6 Hearings.

7 (Source: P.A. 93-617, eff. 12-9-03; 93-721, eff. 1-1-05;
8 93-1091, eff. 3-29-05.)

9 Section 99. Effective date. This Act takes effect upon
10 becoming law.

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2

Statutes amended in order of appearance

3 5 ILCS 100/1-5 from Ch. 127, par. 1001-5

4 5 ILCS 100/1-13 new

5 5 ILCS 100/1-15 from Ch. 127, par. 1001-15

6 5 ILCS 100/1-30 from Ch. 127, par. 1001-30

7 5 ILCS 100/10-3 new

8 5 ILCS 100/10-5 from Ch. 127, par. 1010-5

9 5 ILCS 100/10-15 from Ch. 127, par. 1010-15

10 5 ILCS 100/10-20 from Ch. 127, par. 1010-20

11 5 ILCS 100/10-25 from Ch. 127, par. 1010-25

12 5 ILCS 100/10-45 from Ch. 127, par. 1010-45

13 5 ILCS 100/10-50 from Ch. 127, par. 1010-50

14 5 ILCS 100/10-60 from Ch. 127, par. 1010-60

15 5 ILCS 100/10-65 from Ch. 127, par. 1010-65

16 5 ILCS 100/Art. 12 heading

17 new

18 5 ILCS 100/12-5 new

19 5 ILCS 100/12-10 new

20 5 ILCS 100/12-15 new

21 5 ILCS 100/12-20 new

22 5 ILCS 100/12-25 new

23 5 ILCS 100/12-30 new

24 5 ILCS 100/12-35 new

25 5 ILCS 100/12-40 new

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1 20 ILCS 415/4c

from Ch. 127, par. 63b104c