



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB2111

Introduced 2/14/2008, by Sen. A. J. Wilhelmi

SYNOPSIS AS INTRODUCED:

5 ILCS 100/10-50	from Ch. 127, par. 1010-50
735 ILCS 5/3-102	from Ch. 110, par. 3-102
735 ILCS 5/3-103	from Ch. 110, par. 3-103
735 ILCS 5/3-107	from Ch. 110, par. 3-107
735 ILCS 5/3-113	

Amends the Illinois Administrative Procedure Act. Provides that each final order must contain the name and the address of all parties of record to be named as defendants in judicial review. Amends the Administrative Review Law of the Code of Civil Procedure. Provides that the Administrative Review Law shall be liberally construed in the interests of justice to grant an orderly method of judicial review of administrative agency decisions. Changes provisions regarding amendment of a complaint to allow the addition as a party of any person or entity whom the court finds to have been a party to the administrative hearing that is the subject of review who was not otherwise named in the original complaint; also provides that the new party or parties must be added within 35 days after the court makes such a finding. Provides that, except as otherwise provided, in an action to review a final decision of an administrative agency, the administrative agency and all persons, other than the plaintiff or petitioner, who were identified in the final order as parties of record to the proceedings before the administrative agency shall be made defendants or respondents and may be served with summons at the address listed for each such party in the final written decision of the agency; also deletes certain language regarding naming of, and service upon, an unnamed party as a defendant or respondent. Contains applicability provisions. Effective immediately.

LRB095 14369 WGH 43432 b

1 AN ACT concerning administrative review.

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 Section 10-50 as follows:

6 (5 ILCS 100/10-50) (from Ch. 127, par. 1010-50)

7 Sec. 10-50. Decisions and orders.

8 (a) A final decision or order adverse to a party (other
9 than the agency) in a contested case shall be in writing or
10 stated in the record. A final decision shall include findings
11 of fact and conclusions of law, separately stated. Findings of
12 fact, if set forth in statutory language, shall be accompanied
13 by a concise and explicit statement of the underlying facts
14 supporting the findings. If, in accordance with agency rules, a
15 party submitted proposed findings of fact, the decision shall
16 include a ruling upon each proposed finding. Parties or their
17 agents appointed to receive service of process shall be
18 notified either personally or by registered or certified mail
19 of any decision or order. Upon request a copy of the decision
20 or order shall be delivered or mailed forthwith to each party
21 and to his attorney of record.

22 (b) All agency orders shall specify whether they are final
23 and subject to the Administrative Review Law. Each final order

1 must contain the names and addresses of all parties of record
2 to be named as defendants in judicial review.

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

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

11 Section 10. The Code of Civil Procedure is amended by
12 changing Sections 3-102, 3-103, 3-107, and 3-113 as follows:

13 (735 ILCS 5/3-102) (from Ch. 110, par. 3-102)

14 Sec. 3-102. Scope of Article. Article III of this Act shall
15 apply to and govern every action to review judicially a final
16 decision of any administrative agency where the Act creating or
17 conferring power on such agency, by express reference, adopts
18 the provisions of Article III of this Act or its predecessor,
19 the Administrative Review Act. This Article shall be known as
20 the "Administrative Review Law". In all such cases, any other
21 statutory, equitable or common law mode of review of decisions
22 of administrative agencies heretofore available shall not
23 hereafter be employed.

24 Unless review is sought of an administrative decision

1 within the time and in the manner herein provided, the parties
2 to the proceeding before the administrative agency shall be
3 barred from obtaining judicial review of such administrative
4 decision. In an action to review any final decision of any
5 administrative agency brought under Article III, if a judgment
6 is reversed or entered against the plaintiff, or the action is
7 voluntarily dismissed by the plaintiff, or the action is
8 dismissed for want of prosecution, or the action is dismissed
9 by a United States District Court for lack of jurisdiction,
10 neither the plaintiff nor his or her heirs, executors, or
11 administrators may commence a new action within one year or
12 within the remaining period of limitation, whichever is
13 greater. All proceedings in the court for revision of such
14 final decision shall terminate upon the date of the entry of
15 any Order under either Section 2-1009 or Section 13-217. Such
16 Order shall cause the final administrative decision of any
17 administrative agency to become immediately enforceable. If
18 under the terms of the Act governing the procedure before an
19 administrative agency an administrative decision has become
20 final because of the failure to file any document in the nature
21 of objections, protests, petition for hearing or application
22 for administrative review within the time allowed by such Act,
23 such decision shall not be subject to judicial review hereunder
24 excepting only for the purpose of questioning the jurisdiction
25 of the administrative agency over the person or subject matter.

26 This Act shall be liberally construed in the interests of

1 justice to grant an orderly method of judicial review of
2 administrative agency decisions.

3 (Source: P.A. 88-1.)

4 (735 ILCS 5/3-103) (from Ch. 110, par. 3-103)

5 Sec. 3-103. Commencement of action. Every action to review
6 a final administrative decision shall be commenced by the
7 filing of a complaint and the issuance of summons within 35
8 days from the date that a copy of the decision sought to be
9 reviewed was served upon the party affected by the decision,
10 except that:

11 (1) in municipalities with a population of 500,000 or
12 less a complaint filed within the time limit established by
13 this Section may be subsequently amended to add a police
14 chief or a fire chief in cases brought under the Illinois
15 Municipal Code's provisions providing for the discipline
16 of fire fighters and police officers; and

17 (2) in other actions for review of a final
18 administrative decision, a complaint filed within the time
19 limit established by this Section may be amended to add as
20 a party any person or entity whom the court finds to have
21 been a party to the administrative hearing that is the
22 subject of review who was not otherwise named in the
23 original complaint. The new party or parties must be added
24 within 35 days after the court makes such a finding ~~an~~
25 employee, agent, or member of an administrative agency,

1 ~~board, committee, or government entity, who acted in an~~
2 ~~official capacity as a party of record to the~~
3 ~~administrative proceeding, if the administrative agency,~~
4 ~~board, committee, or government entity is a party to the~~
5 ~~administrative review action. If the director or agency~~
6 ~~head, in his or her official capacity, is a party to the~~
7 ~~administrative review, a complaint filed within the time~~
8 ~~limit established by this Section may be amended to add the~~
9 ~~administrative agency, board, committee, or government~~
10 ~~entity.~~

11 The method of service of the decision shall be as provided
12 in the Act governing the procedure before the administrative
13 agency, but if no method is provided, a decision shall be
14 deemed to have been served either when a copy of the decision
15 is personally delivered or when a copy of the decision is
16 deposited in the United States mail, in a sealed envelope or
17 package, with postage prepaid, addressed to the party affected
18 by the decision at his or her last known residence or place of
19 business.

20 The form of the summons and the issuance of alias summons
21 shall be according to rules of the Supreme Court.

22 This amendatory Act of 1993 applies to all cases involving
23 discipline of fire fighters and police officers pending on its
24 effective date and to all cases filed on or after its effective
25 date.

26 The changes to this Section made by this amendatory Act of

1 the 95th General Assembly apply to all actions pending on the
2 effective date of this amendatory Act of the 95th General
3 Assembly and to all actions filed on or after the effective
4 date of this amendatory Act of the 95th General Assembly.

5 (Source: P.A. 88-1; 88-110; 88-670, eff. 12-2-94; 89-685, eff.
6 6-1-97.)

7 (735 ILCS 5/3-107) (from Ch. 110, par. 3-107)

8 Sec. 3-107. Defendants.

9 (a) Except as provided in subsection (b) or (c), in any
10 action to review any final decision of an administrative
11 agency, the administrative agency and all persons, other than
12 the plaintiff, who were identified in the final order as
13 parties of record to the proceedings before the administrative
14 agency shall be made defendants and may be served with summons
15 at the address listed for each such party in the final written
16 decision of the agency. No action for administrative review
17 shall be dismissed for lack of jurisdiction based upon the
18 failure to name an employee, agent, or member, who acted in his
19 or her official capacity, of an administrative agency, board,
20 committee, or government entity, where the administrative
21 agency, board, committee, or government entity, has been named
22 as a defendant as provided in this Section. Naming the director
23 or agency head, in his or her official capacity, shall be
24 deemed to include as defendant the administrative agency,
25 board, committee, or government entity that the named

1 defendants direct or head. No action for administrative review
2 shall be dismissed for lack of jurisdiction based upon the
3 failure to name an administrative agency, board, committee, or
4 government entity, where the director or agency head, in his or
5 her official capacity, has been named as a defendant as
6 provided in this Section.

7 ~~If, during the course of a review action, the court~~
8 ~~determines that a party of record to the administrative~~
9 ~~proceedings was not made a defendant as required by the~~
10 ~~preceding paragraph, and only if that party was not named by~~
11 ~~the administrative agency in its final order as a party of~~
12 ~~record, then the court shall grant the plaintiff 21 days from~~
13 ~~the date of the determination in which to name and serve the~~
14 ~~unnamed party as a defendant. The court shall permit the newly~~
15 ~~served defendant to participate in the proceedings to the~~
16 ~~extent the interests of justice may require.~~

17 (b) With respect to actions to review decisions of a zoning
18 board of appeals in a municipality with a population of 500,000
19 or more inhabitants under Division 13 of Article 11 of the
20 Illinois Municipal Code, "parties of record" means only the
21 zoning board of appeals and applicants before the zoning board
22 of appeals. The plaintiff shall send a notice of filing of the
23 action by certified mail to each other person who appeared
24 before and submitted oral testimony or written statements to
25 the zoning board of appeals with respect to the decision
26 appealed from. The notice shall be mailed within 2 days of the

1 filing of the action. The notice shall state the caption of the
2 action, the court in which the action is filed, and the names
3 of the plaintiff in the action and the applicant to the zoning
4 board of appeals. The notice shall inform the person of his or
5 her right to intervene. Each person who appeared before and
6 submitted oral testimony or written statements to the zoning
7 board of appeals with respect to the decision appealed from
8 shall have a right to intervene as a defendant in the action
9 upon application made to the court within 30 days of the
10 mailing of the notice.

11 (c) With respect to actions to review decisions of a
12 hearing officer or a county zoning board of appeals under
13 Division 5-12 of Article 5 of the Counties Code, "parties of
14 record" means only the hearing officer or the zoning board of
15 appeals and applicants before the hearing officer or the zoning
16 board of appeals. The plaintiff shall send a notice of filing
17 of the action by certified mail to each other person who
18 appeared before and submitted oral testimony or written
19 statements to the hearing officer or the zoning board of
20 appeals with respect to the decision appealed from. The notice
21 shall be mailed within 2 days of the filing of the action. The
22 notice shall state the caption of the action, the court in
23 which the action is filed, and the name of the plaintiff in the
24 action and the applicant to the hearing officer or the zoning
25 board of appeals. The notice shall inform the person of his or
26 her right to intervene. Each person who appeared before and

1 submitted oral testimony or written statements to the hearing
2 officer or the zoning board of appeals with respect to the
3 decision appealed from shall have a right to intervene as a
4 defendant in the action upon application made to the court
5 within 30 days of the mailing of the notice. This subsection
6 (c) applies to zoning proceedings commenced on or after the
7 effective date of this amendatory Act of the 95th General
8 Assembly.

9 (d) The changes to this Section made by this amendatory Act
10 of the 95th General Assembly apply to all actions pending on
11 the effective date of this amendatory Act of the 95th General
12 Assembly and to all actions filed on or after the effective
13 date of this amendatory Act of the 95th General Assembly.

14 (Source: P.A. 95-321, eff. 8-21-07.)

15 (735 ILCS 5/3-113)

16 Sec. 3-113. Direct review of administrative orders by the
17 appellate court.

18 (a) Unless another time is provided specifically by the law
19 authorizing the review, an action for direct review of a final
20 administrative decision of an administrative agency by the
21 appellate court shall be commenced by the filing of a petition
22 for review in the appellate court within 35 days from the date
23 that a copy of the decision sought to be reviewed was served
24 upon the party affected by the decision. The method of service
25 of the decision shall be as provided in the Act governing the

1 procedure before the administrative agency, but if no method is
2 provided, a decision shall be deemed to have been served either
3 when a copy of the decision is personally delivered or when a
4 copy of the decision is deposited in the United States mail, in
5 a sealed envelope or package, with postage prepaid, addressed
6 to the party affected by the decision at his or her last known
7 residence or place of business.

8 (b) The petition for review shall be filed in the appellate
9 court and shall specify the parties seeking review and shall
10 designate the respondent and the order or part thereof to be
11 reviewed. The administrative agency and all persons, other than
12 the petitioner, who were identified in the final order as ~~other~~
13 parties of record to the proceedings before the administrative
14 agency shall be made ~~named~~ respondents and may be served with
15 summons at the address listed for each such party in the final
16 written decision of the agency. No action for administrative
17 review shall be dismissed for lack of jurisdiction based upon
18 the failure to name an employee, agent, or member, who acted in
19 his or her official capacity, of an administrative agency,
20 board, committee, or government entity, where the
21 administrative agency, board, committee, or government entity,
22 has been named as a respondent as provided in this Section.
23 Naming the director or agency head, in his or her official
24 capacity, shall be deemed to include as respondent the
25 administrative agency, board, committee, or government entity
26 that the named respondents direct or head. No action for

1 administrative review shall be dismissed for lack of
2 jurisdiction based upon the failure to name an administrative
3 agency, board, committee, or government entity, where the
4 director or agency head, in his or her official capacity, has
5 been named as a respondent as provided in this Section. If,
6 during the course of a review action, the court determines that
7 a party of record to the administrative proceedings was not
8 made a defendant as required by the preceding paragraph, ~~and~~
9 ~~only if that party was not named by the administrative agency~~
10 ~~in its final order as a party of record,~~ then the court shall
11 grant the plaintiff 35 ~~21~~ days from the date of the
12 determination in which to name and serve the unnamed party as a
13 defendant. The court shall permit the newly served defendant to
14 participate in the proceedings to the extent the interests of
15 justice may require.

16 (c) The changes to this Section made by this amendatory Act
17 of the 95th General Assembly apply to all actions pending on
18 the effective date of this amendatory Act of the 95th General
19 Assembly and to all actions filed on or after the effective
20 date of this amendatory Act of the 95th General Assembly.

21 (Source: P.A. 88-1; 89-438, eff. 12-15-95.)

22 Section 99. Effective date. This Act takes effect upon
23 becoming law.