

1 AMENDMENT TO HOUSE BILL 1456

2 AMENDMENT NO. _____. Amend House Bill 1456 by replacing
3 everything after the enacting clause with the following:

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 Section 1-13 and Article 12 as follows:

8 (5 ILCS 100/1-5) (from Ch. 127, par. 1001-5)

9 Sec. 1-5. Applicability.

10 (a) This Act applies to every agency as defined in this
11 Act. Beginning January 1, 1978, in case of conflict between
12 the provisions of this Act and the Act creating or conferring
13 power on an agency, this Act shall control. ~~If, however, an~~
14 ~~agency (or its predecessor in the case of an agency that has~~
15 ~~been consolidated or reorganized) has existing procedures on~~
16 ~~July 1, 1977, specifically for contested cases or licensing,~~
17 ~~these existing provisions control, except that this exception~~
18 ~~respecting contested cases and licensing does not apply if~~
19 ~~the Act creating or conferring power on the agency adopts by~~
20 ~~express reference the provisions of this Act.~~ Where the Act
21 creating or conferring power on an agency establishes
22 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
11 position descriptions prepared and maintained under the
12 Personnel Code. Those class specifications shall, however,
13 be made reasonably available to the public for inspection and
14 copying. The provisions of this Act do not apply to hearings
15 under Section 20 of the Uniform Disposition of Unclaimed
16 Property Act.

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

19 (1) Rules adopted by the Pollution Control Board
20 that, in accordance with Section 7.2 of the Environmental
21 Protection Act, are identical in substance to federal
22 regulations or amendments to those regulations
23 implementing the following: Sections 3001, 3002, 3003,
24 3004, 3005, and 9003 of the Solid Waste Disposal Act;
25 Section 105 of the Comprehensive Environmental Response,
26 Compensation, and Liability Act of 1980; Sections 307(b),
27 307(c), 307(d), 402(b)(8), and 402(b)(9) of the Federal
28 Water Pollution Control Act; and Sections 1412(b),
29 1414(c), 1417(a), 1421, and 1445(a) of the Safe Drinking
30 Water Act.

31 (2) Rules adopted by the Pollution Control Board
32 that establish or amend standards for the emission of
33 hydrocarbons and carbon monoxide from gasoline powered
34 motor vehicles subject to inspection under Section

1 13A-105 of the Vehicle Emissions Inspection Law and rules
2 adopted under Section 13B-20 of the Vehicle Emissions
3 Inspection Law of 1995.

4 (3) Procedural rules adopted by the Pollution
5 Control Board governing requests for exceptions under
6 Section 14.2 of the Environmental Protection Act.

7 (4) The Pollution Control Board's grant, pursuant
8 to an adjudicatory determination, of an adjusted standard
9 for persons who can justify an adjustment consistent with
10 subsection (a) of Section 27 of the Environmental
11 Protection Act.

12 (5) Rules adopted by the Pollution Control Board
13 that are identical in substance to the regulations
14 adopted by the Office of the State Fire Marshal under
15 clause (ii) of paragraph (b) of subsection (3) of Section
16 2 of the Gasoline Storage Act.

17 (d) Pay rates established under Section 8a of the
18 Personnel Code shall be amended or repealed pursuant to the
19 process set forth in Section 5-50 within 30 days after it
20 becomes necessary to do so due to a conflict between the
21 rates and the terms of a collective bargaining agreement
22 covering the compensation of an employee subject to that
23 Code.

24 (e) Section 10-45 of this Act shall not apply to any
25 hearing, proceeding, or investigation conducted under Section
26 13-515 of the Public Utilities Act.

27 (f) Article 10 of this Act does not apply to any
28 hearing, proceeding, or investigation conducted by the State
29 Council for the State of Illinois created under Section
30 3-3-11.05 of the Unified Code of Corrections or by the
31 Interstate Commission ~~Commission~~ for Adult Offender
32 Supervision created under the Interstate Compact for Adult
33 Offender Supervision.

34 (Source: P.A. 92-571, eff. 6-26-02; revised 7-25-02.)

1 (5 ILCS 100/1-13 new)

2 Sec. 1-13. "Administrative hearing" means any hearing
3 required to comply with the provisions of this Act concerning
4 a contested case.

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

6 Sec. 1-15. "Administrative law judge" means the
7 presiding officer or officers at the initial administrative
8 hearing before each agency and each continuation of that
9 administrative hearing. The term also includes but is not
10 limited to hearing examiners, hearing officers, referees, and
11 arbitrators.

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

13 (5 ILCS 100/1-30) (from Ch. 127, par. 1001-30)

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

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

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

22 Sec. 10-5. Rules required for hearings. All agencies
23 shall adopt rules establishing procedures for administrative
24 contested-case hearings.

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

26 (5 ILCS 100/10-15) (from Ch. 127, par. 1010-15)

27 Sec. 10-15. Standard of proof. Unless otherwise
28 provided by law or stated in the agency's rules, the standard
29 of proof in any administrative contested--case hearing
30 conducted under this Act by an agency shall be the

1 preponderance of the evidence.

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

3 (5 ILCS 100/10-20) (from Ch. 127, par. 1010-20)

4 Sec. 10-20. Qualifications of administrative law judges.

5 All Agencies shall adopt rules concerning the minimum

6 qualifications of administrative law judges for

7 administrative contested-case hearings not subject to Article

8 12 of this Act. The agency head or an attorney licensed to

9 practice law in Illinois may act as an administrative law

10 judge or panel for an agency without adopting any rules under

11 this Section. The These rules may be adopted using the

12 procedures in either Section 5-15 or 5-35.

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

14 (5 ILCS 100/10-25) (from Ch. 127, par. 1010-25)

15 Sec. 10-25. Notice of contested cases; administrative

16 notice; hearing.

17 (a) In a contested case, all parties shall be afforded

18 an opportunity for an administrative a hearing after

19 reasonable notice. The notice shall be served personally or

20 by certified or registered mail or as otherwise provided by

21 law upon the parties or their agents appointed to receive

22 service of process and shall include the following:

23 (1) A statement of the time, place, and nature of

24 the administrative hearing.

25 (2) A statement of the legal authority and

26 jurisdiction under which the administrative hearing is to

27 be held.

28 (3) A reference to the particular Sections of the

29 substantive and procedural statutes and rules involved.

30 (4) Except where a more detailed statement is

31 otherwise provided for by law, a short and plain

32 statement of the matters asserted, the consequences of a

1 failure to respond, and the official file or other
2 reference number.

3 (5) The names and mailing addresses of the
4 administrative law judge, all parties, and all other
5 persons to whom the agency gives notice of the
6 administrative hearing unless otherwise confidential by
7 law.

8 (b) An opportunity shall be afforded all parties to be
9 represented by legal counsel and to respond and present
10 evidence and argument.

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

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

15 (5 ILCS 100/10-45) (from Ch. 127, par. 1010-45)

16 Sec. 10-45. Proposal for decision. Except where
17 otherwise expressly provided by law, when in a contested case
18 a majority of the officials of the agency who are to render
19 the final decision has not heard the case or read the
20 record, the decision, if adverse to a party to the proceeding
21 other than the agency, shall not be made until a proposal for
22 decision is served upon the parties and an opportunity is
23 afforded to each party adversely affected to file exceptions
24 and to present a brief and, if the agency so permits, oral
25 argument to the agency officials who are to render the
26 decision. The proposal for decision shall contain a
27 statement of the reasons therefor and of each issue of fact
28 or law necessary to the proposed decision and shall be
29 prepared by the persons who conducted the administrative
30 hearing or one who has read the record.

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

32 (5 ILCS 100/10-50) (from Ch. 127, par. 1010-50)

1 Sec. 10-50. Decisions and orders.

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

17 (b) All agency orders shall specify whether they are
18 final and subject to the Administrative Review Law. In the
19 event that the agency submits a matter to the separate,
20 independent Office of Administrative Hearings for
21 adjudication pursuant to Article 12 of this Act, the agency,
22 and not the Office of Administrative Hearings, shall remain
23 the required named party for purposes of the Administrative
24 Review Law.

25 (c) A decision by any agency in a contested case under
26 this Act shall be void unless the proceedings are conducted
27 in compliance with the provisions of this Act relating to
28 contested cases, except to the extent those provisions are
29 waived under Section 10-70 and except to the extent the
30 agency has adopted its own rules for contested cases as
31 authorized in Section 1-5.

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

33 (5 ILCS 100/10-60) (from Ch. 127, par. 1010-60)

1 Sec. 10-60. Ex parte communications.

2 (a) Except in the disposition of matters that agencies
3 are authorized by law to entertain or dispose of on an ex
4 parte basis, agency heads, agency employees, and
5 administrative law judges shall not, after notice of hearing
6 in a contested case or licensing to which the procedures of a
7 contested case apply under this Act, communicate, directly or
8 indirectly, in connection with any issue of fact, with any
9 person or party, or in connection with any other issue with
10 any party or the representative of any party, without ~~except~~
11 ~~upon~~ notice and opportunity for all parties to participate.

12 (b) However, an agency member may communicate with other
13 members of the agency, and an agency member or administrative
14 law judge may have the aid and advice of one or more personal
15 assistants.

16 (c) An ex parte communication received by any agency
17 head, agency employee, or administrative law judge shall be
18 made a part of the record of the pending matter, including
19 all written communications, all written responses to the
20 communications, and a memorandum stating the substance of all
21 oral communications and all responses made and the identity
22 of each person from whom the ex parte communication was
23 received.

24 (d) Communications regarding matters of procedure and
25 practice, such as the format of pleadings, number of copies
26 required, manner of service, scheduling, and status of
27 proceedings, are not considered ex parte communications under
28 this Section.

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

30 (5 ILCS 100/10-65) (from Ch. 127, par. 1010-65)

31 Sec. 10-65. Licenses.

32 (a) When any licensing is required by law to be preceded
33 by notice and an opportunity for an administrative a hearing,

1 the provisions of this Act concerning contested cases shall
2 apply.

3 (b) When a licensee has made timely and sufficient
4 application for the renewal of a license or a new license
5 with reference to any activity of a continuing nature, the
6 existing license shall continue in full force and effect
7 until the final agency decision on the application has been
8 made unless a later date is fixed by order of a reviewing
9 court.

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

1 subpoena or warrant, the agency shall suspend, revoke, or
2 refuse to issue or renew the license. In cases in which the
3 Department of Public Aid has previously determined that an
4 applicant or a licensee is more than 30 days delinquent in
5 the payment of child support and has subsequently certified
6 the delinquency to the licensing agency, and in cases in
7 which a court has previously determined that an applicant or
8 licensee has been in violation of the Non-Support Punishment
9 Act for more than 60 days, the licensing agency shall refuse
10 to issue or renew or shall revoke or suspend that person's
11 license based solely upon the certification of delinquency
12 made by the Department of Public Aid or the certification of
13 violation made by the court. Further process, hearings, or
14 redetermination of the delinquency or violation by the
15 licensing agency shall not be required. The licensing
16 agency may issue or renew a license if the licensee has
17 arranged for payment of past and current child support
18 obligations in a manner satisfactory to the Department of
19 Public Aid or the court. The licensing agency may impose
20 conditions, restrictions, or disciplinary action upon that
21 license.

22 (d) Except as provided in subsection (c), no agency
23 shall revoke, suspend, annul, withdraw, amend materially, or
24 refuse to renew any valid license without first giving
25 written notice to the licensee of the facts or conduct upon
26 which the agency will rely to support its proposed action and
27 an opportunity for an administrative a hearing in accordance
28 with the provisions of this Act concerning contested cases.
29 At the administrative hearing, the licensee shall have the
30 right to show compliance with all lawful requirements for the
31 retention, continuation, or renewal of the license. If,
32 however, the agency finds that the public interest, safety,
33 or welfare imperatively requires emergency action, and if the
34 agency incorporates a finding to that effect in its order,

1 summary suspension of a license may be ordered pending
2 proceedings for revocation or other action. Those
3 proceedings shall be promptly instituted and determined.

4 (e) Any application for renewal of a license that
5 contains required and relevant information, data, material,
6 or circumstances that were not contained in an application
7 for the existing license shall be subject to the provisions
8 of subsection (a).

9 (Source: P.A. 90-18, eff. 7-1-99; 91-613, eff. 10-1-99.)

10 (5 ILCS 100/Art. 12 heading new)

11 ARTICLE 12. OFFICE OF ADMINISTRATIVE HEARINGS

12 (5 ILCS 100/12-5 new)

13 Sec. 12-5. Applicability. This Article applies to all
14 agencies under the jurisdiction of the Governor other than
15 the following:

16 (a) Illinois Labor Relations Board and the State Panel
17 and Local Panel created under the Illinois Public Labor
18 Relations Act;

19 (b) Illinois Education Labor Relations Board;

20 (c) Illinois Commerce Commission;

21 (d) Illinois Industrial Commission;

22 (e) Civil Service Commission;

23 (f) Pollution Control Board;

24 (g) Illinois State Police Merit Board;

25 (h) Property Tax Appeal Board; and

26 (i) Human Rights Commission.

27 (5 ILCS 100/12-10 new)

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

29 (a) The Office of Administrative Hearings (Office) is
30 established for the purpose of separating the adjudicatory
31 function from the investigatory, prosecutory, and

1 policy-making functions of agencies in the executive branch.
2 The Office is an independent State agency in the executive
3 branch and is responsible for conducting administrative
4 hearings in accordance with the legislative intent expressed
5 by this Act.

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

15 (c) The Chief Administrative Law Judge must maintain his
16 or her principal office in Springfield and may maintain any
17 other offices that may be necessary. The Chief
18 Administrative Law Judge may purchase or lease any equipment
19 and supplies that may be necessary to carry out his or her
20 duties and must maintain records and files of the work of the
21 Office.

22 (5 ILCS 100/12-15 new)

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

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

27 (b) The Chief Administrative Law Judge shall receive an
28 annual salary of \$95,000 or the amount established by the
29 Compensation Review Board, whichever is greater.

30 (5 ILCS 100/12-20 new)

31 Sec. 12-20. Oath. Each prospective Chief Administrative
32 Law Judge, before taking office, must take and subscribe to

1 the oath or affirmation prescribed by Section 3 of Article
2 XIII of the Illinois Constitution, an executed copy of which
3 shall be filed with the Secretary of State.

4 (5 ILCS 100/12-25 new)

5 Sec. 12-25. Powers and duties of the Chief
6 Administrative Law Judge. The Chief Administrative Law Judge
7 has the following powers and duties:

8 (a) The Chief Administrative Law Judge may select any
9 administrative law judges that are necessary to carry out the
10 purposes of this Article. The Chief Administrative Law Judge
11 may establish different levels of administrative law judge
12 positions. The Chief Administrative Law Judge may employ and
13 direct other staff, including administrative, technical,
14 clerical, and other specialized or technical personnel that
15 may be necessary to carry out the purposes of this Article.

16 (1) Except as otherwise provided in paragraph (2) of
17 this subsection, each administrative law judge must have
18 been admitted to practice as an attorney in this State
19 for at least 5 years and must have a demonstrated
20 knowledge of and experience in administrative law and
21 procedure that is suitable to the duties of the Office.
22 An administrative law judge must be a full-time or
23 part-time employee of the Office, except that the Chief
24 Administrative Law Judge may contract for the services of
25 an attorney to serve as an administrative law judge for a
26 specific case, when necessary, because of a lack of
27 available employees with the expertise required to handle
28 a specialized contested case.

29 (2) The Chief Administrative Law Judge may employ
30 persons who are not admitted to practice as an attorney
31 to act as administrative law judges if they are
32 transferred to the Office under subsection (c) of Section
33 12-40 of this Article.

1 (b) Administrative law judges employed by the Office are
2 not subject to the Personnel Code. The Chief Administrative
3 Law Judge must establish hiring procedures based upon merit
4 and fitness and may discipline and terminate employees based
5 only upon good cause, after notice and an opportunity for a
6 hearing and a finding of good cause by an impartial hearing
7 officer. The Chief Administrative Law Judge must fix
8 salaries of Office administrative law judges and adopt
9 personnel rules establishing a general salary schedule
10 according to a classification of employees, subject to merit
11 increases, that applies to all Office administrative law
12 judges. The Chief Administrative Law Judge must adopt a code
13 of conduct and rules concerning the hiring, discipline, and
14 termination of Office administrative law judges and the
15 resolution of grievances.

16 (c) The Chief Administrative Law Judge must assign an
17 administrative law judge for any proceeding that is required
18 by this Article to be conducted by the Office and for any
19 proceeding for which the Office has agreed to furnish an
20 administrative law judge as provided in subsection (d). Any
21 administrative law judge so assigned does not become an
22 employee of the agency during the assignment and is not
23 subject to the direction or the supervision of the agency to
24 whose proceeding the administrative law judge has been
25 assigned.

26 (d) The Office may enter into an interagency agreement
27 with any agency to furnish administrative law judges to
28 conduct administrative hearings not otherwise required to be
29 conducted by the Office. The Office may also enter into an
30 agreement with a unit of local government or school district
31 to furnish administrative law judges to conduct
32 administrative hearings.

33 (e) In assigning administrative law judges, the Chief
34 Administrative Law Judge must, when possible, use personnel

1 having experience in the field or subject matter of the
2 hearing and assign administrative law judges primarily to the
3 hearings of particular agencies on a long-term basis. The
4 Chief Administrative Law Judge may act as an administrative
5 law judge in a particular case.

6 (f) The Office may adopt rules as necessary to carry out
7 its powers and duties under this Act. The rules must
8 include, but are not limited to, the procedures for
9 requesting the assignment of administrative law judges. No
10 agency, however, may select any individual administrative law
11 judge for any proceeding or reject any individual
12 administrative law judge, except in accordance with the
13 provisions of this Article regarding disqualifications.

14 (g) The Office must develop and institute a program of
15 continuing education and training for administrative law
16 judges and may permit administrative law judges and hearing
17 examiners employed by other agencies to participate in its
18 program. The Office shall also develop and implement a code
19 of professional conduct for its administrative law judges,
20 incorporating the provisions of the Code of Judicial Conduct
21 whenever possible. The Office may develop and institute
22 other educational programs in the area of administrative law
23 and procedure for the benefit of State employees and those
24 who participate in administrative hearings.

25 (h) The Office must:

26 (1) annually collect information on administrative
27 law and procedure in Illinois and must study
28 administrative law and procedure for the purpose of
29 improving the fairness, efficiency, and uniformity of
30 administrative adjudicatory proceedings in Illinois;

31 (2) monitor the quality and cost of State
32 administrative hearings; and

33 (3) annually report its findings and
34 recommendations to the Governor and to the General

1 Assembly no later than March 15 of each year.

2 (5 ILCS 100/12-30 new)

3 Sec. 12-30. Proceedings. Beginning on January 1, 2005,
4 an administrative law judge of the Office shall preside over
5 any administrative hearing of any agency subject to this
6 Article, except that an administrative hearing in a contested
7 case commenced prior to January 1, 2005 and pending before an
8 administrative law judge not transferred to the Office of
9 Administrative Hearings by operation of Section 12-40 of this
10 Article shall not be heard by an administrative law judge of
11 the Office without the agreement of the parties.

12 (5 ILCS 100/12-35 new)

13 Sec. 12-35. Administrative hearing procedures.

14 (a) Time and place of hearing. The Office must consult
15 the agency and determine the place and the time of
16 commencement of the administrative hearing.

17 (b) Powers of administrative law judge. The
18 administrative law judge presides at the administrative
19 hearing and may:

20 (1) administer oaths and affirmations;

21 (2) rule on offers of proof and receive relevant
22 evidence;

23 (3) regulate the schedule and the course of the
24 hearing;

25 (4) dispose of procedural requests or similar
26 matters;

27 (5) sign and issue subpoenas in the name of the
28 agency requiring attendance and giving of testimony by
29 witnesses and the production of books, papers, and other
30 documentary evidence;

31 (6) exercise any other powers relating to the
32 conduct of the administrative hearing that are lawfully

1 delegated to him or her by the agency or by the
2 examining, advisory, or disciplinary board. Whenever,
3 after an agency head or an examining, advisory, or
4 disciplinary board has commenced hearing a case with an
5 administrative law judge presiding, a quorum no longer
6 exists, the administrative law judge who is presiding must
7 complete the hearing as if sitting alone and must render
8 a proposed decision in accordance with subsection (e) of
9 this Section; and

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

12 (c) Disqualifications.

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

20 (2) Any party may petition for the disqualification
21 of any administrative law judge by filing an affidavit
22 stating with particularity the grounds upon which it is
23 claimed that a fair and impartial hearing cannot be
24 accorded. The affidavit must be filed before the taking
25 of evidence or, if evidence has already been taken,
26 promptly upon discovering facts establishing grounds for
27 disqualification.

28 (3) The administrative law judge whose
29 disqualification is requested must determine whether to
30 grant the petition, stating facts and reasons for the
31 determination.

32 (4) If an administrative law judge becomes
33 unavailable as a result of recusal or any other reasons,
34 the Chief Administrative Law Judge must assign another

1 administrative law judge to preside at the administrative
2 hearing.

3 (d) Ex parte communications. Except in disposition of
4 matters that are authorized by law to be disposed of on an ex
5 parte basis, no administrative law judge of the Office may,
6 after notice of an administrative hearing in a contested
7 case, communicate, directly or indirectly, in connection with
8 any issue of fact, with any person or party, or in connection
9 with any other issue with any party or his or her
10 representative, without notice and opportunity for all
11 parties to participate. An administrative law judge,
12 however, may communicate with other employees of the Office.
13 No member of the Office may communicate regarding pending
14 matters to any member of an agency or of an examining,
15 advisory, or disciplinary board if the agency or board is
16 hearing the case with the administrative law judge. An
17 administrative law judge may have the aid and advice of one
18 or more assistants.

19 (e) Proposed decisions. When a majority of the members
20 of an agency or of an examining, advisory, or disciplinary
21 board has not heard a case with the administrative law judge,
22 any proposed decision prepared by an administrative law judge
23 of the Office is subject to this subsection (e) and Section
24 10-45 of this Act.

25 (1) When an administrative law judge hears a case
26 alone, he or she must prepare a proposed decision in a
27 form that may be adopted as the decision in the case.
28 The administrative law judge must submit the proposed
29 decision to the agency or, in the case of proceedings
30 that an examining, advisory, or disciplinary board is
31 authorized by an Act to hear and make a recommended
32 decision, to the examining, advisory, or disciplinary
33 board.

34 (2) When an administrative law judge hears a case

1 with an agency head or with an examining, advisory, or
2 disciplinary board, the administrative law judge must be
3 present during the consideration of the case and must, if
4 requested by the agency or by the board, prepare a
5 proposed decision and submit it to the agency or board.

6 (3) In reviewing a proposed decision submitted by
7 an administrative law judge of the Office, an agency head
8 or an examining, advisory, or disciplinary board is not
9 bound by the proposed decision and may adopt all, some,
10 or none of the proposed decision as its recommended
11 decision. If the agency head or examining, advisory, or
12 disciplinary board does not adopt the proposed decision
13 in its entirety, it must either (i) recommend a decision
14 in the case based upon the record, including transcript,
15 or (ii) remand the case to the same administrative law
16 judge to take additional evidence.

17 (4) If a case has been remanded to an
18 administrative law judge to take additional evidence or
19 to include more detailed findings of fact or conclusions
20 of law, the administrative law judge must prepare a
21 proposed decision upon the additional evidence and upon
22 the transcript and other papers that are part of the
23 record of the prior hearing and must submit the proposed
24 decision to the agency or to the examining, advisory, or
25 disciplinary board. If the administrative law judge who
26 heard the case originally is unavailable to take the
27 additional evidence, by reason of illness or other
28 disability or because he or she is no longer employed by
29 the Office, the Chief Administrative Law Judge must
30 assign a different administrative law judge to take the
31 additional evidence.

32 (5 ILCS 100/12-40 new)

33 Sec. 12-40. Transition.

1 (a) The Governor must appoint a Chief Administrative Law
2 Judge to take office on July 1, 2004.

3 (b) No later than July 1, 2004, each agency must provide
4 to the Chief Administrative Law Judge all relevant
5 information concerning hearings, number of hearings,
6 personnel used as hearing officers and support staff, and
7 actual expenditures for contracted hearing officer services,
8 equipment, and travel.

9 (c) All full-time administrative law judges used
10 principally to preside over administrative hearings conducted
11 by an agency subject to the provisions of this Act for at
12 least one year before July 1, 2004 must be administratively
13 transferred to the Office no later than January 1, 2005.

14 (d) All full-time employees who have principally served
15 as support staff of those employees transferred under
16 subsection (c) of this Section must be administratively
17 transferred to the Office no later than January 1, 2005.

18 (e) All equipment or other tangible property, in
19 possession of agencies, used or held principally by personnel
20 transferred under this Section must be transferred to the
21 Office not later than January 1, 2005, unless the head of the
22 agency and the Chief Administrative Law Judge determine that
23 the equipment or property will be more efficiently used by
24 the agency if not transferred.

25 Section 10. The Personnel Code is amended by changing
26 Section 4c as follows:

27 (20 ILCS 415/4c) (from Ch. 127, par. 63b104c)

28 Sec. 4c. General exemptions. The following positions in
29 State service shall be exempt from jurisdictions A, B, and C,
30 unless the jurisdictions shall be extended as provided in
31 this Act:

32 (1) All officers elected by the people.

1 (2) All positions under the Lieutenant Governor,
2 Secretary of State, State Treasurer, State Comptroller,
3 State Board of Education, Clerk of the Supreme Court, and
4 Attorney General.

5 (3) Judges, and officers and employees of the
6 courts, and notaries public.

7 (4) All officers and employees of the Illinois
8 General Assembly, all employees of legislative
9 commissions, all officers and employees of the Illinois
10 Legislative Reference Bureau, the Legislative Research
11 Unit, and the Legislative Printing Unit.

12 (5) All positions in the Illinois National Guard
13 and Illinois State Guard, paid from federal funds or
14 positions in the State Military Service filled by
15 enlistment and paid from State funds.

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

18 (7) Directors of Departments, the Adjutant General,
19 the Assistant Adjutant General, the Director of the
20 Illinois Emergency Management Agency, members of boards
21 and commissions, and all other positions appointed by
22 the Governor by and with the consent of the Senate.

23 (8) The presidents, other principal administrative
24 officers, and teaching, research and extension faculties
25 of Chicago State University, Eastern Illinois University,
26 Governors State University, Illinois State University,
27 Northeastern Illinois University, Northern Illinois
28 University, Western Illinois University, the Illinois
29 Community College Board, Southern Illinois University,
30 Illinois Board of Higher Education, University of
31 Illinois, State Universities Civil Service System,
32 University Retirement System of Illinois, and the
33 administrative officers and scientific and technical
34 staff of the Illinois State Museum.

1 (9) All other employees except the presidents,
2 other principal administrative officers, and teaching,
3 research and extension faculties of the universities
4 under the jurisdiction of the Board of Regents and the
5 colleges and universities under the jurisdiction of the
6 Board of Governors of State Colleges and Universities,
7 Illinois Community College Board, Southern Illinois
8 University, Illinois Board of Higher Education, Board of
9 Governors of State Colleges and Universities, the Board
10 of Regents, University of Illinois, State Universities
11 Civil Service System, University Retirement System of
12 Illinois, so long as these are subject to the provisions
13 of the State Universities Civil Service Act.

14 (10) The State Police so long as they are subject
15 to the merit provisions of the State Police Act.

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

18 (12) The technical and engineering staffs of the
19 Department of Transportation, the Department of Nuclear
20 Safety, the Pollution Control Board, and the Illinois
21 Commerce Commission, and the technical and engineering
22 staff providing architectural and engineering services in
23 the Department of Central Management Services.

24 (13) All employees of the Illinois State Toll
25 Highway Authority.

26 (14) The Secretary of the Industrial Commission.

27 (15) All persons who are appointed or employed by
28 the Director of Insurance under authority of Section 202
29 of the Illinois Insurance Code to assist the Director of
30 Insurance in discharging his responsibilities relating to
31 the rehabilitation, liquidation, conservation, and
32 dissolution of companies that are subject to the
33 jurisdiction of the Illinois Insurance Code.

34 (16) All employees of the St. Louis Metropolitan

1 Area Airport Authority.

2 (17) All investment officers employed by the
3 Illinois State Board of Investment.

4 (18) Employees of the Illinois Young Adult
5 Conservation Corps program, administered by the Illinois
6 Department of Natural Resources, authorized grantee under
7 Title VIII of the Comprehensive Employment and Training
8 Act of 1973, 29 USC 993.

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

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

18 (21) All hearing officers of the Human Rights
19 Commission.

20 (22) All employees of the Illinois Mathematics and
21 Science Academy.

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

24 (24) All administrative law judges of the Office of
25 Administrative Hearings.

26 (Source: P.A. 90-490, eff. 8-17-97; 91-214, eff. 1-1-00;
27 91-357, eff. 7-29-99.)

28 Section 15. The Code of Civil Procedure is amended by
29 changing Sections 3-106 and 3-107 as follows:

30 (735 ILCS 5/3-106) (from Ch. 110, par. 3-106)

31 Sec. 3-106. Appearance of defendants. In any action to
32 review any final decision of any administrative agency, the

1 agency shall appear by filing an answer consisting of a
2 record of the proceedings had before it, or a written motion
3 in the cause or a written appearance. In the event that the
4 agency submits a matter to the separate, independent Office
5 of Administrative Hearings for adjudication pursuant to
6 Article 12 of the Illinois Administrative Procedure Act, the
7 agency, and not the Office of Administrative Hearings, shall
8 remain the required named party for purposes of this
9 Administrative Review Law. All other defendants desiring to
10 appear shall appear by filing a written appearance. Every
11 appearance shall be filed within the time fixed by rule of
12 the Supreme Court, and shall state with particularity an
13 address where service of notices or papers may be made upon
14 the defendant so appearing, or his or her attorney.

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

16 (735 ILCS 5/3-107) (from Ch. 110, par. 3-107)

17 Sec. 3-107. Defendants.

18 (a) Except as provided in subsection (b), in any action
19 to review any final decision of an administrative agency, the
20 administrative agency and all persons, other than the
21 plaintiff, who were parties of record to the proceedings
22 before the administrative agency shall be made defendants.
23 However, when the matter was adjudicated before a separate,
24 independent adjudicatory office established pursuant to
25 Article 12 of the Illinois Administrative Procedure Act,
26 Division 2.1 of Article 1 of the Illinois Municipal Code, or
27 Division 2.2 of Article 1 of the Illinois Municipal Code, the
28 agency that submitted the matter for adjudication, not the
29 separate, independent adjudicatory office, shall be deemed to
30 be the required named defendant for purposes of this
31 Administrative Review Law. No action for administrative
32 review shall be dismissed for lack of jurisdiction based upon
33 the failure to name an employee, agent, or member, who acted

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

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

24 (b) With respect to actions to review decisions of a
25 zoning board of appeals in a municipality with a population
26 of 500,000 or more inhabitants under Division 13 of Article
27 11 of the Illinois Municipal Code, "parties of record" means
28 only the zoning board of appeals and applicants before the
29 zoning board of appeals. The plaintiff shall send a notice
30 of filing of the action by certified mail to each other
31 person who appeared before and submitted oral testimony or
32 written statements to the zoning board of appeals with
33 respect to the decision appealed from. The notice shall be
34 mailed within 2 days of the filing of the action. The notice

1 shall state the caption of the action, the court in which the
2 action is filed, and the names of the plaintiff in the action
3 and the applicant to the zoning board of appeals. The notice
4 shall inform the person of his or her right to intervene.
5 Each person who appeared before and submitted oral testimony
6 or written statements to the zoning board of appeals with
7 respect to the decision appealed from shall have a right to
8 intervene as a defendant in the action upon application made
9 to the court within 30 days of the mailing of the notice."
10 (Source: P.A. 88-1; 88-655, eff. 9-16-94; 89-438, eff.
11 12-15-95; 89-685, eff. 6-1-97.)".