



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

SB2073

Introduced 2/25/2005, by Sen. Don Harmon

SYNOPSIS AS INTRODUCED:

5 ILCS 100/1-5	from Ch. 127, par. 1001-5
5 ILCS 100/1-13 new	
5 ILCS 100/1-15	from Ch. 127, par. 1001-15
5 ILCS 100/1-30	from Ch. 127, par. 1001-30
5 ILCS 100/10-3 new	
5 ILCS 100/10-5	from Ch. 127, par. 1010-5
5 ILCS 100/10-15	from Ch. 127, par. 1010-15
5 ILCS 100/10-20	from Ch. 127, par. 1010-20
5 ILCS 100/10-25	from Ch. 127, par. 1010-25
5 ILCS 100/10-45	from Ch. 127, par. 1010-45
5 ILCS 100/10-50	from Ch. 127, par. 1010-50
5 ILCS 100/10-60	from Ch. 127, par. 1010-60
5 ILCS 100/10-65	from Ch. 127, par. 1010-65
5 ILCS 100/Art. 12 heading new	
5 ILCS 100/12-5 new	
5 ILCS 100/12-10 new	
5 ILCS 100/12-15 new	
5 ILCS 100/12-20 new	
5 ILCS 100/12-25 new	
5 ILCS 100/12-30 new	
5 ILCS 100/12-35 new	
5 ILCS 100/12-40 new	
20 ILCS 415/4c	from Ch. 127, par. 63b104c

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.

LRB094 11360 RCE 42222 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 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 the
12 provisions of this Act and the Act creating or conferring power
13 on an agency, this Act shall control. ~~If, however, an agency~~
14 ~~(or its predecessor in the case of an agency that has been~~
15 ~~consolidated or reorganized) has existing procedures on July 1,~~
16 ~~1977, specifically for contested cases or licensing, those~~
17 ~~existing provisions control, except that this exception~~
18 ~~respecting contested cases and licensing does not apply if the~~
19 ~~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
23 procedures shall remain in effect.

24 (b) The provisions of this Act do not apply to (i)
25 preliminary hearings, investigations, or practices where no
26 final determinations affecting State funding are made by the
27 State Board of Education, (ii) legal opinions issued under
28 Section 2-3.7 of the School Code, (iii) as to State colleges
29 and universities, their disciplinary and grievance
30 proceedings, academic irregularity and capricious grading
31 proceedings, and admission standards and procedures, and (iv)
32 the class specifications for positions and individual position

1 descriptions prepared and maintained under the Personnel Code.
2 Those class specifications shall, however, be made reasonably
3 available to the public for inspection and copying. The
4 provisions of this Act do not apply to hearings under Section
5 20 of the Uniform Disposition of Unclaimed Property Act.

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

8 (1) Rules adopted by the Pollution Control Board that,
9 in accordance with Section 7.2 of the Environmental
10 Protection Act, are identical in substance to federal
11 regulations or amendments to those regulations
12 implementing the following: Sections 3001, 3002, 3003,
13 3004, 3005, and 9003 of the Solid Waste Disposal Act;
14 Section 105 of the Comprehensive Environmental Response,
15 Compensation, and Liability Act of 1980; Sections 307(b),
16 307(c), 307(d), 402(b)(8), and 402(b)(9) of the Federal
17 Water Pollution Control Act; and Sections 1412(b),
18 1414(c), 1417(a), 1421, and 1445(a) of the Safe Drinking
19 Water Act.

20 (2) Rules adopted by the Pollution Control Board that
21 establish or amend standards for the emission of
22 hydrocarbons and carbon monoxide from gasoline powered
23 motor vehicles subject to inspection under Section 13A-105
24 of the Vehicle Emissions Inspection Law and rules adopted
25 under Section 13B-20 of the Vehicle Emissions Inspection
26 Law of 1995.

27 (3) Procedural rules adopted by the Pollution Control
28 Board governing requests for exceptions under Section 14.2
29 of the Environmental Protection Act.

30 (4) The Pollution Control Board's grant, pursuant to an
31 adjudicatory determination, of an adjusted standard for
32 persons who can justify an adjustment consistent with
33 subsection (a) of Section 27 of the Environmental
34 Protection Act.

35 (5) Rules adopted by the Pollution Control Board that
36 are identical in substance to the regulations adopted by

1 the Office of the State Fire Marshal under clause (ii) of
2 paragraph (b) of subsection (3) of Section 2 of the
3 Gasoline Storage Act.

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

10 (e) Section 10-45 of this Act shall not apply to any
11 hearing, proceeding, or investigation conducted under Section
12 13-515 of the Public Utilities Act.

13 (f) Article 10 of this Act does not apply to any hearing,
14 proceeding, or investigation conducted by the State Council for
15 the State of Illinois created under Section 3-3-11.05 of the
16 Unified Code of Corrections or by the Interstate Commission
17 ~~Commission~~ for Adult Offender Supervision created under the
18 Interstate Compact for Adult Offender Supervision.

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

20 (5 ILCS 100/1-13 new)

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

24 (5 ILCS 100/1-15) (from Ch. 127, par. 1001-15)

25 Sec. 1-15. "Administrative law judge" means the presiding
26 officer or officers at the initial administrative hearing
27 before each agency and each continuation of that administrative
28 hearing. The term also includes but is not limited to hearing
29 examiners, hearing officers, referees, and arbitrators.

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

31 (5 ILCS 100/1-30) (from Ch. 127, par. 1001-30)

32 Sec. 1-30. "Contested case" means an adjudicatory
33 proceeding (not including ratemaking, rulemaking, or

1 quasi-legislative, informational, or similar proceedings) in
2 which the individual legal rights, duties, or privileges of a
3 party are required by law to be determined by an agency only
4 after an opportunity for an administrative ~~a~~ hearing.

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

6 (5 ILCS 100/10-3 new)

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

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

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

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

14 (5 ILCS 100/10-15) (from Ch. 127, par. 1010-15)

15 Sec. 10-15. Standard of proof. Unless otherwise provided
16 by law or stated in the agency's rules, the standard of proof
17 in any administrative ~~contested case~~ hearing conducted under
18 this Act by an agency shall be the preponderance of the
19 evidence.

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

21 (5 ILCS 100/10-20) (from Ch. 127, par. 1010-20)

22 Sec. 10-20. Qualifications of administrative law judges.
23 ~~All~~ Agencies shall adopt rules concerning the minimum
24 qualifications of administrative law judges for administrative
25 ~~contested case~~ hearings not subject to Article 12 of this Act.
26 The agency head or an attorney licensed to practice law in
27 Illinois may act as an administrative law judge or panel for an
28 agency without adopting any rules under this Section. The ~~These~~
29 rules may be adopted using the procedures in either Section
30 5-15 or 5-35.

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

1 (5 ILCS 100/10-25) (from Ch. 127, par. 1010-25)

2 Sec. 10-25. Notice of contested cases; administrative
3 ~~notice~~; hearing.

4 (a) In a contested case, all parties shall be afforded an
5 opportunity for an administrative ~~a~~ hearing after reasonable
6 notice. The notice shall be served personally or by certified
7 or registered mail or as otherwise provided by law upon the
8 parties or their agents appointed to receive service of process
9 and shall include the following:

10 (1) A statement of the time, place, and nature of the
11 administrative hearing.

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

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

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

20 (5) The names and mailing addresses of the
21 administrative law judge, all parties, and all other
22 persons to whom the agency gives notice of the
23 administrative hearing unless otherwise confidential by
24 law.

25 (b) An opportunity shall be afforded all parties to be
26 represented by legal counsel and to respond and present
27 evidence and argument.

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

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

32 (5 ILCS 100/10-45) (from Ch. 127, par. 1010-45)

33 Sec. 10-45. Proposal for decision. Except where otherwise
34 expressly provided by law, when in a contested case a majority
35 of the officials of the agency who are to render the final

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

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

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

14 Sec. 10-50. Decisions and orders.

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

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

31 (c) A decision by any agency in a contested case under this
32 Act shall be void unless the proceedings are conducted in
33 compliance with the provisions of this Act relating to
34 contested cases, except to the extent those provisions are
35 waived under Section 10-70 ~~and except to the extent the agency~~

1 ~~has adopted its own rules for contested cases as authorized in~~
2 ~~Section 1-5.~~

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

4 (5 ILCS 100/10-60) (from Ch. 127, par. 1010-60)

5 Sec. 10-60. Ex parte communications.

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

16 (b) However, an agency member may communicate with other
17 members of the agency, and an agency member or administrative
18 law judge may have the aid and advice of one or more personal
19 assistants.

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

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

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

33 (5 ILCS 100/10-65) (from Ch. 127, par. 1010-65)

34 Sec. 10-65. Licenses.

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

4 (b) When a licensee has made timely and sufficient
5 application for the renewal of a license or a new license with
6 reference to any activity of a continuing nature, the existing
7 license shall continue in full force and effect until the final
8 agency decision on the application has been made unless a later
9 date is fixed by order of a reviewing 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 so
16 certify shall result in disciplinary action, and that making a
17 false statement may subject the licensee to contempt of court.
18 The agency shall notify each applicant or licensee who
19 acknowledges a delinquency or who, contrary to his or her
20 certification, is found to be delinquent or who after receiving
21 notice, fails to comply with a subpoena or warrant relating to
22 a paternity or a child support proceeding, that the agency
23 intends to take disciplinary action. Accordingly, the agency
24 shall provide written notice of the facts or conduct upon which
25 the agency will rely to support its proposed action and the
26 applicant or licensee shall be given an opportunity for an
27 administrative ~~a~~ hearing in accordance with the provisions of
28 the Act concerning contested cases. Any delinquency in
29 complying with a child support order can be remedied by
30 arranging for payment of past due and current support. Any
31 failure to comply with a subpoena or warrant relating to a
32 paternity or child support proceeding can be remedied by
33 complying with the subpoena or warrant. Upon a final finding of
34 delinquency or failure to comply with a subpoena or warrant,
35 the agency shall suspend, revoke, or refuse to issue or renew
36 the license. In cases in which the Department of Public Aid has

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

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

34 (e) Any application for renewal of a license that contains
35 required and relevant information, data, material, or
36 circumstances that were not contained in an application for the

1 existing license shall be subject to the provisions of
2 subsection (a).

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

4 (5 ILCS 100/Art. 12 heading new)

5 ARTICLE 12. OFFICE OF ADMINISTRATIVE HEARINGS

6 (5 ILCS 100/12-5 new)

7 Sec. 12-5. Applicability. This Article applies to all
8 agencies under the jurisdiction of the Governor other than the
9 following:

10 (a) Illinois Labor Relations Boards created under the
11 Illinois Public Labor Relations Act;

12 (b) Illinois Educational Labor Relations Board;

13 (c) Illinois Commerce Commission;

14 (d) Illinois Workers' Compensation Commission;

15 (e) Civil Service Commission;

16 (f) Pollution Control Board;

17 (g) Illinois State Police Merit Board;

18 (h) Property Tax Appeal Board;

19 (i) Human Rights Commission; and

20 (j) State Board of Elections.

21 (5 ILCS 100/12-10 new)

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

23 (a) The Office of Administrative Hearings, hereinafter
24 referred to as the Office, is established for the purpose of
25 improving public trust and confidence in administrative
26 adjudication by:

27 (1) separating the adjudicatory function from the
28 investigatory, prosecutory, and policy-making functions of
29 agencies in the executive branch;

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

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

1 (4) eliminating unnecessary and duplicative costs in
2 administrative adjudication.

3 (b) The Office is an independent State agency in the
4 executive branch and is responsible for conducting
5 administrative hearings in accordance with the legislative
6 intent expressed by this Act.

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

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

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

22 (f) The Office of Administrative Hearings by and through
23 the Chief Administrative Law Judge and any Administrative Law
24 Judge under this Article is empowered to subpoena and bring
25 before it, him, or her any person in this State and to take
26 testimony, in person or by telephone, upon payment of the same
27 fees, and in the same manner as is prescribed by law for
28 judicial proceedings in civil cases in the courts of this
29 State. The term "Administrative Law Judge" as used in this
30 Article means an administrative law judge as defined in 5 ILCS
31 100/1-15 who is an employee of the Office.

32 (g) The Office may enter into an interagency agreement with
33 any agency to furnish administrative law judges to conduct
34 administrative hearings not otherwise required to be conducted
35 by the Office. The Office may also enter into an agreement with
36 a unit of local government or school district to furnish

1 administrative law judges to conduct administrative hearings.

2 (h) Any finding, determination, ruling or order issued as
3 result of any hearing conducted for any public entity subject
4 to or contracted for under this Article shall have the same
5 status and be subject to the same conditions and limitations as
6 if conducted by that public entity. That entity shall remain
7 the proper party named and served in any action in
8 administrative review under the provisions of the
9 Administrative Review Law or other review or appeal provision
10 provided by law.

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

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 as set by the Governor of Illinois from time to
29 time or the amount established by the Compensation Review
30 Board, whichever is greater.

31 (5 ILCS 100/12-20 new)

32 Sec. 12-20. Oath. Each prospective Chief Administrative
33 Law Judge, before taking office, must take and subscribe to the
34 oath or affirmation prescribed by Section 3 of Article XIII of

1 the Illinois Constitution, an executed copy of which must be
2 filed with the Secretary of State.

3 (5 ILCS 100/12-25 new)

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

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

10 (b) Administrative Law Judges and their immediate
11 supervisors shall be subject to Jurisdiction A, B and C of the
12 Personnel Code, except that provisions contained in 20 ILCS
13 415/8b.18 and 19 shall not apply.

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

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

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

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

32 (g) The Chief Administrative Law Judge must assign an
33 administrative law judge for any proceeding that is required by
34 this Article to be conducted by the Office and for any
35 proceeding for which the Office has agreed to furnish an

1 administrative law judge as provided in Section 12-10 of this
2 Act.

3 (h) Any administrative law judge so assigned does not
4 become an employee of the agency during the assignment and is
5 not subject to the direction or the supervision of the agency
6 to whose proceeding the administrative law judge has been
7 assigned.

8 (i) In assigning administrative law judges, the Chief
9 Administrative Law Judge must, when possible, use personnel
10 having knowledge, training, or experience in the field or
11 subject matter of the hearing and assign administrative law
12 judges primarily to the hearings of particular agencies on a
13 long-term basis. The Chief Administrative Law Judge may act as
14 an administrative law judge in a particular case when
15 appropriate under law.

16 (j) The Chief Administrative Law Judge shall adopt uniform
17 rules of procedure and evidence governing hearings conducted by
18 the Office of Administrative Hearings. Rules adopted by the
19 Chief Administrative Law Judge shall supersede any contrary
20 rules adopted by agencies subject to this Article except to the
21 extent required by federal law or State statute. The Chief
22 Administrative Law Judge may adopt such additional rules as
23 necessary to carry out the powers and duties of the Office of
24 Administrative Hearings.

25 (k) The Chief Administrative Law Judge must:

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

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

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

1 (5 ILCS 100/12-30 new)

2 Sec. 12-30. Proceedings. Beginning on January 1, 2007, an
3 administrative law judge of the Office shall preside over any
4 administrative hearing of any agency subject to this Article,
5 except that an administrative hearing in a contested case
6 commenced before January 1, 2007 and pending before an
7 administrative law judge not transferred to the Office of
8 Administrative Hearings by operation of Section 12-40 of this
9 Article shall not be heard by an administrative law judge of
10 the Office without the agreement of the parties.

11 (5 ILCS 100/12-35 new)

12 Sec. 12-35. Administrative Hearing Procedures.

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

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

18 (1) administer oaths and affirmations;

19 (2) rule on offers of proof and receive relevant
20 evidence;

21 (3) regulate the schedule and the course of the
22 hearing;

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

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

28 (6) exercise any other powers relating to the conduct
29 of the administrative hearing that are lawfully delegated
30 to him or her by the agency or by the examining, advisory,
31 or disciplinary board. Whenever, after an agency head or an
32 examining, advisory, or disciplinary board has commenced
33 hearing a case with an administrative law judge presiding,
34 a quorum no longer exists, the administrative law judge who
35 is presiding must complete the hearing as if sitting alone

1 and must render a proposed decision in accordance with
2 subsection (e) of this Section; and

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

5 (c) Disqualifications.

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

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

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

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

33 (5) If an administrative law judge becomes unavailable
34 as a result of recusal or any other reasons, the Chief
35 Administrative Law Judge must assign another
36 administrative law judge to preside at the administrative

1 hearing.

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

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

23 (1) When an administrative law judge hears a case
24 alone, he or she must prepare a decision. The
25 administrative law judge must submit the decision to the
26 agency or, in the case of proceedings that an examining,
27 advisory, or disciplinary board is authorized by an Act to
28 hear and make a recommended decision, to the examining,
29 advisory, or disciplinary board.

30 (2) When an administrative law judge hears a case with
31 an agency head or with an examining, advisory, or
32 disciplinary board, the administrative law judge must be
33 present during the consideration of the case and must, if
34 requested by the agency or by the board, prepare a proposed
35 decision and submit it to the agency or board.

36 (3) In reviewing a proposed decision submitted by an

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

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

25 (5 ILCS 100/12-40 new)

26 Sec. 12-40. Transition.

27 (a) The Governor must appoint a Chief Administrative Law
28 Judge to take office on July 1, 2006.

29 (b) No later than July 1, 2006, each agency must provide to
30 the Chief Administrative Law Judge all relevant information
31 concerning hearings, number of hearings, personnel used as
32 hearing officers and support staff, and actual expenditures for
33 contracted hearing officer services, equipment, and travel.

34 (c) All full-time administrative law judges used
35 principally to preside over administrative hearings conducted

1 by an agency subject to the provisions of this Act for at least
2 one year before July 1, 2006 must be administratively
3 transferred to the Office no later than January 1, 2007.

4 (d) All full-time employees who have principally served as
5 support staff of those employees transferred under subsection
6 (c) of this Section must be administratively transferred to the
7 Office no later than January 1, 2007.

8 (e) All equipment or other tangible property, in possession
9 of agencies, used or held principally by personnel transferred
10 under this Section must be transferred to the Office not later
11 than January 1, 2007, unless the head of the agency and the
12 Chief Administrative Law Judge determine that the equipment or
13 property will be more efficiently used by the agency if not
14 transferred.

15 Section 10. The Personnel Code is amended by changing
16 Section 4c as follows:

17 (20 ILCS 415/4c) (from Ch. 127, par. 63b104c)

18 Sec. 4c. General exemptions. The following positions in
19 State service shall be exempt from jurisdictions A, B, and C,
20 unless the jurisdictions shall be extended as provided in this
21 Act:

22 (1) All officers elected by the people.

23 (2) All positions under the Lieutenant Governor,
24 Secretary of State, State Treasurer, State Comptroller,
25 State Board of Education, Clerk of the Supreme Court, and
26 Attorney General.

27 (3) Judges, and officers and employees of the courts,
28 and notaries public.

29 (4) All officers and employees of the Illinois General
30 Assembly, all employees of legislative commissions, all
31 officers and employees of the Illinois Legislative
32 Reference Bureau, the Legislative Research Unit, and the
33 Legislative Printing Unit.

34 (5) All positions in the Illinois National Guard and

1 Illinois State Guard, paid from federal funds or positions
2 in the State Military Service filled by enlistment and paid
3 from State funds.

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

6 (7) Directors of Departments, the Adjutant General,
7 the Assistant Adjutant General, the Director of the
8 Illinois Emergency Management Agency, members of boards
9 and commissions, and all other positions appointed by the
10 Governor by and with the consent of the Senate.

11 (8) The presidents, other principal administrative
12 officers, and teaching, research and extension faculties
13 of Chicago State University, Eastern Illinois University,
14 Governors State University, Illinois State University,
15 Northeastern Illinois University, Northern Illinois
16 University, Western Illinois University, the Illinois
17 Community College Board, Southern Illinois University,
18 Illinois Board of Higher Education, University of
19 Illinois, State Universities Civil Service System,
20 University Retirement System of Illinois, and the
21 administrative officers and scientific and technical staff
22 of the Illinois State Museum.

23 (9) All other employees except the presidents, other
24 principal administrative officers, and teaching, research
25 and extension faculties of the universities under the
26 jurisdiction of the Board of Regents and the colleges and
27 universities under the jurisdiction of the Board of
28 Governors of State Colleges and Universities, Illinois
29 Community College Board, Southern Illinois University,
30 Illinois Board of Higher Education, Board of Governors of
31 State Colleges and Universities, the Board of Regents,
32 University of Illinois, State Universities Civil Service
33 System, University Retirement System of Illinois, so long
34 as these are subject to the provisions of the State
35 Universities Civil Service Act.

36 (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
27 Department of Natural Resources, authorized grantee under
28 Title VIII of the Comprehensive Employment and Training Act
29 of 1973, 29 USC 993.

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

34 (20) All "temporary" employees hired under the
35 Department of Natural Resources' Illinois Conservation
36 Service, a youth employment program that hires young people

1 to work in State parks for a period of one year or less.

2 (21) All hearing officers of the Human Rights
3 Commission.

4 (22) All employees of the Illinois Mathematics and
5 Science Academy.

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

8 (24) The commissioners and employees of the Executive
9 Ethics Commission.

10 (25) The Executive Inspectors General, including
11 special Executive Inspectors General, and employees of
12 each Office of an Executive Inspector General.

13 (26) The commissioners and employees of the
14 Legislative Ethics Commission.

15 (27) The Legislative Inspector General, including
16 special Legislative Inspectors General, and employees of
17 the Office of the Legislative Inspector General.

18 (28) The Auditor General's Inspector General and
19 employees of the Office of the Auditor General's Inspector
20 General.

21 (29) All employees of the Office of Administrative
22 Hearings.

23 (Source: P.A. 93-617, eff. 12-9-03; 93-721, eff. 1-1-05;
24 revised 10-14-04.)

25 Section 99. Effective date. This Act takes effect upon
26 becoming law.