

JOINT COMMITTEE ON ADMINISTRATIVE RULES

ILLINOIS GENERAL ASSEMBLY

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REP. TOM DEMMER
REP. GREG HARRIS
REP. LOU LANG
REP. ANDRÉ THAPEDI

MINUTES

May 15, 2018

MEETING CALLED TO ORDER

The Joint Committee on Administrative Rules met on Tuesday, May 15, 2018 at 10:30 a.m. in Room 122B of the Capitol, Springfield IL. Co-Chair Harmon called the meeting to order and announced that the policy of the Committee is to allow only representatives of State agencies to testify orally on any rule under consideration at Committee meetings. Other persons are encouraged to submit their comments to the JCAR office in writing.

ATTENDANCE ROLL CALL

X Senator Pamela Althoff	Representative Peter Breen
X Senator Don Harmon	X Representative Tom Demmer
Senator Karen McConnaughay	X Representative Greg Harris
X Senator Tony Muñoz	X Representative Lou Lang
Senator Ira Silverstein	X Representative André Thapedi
X Senator Chuck Weaver	X Representative Keith Wheeler

APPROVAL OF THE MINUTES OF THE APRIL 17, 2018 MEETING

Representative Lang moved, seconded by Senator Althoff, that the minutes of the April 17, 2018 meeting be approved. The motion passed unanimously (9-0-0).

Environmental Protection Agency – Procedures for Informational and Quasi-Legislative Public Hearings (35 Ill. Adm. Code 164; 41 Ill. Reg. 14851); Procedures for Permit and Closure Plan Hearings (35 Ill. Adm. Code 166; 41 Ill. Reg. 14856); Public Participation in the Air Pollution Control Permit Program (35 Ill. Adm. Code 252; 41 Ill. Reg. 14862)

Co-Chair Harmon announced that these rules would be considered at JCAR's June meeting.

AGENCY RESPONSE

Department of Revenue – Property Tax Code (86 Ill. Adm. Code 110; 41 Ill. Reg. 15043)

Due to the appropriateness of the Agency's response, no further action was taken.

CONSIDERATION OF RULEMAKINGS/ISSUES

State Board of Education – Public Schools Evaluation, Recognition, and Supervision (23 Ill. Adm. Code 1; 41 Ill. Reg. 15542)

Cara Wiley, Director of Regulatory Support and Wellness, and Amanda Elliott, Legislative Affairs, represented SBE.

Co-Chair Wheeler: Some Committee members have an ongoing concern about the extent to which the rule allows extracurricular athletic activities to be counted in lieu of physical education classes. SBE has indicated its preference for these PE waiver modifications to be granted by SBE on a case-by-case basis, and while this has alleviated some JCAR concerns, I remain concerned about the speed with which these modifications will be considered. Will SBE consider these requests as quickly as possible? If not, JCAR will need to revisit this topic.

Ms Wiley: There haven't been many modification requests, but SBE staff is willing to facilitate the process for any who apply.

Representative Thapedi: Has SBE had talked to Representative Will Davis, the sponsor of the original legislation, on these rules.

SBE: Yes. He is in support of SBE's interpretation of the PE requirement.

Senator Althoff: How long would a modification request take to process?

Ms Wiley: SBE is statutorily required to respond within 45 days or approval is automatic. I am not aware of any modification requests received, so this will be a new process. SBE is willing to work with districts to facilitate this process.

Department of Human Services – Alcoholism and Substance Abuse Treatment and Intervention Licenses (77 Ill. Adm. Code 2060; 41 Ill. Reg. 14878)

Rick Nance, Deputy Director for Business and Fiscal Services of the Division of Alcoholism and Substance Abuse, and Tracie Drew, Bureau Chief of Administrative Rules, represented DHS.

Representative Lang: The Public Act being implemented requires DHS to adopt rules by 8/5/17 and amended the IAPA to permit emergency rulemaking necessary. Nine months after the statutory deadline, there are no rules adopted, emergency or otherwise. Why?

Mr. Nance: DHS was trying to get the details of the rule language worked out.

Representative Lang: Was the legislation a surprise to DHS?

Mr. Nance: Yes.

Representative Lang: Was it such a surprise that it would take 9 months to get the rule together?

Mr. Nance: Yes, considering the difficulty of getting all the right people to weigh in on the rule, drafting it, and circulating it for comment.

Representative Lang: Does it matter to DHS that a bill ordered it to do something, and gave it extraordinary rulemaking authority to do it, and yet DHS didn't do it for 9 months?

Mr. Nance: It bothers me that it took so long, but my staff worked with DHS' legislative and administrative rules staff to develop the rule and now the rule is at this point in the process.

Representative Lang: This isn't a sufficient answer. The General Assembly puts deadlines in bills for a reason and, when the bill becomes law, the deadlines do too. What do you think legislators should do when a date certain is put into a law and a State agency willfully ignores that law?

Mr. Nance: Declined to answer the question, citing internal rulemaking processes as the cause for the delay.

Representative Lang: Did DHS notify JCAR of the likely delay?

Mr. Nance: I did not, but I'm not sure if the agency's JCAR liaisons had done so.

Representative Lang: Can DHS furnish copies of any such correspondence?

Mr. Nance: These could probably be supplied within the week.

Representative Thapedi: You said DHS was surprised by the legislation, yet DHS is listed as having been neutral on the bill. So how were you surprised if you weighed in on the legislative process and were following that process from inception until it was signed? Where is the surprise?

Mr. Nance: The requirement came from the budget implementation bill, and thus the notice of the funding change came from DHS' appropriations staff, without mention of the rulemaking deadline.

Representative Thapedi: If you have a large organization with people who specialize in every piece of the process, how was this provision missed? Where is the excuse for a delay?

Mr. Nance: I was only informed of the bill once it had been enacted.

Representative Wheeler: Why did you not use emergency rulemaking?

Mr. Nance: Use of emergency rulemaking is not determined by our division; it's handled elsewhere within DHS. So I can't answer that.

Representative Lang: Requested that this rulemaking be removed from the No Objection list and considered at the June meeting so JCAR could get the answers it needed.

CERTIFICATION OF NO OBJECTION

Senator Muñoz moved, seconded by Senator Weaver, that the Committee inform the agencies to whose rulemakings the Committee did not vote an Objection or Extension, or did not remove from the No Objection List, that the Committee considered their respective rulemakings at the monthly meeting and, based upon the agreements for modification of the rulemakings made by the agencies, no Objections will be issued. The motion passed unanimously (9-0-0).

ANNOUNCEMENT OF JUNE MEETING DATE

Co-Chair Harmon announced that the next JCAR meeting would be held at 11:00 a.m. on Tuesday, June 12, 2018, in Room C600 of the Michael A. Bilandic Building, Chicago IL.

ADJOURNMENT

Co-Chair Wheeler moved, seconded by Senator Muñoz, that the meeting stand adjourned. The motion passed unanimously.

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