

JOINT COMMITTEE ON ADMINISTRATIVE RULES

ILLINOIS GENERAL ASSEMBLY

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REP. BARBARA FLYNN CURRIE
REP. TOM DEMMER
REP. GREG HARRIS
REP. ANDRÉ THAPEDI

MINUTES

August 14, 2018

MEETING CALLED TO ORDER

The Joint Committee on Administrative Rules met on Tuesday, August 14, 2018 at 11:00 a.m. in Room C600 of the Michael A. Bilandic Building, Chicago IL. Co-Chair Wheeler 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	X Representative Peter Breen
X Senator Don Harmon	X Representative Barbara Flynn Currie
Senator Karen McConaughay	X Representative Tom Demmer
X Senator Tony Muñoz	X Representative Greg Harris
Senator Ira Silverstein	X Representative André Thapedi
X Senator Chuck Weaver	X Representative Keith Wheeler

APPROVAL OF THE MINUTES OF THE JULY 17, 2018 MEETING

Senator Weaver moved, seconded by Representative Breen, that the minutes of the July 17, 2018 meeting be approved. The motion passed unanimously (10-0-0).

REVIEW OF AGENCY RULEMAKINGS

Department of Natural Resources – Duck, Goose and Coot Hunting (17 Ill. Adm. Code 590; 42 Ill. Reg. 4286)

Representative Demmer moved, seconded by Senator Muñoz, that JCAR, with the concurrence of the Department, extend consideration of this rulemaking for an additional 45 days. The motion passed unanimously (10-0-0).

AGENCY RESPONSES

Department of Children and Family Services – Licensing Standards for Day Care Homes (Emergency) (89 Ill. Adm. Code 406; 42 Ill. Reg. 8519); Licensing Standards for Day Care Centers (Emergency) (89 Ill. Adm. Code 407; 42 Ill. Reg. 8555); Licensing Standards for Group Day Care Homes (Emergency) (89 Ill. Adm. Code 408; 42 Ill. Reg. 8593)

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

Due to the appropriateness of the agencies' responses, no further action was taken.

CONSIDERATION OF OTHER RULEMAKINGS

Department of Financial and Professional Regulation – Acupuncture Practice Act (68 Ill. Adm. Code 1140; 42 Ill. Reg. 8683)

Mark Thompson, Deputy General Counsel, and Chau Nguyen, Assistant General Counsel, represented DFPR. Representative Thapedi asked what the Department's intent was with respect to the proposed rulemaking.

Mr. Nguyen: The proposal reflects the changes made by the sunset reauthorization of the Acupuncture Practice Act (PA 100-375), including adding herbal medicinals to the scope of practice for acupuncturists and updates to reflect current educational standards set by the industry. DFPR worked with the industry in making these changes.

Representative Thapedi: Did the Department also work with the bill's sponsor in developing this rulemaking? Mr. Nguyen: This was not the case. Representative Thapedi: How did the Department determine that the departure from statute in Section 1140.100(c) (Unprofessional Conduct) was consistent with the legislative intent? Mr. Nguyen: The current rule draws a line in the sand: when an acupuncturist is the subject of a complaint of improper use of herbal medicinals, DFPR will investigate the licensee to determine if any additional herbal medicine coursework or certification courses beyond the minimum statutory requirements has been taken.

Representative Thapedi: Is this Section establishing a new standard of care? Mr. Nguyen: DFPR is relying on the existing standards promulgated by NCCAOM (National Certification Commission for Acupuncture and Oriental Medicine), which is the national certifying body.

Mr. Nguyen confirmed that DFPR would be removing Section 1140.100(c) from the rulemaking.

Co-Chair Harmon: In the proposed rule there are 2 educational pathways to a single license that will then allow a licensee to practice in 2 different practice areas. Mr. Nguyen: As the statute exists now, if a licensee has either the diplomate of acupuncture or the diplomate of oriental medicine, the practice of herbal medicine is allowed. This is not the way the rulemaking was written. The rulemaking would not require a licensee to take the extra coursework in herbal medicine; it just states that DFPR will inquire into the licensee's competency in the event of a complaint.

Co-Chair Harmon: This provision has DFPR asking licensees to prove, after the fact, that they had the training to do something when their licenses permit them to do so without that training. This provision is clumsy. DFPR should come back to the legislature for clarifying language to align the licensure statute with the realities of training and practice in this field. Mr. Thompson: The acupuncturists' association will be pursuing such legislation, and DFPR would be happy to work with them.

Based on the Department's agreement to remove Section 1140.100(c), the rulemaking was placed on the No Objection List.

Department of Revenue – Invest in Kids Act (86 Ill. Adm. Code 1000; 42 Ill. Reg. 7448)

Mark Dyckman, General Counsel, represented DOR. Representative Currie: The Invest in Kids Act lists several priorities for selecting students for a scholarship: continuity, siblings in the same school, financial need, and focus areas defined by the State Board of Education. Apparently DOR proposing to give Scholarship Granting Organizations (SGOs) the ability to decide what priorities should be more important or less important. JCAR hasn't yet seen that language and, second, that there does not seem to be any indication in the statute that this decision should be turned over to private organizations. An Extension might be in order so the proponents of this change and DOR can further consider their request for this change.

Mr. Dyckman: Confirmed that DOR had been approached by some public commentors asking that SGOs be given the discretion to rank priority groups, as long as they make that ranking public in advance. DOR is working out language with some of these commentors. DOR does not believe that the statute precludes SGOs from ranking these priorities, but is not comfortable ranking these priorities itself. DOR would not oppose an Extension.

Representative Thapedi: Although the statute is silent on this question, there was considerable legislative intent on the issue of ranking priorities. That was one of the major concerns raised by the Black Caucus and others. Is it DOR's intention to prioritize who gets the grants and who does not? Mr. Dyckman: DOR has no intention of ranking these priorities, but some of the commentors believe that continuity should be the top priority. Students should not be bounced once they start attendance under a scholarship. DOR believed a compromise could be worked out that did not contravene statute.

Representative Thapedi: My concern is whether DOR would be allowing SGOs to rank the priorities. I am glad DOR will take more time to consider these questions. Who are the involved commentors? Mr. Dyckman: Written comments were received from a rabbi and the Catholic Conference, but DOR remained open to any comments on this issue.

Representative Currie moved, seconded by Representative Harris, that JCAR, with the concurrence of the Department of Revenue, extend the Second Notice Period for this rulemaking for an additional 45 days. The motion passed unanimously (10-0-0).

Illinois State Board of Investment – Rules and Regulations of the Board (74 Ill. Adm. Code 800; 42 Ill. Reg. 6630)

Senator Althoff moved, seconded by Representative Breen, that JCAR, with the concurrence of the Illinois State Board of Investment, extend the Second Notice Period for this rulemaking for an additional 45 days. The motion passed 9-0-1, with Co-Chair Harmon abstaining.

CERTIFICATION OF NO OBJECTION

Senator Weaver moved, seconded by Senator Muñoz, that the Committee inform the agencies to whose rulemakings the Committee has not voted 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 rulemaking made by the agency, no Objections will be issued. The motion passed unanimously (10-0-0).

ANNOUNCEMENT OF SEPTEMBER MEETING DATE

Co-Chair Wheeler announced that the next JCAR meeting would be held at 11:00 a.m. on Tuesday, September 18, 2018, in Room C600 of the Michael A. Bilandic Building, Chicago IL.

ADJOURNMENT

Co-Chair Harmon moved, seconded by Representative Currie, that the meeting stand adjourned. The motion passed unanimously.

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