

# JOINT COMMITTEE ON ADMINISTRATIVE RULES

ILLINOIS GENERAL ASSEMBLY

CO-CHAIR:  
SEN. MAGGIE CROTTY

CO-CHAIR:  
REP. BRENT HASSERT

EXECUTIVE DIRECTOR:  
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SEN. J. BRADLEY BURZYNSKI  
SEN. JAMES CLAYBORNE, JR.  
SEN. RANDY HULTGREN  
SEN. DAN RUTHERFORD  
SEN. IRA SILVERSTEIN  
REP. JOHN FRITCHEY  
REP. LOU LANG  
REP. DAVID R. LEITCH  
REP. DAVID MILLER  
REP. ROSEMARY MULLIGAN

## MINUTES

March 11, 2008

### MEETING CALLED TO ORDER

The Joint Committee on Administrative Rules met on March 11, 2008 at 11:00 a.m. in Room C-1 of the Stratton Office Building in Springfield IL.

Co-Chair Hassert 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 hearings. Other persons are encouraged to submit their comments in writing.

### ATTENDANCE ROLL CALL

X Senator Bradley Burzynski	X Representative John Fritchey
X Senator James Clayborne, Jr.	X Representative Brent Hassert
X Senator Maggie Crotty	X Representative Lou Lang
X Senator Randy Hultgren	X Representative David Leitch
X Senator Dan Rutherford	X Representative David Miller
Senator Ira Silverstein	X Representative Rosemary Mulligan

### APPROVAL OF THE MINUTES OF THE PREVIOUS JCAR MEETING

Senator Hultgren moved, seconded by Representative Lang, to approve the minutes of the February 13 (recessed) and 26 (reconvened), 2008 meeting. The motion passed unanimously.

### REVIEW OF AGENCY RULEMAKINGS

*Department of Healthcare and Family Services – Medical Assistance Programs (89 Ill. Adm. Code 120; 31 Ill. Reg. 16629)*

Senator Rutherford moved, seconded by Senator Burzynski, that JCAR object to the Department's lack of timeliness in proposing this rulemaking. PA 94-847, effective 1/1/07, specifically required implementation of the provisions articulated in this rulemaking by 7/1/07. The motion passed unanimously.

***Secretary of State – Department of Personnel (80 Ill. Adm. Code 420; 32 Ill. Reg. 3013) (Emergency)***

Senator Crotty moved, seconded by Representative Leitch, that JCAR object to the Secretary of State using emergency rulemaking to adopt rules titled "Department of Personnel" (80 Ill. Adm. Code 420; 32 Ill. Reg. 3013) because there is no situation meeting the criteria for an emergency rulemaking under Section 5-45 of the IAPA. The personnel rule policies being revised or updated embrace statutory changes long known to the Secretary, some as far back as 1991. Any emergency situation that exists is agency created. The motion passed unanimously.

Co-Chair Hassert asked if any member desired to discuss any other rulemaking. Members requested consideration of issues involving the Health Facilities Planning Board, the Executive Ethics Commission, the Department of Commerce and Economic Opportunity and the Department of Healthcare and Family Services.

***Health Facilities Planning Board – Narrative and Planning Policies (77 Ill. Adm. Code 1100; 31 Ill. Reg. 16387)***

The Department was represented by Jeffrey Mark, Executive Secretary, and Frank Urso, General Counsel.

Representative Hassert asked, if JCAR does not issue an Objection, when does HFPB plan to implement this rule.

Mr. Mark responded that it will move as soon as possible to adopt the rule. This should be done no later than the end of March.

Representative Hassert asked whether applications submitted after passage of the underlying legislation last June and that are still pending before the Board will be considered under the guidelines embodied in this rulemaking.

Mr. Mark responded in the affirmative, stating that HFPB uses the most current data available. Upon adoption of this rulemaking, the datasets it describes will be the most current available.

Senator Clayborne stated that an issue important to his district was awaiting HFPB action and asked if the Board could delay its decision forever.

Mr. Mark responded that HFPB rules require Board action within so many days, with the opportunity to defer consideration if more information is needed.

***Executive Ethics Commission – Organization, Information, Rulemaking and Hearings (2 Ill. Adm. Code 1620; 31 Ill. Reg. 6754)***

The Commission was represented by Chad Fornoff, Executive Director, and Shawn Denney, Attorney General's appointee to, and Chair of, the Commission.

Representative Fritchey, seconded by Representative Miller, moved that the Joint Committee agree to extend the Second Notice period for the rulemaking for an additional 45 days to afford more time to address outstanding issues. Mr. Fornoff indicated the Commission's concurrence.

Representative Fritchey asked if there were representatives of any of the Executive Inspectors General present. EIGs from the Governor's, State Treasurer's and Comptroller's offices indicated their presence. Representative Fritchey asked that the EIGs present pass on to those not in attendance the comments he was about to make.

Representative Fritchey expressed JCAR's respect for the work of the Commission and the EIGs. The rules EEC has proposed, some of which may be meritorious, some of which may be less so, are of tremendous importance. JCAR would like to spend the time to determine what the rules are attempting to accomplish and whether they are statutorily permissible. JCAR would like to ask that, within the next week, EEC and each of the EIGs, for each rule change that is being proposed, provide to JCAR a short summation of its current position. Subsequent to receiving those memos, there may be an effort to try to get the interested parties together to find areas of mutual agreement. On issues for which there is no agreement, obviously some parties will have to win and some will have to lose.

Mr. Fornoff indicated his willingness to provide the requested materials.

The motion to extend passed unanimously.

***Department of Commerce and Economic Opportunity – Illinois Small Business Development Program (14 Ill. Adm. Code 570; 32 Ill. Reg. 2979) (Emergency)***

The Department was represented by John Knittle, Deputy General Counsel, and Mark Gauss, Manager of Business Finance.

Senator Burzynski stated that he had a couple of questions involving DCEO's emergency rule involving a loan to a small business. He pointed out that the rule is raising a \$50,000 loan cap to \$100,000 and recognized that statute authorizes this change. Senator Burzynski stated his understanding that this change was designed to accommodate a single business, and asked for more detail.

Mr. Gauss responded that an application under current consideration would require a loan greater than \$50,000. The owner of a small business is retiring and will either close the business or sell it. A prospective buyer is requesting the loan. DCEO wants to conclude consideration of the application as soon as possible so the business can remain open.

Senator Burzynski asked if the new \$100,000 cap will apply to future loan applications as well as this one.

Mr. Gauss indicated it would.

Senator Burzynski asked where the business involved in the current application is located.

Mr. Gauss responded that the business is on the South Side of Chicago.

Senator Burzynski asked if a more specific location could be stated. When an emergency rule appears to be targeted to a single entity, JCAR would be remiss if it failed to ask who is involved, what is the nature of the emergency, etc.

Mr. Knittle said the rule change is not necessarily directed at this one applicant. The statutory amount has been increased, and the Department is now amending the rule correspondingly. This one application happened to be pending at the time. The emergency was that DCEO wanted to make the change so that this entity could avail itself of the new statute.

Senator Burzynski asked for the names of the principals involved in the affected business.

Mr. Knittle responded that the business is Harold's Chicken franchise #38 and the loan is being requested through Shore Bank.

Senator Burzynski asked when the statute was changed to \$100,000.

The DCEO representatives indicated they were not sure.

Senator Burzynski stated that the use of emergency rulemaking to effect this change raises some questions, as do some ethics issues currently gaining attention around the State. He asked if the location of the franchise is going to change.

Mr. Gauss responded that it would not change.

Senator Rutherford stated that, if a statutory change requires a rulemaking change, the agency should anticipate this need and start the proposed rulemaking process. An emergency rule precipitated by the needs of one particular business raises a lot of red flags. When DCEO awards one of these loans, does it have objective standards applicants must meet, or is this a subjective decision?

Mr. Gauss explained that the bank makes the application requesting State participation in the loan. Due diligence with respect to the soundness of the loan is on the part of the bank. DCEO staff then reviews the bank's analysis, and the Financial Review Committee then evaluates the benefits to the community, the preservation of jobs, etc.

Senator Rutherford asked if this is a loan guarantee.

Mr. Gauss responded that it is a participation loan in which the bank makes the loan, then asks the State to buy a part of the loan.

Senator Rutherford asked if the funding pool is limited.

Mr. Gauss said it is a revolving fund, so available funding is dependent on incoming loan payments. The current balance is around \$4 million.

Senator Rutherford advised DCEO that it may want to consider using the proposed rulemaking process in the future, particularly when a single business appears to benefit.

Mr. Knittle stated that they now understand the advisability of doing so.

Representative Miller asked when this application was received.

Mr. Gauss indicated the original contact was made a month or two ago, but no action could be taken until this rule change is made.

Representative Miller asked for verification that the total loan amount is \$135,000.

Mr. Gauss indicated this is true, with the State's 50% participation being \$67,500. The purchase has not been made yet, nor the loan participation finally approved.

Representative Miller again asked when the statutory change was made.

Mr. Gauss indicated it was in the last legislative session.

Representative Miller asked if DCEO has been approached about any other loan participation over the \$50,000 level.

Mr. Gauss said one other request is pending, but its review is not yet complete. Discussions have commenced with respect to others, but they are not yet concrete requests.

Representative Miller asked for the location of this Harold's.

Mr. Knittle responded 2224 E. 79<sup>th</sup> Street.

Representative Miller asked if there is any indication from the owner or potential buyer that they could not wait a month for this rule change.

Mr. Gauss indicated the current owner wants the decision to liquidate or sell finalized quickly so he can retire.

Representative Miller asked, granted that the parties are anxious to close, would the sale fall through if DCEO went through the proposed rulemaking process, in DCEO's opinion.

Mr. Gauss responded in the affirmative and stated again that the only reason for the rule change is to make the rule match the statute.

Senator Rutherford suggested that DCEO review all of its statutorily authorized thresholds and determine if its rules concur. Resorting to emergency rule for this purpose raises questions.

***Department of Healthcare and Family Services – Reimbursement for Nursing Costs for Geriatric Facilities (89 Ill. Adm. Code 147; 32 Ill. Reg. 415) (Emergency)***

The Department was represented by Tamara Hoffman, Chief of Staff, and Theresa Eagleson, Administrator of the Division of Medical Programs.

Senator Rutherford reminded the Committee that, at the 2/26/08 meeting, JCAR withdrew in part its Suspension on this rulemaking so that the portions of the rulemaking implementing a statutorily authorized rate increase could go into effect. Unfortunately, a few references to the relevant rule text were omitted from that motion. Senator Rutherford indicated his desire to offer another motion to rectify that problem. Senator Rutherford, seconded by Senator Burzynski, moved that the JCAR Suspension of the emergency rule be further withdrawn in part, with respect to the portions of the rule affecting rate changes that were inadvertently excluded from the 2/26/08 withdrawal. JCAR believes these additional portions of the rule to be the legitimate subject of emergency rulemaking, as these rate changes implement an additional appropriation making these rates effective 1/1/08. The portions of the rule affecting HFS monitoring of providers under this program are not of an emergency nature and the Suspension stays in place for those provisions, allowing for the full public review and opportunity to comment afforded by the proposed rulemaking process. The specific portions of the emergency rule for which the Suspension is further withdrawn are as follows:

Table A

Injections  
Psychiatric Services III  
Exceptional Care, Respiratory Services  
Complex Wounds

Section 147.200(i)(16) and (17)

Ms Hoffman stated that the Department understands and agrees with what Senator Rutherford is proposing, but added that HFS still does believe that it has the authority....

Senator Rutherford pointed out that the Committee had already heard this at the last two meetings. The Committee is now attempting to help HFS make the reimbursements authorized by this emergency at Ms Hoffman's specific request. He pointed out that a motion had been made.

The motion passed on a rollcall vote of 11-0-0.

**CERTIFICATION OF NO OBJECTION**

Senator Crotty moved, seconded by Senator Hultgren, that the Committee inform the agencies to whose rulemakings the Committee did not vote an Objection, or did not remove from the No Objection List, that the Committee considered their respective rulemakings at the monthly meeting and, based on the Agreements for modification of the rulemakings made by the agencies, no Objections will be issued.

The motion passed unanimously.

### **AGENCY RESPONSES**

*Department of Healthcare and Family Services – Medical Assistance Programs (89 Ill. Adm. Code 120; 31 Ill. Reg. 15854) (Emergency)*

Representative Mulligan moved, seconded by Representative Lang, that JCAR publish a Notice of Failure to Remedy. The motion passed unanimously.

*Department of Central Management Services – Pay Plan (80 Ill. Adm. Code 310; 31 Ill. Reg. 14619)*

*Department of Human Services – Food Stamps (89 Ill. Adm. Code 121; 31 Ill. Reg. 14372) (Peremptory)*

Based on the appropriateness of the agencies' responses, no further action was taken.

### **APRIL MEETING DATE**

Co-Chair Hassert announced that the next monthly meeting is scheduled for Tuesday, April 15, 2008, 9:00 a.m., Room C-1, Stratton Office Building, Springfield IL.

### **ADJOURNMENT**

Representative Mulligan moved, seconded by Representative Leitch, that the meeting be adjourned. The motion passed unanimously and the meeting was adjourned.

*Min:0803Feb*