

JOINT COMMITTEE ON ADMINISTRATIVE RULES

ILLINOIS GENERAL ASSEMBLY

CO-CHAIR:
SEN. MAGGIE CROTTY

CO-CHAIR:
REP. BRENT HASSERT

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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

November 19, 2008

Meeting Called to Order

The Joint Committee on Administrative Rules met on November 19, 2008 at 11:00 a.m. in Room A-1 of the Stratton Building in Springfield, Illinois.

Co-Chair Hassert 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 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 OCTOBER 16, 2008 AND NOVEMBER 12, 2008 (SPECIAL) MEETINGS

Senator Crotty moved, seconded by Senator Rutherford, to approve the minutes of the October 16 and November 12, 2008 meetings. The motion passed unanimously.

REVIEW OF AGENCY RULEMAKINGS AND EXISTING RULE

***Department of Children and Family Services – Office of the Inspector General (OIG)
(89 Ill. Adm. Code 430; 32 Ill. Reg. 6962)***

Senator Clayborne moved, seconded by Senator Hultgren, that JCAR object because the rulemaking exceeds the Department's statutory authority under Section 35.5 of the

Children and Family Services Act by allowing the Inspector General to share confidential information with a variety of law enforcement entities. Statute authorizes the sharing of this information only with the Department of State Police. If the Department believes this expansion in the OIG's authority to share information with law enforcement is warranted, it should first seek a change in the statute. The motion passed unanimously.

Department of Financial and Professional Regulation – Consumer Installment Loan Act (38 Ill. Adm. Code 110; 32 Ill. Reg. 13127)

Representative Leitch, seconded by Representative Mulligan, moved that JCAR and the Department of Financial and Professional Regulation agree to extend the Second Notice period for this rulemaking for an additional 45 days. The motion passed unanimously.

Board of Higher Education – Program Review (Private Colleges and Universities) (23 Ill. Adm. Code 1030; 32 Ill. Reg. 13911) and Approval of New Units of Instruction, Research and Public Service at Public Institutions (23 Ill. Adm. Code 1050; 32 Ill. Reg. 13941)

Representative Lang, seconded by Senator Crotty, moved that JCAR recommend that the Board of Higher Education update its rules to reflect current policy in a more timely manner. BHE has been implementing these policies and procedures since 2002 without updating its rules to reflect that policy. The motion passed unanimously.

Department of Natural Resources – Special Wildlife Funds Grant Program (17 Ill. Adm. Code 3060; 32 Ill. Reg. 14413)

Representative Fritchey moved, seconded by Representative Miller, that JCAR recommend that the Department be more timely in adopting rules implementing Public Acts. This rulemaking implements PA 94-516, effective 8/10/05, that required adoption of rules implementing grant criteria by 1/1/06. The motion passed unanimously.

Department of Human Services – Food Stamps (89 Ill. Adm. Code 121; 32 Ill. Reg. 16905) (Peremptory)

Senator Rutherford moved, seconded by Representative Mulligan, that JCAR object to the Department using peremptory rulemaking to adopt amendments to 89 Ill. Adm. Code 121.94(c), 121.96(d)(2) and 121.150(b) because the 10/1/08 peremptory rulemaking included federal provisions effective 6/18/08. This violates the IAPA Section 5-50 requirement that adoption of federal changes by peremptory rule occur within 30 days after the federal action. Because inclusion of the above cited subsections in this peremptory rulemaking violates the IAPA, JCAR finds that it presents a threat to the public interest and suspends the peremptory amendments to 89 Ill. Adm. Code 121.94(c), 121.96(d)(2) and 121.150(b). The motion passed on a vote of 10-0-0. (Yes: Burzynski, Crotty, Hultgren, Rutherford, Fritchey, Hassert, Lang, Leitch, Miller, Mulligan)

State Board of Education – Existing Rules

Representative Leitch moved, seconded by Senator Burzynski, that JCAR recommend that the State Board of Education adopt rules implementing PA 94-855, effective 1/1/07, that amended Section 2-3.80 of the School Code affecting school districts offering secondary agricultural education programs. The motion passed unanimously.

Co-Chair Hassert asked if any member desired to discuss any other proposed rulemaking. Senator Crotty indicated that she wanted to address a proposed rulemaking of the Secretary of State and Senator Rutherford asked to consider a rulemaking by the Department of Natural Resources

Secretary of State – Procedures and Standards (92 Ill. Adm. Code 1001; 32 Ill. Reg. 9819)

This rulemaking establishes rules for an expansion of the BAIID monitoring program. Senator Crotty moved, seconded by Senator Rutherford, that the Second Notice period for this rulemaking be extended for an additional 45 days to further address issues raised by public commentors. The motion passed unanimously.

Department of Natural Resources – Viral Hemorrhagic Septicemia Virus (17 Ill. Adm. Code 875; 32 Ill. Reg 14401)

Senator Rutherford pointed out that this rulemaking will replace an emergency rule that is set to expire on 11/26/08. This proposed rulemaking reflects federal rules that are likely to change with the filing of revised federal rules on 1/9/09. The Department has indicated that it agrees to reflect any changes the federal government may adopt immediately after they are announced.

Representative Leitch asked if a representative of DNR was present to address questions. No representative was available. The Representative stated his understanding that the penalties for violation of this rule are set by the State and are not driven by federal rule. The Representative believes it to be ridiculous that a person who is out fishing with his children who moves from one lake to another, taking his minnows, can face penalties of up to \$1000 or a year in jail. It is within the power of DNR to devise much less onerous and far more sensible penalties.

Co-Chair Hassert stated that JCAR Staff can ask DNR to look into a revision in the rule's penalty provisions.

Co-Chair Hassert asked if any member desired to discuss any other emergency or peremptory rulemaking. Senator Rutherford asked to consider a peremptory rule of the Department of Healthcare and Family Services.

Department of Healthcare and Family Services – Medical Assistance Programs (89 Ill. Adm. Code 120; 32 Ill. Reg. 18889) (Peremptory)

Senator Rutherford moved, seconded by Representative Lang, that JCAR object to the Department's use of peremptory rulemaking because that use violates Sections 5-50 of the IAPA. Section 5-50 allows peremptory rulemaking to be used only "when rulemaking is required as a result of federal law, federal rules and regulations, an order of a court or a collective bargaining agreement...that precludes compliance with the general rulemaking requirements...and that precludes the exercise of discretion by the agency as to the content of the rule". In adopting this peremptory rule, HFS relied on the Opinion of the Appellate Court Fifth Division affirming the judgment of the trial court in *Caro*. First, while the Appellate Court discussed the deficiencies in the emergency rule adopted by HFS and suspended by JCAR, it did not issue any order requiring HFS to adopt additional rule text without discretion, nor did the Appellate Court set any deadline for action that precluded the use of general rulemaking procedures. For this reason, the use of peremptory rulemaking does not meet the tests of IAPA Section 5-50. Second, on 5/20/08, JCAR suspended an earlier peremptory rule adopted by HFS in response to circuit court action in *Caro*. On 11/16/08, the 180 day period during which the General Assembly or JCAR could withdraw that suspension expired, making the Suspension permanent. Portions of this current peremptory rule are identical to that suspended peremptory rule. Section 5-125 of the IAPA states that "the agency may not enforce, or invoke for any reason, a rule or portion of a rule that has been suspended". Therefore, adoption of this peremptory rule also violates Section 5-125 of the IAPA. The motion passed on a vote of 10-0-0. (Yes: Burzynski, Crotty, Hultgren, Rutherford, Fritchey, Hassert, Lang, Leitch, Miller, Mulligan)

CERTIFICATION OF NO OBJECTION

Representative Mulligan moved, seconded by Senator Rutherford, 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 upon the Agreements for modification of the rulemakings made by the agencies, no Objections will be issued. The motion passed unanimously, except that Representative Leitch and Senators Burzynski and Rutherford asked to be recorded as "No" on the rulemaking of the Department of Natural Resources titled Viral Hemorrhagic Septicemia Virus (17 Ill. Adm. Code 875; 32 Ill. Reg 14401).

EXPEDITED CORRECTIONS

Department of Employment Security – Payment of Benefits (56 Ill. Adm. Code 2830; 32 Ill. Reg. 16932)

Senator Hultgren moved, seconded by Representative Fritchey, that JCAR approve and certify the Request for Expedited Correction. The effective date of the correction is 7/24/08.

Health Facilities Planning Board – Narrative and Planning Policies (77 Ill. Adm. Code 1100; 32 Ill. Reg. 17276)

Representative Miller moved, seconded by Representative Leitch, that JCAR approve and certify the Request for Expedited Correction. The effective date of the correction is 7/18/08.

AGENCY RESPONSES

Illinois Commerce Commission – Electric Interconnection of Distributed Generation Facilities (83 Ill. Adm. Code 466; 32 Ill. Reg. 6173)

No further action was taken. Staff will monitor.

Department of Public Health – Child Health Examination Code (77 Ill. Adm. Code 665; 32 Ill. Reg. 8778) (Emergency) and Child Health Examination Code (77 Ill. Adm. Code 665; 32 Ill. Reg. 9055) (Emergency)

Since JCAR has already gone on record as objecting to DPH's unnecessary use of emergency rulemaking, no further action was taken.

State Board of Investment – State (of Illinois) Employees' Deferred Compensation Plan (80 Ill. Adm. Code 2700; 32 Ill. Reg. 6840)

Due to the appropriateness of the agency's response, no further action was taken. Staff will monitor.

DECEMBER MEETING DATE

Co-Chair Hassert announced that the next monthly meeting is scheduled for Tuesday, December 16, 2008, 10:30 a.m., Room 16-503 of the James R. Thompson Center in Chicago.

ADJOURNMENT

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