

JOINT COMMITTEE ON ADMINISTRATIVE RULES

ILLINOIS GENERAL ASSEMBLY

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SEN. BILL CUNNINGHAM

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SEN. KIMBERLY LIGHTFORD
SEN. TONY MUÑOZ
SEN. SUE REZIN
SEN. PAUL SCHIMPF
REP. TOM DEMMER
REP. MIKE HALPIN
REP. FRANCES HURLEY
REP. STEVEN REICK
REP. ANDRÉ THAPEDI

MINUTES

June 16, 2020

MEETING CALLED TO ORDER

The Joint Committee on Administrative Rules met on Tuesday, June 16, 2020, at 11:30 a.m. in Room C-1 of the Stratton Building, Springfield IL. Co-Chair Cunningham 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 Bill Cunningham	X Representative Tom Demmer
X Senator John Curran	X Representative Mike Halpin
Senator Kimberly Lightford	X Representative Frances Hurley
X Senator Tony Muñoz	X Representative Steven Reick
Senator Sue Rezin	Representative André Thapedi
X Senator Paul Schimpf	X Representative Keith Wheeler

APPROVAL OF THE MINUTES OF THE May 20, 2020 MEETING

Sen. Schimpf moved, seconded by Co-Chair Wheeler, that the minutes of the May 20, 2020 meeting be approved. The motion passed unanimously (9-0-0).

REVIEW OF AGENCY RULEMAKINGS

Illinois State Police – Firearm Dealer License Certification Act (20 Ill. Adm. Code 1232; 44 Ill. Reg. 2446)

Yvette Loizon, Chief Legal Counsel, represented ISP. Sen. Schimpf commended ISP and stakeholders for the work they had done on this rule. He noted that there were a few issues left to be worked out, video surveillance for one, and asked ISP for a commitment that it would continue to work with stakeholders to resolve them. Ms Loizon affirmed ISP's commitment to do this, and thanked JCAR Staff for its work on this rulemaking.

Rep. Reick echoed Sen. Schimpf's sentiments, and thanked Ms Loizon for the time spent on the phone with him going through these issues. He commended Ms Loizon and ISP and the

stakeholders for bargaining in good faith. Co-Chair Cunningham thanked ISP for its work on this rulemaking.

Department of Children and Family Services -- Licensing Standards for Day Care Homes (Emergency Amendment to Emergency Rule) (89 Ill. Adm. Code 406; 44 Ill. Reg. 11070); Licensing Standards for Day Care Centers (Emergency Amendment to Emergency Rule) (89 Ill. Adm. Code 407; 44 Ill. Reg. 11079); Licensing Standards for Group Day Care Homes (Emergency Amendment to Emergency Rule) (89 Ill. Adm. Code 408; 44 Ill. Reg. 11094)

Meaghan Jorgensen, Deputy Director of Legislative Affairs, represented DCFS. Sen. Schimpf noted that, on Friday, June 12, several members of JCAR participated in a conference call with Ms Jorgensen to talk about the licensed day care guidance. It was his understanding that DCFS acknowledged then that, although rule text is legally binding, guidance is not. However, the text of the guidance posted on the DCFS website uses mandatory language such as "must", which suggests DCFS sees the guidance as more than advisory. Ms Jorgensen clarified that the guidance is simply guidance; when the Department says "must", it means that this is a list of best practices. No one can be cited for violating the guidance; DCFS just wants to encourage everyone to follow it. Sen. Schimpf said he is concerned that some of the day care providers might not understand the distinction, since the guidance does use mandatory language. He asked that DCFS update the guidance document to indicate that these are best practices and recommendations rather than requirements. Ms Jorgensen said she thought that would be no problem, but would report on DCFS' intent later that day. Sen. Schimpf said that JCAR would move an Objection to clarify the difference between the rule of law and guidance. This will not set aside the emergency rules, but will simply note the distinction between rule, which is law, and guidance, which is advisory.

Co-Chair Cunningham said that JCAR sees distinctions between guidance, which by its nature is a series of suggestions, and rule, which is enforceable law. He complimented DCFS for the work it had done to amend the original package of emergency rules, but said that all agencies should be clear on the distinction between rule and guidance. He mentioned the Illinois Gaming Board's guidance for reopening of casinos and video gaming terminals. JCAR's view of those guidelines is similar to its view of these DCFS guidelines: important advice, but not law.

Sen. Schimpf moved, seconded by Co-Chair Wheeler, that JCAR object to these emergency rules because they establish policy outside of rule. These emergency amendments subject licensees to guidance posted on the DCFS website that is not included in rule. The Illinois Administrative Procedure Act requires any policy affecting persons outside an agency to be adopted as rule. Guidance does not have the force of law or rule and cannot be enforced in the same manner.

The motion passed unanimously (9-0-0).

Department of Financial and Professional Regulation-DPR – The Illinois Speech-Language Pathology and Audiology Practice Act (68 Ill. Adm. Code 1465; 44 Ill. Reg. 55)

Co-Chair Cunningham announce that this rulemaking is being postponed until the July meeting.

CERTIFICATION OF NO OBJECTION

Rep. Hurley moved, seconded by Sen. 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 (9-0-0).

ANNOUNCEMENT OF JULY MEETING DATE

Co-Chair Cunningham announced that the next JCAR meeting is scheduled for Tuesday, July 14, 2020, in Room C600 of the Michael A. Bilandic Building, Chicago IL at 11:00 a.m.

ADJOURNMENT

Rep. Hurley moved, seconded by Sen. Muñoz, that the meeting stand adjourned. The motion passed unanimously (9-0-0).

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