

JOINT COMMITTEE ON ADMINISTRATIVE RULES

ILLINOIS GENERAL ASSEMBLY

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REP. TOM DEMMER
REP. MIKE HALPIN
REP. FRANCES HURLEY
REP. STEVEN REICK
REP. ANDRÉ THAPEDI

MINUTES

August 11, 2020

MEETING CALLED TO ORDER

The Joint Committee on Administrative Rules met on Tuesday, August 11, 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
X Senator Sue Rezin	X Representative André Thapedi
X Senator Paul Schimpf	X Representative Keith Wheeler

APPROVAL OF THE MINUTES OF THE JULY 14, 2020 MEETING

Rep. Hurley moved, seconded by Rep. Demmer, that the minutes of the July 14, 2020 meeting be approved. The motion passed unanimously (11-0-0).

REVIEW OF AGENCY RULEMAKINGS

State Board of Education – Registered Apprenticeship Program (23 Ill. Adm. Code 255; 44 Ill. Reg. 4553)

Rep. Reick moved, seconded by Sen. Muñoz, that JCAR recommend that SBE be more timely in implementing rulemakings by the deadlines established in statute. SBE was statutorily required to initiate rulemaking in January 2019. It did not propose this rulemaking until March 2020. The motion passed unanimously (11-0-0).

Liquor Control Commission – The Illinois Liquor Control Commission (11 Ill. Adm. Code 100; 43 Ill. Reg. 14571)

Rep. Halpin moved, seconded by Rep. Hurley, that JCAR object to this rulemaking because of the unbalanced economic impact it could have on some sectors of the liquor industry. JCAR

recommends that LCC continue to work with the various sectors of the industry to fully determine the economic impact of this rulemaking and to find a balanced solution to the issue of State mandated access to cooperative purchasing agreements. The motion passed unanimously (11-0-0).

AGENCY RESPONSE

Secretary of State – Business Corporation Act (Emergency Amendment to Emergency Rule) (14 Ill. Adm. Code 150; 44 Ill. Reg. 7944); General Not For Profit Corporations (Emergency Amendment to Emergency Rule) (14 Ill. Adm. Code 160; 44 Ill. Reg. 7951); Uniform Partnership Act (1997) (Emergency Amendment to Emergency Rule) (14 Ill. Adm. Code 166; 44 Ill. Reg. 7956); Uniform Limited Partnership Act (Emergency Amendment to Emergency Rule) (14 Ill. Adm. Code 171; 44 Ill. Reg. 7961); Limited Liability Company Act (Emergency Amendment to Emergency Rule) (14 Ill. Adm. Code 178; 44 Ill. Reg. 7966)

Rep. Thapedi moved, seconded by Sen. Rezin, that the Suspensions be withdrawn.

THE MOTION TO WITHDRAW SUSPENSIONS

Y Senator Bill Cunningham	Y Representative Tom Demmer
Y Senator John Curran	Y Representative Mike Halpin
Senator Kimberly Lightford	Y Representative Frances Hurley
Y Senator Tony Muñoz	Y Representative Steven Reick
Y Senator Sue Rezin	Y Representative André Thapedi
Y Senator Paul Schimpf	Y Representative Keith Wheeler

The motion passed unanimously (11-0-0).

CONSIDERATION OF OTHER RULEMAKINGS AND ISSUES

State Board of Education – Voluntary Registration and Recognition of Nonpublic Schools (23 Ill. Adm. Code 425; 44 Ill. Reg. 3844)

Sen. Schimpf moved, seconded by Rep. Halpin, that the Second Notice period for this rulemaking be extended for an additional 45 days. The motion passed unanimously (11-0-0).

Department of Commerce and Economic Opportunity – Local Coronavirus Urgent Remediation Emergency (or Local CURE) Support Program (Emergency/Emergency Amendment to Emergency Rule) (14 Ill. Adm. Code 700; 44 Ill. Reg. 11824)

Philip Keshen, Chief Financial Officer, and Michelle Masoncup, General Counsel, represented DCEO.

Sen. Curran asked for an update on the emergency rule.

Mr. Keshen: Municipalities and counties are part of the Local CURE program's Allotment A, which sets aside \$200M for reimbursement of COVID-19 related expenses. Allotment B is for local health departments (LHDs) and Allotment C is for special taxing districts. In an emergency

amendment to the emergency rule, DCEO has established an additional \$15M in grants that will be used to create an economic support program. Local governments will apply, in conjunction with local business entities seeking assistance because of COVID related expenses they have incurred. To make sure the State, and by extension the local government, can grant those funds with full confidence that they are reimbursable, DCEO is requiring the same due diligence requirements as in the Business Interruption Grant (BIG) program.

Sen. Curran: This program is subject to the Grant Accountability and Transparency Act. What factors would disqualify a recipient from grant funding?

Mr. Keshen: A potential grantee would not receive funds if it is delinquent in paying a State tax obligation, engaged in a business that is unlawful under Illinois or federal law, is already receiving assistance under BIG, is on the debarred/suspended list of the federal System for Award Management, or fails to meet program eligibility criteria. In BIG, DCEO has recipients sign a statement attesting they are not ineligible under these criteria, submit tax returns, and provide a valid FEIN to ensure they are legally permitted to do business in Illinois. For example, in the funding round for restaurants, DCEO has been collecting applicants' business registrations to ensure they are up to date. DCEO has a certification program that local governments can mirror. Local governments should also check potential recipients against the list of BIG recipients (on DCEO's website) and the federal debarred/suspended list. DCEO asks that local government criteria for distributing funding comply with the federal CARES Act and that the local government actually disburses funds based on those criteria.

Sen. Curran: Local governments would face an outstanding liability through this process.

Mr. Keshen: The liability for the proper use of the federal funds remains with the State, which is why these controls are necessary. To assist the governments in proper disbursement, DCEO is using the GATA portal to post information about the grant program, updating the Local CURE page on its website as new guidance comes out, and assigning a grant manager to each local government grantee to help with the day-to-day administration of its grant.

Ms Masoncup: The purpose of these controls is to mitigate the liability on both State and local governments.

Sen. Curran: Will DCEO continue to work with the IL Municipal League and the IL Association of Counties as the program is finalized and rolled out?

Ms Masoncup: Agreed.

Sen. Curran: Can unused funds from the \$200M CURE program be used to supplement the economic support program?

Ms Masoncup: The first \$15M of unused funds will go toward a second round of economic support grants.

Sen. Curran: Thanked Mr. Keshen and Ms Masoncup for their testimony and continued efforts.

Rep. Halpin: How will the \$15M be distributed?

Mr. Keshen: Grants will be given to the local governments that successfully apply. The amount will be determined on a per capita basis.

Rep. Halpin: Will counties that don't have their own economic development offices but that still want to help businesses in their communities reach out to DCEO for assistance?

Mr. Keshen: DCEO is committed to providing technical assistance throughout the application process.

Co-Chair Cunningham: Thanked DCEO for its hard work on this rule and echoed Sen. Curran's request that it continue to work with local governments throughout the process.

Department of Public Health – Control of Communicable Diseases Code (Emergency) (77 Ill. Adm. Code 690)

Ann Spillane, General Counsel for the Governor's office, and Joanne Olson, DPH Deputy Chief of Staff, represented DPH.

Co-Chair Wheeler: Thanked DPH for the effort put into this rule and the collaboration with JCAR members. The rule is in a much better place than it was a week previously. What should a business do when it has a customer who is unable to tolerate a mask due to a medical condition?

Ms Spillane: This will vary depending on the type of business, but generally the administration is recommending that the business post signage that a mask is required; ensure, to the greatest extent possible, that employees are wearing masks; ask maskless customers to wear a mask; and, if possible, provide maskless customers with masks. If the individual replies that a medical condition prevents mask use, the business need not press the customer for specifics. Business owners are not expected to become doctors.

Co-Chair Wheeler: This advice is consistent with Department of Human Rights guidance that businesses should not ask further questions. What steps can a business take to document that it is complying to the greatest extent possible?

Ms Spillane: This would vary according to the type of business, but, if feasible, the business could document that the customer was asked to wear a mask. Businesses are not expected to achieve 100% compliance. Compliance would involve posting signage, possibly providing a mask, asking customers to wear a mask, and, if possible, asking a customer not wearing a mask to leave. Asking a customer to leave might not always be feasible for safety reasons.

Co-Chair Wheeler: I do not want an employee or business owner to be in any trouble because he or she was too intimidated by a customer to ask that customer to leave. What standards would be used to determine "reasonable efforts" to comply? I have been contacted by business owners concerned they could be charged for a Class A misdemeanor because their customers refuse to wear masks. Most of the e-mails I am receiving are not from people who want to flout the rule; rather, they are concerned that doing their best to follow the rule might be judged not good enough. Is there a clearer standard businesses could follow?

Ms Spillane: The challenge with this rule is coming up with something that applies to a wide spectrum of businesses and organizations. Numerous suggestions by Co-Chair Wheeler have been incorporated into the rule already and the administration is open to continuing dialogue. With the number of cases increasing, this is a critical moment and it is necessary to have this rule in place, but ongoing discussion would be appreciated.

Co-Chair Wheeler: Does the 6-foot distancing requirement apply to customers from the same household?

Ms Spillane: Family members should be required to wear masks even if they are only close to other household members; however, if a parent says that the family unit would stay together and not walk separately around the store, the business would not be expected to argue with that.

Co-Chair Wheeler: Has the 5 persons/1000 sq.ft. occupancy limit in other guidance, which is not repeated in this rule, been changed?

Ms Spillane: We have received feedback that the person/sq.ft. measure is too confusing. DPH will instead focus on the 50% occupancy requirement.

Co-Chair Wheeler: The rule states it does not supersede any executive order, guidance issued pursuant to executive order, or local ordinance. Subordinating rule to unofficial guidance or local ordinances is a violation of the IAPA.

Ms Spillane: DPH's intent is not to replace local ordinances already in effect.

Co-Chair Wheeler: Can the rule be more specific regarding what constitutes a "reasonable effort" to ensure customers wear masks?

Ms Spillane: We are struggling to provide examples that can apply to the full range of situations in which the rule applies without swamping the rule with examples and causing more confusion. DPH is open to including additional examples if they would be useful.

Co-Chair Wheeler: With the changing guidance from CDC and requirements imposed by federal, State and local governments, it is difficult for small business owners to know whether they are complying with all of them. The rule needs to be even clearer about how to comply with its requirements, but I laud DPH for the work done so far.

Rep. Thapedi: Emergency rules must be limited to situations in which the public health, safety or welfare are at stake and are needed more quickly than the normal rulemaking process allows. Was this the case with this rule?

Ms Spillane: Yes.

Rep. Thapedi: Does this emergency rule satisfy all of the criteria for emergency rules laid out in 1 Ill. Adm. Code 230.400?

Ms Spillane: Yes.

Rep. Thapedi: Then JCAR had no basis for Objections or Recommendations, and should not even consider the possibility of a Suspension. 77 Ill. Adm. Code 690.Subpart D (Control of Communicable Diseases Code (CCD Code)) lists numerous communicable diseases requiring special action and DPH notification. Is COVID-19 a novel disease that should be included on this list?

Ms Spillane: Yes, it is a novel disease.

Rep. Thapedi: Is there any precedent for this sort of rulemaking under the CCD Code?

Ms Spillane: There have been several. JCAR has traditionally allowed DPH to take matters on a disease-by-disease basis. Sec. 690.100(d) says "when an epidemic of a disease dangerous to the public health occurs, and present rules are not adequate for its control or prevention, the Department shall issue more stringent requirements".

Rep. Thapedi: Sec. 690.100 lays out specific reporting requirements for these diseases as well. What is DPH's authority to issue this rule?

Ms Spillane: Sec. 2310-195 of the Department of Public Health Powers and Duties Law [20 ILCS 2310] provides general rulemaking authority over matters in DPH's jurisdiction and Sec. 2(a) of the Department of Public Health Act (DPH Act) [20 ILCS 2305] tasks DPH with "general supervision of the interest of the health and lives of the people of the State".

Rep. Thapedi: What is DPH's authority to adopt this particular emergency rule?

Ms Spillane: DPH has emergency rulemaking authority under the DPH Act and the IAPA [5 ILCS 100/5-45(c)(iii)]. The State is several months into the COVID-19 pandemic and the measures already in place have not been sufficient to prevent an uptick in cases.

Rep. Thapedi: Are you aware of any legislation presented to DPH or the Governor's office by the business community to address the mask issue?

Ms Spillane: I am not.

Rep. Halpin: Is the provision in Sec. 2(a) of the DPH Act regarding situations in which LHDs fail to act applicable to the current situation?

Ms Spillane: That provision refers to situations in which DPH steps in directly and bills the LHD for expenses incurred on its behalf.

Rep. Halpin: What measures has DPH taken to reduce this rule's impact on small business?

Ms Spillane: We have followed the concept of reasonable effort, specifically where it refers to taking into account the totality of the circumstances. We recognize that small businesses face a wide array of circumstances and may not be able to comply as uniformly as larger businesses. Written notice and a timetable to comply with a written notice are also critical because they inform the business owner/manager of the specific problems well before any penalties are imposed. In

addition, DPH has revised the rules to make it clearer that businesses are not expected to achieve 100% success, as there will be customers who refuse to comply.

Rep. Halpin: Is the principal role of the rule to go after businesses that are clearly complicit in customers' decisions to not wear masks or to gather without social distancing?

Ms Spillane: Businesses themselves have expressed frustration that they are following the rules and limiting customer access while their competitors do not. Part of what is driving this rule is to level the playing field so that businesses that are obeying health guidelines are not disadvantaged.

Rep. Halpin: Can individuals be charged with misdemeanors under this rule?

Ms Spillane: This was not DPH's intention. The burden of compliance is being intentionally placed on the business, not on particular individuals.

Rep. Halpin: When the rule was originally proposed in May, I had significant concerns. I appreciate DPH working with JCAR to address some of the rule's problems. Can you discuss this collaboration and speak of DPH's plans moving forward?

Ms Spillane: DPH had conversations with several members of JCAR, other agencies, business owners, etc. It's next step is to ask the State Police to reach out to local law enforcement agencies (LLEAs) to help them think through hypothetical enforcement situations and offer recommendations on implementation of this rule. DPH is also reaching out to LHDs and will have conversations about enforcement with the Attorney General and the Department of Labor.

Rep. Halpin: Will DPH commit to changing the rule as necessary if its enforcement is more stringent than DPH's stated intent?

Ms Spillane: Yes.

Sen. Rezin: In statute, violating this rule is still punishable by a \$2500 fine and up to 1 year in prison. While it is not DPH's intent to apply this punishment to individuals, will this softer intent be overshadowed by the language of the statute, especially as many businesses are owned by individuals? How will enforcement work with respect to an individual who owns a business?

Ms Spillane: The language of the rule speaks for itself. It places an obligation only at the business level; the only way to violate it is at the business level. It would require a State's Attorney to completely ignore the language of the rule to prosecute individuals.

Sen. Rezin: Who besides a State's Attorney can assess penalties?

Ms Spillane: Only the State's Attorney could assess penalties under this Part.

Sen. Rezin: So DPH cannot do so?

Ms. Spillane: No. The requirement to go through the step-by-step enforcement process is statutory. Sec. 2(a) of the DPH Act says that "all local boards of health, health authorities and officers, police officers, sheriffs and all other officers and employees of the State or any locality shall enforce"

DPH rules. Any of these entities can issue warnings, but the misdemeanor charge requires a State's Attorney and ultimately a judge.

Sen. Rezin: How will enforcement work in the hypothetical case that a State's Attorney wants to make a name for himself by going after a business that has not been enforcing social distancing or mask use?

Ms. Spillane: A ticket would be issued. No one would be taken into custody, since the enforcement would be directed at a business rather than an individual. That ticket would most likely specify a date to appear in court, which could be 90 days from the date of citation. Often at that stage misdemeanors are dismissed through negotiation. That is up to the State's Attorney. If not dismissed, the case would appear before a judge who would determine whether the misdemeanor will come to trial.

Sen. Rezin: DPH has always had the authority to enforce misdemeanor charges even if it has not used it. The current extraordinary situation has prompted consideration of how and if the statutory penalty should be applied. Large group gatherings have been used to put a county on the warning list. How does the emergency rule apply to large group gatherings?

Ms Spillane: This rule gives LHDs and LLEAs the authority to disperse groups of 50+ that are not social distancing. The rule does not give anyone other than DPH the ability to issue misdemeanor citations. It does provide local enforcers a basis for addressing 50+ groups. ISP Director Brendan Kelly reported that some LLEAs have requested guidance beyond EOs to reference when enforcing distancing. Director Kelly stated there was no desire to arrest or ticket people, but having these provisions in rule would give officers something to cite when breaking up large gatherings.

Sen. Rezin: When the first version of this rule was proposed in May, Illinois still had not bent the curve and COVID-19 was still a major emergency, but no legislation was brought to the General Assembly that would have addressed this issue. It is not the job of the business community to propose legislation. Why did the administration not bring legislation to the GA instead of the administrative rule process?

Ms Spillane: The administration has experienced some frustration about proposing legislation. However, that question has to be addressed above my level. The CCD Code sets forth requirements for specific diseases that DPH has traditionally implemented through rule. The current situation is different because the response to COVID-19 has become politicized, but dealing with this novel disease through rules was still the appropriate way to proceed.

Sen. Schimpf: Commended the administration for reaching out to JCAR members, noting that this rule was significantly different from the original May rulemaking. Section 690.50(e) of the rule states "when two or more suspected cases of COVID-19 occur in any business, organization, institution, facility, school or daycare the business owner, or the person in charge of the establishment shall cooperate with public health authorities in the investigation of cases, suspect cases, outbreaks and suspect outbreaks". The size of the entity experiencing the 2+ cases is not considered. How did DPH decide on the 2-case threshold rather than a percentage of the entity's total capacity?

Ms Olson: During the COVID-19 response, the trigger for DPH to start investigating an outbreak has been 2 cases. The CCD Code defines an outbreak as "the occurrence of illness in a person or a group of epidemiologically associated persons, with the rate of frequency clearly in excess of normal expectations". A normal expectation for COVID-19 is zero cases. If COVID-19 is present, the rule is written to require entities to cooperate with DPH to determine whether it is spreading.

Sen. Schimpf: Is there any non-obvious requirement that is triggered by the word "cooperate"?

Ms Olson: Cooperation has its plain sense meaning. For example, DPH could ask a business for a list of customers on its premises on a particular day (if that information is kept) so that DPH could reach out to the customers and inform them of a potential COVID-19 exposure. Cooperation could also involve cleaning or disinfecting appropriately. Cooperation does not have a tricky or special meaning in this context.

Sen. Schimpf: Does a school with 2 cases automatically close?

Ms Olson: That is not the intent of the rule. The decision to close would depend on the size of the outbreak.

Ms Spillane: Defining a COVID-19 incidence as an outbreak, which could result in closure, is a fact-specific classification that would take into account the relative size of the school. A previous version of this rule would have required facility closure with 2 or more cases, but that requirement was loosened.

Sen. Schimpf: Is DPH relying on the CCD Code as authority for this particular rulemaking?

Ms Spillane: No. Over the decades, JCAR has not objected to DPH proceeding with a disease-by-disease approach, implemented by rulemaking.

Sen. Schimpf: Some of DPH's rules predate the IAPA so it is not necessarily true that because a rule is in place means JCAR has approved of the rule. I am not a hard "no", but am skeptical as to whether the rule aligns with statute. What authority in the DPH Act gives DPH the authority to set up a different process for dealing with communicable disease than that which is already in statute (Sec. 2(c) of the DPH Act)?

Ms Spillane: DPH views the CCD Code's requirements for specific diseases and the isolation/quarantine/closure process in Sec. 2(c) of the DPH Act as parallel tracks. DPH is not tinkering with isolation, quarantine or closure, but it could still pursue those. To do so, DPH would have to meet all of the requirements set out in existing law and rules, including (for involuntary quarantines/closures) a court hearing and proof from DPH, based on clear and convincing evidence. This is not an attempt to get around Sec. 2(c); it is a separate enforcement mechanism allowed and carried out through the CCD Code.

Sen. Schimpf: Although the statute might need to be updated, it is not the role of JCAR to determine that. What is DPH's authority to decide the statutory penalty applies to one group but not to another.

Ms Spillane: The only violation that can occur under the rule is at the entity level. With the help of JCAR, the rule has been clarified on this point and is permissible.

Sen. Schimpf: The concern was not from a policy standpoint, but rather from the prerogatives of the legislature. Is it Ms Spillane's position that the administration could decide that, for example, the penalties prescribed by the Illinois Human Rights Act [775 ILCS 5] should not apply to a particular class of defendants?

Ms Spillane: We are talking past each other. DPH's position is that statute says every violation of DPH rules is a misdemeanor, but it does not say DPH has to set the rules in specific ways. In light of the specifics of a particular disease, DPH can draft a rule to say that certain entities are responsible for doing X, Y and Z. This is what the administration is doing with COVID-19 and believes acceptable.

Sen. Schimpf: Is your position consistent with the appellate court decisions on mask requirements?

Ms Spillane: Yes.

Sen. Schimpf: JCAR is a procedure committee, not a policy committee. The job of this committee, in my view, is not to decide whether this rule is sound policy but rather to decide whether it complies with the IAPA and is not inconsistent with legislative intent. The rule does not match existing statute in either its penalty provisions or its enforcement provisions. Because of this, the solution should be to call a special session and fix the statute. I spoke with Gov. Pritzker, who does not believe a special session is practicable. I believe it is. Having talked with Illinoisans who refuse to wear masks, I do not believe this rule will make people likelier to wear a mask, but calling a special session and adding a mask mandate to statute, with the full support of the rule of law, would.

Sen. Curran: Commended the administration for collaborating with JCAR to come up with a better rule. How is it possible for an individual to violate the rule when subsection (c)(1) of the rule requires individuals to wear masks and subsection (c)(4) limits gatherings to 50 people? As written, these are both mandates clearly placed on individuals, not on businesses. Since Sec. 8.1 of the DPH Act says "whoever violates or refuses to obey any rule or regulation of the DPH shall be deemed guilty of a Class A misdemeanor" and "each state's attorney shall prosecute all persons in his county violating or refusing to obey the rules and regulations of" DPH. It seems within a State's Attorney's authority to prosecute individuals under the rule.

Ms Spillane: The rule clearly states that the actual obligation for compliance lies at the entity level and not the individual level. A State's Attorney would have to disregard a significant chunk of the rule to prosecute individuals under it.

Sen. Curran: I agree that DPH has written its intent as clearly in the rule as it could, but I contend that there is a fundamental flaw in the rule based on the obligation in Sec. 8.1 of the DPH Act to prosecute violators of DPH rules. *Illinois RSA No. 3, Inc. v. Department of Central Management Services* (809 N.E.2d 137; Ill. App. Ct. 2004) was a case in which a wireless telephone company sued CMS claiming the administrative rule limiting reimbursement of 911 service costs to 100% of surcharges collected violated a statute that specifically limited the reimbursement of surcharges to 125%. The appellate court held that the agency lacked discretion to make a blanket rule limiting

reimbursement below the level set in the enabling statute. It also held that an administrative rule is invalid if it conflicts with the language of the statute under which the rule was adopted. While administrative rules interpreting statute serve as guidance to legislative intent, the rules are binding on the court only to the extent that they follow the statute. Administrative rules can neither limit, enlarge, nor amend the scope of the statute beyond the clear import of the legislative language used. This case, when taken with the clear language of Sec. 8.1 of the DPH Act, leads me to believe there is nothing prohibiting a State's Attorney from prosecuting an individual under (c)(1) or (c)(4). I compliment DPH on how far it has brought this rule, but I conclude DPH is limited by the statute and the only cure for that is an actual amendment to the statute. I respectfully agree to disagree. I thank Ms Spillane for her openness.

Ms Spillane: Thanked JCAR for its input, which she said has helped to make the rule much better.

Rep. Reick: Define "gathering".

Ms Spillane: Referred to the dictionary definition.

Rep. Reick: Do people walking around Home Depot comprise a gathering?

Ms Spillane: No.

Rep. Reick: What was the statutory basis for Sec. 690.650(d)(1)(C), which exempts individuals from the penalties in Sec. 8.1 of the DPH Act?

Ms Spillane: DPH is saying that the way to violate the rule is at the entity level, not the individual level.

Rep. Reick: Sec. 5-5 of the Criminal Code of 2012 (Accountability for conduct of corporation) states "a person is legally accountable for conduct which is an element of an offense and which, in the name or in behalf of a corporation, he performs or causes to be performed, to the same extent as if the conduct were performed in his own name or behalf". How does the exemption of individual liability for people who act on behalf of a corporation work with a clear statement in the Criminal Code that holds individuals personally responsible for the action of a company?

Ms Spillane: Sec. 690.650(d)(1)(C) does not create an exemption. Rather, it helps define what constitutes a violation.

Rep. Reick: Despite the improvements made to the rule since May, the rule is still pulling back on statute and making it less than it actually is. Statute represents the will of Illinoisans. This rule takes the statute and says we're not going to follow this portion of the statute because it may be inconvenient or impossible to do it. This limits the reach of the will of Illinoisans, which they enacted through statute. The pandemic is not over and history suggests that a second and much worse wave may be coming. What will the State do if it shoots every arrow in its quiver now to address the first wave when the second wave may require the Governor to lock people into their homes? This is not 1918, but, if it turns out to be that bad, the State needs to have some bullets left in its gun. The Governor would gain the support of the legislature for the policy expressed in this rule if only he would call them back into session. The policy change made in this rule should not be made in rule; it should be created through the legislative process.

Co-Chair Wheeler thanked both Ms Spillane and Ms Olson for their time, and said he wished that many of the things they had said in testimony to explain or defend the rule could have been put into the actual rule so people could understand it more clearly. Sec. 5-20 of the IAPA states "each rule that implements a discretionary power to be exercised by an agency shall include the standards by which the agency shall exercise the power. The standards shall be stated as precisely and clearly as practicable under the conditions to inform fully those persons affected". DPH has not yet met this requirement, but expressed interest in working with the administration to hammer out a rule that is more universally accepted and gives businesses and other affected entities the chance to know that they are complying with the rules.

Co-Chair Cunningham echoed Co-Chair Wheeler's praise of the Governor's office and DPH for their work on this rule. It is important to view this in light of where the rule was in May, when the Committee was universally uncomfortable with the rule because it would have allowed for the jailing of individuals who violated the mask rule. That was the main sticking point, and he thanked the administration for removing that provision from the rule. He acknowledged the complexity of the legal question surrounding the current version of the rule, but said it was part of a good faith effort by the Department to ensure that individuals are not arrested for not following these provisions and said he thought DPH did so appropriately. The graduated penalties, which do not involve citation until the third offense, are also an important addition as they ensure that the rule will be enforced only against rogue operators; it is not something that can be easily applied against a business that slips up once or twice. He thanked the administration for making sure the rule was written that way. The element of local control persists in this rule, since no one can be fined unless the local State's attorney takes it to court and the local circuit court judge agrees that there is a violation. Both the rule's opponents and proponents have overstated the rule's effect because of this local control element, since the parts of the State with the highest rates of noncompliance are also the least likely to overzealously enforce this rule. Finally, in recent weeks I have heard criticism of JCAR for being so wedded to process, but this is why JCAR exists. DPH has adequately followed the rulemaking procedure, noting that the CCD Code is filled with dozens of provisions for other specific diseases that were adopted through rulemaking. He thanked the administration for its promise to continue to work with JCAR, and noted that, if the intent of this rule is not being followed in practice, DPH can amend the emergency rule to address those problems.

Rep. Reick moved, seconded by Sen. Schimpf, that JCAR object to and suspend the Department's emergency rule. The rule includes enforcement measures for violation of masking and social distancing rules that do not provide businesses, services, facilities, organizations, schools, and daycare facilities with notice that action may be taken against their entity. The rule also lacks clear standards by which the entity can judge the appropriateness of the measures it is required to take under the rule. Enforcing entities can exercise discretion in making determinations, leading to inconsistent application of the policy statewide. Existing statute and rule provide procedures by which DPH can address public health emergencies and the process it must follow in doing so. Redirecting those procedures to target businesses, services, organizations, schools, and daycare facilities is a major deviation from statute. Those policies should be changed, if necessary, by the General Assembly, not an administrative agency. JCAR finds that adoption of this emergency rule poses a threat to the public interest because it violates the IAPA and fails to enact the required standards by which businesses, services, organizations, schools, and daycare facilities will be required to comply.

Co-Chair Cunningham noted that this motion required 8 votes to carry.

SUSPENSION ROLL CALL

N	Senator Bill Cunningham	Y	Representative Tom Demmer
Y	Senator John Curran	N	Representative Mike Halpin
	Senator Kimberly Lightford	N	Representative Frances Hurley
N	Senator Tony Muñoz	Y	Representative Steven Reick
Y	Senator Sue Rezin	N	Representative André Thapedi
Y	Senator Paul Schimpf	Y	Representative Keith Wheeler

The motion failed to garner the required 8 votes (6-5-0).

CERTIFICATION OF NO OBJECTION

Rep. Hurley moved, seconded by Rep. Halpin, 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 (11-0-0).

ANNOUNCEMENT OF SEPTEMBER MEETING DATE

Co-Chair Wheeler announced that the next JCAR meeting is scheduled for Tuesday, September 15, 2020, in Room C-1 of the William G. Stratton Office Building, Springfield IL at 11:30 a.m.

ADJOURNMENT

Rep. Demmer moved, seconded by Rep. Reick, that the meeting stand adjourned. The motion passed unanimously (11-0-0).