

JOINT COMMITTEE ON ADMINISTRATIVE RULES

ILLINOIS GENERAL ASSEMBLY

CO-CHAIR:
SEN. BILL CUNNINGHAM

CO-CHAIR:
REP. KEITH R. WHEELER



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SEN. DONALD P. DeWITTE
SEN. KIMBERLY A. LIGHTFORD
SEN. ANTONIO MUÑOZ
SEN. SUE REZIN
REP. TOM DEMMER
REP. MICHAEL HALPIN
REP. FRANCES ANN HURLEY
REP. STEVEN REICK
REP. CURTIS J. TARVER, II

March 16, 2021

MEETING CALLED TO ORDER

The Joint Committee on Administrative Rules met on Tuesday, March 16, 2021, at 11:00 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	Representative Tom Demmer
X Senator John F. Curran	X Representative Michael Halpin
X Senator Donald DeWitte	X Representative Frances Ann Hurley
Senator Kimberly A. Lightford	X Representative Steven Reick
X Senator Antonio Muñoz	Representative Curtis Tarver
X Senator Sue Rezin	X Representative Keith Wheeler

APPROVAL OF THE MINUTES OF THE FEBRUARY 17, 2021 MEETING

Rep. Reick moved, seconded by Sen. DeWitte, that the minutes of the February 17, 2021 meeting be approved. The motion passed unanimously (9-0-0).

REVIEW OF AGENCY RULEMAKING

Pollution Control Board – Standards for the Disposal of Coal Combustion Residuals in Surface Impoundments (35 Ill. Adm. Code 845; 44 Ill. Reg. 6696)

Rep. Hurley moved, seconded by Sen. Rezin, that JCAR, with the concurrence of the Pollution Control Board, extend this rulemaking for an additional 45 days. The motion passed unanimously (9-0-0).

Torture Inquiry and Relief Commission – Organization, Public Information, Procedures and Rulemaking (2 Ill. Adm. Code 3500; 44 Ill. Reg. 17392)

Sen. Curran moved, seconded by Co-Chair Wheeler, that JCAR, with the concurrence of the Torture Inquiry and Relief Commission, extend this rulemaking for an additional 45 days. The motion passed unanimously (9-0-0).

CONSIDERATION OF OTHER RULEMAKINGS/ISSUES

Department of Financial and Professional Regulation – Illinois Professional Land Surveyor Act of 1989 (68 Ill. Adm. Code 1270; 44 Ill. Reg. 16065)

Rep. Halpin moved, seconded by Rep. Hurley, that JCAR recommend that DFPR review its policies regarding live continuing education, whether virtual or in-person, after the COVID-19 pandemic ends. The motion passed unanimously (9-0-0).

Department of Commerce and Economic Opportunity – Local Coronavirus Urgent Remediation Emergency (or Local CURE) Program (Emergency) (14 Ill. Adm. Code 700; 45 Ill. Reg. 2703)

Sen. Muñoz moved, seconded by Sen. Rezin, that JCAR recommend that DCEO refrain from using emergency rulemaking procedures when regular rulemaking would suffice and refrain from including non-emergency provisions in emergency rulemaking. The motion passed unanimously (9-0-0).

Department of Employment Security – Recovery of Benefits (Emergency) (56 Ill. Adm. Code 2835; 45 Ill. Reg. 2274)

Kevin Lovellette, Chief General Counsel, represented IDES.

Sen. DeWitte: Can you briefly describe exactly the emergency request you are seeking with regard to the clawback of overpaid PUA benefits?

Mr. Lovellette: To focus on the emergency aspect – we wanted to make sure that we are able to start this process as soon as possible after the federal government gave states the authority to begin recovery of PUA overpayments, which resulted in the emergency rule and subsequent regular rulemaking. And we have started this process based on the emergency rule.

Sen. DeWitte: As it was explained to us in a staff discussion yesterday, the rule that you're specifically asking for is seeking permission to include, with these clawback letters, a letter explaining the potential exceptions for having to repay these overpayments? Is that an accurate description of what you're looking to do with this emergency rule?

Mr. Lovellette: When we send a notice of overpayment, we also include a "request for waiver" form, which is a questionnaire with two questions to provide us the information to make that determination.

Sen. DeWitte: The document I am reading suggests there are two exemptions from having to return any of these overpaid benefits—generally, that it would cause a financial hardship, or that recovery would be unconscionable. My question is how subjective those two reasons may be, and frankly anybody who has potentially been overcompensated could claim either one of these issues. If the issue is simply to waive collection of these overpayments of benefits, that's one thing. But to ask for these subjective considerations—if these are claimed, how will the adjudication process then work?

Mr. Lovellette: There are two main requirements: first, that the overpayment occurred because of no fault on the part of the claimant, and the second is that collecting on the overpayment would be against equity and good conscience. And that is the language used by Congress in the Continued Assistance Act that allows states to recover these overpayments. We've followed this

language almost exactly. Our adjudicators will use claimants' answers to the questionnaire to determine those two issues, and if they do need additional information they may give a claimant a call to ask for more information.

Sen. DeWitte: How will IDES determine who has been overcompensated and who hasn't?

Mr. Lovellette: An overpayment is posted when an individual receives aid they are not entitled to. So someone who is asking for a waiver will already have been notified that the overpayment was created. Overpayments have occurred throughout the history of unemployment; it's not something unique to the pandemic. We have seen many of them under the new PUA system, which is why I'm going to go out on a limb and guess that is why Congress gave states the authority to recover overpayments.

Sen. DeWitte: Does IDES have any intention of recovering any of these potential overpayments based on the subjective language included in this emergency request?

Mr. Lovellette: This language comes from the US Department of Labor, which requires Illinois and all states to evaluate each case based on these circumstances. We cannot deviate from this in granting waivers. So when we look at the individual case, we use the information provided in the questionnaire as well as their files to make these determinations.

Co-Chair Wheeler: I'd like to address the process from the perspective of a recipient being notified of a so-called overpayment of PUA. My office has received many calls from people who have received these notices of overpayment. How long ago did these notices go out?

Mr. Lovellette: That is an excellent question that I do not have the answer to. I know it was a few weeks ago but I do not know the number of weeks.

Co-Chair Wheeler: They are concerned because the State is requesting some sort of review of funds overpaid through PUA, for which they have no documentation whatsoever as to what they received and why they received that specific dollar amount, and now we're going to tell them that there's an emergency rule that says "hey, we're going to try to get some money back from you, but if you don't want to pay it back, check one of these two boxes here and we'll let it go." Is that a good summation of what's happening?

Mr. Lovellette: We are collecting the information that the USDOL guidance requires to consider each case. We have to look at each case specifically to determine if there are grounds for a waiver.

Co-Chair Wheeler: The people who are applying for waivers have gone through a lot already, and I want to make sure you are doing the best you can for them.

Mr. Lovellette: Of course.

CERTIFICATION OF NO OBJECTION

Rep. Halpin moved, seconded by Rep. Hurley, 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).

Co-Chair Cunningham congratulated JCAR staffer Ed Stasiewicz on his retirement.

ANNOUNCEMENT OF APRIL MEETING DATE

Co-Chair Cunningham announced that the next JCAR meeting is scheduled for Tuesday, April 13, 2021, at 11:00 a.m. in Room C-1 of the Stratton Building, Springfield IL.

ADJOURNMENT

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

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