

JOINT COMMITTEE ON ADMINISTRATIVE RULES

ILLINOIS GENERAL ASSEMBLY

CO-CHAIR:
SEN. BILL CUNNINGHAM

CO-CHAIR:
REP. KEITH R. WHEELER



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SEN. JOHN F. CURRAN
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

MINUTES

August 18, 2021

MEETING CALLED TO ORDER

The Joint Committee on Administrative Rules met on Wednesday, August 18, 2021, at 10:30 a.m. in Room D-1 of the Stratton Building, Springfield. Co-Chair Wheeler 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 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	X Representative Curtis J. Tarver, II
X Senator Sue Rezin	X Representative Keith Wheeler

APPROVAL OF THE MINUTES OF THE JULY 13, 2021 MEETING

Sen. Muñoz moved, seconded by Rep. Demmer, that the minutes of the July 13, 2021 meeting be approved. The motion passed unanimously (11-0-0).

CONSIDERATION OF OTHER RULEMAKINGS/ISSUES

Illinois Gaming Board – Riverboat and Casino Gambling (86 Ill. Adm. Code 3000; 45 Ill. Reg. 6565)

Rep. Hurley moved, seconded by Sen. DeWitte, that JCAR, with the concurrence of the Illinois Gaming Board, extend the 2nd notice period for this rulemaking for an additional 45 days. The motion passed unanimously (11-0-0).

Department of Financial and Professional Regulation – Cannabis Regulation and Tax Act (Emergency) (68 Ill. Adm. Code 1291; 45 Ill. Reg. 9586)

Beth Compton, Senior Deputy General Counsel, and Kit Walsh, Associate General Counsel, represented DFPR.

Rep. Tarver: Why don't Sec. 1291.95(a) and (d) track each other? Subsection (a) says DFPR "shall deny issuance or renewal" and subsection (d) says "shall deny issuance" but says nothing about the renewal.

Ms. Compton: We will add "renewal" there as well. That was an oversight on our part.

Rep. Reick moved, seconded by Rep. Halpin, that JCAR object to and suspend Subpart B ("Responsible Vendor Program") of this emergency rulemaking because it does not meet the criteria of 1 Ill. Adm. Code 230.400 and meets one or more of the criteria in 1 Ill. Adm. Code 230.550. DFPR implemented a Responsible Vendor Program outside of rule in 2019 and is now placing and changing program requirements via emergency rule without adequately explaining in writing the emergency situation that warranted immediate adoption of the rule without public comment and review and that the emergency situation arose through no fault of DFPR. While JCAR appreciates that DFPR is working to place these policies of general applicability into rule, the general rulemaking procedures of Section 5-40 of the IAPA should have been used. JCAR finds that Subpart B does not address a valid emergency and that any emergency situation that may exist has been created solely by failure of the Agency to act in a timely fashion and therefore constitutes a serious threat to the public interest and welfare.

Suspension Roll Call

Y Senator Bill Cunningham	Y Representative Tom Demmer
Y Senator John F. Curran	Y Representative Michael Halpin
Y Senator Donald DeWitte	Y Representative Frances Ann Hurley
Senator Kimberly A. Lightford	Y Representative Steven Reick
Y Senator Antonio Muñoz	Y Representative Curtis J. Tarver, II
Y Senator Sue Rezin	Y Representative Keith Wheeler

The motion passed 11-0-0.

Department of Revenue – Leveling the Playing Field for Illinois Retail Act (Emergency) (56 Ill. Adm. Code 6000; 45 Ill. Reg. 9625)

Sen. Curran moved, seconded by Sen. Muñoz, that JCAR object to and suspend this emergency rulemaking because it does not meet the criteria of 1 Ill. Adm. Code 230.400 and meets one or more of the criteria in 1 Ill. Adm. Code 230.550. DOR implemented many changes to the rules that implemented the Leveling the Playing Field for Illinois Retail Act and SB 2066 of the 102nd General Assembly via emergency rulemaking on July 13, 2021. These changes are occurring in the middle of a tax year, do not specify whether the changes apply to the entire tax year or only prospectively, and did not permit affected entities adequate time to implement required changes to their tax systems. Additionally, DOR has employed "anticipatory rulemaking" in advance of the enactment of SB 2066, which contains the necessary statutory authorization for changes contained in this rulemaking. While JCAR appreciates that DOR is working to place these policies of general applicability into rule in a timely manner, the general rulemaking procedures of Section 5-40 should have been used. JCAR finds the adoption of this emergency rule constitutes a serious threat to the public interest and welfare because DOR has failed to: provide an adequate explanation in writing of the emergency situation that warranted immediate adoption

of this rule without public comment; limit the rule to matters that are required to meet the emergency situation; produce a rulemaking that complies with the statutory authority upon which it is based; and consider the economic effects of the rules upon those regulated. JCAR finds this to be a serious threat to the public interest.

Suspension Roll Call

Y Senator Bill Cunningham	Y Representative Tom Demmer
Y Senator John F. Curran	Y Representative Michael Halpin
Y Senator Donald DeWitte	Y Representative Frances Ann Hurley
Senator Kimberly A. Lightford	Y Representative Steven Reick
Y Senator Antonio Muñoz	Y Representative Curtis J. Tarver, II
Y Senator Sue Rezin	Y Representative Keith Wheeler

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

State Board of Education

Sen. Curran: Questions have been raised by members of JCAR concerning the use of policy outside of rule with respect to the mask mandate imposed by the Illinois State Board of Education. This is not to debate the specific terms of the policy being enacted but rather the way in which the policy was implemented and how it is being enforced. It is the purview of JCAR to inquire about policies being enacted outside of rule. We are disappointed that the opportunity to receive testimony from ISBE was not available to JCAR members at this JCAR meeting. Members of JCAR are requesting representatives of ISBE to appear at the September JCAR meeting to provide testimony. In the interim, this committee will consider sending written inquiries to ISBE.

Department of Public Health – Immunization Registry Code (Emergency) (77 Ill. Adm. Code 789; 45 Ill. Reg. 9607)

Justin DeWitt, Chief of Staff, represented DPH.

Rep. Reick: I understand that DPH is going to be filing an emergency amendment to this emergency rule. Can you go into a little more depth on this, please?

Mr. DeWitt: The emergency amendment to the emergency rule captures a couple of nuances related to who DPH will share information from the Vaccine Registry with. We acknowledge that partners and local officials weren't defined and we are not sharing with either category so we agreed to delete that language from the emergency rule.

Rep. Reick: Can you tell me the authority by which this Vax Verify system was implemented?

Mr. DeWitt: Currently DPH provides vaccine records to any resident of Illinois who requests them. This has historically been done via paper form. But given COVID and the increased interest the public has in receiving their vaccine information from DPH we decided it was appropriate to provide that information digitally and proceeded to do so. I'm not aware that there is a specific statutory mandate that we do this; it's more about modernizing our system and delivery of services.

Rep. Reick: Do you have any statistics on how many people actually ask for their vaccine records?

Mr. DeWitt: I don't know the specific numbers that we receive each year, but will research and get back to you.

Rep. Reick: From what I have read and heard, there are extensive criticisms of the system, particularly dealing with a third party vendor for purposes of administration—specifically Experian, which has had some issues with data security. What was the thought process that prompted you to find a third party such as that who would be responsible for administering this program?

Mr. DeWitt: That third party is the Department of Innovation and Technology; they are the IT experts in the State of Illinois, and we use them to find solutions to our data system requirements. So the selection of vendors that made up the Vax Verify system was done by DOIT's project management team, not through DPH.

Rep. Reick: It sounds like what you are doing is in effect the same sort of thing that we do when you have your auto insurance card on your phone and you can flash it as a proof of insurance. Is this meant to do the same thing with regard to vaccines? Or is there some other function to be served here?

Mr. DeWitt: That specific functionality that you described is not there. The purpose is to provide the public with access to not only their COVID vaccine records but any vaccine records that are on file in the I-CARE registry and, for many of us, that goes back to birth. So it isn't just to get on an airplane; it's to provide a digital solution for the public to access that information rather than submitting a paper form and waiting for that to happen. So this specifically just provides a service to the public. What the public then does with that information is totally up to them; once you download that report, what you do with it after that is not something that IDPH has any sway over.

Rep. Reick: Circling back to my first question is the fact that you have authority under statute or rule to provide this information and you believe the manner in which it's being supplied is well within your authority. Is that your position?

Mr. DeWitt: It is consistent with our duty to provide any resident with records that we maintain on their behalf. It is no different than the Secretary of State providing a driver's record to someone who requests it. We are the keeper of the records officially, and it is our duty to provide those records to the public upon request.

CERTIFICATION OF NO OBJECTION

Rep. Tarver moved, seconded by Sen. Rezin, 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 Cunningham announced that the next JCAR meeting is scheduled for Tuesday, September 14, 2021, at 10:30 a.m. in Room C600 of the Bilandic Office Building, Chicago, IL.

ADJOURNMENT

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

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