

JOINT COMMITTEE ON ADMINISTRATIVE RULES

ILLINOIS GENERAL ASSEMBLY

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REP. STEVEN REICK
REP. CURTIS J. TARVER, II

MINUTES

October 19, 2021

MEETING CALLED TO ORDER

The Joint Committee on Administrative Rules met on Tuesday, October 19, 2021, at 10:30 a.m. in Room C-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
X 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 SEPTEMBER 14, 2021 MEETING

Sen. Lightford moved, seconded by Rep. Reick, that the minutes of the September 14, 2021 meeting be approved. The motion passed unanimously (12-0-0).

CONSIDERATION OF OTHER RULEMAKINGS/ISSUES

Department of Financial and Professional Regulation – Cannabis Regulation and Tax Act (68 Ill. Adm. Code 1291; 45 Ill. Reg. 9527)

Sen. DeWitte moved, seconded by Rep. Halpin, that JCAR, with the concurrence of the Department of Financial and Professional Regulation, extend these rulemakings for an additional 45 days. The motion passed unanimously (12-0-0).

AGENCY RESPONSES

Illinois Housing Development Authority – Federal Emergency Rental Assistance Programs (47 Ill. Adm. Code 378; 45 Ill. Reg. 6675)

Staff will continue to monitor the situation.

CONSIDERATION OF OTHER RULEMAKINGS AND ISSUES

Department of Commerce and Economic Opportunity – Back to Business Grant Program (Emergency) (14 Ill. Adm. Code 691; 45 Ill. Reg. 11616)

Khama Sharp, Deputy General Counsel, and Jason Horwitz, Deputy Director for Policy Development, Planning, and Research, represented DCEO.

Rep. Reick: What is the intent of this program? Is it to distribute money as widely as possible among as many businesses as possible or are there specific parameters in which a business can qualify for this funding?

Mr. Sharp: The intent is to help as many businesses as possible stay afloat. So there is a policy discussion regarding whether the amount of the funds should be smaller to reach as many businesses as possible or if the funds should be big enough to assist businesses to stay open. And that's been a back-and-forth conversation between policy staff and stakeholders.

Rep. Reick: Let's say we have a business that owns 7 or 8 different businesses in a tree structure, with subsidiaries or related businesses or things like that. Are there guidelines within the program that would keep a business with many subsidiary parts from each getting a grant? The obvious thing is in a farm community you've got 5 or 6 brothers all on farms that are all part of the main thing—something like that. Is there any kind of restriction on related parties getting grants when the benefit would flow from the related parties up to a consolidated parent?

Mr. Sharp: The rules cap the award at \$300,000 for one applicant with multiple businesses. Also, in reviewing an application we can still look at whether different applicants are part of the same parent company, and that would still be taken into consideration and the total award capped at \$300,000.

Rep. Reick: I'm thinking about how the Internal Revenue Code defines "related parties", where you've got an organizational structure that has certain ownership interests, one in the other, etc. But you are saying this is obviated by the fact that there's a \$300,000 cap for any particular entity regardless of its makeup or structure?

Mr. Sharp: Correct.

Rep. Halpin: In the rules for this program, is there anything within the eligibility criteria or any type of clawback provisions for businesses that aren't in compliance with State law?

Mr. Sharp: The section on noncompliance (691.140) addresses clawbacks for ineligibility.

Rep. Halpin: What is the internal procedure for clawbacks?

Mr. Sharp: If we receive a report, that report is circulated in most instances by office, and an investigation will be made to determine whether the business is ineligible based on the rules provided. If that individual is deemed ineligible, then we go about the process of sending out a

letter requesting that those funds be returned. In the instance when the funds are not returned, then we submit that case file to the Attorney General's office and go from there.

Rep. Halpin: And does that include noncompliance with State COVID-19 mitigation efforts?

Mr. Sharp: We are actually working on an emergency amendment regarding that, but it does include COVID-19 mitigation efforts. Our general policy is to warn you that you are not in compliance before taking the first steps to claw back funds.

Rep. Halpin: It sounds like the Governor shares the concern that this money isn't going to be able to go to every business in the State because there just isn't enough to go around, and I would certainly have concerns. I know there are businesses in my district that very much follow the rules to the detriment of their bottom line and may not be able to receive funds when other businesses that flouted the executive orders and mitigations may be otherwise eligible for these funds. I hope this is something that the Department takes into consideration when proceeding with this program.

Sen. DeWitte: The rule you have filed contains eligibility criteria that excludes businesses started on or after January 1, 2020. It's my understanding that those businesses would have access to any available funds that may still be available through the Business Interruption Grant (BIG) program which preceded that business program. Where do businesses excluded from the Back to Business program go? Is there any option for them to acquire business grant funds?

Mr. Sharp: For businesses that opened after January 1, 2020, we will be having a second round directed toward startup businesses. Right now we are just trying to get more information from the U.S. Department of the Treasury regarding how to use those funds. The guidance we have received requires information about losses from businesses measured by comparing 2020 to previous years. We aren't able to do that with new businesses. So there will be a Round 2 specifically tailored to those businesses.

Sen. DeWitte: Will this be within the new Back to Business Grant Program?

Mr. Sharp: Yes, it will.

Sen. DeWitte: In that case, is there any funding left in the BIG grant program or has all that money been expended?

Mr. Sharp: That money has not been expended. There might be up to \$50 million.

Mr. Horwitz: There is a \$50 million appropriation for the Back to Business Grant Program that is specifically set aside for startup businesses and also for businesses that reactivate vacant spaces in downtown areas. For both of those categories, we're still working on developing that policy and really wanting to make sure that what we do develop there is in line with federal guidance regarding what is permitted for these funds.

Sen. DeWitte: To be clear, for any businesses that do not qualify that started after January 1, 2020, there will be a new fund created to deal with those new businesses?

Mr. Horwitz: Yes. Those businesses will be eligible for the portion of the program that is currently under development, which is part of that \$50 million appropriation.

The Committee recessed and was called back to order by Co-Chair Wheeler.

Illinois Housing Development Authority – COVID-19 Affordable Housing Grant Program (Emergency) (47 Ill. Adm. Code 369; 45 Ill. Reg. 11866)

Co-Chair Cunningham moved, seconded by Representative Demmer, that JCAR object to this emergency rule because it refers to program documents for grant program requirements that should be in rule. Sec. 1-70 of the IAPA requires all agency statements of general applicability that implement, apply, interpret, or prescribe law or policy affecting the rights of persons outside an agency to be maintained in rule. JCAR further recommend that IHDA work with JCAR Staff prior to filing emergency rules to help address rule style prior to adoption. The motion passed unanimously (11-0-0).

Senator Lightford rejoined the meeting.

Department of Public Health – Emergency Medical Services, Trauma Center, Comprehensive Stroke Center and Acute Stroke Ready Hospital Code (Emergency) (77 Ill. Adm. Code 515; 45 Ill. Reg. 12108)

Justin DeWitt, Chief of Staff, represented IDPH.

Co-Chair Cunningham: You and I had an opportunity to discuss some of these things off line, so I just wanted to express for the record some of the concerns that members have about implementation of these emergency rules, specifically those that apply to EMS. We have some concerns, although obviously the rules are well-intended and are getting at a very important thing—ensuring that individuals who work in ambulances are vaccinated or, if not, are involved in some sort of testing protocol. We completely agree with the intent. We have some concerns about the implementation related to the availability of testing and testing lag time, and are concerned that both private ambulances and fire protection ambulance districts that are already having personnel problems might have further problems because of the workability of some of the rules. As I said, the rules are important, but it's also important that we ensure proper staffing levels. We expressed that to you and I know you have had some conversations with some of the ambulance people about this. Can you share with us what your discussions have been like?

Mr. DeWitt: We understand there's a concern about the availability of testing, costs of testing, and then the implementation of this in the time frame that the emergency rule requires. I think relative to the time frame we can say that we've been very judicious in enforcing emergency rules, especially with those entities that are seeking to comply, that are reaching out and saying "we're trying to do this, but are having trouble connecting to a testing organization", and we're certainly stepping in to help them. With respect to their ability to test, our goal of course is to get everyone vaccinated and, for people who can't be vaccinated, to create a network of testing across Illinois; it's actually quite dense, but there are some areas of the state where testing is less available and the Department is more than happy to work with EMS providers to help them find solutions to their testing problems.

Co-Chair Cunningham: And you believe that you can actually supply them with tests if they are running into problems?

Mr. DeWitt: We have provided tests to K-12 schools and have helped some fire departments with testing. Generally it's been short-term to give them time to find a provider. There are a lot of third-party private providers of testing out there in the universe, but we understand that it may take some time to create contracts and negotiate those deals. And IDPH, to the extent we can, is willing to help critical healthcare providers who are providing services in transporting people between hospitals and nursing homes, making trauma runs, we definitely don't want to see anything harm that.

Co-Chair Cunningham: Yes. We urge you to work in concert with them on this with the understanding that these rules are new. We would certainly encourage you to work with them in implementing to ensure they are in compliance on the front end rather than coming down hard on them because they can't comply. So we're looking for a little leeway at least for a number of weeks so they can get their operations up and implemented and we don't end up with these service gaps.

Mr. DeWitt: We have not been that way with other regulated entities and have been very judicious, especially when there's evidence that folks are trying to get these programs off the ground and we're very accommodating of that. We only look more harshly on those who are flouting the requirements and not doing anything at all. Otherwise, we continue to be judicious in our enforcement activities.

Co-Chair Cunningham: It is my understanding that the ambulance industry has offered some suggestions how they think this can be better implemented. We would certainly urge the Department to work with them on those ideas. I would certainly offer my assistance and I think the assistance of any of the Committee members in helping you in the next 30 days address this issue with the ambulance industry. This is something we can have further discussions about at our next JCAR meeting. Hopefully some amendments can be made to existing rules to ensure that we are enforcing vaccination and testing but also not creating these gaps in service.

Mr. DeWitt: We are always open to working with JCAR and staff to create a better mousetrap so if there are some tweaks that need to be made we are open to talking about them. Going forward, we are happy to work with the industry; some of this information just came to me in the last few hours before this meeting, and so we'll look for better connections with the members of this industry, especially EMS, to make sure we're receiving their concerns in a more timely fashion. We really need these frontline folks to be protected and to be protecting those that they're serving.

Department of Revenue – Leveling the Playing Field for Illinois Retail Act (Emergency) (86 Ill. Adm. Code 131; 45 Ill. Reg. 12152)

David Reid, Deputy Counsel for Sales and Excise Tax, Brian Fliflet, Deputy General Counsel, Alexis Overstreet, Associate Counsel, and Colin Bowes-Carlson, General Counsel, represented DOR.

Sen. Rezin: Can you explain to us the modification to the emergency rulemaking that you have adopted?

Mr. Fliflet: Basically, we first proposed emergency rules in which we made a number of changes to the rules that were adopted last December. The biggest ones were how to handle the Metropolitan Pier and Exposition Authority Tax as well as the Chicago Soft Drink Tax, which

our original rules had excluded from application of the Leveling the Playing Field tax. And we've made additional changes based on legislation that was passed during the spring. There were objections raised that some of our amendments were not emergencies, so we removed that aspect of it and focused mostly on the MPEA tax and the Chicago Soft Drink Tax to bring our rules into compliance with our new interpretation under the statute as well as what we believe to be industry practice.

Sen. Rezin: Our concern is that you only provided notification for some of the independent restaurants regarding these changes over 13 days, and we're concerned that some of the independent businesses probably were not aware of the change. Do you think 13 days is a sufficient amount of notification?

Mr. Fliflet: We chose the date that would be the beginning of the reporting period after the emergency rules went into effect, but actually after we adopted the rules last December which said that the MPEA tax and the Chicago Soft Drink tax were not part of the Leveling the Playing field, what that meant was that eating and drinking establishments would continue to collect and pay the tax, rather than the marketplace facilitators which under our rules were only responsible for collecting the State and Local Retailer's Occupation Tax. Once we adopted those rules, we were contacted by the Illinois Restaurant Association as well as representatives from the food delivery companies that were questioning our interpretation. The restaurants said "we don't want to be collecting these taxes on sales that were made through a food delivery app because there should be only one taxpayer and not different taxes collected by different parties", and on the other hand, when we were talking to the food delivery apps they said their interpretation of the statute was they were required to collect all the taxes. So we basically agreed with them and said we would change our interpretation so that going forward once we issued these emergency rules no longer will the restaurants have to worry about the MPEA tax and the Chicago Soft Drink tax—now just the marketplace facilitator. Even though our rule said that it was the responsibility of the restaurant, we also allowed them to engage in agreements where the marketplace facilitator would voluntarily collect those taxes on their behalf, which is what we understand has been happening since January 1. So our response to your question is we don't think there is an issue for anybody coming into compliance by the October 1 date in our emergency rules because our expectation is that we are just conforming our rules to what we believe to be the industry practice. And certainly, if any taxpayer has not been collecting the tax in reliance on our rule, then we would be required under the Taxpayer Bill of Rights to abate any tax penalties and interest that may be assessed.

Sen. Curran moved, seconded by Sen. Muñoz, that JCAR recommend that the Department of Revenue take into consideration the impact on businesses when changing policy in the middle of a taxing year. JCAR further recommends that Department of Revenue utilize more direct communications on affected entities whenever policy changes occur.

Illinois State Board of Education -- Nonrecognition of schools due to noncompliance with ISBE mask policy

Kristen Kennedy, Deputy Legal Officer, and Jennifer Saba, Executive Director for Regional Services, represented ISBE.

Sen. DeWitte: First of all I want to thank you and Dr. Ayala for a letter dated October 18 that appears to have been sent with regards to the differentiation between public schools and private schools as it relates to the recognition process. According to this letter, it appears based on the

judge's ruling in Kendall County last week that issued a temporary restraining order that there may have been an overreach on ISBE's part with regard to the immediate suspension of a private school's certification, and, following the decision by ISBE to move other remaining private schools to noncompliance status, that you have now determined or decided that you would like to make that rule permanent regarding leveling the playing field as to how the certification process is done for public and private schools. I'm assuming you're going to move private schools to the same schedule that public schools currently enjoy with regard to the decertification process. That's a very rough interpretation of the last couple of weeks, but could you walk us through exactly what your rules submission will entail?

Ms. Kennedy: ISBE has been working internally and will be filing emergency rules on Part 1 and Part 425 in the coming days. Generally, the rules will clarify when the State Superintendent can change the status of a school or district, will provide a framework by which public and private schools can exercise their due process rights by detailing how public and nonpublic schools can appeal changes in their recognition status, and will add greater specificity to the appeals process during the nonrecognition of schools, including specific timelines and requirements for hearings, communication between ISBE and school administrators, and the steps necessary for ISBE to render a final decision.

Sen. DeWitte: Will the rules you will be submitting align with the existing rules public schools are currently operating under regarding the certification process? Will the due process schedule be identical for both public and private schools?

Ms. Kennedy: It is my understanding that it will.

Sen. Curran: Just a clarification: In clarifying revocation for nonpublic schools, will probation be a necessary step prior to removal of recognition for private schools?

Ms. Kennedy: Yes, it will. The nonpublic school administrative rules do include a probation status. 23 Ill. Adm. Code 425.50(c) is currently the probation process, so that's currently included in the administrative rules.

Sen. Curran: But unlike the public schools, which have to go through probation first prior to nonrecognition, the nonpublic schools could just go straight to nonrecognition. Will the emergency rule you're working on clarify that the probationary due process is required for revocation of recognition status for nonpublic schools as well?

Ms. Kennedy: Yes, I believe so.

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 (12-0-0).

ANNOUNCEMENT OF SEPTEMBER MEETING DATE

Co-Chair Cunningham announced that the next JCAR meeting is scheduled for Tuesday, November 16, 2021, at 11:00 a.m. in Room C600 of the Bilandic Building, Chicago, IL.

ADJOURNMENT

Co-Chair Cunningham moved, seconded by Rep. Hurley, that the meeting stand adjourned. The motion passed unanimously (12-0-0).

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