

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

April 19, 2022

MEETING CALLED TO ORDER

The Joint Committee on Administrative Rules met on Tuesday, April 19, 2022, at 11:00 a.m. in Room C600 of the Bilandic Building, Chicago. 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	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	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 MARCH 22, 2022 MEETING

Sen. Muñoz moved, seconded by Sen. Rezin, that the minutes of the March 22, 2022 meeting be approved. The motion passed unanimously (9-0-0).

AGENCY RESPONSES

Department of Public Health – Control of Communicable Diseases Code (77 Ill. Adm. Code 690; 46 Ill. Reg. 3434)

Co-Chair Wheeler noted that this Agency Response would not be considered at that meeting and may be placed on a future agenda.

Department of Children and Family Services – Licensing Standards for Group Homes (89 Ill. Adm. Code 403; 46 Ill. Reg. 1120)

Due to the appropriateness of the agency's response, no further action was taken.

Department of Financial and Professional Regulation – Orthotics, Prosthetics, and Pedorthics Act (68 Ill. Adm. Code 1325; 45 Ill. Reg. 14508) and Clinical Social Work and Social Work Act (68 Ill. Adm. Code 1470; 45 Ill. Reg. 15104)

Staff will continue to monitor the agency's implementation of these rules.

COMPLAINT REVIEW

Department of Natural Resources – Fishing Tournament Permits

John Fischer, Legal Counsel, represented DNR.

Rep. Halpin: Can you please explain the nature of the complaint?

Mr. Fischer: DNR made enforcement and administrative rule changes to their site permits and fees last fall. Through internal review it was found that DNR was not appropriately applying permits to sell at fishing tournaments. The complaint says that DNR is charging new fees for fishing tournaments, all of which will cause fishing tournaments to leave the State and negatively impact the Illinois communities that host fishing tournaments. There are waiver criteria that the Department has set out that any event, whether it's a fishing tournament or any other type of event that is occurring on DNR land, can apply for a waiver to the permit itself, and that is reviewed by the Department based on criteria set out in the rule.

Rep. Halpin: Is there anything about that criteria that would be more likely or less likely to apply to a fishing tournament vs. another event that has had this permit to sell requirement enforced in the past?

Mr. Fischer: Really what we're looking for is "is this an event that is hosted by an educational institution or a school, like high school tournaments hosted through the IHSA, or is it an event that coincides with the Department's mission, or is it a conservation event?" Those are typically the areas that we are looking at. Also we take charity events into consideration.

Rep. Halpin: So schools and nonprofits are more likely to meet those criteria?

Mr. Fischer: Yes.

Rep. Halpin: Had there been an estimate of whether or not there were fishing tournaments that had been planned for the past few years that have been canceled or no longer moving forward?

Mr. Fischer: Yes. Every year we have roughly around 2,000 fishing tournaments that get a fishing tournament permit to host an event in the State of Illinois. And roughly, we end up having somewhere in the nature of the high 400s to low 500s of those events that get canceled every year. A lot of times we ask for why. Typically, it's for low participation or if that day or time they wanted to have the tournament has already been booked. Obviously, in 2020 we had a high number that were canceled due to COVID. But as of right now our numbers are on track with how they were then for the previous years pre-COVID as well as post-COVID.

Rep. Halpin: Is there any geographical analysis as to whether these events are more likely to be canceled in border communities where boats can be launched from the other side of the river?

Mr. Fischer: There hasn't to the Department's knowledge. Again, I will point out that the permit itself doesn't apply to every single fishing tournament. It's only to those that are charging a fee to the general public to fish on Department waters.

Rep. Halpin: Lastly, there were a couple of bills filed in this most recent (102nd) General Assembly about exempting these fees. Did DNR slip as a witness with a position on either of those bills?

Mr. Fischer: I don't believe that we did, but from my understanding neither of those bills passed.

Rep. Halpin: I think that's right. Do you know if DNR does have a position on that particular issue, if the legislature were to step in?

Mr. Fischer: I'd have to run that back by the administration. I can't comment on that.

Co-Chair Wheeler: Thank you. We want to let you know we appreciate you coming forth and testifying for the Committee. There are some things that we will keep an eye on as people keep us apprised of their concerns. We appreciate you being here, though.

REVIEW OF AGENCY RULEMAKINGS

Illinois Commerce Commission – Electric Interconnection of Distributed Generation Facilities (83 Ill. Adm. Code 466; 46 Ill. Reg. 1) and Electric Interconnection of Large Distributed Generation Facilities (83 Ill. Adm. Code 467; 46 Ill. Reg. 124)

Matthew Harvey, Deputy General Counsel, represented ICC.

Co-Chair Wheeler: We don't have anything in writing ahead of time, so we wanted to verify that your agency is willing to accept an Extension on these two tabs.

Mr. Harvey: We are. We understand you want us to respond to the comments that were filed by the joint solar parties.

Co-Chair Wheeler: Yes, the late comments. We appreciate that.

Rep. Halpin moved, seconded by Rep. Hurley, that JCAR, with the concurrence of the Illinois Commerce Commission, extend the Second Notice period for these rulemakings for an additional 45 days. The motion passed unanimously (9-0-0).

Department of Public Health – Medically Complex for the Developmentally Disabled Facilities Code (77 Ill. Adm. Code 390; 46 Ill. Reg. 299) and Civil Money Penalty Reinvestment Program (77 Ill. Adm. Code 425; 46 Ill. Reg. 1763)

Justin DeWitt, Chief of Staff, represented DPH.

Co-Chair Wheeler: Before we move on with any official business, I want to take a moment. You've made it clear to me a little bit ago that this may be your last JCAR meeting in this position. And I wanted to say that you've been a great partner to work alongside of on many things, not all of which we agreed on—that may be a massive understatement. But you are a

tremendous advocate for public health. I have told you before I think you have had the hardest job in Springfield for the last two years and counting—

Mr. DeWitt: I won't disagree.

Co-Chair Wheeler: --but I'll say that with grace and in the face of great difficulty you've been a true partner, and I just want to say thank you personally and on behalf of the Committee.

Co-Chair Cunningham: Just to make a bipartisan compliment, Justin, I think all the members of the Committee agree completely with what Chairman Wheeler said. Obviously the last two years have been tremendously challenging and you've had to interact with this body a lot. You've always done it as a professional. You've always been focused on problem-solving and accomplished that many, many times. So we will definitely miss working with you and wish you good luck in your future endeavors.

Mr. DeWitt: Thank you, Mr. Chair. I look back on the statistics this last calendar year and I think we had at least 80 rulemakings in front of JCAR, and maybe more—it's sort of hard to keep track of. But I really appreciate the very bicameral, very professional work with the staff as well as with the members. It has not been easy to sit in this chair sometimes, but I have always been treated professionally and I really appreciate the regulatory construct that I really cut my teeth on at Public Health and in State government, and I believe in that construct. So that's a large testament to my engagement as chief of staff with this body is to carry that forward. It's really where the work of government gets done. And I just appreciate it—not always the position I was in, but the ability to come here and speak very freely and try to inform JCAR about why we were doing the particular things we were trying to do. So thank you, and goodbye for now, and never say never, but this may be my last JCAR meeting.

Co-Chair Wheeler: Thank you. We appreciate you being here.

Sen. DeWitte moved, seconded by Rep. Tarver, that JCAR recommend with respect to these rulemakings that the Department be more timely in implementing Public Acts. Public Act 99-180 became effective on July 29, 2015 and Public Act 96-1372 became effective on July 29, 2010. The motion passed unanimously (9-0-0).

Department of Public Health – Socio-Emotional and Developmental Screening (77 Ill. Adm. Code 664; 45 Ill. Reg. 12238)

Sen. Curran moved, seconded by Sen. Muñoz, that JCAR recommend with respect to this rulemaking that the Department be more timely in implementing statute in rule. Public Act 99-927, which required the Department to promulgate rules for social, emotional and developmental screening of school-aged children, was effective on January 20, 2017. The motion passed unanimously (9-0-0).

Department of Healthcare and Family Services – Special Eligibility Groups (Emergency) (89 Ill. Adm. Code 118; 46 Ill. Reg. 4947)

Sen. Rezin moved, seconded by Rep. Hurley, that JCAR object to the Department of Healthcare and Family Services' use of emergency rulemaking to enact Section 118.780 of this emergency rule because the emergency situation with regard to this portion of the rulemaking is agency-created and the emergency rule does not comply with the legislative intent upon which it is

based. 1 Ill. Adm. Code 230.400(a) requires the Committee to consider whether the emergency situation arose through no fault of the agency and whether each portion of the emergency rule complies with the legislative intent upon which it is implementing and interpreting. This Section implements Public Act 98-651, which established medical assistance coverage of kidney transplants for non-citizens with end stage renal disease. This Public Act was effective June 16, 2014 and the Department implemented the transplant coverage in emergency rule effective October 1, 2014. However, the Department allowed that emergency rule to expire and did not adopt corresponding proposed rules on the same topic. In this instance, the Department created an emergency situation by failing to adopt proposed rules for this program before they expired in 2015. Furthermore, JCAR object to the Department's reliance on emergency rulemaking authority granted in a 2014 Public Act. Public Act 98-651 granted the Department emergency rulemaking authority for the expeditious and timely implementation of the provisions of the Act. Exercising this emergency authority over 7 years later is neither expeditious nor timely implementation of the Act and does not comply with the General Assembly's stated intent for granting that authority.. The motion passed unanimously (9-0-0).

Chief Procurement Officer for General Services Standard Procurement (44 Ill. Adm. 1; 45 Ill. Reg. 10293)

Co-Chair Wheeler noted that this rulemaking was removed from the No Objection List and will be considered at the May 17, 2022 meeting.

CERTIFICATION OF NO OBJECTION

Rep. Tarver moved, seconded by Sen. Curran, 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 FEBRUARY MEETING

Co-Chair Wheeler announced that the next JCAR meeting will be Tuesday, May 17, 2022, at 11:00 in Room C600 of the Bilandic Building, Chicago, Illinois.

ADJOURNMENT

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

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