

# THE FLINN REPORT

ILLINOIS GENERAL ASSEMBLY  
JOINT COMMITTEE ON ADMINISTRATIVE RULES

Elaine Spencer, Editor

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The Flinn Report is a weekly summary of regulatory actions of State agencies published in the *Illinois Register* and action taken by the Illinois General Assembly’s Joint Committee on Administrative Rules (JCAR). The Flinn Report honors founding JCAR member Representative Monroe Flinn, and is designed to inform and involve the public in changes taking place in agency administration.

## Proposed Rulemakings

### SPECIAL EDUCATION

The ILLINOIS STATE BOARD OF EDUCATION proposed amendments to Special Education (23 IAC 226; 48 Ill Reg 6946) and Special Education Facilities Under Section 14-7.02 of the School Code (23 IAC 401; 48 Ill Reg 6974) implementing recent Public Acts and ISBE policy changes. Both rulemakings require nonpublic special education facilities in which students have been placed at their home district’s expense (because the home district cannot accommodate their needs) not to terminate any student’s enrollment without first requesting an Individualized Education Plan (IEP) meeting from the contracting school district; to provide notice of an enrollment termination at least 20 business days in advance; and to include in their notice the reasons for the termination. Amendments to Part 226 additionally require IEPs to include any extra accommodation the student may need in an emergency,

including a natural disaster or active shooter situation, and to determine the student’s Priority of Urgency of Need for Services (PUNS) List status at each annual review. (The PUNS List is the Department of Human Services’ database of persons who are in current or future need of Home and Community-Based Waiver services for

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persons with developmental disabilities.) If an IEP student is not registered with PUNS or the student’s registration status is not known, the parents/guardian and student will receive contact information for an Intermediate Service Center that can register the student with PUNS. An IEP for a student age 14½ or older shall include any dual credit courses in which the student has enrolled for either dual high school-college credit or for high school credit only. Other

provisions allow parent/guardian requests for an independent educational evaluation at district expense to be submitted to either the applicable district special education administrator or the district superintendent; allow a finalized IEP to be delivered to parents on an agreed-upon date (currently, immediately); clarify the extent of “stay put” agreements allowing a child to remain in the current placement while mediation efforts are in progress; remove references to the Learning Disability Specialist I endorsement and the work assignments that required this obsolete endorsement; and require an IEP meeting to be held when a student will require ongoing home or hospital instruction and allow such instruction to be delivered in person or online. The Part 401 rulemaking additionally clarifies a distinction between residential-only programs (in which all

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**ADOPTED RULES:** Rules adopted by agencies this week. **EMERGENCY RULES:** Temporary rules adopted for no more than 150 days.  
**PROPOSED RULEMAKINGS:** Rules proposed by agencies this week, commencing a First Notice public comment period of at least 45 days.  
**PEREMPTORY RULES:** Rules adopted without prior public notice or JCAR review as authorized by 5 ILCS 100/5-50.  
▪ - Designates rules of special interest to small businesses, small municipalities and/or non-profit organizations. Agencies must consider comments from these groups and attempt to minimize regulatory burdens on them.  
**QUESTIONS/COMMENTS:** Submit mail, e-mail or phone calls to the agency personnel listed below each summary.  
**RULE TEXT:** First Notice proposed text, emergency rule and peremptory rule text is available at the Secretary of State website (<https://www.ilsos.gov/departments/index/register/home.html>) or at the Illinois General Assembly website (<http://www.ilga.gov>) under “Illinois Register”. Second Notice text for proposed rulemakings (original version with any changes made by the agency during First Notice included) is available at the JCAR website.

# Proposed Rulemakings

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students live on campus) and combination programs (which enroll both day students and resident students). The rulemaking specifies what must be included in a residential-only program's application for ISBE approval and also provides that applications from any program will be

approved on a rolling basis with no specific timeline. If any program's ISBE approval status is downgraded to "pending further review" of alleged deficiencies or violations, the program must notify all contracting school districts of this change, and school districts may not make any new placements into the program. Programs being downgraded to "nonapproved" status will receive 20 (currently 10) business days' notice from the State Superintendent. A program provider in Illinois or another

state that loses its license or approval to operate and can no longer accept admissions must notify ISBE of the admissions hold within 5 business days. Other provisions clarify staffing and life-safety inspection requirements.

*Questions/requests for copies/comments on the 2 ISBE rulemakings through 7/1/24: Azita Kakvand, SBE, 555 W. Monroe St., Suite 900, Chicago IL 60661, 312-783-2757, [rules@isbe.net](mailto:rules@isbe.net)*

## JCAR Meeting Action

At its 5/14/24 meeting, the Joint Committee on Administrative Rules approved the following actions. Proposed rulemakings from this agenda that are not listed below received No Objection and may be adopted by their agencies. Emergency rules not acted upon at this meeting may be reconsidered at later meetings.

### RECOMMENDATION

With respect to the Department of Healthcare and Family Services' emergency rulemaking titled Medical Payment (89 IAC 140; 48 Ill Reg 5768) and the Department of Human Services' emergency rulemaking titled Medicaid Community Mental Health Services Program (59 IAC 132; 48 Ill Reg 5799), JCAR recommends that both agencies be more timely in their use of emergency rulemaking to meet statutory deadlines. Amendments to Section 35-50 of the Reimagine Public Safety Act [430 ILCS 69], effective June 7, 2023, required HFS and DHS to institute a joint background check waiver process on or before October 1, 2023, that would limit the number and type of disqualifying criminal offenses for Peer Support Workers working with Violence Prevention-Community Support Teams. Both agencies could have appropriately used emergency rulemaking to meet the October 1 deadline.

### EXTENSIONS

JCAR, with the concurrence of the respective agencies, extended the Second Notice periods for the following rulemakings an additional 45 days. These rulemakings will be considered again at the June 4 JCAR meeting.

Department of Central Management Services, Federal Surplus Property: Illinois State Plan, State Agency for Federal Surplus Property (44 IAC 5020; 48 Ill Reg 1980), Merit and Fitness (80 IAC 302; 48 Ill Reg 12), and Conditions of Employment (80 IAC 303; 48 Ill Reg 66).

Department of Financial and Professional Regulation, Cannabis Regulation and Tax Act (68 IAC 1291; 47 Ill Reg 12526)

### POSTPONEMENTS

JCAR postponed action on the following proposed rulemakings until the June 4 meeting:

Department of Human Services, Fiscal/Administrative Recordkeeping and Requirements (89 IAC 509; 48 Ill Reg 2769)

Department of Revenue, Income Tax (86 IAC 100; 47 Ill Reg 18412)

# Adopted Rules

## ▪ PAID LEAVE POLICIES

The DEPARTMENT OF LABOR adopted a new Part titled Paid Leave for All Workers Act (56 IAC 200; proposed at 47 Ill Reg 15559) effective 4/30/24 at 48 Ill Reg 7291, implementing Public Act 102-1143, which established the Paid Leave for All Workers Act [820 ILCS 192]. The Act and the new Part require all public and private employers in Illinois (except school districts and park districts), effective 1/1/24, to grant their employees a minimum of 1 hour of paid leave at their regular rate of pay for every 40 hours worked, up to a minimum of 40 hours paid leave per 12-month period. The employer may grant leave time as it is earned, or allow employees to use any or all of their leave time from the beginning of the 12-month period (frontloading). Employers with existing paid leave policies in place prior to 1/1/24 do not have to change them if they meet or exceed the minimum requirements of the Act. Employees who did not previously earn paid leave shall begin to earn paid leave under the Act on 1/1/24 or the date they begin employment, whichever is later. If leave time is not frontloaded, employees must be allowed to start using their accrued leave time after having worked 90 days past the later of these dates. All work time, including overtime, must be counted toward accrual of paid leave and an employee may use their paid leave time for any reason. Unused accrued paid leave time from one 12-month period must be carried over to the following 12-month period. The rulemaking outlines how paid leave time must be calculated and documented in different employment situations; how employees will be notified of paid leave time they have earned and when it can be claimed; how the Act applies to unionized employees, domestic

workers, and transferred employees; and how unused paid leave will be compensated upon termination of employment. Complaints may be filed against employers who violate the Act and each violation is subject to a \$2,500 fine. Since 1<sup>st</sup> Notice, DOL has clarified various aspects of this rulemaking, including how to calculate paid leave pay rates for workers who earn gratuities/tips or commissions and when an employer can deny a leave request based on operational needs. DOL has also added examples regarding local paid leave ordinances, simplified recordkeeping and reporting requirements, and clarified that the Act does not apply to employees subject to a collective bargaining agreement for the duration of that agreement. Small businesses, small municipalities and non-profit organizations are affected.

*Questions/requests for copies: Anna Koepfel, DOL, 524 S. Second St., Suite 400, Springfield IL 62701, 217-558-1270, [Anna.Koepfel@illinois.gov](mailto:Anna.Koepfel@illinois.gov)*

## ▪ FINANCIAL INSTITUTIONS

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION adopted new Parts titled Credit Union Community Reinvestment (38 IAC 185; proposed at 48 Ill Reg 621, adopted at 48 Ill Reg 7004), Bank Community Reinvestment (38 IAC 345; proposed at 48 Ill Reg 695, adopted at 48 Ill Reg 7095) and Mortgage Community Reinvestment (38 IAC 1055; proposed at 48 Ill Reg 765, adopted at 48 Ill Reg 7172) and adopted an amendment to the Part titled Rules Governing the Request for Reconsideration of Examination Findings (38 IAC 385; proposed at 48 Ill Reg 759, adopted at 48 Ill Reg 7167), all effective 5/1/24. These rulemakings implement Public Act 101-657, the Illinois Community

Reinvestment Act (ILCRA) and are intended to ensure that regulated financial institutions equitably provide financial services to individuals and businesses in low-income (less than 50% of an area's median income) and moderate-income (50% to 80% of area median income) neighborhoods and in areas that lack access to safe and affordable banking/lending services. The new Parts apply to credit unions, banks, and Illinois-licensed mortgage lenders that originated or lent 50 or more mortgage loans in the previous calendar year and were responsible for underwriting or approving these loans. The new Parts 185, 345 and 1055 require DFPR to periodically evaluate how these credit unions, banks and mortgage lenders are performing with regard to community development, which includes activities that: support affordable housing; finance small businesses or farms with gross annual revenues of \$1 million or less; revitalize or stabilize areas of high poverty or unemployment or disaster-stricken areas; mitigate environmental harm or encourage climate resilience in low-income areas; or provide community services to low- and moderate-income persons. Initial evaluations will begin on 2/1/25 and continue for the next 6 years, with larger institutions being evaluated first. Banks and credit unions with \$391 million or more in assets have until 2/1/25 to come into compliance with these rules. Smaller banks and credit unions must comply by 8/1/25 and mortgage lenders by 11/1/24. Activities DFPR will consider in its evaluations include the institution's participation in qualified investments such as small business and farm loans; origination of mortgage, home improvement and rehabilitation loans that enable low-

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# Adopted Rules

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and moderate-income residents to maintain affordable housing; technical assistance to small businesses, farms and non-profits to help them establish creditworthiness; contributions to private, non-profit community development or improvement organizations; contributions to disaster relief or recovery efforts in any part of the State; provision of low-cost education loans to low-income borrowers; marketing and outreach to unbanked individuals (who have no savings or checking accounts with depository institutions) and underbanked individuals (who have such accounts but have resorted to financial services from other entities, such as installment/payday lenders); and activities in cooperation with minority- and women-owned financial institutions. Performance standards for small banks and credit unions, limited or special purpose institutions (banks and credit unions that provide only certain services, e.g., vehicle loans or credit cards) and other institutions are outlined, along with the data and reports that each institution must provide. Banks and credit unions may choose to have loans made by their affiliates or by consortiums in which they participate considered in the evaluation process. After completing an evaluation, DFPR will assign each institution a rating of outstanding, satisfactory, needs to improve, or substantial noncompliance. The institution must provide public notice of this rating and the results of the evaluation. Reevaluations will be conducted at intervals of 3-5 years for institutions rated outstanding or satisfactory, 2 years for those rated as needs to improve, and 1 year for those rated in substantial noncompliance. The performance record of the institution will be taken into account whenever

DFPR considers an application to establish or relocate a main office or branch, or to renew or reorganize that institution. Finally, the amendment to Part 385 adds savings banks to the definition of a regulated financial institution and includes the ILCRA ratings assigned to State banks in the definition of a material supervisory determination. Since 1<sup>st</sup> Notice, DFPR has made numerous changes to Parts 185, 345, and 1055, including raising the asset thresholds for large banks and credit unions, adding compliance deadlines, and clarifying various aspects of the evaluation processes and the criteria upon which ratings will be based. Those affected by these rulemakings include credit unions, banks, mortgage lenders, and small businesses or non-profits that use or seek their services.

*Questions/requests for copies of the 4 DFPR rulemakings: Craig Cellini, DFPR, 320 W. Washington St., 2<sup>nd</sup> Floor, Springfield IL 62786, 217-785-0810, fax 217-557-4451.*

## HOSPITALS

The DEPARTMENT OF PUBLIC HEALTH adopted amendments to Hospital Licensing Requirements (77 IAC 250; proposed at 48 Ill Reg 1787) effective 5/3/24 at 48 Ill Reg 7321, implementing 6 Public Acts. The rulemaking implements PA 102-1095, which prohibits use of latex gloves for patient care or food handling in hospitals and other health care facilities when non-latex gloves are available. In a crisis situation in which non-latex gloves cannot be reliably sourced, patient care staff must prioritize non-latex gloves for use on patients who state that they have latex allergies and on patients who are unconscious or otherwise unable to communicate and whose medical history does not indicate whether or not they have a latex allergy. If food preparation and service personnel

must use latex gloves due to a shortage of non-latex gloves, signs must be prominently placed at the point of order or purchase notifying the public of the temporary change. In accordance with PA 103-57, the rulemaking requires that hospital patients age 50 (currently, 65) and older be identified and offered influenza immunization and that patients ages 65 and older be identified and offered pneumococcal (pneumonia) immunization. Other Public Acts implemented in this rulemaking are PA 103-160, requiring hospitals to provide information and educational materials to parents of newborns concerning voluntary donation of breast milk to non-profit milk banks; PA 103-169, which requires hospitals to have written policies and continuing education on how to address airway emergencies during childbirth; PA 103-211, which requires hospital nursing care committees to annually notify nursing staff of their rights under Section 10.10 of the Hospital Licensing Act (which addresses nurse staffing plans); and PA 103-213, which prohibits delaying emergency room screening or treatment in order to inquire about the patient's insurance status or method of payment. Finally, the rulemaking updates various incorporations by reference and adds definitions for "dietitian" and "dietetic service director" along with professional qualifications for the dietetic service director position.

## SHELTERED CARE

DPH also adopted amendments to Sheltered Care Facilities Code (77 IAC 330; proposed at 47 Ill Reg 15139), effective 5/3/24 at 48 Ill Reg 7397, implementing 7 Public Acts and aligning the Part with the Nursing Home Care Act. This rulemaking

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clarifies the definition of a sheltered care facility; provides for facilities to obtain either 1- or 2-year licenses (previously, all licenses were annual); provides that willful submission of false information on a license application, interference with a DPH survey or inspection, or failure to implement a plan of correction are business offenses subject to a fine of up to \$10,000; clarifies how certain penalties are assessed; requires 60 days (formerly 90 days) notice of a facility's closure; requires the facility to submit a closing plan to DPH with provisions for the safe and orderly transfer of residents; and prohibits referrals of residents or their families to any unlicensed home health, home services or home nursing agency. Other provisions update staff training and infection control requirements; limit use of physical restraints and update requirements for informed consent to use physical restraints or to administer psychotropic medications; require DPH to be notified and a contingency plan submitted if direct care staff have given notice of intent to go on strike; require nursing staff to be notified of employee assistance programs; require information regarding the Long-Term Care Ombudsman Program and filing of complaints to be made available to the public, residents and visitors; clarify the timeline for issuing administrative warnings and requiring corrective action for less serious violations; require compliance with the Alzheimer's Disease and Related Dementias Act, the Authorized Electronic Monitoring in Long-Term Care Facilities Act, and their related DPH rules; require closed captioning to be left on TV sets in common areas; and update statutory references and incorporations by reference of federal regulations and professional

standards. Since 1<sup>st</sup> Notice, DPH has aligned its rules regarding physical restraints and psychotropic medications with current statutes. Sheltered care facilities licensed under this Part are affected.

*Questions/requests for copies of the 2 DPH rulemakings: Tracey Trigillo, DPH, 524 S. Second St., 6<sup>th</sup> Floor, Springfield IL 62701, [dph.rules@illinois.gov](mailto:dph.rules@illinois.gov)*

## HEALTH INSURANCE

The DEPARTMENT OF INSURANCE adopted amendments to the Part now titled Health Insurance Rate Review (50 IAC 2026; proposed at 47 Ill Reg 19290) effective 4/30/24 at 48 Ill Reg 7239, implementing Public Act 103-106. The PA and the rulemaking give DOI authority, beginning in the 2026 plan year, to determine that proposed health insurance premium rates for small group or individual insurers are inadequate. (Formerly, DOI could determine that a proposed rate was unjustified, unfairly discriminatory, or not excessive.) The rulemaking changes the name of the Part (formerly, Premium Increase Justification and Reporting) and updates the process by which insurers provide notice of proposed rate changes and accept public comment on them, after which DOI approves, disapproves or modifies the proposed rates. DOI may determine that a proposed rate is inadequate if it is insufficient to cover projected losses and expenses or that it could eventually endanger the solvency of the insurer. All rate changes that take effect on or after 1/1/25, even if they are not subject to DOI review, must be posted on DOI's website and will be subject to public comment. DOI must complete its review of applicable rates and issue its determination within 60 days after the end of the public comment period. Insurers may request a hearing to contest a determination within 10 days after the

determination is issued. A new determination may be issued if new information becomes available to DOI before the proposed rate takes effect. Since 1<sup>st</sup> Notice, DOI has clarified what information is not considered confidential or proprietary (and is therefore subject to public disclosure) and expanded the factors to be addressed when general or assumed medical trends are cited as justification for an increase.

## SUPPLIER DIVERSITY

DOI also adopted a new Part titled Supplier Diversity Reports (50 IAC 910; proposed 47 Ill Reg 18845) effective 4/30/24 at 48 Ill Reg 7215, implementing PA 103-426. The PA and this rulemaking require risk-bearing entities (e.g., insurance companies, dental insurance plans, health maintenance organizations, limited health service organizations, accredited reinsurers) that conduct business in Illinois and have at least \$50 million in assets to file an annual report with DOI indicating whether they have a supplier diversity program that encourages or facilitates procurement of goods and services from "inclusion suppliers". Risk-bearing entities subject to this Part must file this report annually no later than April 1, using a template created by the Department. The rule defines an inclusion supplier as a business with 51% or greater ownership by minority persons, women, veterans, persons with disabilities, or LGBT persons. (Since 1<sup>st</sup> Notice, DOI has cross referenced the Business Enterprise Act's definition of women-owned and disability-owned businesses.) Entities are not required to have supplier diversity programs, but must report to DOI whether or not they have such a program or, if they do not have one, whether they plan to

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# Adopted Rules

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create or join one in the next 12 months. The rulemaking also lists the types of risk-bearing entities generally excluded from the filing requirement and establishes the method to determine whether a risk-bearing entity meets the \$50 million threshold to file a report in any given year. Affiliated risk-bearing entities may file a single, combined report when they participate in the same supplier diversity program or other procurement program. Reports will be posted on the DOI website and kept publicly available for at least 5 years. Changes since 1<sup>st</sup> Notice include added or clarified definitions and provisions allowing risk-bearing entities to include in their reports “any other information that would help contextualize, qualify, expand upon, or explain variability or uncertainty” in any listed items.

## **PUBLIC ADJUSTERS**

DOI adopted amendments to the Part titled Licensing of Public Adjusters (50 IAC 3118; proposed at 47 Ill Reg 18857) effective 4/30/24 at 48 Ill Reg 7257, implementing Public Act 103-

216, which places a 10% cap on public adjuster fees (taken from the total amount of a claim) for residential insurance claims as a consumer protection measure. A public adjuster also shall not recommend any contractor without verifying that the contractor has liability insurance, a performance bond, any necessary licenses to perform the work, and a written warranty of workmanship. The rulemaking updates the requirements for a consumer rights notice which public adjusters must provide to all clients, makes technical changes to keep the Rule consistent with its enabling Act, and removes requirements that public adjusters provide each client with at least 2 competitive bids from any contractor, vendor or service provider that the adjuster may recommend, and that the adjuster assume responsibility for any work performed by a recommended contractor that is not completed in a workmanlike manner. Public insurance adjusters are affected.

## **INSURANCE**

DOI adopted amendments to Derivative Instruments (50 IAC 806; proposed at 47 Ill Reg 12643, adopted at 48 Ill Reg 7210), Credit for

Reinsurance Ceded (50 IAC 1104; proposed at 47 Ill Reg 12648, adopted at 48 Ill Reg 7229), Illinois Health Insurance Portability and Accountability Standards (50 IAC 2025; proposed at 47 Ill Reg 12653, adopted at 48 Ill Reg 7234) and Health Maintenance Organization (50 IAC 4521; proposed at 47 Ill Reg 12658, adopted at 48 Ill Reg 7266), all effective 4/30/24. Amendments to Parts 806 and 1104 update an incorporation by reference of a National Association of Insurance Commissioners (NAIC) document. The Part 2025 and 4521 rulemakings remove obsolete requirements related to the Illinois Comprehensive Health Insurance Plan, which no longer exists.

*Questions/requests for copies of the 7 DOI rulemakings: Parts 806 and 1104, Susan Anders (217-558-0957); Part 910, Charles Metcalf (217-558-0853); Parts 2025 and 4521, Ryan Gillespie (217-558-2746); Part 2026, Eric Anderson (217-782-6284); all DOI, 320 W. Washington St., 4<sup>th</sup> Fl., Springfield IL 62767, 217-558-0957. Part 3118, Kathryn Williams, DOI, 122 S. Michigan Ave., 19<sup>th</sup> Floor, Chicago IL 60603, 312-814-8212.*

## Second Notices

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The following rulemakings were moved to Second Notice this week by the agencies listed below, commencing the JCAR review period. These rulemakings will be considered at the June 4, 2024 meeting in Chicago. Other items not published in the *Illinois Register* or The Flinn Report may also be considered. Further comments concerning these rulemakings should be addressed to JCAR at [jcar@ilga.gov](mailto:jcar@ilga.gov).

### IL COMMUNITY COLLEGE BOARD

Administration of the Illinois Public Community College Act (23 IAC 1501; 47 Ill Reg 16151) proposed 11/17/23

### IL EMERGENCY MANAGEMENT AGENCY

Handling and Disposal of Water Treatment Residuals (32 IAC 622; 47 Ill Reg 8291) proposed 6/16/23

### DEPT OF HEALTHCARE AND FAMILY SERVICES

Hospital Services (89 IAC 148; 48 Ill Reg 799) proposed 1/12/24

Child Support Services (89 IAC 160; 48 Ill Reg 2333) proposed 2/16/24

### DEPT OF PUBLIC HEALTH

Skilled Nursing and Intermediate Care Facilities Code (77 IAC 300; 48 Ill Reg 3008) proposed 3/1/24

Sheltered Care Facilities Code (77 IAC 330; 48 Ill Reg 3042) proposed 3/1/24

### DEPT OF REVENUE

Service Use Tax (86 IAC 160; 48 Ill Reg 1598) proposed 1/26/24

Parking Excise Tax (86 IAC 195; 48 Ill Reg 2377) proposed 2/16/24

### OFFICE OF THE STATE FIRE MARSHAL

Fire Station Rehabilitation and Construction Grant Program (41 IAC 296; 48 Ill Reg 3716) proposed 3/15/24

### SECRETARY OF STATE

Certificates of Title, Registration of Vehicles (92 IAC 1010; 48 Ill Reg 4333) proposed 3/22/24

### STATE BOARD OF INVESTMENT

State (of Illinois) Employees' Deferred Compensation Plan (80 IAC 2700; 48 Ill Reg 1645) proposed 1/26/24

### Next JCAR Meeting: Tuesday, June 4, 11 a.m.

Room C-600, Bilandic Bldg., 160 N. LaSalle St., Chicago  
Meeting will be live streamed on the JCAR website

### Joint Committee on Administrative Rules

Senator Bill Cunningham, Co-Chair

Senator Cristina Castro

Senator Donald DeWitte

Senator Dale Fowler

Senator Napoleon Harris, III

Senator Sue Rezin

Representative Ryan Spain, Co-Chair

Representative Eva-Dina Delgado

Representative Jackie Haas

Representative Steven Reick

Representative Curtis Tarver, II

Representative Dave Vella

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