

Edgar County Watchdogs Inc.
7060 Illinois Highway 1
Paris, IL 61944

Subject: Section 690.40 Pandemic or Epidemic Respiratory Disease – Emergency Provisions EMERGENCY

May 17, 2020

Dear JCAR Members,

Edgar County Watchdogs Inc. is a non-profit government accountability organization focusing on assisting citizens across Illinois in their efforts of holding local and state government accountable to the rule of law.

The Department of Public Health has initiated an emergency rule change of great concern to the citizens of this state, reflective in the fact we have been contacted by thousands of concerned citizens seeking help on this matter.

According to the rule making process:

"An Objection to an emergency or peremptory rule indicates that JCAR finds the rule is not consistent with statute, has an adverse economic impact on small businesses, small municipalities, and non-profit organizations, or fails to meet some other standard established by the IAPA."

"A Suspension of an emergency or peremptory rule, in conjunction with an Objection, stops the rule from being enforced based on JCAR's finding that the rule is contrary to the public interest, safety or welfare and/or that there is no legitimate reason for the agency to have used emergency or peremptory rulemaking."

We urge the Committee to **Object and Suspend** the proposed rule for the following reasons.

5 ILCS 100/5-45 – Emergency Rule Making

- (a) "Emergency" means the existence of any situation that any agency finds reasonably constitutes a threat to the public interest, safety, or welfare.

While most agree there are parts of the state in such a state of an emergency, it is being ignored that many other parts are not. In fact, Edgar County, the location of our operation has not had a single confirmed case of COVID-19, along with one other county in Illinois. Creating a new rule under the Emergency Rule Making statute not identifying the specific locations of those emergencies points to a one size fits all approach, which is simply ludicrous. Considering many locations previously faced with the emergency are now reflecting a decrease in their numbers,

confirmed by even more testing, it is clear the alleged “emergency” has passed in many parts of the state.

5 ILCS 100/5-30 mandates when an agency proposes a new rule or an amendment to an existing rule that *may have an impact on small businesses, not for profit corporations, or small municipalities, the agency shall do each of the following:*

(a) The agency *shall consider* each of the following methods for *reducing the impact of the rulemaking on small businesses, not for profit corporations, or small municipalities. The agency shall reduce the impact by utilizing one or more of the following methods if it finds that the methods are legal and feasible in meeting the statutory objectives that are the basis of the proposed rulemaking.*

(1) *Establish less stringent compliance or reporting requirements in the rule for small businesses, not for profit corporations, or small municipalities.*

(5) *Exempt small businesses, not for profit corporations, or small municipalities from any or all requirements of the rule.*

We have not seen any efforts to reduce the impact such a rule would have on small businesses, small municipalities or non-profits from this rule. Nor have we seen any such exemptions to protect them from sure economic devastation.

On page 67 of the Illinois Pandemic and Influenza plan adopted by the state, it speaks to the issue of quarantine and why such a step would damage the economy. (<https://edgarcountywatchdogs.com/wp-content/uploads/2020/04/illinois-pandemic-influenza-plan-version-51march-2020.pdf>)

“Even if somewhat effective in controlling influenza in large populations, it would not be feasible to implement and enforce with available resources and would damage the economy by reducing the workforce.”

If the adopted Illinois Influenza Pandemic plan understands you don’t keep people quarantined because it would damage the economy, the parallel is you don’t close businesses as that also destroys our economy as well as cripples our local governmental operations dependent upon property tax receipts. If businesses fail, which they are under the current edicts from the Governor, those property taxes will not come in, leaving local government unable to provide even the most basic services of Fire, Police, and Ambulance services.

Other concerns worthy of an Objection and Suspension of these rules are tied to Constitutional and Due Process issues.

Businesses who are not fortunate enough to be located in an Airport or Hospital are being discriminated against, not to mention the rules pick and choose winners and losers without any supportive evidence as to why certain businesses would be shut down over others allowed to remain open.

The rule violates business owner's due process rights normally applicable under the current Public Health Act, specifically 20 ILCS 2305/2(c). Under the current rules the basic foundation of our rights is provided, which requires proof the person or business is a risk. Under the suggested new rules, businesses are guilty for simply operating their business even though there is no evidence they are a risk to public health and safety.

Allowing a rule that criminalizes the operation of specific businesses as determined by unelected officials is a clear overreach and breach of the public trust. This proposed rule comes over two months after the initial Executive Order of March 15th, 2020. It appears after realizing the EOs being issued had to prove a business was a risk before closing them was a hurdle they could not overcome (because there were not a risk, IDPH now takes to the path of claiming an emergency exists over two months after the initial declaration and abuses the Emergency Rule Making provision to whisk in a new rule which makes our state's business owners criminals for doing nothing more than operating their business and providing for their families. Such an overreach must be stopped.

We urge the entire Committee to recognize the clear justifiable reasons to stop this rule and take immediate steps to do so.

Sincerely,



Kirk Allen, Director – ECWd



John Kraft, Director – ECWd