JOINT COMMITTEE ON ADMINISTRATIVE RULES

ILLINOIS GENERAL ASSEMBLY

1978 ANNUAL REPORT

FEBRUARY 1979

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Submitted February 1979

To The Members of The 81st General Assembly

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LETTER OF TRANSMITTAL

To The Members of The 81st General Assembly:

I am hereby submitting our first Annual Report detailing the activities of the Joint Committee on Administrative Rules during 1978. The report is required by Section 7.10 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1977, ch. 127, par. 1007.10) and presents the "findings, conclusions and recommendations including suggested legislation" of the Joint Committee for the consideration of the General Assembly.

I hope that the findings presented here will be of value to the legislature in more effectively accomplishing its task of overseeing the operations of the administrative agencies of the state. For too long, the legislature has been content to pass legislation without systematically insuring that the administrative agencies charged with the task of implementing that legislation are properly interpreting and complying with the intent of the legislation. All of us have faced difficult problems because of this lack of oversight. Hopefully, the Joint Committee will provide a means of effectively insuring agency compliance with the intent of the legislation we enact.

As indicated in the statements of objection and recommendations presented here, the Joint Committee has uncovered areas where the statutes are unclear, where we have failed to provide clear and detailed statement of our intent, as well as areas where agencies have failed. Agency rules and regulations made under broad and imprecise authority are difficult to predict or control. Some of the suggested legislation included in this report address these areas, suggesting careful revisions of statutes to more fully state the intent of the legislature.

Although this is the first year of the operation of the Joint Committee, I believe that much has been accomplished. The recommendations included in this report already indicate the value of the Joint Committee in overseeing and controlling regulation by state agencies. As more of the mandated tasks of the Joint Committee are implemented, particularly the five-year periodic evaluation of all state agency rules, the Joint Committee's important role in effective legislative oversight of state agencies should become even clearer.

The members of the Joint Committee appreciate the cooperation of the numerous other members of the General Assembly who have shared their views with us in areas of particular concern. We trust you will continue to participate in this vital process as we seek to develop the Joint Committee in directions that will benefit the legislative process.

Respectfully,

Harry "Bus" Yourell

Rep. Harry "Bus" Yourell
Chairman
Joint Committee On
Administrative Rules

SUMMARY

Activities

As outlined in this Annual Report, the Joint Committee on Administrative Rules during 1978 has sought to implement its primary responsibility for legislative review of proposed rulemaking as mandated by the Illinois Administrative Procedure Act. In implementing this responsibility, the Joint Committee has reviewed over 500 proposed rulemakings and issued over 70 formal statements of objection. Each of these statements is presented in this report. The Joint Committee has thus had a substantial impact on the substance of agency-made law. Besides this primary focus, the Joint Committee has dealt with some of the inevitable difficult problems of transition to a new rulemaking system, has sought to gain compliance of agencies with the requirements of the Illinois Administrative Procedure Act and has begun planning for the systematic review of existing rules mandated under the Act.

Recommendations

The Joint Committee believes that some additional changes are necessary in the rulemaking process to insure effective legislative input. The Joint Committee is developing legislation which will accomplish these important procedural changes. Recommended Bill One (pages 89- 90) is also intended to improve the rulemaking process by requiring rules to state as specifically as possible the standards and criteria used by the agency in exercising its discretion.

Based on specific reviews of proposed rulemakings, the Joint Committee is also recommending 21 bills to address specific problems. These bills are presented in this report as Recommended Bills Two through Twenty-Two (pages 93 - 216). Many of these bills are intended to clarify the intent of the legislature in specific statutes and to provide clear direction to the administrative agency carrying out these statutes. Several of the bills provide explicit rulemaking authority to agencies in relation to responsibilities which seem to require such authority. In a broad sense, these bills are thus intended as corrective or clarifying.

The Joint Committee is also recommending attention to agency appropriations in several cases and other appropriate action by other state officials. These recommendations are contained in the resolutions adopted by the Joint Committee which are presented on pages 217-224.

ORGANIZATION OF THE JOINT COMMITTEE

Formation

The Joint Committee on Administrative Rules was established in 1977 as a permanent joint committee of the Illinois General Assembly through passage of House Bill 14 (Public Act 80-1035), which made extensive revisions in the Illinois Administrative Procedure Act (Illinois Revised Statutes 1977, ch. 127, par. 1001 et. seq.). Among the basic purposes of the Joint Committee under this law are (1) "the promotion of adequate and proper rules by agencies and an understanding on the part of the public respecting such rules;" (2) "monitor and investigate compliance of agencies with the provisions of this Act;" (3) "make periodic investigations of the rule-making activities of all agencies;" and (4) "evaluate and report on all rules in terms of their propriety, legal adequacy, relation to statutory authorization, economic impact on those affected by the rule and public policy."

The formation of the Joint Committee was a response to the growing recognition by the legislature of the importance and effect on the daily lives of the citizens of Illinois of the rules of a growing number of state administrative agencies. Since courts have ruled that administrative rules have "the full force and effect of law," the legislature also recognized the need to reassert proper legislative involvement in the making of law.

Numerous other state legislatures have also moved in this direction and have created special committees to review administrative rules. Other states have authorized standing bill-processing committees to review administrative rules, or have authorized the legislature as a whole to disapprove proposed administrative rules. Approximately thirty-five states now have some form of legislative review of administrative rulemaking. Unlike some other legislatures, the Illinois General Assembly felt that the legislative involvement in administrative rulemaking should be advisory only to avoid improper interference in agency operations. The Act clearly specifies that the Joint Committee shall have "advisory powers only relating to its function" (Sec. 7.04(1)).

Along with the creation of the Joint Committee, the Illinois General Assembly made several other significant changes in the Administrative Procedure Act through enactment of House Bill 14 (Public Act 80-1035). The two most significant of these changes involved (1) making the Act's rulemaking and hearing provisions applicable to all state agencies and (2) creating the Illinois Register published by the Secretary of State to inform the public of all rulemaking actions by state agencies. With these amendments, the Illinois Administrative Procedure Act, which was initially passed in 1975, became a truly useful instrument for opening up the administrative rulemaking process and insuring basic fairness in administrative hearings. The creation of the Joint Committee to provide legislative input into administrative rulemaking was an integral part of this desire to make the Administrative Procedure Act effective.

The basic trend which resulted in the need for the creation of the Joint Committee was the increasing reliance on and power of administrative agencies to fulfill vital functions of the state. In fact, governmental observers have called the current system of administrative agencies a "fourth branch of government." In many ways, these agencies have obscured the traditional notion of separation of powers by fulfilling functions of all three traditional branches of government: executive, judicial and legislative. In their role of carrying out government programs established by statute, they fulfill a clearly executive branch function. The hearing processes often embodied in administrative agencies appear to involve such agencies in at least quasi-judicial functions, and the increasing rulemaking authority of such agencies is at least a quasi-legislative function. The Joint Committee can be usefully viewed as a legislative attempt to readjust this changing notion of separation of powers caused by the growing number and power of administrative agencies.

A national 1978 report prepared by the Legislative Improvement and Modernization Committee of the National Conference of State Legislatures entitled Restoring the Balance described the situation as follows:

> As more agencies were created or expanded, the number of regulations promulgated to implement laws increased dramatically. In most states today, the body of law created by the rule-making process matches or exceeds the statutory laws of those states. While it was

> recognized that agency rule-making was necessary for the implementation of laws passed by the legislature, one major concern was the increasing number of regulations that either exceeded the statutory authority of the promulgating agencies or violated the legislative intent of the laws. (p. 7)

This well describes the situation in Illinois. The Joint Committee in this context was created to provide the legislature with a systematic, advisory role in the rulemaking process.

The functions of the Joint Committee under the amended Administrative Procedure Act can be broadly classified in two categories: (1) on-going review and comment functions in relation to newly proposed rulemaking actions of state agencies and (2) longer-term, more in-depth examination of groups of existing rules and the rulemaking process. The nature of these functions was clearly designed for the Joint Committee to effectively inform and advise the General Assembly on rulemaking activities. For example, Section 7.06(g) of the Act provides that when an agency refuses to modify or withdraw a rulemaking which the Joint Committee finds objectionable, the Joint Committee's appropriate action is to recommend to the General Assembly legislation to correct the rulemaking. This process was designed to insure the integrity of both the administrative rulemaking process and the proper legislative process of lawmaking.

Committee Members

The Administrative Procedure Act established the Joint Committee to be composed of 16 members -- 8 Representatives and 8 Senators. Four members are appointed by the leader of each party in each chamber (Section 7.02). The following members served on the Joint Committee during 1978:

Senators	Representatives
Appointed by the President:	Appointed by the Speaker:
Richard M. Daley Appointed November 1, 1977	Monroe L. Flinn Appointed October 18, 1977
James H. Donnewald Appointed November 1, 1977	Alan J. Greiman Appointed January 24, 1978
Larry Leonard Appointed November 1, 1977	John M. Matejek Appointed October 18, 1977
Philip J. Rock Appointed November 1, 1977	Harry "Bus" Yourell Appointed October 18, 1977
Appointed by the Minority Leader:	Appointed by the Minority Leader:
Prescott E. Bloom Appointed October 5, 1977	Jim Edgar Appointed September 15, 1977
Jack Bowers Appointed November 2, 1977	Lynn Martin Appointed January 10, 1978
David J. Regner Appointed October 6, 1977	Roger McAuliffe Appointed October 26, 1977
Richard A. Walsh Appointed October 6, 1977	Jim Reilly Appointed September 15, 1977

The officers selected from the membership of the Joint Committee at the November 1977, organizational meeting are the following:

Chairman:	Representative Harry "Bus" Yourell
First Vice-Chairman:	Representative Jim Edgar
Second Vice-Chairman:	Senator David J. Regner
Secretary:	Senator Larry Leonard

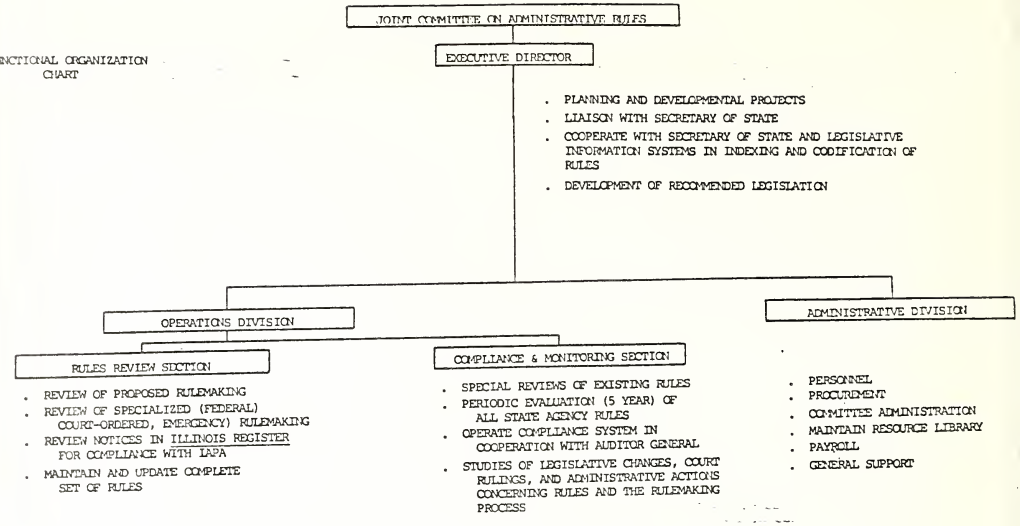
Staff Organization

The Joint Committee membership selected an executive director of the Joint Committee at the November 1977, organizational meeting as authorized by Section 7.02(d) of the Administrative Procedure Act. Additional staff have been hired by the Joint Committee to implement the functions of the Joint Committee under the Administrative Procedure Act. The Joint Committee developed a staffing phase-in plan to accomplish a smooth transition and concentration on priority development of the on-going proposed rulemaking review functions.

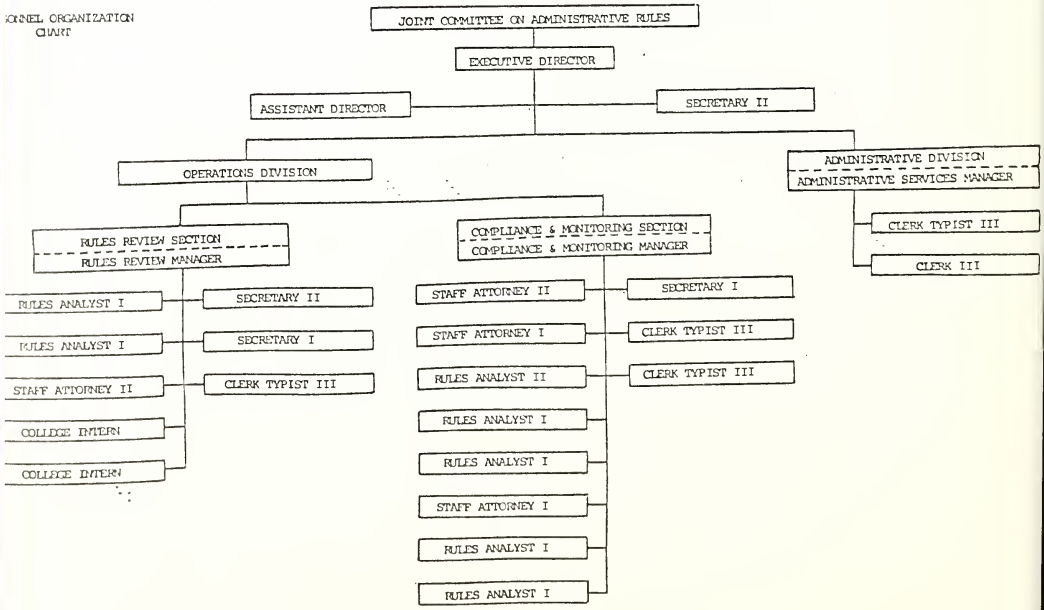
The following charts indicate the staff organization of the Office of the Joint Committee. The first indicates the functional organization of the Joint Committee staff into two operational sections -- (1) rules review and (2) monitoring and compliance. These sections correspond to the basic division between the Joint Committee's on-going responsibility to review proposed rulemaking actions and the mandate of longer term, more in-depth investigation of existing agency rules.

The second organizational chart indicates the allocation of specific staff positions to the sections and their supervisory relationships. The total staff size indicated in this chart of 18 professional and 9 clerical positions is anticipated to be the permanent stable size of the office to fully implement the functions mandated under the Administrative Procedure Act. Positions filled during the transitional year of 1978 include 9 professional and 4 clerical positions. Full staffing is expected by June 1979.

FUNCTIONAL ORGANIZATION CHART



ONNEL ORGANIZATION CHART



REVIEW OF PROPOSED RULEMAKING

Basic Policies

The Joint Committee has viewed the review of proposed rulemaking as its major priority during 1978. Each of the almost 500 rulemaking proposals has been reviewed by the Joint Committee staff and presented to the Joint Committee. Although the rulemaking proposals differ widely from simple changes in a few sentences, and repeals of outdated rules to hundreds of pages of new complex state regulations, this figure indicates something of the tremendous workload involved.

The Joint Committee has reviewed rules primarily for their compliance with the statutory authority of the agency and the legislative intent of the authorizing statute. Other considerations, such as vague wording of rules and lack of adequate standards stated in the rules, have also been major issues of concern to members of the Joint Committee in their review of proposed rules. Attempting to streamline the rules, eliminating unnecessary regulations, as well as insuring that the rules fully state the agency's basic policies have both been major goals of the Joint Committee's review.

In order to systematize the review of proposed rulemaking, the Joint Committee also developed and proposed a comprehensive set of operational rules. These proposed rules are included in this annual report as Appendix B. Most important in these rules is Section 1.2.06, which presents the primary basis for the Joint Committee's review. It states,

> The Joint Committee will give major consideration to the following criteria in reviewing proposed rulemaking:
>
> 1. Legal authority for the proposed rulemaking.
> 2. Compliance of the proposed rulemaking with legislative intent.
> 3. Compliance with state and federal constitutional requirements and other law.
> 4. The proposing agency's statement of justification and rationale for the proposed rulemaking.
> 5. Anticipated economic effect of the proposed rulemaking on the public and the agency's budget.
> 6. Clarity of the language of the proposed rulemaking for understanding by the affected public.
> 7. Sufficient completeness and clarity to insure meaningful guidelines and standards in the exercise of agency discretion.
> 8. Redundancies, grammatical deficiencies and technical errors in the proposed rulemaking.
> 9. Compliance of the agency with the requirements of the Illinois Administrative Procedure Act and responsiveness to public submissions regarding proposed rulemaking. (page 237)

These criteria provide the basis on which the Joint Committee reviews each proposed rulemaking and may object to the rulemaking. The criteria represent the Joint Committee's interpretation of their review responsibilities under the Illinois Administrative Procedure Act. Of course, it should be remembered that the Joint Committee's review powers are purely advisory and the Joint Committee cannot compel an agency to modify any proposed rulemaking. Therefore, these criteria serve primarily as basic guidelines for the Joint Committee's review.

One of the particular issues which has been uncovered in the course of reviewing rules has been the frequent failure of agencies to adequately state the basis on which determinations will be made or action will be taken by the agency. This lack of standards and criteria prompted the Joint Committee to prepare a position paper on this issue and distribute it to all state agencies. This position paper was adopted by the Joint Committee on October 19, 1978, and appears as Appendix C in this annual report. The paper states the reasons that standards and criteria must be stated in agency rules, delineating three basic reasons, (1) "the prevention of arbitrary action by the agency," (2) "to inform the public of the agency's policy in regard to its exercise of discretion," and (3) "to provide a specific basis for appeal of agency determinations to judicially insure agency compliance with its established standards." (page 244)

This review of proposed rulemaking has resulted in numerous changes in agency rules. Agencies have agreed to make numerous necessary changes based on suggestions by the Joint Committee staff, but further changes have also been made in rules as a result of a formal statement of objection by the Joint Committee. In areas where agencies have failed to make necessary changes in rules to which the Joint Committee has objected, the Joint Committee is proposing specific remedial legislation as authorized by the Illinois Administrative Procedure Act. Such review has also uncovered areas where the authorizing legislation was inadequate to clearly express the legislative intent or guide the agency sufficiently in the proposal of implementing rules. In these areas, the Joint Committee has also recommended remedial legislation.

Statistical Summary

The following tables summarize the number of rulemakings by Illinois agencies during 1978 and the results of review by the Joint Committee of proposed rulemakings. Although any statistical summary is subject to qualifications, this summary does generally indicate the extent of rulemaking and the fact that the Joint Committee has had a substantial impact during 1978 on this rulemaking activity. The most important qualification of this summary is that each rulemaking is viewed as a unit, although they differ widely in length, complexity, nature and importance. A rulemaking may vary from a simple amendment changing a few words in an agency's rules to hundreds of pages of new regulations. The sheer number of rulemakings presented here may therefore be somewhat misleading in some cases.

Table One presents the number of proposed, emergency and federal or court ordered rulemakings by agency. The Joint Committee has not reviewed emergency, or federal or court ordered rules, but these figures do indicate a substantial use of these rulemaking provisions by state agencies. Emergency rulemakings add up to more than one-fourth the number of normal rulemakings indicating the frequent use of this provision authorized by Section 5(b) of the Illinois Administrative Procedure Act. Several suggestions have been made for Joint Committee examination of at least the nature of the emergencies necessitating use of this provision. The Act is specific in requiring that to use this provision an agency must find that an emergency exists which both (1) reasonably constitutes "a threat to the public interest, safety or welfare" and (2) "requires adoption of a rule upon fewer than 45 days' notice." Similarly, use of the federal or court ordered provision requires that the order be "under conditions which preclude the agency's compliance with the notice or hearing requirement of this Act." It is unclear how strictly agencies are interpreting or following these requirements.

The most obvious indication from Table One is the actual amount of rulemaking undertaken by state agencies. Adding all three types of rulemaking, over 650 rulemakings actions were taken by state agencies during 1978. Of these, the Joint Committee reviewed each of the over 500 normal proposed rulemakings. This indicates a substantial workload for the Joint Committee members and staff.

The basic results and effects of the Joint Committee review are presented statistically in Table Two. This table shows that of the total of more than 500 proposed rulemakings reviewed by the Joint Committee, serious problems were discovered by the Joint Committee staff in over 35% of the rulemakings. Most of these problems were resolved through informal discussions at the staff level with the proposing agencies. Agencies were anxious to respond to most of the problems discovered by the Joint Committee staff and agreed to make appropriate changes and corrections in most cases. The Joint Committee formally issued a total of 72 statements of objection to proposed rulemakings during 1978. These amount to less than 15% of the total number of proposed rulemakings and less than 40% of those rulemakings where Joint Committee staff review had discovered serious problems. This further indicates both the desire of agencies to change rules to correct serious problems and also the extent of those issues where serious problems were unresolved without formal Joint Committee action. The final column of Table Two indicates the nature of responses by agencies to statements of objection. This column is incomplete due to the time delay involved in formal agency responses. These figures indicate that even when formal Joint Committee objection was required agencies modified or withdrew proposed rulemakings in the majority of instances.

Table Three presents a breakdown of the statements of objection and the nature of the agency responses by agency. The agencies are presented in the same order as in Table One. This table indicates that the agencies which have responded least favorably to the objections by the Joint Committee have been the Department of Public Aid and the Department of Public Health. These agencies are also among the most active rulemaking agencies as indicated in Table One. The figures in Table Three also elaborate the general pattern of favorable responses of most agencies to Joint Committee objections shown by Table Two.

The final table (Table Four) presents a summary by quarter of the number of Joint Committee objections and the nature of responses by agencies. The figures shown the phasing-in character of the Joint Committee's activities by the increasing number of objections due to more thorough review of rules as more staff became available. It is unclear, however, whether the apparant increasing favorableness over the year of agency responses is a general trend because of the

large number of pending responses. Pending responses are simply instances where the agency has not yet had time to respond.

TABLE ONE: STATISTICAL SUMMARY OF RULEMAKINGS BY AGENCY

Code Departments	Proposed	Emergency	Federal & Court-Ordered
Administrative Services	1		
Aging	5	4	
Agriculture	14	1	
Children & Family Services	2		
Conservation	76	17	
Corrections	82	21	9
Financial Institutions	1		
Insurance	15	1	
Labor	5		
Law Enforcement	2	1	
Local Government Affairs	1	1	
Mental Health & Developmental Disabilities	8		
Mines and Minerals	4	3	
Personnel	10	9	
Public Aid	46	19	12
Public Health	42	12	
Registration and Education	11	3	
Revenue	11		
Transportation	13	1	1
Veterans' Affairs	1		
Constitutional Offices			
Attorney General	3		
Auditor General	7		
Comptroller	1		
Office of Education	3	2	2
Secretary of State	15	3	
Treasurer/Comptroller	1		
Legislative Agencies			
Joint Committee on Administrative Rules	3	1	
Legislative Information System	1	1	
Legislative Travel Control Board	1	1	
House of Representatives	1		
Miscellaneous Agencies			
Building Authority	1		
Capital Development Board	2		
Commerce Commission	17	1	
Criminal Justice Information Council	1		
Dangerous Drugs Commission	14		
Board of Elections	6	3	

Code Departments	Proposed	Emergency	Federal & Court-Ordered
Environmental Protection Agency	7	2	
Board of Ethics	2		
Fair Employment Practices Commission	2	1	
State Fire Marshall	1		
Governor's Office of Manpower and Human Development	2	2	
Governor's Purchased Care Review Board	1	1	
Health Facilities Authority	5		
Industrial Commission	4		
Law Enforcement Commission	1	2	
Law Enforcement Merit Board	2	3	
Liquor Control Commission	2		
Institute of Natural Resources		1	
Pollution Control Board	18	2	
Prisoner Review Board	2	2	
Racing Board	10	6	
Savings and Loan Commissioner	3	1	
State Employees Retirement System	2		
State's Attorneys Appellate Service Commission	1		
Statewide Health Coordinating Council	4	3	
Teachers Retirement System	2	1	
Vocational Rehabilitation	1	1	
Universities			
State Scholarship Commission	1		
Universities Civil Service System	2		
Universities Retirement System	1		
Total:	507	133	24

TABLE TWO: STATISTICAL SUMMARY OF JOINT COMMITTEE REVIEW AND IMPACT ON RULEMAKINGS

Total Number of Rulemakings Reviewed	Estimated Number or Rulemakings With Serious Problems Discovered By Joint Committee Staff Review	Number of Statements of Objections Issued by Joint Committee	Number and Nature of Agency Responses To Statements of Objection	
507	185	72	Total:	58
	(36.5% of Proposed Rulemakings Reviewed)	(14.2% of Proposed Rulemakings Reviewed)	Rulemaking Withdrawn:	10 (17.2%)
			Rulemaking Modified to Meet Objection:	26 (44.8%)
		(38.9% of Proposed Rulemakings With Serious Problems)	Refusal to Withdraw or Modify Rulemaking:	22 (37.9%)

TABLE THREE: STATISTICAL SUMMARY OF STATEMENTS OF OBJECTION BY AGENCY

Code Departments	Number of Statements of Objection	Nature of Response: Withdraw	Modify	Refusal	Responses Pending
Administrative Services	1		1		
Agriculture	1	1			
Child & Family Services	1			1	
Conservation	2	1	1		
Corrections	2		1		1
Insurance	4		1	2	1
Mental Health	3		3		
Personnel	1		1		
Public Aid	9	2	1	5	1
Public Health	14	1	7	5	1
Registration & Education	2	1	1		
Revenue	4	1		3	
Transportation	1		1		
Veterans' Affairs	1		1		
Constitutional Offices					
Attorney General	1			1	
Secretary of State	1		1		
Other Agencies					
Capital Development Board	1			1	
Commerce Commission	4		2		2
Dangerous Drugs Commission	1				1
Board of Elections	1		1		
Environmental Protection Agency	3	1		1	1
Board of Ethics	1		1		
Governor's Office of Manpower	2			2	
Industrial Commission	1				1
Law Enforcement Commission	1		1		
Law Enforcement Merit Board	2	1			1
Liquor Control Commission	1				1
Pollution Control Board	1	1			
Prisoner Review Board	1				1
Racing Board	2				2
State Scholarship Comm.	1		1		
Vocational Rehabilitation	1			1	
Total:	72	10	26	22	14

TABLE FOUR: STATISTICAL SUMMARY OF STATEMENTS OF OBJECTION ISSUED BY JCAR BY QUARTER DURING 1978

		Nature of Response			
	Number of Statements of Objection	Withdraw	Modify	Refusal	Responses Pending
anuary - March	14	3	5	6	0
\pril - June	19	1	8	10	0
uly - September	19	5	10	4	0
)ctober - December	20	1	3	2	14
Total:	72	10	26	22	14

Specific Statements of Objection Issued

During 1978, the Joint Committee issued 72 formal statements of objection to proposed rulemakings by state agencies. This section presents each of these statements of objection, the specific objections of the Joint Committee, and nature of the response by the agency. The statements of objection are presented by agency in the same order as Table Two.

CODE DEPARTMENTS

Department of Administrative Services

Travel Regulations

Initial Publication in Illinois Register: May 26, 1978

Joint Committee Objection: June 16, 1978

Specific Objections: Proposed Rule 2.6.05 which reads:

> Honoraria:
> Any State officer appointed pursuant to the provisions of the Civil Administrative Code who receives an honorarium, a fee, or any other form of monetary compensation for a speech, an article or any other form of public utterance shall remit such compensation to the State Treasurer for deposit in the General Revenue Fund. Other State personnel who receive honoraria or fees for speeches or articles which are accomplished on their own time are not required to remit the honoraria to the State Treasury.
>
> The Joint Committee objects to this proposed rule because it exceeds the statutory authority of the Department. Such a policy may in fact be desirable; however, Section 12-2 of An Act in Relation to State Finance, Ill.Rev.Stat.1977, ch.127,par.148-2, authorizes the Department only to prescribe rates for reimbursements made to State employees under the jurisdiction of the Governor's Travel Control Board for travel expenses incurred while on official business for the State.

Date Agency Response Received: July 10, 1978

Nature of Agency Response: Modified

Department of Agriculture

Repeal of Swine Movement Limitations, Regs. IX and XXII

Initial Publication in Illinois Register: August 25, 1978

Joint Committee Objection: September 18, 1978

Specific Objections:

The primary goal of these repealers is the elimination of restriction on movement of feeder swine through various markets. The Department has indicated that such restrictions were imposed to prevent the spread of certain contagious hog diseases, and have been successful in that respect. The Department further indicates it will oppose these repealers at formal public hearings to be held in October.

The Joint Committee objects to these proposed repealers of Regulations IX and XXII because these repealers are contrary to the legislative intent of the Livestock Auction Market Law to provide for regulation of livestock auction markets so as to protect the health of livestock and humans.

Date Agency response Received: October 16, 1978

Nature of Agency Response: Withdrawn

Department of Children and Family Services

Safeguarding Personal Information in Case Files

Initial Publication in Illinois Register: April 14, 1978

Joint Committee Objection: May 15, 1978

Specific Objections:

1) Proposed Section 4(c), which reads:

"Person served by the Department" means any person who receives services or applies for services from the Department through its various offices, facilities, institutions and programs. The term includes persons who are subject to licensing by the Department and persons who involuntarily receive protective services from the Department." (Emphasis added)

The Joint Committee objects to this proposed Section because the Department exceeds the authority conferred upon it by the General Assembly by including within the scope of the proposed rules persons who are subject to licensing by the Department, or who apply for services.

2) Proposed Section 5(a) (1), which reads:

> "Departmental employees may release personal information to State's Attorneys, the Attorney General, Municipal and Sheriff's police when in the discretion of the employee, the information will benefit the interests of a child or family served by the Department; will further the statutory purpose of the Department or is necessary for the Administration of programs of the Department." (Emphasis added)

The Joint Committee objects to this proposed Section because it does not set forth sufficient criteria to guide Department employees in the exercise of their discretion.

3) Proposed Section 5(d) which reads, in part:

> "The Department, in disclosing personal information, shall take reasonable precautions to assure that (1) the persons receiving the information recognize the confidential nature of the information; (2) the information will not be further released except as is necessary for the proper delivery of the services; and (3) the information released will be limited to that information which is necessary to properly provide the service." (Emphasis added)

The Joint Committee objects to this proposed Section because the phrase "reasonable precautions" is so vague as to be useless in describing the policy the Department intends to implement to protect the privacy of individuals.

4) Proposed Section 8 which reads, in part:

> "Records of the Department may not be removed from the Department facilities or photocopied without permission of the Director, guardianship administrator, the appropriate Regional Director, or an Institution Administrator."

The Joint Committee objects to this proposed Section because of the lack of criteria to be used to determine when permission will be given to photocopy or remove records from the Department facilities.

Date Agency Response Received: August 17, 1978

Nature of Agency Response: Refusal

The Joint Committee is recommending specific legislation in response to this rulemaking (see Recommended Bill Three, pages 99 - 102).

Department of Conservation

Amendments to Article XX

Initial Publication in Illinois Register: April 28, 1978

Joint Committee Objection: May 15, 1978

Specific Objections:

The "Notice of Proposed Amendment" filed by the Department and published in the Illinois Register by the Secretary of State cites as statutory authority for the proposed rulemaking "...Illinois Revised Statutes, Chapters 38, 56, 56½, 57½, 61, 95½, 105 and 127."

The Joint Committee objects to this proposed Amendment because Section 5(a) (1) of the Illinois Administrative Procedure Act, Ill.Rev.Stat.1977,ch.127,par.1005(a) (1), requires notices of proposed rulemaking to include "the specific statutory citation upon which the proposed (rulemaking) is based and is authorized." Section 5(c) provides: "No action by any agency to adopt, amend or repeal a rule...shall be valid unless taken in compliance with this Section." The Joint Committee believes that the action of the Department of Conservation to amend this rule does not comply with Section 5 of the Illinois Administrative Procedure Act.

Date Agency Response Received: June 1, 1978

Nature of Agency Response: Withdrawn

Article CXLII: Land and Water Conservation Fund

Initial Publication in Illinois Register: August 11, 1978

Joint Committee Objection: September 18, 1978

Specific Objections:

The Joint Committee objects to this proposed new rule because it does not include any provision stating that the federal funds administered by the Department under the Federal Land and Water Conservation Fund program will be expended in accordance with all applicable state statutes.

Date Agency Response Received: October 30, 1978

Nature of Agency Response: Modified

Department of Corrections

Juvenile Division Administrative Regulation: Youth Allowances

Initial Publication in Illinois Register: July 14, 1978

Joint Committee Objection: August 23, 1978

Specific Objections:

The Joint Committee objects to this proposed rule because it lacks adequate specificity in delineating the procedures to be followed and the standards to be used in making necessary determinations in carrying out the functions of the Department in this area. Since the Department must have a policy embodying meaningful standards and adequate procedural safeguards to protect against arbitrary action and unequal and unfair treatment of youths in the administration of this program, the rule does not fully state the Department's policy. Section 4(c) of the Illinois Administrative Procedure Act requires that each agency statement of policy must be adopted pursuant to the Act to be effective or invoked by the agency.

Date Agency Response Received: October 3, 1978

Nature of Agency Response: Modified

Adult Division Administrative Regulation: Residents' Personal Property

Initial Publication in Illinois Register: October 27, 1978

Joint Committee Objection: November 14, 1978

Specific Objections:

Rule 856, IIBI which states, in part, that "(a)ll sheriffs shall be supplied with a list of approved personal property items" belonging to new admissions, which may be stored by the Department.

The Joint Committee objects to this proposed Rule 856 IIBI because it fails to set forth adequate standards to govern the Department's exercise of discretion with regard to the approval of residents' personal property. The policy of the Department in this area constitutes a "rule" as the term is defined in the Illinois Administrative Procedure Act. Under Section 4(c) of the Act, Ill.Rev.Stat.1977, ch.127,par.1004(c), "(n)o agency rule is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been made available for public inspection and filed with the Secretary of State as required by this Act."

Date Agency Response Received: Response Pending

Department of Insurance

Religious and Charitable Risk Pooling Trust Rule 56.01

Initial Publication in Illinois Register: January 13, 1978

Joint Committee Objection: February 21, 1978

Specific Objections:

Proposed Rule 56.01, Section 2(B)(3) which reads:

B. The Trust instrument shall be in writing and shall be executed and in addition to the requirements contained in the Act shall contain provisions addressing the following:

3. A requirement that all beneficiaries be residents of the State of Illinois and have their operations confined solely to Illinois. It is the specific intention of this requirement to restrict the use of the Act only to charities and religious entities located and operating exclusively in the State of Illinois.

The Joint Committee objects to this provision because Public Act 80-530 does not, either by express terms or by legislative intent, authorize the Department to impose such a restrictive requirement on trust beneficiaries. Section 4 of the Act requires only that a beneficiary be incorporated in Illinois or possess a Certificate of Authority from the Secretary of State.

Date Agency Response Received: May 24, 1978

Nature of Agency Response: Modified

Rule 22.01: Pension Examination and Compliance Procedure

Initial Publication in Illinois Register: March 3, 1978

Joint Committee Objection: March 23, 1978

Specific Objections:

1. The Proposed Rule was published in the March 3, 1978, issue of the Illinois Register. Persons wishing to comment on the Proposed Rule at the hearing were required to so notify the Director by March 15, 1978, twelve days after publication. Section 5(a)(2) of the IAPA requires an agency to accept comments from interested persons who submit requests to comment within 14 days of publication. It appears that Proposed

Rule 22.01 has been published in violation of the notice provisions of the IAPA, and the action of the Department to adopt this rule will not be valid.

2. Section 3D(3) of Proposed Rule 22.01, which reads as follows:

Section 3. Examinations.

. . . .

D. The procedure to be followed for compliance, where necessary:

. . . .

3. The Director as the result of the hearing shall order compliance within 30 days of his Order in those areas found not to be in compliance and failure to comply within the 30 day time period may subject the fund or system to a fine.

The Joint Committee objects to this section because it does not contain criteria to be used by the Director in deciding whether or not to levy a fine for non-compliance.

3. Proposed Rule 22.01, based on authority granted by P.A. 80-906, puts into the form of a rule pertaining only to smaller local funds and systems the requirements contained in Ill.Rev.Stat.1977,ch.108½,par.22-502. This latter section pertains to all government employee pension, annuity and retirement funds or systems. The Joint Committee doubts that the intent of the General Assembly in enacting P.A. 80-906 was simply to authorize the Department to enact rules implementing par. 22-502 only as to some and not all of the funds covered by par. 22-502. Rather, it was obviously the legislative intent by P.A. 80-906 to enable the Department to deal by rule with problems peculiar to those smaller local funds and systems.

Date Agency Response Received: June 15, 1978

Nature of Agency Response: Refusal

The Joint Committee is recommending specific legislation in response to this rulemaking (see Recommended Bill Five, pages 109-113).

Rule 20.07: Minimum Standards of Individual Accident and Health Insurance

Initial Publication in Illinois Register: March 24, 1978

Joint Committee Objection: April 18, 1978

Specific Objections:

1) Section 6 E of the proposed rule reads in part:

> "No policy shall limit or exclude coverage by type of illness, accident, treatment or medical condition, except as follows or as may be approved by the Director from time to time:"

The Joint Committee objects to this proposed paragraph 6 E because it fails to contain any criteria or standards delimiting the authority of the Director in approving exceptions to the rule. Such failure renders the rule vague and subject to arbitrary exercise of discretion. Moreover, exceptions approved by the Director under this paragraph could constitute rulemaking by the Director in violation of the notice, publication and legislative review provisions of the Illinois Administrative Procedure Act.

2) Section 6 F of the proposed rule reads in part:

> "No provision of this rule shall prohibit the use of any policy provision which is required or permitted by statute."

The Joint Committee objects to this proposed paragraph 6 F because it appears to sanction retention of rules in conflict with applicable statutes.

Date Agency Response Received: July 10, 1978

Nature of Agency Response: Refusal

The Joint Committee is recommending specific legislation in response to this rulemaking (see Recommended Bill Six, pages 115-122).

Department of Mental Health and Developmental Disabilities

Rule 100.2-1: Procedures for Handling of Funds

Initial Publication in Illinois Register: May 5, 1978

Joint Committee Objection: June 16, 1978

Specific Objections:

Section C. which reads in part:

> "To the extend practical, purchases of supplies and equipment from this Fund shall be in accordance with the Illinois Purchasing Act, as amended (Ill.Rev.Stat.1977, ch.127,132.1 et.seq.)."

The Joint Committee objects to this proposed amendment because it is contrary to the principle of competitive bidding and economical procurement practices through centralized purchasing which is public policy established by the Illinois Purchasing Act. While the Department has agreed to change the language of Section C. to reference the Department's Purchasing Rule adopted pursuant to Section 5 of the Illinois Purchasing Act (Ill.Rev.Stat.1977,ch.127,par.132.5), the language "To the extent practical" has not been deleted. This phrase is contrary to the public policy established in the Illinois Purchasing Act and is in violation of Section 5 of the same Act.

Date Agency Response Received: August 18, 1978

Nature of Agency Response: Modified

Amendments to Rule 100.4-1

Initial Publication in Illinois Register: May 5, 1978

Joint Committee Objection: June 16, 1978

Specific Objections:

1) Section D.1 of the proposed rule provides that violations of the rule, which can include that sale or gift of drugs, narcotics and marijuana, shall be reported to the superintendent "who shall take appropriate action". These latter words apear to give the superintendent a discretionary power to act without regard to the requirements of law in relation to criminal offenses.

2) Section D.2 of the proposed rule prohibits firearms on facility grounds "without prior written permission" of the superintendent. No standards for granting such permission are given, and no authority for granting such permission is cited.

The Joint Committee objects to Sections D.1 and D.2 of the proposed amendment to Rule 100.4-1 because they are unconstitutionally vague and in violation of "An Act codifying the powers and duties of the Department of Mental Health and Developmental Disabilities", approved August 2, 1961, as amended (Ch.191/2, par.100-7, Ill.Rev.Stat).

In addition, the Joint Committee objects to Section D.2 of the proposed amendment to Rule 100.4-1 as being contrary to legislative intent in its implication that lethal firearms could ever be authorized on facility grounds except as allowed by law with respect to law enforcement officers. The Joint Committee suggests that Section D.2 be rewritten by deleting everything after "facility grounds" in the first sentence.

Date Agency Response Received: September 1, 1978

Nature of Agency Response: Modified

Rule 100.34.1: Grants for Construction of Community Mental Health Centers

Initial Publication in Illinois Register: May 12, 1978

Joint Committee Objection: June 16, 1978

Specific Objections:

Proposed Section B.3, which reads in part:

The amount of the grant shall be determined by the current priority ranking in the state plans for construction under Public Law 88-164, P.L. 94-63, or similar subsequent Acts.

The Joint Committee objects to this proposed rule because the priority ranking and method of determining that ranking constitute "rules" as that term is defined in the Illinois Administrative Procedure Act. Although the state plan which contains these rules is referred to in proposed Section B.3, the rules are not currently on file with the Secretary of State. Under Section 4(c) of the IAPA, it is unlawful for any agency to invoke such rules for any purpose. Since proposed Section B.3 invokes these unpublished rules, it violates the IAPA.

Date Agency Response Received: September 1, 1978

Nature of Agency Response: Modified

Department of Personnel

Amendments to the Pay Plan

Initial Publication in Illinois Register: June 16, 1978

Joint Committee Objection: July 26, 1978

Specific Objections:

Proposed Part V, Section M.C.S.3.00 which states, in part:

> "Any deviation from the approved policy and procedures set out in this plan must have prior approval of the Director of Personnel."

The Joint Committee objects to this proposed Section because it does not contain any criteria, general or specific, which the Director will consider in deciding whether to approve deviations from the plan. To be valid and effective, such policy must be promulgated in accordance with the provisions of the Illinois Administrative Procedure Act.

Date Agency Response Received: October 20, 1978

Nature of Agency Response: Withdrawn

Department of Public Aid

Rate Schedules for SNF/PED Payment

Initial Publication in Illinois Register: February 3, 1978

Joint Committee Objection: February 21, 1978

Specific Objections:

Rule 4.14, within which the proposed rate schedules are to be included consists of eight pages of text and two substantive attachments totalling sixty-five pages. The fact that the Rule is not internally subdivided and numbered in a systematic way makes discussion of, and citation to, specific provisions difficult, if not impossible. This defeats the purpose of requiring agencies to publish their rules so that those affected by such rules may understand what is required of them by the agency.

Date Agency Response Received: May 23, 1978

Nature of Agency Response: Withdrawn

Rule for Medical Vendor Administrative Proceedings

Initial Publication in Illinois Register: January 13, 1978

Joint Committee Objection: February 21, 1978

Specific Objections:

1. Proposed Rule 4.14(3) which reads in part:
   4.41 Denial of Application
   . . . .
   The Department may deny an application submitted by a vendor that has been previously terminated, barred or denied participation if...

(3) the Department determines, after reviewing the activities which served as the basis for the earlier termination or barring, that the application should not be approved.

At the Joint Committee meeting on February 21, 1978, the Department stated that decisions to deny applications of vendors that have been previously terminated would be made on a case by case basis, considering factors such as length of time since termination, corrective measures taken, etc. The Joint Committee does not question the authority of the Department to promulgate such a rule; however, the basis for determination set forth above is a policy statement which must be set forth in the Proposed Rule.

2. Proposed Rule 4.51 which reads in part:

4.51 Recovery of Money
The Department may recover money improperly or erroneously paid, or overpayments, either by setoff, crediting against future billings or by requiring direct repayment. These actions may be requiring direct repayment. These actions may be taken whenever the Department determines that a vendor may have submitted bills in a manner not consistent with Department policy, or if it determines that a vendor may have received payment to which he may not have been properly entitled.

The Proposed Rule appears to authorize recovery of allegedly improper or erroneous payments prior to any opportunity for the vendor to request a hearing to contest the Department's determination.

3. Proposed Rule 4.61 which reads in part:

4.61 Termination
The Department may terminate a vendor's elibigility to participate in the Medical Assistance Program if it determines that, at any time prior or subsequent to the effective date of these Rules:
. . . .

Section 12-4.26 of Public Act 80-2nd S.S.-2 expressly limits termination for a vendor's past conduct to instances "where the vendor had actual or constructive knowledge of the requirements which applied to his conduct or activities." By omitting this from the Proposed Rule, the Department appears to be exceeding its statutory authority.

4. Proposed Rule 4.61(j) which reads:

4.61 Termination

. . . .

(j) Conviction in this or any other State of any crime not related to the Medical Assistance Program which is a felony, under the laws of that State, or conviction in a federal court of any crime not related to the Medical Assistance Program which is a felony, if the Department determines after investigation, that the vendor's continued participation would not be in the public interest.

There are no criteria set forth in the Proposed Rule which would indicate what criteria will be used to determine whether continued participation in the program is not in the "public interest."

5. Proposed Rule 4.65 which reads in part:

4.65 Withholding of Payments During Pendency of proceeding Payments on pending and subsequently submitted bills may be withheld during the pendency of the administrative proceeding....

Again, at the Joint Committee meeting the Department explained precisely the circumstances under which payments would or would not be withheld. Such policy statements must be expressed as a Rule.

6. Proposed Rule 4.93 which reads:

4.93 Repeal of Prior Rules

These rules shall become effective immediately upon filing a certified copy thereof with the Secretary of State of the State of Illinois as provided by the statutues of the State of Illinois in such cases made and provided, and shall supersede all other rules and regulations covering subject matter embraced in these rules.

The Joint Committee realizes that these Proposed Rules are identical in every respect to the Emergency Rules previously filed by the Department covering this subject. However, as a Proposed Rule, 4.93 is contrary to Section 6(c) of the Illinois Administrative Procedure Act, as amended, which provides that rules are effective ten days after filing with the Secretary of State. Also, it is apparently the intent of the Department to repeal the Emergency Rules to be replaced by these Proposed Rules. This should be done by express language.

7. The term "management responsibility" wherever it appears in the Proposed Rules.

This term, which also appears throughout Public Act 802nd S.S.-2, is nowhere defined in the Proposed Rules. The Legislature has established a general policy, and has delegated to the Department the responsibility and authority to implement that policy through rules based upon the Department's experience and expertise. By leaving the definition of "management responsibility" to the courts, the Department is not carrying out its responsibility as delegated by the Legislature.

Date Agency Response Received: May 16, 1978

Nature of Agency Response: Refusal

The Joint Committee is recommending specific legislation in response to this rulemaking (see Recommended Bill Eight, pages 127 - 134).

Rule 3.55: Lost and Stolen Warrants

Initial Publication in Illinois Register: April 21, 1978

Joint Committee Objection: May 15, 1978

Specific Objections:

The Joint Committee objects to Proposed Rule 3.55 which reads, in part:

> "In the event the missing warrant is actually received and cashed by the client, and a replacement warrant has been issued, the Department, pursuant to the terms of the recovery agreement, shall deduct the amount of the replacement warrant and any assistance issued to meet immediate need from future assistance payments."

The Joint Committee objects to this proposed amendment because the policy of the Department in determining the manner and amount by which future assistance warrants will be reduced to recovery excess assistance is a rule within the definition of that term in the Illinois Administrative Procedure Act. Section 4 of the Act provides that no rule may be invoked by an agency until it has been made available for public inspection. Since this policy under which the Department is currently operating is not available for public inspection, the Department is in violation of the IAPA.

Date Agency Response Received: July 24, 1978

Nature of Agency Response: Modified

Amendments to Rules 3.06 and 7.07: Composition, Caretaker-Assistance Unit

Initial Publication in Illinois Register: May 19, 1978

Joint Committee Objection: June 16, 1978

Specific Objections:

Rule 3.06, Persons Who May Be Included in the Assistance Unit, which reads in part:

The eligibility of a child in an assistance unit depends on that child's lack of parental support or care. All eligible individuals in a household shall be included in a single case, except in two-parent households where there are children of differing parentage, some of whom lack parental support or care because of the unemployment of their father.

Rule 7.07, Caretaker Relative, which reads in part:

Every...case shall have one person designated as the caretaker relative...No person shall serve as caretaker relative for more than one AFDC grant case at the same time, except for an AFDC-U father whose child's eligibility is based on the lack of parental support or care of that child's mother.

The Joint Committee objects to these proposed amendments because under Section 4-1.3 of the Public Aid Code, the unemployment of the parent or parents, rather than the unemployment of the father only, is a condition for a finding that a child is "dependent". The Department has no statutory authority to so limit eligibility.

Date Agency Response Received: July 14, 1978

Nature of Agency Response: Refusal

The Joint Committee has adopted a resolution in response to this rulemaking urging appropriate action by the Department and federal officials (see pages 222 - 223).

Rule 3.96: Replacement of Food Stamps

Initial Publication in Illinois Register: May 19, 1978

Joint Committee Objection: June 16, 1978

Specific Objections:

1) The "Notice of Proposed Rulemaking" does not reveal any federal or State statutory or regulatory authority to replace food stamp benefits that have been given.

2) In addition, the proposed rule fails to disclose any standards for determining how a person can "document" the loss of foodstuffs or what will be considered "adequate" documentation.

The Joint Committee objects to this proposed Rule 3.96 because it is beyond the scope of the statute upon which it is based and authorized; further, the Joint Committee objects to this proposed Rule 3.96 as extremely vague and potentially arbitrary, in violation of the equal protection requirements of the federal and State constitutions.

Date Agency Response Received: July 20, 1978

Nature of Agency Response: Refusal

Rule 4.02: Payments to Practitioners and Laboratories

Initial Publication in Illinois Register: May 12, 1978

Joint Committee Objection: June 16, 1978

Specific Objections:

1. Subparagraph 2 of Proposed Rule 4.02, which reads in part:

   Payments are to be made according to a schedule of state-wide pricing screens established by the Department of Public Aid...Screens will be related to the average state-wide charge.

The Joint Committee objects to this proposed rule because it does not set forth the Department's policy as to how screens are to be related to the average state-wide charge. Such policy constitutes a "rule" as that term is defined in the Illinois Administrative Procedure Act, and the Department must give notice thereof and afford interested persons reasonable opportunity to comment.

2. That part of Proposed Rule 4.07, which reads in part:

   Practitioners identified as having been paid at a rate in excess of $100,000 per annum during any quarter, will be subject to an upper limit of 80 percent of the state-wide pricing screens.

The Joint Committee objects to this proposed rule because it denies such practitioners the equal protection of the laws guaranteed by the Constitutions of Illinois and of the United States.

Date Agency Response Received: July 26, 1978

Nature of Agency Response: Refusal

Amendments to Rule 7.05

Initial Publication in Illinois Register: May 5, 1978

Joint Committee Objection: June 6, 1978

Specific Objections:

The "Notice of Proposed Amendment" accompanying this proposed amendment seems to suggest that this amendment is but the tip of an iceberg, i.e., that this and other rules do not fully embody the policy of the Department as required by Administrative Procedure Act.

The Joint Committee objects to this proposed amendment to Rule 7.05 because the rule appears to be unconstitutionally vague and fails to fully embody Department policy.

Date Agency Response Received: July 10, 1978

Nature of Agency Response: Refusal

Rule 4.14: Group Care Services and Rates

Initial Publication in Illinois Register: August 18, 1978

Joint Committee Objection: September 18, 1978

Specific Objections:

Rule 4.1421(7) reads:

7. Donated Goods -- The fair market value of nondepreciable care related donated goods is an allowable cost.

Rule 4.1422(6) reads:

6. Non-Paid Workers -- Allowable costs are salaries at the value that would be paid if employees were hired, only if volunteers are used to meet minimum standards and cost is determinable.

The Joint Committee objects to these proposed sections because they do not reasonably relate allowable costs to the actual costs of the group care facilities. These sections thus violate the requirement of Section 5-5.3 of the Public Aid Code (Ill.Rev.Stat.1977,ch.23,par.5-5.3) that the reimbursement rates be "cost-related" and based on the "actual costs" of providing services.

The Joint Committee also objects to the provisions in Rules 4.143 (a, b and c) and 4.145(c) as exceeding the statutory authority of the Department of Public Aid and imposing requirements on the Department of Public Health. These regulations more improperly belong under the authority of the Department of Public Health or the joint authority of the two agencies established by Section 9.1(c) of the Nursing Homes, Sheltered Care Homes, and Homes for the Aged Act (Ill.Rev.Stat.1977,ch.111½,par.35.16 et. seq.) and Section 5-5.7 of the Public Aid Code (Ill.Rev.Stat.1977, ch.23,par.5-5.7).

Date Agency Response Received: December 21, 1978

Nature of Agency Response: Withdrawn

Rule 4.05: Dental Services

Initial Publication in Illinois Register: September 22, 1978

Joint Committee Objection: October 19, 1978

Specific Objections:

1. The reference in Proposed Rule 4.05 to the "Drug Manual".

The Joint Committee objects to this proposed rule because the Drug Manual is part of the IDPA Medical Assistance Program Handbook for Pharmacies. To the extent that this handbook contains Department policy not included within the Department's published rules and filed with the Secretary of State, such policy is invalid and unenforceable by the Department. At the least, the policy of the Department regarding the addition to or deletion from the listing of drugs in the Drug Manual constitutes a "rule" as defined in the Illinois Administrative Procedure Act, and must be adopted as such.

2. Proposed Rule 4.05, Prescriptions, which states in part: "The Department shall require prior approval for the prescription of any items not excluded and not listed, or in excess of the quantities listed, in its Drug Manual"; and proposed Rule 4.05, Limitations, which states, in part: "The dentist shall request post Approval when a dental procedure requiring prior approval is provided on an emergency basis."

The Joint Committee objects to these proposed rules because they lack adequate standards to govern the Department's exercise of discretion with regard to the granting of post or prior approval for goods or services. The policies of the Department in this area constitute "rules" as that term is defined in the Illinois Administrative Procedure Act.

Under Section 4(c) of the Act, Ill.Rev.Stat.1977,ch.127, par.1004(c), "(n)o agency rule is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been made available for public inspection and filed with the Secretary of State as required by this Act."

Date Agency Response Received: Response Pending

Department of Public Health

Water Well Pump Installation Code Rules

Initial Publication in Illinois Register: December 23, 1977

Joint Committee Objection: January 11, 1978

Specific Objections:

Proposed Rule 3.4 which reads:
3.4 Variance. If conditions exist at a proposed installation site which preclude compliance with the requirements specified herein, the contractor may request a variance from the Department.

The proposed rule does not sufficiently inform persons seeking a variance, or considering such action, of the procedure for application or of the criteria to be used by the Department to attempt to anticipate and specify every set of conditions which would warrant the granting of a variance; such decisions will necessarily be made on a case by case basis. However, the Joint Committee feels that at least the general nature of the factors the Department will consider should be set forth in order to provide guidance to those affected by these rules.

Date Agency Response Received: March 28, 1978

Nature of Agency Response: Modified

Food Service Sanitation Rules

Initial Publication in Illinois Register: December 30, 1977

Joint Committee Objection: January 11, 1978

Specific Objections:

Proposed Article III, Rule 3.05(a)(3) which reads:

3. That facilities not in compliance on July 1, 1978, because of the unavailability of training programs in their area shall be allowed an extension until January 1, 1979 to comply.

The Joint Committee objects to this provision because it does not indicate on what basis the determination of "the unavailability of training programs" in an area is to be made. This provision should include a definition of the term "unavailability."

Date Agency Response Received: March 28, 1978

Nature of Agency Response: Modified

The Joint Committee is recommending specific legislation in response to this rulemaking (see Recommended Bill Nine, pages 135 - 140).

Water Well Construction Code Rules

Initial Publication in Illinois Register: December 30, 1977

Joint Committee Objection: January 11, 1978

Specific Objections:

1. Proposed Rule 2.4 which reads:
   2.4 Variances
   If conditions exist at a proposed installation site which precludes compliance with the requirements specified herein, the contractor may request a variance from the Department.

The proposed rule does not sufficiently inform persons seeking a variance, or considering such action, of the procedure for application or of the criteria to be used by the Department in reaching its decision. It is obviously impossible for the Department to attempt to anticipate and specify every set of conditions which would warrant the granting of a variance; such decisions will necessarily be made on a case by case basis. However, the Joint Committee feels that at least the general nature of the factors the Department will consider should be set forth in order to provide guidance to those affected by these rules.

2. Proposed Rule 9.1 which reads in part:
   9.1 Casing And Liner Pipe
   Casing produced from any other materials must receive ~~be--approved~~ approval by the Illinois Department of Public Health prior to use.

This Rule does not indicate how the Department's approval is to be secured. In addition, the Joint Committee recommends that this rule state that the Department approval shall be given only if the Department specifically finds that the casing produced from other materials be at

least equivalent to the materials expressly mentioned in the rule in terms of safety and suitability for the function for which the casing is to be used.

Date Agency Response Received: March 28, 1978

Nature of Agency Response: Modified

Rules for Licensing of Hospitals

Initial Publication in Illinois Register: December 30, 1977

Joint Committee Objection: January 11, 1978

Specific Objections:

Proposed Part XXI - Construction Standards For Existing Hospitals.

The proposed addition of construction standards for existing hospitals makes no provision for informing hospitals of the phase-in period allowed to conform with the new rules. From the Department's presentation to the Joint Committee it is clear that it is not the intention of the Department to require full compliance by all covered hospitals immediately on these new rules becoming effective. Rather, the Department recognizes that some delay will be necessary before all hospitals will be able to comply fully with the new requirements, depending on economic factors and the extent of modifications required to bring each hospital up to the new-standards.

Therefore, the Joint Committee believes that the Department should inform hospitals affected by these rules of the time limitations for compliance.

Date Agency Response Received: March 28, 1978

Nature of Agency Response: Modified

Grant Awards to Family Practice Residency Programs

Initial Publication in Illinois Register: January 13, 1978

Joint Committee Objection: February 21, 1978

Specific Objections:

1. Proposed Rule 3.01 which reads:
   3.01 Membership of the Advisory Committee shall include the Executive Secretary of the Statewide Health Coordinating Council, one school of medicine or osteopathy dean, four family

practitioners and three members of the general public capable of advising the Director in matters of financial aid, underserved populations, or who utilize family practice services.

Since this proposed rule restates only part of Section 5 of the Act, it is confusing and possibly misleading. It would be preferrable to reference "the advisory committee created by Section 5 of the Act."

2. Proposed Rule 3.02.5 which reads:
   3.02.5 Meetings shall be at the discretion of the Director.

The statutory requirement in Section 5 of the Act that the Advisory Committee meet at least once a year should be included.

3. Proposed Rule 4.02 which reads:
   4.02 Eligibility-Any accredited family practice program, school of medicine or osteopathy with a department of family practice, or any community sponsoring ageny or educational extension of family practice residencies in designated shortage areas of the State may apply for a grant under this Act.

The rule should clearly state the sense in which the word "committed" is used in the Proposed Rule.

4. Proposed Rule 4.04.4 which reads:
   4.04 Project Requirements - Each applicant shall:

   4.04.4 Participate in research and reporting as required by the Director at appropriate intervals.

Whether the Director requires participation in research and reporting at fixed or variable intervals, the use of the term "appropriate intervals" in the Proposed Rule does not sufficiently inform applicants of their obligations.

5. Proposed Rule 4.05 which reads:
   4.05 Project Preferences - The Director, after consultation with the Advisory Committee, will approve all applications, taking into consideration the following program elements:....

The wording of the proposed rule implies that the Director will not disapprove any applications. Unless this is the intent of the proposed rule, the wording should be changed.

6. Proposed Rule 4.05.3 which reads:
   4.05.3 The understanding of the political and social conditions under which a medical practice is conducted.

This Proposed Rule is this context is inappropriate and unnecessary and the language should be deleted.

7. Proposed Rule 5.04 which reads:
   5.04 Each applicant shall be accountable to expend the funds solely for carrying out the approved project. Failure to show accountability will terminate further awards, and recoupment may be required after judicial hearing.

This provision does not meet the requirements contained in the Illinois Administrative Procedure Act concerning contested cases.

Date Agency Response Received: May 24, 1978

Nature of Agency Response: Refusal

The Joint Committee is recommending specific legislation in response to this rulemaking (see Recommended Bill Ten, pages 141 - 145).

Rules for Licensure of Home Health Agencies

Initial Publication in Illinois Register: January 20, 1978

Joint Committee Objection: February 21, 1978

Specific Objections:

1. Proposed Rule 2.0.

The Joint Committee objects to the following terms as defined in Proposed Rule 2.0: Administrator; Branch Office; Clinical Note; Home Health Aide; Plan of Treatment; Supervision. The definitions go beyond the intent of Public Act 80-804 in that they impose requirements upon home health agencies not contemplated by the Legislature.

2. Proposed Rule 6.05 which reads:
   6.05 Licensure Nontransferable
   1) Each license shall be issued only for the home health agency named in the application and shall not be transferred or assigned to any other person, agency or corporation.

   2) Sale, assignment, lease or other transfer, voluntary or involuntary, shall require relicensure by the new owner or person in interest prior to maintaining operating or conducting a home health agency.

Subparagraph 2) of Proposed Rule provides, in effect, for the automatic revocation of a license when control of the home health agency is transferred. Such a provision is not authorized by Section 9 of Public Act 80-804, which states the authority of the Department to revoke licenses.

3. Proposed Rule 6.04(3).

The Joint Committee objects to the requirement that approval of the Health Systems Agency be obtained for each annual license renewal.

4. Proposed 6.06(3)(c). (Note: The letter (c) appears to have been inadvertently omitted from the text of the Proposed Rule as published in the Illinois Register.)

This Proposed Rule exceeds the authority of the Department in that it purports to prescribe to the various health systems agencies the criteria they should use to approve a home health agency. Section 6 of Public Act 80-804 requires only that the health systems agency certify that the home health agency service is consistent with the health service plan of the health systems agency.

Date Agency Response Received: May 24, 1978

Nature of Agency Response: Refusal

The Joint Committee is recommending specific legislation in response to this rulemaking (see Recommended Bill Twelve, pages 151 - 158).

Rules Implementing the Choke Saving Methods Act

Initial Publication in Illinois Register: February 10, 1978

Joint Committee Objection: March 23, 1978

Specific Objections:

Proposed Rule 3 which reads:

Rule 3. Program Administration

The Illinois Department of Public Health, Division of Emergency Medical Services and Highway Safety is responsible for the program coordination on a statewide basis. The Illinois Department of Public Health designed placards which are available free of charge to food service establishments.

The Joint Committee objects to this proposed rule because Section 3.1 of the Choke-Saving Methods Act (Ill. Rev. Stat. 1977, ch. 56½, par. 603.1) requires the Department to distribute placards to food service establishments.

Date Agency Response Received: May 24, 1978

Nature of Agency Response: Refusal

The Joint Committee has adopted a resolution in response to this rulemaking urging appropriate action by the Department and scrutiny of the Department's appropriation by the appropriate committees of the General Assembly (see page 224).

Second Edition of Rule 9 of the Health Facilities Planning Board

Initial Publication in Illinois Register: February 3, 1978

Joint Committee Objection: March 23, 1978

Specific Objections:

Proposed Paragraph 9.03.06 reads:

9.03.06

"TIE Committees and Innovative Programs Committees," shall be committees appointed by the Chairman of the State Board. Each Committee shall consist of a minimum of two members of the State Board (one consumer, one provider) of which one shall be designated as the chairman of the committee, one agency staff member, one person representing the appropriate health care facility organization (e.g., related to hospitals), one consumer member of the Board of a recognized areawide health planning organization, one recognized areawide health planning organization staff member, and a minimum of two experts in the applicable field to which the TIE or Innovative Program relates. The Executive Secretary shall solicit the assistance or appropriate professional, scientific, and other sources to identify experts whom the Chairman can consider for appointment.

There shall be a TIE Committee for each type of equipment which is to be considered for a classification as TIE and an Innovative Program Committee for each type of program which is to be classified or considered for classification as an Innovative Program. The committee shall continue to function until the particular TIE or Innovative Program is declassified by the State Board.

The Joint Committee objects to this proposed paragraph as beyond the scope of the statute in that it is not conducive to the expressed purpose of the Illinois Health Facilities

Planning Act (Ill.Rev.Stat.1977,ch.111½,par.1152) to promote the establishment of an orderly and comprehensive health care delivery system which will guarantee the availability of quality health care to the general public. The Joint Committee is particularly disturbed by the absence of any provision in Paragraph 9.03.06 or elsewhere which would establish a time-frame for appointment of a TIE or Innovative Program Committee and the absence of any provision which would establish a time-frame for classification by such committees.

Date Agency Response Received: May 24, 1978

Nature of Agency Response: Refusal

Rule 4B.05 of the Health Facilities Planning Board

Initial Publication in Illinois Register: March 24, 1978

Joint Committee Objection: April 18, 1978

Specific Objections:

These proposed paragraphs would void and revoke, respectively, the "Rule 4B Exemption" established in Rule 4B.05. The Joint Committee believes the "Rule 4B Exemption" to be warranted by the constitutional prohibition against impairment of (existing) contracts rather than by any statutory authority.

The Joint Committee objects to these proposed paragraphs because they would authorize the impairment of contracts in violation of Article I, Section 10 of the United States Constitution and Article I, Section 16 of the Illinois Constitution of 1970.

Date Agency Response Received: May 24, 1978

Nature of Agency Response: Refusal

Grants to Illinois Medical Students Under the Family Practice Residency Act

Initial Publication in Illinois Register: June 16, 1978

Joint Committee Objection: July 26, 1978

Specific Objections:

1. Proposed Rule 9.04, which requires scholarship recipients to agree to one year of service for each year such financial assistance was received.

The Joint Committee objects to this proposed rule because Section 3.07 of the Family Practice Residency Act, Ill. Rev. Stat. 1977, ch. 144, par. 1453.07, defines an "eligible medical student" as one who "agrees to serve for three years as a primary care physician." However desirable the Department believes the policy expressed in the proposed Rule to be, it contrary to the express language of the Act.

2. Proposed Rule 10.01, which reads in part:

10.01 In the event the student fails to perform the terms...of his or her contract the student shall repay to the Department all monies spent by the Department for the student's medical studies...and an additional penalty sum equal to twice that amount.

The Joint Committee objects to this proposed rule because the Department has no statutory authority to impose a penalty for breach of contract, and such penalty is otherwise unenforceable.

Date Agency Response Received: August 10, 1978

Nature of Agency Response: Modified

The Joint Committee is recommending specific legislation in response to this rulemaking (see Recommended Bill Eleven, pages 147-150).

Hospital Licensing Requirements, Maternity and Newborn Services

Initial Publication in Illinois Register: August 25, 1978

Joint Committee Objection: September 18, 1978

Specific Objections:

Both Rule 4(15-2.4) and Rule 7(15-2.7) require hospitals to submit a service program plan ("Maternity and Neonatal", and "Combined Service", respectively) to the Department of Public Health for its approval. Neither rule includes or refers to standards for securing the approval of the Department for such plans.

The Joint Committee objects to these proposed amendments to Rule 4(15-2.4) and Rule 7(15-2.7) because these proposed amended rules fail to prescribe any standards for approval of plans subject to the rules, and are therefore unduly vague.

Date Agency Response Received: December 12, 1978

Nature of Agency Response: Modified

Rule 19.04.00: Alcoholism and Intoxication Treatment Programs

Initial Publication in Illinois Register: September 1, 1978

Joint Committee Objection: September 18, 1978

Specific Objections:

Proposed Rule 19.04.00 states that "The aftercare program shall have adequate staff." No standard by which the adequacy of an aftercare program's staff is to be judged by the Department is provided or referred to. No guidance is provided as to whether "adequate" refers to staff size, staff training, staff experience, or other criteria.

The Joint Committee objects to this proposed Rule 19.04.00 of the Rules and Regulations for Alcoholism and Intoxication Treatment Programs because the proposed rule fails to prescribe standards for determination by the Department of Public Health of the adequacy of alcoholism aftercare treatment staffs.

Date Agency Response Received: December 8, 1978

Nature of Agency Response: Modified

Mobile Intensive Care Program

Initial Publication in Illinois Register: October 20, 1978

Joint Committee Objection: November 14, 1978

Specific Objections:

Article IV, Rule 4.03(b)(10) of the proposed Mobile Intensive Care Program Rules and Regulations which states that the (ALS/MIC Program) proposal must include "(a) letter from the highest elected official from each governmental unit of the area involved must agree in writing to the ALS/MIC concept."

Article IV, Rule 4.05 of the proposed Mobile Intensive Care Program, Rule and Regulations, which states that

(t)he proposal must contain written commitments from each of the following individuals:

d) Medical Records Librarian

The Joint Committee objects to the proposed Mobile Intensive Care Program, Rules and Regulations, Article IV, Rules 4.03(b)(10) and 4.05(d) because they are unreasonable and arbitrary and exceed the Department's authority under the Pre-Hospital Emergency Medical Services Act.

Date Agency Response Received: December 7, 1978

Nature of Agency Response: Withdrawn

Licensure of Intermediate Care Facilities for the Developmentally Disabled

Initial Publication in Illinois Register: October 27, 1978

Joint Committee Objection: November 14, 1978

Specific Objections:

1. Division 42 - Policies, Rule 42.02.02.02 of proposed Minimum Standards, Rules and Regulations for the Licensure of Intermediate Care Facilities for the Developmentally Disabled which states "(a) written statement linking the facility's role to the state comprehensive program for the developmentally disabled."

The Joint Committee objects to the proposed Minimum Standards, Rules for the Licensure of Intermediate Care Facilities for the Developmentally Disabled because they condition licensure on adherence to rules not on file with the Secretary of State, in violation of Section 4(c) of the Illinois Administrative Procedure Act, Ill. Rev. Stat. 1977, ch. 127, par. 1001 et seq.

2. Division 57 - Special Standards for Intermediate Care Facilities for the Developmentally Disabled of Fifteen (15) Beds or Less, Sections 9, 10, 11, 14, 18, 19 and 20 of proposed Minimum Standards, Rules and Regulations for the Licensure of Intermediate Care Facilities for the Developmentally Disabled.

The Joint Committee objects to these proposed Sections because the Department's waiver procedures are not specified in Division 57 - Special Standards for Intermediate Care Facilities for the Developmentally Disabled of Fifteen (15) Beds or Less. Such procedures constitute "rules" as that term is defined in Section 3.09 of the Illinois Administrative Procedure Act, Ill.Rev.Stat.1977,ch.127,par.1001 et. seq., and the Department's failure to include them in these proposed Rules violates Section 4(c) of the Act.

Date Agency Response Received: Response Pending

Department of Registration and Education

Implementation of P.A. 80-236 (Grants to Public Museums)

Initial Publication in Illinois Register: February 24, 1978

Joint Committee Objection: March 23, 1978

Specific Objections:

The Joint Committee objects to these rules in their entirety because there is no statutory authority for rulemaking conferred upon the Department of Registration and Education for the purposes of Public Act 80-236.

Date Agency Response Received: May 12, 1978

Nature of Agency Response: Withdrawn

Rule XVII, Rental Finding Services

Initial Publication in Illinois Register: October 6, 1978

Joint Committee Objection: November 14, 1978

Specific Objections:

1. Section A of proposed Rule XVII which states, in part:

> Any person, association, co-partnership or corporation, who for compensation or valuable consideration, finds attempts to find, or offers to find, for any person, a unit of rental real estate, or who is engaged in the business of or activity involving the finding, attempting to find, or offering to find a unit of rental real estate, shall be considered to fall within the definition of the term "broker" under the Illinois Real Estate Brokers and Salesmen License Act, and engaging in such business or activity shall, therefore, require, pursuant to the Act, proper licensure before this business or activity shall be engaged in.

The Joint Committee objects to this proposed Section because it may be read to include an owner or manager of an apartment building, or the employees of a rental office of an apartment complex. The inclusion of such persons in the definition of "finder" goes beyond the intent of the General Assembly as expressed in the Real Estate Brokers and Salesmen License Act, Ill.Rev.Stat.1977,ch.111,par.5701 et seq, and is in violation of Section 6 of the Act.

2. Section D(8) of proposed Rule XVII which states:

> Pursuant to paragraph (c) (6) above, the following information for each rental unit shall be provided to the person with whom such contract is entered into:

8) Whether the rental unit is listed with the express authority of the owner or his agent;

The Joint Committee objects to this proposed Section because Sections 15(e)(5) and (16) of the Real Estate Brokers and Salesmen License Act, Ill. Rev.Stat. 1977, ch. 111, par. 5732(e)(5), (16), prohibits a broker from "(a)cting for more than one party in a transaction without the knowledge of all parties for whom he acts," and from "advertising that any property is...for rent in a newspaper or other publication without the consent of the owner or his authorized agent." As written, the proposed Rule appears to permit a finder to act without the permission of the owner.

Date Agency Response Received: December 13, 1978

Nature of Agency Response: Modified

Department of Revenue

Coin-Operated Amusement Device Tax Rules

Initial Publication in Illinois Register: February 24, 1978

Joint Committee Objection: March 23, 1978

Specific Objections:

1. Proposed Rule 2, Section 4, which reads in part:
A license may be issued for any fractional portion of a license year, but not less than a month. Even a fractional year will end on the ensuing July 31. A fractional license year cannot be issued for one or more months ending with some date other than July 31.

This proposed rule is confusing. If it is the Department's intent that any fractional year license expire on the July 31 following its issuance, it should be so stated. For example: "All fractional year licenses shall expire on the ensuing July 31."

2. Proposed Rule 2, Section 4.

If this proposed rule is not changed, as suggested in Objection 1, the phrase "fractional license year" in the last sentence of the section is apparently a typographical error and should be corrected to "fractional year license."

Date Agency Response Received: April 27, 1978

Nature of Agency Response: Withdrawn

The Joint Committee is recommending specific legislation in response to this rulemaking (see Recommended Bill Fifteen, pages 179 - 182).

Rule 1 Under the Bingo License and Tax Act

Initial Publication in Illinois Register: July 21, 1978

Joint Committee Objection: August 23, 1978

Specific Objections:

The proposed new language in Section C reads:

> "The Department may require a bond in such an amount as, in its opinion, will protect the State of Illinois against failure to pay the amount which may become due from the applicant, but the amount of the bond required by the Department shall not exceed $50.00 per day for each day of bingo."

Section B reads in part:

> "The Department may require an additional bond whenever the bond already posted does not cover the licensee's average quarterly tax liability."

The Joint Committee objects to this proposed amendment because in both of the cited sections, the rule fails to state agency policy regarding the basis on which the Department will exercise its discretionary power to set the amount of a limited bingo license bond and to require additional bonds for regular bingo licenses. This lack of standards for making these determinations fails to protect against arbitrary action by the Department. Section 4(c) of the Illinois Administrative Procedure Act requires that each agency statement of policy must be adopted pursuant to the Act to be effective or invoked by the agency.

Date Agency Response Received: September 18, 1978

Nature of Agency Response: Refusal

The Joint Committee is recommending specific legislation in response to this rulemaking (see Recommended Bill Thirteen, pages 159- 163).

Retailers Occupation Tax, County Fairs

Initial Publication in Illinois Register: August 11, 1978

Joint Committee Objection: September 18, 1978

Specific Objections:

Section 1 of Rule 49, which requires persons selling tangible personal property for use or consumption at the State Fair, County Fairs, art shows, flea markets "and the like" to make daily payment of the tax due to the Department.

The Joint Committee objects to this proposed amendment because nothing in the Retailers' Occupation Tax Act, Ill.Rev.Stat.1977,ch.120,par.440 et seq. authorizes the Department to collect the tax on a daily basis. Such a policy may be advisable, but the Department has only those powers delegated by the General Assembly, and the General Assembly has not granted, either expressly or by necessary implication, the power to collect such tax on a daily basis.

Date Agency Response Received: October 26, 1978

Nature of Agency Response: Refusal

The Joint Committee is recommending specific legislation in response to this rulemaking (see Recommended Bill Fourteen, pages 165-177).

Coin-Operated Amusement Device Tax Rules

Initial Publication in Illinois Register: September 8, 1978

Joint Committee Objection: October 19, 1978

Specific Objections:

The proposed change would bring Department rules into literal compliance with statutory language by establishing that the tax on coin operated amusement devices would be measured by the number of coin-receiving slots rather than the number of devices.

The Joint Committee objects to this proposed amendment to Rule 1 because this provision is, in the Joint Committee's opinion, impractical, unreasonable, and contrary to legislative intent.

Date Agency Response Received: November 3, 1978

Nature of Agency Response: Refusal

The Joint Committee is recommending specific legislation in response to this rulemaking (see Recommended Bill Fifteen, pages 179- 182).

Department of Transportation

Allocation of Financial Responsibility for Traffic Control Signals

Initial Publication in Illinois Register: May 5, 1978

Joint Committee Objection: June 16, 1978

Specific Objections:

Proposed Rule 13-3.5, agreements and permits, which deals with maintenance agreements between the Department and local agencies.

The Joint Committee objects to this proposed rule because the rule does not specify that such agreements may not purport to bind the State beyond the end of the fiscal year in which the agreement is signed, State Finance Act, Sections 25, 30, Ill.Rev.Stat.1977,ch.127,pars.161,166.

Date Agency Response Received: July 20, 1978

Nature of Agency Response: Modified

The Joint Committee is recommending specific legislation in response to this rulemaking (see Recommended Bill Sixteen, pages 183- 186).

Department of Veterans' Affairs

Scholarships for Military Dependents

Initial Publication in Illinois Register: September 1, 1978

Joint Committee Objection: September 18, 1978

Specific Objections:

Proposed Rule 16.12, which lists non-reimbursable fees under this scholarship program.

The Joint Committee objects to this proposed rule because Section 30-14.2 of the School Code, Ill. Rev.Stat. 1977, ch. 122, par. 30-14.2, provides that eligible students are entitled to payment of "mandatory fees." Since some of the fees listed in Proposed Rule 16.12 as non-reimbursable are, in fact, mandatory, the proposed rule is in direct conflict with the statute.

Date Agency Response Received: December 7, 1978

Nature of Agency Response: Modified

The Joint Committee is recommending specific legislation in response to this rulemaking (see Recommended Bill Seventeen, pages 187 - 191).

ELECTED OFFICIALS

Office of the Attorney General

Rules Regarding Issuance of Opinions

Initial Publication in Illinois Register: May 26, 1978

Joint Committee Objection: June 16, 1978

Specific Objections:

Section 5 of "An Act in regard to attorneys general and state's attorneys" (Ch. 14, par. 5, Ill. Rev. Stats.) authorizes the Attorney General to issue legal opinions in certain cases. These proposed rules are intended to state the Attorney General to issue legal opinions in certain cases. These proposed rules are intended to state the Attorney General's policies, and procedural and form requirements, relative to requesting such opinions. Neither the cited Act, nor any other Act, case law, Constitutional power or provision expressly empowers the Attorney General to issue such rules.

The Joint Committee objects to this proposed rulemaking because it is beyond the scope of the Attorney General's statutory or other authority to promulgate and enforce rules in connection with issuance of legal opinions.

Date Agency Response Received: September 20, 1978

Nature of Agency Response: Refusal

The Joint Committee is recommending specific legislation in response to this rulemaking (see Recommended Bill Eighteen, pages 193 - 197).

Office of the Secretary of State

Rules under the Business Take-Over Act

Initial Publication in Illinois Register: September 29, 1978

Joint Committee Objection: October 19, 1978

Specific Objections:

The final paragraph of proposed Rule 202, definition of the term "initial public disclosure of the intent to make a take-over offer" as used in Section 4.B. and in Section 5 of the Act. The final paragraph states:

> The Secretary may permit the omission of any of the above information or the inclusion of additional information in a public disclosure.

The Joint Committee objects to this proposed rule because it lacks adequate standards to govern the exercise of the Secretary's discretion with regard to permitting the omission or requiring the inclusion of information. The policy of the Office of the Secretary of State in this area constitutes a "rule" as that term is defined in the Illinois Administrative Procedure Act. Under Section 4(c) of the Act, Ill. Rev. Stat. 1977, ch. 127, par. 1004(c), "(n)o agency rule is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been made available for public inspection and filed with the Secretary of State as required by this Act."

Date Agency Response Received: November 5, 1978

Nature of Agency Response: Modified

OTHER AGENCIES

Capital Development Board

Accessibility Standards Illustrated

Initial Publication in Illinois Register: September 8, 1978

Joint Committee Objection: October 19, 1978

Specific Objections:

1. The terms "Apartment" and "Apartment Building" as defined in Section 1.1.3 of the proposed Standards and wherever used in the proposed Standards as including privately owned residential structures. This objection includes, but is not limited to, the use of those terms in Section 16.1, Residential Structures.

The Joint Committee objects to these proposed Sections because the definition of "Public building" in Section 2 of the Facilities for the Handicapped Act, Ill. Rev. Stat. 1977, ch. 111½, par. 3702, cannot reasonably be construed to include privately owned residential structures, nor was it the intent of the General Assembly to include such structures within the scope of the Act. The Capital Development Board has no authority to adopt rules applicable to such buildings.

2. Section 8.1.7 of the proposed Standards, which requires all employee toilet facilities to be accessible.

The Joint Committee objects to this proposed Section because Section 4 of the Facilities for the Handicapped Act, Ill. Rev. Stat. 1977, ch. 111½, par. 3704, expressly requires that the Standards "shall not require facilities for the handicapped in portions of public buildings which are not open to or used by the general public." To the extent that employee toilet facilities are not open to or used by the general public, the Board has no authority to adopt standards applicable to such facilities.

3. Section 16.4, Health Facilities, of the proposed Standards, which states in Section 16.4.1 that "(a)ll spaces used by visitors and staff shall meet the requiements of this standard."

The Joint Committee objects to this proposed Section because, to the extent that portions of the health facility are not open to or used by the general public, the Board has no authority to adopt standards applicable to such facilities.

4. Section 17.1, Remodeling, of the proposed Standards, which makes these Standards applicable to the remodeling of all public buildings.

The Joint Committee objects to this proposed Section because under Sections 5 and 6 of the Facilities for the Handicapped Act, Ill.Rev.Stat.1977,ch.111½,pars.3705,3706, the Standards may apply to the remodeling of public buildings only when such remodeling is done by "the State or any political subdivision, governmental entity or public authority." The Board has no authority to adopt rules governing the remodeling of all public buildings.

Date Agency Response Received: December 22, 1978

Nature of Agency Response: Refusal

The Joint Committee has adopted a resolution in response to this rulemaking urging appropriate action by the Board, the Attorney General and the Appropriations Committees of the General Assembly. (see pages 218-219).

Commerce Commission

General Order 153, Motor Bus Carriers

Initial Publication in Illinois Register: May 26, 1978

Joint Committee Objection: June 16, 1978

Specific Objections:

Proposed Section 3D, which reads:

Baggage Liability:
Carrier may not totally exempt its liability for any article offered as check baggage, except for certain articles which list shall be prominently posted and shall be articles approved by the Illinois Commerce Commission as exempt from carrier liability.

The Joint Committee objects to this proposed rule because it does not set forth any of the criteria which the Commission will use to approve exemptions from liability.

Date Agency Response Received: August 31, 1978

Nature of Agency Response: Modified

General Order 172: Procedures for Utilities

Initial Publication in Illinois Register: October 13, 1978

Joint Committee Objection: November 14, 1978

Specific Objections:

Rule 9 of General Order 172 which gives two dates on which a utility may consider a payment past due as follows:

1) "payment is received at the utilities' office not more than two full business days after the due date printed on the bill the customer shall be deemed to have made a timely payment."

2) "(i)n determining whether a bill is past due, a utility may rely on the postmark of the payment, in which case, the payment shall be considered past due if the payment is postmarked after the due date printed on the bill."

In fact, it is the Commission's policy that a utility must elect to use one date or the other. The proposed rule does not state this policy.

The Joint Committee objects to this proposed rule because it does not state the Commission's policy as to when a utility may consider a payment past due. The policy of the Commission in this area constitutes a "rule" as that term is defined in the Illinois Administrative Procedure Act. Under Section 4(c) of the Act, Ill. Rev. Stat. 1977, ch. 127, par. 1004(c), "(n)o agency rule is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been made available for public inspection and filed with the Secretary of State as required by this Act.

Date Agency Response Received: January 2, 1979

Nature of Agency Response: Modified

Safety Standards for Transportation of Gas and Pipeline Facilities

Initial Publication in Illinois Register: October 6, 1978

Joint Committee Objection: November 14, 1978

Specific Objections:

Sections 192.13 and 192.619 to the extent that they refer to offshore pipeline.

The Joint Committee objects to these proposed Sections because references to offshore pipeline are unnecessary and inappropriate as applied to gas pipeline in Illinois. There are currently no offshore lines in this state; and "offshore pipeline" as defined in the federal regulations, which the Commission has adopted in toto, would not include underwater pipeline in Illinois.

Date Agency Response Received: Response Pending

Dangerous Drugs Commission

Rules for Drug Abuse Programs

Initial Publication in Illinois Register: October 27, 1978

Joint Committee Objection: November 14, 1978

Specific Objections:

1. Proposed Rule 2.01 defines, in part, an addict as "any individual who habitually uses certain mind-altering substances or intoxicants to the point of having developed a physical and/or psychological dependence on them", and addiction as a "physical and/or psychological dependence upon a drug." Sec. 3 of the Dangerous Drugs Abuse Act, Ill. Rev. Stat. 1977, ch. 91½, par. 120.3-3 - 120.3-4 defines addict and addiction, in part, as "habitually using a controlled substance."

The Joint Committee objects to this proposed Rule 2.01 defining addict and addiction because it does not conform with the statutory definition of addict and addiction.

2. Proposed Rule 42.04 which reads, in part:

42.04 Intake protocol

At intake initial personal, medical, and drug histories must be taken by appropriately trained and experienced intake coordinators or medical practitioners.

The Commission was asked to specify the standards used in determination of what is meant by appropriately trained and experienced. The Commission responded that it was determined on a case by case basis because of the uniqueness of each drug abuse program.

The Joint Committee objects to this proposed amendment because it lacks adequate standards to govern the Commission's exercise of discretion with regard to approval of drug abuse programs. The policy of the Commission in this area constitutes a "rule" as that term is defined in the Illinois Administrative Procedure Act. Under Section 4(c) of the Act, Ill. Rev. Stat. 1977, ch. 127, par. 1004(c), "(n)o agency rule is valid or effective against any person or party, nor may it be invoked by the agency for any purpose until it has been made available for public inspection and filed with the Secretary of State as required by this Act."

Date Agency Response Received: Response Pending

State Board of Elections

Certification of Proposed Constitutional Amendments and Policy Referenda

Initial Publication in Illinois Register: June 23, 1978

Joint Committee Objection: July 25, 1978

Specific Objections:

1. Section 3 of proposed Rule 8-1, which reads:

"3. There shall be no limit on the number of proposed amendments to the Illinois Constitution submitted to the electorate at the same election."

The Joint Committee objects to this proposed Section because Article XIV, Section 2(c) of the Illinois Constitution expressly limits the number of amendments that may be submitted at an election. Although this limitation is mentioned elsewhere in the proposed Rule, the statement in Section 3 is inaccurate and misleading.

2. Section 4 of proposed Rule 8-1, which reads:

"4. The State Board of Elections shall not certify more than three questions of public policy initiated by petition for the same election. All remaining questions of public policy shall be certified and submitted to the voters at the next succeeding general election."

The Joint Committee objects to this proposed Section because Section 28-1 of the Election Code, Ill. Rev. Stat. 1977, ch. 46, par. 28-1, requires the Board to submit questions of public policy "at any general, special or primary election named in the petition." Where more than three petitions presenting such questions are filed, the Board has no authority to submit the questions at succeeding elections not named in the petition.

Date Agency Response Received: August 23, 1978

Nature of Agency Response: Modified

Environmental Protection Agency

Criteria for Siting Sanitary Landfills in Marginal Areas

Initial Publication in Illinois Register: July 7, 1978

Joint Committee Objection: July 25, 1978

Specific Objections:

The Joint Committee objects to this proposed set of criteria because the agency lacks statutory authority for making such rules. The agency has the statutory authority with respect to permitting sanitary landfills under the Environmental Protection Act to "adopt such procedures as are necessary to carry out its duties udner this section" and to "impose such conditions as may be necessary to accomplish the purposes of this Act and as are not inconsistent with the regulations promulgated by the (Pollution Control) Board hereunder." (Il.Rev.Stats.1977,ch.111½,par.1039(2)). However, these criteria are broad standards, excluding a general type of area from consideration for permits for sanitary landfills, and more properly belong under the Pollution Control Board's authority to set general "standards" (par. 1022) than under the Agency's more limited authority to establish "procedures" and "conditions" within the Board's standards. The Environmental Protection Agency is, therefore, exceeding its statutory authority in proposing these rules.

Date Agency Response Received: October 25, 1978

Nature of Agency Response: Withdrawn

Technical Policy Statement, Public Water Supplies

Initial Publication in Illinois Register: July 21, 1978

Joint Committee Objection: August 23, 1978

Specific Objections:

The Joint Committee objects to these proposed amendments because the Agency lacks the statutory authority to adopt regulations governing the location, design, construction, operation and maintenance of public water supply installations. Such authority has been delegated by the General Assembly to the Pollution Control Board, and the Board, an entity completely separate and distinct from the Agency, has no authority to redelegate its powers to another state agency.

Date Agency Response Received: November 22, 1978

Nature of Agency Response: Refusal

Board of Ethics

Rule 8: Undue Hardship

Initial Publication in Illinois Register: June 9, 1978

Joint Committee Objection: July 25, 1978

Specific Objections:

The first paragraph of Rule 8, reads in part:

"In the event the Board determines that the objection is not frivolous, the statement of the included person will not be required to disclose information with respect to the objecting spouse or immediate family members..."

The Joint Committee objects to this proposed New Rule 8 because the determination to be made by the Board under this rule, namely the non-frivolity of the request, is inconsistent with the authorizing law cited by the Board. Executive Order No. 3 (1977), paragraph 6, clearly requires the Board to make such determinations on the basis of undue hardship. Further, the Board has failed to provide in the rule meaningful standards or criteria for making the determination of the absence or presence of undue hardship.

Date Agency Response Received: August 7, 1978

Nature of Agency Response: Modified

Governor's Office of Manpower and Human Development

Rules for the Office of Consumer Services

Initial Publication in Illinois Register: May 26, 1978

Joint Committee Objection: June 16, 1978

Specific Objections:

> Executive Order Number 3-1976, which created GOMHD and set forth its duties and responsibilities, cannot reasonably be construed to authorize the agency to administer the program described in the proposed rules. The Executive Order clearly relates only to the problems of unemployment and underemployment, and the need for coordination among agencies to find solutions to those problems. The proposed rules, however, deal with a program which has very little, if any, connection with those problems.

Date Agency Response Received: July 18, 1978

Nature of Agency Response: Refusal

The Joint Committee had adopted a resolution in response to this rulemaking urging appropriate action by the Office, and the Appropriations Committees of the General Assembly (see pages 220 - 221).

Amendments to Rules for the Office of Consumer Services

Initial Publication in Illinois Register: August 4, 1978

Joint Committee Objection: August 23, 1978

Specific Objections:

> This rulemaking is an amendment to rules originally proposed by GOMHD in May, 1978, and objected to by the Joint Committee at its June 16, 1978, meeting. The basis for the earlier objection remains and is applicable to this proposed rulemaking; i.e., Executive Order Number 3-1976, which created GOMHD, does not authorize the agency to administer the program that the proposed rules, including this proposed amendment, implement.

Date Agency Response Received: September 21, 1978

Nature of Agency Response: Refusal

The Joint Committee has adopted a resolution in response to this rulemaking urging appropriate action by the Office and the Appropriations Committees of the General Assembly (see pages 220 - 221).

Law Enforcement Commission

Financial Guidelines

Initial Publication in Illinois Register: March 10, 1978

Joint Committee Objection: April 18, 1978

Specific Objections:

Proposed Chapter I, Rule 4, prescribes the standards and objectives of "Audit Coverage" pertaining to the review and evaluation of financial practices of grantees receiving financial assistance from the Commission. It contains no provision, however, providing for the imposition by the Commission of any sanction or limitation upon grantees discovered to be in violation of such standards or objectives.

The Joint Committee objects to this proposed Rule 4 of Chapter I because it fails to contain sufficient safeguards against irregularities in financial practices of grantees.

Date Agency Response Received: June 28, 1978

Nature of Agency Response: Modified

Law Enforcement Merit Board

Rules, Regulations and Procedures

Initial Publication in Illinois Register: June 23, 1978

Joint Committee Objection: July 26, 1978

Specific Objections:

The Joint Committee objects to these proposed Rules, Regulations and Procedures for two reasons. First, these rules were proposed under the title "Department of Law Enforcement Merit Board", while the current statutory title is "State Police Merit Board". Although the Board was given jurisdiction over the former Illinois Bureau of Investigation officers during the 1977 reorganization, the title of the Board was not changed in statute. Thus, under the title used by the Board, the Board does not have statutory authority for proposing these rules.

The Joint Committee also objects to these proposed rules on the basis of two provisions which are unnecessarily vague and could deprive candidates and officers of equal treatment. The first is the use of the vague phrase "background investigation as prescribed by the Board" in Section 2-1, paragraph (h). The Board has failed to provide the specific background information which will be

considered or the criteria on which such information will be delineated. The rules also make no provision for maintaining the confidentiality of information obtained during such investigations. This lack of clarity and adequate procedural safegrounds could result in serious violations of applicants' rights.

The other provision which is unnecessarily vague and could result in violations of officers' rights relates to promotional competitions. The proposed rules provide that the Board can set "the percentage weight to be applied to each promotional factor" (Section 4-3, paragraph (c)), but fails to provide the criteria to be used by the Board in setting such weightings. The provision also fails to ensure uniformity in weightings between competitions and thus could result in unequal treatment of officers for promotion.

Date Agency Response Received: August 15, 1978

Nature of Agency Response: Withdrawn

Rules of the Merit Board (Redrafted)

Initial Publication in Illinois Register: October 27, 1978

Joint Committee Objection: November 14, 1978

Specific Objections:

1. Proposed Section 3-1 which includes "Deputy Superintendent" and "Special Agent VII" under ranks of sworn officers should not include these "special assignments" as they do not affect the individual's rank according to section 3-2.

The Joint Committee objects to this proposed section because it is in violation of the Board's statutory authority in regard to "rank" as set forth in Section 8 of "An Act in Relation to the State Police", Ill. Rev. Stat. 1977, ch. 121, par. 307.8.

2. Proposed Section 4-3, paragraph (e), which states, in part, "(t)he Board shall specify in the promotional announcement each of the factors to be included in the promotional process and the weight to be applied to each factor and considering the number of vacancies projected, indicate the percentage of those eligible in each rank that will be certified."

The Joint Committee objects to this proposed section because Proposed Section 4-3, paragraph (3) fails to set forth adequate standards to govern the Department's exercise of discretion with regard to the criteria the Board will use in establishing the "weight" to be applied to each promotional factor.

The policy of the Department of Law Enforcement Merit Board in this area constitutes a "rule" as that term is defined in the Illinois Administrative Procedure Act under Section 4(c) of the Act, Ill. Rev. Stat. 1977, ch. 127, par. 1004(c), "(n)o agency rule is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been made available for public inspection and filed with the Secretary of State as required by this Act."

Date Agency Response Received: Response Pending

Pollution Control Board

Rule 204: Sulfur Dioxide Emissions

Initial Publication in Illinois Register: June 16, 1978

Joint Committee Objection: July 26, 1978

Specific Objections:

The proposed amendments to Rule 204(c)(1)(B)(i) and (ii) prohibit the emission of Sulfur Dioxide (SO^2) from a solid-fuel burning source outside the Chicago, St. Louis and Peoria Major Metropolitan Areas (MMA's) in Illinois to exceed 6.8 pounds of SO^2 per million BTU of actual heat input "and the emission limit provide by Rule 204(e)".

The Joint Committee objects to this proposed amendment to Rule 204 because it is extremely vague and confusing, as it fails to clearly specify the relationship between the two types of limitations imposed upon SO^2 emissions.

Date Agency Response Received: No Response

Nature of Agency Response: Withdrawn by Law

Prisoner Review Board

Proposed Rules

Initial Publication in Illinois Register: September 22, 1978

Joint Committee Objection: October 19, 1978

Specific Objections:

1. The notice of proposed rulemaking published in the Illinois Register, Volume 2, Issue 38.

The Joint Committee objects to this proposed rulemaking because the notice did not meet the requirements of the Illinois Administrative Procedure Act, Ill.Rev.Stat.1977,ch.127,par.1001 et seq. Section 5(a)1 of the IAPA requires each agency prior to the adoption of any rule, to publish a notice of proposed rulemaking containing, inter alia, "the time, place and manner in which interested persons may present their views and comments concerning the intended action." The notice did not contain this information, and, pursuant to Section 5(c) of the IAPA, Board action to adopt these rules would be invalid.

2. Section II D of the proposed rules which states:

> Youth committed under the Juvenile Court Act are first eligible for parole at the discretion of the superintendent of their facility.

The Joint Committee objects to this proposed section because it conflicts with Section 3-3-3(e) of the Unified Correction Code, Ill.Rev.Stat.1977,ch.38,par.1003-3-3(e), which provides that every person committed to the Juvenile Division "shall be eligible for parole without regard to the length of time the person has been confined or whether the person has served any minimum term imposed." The Board has no authority to adopt such a rule.

Date Agency Response Received: Response Pending

Racing Board

Re-numbering Harness and Thoroughbred Rules

Initial Publication in Illinois Register: October 13, 1978

Joint Committee Objection: November 14, 1978

Specific Objections:

Rule B2.04 Time of Filing:

This rule establishes the deadline for filing applications for concessionaire's license. The last paragraph states "(t)he Board may, in its discretion, upon good cause shown receive applications for an occupational license to operate as a concessionaire at a date subsequent to the dates specified in this rule."

The Joint Committee objects to this proposed rule because it does not reflect the Board's actual policy, as the Board has yet to refuse to consider an application because it was filed after the deadline.

Date Agency Response Received: Response Pending

State Scholarship Commission

Proposed Regulations

Initial Publication in Illinois Register: June 30, 1978

Joint Committee Objection: July 26, 1978

Specific Objections:

1. Proposed Rule 1.13, which sets as a goal fixed quotas for advisory committee membership based on race and sex.

The Joint Committee objects to this proposed rule because the Commission is mandated by law to exercise its powers without regard to race or sex.

2. Proposed Rule 4.08, which states:

"Rule 4.08 Educational institutions shall be approved as lenders in IGLP if approved by the Office of Education and if they meet other specific criteria."

The Joint Committee objects to this proposed rule because the criteria referred to constitute rules as defined in the Illinois Administrative Procedure Act and should be adopted pursuant to that Act.

3. Proposed Rule 4.74, which states:

"Rule 4.74 IDAPP will purchase loans only from those Lenders who have no inappropriate relationships with the educational institutions certifying the loan."

The Joint Committee objects to this proposed rule because it does not contain the Commission's policy as to what it will consider to be an "inappropriate relationship".

Date Agency Response Received: October 30, 1978

Nature of Agency Response: Modified

Board of Vocational Rehabilitation

Proposed Rule 00004

Initial Publication in Illinois Register: May 26, 1978

Joint Committee Objection: June 16, 1978

Specific Objections:

> This proposed rulemaking has been taken without express statutory authority to make rules. It is the policy of the Joint Committee at this time that an agency must have express authority from the legislature to make rules.
>
> The Joint Committee objects to this proposed Rule 00004 because the Board of Vocational Rehabilitation is presently without express authority to make rules.

Date Agency Response Received: August 14, 1978

Nature of Agency Response: Refusal

The Joint Committee is recommending specific legislation in response to this rulemaking (see Recommended Bill Twenty-Two, pages 213 - 216).

PROCEDURAL LEGISLATION

In reviewing proposed rulemaking actions of state agencies, the Joint Committee encountered a number of procedural problems which necessitated amendments to the Administrative Procedure Act. Some of these problems were of a transitional nature and can probably be resolved simply as more experience is gained both by administrative agencies and the Joint Committee in handling provisions of the Act.

Some of the minor procedural difficulties were corrected in House Bill 15 (Public Act 80-1457) such as the requirement for compilations of agency rules in Section 7(a), the need for a uniform codification system, and the quorum requirement for Joint Committee hearings. These relatively minor procedural changes were incorporated with the revisions in the definition of agency and exemptions for certain university procedures into House Bill 15, which is included in this report as Appendix D. Some of these procedural changes, particularly the development of a uniform codification system by the Secretary of State, should result in substantial improvements in the rulemaking process.

Two major procedural difficulties became obvious to the Joint Committee: (1) rules were being proposed in a very tentative form and since the Joint Committee hearing on proposed rules often take places before the end of the public comment period, the Joint Committee was often forced to review proposed drafts of rules with no assurance of the final form of the rules; and (2) even after review by the Joint Committee, agencies could make substantial changes to the rules, effectively escaping Joint Committee review entirely. To address these procedural deficiencies of the rulemaking process, the Joint Committee proposed changes that were embodied in House Bill 16. These changes would have separated the public comment period from the Joint Committee review by creating a second 45-day notice period reserved for review by the Joint Committee of proposed rulemaking actions. House Bill 16 would also have prohibited agencies from making additional changes after the Joint Committee review except in response to specific suggestions or objections raised by the Joint Committee. These major changes as well as the other minor changes included in House Bill 16, would have corrected the perceived deficiencies and insured a strong and effective legislative role in the review process.

The General Assembly passed House Bill 16, but it was ammendatorily vetoed by the Governor. The suggested changes in the amendatory veto message eliminated several of the key elements of the legislation and the members of the Joint Committee felt that the suggested changes were unacceptable to accomplish their purposes. After extensive discussions with representatives of the Governor, the Joint Committee agreed to let House Bill 16 die and to work with the Governor's office in developing legislation that would be mutually acceptable and could be introduced on an emergency basis in 1979. This legislation is currently under development and should be formally recommended by the Joint Committee and introduced early in the 1979 session of the General Assembly.

The Joint Committee is continuing to seek methods to insure the strong and effective involvement of the legislature in rulemaking while maintaining the integrity of both the administrative rulemaking process and the proper legislative role of lawmaking.

IMPLEMENTATION OF EXISTING RULES REVIEW

Under the Illinois Administrative Procedure Act, the Joint Committee is authorized to examine any existing rule (Section 7.07) and is also mandated to conduct a systematic evaluation of all state agency rules by subject area on a five-year basis (Section 7.08). Both of these sections impose wide-ranging and substantial responsibilities on the Joint Committee. In setting its initial implementation priorities, the Joint Committee recognized the necessity of careful planning in approaching these tasks and determined that more effective utilization of resources could be accomplished by concentration during 1978 on the review of proposed rulemaking, instead of beginning reviews of existing rules under either of these authorizations. The Joint Committee has thus done little actual review of existing rules during 1978, but has begun the extensive planning process which was considered essential to the proper implementation of these sections.

From the initial planning accomplished to date, it appears that the Joint Committee will implement during 1979 two programs involving review of existing rules. The first of these programs will be the mandated five-year periodic evaluation program. The second program involving review of existing rules will be reviews based on specific complaints by individuals or groups affected by agency rules. Although the Joint Committee is authorized by Section 7.07 to "examine any rules for the purpose of determining whether the rule is within the statutory authority upon which it is based, and whether the rule is in proper form," it appears that the Joint Committee will limit its use of this authority initially to situations in which the public complains about an agency's rules. The Joint Committee believes that this will be the most effective way to utilize its staff resources and concentrate on rules with broad public effects. Based on such complaints, the Joint Committee will review such rules to determine whether they are within the statutory authority of the agency.

During the planning process for the implementation of these programs, the staff of the Joint Committee has actively sought a wide range of input. The staff members assigned to the Compliance and Monitoring Section have conducted investigations of several other states, particularly Florida, in which the state legislature has initiated a program of legislative review of existing state agency

rules. Although most state programs concentrate on the review of newly proposed rulemaking, the Florida experience and the experiences of several other states have provided valuable information for designing an effective review program for the Joint Committee.

The planning process has also involved seeking input from the academic community, private groups, other legislative agencies, and state administrative personnel. A series of roundtable discussions focusing on issues of particular concern to these various groups has provided detailed information on effective methods and approaches for the Joint Committee. Among the basic issues this planning project has sought to answer are the following questions which formed the basis for this information-gathering process:

I. Basic Threshhold Policy Issues

1. What should be the proper scope of JCAR's reviews of existing administrative rules? Should they be solely concerned with compliance of rules with statutory authority and legal provisions or also investigate actual agency operations for compliance with rules or utilization of unstated policies?

2. What should be the relationship between JCAR's reviews of rules and fiscal oversight functions of the legislature?

3. What changes might result in administrative law doctrines as a result of initiation of legislative review of administrative rules, particularly concerning issues such as inherent rulemaking authority of agencies and subdelegation of rulemaking authority?

4. What constraints will affect the extent of JCAR's review of existing administrative rules? What, for example, is the effect on JCAR's power of the doctrine of separation of powers, the concept of statutory mandates and legislative intent, and conflicts in the law authorizing an administrative agency?

5. What should the JCAR's basic philosophy of rules review include? Should the JCAR substitute its substantive opinions for those of the agency or refrain from such substitution? Should the JCAR be as restrictive in its scope as courts?

II. Initiation Issues

1. What degree of cooperation can be expected from administrative agencies during reviews of an agency's rules? What types of problems will be encountered by agencies in dealing with a review of their rules and how can these problems be minimized?

2. What types of problems might result for agencies in responding to and implementing recommendations resulting from review of their rules?

3. What kind of on-going interaction and exchange should be maintained with an agency during a review of the agency's rules? How can the proper type and degree of interaction be formalized?

4. Can problems regarding confidentiality of certain agency information be anticipated? How can these problems be dealt with?

5. Since the JCAR is mandated to review existing rules on a subject area basis (IAPA, Sec. 7.08a), how can rules concerning each subject be located and grouped? How well will operating units within agencies correspond to these subject classifications?

6. Could subject areas by effectively grouped in devising a timeframe or should each be scheduled individually?

7. What interaction can be anticipated and would be appropriate with special private interest groups concerned about an agency's operations during the review process? How should the interaction differ in the periodic review program and in the special complaint reviews?

8. How and at what point in the review process should expert advice on particular technical issues be obtained?

9. What kind and degree of field investigation will be required of JCAR staff during reviews of administrative rules? What degree of independence from agency information should the JCAR maintain in ascertaining facts relevant to the evaluation of agency rules? What sources of information should be utilized?

10. What particular kind of expertise will be needed for JCAR staff in these existing rules review programs? What types of training will be necessary?

11. Should a team approach be utilized on the periodic review program or would an expertise or subject area allocation be more effective? How will JCAR staff configurations influence interaction with agencies during the review process?

III. Priority and Policy Issues

1. What should be the comparative scope of the periodic review program as opposed to the special reviews? Should both programs be equally broad, or should the special reviews be restricted to exclude field investigations?

2. How can priorities between the periodic review program and special reviews be established and maintained?

3. What priorities should be established regarding procedural or structural recommendations (IAPA, Sec. 7.08b)? How can procedural or structural recommendations be presented to agencies effectively?

4. How should the bulk and nature of recommendations from the period review process differ from special reviews?

IV. Operational Issues

1. How should frivolous complaints regarding agency rules be handled? Should a formal complaint procedure be established to insure uniformity in consideration of complaints? On the basis of what criteria should complaints be evaluated as a basis for initiating special reviews?

2. How should statutory inconsistencies and conflicts in the law be handled during reviews of rules based on the statute or law?

3. How can the economic impact of rules be effectively measured? What economic models should be utilized in this process? How can other impacts of rules be measured and evaluated? What program evaluation techniques be appropriate in specific instances?

4. How should interagency conflict be dealt with during reviews involving more than one agency? How should interunit conflict within an agency be dealt with? Should the rules review process deal with only central agency personnel?

5. When will public hearings be appropriate during reviews of an agency's rules? How should such public hearings be conducted and the resulting input utilized in the review process?

6. What policy should govern the issuance of subpoenas during the course of a review?

7. How can agency reaction to recommendations be systematically collected and presented to the Joint Committee? Would written responses or oral testimony be most appropriate?

8. What cooperation with other legislative agencies would be useful to the rules review process?

The Joint Committee staff has collected a wide range of input on these comprehensive issues and is currently developing a summary and proposal to be presented to the Joint Committee for implementation of the existing rules review programs. It is anticipated that the five-year periodic evaluation program will be

operational by July 1979, following adoption by the Joint Committee of policies and procedures for the program and the schedule of subject areas and agencies mandated under Section 7.08(a) of the Administrative Procedure Act.

A number of complaints concerning specific agency rules have been received by the Joint Committee during 1978. Although the Joint Committee will probably not initiate a comprehensive program for handling such complaints until the spring of 1979, the Joint Committee staff has conducted some spot checks of rules and initiated inquiries to obtain information necessary to provide some preliminary answers to these complaints during 1978. Approximately thirty such brief reviews based on public complaints have been conducted during the year on a wide range of issues involving the effect on the public and the legal authority of agency rules.

Although the proper implementation of these existing rules review programs is one of the most difficult problems the Joint Committee is currently facing, the Joint Committee believes that this is one of its key duties in insuring the proper development of rules over time. It provides for the type of broad and comprehensive review which has the potential of raising the Joint Committee's impact on rulemaking from the purely procedural level to having a direct impact on the substantive policy embodied in agency rules. The proper implementation of the five-year evaluation program has the potential of recommending substantial reductions in the number of overlapping and conflicting rules, streamlining rules for easier access and understanding by the public, and suggesting procedural and organizational changes to improve the quality of the rulemaking process in Illinois. These are among the basic goals of the Administrative Procedure Act and the creation of the Joint Committee.

COMPLIANCE ACTIVITIES

Monitoring compliance of state agencies with the requirements of the Administrative Procedure Act has been a concern of the Joint Committee. The Joint Committee has worked closely with the Office of the Secretary of State in developing procedures for rulemaking and insuring that agencies are properly filing and publishing proposed and adopted rulemakings.

General compliance activities have included memos to all state agencies concerning the requirements of the Administrative Procedure Act, and changes in the Act. The Joint Committee staff has met with numerous agencies to discuss how the agency can more effectively accomplish the goals of the Act as well as informing them of the procedural requirements.

Two specific instances of compliance activities should be discussed in some detail. These involve the state universities and the Northeastern Illinois Planning Commission.

State Universities

The Board of Trustees of the University of Illinois contended after passage of the changes in House Bill 14 (Public Act 80-1035) amending the Administrative Procedure Act that state universities were not covered by the Act. The arguments of the Board centered on the definition of "agency" in Section 3.01 of the Act. The Joint Committee discussed this issue extensively with the Board and other state universities. The Joint Committee requested an Attorney General's opinion on the question. The Attorney General issued his opinion on June 29, 1978, finding that the Board was covered by the definition of agency in the Administrative Procedure Act and was thus subject to the provisions of the Act. The opinion is included as Appendix E in this report.

Recognizing the difficulties of the various state universities in complying with some of the requirements of the Administrative Procedure Act in specific circumstances, the Joint Committee supported legislation to specifically exempt some types of proceedings from the requirements of the Act. These exemptions were primarily designed to alleviate difficulties with the hearing requirements of the Act, although some of the exemptions also relate to the rulemaking require-

ments. The specific amendatory language which was passed as part of House Bill 15 (Public Act 80-1457) exempted "as to State colleges and universities, their disciplinary and grievance proceedings, academic irregularity and capricious grading proceedings, and admission standards and procedures." The language of the definition of agency was also amended in House Bill 15 for clarification. House Bill 15 as enacted is included as Appendix D in this report.

Northeastern Illinois Planning Commission

As a result of a request by Mayor Nicholas B. Blase of Niles, Illinois, the Joint Committee initiated an inquiry to determine whether the Northeastern Illinois Planning Commission was subject to the requirements of the Administrative Procedure Act. The Joint Committee believes that the commission is covered by the definition of agency in Section 3.01 of the Act and is therefore subject to the requirements of the Act. The commission has opposed this position, arguing that the advisory nature of the commission's functions and the lack of legal precedent classifying the commission as a state agency indicates that the commission would not be considered an agency under the Administrative Procedure Act. The commission therefore does not believe it is subject to the requirements of the Act.

The Joint Committee requested an Attorney General's opinion on this issue. No formal opinion was issued but a letter from the Office of the Attorney General to Chairman Yourell of the Joint Committee, dated September 27, 1978, indicated that the office does not consider the commission to be subject to the Administrative Procedure Act. The Joint Committee has renewed the request for an official opinion from the Attorney General and raised the further question of whether the amended definition of agency included in House Bill 15 (Public Act 80-1457) would change the status of the commisison under the Act. The language of this amended definition is included in Appendix D of this report.

At the October 1978, hearing of the Joint Committee, representatives of the commission and the members of the Joint Committee discussed the issue of the coverage of the commission under the Administrative Procedure Act in some detail. The discussion at the hearing also concerned the further issue of, regardless of the legal question of the coverage of the Act, should the commission be covered under the Act as a matter of policy. Both the legal issue and the policy issue are

unresolved, but the Joint Committee is continuing to examine the issues involved and to aid in clarifying the coverage of the Act.

Suggested Amendments to the Illinois Administrative Procedure Act

The Joint Committee is recommending two specific changes in the Illinois Administrative Procedure Act to solve procedural problems and to clarify some of the requirements of the Act.

As indicated in the section of this report discussing procedural legislation considered during 1978 (pages 75 - 76), the Joint Committee will recommend legislation during 1979 to change the rulemaking process in a manner similar to the amendments to House Bill 16 proposed during 1978. The most crucial provision of the bill is the separation of the Joint Committee review and the public comment period. This will insure that the Joint Committee is reviewing the final form of the rule and also allow the Joint Committee to guage the responsiveness of agencies to public comments.

Recommended Bill One presented on the following pages would clarify the requirement that agency rules fully state the standards and criteria utilized by an agency in exercising its discretion. The position paper on the provision of standards and safeguards for exercising discretion in agency rules contained in Appendix C provides the legal and practical background for this requirement. Although the statement of standards and criteria may be implied in the Act, the Joint Committee believes that an explicit statement of this requirement would be valuable.

RECOMMENDED BILL ONE

81st GENERAL ASSEMBLY
State of Illinois

1979 and 1980

INTRODUCED _____, BY

SYNOPSIS: (Ch. 127, new par. 1004.02)

Amends the Illinois Administrative Procedure Act. Requires administrative agencies to include as part of their rules the standards governing the exercise of agency discretion.

LRB8103001LtRpk

Fiscal Note Act may apply

A BILL FOR

LRB81 03001MRpk

AN ACT to add Section 4.02 to "The Illinois Administrative Procedure Act", approved September 22, 1975, as amended.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Section 4.02 is added to "The Illinois Administrative Procedure Act", approved September 22, 1975, as amended, the added Section to read as follows:

(Ch. 127, new par. 1004.02)

Sec. 4.02. Every rule or body of rules which describes or authorizes the exercise of a discretionary power by or on behalf of an agency shall include or refer to the standards governing the exercise of that discretionary power. Such standards shall be written with sufficient particularity to provide affected persons with useful notice of the criteria governing the exercise of discretion by the agency.

Suggested Legislation from Proposed Rulemaking Reviews

Each of these recommended bills addresses a specific difficulty discovered during the review of proposed rulemaking by an agency. In some cases, the Joint Committee did not formally issue a statement of objection to the proposed rulemaking, but agreed to suggest legislation to remedy perceived statutory problems. In other cases, the recommended legislation is the direct result of a statement of objection which the agency has responded to by refusing to withdraw or modify the proposed rulemaking. Recommended Bills Two through Twenty-Two are presented with summaries on the following pages.

Although most of the recommended bills deal with specific situations, several of these bills deserve special attention because of their nature and impact. Recommended Bill Eight (pages 127- 134) would amend an important section which provides authority to the Department of Public Aid to bar medical vendors from receiving payments for services from the Department's programs. The statute provides detailed safeguards to protect vendors from arbitrary or unreasonable action by the Department, but the Department's rules failed to provide standards and criteria in the crucial situation of withholding payments while the hearing is pending. The Department also failed to define who would be covered by a crucial term. The recommended bill addresses both of these deficiencies by requiring more detailed rules by the Department in these two areas.

Another particularly important bill concerns the licensure of home health agencies by the Department of Public Health. Recommended Bill Twelve (pages 151 - 158) amends the Home Health Agency Licensure Act by clarifying the scope and extent of the requirements which can be imposed by the Department of Public Health. The amendments do not destroy the statute by eliminating regulation, but they will provide a clearer statment of the intent of the legislature in passing this Act. The Joint Committee staff in developing this legislation reviewed the hundreds of comments received by the Department from affected public agencies, private health care providers, other interested groups, and the general public.

A different type of situation is addressed by recommended Bill Nineteen (pages 199 - 202). In this case, the Joint Committee found in reviewing rules

proposed by the Illinois Office of Education that there was no adequate enforcement mechanism for the requirement that school bus drivers have special driving permits. The regulation was ineffective because the enforcement fell in the cracks between several agencies: State Board of Education, regional school superintendents, the Department of Transportation, the Secretary of State's office and local school boards. This bill will provide the necessary authority for enforcement of the regulation.

Several of the other recommended bills provide explicit rulemaking authority to agencies where such authority appears necessary to adequately fulfill the agency's statutory tasks. Recommended Bill Eighteen (pages 193- 197) provides explicit rulemaking authority to the Attorney General in relation to issuing opinions and Recommended Bill Twenty-Two (pages 213- 216) provides explicit rulemaking authority to the Division of Vocational Rehabilitation. The Joint Committee has also considered the possibility of comprehensive revisory legislation to clarify the numerous delegations of rulemaking authority which appear throughout the statutes, and provide rulemaking authority in cases such as these where such authority seems desirable.

Another group of these recommended bills address situations where an agency has failed to state the standards and criteria involved in exercising an agency's discretion. The importance of the statement of such standards and criteria is indicated in the Joint Committee position paper on this issue in Appendix C. Recommended Bills Five (pages 109-113) and Six (pages 115- 122) would explicitly require the Department of Insurance to state its standards and criteria in relation to levying fines on pension systems and approving exceptions to minimum standards of individual accident and health insurance policies. Recommended Bill Thirteen (pages 159- 163) addresses a similar situation in relation to the Department of Revenue's administration of the Bingo License and Tax Act. The Department's rules failed to state the criteria or standards on which several agency determinations would be made. Recommended Bill Thirteen would specifically require the statements of those standards and criteria in these instances. These bills are closely related to the general requirement that is proposed in Recommended Bill One (pages 89 - 90) as an amendment to the Illinois Administrative Procedure Act.

RECOMMENDED BILL TWO

LEGISLATION FROM PROPOSED RULEMAKING REVIEW

AGENCY: Department of Agriculture

PROPOSED RULEMAKING: Regulation XVa, Cattle from Certain Designated Areas (Proposed August 25, 1978)

BACKGROUND: The Department's proposed rule was intended to control the spread of cattle scabies, by restricting importation of cattle into the state from designated disease areas. The rules allowed the Director to designate the areas, which appeared to technically conflict with the statutory requirement that the Governor "schedule" such areas by "proclamation." The Joint Committee did not formally object to the rules, since it was felt that the policy of requiring the Governor's personal involvement was unnecessary, but expressed the need for statutory changes to establish this authority with the Director of the Department.

SUMMARY OF LEGISLATION: This amendatory language would shift the authority for designation of disease areas from the Governor to the Director of the Department of Agriculture, who for all practical purposes currently performs this function. The amendment will clarify the process and the relationship between such designation and the Department's rules.

RECOMMENDED BILL TWO

81st GENERAL ASSEMBLY
State of Illinois

1979 and 1980

INTRODUCED _____, BY

SYNOPSIS: (Ch. 8, par. 177)

Amends an Act relating to diseased animals by transfering the authority to prohibit the importation of diseased animals from the Governor to the Director of the Department of Agriculture of the State of Illinois.

LRB8102936BDakA

Fiscal Note Act
may be applicable

A BILL FOR

AN ACT to amend Section 10 of "An Act to revise the law in relation to the suppression, prevention and extirpation of contagious and infectious diseases among animals", approved July 23, 1943, as amended.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Section 10 of "An Act to revise the law in relation to the suppression, prevention and extirpation of contagious and infectious diseases among animals", approved July 23, 1943, as amended, is amended to read as follows:

(Ch. 8, par. 177)

Sec. 10. The Department may promulgate and adopt reasonable rules prescribing entry requirements and conditions governing the importation of animals, carcasses, portions of carcasses, hay, straw, fodder, or other material capable of conveying infection, to prevent the spread of contagious or infectious diseases into Illinois. Such rules shall be applied only to animals, carcasses, portions of carcasses, hay, straw, fodder and other materials capable of conveying infection, from any other state, territory, district, province or country, or portion thereof, which the Director has designated. Such designation shall be based on information that a contagious or infectious disease exists in any other state, territory, district, province or country, or portion thereof, or that the condition of any animals, carcasses, portions of carcasses, hay, straw, fodder, and other materials capable of conveying infection coming from such an area into this State is such as would render them liable to convey any such disease. The Director's designation shall describe affected areas with sufficient precision to inform all concerned parties as to the geographical boundaries of such areas. Adequate notice of such designation shall be given to all affected parties,

Rulemaking under this Section is subject to the provisions of the Illinois Administrative Procedure Act. Whenever the Department reports to the Governor that any contagious or infectious disease exists in any other State, territory, district, province or country, or in any portion thereof, or in any locality therein, or that the condition of any animals coming therefrom into this State is such as would render them liable to convey any such disease, he may, by proclamation, schedule such State, territory, district, province or country, or any portion thereof, or any locality therein, and prohibit the importation or bringing therefrom into this State of any animals of the kind diseased or of any such animals that have been exposed to such disease or whose condition would render them liable to convey such disease to other animals, or of any carcasses or portions of carcasses, or of any hay, straw, fodder or other material capable of conveying infection, except under such rules as may be prescribed by the Department and approved by the Governor.

RECOMMENDED BILL THREE

LEGISLATION FROM PROPOSED RULEMAKING REVIEW

AGENCY: Department of Children and Family Services

PROPOSED RULEMAKING: Rule 8.01 Safeguarding Personal Information in Case Files (Proposed April 14, 1978)

BACKGROUND: These rules were intended by the Department to insure special safeguarding of personal information contained in case files. The Joint Committee objected to the rules at its May 1978 hearing and stated four specific objections (see pages 26 - 27). The Department modified the rules to meet three of the objections. The remaining point of objection concerns the scope of coverage of these provisions. The Department has included records of persons who apply for services and who are subject to licensing by the Department as well as the apparantly directly intended persons who are receiving services from the Department. The Joint Committee believes this extension of these special privacy rules is in violation of the statutory provisions (Ill.Rev.Stat.1977,ch.23,par.5035.1).

SUMMARY OF LEGISLATION: This legislation would clarify the statutory language regarding the scope of coverage of the special records privacy provisions of the Department, specifically excluding from coverage persons who apply for services and persons subject to licensing by the Department. This merely clarifies the apparant legislative intent.

RECOMMENDED BILL THREE

81st GENERAL ASSEMBLY
State of Illinois

1979 and 1980

INTRODUCED _____. BY

SYNOPSIS: (Ch. 23, par. 5035.1)

Amends An Act relating to the Department of Children and Family Services. Excludes records of persons who apply for and are denied services and persons subject to licensing by the Department, as well as the Department's own administrative and fiscal records, from confidentiality.

LRB8102994ALjs

A BILL FOR

AN ACT to amend Section 35.1 of "An Act creating the Department of Children and Family Services, codifying its powers and duties, and repealing certain Acts and Sections herein named", approved June 4, 1963, as amended.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Section 35.1 of "An Act creating the Department of Children and Family Services, codifying its powers and duties, and repealing certain Acts and Sections herein named", approved June 4, 1963, as amended, is amended to read as follows:

(Ch. 23, par. 5035.1)

Sec. 35.1. The case and clinical records of patients in Department supervised facilities, wards of the Department, children receiving child welfare services, persons receiving other services of the Department, and Department reports of injury or abuse to children shall not be open to the general public. Such case and clinical records and reports or the information contained therein shall be disclosed by the Director of the Department only to proper law enforcement officials, individuals authorized by court, the Illinois General Assembly or any committee or commission thereof, and to such other persons and for such reasons as the Director shall designate by rule or regulation. This Section does not apply to the Department's fiscal records, other records of a purely administrative nature, records concerning persons applying for but not receiving Department services, or any forms, documents or other records concerning persons or facilities subject to licensing by the Department ~~or such Department completed forms and documents as may be used by the Department in examining or evaluating child care facilities for purposes of licensure.~~

RECOMMENDED BILL FOUR

LEGISLATION FROM PROPOSED RULEMAKING REVIEW

AGENCY: Department of Conservation

PROPOSED RULEMAKING: Article II, Hunting of White-Tailed Deer (Proposed March 17, 1978)

BACKGROUND: The Department's proposed rule would exclude non-residents of Illinois from obtaining hunting licenses for deer hunting in Illinois. In the April 18, 1978, hearing before the Joint Committee, the Department admitted that had no express statutory authority for this provision and also indicated that it might be challenged under federal constitutional provisions. The Joint Committee indicated that it agreed with the policy behind the rule and suggested statutory changes to provide authority for the provision.

SUMMARY OF LEGISLATION: This legislation would not prohibit non-residents from obtaining Illinois deer hunting licenses, but would establish differential fees for residents and non-residents. The intended effect would be to discourage non-residents from attempting to obtain Illinois deer hunting licenses.

RECOMMENDED BILL FOUR

81st GENERAL ASSEMBLY
State of Illinois

1979 and 1980

INTRODUCED _____, BY

SYNOPSIS: (Ch. 61, par. 2.26)

Amends the Game Code of 1971. Raises the deer hunting permit fee for non-residents to $50.

LRB8102932ASjw

Fiscal Note Act may be applicable

A BILL FOR

LRB8102938ASjw

AN ACT to amend Section 2.26 of the "Game Code of 1971", approved December 10, 1971, as amended.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Section 2.26 of the "Game Code of 1971", approved December 10, 1971, as amended, is amended to read as follows:

(Ch. 61, par. 2.26)

Sec. 2.26. Before any person may take deer he shall first obtain a "Deer Hunting Permit" in accordance with the prescribed regulations set forth in an administrative order of the Department. Deer hunting permits shall be issued by the Department. The fee for a Deer Hunting Permit to take deer with either bow and arrow or gun shall be $15 for residents of the State. The fee for non-residents shall be $50. The following persons, upon application to the Department, shall be issued a deer hunting permit without payment of the fee stated herein: (a) the owner and members of the immediate family residing on farm land; or (b) the bona fide tenant of farm land and members of the immediate family residing on the farm land.

The deer hunting permit issued without fee shall be effective only as to the farm lands upon which the person to whom it is issued resides.

It shall be lawful for the holder of a deer hunting permit, during open seasons, to take or attempt to take deer by use of gun provided that such gun is a shotgun of not larger than 10 nor smaller than 20 gauge loaded with rifled slugs, or is a muzzle loading rifle. The standards and specifications for use of such guns shall be established by administrative order and they shall be used subject to regulations established for the use of a shotgun.

No person may have in his possession any other firearm or

sidearm when taking deer by the use of either a shotgun, bow and arrow or muzzle loading rifle.

Persons having a deer hunting permit shall be permitted to take deer only during the hours of 6:30 a. m. to 4:00 p. m., Central Standard Time, and only during those days for which an open season is established for the taking of deer by use of shotgun or muzzle loading rifle.

It shall be lawful for a person having a deer hunting permit for bow and arrow to take deer only during the period from 1/2 hour before sunrise to 1/2 hour before sunset, Central Standard Time, and only during those days for which an open season is established for the taking of deer by use of bow and arrow.

It is unlawful for any person to take deer by use of dogs, horses, automobiles, aircraft or other vehicles, or by the use of salt or bait of any kind.

It shall be unlawful to possess or transport any wild deer which has been injured or killed in any manner upon a public highway or public right-of-way of this State.

Whenever any person attempts to or takes deer by the use of a shotgun or muzzle loading rifle, he shall wear, when in the field, a cap and an upper outer garment of a solid and vivid color and these articles of clothing shall display a minimum total of not less than 400 square inches of material. This clothing requirement applies to both hunters and non-hunters that may be in a hunting party in the field.

Beginning January 1, 1976, those persons who attempt to or take deer shall be required to wear articles of clothing of a solid and vivid hunter blaze-orange color.

The bag, possession limit and clothing requirement shall be established by administrative order.

It is unlawful for any person having taken his limit of deer to further participate, with gun or bow and arrow, in any hunting party for the purposes of taking additional deer.

The Department, with the approval of the Conservation

Advisory Board, shall announce by administrative order the counties that are to be open for deer hunting only where it is not feasible to attempt to hunt upland game during the prescribed seasons set forth. In those counties where upland game hunting is permitted during the period of the deer season, the Department shall require the use of a vivid colored cap or upper garment, or establish whatever other measures necessary to accomplish a high degree of hunting safety. Beginning January 1, 1976, during deer hunting season the upland game hunter will be required to wear the same hunting clothing as required for the deer hunter during the deer season.

RECOMMENDED BILL FIVE

LEGISLATION FROM PROPOSED RULEMAKING REVIEW

AGENCY: Department of Insurance

PROPOSED RULEMAKING: Pension Exams and Compliance Procedures (Proposed March 3, 1978)

BACKGROUND: The Joint Committee objected to these rules on the basis of several difficulties at its March 1978, hearing (see pages 30 - 31). The Department refused to withdraw or modify the rules to meet the Joint Committee's objections. The most serious objection was the lack of criteria on the basis of which the Director may levy a fine. This lack of criteria fails to protect against arbitrary action by the Director and does not adequately inform the affected public regarding when or on what basis the Department will impose a fine.

SUMMARY OF LEGISLATION: This legislation would require the Department to specify in the form of rules the standards and criteria on the basis of which the Director will impose a penalty. The legislation indicates that the criteria should be related to evidence of efforts made in good faith to comply with the legal requirements.

RECOMMENDED BILL FIVE

81st GENERAL ASSEMBLY
State of Illinois

1979 and 1980

INTRODUCED _____, BY

SYNOPSIS: (Ch. 108 1/2, par. 22-509)

Amends the Pension Code. Requires the Director of Insurance to develop criteria to use in determining whether to assess a penalty for non-compliance with a pension law and criteria to determine the amount of such penalty.

LRB8102998KPmkA

Fiscal Note Act
may be applicable

A BILL FOR

AN ACT to amend Section 22-509 of the "Illinois Pension Code", approved March 18, 1963, as amended.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Section 22-509 of the "Illinois Pension Code", approved March 18, 1963, as amended, is amended to read as follows:

(Ch. 108 1/2, par. 22--509)

Sec. 22-509. Failure to comply. Whenever the Division determines by examination, investigation, or in any other manner, that the governing body, or any elected or appointed officer or official of any governmental unit defined in Section 22--502 of this Division, now or hereafter subject to any law creating a pension, annuity or retirement fund or system for the benefit of the employees of the governmental unit, has failed to comply with any of the provisions of such law to which it is subject by reason of population or otherwise, the Director of Insurance shall, in writing, notify the governing body, officer or official, as the case may be, of the specific provision or provisions of the law which are not being complied with. Upon receipt of the notice the governing body, officer or official, as the case may be, to which such notice is addressed, shall take immediate steps to comply with the provisions of law as set forth in the notice. Upon failure by the governing body, officer or official to comply within a reasonable time after the receipt of such notice, the Director of Insurance, may hold a hearing for the governing body, officer or official at which they shall show cause for non-compliance with the law. If upon conclusion of such hearing the Director determines good and sufficient cause for non-compliance has not been shown, he may order compliance within a period of not less than 30 days. If evidence of compliance has not been submitted to

the Director within the period of time prescribed in the order and no administrative appeal from the order has been initiated, the Director may for such non-compliance assess a civil penalty of up to $1,000 against such governing body, officer or official. The Director shall develop and state in the form of rules, standards, and criteria with as much specificity as practicable that he will use in determining whether to assess such a penalty and setting the amount of such a penalty. Such standards and criteria should include, but not be limited to, consideration of evidence of efforts made in good faith to comply with applicable legal requirements. Such rulemaking is subject to the provisions of the Illinois Administrative Procedure Act.

If a penalty is assessed and not paid within 30 days of the date of assessment, the Director shall, without further notice, report the act of non-compliance to the Attorney General of this State. It shall be the duty of the Attorney General, or, if the Attorney General so designates, of the state's attorney of the county in which the governmental unit is located, to apply forthwith by complaint on relation of the Director of Insurance in the name of the people of the State of Illinois, as plaintiff, to the Circuit Court of the county in which the governmental unit is located for enforcement of the penalty prescribed in this Section or for such additional relief as the nature of the case and the interest of the employees of the governmental unit or the public may require.

RECOMMENDED BILL SIX

LEGISLATION FROM PROPOSED RULEMAKING REVIEW

AGENCY: Department of Insurance

PROPOSED RULEMAKING: Minimum Standards of Individual Accident and Health Insurance Policies (Proposed March 24, 1978)

BACKGROUND: At its April, 1978 hearing, the Joint Committee objected to these rules because of a provision which allowed the Director to approve exeptions to the standards without any standards or criteria for making such exceptions. The statement of specific objections stated that the Joint Committee objects to "paragraph 6E because it fails to contain any criteria or standards delimiting the authority of the Director in approving exceptions to the rule. Such failure renders the rule vague and subject to arbitrary exercise of discretion." (see page 32). The Department refused to include any criteria in the rule, stating that it is "indispensable to retain the discretionary capacity in 6E." The Joint Committee still believes it is essential to include in the rules criteria on the basis of which exceptions may be made by the Director.

SUMMARY OF LEGISLATION: This legislation would clarify the statute which allows exceptions to the minimum standards by making the criteria for such exceptions more specific. The legislation would also require the Department to include in its rules any more specific standards or criteria the Director will use to grant exceptions.

RECOMMENDED BILL SIX

81st GENERAL ASSEMBLY
State of Illinois

1979 and 1980

INTRODUCED _____, BY

SYNOPSIS: (Ch. 73, par. 967a)

Amends the Illinois Insurance Code. Alters the criteria to be used by the Director of Insurance to grant exceptions to the minimum standards promulgated by rule for various accident and health insurance coverages, from exceptions in the public interest to exceptions specifically benefiting individuals or groups, if such persons can be informed of the exceptions. Requires the specific criteria for exceptions to be included in rules promulgated by the Department. Subjects rulemaking in regard to such minimum standards to The Illinois Administrative Procedure Act. Makes changes in terminology to correlate therewith.

LRB8102995SKjpA

Model Rule Act
Rule is applicable

A BILL FOR

LRB8810299SSKjpA

AN ACT to amend Section 355a of the "Illinois Insurance Code", approved June 29, 1937, as amended.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Section 355a of the "Illinois Insurance Code", approved June 29, 1937, as amended, is amended to read as follows:

(Ch. 73, par. 967a)

Sec. 355a. (1) The purpose of this Section shall be (a) to provide reasonable standardization and simplification of terms and coverages of individual accident and health insurance policies to facilitate public understanding and comparisons; (b) to eliminate provisions contained in individual accident and health insurance policies which may be misleading or unreasonably confusing in connection either with the purchase of such coverages or with the settlement of claims; and (c) to provide for reasonable disclosure in the sale of accident and health coverages.

(2) Definitions applicable to this Section are as follows:

(a) "Policy" means all or any part of the forms constituting the contract between the insurer and the insured, including the policy, certificate, subscriber contract, riders, endorsements, and the application if attached, which are subject to filing with and approval by the Director.

(b) "Service corporations" means non-profit hospital, medical, voluntary health, vision, dental, and pharmaceutical corporations organized and operating respectively under "The Non-Profit Hospital Service Plan Act", "The Medical Service Plan Act", "The Voluntary Health Services Plans Act", "The Vision Service Plan Act", "The Dental Service Plan Act", and "The Pharmaceutical Service Plan Act".

(c) "Accident and health insurance" means insurance written under Article XX of the Insurance Code, other than credit accident and health insurance, and coverages provided in subscriber contracts issued by service corporations. For purposes of this Section such service corporations shall be deemed to be insurers engaged in the business of insurance.

(3) The Director shall issue such rules and regulations as he shall deem necessary or desirable to establish specific standards, including standards of full and fair disclosure that set forth the form and content and required disclosure for sale, of individual policies of accident and health insurance, which rules and regulations shall be in addition to and in accordance with the applicable laws of this state, and which may cover but shall not be limited to: (a) terms of renewability; (b) initial and subsequent conditions of eligibility; (c) non-duplication of coverage provisions; (d) coverage of dependents; (e) pre-existing conditions; (f) termination of insurance; (g) probationary periods; (h) limitation, exceptions, and reductions; (i) elimination periods; (j) requirements regarding replacements; (k) recurrent conditions; and (l) the definition of terms including but not limited to the following: hospital, accident, sickness, injury, physician, accidental means, total disability, partial disability, nervous disorder, guaranteed renewable, and non-cancellable.

The Director may issue rules and regulations that specify prohibited policy provisions not otherwise specifically authorized by statute which in the opinion of the Director are unjust, unfair or unfairly discriminatory to the policyholder, any person insured under the policy, or beneficiary.

(4) The Director shall issue such rules and regulations as he shall deem necessary or desirable to establish minimum standards for benefits under each category of coverage in individual accident and health policies, other than

conversion policies issued pursuant to a contractual conversion privilege under a group policy, including but not limited to the following categories: (a) basic hospital expense coverage; (b) basic medical-surgical expense coverage; (c) hospital confinement indemnity coverage; (d) major medical expense coverage; (e) disability income protection coverage; (f) accident only coverage; and (g) specified disease or specified accident coverage.

Nothing in this subsection (4) shall preclude the issuance of any policy which combines two or more of the categories of coverage enumerated in subparagraphs (a) through (f) of this subsection.

No policy shall be delivered or issued for delivery in this State which does not meet the prescribed minimum standards for the categories of coverage listed in this subsection unless the Director finds that such policy is necessary to meet specific needs of individuals or groups and such individuals or groups will be adequately informed that such policy does not meet the prescribed minimum standards ~~will be in the public interest~~, and such policy meets the requirement that the benefits provided therein are reasonable in relation to the premium charged. The standards and criteria to be used by the Director in approving such policies shall be included in the rules required under this Section with as much specificity as practicable.

The Director shall prescribe by rule the method of identification of policies based upon coverages provided.

(5) (a) In order to provide for full and fair disclosure in the sale of individual accident and health insurance policies, no such policy shall be delivered or issued for delivery in this State unless: (i) in the case of a direct response insurance product, the outline of coverage described in paragraph (b) of this subsection accompanies the policy; (ii) in all other cases, the outline of coverage described in said paragraph (b) of this subsection is delivered to the

applicant at the time the application is made, and an acknowledgment signed by the insured, of receipt of delivery of such outline is provided to the insurer with the application. In the event the policy is issued on a basis other than that applied for, the outline of coverage properly describing the policy must accompany the policy when it is delivered and such outline shall clearly state that the policy differs, and to what extent, from that for which application was originally made.

(b) The Director shall issue such rules ~~and regulations~~ as he shall deem necessary or desirable to prescribe the format and content of the outline of coverage required by paragraph (a) of this subsection. "Format" means style, arrangement, and overall appearance, including such items as the size, color, and prominence of type and the arrangement of text and captions. "Content" shall include without limitation thereto, statements relating to the particular policy as to the applicable category of coverage prescribed under subsection 4; principal benefits; exceptions, reductions and limitations; and renewal provisions, including any reservation by the insurer of a right to change premiums. Such outline of coverage shall clearly state that it constitutes a summary of the policy issued or applied for and that the policy should be consulted to determine governing contractual provisions.

(c) Prior to the issuance of rules ~~or regulations~~ pursuant to this Section, the Director shall afford the public, including the companies affected thereby, reasonable opportunity for comment. Such rulemaking is subject to the provisions of "The Illinois Administrative Procedure Act".

(7) When a rule ~~or regulation~~ has been adopted, pursuant to this Section, all policies of insurance or subscriber contracts which are not in compliance with such rule or ~~regulation~~ shall, when so provided in such rule or ~~regulation~~, be deemed to be disapproved as of a date

specified in such rule ~~or regulation~~ not less than 120 days following its effective date, without any further or additional notice other than the adoption of the rule ~~or regulation~~.

(8) When a rule ~~or regulation~~ adopted pursuant to this Section so provides, a policy of insurance or subscriber contract which does not comply with the rule ~~or regulation~~ shall not less than 120 days from the effective date of such rule ~~or regulation~~, be construed, and the insurer or service corporation shall be liable, as if the policy or contract did comply with the rule ~~or regulation~~.

(9) Violation of any rule ~~or regulation~~ adopted pursuant to this Section shall be a violation of the insurance law for purposes of Sections 370 and 446 of the Insurance Code.

RECOMMENDED BILL SEVEN

LEGISLATION FROM PROPOSED RULEMAKING REVIEW

AGENCY: Department of Law Enforcement

PROPOSED RULEMAKING: Criminal History Record Information (Proposed March 10, 1978)

BACKGROUND: The Department proposed a set of rules to govern an individual's right to access and review of any criminal history record information concerning himself. Federal law and regulations required such a system of access and review. The Joint Committee considered the rules at its April, 1978 hearing and did not formally object. The Joint Committee indicated that the relevant State law (Ill.Rev.Stat.1977,ch.38,par.206-7) did not clearly provide a right of access and review to individuals and also that this section conflicted with other Acts requiring the dissemination of records to other agencies. Amendatory language was recommended to remedy this situation.

SUMMARY OF LEGISLATION: This amendment would clearly specify an individual's right to access and review of his criminal record information and specifically allow the Department to release information to other agencies when required by another state statute.

RECOMMENDED BILL SEVEN

81st GENERAL ASSEMBLY
State of Illinois

1979 and 1980

INTRODUCED _____, BY

SYNOPSIS: (Ch. 38, par. 206-7)

Amends the Criminal Identification and Investigation Act. Specifies an individual's right to access and review of his criminal record pursuant to rules established by the Department of Law Enforcement. Allows the Department to release information to other agencies when required by another State statute.

LRB8102262KPakA

Fiscal Note Act may be applicable

A BILL FOR

AN ACT to amend Section 7 of "An Act in relation to criminal identification and investigation", approved July 2, 1931, as amended.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Section 7 of "An Act in relation to criminal identification and investigation", approved July 2, 1931, as amended, is amended to read as follows:

(Ch. 38, par. 206-7)

Sec. 7. No file or record of the Department hereby created shall be made public, except as may be necessary in the identification of persons suspected or accused of crime and in their trial for offenses committed after having been imprisoned for a prior offense; and no information of any character relating to its records shall be given or furnished by said Department to any person, bureau or institution other than as herein provided in this Act or other State law, or when a governmental unit is required by state or federal law to consider such information in the performance of its duties. Violation of this Section shall constitute a Class A misdemeanor.

However, if an individual requests the Department to release information as to the existence or nonexistence of any criminal record he might have, the Department shall do so upon determining that the person for whom the record is to be released is actually the person making the request. The Department shall establish rules to set forth procedures to allow an individual to review any criminal history record information the Department may hold concerning that individual upon verification of the identity of the individual. Such rulemaking is subject to the provisions of the Illinois Administrative Procedure Act.

RECOMMENDED BILL EIGHT

LEGISLATION FROM PROPOSED RULEMAKING REVIEW

AGENCY: Department of Public Aid

PROPOSED RULEMAKING: Medical Vendor Administrative Proceedings (Proposed January 13, 1978)

BACKGROUND: The Department proposed these rules on the basis of legislation which became effective December 1, 1977, authorizing the Department to suspend or terminate medical vendors eligibility for participation in medical services programs (House Bill 4, Special Session 2). The Joint Committee reviewed these rules at its February 21, 1978, hearing and objected to the rules, listing seven specific objections. (see pages 35 - 38). The agency modified the rule to meet five of these objections, but two objections were not corrected by the agency's modifications. These remaining problems are (1) the lack of a definition of "management responsibility" thus providing no guidance to the public of who the agency may apply this provision to, and (2) the lack of criteria on which the agency may decide not to withhold payments while termination proceedings are pending. Both of these deficiencies result in significant areas of uncertainty of anticipated agency actions for the affected public.

SUMMARY OF LEGISLATION: This legislation would correct both of these deficiencies by (1) expressing requiring the agency to include in its rules a definition of "management responsibility" and (2) specifying the criteria on which the Department can decide not to withhold payment when a termination proceeding is pending. The criteria are based on responses of the Department to the questions raised by the Joint Committee.

RECOMMENDED BILL EIGHT

81st GENERAL ASSEMBLY
State of Illinois

1979 and 1980

INTRODUCED _____, BY

SYNOPSIS: (Ch. 23, par. 12-4.25)

Amends the Public Aid Code. Adds provisions specifying the criteria on which the Department of Public Aid can decide not to withhold payment from a medical vendor when a termination or suspension proceeding is pending against such vendor. Also, requires the agency to include in its rules a definition of "management responsibility".

LRB810294lALpk

A BILL FOR

AN ACT to amend Section 12-4.25 of "The Illinois Public Aid Code", approved April 11, 1967, as amended.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Section 12-4.25 of "The Illinois Public Aid Code", approved April 11, 1967, as amended, is amended to read as follows:

(Ch. 23, par. 12-4.25)

Sec. 12-4.25. (A) The Illinois Department may deny, suspend or terminate the eligibility of any person, firm, corporation, association, agency, institution or other legal entity to participate as a vendor of goods or services to recipients under the medical assistance program under Article V, if after reasonable notice and opportunity for a hearing the Illinois Department finds:

(a) Such vendor is not complying with the Department's policy or rules and regulations, or with the terms and conditions prescribed by the Illinois Department in its vendor agreement, which document shall be developed by the Department as a result of negotiations with each vendor category, including physicians, hospitals, long term care facilities, pharmacists, optometrists, podiatrists and dentists setting forth the terms and conditions applicable to the participation of each vendor group in the program; or

(b) Such vendor is not properly licensed or qualified, or such vendor's professional license, certificate or other authorization has not been renewed or has been revoked, suspended or otherwise terminated; or

(c) Such vendor has failed to keep or make available for inspection, audit or copying, after receiving a written request from the Illinois Department, such records regarding payments claimed for providing services. This section does not require vendors to make available patient records of

patients for whom services are not reimbursed under this Code; or

(d) Such vendor has failed to furnish any information requested by the Department regarding payments for providing goods or services; or

(e) Such vendor has knowingly made, or caused to be made, any false statement or representation of a material fact in connection with the administration of the medical assistance program; or

(f) Such vendor has furnished goods or services to a recipient which are (1) in excess of his or her needs, (2) harmful to the recipient, or (3) of grossly inferior quality, all of such determinations to be based upon competent medical judgment and evaluations; or

(g) The vendor; a person with management responsibility for a vendor; an officer or person owning, either directly or indirectly, 5% or more of the shares of stock or other evidences of ownership in a corporate vendor; an owner of a sole proprietorship which is a vendor; or a partner in a partnership which is a vendor, either:

(1) was previously terminated from participation in the medical assistance program; or

(2) was a person with management responsibility for a previously terminated vendor during the time of conduct which was the basis for that vendor's termination from participation in the medical assistance program; or

(3) was an officer, or person owning, either directly or indirectly, 5% or more of the shares of stock or other evidences of ownership in a previously terminated corporate vendor during the time of conduct which was the basis for that vendor's termination from participation in the medical assistance program; or

(4) was an owner of a sole proprietorship or partner of a partnership which was previously terminated during the time of conduct which was the basis for that vendor's termination

from participation in the medical assistance program; or

(h) The vendor; a person with management responsibility for a vendor; an officer or person owning, either directly or indirectly, 5% or more of the shares of stock or other evidences of ownership in a corporate vendor; an owner of a sole proprietorship which is a vendor; or a partner in a partnership which is a vendor, either:

(1) has engaged in practices prohibited by federal or State law or regulation; or

(2) was a person with management responsibility for a vendor at the time that such vendor engaged in practices prohibited by federal or State law or regulation; or

(3) was an officer, or person owning, either directly or indirectly, 5% or more of the shares of stock or other evidences of ownershio in a vendor at the time such vendor engaged in practices prohibited by federal or State law or regulation; or

(4) was an owner of a sole proprietorship or partner of a partnership which was a vendor at the time such vendor engaged in practices prohibited by federal or State law or regulation.

(B) Upon termination of a vendor of goods or services from participation in the medical assistance program authorized by this Article, a person with management resoonsibility for such vendor during the time of any conduct which served as the basis for that vendor's termination is barred from participation in the medical assistance program.

Upon termination of a corporate vendor, the officers and persons owning, directly or indirectly, 5% or more of the shares of stock or other evidences of ownership in the vendor during the time of any conduct which served as the basis for that vendor's termination are barred from participation in the medical assistance program.

Upon termination of a sole proprietorship or partnership, the owner or partners during the time of any conduct which

served as the basis for that vendor's termination are barred from participation in the medical assistance program.

Rules adopted by the Illinois Department to implement these provisions shall specifically include a definition of the term "management responsibility" as used in this Section. Such definition shall include, but not be limited to, typical job titles, and duties and descriptions which will be considered as within the definition of individuals with management responsibility for a provider.

(C) If a vendor has been suspended from the medical assistance program under Article V of the Code, the Director may require that such vendor correct any deficiencies which served as the basis for the suspension. The Director shall specify in the suspension order a specific period of time, which shall not exceed one year from the date of the order, during which a suspended vendor shall not be eligible to participate. At the conclusion of the period of suspension the Director shall reinstate such vendor, unless he finds that such vendor has not corrected deficiencies upon which the suspension was based.

If a vendor has been terminated from the medical assistance program under Article V, such vendor shall be barred from participation for at least one year. At the end of one year a vendor who has been terminated may apply for reinstatement to the program. Upon proper application to be reinstated such vendor may be deemed eligible by the Director providing that such vendor meets the requirements for eligibility under this Act.

(D) The Illinois Department may recover money improperly or erroneously paid, or overpayments, either by setoff, crediting against future billings or by requiring direct repayment to the Illinois Department.

(E) The Illinois Department may withhold payments to any vendor during the pendency of any proceeding under this Section except that if a final administrative decision has

not been issued within 120 days of the initiation of such proceedings, unless delay has been caused by the vendor, payments can no longer be withheld, provided, however, that the 120 day limit may be extended if said extension is mutually agreed to by the Illinois Department and the vendor. The Illinois Department shall not withhold payments during the pendency of any proceeding under this Section if it finds that such action would result in the vendor being unable to provide to recipients necessary services which are unavailable from other providers. Payments may be denied for bills submitted with service dates occurring during the pendency of a proceeding where the final administrative decision is to terminate eligibility to participate in the medical assistance program.

(F) The provisions of the Administrative Review Act, approved May 8, 1945, as now or hereafter amended, and the rules adopted pursuant thereto, shall apply to and govern all proceedings for the judicial review of final administrative decisions of the Illinois Department under this Section. The term "administrative decision" is defined as in Section 1 of the Administrative Review Act.

(G) Nothing contained in this Code shall in any way limit or otherwise impair the authority or power of any State agency responsible for licensing of vendors.

RECOMMENDED BILL NINE

LEGISLATION FROM PROPOSED RULEMAKING REVIEW

AGENCY: Department of Public Health

PROPOSED RULEMAKING: Amendments to Food Service Sanitation Rules and Regulations (Proposed December 30, 1977)

BACKGROUND: The proposed amendments established a certification program for Food Service Managers. Each food service establishment would then be required to have a certified Food Service Manager. Training programs were intended to be offered to aid individuals in preparing for the certification exam, but after a specified date, successful completion of the training program was to be required for eligibility for the certification exam. The Joint Committee objected at its January, 1978, hearing because of the uncertainty of a provision allowing exceptions based on the unavailability of the training program (see pages 43 - 44). Instead of clarifying the provision, the Department deleted the provision entirely and delayed the effected date.

SUMMARY OF LEGISLATION: The suggested legislation would add a provision requiring the Department to grant exceptions based on unavailability of any training program required for eligibility for any certification exam.

RECOMMENDED BILL NINE

81st GENERAL ASSEMBLY
State of Illinois

1979 and 1980

INTRODUCED _____, BY

SYNOPSIS: (Ch. 111 1/2, par. 22)

Amends An Act in relation to public health. Provides that when completion of a training program is required of food service employees before their certification such requirement may be waived if the program is not reasonably available to the individual.

LRB8102996PMjp

A BILL FOR

LRB8102996PMjp

AN ACT to amend Section 2 of "An Act in relation to public health", approved May 28, 1877, as amended.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Section 2 of "An Act in relation to public health", approved May 28, 1877, as amended, is amended to read as follows:

(Ch. 111 1/2, par. 22)

Sec. 2. The State Department of Public Health has general supervision of the interests of the health and lives of the people of the State. It has supreme authority in matters of quarantine, and may declare and enforce quarantine when none exists, and may modify or relax quarantine when it has been established. The Department may adopt, promulgate, repeal and amend rules and regulations and make such sanitary investigations and inspections as it may from time to time deem necessary for the preservation and improvement of the public health, consistent with law regulating the following:

(a) Transportation of the remains of deceased persons.

(b) Sanitary practices relating to drinking water made accessible to the public for human consumption or for lavatory or culinary purposes.

(c) Sanitary practices relating to rest room facilities made accessible to the public or to persons handling food served to the public.

(d) Sanitary practices relating to disposal of human wastes in or from all buildings and places where people live, work or assemble.

Whenever the Department establishes by rule a requirement that employees of a food service establishment be certified or licensed, or that a food service establishment employ an individual who has been certified or licensed by the Department, and completion of a training or educational

program is a condition of eligibility for such certification or license, the Department shall grant to any individual an exception to the required completion of the training or educational program if the Department determines that the training or educational program is not reasonably available to the individual. Such exception shall not affect any other requirements established by the Department for such certification or licensing.

~~The provisions of "The Illinois Administrative Procedure Act", approved September 22, 1975, are hereby expressly adopted and shall apply to all administrative rules and procedures of the Department of Public Health under this Act, except that Section 5 of the Illinois Administrative Procedure Act relating to procedures for rule making does not apply to the adoption of any rule required by federal law in connection with which the Department is precluded by law from exercising any discretion.~~

All local boards of health, health authorities and officers, police officers, sheriffs and all other officers and employees of the state or any locality shall enforce the rules and regulations so adopted.

The Department of Public Health shall investigate the causes of dangerously contagious or infectious diseases, especially when existing in epidemic form, and take means to restrict and suppress the same, and whenever such disease becomes, or threatens to become epidemic, in any locality and the local board of health or local authorities neglect or refuse to enforce efficient measures for its restriction or suppression or to act with sufficient promptness or efficiency, or whenever the local board of health or local authorities neglect or refuse to promptly enforce efficient measures for the restriction or suppression of dangerously contagious or infectious diseases, the Department of Public Health may enforce such measures as it deems necessary to protect the public health, and all necessary expenses so

incurred shall be paid by the locality for which services are rendered.

The Department of Public Health may establish and maintain a chemical and bacteriologic laboratory for the examination of water and wastes, and for the diagnosis of diphtheria, typhoid fever, tuberculosis, malarial fever and such other diseases as it deems necessary for the protection of the public health.

As used in this Act, "locality" means any governmental agency which exercises power pertaining to public health in an area less than the State.

The terms "sanitary investigations and inspections" and "sanitary practices" as used in this Act shall not include or apply to "Public Water Supplies" or "Sewage Works" as defined in the "Environmental Protection Act".

RECOMMENDED BILL TEN

LEGISLATION FROM PROPOSED RULEMAKING REVIEW

AGENCY: Department of Public Health

PROPOSED RULEMAKING: Grant Awards to Family Practice Residency Programs (Proposed January 13, 1978)

BACKGROUND: The Department proposed these rules to implement the grant awards program established by the Family Practice Residency Act (Ill.Rev.Stat.1977, ch.144,par.1451 et. seq.) which became effective in September 1977. The Joint Committee objected to the rules on seven points (see pages 45 - 47). In response, the agency modified the rules to meet six of the specific objections, but refused to modify the rules on the remaining point. This remaining problem is the Joint Committee's objection to the inclusion as one of the criteria for consideration of awards, "The understanding of the political and social conditions under which a medical practice is conducted." The Joint Committee felt that this phrase was "inappropriate and unnecessary" as well as unclear and possibly beyond the statutory authority of the agency.

SUMMARY OF LEGISLATION: This legislation would clarify the criteria to be considered by the Department in making grant awards to family practice residency programs by expanding the statutory list of such criteria. The Department's "social and political conditions" phrase would be replaced with more appropriate and clearer language. This legislation also insures that these additional criteria are secondary to the criteria included in the original Act.

RECOMMENDED BILL TEN

81st GENERAL ASSEMBLY
State of Illinois

1979 and 1980

INTRODUCED _____, BY

SYNOPSIS: (Ch. 144, par. 1454.02)

Amends Section 4.02 of the "Family Practice Residency Act". Establishes secondary criteria which the Department of Public Health may consider in distributing funds to family practice residency programs.

LRB8103000GLjw

A BILL FOR

LRB91U3u6UGLj-

AN ACT to amend Section 4.02 of the "Family Practice Residency Act", approved September 5, 1977, as amended.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Section 4.02 of the "Family Practice Residency Act", approved September 5, 1977, as amended, is amended to read as follows:

(Ch. 144, par. 1454.02)

Sec. 4.02. To determine the procedures for the distribution of the funds to family practice residency programs, including the establishment of eligibility criteria in accordance with the following guidelines:

(a) preference for programs which are to be established at locations which exhibit potential for extending family practice physician availability to Designated Shortage Areas;

(b) preference for programs which are located away from communities in which medical schools are located; and

(c) preference for programs located in hospitals having affiliation agreements with medical schools located within the State.

In distributing such funds, the Department may also consider as secondary criteria whether a family practice residency program has:

(1) Adequate courses of instruction in the behavioral sciences;

(2) Availability and systematic utilization of opportunities for residents to gain experience through local health departments or other preventive or occupational medical facilities;

(3) A continuing program of community-oriented research in such areas as risk factors in community populations, immunization levels, environmental hazards, or occupational hazards;

(5) Sufficient mechanisms for maintenance of quality training, such as peer review, systematic progress reviews, referral system, and maintenance of adequate records; and

(5) An appropriate course of instruction in social, institutional and economic conditions affecting family practice.

RECOMMENDED BILL ELEVEN

LEGISLATION FROM PROPOSED RULEMAKING REVIEW

AGENCY: Department of Public Health

PROPOSED RULEMAKING: Grants to Illinois Medical Students: Part II (Proposed June 16, 1978)

BACKGROUND: The Department proposed these rules under the Family Practice Residency Act (Ill.Rev.Stat.1977,ch.144,par.1451 et. seq.) to establish procedures for these scholarship grants. The Joint Committee reviewed the rules and objected to two sections of the rules at its July, 1978 hearing (see pages 50 - 51). The Joint Committee found that the rules violated the Act in two respects: (1) by allowing less than three years' service in family practice in exchange for a medical school grant, and (2) by establishing penalties for violating the agreement. The Joint Committee indicated that both of these provisions seemed to be valuable as a matter of policy and thus the statute should be amended to allow these provisions.

SUMMARY OF LEGISLATION: The proposed legislation would require one year of service for each year of medical school grant to a maximum of three years and would establish a penalty for failure to complete the required service.

RECOMMENDED BILL ELEVEN

81st GENERAL ASSEMBLY
State of Illinois

1979 and 1980

INTRODUCED _____, BY

SYNOPSIS: (Ch. 144, par. 1453.07)

Amends the Family Practice Residency Act. Requires medical students who receive financial assistance under this Act to render one year of direct patient care in a Designated Shortage Area for each year of medical training for which financial aid was received. Provides that the maximum length of required service shall be three years. In addition, provides penalty for failure to complete the required service.

LRB8102259MRjsA

Fiscal Note Act may be applicable

A BILL FOR

LRB81U2254MRjsA

AN ACT to amend Section 3.07 of the "Family Practice Residency Act", approved September 5, 1977, as amended.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Section 3.07 of the "Family Practice Residency Act", approved September 5, 1977, as amended, is amended to read as follows:

(Ch. 144, par. 1453.07)

Sec. 3.07. "Eligible medical student" means a person who meets all of the following qualifications:

(a) he or she is an Illinois resident at the time of application for a scholarship under the program established by this Act;

(b) he or she is studying medicine in a medical school located in Illinois;

(c) he or she exhibits financial need as determined by the Department; and

(d) he or she agrees to serve for one year three years as primary care physician, spending at least fifty per cent of the time engaged in direct patient care in a Designated Shortage Area, for each year of medical training for which a scholarship under the program established by this Act is received. The maximum required service under this agreement shall be 3 years; and

(e) he or she agrees to repay in full all scholarships received under the program established by this Act, plus a penalty of twice the scholarship amount, if he or she does not fulfill the agreement under paragraph (d) of this Section. The agreement shall recite the manner and terms by which services are to be rendered and the penalty is to be paid upon default.

RECOMMENDED BILL TWELVE

LEGISLATION FROM PROPOSED RULEMAKING REVIEW

AGENCY: Department of Public Health

PROPOSED RULEMAKING: Rules for Licensure of Home Health Agencies (Proposed January 20, 1978)

BACKGROUND: These rules were proposed by the Department to implement the Home Health Agency Licensing Act (Ill.Rev.Stat.1977,ch.111½,par.2801 et. seq.) which became effective October 1, 1977. The Joint Committee objected to these rules in February 1978 (see pages 47 - 48) and also supported SJR87 which urged the Department to reconsider adoption of the rules. The basic issue involves the scope of the regulation established by these rules. The Joint Committee feels that the legislature did not intend such excessive regulation of home health agencies under this Act. Especially problemmatic is the definition of home health services, required qualifications of personnel, the relationship to similar federal regulations and the role of the regional health systems agencies in the licensing process.

SUMMARY OF LEGISLATION: This legislation would narrow and more clearly define the proper scope of regulation of home health agencies. Specifically, the legislation would exempt certain types of services from the definition of "home health services" to clarify the coverage of this Act, limit the health systems agency to an advisory role instead of their current certification authority, make the determination of qualifications of personnel directly related to the services performed, prohibit the Department from regulating the management or administration of home health agencies except when they are directly related to the quality of care provided, and require the Department's rules to be no more stringent than the federal regulations. The legislation would also require consideration of the economic impact of the standards prior to adoption or amendment and publication of an economic impact statement

RECOMMENDED BILL TWELVE

81st GENERAL ASSEMBLY
State of Illinois

1979 and 1980

INTRODUCED _____, BY

SYNOPSIS: (Ch. 111 1/2, pars. 2802.5, 2806, 2808 and 2810)

Amends the Home Health Agency Licensing Act. Amends the definition of "home health services" to narrow its scope. Deletes the health systems agency certification requirement. Requires the Department of Public Health to consider the economic impact of any standards it intends to adopt and requires that the standards be no more stringent than the minimum Social Security standards.

LRB8102993KPmkA

Fiscal Note Act
may be applicable

A BILL FOR

LRB8102993KPmkA

AN ACT to amend Sections 2.05, 6, 8 and 10 of the "Home Health Agency Licensing Act", approved September 20, 1977.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Sections 2.05, 6, 8 and 10 of the "Home Health Agency Licensing Act", approved September 20, 1977, are amended to read as follows:

(Ch. 111 1/2, par. 2802.05)

Sec. 2.05. "Home health services" means services provided to a person at his residence according to a plan of treatment for illness or infirmity prescribed by a physician. Such services include part time and intermittent nursing services and other therapeutic services such as physical therapy, occupational therapy, speech therapy, medical social services, or services provided by a home health aide. But do not include homemaker, companionship, or incidental hygiene or other medical-related services not generally requiring trained medical personnel to perform.

(Ch. 111 1/2, par. 2806)

Sec. 6. The Department shall, before March 1, 1978, promulgate standards by rule for home health agencies operated in this State and. ~~The standards shall be such as to require the certification by the health systems agency that the home health agency service is consistent with the health service plan of the health systems agency serving the particular area in which a home health agency is located.~~ The Department shall issue such rules and regulations as are deemed necessary for the proper regulation of such home health agencies. Such rulemaking is subject to the provisions of the Illinois Administrative Procedure Act.

The Department shall fully consider the economic impact of such standards on home health agencies, other health care providers and the general public. Prior to the adoption or

amendment of any such standards, the Department shall prepare and publish a complete statement of such economic impact which has been considered in the development of the standards.

The Department shall not propose any standards which are more stringent than the minimum standards adopted by the Federal Social Security Administration for eligibility for participation of home health agencies in the health insurance for the aged program. Such standards shall be directly related to the quality of care provided to the individuals being served and shall not concern management structure or administration of home health agencies except when such standards are directly necessary to insure quality of care.

(Ch. 111 1/2, par. 2808)

Sec. 8. In considering an application for a license or renewal of a license as a home health agency, the Department may consult with the health systems agency in the particular area which the applicant intends to serve to insure that the home health agency service is generally consistent with the health service plan for the area. Such consultation shall be advisory only to aid the Department in making the determination required under subsection (e) of this Section.

An application for a license may be denied for any of the following reasons:

(a) failure to meet the minimum standards prescribed by the Department pursuant to Section 6;

(b) satisfactory evidence that the moral character of the applicant or supervisor of the agency is not reputable. In determining moral character, the Department may take into consideration any convictions of the applicant or supervisor but such convictions shall not operate as a bar to licensing;

(c) lack of personnel qualified by training or and experience to properly perform the specific function of a home health services proposed by the agency;

(d) insufficient financial or other resources to operate

and conduct a home health agency in accordance with the requirements of this Act and the minimum standards, rules and regulations promulgated thereunder;

(e) operation of the agency would cause serious disruption or irreparable damage to the general system of health services delivery in the particular area the agency intends to serve. ~~The agency does not receive certification of approval from the health systems agency in the area.~~

(Ch. 111 1/2, par. 2810)

Sec. 10. (a) The Department may, upon its own motion, and shall upon the verified complaint in writing of any person setting forth facts which if proven would constitute grounds for the denial of an application for a license, or refusal to renew a license, or revocation of a license, investigate the applicant or licensee. Before denying an application, or refusing to renew a license, or revoking a license, the Department shall notify the applicant or licensee.

(b) Such notice shall be effected by registered mail or by personal service setting forth the particular reasons for the proposed action and fixing a date, not less than 15 days from the date of such mailing or service, at which time the applicant or licensee shall be given an opportunity for a hearing. Such hearing shall be conducted by the Director or by an employee of the Department designated in writing by the Director as Hearing Officer to conduct the hearing. On the basis of any such hearing, or upon default of the applicant or licensee, the Director shall make a determination specifying his findings and conclusions.

(c) The procedure governing hearings authorized by this Section shall be in accordance with the Illinois Administrative Procedure Act ~~which is expressly adopted and incorporated herein as if all of the provisions of such Act were recited in this Act, except that in case of conflict between the two Acts the provisions of this Act shall~~

contrat.

(d) The Director or Hearing Officer shall upon his own motion, or on the written request of any party to the proceeding, issue subpoenas requiring the attendance and the giving of testimony by witnesses, and subpoenas duces tecum requiring the production of books, papers, records, or memoranda. All subpoenas and subpoenas duces tecum issued under the terms of this Act may be served by any person of full age. The fees of witnesses for attendance and travel shall be the same as the fees of witnesses before the circuit court of this State, such fees to be paid when the witness is excused from further attendance. When the witness is subpoenaed at the instance of the Director, or Hearing Officer, such fees shall be paid in the same manner as other expenses of the Department, and when the witness is subpoenaed at the instance of any other party to any such proceeding the Department may require that the cost of service of the subpoena or subpoena duces tecum and the fee of the witness be borne by the party at whose instance the witness is summoned. In such case, the Department in its discretion, may require a deposit to cover the cost of such service and witness fees. A subpoena or subpoena duces tecum issued as aforesaid shall be served in the same manner as a subpoena issued out of a court.

(e) Any Circuit Court of this State upon the application of the Director, or upon the application of any other party to the proceeding, may, in its discretion, compel the attendance of witnesses, the production of books, papers, records, or memoranda and the giving of testimony before the Director or Hearing Officer conducting an investigation or holding a hearing authorized by this Act, by an attachment for contempt, or otherwise, in the same manner as production of evidence may be compelled before the court.

(f) The Director or Hearing Officer, or any party in an investigation or hearing before the Department, may cause the

depositions of witnesses within the State to be taken in the manner prescribed by law for like depositions in civil actions in courts of this State, and to that end compel the attendance of witnesses and the production of books, papers, records, or memoranda.

RECOMMENDED BILL THIRTEEN

LEGISLATION FROM PROPOSED RULEMAKING REVIEW

AGENCY: Department of Revenue

PROPOSED RULEMAKING: Licensing for Bingo, Rule No. 1 Under the Bingo License and Tax Act (Proposed July 21, 1978)

BACKGROUND: The Joint Committee objected to this proposed rule because of two provisions which did not provide statements of standards on which actions by the Department would be based (see page 56). One of the provisions concerned requiring and setting the amount of a bond for a limited bingo license and the other provision concerned requiring an additional bond for a licensee. In both provisions, the Joint Committee believed there were inadequate standards to guard against arbitrary action by the agency and to fully inform the public of the agency's policy toward exercising its discretion in these areas. The Department refused to modify the rule, stating that standards, if necessary, would be stated in the statute and the Department should not limit its discretion.

SUMMARY OF LEGISLATION: This amendment to the Bingo License and Tax Act will clarify the general provisions for the requirement of bonds from bingo licensees and require the Department to state in the form of rules its standards for exercising its discretion in this area.

RECOMMENDED BILL THIRTEEN

81st GENERAL ASSEMBLY
State of Illinois

1979 and 1980

INTRODUCED _____, BY

SYNOPSIS: (Ch. 120, par. 1103)

Amends the Bingo License and Tax Act. Requires the Department of Revenue to establish standards by rule, subject to the Illinois Administrative Procedure Act, to determine the necessity for bonding, amount of bond and the necessity for additional security for a bingo licensee.

LRB8103109FGjpA

Fiscal Note Act may be applicable

A BILL FOR

the payment to the Department of Revenue of applicable taxes. Such rulemaking is subject to the provisions of the Illinois Administrative Procedure Act. The provisions of Sections 4, 5, 5a, 5b, 5c, 5d, 5e, 5f, 5g, 5h, 5i, 5j, 6, 6a, 6b, 6c, 8, 9, 10, 11, 12 and 13 1/2 of the "Retailers' Occupation Tax Act" which are not inconsistent with this Act shall apply, as far as practicable, to the subject matter of this Act to the same extent as if such provisions were included in this Act. For the purposes of this Act, references in such incorporated Sections of the "Retailers' Occupation Tax Act" to retailers, sellers or persons engaged in the business of selling tangible personal property means persons engaged in conducting bingo games, and references in such incorporated Sections of the "Retailers' Occupation Tax Act" to sales of tangible personal property mean the conducting of bingo games.

One-half of all of the sums collected under this Section shall be deposited into the Mental Health Fund and 1/2 of all of the sums collected under this Section shall be deposited in the Common School Fund.

RECOMMENDED BILL FOURTEEN

LEGISLATION FROM PROPOSED RULEMAKING REVIEW

AGENCY: Department of Revenue

PROPOSED RULEMAKING: Retailers' Occupation Tax -- County Fairs (Proposed August 11, 1978)

BACKGROUND: The proposed rulemaking would have provided for daily collection of sales tax at "county fairs, art shows, flea markets and the like" as well as the State Fair. The Joint Committee at its September 18, 1978, hearing issued a statement of objection to the proposed rulemaking as exceeding the Department's statutory authority. (see pages 56 - 57). The Joint Committee also felt that as a matter of policy this may be a valuable procedure and agreed to develop legislation to grant this authority to the Department.

SUMMARY OF LEGISLATION: This amendment to the Retailers' Occupation Tax Act (Section 3; Ill.Rev.Stat.1977,ch.120,par.442) would allow the Department to collect the tax daily at the Illinois State Fair and at county fairs, art shows, flea markets and similar activities when the Department finds that there is a significant risk of loss of revenue to the State because of a large number of out-of-state retailers or other reasons.

RECOMMENDED BILL FOURTEEN

81st GENERAL ASSEMBLY
State of Illinois

1979 and 1980

INTRODUCED _____, BY

SYNOPSIS: (Ch. 120, par. 442)

Amends the Retailers' Occupation Tax Act. Allows the Department of Revenue to collect the tax daily at the Illinois State Fair, art shows, flea markets and other similar events when the Department finds that there is a significant risk of loss of revenue to the State because of a large number of out-of-state retailers or other reasons.

LRB8102263KPak

Fiscal Note Act
may be applicable

A BILL FOR

LRB81U2263KPak

AN ACT to amend Section 3 of the "Retailers' Occupation Tax Act", approved June 28, 1933, as amended.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Section 3 of the "Retailers' Occupation Tax Act", approved June 28, 1933, as amended, is amended to read as follows:

(Ch. 120, par. 442)

Sec. 3. Except as provided in this Section, on or before the last day of each calendar month, every person engaged in the business of selling tangible personal property at retail in this State during the preceding calendar month shall file a return with the Department, stating:

1. The name of the seller;

2. His residence address and the address of his principal place of business and the address of the principal place of business (if that is a different address) from which he engages in the business of selling tangible personal property at retail in this State;

3. Total amount of receipts received by him during the preceding calendar month from sales of tangible personal property, and from services furnished, by him during such preceding calendar month;

4. Total amount received by him during the preceding calendar month on charge and time sales of tangible personal property, and from services furnished, by him prior to the month for which the return is filed;

5. Deductions allowed by law;

6. Gross receipts which were received by him during the preceding calendar month and upon the basis of which the tax is imposed;

7. The amount of tax due;

8. The amount of penalty due, if any;

9. Such other reasonable information as the Department may require.

If the retailer's average monthly tax liability to the Department does not exceed $100, the Department may authorize his returns to be filed on a quarter annual basis, with the return for January, February and March of a given year being due by April 30 of such year; with the return for April, May and June of a given year being due by July 31 of such year; with the return for July, August and September of a given year being due by October 31 of such year, and with the return for October, November and December of a given year being due by January 31 of the following year.

If the retailer's average monthly tax liability with the Department does not exceed $20, the Department may authorize his returns to be filed on an annual basis, with the return for a given year being due by January 31 of the following year.

Such quarter annual and annual returns, as to form and substance, shall be subject to the same requirements as monthly returns.

Notwithstanding any other provision in this Act concerning the time within which a retailer may file his return, in the case of any retailer who ceases to engage in a kind of business which makes him responsible for filing returns under this Act, such retailer shall file a final return under this Act with the Department not more than one month after discontinuing such business.

Where the same person has more than one business registered with the Department under separate registrations under this Act, such person may not file each return that is due as a single return covering all such registered businesses, but shall file separate returns for each such registered business.

In addition, with respect to motor vehicles and aircraft, every retailer selling this kind of tangible personal

property shall file, with the Department, upon a form to be prescribed and supplied by the Department, a separate return for each such item of tangible personal property which the retailer sells, except that where, in the same transaction, a retailer of motor vehicles transfers more than one motor vehicle to another motor vehicle retailer for the purpose of resale, such seller for resale may report the transfer of all motor vehicles involved in that transaction to the Department on the same uniform invoice-transaction reporting return form.

Such transaction reporting return in the case of motor vehicles shall be the same document as the Uniform Invoice referred to in Section 5-402 of The Illinois Vehicle Code and must show the name and address of the seller; the name and address of the purchaser; the amount of the selling price including the amount allowed by the retailer for traded-in property, if any; the amount allowed by the retailer for the traded-in tangible personal property, if any, to the extent to which Section 1 of this Act allows an exemption for the value of traded-in property; the balance payable after deducting such trade-in allowance from the total selling price; the amount of tax due from the retailer with respect to such transaction; the amount of tax collected from the purchaser by the retailer on such transaction (or satisfactory evidence that such tax is not due in that particular instance, if that is claimed to be the fact); the place and date of the sale; a sufficient identification of the property sold; such other information as is required in Section 5-402 of The Illinois Vehicle Code, and such other information as the Department may reasonably require.

Such transaction reporting return in the case of aircraft must show the name and address of the seller; the name and address of the purchaser; the amount of the selling price including the amount allowed by the retailer for traded-in property, if any; the amount allowed by the retailer for the

traded-in tangible personal property, if any, to the extent to which Section 1 of this Act allows an exemption for the value of traded-in property; the balance payable after deducting such trade-in allowance from the total selling price; the amount of tax due from the retailer with respect to such transaction; the amount of tax collected from the purchaser by the retailer on such transaction (or satisfactory evidence that such tax is not due in that particular instance, if that is claimed to be the fact); the place and date of the sale, a sufficient identification of the property sold, and such other information as the Department may reasonably require.

Such transaction reporting return shall be filed not later than 30 days after the day of delivery of the item that is being sold, but may be filed by the retailer at any time sooner than that if he chooses to do so. The transaction reporting return and tax remittance or proof of exemption from the Illinois use tax may be transmitted to the Department by way of the State agency with which, or State officer with whom the tangible personal property must be titled or registered (if titling or registration is required) if the Department and such agency or State officer determine that this procedure will expedite the processing of applications for title or registration.

With each such transaction reporting return, the retailer shall remit the proper amount of tax due (or shall submit satisfactory evidence that the sale is not taxable if that is the case), to the Department or its agents, whereupon the Department shall issue, in the purchaser's name, a use tax receipt (or a certificate of exemption if the Department is satisfied that the particular sale is tax exempt) which such purchaser may submit to the agency with which, or State officer with whom, he must title or register the tangible personal property that is involved (if titling or registration is required) in support of such purchaser's

application for an Illinois certificate or other evidence of title or registration to such tangible personal property.

No retailer's failure or refusal to remit tax under this Act precludes a user, who has paid the proper tax to the retailer, from obtaining his certificate of title or other evidence of title or registration (if titling or registration is required) upon satisfying the Department that such user has paid the proper tax (if tax is due) to the retailer. The Department shall adopt appropriate rules to carry out the mandate of this paragraph.

If the user who would otherwise pay tax to the retailer wants the transaction reporting return filed and the payment of the tax or proof of exemption made to the Department before the retailer is willing to take these actions and such user has not paid the tax to the retailer, such user may certify to the fact of such delay by the retailer and may (upon the Department being satisfied of the truth of such certification) transmit the information required by the transaction reporting return and the remittance for tax or proof of exemption directly to the Department and obtain his tax receipt or exemption determination, in which event the transaction reporting return and tax remittance (if a tax payment was required) shall be credited by the Department to the proper retailer's account with the Department, but without the 2% discount provided for in this Section being allowed. When the user pays the tax directly to the Department, he shall pay the tax in the same amount and in the same form in which it would be remitted if the tax had been remitted to the Department by the retailer.

Refunds made by the seller during the preceding return period to purchasers, on account of tangible personal property returned to the seller, shall be allowed as a deduction under subdivision 5, in case the seller had theretofore included the receipts from the sale of such tangible personal property in a return filed by him and had

paid the tax imposed by this Act with respect to such receipts.

Where the seller is a corporation, the return filed on behalf of such corporation shall be signed by the president, vice-president, secretary or treasurer or by the properly accredited agent of such corporation.

Except as provided in this Section, the retailer filing the return under this Section shall, at the time of filing such return, pay to the Department the amount of tax imposed by this Act less a discount of 2% or $5 per calendar year, whichever is greater, which is allowed to reimburse the retailer for the expenses incurred in keeping records, preparing and filing returns, remitting the tax and supplying data to the Department on request. In the case of retailers who report and pay the tax on a transaction by transaction basis, as provided in this Section, such discount shall be taken with each such tax remittance instead of when such retailer files his periodic return.

If the taxpayer's average monthly tax liability to the Department under this Act, the "Use Tax Act", the "Service Occupation Tax Act", the "Service Use Tax Act", the "Municipal Retailers' Occupation Tax Act", the "Municipal Service Occupation Tax Act", the "County Retailers' Occupation Tax Act" and the "County Service Occupation Tax Act" exceeded $5,000 during the preceding 4 complete calendar quarters and the taxpayer is not required to make quarter monthly payments under this Section, he shall file a return with the Department for each month by the end of the month during which such tax liability is incurred. If the Director of Revenue finds that the information required for the making of an accurate return cannot reasonably be compiled by a taxpayer by the end of the current calendar month for which a return is to be made, he may grant, for a period of one calendar quarter, a continuing one month extension of time for the filing of such returns. The granting of such an

extension may be conditioned upon the deposit by a taxpayer with the Department of an amount of money not exceeding the average monthly tax liability of the taxpayer to the Department for the preceding 4 complete calendar quarters (excluding the month of highest liability and the month of lowest liability in such 4 quarter period). Once applicable, the requirement of the deposit shall continue until the taxpayer's average monthly liability to the Department during the preceding 4 complete calendar quarters (excluding the month of highest liability and the month of lowest liability) is less than $4,500, or until the taxpayer's average monthly liability to the Department as computed for each calendar quarter of the preceding 4 complete calendar quarter period is less than $5,000.

All such deposits shall be credited against the taxpayer's liabilities under this Act, the "Use Tax Act", the "Service Occupation Tax Act", and the "Service Use Tax Act".

If the taxpayer's average monthly tax liability to the Department under this Act, the "Use Tax Act", the "Service Occupation Tax Act", the "Service Use Tax Act", the "Municipal Retailers' Occupation Tax Act", the "Municipal Service Occupation Tax Act", the "County Retailers' Occupation Tax Act" and the "County Service Occupation Tax Act" was $25,000 or more during the preceding 4 complete calendar quarters or was $10,000 or more if such 4 quarter period ended on or after March 31, 1977, he shall file a return with the Department each month by the end of the month next following the month during which such tax liability is incurred and shall make payments to the Department on or before the 7th, 15th, 22nd and last day of the month during which such liability is incurred in an amount equal to 1/4 of the taxpayer's actual liability for the month or an amount set by the Department not to exceed 1/4 of the average monthly liability of the taxpayer to the Department for the preceding 4 complete calendar quarters (excluding the month

of highest liability and the month of lowest liability in such 4 quarter period). The amount of such quarter monthly payments shall be credited against the final tax liability of the taxpayer's return for that month. Once applicable, the requirement of the making of quarter monthly payments to the Department shall continue until such taxpayer's average monthly liability to the Department during the preceding 4 complete calendar quarters (excluding the month of highest liability and the month of lowest liability) is less than $9,000, or until such taxpayer's average monthly liability to the Department as computed for each calendar quarter of the 4 preceding complete calendar quarter period is less than $10,000. If any such quarter monthly payment is not paid at the time or in the amount required by this Section, then the taxpayer's 2% vendors' discount shall be reduced by 2% of the difference between the minimum amount due as a payment and the amount of such quarter monthly payment actually and timely paid, except insofar as the taxpayer has previously made payments for that month to the Department in excess of the minimum payments previously due as provided in this Section. The Department shall make reasonable rules and regulations to govern the quarter monthly payment amount and quarter monthly payment dates for taxpayers who file on other than a calendar monthly basis.

If any such payment or deposit provided for in this Section exceeds the taxpayer's present and probable future liabilities under this Act, the "Use Tax Act", the "Service Occupation Tax Act" and the "Service Use Tax Act", the Department shall issue to the taxpayer a credit memorandum, which may be submitted by the taxpayer to the Department in payment of tax liability subsequently to be remitted by the taxpayer to the Department or be assigned by the taxpayer to a similar taxpayer under this Act, the "Use Tax Act", the "Service Occupation Tax Act" or the "Service Use Tax Act", in accordance with reasonable rules and regulations to be

prescribed by the Department.

Any deposit previously made by a taxpayer who is required to make quarter monthly payments under this amendatory Act of 1970 shall be applied against the taxpayer's liability to the Department under this Act, the "Use Tax Act", the "Service Occupation Tax Act" or the "Service Use Tax Act" for the month preceding the first month in which the taxpayer is required to make such quarter monthly payments. If the deposit exceeds that liability, the Department shall issue the taxpayer a credit memorandum for the excess.

Of the money received by the Department under the provisions of this Act, after October 31, 1969, 3/4 thereof shall be paid into the State treasury, and 1/4 shall be reserved in a special account and used only for the transfer to the Common School Fund as part of the monthly transfer from the General Revenue Fund in accordance with Section 8 1/2 of "An Act in relation to State finance", approved June 10, 1919, as amended.

For greater simplicity of administration, manufacturers, importers and wholesalers whose products are sold at retail in Illinois by numerous retailers, and who wish to do so, may assume the responsibility for accounting and paying to the Department all tax accruing under this Act with respect to such sales, if the retailers who are affected do not make written objection to the Department to this arrangement.

Any person engaged in the business of selling tangible personal property at retail as a concessionaire at the Illinois State Fair, county fairs, art shows, flea markets and similar exhibitions or events, may be required to make a daily report of the amount of such sales to the Department and to make a daily payment of the full amount of tax due. The Department shall impose this requirement when it finds that there is a significant risk of loss of revenue to the State at such an exhibition or event. Such a finding shall be based on evidence that a substantial number of

concessionaires who are not residents of Illinois will be engaging in the business of selling tangible personal property at retail at the exhibition or event, or other evidence of a significant risk of loss of revenue to the State. The Department shall notify concessionaires affected by the imposition of this requirement. In the absence of notification by the Department, the concessionaires shall file their returns as otherwise required in this Section.

RECOMMENDED BILL FIFTEEN

LEGISLATION FROM PROPOSED RULEMAKING REVIEW

AGENCY: Department of Revenue

PROPOSED RULEMAKING: Coin-Operated Amusement Devices Tax (Proposed February 24, 1978, and September 8, 1978)

BACKGROUND: The Department proposed in February, 1978, to change the method of tax assessment on coin-operated amusement devices in its rules from a "per device" basis to a "per slot" basis. This was intended to correct the rule's prior violation of the statute which clearly requires a "per slot" tax assessment (Ill.Rev.Stat.1977,ch.120,par.481b.1). The Joint Committee objected to this change under the belief that such an assessment method would be unreasonable (see pages 55 - 56). The Department withdrew its rule and attempted to pass corrective legislation. The legislation failed and the Department reproposed the rule in September, 1978. The Joint Committee again objected, continuing to maintain that the statutory method was unreasonable and should be changed (see page 57). This legislation will give the full General Assembly the opportunity to change the method of tax assessment.

SUMMARY OF LEGISLATION: This legislation will change the method of assessment of tax on coin-operated amusement devices from a "per slot" basis to a "per device" basis. This will make the tax method more reasonable and in conformity with the Department of Revenue's current unauthorized practice.

RECOMMENDED BILL FIFTEEN

81st GENERAL ASSEMBLY
State of Illinois

1979 and 1980

INTRODUCED _____, BY

SYNOPSIS. (Ch. 120, par. 481b.1)

Amends Section 1 of the "Coin-Operated Amusement Device Tax Act". Imposes the tax on the device (not the coin receiving slots of the device).

LR58102942GLjw

Fiscal Note Act
may be applicable

A BILL FOR

LRB81029426Ljw

AN ACT to amend Section 1 of the "Coin-Operated Amusement Device Tax Act", approved July 7, 1953, as amended.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Section 1 of the "Coin-Operated Amusement Device Tax Act", approved July 7, 1953, as amended, is amended to read as follows:

(Ch. 120, par. 481b.1)

Sec. 1. There hereby is imposed, on the privilege of operating every coin-in-the-slot-operated amusement device in this State which returns to the player thereof no money or property or right to receive money or property, an annual privilege tax of $10.00 for each device ~~coin-receiving-slot~~.

RECOMMENDED BILL SIXTEEN

LEGISLATION FROM PROPOSED RULEMAKING REVIEW

AGENCY: Department of Transportation

PROPOSED RULEMAKING: Proposed Rule 13-3 Governing the Allocation of Financial Responsibility for Traffic Signal Installation, Maintenance and Operation (Proposed May 5, 1978)

BACKGROUND: The Joint Committee at its June, 1978 hearing objected to this proposed rule because it does not specify that traffic control maintenance agreements between the agency and a municipality must be renewed each fiscal year to be in conformity with the requirements of the State Finance Act (see page 58). The Department disagreed with this interpretation, but modified the rule by adding the phrase "The master agreement shall be in accordance with the provisions of all applicable law." The Joint Committee believes this phrase lacks adequate specificity to actually inform the municipalities and the public of the legal duration of such agreements.

SUMMARY OF LEGISLATION: This suggested legislation would clarify the statute authorizing these agreements to clearly indicate that such agreements cannot bind the state to expenditures beyond the current fiscal year and that they must conform to the requirements of the State Finance Act.

RECOMMENDED BILL SIXTEEN

81st GENERAL ASSEMBLY
State of Illinois

1979 and 1980

INTRODUCED _____, BY

SYNOPSIS: (Ch. 121, par. 9-101)

Amends the Illinois Highway Code by limiting the highway contracts of counties and municipalities with the Department to the fiscal year in which such agreements are made, and provides that such agreements conform to the State Finance Act.

LRB8102997BDak

A BILL FOR

AN ACT to amend the "Illinois Highway Code", approved June 8, 1959, as amended.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Section 9-101 of the "Illinois Highway Code", approved June 8, 1959, as amended, is amended to read as follows:

(Ch. 121, par. 9--101)

Sec. 9-101. Nothing in this Code shall prevent the execution of cooperative agreements among governmental agencies.

Any municipality may negotiate an agreement with the Department whereby the municipality may use such funds as are available to it for that purpose for the construction or maintenance of a State highway within its boundaries or with the corporate authority of a county or road district for the construction or maintenance of a highway on the county highway system or township or district road system outside of its municipal boundaries.

The county board may negotiate an agreement with the Department whereby the county may use such funds as are available to it for that purpose for the construction or maintenance of a highway on the State highway system or with a municipality for the construction or maintenance of streets on the municipal street system of such municipality.

Such agreements may not bind the State to expend funds in any fiscal year other than the fiscal year in which the agreement is made. Such agreements shall conform to all applicable provisions of "An Act in relation to State finance", approved June 10, 1919, as amended.

RECOMMENDED BILL SEVENTEEN

LEGISLATION FROM PROPOSED RULEMAKING REVIEW

AGENCY: Department of Veterans' Affairs

PROPOSED RULEMAKING: Scholarships for Military Dependents (Proposed September 1, 1978)

BACKGROUND: The Joint Committee objected to this proposed rulemaking at its September 1978, meeting because the Department did not provide for reimbursement of all "mandated fees" as required by the statute establishing this program (see pages 58 - 59). Instead, the Department was attempting to make the reimburseable fees compatable with other scholarship programs administered by the Department. The Joint Committee objected because the rules were technically in violation of the statute, but agreed with the Department that compatability was desirable and legislation should be introduced to establish this compatability.

SUMMARY OF LEGISLATION: This legislation would change the requirement that "mandatory fees" be reimbursed to a requirement that a list of specific fees be reimbursed, consistent with other scholarship programs.

RECOMMENDED BILL SEVENTEEN

81st GENERAL ASSEMBLY
State of Illinois

1979 and 1980

INTRODUCED _____, BY

SYNOPSIS: (Ch. 122, par. 30-14.2)

Amends The School Code. Provides that benefits under scholarships for dependents of certain military personnel include matriculation, graduation, activity, term or incidental fees instead of mandatory fees.

LRB8102999ASma

Fiscal Note Act may be applicable

A BILL FOR

AN ACT to amend Section 30-14.2 of "The School Code", approved March 18, 1961, as amended.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Section 30-14.2 of "The School Code", approved March 18, 1961, as amended, is amended to read as follows:

(Ch. 122, par. 30--14.2)

Sec. 30-14.2. Scholarships for Dependents of military personnel who are prisoners, missing in action, killed or permanently disabled. Any spouse, natural child, legally adopted child, or any child in legal custody of an Illinois resident prior to or during the time the U. S. Department of Defense has declared such serviceman or servicewoman to be a prisoner of war, or a person missing in action, or a person killed or such serviceman or servicewoman has been declared by the U. S. Department of Defense or the U. S. Veterans Administration to be permanently disabled with 90% to 100% disability is entitled to 8 semesters or 12 quarters of full payment of tuition and any matriculation, graduation, activity, term or incidental mandatory fees at any State supported Illinois institution of higher learning for either full or part-time study, or 8 semesters or 12 quarters of payment of tuition and any matriculation, graduation, activity, term or incidental mandatory fees at the rate established by the Illinois State Scholarship Commission for private institutions in the State of Illinois. The benefits of this Section shall be administered by and paid out of funds available to the Illinois Department of Veterans Affairs and shall accrue to the bona fide applicant without the requirement of demonstrating financial need to qualify for such benefits. Once a person qualifies as a dependent under the terms and provisions of this paragraph there shall

be no situation such as the return of such serviceman or servicewoman that will remove the dependent from provisions or benefits of this paragraph.

RECOMMENDED BILL EIGHTEEN

LEGISLATION FROM PROPOSED RULEMAKING REVIEW

AGENCY: Office of the Attorney General

PROPOSED RULEMAKING: Issuance of Opinions (Proposed May 26, 1978)

BACKGROUND: The Joint Committee objected to these proposed rules at its May 26, 1978, hearing because the Attorney General lacked express statutory authority to adopt such rules (see page 59). The argument of the representative of the Attorney General's office that there was an implied rulemaking power in the delegation of the discretionary task of issuing opinions was not accepted by the Joint Committee. The Office of the Attorney General refused to withdraw the rules and they are currently in effect.

SUMMARY OF LEGISLATION: This amendment will give the Attorney General express statutory authority to adopt rules in relation to the issuing of opinions.

RECOMMENDED BILL EIGHTEEN

81st GENERAL ASSEMBLY
State of Illinois

1979 and 1980

INTRODUCED _____, BY

SYNOPSIS:

(Ch. 14, par. 4)

Amends an Act in regard to attorneys general. Provides the Attorney General with express statutory authority to adopt rules in relation to the issuing of opinions.

LRB8102937Pmk

Fiscal Note Act
may/s applicable

A BILL FOR

AN ACT to amend Section 4 of "An Act in regard to attorneys general and state's attorneys", approved March 26, 1874, as amended.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Section 4 of "An Act in regard to attorneys general and state's attorneys", approved March 26, 1874, as amended, is amended to read as follows:

(Ch. 14, par. 4)

Sec. 4. The duties of the attorney general shall be--

First--To appear for and represent the people of the state before the supreme court in all cases in which the state or the people of the state are interested.

Second--To institute and prosecute all actions and proceedings in favor of or for the use of the state, which may be necessary in the execution of the duties of any state officer.

Third--To defend all actions and proceedings against any state officer, in his official capacity, in any of the courts of this state or the United States.

Fourth--To consult with and advise the several state's attorneys in matters relating to the duties of their office; and when, in his judgment, the interest of the people of the state requires it, he shall attend the trial of any party accused of crime, and assist in the prosecution.

Fifth--To consult with and advise the governor and other state officers, and give, when requested, written opinions upon all legal or constitutional questions relating to the duties of such officers respectively.

Sixth--To prepare, when necessary, proper drafts for contracts and other writings relating to subjects in which the state is interested.

Seventh--To give written opinions, when requested by

either branch of the general assembly, or any committee thereof, upon constitutional or legal questions. The Attorney General shall adopt necessary and reasonable rules regarding the issuance of such opinions. Such rules shall be subject to the provisions of the Illinois Administrative Procedure Act.

Eighth--To enforce the proper application of funds appropriated to the public institutions of the state, prosecute breaches of trust in the administration of such funds, and, when necessary, prosecute corporations for failure or refusal to make the reports required by law.

Ninth--To keep a register of all cases prosecuted or defended by him, in behalf of the state or its officers, and of all proceedings had in relation thereto, and to deliver the same to his successor in office.

Tenth--To keep on file in his office a copy of the official opinions issued by the attorney general and deliver same to his successor.

Eleventh--To pay into the state treasury all moneys received by him for the use of the state.

Twelfth--To attend to and perform any other duty which may, from time to time, be required of him by law.

RECOMMENDED BILL NINETEEN

LEGISLATION FROM PROPOSED RULEMAKING REVIEW

AGENCY: Illinois Office of Education

PROPOSED RULEMAKING: Secular Textbook Loan Program (Proposed March 17, 1978)

BACKGROUND: The proposed rulemaking established a priority system for implementation of the Secular Textbook Loan Program under Section 18-17 of the School Code (Ill.Rev.Stat.1977,ch.122,par.18-17). The Joint Committee at its hearing in April, 1978 did not formally object, but indicated that the priority system was not contemplated by and was technically in violation of the authorizing statute. The Joint Committee suggested that an amendment to this section would clarify the statute.

SUMMARY OF LEGISLATION: The amendment will specify that the Office can utilize a priority system in implementing this program. This will clarify the compliance of the rules with the authorizing statute and help to guarantee equitable distribution of available resources

RECOMMENDED BILL NINETEEN

81st GENERAL ASSEMBLY
State of Illinois

1979 and 1980

INTRODUCED _____, BY

SYNOPSIS: (Ch. 122, par. 18-17)

Allows the State Board of Education to establish by rule a system of equitable distribution of textbooks when funds are insufficient to provide textbooks to all applicants. Also, makes nonsubstantive changes.

LRB8102261ALakA

Fiscal Note Act may be applicable

A BILL FOR

AN ACT to amend Section 18-17 of "The School Code" approved March 18, 1961, as amended.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Section 18-17 of "The School Code", approved March 18, 1961, as amended, is amended to read as follows:

(Ch. 122, par. 18-17)

Sec. 18-17. The State Board ~~of Examiners Office~~ of Education shall provide ~~the following~~ free of charge to any student in this State who is enrolled in grades kindergarten through 12 at a public school or at a school other than a public school which is in compliance with the compulsory attendance laws of this State and Title VI of the Civil Rights Act of 1964 the loan of secular textbooks listed for use by the State Board ~~Office~~ of Education. The foregoing service shall be provided directly to the students at their request or at the request of their parents or guardians. The State Board ~~Office~~ of Education shall adopt appropriate regulations to administer this Section and to facilitate the equitable participation of all students eligible for benefits hereunder.

For purpose of this Section when available funds are insufficient to provide the loan of secular textbooks to all eligible students, the State Board of Education may establish by rule a system of priorities based solely on grade level to insure equitable distribution of loaned secular textbooks. Such rulemaking is subject to the provisions of the Illinois Administrative Procedure Act.

RECOMMENDED BILL TWENTY

LEGISLATION FROM PROPOSED RULEMAKING REVIEW

AGENCY: Illinois Office of Education

PROPOSED RULEMAKING: Rules for Pupil Transportation (Proposed June 30, 1978)

BACKGROUND: These rules represented a complete revision of the Office's School Bus and Pupil Transportation rules. Some of the changes reflected shifting of authority for various phases of regulation between the Office of Education, the Department of Transportation and the Secretary of State. The Joint Committee considered the rules at its July 25, 1978, meeting, but did not formally object. It was felt, however, that additional statutory authority was needed to make the regulations requiring school bus driver permits actually effective. Instances were cited where the lack of enforcement of this requirement had resulted in accidents.

SUMMARY OF LEGISLATION: This legislation would expressly authorize regional superintendents and local school boards to monitor compliance with the requirement that bus drivers have valid school bus driver permits. It would also allow a local school board to cancel contracts with transportation providers for evidence of non-compliance with this requirement.

RECOMMENDED BILL TWENTY

81st GENERAL ASSEMBLY
State of Illinois

1979 and 1980

INTRODUCED _____, BY

SYNOPSIS: (Ch. 122, par. 29-6.1)

Amends The School Code. Authorizes regional superintendents and local school boards to monitor compliance with the statutory requirement that bus drivers have valid school bus driver permits. Authorizes local school boards to cancel contracts with transportation providers based on evidence of non-compliance with this requirement.

LRB9102939SKak

A BILL FOR

LRS8102934SKak

AN ACT to amend Section 29-6.1 of "The School Code", approved March 18, 1961, as amended.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Section 29-6.1 of "The School Code", approved March 18, 1961, as amended, is amended to read as follows:

(Ch. 122, par. 29-6.1)

Sec. 29-6.1. Contracts for transportation. School boards may enter into 1, 2 or 3 year contracts for transportation of pupils to and from school.

School boards and regional superintendents may conduct such investigations as may be necessary to insure that all persons hired by a contractor to operate school buses have valid school bus driver permits as required under Sections 6-104 and 6-105.1 of "The Illinois Vehicle Code". If a regional superintendent finds substantial evidence of non-compliance with this requirement in the case of any such contract, he shall recommend to the school board termination of the contract. The school board may terminate such contracts based on such recommendations or other evidence of non-compliance with the permit requirements.

RECOMMENDED BILL TWENTY-ONE

LEGISLATION FROM PROPOSED RULEMAKING REVIEW

AGENCY: State Board of Elections

PROPOSED RULEMAKING: Reorganization and Updating of Rules (Proposed April 28, 1978)

BACKGROUND: A number of difficulties were discovered and resolved in this reorganization of the State Board of Elections rules. One remaining difficulty was the problematic nature of the statutory authority for requiring publication of notices of primary elections in Chicago and Cook County. The statute (Ill.Rev.Stat.1977,ch.46,par.7-15) requires "posting...in the same manner as notice of election for general elections are required to be posted..." However, over the years, the election code has been amended so that now the statutory requirement for posting for general elections has been changed to a publication requirement. The Board was interpreting "posted" in this section to include "published" and was thus imposing a publication requirement. While the Joint Committee agreed with the policy behind the Board's rule to require publication, it was felt that the language in Section 7-15 should be amended to update the statute and to provide clearer authority for this requirement.

SUMMARY OF LEGISLATION: The legislation would simply clarify the statutory language to make it clear that a publication, instead of a posting, requirement for primary elections in Chicago and Cook County is being imposed.

RECOMMENDED BILL TWENTY-ONE

81st GENERAL ASSEMBLY
State of Illinois

1979 and 1980

INTRODUCED _____, BY

SYNOPSIS: (Ch. 46, par. 7-15)

Amends the Election Code. Requires notice of the primaries to be published as required for general elections.

LRB8102940KPma

A BILL FOR

LRB8102940KPma

AN ACT to amend Section 7-15 of "The Election Code", approved May 11, 1943, as amended.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Section 7-15 of "The Election Code", approved May 11, 1943, as amended, is amended to read as follows:

(Ch. 46, par. 7-15)

(Text of Section in effect until December 1, 1980)

Sec. 7-15. At least 20 days before each primary the county clerk of each county, or the city, village or incorporated town or town or other clerk, whose duty it is to give notice of general elections under this Act, for the election of officers whose nomination is required to be made under this Article, shall prepare in the manner provided in this Act, a notice of such primary which notice shall state the time and place of holding the primary, the hours during which the polls will be open, the offices for which candidates will be nominated at such primary and the political parties entitled to participate therein, notwithstanding that no candidate of any such political party may be entitled to have his name printed on the primary ballot.

In counties, cities, villages, incorporated towns or towns having fewer than 500,000 inhabitants such notice shall be published once in two or more newspapers printed and published in the county, city, village, incorporated town or towns, as the case may be, or if there is no such newspaper, then in any two or more newspapers printed and published in the county and having a general circulation throughout the community.

In counties, cities, villages, incorporated towns or towns having 500,000 or more inhabitants such notice shall be published posted at least 15 days prior to the primary by the

same authorities and in the same manner as notice of election for general elections are required to be published posted in counties, cities, villages, incorporated towns or towns of 500,000 or more inhabitants under this Act.

(Text of Section taking effect December 1, 1980)

Sec. 7-15. At least 20 days before the general primary the county clerk of each county, and at least 20 days before the consolidated primary the local election official of each unit of local government for which nomination of officers is required to be made under this Article, shall prepare in the manner provided in this Act, a notice of such primary which notice shall state the time and place of holding the primary, the hours during which the polls will be open, the offices for which candidates will be nominated at such primary and the political parties entitled to participate therein, notwithstanding that no candidate of any such political party may be entitled to have his name printed on the primary ballot.

In counties, municipalities, or towns having fewer than 500,000 inhabitants such notice shall be published once in two or more newspapers published in the county, municipality or town, as the case may be, or if there is no such newspaper, then in any two or more newspapers published in the county and having a general circulation throughout the community.

In counties, municipalities, or towns having 500,000 or more inhabitants such notice shall be published posted at least 15 days prior to the primary by the same authorities and in the same manner as notice of election for general elections are required to be publishsed posted in counties, municipalities or towns of 500,000 or more inhabitants under this Act.

Section 2. This Act does not accelerate the taking effect of any part of the version of any Section for which a deferred effective date is specified and does not defer or

suspend the repeal heretofore provided by law of any Section.

RECOMMENDED BILL TWENTY-TWO

LEGISLATION FROM PROPOSED RULEMAKING REVIEW

AGENCY: Division of Vocational Rehabilitation

PROPOSED RULEMAKING: Criteria for Evaluation of Programs (Proposed May 26, 1978)

BACKGROUND: These rules, which governed a number of key functions of the Division of Vocational Rehabilitation, were proposed in May 1978. The Joint Committee considered the rules at its June 1978 hearing and formally objected to the rules because the Board lacked express statutory authority to adopt rules, even though rulemaking authority could possibly be inferred from the Act establishing the division. The Joint Committee believed that an express grant of rulemaking authority would clarify the agency's powers.

SUMMARY OF LEGISLATION: This amendatory legislation would expressly grant rulemaking authority to the Board of Vocational Rehabilitation in carrying out its powers and duties. The amendment also replaces unnecessary language relating to the applicability of the Illinois Administrative Procedure Act.

RECOMMENDED BILL TWENTY-TWO

81st GENERAL ASSEMBLY
State of Illinois

1979 and 1980

INTRODUCED _____, BY

SYNOPSIS: (Ch. 23, par. 3434a)

Amends An Act in relation to vocational rehabilitation of disabled persons. Provides the Board of Vocational Rehabilitation with express authority to adopt rules necessary to accomplish the purposes of the Act.

LRB8102260PMdvA

Fiscal Note Act
may be applicable

A BILL FOR

AN ACT to amend Section 3a of "An Act in relation to vocational rehabilitation of disabled persons", approved June 28, 1921, as amended.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Section 3a of "An Act in relation to vocational rehabilitation of disabled persons", approved June 28, 1921, as amended, is amended to read as follows:

(Ch. 23, par. 3434a)

Sec. 3a. The Board of Vocational rehabilitation shall adopt such rules as may be necessary to carry out its powers and duties under this Act and accomplish the purposes of this Act. Such rulemaking shall be subject to the provisions of "the Illinois Administrative Procedure Act". ~~The provisions of "The Illinois Administrative Procedure Act", approved September 22, 1975, are hereby expressly adopted and shall apply to all administrative rules and procedures of the Board of Vocational Rehabilitation under this Act, except that Section 5 of The Illinois Administrative Procedure Act relative to procedures for rule making does not apply to the adoption of any rule required by federal law in connection with which the Board is precluded by law from exercising any discretion.~~

Other Recommendations

During the review of several proposed rulemakings, the Joint Committee discovered situations which needed legislative attention, but which were not amenable to amendatory legislation. To address these situations, the Joint Committee has adopted resolutions clearly setting forth the Joint Committee's views and urging legislative action on the agency's appropriation or other appropriate legislative action, or urging action by other state officials. Each of these resolutions adopted by the Joint Committee is presented on the following pages.

JOINT COMMITTEE ON ADMINISTRATIVE RULES

RESOLUTION

Whereas, the Joint Committee on Administrative Rules has found that the rules entitled Accessibility Standards Illustrated, proposed by the Capital Development Board to implement the Facilities for the Handicapped Act (Ill.Rev.Stat.1977,ch.111½,par.3701 et. seq.) as published in the September 8, 1978 issue of the Illinois Register, exceed the statutory and legal authority of the Board; and

Whereas, the Board has refused to modify these rules in response to the specific objections of the Joint Committee that the provisions of the rules making these standards applicable to facilities not accessible to the general public and to the privately-funded remodeling of facilities clearly exceed the authority delegated to the Board by the Facilities for the Handicapped Act; and

Whereas, the Attorney General would be the officer responsible for the enforcement of these rules or the prosecution of violators of the provisions of these rules; and

Whereas, the question of the applicability of these standards is particularly important, since the lack of clear statement of the legal coverage of these rules in some areas may weaken their total effect, making them potentially ineffective in dealing with any facilities; and

Whereas, this is an important issue which affects the daily lives of thousands of Illinois citizens; and

Whereas, since the legislative intent of the Act is plainly stated in limiting the applicability of these standards to facilities open to the general public, new buildings, and publicly-funded remodeling of buildings the Board lacks the authority to legally adopt these rules which the Joint Committee has objected to and the Board has refused to modify or withdraw;

Therefore, Be It Resolved that the Joint Committee reassert its finding that these rules violate the express provisions of the Facilities for the Handicapped Act, exceed the statutory or legal authority of the Capital Development Board, are unenforceable and could seriously weaken efforts to make reasonable and effective requirements for access by handicapped individuals to facilities; and

Be It Further Resolved that a copy of this resolution be transmitted to the Capital Development Board and the Board be urged to reconsider its adoption of these rules in their present form; and

Be It Further Resolved that a copy of this resolution be transmitted to the Attorney General to advise him of the Joint Committee's position that these rules are unenforceable and that he also urge the Board to reconsider adoption of rules; and

Be It Further Resolved that a copy of this resolution be transmitted to the chairmen and minority spokesmen of the Appropriation Committees of the General Assembly which consider the requests for appropriations from the Board and that these committees be urged to consider these issues during Fiscal Year 1980 budget hearings.

JOINT COMMITTEE ON ADMINISTRATIVE RULES

RESOLUTION

Whereas, the Joint Committee on Administrative Rules has found that the Office of Consumer Services rules and regulations proposed by the Governor's Office of Manpower and Human Development and published in the May 26, 1978, and August 4, 1978, issues of the Illinois Register, exceed the authority of the office under Executive Order Number 3 (1976); and

Whereas, the Joint Committee has objected to these rules on the specific basis that the Executive Order relates solely to the problems of unemployment and underemployment, and the need for coordination among agencies to find solutions to these problems and the order cannot be reasonably construed to authorize the office to conduct the program established in the proposed rules, which has little, if any, connection with those problems; and

Whereas, the public policy issues involved in the establishment of the consumer services contemplated in these rules are of such a nature that they should receive full and open discussion by the public and their elected representatives; and

Whereas, the establishment and conduct of a program of this nature and importance under solely executive authority constitutes an encroachment of the legislative power to make law;

Therefore, be it resolved that the Joint Committee reassert its finding that these rules exceed any authority delegated by the legislature or executive to the office and that they are unenforceable; and

Be It Further Resolved that a copy of this resolution be transmitted to the Governor's Office of Manpower and Human Development and that the office be urged to reconsider adoption of these rules and promptly withdraw them and if the office desires to continue such a program, to seek proper statutory authorization for the program; and

Be It Further Resolved that a copy of this resolution be transmitted to the chairmen and minority spokesmen of the Appropriation Committees of the General Assembly which consider the requests for appropriations from the Office and that these committees be urged to consider these issues during Fiscal Year 1980 budget hearings.

JOINT COMMITTEE ON ADMINISTRATIVE RULES

RESOLUTION

Whereas, the Joint Committee on Administrative Rules has found that the amendments to rules 3.06 and 7.07 proposed by the Department of Public Aid as published in the May 19, 1978, issue of the Illinois Register, violate the express statutory provision of the Public Aid Code that dependency of a child is based on unemployment of the parent or parents, (Il. Rev. Stat. 1977, ch. 23, par. 4-1.3), by making dependency based on the unemployment of the father; and

Whereas, this issue seriously affects the eligibility of Illinois citizens for federal aid under the Aid for Families with Dependent Children program; and

Whereas, the Department has refused to modify or withdraw the rule in response to the objections of the Joint Committee and contends that the rule is necessary to comply with federal law and regulations concerning AFDC eligibility; and

Whereas, the provision of the state law that dependency of a child be based on unemployment of the parent or parents is clearly stated and appears more equitable than the federal restriction of dependency to situations arising from the unemployment of the father; and

Whereas, the federal law and regulations appear to have insubstantial legal foundation and may well be found to be unconstitutionally discriminatory;

Therefore, Be It Resolved that the Joint Committee reassert its finding that these rules of the Department of Public Aid are in clear violation of express state statutory language and are thus enforceable; and

Be It Further Resolved, that a copy of this resolution be transmitted to the Department of Public Aid and that the Department be urged to reconsider the adoption of these rules and to amend the rules to conform to the express statutory provision; and

Be It Further Resolved, that a copy of this resolution be transmitted to the federal Social Security Administration and the agency be urged to reconsider and change this requirement.

JOINT COMMITTEE ON ADMINISTRATIVE RULES

RESOLUTION

Whereas, the Joint Committee on Administrative Rules has found that the rules proposed by the Department of Public Health to implement the Choke-Saving Methods Act (Ill.Rev.Stat.1977,ch.56½,par.601 et. seq.) as published in the February 10, 1978, issue of the Illinois Register, violate the express statutory mandate of the Act to distribute placards to food service establishments by proposing to simply make available such placards; and

Whereas, the Department modified the rule in response to the Joint Committee objection, but still did not agree to actually distribute the placards to food service establishments as clearly required by the Act; and

Whereas, when House Bill 13, which created the Choke-Saving Methods Act, was considered by the legislature in 1977,the Department agreed to actually distribute, rather than simply make available, these placards and funds were supposedly provided in the Department's Fiscal Year 1979 budget for this purpose;

Therefore, Be It Resolved that the Joint Committee reassert its objection to these rules as modified, since they fail to provide for actual distribution of the placards to food service establishments as required by the Choke-Saving Methods Act; and

Be It Further Resolved, that a copy of this resolution be transmitted to the Department of Public Health and the Department be urged to amend these rules to conform to the requirement for distribution in the Act; and

Be It Further Resolved, that a copy of this resolution be transmitted to the chairmen and minority spokesmen of the Appropriation Committees of the General Assembly and that these committees be urged to review the apparant failure of the Department to actually distribute the placards as required under the Choke-Saving Methods Act during the Fiscal Year 1980 budget hearings.

APPENDIX A
ILLINOIS ADMINISTRATIVE PROCEDURE ACT

(Illinois Revised Statutes 1977, Chapter 127, Paragraphs 1001 et. seq.)

AN ACT in relation to administrative rules and procedures, and to amend an Act therein named in connection therewith. Approved and effective Sept. 22, 1975 by P.A. 79–1083.

1001. Short Title.) § 1. This Act shall be known and may be cited as "The Illinois Administrative Procedure Act".

1002. Applicability.) § 2. This Act applies to every agency as defined herein. Beginning January 1, 1978 in case of conflict between the provisions of this Act and the Act creating or conferring power on an agency, this Act shall control. However if an agency has existing procedures on July 1, 1977 specifically for contested cases or licensing those existing provisions control, except that this exception respecting contested cases and licensing does not apply if the Act creating or conferring power on the agency adopts by express reference the provision of this Act. Where the Act creating or conferring power on an agency establishes administrative procedures not covered by this Act, such procedures shall remain in effect.

The provisions of this Act shall not apply to (1) preliminary hearings, investigations or practices where no final determinations affecting State funding are made by the State Board of Education, (2) State Board of Education statements, guidelines or policies which do not have the force of law, and (3) legal opinions issued under Section 2—3.7 of The School Code.[1] Neither shall the provisions of this Act apply to hearings under Section 20 of the "Uniform Disposition of Unclaimed Property Act".[2]

Amended by P.A. 80–1035, § 1, eff. Sept. 27, 1977.

[1] Chapter 122, § 2—3.7.
[2] Chapter 141, § 101 et seq.

1003. Definitions.) § 3. As used in this Act, unless the context otherwise requires, the terms specified in Sections 3.01 through 3.09[1] have the meanings ascribed to them in those Sections.

[1] Chapter 127, §§ 1003.01 to 1003.09.

1003.01 Agency.] § 3.01. "Agency" means each State Board, commission, department, or officer, other than the Governor, legislature, or the courts, authorized by law to make rules or to determine contested cases.

1003.02. Contested case.] § 3.02. "Contested case" means an adjudicatory proceeding, not including rate making, rule-making, quasi-legislative, informational or similar proceedings, in which the individual legal rights, duties or privileges of a party are required by law to be determined by an agency only after an opportunity for hearing.

Amended by P.A. 80–1035, § 1, eff. Sept. 27, 1977.

1003.03 Hearing examiner.] § 3.03. "Hearing examiner" means the presiding officer or officers at the initial hearing before each agency and each continuation thereof.

1003.04 License.] § 3.04. "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law, but it does not include a license required solely for revenue purposes.

1003.05 Licensing.] § 3.05. "Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license.

1003.06 Party.] § 3.06. "Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.

1003.07 Person.] § 3.07. "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

1003.08 Rate making or rate making activities.] § 3.08. "Rate-making" or "rate-making activities" means the establishment or review of or other exercise of control over the rates or charges for the products or services of any person, firm or corporation operating or transacting any business in this State.

1003.09. Rule.] § 3.09. "Rule" means each agency statement of general applicability that implements, applies, interprets, or prescribes law or policy, but does not include (a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to persons or entities outside the agency, (b) informal advisory rulings issued pursuant to Section 9,[1] (c) intra-agency memoranda or (d) the prescription of standardized forms.

Amended by P.A. 80–1035, § 1, eff. Sept. 27, 1977.

[1] Chapter 127, § 1009.

1004. Adoption of Rules; Public Information; Availability of Rules.) § 4. (a) In addition to

other rule-making requirements imposed by law, each agency shall:

1. adopt rules of practice setting forth the nature and requirements of all formal hearings;

2. make available for public inspection all rules adopted by the agency in the discharge of its functions.

(b) Each agency shall make available for public inspection all final orders, decisions and opinions, except those deemed confidential by state or federal statute and any trade secrets.

(c) No agency rule is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been made available for public inspection and filed with the Secretary of State as required by this Act. This provision is not applicable in favor of any person or party who has actual knowledge thereof.

Amended by P.A. 80–1035, § 1, eff. Sept. 27, 1977.

1004.01. Required rules.] § 4.01. (a) Each agency shall maintain as a rule the following:

1. a current description of the agency's organization with necessary charts depicting same;

2. the current procedures on how the public can obtain information or make submissions or requests on subjects, programs, and activities of the agency;

3. tables of contents, indices, reference tables, and other materials to aid users in finding and using the agency's collection of rules currently in force; and

4. a current description of the agency's rule making procedures with necessary flow charts depicting same.

(b) The rules required to be filed by this Section may be adopted, amended, or repealed and filed as provided in this Section in lieu of any other provisions or requirements of this Act.

The rules required by this Section may be adopted, amended, or repealed by filing a certified copy with the Secretary of State as provided by paragraphs (a) and (b) of Section 6,[1] and may become effective immediately.

Added by P.A. 80–1035, § 1, eff. Sept. 27, 1977.

[1] Chapter 127, § 1006.

1005. Procedure for Rule-Making.) § 5. (a) Prior to the adoption, amendment or repeal of any rule, each agency shall:

1. give at least 45 days' notice of its intended action. This notice period shall commence on the first day the notice appears in the Illinois Register. The notice shall include a text of the proposed rule, or the old and new materials of a proposed amendment, or the text of the provision to be repealed; the specific statutory citation upon which the proposed rule, the proposed amendment to a rule or the proposed repeal of a rule is based and is authorized; a description of the subjects and issues involved; and the time, place and manner in which interested persons may present their views and comments concerning the intended action. In addition, the Secretary of State shall publish and maintain the Illinois Register and set forth the manner in which agencies shall submit the notices required by this Act to him for publication in the Illinois Register. The Illinois Register shall be published at least once each week on the same day unless such day is an official State holiday in which case the Illinois Register shall be published on the next following business day and sent to subscribers who subscribe for the publication with the Secretary of State. The Secretary of State may charge a subscription price to subscribers that covers mailing and publication costs;

2. afford all interested persons who submit a request within 14 days after notice of the proposed change is published in the Illinois Register reasonable opportunity to submit data, views, arguments or comments, which may, in the discretion of the agency, be submitted either orally or in writing or both. The notice published in the Illinois Register of the Secretary of State shall indicate the manner selected by the agency for such submissions. The agency shall consider fully all submissions respecting the proposed rule.

(b) If any agency finds that an emergency, reasonably constituting a threat to the public interest, safety or welfare, requires adoption of a rule upon fewer than 45 days' notice and states in writing its reasons for that finding, it may proceed without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The rule may be effective for a period of not longer than 150 days but the agency's authority to adopt an identical rule under subsections (a)(1) and (a)(2) of this Section is not precluded.

(c) No action by any agency to adopt, amend or repeal a rule after this Act has become applicable to the agency shall be valid unless taken in compliance with this Section. A proceeding to contest any rule on the ground of non-compliance with the procedural requirements of this Section must be commenced within 2 years from the effective date of the rule.

(d) The notice and publication requirements of this Section do not apply to a matter relating solely to agency management, personnel practices, or to public property, loans or contracts.

(e) If any agency is required by federal law or federal rules and regulations or by an order of court to adopt a rule under conditions which preclude the agency's compliance with the notice or hearing requirement of this Act, the agency may proceed to adopt such a rule upon filing with the Secretary of State.

Amended by P.A. 80–1035, § 1, eff. Sept. 27, 1977.

1006. Filing and Taking Effect of Rules.) § 6. (a) Each agency shall file in the office of the Secretary of State and in the agency's principal office a certified copy of each rule and modification or repeal of any rule adopted by it, including all rules existing on the date this Act becomes applicable to the agency other than rules already so filed. The Secretary of State and the agency shall each keep a permanent register of the rules open to public inspection. The Secretary of State may refuse to accept for filing such certified copies as are not in substantial compliance with reasonable rules prescribed by him concerning the form of documents to be filed with him.

(b) Concurrent with the filing of any material pursuant to this Act, the filing agency shall submit to the Secretary of State for publication in the next available issue of the Illinois Register a notice of rule making which presents:

1. if the material is a new rule, the full text of the new rule; or

2. if the material is an amendment to a rule or rules, the full text of the rule or rules as amended; or

3. if the material is a repealer, such notice of repeal shall be published.

(c) Each rule hereafter adopted is effective 10 days after filing, except that:

1. if required by statute or specified in the rule, a later date is the effective date;

2. subject to applicable constitutional or statutory provisions, an emergency rule becomes effective immediately upon filing with the Secretary of State and in the agency's principal office, or a stated date less than 10 days thereafter, if the agency finds that this effective date is necessary because of emergency. The agency's finding and a brief statement of the reasons therefor shall be filed with the rule. The agency shall take reasonable and appropriate measures to make emergency rules known to the persons who may be affected by them.

Amended by P.A. 80–1035, § 1, eff. Sept. 27, 1977.

1007. Publication of Rules:) § 7. (a) The agency shall compile, index and publish all its rules adopted under the provisions of this Act, and all rules certified under the provisions of Section 7.01(b) of this Act.[1] Compilations shall be supplemented or revised and certified as current to the Secretary of State at least once every 2 years.

(b) Compilations, supplements and revisions required by this Section shall be filed in the office of the Secretary of State in Springfield, Illinois and in the Cook County Law Library in Chicago, Illinois and with the Joint Committee on Administrative Rules. The agency shall make compilations, supplements and revisions available upon request to agencies and officials of this State without charge and to other persons at prices established by the agency to cover mailing and publication costs.

Amended by P.A. 80–1035, § 1, eff. Sept. 27, 1977.

[1] Chapter 127, § 1007.01.

1007.01. Certification of rules filed with the Secretary of State.] § 7.01. (a) Beginning January 1, 1978 whenever a rule, or modification or repeal of any rule, is filed with the Secretary of State, the Secretary of State within 3 working days after such filing shall send a certified copy of such rule, modification or repeal to the Joint Committee on Administrative Rules established in Section 7.02.[1]

(b) Any rule on file with the Secretary of State on January 1, 1978 shall be void 60 days after that date unless within such 60 day period the issuing agency certifies to the Secretary of State that the rule is currently in effect.

Within 45 days after the receipt of any certification pursuant to this sub-section (b), the Secretary of State shall send to the Joint Committee on Administrative Rules established in Section 7.02 a copy of each agency's certification so received along with a copy of the rules covered by the certification.

Added by P.A. 80–1035, § 1, eff. Sept. 27, 1977..

[1] Chapter 127, § 1007.02.

1007.02 Joint Committee on Administrative Rules — Membership — Terms — Vacancies — Compensation — Meetings — Executive director — Office.] § 7.02 (a) The Joint Committee on Administrative Rules, is hereby created. The Joint Committee shall be composed of 16 members, 4 members appointed by the President of the Senate and 4 by the Senate Minority Leader, and 4 members appointed by the Speaker of the House of Representatives and 4 by the House Minority Leader.

Members of the Joint Committee shall be appointed during the Month of July of each odd numbered year for 2 year terms beginning August 1, and until their successors are appointed and qualified. In the event of a death of a member or if a member ceases to be a member of the General Assembly a vacancy shall exist. Vacancies shall be filled for the time remaining of the term in the same manner as the original appointments. All appointments shall be in writing and filed with the Secretary of State as a public record.

(b) The Joint Committee shall organize during the month of September each odd numbered year by electing a Chairman and such other officers as it deems necessary. The chairmanship of the Joint Committee shall be for a 2 year term and may not be filled in 2 successive terms by persons of the same political party. Members of the Joint Committee shall serve without compensation, but shall be reimbursed for expenses. The Joint Committee shall hold monthly meetings and may meet oftener upon the call of the Chairman or 4 members. A quorum of the Joint Committee consists of a majority of the members appointed from each house of the General Assembly.

(c) When feasible the agenda of each meeting of the Joint Committee shall be submitted to the Secretary of State to be published at least 5 days prior to the meeting in the Illinois Register. The provisions of this subsection shall not prohibit the Joint Committee from acting upon an item that was not contained in the published agenda.

(d) The Joint Committee shall appoint an Executive Director who shall be the staff director. The Executive Director shall receive a salary to be fixed by the Joint Committee.

The Executive Director shall be authorized to employ and fix the compensation of such necessary professional, technical and secretarial staff and prescribe the duties of such staff.

(e) The initial appointments required by this Section shall be made no later than November 1, 1977. In addition, the Joint Committee created by this Section shall initially organize by electing its officers and appointing the Executive Director no later than November 30, 1977.

(f) A permanent office of the Joint Committee shall be in the State Capitol Complex wherein the Space Needs Commission shall provide suitable offices.

Added by P.A. 80–1035, § 1, eff. Sept. 27, 1977.

1007.03. Administration of oaths or affirmations—Affidavits or depositions—Subpoena.] § 7.-03.. (a) The Executive Director of the Joint Committee or any person designated by him may administer oaths or affirmations, take affidavits or depositions of any person.

(b) The Executive Director, upon approval of a majority vote of the Joint Committee, or the presiding officers may subpoena and compel the attendance before the Joint Committee and examine under oath any person, or the production for the Joint Committee of any records, books, papers, contracts or other documents.

If any person fails to obey a subpoena issued under this Section, the Joint Committee may apply to any circuit court to secure compliance with the subpoena. The failure to comply with the order

of the court issued in response thereto shall be punished as a contempt.

Added by P.A. 80–1035, § 1, eff. Sept. 27, 1977.

1007.04. Powers of joint committee.] § 7.04. The Joint Committee shall have the following powers under this Act:

1. The Joint Committee shall have advisory powers only relating to its function, which shall be the promotion of adequate and proper rules by agencies and an understanding on the part of the public respecting such rules.

2. The Joint Committee may undertake studies and investigations concerning rule-making and agency rules.

3. The Joint Committee shall monitor and investigate compliance of agencies with the provisions of this Act, make periodic investigations of the rule-making activities of all agencies, and evaluate and report on all rules in terms of their propriety, legal adequacy, relation to statutory authorization, economic impact on those affected by the rule and public policy.

4. Hearings and investigations conducted by the Joint Committee under this Act may be held at such times and places within the State as such Committee deems necessary;

5. The Joint Committee shall have the authority to request from any agency an analysis of the:

a. effect of a new rule, amendment or repealer;

b. agency's evaluation of the submissions presented to the agency pursuant to Section 5 of this Act; [1]

c. a description of any modifications from the initially published proposal made in the finally accepted version of the intended rule, amendment or repealer; and

d. the agency's justification and rationale for the intended rule, amendment or repealer.

Added by P.A. 80–1035, § 1, eff. Sept. 27, 1977.

[1] Chapter 127, § 1005.

1007.05. Responsibilities of joint committee.] § 7.05. The Joint Committee shall have the following responsibilities under this Act:

1. The Joint Committee shall conduct a systematic and continuing study of the rules and rule making process of all state agencies, including those agencies not covered in Section 3.01 of this Act,[1] for the purpose of improving the rule making process, reducing the number and bulk of rules, removing redundancies and unnecessary repetitions and correcting grammatical, typographical and like errors not affecting the construction or meaning of the rules, and it shall make recommendations to the appropriate affected agency.

2. The Joint Committee shall review the statutory authority on which any administrative rule is based.

3. The Joint Committee shall maintain a review program, to study the impact of legislative changes, court rulings and administrative action on agency rules and rule making.

Added by P.A. 80–1035, § 1, eff. Sept. 27, 1977.

[1] Chapter 127, § 1003.01.

1007.06. Examination of proposed rule, amendment or repeal of rule by the joint committee—Determinations.] § 7.06. (a) The Joint Committee may examine any proposed rule, amendment to a rule, and repeal of a rule for the purpose of determining whether the proposed rule, amendment to a rule, or repeal of a rule is within the statutory authority upon which it is based, whether the rule, amendment to a rule or repeal of a rule is in proper form and whether the notice is given prior to its adoption, amendment, or repeal was sufficient to give adequate notice of the purpose and effect of the rule, amendment or repeal.

(b) If the Joint Committee objects to a proposed rule, amendment to a rule, or repeal of a rule, it shall certify the fact to the issuing agency and include with the certification a statement of its specific objections.

(c) If within 45 days after a proposed rule, amendment to a rule or repeal of a rule has been published in the Illinois Register, the Joint Committee certifies its objections to the issuing agency then that agency shall within 90 days of receipt of the statement of objection:

1. modify the proposed rule, amendment or repealer to meet the Joint Committee's objections;

2. withdraw the proposed rule, amendment, or repealer in its entirety, or;

3. refuse to modify or withdraw the proposed rule, amendment or repealer.

(d) If an agency elects to modify a proposed rule, amendment or repealer to meet the Joint Committee's objections, it shall make only such modifications as are necessary to meet the objections and shall resubmit the rule, amendment or repealer to the Joint Committee. The agency shall submit a notice of its election to modify a proposed rule, amendment or repealer to meet the Joint Committee's objections to the Secretary of State which shall be published in the first available issue of the Illinois Register, but shall not be required to conduct a public hearing.

(e) If an agency elects to withdraw a proposed rule, amendment or repealer as a result of the Joint Committee's objections, it shall notify the Joint Committee, in writing, of its election and shall submit a notice of the withdrawal to the Secretary of State which shall be published in the next available issue of the Illinois Register.

(f) Failure of an agency to respond to the Joint Committee's objections to a proposed rule, amendment or repealer, within the time prescribed in subsection (c) shall constitute withdrawal of the rule in its entirety. The Joint Committee shall submit a notice to that effect to the Secretary of State which shall be published in the next available issue of the Illinois Register and the Secretary of State shall refuse to accept for filing a certified copy of such proposed rule, amendment or repealer under the provisions of Section 6.[1]

(g) If an agency refuses to modify or withdraw the proposed rule, amendment or repealer so as to remedy an objection stated by the Joint Committee and the Joint Committee decides to recommend legislative action, then the Joint Committee shall have drafted and have introduced into either house of the General Assembly appropriate legislation to implement the recommendations of the Joint Committee.

Added by P.A. 80–1035, § 1, eff. Sept. 27, 1977.

[1] Chapter 127, § 1006.

1007.07 Examination of rule by the joint committee — Determinations.] § 7.07 (a) The Joint Committee may examine any rule for the purpose of determining whether the rule is within the statutory authority upon which it is based, and whether the rule is in proper form.

(b) If the Joint Committee objects to a rule, it shall, within 5 days of the objection, certify the fact to the adopting agency and include within the certification a statement of its specific objections.

(c) Within 90 days of receipt of the certification, the agency shall:

1. Notify the Joint Committee that it has elected to amend the rule to meet the Joint Committee's objection;

2. Notify the Joint Committee that it has elected to repeal the rule, or;

3. Notify the Joint Committee that it refuses to amend or repeal the rule.

(d) If the agency elects to amend a rule to meet the Joint Committee's objections, it shall notify the Joint Committee in writing and shall initiate rule-making procedures for that purpose by giving notice as required by Section 5 of this Act.[1] The Joint Committee shall give priority to rules so amended when setting its agenda.

(e) If the agency elects to repeal a rule as a result of the Joint Committee objections, it shall notify the Joint Committee, in writing, of its election and shall initiate rule-making procedures for that purpose by giving notice as required by Section 5 of this Act.

(f) If the agency elects to amend or repeal a rule as a result of the Joint Committee objections, it shall complete the process within 180 days after giving notice in the Illinois Register.

(g) Failure of the agency to respond to the Joint Committee's objections to a rule within the time prescribed in subsection (c) shall constitute a refusal to amend or repeal the rule.

(h) If an agency refuses to amend or repeal a rule so as to remedy an objection stated by the Joint Committee and the Joint Committee decides to recommend legislative action, then the Joint Committee shall have drafted and have introduced into either house of the General Assembly appropriate legislation to implement the recommendations of the Joint Committee.

Added by P.A. 80–1035, § 1, eff. Sept. 27, 1977.

[1] Chapter 127, § 1005.

1007.08. Periodic evaluation of rules by the joint committee—Categories.] § 7.08. (a) The Joint Committee shall evaluate the rules of each agency at least once every 5 years. The Joint Committee by rule shall develop a schedule for this periodic evaluation. In developing this schedule the Joint Committee shall group rules by specified areas to assure the evaluation of similar rules at the same time. Such schedule shall include at least the following categories:

1. human resources;
2. law enforcement;
3. energy;
4. environment;
5. natural resources;
6. transportation;
7. public utilities;
8. consumer protection;
9. licensing laws;
10. regulation of occupations;
11. labor laws;
12. business regulation;
13. financial institutions; and
14. government purchasing.

(b) Whenever evaluating any rules as required by this Section the Joint Committee's review shall include an examination of:

1. organizational, structural and procedural reforms which effect rules or rule making;

2. merger, modification, establishment or abolition of regulations;

3. eliminating or phasing out outdated, overlapping or conflicting regulatory jurisdictions or requirements of general applicability; and

4. increasing economic impact.

Added by P.A. 80–1035, § 1, eff. Sept. 27, 1977.

1007.09. Administration of Act.] § 7.09. The Joint Committee shall have the authority to adopt rules to administer the provisions of this Act relating to the Joint Committee's responsibilities, powers and duties.

Added by P.A. 80–1035, § 1, eff. Sept. 27, 1977.

1007.10. Report of findings, conclusions and recommendations by the Joint Committee.] § 7.10. The Joint Committee shall report its findings, conclusions and recommendations including suggested legislation to the General Assembly by February 1 of each year.

Added by P.A. 80–1035, § 1, eff. Sept. 27, 1977.

1008. Petition for Adoption of Rules.) § 8. Any interested person may petition an agency requesting the promulgation, amendment or repeal of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration and disposition. If, within 30 days after submission of a petition, the agency has not initiated rule-making proceedings in accordance with Section 5 of this Act,[1] the petition shall be deemed to have been denied.

[1] Chapter 127, § 1005.

1009. Declaratory Rulings by Agencies.) § 9. Each agency may in its discretion provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any statutory provision or of any rule or order of the agency. Declaratory rulings shall not be appealable.

1010. Contested Cases; Notice; Hearing.) § 10. (a) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice. Such notice shall be served personally or by certified or registered mail upon such parties or their agents appointed to receive service of process and shall include:

1. a statement of the time, place and nature of the hearing;

2. a statement of the legal authority and jurisdiction under which the hearing is to be held;

3. a reference to the particular Sections of the statutes and rules involved; and

4. except where a more detailed statement is otherwise provided for by law, a short and plain statement of the matters asserted.

(b). Opportunity shall be afforded all parties to be represented by legal counsel, and to respond and present evidence and argument.

(c). Unless precluded by law, disposition may be made of any contested case by stipulation, agreed settlement, consent order or default.

1011. Record in Contested Cases.) § 11. (a) The record in a contested case shall include:

1. all pleadings (including all notices and responses thereto), motions, and rulings;
2. evidence received;
3. a statement of matters officially noticed;
4. offers of proof, objections and rulings thereon;
5. proposed findings and exceptions;
6. any decision, opinion or report by the hearing examiner;
7. all staff memoranda or data submitted to the hearing examiner or members of the agency in connection with their consideration of the case; and
8. any communication prohibited by Section 14 of this Act,[1] but such communications shall not form the basis for any finding of fact.

(b). Oral proceedings or any part thereof shall be recorded stenographically or by such other means as to adequately insure the preservation of such testimony or oral proceedings and shall be transcribed on request of any party.

(c). Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

[1] Chapter 127, § 1014.

1012. Rules of Evidence; Official Notice.) § 12. In contested cases:

(a). Irrelevant, immaterial or unduly repetitious evidence shall be excluded. The rules of evidence and privilege as applied in civil cases in the Circuit Courts of this State shall be followed. However, evidence not admissible under such rules of evidence may be admitted (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced, any part of the evidence may be received in written form.

(b). Subject to the evidentiary requirements of subsection (a) of this Section, a party may conduct cross-examination required for a full and fair disclosure of the facts.

(c). Notice may be taken of matters of which the Circuit Courts of this State may take judicial notice. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.

1013. Proposal for Decision.) § 13. Except where otherwise expressly provided by law, when in a contested case a majority of the officials of the agency who are to render the final decision has not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the agency, shall not be made until a proposal for decision is served upon the parties, and an opportunity is afforded to each party adversely affected to file exceptions and to present a brief and, if the agency so permits, oral argument, to the agency officials who are to render the decision. The proposal for decision shall contain a statement of the reasons therefor and of each issue of fact or law necessary to the proposed decision, prepared by the persons who conducted the hearing or one who has read the record.

1014. Decisions and Orders.) § 14. A final decision or order adverse to a party (other than the agency) in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties or their agents appointed to receive service of process shall be notified either personally or by registered or certified mail of any decision or order. Upon request a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record.

A decision by any agency in a contested case under this Act shall be void unless the proceedings are conducted in compliance with the provisions of this Act relating to contested cases except to the extent such provisions are waived pursuant to Section 18 of this Act [1] and except to the extent the agency has adopted its own rules for contested cases as authorized in Section 2 of this Act.[2]

Amended by P.A. 80–1035, § 1, eff. Sept. 27, 1977.

[1] Chapter 127, § 1018.
[2] Chapter 127, § 1002.

1015. Ex Parte Consultations.) § 15. Except in the disposition of matters which they are authorized by law to entertain or dispose of on an ex parte basis, neither agency members, employees nor hearing examiners shall, after notice of hearing in a contested case or licensing to which the procedures of a contested case apply under this Act, communicate, directly or indirectly, in connection with any issue of fact, with any person or party, or in connection with any other issue with any party or his representative, except upon notice and opportunity for all parties to participate. However, an agency member may communicate with other members of the agency, and an agency member or hearing examiner may have the aid and advice of one or more personal assistants.

Amended by P.A. 80–1035, § 1, eff. Sept. 27, 1977.

1016. Licenses.) § 16. (a) When any licensing is required by law to be preceded by notice and opportunity for hearing, the provisions of this Act concerning contested cases shall apply.

(b) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license shall continue in full force and effect until the final agency decision on the application has been made unless a later date is fixed by order of a reviewing court.

(c) No agency shall revoke, suspend, annul, withdraw, amend materially, or refuse to renew any valid license without first giving written notice to the licensee of the facts or conduct upon which the agency will rely to support its proposed action, and an opportunity for hearing in accordance with the provisions of this Act concerning contested cases. At any such hearing, the licensee

shall have the right to show compliance with all lawful requirements for the retention, or continuation or renewal of the license. If, however, the agency finds that the public interest, safety or welfare imperatively requires emergency action, and if the agency incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action which proceedings shall be promptly instituted and determined.

Any application for renewal of a license which contains required and relevant information, data, material or circumstances which were not contained in an application for the existing license, shall be subject to the provisions of Section 16(a) of this Act.[1]

Amended by P.A. 80–1035, § 1, eff. Sept. 27, 1977.

[1] Chapter 127, § 1016.

1017. Rate-Making.) § 17. Every agency which is empowered by law to engage in rate-making activities shall establish by rule, not inconsistent with the provisions of law establishing such rate-making jurisdiction, the practice and procedure to be followed in rate-making activities before such agency.

1018. Waiver.) § 18. Compliance with any or all of the provisions of this Act concerning contested cases may be waived by written stipulation of all parties.

1019. § 19. Repealed by P.A. 80–1035, § 2, eff. Jan. 1, 1978.

1020. Severability.) § 20. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are severable.

1021. Effective date.) § 21. This Act takes effect upon its becoming a law.

APPENDIX B
OPERATIONAL RULES FOR
REVIEW OF PROPOSED RULES

(Published in the October 13, 1978, issue of the Illinois Register)

NOTICE OF PROPOSED RULEMAKING

AGENCY: Joint Committee on Administrative Rules

TITLE OF RULE: Article I: Operational Rules
Rule One: General Policies
Rule Two: Review of Proposed Rulemaking

STATUTORY AUTHORITY: Illinois Administrative Procedure Act, Sec. 7.09 (Ill.Rev.Stat.1977,ch.127,par.1007.09)

SUMMARY AND PURPOSE: These proposed rules are intended to state the Joint Committee's policies concerning interaction with other state agencies and review of proposed rulemaking. Among the features of the proposed rules are provisions concerning (1) submission by the proposing agency of additional explanatory material concerning each proposed rulemaking to the Joint Committee as authorized by Section 7.04(5) of the Administrative Procedure Act, (2) criteria to be considered by the Joint Committee in considering possible objection to a proposed rulemaking, (3) procedure to be followed by the Joint Committee in objecting to a proposed rulemaking, and (4) specific manner and form in which the proposing agency should respond to an objection by the Joint Committee to a proposed rulemaking. These rules are being proposed to insure availability and input from the interested public and affected state agencies.

WILL THIS PROPOSED RULEMAKING REPLACE AN EMERGENCY RULE CURRENTLY IN EFFECT? No.

SUBMISSION OF COMMENTS: Comments on this proposed rulemaking may be submitted in writing for a period of 45 days following publication of this notice. Comments should be submitted to:

Gary Schechter, Rules Review Manager
Joint Committee on Administrative Rules
520 South Second Street, Suite 100
Springfield, Illinois 62706

A public hearing will also be held on these proposed rules at which state agency personnel or the public may present their views concerning these rules. The hearing will be held December 11, 1978, at 1:30 PM, in Room D-1, Stratton Office Building, Springfield, Illinois. Agencies or individuals wishing to present testimony should contact Gary Schechter, Rules Review Manager, Joint Committee on Administrative Rules, at (217) 785-2254. Agencies and individuals contacting the Joint Committee in advance will be given priority in presenting testimony and other agencies and individuals will also be given an opportunity to present testimony if time permits.

THE FULL TEXT OF THE PROPOSED RULES IS AS FOLLOWS:

TEXT OF PROPOSED RULE

ARTICLE I: OPERATIONAL RULES

RULE ONE: GENERAL POLICIES

Section 1.1.01: In carrying out its function of *promoting adequate and proper rules by agencies and understanding on the part of the public respecting such rules* and its responsibilities to review proposed rulemaking by agencies, the Joint Committee will seek to cooperate with agencies as extensively as possible and conduct its hearings in a manner promoting full and open discussion of proposed rulemaking. This policy is intended to implement the spirit as well as the letter of the Illinois Administrative Procedure Act.

Section 1.1.02: The Joint Committee and its staff will consult with agencies regarding difficulties in implementing the rulemaking procedures of the Illinois Administrative Procedure Act as necessary. Such consultation will be for the purpose of advising agencies regarding form, compliance with statutory authority or other matters considered by the Joint Committee in its authority to review rules and rulemaking.

Section 1.1.03: Since under the Illinois Administrative Procedure Act, the Secretary of State along with the Joint Committee has substantial responsibility of the *Illinois Register*, the Joint Committee will cooperate fully with the Secretary of State. The Joint Committee will strive to establish effective working relationships with the Secretary of State to ensure efficient administration of rulemaking procedures. The procedures followed by the Joint Committee will be coordinated with the "Rules on Rules" adopted by the Secretary of State.

RULE TWO: REVIEW OF PROPOSED RULEMAKING

Section 1.2.01: On the same working day of the submission of any notice of proposed rulemaking by an agency to the Secretary of State for publication in the *Illinois Register*, the proposing agency shall also submit to the Joint Committee *an analysis of the anticipated effects of the proposed rulemaking and a justification and rationale for the proposed rulemaking.* Such information should be concise but complete, including sufficient detail to fully explain the effect and rationale of the rulemaking. The agency should include consideration of each of the following specific factors:

1. *An analysis of the anticipated effects of the proposed rulemaking:*
   a. Basic impact on affected individuals or groups.
   b. Anticipated changes in the agency's operations or structure resulting from implementation of the rulemaking.
   c. Economic impact on the agency's budget.
   d. Economic impact on affected individuals or groups, including businesses.
   e. Any other anticipated effects.

2. *A justification and rationale for the proposed rulemaking:*
   a. Any changes in statutory language requiring the proposed rulemaking.
   b. Any changes in agency policy, procedures, or structure requiring the proposed rulemaking.
   c. Relationship to other rulemaking activities of the agency including anticipated rulemaking activities.
   d. Relationship to any relevant federal rules, regulations, or funding requirements.
   e. Any other relevant considerations.

Section 1.2.02: The submission of the information required under Section 1.2.01 to the Joint Committee should (1) be clearly identified as "Agency Analysis of Proposed Rulemaking," (2) indicate the agency name and the specific

agency personnel who will respond to Joint Committee questions regarding the proposed rulemaking, (3) indicate the title and subject of the proposed rulemaking, (4) be dated and (5) be signed by an appropriate agency official. The information should be submitted to the Executive Director, Joint Committee on Administrative Rules, 520 South Second Street, Suite 100, Springfield, Illinois 62706.

Section 1.2.03: The Joint Committee staff will review each proposed rulemaking, including the notice of proposed rulemaking, the text of the rulemaking and any information provided under Section 1.2.01. The Joint Committee staff may request additional information, psoe questions or problems discovered in reviewing the proposed rulemaking, and communicate or meet with appropriate agency personnel to discuss the proposed rulemaking. Such staff review will be based on the criteria outlined in Section 1.2.06. The staff may develop a recommendation for action, including the issuance of an objection to the proposed rule or the development of legislation by the Joint Committee. Such recommendation shall be advisory only and shall not limit the Joint Committee's discretion to take different appropriate action.

Section 1.2.04: At the Joint Committee hearingon a notice of proposed rulemaking, the proposing agency shall provide to the Joint Committee an *evaluation of all submissions regarding the proposed rulemaking received by the agency* up to one week prior to the hearing. If no submissions have been received by the agency prior to that time, the agency should submit a statement stating such to the Joint Committee. Evaluation of submissions received later than this date shall be submitted to the Joint Committee upon filing the rulemaking for adoption with the Secretary of State in accordance with Section 1.2.13. Such evaluations should focus on the relevance of the comments to the criteria outlined in Section 1.2.06 and should include each of the following:

1. A list of all individuals or groups making written submissions, or requesting the opportunity to make a written submission.
2. A list of all specific criticisms or comments raised in the submissions.
3. The agency's response to each of the specific criticisms or comments as related to the criteria outlined in Section 1.2.06.

Section 1.2.05: The Joint Committee will hold full and adequate hearings on proposed rulemaking. Oral testimony will be taken from appropriate personnel of the proposing agency. Written comments will be considered from individuals or groups affected by the rules as relevant to the criteria outlined in Section 1.2.06. Such written comments should be sent to the Executive Director, Joint Committee on Administrative Rules, 520 South Second Street, Suite 100, Springfield, Illinois 62706, and should be received at least three working days prior to the hearing. The tentative agenda for each hearing will be published as soon as practical prior to each hearing in the *Illinois Register*.

Section 1.2.06: The Joint Committee will give major consideration to the following criteria in reviewing proposed rulemaking:

1. Legal authority for the proposed rulemaking.
2. Compliance of the proposed rulemaking with legislative intent.
3. Compliance with state and federal constitutional requirements and other law.
4. The proposing agency's statement of justification and retionale for the proposed rulemaking.
5. Anticipated economic effect of the proposed rulemaking on the public and the agency's budget.
6. Clarity of the language of the proposed rulemaking for understanding by the affected public.
7. Sufficient completeness and clarity to insure meaningful guidelines and standards in the exercise of agency discretion.
8. Redundancies, grammatical deficiencies and technical errors in the proposed rulemaking.
9. Compliance of the agency with the requirements of the Illinois Administrative Procedure Act and responsiveness to public submissions regarding proposed rulemaking.

Section 1.2.07: If the Joint Committee finds that the proposed rulemaking is significantly deficient in relation to any of the criteria outlined in Section 1.2.06, *the Joint Committee will object to the proposed rulemaking.*

Section 1.2.08: If the Joint Committee objects to any proposed rulemaking, the Executive Director of the Joint Committee within five working days of the objection, *shall certify the fact of the objection to the proposing agency*. Such certification will be made in the manner shown in Illustration I. *The certification to the agency shall include a statement of specific objections of the Joint Committee to the proposed rulemaking.*

Section 1.2.09: *The proposing agency should respond to an objection within 90 days of the receipt of the statement of specific objections.* The agency response should address each of the specific objections stated in the statement of objections. The response should be concise, but complete, clearly stating the gency's response and rationale for such response. The response should be made in the manner shown in Illustra-tion II.

Section 1.2.10: The agency must respond to the Joint Committee's objection in one of the following manners:

1. *Modification of the proposed rulemaking to meet all specific objections stated by the Joint Committee in the statement of objections. The complete text of the proposed rulemaking including all modifications should be included in the response.*
2. *Withdrawal of the proposed rulemaking.* If responding in this manner, the agency should state the particular objections of the Joint Committee which are the basis of the withdrawal.
3. *Refusal to modify or withdraw the proposed rulemaking.* The agency should present in its response its justification and rationale for refusing to modify or withdraw the proposed rulemaking, addressing each of the specific objections stated by the Joint Committee.

Section 1.2.11: Each statement of specific objections to a proposed rulemaking isssued by the Joint Committee shall be submitted as soon as practical to the Secretary of State for publication in the *Illinois Register*.

Section 1.2.12: On the same day as submission of a Notice of Rules Adopted to the Secretary of State for publication in the *Illinois Register*, the agency

shall provide to the Joint Committee *a description of and rationale for any modifications made in the rules* betweenthe initial proposed rulemaking and final publication, which is not clearly indicated in the notice of adoption as published in the *Illinois Register*.

Section 1.2.13: The agency shall also provide on the same day as submission of a Notice of Adopted Rules to the Secretary of State an evaluation of all submissions received by the agency regarding the rule after the evaluation requested to be submitted at the Joint Committee hearing under Section 1.2.04 and containing the same specific information. If no submissions have been received regarding the rule during this time, the agency should submit a statement stating such to the Joint Committee.

Section 1.2.14: *The Joint Committee may develop legislation* to remedy deficiencies or problems, clarify legislative intent, provide statutory rulemaking authority, or deal with other situations encountered in reviews of proposed rulemaking. The Joint Committee will approve such legislation by majority vote and have such legislation introduced in either House of the General Assembly.

TEXT OF PROPOSED RULE

ILLUSTRATION I

JOINT COMMITTEE ON ADMINISTRATIVE RULES

CERTIFICATION OF OBJECTION

The Joint Committee on Administrative Rules, objected on _____ (Date of Objection), to the _____'s (Name of Agency) proposed _____ (Title of Rulemaking) which was published in the Illinois Register on _____ (Date).

This objection is made pursuant to Section 7.04 and 7.06 of the Illinois Administrative Procedure Act, as amended. A statement of the Joint Committee's specific objections accompanies this certification.

Please take notice that failure to respond within 90 days of the receipt of this Certification of Objection shall constitute withdrawal of the proposed rulemaking in its entirety.

Certified _____ (Date).

_____
(Signature)

_____
(Typewritten Name)
Executive Director
Joint Committee On
Administrative Rules

TEXT OF PROPOSED RULE

ILLUSTRATION II

AGENCY RESPONSE TO JOINT COMMITTEE OBJECTION

DATE: _____

Agency: _____

Title and Subject of Rule: _____

_____

Response (Check One): _____ Modification of Rulemaking to Meet Objections

_____ Withdrawal of Rulemaking

_____ Refusal to Modify or Withdraw

_____

Signature of Agency Official

Agency Response to Specific Joint Committee Objections:

(Respond to each objection raised by the Joint Committee, indicating clearly the intended action of the agency in response to each objection and the rationale for such response. Use additional pages as necessary.)

JOINT COMMITTEE ON ADMINISTRATIVE RULES
POSITION PAPER
ADOPTED OCTOBER 19, 1978
PROVISION OF STANDARDS AND SAFEGUARDS FOR EXERCISING DISCRETION IN AGENCY RULES

One of the key policy issues faced by the Joint Committee is the extent to which agencies should be required to specify by rule their standards and procedural safeguards for the exercise of agency discretion. The Joint Committee has taken a relatively firm stand on this issue and has objected to a significant number of proposed agency rules based on a lack of adequate standards and/or procedural safeguards. A typical Joint Committee objection is the statement of objection issued on August 24, 1978, objecting to Department of Corrections' proposed Juvenile Division Rule on Youth Allowances. The statement said:

> The Joint Committee objects to this proposed rule because it lacks adequate specificity in delineating the procedures to be followed and the standards to be used in making necessary determinations in carrying out the functions of the Department in this area. Since the Department must have a policy embodying meaningful standards to protect against arbitrary action and unequal and unfair treatment of youths in the administration of this program, the rule does not fully state the Department's policy.

The basic purpose of all rulemaking by agencies is to provide guidelines for the exercise of an agency's discretion. In a simplified sense, a statute delegates a specific task to an agency requiring the agency to make determinations and decisions in carrying out the task; the statute delegates an area of discretion to an agency. The agency must develop a systematic non-arbitrary means of exercising that discretion. Rules then become the basic bridge between statutory authority and actual agency operations. Controlling discretion is the primary purpose of rules and the specification of standards and procedural safeguards are at the heart of controlling discretion. As the administrative law professor, Kenneth Culp Davis has said:

> ...the hope for better protection lies not in better statutory standards but in administrative standards and safeguards... The requirement should gradually grow into a requirement, judicially enforced, that administrators must strive to do as much as they reasonably can do to develop and to make known the needed confinements of discretionary power through standards, principles, and rules. (Administrative Law Text, 1972, p. 147)

Specification of standards and procedures for the exercise of discretionary power, therefore, serves three vital rulemaking ends. The first is the prevention of arbitrary action by the agency. Agencies must act systematically in exercising discretion to avoid arbitrary action. Public statement of the standards and safeguards to be used in acting systematically provides an additional protection against arbitrary action. A second purpose is to inform the public of the agency's policy in regard to its exercise of discretion. The third purpose is to provide a specific basis for appeal of agency determinations to judicially insure agency compliance with its established standards. All three purposes are closely interrelated and deal with some of the basic issues behind passage of the Illinois Administrative Procedure Act.

The Joint Committee has consistently objected to rules which fail to provide meaningful standards for agency determinations and procedural safeguards against arbitrary action. This policy of the Joint Committee to object to rules which do not contain meaningful standards and procedural safeguards is consistent with the trend of judicial decisions. In reviewing agency rules, courts have increasingly held that agencies should be required to state standards to guide their discretion. The Court of Appeals for the District of Columbia has spoken of "an incipient but powerful trend in the law -- a new refusal to rely blindly upon the unstructured exercise of official discretion and a new judicial willingness to require promulgation of and obedience to rules by administrative agencies." (U.S. v. Bryant, 439 F.2d 642, 652 (D.C. CIR. 1971)).

The specific statutory basis on which the Joint Committee has usually objected to rules which inadequately specify standards and safeguards is Section 4(c) of the Illinois Administrative Procedure Act. This provision states that "No agency rule is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been made available for public inspection and filed with the Secretary of State as required by this Act." (Il.Rev.Stats.1977, ch.127,par.1004(c)). Since the definition of rule includes "each agency statement of general applicability that implements, applies, interprets, or prescribes law or policy" (Sec. 3.09), and the agency must have a systematic policy for making determinations if it is to avoid acting arbitrarily, that policy must be stated in a rule to be in compliance with the Administrative Procedure Act. According to the Act, such unpromulgated general rules will not be effective and cannot be invoked by the agency.

The Joint Committee does not feel that requiring agencies to specify standards and develop procedural safeguards where possible will hinder agencies in administering laws. The agency must follow standards if it is to avoid arbitrary action; the further point here is that the agency should also formally state those standards in rules. Even in granting exceptions to a rule, the general rationale for such exceptions should be stated in the rule.

For example, it may be necessary for a licensing agency to impose a bonding requirement upon some applicants but not upon others. A "shopping list" of examples would likely be cumbersome and would doubtless exclude some applicants that the agency would want included. In order to avoid this dilemma, the agency in this example should identify those distinguishing factors common to all parties which it desires to single out for special treatment. In other words, the agency should ask "When and why would an exception be made?" This question should suggest a standard for making exceptions. Perhaps the additional requirement is for an additional surety bond. When and why would such an additional bond be warranted? Usually, additional bonding requirements are imposed when some unusual circumstances indicate that additional security is required to adequately assure compliance. Thus, the rule could be stated in terms of its goals: "An additional bond shall be required to assure compliance with these rules when, upon consideration of all relevant facts, the agency determines that compliance by the

applicant will be unusually difficult or unlikely." It is enough to so state this reasoning as the rule regarding requirement of additional bonding. Specific situation examples (poor prior payment record, previous bankruptcy, prior conviction of the treasurer for embezzlement, etc.) are not required to be stated, although examples may be very helpful in specific cases.

The result should be a general but flexible standard which informs the public without unduly hampering agency discretion. Providing meaningful, publicly-available standards which will form the basis of an agency's exercise of its discretion is an important element of the Illinois Administrative Procedure Act.

HOUSE BILL 15 (Public Act 80-1457)

HB1015 Enrolled LS680-2024-HB/tc

AN ACT to amend Sections 2, 3.01, 7 and 7.02 of "The Illinois Administrative Procedure Act", approved September 22, 1975.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Sections 2, 3.01, 7 and 7.02 of "The Illinois Administrative Procedure Act", approved September 22, 1975, are amended to read as follows:

(Ch. 127, par. 1002)

Sec. 2. This Act applies to every agency as defined herein. Beginning January 1, 1978 in case of conflict between the provisions of this Act and the Act creating or conferring power on an agency, this Act shall control. However if an agency has existing procedures on July 1, 1977 specifically for contested cases or licensing those existing provisions control, except that this exception respecting contested cases and licensing does not apply if the Act creating or conferring power on the agency adopts by express reference the provision of this Act. Where the Act creating or conferring power on an agency establishes administrative procedures not covered by this Act, such procedures shall remain in effect.

The provisions of this Act shall not apply to (1) preliminary hearings, investigations or practices where no final determinations affecting State funding are made by the State Board of Education, (2) State Board of Education statements, guidelines or policies which do not have the force of law, ~~and~~ (3) legal opinions issued under Section 2-3.7 of The School Code, and (4) as to State colleges and universities, their disciplinary and grievance proceedings, academic irregularity and capricious grading proceedings, and admission standards and procedures. Neither shall the provisions of this Act apply to hearings under Section 20 of

the "Uniform Disposition of Unclaimed Property Act".

(Ch. 127, par. 1003.01)

Sec. 3.01. "Agency" means each officer, board, commission and agency created by the Constitution, whether in the executive, legislative, or judicial branch of State government, but other than the circuit court; each officer, department, board, commission, agency, institution, authority, university, body politic and corporate of the State; and each administrative unit or corporate outgrowth of the State government which is created by or pursuant to statute, other than units of local government and their officers, school districts and boards of election commissioners; each administrative unit or corporate outgrowth of the above and as may be created by executive order of the Governor. However, "agency" does not include:

(a) the House of Representatives and Senate, and their respective standing and service committees;

(b) the Governor; and

(c) the justices and judges of the Supreme and Appellate Courts.

No entity shall be considered an "agency" for the purposes of this Act unless ~~State board, commission, department, or officer, other than the Governor, legislature, or the courts,~~ authorized by law to make rules or to determine contested cases.

(Ch. 127, par. 1007)

Sec. 7. Publication of Rules.) (a) The agency shall compile, index and publish all its rules adopted under the provisions of this Act, and all rules certified under the provisions of subsection (b) of Section 7.01 ~~Section 7.01(b)~~ of this Act. The initial compilation, index and publication required by this Section shall contain all rules in effect on July 1, 1980, and shall be filed as provided in subsection (b) not later than October 1, 1980. Thereafter, compilations shall be supplemented or revised and certified as current to

the Secretary of State at least once every 2 years.

(b) Compilations, supplements and revisions required by this Section shall be filed in the office of the Secretary of State in Springfield, Illinois and in the Cook County Law Library in Chicago, Illinois and with the Joint Committee on Administrative Rules. The agency shall make compilations, supplements and revisions available upon request to agencies and officials of this State without charge and to other persons at prices established by the agency to cover mailing and publication costs.

(c) The Secretary of State shall, by rule, prescribe a uniform system for the codification of rules on or before July 1, 1980. All rules on file with the Secretary of State and in effect on July 1, 1984, shall be in compliance with the uniform system for the codification of rules. The Secretary of State shall not adopt any codification system under this subsection without the approval of the Joint Committee on Administrative Rules. Approval by the Joint Committee shall be conditioned solely upon establishing that the proposed codification system is compatible with existing electronic data processing equipment and programs maintained by and for the General Assembly.

(Ch. 127, par. 1007.02)

Sec. 7.02. (a) The Joint Committee on Administrative Rules, is hereby created. The Joint Committee shall be composed of 16 members, 4 members appointed by the President of the Senate and 4 by the Senate Minority Leader, and 4 members appointed by the Speaker of the House of Representatives and 4 by the House Minority Leader.

Members of the Joint Committee shall be appointed during the month of July of each odd numbered year for 2 year terms beginning August 1, and until their successors are appointed and qualified. In the event of a death of a member or if a member ceases to be a member of the General Assembly a vacancy shall exist. Vacancies shall be filled for the time

remaining of the term in the same manner as the original appointments. All appointments shall be in writing and filed with the Secretary of State as a public record.

(b) The Joint Committee shall organize during the month of September each odd numbered year by electing a Chairman and such other officers as it deems necessary. The chairmanship of the Joint Committee shall be for a 2 year term and may not be filled in 2 successive terms by persons of the same political party. Members of the Joint Committee shall serve without compensation, but shall be reimbursed for expenses. The Joint Committee shall hold monthly meetings and may meet oftener upon the call of the Chairman or 4 members. A quorum of the Joint Committee consists of a majority of the members ~~appointed from each house of the General Assembly~~.

(c) When feasible the agenda of each meeting of the Joint Committee shall be submitted to the Secretary of State to be published at least 5 days prior to the meeting in the Illinois Register. The provisions of this subsection shall not prohibit the Joint Committee from acting upon an item that was not contained in the published agenda.

(d) The Joint Committee shall appoint an Executive Director who shall be the staff director. The Executive Director shall receive a salary to be fixed by the Joint Committee.

The Executive Director shall be authorized to employ and fix the compensation of such necessary professional, technical and secretarial staff and prescribe the duties of such staff.

(e) ~~The initial appointments required by this Section shall be made no later than November 1, 1977. In addition, the Joint Committee created by this Section shall initially organize by electing its officers and appointing the Executive Director no later than November 30, 1977.~~

~~(f)~~ A permanent office of the Joint Committee shall be

in the State Capitol Complex wherein the Space Needs Commission shall provide suitable offices.

Section 2. This amendatory Act shall take effect January 1, 1979.

APPENDIX E

WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD
62706

June 29, 1978

FILE NO. S-1362

ADMINISTRATIVE LAW:
Applicability of Illinois Administrative
Procedure Act to the Board of Trustees
of the University of Illinois

-

Honorable Harry Yourell
State Representative
Chairman, Joint Committee on Administrative Rules
612 South Second Street - Lower Level
Springfield, Illinois 62706

Dear Representative Yourell:

I have your letter wherein you ask whether the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1977, ch. 127, par.1001 et seq.) is applicable to the Board of Trustees of the University of Illinois. Section 2 of the Act (Ill. Rev. Stat. 1977, ch. 127, par. 1002) provides that the Act applies to every "agency" as that term is defined in the Act. Section 3.01 of the Act (Ill. Rev. Stat. 1977, ch. 127, par. 1003.01) defines the term "agency" as follows:

> "'Agency' means each State Board, commission, department, or officer, other than the Governor, legislature, or the courts, authorized by law to make rules or to determine contested cases."

Therefore, in order for the Act to apply to the Board of Trustees of the University of Illinois, the Board must be a "State Board" and must be authorized by law to make rules or to determine contested cases. It is my opinion that the Board of Trustees meets these requirements and is thus subject to the Illinois Administrative Procedure Act.

I am aware that in People v. Barrett (1943), 382 Ill. 321, 342, 347, the Illinois Supreme Court held that the Board of Trustees of the University of Illinois, as a corporation, was separate and distinct from the State and that, as a result, the Attorney General was not its legal advisor. Relying on Barrett, the court in Board of Trustees of the University of Illinois v. Industrial Commission (1969), 44 Ill. 2d 207, 212, ruled that the Board of Trustees was an entity independent of the State; the court therefore held that the Board was not within the immunity clause of the 1870 Constitution (Ill. Const. 1870, art. IV, § 26) and that section 19(f)(1) of the Workmen's Compensation Act (Ill. Rev. Stat. 1967, ch. 48, par. 138.19(f)(1)) did not prohibit the Board from seeking judicial review of a decision

of the Industrial Commission. The court in Board of Trustees, however, did not hold that the Board of Trustees of the University of Illinois was not an arm of the State. Kane v. Board of Governors of State Colleges and Universities (1976), 43 Ill. App. 3d 315, 322.

The appellate court in Kane examined the statutory provisions relating to the Board of Governors of State Colleges and Universities and concluded that the Board of Governors was not autonomous and totally independent of the State of Illinois. Rather, the court held that the Board of Governors was an arm of the State which was to be sued, as other State agencies, in the Court of Claims. An examination of the statutory provisions relating to the Board of Trustees of the University of Illinois demonstrates that the Board of Trustees is also an arm of the State.

The Board of Trustees is a creation of the General Assembly. (Ill. Rev. Stat. 1977, ch. 144, par. 22.) The Governor serves on the Board of Trustees; the nine elected members of the Board are chosen by the voters of the State at general elections. (Ill. Rev. Stat. 1977, ch. 144, par. 41.) The Board has the power to acquire property. (Ill. Rev. Stat. 1977, ch. 144, pars. 22, 48.1, 70.2.) However, the Board can

only acquire and hold property as the trustee and agent for the State (People v. Barrett (1943), 382 Ill. 321, 341.) The State is the beneficial owner of all property, the title to which may be held by the Board of Trustees. People ex rel. Olmsted. v. University of Illinois (1928), 328 Ill. 377, 382.

The Board of Trustees is required generally to pay income received by the University of Illinois into the State Treasury, to be held in a special fund. The General Assembly is authorized to make appropriations from this special fund for the support, operation and improvement of the University of Illinois. (Ill. Rev. Stat. 1977, ch. 127, par. 142d.) The Board's expenditures are subject to both the State Comptroller Act (Ill. Rev. Stat. 1977, ch. 15, par. 201 et seq.) and the Illinois State Auditing Act. Ill. Rev. Stat. 1977, ch. 15, par. 301-1 et seq.

The persons employed by the Board of Trustees are employees of the State. (People ex rel. Redman v. Board of Trustees (1918), 283 Ill. 494, 499.) They are covered by the State University Civil Service System (Ill. Rev. Stat. 1977, ch. 24 1/2, par. 38b1 et seq.) and are participants in the State Universities Retirement System. Ill. Rev. Stat. 1977, ch. 108 1/2, par. 15-101 et seq.

These statutory provisions and court cases demonstrate clearly that the Board of Trustees is a State board. Although the Board for some purposes may be separate and distinct from the State, it is not autonomous and completely independent of the State. The Board of Trustees administers the University of Illinois according to the requirements of State statutes and within the limits of the General Assembly's appropriation. "It functions solely as an agency of the State for the purpose of the operation and administration of the university, for the State." (People v. Barrett (1943), 382 Ill. 321, 343.) See also Pope v. Parkinson (1977), 48 Ill. App. 3d 797, 802, wherein the court not only assumed that the University of Illinois was, as a State agency, subject to the Open Meetings Act (Ill. Rev. Stat. 1977, ch. 102, par. 41 et seq.) but also, relying on the Kane case, stated explicitly that it was an arm of the State.

In addition to being a State board, the Board of Trustees is authorized by law to make rules. Section 3.09 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1977, ch. 127, par. 1003.09) defines "rule" as follows:

> "'Rule' means each agency statement of general applicability that implements, applies, interprets, or prescribes law or policy, but does not include

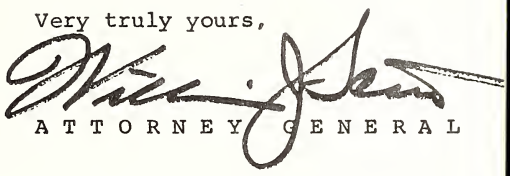
> (a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to persons or entities outside the agency, (b) informal advisory rulings issued pursuant to Section 9, (c) intra-agency memoranda or (d) the prescription of standardized forms."

The Board of Trustees is expressly authorized by statute to make rules which meet this definition, (e.g. Ill. Rev. Stat. 1977, ch. 23, par. 2209 (rules for the management of the Surgical Institute for Children); ch. 127, par. 132.5 (rules for purchases)) In addition, it is the generally accepted rule that State agencies have implied powers to make all necessary and reasonable rules to carry out their express powers and duties. FCC v. Schreiber (1965), 381 U.S. 279, 289; Kerr's Catering Service v. Dep't of Industrial Relations (1962), 57 Cal. 2d 319, 329, 369 P. 2d 20, 26.

The Board of Trustees of the University of Illinois is a State board, and it is authorized by law to make rules. Therefore, the Board of Trustees meets both of the requirements for being an "agency" as that term is defined in section 3.01 of the Illinois Administrative Procedure Act. Because the Board of Trustees is an "agency", it is my opinion that the Illinois

Administrative Procedure Act is applicable to the Board.

Very truly yours,



ATTORNEY GENERAL