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# ANNUAL REPORT

ILLINOIS GENERAL ASSEMBLY

**J**OINT  
**C**OMMITTEE  
ON  
**A**DMINISTRATIVE  
**R**ULES

1980  
1980



# JOINT COMMITTEE ON ADMINISTRATIVE RULES

ILLINOIS GENERAL ASSEMBLY

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## LETTER OF TRANSMITTAL

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TO THE MEMBERS OF THE 81ST GENERAL ASSEMBLY:

I hereby submit the Annual Report of the Joint Committee on Administrative Rules pursuant to Section 7.10 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1977, ch. 127, par. 1007.10). As required, it contains the "findings, conclusions and recommendations including suggested legislation" of the Joint Committee for your consideration.

I submit this with the hope the General Assembly will find it of assistance in exercising its constitutional duty to oversee the implementation of the laws we pass -- a duty the General Assembly ignored from the 1920's, until it created the Joint Committee on Administrative Rules in 1977. Since we began operation, the Joint Committee has made significant advances in your capability to fulfill this responsibility. Agencies have become more aware of the necessity to implement statutes in accordance with legislative intent and the legislature, through the Joint Committee, now has a direct means of monitoring that agency rules do comply with legislative intent.

The numerous and detailed statements of objection and recommended legislation as well as the statistical summaries presented in this report indicate the volume of work handled by the Joint Committee. We estimate that agency-made law in the form of the rules is three times as voluminous as the statutes passed by the legislature. And agency rules often represent the law which most directly affects the daily lives of the citizens of the State. It is vital that you have an effective means of overseeing these rules.



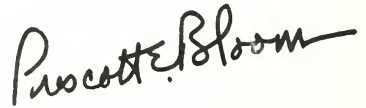
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With the approval of House Bill 2226 (Public Act 81-1044), which became effective October 1, 1979, the Joint Committee's review of newly proposed rules has been strengthened. The Joint Committee has also begun to implement your mandate to review existing rules on a systematic basis with the five-year review program (your "sunset" function) and with reviews based on complaints (your ombudsman function). The full range of the Joint Committee's duties has now begun; and I solicit your input about problems with agencies' rules that arise in your districts.

As you review this report of our 1979 activities, you can appreciate the number of alligators standing between the General Assembly and draining the regulatory swamp created by 50 years of legislative neglect. Your serious consideration of our 1980 recommendations will significantly assist in restoring the public's confidence in the General Assembly as the "people's branch" of government.

Let me thank all the members of the General Assembly for your suggestions and comments on specific agency rules and on the development of the role of the Joint Committee. Only as each of us as legislators becomes concerned and involved in this oversight process can the Joint Committee, acting on your behalf, remind the unelected portion of Illinois' government that it, too, is accountable.

Respectfully,

A handwritten signature in black ink that reads "Prescott E. Bloom". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Senator Prescott E. Bloom  
Chairman



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## SUMMARY

### Activities

As outlined in this Annual Report to the General Assembly, the Joint Committee on Administrative Rules during 1979 completed the implementation of each of its basic responsibilities under the Administrative Procedure Act. The on-going review of rulemaking required the examination of over 525 rulemakings by state agencies. The Joint Committee discovered numerous deficiencies in these rules, resolved most of them through cooperation with the agency, and issued 65 formal statements of objection. Each of these statements is presented in this report.

Newly implemented programs during 1979 include the five-year comprehensive review program, reviews of rules based on complaints and review of public acts which require rulemaking. The Joint Committee also undertook a special review of plans of the Environmental Protection Agency pursuant to House Joint Resolution 16 and assisted the Office of the Secretary of State in the development of a uniform system for the codification of all state agency rules in Illinois. The more than 20 legislative recommendations of the Joint Committee included in the 1978 Annual Report received generally favorable consideration by the General Assembly during 1979.

The Joint Committee has continued during 1979 to have a significant impact on agency-made law in Illinois and to fulfill an important systematic substantive oversight function for the Illinois General Assembly.

### Recommendations

The Joint Committee is recommending several additional procedural changes in the Administrative Procedure Act. These recommendations are included in Recommended Bills One through Three. The first two recommended bills would provide means of increasing the Joint Committee's control over agency rulemaking. They would change the currently advisory powers of the Joint Committee into more effective tools for insuring that agency-made law complies with statutory authority and legislative intent. The last procedural bill makes a minor change in the applicability of the Act by excluding soil and water conservation districts from its coverage.

Each of the six other bills being specifically recommended by the Joint Committee in this report addresses individual problems which have been uncovered during the review of agency rules. Many of these bills are intended to clarify the intent of the legislature in specific statutes and to provide clear direction to the agencies carrying out these statutes.

In addition to the recommended bills, the Joint Committee is also presenting in this report sixteen alternative bills and suggesting that the General Assembly give careful attention to resolving these issues uncovered by the Joint Committee's review. While the Joint Committee believes that these issues are beyond its primary area of expertise, these are serious issues which should be addressed by the General Assembly. The Joint Committee is suggesting alternative approaches in these cases to facilitate consideration by the General Assembly.

## TABLE OF CONTENTS

	Page
INTRODUCTION: BACKGROUND AND OVERVIEW	9
Creation and Basic Functions	9
Committee Members	10
Implementation Priorities	11
Staff Organization	13
Report Overview	15
STATISTICAL OVERVIEW	17
REVIEW OF RULEMAKING	35
General Rulemaking	35
Emergency and Peremptory Rulemaking	37
Specific Statements of Objection Issued	40
PUBLIC ACT REVIEW	89
FIVE-YEAR REVIEW PROGRAM	93
COMPLAINT REVIEWS	109
SPECIAL HOUSE JOINT RESOLUTION 16 PROJECT	113
PROCEDURAL LEGISLATION	119
CODIFICATION PROGRESS	127
COURT DECISIONS AND ATTORNEY GENERAL OPINIONS	131
RESULTS OF 1978 LEGISLATIVE RECOMMENDATIONS	137
LEGISLATIVE RECOMMENDATIONS	149
Procedural Bills	149
Substantive Bills	151
Text of Recommended Bills	176
ALTERNATIVE BILLS	197
Text of Alternative Bills	207
APPENDICES	303

TABLE OF RECOMMENDED AND ALTERNATIVE BILLS

**Recommended Bills**

<u>Procedural Bills</u>	<u>Affected Agencies</u>	<u>Discussion/Pages</u>	<u>Background and Summary/Pages</u>	<u>Text/Pages</u>
One	All	121-122	149-150	155-158
Two	All	121-122	150	159-168
Three	Soil and Water Conservation Districts	123	150-151	169-170

<u>Substantive Bills</u>	<u>Affected Agencies</u>	<u>Statement of Objection/Pages</u>	<u>Background and Summary/Pages</u>	<u>Text/Pages</u>
Four	Department of Agriculture	41-42	151	171-173
Five	Department of Conservation	43-46	151-152	175-176
Six	Department of Financial Institutions	48	152	177-181
Seven	Department of Financial Institutions	48-49	152-153	183-185
Eight	Department of Labor	50	153	187-191
Nine	Pollution Control Board	86	154	193-195

**Alternative Bills**

<u>Alternative Bills</u>	<u>Affected Agencies</u>	<u>Statement of Objection/Pages</u>	<u>Background and Summary/Pages</u>	<u>Text/Pages</u>
One	Department of Public Aid	58	197-198	207-216
Two				217-226
Three	Department of Public Health	66-67	198-199	227-228
Four				229-230
Five	Department of Public Health	68-69	199-200	231-234
Six				235-238
Seven	Department of Registration and Education	69-70	200-201	239-241
Eight				243-245
Nine	Department of Revenue	75	201-202	247-257
Ten				259-269
Eleven	Illinois Commerce Commission	76-77	202-203	271-276
Twelve				277-282
Thirteen	Environmental Protection Agency	81-82	203-204	283-287
Fourteen				289-293
Fifteen	Pollution Control Board	none issued	204-205	295-298
Sixteen				299-302

LIST OF TABLES

	Pages
Table One: Functional and Personnel Organizational Charts of the Office of the Joint Committee	14
Table Two: Statistical Summary of Rulemakings by Agency for 1979	20-21
Table Three: Comparison of Emergency and Peremptory Rulemakings by Agency for 1978 and 1979	22-23
Table Four: Statistical Summary by Agency of Statements of Objection Issued During 1979 and Agency Responses	24
Table Five: Updated Statistical Summary by Agency of Statements of Objection Issued During 1978 and Agency Responses	25
Table Six: Comparison of Proposed Rulemakings and Statements of Objection by Agency for 1978 and 1979	26-28
Table Seven: Statistical Summary of Joint Committee Review and Impact on Rulemaking in 1979	29
Table Eight: Updated Statistical Summary of Joint Committee Review and Impact on Rulemaking in 1978	30
Table Nine: Comparison Between Statistical Summary of Joint Committee Review and Impact on Rulemaking in 1978 and 1979	31
Table Ten: Statistical Summary of Statements of Objection Issued by Quarter During 1979	32
Table Eleven: Updated Statistical Summary of Statements of Objection Issued by Quarter During 1978	33
Table Twelve: Statistical Summary of Joint Committee Review of Emergency and Peremptory Rulemaking by Agency During 1979	34

	Pages
Table Thirteen: Number of 1979 Public Acts Which Could Require Rulemaking by Agency	91-92
Table Fourteen: Schedule of Subject Areas for the Five-Year Review Program	101
Table Fifteen: Rules being reviewed under the Five-Year Review Program	104-108
Table Sixteen: Members of the HJR16 Subcommittee	115
Table Seventeen: Public Acts Affecting the Illinois Administrative Procedure Act	124
Table Eighteen: Specific Sections of the Illinois Administrative Procedure Act Affected by Public Acts	125
Table Nineteen: Ad Hoc Rules Codification Task Force Participants	129
Table Twenty: Statistical Summary of Results of 1978 Legislative Recommendations	138
Table Twenty-One: Results of Individual Recommended Substantive Bills	139-144
Table Twenty-Two: Results of Individual Recommended Amendments to the Administrative Procedure Act	145-147

## INTRODUCTION: BACKGROUND AND OVERVIEW

This report summarizes the activities of the Joint Committee on Administrative Rules during 1979, its second year of operation. The recommended legislation included in this report represents the most visible results of the Joint Committee's efforts during this year.

The less visible results of the Joint Committee's efforts are also important, however. Agencies have made significant changes in proposed rules in response to objections made by the Joint Committee. The five-year review program is beginning to provide a means of evaluating existing rules in a comprehensive manner by subject area. The legislature is more aware of the importance of rulemaking actions and agencies are more aware of the need to adhere closely to the requirements of the statutes being implemented by rulemaking.

This introduction will provide general background information about the Joint Committee as well as a brief overview of this report.

### Creation and Basic Functions

The Joint Committee on Administrative Rules was created by the General Assembly in 1977 through the passage of House Bill 14 (Public Act 80-1035). This Act was a comprehensive amendment to the Illinois Administrative Procedure Act which had been enacted in 1975. The initial organizational meeting of the Joint Committee was held in October 1977, following the appointment of members by the legislative leaders.

The basic function of the Joint Committee is described in Section 7.04(1) of the Act in these words:

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.

The key elements of this description of the Joint Committee's function can be delineated into three statements: (1) The Joint Committee has only advisory powers. (2) The Joint Committee should promote rulemaking which is adequate and proper. (3) The Joint Committee should promote public understanding of rules and the rulemaking process.

The two major Joint Committee activities established by the Act are (1) review of rulemaking actions by agencies — Section 5.01, 7.04(5), and 7.06; and (2) review and evaluation of existing rules — Sections 7.04(2 and 3), 7.05(1), 7.07 and 7.08. Each of these major activities are directed toward accomplishing the Joint Committee's basic functions.

Another way to express the Joint Committee's function is in terms of communication between the legislature and state agencies. The Joint Committee monitors agency rulemaking actions. So bringing the legislative and administrative processes closer together through increased communication and cooperation can be seen as one of the Joint Committee's basic functions.

### Committee Members

The Administrative Procedure Act provides in Section 7.02 that the members of the Joint Committee serve for two-year terms. Appointments to the Committee are to be made in July of each odd-numbered year and the Committee is to select new officers following these appointments.

The members appointed in 1979 to serve on the Joint Committee are the following:

#### Senators

Appointed by the President:

Arthur L. Berman  
Jeremiah E. Joyce  
George Sangmeister  
Frank D. Savickas

#### Representatives

Appointed by the Speaker:

Alan J. Greiman  
Douglas N. Kane  
Richard Kelly, Jr.  
Harry "Bus" Yourell

Appointed by the Minority Leader:

Prescott E. Bloom  
Lynn Martin  
David J. Regner  
Richard A. Walsh

Appointed by the Minority Leader:

Glen L. Bower  
A.T. "Tom" McMaster  
Jim Reilly  
Robert C. Winchester

The new officers elected by the members of the Joint Committee at the October 1979 organizational meeting are the following:



Chairman: Senator Prescott E. Bloom  
First Vice-Chairman: Senator Arthur L. Berman  
Second Vice-Chairman: Representative Jim Reilly  
Secretary: Representative Harry "Bus" Yourell

### Implementation Priorities

In implementing its responsibilities under the Administrative Procedure Act, the Joint Committee established a system of priority program implementation concentrating first on the establishment of the on-going review functions and then initiating the longer term more in-depth review responsibilities. The initial priorities established by the Joint Committee in January 1978 were as follows:

#### First Priority

- A. Establish the mechanics and the procedures for reviewing proposed rules during the 45-day notice period for proposed rulemaking.
- B. Develop a working relationship with the Secretary of State's office which must include the:
  1. establishment of adequate Rules on Rules;
  2. development of daily operational procedures with the Secretary of State's Office; and
  3. establishment of an index system for the Illinois Register to make it more useable.

#### Second Priority

- A. Establish a review program for specialized rules that shall include:
  1. Internal management rules;
  2. Emergency rules; and
  3. Federal and court ordered rules.
- B. Establish the procedure and the mechanics for handling and processing complaints the Joint Committee receives concerning a particular rule that currently is in effect.

#### Third Priority

- A. Establish the five-year review program of each agency's rules as required by the IAPA.
- B. Establish the mechanics and the procedures for reviewing existing rules.
- C. Develop a program to study the rulemaking process of all state agencies.

- D. Begin to examine and develop a statewide indexing and codification system for all the state's administrative rules.
- E. Develop a program to study the impact of legislative changes, court rulings and administrative actions on the rulemaking process and on effective rules.
- F. Work with the Auditor General to establish a system to review state agency compliance with the IAPA.

As the Joint Committee has actually implemented these responsibilities, these priorities have been refined and reorganized. The January 1978 list served primarily to focus attention on the immediate priorities at the time of initiating the on-going review of proposed rulemaking and establishing an efficient working relationship with the Secretary of State's office. These immediate priorities were implemented during 1978.

During 1979, the Joint Committee focused on implementing its longer-term, more in-depth review responsibilities, especially the five-year evaluation of all state agency rules. The development of the Background Report on Review of Existing Rules was a major portion of this process. The report contained a comprehensive set of recommendations for the implementation of these review programs by the Joint Committee.

The program implementation priority list utilized by the Joint Committee in 1979 follows. It includes citations to the major sections of the Administrative Procedure Act which authorize each program.

#### Highest Priority

Review of proposed rulemaking [Section 7.06]

#### Second Priority

Five-year periodic evaluation of all agency rules program [Section 7.08]

Review of emergency and court and federal ordered rulemaking [Section 5(b) and 5(e), Section 7.07]

Special reviews of existing rules [Section 7.07, Section 7.05(2)]

Review of procedural rules [Section 4.01, Section 7.05(1)]

#### Third Priority

Review of related legislative changes, court rulings, and administrative action  
[Section 7.05(3)]

Compliance activities [Section 7.04(3)]

Another important step in the implementation of the full range of the Joint Committee's responsibilities during 1979 has been the development and adoption of formal rules to guide the Joint Committee's programs. Rulemaking by the Joint Committee is authorized by Section 7.09 of the Administrative Procedure Act. The rules for the review of proposed rulemaking had been adopted in 1978, but extensive revisions were made to comply with the procedural changes enacted by Public Act 81-1044. Rules for the review of emergency rulemaking (Rule Three), the review of federal or court-ordered, or peremptory, rulemaking (Rule Four), the five-year evaluation of all agency rules (Rule Five) and the complaint review program (Rule Six) were developed and adopted during 1979. These rules appear in this report as Appendix C on pages 337-378.

All the major responsibilities of the Joint Committee have been implemented at this point in time. Although the five-year and complaint programs did not show extensive results during 1979, they were implemented successfully. It is expected that the five-year review program will show major results during 1980 and may even replace the review of proposed rulemaking as the primary focus of the Joint Committee's activities.

### Staff Organization

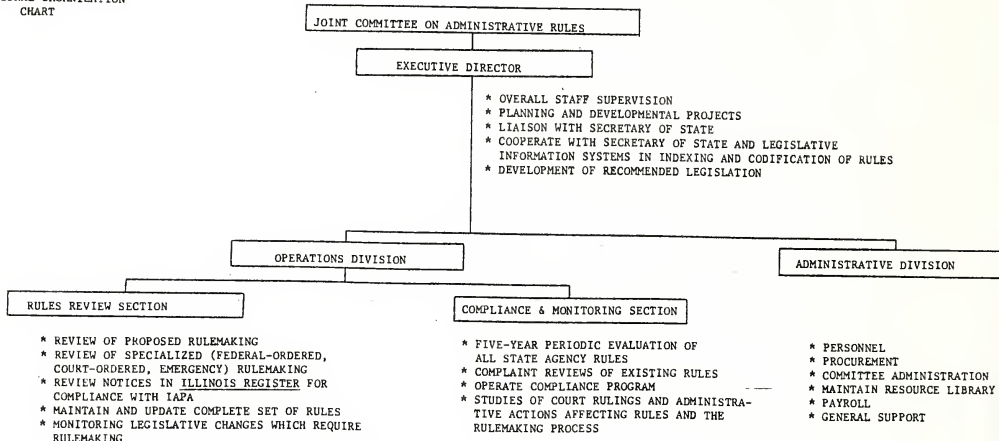
The organization and phasing-in plan of staffing of the Joint Committee was intended to complement the Committee's implementation priorities. The staff was organized into two operational sections -- one section focusing on proposed rulemaking review (Rules Review Section) and the other section concentrating on the five-year evaluation and other reviews of existing rules (Compliance and Monitoring Section). More initial staff members were assigned to the Rules Review Section.

During 1979, staffing of the Compliance and Monitoring Section progressed as planning was completed and implementation of the review programs began.

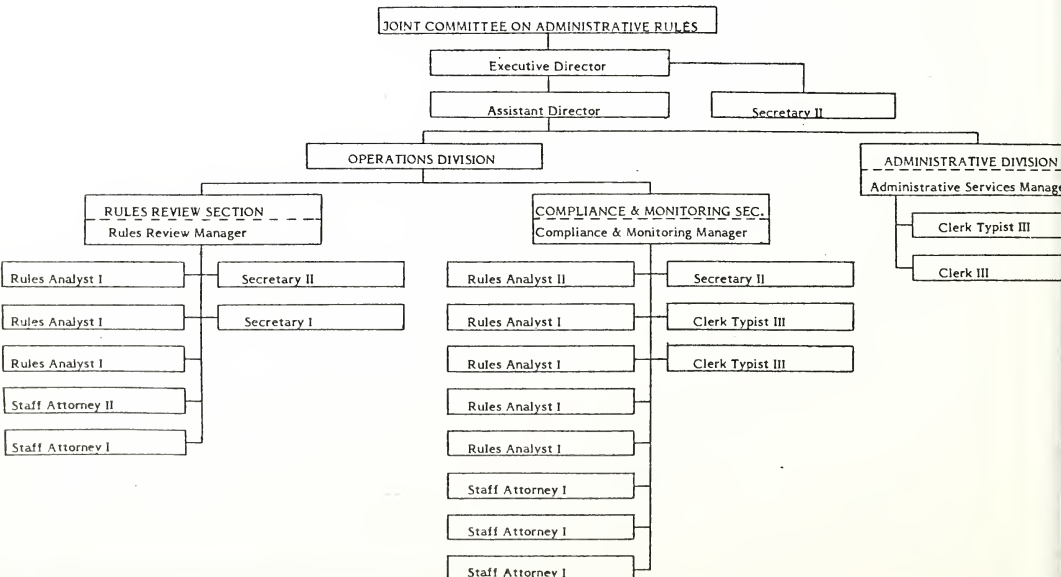
Table One presents the functional and personnel organizational charts of the Joint Committee staff. The charts present the division of responsibilities between the sections as well as the assignment of personnel. The phased-in staffing has been successful in

TABLE ONE: FUNCTIONAL AND PERSONNEL ORGANIZATIONAL CHARTS OF THE OFFICE OF THE JOINT COMMITTEE

FUNCTIONAL ORGANIZATION CHART



PERSONNEL ORGANIZATION CHART



aiding in smoothly implementing the Joint Committee's responsibilities. The Joint Committee's full staffing size has been reached at this point in time.

### Report Overview

This annual report is organized by the major programs and responsibilities of the Joint Committee. Following the statistical overview (pages 17-34), the programs conducted by the Rules Review Section are discussed. These include: (1) Review of proposed rulemaking, including emergency and peremptory rulemaking — pages 35-38. A complete listing of all the statements of objection issued by the Joint Committee is included in this Section. (2) Public Act review — pages 89-92. This review of legislative changes has been useful in increasing and improving communication between the legislature and administrative agencies.

The next sections of this report discuss programs under the Compliance and Monitoring Section. These include: (1) Five-year Review Program — pages 93-108; and (2) Complaint Reviews — pages 109-111. Since these programs have only recently been implemented, the results presented in these sections are less detailed.

Other projects and activities in which the Joint Committee has been involved are discussed in the sections on (1) Special House Joint Resolution 16 Project — pages 113-118; (2) Procedural Legislation — pages 119-125; and (3) Codification Progress — pages 127-130. Several court decisions and Attorney General opinions which affect the interpretation of the Administrative Procedure Act are discussed in the next section because of their importance to the operation of the Joint Committee — pages 131-135.

The results of legislation recommended by the Joint Committee during 1978 are also discussed — pages 137-147. This discussion provides a useful indication of the effectiveness of the Joint Committee in legislatively resolving the difficulties it uncovers.

The final two sections contain bills developed by the Joint Committee for consideration by the General Assembly. The first of these sections of the report presents the legislation recommended by the Joint committee as a result of its activities during 1979 — pages 149-195. These bills will be introduced by the Joint Committee during the 1980 legislative session.

The other section presenting bills developed by the Jont Committee indicate serious problem areas uncovered during the Joint Committee's reviews. Rather than recommending a single bill in these cases, the Joint Committee is suggesting alternative legislation, allowing the General Assembly to address these serious issues — pages 197-302.

The appendices present useful reference materials for individuals interested in the work of the Joint Committee, including the currently effective version of the Administrative Procedure Act (Appendix A on pages 305-318).

## STATISTICAL OVERVIEW

This section summarizes statistically the rulemaking actions of state agencies and the results of the review by the Joint Committee during 1979. The statistics are compared to those collected for 1978 which were presented in the 1978 Annual Report to indicate possible statistical trends in the rulemaking process in Illinois.

Any attempt to present a quantitative analysis of a basically qualitative process is subject to some limitations. The most important limitation of these statistics is that each rulemaking is considered a unit, although they vary widely in length, complexity and importance. A rulemaking may be a simple amendment to change a few words in an agency's rules and having little impact on the public. But the adoption of a comprehensive set of rules with hundreds of pages of new regulations with a broad and significant impact on the public will also be considered a single rulemaking. Although this difference places a limitation on the value of these statistics, several factors reduce the importance of this difference. First, most agency rulemaking actions fall into a middle range of complexity and importance and are usually comparable to each other. Second, the detailed qualitative discussion in other sections of this report (pages 35-88) balances this statistical presentation. Third, the statistics are useful for comparisons between 1978 and 1979, since statistics collected in both years are subject to the same limitations.

Table Two (pages 20-21) presents the number of proposed, emergency and peremptory rulemakings by agency. Three agencies, the Department of Conservation, the Department of Public Aid and the Department of Public Health, account for 40.2% of all proposed rulemakings in 1979. These same agencies also account for 42% of all emergency rules adopted in 1979. The Department of Public Aid promulgated 6 of the 9 peremptory rules adopted in 1979.

One concern of the Joint Committee has been the excessive use of the emergency and peremptory rulemaking provisions. Table Three (pages 22-23) compares the number of peremptory and emergency rulemakings for 1978 and 1979. The figures are presented by agency. As indicated in the table, the Department of Conservation has decreased its number of emergency rulemaking actions drastically — from 30 in 1978 to only 8 in 1979. This accounts for most of the change in the total number of emergency rulemakings from

1978 to 1979. It is hoped that the review by the Joint Committee of these types of rulemaking will lead to an eventual reduction in the use of these procedures by all agencies. No real trend in this direction can be determined at this time.

Table Four (page 24) presents a breakdown by agency of the statements of objection issued by the Joint Committee during 1979. The nature of the agency responses is also indicated in the table. The three agencies which proposed the majority of the rules also account for approximately 43% of the rulemakings which the Joint Committee objected to. The Department of Conservation refused to modify its rulemaking in response to Joint Committee statements of objection seven times. As can be seen by the specific objections on pages 42-46, the statements of objection to Conservation rulemakings concerned the same problem in most of the cases.

The comparable statistics for 1978 are presented in Table Five (page 25). This is an updated version of the table presented in the 1978 Annual Report, indicating the nature of the responses which were pending at the time the 1978 Annual Report was prepared.

A comparison by agency between the number of proposed rulemakings and the number of statements of objection issued by the Joint Committee is presented in Table Six (pages 26-28). The number of statements of objection issued include objections to emergency and peremptory rulemakings as well as proposed rulemakings. The total number of proposed rulemakings and Joint Committee objections have decreased slightly during 1979, however the figures do not support any projection of a trend in this direction. The changes in the rulemaking procedure which took effect October 1, 1979, may be partially responsible for this slight decrease.

The basic results and effects of the Joint Committee review during 1979 are presented statistically in Table Seven (page 29). The estimated number of rulemakings with serious problems represents the number of rulemakings the staff would have recommended that the Joint Committee object to had the agency not modified the rulemaking and the number of rulemakings reviewed which the staff did recommend that the Joint Committee object to. Many rulemakings were modified prior to Committee meetings in response to staff suggestions. Other modifications were agreed to by agencies at the meetings. In only 65 cases did the Joint Committee issue a statement of objection to agency rulemaking. This table indicates something of the total extent to which the Joint Committee has had an impact on agency rulemaking in addition to those



instances in which the Joint Committee has issued statements of objection. The figures include emergency and peremptory rulemakings as well as proposed rulemakings.

Comparable updated figures for 1978 are presented in Table Eight (page 30) and a comparison between the two years is presented in Table Nine (page 31). This comparison indicates that the number of rules withdrawn in response to statements of objection has decreased, while the number of refusals has increased. This increase does not indicate decreased responsiveness to the Joint Committee because it is largely the result of the refusal of the Department of Conservation to modify rules which present the same basic problem. If these seven objections and responses of the Department of Conservation were not considered the percentage of refusals would have increased by only 10%. This percentage may decrease further as more responses are received.

Tables Ten (page 32) and Eleven (page 33) present the number of the Joint Committee's objections and agency responses by quarter for 1978 and 1979. Table Eleven presents the updated figures for 1978, while Table Ten presents the comparable figures for 1979. The decrease of objections issued by the Joint Committee during the last two quarters of 1979 may be partially explained by the changes in the rulemaking procedure which took effect on October 1, 1979.

The final table is Table Twelve (page 34), which presents figures only on the review of emergency and peremptory rulemakings. The Joint Committee began reviewing these types of rulemaking in July 1979. During this last half of 1979, 49 emergency and 4 peremptory rules were reviewed. The review resulted in six objections. The only two responses which have been received were refusals to modify or withdraw the rulemaking.

This statistical overview should indicate generally the extent of the Joint Committee's impact on the rulemaking process in Illinois. The heavy workload of the Joint Committee should also be clear from this overview.

TABLE TWO: STATISTICAL SUMMARY OF RULEMAKINGS BY AGENCY FOR 1979

<u>Code Departments</u>	<u>Proposed</u>	<u>Emergency</u>	<u>Peremptory</u>
Aging	1	1	
Agriculture	17	3	
Children & Family Services	2		
Conservation	92	16	
Corrections	23	8	
Financial Institutions	10	1	
Insurance	14		
Labor	6		
Mental Health & Developmental Disabilities	13	1	
Mines and Minerals			
Personnel	9	5	
Public Aid	56	14	6
Public Health	43	12	
Registration and Education	11	3	
Revenue	16	1	
Transportation	13	2	
Veterans' Affairs	2		
<u>Constitutional Offices</u>			
Attorney General	1		
Auditor General	5		
Comptroller	2	2	
Secretary of State	21	2	
Treasurer	1		
<u>Legislative Agencies</u>			
Joint Committee on Administrative Rules	5		
Legislative Travel Control Board	1		
<u>Miscellaneous Agencies</u>			
Banks and Trust Companies, Commissioner of	2		
Capital Development Board	1		
Commerce & Community Affairs	1		
Commerce Commission	11	1	
Community College Board	1		
Criminal Justice Information Council	2	2	

<u>Miscellaneous Agencies</u>	<u>Proposed</u>	<u>Emergency</u>	<u>Pereemptory</u>
Dangerous Drugs Commission	2		
Board of Elections	1	1	
Education, State Board of	4		1
Environmental Protection Agency	12	3	
Fair Employment Practices Commission	3		
State Fire Marshal	2	1	
Governor's Office of Manpower and Human Development	2	1	1
Governor's Purchased Care Review Board	6	4	
Guardianship and Advocacy Commission		1	
Health Facilities Authority	2		
Health Facilities Planning Board	1		
Health Finance Authority	1	1	
Board of Higher Education	3	1	
Higher Education Travel Control Board	1		
Industrial Commission	1		
Investments, State Board of	3	1	
Law Enforcement Merit Board	2		
Local Records Commission	1		
Lottery Control Board	2		
Medical Center Commission	1	1	
Institute of Natural Resources	1	2	
Pollution Control Board	11	1	1
Racing Board	14	7	
Savings and Loan Commissioner	4	1	
State Employees' Retirement System	3		
State Fair Agency	4		
Statewide Health Coordinating Council	1		
 <u>Universities</u>			
State Scholarship Commission	3		
Universities Civil Service Merit Board	2		
 Total:	475	102	9

TABLE THREE: COMPARISON OF EMERGENCY AND PEREMPTORY RULEMAKINGS  
BY AGENCY FOR 1978 AND 1979

	<u>Emergency</u>		<u>Peremptory</u>	
	<u>1978</u>	<u>1979</u>	<u>1978</u>	<u>1979</u>
<u>Code Departments</u>				
Aging	4	1		
Agriculture	1	3		
Conservation	17	16		
Corrections	21	8	9	
Financial Institutions		1		
Insurance	1			
Law Enforcement	1			
Local Government Affairs	1			
Mental Health & Developmental Disabilities		1		
Mines and Minerals	3			
Personnel	9	5		
Public Aid	19	14	12	6
Public Health	12	12		
Registration & Education	3	3		
Revenue		1		
Transportation	1	2	1	
<u>Constitutional Offices</u>				
Comptroller		2		
Secretary of State	3	2		
<u>Legislative Agencies</u>				
Joint Committee on Administrative Rules	1			
Legislative Information System	1			
Legislative Travel Control Board	1			
<u>Miscellaneous Agencies</u>				
Bank and Trust Companies, Commissioner of		1		
Commerce and Community Affairs		1		
Commerce Commission	1	1		
Criminal Justice Information Board		2		
Board of Elections	3	1		
Education, State Board of	2		2	1
Environmental Protection Agency	2	3		
Fair Employment Practices Commission	1			

	<u>Emergency</u>		<u>Peremptory</u>	
	<u>1978</u>	<u>1979</u>	<u>1978</u>	<u>1979</u>
<u>Miscellaneous Agencies Con't</u>				
State Fire Marshal		1		
Governor's Office of Manpower and Human Development	2	1		1
Governor's Purchased Care Review Board	1	4		
Guardianship and Advocacy Commission		1		
Health Finance Authority		1		
Board of Higher Education		1		
Investment, State Board of		1		
Law Enforcement Commission	2			
Law Enforcement Merit Board	3			
Medical Center Commission		1		
Institute of Natural Resources	1	2		
Pollution Control Board	2	1		1
Prisoner Review Board	2			
Racing Board	6	7		
Savings & Loan Commissioner	1	1		
Statewide Health Coordinating Council	3			
Teachers Retirement System	1			
Vocational Rehabilitation	<u>1</u>	-	-	-
Total:	133	102	24	9

TABLE FOUR: STATISTICAL SUMMARY BY AGENCY OF STATEMENTS  
OF OBJECTION ISSUED DURING 1979 AND AGENCY RESPONSES

<u>Code Departments</u>	Number of Statements of Objection	<u>Nature of Response</u>			Responses Pending
		<u>Withdraw</u>	<u>Modify</u>	<u>Refusal</u>	
Agriculture	2		1	1	
Conservation	7			7	
Financial Institutions	4		2	2	
Labor	2		2		
Mental Health and Develop- mental Disabilities	2		2		
Public Aid	11		6	5	
Public Health	10		4	5	1
Registration and Education	4		1		3
Revenue	4	1	1	2	
<u>Other Agencies</u>					
Commerce Commission	4		1	3	
Community College Board	1				1
Criminal Justice Information Council	1			1	
Education, State Board of	2		2		
Environmental Protection Agency	2				2
State Fire Marshal	1				1
Health Facilities Authority	1		1		
Investment, State Board of	1		1		
Lottery Control Board	2	1		1	
Pollution Control Board	1			1	
Racing Board	1			1	
<u>Universities</u>					
State Scholarship Commission	1		1		
University Civil Service Merit Board	1			1	
	—	—	—	—	—
Total:	65	2	25	30	8

TABLE FIVE: UPDATED STATISTICAL SUMMARY BY AGENCY OF STATEMENTS OF OBJECTION ISSUED DURING 1978 AND AGENCY RESPONSES

<u>Code Departments</u>	<u>Number of Statements of Objection</u>	<u>Nature of Response</u>		
		<u>Withdraw</u>	<u>Modify</u>	<u>Refusal</u>
Administrative Services	1		1	
Agriculture	1	1		
Child & Family Services	1			1
Conservation	2	1	1	
Corrections	2		2	
Insurance	4	1	1	2
Mental Health	3		3	
Personnel	1		1	
Public Aid	9	2	2	5
Public Health	14	1	8	5
Registration & Education	2	1	1	
Revenue	4	1		3
Transportation	1		1	
Veterans' Affairs	1		1	
<u>Constitutional Offices</u>				
Attorney General	1			1
Secretary of State	1		1	
<u>Other Agencies</u>				
Capital Development Board	1			1
Commerce Commission	4		3	1
Dangerous Drugs Commission	1		1	
Board of Elections	1		1	
Environmental Protection Agency	3	1		2
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	1	1	
State Scholarship Commission	1		1	
Vocational Rehabilitation	1			1
<b>Total:</b>	<b>72</b>	<b>14</b>	<b>34</b>	<b>24</b>

Updates Table Three which appeared on page 23 of the 1978 Annual Report issued by the Joint Committee in February 1979. At that time, 14 responses were pending.

TABLE SIX: COMPARISON OF PROPOSED RULEMAKINGS AND STATEMENTS OF OBJECTION  
BY AGENCY FOR 1978 AND 1979

	<u>Proposed Rulemakings</u>		<u>Number of Statements of Objection</u>	
	<u>1978</u>	<u>1979</u>	<u>1978</u>	<u>1979</u>
<u>Code Departments</u>				
Administrative Services	1	0	1	
Aging	5	1		
Agriculture	14	17	1	2
Children & Family Services	2	2	1	
Conservation	76	92	2	7
Corrections	82	23	2	
Financial Institutions	1	10		4
Insurance	15	14	4	
Labor	5	6		2
Law Enforcement	2	0		
Local Government Affairs	1	0		
Mental Health & Developmental				
Disabilities	8	13	3	2
Mines and Minerals	4	0		
Personnel	10	9	1	
Public Aid	46	56	9	11
Public Health	42	43	14	10
Registration and Education	11	11	2	4
Revenue	11	16	4	4
Transportation	13	13	1	
Veterans' Affairs	1	2	1	
<u>Constitutional Offices</u>				
Attorney General	3	1	1	
Auditor General	7	5		
Comptroller	1	2		
Secretary of State	15	21	1	
Treasurer/Comptroller	1	1		
<u>Legislative Agencies</u>				
Joint Committee on				
Administrative Rules	3	5		
Legislative Information System	1	0		
Legislative Travel Control				
Board	1	1		
House of Representatives	1	0		
<u>Miscellaneous Agencies</u>				
Banks and Trust Companies,				
Commissioner of	0	2		
Building Authority	1	0		



	Proposed Rulemakings		Number of Statements of Objections	
	1978	1979	1978	1979
<u>Miscellaneous Agencies Con't.</u>				
Capital Development Board	2	1	1	
Commerce and Community Affairs	0	1		
Commerce Commission	17	11	4	4
Community College Board	0	1		1
Criminal Justice Information Council	1	2		1
Dangerous Drugs Commission	14	2	1	
Board of Elections	6	1	1	
Education, State Board of	3	4		2
Environmental Protection Agency	7	12	3	2
Board of Ethics	2	0	1	
Fair Employment Practices Commission	2	3		
State Fire Marshal	1	2		1
Governor's Office of Manpower and Human Development	2	2	2	
Governor's Purchased Care Review Board	1	6		
Health Facilities Authority	5	2		1
Health Facilities Planning Board	0	1		
Health Finance Authority	0	1		
Board of Higher Education	0	3		
Higher Education Travel Control Board	0	1		
Industrial Commission	4	1	1	
Investments, State Board of	0	3		1
Law Enforcement Commission	1	0	1	
Law Enforcement Merit Board	2	2	2	
Liquor Control Commission	2	0	1	
Local Records Commission	0	1		
Lottery Control Board	0	2		2
Medical Center Commission	0	1		
Institute of Natural Resources	0	1		
Pollution Control Board	18	11	1	1
Prisoner Review Board	2	0	1	
Racing Board	10	14	2	1
Savings and Loan Commissioner	3	4		
State Employees Retirement System	2	3		
State Fair Agency	0	4		
State's Attorneys Appellate Service Commission	1	0		
Statewide Health Coordinating Council	4	1		
Teachers Retirement System	2	0		
Vocational Rehabilitation	1	0	1	

	Proposed Rulemakings		Number of Statements of Objections	
	<u>1978</u>	<u>1979</u>	<u>1978</u>	<u>1979</u>
<u>Universities</u>				
State Scholarship Commission	1	3	1	1
Universities Civil Merit Board	2		1	
University Retirement System	<u>1</u>	<u>0</u>	—	—
Total:	507	475	72	65

TABLE SEVEN: STATISTICAL SUMMARY OF JOINT COMMITTEE REVIEW AND IMPACT ON RULEMAKING IN 1979

Total Number of Proposed, Emergency and Peremptory Rules Reviewed	Estimated Number of Rulemakings With Serious Problems Discovered By Joint Committee Staff Review	Number of Statements of Objection Issued by Joint Committee	Number and Nature of Agency Responses To Statements of Objection	
528	176	65	57	
(57.7% of Proposed Rulemakings Reviewed)*	(20.1% of Proposed Rulemakings Reviewed)*	(36.9% of Proposed Rulemakings With Serious Problems)	Rulemaking Withdrawn After Objection:	2 ( 3.5%)
			Rulemaking Modified to Meet Objection:	25 (43.8%)
			Refusal to Withdraw or Modify Rulemaking:	30 (52.6%)

\* Percentages are based on actual number of rules which have been considered at a Joint Committee meeting during 1979. Rulemakings by the same agency which raise the same problem at the same time are considered as a unit.

TABLE EIGHT: UPDATED STATISTICAL SUMMARY OF JOINT COMMITTEE REVIEW AND IMPACT ON RULEMAKING IN 1978

Total Number of Rulemakings Reviewed	Estimated Number of Rulemakings With Serious Problems Discovered By Joint Committee Staff Review	Number of Statements of Objection Issued by Joint Committee	Number and Nature of Agency Responses To Statements of Objection
507	185	72	Total: 72
(36.5% of Proposed Rulemakings Reviewed)	(14.2% of Proposed Rulemakings Reviewed)		Rulemaking Withdrawn After Objection: 14 (19.4%)
			Rulemaking Modified to Meet Objection: 34 (47.2%)
			Refusal to Withdraw of Modify Rulemaking: 24 (33.3%)

Updates Table Two which appeared on page 22 of the 1978 Annual Report issued by the Joint Committee in February 1979. At that time, 14 responses were pending.

TABLE NINE: COMPARISON BETWEEN STATISTICAL SUMMARY OF JOINT COMMITTEE REVIEW AND IMPACT ON RULEMAKING IN 1978 AND 1979

Total Number of Rulemakings Reviewed	Estimated Number or Rulemakings With Serious Problems Discovered By Joint Committee Staff Review	Number of Statements of Objection Issued by Joint Committee	Number and Nature of Agency Responses To Statements of Objection
1978: 507	1978: 185	1978: 72	1978: 72
1979: 528	1979: 176	1979: 65	1979: 57
*			
		Rulemaking Withdrawn After Objection:	1978: 14 (19.4%) 1979: 2 (3.5%)
		Rulemaking Modified to Meet Objection:	1978: 34 (47.2%) 1979: 25 (43.8%)
		Refusal to Withdraw or Modify Rulemaking:	1978: 24 (33.3%) 1979: 30 (52.6%)

\* Includes emergency and peremptory rulemaking reviewed during 1979.

TABLE TEN: STATISTICAL SUMMARY OF STATEMENTS OF OBJECTION  
ISSUED BY QUARTER DURING 1979

	Number of Statements of <u>Objections</u>	<u>Nature of Response</u>			Responses <u>Pending</u>
		<u>Withdraw</u>	<u>Modify</u>	<u>Refusal</u>	
January - March	18	2	10	6	0
April - June	23	0	12	11	0
July - September	12	0	2	10	0
October - December	<u>12</u>	<u>0</u>	<u>1</u>	<u>3</u>	<u>8</u>
Total:	65	2	25	30	8

TABLE ELEVEN: UPDATED STATISTICAL SUMMARY OF STATEMENTS OF OBJECTION  
ISSUED BY QUARTER DURING 1978

	<u>Number of Statements of Objection</u>	<u>Nature of Response</u>		
		<u>Withdraw</u>	<u>Modify</u>	<u>Refusal</u>
January - March	14	3	5	6
April - June	19	1	8	10
July - September	19	5	10	4
October - December	20	5	11	4
	—	—	—	—
Total:	72	14	34	24

Updates Table Four which appeared on page 24 of the 1978 Annual Report issued by the Joint Committee in February 1979. At that time, 14 responses were pending.

TABLE TWELVE: STATISTICAL SUMMARY OF JOINT COMMITTEE REVIEW OF EMERGENCY AND PEREMPTORY RULEMAKING BY AGENCY DURING 1979

Code Departments	Number of Emergency Rules Reviewed	Number of Peremptory Rules Reviewed	Number of Statements of Objection	Nature of Agency Response	
				Refusal	Response Pending
<u>Conservation</u>	10				
Corrections	7				
Financial Institutions	1				
Personnel	3				
Public Aid	3	2			
Public Health	6	1	1		1
Registration and Education	3		2		2
<u>Constitutional Offices</u>					
Secretary of State	2				
<u>Other Agencies</u>					
Banks and Trust Companies, Commissioner of	1				
Commerce and Community Affairs	1				
Commerce Commission	1				
Criminal Justice Information Council	1		1		1
Board of Elections	1				
Environmental Protection Agency	1		1		1
Governor's Office of Manpower and Human Development	1				
Governor's Purchased Care Review Board	2				
State Fire Marshal	1				
Medical Center Commission	1				
Pollution Control Board		1			
Racing Board	2		1		1
Savings and Loan, Commissioner	1				
<b>Total:</b>	<b>49</b>	<b>4</b>	<b>6</b>	<b>2</b>	<b>4</b>



## REVIEW OF RULEMAKING

### General Rulemaking

During 1979, the Joint Committee has reviewed each of the 475 rulemakings proposed by Illinois state agencies. These proposed rulemakings differed widely in complexity, from simple changes in a few sentences and repeals of outdated rules to hundreds of pages of new complex regulations. The basic policies enunciated in the 1978 Annual Report of the Joint Committee have continued to govern the review process utilized during review of proposed rulemakings. However, since October 1, 1979, when the amendments to the Illinois Administrative Procedure Act contained in P.A. 81-1044 became effective, a more in-depth analysis of proposed rules in their final form has been possible.

The Joint Committee continues to review rules primarily for their compliance with the statutory authority of the agency and the legislative intent of the authorizing statute. Other major issues of concern to members of the Joint Committee in the review of proposed rulemaking have been vague wording of rules, lack of adequate standards to govern agency discretion, elimination of unnecessary rules and streamlining the rules. By analyzing the rules in this manner, the Joint Committee attempts to insure that the rules fully and clearly state the agency's basic policies. In addition, an economic analysis stated in dollar figures may be requested. This enables the Joint Committee to review the economic impact of the proposed rule on the State budget and the persons affected by the rulemaking.

In order to systematize the review of proposed rulemaking, the Joint Committee had adopted a comprehensive set of operational rules in 1978. These rules were amended in 1979 in order to incorporate the amendments to the Illinois Administrative Procedure Act. These amended rules are included in this annual report as Appendix C (pages 337-378). Most important in these rules is Section 1.2.09, 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 state 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.

These criteria represent the Joint Committee's interpretation of their review responsibilities under the Illinois Administrative Procedure Act and serve as the basis on which the Joint Committee reviews each proposed rulemaking and may object to the rulemaking. 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.

In examining the statutory authority of an agency to promulgate a rule a recurring issue has been the question of whether an agency has an implicit power to make rules when express authority is not granted in the statute. A position paper, adopted by the Joint Committee, which appears as Appendix D (pages 379-387) in this report, states the position the Joint Committee will take toward evaluating the nature of the rulemaking authority delegated to agencies by statute. This paper states:

Each agency has the authority, and in fact, the responsibility, to state as completely as possible its policy whenever the agency is delegated a task requiring some exercise of discretion by the agency. Such rulemaking is interpretive, meaning that the rules

present the agency's interpretation of the statutory enactment which it is administering. The Joint Committee believes, however, that such an implicit authority to prescribe interpretive rules should not include adding any requirements or imposing any additional duties on the public. Rules which do add requirements beyond the statute which affect the rights or privileges of the public will be termed legislative rules.

This position paper should enable agencies to anticipate what types of rules the Joint Committee will find to exceed the rulemaking authority of the agencies.

The review of proposed rulemaking has resulted in numerous changes in agency rules. Numerous necessary changes were based on suggestions of the staff. Further important changes in rules were made as the 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.

#### Emergency and Peremptory Rulemaking

Since July, 1979, the Joint Committee has been reviewing emergency and peremptory rules as they are adopted by state agencies. By the end of 1979, the Joint Committee had reviewed 49 emergency rules and 4 peremptory rules. With the start of this review process, the Joint Committee now reviews all agency rulemaking.

Through use of the emergency and peremptory rulemaking provisions of the Illinois Administrative Procedure Act, an agency can adopt rules without public review or comment. Because of this, review of these types of rules by the Joint Committee to insure that these provisions are utilized only when appropriate is an important ingredient in legislative oversight of agency rulemaking.

The Joint Committee has reviewed emergency and peremptory rulemakings primarily for their compliance with Sections 5.02 and 5.03 of the Illinois Administrative Procedure Act. Other considerations, such as the statutory authority of the agency, the

legislative intent of the authorizing statutes, vague wording of rules and lack of adequate standards, are also major issues of concern.

In order to systematize the review of these rulemakings, the Joint Committee has adopted operational rules for the review of emergency and preemptory rules. These rules are included in this annual report on pages 347-355 of Appendix C. The basic criteria for review of emergency rules is stated in Operational Rules 1.3.04 and 1.3.05. Section 1.3.04 states:

The Joint Committee will consider the following criterion in reviewing emergency rulemaking:

The extent to which the agency's explanation of the need for emergency rulemaking demonstrates that the emergency rulemaking is in compliance with Section 5.02 of the Act in that it describes a situation reasonably constituting a threat to the public interest, safety or welfare which requires adoption of a rule upon fewer days' notice than is required by Section 5.01 of the Act.

Section 1.3.05 states:

If the emergency rulemaking is determined to be in compliance with Section 5.02 of the Act, the Joint Committee will consider the following criteria in reviewing emergency rulemaking:

1. Legal authority for the action taken in the emergency rulemaking.
2. Compliance with state and federal constitutional requirements and other law.
3. The extent to which the agency has explained its justification and rationale for not complying with the notice and hearing requirements of the Act.
4. The extent to which the emergency rulemaking is limited to rectifying the emergency and contains no provisions not required to meet the emergency.
5. The extent to which the agency has taken reasonable and appropriate measures to make the emergency rulemaking known to the persons who may be affected by it.
6. Whether an identical emergency rulemaking, or an emergency rulemaking having substantially the same purpose and effect, has been adopted by the agency within the preceding 24 months.

These criteria provide the basis on which the Joint Committee reviews each emergency

rule and may object to the rulemaking.

The key sections in the operational rules which provide the basis for review of preemptory rules are Sections 1.4.06 and 1.4.07. Section 1.4.06 states:

The Joint Committee will consider the following criteria in reviewing preemptory rulemaking.

1. The extent to which an agency is precluded from complying with the general rulemaking requirements imposed by Section 5.01 of the Act, as that phrase is defined in Section 1.4.03(3) of this rule.
2. The extent to which an agency is actually required to adopt rules as a direct result of federal law, federal rules and regulations, or court order.
3. The extent to which the rulemaking is limited to meet only the requirements of the federal law, federal rules and regulations, or court order and contains no other rulemaking not required by the federal law, federal rules and regulations, or court order.
4. The extent to which the agency has explained its justification and rationale for not complying with the general rulemaking requirements of the Act.

Section 1.4.07 states:

If the preemptory rulemaking is determined to be in compliance with Section 5.03 of the Act, the Joint Committee will consider the following criteria in reviewing the preemptory rulemaking:

1. Compliance with the requirements of the act or acts upon which the rulemaking is based and is authorized.
2. Anticipated economic effect of the rulemaking on the public and the state budget.
3. Clarity of language of the rulemaking for understanding by the affected public.
4. Sufficient completeness and clarity to ensure meaningful guidelines and standards in the exercise of agency discretion.
5. Redundancies, grammatical deficiencies and technical errors in the rulemaking.
6. Conflicts between the rulemaking and state law.

7. Compliance with the requirements of the relevant federal law, federal rules and regulations, or court order.

The Joint Committee believes that review of these types of rulemaking will result in some necessary changes in agency rules. Review of emergency and peremptory rules may prevent the agencies from creating problems by adopting rules which are unconstitutional or without statutory authority.

Review of emergency rulemaking should encourage agencies to plan to present proposed rulemaking to the public for comment and limit the use of emergency rulemaking to those situations which are emergencies as defined by the Act. The scrutiny of peremptory rulemaking should prevent an agency from claiming a rule is mandated by federal law or a court order which is only suggested as one possible solution to a problem. The Joint Committee hopes that by exposing possible abuses of these rulemaking procedures, agencies will adopt fewer rules by the use of these procedures and present their rules to the public for comment prior to adoption by use of the proposed rulemaking procedures.

#### Specific Statements of Objection Issued

During 1979, the Joint Committee issued 65 formal statements of objection to 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. This list includes objections to emergency and peremptory rulemakings as well as general rulemaking. The statements of objection are presented by agency in the same order as Table Two (pages 20-21).

### **CODE DEPARTMENTS**

#### **Department of Agriculture**

##### Rules for the "Grain Dealers Act"

Initial Publication in Illinois Register: January 5, 1979

Joint Committee Objection: March 20, 1979

Specific Objection:

Proposed Rule 7.02 which states:

All grain dealers shall be open for business for not less than 1/2 hour before the opening of the Chicago Board of Trade until 1/2 hour after the closing of the Chicago

Board of Trade, unless other business hours have been approved by the Department. Application for other business hours must be made on forms provided by the Department, and if approved, must be posted in each business office used by the dealer.

The Joint Committee objects to this proposed Rule because it lacks adequate standards to govern the Department's exercise of discretion with regard to the Department's policy for granting variances in business hours. The policy of the Department 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: April 17, 1979

Nature of Agency Response: Modified

Regulation V - Indemnity - Pursuant to the  
Illinois Bovine Brucellosis Eradication Act

Initial Publication in Illinois Register: June 8, 1979

Joint Committee Objection: July 17, 1979

Specific Objections:

1. Proposed Regulation V(B), which provides that when State funds are available for paying indemnity, the Department shall pay a \$25 indemnity for each female calf destroyed which was nursing a cow classified as a brucellosis reactor.

The Joint Committee objects to this proposed amendment because the Department lacks statutory authority, under the Illinois Bovine Brucellosis Eradication Act (Ill. Rev. Stat. 1977, ch. 8, par. 134 et seq.) to make indemnity payments for non-infected animals.

2. Proposed Regulation V(C), which provides that, in certain instances, an entire herd may be depopulated, if the owner agrees, and that an indemnity be paid.

The Joint Committee objects to this proposed rule because the Department lacks statutory authority, under the Illinois Bovine Brucellosis Eradication Act (Ill. Rev. Stat. 1977, ch. 8, par. 134 et seq.) to make indemnity payments for non-infected animals.

Date Agency Response Received: August 14, 1979

Nature of Agency Response: Refusal To Modify or Withdraw

The Joint Committee is recommending specific legislation in response to this rulemaking (see Recommended Bill Four, pages 171-173).

## Department of Conservation

### Article 2 - Taking of White-tailed Deer by Use of Bow and Arrow and Article 3 - Taking of White-tailed Deer by Use of Firearms

Initial Publication in Illinois Register: March 23, 1979

Joint Committee Objection: April 24, 1979

#### Specific Objection:

Proposed Section B.1 of Article 2 and Proposed Section B.1 of Article 3, which state, in part:

Hunters must be an Illinois resident or out-of-state landowner of at least 40 acres of Illinois farm or forest land....

The Joint Committee objects to this proposed section because the Department does not have the statutory authority to establish either residency or the ownership of 40 acres of land as a condition of eligibility for deer permits.

Date Agency Response Received: June 28, 1979

Nature of Agency Response: Refusal To Modify or Withdraw

The question on non-resident hunting permits involved in this rulemaking was addressed by Recommended Bill Four included in the Joint Committee's 1978 Annual Report. The bill was enacted as Public Act 81-387.

### Article 39, "Camping Including Fees Pertaining to Public Use of Department of Conservation Properties

Initial Publication in Illinois Register: April 6, 1979

Joint Committee Objection: April 24, 1979

#### Specific Objection:

Proposed Section G2c(3) which states,

Illinois residents who are blind or disabled may camp without a fee.

The Joint Committee objects to this proposed Section because the Department does not have the authority to limit non-fee camping only to blind or disabled persons who are residents of Illinois. Section 63a23, states that "no fee authorized by this section shall be charged...any person who is blind or disabled." (Emphasis



added.)

Date Agency Response Received: July 24, 1979

Nature of Agency Response: Refusal To Modify or Withdraw

Article 143, Hunting, Fishing, Trapping and Boating at the Clinton Lake Recreation Area

Initial Publication in Illinois Register: May 4, 1979

Joint Committee Objection: May 29, 1979

Specific Objection:

Proposed Section C.2.d which states, in part:

To be eligible for the daily draw [for a blind site] an individual must be 16 years of age or older.

The Joint Committee objects to this proposed section because the Department lacks the statutory authority to impose the restriction that an individual must be 16 years of age or older to be eligible for the drawing for blind sites.

Date Agency Response Received: July 6, 1979

Nature of Agency Response: Refusal To Modify or Withdraw

The Joint Committee is recommending specific legislation in response to this rulemaking (see Recommended Bill Five, pages 175-176).

Article 148 - Waterfowl Hunting at Collins Lake

Initial Publication in Illinois Register: May 25, 1979

Joint Committee Objection: June 18, 1979

Specific Objection:

Proposed Section B.2.d.1 which states, in part:

To be eligible for the daily drawing [for a blind site] an individual must be 16 years of age or older.

The Joint Committee objects to this proposed section because the Department lacks the statutory authority to impose the restriction that an individual must be 16 years of age or older to be eligible for the drawing for blind sites.

Date Agency Response Received: July 6, 1979

Nature of Agency Response: Refusal To Modify or Withdraw

The Joint Committee is recommending specific legislation in response to this rulemaking (see Recommended Bill Five, pages 175-176).

Article 44, Hunting at Kankakee River State Park;  
Article 55, Hunting at the Des Plaines Conservation Area;  
Articles 65-A, 65-B, 65-C, and 65-D, Hunting at Mississippi River Pools;  
Article 75, Hunting at Sangchris Lake State Park;  
Article 81, Hunting at Lake De Pue Conservation Area;  
Article 84, Hunting at Horseshoe Lake State Park;  
Article 93, Hunting at Anderson Lake Conservation Area;  
Article 111, Hunting at Chain O'Lakes State Park;  
Article 119, Hunting at Marshall County Conservation Area,  
Article 124, Hunting at Rice Lake Conservation Area;  
Article 129, Hunting at Stephen A. Forbes State Park;  
Article 130, Hunting at Woodford County Conservation Area; and  
Article 141, Hunting at Lake Sinnissippi

Initial Publication in Illinois Register: June 15, 22 or 29, 1979

Joint Committee Objection: July 17, 1979

Specific Objections:

1. Proposed Article 44, Section C.3; Proposed Article 55, Section B.2.c; Proposed Article 65-A, Section H.2.b; Proposed Article 65-B, Section D.1.c; Proposed Article 65-C, Sections D.1.b, D.2.b, and D.2.d; Proposed Article 65-D, Sections D.4 and D.8; Proposed Article 75, Section C.3.a; Proposed Article 81, Section B.2.c; Proposed Article 111, Section B.2.c; Proposed Article 119, Section B.3.c; Proposed Article 124, Section B.4; Proposed Article 129, Section B.5.f; Proposed Article 130, Section B.3.c; and Proposed Article 141, Section E.2.b which require that an individual be at least 16 years of age to enter the drawing for a blind site.

The Joint Committee objects to these proposed sections because the Department lacks the statutory authority to prohibit individuals under 16 years of age from entering the drawing for blind sites.

2. Proposed Article 44, Section D.12; Proposed Article 55, Section B.3.f; Proposed Article 65-A, Section D.3; Proposed Article 65-B, Section G.3; Proposed Article 65-C, Section G.3; Proposed Article 65-D, Sections H.3 and I.4; Proposed Article 81; Proposed Article 84, Section E.7; Proposed Article 93, Section B.4.c; Proposed Article 111, Section B.3.f; Proposed Article 119, Section B.6.b; Proposed Article 130, Section B.5.f; and Proposed Article 141, Section D.3 which prohibit individuals under 16 years of age from hunting unless accompanied by an adult.

The Joint Committee objects to these proposed sections because the Department lacks the statutory authority to prohibit individuals under 16 years of age from hunting unless accompanied by an adult.

Date Agency Response Received: July 31, 1979

Nature of Agency Response: Refusal To Modify or Withdraw

The Joint Committee is recommending specific legislation in response to this rulemaking (see Recommended Bill Five, pages 175-176).

Article 12, The Operation of Public Hunting Areas Either Owned or Leased by the Department of Conservation and Operated Under a Daily Permit System;  
Article 50, Hunting, Trapping, Fishing and Boating at Baldwin Lake Fish and Wildlife Area;  
Article 52, Hunting, Fishing and Other Management Procedure at Rend Lake;  
Article 54, Hunting at Lee County (Green River) Conservation Area;  
Article 58, Hunting at Oakwood Bottoms Green Tree Reservoir;  
Article 59, Hunting at Larue Scatters;  
Article 60, Hunting, Trapping and Boating and Lake Shelbyville;  
Article 98, Hunting and Other Management Procedures on the Horseshoe Lake Conservation Area (Alexander County);  
Article 104, Hunting, Trapping and Fishing at the Sangano's Conservation Area;  
Article 128, Hunting, Fishing and Trapping at Spring Lake Conservation Area

Initial Publication in Illinois Register: July 6 or 27, 1979

Joint Committee Objection: August 14, 1979

Specific Objections:

1. Proposed Article 12, Section C(9); proposed Article 50; proposed Article 2, Section B(1)(k); proposed Article 54; proposed Article 58; proposed Article 59; proposed Article 60; and proposed Article 98 which prohibit individuals under 16 years of age from hunting unless accompanied by an adult.

The Joint Committee objects to these proposed rules because the Department lacks the statutory authority to prohibit individuals under 16 years of age from hunting unless accompanied by an adult.

2. Proposed Article 104, Section C(3) and proposed Article 128, Section B(3)(c) which require that an individual be at least 16 years of age to enter the drawing for a blind site.

The Joint Committee objects to these proposed sections because the Department lacks the statutory authority to prohibit individuals under 16 years of age from entering the drawing for blind sites.

Date Agency Response Received: August 22, 1979

Nature of Agency Response: Refusal To Modify or Withdraw

The Joint Committee is recommending specific legislation in response to this rulemaking (see Recommended Bill Five, pages 175-176).

Article 33 - William W. Powers Conservation Area;  
Article 153 - Waterfowl Hunting at Pekin Lake Conservation Area

Initial Publication in Illinois Register: August 24, 1979

Joint Committee Objection: September 18, 1979

Specific Objections:

1. Proposed Article 33, Section D5 and Proposed Article 153, Section E6, which prohibit individuals under 16 years of age from hunting unless accompanied by an adult.

The Joint Committee objects to these proposed sections because the Department lacks the statutory authority to prohibit individuals under 16 years of age from hunting unless accompanied by an adult.

2. Proposed Article 33, Section C3 and proposed Article 153, Section C3, which require that an individual must be at least 16 years of age to be eligible to enter the drawing for blind sites.

The Joint Committee objects to these proposed sections because the Department lacks the statutory authority to prohibit individuals under 16 years of age from entering the drawing for blind sites.

Date Agency Response Received: October 3, 1979

Nature of Agency Response: Refusal To Modify or Withdraw

The Joint Committee is recommending specific legislation in response to this rulemaking (see Recommended Bill Five, pages 175-176).

## Department of Financial Institutions

### Section 20 of the Rules Governing the Execution and Enforcement of the Illinois Consumer Finance Act

Initial Publication in Illinois Register: March 16, 1979

Joint Committee Objection: April 24, 1979

Specific Objections:

1. Section 20, first full paragraph of the proposed rule, which provides that "[n]o other business may be conducted in the licensed Consumer Finance Office not authorized in writing by the Director pursuant to Section 12 of the Consumer Finance Act."

The Joint Committee objects to this proposed rule because it lacks adequate standards to govern the Director's exercise of discretion with regard to authorization of other business. The policy of the Director 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."

2. Proposed Section 20(i)(4) which provides that present borrowers or obligors of a parent, subsidiary or affiliate of a licensee may be solicited for "loans-by-mail" only with specific authorization from the Director.

The Joint Committee objects to this proposed rule because it lacks adequate standards to govern the Director's exercise of discretion with regard to authorization to solicit present borrowers or obligors of a parent, subsidiary or affiliate of a licensee. The policy of the Director 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: July 12, 1979

Nature of Agency Response: Modified

Section 20 of the Rules Governing the Execution  
and Enforcement of the Illinois Consumer Installment  
Loan Act

Initial Publication in Illinois Register: March 16, 1979

Joint Committee Objection: April 24, 1979

Specific Objections:

1. Section 20, first full paragraph of the proposed rule, which provides that "[n]o other business may be conducted in the licensed Consumer Finance Office not authorized in writing by the Director pursuant to Section 12 of the Consumer Finance Act."

The Joint Committee objects to this proposed rule because it lacks adequate standards to govern the Director's exercise of discretion with regard to authorization of other business. The policy of the Director 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(e), "[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."

2. Proposed Section 20(i)(4) which provides that present borrowers or obligors of a parent, subsidiary or affiliate of a licensee may be solicited for "loans-by-mail" only with specific authorization from the Director.

The Joint Committee objects to this proposed rule because it lacks adequate standards to govern the Director's exercise of discretion with regard to authorization to solicit present borrowers or obligors of a parent, subsidiary or affiliate of a licensee. The policy of the Director 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: July 12, 1979

Nature of Agency Response: Modified

#### Currency Exchange Division Rules

Initial Publication in Illinois Register: March 16, 1979

Joint Committee Objection: April 24, 1979

Specific Objection:

Proposed Rule 6(d)(1), which provides that no licensee may issue or sell any money order in an amount in excess of \$750, with certain exceptions.

The Joint Committee objects to this proposed rule because under the Illinois Currency Exchange Act, Ill. Rev. Stat. 1977, ch. 16 1/2, par. 30 et seq., the Department has no authority to prohibit the issuance of money orders in excess of \$750.

Date Agency Response Received: June 18, 1979

Nature of Agency Response: Refusal To Modify or Withdraw

The Joint Committee is recommending specific legislation in response to this rulemaking (see Recommended Bill Six, pages 177-181).

#### Division of Financial Planning and Management Service Rules

Initial Publication in Illinois Register: March 23, 1979

Joint Committee Objection: April 24, 1979

Specific Objections:

1. Section IB5(A)(4) of the proposed rules, which provide that, where legal action is taken to collect an unpaid fee, the fees of a salaried attorney shall not be included.

The Joint Committee objects to this proposed rule because, under the Financial Planning and Management Service Act, Ill. Rev. Stat. 1977, ch. 16 1/2, par. 251 et seq., the Department has no statutory authority to limit or restrict attorney's fees.

2. Section 7G of the proposed rules, which provide that, when it is necessary to advance funds for a debtor, the licensee shall in no case advance funds beyond the amount of one periodic payment required of the debtor without the express consent of the Department.

The Joint Committee objects to this proposed rule because it lacks adequate standards to govern the Department's exercise of discretion with regard to the granting of consent to advance funds. The policy of the Department in this area constitutes a "rule" as that term is defined in the Illinois Administrative Procedure 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."

3. Section 12 of the proposed rules, which authorizes the Director to suspend violators.

The Joint Committee objects to this proposed rule because, under the Financial Planning and Management Service Act, the Director lacks statutory authority to suspend the license of a licensee.

4. Sections 10 and 11 of the proposed rules, which provide for a charge of fees by the Department for conducting examinations and investigations and for registering a change of business address of a licensee.

The Joint Committee objects to this proposed rule because, under the Financial Planning and Management Service Act, the Department has no statutory authority to impose the fees required by those sections of the proposed rule.

Date Agency Response Received: June 25, 1979

Nature of Agency Response: Refusal To Modify or Withdraw

The Joint Committee is recommending specific legislation in response to this rulemaking (see Recommended Bill Seven, pages 183-185).

Department of Labor

Rules Relating to the Administration and  
Enforcement of the Illinois Child Labor Law

Initial Publication in Illinois Register: March 9, 1979

Joint Committee Objection: April 26, 1979

Specific Objections:

1. Proposed Section 29, which states, in part, "[s]ince time in attendance at school is included in hours of work, no minor may work both Sunday and Saturday of a week in which school is in session for five days."

The Joint Committee objects to the Department's prohibition of work on Sunday and Saturday of a week in which school is in session for five days because it exceeds the Department's statutory authority and is in violation of Section 3 of the Child Labor Law (Ill. Rev. Stat. 1977, ch. 48, par. 31.1 et seq.).

2. Proposed Section 31, which provides that a physical examination procured either for entrance into ninth grade, participation in athletics, or admission into summer camp may be substituted for the public health or public school physician statement of physical fitness required by Section 12(4) of the Child Labor Law.

The Joint Committee objects to this proposed section because it is in violation of Section 12(4) of the Child Labor Law which requires a statement of physical fitness certifying that the minor is physically fit to be employed in all legal occupations.

3. Proposed Section 14, which states, in part: "Notwithstanding the omission of construction work from Section 7 of the Act, the inclusion of said gainful occupation in Section 1 of the Act shall be construed as being a hazardous occupation prohibited to minors."

The Joint Committee objects to proposed Section 14 because the Department has no statutory authority to prohibit the employment of minors in construction work unless the work involved is prohibited under the provisions of Section 7 of the Act, "Hazardous occupations."

Date Agency Response Received: May 23, 1979

Nature of Agency Response: Modified

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

Repeal of Rule 2 and Amendment to Rule 8  
of the Rules and Regulations Relating to



## the Operation of Private Employment Agencies

Initial Publication in Illinois Register: March 23, 1979

Joint Committee Objection: April 26, 1979

Specific Objection:

1. Proposed Amendment (J) to Rule 8, which states that documentation of an annual physical examination shall include "[t]he statement that the domestic referral named therein was 'found free of communicable disease and otherwise physically and emotionally fit to serve as a domestic employee'."

The Joint Committee objects to this proposed rule because the Department has no statutory authority to require such a finding. Section 9.1 of an Act to revise the law in relation to private employment agencies and to repeal an Act therein named (Ill. Rev. Stat. 1977, ch. Ill, par. 901 et seq.) provides for physical examinations only to safeguard the health of employers and their families from communicable diseases.

Date Agency Response Received: May 22, 1979

Nature of Agency Response: Modified

## **Department of Mental Health and Developmental Disabilities**

### Rule 100.20-1 - Service Recipients Activity Fund in Department Facilities

Initial Publication in Illinois Register: March 3, 1979

Joint Committee Objection: March 20, 1979

Specific Objection:

Section C(1) of the proposed Rule which states:

In order that expenditures from the Service Recipients Activity Fund equitably benefit recipients of services of the facility, the Facility Director may establish a Service Recipients Activity Committee to be responsible for planning and advising the Facility Director on expenditures from this fund.

The Joint Committee objects to this proposed Section because it lacks adequate standards to govern a facility's determination of whether or not such a Service Recipients Activity Fund should be established. The policy of the Department 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), "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."

Date Agency Response Received: April 17, 1979

Nature of Agency Response: Modified

Rule 132.51, "State Purchasing Rules and Regulations"  
and 132.52, "Service Contracts"

Initial Publication in Illinois Register: June 22, 1979

Joint Committee Objection: July 17, 1979

Specific Objections:

1. Section 2(a) of proposed Rule 132.51 and Section 5 of Rule 132.52, which provide that the Department reserves the right to reject any and all bids, offers or proposals received by it with respect to any invitation to bid or request for proposal.

The Joint Committee objects to this proposed rule because it lacks adequate standards to govern the Department's exercise of discretion with regard to acceptance or rejection of bids. The policy of the Department 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."

2. Section 5 of the Illinois Purchasing Act requires that the proposed rule be approved by the Department of Administrative Services. None of the proposed amendments have been approved by that Department.

The Joint Committee objects to these proposed amendments because their promulgation without having been approved by the Department of Administrative Services is in violation of Section 5 of the Illinois Purchasing Act (Ill. Rev. Stat. 1977, ch. 127, par. 132.5).

3. The proposed rulemaking is incomplete, in that it does not contain provisions required by statute.

The Joint Committee objects to these proposed rules because they do not contain all of the provisions required by Section 6 of the Illinois Purchasing Act. (Ill. Rev. Stat. 1977, ch. 127, par. 132.6 et seq.)

Date Agency Response Received: October 22, 1979

Nature of Agency Response: Modified

## Department of Public Aid

### Rule 5.03, Requirements for Service Providers Desiring to Participate in FY 80 Title XX Donated Funds Initiative

Initial Publication in Illinois Register: December 1, 1978

Joint Committee Objection: January 31, 1979

Specific Objections:

1. Section 5.03.1 which states, in part: "On January 15, 1979, the Department of Public Aid will distribute a standardized Request for Proposals (RFP) to interested social service agencies in the State."
2. Section 5.03.5 which states, in part: "On or before May 1, 1979, the Department will inform the Allied Agency in writing of those proposals that have been approved for funding by the Department."

The Joint Committee objects to these proposed sections because they refer to policies which are not included in the Department's rules. The RFP referred to in Section 5.03.1 contains statements which constitute "rules" as that term is defined in Section 3.09 of the Illinois Administrative Procedure Act, e.g. Sections I.D.2., Review Criteria, and I.F.2., Purchase of Service Agreements, and Section I.F.3., which requires Department approval of the POSA format. Under Section 4(c) of the IAPA, "[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: March 15, 1979

Nature of Agency Response: Refusal To Modify or Withdraw

### Rule 4.22 - Definitions

Initial Publication in Illinois Register: December 29, 1978

Joint Committee Objection: January 31, 1979

Specific Objections:

Section 4.22.3 which states, in part:

The Department may deny payment for goods or services rendered or ordered by a person who is barred as described in subparagraphs (a), (c) or (d). The Department may also deny payment for goods or services rendered by vendors who are employees of a person or entity described in subparagraph (b).

The Joint Committee objects to this proposed section because it does not contain the Department's entire policy on the denial of payment to medical vendors.

Section 12-4.25(A) of the Public Aid Code, Ill. Rev. Stat. 1977, ch. 23, par. 4-25(A), states the Department may deny, suspend or terminate eligibility for the Medical Vendor Program only after giving "reasonable notice and opportunity for a hearing." Though the Department's actual policy is to notify any vendor before action is taken to deny payment, this is not included in the proposed rule. This policy falls within the definition of "rule" as defined in Section 3.09 of the Illinois Administrative Procedure Act, Ill. Rev. Stat. 1977, ch. 127, par. 1003.09. Under Section 4(c) of the Act "[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: March 14, 1979

Nature of Agency Response: Modified

Rule 4.144.D, Group Care Services

Initial Publication in Illinois Register: January 12, 1979

Joint Committee Objection: February 21, 1979

Specific Objection:

1. Proposed Rule 4.144.D which states, in part:

"The Department shall reimburse for support costs at actual costs up to the 50th percentile of all SNF and ICF facilities in the health service area (HSA)..."

The Joint Committee objects to this proposed rule because the Department's policy constitutes a "rule" as that term is defined in the Illinois Administrative Procedure Act, and the Department's failure to include its policy in the proposed rule violates Section 4(c) of the Illinois Administrative Procedure Act, Ill. Rev. Stat. 1977, ch. 127, par. 1004(c).

Date Agency Response Received: April 16, 1979

Nature of Agency Response: Modified

Rule 4.141 Determination of Need for  
Group Care: Amendment

Initial Publication in Illinois Register: February 16, 1979

Joint Committee Objection: March 20, 1979

Specific Objection:

Proposed Rule 4.141 which reads, in part: "The prior approval of the Department or its designee is required before payments will be authorized for a recipient admitted to a group care facility."

The Joint Committee objects to this proposed rule because it lacks adequate standards to govern the Department's exercise of discretion with regard to the granting of prior approval. The policy of the Department in this area constitutes a "rule" as that term is defined in the Illinois Administrative Procedure 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: April 16, 1979

Nature of Agency Response: Modified

Rule 4.04 - Optical Services and Supplies:  
Amendments

Initial Publication in Illinois Register: February 23, 1979

Joint Committee Objection: March 20, 1979

Specific Objections:

1. Part (a) of proposed Section on Services Not Covered which states, in part:

Eye care services and supplies for which payment shall not be made include:

- a) screening services.

The Joint Committee objects to this proposed section because it does not reflect the Department's actual policy which is to pay for a screening which determines that an individual requires eye care. This policy 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 by the agency for public inspection and filed with the Secretary of State as required by this Act."

2. Proposed Section on Limitations which states, in part: "One refraction per year is allowed, except in unusual circumstances.

The Joint Committee objects to this proposed section because it lacks adequate standards to govern the Department's exercise of discretion with regard to when an individual would be allowed more than one refraction per year. The policy of the Department 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."

3. Proposed Section on Payment which states: "Payment for services and supplies shall be at the provider's usual and customary charge not to exceed the maximum established by the Department."

The Joint Committee objects to this proposed section because it lacks adequate standards to govern the Department's exercise of discretion with regard to the maximum rates the Department will pay for eye care services and supplies. The policy of the Department 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: June 11, 1979

Nature of Agency Response: Modified

Rule 4.11, Home Health Services,  
Amendment

Initial Publication in Illinois Register: February 23, 1979

Joint Committee Objection: March 20, 1979

Specific Objections:

1. Proposed Section on Covered Services which states, in part: "When home health care is required on an extended basis, payment shall not be made if the total cost [of home health care] exceeds the cost of alternate care in a group care facility."

The Joint Committee objects to this proposed section because it directly conflicts with Department Rule 3.09 which states that when the cost of in-home care exceeds the cost of institutionalization, the client must pay the difference. Therefore, this Proposed Section does not necessarily indicate what the Department policy will be when an individual requires home health care on an extended basis.

2. Proposed Section on Covered Services which states, in part: "Home health services may be provided to recipients in their places of residence when required because of illness, disability or infirmity and when provided in accordance with a plan established by a physician and reviewed by the physician at least every 60 days.

The Joint Committee objects to this proposed section because it lacks adequate standards to govern the Department's exercise of discretion with regard to the provision of home health care. The policy of the Department 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."

3. Proposed Section on Limitations which requires the prior approval of the Department before payment will be authorized for the provision of home health care by home health agencies, self-employed nurses, or therapists.

The Joint Committee objects to this proposed section because it lacks adequate standards to govern the Department's exercise of discretion with regard to the granting or prior approval of home health care. The policy of the Department 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."

4. Proposed Section on Payment which states, in part: "Payment to independent therapists and community health agencies is made at the rate approved by the Department at the time prior approval is given."

The Joint Committee objects to this proposed section because it lacks adequate standards to govern the

Department's exercise of discretion with regard to the rate at which therapists and community health agencies will be paid. The policy of the Department 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: June 15, 1979

Nature of Agency Response: Refusal to Modify or Withdraw

#### Rules 4.01 - 4.018

Initial Publication in Illinois Register: March 30, 1979

Joint Committee Objection: April 24, 1979

Specific Objection:

Proposed rules 4.01 - 4.018, which set forth the Department's general policies with regard to vendor participation in the Medical Assistance program.

The Joint Committee objects to these proposed rules because Section 12-4.25 of the Public Aid Code, Ill. Rev. Stat. 1977, ch. 23, par. 12-4.25, mandates the Department to develop provider agreements with each vendor category, and the Department has not as yet developed such an agreement with one category of vendor, physicians. By attempting to regulate the participation of physicians in the Medical Assistance program without a provider agreement, the Department is in violation of the express legislative intent of Section 12-4.25.

Date Agency Response Received: May 24, 1979

Nature of Agency Response: Refusal To Modify or Withdraw

The Joint Committee is suggesting two alternative bills for General Assembly consideration in response to this rulemaking (see Alternative Bills One and Two, pages 207-226).

#### Rule 3.28 - Lack of Parental Support or Care

Initial Publication in Illinois Register: April 13, 1979

Joint Committee Objection: May 29, 1979

Specific Objection:



Proposed Section 3.28.4 which states, in part:

Unemployment of the father is the basis of a child's eligibility for AFDC-U.

The Joint Committee objects to this proposed section because it violates Section 4-1.3 of the Public Aid Code, Ill. Rev. Stat. 1977, ch. 23, par. 4-1.3, which states that a child is eligible for AFDC because of the "unemployment, total or partial, of the parent or parents."

Date Agency Response Received: July 11, 1979

Nature of Agency Response: Refusal To Modify or Withdraw

The federal rules on which the Department's rule was based have been found unconstitutional after the Department refused to modify this rulemaking. The Department will now initiate rulemaking to remedy this objection.

Rule 3.09, In-Home-Care Supportive Services Program

Initial Publication in Illinois Register: May 25, 1979

Joint Committee Objection: June 18, 1979

Specific Objection:

Proposed Section 3.09.11 which states, in part:

The rate for reimbursement for homemaker services shall be individually negotiated with each Homemaker agency with whom the Department contracts. If Chore and Housekeeping services are provided by an agency with whom the Department contracts, the rate of reimbursement shall be individually negotiated.

The Joint Committee objects to proposed Section 3.09.11 because it does not reflect the Department's actual policy.

The Department's policy is to request proposals from agencies which desire to provide services to the Department's clients. These requests (RFP's) inform agencies of the requirements and conditions of participation in the program. This Department policy 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: July 11, 1979

Nature of Agency Response: Modified

Rule 3.51, Assistance Standards:  
Income Maintenance

Initial Publication in Illinois Register: June 1, 1979

Joint Committee Objection: June 18, 1979

Specific Objections:

1. Proposed Rule 3.51, AABD and GA Adult Cases 1, which allows for a one cent difference between household allowances for active recipients and bedfast recipients when either "3 through 7" or "8 or more" persons eat together in the assistance unit.

The Joint Committee objects to this proposed section because it is arbitrary and unreasonable.

2. Proposed Rule 3.51 AABD and GA Adult Cases 1.A., which states, in part:

Approval of an allowance in a different amount or when only a partial food allowance is authorized, or for a non-standard diet requires approval of the Department.

The Joint Committee objects to this proposed rule because it lacks adequate standards to govern the Department's exercise of discretion with regard to its policy for the approval of a different or partial food allowance, or for a non-standard diet. The policy of the Department 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: July 23, 1979

Nature of Agency Response: Modified

Rules 3.51, Assistance Standards: Income Maintenance;  
3.711 MANG (AABDD): Income Standard;  
3.712, MANG(C): Income Standard;  
3.713, Exceptions to the Use of the MANG Income Standard;  
3.715, AMI Income Standard

Initial Publication in Illinois Register: September 21, 1979

Joint Committee Objection: October 23, 1979

Specific Objection:

Proposed Rules 3.51, 3.711, 3.712, 3.713 and 3.715, which implement the 5% increase in the Financial Assistance Standard for AFDC, AABD and GA and the Medical Assistance Standards.

The Joint Committee objects to these proposed rules because the Department failed to notify or consult with the Legislative Advisory Committee regarding the proposed deviations in the amount of grants to recipients of public aid as required by Ill. Rev. Stat. 1977, ch. 23, par. 12-14.

Date Agency Response Received: November 2, 1979

Nature of Agency Response: Refusal to Modify or Withdraw

The Joint Committee has urged action by the Legislative Advisory Committee, the Committee to Rewrite the Public Aid Code and the General Assembly in response to this rulemaking.

#### Department of Public Health

Chapter No. 4 - Third Edition, Rules for  
Processing an Application for Permit and  
Validity of Permits

Initial Publication in Illinois Register: December 29, 1978

Joint Committee Objection: January 31, 1979

Specific Objection:

Section 4.03.B.01 of the proposed rule, which states, in part:

When an application for permit is received by the Agency, the Executive Secretary of the State Board shall classify the project...as being:

- (A) reviewable
- (B) non-reviewable; or
- (C) emergency.

The Joint Committee objects to this proposed section because it is beyond the Department's statutory authority to classify health care facility projects. Section 8 of the Illinois Health Facilities Planning Act, Ill. Rev. Stat. 1977, ch. 111 1/2, par. 1158, establishes a statutorily defined permit review process. Nothing in the Act authorizes the Board to classify a health care facility project as non-reviewable or emergency, and therefore exempt from the application and review process.

Date Agency Response Received: April 3, 1979

Nature of Agency Response: Refusal to Modify or Withdraw

This objection has been remedied by the provision of appropriate authority in Public Act 81-149 subsequent to the review of this rulemaking.

Chapter 11 - Second Edition; Financial and Economic Feasibility Review and Evaluation Plan

Initial Publication in Illinois Register: February 23, 1979

Joint Committee Objection: March 20, 1979

Specific Objections:

Proposed Rule 11.03.02(A) which states, in part:

All applications having a total estimated project cost greater than the lesser of \$2,000,000 or 10 percent of the annual operating revenue of the hospital...shall be classified "reviewable" under this Chapter.

Proposed Rule 11.03.02(B) which states, in part:

All applications classified reviewable under other rules of the State Board and having a total estimated project cost greater than the lesser of \$500,000 or 5 percent of the annual operating revenue of the hospital...shall be classified "reviewable" under this chapter.

The Joint Committee objects to these proposed rules because it is beyond the Department's statutory authority to classify health care facility projects as reviewable or non-reviewable. Section 8 of the Illinois Health Facilities Planning Act, Ill. Rev. Stat. 1977, ch. 111 1/2, par. 1158, establishes a statutorily defined permit review process. Nothing in the Act authorizes the Department to classify a health care facility project as non-reviewable, and therefore exempt from the review process.

Date Agency Response Received: May 4, 1979

Nature of Agency Response: Refusal to Modify or Withdraw

This objection has been remedied by the provision of appropriate authority in Public Act 81-149 subsequent to the review of this rulemaking.

Chapter 3B - Third Edition; The Long-Term Care and Chronic Disease Facilities Plan

Initial Publication in Illinois Register: March 23, 1979

Joint Committee Objection: April 26, 1979

Specific Objection:

Section 3B.04.C.01 of the proposed rule, which states, in part:

When an application for permit has been received by the agency, the executive secretary shall classify the project into one of the following classifications:

- (A) reviewable classification...
- (B) emergency classification...
- (C) non-reviewable classification....

The Joint Committee objects to this proposed section because it is beyond the Department's statutory authority to classify health care facility projects as reviewable, emergency or non-reviewable. Section 8 of the Illinois Health Facilities Planning Act, Ill. Rev. Stat. 1977, ch. III 1/2, par. 1158, establishes a statutorily defined review process. Nothing in the Act authorizes the Department to classify a health care facility project as emergency or non-reviewable, and therefore exempt from the review process.

Date Agency Response Received: May 25, 1979

Nature of Agency Response: Refusal to Modify or Withdraw

Rules for Illinois Department of Public Health Hemophilia Program

Initial Publication in Illinois Register: April 6, 1979

Joint Committee Objection: April 26, 1979

Specific Objections:

1. Section 3.01 of the proposed rule, which states, in part:

To demonstrate that he meets the financial requirements as prescribed in the Statute, the patient must submit an annual application....

The Joint Committee objects to this proposed section because it is in conflict with Section 3(3) of an Act establishing in the Illinois Department of Public Health a program for the care of persons suffering from hemophilia, establishing a Hemophilia Advisory Committee and designating powers and duties in relation thereto (Ill. Rev. Stat. 1977, ch. III 1/2, par. 2901 et seq.) Section 3(3) of the Act states that the amount of financial assistance granted by the Department is dependent upon the financial condition

of the family of the hemophilic patient, whereas Section 3.01 of the proposed rule implies that the amount of financial assistance granted by the Department is dependent upon the financial condition of the hemophilic patient.

2. Section 3.02 of the proposed rule, which states, in part:

A patient, who has received a letter from the Department requiring a participation charge, and who feels the charge will cause an unusual financial hardship on himself and his family, may write to the Director of the Department requesting a reevaluation of his current financial situation.

The Joint Committee objects to this proposed section because it is in violation of Section 3(3) of an Act establishing in the Illinois Department of Public Health a program for the care of persons suffering from hemophilia, establishing a Hemophilia Advisory Committee and designating powers and duties in relation thereto (Ill. Rev. Stat. 1977, ch. III 1/2, par. 2901 et seq.) While Section 3.02 of the proposed rule leaves the Director broad discretion in the review of financial hardship cases, Section 3(3) of the Act states that "[t]he Director may extend financial assistance in cases of unusual hardships, according to specific procedures and conditions adopted for this purpose in the rules and regulations promulgated by the Department to implement and administer this Act." (Emphasis added.)

Date Agency Response Received: May 15, 1979

Nature of Agency Response: Modified

Minimum Standards, Rules and Regulations for  
the Licensure of Long-Term Care Facilities

Initial Publication in Illinois Register: April 13, 1979

Joint Committee Objection: May 29, 1979

Specific Objection:

Proposed Rule 01.14.02.00, which states:

The alcoholism treatment program in a long-term care facility must meet the Rules and Regulations for Alcoholism and Detoxication [sic] Treatment Programs, as promulgated by the Illinois Department of Public Health under the Alcoholism Treatment Licensing Act.

The Joint Committee objects to this proposed rule because if the Rules and Regulations for Alcoholism and Intoxication

Treatment Programs are adopted in toto, they would be unenforceable against facilities licensed under the "Nursing homes, sheltered care homes, and homes for the aged Act," Ill. Rev. Stat. 1977, ch. III 1/2, par. 35.16 et seq.

Date Agency Response Received: August 21, 1979

Nature of Agency Response: Modified

Chapter No. 3 - 4th Edition: The  
Illinois Health Care Facilities Plan

Initial Publication in Illinois Register: May 4, 1979

Joint Committee Objection: May 29, 1979

Specific Objection:

Proposed Rule 3.04.B.01(B), which states:

Emergency Classification. Emergency projects are those construction or modification projects which are necessary because there exists one or more of the following conditions:

- (1) An imminent threat to the structural integrity of the building; and/or
- (2) An imminent threat to the safe operation and functioning of the mechanical, electrical, or comparable systems of the building.

The Joint Committee objects to this proposed rule because it is beyond the Department's statutory authority to classify health care facility projects as reviewable or emergency. Section 8 of the Illinois Health Facilities Planning Act, Ill. Rev. Stat. 1977, ch. III 1/2, par. 1158, establishes a statutorily defined permit review process. Nothing in the Act authorizes the Department to classify a health care facility project as emergency, and therefore exempt from the review process.

Date Agency Response Received: July 11, 1979

Nature of Agency Response: Refusal To Modify or Withdraw

This objection has been remedied by the provision of appropriate authority in Public Act 81-149 subsequent to the review of this rulemaking.

Rules for the Licensure of Home  
Health Agencies

Initial Publication in Illinois Register: May 11, 1979

Joint Committee Objection: May 29, 1979

Specific Objection:

Proposed Rule 7.01, which states, in part:

The following information must be furnished to the Department at least sixty days in advance of the training program. Retroactive approval will not be granted.

The Joint Committee objects to this proposed rule because it is arbitrary and unreasonable. Rule 2.0 of the rules and regulations for the licensure of home health agencies states, in part, "[o]n and after October 1, 1979, every agency employing home health aides shall insure through verification that all newly employed home health aides have completed a basic course of instruction." However, given the time requirements involved in the approval of a home health aide training program, it is extremely unlikely that there will be any approved training programs in operation in time to meet the October 1, 1979 implementation deadline.

Date Agency Response Received: August 31, 1979

Nature of Agency Response: Modified

Hospital Licensing Requirements, Parts I, II, III, VI, VIII, IX, X, XI, XIV, XVI, XIX and XXII

Initial Publication in Illinois Register: June 22, 1979

Joint Committee Objection: July 17, 1979

Specific Objections:

1. Proposed rule (1-2.1)l.(b) which states, in part:

Accreditation by the Joint Commission on Accreditation of Hospitals may be accepted, in whole or in part, as documentation that the accredited hospital is in compliance with State Licensing Requirements.

The Joint Committee objects to this proposed rule because the criteria used by the Department to determine whether to accept hospital accreditation by the Joint Commission on Accreditation of Hospitals constitute "rules" as that term is defined in Section 3.09 of the Illinois Administrative Procedure Act, Ill. Rev. Stat. 1977, ch. 127, par. 1003.09, and the failure of the Department to include such criteria in proposed rule (1-2.1)l.(b) is in violation of Section 4(c) of the IAPA which states that "[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."

2. Proposed rule (1-3.2)2. which states:

Any hospital desiring to conduct an experimental program or to do research which is in conflict with these regulations, must submit a written request to the Department and secure prior approval.

...

Progress reports on the results of the research or experiment or the notice of termination of the program shall be submitted to the Department. The timing of Progress Reports shall be determined by the Departments [sic].

The Joint Committee objects to this proposed rule because the criteria used by the Department to determine whether to approve experimental or research programs, and for the timing of Progress Reports on such programs, constitute "rules" as that term is defined in the IAPA. The Department's failure to include this criteria in proposed rule (1-3.2)2. is in violation of Section 4(c) of the IAPA.

3. Proposed Part XIX Psychiatric Services - of the Hospital Licensing Requirements.

The Joint Committee objects to proposed Part XIX because it is arbitrary, and inconsistent with the Mental Health and Developmental Disabilities Code, Ill. Rev. Stat. 1978 Supp., ch. 91 1/2, par. 1-100 et seq., which recognizes the independence of psychologists.

Date Agency Response Received: October 22, 1979

Nature of Agency Response: Refusal To Modify or Withdraw

The Joint Committee is suggesting two alternative bills for General Assembly consideration in response to this rulemaking (see Alternative Bills Three and Four, pages 227-230).

Rules for the Control of Communicable Diseases

Initial Publication in Illinois Register: September 7, 1979

Joint Committee Objection: October 23, 1979

Specific Objection:

Proposed Chapter III [Measles] (D)(4) which states, in part:

D. Measles Outbreak Control

4. A notice must be sent home with each student who has not presented prior proof

of immunity [against measles] explaining that the student is to be excluded, effective the following morning, until acceptable proof of immunization is received by the school.

Pursuant to Section 2 of an act in relation to the prevention of certain communicable diseases, Ill. Rev. Stat. 1977, ch. Ill 1/2, par. 22.12, the immunization requirement shall not apply if "[t]he parent or guardian of the child objects thereto on the grounds that the administration of immunizing agents conflicts with his religious tenets or practices...."

The Joint Committee objects to this proposed rule because it is beyond the Department's statutory authority to exclude from school, in the event of a measles outbreak, children who have not been immunized on religious grounds.

Date Agency Response Received: December 17, 1979

Nature of Agency Response: Modified

Peremptory Rules for Drinking  
Water Systems

Initial Publication in Illinois Register: September 7, 1979

Joint Committee Objection: October 23, 1979

Specific Objections:

The Rules for Drinking Water Systems which were promulgated in order to obtain primacy and become eligible for federal grants for the monitoring of drinking water systems.

1. The Joint Committee objects to these rules because the Department was not required to adopt them by federal law or federal rules and regulations or by an order of court as required by Section 5(e) of the Illinois Administrative Procedure Act, Ill. Rev. Stat. 1977, ch. 127, par. 1005(e).
2. The Joint Committee objects to these rules because they do not reflect the policy of the Department. In fact, the Department has not intention of enforcing several of the more burdensome requirements mandated by the federal Safe Drinking Water Act.

Date Agency Response Received: Pending

Nature of Agency Response: Pending

The Joint Committee is suggesting two alternative bills for General Assembly consideration in response to this rulemaking (see Alternative Bills Five and Six, pages 231-238).

## **Department of Registration and Education**

### Amendment, Dental Rules I, II, and IV of the Illinois Dental Practice Act

Initial Publication in Illinois Register: February 9, 1979

Joint Committee Objection: March 20, 1979

Specific Objection:

Rule II of the proposed Rule which states, in part:

Those candidates who present evidence satisfactory to the Department of success in an examination which the Department deems to be equivalent to the Preclinical Part of the Practical Section of the examination shall not be required to take such part of the examination.

The Joint Committee objects to this proposed Rule II because it lacks adequate standards to govern the Department's determination of whether such an exemption should be granted. The policy of the Department in this area constitutes a "rule" as that term is defined in the Illinois Administrative Procedure 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: April 23, 1979

Nature of Agency Response: Modified

### Rules for the Administration of the Illinois Nursing Act

Initial Publication in Illinois Register: September 28, 1979

Joint Committee Objection: October 23, 1979

Specific Objection:

Proposed rule III(H) which states, in part:

The Director may, upon a written report submitted by the Committee [of Nurse Examiners], withdraw, suspend or place on probation the approval of a nursing education program for any of the following:

The Joint Committee objects to this proposed rule because it fails to set forth the Department's policies for determining whether to place on probation, suspend or withdraw the approval of a nursing school, and for determining the length and severity of such action. These policies constitute "rules" as that term is defined in Section 3.09 of the Illinois Administrative Procedure Act, Ill. Rev. Stat. 1977, ch. 127, par. 1003.09. 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: Pending

Nature of Agency Response: Pending

The Joint Committee is suggesting two alternative bills for General Assembly consideration in response to this rulemaking (see Alternative Bills Seven and Eight, pages 239-245).

Rules for the Administration of the Illinois  
Detective Act - Rule VI

Initial Publication in Illinois Register: October 19, 1979

Joint Committee Objection: November 20, 1979

Specific Objection:

Rule VI(B)(4) which states, in part:

Both the Armed Guard Training Card and the identification card must be returned to the Department by the employer with the notification of termination of employment as required by Section 10B(9) of the Illinois Detective Act. The Department will not reissue an Armed Guard Training Card of an identification card for new employment if the card or cards from previous employers have not been returned.

The Joint Committee objects to rule VI(B)(4) because it is beyond the Department of Registration and Education's statutory authority to make an employee responsible for ensuring that a previous employer returns that employee's training and identification cards.

Date Agency Response Received: Pending

Nature of Agency Response: Pending

Emergency Rules for the Administration of the Illinois  
Optometric Act - Rule X - Continuing Education  
for Optometrists

Initial Publication in Illinois Register: November 21, 1979

Joint Committee Objection: November 20, 1979

Specific Objection:

Rules for Administration of the Illinois Optometric Act - Rule X - Continuing Education for Optometrists which establish continuing education requirements for licensed optometrists.

The Joint Committee objects to this emergency rulemaking because it could have been adopted by use of the proposed rulemaking procedures provided in the Illinois Administrative Procedure Act, Ill. Rev. Stat. 1977, ch. 127, par. 1005.01, as amended by P.A. 81-1044. A continuing education requirement was added to the Illinois Optometric Act (Ill. Rev. Stat. 1977, ch. 127, par. 3801 et seq., as amended) in October, 1975 by P.A. 79-924. Therefore, this emergency rulemaking does not meet the requirements of Section 5.01 of the Illinois Administrative Procedure Act which provides that emergency rulemaking procedures should only be used "where an agency finds that an emergency exists which requires adoption of a rule upon fewer days than is required by Section 5.01...."

Date Agency Response Received: Pending

Nature of Agency Response: Pending

**Department of Revenue**

Rule 1, Bingo License and Tax Act

Initial Publication in Illinois Register: December 8, 1978

Joint Committee Objection: January 31, 1979

Specific Objection:

The notice of proposed rulemaking published in the Illinois Register did not include "the old and new materials of a proposed amendment" as required by Section 5(a)(1) of the Illinois Administrative Procedure Act, Ill. Rev. Stat. 1977, ch. 127, par. 1005(a)(1). It is vital that the old material of a rule being amended be included in the notice so that persons affected by the rulemaking will be advised of the nature and scope of the change in the rule.

The Joint Committee objects to this proposed amendment because the notice of proposed rulemaking is in violation of the provisions of the IAPA.

Date Agency Response Received: None

Nature of Agency Response: Withdrawn

Article 2, ROTA and Article 2 of  
Service Occupation Tax Act

Initial Publication in Illinois Register: January 5, 1979

Joint Committee Objection: February 21, 1979

Specific Objections:

1. Proposed Part E of Section Nine which states, "[a]n item of machinery or equipment which initially is used exclusively in manufacturing or assembling and is later converted exclusively or partially to non-exempt uses, will become subject to taxes at the time the exempt exclusive use terminates and any non-exempt use begins." P.A. 80-1292 requires that exempted machinery be used directly and exclusively in the manufacturing process.

The Joint Committee objects to the Department's interpretation of "exclusively" because it violates the legislative intent of offering industry a financial incentive to expand or locate manufacturing facilities within Illinois. The Department's interpretation of "exclusive use" will exclude a great deal of machinery and equipment considered exempt under any reasonable standard, and will also put smaller businesses at a competitive disadvantage. The Department's interpretation of exclusive use is also unenforceable.

2. Proposed Part H of Section Nine which requires both the vendor and the purchaser to certify the exempt nature of the transaction.

The Joint Committee objects to proposed Section H because Public Act 80-1292 does not require the seller to validate or "certify" the buyer's tax exemption claim. Rather, the Act requires only that the seller furnish to the Department a certificate of exemption from the purchaser. Requiring the certification of the seller places the seller into the precarious position of having to deny an exemption and very possibly a sale because the buyer's tax exemption claim may not seem to be valid. The Department's requirement of the retailer alters the role of the retailer from collector of taxes to enforcer of Departmental rules.

3. Part C of Section Nine which defines "machinery and equipment" to include:

any mechanical, electric, or electronic devices as well as any adjunct or attachment necessary for the basic device

to accomplish its intended function or any device used or required to control, regulate, or operate a piece of machinery equipment, provided such device is directly connected with or is an integral part of the machinery or equipment.

The Joint Committee objects to this proposed rule because it fails to make a distinction between "machinery" and "equipment." By not distinguishing between the two, the Department excludes certain tools, dies, jigs, and other objects which are independent and separate of the machinery, are used directly and exclusively in the manufacturing process, and would normally be considered equipment necessary for the production of a product.

4. Proposed Part D of Section Nine which in defining "direct use" states,

The law requires that, to be exempt, machinery and equipment be used "directly" in manufacturing or assembling. In determining whether such property is "directly" used consideration will be given to the following factors:

1. The physical proximity of the property in question to the production process in which it is used;
2. The proximity of time of use of the property in question to the time of use of other property used before and after it in the production process;
3. The active causal relationship between the use of the property in question and the production of a product.

The Joint Committee objects to this proposed rulemaking because it lacks adequate standards to govern the Department's exercise of discretion in applying the factors listed above to machinery and equipment in the determination of what constitutes a "direct use." The factors given by the Department do not provide adequate guidance to the affected parties in determining what constitutes direct use. The policy of the Department in this area constitutes a rule, as that term is defined in Section 3.09 of the Illinois Administrative Procedure Act, Ill. Rev. Stat. 1977, ch. 127, par. 1003.09. Under Section 4(c) of the Act "[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."

5. Part F of Section Nine which states,

The assembly, fabrication, construction or "manufacture" of articles of tangible personal property on behalf of a customer who owns the materials or components out of which the product is assembled, fabricated, constructed, or "manufactured" is not an exempt use by a manufacturer or assembler as the output of the manufacturer or assembler's production process is not for sale by him.

The Joint Committee objects to the exclusion from the exemption of machinery and equipment used by manufacturers who do not own the components of a product or do not directly sell a product because it exceeds the Department's statutory authority which requires only that machinery and equipment be directly and exclusively used in the manufacturing or assembling of tangible personal property for sale (Public Act 80-1292). The statutory language does not require that the products must be sold by the manufacturer.

6. Failure of the Department to include in the proposed rules its policy with regard to the application of the concept of "manufacturing process" to specific machinery and equipment, and phases of a manufacturer's operation.

The Joint Committee objects to proposed Article 2, Section 9, Machinery and Equipment Exemption, because it lacks adequate standards to govern the Department's exercise of discretion in applying the concept of "manufacturing process" to specific machinery and equipment, and to phases of the manufacturer's operation. The policy of the Department in this area constitutes a rule, as that term is defined in Section 3.09 of the Illinois Administrative Procedure Act, Ill. Rev. Stat. 1977, ch. 127, par. 1003.09. Under Section 4(c) of the Act "[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: May 27, 1979

Nature of Agency Response: Refusal to Modify or Withdraw

Members of the Joint Committee introduced House Bill 1596 in response to this rulemaking to clarify the legislative intent of the statute. The bill was enacted as Public Act 81-991.

Article 14 of the Retailers' Occupation Tax  
Act as it Pertains to "Transferee Assessments"



Initial Publication in Illinois Register: April 6, 1979

Joint Committee Objection: April 26, 1979

Specific Objection:

Article 14, which states, in part, that the Department may grant a rehearing upon application of the person aggrieved after issuance of a final assessment or a notice of tax liability which becomes final without the necessity of actually issuing a final assessment.

The Joint Committee objects to this proposed Article 14 because it lacks adequate standards to govern the Department's exercise of discretion with regard to the granting of rehearings. The policy of the Department 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: June 8, 1979

Nature of Agency Response: Modified

Article 4 of the Retailers' Occupation Tax Act  
as it Pertains to Penalties of Perjury and Article  
4 of the Service Occupation Tax Act as it Pertains  
to Penalties of Perjury

Initial Publication in Illinois Register: July 27, 1979

Joint Committee Objection: August 14, 1979

Specific Objection:

Article No. 4(N) of the Retailers' Occupation Tax rules, incorporated by reference in Article No. 4(G) of the Service Occupation Tax rules, which states that each return or notice is to be filed under the penalties of perjury.

The Joint Committee objects to proposed Article 4(N) of the Retailers' Occupation Tax rules because the Department lacks statutory authority to require these returns and notices to be filed under penalty of perjury.

Date Agency Response Received: October 19, 1979

Nature of Agency Response: Refusal to Modify or Withdraw

The Joint Committee is suggesting two alternative bills for General Assembly consideration in response to this rulemaking (see Alternative Bills Nine and Ten, pages 247-269).

## OTHER AGENCIES

### Illinois Commerce Commission

#### General Order 1 Under Illinois Commercial Relocation of Trespassing Vehicles Law

Initial Publication in Illinois Register: December 15, 1978

Joint Committee Objection: January 31, 1979

Specific Objection:

Section 11(a)(2) of the proposed rule, which reads:

#### Section 11. License - Revocation or Suspension

(a) Basis for revocation or suspension of a relocater or operator license. The Commission may revoke or suspend a relocater or operator license for any one or more of the following reasons:

...

(2) If the holder has committed substantial or repeated violations of the Illinois Commercial Relocation of Trespassing Vehicles Law or rules promulgated thereunder.

The Joint Committee objects to this proposed rule because Section 18a-200(6) of the Illinois Commercial Relocation of Trespassing Vehicles Law requires the Commission to "provide by rule" for suspension or revocation of the licenses of substantial or repeated violators of the law. By merely restating the statutory language, the Commission has failed to comply with the statutory mandate.

Date Agency Response Received: May 3, 1979

Nature of Agency Response: Refusal To Modify or Withdraw

The Joint Committee is suggesting two alternative bills for General Assembly consideration in response to this rulemaking (see Alternative Bills Eleven and Twelve, pages 271-282).

#### General Order 208, Emergency Telephone Report

Initial Publication in Illinois Register: January 5, 1979

Joint Committee Objection: February 21, 1979

Specific Objection:

1. Proposed General Order 208 whose format is that of a "standardized form."

The Joint Committee objects to this proposed rule because

the format used is that of a standardized form, and according to Section 3.09 of the Illinois Administrative Procedure Act, Ill. Rev. Stat. 1977, ch. 127, par. 1003.09 "Rule" does not include the prescription of standardized forms. Rather, the policy contained in the form should be set forth in an expository manner.

Date Agency Response Received: Not Applicable

Nature of Agency Response: Modified

General Order 2 - Uniform System of Accounts for Relocators of Trespassing Vehicles Under the Illinois Commercial Relocation of Trespassing Vehicles Law

Initial Publication in Illinois Register: June 15, 1979

Joint Committee Objection: July 17, 1979

Specific Objection:

The Joint Committee objects to this proposed General Order because the Commerce Commission does not have the statutory authority to establish a uniform system of accounts in this area. If the General Assembly had intended to delegate to the Commission such authority, it would have done so by express statutory language, as was the case in, for example, The Illinois Motor Carrier of Property Law, Ill. Rev. Stat. 1977, ch. 95 1/2, par. 18-100 et seq., and An Act Concerning Public Utilities, Ill. Rev. Stat. 1977, ch. 111 2/3, par. 1 et seq.

Date Agency Response Received: October 10, 1979

Nature of Agency Response: Refusal to Modify or Withdraw

The Joint Committee is suggesting two alternative bills for General Assembly consideration in response to this rulemaking (see Alternative Bills Eleven and Twelve, pages 271-282).

Rules on Minimum Safety Standards for the Transportation of Gas and for Pipeline Facilities

Initial Publication in Illinois Register: August 24, 1979

Joint Committee Objection: September 18, 1979

Specific Objections:

1. Proposed Rules 192.457(b)(3) and 192.465(e), which provide that an operator shall determine the areas of actual corrosion by electrical survey, or where electrical survey is impractical by other means.

The Joint Committee objects to this proposed rule because the rule is vague, and thus fails to provide adequate

standards or guidelines to govern the Commission's determination as to when an electrical survey is impractical, and for determining what other means of checking pipe corrosion are adequate.

2. Proposed Rule 192.467, which uses the phrases "if isolation is not achieved because it is impractical", "other measures must be taken" and "where a pipeline is located in close proximity to tower footings."

The Joint Committee objects to the proposed rule because the rule is vague, and thus fails to provide adequate standards or guidelines to govern the Commission's determination as to when isolation is impractical and of what other measures are acceptable.

3. Proposed Rule 192.473(a) and 192.473(b), which require a program to minimize the effects of stray currents, and a design to minimize adverse effects on adjacent structures.

The Joint Committee objects to the proposed rules because the rule is vague, and thus fails to provide adequate standards or guidelines by which the Commission may determine whether a program to minimize the detrimental effects of stray currents, and the design to minimize adverse effects on adjacent structures, are adequate.

Date Agency Response Received: December 21, 1979

Nature of Agency Response: Refusal To Modify or Withdraw

## **Illinois Community College Board**

### Policy Manual

Initial Publication in Illinois Register: September 7, 1979

Joint Committee Objection: October 23, 1979

Specific Objection:

Proposed Rules 4.03, 4.07, 4.08.01, 4.08.02, 6.14, 6.17, 7.07B, 7.17, 7.19, 8.03, 9.05, 9.06 and proposed Chapter Four. These proposed rules provide standards and criteria for community college recognition by the Board, and the Board's policies for the recognition program. Criteria for program recognition and the Board's policies for approving programs are also provided in these rules.

The Joint Committee objects to these proposed rules because they lack adequate standards to govern the Board's exercise of discretion with regard to the policies contained in these rules. The policies of the Board in these areas 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: Pending

Nature of Agency Response: Pending

### **Criminal Justice Information Council**

#### Emergency Regulations Governing the Security of Criminal History Record Information

Initial Publication in Illinois Register: July 13, 1979

Joint Committee Objection: August 14, 1979

Specific Objection:

This emergency amendment extends the expiration date of the rule from July 1, 1979 to July 1, 1980. The original decision to establish the July 1, 1979, expiration date within the rule was made by the Council. The Council's position in this case, that the impending expiration of the rule constitutes an emergency requiring the adoption of a rule upon less than 45 days' notice, is not consistent with the requirement of the Illinois Administrative Procedure Act, Ill. Rev. Stat. 1977, ch. 127, par. 1001 et seq., that agencies may adopt rules only after giving notice of their intended actions, and permitting interested persons to comment on those actions.

The Joint Committee objects to this emergency rule because it is filed in violation of Section 5(b) of the IAPA, in that no emergency exists which requires its adoption upon less than 45 days' notice.

Date Agency Response Received: September 10, 1979

Nature of Agency Response: Refusal To Modify or Withdraw

### **State Board of Education**

#### Rules for Dismissal of Tenured Teachers, Principals, and Civil Service Employees in School Districts Governed by Article 34 of the School Code

Initial Publication in Illinois Register: January 19, 1979

Joint Committee Objection: February 21, 1979

Specific Objections:

1. Section 3.03(e), which states:

If the employee fails to promptly notify the [local] board of any name stricken or fails to cooperate in the selection process, the board may select the hearing officer from the remaining names on the list.

The Joint Committee objects to this proposed section because it does not reflect the Board's actual policy.

The Board's policy is to give an employee 10 days to notify the local board of a decision to strike a name from the list of potential hearing examiners. This policy constitutes a rule, as that term is defined in Section 3.09 of the Illinois Administrative Procedure Act, Ill. Rev. Stat. 1977, ch. 127, par. 1003.09. Under Section 4(c) of the Act "[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."

2. Section 7.03(k) which states, in part:

A return receipt showing delivery to the employee's last known address within 20 days after the date of adoption of the motion for dismissal shall constitute proof of service [of the notice of dismissal].

The Joint Committee objects to this proposed section because it does not reflect the Board's actual policy.

A return receipt showing delivery of the notice constitutes proof of service when the notice has been delivered by mail. When the notice has been delivered in person, the testimony of the person delivering the notice constitutes proof of service. This policy is a rule as that term is defined in Section 3.09 of the Illinois Administrative Procedure Act, Ill. Rev. Stat. 1977, ch. 127, par. 1003.09. Under Section 4(c) of the Act "[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: March 23, 1979

Nature of Agency Response: Modified

S.B.E. 132 - Rules for the Development of  
a Plan for the Improvement of Instruction

Initial Publication in Illinois Register: May 4, 1979

Joint Committee Objection: May 20, 1979

Specific Objection:

Proposed Section 5.3 which states:

The hearing shall be conducted in accordance with the requirements of the Illinois Administrative Procedure Act, Ch. 127, par. 1010, 1011, 1012, 1013, 1014, and the rules of practice adopted pursuant to Ch. 127, par. 1004(a)1 entitled "Hearing Practices for Contested Cases Pertaining to Withholding of Funds."

The Joint Committee objects to this proposed section because the rules of practice referred to in the proposed section have not been filed with the Secretary of State, as required by Section 5(a) of the Illinois Administrative Procedure Act, Ill. Rev. Stat. 1977, ch. 127, par. 1005(a). In fact, the Board will rely solely on the hearing requirements contained in the IAPA. The rule as proposed, therefore, does not reflect the actual policy of the Board.

Date Agency Response Received: August 1, 1979

Nature of Agency Response: Modified

### **Environmental Protection Agency**

#### Rules for Issuance of Permits to New or Modified Air Pollution Sources Affecting Nonattainment Areas

Initial Publication in Illinois Register: September 14, 1979

Joint Committee Objection: October 23, 1979

Specific Objection:

Section 10.1 which states that emission offsets must be obtained prior to the operation of the new or modified source and Section 10.3 which states that emission offsets may be transferred.

The Joint Committee objects to Sections 10.1 and 10.3 because the Agency does not adequately state its policy with regard to the ownership, transferral and acquisition of emission offsets. The policy of the Agency in this area constitutes a rule, as that term is defined in Section 3.09 of the Illinois Administrative Procedure Act, Ill. Rev. Stat. 1977, ch. 127, par. 1003.09. 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: Pending

Nature of Agency Response: Pending

The Joint Committee is suggesting two alternative bills for General Assembly consideration in response to this rulemaking (see Alternative Bills Thirteen and Fourteen, pages 283-293).

Emergency Rules for Issuance of Permits to  
New or Modified Air Pollution Sources Affecting  
Nonattainment Areas

Initial Publication in Illinois Register: September 14, 1979

Joint Committee Objection: October 23, 1979

Specific Objection:

This is the second filing of this emergency rulemaking the first being published concurrently with proposed rulemaking on May 4, 1979 in the Illinois Register. Section 5(b) of the Illinois Administrative Procedure Act, Ill. Rev. Stat. 1977, ch. 127, par. 1005(b) provides that emergency rules "may be effective for a period of not longer than 150 days...." The 150 day period allows an agency to formally adopt emergency rules as permanent rules, if the agency so desires. Consecutive publication of substantially identical rules on an emergency basis is not consistent with the IAPA requirement of notice.

The Joint Committee objects to this emergency rulemaking because it is filed in violation of Section 5(b) of the IAPA, in that no emergency exists which requires its adoption upon fewer than 45 days' notice.

Date Agency Response Received: Pending

Nature of Agency Response: Pending

The Joint Committee is suggesting two alternative bills for General Assembly consideration in response to this rulemaking (see Alternative Bills Thirteen and Fourteen, pages 283-293).

**State Fire Marshal, Office of**

Boiler and Pressure Vessel Safety Act and Rules

Initial Publication in Illinois Register: October 12, 1979

Joint Committee Objection: November 20, 1979

Specific Objection:

Proposed Boiler and Pressure Vessel Safety Rules, which establish procedures for the repair and alteration of boiler and pressure vessels.



The Joint Committee objects to the proposed rules because they do not contain a provision allowing an owner/user to utilize either NBIC or API standards for boiler and pressure vessel repair, alteration and inspection, as provided by Section 10(A)3 of the Boiler Safety Act, Ill. Rev. Stat. 1977, ch. Ill 1/2, par. 321(A)3.

Date Agency Response Received: Pending

Nature of Agency Response: Pending

## **Illinois Health Facilities Authority**

### Fees and Costs Applicable to the Sale of Bonds

Initial Publication in Illinois Register: May 18, 1979

Joint Committee Objection: June 18, 1979

Specific Objections:

1. Section 1 of proposed Article II, which states that the application fee for bond issues of less than 500,000 dollars or more than 35,000,000 dollars is "individually determined."

The Joint Committee objects to this proposed section because the general criteria used by the Authority to determine the exact application fee for bond issues of less than 500,000 dollars, or more than 35,000,000 dollars, constitute "rules" as that term is defined in Section 3.09 of the Illinois Administrative Procedure Act, Ill. Rev. Stat. 1977, ch. 127, par. 1003.09, and the failure of the Authority to include any criteria in Section 1 of proposed Article II is in violation of Section 4(c) of the IAPA which states that "[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."

2. Section 4 of proposed Article II, which states, in part, "[s] election of the firm to perform this [feasibility] study from the Authority's list of approved consulting firms will be made by the Authority after consultation with the applicant."

The Joint Committee objects to this proposed rule because the Authority's policies on approval of financial feasibility consulting firms constitute "rules" as that term is defined in the IAPA. The Authority's failure to include its policies in Section 4 of the proposed Article II is in violation of Section 4(c) of the IAPA.

Date Agency Response Received: July 12, 1979

Nature of Agency Response: Modified

## State Board of Investments

### State Employees' Deferred Compensation Plan

Initial Publication in Illinois Register: February 2, 1979

Joint Committee Objection: February 21, 1979

Specific Objection:

Section 24-104.1 of the Public Employees' Deferred Compensation Act, Ill. Rev. Stat. 1977, ch. 108 1/2 par. 24-104.1, states that the Plan shall provide for the recovery of the expenses of its administration. The Board's policy for doing this is to charge participants a \$1.00 per month fee plus an annual asset charge of .2 percent. This policy was not included in the proposed rules.

The Joint Committee objects to proposed Section 4.5 because the Board's policy for recovering administrative expenses is a rule as that term is defined in Section 3.09 of the Illinois Administrative Procedure Act, Ill. Rev. Stat. 1977, ch. 127, par. 1003.09. Under Section 4(c) of the Act "[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: March 19, 1979

Nature of Agency Response: Modified

## Lottery Control Board

### Rule 19, Requests for Action to Make Changes With Respect to Rule 14, Paragraph 5, Rule 17 and Rule 18 of the Illinois Lottery Law

Initial Publication in Illinois Register: March 2, 1979

Joint Committee Objection: March 20, 1979

Specific Objections:

1. Proposed Sections 2, 3 and 4 which are the Definitions and the Powers and Duties of the Lottery Control Board. These proposed sections contain only citations of sections of the Illinois Lottery Law, Ill. Rev. Stat. 1977, ch. 120, par. 1151 et seq., and do not include the text of any of the sections which have been adopted verbatim as rules.

The Joint Committee objects to these proposed sections because the text of sections of statute which are adopted as rules should be included in full instead of merely providing citations to these sections of statute.

2. Proposed Rule 22 which states, in part, "[t]hese rules may be suspended or modified by the Board, in whole or in part, in the interest of justice."

The Joint Committee objects to this proposed rule because it violates Section 5(a) of the Illinois Administrative Procedure Act, Ill. Rev. Stat. 1977, ch. 127, par. 1005(a) which establishes the 45 day notice and hearing procedure for "the adoption, amendment or repeal of any rule." Under Section 5(c) of the Act, "[n]o action by any agency to adopt, amend or repeal a rule...shall be valid unless taken in compliance with this Section."

Date Agency Response Received: June 4, 1979

Nature of Agency Response: Withdrawn

Section 22 of the Procedural Rules of  
the Lottery Control Board (existing rule)

Rule Adopted: August 23, 1974

Joint Committee Objection: June 18, 1979

Specific Objection:

Section 22 which states, in part, "[t]hese rules may be suspended or modified by the Board, in whole or in part, in the interest of justice."

The Joint Committee objects to this rule because it allows the Board to circumvent the 45 day notice and hearing requirement of Section 5(a) of the Illinois Administrative Procedure Act, Ill. Rev. Stat. 1977, ch. 127, par. 1005(a) when making rules. Under Section 5(c) of the Act, "[n]o action by any agency to adopt, amend or repeal a rule...shall be valid unless taken in compliance with this Section."

Date Agency Response Received: No response

Nature of Agency Response: Refusal To Modify or Withdraw

After an additional hearing before the Joint Committee, the Agency agreed to initiate rulemaking to amend this section to remedy the objection.

**Pollution Control Board**

Rules 401 and 405 of Chapter 1: Procedural Rules

Initial Publication in Illinois Register: October 12, 1979

Joint Committee Objection: November 20, 1979

Specific Objection:

The proposed amendments to Procedural Rules 401 and 405 of Chapter One of the Board's rules which require petitioners applying for variances from State laws and regulations to prove consistency with applicable Federal laws and regulations.

The Joint Committee objects to the proposed amendments to Procedural Rules 401 and 405 because the Board is exceeding its statutory authority granted under Title IX of the Environmental Protection Act, Ill. Rev. Stat. 1977, ch. 127, par. 1035 - 1038 by requiring petitioners to prove consistency with applicable Federal laws and regulations. Under the Board's authority, the Board, not the petitioner, was given the responsibility to ensure conformity with the Federal laws and regulations.

Date Agency Response Received: December 7, 1979

Nature of Agency Response: Refusal to Modify or Withdraw

The Joint Committee is recommending specific legislation in response to this rulemaking (see Recommended Bill Nine, pages 193-195).

**Illinois Racing Board**

Amendments to Thoroughbred Rule 301, Renumbered as 302a; 302, Renumbered as 302b; 303 Through 309 Inclusive, 312, 313, 314, Renumbered as Part of 312, 315 Through 318A Inclusive, 318C Through 318H Inclusive; New Rules 301 and 314 (emergency)

Initial Publication in Illinois Register: July 20, 1979

Joint Committee Objection: August 14, 1979

Specific Objection:

These emergency rules are identical to emergency rules adopted by the Racing Board on February 27, 1979. Section 5(b) of the Illinois Administrative Procedure Act, Ill. Rev. Stat. 1977, ch. 127, par. 1005(b), provides that emergency rules "may be effective for a period of not longer than 150 days..." The 150 day period allows an agency to formally adopt emergency rules as permanent rules, if the agency so desires. Consecutive publication of substantially identical rules on an emergency basis is not consistent with the requirement of the IAPA that agencies may adopt rules only after giving notice of their intended actions, and permitting interested persons to comment on those actions.

The Joint Committee objects to these emergency rules because they are filed in violation of Section 5(b) of the IAPA, in that no emergency exists which requires their adoption upon less than 45 days' notice.

Date Agency Response Received: September 17, 1979

Nature of Agency Response: Refusal To Modify or Withdraw

### **Illinois State Scholarship Commission**

#### Student to Student Program of Matching Grants

Initial Publication in Illinois Register: June 8, 1979

Joint Committee Objection: July 17, 1979

Specific Objection:

1. Proposed Section 13.06 which establishes a maximum contribution of \$9.00 per academic year.

The Joint Committee objects to proposed Section 13.06 because the Commission lacks the statutory authority to impose a limit on the amount a student may contribute to the Student to Student Program of Matching Grants.

Date Agency Response Received: October 15, 1979

Nature of Agency Response: Modified

### **University Civil Service Merit Board**

#### Rule 7.7c - Student Appointments

Initial Publication in Illinois Register: September 21, 1979

Joint Committee Objection: October 23, 1979

Specific Objection:

Rule 7.7c which states, in part, that the Director may approve exceptions to the "official" student workload when sufficient cause is evidenced.

The Joint Committee objects to Rule 7.7c because it lacks adequate standards to govern the Director's exercise of discretion with regard to determining when sufficient cause is evidenced when approving exceptions to Rule 7.7c. The policy of the Board in this area constitutes a rule, as that term is defined in Section 3.09 of the Illinois Administrative Procedure Act, Ill. Rev. Stat. 1977, ch. 127, par. 1003.09. 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 16, 1979

Nature of Agency Response: Refusal To Modify or Withdraw

## PUBLIC ACT REVIEW

Section 7.05(3) of the Administrative Procedure Act gives one of the Joint Committee's responsibilities as maintaining "a review program to study the impact of legislative changes...on agency rules and rulemaking." To implement this responsibility, the Joint Committee developed a program to monitor legislation which may affect rulemaking. This program is conducted by the Rules Review Section.

The purposes of this program are directed both toward informing agencies of changes in the statutes which may require rulemaking action and to keep the Joint Committee members and the General Assembly informed of the progress made by agencies in implementing newly-enacted bills.

The review of public acts was begun in August and September of 1979. Each of the bills enacted during 1979 was reviewed for its possible effect on agency rules. Approximately 500 acts which could require some type of rulemaking were identified and the agencies were each informed of which specific acts seemed to affect their rules and could require rulemaking. These identified acts included acts creating new agencies or reorganizing agencies with rulemaking authority, since they will usually require at least the readoption of the rules of the agency under the new agency name.

Table Thirteen on pages 91-92 indicates the number of public acts identified by agency which could require rulemaking. The table also indicates the number of rulemakings which have been initiated and adopted by each agency to implement the legislative changes. While some of the acts identified by the Joint Committee staff may not on closer examination actually require rulemaking, it presently appears at this point in time that some agencies have not initiated rulemaking in response to legislative changes. This is a potentially serious deficiency in the rulemaking process of state agencies.

The Joint Committee will continue to identify public acts which appear to require rulemaking and periodically inform agencies of these acts. The Joint Committee will also continue to monitor the initiation of rulemaking by agencies in response to these legislative changes.

The Joint Committee plans to prepare a report to the General Assembly in about April 1980, which will analyze the responsiveness of agencies in initiating rulemaking in response to newly-enacted bills. The report will indicate the length of time taken by each agency to initiate and to adopt rules in response to each public act and highlight agencies which have failed to initiate rulemaking. This report should be useful to the legislature in evaluating the performance of agencies.

This public act review process should prove to be an effective oversight mechanism for the General Assembly, and should create agency awareness of the need to initiate rulemaking when required by new acts.



TABLE THIRTEEN: NUMBER OF 1979 PUBLIC ACTS WHICH COULD REQUIRE  
RULEMAKING BY AGENCY

	Number of Public Acts Which Could Require <u>Rulemaking</u>	Number of Rulemakings <u>Initiated</u>	Number of Rulemakings <u>Adopted</u>
<u>Code Departments</u>			
Administrative Services	4		
Aging	1		
Agriculture	22	1	1
Children and Family Services	10		
Conservation	17	3	1
Commerce and Community Affairs*	7	1	
Corrections	11	1	
Financial Institutions	7	2	
Human Rights*	1		
Insurance	27	2	
Labor	9		
Law Enforcement	3		
Local Government Affairs	2		
Mental Health and Developmental Disabilities	6		
Mines and Minerals	4		
Personnel	7	2	
Public Aid	14	2	1
Public Health	36		
Rehabilitation Services*	5		
Registration and Education	16		
Revenue	32	4	
Transportation	35	2	
Veterans' Affairs	3	1	
<u>Elected Officials</u>			
Attorney General	5		
Auditor General	1	1	
Comptroller	8		
Secretary of State	46	1	
Treasurer	1	1	
<u>Other Agencies</u>			
Bi-State Development Agency	1		
Board of Education	28		
Board of Higher Education	1		
Board of Trustees of the University of Illinois	1		
Capital Development Board	2		
Civil Service Commission	1		
Commerce Commission	7	1	
Commissioner of Banks and Trust Companies	3	1	
Dangerous Drugs Commission	6		

	Number of Public Acts Which Could Require <u>Rulemaking</u>	Number of Rulemakings <u>Initiated</u>	Number of Rulemaking <u>Adopted</u>
Delinquency Prevention Commission	1		
Economic Development, Commission for	1		
Economic and Fiscal Commission	1		
Educational Facilities Authority	1		
Elections, Board of	16		
Emergency Services and Disaster Agency	1		
Environmental Facilities Financing Authority	1		
Environmental Protection Agency	5		
Fair Employment Practices Commission	2		
Fire Marshal, State	4		
General Assembly Retirement System	1		
Group Insurance Advisory Commission	1		
Health Assistance Programs, Commission on*	1		
Housing Development Authority	1		
Human Rights Commission	1		
Human Relations, Commission on	1		
Industrial Commission	1		
Industrial Development Authority	1		
Institute of Natural Resources	1		
Insurance Laws Study Commission	1		
Judges Retirement System	1		
Legislative Travel Control Board	1		
Liquor Control Commission	8		
Lottery Control Board	1		
Mass Transit Employee Anti-Crime Program Review Committee*	1		
Pollution Control Board	1		
Property Tax Appeal Board	1		
Racing Board	1		
Savings and Loan Commissioner	4		
Select Joint Committee on Regulatory Agency Reform*	2		
State Employees' Retirement System	3	1	
State Scholarship Commission	4		
Teachers' Retirement System	2		
Universities Civil Service System	2		
Universities Retirement System	6		
Total:	471	26	3

\*Newly created or reorganized agencies

## FIVE-YEAR REVIEW PROGRAM

During 1979, the Joint Committee began to implement its responsibility to review all the existing rules of all state agencies. The review, which is mandated by Section 7.08 of the Administrative Procedure Act, is required to be completed within five years.

Extensive planning for the program was undertaken in late 1978 and early 1979. A background report was prepared and formal rules for the conduct of the program were adopted in August 1979. The actual review began in September with rules concerning regulation of occupations. The results of the initial staff review in this subject area will be considered by the Joint Committee members beginning in February and March, 1980. The program will be in full operation in 1980.

It is expected that extensive revisions will be made by agencies in their rules as a result of this review by the Joint Committee. Another anticipated result will be greater coordination between agencies regulating the same areas and the reduction of overlapping and conflicting regulations and regulatory jurisdictions.

This section will briefly discuss the background of this program, its implementation and its anticipated operation.

### Background

Section 7.08 of the Administrative Procedure Act mandates this on-going cyclical review program. The first part of this section sets out the basic organization and procedure for the review. It reads:

(a) The Joint Committee shall evaluate the rules of each agency at least once every five 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.

This detailed set of organizational and procedural requirements for the program have established a rather firm structure. The requirement that all the rules of all state agencies must be categorized by "specified areas," including the fourteen enumerated areas, has been one of the most difficult requirements for the Joint Committee in implementing this program.

The other subsection dealing with this program provides substantive guidelines for the Joint Committee's evaluation of rules. The four guidelines listed in this subsection can be viewed as criteria for the evaluation of agency rules under this program. The subsection reads:

- (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 rulemaking;
  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. economic and budgetary effects.

Considering these criteria in connection with the other powers and responsibilities of the Joint Committee delineated in Sections 7.04 and 7.05, as well as other sections of the Act, gives an idea of the substantive scope of this program. The Joint Committee's review must include consideration of overlaps and conflicts, economic effects, procedural reforms and streamlining of rules. This is obviously a large task.

Not only the mandated scope of the review, but also the sheer volume of existing state agency rules indicates the size of this responsibility. The currently effective rules fill approximately 350 - 8 1/2" X 11" notebooks, or five bookcases in the Joint Committee's office.

## Planning and Implementation

The Joint Committee attempted to implement this program carefully, making sure that adequate planning had gone into organizing this program before it was put into operation. Three tasks were essential for accomplishing the necessary planning: (1) Substantive guidelines, especially detailed criteria for the review, had to be developed. (2) All of the existing rules of all state agencies had to be categorized into subject areas. (3) Rules for the conduct of the program, including the review schedule, had to be developed and adopted. Each of these tasks will be discussed here to indicate the extensive planning which went into the implementation of this program during 1979.

The development of substantive guidelines and detailed criteria for the five-year review program was accomplished as part of the broader task of implementing all the responsibilities of the Joint Committee for reviewing existing rules. A wide range of resources were utilized in this phase of the planning. A series of roundtable discussions involving state agency personnel, legislative staff members, academic experts, interest group representatives, private attorneys and other interested persons was held to gain diverse viewpoints on these tasks.

The result of this effort was the development of a comprehensive report, entitled Background Report on Review of Existing Rules, which presented recommendations for the Joint Committee's implementation of its responsibilities to review currently effective rules. The recommendations concerning the criteria the Joint Committee should utilize in this type of review outlined eight basic criteria. These recommendations read:

1. In evaluating whether a rule is within the statutory authority on which it is based, it is recommended that the Joint Committee utilize the standard canons of statutory construction and resort to the concept of legislative intent and the use of extrinsic aids only when the statutory language is unclear, internally contradictory, or contravenes the evident purpose of the enactment.
2. In reviewing the basic reasonableness of an existing rule, it is recommended that the Joint Committee consider whether it appears to be generally within the scope of the agency's purposes, powers, and mission; whether it imposes clearly unreasonable or contradictory requirements; whether it conforms to legal requirements; whether it contains adequate

procedural safeguards and standards for the exercise of discretion; and whether the public policy embodied in the rule is reasonable and consistent with public policy enacted by the legislature.

3. In considering whether existing rules are in proper form, it is recommended that the Joint Committee examine whether the form of the rules, their codification and physical format conform to the specifications established by the Secretary of State's office and contribute to public access and availability.
4. It is recommended that the Joint Committee, fulfilling its statutory mandate to streamline existing rules, consider both the necessity and public need for the regulations contained in the rules and the complexity of the language of the rules.
5. It is recommended that the Joint Committee review existing rules to identify technical errors, but limit its objections to situations in which such errors seriously affect the public's ability to understand the actual meaning of the rules.
6. It is recommended that the Joint Committee's review of existing rule include the identification of conflicts or overlaps between agency rules or regulatory jurisdictions and the recommendation of changes in specific rules, changes in rulemaking procedures, or organizational changes in agency jurisdictions to eliminate such conflicts or overlaps.
7. It is recommended that the Joint Committee examine the relation to agency operations of existing rules, including whether areas of agency discretion are adequately guided by rules, whether the agency is actually operating in accordance with its rules, and whether the rules provide the public with a meaningful knowledge of how the agency will act.
8. It is recommended that the Joint Committee in examining the economic impact of existing rules, primarily limit its concern to budgetary and revenue impacts and the impact on persons directly regulated, and that the Joint Committee object only when the economic effects are clearly unreasonable or beyond legislative intent.

The report also recommended that the criteria which should be emphasized in the five-year review program should be statutory authorization, proper form, streamlining, and conflicts or overlaps. Criteria which were recommended for secondary priority in this program were basic reasonableness, technical errors and economic impact. The criterion of the relation to agency operations was recommended for least emphasis, or lowest priority, in the five-year review program.

The specific recommendation concerning the five-year program presented in the background report reads: "It is recommended that the Joint Committee in implementing the five-year periodic evaluation program utilize a subject area and functional activity classification scheme, develop a schedule for the five-year cycle, organize a team approach for the staff portion of the review and include agency and public input and formal hearings on each segment of the cycle." Other recommendations for the implementation of the complaint review program and the other types of reviews involving existing rules were also presented in the report.

These recommendations contained in the background report have provided the basic substantive guidelines for the implementation of the five-year review program.

The second task of categorizing all the existing rules of all state agencies into subject areas has probably proven to be the most difficult and complex of the tasks required for implementation of the program. The sheer volume of rules, the large number of agencies involved, the numerous diverse statutes under which rules have been adopted and the lack of any consistent numbering, filing, or format of the rules even within a single agency contributed to the difficulty of the task.

The process began with an initial attempt at the categorization of the rules into the fourteen subject areas delineated in the Act. Additional categories were added as it became apparent that they were necessary to encompass the scope of all the rules. Then the categories were refined into two dimensions — substantive and functional — to allow a more detailed classification of the rules. The resulting two-dimensional matrix was utilized for the final classification. Each set of rules was thus classified by its substantive area (such as, environment, labor, business regulation, or education) and by its functional type (such as, licensing, financing, planning, or regulating). The categories used in the matrix are as follows:

<u>Substantive</u>	<u>Functional</u>
1. Education and Cultural Resources	1. Administering
a. Cultural Resources	2. Enforcing
b. Elementary and Secondary Education	3. Financing
c. Higher Education	4. Informing
2. Financial Institutions	5. Permitting and Licensing
3. Governmental Management	6. Planning
a. Government Purchasing	7. Regulating
b. Records and Information	8. Servicing
c. Service Management	[See Section 1.5.04 of the Joint Committee's Operational Rules]
4. Human Resources	
a. Corrections	
b. Mental Health	
c. Public Health	
d. Welfare	
5. Industry and Labor	
a. Business Regulation	
b. Consumer Protection	
c. Labor Laws	
d. Regulation of Occupations	
6. Law Enforcement	
7. Natural Resources	
a. Energy	
b. Environment	
c. Wildlife Management	
8. Public Utilities	
9. Transportation	
[See Section 1.5.03 of the Joint Committee's Operational Rules]	

The report resulting from this classification effort was over 325 pages long and categorized each of the thousands of sets of agency rules into one of the 168 matrix cells. Although the functional categories have proven useful for the organization of the Joint Committee staff's review, it was viewed as too complex for use in the basic structuring of the program. A simpler classification has been developed for the main structure of the program utilizing only the substantive categories.

The Joint Committee considered the results of the classification in September 1979 and made additional refinements following input from agencies and the public. It is anticipated that further refinements and adjustments of the classification will be necessary throughout the five-year review, especially to accommodate the adoption of new rules by agencies.



The codification system being developed by the Secretary of State (see pages 127-130) should aid in the complex task of categorizing the rules into meaningful subject areas for the five-year review. The uniformity in numbering and format which the codification will require should also reduce some of the mechanical problems involved.

The third task necessary for the implementation of the program involved the development and adoption of rules for the conduct of the program. The Act mandates that these rules include the schedule of subject areas for the review. The other major aspect of these operational rules was the criteria to be utilized by the Committee in evaluating rules under the program.

The rules for the operation of the five-year review program (Rule Five of the Joint Committee's Operational Rules) were adopted by the Joint Committee in August 1979 and became effective on September 1, 1979. The rules as adopted appear in Appendix C (pages 356-365) in this report.

The criteria included in the rules were refined from the discussion in the background report. The eleven specific criteria which were included in the operational rules read as follows:

Section 1.5.13: In evaluating existing rules under the periodic review program outlined in this rule, the Joint Committee shall consider the following criteria:

1. Compliance of each rule with the statutory authority on which it is based.
2. Compliance of each rule with the legislative intent of the enactment on which it is based.
3. Compliance of each rule with constitutional requirements and other applicable law.
4. Compliance in the certification and filing of each rule with the requirements of the Administrative Procedure Act, other applicable laws, the agency's rulemaking procedure rules and the rules of the Office of the Secretary of State.
5. Necessity for the rules, including the existence of a demonstratable public need for any regulation embodied in the rules.
6. Accuracy and currency of the rules in relation to agency operations and programs.
7. Simplicity and clarity of the language of the rules.
8. Elimination of serious technical errors in the rules, including grammatical, spelling, and

- typographical errors, which affect the public's ability to understand the meaning of the rules.
9. Reduction of overlapping or conflicting rules, or overlapping or conflicting regulatory jurisdictions of agencies or units within an agency.
  10. Inclusion of adequate standards and procedural safeguards in the rules to guide agency discretion, provide protection from arbitrary action, and inform the public of the basis for agency actions.
  11. Adequate consideration by the agency of the economic impact of the rules.

The schedule included in the rules resulted from an effort to balance the workload of each of the years of the review and to provide time to concentrate on areas in which the Joint Committee believes this type of review would be most useful. The schedule is presented along with the years involved in Table Fourteen.

The adoption of the rules for the operation of the five-year review program by the Joint Committee completed the planning progress and allowed the Joint Committee to begin to implement the program.

### Operation

This Section will briefly outline the basic steps in the review process as it has been established to indicate how the program will operate. The operational rules in Appendix C (pages 356-365) should provide additional detail on the program's anticipated operation.

The first stage in the process is the collection of basic information from the agency about each rule being reviewed. This information should be maintained and updated by agencies on a regular basis, so providing it to the Joint Committee should not be difficult or burdensome. The specific kinds of information which are requested, as listed in Section 1.5.08 of the operational rules, are the following:

1. The specific statutory language which authorizes each rule or set of rules and the specific statutory language which each rule or set of rules is implementing or interpreting.
2. The relationship of each rule or set of rules to the agency's program and organizational structure.
3. An estimate of the approximate cost to the State for operation of the agency programs or functions related to each rule or set of rules and for enforcement or monitoring of compliance with the rule or set of rules.

TABLE FOURTEEN: SCHEDULE OF SUBJECT AREAS FOR  
FIVE-YEAR REVIEW PROGRAM

<u>First Year</u>	<u>1979-80</u>
Industry and Labor	
- Business Regulation	
- Consumer Protection	
- Labor Laws	
- Regulation of Occupations	
<u>Second Year</u>	<u>1980-81</u>
Natural Resources	
- Energy	
- Environment	
- Wildlife Management	
Public Utilities	
Transportation	
<u>Third Year</u>	<u>1981-82</u>
Governmental Management	
- Government Purchasing	
- Records and Information Management	
- Services Management	
Law Enforcement	
<u>Fourth Year</u>	<u>1982-83</u>
Human Resources	
- Corrections	
- Mental Health	
- Public Health	
- Welfare	
<u>Fifth Year</u>	<u>1983-84</u>
Education and Cultural Resources	
- Cultural Resources	
- Elementary and Secondary Education	
- Higher Education	
Financial Institutions	

Reference: Section 1.5.05 of the Joint Committee's operational rules  
(pages 357-359).

4. An estimate of the extent of compliance and non-compliance by the affected public with each rule or set of rules, and the number and extent of variances permitted by the agency to each rule or set of rules.
5. An estimate of the effect of each rule or set of rules on state revenues.
6. An estimate of the economic effect on members of the public directly regulated by each rule or set of rules.
7. Evidence of the existence of a public need for the regulation provided by each rule or set of rules, including evidence of any harm that would result to the public health, welfare or safety, if the rule or set of rules were repealed.

This information provides the basis for the Joint Committee's review and evaluation of the rules.

The second stage is the initial review of the rules by the Joint Committee staff. Questions and problems concerning each set of rules are raised by the staff and sent to the agency for its response. This stage also includes detailed discussions and conferences between the Joint Committee staff and agency representatives to answer questions which have been raised and to resolve any problems concerning the rules. The results of this staff review are presented in detail to the Joint Committee members.

The next stage of the review process involves public hearings to gain public input on the rules being reviewed. It is anticipated that the Joint Committee will usually appoint subcommittees of its members for the purpose of holding such public hearings. Although input from interested groups will be collected throughout the review process, this will be the major opportunity for public input.

The final stage of the review will be the consideration by the Joint Committee of the findings and recommendations resulting from the review. Agencies will be given an opportunity to respond to the recommendations in writing as well as orally at the Joint Committee hearing. The Joint Committee may issue statements of objection to specific rules, recommend legislation to the General Assembly, recommend administrative action or take other appropriate actions as the result of the review results and findings.

The Joint Committee began the first cycle of reviews under the five-year review program during the final months of 1979. The initial staff review will be completed on

the first subject area early in 1980 and consideration of the findings and recommendations by the Joint Committee members will begin at that time. The rules which are the subject of this first cycle of reviews are listed in in Table Fifteen.

This five-year review program will provide a unique opportunity to evaluate the rules of state agencies in a comprehensive and systematic manner. The careful and detailed planning conducted by the Joint Committee has resulted in an effective implementation of the program.

TABLE FIFTEEN: RULES BEING REVIEWED UNDER THE FIVE-YEAR  
REVIEW PROGRAM\*

DEPARTMENT OF AGRICULTURE

- Organizational structure and rulemaking procedures.
- Civil Administrative Code.
- Commercial Feed Act.
- Apple and Peach Marketing Program.
- Illinois Soybean Marketing Program.
- Insect, Pest and Plant Disease Act.
- Egg and Egg Products Act.
- Egg Marketing Program.
- Humane Slaughter of Livestock Act.
- Animal Welfare Act.
- Animal Control Act.
- Act in Relation to the Humane Care and Treatment of Animals.
- Diseased Animals Act.
- Horsemeat, Rules and Regulations.
- Swine Brucellosis Eradication Act.
- Act to Prevent Foul Brood Among Bees.
- Fertilizer Act of 1961.
- Act to Regulate the Sale and Distribution of Mixed Fertilizers and Fertilizer Materials.
- Refrigerated Warehouses.
- Salvage Warehouses and Salvage Warehouse Stores for Food, Alcoholic Liquors, Drugs, and Cosmetics.
- Loading Platforms for Collection Centers for Dead Animals, Poultry, Fish and Parts of Bodies Thereof.
- Illinois Horseracing Act of 1975.

ATTORNEY GENERAL

- Rules and regulations under the Consumer Fraud and Deceptive Business Practices Act.
- Franchise Disclosure Act.

ILLINOIS COMMERCE COMMISSION

- Commercial Relocation of Trespassing Vehicles Law.

DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

- Property Control Act rules.
- Requirements for funding grant-in-aid programs under Executive Order #3 (1976). Formerly under the Governor's Office of Manpower and Human Development.

DEPARTMENT OF CONSERVATION

- The Forest Products Transportation Act.
- Fish Code of Illinois.

GOVERNOR'S OFFICE OF CONSUMER SERVICES

- Program Guidelines for the Office of Consumer Services, Rules for public participation.
- Applying for financial and technical assistance from the Office of Consumer Services. Formerly under the Governor's Office of Manpower and Human Development.

#### ENVIRONMENTAL PROTECTION AGENCY

- An Act to Regulate the Operating of a Public Water Supply Certification and Operation of Environmental Laboratories.

#### FAIR EMPLOYMENT PRACTICES COMMISSION

- Fair Employment Practices Act: Internal rules.
- Rules and regulations concerning public contracts.
- Administrative Procedure Act: Internal rules.

#### INDUSTRIAL COMMISSION

- Rules of practice before the Commission on Workman's Compensation and Occupational Diseases Cases.
- Rules governing assignment to insurance carriers under An Act to Provide Insurance for Employees who Have Been Rejected by Carriers.

#### DEPARTMENT OF INSURANCE

- The Insurance Code, Rules and Regulations.

#### DEPARTMENT OF LABOR

- Regulations for the administration of the Unemployment Insurance Act.
- Regulations for conduct of hearings under the Unemployment Insurance Act.
- Rules and regulations of the Bureau of Employment Security.
- Private Employment Agency Act.
- Illinois Home Work Law.
- Minimum Wage Act.
- Act in Relation to the Payment of Wages to Non-governmental Employees.
- Rules and regulations under the Child Labor Law.
- Rules under An Act to Promote the Public Health and Comfort of Persons Employed by Providing for One Day Rest in Seven.
- Administrative Procedure Act rules.

#### LIQUOR CONTROL COMMISSION

- Organizational Structure and Rulemaking Procedures.
- Liquor Control Act.

#### DEPARTMENT OF MINES AND MINERALS

- An Act Regulating the Manufacture, Sale, Storage, Possession, Transportation, Use or Gift of Explosives.
- Coal Mining Act - Surface, Installation, Health and Safety.
- Coal Mining Act, Metal Mining Act - Safety Regulations.

#### DEPARTMENT OF PUBLIC HEALTH

- Plumbing License Law rules.
- Rules under the Plumbing Code.
- Act in Relation to Licensing of Dair Plant Operators.
- Structural Pest Control Law.
- Pesticide Control Law.
- Milk and Water Laboratory Approval Program.
- Certification and Operation of Environmental Laboratories.
- Illinois Food Drug and Cosmetic Act.
- Manufactured Housing and Mobile Home Safety Act.
- Water Well and Pump Installation Contractors License Act.
- Water Well and Pump Construction Code.

## ILLINOIS RACING BOARD

- Horse Racing Act of 1975.

## DEPARTMENT OF REGISTRATION AND EDUCATION

- Detection of Deception Examiner Act rules and regulations.
- Land Surveyors Act rules and regulations.
- Weather Modification Control Act rules and regulations.
- Horseshoeing Act rules and regulations.
- Funeral Directing and Embalming Act rules and regulations.
- Barber Act rules and regulations.
- Beauty Culture Act rules and regulations.
- Collection Agency Act rules and regulations.
- Detective Act rules and regulations.
- Veterinary Medicine and Surgery Practice Act rules and regulations.
- Rules and regulations concerning dental practice, dental hygienist and dental specialist.
- Medical Practice Act rules and regulations.
- Certified Shorthand Reporters Act rules and regulations.
- Land Sales Act rules and regulations.
- Real Estate Brokers and Salesmen Act rules and regulations.
- Architectural Act rules and regulations.
- Public Accounting Act rules and regulations.
- Professional Engineering Act rules and regulations.
- Structural Engineering Act rules and regulations.
- Civil Administrative Code rules and regulations.
- Rules and regulations under An Act in Relation to Meetings.

## DEPARTMENT OF REVENUE

- Municipal Retailers Occupation Tax Act rules and regulations.
- Retailers Occupation Tax Act rules and regulations.
- Municipal Use Tax Act rules and regulations.
- Municipal Leasing Occupation Tax Act rules and regulations.
- Municipal Services Occupation Tax Act rules and regulations.
- Services Occupation Tax Act rules and regulations.
- Bingo License and Tax Act rules and regulations.
- Act Relating to Alcoholic Liquors.
- Coin-Operated Amusement Device Tax Act.
- Cigarette Tax Act.
- Act for the Assessment and Taxation of Private Car Line Companies.
- County Service Occupation Tax Act.
- County Use Tax Act.
- County Leasing Occupation Tax Act.
- County Retailer's Occupation Tax Act.
- Gas Revenue Tax Act.
- Hotel Operator's Occupation Tax Act.
- Leasing Occupation Tax Act.
- Leasing Use Tax Act.
- Messages Tax Act.
- Use Tax Act.
- Tobacco Products Tax Act.
- Oil Inspection Act.



SECRETARY OF STATE

- Securities Act of 1933 rules and regulations.
- Business Take-Over Act Rules.

\* These rules have been classified in the areas of regulation of occupations, consumer protection, labor laws and business regulation.



## COMPLAINT REVIEWS

Identifying and resolving problems with state agency rules and regulations is one of the Joint Committee's main purposes. The complaint review procedure established by the Joint Committee should aid in the identification of rules which members of the public have experienced problems understanding or complying with. The procedure is not intended to be adversarial in nature, but to provide a forum for discussion and resolution of regulatory problems. Often the problems are resolved without formal action by the Joint Committee.

Since the initiation of the complaint review process in the fall of 1979, the Joint Committee has reviewed about 25 complaints concerning agencies rules. Not all the problems have been resolved in each case, but the Joint Committee staff has usually been able to resolve the major difficulties through written questions and conferences with the agency involved.

Only one complaint during 1979, which concerned the confidentiality of records of foster parents maintained by the Department of Children and Family Services, required a formal hearing by the Joint Committee members. Although the Joint Committee did not issue a statement of objection to the rule, the hearing provided an opportunity for a full discussion of the difficult issues involved.

The complaint review procedure was developed in connection with the comprehensive planning for the review of existing rules which was discussed in the section on the five-year review program (pages 95-97). The Background Report developed from the planning process recommended the establishment of this type of program. The recommendation read: "It is recommended that the Joint Committee develop a complaint review program to investigate complaints on existing rules and that after appropriate study and review, the Joint Committee object to rules found to be seriously deficient." The type of program recommended was discussed in detail on pages 105-111 of the Background Report.

The Background Report recommended that the general criteria which should be considered primary in this program are statutory authorization, basic reasonableness, and economic impact. The recommended criteria for secondary emphasis are relation to

agency operations, and conflicts or overlaps. The other criteria (proper form, streamlining, and technical errors) were recommended for least emphasis.

This recommendation was based on input from numerous participants in the planning project who viewed complaints as a potentially valuable means for identification of troublesome or problematic rules. Since the procedure is directly related to the effect of rules on the public, it allows the Joint Committee to identify and resolve salient regulatory problems. The experiences of other states, such as Minnesota, in conducting similar programs provided another basis for the implementation of this procedure.

Rules for the operation of this program were developed and adopted by the Joint Committee in August 1979. These rules are included in the Joint Committee's Operational Rules as Rule Six (see Appendix C, pages 366-369).

The most important section of the rules established the specific criteria for the Joint Committee's evaluation of rules which are the subject of a complaint. The criteria, which were based on the discussion in the Background Report, are:

1. Compliance of the rule or set of rules with the statutory authority on which it is based.
2. Compliance of the rule or set of rules with legislative intent.
3. Compliance with state and federal constitutional requirements and other law.
4. Reasonableness of the agency's rationale and justification for the rule or set of rules, particularly for any regulation of the public embodied in the rule or set of rules.
5. Conformity of agency rules to the actual practice and operations of the agency.
6. Inclusion of all relevant agency policies in the set of rules.
7. Clarity of the language of the rule or set of rules.
8. Clarity and completeness of the standards in the rules for the exercise of discretion by the agency.
9. Conformity to rulemaking requirements of the Administrative Procedure Act, including the proper publishing and filing of the rules.
10. Responsiveness of agencies to public comments and requests for rulemaking pursuant to Section 8 of the Administrative Procedure Act.
11. Reasonableness of the economic impacts of the rules and limitation of such impacts to the proper scope of the agency's authority under

the purpose and intent of the agency's authorizing statute.

The procedure for this review as outlined in the rules is relatively simple. Complaints received from the public are reviewed by the Joint Committee staff initially. The issues involved are discussed with the agency, members of the Joint Committee and the individuals or groups presenting the complaints. Informal staff-level conferences are often held in an effort to resolve the problems.

If significant problems are discovered during this preliminary staff review, the complaint will be brought before the full Joint Committee for a formal hearing. The staff may recommend that the Joint Committee issue a formal statement of objection to the rules involved.

At a full Joint Committee hearing on a complaint, the agency will be asked to justify their position and the problems will be discussed in detail by the Joint Committee members.

The results of complaint reviews by the Joint Committee staff which do not require a formal hearing are presented to the Joint Committee members in a written report for their consideration. This insures that the resolution of complaints is monitored by the members.

As the public becomes more aware of this function of the Joint Committee, it can be anticipated that more complaints will be received. This program of reviewing rules based on complaints should provide a valuable balance to the systematic, comprehensive review involved in the five-year review program.



## SPECIAL HJR16 PROJECT

### Overview

During the spring 1979 session of the legislature, House Joint Resolution 16 was passed creating a special joint subcommittee of the Joint Committee on Administrative Rules to investigate and report on the plans and policies of the state implementation of the Federal Clean Air Act amendments of 1977 and Section 208 of the Clean Water Act. Under both of these federal Acts, the state was being required to develop and submit to the United States Environmental Protection Agency plans to implement these programs.

The creation of the joint subcommittee was the result of legislative concern that there had been inadequate input from the legislature and that the plans would have a far-reaching effect, particularly on the economic growth of the state. Since the Joint Committee on Administrative Rules was already reviewing various portions of these plans which were being proposed as rules by the Illinois Environmental Protection Agency and the Pollution Control Board, it was considered appropriate to place this more comprehensive review under the Joint Committee.

The resolution creating the special joint subcommittee, House Joint Resolution 16, as it was passed by the General Assembly reads as follows:

WHEREAS, The United States Environmental Protection Agency is currently requiring the State of Illinois to develop standards, plans and policies to implement federal programs and standards under the Clean Air Act of 1977 and Section 208 of the Clean Water Act, which will have a significant impact on the industry and citizens of the State of Illinois; and

WHEREAS, The Illinois Environmental Protection Agency and other federally-designated agencies within the State are currently developing such standards, plans, and policies; and

WHEREAS, Such plans must be submitted by the Governor of Illinois to the United States Environmental Protection Agency; and

WHEREAS, A significant portion of the plans involve standards which will be presented to the Pollution Control Board for adoption as state rules, and may additionally commit the State to further legislative enactments; and

WHEREAS, The General Assembly is concerned that the public be fully informed and provided an opportunity to present their views on these plans, standards and policies; therefore, be it

RESOLVED, BY THE HOUSE OF REPRESENTATIVES OF THE EIGHTY-FIRST GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, THE SENATE CONCURRING HEREIN, that a special joint subcommittee of the Joint Committee on Administrative Rules be created to be composed of eight members of the House and Senate, two each appointed by the Speaker of the House, the Minority Leader of the House, the President of the Senate, and the Minority Leader of the Senate; and be it further

RESOLVED, That the special joint subcommittee review the proposed standards, plans and policies being developed for submission to the United States Environmental Protection Agency under the Clean Air Act of 1977 and Section 208 of the Clean Water Act; and be it further

RESOLVED, That the special joint subcommittee hold public hearings, examine relevant federal standards and programs, consider the economic impact on Illinois industry and citizens of proposed standards, plans and policies, and gather such other information and views as may be necessary; and be it further

RESOLVED, That the special joint subcommittee make recommendations before June 1, 1979, to the Illinois Environmental Protection Agency, the Governor and the Pollution Control Board concerning the implementation of such standards, plans and policies in Illinois and to the Joint Committee on Administrative Rules and the General Assembly concerning possible action in the review of rulemaking containing such standards, plans or policies and possible legislation.

The members appointed by the legislative leaders to this special joint subcommittee are listed in Table Fifteen. Representative J. Theodore Meyer, who was the sponsor of House Joint Resolution 16, was elected Chairman of the subcommittee at its first meeting in May 1979. Senator John L. Knuppel, Senate sponsor of the resolution, was elected Vice-Chairman.

### Hearings

The subcommittee held several hearings on the State Implementation Plan for Air Quality and on the Water Management Plan. Representatives from the Illinois Environ-



TABLE SIXTEEN

MEMBERS OF THE HOUSE JOINT RESOLUTION 16 SUBCOMMITTEE

Appointed by the Speaker of the House:

Representative Michael F. McClain

Representative Harry "Bus" Yourell

Appointed by the House Minority Leader:

Representative John W. Hallock, Jr.

Representative J. Theodore Meyer (Chairman)

Appointed by the President of the Senate:

Senator Vince Demuzio

Senator John L. Knuppel (Vice-Chairman)

Appointed by the Senate Minority Leader:

Senator Adeline J. Geo-Karis

Senator Robert W. Mitchler

mental Protection Agency and the Pollution Control Board presented background information on the development of the plans and responded to inquiries concerning specific provisions included in the plans. Numerous business representatives presented their viewpoints on the plans, pointing out some important areas where the plans will have serious effects. Representatives of federal agencies, state regional planning agencies, local governmental units, multi-state planning agencies, and other interested groups also testified.

The issues and questions explored by the subcommittee during these hearings are presented in the following outline:

#### I. Legal authority for adoption of the plans

Do any of the provisions of the plans, including proposed regulatory actions, exceed the authority of the state agency under state law?

To what extent can, are, or should these state agencies act as agents of the federal government in adopting these regulatory plans under federal authority?

What is the authority for and the legal effect of a state agency "promising" passage of new legislation as part of a plan submitted to the federal government?

To what extent does federal authority pre-empt state authority in relation to these plans?

#### II. Economic impact of the plans

Have the agencies involved accurately assessed the economic impact of the plans?

Have the agencies involved adequately considered the economic impact of the plans?

Has the cumulative economic effect of the plans been assessed and considered as well as the effect of individual regulations?

Have the differential economic effects on different economic groups, including industry, agriculture and consumers been assessed and considered?

#### III. Reasonableness and necessity of the plans

Do the plans impose any requirements which are impossible for the affected persons to comply with and are thus unreasonable?

Are each of the regulatory provisions of the plans directly related to some public need?

Would any adverse effects on public health, safety or welfare result from not imposing any of the provisions of the plans?

Have the agencies adequately considered whether voluntary rather than mandatory regulatory programs will achieve the public need?

Are regional differences in the plans necessitated by demonstrable demographic, economic or other differences between these areas?

#### IV. Procedural adequacy in adoption of the plans

Did the agencies involved adequately collect and consider public comments on the plans and all alternatives to the programs included in the plans?

Was the interaction between state and federal authorities proper during development of the plans?

Were relevant regional differences adequately assessed and considered during development of the plans?

What will be the extent of updating or revisions to the plans expected during the next several years and was the opportunity for such updating and revisions considered in proposing these initial plans?

The diversity of viewpoints presented on these issues in the subcommittee's hearings provided a basis for the subcommittee's considerations.

Although the purpose of the project was a broad overview of these plans and their relationship to regulatory activities, the subcommittee explored some specific issues and provisions of the plans in depth. Among the specific provisions which were examined in more detail in the Water Management Plan were (1) the soil erosion control program proposed for the Department of Agriculture, (2) the implementing role proposed for the Northeastern Illinois Planning Commission and (3) the relationship of the plan to federal funding of the Chicago area deep tunnel and reservoir project proposed by the Metropolitan Sanitary District. In the Air Quality Implementation Plan provisions which were focused on by the subcommittee included (1) the feasibility of the dust (fugitive particulate) control program regulating such industries as aggregate mining, (2) the accuracy of the projections of the economic impact of additional regulation of bulk petroleum terminals and facilities, (3) the requirement of offsetting emission reductions for permitting new air pollution sources, and (4) the growth allowance in permitting new air pollution sources. Other specific issues involving various aspects of the plans were also explored in some detail.

#### Report and Recommendations

The subcommittee is currently developing its report to the Joint Committee and the General Assembly. It is anticipated that legislative recommendations of the subcommittee will be introduced during the 1980 legislative sessions.

The activities of the subcommittee have also been useful in aiding in the Joint Committee's review of specific rules proposed by the Illinois Environmental Protection Agency and Pollution Control Board to implement the Air Quality Plan. Alternative Bills Thirteen (pages 283-287), Fourteen (pages 289-293), Fifteen (pages 295-298) and Sixteen (pages 299-302), which have resulted from these reviews, were aided by the subcommittee's activities.

It is expected that the subcommittee's final report and recommendations will be presented to the General Assembly by March 1980. Throughout its study, the subcommittee has made recommendations and suggestions to the Governor, the appropriate state agencies, the Joint Committee, and the General Assembly in accordance with the authorizing resolution.

## PROCEDURAL LEGISLATION

Based on its experiences in reviewing proposed rulemaking, the Joint Committee proposed several bills during 1978 and 1979 to improve the rulemaking process and to strengthen the Joint Committee's impact on rules. House Bills 1196 and 2226 were enacted during the 1979 legislation session and have resulted in some improvements in the proposed rulemaking review process. Senate Bill 419 was also enacted to clarify the fact that rules must include adequate standards for exercising discretionary powers of an agency.

Continuing its efforts to improve the rulemaking process, the Joint Committee is recommending several additional pieces of procedural legislation for consideration by the General Assembly during 1980. The provisions of Senate Bill 307 are being re-introduced in new legislation by the Joint Committee members and further consideration by the General Assembly of House Bill 1503 is also being urged.

Each of these legislative recommendations is discussed in some detail in this section. A summary of all the enacted amendments to the Administrative Procedure Act to date is also provided in this section.

### Proposed Rulemaking Process:

#### House Bills 1196 and 2226 and Senate Bill 419

Both House Bill 1196 and 2226, which were recommended by the Joint Committee, were enacted during 1979. Each of the bills makes a significant contribution to improving the proposed rulemaking process.

House Bill 2226 (Public Act 81-1044) was sponsored by Representative Harry "Bus" Yourell (D.-Oak Lawn), who served as Chairman of the Joint Committee from 1977 to 1979. The provisions included in this bill were largely an outgrowth of proposals made by the Joint Committee in amendments to House Bill 16 in 1978. The major change made by these provisions is the requirements of an additional 45-day notice period solely for review of the rulemaking by the Joint Committee. Some changes were also made by the

bill in peremptory and emergency rulemaking procedures. These changes are discussed in more detail in the section of this annual report on review of proposed rulemaking (pages 35-37).

The economic impact of rules is the focus of House Bill 1196 (Public Act 81-1035). It was sponsored by Representative Jim Reilly (R.-Jacksonville), currently Second Vice-Chairman of the Joint Committee. As introduced, the bill would have required each agency to consider the economic effects of each proposed rulemaking prior to its proposal. The bill also clarified the meaning of "economic impact" by adding three specific factors which should be considered: (1) direct effect on regulated persons, (2) effect on the agency's budget and the budgets, of other state agencies, and (3) effect on state revenues.

The major provision of the bill was revised and amended into House Bill 2226. This provision allows the Joint Committee to require a statement of the economic and budgetary effects from an agency on any proposed rulemaking.

One of the Joint Committee's major emphases in reviewing proposed rules has been insuring that agency rules contain clear standards for exercising discretionary powers. Senate Bill 419 (Public Act 81-1129) which was included in the Joint Committee's 1978 Annual Report as Recommended Bill One, was enacted to specify this legal requirement in statutory language.

Senate Bill 419 was sponsored by Senator Prescott E. Bloom (R.-Peoria), the current Chairman of the Joint Committee. The main provision of the bill reads:

Each rule which implements a discretionary power to be exercised by an agency shall include the standards by which the agency shall exercise the power. Such standards shall be stated as precisely and clearly as practicable under the conditions, to inform fully those persons affected.

This simple language should aid in insuring that agency's proposed rules inform the public about the basis on which an agency will exercise its discretionary powers.

Copies of House Bills 1196 and 2226 and Senate Bill 419 as enacted are included in Appendix B (pages 319-336).

#### Strengthening Proposals:

##### Senate Bill 307 and House Bill 1503

The Joint Committee during 1979, perceived the need to strengthen its authority in the review of proposed rulemaking. This perception was based on two difficulties the Joint Committee experienced.

In some situations involving rules with a broad public impact, agencies refused to modify the rulemaking in response to the Joint Committee's objections. The Department of Revenue's rules implementing the tax exemption for manufacturing equipment serves as an example of this situation. In such cases, recommending legislation and supporting it in the General Assembly is time-consuming and in the meantime the public is being forced to comply with rules which the Joint Committee believes are improper.

The second type of difficulty has arisen in situations in which remedial legislation simply is not appropriate. In some of these situations, the Joint Committee has passed resolutions urging action by the appropriation committees of the legislature or other officials. This has not been entirely satisfactory. The totally unnecessary rules of the Commerce Commission concerning "offshore" pipelines (see page 63 in the 1978 Annual Report) are a good example of this type of problem.

The Joint Committee staff prepared a paper which outlined various "alternatives for strengthening legislative review of administrative rules in Illinois." These alternatives were considered by the Joint Committee during the early months of 1979 and several proposals, including House Bill 1196 as well as Senate Bill 307 and House Bill 1503, were recommended to the General Assembly. A copy of the staff paper is presented in Appendix E (pages 389-396).

Although Senate Bill 307 and House Bill 1503 take quite different approaches, both are intended to increase the responsiveness of agencies to the Joint Committee's objections. Senate Bill 307 takes an indirect approach by removing the judicial

presumption of validity accorded administrative rules. It actually focuses on the harm done by improper agency rules to the public by making it easier for members of the public to overturn agency rules in a judicial challenge. House Bill 1503 takes the more direct approach to this issue by giving the Joint Committee a "veto" power over proposed and existing rules which are found to be seriously objectionable.

House Bill 1503, which is sponsored by Representative Harry "Bus" Yourell (D.-Oak Lawn) who served as Chairman of the Joint Committee from 1977 to 1979, is being actively considered by the General Assembly. This bill appears as Recommended Bill Two and is discussed in the section of this report which presents all the Joint Committee's recommended bills (see pages 159-168).

During the 1979 legislative session the General Assembly passed Senate Bill 307, which was sponsored by Senator Prescott E. Bloom (R.-Peoria), the current Chairman of the Joint Committee. The bill was vetoed by the Governor primarily on the belief that the bill violated the separation of powers between the legislative and executive branches. The Joint Committee recommended to the General Assembly that the veto be overridden because of the importance of the purpose of the bill. The veto was overridden in the Senate, but the motion to override did not receive the required three-fifths majority in the House.

The Joint Committee is recommending to the General Assembly that the provisions of Senate Bill 307 be considered again during 1980. Recommended Bill One (see pages 155-158) will be introduced by the Joint Committee to allow this reconsideration.

### Revisory Legislation

The Joint Committee has been developing some comprehensive revisory legislation to remedy some remaining difficulties with the definition of "state agency" in the Administrative Procedure Act (Section 3.01) and the applicability of the Act. This effort has involved an attempt to identify all the rulemaking authorizations in the statutes. This comprehensive revisory effort has not been completed at this time.

The Joint Committee is recommending one minor bill affecting the applicability of the Act. Recommended Bill Three (pages 169-170) would remove soil and water



conservation districts from coverage by the Act. A summary of the bill is on pages 150-151.

Summary of Amendments  
to the Administrative Procedure Act

Since the Administrative Procedure Act has been amended a number of times since its initial passage in 1975, it may be useful to summarize all these amendments. This should aid in reconstructing the Act at a given point in time, and also in understanding the evolution of the requirements included in the Act.

Table Sixteen presents a chronological list of the six bills or public acts which have affected the Administrative Procedure Act. The Table gives a very brief summary of the main provisions of each of the public acts as well as the passage, approval and effective dates.

The specific sections of the Act affected by each of the subsequent amendatory Acts are indicated in Table Seventeen. This table should be useful in examining any specific section of the Act.

TABLE SEVENTEEN: PUBLIC ACTS AFFECTING THE ILLINOIS ADMINISTRATIVE PROCEDURE ACT

<u>Public Act Number</u>	<u>Effective Date</u>	<u>Bill Number</u>	<u>Passage and Approval Date</u>	<u>Main Provisions</u>
79-1083	September 22, 1975	HB981	Passed: June 24, 1975	initial enactment
80-1035	September 27, 1977	HB14	Passed: June 29, 1977	Illinois Register; creation of Joint Committee; major revision
80-1457	January 1, 1979	HB15	Passed: June 28, 1978 Approved: September 19, 1978	minor changes in agency definition; codification system; Joint Committee quorum
81-1044	October 1, 1979	HB2226	Passed: June 29, 1979 Approved: September 24, 1979	second notice period for Joint Committee; peremptory rulemaking; reorganization of rulemaking provisions; economic effects
81-1035	January 1, 1980	HB1196	Passed: June 28, 1979 Approved: September 24, 1979	economic effects of rulemaking
81-1129	January 1, 1980	SB419	Passed: June 23, 1979 Amendatory Veto: September 14, 1979 Changes Passed:  Certified: November 26, 1979	standards for exercising discretion

TABLE EIGHTEEN: SPECIFIC SECTIONS OF THE ILLINOIS ADMINISTRATIVE PROCEDURE ACT  
AFFECTED BY PUBLIC ACTS

Public Act Number:	79-1083	80-1035	80-1457	81-1044	81-1035	81-112:
Bill Number:	HB981	HB14	HB15	HB2226	HB1196	SB419
Effective Date:	<u>9/22/75</u>	<u>9/27/77</u>	<u>1/1/79</u>	<u>10/1/79</u>	<u>1/1/80</u>	<u>1/1/80</u>

Sections of the  
Administrative  
Procedure 1  
Act 2

3	Added					
3.01	Added		Amended			
3.02	Added			Amended		
3.03	Added					
3.04	Added					
3.05	Added					
3.06	Added					
3.07	Added					
3.08	Added					
3.09	Added		Amended			
4	Added		Amended			
4.01			Added		Amended	
4.02						Added
5	Added		Amended		Amended	
5.01					Added	
5.02					Added	
5.03					Added	
6	Added		Amended		Amended	
6.01					Added	
7	Added		Amended		Amended	
7.01			Added			
7.02			Added		Amended	
7.03			Added			
7.04			Added		Amended	Amended
7.05			Added		Amended	
7.06			Added		Amended	
7.07			Added		Amended	
7.08			Added			Amended
7.09			Added			
7.10			Added			
8	Added					
9	Added					
10	Added					
11	Added					
12	Added					
13	Added					
14	Added		Amended			
15	Added		Amended			
16	Added		Amended			
17	Added					
18	Added					
19	Added		Repealed			
20	Added					
21	Added					



## CODIFICATION PROGRESS

One of the difficulties faced by members of the public in attempting to locate rules of Illinois State agencies which affect them is the lack of a uniform system of numbering and a uniform format of the rules. Many states have published comprehensive administrative codes which include all the rules of the state agencies in that state. The federal government publishes the Code of Federal Regulations, which contains all the rules of federal agencies, although the Federal Administrative Procedure Act defines "rule" more narrowly than the the Illinois Administrative Procedure Act.

The provisions of the Illinois Administrative Procedure Act require each state agency to publish a compilation of its rules by October 1, 1980. These compilations should increase public access to agency rules, but the problems of lack of uniformity in format and numbering and the lack of comprehensive indexing across the rules of all state agencies will still exist.

To move in the direction of uniformity and increased public access to rules, a provision was added to the Administrative Procedure Act in 1978 (Public Act 80-1457), which requires the Secretary of State to develop a uniform codification system. This provision in Section 7 of the Act reads:

(c) The Secretary of State shall, by rule, prescribe a uniform system for 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.  
[Ill.Rev.Stat.1977,ch.127,par.1007(c)]

The three provisions of this subsection concern (1) development and adoption of the codification system by the Secretary of State, (2) compliance of all rules with the codification system, and (3) approval of the codification system by the Joint Committee.

The Joint Committee has worked closely with the Secretary of State in the development of an effective and workable codification system. In the fall of 1979, the Secretary of State established a task force of staff members from various divisions of his office, along with staff members from the Joint Committee and the Legislative Information System. The task force was assigned the job of developing an initial outline of the codification system. A list of the members of the task force is presented in Table Nineteen on the next page.

The codification task force has had numerous meetings since its formation. It has met with law librarians, computer technologists, legal publishers, and other interested groups to gain a broad perspective on the tasks which would be involved if the General Assembly determines that computerization of the rules and publication of an Illinois Administrative Code are useful continuations of the codification project. The task force has also considered legislative changes to implement such computerization and publication of the codified rules. Making sure that the codification scheme is compatible with such possible developments has been a concern of the task force.

The primary work of the task force, however, has focused on the actual detailed specification of a codification scheme which can organize intelligibly all the administrative rules of all the Illinois state agencies. A system utilizing broad subject areas as the basic unit of organization is the direction in which the task force is moving. The classification of all state agency rules into substantive and functional categories completed by the Joint Committee as the basis of the five-year review program has been a valuable resource for the codification task force.

A test sample computerization of several segments of the codification is also underway. This test will ensure the compatibility of the codification scheme with the computer equipment and programs operated by the Legislative Information System. The task force participants from the Legislative Information System are conducting this phase of the project.

It is anticipated that the final codification scheme recommended by the task force will be published as a proposed rule by the Secretary of State in March or April, 1980.

TABLE NINETEEN: AD HOC RULE CODIFICATION TASK FORCE PARTICIPANTS

**Secretary of State**

Central Office

Herman Bodewes

Index Department

Donald Ed

John Hofferkamp

Rules Division

T.C. Christian

Data Processing Department

Roy Reynolds

State Library

Mary Redmond

Ellen Holyroyd

**Legislative Information System**

Walter J. Kesselman

Allan Burgard

George Russell

**Joint Committee on Administrative Rules**

Bruce A. Johnson

Kenneth E. Mitchell

This will allow time for input from the public and state agencies as well as for approval by the Joint Committee.

This project should result in greater accessibility of rules to the affected public as well as contributing eventually to the efficiency of the rulemaking process itself.



## COURT DECISIONS AND ATTORNEY GENERAL OPINIONS

Since the Joint Committee's function is closely related to the interpretation of the Illinois Administrative Procedure Act, the Joint Committee monitors and reports on court decisions and Attorney General opinions which affect the interpretation of the Act. One of the enumerated responsibilities of the Joint Committee under the Act is "to study the impact of legislative changes, court rulings and administrative action on agency rules and rulemaking" [Section 7.05(3)]. The Public Act review discussed on pages 89-92 is another aspect of this monitoring function.

This monitoring function in relation to judicial rulings is especially useful in relation to the scope of the applicability of the Act. The decisions and opinions discussed in this section relate to the scope of definitions of "rule" and "agency" in the Act as well as the issue of the scope of rulemaking authority granted under other statutes. These are important issues to agencies and to the Joint Committee.

Although several court decisions in Illinois in 1979 have cited various provisions of the Illinois Administrative Procedure Act, only one circuit court decision merits discussion here. In Stephen v. Quern, No. 78L975 (6th Cir. Ill. 1979), the plaintiff was a recipient of public aid. The Department of Public Aid issued a directive to its employees which stated a new formula for determining a recipient's income. A recalculation of the plaintiff's income based on this new formula led to a reduction in her Public Aid grant. The plaintiff challenged the use of this new formula because it had not been published as a rule pursuant to the requirements of the Illinois Administrative Procedure Act. The court ruled in favor of the plaintiff and held that the formula was invalid because it had not been adopted in accordance with the procedures in the Act.

The Department argued that the formula was not a rule because it was not of general applicability and did not implement, apply, interpret or prescribe policy. This argument involved the basic definition of rule in Section 3.09 of the Act. However, counsel for the Department admitted the formula applied statewide. It was also clear on its face that the formula involved policy. This argument was not seriously considered by the court.

The defendants also raised the issue that this formula was a statement that concerned only internal management of the agency and did not affect private rights of persons outside the agency and was thus exempt from the rulemaking procedure under Section 3.09(a) or Section 5(c) of the Act. By its terms, this statement of policy was addressed only to agency employees and directed to employees on how to do their job. However, that was not its only effect. Besides controlling how the employees performed their task of determining an applicant's income, this rule also affected the amount an applicant could receive as a grant from the agency. It clearly had a direct effect on the private rights of an individual and the court so held.

This case simply applies the Act in a proper manner. It is a clear statement by a court that statements that deal with both internal management and an individual's rights are subject to the notice and publication requirements prescribed in the Act. Thus, the limited exception in Section 3.09 of the Act which excludes from notice and publication requirements those statements which affect only the internal management of an agency is maintained. Any other interpretation of this Section would have created a gaping hole in the Act and allowed agencies to promulgate large bodies of rules affecting private rights without following the rulemaking procedure. The order in this case is presented in Appendix G (pages 409-411).

The Attorney General has issued several opinions in the past year dealing with administrative rulemaking. Two in particular affected the work of the Joint Committee. One of these opinions was requested by the Joint Committee. The Attorney General was asked whether, in his opinion, the Northeastern Illinois Planning Commission was subject to the requirements of the Illinois Administrative Procedure Act. The Attorney General concluded in opinion S-1434 that the Act did not apply to this Planning Commission.

The conclusion reached by the Attorney General was based primarily on an earlier opinion that office had issued in 1974 which had concluded that the Planning Commission was not subject to the executive authority of the Governor. However, the fact that a commission is not a state agency subject to the control of the executive branch does not necessarily support the conclusion that the commission is not subject to the provisions of the Illinois Administrative Procedure Act.

Section 3.01 of the Act, which was amended by PA 81-1457 during 1979, defines agencies. It states:

Section 3.01 AGENCY. "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 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 authorized by law to make rules or to determine contested cases.

The Attorney General emphasized the language, "each administrative unit or corporate outgrowth of the state government which is created by or pursuant to statute...." The opinion concluded that since it was not subject to the authority of the Governor and was not considered part of state government, the planning commission was not an agency.

This conclusion ignores the language in the Act which includes in the definition of agency "each officer, department, board, commission, agency, institution, authority, university, body politic and corporate of the State...." The Northeastern Planning Commission was created by the Northeastern Illinois Planning Act, Ill. Rev. Stat. 1977, ch. 85, par. 1001 et seq., as amended. Section 2 of the Act, Ill. Rev. Stat. 1977, ch. 85, par. 1102, states, in part, "It is necessary to create an agency authorized to develop and adopt such comprehensive plan...." Section 4 of that Act, Ill. Rev. Stat. 1977, ch. 85, par. 1104, states:

There is created a body politic and corporate by the name and style of Northeastern Illinois Planning Commission to exercise the powers and duties prescribed by this Act for such Commission.

While arguably this body is not a corporate outgrowth of State government, by the terms of the Act which created it, it is an agency whose sole purpose is to carry out activities for the benefit of the State. It is authorized to adopt rules and regulations, and the Attorney General's opinion recognized that none of the other exceptions to the Illinois Administrative Procedure Act applied to this planning commission. It would appear that a more correct interpretation of the Act would be that its provisions do apply to the Northeastern Illinois Planning Commission and similar planning commissions established by the legislature.

Another Attorney General opinion (S-1409) was issued in response to a request by the Environmental Protection Agency after the Joint Committee objected to the agency's adoption of technical policy statements concerning public water supplies as rules. The basis for the objection was that only the Pollution Control Board and not the agency had the authority to adopt these technical policy statements.

This controversy is based on the interpretation of certain provisions of the Environmental Protection Act (Ill. Rev. Stat. 1977, ch. 111 1/2, par. 1001 et. seq.). The Pollution Control Board may adopt regulations governing the location, design, construction, and continuous operation and maintenance of public water supply installations, charges or additions which may effect the continuous sanitary quality, mineral quality or adequacy of the public water supply, pursuant to Title VII of this Act. Section 15 of the Act requires owners of public water systems to apply to the agency for permits and Section 16 vests in the agency the authority to approve these permits if the agency determines that the systems are satisfactory. Section 4(g) of the Environmental Protection Act vests in the agency the duty to administer permit and certification systems. Section 4(j) provides that the agency may make recommendations to the board for the adoption of regulations under Title VII of the Act. Title VII establishes the procedures the Pollution Control Board should use to adopt substantive regulations.

The Pollution Control Board adopted Rule 212A which states:

The Agency may adopt criteria, published in the form of Technical Policy Statements, for the design, operation, and maintenance of public water supply facilities as necessary to insure safe, adequate, and clean water. These criteria shall be revised from time to time to reflect current engineering judgment and advances in the state of the art.

The Joint Committee interpreted these sections of the Act to mean that the agency was without statutory authority to adopt the substantive requirements included in these technical statements as rules but could only recommend their adoption to the board. The Joint Committee further contended that the Rule 212A of the Pollution Control Board was an attempt to redelegate its authority to a separate agency and, therefore, Rule 212A is invalid.

The Attorney General, on the other hand, interprets these sections of the Act to vest in the agency authority to adopt rules to administer the permit system, including these technical policy statements. Based on this interpretation of the Act, Rule 212A is not a redelegation of authority, but is a directive to the agency to carry out its statutory authority to establish technical policy statements concerning public water supplies. The relationship between the board's and the agency's rulemaking authority under the Act is unclear in this interpretation.

Both of the Attorney General opinions discussed here are included in Appendix F (pages 397-408).



## RESULTS OF 1978 LEGISLATIVE RECOMMENDATIONS

Based on proposed rulemaking reviews during 1978, the Joint Committee introduced 21 bills during the 1979 legislative session to address specific substantive problems. Each of these recommended pieces of legislation were included in the Joint Committee's 1978 Annual Report. The Joint Committee also introduced during the 1979 legislative session five bills to amend the Administrative Procedure Act to improve the rulemaking process and strengthen the effectiveness of the Joint Committee's review.

This section is intended to present the results of these legislative recommendations, which were acted on by the General Assembly during 1979. Table Twenty (page 138) presents a statistical summary of action by the General Assembly and the Governor on these recommended bills. The percentages presented in the table indicate a high rate of success for Joint Committee supported legislation.

Tables Twenty-One (pages 139-144) and Twenty-Two (pages 145-147) present the results on the individual bills in some detail. Table Twenty-One concerns the recommended substantive bills, while Table Twenty-Two deals with the recommended amendments to the Administrative Procedure Act. The summaries indicate the basic content of each of the bills as related to the Joint Committee's concerns, but amendments during the legislative process may have altered the content of the legislation. Particularly significant amendments are indicated in the comments.

TABLE TWENTY: STATISTICAL SUMMARY OF RESULTS OF 1978 LEGISLATIVE RECOMMENDATIONS

	Number of Recommended Bills Included in 1978 Annual Report	Number of Bills Introduced	Number Passed by General Assembly in 1979	Percent Passed by the General Assembly	Number of Recommended Bills or Acceptable Alternatives Becoming Law	Percent of Recommended Bills or Acceptable Alternatives Enacted
Substantive Bills	21	21	13	62%	14	67%
Amendments to the Administrative Procedure Act	1	5	4	80%	3	60%
Total	22	26	17	65%	17	65%



TABLE TWENTY-ONE: RESULTS OF INDIVIDUAL RECOMMENDED SUBSTANTIVE BILLS

<u>1978 Annual Report</u> <u>Legislative</u> <u>Recommendations:</u> <u>Recommended</u> <u>Bill Number and</u> <u>Pages</u>	<u>Summary</u>	<u>Final 1979 Status</u> <u>and Comments</u>
Two (93-97)	Senate Bill 423 (Senator Bloom)  Amends an Act relating to diseased animals by transferring the authority to prohibit the importation of diseased animals from the Governor to the Director of the Dept. of Agriculture.	Failed in the Senate Agriculture Committee House Bill 1085 was enacted as Public Act 81-196 and is an acceptable alternative to the recommended bill.
Three (99-102)	Senate Bill 482 (Senator Regner; Representative Reilly)  Amends an Act relating to the Dept. 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.	Amended. Signed into Law on August 13, 1979. Public Act 81-173.
Four (103-108)	House Bill 1186 (Representatives Yourell and Flinn; Senator Martin)  Amends the Game Code of 1971. Creates a deer hunting permit fee for non-residents of at least \$100.	Signed into law on September 4, 1979. Public Act 81-387
Five (109-113)	House Bill 1197 (Representative Reilly; Senator Bloom)  Amends the Pension Code. Requires the Director of Insurance to develop criteria to use in determining whether to assess	Signed into law on September 16, 1979. Public Act 81-691

1978 Annual Report  
Legislative  
Recommendations:  
Bill Number and  
Pages

Bill Number  
And Sponsors  
as Introduced

Final 1979 Status  
and Comments

Summary

a penalty for non-compliance with a pension law and criteria to determine the amount of such a penalty.

Six  
(115-122)

House Bill 1198 (Representative Reilly; Senator Bloom)

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.

Signed into law on September 14, 1979.  
Public Act 81-657

Seven  
(123-126)

Senate Bill 481 (Senator Regner; Representative Reilly)

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 Dept. of Law Enforcement. Allows the Dept. to release information to other agencies when required by another State statute.

Signed into law on August 28, 1979.  
Public Act 81-293

1978 Annual Report  
Legislative  
Recommendations:  
Bill Number and  
Pages

Bill Number  
And Sponsors  
as Introduced

Summary

Final 1979 Status  
and Comments

Eight  
(127-134)

Senate Bill 418 (Senator  
Martin; Representative  
Reilly)

Amends the Public Aid Code. Adds provisions specifying the criteria on which the Dept. 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."

Amended. Signed into law on September 14, 1979. Public Act 81-1058.

Nine  
(135-140)

House Bill 1199 (Representative  
Reilly)

Amend 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.

Tabled due to House floor action deadline.

Ten  
(141-145)

Senate Bill 422 (Senator  
Bloom; Representative  
Yourell)

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

Signed into law on August 30, 1979. Public Act 81-321.

Eleven  
(147-150)

Senate Bill 421 (Senator  
Bloom; Representative  
Yourell)

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

Vetoed on September 14, 1979. House Bill 1966 was enacted as Public Act 81-1041 and is an acceptable

<u>1978 Annual Report</u>	<u>Legislative</u>	<u>Final 1979 Status</u>
<u>Recommendations:</u>	<u>Bill Number</u>	<u>and Comments</u>
<u>Bill Number and</u>	<u>And Sponsors</u>	
<u>Pages</u>	<u>as Introduced</u>	
Twelve (151-158)	House Bill 1200 (Representative Reilly)	alternative to the recommended bill.
Thirteen (159-163)	House Bill 1187 (Representative Yourell and Flinn; Senator Jeremiah Joyce)	Placed on the Interim Study Calendar of the House Human Resources Committee. Some of the Joint Committee's concerns were addressed in House Bill 893 which was enacted as Public Act 81-149.
Fourteen (167-177)	Senate Bill 479 (Senator Regner; Representative Reilly)	Substantially amended. Signed into law on September 21, 1979. Public Act 81-864.
		Signed into law on September 14, 1979. Public Act 81-606.

Summary

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.

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.

Amends the Bingo License and Tax Act. Requires the Dept. 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.

Amends the Retailers' Occupation Tax Act. Allows the Dept. of Revenue to collect the tax daily at the Illinois State Fair, art shows, flea markets and other similar events when the Dept. finds that there is a signifi-

1978 Annual Report  
Legislative  
Recommendations:  
Bill Number and  
Pages

Bill Number  
And Sponsors  
as Introduced

Summary

Final 1979 Status  
and Comments

Fifteen  
(179-182)

House Bill 1190 (Representative Yourell; Senator Nash)

cant risk of loss of revenue to the State because of a large number of out-of-state retailers or other reasons.

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).

Failed on Senate floor. Recommitted to Senate Revenue Committee.

Sixteen  
(183-186)

Senate Bill 480 (Senator Regner)

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

Failed in Senate Transportation Committee.

Seventeen  
(187-191)

House Bill 1189 (Representative Yourell)

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."

Incorporated into House Bill 420 which was signed as Public Act 81-166 and does remedy this problem.

Eighteen  
(193-197)

House Bill 1201 (Representative Reilly; Senator Regner)

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.

Failed in Senate Executive Committee

Nineteen  
(199-202)

House Bill 1188 (Representative Yourell; Senator

Allows the State Board of Education to establish by rule a system of equitable

Failed in Senate Elementary and

1978 Annual Report  
Legislative  
Recommendations:  
Bill Number and  
Pages

Bill Number  
And Sponsors  
as Introduced

Final 1979 Status  
and Comments

Summary

Twenty (203-206)	Berman)  Senate Bill 416 (Senator Martin; Representative Reilly)	distribution of textbooks when funds are insufficient to all applicants. Also, makes non-substantive changes.	Secondary Committee
Twenty-One (207-212)	Senate Bill 417 (Senator Martin, Representative Reilly)	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 trans- portation providers based on evidence of non- compliance with this requirement.	Substantially amended Signed into law on September 7, 1979. Public Act 81-472.
Twenty-Two (213-216)	Senate Bill 420 (Senator Bloom; Representative Yourell)	Amends the Election Code. Requires notice of the primaries to be published as required for general elections.	signed into law on September 7, 1979. Public Act 81-446.
		Amends an Act in relation to vocational rehabilitation of disabled persons. Pro- vides the Board of Vocational Rehabilita- tion with express authority to adopt rules necessary to accomplish the purposes of the Act.	Vetoed on August 30, 1979. Houe Bill 2380 enacted as Public Act 81-35 resolves some but not all, of the problems involved.

TABLE TWENTY-TWO: RESULTS OF INDIVIDUAL RECOMMENDED AMENDMENTS TO THE ADMINISTRATIVE PROCEDURE ACT

<u>Reference</u>	<u>Bill Number and Sponsors as Introduced</u>	<u>Summary</u>	<u>Final 1979 Status and Comments</u>
Recommended Bill Number One (1978 Annual Report, pages 87-89)	Senate Bill 419 (Senator Bloom; Representative Yourell)	Amends the Illinois Administrative Procedure Act. Requires administrative agencies to include as part of their rules the standards governing the exercise of agency discretion.	Governor's recommended change accepted. Public Act 81-
1978 Annual Report discussion on pages 75-76.	House Bill 2226 (Representative Yourell; Senator Regner.	Amends the Illinois Administrative Procedure Act. Establishes separate procedures relating to general rulemaking, emergency rulemaking, and preemptory rulemaking. Provides that the Joint Committee on Administrative Rules may request rulemaking of an agency; and requires publication in the Illinois Register of (1) notice by the Joint Committee to an agency that such Committee's objections to rules have not been remedied, and (2) notice by an agency of its refusal to remedy such Committee's objections. Requires notice of emergency rulemaking to include the text of the rule. Makes other changes. Effective October 1, 1979.	Signed into law on September 24, 1979. Public Act 81-1044.

Bill Number  
and Sponsors  
as Introduced

Reference

Summary

Final 1979 Status  
and Comments

Alternative 1 *	House Bill 1196 (Representative Reilly; Senator Martin)	Amends the Administrative Procedure Act. Requires all agencies contemplating adopting, amending or repealing a rule to determine and consider certain economic effects of such actions. Grants authority to the Joint Committee on Administrative Rules to obtain a report of such economic effects in evaluating an agency's rules.	Signed into law on September 24, 1979. Public Act 81-1035.
Alternative 2 *	Senate Bill 307 (Senator Bloom; Representative Yourell)	Amends the Illinois Administrative Procedure Act to provide that the burden of proof is on an administrative agency where judicial review involves a rule objected to by the Joint Committee on Administrative Rules.	Vetoed on September 12, 1979. Attempt to override failed in House.
Alternatives 5, 7 and 8 *	House Bill 1503 (Representative Yourell)	Amends the Administrative Procedure Act. Establishes a veto power for the Administrative Rules Joint Committee as an alternative to the existing power to issue a statement of objections. The veto power requires a finding by the Committee that the rule constitutes a serious threat to the public interest, safety or welfare. The veto may be issued either before the rule is adopted or a rule may have its effectiveness suspended within 60 days after it becomes effective. Under this provision, the Joint Committee may also suspend the effectiveness of emergency or federal or court ordered rules. Provides	Placed on the spring calendar in the House for consideration in 1980.



Bill Number  
and Sponsors  
as Introduced

Final 1979 Status  
and Comments

Summary

Reference

for the overturning of the Committee's action by passage of a joint resolution by the General Assembly. Allows the Committee to require rulemaking where an agency has developed a written or unwritten policy and such policy is of serious public concern.

- \* Refers to JCAR Staff Paper: Alternatives for Strengthening Legislative Review of Administrative Rules in Illinois (Appendix E). See also discussion on pages 121-122.



## LEGISLATIVE RECOMMENDATIONS

The Joint Committee is recommending nine bills for the consideration of the General Assembly during 1980, as a result of its activities during 1979. Sixteen additional alternative bills are included in the next section of this report. The Joint Committee is required to include these specific legislative recommendations in its annual report to the General Assembly. Section 7.10 of the Administrative Procedure Act states that the Joint Committee's annual report to the General Assembly shall consist of "findings, conclusions and recommendations including suggested legislation." The presentation of recommended legislation in this section fulfills this requirement.

Each of the recommended bills is discussed in this section. The recommended procedural bills, most of which amend the Administrative Procedure Act, are discussed first. Then each of the recommended substantive bills resulting from the review of specific rulemakings is discussed. Three procedural bills and six substantive bills are being recommended.

Copies of each of the recommended bills follow the discussion.

### Procedural Bills

#### **Recommended Bill One (pages 155-158)**

Background: During 1978, the Joint Committee became concerned about the lack of responsiveness of agencies to the objections issued by the Committee. An increased number of agencies were refusing to withdraw or modify proposed rulemakings in response to objections issued by the Joint Committee. During 1979, the Joint Committee introduced Senate Bill 307 sponsored by Senator Prescott E. Bloom to increase agency responsiveness. The bill would have reversed the burden of proof in any judicial challenge involving an agency rule found objectionable by the Joint Committee. The threat to an agency of being unable to support such rules in a court and having them overturned would increase the agency's willingness to change rules to comply with the Joint Committee's objections.

The bill received favorable action by the General Assembly, but was vetoed by the Governor. The General Assembly failed to override the veto. The Joint Committee is recommending further consideration of this bill (see pages 121-122). Recommended Bill One is identical to Senate Bill 307.

Summary: Amends the Illinois Administrative Procedure Act to provide that the burden of proof is on an administrative agency where judicial review involves a rule objected to by the Joint Committee on Administrative Rules.

**Recommended Bill Two (pages 159-168)**

Background: Like Recommended Bill One, this bill was developed as a result of the growing concern by the Joint Committee members that agencies were not being responsive to the current advisory objections issued by the Joint Committee. During 1979, following the recommendation of the Joint Committee, House Bill 1503 was introduced by Representative Harry "Bus" Yourell. Recommended Bill Two is identical to House Bill 1503. It provides for a very strong mechanism to control administrative rulemaking. Under this proposal, the Joint Committee would have veto authority over proposed rules subject to being overturned by the General Assembly. The Joint Committee recommends serious consideration of this bill by the General Assembly during 1980.

Summary: Amends the Administrative Procedure Act. Establishes a veto power for the Administrative Rules Joint Committee as an alternative to the existing power to issue a statement of objections. The veto power requires a finding by the Committee that the rule constitutes a serious threat to the public interest, safety or welfare. The veto may be issued either before the rule is adopted or a rule may have its effectiveness suspended within 60 days after it becomes effective. Under this provision, the Joint Committee may also suspend the effectiveness of emergency or federal or court ordered rules. Provides for the overturning of the Committee's action by passage of a joint resolution by the General Assembly. Allows the Committee to require rulemaking where an agency has developed a written or unwritten policy and such policy is of serious public concern.

**Recommended Bill Three (pages 169-170)**

Background: In 1977, an amendment to the Soil and Water Conservation Districts Act made the Administrative Procedure Act applicable to the rules adopted under the Act by the Department of Agriculture and the soil and water conservation districts. This amendment was one of numerous amendments passed in 1977, making the Administrative

Procedure Act applicable to numerous agencies and programs.

The inclusion of the soil and water conservation districts, however, seems inadvisable because of their nature as units of local government. The Administrative Procedure Act excludes units of local government from coverage by the definition of "agency" in Section 3.01. This recommended legislation is intended to resolve this discrepancy by removing the districts from coverage.

**Summary:** Amends the Soil and Water Conservation Districts Act to exclude rules adopted by the districts from coverage by the Administrative Procedure Act.

### Substantive Bills

#### **Recommended Bill Four** (pages 171-173)

**Agency:** Department of Agriculture

**Rulemaking:** Regulation V - Indemnity - Pursuant to the Illinois Bovine Brucellosis Eradication Act (for Joint Committee objection, see pages 41-42)

**Background:** The Department of Agriculture proposed rules in June 1979, which concerned indemnity pursuant to the Illinois Bovine Brucellosis Eradication Act. This program involves payments to owners of animals which are destroyed in an attempt to eradicate bovine brucellosis. The Joint Committee objected to two provisions in the rules which technically violated the Act by allowing payment for non-infected animals. Although the reasoning for the necessity of destroying certain nursing female calves and whole herds in some situations is compelling, the statute only provides for payment "to the owner of each infected animal." This recommended legislation is intended to correct this technical conflict.

**Summary:** Amends the Illinois Bovine Brucellosis Eradication Act. Alters the indemnification provision to include payment by the State for all dairy or breeding cattle whether infected or not, that are ordered destroyed by the Department of Agriculture.

#### **Recommended Bill Five** (pages 175-176)

**Agency:** Department of Conservation

**Rulemaking:** Articles Concerning Hunting and Blind Drawings at Various State Parks and Other Areas Managed by the Department (for Joint Committee objections, see pages 43-46)

**Background:** Since May 1979, the Joint Committee has objected to two provisions which have been included in numerous proposed rules by the Department of Conservation. The Department has consistently refused to modify the provisions. Both provisions concern age limits: The first provision concerns an age limit of 16 on hunting without being accompanied by an adult, while the other provision concerns an age limit of 16 for eligibility for drawings for blind sites. The Joint Committee believes that neither of these provisions are authorized by statute. This legislation will specify in the statute the age limitations which may be imposed by the Department.

**Summary:** Amends the Wildlife Code to provide that properly licensed hunters under 16 years of age shall be accorded the same hunting privileges as hunters of any other age and that the Department of Conservation may limit eligibility for drawing blind sites to one hunter per family.

**Recommended Bill Six** (pages 177-181)

**Agency:** Department of Financial Institutions

**Rulemaking:** Currency Exchange Division Rules (for Joint Committee objection, see page 48)

**Background:** The Joint Committee objected in April 1979, to rules proposed by the Department of Financial Institutions to regulate currency exchanges under the Illinois Currency Exchange Act. The objectionable provision concerns a limit on the amount of money orders issued by a currency exchange. The Department was changing the limit from \$500 to \$750. The Joint Committee believes that the Department lacks the statutory authority to set such a limit. This bill would remedy this situation by providing the necessary authorization.

**Summary:** Amends the Currency Exchange Act in regard to the rulemaking procedures of the Director of Financial Institutions and permits the Director to establish money order limits.

**Recommended Bill Seven** (pages 183-185)

**Agency:** Department of Financial Institutions

**Rulemaking:** Division of Financial Planning and Management Services (for Joint Committee objection, see pages 48-49)

**Background:** In March, 1979, the Department of Financial Institutions published new proposed rules to implement the Illinois Financial Planning Management Service Act. The Joint Committee objected to these rules in April for four reasons. The agency modified the rules to meet three of the points, but refused to modify the rule to remedy the fourth point. This remaining point concerns the ability of the Director to suspend as well as revoke licenses under the Act.

Under the Act, the Director has the authority to deny applications for licenses (Section 9) and is also given discretion to seek injunctions against unlicensed persons performing financial planning and management services (Section 17). The revocation provision (Section 10), however, is stated in mandatory language - upon certain findings, the Director shall revoke the license. Consistent with this context, the additional suspension power should be carefully limited to avoid delegating unnecessary discretion to the Director.

**Summary:** Amends the Financial Planning and Management Service Act. Gives authority to Director of Financial Institutions to suspend as well as revoke licenses upon certain findings of noncompliance with the statutory requirements.

#### **Recommended Bill Eight** (pages 187-191)

**Agency:** Department of Labor

**Rulemaking:** Rules relating to the administration and enforcement of the Illinois Child Labor Law (for Joint Committee objection, see page 50)

**Background:** The Joint Committee in reviewing the Department of Labor's proposed rules on the administration and enforcement of the Child Labor Law noted several apparant internal conflicts in the Act. Although the Department modified the rules in response to the Joint Committee's objections, legislation is being recommended to clarify the Act. The major problem concerns conflicts between Section 1 and Section 7 and 9 of the Act, which make the Act difficult to administer.

**Summary:** Amends the Child Labor Law by substituting for the enumerated list of prohibited occupations for minors a general prohibition against the employment of minors, under 16 years of age, in any gainful occupation without the employer first obtaining an employment certificate for the minor. Retains the enumerated exceptions to the prohibition. Subjects the Department of Labor's rulemaking power and hearings procedures to the provisions of the Illinois Administrative Procedure Act.

**Recommended Bill Nine** (pages 193-195)

Agency: Pollution Control Board

Rulemaking: Rules 401 and 405 of Chapter 1: Procedural Rules (for Joint Committee objection, see page 86)

Background: The Pollution Control Board proposed rules in October 1979, concerning the consistency of variances granted by the Board to federal laws and regulations. The proposed rules were an amendment to the Board's procedural rules. The effect of the rules is to require the petitioner desiring a variance to prove that the variance is consistent with applicable federal laws and regulations.

The Joint Committee objected to the rules at its November 1979, hearing because the statutory language appears to place the burden on the Board rather than the petitioner. The Joint Committee believes that the Board, or the Environmental Protection Agency, has the necessary expertise to research and understand the federal laws and regulations, which the petitioner may not have.

The Board representative at the Joint Committee hearing indicated the uncertainty regarding the interpretation of federal laws and regulations, however, this uncertainty also exists for the petitioner, who is usually in a less favorable position in terms of being able to clear up the uncertainty.

This legislation will clarify the specific section of the Illinois Environmental Protection Act in line with the Joint Committee's interpretation that the burden should be on the Board.

Summary: Amends the Illinois Environmental Protection Act to provide that the burden of proof in insuring that variances are consistent with federal laws and regulations shall be on the Pollution Control Board, rather than the petitioner. Provides that the recommendation by the Agency to the Board must include an analysis of the federal laws and regulations and an opinion concerning whether the variance would be consistent with the federal laws and regulations.



81st GENERAL ASSEMBLY  
State of Illinois

1979 and 1980

INTRODUCED \_\_\_\_\_ BY

SYNOPSIS: (Ch. 127, par. 1007.04; new par. 1007.071)

Amends the Illinois Administrative Procedure Act to provide that the burden of proof is on an administrative agency where judicial review involves a rule objected to by the Joint Committee on Administrative Rules.

LRB8108387RBsh

A BILL FOR

1 AN ACT to amend Section 7.04 of and to add Section 7.071 44  
 2 to "The Illinois Administrative Procedure Act", approved 50  
 3 September 22, 1975, as amended. 55

4 as it enacted by the People of the State of Illinois 60  
 5 represented in the General Assembly: 65

6 Section 1. Section 7.04 of "The Illinois Administrative 66  
 7 Procedure Act", approved September 22, 1975, as amended, is 69  
 8 amended, and Section 7.071 is added thereto, the added and 60  
 9 amended Sections to read as follows: 61

(Ch. 127, par. 1007.04) 63

10 Sec. 7.04. The Joint Committee shall have the following 64  
 11 powers under this Act: 65

12 1. The function of the Joint Committee shall have 67  
 13 ~~advisory powers only relating to its functions when~~ shall be 69  
 14 the promotion of adequate and proper rules by agencies and an 70  
 15 understanding on the part of the public respecting such 71  
 16 rules. Such function shall be advisory only, except as  
 17 provided in Section 7.071. 73

18 2. The Joint Committee may undertake studies and 74  
 19 investigations concerning rule-making and agency rules. 76

20 3. The Joint Committee shall monitor and investigate 77  
 21 compliance of agencies with the provisions of this Act, make 78  
 22 periodic investigations of the rule-making activities of all 79  
 23 agencies, and evaluate and report on all rules in terms of 80  
 24 their propriety, legal adequacy, relation to statutory 81  
 25 authorization, economic and secondary effects and public 82  
 26 policy. 83

27 4. Hearings and investigations conducted by the Joint 84  
 28 Committee under this act may be held at such times and places 85  
 29 within the State as such Committee deems necessary; 87

30 5. The Joint Committee shall have the authority to 88  
 31 request from any agency an analysis of the: 90

32 a. effect of a new rule, amendment or repeal; 91

1 including any direct economic effect on the persons regulated 72  
 2 by the rule; any anticipated effect on the proposing agency's 73  
 3 budget and the budgets of other State agencies; and any 74  
 4 anticipated effects on State revenues; 75  
 5 o. agency's evaluation of the submissions presented to 76  
 6 the agency pursuant to Section 5.01 of this Act; 78  
 7 c. a description of any modifications from the initially 79  
 8 published proposal made in the finally accepted version of 100  
 9 the intended rule, amendment or repeal; and 102  
 10 d. the agency's justification and rationale for the 103  
 11 intended rule, amendment or repeal. 105

(Ch. 127, new par. 1007.071)

12 Sec. 7.071. If the Joint Committee on Administrative 108  
 13 rules objects to a proposed rule, amendment to a rule, or 109  
 14 repeal of a rule pursuant to Section 7.05 of this act and the 110  
 15 agency refuses to modify or withdraw the proposed rule, 111  
 16 amendment or repeal so as to remedy an objection stated by 112  
 17 the Joint Committee, or if the Joint Committee objects to an 114  
 18 rule pursuant to Section 7.07 of this act and the agency 113  
 19 refuses to amend or repeal the rule so as to remedy an 114  
 20 objection stated by the Joint Committee either by notifying 115  
 21 the Joint Committee of such refusal as provided in paragraph 115  
 22 (c) 3. of Section 7.07, or by failure to respond as provided 116  
 23 in paragraph (d) of Section 7.07, then in any proceeding for 117  
 24 judicial review or for enforcement of the rule, appeal 118  
 25 subsequent to the agency action in response to the objection 119  
 26 by the Joint Committee, or the expiration of the 90-day 119  
 27 period as provided for in paragraph (d) of Section 7.07, for 120  
 28 purpose of court challenge on the agency to establish that the 121  
 29 rule, proposed rule, proposed amendment to a rule, or 122  
 30 proposed repeal of a rule, or the objection of the rule, 122  
 31 proposed rule, proposed amendment to a rule, or proposed 123  
 32 repeal of a rule objected to by the Joint Committee is not 124  
 33 unreasonable, arbitrary, capricious, or otherwise beyond the 125  
 34 authority delegated to the agency and was adopted pursuant to 125

1 FOR REQUIREMENTS OF THIS SET

12c

81st GENERAL ASSEMBLY  
State of Illinois

1979 and 1980

INTRODUCED \_\_\_\_\_ BY

SYNOPSIS: (Ch. 127, pars. 1007.04, 1007.05, 1007.06,  
1007.07)

Amends the Administrative Procedure Act. Establishes a veto power for the Administrative Rules Joint Committee as an alternative to the existing power to issue a statement of objections. The veto power requires a finding by the Committee that the rule constitutes a serious threat to the public interest, safety or welfare. The veto may be issued either before the rule is adopted or a rule may have its effectiveness suspended within 60 days after it becomes effective. Under this provision the Joint Committee may also suspend the effectiveness of emergency or federal or court ordered rules. Provides for the overturning of the Committee's action by passage of a joint resolution by the General Assembly. Allows the Committee to require rulemaking where an agency has developed a written or unwritten policy and such policy is of serious public concern.

LRB8105071JSpkA

A BILL FOR

1 AN ACT to amend Sections 7.04, 7.05, 7.06 and 7.07 of 57  
 2 "The Illinois Administrative Procedure Act", approved 58  
 3 September 22, 1975, as amended. 59

4 Be it enacted by the People of the State of Illinois, 62  
 5 represented in the General Assembly: 63

6 Section 1. Sections 7.04, 7.05, 7.06 and 7.07 of "The 65  
 7 Illinois Administrative Procedure Act", approved September 66  
 8 22, 1975, as amended, are amended to read as follows:

(Ch. 127, par. 1007.04) 68

9 Sec. 7.04. The Joint Committee shall have the following 70  
 10 powers under this Act: 71

11 1. The function of the Joint Committee shall be the 73  
 12 promotion of adequate and proper rules by agencies and an 74  
 13 understanding on the part of the public respecting such 75  
 14 rules. Such function shall be advisory only, except as 76  
 15 provided in subsection 4 (b) of Section 7.05; subsection (a) 76  
 16 (i) and (ii) of Section 7.06; and subsections (i), (ii) and (c) 77  
 17 of Section 7.07. The Joint Committee shall have advisory 78  
 18 powers only relating to its functions when such are the 79  
 19 promotion of adequate and proper rules by agencies and an 80  
 20 understanding on the part of the public respecting such 81  
 21 rules.

22 2. The Joint Committee may undertake studies and 83  
 23 investigations concerning rule-making and agency rules. 84

24 3. The Joint Committee shall monitor and investigate 86  
 25 compliance of agencies with the provisions of this Act, make 87  
 26 periodic investigations of the rule-making activities of all 88  
 27 agencies, and evaluate and report on all rules in terms of 89  
 28 their propriety, legal adequacy, relation to statutory 90  
 29 authorization, economic impact on those affected by the rule 91  
 30 and public policy. 92

31 4. Hearings and investigations conducted by the Joint 93  
 32 Committee under this Act may be held at such times and places 94

1 within the State as such Committee deems necessary; 95

2 5. The Joint Committee shall have the authority to 97  
3 request from any agency an analysis of the: 98

4 a. effect of a new rule, amendment or repealer; 100

5 b. agency's evaluation of the submissions presented to 102  
6 the agency pursuant to Section 5 of this Act; 103

7 c. a description of any modifications from the initially 105  
8 published proposal made in the finally accepted version of 106  
9 the intended rule, amendment or repealer; and 107

10 d. the agency's justification and rationale for the 109  
11 intended rule, amendment or repealer. 110

(Ch. 127, par. 1007.05) 112

12 Sec. 7.05. The Joint Committee shall have the following 114  
13 responsibilities under this Act: 115

14 1. The Joint Committee shall conduct a systematic and 117  
15 continuing study of the rules and rule making process of all 118  
16 state agencies, including those agencies not covered in 119  
17 Section 3.01 of this Act, for the purpose of improving the 120  
18 rule making process, reducing the number and bulk of rules, 121  
19 removing redundancies and unnecessary repetitions and 122  
20 correcting grammatical, typographical and like errors not 123  
21 affecting the construction or meaning of the rules, and it 124  
22 shall make recommendations to the appropriate affected 125  
23 agency. 126

24 2. The Joint Committee shall review the statutory 127  
25 authority on which any administrative rule is based. 128

26 3. The Joint Committee shall maintain a review program, 129  
27 to study the impact of legislative changes, court rulings and 130  
28 administrative action on agency rules and rule making. 131

29 4. The Joint Committee may request rulemaking of an 132  
30 agency in the following cases: 133

31 (a) When the Joint Committee, in the course of its 134  
32 review of an agency's rules under this Act, determines that 135  
33 the agency's rules are incomplete, inconsistent or otherwise 136  
34 deficient or 137

1 (b) when the Joint Committee finds that an agency has 139  
 2 developed written or unwritten policy which the agency has 140  
 3 not filed pursuant to this Act but is enforcing, that such 141  
 4 policy constitutes a rule as defined by Section 3.07, and 142  
 5 that such policy is of serious public concern. In this case,  
 6 when the Joint Committee requests the agency to undertake 143  
 7 rulemaking to adopt such policy as a rule, such request shall 144  
 8 be binding on the agency and the agency shall initiate 145  
 9 rulemaking within 90 days of such request and shall complete 146  
 10 the rulemaking process within 270 days of such request. If 147  
 11 the agency fails to adopt such policy, such policy shall be 148  
 12 invalid and ineffective as provided in subsection (c) of 148  
 13 Section 4. 149

(Ch. 127, par. 1007.06) 151

14 Sec. 7.06. (a) The Joint Committee may examine any 153  
 15 proposed rule, amendment to a rule, and repeal of a rule for 154  
 16 the purpose of determining whether the proposed rule, 155  
 17 amendment to a rule, or repeal of a rule is within the 156  
 18 statutory authority upon which it is based, whether the rule,  
 19 amendment to a rule or repeal of a rule is in proper form and 157  
 20 whether the notice is given prior to its adoption, amendment, 158  
 21 or repeal was sufficient to give adequate notice of the 159  
 22 purpose and effect of the rule, amendment or repeal. 160

23 (b) If the Joint Committee objects to a proposed rule, 162  
 24 amendment to a rule, or repeal of a rule, it shall certify 163  
 25 the fact to the issuing agency and include with the 164  
 26 certification a statement of its specific objections. 165

27 (c) If within 45 days after a proposed rule, amendment 167  
 28 to a rule or repeal of a rule has been published in the 168  
 29 Illinois Register, the Joint Committee certifies its 169  
 30 objections to the issuing agency then that agency shall 170  
 31 within 90 days of receipt of the statement of objection: 171

- 32 1. modify the proposed rule, amendment or repealer to 172
- 33 meet the Joint Committee's objections; 173
- 34 2. withdraw the proposed rule, amendment, or repealer in 175



1 its entirety, or; 17c

2 3. refuse to modify or withdraw the proposed rule, 17d

3 amendment or repealer. 17e

4 (d) If an agency elects to modify a proposed rule, 18a

5 amendment or repealer to meet the Joint Committee's 18b

6 objections, it shall make only such modifications as are 18c

7 necessary to meet the objections and shall resubmit the rule, 18d

8 amendment or repealer to the Joint Committee. The agency 18e

9 shall submit a notice of its election to modify a proposed 18f

10 rule, amendment or repealer to meet the Joint Committee's 18g

11 objections to the Secretary of State which shall be published 18h

12 in the first available issue of the Illinois Register, but 18i

13 shall not be required to conduct a public hearing. (e) If 18j

14 an agency elects to withdraw a proposed rule, amendment or 19a

15 repealer as a result of the Joint Committee's objections, it 19b

16 shall notify the Joint Committee, in writing, of its election 19c

17 and shall submit a notice of the withdrawal to the Secretary 19d

18 of State which shall be published in the next available issue 19e

19 of the Illinois Register.

20 (f) Failure of an agency to respond to the Joint 19f

21 Committee's objections to a proposed rule, amendment or 19g

22 repealer, within the time prescribed in subsection (c) shall 19h

23 constitute withdrawal of the rule in its entirety. The Joint 19i

24 Committee shall submit a notice to that effect to the 19j

25 Secretary of State which shall be published in the next 20a

26 available issue of the Illinois Register and the Secretary of 20b

27 State shall refuse to accept for filing a certified copy of 20c

28 such proposed rule, amendment or repealer under the 20d

29 provisions of Section 6.

30 (4) If an agency refuses to modify or withdraw the 20e

31 proposed rule, amendment or repealer so as to remedy an 20f

32 objection stated by the Joint Committee and the Joint 20g

33 Committee decides to recommend legislative action, then the 20h

34 Joint Committee shall have drafted and have introduced into 20i

35 either house of the General Assembly appropriate legislation

1 to implement the recommendations of the Joint Committee. 204

2 (h) If the Joint Committee determines that adoption and 211  
3 effectiveness of a proposed rule, amendment or repealer or 212  
4 portion of a proposed rule, amendment or repealer by an 213  
5 agency would constitute a serious threat to the public 214  
6 interest, safety or welfare, the Joint Committee may, at any 215  
7 time prior to the taking effect of such proposed rule, 216  
8 amendment or repealer or within 60 days after the taking 217  
9 effect of such proposed rule, amendment or repealer issue a 218  
10 statement to that effect. A certified copy of such statement 219  
11 shall be transmitted to the proposing agency and to the 220  
12 Secretary of State for publication in the next available 221  
13 issue of the Illinois Register. Issuance by the Joint 222  
14 Committee of a statement of objections to a proposed rule, 223  
15 amendment or repealer as provided in subsection (c) of this 224  
16 Section shall not preclude issuance of a statement by the 225  
17 Joint Committee under this subsection to the same proposed 226  
18 rule, amendment or repealer.

19 (i) The proposed rule, amendment or repealer or the 227  
20 portion of the proposed rule, amendment or repealer to which 228  
21 the Joint Committee has issued a statement under subsection 229  
22 (h) shall not be accepted for filing by the Secretary of 230  
23 State nor take effect. If the proposed rule, amendment or 231  
24 repealer, or the portion of the proposed rule, amendment or 232  
25 repealer to which the Joint Committee issues a statement 233  
26 under subsection (h) has been filed with the Secretary of 234  
27 State prior to the receipt of the certified statement by the 235  
28 Secretary of State, the effectiveness of the rule, amendment, 236  
29 or repealer, or the portion of the rule, amendment, or 237  
30 repealer to which the Joint Committee has issued a statement 238  
31 under this subsection shall be suspended immediately upon 239  
32 receipt of the certified statement by the Secretary of State. 240  
33 The Secretary of State shall indicate such suspension 241  
34 prominently and clearly on the face of the affected rule or 242  
35 portion of a rule filed in the Office of the Secretary of

1 State. Such rules or portions of rules suspended in 239  
2 accordance with this subsection shall be considered repealed 240  
3 upon expiration of the time provided for in subsection (j) 241  
4 for the submission of a petition by the agency to the Joint  
5 Committee or, if such petition is submitted, upon expiration 242  
6 of the time provided in subsection (j) for the overturning of 243  
7 the effect of the Joint Committee's action by the General 244  
8 Assembly. The agency may not enforce nor invoke for any 245  
9 reason a rulemaking or portion of a rulemaking which has been 246  
10 suspended in accordance with this subsection.  
11 (j) The proposing agency may petition the Joint 248  
12 Committee for introduction of a joint resolution in the 249  
13 General Assembly to overturn the effect of the action taken 250  
14 by the Joint Committee under subsection (h). Such a petition  
15 must be submitted to the Joint Committee within 90 days of 251  
16 the issuance of the statement by the Joint Committee. The 252  
17 Joint Committee shall notify the Secretary of State upon the 254  
18 receipt of such a petition and shall cause to be introduced  
19 in either house of the General Assembly a joint resolution to 255  
20 overturn the effect of the action taken by the Joint 256  
21 Committee as soon as practicable. The General Assembly may, 257  
22 by the adoption of such joint resolution within 90 days of 258  
23 the introduction of the joint resolution, overturn the effect  
24 of the action taken by the Joint Committee. 259  
(Ch. 127, par. 1007.07) 261  
25 Sec. 7.07. (a) The Joint Committee may examine any 263  
26 rule, including rules adopted under subsections (q) or (e) of 264  
27 Section 5 of this Act for the purpose of determining whether 265  
28 the rule is within the statutory authority upon which it is 266  
29 based, and whether the rule is in proper form. 267  
30 (b) If the Joint Committee objects to a rule, it shall, 269  
31 within 5 days of the objection, certify the fact to the 270  
32 adopting agency and include within the certification a 271  
33 statement of its specific objections.  
34 (c) Within 90 days of receipt of the certification, the 273

1	agency shall:	274
2	1. Notify the Joint Committee that it has elected to	276
3	amend the rule to meet the Joint Committee's objection;	277
4	2. Notify the Joint Committee that it has elected to	279
5	repeal the rule, or;	280
6	3. Notify the Joint Committee that it refuses to amend	282
7	or repeal the rule.	283
8	(d) If the agency elects to amend a rule to meet the	285
9	Joint Committee's objections, it shall notify the Joint	286
10	Committee in writing and shall initiate rule-making	287
11	procedures for that purpose by giving notice as required by	288
12	Section 5 of this Act. The Joint Committee shall give	289
13	priority to rules so amended when setting its agenda.	
14	(e) If the agency elects to repeal a rule as a result of the	290
15	Joint Committee objections, it shall notify the Joint	291
16	Committee, in writing, of its election and shall initiate	292
17	rule-making procedures for that purpose by giving notice as	293
18	required by Section 5 of this Act.	
19	(f) If the agency elects to amend or repeal a rule as a	295
20	result of the Joint Committee objections, it shall complete	296
21	the process within 180 days after giving notice in the	297
22	Illinois Register.	
23	(g) Failure of the agency to respond to the Joint	299
24	Committee's objections to a rule within the time prescribed	300
25	in subsection (c) shall constitute a refusal to amend or	301
26	repeal the rule.	
27	(h) If an agency refuses to amend or repeal a rule so as	303
28	to remedy an objection stated by the Joint Committee and the	304
29	Joint Committee decides to recommend legislative action, then	305
30	the Joint Committee shall have drafted and have introduced	306
31	into either house of the General Assembly appropriate	307
32	legislation to implement the recommendations of the Joint	308
33	Committee.	
34	(i) <u>If the Joint Committee determines that a rule or</u>	310
35	<u>portion of a rule adopted under subsections (b) or (k) of</u>	311

1 Section 5 of this Act constitutes a serious threat to the 312  
 2 public interest, safety or welfare, the Joint Committee may 313  
 3 issue a statement to that effect. A certified copy of such  
 4 statement shall be transmitted to the affected agency and to 314  
 5 the Secretary of State for publication in the next available 315  
 6 issue of the Illinois Register. Issuance by the Joint 316  
 7 Committee of a statement of objections to a rule or portion  
 8 of a rule under subsection (b) of this Section shall not 317  
 9 preclude issuance of a statement by the Joint Committee under 318  
 10 this subsection to the same rule or the same portion of a 319  
 11 rule.

12 (j) The effectiveness of the rule or the portion of a 321  
 13 rule shall be suspended immediately upon receipt of the 322  
 14 certified statement by the Secretary of State. The Secretary 323  
 15 of State shall indicate such suspension prominently and 324  
 16 clearly on the face of the affected rule or the portion of a  
 17 rule filed in the Office of the Secretary of State. Rules or 325  
 18 portions of rules suspended in accordance with this 326  
 19 subsection shall be considered repealed upon expiration of 327  
 20 the time provided for in subsection (k) for the submission of  
 21 a petition by the agency to the Joint Committee or, if such 329  
 22 petition is submitted, upon expiration of the time provided 330  
 23 in subsection (k) for the overturning of the effect of the  
 24 Joint Committee's action by the General Assembly. The agency 331  
 25 may not enforce, nor invoke for any reason, a rule or portion 332  
 26 of a rule which has been suspended in accordance with this 333  
 27 subsection.

28 (k) The affected agency may petition the Joint Committee 335  
 29 for introduction of a joint resolution in the General 336  
 30 Assembly to overturn the effect of the action taken by the 337  
 31 Joint Committee under subsection (j). Such a petition must 338  
 32 be submitted to the Joint Committee within 90 days of the 339  
 33 issuance of the statement by the Joint Committee. The Joint  
 34 Committee shall notify the Secretary of State upon the 340  
 35 receipt of such a petition and shall cause to be introduced 341

1 in either house of the General Assembly a joint resolution to 342  
2 overturn the effect of the action taken by the Joint  
3 Committee as soon as practicable. The General Assembly may 343  
4 by the adoption of such joint resolution within 30 days of 344  
5 the introduction of the joint resolution overturn the effect 345  
6 of the action taken by the Joint Committee.

81st GENERAL ASSEMBLY  
State of Illinois

1979 and 1980

INTRODUCED \_\_\_\_\_ . BY

SYNOPSIS: (Ch. 5, par. 138.10)

Amends the Soil and Water Conservation District Act to exempt soil and water conservation districts from the provisions of the Illinois Administrative Procedure Act.

LRB8108697ASjp

A BILL FOR

1 A. ACT to amend Section 43 of the "Soil and water 46  
 2 Conservation Districts Act", approved July 9, 1937, as 47  
 3 amended. 49

4 be it enacted by the People of the State of Illinois, 52  
 5 represented in the General Assembly: 53

6 Section 1. Section 43 of the "Soil and water 54  
 7 Conservation Districts Act", approved July 9, 1937, as 55  
 8 amended, is amended to read as follows: 56

(Ch. 5, par. 138.10) 58

9 Sec. 43. Administrative Procedure Act - Application. 59  
 10 The provisions of "The Illinois Administrative Procedure 60  
 11 Act" ~~approved September 22, 1975, are hereby expressly~~ 61  
 12 ~~adopted and shall apply to all administrative rules and~~ 62  
 13 ~~procedures of any district or the Department under this Act~~  
 14 ~~except that Section 5 of the Illinois Administrative~~ 63  
 15 ~~Procedure Act relating to procedures for rulemaking does not~~ 64  
 16 ~~apply to the adoption of any rule required by federal law in~~ 65  
 17 ~~connection with when any district or the Department is~~ 66  
 18 ~~precluded by law from exercising any discretion.~~



81st GENERAL ASSEMBLY  
State of Illinois

1979 and 1980

INTRODUCED \_\_\_\_\_ BY

**SYNOPSIS:** (Ch. 8, pars. 136, 136b, 137)

Amends the "Illinois Bovine Brucellosis Eradication Act". Alters the indemnification provision to include payment by the State for all dairy or breeding cattle whether infected or not, that are ordered destroyed by the Department of Agriculture.

LRB8108485FGjo

*Fiscal Note Act  
may be applicable*

A BILL FOR

1 AN ACT to amend Sections 3, 3b and 4 of the "Illinois 20  
 2 Bovine Brucellosis Eradication Act", approved July 12, 1939, 21  
 3 as amended. 22

4 Be it enacted by the People of the State of Illinois, 23  
 5 represented in the General Assembly: 24

6 Section 1. Sections 3, 3b and 4 of the "Illinois Bovine 25  
 7 Brucellosis Eradication Act" approved July 12, 1939, as 26  
 8 amended, are amended to read as follows: 27

(Ch. 8, par. 136)

9 Sec. 3. All owners of dairy or breeding cattle within the 28  
 10 State of Illinois shall submit their cattle for an official 29  
 11 test for the detection of brucellosis upon request by the 30  
 12 Department, and shall provide the necessary facilities for 31  
 13 making tests and render such assistance as may be required by 32  
 14 the Department. The direct expense of making such tests shall 33  
 15 be paid by the Department. 34

16 The Department may use or authorize the ring test to 35  
 17 detect the herds in which brucellosis exists. All herds 36  
 18 producing milk or cream which react to the ring test shall be 37  
 19 given an official test in accordance with rules and 38  
 20 regulations of the Department. If the tests provided for in 39  
 21 this Act disclose that any animal or animals in such herd are 40  
 22 infected with brucellosis and it appears that the public 41  
 23 interest would best be served by their destruction, ~~the~~ 42  
 24 destruction of female calves of the herd, or the destruction 43  
 25 of the entire herd, the Department shall request such 44  
 26 destruction. The owner may be partially indemnified for the 45  
 27 loss sustained, unless otherwise required by the provisions 46  
 28 of Section 4 of this Act. 47

(Ch. 8, par. 136b)

29 Sec. 3b. Herds which contain d+setose reactors to the 48  
 30 test required in Section 3 shall be quarantined until the 49  
 31 animals indicated by the Department are destroyed separately 50

1 or until official tests indicate brucellosis infection no 98  
2 longer exists in the herd. 99  
3 (Ch. 8, par. 137) 100  
4 Sec. 4. If State funds are available for paying 101  
5 indemnity, the Department shall pay to the owner of each 102  
6 destroyed infected animal an indemnity of \$50 for any grade 103  
7 animal and \$100 for any registered animal, except that steers 104  
8 so destroyed shall not be eligible for indemnity unless the 105  
9 Department requests destruction depopulation of the entire 106  
10 herd. The Department may, by rule registration, increase the 107  
11 indemnity payments or expand the scope of animals covered to 108  
12 facilitate the program for eradication of brucellosis. 109  
13 Registration certificates covering purebred or crossbred 110  
14 animals registered with an approved registry association 111  
15 shall be presented before payment of indemnity. A reasonable 112  
16 length of time will be allowed for the registration of 113  
17 eligible animals that are under 3 years of age. 114



81st GENERAL ASSEMBLY  
State of Illinois

1979 and 1980

INTRODUCED \_\_\_\_\_ BY

SYNOPSIS: (Ch. 61, new par. 2.39)

Amends the Wildlife Code to provide that properly licensed hunters under 16 years of age shall be accorded the same hunting privileges as hunters of any other age and that the Department of Conservation may limit eligibility for drawing blind sites to one hunter per family.

LRB8108484PMna

A BILL FOR

1 AN ACT to add Section 2.39 to the "Wildlife Code", 47  
2 approved December 10, 1971, as amended. 50

3 Be it enacted by the People of the State of Illinois, 53  
4 represented in the General Assembly: 54

5 Section 1. Section 2.39 is added to the "Wildlife Code", 55  
6 approved December 10, 1971, as amended, the added Section to 56  
7 read as follows: 57

8 (Ch. 61, new par. 2.39) 59

9 Sec. 2.39. The Department may not restrict the hunting 60  
10 of properly licensed persons based solely on the age of the 61  
11 person, on lands owned, leased or managed by the Department. 62  
12 A person under the age of 16 who has obtained the written 63  
13 consent required by Section 3.1, has qualified for a hunting 64  
14 license by obtaining a certificate of competency under 65  
15 Section 3.2, and has been properly issued a hunting license, 66  
16 shall be accorded the same hunting privileges by the 66  
17 Department as persons of any other age. However, if the 67  
18 Department finds that it is necessary for the safety of the 68  
19 hunters or the public in a specific area to require each 69  
20 hunter to be accompanied by another hunter or to restrict the  
21 total number of hunters allowed in the area, the Department 70  
22 may require each hunter under 16 years of age to be 71  
23 accompanied by a hunter of more than 18 years of age. The 72  
24 Department may also restrict eligibility for drawings for  
25 blind sites to one hunter per family, when such restriction 73  
26 is necessary to insure an equitable allocation of sites. 74

81st GENERAL ASSEMBLY  
State of Illinois

1979 and 1980

INTRODUCED \_\_\_\_\_, BY

SYNOPSIS: (Ch. 16 1/2, pars. 49 and 49.3)

Amends the Currency Exchange Act in regard to the  
rulemaking procedures of the Director of Financial  
Institutions and permits the Director to establish money  
order limits.

LR88108487BDjw

A BILL FOR

1 AN ACT to amend Sections 19 and 19.3 of "An Act in 48  
 2 relation to the definition, licensing and regulation of 49  
 3 community currency exchanges and ambulatory currency 50  
 4 exchanges, and the operators and employees thereof, and to 51  
 5 make an appropriation therefor, and to provide penalties and 52  
 6 remedies for the violation thereof", approved June 30, 1943, 53  
 7 as amended. 54

8 Be it enacted by the People of the State of Illinois, 57  
 9 represented in the General Assembly: 58

10 Section 1. Sections 19 and 19.3 of "An Act in relation 59  
 11 to the definition, licensing and regulation of community 60  
 12 currency exchanges and ambulatory currency exchanges, and the 61  
 13 operators and employees thereof, and to make an appropriation 62  
 14 therefor, and to provide penalties and remedies for the 63  
 15 violation thereof", approved June 30, 1943, as amended, are 64  
 16 amended to read as follows: 65

(Ch. 16 1/2, par. 49)

17 Sec. 19. The Director may make and enforce such 67  
 18 reasonable rules and ~~v-relevant-regulations, directions,~~ 68  
 19 ~~orders, decisions and findings~~ as may be necessary for the 69  
 20 execution and enforcement of this Act and to accomplish the 70  
 21 purposes sought to be attained herein. All such rules and 71  
 22 ~~regulations, directions, orders, decisions and findings~~ shall 72  
 23 be filed and entered by the Director in an indexed permanent 73  
 24 book or record, with the effective date thereof suitably 74  
 25 indicated, and such book or record shall be a public 75  
 26 document. All rules ~~regulations and directions,~~ which are of 76  
 27 a general character, shall be printed and copies thereof 77  
 28 mailed to all licensees within 10 days after filing as 78  
 29 aforesaid. Copies of all ~~findings, orders and decisions~~ shall 79  
 30 be mailed to the parties affected thereby by United States 80  
 31 mail within 5 days of such filing. These requirements are in 81  
 32 addition to the rulemaking and contested case requirements of 82



1	<u>the Illinois Administrative Procedure Act.</u>	83
	(Ch. 16 1/2, par. 49.3)	85
2	Sec. 19.3. (A) The General Assembly hereby finds and	86
3	declares: community currency exchanges and ambulatory	87
4	currency exchanges provide important and vital services to	88
5	Illinois citizens. In so doing, they transact extensive	89
6	business involving check cashing and the writing of money	
7	orders in communities in which banking services are generally	90
8	unavailable. Customers of currency exchanges who receive	91
9	these services must be protected from being charged	92
10	unreasonable and unconscionable rates for cashing checks and	
11	purchasing money orders. The Illinois Department of	93
12	Financial Institutions has the responsibility for regulating	94
13	the operations of currency exchanges and has the expertise to	95
14	determine reasonable maximum rates to be charged for check	96
15	cashing and money order purchases. Therefore, it is in the	
16	public interest, convenience, welfare and good to have the	97
17	Department establish reasonable maximum rate schedules for	98
18	check cashing and the issuance of money orders and to require	99
19	community and ambulatory currency exchanges to prominently	100
20	display to the public the fees charged for all services.	101
21	(B) The Director shall, by rules adopted in accordance	102
22	with the Illinois Administrative Procedure Act, expeditiously	103
23	formulate and issue schedules of reasonable maximum rates	105
24	which can be charged for check cashing and writing of money	106
25	orders by community currency exchanges and ambulatory	
26	currency exchanges.	108
27	(1) In determining the maximum rate schedules for the	109
28	purposes of this Section, the Director shall take into	110
29	account:	111
30	(a) Rates charged in the past for the cashing of checks	112
31	and the issuance of money orders by community and ambulatory	113
32	currency exchanges.	114
33	(b) Rates charged by banks or other business entities	115
34	for rendering the same or similar services and the factors	116

1 upon which those rates are based. 117

2 (c) The income, cost and expense of the operation of 118

3 currency exchanges. 119

4 (d) Rates charged by currency exchanges or other similar 120

5 entities located in other states for the same or similar 121

6 services and the factors upon which those rates are based. 122

7 (e) Rates charged by the United States Postal Service 123

8 for the issuing of money orders and the factors upon which 124

9 those rates are based. 125

10 (f) A reasonable profit for a currency exchange 126

11 operation. 127

12 (2) (a) The schedule of reasonable maximum rates 128

13 established pursuant to this Section may be modified by the 129

14 Director from time to time pursuant to rules adopted in 130

15 accordance with the Illinois Administrative Procedure Act. 131

16 (b) Upon the filing of a verified petition setting forth 132

17 allegations demonstrating reasonable cause to believe that 133

18 the schedule of maximum rates previously issued and 134

19 promulgated should be adjusted, the Director shall 135

20 expeditiously: 136

21 (i) Reject the petition if it fails to demonstrate 137

22 reasonable cause to believe that an adjustment is necessary; 138

23 or 139

24 (ii) Conduct such hearings, in accordance with this 140

25 Section, as may be necessary to determine whether the 141

26 petition should be granted in whole or in part. 142

27 (c) No petition may be filed pursuant to subparagraph 143

28 ~~(b)~~ of paragraph (2) of subsection (B) unless: 144

29 (i) At least nine months have expired since the last 145

30 promulgation of schedules of maximum rates; and 146

31 (ii) At least one-fourth of all community currency 147

32 exchange licensees join in a petition or, in the case of 148

33 ambulatory currency exchanges, a licensee or licensees 149

34 authorized to serve at least 100 locations join in a 150

35 petition. 151

1           (3) Any currency exchange may charge lower fees than 154  
2 those of the applicable maximum fee schedule after filing 155  
3 with the Director a schedule of fees it proposes to use. 157  
4           (f) The Director may also establish, by rules adopted in 156  
5 accordance with the Illinois Administrative Procedure Act, a 159  
6 maximum amount for which a community currency exchange or 160  
7 ambulatory currency exchange may issue any single money 161  
8 order. Such maximum amount shall be based on consideration 162  
9 of the lawful needs of the public served by community 163  
10 currency exchanges and ambulatory currency exchanges. The 164  
11 Director may also provide for exemptions from such maximum  
12 amount.



81st GENERAL ASSEMBLY  
State of Illinois

1979 and 1980

INTRODUCED \_\_\_\_\_, BY

SYNOPSIS: (Ch. 16 1/2, pars. 260 and 265)

Amends the "Financial Planning and Management Service Act". Gives authority to Director of Financial Institutions to suspend as well as revoke licenses upon certain findings of noncompliance with the statutory requirements.

LRB8108486RBsh

A BILL FOR

1 An Act to amend Sections 10 and 15 of the "Financial 47  
 2 Planning and Management Service Act", approved July 9, 1957, 48  
 3 as amended. 50

4 Be it enacted by the People of the State of Illinois, 53  
 5 represented in the General Assembly: 54

6 Section 1. Sections 10 and 15 of the "Financial Planning 55  
 7 and Management Service Act", approved July 9, 1957, as 56  
 8 amended, are amended to read as follows: 57

(Ch. 16 1/2, par. 260) 59

9 Sec. 10. Revocation or suspension of license.) (a) The 61  
 10 Director shall, ~~upon 5 days notice to the licensee by~~  
 11 ~~registered United States mail, directed to the licensee at~~ 62  
 12 ~~the address set forth on the license, stating the~~ 63  
 13 ~~contemplated action and in general the grounds therefore and~~ 64  
 14 ~~upon reasonable opportunity to be heard prior to such action,~~ 65  
 15 revoke any license issued hereunder if he shall find that:  
 16 (1) any licensee has failed to pay the annual license fee, or 66  
 17 to maintain in effect the bond required under the provisions 67  
 18 of this Act; or (2) the licensee has willfully failed to 68  
 19 comply with any ruling order, decision or finding of the  
 20 Director made ~~pursuant to and~~ within the authority of this 70  
 21 Act; or ~~that~~ (2) the licensee has willfully violated any 71  
 22 provisions of this Act or any rule, regulation or direction 72  
 23 lawfully made by the Director under and within the authority 73  
 24 of this Act; or ~~that~~ (3) any fact or condition exists which, 74  
 25 if it had existed at the time of the original application for  
 26 a license, would have warranted the Director in refusing its 75  
 27 issuance; or ~~that~~ (4) any applicant or party to an 76  
 28 application has made any false statement or representation to 77  
 29 the Director in applying for a license hereunder. 79

30 (b) If the Director find that a condition requiring the 80  
 31 revocation of a license exists and finds that revocation 81  
 32 could result in irreparable harm to the licensee or deny 82

1 necessary services to the public, the Director shall suspend 83  
2 rather than revoke the license. Such suspension shall be for  
3 a specified period of time but not more than 90 days. If the 84  
4 condition resulting in the suspension is not remedied during 85  
5 the suspension period, the Director shall take immediate 86  
6 action to revoke the license. 87

7 (c) Action under this Section for revocation or 88  
8 suspension of a license may be taken only upon 5 days notice 89  
9 to the licensee. The notice shall be mailed to the licensee 90  
10 by registered United States mail, directed to the licensee at 91  
11 the address set forth on the license. The notice shall state  
12 the contemplated action and in general the grounds for the 92  
13 action. The Director shall provide reasonable opportunity for 93  
14 the licensee to be heard prior to such action. Hearings under 94  
15 this Section shall be conducted in accordance with the 95  
16 requirements of the Illinois Administrative Procedure Act. 96

(Ch. 16 1/2, par. 265)

17 Sec. 15. Rules and regulations.) The Director shall make 10  
18 and find, as required by law, and enforce all reasonable 10  
19 rules and regulations as shall be necessary for the 10  
20 administration of this Act. Such rulemaking shall be subject  
21 to the provisions of the Illinois Administrative Procedure 10  
22 Act.





81st GENERAL ASSEMBLY  
State of Illinois

1979 and 1980

INTRODUCED \_\_\_\_\_ BY

**SYNOPSIS:** (Ch. 48, pars. 31.1, 31.2, 31.3, 31.4, 31.6 and 31.16, rep. par. 31.9)

Amends the Child Labor Law by substituting for the enumerated list of prohibited occupations for minors a general prohibition against the employment of minors, under 16 years of age, in any gainful occupation without the employer first obtaining an employment certificate for the minor. Retains the enumerated exceptions to the prohibition. Subjects the Department of Labor's rulemaking power and hearings procedures to the provisions of the Illinois Administrative Procedure Act.

*Fiscal Note Act  
may be appropriate*

LRB8108483Astc

A BILL FOR

1 AN ACT to amend Sections 1, 2, 3, 4, 6 and 16 and to 51  
 2 repeal Section 9 of the "Child Labor Law", approved June 30, 52  
 3 1945, as amended. 54

4 Be it enacted by the People of the State of Illinois, 56  
 5 represented in the General Assembly: 58

6 Section 1. Sections 1, 2, 3, 4, 6 and 16 of the "Child 59  
 7 Labor Law", approved June 30, 1945, as amended, are amended 60  
 8 to read as follows: 61

(Ch. 48, par. 31-1) 63

9 Sec. 1. (a) No minor under 16 years of age shall be 64  
 10 employed, permitted, or suffered to work within this State in 65  
 11 any gainful occupation, except agriculture, unless the 66  
 12 person, firm or corporation employing such minor obtains and 67  
 13 keeps on file an employment certificate. No minor under 16 68  
 14 years of age, except minors 14 or 15 years of age who are 69  
 15 participating in federally funded work experience career 70  
 16 education programs under the direction of the State Board of 71  
 17 Education, at any time shall be employed, permitted or 72  
 18 suffered to work in any gainful occupation in connection with 73  
 19 any theater, concert hall or place of amusement, or any 74  
 20 mercantile institution, store, office, hotel, laundry, 75  
 21 manufacturing establishment, mill, cannery, factory, or 76  
 22 workshop, restaurant, lunch room, beauty parlors, barber 77  
 23 shop, bakeries, coat, brick or lumber yard, or in any type of 78  
 24 construction work within this State; However 79

25 (b) Minors between 14 and 16 years of age may be 80  
 26 employed, permitted, or suffered to work outside school hours 81  
 27 and during school vacations if such work is (1) not in 82  
 28 dangerous or hazardous factory work and (2) not prohibited by 83  
 29 Section 7 of this Act and (3) not or in any occupation 84  
 30 otherwise prohibited by law or by order or regulation made in  
 31 pursuance of law.

32 (c) No minor under 12 years of age, except members of the

1 ~~farmers own family who live with the farmer at his principal~~ 85  
 2 ~~place of residence,~~ at any time shall be employed, permitted 86  
 3 or suffered to work in any gainful occupation in connection 87  
 4 with agriculture, ~~v Except that This provision shall not~~ 88  
 5 ~~apply: (1) to members of a farmer's own family who live at~~ 89  
 6 ~~his principal place of residence; (2) to minors engaged in~~ 90  
 7 ~~agricultural pursuits other than as a gainful occupation; or~~  
 8 ~~(3) to any minor of 10 years of age or more who may be~~ 91  
 9 permitted to work in a gainful occupation in connection with 92  
 10 agriculture during the school vacations or outside of school 93  
 11 hours. 94

(Ch. 48, par. 31.2) 96

12 Sec. 2. Nothing in this Act applies to: ~~(1) the work of~~ 97  
 13 ~~a minor engaged in agricultural pursuits except for those~~ 98  
 14 ~~persons restricted from working in a gainful occupation in~~ 99  
 15 ~~connection with agriculture in Section 17 in the sale and~~ 100  
 16 ~~distribution of magazines and newspapers at hours when the~~  
 17 ~~schools of the district are in session; v Nothing in this~~ 101  
 18 ~~Act applies to (2) the employment of a minor outside school~~ 102  
 19 ~~hours in and around a home at work usual to the home of the~~ 103  
 20 ~~employer so long as that work is not in connection with or a~~ 104  
 21 ~~part of the business, trade or profession of the employer; v~~ 105  
 22 ~~Nothing in this Act applies to (3) the work of a minor of 13~~ 106  
 23 ~~years of age or more in caddying at a golf course; who is 13~~ 107  
 24 ~~or more years of age; Nothing in Section 9 of this Act~~ 109  
 25 ~~applies to or (4) the participation of a minor, 14 or 15~~ 110  
 26 ~~years of age, during the school vacations that part of the~~ 111  
 27 ~~year from June 1 through September 15, in an occupational,~~ 112  
 28 ~~vocational, or educational program funded by the~~  
 29 ~~Comprehensive Employment and Training Act. 114~~

(Ch. 48, par. 31.3) 116

30 Sec. 3. No minor under 16 years of age shall be employed, 117  
 31 permitted, or suffered to work in any gainful occupation 118  
 32 mentioned in Section 1 of this Act for more than 6 119  
 33 consecutive days in any one week, or more than 48 hours in 120

1 any one week, or more than 8 hours in any one day, or be so 120  
 2 employed, permitted or suffered to work between 7 p. m. and 7 121  
 3 a. m. 122

4 The hours of work of minors under the age of 16 years 123  
 5 employed outside of school hours shall not exceed 3 a day on 124  
 6 days when school is in session, nor shall the combined hours 125  
 7 of work outside and in school exceed a total of 8 a day. 126

(Ch. 48, par. 31-4) 128

8 Sec. 4. No minor under ~~16 sixteen (16)~~ years of age shall 129  
 9 be employed, or permitted to work in any gainful occupations 130  
 10 mentioned ~~in Section 1 of this Act~~ for more than ~~5 five (5)~~ 131  
 11 hours continuously without an interval of at least ~~30 thirty~~ 132  
 12 ~~(30)~~ minutes for meal period, and no period of less than ~~30~~ 133  
 13 ~~thirty (30)~~ minutes shall be deemed to interrupt a continuous 134  
 14 period of work. 135

(Ch. 48, par. 31-6) 137

15 Sec. 6. It shall be the duty of every employer of minors 138  
 16 between the ages of 14 and 16 years employed for or in 139  
 17 connection with any gainful occupation ~~mentioned in Section 1~~ 140  
 18 to keep a register upon the premises where the work is being 141  
 19 done on which register shall be recorded the name, age and 142  
 20 place of residence of every minor between the ages of 14 and 143  
 21 16 years. It shall be unlawful for any person, firm or 144  
 22 corporation to hire or employ or to permit or suffer to work 145  
 23 in or for or in connection with any of the gainful occupation 146  
 24 ~~occupations mentioned in Section 1~~, any minor between the 146  
 25 ages of 14 and 16 years unless there is first procured and 147  
 26 placed on file on the premises where the work is being done, 148  
 27 employment certificates issued as hereinafter provided and 149  
 28 accessible to the authorized officers or employees of the 149  
 29 Department of Labor, and to the truant officers or other 150  
 30 school officials charged with the enforcement of the 151  
 31 compulsory education law. 151

(Ch. 48, par. 31.16) 153

32 Sec. 16. (a) The Department of Labor shall make, 154

1 promote and enforce such reasonable rules and regulations 155  
2 relating to the administration and enforcement of the 156  
3 provisions of this act, including the issuance of 157  
4 certificates authorized under this Act, as may be deemed  
5 expedient. Such rulemaking may not expand the specific work 158  
6 activities prohibited to minors specified in Section 7 of 159  
7 this Act. Such rulemaking is subject to the provisions of 160  
8 the Illinois Administrative Procedure Act. (b) In order to 161  
9 promote uniformity and efficiency of issuance, it shall in  
10 consultation with the State Superintendent of Education 162  
11 formulate the forms on which certificates shall be issued and 163  
12 also forms needed in connection with such issuance, and it 164  
13 shall supply such forms to the issuing officers. (c) The 165  
14 Department of Labor, its deputies and inspectors, may suspend  
15 any certificate as an emergency action imperatively required 166  
16 for the public health, safety and welfare of minors if in 167  
17 their judgment it was improperly issued or if the minor is 168  
18 illegally employed. If the certificate is so suspended the 169  
19 employer and all interested parties shall be notified of such  
20 suspension in writing and such minor shall not thereafter be 170  
21 employed, permitted, or suffered to work until a final order 171  
22 is issued by the Department of Labor after a hearing either 172  
23 reinstating or revoking the certificate. The hearing shall 173  
24 commence within 21 days after the date of any such 174  
25 suspension. If the certificate is revoked the minor shall 175  
26 not thereafter be employed, permitted or suffered to work 176  
27 until a new certificate for his employment has been obtained.  
28 (d) Hearings conducted under this Act are subject to the 177  
29 provisions of the Illinois Administrative Procedure Act. 179  
    (Ch. 48, rep. par. 31.9) 181  
30 Section 2. Section 9 of the "Child Labor Law", approved 182  
31 June 30, 1945, as amended, is repealed. 183



81st GENERAL ASSEMBLY  
State of Illinois

1979 and 1980

INTRODUCED \_\_\_\_\_ BY

SYNOPSIS: (Ch. 111 1/2, pars. 1035 and 1037)

Provides that the burden of proof in establishing that variances are consistent with federal laws and regulations shall be on the Environmental Protection Agency, rather than the variance petitioner, and requires the Pollution Control Board to determine such consistency. Requires related recommendations given by the Agency to the Board to include an analysis of applicable federal laws and an opinion concerning consistency of the variance therewith.

LRB8108526SKjo

Fiscal Note Act  
may be applicable

A BILL FOR

1	AN ACT to amend Sections 35 and 37 of the "Environmental	53
2	Protection Act", approved June 29, 1970, as amended.	56
3	<u>Be it enacted by the People of the State of Illinois,</u>	59
4	<u>represented in the General Assembly:</u>	60
5	Section 1. Sections 35 and 37 of the "Environmental	61
6	Protection Act", approved June 29, 1970, as amended, are	62
7	amended to read as follows:	63
	(Ch. 111 1/2, par. 1035)	65
8	Sec. 35. To the extent consistent with applicable	66
9	provisions of the Federal Water Pollution Control Act	67
10	Amendments of 1972 (P.L. 92-500), the Federal Safe Drinking	68
11	Water Act (P.L. 93-523), the Clean Water Act of 1977 (P.L.	69
12	95-217), the Clean Air Act as amended in 1977 (P.L. 95-95),	70
13	and regulations pursuant thereto, and to the extent	
14	consistent with applicable provisions of the Federal Resource	71
15	Conservation and Recovery Act of 1976 (P.L. 94-580), and	72
16	regulations pursuant thereto, the Board may grant individual	73
17	variances beyond the limitations prescribed in this Act,	74
18	whenever it is found, upon presentation of adequate proof,	75
19	that compliance with any rule or <del>regulatory</del> requirement or	76
20	order of the Board would impose an arbitrary or unreasonable	77
21	hardship. <u>The Board may not grant any variance that is wholly</u>	78
22	<u>or partly inconsistent with applicable federal laws and</u>	
23	<u>regulations.</u> In granting or denying a variance the Board	80
24	shall file and publish a written opinion stating the facts	
25	and reasons leading to its decision.	82
	(Ch. 111 1/2, par. 1037)	84
26	Sec. 37. Any person seeking a variance shall do so by	85
27	filing a petition for variance with the Agency. The Agency	86
28	shall promptly give written notice of such petition to any	87
29	person in the county in which the installation or property	88
30	for which variance is sought is located who has in writing	89
31	requested notice of variance petitions, the State's attorney	



1 of such county, the Chairman of the County Board of such 90  
2 county, and to each member of the General Assembly from the 91  
3 legislative district in which that installation or property 92  
4 is located, and shall publish notice of such petition in a 93  
5 newspaper of general circulation in such county. The notices 94  
6 required by this Section shall include the street address,  
7 and if there is no street address then the legal description 95  
8 or the location with reference to any well known landmark,  
9 highway, road, thoroughfare or intersection. The Agency 97  
10 shall promptly investigate such petition, consider the views  
11 of persons who might be adversely affected by the grant of a 98  
12 variance, and make a recommendation to the Board as to the 99  
13 disposition of the petition. Such recommendation shall 100  
14 include an analysis of the applicable federal laws and 101  
15 regulations and an opinion concerning the consistency of the 102  
16 petition with such federal laws and regulations. If the  
17 Board, in its discretion, concludes that a hearing would be 104  
18 advisable, or if the Agency or any other person files a  
19 written objection to the grant of such variance within 21 105  
20 days, then a hearing shall be held, under the rules 106  
21 prescribed in Sections 32 and 33 (a) of this Act, and the 107  
22 burden of proof shall be on the petitioner, except as to 108  
23 consistency with applicable federal laws and regulations, in  
24 which case the burden of proof shall be on the Agency, 109  
25 subject to final determination by the Board pursuant to 110  
26 Section 35 of this Act. 111



## ALTERNATIVE BILLS

During the review of proposed rulemaking in 1979, the Joint Committee discovered a number of difficult and complex issues which need to be addressed by the General Assembly. In the 1978 Annual Report to the General Assembly, the Joint Committee included several resolutions pointing out these kinds of areas of concern to all the members of the General Assembly.

While the Joint Committee recognizes the seriousness of these issues, it is not always appropriate for the Joint Committee on its own to make the policy decisions involved and recommend a single approach to the General Assembly. Where the issues were clear and properly within the Joint Committee's mission, single recommended bills have been developed. They are included in the previous section (pages 149-195). But, the issues addressed by the alternative bills included in this section go beyond the Joint Committee's primary area of expertise.

In these situations, the Joint Committee decided that it is most appropriate to suggest alternative approaches to resolving the problems. These alternative bills should stimulate consideration by the full General Assembly of the issues involved in each case.

### **Alternative Bills One and Two (pages 207-226)**

Agency: Department of Public Aid

Rulemaking: Rules 4.01 - 4.018, Medical Assistance Program (for Joint Committee objection, see page 58)

Background: The Joint Committee objected in April 1979 to rules proposed by the Department of Public Aid concerning the Medical Assistance Program. The basis of the Joint Committee's objection was that Section 12-4.25 of the Public Aid Code requires the Department to "negotiate" vendor agreements with each category of vendor which is specifically listed in the section. The list includes physicians, hospitals, long term care facilities and other types of medical vendors.

The Joint Committee believes that many of the requirements included in these proposed rules should more properly have been negotiated and included in a vendor agreement. The Department refused to modify the rules, arguing that the imposition of these requirements is authorized by other sections of the Code (Sections 12-13 and 5-5).

Since the statute allows the Department to develop rules and also requires the Department to develop a negotiated vendor agreement, it seems best to interpret the rulemaking authority as applying generally to all categories of vendors and the provider agreement as applying to each specific vendor category. The requirement for vendor agreements would be meaningless if the Department could impose identical requirements by rulemaking and avoid negotiation.

Since the Joint Committee does not believe it is within its expertise to make the judgment involved in the substantive policy decision to resolve this conflict, the Joint Committee is developing alternative pieces of legislation to explicitly implement each interpretation.

**Summary of Alternative Bill One:** Amends the Public Aid Code to provide that rules adopted by the Department of Public Aid to implement the Medical Assistance Program must apply to all categories of medical vendors. Specific requirements applying to only one vendor category must be included in the vendor agreement required under Section 12-4.25.

**Summary of Alternative Bill Two:** Amends the Public Aid Code to provide that rules concerning vendor participation in the Medical Assistance Program adopted by the Department of Public Aid may apply to a single category of vendor, despite the requirement to negotiate a vendor agreement with each category or vendor.

#### **Alternative Bills Three and Four (pages 227-230)**

**Agency:** Department of Public Health

**Rulemaking:** Hospital Licensing Requirements, Parts I, II, III, VI, VIII, IX, X, XI, XIV, XVI, XIX, and XXII (for Joint Committee objection, see pages 66-67)

**Background:** In June 1979, the Department of Public Health proposed extensive amendments to its hospital licensing requirements under the Hospital Licensing Act. The Joint Committee objected to the rules on three grounds. The first two grounds were remedied by the Department through modifications of the rules.

The Joint Committee's third ground for objecting to the rules involved an apparent conflict between the section of the rules concerning psychiatric services and the recognition of the expertise of psychologists in the Mental Health and Developmental Disabilities Code and the Psychologists Registration Act.

The Joint Committee believes this conflict should be resolved, but does not believe that it has the

expertise to make the policy decision involved. The Joint Committee is developing legislation to resolve the conflict both in line with the interpretation that psychologists should be recognized (Alternative Bill Three) and in line with the Department's rules (Alternative Bill Four).

**Summary of Alternative Bill Three:** Amends the Hospital Licensing Act to require that the expertise and skills of psychologists be recognized in the standards adopted by the Department of Public Health for psychiatric programs of hospitals. Provides that psychologists shall be allowed to participate in the management and direction of psychiatric programs and to exercise the full range of services authorized by the Psychologist Registration Act in the hospital.

**Summary of Alternative Bill Four:** Amends the Hospital Licensing Act to require psychiatric services in hospitals to be provided under the management of a psychiatrist. Requires the Department to recognize the expertise and skills of psychologists in its hospital licensing standards.

#### **Alternative Bills Five and Six (pages 231-238)**

**Agency:** Department of Public Health

**Rulemaking:** Peremptory Rules for Drinking Water Systems (for Joint Committee objection, see pages 68-69)

**Background:** The Department of Public Health adopted rules concerning public water supplies as federal-ordered rules in August 1979. The rules regulate water supplies in small communities (under 5000 population) and non-community water supplies serving 25 persons or more for at least 60 days per year (for example, a well used by a restaurant). Larger public water supplies are regulated by the Illinois Environmental Protection Agency. The purpose of the rules was to achieve primacy for the state for enforcement of the Federal Safe Drinking Water Act.

The Joint Committee objected to the adoption of the rules as federal-ordered rules, since the rules are not actually mandatory. The Joint Committee also questioned whether the Department has statutory authority for the adoption of rules and whether the rules actually reflected the Department's policy, since the Department had indicated that some of the rules would not be enforced.

The Joint Committee believes this issue should be resolved, but does not believe it has the expertise or to make the policy decision involved. So, the Joint Committee is developing legislation to clearly authorize the rules (Alternative Bill Five) and alternative legislation to explicitly prohibit the adoption of these rules (Alternative Bill Six).

Summary of Alternative Bill Five: Amends an Act in relation to public health. Provides that the Department of Public Health may adopt rules for the regulation of public water supplies of a specified size. Further provides that no rules may be adopted unless they are shown to be necessary to protect the public health and not unreasonably costly.

Summary of Alternative Bill Six: Prohibits the Department of Public Health from adopting rules concerning community or non-community water supplies. Places such rules solely under the authority of the Pollution Control Board and the Environmental Protection Agency.

#### **Alternative Bills Seven and Eight (pages 239-245)**

Agency: Department of Registration and Education

Rulemaking: Rules for the Administration of the Illinois Nursing Act (for Joint Committee objection, see pages 69-70)

Background: The Department of Registration and Education in September, 1979, proposed revised set of rules to administer the Illinois Nursing Act. The Joint Committee objected to the rules because of the lack of standards to govern the agency's decision regarding the withdrawal, suspension or placing on probation of a nursing school. The basis of the objection was the possibility for arbitrary action allowed by this lack of criteria and the fact that the statute is silent concerning revocation or suspension of approval. The Department refused to modify the rules.

Because the Joint Committee believes that the General Assembly should consider the policy issues raised by this situation, the Joint Committee is suggesting two bills for General Assembly consideration -- the first would clarify the Act in line with the Joint Committee's interpretation (Alternative Bill Seven), the other bill would clarify the Act in line with the Department's interpretation (Alternative Bill Eight).

Summary of Alternative Bill Seven: Amends the Illinois Nursing Act to provide for the suspension, revocation or placing on suspension of nursing schools. Requires the Director to develop criteria for such actions. Such criteria must be adopted as rules.

Summary of Alternative Bill Eight: Amends the Illinois Nursing Act to provide for the suspension or revocation of approval of nursing nurses at the sole discretion of the Director of the Department of Registration and Education.

**Alternative Bills Nine and Ten** (pages 247-269)

Agency: Department of Revenue

Rulemaking: Article 4 of the Retailers' Occupation Tax Act as it Pertains to Penalties of Perjury and Article 4 of the Service Occupation Tax Act as it Pertains to Penalties of Perjury (for Joint Committee objection, see page 75)

Background: The Department of Revenue in July 1979 proposed amendments to their rules under the Retailers' Occupation Tax Act and the Service Occupation Tax Act. The amendments incorporated a provision requiring that returns must be verified by a written declaration that it is made under the penalties of perjury.

The Joint Committee objected to this provision, believing that the Department lacks statutory authority for imposing perjury penalties. The Department argued that such authority could be implied under several recent judicial rulings which hold that an agency with authority to take oaths and promulgate regulations may require acts to be performed under oath. The Joint Committee believes that because this penalty is quite serious, the policy issue of whether the Department should be allowed to impose it or not should be decided by the General Assembly.

Legislation is being presented by the Joint Committee authorizing the imposition of the penalty and prohibiting the Department from imposing such a penalty. These two alternative bills will allow the General Assembly to resolve this issue in one direction or the other.

Summary of Alternative Bill Nine: Amends the Retailers' Occupation Tax Act by requiring that all returns and notices be filed under the penalties of perjury.

Summary of Alternative Bill Ten: Prohibits the Department of Revenue from requiring returns under the Retailers' Occupation Tax Act to be filed under penalties of perjury.

**Alternative Bills Eleven and Twelve** (pages 271-282)

Agency: Illinois Commerce Commission

Rulemaking: General Orders 1 and 2 under the Illinois Commercial Relocation of Trespassing Vehicles Law (for Joint Committee objections, see pages 76-77)

Background: The Joint Committee has objected to both General Orders issued by the Illinois Commerce Commission under the Commercial Relocation of Trespassing Vehicles Law, proposed December 15, 1978, and June 15, 1979. The basis of the objection to the first General Order was the lack of criteria for suspension or revocation of licenses. The Commission merely repeated the statutory language, instead of providing criteria. The second objection was to the uniform system of accounts which was viewed as unauthorized by the statute.

Several other developments are relevant. First, during 1979 the General Assembly added a provision to the law setting the maximum rate at \$35 (HB 1757, PA 81-333), although the Commission has granted higher rates. A challenge is being brought against this provision in court in Cook County. The challenge is also likely to involve the lack of standards in the law for the determination of rates. Another development is the fact that only Cook County is affected by the law at this time. The two downstate counties which opted in are now opting out largely because of the excessive nature of the Commission regulations. And, in Cook County the result of these regulations is that only the largest company can comply with the regulations and smaller companies are being forced out of the business.

The Joint Committee has developed legislation to clarify the Act to specifically prohibit the Commission from imposing a uniform accounting system and alternative legislation to authorize the imposition of a uniform accounting system. Consideration of these two alternative bills will allow the General Assembly to address the policy issues involved.

Summary of Alternative Bill Eleven: Amends the Illinois Commercial Relocation of Trespassing Vehicles Law to include legislative findings and to revise the rate-making authority of the Illinois Commerce Commission under the law. Provides that maximum fees for storage established by the Commission should



be based on typical business expenses and prohibits the Commission from imposing a uniform accounting system. Maintains \$35 maximum charge for towing or relocation.

Summary of Alternative Bill Twelve: Amends the Illinois Vehicle Code to allow the Illinois Commerce Commission to impose a uniform system of accounts on commercial relocators of trespassing vehicles. Also, clarifies purpose of the regulation of commercial relocation of trespassing vehicles. Maintains the \$35 maximum charge for relocation.

### **Alternative Bills Thirteen and Fourteen (pages 283-293)**

Agency: Environmental Protection Agency

Rulemaking: Rules and Emergency Rules for Issuance of Permits to New or Modified Air Pollution Sources Affecting Nonattainment Areas (for Joint Committee objections, see pages 81-82)

Background: The Environmental Protection Agency adopted on an emergency basis rules for the issuance of permits to new or modified air pollution sources affecting nonattainment areas on May 4, 1979, and September 14, 1979. The agency at both times also proposed the rules as permanent rules, but to date the rules have not been adopted on a permanent basis.

The Joint Committee objected to the rules in October, 1979, because of the improper use of the emergency rulemaking procedure.

The Joint Committee also objected to the lack of clarity in the rules concerning the requirement for an offsetting emission reduction prior to operation of a new or modified air pollution source. Although the offset requirement is federally mandated to some extent, the agency has failed to delineate its specific policies in relation to the obtaining or transferring of rights to offsets. Since the Environmental Protection Act is silent on this issue, it is a matter of serious public concern, and the agency has failed to clarify its policy in rulemaking, an amendment to the statute is appropriate.

Since the Joint Committee believes that the issues raised by these rules exceed its primary area of expertise, the Joint Committee is developing two alternative bills for consideration by the General Assembly — the first would allow the imposition of the offset requirement under certain conditions, while the other bill would prohibit the agency from imposing an offset requirement.

Summary of Alternative Bill Thirteen: Amends the Environmental Protection Act to allow the Pollution Control Board to impose an offset requirement for the granting of permits for the operation of air pollution sources. Makes the Environmental Protection Agency responsible for documenting emission reductions which may be used as offsets. Provides that the right to the use of a reduction as an offset is held by the owner of the source responsible for the reduction. Such rights may not be transferred. Further provides that a good faith effort to obtain an offset shall satisfy the requirement and that previous reductions and economic growth must also be considered.

Summary of Alternative Bill Fourteen: Amends the Environmental Protection Act to prohibit the Environmental Protection Agency from imposing a requirement that owners or operators of air pollution sources obtain an offsetting reduction in air pollution emissions prior to the issuance of a permit for the operation of the air pollution source. Requires the agency to allow reasonable economic growth and to consider emission reductions achieved by the source in granting operating permits.

#### **Alternative Bills Fifteen and Sixteen (pages 295-302)**

Agency: Pollution Control Board

Rulemaking: Amendments to Fugitive Particulate Matter Rules

Background: In the August 10, 1979, issue of the Illinois Register, the Pollution Control Board proposed amendments to their air pollution rules concerning fugitive particulate matter. The Joint Committee did not object, but various members expressed serious concerns about the lack of specific and uniform criteria for designing nonattainment areas which will be subject to these regulations. The concerns about the criteria used were heightened by the inclusion of additional areas in the adopted version of the rule which were not included in the proposed version.

The Joint Committee believes that the Board should be specifically required to develop and consistently apply these criteria because of the importance of this discretionary power of the Board. This is consistent with Section 4.02 of the Administrative Procedure Act which was added by Public Act 81-1129 and became effective January 1, 1980. Alternative Bill Fifteen would implement this position.

The Joint Committee is also presenting alternative legislation to specifically exempt the Pollution Control

Board from stating criteria in this case. This would authorize the Board's current policy. Consideration of these alternative bills will allow the General Assembly to address the policy issues involved in this situation.

**Summary of Alternative Bill Fifteen:** Amends the Environmental Protection Act to require the Pollution Control Board to adopt specific and uniform criteria for the designation of areas of the state as nonattainment areas. Provides that the Board must adopt such criteria by July 1, 1981. Designations will be invalid if they are not consistent with such criteria.

**Summary of Alternative Bill Sixteen:** Amends the Environmental Protection Act to exempt the Pollution Control Board from the requirement of Section 4.02 of the Administrative Procedure Act, which requires standards or criteria to be stated in rules as the basis for any discretionary power, in regard to its designation of areas of the state that do not attain the standards for air quality or areas in which control measures will be enforced.



81st GENERAL ASSEMBLY  
State of Illinois

1979 and 1980

INTRODUCED \_\_\_\_\_ BY

**SYNOPSIS:** (Ch. 23, pars. 5-5 and 12-4.25)

Amends the Public Aid Code to provide that regulations adopted by the Department of Public Aid governing the dispensing of health services apply generally to all categories of health service vendors. Terms applying to only one vendor category must be included in the vendor agreement.

LRB8108527SCma

A BILL FOR

1	AN ACT to amend Sections 5-5 and 12-4.25 of "The Illinois	51
2	Public Aid Code", approved April 11, 1967, as amended.	54
3	<u>As it enacted by the People of the State of Illinois,</u>	57
4	<u>represented in the General Assembly:</u>	58
5	Section 1. Sections 5-5 and 12-4.25 of "The Illinois	59
6	Public Aid Code", approved April 11, 1967, as amended are	60
7	amended to read as follows:	61
	(Ch. 23, par. 5-5)	63
8	Sec. 5-5. Medical services.) The Illinois Department, by	64
9	rule, shall determine the quantity and quality of the medical	65
10	assistance for which payment will be authorized, and the	66
11	medical services to be provided, which may include all or	67
12	part of the following: (1) inpatient hospital services; (2)	68
13	outpatient hospital services; (3) other laboratory and x-ray	69
14	services; (4) skilled nursing home services; (5) physicians'	
15	services whether furnished in the office, the patient's home,	70
16	a hospital, a skilled nursing home, or elsewhere; (6) medical	71
17	care, or any other type of remedial care furnished by	72
18	licensed practitioners; (7) home health care services; (8)	73
19	private duty nursing service; (9) clinic services; (10)	74
20	dental services; (11) physical therapy and related services;	75
21	(12) prescribed drugs, dentures, and prosthetic devices; and	
22	eyeglasses prescribed by a physician skilled in the diseases	76
23	of the eye, or by an optometrist, whichever the person may	77
24	select; (13) other diagnostic, screening, preventive, and	78
25	rehabilitative services; (14) transportation and such other	79
26	expenses as may be necessary; (15) medical treatment of rape	80
27	victims for injuries sustained as a result of the rape,	81
28	including examinations and laboratory tests to discover	
29	evidence which may be used in criminal proceedings arising	82
30	from the rape; (16) any other medical care, and any other	83
31	type of remedial care recognized under the laws of this	84
32	State, but not including abortions, or induced miscarriages	85

1 or premature births, unless, in the opinion of a physician, 85  
2 such procedures are necessary for the preservation of the 86  
3 life of the woman seeking such treatment, or except an 87  
4 induced premature birth intended to produce a live viable 88  
5 child and such procedure is necessary for the health of the 89  
6 mother or her unborn child. The preceding terms include 90  
7 nursing care and nursing home service for persons who rely on  
8 treatment by spiritual means alone through prayer for 91  
9 healing. 92

10 The Illinois Department, by rule, may distinguish and 93  
11 classify the medical services to be provided in accordance 94  
12 with the classes of persons designated in Section 5-2. 96

13 The Illinois Department shall establish such regulations 97  
14 governing the dispensing of health services under this 98  
15 Article as it shall deem appropriate. Such regulations must 99  
16 apply generally to all categories of health service vendors. 100  
17 In formulating these regulations the Illinois Department 101  
18 shall consult with and give substantial weight to the  
19 recommendations offered by the Legislative Advisory 102  
20 Committee. The Department should seek the advice of formal 103  
21 professional advisory committees appointed by the Director of 104  
22 the Illinois Department for the purpose of providing regular 105  
23 advice on policy and administrative matters to the Illinois  
24 Department. 107

25 All dispensers of medical services shall be required to 108  
26 maintain and retain business and professional records 109  
27 sufficient to fully and accurately document the nature, 110  
28 scope, details and receipt of the health care provided to 111  
29 persons eligible for medical assistance under this Code, in 112  
30 accordance with regulations promulgated by the Illinois 113  
31 Department. The rules and regulations shall require that  
32 proof of the receipt of prescription drugs, dentures, 114  
33 prosthetic devices and eyeglasses by eligible persons under 115  
34 this Section accompany each claim for reimbursement submitted 116  
35 by the dispenser of such medical services. No such claims 117

1 for reimbursement shall be approved for payment by the 118  
2 Illinois Department without such proof of receipt. 119

3 The rules and regulations of the Illinois Department 120  
4 shall require that a written statement including the required 121  
5 opinion of a physician shall accompany any claim for 122  
6 reimbursement for abortions, or induced miscarriages or 123  
7 premature births. This statement shall indicate what 124  
8 procedures were used in providing such medical services. 125

9 The Illinois Department shall require that all dispensers 126  
10 of medical services desiring to participate in the Medical 127  
11 Assistance program established under this Article to disclose 128  
12 all financial, beneficial, ownership, equity, surety or other 129  
13 interests in any and all firms, corporations, partnerships, 130  
14 associations, business enterprises, joint ventures, agencies, 131  
15 institutions or other legal entities providing any form of 132  
16 health care services in this State under this article. 133

17 The Illinois Department shall develop and operate, in 134  
18 cooperation with other State Departments and agencies and in 135  
19 compliance with applicable federal laws and regulations, 136  
20 appropriate and effective systems of health care evaluation 137  
21 and programs for monitoring of utilization of health care 138  
22 services and facilities, as it affects persons eligible for 139  
23 medical assistance under this Code. The Illinois Department 140  
24 shall report regularly the results of the operation of such 141  
25 systems and programs to the Legislative Advisory Committee 142  
26 on Public Aid to enable the Committee to ensure, from time to 143  
27 time, that these programs are effective and meaningful. 144

28 The Illinois Department shall report annually to the 145  
29 General Assembly, no later than the second Friday in April of 146  
30 1979 and each year thereafter, in regard to: 148

31 a) actual statistics and trends in utilization of 149  
32 medical services by public aid recipients; 151  
33 b) actual statistics and trends in the provision of the 152  
34 various medical services by medical vendors; 154  
35 c) current rate structures and proposed changes in those 155



1 rate structures for the various medical vendors; and 157  
 2 d) efforts at utilization review and control by the 158  
 3 Illinois Department. 160

4 The period covered by each report shall be the 3 years 161  
 5 ending on the June 30 prior to the report. The report shall 162  
 6 include suggested legislation for consideration by the 163  
 7 General Assembly. The filing of one copy of the report with 164  
 8 the Clerk of the House of Representatives, one copy with the 165  
 9 Secretary of the Senate and one copy with the Legislative 166  
 10 Advisory Committee on Public Aid or its successor shall be 167  
 11 deemed sufficient to comply with this Section. 168

(Ch. 23, par. 12-4.25) 170

12 Sec. 12-4.25. (A) The Illinois Department may deny, 171  
 13 suspend or terminate the eligibility of any person, firm, 172  
 14 corporation, association, agency, institution or other legal 173  
 15 entity to participate as a vendor of goods or services to 174  
 16 recipients under the medical assistance program under Article 175  
 17 V, if after reasonable notice and opportunity for a hearing 176  
 18 the Illinois Department finds: 177

19 (a) Such vendor is not complying with either of the 178  
 20 following: 179

21 (1) The Department's ~~policy--or--rules and regulations~~ 180  
 22 adopted under Article V to govern the dispensing of health 181  
 23 services, ~~or with~~ 183

24 (2) The terms and conditions prescribed by the Illinois 185  
 25 Department in the specific ~~its~~ vendor agreement for the 186  
 26 applicable category of vendor, ~~which document Vendor~~  
 27 agreements shall be developed by the Department as a result 187  
 28 of negotiations with each vendor category, including 188  
 29 physicians, hospitals, long term care facilities, 189  
 30 pharmacists, optometrists, podiatrists and dentists and shall  
 31 set setting forth the terms and conditions applicable to the 191  
 32 participation of each vendor group in the program; or 193

33 (b) Such vendor has failed to keep or make available for 194  
 34 inspection, audit or copying, after receiving a written 195

1	request from the Illinois Department, such records regarding	196
2	payments claimed for providing services. This section does	197
3	not require vendors to make available patient records of	198
4	patients for whom services are not reimbursed under this	199
5	Code; or	200
6	(c) Such vendor has failed to furnish any information	201
7	requested by the Department regarding payments for providing	202
8	goods or services; or	203
9	(d) Such vendor has knowingly made, or caused to be	204
10	made, any false statement or representation of a material	205
11	fact in connection with the administration of the medical	206
12	assistance program; or	207
13	(e) Such vendor has furnished goods or services to a	208
14	recipient which are (1) in excess of his or her needs, (2)	209
15	harmful to the recipient, or (3) of grossly inferior quality,	210
16	all of such determinations to be based upon competent medical	211
17	judgment and evaluations; or	212
18	(f) The vendor; a person with management responsibility	213
19	for a vendor; an officer or person owning, either directly or	214
20	indirectly, 5% or more of the shares of stock or other	215
21	evidences of ownership in a corporate vendor; an owner of a	216
22	sole proprietorship which is a vendor; or a partner in a	217
23	partnership which is a vendor, either:	218
24	(1) was previously terminated from participation in the	219
25	medical assistance program; or	221
26	(2) was a person with management responsibility for a	222
27	previously terminated vendor during the time of conduct which	223
28	was the basis for that vendor's termination from	224
29	participation in the medical assistance program; or	226
30	(3) was an officer, or person owning, either directly or	227
31	indirectly, 5% or more of the shares of stock or other	228
32	evidences of ownership in a previously terminated corporate	229
33	vendor during the time of conduct which was the basis for	230
34	that vendor's termination from participation in the medical	231
35	assistance program; or	232

1	(4) was an owner of a sole proprietorship or partner of	233
2	a partnership which was previously terminated during the time	234
3	of conduct which was the basis for that vendor's termination	235
4	from participation in the medical assistance program; or	237
5	(g) The vendor; a person with management responsibility	238
6	for a vendor; an officer or person owning, either directly or	239
7	indirectly, 5% or more of the shares of stock or other	240
8	evidences of ownership in a corporate vendor; an owner of a	241
9	sole proprietorship which is a vendor; or a partner in a	242
10	partnership which is a vendor, either:	243
11	(1) has engaged in practices prohibited by applicable	244
12	federal or State law or regulation relating to the medical	245
13	assistance program; or	246
14	(2) was a person with management responsibility for a	247
15	vendor at the time that such vendor engaged in practices	248
16	prohibited by applicable federal or State law or regulation	249
17	relating to the medical assistance program; or	250
18	(3) was an officer, or person owning, either directly or	251
19	indirectly, 5% or more of the shares of stock or other	252
20	evidences of ownership in a vendor at the time such vendor	253
21	engaged in practices prohibited by applicable federal or	254
22	State law or regulation relating to the medical assistance	
23	program; or	255
24	(4) was an owner of a sole proprietorship or partner of	256
25	a partnership which was a vendor at the time such vendor	257
26	engaged in practices prohibited by applicable federal or	258
27	State law or regulation relating to the medical assistance	259
28	program.	260
29	(8) The Illinois Department shall deny, suspend or	261
30	terminate the eligibility of any person, firm, corporation,	262
31	association, agency, institution or other legal entity to	263
32	participate as a vendor of goods or services to recipients	264
33	under the medical assistance program under Article V:	265
34	(1) if such vendor is not properly licensed; or	267
35	(2) within 30 days of the date when such vendor's	268

1	professional license, certification or other authorization	269
2	has been refused renewal or has been revoked, suspended or	270
3	otherwise terminated.	271
4	(C) Upon termination of a vendor of goods or services	272
5	from participation in the medical assistance program	273
6	authorized by this Article, a person with management	274
7	responsibility for such vendor during the time of any conduct	275
8	which served as the basis for that vendor's termination is	276
9	barred from participation in the medical assistance program.	277
10	Upon termination of a corporate vendor, the officers and	279
11	persons owning, directly or indirectly, 5% or more of the	280
12	shares of stock or other evidences of ownership in the vendor	281
13	during the time of any conduct which served as the basis for	282
14	that vendor's termination are barred from participation in	283
15	the medical assistance program.	284
16	Upon termination of a sole proprietorship or partnership,	285
17	the owner or partners during the time of any conduct which	286
18	served as the basis for that vendor's termination are barred	287
19	from participation in the medical assistance program.	289
20	Rules adopted by the Illinois Department to implement	290
21	these provisions shall specifically include a definition of	291
22	the term "management responsibility" as used in this Section.	292
23	Such definition shall include, but not be limited to, typical	293
24	job titles, and duties and descriptions which will be	
25	considered as within the definition of individuals with	294
26	management responsibility for a provider.	295
27	(D) If a vendor has been suspended from the medical	296
28	assistance program under Article V of the Code, the Director	297
29	may require that such vendor correct any deficiencies which	298
30	served as the basis for the suspension. The Director shall	299
31	specify in the suspension order a of the order, during which	300
32	a suspended vendor shall not be eligible to participate. At	301
33	the conclusion of the period of suspension the Director shall	302
34	reinstate such vendor, unless he finds that such vendor has	
35	not corrected deficiencies upon which the suspension was	303

1 based. 304

2 If a vendor has been terminated from the medical 305

3 assistance program under Article V, such vendor shall be 306

4 barred from participation for at least one year. At the end 307

5 of one year a vendor who has been terminated may apply for 308

6 reinstatement to the program. Upon proper application to be 309

7 reinstated such vendor may be deemed eligible by the Director

8 providing that such vendor meets the requirements for 310

9 eligibility under this Act. 312

10 (E) The Illinois Department may recover money improperly 313

11 or erroneously paid, or overpayments, either by setoff, 314

12 crediting against future billings or by requiring direct 315

13 repayment to the Illinois Department. 317

14 (F) The Illinois Department may withhold payments to any 318

15 vendor during the pendency of any proceeding under this 319

16 Section except that if a final administrative decision has 320

17 not been issued within 120 days of the initiation of such 321

18 proceedings, unless delay has been caused by the vendor, 322

19 payments can no longer be withheld, provided, however, that

20 the 120 day limit may be extended if said extension is 323

21 mutually agreed to by the Illinois Department and the vendor. 324

22 The Illinois Department shall state by rule with as much 325

23 specificity as practicable the conditions under which 326

24 payments will not be withheld during the pendency of any

25 proceeding under this Section. Payments may be denied for 328

26 bills submitted with service dates occurring during the

27 pendency of a proceeding where the final administrative 329

28 decision is to terminate eligibility to participate in the 330

29 medical assistance program. The Illinois Department shall 331

30 state by rule with as much specificity as practicable the 332

31 conditions under which payments will not be denied for such

32 bills. 333

33 (G) The provisions of the Administrative Review Act, 334

34 approved May 8, 1945, as now or hereafter amended, and the 335

35 rules adopted pursuant thereto, shall apply to and govern all 336

1	proceedings for the judicial review of final administrative	337
2	decisions of the Illinois Department under this Section. The	338
3	term "administrative decision" is defined as in Section 1 of	339
4	the Administrative Review Act.	340
5	(H) Nothing contained in this Code shall in any way	341
6	limit or otherwise impair the authority or power of any State	342
7	agency responsible for licensing of vendors.	343

81st GENERAL ASSEMBLY  
State of Illinois

1979 and 1980

INTRODUCED \_\_\_\_\_, BY

SYNOPSIS: (Ch. 23, pars. 5-5 and 12-4.25)

Amends Public Aid Code to provide that rules adopted by the Department of Public Aid governing the dispensing of health services may apply to a single category of health service vendors despite the requirement that the Department develop vendor agreements with each category of vendors.

LRB8109376SCjp

A BILL FOR

1 AN ACT to amend Sections 5-5 and 12-4.25 of "The Illinois 49  
2 Public Aid Code", adopted April 11, 1967, as amended. 52

3 Be it enacted by the People of the State of Illinois; 55  
4 represented in the General Assembly: 56

5 Section 1. Sections 5-5 and 12-4.25 of "The Illinois 57  
6 Public Aid Code", adopted April 11, 1967, as amended, are 58  
7 amended to read as follows: 59

(Ch. 23, par. 5-5) 61

8 Sec. 5-5. Medical services.) The Illinois Department, by 62  
9 rule, shall determine the quantity and quality of the medical 63  
10 assistance for which payment will be authorized, and the 64  
11 medical services to be provided, which may include all or 65  
12 part of the following: (1) inpatient hospital services; (2) 66  
13 outpatient hospital services; (3) other laboratory and x-ray 67  
14 services; (4) skilled nursing home services; (5) physicians' 68  
15 services whether furnished in the office, the patient's home, 69  
16 a hospital, a skilled nursing home, or elsewhere; (6) medical 70  
17 care, or any other type of remedial care furnished by 71  
18 licensed practitioners; (7) home health care services; (8) 72  
19 private duty nursing service; (9) clinic services; (10) 73  
20 dental services; (11) physical therapy and related services; 74  
21 (12) prescribed drugs, dentures, and prosthetic devices; and 75  
22 eyeglasses prescribed by a physician skilled in the diseases 76  
23 of the eye, or by an optometrist, whichever the person may 77  
24 select; (13) other diagnostic, screening, preventive, and 78  
25 rehabilitative services; (14) transportation and such other 79  
26 expenses as may be necessary; (15) medical treatment of rape 80  
27 victims for injuries sustained as a result of the rape, 81  
28 including examinations and laboratory tests to discover 82  
29 evidence which may be used in criminal proceedings arising 83  
30 from the rape; (16) any other medical care, and any other 84  
31 type of remedial care recognized under the laws of this 85  
32 State, but not including abortions, or induced miscarriages 86



1 or premature births, unless, in the opinion of a physician, 83  
 2 such procedures are necessary for the preservation of the 84  
 3 life of the woman seeking such treatment, or except an 85  
 4 induced premature birth intended to produce a live viable 86  
 5 child and such procedure is necessary for the health of the 87  
 6 mother or her unborn child. The preceding terms include 88  
 7 nursing care and nursing home service for persons who rely on 89  
 8 treatment by spiritual means alone through prayer for 90  
 9 healing. 91

10 The Illinois Department, by rule, may distinguish and 91  
 11 classify the medical services to be provided in accordance 92  
 12 with the classes of persons designated in Section 5-2. 94

13 The Illinois Department shall establish such rules 95  
 14 regulations governing the dispensing of health services under 96  
 15 this Article as it shall deem appropriate. Such rules may 97  
 16 apply generally to all categories of health service vendors 98  
 17 or may apply only to a single category of health service 99  
 18 vendors, notwithstanding the requirement under Section 100  
 19 12-4.25 that the Illinois Department develop agreements with 101  
 20 each category of vendors. In formulating these rules 102  
 21 regulations the Illinois Department shall consult with and 102  
 22 give substantial weight to the recommendations offered by the 103  
 23 Legislative Advisory Committee. The Department should seek 104  
 24 the advice of formal professional advisory committees 105  
 25 appointed by the Director of the Illinois Department for the 106  
 26 purpose of providing regular advice on policy and 107  
 27 administrative matters to the Illinois Department. 108

28 All dispensers of medical services shall be required to 109  
 29 maintain and retain business and professional records 110  
 30 sufficient to fully and accurately document the nature, 111  
 31 scope, details and receipt of the health care provided to 112  
 32 persons eligible for medical assistance under this Code, in 113  
 33 accordance with regulations promulgated by the Illinois 114  
 34 Department. The rules and regulations shall require that 115  
 35 proof of the receipt of prescription drugs, dentures, 115

1	prosthetic devices and eyeglasses by eligible persons under	116
2	this Section accompany each claim for reimbursement submitted	117
3	by the dispenser of such medical services. No such claims	118
4	for reimbursement shall be approved for payment by the	119
5	Illinois Department without such proof of receipt.	120
6	The rules and regulations of the Illinois Department	121
7	shall require that a written statement including the required	122
8	opinion of a physician shall accompany any claim for	123
9	reimbursement for abortions, or induced miscarriages or	124
10	premature births. This statement shall indicate what	125
11	procedures were used in providing such medical services.	126
12	The Illinois Department shall require that all dispensers	127
13	of medical services desiring to participate in the Medical	128
14	Assistance program established under this Article to disclose	129
15	all financial, beneficial, ownership, equity, surety or other	130
16	interests in any and all firms, corporations, partnerships,	131
17	associations, business enterprises, joint ventures, agencies,	132
18	institutions or other legal entities providing any form of	133
19	health care services in this State under this article.	134
20	The Illinois Department shall develop and operate, in	135
21	cooperation with other State Departments and agencies and in	136
22	compliance with applicable federal laws and regulations,	137
23	appropriate and effective systems of health care evaluation	138
24	and programs for monitoring of utilization of health care	139
25	services and facilities, as it affects persons eligible for	140
26	medical assistance under this Code. The Illinois Department	141
27	shall report regularly the results of the operation of such	142
28	systems and programs to the Legislative Advisory Committee	143
29	on Public Aid to enable the Committee to ensure, from time to	143
30	time, that these programs are effective and meaningful.	145
31	The Illinois Department shall report annually to the	146
32	General Assembly, no later than the second Friday in April of	147
33	1979 and each year thereafter, in regard to:	149
34	a) actual statistics and trends in utilization of	150
35	medical services by public aid recipients;	152

1           d) actual statistics and trends in the provision of the 153  
2 various medical services by medical vendors; 155  
3           c) current rate structures and proposed changes in those 156  
4 rate structures for the various medical vendors; and 158  
5           d) efforts at utilization review and control by the 159  
6 Illinois Department. 161

7           The period covered by each report shall be the 3 years 162  
8 ending on the June 30 prior to the report. The report shall 163  
9 include suggested legislation for consideration by the 164  
10 General Assembly. The filing of one copy of the report with 165  
11 the Clerk of the House of Representatives, one copy with the 166  
12 Secretary of the Senate and one copy with the Legislative 167  
13 Advisory Committee on Public Aid or its successor shall be 168  
14 deemed sufficient to comply with this Section. 169

(Ch. 23, par. 12-4.25) 171

15           Sec. 12-4.25. (A) The Illinois Department may deny, 172  
16 suspend or terminate the eligibility of any person, firm, 173  
17 corporation, association, agency, institution or other legal 174  
18 entity to participate as a vendor of goods or services to 175  
19 recipients under the medical assistance program under Article 176  
20 V, if after reasonable notice and opportunity for a hearing 177  
21 the Illinois Department finds: 178

22           (a) Such vendor is not complying with either of the 179  
23 following: 180

24           (1) the Department's ~~policy or rules and regulations~~ 182  
25 adopted under Article V to govern the dispensing of health 183  
26 services; or with 184

27           (2) the terms and conditions prescribed by the Illinois 186  
28 Department in the specific ~~its~~ vendor agreement for the 187  
29 applicable category of vendor, ~~which~~ ~~document~~ vendor  
30 agreements shall be developed by the Department as a result 188  
31 of negotiations with each vendor category, including 189  
32 physicians, hospitals, long term care facilities, 190  
33 pharmacists, optometrists, podiatrists and dentists and shall  
34 set ~~setting~~ forth the terms and conditions applicable to the 192

1	participation of each vendor group in the program; or	194
2	(b) Such vendor has failed to keep or make available for	195
3	inspection, audit or copying, after receiving a written	196
4	request from the Illinois Department, such records regarding	197
5	payments claimed for providing services. This section does	198
6	not require vendors to make available patient records of	199
7	patients for whom services are not reimbursed under this	200
8	Code; or	201
9	(c) Such vendor has failed to furnish any information	202
10	requested by the Department regarding payments for providing	203
11	goods or services; or	204
12	(d) Such vendor has knowingly made, or caused to be	205
13	made, any false statement or representation of a material	206
14	fact in connection with the administration of the medical	207
15	assistance program; or	208
16	(e) Such vendor has furnished goods or services to a	209
17	recipient which are (1) in excess of his or her needs, (2)	210
18	harmful to the recipient, or (3) of grossly inferior quality,	211
19	all of such determinations to be based upon competent medical	212
20	judgment and evaluations; or	213
21	(f) The vendor; a person with management responsibility	214
22	for a vendor; an officer or person owning, either directly or	215
23	indirectly, 5% or more of the shares of stock or other	216
24	evidences of ownership in a corporate vendor; an owner of a	217
25	sole proprietorship which is a vendor; or a partner in a	218
26	partnership which is a vendor, either:	219
27	(1) was previously terminated from participation in the	220
28	medical assistance program; or	221
29	(2) was a person with management responsibility for a	222
30	previously terminated vendor during the time of conduct which	223
31	was the basis for that vendor's termination from	224
32	participation in the medical assistance program; or	225
33	(3) was an officer, or person owning, either directly or	226
34	indirectly, 5% or more of the shares of stock or other	227
35	evidences of ownership in a previously terminated corporate	228

1 vendor during the time of conduct which was the basis for 231  
2 that vendor's termination from participation in the medical 232  
3 assistance program; or 233  
4 (4) was an owner of a sole proprietorship or partner of 234  
5 a partnership which was previously terminated during the time 235  
6 of conduct which was the basis for that vendor's termination 236  
7 from participation in the medical assistance program; or 238  
8 (j) The vendor; a person with management responsibility 239  
9 for a vendor; an officer or person owning, either directly or 240  
10 indirectly, 5% or more of the shares of stock or other 241  
11 evidences of ownership in a corporate vendor; an owner of a 242  
12 sole proprietorship which is a vendor; or a partner in a 243  
13 partnership which is a vendor, either: 244  
14 (1) has engaged in practices prohibited by applicable 245  
15 federal or State law or regulation relating to the medical 246  
16 assistance program; or 247  
17 (2) was a person with management responsibility for a 248  
18 vendor at the time that such vendor engaged in practices 249  
19 prohibited by applicable federal or State law or regulation 250  
20 relating to the medical assistance program; or 252  
21 (3) was an officer, or person owning, either directly or 253  
22 indirectly, 5% or more of the shares of stock or other 254  
23 evidences of ownership in a vendor at the time such vendor 255  
24 engaged in practices prohibited by applicable federal or 256  
25 State law or regulation relating to the medical assistance 257  
26 program; or 258  
27 (4) was an owner of a sole proprietorship or partner of 259  
28 a partnership which was a vendor at the time such vendor 260  
29 engaged in practices prohibited by applicable federal or 261  
30 State law or regulation relating to the medical assistance 262  
31 program. 263  
32 (B) The Illinois Department shall deny, suspend or 264  
33 terminate the eligibility of any person, firm, corporation, 265  
34 association, agency, institution or other legal entity to 266  
35 participate as a vendor of goods or services to recipients 267

1	under the medical assistance program under Article V:	269
2	(1) if such vendor is not properly licensed; or	271
3	(2) within 30 days of the date when such vendor's	272
4	professional license, certification or other authorization	273
5	has been refused renewal or has been revoked, suspended or	274
6	otherwise terminated.	275
7	(3) Upon termination of a vendor of goods or services	276
8	from participation in the medical assistance program	277
9	authorized by this Article, a person with management	278
10	responsibility for such vendor during the time of any conduct	279
11	which served as the basis for that vendor's termination is	280
12	barred from participation in the medical assistance program.	281
13	Upon termination of a corporate vendor, the officers and	283
14	persons owning, directly or indirectly, 5% or more of the	284
15	shares of stock or other evidences of ownership in the vendor	285
16	during the time of any conduct which served as the basis for	286
17	that vendor's termination are barred from participation in	287
18	the medical assistance program.	288
19	Upon termination of a sole proprietorship or partnership,	289
20	the owner or partners during the time of any conduct which	290
21	served as the basis for that vendor's termination are barred	291
22	from participation in the medical assistance program.	293
23	Rules adopted by the Illinois Department to implement	294
24	these provisions shall specifically include a definition of	295
25	the term "management responsibility" as used in this Section.	296
26	Such definition shall include, but not be limited to, typical	297
27	job titles, and duties and descriptions which will be	298
28	considered as within the definition of individuals with	299
29	management responsibility for a provider.	300
30	(4) If a vendor has been suspended from the medical	301
31	assistance program under Article V of the Code, the Director	302
32	may require that such vendor correct any deficiencies which	303
33	served as the basis for the suspension. The Director shall	304
34	specify in the suspension order a of the order, during which	305
35	a suspended vendor shall not be eligible to participate. At	306

1 the conclusion of the period of suspension the Director shall 307  
2 reinstate such vendor, unless he finds that such vendor has  
3 not corrected deficiencies upon which the suspension was 308  
4 based. 309

5 If a vendor has been terminated from the medical 310  
6 assistance program under Article V, such vendor shall be 311  
7 barred from participation for at least one year. At the end 312  
8 of one year a vendor who has been terminated may apply for 313  
9 reinstatement to the program. Upon proper application to be 314  
10 reinstated such vendor may be deemed eligible by the Director  
11 providing that such vendor meets the requirements for 315  
12 eligibility under this Act. 317

13 (E) The Illinois Department may recover money improperly 318  
14 or erroneously paid, or overpayments, either by setoff, 319  
15 crediting against future billings or by requiring direct 320  
16 repayment to the Illinois Department. 322

17 (F) The Illinois Department may withhold payments to any 323  
18 vendor during the pendency of any proceeding under this 324  
19 Section except that if a final administrative decision has 325  
20 not been issued within 120 days of the initiation of such 326  
21 proceedings, unless delay has been caused by the vendor, 327  
22 payments can no longer be withheld, provided, however, that  
23 the 120 day limit may be extended if said extension is 328  
24 mutually agreed to by the Illinois Department and the vendor. 329  
25 The Illinois Department shall state by rule with as much 330  
26 specificity as practicable the conditions under which 331  
27 payments will not be withheld during the pendency of any 332  
28 proceeding under this Section. Payments may be denied for  
29 bills submitted with service dates occurring during the 333  
30 pendency of a proceeding where the final administrative 334  
31 decision is to terminate eligibility to participate in the 335  
32 medical assistance program. The Illinois Department shall 336  
33 state by rule with as much specificity as practicable the 337  
34 conditions under which payments will not be denied for such 338  
35 bills. 339

1	[G] The provisions of the Administrative Review Act,	340
2	approved May 8, 1945, as now or hereafter amended, and the	341
3	rules adopted pursuant thereto, shall apply to and govern all	342
4	proceedings for the judicial review of final administrative	343
5	decisions of the Illinois Department under this Section. The	344
6	term "administrative decision" is defined as in Section 1 of	345
7	the Administrative Review Act.	346
8	[H] Nothing contained in this Code shall in any way	347
9	limit or otherwise impair the authority or power of any State	348
10	agency responsible for licensing of vendors.	349



81st GENERAL ASSEMBLY  
State of Illinois

1979 and 1980

INTRODUCED \_\_\_\_\_, BY

SYNOPSIS: (Ch. 111 1/2, par. 147.1)

Amends the "Hospital Licensing Act" by requiring that provisions be made in the standards established by the Department of Public Health for the employment of clinical psychologists in the management and direction of hospital psychiatric programs.

LRB8108696FGch

A BILL FOR

1	An Act to amend Section 6-1 of the "Hospital Licensing	50
2	Act", approved July 1, 1953, as amended.	53
3	<u>Be it enacted by the People of the State of Illinois,</u>	56
4	<u>represented in the General Assembly:</u>	57
5	Section 1. Section 6-1 of the "Hospital Licensing Act",	58
6	approved July 1, 1953, as amended, is amended to read as	59
7	follows:	60
	(Ch. 111 1/2, par. 147.1)	62
8	Sec. 6-1 In licensing any hospital which provides for the	63
9	diagnosis, care or treatment for persons suffering from	64
10	mental or emotional disorders or for mentally retarded	65
11	persons, the Department shall consult with the Department of	66
12	Mental Health and Developmental Disabilities in developing	67
13	standards for and evaluating the psychiatric programs of such	
14	hospitals.	69
15	<u>Such standards shall include provisions relating to the</u>	70
16	<u>employment of clinical psychologists, registered under the</u>	71
17	<u>Psychologist Registration Act, in the management and</u>	72
18	<u>direction of psychiatric programs, and provide for the</u>	73
19	<u>exercise by such psychologists of the full range of</u>	
20	<u>professional services authorized by that Act in the hospital.</u>	74

**81st GENERAL ASSEMBLY  
State of Illinois**

1979 and 1980

**INTRODUCED** \_\_\_\_\_ **BY**

**SYNOPSIS:** (Ch. 111 1/2, par. 147.1)

Amends the "Hospital Licensing Act" by requiring psychiatric services in hospitals to be managed by a psychiatrist. Requires the Department of Public Health to recognize the expertise of psychologists in its hospital licensing standards.

LRB8109377FGtc

**A BILL FOR**

1 AN ACT to amend Section 6.1 of the "Hospital Licensing 49  
2 Act", approved July 1, 1953, as amended. 52

3 be it enacted by the People of the State of Illinois, 55  
4 represented in the General Assembly: 50

5 Section 1. Section 6.1 of the "Hospital Licensing Act", 57  
6 approved July 1, 1953, as amended, is amended to read as 58  
7 follows: 59

(Ch. 111 1/2, par. 147.1) 61

8 Sec. 6.1 In licensing any hospital which provides for the 62  
9 diagnosis, care or treatment for persons suffering from 63  
10 mental or emotional disorders or for mentally retarded 64  
11 persons, the Department shall consult with the Department of 65  
12 Mental Health and Developmental Disabilities in developing  
13 standards for and evaluating the psychiatric programs of such 66  
14 hospitals. 67

15 The expertise and skills of clinical psychologists, as 68  
16 defined in Section 1-103 of the Mental Health and 69  
17 Developmental Disabilities Code, and of psychologists 70  
18 registered under the Psychologist Registration Act shall be 71  
19 recognized in such standards. However, the Department may 72  
20 require psychologists to serve under the direction or 73  
21 supervision of a psychiatrist. Such standards shall require  
22 psychiatric services to be provided only under the management 74  
23 of a psychiatrist.

81st GENERAL ASSEMBLY  
State of Illinois

1979 and 1980

INTRODUCED \_\_\_\_\_, BY

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

Amends An Act relating to public health. Restricts power of Department of Public Health to make rules relating to drinking water to community water supplies in communities of less than 5000 and non-community water supplies serving 25 or more persons for at least 60 days a year. Prohibits Department from adopting rules governing areas covered by Pollution Control Board or Environmental Protection Agency rules. Requires Department to make written findings that rules adopted under this provision will not result in unreasonable cost and are necessary to protect the public health.

LRB8108558SCTc

Fiscal Note Act  
may be applicable

A BILL FOR

1 AN ACT to amend Section 2 of "An Act in relation to 55  
2 public health", approved May 28, 1877, as amended. 58

3 Be it enacted by the People of the State of Illinois, 61  
4 represented in the General Assembly: 62

5 Section 1. Section 2 of "An Act in relation to public 63  
6 health", approved May 28, 1877, as amended, is amended to 64  
7 read as follows: 65

(Ch. 111 1/2, par. 22) 67

8 Sec. 2. The State Department of Public Health has 68  
9 general supervision of the interests of the health and lives 69  
10 of the people of the State. It has supreme authority in 70  
11 matters of quarantine, and may declare and enforce quarantine 71  
12 when none exists, and may modify or relax quarantine when it  
13 has been established. The Department may adopt, promulgate, 72  
14 repeal and amend rules and regulations and make such sanitary 73  
15 investigations and inspections as it may from time to time 74  
16 deem necessary for the preservation and improvement of the 75  
17 public health, consistent with law regulating the following:

18 (a) Transportation of the remains of deceased persons. 77

19 (b) Sanitary practices relating to drinking water made 79  
20 accessible to the public for human consumption or for 80  
21 lavatory or culinary purposes. The Department may adopt 81  
22 rules under this provision governing community water supplies 82  
23 servicing communities of less than 5000 population or  
24 non-community water supplies serving 25 persons or more for 83  
25 at least 60 days per year, which are not covered by rules 84  
26 adopted by the Pollution Control Board or the Environmental 85  
27 Protection Agency. Before adopting any rules under this 86  
28 provision, the Department must make written findings that the  
29 proposed rules (1) will not result in unreasonable costs to 88  
30 communities or persons who own, operate, or maintain such 89  
31 public water supplies, and (2) are necessary to protect the  
32 public health. 90

1 (c) Sanitary practices relating to rest room facilities 91  
2 made accessible to the public or to persons handling food 92  
3 served to the public. 94  
4 (d) Sanitary practices relating to disposal of human 95  
5 wastes in or from all buildings and places where people live, 96  
6 work or assemble. 97  
7 The provisions of "The Illinois Administrative Procedure 98  
8 Act", approved September 22, 1975, are hereby expressly 99  
9 adopted and shall apply to all administrative rules and 100  
10 procedures of the Department of Public Health under this Act, 101  
11 except that Section 5 of the Illinois Administrative 102  
12 Procedure Act relating to procedures for rule-making does not 103  
13 apply to the adoption of any rule required by federal law in 104  
14 connection with which the Department is precluded by law from 105  
15 exercising any discretion. 106  
16 All local boards of health, health authorities and 107  
17 officers, police officers, sheriffs and all other officers 108  
18 and employees of the state or any locality shall enforce the 109  
19 rules and regulations so adopted. 110  
20 The Department of Public Health shall investigate the 111  
21 causes of dangerously contagious or infectious diseases, 112  
22 especially when existing in epidemic form, and take means to 113  
23 restrict and suppress the same, and whenever such disease 114  
24 becomes, or threatens to become epidemic, in any locality and 115  
25 the local board of health or local authorities neglect or 116  
26 refuse to enforce efficient measures for its restriction or 117  
27 suppression or to act with sufficient promptness or 118  
28 efficiency, or whenever the local board of health or local 119  
29 authorities neglect or refuse to promptly enforce efficient 120  
30 measures for the restriction or suppression of dangerously 121  
31 contagious or infectious diseases, the Department of Public 122  
32 Health may enforce such measures as it deems necessary to 123  
33 protect the public health, and all necessary expenses so 124  
34 incurred shall be paid by the locality for which services are  
35 rendered.

1	The Department of Public Health may establish and	125
2	maintain a chemical and bacteriologic laboratory for the	126
3	examination of water and wastes, and for the diagnosis of	127
4	diphtheria, typhoid fever, tuberculosis, malarial fever and	128
5	such other diseases as it deems necessary for the protection	129
6	of the public health.	130
7	As used in this Act, "locality" means any governmental	131
8	agency which exercises power pertaining to public health in	132
9	an area less than the State.	134
10	The terms "sanitary investigations and inspections" and	135
11	"sanitary practices" as used in this Act shall not include or	136
12	apply to "Public Water Supplies" or "Sewage Works" as defined	137
13	in the "Environmental Protection Act".	138



**81st GENERAL ASSEMBLY  
State of Illinois**

1979 and 1980

INTRODUCED \_\_\_\_\_, BY

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

Amends An Act relating to public health. Prohibits Department of Public Health from adopting rules relating to water quality standards. Places such rule making power solely under the authority of the Pollution Control Board, the Environmental Protection Agency and federal authorities.

LRB8109378SCak

A BILL FOR

1 AN ACT to amend Section 2 of "An Act in relation to 4d  
2 public health", approved May 28, 1877, as amended. 51

3 be it enacted by the People of the State of Illinois, 54  
4 represented in the General Assembly: 53

5 Section 1. Section 2 of "An Act in relation to public 56  
6 health", approved May 28, 1877, as amended, is amended to 57  
7 read as follows: 58

(Ch. 111 1/2, par. 22) 60

8 Sec. 2. The State Department of Public Health has 61  
9 general supervision of the interests of the health and lives 62  
10 of the people of the State. It has supreme authority in 63  
11 matters of quarantine, and may declare and enforce quarantine 64  
12 when none exists, and may modify or relax quarantine when it 65  
13 has been established. The Department may adopt, promulgate, 66  
14 repeal and amend rules and regulations and make such sanitary 67  
15 investigations and inspections as it may from time to time 68  
16 deem necessary for the preservation and improvement of the 69  
17 public health, consistent with law regulating the following: 70

18 (a) Transportation of the remains of deceased persons. 71

19 (b) Sanitary practices relating to drinking water made 73  
20 accessible to the public for human consumption or for 74  
21 lavatory or culinary purposes. The Department may not adopt 75  
22 rules under this provision relating to water quality 76  
23 standards. Rules relating to such standards shall be 77  
24 promulgated solely by the Pollution Control Board, 78  
25 Environmental Protection Agency and appropriate local 79  
26 authorities.

27 (c) Sanitary practices relating to rest room facilities 80  
28 made accessible to the public or to persons handling food 81  
29 served to the public. 82

30 (d) Sanitary practices relating to disposal of human 84  
31 wastes in or from all buildings and places where people live, 85  
32 work or assemble. 86

1 The provisions of "The Illinois Administrative Procedure 87  
2 Act", approved September 22, 1975, ~~as amended~~ are hereby 88  
3 expressly adopted and shall apply to all administrative rules 89  
4 and procedures of the Department of Public health under this 90  
5 Act ~~except that Section 5 of the Illinois Administrative~~ 91  
6 ~~Procedure Act relating to procedures for rule-making does not~~ 92  
7 ~~apply to the adoption of any rule required by federal tax in~~  
8 ~~connection with which the Department is precluded by law from~~ 93  
9 ~~exercising any discretion.~~ 95  
10 All local boards of health, health authorities and 96  
11 officers, police officers, sheriffs and all other officers 97  
12 and employees of the state or any locality shall enforce the 98  
13 rules and regulations so adopted. 99  
14 The Department of Public Health shall investigate the 100  
15 causes of dangerously contagious or infectious diseases, 101  
16 especially when existing in epidemic form, and take means to 102  
17 restrict and suppress the same, and whenever such disease 103  
18 becomes, or threatens to become epidemic, in any locality and 104  
19 the local board of health or local authorities neglect or 105  
20 refuse to enforce efficient measures for its restriction or 106  
21 suppression or to act with sufficient promptness or 106  
22 efficiency, or whenever the local board of health or local 107  
23 authorities neglect or refuse to promptly enforce efficient 108  
24 measures for the restriction or suppression of dangerously 109  
25 contagious or infectious diseases, the Department of Public 110  
26 health may enforce such measures as it deems necessary to 110  
27 protect the public health, and all necessary expenses so 111  
28 incurred shall be paid by the locality for which services are 112  
29 rendered. 113  
30 The Department of Public Health may establish and 114  
31 maintain a chemical and bacteriologic laboratory for the 115  
32 examination of water and wastes, and for the diagnosis of 116  
33 diphtheria, typhoid fever, tuberculosis, malarial fever and 117  
34 such other diseases as it deems necessary for the protection 118  
35 of the public health. 119

1	As used in this Act, "locality" means any governmental	120
2	agency which exercises power pertaining to public health in	121
3	an area less than the State.	123
4	The terms "sanitary investigations and inspections" and	124
5	"sanitary practices" as used in this Act shall not include or	125
6	apply to "Public water supplies" or "Sewage works" as defined	126
7	in the "Environmental Protection Act".	127

81st GENERAL ASSEMBLY  
State of Illinois

1979 and 1980

INTRODUCED \_\_\_\_\_, BY

SYNOPSIS: (Ch. 111, par. 3407)

Amends the Illinois Nursing Act to require the Department of Registration and Education to adopt specific criteria relating to the procedures for the revocation or suspension of approval of nursing schools or their placement on probationary status.

LRB8108556BDjo

A BILL FOR

1	AN ACT to amend Section 5 of "The Illinois Nursing Act",	48
2	approved June 14, 1951, as amended.	51
3	<u>Be it enacted by the People of the State of Illinois,</u>	54
4	<u>represented in the General Assembly:</u>	55
5	Section 1. Section 5 of "The Illinois Nursing Act",	56
6	approved June 14, 1951, as amended, is amended to read as	57
7	follows:	58
	(Ch. 111, par. 3407)	60
8	Sec. 5. Subject to the provisions of this Act, the	61
9	Department shall:	62
10	1. Prescribe rules defining what constitutes a school of	63
11	professional nursing and what constitutes a school of	64
12	practical nursing.	65
13	2. Adopt rules providing for the establishment and	66
14	maintenance of a uniform and reasonable standard of	67
15	educational programs to be observed by all schools of	68
16	professional nursing and all schools of practical nursing	69
17	which are approved by the Department; and determine the	70
18	standing of such schools by reference to compliance with such	70
19	rules; and provide for surveys of all such schools and their	71
20	programs at such times as deemed necessary.	73
21	3. Prepare and maintain a list of approved schools of	74
22	professional nursing and schools of practical nursing in this	75
23	State, whose graduates, if they have the other necessary	76
24	qualifications provided in this Act, shall be eligible to	77
25	apply for a license to practice nursing in this State.	79
26	4. Establish and maintain a minimum standard of	80
27	preliminary education subject to Section 8 and Section 9 to	81
28	be required for admission to all schools of professional	82
29	nursing and all schools of practical nursing and require	83
30	satisfactory proof of the enforcement of such standards by	84
31	such schools.	85
32	<u>5. Adopt rules providing procedures for the revocation;</u>	86

1 suspension, or placement on a probationary status of approval 87  
2 of schools of professional nursing and schools of practical 88  
3 nursing in this State. Suspension of approval or placement of 89  
4 a school's approval on a probationary status must be for a 90  
5 specified period of time not more than one year. The rules 91  
6 adopted under this provision must include specific criteria 92  
7 for the revocation, suspension and placement on a 93  
8 probationary status of approval of schools. Reasonable notice  
9 and opportunity for a hearing shall be provided to the school 94  
10 prior to any action under this provision. The Committee shall 95  
11 submit a written report to the Department of any situation 96  
12 which it determines may constitute grounds for action under  
13 this provision. 98

14 5x 5w Prescribe rules for a method of examination of  
15 candidates for registered professional nurses and licensed 99  
16 practical nurses and for issuance of certificates authorizing 100  
17 candidates upon passing an examination to practice as 101  
18 registered professional nurses and licensed practical nurses 102  
19 respectively. 103

20 1x 6w Conduct examinations to ascertain the 104  
21 qualifications and fitness of applicants for certificates as 105  
22 registered professional nurses and for certificates as 106  
23 licensed practical nurses, and pass upon the qualifications 107  
24 of applicants for licensure by endorsement. 108

25 8x 7w Conduct hearings on proceedings to revoke, suspend 109  
26 or refuse renewal of licenses or certificates of persons who 110  
27 are registered under this Act as registered professional 111  
28 nurses or licensed practical nurses 112

29 9x 8w Formulate rules required for the administration of 113  
30 this Act.





**81st GENERAL ASSEMBLY  
State of Illinois**

1979 and 1980

INTRODUCED \_\_\_\_\_ BY

**SYNOPSIS:** (Ch. 111, par. 3407)

Amends the Nursing Act by providing for the suspension or revocation of approval of nursing schools at the sole discretion of the Director of Registration and Education.

LRBB109379BDak

A BILL FOR

1	AN ACT to amend Section 5 of "The Illinois Nursing Act",	48
2	approved June 14, 1951, as amended.	51
3	<u>Be it enacted by the People of the State of Illinois,</u>	54
4	<u>represented in the General Assembly:</u>	55
5	Section 1. Section 5 of "The Illinois Nursing Act",	56
6	approved June 14, 1951, as amended, is amended to read as	57
7	follows:	58
	(Ch. 111, par. 3407)	60
8	Sec. 5. None of the functions, powers or duties	61
9	enumerated in this Section shall be exercised by the	62
10	Department except upon the action and report in writing of a	63
11	majority of all appointed members of the committee.	65
12	Subject to the provisions of this Act, the Department	66
13	shall:	67
14	1. Prescribe rules defining what constitutes a school of	68
15	professional nursing and what constitutes a school of	69
16	practical nursing.	70
17	2. Adopt rules providing for the establishment and	71
18	maintenance of a uniform and reasonable standard of	72
19	educational programs to be observed by all schools of	73
20	professional nursing and all schools of practical nursing	74
21	which are approved by the Department; and determine the	75
22	standing of such schools by reference to compliance with such	75
23	rules; and provide for surveys of all such schools and their	76
24	programs at such times as deemed necessary.	78
25	3. Prepare and maintain a list of approved schools of	79
26	professional nursing and schools of practical nursing in this	80
27	State, whose graduates, if they have the other necessary	81
28	qualifications provided in this Act, shall be eligible to	82
29	apply for a license to practice nursing in this State.	84
30	4. Establish and maintain a minimum standard of	85
31	preliminary education subject to Section 8 and Section 9 to	86
32	be required for admission to all schools of professional	87

1 nursing and all schools of practical nursing and require 87  
2 satisfactory proof of the enforcement of such standards by 88  
3 such schools. 89  
4 5. Adopt rules to provide procedures for the revocation, 90  
5 suspension or placement on a probationary status of schools 91  
6 of professional nursing and schools of practical nursing in 92  
7 this State. Such actions shall be at the sole discretion of 93  
8 the Director, Section 4.02 of the Illinois Administrative 94  
9 Procedure Act, requiring the statement of criteria or 95  
10 standards for discretionary actions, shall not apply to rules 96  
11 adopted under this provision. 96  
12 4. 5. Prescribe rules for a method of examination of 97  
13 candidates for registered professional nurses and licensed 98  
14 practical nurses and for issuance of licenses authorizing 99  
15 candidates upon passing an examination to practice as 100  
16 registered professional nurses and licensed practical nurses 101  
17 respectively. 102  
18 1. 6. Conduct examinations to ascertain the 103  
19 qualifications and fitness of applicants for licenses as 104  
20 registered professional nurses and for licenses as licensed 105  
21 practical nurses, and pass upon the qualifications of 106  
22 applicants for licensure by endorsement. 107  
23 2. 7. Conduct hearings or proceedings to revoke, suspend 108  
24 or refuse renewal of licenses of persons who are licensed 109  
25 under this Act as registered professional nurses or licensed 110  
26 practical nurses and revoke, suspend or refuse to renew such 111  
27 licenses. 112  
28 3. 8. Formulate rules required for the administration of 113  
29 this Act.



81st GENERAL ASSEMBLY  
State of Illinois

1979 and 1980

INTRODUCED \_\_\_\_\_, BY

SYNOPSIS: (Ch. 120, par. 442)

Amends the Retailers' Occupation Tax Act by requiring that all returns and notices be filed under the penalties of perjury.

LRB8108528BDjp

A BILL FOR

1	AN ACT to amend Section 3 of the "Retailers' Occupation	45
2	Tax Act", approved June 28, 1933, as amended.	48
3	<u>Be it enacted by the People of the State of Illinois,</u>	51
4	<u>represented in the General Assembly:</u>	52
5	Section 1. Section 3 of the "Retailers' Occupation Tax	53
6	Act", approved June 28, 1933, as amended, is amended to read	54
7	as follows:	55
	(Ch. 120, par. 442)	57
8	Sec. 3. Except as provided in this Section, on or	58
9	before the last day of each calendar month, every person	59
10	engaged in the business of selling tangible personal property	60
11	at retail in this State during the preceding calendar month	61
12	shall file a return with the Department, stating:	62
13	1. The name of the seller;	64
14	2. His residence address and the address of his	65
15	principal place of business and the address of the principal	66
16	place of business (if that is a different address) from which	67
17	he engages in the business of selling tangible personal	68
18	property at retail in this State;	69
19	3. Total amount of receipts received by him during the	70
20	preceding calendar month from sales of tangible personal	71
21	property, and from services furnished, by him during such	72
22	preceding calendar month;	73
23	4. Total amount received by him during the preceding	74
24	calendar month on charge and time sales of tangible personal	75
25	property, and from services furnished, by him prior to the	76
26	month for which the return is filed;	78
27	5. Deductions allowed by law;	80
28	6. Gross receipts which were received by him during the	81
29	preceding calendar month and upon the basis of which the tax	82
30	is imposed;	83
31	7. The amount of tax due;	85
32	8. The amount of penalty due, if any;	87

1 9. Such other reasonable information as the Department 88  
2 may require. 89  
3 Such return and any other notices required to be filed 90  
4 under this Act shall contain, or be verified by, a written 91  
5 declaration that it is made under the penalties of perjury. 92  
6 If the retailer's average monthly tax liability to the 94  
7 Department does not exceed \$100, the Department may authorize 95  
8 his returns to be filed on a quarter annual basis, with the 96  
9 return for January, February and March of a given year being 97  
10 due by April 30 of such year; with the return for April, May 98  
11 and June of a given year being due by July 31 of such year; 99  
12 with the return for July, August and September of a given 100  
13 year being due by October 31 of such year, and with the 101  
14 return for October, November and December of a given year 101  
15 being due by January 31 of the following year. 103  
16 If the retailer's average monthly tax liability with the 104  
17 Department does not exceed \$20, the Department may authorize 105  
18 his returns to be filed on an annual basis, with the return 106  
19 for a given year being due by January 31 of the following 107  
20 year. 108  
21 Such quarter annual and annual returns, as to form and 109  
22 substance, shall be subject to the same requirements as 110  
23 monthly returns. 111  
24 Notwithstanding any other provision in this Act 112  
25 concerning the time within which a retailer may file his 113  
26 return, in the case of any retailer who ceases to engage in a 114  
27 kind of business which makes him responsible for filing 115  
28 returns under this Act, such retailer shall file a final 116  
29 return under this Act with the Department not more than one 116  
30 month after discontinuing such business. 116  
31 Where the same person has more than one business 115  
32 registered with the Department under separate registrations 120  
33 under this Act, such person may not file each return that is 121  
34 due as a single return covering all such registered 121  
35 businesses, but shall file separate returns for each such 121

1	registered business.	124
2	In addition, with respect to motor vehicles and aircraft,	125
3	every retailer selling this kind of tangible personal	126
4	property shall file, with the Department, upon a form to be	127
5	prescribed and supplied by the Department, a separate return	128
6	for each such item of tangible personal property which the	129
7	retailer sells, except that where, in the same transaction, a	130
8	retailer of motor vehicles transfers more than one motor	131
9	vehicle to another motor vehicle retailer for the purpose of	
10	resale, such seller for resale may report the transfer of all	132
11	motor vehicles involved in that transaction to the Department	133
12	on the same uniform invoice-transaction reporting return	134
13	form.	135
14	Such transaction reporting return in the case of motor	136
15	vehicles shall be the same document as the Uniform Invoice	137
16	referred to in Section 5-402 of The Illinois Vehicle Code and	138
17	must show the name and address of the seller; the name and	139
18	address of the purchaser; the amount of the selling price	140
19	including the amount allowed by the retailer for traded-in	141
20	property, if any; the amount allowed by the retailer for the	
21	traded-in tangible personal property, if any, to the extent	142
22	to which Section 1 of this Act allows an exemption for the	143
23	value of traded-in property; the balance payable after	144
24	deducting such trade-in allowance from the total selling	145
25	price; the amount of tax due from the retailer with respect	
26	to such transaction; the amount of tax collected from the	146
27	purchaser by the retailer on such transaction (or	147
28	satisfactory evidence that such tax is not due in that	148
29	particular instance, if that is claimed to be the fact); the	149
30	place and date of the sale; a sufficient identification of	
31	the property sold; such other information as is required in	150
32	Section 5-402 of The Illinois Vehicle Code, and such other	151
33	information as the Department may reasonably require.	153
34	Such transaction reporting return in the case of aircraft	154
35	must show the name and address of the seller; the name and	155



1 address of the purchaser; the amount of the selling price 156  
2 including the amount allowed by the retailer for traded-in 157  
3 property, if any; the amount allowed by the retailer for the 158  
4 traded-in tangible personal property, if any, to the extent 159  
5 to which Section 1 of this Act allows an exemption for the 160  
6 value of traded-in property; the balance payable after  
7 deducting such trade-in allowance from the total selling 161  
8 price; the amount of tax due from the retailer with respect 162  
9 to such transaction; the amount of tax collected from the 163  
10 purchaser by the retailer on such transaction (or 164  
11 satisfactory evidence that such tax is not due in that  
12 particular instance, if that is claimed to be the fact); the 165  
13 place and date of the sale, a sufficient identification of 166  
14 the property sold, and such other information as the 167  
15 Department may reasonably require. 168

16 Such transaction reporting return shall be filed not 169  
17 later than 30 days after the day of delivery of the item that 170  
18 is being sold, but may be filed by the retailer at any time 171  
19 sooner than that if he chooses to do so. The transaction 172  
20 reporting return and tax remittance or proof of exemption 173  
21 from the Illinois use tax may be transmitted to the 174  
22 Department by way of the State agency with which, or State 175  
23 officer with whom the tangible personal property must be 176  
24 titled or registered (if titling or registration is required) 177  
25 if the Department and such agency or State officer determine 178  
26 that this procedure will expedite the processing of 178  
27 applications for title or registration. 179

28 With each such transaction reporting return, the retailer 180  
29 shall remit the proper amount of tax due (or shall submit 181  
30 satisfactory evidence that the sale is not taxable if that is 182  
31 the case), to the Department or its agents, whereupon the 183  
32 Department shall issue, in the purchaser's name, a use tax 184  
33 receipt (or a certificate of exemption if the Department is  
34 satisfied that the particular sale is tax exempt) which such 185  
35 purchaser may submit to the agency with which, or State 186

1 officer with whom, he must title or register the tangible 187  
2 personal property that is involved (if titling or 188  
3 reoistration is required) in support of such purchaser's 189  
4 application for an Illinois certificate or other evidence of  
5 title or registration to such tangible personal property. 191  
6 No retailer's failure or refusal to remit tax under this 192  
7 Act precludes a user, who has paid the proper tax to the 193  
8 retailer, from obtaining his certificate of title or other 194  
9 evidence of title or registration (if titling or registration 195  
10 is required) upon satisfying the Department that such user 196  
11 has paid the proper tax (if tax is due) to the retailer. The 197  
12 Department shall adopt appropriate rules to carry out the 198  
13 mandate of this paragraph. 199  
14 If the user who would otherwise pay tax to the retailer 200  
15 wants the transaction reporting return filed and the payment 201  
16 of the tax or proof of exemption made to the Department 202  
17 before the retailer is willing to take these actions and such 203  
18 user has not paid the tax to the retailer, such user may 204  
19 certify to the fact of such delay by the retailer and may 205  
20 (upon the Department being satisfied of the truth of such  
21 certification) transmit the information required by the 206  
22 transaction reporting return and the remittance for tax or 207  
23 proof of exemption directly to the Department and obtain his 208  
24 tax receipt or exemption determination, in which event the 209  
25 transaction reporting return and tax remittance (if a tax 210  
26 payment was required) shall be credited by the Department to  
27 the proper retailer's account with the Department, but 211  
28 without the 2% discount provided for in this Section being 212  
29 allowed. When the user pays the tax directly to the 213  
30 Department, he shall pay the tax in the same amount and in 214  
31 the same form in which it would be remitted if the tax had 215  
32 been remitted to the Department by the retailer. 216  
33 Refunds made by the seller during the preceding return 217  
34 period to purchasers, on account of tangible personal 218  
35 property returned to the seller, shall be allowed as a 219

1 deduction under subdivision 5, in case the seller had 220  
2 therefore included the receipts from the sale of such 221  
3 tangible personal property in a return filed by him and had  
4 paid the tax imposed by this Act with respect to such 222  
5 receipts. 223

6 Where the seller is a corporation, the return filed on 224  
7 behalf of such corporation shall be signed by the president, 225  
8 vice-president, secretary or treasurer or by the properly 226  
9 accredited agent of such corporation. 227

10 Except as provided in this Section, the retailer filing 228  
11 the return under this Section shall, at the time of filing 229  
12 such return, pay to the Department the amount of tax imposed 230  
13 by this Act less a discount of 2% or \$5 per calendar year, 231  
14 whichever is greater, which is allowed to reimburse the 232  
15 retailer for the expenses incurred in keeping records, 233  
16 preparing and filing returns, remitting the tax and supplying 234  
17 data to the Department on request. In the case of retailers 235  
18 who report and pay the tax on a transaction by transaction 236  
19 basis, as provided in this Section, such discount shall be 237  
20 taken with each such tax remittance instead of when such 238  
21 retailer files his periodic return. 239

22 If the taxpayer's average monthly tax liability to the 240  
23 Department under this Act, the "Use Tax Act", the "Service 241  
24 Occupation Tax Act", the "Service Use Tax Act", the 242  
25 "Municipal Retailers' Occupation Tax Act", the "Municipal 243  
26 Service Occupation Tax Act", the "County Retailers' 244  
27 Occupation Tax Act" and the "County Service Occupation Tax 245  
28 Act" was \$25,000 or more during the preceding 4 complete 246  
29 calendar quarters or was \$10,000 or more if such 4 quarter 247  
30 period ended on or after March 31, 1977, he shall file a 248  
31 return with the Department each month by the end of the month 249  
32 next following the month during which such tax liability is 250  
33 incurred and shall make payments to the Department on 248  
34 before the 7th, 15th, 22nd and last day of the month during 249  
35 which such liability is incurred in an amount equal to 1/4 of 250

1 the taxpayer's actual liability for the month or an amount 251  
2 set by the Department not to exceed 1/4 of the average 252  
3 monthly liability of the taxpayer to the Department for the  
4 preceding 4 complete calendar quarters (excluding the month 253  
5 of highest liability and the month of lowest liability in 254  
6 such 4 quarter period). The amount of such quarter monthly 255  
7 payments shall be credited against the final tax liability of 256  
8 the taxpayer's return for that month. Once applicable, the 257  
9 requirement of the making of quarter monthly payments to the 258  
10 Department shall continue until such taxpayer's average  
11 monthly liability to the Department during the preceding 4 259  
12 complete calendar quarters (excluding the month of highest 260  
13 liability and the month of lowest liability) is less than 261  
14 \$9,000, or until such taxpayer's average monthly liability to 262  
15 the Department as computed for each calendar quarter of the 4 263  
16 preceding complete calendar quarter period is less than 264  
17 \$10,000. If any such quarter monthly payment is not paid at  
18 the time or in the amount required by this Section, then the 265  
19 taxpayer's 2% vendors' discount shall be reduced by 2% of the 266  
20 difference between the minimum amount due as a payment and 267  
21 the amount of such quarter monthly payment actually and 268  
22 timely paid, except insofar as the taxpayer has previously 269  
23 made payments for that month to the Department in excess of  
24 the minimum payments previously due as provided in this 270  
25 Section. The Department shall make reasonable rules and 271  
26 regulations to govern the quarter monthly payment amount and 272  
27 quarter monthly payment dates for taxpayers who file on other 273  
28 than a calendar monthly basis. 274  
29 If any such payment or deposit provided for in this 275  
30 Section exceeds the taxpayer's present and probable future 276  
31 liabilities under this Act, the "Use Tax Act", the "Service 277  
32 Occupation Tax Act" and the "Service Use Tax Act", the 278  
33 Department shall issue to the taxpayer a credit memorandum no 279  
34 later than 30 days after the date of payment, which 280  
35 memorandum may be submitted by the taxpayer to the Department

1 in payment of tax liability subsequently to be remitted by 281  
2 the taxpayer to the Department or be assigned by the taxpayer 282  
3 to a similar taxpayer under this Act, the "Use Tax Act", the 283  
4 "Service Occupation Tax Act" or the "Service Use Tax Act", in 284  
5 accordance with reasonable rules and regulations to be 285  
6 prescribed by the Department. 286

7 Any deposit previously made by a taxpayer who is required 287  
8 to make quarter monthly payments under this amendatory Act of 288  
9 1976 shall be applied against the taxpayer's liability to the 289  
10 Department under this Act, the "Use Tax Act", the "Service 290  
11 Occupation Tax Act" or the "Service Use Tax Act" for the 291  
12 month preceding the first month in which the taxpayer is 292  
13 required to make such quarter monthly payments. If the 293  
14 deposit exceeds that liability, the Department shall issue  
15 the taxpayer a credit memorandum for the excess. 295

16 Of the money received by the Department under the 296  
17 provisions of this Act, after October 31, 1969, 3/4 thereof 297  
18 shall be paid into the State treasury, and 1/4 shall be 298  
19 reserved in a special account and used only for the transfer 299  
20 to the Common School Fund as part of the monthly transfer 300  
21 from the General Revenue Fund in accordance with Section B  
22 1/2 of "An Act in relation to State finance", approved June 301  
23 10, 1919, as amended. 303

24 The Department may, upon separate written notice to a 304  
25 taxpayer, require the taxpayer to prepare and file with the 305  
26 Department on a form prescribed by the Department within not 306  
27 less than 60 days after receipt of the notice an annual 307  
28 information return for the tax year specified in the notice.  
29 Such annual return to the Department shall include a 308  
30 statement of gross receipts as shown by the retailer's last 309  
31 State income tax return. If the total receipts of the 310  
32 business as reported in the State income tax return do not 311  
33 agree with the gross receipts reported to the Department of  
34 Revenue for the same period, the retailer shall attach to his 312  
35 annual return a schedule showing a reconciliation of the 2 313

1 amounts and the reasons for the difference. The retailer's 31.  
2 annual return to the Department shall also disclose the cost  
3 of goods sold by the retailer during the year covered by such 31E  
4 return, opening and closing inventories of such goods for 31E  
5 such year, costs of goods used from stock or taken from stock 31E  
6 and given away by the retailer during such year, payroll 31E  
7 information of the retailer's business during such year and  
8 any additional reasonable information which the Department 31E  
9 deems would be helpful in determining the accuracy of the 320  
10 monthly, quarterly or annual returns filed by such retailer 321  
11 as provided for in this Section. 322  
12 If the annual information return required by this Section 323  
13 is not filed when and as required the taxpayer shall be 324  
14 liable for a penalty equal to 1/6 of 1% of the tax due from 325  
15 such taxpayer under this Act during the period to be covered 326  
16 by the annual return for each month or fraction of a month 327  
17 until such return is filed as required, the penalty to be  
18 assessed and collected in the same manner as any other 328  
19 penalty provided for in this Act. 329  
20 The chief executive officer, proprietor, owner or highest 330  
21 ranking manager shall sign the annual return to certify the 331  
22 accuracy of the information contained therein. Any person 332  
23 who willfully signs the annual return containing false or 333  
24 inaccurate information shall be guilty of perjury and  
25 punished accordingly. The annual return form prescribed by 334  
26 the Department shall include a warning that the person 335  
27 signing the return may be liable for perjury. 336  
28 The provisions of this Section concerning the filing of 337  
29 an annual information return do not apply to a retailer who 338  
30 is not required to file an income tax return with the United 339  
31 States Government. 340  
32 As soon as possible after the first day of each month 341  
33 beginning January 1, 1980, upon certification of the 342  
34 Department of Revenue, the Comptroller shall order 343  
35 transferred and the Treasurer shall transfer from the General

1	Revenue Fund	344
2	(i) to the Road Fund an amount equal to 3% and	346
3	(ii) to the Motor Fuel Tax Fund an amount equal to 2.5%	347
4	of the net revenue realized under this Act for the second	348
5	preceding month. Net revenue realized for a month shall be	349
6	the revenue collected by the State pursuant to this Act, less	350
7	the amount paid out during that month as refunds to taxpayers	
8	for overpayment of liability.	352
9	For greater simplicity of administration, manufacturers,	353
10	importers and wholesalers whose products are sold at retail	354
11	in Illinois by numerous retailers, and who wish to do so, may	355
12	assume the responsibility for accounting and paying to the	356
13	Department all tax accruing under this Act with respect to	357
14	such sales, if the retailers who are affected do not make	358
15	written objection to the Department to this arrangement.	359
16	Any person engaged in the business of selling tangible	360
17	personal property at retail as a concessionaire or other type	361
18	of seller at the Illinois State Fair, county fairs, art	362
19	shows, flea markets and similar exhibitions or events, may be	363
20	required to make a daily report of the amount of such sales	
21	to the Department and to make a daily payment of the full	364
22	amount of tax due. The Department shall impose this	365
23	requirement when it finds that there is a significant risk of	366
24	loss of revenue to the State at such an exhibition or event.	
25	Such a finding shall be based on evidence that a substantial	367
26	number of concessionaires or other sellers who are not	368
27	residents of Illinois will be engaging in the business of	369
28	selling tangible personal property at retail at the	
29	exhibition or event, or other evidence of a significant risk	370
30	of loss of revenue to the State. The Department shall notify	371
31	concessionaires and other sellers affected by the imposition	372
32	of this requirement. In the absence of notification by the	373
33	Department, the concessionaires and other sellers shall file	
34	their returns as otherwise required in this Section.	374





**81st GENERAL ASSEMBLY  
State of Illinois**

1979 and 1980

INTRODUCED \_\_\_\_\_, BY

**SYNOPSIS:** (Ch. 120, par. 442)

Amends the Retailers' Occupation Tax Act by prohibiting the Department of Revenue from requiring returns to be filed under penalties of perjury.

LRB8109380BDak

**A BILL FOR**

1	AN ACT to amend Section 3 of the "Retailers' Occupation	46
2	Tax Act", approved June 28, 1933, as amended.	49
3	<u>Be it enacted by the People of the State of Illinois,</u>	52
4	<u>represented in the General Assembly:</u>	53
5	Section 1. Section 3 of the "Retailers' Occupation Tax	54
6	Act", approved June 28, 1933, as amended, is amended to read	55
7	as follows:	56
	(Ch. 120, par. 442)	58
8	Sec. 3. Except as provided in this Section, on or	59
9	before the last day of each calendar month, every person	60
10	engaged in the business of selling tangible personal property	61
11	at retail in this State during the preceding calendar month	62
12	shall file a return with the Department, stating:	64
13	1. The name of the seller;	66
14	2. His residence address and the address of his	67
15	principal place of business and the address of the principal	68
16	place of business (if that is a different address) from which	69
17	he engages in the business of selling tangible personal	70
18	property at retail in this State;	71
19	3. Total amount of receipts received by him during the	72
20	preceding calendar month from sales of tangible personal	73
21	property, and from services furnished, by him during such	74
22	preceding calendar month;	75
23	4. Total amount received by him during the preceding	76
24	calendar month on charge and time sales of tangible personal	77
25	property, and from services furnished, by him prior to the	78
26	month for which the return is filed;	80
27	5. Deductions allowed by law;	82
28	6. Gross receipts which were received by him during the	83
29	preceding calendar month and upon the basis of which the tax	84
30	is imposed;	85
31	7. The amount of tax due;	87
32	8. The amount of penalty due, if any;	89

1 9. Such other reasonable information as the Department 90  
2 may require. 91

3 The Department may not require such return nor other 92  
4 notices required to be filed under this Act to contain, nor 93  
5 to be verified by, a written declaration that it is made 94  
6 under the penalties of perjury. 95

7 If the retailer's average monthly tax liability to the 96  
8 Department does not exceed \$100, the Department may authorize 97  
9 his returns to be filed on a quarter annual basis, with the 98  
10 return for January, February and March of a given year being 99  
11 due by April 30 of such year; with the return for April, May 100  
12 and June of a given year being due by July 31 of such year; 101  
13 with the return for July, August and September of a given 102  
14 year being due by October 31 of such year, and with the  
15 return for October, November and December of a given year 103  
16 being due by January 31 of the following year. 105

17 If the retailer's average monthly tax liability with the 106  
18 Department does not exceed \$20, the Department may authorize 107  
19 his returns to be filed on an annual basis, with the return 108  
20 for a given year being due by January 31 of the following 109  
21 year. 110

22 Such quarter annual and annual returns, as to form and 111  
23 substance, shall be subject to the same requirements as 112  
24 monthly returns. 113

25 Notwithstanding any other provision in this Act 114  
26 concerning the time within which a retailer may file his 115  
27 return, in the case of any retailer who ceases to engage in a 116  
28 kind of business which makes him responsible for filing 117  
29 returns under this Act, such retailer shall file a final 118  
30 return under this Act with the Department not more than one  
31 month after discontinuing such business. 120

32 Where the same person has more than one business 121  
33 registered with the Department under separate registrations 122  
34 under this Act, such person may not file each return that is 123  
35 due as a single return covering all such registered 124

1	businesses, but shall file separate returns for each such	125
2	registered business.	126
3	In addition, with respect to motor vehicles and aircraft,	127
4	every retailer selling this kind of tangible personal	128
5	property shall file, with the Department, upon a form to be	129
6	prescribed and supplied by the Department, a separate return	130
7	for each such item of tangible personal property which the	131
8	retailer sells, except that where, in the same transaction, a	132
9	retailer of motor vehicles transfers more than one motor	133
10	vehicle to another motor vehicle retailer for the purpose of	
11	resale, such seller for resale may report the transfer of all	134
12	motor vehicles involved in that transaction to the Department	135
13	on the same uniform invoice-transaction reporting return	136
14	form.	137
15	Such transaction reporting return in the case of motor	138
16	vehicles shall be the same document as the Uniform Invoice	139
17	referred to in Section 5-402 of The Illinois Vehicle Code and	140
18	must show the name and address of the seller; the name and	141
19	address of the purchaser; the amount of the selling price	142
20	including the amount allowed by the retailer for traded-in	143
21	property, if any; the amount allowed by the retailer for the	
22	traded-in tangible personal property, if any, to the extent	144
23	to which Section 1 of this Act allows an exemption for the	145
24	value of traded-in property; the balance payable after	146
25	deducting such trade-in allowance from the total selling	147
26	price; the amount of tax due from the retailer with respect	
27	to such transaction; the amount of tax collected from the	148
28	purchaser by the retailer on such transaction (or	149
29	satisfactory evidence that such tax is not due in that	150
30	particular instance, if that is claimed to be the fact); the	151
31	place and date of the sale; a sufficient identification of	
32	the property sold; such other information as is required in	152
33	Section 5-402 of The Illinois Vehicle Code, and such other	153
34	information as the Department may reasonably require.	155
35	Such transaction reporting return in the case of aircraft	156

1 must show the name and address of the seller; the name and 157  
2 address of the purchaser; the amount of the selling price 158  
3 including the amount allowed by the retailer for traded-in 159  
4 property, if any; the amount allowed by the retailer for the 160  
5 traded-in tangible personal property, if any, to the extent 161  
6 to which Section 1 of this Act allows an exemption for the 162  
7 value of traded-in property; the balance payable after 163  
8 deducting such trade-in allowance from the total selling 163  
9 price; the amount of tax due from the retailer with respect 164  
10 to such transaction; the amount of tax collected from the 165  
11 purchaser by the retailer on such transaction (or 166  
12 satisfactory evidence that such tax is not due in that 167  
13 particular instance, if that is claimed to be the fact); the 168  
14 place and date of the sale, a sufficient identification of 168  
15 the property sold, and such other information as the 169  
16 Department may reasonably require. 170

17 Such transaction reporting return shall be filed not 171  
18 later than 30 days after the day of delivery of the item that 172  
19 is being sold, but may be filed by the retailer at any time 173  
20 sooner than that if he chooses to do so. The transaction 174  
21 reporting return and tax remittance or proof of exemption 175  
22 from the Illinois use tax may be transmitted to the 176  
23 Department by way of the State agency with which, or State 176  
24 officer with whom the tangible personal property must be 177  
25 titled or registered (if titling or registration is required) 178  
26 if the Department and such agency or State officer determine 179  
27 that this procedure will expedite the processing of 180  
28 applications for title or registration. 181

29 with each such transaction reporting return, the retailer 182  
30 shall remit the proper amount of tax due (or shall submit 183  
31 satisfactory evidence that the sale is not taxable if that is 184  
32 the case), to the Department or its agents, whereupon the 185  
33 Department shall issue, in the purchaser's name, a use tax 186  
34 receipt (or a certificate of exemption if the Department is 186  
35 satisfied that the particular sale is tax exempt) which such 187

1	purchaser may submit to the agency with which, or State	188
2	officer with whom, he must title or register the tangible	189
3	personal property that is involved (if titling or	190
4	registration is required) in support of such purchaser's	191
5	application for an Illinois certificate or other evidence of	
6	title or registration to such tangible personal property.	193
7	No retailer's failure or refusal to remit tax under this	194
8	Act precludes a user, who has paid the proper tax to the	195
9	retailer, from obtaining his certificate of title or other	196
10	evidence of title or registration (if titling or registration	197
11	is required) upon satisfying the Department that such user	198
12	has paid the proper tax (if tax is due) to the retailer. The	199
13	Department shall adopt appropriate rules to carry out the	200
14	mandate of this paragraph.	201
15	If the user who would otherwise pay tax to the retailer	202
16	wants the transaction reporting return filed and the payment	203
17	of the tax or proof of exemption made to the Department	204
18	before the retailer is willing to take these actions and such	205
19	user has not paid the tax to the retailer, such user may	206
20	certify to the fact of such delay by the retailer and may	207
21	(upon the Department being satisfied of the truth of such	
22	certification) transmit the information required by the	208
23	transaction reporting return and the remittance for tax or	209
24	proof of exemption directly to the Department and obtain his	210
25	tax receipt or exemption determination, in which event the	211
26	transaction reporting return and tax remittance (if a tax	212
27	payment was required) shall be credited by the Department to	
28	the proper retailer's account with the Department, but	213
29	without the 2% discount provided for in this Section being	214
30	allowed. When the user pays the tax directly to the	215
31	Department, he shall pay the tax in the same amount and in	216
32	the same form in which it would be remitted if the tax had	217
33	been remitted to the Department by the retailer.	218
34	Refunds made by the seller during the preceding return	219
35	period to purchasers, on account of tangible personal	220

1 property returned to the seller, shall be allowed as a 221  
2 deduction under subdivision 5, in case the seller had 222  
3 theretofore included the receipts from the sale of such 223  
4 tangible personal property in a return filed by him and had  
5 paid the tax imposed by this Act with respect to such 224  
6 receipts. 225  
7 where the seller is a corporation, the return filed on 226  
8 behalf of such corporation shall be signed by the president, 227  
9 vice-president, secretary or treasurer or by the properly 228  
10 accredited agent of such corporation. 229  
11 Except as provided in this Section, the retailer filing 230  
12 the return under this Section shall, at the time of filing 231  
13 such return, pay to the Department the amount of tax imposed 232  
14 by this Act less a discount of 2% or \$5 per calendar year, 233  
15 whichever is greater, which is allowed to reimburse the 234  
16 retailer for the expenses incurred in keeping records, 235  
17 preparing and filing returns, remitting the tax and supplying  
18 data to the Department on request. In the case of retailers 236  
19 who report and pay the tax on a transaction by transaction 237  
20 basis, as provided in this Section, such discount shall be 238  
21 taken with each such tax remittance instead of when such  
22 retailer files his periodic return. 240  
23 If the taxpayer's average monthly tax liability to the 241  
24 Department under this Act, the "Use Tax Act", the "Service 242  
25 Occupation Tax Act", the "Service Use Tax Act", the 243  
26 "Municipal Retailers' Occupation Tax Act", the "Municipal 244  
27 Service Occupation Tax Act", the "County Retailers' 245  
28 Occupation Tax Act" and the "County Service Occupation Tax 246  
29 Act" was \$25,000 or more during the preceding 4 complete 246  
30 calendar quarters or was \$10,000 or more if such 4 quarter 247  
31 period ended on or after March 31, 1977, he shall file a 248  
32 return with the Department each month by the end of the month 249  
33 next following the month during which such tax liability is  
34 incurred and shall make payments to the Department on or 250  
35 before the 7th, 15th, 22nd and last day of the month during 251

1 which such liability is incurred in an amount equal to 1/4 of 252  
2 the taxpayer's actual liability for the month or an amount 253  
3 set by the Department not to exceed 1/4 of the average 254  
4 monthly liability of the taxpayer to the Department for the  
5 preceding 4 complete calendar quarters (excluding the month 255  
6 of highest liability and the month of lowest liability in 256  
7 such 4 quarter period). The amount of such quarter monthly 257  
8 payments shall be credited against the final tax liability of  
9 the taxpayer's return for that month. Once applicable, the 259  
10 requirement of the making of quarter monthly payments to the 260  
11 Department shall continue until such taxpayer's average  
12 monthly liability to the Department during the preceding 4 261  
13 complete calendar quarters (excluding the month of highest 262  
14 liability and the month of lowest liability) is less than 263  
15 \$9,000; or until such taxpayer's average monthly liability to 264  
16 the Department as computed for each calendar quarter of the 4 265  
17 preceding complete calendar quarter period is less than 266  
18 \$10,000. If any such quarter monthly payment is not paid at  
19 the time or in the amount required by this Section, then the 267  
20 taxpayer's 2% vendors' discount shall be reduced by 2% of the 268  
21 difference between the minimum amount due as a payment and 269  
22 the amount of such quarter monthly payment actually and 270  
23 timely paid, except insofar as the taxpayer has previously 271  
24 made payments for that month to the Department in excess of  
25 the minimum payments previously due as provided in this 272  
26 Section. The Department shall make reasonable rules and 273  
27 regulations to govern the quarter monthly payment amount and  
28 quarter monthly payment dates for taxpayers who file on other 275  
29 than a calendar monthly basis. 276  
30 If any such payment or deposit provided for in this 277  
31 Section exceeds the taxpayer's present and probable future 278  
32 liabilities under this Act, the "Use Tax Act", the "Service 279  
33 Occupation Tax Act" and the "Service Use Tax Act", the 280  
34 Department shall issue to the taxpayer a credit memorandum no 281  
35 later than 30 days after the date of payment, which



1 memorandum may be submitted by the taxpayer to the Department 282  
2 in payment of tax liability subsequently to be remitted by 283  
3 the taxpayer to the Department or be assigned by the taxpayer 284  
4 to a similar taxpayer under this Act, the "Use Tax Act", the 285  
5 "Service Occupation Tax Act" or the "Service Use Tax Act", in 286  
6 accordance with reasonable rules and regulations to be 287  
7 prescribed by the Department. 288

8 Any deposit previously made by a taxpayer who is required 289  
9 to make quarter monthly payments under this amendatory Act of 290  
10 1976 shall be applied against the taxpayer's liability to the 291  
11 Department under this Act, the "Use Tax Act", the "Service 292  
12 Occupation Tax Act" or the "Service Use Tax Act" for the 293  
13 month preceding the first month in which the taxpayer is 294  
14 required to make such quarter monthly payments. If the 295  
15 deposit exceeds that liability, the Department shall issue 296  
16 the taxpayer a credit memorandum for the excess. 297

17 Of the money received by the Department under the 298  
18 provisions of this Act, after October 31, 1969, 3/4 thereof 299  
19 shall be paid into the State treasury, and 1/4 shall be 300  
20 reserved in a special account and used only for the transfer 301  
21 to the Common School Fund as part of the monthly transfer 302  
22 from the General Revenue Fund in accordance with Section 8  
23 1/2 of "An Act in relation to State finance", approved June 303  
24 10, 1919, as amended. 305

25 The Department may, upon separate written notice to a 306  
26 taxpayer, require the taxpayer to prepare and file with the 307  
27 Department on a form prescribed by the Department within not 308  
28 less than 60 days after receipt of the notice an annual 309  
29 information return for the tax year specified in the notice. 310  
30 Such annual return to the Department shall include a 311  
31 statement of gross receipts as shown by the retailer's last  
32 State income tax return. If the total receipts of the 312  
33 business as reported in the State income tax return do not 313  
34 agree with the gross receipts reported to the Department of 314  
35 Revenue for the same period, the retailer shall attach to his 315

1 annual return a schedule showing a reconciliation of the 2 316  
2 amounts and the reasons for the difference. The retailer's  
3 annual return to the Department shall also disclose the cost 317  
4 of goods sold by the retailer during the year covered by such 318  
5 return, opening and closing inventories of such goods for 319  
6 such year, costs of goods used from stock or taken from stock 320  
7 and given away by the retailer during such year, payroll 321  
8 information of the retailer's business during such year and  
9 any additional reasonable information which the Department 322  
10 deems would be helpful in determining the accuracy of the 323  
11 monthly, quarterly or annual returns filed by such retailer 324  
12 as provided for in this Section. 325  
13 If the annual information return required by this Section 326  
14 is not filed when and as required the taxpayer shall be 327  
15 liable for a penalty equal to 1/6 of 1% of the tax due from 328  
16 such taxpayer under this Act during the period to be covered 329  
17 by the annual return for each month or fraction of a month 330  
18 until such return is filed as required, the penalty to be 331  
19 assessed and collected in the same manner as any other 332  
20 penalty provided for in this Act. 333  
21 The chief executive officer, proprietor, owner or highest 334  
22 ranking manager shall sign the annual return to certify the 335  
23 accuracy of the information contained therein. Any person 336  
24 who willfully signs the annual return containing false or 337  
25 inaccurate information shall be guilty of perjury and 338  
26 punished accordingly. The annual return form prescribed by 339  
27 the Department shall include a warning that the person 340  
28 signing the return may be liable for perjury. 341  
29 The provisions of this Section concerning the filing of 342  
30 an annual information return do not apply to a retailer who 343  
31 is not required to file an income tax return with the United 344  
32 States government. 345  
33 As soon as possible after the first day of each month 346  
34 beginning January 1, 1980, upon certification of the 347  
35 Department of Revenue, the Comptroller shall order 348

1	transferred and the Treasurer shall transfer from the General	349
2	Revenue Fund	350
3	(i) to the Road Fund an amount equal to 3% and	352
4	(ii) to the Motor Fuel Tax Fund an amount equal to 2.5%	353
5	of the net revenue realized under this Act for the second	354
6	preceeding month. Net revenue realized for a month shall be	355
7	the revenue collected by the State pursuant to this Act, less	356
8	the amount paid out during that month as refunds to taxpayers	357
9	for overpayment of liability.	358
10	For greater simplicity of administration, manufacturers,	359
11	importers and wholesalers whose products are sold at retail	360
12	in Illinois by numerous retailers, and who wish to do so, may	361
13	assume the responsibility for accounting and paying to the	362
14	Department all tax accruing under this Act with respect to	363
15	such sales, if the retailers who are affected do not make	364
16	written objection to the Department to this arrangement.	365
17	Any person engaged in the business of selling tangible	366
18	personal property at retail as a concessionaire or other type	367
19	of seller at the Illinois State Fair, county fairs, art	368
20	shows, flea markets and similar exhibitions or events, may be	369
21	required to make a daily report of the amount of such sales	370
22	to the Department and to make a daily payment of the full	371
23	amount of tax due. The Department shall impose this	372
24	requirement when it finds that there is a significant risk of	
25	loss of revenue to the State at such an exhibition or event.	373
26	Such a finding shall be based on evidence that a substantial	374
27	number of concessionaires or other sellers who are not	375
28	residents of Illinois will be engaging in the business of	376
29	selling tangible personal property at retail at the	377
30	exhibition or event, or other evidence of a significant risk	
31	of loss of revenue to the State. The Department shall notify	378
32	concessionaires and other sellers affected by the imposition	379
33	of this requirement. In the absence of notification by the	380
34	Department, the concessionaires and other sellers shall file	381
35	their returns as otherwise required in this Section.	



81st GENERAL ASSEMBLY  
State of Illinois

1979 and 1980

INTRODUCED \_\_\_\_\_, BY

SYNOPSIS: (Ch. 95 1/2, pars. 18a-101, 18a-200 and 18a-300)

Amends "The Illinois Vehicle Code" by providing for the establishment of storage fees for vehicle relocators by the Illinois Commerce Commission based on typical business expenses in the relocator's area and prohibits the I.C.C. from imposing a uniform accounting system.

LRBE108698FGma

A BILL FOR

1 AN ACT to amend Sections 18a-101, 18a-200 and 18a-300 of 49  
 2 "The Illinois Vehicle Code", approved September 29, 1969, as 50  
 3 amended. 52

4 Be it enacted by the People of the State of Illinois, 55  
 5 represented in the General Assembly: 56

6 Section 1. Sections 18a-101, 18a-200 and 18a-300 of "The 57  
 7 Illinois Vehicle Code", approved September 29, 1969, as 58  
 8 amended, are amended to read as follows: 59

(Ch. 95 1/2, par. 18a-101) 61

9 Sec. 18a-101. Declaration of policy and delegation of 62  
 10 jurisdiction. It is hereby declared to be the policy of the 63  
 11 State of Illinois to supervise and regulate the commercial 64  
 12 removal of trespassing vehicles from private property, and 65  
 13 the subsequent relocation and storage of such vehicles. This 66  
 14 declaration of policy is based on the finding by the General 67  
 15 Assembly that there is uncertainty regarding the rights of 68  
 16 the parties involved and that vehicle relocators may have 69  
 17 charged unreasonable fees. This supervision and regulation 70  
 18 is intended in such manner as to fairly distribute rights and 71  
 19 responsibilities among the parties involved including vehicle 72  
 20 owners, private property owners and commercial vehicle 73  
 21 relocators and to establish reasonable rates for such  
 22 services. To accomplish and for this purpose the power and  
 23 authority to administer and to enforce the provisions of this 74  
 24 Chapter shall be vested in the Illinois Commerce Commission. 75

(Ch. 95 1/2, par. 18a-200) 78

25 Sec. 18a-200. General powers and duties of Commission. 79  
 26 The Commission shall: 81

27 (1) Regulate commercial vehicle relocators and their 82  
 28 employees in accordance with this Chapter, and to that end 83  
 29 may establish reasonable requirements with respect to proper 84  
 30 service, and practices relating thereto. 85

31 (2) Adopt reasonable and proper rules covering the 87

1 exercise of powers conferred upon it by this Chapter, and 88  
2 reasonable rules governing investigations, hearings and 89  
3 proceedings under this Chapter. 90

4 (3) ~~Set reasonable rates, not to exceed \$35, for the 91~~  
5 ~~commercial towing or removal of trespassing vehicles from 92~~  
6 ~~private property. The Commission may also set reasonable 93~~  
7 ~~rates Set maximum fees for the storage, for periods in excess 94~~  
8 ~~of 72 hours, of trespassing vehicles towed or removed from~~  
9 ~~private property if it finds that such maximum fees are~~ 95  
10 ~~necessary to protect vehicle owners from unreasonable or~~ 96  
11 ~~excessive charges. such vehicles in connection with such 97~~  
12 ~~towing or removal. However, no relocater shall impose charges 98~~  
13 ~~for such storage for the first 72 hours after towing or 99~~  
14 ~~removal. Such maximum fees shall be based on information 100~~  
15 ~~regarding typical business expenses involved in such storage~~  
16 ~~in the geographical area of the State in which the relocater 101~~  
17 ~~is operating. The Commission may not impose uniform 102~~  
18 ~~accounting procedures on relocaters for the purpose of~~ 103  
19 ~~setting such maximum fees.~~ 104

20 (4) Investigate and maintain current files of the 105  
21 criminal records, if any, of all relocaters and their 106  
22 employees, and of all applicants for relocater's licenses and 107  
23 operator's licenses. 108

24 (5) Issue relocater's licenses and operator's licenses 109  
25 in accordance with Article IV of this Chapter. 111

26 (6) The Commission, upon verified complaint in writing 112  
27 by any person, organization or body politic, shall, or upon 113  
28 its own initiative may, investigate whether any commercial 114  
29 vehicle relocater, operator or person otherwise required to 115  
30 comply with any provision of this Chapter or any rule 116  
31 promulgated hereunder, has failed to comply with any such 117  
32 provision or rule. If the Commission, after notice and 118  
33 hearing, finds that any commercial vehicle relocater, 118  
34 operator or other person required to so comply has failed to 119  
35 comply with any such provision or rule, the Commission shall 120

1 issue an appropriate order to compel compliance therewith. 121  
2 The Commission shall also provide by rule for the suspension  
3 or revocation of licenses of relocators or operators who are 122  
4 found to have committed substantial or repeated violations of 123  
5 this Chapter or any rules promulgated hereunder, and shall 124  
6 suspend or revoke licenses pursuant to such rule. 126  
7 (Ch. 95 1/2, par. 18a-300) 128  
8 Sec. 18a-300. Commercial vehicle relocators - Unlawful 129  
9 practices- It shall be unlawful for any commercial vehicle 130  
10 relocator:  
11 (1) to operate in any county in which this Chapter is 131  
12 applicable without first obtaining from the Commission a 132  
13 license to operate as provided in Article IV of this Chapter; 133  
14 (2) to employ as an operator, or otherwise so use the 134  
15 services of, any person who does not have at the commencement 135  
16 of employment or service, or at any time during the course of 136  
17 employment or service, an operator's license issued in 137  
18 accordance with Sections 18a-403 or 18a-405 of this Chapter; 138  
19 or to fail to notify the Commission, in writing, of any known 139  
20 criminal conviction of any employee occurring at any time 140  
21 before or during course of employment or service. 141  
22 (3) to operate upon the highways of this State any 142  
23 vehicle used in connection with any commercial vehicle 143  
24 relocation service unless:  
25 (a) there is painted or firmly affixed to such vehicle 144  
26 on both sides thereof in a color or colors vividly 145  
27 contrasting to the color of the vehicle the name, address and 146  
28 telephone number of the operator thereof. The Commission 147  
29 shall prescribe reasonable rules and regulations pertaining 148  
30 to insignia to be painted or firmly affixed to vehicles and 149  
31 shall waive the requirements of the address on any such 150  
32 vehicle in cases where the operator of a vehicle has painted 151  
33 or otherwise firmly affixed to the vehicle a seal or trade 152  
34 mark which clearly identifies the operator of the vehicle; 153  
35 and 154



1	(b) there is carried in the power unit of such vehicle a	157
2	certified copy of the currently effective license. Copies	158
3	may be photographed, photocopied, or reproduced or printed by	159
4	any other legible and durable process. Any person guilty of	160
5	not causing to be displayed a copy of his license may in any	161
6	hearing concerning such violation be excused from the payment	162
7	of the penalty hereinafter provided upon a showing that such	
8	license was issued by the Commission, but was subsequently	163
9	lost or destroyed.	165
10	(4) to advertise in any newspaper, book, list,	166
11	classified directory or other publication unless there is	167
12	contained in such advertisement the license number of such	168
13	relocator.	169
14	(5) to remove any vehicle from private property without	170
15	having first obtained the written authorization of the	171
16	property owner or other person in lawful possession or	172
17	control of the property, his authorized agent, or an	173
18	authorized law enforcement officer. Such authorization may	
19	be on a contractual basis covering a period of time or	174
20	limited to a specific removal.	175
21	(6) to charge the private property owner, who requested	176
22	that an unauthorized vehicle be removed from his property,	177
23	with the costs of removing such vehicle contrary to any terms	178
24	which may be a part of the contract between the property	179
25	owner and the commercial rellocator.	180
26	(7) to remove a vehicle when the owner or operator of	181
27	such vehicle is present or arrives at the vehicle location at	182
28	any time prior to the completion of removal, and is willing	183
29	and able to remove the vehicle immediately.	184
30	(8) to remove any vehicle from property on which signs	185
31	are required and on which there are not posted appropriate	186
32	signs pursuant to Section 18a-302.	187
33	(9) to fail to notify law enforcement authorities in the	188
34	jurisdiction in which the trespassing vehicle was removed	189
35	within one hour of such removal. Notification shall include	190

1 a complete description of the vehicle, registration numbers 191  
2 if possible, the locations from which and to which the 192  
3 vehicle was removed, the time of removal, and any other 193  
4 information required by regulation, statute or ordinance. 194  
5 (10) to impose any charge for the towing or removal of 195  
6 trespassing vehicles in excess of \$35, or to impose any 196  
7 charge for service or storage in excess of any maximum fees 197  
8 other than in accordance with the rates set by the Commission 198  
9 pursuant to Section 18a-200. 199  
10 (11) to fail, in the office or location at which 200  
11 relocated vehicles are routinely returned to their owners, to 201  
12 prominently post the name, address and telephone number of 202  
13 the nearest office of the Commission to which inquiries or 203  
14 complaints may be sent, and to make available in written 204  
15 form, the relevant statutes, regulations and ordinances 205  
16 governing commercial vehicle relocators. 206  
17 (12) ~~to~~ to remove any vehicle, otherwise in accordance 207  
18 with this Act, more than 10 miles from its location when 208  
19 towed.

**81st GENERAL ASSEMBLY  
State of Illinois**

1979 and 1980

INTRODUCED \_\_\_\_\_ . BY

**SYNOPSIS:** (Ch. 95 1/2, pars. 18a-101, 18a-200 and 18a-300)

Amends "The Illinois Vehicle Code" by allowing the Commerce Commission to impose a uniform system of accounts on commercial relocators of trespassing vehicles and clarifies the purpose of commercial relocation regulations.

LRB8109422FGak

*Fiscal Note Act  
may be applicable*

A BILL FOR

1 AN ACT to amend Sections 18a-101, 18a-200, and 18a-300 of 49  
 2 "The Illinois Vehicle Code", approved September 29, 1969, as 50  
 3 amended. 52

4 Be it enacted by the People of the State of Illinois, 55  
 5 represented in the General Assembly: 56

6 Section 1. Sections 18a-101, 18a-200, and 18a-300 of 57  
 7 "The Illinois Vehicle Code", approved September 29, 1969, as 58  
 8 amended, are amended to read as follows: 59

(Ch. 95 1/2, par. 18a-101) 61

9 Sec. 18a-101. Declaration of policy and delegation of 62  
 10 jurisdiction. It is hereby declared to be the policy of the 63  
 11 State of Illinois to supervise and regulate the commercial 64  
 12 removal of trespassing vehicles from private property, and 65  
 13 the subsequent relocation and storage of such vehicles. This 66  
 14 declaration of policy is based on the findings by the General 67  
 15 Assembly that there is uncertainty regarding the rights of 68  
 16 the parties involved and that vehicle relocators may have 68  
 17 charged unreasonable fees. This supervision and regulation 69  
 18 is intended in such manner as to fairly distribute rights and 70  
 19 responsibilities among the parties involved including vehicle 71  
 20 owners, private property owners and commercial vehicle 73  
 21 relocators, and to establish reasonable rates for such 74  
 22 services. To accomplish and for this purpose the power and  
 23 authority to administer and to enforce the provisions of this 75  
 24 Chapter shall be vested in the Illinois Commerce Commission. 76

(Ch. 95 1/2, par. 18a-200) 79

25 Sec. 18a-200. General powers and duties of Commission. 80  
 26 The Commission shall: 82

27 (1) Regulate commercial vehicle relocators and their 83  
 28 employees in accordance with this Chapter, and to that end 84  
 29 may establish reasonable requirements with respect to proper 85  
 30 service, and practices relating thereto. 87

31 (2) Adopt reasonable and proper rules covering the 88

1 exercise of powers conferred upon it by this Chapter, and 89  
2 reasonable rules governing investigations, hearings and 90  
3 proceedings under this Chapter. 91  
4 (3) Set reasonable rates, not to exceed \$35, for the 92  
5 commercial towing or removal of trespassing vehicles from 93  
6 private property. The Commission may also set reasonable 94  
7 rates for the storage, for periods in excess of 72 hours, of 95  
8 such vehicles in connection with such towing or removal; if 96  
9 it finds that such maximum fees are necessary to protect 97  
10 vehicle owners from unreasonable or excessive charges.  
11 However, no relocater shall impose charges for such storage 98  
12 for the first 72 hours after towing or removal. The 99  
13 Commission may require relocators to maintain financial 100  
14 records in accordance with uniform accounting procedures for 101  
15 the purpose of providing information for setting such rates.  
16 (4) Investigate and maintain current files of the 103  
17 criminal records, if any, of all relocators and their 104  
18 employees, and of all applicants for relocater's licenses and 105  
19 operator's licenses. 106  
20 (5) Issue relocater's licenses and operator's licenses 107  
21 in accordance with Article IV of this Chapter. 109  
22 (6) The Commission, upon verified complaint in writing 110  
23 by any person, organization or body politic, shall, or upon 111  
24 its own initiative may, investigate whether any commercial 112  
25 vehicle relocater, operator or person otherwise required to 113  
26 comply with any provision of this Chapter or any rule 114  
27 promulgated hereunder, has failed to comply with any such 115  
28 provision or rule. If the Commission, after notice and 116  
29 hearing, finds that any commercial vehicle relocater, 116  
30 operator or other person required to so comply has failed to 117  
31 comply with any such provision or rule, the Commission shall 118  
32 issue an appropriate order to compel compliance therewith. 119  
33 The Commission shall also provide by rule for the suspension  
34 or revocation of licenses of relocaters or operators who are 120  
35 found to have committed substantial or repeated violations of 121

1 this Chapter or any rules promulgated hereunder, and shall 122  
2 suspend or revoke licenses pursuant to such rule. 124  
(Ch. 95 1/2, par. 18a-300) 126  
3 Sec. 18a-300. Commercial vehicle relocators - Unlawful 127  
4 practices. It shall be unlawful for any commercial vehicle 128  
5 relocater: 129  
6 (1) to operate in any county in which this Chapter is 130  
7 applicable without first obtaining from the Commission a 131  
8 license to operate as provided in Article IV of this Chapter; 132  
9 (2) to employ as an operator, or otherwise so use the 134  
10 services of, any person who does not have at the commencement 135  
11 of employment or service, or at any time during the course of 136  
12 employment or service, an operator's license issued in 137  
13 accordance with Sections 18a-403 or 18a-405 of this Chapter; 138  
14 or to fail to notify the Commission, in writing, of any known 139  
15 criminal conviction of any employee occurring at any time  
16 before or during course of employment or service. 141  
17 (3) to operate upon the highways of this State any 142  
18 vehicle used in connection with any commercial vehicle  
19 relocation service unless: 144  
20 (a) there is painted or firmly affixed to such vehicle 145  
21 on both sides thereof in a color or colors vividly 146  
22 contrasting to the color of the vehicle the name, address and 147  
23 telephone number of the operator thereof. The Commission 148  
24 shall prescribe reasonable rules and regulations pertaining 149  
25 to insignia to be painted or firmly affixed to vehicles and  
26 shall waive the requirements of the address on any such 150  
27 vehicle in cases where the operator of a vehicle has painted 151  
28 or otherwise firmly affixed to the vehicle a seal or trade 152  
29 mark which clearly identifies the operator of the vehicle; 153  
30 and 154  
31 (b) there is carried in the power unit of such vehicle a 155  
32 certified copy of the currently effective license. Copies 156  
33 may be photographed, photocopied, or reproduced or printed by 157  
34 any other legible and durable process. Any person guilty of 158

1	not causing to be displayed a copy of his license may in any	159
2	hearing concerning such violation be excused from the payment	160
3	of the penalty hereinafter provided upon a showing that such	
4	license was issued by the Commission, but was subsequently	161
5	lost or destroyed.	163
6	(4) to advertise in any newspaper, book, list,	164
7	classified directory or other publication unless there is	165
8	contained in such advertisement the license number of such	166
9	relocator.	167
10	(5) to remove any vehicle from private property without	168
11	having first obtained the written authorization of the	169
12	property owner or other person in lawful possession or	170
13	control of the property, his authorized agent, or an	171
14	authorized law enforcement officer. Such authorization may	
15	be on a contractual basis covering a period of time or	172
16	limited to a specific removal.	174
17	(6) to charge the private property owner, who requested	175
18	that an unauthorized vehicle be removed from his property,	176
19	with the costs of removing such vehicle contrary to any terms	177
20	which may be a part of the contract between the property	178
21	owner and the commercial relocater.	179
22	(7) to remove a vehicle when the owner or operator of	180
23	such vehicle is present or arrives at the vehicle location at	181
24	any time prior to the completion of removal, and is willing	182
25	and able to remove the vehicle immediately.	184
26	(8) to remove any vehicle from property on which signs	185
27	are required and on which there are not posted appropriate	186
28	signs pursuant to Section 18a-302.	188
29	(9) to fail to notify law enforcement authorities in the	189
30	jurisdiction in which the trespassing vehicle was removed	190
31	within one hour of such removal. Notification shall include	191
32	a complete description of the vehicle, registration numbers	192
33	if possible, the locations from which and to which the	193
34	vehicle was removed, the time of removal, and any other	194
35	information required by regulation, statute or ordinance.	195

1           (10) to impose any charge for ~~service~~ the towing or 196  
2 removal of trespassing vehicles in excess of \$35, or to 197  
3 impose any charge for or storage for more than 72 hours other 198  
4 than in accordance with the rates set by the Commission. 200  
5           (11) to fail, in the office or location at which 201  
6 relocated vehicles are routinely returned to their owners, to 202  
7 prominently post the name, address and telephone number of 203  
8 the nearest office of the Commission to which inquiries or 204  
9 complaints may be sent, and to make available in written 205  
10 form, the relevant statutes, regulations and ordinances 206  
11 governing commercial vehicle relocators. 207  
12           ~~(12) (11)~~ to remove any vehicle, otherwise in accordance 208  
13 with this Act, more than 10 miles from its location when 209  
14 towed.



81st GENERAL ASSEMBLY  
State of Illinois

1979 and 1980

INTRODUCED \_\_\_\_\_, BY

SYNOPSIS: (Ch. 111 1/2, par. 1039)

Amends the "Environmental Protection Act" to allow the Pollution Control Board to impose offset requirements in order to issue permits to operate an air pollution source. The Environmental Protection Agency is responsible for documenting these offsets and the Agency shall consider an applicant's good faith effort to offset, prior reductions in air pollution and the economic growth of the applicant in determining if the offset requirement has been met.

Fiscal Note Act: LRB8108557FCjo  
may be applicable

A BILL FOR

1 AN ACT to amend Section 39 of the "Environmental 52  
2 Protection Act", approved June 29, 1970, as amended. 55

3 Be it enacted by the People of the State of Illinois, 58  
4 represented in the General Assembly: 59

5 Section 1. Section 39 of the "Environmental Protection 60  
6 Act", approved June 29, 1970, as amended, is amended to read 61  
7 as follows: 62

(Ch. 111 1/2, par. 1039) 64

8 Sec. 39. (a) When the Board has by regulation required a 65  
9 permit for the construction, installation, or operation of 66  
10 any type of facility, equipment, vehicle, vessel, or 67  
11 aircraft, the applicant shall apply to the Agency for such 68  
12 permit and it shall be the duty of the Agency to issue such a 69  
13 permit upon proof by the applicant that the facility, 70  
14 equipment, vehicle, vessel, or aircraft will not cause a 71  
15 violation of this Act or of regulations hereunder. The 72  
16 Agency shall adopt such procedures as are necessary to carry 73  
17 out its duties under this Section. In granting permits the 74  
18 Agency may impose such conditions as may be necessary to 75  
19 accomplish the purposes of this Act, and as are not 76  
20 inconsistent with the regulations promulgated by the Board 77  
21 hereunder. A bond or other security shall not be required as 78  
22 a condition for the issuance of a permit, provided that a 79  
23 bond or other security may be required as a condition for the 80  
24 issuance of a permit for a hazardous waste disposal site 81  
25 pursuant to regulations adopted by the board under Section 82  
26 22.4 of this Act. If the Agency denies any permit under this 83  
27 Section, the Agency shall transmit to the applicant within 84  
28 the time limitations of this Section specific, detailed 85  
29 statements as to the reasons the permit application was 86  
30 denied. Such statements shall include, but not be limited to 87  
31 the following: 88

32 (1) the sections of this Act which may be violated if 87

1	the permit were granted;	89
2	(ii) the provision of the regulations, promulgated under	90
3	this Act, which may be violated if the permit were granted;	91
4	(iii) the specific type of information, if any, which	93
5	the Agency deems the applicant did not provide the Agency	94
6	and;	95
7	(iv) a statement of specific reasons why the Act and the	96
8	regulations might not be met if the permit were granted.	98
9	If there is no final action by the Agency within 90 days	99
10	after the filing of the application for permit, the applicant	100
11	may deem the permit issued; except that this time period	101
12	shall be extended to 180 days when notice and opportunity for	102
13	public hearing are required by State or Federal law or	
14	regulation.	103
15	(b) The Agency may issue NPDES permits exclusively to	104
16	this subsection for the discharge of contaminants from point	105
17	sources into navigable waters, all as defined in the Federal	106
18	Water Pollution Control Act Amendments of 1972 (P. L.	107
19	92-500), within the jurisdiction of the State, or into any	
20	well.	108
21	All NPDES permits shall contain those terms and	109
22	conditions, including but not limited to schedules of	110
23	compliance, which may be required to accomplish the purposes	111
24	and provision of this Act.	112
25	The Agency may include, among such conditions, effluent	113
26	limitations and other requirements established under this	114
27	Act, Board regulations, the Federal Water Pollution Control	115
28	Act Amendments of 1972 and regulations pursuant thereto, and	116
29	schedules for achieving compliance therewith at the earliest	117
30	reasonable date.	118
31	The Agency shall adopt filing requirements and procedures	119
32	which are necessary and appropriate for the issuance of NPDES	120
33	permits, and which are consistent with the Act or regulations	121
34	adopted by the Board, and with the Federal Water Pollution	122
35	Control Act Amendments of 1972 (P. L. 92-500) and	123

1 regulations pursuant thereto. 124

2 The Agency, subject to any conditions which may be 125  
3 prescribed by Board regulations, may issue NPDES permits to 126  
4 allow discharges beyond deadlines established by this Act or 127  
5 by regulations of the Board without the requirement of a 128  
6 variance, subject to the Federal Water Pollution Control Act 129  
7 Amendments of 1972 (P. L. 92-500) and regulations pursuant 130  
8 thereto. 131

9 (c) Immediately upon receipt of a request for a permit 132  
10 or supplemental permit for a refuse disposal facility, the 133  
11 Agency shall notify the State's attorney and the Chairman of 134  
12 the County Board of the county in which the facility is 135  
13 located and each member of the General Assembly from the 136  
14 legislative district in which that facility is located and to 137  
15 the clerk of each municipality any portion of which is within 138  
16 3 miles of the facility, prior to the issuance of a permit to 139  
17 develop a hazardous waste disposal site, the Agency shall 140  
18 conduct a public hearing in the county where the site is 141  
19 proposed to be located. 141

20 (d) The Board may by regulation require owners or 142  
21 operators of air pollution sources to attempt to obtain an 143  
22 offsetting reduction in air pollution emissions, to the 144  
23 extent required by federal law or regulation, prior to the 145  
24 issuance of a permit for the operation of the air pollution 146  
25 source. The Agency shall be responsible for documenting and 147  
26 maintaining records of emission reductions achieved by air 148  
27 pollution sources which may be utilized for satisfying the 148  
28 offset requirement. The right to the use of emission 149  
29 reductions as offsets shall be held by the owner of the 149  
30 source responsible for the reduction and may not be 150  
31 transferred. Reasonable allowances shall be made for economic 151  
32 growth in the consideration of whether a permit applicant has 151  
33 satisfied the offset requirement. Reductions achieved by a 152  
34 source prior to the imposition of any offset requirement 153  
35 shall also be considered by the Agency in determining whether 154

1 the permit shall be granted. A good faith effort by an 154  
2 applicant to obtain an emission offset under this paragraph 155  
3 shall be deemed to satisfy this requirement, notwithstanding 156  
4 any other provisions of this paragraph.



81st GENERAL ASSEMBLY  
State of Illinois

1979 and 1980

INTRODUCED \_\_\_\_\_, BY

**SYNOPSIS:** (Ch. 111 1/2, par. 1039)

Amends the "Environmental Protection Act" by prohibiting the Environmental Protection Agency from imposing a requirement that owners or operators of air pollution sources obtain an offsetting reduction in air pollution emissions prior to the issuance of a permit to operate the air pollution source.

LRB8109423FGma

*Fiscal Note Act  
may be applicable*

A BILL FOR





1	AN ACT to amend Section 39 of the "Environmental	51
2	Protection Act", approved June 29, 1970, as amended.	54
3	<u>Be it enacted by the People of the State of Illinois,</u>	57
4	<u>represented in the General Assembly:</u>	58
5	Section 1. Section 39 of the "Environmental Protection	59
6	Act", approved June 29, 1970, as amended, is amended to read	60
7	as follows:	61
	(Ch. 111 1/2, par. 1039)	63
8	Sec. 39. (a) When the Board has by regulation required a	64
9	permit for the construction, installation, or operation of	65
10	any type of facility, equipment, vehicle, vessel, or	66
11	aircraft, the applicant shall apply to the Agency for such	67
12	permit and it shall be the duty of the Agency to issue such a	68
13	permit upon proof by the applicant that the facility,	69
14	equipment, vehicle, vessel, or aircraft will not cause a	
15	violation of this Act or of regulations hereunder. The	70
16	Agency shall adopt such procedures as are necessary to carry	71
17	out its duties under this Section. In granting permits the	72
18	Agency may impose such conditions as may be necessary to	73
19	accomplish the purposes of this Act, and as are not	74
20	inconsistent with the regulations promulgated by the Board	
21	hereunder. A bond or other security shall not be required as	75
22	a condition for the issuance of a permit, provided that a	76
23	bond or other security may be required as a condition for the	77
24	issuance of a permit for a hazardous waste disposal site	78
25	pursuant to regulations adopted by the Board under Section	79
26	22-4 of this Act. If the Agency denies any permit under this	
27	Section, the Agency shall transmit to the applicant within	80
28	the time limitations of this Section specific, detailed	81
29	statements as to the reasons the permit application was	82
30	denied. Such statements shall include, but not be limited to	83
31	the following:	84
32	(i) the sections of this Act which may be violated if	85

1	the permit were granted;	87
2	(ii) the provision of the regulations, promulgated under	88
3	this Act, which may be violated if the permit were granted;	89
4	(iii) the specific type of information, if any, which	91
5	the Agency deems the applicant did not provide the Agency	92
6	and;	93
7	(iv) a statement of specific reasons why the Act and the	94
8	regulations might not be met if the permit were granted.	96
9	If there is no final action by the Agency within 90 days	97
10	after the filing of the application for permit, the applicant	98
11	may deem the permit issued; except that this time period	99
12	shall be extended to 180 days when notice and opportunity for	100
13	public hearing are required by State or Federal law or	101
14	regulation.	102
15	(d) The Agency may issue NPDES permits exclusively to	103
16	this subsection for the discharge of contaminants from point	104
17	sources into navigable waters, all as defined in the Federal	105
18	Water Pollution Control Act Amendments of 1972 (P. L.	106
19	92-500), within the jurisdiction of the State, or into any	107
20	well.	108
21	All NPDES permits shall contain those terms and	109
22	conditions, including but not limited to schedules of	110
23	compliance, which may be required to accomplish the purposes	111
24	and provision of this Act.	112
25	The Agency may include, among such conditions, effluent	113
26	limitations and other requirements established under this	114
27	Act, Board regulations, the Federal Water Pollution Control	115
28	Act Amendments of 1972 and regulations pursuant thereto, and	116
29	schedules for achieving compliance therewith at the earliest	117
30	reasonable date.	118
31	The Agency shall adopt filing requirements and procedures	119
32	which are necessary and appropriate for the issuance of NPDES	120
33	permits, and which are consistent with the Act or regulations	121
34	adopted by the Board, and with the Federal Water Pollution	122
35	Control Act Amendments of 1972 (P. L. 92-500) and	123

1	regulations pursuant thereto.	124
2	The Agency, subject to any conditions which may be	125
3	prescribed by Board regulations, may issue NPDES permits to	126
4	allow discharges beyond deadlines established by this Act or	127
5	by regulations of the Board without the requirement of a	128
6	variance, subject to the Federal Water Pollution Control Act	129
7	Amendments of 1972 (P. L. 92-500) and regulations pursuant	130
8	thereto.	131
9	(c) Immediately upon receipt of a request for a permit	132
10	or supplemental permit for a refuse disposal facility, the	133
11	Agency shall notify the State's attorney and the Chairman of	134
12	the County Board of the county in which the facility is	135
13	located and each member of the General Assembly from the	136
14	legislative district in which that facility is located and to	137
15	the clerk of each municipality any portion of which is within	
16	3 miles of the facility, prior to the issuance of a permit to	138
17	develop a hazardous waste disposal site, the Agency shall	139
18	conduct a public hearing in the county where the site is	140
19	proposed to be located.	141
20	<u>(d) The Agency shall not require, nor attempt to</u>	142
21	<u>require, owners or operators of air pollution sources to</u>	143
22	<u>obtain, nor attempt to obtain, an offsetting reduction in air</u>	144
23	<u>pollution emissions prior to the issuance of a permit for the</u>	145
24	<u>operation of the air pollution source. The Agency shall make</u>	146
25	<u>reasonable allowances for economic growth in each area of the</u>	
26	<u>State in determining whether to grant a permit for the</u>	147
27	<u>operation of a new or modified air pollution source.</u>	148
28	<u>Emission reductions achieved by the source and efforts to</u>	149
29	<u>achieve emission reductions shall also be considered.</u>	



81st GENERAL ASSEMBLY  
State of Illinois

1979 and 1980

INTRODUCED \_\_\_\_\_, BY

SYNOPSIS: (Ch. 111 1/2, par. 1010)

Amends the Environmental Protection Act to require the Pollution Control Board to adopt specific criteria for the designation of areas of the State that do not attain the standards for air quality and for the designation of those areas of the State in which control measures will be enforced. Effective immediately.

Fiscal Note Act LRB8108559PMjw  
may be applicable

A BILL FOR

1	AN ACT to amend Section 10 of the "Environmental	51
2	Protection Act", approved June 29, 1970, as amended.	54
3	<u>Be it enacted by the People of the State of Illinois,</u>	57
4	<u>represented in the General Assembly:</u>	58
5	Section 1. Section 10 of the "Environmental Protection	59
6	Act", approved June 29, 1970, as amended, is amended to read	60
7	as follows:	61
	(Ch. 111 1/2, par. 1010)	63
8	Sec. 10. The Board, pursuant to procedures prescribed	64
9	in Title VII of this Act, may adopt regulations to promote	65
10	the purposes of this Title. Without limiting the generality	66
11	of this authority, such regulations may among other things	67
12	prescribe:	68
13	(a) Ambient air quality standards specifying the maximum	69
14	permissible short-term and long-term concentrations of	70
15	various contaminants in the atmosphere;	72
16	(b) Emission standards specifying the maximum amounts or	73
17	concentrations of various contaminants that may be discharged	74
18	into the atmosphere;	76
19	(c) Standards for the issuance of permits for	77
20	construction, installation, or operation of any equipment,	78
21	facility, vehicle, vessel, or aircraft capable of causing or	79
22	contributing to air pollution or designed to prevent air	80
23	pollution;	81
24	(d) Standards and conditions regarding the sale, offer,	82
25	or use of any fuel, vehicle, or other article determined by	83
26	the Board to constitute an air-pollution hazard;	85
27	(e) Alert and abatement standards relative to	86
28	air-pollution episodes or emergencies constituting an acute	87
29	danger to health or to the environment;	89
30	(f) Requirements and procedures for the inspection of	90
31	any equipment, facility, vehicle, vessel, or aircraft that	91
32	may cause or contribute to air pollution;	93

1 (g) Requirements and standards for equipment and 95  
2 procedures for monitoring contaminant discharges at their 96  
3 sources, the collection of samples and the collection, 97  
4 reporting and retention of data resulting from such 98  
5 monitoring. 99

6 (h) The Board shall adopt regulations prescribing the 100  
7 conditions under which existing fuel combustion emission 101  
8 sources may use intermittent control systems in lieu of 102  
9 compliance with sulfur dioxide emission standards. Such 103  
10 sources upon submission of proof that the use of a 104  
11 supplemental control system will not contribute to a  
12 violation of ambient air quality standards for sulfur 105  
13 dioxide, may utilize intermittent control systems, under such 106  
14 conditions as the Board deems proper, until December 31, 107  
15 1985. Any source utilizing intermittent control systems 108  
16 pursuant to such Board regulations shall be in compliance 109  
17 with sulfur dioxide emission standards not later than 110  
18 December 31, 1985. 111

19 The Board shall adopt regulations prescribing specific 112  
20 and uniform criteria for the designation of areas of the 113  
21 State which do not attain the standards for air quality and 114  
22 for the designation of those areas of the State in which 115  
23 control measures will be enforced, whenever such designations  
24 are required by this Act or federal law or regulations. Such 116  
25 regulations must be adopted by July 1, 1981. No such 117  
26 designation shall be valid, nor enforceable, nor used by the 118  
27 Board or the Agency for any purpose, unless the designation  
28 is consistent with the criteria. 120

29 The Board may not adopt any regulation banning the 121  
30 burning of leaves throughout the State generally. The Board 122  
31 may, by regulation, restrict or prohibit the burning of 123  
32 leaves within any geographical area of the State if it 124  
33 determines based on medical and biological evidence generally 125  
34 accepted by the scientific community that such burning will  
35 produce in the atmosphere of that geographical area 126

1	contaminants in sufficient quantities and of such	126
2	characteristics and duration as to be injurious to humans,	127
3	plant, or animal life, or health.	128
4	Section 2. This Act takes effect upon its becoming a	129
5	law.	



**81st GENERAL ASSEMBLY  
State of Illinois**

1979 and 1980

INTRODUCED \_\_\_\_\_, BY

**SYNOPSIS:** (Ch. 111 1/2, par. 1010)

Amends the Environmental Protection Act to exempt the Pollution Control Board from the standards and criteria requirement of the Administrative Procedure Act when designating areas of the State in which control measures will be enforced or those areas of the State which do not attain the standards for air quality.

LRB8109424Pmd

A BILL FOR

1           An Act to amend Section 10 of the "Environmental   49  
2   Protection Act", approved June 29, 1970, as amended.       52

3           as it enacted by the People of the State of Illinois,   53  
4   represented in the General Assembly;                       56

5           Section 1. Section 10 of the "Environmental Protection   57  
6   Act", approved June 29, 1970, as amended, is amended to read   58  
7   as follows:   59

          (Cn. 111 1/2, par. 1010)

8           Sec. 10. The Board, pursuant to procedures prescribed   62  
9   in Title VII of this Act, may adopt regulations to promote       63  
10   the purposes of this Title. Without limiting the generality   64  
11   of this authority, such regulations may among other things     65  
12   prescribe:   66

13          (a) Ambient air quality standards specifying the maximum   67  
14   permissible short-term and long-term concentrations of       68  
15   various contaminants in the atmosphere;                       71

16          (b) Emission standards specifying the maximum amounts or   72  
17   concentrations of various contaminants that may be discharged   73  
18   into the atmosphere;   74

19          (c) Standards for the issuance of permits for           75  
20   construction, installation, or operation of any equipment,     76  
21   facility, vehicle, vessel, or aircraft capable of causing or     77  
22   contributing to air pollution or designed to prevent air       78  
23   pollution;   79

24          (d) Standards and conditions regarding the sale, offer,   80  
25   or use of any fuel, vehicle, or other article determined by     81  
26   the Board to constitute an air-pollution hazard;             82

27          (e) Alert and abatement standards relative to           83  
28   air-pollution episodes or emergencies constituting an acute   84  
29   danger to health or to the environment;                       87

30          (f) Requirements and procedures for the inspection or     88  
31   any equipment, facility, vehicle, vessel, or aircraft that     89  
32   may cause or contribute to air pollution;                     92

1 (g) Requirements and standards for equipment and 92  
2 procedures for monitoring contaminant discharges at their 93  
3 sources, the collection of samples and the collection, 94  
4 reporting and retention of data resulting from such 95  
5 monitoring. 96

6 (h) The board shall accept regulations prescribing the 97  
7 conditions under which existing fuel combustion emission 98  
8 sources may use intermittent control systems in lieu of 99  
9 compliance with sulfur dioxide emission standards. Such 100  
10 sources upon submission of proof that the use of a 101  
11 supplemental control system will not contribute to a 102  
12 violation of ambient air quality standards for sulfur 103  
13 dioxide, may utilize intermittent control systems, under such 104  
14 conditions as the Board deems proper, until Decemoer 31, 105  
15 1985. Any source utilizing intermittent control systems 106  
16 pursuant to such board regulations shall be in compliance 107  
17 with sulfur dioxide emission standards not later than 108  
18 December 31, 1985.

19 Whenever the Board is required by this Act or by federal 109  
20 law or regulations to designate areas of the State which do 110  
21 not attain the standards for air quality or to designate 111  
22 areas of the State in which control measures will be 112  
23 enforced, the Board shall be exempt from the requirement of 113  
24 Section 4.02 of the Administrative Procedure Act. Such 114  
25 designations shall be at the sole discretion of the Board and 115  
26 no criteria or standards for such designations shall be 116  
27 required to be stated by the Board.

28 The board may not adopt any regulation banning the 117  
29 burning of leaves throughout the State generally. The board 118  
30 may, by regulation, restrict or prohibit the burning of 119  
31 leaves within any geographical area of the state if it 120  
32 determines based on medical and biological evidence generally 121  
33 accepted by the scientific community that such burning will 122  
34 produce in the atmosphere of that geographical area 123  
35 contaminants in sufficient quantities and of such

- 1 characteristics and duration as to be injurious to humans, 124
- 2 plant, or animal life, or health.

APPENDICES

	<u>Pages</u>
Appendix A: Illinois Administrative Procedure Act as Effective January 1, 1980	305-318
Appendix B: Amendments to the Illinois Administrative Procedure Act Enacted During 1979	
1) House Bill 2226 (Public Act 81-1044) Effective October 1, 1979	319-331
2) House Bill 1196 (Public Act 81-1035) Effective January 1 1980	332-335
3) Senate Bill 419 (Public Act 81-1129) Effective January 1, 1980	336
Appendix C: Operational Rules of the Joint Committee as effective January 1, 1980	337-378
Appendix D: Joint Committee Position Paper: Implicit and Explicit Rulemaking Authority Delegated to State Agencies (Adopted May 29, 1979)	379-387
Appendix E: Joint Committee Staff Paper: Alternatives for Strengthening Legislative Review of Administrative Rules in Illinois	389-396
Appendix F: Attorney General Opinions	
1) Environmental Protection Agency Rules on Public Water Supplies (File Number S-1409, Issued January 10, 1979)	397-403
2) Northeastern Illinois Planning Commission (File Number S-1434, Issued April 30, 1979)	405-408
Appendix G: Stephen v. Quern, Illinois Circuit Court of the Sixth Judicial Circuit, Court Order Entered March 19, 1979	409-411



APPENDIX A

THE ILLINOIS ADMINISTRATIVE PROCEDURE ACT

(ILLINOIS REVISED STATUTES, CHAPTER 127, PARAGRAPHS 1001-1021)

AS EFFECTIVE JANUARY 1, 1980

**Section 1. SHORT TITLE** This Act shall be known and may be cited as "The Illinois Administrative Procedure Act." (PA 79-1083, effective September 22, 1975)

**Section 2. APPLICABILITY** 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, (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." (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977; Amended by PA 80-1457, effective January 1, 1979)

**Section 3. DEFINITIONS** As used in this Act, unless the context otherwise requires, the terms specified in Section 3.01 through 3.09 have the meanings ascribed to them in those Sections. (PA 79-1083)

**Section 3.01. AGENCY** "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 authorized by law to make rules or to determine contested cases. (PA 79-1083; Amended by PA 80-1457, effective January 1, 1979)

**Section 3.02. CONTESTED CASE)** "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. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)

**Section 3.03. HEARING EXAMINER)** "Hearing examiner" means the presiding officer or officers at the initial hearing before each agency and each continuation thereof. (PA 79-1083)

**Section 3.04. LICENSE)** "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. (PA 79-1083)

**Section 3.05. LICENSING)** "Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license. (PA 79-1083)

**Section 3.06. PARTY)** "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. (PA 79-1083)

**Section 3.07. PERSON)** "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency. (PA 79-1083)

**Section 3.08. RATE-MAKING OR RATE-MAKING ACTIVITIES)** "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. (PA 79-1083)

**Section 3.09. RULE)** "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. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)

**Section 4. ADOPTION OF RULES: PUBLIC INFORMATION, AVAILABILITY OF RULES)** (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. **(PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)**

**Section 4.01. REQUIRED RULES)** (a) Each agency shall maintain as rules 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, and may become effective immediately. **(Added by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979)**

**Section 4.02. STANDARDS FOR DISCRETION)** Each rule which implements a discretionary power to be exercised by an agency shall include the standards by which the agency shall exercise the power. Such standards shall be stated as precisely and clearly as practicable under the conditions, to inform fully those persons affected. **(Added by PA 80-1129, Effective January 1, 1980)**

**Section 5. PROCEDURE FOR RULE-MAKING)** (a) Prior to the adoption, amendment or repeal of any rule, each agency shall accomplish the actions required by Sections 5.01, 5.02 or 5.03, whichever is applicable.

(b) 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.

(c) 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. **(PA 79-1083; Amended by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979)**

**Section 5.01. GENERAL RULEMAKING)** In all rulemaking to which Section 5.02 or 5.03 does not apply, each agency shall:

(a) give at least 45 days' notice of its intended action to the general public. This first notice period shall commence on the first day the notice appears in the Illinois Register. The first 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 complete 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.

During the first notice period, the agency shall provide all interested persons who submit a request to comment within the first 14 days of the notice period 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 shall indicate the manner selected by the agency for such submissions. The agency shall consider all submissions received.

(b) provide up to 45 days additional notice of its intended action to the Joint Committee on Administrative Rules. The second notice period shall commence on the day written notice is received by the Joint Committee, and shall expire 45 days thereafter unless prior to that time the agency shall have received a statement of objection from the Joint Committee, or notification from the Joint Committee that no objection will be issued. The written notice to the Joint Committee shall include the text and location of any changes made to the proposed rule during the first notice period, and, if written request has been made by the Joint Committee within 30 days after initial notice appears in the Illinois Register pursuant to Paragraph (a) of this Section, shall include an analysis of the economic and budgetary effects of the proposed rule. After commencement of the second notice period, no substantive change may be made to a proposed rule unless it is made in response to an objection or suggestion of the Joint Committee.

(c) after the expiration of 45 days, after notification from the Joint Committee that no objection will be issued, or after response by the agency to a statement of objections issued by the Joint Committee, whichever is applicable, the agency shall file, pursuant to Section 6 of this Act, a certified copy of each rule, modification, or repeal of any rule adopted by it, which shall be published in the Illinois Register. Each rule hereafter adopted under this Section is effective upon filing, unless a later effective date is required by statute or is specified in the rule. **(Added by PA 81-1044, effective October 1, 1979)**

**Section 5.02 EMERGENCY RULEMAKING)** "Emergency" means the existence of any situation which any agency finds reasonably constitutes a threat to the public interest, safety or welfare. Where any agency finds that an emergency exists which requires adoption of a rule upon fewer days than is required by Section 5.01, and states in writing its reasons for that finding, the agency may adopt an emergency rule without prior notice or hearing, upon filing a notice of emergency rulemaking with the Secretary of State pursuant to Section 6.01 of this Act. Such notice shall include the text of the emergency rule and shall be published in the Illinois Register. Subject to applicable constitutional or statutory provisions, an emergency rule becomes effective immediately upon filing pursuant to Section 6, or at a stated date less than 10 days thereafter. The agency's finding and a statement of the specific reasons therefore 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.

An emergency rule may be effective for a period of not longer than 150 days, but the agency's authority to adopt an identical rule under Section 5.01 of this Act is not precluded. No emergency rule may be adopted more than once in any 24 month period. Two or more emergency rules having substantially the same purpose and effect shall be deemed to be a single rule for purposes of this Section. **(Added by PA 81-1044, effective October 1, 1979)**

**Section 5.03. PEREMPTORY RULEMAKING)** "Peremptory rulemaking" means any rulemaking which is required as a result of federal law, federal rules and regulations, or an order of a court, under conditions which preclude compliance with general rulemaking requirements imposed by Section 5.01 and which preclude the exercise of discretion by the agency as to the content of the rule it is required to adopt. Where any agency finds that peremptory rulemaking is necessary and states in writing its reasons for that finding, the agency may adopt peremptory rulemaking upon filing a notice of rulemaking with the Secretary of State pursuant to Section 6.01 of this Act. Such notice shall be published in the Illinois Register. A rule adopted under the peremptory rulemaking provisions of this Section becomes effective immediately upon filing with the Secretary of State and in the agency's principal office, or at a date required or authorized by the relevant federal law, federal rules and regulations, or court order, as stated in the relevant federal law, rules and regulations, and shall be in such form as the Secretary of State may reasonably prescribe by rule. The agency shall file the notice of peremptory rulemaking within 30 days after a change in rules is required. **(Added by PA 81-1044, effective October 1, 1979)**

**Section 6. FILING OF RULES)** (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.

(b) Concurrent with the filing of any material pursuant to this Section, the filing agency shall submit to the Secretary of State for publication in the next available issue of the Illinois Register a notice of rulemaking 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. **(PA 79-1083; Amended by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979)**

**Section 6.01. FORM AND PUBLICATION OF NOTICES)** The Secretary of State may prescribe reasonable rules concerning the form of documents to be filed with him, and may refuse to accept for filing such certified copies as are not in compliance with such rules. In addition, the Secretary of State shall publish and maintain the Illinois Register and may prescribe reasonable rules setting forth the manner in which agencies shall submit notices required by this Act 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.

Notwithstanding any other provision of this Act, if an agency proposes or adopts federal rules or portions thereof, the requirement that the full text thereof be filed shall be satisfied by filing with the applicable notice a photographic or other reproduction of such rules, or a statement that the agency proposes to adopt or is adopting such rules with a citation to the Federal Register or Code of Federal Regulations where the text appears. If an agency proposes or adopts as rules the standards or guidelines, or portions thereof, of any professional, trade or other association or entity, the requirement that the full text thereof be filed shall be satisfied by filing with the applicable notice a photographic or other reproduction of such standards or guidelines. **(Added by PA 81-1044, effective October 1, 1979)**

**Section 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 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. **(PA 79-1083; Amended by PA 80-1035, effective September 27, 1977; Amended by PA 80-1457, effective January 1, 1979)**

**Section 7.01. CERTIFICATION)** (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 three 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.

(b) Any rule on file with the Secretary of State on January 1, 1978 shall be void 60 days after the 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 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 PA 80-1035, effective September 27, 1977)**

**Section 7.02. JOINT COMMITTEE ON ADMINISTRATIVE RULES)** (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 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 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.

(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) 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 PA 80-1035, effective September 27, 1977; Amended by PA 80-1457, effective January 1, 1979)**

**Section 7.03. OATHS; AFFIDAVITS; SUBPOENA)** (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 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 PA 80-1035, effective September 27, 1977)**

**Section 7.04. POWERS OF JOINT COMMITTEE)** 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 and budgetary effects 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, including any direct economic effect on the persons regulated by the rule; any anticipated effect on the proposing agency's budget and the budgets of other State agencies; and any anticipated effects on State revenues;

b. agency's evaluation of the submissions presented to the agency pursuant to Section 5.01 of this Act;

c. a description of any modifications from the initially published proposal made in the finally accepted version of the intended rule, amendment or repealer. **(Added by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1978; Amended by PA 81-1035, effective January 1, 1980)**

**Section 7.05. RESPONSIBILITIES OF JOINT COMMITTEE)** 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, 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.

4. The Joint Committee shall suggest rulemaking of an agency whenever the Joint Committee, in the course of its review of the agency's rules under this Act, determines that the agency's rules are incomplete, inconsistent or otherwise deficient. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979)

**Section 7.06. JOINT COMMITTEE OBJECTION TO PROPOSED RULE-MAKING) (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 was given prior to its adoption, amendment, 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 notice of proposed rulemaking has been received by the Joint Committee, 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 such modifications as are necessary to meet the objections and shall resubmit the rule, amendment or repealer to the Joint Committee. In addition, the agency shall submit a notice of its election to modify the proposed rule, amendment or repealer to meet the Joint Committee's objections to the Secretary of State, which notice shall be published in the first available issue of the Illinois Register, but the agency shall not be required to conduct a public hearing. If the Joint Committee determines that the modifications do not remedy the Joint Committee's objections, it shall so notify the agency in writing and shall submit a copy of such notification to the Secretary of State for publication in the next available issue of the Illinois Register. In addition, the Joint Committee may recommend legislative action as provided in subsection (g) for agency refusals.

(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 proposed rule, amendment or repealer 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.

(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, it shall notify the Joint Committee in writing of its refusal and shall submit a notice of refusal to the Secretary of State which shall be published in the next available issue of the Illinois Register. If the Joint Committee decides to recommend legislative action in response to an agency refusal, 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.

(h) No rule, amendment or repeal of a rule shall be accepted by the Secretary of State for filing under Section 6, if such rule-making is subject to this Section, until after the agency has responded to the objections of the Joint Committee as provided in this Section. **(Added by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979)**

**Section 7.07. JOINT COMMITTEE OBJECTION TO EXISTING RULE)** (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. 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, it shall notify the Joint Committee in writing of its refusal and shall submit a notice of refusal to the Secretary of State which shall be



published in the next available issue of the Illinois Register. If the Joint Committee, in response to an agency refusal, 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 PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979)**

**Section 7.08. PERIODIC EVALUATION BY JOINT COMMITTEE)** (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. economic and budgetary effects. **(Added by 80-1035, effective September 27, 1977; Amended by PA 81-1035, effective January 1, 1980)**

**Section 7.09. JOINT COMMITTEE RULE-MAKING)** 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 PA 80-1035, effective September 27, 1977)**

**Section 7.10. REPORT BY JOINT COMMITTEE)** 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 PA 80-1035, effective September 27, 1977)**

**Section 8. PETITION FOR ADOPTION OF RULES)** 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, the petition shall be deemed to have been denied. (PA 79-1083)

**Section 9. DECLARATORY RULINGS BY AGENCY)** 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. (PA 79-1083)

**Section 10. CONTESTED CASES; NOTICE; HEARING)** (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. (PA 79-1083)

**Section 11. RECORD IN CONTESTED CASES)** (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, 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. (PA 79-1083)

**Section 12. RULES OF EVIDENCE; OFFICIAL NOTICE)** 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 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. **(PA 79-1083)**

**Section 13. PROPOSAL FOR DECISION)** 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. **(PA 79-1083)**

**Section 14. DECISIONS AND ORDERS)** 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. Finding 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 and except to the extent the agency has adopted its own rules for contested cases as authorized in Section 2 of this Act. **(PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)**

**Section 15. EX PARTE CONSULTATIONS)** 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. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)

**Section 16. LICENSES)** (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. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)

**Section 17. RATE-MAKING)** 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. (PA 79-1083)

**Section 18. WAIVER)** Compliance with any or all of the provisions of this Act concerning contested cases may be waived by written stipulation of all parties. (PA 79-1083)

**Section 19.** (PA 79-1083; Repealed as of January 1, 1978, by PA 80-1035, effective September 27, 1977)

**Section 20. SEVERABILITY)** 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. (PA 79-1083)

**Section 21. EFFECTIVE DATE)** This Act takes effect upon its becoming a law. (PA 79-1083, effective September 22, 1975)

APPENDIX B  
AMENDMENTS TO THE ADMINISTRATIVE PROCEDURE ACT  
ENACTED DURING 1979

1) HOUSE BILL 2226 (PUBLIC ACT 81-1044)

Approved September 24, 1979  
Effective October 1, 1979

HB2226 Enrolled

LRB8103468HBVB

1 AN ACT to amend Sections 4.01, 5, 6, 7.04, 7.05, 7.06 and 56  
2 7.07 of and to add Sections 5.01, 5.02, 5.03 and 6.01 to 57  
3 "The Illinois Administrative Procedure Act", approved 58  
4 September 22, 1975, as amended. 59

5 Be it enacted by the People of the State of Illinois, 61  
6 represented in the General Assembly: 62

7 Section 1. Sections 4.01, 5, 6, 7.04, 7.05, 7.06 and 64  
8 7.07 of "The Illinois Administrative Procedure Act", approved 65  
9 September 22, 1975, as amended, are amended, and Sections 66  
10 5.01, 5.02, 5.03 and 6.01 are added thereto, the amended and 67  
11 added Sections to read as follows:

(Ch. 127, par. 1004.01) 69

12 Sec. 4.01. (a) Each agency shall maintain as rules a 71  
13 ~~rule~~ the following:

14 1. a current description of the agency's organization 73  
15 with necessary charts depicting same; 74

16 2. the current procedures on how the public can obtain 76  
17 information or make submissions or requests on subjects, 77  
18 programs, and activities of the agency; 78

19 3. tables of contents, indices, reference tables, and 80  
20 other materials to aid users in finding and using the 81  
21 agency's collection of rules currently in force; and 82

22 4. a current description of the agency's rule making 84  
23 procedures with necessary flow charts depicting same. 85

24 (b) The rules required to be filed by this Section may 87  
25 be adopted, amended, or repealed and filed as provided in 88  
26 this Section in lieu of any other provisions or requirements 89  
27 of this Act.

28 The rules required by this Section may be adopted, 91  
29 amended, or repealed by filing a certified copy with the 92  
30 Secretary of State as provided by paragraphs (a) and (b) of 93  
31 Section 6, and may become effective immediately. 94

(Ch. 127, par. 1005) 96

Clerk of the House

*John Blair*

Originated in the House of Representatives

PUBLIC ACT 81-1044

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1           Sec. 5. Procedure for Rule-Making.) (a) Prior to the 98  
2 adoption, amendment or repeal of any rule, each agency shall 99  
3 ~~accomplish the actions required by Sections 5.01, 5.02 or~~ 100  
4 ~~5.03, whichever is applicable.~~  
5           1. ~~give at least 45 days' notice of its intended action.~~ 102  
6 ~~This notice period shall commence on the first day the notice~~ 103  
7 ~~appears in the Illinois Register. The notice shall include a~~ 104  
8 ~~text of the proposed rule, or the old and new materials of a~~ 105  
9 ~~proposed amendment, or the text of the provision to be~~ 106  
10 ~~repealed; the specific statutory citation upon which the~~ 107  
11 ~~proposed rule, the proposed amendment to a rule or the~~  
12 ~~proposed repeal of a rule is based and is authorized; a~~ 108  
13 ~~description of the subjects and issues involved; and the~~ 109  
14 ~~time, place and manner in which interested persons may~~ 110  
15 ~~present their views and comments concerning the intended~~  
16 ~~action. In addition, the Secretary of State shall publish~~ 111  
17 ~~and maintain the Illinois Register and set forth the manner~~ 112  
18 ~~in which agencies shall submit the notices required by this~~ 113  
19 ~~Act to him for publication in the Illinois Register. The~~  
20 ~~Illinois Register shall be published at least once each week~~ 114  
21 ~~on the same day unless such day is an official State holiday~~ 115  
22 ~~in which case the Illinois Register shall be published on the~~ 116  
23 ~~next following business day and sent to subscribers who~~ 117  
24 ~~subscribe for the publication with the Secretary of State.~~  
25 ~~The Secretary of State may charge a subscription price to~~ 118  
26 ~~subscribers that covers mailing and publication costs;~~ 119  
27           2. ~~afford all interested persons who submit a request~~ 121  
28 ~~within 14 days after notice of the proposed change is~~ 122  
29 ~~published in the Illinois Register reasonable opportunity to~~ 123  
30 ~~submit data, views, arguments or comments, which may, in the~~ 124  
31 ~~discretion of the agency, be submitted either orally or in~~  
32 ~~writing or both. The notice published in the Illinois~~ 125  
33 ~~Register of the Secretary of State shall indicate the manner~~ 126  
34 ~~selected by the agency for such submissions. The agency~~ 127  
35 ~~shall consider fully all submissions respecting the proposed~~

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1 rule 127

2 ~~(b) If any agency finds that an emergency, reasonably~~ 129

3 ~~constituting a threat to the public interest, safety or~~ 130

4 ~~welfare, requires adoption of a rule upon fewer than 45 days'~~ 131

5 ~~notice and states in writing its reasons for that finding, it~~ 132

6 ~~may proceed without prior notice or hearing or upon any~~

7 ~~abbreviated notice and hearing that it finds practicable, to~~ 133

8 ~~adopt an emergency rule. The rule may be effective for a~~ 134

9 ~~period of not longer than 150 days but the agency's authority~~ 135

10 ~~to adopt an identical rule under subsections (a) (1) and~~ 136

11 ~~(a) (2) of this Section is not precluded.~~

12 ~~(b) (c) No action by any agency to adopt, amend or~~ 139

13 ~~repeal a rule after this Act has become applicable to the~~ 139

14 ~~agency shall be valid unless taken in compliance with this~~ 140

15 ~~Section. A proceeding to contest any rule on the ground of~~ 141

16 ~~non-compliance with the procedural requirements of this~~

17 ~~Section must be commenced within 2 years from the effective~~ 142

18 ~~date of the rule.~~ 143

19 ~~(c) (d) The notice and publication requirements of this~~ 145

20 ~~Section do not apply to a matter relating solely to agency~~ 146

21 ~~management, personnel practices, or to public property, loans~~ 147

22 ~~or contracts.~~

23 ~~(e) If any agency is required by federal law or federal~~ 149

24 ~~rules and regulations or by an order of court to adopt a rule~~ 150

25 ~~under conditions which preclude the agency's compliance with~~ 151

26 ~~the notice or hearing requirement of this Act, the agency may~~ 152

27 ~~proceed to adopt such a rule upon filing with the Secretary~~

28 ~~of State.~~

(Ch. 127, new par. 1005.01) 154

29 Sec. 5.01. General rulemaking.) In all rulemaking to 156

30 which Section 5.02 or 5.03 does not apply, each agency shall: 157

31 (a) give at least 45 days' notice of its intended action 159

32 to the general public. This first notice period shall 160

33 commence on the first day the notice appears in the Illinois 161

34 Register. The first notice shall include a text of the

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1 proposed rule, or the old and new materials of a proposed 162  
 2 amendment, or the text of the provision to be repealed; the 163  
 3 specific statutory citation upon which the proposed rule, the 164  
 4 proposed amendment to a rule or the proposed repeal of a rule 165  
 5 is based and is authorized; a complete description of the  
 6 subjects and issues involved; and the time, place and manner 166  
 7 in which interested persons may present their views and 167  
 8 comments concerning the intended action.  
 9 During the first notice period, the agency shall provide 169  
 10 all interested persons who submit a request to comment within 170  
 11 the first 14 days of the notice period reasonable opportunity 171  
 12 to submit data, views, arguments or comments, which may, in 172  
 13 the discretion of the agency, be submitted either orally or 173  
 14 in writing or both. The notice published in the Illinois  
 15 Register shall indicate the manner selected by the agency for 174  
 16 such submissions. The agency shall consider all submissions 175  
 17 received.  
 18 (b) provide up to 45 days additional notice of its 177  
 19 intended action to the Joint Committee on Administrative 178  
 20 Rules. The second notice period shall commence on the day 179  
 21 written notice is received by the Joint Committee, and shall 180  
 22 expire 45 days thereafter unless prior to that time the  
 23 agency shall have received a statement of objection from the 181  
 24 Joint Committee, or notification from the Joint Committee 182  
 25 that no objection will be issued. The written notice to the 183  
 26 Joint Committee shall include the text and location of any  
 27 changes made to the proposed rule during the first notice 184  
 28 period, and, if written request has been made by the Joint 185  
 29 Committee within 30 days after initial notice appears in the 186  
 30 Illinois Register pursuant to Paragraph (a) of this Section, 187  
 31 shall include an analysis of the economic and budgetary  
 32 effects of the proposed rule. After commencement of the 190  
 33 second notice period, no substantive change may be made to a  
 34 proposed rule unless it is made in response to an objection 191  
 35 or suggestion of the Joint Committee. 192

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 [Signature]



1           (c) after the expiration of 45 days, after notification 194  
2 from the Joint Committee that no objection will be issued, or 195  
3 after response by the agency to a statement of objections 196  
4 issued by the Joint Committee, whichever is applicable, the 197  
5 agency shall file, pursuant to Section 6 of this Act, a  
6 certified copy of each rule, modification, or repeal of any 198  
7 rule adopted by it, which shall be published in the Illinois 199  
8 Register. Each rule hereafter adopted under this Section is 200  
9 effective upon filing, unless a later effective date is 201  
10 required by statute or is specified in the rule.

(Ch. 127, new par. 1005.02) 203

11           Sec. 5.02. Emergency rulemaking.) "Emergency" means the 205  
12 existence of any situation which any agency finds reasonably 206  
13 constitutes a threat to the public interest, safety or 207  
14 welfare. Where any agency finds that an emergency exists 208  
15 which requires adoption of a rule upon fewer days than is 209  
16 required by Section 5.01, and states in writing its reasons 210  
17 for that finding, the agency may adopt an emergency rule 211  
18 without prior notice or hearing, upon filing a notice of 212  
19 emergency rule making with the Secretary of State pursuant to  
20 Section 6.01 of this Act. Such notice shall include the text 213  
21 of the emergency rule and shall be published in the Illinois 214  
22 Register. Subject to applicable constitutional or statutory 215  
23 provisions, an emergency rule becomes effective immediately 216  
24 upon filing pursuant to Section 6, or at a stated date less 217  
25 than 10 days thereafter. The agency's finding and a 218  
26 statement of the specific reasons therefor shall be filed  
27 with the rule. The agency shall take reasonable and 219  
28 appropriate measures to make emergency rules known to the 220  
29 persons who may be affected by them.

30           An emergency rule may be effective for a period of not 222  
31 longer than 150 days, but the agency's authority to adopt an 223  
32 identical rule under Section 5.01 of this Act is not 224  
33 precluded. No emergency rule may be adopted more than once 225  
34 in any 24 month period. Two or more emergency rules having 226

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1 substantially the same purpose and effect shall be deemed to 226  
2 be a single rule for purposes of this Section. 227  
3 (Ch. 127, new par. 1005.03) 229  
4 Sec. 5.03. Peremptory rulemaking.) "Peremptory 232  
5 rulemaking" means any rulemaking which is required as a 233  
6 result of federal law, federal rules and regulations, or an 234  
7 order of a court, under conditions which preclude compliance 235  
8 with general rulemaking requirements imposed by Section 5.01 236  
9 and which preclude the exercise of discretion by the agency 237  
10 as to the content of the rule it is required to adopt. Where 238  
11 any agency finds that peremptory rulemaking is necessary and  
12 states in writing its reasons for that finding, the agency  
13 may adopt peremptory rulemaking upon filing a notice of 239  
14 rulemaking with the Secretary of State pursuant to Section 240  
15 6.01 of this Act. Such notice shall be published in the 241  
16 Illinois Register. A rule adopted under the peremptory  
17 rulemaking provisions of this Section becomes effective 242  
18 immediately upon filing with the Secretary of State and in 243  
19 the agency's principal office, or at a date required or 244  
20 authorized by the relevant federal law, federal rules and 245  
21 regulations, or court order, as stated in the notice of 246  
22 rulemaking. Notice of rulemaking under this Section shall be 247  
23 published in the Illinois Register, and shall specifically 248  
24 refer to the appropriate state or federal court order or 249  
25 federal law, rules and regulations, and shall be in such form  
26 as the Secretary of State may reasonably prescribe by rule. 250  
27 The agency shall file the notice of peremptory rulemaking  
28 within 30 days after a change in rules is required. 252  
29 (Ch. 127, par. 1006) 254  
30 Sec. 6. Filing and Taking Effect of Rules.) (a) Each 256  
31 agency shall file in the office of the Secretary of State and 257  
32 in the agency's principal office a certified copy of each 258  
33 rule and modification or repeal of any rule adopted by it, 259  
34 including all rules existing on the date this Act becomes 260  
35 applicable to the agency other than rules already so filed. 261

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1 The Secretary of State and the agency shall each keep a 261  
 2 permanent register of the rules open to public inspection. 262  
 3 ~~The Secretary of State may refuse to accept for filing such 263~~  
 4 ~~certified copies as are not in substantial compliance with 264~~  
 5 ~~reasonable rules prescribed by him concerning the form of 265~~  
 6 ~~documents to be filed with him.~~

7 (b) Concurrent with the filing of any material pursuant 267  
 8 to this Section ~~Act~~, the filing agency shall submit to the 268  
 9 Secretary of State for publication in the next available 269  
 10 issue of the Illinois Register a notice of rulemaking which 270  
 11 presents:

12 1. if the material is a new rule, the full text of the 272  
 13 new rule; or

14 2. if the material is an amendment to a rule or rules, 274  
 15 the full text of the rule or rules as amended; or 275  
 16 3. if the material is a repealer, such notice of repeal 277  
 17 shall be published. 278

18 ~~(c) Each rule hereafter adopted is effective 10 days 280~~  
 19 ~~after filing, except that:~~

20 ~~1. if required by statute or specified in the rule, a 282~~  
 21 ~~later date is the effective date; 283~~

22 ~~2. subject to applicable constitutional or statutory 285~~  
 23 ~~provisions, an emergency rule becomes effective immediately 286~~  
 24 ~~upon filing with the Secretary of State and in the agency's 287~~  
 25 ~~principal office, or at a stated date less than 10 days 288~~  
 26 ~~thereafter, if the agency finds that this effective date is 289~~  
 27 ~~necessary because of emergency. The agency's finding and a 290~~  
 28 ~~brief statement of the reasons therefor shall be filed with 291~~  
 29 ~~the rule. The agency shall take reasonable and appropriate 292~~  
 30 ~~measures to make emergency rules known to the persons who may 292~~  
 31 ~~be affected by them.~~

32 (Ch. 127, new par. 1006.01) 294  
 33 Sec. 6.01. Form and publication of notices.) The 296  
 34 Secretary of State may prescribe reasonable rules concerning 297  
the form of documents to be filed with him, and may refuse to 298

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1 accept for filing such certified copies as are not in 299  
 2 compliance with such rules. In addition, the Secretary of  
 3 State shall publish and maintain the Illinois Register and 300  
 4 may prescribe reasonable rules setting forth the manner in 301  
 5 which agencies shall submit notices required by this Act for 302  
 6 publication in the Illinois Register. The Illinois Register 303  
 7 shall be published at least once each week on the same day 304  
 8 unless such day is an official State holiday in which case 305  
 9 the Illinois Register shall be published on the next  
 10 following business day and sent to subscribers who subscribe 306  
 11 for the publication with the Secretary of State. The 307  
 12 Secretary of State may charge a subscription price to  
 13 subscribers that covers mailing and publication costs. 308  
 14 Notwithstanding any other provision of this Act, if an 310  
 15 agency proposes or adopts federal rules or portions thereof, 311  
 16 the requirement that the full text thereof be filed shall be 312  
 17 satisfied by filing with the applicable notice a photographic 313  
 18 or other reproduction of such rules, or a statement that the 314  
 19 agency proposes to adopt or is adopting such rules with a  
 20 citation to the Federal Register or Code of Federal 315  
 21 Regulations where the text appears. If an agency proposes or 316  
 22 adopts as rules the standards or guidelines, or portions 317  
 23 thereof, of any professional, trade or other association or  
 24 entity, the requirement that the full text thereof be filed 318  
 25 shall be satisfied by filing with the applicable notice a 319  
 26 photographic or other reproduction of such standards or 320  
 27 guidelines.

(Ch. 127, par. 1007.04) 322

28 Sec. Sec. 7.04. The Joint Committee shall have the 324  
 29 following powers under this Act:

30 1. The Joint Committee shall have advisory powers only 326  
 31 relating to its function, which shall be the promotion of 327  
 32 adequate and proper rules by agencies and an understanding on 328  
 33 the part of the public respecting such rules.

34 2. The Joint Committee may undertake studies and 330

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1	investigations concerning rule-making and agency rules.	331
2	3. The Joint Committee shall monitor and investigate	333
3	compliance of agencies with the provisions of this Act, make	334
4	periodic investigations of the rule-making activities of all	335
5	agencies, and evaluate and report on all rules in terms of	336
6	their propriety, legal adequacy, relation to statutory	337
7	authorization, economic impact on those effected by the rule	
8	and public policy.	338
9	4. Hearings and investigations conducted by the Joint	340
10	Committee under this Act may be held at such times and places	341
11	within the State as such Committee deems necessary;	342
12	5. The Joint Committee shall have the authority to	344
13	request from any agency an analysis of the:	345
14	a. effect of a new rule, amendment or repealer;	347
15	b. agency's evaluation of the submissions presented to	349
16	the agency pursuant to Section <u>5.01</u> 5 of this Act;	350
17	c. a description of any modifications from the initially	352
18	published proposal made in the finally accepted version of	353
19	the intended rule, amendment or repealer; and	354
20	d. the agency's justification and rationale for the	356
21	intended rule, amendment or repealer.	357
	(Ch. 127, par. 1007.05)	359
22	Sec. 7.05. The Joint Committee shall have the following	361
23	responsibilities under this Act:	362
24	1. The Joint Committee shall conduct a systematic and	364
25	continuing study of the rules and rule making process of all	365
26	state agencies, including those agencies not covered in	366
27	Section 3.01 of this Act, for the purpose of improving the	367
28	rule making process, reducing the number and bulk of rules,	368
29	removing redundancies and unnecessary repetitions and	369
30	correcting grammatical, typographical and like errors not	
31	affecting the construction or meaning of the rules, and it	370
32	shall make recommendations to the appropriate affected	371
33	agency.	
34	2. The Joint Committee shall review the statutory	373

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1 authority on which any administrative rule is based. 374

2 3. The Joint Committee shall maintain a review program, 376

3 to study the impact of legislative changes, court rulings and 377

4 administrative action on agency rules and rule making. 378

5 4. The Joint Committee shall suggest rulemaking of an 380

6 agency whenever the Joint Committee, in the course of its 381

7 review of the agency's rules under this Act, determines that 382

8 the agency's rules are incomplete, inconsistent or otherwise 383

9 deficient.

(Ch. 127, par. 1007.06) 385

10 Sec. 7.06. (a) The Joint Committee may examine any 387

11 proposed rule, amendment to a rule, and repeal of a rule for 388

12 the purpose of determining whether the proposed rule, 389

13 amendment to a rule, or repeal of a rule is within the 390

14 statutory authority upon which it is based, whether the rule,

15 amendment to a rule or repeal of a rule is in proper form and 391

16 whether the notice was ~~is~~ given prior to its adoption, 392

17 amendment, or repeal and was sufficient to give adequate 393

18 notice of the purpose and effect of the rule, amendment or 394

19 repeal.

20 (b) If the Joint Committee objects to a proposed rule, 396

21 amendment to a rule, or repeal of a rule, it shall certify 397

22 the fact to the issuing agency and include with the 398

23 certification a statement of its specific objections. 399

24 (c) If within 45 days after notice of proposed 401

25 rulemaking a proposed rule, amendment to a rule or repeal of 403

26 a rule has been received by the Joint Committee published in 404

27 the Illinois Register, the Joint Committee certifies its 405

28 objections to the issuing agency then that agency shall 406

29 within 90 days of receipt of the statement of objection:

30 1. modify the proposed rule, amendment or repealer to 408

31 meet the Joint Committee's objections; 409

32 2. withdraw the proposed rule, amendment, or repealer in 411

33 its entirety, or; 412

34 3. refuse to modify or withdraw the proposed rule, 414

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1 amendment or repealer. 415

2 (d) If an agency elects to modify a proposed rule, 417

3 amendment or repealer to meet the Joint Committee's 418

4 objections, it shall make such modifications, as are 419

5 necessary to meet the objections and shall resubmit the rule, 420

6 amendment or repealer to the Joint Committee. In addition,

7 the agency shall submit a notice of its election to modify, 421

8 ~~the~~ a proposed rule, amendment or repealer to meet the Joint 422

9 Committee's objections to the Secretary of State, which 423

10 ~~notice~~ shall be published in the first available issue of the 425

11 Illinois Register, but the agency shall not be required to 426

12 conduct a public hearing. If the Joint Committee determines

13 that the modifications do not remedy the Joint Committee's

14 objections, it shall so notify the agency in writing and

15 shall submit a copy of such notification to the Secretary of

16 State for publication in the next available issue of the

17 Illinois Register. In addition, the Joint Committee may 431

18 recommend legislative action as provided in subsection (g)

19 for agency refusals. 432

20 (e) If an agency elects to withdraw a proposed rule, 434

21 amendment or repealer as a result of the Joint Committee's 435

22 objections, it shall notify the Joint Committee, in writing, 436

23 of its election and shall submit a notice of the withdrawal 437

24 to the Secretary of State which shall be published in the 438

25 next available issue of the Illinois Register.

26 (f) Failure of an agency to respond to the Joint 440

27 Committee's objections to a proposed rule, amendment or 441

28 repealer, within the time prescribed in subsection (c) shall 442

29 constitute withdrawal of the proposed rule, amendment or

30 repealer in its entirety. The Joint Committee shall 443

31 submit a notice to that effect to the Secretary of State 445

32 which shall be published in the next available issue of the 446

33 Illinois Register and the Secretary of State shall refuse to 447

34 accept for filing a certified copy of such proposed rule, 447

35 amendment or repealer under the provisions of Section 6. 448

448  
 jji

1 (g) If an agency refuses to modify or withdraw the 450  
 2 proposed rule, amendment or repealer so as to remedy an 451  
 3 objection stated by the Joint Committee, it shall notify the 452  
 4 Joint Committee in writing of its refusal and shall submit a 453  
 5 notice of refusal to the Secretary of State which shall be  
 6 published in the next available issue of the Illinois 454  
 7 Register, and if the Joint Committee decides to recommend 455  
 8 legislative action in response to an agency refusal, then the 457  
 9 Joint Committee shall have drafted and have introduced into  
 10 either house of the General Assembly appropriate legislation 458  
 11 to implement the recommendations of the Joint Committee. 459

12 (h) No rule, amendment or repeal of a rule shall be 461  
 13 accepted by the Secretary of State for filing under Section 462  
 14 6, if such rulemaking is subject to this Section, until after 463  
 15 the agency has responded to the objections of the Joint 464  
 16 Committee as provided in this Section.

(Ch. 127, par. 1007.07) 466

17 Sec. 7.07. (a) The Joint Committee may examine any rule 468  
 18 for the purpose of determining whether the rule is within the 469  
 19 statutory authority upon which it is based, and whether the 470  
 20 rule is in proper form.

21 (b) If the Joint Committee objects to a rule, it shall, 472  
 22 within 5 days of the objection, certify the fact to the 473  
 23 adopting agency and include within the certification a 474  
 24 statement of its specific objections.

25 (c) Within 90 days of receipt of the certification, the 476  
 26 agency shall:

27 1. Notify the Joint Committee that it has elected to 478  
 28 amend the rule to meet the Joint Committee's objection; 479  
 29 2. Notify the Joint Committee that it has elected to 481  
 30 repeal the rule, or;  
 31 3. Notify the Joint Committee that it refuses to amend 483  
 32 or repeal the rule.

33 (d) If the agency elects to amend a rule to meet the 485  
 34 Joint Committee's objections, it shall notify the Joint 486

kic  
 pj



1 Committee in writing and shall initiate rule-making 487  
 2 procedures for that purpose by giving notice as required by  
 3 Section 5 of this Act. The Joint Committee shall give 488  
 4 priority to rules so amended when setting its agenda. 489  
 5 (e) If the agency elects to repeal a rule as a result of 491  
 6 the Joint Committee objections, it shall notify the Joint 492  
 7 Committee, in writing, of its election and shall initiate 493  
 8 rule-making procedures for that purpose by giving notice as 494  
 9 required by Section 5 of this Act.  
 10 (f) If the agency elects to amend or repeal a rule as a 496  
 11 result of the Joint Committee objections, it shall complete 497  
 12 the process within 180 days after giving notice in the 498  
 13 Illinois Register.  
 14 (g) Failure of the agency to respond to the Joint 500  
 15 Committee's objections to a rule within the time prescribed 501  
 16 in subsection (c) shall constitute a refusal to amend or 502  
 17 repeal the rule.  
 18 (h) If an agency refuses to amend or repeal a rule so as 504  
 19 to remedy an objection stated by the Joint Committee, it 505  
 20 shall notify the Joint Committee in writing of its refusal 506  
 21 and shall submit a notice of refusal to the Secretary of 507  
 22 State which shall be published in the next available issue of  
 23 the Illinois Register. ~~and~~ if the Joint Committee, in 509  
 24 response to an agency refusal, decides to recommend 510  
 25 legislative action, then the Joint Committee shall have 511  
 26 drafted and have introduced into either house of the General  
 27 Assembly appropriate legislation to implement the 512  
 28 recommendations of the Joint Committee.  
 29 Section 2. This amendatory Act takes effect October 1, 514  
 30 1979. APPROVED

37<sup>th</sup> day of July, 1979

*[Signature]*

*[Signature]*  
 Speaker, House of Representatives  
*[Signature]* *[Signature]*  
 President of the Senate

2) HOUSE BILL 1196 (PUBLIC ACT 81-1035)

Approved September 24, 1979

Effective January 1, 1980

HB1196' Enrolled

LRB8105069JSjp

1	AN ACT to amend Sections 5, 7.04 and 7.08 of "The	52
2	Illinois Administrative Procedure Act", approved September	53
3	22, 1975, as amended.	54

4	<u>Be it enacted by the People of the State of Illinois,</u>	57
5	<u>represented in the General Assembly:</u>	58

6	Section 1. Sections 5, 7.04 and 7.08 of "The Illinois	60
7	Administrative Procedure Act", approved September 22, 1975,	61
8	as amended, are amended to read as follows:	

	(Ch. 127, par. 1005)	63
--	----------------------	----

9	Sec. 5. Procedure for Rule-Making.) (a) Prior to the	65
10	adoption, amendment or repeal of any rule, each agency shall:	66

11	1. give at least 45 days' notice of its intended action.	68
----	--	----

12	This notice period shall commence on the first day the notice	69
13	appears in the Illinois Register. The notice shall include a	70
14	text of the proposed rule, or the old and new materials of a	71
15	proposed amendment, or the text of the provision to be	72
16	repealed; the specific statutory citation upon which the	73
17	proposed rule, the proposed amendment to a rule or the	
18	proposed repeal of a rule is based and is authorized; a	74
19	description of the subjects and issues involved; and the	76
20	time, place and manner in which interested persons may	77
21	present their views and comments concerning the intended	78
22	action. In addition, the Secretary of State shall publish	
23	and maintain the Illinois Register and set forth the manner	79
24	in which agencies shall submit the notices required by this	80
25	Act to him for publication in the Illinois Register.	81
26	Illinois Register shall be published at least once each week	82
27	on the same day unless such day is an official State holiday	83
28	in which case the Illinois Register shall be published on the	84
29	next following business day and sent to subscribers who	
30	subscribe for the publication with the Secretary of State.	85
31	The Secretary of State may charge a subscription price to	86
32	subscribers that covers mailing and publication costs;	87

Clerk of the House

*John A. Baird*

Originated in the House of Representatives

PUBLIC ACT 81-1035

*Wm P.K.*

1           2. afford all interested persons who submit a request 89  
2 within 14 days after notice of the proposed change is 90  
3 published in the Illinois Register reasonable opportunity to 91  
4 submit data, views, arguments or comments, which may, in the 92  
5 discretion of the agency, be submitted either orally or in 93  
6 writing or both. The notice published in the Illinois 94  
7 Register of the Secretary of State shall indicate the manner 95  
8 selected by the agency for such submissions. The agency 96  
9 shall consider fully all submissions respecting the proposed 96  
10 rule. 96

11           (b) If any agency finds that an emergency, reasonably 98  
12 constituting a threat to the public interest, safety or 99  
13 welfare, requires adoption of a rule upon fewer than 45 days' 100  
14 notice and states in writing its reasons for that finding, it 101  
15 may proceed without prior notice or hearing or upon any 102  
16 abbreviated notice and hearing that it finds practicable, to  
17 adopt an emergency rule. The rule may be effective for a 103  
18 period of not longer than 150 days but the agency's authority 104  
19 to adopt an identical rule under subsections (a)(1) and 105  
20 (a)(2) of this Section is not precluded. 105

21           (c) No action by any agency to adopt, amend or repeal a 107  
22 rule after this Act has become applicable to the agency shall 108  
23 be valid unless taken in compliance with this Section. A 109  
24 proceeding to contest any rule on the ground of 110  
25 non-compliance with the procedural requirements of this  
26 Section must be commenced within 2 years from the effective 111  
27 date of the rule. 111

28           (d) The notice and publication requirements of this 114  
29 Section do not apply to a matter relating solely to agency 115  
30 management, personnel practices, or to public property, loans 116  
31 or contracts. 116

32           (e) If any agency is required by federal law or federal 118  
33 rules and regulations or by an order of court to adopt a rule 119  
34 under conditions which preclude the agency's compliance with 120  
35 the notice or hearing requirement of this Act, the agency may 121

*Carroll  
P.R.*

1	proceed to adopt such a rule upon filing with the Secretary	122
2	of State.	
	(Ch. 127, par. 1007.04)	124
3	Sec. 7.04. The Joint Committee shall have the following	126
4	powers under this Act:	127
5	1. The Joint Committee shall have advisory powers only	129
6	relating to its function, which shall be the promotion of	130
7	adequate and proper rules by agencies and an understanding on	131
8	the part of the public respecting such rules.	132
9	2. The Joint Committee may undertake studies and	134
10	investigations concerning rule-making and agency rules.	135
11	3. The Joint Committee shall monitor and investigate	137
12	compliance of agencies with the provisions of this Act, make	138
13	periodic investigations of the rule-making activities of all	139
14	agencies, and evaluate and report on all rules in terms of	140
15	their propriety, legal adequacy, relation to statutory	141
16	authorization, <u>economic and budgetary effects economic-impact</u>	
17	<u>on-those-affected-by-the-rule</u> and public policy.	143
18	4. Hearings and investigations conducted by the Joint	145
19	Committee under this Act may be held at such times and places	146
20	within the State as such Committee deems necessary;	147
21	5. The Joint Committee shall have the authority to	149
22	request from any agency an analysis of the:	150
23	a. effect of a new rule, amendment or repealer,	152
24	<u>including any direct economic effect on the persons regulated</u>	153
25	<u>by the rule; any anticipated effect on the proposing agency's</u>	154
26	<u>budget and the budgets of other State agencies; and any</u>	155
27	<u>anticipated effects on State revenues;</u>	
28	b. agency's evaluation of the submissions presented to	157
29	the agency pursuant to Section 5 of this Act;	158
30	c. a description of any modifications from the initially	160
31	published proposal made in the finally accepted version of	161
32	the intended rule, amendment or repealer; and	162
33	d. the agency's justification and rationale for the	164
34	intended rule, amendment or repealer.	165

WJR  
P.R.

(Ch. 127, par. 1007.08)

1           Sec. 7.08. (a) The Joint Committee shall evaluate the           167  
2 rules of each agency at least once every 5 years. The Joint           169  
3 Committee by rule shall develop a schedule for this periodic           170  
4 evaluation. In developing this schedule the joint Committee           171  
5 shall group rules by specified areas to assure the evaluation           172  
6 of similar rules at the same time. Such schedule shall           173  
7 include at least the following categories:           174

8           1. human resources;           176  
9           2. law enforcement;           177  
10          3. energy;           178  
11          4. environment;           179  
12          5. natural resources;           180  
13          6. transportation;           181  
14          7. public utilities;           182  
15          8. consumer protection;           183  
16          9. licensing laws;           184  
17          10. regulation of occupations;           185  
18          11. labor laws;           186  
19          12. business regulation.           187  
20          13. financial institutions; and           188  
21          14. government purchasing.           189

22           (b) Whenever evaluating any rules as required by this           191  
23 Section the Joint Committee's review shall include an           192  
24 examination of:

25           1. organizational, structural and procedural reforms           194  
26 which effect rules or rule making;           195  
27           2. merger, modification, establishment or abolition of           197  
28 regulations;           198  
29           3. eliminating or phasing out outdated, overlapping or           199  
30 conflicting regulatory jurisdictions or requirements of           200  
31 general applicability; and           201  
32           4. Economic and budgetary effects increasing--economic           202

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impet.

*[Handwritten signature]*

*[Handwritten signature]*  
Speaker, House of Representatives

*[Handwritten signature]*  
President of the Senate

1 AN ACT to add Section 4.02 to "The Illinois 47  
2 Administrative Procedure Act", approved September 22, 1975, 48  
3 as amended. 50

4 Be it enacted by the People of the State of Illinois, 53  
5 represented in the General Assembly: 54

6 Section 1. Section 4.02 is added to "The Illinois 56  
7 Administrative Procedure Act", approved September 22, 1975. 57  
8 as amended, the added Section to read as follows: 58

(Ch. 127, new par. 1004.02) 60

9 Sec. 4.02. Each rule which implements a discretionary 61  
10 power to be exercised by an agency shall include the 62  
11 standards by which the agency shall exercise the power. Such 63  
12 standards shall be stated as precisely and clearly as 64  
13 practicable under the conditions, to inform fully those  
14 persons affected.

Secretary of the Senate  
Originated in the Senate  
*Ronald C. Siggett*

PUBLIC ACT 81-1129

*Philip J. Rock*  
President of the Senate

*Walter C. Akeman*  
Speaker, House of Representatives

CERTIFIED

this 26<sup>th</sup> day of November, 1979 A.D.  
that the acceptance of the General Assembly and  
forms to my specific recommendation for this

*James R. Thompson*  
GOVERNOR

APPENDIX C

OPERATIONAL RULES OF THE JOINT COMMITTEE  
AS EFFECTIVE JANUARY 1, 1980

	Pages
Rule One: General Policies	338
Rule Two: Review of Proposed Rulemaking	339-346
Rule Three: Review of Emergency Rulemaking	347-350
Rule Four: Review of Peremptory Rulemaking	351-355
Rule Five: Five-Year Evaluation of All Existing Rules	356-365
Rule Six: Complaint Review of Existing Rules	366-369
Illustrations	370-378

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 all 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 all 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 the Secretary of State has substantial responsibility under the Illinois Administrative Procedure Act, especially for publication 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.

Section 1.1.04: As used in these rules, unless the context otherwise clearly requires:

1. "Act" means the Illinois Administrative Procedure Act, Ill. Rev. Stat. 1977, ch. 127, par. 1001 et seq., as amended.
2. "Joint Committee" means the Joint Committee on Administrative Rules, created by Section 7.02(a) of the Act.
3. "Executive Director" means the Executive Director of the Joint Committee.

Filed: Nov 5  
DEC 28 1979

Effective: DEC 10 1979

Amended

NOV 28 1979



RULE TWO: REVIEW OF PROPOSED RULEMAKING

Section 1.2.01: As used in this rule:

1. "First notice" means the notice required to be given to the general public by agencies pursuant to Section 5.01(a) of the Act.
2. "First notice period" means that period of time, not less than 45 days, commencing on the day the first notice appears in the Illinois Register.
3. "Second notice" means the notice required to be given by agencies to the Joint Committee pursuant to Section 5.01(b) of the Act, and containing the information required by Section 1.2.05 of this rule.
4. "Second notice period" means that period of time, not more than 45 days, following the first notice period, and commencing on the day the second notice is received by the Joint Committee.

Section 1.2.02: If, within five working days after the first notice period commences, the proposing agency requests in writing that the Joint Committee conduct a preliminary review of the agency's proposed rulemaking, the Joint Committee staff will review the proposed rulemaking, including the notice of proposed rulemaking and the text of the rulemaking. The Joint Committee staff may pose questions or problems discovered in reviewing the proposed rulemaking, and communicate or meet with appropriate agency personnel to discuss the proposed rulemaking. This review will be based on the criteria outlined in Section 1.2.09; however, such review is independent of, and shall not relieve the proposing agency of its responsibilities under, the review conducted pursuant to Sections 1.2.05 and 1.2.07.

Section 1.2.03: In addition, within 30 days after the commencement of the first notice period, the Joint Committee, through the Executive Director, may request from the proposing agency **an analysis of the economic and budgetary effects of the proposed**

Amended

NOV 28 1979

**rulemaking.** An analysis will be requested unless it is reasonably evident from the information provided by the agency in the first notice, and from other information available to the Joint Committee, that the economic and budgetary effects of the proposed rulemaking in the areas outlined in Section 1.2.04 will not be substantial. The request for such analysis will be in writing.

**Section 1.2.04:** If the Joint Committee requests an analysis of the economic and budgetary effects of a proposed rulemaking, the affected agency shall submit such analysis in writing to the Joint Committee as part of the second notice. The analysis shall be in the form shown in Illustration I, including a discussion of the following factors:

1. **Any direct economic effect on the persons regulated by the rule.**
2. **Any anticipated effect on the proposing agency's budget.**
3. **Any anticipated effect on the budgets of other State agencies.**
4. **Any anticipated effect on State revenue.**
5. **Any other considerations relevant to the economic and budgetary effects of the proposed rulemaking.**
6. **The estimated effect, in dollars, of each of the above factors.**

**Section 1.2.05:** The second notice period shall commence on the day written notice is received by the Joint Committee, and shall expire 45 days thereafter unless prior to that time the agency shall have received a statement of objection from the Joint Committee, or notification from the Joint Committee that no objection will be issued.

The second notice shall contain the following information:

Amended

NOV 28 1979

1. Agency name.
2. Title of proposed rulemaking.
3. Date of the first notice.
4. **Text and location of any changes made to the proposed rulemaking during the first notice period.**
5. **If requested by the Joint Committee pursuant to Section 1.2.03, an analysis of the economic and budgetary effects of the proposed rulemaking.**
6. Name of specific agency personnel who will respond to Joint Committee questions regarding the proposed rulemaking.

The second notice should be clearly identified as such, and shall be submitted to the Executive Director, Joint Committee on Administrative Rules, 520 South Second Street, Suite 100, Springfield, Illinois 62706.

Within two working days after the receipt by the Joint Committee of a second notice, the Joint Committee will notify the Office of the Secretary of State and the proposing agency of the date upon which the second notice period commenced. Notices which do not contain all of the information required by this Section and by Section 5.01(b) of the Act will not be accepted by the Joint Committee, and any agency submitting such notice will be informed in writing of the specific reason or reasons why the notice was not accepted.

Section 1.2.06: Along with the second notice the agency should also submit the following information, in writing, to the Joint Committee:

1. **Agency's evaluation of the submissions presented to the agency by interested persons during the first notice period (but not including any submission**

Amended

NOV 28 1979

presented to the agency by the Joint Committee pursuant to Section 1.2.02) including:

- a. The names and addresses of all individuals or groups making a written submission, or requesting the opportunity to make a written submission.
  - b. A list of all specific criticisms or comments raised in the submissions.
  - c. The agency's evaluation of each of the specific criticisms or comments as related to the criteria outlined in Section 1.2.09.
  - d. A statement that the agency has considered all submissions received during the first notice period.
2. **An analysis of the anticipated effects of the proposed rulemaking, including:**
- 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. Any other anticipated effects.
3. **A justification and rationale for the proposed rulemaking, including:**
- 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.

Amended

NOV 28 1979

- d. Relationship to any relevant federal rules, regulations, or funding requirements.
- e. Any other relevant considerations.

Section 1.2.07: The Joint Committee staff will review each notice submitted pursuant to Section 1.2.05, and the information submitted pursuant to Section 1.2.06. The staff review will be based on the criteria outlined in Section 1.2.09. The staff will report the results of its review to the Joint Committee, and may develop a recommendation for action, including the issuance of an objection to the proposed rulemaking 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 or additional appropriate action. To facilitate full and open consideration of proposed rulemaking, the staff of the Joint Committee will make reasonable efforts to ensure that the proposing agency is aware of the substance of such recommendations.

Section 1.2.08: 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 1.2.09. 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. Unless the individual or group submitting the comments expressly requests otherwise, the Joint Committee shall provide a copy of such comments to the proposing agency. The tentative agenda for each hearing will be published as soon as practicable prior to each hearing in the Illinois Register.

Section 1.2.09: The Joint Committee will give major consideration to the following criteria in reviewing proposed rulemaking:

Amended

NOV 28 1979

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 state budget.
6. Clarity of the language of the proposed rulemaking for understanding by the affected public.
7. Sufficient completeness and clarity to ensure 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 1.2.10: If the Joint Committee finds that the proposed rulemaking is significantly deficient in relation to any of the criteria outlined in Section 1.2.09, **the Joint Committee will object to the proposed rulemaking.** If the Joint Committee does not make such finding, **the Joint Committee will notify the proposing agency in writing that no objection will be issued,** unless the second notice period has expired, or unless the Joint Committee finds, at the time of the hearing, that additional information is necessary in order for the Joint Committee to carry out its functions pursuant to Sections 7.04 and 7.06 of the Act. Such notification will be mailed to the proposing agency within two working days following the day of the Joint Committee hearing at which the proposed rulemaking is considered.

Section 1.2.11: If the Joint Committee objects to any proposed rulemaking, 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 II. **The certification to the agency shall include a statement of specific objections of the Joint Committee to the proposed rulemaking.**

Amended

NOV 28 197

Each statement of specific objections to a proposed rulemaking issued by the Joint Committee shall also be submitted as soon as practicable to the Secretary of State for publication in the Illinois Register.

**Section 1.2.12:** 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 in the statement of objection. The response should be concise, but complete, clearly stating the agency's response and rationale for such response. The response should be made in the manner shown in Illustration III.

**Section 1.2.13:** 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 objection.** 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 or other reasons 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 1.2.14:** If the agency elects to modify a proposed rulemaking to meet the specific objections of the Joint Committee, the Joint Committee will review the agency response. If the Joint Committee determines that the modifications do not remedy the specific objections, it will so notify the agency and will submit a copy of such notification to the Secretary of State for publication in the next available issue of the Illinois Register. The notification will contain a statement of the specific reasons why the modifications do not remedy the specific objections.

AMENDED

NOV 28 1979

Section 1.2.15: If the proposing agency fails to respond to an objection within 90 days from receipt of the certification of an objection and statement of specific objections from the Joint Committee, the rulemaking will be considered automatically withdrawn by operation of law. Following the expiration of the 90 day period the Executive Director shall send a notice to the Secretary of State stating that the proposing agency has failed to respond to the objection by the Joint Committee within the 90 days, and that the rulemaking has been withdrawn by operation of law.

Section 1.2.16: After commencement of the second notice period, no substantive change may be made to a proposed rule unless it is made in response to an objection or suggestion of the Joint Committee.

Section 1.2.17: The Joint Committee may develop legislation to remedy deficiencies or problems, 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.

Filed: <sup>Nov 28</sup> ~~DEC 28~~ 1979

Effective: DEC 10 1979

Amended

NOV 28 1979



### RULE THREE: REVIEW OF EMERGENCY RULEMAKING

Section 1.3.01: The Joint Committee recognizes that situations occur which require immediate action and in these instances emergency rules must be adopted pursuant to Section 5.02 of the Act. However, the Joint Committee believes that the notice and comment period is an integral part of agency rulemaking and, therefore, the use of the emergency rulemaking process must be strictly limited to situations **reasonably constituting a threat to the public interest, safety or welfare, and requiring the adoption of rules upon fewer days' notice than is required by Section 5.01 of the Act.**

In accordance with its authority under Section 7.07 of the Illinois Administrative Procedure Act to **examine any rule for the purposes of determining whether the rule is within the statutory authority upon which it is based, and whether the rule is in proper form**, the Joint Committee will review emergency rulemaking to ensure that the use of the process is limited to only those situations specified in Section 5.02 of the Act. The specific criteria to be used in the review are stated in Sections 1.3.04 and 1.3.05 of this rule.

Section 1.3.02: As used in this rule, "Emergency rulemaking" means a rule adopted pursuant to Section 5.02 of the Act.

Section 1.3.03: Based on the criteria outlined in Sections 1.3.04 and 1.3.05 of this rule the Joint Committee staff will review each emergency rulemaking. To the extent necessary to conduct an effective review of the emergency rulemaking, the Joint Committee staff will pose questions or problems discovered in reviewing the emergency rulemaking, and communicate or meet with appropriate agency personnel to discuss the emergency rulemaking. If the rule is substantially deficient in

relation to any of the criteria outlined in Sections 1.3.04 and 1.3.05, staff will develop a recommendation for action by the Joint Committee. Such recommendation shall be advisory only and shall not limit the Joint Committee's discretion to take different or additional appropriate action. To facilitate full and open consideration of emergency rulemaking, the staff of the Joint Committee will make reasonable efforts to ensure that the agency is aware of the substance of such recommendation. The agency will be informed of the date of the Joint Committee meeting at which the emergency rulemaking will be considered. An agency representative will be asked to attend the hearing at which the rulemaking is discussed.

Section 1.3.04: The Joint Committee will consider the following criterion in reviewing emergency rulemaking:

The extent to which the agency's explanation of the need for emergency rulemaking demonstrates that the emergency rulemaking is in compliance with Section 5.02 of the Act in that it describes **a situation reasonably constituting a threat to the public interest, safety or welfare which requires adoption of a rule upon fewer days' notice than is required by Section 5.01 of the Act.**

Section 1.3.05: If the emergency rulemaking is determined to be in compliance with Section 5.02 of the Act, the Joint Committee will consider the following criteria in reviewing emergency rulemaking:

1. Legal authority for the action taken in the emergency rulemaking.
2. Compliance with state and federal constitutional requirements and other law.
3. The extent to which the agency has explained its justification and rationale for not complying with the notice and hearing requirements of the Act.

Amended

NOV 28 1979

Rule Three

4. The extent to which the emergency rulemaking is limited to rectifying the emergency and contains no provisions not required to meet the emergency.
5. The extent to which the agency has taken reasonable and appropriate measures to make the emergency rulemaking known to the persons who may be affected by it.
6. Whether an identical emergency rulemaking, or an emergency rulemaking having substantially the same purpose and effect, has been adopted by the agency within the preceding 24 months.

**Section 1.3.06:** If the Joint Committee finds that the emergency rulemaking is significantly deficient in relation to any of the criteria outlined in Sections 1.3.04 and 1.3.05 of this rule, **the Joint Committee will object to the emergency rulemaking.**

**Section 1.3.07:** If the Joint Committee objects to any emergency rulemaking, the Joint Committee, within five working days of the objections, **shall certify the fact of the objection to the agency. The certification to the agency shall include the specific objections of the Joint Committee to the emergency rulemaking.** Such certifications shall be in the manner shown in Illustration IV.

**Section 1.3.08:** **The agency should respond to an objection within 90 days of the receipt of the statement of objection.** The agency response shall address each of the specific objections in the statement of objection. The response should be concise, but complete, clearly stating the agency's response and rationale for such response. The response shall be made in the manner shown in Illustration IV A.

**Section 1.3.09:** The agency shall respond to the Joint Committee's objection in one of the following manners:

1. **Modification of the emergency rulemaking to meet all specific objections stated by the Joint Committee in the statement of objection.** The complete

Amended

NOV 28 1979

text of the emergency rulemaking including all modifications should be included in the response. Publication in the Illinois Register by the agency of a notice of modification of an emergency rulemaking to meet the objections of the Joint Committee shall not extend the effective period of the emergency rulemaking, nor shall such publication be deemed to constitute the adoption of the same or substantially similar emergency rulemaking.

2. **Repeal of the emergency rulemaking**, in accordance with the procedure established by the Secretary of State for the repeal of an emergency rule before the 150-day effective period of the rule has expired, contained in Section 5.06 of the Secretary of State's "Rules on Rules." If responding in this manner, an agency should state the particular objections of the Joint Committee or other reasons which are the basis of the repeal.
3. **Refusal to modify or repeal the emergency rulemaking**. The agency should present in its response its justification and rationale for refusing to modify or repeal the emergency rulemaking, addressing each of the specific objections stated by the Joint Committee.

Section 1.3.10: **Failure of an agency to respond to the Joint Committee's statement of objection to an emergency rule within 90 days of the receipt of the certification of the objections shall constitute a refusal to modify or repeal the rule.**

Section 1.3.11: Each statement of specific objections to an emergency rulemaking issued by the Joint Committee shall be submitted as soon as practicable to the Secretary of State for publication in the Illinois Register.

Filed: <sup>Nov 24</sup> ~~DEC 28 1979~~ \_\_\_\_\_

Effective: DEC 10 1979

Amended  
NOV 28 1979

## RULE FOUR: REVIEW OF PEREMPTORY RULEMAKING

Section 1.4.01: Under Sections 7.04 and 7.07 of the Act, the Joint Committee is given the authority to evaluate and review any rule in terms of its propriety, legal adequacy, form, and economic and public impact. Pursuant to the Act, the Joint Committee will review peremptory rulemaking using the criteria outlined in Sections 1.4.06 and 1.4.07 of this rule.

Section 1.4.02: The Joint Committee recognizes that situations occur in which a federal law, federal rules and regulations, or a court order requires immediate action on the part of an agency to promulgate a specific policy. In those instances the peremptory rulemaking must be adopted pursuant to Section 5.03 of the Act. However, the Joint Committee believes that the notice and comment period is an integral part of the rulemaking process. It is important that an agency when developing its rules consider the views of persons affected by the rulemaking. It also is important that persons affected by the rulemaking are provided with the opportunity to comment. Since the peremptory rulemaking process precludes any opportunity for public comment or review, the Joint Committee will review the peremptory rulemaking to ensure that use of the process is limited only to those situations specified in Section 5.03 of the Act.

Section 1.4.03: As used in this rule:

1. "Peremptory rulemaking" means rulemaking adopted pursuant to Section 5.03 of the Act.
2. "Federal rules and regulations" means those federal rules and regulations which are or will be published in the Code of Federal Regulations.

Amended

NOV 28 1979

3. "Conditions which preclude the agency's compliance with the general rulemaking requirements imposed by Section 5.01 of the Act" includes only those conditions which render compliance with the notice or hearing requirements of the Act impossible. A federal law, federal rules and regulations, or court order which merely makes such compliance more difficult or which prescribes the content of such rulemaking shall not be deemed to preclude an agency from complying with the notice or hearing requirements. If conditions exist which constitute an emergency as defined in Section 5.02 of the Act, the agency may adopt the rule pursuant to such Section and will not be considered precluded from compliance with the notice or hearing requirements of the Act.

Section 1.4.04: On the same day the notice of preemptory rulemaking is filed with the Secretary of State, the agency shall submit to the Joint Committee a copy of the court order or specific citation of the federal law or federal rules and regulations requiring the rulemaking action. The Joint Committee staff will review preemptory rulemaking based on the criteria outlined in Sections 1.4.06 and 1.4.07 of this rule. To the extent it is necessary to conduct an effective review of the preemptory rulemaking, the Joint Committee staff will pose questions or problems discovered in the review of the rulemaking, and communicate with appropriate agency personnel to discuss the rulemaking.

Section 1.4.05: If the rulemaking is substantially deficient in relation to any of the criteria outlined in Sections 1.4.06 and 1.4.07 of this rule, the staff will develop a recommendation for action by the Joint Committee. Such recommendation shall be advisory only and shall not limit the Joint Committee's discretion to take different or additional appropriate action. To facilitate full and open consideration of the preemptory rulemaking, the staff will make reasonable efforts to ensure that the affected agency is aware of the substance of any staff recommendations to the Joint Committee. The agency will be informed of the date of the Joint Committee hearing at which the preemptory rulemaking will be considered. An agency representative will be asked to attend the Joint Committee hearing at which the rulemaking is discussed.

Amended

NOV 28 19

Section 1.4.06: The Joint Committee will consider the following criteria in reviewing peremptory rulemaking.

1. The extent to which an agency is precluded from complying with the general rulemaking requirements imposed by Section 5.01 of the Act, as that phrase is defined in Section 1.4.03(3) of this rule.
2. The extent to which an agency is actually required to adopt rules as a direct result of federal law, federal rules and regulations, or court order.
3. The extent to which the rulemaking is limited to meet only the requirements of the federal law, federal rules and regulations, or court order and contains no other rulemaking not required by the federal law, federal rules and regulations, or court order.
4. The extent to which the agency has explained its justification and rationale for not complying with the general rulemaking requirements of the Act.

Section 1.4.07: If the peremptory rulemaking is determined to be in compliance with Section 5.03 of the Act, the Joint Committee will consider the following criteria in reviewing the peremptory rulemaking:

1. Compliance with the requirements of the act or acts upon which the rulemaking is based and is authorized.
2. Anticipated economic effect of the rulemaking on the public and the state budget.
3. Clarity of language of the rulemaking for understanding by the affected public.
4. Sufficient completeness and clarity to ensure meaningful guidelines and standards in the exercise of agency discretion.

Amended  
NOV 28 1979

5. Redundancies, grammatical deficiencies and technical errors in the rulemaking. .
6. Conflicts between the rulemaking and state law.
7. Compliance with the requirements of the relevant federal law, federal rules and regulations, or court order.

Section 1.4.08: If the Joint Committee finds that the peremptory rulemaking is substantially deficient in relation to any of the criteria outlined in Sections 1.4.06 and 1.4.07 of this rule, **the Joint Committee will object to the peremptory rulemaking.**

Section 1.4.09: If the Joint Committee objects to any rulemaking, the Joint Committee, within five working days of the objection, **shall certify the fact of the objection to the agency. The certification to the agency shall include the specific objections of the Joint Committee to the peremptory rulemaking.** Each statement of objection to a peremptory rulemaking issued by the Joint Committee shall be submitted as soon as practicable to the Secretary of State for publication in the Illinois Register. Such certification shall be made in the manner shown in Illustration IV.

Section 1.4.10: **The agency should respond to an objection within 90 days of the receipt of the statement of objection.** The agency response shall address each of the specific objections in the statement of objection. The response should be concise, but complete, clearly stating the agency's response and rationale for such response. The response shall be made in the manner shown in Illustration IV A.

Section 1.4.11: The agency shall respond to the Joint Committee's objection in one of the following manners:

1. **Modification of the peremptory rulemaking to meet all specific objections stated by the Joint Committee in the statement of objection.** The complete

Amended

NOV 28 197



text of the rulemaking including all modifications should be included in the response.

2. **Repeal of the peremptory rulemaking.** If responding in this manner, the agency should state the particular objections of the Joint Committee or other reasons which are the basis of the repeal.
3. **Refusal to modify or repeal the peremptory rulemaking.** The agency should present in its response its justification and rationale for refusing to modify or repeal the rulemaking, addressing each of the specific objections stated by the Joint Committee.

**Section 1.4.12: If an agency elects to amend or 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 rulemaking procedures for that purpose by giving notice as required by Section 5.01 of the Act. The Joint Committee will give priority to rulemakings initiated to meet an objection when setting its agenda.**

**Section 1.4.13: The agency shall complete its rulemaking procedures within 180 days after giving notice in the Illinois Register.**

**Section 1.4.14: Failure to respond to the Joint Committee's objections to a rule within 90 days of receipt of certification of the objection shall constitute a refusal to amend or repeal the rule.**

**Section 1.4.15: If an agency refuses to amend or repeal a rule so as to remedy an objection stated by the Joint Committee, the Joint Committee may develop legislation to remedy deficiencies or problems, clarify legislative intent, provide statutory rule-making authority, or deal with other situations encountered in reviews of peremptory rulemaking. The Joint Committee will approve such legislation by majority vote and have such legislation introduced in either house of the General Assembly.**

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NOV 28 1979

RULE FIVE: FIVE-YEAR EVALUATION OF ALL EXISTING RULES

Section 1.5.01: The Joint Committee on Administrative Rules will review all existing state agency rules on a periodic basis. Each rule of each agency will be evaluated during the course of this review at least once every five years. This review is mandated by Section 7.08 of the Illinois Administrative Procedure Act (Ill. Rev. Stats. 1977, ch. 127, par. 1007.08).

Section 1.5.02: The five-year review of all agency rules by the Joint Committee pursuant to this rule is in addition to the review of proposed rules of state agencies or other reviews of agency rules authorized by other provisions of the Administrative Procedure Act.

Section 1.5.03: To insure that the Joint Committee reviews similar rules at the same time, the Joint Committee will classify all existing rules into the following subject areas and subareas:

1. Education and Cultural Resources
  - a. Cultural Resources
  - b. Elementary and Secondary Education
  - c. Higher Education
2. Financial Institutions
3. Governmental Management
  - a. Government Purchasing
  - b. Records and Information Management
  - c. Service Management
4. Human Resources
  - a. Corrections
  - b. Mental Health

*(Filed August 15, 1979, effective September 1, 1979)*

AUG 15 1979

- c. Public Health
- d. Welfare
- 5. Industry and Labor
  - a. Business Regulations
  - b. Consumer Protection
  - c. Labor Laws
  - d. Regulation of Occupations
- 6. Law Enforcement
- 7. Natural Resources
  - a. Energy
  - b. Environment
  - c. Wildlife Management
- 8. Public Utilities
- 9. Transportation

Section 1.5.04: To facilitate the conduct of the Joint Committee's review and further insure that similar rules are evaluated at the same time, the Joint Committee will, in addition to the classification under Section 1.5.03, also classify all existing rules into the following types of functional activities:

- 1. Administering
- 2. Enforcing
- 3. Financing
- 4. Informing
- 5. Permitting and Licensing
- 6. Planning
- 7. Regulating
- 8. Servicing

Section 1.5.05: The Joint Committee will conduct this periodic evaluation according to the following schedule:

*(filed August 15, 1979, effective September 1, 1979)*

AUG 15 1979

1. During the first year of each five-year review cycle, the Joint Committee will evaluate all of the rules classified pursuant to Section 1.5.03 in the following subject areas and subareas:
  - a. Industry and Labor
    - (1) Business Regulation
    - (2) Consumer Protection
    - (3) Labor Laws
    - (4) Regulation of Occupations
  
2. During the second year of each five-year review cycle, the Joint Committee will evaluate all of the rules classified pursuant to Section 1.5.03 in the following subject areas and subareas:
  - a. Natural Resources
    - (1) Energy
    - (2) Environment
    - (3) Wildlife Management
  - b. Public Utilities
  - c. Transportation
  
3. During the third year of each five-year review cycle, the Joint Committee will evaluate all of the rules classified pursuant to Section 1.5.03 in the following subject areas and subareas:
  - a. Governmental Management
    - (1) Governmental Purchasing
    - (2) Records and Information Management
    - (3) Services Management
  - b. Law Enforcement
  
4. During the fourth year of each five-year review cycle, the Joint Committee will evaluate all of the rules classified pursuant to Section 1.5.03 in the following subject areas and subareas:
  - a. Human Resources

*(filed August 15, 1979, effective September 1, 1979)*

- (1) Corrections
- (2) Mental Health
- (3) Public Health
- (4) Welfare

5. During the fifth year of each five-year review cycle, the Joint Committee will evaluate all of the rules classified pursuant to Section 1.5.03 in the following subject areas and subareas:
  - a. Education and Cultural Resources
    - (1) Cultural Resources
    - (2) Elementary and Secondary Education
    - (3) Higher Education
  - b. Financial Institutions

Section 1.5.06: Prior to the initiation of the evaluation of existing rules within each area, subarea or activity, the office of the Joint Committee will make reasonable efforts to notify each agency whose rules will be evaluated as part of the review. Such notification will include the following information:

1. The specific rules or sets of rules classified in the area, subarea or activity to be evaluated.
2. The location of such rules in the official compilation of the agency's rules on file with the Office of the Secretary of State.
3. The approximate time period during which the Joint Committee will be evaluating such rules.

Section 1.5.07: Failure of the Joint Committee to give actual notice of a review to an affected agency under Section 1.5.06 shall not prevent the Joint Committee from reviewing existing rules of the agency, making recommendations concerning the agency, or objecting to existing rules of the agency during the course of a review of rules within a subject area, subarea, or activity.

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AUG 15 1979

Section 1.5.08: When evaluating existing rules of an agency during the course of a review, the Joint Committee will request the agency to submit the following information concerning each rule or set of rules being evaluated:

1. The specific statutory language which authorizes each rule or set of rules and the specific statutory language which each rule or set of rules is implementing or interpreting.
2. The relationship of each rule or set of rules to the agency's programs and organizational structure.
3. An estimate of the approximate cost to the State for operation of the agency programs or functions related to each rule or set of rules and for enforcement or monitoring of compliance with the rule or set of rules.
4. An estimate of the extent of compliance and non-compliance by the affected public with each rule or set of rules, and the number and extent of variances permitted by the agency to each rule or set of rules.
5. An estimate of the effect of each rule or set of rules on state revenues.
6. An estimate of the economic effect on members of the public directly regulated by each rule or set of rules.
7. Evidence of the existence of a public need for the regulation provided by each rule or set of rules, including evidence of any harm that would result to the public health, welfare or safety, if the rule or set of rules were repealed.

Section 1.5.09: The staff of the Joint Committee will conduct a preliminary review of each rule or set of rules during the course of each review by the Joint Committee. Such staff review will be based on and consider the criteria outlined in Section 1.5.13.

Section 1.5.10: The staff of the Joint Committee may pose questions, or problems to an agency discovered during the staff review of its rules, and meet or otherwise communicate with appropriate agency personnel or other interested individuals.

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AUG 15 1979

Section 1.5.11: The Joint Committee may hold public hearings for the purpose of gathering information and views from interested individuals or groups during the course of the review, when it finds that such a hearing is necessary for a complete examination of the rules. The Joint Committee may designate a subcommittee of its members for the purpose of holding such public hearings. The agenda of such hearings, including an indication of the specific rules or sets of rules involved and the agency or agencies whose rules are involved, shall be published in the Illinois Register as provided in Section 7.02(c) of the Administrative Procedure Act to afford interested individuals or groups notice of such hearings. Written or oral testimony presented at such hearings shall be considered by the Joint Committee as related to the criteria outlined in Section 1.5.13 in its evaluation of the rules involved.

Section 1.5.12: The Joint Committee may consider together or separately rules included in the review, grouping them by agency, by further divisions of subject areas or subareas, or by the functional activities classification pursuant to Section 1.5.03. Such grouping shall be for the purpose of facilitating the conduct of the review or reporting findings and recommendations.

Section 1.5.13: In evaluating existing rules under the periodic review program outlined in this rule, the Joint Committee shall consider the following criteria:

1. Compliance of each rule with the statutory authority on which it is based.
2. Compliance of each rule with the legislative intent of the enactment on which it is based.
3. Compliance of each rule with constitutional requirements and other applicable law.
4. Compliance in the certification and filing of each rule with the requirements of the Administrative Procedure Act, other applicable

*(filed August 15, 1979, effective September 1, 1979)*

AUG 15 1979

laws, the agency's rulemaking procedure rules and the rules of the office of the Secretary of State.

5. Necessity for the rules, including the existence of a demonstratable public need for any regulation embodied in the rules.
6. Accuracy and currency of the rules in relation to agency operations and programs.
7. Simplicity and clarity of the language of the rules.
8. Elimination of serious technical errors in the rules, including grammatical, spelling, and typographical errors, which affect the public's ability to understand the meaning of the rules.
9. Reduction of overlapping or conflicting rules, or overlapping or conflicting regulatory jurisdictions of agencies or units within an agency.
10. Inclusion of adequate standards and procedural safeguards in the rules to guide agency discretion, provide protection from arbitrary action, and inform the public of the basis for agency actions.
11. Adequate consideration by the agency of the economic impact of the rules.

Section 1.5.14: The staff of the Joint Committee will report to the Joint Committee on the results and findings of its preliminary review of rules in relation to the criteria outlined in Section 1.5.13. Such report may include appropriate recommendations for any of the types of Joint Committee action outlined in Section 1.5.16. Such recommendations shall be only advisory to the Joint Committee. Each agency whose rules are being reviewed shall be given reasonable opportunity to submit its views and comments in writing to the Joint Committee prior to the hearing by the Joint Committee provided for in Section 1.5.15.

Section 1.5.15: The Joint Committee shall hold a hearing in relation to each review. Such a hearing may be conducted in conjunction with other hearings of the Joint Committee. The agenda of such a hearing will be published in

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AUG 15 1979



the Illinois Register, as provided in Section 7.02(c) of the Administrative Procedure Act. At such a hearing, the Joint Committee shall consider the rules which are the subject of the review in relation to the criteria outlined in Section 1.5.13. Such consideration shall include consideration of written or oral testimony by the agencies involved, public testimony received at public hearings held in accordance with Section 1.5.11, and the results, findings and recommendations included in the staff report on its review.

**Section 1.5.16:** In response to difficulties or problems in relation to the criteria outlined in Section 1.5.13 discovered in the course of the Joint Committee's review, the Joint Committee may take any of the following types of actions:

1. Object to specific existing rules. Such objections shall be made pursuant to Section 7.07 of the Administrative Procedure Act in the manner indicated in Section 1.5.17 of this rule.
2. Recommend appropriate rulemaking by agencies. Such action shall be taken in the manner indicated in Section 1.5.20.
3. Recommend administrative action by agencies. Such recommendation may include recommended changes in rulemaking procedures or coordination of rulemaking between agencies. Such action shall be taken in the manner indicated in Section 1.5.20.
4. Recommend further legislative investigation by appropriate committees, commissions or other units.
5. Recommend specific corrective legislation. Such legislation shall be introduced into either house of the General Assembly upon a majority vote of the members of the Joint Committee.

**Section 1.5.17:** If the Joint Committee determines that an existing rule or set of rules, which is a subject of the review, is seriously deficient in relation to any of the criteria outlined in Section 1.5.13 of this rule, the Joint Committee shall object to the rule as provided in Section 7.07 of the Administrative

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AUG 15 1979

Procedure Act. Within five working days of the objection, the Joint Committee shall certify the fact of the objection to the agency in the manner shown in Illustration V. A statement of specific objections to the rule or set of rules shall accompany the certification.

Section 1.5.18: Within 90 days of the receipt of the certification of objection, the agency should notify the Joint Committee in writing of its intended action in response to the objection. The agency response shall be either (1) to initiate rulemaking to repeal the rule objected to by the Joint Committee, (2) to initiate rulemaking to amend the rule objected to by the Joint Committee, or (3) to refuse to initiate rulemaking to remedy the Joint Committee's objection. Failure to respond to the Joint Committee's objection within 90 days after receipt of the objection shall constitute a refusal to remedy the Joint Committee's objection. Agency responses shall be made in the manner shown in Illustration VI.

Section 1.5.19: If an agency fails to complete a rulemaking action initiated in response to the Joint Committee objection within 180 days, the Joint Committee shall consider such failure a refusal to remedy the Joint Committee's objection.

Section 1.5.20: If the Joint Committee finds that a rule or set of rules under review is seriously deficient in relation to any of the criteria outlined in Section 1.5.13, and that remedying such deficiency will require new rulemaking or administrative action, rather than amending or repealing existing rules, the Joint Committee will recommend such necessary rulemaking or administrative action to the agency or agencies involved. Within five working days of such recommendation by the Joint Committee, the Joint Committee shall certify the fact of such recommendation to the agency or agencies. Such certification shall be made in the manner shown in Illustration VII. A statement of the specific recommendation, reasons for the

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AUG 15 1979

recommendation and the date by which the agency should respond to the recommendation shall accompany such certification.

Section 1.5.21: The Joint Committee shall monitor whether agencies initiate recommended rulemaking and administrative action resulting from the review. Agencies should inform the Joint Committee of any rulemaking initiated or administrative action taken in response to recommendations for rulemaking or administrative action from the Joint Committee.

Section 1.5.22: If the agency refuses or fails to remedy an objection to an existing rule or set of rules, or to initiate recommended rulemaking or administrative action by the date indicated in the recommendation, the Joint Committee may develop legislation to remedy statutory deficiencies or problems, clarify legislative intent, require administrative action, or otherwise remedy the situation. Such legislation shall be introduced into either house of the General Assembly upon a majority vote of the members of the Joint Committee.

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AUG 15 1979

RULE SIX: COMPLAINT REVIEWS OF EXISTING RULES

Section 1.6.01: The Joint Committee on Administrative Rules will review existing rules of state agencies based on complaints received from interested persons or groups pursuant to this rule. Such review is authorized by Sections 7.07 and 7.04 (subsections 2 and 3) of the Illinois Administrative Procedure Act [Ill. Rev. Stats. 1977, ch. 127, pars. 1007.07, 1007.04(2) and 1007.04(3)]. Review of rules by the Joint Committee pursuant to this rule is a legislative investigation and is not intended to be a prerequisite or replacement for any administrative or judicial review of rules otherwise provided for by law.

Section 1.6.02: For the purposes of this rule, a complaint will consist of any written communication received by the Office of the Joint Committee which raises questions concerning existing rules of an agency or agencies related to the criteria specified in Section 1.6.07.

Section 1.6.03: Complaints should be sent to the Executive Director, Joint Committee on Administrative Rules, 520 South Second Street, Springfield, Illinois 62706. Each complaint should include the following information:

1. The names and addresses of the persons or groups presenting the complaint.
2. The agency or agencies whose rules are being questioned.
3. The specific rule or set of rules involved.
4. A description of the effect of the rule or rules on the persons or groups presenting the complaint.
5. The names and addresses of other affected persons and groups and representatives of the agency or agencies involved in the situation.
6. Any additional facts or documentation necessary to understand the situation.

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AUG 15 1979

7. . The relationship of the questions raised concerning the rules to the criteria specified in Section 1.6.07.

Section 1.6.04: The Joint Committee staff may request additional information, pose questions or problems discovered during the review, and communicate or meet with the appropriate complainants and agency personnel to discuss the complaint. The conduct and content of the review shall be based on the criteria outlined in Section 1.6.07. The staff shall make reasonable efforts to ensure that the affected agency or agencies are aware of the substance of any complaint and the staff's findings.

Section 1.6.05: When the Joint Committee receives a complaint which alleges that an agency has an unwritten policy which is not embodied in the rule or rules, the Joint Committee will encourage the persons or groups presenting the complaint to petition the agency to initiate rulemaking pursuant to Section 8 of the Illinois Administrative Procedure Act.

Section 1.6.06: The Joint Committee staff shall report its findings to the Joint Committee. Such staff report will indicate whether the staff review of a complaint indicates evidence of possible deficiencies of the rule or rules in relation to the criteria specified in Section 1.6.07. Such report may include suggestions for objections by the Joint Committee. Staff recommendations shall be only advisory to the Joint Committee and shall not limit the Joint Committee from taking any appropriate action.

Section 1.6.07: In reviewing complaints concerning existing agency rules, the Joint Committee shall give major consideration to the following criteria:

1. Compliance of the rule or set of rules with the statutory authority on which it is based.
2. Compliance of the rule or set of rules with legislative intent.
3. Compliance with state and federal constitutional requirements and other law.

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AUG 15 1979

4. Reasonableness of the agency's rationale and justification for the rule or set of rules, particularly for any regulation of the public embodied in the rule or set of rules.
5. Conformity of agency rules to the actual practice and operations of the agency.
6. Inclusion of all relevant agency policies in the set of rules.
7. Clarity of the language of the rule or set of rules.
8. Clarity and completeness of the standards in the rules for the exercise of discretion by the agency.
9. Conformity to rulemaking requirements of the Administrative Procedure Act, including the proper publishing and filing of the rules.
10. Responsiveness of agencies to public comments and requests for rulemaking pursuant to Section 8 of the Administrative Procedure Act.
11. Reasonableness of the economic impacts of the rules and limitation of such impacts to the proper scope of the agency's authority under the purpose and intent of the agency's authorizing statute.

Section 1.6.08: Any one of the officers of the Joint Committee may place a complaint on the agenda of the Joint Committee for consideration of a rule or rules based on evidence of possible deficiencies of the rule or rules in relation to the criteria specified in Section 1.6.07. No complaint will be placed on the agenda if the officers determine that substantially the same issues raised by the complaint have been previously considered by the Joint Committee, unless the officers find that the complaint reveals substantial information not previously available to the Joint Committee. At the hearing, the complainant and the agency or agencies will be given an opportunity to present their views. If the Joint Committee finds that other persons or groups are directly affected by the rule or rules, such persons or groups will also be given an opportunity to present their views orally or in writing.

Section 1.6.09: If the Joint Committee finds that the rule or rules which are the subject of a complaint are deficient in relation to the criteria specified in

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AUG 15 1979

Section 1.6.07, the Joint Committee will object to the rule or set of rules. Within five working days of the objection, the Joint Committee shall certify the fact of the objection to the agency in the manner shown in Illustration V. A statement of specific objections to the rule or set of rules shall accompany the certification.

Section 1.6.10: Within 90 days of the receipt of the certification of objection, the agency should notify the Joint Committee in writing of its intended action in response to the objection. The agency response shall be either (1) to initiate rulemaking to repeal the rule objected to by the Joint Committee, (2) to initiate rulemaking to amend the rule objected to by the Joint Committee, or (3) to refuse to initiate rulemaking to remedy the Joint Committee's objection. Failure to respond to the Joint Committee's objection within 90 days after receipt of the objection shall constitute a refusal to remedy the Joint Committee's objection. Agency responses shall be made in the manner shown in Illustration VI.

Section 1.6.11: If an agency fails to complete the rulemaking process initiated in response to the Joint Committee objection within 180 days, the Joint Committee shall consider such failure a refusal to remedy the Joint Committee's objection.

Section 1.6.12: If the agency refuses or fails to remedy an objection to an existing rule or set of rules, the Joint Committee may develop legislation to remedy statutory deficiencies or problems, clarify legislative intent, or otherwise remedy the situation. Such legislation shall be introduced into either house of the General Assembly upon a majority vote of the members of the Joint Committee.

Section 1.6.13: The Executive Director shall make reasonable efforts to inform the persons or groups initiating the complaint of the result of the Joint Committee review and the nature of the agency response.

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AUG 15 1979

ILLUSTRATION I  
AGENCY ANALYSIS  
OF ECONOMIC AND BUDGETARY EFFECTS  
OF PROPOSED RULEMAKING

Agency: \_\_\_\_\_

Proposed Rulemaking: \_\_\_\_\_  
\_\_\_\_\_

1. Direct economic effect on the persons regulated by the rule.

Discussion

Specific Estimated Effect

\$

2. Anticipated effect on the proposing agency's budget.

Discussion

Specific Estimated Effect

\$

Amended

NOV 28 197



3. Anticipated effect on the budgets of other state agencies.

Discussion

Specific Estimated Effect

\$

4. Anticipated effect on state revenue.

Discussion

Specific Estimated Effect

\$

5. Other considerations relevant to the economic and budgetary effects of the proposed rulemaking.

Discussion

Amended

NOV 28 1979

ILLUSTRATION II

JOINT COMMITTEE ON ADMINISTRATIVE RULES

CERTIFICATION OF OBJECTION

County of Sangamon )  
                                  )  
State of Illinois     )

I, \_\_\_\_\_, Executive Director of the Joint Committee on Administrative Rules, being first duly sworn on oath, depose and state that, pursuant to Section 7.04 and 7.06 of the Illinois Administrative Procedure Act, as amended, the Joint Committee on Administrative Rules, at its meeting on \_\_\_\_\_, (Date) objected to \_\_\_\_\_, (Title of Rulemaking) proposed by \_\_\_\_\_ (Name of Agency).

A statement of the Joint Committee's specific objections accompanies this certification.

Please take notice that failure to respond within 90 days of receipt of this Statement of Objection shall constitute withdrawal of the proposed rulemaking published in the \_\_\_\_\_, (Date) Illinois Register in its entirety.

\_\_\_\_\_  
Executive Director

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Notary Public

Amended

NOV 28 197

ILLUSTRATION III

AGENCY RESPONSE TO JOINT COMMITTEE OBJECTION  
TO PROPOSED RULEMAKING

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.)

Amended  
NOV 28 1979

ILLUSTRATION IV

JOINT COMMITTEE ON ADMINISTRATIVE RULES

CERTIFICATION OF OBJECTION TO EMERGENCY OR PEREMPTORY RULES

County of Sangamon )  
  )  
State of Illinois        )

I, \_\_\_\_\_, Executive Director of the Joint Committee on Administrative Rules, being first duly sworn on oath, depose and state that, pursuant to Section 7.04 and 7.07 of the Illinois Administrative Procedure Act, as amended, the Joint Committee on Administrative Rules, at its meeting on \_\_\_\_\_, objected to the \_\_\_\_\_'s (Name of Agency) \_\_\_\_\_ (emergency, peremptory) rule(s) entitled or concerning \_\_\_\_\_ (title or subject of rule or set of rules) which was (were) published in the \_\_\_\_\_, (Date) Illinois Register.

A statement of the Joint Committee's specific objections accompanies this certification.

Please take notice that failure of the Agency to respond to the Joint Committee's objections to a rule within 90 days of receipt of this Certification of Objection shall constitute a refusal to amend or repeal the rule.

\_\_\_\_\_  
Executive Director

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 1979 \_\_.

\_\_\_\_\_  
Notary Public

Amended  
NOV 28 1979

ILLUSTRATION IV A

AGENCY RESPONSE TO JOINT COMMITTEE OBJECTION  
TO EMERGENCY OR PEREMPTORY RULES

Date: \_\_\_\_\_

Agency: \_\_\_\_\_

Title and Subject of Rule: \_\_\_\_\_

\_\_\_\_\_

- Response (Check One):
- Initiate rulemaking to repeal the rule(s) to meet the Joint Committee's objection
  - Initiate rulemaking to amend the rule(s) to meet the Joint Committee's objection
  - Refusal to initiate rulemaking to remedy the Joint Committee's objection

If rulemaking will be initiated, date notice of proposed rulemaking was, or is expected to be, published in the Illinois Register:

\_\_\_\_\_

Agency response to specific Joint Committee objections:

(Respond to each of the specific objections raised by the Joint Committee, indicating clearly the intended agency action in response to each objection and the rationale for such response. Use additional pages as necessary.)

\_\_\_\_\_  
Signature of Agency Official

Amended

NOV 28 1979

ILLUSTRATION V

JOINT COMMITTEE ON ADMINISTRATIVE RULES  
CERTIFICATION OF OBJECTION  
TO EXISTING RULES

The Joint Committee on Administrative Rules hereby certifies that, pursuant to Sections 7.04 and 7.07 of the Illinois Administrative Procedure Act, as amended, the Joint Committee on Administrative Rules objected on \_\_\_\_\_ (Date of Objection) to the \_\_\_\_\_'s (Name of Agency) rules(s) entitled or concerning \_\_\_\_\_ (Title or Subject of Rule or Set of Rules) which appears at \_\_\_\_\_ (Page or Location Identification) in the agency's rules.

A statement of the specific objections of the Joint Committee accompanies this certification.

Please take notice that failure to respond to this objection within 90 days, or failure to complete rulemaking initiated in response to this objection within 180 days of the receipt of this Certification of Objection shall constitute a refusal to remedy the objection.

Certified \_\_\_\_\_ (Date).

\_\_\_\_\_  
(Signature)

By:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typewritten name)

\_\_\_\_\_  
(Typewritten Name)

Chairman  
Joint Committee on  
Administrative Rules

Subscribed and sworn to before me this \_\_\_\_\_ (Date) date of \_\_\_\_\_ (Month),  
\_\_\_\_\_ (Year).

\_\_\_\_\_  
Notary Public

*(Filed August 15, 1979, Effective August 25, 1979)*

AUG 15 1979

ILLUSTRATION VI

AGENCY RESPONSE TO JOINT COMMITTEE OBJECTION  
TO EXISTING RULES

Date: \_\_\_\_\_

Agency: \_\_\_\_\_

Title and Subject of Rule: \_\_\_\_\_

\_\_\_\_\_

- Response (Check one):      \_\_\_\_\_ Initiate rulemaking to repeal the rule(s) to  
meet the Joint Committee's objection  
\_\_\_\_\_ Initiate rulemaking to amend the rule(s) to  
meet the Joint Committee's objection  
\_\_\_\_\_ Refusal to initiate rulemaking to remedy the  
Joint Committee's objection

If rulemaking will be initiated, date notice of proposed rulemaking was, or is expected  
to be, published in the Illinois Register:

\_\_\_\_\_

Agency response to specific Joint Committee objections:

(Respond to each of the specific objections raised by the Joint Committee,  
indicating clearly the intended agency action in response to each objection  
and the rationale for such response. Use additional pages as necessary.)

\_\_\_\_\_  
Signature of Agency Official

*(Filed August 15, 1979, Effective August 25, 1979)*

AUG 15 1979

ILLUSTRATION VII

JOINT COMMITTEE ON ADMINISTRATIVE RULES  
CERTIFICATION OF RECOMMENDATION

The Joint Committee on Administrative Rules hereby certifies that, on \_\_\_\_\_ (Date of Recommendation), pursuant to Sections 7.04(3), 7.04(1) and 7.08 of the Illinois Administrative Procedure Act, as amended, the Joint Committee on Administrative Rules as a result of its review of rules entitled or concerning \_\_\_\_\_ (Title or Subject of Rule or Set of Rules) recommended rulemaking or other administrative action by \_\_\_\_\_ (Name of Agency).

A statement of the specific recommendation of the Joint Committee and reasons for the recommendation accompanies this certification.

Please take notice that failure to act to implement this recommendation within a reasonable time shall be considered by the Joint Committee as a refusal to remedy the situation.

Certified \_\_\_\_\_ (Date)

\_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature) (Typewritten Name)

\_\_\_\_\_  
(Typewritten Name)  
Chairman,  
Joint Committee on  
Administrative Rules

Subscribed and sworn to before me this \_\_\_\_\_ (Date) day of \_\_\_\_\_ (Month), \_\_\_\_\_ (Year).

\_\_\_\_\_  
Notary Public

*(filed August 15, 1979, effective September 1, 1979)*

AUG 15 1979



APPENDIX D

JOINT COMMITTEE ON ADMINISTRATIVE RULES

POSITION PAPER

ADOPTED MAY 29, 1979

IMPLICIT AND EXPLICIT RULEMAKING AUTHORITY  
DELEGATED TO AGENCIES

One of the recurring issues faced by the Joint Committee on Administrative Rules has been the question of whether an agency has an implicit power to make rules. Since the Joint Committee is authorized by the Illinois Administrative Procedure Act to examine whether an agency's rules are within the statutory authority of the agency [Section 7.05(2)], this has become a crucial issue.

This position paper is intended to clarify the position the Joint Committee will take toward evaluating the nature of the rulemaking authority delegated to agencies by statute. This statement should enable agencies to anticipate what types of rules the Joint Committee will find to exceed the rulemaking authority of the agencies.

Stated as simply as possible, the Joint Committee believes that each agency has the authority, and in fact, the responsibility, to state as completely as possible its policy whenever the agency is delegated a task requiring some exercise of discretion by the agency. Such rulemaking is interpretive, meaning that the rules present the agency's interpretation of the statutory enactment which it is administering. The Joint Committee believes, however, that such implicit authority to prescribe interpretive rules should not include adding any requirements or imposing any additional duties on the public. Rules which do add requirements beyond the statute which affect the rights or privileges of the public will be termed legislative rules. The Joint Committee will object to legislative rules proposed by agencies, unless the agency has an explicit statutory grant of rulemaking authority. This position should become clearer in the following discussion.

## MAJOR INSTANCES

Two major instances raising this issue will be used to illustrate the Joint Committee's position in this paper. The first involved rules proposed by the Department of Registration and Education to administer Public Act 80-236, which involved the distribution of state funds to public museums. Since the Act did not expressly authorize the Department to adopt rules for carrying out the Act, the Joint Committee objected to the proposed rules. The Department responded using the following line of reasoning. (1) The Act gave the Department a specific task and responsibility, namely distributing certain funds to public museums. (2) The Department must not administer the Act arbitrarily. (3) The task could not be carried out nonarbitrarily without developing a set of policies which would fall under the definition of "rule" in the Administrative Procedure Act [Section 3.09]. (4) Therefore, the Act must also imply a power for the Department to adopt rules. Despite this reasoning, the Department agreed to withdraw the rules, following the Joint Committee's objection. The Joint Committee prepared a recommended amendment to the Act to expressly give the Department rulemaking authority.

The second major instance involved rules concerning the issuance of legal opinions, which were proposed by the Office of the Attorney General. Again, the Joint Committee objected to the rules based on the lack of an explicit delegation of rulemaking authority to the agency. The Office of the Attorney General made the following comments at the Joint Committee hearing on the rules:

Mr. Wallin [representing the Office of the Attorney General]: Just a few comments. The power to set rules and regulations doesn't give them the power to do anything that is beyond, or undertake anything that isn't authorized by, the statute in carrying out the program.

And secondly, the definition of rule in the Procedure Act is quite broad and includes statements of policy.

And third, if you tell me that we can't [adopt these rules] because we don't have the authority to promulgate these rules,...the new State Procedure Act does not apply. It only applies to agencies which have

rulemaking authority...and I think that defeats the purpose of the Act in getting agencies to set down their policies and rules to give the people an accountable government. (June, 1978, JCAR hearing transcript)

The office refused to modify or withdraw the proposed rules in response to the Joint Committee's objection. The Joint Committee developed legislation to grant the necessary statutory authority, but this was an argument which made the Joint Committee reconsider its position on evaluating an agency's rulemaking authority.

### BACKGROUND

The trend of administrative law in this area is very difficult and complex. The only directly relevant Illinois Supreme Court case appears to be the 1875 case of Porter v. R., R.I. & St. L. R.R. Co. The challenged statute stated that the Board of Tax Equalization was to "adopt such rules and principles...as to it may seem equitable and just...not inconsistent with this Act...and of the same effect as if contained in this Act." While the Court ruled that this was a proper delegation of rulemaking authority, it went further to state, "We are unable to perceive that any power is, in this respect, conferred upon the Board which it would not equally have possessed had the statute been silent upon the subject." This statement would argue for implicit rulemaking authority, but cannot be relied on too heavily because the case is obviously dated and the statement was in the nature of dicta.

The argument in favor of some type of implicit rulemaking authority is also supported by Professor Kenneth Culp Davis. He says in his Administrative Law Text,

Any officer who has discretionary power necessarily also has the power to state publicly the manner in which he will exercise it, and any such public statement can be adopted through a rulemaking procedure, whether or not the legislative body has separately conferred a rulemaking power on the officer.

The preceding sentence is (a) especially important to successful control of discretionary power, and it is (b) exceedingly simple and clearly incontrovertible, even

though (c) the legal effect of such a public statement by an officer depends upon extremely complex law that often baffles the best judges and the best lawyers.  
(page 143)

Davis' comment on the legal effect of rules is of most direct concern here. Even though he says that agencies incontrovertibly have an implicit rulemaking authority in connection with the authorization of the agency to undertake any task requiring discretion, he is not saying that the agency has implicit authority to make rules which have the full force of law.

Professor Frank E. Cooper in his text on state administrative law states a different view, although he does not directly deal with this issue. He distinguishes between types of rules, defining "legislative rules" as "those substantive rules adopted pursuant to delegation of legislation authority, the violation of which entails statutory sanctions." (page 264). He then defines "interpretive rules" as all rules made by agencies without "legislative authority," but carefully qualifies the nature of such rulemaking as not being quasi-legislative. The most important distinction to Cooper seems to be the inability of agencies to impose sanctions without express legislative authority.

This type of distinction was indirectly supported by the Illinois Supreme Court in Madsen v. Industrial Commission (1943). In ruling on the legal effect of rules adopted by the Industrial Commission, the court held that

While the Industrial Commission is vested with the power to make rules for carrying out its statutory duties, it is without power to make rules creating substantive rights. It is restricted to making only such rules as will aid in carrying out the duties imposed upon the commission by the statute...To give these quoted words [the commission's rules] the effect urged by the plaintiff in error [the effect of creating a substantive right] would amount to rendering the rule-making powers of the Industrial Commission superior to the legislative power of the General Assembly.

Although the court did not use the terms "legislative" or "interpretive" rules, the argument is essentially that the commission's rules must be read as interpretive only, since the commission lacked the statutory authority to adopt legislative rules. Even though the commission did have express authority to adopt rules, the court interpreted that express authority as limited to procedural and interpretive matters.

Administrative law has traditionally divided rules into two types based primarily, but not solely, on their effect. The first type is a legislative rule, which has the full force of law as though it were passed by the legislative body itself. Courts have typically upheld the substantive content of legislative rules, refusing to substitute the judgement of the court for the agency's judgement, when the courts have found that the agency had the authority to make legislative rules. The other type of rule is an interpretive rule. Interpretive rules do not have the force of law and simply state the agency's interpretation of the law rather than making new law. Courts have not been as reluctant to substitute their interpretation of the law for an agency's interpretation.

A further traditional distinction between legislative rules relates to their basic character in relation to the statutory authorization. Legislative rules add substantive requirements to the statute, while interpretive rules only inform the public of the agency's interpretation of the statute. Obviously this distinction may be difficult to make in individual cases. It is clear that the definition of "rule" in the Administrative Procedure Act is broad enough to cover both types of rules. The Act does not apply only to rules which have the full force of law.

#### THE JOINT COMMITTEE POSITION

While the law in Illinois on this question is far from clear, it is clear that the two most consistent positions at the opposite extremes of the issue each results in obvious difficulties. The first position that agencies have implicit rulemaking authority whenever the agency is delegated a task requiring the exercise of discretion could result in the view that the common language in the statutes delegating rulemaking power to an agency is virtually meaningless. This position could also weaken the ability of the legislature to control or confine the quasi-legislative rulemaking authority of agencies and insure that agency rules do not usurp legislative authority, or misinterpret legislative intent, which is a basic purpose of the legislative review process established under the Administrative Procedure Act.

The position at the other extreme of the issue, that only agencies with explicit statutory grants of rulemaking authority can promulgate rules, also has adverse implications. While this position does allow the rulemaking authority of agencies to be more easily confined, it could result in a weakening of the coverage of the Administrative Procedure Act as indicated by the testimony of the Attorney General's office quoted above. Agencies could simply continue to follow informal policies which, for all practical purposes, would not be required to be publicly available through the rulemaking procedures of the Administrative Procedure Act. In effect, the definition of "rule" in the Act would also be weakened to refer only to expressly statutorily authorized rules, effectively eliminating the coverage of general policy statements. This would appear to defeat one of the basic purposes of the Act to require agencies to open all their informal policies to public scrutiny.

The position adopted by the Joint Committee avoids both extremes and is consistent with the law in this area. Agencies with express statutory grants of rulemaking authority will normally have the authority to make legislative rules, while agencies lacking an express statutory grant of rulemaking authority for a particular area may only make interpretive rules. Both types of rules will nonetheless be subject to the requirements of the Administrative Procedure Act. The Joint Committee will examine carefully the character of each rule and its intended effect to determine if it is legislative or interpretive in nature. Then the Joint Committee will examine the statutory authorization under which the rule is being proposed to determine if the statute expressly authorizes legislative rules, expressly authorizes rulemaking not including legislative rules, or authorizes a task implicitly requiring interpretive rules. Recognition of the legal effect of the rules, whether legislative or interpretive, will be stressed by the Joint Committee with agencies and the affected public.

It should be noted that express grants of rulemaking power may not actually grant the power to adopt legislative rules. For example, it is conceivable that a statute could authorize an agency to make rules with the provision that "such rules shall not have the force of law," or the statute itself could be so specific or stated in such terms that it would not allow additional legal requirements to be imposed. Rules adopted under these authorizations would clearly be only interpretive. On the other hand, a statute which does not expressly authorize legislative rules may implicitly require legislative rules, although this would presumably be an extraordinary situation. In such cases, the Joint Committee believes it would be the best policy to consider the statute itself deficient and the Joint Committee will recommend remedial legislation.

The presumption by the Joint committee will be, following this policy, as in the past, that rules are legislative and an express grant of rulemaking authority is required.

Other states have developed similar positions in relation to this issue. In response to a question by the Joint Committee, the Wyoming Legislative Council stated their position as follows:

If rules are legislative, i.e., impose restrictions, limitations or substantive obligations upon members of the public dealing with the agency, then such rules may only be adopted under express statutory authority...[However,] we encourage the adoption of interpretive rules, whether under express or implied rulemaking authority, as the best means of identifying differences between administrative interpretation and legislative intent, and of avoiding non-uniform application of the law.

This position taken by the Wyoming legislature in reviewing administrative rules and expressed by other states as well closely parallels the position adopted by the Joint Committee.

Stated simply, the Joint Committee will utilize the basic judicial distinction between legislative and interpretive rules as a basis for determining whether the statute authorizes the type of rulemaking being proposed by the agency. Legislative rules proposed by an agency without a specific grant of such rulemaking authority would be objected to by the Joint Committee.

However, the Joint Committee will not distinguish between legislative and interpretive rules in precisely the same manner as courts have developed this distinction. While courts have focused on the legal effect of the rules in making this determination, the Joint Committee will focus more on the nature of the rules themselves. In the Joint Committee's view, legislative rules can be thought of as proscriptive (meaning that they affect a legal right, duty or privilege), while interpretive rules can be considered purely descriptive (meaning that they inform or direct without affecting a legal right, duty, or privilege). A rule will be defined by the Joint Committee as interpretive if it has one of the following characteristics:

1. It places no additional legal duty and confers no additional substantive right or privilege on any outside party beyond the statutory duties or rights.
2. It describes a duty, burden or right in strictly permissive language.
3. It describes or establishes a discretionary power which does not include any power to impose a legal duty or confer a substantive right or privilege.
4. It describes or imposes no additional burden of performance beyond any statutory requirement as a precondition to a substantive right or privilege except for instructions setting forth purely ministerial acts relative to use of agency forms and procedures.

A rule having none of these characteristics would be defined as legislative or proscriptive. Generally, legislative rules will be considered as rules which impose (directly, indirectly, or by reference to statutory penalty provisions) "penalties" for acting or failing to act in some manner. Such a "penalty" may involve the imposition of a duty or the loss of a right or privilege as well as a monetary fine or other conventional penalty.

#### APPLICATION

Attempting to retroactively apply this position to the two specific instances cited at the beginning of this paper is difficult, but may be useful in illustrating the actual effect of this position. The rules proposed by the Department of Registration and Education seem to have been in the nature of legislative rules, since they clearly affected who would and who would not receive a public benefit. Thus the Department did lack the authority to propose the rules and the objection of the Joint Committee was well-founded. The provision of an express statutory rulemaking authorization, since the Joint Committee recognized that the lack of the rulemaking authorization really constituted a deficiency in the legislation, solved the question and legitimately authorized the Department to adopt these legislative rules. The rules adopted under that authority then would be viewed as having the full force of the law. Alternatively, the legislature could have included specific details in the Act regarding distribution of the funds, leaving the Department narrowed discretion that would only require interpretive rulemaking.



The instance involving rules proposed by the Attorney General's office is less clear. It is uncertain whether the proposed rules were in the nature of legislative or interpretive rules or whether their intended effect was to have the full force of law. If the rules were viewed by the Joint Committee as only interpretive, then the Joint Committee should not have objected and should have actually encouraged the agency to develop such rules to inform the public as completely as possible, while at the same time, stressing that the rules do not have the force of law. However, if the Joint Committee determined that the rules were legislative in character and intent, then an objection was entirely in order since the agency lacked the necessary express statutory authorization to add substantive requirements to the law by adopting legislative rules.

As indicated by this brief attempt to apply this position to these cases, this is a workable and balanced position. The Joint Committee believes that adoption of this position will clarify the authority of agencies to adopt rules as well as contribute to an understanding of the proper role of legislative review of administrative rules in insuring compliance of rulemaking with statutory authority.



JCAR STAFF PAPER  
ALTERNATIVES FOR STRENGTHENING LEGISLATIVE REVIEW  
OF ADMINISTRATIVE RULES IN ILLINOIS

Introduction

This paper briefly outlines various alternatives for strengthening the Joint Committee's review of administrative rules. To place these alternatives in context, the report first discusses the growing activity among state legislatures in this area and presents the major patterns of powers and structures which other states have used for their review of administrative rules. Then, a brief discussion of perceived problems in the current Illinois system is presented. Finally, nine alternatives for strengthening review of administrative rules in Illinois are outlined for the consideration of the Joint Committee. The approach of this report, even to the legal issues involved, is primarily pragmatic.

Activity in the States

The growing movement in the states to initiate legislative review of administrative rules is clearly evident from even a cursory examination of the statistics. According to a report by the Legislative Improvement and Modernization Committee of the National Conference of State Legislatures, in 1967 only thirteen states had procedures for legislative review of administrative rules. The number had risen to twenty-seven by 1976. The activity on this issue during the 1977 session can be viewed as little short of phenomenal. The following figures give some indication of this activity:

<u>Event During 1977 Legislative Session</u>	<u>Number of States</u>	<u>Specific States</u>
Formation of new mechanism for legislative review of administrative rules	9	Illinois, Georgia, Maine, Nevada, New York, North Carolina, Ohio, Texas, Wyoming
Major revisions in procedures for legislative review of administrative rules	7	Alaska, Connecticut, Kansas, Michigan, Missouri, Montana, South Carolina
Gubernatorial veto of related legislation	6	Colorado, Louisiana, New Mexico, New York, North Dakota, Rhode Island

This explosive activity not only indicates that state legislatures view this as a crucial issue of reassertion of legislative authority over lawmaking, but also indicates that a variety of different forms and procedures are being adopted by the various states. This is particularly evident from the significant number of states making major revisions in their mechanisms for legislative review of administrative rules, especially since some of these states only established such mechanisms a few years previously.

In many ways, the developments in Illinois stand in the mainstream of these trends. Although taking a moderate, "advisory only" form of legislative review, already during the 1978 legislative session several significant changes in the review process were proposed in House Bills 15 and 16. The comparatively strong language for review of existing rules included in the Illinois Administrative Procedure Act, however, is quite unique among the states.

Despite a number of thorny legal questions surrounding this entire development, such as the separation of powers doctrine, it is perhaps a fair statement that the law in this area is extremely flexible. In fact, careful formulation of changes in the mechanisms of legislative review may itself exert a significant impact on the trend of law. Thus, while this paper will discuss some legal issues, this basic qualification that the law is not fixed or precise in this area should be kept in mind.

### Patterns Among the States

Examining the procedures for legislative review of administrative rules in the various states, several patterns of powers and structure which emerge. Based on responses to a questionnaire recently sent to the states by the Joint Committee, the following four basic patterns can be delineated:

<u>Pattern for Legislative Review of Administrative Rules</u>	<u>Number of States</u>
I. Full legislature approval of administrative rules required	2
II. Standing substantive legislative committees review administrative rules	7
III. Special administrative review committee with limited power	12

#### IV. Special administrative rule review committee with veto or suspension power

7

There is no constitutional or legal question that the legislature as a whole with the approval of the governor can pass a law changing or repealing any administrative rule or regulation, since such rules and regulations are adopted by agencies under legislative authorization. The legislature again with the consent of the governor can even change the agency's authorizing statute and the functions assigned to an executive agency.

The power of a legislative committee is less clear and becomes the crucial issue. There are basically two different approaches which have been taken to this issue in other states as indicated by the patterns above. Some states have established committees with the power to suspend or disapprove administrative rules. Other states have limited the power of such committees to a comment and recommendation function.

The two states with the longest existing system of administrative rule review both utilize special committees with suspension powers. These states are Michigan and Wisconsin. In response to a challenge of the constitutionality of the Wisconsin Joint Committee for Review of Administrative Rules before the Wisconsin Supreme Court, the committee argued that its power to suspend rules is not a law-making power, but only the power to allow the legislature as a whole time to consider the rules. This type of argument may well answer some of the difficult legal issues involved in this area, although it obviously does little to support a full approval power vested in a rules review committee.

#### Current Perceived Problems

There appear to be several interrelated problems with the current Illinois system for legislative review of administrative rules as perceived by members of the Joint Committee on Administrative Rules. One of these problems, the lack of "finality" of the rules as reviewed by the Joint Committee, was addressed by the changes in House Bill 16. Whether these changes will actually accomplish their intended purposes in resolving this problem is still unclear at this point in time. If

the changes are effective, one area of agency unresponsiveness to the Joint Committee will be eliminated; the agency will be required to commit itself to a final form of the rule prior to Joint Committee review and will also be required to respond directly and only to the Joint Committee's objections.

Other problems in relation to agency unresponsiveness may well remain, however. Agencies may still be able to respond negatively to the Joint Committee's objections with little fear of direct, expeditious and effective action by the Joint Committee. The primary recourse available to the Joint Committee is the recommendation of corrective legislation to the full General Assembly. While this avoids some difficult legal issues, it has two basic disadvantages:

- (1) It involves a long process of consideration by the General Assembly, during which time the presumption is in favor of the agency since the rule is allowed to be effective and enforced, regardless of the seriousness or strength of legislative opposition.
- (2) Some specific areas of regulation may be too technical or complex or the objections may be of such a nature that corrective changes in statutory language may be extremely complex and could result in harmful overspecificity in the statutory language.

For example, if the Joint Committee objects to a rule as being too vague and failing to protect against arbitrary action by the agency and the agency refuses to modify the rule, the Joint Committee is faced with the complex task of specifying in recommended corrective legislation the specific points of detail the agency should include in the rule and then explaining the issue to the full General Assembly before any effective action can be taken. This would be true regardless of how poor the rule was or how seriously it affected the rights of the public. Thus, the Joint Committee could be seriously hampered in taking effective corrective action in this type of situation.

Some of these current perceived problems may be reduced by a strong and effective review of existing rules by the Joint Committee under its current authority. Since the Joint Committee has only begun implementation of this authority, however, it is difficult to know what its effect will be.

## Alternatives

The following alternatives appear possibly appropriate for consideration by the Joint Committee at this time. These alternatives are designed to increase the control of the Joint Committee over administrative rules and to address the problems of unresponsiveness of agencies. Obviously other alternatives are possible, but these appear to be the most feasible strengthening alternatives at this time. Each of these alternatives has parallels to the procedures established in other states, although significant differences in other aspects of the rulemaking process in other states limits the relevance of these parallels.

1. Require agency consideration of the economic effect of proposed rules and strengthen the power of the Joint Committee to review the economic effect of rules.

The Florida Joint Administrative Procedures Committee is involved in reviewing the economic effects of proposed rules and agencies in Florida are required to consider the economic impact of rules prior to initiating rulemaking. Difficulties have arisen from the language of the requirement and the legislative review has usually been quite cursory. In Illinois, such a provision could be strengthened by including review by the Joint Committee of the economic effects of existing rules during the five-year review program. Inclusion of such a provision might at least make agencies more conscious of the effects of their rules and could strengthen the Joint Committee's role by providing another criterion for review of agencies' rules.

2. Shift the burden of proof to the agency in any court challenge of a rule provision specifically objected to by the Joint Committee.

This is parallel to a unique provision included in the Iowa Administrative Procedure Act. It would give the Joint Committee's objections more weight by requiring the agency to present a positive justification for a challenged rule in a subsequent court challenge, if the rule had been objected to by the Joint Committee. The fear of the rule being challenged in court would presumably increase agency responsiveness to the Joint Committee. This alternative also has the advantage of not requiring additional action by the Joint Committee. Since this is a unique provision in the Iowa law, it is unclear exactly how effective it

would be in Illinois. In the one court case that has occurred in Iowa on this issue, the court reversed the burden of proof, found that the agency was unable to adequately support the rule, and declared the rule invalid. Whether Illinois courts would treat such a provision in the same way is unclear. The substance and authority of the Joint Committee objection as well as the constitutionality of the provision itself could become objects of the court's concern.

3. Require approval by the Joint Committee of all emergency rulemaking prior to the rulemaking becoming effective.

Under this alternative, the Joint Committee would consider each emergency rulemaking and determine whether an actual emergency exists prior to the effectiveness of the emergency rulemaking. This could possibly be done by a subcommittee of the Joint Committee to avoid the necessity of frequent meetings, although this may not be acceptable. Such an alternative would prevent agencies from bypassing the Joint Committee review through the emergency rulemaking provisions. Such a provision should include a specification of the basis on which the Joint Committee will find that an emergency exists, such as, definite evidence of an impending loss of federal funds. Rulemaking rejected under the emergency basis would then be reviewed by the Joint Committee under the normal proposed rulemaking review process. This could cause unnecessary delay, however, in cases where serious emergencies exist. This alternative, as well as the next alternative, may be somewhat premature, however, since the Joint Committee has not yet begun review of emergency rules under the current advisory power.

4. Allow suspension by the Joint Committee of any emergency rulemaking during the emergency period.

This is a variation of the previous alternative, which might avoid the unnecessary delays involved in serious emergency situations. An agency under this procedure would be allowed to adopt emergency rules, at any time, but the Joint Committee on a finding that an actual emergency does not exist, would be able to suspend the emergency rule. At this point, the agency would be able to submit the rule through the normal proposed rulemaking process.

5. Allow the Joint Committee to veto any rulemaking proposed by an agency before it became effective.



This alternative could raise constitutional questions about separation of powers, but can be defended reasonably; the legislature is merely conditioning its delegation of rulemaking authority to the administrative agencies. Of course, a court may view the issue differently. This alternative would strengthen the Joint Committee and also increase agency responsiveness, although agencies could evade the procedure by simply not filing its rules. Thus, pushing rulemaking underground or encouraging hidden rules could be a result of this alternative. Such an alternative might allow the Joint Committee to continue to disclaim actual responsibility for the substance of rule, which would be more difficult under the next alternative, but it is problematic whether the general public would actually distinguish between this veto power and an actual approval power.

6. Require positive approval by the Joint Committee of all proposed rules before they can become effective.

This alternative would place the Joint Committee in a very strong position, but could also result in the Joint Committee being viewed by the public as responsible for the substance of the rules instead of the more limited responsibility for conformity to the authorizing statute and legislative intent. Requiring legislative approval before the effectiveness of the rules would probably confront fewer constitutional issues than allowing suspension of already effective rules. The legal argument could be made in support of this alternative that the delegation of rulemaking authority to an agency does not need to be unconditional; the legislature is simply conditioning the delegation of rulemaking authority on the approval of the Joint Committee. Changes to each of these specific statutory grants of rulemaking authority as well as changes to the Illinois Administrative Procedure Act may be necessary to actually effectuate this alternative.

7. Allow suspension of existing rules by the Joint Committee.

This would be the strongest alternative for legislative review of administrative rules. One of two different qualifications might be added to the authority of the Joint Committee to suspend rules: (1) The power could be subject to positive confirmation by the full General Assembly through passage of a resolution. This would require positive action by the Joint Committee in introducing and supporting such a resolution. (2) The power could be subject only to being overturned by the full General Assembly through passage of a resolution. This would be a lesser

qualification of the Joint Committee's power, since the presumption would be on the side of the Joint Committee. This alternative regardless of the qualifications would result in the most serious legal issues. One issue which would be raised is whether passage of a resolution can affect law, since it eliminates the approval of the Governor required under normal legislative lawmaking.

8. Allow the Joint Committee to require rulemaking by an agency.

Very serious constitutional questions could be raised about this alternative. It could be viewed as denying rulemaking authority to an agency at all, since the Joint Committee could force the agency to adopt whatever rules the Joint Committee desired. If the provision were carefully worded to allow the Joint Committee to require rulemaking only in certain areas and based on certain criteria, such a provision could be defensible.

9. Allow the Joint Committee to challenge agency rules by initiating a court action.

This power has recently been given to the Florida legislative committee reviewing administrative rules. It would allow the Joint Committee to directly challenge the validity of an agency rule as an alternative to the time-consuming process of recommending remedial legislation. This would eliminate some of the current perceived problems involved in recommending legislation to correct improper rulemaking, but might create other problems. The provision should include specific criteria, such as a finding that the rule exceeds statutory authority or fails to comply with legislative intent, as the basis of any court challenge initiated by the Joint Committee. Such an alternative would place the Joint Committee in a direct formal adversarial role with the agency, which may not be desirable.



**WILLIAM J. SCOTT**  
ATTORNEY GENERAL  
STATE OF ILLINOIS  
SPRINGFIELD

January 10, 1979

FILE NO. S-1408

**ENVIRONMENTAL PROTECTION:**  
Authority of Environmental Protection  
Agency to Adopt Technical Policy State-  
ments Concerning Public Water Supplies

Michael P. Mauzy, Acting Director  
Illinois Environmental Protection Agency  
2200 Churchill Road  
Springfield, Illinois 62706

Dear Mr. Mauzy:

I have your letter wherein you ask whether the Illinois Environmental Protection Agency has the authority to adopt technical policy statements concerning public water supplies. It is my opinion that the Agency does have the authority to adopt such statements.

The Joint Committee on Administrative Rules has questioned the Agency's authority to adopt these technical policy statements. The Committee has pointed out that under section 17 of the Environmental Protection Act (Ill. Rev. Stat. 1977, ch. 111 1/2, par. 1017) the Pollution Control Board has

the authority to adopt regulations concerning public water supplies and that the Board may not redelegate its authority to the Environmental Protection Agency.

The Pollution Control Board has not redelegated its authority to adopt public water supply regulations to the Agency. Rule 212A of the Board's rules and regulations on public water supplies provides as follows:

- "A. The Agency may adopt criteria, published in the form of Technical Policy Statements, for the design, operation, and maintenance of public water supply facilities as necessary to insure safe, adequate, and clean water. These criteria shall be revised from time to time to reflect current engineering judgment and advances in the state of the art."

Rule 212A is a directive from the Board to the Agency consistent with the Agency's statutory authority to administer the provisions of the Environmental Protection Act relating to public water supplies and the public water supply regulations of the Pollution Control Board. In its opinion on the regulations for public water supplies, the Board discussed Rule 212A. The Board explained that Rule 212A did not redelegate the Board's rule-making authority to the Agency and that the Agency's technical policy statements were intended to inform the owners of public water supplies as to how the Agency administers the

Board's regulations. The Board's opinion reads in pertinent part:

"Technical policy statements are the tools of the Agency to allow the proper administration of these rules. These statements detail what will be required of a public water supply so as to comply with these rules, and serve as a guide for proper construction and operation of facilities. Guidelines are also incorporated for the proper minimum chlorine residuals, fluoridation procedures, safety precautions, and any other pertinent specifications (R. 23, 943).

Certain witnesses expressed a fear that technical policy statements would allow the Agency to dictate all facets of public water supply and potentially interfere with normal maintenance (Ex. 29, P. 6, R. 860). This fear is unfounded. In the first instance, Rule 212 (B) allows ample time for public comment. In the second instance, if an owner of a public water supply feels that a condition to his permit was incorporated on the basis of an unjust technical policy statement, his appeal to the Illinois Pollution Control Board could very well raise this point. Technical policy statements have been used in other divisions of the Environmental Protection Agency, and would appear to be working satisfactorily."

Even without Rule 212A, the Agency has the statutory authority to adopt technical policy statements concerning public water supplies. Section 15 of the Environmental Protection Act (Ill. Rev. Stat. 1977, ch. 111 1/2, par. 1015) requires owners of public water supplies to submit plans and specifications for any public water supply installations, changes, or

additions to the Environmental Protection Agency. Section 16 of the Act (Ill. Rev. Stat. 1977, ch. 111 1/2, par. 1016) authorizes the Agency to approve plans and specifications on the basis of sanitary quality, mineral quality and adequacy of the water supply. The Agency is also authorized to request owners of public water supplies which are operating to submit samples of water and reports of operation. (Ill. Rev. Stat. 1977, ch. 111 1/2, par. 1019.) The Agency's technical policy statements inform the owners of public supplies as to how the Agency carries out its duty to approve and monitor public water supplies.

In addition to its specific authority to approve and monitor public water supplies, the Agency has general authority to administer the permit system established by the regulations of the Pollution Control Board. Section 4(g) of the Environmental Protection Act (Ill. Rev. Stat. 1977, ch. 111 1/2, par. 1004(g)) provides as follows:

"(g) The Agency shall have the duty to administer, in accord with Title X of this Act, such permit and certification systems as may be established by this Act or by regulations adopted thereunder."

Title X of the Act includes section 39(a) (Ill. Rev. Stat. 1977,

Michael P. Mauzy - 5.

ch. 111 1/2, par. 1039(a)). Section 39(a) reads in pertinent part:

"(a) When the Board has by regulation required a permit for the construction, installation, or operation of any type of facility, equipment, vehicle, vessel, or aircraft, the applicant shall apply to the Agency for such permit and it shall be the duty of the Agency to issue such a permit upon proof by the applicant that the facility, equipment, vehicle, vessel, or aircraft will not cause a violation of this Act or of regulations hereunder. The Agency shall adopt such procedures as are necessary to carry out its duties under this Section. In granting permits the Agency may 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 Board hereunder. \* \* \* (Emphasis added.)

The Board has established a permit system for public water supplies. According to section 4(g), the Agency administers this system; and, according to section 39(a), the Agency is required to adopt procedures that are necessary to administer the issuance of public water supply permits. The Agency's technical policy statements are necessary in order to administer the Board's permit requirement for public water supplies. These statements provide the owners of public water supplies with a clear set of guidelines as to how the Agency administers the Board's regulations. The Board retains its rule-making authority. As pointed out in the Board's opinion

on Rule 212A, an owner of a public water supply who believes that the Agency's technical policy statements incorrectly administer the Board's regulations, may appeal to the Board. The Board may then examine whether the Agency's technical policy statements are in accord with the intention of the Board's regulations.

It is, therefore, my opinion that the Pollution Control Board has not redelegated its authority to adopt regulations concerning public water supplies to the Environmental Protection Agency. The Agency's statutory powers to approve and monitor public water supplies and to administer the Board's permit requirements authorize the Agency to adopt technical policy statements for public water supplies.

This conclusion is supported by the analysis in U. S. Steel Corp. v. Pollution Control Board (1977), 52 Ill. App. 3d 1, 9. In that case it was contended that the Board's Rule 910(a)(6) redelegated the Board's authority to set effluent standards and conditions to the Agency. The court disagreed with that contention and with the earlier finding of invalidity in Peabody Coal Co. v. Pollution Control Board (1976), 36 Ill. App. 3d 5, 20. The court in U. S. Steel held



Michael P. Mauzy - 7.

that Rule 910(a)(6) was not a redelegation of the Board's rule-making authority but was, instead, a directive to the Environmental Protection Agency to carry out the Agency's statutory power to set the conditions and terms for the issuance of National Pollution Discharge Elimination System permits. Rule 212A of the Board's rules and regulations on public water supplies, similarly, is not a redelegation of the Board's authority to regulate public water supplies. Rule 212A is merely a directive to the Environmental Protection Agency to exercise the Agency's statutory authority to adopt technical policy statements concerning public water supplies.

Very truly yours,

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WILLIAM J. SCOTT  
ATTORNEY GENERAL  
STATE OF ILLINOIS  
SPRINGFIELD  
62706

April 30, 1979

FILE NUMBER S-1434

ADMINISTRATIVE LAW:  
Whether Northeastern Illinois  
Planning Commission Is a  
State Agency

Honorable Harry Yourell  
State Representative  
Chairman, Joint Committee on  
Administrative Rules  
520 South Second Street, Suite 100  
Springfield, Illinois 62706

Dear Representative Yourell:

This responds to your letter wherein you ask whether the Northeastern Illinois Planning Commission (hereinafter referred to as NIPC) is a State agency for the purposes of the Illinois Administrative Procedure Act. (Ill. Rev. Stat. 1977, ch. 127, par. 1001 et seq.) Section 3.01 of that Act (Ill. Rev. Stat. 1977, ch. 127, par. 1003.01, as amended by Public Act 80-1457) defines the term "State agency" as follows:

"'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 authorized by law to make rules or to determine contested cases." (Emphasis added.)

It is my opinion that NIPC does not qualify as a State agency under this definition. In opinion No. NP-770, I examined the nature of NIPC and advised that it was a body politic and corporate, separate and apart from State government. I stated in that opinion as follows:

" \* \* \*

NIPC is defined in section 4 of the North-eastern Illinois Planning Act (Ill. Rev. Stat. 1973, ch. 85, par. 1104) as a 'body politic and corporate' -- a separate governmental entity exercising a specific and distinct governmental function -- planning. It is no part of the counties, cities, villages, townships, park districts, etc., located in the six county area of northeastern Illinois. It is also separate and apart from state government. State executive government has no control over NIPC, or its functions. Indeed, the Northeastern Illinois Planning Act treats the State of Illinois as a separate entity when it provides, at section 36:

Honorable Harry Yourell - 3.

'The Commission may accept and expend funds \* \* \* from any source including grants, bequests, gifts, or contributions made by a person, a unit of government, the State government, or the Federal government.' (emphasis added.) (Ill. Rev. Stat. 1973, ch. 85, par. 1136.)"

I see no basis for changing the conclusion reached in opinion No. NP-770 and find no basis for doing so in the Illinois Administrative Procedure Act. NIPC is a body politic and corporate, but it is not a body politic and corporate of the State. Furthermore, because NIPC is separate and apart from the State government, it cannot be an administrative unit or corporate outgrowth of the State government.


I am aware that there is some uncertainty regarding the underscored words in section 3.01. The phrase expressly excludes units of local government, school districts and boards of election commissioners from administrative units and corporate outgrowths of the State government. Exceptions to the application of a statute are generally strictly construed. (People v. Chas. Levy Circulating Co. (1959), 17 Ill. 2d 168, 177.) Such strict construction, however, will not be applied to defeat the legislative purpose with respect to a particular provision. Winner v. Kadow (1940), 373 Ill. 192, 195; People ex rel. Hopf v. Barger (1975), 30 Ill. App. 3d 525, 537.

There is no indication that the General Assembly intended that the express exclusion in section 3.01 should

Honorable Harry Yourell - 4.

be interpreted to mean that governmental entities other than the three specified must be considered administrative units or corporate outgrowths of the State government, even though they are separate and apart from the State government. Units of local government, school districts and boards of election commissioners are not part of the State government. The apparent purpose of the express exclusion of these entities is to guarantee that they will not be deemed to be State agencies. The express exclusion is not intended to result in including entities such as NIPC within the definition of "State agency."

Very truly yours,



A T T O R N E Y G E N E R A L

STATE OF ILLINOIS  
IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
CHAMPAIGN COUNTY

THERESA STEPHEN,  
Plaintiff,

vs.

ARTHUR F. QUERN, Director  
Illinois Department fo  
Public Aid; and ILLINOIS  
DEPARTMENT OF PUBLIC AID,  
Defendants.

No. 78 L 975

ORDER

This case is brought for administrative review by a recipient of Public Aid whose grant was reduced when the County Department of Public Aid employees used a new formula to determine the petitioner's income and thereby ascertain the amount of her grant. The petitioner also appeals from the administrator's final order denying her request to continue her benefits at their prior levels pending that decision. I find from the evidence and upon the law that the Administrator was wrong on both counts and therefore order him to reinstate the petition's payments at the rate determined by the legal policy in effect prior to the implementation of Budget Policy #615 of the AFDC procedures adopted February 6, 1978. The result in this case derives from my conclusion that the change of "policy" contained in said #615 did affect recipient's benefits by means of an admittedly unpublished (in the Illinois Register) and admittedly unfilled (with the Secretary of State) "Rule."

The Department of Public Aid was at the time of the adoption of said rule required to comply with the Administrative Procedures Act, and that Act, Chapter 127, Section 1001 et. seq. required the department first to file and publish any new or amended rule and wait the prescribed time before applying such rule. As I said, it is admitted the Administrative Procedure Act was not followed here with regard to Policy #615.

no impact on the eligibility of an applicant or the size of her grant, but those rules that do, go to the crux of the rights a citizen has to obtain the assistance the law has directed the department to give and, may not be changed without the opportunity for public hearing contemplated by the law, (Chapter 127).

If the rule were otherwise, the administrator would be free to raise or lower the grants by administrative procedures he deemed necessary without notice. I do not, by these remarks indicate that the administrator could not change policies or procedures, but only that he must follow the procedures set out by law under Chapter 127; when as here the rule affects the rights of recipients to a grant properly determined by lawful rules.

Returning now to the question of notice, a matter which has relevancy to the matter of the petitioner's right to have her grant continued at the old rate pending a final determination of the correctness of the Department's action of reducing her grant.

The departments rule simply stated is: If a petitioner files her notice to appeal any action of the department adverse to her; her grant will continue unreduced until the administrator's final decision, provided she does so within ten days of the date of the order reducing her grant. The administrator properly found that she did not have her appeal on file within 10 days and he upheld the departments refusal to continue her grant unabated. I agree with the petitioner that the ten days running should not start against her until she receives actual notice. The record establishes that she got actual notice on the 5th, 6th, or 7th of June, 1978 and that her appeal was filed on the 15th of June and therefore was timely. Constructive notice of the reduction of her grant by reason of the receipt of the reduced check, or presumptive notice by reason of the mailing of the notice to the petitioner at her correct address will not prevail over the otherwise unimpeached testimony that the petitioner did not receive such notice. Due process requires nothing less in such circumstances: ISEBELL vs. PUBLIC AID; 310 NE2 742; MANN vs. PUBLIC AID; 333 NE2 233.

Therefore, although I adopt the facts found by the Administrator in his final decision, I take exception to his conclusions and I order the petitioners grant be reinstated retroactively to June,



1978 as indicated above.

Because I find nothing in the record upon which I could fix damages and because the Administrative Review Act would not permit me to consider in this proceeding, anything not properly before the agency's hearing officer, the petitioner's request for damages on other grounds will be denied and the Court herein enters its judgement on the findings above as ordered above and that the petitioner have her costs.

  
Associate Judge

ENTER: March 19, 1979

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