ADMINISTRATIVE RULES REVIEW COMMITTEE
Annual Report
1983

I. GENERAL OVERVIEW. in 1983 55 Iowa agencies adopted a total of 458 ARC filings, representing about 1,800 individual rule additions, amendments or repealers. This number represents roughly a ten per cent increase since 1981. Some of this increase can be attributed to a recently created policy requiring most "emergency" adopted and implemented rules to also be adopted through the normal rule-making procedures. The agencies which promulgated rules in 1983 are listed below, together with the number of filings put into effect:

HUMAN SERVICES DEPARTMENT	106	ENGINEERING BOARD	3
HEALTH DEPARTMENT	48	IOWA DEVELOPMENT COMMISSION	3
CONSERVATION COMMISSION	36	AUDITOR	2
COMMERCE COMMISSION	26	BEER & LIQUOR CONTROL DEPARTMENT	2
REVENUE DEPARTMENT	26	HEALTH DATA COMMISSION	2
TRANSPORTATION DEPARTMENT	20	NURSING HOME ADMINISTRATORS BD.	2
OFFICE OF PLANNING&PROGRAMMING	15	PAROLE BOARD	2
COLLEGE AID COMMISSION	12	PHARMACY EXAMINERS BOARD	2
INSURANCE DEPARTMENT	11	RAILWAY FINANCE AUTHORITY	2
FAMILY FARM AUTHORITY	10	REGENTS BOARD	2
JOB SERVICE DEPARTMENT	9	SUBSTANCE ABUSE AUTHORITY	2
WATER, AIR & WASTE MANAGEMENT	9	ARCHITECTURAL EXAMINERS BOARD	1
MERIT DEPARTMENT	9	CAMPAIGN FINANCE DISCLOSURE COMM.	1
NURSING EXAMINERS BOARD	9	CIVIL RIGHTS COMMISSION	1
PUBLIC SAFETY DEPARTMENT	9	COUNTY FINANCE COMMITTEE	1
LABOR DEPARTMENT	8	FAIR BOARD	1
ARTS COUNCIL	7	INDUSTRIAL COMMISSIONER	1
ENERGY POLICY COUNCIL	6	LANDSCAPE ARCHITECTS BOARD	1
REAL ESTATE COMMISSION	6	LIVESTOCK HEALTH ADVISORY COUN.	1
CREDIT UNION DEPARTMENT	5	NATURAL RESOURCES COUNCIL	1
HOUSING FINANCE AUTHORITY	5	O. S. H. A.	1
SOIL CONSERVATION DEPARTMENT	5	PROFESSIONAL & OCCUPATIONAL Bd.	1
AGRICULTURE DEPARTMENT	4	PRODUCT DEVELOPMENT CORPORATION	1
CORRECTIONS DEPARTMENT	4	PUBLIC BROADCASTING DEPARTMENT	1
PUBLIC INSTRUCTION DEPARTMENT	4	PEACE OFFICERS RETIREMENT	1
AGING COMMISSION	3	SECRETARY OF STATE	1
BLIND COMMISSION	3	VETERINARY BOARD	1
COMPTROLLER	3		

While the volume of rule-making is up, to a certain extent the degree of controversy is down. In 1983 the committee imposed only

three objections, and two of these were non-substantive. No 45 day delays were imposed. In 1982 two objections and 2 delays were imposed. A total of 92 objections have been imposed since January, 1977. In that year 36 objections were imposed; in 1978, 24 objections; in 1978, in 1979 13 objections; in 1980 6 objections; in 1981, 8 objections; in 1982, 2 objections. A total of ten 45 day delays have been imposed since that power was created in 1978.

II. MAJOR RULE-MAKING ISSUES OF 1983

1. COMMERCE COMMISSION-basic local only telephone service. The breakup of A.T.&T. means in part that long distance service is no longer an integral part of telephone service. ATT proposed to the federal regulators that it be allowed to impose an access charge on each telephone, for the right to have access to the long-distance network.

The Iowa Commerce Commission reacted to this by proposing a rule of its own, which would require local companies to develop "basic local only service". This service would have no access to any long-distance network. The companies opposed this proposal, arguing: 1) that existing technology could not economically provide this service, and 2) that it was uncertain whether enough people would purchase the service to make the research and development costs worthwhile.

The committee delayed the effective date of the rule until the federal regulatory agency ruled on the initial request to institute access charges. In January, 1984 the F.C.C. delayed any implementation of these charges until 1985. The Iowa Commerce Commission then agreed to postpone any implementation of this proposal pending a final FCC determination.

BLIND COMMISSION-possible cutback in college tuition grants. Due to the possibility of budget reductions, the commission proposed a contingency rule, to go into effect only if enough funds for college tuition grants were not available. The rule would impact blind students wishing to attend private institutions. It provided that money would be provided to meet the tuition levels of Regent's institutions instead of the generally higher levels of private schools. The rule was vehemently opposed by blind students who were concerned that Regent's institutions might not have the particular type of instruction they desired, and who also feared their possible relocation from their homes. The committee noted that in the event of a budget reduction, it was preferable to have a policy prepared in advance, and that the tuition policy was a reasonable means to reduce expenditures, if mandated to do so, while still providing blind students with a college education.

HEALTH DEPARTMENT-Administrators in care facilities for the mentally retarded. The committee examined a largely statutory problem dealing with the qualifications of administrators in homes for the mentally retarded. Chapter 135E, the Code,

required the administrators to be licensed by the nursing home board, although none in fact were. Caring for the mentally retarded was such a unique problem that administrators were specially trained in the care of the mentally retarded, but did not have the training specified by the nursing home board. The committee referred this issue to the General Assembly with the recommendation that these administrators be exempted from the nursing home law. A statutory exemption was provided by the 1983 session.

HUMAN SERVICES-cutback in funding for nursing facilities. The mandated budget reduction of Fall, 1983 created a crisis in the Title XX nursing home program. A four percent cut had to be made, either through an across the board cut in reimbursement, or through the outright elimination of entire programs. The department chose the latter course and eliminated inflation and incentive factors from the funding formula. These two factors awarded bonus payments to homes that operated at less than the maximum state reimbursement rate. The department argued that this was the fairest means of implementing the required cutback. The department noted that the elimination of these two factors still entitled the lower cost homes to their full reimbursement rate, while across the board cuts would lower an already inadequate rate, possibly in violation of federal law. Opponents of this rule argued that it was illegal; taking the position that the Governor's power to order across the board cuts did not empower an agency to then selectively apply that cut to specific programs. The committee was split on this issue, and ultimately declined to take any action on the rule.

HUMAN SERVICES-Payment for eyeglasses under Title XX. In an effort to reduce the cost of providing glasses to the needy, the department proposed a rule which would result in a single laboratory being chosen to grind all lenses for the program. The committee opposed this on the grounds that establishing a single vendor to grind lenses would put that company in a superior position to market its products over competing optical firms. Testimony and evidence submitted at the meeting indicated that most laboratories also operated retail outlets; and that only large companies could reasonably be expected to bid on a state-wide contract for Title XX lenses. The value of a statewide contract to a single laboratory, in addition to its monetary value, would be that it would provide a guaranteed source of business that would allow the company to more aggressively compete for retail eyeglass business. It was the opinion of the committee that the state should not provide a particular vendor with a competitive advantage over it's competitors. The department subsequently dropped this proposal.

medical cost containment measure, the department has statutory authority to regulate the reimbursement contracts negotiated by BS/BC with Iowa hospitals. This authority is specific to the one insuror because BS/BC dominates the market with over 70% of all Iowan's insured through its programs. The controversy surrounding these rules was "prospective payment". Under this proposal, hospitals were to be given a lump-sum, advance payment to provide hospital care for BS/BC subscribers, instead of the customary pay-as-you-go practice. This system was opposed by the

private insurance industry, which feared that hospitals would make up any shortfall in BS/BC payments by raising the charges to private insurers. Hospitals also opposed the system, contending that the department had statutory authority to approve contracts for fairness, not to impose a novel form of cost containment on the hospital industry. The committee concluded that the new system could not be properly evaluated until it had been given a chance to operate, and so it took no adverse action on the rules.

INSURANCE DEPARTMENT-Commodity pools. Under its general regulatory power, the department proposed to strictly control the offering and sale of commodity pools. Similar to mutual funds, these pools invest in commodity futures instead of stock. The risk factor is extremely high, with 80% of the pools experiencing a loss. For that reason the proposed regulation was stringent, requiring the offeror to determine whether the investor could afford to invest in the pool, and imposing strict conflict of interest and disclosure provisions. After some discussion, the committee approved the regulation.

REVENUE DEPARTMENT-Utility and railroad property evaluation. The department proposed rules to significantly change the methodology used for evaluating railroad and utility property. The key to this new method was to attempt to value the property as part of an operating whole, as opposed to aggregating the value of pipes, rails, vehicles, etc. The result is a higher value placed on the operating whole, as opposed to aggregating the value of pipes, rails, vehicles, etc. The result is a higher value placed on the property and about $40 million extra in property tax revenue. The companies strongly opposed this change, noting that by law tax was imposed on tangible property, while the concept and methodology of the rules embraced the value of intangibles as well, such as operating capital, speculative value of stock, etc. They believed the methodology grossly inflated the values of their Iowa property.

The methodology itself was complex, combining three different types of evaluation, and giving each a specific weight in the final calculation. The most controversial of these methods was the "stock and debt" approach; an accounting method that held that the value of a company could be determined by combining the value of its stock and debt. This theory reasoned that the assets of a company are equal to its liabilities and since it was possible to measure a company's liability (i.e.: its stock and debt), that figure must represent the value of the company assets. This approach was given 70% weight in the final calculation.

The validity of this entire theory was, at that time, being contested before the State Board of Tax Review, following an initial hearing officer's decision that ruled against the department. The committee concluded that the complexity of this issue made the State Board a more appropriate forum to decide the validity of the various accounting methods, and imposed a seventyday delay to prevent implementation of the rules until the State Board had issued a ruling. The board overturned the hearing officer's decision and ruled in favor of the department. The committee then removed the delay, allowing the rule to be implemented for

the 1985 assessment period. The rule is currently on appeal to the district court.

TRANSPORTATION DEPARTMENT-elimination of escort vehicles for large trucks. The department conducted a study which indicated that escort vehicles were being required in too many circumstances; the vehicles were commonly required to lead (and sometimes follows) trucks of excess size or weight across Iowa's highways. The department proposed new rules to significantly reduce the situations were escort vehicles were required. In addition, the department proposed to eliminate "official escorts" entirely; this designation was a type of license that identified the holder as a qualified escort driver.

This elimination of a license, and the reduction of required escorts, created great opposition from official escorts. They contended that their expertise was essential to ensure that vehicles of excess size did not present a highway hazard. It was the opinion of the committee that the department had presented adequate evidence to support its decision, but it did refer the issue to the General Assembly for further study. No additional action was taken.

WATER, AIR & WASTE MANAGEMENT-Sulphur dioxide regulation and Iowa coal. To combat the problem of "acid rain", the department proposed to limit emissions of sulphur dioxide to five pounds per million btu's state wide. The rule currently is six pounds for the counties bordering the Mississippi, and no limit for the remaining 89 counties. The proposal would have had a serious impact on Iowa's coal industry, which markets a relatively high sulphur coal. This five mine industry opposed the rule change, alleging; 1)That the actual sulphur levels in Iowa's air did not pose any health threat to Iowa, and 2)That any benefit that might accrue with a statewide five pound standard would also accrue if the department compromised with a six pound standard, which Iowa washed coal could meet.

The committee demanded an economic impact statement to estimate the fiscal impact the five pound limit would have on the industry, and to compare that impact with the ecological benefits derived from the new levels. A detailed statement was provided which did reveal a substantial fiscal impact on the industry ($3.4 million), but it was less clear in estimating the benefits resulting from the proposed reduction. The committee questioned whether a possibly fatal blow on the industry was justified by the somewhat intangible benefits from the rule. Further consideration by the committee was made unnecessary when the DWAWM board declined to adopt the rule.

III RULES RELATED LEGISLATION IN 1983

FISCAL IMPACT ON LOCAL GOVERNMENT-1983 Acts, Chapter 142, ss6&9. Chapter 142 generally requires fiscal notes of laws and rules impacting upon local government. Section six requires that a fiscal note be prepared by any agency promulgating a rule which imposes additional cost on local government beyond the cost explicitly imposed by statute.

Section nine amends Chapter 17A by allowing private associations to "subscribe" to an individual agencies proposed rulemaking. These associations may demand to be put on an agency mailing list to receive copies of proposed rules as they are submitted for publication.

EQUAL ACCESS TO JUSTICE-1983 Acts, Chapter 107. This new provision allows individuals or small businesses, who prevail in court over the state, to recover court costs and attorney fees from the state when: 1) the state was envolved in the action primarily in a prosecutorial, as opposed to an adjudicatory , role; and 2) the state's position was not supported by substantial evidence. Additional limitations exclude numerous legal actions brought by the state.

INTRODUCTION OF BILLS BY THE ARRC-Joint rule 19. An obscure amendment to the internal rules of the legislature allows the committee to introduce legislation in either house at any time during the session. Committee bills must relate to administrative rules and are forwarded to the appropriate standing committee of the legislature. That committee must vote on the ARRC proposal within three weeks (except: ways & means, finance and appropriations committees). This rule allows the committee to act as if it were a single legislator, with the added advantage that it would not be subject to the time limitations of the bill drafting funnel.

LEGISLATIVE VETO-Senate Joint Resolution six. Enacted for the second time in 1984, this proposed constitutional amendment to establish a legislative veto will be on the ballot in 1984. As veto provisions go, this proposal is relatively modest. Instead of a committee or one-house veto, this provision requires an affirmative vote of both houses, by an absolute majority. This proposed mechanism differs from a bill only in that it does not require the Governor's signiature to become effective.

IV. COURT DECISIONS IN 1983

USSC-CHADHA v. I.N.S., 1983. Fifty years since it was first used by Congress, the US Supreme Court has struck down legislative veto. The decision is not binding on state courts, but it does serve as a powerful precident that may state jurisdictions will follow.

The court ruled that legislative veto was an unconstitutional abuse of legislative power. The court noted that the power of the legislature was to make law, and that power was divided between the House, the Senate and the President, and the court then concluded that laws could be created only by those three government bodies acting jointly.

IOWA-IOWA-ILLINOIS GAS & ELECTRIC v. IOWA STATE COMMERCE COMMISSION, 1983. The issue presented to the Iowa Court whether a committee objection automatically reverses the burden of proof on a rule. The Court concluded that an objection reverses the burden only on those grounds specified in the objection. In other words, if the committee objects on the grounds that a rule

is unreasonable, the burden is reversed only on that particular issue; if a second issue exists, such as the statutory authority for the action, the burden would not be reversed if that issue was not raised in the objection.

IOWA-IOWA CITIZENS LABOR ENERGY COALITION v. IOWA STATE COMMERCE COMMISSION, 1983. This case examined the issue of the extent to which a notice of intended action can be modified by the adopted rule. The question wasadequacy of notice and the Court has adopted the position that is similar to that of the committee. The principle enunciated by the court was that even substantial changes can be made in a notice so long as they are in character with the original scheme and are a logical outgrowth of the notice and comment already given.