

To the Graduate Council:

I am submitting herewith a thesis written by R. Craig Williamson entitled "Legislative Review of Administrative Rules and Regulations: A Review of American State Legislatures and a Case Study of Tennessee's General Assembly." I recommend that it be accepted in partial fulfillment of the requirements for the degree of Master of Arts, with a major in Political Science.

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LEGISLATIVE REVIEW OF ADMINISTRATIVE RULES AND
REGULATIONS: A REVIEW OF AMERICAN STATE
LEGISLATURES AND A CASE STUDY OF
TENNESSEE'S GENERAL ASSEMBLY

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ABSTRACT

The purpose of this research was to analyze the impact of legislative review of administrative rules and regulations. It was found that in the past state legislatures have not exercised much control over the policies and procedures of state agencies. Rule review has been a popular method implemented by several state legislatures in order to increase their oversight of administrative activities.

The influence and scope of the rules and regulations promulgated by state agencies are frequently no different from the laws passed by the legislature and signed by the executives. In essence, this allows the administrative agency to make substantive governmental policy without public accountability. This scheme also reinforces legislatures' apparent willingness to pass significant issues on to the administrative agency.

Information gathered for this research came from several sources. In developing a rule review/oversight model an analysis of the research dealing with legislative oversight was used. State statutes and legislative journals were evaluated in the discussion of the rule review procedures found in American state legislatures. The investigation into Tennessee's experiences with rule review were obtained through interviews, taped recordings, transcripts of meetings, legislative journals, legal journals and personal observations.

This study is divided into five chapters. The first chapter lists the factors which have been found to be important in legislative oversight programs. These factors include the environment external to the legislature, the motivations of the individual legislator and the structure of the rule review process. The second chapter is concerned with the development of rule review in American state legislatures. It was found that state legislatures differ greatly in their approaches to rule review. In addition, it is seen that when state statutes are compared the anticipated strength of Tennessee's procedure is one of the highest in the nation.

The third chapter is an investigation of the passage and development of rule review in Tennessee. It is believed that the legislature's movement away from executive domination played a central role in the passage of a strong rule review procedure. The controversial issue of "over-regulation" by administrative agencies also provided enthusiastic constituent support for the procedure. Since its enactment rule review has developed so that it has become a viable part of the legislative process in Tennessee. The fourth chapter is concerned with the actual behavior of the rule review committees in Tennessee. In this chapter it is discussed that rule review has had no noticeable impact on the number of rule sections promulgated by state agencies. An examination of the types of rules being rejected is also presented. Based on this examination it appears that the behavior of the review committees is directed

as much toward restricting business control over state agencies as it is toward agencies over-regulating businesses.

The final chapter of this study highlights and summarizes the impact of rule review. The basic idea presented in this chapter is that rule review will increase the accountability of the administrative agency, even if it occurs only through the anticipation of legislative analysis. In turn, rule review should also increase legislative responsibility by creating a system that requires legislative involvement in administrative rulemaking.

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CHAPTER I

PRESENTATION AND LITERATURE REVIEW

Introduction and Organization of the Study

This study is concerned with a relatively new procedure used in legislative oversight of administration. The procedure is known as legislative review of administrative rules and regulations. Rule review has extended the legislature's legal ability and responsibility in overseeing the behavior of bureaucracy. This is important because of the pervasiveness of the effects of administrative rules and regulations. A few samples of what they govern include prices of utilities, health care standards, environmental conditions, operation of state hospitals, colleges and universities, accounting procedures, licensing professions, highway conditions, penal systems and labor practices. Almost nothing in the day to day operations of business in the public and private sectors escapes the purview of administrative rules.

Changes in the complexity of our society have been the major reason for our governments' willingness to increasingly rely on the administrative agency for help. Out of necessity legislatures have had to depend on the expertise of the agency official to solve specific problems. As Kenneth Culp Davis has said, a legislature ". . . is ill-suited for handling masses of detail, or for applying to shifting and continuing problems (sic) the ideas supplied by scientists or other

professional advisors."¹

The present tendency is for the legislature to present basic outlines for programs in the form of legislation. The substance of the program, however, is delegated to the administrative agency. There are two basic problems to this scheme. The first is that democratic theory requires substantive governmental action to be publicly accountable. Since the actions of administrative agencies are frequently based on value judgments, then there should be a means for making these judgments responsive to community values. The second problem arises from the legislative bodies' unwillingness to make clear-cut policy decisions. Due to political considerations legislatures have been known to pass on politically charged issues to an administrative agency. Therefore, administrative agencies are being forced to make political decisions (deciding among competing interests).

Since there is little practicality in having the specialist administrator directly accountable to the public there needs to be some form of indirect linkage between the agency and the public it serves. For many years judicial review has served this function. To a great extent, the barriers of time, money and information have restricted this method only to a select few. In terms of democratic principles, by giving legislatures direct control over agency rules, "political" decision-making is

¹Kenneth Culp Davis, Administrative Law Text, Third Edition (St. Paul: West Publishing Company, 1972), p. 13.

both deferred to and required of an elected representative body. Rule review should strengthen administrative accountability to the legislature, as well as make the legislature more responsible for the practices of administrative agencies.

Chapter I shows how the literature has treated oversight in general and rule review in more specific terms. Chapter II focuses on the history of rule review and its applications in the American state legislatures. Chapter III explains the controversies surrounding the implementation of rule review in Tennessee. In Chapter IV there is an analysis of the impact of rule review in Tennessee. The relationship between the private sector, the administrative agencies, legislative staff and the legislators is analyzed and reviewed. Chapter V consists of a summary and conclusions to the study.

Oversight and the Legislature

Crane's detailed review of legislative activities indicates that overseeing administration "is an important traditional legislative function."² Other reports also suggest that American legislatures in their pursuit of oversight of the executive and the administrative agency have outperformed their counterparts worldwide.³ It appears, as Crane reports,

²Edgar Crane, Legislative Review of Government Programs: Tools for Accountability (New York: Praeger Publishers, 1977), pp. 2-3.

³Abdo I. Baaklini, Comparative Legislative Reforms and Innovations (Albany: State University of New York, 1978), p. 5.

that American legislatures have "an unequalled willingness to take on the executive in direct conflict, which may reflect American faith that truth will emerge from an adversary process and an American conviction that a balance of powers is a requirement for good government."⁴ In order to effect legislative oversight, American legislatures have employed various techniques that would, if effective, develop a pattern of bureaucratic accountability. The best known technique, the legislative audit, has been concerned with the financial aspects of agency activity. The legislative power of the purse has been viewed as the "legislatures most direct and ultimate tool for enforcing executive accountability."⁵ Techniques other than the financial audit include rule review, program evaluation, and sunset. When separated from the financial audit, program evaluation is concerned with an analysis of the performance of the agency. It measures the degree to which the agency reached its stated objective. On occasion, program evaluation results in new legislation in order to promote changes within the agency's policies and procedures. Sunset provisions require agencies to periodically (generally every five years) appear before legislative committees so that the agency can justify its existence. The legislature is given the authority to either reinstate the agency or to allow it to go out of existence.

⁴Crane, p. 3.

⁵Ibid., p. 7.

Most of a legislature's oversight activity is carried out in committee hearings. However, less formal means of overseeing can occur. For example, legislative letters, telephone calls, public speeches, campaign promises, on-site visits, and private meetings can be very effective means for conducting oversight. Even casual conversation over cocktails at a reception can be used as a less formal and diplomatic way to perform oversight. In reality, oversight can occur whenever an agency official and a legislator or legislative staff member get together.

Unlike the other methods of oversight the primary concern of legislators involved in rule review is that they have some control over the body of law created by administrative agencies. This body of law includes the rules and regulations promulgated by administrators so that they are able to carry out legislative programs. Frequently these rules are of such a nature in terms of content and effect that it is difficult to distinguish them from statutes. In fact, the ability to make rules and regulations are as Bernard Schwartz contends, "the most significant power in the administrative armory. The authority of administrative agencies to make rules and regulations having statutory effect is a power of enormous consequence."⁶ Therefore, legislative review of this rule-making authority is an important aspect in the relationship between legislatures and administration.

⁶Bernard Schwartz, "Legislative Control Over Administrative Rules and Regulations," New York University Law Review, 30 (1955), p. 1031.

Currently, thirty-six states are practicing some form of legislative review of administrative rules and regulations. The focus of this study will be on the activities of the review committees across the states in general and particularly in Tennessee. Since the review procedure in Tennessee has been in effect for just over five years it is felt that the practice has matured to the point that it is both possible and important to analyze its impact. It is also hoped that this study of legislative behavior in Tennessee will develop some general ideas about legislatures and their relationship with the executive-administrative part of government.

Oversight: As A Concept

Oversight is considered to be one of the most important operations of a legislative system.⁷ It is indicative of the legislature's willingness and ability to exercise its constitutional powers.⁸ A vigorous oversight program establishes a direct link between a democratically elected body (the legislature) and the professionally organized executive agency.

⁷Donald G. Herzberg and Alan Rosenthal, Strengthening the States: Essays on Reform (Garden City, New Jersey: Doubleday and Company, 1971), Preface; Malcolm Jewell and Samuel Patterson, The Legislative Process in the United States (New York: Random House, 1973).

⁸Edwin L. Jackson and Alan J. Howard, Legislative Oversight (Athens, Georgia: Institute of Government University of Georgia, 1976), Introduction; United States Supreme Court cases, Dryer v. Illinois, 187 U.S. 71 (1902); International Brotherhood v. Hanke, 339 U.S. 470 (1950). These cases have established oversight as a legal and proper function of the legislature.

Only by closely reviewing agency activities can legislators make informed decisions in regard to policy direction and program changes.

Before proceeding to a discussion of the research dealing with legislative oversight and legislative review of rules and regulations it is important to clarify the meaning and use of the term oversight. Generally speaking, oversight is a multifaceted concept, therefore the manner in which researchers define it affects what they discover about it.⁹ The vocabulary used to describe oversight is long and varied. One compiled list included the words scrutiny, review, control, command, supervision, watchfulness, inspection and influence.¹⁰ In practice oversight is a diversified process that has the potential to become a part of almost any legislative action. In one respect it can be used to check for dishonesty and waste in the execution of legislative programs. It can also be used as a tool to stimulate bureaucratic production, to discourage the development of an entrenched administrative routine, as well as insure compliance with legislative intent.¹¹ In more explicit terms, oversight does not necessarily mean that the legislature is only involved in the approval of programs, but the legislature can also have

⁹Morris Ogul, Congress Oversees the Bureaucracy (Pittsburgh, Pa.: University of Pittsburgh Press, 1978), pp. 6-7.

¹⁰Ibid., p. 7.

¹¹Alan Rosenthal, Legislative Performance in the States: Explorations of Committee Behavior (New York: The Free Press, 1974), p. 11.

a significant role in the continuous review of program performance.

Keefe has defined oversight as a technique that a legislature needs in order "to keep the executive establishment responsive and accountable, to promote rationality and efficiency in the formulation and administration of public policy, to reap the party advantage, and to advance the causes of individual legislators and interest groups."¹²

Just how active are legislatures in their role of overseeing the activities of the administrative agency? Even though oversight is considered to be a primary function of the legislature it has for the most part not been utilized to any great extent. Many believe that legislatures are not really interested in pursuing comprehensive oversight programs. It is felt that the predominant state of the art for the state legislatures is that they are trapped into a routine of allowing incremental changes in agency programs. In addition, evidence indicates that veteran legislators have little interest in receiving information that might warrant an increase in their activities relating to agency programs.¹³ Therefore, the sources of incremental changes in programs are almost always the agencies themselves or some public or private group connected with the agencies. It is believed that the part-time state legislatures

¹²William J. Keefe, "The Functions and Powers of the State Legislature," Alexander Heard, editor. State Legislatures in American Politics (Englewood Cliffs, New Jersey: Prentice Hall Inc., 1966), p. 45.

¹³Crane, p. 13.

are seldom involved in any indepth analysis of the needs of agencies and the people they serve.

Administrative agencies have traditionally sought out the chief executive instead of the legislature for support in the growth of their programs. Evidence indicates that the governor's approval is more readily sought than the legislature's when agencies wish to expand beyond what is expected.¹⁴ Ironically, this same scenario holds true for legislatures which generally do not have time, staff support, auditing services and other helpful informational resources. Similar to administrative agencies, state legislatures frequently must rely on executive opinion before they can effect oversight.¹⁵ Eventually, legislators in these various states will have to decide whether or not this type of relationship with the executive branch is desirable. This in part may explain the recent movement toward modernizing several of the legislatures across the states.

In summary, oversight is a broadly based idea that the legislature have some control over the policies and programs of the state government. Oversight may be a single event which receives an enormous amount of publicity or a long tedious process that receives none at all. A few

¹⁴Ira Sharkansky, "Agency Requests, Gubernatorial Support and Budget Success in State Legislatures," American Political Science Review, 52 (1968), p. 1221.

¹⁵Citizens Conference of State Legislatures, State Legislatures: An Evaluation of Their Effectiveness (New York: Praeger Publishers, 1971), p. 210.

legislatures are actively engaged in oversight; other legislatures may not be. In some cases oversight has been carried to the extent that legislators are being accused of usurping administrative authority.¹⁶ In others, administrative actions are never questioned by the legislators.

For the purposes of this study oversight will be defined as the actions that the legislature takes either collectively or individually in order to oversee the implementation of legislative policy or change on-going programs. Oversight when defined in this manner spans the politics (formulation of legislative policy) administration (management of programs) continuum. This broad definition of oversight is consistent with the nature of the primary focus of this study--rule review. Rule review occurs during both the formulation (approval of the rules) and management periods (suspension of the rules). The following discussion is concerned with the primary factors that affect the extent of legislative oversight.

Oversight: Environment, Legislators and Structure

Three elements seem to promote oversight. First, oversight seems to arise from the events/circumstances within the environment which affect the day to day operations of the legislature. Two of the most important environmental determinants of oversight in the states are the prevailing relations between the legislative and executive branch and the extent to which constituents complain about the actions of

¹⁶Ralph Craft, Profiles of Oversight in Five States (New Brunswick, New Jersey: Eagleton Institute of Politics, October 1977), p. 13.

administrative agencies. Secondly, the motivations, abilities and the subsequent willingness of the individual legislator to become involved in oversight tends to be an important predictor of oversight behavior. For example, legislators may be motivated by the sense of accomplishment they receive when they look into the affairs of state agencies. On the other hand, it is widely suspected that many legislators become highly motivated only when they view their efforts as being beneficial to their reelection possibilities.¹⁷

The final element deals with structural constraints which every legislature must confront. The development of the committee systems, legal restrictions and staff support all play a role in the determination of the extent to which a legislature will be involved in oversight. Figure 1 illustrates how these three components interact in order to show a legislature's involvement in rule review.

Environment: Executive Relations and Constituent Demands. Historically there are disagreements between the executive and legislative branches. Frequently, this relationship has developed into an adversary one. When this occurs, it is believed that oversight activities become more intense.¹⁸ Basically, the predominant constitutional differences

¹⁷David Mayhew, Congress: The Electoral Connection (New Haven: Yale University Press, 1977).

¹⁸Seymour Scher, "Congressional Committee Members as Independent Agency Overseers; A Case Study," American Political Science Review, 54 (1960), p. 919.

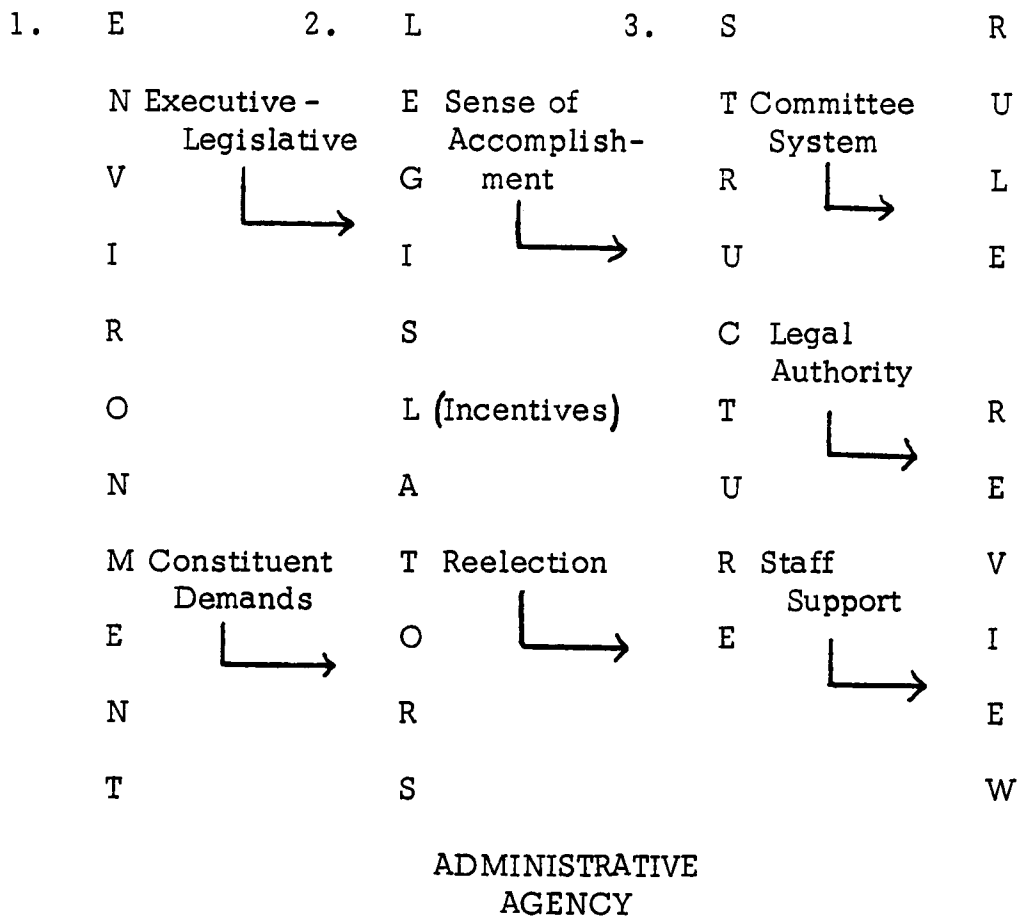


Figure 1. A Review of the Oversight Literature: A Model of Three Major Components Which Have Been Found to Have a Significant Impact on Legislative Use of Oversight/Rule Review

between the executive and legislative branches are responsible for the development of this potentially adversary relationship.¹⁹ Controversy between the two branches generally revolves around contradictory interpretations of legislative programs. Therefore, on occasion oversight may result from legislative distress over the manner in which the executive has strayed from legislative intentions. This legislative distress may be a product of modern times. As one observer has pointed out ". . . legislative intent was what judges and administrators said it was. State legislatures were assumed to be so passive as not to know their own intent."²⁰

It is not unusual to find legislators spending a great deal of time attempting to satisfy the demands of their constituents. It is believed that improvement in legislative oversight will enhance the legislator's ability to be better informed and responsive toward these demands. In essence, the legislator serves as an ombudsman for his constituents. The service that legislators are most likely to provide in respect to oversight will be one that is directed toward selective administrative activities which are the most salient within their districts. The recent growth in state agencies' money, personnel and regulations has caused

¹⁹John D. Lees, "Legislatures and Oversight: A Review Article on a Neglected Area of Research," Legislative Studies Quarterly, 2 (1976), p. 197.

²⁰Crane, p. 72.

increasing public reactions.²¹ When these public reactions are transmitted to the legislators one assumption is that they will begin to use as well as develop the practice of oversight in their respective legislative bodies. Transcripts, which were recorded during a legislative meeting immediately following the enactment of rule review in Tennessee, tend to support this claim. In general, legislators stated that they supported rule review because they received numerous complaints from constituents about the seemingly arbitrary rules and regulations of state agencies.²²

How would the implementation of a legislative rule review procedure influence legislative-executive relations? Traditionally, administrative agencies have been considered to be arms of the executive. The rule-making authority of these agencies is a power of enormous consequence that has been jealously guarded by administrators. As a result, many administrators feel that legislative review of their rules and regulations is an encroachment of their power. These same administrators do not approve of having the layman (legislator) "looking over their shoulder" whenever they decide to make a change in program policy.²³

²¹Edwin L. Jackson and Alan J. Howard, Legislative Oversight (Athens, Georgia: Legislative Research Series, Institute of Government, University of Georgia, 1976), pp. 4-5.

²²Legislative Panel on the Suspension of State Agency Rules and Regulations, Transcripts in the Tennessee General Assembly Library (Nashville: June 1975).

²³Interview, Bill Bates, Director Administrative Procedures Division of the office of the Secretary of State, May 16, 1980.

Rule review is also an oversight procedure that requires both legislative and administrative participation. Administrators should become aware of what Lyons and Thomas have called "political accountability."²⁴ In short, this means that administrative expertise must be coupled with an awareness of how administrative practice will be perceived by legislators, who are operating in a political environment. Therefore, administrators must be responsive to community values that are not explicitly defined in the law. Although the separation of powers provision of state constitutions implies that there is a dichotomy between administrative-management and legislative-enactment the concept of accountability defies this distinction. In an historical context events indicate that both agencies and legislatures are on occasion held responsible for the activities of government.

Legislative oversight has also been viewed as a way that a legislature can become independent from the executive branch.²⁵ An assumption is that a thrust toward independence by the legislature is likely to create a more equally balanced relationship between the two branches of government. If a legislature accepts an active role in rule review

²⁴William Lyons and Larry W. Thomas, Legislative Oversight: A Three State Study (Knoxville: Bureau of Public Administration, University of Tennessee, 1978), p. 7.

²⁵Lee S. Greene, David H. Grubbs, Victor G. Hobday, Government in Tennessee, Third Edition (Knoxville: The University of Tennessee Press, 1975), p. 102.

then it is expected that the legality of the concept of "legislative intent," which administration is required to follow, will be more firmly established.²⁶ As a consequence, executive, as well as, judicial responsibilities in the governance of agency programs will become less flexible. Frequently, the vagueness of legislative intent allows the other branches of government to assume quasi-legislative duties.

The ability of the legislature to manage constituent complaints about agency rules and regulations may be the most important factor in stimulating the legislature's desire for independent action. In fact, evidence indicates that the need to be able to satisfy these complaints was a major factor in the enactment of an extensive review procedure in Tennessee.²⁷

In conclusion, both executive-legislative relations and constituent service have been shown to be crucial factors in the legislative movement toward oversight and rule review. The next part of the model, the legislators themselves, indicates the manner in which these environmental determinants affect the legislators. In this discussion it will also be seen that other factors may be necessary in order to motivate the legislators to become involved in rule review.

Legislators. The second major component of the model of legislative

²⁶Crane, p. 72.

²⁷Legislative Panel (1975).

rule review is the legislators themselves. Specific attention is given to whether or not certain attitudes and orientations of individual legislators have an affect on oversight behavior.²⁸ In addition, observations do show that oversight is influenced by legislators' willingness to continue to serve in the legislature. High legislative turnover, as a whole and on committees, has been cited as being detrimental to a strong legislature and a productive oversight program.²⁹ Improvements such as higher salaries, better facilities and longer terms do tend to curb turnover rates that average as high as 50 percent per term in some states.³⁰ As a result of high turnover, the expertise of the legislator appears to be more a function of external occupation instead of committee assignment and legislative experience.³¹ At present no study has tried to link occupational groups or educational background with willingness to conduct oversight.

As recently as 1974 three-fourths of over six-hundred legislators surveyed in six states perceived their performance in oversight as being

²⁸Duane Lockhard, "The State Legislator," in Alexander Heard, editor. State Legislatures in American Politics (Englewood Cliffs, New Jersey: Prentice Hall Inc., 1966), p. 100.

²⁹Alan Rosenthal, "Legislative Turnover in the States," State Government, 47 (1974), pp. 148-152.

³⁰*Ibid.*, p. 149.

³¹Rosenthal, Legislative Performance, p. 168.

less than adequate.³² There is some indication that these attitudes are based on a historically low priority assigned to oversight, especially when it is compared to either lawmaking or constituency service.³³ With little time and even less support, due to lack of staff and agency cooperation, it should not be unusual to find legislators avoiding this awesome responsibility.

The incentive for a legislator to become involved in oversight may be small or large. As Rosenthal indicates one of the strongest factors affecting committee performance in oversight is the individual's sense of control over the affairs of administrative agencies.³⁴ Rosenthal suggests that there are parallels between legislators' ability to make meaningful changes in agency activities and their continued support for oversight. Mayhew furthers this logic in his observation of Congressional behavior. He feels that if legislators are capable of effectively criticizing the executive and the administration's opinions then legislators are rewarded and receive a direct payment for their services to their constituents.³⁵ The "direct payment" to which Mayhew is referring is electoral success. According to Mayhew the most apparent reason legislators act the way they do is in order for them to get reelected. In fact,

³²Ibid., p. 104.

³³Crane, p. 81.

³⁴Rosenthal, Legislative Performance, p. 104.

³⁵Mayhew, p. 106.

the extent of a legislator's involvement in oversight may be a product of an interplay between claiming credit and taking a position, which are both essential elements to a reelection bid.³⁶

Several years prior to Mayhew, Buchanan found that this was the case in the California legislature. Although Buchanan did not specifically mention oversight, he reported that "critical policy decisions . . . were made in order to satisfy the demands of the persons or institutions that most directly affected the ability of members to gain and hold their seats."³⁷ This brings up an important point: do the legislators representing safe electoral districts act differently in regard to oversight than do those legislators who are unsure of their reelection? In Craft's analysis of the Georgia legislature he found that one of the elements of those legislators likely to lead in oversight was that they lacked electoral competition in their home districts.³⁸ On the other hand, in Mayhew's Congressional study he saw "marginal" legislators acting more like delegates in search of oversight issues.³⁹ Mayhew noted the close elections of both Senators Magnuson and McCarthy as the source of their oversight activities

³⁶Ibid., p. 111.

³⁷William Buchanan, Legislative Partisanship: The Deviant Case of California (Los Angeles: University of California Press, 1963), p. 150.

³⁸Craft, pp. 5-6.

³⁹Mayhew, p. 32.

in consumer affairs and communism, respectively. Although at first glance these reports may appear to contradict one another, in reality they tend to reflect the nature of oversight activities in the states. State legislators who become involved in questioning administrative practices may tend to discover that the administration is willing to wage a campaign against them. In Congress, however, legislators tend to have a much broader power (campaign resources) base in terms of partisan support and political organization. Therefore, they may be more willing to confront the executive with oversight activities.

To a great extent the legislators initial perspective about rule review and then the support they receive for engaging in oversight will determine their willingness to continue to participate in it. Frequently, the legislator's perspective will be determined by the complexity of the issue involved. According to Scher, the more complex the issue the less likely it will be reviewed.⁴⁰ Legislators may also believe that their duty is to remain loyal to the executive's appointed agency officials. If this is the case then it would not be likely for them to engage in reviewing rules that may be considered to be a breach of this loyalty. As discussed earlier, the behavior of legislators in oversight may be directly related to their electoral expectations. Legislators will avoid the type of review that may provoke reprisals during reelection.⁴¹

⁴⁰Seymour Scher, "Conditions for Legislative Control," Journal of Politics, 25 (1963), p. 531.

⁴¹Scher, p. 536.

On the other hand, legislators may seek to be active in rule review because they may feel that to do so will contribute to their electoral success. It would be easy to understand that in certain cases that the evaluation and suspension of state regulations (strip mining, tax exemptions, or special permits and licenses) may aid legislators in their ability to receive financial contributions and other resources which are essential to a successful campaign.

In conclusion this discussion has focused primarily on individual as opposed to collective behavior of legislators. The following discussion is concerned with those factors within the structure of the legislature that will stimulate collective behavior. Collective action is viewed as being necessary if rule review is to become a viable part of the legislative process.

Structure. The third component of the rule review model is the structural setting in which the review process takes place. Structure includes both committee design and the resources which will spur the movement toward a permanent and well developed rule review process. Despite the seeming importance of oversight/rule review, present experience in state legislatures reveals serious operating limitations. According to Crane, the majority of state legislatures are limited in their review capacity because they do not have the resources needed to conduct meaningful oversight.⁴² It is characteristic of state legislatures to be

⁴²Crane, p. 81.

limited by legal restrictions such as the length of the legislative session or a three-fourths vote to override an executive veto.

Ogul believes that the most important factor in regard to strengthening an oversight program can be found in the legislator's willingness to become involved.⁴³ Rosenthal supplements Ogul's findings by asserting that legislative willingness can be encouraged by the creation of a professional committee system that has both capacity and power.⁴⁴

It is suspected that state legislative committees are often restrained by partisanship, legislative leadership and executive dominance. In partial support of this idea, Jewell and Patterson believe that, "the committee system is the main line of defense relied on by Congressmen and state legislators to halt the twentieth century trend that threatens to turn legislative bodies into rubber stamps for the executive branch."⁴⁵ In their survey of state legislators in the fifty states, Uslaner and Weber shed new light on the importance of committees. In their research they found that when committees were compared with party caucuses, political parties, committee chairmen and other legislative leaders, they were by far the most dominant decision loci within state legislatures.⁴⁶

⁴³Ogul, p. 55.

⁴⁴Rosenthal, Legislative Performance, p. 65.

⁴⁵Malcolm Jewell and Samuel Patterson, The Legislative Process in the United States (New York: Random House, 1973) 2nd Edition, pp. 218-219.

⁴⁶Eric Uslaner and Ronald E. Weber, Patterns of Decision-Making in State Legislatures (New York: Praeger Publishers, 1977), pp. 74-75.

In addition to the necessity of committee involvement in oversight, Gawthrop reports that one of the reasons for legislative inactivity is that the executive branch has control over administrative information. Gawthrop believes that weaknesses in legislative review of government programs can be attributed to the wider range of analytic capabilities possessed by the executive branch.⁴⁷ He continues by explaining that oversight programs can be designed to bring the scale of legislative and executive branches back into balance.⁴⁸ The most frequently mentioned plan that can be used to increase legislative independence from the executive is to provide the legislature and its committees with adequate staff.⁴⁹ It has also been shown that increasing staff will likely result in a great deal of improvement in committee performance in oversight.⁵⁰ Charles Press, however, expresses concern over this emphasis on staffing. He fears that an expert committee staff would eventually form an alliance with the staffs in the administrative agencies.

⁴⁷Louis C. Gawthrop, "State Legislatures and Program Performance Review: Some Policy Implications," Susan Welch and John G. Peters, editors, Legislative Reform and Public Policy (New York: Praeger Publishers, 1977), p. 144.

⁴⁸*Ibid.*, p. 145.

⁴⁹Jewell and Patterson, p. 250.

⁵⁰Alan Rosenthal, "Consequences of Legislative Staffing," (Milwaukee: Yearbook National Conference of State Legislative Leaders, 1969), p. 15. Also see Arthur Bolton, "Expanding Powers of the State Legislature," in Leroy Rieselbach, editor, Legislative Reform (Lexington, Massachusetts: Lexington Books, 1970).

As a result staff information may not always be the type that warrants oversight activity.⁵¹

Bibby in his study of Congress found evidence which suggests the actions of the committee leader, the use of subcommittees and the recruitment pattern used in committee assignment can be as important as staff to an oversight committee.⁵² In essence, Bibby believes that the committee leader must perceive oversight as an important function of his/her committee. The leader must also be willing to delegate authority to a subcommittee and in addition the committee members should be serving on the committee willingly. Under these conditions Bibby feels that oversight will become a strong legislative function.

The most comprehensive analysis of committee performance in a state legislature was conducted by Rosenthal in 1977. In his study Rosenthal measured the significance of several factors which may have an impact on committee performance. In order to assess these factors he used variations in performance among the committees in the New Jersey Legislature. In this analysis he found that committee effort and member's characteristics have the greatest impact on a committee's

⁵¹Charles Press, "Second Thoughts on Strengthening State Legislatures," Publius, 4 (1970), p. 121.

⁵²John F. Bibby, "Committee Characteristics and Legislative Oversight of Administration," Midwest Journal of Politics, 1 (1966), pp. 80, 82-83, 90, 97-98.

performance in oversight.⁵³ The variables which were used to indicate effort included a sense of control (the legislators felt that their efforts had some impact on administrative behavior) and the willingness to control the administrative agency. Unfortunately, these variables tend to muddle the distinction between effort and performance. It is neither surprising nor profound to discover that those who try harder will do better. Another shortcoming of this study is the inherent problem of measuring committee performance in a single legislature.

In contrast, Craft⁵⁴ and Fenno⁵⁵ have argued the most successful way to approach oversight is through the appropriations process. Due to the importance of budgets, committees involved in fiscal review have a definite advantage in becoming more occupied with oversight activities. On the other hand, the importance of Rosenthal's work is to know that committee capacity items such as the division of labor, the amount of staff, time and facilities will increase the committee's chances for a better performance in oversight.⁵⁶

The Findings: An Overview of State Legislative Performance in Oversight

A few researchers have attempted to evaluate legislative performance in oversight. From an overall perspective, the major problem

⁵³Rosenthal, Legislative Performance, p. 104. ⁵⁴Craft, p. 1.

⁵⁵Richard Fenno, The Power of the Purse (Boston: Little and Brown, 1966).

⁵⁶Rosenthal, Legislative Performance, pp. 49-53.

has been that the definitions of adequate oversight used in this research have differed. For example, in 1971 the Citizens Conference of State Legislatures reported, in its survey of legislators, that California was the only state to have a structure capable of performing oversight.⁵⁷ By 1977, Edgar Crane saw Florida as being the only state to fully utilize its committee system for review.⁵⁸ Crane also classified only seven other states, which use varying oversight strategies, as having "intensive" program review.⁵⁹ California was not given this recognition.

It also appears that adequate performance in oversight by a legislature may be a function of the occupation of the person being surveyed. For instance, in 1967, four hundred administrators out of nine-hundred surveyed were making claims that the legislatures had more control in the maintenance of their programs than the executives in their respective states.⁶⁰ Wright felt that these attitudes reflected a mistaken notion in respect to the legislative role in oversight. An excerpt from this

⁵⁷John Burns, The Sometime Governments (New York: Bantam Books, Inc., 1971), p. 127.

⁵⁸Crane, p. 35.

⁵⁹Ibid., p. 175. The states Crane lists are New York, New Jersey, Illinois, Michigan, Massachusetts, Connecticut, and Virginia.

⁶⁰Dell S. Wright, "Executive Leadership in State Administration," Midwest Journal of Political Science, 11 (1967), p. 5.

study reads:

Legislative interim committees of a research nature plus the very real possibility of a continuous legislative oversight by one or a few important legislators may be occurring to such an extent that our results accurately reflect a continuous rather than a discontinuous legislative control of state administrators.⁶¹

Several differences between the executive establishment and the legislature may also account for the opinions of administrators. Contrary to their experiences with the executive branch, administrators find it to be extremely difficult to identify a single person with the power to make final decisions. A characteristic of the legislature is that decision-making is scattered. Compounding their problems with legislatures, administrators also find that the rules and procedures used in the legislature are cumbersome and very complex. Generally speaking, the degree of professionalism and the informational resources of the legislature are far below the executive's standards.⁶² When answering to the legislature, administrators frequently discover that they are being subjected to pressures generated by partisanship and interest groups. Under any one of these circumstances it would not be surprising to find that bureaucrats would prefer less legislative control.

Ira Sharkansky found some evidence of this in his survey of administrators in nineteen states. An overwhelming majority of these

⁶¹Ibid., p. 20.

⁶²Keefe, pp. 61-62.

administrators indicated that their agencies would be much better off with less legislative involvement.⁶³ It appears that bureaucracy is more successful with proposed appropriations if they rely on the governor's support and if they are able to focus legislative attention toward incremental increases in their budgets.⁶⁴

Rule Review: Its Impact on Legislative Performance in Oversight

As discussed earlier, it was seen that there are five formal procedures that a legislature can use to conduct oversight. They are program evaluation, performance audit, efficiency audit, sunset legislation and review of administrative rules and regulations. According to Lyons and Thomas, sunset and rule review are the two procedures which are probably most responsible for recent increases in oversight activity.⁶⁵ In addition, this same study noted that there is less emphasis on the traditional oversight procedures of program audit and evaluation. Through the use of surveys it was found that within the states of Florida, Tennessee and Missouri the use of sunset and rule review procedures have made legislators more willing to participate in oversight.⁶⁶ Lyons and Thomas also indicate that it is important to distinguish these new mechanisms from the old. They emphasize that rule review is a new activity that

⁶³Keefe, pp. 6-162.

⁶⁴Sharkansky, p. 1226.

⁶⁵Lyons and Thomas, p. 101.

⁶⁶Ibid., p. 107.

specifically calls for continuous legislative participation in oversight.⁶⁷

Another important aspect of rule review is its potential ability to curb the growth of agency rules and regulations. Traditionally legislatures have placed little restriction on agencies' rulemaking powers, the proponents of rule review claim that if the legislature had more control then fewer rules would be written. Several states now have a situation where the body of law that contains rules and regulations is either nearly equal to or exceeds the statutory law.⁶⁸ In recent years, the federal government has been subjected to similiar experiences. For example, in 1974 sixty-seven federal agencies, departments and bureaus having rulemaking authority adopted 7,496 new or amended regulations, while Congress during that same year enacted 404 public laws, a ratio of 18 to 1.⁶⁹

In the article, "Overruling the Rulemakers," Pierce noted that legislative rule review would emerge to become the "People's protectors against a modern threat--haughty bureaucracies."⁷⁰ In Florida, Pierce

⁶⁷Ibid., p. 93.

⁶⁸Report of the National Conference on State Legislatures (Lexington, Kentucky: National Conference on State Legislatures, 1978), p. 7.

⁶⁹Representative Elliot Levitas, Democrat, Georgia, in a speech sponsored by the American Bar Association, Seminar on Congressional Oversight of Agency Decision-Making (December, 1976). (Personal copy-Bill Bates, Administrative Procedures Division).

⁷⁰Ned R. Pierce, "Overruling the Rulemakers," National Civic Review, 65 (1976), p. 376.

found that there is a great deal of concern among legislators that state agencies are exceeding their statutory authority. He explained that there had been instances in which agencies issued regulations that were verbatim copies of bills that legislatures had considered and refused to pass.⁷¹ According to Pierce, rule review is not only an effective way to curb the bureaucrat's willingness to go beyond legislative authority, but rule review can also decrease bureaucratic mistakes. In order to test this he found that 79 percent of the rules promulgated during 1975 by Florida's state agencies had some form of technical error. Six percent of these same rules were viewed by the review committee members as exceeding their statutory authority.⁷² By 1976, the second year of committee rule review in Florida, the technical errors had decreased 19 percent and no rules were viewed as going beyond the parameters established by the legislature.⁷³ It appears as though the 19 percent decrease in errors may reflect a more cautious attitude on the part of agency rulemakers as a result of oversight in the evaluation of agency rules. The importance of the Pierce article is that rule review may not only have an effect on curbing the growth of rules but the procedure may also increase the quality of the language used in drafting the rules.

⁷¹Ibid.

⁷²Pierce, p. 377.

⁷³Ibid., p. 378.

Conclusions

In this chapter the issue of administrative accountability was discussed. It was seen that out of necessity administrative agencies are making political decisions. The responsibility for these decisions is not clearly defined. Democratic principles imply that mechanisms for governmental accountability be established. Legislative oversight is one way of strengthening administrative accountability.

There are various mechanisms and means for implementing oversight. One of the more contemporary mechanisms, rule review, was seen as being important in terms of its impact on the promulgated rules of administrative agencies. These rules, in effect, are the bodies of law which the agencies use to operate. Rule review is also an oversight procedure that requires legislative participation in administrative practices. Its use will make administrators more accountable to the legislature and the legislature more responsible for the actions of the administrators.

It is believed that the extent of the use of rule review may be influenced by the three components presented in the oversight/rule review model. Initially, constituent complaints about administrative procedure and/or the development of an adversary relationship between the executive and legislative branches will generate a movement toward oversight of administrative rules and regulations. In order to supplement this movement it is felt that legislators need to be reinforced for their activities in rule review. A sense of accomplishment and/or increasing reelection

probabilities were seen as two incentives that would provide this reinforcement. The structure of the rule review procedure is also an important component in the determination of rule review's impact. A viable committee system is seen as the critical element of this structural component. Strong rule review procedures should be products of committees that have adequate staff and broad legal authority to act on administrative rules. Due to this study's emphasis on the implementation and the actual behavior of Tennessee's review procedure this model will not be applied. It should be kept in mind that in latter chapters continuous reference will be given to the executive-legislative relationship, constituent demands and the structural components of rule review procedures. The willingness of legislators to participate in oversight has not been examined.

The research dealing with legislative performance in oversight was also reviewed. It was seen that adequate oversight is defined in many different ways. In reviewing the opinions of administrators and legislators it was seen that they tend to possess contradictory views in regard to state legislatures' performance in oversight. Administrators argue that there is a great deal if not too much legislative oversight. On the other hand, legislators feel that they are ineffective when it comes to controlling agencies' activities. Finally, in this chapter it was indicated that the rule review process is beginning to have an impact on legislative performance in oversight. It was discussed that rule review could be an effective check on administrators' willingness to exceed the authority delegated to them by the legislature.

The second chapter will trace the development of rule review in American state legislatures. In addition, there will be an analysis of the laws in the thirty-six states which now have a rule review procedure. A comparison of these laws will give some indication as to which legislatures have greater potential to oversee state agency rulemaking.

CHAPTER II

RULE REVIEW IN AMERICAN STATE LEGISLATURES

Since the New Deal and particularly in the years beginning in the mid 1960's, state and national administrative agencies have become more active in rulemaking. The passage of a uniform method for adopting rules and the periodic publication of them has solidified the argument that agency rules and regulations have the force and effect of law. Each private citizen or business is as responsible for following the provisions of the agency's rules as they would be for following the dictates of a legislative act. This is true even though the rule is drafted by a nonelected bureaucratic agency. Problems occur, however, in that rules and regulations occasionally either exceed or do not go far enough in their application of legislative intent. Therefore, there has been a movement in state legislatures and in Congress to provide a process whereby legislative intent can be more effectively applied through agency rules and regulations.¹ This chapter will trace the history of this movement.

Written into the statute creating a rule review committee in New York is a statement of purpose. The following is an excerpt from that statute.

¹Hans A. Linde and George Burns, Legislative and Administrative Processes (Mineola, New York: The Foundation Press, Inc., 1976), p. 628.

The legislature recognizes that continuous legislative review of administrative regulations is necessary to monitor the implementation of the ever increasing exercise of rulemaking by executive agencies. Rulemaking power is delegated by the legislature and the review of such power is an integral part of the legislative function. Administrative regulations affect the economic, environment and social well being of this state and should therefore be subject to legislative oversight.²

In light of similar views in other states, American state legislatures have in increasing numbers begun to systematically review agency rules and regulations. The first part of this chapter will discuss the emergence of legislative rule review in the states. It will also be concerned with the characteristics and the comparative practices of each of the state review committees.

The Development of Rule Review in the States

Legislative oversight of administrative activities is the culmination of the legislative branch's attempt to reorganize, develop, and control administrative procedure. The belief that the legislature should become involved in reviewing administrative rules stems from experiences in the British Parliament. According to Sir Cecil Carr, in his paper discussing Parliamentary rule review, statutory instruments, as they are called in England, have been reviewed by the British legislature for over one hundred years.³ For this period of time the House of Commons has

²McKinney's Consolidated Laws of New York Annotated, Book 31, Article 5-B Section 87.

³Sir Cecil Carr, "Parliamentary Supervision in Britain," New York Law Review 30 (1955), p. 1040.

been able to annul rules before they become effective. The British system does not give Parliament the authority to amend or modify an agency rule. The powers of the review committee, the Select Committee on Statutory Instruments, extend only to the disapproval of proposed rules and the suspension of effective ones. In a later discussion it will be seen that the powers of disapproval and suspension are used by the potentially stronger state legislative committees.

In the United States Congress rule review is in its early stages of development relative to the procedures which are being used in several of the states. There have been a few attempts to give Congress the authority to review and have rejection powers over all the rules and regulations of federal agencies (this excludes statutory rejection). One of the most recent, House Resolution 12048 (1977) was drafted in order to require federal agencies to submit their proposed rules to a Congressional committee for review. This bill received over two-hundred cosponsors in the House and fifteen cosponsors in the Senate. Although the bill was reported out of subcommittee, it became stalled in the House Rules Committee. Indications do exist that another attempt will be made to pass this legislation in 1980.⁴ At present, however, Congress reviews rules and regulations in a piecemeal fashion. Congress has at times

⁴United States Representative Elliot Levitas (D. Georgia), remarks were made at a Seminar on Congressional Oversight of Agency Decision-Making, Bicentennial Institute Proceedings (December, 1977).

added provisions to legislation that require agency rulemaking to be reviewed. These provisions enable either house of Congress to approve or disapprove of the proposed rules. United States Representative Elliot Levitas (D. Georgia) reported in 1977 that he had identified approximately one hundred and thirty acts of Congress that had provisions for legislative review of contemplated or pending administrative rules and regulations.⁵ The most recent legislation with a review provision was passed by Congress in February of 1980. This bill gave either chamber of Congress veto powers over the Environmental Protection Agency's noise abatement rules.

Although it is generally characteristic of state legislatures to fashion themselves after the national legislature the practice of reviewing agency rules has been an exception. Thirty-six states now have statutory provisions for rule review. Over two-thirds of these state legislatures have relatively more power than Congress in that their committees have review authority over all state rules and regulations. In addition, each of the thirty-six states have adopted an administrative procedures act. These acts generally stipulate that agencies adopt uniform methods for promulgating rules, periodic publication of the rules, and required methods for the settlement of contested cases. Presently, there are thirteen states with an administrative procedures act that do not

⁵Ibid.

have a legislative rule review provision. The one remaining state, Pennsylvania, has neither. In 1968, the Pennsylvania legislature repealed the state's administrative procedures act. This repeal was a result of a Pennsylvania Supreme Court ruling that declared that agencies' rules and regulations should be defined as "interpretations." The court stated further, "interpretations by agencies (executive branch) are not matters that are binding on the public, therefore there is no need for them to be published."⁶

Administrative procedure reform at the state level had its origins nearly fifty years ago. To a great extent this movement was initiated by the American Bar Association. Under the chairmanship of Louis G. Caldwell, an A.B.A. committee on agency regulations issued a report in 1933, that called for uniform adoptive procedures and the hearing and resolution of controversies related to the activities of administrative agencies.⁷ This was the beginning of what F.E. Cooper has called, "the gradual evolution of thinking . . . with respect to administrative law and procedure."⁸ After several subsequent reports, the Model State Administration Procedures Act was approved by the National Conference

⁶Pennsylvania Statutes, 45-1209 (1968).

⁷American Bar Association, American Bar Association Reports, 38 (Chicago, 1933), pp. 407-427.

⁸F.E. Cooper, State Administrative Law (New York: Bobbs-Merrill Co., 1965), p. 8.

of Commissioners of Uniform State Laws in 1946. Since the approval and distribution of the Model State Act, massive research has been conducted on the subject. To some extent the product of this research was the Revised Act of 1961. The majority of the forty-nine administrative procedures acts used in the states today borrowed directly from the Revised Act which is known as the Uniform Administrative Procedures Act of 1961.

The earliest rule review experience in the United States began in the Virginia General Assembly. During the 1944 legislative session, Virginia legislators established a committee to review the rules and make recommendations to the General Assembly. The work of the committee was confined primarily to the proposed rules of twelve specified agencies.⁹ In 1952, legislation in Virginia provided for a more formal rule making procedure within and among the state agencies. After this was done the rule review committee was eliminated, which is exactly the opposite of the experience of most other states. Perhaps the most noteworthy early review procedure in the United States occurred in Connecticut in 1949. This procedure consists of all the elements that are present in a system which allows a legislative committee the most discretion. According to the Connecticut statute, all agency rules are to be filed

⁹Bernard Schwartz, "Legislative Control of Administrative Rules and Regulations; The American Experience," New York Law Review, 30 (1955), p. 1040.

for committee inspection.¹⁰ The law, which is still in force, specifies that a special joint bi-partisan committee has the option of reviewing all effective and proposed rules. The committee has the power to suspend and disapprove of each rule that it reviews. In 1979, this statute was amended to give the committee the authority to modify the rules as the members deem it to be necessary.¹¹ In effect, this allows the Connecticut committee members the power to write the rules.

Michigan, in 1948, actually was the first state to employ this form of committee review of administrative practices. However, for several years Michigan politics was embroiled in the controversy that legislative review was an unconstitutional procedure in that it violated state provisions insuring the separation of powers between the executive and legislative branches.¹² As a result of this controversy the rule review committee was not actively involved in the suspension and disapproval of rules and regulations. The debate was finally resolved in 1963, when a constitutional amendment was passed to give the legislature and its committee suspension and disapproval powers.¹³

¹⁰Connecticut Revised General Statutes, 4-48A (4-170), (1949, 1967 amended 1979).

¹¹Ibid.

¹²Michigan Statutes Annotated, 24.235 (1948). Interview, Bill Bates, Director Administrative Procedures Division, Office of the Secretary of State, State of Tennessee (November, 1979).

¹³Michigan Constitution, Section 24.71 (1963).

Nebraska, in 1950, became the fourth state to adopt committee review. According to the Nebraska statute, all agency rules are to be filed for legislative inspection.¹⁴ The review committee's primary function is to screen and review any rule or regulation. The committee decides which rules may be contrary to legislative intent, then these rules are brought before the full unicameral legislature. The Nebraska statute also specifies that the legislature has the power "to reject, change, alter, amend or modify in such a manner that it deems necessary."¹⁵

Other early developments in legislative rule review took place in Kansas in 1950,¹⁶ and in Wisconsin in 1953.¹⁷ In both states all agency rules do not have to be submitted to the legislature. However the legislatures can select any rule for review. The procedures used in these two states are similar to the early Virginia system in that committee actions had to be approved by the legislature. Although Virginia required only a single resolution from either house, the Kansas and Wisconsin statutes still require a joint resolution (from both houses) to give force to their committee recommendations.

In summary, two trends of legislative rule review are evident from

¹⁴Nebraska Revised Statutes, 84-904 (1950).

¹⁵Nebraska Revised Statutes, 84-908 (1950).

¹⁶Kansas Statutes Annotated, 77-436 (1950).

¹⁷Wisconsin Statutes Annotated, 13.56 (1953).

these early developments. The first trend allows a committee of the legislature the right to review and veto all rules and regulations of state agencies. The second follows a pattern of committee review and referral to the full legislature. This latter trend stipulates that the legislature must always sanction the actions of the committee.

Current Status of Rule Review Statutes

An examination of all statutes reveals that thirty-six state legislatures employed some form of rule review prior to January of 1980. The language used in these statutes expresses a great deal of difference in the review procedures used across the states.

A word of caution should be noted however, in that the stated word of the statutes may differ on occasion from its actual application. For example, the Tennessee statute makes no mention of its primary review structure; the committees on government operations.¹⁸ The statutory language used in the Tennessee Code Annotated is also confusing in that it states that an agency is allowed forty-five days to conform to the committee recommendation. In reality, this disallowment period only lasts thirty days, which is the interim between the monthly committee meetings. However, the statutes are good indicators of the relative powers possessed by the review committees across the states.

There are two important factors embodied in each review statute.

¹⁸Tennessee Code Annotated, 4-5-104.

The first has to do with the structure of the committee assigned to the review task. Among the states, various types of review committees are used. They range from commissions, which are only partly legislative to a single specialized committee in either house. This study will take the viewpoint that the more specialized and legislative a committee is the greater its authority will be in regard to legislative oversight. If a committee has centralized authority this will facilitate its members' attempt to oversee rulemaking. The second important factor is the authority that the review committee or the legislature can utilize in its effort to prevent certain rules and regulations from being used by the administrative agency. Basically, there are seven methods of controlling the implementation of rules. Each of these methods will be discussed in detail later in this chapter.

There are three basic approaches used by state legislatures in their review of administrative rules and regulations. Table 1 presents the distribution of these approaches as they appear across the states. The approaches are listed in the table according to their probably influence over state agencies rules and regulations. The range begins with the most authoritative type; the specialized committee, and concludes with the least authoritative, the referral committee structure.

TABLE 1

STATE COMMITTEE APPROACHES IN THE REVIEW
OF AGENCY RULES AND REGULATIONS*

Specialized Approaches (Strong)	Generalized Approaches (Moderate)	Referral Approaches (Weak)	
Alaska	Nebraska	Arkansas	Oklahoma
Connecticut	New York	Georgia	Oregon
Florida	Ohio	Louisiana	Texas
Illinois	South Dakota	Maine	South Carolina
Kansas	Tennessee	Maryland	
Michigan	Vermont		
Minnesota	Wisconsin		
Montana			
		Colorado	Nevada
		Delaware	North Carolina
		Idaho	Washington
		Iowa	West Virginia
		Kentucky	Wyoming
No Formal Review			
Alabama	Mississippi		Pennsylvania
California	New Hampshire		Rhode Island
Hawaii	New Jersey		Utah
Indiana	New Mexico		Virginia
Massachusetts	North Dakota		

*Arizona has been excluded from these listings because only the rules and regulations of the State Parks Commission are reviewed.

The most potentially powerful rule review design, the specialized approach, requires that the major focus of the committee's duties is on rule review. Generally, the only other responsibility of the committee is the review of the agency's justification of its existence, which is required by sunset laws. At present there are sixteen states using this approach to rule review.

The second approach is a generalized one, which requires that the committee has several other responsibilities in addition to rule review and sunset. For example, in the Maryland legislature, the Joint Standing Committee on Administrative, Executive and Legislative Review also serves as the financial and appointment review committee. The greatest number of state committees found in this category are standing committees. These standing committees generally spend the majority of their time screening legislation. As a result, it is assumed that the standing committee devotes little time to rule review. Nine states are now using this generalized approach.

The least powerful approach to rule review is the referral procedure. This occurs when the review committee does not have the authority to decide which rules it is to review. This referral pattern requires that either a non-legislative commission, a sub-committee, or a joint-standing committee screen out the rules that may be controversial and send these rules to the rule review committee. These committees seldom have the power to reject a rule without the approval of the full

legislature. The referral pattern is presently used in ten states. For a more detailed explanation of the procedures used in a particular state refer to the Appendix A at the end of the study.

Powers Granted to the Review Committees Across the States

Although the review structure is an important factor in the influence over agency rulemaking, the range of powers given to the review committees are more crucial. The legislative review capability will in part be determined by the powers delegated to the review committees by the laws of the state. All thirty-six state legislatures which have rule review have special powers over the state agency's use of rules and regulations. The scope of this authority, however, has two major divisions among the various state rule review systems. The first division includes those committees that can act on all agency rules. The second group includes those committees that are allowed to review only proposed rules. Proposed rules are either those rules newly promulgated that have not taken effect or they are agency repeals or amendments to existing rules. It appears that the primary reason for these different approaches is that in the state legislatures which review only proposed rules the feeling persists that the legislative committee rejecting effective rules would be in violation of the separation of powers provision. Table 2 lists the state committees according to the scope of their review authority.

TABLE 2

THE SCOPE OF STATE LEGISLATIVE COMMITTEE
RULE REVIEW AUTHORITY*

<u>States</u>	<u>Prop.</u>	<u>All</u>	<u>States</u>	<u>Prop.</u>	<u>All</u>
Alaska		x	Montana		x
Arkansas		x	Nebraska		x
**Colorado	x		Nevada		x
Connecticut		x	New York		x
Delaware	x		North Carolina	x	
Florida		x	Ohio		x
Georgia	x		Oklahoma	x	
Idaho	x		Oregon		x
Illinois		x	South Carolina	x	
Iowa		x	South Dakota		x
Kansas	x		Tennessee		x
Kentucky	x		Texas	x	
Louisiana		x	Vermont		x
Maine		x	Washington		x
Maryland		x	West Virginia	x	
Michigan		x	Wisconsin		x
Missouri	x		Wyoming		x

*Arizona has been excluded from this table because only the rules of the State Parks Commission are reviewed.

**Colorado--the legislature reviews only those rules that have been in effect for twenty days or less.

There are seven ways in which review committees can control the utilization of agency rules and regulations. These control mechanisms can affect both adopted and proposed rules. Suspension and objection powers relate to adopted rules, disapproval and disallowment powers can be implemented on proposed rules. Advisory, admendment, and modification powers apply to both proposed and adopted rules. Each of these mechanisms is discussed below, beginning with the strongest control mechanism, the admendment power. The remaining powers are discussed in ascending order of their probable strength.

Admendment of either proposed or adopted rules allows a committee to delete and add on to the rules as the members deem it to be necessary. In effect, the power to amend the rules is tantamount to writing them. The constitutionality of the amendment power is suspect. According to one legal expert, "for a legislative committee to write the rules would be a serious breach of the separation of powers provision. The executive branch's ability to write and amend the rules is a technique used in enforcement of the rules, which is an executive power."¹⁹

Modification of either proposed or adopted rules means that a committee, through statutory authority, is allowed to veto parts of a rule section. Unlike the amendment power, the legislative committee can

¹⁹Interview, Bill Bates, Director of Administrative Procedures Division, Office of the Secretary of State, Tennessee (April, 1980).

only suggest needed improvements in the rule. Different from the following powers, a modification power permits a committee to reject parts of a rule without affecting other parts of that same rule section.

Suspension of adopted rules represents the committee's ability to deny the effectiveness of a rule that has been previously adopted. Suspension always pertains to a rule section. Therefore it differs from modification in that the complete rule section must be sent back to the administrative agency for changes, instead of only part of the section.

Disapproval of proposed rules allows a committee to reject a rule before it is adopted. This is the power that is analogous to the executive veto of legislative acts. A disapproval power permits a legislative committee to review and reject prospective agency rules. It differs from the veto analogy in that the administrative agency can not override the decision of the committee.

Objection to adopted rules signifies that a committee has the authority to temporarily suspend the effectiveness of an adopted rule. The objected rule is generally referred to the full legislature.

Disallowment differs from objection in that it pertains to only proposed rules. This power gives the rule review committee the authority to temporarily delay a rule from being adopted. The disallowed rule is generally referred to the full legislature, and if within a specified length of time it is not acted on then the rule will become adopted and can be used by the state agency.

The final control mechanism is the advisory power. This power is possessed by all rule review committees. The advisory power is the basic authority that the committees use in order to investigate the effects of agency rules. For those committees possessing just the advisory power the rules that they find to be objectionable must be referred to the full legislature. Usually, this referral is sent to the legislature in the form of a bill. The effectiveness of the rule is usually delayed only for the time that the bill is being acted on.

In order to understand the practical application of these powers an explanation of how they are used would be appropriate. First, it should be indicated that thirty of the thirty-six rule review committees have more than one of these control mechanisms. Therefore, these powers are often used by the review committees in combinations, not singularly as presented in the subsequent discussion.

Assume that the administrative agency has proposed a rule to change the state's minimum standards for water pollution from four parts hydrogen/one part phosphorous (4/1)E (Effective Rule) to three parts hydrogen/one part phosphorous (3/1) P (Proposed Rule) thus easing the pollution standard. On the other hand, the consensus on the rule review committee is that the standard should be raised to five/one (5/1) C (Committee Rule). Under the amendment power the committee can rewrite either the proposed or the adopted rule to the (5/1C) standard. Using the modification power, the committee can simply delete either the (3/1P) proposed or the (4/1E)

adopted and wait for the agency to conform to the (5/1C) policy of the committee. The suspension power would give the committee the authority to reject the (4/1E) adopted, and hope that the agency will promulgate the (5/1C) standard. The probability of this occurring is great, since the agency by law usually promulgates a new standard to replace the old. Under the disapproval power the committee can only reject the (3/1P) proposed, and then attempt to persuade the administrative agency to propose the (5/1C) standard. The objection power allows the committee to temporarily suspend the effectiveness of the adopted rule (4/1E). The full legislature would then arbitrate a new standard by considering it in the form of legislation. Disallowment gives the rule review committee the power to temporarily delay the use of the (3/1P) standard. Similar to the objection power the final decision would be made by the full legislature. The advisory power gives the rule review committee a definite time period, usually thirty to forty-five days, to review the proposed standard (3/1P). After this period the standard becomes effective unless the full legislature decides to act on it.

In sum, the most influential statutory mechanisms used by legislative rule review committees are the amendment and modification powers. These methods of control, as indicated in Table 3, are not widely held. The more frequently held powers of suspension and disapproval are considered to be moderately strong. The committees possessing moderate powers are the ones that have the authority to object and disallow the

TABLE 3
THE DISTRIBUTION OF AUTHORITY GIVEN TO THE STATE
LEGISLATIVE RULE REVIEW COMMITTEES

States	STRONG		MODERATELY STRONG		MODERATE		WEAK	
	Amend	Modify	Suspend	Disapprove	Object	Disallow	Advisory	
Alaska						x		x
Arkansas								x
Colorado								x
Connecticut		x	x	x	x			x
Delaware								x
Florida			x	x	x			x
Georgia								x
Idaho						x		x
Illinois						x		x
Iowa						x		x
Kansas						x		x
Kentucky						x		x
Louisiana						x		x
Maine				x		x		x
Maryland						x		x
Michigan						x		x
Minnesota			x	x	x	x		x
Missouri						x		x
Montana						x		x
Nebraska					x			x

TABLE 3 (continued)

States	STRONG		MODERATELY STRONG		MODERATE		WEAK	
	Amend	Modify	Suspend	Disapprove	Object	Disallow	Advisory	
Nevada						x	x	
New York						x	x	
North Carolina							x	
Ohio						x	x	
Oklahoma						x	x	
Oregon						x	x	
South Carolina						x	x	
South Dakota				x		x	x	
Tennessee			x	x		x	x	
Texas					x	x	x	
Vermont						x	x	
Washington							x	
West Virginia		x (only proposed)		x		x	x	
Wisconsin	x	x					x	
Wyoming							x	

rules of state agencies. The advisory power is viewed as being the least influential in that the committee is restricted as to time and control over the proposed agency rule.

An overview of Table 3 indicates that there are seven state legislative committees which possess only the advisory power. Nineteen state rule review committees can legally use both the advisory and disallowment powers. The remaining nine state committees have the potentially stronger review powers. There appears to be no geographic distribution as to which state has the stronger powers. However, Table 4 will indicate that there is a reason to believe that a connection exists between the age of the review statute and the powers granted to the committee.

Table 4 lists the states according to the anticipated strength of their rule review committees. The categories used in this determination are the design of the committee (Table 1), the extent of the committee's scope of review (Table 2), and the relative influence of the powers granted to it (Table 3). Table 4 combines these three factors as they occur within a state. Then a comparison among the states is made. The results indicate that there are thirteen variations of relative strength in American state legislatures. In order to distinguish between the states in each of the thirteen variations the age of the statute has been used. This factor is thought to be extremely important because committees tend to

TABLE 4

RANK ORDER OF THE STATE LEGISLATIVE RULE REVIEW
COMMITTEES: A REVIEW OF THE STATUTES*

<u>Category</u>	<u>Rank</u>	<u>State</u>	<u>Powers</u>	<u>Scope</u>	<u>Structure</u>	<u>Age of the Statute</u>
I.	1	Connecticut	Very Strong	All Rules	Strong	31 years
	2	Wisconsin	.. ..	.. ..	..	27 years
II.	3	Michigan	Strong	All Rules	Strong	30 years
	4	Florida	..	.. ..	..	6 years
	5	Tennessee	..	.. ..	..	5 years
III.	6	West Virginia	Very Strong	Proposed	Weak	4 years
	7	Nebraska	Moderate	All Rules	Strong	31 years
IV.	8	South Dakota	..	.. ..	..	8 years
	9	Minnesota	..	.. ..	..	5 years
	10**	Alaska	..	.. ..	..	5 years
	11	Vermont	..	.. ..	..	4 years
	12	Montana	..	.. ..	..	3 years
	13**	Illinois	..	.. ..	..	3 years
	14	Ohio	..	.. ..	..	2 years
	15**	New York	..	.. ..	..	2 years

TABLE 4 (continued)

<u>Category</u>	<u>Rank</u>	<u>State</u>	<u>Powers</u>	<u>Scope</u>	<u>Structure</u>	<u>Age of the Statute</u>
V.	16	Oregon	Moderate	All Rules	Moderate	5 years
	17	Maryland	..	.. ..	..	4 years
	18	Maine	..	.. ..	..	2 years
	19**	Louisiana	..	.. ..	..	2 years
VI.	20	Nevada	Moderate	All Rules	Weak	6 years
	21	Iowa	..	.. ..	..	3 years
VII.	22	Kansas	Moderate	Proposed	Strong	30 years
	23	Missouri	..	..	..	4 years
VIII.	24	Oklahoma	Moderate	Proposed	Moderate	5 years
	25	Texas	..	..	..	4 years
	26	Idaho	..	..	..	2 years
	27	South Carolina	..	..	..	1 year
IX.	28	Kentucky	Moderate	Proposed	Weak	4 years
X.	29	Arkansas	Weak	All Rules	Moderate	7 years
XI.	30	Washington	Weak	All Rules	Weak	17 years
	31	Wyoming	..	.. ..	..	3 years

TABLE 4 (continued)

<u>Category</u>	<u>Rank</u>	<u>State</u>	<u>Powers</u>	<u>Scope</u>	<u>Structure</u>	<u>Age of the Statute</u>
XII.	32	Georgia	Weak	Proposed	Moderate	3 years
XIII.	33	North Carolina	Weak	Proposed	Weak	3 years
	34**	Colorado	..	..	..	3 years
	35	Delaware	..	..	..	2 years

*Arizona has been excluded because the legislature reviews only the rules of the State Parks Commission.

**State has identical strengths as preceding state.

be more willing to use their review powers as the procedure develops over time. (See Chapter IV.)

A survey of Table 4 shows that there are thirteen different categories for the statutory rule review process across the states. Exactly one-fourth of the states have employed a strategy where the legislative committee allows for an emphasis on rule review (Category IV). There are five states that have extremely powerful review capabilities: Connecticut, Wisconsin, Michigan, Florida and Tennessee. With the exception of Florida and Tennessee each of these states has been reviewing rules for nearly thirty years. The median age of the rule review statutes in the American states is four years. In addition, Tennessee is the only state out of the top five that has not had an administrative procedures act for over twenty-five years.²⁰ Tennessee's act has been in force for only six years.

A 1971 ranking of the overall effectiveness of state legislatures shows a consistency with the findings in Table 4. For instance, out of the top five states, Florida was rated as high as fourth, Wisconsin was fifth and Michigan was rated eighth.²¹ Although Connecticut

²⁰Cooper, p. 13.

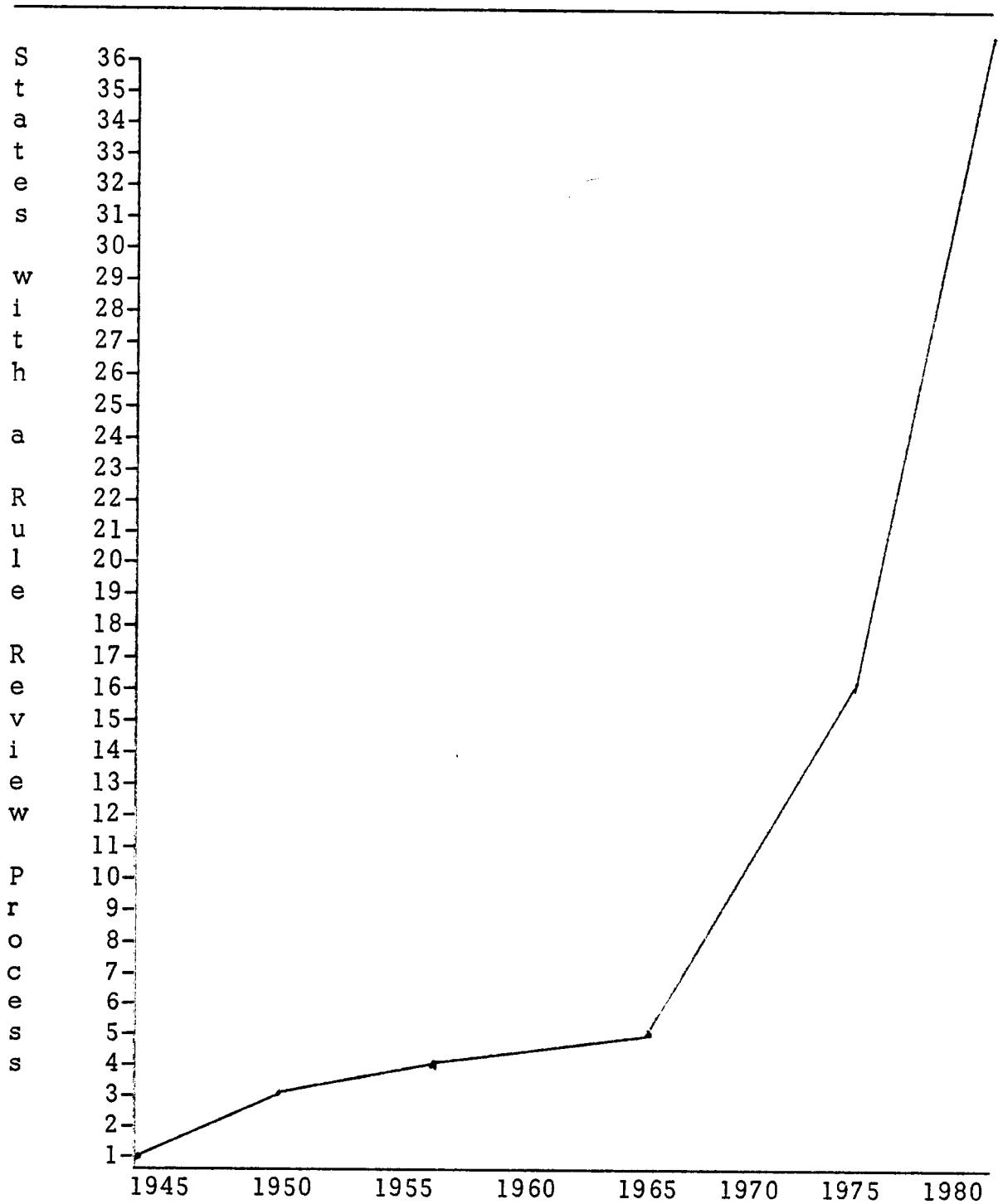
²¹Citizens Conference of State Legislatures.

received a rating of twenty-fourth among the states, its legislature was subject to massive reforms in 1970 that would not have been discerned in this study.²² In this same report Tennessee rated twenty-sixth, however the Tennessee General Assembly has also undergone massive reform since 1974.

Figure 2 indicates that the adoption of the rule review procedure by American state legislatures evolved slowly between the years of 1945 and 1970 in that only five states had adopted the procedure. Perhaps one reason for the delay in the adoption of rule review by the states is that the primary model for innovation, the United States Congress, has been unwilling to systematically use rule review. However, in the decade following 1970, rule review spread rapidly among the state legislatures. By 1980, thirty-six legislatures were using the procedure.

This rapid growth is attributed to two factors. First of all, it is believed that rule review was being used by legislatures in order to modernize. Modernization in this instance meant that legislatures were becoming more independent from the executive branch. Legislative

²²David Ogle, Strengthening the Connecticut Legislature (New Brunswick, New Jersey: Rutgers University Press, 1970).



The Year the Process was Adopted (Five Year Intervals)

Figure 2. Growth of Rule Review in American State Legislatures

review of administrative rules is a procedure that legislatures began to use in order to achieve a more equal partnership with the executive.

From this perspective rule review was a part of the movement by state legislative bodies to strengthen the role of their organization. Secondly, the status of governmental regulations became a popular political issue in the 1970's. Legislators across the states were rallying around the idea that government was over-regulating businesses and individuals. In essence, rule review became a part of the popular political crusade against "too much regulation."

Conclusion

This chapter has considered the development of rule review in state legislatures across the nation. It was found that legislative review of state agencies' rules and regulations began as a reform in administrative procedures. The Revised State Administrative Procedures Act of 1961 recommends legislative review. However, it remains vague in the manner in which it should be applied.

It was also seen that in Congress, the institution that state legislatures frequently model, rule review is conducted in a piecemeal fashion. An overview of state statutes indicates that there are numerous variations among the thirty-six state legislative review systems. The statutes also reveal that there are thirteen general categories

in regard to committee powers, scope and structure. There is also evidence to show that the new statutes are not giving legislative committees as much authority as those drafted over twenty years ago. Even though this is occurring, rule review appears to be a popular procedure which has been adopted by thirty-one state legislatures since 1970. The reason cited for this rapid adoption of rule review were legislative modernization and the popular issue that there needs to be some control over bureaucratic growth.

In conclusion, a review of state laws should only be accepted for what it is. A rule review committee may hold strong powers only to let them go relatively unused. As indicated earlier, there are factors both external and internal to a legislative body that will have an impact on the extent that oversight/rule review will be used by a legislature. The next chapter will discuss the passage and development of rule review in Tennessee as it describes these factors. It should be kept in mind that Tennessee has one of the stronger rule review processes according to its statutory provisions. Therefore, an analysis of its origin and implementation may reveal not only the reasons for the strengths of Tennessee's procedure, but also the extent of the

application of the rule review powers in the state.

CHAPTER III

THE DEVELOPMENT OF LEGISLATIVE RULE REVIEW IN TENNESSEE

Passage of the Review Procedure

As indicated in Chapter II Tennessee's General Assembly has one of the strongest rule review processes in the nation. It was also mentioned in the two previous chapters that the passage and use of this procedure across the states was in part a result of the constituent support legislators were receiving for announcing that there needed to be more control over bureaucratic growth. This was the case in Tennessee when the legislature enacted rule review in 1975.¹ However, Tennessee had also experienced an emerging legislative movement toward modernization and independence from the executive branch. This movement is believed to have contributed to the passage of rule review in the state. The first section of this chapter will briefly trace the changes in the General Assembly which have led the way toward the enactment of rule review.

The Limited Constitutional Convention of 1965, which in part mandated reapportionment² and established annual legislative sessions³ led the movement toward modernizing the Tennessee legislature. Although

¹Legislative Panel, "Discussion on the Suspension of State Agency Rules and Regulations," Transcripts, Nashville: Tennessee General Assembly, 1975.

²Constitution of Tennessee, Art. II, Sec. 5.

³Constitution of Tennessee, Art. II, Sec. 8.

the impact of redistricting has been assessed as having minimal influence on the institutionalization of the legislature,⁴ annual legislative sessions has been a change which has significantly affected legislative performance.⁵ According to Mallard, annual sessions, which began in 1968, have led to additional reforms such as annual salaries and the procedure of allowing committees to meet continuously throughout the year.⁶ Even though the annual session has been important in improving Tennessee's legislature it is still restricted to forty-five days a year. As a result, Tennessee ranks 40th among the states in the length of its legislative session.⁷

Improvement in legislative facilities can also be attributed to the annual session. Prior to 1970, the only office space provided for the legislators was their desks on the floor of the Senate and House chambers. In addition committee meetings were held within the chambers and a great deal of the legislature's business was conducted in the hotels

⁴John R. Petty, "A Comparative Study of the Institutionalization of the Tennessee House of Representatives and the United States House of Representatives" (Unpublished M.A. thesis, University of Tennessee, 1971), p. 134.

⁵Carl B. Mallard, "The Governor as a Legislative Leader in Tennessee" (Unpublished PH.D. thesis, University of Tennessee, 1979), p. 77.

⁶Ibid.

⁷The Book of States 1978-1979 (Lexington, Kentucky: Council of State Governments, 1979), p. 34.

located across the street from the Capitol.⁸ During the first legislative session in an even year, 1968, the General Assembly authorized the renovation of the War Memorial Building, which is adjacent to the Capitol Building. In 1970 legislators began occupying private offices in this building. In 1972 the legislature made another important change when it authorized the expenditure of 4.4 million dollars in order to expand legislative facilities. The Legislative Plaza, which was completed in 1975, was the result of this appropriation. Committee rooms, press facilities, cafeteria, majority leadership offices, which include the Speakers of the Senate and House, Floor Leaders, and all the officers of the standing committees and their staffs are located in this impressive legislative office building. One interesting indicator of the partisan nature of the Tennessee General Assembly is that no member of the minority party has enjoyed the convenience of having an office in the Legislative Plaza.

Other factors that have contributed toward the modernization of the legislature include recent increases in legislative salaries, consolidation of the committee system and an increase in staff support. The salary of a state legislator in Tennessee has increased from \$1,800 in 1965 to \$7,500 in 1980.⁹ The committee system has been streamlined

⁸Mallard, p. 77.

⁹The Book of States, p. 31. In addition to salary legislators also receive a daily allowance when the legislature is in session or the legislator is attending a committee meeting. This allowance has increased

from eighty-one standing committees in 1955,¹⁰ and thirty-four in 1965, to twenty-two in 1980.¹¹ To supplement this centralization of committee authority, which is extremely important to rule review, the legislature has also greatly increased its staff support. Prior to 1970, committees shared among themselves research assistants and secretaries. With the expansion of facilities each committee leader began employing personnel specifically for their committees. Currently each committee has a research analyst, one or two secretaries, and at least one attorney. This increase in staff has allowed the legislature to develop its own information services independent of the executive branch and the lobbyists.

Paralleling these reforms in the legislative system the General Assembly began to remove itself from executive domination. As early as 1967, the legislature took dramatic independent action when it cut over 30 million dollars from the governor's proposed budget.¹² In this same year the General Assembly created the Fiscal Review Committee, which is specifically designed to review the fiscal activities of the executive branch. This joint committee has emerged to be one of if not the most

from \$6.00 per day in 1955 to over \$60.00 in 1980.

¹⁰Greene et. al., p. 88.

¹¹State of Tennessee, Tennessee Blue Book, 1979-1980 (Nashville, Tennessee: State of Tennessee Publications Office, 1979), p. 80.

¹²Antoinette Thompson, "Legislative Review of the Budget in the Tennessee General Assembly, 1965-1973" (Unpublished M.A. thesis, University of Tennessee, 1974), pp. 66-67.

powerful committee in the legislature. The committee's periodic financial reports on the effects of proposed administrative budgets have frequently been instrumental in legislative opposition to them. As a probable result of this activity a 1971 study by the Citizens Conference on State Legislatures ranked the Tennessee legislature ninth among the state legislatures in its independence from the executive branch. Criteria used in this ranking were the legislature's review and oversight powers of the executive.¹³

Legislative review of administrative rules and regulations may be viewed as a continuation of the General Assembly's policy to develop and maintain independent initiative in controlling state administration. Prior to 1975, the Tennessee legislature had no formal means of reviewing state regulations. Between the years of 1973 and 1975, the only requirement relating to promulgated rules was that they were to be filed with the Office of the Attorney General. After a thirty day period the rule would become effective, if the Attorney General had no questions as to the legality of the rule. Prior to 1973, the only requirement of state agencies was the procedure of filing the rules with the Attorney General.

Rule review in Tennessee came into existence as an amendment to a year old administrative procedures act. The passage of this admendment

¹³Citizens Conference of State Legislatures, State Legislatures: An Evaluation of Their Effectiveness (New York: Praeger Publishers, 1971), p. 77.

is another indicator of the legislature's emerging independence from the executive branch. Rule review was passed into law over Governor Ray Blanton's veto and the procedure has been maintained despite the continuous attempts of state agencies to become exempt from its provisions.

Unlike most legislation which include major changes, the rule review procedure was approved by the legislature without being subjected to a committee hearing. The amendment was added to a series of amendments to the administrative procedures act on the floor of the Senate. This strategy was used because it was believed that there was not enough support in the State and Local Governments Committees to promote the passage of the bill with rule review included.¹⁴ The other amendments to the administrative procedures act, which were subject to committee hearings, included clarifications on the definitions as to which agencies were to be covered by the act and requirements that all state rules and regulations were to be published and distributed statewide in a fashion similar to the Tennessee Code Annotated.

On May 5, 1975, Senator Douglas Henry, a Democrat from Nashville, introduced the amendment for establishing rule review. The amendment when attached to the original bill received unanimous approval in both the House and Senate. On May 19, 1975 the bill was returned to the

¹⁴Interview, Tom Jensen (R. Knoxville), Former House Minority Leader, October, 1979.

General Assembly by Governor Blanton with the following veto message:

I believe that the above cited amendment would allow the legislature to invade the executive powers of the Governor and his Cabinet. It is my further belief that this provision in the bill violates both the letter and spirit of the Constitution of Tennessee.

It is (sic) from time to time rules promulgated by department heads and executive branches of government are questioned by members of the General Assembly or the citizens of this state, then I pledge to cooperate with these parties to bring about a suitable solution to the problem. In searching for that solution, however I will continue to protect the separation of powers in our system of democracy that has existed since the Constitution of the United States was adopted.¹⁵

The original Tennessee administrative procedures act was passed in 1974 during the administration of Governor Winfield Dunn, a Republican. The primary supporters of the administrative procedures act were Republican leaders, Tom Jensen, the Minority Leader of the House and Tom Garland, the Minority Leader of the Senate. Paralleling the change in administrations in 1975, legislative support for strengthening legislative control of agency rulemaking switched to the Democratic leaders. Representatives James Lanier (D. Dyersburg), chairman of the House Calender and Rules Committee, became the primary sponsor of the new amendment; however, he opposed the rule review provision. Another Democrat, Representative Larry Bates (Martin) became the primary defender of the rule review amendment. After the rule review amendment was attached to the bill which amended the administrative procedures act, Representative Lanier

¹⁵State of Tennessee, House Journal, 1975, p. 70. Hereinafter referred to as House Journal.

only reluctantly supported its passage.¹⁶

Following Governor Blanton's veto, in May of 1975, neither the bill nor its new amendment received much media exposure. The Nashville Tennessean, which is noted for its extensive coverage of state legislative news, mentioned the bill twice and only in the context of other legislative news. Throughout the two months of May and June, rule review was never given headline or editorial attention. It was overshadowed by much more sensational news. At that time interest in the legislature, as well as, in the press was centered on businesses owned by Ned Cook, a Memphis industrialist. During the previous legislative session a bill was passed requiring a state tax on goods and services generated in the state and sold in another state. As a result of this legislation Cook's companies owed taxes amounting to over \$148,000.

In challenging the legislature Ned Cook vowed to move his businesses and all the jobs that went with them out of the state if forced to pay the tax. Despite vigorous opposition from around the state, the legislature granted Cook Industries and three other businesses an exemption from the tax. Governor Blanton vetoed the measure. On June 12, 1975 the same day that the legislature overrode the Cook veto, legislative

¹⁶Representative Lanier's reluctance to support rule review is revealed in tapes located in the Tennessee General Assembly's library. These tapes were made prior to the enactment of rule review at a legislative hearing regarding administrative responsibilities in May of 1975.

rule review became reality. It was one of three vetoes that were overridden on that day. According to the Tennessean, one legislator stood up and motioned to the rear of the senate chamber as he directed the clerk to "bring them on in--bring them on in" indicating that there was very little hope for the Governor's vetoes being sustained, especially in the environment produced by the Cook controversy.¹⁷

During the June 12 debate in the Senate the rule review amendment picked up a new sponsor, Senator William Davis, an independent from Covington. The original sponsor Senator Henry withdrew his support because he was not thoroughly convinced of the practicality of legislative rule review.¹⁸ Despite this defection, Senator Davis was able to produce enough votes to override the veto. In the Senate there were eighteen affirmative votes and twelve negative ones. Only a simple majority in both houses is needed to override a veto in Tennessee. One Republican Senator, Curtis Person of Memphis, a vocal Ned Cook supporter, decided to vote against the override. The eleven remaining Republicans in the Senate voted in favor of the override. Previously on June 9, the House had voted overwhelmingly to override. The final tally was sixty-one to

¹⁷Nashville Tennessean, June 13, 1975, p. 14.

¹⁸Legislative Panel.

eleven. Out of the thirty-four Republicans only one, Charles Ashford, another Memphis legislator who favored the Ned Cook exemption, voted to sustain the veto. Apparently these Republicans were unwilling to challenge the Governor twice in one day as numerous Democrats had done.

In conclusion, the administrative procedures act amendments, which included rule review, were passed in an environment where both political parties were receiving public ridicule for succumbing to special interests. In addition, the legislature had established an independent attitude toward the executive branch. In 1975, nine out of the twenty bills vetoed by the newly elected governor were passed into law.¹⁹ This atmosphere was conducive to the strong legislative review powers presented in the rule review law.

The Aftermath

Immediately after rule review by the standing committees of the legislature became law in Tennessee there were indications that its use would not be met with complete acceptance by either the Governor or the heads of the state agencies. Initially, the Public Service Commission made several attempts to become exempt from the rulemaking and review procedures. Since 1953, the Commission had been using its own formal procedure for rulemaking. Because of this the three Public Service

¹⁹House and Senate Journals, 1975.

Commissioners were persuasive enough to have legislation introduced to exempt their agency from the act.²⁰ Subsequent to the actions of the Public Service Commission other agencies also sought exemptions. A list of those agencies seeking exemptions includes all institutions of higher learning in the state,²¹ the Tennessee Department of Employment Security²² and The Board of Review.²³ Even though the Public Service Commission's bill passed overwhelmingly in the House with seventy votes for and seven against, it was withdrawn from the Senate. As frequently occurs in the General Assembly, the impact of certain bills is not fully realized until they are passed from one chamber to the other. By the time the Public Service Commission's exemption reached the Senate the legislators began to rally around the opinion that there should be no exemptions to rulemaking, legislative review or the publications provisions of the act. As a consequence of this attitude no agency has won a full exemption from these provisions.²⁴

The Department of Employment Security and The Board of Review

²⁰Tennessee House Bill 1857, 1976 and Senate Bill 2140, 1976. Hereinafter in this thesis referred to as House Bill or Senate Bill.

²¹House Bills 1759 and 1662, 1976.

²²House Bills 1636 and 1643, 1976.

²³House Bills 2354 and 2180, 1976.

²⁴Interview, William Bates, Director of Administrative Procedures Division (February 1980).

also made efforts, in 1975, to become exempt from the act. It was their contention, especially within the Department of Employment Security, that federal funds would be jeopardized if they had to follow the guidelines of the administrative procedures act. These agencies were successful in becoming exempt from the declaratory judgments and discovery provisions within the contested cases section of the act. However, they are still subject to all other rulemaking procedures including legislative review.²⁵ The state's college and university systems (The University of Tennessee and the Board of Regents) did win minor exemptions for disciplinary rulemaking, curriculum, administration and graduation requirements. Similar to the experiences of the other agencies these systems were not able to receive approval for a complete exemption, as they had hoped. The only complete exemptions from legislative review in Tennessee are the divisions of government mentioned in the original act. They include the military, the courts, the governor and the legislature itself. In addition, specified emergency rules are allowed to go into effect for a maximum of one-hundred and twenty days and there are exemptions for the fishing and hunting seasons.

The most serious lack of acceptance was initiated before the rule review program was actually implemented. On June 21, 1975, at a

²⁵Scott Gallant, A Manual for State Administrators on the Uniform Administrative Procedures Act (Nashville, Tennessee: Office of the Secretary of State, 1979), p. 17.

seminar for state employees Governor Ray Blanton announced that the policy of his administration would be "to absolutely ignore" legislative review of administrative rules and regulations. It was the Governor's belief "that the legislative branch's job is to legislate, and the administrative branch's job is to administrate and in this provision (rule review) the legislature is trying to take over the administrative branch."²⁶

The ideas presented in this statement indicate that the Governor held a very narrow view of the constitutional arrangement. In practice, state agencies do not act as if they are purely executive, legislative or judicial. At best they perform a combination of functions. As stated by the sponsors of the legislation, the purpose of rule review is not to interfere with the activities of state agencies, what it will do is to provide the legislator and the public better access to them.²⁷ In essence, the Governor's threat had no real substance since the administrative procedure act requires that all proposed rules be filed with the Secretary of State--a legislatively appointed office.

There has been one court case, Acuff v. Commissioner of Tennessee Department of Labor,²⁸ in which the petitioner attempted to invalidate

²⁶Governor Ray Blanton, Address made to constitutional officers, select members of the General Assembly, and heads of several state agencies (June 21, 1975). Tennessee General Assembly library.

²⁷Legislative Panel.

²⁸Acuff v. Commissioner of Tennessee Department of Labor, 554 S.W. 2nd 627 (1977).

the administrative procedures act because rule review by a legislative committee was unconstitutional. The claim was dismissed, however, because the issues presented in the case lacked any pertinence in regard to legislative authority. The opinion of the court did point out that the rule suspension section was "a questionable procedure and may be unconstitutional" but, to assume unconstitutionality of one section of the administrative procedures act would not invalidate the entire act.²⁹

A House subcommittee in 1977 studied the possibility of a test case in order to determine the constitutionality of the rule review statute. The subcommittee reported that a test case would be ill advised because of the absence of any case law on either the federal or state level. Also the subcommittee felt that an adverse opinion by the State Supreme Court regarding rule review might foreclose any future attempts to refine the law. In effect, a test case may leave the legislature with no alternative except to amend the constitution, which it cannot do alone, and in Tennessee it cannot do easily.³⁰

Another important movement that questioned the rule review procedure came about as a result of a request by Governor Blanton. The issue of rule suspension (disapproval had not yet become a part of the law)

²⁹Ibid., p. 628.

³⁰Steve Cobb, Chairman, Report of the Subcommittee on the Review of Administrative Regulations (March 22, 1977).

by a single legislative committee was studied by the Office of the Attorney General as to its constitutional merits. On December 22, 1975, Assistant Attorney General Richard Lodge delivered a letter to the Governor stating that the amendment did not violate the doctrine of separation of powers, as the Governor had claimed. In short, the logic of the Attorney General was that if the legislature has the ability to grant rulemaking powers to state agencies, then the legislature should have the authority to take them away. On the other hand, the Attorney General did question the delegation of this authority to the standing committees of the legislature. Since a rule suspension was in effect a repeal of a matter that had identical force as a statute and because statutes could not be repealed by a single committee, neither could agency rules and regulations. The delegation of authority was also judged to be unconstitutional because the act of rulemaking and repealing was in the Attorney General's opinion analogous to "making laws" which is a purely legislative power that cannot be delegated to a single committee. The following is an excerpt from the Attorney General's opinion; it should be remembered that this opinion is not legally binding and carries with it only the power of persuasion.

Section 21 permits a standing committee of either house to suspend a regulation having the effect of law. The action does not even require the concurrence of the appropriate committee of the other House. Nor must the suspension be put before the General Assembly. The suspension may last forever and may be for any purpose, whether just or arbitrary. Finally, any delegation of legislative power must be a

delegation with guidelines within which the discretion granted must be used. Lobelville Special School District v. McCanless, supra at 274. The legislative committees are given no standards by which to judge the exercise of their power of suspension.³¹

Current Development

Recent changes in the review process reveal that the opinion of the Attorney General was used in part. Even though the statute still reads that "any appropriate committee" can suspend the rules of an agency, the legislators found this practice to be too cumbersome to operate effectively. So in 1977, the Speaker of the House, Ned Ray McWherter created the House Committee on Government Operations. In 1978, the Senate version of this committee was created. These committees became responsible for two phases of legislative oversight, rule review and the newly enacted sunset provisions (Tennessee Government Entity Review Law).³² The committees on government operations meet jointly once a month. The Senate committee has eleven members, six Democratic, four Republican and one independent (1979). The House committee consists of fourteen members, nine Democratic and five Republican. Eight

³¹Richard Lodge, Assistant Attorney General of Tennessee, in a letter addressed to Governor Ray Blanton (December 22, 1975). (Personal Copy--Bill Bates, Director of Administrative Procedures, Office of the Secretary of State, State of Tennessee).

³²Tennessee Code Annotated, 4-29-101 through 4-29-207.

members are needed for a quorum and both committees pass motions separately by a simple majority. There are currently (1980) four staff personnel assigned to work with both committees: one attorney from legal services, two attorneys from the Administrative Procedures Division of the Secretary of State's Office, and one non-attorney, who is assigned directly to the committees. With the exception of the Fiscal Review Committee, the previously mentioned financial oversight committee, the rule review committees have more staff personnel than any other legislative committee. Primary staff responsibilities are preparing rule summaries, legal briefs and other requested information from the members of the committees.

During the 1978 legislative session, the General Assembly decided to use the advice of the Attorney General even further. At that time the Assembly passed an amendment to the administrative procedures act that gave the committees the authority to disapprove of agency rules before they were made effective. According to the law, that took effect in December of 1978, each agency must file its new rule with the Secretary of State. After this the affected agency is required to wait for a period of forty-five days. If within that period the committees on government operations fail to act on the rule then the rule becomes effective. When the committee decides to act on the rule (disallowment) then it must give the affected agency a fifteen day notice before it can schedule a

hearing on the proposed rule.³³

During the next legislative session, in 1979, the act was amended slightly in order to offer guidelines, as the Attorney General had advised, to the review process. Currently, disapproval or suspension of a rule must be based on grounds that it has been found to be "illegal, unreasonable or contrary to legislative intent."³⁴

During the next session in 1980, the legislature approved a bill, which reorganizes the committees on government operations. Beginning in January of 1981, the committees will consolidate to form the Joint Committee on Government Operations. Membership on the committee will consist of eighteen legislators, nine from the Senate and nine from the House. Unlike the present arrangement all motions will be voted on jointly, with a simple majority required for passage. A quorum is made when a majority of the members are present.

Another important change occurring in 1980 dealt with revising the rule summaries received by the committee members. Prior to January 1980, all summaries were prepared by agency staff and included comments and recommendations from the legislative staff. Other than this there was no prescribed form in the development of these summaries. William N. Bates, the Director of the Administrative Procedures Division of the Secretary of State's Office devised a more formal method in order to provide

³³Tennessee Code Annotated, 4-510 (h).

³⁴Ibid.

the committee members with more useful information. Each summary is now subject to a three step process. First, the agency promulgating the rule is required to cite the statutory authority of the rule and then summarize each provision of the rule, subsequent to this the agency must answer the following seven questions.

1. What is the practical and actual effect of the rule?
2. What persons, corporations, municipals or governmental units will be most directly affected by the rule and how?
3. Why is this rule necessary? What is the justification for the new rule, amendment of rule(s) or repeal of existing rule(s)?
4. Are these rules mandated by federal law or federal regulations? If so, explain and provide the federal citation mandating adoption of these rules. To what extent, if any, have you altered the text of federal regulations and/or added additional state requirements by rule?
5. Names of persons or organizations connected with the agency and of persons outside the agency urging adoption or rejection of the rules.
6. Are there any opinions of the Attorney General or have any opinions been requested relating to any provisions of these rules? If yes, please attach.
7. Any other information the agency considers relevant to the

understanding of the rules.³⁵

In addition to this, the agency is also required to file a fiscal impact statement with the Administrative Procedures Division which indicates any financial impact the rule may have on the state.

The second step in the development of the rule review summary involves a meeting between legislative staff and agency personnel. During this evaluation meeting, all pertinent agency information on the rule is examined. The legislative staff is then responsible for clarifying and anticipating all reasonable questions that may be posed by the legislators during the committee hearing. The final step in the preparation of rule summaries involves the legislative staff writing an abstract of the rule, as well as an evaluation of the agency summary. This information is available only to the members of the committee.

Summary

This chapter has reviewed the formal development of legislative rule review in Tennessee. It was seen that the introduction of rule review in Tennessee was the culmination of legislative modernization and a change in the executive-legislative relationship. In addition, there is some reason to believe that rule review received broad legislative support because of frequent constituent complaints about agency rules and the

³⁵William N. Bates, State Agency Seminar on Legislative Oversight of Rules (January 25, 1980).

popular political issue that government was over-regulating business and individuals.

In Tennessee rule review came about as an amendment to a bill that amended the administrative procedures act. This bill, which passed both the House and Senate overwhelmingly, was vetoed by Governor Ray Blanton. The override of the veto passed easily in the House, but in the Senate a switch in three votes would have sustained the veto. Immediately thereafter the Governor announced that he would ignore the law. Nevertheless rule review by a legislative committee became law and it has not been ignored since all agency rules must be filed with the Office of the Secretary of State.

The initial attitude of state agency officials in regard to rule review was not much different from the Governor's. In fact, several state agencies were nearly successful in becoming exempt from the review procedure. It was felt that the rule suspension power violated the separation of powers provision of the state constitution. To date no legally binding action has been taken against the legislature and its new powers.

The year 1980 has brought two significant changes to the review process. First of all, the committee structure will be altered so that a Joint Committee on Government Operations, a specialized oversight committee, will be formed. The committee will start operating in January of 1981. The second change has greatly affected the quality of information

concerning agency rules and regulations received by the committee members. This information, known as a rule summary, is currently being drafted in a uniform fashion, regardless of which agency is affected. Prior to January 1980, rule summaries lacked special form and were pieced together primarily by agency, legislative staff and lobbyists.

This chapter has shown that the Tennessee General Assembly is intent to maintain and develop its review process. What this has meant in terms of legislative committee activity is the focus of the following chapter. The extent of the committees' involvement is important in regard to legislative-administrative relations. The idea of accountability, which has been discussed as an important facet of this relationship, may strengthen when there are identifiable signs of the committees' willingness to act on a rule. Therefore, the next chapter will give specific attention to the committees' suspensions and disapprovals of agency rules and regulations.

CHAPTER IV

RULE REVIEW: THE ACTIONS OF TENNESSEE'S LEGISLATIVE COMMITTEES

In 1975, the rule review committees in Tennessee began suspending the rules and regulations of state agencies. This chapter will concentrate on these specific actions of the review committees. Through examining the rules that have either been suspended or disapproved by the committees the nature and importance of rule review is discerned. In addition, attention will be given to the various relationships affected by rule rejection. The relationship among the private sector, regulatory agencies, and the legislative committees (members and staff) are basic to the understanding of the process of rule review.

Initially when the rule review committee acts on a rule it can either approve it or place it on notice. The rules receiving notice are transferred to the beginning of the agenda for the next month's committee hearing. It is only during this second hearing that the review committee can reject the rule (suspension or disapproval). It should be kept in mind that a rejected rule is a decision by legislators on the review committee that the affected agency by promulgating or using the rule is not acting according to "legislative intent." This intent is largely determined, in respect to agency rules and regulations, by the approval and rejection behavior of the rule review committee.

Since the inauguration of the process in 1975 there have been

eleven rules disapproved and four rules suspended by the review committees in Tennessee. Eight additional rules have received notice and were eventually approved by the review committee. A disapproval is the rejection of a rule that an agency is attempting to adopt. Those rules which have been previously adopted can only be rejected by the review committee's suspension power. Appendix B lists all twenty-three rules in chronological order of their suspension, disapproval or receiving notice.

Typologies Based on Rule Rejections

An examination of the fifteen disapproved and suspended rules indicates that there are three basic types of rules being rejected. It is believed that under the conditions similar to those described in each of these situations the chances for a rule being rejected are greatly increased. Two of the general conditions are classified according to who gains from the rule being rejected. The third type occurs when the review committee rejects a rule because it considers the issue to be a nonregulatory matter. The three general conditions are:

1. Private industry gains--when there is conflict between the industry and the large diversified agency.
2. Broader interests gain-- when the smaller specialized agency works in collusion with the businesses it regulates without consideration of the broader interests.

3. Committee deference to the full legislature--when any regulatory agency attempts to adopt or use a rule which is similar to legislation that the legislature reviewed and refused to accept.

These typologies have been devised in order to clarify the rejection behavior of the rule review committees. The number of rejected rules have fallen almost equally into each type. Five are listed in Type One, four in Type Two and four rule rejections have been classified in Type Three. This distribution illustrates that rule review is not singularly directed toward curbing the extent of government control.

The ensuing discussion will be divided into three sections, one for each of the three descriptive types of rule rejection. Each section will follow the same basic form in that the rejection type will be briefly identified. Then a list of rejected rules will be given, which will be followed by a detailed discussion of the conditions for these particular rejections.

Type One: Private Industry Gaining Rule Rejections

The first general type of a rule being rejected occurs when state agencies attempt to use or promulgate rules which are contrary to the view of the regulated industry. To a great extent the rule is rejected because the affected industry was successful in approaching and ultimately persuading committee members to vote against the rule. Generally speaking, there will be a competing view

of interested party (parties) that is being supported by the administrative agency. However, the parameters of this opposing viewpoint are restricted in that this side of the issue is argued by an agency official. The burden of proof for demonstrating the necessity of the rule is always the responsibility of the agency. This type of rule rejection also indicates that the state legislature is willing to provide certain industries with special consideration. This consideration is a product of the review process in that legislators, who may benefit from cooperation with these businesses, now have access to the regulations (aside from legislation) to which industry is so frequently opposed.

Out of the fifteen suspended and disapproved rules between December 1975 and May 1980 five have followed this pattern. Table 5 lists these rules in chronological order.

The first rule suspended by a legislative committee in Tennessee occurred in December of 1975. This was a set of rules which governed the operation of surface coal mining in the state. The Department of Conservation had begun to act under a set of rules which conformed and in some cases exceeded the standards set by the Federal Environmental Protection Agency. The coal mining interests of the state felt that these regulations were unjust in that compliance would call for enormous expenditures while benefiting only a few people. The industry's primary objection to the rule was the extensive provisions for revegetation of mined areas.

TABLE 5

SUMMARY OF REJECTED RULES/TYPE ONE: PRIVATE INDUSTRY GAINING RULE REJECTIONS

Date	Department or Agency	Description of the Rule*	Action Taken	Legislative Committee
November 1975	Conservation	Raised the requirements for the operation of strip mining in the state. Affected both environmental and safety regulations. (0400-3-7.03)	Suspended December 1975	General Welfare and Environmental- Senate
February 1976	Revenue	Placed a tax on the "services rendered" by the state's opticians. Equivalent to the state's sales tax. (1320-51.44)	Suspended March 1976	Commerce- House
November 1978	Public Health	An emergency rule which established state guidelines for residential homes for the aged. (1200-8-0)	Suspended December 1978	Committee on Government Operations (CGO), House
November 1978	Revenue	Disallowed businesses from deducting certain items from the computation of their gross sales taxes. (1320-4-5-52)	Disapproved December 1978	CGO, House

TABLE 5 (continued)

Date	Department or Agency	Description of the Rule*	Action Taken	Legislative Committee
August 1979	Public Health- Air Pollution	Establishes standards for pollution control--creation of non-attainment area, which requires higher quality air standards and prohibits plant expansion. (1200-3-19-03)	Disapproved April 1980	CGO, Senate

*Explains the basic effect of the rule. Numbers listed at the end of each description are index numbers for the rule section found in the Official Compilation of the Rules and Regulations of the State of Tennessee.

The coal lobby was successful in its bid to persuade members of the Senate General Welfare and Environmental Committee to use its newly acquired rule suspension power to get rid of this rule. Thus, legislative review of administrative rules and regulations in Tennessee began with a volatile issue that escaped publicity¹ and kept good relations between the state's coal industry and the legislature.

The next suspension of a rule, by a legislative committee, was similar in characteristics to the first one. In March 1976 the House Commerce Committee was persuaded by the state's opticians that their services should not be classified as an item subject to the state's sales tax. The rule, which made these services taxable, was promulgated by the Department of Revenue in 1975, despite the objection of the state's optician association. Noted for extensive lobbying efforts in the General Assembly, members of this association began discussing this issue with legislators on the House Commerce Committee. This committee, which is generally assigned business tax measures, became the second standing committee of the General Assembly to suspend an agency regulation.

The first rule suspension by the newly formed Committee on Government Operations (CGO) of the House (There have been two suspensions by the CGO. See Appendix B.) was used in order to discontinue the

¹A review of the Nashville Tennessean for the months of November and December of 1975 indicated there was no reporting of the suspension of these rules.

emergency rules regulating nursing homes. Similar to the nature of the two initial suspensions, the lobbying efforts of the nursing home operators were decisive. These regulations were written in order to reform the conditions in the state's nursing homes. It was the opinion of the Department of Public Health that even though nursing homes must be certified to operate, they were not attempting to improve the quality of their facilities. These regulations established criteria for safety and the use of special apparatus (handrails, type of bedding, etc.) before these businesses would be allowed to operate in the state. The Nursing Home Administrators, another lobbying group, protested these changes stating that they were unjustifiable and the costs of complying with the rules were beyond the capacity of the businesses involved.

The first disapproval of a proposed rule occurred in December of 1978. This was also the first occasion that the CGO could disapprove a rule since the power had just become effective. In this action the House CGO disapproved the Department of Revenue's proposed rule regulating the computation of gross income for retail businesses in the determination of their state sales taxes. Again, the primary issue of this conflict was over the supplemental services (tailoring, repairs, consultation, etc.) provided by the retail businesses. The language of the proposed rules made these services subject to the state's sales tax. According to one source, various retail and labor organizations were

opposed to the sanctions of this rule.²

The most controversial set of rules, which demonstrates this conflict between agency and business, were promulgated in the fall of 1979. These rules drafted by the Department of Public Health-Air Pollution Division resulted in the classification of two industrial sites in the state, Columbia and Rockwood, as polluted "non-attainment" areas. This meant basically two things. First, because of the air quality, the industry receiving such status was not allowed to expand the operations of its plant. Secondly, the industry was required to install additional air pollution control devices. Primary opposition to these rules came from the Tennessee Manufacturer's Association and the Union Carbide Corporation, the owner of the Columbia plant. These interest argued that the methods for monitoring the pollution in the Columbia area were extremely unfair. The industry spokesman also presented evidence to the review committee that showed that the new pollution devices, which were required to meet attainment standards, would warrant a plant "shut down" that would result in extensive layoffs.³

The Air Pollution Control Board of Tennessee argued in favor of the proposed rules. The view of the Board was that the improvements needed in these plants would be purchased at "minimal costs." In

²Interview, Joe Barnes, Chief Counsel for the Committees on Government Operations (June, 1980).

³Union Carbide Corporation, Carbon Product Division, Columbia, Tennessee, "Comments Concerning Columbia Non Attainment," (September 11, 1979).

addition, it would not take a great deal of time (avoiding layoffs) to comply with the rules. The Board also claimed that federal funds used in controlling air pollution would be cut if the industries refused to comply and the legislative committee disapproved of the attainment standards.⁴

The Committees on Government Operations continued to mull over these issues for nearly eight months, even though the statute establishing rule review states that postponement (receiving notice) of a proposed rule can last no longer than forty-five days. Finally, in April of 1980 the Senate CGO voted to disapprove the rule as it related to the monitoring procedures in the Columbia area, thus favoring the views of the Union Carbide Corporation.

In sum, this first pattern of committee rule rejection indicates the significance of lobbying efforts. In each of the preceding cases the affected industry had well-prepared summaries that defended their position. Each committee member received a copy of these summaries well in advance of the committee hearing.⁵ The actions of the committee members also suggests the presence of the electoral connection. The coal industry, the optometrists, nursing home administrators, the retail

⁴Air Pollution Control Board of Tennessee, "Board Resolution Concerning the Adoption of Rules: 1200-3-19-03" (June 28, 1979), No. 4-79, p. 1.

⁵Interview, Scott Gallant, Assistant Director of Publications, Administrative Procedures Division, Office of the Secretary of State (November, 1979).

merchants and manufacturers association have all made substantial financial contributions to the campaigns of state legislators.⁶

This type of rule rejection also indicates that rule review does deal in matters of substance as opposed to simple housekeeping measures. In fact, it appears as though rule review may be a method for resolving volatile issues in a manner that does not lend itself to a great deal of attention from the press. However, legislators who are involved can claim credit for saving industry from "undue regulations."

The most significant aspect of this type of rejection is that rule review provides a new access for industry in their conflicts with regulatory agencies. This access is much less expensive, and on occasion less time consuming than court intervention. It may also give industry a more profitable return on their campaign contributions. According to two CGO staff members there has only been one occasion where a powerful lobbying organization has been unsuccessful in its attempt to have a rule suspended or disapproved.⁷ This occurred when the CGO sustained the application of the non-attainment area rule to the Rockwood plant (steel refinery), which was opposed by the Tennessee

⁶Common Cause of Tennessee, Financing of the Tennessee 90th General Assembly (Nashville: Common Cause, 1977).

⁷Interview, William Bates, Director of Administrative Procedures Division, Office of the Secretary of State (June 1980); Joe Barnes (June 1980).

Manufacturer's Association.

This type of rule rejection is also important because three out of four rule suspensions are found in this category. This again emphasizes the effect of strong lobbying efforts. In the Tennessee review procedure suspension of the rules was the only power possessed by the rule review committees from 1975 through 1978. During these years committee rule review was conducted unsystematically. Each rule reviewed by a committee was conducted in order to satisfy the complaints made about it. Therefore, the lobbyist played a central role in the initial review, as well as, in the final rejection of the rule. Starting in January of 1979, the Committees on Government Operations began to systematically review each new rule as it was proposed by the administrative agency. Only one rule has been suspended since this required systematic review of proposed rules was initiated. (See Appendix B.)

This type of rule rejection also illustrates legislative activity which is related to the "over-regulation" issue. Apparently, as it exists in Tennessee, there has been minimal objection to new rules, which average over four hundred new rule sections a year. The initial suspension of the standing committees appear to have been the only examples where effective regulations were rejected because they were thought to be too restrictive. One conclusion from this observation is that the complaints about "over-regulation" tend to be

generalized ones, which have in only a few instances been directed toward a specific rule.

Type Two: Broader Interests Gaining Rule Rejections

The second type of rule rejection has tapped a seemingly paradoxical trend in that private businesses in combination with state agencies are drafting regulations strictly in order to foster their own interests, as opposed to some broader interest. A crucial difference between the first and this second type of rule rejection is that the agencies involved generally have a smaller scope of authority. Most of the agencies found in this type have been established in order to regulate a single type of business.

In these examples the broader interest is thought to reflect the views of the majority of the people. Decreasing state expenditures, creating more jobs, and preventing possible abuse of state regulations have been found to be situations that have received broad interest support. In essence, the concept of broad interest is one that implies that changes made by specialized groups may have a detrimental effect on society as a whole. Out of the fifteen rejected rules four have followed this pattern. Table 6 lists these rules in the order that they have appeared before the committee.

In December of 1979, the House CGO disapproved a rule promulgated by the Alcoholic Beverage Commission (A.B.C.). This rule was

TABLE 6

SUMMARY OF REJECTED RULES/TYPE TWO: BROADER
INTERESTS GAINING RULE REJECTIONS

Date	Department or Agency	Description of the Rule*	Action Taken	Legislative Committee
June 1979	Public Health Division of Nursing Home Administrators	Establishes school for Nursing Home Administrators regulated by The Nursing Home Board of Examiners. 1979 Defined School's Philosophy, Purpose, Administration, Organization and Finances. (1020-106-5)	Disapproved July	CGO, House
November 1979	Alcoholic Beverage Commission	Eliminated regulation on personal and employee use of liquor inven- tory in wholesale and retail outlets. Also liberalized the monitoring of such inventories, which is limited to eight cases of fifths per week. (0100-3--.15)	Disapproved December 1979	CGO, House
December 1979	Department of Education	Increased the standard for ancho- rage of school bus seats. Re- quired the use of a larger bolt, which had a substantial fiscal impact. (\$200.00 per bus) (0520-1-5--.03)	Disapproved January 1980	CGO, House

TABLE 6 (continued)

Date	Department or Agency	Description of the Rule*	Action Taken	Legislative Committee
February 1980	Board of Examiners for Architects and Engineers	Licensing procedures for landscape architects created. Provides for examination, disciplinary hearing, and review board. (0120-1)	Disapproved March 1980	CGO, Senate

*Explains the basic effect of the rule. Numbers listed at the end of each description are index numbers for the rule section found in the Official Compilation of the Rules and Regulations of the State of Tennessee.

written in order to repeal a regulation on the private use of liquor inventories by wholesale and retail owners and employees. The purpose of the existing regulation was to restrict the "out of the market" sales of liquor by keeping strict inventories and controlling the specific amount (eight cases of fifths per month) that employees and owners could use for personal consumption. The liquor industry in alliance with the A.B.C. felt that this limitation was much too restrictive. This repeal of a rule was promptly rejected by the CGO of the House because of the opinion that to allow larger personal inventories would lead to "bootleg" sales, as well as, avoidance of state taxes.

Although under a different set of circumstances it appears that the Department of Education was also involved in a similar type of arrangement. One month prior to the disapproval of the Department's rule, the House CGO disallowed (a thirty day notice) all the Department of Education's minimum standards used in governing the state's public school system. (See Appendix B.) This was done because the Commissioner of Education had decided to publish the minimum standards and distribute them among the school systems before the CGO had the opportunity to review them. The cost of the publication and distribution was \$17,000.⁸ As a result of this action the committee staff was instructed by Chairman Bob Davis (D. Chattanooga) to review all the

⁸William Bates (April 1980).

minimum standards very carefully. However, at the next committee meeting, one month later, all the standards with exception of a new standard for anchoring school bus seats, were approved. This rule required that a newer and heavier bolt be used on all the seats in public school buses. After a month's research legislative staff could find no examples in Tennessee that the present bolts were defective or inefficient. In the staff's opinion, changing bolts would have a substantial financial impact (\$200.00 per bus) on the state while having little if any safety justification. It was also revealed that all research and summaries delivered to the committee members from the Department, came by the way of the industry that manufactured and installed the newer bolts. An industry spokesman also appeared before the committee in order to argue the necessity of the rule.

This type of rule rejection indicates that certain state agencies may be vulnerable to the desires of the industry which it regulates. Legislative review provides a check on this association so that all divergent interests may be heard before the rule comes into effect. Throughout state government there are various commissions and agencies that regulate one type of industry. It is apparent that these groups could engage in a kind of rulemaking that would be unsuitable to certain broader interests within our society. This was especially true in the A.B.C.'s compatible attitude toward the liquor industry.

In July of 1979, the CGO of the House disapproved a set of rules

which would have given nursing home administrators the authority to establish a training center for those wanting to enter the profession. If they were allowed to do so then the Board of Examiners for Nursing Homes would have had complete autonomy in the licensing of these administrators. It was the opinion of the legislators that the Board of Examiners had gone far beyond the intent of the legislation that created their board.

A similar set of circumstances also caused the rejection of a set of rules promulgated by the Board of Examiners for Architects and Engineers. This Board attempted to restrict entry into the trade of landscape architects. In establishing a licensing procedure for landscape architects only qualified individuals, who passed a state exam, would have been allowed to bid for state contracts, as well as, other private construction ventures. The CGO of the Senate rejected this change because the legislature's intent was to establish certification (less restrictive) instead of licensing procedures.⁹

In essence this second type of rule rejection has shown that rule review committees are aware of the problem of having specialized agencies governing a single type of business. There is a tendency on the part

⁹ Licensing procedures establishes a commission, which can write rules, decide on contested cases and govern the occupation. Certification is a term developed by the legislature as a compromise; a certified profession has no commission thus having no legal authority to restrict entry into the profession.

of both government and business to protect and promote the livelihood of existing businesses. In these cases the review committee served as an arbiter in determining how much protection the government should allow, thus protecting broader interests.

The final type of rule rejection indicates that on occasion certain issues are of such a nature that the review committee feels compelled to refer the rule to the full legislature.

Type Three: Committee Deference to the Full Legislature

From time to time rules appear before the review committee that have either been presented to the legislature as a bill or the subject matter of the rule is considered to be statutory material. If this is the case then the rejection of the rule does not necessarily mean that the legislature disagrees with its intent, as in the two previous patterns. It does mean that they believe that the full legislature should be involved in the acceptance of the policy. Therefore, administrators have found that one consequence of having legislative rule review is that it is extremely difficult if not impossible to adopt regulations that parallel the intent of bills that the legislature considered and refused to pass.¹⁰ CGO Committee staff has been given the task of sorting through the stacks of legislation that the General Assembly considers each year. In 1980 over 1300 pieces of legislation were introduced in Tennessee's

¹⁰William Bates (April 1980).

legislature. In addition, certain issues are considered to be matters in which the full legislature has jurisdiction. The examples found in the list of rejected rules include certifying new professions, local rules, and involvement in federally supported programs. Table 7 cites the rejected rules that follow this pattern.

In February of 1979, a rule promulgated by the Public Health-Medical Assistance Division allowed community hospitals to receive medicaid benefits even though the hospital had not complied with medicaid regulations. Despite the assurances of the agency, the rule was rejected because committee members felt that non-compliance might jeopardize federal funds to the medicaid program. In addition, members of the committee argued that the approval of a grandfather clause which allows existing yet non-complying agents to receive funds would not be within the jurisdiction of a single committee. In order for the agency to apply a grandfather clause these legislators felt that the issue should have the sanction of the full legislature.¹¹

The CGO of the Senate disapproved a rule in February of 1980 that would have allowed local governments more discretion in taxing businesses within their jurisdiction. Legislators jealously guard their power to oversee the taxing operations of the local governments in their districts. The review committee by not approving this measure

¹¹Joe Barnes (June 1980).

TABLE 7
SUMMARY OF REJECTED RULES/TYPE THREE: COMMITTEE DEFERENCE
TO THE FULL LEGISLATURE

Date	Department or Agency	Description of the Rule*	Action Taken	Legislative Committee
February 1979	Public Health Medical Assist- ance	Grandfather clause--to allow community health centers to re- ceive medicaid benefits prior to complying to the medicaid regulations. (1200-13-2.-06)	Disapproved March 1979	CGO, Senate
January 1980	State Board of Medical Examiners	Licensing of physician's assist- ants. Gave physician's assist- ants the right to perform certain duties. (088-2--01)	Disapproved February 1980	CGO, House
February 1980	Revenue	Waived certain procedures for local government to adopt spe- cialized business taxes. (1320-4-5-27)	Disapproved March 1980	CGO, Senate
March 1980	Alcoholic Beverage Commission	Removed the restriction on the advertising of liquor prices and name brands. (0100-1-.01,3, 01-.011)	Disapproved May 1980	CGO, Senate House

*Explains the basic effect of the rule. Numbers listed at the end of each description are index numbers for the rule section found in the Official Compilation of the Rules and Regulations of the State of Tennessee.

continues the policy of allowing each legislator the right to work with their respective local governments.¹² With the consent of the legislators and local officials, generally local bills are introduced and passed as legislation. These local bills restrict the effects of the policies to only the specified political jurisdiction.

Another rule that follows this type of rejection was one that was promulgated by the State Board of Medical Examiners. In effect, this rule established physician's assistants as a licensed profession in the state. On two different occasions this same issue was considered in legislation and defeated. The most notable reason for its failure was that the state's optometrists and ophthalmologists opposed allowing physician's assistants to become licensed. The reason for their opposition was that they feared the P.A.'s would begin to assume part of their duties. One duty most frequently mentioned by the ophthalmologists was the testing of eye refractions. Immediately following the rejection of the rule establishing physicians assistants, a bill was reintroduced that finally gained legislative approval.

The final rule rejection that falls in this category occurred in March of 1980. The A.B.C. promulgated a rule which removed the restrictions on the advertising of liquor prices and name brands

¹²According to a 1953 Tennessee Constitutional Amendment all local legislation needs two-thirds approval of the local governing body. Tennessee Constitution, Article XI, Section 9.

throughout the state. Supported by the state's liquor industry, this repeal of the rules received severe opposition from religious groups around the state. As a result of mounting public pressure and publicity the CGO of both the Senate and House disapproved of repealing the restrictions on liquor advertising. From the perspective of the state's consumers the competition arising from this advertising might not only result in lower prices but might also serve to provide more information for the buyer. The state's liquor industry encouraged this viewpoint in that the volume of liquor sales may increase as a result of advertising. However, the even broader and more effectively organized religious interests feel that advertising prices and locations would serve to encourage the consumption of alcohol. Therefore, in order to effect a compromise among these groups the review committee rejected the rule change because as several committee members stated this issue would be better served if it was considered by the full legislature. They cited the advertising of pharmaceutical drugs as a similar issue that was handled by the full legislature instead of the rule review committee.

Miscellaneous Cases

Two of the fifteen rejected rules were not considered under the three types of rule rejection. However, they are still important in that they do reflect the rule review committee's willingness to accept responsibility for arbitrating opposing interests when the enabling

legislation remains vague in its intent. Table 8 presents the two remaining rules.

The suspension of the Board of Regents attempt to withdraw all of their rules concerning faculty members stems from the previous attitude of this agency that it should not be subject to the administrative procedures act. Basically, the Board of Regents felt that establishing uniform methods for promotion, leave policy and definitions of faculty members would leave the Board unduly responsible for the actions of the administrators in each institution (colleges and universities). This was reflected in the Gray v. State Board of Regents¹³ decision which held that the Board did have responsibility for the actions of administrators in regard to student behavior in each college and university within its system.

The legislative committee rejected the withdrawal because of the desire of the committee members that a centralized agency needed to be responsible for administrative hearings and rulemaking. The removal of the regulatory chapters dealing with the policies and procedures concerning faculty members was viewed as a step that would relieve the Board of Regents from these obligations.

The next rejection was a disapproval of a rule promulgated by the Department of Human Services. In this instance the rule review

¹³Gray v. State Board of Regents, Tennessee, 561 Southwest Reporter 2 d 140 (1976).

TABLE 8
MISCELLANEOUS RULE REJECTIONS

Date	Department or Agency	Description of the Rule*	Action Taken	Legislative Committee
November 1978	Board of Regents	Mandated the withdrawal of the agency's rules in regard to the definition of faculty members, the promotion of faculty and faculty leave policy. (0240-2-6.01, Chapters 0240-2-7 and 0240-4-5)	Suspended December 1978	CGO, House Senate
April 1979	Human Services	Established procedures for foster care in the state. Created timetable for permanent family, and foster care commission. (1240-4-5.05-.06)	Disapproved June 1979	CGO, Senate

*Explains the basic effect of the rule. Numbers listed at the end of each description are index numbers found in the Official Compilation of the Rules and Regulations of the State of Tennessee.

committee served as an arbiter between the foster care programs and the state's privately owned orphanages. The Department of Human Services was operating under a statutory mandate that they create a commission, as well as, standards for foster care programs in the state. Religious interests around the state objected to the standard which designed a timetable for sending children into a permanent family environment. The primary reason for their objections was that they felt that the sectarian orphanages would be eliminated due to the rapid take over of the foster care system. As a result of this objection from the orphanages the House CGO disapproved the rule so that the religious interests and the state agency would have more time to reach a compromise. Two months later, a rule was approved by the CGO that kept essentially the same timetable for permanent residence, yet gave the orphanages representation on the state commission which was to govern the operations of the program.

In summary, there are three types of rule rejection in Tennessee. The first deals with the large diversified agencies conflicting with the industries they regulate. It was seen that rule review has been used by major corporations and business associations to get rid of unwanted regulation. The second is concerned with curbing the influence businesses have over certain small specialized agencies. In part the review committee has served as an arbiter in insuring that the financial control and the administrative procedures used by state agencies

do not promote and protect businesses beyond the agency's statutory authority. It is in this manner that the rule review committees serve the state's broader interests. The third type reveals that the committee is inclined to reject rules that they feel should be considered by the full legislature. It was seen that certain issues are considered to be statutory, and rules that have similar intent of previous unsuccessful legislation are deferred by the committee back to the full legislature.

Factors that Contribute Toward Rule Rejection

There are several factors which have an influence on committee rejection of rules and regulations. The most frequently reoccurring items which have the greatest impact on rule rejection are the lobbying efforts of interested parties, the nature of the agency involved, and staff summaries. The following section will elaborate on the effects of each of these factors since they are viewed as being extremely important to the operations and outcome of rule review in Tennessee.

Lobbyists. The effects of lobbying should not be underestimated. In Tennessee, Common Cause has identified over one-hundred and fifty business, labor and partisan associations that are organized interest groups.¹⁴ To an extent most of these groups contribute money, manpower, and information to legislators. Legislators are therefore

¹⁴Common Cause of Tennessee, Financing of the Tennessee 90th General Assembly (Nashville: Common Cause/Tennessee, 1977), pp. 151-152.

dependent upon these organizations not only for reelection (See Chapter I) but on occasion their ability for decisive action depends on the information that they receive from the lobbyists.

Rule review is an area of legislative activity that lends itself to interest group influence. Due to their small numbers, the key members on the rule review committee are easily identified. Therefore, lobbyists can centralize their efforts toward these key individuals. Also due to apparent lack of press coverage of the review committee, lobbyists have more flexibility in their operation. They do not have to be as sensitive to the broader issues which sometimes create operational barriers when working with the full legislature. In brief, the lobbyists are more capable of determining the outcome of their efforts in rule review than they would be with the full legislature. It is a much more comfortable arena in which to work.

Nature of the Agency. State agencies have a wide range of responsibilities. For example, one of the largest agencies, the Department of Public Health, regulates numerous different types of businesses. The regulated businesses range from the producers of groceries to the suppliers of medical products. The objective of this agency, and others similar to it, is to regulate so that appropriate levels in quality of services and goods are maintained in the state. Any controversy between these large agencies and the regulated businesses centers on the question of what is appropriate. As seen in the first type of

rejected rules, their perspectives may differ.

On the other hand, there are smaller more specialized agencies which in part were created by the legislature for the businesses being regulated. One example, reviewed in the rejection types was the Alcoholic Beverage Commission. At times it becomes apparent that there is a tendency for this agency and the liquor industry to jointly determine acceptable standards. The rule review committee on occasion was rejecting these standards because of the feeling that the agency and business were not considering broader interests. Support for these broader interests is usually found in the research the legislative staff conducts on each promulgated rule. The content of this research is found in the rule summary which is discussed in the following section.

Rule Summaries. The rule summary is the information that the committee members receive prior to reviewing and voting on the rule. To a great extent most legislators do not have the technical expertise to make fair judgments on these rules without the information provided to them in the summaries. The summaries also serve to shape the legislator's initial opinions concerning the rules, since they are distributed to them two weeks prior to the committee hearing. In addition, questions asked by the legislators during these hearings frequently parallel the issues raised in the summary. In this way the rule summary generally guides the content of the committee hearing.

Rule summaries also indicate the importance staff has in regard

to the actions of the review committee. Committee staff is responsible for the preliminary inquiry into the necessity of rule changes. It is therefore the responsibility of staff to determine the important issues and report on these issues in the summary. A detailed discussion of the exact form used by the staff in the development of rule summaries is found in Chapter III. Perhaps the most unique aspect of the rule summaries is that they are more comprehensive than any legislatively produced information received on proposed legislation. In effect this means that proposed rules are being scrutinized by staff more thoroughly than proposed laws.

Rule Review: Prospective on the Future

Although rule review in Tennessee is into its sixth year, the actual practice of continuous review by a specialized committee did not begin until 1978. The importance of the continuous approach is indicated by the increasing number of rule sections which have been rejected by the committees since 1978. Table 9 lists these rules corresponding to the year they were either disapproved or suspended. The table also shows the number of proposed and emergency rule sections which were filed by state agencies during the specified year. The final column in the table indicates the success rate of each promulgated rule section. This rate has been calculated by dividing the number of proposed rules reviewed by the number of rejected rules. The results are then subtracted from 100 percent.

TABLE 9

A LISTING OF TENNESSEE'S STATE AGENCIES RULES AND REGULATIONS: REJECTED RULES, PROMULGATED RULES AND THE APPROVAL SUCCESS RATE (JULY 1, 1975 - MAY 30, 1980)

Year	Rejected Rule Sections		Promulgated Rule Sections*		
	Suspensions	Disapprovals**	Proposed	Emergency	Success Rate
1975	2	n/a (July-December)	174	29	.989
1976	2	n/a	658	56	.997
1977	0	n/a	308	23	1.000
1978	34	1	492	16	.929
1979	0	9	381	110	.977
1980	0	40 (January-May)	121	27	.669

*Promulgated rule means any section of the rules presented by a single agency at one time. Each rule section covers a specific aspect of the agency's program.

**It is suspected that the number of disapprovals may decrease in the future since the administrative agency was recently given the authority to withdraw a rule when it is obvious that it will be disapproved. Disapproval did not become a committee power until 1978.

Perhaps the most important finding in Table 9 is the growing use of the disapproval power. It appears that the review committee of 1981, the Joint Committee on Government Operations, may be more willing to use the disapproval power if present trends are followed. Apparently, the procedure has changed to the point that committee members are more comfortable in their task of continuous review of agencies proposed rules. The suspension of effective rules can neither be practical nor systematic. Continuous suspension would require periodic review of all the rules of each agency. Sunset legislation, which requires legislative review of the structure and objective of state agencies may be a better forum for reviewing effective rules.

Another finding of Table 9 is that there has been no noticeable decline in the number of rules being promulgated over the past five years. The claim that rule review would curb the number of rules seems not to be the case. However, there is speculation that the agencies are drafting higher quality rules as a result of the requirements of the rule summary and the anticipation of the legislative hearing.¹⁵

Conclusions

Tennessee is one of the several states that now have a situation where the body of law that contains rules and regulations either equals

¹⁵William Bates (April 1980).

or exceeds the statutory law.¹⁶ In Tennessee, during the 1977 legislative session the volume of newly adopted rules and regulations published in the Tennessee Administrative Register amounted to 2,061 sections, subsections and paragraphs.¹⁷ The responsibility of the rule review committee to analyze and evaluate each proposed rule section is extremely demanding. The review committee in Tennessee has similar powers in regard to rules and regulations with the exception of drafting the rules, as the legislature has in making laws. These are significant powers that may have an enormous influence over private individuals, selected groups, small and large businesses, and all segments of government.

The potential for abuse of the review system by powerful lobbying factions is apparent. The traditional safeguard of checks and balances within a legislative system exist only in a mild and unused form in Tennessee.¹⁸ On the other hand, rule review is a method that can establish a form of political accountability for administrators,

¹⁶Report of the National Conference of State Legislatures (Lexington, Kentucky: NCSL, 1978), p. 7.

¹⁷Scott Gallant, Assistant Director of Publications, Administrative Procedures Division, in a memo written to Mike Call, Administrative Assistant to the Speaker of the House of Representatives (October 20, 1977).

¹⁸A Joint Resolution, which is passed by both houses of the legislature, is the only check on the powers of the review committee other than the passage of legislation.

who are making political decisions. The anticipation of legislative review calls for administrators to be sensitive to the attitudes, perceptions, and previous behavior of the rule review committee.

Rule review may also result in legislators on the CGO making rule changes without accepting responsibility for them. As a consequence, agency administrators may also feel that they should not be accountable for the changes made by a legislative committee. It is in this fashion that rule review can be used to undermine the authority of administrators. In addition, since many of the enabling statutes for administrative programs remain vague in their intent, legislative involvement in the details of the program can make intent more sharply defined. When the legislature alters a rule the intent of the legislature becomes explicit. In effect this may tend to restrict administrative authority.

CHAPTER V

SUMMARY AND CONCLUSIONS

This thesis has focused on a basic problem in American democratic governments. As a result of the changing complexities in governing our society, certain segments of our democratic government have sought to become removed from public accountability. The most noticeably insulated segment of government is the administrative agency. To a great extent agencies have been allowed to make significant changes in the policies of government without being subjected to continuous inquiry by the elected legislative bodies.

Since the legislature is the branch of government which creates and delegates powers to administrative agencies it is responsible for overseeing their activities. Legislatures have primarily used the financial aspects of agency's programs to control their actions. In several ways this method of oversight has not always proved to be effective. Therefore, newer procedures for oversight are beginning to emerge. One of these procedures, legislative review of administrative rules and regulations, has been the subject of this study.

Administrative rules and regulations have the force and effect of law. They are powerful tools used by agencies which influence an extensive list of both public and private operations. Therefore, an analysis of legislative review of agency rules and regulations has

vital importance.

A model for rule review was discussed in Chapter I in order to describe the factors which have the greatest impact on a legislature's willingness to use rule review. The three components of the model--environment, legislators, structure--were identified through a synthesis of the research that has been conducted on oversight. It is assumed that under certain conditions the oversight/rule review behavior of a legislature will be intense. Under dissimilar conditions the review behavior will weaken. The two major factors within the legislative environment that contribute toward the degree of intensity of oversight are executive-legislative relations and the demands constituents place on the government. Legislators appear to be motivated by a sense of accomplishment and the meaning rule review may have in regard to re-election. The literature also indicates that legislators can be more successful in their oversight endeavors if the legislative structure is designed in such a fashion that oversight is encouraged. This depends primarily upon the committee system, which needs staff support and the legal authority to act on an agency rule.

Research reveals that certain state legislatures are beginning to make rapid improvements in their performance in oversight.¹

¹Rosenthal, Legislative Performance; Pierce; Crane; Lyons and Thomas.

One of the procedures cited for helping in this improvement was rule review. Rule review was found to be an oversight procedure that should have an important impact on the relationship between the administrative agencies as it adds to the responsibility of the legislature.

A review of state statutes reveals that during the early development of rule review, in the 1950's, two basic patterns of the procedure became evident. The first pattern gives the review committee the powers to either reject or accept agency rules. The second pattern allows the committee to review and then refer questionable rules to the full legislature. As rule review became more popular the procedures adopted by the states began to vary according to the structure of the review committees, the scope of authority and in the powers delegated to the committees. Presently there are thirteen variations in the manner in which state legislatures go about overseeing agency rules.

Another finding of the statute review was that there are seven different types of control mechanisms used in rule review by state legislative committees. These mechanisms range from the amendment power, which is allowed in one state, to the advisory power, that is possessed by all thirty-six state review committees.

In Chapter II the states with rule review procedures were ranked according to the anticipated strength of their review committees. From this ranking it was seen that the stage of legislative development within a state related to the strength of the review committees. Five states,

including Tennessee, were found to have stronger review capabilities. It appears, however, that Tennessee's General Assembly is the least developed of the five leading states; the length of its legislative session and the compensation paid to its legislators fall below the high standards set by the four other states.

Between the years of 1945 and 1970, only five state legislatures began reviewing rules and regulations. In the decade following 1970, thirty-one of the thirty-six states adopted their review procedure. This rapid growth can be attributed in part to legislative modernization. However, a major impetus for the sweeping acceptance of rule review statutes was the highly charged political issue which claimed that there was too much governmental regulation. In essence, rule review became the practical means of a popular issue which politicians enthusiastically supported.

In this study it was discussed that there are certain limitations to a survey of state statutes. In fact, it was seen that on occasion the statutory language could be misleading when one attempts to understand the operation of rule review in a specific state. Although it was beyond the scope of this study to look at a range of rule review operations across the states, the procedure and its operation in Tennessee were examined in detail. This examination has two parts. First of all, the historical context in which rule review was enacted was considered because it is deemed to be extremely important in terms of the present

characteristics of the law. Secondly, the actions of the rule review committees in the Tennessee legislature were analyzed according to their suspensions and disapprovals of agency rules.

The historical review indicated that the procedure received a less than amiable reception from both the governor and agency officials. In fact, the governor promised to "ignore the law" and several state agencies attempted to secure exemptions from it. Opponents of rule review claimed that it violated the separation of powers provision of the state constitution. They contended that rule review was an encroachment upon administrative expertise. In addition, Governor Blanton argued that the delegation of suspension (rejecting effective rules) to a single legislative committee concentrated too much authority within the legislature. Nevertheless, rule review by legislative committee in Tennessee has survived and developed. A brief list of those items considered to be important in terms of the development of rule review include: installment of the disapproval power (rejecting proposed rules), consolidation of the rule review committee, increase in staff, and the distribution of comprehensive information (on the rules being reviewed) to the committee members.

What does all of this mean? In order to answer this question this study has examined each rule or regulation that has either been suspended or disapproved by a review committee in Tennessee. It was found that rule review may become involved in volatile issues. In

fact, the first rule suspended by a committee in Tennessee was one that called for more restrictive measures used in regulating strip mining. From the outset it appeared that rule review would be used by interest groups and the legislature in order to prevent agencies from unilaterally implementing regulations that could have an economic impact on businesses within the state.

It was seen that rule review committees direct their rule rejection activity toward three types of rules. Type One identifies five examples in Tennessee where businesses have benefited from the actions of the rule review committee. The Second Type identifies instances where smaller state agencies and businesses have worked together in order to promulgate rules that promote and protect certain business operations. Broader interests such as the protection of state revenues, the monitoring of possible criminal violations, and the maintenance of free entry into businesses without undue restriction have influenced the rejection of promulgated rules. The Third Type of rule rejection recognizes the ability of the review committee to reject rules because they have features which are similar to proposed legislation that the full legislature considered but refused to pass.

Conclusion: Has It Made a Difference?

This study has been conducted with an emphasis on committee review of agency rules and regulations. Committees are the locus of decision-making in a legislative body and specialization is crucial to their operation.

Engaging extensively in rule review requires the special knowledge and swift action which is offered by a committee system. Therefore, an analysis of the rule review committees across the states is considered to be crucial when determining the impact of the oversight procedure in American state legislatures.

Most importantly, however, rule review has had an impact on administrative-legislative relations. This relationship may be changing in at least two ways as a result of rule review. First, it was seen that the concept of accountability for administrative regulations may now be shifting. For instance, administrators should be accepting the reality of continuous legislative involvement in their promulgation of rules and regulations. Although rule rejection is only actualized in a few cases, the anticipation of frequent legislative hearings should have a powerful controlling effect on the administrator. The legislature, perhaps unwittingly, also has accepted new responsibilities for which it too should remain accountable. When the legislature chooses to reject agency rules, in effect it is becoming involved in the details of agency programs. In doing so, legislators are influencing legislative-administrative relations by broadening the scope of legislative intent, thus increasing the responsibility of the legislature.

Legislative intent is a concept which needs further study. Currently, however, it is apparent that on occasion there is a difference between voiced opinions of legislators and administrative interpretations

of legislative acts. Rule review will certainly strengthen legislative authority as it restricts the interpretative powers of state agencies. Essentially legislative intent has been thought of as a concept which remains intrinsic to the legislative act as it is handed down to the administrative agency. Rule review is an oversight procedure which mandates legislative follow-through in the specific details of the legislative act. Intent, therefore, becomes something less of an interpretation and more of an actual statement of objective by the legislature. A potential legal problem could arise from the procedure in that committees in at least eight states can determine the intent of the full legislature in regard to agency rules.

From an overall perspective, the legal concept of separation of powers will be affected by the continuance of rule review. Traditionally, rules and regulations have been considered to be the jurisdiction of administrative agencies. Legislative rule review changes this outlook. As legislators begin to initiate changes in the rules, the rules may no longer be viewed strictly as enforcement of the laws. As a result administrative rules should assume the same inherent value as the laws themselves. This is a product of rule review which benefits administration because the rules and regulations analyzed and approved by the legislature carry with them the support of legislative intent.

Does this really matter? There has been only one court case in Tennessee which dealt with this issue. The petitioner in this case

claimed that the rules of the State Board of Regents were invalid because they did not receive the explicit approval of the legislature. The issue was never resolved, however, because the rule which was violated was also part of the state's criminal code.² With no other example it appears that there is very little basis to the claim that rules somehow become stronger because they have received legislative approval. From an overall perspective rule review has made only a minor impact on the operations of the state legislature. Perhaps the anticipation of rule analysis by the legislature on the part of administrators has made them more deliberate in their drafting of rules. There is no evidence to indicate that administrators are unwilling to promulgate rules because of the fear of legislative review.³ In terms of practical effect, five years of rule review in Tennessee have given the state less restrictive strip mining regulations, liquor store owners are still unable to advertise and their personal consumption of alcohol is still being monitored, nursing homes continue to operate relatively unregulated and the state has saved \$40,000 by not purchasing new bolts for its public school buses and so on. In sum, rule review is an interesting idea which has made minor changes, but it has not significantly effected the operations of state government.

²Gray v. State Board of Regents, 561 Southwest Reporter 2nd Edition, 140, Tennessee, 1976.

³Interview, William Bates, Director Administrative Procedures Division, Office of the Secretary of State (June 1980).

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APPENDIXES

APPENDIX A

A SURVEY OF STATE LEGISLATIVE RULE REVIEW STATUTES

The review committees will be listed in alphabetical order in the following manner:

Name of the state, Year of statute, Code number
Powers of the committee

Name of the committee, membership requirements, voting procedures
and other added information

1. Lists which rules the committee is allowed to review.
2. This is a listing of the time requirements as they relate to the delegated powers. Time requirements can be listed in several different ways depending upon which entry is responsible for acting on the rule. For example, in Tennessee the agency is required to act by either amending, modifying or repealing a disallowed rule or objected rule within thirty days. In some states the time constraint is placed on the committee, especially in reference to proposed rules. In other states the full legislature must act within a certain time period or the committee action will supersede it. In all states proposed rules will be approved automatically if there is no legislative action within a defined length of time.

Alaska 1975 44-62-32 24.20-400
Disallowment and Advisory

Administrative regulations review committee; six members, three from Senate and three from House, at least one member must be from each political party, simple majority

1. All Rules Reviewed; two-thirds of legislature must sustain committee action.
2. Committee has forty-five days to review proposed rule before it becomes effective

Arkansas 1973 6-610, 4-617
Advisory

Legislative Council Committee; thirty members, sixteen House and fourteen Senate, bi-partisan restrictions, various duties

1. All Rules Reviewed
2. Council has thirty days to review before rule becomes effective.

Colorado 1977 24-4-103
Advisory

Joint committee on administrative regulations; six members, three House and three Senate, no partisan restriction; all rules reviewed by the committee are referred by legal staff

1. Proposed Rules Reviewed
2. After agency's adoption rule becomes effective, the committee has twenty days to advise full legislature as to the merits of the rule.

Connecticut 1949, 1967 amended 1979 4-48a (4-170)
Modify (all rules), Suspension and Disapproval

Joint legislative regulations review committee, fourteen members, eight House and six Senate, proportional partisan representation, simple majority

1. All Rules Reviewed
2. The committee has sixty five days to select rule for review or it becomes automatically adopted.

Delaware 1978 Title 29-6455
Advisory

Delaware Administrative Commission; three members all non-legislative refers all matters to full legislature

1. Proposed Rules Reviewed
2. For adoption on expected date agency must submit proposed rules thirty days prior to that date

Florida 1974 Chapter 120
Suspension and Disapproval

Joint administrative procedures committee, six members, three House and three Senate, no partisan restriction, simple majority, several guidelines for disapproval, one listing state that the proposed rule must not have an adverse affect on the competitive market

1. All Rules Reviewed
2. Automatic approval within twenty-one days from filing

Georgia 1977 3a-103
Advisory

All standing committees, two-thirds of both houses must agree with committee referral

1. Proposed Rules Reviewed
2. Committees must act within twenty days or rules are automatically adopted

Idaho 1978 67-5218
Disallowment and Advisory

Two subcommittees; simple, no restriction as to membership

1. Proposed Rules Reviewed
2. Agencies are restricted in that each proposed rule must be submitted at the beginning of the legislative session. An exception to this is the adoption of emergency rules.

Louisiana 1978 49.968
Disapproval and Advisory

All standing committees; each committee is assigned to a specified agency. All rules adopted or proposed by these agencies can be reviewed by the standing committees. The Governor has veto power over the actions of the committees.

1. All Rules Reviewed
2. Agency must submit rule to assigned committee twenty-one days prior to its expected adoption.

Maine 1978 5-11105
Disallowment and Advisory

Standing committees of both houses

1. All Rules Reviewed; all rules expire five years from adoption
2. No time restrictions

Maryland 1976 Article 40-40a (amended 1964)
Disallowment and Advisory

Joint standing committee on administrative executive and legislative review; ten members, five Senate and five delegates, proportional partisan representation, simple majority

1. All Rules Reviewed; committee has various duties aside from rule review
2. No time restrictions

Michigan 1950, 1963 Constitutional Amendment Section 24.71
Suspension and Disapproval

Administrative regulations review committee, six members, three Senate, three House, no partisan restrictions, simple majority, committee operates only when legislature is not in session

1. All Rules Reviewed
2. Committee has twenty days to select rule before it becomes effective

Minnesota 1975 3.965
Disallowment and Advisory

Legislative commission for review of administrative rules; ten members, five Senate and five House, no partisan restriction, simple majority

1. All Rules Reviewed
2. Agency must submit proposed rules prior to the legislative session

Missouri 1976 536.037
Disallowment and Advisory

Committee on administrative rules; ten members, five Senate and five House, no partisan restrictions, simple majority

1. Proposed Rules Reviewed
2. No time restrictions

Montana 1977 82-4203.1
Disallowment and Advisory

Administrative code committee; eight members, four Senate, four House, partisan representation must be equal, committee meets monthly

1. All Rules Reviewed; no less than twenty legislators must agree that effective rule should be reviewed.
2. No time requirements

Nebraska 1949 amended 1979 84-901.1
Objection and Disallowment

Administrative rule review committee; seven members, unicameral legislature, simple majority, no partisan restriction

1. All Rules Reviewed
2. Objected and disallowed rules must be changed or resubmitted by agency within thirty days or rules are suspended. Legislature must sustain suspensions. In addition, statute specifically mentions that committee cannot amend the rules.

Nevada 1977 233B.066-.068
Disallowment and Advisory

Rule review commission; no statutory requirements dealing with make-up of committee, simple majority

1. All Rules Reviewed
2. Commission sends all disallowed rules to standing committee which is assigned to affected agency. Standing committee must act on rule within thirty-five days. Without compliance, rule is automatically adopted.

New York 1978 Legis. 87
Disallowment and Advisory

Administrative regulation review commission, six members, three Senate and three Assembly, bi-partisan restriction four majority party and two minority, simple majority

1. All Rules Reviewed
2. The committee has twenty-one days to review the rule or it is automatically adopted.

North Carolina 1977 120-30.24-.35
Advisory

Administrative rules review committee; seven members, no membership or partisan restrictions; refers all decisions to Legislative research commission

Legislative research commission; ten members, five Senate and five House, commission includes non-legislative appointees

1. Proposed Rules Reviewed; all findings sent to commission. Commission sends reviewed rules to full legislature in the form of a bill.
No action on proposed rule constitutes approval.
2. No time restriction

Ohio 1978 101.35
Disallowment and Advisory

Joint committee on agency rule review; fourteen members, seven Senate and seven House, four to three partisan representation, simple majority

1. All Rules Reviewed

Ohio, continued

2. Committee must submit disallowed rule to the legislature within sixty days, without compliance rule is automatically approved.

Oklahoma 1975 75-308
Disallowment and Advisory

Standing committees of either house

1. Proposed Rules Reviewed
2. Committees have sixty days to submit disallowed rule to the full legislature. Without compliance, the disallowed rule is automatically adopted.

Oregon 1975 171.705

Disallowment and Advisory

Legislative counsel committee; eleven members, five Senate and six House, no partisan restriction, simple majority

1. All Rules Reviewed; committee has various duties aside from rule review
2. Committee has sixty days to submit disallowed rule to legislature. Without compliance rule is automatically approved.

South Carolina 1979 1-23-125
Disallowment and Advisory

Standing committees of both houses

1. Proposed Rules Reviewed
2. Committees must submit disallowed rule to the full legislature within ninety days. Without compliance, rule is automatically adopted.

South Dakota 1972 reenacted 1975 1-26-1.1
Disapproval and Advisory

Interim rules review committee; six members, three Senate and three House, four majority party and two minority, three-fourths vote for disapproval

1. All Rules Reviewed
2. If rule is not selected for review in twenty days after it is filed then it is automatically approved

Tennessee 1975, 1978 amended 1980 4-535
Suspension and Disapproval

Present--Senate committee on government operations, eleven members
no partisan restrictions, simple majority, quorum one-half membership

Present--House committee on government operations, fourteen members,
no partisan restrictions, simple majority, quorum one-half membership

January 1, 1981--Joint committee on government operations, eighteen
members, nine Senate and nine House, no partisan restrictions,
simple majority, quorum one-half membership

1. All Rules Reviewed by either committee until 1981
2. The committee has forty-five days to select rule for review. Agency has thirty days to meet committee recommendations or rule is suspended or disapproved.

Texas 1976 6252-13a
Disallowment and Advisory

Standing committees of both houses

1. Proposed Rules Reviewed
2. Committees have thirty days to submit disallowed rule to the full legislature. Without compliance the rule is automatically adopted.

Vermont 1976 3-817
Disallowment and Advisory

Legislative committee on administrative rules; eight members, four
Senate and four House, partisan representation is proportional to membership, simple majority

1. All Rules Reviewed
2. Committee must submit disallowed rule to the legislature within thirty days. Without compliance rules are automatically approved.

Washington 1963 34.04.160
Advisory

Legislative Council referral to all standing committees

1. All Rules Reviewed
2. Agencies must submit all proposed rules ten days prior to legislative session, exception is given to emergency rules.

West Virginia 1976 29a-3-11
Modification (proposed rules), Disallowment and Advisory

Legislative rulemaking review committee, twelve members, six senate and six delegates, bi-partisan restriction, simple majority, all actions are referred to standing committees.

1. Proposed Rules Reviewed
2. Committee has six months to approve rule, disallowed rule is sent immediately to standing committee which is assigned to affected agency. One hundred and eighty days without action rule is automatically approved. Standing committees cannot disapprove rules that are dependent upon federal funds.

Wisconsin 1953 amended 1977 13.56
Amend, Modify (all rules), and Disallowment

Joint Committee for review of administrative rules; ten members, five senators and five house members, bi-partisan, simple majority, Objection declared invalid also statute has been declared one-half invalid--opinion Attorney General of Wisconsin 1977

1. All Rules Reviewed
2. Agency has sixty days to either change disallowed rule or resubmit the rule. Without compliance rule is disapproved automatically.

Wyoming 1977 28-9-101
Advisory

Legislative Council Commission referral to all standing committees

1. All Rules Reviewed; Council selects the rules
2. Agencies must submit rules within sixty days of their expected adoption, without compliance rules will not go into effect

APPENDIX B

SUMMARY OF DISAPPROVALS, SUSPENSIONS AND RULES RECEIVING NOTICE: THE ACTIONS OF THE RULE REVIEW COMMITTEES IN TENNESSEE

<u>Date</u>	<u>Department or Agency</u>	<u>Description of the Rule*</u>	<u>Action Taken</u>	<u>Legislative Committee</u>
1. November 1975	Conservation	Rule raised the requirements for the operation of strip mining. Rule affected both environmental and safety regulations. (0400-3-7-.03) (11.22-11.23)	Suspended December 1975	General Welfare and Environmental- Senate
2. February 1976	Revenue	This was a tax placed on the "services rendered" by opticians. The tax equalled the state sales tax. (1320-5-1.44)	Suspended March 1976	Commerce House
3. November 1978	Public Health	This was an emergency rule, that established state guidelines for Residential Homes for the Aged. The industry felt that the regulations were too restrictive. (1200-8-0)	Suspended December 1978	Committee on Government Operations (CGO) House
4. November 1978	Revenue	The rule allowed businesses to deduct certain items from the computation of their gross sales taxes. (1320-4-5-52)	Disapproved December 1978	CGO House

5. November 1978	Board of Regents	Rule included three sections. One for definition of faculty members, the second for the promotion of faculty and the third dealt with faculty leave policy. (0240-2-6.01)	Suspended December 1978	CGO House and Senate
6. February 1979	Public Health Medical Assistance	Rule used grandfather clause in order to allow community health centers to receive medicaid benefits prior to complying to the medicaid regulations. (1200-13- 2-.06)	Disapproved March 1979	CGO Senate
7. April 1979	Human Services	Rule established procedures, commission and board for foster care program. (1240-4-5-.06)	Disapproved June 1979	CGO Senate
8. April 1979	Motor Vehicle Commission	The creation of licensing proce- dures for used car dealers and used car parts dealerships. (0960-1-.09)	Notice- Passed June 1979	CGO Senate
9. June 1979	Public Health Nursing Home Administra- tors	Rule established a school for Nursing Home Administrators which would be regulated by the Nursing Home Board of Examiners. Defined School's Philosophy, Pur- pose, Administration, Organization and Finance. (1020-106-5)	Disapproved July 1979	CGO House

10. August 1979	Public Health Air Pollution	Rule deems property adjacent to a Rockwood factory a non-attainment area (plant expansion is illegal in this area). In addition, plant is required to purchase more extensive pollution control devices. (1200-3-19-03)	Notice and Passed April 1980	CGO Senate
11. September 1979	Public Health Air Pollution	Rule deems property adjacent to a Columbia factory a non-attainment area. Industry feels that pollution monitoring was inadequate. (1200-3-19-03-.39)	Disapproved April 1980	CGO Senate
12. September 1979	Finance and Administra- tion	Rule governs the policy and procedures governing the write off of accounts receivable to the state. (0620-1-9)	Notice and Passed	CGO Senate
13. September 1979	Revenue	Rule specifies certain methods for local governments to use in their property tax assessments. (1320-4-7.01)	Notice and Approved November 1979	CGO Senate
14. October 1979	General Services	Rule allows certain agencies direct purchasing authority. And direct authority in the disposal of state surplus property. (0690-2-1-.12)	Notice and Passed November 1979	CGO House

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|----------------------|-------------------------------------|---|--|--------------|
| 15. November
1979 | Alcoholic
Beverage
Commission | Repeal of a rule that regulates personal and employee use of liquor inventory in wholesale and retail outlets. Repeal would have liberalized the monitoring of such inventories. (0100-3-.15/4/a) | Disapproved
December
1979 | CGO
House |
| 16. November
1979 | University of
Tennessee | Rule dealt with disciplinary hearings for students. If a student chooses to use administrative hearing as provided in U.A.P.A. then he waives his right to appeal to the Chancellor and the Board of Trustees. (1720-4-10-.12) Rule passed despite strong staff unfavorable recommendation. | Notice and
Passed
December
1979 | CGO
House |
| 17. November
1979 | Department of
Education | All the rules and regulations for the minimum standards of the state's public school systems. Reason for notice--The Department has published and distributed the rules as a cost of \$17,000 prior to committee approval. (1020-1-5) | Notice and
Passed
(partial)
January
1980 | CGO
House |

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|----------------------|--|---|--|---------------|
| 18. November
1979 | Department
of Education | Rule increased the standard for anchorage of school bus seats. Required the use of a larger bolt which had a substantial fiscal impact. According to staff no safety justification was indicated. (0520-1-5-.03) | Disapproved
December
1979 | CGO
House |
| 19. January
1980 | State Board
of Medical
Examiners | Rule provided for certification of physician's assistants. Previous bill with similar intent as this rule failed to pass the full legislature. In addition, optometrists opposed rule because of the fear that P.A.'s would assume part of their duties. (0880-2-.01) | Disapproved
February
1980 | CGO
House |
| 20. January
1980 | University
of Tennessee | Rule provided that all cars parked on the Chattanooga campus property be registered by the University. Maximum fine was set at \$20.00 and impoundment fee. The school can also withhold credit, degrees, and portions of faculty payroll. (1720-3-13.01) | Notice and
Passed
February
1980 | CGO
Senate |
| 21. February
1980 | Revenue | Rule waived certain procedures for local governments to adopt certain business taxes. (1320-4-5-27 (3)) | Disapproved
March | CGO
Senate |

22. February 1980	Board of Examiners for Architects and Engineers	Rule went beyond intent of enabling statute which gave cer- tification privileges to landscape architects. Rule provided licen- sing procedures such as exami- nation, disciplinary hearings and review board. (0120-1 and -2)	Disapproved March 1980	CGO Senate
23. March 1980	Alcoholic Beverage Commission	Rule removed the restriction on the advertising of liquor prices and name brands. Repeal of rules (0100-1.01, 3.01-.011)	Disapproved May 1980	CGO Senate and House
24. April 1980	Real Estate Commission	Rule repealed prohibition on agents using answering services. And certain restrictions on pro- cedures for calculating commis- sions. (1260-1 and 1260-2)	Notice and Passed	CGO House

VITA

Robert Craig Williamson was born August 26, 1950, in Bowling Green, Kentucky. In 1968, he graduated from University High School which was affiliated with Western Kentucky University. He completed his Bachelor of Arts degree in Political Science from the University of Tennessee in 1974.

During his years as an undergraduate he worked as a juvenile counselor at Lakeshore Mental Health Center and as an owner of a service contracting company. He is presently employed by the General Counsel Division of the Tennessee Valley Authority.

In 1977, he served as a University of Tennessee Alumni Intern in the state's general assembly. In that same year he married Susan Jane Creek; they presently reside with their daughter, Nikki, in Concord, Tennessee.