

**MINUTES OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**

Tuesday, October 8, 2002 – 2:00 p.m. – Room 416 State Capitol

Members Present:

Sen. Howard A. Stephenson, Senate Chair
Rep. David Ure, House Chair
Sen. Mike Dmitrich
Sen. Ed Mayne
President Al Mansell
Sen. Michael G. Waddoups
Rep. Judy A. Buffmire
Rep. James R. Gowans
Rep. Merlynn T. Newbold
Speaker Martin R. Stephens

Staff Present:

Mr. Arthur L. Hunsaker, Research Analyst
Ms. Susan Creager Allred, Associate General Counsel
Ms. Cassandra N. Bauman, Legislative Secretary

Note: A list of others present and a copy of materials can be found at <http://www.image.le.state.ut.us/imaging/history.asp> or by contacting the committee secretary at 538-1032.

1. Committee Business

Chair Stephenson called the meeting to order at 2:19 p.m.

MOTION: Rep. Newbold moved to approve the minutes of the September 9, 2002 meeting. The motion passed unanimously with Rep. Buffmire and Speaker Stephens absent for the vote.

2. Computer Software Licensing, Copyright, Control, Retention, and Transfer

Rep. Gowans stated that: (1) the CIO (Chief Information Officer) does not have rulemaking authority, although it could be argued that, to comply with statutory mandates, the CIO would have to write rules; (2) the proposed rule attempts to allow the CIO to make some hiring decisions in state agencies; (3) the transfer of proprietary software to the private sector could create a potential conflict of interest for CIO employees who later leave government service; and (4) filing the rule as a "repeal and reenact" rather than simply amending the existing language makes it difficult to differentiate between old and new language.

Mr. Hunsaker cited Section 63D-1-301.5 as an example of the CIO's statutory authority to create policies, standards, and procedures.

Mr. Al Sherwood, Deputy CIO (Chief Information Officer) for Policy and Planning, CIO's Office, indicated that the rule has been in effect since 1992 and was originally created under the rulemaking authority for the State Technology Coordinator. He indicated that, in the CIO statute, "executive branch agencies shall comply with policies, procedures, and standards established by the chief information officer. . . ." He agreed that the statute does not provide for the CIO make rules.

Mr. Ken Hansen, Director, Division of Administrative Rules, commented that the CIO has made a rule when statute required a policy because the proposed policy fit the definition of a rule due to its effect on outside agencies.

Mr. Sherwood indicated that the proposed software controller for each agency would be a part of existing positions and would not require new employees.

Speaker Stephens questioned R365-3-6(3), indicating that the state may sell or transfer state-developed and owned computer software, subject to approval from the CIO, except if the transfer or sale is to another state or entity. Mr. Sherwood indicated his belief that the language does not reflect the intent of the CIO and will be reviewed.

Speaker Stephens questioned the language in R365-3-6(5) "any state employee who does not comply with this rule may be subject to disciplinary action, including dismissal. . . ." Mr. Sherwood noted that certain actions are necessary for employees who do not obey the law and that an employee who does not comply with the rule could be violating copyright law.

Rep. Ure questioned R365-3-5(4) regarding the state software controller function and its role within each agency. Mr. Sherwood commented that the controller would be responsible for purchases bought off a central contract and that the controller would not supervise but would coordinate and provide information to employees who are responsible for the software once purchased.

MOTION: Rep. Ure moved that the Committee refer the issue to the Public Utilities and Technology Interim Committee to review during its November 2002 meeting the statutory authority of the CIO to write rules. The motion passed unanimously.

MOTION: Rep. Ure moved that the Committee place R365-3-6(5) on the sunset list for the 2003 General Session. He withdrew his motion.

Speaker Stephens suggested that Mr. Sherwood review and refile the rule with amendments addressing the concerns expressed.

Committee discussion followed. Chair Stephenson requested that the issue be brought back in 30 days.

3. Daily Motor Pool Van, Four Wheel Drive Sport Utility Vehicle (4x4 SUV) and Wheel Chair Accessible Vehicle Lease Criteria

Rep. Gowans explained that his concerns with the rule relate to the elimination of a requirement for written authorization from a supervisor to lease a Sport Utility Vehicle (SUV) from the daily motor pool.

Mr. Sal Petilos, Internal Auditor, Division of Administrative Services, indicated that the list of vehicles in the rule does not include all vehicles available at the Daily Motor Pool. He indicated that SUV's were removed from the title of the rule because the rule no longer included a requirement for supervisor permission to lease an SUV. He noted that the reason for dropping the requirement for written authorization to lease an SUV is to accommodate extreme weather conditions, among other things. He stated that the written approval requirement to lease SUV's will remain.

Mr. John Massey, Director, Office of the Legislative Fiscal Analyst, indicated that his office has been involved in the issue. He commented that the Capital Facilities and Administrative Services Appropriations Subcommittee would like to request information regarding the increase or decrease of SUV requests in the Daily Motor Pool, explaining that any additions to the pool would need to be in an appropriation request submitted to the Legislature. He noted that the rule could include such requests.

Mr. Steve Saltzgeber, Director, Fleet Operations, responded to questions from the Committee regarding the minimum passenger requirements for requested vehicles. He also indicated that the information Mr. Massey referred to could be provided upon request without writing the requirement into rule.

4. Nurse Practice Act Rules

Rep. James Ferrin distributed "Administrative Rule Analysis - Document C 601, 602, 603." He expressed concern that the rule analysis form accompanying the filing of R156-31b in the August 15 Utah State Bulletin cited S.B. 51, 2002 General Session, as authority to make the change. He also disputed the statement in the rule analysis that there was no negative fiscal impact to businesses beyond those already created by S.B. 51. He noted that the rule would disqualify Excelsior College graduates from licensure in Utah and as a result eliminate the Excelsior program in Utah entirely. He stated that the Access to Health Care Coverage Task Force looked at the issue and that DOPL (Division of Occupational and Professional Licensure) became aware of the issue at that point. He noted that DOPL is currently working to resolve the issues and that it will be brought back to the Committee at some point.

Ms. Laura Poe, Assistant Director, DOPL, indicated that the rule will continue to be reviewed and resolved. She stated that purpose language in the analysis of a proposed rule is subject to interpretation and that the Division will be more aware of this when writing the purpose statement. She commented that the rule, as Rep. Ferrin indicated, was not intentionally misleading. Ms. Poe indicated that the Division will continue to work with the parties involved on resolving the issues. She responded to questions.

Sen. Paula Julander stated that she is a registered nurse and health care is a matter of team work. She indicated that education is most important and emphasized the importance of clinical practice for students.

5. Other Items / Adjourn

Upcoming meetings are tentatively scheduled for Monday, October 21, 2002 at 2:00 p.m. and Tuesday, November 5, 2002 at 9:00 a.m. in room 416.

MOTION: Rep. Buffmire moved to adjourn the meeting. The motion passed unanimously with Speaker Stephens absent for the vote.

Chair Stephenson adjourned the meeting at 3:49 p.m.