

**MINUTES OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**
Monday, June 27, 2005 – 1:00 p.m. – Room W135 House Building

Members Present:

Sen. Howard A. Stephenson, Senate Chair
Rep. David Ure, House Chair
Sen. Mike Dmitrich
Sen. Ed Mayne
Sen. Michael G. Waddoups
Sen. Mark B. Madsen
Rep. Kory M. Holdaway
Rep. Carol Spackman Moss

Members Excused:

Rep. James R. Gowans
Rep. Merlynn T. Newbold

Staff Present:

Mr. Arthur L. Hunsaker, Policy Analyst
Ms. Susan Creager Allred, Associate General Counsel
Ms. Tracey Fredman, Legislative Secretary

Note: A list of others present and a copy of related materials can be found at www.leg.utah.gov or by contacting the committee secretary, Tracey Fredman, at 538-1032. A recording of the meeting is available from the committee secretary.

1. Committee Business

Chair Ure called the meeting to order at 1:15 p.m.

MOTION: Rep. Holdaway moved to approve the minutes of the June 10, 2005 meeting. The motion passed unanimously. Sen. Mayne and Sen. Waddoups were absent for the vote.

2. Staff Report: Unpaid Child Care Expense Documents Distributed to Committee Members in October 26, 2004 Meeting

Mr. Hunsaker, staff and policy analyst, gave background information and commented on the classification by the OLRGC of a packet of documents, originally distributed by Deborah Tilley, Tilley Time Child Care Center, to committee members in the October 21, 2004 meeting, as a private record. He also distributed and reviewed a letter from Mr. Bryant R. Howe, Assistant Director and Records Officer, Office of Legislative Research and General Counsel (OLRGC), to Ms. Susyn Keel, Office of Child Care, dated November 3, 2004, and a summary of "Aged Receivables" from Tilley Time, dated October 21, 2004.

Ms. Karen Silver, Salt Lake Community Action Program, said she had been concerned with the release of the information in a public meeting. She said the OLRGC had addressed the issue appropriately, and encouraged the Committee to establish a protocol to prevent this from ever happening again.

Ms. Deborah Tilley, Owner, Tilley Time Child Care Center, spoke briefly about the ongoing problem with delayed payments from the state for eligible child care.

Mr. Mike Richardson, Department of Workforce Services, explained that 90 percent of payments are made in a timely manner. He said that some payments are held up because the families are not eligible for state assistance, and some families don't submit paperwork on time.

Ms. Lynnette Rasmussen, Director of the State Office of Childcare, Department of Workforce Services, said that the state subsidy was never intended to pay the full cost for child care. She said that most of the names on Ms. Tilley's list were people who needed to make co-payments.

MOTION: Sen. Stephenson moved that the chairs send a letter on behalf of the Administrative Rules Review Committee to the Workforce Services and Community and Economic Development Interim Committee requesting that the Committee look at this issue, specifically the system for timeliness of payment to providers, to improve the partnership between the providers, the parents, and the agency.

3. Time Frame Requirement for Agency Response to a Rule Petition (UCA Section 63-46a-12(4))

Sen. Stephenson introduced the issue and commented that the discussion was to clarify statutory provisions.

Mr. Hunsaker reviewed UCA Subsection 63-46a-12(4) and explained that an agency has 30 days following the submission of a petition to have a rule changed to either deny the petition in writing or to initiate rulemaking proceedings.

Mr. Craig M. Call, Property Rights Ombudsman, State of Utah, provided background on Ms. Kaye McPhies's concern with a Division of Water Quality rule. He explained that she had requested a rule change that would provide a variance to the rule. Mr. Call said that the time frame in which the Division of Water Quality responded to Ms. McPhies's petition for a rule change does not comply with UCA Subsection 63-46a-12(4).

Ms. Dianne Nielson, Executive Director, Department of Environmental Quality (DEQ), and a member of the Board of Water Quality (Board), talked about the process the Board uses when making decisions. She commented that DEQ, the Division of Water Quality, and the Board feel that they have met the requirement of the rule but recognize that Mr. Call interprets the rule differently.

Mr. Walt Baker, Director, Division of Water Quality, DEQ, responded to questions from the Committee.

Laura Lockhart, Attorney, Office of the Attorney General, commented on the process, and said that Ms. McPhie has gone through the proper process for challenging a rule.

Mr. Ken Hansen, Director, Administrative Rules, said that the Model State Administrative Procedures Act suggests that states provide 60 days for agencies to respond to a petition for a rule change.

Ms. Allred, staff attorney, said that it appears that the Division of Water Quality did not follow the time frame provided in UCA Subsection 63-46a-12(4). She noted that in some circumstances the 30-day time frame may not be adequate for an agency response.

Sen. Stephenson expressed concern with the action taken by the Division and requested that the Division come to the next committee meeting to discuss the issue further.

Mr. Tom Johnson, a petitioner with Ms. McPhie, commented briefly on similar circumstances with his properties. He spoke in support of a variance procedure.

4. Executive Orders

Discussion of this item was postponed until a future meeting.

5. Committee Business

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The next meeting will be July 11, 2005, at 9:30 a.m.

6. Adjourn

Chair Ure adjourned the meeting at 2:40 p.m.