

**MINUTES OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**
May 23, 2000 - 9:00 a.m. - Room 305 State Capitol

Members Present:

Sen. Howard A. Stephenson, Co-chair
Rep. David Ure, Co-chair
Sen. Mike Dmitrich
Sen. Eddie "Ed" P. Mayne
Sen. Howard C. Nielson
Rep. Judy A. Buffmire
Rep. James R. Gowans
Rep. Martin R. Stephens

Members Excused:

Sen. L. Alma "Al" Mansell

Members Absent:

Rep. John E. Swallow

Staff Present:

Mr. Arthur L. Hunsaker,
Research Analyst
Ms. Esther D. Chelsea-McCarty,
Associate General Counsel
Ms. Audrey Wendel,
Legislative Secretary

Note: A list of others present and copies of materials distributed in the meeting are on file in the Office of Legislative Research and General Counsel.

1. Call to Order and Approval of May 2, 2000 Minutes - Chair Ure called the meeting to order at 9:12 a.m.

MOTION: Rep. Buffmire moved to approve the minutes of May 2, 2000. The motion passed unanimously, with Sen. Dmitrich absent for the vote.

2. Aquatic Animal Rules and Implementation (R58-17) - Mr. Lewis Barker, Mountain View Trout Ranch, discussed several concerns regarding the regulations of the Department of Agriculture and Food, the manner in which they were implemented, and the impact they have had on his business. He said that after examining the statutes he feels the department has the authority to do what they are doing, but feels that the regulations do not give the department any authority to promote the industry, only to protect aquatic life. He is incurring heavy losses, not from diseased fish but from regulations.

Mr. Michael R. Marshall, State Veterinarian; Mr. Kent Hauck, Fish Pathologist; and Mr. Mark Martin, Fish Health Specialist, represented the Department of Agriculture and Food. Rep. Stephens asked them to respond to the concerns raised by Mr. Barker. Mr. Marshall clarified that the department is mandated to promote the industry.

Rep. Stephens asked why bull frogs cannot be sold through fish farms, but can be sold through pet stores. Mr. Marshall said that enforcing the rules regarding the marketing of frogs is not under their jurisdiction, but that as a courtesy they notify individuals as to what the rules are.

Rep. Stephens expressed concern with the state's prohibition on the importation of disease-free fish from facilities outside the state and questioned whether it was good public policy.

Rep. Ure asked Mr. Marshall to find out whether other states regulate in this manner and

get the information to staff. He also asked staff to do any follow up research. Rep. Stephens said he disagrees with some of their regulations, but the department appears to have authority to write them.

MOTION: Rep. Stephens moved to direct staff to do research on the importation of disease-free fish in the state to see if Utah is the only state that requires testing of a licensed, disease-free facility for importation, and also check with the Department of Natural Resources on the selling of bull frogs and non-fish aquaculture. The motion passed unanimously.

3. R512-1 Description of Division Services, Eligibility, and Service Access; and R512-41 Qualifying Adoptive Families and Adoption Placement - Mr. Hunsaker introduced the issue. The Division of Child and Family Services filed emergency rules regarding foster care and adoption allowing the regional director to waive certain portions of the statute. The question is whether this waiver provision violates the intent of the legislation regarding foster care and adoptive placements. Mr. Steven Bradford, Policy Specialist; and Mr. Scott Clark, Chair, Division of Child and Family Services Board, spoke. Mr. Clark said he doesn't feel that the language in question allows the division to violate statute. There are other requirements that must be taken into consideration to preserve the best interest of the child.

Sen. Nielson said during the 2000 General Session, there was more than one bill on the subject and when the bills were merged, similar language was left out of the final bill. Rep. Nora Stephens, sponsor of H.B. 103, Amendments to Child Welfare, upon which the emergency rule language was based, said the bill was based on research that indicated that children raised in single parent households are at greater risk. She feels that the bill already provides adequate flexibility and that the language providing for a waiver of the statute should not be accepted.

Sen. Nielson suggested that the division make the following change to the rule: in R512-1-5(B), delete the sentence permitting a waiver by the region director and insert the following after "foster parent" in the previous sentence: "if the region director determines that it is in the best interest of the child." Rep. Nora Stephens suggested they reference that section with 78-30-9.

MOTION: Sen. Nielson moved that the committee suggest an amendment to the rule as stated with the reference to section 78-30-9.

Rep. Buffmire suggested the motion be amended to include the language as stated above, in appropriate places in both R512-1 and R512-12.

Rep. M. Stephens said Sen. Nielson's motion needs to be worded in the form of a letter encouraging the division to make the suggested changes.

Rep. Ure clarified that the division may take the exact wording from the suggestions given in the meeting, adopt the language, then file it as a permanent rule. The amended motion passed unanimously.

Janetha Hancock, Associate General Counsel, said the rule defines 'cohabiting', but there was a specific decision made to not define it in H.B. 103 and instead define 'residing' while establishing a priority for married couples.

Rep. M. Stephens suggested that the law should be modified in the next session.

Rep. Nora Stephens said that the single, non-cohabiting individual is covered in the law, in that they are not denied from being chosen to adopt.

Mr. Bradford pointed out that the rule will be ignored if there is not a mandate in the rule stating that they must first seek to place with a married couple.

Rep. Ure suggested that Rep. Nora Stephens, Sen. Nielson, Rep. Buffmire, Ms. Janetha Hancock, and Sen. Valentine get together and discuss the term "residing".

MOTION: Rep. Buffmire moved that the committee ask the division to review kinship placements and priorities, and any relevant case law to clarify the bill's original intent. The motion passed unanimously.

4. Committee Business - Future committee meetings are scheduled for June 7, June 20, and July 5, at 9:00 a.m. in room 305, State Capitol.

5. Adjourn -

MOTION: Rep. Gowans moved to adjourn the meeting at 11:10. The motion passed unanimously.

