BUSINESS ENTERPRISE PROGRAM OF OREGON

RULE-MAKING MEETING

**Date: Wednesday, August 23rd, 2017**

**Time: 9:00 am**

 OREGON COMMISSION FOR THE BLIND

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**Agenda**

1. Open Meeting/Roll Call (9:00 am)

2. HB 3253 Rules Development Negotiations

3.  Public Comment (4:00 pm)

4. Action Items, if any

5. Adjourn

**Verbatim**

Hauth: Art, you’re on the line. Hey, if you wouldn’t mind… you wouldn’t mind taking roll, I’d sure appreciate it. And I’ll check Terry, here, just to make sure he didn’t get the time switched up. So.

Art Stevenson: Okay. I will go ahead and proceed, then, if you so desire, Mr. Chair.

Hauth: You bet. You bet.

Art Stevenson: All right. Good morning, everybody. It’s 9:00 am and so I want to call this meeting to order. And first off we’ll start by taking a roll call of the Elected Committee to see who’s present. Randy, of course, is here on mute. I’m here. And so, Jerry Bird, are you on the line?

Bird: I’m here.

Art Stevenson: Okay. Steve Gordon?

Gordon: I’m here.

Art Stevenson: Steve Jackson, are you on the line?

Jackson: Steve Jackson. Right here.

Art Stevenson: All right, that’s great. And I know for a fact that Derrick is not going to be on the line today. He’s been given doctor’s orders not to participate, due to medical reasons. And so he won’t be on the phone with us today. So, that being said, we know Eric Morris is here. Can we…? Is there anybody else in the room with Eric this morning? Could you please, for the record, state your name.

Pileggi: Tom Pileggi, BEP.

Ewing: Kathy Ewing, BEP.

Art Stevenson: Okay. All right. So now we’ll go to the rest of who’s on the line. We’ll go with the managers. Celyn Brown, I heard you on the line.

Celyn Brown: Yes.

Art Stevenson: Lewanda Miranda?

Miranda: Present.

Art Stevenson: Okay. Tessa Brown. Salvador Barraza. Cathy Colley-Dominique.

Miranda: Am I off mute?

Art Stevenson: Harold Young. Char, are you on the line today? No Char? Lin Jaynes? No Lin. Okay. Let’s go… Gordon Smith. No Gordo today. Carole Kinney. Was that Carole? Carole? Okay, let me see. Anybody I forget? If I did, make yourself known. Okay, now we’ll go to guests on the line. I heard Cassie out there. Good morning, Cassie.

Cassie Bruske: Good morning.

Art Stevenson: From Eames Consulting. Linda Haseman, you out there this morning? No? Okay. Any other visitors?

Terry Smith: Terry Smith is here.

Art Stevenson: Oh, hi, Terry. Randy…

Hauth: And Art, just so you know, I am back on the line.

Art Stevenson: All right. Well, I’ll turn it back over to you, Mr. Chair.

Hauth: Thank you, sir. Thank you very much. Is there anybody else on the line that hasn’t announced themselves?

Hoddle: Vance Hoddle, with Canteen Vending.

Hauth: Hey, Vance. Welcome. Welcome. Well, let’s get this adventure going, this rulemaking adventure going, as Mark Riesmeyer so poignantly stated. And I’m going to allow for public comment. But let’s try and keep public comment to, you know, to the minimum. And we have a full slate today. I do know that Terry Smith had… took some advantage previously about helping try and find some of maybe the hot spots that are contained within the draft rules that are in RSA. And I think Terry did some work on those. And I believe we’ll step through those today.

And, you know, I know the hot topic in the room is… well, there’s a couple of hot topics. But one I know is the proposed limitation of subcontracting by the agency. I know several weeks back, for those on the line that weren’t here, the Commission for the Blind chairperson proposed a 5% or 10% limitation of subcontractors and blind persons to do that. And then, following that, there was more discussion with Director Morris during one day of our meeting. And so I know that’s a hot topic. And there’s a few others, including the complaint process. We need to try and get that worked through. And unassigned vending, and so forth and so on.

But what I would like to remind everybody, is that administrative rules should be a tool to help administer the program; they should not be a tool to lay a hammer down on the blind vendors or limit the blind vendors or stifle the program. So anything that is proposed by the agency as we go forward, I guess my question is, how does that benefit the program? Explain it to us, please, with, you know, data and factual basis behind that. And also, how does that benefit the blind vendors?

So those are the things that I’m going to be asking as we go forward. I would also encourage that over the last couple of years, the administrator of this agency had said, you know, when the question came up about, “Why are you trying to limit subcontracting?” Her stance was, “I just have to follow the law.” Well, now that the law has enacted a new law that allows for it, it seems like that same administrator is trying to do the same thing. So I question, really, what the motives are. I hope this is something that this agency can move forward with, collaboratively, and embrace the intent of the law and not continue to stub their toe, as they have done.

I do believe that, if any imposed limitations are mandated, either… either through the ultimate authority or what it would be that it will just continue to perpetuate the complaints and grievances and legal wrangling. So, with that being said, I hope we have a great, productive day today. Thank everybody for joining us. And I’ll turn that over to public comment. Anybody have a public comment or statement for the record?

Hoddle: This is Vance Hoddle with Canteen Vending. So I do have a short public comment, if I may.

Hauth: Sure. Go ahead.

Hoddle: Okay. So, anyway, ditto on everything you just said, basically. And then, you know, we’ve been… we’ve been in contact with key legislators who supported this house bill, in regards to that limitation of subcontracting. They, I’m sure, will be providing some guidance moving forward.

Hauth: Thank you, Vance. Any other comment? Going once, going twice, three times. Sold. Terry Smith, welcome. Thanks for carving this day out for us. So the floor is yours.

Terry Smith: Okay. And I appreciate your framing it with the… I mean I understand we still have a difficult conversation. You know, we keep putting it off, as far as limitations. We really haven’t discussed limitations, other than just in passing. You know, we’ve been trying to get at everything else and I think that’s going to continue to be our strategy: you know, to work through the things that need to be fixed with the rules and then, you know, if the agency wants to propose those limitations, then, you know, we can have that conversation. Whether or not we can get through all that today, I don’t know. It depends on, you know, how much discussion and how productive we can be in… in today.

You know, what I’m proposing is, you know, as promised, and as I was asked to do at the last meeting, I went through your rules and, you know, there was some… a couple things in there that I thought were a conflict with… with Randolph-Sheppard, which I’ve noted several things in there, as far as, you know, what I think are best practices that we can discuss. And what I would propose is that, as a starting point, we go through those suggestions and recommendations. And then, after that, we’ll look at other areas that anybody wants to take a look at. Is that okay?

Hauth: Sounds good to me, Terry.

Terry Smith: Hearing no objections, I started… and Kathy, I’m sure you’re taking notes again.

Ewing: Yes.

Terry Smith: So… and I can’t remember. Were you on the list? Did you get the copy of the stuff I sent in?

Ewing: It was forwarded to me.

Terry Smith: Okay. Sorry. I reminded myself several times to make sure you… I copied you. But instead I just hit “reply all” and you weren’t on the list. So… apparently. So. Starting with the definitions I noted the definition of the Business Enterprise Program, you know, has a misleading meaning. I think it says that the Business Enterprise Program provides employment to people who are blind. You know, that is basically the definition of vocational rehabilitation services. I think the Business Enterprise Program is more specific than that and I suggested that we change the definition to “the program administered by the Commission that is responsible for providing self-employment opportunities, pursuant to the Randolph-Sheppard Act.” And that sort of gets in what… what, really, BEP is.

Any discussion about that? Questions? Concerns?

Hauth: You know, Terry – this is Randy – I defer to your expertise. I don’t know where that definition came from but if the agency or none of the board has any objections with that, I think we… I think we dial it in. So.

Terry Smith: Any objections? Okay. The second thing, also under definitions, you know, we… I think we said priority, I think in the working document, said the definition is to come later. The act refers to priority as the first right of refusal. And, you know, I don’t think we need a big flowery definition, other than that’s what priority means, first right of refusal. And I would propose that, under definitions, where it says priority, we define it as first right of refusal.

And then Gretchen will obviously take a look at that when she does her review of the rules. But that would be… that would be my suggestion, so that we can…. Any objection to that, as a definition for priority?

Art Stevenson: I agree.

Terry Smith: Hearing no objections, we will move on. Under the Training section, B1.

Art Stevenson: Terry?

Terry Smith: Yeah.

Art Stevenson: There was one more definition that Randy had put forth out there, which I think would be critical. And that is the definition of a full evidentiary hearing.

Hauth: Yeah. If I may, Art, yeah, you’re absolutely right. Terry, I don’t know where we address that but I know there was some conversation last week with Eric Morris and you about summary determinations and that. And, as a person that’s been involved in the complaint process and been forced through a summary determination, I can tell you that what Eric…

Miranda: [Inaudible.]

Hauth: You’re off mute, Lewanda.

Miranda: Oh, I’m sorry.

Hauth: That’s all right. But, anyway, so, as a person that had been forced through a summary determination, even though I objected to it and had been limited in my full evidentiary hearing and not been provided a chance to examine witnesses, cross-examine witnesses, enter new evidence, a limit in my discovery, I do believe that it is critical and crucial to address what a full evidentiary hearing means. Because the agency believes it’s simply the AG’s Office arguing on paper and, you know, so…. That’s where this comes from. And I’ve seen it happen time and time again to blind vendors here in Oregon, not just myself. So.

Miranda: Mm hm.

Hauth: Hey, Lewanda, I think you’re still going off mute.

Miranda: Oh my goodness!

Hauth: Hey, Terry?

Terry Smith: Yeah.

Hauth: And, Terry…. Okay, go ahead.

Miranda: [Inaudible.]

Terry Smith: I think that’s a, you know, a conversation that goes way beyond, you know, what the definitions are. You know, evidentiary hearing – and this is just my take – that’s a, you know, that’s a legal term and there are Oregon statutes that… that define it. And, as a matter of fact, I was looking those up and, you know…. So, if you’re looking for a definition, I think, you know, you’re going to be doing… conducting your hearings according to what the Oregon law says about evidentiary hearing. And that’s… that’s, you know, what you’re going to be bound by. And, you know, unless you change… you know, somehow go in and change the way hearings are done in Oregon altogether. But in, you know, making a motion for summary judgment is just… is a very common legal thing that you do. You know, I don’t see it very often, you know, but it’s fairly common. And I don’t know how you get at that in your rules, unless you’re just going to throw out, you know, the way you do hearings altogether.

Hauth: Well, and I don’t know either. And that’s why I suggested… I do think it’s important. And, again, it goes back to how does a blind vendor get their fair day through this process? And I know we’ve talked about the Director's Review and I know we’ve talked about the administrative review and I know we’ll talk about that further down. But it’s clear to me and to other vendors who have gone through it that the agency certainly circles the wagons and uses those resources to deny, you know, hearings, to deny witnesses. And it may be in compliance with the Oregon state statutes for summary determination being allowed but, you know, it just… if there’s a way that we can make the process more open and fair and define it so that the agency can’t just hand down a summary determination and the, you know, and the…

Bird: Randy.

Hauth: Yes.

Terry Smith: As far as the definitions are concerned, I would suggest that… I mean, I don’t think we’re capable of actually defining what that it is.

Hauth: Okay.

Terry Smith: I think it… I’m sure it’s defined in statute. I would suggest that, you know, we have the agency at least look at, you know, if we want the legal definition of what that is, then… I mean, the definition…

Hauth: Okay. Well, that’s fine, Terry. I just wanted to throw that out there to see if that’s something we need to do. So..

Bird: Jerry.

Terry Smith: I know you…. Yeah.

Bird: I thought we agreed that it’s got to be agreed to by both parties.

Terry Smith: What does?

Bird: Summary determination.

Terry Smith: That’s what Eric said last week. I’m not sure… I mean, a motion for summary judgment is what I think we’re talking about. And, you know, in my experience, it does not have to be agreed to by both parties. You can make a motion for summary judgment and the other side can argue against that. But then there’s the judge that makes the final call on whether he’s going to rule on summary judgment.

Now, if it’s different in Oregon, and it has to be agreed to by both parties, then that’s something that…. And I’m not an attorney. So that’s, you know… those are…

Hauth: Hey, Terry?

Terry Smith: … legal questions… Mm hm?

Hauth: Hey, Terry, let’s go ahead and, if we can, let’s go ahead and move on and maybe come back to this, either today or, you know, however we need to. But no, it doesn’t have to be agreed to by both parties.

Terry Smith: Yeah.

Hauth: No. So. Because I [inaudible]. Go ahead.

Terry Smith: And… And I’ve never seen it where it had to be agreed to by both parties. Okay, then the other one was… I said in section… under Training, B.1., we should add with the active participation of the BECC, where it’s talking about where you can design a training program. I mean the law requires that the committee actively participate. And I think it says, “will consult with,” you know, the correct term is “with the active participation,” so it would read, “businesses… the Business Enterprise Program, with the active participation of the BECC, may design training” dah dah dah dah dah.

Ewing: Uh…

Terry Smith: Any objection to that?

Art Stevenson: Well, Terry, this is Art.

Terry Smith: Okay.

Art Stevenson: Am I…?

Terry Smith: Yeah. Go ahead, Art. Now you’re muted.

Art Stevenson: Now I’m muted. Yeah. I… you know, I agree that it should be with the active participation of the Elected Committee. But I also believe that some of the parameters should be in the rules, to make sure that all the bases are covered. One of the things Mr. Hartle told me is, the current rules and training program doesn’t show that a blind licensed manager is capable of running all the different types of facilities. And, of course, once they are issued their license they are allowed to bid on any and all of the quote unquote different kinds of facilities we have here in Oregon. And so there has to be something in the rules that ensures, in my opinion, that ensures that a manager is receiving, you know, the appropriate training so they can. And is tested so that they can demonstrate their capabilities of running all the different kinds of facilities here in Oregon.

Terry Smith: Well, so you got to do the basic curriculum. Then you’ve got the on-the-job training. I don’t… I’m trying to figure out… I mean, you could put a sentence in there… I don’t… It seems to me that you’re going to address that through the training program itself, not the rule. But if…. It says, “to be eligible for a license, dah dah dah, the Business Enterprise Program may design the training, taking into account the potentially available vending facilities and the trainee’s skills.”

Okay. And I think that… Okay, now… I think that’s where Jesse did… may have had a concern, Eric. And I don’t know if he discussed it with you.

Morris: Nope.

Terry Smith: It… It… I think… And I’m just… He didn’t… I don’t think he’s… I don’t know that I had the conversation with him, either. I think maybe we need to change that wording even a little more. Because it appears that… and I think this is where Art is getting at… and it appears that you are customizing training based on the available facilities. And if you have a vending facility… if you have an all-vending location, that’s what you’re training them in. They get their license, they’ve had no training in the other types of categories if they get promoted and they’re not capable of handling those. And also, the training is based on the skills of the vendors. I think that’s what you’re getting at. What… If I were you guys I would take out “for assignment to a vending facility,” put period. Take out “taking into account potentially available vending facilities and the trainee’s skills.” And then I would maybe add a sentence. That takes care of it. But if you want to add one more sentence, you could add a sentence, “The training will encompass all types… The training will encompass the operation of all types of vending facilities.” Something like that. What do you think, Eric?

Morris: That sounds good.

Terry Smith: Yeah. That way, it doesn’t look like your trainees…. Kathy, did you get that?

Ewing: Yes. So a period after “assignment to a vending facility, the training will encompass operations of all types of vending facilities.”

Terry Smith: And then… And then the next sentence will be, “The training, of course, may include distance education.”

Ewing: Yep.

Terry Smith: Okay.

Art Stevenson: Terry?

Terry Smith: Is everybody okay…? Well, first of all, is everybody okay with that?

Art Stevenson: I’m…

Terry Smith: Hearing no… Go ahead.

Art Stevenson: Okay, am I off mute?

Terry Smith: Yes.

Art Stevenson: Okay. So, in Tennessee, for instance, obviously, you’ve got your rules and then you actually have a training manual, correct?

Terry Smith: No.

Art Stevenson: No training manual? Okay. Well, and…

Terry Smith: We have an operat… We have our BEP rules and we have our operations manual, which goes into more detail on the rules and, you know, contains all the different policies and that kind of stuff. So it’s not a training manual. It’s just the operations manual, so you don’t have to put all your policies and procedures in your rules.

Art Stevenson: Yeah. Okay. I just wanted to get… and, like, I know in North Carolina you’re… you’re able to, you know, get a license in each different type of facility once you’ve… you’ve completed the training and stuff like that.

Terry Smith: Yeah, what we did when… we had different categories of facilities. You got a license to operate, you know, the basic facilities and then you had to go for additional training to operate, you know, the more complex facilities. So… but that had… that was not a, you know… that was not a training manual. That was just part of our operations and the way… the way we did it. And there are a few states that break out their categories, you know, so that you have to have special training in each category. But, you know, I don’t know if you guys have enough, really, facilities or, you know, variety of facilities that when you do have the vending… you’re basically vending or you’re, you know, you do have your food prep locations. So I don’t know…

Art Stevenson: Well, and now…

Terry Smith: … what else you would need.

Art Stevenson: Now… Now we’re heading into the commissaries and stuff like that, too. And obviously that was part of the new law and stuff. And so, you know, I just wanted to make sure, you know, that we were covering all our bases like RSA wanted and… and that, you know, all of those different things were handled. And I don’t know how…

Terry Smith: You can put something in her that… that says that you could require additional training as a prerequisite for certain types of facilities and not really define it here. And then you guys start getting into the commissaries, you guys could agree that you’re going to have to let… in order to bid on that facility or get that facility you’re going to have to complete, you know, some additional training in that.

I wouldn’t narrow it down too much because, you know, you don’t want to box yourself in. What you might consider doing is – and I’m just thinking out loud, guys so –

Art Stevenson: No, you go right ahead.

Terry Smith: If you put a number… if you go… if you change… put a new number three and just say, “with the active participation of the BECC, additional training may be required as a prerequisite” for unique vending facilities. I’m not totally sold on the word “unique vending facilities.”

Art Stevenson: [Laughs.]

Terry Smith: From a concept standpoint, is there any objection to that? I mean, I don’t think that’s a bad idea.

Art Stevenson: Yeah. And then, there was one more thing I wanted to say, Terry…

Terry Smith: Wait, wait, wait. Let’s finish that. So Kathy…? And Eric, do you have any objection to that?

Morris: I think we need to flesh out the… whatever we’re going to call it.

Terry Smith: Yeah.

Ewing: So, uh…

Terry Smith: For right now, let’s just use the wording I did and make that a number two. And then you make two, three, four, five…

Ewing: Okay.

Terry Smith: … and then we’ll come up with…

Morris: Hang on. Hang on.

Ewing: Okay. So did you say that was going to be the new number two or the new number three?

Terry Smith: It could be either one.

Morris: Make it three.

Ewing: Make it three? Okay.

Terry Smith: Maybe it’s better as a number three.

Ewing: So, I’m sorry. I’m having a little trouble hearing. So you said one or two?

Terry Smith: I’m saying…

Ewing: Uh huh.

Terry Smith: … make what I just read… Where did you put it? Have you written it down yet?

Ewing: I put it in number three.

Terry Smith: Yeah, that would be a new number three. Number three would be number four.

Ewing: Okay. Great.

Terry Smith: And number four will be number five.

Ewing: Yep. So what I had was, “with active participation, additional training may be required for unique facilities.” Did I miss any part?

Terry Smith: Yeah, “with active participation of the BECC…”

Ewing: Okay.

Terry Smith: “… additional training may be required as a prerequisite…”

Ewing: Okay.

Terry Smith: ‘… for assignment to unique vending facilities.” And we can flesh out the final wording once we… once I see it down on paper, I’ll be able to…

Ewing: Thank you.

Terry Smith: Okay, the next thing that I had… Yeah?

Art Stevenson: Yeah, I had to get myself off mute. Also, I actually wanted to – and I brought this up and we need to bring it up right now – wanted to put in training that if we got a licensee going through training, that they… if we’re having an in-service training on – which we’re supposed to have – and they’re actually going through the training program to procure a license, that we should take advantage of the in-service training and make that part of the curriculum, that they do get that additional training that the blind licensed managers are getting to… as they’re going through the licensing process. It also gives them an opportunity, you know, to meet blind licensed managers and, you know, ask questions and all that kind of good thing. And so I think it would be a… an excellent tool that we should use to help our new trainees, you know, take advantage of something that we’re doing anyway.

Terry Smith: You don’t… You don’t need a rule to require your trainees to attend the in-service training. I mean, that’s just…. In fact, you’re designing… it says you’ll be involved in designing the training program. And, you know, when you design the program you can incorporate that into it, that if there’s an in-service training while they’re in their training they will attend the in-service training. It’s just as simple as that. You don’t need a rule to require them to attend.

Art Stevenson: [Inaudible.]

Terry Smith: So the next thing… The next thing I said under training, we talked about the prerequisite skills are listed. You also should include as a prerequisite skill, adequate computer skills, sufficient to complete…. Maybe not even… I said sufficient to complete the online training because right now you are using online training. But computer skills are, you know, absolutely essential, even if you don’t do online training. And so, you know, you’re talking about math skills and writing skills and all that kind of stuff. Computer skills in today’s world are, you know, absolutely, you know, essential. You can’t do, you know, emails and simple Word documents and even need to be able to do Excel spreadsheets and all that stuff then, you know, you’re going to have a difficult time succeeding in the program. And so I… And especially the way you’re doing it now, that you are doing it online, not being… not having the computer skills is just… there’s no way to complete it.

So I would strongly suggest that you guys add in your language there, it says, “the trainee must demonstrate proficiency in mathematics, writing and reading comprehension to the extent necessary for successfully operating a vending facility.” I’d say, “a trainee must demonstrate proficiency in mathematics, writing, comma, reading, comma, and computer skills” or “reading comprehension, comma, computer skills” or “and computer skills.”

Ewing: Got it.

Terry Smith: Any objection to that?

Art Stevenson: Terry?

Terry Smith: I… Yes.

Art Stevenson: Okay. Well, obviously, you know, computer skills, each individual has, you know, different capabilities and stuff like that. And so, me, for instance, I’m a horrible typer. I’m the first to admit it. And so, if you’re going to talk about proficiency, you know, I mean, obviously some of us are better at doing things than others. Clearly defining that proficiency, you know, would… well, I have a concern about that. Because, obviously, Terry, some people are good at some things and others… but also, you know, being able to, you know, being able to hire somebody to help you do something better or having the appropriate technology if you’re not a good typer like me. So I just… I just want to make sure that we cover all our bases and don’t, you know, have somebody say, “Well, you’re a horrible typist on the computer so you can’t become a blind licensed manager.” So…

Terry Smith: Well, you can…

Art Stevenson: … just throwing that out there.

Terry Smith: You can define that, you know, in your policy if you want to. But you can’t… right now, you got somebody going… right now, the way it’s written, you don’t even have to know how to turn a computer on to get in the program. They can’t turn a computer on and you say, “Okay, now go take the Hadley course.” Well, they can’t do it. So if they don’t have computer skills to complete the Hadley course… if… if the counselor is not checking their computer skills to see if they can even complete their online training, then you’re doing a disservice to the person, making them think they can go through the training program. Because you’re not going to hire somebody to do the online training for them. At least, you shouldn’t be. If that’s happening, then…

Bird: This is Jerry. I think I agree. Let’s just put computer skills and leave it and move on.

Terry Smith: Any objections? Did you get that? What I said that, Kathy?

Ewing: So I have mathematics, comma, writing, comma, reading comprehension, and computer skills to the extent necessary to successfully operate…

Terry Smith: Yes.

Ewing: … a vending facility. Great.

Terry Smith: You got it? Okay. The next thing I said was under Licenses, that first line in there is in there by mistake, I think. Because it says, “the Commission shall issue licenses to trainees and licensed blind managers from other states when….” And then it says, “with respect to licensing… with respect to issuing a license to a trainee” then it describes what happens, with respect to issuing a license to a licensed blind manager from another state it describes what you’re going to do. I mean, I don’t think that sentence is necessary. I mean, it doesn’t change anything if you want to leave it in there. I just think it… totally up to you guys. So… So, I mean, I’ll just leave that up to Eric. I mean, like I said, it doesn’t add to it, it doesn’t take anything away from it. So.

Morris: Yeah, it just tees up the section.

Terry Smith: And… yeah. Section D is titled Denial, Suspension and Termination of License. However, it only deals with the denial of license. So the title should just be Denial of a License. You follow me there?

Ewing: Yes.

Terry Smith: Because… and then the next section, section E, deals with suspension and termination of a license. And… this is where I said you’re going to need…. Right now it just says you can suspend or terminate. I don’t… I don’t know what “suspend” means. You know, I think you need to, you know, define what you mean by suspension. And then, when do you suspend and when do you terminate? I mean, I don’t… I’m not sure.

Art Stevenson: Well, I agree with you, Terry. It needs to be spelled out.

Hauth: Terry, this is Randy. So how do some of the more progressive states handle that? I mean, I guess my thought is, certainly people have to be, you know, provided and… provided the support necessary that, you know, if they are failing, to make sure to be provided, you know, steps through the system. And once they get to that point we want to make sure that, you know, progressive discipline instead of just a, “Uh oh! You’re suspended. You’re gone.” I’m not sure where we’d put that. But as far as my care and concern for the managers, when we get to that point, if it’s now or if it’s later, let’s try and see how some of the, you know….

Terry Smith: Well, I would… I would first…. See, the Randolph-Sheppard Act talks about suspension or termination. And some states don’t have, you know, even… they don’t make provisions for suspension. And, you know, some states… some states do.

But, you know, I would define suspension over in the definitions section. And I’m just… here again, I should’ve looked some of these up. And it’s the status of a vending facility manager who has been temporarily removed from his assignment due to performance-related issues. So that describes what a suspension is. So you… So you suspended their license and so that… their license is in suspension. And then…. Have you guys ever suspended anybody?

Morris: No, Terry. And I think… I think part of the reason that this language is in there is it comes from the federal act. I think probably the easiest thing to do is take out the discussions of suspension. Because a few years ago when we were working on rules there was no interest in progressive discipline or anything like that at the time. So if we take out the suspension language and just leave the termination language in there it clears it up pretty quick.

Hauth: Yeah, I think there always should be… you know, if somebody’s going to be removed from the program, there needs to be a documented trail how that occurred. And in my mind it has to also be provided post-employment assistance and training. And so I don’t know in that definition, Terry, if you can say, “after being ordered, you know, this” or how we would tie that up.

Terry Smith: Well, I think what I hear Eric saying is what I agree with. We… as I said, some states don’t even discuss suspension. You know, if you don’t… if you just take the word “suspension” out of there and just call it Termination of License. Because suspension, if you suspend somebody’s license you’re creating a whole lot of problems for yourself.

Hauth: Yeah. I, personally, I agree with that, Terry. I mean, I don’t know what the other board members feel.

Terry Smith: Okay. So let’s forget what I said about a definition of suspension. And then change that section title to just Termination of License.

Ewing: Okay.

Terry Smith: And then in the first sentence, where it says “suspend or terminate,” take out “suspend or.”

Ewing: Mm hm.

Terry Smith: Because, really, when you look at the reasons down there, you don’t meet eligibility, you can’t suspend it anyway. I mean…. And then the next section…. Well, let’s see. Let’s not go there yet.

Art Stevenson: Terry?

Terry Smith: Any objection to that?

Art Stevenson: Am I off mute?

Terry Smith: Yes.

Art Stevenson: Hello. Yeah, and I don’t think there should be suspension but I think there – and we had this discussion – there should be some kind of probation. Eric, you know, came up in the operating agreement that we were going to start paying money if we were late on reports and stuff like that. And I, actually, think that, in order to address an issue, if the manager is not taking the proper steps, that there should be some kind of probation period where obviously there’s ongoing training going on to resolve the issue. But I strongly feel that, you know, instead of saying, “Oh, you’re going to have to pay fifty bucks” for something… that introducing a probation thing kind of makes sure that you’re dotting your i’s and crossing your t’s. But also, you know, probation can lead to termination. And that’s why I think there should be language in there about putting a manager on probation and making sure that they’re addressing the issues.

Now, also, you know, I believe that – and we had this discussion in rules last time – that if building managers have an ongoing problem, going to the agency first instead of directly to the blind licensed manager, you know, that shouldn’t be happening. I mean, there should be a relationship between the manager and their building, where they are addressing ongoing issues and concerns and not the agency first.

Terry Smith: You’re getting us way off track. And let me…. Let’s see, the next thing I had on my list was discussion of probation so, you know, that’s fine. I don’t want to get into the $50 because I think… I don’t see that and probation as being the same thing. So, you know, I think… I had… I’m hearing you guys say that you want some type of probation. And I think Eric said just a minute ago that last time you guys talked about this there was zero interest in having a disciplinary process. So is there consensus that there needs to be some type of probation before you actually go [inaudible] somebody’s license?

Hauth: Hey, Terry?

Terry Smith: Yeah.

Hauth: I think it just makes it… personally, I think it just makes it convoluted. I would… I would be happier to have some kind of established pathway through the, you know, potential termination of a blind vendor, to make sure that they’re afforded all those, instead of focusing on the probation. Because I think it’s just too… too… it could be too arbitrary. And, you know, that’s just my opinion. I think, you know, if we can tie in that managers are provided all the support necessary to be successful for post-employment training prior to terminations, I think that would kind of get to… I don’t know, but just my thought.

Terry Smith: I think the purpose of the probation is twofold: one, it’s to put the offender on notice that they need to improve; two, it is… provides the track to eventually, you know, if they don’t improve it to where they could be terminated.

Hauth: So, in your opinion, Terry, is it a good thing for the vendor? Does it then make sure that the agency provides all the resources necessary if that’s the case?

Terry Smith: For…. In every state that I’ve looked at their rules, they do not have a probationary process. And then I advise them to put something in there because currently, as it is written, you violate a rule, the rules say your license can be terminated if you violate a rule. So Eric… Randy could be late with his report, violated the rules, he can be terminated. You know, and I think the probation process allows… it affords protection to the vendors. Can it be abused? Could be. But I would rather give Eric the power to abuse probation, which can be grieved, than I would to just give him the power to terminate.

Hauth: Well, let’s do it. Let’s build the probation in, you know, if it’s good practice. So.

Terry Smith: I mean, that’s just… that’s just my take, you know.

Hauth: Hey, board members, are you okay with it? I mean, obviously, we want to take away – you know, and not just Eric, but whoever – we want to take away any kind of arbitrary discretion there. And if we build a buffer into it to make sure that either a manager’s… if they’re doing not so well, they get a chance to put it together, you know, better and be successful. And/or not. But I would support that if, you know, that’s a good practice. And, you know, Terry that’s what you would also suggest. I mean, that’s why we have you here. So.

Terry Smith: Eric, how do you feel about having probation?

Morris: Well, I think… I think “probation” is a very old and outdated term. I think “progressive discipline” is more of a modern-day, accurate term for dealing with people who are struggling. I don’t feel very comfortable with trying to come up with something on the fly as we’re talking today, to say, “Hey, we’re going to build in this whole process.” I mean, what’s that look like operationally? Because that’s… that’s essentially what you’re saying is, instead of terminating somebody’s license, which we have a whole bunch of criteria for, now we’re going to build in a program that we’re going to try to manage to everybody’s satisfaction, that…. You see what I’m saying?

Art Stevenson: Well, am I off mute?

Terry Smith: Yes.

Art Stevenson: Okay. Am I off mute now? [Laughs.]

Terry Smith: You are.

Art Stevenson: Okay. I believe that – and, you know, you can call it what you want – but I think this is a pathway for us all to also to get rid of the no-cause clause and all that kind of stuff. And so the more things we got in the rules or whatever that are going to help us get rid of the no-cause clause and put in a contract or whatever, you know, that certain things will happen if there’s problems and stuff like that. I think we’re much, much better off.

Terry Smith: This has to do with licenses, so we’re not talking about no cause. I mean, this is… they can’t terminate your license for no cause.

Art Stevenson: No, but they can terminate your employment with no cause. Because if you lose the… if they get rid of the contract of course… so it’s all inter-related, Terry, I believe. And… And… And you may not agree with that. But I, you know, I believe it’s all inter-related and needs to be, you know, a part of all the processes. And…

Hauth: So, yeah. So, Terry, Eric just said a few minutes ago that he wouldn’t be comfortable putting something together on the fly, which, you know, I get that. So if probation is something that’s the best practice out there or… how do we move forward today with that? Do we…? You know, what’s your suggestion? Is there a way to craft it into the rules? Do you have any suggested language that we can throw forward and have Eric review it? Or what’s your thoughts?

Terry Smith: Well, I’ve got… I mean, it’s not… it’s not rocket science. What we did in Tennessee was… I’m reading it here. And we put everybody that goes into the program is on six months’ probation. So, you know, that’s your time to prove that you can do it. And then we have disciplinary probation. And it just says what we… “established managers may be placed on probation for disciplinary purposes when the agency determines that the vending facility is not being operated in accordance with the rules and regulations, the terms and conditions of the permit, the terms and conditions of the vending facility agreement, policies and procedures, as specified in the TB operations manual, state law, the violation of which is or reasonably may result in financial or physical harm to the vendors, I mean the customers.” And then “regulations of other state agencies of the state of Tennessee, which have regulator authority, dah dah dah dah dah.” And it says, “notice of disciplinary probation will be sent certified mail” and tells within… you got to tell in that letter what you got to do to have the probation lifted. And the managers on probation will not be allowed to bid on new facilities. And if the manager’s placed on disciplinary probation for the same offense three times in 12 months, then their license would be automatically terminated.

That’s what ours said. I mean, and that’s… that’s the whole section on probation.

Hauth: So, Eric, what are your thoughts? I know you just mentioned a few minutes ago that… But after hearing that, is that at least a framework to kind of, you know, put together, even if we change the title of it? If you don’t like “probation” can we… you know, I don’t know. But…

Terry Smith: Are you talking… Eric, just… are you talking about doing sort of like you’re used to in state government, to where you will have a oral warning, written warning and that kind of stuff before termination? Is that what…?

Morris: Yeah, that’s progressive discipline.

Terry Smith: Right.

Hauth: What do you think about that, Terry? Is that…?

Terry Smith: Oh, I think that’s… that accomplishes the same thing.

Hauth: Okay.

Terry Smith: So, you know, what I would suggest is that Eric put that sort of that little, that thing in writing how he sees that happening and send it out to the group. And that would go in… I guess you’d do… section… you’d have to put it in as like a… I might do that as a new e) and move e) down to f). Let’s see. Wait, hold on. I’d do it, I’d probably do it before… Yeah, maybe do that as a new e) and move the other ones down. It doesn’t really matter. I’ll leave that up to Eric. He can figure out… because he needs… I mean, these things badly need to be reformatted and Eric and I have talked about that. I mean, these things need to be… Currently, you really can’t refer the… I mean, you need to be able to say, “Go to section 1, part B3.” Your rules aren’t set up that way and I don’t know that they have to be before they go to RSA but it would certainly be easier for you guys and everybody, so whenever he says if you’re in violation of something he can say, “Pursuant to…” then actually cite the rule without…. It’s just hard to do right now because everything’s sort of… no numbering system.

Anyway, Eric, are you okay with putting something in writing and sending it out to the group on progressive discipline?

Morris: Yeah, I’m thinking about it. Just trying to figure out how to fold it in here. But, yeah, I can type something up.

Terry Smith: Okay. So… and we can ask Jesse this, the section… the next section, F. I mean, I don’t have to ask him because I know the answer, but immediate suspension or termination, you know, you cannot immediately suspend or terminate. You can immediately remove somebody from a facility for, you know, if you have to. You cannot terminate their license. So that section [inaudible].

Hauth: Well, hey, Terry? So, I mean, I trust that you do know this. I mean, you’re pretty competent in knowing this, for sure. Eric, do you have any concerns with it? Do you need to…? I mean, do we need somebody to remove it? Do you have to review it? Or what’s your thoughts on that?

Morris: Well, it’s referencing a specific ORS, so it’s just not some arbitrary thing that he’s talking about. So, yeah.

Hauth: So what’s our plan on that, then, Terry? Are we going to talk to… or seek Jesse’s counsel on that?

Terry Smith: Yeah, we can. I mean, the federal law says you can only do it…

Hauth: Yeah, yeah.

Terry Smith: … right to an evidentiary hearing. So there’s no provision for immediately doing it. Like I said, you can immediately remove somebody from a facility but…

Art Stevenson: Terry? Terry, you’re fading in and out.

Terry Smith: Okay. Well, I’m on a Bluetooth but there’s no way that I can do what I’m doing without Bluetooth. So. So we can leave that in there. I mean, it’s… and when we talk with Jesse if it has to come out it has to come out. There’s nothing we can do about that.

Hauth: I mean, I… you know, obviously nobody can be terminated from their license without a full evidentiary hearing. And that’s pretty clear, regardless of the ORS statute that the agency may believe allows for that to happen. I think what Terry’s saying is that a person can be removed from their facility for certain reasons but their license isn’t terminated. Is that what you’re saying, Terry?

Terry Smith: Yes.

Hauth: So let’s, you know, gosh, I don’t know. That’s… yeah, anyway. So.

Terry Smith: So the next section is Denial, Suspension or Termination of License. But we took suspension out. And here’s where you have “provide a hearing, as provided in section on dispute resolution, when the applicant, trainee or licensed blind manager makes a written request for a hearing, as required in 34 CFR 395.13.” I would just… you can’t… you can’t have a trainee file for a grievance under Randolph-Sheppard. They can file it under VR if they want to. But under BEP you cannot… you are not entitled to any of the remedies that are available under Randolph-Sheppard Act.

Hauth: Hey, Eric, do you know where that came from? Or is there any problem with us removing that out of there?

Morris: I’m trying to make sure I’m on the right section.

Ewing: And, Terry, [inaudible].

Terry Smith: G. G.

Morris: Section G. Okay. Sorry, Kathy…

Ewing: Terry, did you say that in section G, Denial, Suspension or Termination, we should remove Suspension or… I mean, Suspension?

Terry Smith: Yeah…

Ewing: Okay.

Terry Smith: That for sure has to come out. I think you need… I think we need to say… I don’t think you need Denial. I think it’s just…

Morris: Termination.

Terry Smith: Yeah, just Termination. We’ve already got Termination up there earlier, the…

Ewing: Wasn’t Denial referring to the applicants or trainees?

Morris: Yeah.

Ewing: Okay.

Terry Smith: Yeah.

Morris: So, Terry, you’re saying that, until they’re actually licensed, they don’t have any fair hearing complaint…

Terry Smith: Right.

Morris: … except for over on the VR side.

Terry Smith: Right.

Morris: All right.

Terry Smith: I’m trying to figure out what to call that section. We’ve already got “Termination of Licensure” in the section before that.

Morris: Could you just call it…

Terry Smith: This is what I would say…

Morris: Could you call it Hearings?

Terry Smith: This is what I would…

Morris: Sorry.

Terry Smith: Why don’t we call it “Notice of Termination…”

Morris: There you go.

Ewing: Okay.

Terry Smith: And then, “You will provide written notice of…” take out “denial, suspension or…”

Ewing: Okay.

Terry Smith: It’ll say “provide written notice of termination to the applicant…” Or, no, “to the licensed blind…” or should I say, “vending facility manager.” So it’s going to say… Kathy, I’m sorry. I know I’m…

Ewing: It’s okay.

Terry Smith: … just… I’m hard to follow sometimes. “Provide written notice of termination to the vending facility manager, as required in…” I don’t know what ORS 183-4, whatever that is, but that… I’m sure that’s still accurate. Gretchen’ll fix that up.

And then I would say, on number two, I would say, “Such notice shall advise the vending facility manager of his rights to a hearing, as provided in section…” then pick up the rest of that language. Because you’re required to note… you’re required to advise them of their rights. So number two should be, “Such notice shall advise the vending facility manager of his right to…” and then take out “provide” there in the first sentence, or “a hearing as provided in section so-and-so.”

Kathy, are you close to getting what I’m talking about?

Ewing: I think so. So it says, “Such notice shall advise the vending facility manager of his or her right to a hearing.” And then you said, take out “as provided in section…”

Terry Smith: No, no.

Ewing: Okay.

Terry Smith: Leave all that in there.

Ewing: Okay. Great. And then, let’s see…

Terry Smith: Why don’t you…? Is all you’re doing is taking the word “provide” out and…

Ewing: Okay.

Terry Smith: … add that language you just got. And you got it perfect.

Ewing: Okay and then I do it. Okay. Good.

Terry Smith: And you took out number one, “denial, suspension or” so it just says “termination,” correct?

Ewing: Correct.

Terry Smith: Okay. Any objection to those changes? Okay…

Hauth: Terry, I was on mute. Can you read that section to me one more time?

Terry Smith: Kathy, can you read it?

Ewing: Sure. Do you want the whole section? “Notice of Termination: When the Commission has grounds for termination of a license, it shall provide written notice of termination to the vending facility manager, as required in ORS 183.4152. Number two: such notice shall advise the vending facility manager of his or her right to a hearing, as provided in section Dispute Resolution Process C. When the applicant, trainee or vending facility manager makes a written request for a hearing, as required in 34 CFR 395.13.”

Hauth: All right. Thanks.

Art Stevenson: Can we…?

Terry Smith: Okay.

Art Stevenson: Can we put the word “full” in front of that evidentiary? “Full hearing” or whatever?

Terry Smith: I think… the word evidentiary hearing is what is used in the statute. I don’t think “full…” Does it say “full evidentiary hearing” or does it just say “evidentiary hearing?” I think it’s fine to use whatever…

Art Stevenson: Well, I would just prefer to have the “full” in there.

Morris: It has to be consistent.

Terry Smith: Trying to look up…

Morris: Yeah, I’m trying to look through the statute, too, Terry.

Terry Smith: It does say “full evidentiary hearing.” That’s what the Randolph-Sheppard Act says. The regulation CFR 395.

Hauth: Good catch, Art Stevenson.

Terry Smith: 395.7a or 7b. It’s “full evidentiary hearing.” So you can put “full evidentiary” before “hearing.”

Ewing: Okay. And that happens twice in number two, there. Okay.

Terry Smith: Okay. Let’s see where was it in my list… Let’s see, under Training for Vending Facility Managers, section a) 3 used the word “consultation.” Don’t know where that is. Oh.

Morris: Oh, I see it.

Terry Smith: Post-licensure training.

Morris: 275…

Terry Smith: Number three. It says, “planning for training will be done in consultation with the Business Enterprise’s Elected Committee.” That should be “with the active participation.”

Ewing: Got it.

Terry Smith: And also under this section, this is where I was suggesting, because several states have done this, to where they have put in in-service training requirements for all of their managers. And it sort of started with a presentation at BLAST a couple years ago when Florida did a presentation on their training program, their in-service training program. And Tennessee has a training requirement. And Indiana has a training requirement, But now several states have gone in and adopted sort of the Florida model, to where you have to have, let’s say, so many continuing education points in order to keep your license active, like you have to do in a lot of professions. If you’re a nurse or an accountant or a doctor or a lawyer, you have to go to in-service training and you have to accumulate so many points in order to keep your license active.

And so what you do in that situation is you day, “Okay, you’re going to have to get… let’s… I want to just use… throw it out here, let’s say you have to have eight points a year to get your… to keep your license active. And so your annual in-service training would say, let’s say that’s worth three points or four points. And then if you go to BLAST or Sagebrush or NAMA, each of those could be worth two points. If you go to maybe the local NAMA meeting, you know, maybe that’s worth one point. You assign the values. You go… there’s a food show, if Vistar puts on a food show, then you get a point for that. If you take one of the Hadley online courses, free online courses, business… from their business school, you get one or two points. Maybe if you take the full module, you know, that’s part… most of you folks have taken it, then the bottom line is that the agency and the committee go through and they decide how many points every vendor is going to have to have. And then they assign a point value to the different things that are going to qualify. And…

Hauth: Hey, Terry? I think… I think it’s a good idea. I don’t know what Eric’s thoughts are on it or what the other Elected Committee members’ are, but I think it’s a good idea and it helps, you know, raise the bar for the blind vendors. And so, without going into all the philosophies behind it, I support it. I don’t know what…. Eric, what’s your thoughts on that?

Morris: I think I’d like to hear from the rest of the committee and see what they have to say.

Hauth: Well, I was going to go to them next.

Morris: I think it’s a good idea…

Hauth: But…

Morris: I think it’s like progressive discipline. We talked about this a few years ago and I don’t… I don’t remember anybody being into it. I think it’s a great idea.

Hauth: Yeah. No, I do, too. And I’ll tell you, really, when I’ve had mixed feelings about this. Because, like, as far as mandatory in-services, if you have to force somebody to be there, what value are they going to be, you know? If they’re wanting to raise the bar themselves, then they’re going to be participatory in the Elected Committee meetings. You know, some of our managers haven’t been to an Elected Committee meeting for, you know, years or months, you know. But again, I think if we could encourage this kind of learning, personally, I think it’s great. So, thanks, Eric. Committee members, what are your thoughts on something like this?

Art Stevenson: Chair Hauth?

Hauth: Yes, Art.

Art Stevenson: Yeah, I definitely agree with you. I think we most definitely have to continuously learn to get better. And if a manager isn’t willing to do that, you know, adopt new trends and all that kind of good stuff, then they actually aren’t going to be a successful manager. And so I would be completely in support of that, including, you know… does the Florida thing have a list in their rules, Terry? Or do they just decide what qualifies?

Terry Smith: To be honest, I don’t remember what theirs says. You sent out the New Jersey rules. Let me see what… how theirs says.

Morris: And Terry, what’s the consequences if people don’t do their CE credits?

Terry Smith: They… Their license will be terminated. It’s a, you know, it’s a requirement. You can make exceptions for medical reasons and things like that, of course.

Hauth: And we could… you know, Eric, we could work together on that through active participation and make a system that works, you know, that’s reasonable and that’s obtainable. It doesn’t mean, you know, we have to do every training and every Elected Committee meeting. But we already, as you know, have some kind of punitive things in for late reporting, right? Your license can be terminated. Or if you’re not attending Elected Committee meetings, you don’t get to bid on…. So, I think we could make a sensible pathway on this. If, you know, if the board and the agency think it’s a good idea.

Terry Smith: So this is what New Jersey says, and they don’t spell it out in a great detail, their rule says… well, actually, “the Commission requires that all its managers participate in upward mobility training. Consistent with this practice, calculated to improve professionalism and high-level customer service, managers will be required to complete 15 hours per calendar year of upward mobility training related to the national Randolph-Sheppard Program or general business management skill sets. This can be accomplished by participating in any combination of the following:

Statewide annual meetings

Instructional workshops conducted by Commission staff and Commission members.

Managers must submit to bid manager their course selection for approval.”

Art Stevenson: So, Terry, that’s based on a hour thing not a point thing, correct?

Terry Smith: Yeah, you assign the number of hours.

Art Stevenson: To each different thing?

Terry Smith: Yeah.

Art Stevenson: Okay.

Terry Smith: I don’t like the way theirs is worded, now that I look at it. I was there… Dan Fry, you can tell he’s a lawyer, just the way that was written. But I could just give you, you know, I could type out real fast the language I would suggest for that and send it to everybody. And without getting in… because I don’t think you want to assign the hours or points or anything in your rules. Because, you know, you want that flexibility, depending on what comes up or whatever.

Hauth: We can change it that way. If we just put in context what we’re trying to get in the rules and then we could… yeah. I just… I think it needs to be, personally, simpler is better, but with our allowance to be able to…

Terry Smith: I’ll look at what we did in South Carolina.

Hauth: Yeah.

Terry Smith: We did this… when I helped South Carolina we put it in. So I hear that, at least in concept, we’re okay with this and that I will draft something up and get it out to the group for everybody’s consideration. Any objection to that?

Okay, I’ve got, under vacancies… never mind. Well, let’s talk about it. I said under vacancies, if we add a probation process you’ll want to add that a vendor on probation cannot bid. So I guess, Eric, under the progressive discipline… would they be allowed to bid if they were in some kind of performance improvement plan or something? Or do we not even want to go… get involved in that right now?

Morris: Yeah, I don’t think we want to get involved in that right now.

Terry Smith: Okay. Okay. But I don’t know if we want to do…. It says in here that your operating agreement is done every two years. So that’s in your rules currently. You know, I don’t know if there’s interest in doing it for an indefinite period of time. Most states do it an indefinite period of time. I know of one other state that does renew them. It’s my…

Hauth: So…

Terry Smith: … understanding that RSA allowed that. So, you know, your license has to be for an indefinite period of time but your operating agreement does not. So I don’t know what the sentiment of the…

Hauth: What…? Yeah. Hey, Eric, what’s the agency’s take on this? I know we had a little bit of discussion about it. Sounds like the best practice is out there might be to make it perpetual. But what your guys’ take on it?

Morris: Well, right now we do it annually. So moving to a… every two years is a, you know, that’s a longer period of time. So that’s what we’re interested in. Two years is what we put in there. So… And it’s been a year…

Hauth: Yeah.

Morris: You know, we’ve had it in place for a year for 16 years.

Hauth: Right. But, I mean, is there a reason that the agency doesn’t want to make it perpetual? I mean, I think that would be my desire, to have it perpetual. Because you still have those tools in place if the manager isn’t doing their job. But is there any… like, what’s the rationale? Again, I’ll go back to, you know, how does it benefit the program? How does it benefit the manager? And what’s the rationale not to make it perpetual? Because I can see, from my point of view, I can see it being a win-win for everybody. But… do you know what the agency’s position is? Or is it…?

Morris: Well, the agency’s position is that we’re willing to do two years. Right now it’s annual, so… [Clears throat.] Excuse me.

Hauth: Yeah. But what’s… what’s the rationale behind it? I guess, you know, the thinking behind that?

Morris: I don’t know if there’s a whole bunch of thinking behind it. And I didn’t prepare a speech to talk about one year versus indefinite. So, yeah.

Hauth: But I guess that’s why we’re here, to try and work through some of these things. And, if it makes sense, why wouldn’t we? You know? So.

Bird: Jerry.

Terry Smith: Go ahead.

Hauth: Go ahead, Jerry.

Bird: Yeah, I just like… I don’t think there is a reason not to, other than extra work. I believe, if it’s been passed by the Randolph-Sheppard Administration in other states then it’s perfectly legal. I think it should be indefinite. But it needs to be able to be changed according to how your facility changes. Because, like, I’ve had the same facility for basically 28 years. So there’s no reason for them to do mine every one, every two, every three, every four, unless there’s some changes. So I, as a board member, would agree to… and also believe that it should just be indefinite. Thank you.

Art Stevenson: Chair Hauth?

Hauth: Yes, Art.

Art Stevenson: I agree with Jerry. Obviously, if they’ve been assigned to a facility they need to, obviously, do the things they need to do, including, you know, proving all the things that are updated, that, you know, insurance, et cetera, et cetera, et cetera. But we don’t have to go through the whole process. We basically just have to confirm that they’re complying with all the stuff that they need to do. And so, obviously, if the blind licensed manager isn’t complying, then you can remove from their facility. But to go through the process of signing and re-signing and the whole nine yards, you know, it causes problems, I believe, and won’t go into great detail. But, you know, it has been a problem in the past and I think the way you eliminate it is just make it perpetual as long as the manager is complying with his responsibility. His or her responsibilities.

Hauth: Yeah, I mean, that would be… that’s my support. I mean, and, you know, if the agency can have some flexibility on saying, “Hey, let’s go with what might be a best practice” and allow for that to happen… I mean, I know that’s what I will be supporting and encouraging to happen. And so I hope we can get there. I don’t know why it wouldn’t really be a good idea to. So.

Terry Smith: So, Eric, how do you want to proceed?

Morris: Well, if we’re trying to do some good faith negotiations right now, and it has been for the last 16 years, every single year. So this proposes every two years. So I think that’s a good step in the right direction. And I think, if that works out, and things stay on the straight and narrow for the next couple of years or whatever, we could go back and take a look at it.

Bird: This is Jerry. I still don’t understand why… what does it matter? I can tell there must be some kind of controlling effort here, that Eric’s… to say that oh, we get it two years now, instead of one. It’s just… it’s such a great step forward. Still almost tells me that it’s being used as a tool. Because why don’t you do the smarter thing? Because we’re getting… you guys are going to have to start hiring more staff if you’re going to go check my machines and do this and do all this. And now you got to do these operating agreements. To me, it’s only a tool to… I don’t know. It’s just… I don’t see the reali… Like Randy said, the reason other than it’s just better than the old one. I mean, come on, we’re here now. Why do we want to come back… I don’t see Eric’s, really, reasoning why we shouldn’t. Thanks.

Jackson: Could I inter… could I say something, please? Steve Jackson.

Hauth: Yeah, Steve.

Jackson: Well, I just thought I was reading in an operating agreement that when you’re assigned a facility, it says you will be assigned permanently to the facility. And so I thought maybe we could, you know, play on those words. Because that what I was under the assumption, that it was assigned permanently. But also, wouldn’t it free up time for the staff of the Commission if they wouldn’t have to go around and have people sign things and then get copies and stuff. If they just, you know, made sure everybody was in compliance with insurance and everything and then…. So I agree. I think it should be perpetual. I don’t… I think that two years is a good step in the direction, but I don’t see why it can’t be perpetual.

Hauth: Thanks, Steve. You know, my concern is that I believe, you know, that the steps to end a operating agreement are different than the steps on terminating a manager’s license. And so I do… I have concerns that the agency has utilized the operating agreements previously as a tool. And so, if we can try and work in good faith negotiations to get away from that and still allow the agency, if need be, to terminate or discipline a manager. You know, again, I go back to… you know, that will be my position. And I don’t know exactly how we address this or if the agency has some flexibility. But, you know. So.

Art Stevenson: Chair Hauth?

Hauth: Yep.

Art Stevenson: Again, I agree with you a hundred percent. The operating agreement shouldn’t be used as a disciplinary tool. It should be used as an agreement to run their facility and stuff like that. And so I think it is my desire to get away from traps that could potentially cause problems. And, therefore, you know, getting rid of one of those traps and, you know, just complying with the laws and rules and regulations of the program is the ultimate step in the right direction. And increasing it from one year to two years, that’s no huge leap, in my opinion, at all. And so let’s get rid of the trap and, you know, just make it permanent until the blind licensed manager bids out or leaves the program.

Gordon: Chairman Hauth?

Hauth: Yes, Steve.

Gordon: Yeah, I’m in agreement with Art and you that we should just have it perpetual. Thank you.

Hauth: So, Terry, obviously we’re on, you know, opposite sides of this… of this issue. How do we… How do we work through this the best?

Terry Smith: Well, I think there are two options. Option number one: keep talking and see if… I mean, Eric, sounds to me, is not going to go for… isn’t at this point ready to commit to an indefinite operating agreement. And, you know, so there’s either the… is there a number between two and forever that you could live with? And if the choices are either two or forever, then I think we’re not going to have an agreement on it and we move forward. And so current rules say one. So if we don’t sort of have some kind of consensus here, then, you know, they could go back to just the one. Because, you know, we’re making changes. You know, we’re staying with everything as is, except for the things that we agree to. So if we don’t agree to anything, then the agency could automatically revert back to what it says now and just say we couldn’t reach consensus.

So I think… three things can happen: one is that… one is keep talking, come up with something between two and forever. Is it three, is it four, is it five, is it 20? I don’t know. The other is to let Eric is at two. He can, when these things are submitted, if he wants to [inaudible] that, then he can. The third option is to revert back to the way it is now in the rules and stay with the one year. I don’t know, Eric… it’s sort of your decision. If you want to, you know, if you’re open to something greater than two but less than forever, then let’s continue the conversation. If you’re not, then let’s move on.

Morris: I think we should move on.

Terry Smith: Okay.

Bird: Excuse… Jerry.

Terry Smith: Where we’re leaving it is, the current rules say one; he is willing to go to two. And it’s at two right now. So, if he thinks about it and before these things are submitted has agreement that he wants to make that a little longer or go to indefinite, then that’s what the final rules will look like. Is that Jerry?

Bird: Yeah, well I was just going to say it kind of troubled me; it’s almost like you’re telling Eric, “We’ll do whatever you say.” I mean, or we’ll go back. I mean, once again, I would like Eric, for the record, to tell us what’s the reason, his reasoning, to only think two years. What’s… What’s the difference between five years? I mean, tell us why you want only two years. If it’s not a reason that you feel so strong about, why do you want the extra work? As if you don’t have enough? Because I don’t understand the two years. I don’t understand what Terry just says, “Well, if Eric won’t agree or that I guess we can do it.” But as a protest that we don’t believe that that’s correct, I’m not quite understanding here where we’re… I thought there were negotiations and then they’re not. And then they’re Eric won’t budge and he won’t tell us why. I’m quite confused.

Terry Smith: Eric… Eric did move. I mean, he went from one to two. And so it’s not accurate to say he didn’t budge. So…

Art Stevenson: Randy, can I…? I mean, Terry, can I talk for one second? And this is what I believe – I’m making this proposal for one reason: it saves time and it also save money. Many states do that for that reason. And I believe we should do it for the same reason. Because of the time and the expense of, you know, it was… costs time and money every year. It does cost time and money every two years. And so, as a blind licensed manager, I want to save time and money. I would hope the agency would want to do the same thing. And so that’s my reasoning for saying. “Hey, make it perpetual, because we’re going to save time and money.” And that’s my bottom line, as a member of the Elected Committee. I’m all for saving time and money and having the hassle of having to do this all the time. So I’m going to make that statement and leave it at that. And Eric can go ahead and say, “Well, I’ll do two.” And that’s fine. But we’re not saving time and money but just going… increasing it to… from one year to two; not the kind of savings that I would like to see.

Bird: And if I may, this is Jerry, you got to understand, sometimes… we’re making decisions here as business people. And as business people we look at things that save time. Time’s money. What’s a waste, what isn’t a waste? What’s your value? That’s what this program’s about. Sometimes when I… other state maybe staff and that have a different way because they’re not so much of business-minded as… as, what do you say, having the control instead of a smart way. It’s a control thing that… like I say, we’re here as businesses. If it’s smart business, a good reason, we want to do it. If it’s going to cost us money, we have better things to spend our staff money on, you know? And if even we start having to pay for our staff. So, once again, I just don’t see the value of… and as business people we look at value. Thanks.

Art Stevenson: I guess we can move on now, Terry. But I wanted to put that on the record, as a member of the Elected Committee and as, you know, a person who knows we have limited funds and resources, any way that we can save money and resources, we should be looking at that very carefully before we just make a rash decision like, “Well, we’re increasing from one to two years.” So, anyways.

Terry Smith: Well, I would suggest, you know, one other… one thing. You know, I think just to say you’ll enter into an agreement, you do need, either here in the rules or in the operating agreement itself, that, you know, under what circumstances the agreement can be terminated. And I can’t remember… it’s in the… it may be in the operating agreement. I remember making some notes on… when I sent it out. Either when we get to operating agreement or come back here to the rules we’ll need to have that discussion.

Okay, the next thing was under temporary assignments. And this is where we get to the issue about continued operation of a vending facility. At least this is where I think it should go. I know this is an issue with the committee. And it came up several times last week. And I think the issue… and… and maybe if I misstate it, then correct me. I think the issue was that when a vendor leaves a facility, for whatever reason, and the agency assumes responsibility for that facility, then there should be some criteria or some guidance on how that process will unfold. Is that what the issues were?

Hauth: Yeah, Terry. In sum, that’s it. So… well, I mean, we want to help work with the agency to make sure that the beneficiary of this program, the blind… or the vending facility manager has an opportunity to, you know, benefit from those facilities and not necessarily that it’s arbitrarily being brought into set-aside, you know. So that… if we can find a way around… to fix that with the agency, that’d be great.

Terry Smith: Currently, it says, “If a licensed blind manager – or vending facility manager, I guess it is – or licensee is not available or selected for permanent assignment to a vending facility, the Commission may select the licensed blind manager or licensee who operates a vending facility under a temporary operating agreement. A vending facility manager or licensee with indebtedness to the Commission shall not be eligible to operate a vending facility under a temporary operating agreement. The following process will be used to select a temporary manager. The Director shall send an announcement of a temporary vending facility assignment to all licensed blind managers and licensees. The announcement shall contain the following:

The vending facility agreement or permit

A list of equipment provided

A list of the types of products sold

Sales figures and net proceeds for the past three years

For new vending facility, a survey, if available

All licensed blind managers or licensees shall apply to the Director for assignment as a temporary manager. If more than one licensed blind manager or licensee applies for the temporary assignment, the Director shall interview the applicant. The Director shall select a licensed blind manager or licensee based on the following categories:

Business experience”

It’s the same seven that you used… no…

Bird: Jerry.

Terry Smith: Yeah, these are the same seven that you used for determining a promotion. “The Director shall score each of the categories from zero to 50, the maximum score being 350. The Director shall add up all seven category scores to calculate an overall total score for each applicant. The applicant with the highest total score shall be selected. I the event of a tie, the applicant with the most years of experience in the Oregon Business Enterprise Program shall be selected. After a licensed blind manager or a licensee has been selected, the Commission and the selected licensed blind manager or licensee shall fully execute a temporary operating agreement for the vending facility. If no licensed blind manager or licensee is willing to accept a temporary operating agreement for the vending facility, the Commission shall contract with a private vendor for the continued operation of its vending facility until a licensed blind manager or licensee is selected to operate the vending facility.”

Hauth: Hey, Terry? Terry, that’s a mouthful. Is there an easier way to get to that? And…

Terry Smith: I think that…

Bird: I got a…

Terry Smith: I don’t think… I really don’t know that you need to change anything. I don’t… The one thing I would change for sure is, I would use… we added an eighth thing on the… when we were looking at the motions, we said their plan for the new facility.

Morris: Oh, business plan.

Terry Smith: And you… the Director gets 50 points here. I don’t know why it just wouldn’t be the same 10 points that we went with on the promotion interview. So that’s the one thing I would definitely change. I would make the criteria and the evaluation system exactly the same so there’s no confusion. And then, in all reality, I don’t think there is… I think everything I read, other than that, I’m perfectly okay with. It gives a first priority to the… to a blind vendor.

Now, there may be situations and… where it is an emergency and you don’t, you know, it’s just not practical to go through that process. I mean, that’s… if some… if somebody walked out tomorrow or they died tomorrow and… you don’t have time to go through that process. And so, well… died is not a good example because you… a spouse can continue, if they have a spouse. So let’s just say Randy tomorrow says, “Here, I’m done,” Eric doesn’t have time to go through that process. So there needs to be something in here that’s under emergency situations, where, you know, the vendor gives no notice, that they can subcontract for a set period of time before they bid it out. And, you know, I would say six months or whatever you guys decide.

But I would add a sentence in there that says, “In the event a manager leaves, without providing notice, then the Commission may subcontract with a private entity for a period up to six months before bidding it out. And the funds collected will be used according to…” you know, the section where we talk about state unassigned.

Because you’re going to have… there’s situations you just can’t do it. You know, the other option is just to give Eric total authority to say it…

Hauth: Sure.

Terry Smith: I’m going to, you know…

Hauth: Sure.

Terry Smith: … I’m going to give it to Chair Hauth because I…

Hauth: Yeah, I know Jerry… I know Jerry’s been wanting to say something. And yeah, I don’t think an emergency instance is a bad thing, as long as it’s, you know, as long as nobody would abuse that or how do we make sure that that…? That’s my only thought, is that, you know, it wouldn’t just necessarily be deemed an emergency because… even if it weren’t. So… and I’m not saying that would happen, but precautionary…

Terry Smith: Well, emergency, I’m saying is without… if a facility’s vacated with no notice. Right now they don’t have a choice…

Hauth: Okay.

Terry Smith: … technically. By these rules they don’t have that option. Go ahead, Jerry.

Bird: Thank you. I only got a little concerned when you was reading that, your first part was the agency “may.” And then towards the bottom it was a “shall” contract with a commercial vendor if we… they can’t get it. I’m a little confused because I think the idea is we’d prefer… that’s why I think that might be “they shall” put this out for permanent or temporary to a manager. My idea of this is, shouldn’t any manager have the first right of refusal over them deciding whether to give it to a manager temporary or to a contractor. So if there’s nobody interested, and of course if there’s an emergency or something they do need that authority to hurry and put it out. But why is there “may” for us and “shall” for subcontractors?

Art Stevenson: Chair Hauth? I mean, or Terry? Am I off mute?

Terry Smith: Yes.

Art Stevenson: Okay. There’s been a long ongoing conversation about this. And one of the things that was suggested before, Terry – and, you know, we did take into consideration this emergency thing – is to have a list of qualified managers that are willing to do that. And then, in an emergency case like you’re talking about we already have an established list and a manager would be able to go under a temporary agreement.

Obviously, I fell a blind licensed manager is just as capable of getting the job done and getting things in place as quickly as the agency can because of our experience at being blind licensed managers. So developing a list of qualified managers who are willing to take on that obligation in an emergency is definitely a way of doing that. And so that was a topic of discussion about this particular situation before. And I still think it is an adequate solution for emergency purposes also.

If a subcontractor can do it, you know, we can go ahead and have the resources to do it, too. And obviously the statute says, you know, that the blind licensed manager should be considered first.

Now, if they were using a subcontractor and they had resources and stuff like that to get the job done, the manager can do it just as good as the agency can.

Terry Smith: Well, I will… I think the question becomes, should one blind vendor benefit from that or should all blind vendors. If you’re subcontracting then all the money’s coming back to the program then all blind vendors benefit from it. So that would be…

Bird: What about the “shall” and “may?”

Terry Smith: Well, I… I don’t want this to get out, but I agree with Jerry. I think the intent here, and as I read it I think the intent is that licensed blind vendors have first priority. And I think that’s clear in reading it that that is the intent. And I think, you know, personally I think it should be “shall” if one is available. Then you go through that process. But I still believe that the agency, in an emergency situation, should be able to make that call and, you know, subcontract it out until such time as they can bid it out.

Hauth: Well, hey, Eric, do you have any problem changing that to “shall?”

Morris: Which one?

Hauth: The first one, when you read into that, where it says the licensed blind vendor may, I believe. I don’t have it in front of me.

Terry Smith: It’s the very first sentence under Temporary Assignment, is where… What I would suggest you do is say, ‘If the licensed blind manager or licensee is not available or selected for permanent assignment to a vending facility, the Commission – it says ‘may’ – shall select a licensed blind manager or licensee to operate the vending facility under a temporary operating agreement.” And then I would add, “if there’s a vending facility manager willing to do it.”

And then I would go down after that, down at the very bottom and one sentence about the emergency… I believe that’s what this… what that is the intent of this anyway. Because there’s nowhere else currently, there’s nothing that authorizes the Commission to contract with anybody else, unless a blind vendor turns it down. That’s what it says down at the bottom. We could change things but they’re just in the comfort level. I think… I think that… to me, that’s not the issue. The issue is the wording for the emergency. I keep calling it emergency. I don’t want it to say… or we can call it emergency situation but…

Hauth: Yeah. You know, Terry, I think what you’re saying there is good. And if, you know, the agency supports it and the board supports it… And I know our issues currently aren’t necessarily because the rules don’t direct it. It’s just because, you know, maybe we feel that the agency hasn’t been complying with the rules. But if we believe that, that’s addressed through a different way. Because right now if we create new rules and the agency doesn’t comply with them you have to address that through a different way. But if we’re writing rules and we’re trying to put the strongest language in it that can and the intent of that is to go to the beneficiary of the program, which… I mean, what I just heard, I’m pretty good with. You know? I think it gets to what we’re doing. If Eric is and we can change it to “shall…”

Morris: Terry, could you go back over what you said? Because I was trying to focus on the may and shalls and you were rewriting some stuff.

Terry Smith: On the very first sentence…

Morris: Yeah.

Terry Smith: … change “may” to “shall.” But at the end of that sentence add “if a vending facility manager is available and willing to accept the temporary assignment.” So you will select a licensed… that gets to what they’re talking about.

Morris: Yeah.

Terry Smith: The licensed blind vendor gets first priority.

Morris: I gotcha. Yeah, that works.

Terry Smith: Okay. And then we go down and, at the very end of that section…

Morris: So it’d be number seven.

Terry Smith: Let’s see. Yes, it’d be number seven. And so, I’m on the fly here, so… “If a vending facility becomes vacant, for whatever reason, without prior notice, the vending facility manager, comma, Commission may elect the contract with a third-party vendor to ensure continuous operation of the vending facility,” period. And then I would say … I would say with the active participation of the BECC, comma, decision will be made as to when to announce vacant facility all vending facility managers, licensees bid,” period. “In such instances, comma, the Commission shall ensure that the vending facility is announced for bid…” Wait. Change that. How did that… How did that sentence start, Kathy?

In such… say, “In such instances, comma…”

Ewing: Uh huh.

Terry Smith: “… the… In such instances, the vending facility will not remain the third-party for more than blank months without bidding it out, unless unique circumstances exist,” period. You got to put that in there because you might… there’s all kinds of things that could happen and you just need to… and it says with the active participation of the committee. The six months or eight months or twelve months or whatever y’all think is the best number just tells you, okay, they’re going to put it on third-party and… because it’s an emergency situation. It says “may,” but it doesn’t say that they, you know, they have to do that. But then it gives you the protection that it’s going to come out for bid in a period of time unless just… there could be something where part of the facility could close; it’s no longer a viable operation. It could be a situation where, you know, the agency and the committee decide it’s… that facility shouldn’t go out for Eric to bid, you split it up and do other things with it. I don’t know. There could be all kinds of reasons why you don’t bid it out. So you don’t want to box yourself into a corner and say you have to bid it out when it’s no longer a viable operation.

So, with that language, Eric, let me hear from you first. What’s your thoughts?

Morris: Can you read it back, Kathy?

Ewing: Sure. And I may have missed a couple words. “If a vending facility becomes vacant for whatever reason without prior notice by the vending facility manager, the Commission may elect to contract with a third-party vendor to ensure continuous operation of a vending facility. With the active participation of the BECC a decision will be made as to when to announce the vacant facility so that all vending facility managers and licensees can bid. In such instances, the vending facility will not remain in the third party for more than blank months without bidding it out, unless unique circumstances exist.”

Morris: Yeah, I think that sounds good.

Terry Smith: So, committee? Are you guys okay with that? The only thing we have to come up with is what goes in the blank.

Hauth: Hey, Terry? You had mentioned that, you know, short of it going out to bid, maybe through active participation, the committee and agency would want to determine a different pathway. Is that… Is that handled within that language?

Terry Smith: Yeah.

Hauth: Okay.

Terry Smith: I think so.

Hauth: Okay. I mean, obviously, the intent of the program is to provide, you know, remunerative employment opportunities for blind vendors. So that’s my first [inaudible]. But I was just wondering if, in fact, those, you know… if it allows for deviation from that through the rules like you were talking about. So.

Terry Smith: What do you mean? I’m not sure…

Hauth: Well, like you were saying, maybe through active participation the committee and the agency, instead of saying this should go out for bid, maybe it, you know, would go, you know, be dealt with a different way.

Terry Smith: We could… We could add one more sentence that says… We said, unless there are unique circumstances? Is that what we said?

Ewing: “Unless unique circumstances exist.” Yep.

Hauth: I mean, I don’t know what the other committee members think about it. Right now the intention is to build up opportunities for people that are blind, you know, and beneficiaries of this program and to get more people into the program. But in the future, you know, maybe there would be, you know, a desire to…

Terry Smith: What if… What if we say this? What if we put at the end of that, “unless unique circumstances exist that make the facility no longer viable?” And then that way then you can decide what to do with it.

Hauth: I mean, I think that’s okay, as long as it makes sure that the key… I don’t want to allow any kind of – again, not that the agency would – but I don’t want to allow any discretion on the agency to say, “Oh no, unique circumstances exist and so we’re not going to support that.” So, I don’t know.

Art Stevenson: Chair Hauth?

Terry Smith: Is everybody okay with that language I just added?

Morris: [Inaudible.]

Ewing: Bid it out unless… well, the last sentence: “In such instances, a vending facility will not remain the third party for more than blank months without bidding it out, unless unique circumstances exist that make the facility no longer viable.”

Terry Smith: Any objections to that?

Morris: I think it was good…

Art Stevenson: Chair Hauth?

Morris: … before we added stuff in.

Hauth: Yeah, Art, go ahead. You’re on mute, Art. You’re still on mute, Art, if you were trying to say anything.

Terry Smith: No Art.

Art Stevenson: Am I off mute now?

Hauth: You are.

Art Stevenson: Okay. Dang phone. Anyways, I dropped off the line so I missed quite a bit of that. But anyways, my concern, of course, if a qualified manager is available, you know… say, for instance, this thing that’s going on, the agency is collecting five percent of the gross from a certain subcontractor. I still believe that if a manager is there and willing to do the oversight that the money should go to the blind licensed manager and not the agency. So that’s my concern concerning that. And I think it definitely needs to be addressed, that temporary agreements are in there and if the manager is willing to do the oversight, then there should be no question about it, it should be assigned to the blind licensed manager.

Terry Smith: I think… I think… I don’t think you want in there lock yourself in to where it’s automatic. I mean, it says that they “shall” give it to a licensed vendor, if one’s available. So, you know, that’s… they shall do it. The only… The only time they have any leeway, if somebody walks out without giving any notice, they got to do something right then. And it’s, you know, chances are, currently they’re probably Vance’s machines. Eric can call Vance and say, “We want you to continue to stay in there until we can figure out what to do with it.” And the Commission will come to us and I think… I think the agency has to have some authority to deal with situations like that. And especially if it’s a subcontractor arrangement like that.

Hauth: And Terry, I personally don’t disagree with you. I think a lot of it is just a lot of sensitivity around what’s been going on here recently.

Terry Smith: I understand.

Hauth: You know? And so, you know. So.

Terry Smith: I’m just trying to give you what are best practices.

Hauth: Yeah. Sure. No, I mean, I don’t, you know, I see what Art’s saying but I don’t think this is a big one to get hung up on. I may be wrong. But if it says it “shall” go to the blind vendor, then that’s the intended purpose of it. And… but if an emergency does come up, you know…. So. I personally think it’s something worth, you know, kind of in concept agreeing to and moving forward to get to some of these other stuff. But that’s just my opinion. So.

Terry Smith: Eric? Eric, what… what’s your thinking, in terms of the length of time that it can be left on third party before you’re going to bid it out? What would you…? What’s your thinking there?

Morris: Well, just to circle back real quick, I wasn’t good with the last… if the facility’s not viable, I think that… that putting one criteria in there eliminates the idea that if there’s unique circumstances… that’s… I think it’s counter-intuitive. So I think having unique circumstances gives us the flexibility to deal with unique circumstances. I’d like to hear from… what everybody else thinks about months. I mean, I’m not sure. I’m still thinking about that.

Terry Smith: Well, okay. Let’s deal with the other issue. And you’re right, I did sort of add another criteria in there. So if you put a period under unique circumstances and say…. Put a period and then you say, “If the facility is no longer viable, comma, the Commission, with the active participation of the committee of blind vendors, may choose not to bid it out and make other arrangements to ensure the continuous operation of the facility.”

Morris: Okay. Kathy’s typing away furiously.

Ewing: [Laughs.] Okay.

Terry Smith: I got to be her favorite person in the whole world. [Laughs.]

Ewing: So, “if a facility is no longer viable, the Commission, with the active participation of the BECC may choose not to bid it out and make other arrangements.”

Terry Smith: Yeah, that’s fine. I said “for the continuous operation…”

Ewing: Oh.

Terry Smith: I think we said that starts a whole section, didn’t we?

Ewing: Mmm.

Terry Smith: No?

Ewing: Yes.

Terry Smith: I would say “to ensure the continuous operation.” No, don’t. Don’t. Just stop at “arrangement.” Stop at “arrangement.”

Ewing: Okay.

Terry Smith: Because we’ll no longer be a facility, a vending facility. So just stop at “arrangement.”

Ewing: Okay.

Terry Smith: So, Eric, I know you wanted to hear from the committee, but I’m going to put you on the spot. I’m going to… What… I mean, I want to hear what you think is reasonable, in terms of, you know, the time frame for how long it could stay on temporary assignment.

Morris: I would say six months. Because I think that’s… Well, no that’s not the right… Yeah, six months is good.

Terry Smith: Six months is where I was on… at, too. So, is the committee okay with six months?

Hauth: I would think six months is too long. However, I wouldn’t, you know, I wouldn’t draw a line in the sand over that. So.

Terry Smith: Yeah, if they can do it… if they can do it in two or three months, they can do it in two or three months.

Hauth: Yep. Sure. Maximum of six months. Yeah, I mean, I’m good with that. So. Personally.

Terry Smith: So do I hear any objections to what we just put down in writing, using six months? Okay, hearing none, let’s get into the fun part. Under Set-Aside, Allowable Deductions…

Art Stevenson: Chair Hauth?

Hauth: Yes, Art.

Terry Smith: Art.

Art Stevenson: I think we should check with the people who are stuck in that room and can’t move, if they need a restroom break for ten minutes or so.

Hauth: Yeah, whatever you guys… whatever you guys think, Terry. I’m kind of off and on mute so sometimes if I don’t respond that’s why. So just feel free to kind of help facilitate that, as well.

Morris: We’d be good taking ten.

Terry Smith: Ten it is.

Morris: All right.

**PART 2**

Terry Smith: Okay. We were getting ready to discuss set-aside deductions and… under allowable deductions. And where it talks about employee expenses… Again, this is not a Randolph-Sheppard requirement, but I think a lot of states will only allow you to deduct employee expenses if you’re… it they’re actually employed in the eyes of the IRS and you’re doing the proper withholding and that kind of stuff. Otherwise, it is subject to being abused. You call somebody an employee actually if you’re paying them a salary, so your employee, but you’re not doing withholding, you’re violating the federal law. So I put… I think you should put in there when it says allowable deductions that you put, you know, provided the vendor does withholdings, pays unemployment, et cetera, et cetera, et cetera. Otherwise, it’s not an allowable expense if you’re just paying somebody under the table or whatever, not reporting it to the IRS. Because, again, you’re breaking federal law if you’re not doing withholdings.

Hauth: Hey, Terry, can you put something that is “compliant with employment law” or something like that? I mean…

Terry Smith: Yeah.

Hauth: I mean, something like that, I would guess. So.

Terry Smith: That’s… Let me see where that is. Yeah, it says “wages paid to employees, including any spouse, domestic partner or a relative by blood or marriage, not to exceed two times the state of Oregon’s minimum wage.” And then you would put, “provided….” I’d just say, “provided the vendor is compliant with IRS requirements… reporting.” That’s all I would say.

Ewing: “With IRS-compliant reporting.” Okay.

Terry Smith: Any objection to that? I don’t know, business consulting and legal fees… again, I don’t know where you guys would be using those or if they get used. So usually, when you have broad categories like that, you know, it’s got to be approved where you can deduct it. I don’t know what a business consulting would be. If you’re hiring somebody to come in and help you better market or whatever. Or you’re just hiring somebody on an ongoing basis. I think… My thinking is, on both of those you’d put “by approval from the Commission.”

I don’t think you should just be able to put… say, “I’m hiring this person as a business consultant” and charge off legal fees. But it really may not be related, directly related to operations [inaudible]. The Commission ought to be able to make sure that they are indeed related to the operation of the vending facility. Everybody understand what I’m saying?

People do… Is there much of that? Where that you’re deducting business or legal expenses? No? Apparently not...

Art Stevenson: Well…

Terry Smith: Any…? Go ahead.

Art Stevenson: Well, you said business-related… Am I off mute?

Terry Smith: Yes, you’re off mute.

Art Stevenson: Okay. Okay. So business-related or complaint-related or…

Terry Smith: Got to be related.

Art Stevenson: Obviously, if you’re going to hire, you know, somebody’s giving you a bunch of stuff concerning, you know, or suing you or something like that, that’s one thing. But the complaint process, of course, is another thing. And so if you’re going to put business-related and complaint-related, I wouldn’t have a problem with it.

Terry Smith: Well, right now it just says “business consulting services.” I’m just… we’re only talking about what’s allowable on your set-aside. And right now is all it says is “business consulting services.” And all it says is “legal fees directly related to the operation of the vending facility.” I’m just saying, with each of those you ought to put… you ought to tag at the end “with prior approval from the Commission.” It just doesn’t open it up for anybody to deduct whatever they want and call it business consulting. I don’t know how much the Commission looks into your… what you claim now. If you just write it down and they accept it then, you know, that’s even more of a problem. Is there any objection to that?

Art Stevenson: Well, again, Terry, you know, I… you know, if a blind licensed manager is making a… now the consultant… obviously, the agency should be assisting the blind licensed manager and all this kind of stuff… and maybe something specialized for their unit or something like that might be, you know, get the blessing. But I do believe that the agency should be helping you with any problems you have. But as far as the legal fees go, you know, giving the agency the ultimate authority to say yes or no, I think, in my opinion, is taking away from my independent business decision-making power. And I may have a problem with that.

Terry Smith: So what…? So if you put down… what’s currently... you put down last month you had $2,000 in legal fees, do you have to show what that’s for? And it’s got to be approved by the agency? Hello? Is anybody even reporting legal fees or business consulting services? Sound like they are.

Jackson: Terry, I don’t know if anybody’s recording legal fees, if that’s your question. But I’m listening.

Terry Smith: Okay. Then if there’s… I mean, I think it’s implied it has to be approved. But if you don’t want to put it in there I don’t want to waste time on it. Are you guys…? When you report your mileage are you doc… did you have to document that?

Hauth: We do, Terry, we do actual [inaudible] mileage on our reporting. And, you know, if the agency asks for documents, supporting documents – I know that’s the agency’s right to do. So. But the only documents that we’ve been required to do is the third-party subcontracting and the insurance. And I know that… Yeah, anyway, we did undergo an audit here oh, I don’t know, about three, four, five months ago. I don’t know, a while back. And they did ask for all supporting documents. So… but no, the question is… the answer is no, we don’t provide that right now. And there’s two different allowances: actual and mileage.

Terry Smith: Well, I just think it ought to be documented on a mile… you ought to have a mileage log. You don't have to submit that mileage log, but that… you should be required to keep a mileage log if you’re doing mileage. I just think you need to have that in there.

Morris: That’s under 15, Terry?

Terry Smith: Yeah. There’s automobile expenses, allowable expenses, either the documented business-related mileage driven, multiplied by the current Internal Revenue Service standard mileage rate, or the total itemized automobile expenses for that month. What do most people do? Are most people doing mileage or actual? Randy, what do you…?

Hauth: I think… Well, I do actual. I think there’s a, you know, I think some people do mileage, some people do actual.

Terry Smith: Okay. Just a thought.

Hauth: I mean, isn’t it implied, Terry, already that we have to… I mean, we have to, you know.

Terry Smith: And…

Morris: Hey, Terry?

Terry Smith: I also ask, who determines the appropriate… what is business-related training?

Hauth: I don’t think there’s any requirements or restrictions on that. You know, if the manager’s going and taking training and deducting that off their [inaudible] for themselves, I don’t think there’s any, you know, allowance or denial for that. If we go to the agency to request, you know, either assistance with that travel and training, then I know it has to be approved and….

Terry Smith: Okay. And the other thing I had, you know, I think it ought to be… it ought to be clear, when you talk about number ten, I guess it is, where you talk about tax preparation, income tax preparation is not an allowable. So, you know, maybe on your IRS but it’s not an expense to the facility. So I don’t know what you guys are doing in that area.

Hauth: Hey, hey, Terry? I don’t, you know, I know that’s not a… I mean, a major issue, if you’re filing your taxes quarterly or annually and you’re marking off, you know, two to three hundred dollars. But, just out of curiosity, why is that not an allowable expense, if it’s… Like, you know, in my instance, I have a corporation…

Terry Smith: It’s your personal income. It’s not… It’s not… Only expenses are related are expenses related to the net income of the vending facility. Personal taxes… because your personal taxes have, you know, lots of income… may have income and may have expenses that aren’t related to your vending facility. You know, that…

Hauth: Yeah. And I mean, honestly, it’s not that big a deal to me. However, like, when I file my taxes, I file it, you know, as a corporation and also as a sole proprietor. So, blah, blah, blah. But I don’t know if anybody else has any comments on that. It’s not that big a deal. So.

Terry Smith: Well, I’m just bringing it up…

Hauth: Yeah. No.

Terry Smith: But the one thing… the one thing you do have to change is, your set-aside… what you pay set-aside is not an allowable expense. So are you guys deducting it now as an expense? It says your prior month set-aside?

Hauth: No, Terry. So what we do on our monthly is… so the net proceeds is on line whatever, you know, 28. And then we deduct the previously paid set-aside to get our net… net proceeds and net profit. But we don’t… we don’t use that to calculate our set-aside. So our set-aside is based off of our net proceeds.

Terry Smith: Oh, you don’t…. So your set-aside is based on the larger number.

Hauth: Yep. Mm hm.

Terry Smith: Okay.

Hauth: I mean, you deduct your previously paid set-aside just to get your net earnings, but it doesn’t form into the calculation.

Terry Smith: Say that again?

Hauth: It doesn’t formulate into the calculation of what you’re paying for set-aside. So we’re doing it off the net proceeds, is what we base our set-aside on.

Terry Smith: So you need to take 18 out then, completely.

Ewing: Okay.

Terry Smith: Because it’s not an allowable expense. Your current rules say it’s an allowable expense.

Hauth: I mean, correct me if I’m wrong, anybody, but that’s… that’s what I see.

Morris: So, Terry?

Terry Smith: Yeah.

Morris: Under the tax preparation thing, should it say “business-related tax preparation?” Would that be more appropriate?

Terry Smith: Yeah. That’d be more appropriate.

Ewing: What number was that, again?

Morris: Ten.

Ewing: Okay.

Terry Smith: So, Eric, is Randy’s understanding of the way set-aside’s calculated, is that your under… is that correct?

Morris: I believe so. I’m trying to picture the spreadsheet in my head. I’d have to go back and pull it up and look at it. But that sounds accurate.

Terry Smith: So if you… so let’s just say you made… your net proceeds are $10,000, then the previous month you paid a thousand in set-aside, making it $9,000, but you pay set-aside based on the 10,000, is that correct?

Morris: Yes, that’s the correct…

Art Stevenson: That’s correct.

Morris: Yeah.

Terry Smith: All right, then, you’re good. But that still needs to come out on 18. 18 needs to be stricken completely.

Morris: Yeah, Kathy took it out.

Terry Smith: I also… it says under reporting there’s no mention anywhere about rebates. Rebates are… have to be counted as income and I don’t know where you report those. There needs to be some allowance for any rebates that you get.

Hauth: Hey, hey, Terry? Just a question here, so I better understand it. My understanding is, set-aside is based off of earnings from a vending facility or vending. So I guess you’re saying that rebates are part of that or connected to that?

Terry Smith: Yeah. That’s money you’re… That’s money you’re getting as a result of operating that vending that you wouldn’t be getting otherwise. Rebates and commissions, those kind of things, are all… count toward your net profit.

Morris: So, Terry, you’re saying we should add a category under reporting?

Terry Smith: Either that or… I mean, I don’t care where you add it. You could… but it… I… that’s the cleanest thing to report it as. And I’m getting off track just a little bit but currently, on a subcontract, do they report the sales and then…? Or are they reporting just the commissions?

Hauth: We’re reporting it… at least, I’ll speak for myself, the locations, the gross sales, and the commission rates.

Terry Smith: So then, the gross sales…

Hauth: And the type of machine. So I give the agency the full shooting match, you know. And locations, the style of machines, the gross sales and also the percentage of those gross sales, it’s all calculated out per machine.

Terry Smith: So where do y’all report… how do y’all report that, Eric? To the feds? If it had $10,000… if what I understand you’re saying, sales were $10,000 and he was getting a 25% commission, he’s showing $10,000 but he’s showing net income of $2500. Is that right, Randy?

Hauth: Well, I also have deductions. My business, you know, my business insurance, by business…

Terry Smith: Yeah, I understand that. I understand that. I’m just talking about…

Hauth: Yeah, yeah, right. No. So I, yeah, what I report on my report is the money that I earn from my agreement with, you know, Canteen. So I don’t report the total sales.

Terry Smith: Okay.

Hauth: I report the portion that I receive through my [inaudible]. If that’s what you’re asking.

Terry Smith: Yeah, it is. That’s exactly what I’m asking. So you’re reporting…. It’d be easier if you just added rebates. But it either needs to be added, rebates, or it just has to be clear that that needs to be added into your sales figures.

Hauth: Well, Terry, wouldn’t rebates be under income, then? If you’re saying it’s income, wouldn’t that [inaudible].

Terry Smith: [Inaudible.]

Hauth: Okay. Yeah. Yeah.

Terry Smith: You don’t have to have a separate category. You just need to put in there clear that…

Hauth: On our reporting there’s an allowance for “other,” you know, “other income.” So…

Terry Smith: There is?

Hauth: Yeah. Mm hm.

Terry Smith: Okay. Then that’s where it needs to go.

Morris: So, Terry, under…

Terry Smith: Okay…

Morris: Sorry.

Terry Smith: Go ahead.

Morris: So line three says “total vending machine income received.” Could we just put “total vending machine income and rebates received?”

Terry Smith: That does it.

Morris: Okay.

Ewing: Got it.

Morris: Good to go.

Terry Smith: And I was saying that under blind managers’ responsibilities, section A, your listing of things that they have to comply with the rules and all that and, you know, program policies probably needs to be added in there.

Hauth: Hey, Terry, just to mention my concern… my concern with that, talking about policies, you know, how are those policies relevant to the Business Enterprise Program? If you’re talking about program rules, but previously there’s been some issue with how blind vendors are in some cases subject to State employment policies, which we don’t believe we are. So if we would just allow for policies to, you know, determine that, I’m not… I personally am not comfortable with that. From some interactions, you know…

Terry Smith: These are not… These would only be policies that are developed with the active participation of the committee and that have been approved by RSA. All policies have to be approved by RSA.

Hauth: Okay. Yeah. Well, we want… Yeah, just wanted to make sure that’s… that’s spelled out or, you know, addressed. So.

Terry Smith: So you may want to… just want to add “policies that have been approved by the Rehabilitation Services Administration.” I would add that in there, just as…

Art Stevenson: I… I agree with that. Because policies have been implemented that haven’t been okayed by RSA and the Elected Committee. And so that definitely needs to be in the rules.

Terry Smith: Kathy, if you look in… we’re still under…. Let’s see, where are we?

Morris: It’s like line 603, Terry.

Terry Smith: I’m looking for… it had all those “shalls” written out.

Morris: Oh. Well, got me on the spot.

Terry Smith: Section B, you should take out the word “shall.” Because you start the sentence, it says… I don’t know Section B or what. This is why you need to restructure these things.

Morris: I see what you’re saying. Line 614.

Ewing: Gotcha.

Morris: Yeah.

Ewing: So just take out all the “shalls” and start it with…?

Morris: No, just… I think it’d be easier to just eliminate the one on 614 than the rest of it.

Terry Smith: Yeah, either one… either one accomplishes the same thing.

Morris: Yeah. One’s much easier to do, versus the other.

Ewing: [Inaudible.]

Terry Smith: Okay. Because all we’re talking about there, guys, is the word “shall” appears twice. It says, “You shall…” and then each sentence starts out “shall.” So you just need to eliminate one of those, which they’ve done. It’s not a substantive change. Then, under Equipment and Inventory… this has to do with the set-aside credit. I mean, do y’all do that now? Because I… that’s… the way you guys have that set up is, I think…

Hauth: What was that question, Terry? I missed what you asked.

Terry Smith: This has… This has to do… If you buy equipment and you put it in your vending facility, you can… you get a set-aside credit. So… So…

Hauth: I don’t think… I don’t think that’s ever happened. Or if it’s happened, it’s been very seldom. But I saw your notes on that. I don’t know what Eric’s thoughts are or the board’s thoughts are on that, but…

Terry Smith: You’ve already said, over under Allowable Expenses you’ve already said it’s an allowable expense. So it… that should be the end of it. I mean, it can’t be an allowable expense and you get a credit, too. Those are two different things. Plus, the way it’s written, the vendor ends up getting paid for that equipment twice. Because he gets a set-aside credit, which effectively pays for that equipment, and then when he… when he turns around and sells it to the agency, so he’s getting paid for it a second time. I think that whole thing ought to come out and it just stay the way you have it over there to the other section there, that it’s an allowable expense. You add it… you buy $1,000 piece of equipment, a $1,000 piece of equipment’s an allowable expense, end of story.

Art Stevenson: Terry?

Terry Smith: Yeah, go ahead.

Art Stevenson: Well, isn’t that…? Okay, if the agency can’t afford to buy a piece of equipment, the manager has the right to do so. And… And then, there’s an agreed upon amount that the blind licensed manager will get to deduct off their set-aside. And once the amount of the equipment has been deducted off the set-aside, then the equipment becomes vested in the agency. And so, you know, I don’t have it right in front of me…

Terry Smith: That’s not what your rules say.

Art Stevenson: Well, and, actually, that’s what it should spell out. Like I said, you know, it’s difficult to read right now with the things, but that what it should say. And that was the purpose of putting that section in there. And I believe, in my opinion, that should remain in there because, you know, if a blind licensed manager needs a piece of equipment and the agency doesn’t have it, the money to get it and stuff, that that process… and that comes right out of the federal regs, does it not?

Terry Smith: No. The federal regs talk about you’ll decide who it’s vested in. That’s all it says.

Art Stevenson: All right. I’ll seek some clarification on there. But I do believe that it needs to say that in the rules, you know, in case that situation comes up.

Terry Smith: I don’t even see… do you see… do you know where that is in the rules, Eric?

Morris: Yeah, I’m looking at it.

Terry Smith: Where are you?

Morris: 695? That’s where it’s about dead center. Starts on 688.

Terry Smith: [Inaudible.] Let’s see, what it says, Art, is [inaudible] “interest in the equipment purchased by the Commission to establish a vending facility is vested solely in the Commission. Licensed blind manager… a licensed blind manager may purchase equipment with the licensed blind manager’s own funds. The licensed blind manager may receive a credit for the cost of these purchases from the monthly set-aside report only with the Director’s written approval. The Commission and the licensed blind manager shall enter into a written agreement to provide the terms for a credit of the equipment cost on their monthly set-aside report. If the licensed blind manager chooses to receive the credit of the equipment cost on that monthly set-aside report, the right, title and interest in the equipment would then become vested in the Commission.” Uh, wait. If the licensed blind… It says, it gives examples how the credit works. It says, “If the licensed blind manager chooses to retain ownership of equipment they have purchased when they leave the vending facility, licensed blind manager shall offer the Commission the first option to purchase equipment at fair market value.”

It’s equipment that is already vested in them. They can’t buy back equipment that’s already vested in them. That’s the part… that last sentence is the part that needs to come out because it already said that it’s vested in them. They can’t turn around and buy it again, if it’s already vested in them. Are you following me? So you were right, what you said… you were exactly right, what you said, the way the rules read, until you get to the very last sentence.

Art Stevenson: Right.

Terry Smith: So that needs to come out. Because they can’t… they can’t legally buy back something they already own.

Art Stevenson: No, I agree with you there.

Terry Smith: All right. Okay. Any other objections to that?

Morris: Take out 706 through 708.

Ewing: So the last sentence of the second paragraph?

Morris: So, Terry, we would delete line 706 through 708?

Ewing: My numbers are…

Terry Smith: No, no, no. Wait. Yes. Yes.

Morris: That paragraph.

Ewing: Okay. Great. Okay. The whole… All right.

Terry Smith: So I want to skip the program-relevant information and come back to that. Then I want to say, go on to Dispute Resolution. And, again, we don’t have to have much conversation with this because this is a Jesse Hartle question. You know, I think we’re going to have to have a conversation with him about whether or not the administrative review can be required. I’m confident that it’s optional. But, you know, your rules now require it. And so we need to have a conversation with Jesse Hartle on that one. So we don’t have to spend any time on that.

Morris: Hey, Terry?

Terry Smith: Things… Yeah.

Morris: So it’s about ten after the hour, ten after noon here, local. Do we want to contemplate…

Terry Smith: Okay.

Morris: … taking a break for lunch? Or…?

Terry Smith: That sounds perfect. So it is… what time did you say?

Morris: I got about eleven after twelve.

Terry Smith: So you want to gear back up at 1:15?

Morris: Randy, what do you think?

Terry Smith: You need that much time? I don’t know…

Hauth: I’m good with whatever you guys want to do. I don’t… I mean, whatever. I know we have a lot to do, so I don’t know if we want to do a 45-minute lunch, if that gives you guys enough, or an hour. Whatever. I’m good with whatever.

Terry Smith: Gives me time. So let’s say, is 1:00 okay, Eric?

Morris: Sure.

Terry Smith: All right. Let’s do 1:00.

**PART 3**

Hauth: Hi. Who just joined in?

Terry Smith: This is Terry again.

Hauth: Oh, okay.

Terry Smith: I joined in and got cut off.

Hauth: Well, I guess we can go ahead and start, Terry, when you’re ready.

Terry Smith: Are the folks there in the room?

Morris: Yeah, we’re here, Terry.

Terry Smith: Okay. So the next thing, which I had skipped over… did we talk about dispute resolution. I was going to say, in that same section we talked, you know, we still talked about the part about trainees or vendors from other states being allowed to ask for a evidentiary hearing. That needs to come out of there, too. We took it out earlier. Do you see where I’m talking about, Kathy?

Ewing: Could you repeat it, Terry?

Terry Smith: We were under the Dispute Resolution section…

Ewing: Uh huh.

Terry Smith: … and we just… and I said we still have in that section also about the trainees and vendors from other states being able to file for a hearing?

Ewing: Okay. Let’s see…

Terry Smith: That… And I can’t… my notes don’t say exactly where it says…

Morris: Yeah, I’m trying to find it.

Ewing: Is it C) Fair Hearing, number one?

Morris: Yeah…

Terry Smith: What line are you on?

Morris: It’d be, like, 879 on our… on my copy.

Ewing: Oh.

Morris: I think it’s…

Pileggi: 879?

Ewing: “A trainee or vending facility manager from another state may request a fair hearing in response to a notice denying licensure?” Or no?

Morris: Yeah.

Ewing: Yes?

Morris: I think that’s what he’s talking about.

Terry Smith: Yes. That… That’s what we… we took it out earlier and we need to take it out there, too.

Morris: Okay.

Ewing: So we should take that out? Okay. Thanks.

Terry Smith: And… Do we have anywhere in here, either in the rules or the operations… operating agreement, that the facility will be operated in a non-discriminatory manner? They… RSA generally requires that statement because it’s right out… it’s right out of the Act. And it hit me… and I didn’t go back and go through everything to see if it was in there. I didn’t remember seeing it. But is that in there? Does anybody know?

Hauth: Terry? So I know a little bit about this. I… I don’t believe that we have a specific policy to deal with non-discrimination through the Business Enterprise Program. And I think it’s been questioned in the past that we just fall within State employment policies and guidelines. So I don’t think that’s accurate. So I know that they require a policy to be, you know, specific to the Randolph-Sheppard Program for non-discrimination. So I don’t think it’s in the operating agreement because I don’t think we have one.

Terry Smith: Well, I’m trying to find the language in the CFR. But, you know, you can put it probably… there’s a section over there called Vending Facility Manager Responsibilities. I’m just trying to find it.

Art Stevenson: Well, wouldn’t that be the agency’s responsibility, Terry?

Terry Smith: It’s your responsibility, too.

Art Stevenson: Huh?

Terry Smith: It’s your responsibility, too.

Art Stevenson: Yeah. No, I understand that. But then it should probably go in both, right?

Terry Smith: I’m trying to see what it says. It says, “Established policies,” which is what we’re doing now, “against discrimination of any blind vendor” – that’s you, the vendor – “on a basis of sex, age, physical or mental impairment, creed, color, national origin or political affiliation.

So you just need to put… So we’re doing it by rule. So I guess we just need to put in there somewhere that exact language, so you’re consistent with what the Act requires. That used to be on the checklist that they always… if you sent rules in that didn’t have that, they would always kick it out. But… I mean, they’d always go back and make you put it in. I don’t know that that… since everybody’s already got it since it’s the first go-round everybody usually has it in there. It’s sort of not been a big issue. I don’t see it in yours. We can… like I said, we can add it in the operating agreement. That might…. Or we can put it under Manager’s Responsibilities or we can put it in both.

Eric, do you have any thoughts about that?

Morris: I’m still trying to remember if we had it somewhere, but if you don’t see it then it’s probably not in there. So…

Terry Smith: Well, I wasn’t specifically looking for it when I read it. I’d already gone through everything and then I says, “Oh, was that in there?” And I don’t remember seeing it. So…

Morris: Kathy’s… Kathy searched for it and she’s not finding it either. So it’s not in there. But as to a preference where it goes, I’m good either way. If RSA wants to see it in the rules, then I think we need to put it in the rules then. Is that…? Terry, is that one of those things that would be appropriate under both agency and vending facility managers’ responsibilities?

Pileggi: I think it would be.

Terry Smith: Do you have a section like that?

Morris: Well, there’s not, like, a combined section. I think you’d just have to put it in each section, basically.

Terry Smith: Yeah, I see it on line… I guess it’s 603, where we talk about…

Pileggi: Yep.

Terry Smith: … licensed blind vendor/manager responsibilities and it says they’ll comply with all those things. And we were going to add policies to that.

Morris: [Inaudible.]

Pileggi: And then probably here. Under Business Enterprise responsibilities.

Morris: Yeah, that’s what I was talking about. Put them under both.

Terry Smith: Yeah, we probably… we can add it under both. But I would like – and my line numbers might be different than yours, Eric – but under 603 of Assigned Vending Facilities, it says, “the licensed blind manager shall operate their assigned vending facility in accordance with the following.” And we were going to add program policies in there, where it says the Business Enterprise’s rules, then I would say… put a new number two: Program Policies Related to the Operation of a Vending Facility. And then I’d make three the Terms and Conditions of a Vending Facility. And then you have four and five. And I’d just add another paragraph and pick up that language that I just read to you. Are you following me, Kathy?

Ewing: Yeah, and Terry would you…

Morris: Could you…

Ewing: … be able to email me that one section?

Morris: Yeah. Or read it again?

Ewing: Or read it?

Terry Smith: I’m sending it to you, Kathy. That’s what I’m doing.

Ewing: Thank you.

Terry Smith: So it’s going to be a new paragraph.

Art Stevenson: So, are we… we’re sticking this in the OCB’s responsibilities, too?

Terry Smith: Eric suggested that.

Art Stevenson: Well, Terry, I do believe that it needs to be in there. Because, if I remember correctly, in the CFRs it distinctly says that in the part that talks about, you know, the State Licensing Agency getting a license and all that stuff. So that’s why I believe it should be stated in the agency part also. Obviously, I don’t believe it says, you know, that a quote unquote in the CFRs or the Act that a manager must do that. I think that’s kind of covered in applicable federal and state…

Terry Smith: No, I just… I just read it to you. I read it right out of the Act.

Art Stevenson: Right.

Terry Smith: It says… It says, “the blind vendor shall not discriminate.”

Art Stevenson: Yeah.

Terry Smith: So the language I added… I added the first part. It says, “Furthermore, the vending facility managers shall not discriminate in any way in the operation of the vending facility,” which I wrote twice. Wait…

Art Stevenson: Right. But it does say that in the State Licensing Agency application for licenses, or whatever, that part…

Terry Smith: It just says they’ll assure that there’s a policy against discrimination. That’s what they have to do. So I said, “Furthermore, the vending facility managers shall not discriminate in any way in the vending facility operation on the basis of sex, age, physical or mental impairment, creed, color, national origin or political affiliation.

Art Stevenson: Yeah.

Terry Smith: And… Any objection to that language? Hearing none, I just sent it to you, Kathy.

Ewing: Oh, good. Okay.

Terry Smith: And then if you want, under agency responsibilities, you can tweak that just a tad and say the agency, in the administration of the program, will ensure that there’s no discrimination. Use the same language.

Okay. So, then, that was all, that was in the rules, as far as the older rules. Then in the… I was saying, you know, and I don’t think we can… I mean, I could do it, but I’d rather the agency or somebody… I think there needs to be a section in here on the priority and the preference. And, you know, the priority part is pretty well spelled out in the statute. Put it in the rules and then have a section on preference, you know, how that’s going to be interpreted. And I think, you know, Gretchen needs to take a look… take a shot at that. Or Eric can. I don’t care. Somebody needs to take a shot at putting that rule in there.

And then, under Temporary Assignment, did we… did you change that? Under Temporary Assignment, Kathy? Where… and I don’t know whether we even… where you have 50 points instead of ten points and you have seven categories instead of the eight? Did you fix… did you change that?

Ewing: Uh, yes. Under… hmm. I’m just trying to get to that point.

Terry Smith: We talked…

Ewing: Yep.

Terry Smith: It’s under Temporary… where the Director goes through and assigns the points. I don’t remember whether… and I just… I remember making the suggestion that we have… use the same eight…

Ewing: Is it…?

Terry Smith: … criteria we use in promotions. The Director shall score each of those categories zero to 50.

Ewing: I think in my notes I have the eight categories. Is it…?

Morris: Yeah.

Ewing: It’s eight. Okay.

Morris: Yeah. So we just copy it from the…

Ewing: Okay.

Morris: … from the permanent selection form.

Terry Smith: Yeah. So you’re not… you’re not really copying, you’re just… whatever that eighth one was, we say something about plan for the operation of a new facility was the eighth category. And instead of doing zero to 50, do zero to ten. That way it’s consistent. Everything’s consistent.

And then…

Art Stevenson: So, Terry?

Terry Smith: Mm hm.

Art Stevenson: You know, we talked about the definition of priority and preference. In that section should we not put…? Or should we put it somewhere else? The avenues that OCB will use to administer the program concerning compliance?

Terry Smith: I’m not following you. What are you saying?

Art Stevenson: I’m saying that the Elected Committee, the Andy Freeman memo, you know, all that stuff, we’ve been talking about it forever. But nothing’s been done about it. And that’s what OCB will do to ensure compliance. Obviously, the law still says, any contract or agreement in violation or non-compliance is null and void. The CFRs have a distinct… for federal locations on how they will move forward to ensure the federal, you know, locations, comply with the law. And we should have…. Although the agency has said that has to be a separate rule. I still don’t understand that. But we need language in here on how the agency plans to move forward to ensure compliance of all the entities that fall under it, you know, our preference and our priority.

Hauth: I think… I think enforcement, you know, some kind of enforcement mechanism, is there a way to build that in that can help the agency do what the law’s intending it to do? Also, just on a side note, I know through this process of crafting the amendments to the law, there was some weigh in on preference and priority by Roger Harris. And I remember Gretchen Merrill also thinking that that was, you know, some of the language was good. So I’m sure she still has that information that she could possibly utilize, as well.

Terry Smith: Well, and what I said – and I don’t… I don’t disagree with what Art said – what I said was, I think somebody needs to write a chapter on the priority and the preference. And that doesn’t need to be me. And, you know, I think it’d be better if it came from, you know, Gretchen. Or, you know, Eric can take the first shot at it, or whatever. I think that needs to happen. And, again, I’m not… I’m not an attorney. But this is my take on the enforcement procedure: if the legislature did not give you the authority to have an enforcement procedure, I don’t know that you can by rule go out and create one. Because this is something… if there’s a dispute between two agencies, you know, then the Governor, you know, he… he’s going to want to know… he’s not going to let one agency sue another agency, in all likelihood.

In Tennessee, we put the dispute resolution right into the law. And so we do have a mechanism that we can follow complaints against agencies that aren’t compliant. And… But… I… We didn’t have that mechanism in place until we got the law changed. So I just… that’s a Gretchen question. If she can… If she can put it in there, then that’s fine and good. I just think, anticipating… in anticipation of what her answer’s going to be, I don’t think that’s going to float.

Hauth: Yeah, and I think one of the things, Terry, in the law it does allow… and we tried to, you know, there was a lot of things that we wanted to do in the piece of this legislation and that, you know, because of one reason or another, didn’t quite make it through the process. However, it does, I think, allow for documentation. Like, if an agency doesn’t allow for the agency or to bid or whatever, that it kind of makes them document.

And also through the reporting, the annual reporting through the Human Services Committee, Health and Human Services, or the Human Services and Housing Committee that Keny-Guyer chairs over, it also is going to be asking for surveys and, you know, that type of thing. So, yeah.

Terry Smith: It’s in there. Everything you just said is in the statute. So that each year, when the Commission does that annual report, as I interpret it, they have to report on compliance by other agencies. So if they, you know, if you… if they feel that a certain government entity is not complying, then they are… that goes in their annual report. And then I guess, you know, if it’s documented enough that, say, a certain agency is not complying with a law, then I would think the legislature may want to do something about that.

But, as far as there being anything further that they agency can do, I… I’m not optimistic you can get it in. Because the legislature didn’t put it in. I think they put in… they put in the reporting thing and that’s how they wanted to deal with it. So if there’s… if Gretchen feels differently, then by all means, I would love to see it in there. I’m just not optimistic you can get it in there.

Hauth: So, Eric, what’s your thoughts? Have you had any discussion with Gretchen about this? Or can we propose to her what we just discussed about?

Morris: Well, I think we can, you know, I can take it…. I was just sitting here writing some notes. I think we can take a draft… shot at drafting it. I think, like Terry said, and you were saying too, is I read the statute. You know, the legislator… legislature didn’t give us any big sticks to go out there, besides, you know, basically saying the priority is the first right of refusal, which is a big stick. So… but they did provide that consequence of hey, people who aren’t working with the agency, we want to hear about that; we want you to come back and tell us, you know, pick an agency out there didn’t… didn’t work with you guys. So I think that’s how they interpreted the enforcement mechanism. So we can ask the question and see what they say. But I’m like Terry, I’m not optimistic they’re going to let us expand some kind of an enforcement mechanism that’s not in the statute.

Art Stevenson: Well, obviously…. Am I off mute?

Terry Smith: Yes, you’re off mute.

Art Stevenson: Obviously, right in the statutes, any contract or agreement in violation or non-compliance is null and void. And just spelling out the avenues, the steps that the agency’ll take to get that contract declared null and void…. Obviously, it’s in the statutes and it also says that the agency will write rules to ensure the proper and satisfactory operations of vending facilities and for the benefit of blind licensed managers. So the statute gives the agency broad authority to write rules. And they’re supposed to administer the program. So, you know, they’re supposed to take the steps necessary to have the other agencies comply with the law.

And so I certainly think all the areas are there to imply that the agency… and, as a matter of fact, they did file in court one time that they were going to get a contract declared null and void. And so, obviously, they wouldn’t have done that if they didn’t have the authority to do it. Just, you know, spelling it out in the rules how they’re going to ensure compliance. That’s not… That’s not suing an agency. That’s making an agency comply with the law. Just like they do in the federal rules and regs.

Hauth: Well, and Art… Art, I agree with you. I think the process, though, is to see what Eric and Gretchen come up with. Because I don’t think we’re going to convince the agency just by, you know…. And I agree with you. But let’s see what… so we can get to some of this other stuff. That’d be my thoughts. Let’s see what Gretchen comes back with and what Eric…. I mean, I don’t know. So.

Art Stevenson: Yeah.

Terry Smith: Yeah, we won’t be able to write that here today. And so hopefully Gretchen can… or Eric can take a first shot at it and, you know, we can see what Gretchen thinks about it. But, however… we’re not… we can’t write that…

Hauth: Eric? Art did bring up a good point about the null and void provision. So that is, you know, that is also an angle to look at. But see what you can get… get done.

Morris: Yeah. And just… just to respond to that, too. Taking somebody to court is essentially suing them. So... just from my perspective.

Terry Smith: Yeah, it doesn’t matter what you call it, it’s all the same thing.

Morris: Yeah.

Terry Smith: But I do believe that there’s probably statutory support for saying a contract is null and void if it’s entered into illegally. But that… that’s, again… that’s…. Let’s let Eric and Gretchen take a shot at that.

So, moving on to my comments under Active Participation, Kathy, section G, that sentence needs to be broken up, just for the heck of it. And you’ve got… sometimes you capitalize Commission – or, not you – but sometimes Commission is capitalized and sometimes it’s not.

Ewing: Mm hm.

Terry Smith: I think you ought to be consistent. Like, in… here it’s capitalized first time it shows up and the next two times it’s not capitalized. I think it should always be capitalized.

Ewing: Okay.

Terry Smith: So you can just do a word search or whatever, if you want to, on that. But it says, “The Commission for the Blind shall ensure the active participation of the Commission’s BECC in the Commission’s major administrative policy and program development decisions that impact the Commission’s Business Enterprise Program shall include but not limited to….” You need to put a period before “shall” because that just…

Ewing: Okay.

Terry Smith: It doesn’t read right. Put a period after the word “program.” And then just say, “This shall include but not limited to…” and you got the list, the long list there.

Ewing: Okay.

Art Stevenson: Am I off mute?

Terry Smith: Yes.

Art Stevenson: Okay. Shouldn’t that be worded exactly what the CFRs say, Terry, concerning the overall administration of the program and all that? Isn’t it worded differently than what the CFRs say? Shouldn’t they be worded exactly like the CFRs?

Terry Smith: I think… I think you’re probably right. I think if you put the word “overall” before “Commission’s” say that impact… that impact…. You could just say…

Ewing: Terry, could you…?

Terry Smith: “… impact the overall administration of the Commission’s Business Enterprise Program…”

Morris: One more time, Terry?

Terry Smith: Where it says, “that impact the overall administration of,” just stick that in there, “the overall administration of.” And then you have all the things laid out down there… you will be participating in.

Ewing: Terry, where…?

Morris: Terry…

Ewing: Where was that, exactly? I’m sorry. Could I…? Yeah.

Terry Smith: The same sen… the same place where you were before.

Ewing: Uh huh.

Terry Smith: Where it says, “The Commission for the Blind shall ensure the active participation of the Commission’s Business… BECC in the Commission’s major administrative and policy program development decisions that impact…” and insert…

Ewing: Mm hm.

Terry Smith: “… the overall administration of…”

Ewing: Okay. Thank you.

Morris: All right. She’s got it.

Terry Smith: “… the Business Enterprise Program” period. Then we have the list of things… of eight things. Then it says… and here we need to get at that other sticky little thing, the…

Art Stevenson: Can you read the eight things, Terry?

Terry Smith: The same things… the eight we went over last week. I’ll be happy to read them. One is setting out of the method of determining set-aside charges to be levied against the net proceeds of the vending facility managers. Development of Business Enterprise rules and statutes. Develop… oh, you don’t want statutes in there.

Art Stevenson: Regulations, right?

Terry Smith: Programs, rules…. Well, you got that, rules and regulations are the same thing. I would say, “Development of Business Enterprise Program rules, policies and standards.” That’s what you… That’s what you usually say.

Art Stevenson: Yep.

Terry Smith: But statutes, that’s outside of active participation. I’m sorry. Y’all went way beyond active participation on that statute. And then three is development of Business Enterprise Program budget requests. Four: development… I mean, yeah, development of criteria for the establishment of new vending facilities. Five: development of selection criteria for Business Enterprise staff recruitment. Six: development of training and retraining programs for vending facility managers and licensees. Seven: development and administration of a system for the transfer and promotion of vending facility managers and licensees. Eight: Sponsoring and planning with the assistance of the Commission meetings and post-licensure training for vending facility managers and licensees.

Art Stevenson: Did…? And… Am I off mute?

Terry Smith: Yeah, you’re off mute.

Art Stevenson: Okay. Aren’t’ we supposed to have – correct me if I’m wrong, Randy, you may remember – aren’t we supposed to have all those policies and stuff put together…? I mean, we just can’t say we’re going to do it. They have to be done before the new rules get implemented? I mean…

Terry Smith: No, that’s… that’s not correct. Not… Not from a…

Hauth: Well, I think… I think, Art, through the APA, if I remember back when we were sharing concerns with the previous rules, you know, I think the question was, you can’t just by Oregon law say that you’re going to implement a policy and tie it into the rules but that you don’t have it at that time. I believe Lin Rosick, during one of her trainings, that identified that. But I don’t… I don’t remember if that’s an accurate reflection of, you know, it’s been a… been a few years back so…. You know, I believe – and maybe Eric needs to check into this – but I believe that if we tie it up to make sure that active participation happens through this process and covers all of our bases, you know, we’re in a good way. But… and then identify, you know…. But I, yeah, I don’t remember and Linda’s not around. She’s more in touch with that than I am. So.

Terry Smith: Yeah, you can’t… I mean, you can’t anticipate every policy and procedure that you guys may want to develop. So, you know, you don’t want to have to go back to your rules and find there’s a policy you want to develop. For example, the criteria for opening new vending facilities, that’s something y’all are supposed to develop. But, you know, if you develop a criteria today and you say the minimum sales should be X, that’s going to change as time goes by, you know. And so you’re going to… you’re going to need to change those policies without going through this lengthy of a process as you do with rules and regs.

But I think here’s where we talk about the relevant information. I think the language about relevant information that’s available to all the vendors is okay. It’s standard language that everybody uses. But, you know, this is where you got to talk about language that ensure that the committee gets everything that they need in order to, you know, make decisions. And so, you know, I would propose that right after that number eight we put a sentence or two in there that says what information you’re going to get, in broad categories, and how often you’re going to get it.

I mean, and let me just sort of talk through it so you know what I’m talking about. Kathy, don’t write any of this down.

Ewing: Okay.

Terry Smith: I’m talking about language that would say something to the effect, to ensure the ability of the BECC to effectively participate in major administrative decisions, the Commission shall provide information in sufficient detail to allow this. And this will… this will include information on revenue from all sources and [inaudible] a category. You know, something to that effect.

So that way, you get… you get information about the… how, you know, where the money’s… how much set-aside’s coming in, how much set-aside’s going out, how much state, federal, everything that’s been spent on the program, to get a report on that periodically. You know, [inaudible] get it, I don’t know. I mean, monthly, obviously, is too often. We did it quarterly. I don’t know… How often…? You guys meet every other month, don’t you?

Morris: Every other week?

Terry Smith: Right now you’re meeting more often than that. But how often do you normally meet?

Hauth: Well, we’re supposed to meet… we’re supposed to meet monthly. So I think the… I mean, I think it says every two months. But we have met monthly, if not more often, just because there’s so much going on and…. But I think, you know, I think people would be happy, Terry, to help you kind of work through this. I think people would be happy to… and, you know, to get the information, if it were detailed information, quarterly. And maybe that’s not good enough for everybody. But I think there’s other data that’s relative, you know, like, let’s say, for instance, the agency says, “We want to… We want to end subcontracting and start subcontracting.” Well, that’s a whole different kind of… in my mind, that’s a whole different kind of data requirement.

I, in good conscience, as a public officer could never make a decision based on just a concept without saying, “Okay, where’s the forecasting? Where’s the money coming from? How’s this all going to lay out? And/or another, you know. So, you know, I think quarterly would be fine for the general outline of the program, how it’s functioning and the set-aside and, you know, the breakdown of managerial services and that. But there may be other… I wouldn’t want to just tie it to that. So.

Terry Smith: You wouldn’t want to tie it to what? I… I followed everything you said until you said…

Hauth: Yeah, to only being quarterly. You know, I mean, if we were going to try and find a way, how often you get the information, I would want to make sure that you have access to that information prior to. And maybe that’s not where you were going with that anyways.

Terry Smith: So there’s two ways to get at that. Well, actually, I think the language I talked about would work. Then, the second thing you could add – which is, again, what we did. I’ve got to admit, we didn’t stick to the strictest…. But anything that the agency is going to submit requires a vote of the committee, has to be submitted so far in advance, so that… as long as the information needed to make that decision. So you could… you could add language like that in there. That gets at what you’re talking about.

I think it’s reasonable… this is the only thing that they’re asking you to, you know, vote on. I mean, they just want to have a conversation about it, you know, they don’t necessarily have to… if they’re asking the committee to go on record on something, they need to give you the information in advance so you can evaluate it.

Are you okay with that, Eric?

Morris: What?

Terry Smith: I said, are you okay with, you know, the things that I’ve just… I’m talking about here?

Morris: In general, yeah.

Terry Smith: I mean, you got…?

Hauth: And I know, you know, Terry, I mean, obviously, you know, the agency probably feels that sometimes too many requests for information are submitted and that the Elected Committee probably feels that many times there’s not enough information. So how do we get to that?

The spirit and intent of this new legislation, in every meeting I was in and every testimony that was given, was all about transparency and accountability of the agency as well. So how do we get to a more open and transparent process, without just piling tons of paperwork on Eric’s desk, you know? Because…. So I guess that’s what we’re trying to get at.

I kind of like, you know, I’m trying to process what you just said. I, you know, in concept I like it. I don’t know if there’s any other board member that wanted to weigh in this, but…

Terry Smith: Well, what I can do…

Hauth: You’re on mute, Art. I don’t know if you’re trying to talk or not. I know that you had a lot…

Art Stevenson: All right. Off mute now?

Hauth: Yep.

Terry Smith: Yes.

Art Stevenson: Okay. Well, I agree with you, Randy. And I definitely think that should happen. But… and I apologize for doing this, but we do want complete rules and stuff like this. So I agree with you. I also want to flip back, just for a minute, on the active participation thing. Because I do believe that there should be something in the rules that we’re allowed to participate with the Board of Commissioners during major administrative decision-making – which, obviously, you and I both know isn’t happening. That, again, program-relevant information… we all know that a report was sent to the Board of Commissioners by Eric, no consultation with the committee or our input or anything. And… And so, I want to go back and I want to say that, since the Board of Commissioners makes major administrative decisions that they, in my opinion, have the obligation to allow us when they are going to be voting on our program issues, that we be allowed to, you know, talk about it. So, sorry, you know. We’re trying to rush this process so things spring into my head all of a sudden. But I for one, Randy, want to see that in the active participation thing, that we’re not denied active participation with the Board of Commissioners on major administrative decisions. Because they make… they tell the agency what they’re going to do. So, anyways, I’m done with that and I apologize for not thinking about it…

Hauth: Yeah, no. Hey, don’t apologize. So, Terry, what’s your thoughts? Eric, what’s your thoughts? How do we work through this? Because in general, you know, I agree with Art, that sometimes decisions are made what we feel is maybe outside of active participation. And kind of all of a sudden the active participation and discussion happens in that arena. So how do we… how do we get to what we’re trying to get and, you know, get buy-in from the agency and the managers. So.

Terry Smith: Well, first, let me just say this, you know, and several references have been made to it, that we’re rushing through this process. We’re not rushing through this process by any design of anybody on this call. You know, we’re rushing through this process because you guys were successful in getting a bill implemented that says you will have rules promulgated by this date. So, you know, it’s not true… It is fast. We are having to go through it. But, you know, it’s not anybody’s fault; it’s just the way it is.

I think, on the active participation question, active participation applies to the State Licensing Agency. The Commission is part of the State Licensing Agency. So, clearly, you know, they can’t make major administrative decisions without the active participation of the committee. But does…? What does that look like? You know, that’s where it gets tricky. I can… I can argue both sides of that issue. You know, I can argue that the active participation takes place, you know, when you sit down and you’re doing what you’re doing now. Because Eric is doing this by the authority of the Commission. He’s representing the Commission right now. And so that active participation is taking place. As far as, you know, can we… I mean, can you mandate that a board allow you to actively participate based on the definition that we have, you know, I don’t know that… again, I don’t think you can sit down in a Commission board meeting and negotiate, so to speak. It’s just not set up that way.

So, I don’t know how you get at that, Art. I really don’t. I don’t… I don’t know…. I mean, you could put some language in here about the Commission board and the Commission board’s got to approve it. But there just as likely to strike it when you send it to them for approval. So I don’t know. I don’t have the answer for how you do it. And like I said, I can… this is your shot at active participation. And, as I’ve said all along, the Commission, they can’t go through and say, “We approve this, we strike that, we approve this, we strike that.” You know, they’ve got to… they can… “We’re not going to approve this” and send it back for more active participation by the committee…. But I don’t know how we get at what you want, to be honest with you.

Art Stevenson: Well, and Terry, I hear what you’re talking about. And, obviously, as far as the Commission board goes, you know, it… as long… well, we could get into a lot of things. I mean, the agency, when they did all this stuff with the subcontracting, you know, our chair at that time was told, “Well, you can come if you do what I want you to do. But if you don’t, we’re not going to let you talk” and stuff like that. And I’m paraphrasing. But the simple fact is, that in the past we were allowed to discuss… our chairperson was allowed to discuss, whenever they were making a presentation on our program, the chair was allowed to be sitting there and give our take and then answer questions and stuff like that.

But when information is being given to these people, who are the decision makers – and, of course, we don’t even have input on the information that’s given to them – then that isn’t true active participation. You know, because the Director’s picking and choosing what information he gives the Commissioners and it may not be all the information. So that’s where…

Hauth: Maybe… Hey, Art, maybe with – and, you know, I’m… you know that, I mean, I agree with you in context. Is there a way, Terry, that we can ensure… because I think recently it was a concern that information is being sent to the Commission board that was not sent to the Elected Committee. So, in the relevant data, can we ensure that, you know, any reports that are sent to the Commissioners will, you know, or whatever the language would be, that also is sent to the Elected Committee? I mean, is there a way to try and go at it that way, so that we feel more part of the process? And, you know….

Terry Smith: I mean, could you put something in your rules? Yeah, you could put anything in your rules.

Hauth: Well, I mean, with the relevant data that we just talked about, can you… can we make… ensure that reports that are submitted to the Commissioners are also part of that relevant data? Or…? Yeah, I mean…. So.

Terry Smith: You can do that.

Hauth: I think, honestly…

Terry Smith: I… I don’t think you’re… Of course, any correspondence, anything they send to the Commission is public information. So, you know… and I’ll say this…

Hauth: But it… it…

Terry Smith: Your process, although you guys don’t like it, is a much more open process and you’re much better situation than most committees are in. Because, you know, yours is going to a Commission board and the decision has to be made in public. In most states, after the BEP Director, you know, finishes… or the State Agency Director had finished the negotiations and they submit something, it goes to a different channel and there’s nothing open about that process. I mean, it goes to the agency head. And, you know, the agency head then can, you know, go along with it or reject it or whatever. But so, although you guys have had issues, you’re still in a better position than most states, as far as the process being open and fair, transparent.

Hauth: Yeah.

Terry Smith: At least, in theory you are.

Hauth: Yeah. And that’s with, Terry, in theory. I think many of us would argue that, you know, it’s not open, transparent, and it’s basically what you just described in the other. But, with that being said, is there a way we can get to it to be more part of the process, to making sure that the information is also sent to the committee? I mean, does Eric or Dacia have problems with that? I would hope not, especially when the legislation said let’s make this more open and transparent.

I think it’s personally a waste of time many times to go to the Commission for the Blind’s board meetings. On… honestly, in my mind, our active participation should occur with Eric and, you know, Dacia and have that be…. But, you know, again, you’re hearing a lot of concerns because of, you know, recent… recent practices and we’re trying to fix that. So.

Terry Smith: Well, like I said, I think any reports that they submit, you know, should be shared. I, you know, I’m going to draw the line, from my perspective, on, you know, can Dacia or Art… I mean, Dacia or Eric communicate with the Commission without sharing all their correspondence with the committee? I mean, that… that’s a bit of a stretch. But I think any kind of reports or recommendations or anything like that, yeah, that’s different.

What I was going to suggest, if… you know, again, when everything’s in the writing – and Eric was generally agreeable to the things we laid out a minute ago – I will put together about a three or four sentence thing. And, Kathy, if you can just note that it will be inserted right after number eight there and I’ll send it out to the group and everybody can look at it and see if that’s something that, you know, we can live with. Or you guys can live with.

Hauth: Yeah, and I’m just thinking for myself, I think the reports, you know, the personal communications back and forth, I don’t think that’s what people are wanting to know. But when reports are sent, you know, that deal with program-relevant issues and what’s going to be discussed, the Elected Committee shouldn’t be caught by surprise when, you know, items are presented to the Commission board. And I’m not saying that’s what or hasn’t happened. But if we can find a fix and Eric’s good with that, too, you know, and the committee’s good with that, let’s try and at least go through it.

Hey, Terry? So we have a couple… I think this was supposed to go till 4:00. We have a couple more hours and it looks like we’re, at least on this, putting some framework around how to resolve it or try to resolve it. How are we looking, as far as time, in getting our product completed today? Or close to that?

Terry Smith: I think… I think I’ve only got two, three more things… I’ve got two more things on my list, which shouldn’t take long at all. Then I’ve got… then a discussion about the operating agreement. And I’ve got down for, you know, we’ve got to send some stuff out. Eric’s got a couple of assignments, I’ve got a couple of assignments. And so, yeah, we can finish this in two hours without any…

Hauth: Okay.

Terry Smith: … without any problems, I think.

Morris: Hey, Randy?

Hauth: Okay. Yeah, Eric.

Morris: I know Theresa Cross was calling in. She’d emailed me a little while ago, saying she was on. Theresa, are you on the call?

Cross: I’m on the call, yes.

Morris: So Theresa’s here from Health Authority. So.

Hauth: Okay. Okay. Thanks. Hi, Theresa. Hold on just one second. Thank you for joining us. Terry, so what are your thoughts, as far as Theresa overviewing us? How much time? Where are we? Even though that’s important, obviously the operating agreement takes precedence and so do the other items you have. So what’s your thoughts on this right now?

Terry Smith: Well, I think… Theresa’s on the line. She did… She went back… I think you guys asked her to do some additional research. I think we need to hear what that research is and let her go. Because she doesn’t want to listen to all of this, I’m sure. So…

Hauth: Okay. Okay.

Terry Smith: So that’d be my suggestion.

Hauth: Okay, you guys… our board members, you guys are good with that? Okay. Okay. Hey, Theresa, thanks for joining in. And I’m sorry, we… we’re really trying to get this product done. So thanks for joining us and you can help summarize or overview what you brought forward, that would be great.

Cross: Sure. Thank you, everybody. I appreciate the time. I know you’ve got a big list on your plate and you guys are making headway. So I appreciate the time on your calendar, on your schedule, to do this. When I met with the group last week you had asked me to put together a comparison. What I heard loud and clear was you wanted consistency, you wanted to follow the federal regulations because many blind vendors have operations in federal facilities and it would make it easier if there was consistency. So I took the… There was a document I sent. I’m not sure if it made its way to everyone. But I’ve got it in front of me and I can certainly send this everyone. But I want to just give you big picture, what the bottom line is here. I looked at the federal guidelines from a document called *Food Service Guidelines for Federal Facilities*, which are aligned with the food and nutrition standards for dietary guidelines for Americans. These are the standards that we used when we were working with Sal at the Valley Café in Salem.

I compared those guidelines to several of the lines of food and beverages that you are already familiar with, such as FitPick. And there’s a couple different lines of FitPick: FitPick 100, FitPick 250. There’s Canteen Choice Plus beverages, Canteen Choice Plus entrees. There’s Canteen enr.G. So there are just three of those lines that meet these federal guidelines for concessions and vending. And that is the FitPick 100 calorie line for packaged snacks, Canteen Choice Plus beverages, “Best” category. There’s “Best” and “Better,” but “Best” category meets these federal guidelines for concessions and vending. And the Canteen Choice Plus entrees meet the federal guidelines for concessions and vending, but only for sodium. There’s several other standards that these guidelines include.

The packaged Canteen and FitPick lines that you’re familiar with that do not meet federal guidelines for concessions and vending are the FitPick 250 calorie line, Canteen’s enr.G line, Canteen Choice Plus snacks, Canteen Choice Plus beverages in the “Better” category, and the Canteen Choice Plus sides. None of these meet the federal guidelines for concessions and vending.

And in this document I also provided a definition of what these… of what packaged snacks are and what prepared foods are, what beverages are. And, interestingly enough, they also gave a definition for local food. And I know we talked about that last time, too. And they defined locally sourced as “an agricultural product that is transported less than 400 miles from its origin, or is distributed within the same state it was produced.” So that’s a little different than the definition that you talked about last week. Just put that out there for… just for conversation. If you’ve already decided on what your “locally-sourced” definition is, with those… it being Oregon, Washington and Idaho, I believe, that’s fine. But I just wanted to tell you that that document that I’ve been using for these nutrition standards also had a “locally-sourced” definition in it.

Art Stevenson: Randy?

Hauth: Yeah, Art.

Art Stevenson: You’re on mute, Art.

Art Stevenson: All right. I hit it again. Sorry. So, Theresa, we’re supposed to write guidelines for managers to be able to get set-aside credit for 50% healthy choices, 75% and 100%. So when you say, for instance, FitPick does not fit the federal guidelines, is that… are you just saying 50%, 75%? Because we’re writing rules for managers to take advantage of a set-aside deduction…

Cross: Mm hm.

Art Stevenson: … if they’re 50% healthy choices, 75% healthy choices and a 100%. So you’re saying that FitPick doesn’t meet the 50% threshold, the 75% threshold? Obviously, it wouldn’t fit the 100%. But does it fit in either one of those categories?

Cross: Okay. That’s a complex question and let me… I’ll try and answer it simply because… and I don’t mean to sound like it’s a silly question because when I looked at all of this I realized how complex this was. There’s the state law that’s citing all of those percentages you just mentioned, Art. And then there are all of these different lines of FitPick and Canteen. And so I’ll try and simplify it and explain it as best I can. So bear with me. There are two lines of FitPick that Canteen… or that you may be familiar with, that you might be using in your vending machines: there’s FitPick 100 calorie snacks and there’s FitPick 250 calorie snacks. The federal guidelines for concessions and vending for packaged snacks say that all snacks need to be 200 calories or less. So, obviously, FitPick’s 250 calorie line is not going to meet that standard. What the law says is that you as a vendor stocking machines want to have, you know, three… 75% of your selections within that machine fit the definition of healthy vending – and that’s what we have to define here, is healthy vending – you get those three percentage points. And then, obviously, fewer percentage points as you have less than 75% of your products in that machine or in your snack bar or cafeteria line that meet those standards.

I think all the law is require… asking you to do is to agree to some kind of a standard. And what I heard last week was that you wanted it to be consistent with the federal guidelines. So my suggestion is for this… the rules to reflect that “healthy” is defined as complying with the *Food Service Guidelines for Federal Facilities*, which is a document, is a booklet that is used to guide food service managers, vendors, customers and members of the vendors from the Blind Commission.

Hauth: Hey…

Cross: Go ahead.

Hauth: Hey, Theresa, if I may, this is Randy. Thank you very much. I believe there was… I believe Art had suggested the federal guidelines. But I believe further conversations were, that was going to be too restrictive and probably not get the goal, you know, the end goal that we all want; and that’s actually, you know, more profitability and more people using healthy vending. I personally believe that healthy vending guidelines should be more in line with, like, FitPick 250 because of the availability of the product. If we set them too restrictive I think we’re going to not achieve what we’re all trying to get. And I know that… I know there was a lot of talk around federal guidelines. But I think after we heard how that may not help us all, we took a step back at that. So I know we’re trying to set the guidelines here. But that would be my… my two cents’ worth in this. So.

Cross: Mm hm. Well, I just want to…. Of course, this is your decision, but I just want to also have the group recognize the fact that FitPick and Canteen and some of the other lines, those are industry standards, those are food and beverage industry standards, which are not necessarily consistent with the dietary guidelines for Americans. But I hear what you are saying, Randy, that they are more restrictive. But that’s where federal facilities and others are moving. I mean, they are striving for that direction.

Art Stevenson: Yeah. Am I off mute?

Cross: You’re off mute.

Art Stevenson: Okay. Good. Yeah, and I… Theresa, I hear exactly what you’re saying. And obviously, you know, I’m a consumer myself. I don’t have any control over what an individual buys a product from me or…. And, as you know, a lot of packaged goods that we sell may have two servings in it. And, you know, if an individual chooses to gobble down both servings at the same time, you know, that’s, I guess, their right to do it. What I’m trying to do is come up with good guidelines and, you know, ensure that it doesn’t hurt or hinder the blind licensed manager and, you know, our profitability and all those kind of good things. And, obviously, we want to definitely provide the goods and services that our customers want and need and, you know, desire. Because, obviously, we’re in it to make a profit and, you know, that’s the nature of our business. If you provide good services and the products that our customers want.

Cross: Mm hm.

Art Stevenson: So, you know, I…. We want to make sure we have guidelines that maybe blind licensed managers can take advantage of it. Of course…

Hauth: Hey, Art?

Art Stevenson: Yeah.

Hauth: Art, like Theresa… if I may, like Theresa said, you know, it’s our decision to make in consultation with her. And so the information she’s provided us, we’re not going to make that decision today. Let’s look through it and, you know, contemplate it and work with the agency on creating something that will help us all get to where we need to do. I do have a question, though, for you, Theresa. As far as the live operations – cafeterias, snack bars, and that – I know you’ve been doing some work with Sal and I believe also Carole Kinney. How… How are we going to… or how do you contemplate we address that structure, as well? Is there… Is there any kind of established guidelines? Because I don’t believe FitPick, and maybe I’m wrong, but applies to live operations.

Cross: You’re right. It doesn’t. Those are more for the machines. There are standards in the book that I mentioned and that’s included in the document I sent also.

Hauth: Okay.

Cross: So these are such as… things such as offering at least three fresh fruit options daily, without any added sugars, making sure there are low-fat dairy products available. It doesn’t mean you can’t serve the whole milk ones, it just… you need to make sure that the low-fat ones are there. Having a… at least 25% of the desserts that are offered have fewer than 200 calories. There are sodium guidelines there, there’s trans fat, there’s labeling, calorie and nutrition labeling and things such as limiting deep-fry entrée options to no more than one choice per day. So there are definitely… there’s food and nutrition standards for packaged foods, which would be the snacks in the machines and there are food and nutrition standards for prepared foods. And those are the kinds of foods you would see in the cafeterias and the snack bars.

Hauth: Okay. Well, thank you. Thank you very much. And, of course, we haven’t had a chance to look that information over and we will do that. Obviously, this is going to…I believe, Eric, is going to take a whole nother, you know, special discussion to deal with and address this and come up with what we think will be a workable solution. So I don’t know if there’s anything else, Theresa, that you want to leave us with. Or, of course, we can follow back up with you. I’m sure you’re, you know, readily available, or I would hope. But…

Cross: I hope you do. Yes, I am available and I’ll check in with Eric about making sure that you are able to get ahold of this document and look through it. And we can move forward from there.

Hauth: Okay.

Art Stevenson: Randy?

Hauth: Anybody have any questions? Yes, Art. Go ahead.

Art Stevenson: So, Theresa, I am chair of the Vending Facility Development Committee and obviously I’m very, not concerned, but very into working with the managers and… on, you know, their cafeterias and all that kind of good stuff. And so I’d like to maybe participate with you in some of this stuff. Because I believe, you know, there’s some options out there that can be taken advantage of. But then, in other instances, you know, depending on where the facility is, who the people that you’re serving, you know…. So, anyways, to make a long story short, I’d like to get together with you some time with the Vending Facility Development Committee to talk about different ways we can work together but also being, you know…. Each vending facility is unique and the people that they serve in, you know, doing that. So, anyways, given that, I’ll shut up now and hopefully we can get together and do some good things.

Cross: That’s a great idea, Art. I think the information that I provided, coupled with some of the work that we did actually polling the customers…. So what is it that people that patronize Sal’s business want? What do people here at the Portland State Office Building who use… who purchase things from Café 800, where Carole Kinney is the manager, what is it that they want? We did that research for them and found overwhelmingly that what the majority of customers want, which is very consistent with what these guidelines say. So I think these guidelines provide the vendor operators with kind of some black and white guidelines with which to provide those foods that their customers want.

Art Stevenson: Okay. Thanks.

Cross: All right. Thanks, everyone.

Morris: Thanks, Theresa.

Cross: Okay. So I’m going to hang up and I’ll just catch up with you, Eric, later about when the… you want to reconvene to go over these in more detail. Is that right?

Morris: That sounds good.

Cross: Okay. Thanks, everybody. Bye.

Hauth: Thank you.

Jackson: Thank you, Theresa.

Terry Smith: Okay, let’s get back… and just so you guys know, I mean, Randy said it’s going to take a whole nother work session, you guys addressed this last week. You guys defined what a healthy item was. In a cafeteria it is the USDA guidelines she talked about. In a vending machine, it’s the FitPick guidelines she talked about. And so you’ve already done that. So, you know, I think you’re… I don’t think you have to really, unless you want to go back and revisit it, I don’t think there’s that much of a reason to do so. But that’s up to y’all. As of right now, it’s in your rules already.

So, the… the last two things that I have on my list had to do with income from federal property. You know, we had put it in there, that you would comply with CFR 395, whatever. Art was really wanting them in the rules. I don’t care one way or the other. If you want it in the rules, I copied it from the Randolph-Sheppard regulations and put it there. And Kathy can just paste it under the vending machine income portion. Totally up to the group. It doesn’t add anything to it, it doesn’t take anything away, except for a little bit of space.

Art Stevenson: Well, my opinion on that one is, if it’s in the rule how the agency is going to move forward and do it, actually do it, that would be helpful. I mean, putting in the rules, you know, what the CFRs say and, you know, it doesn’t get done, then… then I think a little more needed to be put in there that would clarify who, what, where, when, how and why so there wasn’t any controversy and the actual job got done.

Hauth: Well, like Terry said, you know, it’s in there or he proposed it to be in there. So, if it doesn’t add or take away, there shouldn’t be any… you know, we can move forward, right? So.

Terry Smith: If Eric doesn’t object to it being in there, I don’t care. Like I said, I just put it in there because it was an issue last week. And so I stuck that language in there in case the group wanted to go ahead and put it in there. So, had to make it easy on Kathy to copy and paste.

Morris: I think that’s fine, Terry.

Ewing: Should I put it toward the end of the section? Or…?

Terry Smith: It’s actually… let me see…

Morris: It’s the beginning.

Ewing: At the beginning?

Terry Smith: I think… It would actually replace what you now have. Yeah, it would replace what you now have that’s highlighted in yell… that first paragraph… that one whole paragraph.

Ewing: Under “from federal property?”

Morris: Yeah.

Terry Smith: Yeah. And then, in the next thing, was under state property…. Kathy didn’t put the language in that we had talked about, which I don’t know that we told her. I mean, I don’t know where we ended up on that. On state property. It was supposed to read… here it is, “In the event the Commission retains or collects vending machine income from state and other properties that is not in direct competition with a vending facility manager, the funds shall be expended for the same purposes as the set-aside dollars, as outlined in section” whatever set-aside is. So that’s the money that when they put the… under an emergency case, then… that we talked about earlier, and they’re getting a commission, then that money will be spent for the same purposes as set-aside dollars. That’s the language that we talked about last week. Any problem with that?

Bird: Jerry. So are you saying that federal and state vending machine income’s the same… are handled the same?

Terry Smith: No.

Bird: No.

Terry Smith: What it’s saying is… Well, it’s not handled the same. It can be used for the same purposes, yes. But they’re handled differently. This would… whereas, the federal properties, the vendors vote on how to spend that money. State property would just be part of the, you know, the regular budget process. And you could be using it for whatever purposes the group decided to use it for. That was allowed under… the same purposes as set-aside.

Hauth: So, Terry, I think in the law it requires a vote of the Elected Committee, or I mean, of the managers for the use of set-aside. I don’t have it in front of me, so correct me if I’m wrong. But I guess…

Terry Smith: The only place a vote is required is on the vote of federal unassigned. That’s the only place a vote is required. A vote in the… it does reference a vote for set-aside. But what it’s referencing is if the vendors have voted to establish a retirement or health or other benefits, then set-aside can be used for those purposes, too.

Hauth: Okay. Well, help explain, because I think this is where the managers and Elected Committee are getting at. Help us work through on how we don’t believe, you know, set-aside should be used as a… like, unassigned vending, state unassigned vending shouldn’t just necessarily be used to help fund the program without, you know, a vote of the managers or without a, you know, active participation. I mean, maybe there’s times where the Elected Committee and the agency would want to try and utilize or fund some of that through managerial services. But maybe there’s other uses for that, that we would…. So how do we…? How do we get to that?

Terry Smith: Well, I don’t think you do. I mean, unless the agency, which I’m not speaking for Eric, but I’d be shocked if he just gave away that, you know, any say in how that money’s being spent, you know, state unassigned income. So, you know, I think the way the process should work is, you know, and I’m going to get that language about the financial information I’m going to write up, you know, it should work that the agency and the committee evaluate the money they got coming in and they decide how to spend it. And if the agency and the committee decide that it’s going to be spent on new equipment then it’ll be spent on new equipment. If the agency and committee decide benefits then it’ll be spent on benefits. But it would be… that would be part of the regular budget process. It basically becomes set-aside, is what… what…

Hauth: Sure. Right. Yeah, so how do we determine… I mean, you know, so I get that. Through the budget process, working together, like you guys do in Tennessee. I get that whole thing. Where are the safeguards to ensure that the agency just doesn’t deem state unassigned vending, you know, and make a monopoly out of bringing a funding stream in that way. That’s… you know, did we address that in another avenue of the rules? Or…?

Terry Smith: I don’t think…

Hauth: And I’m not saying, you know, I’m not saying the agency would. But let’s say, put me in devil’s advocate, that there’s a funding need and the agency decides that they’re going to start bringing in state vending, unassigned vending, instead of creating a facility for a manager.So.

Bird: Jerry. I’m still lost. Maybe I’m just…

Hauth: Well, let me… let me hear from Terry and see if he has any thoughts on it.

Terry Smith: What are you lost about?

Bird: I’m lost because it still almost sounds like…. I thought set-aside money, however it comes in… we’re saying, unassigned vending, whether it’s state or federal, comes into our set-aside fund. Now, set-aside funds can only be used for five things. Now, I’m kind of confused to where now you’re trying to separate state money; we’re not going to call it set-aside funds until after a certain point, which confuses me. All monies that come in from all vending or anything is supposed to be deposited in our set-aside account. Now, you can only… if you want to change the purposes of our set-aside account and how we come up with them purposes, that’s a whole different thing. But I’m still confused on you’re trying to think that state vending machine income that goes into set-aside is different than federal vending machine income, even though it goes into a set-aside fund, which grows one single fund that can only be used for certain things. I’m confused, it sounds about like somehow you’re trying to separate the two and then you’re not.

Terry Smith: Okay.

Bird: I mean, set-aside is set-aside.

Terry Smith: No. No. Federal unassigned does not go into your set-aside account. They’re… you don’t mix the two unless there’s money left over after the vendors have voted. So let’s say you collect $20,000 a year and the vendors vote to give each vendor $1,000 each toward their retirement and you’ve got 15 vendors so there’s $5,000 left over. You guys vote to put that into set-aside. So that money goes into the set-aside account.

That’s the only time that your federal unassigned could be mixed in with your set-aside, unless there is a vote of the vendors to do that. So you’re wrong in saying the federal income goes into the set-aside account. It never goes into the set-aside account. A different account is accounted for totally different and you guys, the vendors, have control on how to spend that money.

You know, the state unassigned, you know, I… you’re going to have… because you have to account for it separately for the feds… so you have to… you don’t mix it, but you can spend it for the same purposes as set-aside, if you so choose.

And so, you’re going to have, whether you like it or not, you’re going to have three separate accounts. And, you know, you technically could combine state and federal but, you know, you’d have to use it according to the federal rules to do that. And I don’t… I mean, I just think it’s cleaner. It keeps it in… the funding is spent for the same purposes as set-aside dollars. That way, it’s the committee and agency making that decision.

And I don’t see… I’m a little confused on why you guys don’t see the benefit of using that money to help fund the agency. I mean, I don’t see anything wrong with taking that money and using it, matching it, buying equipment with it and repairing equipment…

Hauth: Well, hey, Terry? Let me just weigh in. I don’t think… you know, in a great, healthy environment I don’t think people have problems with that. But, you know, again, some of the things that we’ve faced lately or dealt with lately, when set-aside is directed toward a staff member without, you know…. So I think to back up and go through a proper process and work together on it is the right way to do. But, you know, again, I think some of the things you’re hearing is maybe a lack of trust that that money would at the end of the day, you know, be used properly.

I agree that the budgeting process and I agree active participation and I agree that the agency, you know, should be funded to help provide equipment and those type of things that we need. But I think some of the things you’re hearing are, you know…

Terry Smith: I understand that. You know, and I can… it’s hard to write rules that, you know, when you’ve got a lot of…

Bird: Randy?

Terry Smith: I can write rules that, you know, are based on best practices and you’ll never… you know, there’s nothing you can do, if you have rules and somebody doesn’t abide by them. I mean, you can write… you can write a thousand rules and if they don’t abide by them, it doesn’t, you know…

Hauth: Sure. Sure.

Terry Smith: You can’t…

Hauth: Yeah.

Bird: Randy?

Hauth: So, yeah, Jerry, go ahead. And then let’s hear from Eric’s point of view on this and… if that’s all right. So. Go ahead, Jerry.

Bird: Yeah, and I can see exactly what Terry’s saying. Now, if you’ll write something in there that says any money that comes out of our set-aside that’s related to our program will be matched, and that matching fund will come back into our program. That’s the key. That’s what’s not going on. They use our monies, they get it matched and they give it to rehab. And we’re saying, “Well, why don’t we get it back?” That’s the idea. Why do we want to give up our set-aside because it’s a smart way to make a matching thing. But it’s not smart if you use your money and you don’t get no return. So that’s what’s been… one of my biggest problems, ever since I been in the program, is we can get it matched, but it don’t come back in our program. It’s… It’s… so let’s write something in there that says it goes back to our program and I’ll be glad to start using the matching funds to create income.

Hauth: Thank you, Jerry. Hey, Terry, I don’t know if it would be helpful to hear from Eric and the agency’s point of view or perspective on trying to fix this concern. But.

Terry Smith: Oh, I’m fine to hear from Eric.

Morris: So is that my cue?

Terry Smith: Sure, that’s your cue.

Morris: So the language that Terry’s proposed, I’m good with. So.

Hauth: Terry, can you read that… can you… would you mind reading that again and just kind of framing what, in your… in your… what you believe that would do?

Terry Smith: Okay. Again, keep in mind, I don’t really have a position, per se. I’m just trying to get you to where you know how those monies are being spent. It says, “In the event the Commission collects and retains vending machine income from state and other properties that is not in direct competition with a vending facility manager, funds shall be expended for the same purposes as set-aside dollars, as outlined in section” whatever. But [inaudible].

Hauth: So what do you guys… what are you guys thinking? I mean… you know, obviously… you know, obviously, the federal is, from what I’m understanding, is clearly identified and defined. And the state needs… should be handled through the budgeting process and with active participation and with good faith and all that type of stuff. So I’m not sure what we do on this. I know there’s some concerns there. But are we in… are we in general… I mean, let’s hear, are we in general agreement that the language that Terry’s submitting for our consideration? We need to look… we need to think about it a bit more or we can generally agree to it and, you know…?

Terry Smith: Well, let me hear from... let me say one more thing. The language I just read doesn’t affect the issue about the federal dollars. You know, personally, you know, I understand Jerry’s point and agree with him. But whether or not… you know, I don’t think that you’re going to be able to put it… I mean, you could put it in a rule, but I don’t know that the agency would ever agree to tying itself down like that. And, you know, it’s unfortunate that a lot of states do exactly what you’re talking about. Just… they take the money that’s drawn down out of federal dollars and they put it into a VR program. And I don’t like it and you don’t like it, but RSA has said it’s allowable. And to… Eric can speak for himself. I’m sure if he went to Dacia and asked Dacia that [interference] know how thrilled she would be with this.

Bird: Jerry’s got one more question. What about the money we all pay in set-aside off of our earnings? Where does that… Where does that fall under?

Terry Smith: [Inaudible.]

Hauth: You mean the levied set-aside?

Terry Smith: Yeah.

Bird: Yes. That’s not federal, it’s not state. It’s our money we send in. Is that… can be used… is that considered state, federal? Is it considered the Blind Commission’s money and we can only decide where that goes, alone? I mean, I’m a little confused on that.

Terry Smith: There’s three pots of money: federal unassigned, for monies coming in off of federal property and there’s not a blind vendor; state unassigned, for monies coming in off of state property and there’s not a blind vendor; there’s set-aside, that is the money you guys pay in each month. And they got the guidelines on how you spend set-aside are different than the guidelines on how you spend federal unassigned. So, you know, you do not have sole discretion on how set-aside’s going to be spent. You, the blind vendors, do have sole discretion on how the federal [signal cut out]. So, you know, that’s the difference. And what I wrote in here is that the money will be spent for the same purposes as set-aside dollars, which is the new equipment, replacement of equipment, repair and maintenance, services…

Hauth: Which helps protect the integrity of the program. And I, you know, I think the other process needs to be vetted through the budgeting and through…. I mean, obviously, if we’re making proposals on how our set-aside should be used, the agency has to justify that. So I think that at least puts us in the arena, how we have a voice in the process. And I get it; we don’t just have sole discretion over it. It’s supposed to be done through good faith active participation and, you know… that process. So.

Terry Smith: I think a conversation about the matching dollars is very appropriate for you guys to have with Dacia and you guys to have with the Commission board, if you want to. I just don’t think you’re going to be able, you know, at this juncture, get something like that in the regulations. I think those conversations you’re going to have to have with Dacia and the Commission board, especially, you know, especially… you’re in a better position to have that conversation if there’s going to be more money coming in. Because the Commission, you know, if they’re not matching all their federal dollars now, there may be more willingness to…

Hauth: I would… I would suggest, you guys, if you can help us go through this, that we clearly identify that the federal monies we have discretion over how those… and then we make sure that we’re… that we have a seat at the table through active participation and we discuss with Eric and Dacia and whoever moving forward. Because clearly the legislative language also requires that we be involved in the budgeting and that. So I think that’s where, if I agree with it or not, I think that’s where our discussion needs to occur. So that’s my two cents’ worth there.

[Unknown voice]: No! No!

Terry Smith: Eric said he was okay. Is there any other… are there any objections to the language that was [interference] committee [interference] discussed? Hearing none, let’s have a conversation about the…. Kathy, you got that, right?

Ewing: Ah, let’s see.

Morris: We can get it dialed in, Terry.

Terry Smith: Okay. Just look at the number six on the one I sent you. I sent you the language…

Ewing: Okay.

Terry Smith: … in that document that somebody forwarded to you.

Ewing: Okay.

Terry Smith: And just put that under there, under state income. So…

Ewing: Oh, okay. I did put that in.

Terry Smith: … these are some of the things I noted on the operating agreement that Eric sent out for everyone’s consideration. Doesn’t…? Did it not say in the law that you have to specify in the agreement what the set-aside rate’s going to be?

Morris: Um, let’s see. I just happen to have the law sitting here. So it says… “collect a percentage of net proceeds…” [continues to read to self]. I don’t see that, Terry. At least in section three of the new statute, I don’t see where it says that. It says we’ll set it out in rule: “The Commission shall determine by rule the standard percentage of net proceeds to be collected under this section. The Commission shall provide an agreement with the vending facility manager the percentage of net proceeds that the Commission will collect from the vending facility manager….” So is that saying the same thing twice, both in the rule and the agreement?

Terry Smith: Uh huh. Yeah. That’s the way I read it.

Morris: All right.

Terry Smith: So I think you have to put in there, somewhere in there, that the Commission… that set-aside rate is 11% and they can obtain bonuses this way. You know, I think you need to put that in there.

Morris: Yeah, I’m just trying to think, as I’m thinking out loud here, as we determine what people’s set-aside they’re going to be paying, we talked about that we would do that annually. And I’m just trying to think where that number’s going to end up being, you know, for vending facility manager A, you know, we can put in the whole structure that’s in the statute and stuff. I’m just trying to think of where we embed that: “Hey, you’re paying 9%, because we’ve, you know, determined that you meet the eligibility for these two criteria and….” Do you think that would…?

Terry Smith: I wouldn’t say that. I would just say the vendor will pay 11%, but will have his fee reduced by this amount if he meets these criteria and just list what the bonuses are.

Morris: Okay.

Terry Smith: Or you don’t even have to say… maybe you could even get away with saying that the vendor will pay 11% set-aside, but is eligible for a reduction, pursuant to… and just cite the law or cite the rule. And then you don’t have to lay out all those bonuses in the actual operating agreement.

Morris: Okay. That makes sense. I can put that in. I’ll work on that.

Terry Smith: And I said, under the Commission’s responsibilities, I’d like to send you some language, because there’s one thing that the law requires and it requires you to provide supervisory services. And you ought to pull that language right out of the act. And a couple of other things that I think, you know, right now, in terms of what the operating agreement says, what the, you know, what you guys are going to do is not that… pretty flimsy, to be… you know, I don’t think… it needs to be beefed up a little bit, so that it actually says a little more about what you guys will be doing.

Morris: Okay. You’re going to send that to me, then?

Terry Smith: Yeah.

Morris: All right.

Terry Smith: I’ve got to write that down. I should’ve…

Hauth: Hey, Terry?

Terry Smith: Mm hm?

Hauth: Yeah, let me throw something out there for you. And I don’t know where it would be appropriate, but is there a place to ensure that, you know, post-employment training is provided? I know it’s already allowed for, but specifically, you know, to offset any kind of terminations or…. I don’t know if that… if there’s any kind of language that, you know, can be included in the operating agreement, where, you know, those… as the agency requirements will, you know, go through this, this and this?

Terry Smith: I would do two things. And I think…. Did I miss it, Eric? Isn’t post-employment training referenced in here somewhere?

Morris: Yeah, I thought we had it in the rules. But I’m not sure about… I haven’t memorized the operating agreement, either.

Terry Smith: Yeah, no, not in the operating agreement. You wouldn’t put that in the operating agreement. Is it in the rules somewhere, about post-employment?

Morris: I believe it is. I’m just not positive, right this second…

Terry Smith: RSA generally requires that.

Hauth: Can Kathy…? Hey, Eric, I don’t know if Kathy can do a control-find to see if it’s in there.

Ewing: Okay. So, under Additional Training, right above Vacancies. “The Commission shall provide post-employment services consistent with requirements.” In 34…

Terry Smith: Yeah, that’s required. That’s required to be in there. So, yeah, I would’ve been surprised if it wasn’t. What I would suggest on what you were talking about, Randy…. Post-employment services, I think a lot of people misunderstand what post-employment services are. Post-employment services are a very specific service under the VR Program that… and it’s primarily for people who have been recently placed on the job and they get their case closed and a few months later they find out that they needed another piece of equipment or they needed training on something, they could open their case back up in post-employment services and then not have to go through eligibility and all that stuff.

Hauth: Yeah.

Terry Smith: So that… that is the def… and, you know, it’s usually, it has to be within a year of the time your case is closed. So…

Hauth: Well, and Terry?

Terry Smith: Yep, go ahead.

Hauth: Specifically, what…?

Terry Smith: You go. You go.

Hauth: Okay. Okay. Specifically, what I’m trying to get at and if there’s a way to do that. Like, if a manager is struggling, is there a way to ensure that the agency will provide post-employment training specifically, let’s say, to bookkeeping. That somebody’s, say, somebody’s failing on their bookkeeping. Instead of terminating that person, is there a way to ensure that they’ve been provided that?

Terry Smith: And I would… I would not use the term “post-employment” because that is a technical term in the VR program. You already dealt with… that’s already in your rules. What I would suggest, and Eric is going to put… he’s going to write up a section on progressive discipline. I think something should go in there. Clearly, you know, the agency has responsibility to provide training if there’s any [inaudible] there. So I think in the progressive discipline part, where Eric, when he writes that up, should include something in there saying that if the, you know, if the agency determines that this is a training issue, then they will, you know, arrange to provide that training to the vendor before they terminate them.

Some things are not training issues: not going to work on time; you know, not showing up at your facility is not a training issue; filing your reports late is not a training issue. I mean, that, you know…. But then a lot of things are training issues. You know, if the facility is not clean because they’re not doing the proper… you may be cleaning it or not be doing it on the right schedule or you might be doing it wrong. Cleanliness is, you know, could be a training issue. Some things are not. But I think, Eric, I would encourage you, when you write that up for everybody to look at, that you put something in there about the agency will provide training.

Because I don’t think it’s Eric’s intent, or anybody’s intent, just to kick people out. I mean, I don’t think that’s what, you know, any… I’ve never… I’ve never encountered that from any agency, where their goal is just to kick people out. I think their goal is always to try to salvage the situation. And so, you know, that’s why you go through these processes. If the goal was to kick them out – they violate the rules, you just kick them out.

But are you okay with putting something like that in there, Eric, when you write that up?

Morris: Yeah, no, I think that makes total sense. It helps outline the process.

Terry Smith: Okay. But that’s a good point, Randy. We’ll make sure we get that covered. Yeah, the other thing was, under the vending facility manager responsibilities we don’t even say they have to comply with the program rules. And, you know, that should be the very first thing they have to comply with, you know. So I would put… that would be the first thing I put on my list, is they’re responsible for complying with program rules, regulations and policies, as well as other laws and government regulations. You know, so you could list those out however you want to, Eric. But you get what I’m saying, don’t you?

Morris: Yeah. Yeah, I got ya.

Terry Smith: So, you know, that definitely needs to be in there. Because, otherwise, there’s nothing here that ties them to your own rules. And then…. Oh, also, when you talk about grounds for termination, you know, the other thing is, if the facility closes, then the agreement is automatically terminated, as well. And those… you don’t have an operating agreement. An operating agreement that’s specific to a vending facility and, therefore, if a vending facility closes, then the agreement is null and void, so to speak.

Morris: That makes sense.

Terry Smith: And I said… and then I said also that I’d make sure that they get a chance to correct problems somehow. You know, that… this goes back to the issue we talked about time and time again: you know, do they get a chance to fix the problems? I don’t know how you want to address that. If you… you know, if the rules state that, then I would do that. You know… I would get… I don’t know how to….

And the last thing I was going to say was, you know, we’ve talked about …

Art Stevenson: Come on!

Terry Smith: … you know, what happens in an emergency removal of a manager. I mean…

Art Stevenson: Hey!

Terry Smith: … you can’t remove a manager, you know, for no cause. And this agreement doesn’t say you can.

Art Stevenson: [Muffled.]

Terry Smith: But I would go back and pick up language…

Hauth: Art, you’re off mute.

Terry Smith: That I could send you the language. But there needs to be language of what happens if there’s an emergency removal of a vendor. You know, if something happens and they’re… get in a fight in their vending facility or, you know, something, you know, it’s got to be something that is a threat of some sort that, you know, they can be removed. They still don’t lose their license without a hearing, but you… but this gets at what we’re talking about, being able to remove a manager.

Morris: Yeah, if you could send that to me, that’d be great.

Terry Smith: Yeah.

Hauth: So, Terry, was that the last…?

Terry Smith: Yeah.

Hauth: Was that the last thing you picked up on the operating agreement? Because I know if it is, Art, I believe, has some issues and maybe some others that we can work through.

Terry Smith: Yeah, that’s…. My list is complete.

Hauth: Art.

Art Stevenson: Oh, shoot, Randy. I don’t have my list right in front of me, what I sent out. I sent it out to everybody.

Hauth: I don’t know if you have it, Terry, and all. Or Eric. I’m in the car, so I don’t have it. I know that… I know the… one of the issues in the past had been what was believed to be, you know, a lack of due process, as far as the termination. Or that the agency or facility could direct that termination. I think that was one thing. I don’t know if that got resolved within this operating agreement.

I know also, Art, you talked about the proposed penalties for late payment and that type of thing. That was another one. But I don’t have your list in front of me, either.

Terry Smith: You said… You said, I believe, that the monthly evaluation process – I don’t know what that is, I don’t remember – it is excessive and should only be done on a quarterly basis. The Health Department doesn’t do it monthly and OCB shouldn’t, either. Is that in the rules somewhere?

Morris: No, I don’t think it’s in the rules, Terry. Hey, while people are collecting lists, Terry, can we take a 10-minute break, so we can run to the restroom?

Terry Smith: Sure.

Morris: All right.

[Pause in recording.]

Terry Smith: Well, I know what you’re saying and that’s sort of been an age-old debate on, you know, not just your state, but in other states on whether or not you have to give due process before you actually remove them. And, you know, I would… I would think the answer to that would be yes. Your grievance process is, basically, eight or nine months long, so…

Hauth: Yeah. I mean, it’s clearly a property right. I mean if, you know, a person had the time and effort and resources to challenge that, I believe, you know, it’s even probably a federal violation of your due process rights, under Title II. But, you know, then again, being we’re trying to, you know, address it through the rules, maybe we should with the agency come up with some kind of language that ensures a person gets due process. Because it’s not right that an agency can, I believe, that an agency can say, “You’re gone! You get due process, but good luck to ya!” Wayne Dyer, Charles Glaser or, you know, the list goes on and on.

Art Stevenson: Well, and that’s why, when I put my signature on something – and you know, Randy, this has been a contention and we’ve sent in, “Hey, I’m signing this under duress because it says that.” Well, I don’t want to do that anymore. I want it to say in the agreement that if they’re going to send me a notice of termination I have 30 days to say, “Hey, I want a full evidentiary hearing.” And then, you know, they have to provide me my due process before they remove me, unless it truly, actually is jeopardizing the facility or the customers. And then they could do it. But… and get somebody temporarily in there till it’s settled.

Hauth: Yeah. So, Terry, what do you see in some of the…? I mean, what are some of the better practices on how states address that? Are there some that have it written in the rules, where they make sure to afford, you know, that due process before termina…? Or what do you see when you’re out traveling around?

Terry Smith: I can tell you, the last three states I looked at didn’t even afford the 30 days’ notice. So… which I was appalled at. You guys, I guess you get 30 days’ notice, which gets you, you know, some time to file your grievance. So…

Hauth: Well, Terry, you know as well as I do, a lot of these rules have just, you know, kind of stood the test of time and doesn’t mean they can’t be changed. But…

Terry Smith: Yeah.

Hauth: … it just… they’ve just been that way, just because. And so, is there a way to address that, so that, you know, we can be a little bit more cutting-edge here in Oregon?

Terry Smith: Can it be addressed? Yes. I mean, you know, Eric, are you back in the room?

Morris: Yeah, I’m not even sure we’re talk…. Are you talking about the operating agreement? Talking about the rules?

Terry Smith: Yeah. Talking about the operating agreement. If you… If you give them notice, 30 days’ notice, I think it says, that you’re going to terminate the operating agreement. I mean, obviously, they can grieve, they can file an appeal. And it, you know, it probably ought to say that in here. But the question is, you know, what rights do they have to ensure that you’re not, you know, you’re going to terminate the agreement, you know, and just take them out without any opportunity to have due process. That’s the concern. Because once they’ve been taken out, then, you know, they’re losing income and all that stuff.

Art Stevenson: Yeah.

Terry Smith: Now the… what you could put in there is if you go to a hearing and you win, then the Commission will reimburse you for your lost income. But that’s probably, you know, without saying, I mean, that if you take them to arbitration, the arbitration panel says that they took you out, didn’t have grounds to, panel’s probably going to award you the lost income.

So I think… I don’t know. I think, clearly, termination of an operating agreement is subject to appeal. I mean, you can… you’ve got the right to an evidentiary hearing. I don’t know, you know, what process there is available. And we could do some kind of review of the action without a full-blown evidentiary hearing. I mean, in Tennessee we had ten days that they could actually convene a hearing. But…

Morris: Does the… Does the federal act or the federal regulations talk about operating agreements? In that specific…?

Terry Smith: There will be… just says there will be one.

Morris: Okay.

Terry Smith: And RSA, you know, they’ve actually struggled with this one, too. I’ve had conversations with them and… I think there are some who think that an operating agreement is an extension of the license and therefore can’t be terminated without due process, which I think is what Randy was saying; it’s a property right. Then you’ve got the others, who say, as long as you don’t terminate the license, then, you know, you can terminate the operating agreement. And I don’t know that there’s really… there’s no…. To my knowledge, there’s never been a case where, you know, where that has been said: they did it without giving them due process. I think it’s been said that they removed them wrongfully, they shouldn’t have moved them or terminated the operating agreement. But I don’t know of a case where the grounds for that was they didn’t give them due process first.

So I’m not much help on this one. Because this one is…. And we can ask Jesse that question when we talk to him, if we want to. But… it’s probably a good question to ask him. But I really don’t know where he’ll come down on that one.

Hauth: Okay. Hey, Art? Art or Jerry, I don’t know if you guys are both on the line still. I hope you are. But were there any other issues that are relevant to the operating agreement? I mean, that’s clearly… what you brought up, Art, is an important bit.

Art Stevenson: Yeah. Am I off mute, Randy?

Hauth: You are.

Terry Smith: Yes, you’re off.

Art Stevenson: Okay. And then I pressed the button because you didn’t…. But, anyways, so… other stuff. Yeah. In the other rules we had where the manager was allowed to be late three times in a year. And then if there was more than that, was subject to termination. This operating agreement assesses a penalty, $50 on late reports, $50 on late set-aside. And I don’t remember there ever being a discussion with the Elected Committee on assessing the penalty and what that penalty should be. Obviously, before you could have three lates in a year, you were cool, and now, all of a sudden, from the first one you’re zapped. And then, if I understand what the operating agreement says, that you keep paying $50, you know…

Hawkins: Now we could put the cold stuff up ahead. Well, maybe the coffee. Or the cold…

Art Stevenson: Get off mute, Char!

Hawkins: Okay. Or maybe the cold stuff next.

Art Stevenson: Char! Char! Mute! Char! Mute!

Hawkins: Sorry!

Art Stevenson: So, anyways, number one, you know, I do believe if a manager’s, you know, had a problem with one late payment, due to medical reasons or whatever, they shouldn’t be zapped. If they’re having an ongoing problem, again, we talked about what are they doing wrong to have this happen on a consistent basis. Are they lousy time managers? Et cetera, et cetera, et cetera. So I don’t mind holding managers accountable. We did before, three times in a calendar year and you’re subject to termination. But I think this should be a progressive thing, like, “Hey, if you’re late once, you know, we’re going to give you a written warning that, hey, if you’re late again we’re going to start charging you.” Or something to that fact. So that’s my thought on the one thing.

Terry Smith: Well, we need to discuss that out before you go to another.

Art Stevenson: All right. That’s my case on that one.

Terry Smith: Others?

Hauth: Yeah, Terry. You know, what’s the position of RSA on assessing fines? Is that allowable or not allowable?

Terry Smith: Yes.

Hauth: I think it…. Is it allowable? Okay. I think that’s one of the things that, like, one of those rules that got imposed years ago, how a manager could be potentially terminated for, you know, not filing three reports timely or whatever. I think it’s kind of crazy. But on…. What’s your thoughts, Eric, on the whole penalty thing? You know, as far as…. I get it’s like an incentive to get people to pay on time, right? And it looks like we’ve made some headway doing that recently. And I get chronic non-payers. I get that’s not okay. But, I mean, I pay on time, so I don’t really care. But I do care for those who may be, you know, have something go on with them. So.

Morris: Well, from my perspective, I know this is, Randy, and issue you and I have talked about multiple times since I’ve been here, about the, you know, the progression of three late reports and then end up taking your license away. My thought process, like you just said, this encourages people to pay on time. And basically, I mean, I just think about… when I pay my mortgage, I pay on time so I don’t have a late fee and it doesn’t affect my credit history, which is a whole separate issue. But I don’t pay a late fee. So that’s not like a… that’s not a Business Enterprise practice or some voc rehab practice that’s unique to us. It’s just… that’s… that’s how the world turns, is if you don’t pay on time, there’s consequences for that.

And we have struggled – we, I say all of us on this call and at this agency – to get people to comply with this. And it may seem punitive and stuff, but it… I don’t know what else to do, at this point, besides really, like, personally go around and collect from people each and every single month and show up at your doorstep and say, “Hey, I need your report. I need your….” And I think, literally, that’s the kind of thing that some people need. So I don’t think that’s, you know, that’s not good business. So this is an alternative to it. So.

Terry Smith: I can tell… I can tell you that in Tennessee we had the… in our rules, if you were put on probation three times in one year for the same offense, that your license would be terminated. But we put an exception in for late fees, that it wouldn’t apply to late fees. Because we did have a penalty and I told the vendors that if they… if they want to pay the late fee every month we’ll take their money. And so, it did help fix the problem. That and tying it to probation, which I think yours are tied to, also.

Hauth: Does that late fee go into set-aside?

Terry Smith: Yes.

Hauth: So, the more late payers, the more money we’ll have to work with on the agency through the budget process, I guess.

Terry Smith: Yeah, it’s not going to be significant.

Hauth: No, I’m just… I’m just teasing. Yeah. Yeah. So I don’t know, Art, does that…? I mean, Art, I know this is… you know, if you want to try and make a suggestion that might be different….

Art Stevenson: Well, and Randy, you know, like I said, we went from three times in a calendar year and termination… then termination and now we’re going to, you know, $50 first time, no exceptions, et cetera, et cetera. And so I believe, you know, a written warning, “Hey, your fees were late.” I mean, “You were late and therefore if you’re late again you’re going to pay a penalty.” You know, I think that’s a fair way of doing it. That’s just my personal opinion. And obviously, you know, if something happens medically, you know, should we penalize the manager for that? So I just think, you know, when…

Terry Smith: Now, just… just… for Tennessee, we put in the medical exception and we put in… as long… if a manager called and had good reason on the…. What are you guys? You’ve got to do it by the 20th, so you’ve got three weeks. Ours is due on the 8th. So, you know, if a manager called on the 8th and said, “My computer shut down and I can’t get it in until I go to my daughter’s house and, either today or tomorrow,” or “I’m sick and I’m in the hospital,” or whatever, we didn’t assess them penalties in most cases. And I think, if you’re going to leave the penalty in there it certainly needs to be saying something about unless, you know… unless the VFM's gotten permission to be late, you know, if he penalty kicks in. But you’re right, there are extenuating circumstances that you wouldn’t want somebody charged a late fee for.

Art Stevenson: Well, it was miraculous, too, when we had this discussion, all of a sudden things got better, you know, with the managers and stuff like that. And, you know, most managers won’t reach that three-time threshold that we had before and so there wouldn’t, you know, be any problems and stuff. So I just wanted to throw out there, that we went from three graces… three graces to “Hey, you’re getting penalized for it.” And I thought we could do a little bit better for that and have a progressive thing and have in there the clause about illness or, you know, those kind of things.

[Silence.]

Art Stevenson: Did I lose everybody?

Terry Smith: No, we’re here.

Art Stevenson: Okay. I didn’t hear nothing, so…

Hauth: Hey, Jerry, are you on the line?

Bird: I am. But I haven’t read that.

Hauth: Okay. Okay. I haven’t had a chance to, either. Art, I know you’ve read it over. Is there anybody else on the line that’s had a chance to read it and has any concerns with it? I’m going to look it over tonight and I will send you, you know, just some thoughts, if there are any. But, Art, what… do you have anything else?

Art Stevenson: Well, not that I can think of right at this time, except the due process thing. And I mean, if the law says that you’re in the grievance process that you have the right to, you know, the 30-day notice and all that stuff, our operating agreement shouldn’t conflict with what our actual handbook says. That’s my opinion.

Hauth: So I think you did say in the operating agreement, there was a couple different dates. I think one was the 15th and one was the 20th. I think I remember that, which I think is just a clerical fix or a technical fix. So I guess at this point, Terry, so is… was there anything else on the operating agreement that you noticed? Or have you gone over everything on that, that you noticed? And…

Terry Smith: Well, those are the things that… those are the things that I noticed. I mean…

Hauth: Okay.

Terry Smith: … I didn’t…

Hauth: So. Okay. So is there anything else that we want to talk about? I mean, what about, you know, what about the elephant in the room, the whole 30%... or, I mean, the five to ten percent limitation and all that. Hey, Eric, what’s the agency’s position on that? We probably need to have the discussion about it, right?

Terry Smith: I agree.

Art Stevenson: Hey, Randy? We didn’t discuss program-relevant information, either.

Hauth: Okay.

Art Stevenson: There definitely has to be a definition, in my opinion. And obviously we’ve sent a couple of definitions to OCB and it’s kind of been ignored. And, as I’ve stated in many, many meetings, that if I want to examine the problem that we have with spending too much money on AG’s expenses, then I should have the right to examine, you know, the billings and what they were for and the different categories, so that I could have the possibility of strategizing some ways that we could definitely curtail that. So there needs to be a definition of “relevant.” There needs to be clarification on what privileged information is. And then all the other stuff should be provided to the blind licensed managers… I mean, to the Elected Committee and the blind licensed managers. I mean, if we don’t know what’s going on in the program, we can’t actively participate and, you know, work with the agency to make the program better. And that’s what the Elected Committee is for.

[Silence.]

Art Stevenson: How come there’s always silence after I quit talking?

Terry Smith: [Chuckles.]

Hauth: Hello? Hey, yeah, sorry…

Bird: I guess we’re just [inaudible] talking. No, I’m just kidding.

Hauth: So, Terry, any ideas? Eric, do you have any ideas?

Terry Smith: I’m trying to find in the rules where it talks about program-relevant information, is what I’m doing.

Morris: You guys, aren’t we kind of…

Hauth: Eric…

Morris: I thought we kind of already went over this. I think… the thing that I struggle with is when Art’s talking about, like, analyzing the AG’s fees, what piece of active participation is that addressing? That’s what I can’t quite understand.

Art Stevenson: Well, Eric, just like… just like when the Commission for the Blind sought opinion… an opinion from the AG’s Office on subcontracting. First of all, none of us knew that was happening or was even contemplated. And then, when it was formulated, you know, there was no active participation and stuff like that.

Morris: So what…

Art Stevenson: And frankly…

Morris: So what’s the bill got to do with that?

Art Stevenson: Well… and let me finish my statement…

Morris: Sure. Sorry.

Art Stevenson: … Eric. Obviously, you have the idea that, if we have program-relevant information and we can examine it, that we might be able to come up with some creative ideas on how to curtail it, you know. And, quite frankly, I might come up with a creative idea on how we can curtail the expenses and stuff like that. But, you know, I just… if you don’t get that when you have data you can examine it and you might come up with an idea on how to do things better, then I guess I can’t, you know, I can’t convince you of that. But I can tell you that through active participation in other states, the Elected Committee and the managers do come up with good ideas that could be helpful in running the program. So if… if…

Hauth: Art…

Art Stevenson: … you have a pre-determined notion that I can’t examine the problem and, you know, see where most of the billing’s coming up with and maybe coming up with an idea on how we can curtail it, you know, what can I say? But I know that a lot of successful businesses examine data and come up with good ideas on how to make things better, less expensive, et cetera, et cetera, et cetera. So…

Hauth: Yeah. Hey, Art? Art, let me weigh in here, if I may. You know, Eric, my thoughts are this: if… you know, as long as it’s not breaching confidentiality, why not provide it? I guess that would be my first thought, instead of trying to determine maybe how that will be applicable or not be applicable, right? So that’d be my one thought.

And I know the other thought is through the reporting, the annual report, when the agency goes to the legislators and provides the information, you know, it’s also going to be an opportunity for the Elected Committee to do a report, you know. Even though it might be required through the law, I think the Elected Committee will also be… hopefully will be sitting right beside, you know, the agency and supporting what’s going on. But I think that will be a time also to address issues of concern, if there are any. And I’m sure they’re all going to go away, right? [Chuckles.] But, you know, even if you define things out, Art, and the agency says, “No, I don’t think that’s relevant. I don’t….” You know, so I would just hope that, if the Elected Committee requests that information, it’d be provided, as long as it’s not breaching confidentiality. So that’s just my two cents’ worth there again. So.

So how do we… Terry? You’re the brains of this operation. How do we work through that?

Terry Smith: Well, I’m reading what the Act, not… this is the Randolph-Sheppard Act says; it actually addresses it in two places. One, it talks about the information that’s available to every blind vendor. And it says, “Provide to each blind licensee access to all relevant financial data, including quarterly and annual financial reports on the operation of a vending facility program.” And that’s what it says there. And your language is very similar. You know, maybe you just… just to make sure, you know, that you’re in compliance, you just pick that language up and stick it in your rules, instead of what you have in there. But that’s what the law says.

And then, if you look over in the regulations, where it talks about the responsibilities – we’re talking about application for designation, I think it is – down at the bottom, toward the very bottom in… it says, “adopt accounting procedures and maintain financial records in a manner necessary to provide for each vending facility and for the State’s vending facility program, a classification of financial transactions in such detail as is sufficient to enable evaluation of performance.”

And so those are the two places that financial information is discussed. So… you know, the part that I said I was going to send the language on, about the reports that should be provided to the Committee, you know, that’s where I was talking about the source… where the income’s coming in through and where it’s being spent by category.

This is the way I see this whole thing: they should be providing quarterly and annual reports; that’d be a quarterly financial report showing the money that came in that quarter and the money that went out that quarter. Then they should give you the annual report, which would be the RSA-15 and now the annual report that they give the legislature. Those… as a minimum, those are the things that they are required to give you. Then, if any blind vendor wants to see any of this data, any of this information, everything in the Commission is… is a public record. So they can go in at any time and if they want to go through it and look at all the detail, then they’re entitled to do that.

But, you know, I don’t… I don’t know how you’d get at that, you know, as a… in your rules. I don’t know what you’d do to address that. But I mean, that… what I read is straight out of the federal law. And I… you know, I’m going to deal with the part to the Committee, the language that goes to the Committee, you just pick the language up that’s in the law and put it in your rules so you’re doing what you’re supposed to do.

Hauth: And then, you know, Terry, the other thing I…

Art Stevenson: Randy? Oop.

Hauth: Yeah, go ahead.

Art Stevenson: Well, now, Terry, read that part again. It says provide access to… and then it says including… it says “access to all program-relevant information, including….” So the report you’re talking about is, you know, including those reports. It also says, the way I’m reading it, access to all program-relevant information. And then it says “including.” It doesn’t say… it doesn’t say, “excluding the other stuff,” it says “including that.” And so, the way I’m reading it, okay, if I want to know… if I want to see the invoices from the AG’s Office, that’s program-relevant information and I’m supposed to be provided access to it. That’s what the law says. And so that’s how I read it. And, you know, you’re saying that the Elected Committee is only entitled to those three things and the way I’m hearing it, it says that we’re supposed to be provided access to all program-relevant information – and I don’t have it right in front of me – including. So it doesn’t say…

Terry Smith: Including quarterly…. Art, I just said. You didn’t…

Art Stevenson: Yeah.

Terry Smith: I don’t know where your ears went. I just said, any blind vendor is entitled to go in and look at every single invoice that they want to. That’s not… That’s not what they’re required to provide you. But any… if you want to go in and you want to see those invoices, you are entitled to see those invoices. But in terms of the reports that the agency has to give to the Committee, they don’t have to give it to you in that kind of detail. And what they’re going to do is give you a report that says, “We spent X amount of dollars. We took in this amount of dollars in each of the categories and we spent this amount in each of the categories. That’s what it’s going to say. And it’s going to say, “We spent so much on equipment, so much on maintenance, so much on management services.” And it breaks it down by category, just like that. It’s not going to say, you know, that we bought Jerry a snack machine and we bought Randy a cold food machine. You know, it’s not going to be in that kind of detail. I mean, that’s… you don’t need that detail.

But anything… if you want to see the information that they use to support that, it’s public information and you are entitled to go in and review it and they have to set up a time aside to explain it to you.

Hauth: So, if I may, so, Terry, what time are you here till? And I know we, you know, have some other information. And, you know, I don’t know how we get to what Art’s wanting or requesting, other than through public records and going in. I do think the law, the new statute – again, I don’t have it in front of me – but it does say, you know, relevant data will be provided to the Elected Committee to help, you know, effectuate the proper adminis… you know, active participation. So I believe that there will be things that fall outside of those reports. So, Eric, I’m thinking, how do we… how do we get to where, you know, the agency can freely and, you know, easily provide that kind of information on request? How do you see that in your mind?

Morris: Well, I think it really depends on what it is. I mean, Art talks about the AG billing and stuff, which has been a bone a contention. Art was also requesting every email we had sent regarding, what is it, regarding this process I think it was? Like, the day before we started the process. So, you know, I have a hard time understanding how that’s relevant to anything, to be honest.

So the language that Terry was talking about is in the draft rules now, under section d) of… I’m not sure what it’s under. But the language is almost verbatim. And so that language is in there. You were talking about the statute, under my responsibilities, in the handbook. And then, in the new statute, it calls out that the Commission shall provide relevant information to the Committee in a timely manner, in order to effectuate – that’s a big word use for the day – the Committee’s active participation. So it’s in the statute. The language is not identical to what’s in the rules right this section… second. But I think the language that’s in the rules right this second is from the fed. I mean, that’s what it sounds like. So.

Terry Smith: The first part is almost verbatim. It’s not…

Morris: Yeah.

Terry Smith: And, like I said, you’re talking about two different things. You’re talking about access to information is one thing. You know, providing information to the Committee and reports is totally different. You guys, you know, certainly can structure those quarterly reports, you know, the way you decide what information that you think is important. But, you know, I don’t think… you don’t want it to where it becomes cumbersome, that it’s intrusive on everybody’s time.

Hauth: Yeah, I saw the report that Michael Talley sent here a few months back and, you know, obviously we can work through that. But it looked like in Alabama they provide, you know, a little bit more detail than what we’ve been used to here in Oregon. Maybe, like you suggested, Terry, we can work together to get to the information that the Elected Committee needs. So… or feels that they need, you know. So. And I’m not saying, you know, I’m not saying that those AG’s expenditures are important, but if they’re… Art’s, you know, position is that they are, then I guess that’s how we’re trying to figure out how we get past that. Because maybe he needs those to, you know, actively participate. So, instead of us being at loggerheads, just trying to protect everything or trying to get everything, we need to find a right way to, you know, make the agency happy and make the Elected Committee happy, so that we’ll all know we’re confident working together. So that’s my position.

So, Terry, what time are you leaving today and what do we need to do? And Eric, if you can kind of outline, you know, the process forward. I know we had some discussions about continuing… I think you had some deadlines that you had mentioned. And then we had suggested looking at continuing those deadlines. So, Terry, if you can kind of tell us what you think you need right now.

Terry Smith: I think this is where we are: I’ve got some homework; there’s four different things that I’m supposed to send. Eric has some homework; there’s two things he’s supposed to send. You guys said you hadn’t read the operating agreement, so you guys need to read that. I think, you know, there needs to be some, you know, once that’s done there needs to be some conversation around those. And then you guys are still going to have the hard conversation about percentages. And, you know, I’m prepared to have those now. I don’t know what time… but it’s what time your time?

Morris: Ten to four.

Terry Smith: Ten to four? Yeah. So, you know, if you want to have those conversations, then I’m ready. I think, you know, as far as any further involvement on my part in this process, it’s going to be very difficult because I have one day in the office after tomorrow before these are going to be… probably have to go to RSA for approval. And, you know, if you’re going to try to get them to RSA, you know, the first of September, then that’s the only, you know, I’m not going to have… I’ll have one day in the office that I could probably do an hour or two. But I can’t do all day, like this. So, you know, you guys, after you read everything I submitted and Eric submits, we could have a short conversation on Tuesday. But that’s the…

Hauth: Yeah. Terry, I think that would work, I do still think we need to know where the agency’s coming from on, you know, the whole percent thing.

Terry Smith: Okay. I think… I think if Eric is ready now… I mean, he’s been expecting this conversation for two weeks…

Morris: Yeah, I teed it up, like, last Monday. So it’s not like I’m not ready.

Terry Smith: So, yeah, let’s have that conversation and, you know, see where we can get with it.

Hauth: Well, my thoughts are this: we all, the Elected Committee, and you had a big discussion about it. So I think we need to hear from the agency and, you know, where are they with, you know, their thoughts and how they’re going to proceed with it. You know, in spite of the Elected Committee’s concerns is the agency just going to, you know, move ahead? And, you know, so I think those are the things that the Elected Committee deserves to know, as well as all the financial data around any kind of proposed plan. Like, I know the question was asked last week by, I think, Linda is, so when this concept came up, you know, where’s that relevant supporting data to help us understand and guide this? So, you know, Eric, if you can help us better understand what the agency’s position is or….

Morris: Well, Randy, I’ll say the same thing I said last week in that, right this second, if you go back and look at the statute – and I don’t have it memorized because we were in the heart of it last week, but there’s only a couple of criteria in the statute right now that allow… that are… that provide a framework for decision making around subcontracting and that’s around the issue of quality and of space. Those are the two things.

So what I teed up last week talking about what they talked about at the Commission board was, are you guys good with that? If you guys are good with us making the decision based solely on those two things and it’s zero or a hundred percent subcontracting, that’s… that’s the framework that’s set right this second. So that’s why I tried to express that, to say let’s have that conversation about it. And that’s why I teed it up that way. I believe it was Tuesday, is what it was. Everybody wanted to go back and think about it, process it a little bit.

And so when we came back on Wednesday nobody really wanted to talk about it. So that… to me, that means that people don’t want to have the conversation. So maybe that’s changed, but that’s still my perspective on what… the discussion we need to have is, are people willing to have that discussion about either zero or a hundred. And right now it’s zero, you know, it’s totally black and white; either we allow it all or we allow none, based on… and make a decision based on quality and storage space. So that’s… that’s the agency’s perspective.

Hauth: So is the agency still planning to suggest or, like, write up some kind of percentage requirements around subcontracting? Because, I mean, quite honestly, Eric, I don’t have, like, you know, I would not be doing my due diligence to even make a recommendation on behalf of the managers. Because let’s say the agency says, “Gosh, we want you guys to do 10% and that’s all you’re going to be allowed to have.” I said, “Well, where’s the data to show me that you guys can even, you know, facilitate that through the infrastructure. And, you know, how does this…?

So, you know, without going into deep detail, financial data relative to something like that and the negative impact it may have on the managers and the negative impact it may have on subcontractors. And the conversations, even though I haven’t had a direct conversation with Keny-Guyer, it’s my understanding that it’s not the intent of this legislation. And so I don’t know if you guys have had different conversations with her on this. But, you know, that’s my concern, is that the agency’s going to just dismiss really what I think is a kind of rational argument here and what the intent of the legislation is and could be if the agency wanted it to be, and just march ahead with, you know, some kind of demanding percentages and just reading into the law the way they want. So, you know, I’m personally not… I don’t have the information necessary to even say, “Yeah, that’s a great idea” or “This amount of percentage” or “No percentage.”

My personal opinion is I think subcontracting is allowed and to try and impose anything like that could put us, you know, in conflict with the federal act. But again, you know…

Morris: Well, the…

Hauth: I don’t know… I don’t know that. So.

Morris: Well, the one piece, if you look at the statute itself, and it’s under section 6, sub-paragraph 5, it says, “the Commission may determine by rule the services or products that a subcontractor may provide.” And we did that. We figured out the services and stuff. And then it says, “and the extent to which a subcontractor may perform the duties of a vending facility manager, consistent with the vending facility manager’s statement of full-time employment.”

So that’s the piece of the discussion…

Hauth: Yeah.

Morris: … that I wanted to have last week.

Hauth: And I…

Morris: And we already…

Hauth: I think it says “may,” Eric. I guess my thought is, if the agency wants to, you know, in good faith work along with the Elected Committee. And this is me talking, right? So obviously maybe the agency has a different perspective. But it says they may. And so I don’t think the agency is required to mandate or impose any kind of percentage. And, again, it’ll go back to what it said earlier. If the agency is, how does that benefit the managers, as the law intends? Because I’d like to hear that, you know? And how does it benefit the program as a whole? So.

Morris: Well, to answer a couple of your questions, Randy, the provisions for, what do you call it, the financing of it and staffing support and all that stuff, we talked about that last week. That’s… I think we’ve already built that into the rules that we’ve talked about. So that’s… that’s addressed.

And I think, you know, the thing to understand is that the agency’s perspective is, we want to support managers in full-time employment by providing them the equipment and the resources and everything they need to do to run their operations. And that’s… that’s our perspective on it. And, you know, it says… you’re right, it says “may,” but we already did half that sentence. So it seems a little unusual we do part of the sentence but not the rest of it. So, you know, that’s my…

Hauth: Yeah, I… yeah.

Morris: But…

Hauth: Yeah, go ahead. But we don’t have any, you know, I know we talked about it last week. But, again, we don’t have the data for short-term and long-term. And I think… take you out of the equation, I think the agency is fooling themselves if they believe that they could carry off… even if everybody supported this and said, “This is the greatest thing since sliced bread!” I think the agency is fooling themselves that they have the proper resources to actually fund successfully all the infrastructure and all the equipment necessary.

And so that’s why I’m just, you know… I mean, you know, I’m sharing my… I’m not expecting to change your mind because – or the agency’s mind – because I’ve seen what their mindset has been for the last couple of years when it’s come to subcontracting and trying to end that. I’m just trying to share that I believe… I believe the agency taking the path like it’s trying to take will end up continuing that conflict. Because, you know, it just will. And hopefully we can kind of get away from that. So.

Morris: So the one question you asked me…

Art Stevenson: Terry?

Morris: … is… is, are we planning on proposing something. Is that what you would like to see, some kind of a proposal around what we’re talking about to the extent? Because I…

Hauth: Well, I don’t… I would like the, personally, I would like the agency to say, “Lookit, this intended law does allow for subcontracting and it does give us the discretion to approve it or deny it based on these certain criterias. And even though we’re wanting to maybe make sure that, you know, people are fully engaged in their employment” – and we did that through the, you know, the requirements of day-to-day, or whatever it is…

Morris: Yeah.

Hauth: … managerial responsibilities. That’s what I would like the agency to say is, “We’re not going to impose anything. We’re going to take it as a case-by-case and see, you know, how it’s going to make sense” and not try and limit anybody’s… potentially limit anybody’s rights or earnings. That’s what I would love to see. So.

Bird: Jerry.

Hauth: Yeah, Jerry.

Bird: Yeah, I’m kind of confused here again, the way you guys read that, I thought you was talking about the subcontractor, what’s the extent of what the contractor can do. How does extent come to limitations? I mean, it has nothing to do, the limitations on the blind vendor with what is… how people limited is to the contractor. It’s just that the contractor is limited to certain things he has… can do. I don’t see where it says anything about a limit… the extent. Now, I don’t know how you got extent means that they want you to be able to say they can limit you, “Do this. You can only do that.” I think they’re idea was, it’s all on the… with the, like I said, the subcontractor is allowed to do in your behalf. But in our behalf we do not have a limitation or they would’ve put it in there. Extent and limitation, you’re going to have to explain to me how them are two of the same meaning. Anybody?

Art Stevenson: Randy? Oh. Go ahead. Somebody going to…? Are you going to get an answer there, Jerry?

Bird: How about Mr. Smith?

Hauth: Eric, I’m not sure if you, you know…. Then again, I know this…

Art Stevenson: Am I off…

Hauth: Hold on. I know this is a hot topic, but…

Morris: Yeah.

Hauth: … you know, if you can answer Jerry or give him, you know…

Morris: I don’t know that I could answer him in a way that would satisfy him. So. Sorry.

Bird: That don’t mean you don’t need to answer, Eric. I mean, is there a difference or you’re saying they’re the same?

Morris: Well, Jerry, to be honest with you, I haven’t looked up the definitions of those two words. When I read it, just plain English reading it through, you heard my interpretation of it. So, that’s my answer.

Bird: That’s true. Because you’re looking on your behalf. You don’t look at the managers’ behalf…

Hauth: Hey… Hey.

Bird: … the actual intent of the legislature that we all sat there. Thank you.

Hauth: So, Jerry. Thank you. Hey, Eric, before I… I know Art’s been asking… have you done or the agency done a complete fiscal review of this Keny proposal, like the five percent proposal or the ten percent or any percentage?

Morris: No, I don’t believe we have, Randy.

Hauth: Okay. Thank you.

Morris: Not…

Hauth: Art, I know you wanted to… And let’s all, you guys, let’s all try and, you know, the best that we can, let’s try and keep it, you know, to a dull roar. [Laughs.] Obviously, this is a sensitive issue. So, Art, go ahead. Art, you’re on mute.

Art Stevenson: Am I off mute?

Hauth: You are.

Art Stevenson: I’m off mute. Okay.

Hauth: Yeah.

Art Stevenson: Well, obviously, the law changed things, as far as subcontracting goes. It said that, you know, first of all, a subcontractor must qualify and be put on the list. And that’s part of the law and OCB is putting together a list. Obviously, we have determined rules, you know, that address those issues. The law also says that the agency will promulgate rules to ensure the proper and satisfactory operation of vending facilities and for the benefit of blind licensed managers. And therefore the agency is quite capable to write rules to allow the blind licensed managers who, at this point in time, the agency gave a blessing to to subcontract. And now we’re going to be operating on different rules.

However, the agency doesn’t into consideration, needs to take into consideration the, you know, what led us up to this. And also the agency needs to take into consideration the agreements that they had with the blind licensed managers that they could subcontract. I mean, that… just because this law says we’re doing things differently with subcontracting doesn’t negate the former agreement, Eric, that the agency had with the blind licensed managers subcontracting all or part of their vending facility. In fact, I sat in a meeting, when I was assigned OSP, and the agency said, “Art, you can only have this facility if you subcontract it.” And we came to an agreement and I said, “Okay, I’m going to subcontract it.”

And former agreements, there’s nothing in the new law that says or that takes away your obligation as the agency to honor the agreements that you had with the blind licensed managers before. All the law specifically states is that the manager has to be fully engaged, full-time with his subcontractor and has to document that. And so, Eric, we’re not… we’re not trying to be unreasonable. We’re trying to ensure that the agency is not going to go back on agreements that you made the blind licensed managers make. And this new law doesn’t give you any authority to not be obligated by that agreement. And so what we’re trying to do is say, “Hey, in order to ensure that we don’t have litigation and all that kind of good stuff, let’s write into the rules fair and equitable for both sides and get rid of these problems.

And I have, quite frankly, I have no problems with complying with the law as soon as you put it into place. I will keep a log. I will be fully engaged and document how I am involved with my teaming partner, because that’s what I believe they are under this new law, not subcontractors. Because they are working with me to fulfill my obligations under the contracts and permits. And so that’s where I sit, Eric, as a blind licensed manager and, you know, I want to put it on the record. The agency forced me into subcontracting, for your purposes. And for you to say now, “Art,” or any manager in this program, “right at this point in time it benefits us, so we’re not going to let you subcontract anymore” is just flat wrong. As long as we’re complying with the new laws and, quite frankly, I plan to do that. And you should, the agency should honor that, Eric. Just because you’re a new Director doesn’t mean that you aren’t obligated to agreements that you made in the past.

Hauth: Hey, Art?

Art Stevenson: Yep, I’m done.

Hauth: Art, you bet. And I know… I know, you know, you made your point. I don’t know if, you know, I mean, bottom line, I think – and I’m guilty of this at times, too, and maybe everybody is – but I think lecturing Eric isn’t going to get us what we need. I think the… I think what concerns me is the lack of financial data, both short-term and long-term and the agency not doing their fiscal duty when attempting or even thinking about rolling out a plan like this. You know, this isn’t… I’m just guessing this isn’t Eric’s plan; it is a plan that came from OCB’s administration. And, you know, I guess our hope is that, Eric, you can go through your discussions and try and, you know, if you believe or feel so, can try and encourage the agency to take a different position on this so that we can start to move away from the conflict. I mean, again, every hearing I went through, it was all about, you know, “There’s too many legal concerns and there’s too much complaints and that’s why we’re building in subcontracting as well, to get away from that.”

So for the agency now to, you know, head down and go for it is a concern. So, without lecturing Eric, let’s certainly share our concerns on this and find out if there’s a way to, you know, fix it. So that’s just my recommendation. So. Does anybody else want the floor?

Art Stevenson: Chair Hauth?

Hauth: Eric? Hold on just a second, Art. Do you have anything, Eric?

Morris: Well, I’d like to hear from the rest of the Committee.

Hauth: Yeah, I would just say, you know, I think, you know, I think to try and, like, tie this in to an active participation discussion and debate, you know, is, I mean, is…. Honestly, I’m… I’m kind of, not against you, Eric, but I’m kind of insulted that this whole concoction about limiting subcontracting, especially without the proper fiscal analysis being done of this would even be something the agency would think they have to steamroll ahead. So, personally, I just need a lot more information and I need a lot more consideration before I could even properly actively participate on this, you know, specific item. So. Yeah, Art, go ahead.

Terry Smith: Did we not put in the rules – I’m not looking at them right this second – a statement that said if they didn’t have the money, then…. I thought we addressed that.

Morris: We did.

Hauth: Well, I think we did, Terry. Yeah, Terry, I think we did. But still, for an agency to try and steamroll this without doing all the fiscal analysis around it, it’s just concerning to me. Especially, you know…. Anyway, so.

Bird: Jerry’s got one more comment and it’s that mostly through this whole process, especially the first few days, Terry and others would say, “Now, wait a minute, the law doesn’t say that. The statute they want you to change doesn’t say that.” And then I ask where does it say it can be limited, it says that other part. So where’s that? To where the law doesn’t say limited. I just don’t understand how it’s fair whenever it’s… don’t say something and they take it as something else. It’s… It’s… you don’t use that. The law doesn’t say limited. Where does the law ever say anything about limited. How can you put that in on your own? It’s not there. Don’t make it up. Explain that please, Terry.

Terry Smith: I can’t even begin. I don’t know what you’re even… I mean, I don’t have a clue what you’re talking about.

Bird: Well, Terry, let me take it easier. How about, do you believe the new statutes that the legislature done are asking us to put in a limit… limitations on blind vendors, when they said “extent?”

Terry Smith: I think the plain language, as I read it, allows [inaudible]. When you talk about the definition of the word “extent,” the word “extent” means “the degree to which something has spread; the size or scale of something; the amount to which something is, or is believed to be the case.” So that’s the definition of “extent.” So it talks about scale. So, you know, you can make up your… you know, what it says… I mean, I think you got a law here that talks a lot about subcontracting. And, you know, I think it does allow it. But, you know, I’m not saying… you know, I’m not taking a position that it supports it, that I support that or don’t support that.

This is, you know, what you guys are having to grapple with right now. And, you know, Eric asked a question 30 minutes ago and got no answer. You know, you’ve got rules right now. If we quit this rules process right now you’ve got rules that give him the authority to make the decision. And it’s either, you know, as now written, either yes or no. He asked, did you all want a proposal or, you know, some type of percentage and there was no answer. So, in the absence of there being… you know, unless you tweak the rules, then it’s going to be yes or no whenever you request it. And you’re, you know, and I guess that a lot will depend on, you know, what direction they get from the legislature and that kind of stuff. So…

Hauth: Hey, Terry, thank you. Hey, Eric? Have you heard from Alissa or Jodi Hack’s office lately or recently or today? Or do you know if Dacia has? I know I asked Terry. My understanding was, Alissa was going to reach out to Terry and… or Dacia today. Do you know if that has happened? I read…

Morris: Randy, I’ve been here.

Hauth: What… What… But as far as Dacia, you don’t know that that happened?

Morris: I’ll check in with her as soon as we’re done today.

Hauth: Okay. Okay. It might be a good part of the conversation because, you know…

Morris: Have you…?

Hauth: … there was understanding…

Morris: Well, have you heard from her?

Hauth: I’ve had email communications with her, yes. I haven’t talked to her personally. I left her a message yesterday. And so my understanding was, again, she was going to contact Dacia and/or Terry today. But, you know, I know… you know, Terry, I know you said that Eric put forward a proposal and I’m assuming that you’re saying, you know… or just, I’m not going to suggest what you’re saying. But, again, it goes back to, without proper financial data I can’t in good conscience or good faith…. Even though I don’t personally support a limitation, even if I did, I couldn’t in good conscience support that without the proper data. I do want to… I do know that Linda wanted to weigh in. So, Linda, if you’re on the line, go ahead.

Haseman: Yeah, as somebody that has done actually union negotiations with teachers, a very tough union group to negotiate with, I never would walk in and set down a proposal that I hadn’t done a financial up one way and down the other and made sure that I had my ducks in a row of any proposal that I was making to anybody. And that’s just fiscal responsibility in State agencies and requirements under any kind of fiscal that comes in from state and federal.

Administration has a fiduciary responsibility to produce financial and be able to support those with very detail-driven fiscal data and be able to manage that. And then, coming from a stakeholder’s side and a taxpayer’s side, I’m actually quite shocked that I’m hearing that the agency is coming in with a five to ten percent requirement but has done none of the fiscal requirements for fiduciary financial responsibilities to support that. And when individuals are then trying to do their due diligence, to request those financials, which they should be able to get when you’re building rules, that seems to be wanting to be shuffled off.

And I can tell you very clearly in the state of Oregon, rulemaking requires a fiscal impact. And what I’m hearing is the fiscal impact going to be on licensed blind vendors; if there’s a percentage listed, it’s going to be a fiscal impact on small business, other small private vending businesses that help work with the licensed blind vendors. It’s going to be a fiscal impact on larger subcontractors. So there’s a whole door opening up in the rulemaking process in Oregon [inaudible] the fiscal impact and that needs to be addressed. Nobody that I’ve ever sat down and negotiated with for State agency funds makes the decision without knowing that impact and also the longevity of that impact and if it even can be sustained.

So, until that happens, I think you guys are in a big circle and there’s a lot of work that has to be done fiscally to bring that circle to an end. So…

Hauth: Yeah, thank you.

Haseman: … that’s my statement.

Hauth: Yeah, thank you, Linda.

Bird: One more, Randy.

Terry Smith: Just for the record, everybody…

Hauth: Hold on.

Terry Smith: Make sure everybody understands, there’s not a proposal on the table. I’ve been here… I’ve been involved in this thing for six days now and there is not a proposal on the table, that I’ve heard. I have heard that one commissioner made the comment of five or ten percent. But Eric has made no proposal that I’ve heard. He asked if you wanted one, but he…. I have not… There’s…. So, far as I’m concerned, I mean, she’s right, we are going around in a circle. But I haven’t heard one proposal.

Hauth: Yeah, and Terry, I guess it’s implied. I mean, clearly, even though there isn’t a written proposal, the intention is pretty clear for me that the agency is moving forward to impose limitations on subcontracting. And if they weren’t, why are we having this discussion that carries on and carries on. All the agency has to say is, “You know what? That’s not our intention.” So I think it’s implied and it is a concern.

Bird: Randy.

Hauth: Yeah, Jerry, go ahead. And then I want to go back. So after we hear from Jerry I want to kind of, you know, see what… if anybody else out there wants to weigh in. And then we’ll circle back to Terry and see where we, you know, where we go. So, Jerry, go ahead.

Bird: Yeah, and I kind of think I’m getting a little from Terry is, “You guys haven’t really made any proposals yourself and Eric hasn’t so he’s going to assume it’s zero or nothing.” Well, okay. Here’s my proposal. And we can… I’m pretty sure Eric won’t agree to it, but that’s fine. At least we’ve made our decision. I believe – and we need to vote on it as a membership, as a Committee – I believe our proposal is, as long as you are maintaining the full-time employment there will be no limitations imposed on subcontracting. There you go. That’s my proposal.

Hauth: Eric…

Bird: Any of the other… what do you think, Randy?

Hauth: Eric?

Bird: We need to make a proposal and I think that’s ours. And if they don’t want to agree with it when it goes back to RSA, it didn’t say we didn’t make one. That’s where we made it. So…

Edwards: Randy, this is James.

Hauth: James, go ahead.

Edwards: Yeah, instead of limiting it on the lower end of the scale, why not limit it on the upper end of the scale? Say, no more than 70%. Or something like that.

Hauth: Yeah, well, I don’t know. Jerry? So, as far as your proposal, I think it’s a good proposal and I think the agency, you know, hopefully will support that. Again, my own personal opinion is that the agency, even with the law, the intent of the law is not to limit subcontracting. However, without having the financial and fiscal information, it’s hard for me to weigh in on that. But I do like the proposal. Eric…

Bird: Well, let’s put it out…

Hauth: Eric? Eric? So what do you think of Jerry’s proposal?

Morris: I heard Jerry say it.

Hauth: What do you think of it?

Morris: I think that’s where it is right now; it’s either all or nothing. And Jerry’s proposal is it’s all.

Haut: No, I mean… maybe you took it that way. I think it was a little bit… maybe up to the choice of the manager. But, yeah.

Art Stevenson: Randy?

Hauth: Yeah, Art.

Art Stevenson: So in the current rules it says “a portion.” It doesn’t say 50%, 60%. And the agency, you know, a full portion… with me it’s right around 50%. It wouldn’t… if you go by number of machines. If you go by locations I believe I service more locations than I don’t service. And so, you know, obviously, the agency allowed a portion before. And I like the fact that, as long as we’re doing full-time employment… I’m sure… and obviously, you know, there’s supposed to be fair and equitable treatment with all the managers. I’m sure not Eric would not have got a subcontractor to do Bonneville – and that contract should’ve been… Steve should’ve had it with them – but I’m sure they wouldn’t have said, “Well, we’ll take 25% of that and we’ll go ahead and sign the agreement.” They wouldn’t have done that.

And so I definitely agree with Jerry; as long as we’re…. Well, except for the fact that, you know, again, because of some managers’ situation, like Derrick, he’s got locations up in Eugene, you know, consulting with his subcontractor up there that’s doing that, you know, working with them on the phone and stuff like that, I suppose that’s a possibility to get to the full-time employment. But I like Jerry’s proposal. But I must say that under the current law it just says a portion. And a portion could be a full portion, half a portion, a third of a portion.

And so, what was good then, I don’t see why we can’t continue that in perpetuity. And like I said before, the new law says that we have to subcontract under certain conditions. And I don’t think there’s one manager that hasn’t accepted that and is willing to do… step up to the challenge. So that’s where I’m sitting on it. I like what Jerry said, with…. But there are some mitigating circumstances, like Derrick, and his are spread all over the country.

And I have had discussions with RSA about the agency, you know, starting to break that up. And they’ve already given that to that facility and so they can’t just arbitrarily say, “Well, we’re going to give you this and take away that.” So that’s kind of out of the question. So we’ve got to deal with the current circumstances. And once we’re all dead and gone the agency hopefully will be wise. But we should be allowed to, you know, comply with the law, to continue to do what we’ve been doing.

Hauth: So, yeah. So is there anybody else on the line that wanted to comment? Anybody have any magical fixes for how we work together with the agency and we don’t get caught up in the, you know, the quicksand again? So.

Haseman: Randy, I just have a question. This is Linda. Federal versus state, I know you have at least one federal facility that has a teaming partner. The federal law doesn’t prevent teaming partners. I think it falls silent. And teaming partners tend to be fairly the norm out there in federal. So are… would that be zero for federal, as well? If zero becomes what the agency tries to go after? Would that be five or ten for the federal? Are you… what… I haven’t heard much discussion on how that would look for federal and state. And with it being a federal/state program it seems like it creates that non-uniformity again.

Hauth: Yeah, I don’t know. Terry, I don’t know if you have any weigh-in on that. But, you know, another thing I was wondering is, you know, let’s say that an agency imposes a limitation on a vending facility. And let’s say potentially that limits a manager’s income or, you know, doesn’t allow them that benefit they were receiving before. Maybe in some instances subcontracting is the more profitable model, if you agree with it or not. So how does…? So RSA, let’s say the agency puts rules through and then RSA approves rules that may do that. How does that whole question get answered?

Terry Smith: Well, you can’t place limitations on income. So if they were going about it somehow from the standpoint of limiting what you could make, then that would not be allowable. Placing limitations on subcontracting… if that… if the intent, result of that was to reduce your income then, you know, RSA might take exception to it. I don’t know. But when it comes to income, clearly they… you can’t limit it.

Bird: Well, if I must say, I believe that there’s a special thing in there that vending routes, there will be no limitations on income on vending routes. So… and that’s right in the federal act. So if you limit it, how is that not in conflict?

Terry Smith: I don’t recall that being in there. I don’t think vending routes are addressed at all in the act. In fact, they weren’t anticipated…

Bird: It’s under sharing, income sharing. I know it’s there because I put it in our handbook that’s in effect right now for that same purpose, back in two thou… probably 1990-something. Comes directly out of the Randolph-Sheppard Act, or at least the governing statute.

Terry Smith: I know it… I know it talks about limitations.

Bird: Vending machine income sharing.

Terry Smith: The funny thing about that is they actually put limitations on it.

Bird: I’ll look it up and send it to you.

Terry Smith: I think we put it in your rules. It think that’s what we put…

Bird: They were and then they were removed. Eric and them removed them. We had them in our version that… under vending route, under definitions and that there’d be no limitation imposed on vending machines, routes, combined to create one unit. Straight out of the act.

Hauth: You know, I guess, Terry, as you’re looking through that, I guess the other thing is, that Linda did bring up, potentially is… raises a question with me is, you know, how in the world can the agency utilize subcontracting, as they have and continue to do, and then place a different requirement on the blind vendors. So that’s one thing that I think raises a concern.

And, secondly, like, is Steve Jackson’s situation with a teaming partner, if there was a… you know, if the agency moved forward to try and impose limitations or percentages, how does that come into play with the teaming partner arrangement and/or, like Linda was saying, with the federal properties. So, I mean, I just think this whole direction, you know, I would hope that the agency would take again, a different direction on that. But I think there’s too many unknowns, too many questions, too many challenges to just plug ahead and try and, you know, impose…

Terry Smith: I’ll say… and I looked what you’re saying, Jerry. You’re…. What it says is, they can’t place a… what they’re saying is, there is a limitation on how much income you can get from vending machines on federal property. They can’t place any limitation on income from machines that are being operated by a blind vendor. That’s what it’s saying.

But I… I mean, I totally agree…

Bird: It actually says vending routes.

Terry Smith: No.

Bird: It don’t?

Terry Smith: It doesn’t. They’re combine… it says…

Bird: Combined to create a vending route.

Terry Smith: It doesn’t… that’s what it means, but that’s not… it doesn’t use the word “vending route.” It says vending facilities that are…

Bird: [Inaudible.]

Terry Smith: … combined to create a vending facility.

Bird: All right. Vending routes.

Jackson: Exactly.

Hauth: Hey, Terry?

Terry Smith: But to answer your question… to answer your question, real fast…

Hauth: Go ahead.

Terry Smith: I mean, I agree the agency needs to provide a plan on how they’re going to do this. I totally agree with that. That, you know…. Now, that… is that part of the rule process? You know, I don’t know. But clearly, you know, that’s part of active participation in the budget process and all that stuff. They need to, you know, they need to lay out a plan on how that’s going to happen.

Hauth: Yeah.

Terry Smith: Like I said, I don’t know if that’s separate from…

Hauth: In Oregon – Terry, I can guarantee you – in Oregon you have to do a fiscal impact. And you can even have to do a fiscal impact review committee. I mean, there’s a lot of… there’s a lot of safeguards to prevent an agency from trying to do, maybe, what they’re doing without all the data behind it. So that’s a concern. And then the other thing is, like, the teaming partner arrangement, how would that potentially be impacted for federal properties, how would that be impacted? And, you know, so…

Bird: It would be federal and other property, wouldn’t that? Because federal law states “other” in quite a few places. I thought that was changed in 1975 to include other, not just federal.

Hauth: You know, and Terry, I know, Terry, you’re here facilitating. I do want to ask Eric a couple of questions. Because you’re kind of… you shouldn’t be trying to answer all these questions, as a facilitator. But… so, Eric? So in your discussions, like with potentially imposing limitations on subcontracting, has the agency contemplated how they would still be allowed to subcontract? That’s one thing. Or how it would impact, like, a teaming partner arrangement and/or federal properties where vending is. Has there been discussions around that, do you know? And, if so, what did those look like?

Morris: Well, Randy, the agency has the ability to subcontract for all sorts of things. So that’s within our, oh, what do you call it? Governing statutes? That we have the ability to enter into contracts with people, agencies, you know, whatever. So that… that’s the, what do you call it, the authority behind it. So we hold the teaming partner contract at Bonneville. Have I put a lot of thought into the federal versus state? Not really, because this is a state law we’ve been doing rulemaking around. And I don’t remember what the other question was.

Hauth: I think…

Bird: So here’s…

Hauth: … the teaming partner and the federal and that. And I would just say, you know, for the record, it’s concerning that an agency, you know, serving the blind, their position is that the blind vendors are held to a less standard. So that’s again, you know, if somehow we can encourage this type of thing to, you know, not necessarily be an arbitrary number or limitation and that we deal with it as we move forward through the rules. And, you know, that would probably save everybody a lot of headache and a lot of heartache. And a lot of money.

Terry Smith: Okay, guys, I’m going to have to end. You want to schedule a call? Like I said, I can do a couple hours next Tuesday is the only day I’m going to be available.

Morris: Is that the 29th, Terry?

Terry Smith: Yep.

Art Stevenson: When is Jesse coming back? I’m trying to remember. Is it the 29th?

Terry Smith: The 30th is his first day back.

Art Stevenson: The 30th. Because I do know, you know, there are some definite things that we need to iron out. You know, and Eric saying, “Well, we as the State Licensing Agency have the right to subcontract, but the blind licensed managers really don’t. And I think there needs to be some further weigh-in on that. I believe you’re…. Well, and so we definitely need some clarification there. I would much rather get clarification and try to get the rules right and not have litigation. I completely disagree with the fact… the agency should be overseeing the blind licensed manager, but the contract with duress should be between the blind licensed manager and the teaming partner. Because otherwise they’re not in charge of the operation, they’re just a grunt, have no decision-making power. And that’s not what this program was put together for.

And, you know, so, again, I agree with you, Randy. The teaming partner aspect, I think that was done incorrectly, In fact, when I read the contract I was really appalled because, you know, Steve doesn’t have any decision-making power or any chance to do anything.

Hauth: So, Terry? Terry? Art, listen, you’re right; there’s other issues. So, Terry… I know Terry’s time’s limited. And, you know, I… honestly, Terry, I believe we tried to get this process going back in July, right after, you know, the legislation was passed. But for whatever reason it got pushed forward. So there… we are in a time crunch, you know, obviously. But. So next Tuesday you’re proposing a couple hours to go over the items that we’ve parking lot or we identified. And…

Terry Smith: I’m going to send you the four things that I promised. Eric’s going to send you those two things he promised. Those shouldn’t take that much time to discuss, I don’t think, since we sort of agreed around the, you know, parameters of what we discussed. And then, you know, if there’s anything else that we need to bring up at that time we can. And if I have to go you guys can carry on. So…

Hauth: Okay, thank you.

Morris: What time on…? What time’s good for you, Terry? On the 29th?

Terry Smith: I’m good all day. I’m wide open.

Morris: All right.

Hauth: Well, thank you, Terry, for your efforts. They are…

Terry Smith: Are we going to set a time? I…. Can we go ahead and set a time now, because my schedule may change tomorrow if I don’t.

Hauth: I mean, yeah. Mornings, you know, I mean 9:00’s better for me. But…

Terry Smith: All right. Works for me.

Morris: Me too.

Hauth: Okay. Okay. So we’ll let Terry go and then we’ll, you know, if there’s any public comment, I know people have made a lot of comments during this, but if there’s any public comment, we’ll hear it. Or any comment from the agency. And then we’ll go ahead and adjourn. So is there any public comment? Eric, you want to say anything?

Morris: No, Randy, I think I’ve said enough today. But thank you.

Hauth: Okay.

Bird: Jerry’s got one quick one. And it’s just, to go back on what Randy said, I find it amazing that the state can do it, a sighted person can subcontract without limitations, but the blind person that probably needs it, can benefit from it the most is limited. I once again believe that’s second standards. You’re only doing that because I’m blind. If I wasn’t blind I could do it. So that’s my point. Thanks.

Hauth: Thanks, Jerry. Just my… is there anybody else?

Art Stevenson: Quiet!

Hauth: Yeah, just my… my point is, Eric, to the best of your ability, if you can try and help, you know, alleviate some of this tension or some of these concerns, the documented issues through the administration there, maybe where we could all come away with a win-win and start, you know…. Anyway, whatever you can do would be appreciated.

Morris: I got ya, Randy.

Art Stevenson: Hey, Randy?

Hauth: Yep.

Art Stevenson: Randy?

Hauth: Yeah, Art.

Art Stevenson: Okay. Well, I just want to say that, you know, I believe that questions formulated, asked of the AG’s Office, that we should be involved. Obviously, that’s a major administrative decision because we’re talking about the rules, we’re talking about interpretations, et cetera, et cetera. And so I believe that if questions are going to be asked by the agency and our money is going to be spent on doing that, that we should be actively participating about it. We should know about it. Randy, you should be involved, at the very bare minimum. And so I believe that to be open and transparent, and if we’re going to, you know, ask things about the rules of the AG’s Office, whether they be written or over the phone, that you, actually, Randy, be a part of that. And I think the agency should definitely adhere to that and welcome that. That’s open and transparent. So, anyways, I’m throwing that out there. I think it should be done and hopefully the agency will.

Hauth: Thank you, Art. And thank you everybody for joining in. And I know Mark will send that announcement out. So thank you and good night everybody.

Transcription: Mark Riesmeyer