BUSINESS ENTERPRISE PROGRAM OF OREGON

RULE-MAKING MEETING

**Date: Tuesday, August 29th, 2017**

**Time: 9:00 am**

 OREGON COMMISSION FOR THE BLIND

535 SE 12th Avenue (Portland office)

Conference line: [404-443-6397](tel:404-443-6397;943611%23)

[Participant](tel:404-443-6397;943611%23) [code: 943611#](tel:404-443-6397;943611%23)

**Agenda**

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

2. HB 3253 Rules Development Negotiations

3.  Public Comment (11:00 am)

4. Action Items

a. Analyze/review the draft rules for vending facility managers

5. Adjourn

**8-29-17 Part 2**

**Verbatim**

**Art Stevenson**: Here, here. Somebody hung up and the phone was ringing. I didn’t know James was on the phone but he has been for a while.

**Terry Smith**: Is Eric back?

**Morris**: I’m back.

**Terry Smith**: All right. So the next thing that I see, we added in a couple places that the non-discrimination, both the agency and the vendor, that’s added in there, which that shouldn’t be any issue. The next thing that was… and then we had a couple of wording changes on a couple of the deductions that I don’t think warrants any time. I only think… the next thing is the emergency removal. And this is the [inaudible] we talked about and I’ll just read it.

“The Commission shall remove a vending facility manager from a vending facility if a situation develops that prevents a vending facility manager from fulfilling his or her obligations or if there’s reasonable evidence of a hazardous situation involving the vending facility manager which poses an immediate threat to the safety of the vending facility manager or others. The removal may be immediate if the circumstances require. Prior to or within 24 hours’ notice of the removal the Commission shall contact the district representative of the BECC and inform them of the action. In the event of the failure of the vending facility… In the event of the failure of the vending facility manager to fulfill the duties and discharge the responsibilities of operating the facility, for whatever reason, or documented misconduct jeopardizing the existence of the facility, the Commission may declare the emergency circumstances exist, whereupon the vending facility manager may be immediately removed. In the case of such removal the district representative of the BECC shall be advised of the action prior to or within 24 hours of the removal. In the event of a vending facility manager’s removal, under paragraph one or two of this subsection, the Commission must, within 10 working days, do one of the following: return the vending facility manager to the vending facility, mandate retraining, terminate the operating agreement but allow the vending facility manager to bid on any vacant vending facilities, initiate disciplinary action against the vending facility manager. The vending facility manager may request a full evidentiary hearing if he disagrees with the emergency removal.” So…

**Bird**: All right. Jerry here.

**Terry Smith**: Go, Jerry.

**Bird**: I don’t know why you can have the emergency removal that says it’s only at the health or, you know, of a customer or such as for emergency. I believe it’s absolutely wrong to have the Commission shall a remove a blind… a vending facility manager from a vending facility if a *situation* develops that prevents the vending facility…. Now, situation is a… I mean, I don’t know why that’s in there. That’s got to be removed and then it’s continued to where there’s a health problem. But that… that first sentence has got to be taken out of there. Because who’s going to decide if it’s a situation. Let’s define “situation.” I mean, that just put… that’s just… that’s no reason for it to be in there as an emergency. So the emergency is something we’ve stated earlier, that you can remove a blind vendor, which isn’t a situation. Thank you.

**Hauth**: Yeah, Terry, I wanted to weigh in on that as well. I concur. It’s way too much discretion. I’m not sure if that was something you had written or something Eric’s written. I got… I’m just halfway through when you were reading it, but just way too much discretion. And I, you know, hopefully we can find a way to remove that and make it strictly for an emergency type of situation, you know? So. Maybe just put in “Call 911” or something like that.

**Terry Smith**: Well, Eric didn’t write that up. I copied and pasted out of Tennessee’s. So that’s verbatim except…

**Hauth**: Okay. I just… like I said, I didn’t hear that. But, I mean, that’s my… that’s my position. And I know….

**Terry Smith**: So I’m not clear on what your position is.

**Hauth**: I believe it needs to be…

**Terry Smith**: Are you…? So you’re not objecting to the fact that somebody has to be removed on an emergency basis. You’re just objecting to…

**Hauth**: No.

**Terry Smith**: … what constitutes an emergency?

**Hauth**: Yeah, I believe that’s where I’m coming from. You know, obviously if it’s, you know, for the health and… you know, I mean the health and safety of, you know…

**Derrick Stevenson**: Yeah, I think… Am I off mute?

**Hauth**: But I…

**Terry Smith**: Okay. Just… Just… Just to address Jerry’s concerns about the word “situation,” what it says is, it says “if a situation develops that prevents a vending facility manager from fulfilling his or her obligations.” So that… that doesn’t… they’re not, I mean… that’s a situation where the vending facility manager can’t fulfill his obligations; he’s… he’s unable to. So they have to… they have to take him out. Then it says “or if there is reasonable evidence of a hazardous situation” – and situation is used again – “involving the vending facility manager, which poses an immediate threat.” You’re defining what an emergency situation is: “which poses an immediate threat to the safety of the vending facility manager or others.”

**Bird**: Well, who… who makes the decision? Who gets to make the decision above if it’s a situation, is my thing. Who gets to make that decision? “I believe there’s a situation here.” And if I’m getting you right you’re saying “Well, the situation has to be something that has to deal with the sentence below it.” Then why even have that sentence, that first part in there that causes a person to all of a sudden think “situation.” Now, who’s going to determine the situation? Unless… Unless you define “situation” it needs to be removed, whether Tennessee had it or not. That don’t really matter at this point. I don’t think it should be in ours.

**Art Stevenson**: I… I tend to… Am I off mute?

**Terry Smith**: Yeah.

**Art Stevenson**: Yeah, I tend to agree with Jerry. And I also… You know, one man’s official misconduct, you know, and being subject to interpretation… and… and so most definitely needs to be defined. And, you know, I’ll leave it at that right now. But I am… I’m concerned about… again, we’re getting into that code of conduct thing. And, truthfully speaking, I definitely have a problem with OCB determining what official misconduct is. So…

**Terry Smith**: This isn’t about misconduct. This isn’t about misconduct. It doesn’t say anything in here about misconduct.

**Hauth**: Hey? Hey, Terry?

**Terry Smith**: Uh huh.

**Hauth**: If I could weigh in here; so what are we trying to get at? That we’re trying to allow for an emergency, like the immediate removal of a manager, where a safety… health and safety matter is occurring, right?

**Terry Smith**: Correct. Correct.

**Hauth**: So we shouldn’t we just kind of focus on that? And get, I mean…

**Terry Smith**: Sure.

**Art Stevenson**: So I didn’t… I didn’t hear anything about misconduct? In… In that?

**Terry Smith**: No. No. Not in that paragraph.

**Bird**: It’s a situation. So I… once again, I’m in favor of removing that first part and just keeping what an emergency is. Does any Board member have a problem with that? Or even the staff? I don’t know why you would.

**Terry Smith**: So you don’t want the word “situation” in at all? It appears twice. I mean, the first time it appears it talks about where they can’t operate their facility. Which… if they can’t operate their facility then they’re going to be… I mean, they’re gone, no doubt. So, I mean, you don’t… But “if there’s reasonable evidence of a hazardous situation involving the vending facility manager, which poses an immediate threat to the safety of a vending facility manager or others.” So if you said, “The Commission shall remove a vending facility manager from a vending facility if there is reasonable evidence of a hazardous situation involving the vending facility manager, which poses an immediate threat to the safety of a vending facility manager or others.” Does that…?

**Bird**: Yeah, I agree but it also says “or.” So there’s two different items there, being removed for…

**Terry Smith**: I took it… I took out the first part.

**Bird**: Okay.

**Terry Smith**: I took out… I took out the first situation. I said… because I mean, if he’s not there he’s relinquishing his facility. So that’s… So “the Commission shall remove a vending facility manager from a vending facility if there is reasonable evidence of a hazardous situation involving the vending facility manager, which poses an immediate threat to the safety of the vending facility manager or others.” Is… Is that language okay?

**Bird**: Yes. To me it is.

**Terry Smith**: It focuses only on the safety issue.

**Jackson**: It’s good to me.

**Terry Smith**: Eric, are you okay with that?

**Morris**: Well, based on this situation, yes I would be.

**Terry Smith**: So Kathy, you’re striking out there… the Commission… on that first line…

**Ewing**: Mm hm.

**Terry Smith**: “If a situation develops that prevents a vending facility manager from fulfilling his or her obligations or…” Strike that.

**Ewing**: Right.

**Terry Smith**: And then it says within 24 hours they will notify…. Do you want it to be the district rep or the Committee Chair?

**Derrick Stevenson**: I think the Chair would be best.

**Jackson**: I think…

**Derrick Stevenson**: He represents everyone.

**Terry Smith**: I… I didn’t hear… I didn’t hear what you was saying.

**Derrick Stevenson**: Am I off mute?

**Terry Smith**: You are.

**Derrick Stevenson**: Yeah, I think it should… should go to the Chair since he represents everybody.

**Art Stevenson**: Well…

**Terry Smith**: So the general consensus…

**Art Stevenson**: Yeah. If you do that you might… the Chair or designated… or his designated member on the Elected Committee or something like that. Just in case.

**Terry Smith**: I mean, this is going to happen once… once every six or seven years. So I don’t think…

**Art Stevenson**: Yeah.

**Terry Smith**: … you need to put… I mean, you’re not going to have to make designated to accept calls for this. I think… I think you just say the Chair and that takes care of it. So I would suggest we change that. That the Commission shall contact the Chair instead of district representative.

**Art Stevenson**: Right. So, now I… Does this exclude medical reasons? Like, I’m going to be extreme here, but say, God forbid, I was to have a stroke tomorrow and I would definitely be losing my capabilities. But, you know, should I be removed from my facility because I had a stroke or something like that? Should I be given reasonable opportunity to, you know… can my designated… can a designated person, as long as they are doing the duties while I’m recuping or whatever? I’m just throwing that out there because…

**Hauth**: Yeah. Hey, hey, Art? I think within the state statute it allows for that, you know, death or incapacitation. I don’t know if that would cover it sufficiently or not.

**Art Stevenson**: Well, and I’m… Yeah, going back…

**Hauth**: And I don’t know. Yeah.

**Art Stevenson**: Well, I don’t, you know, I don’t know if it says it in the state statute. But, you know, obviously, you know, that… that needs to be recovered… I mean, covered in the rules. I don’t just want it to arbitrarily say, “Hey, if I lose my capacity to do something for a couple weeks, maybe a month, that I lose my facility.” So any… any comment on that, Terry? Or…?

**Terry Smith**: I think it’s, you know, a situation. This… I think it’s a totally different situation. I mean, this is a situation where you got a… a hazard. The next sentence says…

**Art Stevenson**: But it also says “his or her ability to run the facility.” I mean, that’s not… that’s not a hazardous situation. That’s just, the manager loses his or her ability to run the facility. And if it was temporary, I mean, you sure wouldn’t, in my opinion, remove the manager from that facility.

**Terry Smith**: So what’re you going to do with it?

**Art Stevenson**: Well…

**Terry Smith**: If you have a stroke tomorrow, what happens?

**Art Stevenson**: My wife would jump right in because she’s my partner in my business, so that would be that. I mean, you know, that’s my contingency. But as long a blind licensed manager has a contingency, you know, they shouldn’t be removed from their facility just because we’re all of a sudden on a temporary basis. They’ve…

**Terry Smith**: You’re get… Again, you’re getting way off track. This is about when you got to remove somebody because there’s a hazardous situation that threatens the health and safety of somebody. That’s…. There’s not a hazardous situation if you’re… I mean, that’s a totally different situation. Now the next section probably gets at that. And I think this is where the misconduct came in you heard a minute ago. Number two: “In the event of the failure of the vending facility manager to fulfill the duties and discharge the responsibilities of operating the facility, for whatever reason…” – which could be illness or whatever, but that means you’re not operating the facility. As long as you’re sick and still got somebody running the facility then you’re… you’re not….

But then it says, “… or documented misconduct jeopardizing the existence of the facility, the Commission may declare that emergency circumstances exist, whereupon the vending facility manager may be immediately removed,” et cetera, et cetera, et cetera, same language as above. And this is basically getting at, you know, the misconduct…

**Hauth**: Terry?

**Terry Smith**: … that jeopardizes the existence of the facility. Yeah.

**Hauth**: Yeah, Terry. So my concerns are, you know, what does “misconduct” mean? How is that going to be determined? You know, I know… I know a manager on this call right now who was told that he was unsafe. And so if we go again to allowing too much discretion, especially in a termination or a punitive…. You know, if we’re trying to get…. I mean, what are we trying to get at here, again? I kind of keep going back to that. But I certainly believe we need to find a different angle around that. And I don’t know…

**Terry Smith**: We solved… We solved the hazardous situation, up there, number one.

**Hauth**: Right.

**Terry Smith**: This one… This… This one has to do with, you know, with [inaudible] and, I mean, you can… you can… If it threatens… If it jeopardizes the existence of a facility, that’s what you’re trying to get at. You got a vendor that’s doing something and it threatens… property management is saying, “This guy is, you know, doing this thing, conducting himself this way. It’s not appropriate and, you know, if you don’t get them out we’re going to terminate the permit.” You know, that would be a… that’s when you would use that section.

**Hauth**: Shouldn’t that go through the progressive discipline, though? I mean, if it’s not an emergency situation, which we dealt with, and now this is more of a misconduct type of thing?

**Terry Smith**: I think… I think for your purposes – and I understand where you’re coming from – I think we dealt with the main issue, which we said we were going to deal with, on the emergency basis, you know, with the change we made up there. I don’t know how Eric feels about it. I would just strike number two and move on. Because that’s what you’re getting at, the hazardous situation. And you still have the disciplinary process available. And then you still go through the process. You know, even at number one they have to go through the evaluation… and they may return him to the facility if they find out he’s, you know, that he’s no longer hazardous situation or whatever. They can require retraining and put him back in or terminate the operating agreement or they can initiate disciplinary action. So my suggestion, just to get us off center, so we can get to the next part, is if we just strike number two totally.

**Bird**: I… I like that because it is stated many other places how we can get terminated. Thanks.

**Terry Smith**: Are there any objections to that? Okay. Next section where I have in yellow is number A, line 824, we had… “the vending facility manager shall operate their assigned vending facility in accordance with the following.” And it says we added program policies related to the operation of a vending facility. Kathy, you got your indentions off a little. Not you, but

**Ewing**: Yeah, I’m…

**Terry Smith**: Your indentions need to be fixed.

**Ewing**: I’ll try to fix it.

**Terry Smith**: And then we added… also added the non-discrimination clause there. And the…

**Art Stevenson**: Hey, Terry?

**Terry Smith**: Yeah?

**Art Stevenson**: On the policies, can we put in there that then adopted through the official process? In other words, gone to RSA, et cetera, et cetera, et cetera.

**Terry Smith**: They can’t… They can’t be done unless… I mean, unless you already have that.

**Art Stevenson**: Well, they haven’t passed. I mean, we’ve… OCB’s adopted policies and I just threw out there that I’d feel more comfortable if it said in the rules that they have gone…

**Hauth**: Yeah.

**Art Stevenson**: … through the process.

**Hauth**: I thought we… I thought we talked about that, Terry, previously because of the concern that maybe, you know, years back or whenever, there were these policies brought up by the agency and then they tried to impose those policies on the governance of the Business Enterprise Program. So I think what Art’s saying, which you’re probably hearing is, we don’t want that to happen. We want any policy like… that’s going to impact us to also be approved by RSA or developed through active participation. So how do we get at that?

**Terry Smith**: I mean, you could say program policy… If you were going to do that I would combine one and two and say, “the Business Enterprise Program rules and program policies….” I’d say “the Business Enterprise’s program rules, as related to the operation of the vending facility, as approved by the US Department of Education….” You can put that in there.

**Hauth**: Yeah.

**Art Stevenson**: Yeah.

**Hauth**: I mean, I… Sorry.

**Art Stevenson**: I agree with that because that actually was part of the monitoring report, that OCB should not be, you know, initiating any policies that haven’t been okayed by the Department of Education. So having it in there just dots our I’s and crosses our T’s.

**Terry Smith**: Eric, do you have any objection to that?

**Morris**: I… I don’t. I’m just not sure that’s the right place to put that language, to be honest.

**Terry Smith**: Yeah, I’m not sure where…

**Morris**: But yeah, no, that’s fine. It’s an obscure place to have it, but sure.

**Terry Smith**: Okay, under Active Participation, line 1029, this is where we talk about active participation, what you’ll be doing. This is the language that I submitted.

“In order to ensure that the BECC can effectively participate in major administrative decisions in an informed way. The Commission shall provide to each member of the BECC all relevant information required to make an informed decision. On a quarterly basis the Commission will provide to the BECC a financial report in sufficient detail as to allow the BECC to judge performance. The report shall include listing of all revenue by source – set-aside, vending income, federal vending income, state and other – as well as expenditures by category. As needed, a more detailed explanation shall be given. The Commission shall provide the BECC with a copy of the RSA-15 report no later than January 15th for the prior federal year, ending September 30th. If there is a matter the Commission wants the BECC to actively participate at… If there is a matter the Commission wants the BECC to actively participate at… If there is a matter… If there is a matter the Committee wants the BECC to actively participate on at its next meeting, notice of the action shall be provided to the members of the BECC at least ten working days prior to any meeting where a vote is to be taken. At the same time, the Commission shall provide any necessary background and reasons for the action being recommended.”

So that’s the language that I added on getting at the reports. And they’re required to give you by law, give you the quarterly financial reports and an annual report and so…

**Hauth**: What was that last… What was that last sentence, Terry? That you added?

**Terry Smith**: “If there is a matter the Commission wants the BECC to actively participate on at its next meeting, notice of the action shall be provided to the members of the BECC at least ten working days prior to any meeting where a vote is to be taken. At the same time, the Commission shall provide any necessary background and reasons for the action being recommended.”

**Hauth**: Okay, yeah, I don’t think… I don’t think anybody would have a problem with that. My concern is… and I’m trying to figure out how to get to this. So, let’s say the Elected Committee feels like Art had stated previously, that he wants to see the AG’s expenditures. Or we want a breakdown of managers’ expenditures. And, you know, in the past it’s been a struggle to get those. And I know you had talked about public records and people have access to do that. But, quite honestly, in the past that’s been a struggle too. There’s been exorbitant charges, we believe, you know. And there’s been a lot of contention around that. So how do we get to, you know, if we feel that the information is necessary and is more detailed than necessarily the quarterly reports or, you know…. How do we… How do we ensure that we’ll be able to get that? And that, you know, perhaps the agency doesn’t say, “Oh no, it doesn’t say that here in the rules.” So I’m just trying to…

**Terry Smith**: Well, it says… it says here, “as needed, a more detailed explanation shall be given.” So…

**Hauth**: Okay. And that’s for the Elected Committee as well, right? Not just for…? Okay.

**Terry Smith**: It’s… It’s… This is just for the Elected Committee. This is under active participation.

**Hauth**: Okay. Sounds… Sounds good.

**Bird**: Terry? Jerry.

**Terry Smith**: Yes, Jerry. Go ahead, Jerry.

**Bird**: I’m just wondering if we could put something in there, because one of our problems is even our quarterlies, they’re never on time. I mean, we get them maybe when the other quarter’s due, too. You know, it seems like we… Things are just way out there. I don’t know we put timely to decide that. But also, if they don’t give them to us in a timely manner can we fine them $50 each time?

**Terry Smith**: Well, I mean, I don’t know what you can say. They’re going to give it to you on a quarterly basis. That’s what the law requires and I don’t… I don’t know how you add “timely” to it.

**Art Stevenson**: Terry, this is Art. Am I off mute?

**Terry Smith**: You are.

**Art Stevenson**: So I’m going to bring up again… because Randy brought forth a proposal and gave it to the agency concerning program-relevant information. There was a definition. Plus, there was a list of things that we should just automatically get so that we’re aware of what’s going on in the program. And… And, you know, we’re definitely entitled to that information and… and should receive it. Randy did put forth that proposal and I still think it should be in there, this program-relevant information stuff, that, you know, if a… an agency is following the law and says, “Hey, we’re thinking about this facility,” you know, that we should receive that information so we can actively participate and be part of the process. So I still think that should be in there because it’s information that we should be, you know, involved in: in vending facility development, budget. I mean, all that kind of stuff.

**Terry Smith**: Well… I’m looking for… I thought… Did I not send something about program-relevant information?

**Morris**: Yeah, I thought we talked about that.

**Terry Smith**: I thought I…

**Morris**: Yeah, here it is. 76…

**Terry Smith**: Where is it?

**Morris**: 769.

**Art Stevenson**: Sorry. I fell off the line. Okay, I’m back.

**Terry Smith**: Program-relevant information is different than… I mean when it talks about program-relevant information in the Act it’s talking about any blind licensees entitled to see whatever they want to see in the records. And I thought I put something in there about that. This is strictly about what has to be provided to the Committee on a quarterly basis, that you need to actively participate. I don’t remember what… I don’t remember what all was in that relevant data stuff, relevant information stuff. We can go back and look at that.

Is there any objection to this part, you getting quarterly financial reports, the annual report, and… and ten days’ notice on anything that’s been submitted to you. Are we…? Do we at least have consensus on that?

**Morris**: I’m fine with that, Terry.

**Terry Smith**: Okay, let me ask this another way: Is there any objection to that? Hearing none, I’m going to come back to the relevant financial data and see what I can find. Because I thought I had seen something about that.

The other change we have is on line 1133. That’s just where we put in the definition of vending machine income, where it did previously just say “refer to CFR.” Art wanted it spelled out, so it’s spelled out. We also put in vending machine income in State… from State and other properties. 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, the funds shall be expended for the same purposes as set-aside dollars, as outlined in section so-and-so.”

**Derrick Stevenson**: This is Derrick.

**Hauth**: Hey, Terry?

**Terry Smith**: Yeah.

**Hauth**: Hey, let me… Do we need to build in… So the state statute identifies that there needs to be a vote taken for the retirement, you know, possible retirement pension plan. Do we need to build something like that into the rules to support that? Or what are your thoughts on that?

**Terry Smith**: I’m trying to go back…

**Art Stevenson**: This is Art.

**Terry Smith**: … and find the sections on set-aside. Set-Aside Funds: Assessment of Set-Aside, which are the incentives…

**Hauth**: Or do we just take the Code of Federal Regulations language that identifies that and put it, you know, I don’t know. But I was just wondering if we need to have…

**Terry Smith**: We put it in here. Use of set-aside is line 626. Set-aside dollars will be spent in accordance with, and it cites the law. It says, “The Commission for the Blind shall establish in the State Treasury….” – It’s the line exactly. This is from the law. – “… a fund from the net proceeds of the operation of vending facilities. Monies deposited into the fund, including the interest earned, shall be credited to a special checking account, separate and apart from the General Fund. Disbursements from the account may be made by check signed by the person designated by the Commission. Interest earned by the account shall be credited to the account. Monies in the fund shall be used for the purposes of and are continuously appropriated to the Commission for A) maintaining and replacing equipment, B) purchasing new equipment, C) management services, including but not limited to management training services, D) ensuring a fair minimum return to vending facility managers and E) retirement or pension fund, health insurance contributions and, if determined by a majority vote of vending facility managers, paid sick leave and vacation time. The Commission shall provide to the Governor and to vending facility managers quarterly reports of the accounts established under this section.” And that is straight out of the law.

**Art Stevenson**: This is Art.

**Terry Smith**: Go ahead, Art.

**Art Stevenson**: Okay. When I said that I wanted it spelled out, because it’s been a ongoing problem here in Oregon, I meant that we need to have what OCB should be doing.

**Terry Smith**: It says that. It says…

**Art Stevenson**: For two and a half years…

**Terry Smith**: It says… It says that.

Art Stevenson: Well, but…

**Terry Smith**: It says “shall.”

**Art Stevenson**: Huh?

**Terry Smith**: It says “they *shall* be used.”

**Art Stevenson**: No, no.

**Terry Smith**: [Inaudible.]

**Art Stevenson**: What I’m talking about… What I’m talking about, Terry, is for two and a half years we’ve been trying to get OCB to establish a retirement program and it hasn’t been done. And… And so, you can directly quote the CFRs and say, “Yeah, OCB’s supposed to do that.” But if they’re not doing it, then there’s a need to put in the rules how they’re going to do it. Otherwise, it just isn’t going to get done. And… And so, that’s why I keep saying it needs to be spelled out, because OCB isn’t doing it. They haven’t started a retirement plan…

**Terry Smith**: Well, I…

**Art Stevenson**: They promised they would for two and a half years but they haven’t. And… Or they haven’t done retirement or any of that kind of… any… any kind of thing. And they’re supposed to be doing it. So how do we get OCB to do it? There’s got to be a rule that explains how they’re going to implement the vending machine income situation.

**Terry Smith**: It’s there. It says exactly what you have to do. I… You can’t… You can’t write… I mean, you can’t write a rule and then write what you’re going to do if you violate… I mean, it’s… I mean, I don’t know, you can’t write… can’t write an enforcement thing into the rules. I mean, all you have to do is, at your next meeting of all the vendors, the vendors need to vote. And then that vote is, you know, mandate… the… the agency is obligated to abide by that vote on how you’re going to spend federal unassigned. And, you know, if they don’t do it, then, you know, you’ve got the grievance process. But there’s no… I mean, there’s no reason for them not to do it. And I don’t, you know… I know there’s been lots of discussions about that. I don’t know that… I think… I think your problem is going to be taken care of. I mean, I think the agency understands what its obligations are and they’re going to abide by what the law says. And so, you know, I don’t think… I think your concerns… I mean, I don’t know what you could put in the language that’s going to change it. I mean, it’s up to the Committee, you know, it’s up to you guys to take a vote and… if they don’t do it, file a grievance. They will lose the grievance.

**Hauth**: So, Terry, it’s 11:43. What… If you’re only here till 12:00 what… are there any other things we need to…?

**Terry Smith**: That was all the things highlighted in the changes that were made based off of our… our last conversation, where we agreed to submit language. So I think we’re… I think the rules that, you know, with the changes we’ve agreed to today are, you know, what they are. I think, you know, the operating agreement has… you know, we haven’t discussed that. So I don’t know.

**Hauth**: So let me ask the Board what…. I know… I know once we finally got a complete draft. I know managers and Board members read through it and there were some concerns that I know Jerry and Art and a couple others highlighted. I guess my concern is the operating agreement. I don’t know best how to go about this. It seemed like the agency was steadfast in only allowing two-year, you know, timeline. I don’t know that that’s… You know, I believe it’s problematic because I believe the agency utilizes that as a disciplinary tool or leverage when they don’t have to. That’s my opinion. So how do we go about that? And then when I look through the operating agreement it almost… when you sign it, it almost waives your right to due process, I believe. Because it’s saying, you know, once you’re provided notice you’ll agree – termination notice – you’ll agree to inventory out. And so I’m trying to figure out how we can get some kind of constructive pathway forward so that we don’t have to, you know, challenge or address that. So.

**Terry Smith**: Does it not… Does it not say, and I’m looking for it now, about if you haven’t corrected the problem you’re first given a chance to fix the problem. Does it not say that?

**Hauth**: I don’t have it… yeah, I don’t have it in front of me.

**Terry Smith**: I just, you know, grabbed it here.

**Morris**: It’s like the… almost the very last. It’s the last page, Terry, and it says… It’s number five and it says, “The vending facility manager has failed to fulfill the responsibilities outlined in this operating agreement, after being afforded the opportunity to remedy specific failures.”

**Terry Smith**: All right.

**Morris**: That’s second to the last paragraph.

**Terry Smith**: Number four and five are really the same thing. Is it not… you got the vending facility manager has failed to fulfill their responsibilities outlined in the operating agreement. Up there you say the vending facility agreement or permit.

**Morris**: Oh, yeah. You could take the… You take it after the comments in five and just condense it into four.

**Terry Smith**: Yeah. Then we’d say, “The vending facility manager has failed to fulfill terms and conditions of the vending facility assignment or permit after being afforded the opportunity to remedy specific failures.”

And then it says, “Notice: When any of the above occurs the Commission shall deliver a 30-day termination notice to the vending facility manager. The operating agreement will be terminated and an inventory taken 30 days from the date of notice.” So this is after… this is after the progressive discipline has happened. The way I read it.

**Hauth**: Okay. Is…? Yeah. And so the other thing I wanted to touch base with, I know we talked about it: full evidentiary hearing. Just let me lay this out there for you. And I know you had said, “Well, we… we had thought maybe we needed to put a definition in.” And then you had suggested that there’s probably already a state definition for that. I don’t know if Eric has looked that up. But how do we, in the rules, make sure that a blind vendor is provided that opportunity? Is there a way to do that? Or do we need to talk to Jesse about that? I just wanted to throw that out there for your consideration. And then I know that Jerry and Art had a few items of concern.

**Terry Smith**: You may want to put over there, just as a placeholder, for Eric or whenever they send their… whenever you all send it to Gretchen, you may want to put over under definitions, just insert full evidentiary hearing and then just put a note there, “consult with Gretchen on that,” on what the legal definition is in Oregon. This is a hard one. I’ll be honest with you guys. This… This one is a struggle on, you know, when does due process happen. Obviously, you’ve gone through all the channels. You know, I… I generally didn’t terminate a license until, you know, they had their fair hearing. Although I had so few of them it didn’t… it wasn’t that big a deal. I had… I had some. So I don’t… I don’t know. Can you… Can you remove them without the hearing as long as you give them the hearing? We can have…. We can ask Jesse about that. Because I struggle with that one myself and how that whole process should work and is supposed to work.

But I hear what you’re saying. What you’re saying is, you don’t want them to… this operating agreement to be terminated until they’ve been afforded… you don’t want them removed until they’ve been afforded…?

**Hauth**: Sure. Sure. I mean, to me it only makes sense. And again, you know, this statute is supposed to be flexible and progressive and friendly. And, you know, how does that… how does that afford fairness on the…? You know, it forces the blind vendor to then have to try and get an injunction and… I mean…. So yes, bottom line, yeah that’s what we’re looking at, you know, that due process actually means something.

**Art Stevenson**: Am I off mute?

**Terry Smith**: You are.

Art Stevenson: Okay. Well, there’s two places in the rules, too, where the language “fair hearing” is written instead of “full evidentiary hearing.” And so those places definitely need to be changed to full evidentiary hearing and…

**Terry Smith**: Kathy can do a word search and fix that, which she needs to. They used to call them fair evidentiary hearings and then, you know…. So that’s a common term that’s used. But full evidentiary hearing is probably the best word.

**Bird**: Jerry. Don’t you think they should, before you finally get removed and… from your income and your facility and we’re blind people, we ought to have the right for them to prove we’re guilty? Aren’t we innocent until proven guilty? If they remove us from our income they’ve already decided… made their decision and we have to fight for it back. So I have a little struggle with them removing them from your facility unless it’s an emergency without, you know, your just process.

**Terry Smith**: I don’t know that “innocent until proven guilty” is applicable. That’s a criminal thing. I don’t know that it’s got anything to do with this. But the principle’s the same. I understand what you’re saying. I just think if… and I don’t know. Eric? What… What’s your take on that?

**Morris**: Yeah, I think it’s a criminal… it’s a criminal… innocent until proven guilty kind of thing.

**Terry Smith**: I’m talking about, at what point can you… can you remove them from their facility? Versus letting them have their due process?

**Morris**: Oh, sorry. Well, I think it’s like you were saying. If, you know… If it’s a, like we’ve already talked about today, if it’s an emergency situation, life/safety/health kind of thing, that’s one thing. But if somebody is, you know, if they’re just… whatever the struggle is or whatever the issue is then, you know, I think they should get their due process.

**Terry Smith**: So… So… Then again, you could add a sentence in there that says what we… sort of like we did earlier, except as provided in section so-and-so of the rules, you know, vendor will be entitled to a hearing before being removed. I mean, that’s the right thing to do, to give them their day in court. But I think that gets at what their concerns are.

**Morris**: Yeah, I’m looking at it, trying to see if there’s a place that’d be appropriate to add that language.

**Art Stevenson**: And also, yeah, I know we’re going to have to have this discussion with Jesse and stuff like that. Obviously, a full evidentiary hearing is a full evidentiary hearing and some of the problems that have arisen during the Oregon process, you know, is the summary judgment thing and, you know, logistical things that happen. I mean, if you’re going to do a summary judgment obviously the manager would have the right to discovery and getting evidence and stuff like that before a summary judgment was done. And those things haven’t occurred during the process. But those… those are the kind of logistical things that we need to handle with RSA and stuff to make sure, you know, that the process is fair and equitable. And in the past the agency has been able to, you know, file for the full evidentiary hearing and not necessarily put all the stuff that is on… that’s really on the table and just pick and choose what the administrative law judge is going to hear, which has been problematic also. But you’re right, Terry. It’s, you know, it’s a logistical, difficult nightmare and hopefully we can get all those issues resolved so we can complete these rules.

**Terry Smith**: So he’s agreed to put in the language – you know, he’s just got to figure out where to put it in – that they won’t be removed until they’ve had their due process. I think, you know… I need to go back through my notes and… because I sort of have two or three other questions to ask Gretchen. And, you know, I know the law allows for summary judgment and, you know, I know other states haven’t used summary judgment. The… Whether or not you in your rules can limit that. That’s a legal decision. I wrote that down, a question for Gretchen, that when Randy and them submit these rules, Randy and Eric submit the rules, or Dacia and Randy submit the rules to Gretchen, you know, you can include a list of questions and that can be one of them. I don’t know the answer to that. I mean, that’s just…. But I know summary judgment is not that uncommon.

Now, the other issue you’re talking about is the agency framing the issue that’s going to be heard. That, you know, they can’t do that. You can’t go, like in your example, go through the administrative review and then only the administrative review decision be subject to the fair hearing or the evidentiary hearing. It’s whatever you’re appealing, you originally appealed, is what’s subject to the evidentiary hearing. I don’t know how you get at that in the rules but that’s clearly the case. So. And we can discuss that at [inaudible].

**Hauth**: So, Eric? Going back to Eric, I know Eric was looking at a place to try and find, you know, the language, that a vendor will not be removed until they’re allowed a fair hearing. Is there somewhere we can get that in there?

**Terry Smith**: He’s looking for a place so I’m not even looking at it at this moment. Because my time has come to an end and I’ve got to get on another call. And are you guys going to continue or are you going to adjourn? You know, I don’t know what the… what the… what the plan is, as far as, you know, next steps. I’m not available any more this week, don’t have any full days left. I know if you don’t have this to Jesse… there’s no way you all are going to get this to Jesse because this still has to be approved by the Commission before it goes to Jesse. At least, that’s my understanding. Is that right, Eric? \

**Morris**: Well, I figured we would send a copy to Jesse when we send it to Gretchen so that he can start looking at it. What I was thinking was that, if we could come to consensus today, would be to make the changes from today, push it to Gretchen with the, you know, Randy and I sending it to Gretchen saying, “Hey, you know, here’s the questions we have, here’s the document.” So at least we can get the process rolling along from a legal sufficiency point of view.

**Art Stevenson**: Well, I think the Elected Committee has to have a vote and we have to see…. You know, we’ve done a lot of talking here and I don’t know everything that… you know, and I’ve got to see the whole thing. And then the Elected…

**Morris**: Well, Art?

**Art Stevenson**: I was just going to say, yeah, I would expect you guys to take a vote but not before Gretchen gets a chance to look at it. And if there’s things we have to change based on the legal sufficiency, then I would assume that you guys would be taking a vote sometime early next week, hopefully.

**Hauth**: Yeah, one of the… one of the things that I know we’re going to address…. Let me just say, I think… I think there’s been a ton of progress here. I don’t think we’re at a final product yet. And I know we’re under a timeline but I think we need to make sure that we capture as much of the time, even if Terry’s not available we still need to have these discussions. Again, I know the Elected Committee is interested… well, not the Elected Committee but the blind vendors in the program are interested in having the rules reviewed by, you know, a legal expert as well or somebody very familiar with the structure. Nothing against Terry because I think he’s done an admirable job. But sometimes it’s better to have another, you know, a second opinion look at it too. So I know that’s something we’re trying to deal with as well.

So Terry is saying that… Terry, are you saying we can continue on today if the agency wants? Or are you saying…?

**Terry Smith**: That’s totally up to you guys. That’s totally up to you guys. I mean, if…

**Hauth**: So, Eric… Eric? Board members? What are your guys’ thoughts? I mean… because I… I personally don’t think we’re at a final product yet. I don’t think we have consensus; I think we’re still finishing up some things. You know…

**Terry Smith**: I think we have consensus on what we have. I think everything that’s in writing right now, you’ve got a pretty good… you’ve got a pretty good set of rules. You know, I think, you know, you… you… if you have to, you know, finish looking at the operating agreement while you’re on this call you can do that. If there are certain issues that are still a concern and you want to talk about those, then that’s fine. Otherwise, if you, you know, if you wanted to…. Like I said, I’m not available till next Tuesday after… after now. So I… I’ve got to go. You guys decide what you want to do and just let me know. Okay?

**Morris**: Thanks, Terry.

**Art Stevenson**: Thanks, Terry.

**Hauth**: Thanks, Terry.

**Bird**: Randy?

**Hauth**: Yeah, Jerry?

**Bird**: Well, you know, I don’t know why but we need to discuss, I think, either now or sooner than later the rest of the operating agreement. I’m a little… I mean, the elephant in the room is, according to that operating agreement, full service… there’s a check box. “Are you going to be using full service?” Or “Are you going to be self-service?” Now, the way I’m looking at it, full service, if you want full service then you mark “yes” and then you’re required to select a subcontractor from the list and provide the ones you will be subcontracting to the Director. And then… is that how it is? I know we was wondering about, you know, who’s to say how much you can because we knew there was not actual limits supposed to be done. And the way I’m looking at it and reading it, if that’s correct I think that’s how it should be. Can you explain that, Eric?

**Morris**: I… I’m not quite sure of your question, Jerry.

**Bird**: Well, okay. As I read that operating agreement…

**Morris**: Uh huh.

**Bird**: … it goes through and asks you about are you going to be subcontracting and there’s a box, correct?

**Morris**: Yeah. I follow you. Okay.

**Bird**: Okay. And then there’s another one like, you know, if you’re going to do I guess… fill them yourself. Now I don’t take that… and then your sub… and I would imagine you’d have to provide a list of the ones you are subcontracting and a list of the ones you are doing yourself. So if you’re doing both it still has to be addressed. I’m still confused on…

**Morris**: Oh, I see what you’re saying. There should be another place above that to say, “I’m doing… I’m servicing these locations, I’m subcontracting these locations.” That’s what you’re saying?

**Bird**: Yeah, so we can be sure. Because, you know, I know we never finished that because it… there’s no way it should be zero or a hundred. I mean, it’s whatever you can get approved in… under certain conditions. So therefore, of course, you’ve got to actually… sounds like to me you’re applying for these places or something to get the Director’s permission or whatever it may be. I mean, that’s… that’s the point I’m trying to get to, is… is that sounds like the proper way. And there’s not going to be anything that says you are… you are required to maintain 70% of your full service, is there? Where are we at on that?

**Morris**: We didn’t go anywhere with that, Jerry.

**Bird**: So it’s not going to be part of anything?

**Morris**: Well, the whole idea of percentages and stuff, we couldn’t come to consensus on that.

**Bird**: What does that mean?

**Morris**: Means we couldn’t agree on it.

**Bird**: So where does that leave us?

**Morris**: Like I said before, the Commission can approve subcontracting based on the two things that are in the statute, which are quality of the subcontractor’s services and space within the facility.

**Hauth**: Yeah. So I think we’re good on that, Jerry. I think that, you know, the way I understand it, we’ve moved past that…

**Bird**: Okay.

**Hauth**: … and we’ll deal with it a different way. I mean, correct me if I’m wrong, but that’s the way it looks like to me.

**Morris**: So, Randy?

**Hauth**: Yep.

Morris: So my thoughts were, if we take what we got done today – and I think Kathy’s done a pretty good job of scribing that – and we can get that consolidated together. Would you be okay with you and I submitting that to Gretchen so she can start working on that today? And any questions… I need to get a hold of Terry real quick to see what other questions he had, besides the one about the summary determination piece. But is there anything else…?

**Hauth**: Sure. Let me… Let me… Let me, I mean… Let me poll the Board kind of right now and see what you guys’ thoughts… I mean, just, you know, in general, yeah, I’m good with it. I don’t think we’re all the way done. We have some things we have to…

**Morris**: Yeah, we have to talk to Jesse.

**Hauth**: But let me… let me hear from the Board.

**Derrick Stevenson**: This is Derrick.

**Hauth**: Derrick.

**Derrick Stevenson**: Yeah, I’m still having huge problems with the operating agreement. I think the Commission’s overstepping their boundaries. I think there shouldn’t be anything in the operating agreement that requires a manager to do something that’s not written in our rules. I think, you know, it’s getting… it’s gotten so complicated people can’t even understand what they’re responsibilities are going to be, or whatever. And imposing four percent set-aside if they don’t meet this and that, I don’t think that’s in our rules and I don’t think it should be in our operating agreement.

**Morris**: It’s in the…

**Derrick Stevenson**: If it’s not in our rules, it should not be in the operating agreement.

**Morris**: I think that’s in the statute, Derrick. I’m looking for it.

**Hauth**: Well, what if we… what if we continued work on the operating agreement. Maybe we need to work on that and maybe we submit the rules that we’ve come to consensus on. Just a thought, there. Art, are you on the line? Or Derrick, how does that sound? I mean…

**Bird**: I… I’d like a question, Randy. That I’m okay with you two submitting them but I would… I would ask that as soon as you receive them you send them all to Board members also, for our review.

**Hauth**: Yeah. Yeah. Yeah, sure, to everybody.

**Art Stevenson**: Randy?

**Hauth**: Yeah. Art.

**Art Stevenson**: Am I off mute?

**Hauth**: You are.

**Art Stevenson**: Okay. Yeah, I… well, I’ve definitely got to see the document. I don’t know about consensus or anything but I think we made some progress today, definitely. Still got some unanswered questions, of course, about the full evidentiary hearing and stuff. It’ll be interesting how Jesse and… well, Jesse mostly. Because when are you having that conversation with him, Randy?

**Hauth**: Eric, I don’t know if you have that dialed in. I don’t have my…

**Morris**: Hang on. Let me look.

**Hauth**: … calendar with me right now. Also, I’d like to be involved in… in any conversation you have with Jesse, if you don’t mind, around this… around summary determination…. You know, if… if you’re trying to get clarification on some issues that are program impactful I’d sure like to be part of that.

**Morris**: Yeah, Randy, that’s that call this Thursday at it looks like noon our time with Randy, which is you, me, Jesse and Terry.

**Hauth**: Okay.

**Art Stevenson**: Okay.

**Hauth**: And I don’t know… I don’t know what you feel but, you know, again, you know, how I can be involved with any conversations with Gretchen and/or with, you know, Jesse and Terry, I’d sure, you know, appreciate that opportunity to be there. So Art, go ahead.

**Art Stevenson**: Am I off mute?

**Hauth**: Go ahead. Yep.

**Art Stevenson**: I am off mute? Okay. Well, yeah, you’re supposed to be taking part in that conversation, Randy. But, you know, there was a couple other things that I had issues about. Obviously, the federal code says that all managers must be treated uniformly. And I believe in the fair minimum return or there was something in there where a manager who had theirs on full service had to meet a higher threshold than managers that weren’t. Obviously, that’s not treating managers uniformly and… and those kind of issues. Again, I’ve got to see, you know, the documents that we worked on today and looked… look at it totally.

And so, Eric, what you’re saying is that you’re going to push this document out to Gretchen as soon as you get it all cleaned up? And if you are, you know, there was issues that they… that supposedly she was going to handle. Is she going to handle those first so we can look at the document as a whole? Or just how do you vision that happening?

**Morris**: Which issues were you talking about, Art?

**Art Stevenson**: Well, Gretchen’s supposed to supposedly write the definition… there was some things she was going to do.

**Morris**: Oh, on the preference thing. Yeah.

**Art Stevenson**: Well, the preference thing and the state definition of full evidentiary hearing. I’m still, you know, it’s covered in the federal regs and it’s supposed to… obviously, it has to meet the standard of the federal definition, even on the state level. I mean, if it enhances it… and I remember, you know, the AG’s Office saying, “If it makes it better, that’s okay. But if it softens it, not okay.” So I’m… I’m… I’m trying to wrap my head around the state’s definition of a full evidentiary hearing and the federal definition of the full evidentiary hearing and which definition has to be used.

**Morris**: Well, I think… I think that was part of the discussion to have with Jesse on Thursday. But my understanding is, the state contested case hearing process through the Office of Administrative Hearings, which is in state statute, is… that’s already established. So I’m not sure how we plug it into the rules. But it’s not like we can go in and change the other state statute that talks about contested cases, which is what the state calls that process.

**Art Stevenson**: Yeah, but that doesn’t definitely fit the definition of a full evidentiary hearing.

**Morris**: It doesn’t?

**Art Stevenson**: No, I don’t believe so. I mean… well, let’s just say I don’t believe so. I mean, obviously… and, you know, I’ve read through all that stuff. The administrative law judge can’t even make a ruling on contracts or any of that kind of stuff. And so, you know, those are the issues that we’d need to resolve. Because, you know, it’s just a waste of time and money if the administrative law judge can’t even rule on something that’s an issue in our… in our grievance process.

**Morris**: Well, the…

**Art Stevenson**: And…

**Morris**: … the only problem with that is that the agency isn’t exempted from the Oregon… the Office of Administrative Hearings. So… and I don’t know how we would even get exempted but I know that’s part of the thought process behind the Office of Administrative Hearings, is it centralizes hearing processes throughout the state and most of the agencies use it. And I haven’t read that part you’re talking about with contracts, but I do know that we’re not exempted from the process. So I think that’s the piece that… that Jesse… that we need to talk with Jesse about and see, you know, when he talks about full evidentiary hearing from the federal perspective, what’s that bar look like. Is it a, you know, bar three feet off the ground and the Office of Administrative Hearings, the bar is four feet off the ground? Or is it the other way around? Like you were saying, is it bigger and better or is not to that at least standard?

**Bird**: Randy, this is Jerry. I got to be hanging up now. I think we’re about done, aren’t we?

**Hauth**: Yeah, I think we are. So…

**Derrick Stevenson**: I don’t think so.

**Hauth**: Well…

**Bird**: Okay, well…

**Hauth**: … I mean, we’re not… we’re not done with the product. But… so, Eric? So how about, after you get it cleaned up and get it sent to Gretchen…. Has she given you any idea when to expect it back from her?

**Morris**: Well, I know she… she just got back from vacation yesterday. I talked to her briefly to make sure she was back in the office. But I do know she’s quick. But I can talk to her once we get it cleaned up. Because, you know, she could think it’s like 500 pages or, I mean, I think the document itself is like 30 pages. So I could get a better idea of that later today, probably, and then give you a call?

**Hauth**: Yeah, that… that’d be great. I think my thought was, we need to kind of see what, you know, what she’s getting back to us.

**Morris**: Yeah.

**Hauth**: You know. Hey, so, also that there was some interest in having these reviewed possibly by Susan Gashel on behalf of the vendors. And so I’m trying to figure out, you know, if we want to address that or how we address that. I know, Art, you and I talked about it a little bit. But what are your thoughts on… on that?

**Morris**: Are you…?

**Art Stevenson**: Am I off mute?

**Hauth**: Art.

**Art Stevenson**: Am I off mute?

**Hauth**: You are.

**Art Stevenson**: Okay. Well, again, Randy, you know, we want a legal expert’s opinion on this, that was… you know, and we’ve always wanted that, actually. We wanted someone to participate in this process and of course we never got an answer to our motion that we wanted it because we thought it was imperative. I still think that it would be a valuable thing to have a legal expert like Susan go through it and… and…. Because Terry did a great job but he’s not a legal mind and a legal expert. And… And so, while I have, you know, respect for the AG’s opinion, you know, it’s… it’s… yeah.

So anyways, I’d like to make a motion again, that we, through management services, have Susan examine the document and give us feedback because she is a legal expert. And I think it’s quite an appropriate expenditure for management services. It may help us get this job done with less controversy. So I make… I make that motion again that through management services we spend…. Now, I’ve heard it will be right around $3,000, which I think is money well-spent to get that expert, you know, analysis of the proposed rules.

**Hauth**: Okay. So a motion has been made. Do I have a second?

**Derrick Stevenson**: I second.

**Hauth**: Okay. Discussion? So my thoughts are this: again, Terry did a great job and I think we made a lot of progress. However, one word here and one word there can make a big difference in the interpretation of the rules. I do believe Susan’s insight on behalf of the vendors of this program could be very assistive. And I know the agency has utilized Susan previously so I’m pretty sure they value her knowledge and experience, you know. And I also believe it’s an appropriate expenditure, through managerial services, for Susan to review these rules and provide recommendations. So, Eric, you know, I hope that the agency doesn’t, you know… you know, get… get defensive against this or think this is an attack upon the agency or the AG’s interpretation of the rules. But I believe the vendors also need, you know, a perspective from a legal expert as well. So, with that being said, I don’t know what your thoughts are on it, Eric, or if you have any comments to make. But, you know, I know this would have to be done as soon as possible. So I know once a motion gets voted on, if it’s passed we’d want to make sure that, you know, we could try and get some kind of responsiveness. So, do you have anything to say on that, Eric?

**Morris**: No, I don’t, Randy.

**Hauth**: Okay. A motion’s been made and there has been a second…

**Derrick Stevenson**: This is Derrick.

**Hauth**: Go ahead, Derrick.

**Derrick Stevenson**: Yeah, I… you know, I think it’s important that we do. I myself have some serious problems with the fact that I don’t think the true intent of what the legislators were trying to do is being upheld. I think… I think there’s a lot of things being done that’s going to severely impact a manager’s financial… financially and unfairly financially. We’re talking about, you know, possibly having the managers spend, you know, $1200 a month trying to figure out how to… how to complete the 30-hour week demand. And so I think we need to have somebody help us and describe… help us describe those… those things. So Susan I think is all about recognizing the intent of the law and will give us direction in that manner.

**Hauth**: Yeah, thank you, Derrick. Anybody else? Okay. Do we still have a quorum on the line? I know we have Derrick, Art, myself. Jerry, are you still here?

**Bird**: I’m still here.

**Hauth**: Okay… Steve Jackson…

**Jackson**: Steve Jackson’s right here.

**Hauth**: So let’s go ahead and… let’s go ahead and call for a vote. Signify yea or nay. Art Stevenson.

**Art Stevenson**: Yea.

**Hauth**: Derrick Stevenson.

**Derrick Stevenson**: Yea.

**Hauth**: Jerry Bird.

**Bird**: Yea.

**Hauth**: Steve Gordon.

**Gordon**: Yea.

**Hauth**: Steve Jackson.

**Jackson**: Yes. Yea.

**Hauth**: And myself, yea. Okay, so that recommendation passes. And, you know, it would be imperative, Eric, that you consider that, you know, as soon as possible so that we can continue to get this process moving down the road. So is there anything else from anybody? What do we need to do…?

**Derrick Stevenson**: Yeah, this is Derrick. This is Derrick.

**Hauth**: Go ahead, Derrick. I’m kind of worried that this is going to somehow be construed that… that we gave our stamp of approval on… on these rules. Because I don’t think… I don’t think we have. Like I said, I think there’s still some more stuff that needs to be… be worked on before I’ll vote to accept them. So, you know, as long as it’s not going to be construed that we overwhelmingly support the rules as they’re written right now.

**Hauth**: Yeah, I think you’ve made… I think that’s… I think that’s known. So thank you. Eric, what are your thoughts? What do we need to do, in your perspective, to move… move down the road on this?

**Morris**: Well, like I talked about just a little while ago, we need to get today’s work drafted up because that takes a little bit of time to get incorporated. And then we need to get it to Gretchen to get the process to continue to get moving. I need to take some time to consider your guys’ motion and see what that would look like from a practical point of view. And, like Derrick said, you guys are going to get a chance to weigh in on the final, you know, the final product, as good as it is, as soon as we can get feedback from the AG, which she will provide back to everybody that’s been involved in the process. So that won’t be an issue. But, yeah, the final, you know, we’re not final yet, by any means. So I would rest assured that that’s not the case.

**Hauth**: Okay, thank you. Anybody else? Okay. Any other comments want to be made before we… before we get out of here for the day?

**Art Stevenson**: Randy?

**Hauth**: Yes, Art?

**Art Stevenson**: I just want to say, you know, the AG’s Office, it’s definitely only their opinion, an opinion and it needs to be based in fact and law. I know that there’s been problems with that. And so we all need to remember that and carefully examine whatever they come back and make sure that it is based in facts and law. Anyways, I’ll get out of here now because the dog’s barking. And everybody have a great day.

**Hauth**: All right, let’s go ahead and adjourn this meeting. And thank you, everybody.

**Morris**: Take care.

**Hauth**: Thank you.

**Motions Passed During August 29 Rulemaking Meeting**

1. **That Susan Gashel be invited to review the rules, with her services paid for with set-aside funds under the category of management services.**

Proposed: Art Stevenson. Seconded: Derrick Stevenson. Passed unanimously.

END OF 8-29-17 PART 2 TRANSCRIPTION.

Transcription: Mark Riesmeyer