PROPOSED RULEMAKING HEARING

 **Date: Monday, October 23rd, 2017**

**Time: 1:00 pm**

 OREGON COMMISSION FOR THE BLIND

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**Verbatim**

[Start at 00:00:00]

Morris: Well, I have one o’clock, straight up. So, for the record, it is one o’clock pm on October 23rd, 2017 and I am opening up the public hearing for comment on the proposed Business Enterprise rules. Right now we have nobody on the phone and we have one audience member; Cathy Colley-Dominique is in the audience and has said that she is not going to provide public comment today. So we are going to patiently wait for someone to show up. And I would say I’d give it 10, 15 minutes and, if nobody shows up, then we will adjourn the meeting. And, as always, the public has been notified of this meeting. The public also can comment and submit comments until 5:00 today. So, yeah, we’ll just wait for a few minutes. We have somebody else show up, we’ll go over the ground rules of this hearing and talk a little bit about the proposed rules that are being proposed. And, Cathy, the recorders are recording over here by the phone, so…

Colley-Dominique: You’re reading my mind. [Laughs.]

Morris: Just FYI. [Silence.] Well, while we’re sitting here, why don’t I go over the ground rules of this… of this hearing. This’ll give us a little bit of time to have something going on while we’re sitting here. So the ground rules are, this meeting, this hearing is for pub… the public to provide input on the proposed Business Enterprise rules. The agency and myself will not be answering questions today because this meeting is to hear from the public and the public’s comments on the proposed rules. The proposed rules are under the Oregon Commission for the Blind’s rules divisions and they include several actions, which I’ll read from the Notice of Proposed Rulemaking that was posted out. That says, “This rulemaking repeals the Business Enterprise rules and regulations, which is Oregon Administrative Rules 585-010-0015 and establishes a new division, division 15, which is the Business Enterprise Program, which includes 12 individual program-specific rules, comprehensive language and content additions and revisions have been made to all the program rules. Additional rules have been added, as mandated by the 2017 House Bill 3253, including rules that define full-time employment, rates of set-aside to be charged, and available set-aside discount incentives, and definitions of healthy and local vending items.” So the rules… the new rules under division 15 include, starting at 585-015-0000 starts with the purpose, then steps to the next one at 0005, which is definitions, 0010 is licensing, 0015 is vacancies, 0020 is set-aside funds, 0025 is responsibilities, 0030 is Business Enterprise Consumer Committee, 0035 is dispute resolution, 0040 is vending machine income and 0045 is statement of full-time employment, 0050 is subcontracting, and the last in this rules division, 585-015-0055, is fair minimum return. This rulemaking also repeals previously what was referred to as “the handbook,” which is Oregon Administrative Rule 585-010-0015. That’s repealed. As part of the ground rules anybody testifying today should give their full name, full address… address and their affiliation with the Business Enterprise Program. So that is my opening statement and the ground rules for this hearing. So we’re still waiting for somebody else to arrive that wishes to testify and provide comment on the rules and it’s about… six minutes after the hour of one o’clock, on the 23rd of October. Oh, I also… I was gonna make the part of the ground rules that each person testifying would have ten minutes to provide public comment today and I did not mention that.

[Time passes.]

Morris: Good afternoon. Who just joined us? [Silence.]

Hauth: Randy Hauth just joined.

Morris: Hi Randy. It’s Eric.

Hauth: Hey, Eric.

Morris: So, were you gonna want to testify today?

Hauth: People are confused, is what I can tell you. I don’t know if different times went out or not but I know I’ve been getting calls wondering what time the meeting was. So that’s probably why there’s not much on. I don’t know why that is. I’m just sharing with you I’ve been contacted today by a couple people not sure. So. Anyway, so, what was your question, Eric?

Morris: So, were you gonna provide testimony today?

Hauth: Yeah, I think I’m gonna provide testimony.

Morris: Okay. Give me one second. I just want to close the door 'cause we’re getting a lot of noise outside. So stand by one second and…

Hauth: Sure.

Morris: So Randy, when we started the meeting I went over the ground rules of the meeting. It’s very similar to the fiscal impact meeting we had a couple weekends ago. This… This hearing is to provide an opportunity for the public to provide public comment on the proposed rules. So the way I’ve set it up is everybody will get ten minutes to provide testimony. And then if they also have written documentation we’ll obviously accept that. So, just let me know when you’re ready and we’ll set the timer.

Hauth: Sure. Has there been any testimony so far?

Morris: There has not.

Hauth: Okay. And when is written testimony provided up until? Do you know?

Morris: 5:00 pm tonight.

Hauth: 5:00 pm tonight. Okay. So, yeah. Well, anyway, I’ll… I will start if you want me to. And I will share with you that there have been a multitude of concerns relevant to the process of the rulemaking; and, as well, content contained within the rules. I know that you’re aware the Elected Committee took a position several days past to not only object to the rules that are currently identified as the draft BEP rules but also doing that through our Rehabilitation Services Administration. But also identifying through an Elected Committee meeting that there were a multitude of concerns. I do know that there’s been a… also a concern with the Notice and the way that the Notice identified the filing of the rules. And there’s also been a concern around the… as you know, the fiscal impact notice, as well. So I just wanted to identify that I understand it is the Commission’s prerogative to extend the timeline for the rules and the rulemaking process, I believe, not being an expert on that matter but trying to understand it through reading through the rule process. I would just encourage the agency to do so and to continue working with the Elected Committee of blind vendors. And I know this is more encompassing than the Elected Committee of blind vendors. However, the Elected Committee of blind vendors, as you know, plays a very integral part and should play a very integral part in all this. And so, I’d just encourage the agency to continue and allow for and support continued discussions and look at the comments that were brought forward by Terry Smith, who was the facilitator and provided comments on the rules. Also by Susan Gashel, Randolph-Sheppard expert, well known across the land, provided some comments. Also the Elected Committee of blind vendors provided some comment relative to the proposed rules. So, you know, at this point I believe that is where I am with this project and do not believe that the rules, even though they’re under a timeline, should be pushed forward if they are not… if there’s… if there’s concerns around those rules which, apparently, there are. And so I just, again, respectfully request that the agency consider that. The operating agreement is certainly a concern. The lack of priority language is certainly a concern. The administrative hearings process, or the due process, is certainly a concern, along with some other identifiers that have been provided. And, as well, there was a review done recently of the rules by licensed attorney Ronnie Heard on behalf of some licensed blind vendors and on behalf of myself as well as the licensed blind vendor and I’ll be submitting that along today prior to 5:00, in writing. So I think that’s… that pretty much sums it up. And I do appreciate the opportunity to give that. So. Thank you, Randy. There was someone…

Hauth: Yeah. You’re welcome.

Morris: Did somebody else join us on the phone?

Haseman: Linda Haseman.

Morris: Hi, Linda. How are you today?

Haseman: I’m good. How about you guys?

Morris: Good. Hey, so, I… I wasn’t sure if you heard what I was telling Randy. I did a little introduction at the top of the hour. But, basically, we’re giving everybody ten minutes to provide public comment on the proposed rules. And if you wanted to go ahead and provide a comment just let me know and I’ll start the timer.

Haseman: Yes, I’d like to provide a comment.

Morris: All right. Whenever you’re ready.

Haseman: Okay. My name’s Linda Haseman and, for the record, I’m an interested stakeholder of the Commission for the Blind and have been for a period of time now. And I also recently served on the Fiscal Impact Committee that was convened, I believe, Saturday ago. Anyways, a couple of comments that I’d like to make, for the record of this hearing is, first of all, I’m extremely concerned with… that the rules-making process has indicated that there was a Rules Advisory, so that was posted incorrectly as a notice to the public, which I think creates a big question mark in the process as a whole. And it should’ve been marked correctly, which it wasn’t. And at some point in time the BECC had been told a variety of things: first they were the Rule Advisory Committee, then they weren’t the Rule Advisory Committee, they were a collaborative committee. Actually, they might’ve started out as a collaborative, then they were told they were a Rules Advisory, then they were told they were collaborative and that the form was marked wrong. So the public is unclear from that rule notice, in my opinion, as to was there a Rule Advisory Committee or not. So then, of course, the Fiscal Impact Committee had to be convened and I stand on the premise that the fiscal impact that was listed on the rule advisory notice that was posted… or, I’m sorry, the notice that was posted is invalid. There was… For instance, it indicated… I believe it said something to the effect that there would be no supplies or equipment needed for this. And I don’t believe that’s correct if these rules are implemented, especially with the limitation statement in the rules tied to subcontracting supplies and equipment – as I believe I articulated through the Fiscal Impact Committee – clearly shows that there will be needed money for this and equipment and supplies. I am extremely concerned and remain concerned about the operating agreement. It’s an understanding… a variety of other states… it doesn’t seem like the operating agreement should be… have a time limit on it of two years. I haven’t liked or never thought that it was proper for it to have a one year. I clearly don’t understand just extending it to two years. I think it’s a waste of staff resources and I think it doesn’t meet the requirement of the Randolph-Sheppard Act. I’ve actually even been told in person by one of the RSA individuals at a conference a couple of years ago that those operating agreements should be perpetual. So I, as a stakeholder, cannot support anything that doesn’t… that takes away staff resources and also causes possibly a license to not even have an effect of a license. And I think that’s what the operating agreement does, having a limit on it. Another concern that I have, and I think I mentioned it earlier, is, there is… I know that this bill, 'cause I watched it very carefully, was a part of a lot of the hearings, as far as watching them online, when they were happening, the legislators very clearly intended this to grow the program and I want to see that happen. I’m not sure… when I look through the rules, what I see right now is a whole bunch of control from the licensed blind managers. I’m not seeing exactly how that… this program’s gonna grow from these rules. When you start putting limitations, you start to put in due process requirements, you start putting a whole bunch of other ways to terminate somebody. You put in requirements for a variety of just… controls, it starts restricting a program rather than letting it have the wings it should. And I see what happened in this as I read through it, very… very much a control over the licensed blind managers rather than trying to get them the wings and the flexibility that the legislators intended this to have to grow the program. And I think when you don’t… when you try and only do one business model, and that would be for the Commission to try and supply the equipment, I think you’re going to end up exactly where it ended up quite a few years ago, where the Commission will not have the funds. You’re dealing with a situation where you’re relying on every two… a biennium budget, as to whether the funds will or won’t be there to help support a program rather than creating a variety of business models through the training process and having individuals pick, as individual business people, what model will work for their best business and allowing that to be flexible and creative, based off each person. And I know that was a factor for the legislators. I even heard Representative Keny-Guyer say, “Oh, well, what I’m hearing is this is not a one-size-fits-all.” And if you guys are trying to make this a one-size-fits-all, which I believe is trying to happen through the rules, it’s… it’s gonna be not the intent of the legislature. And I can only support what the intent of the legislature was, which is to grow this program, make it practical, have it be a program-friendly process. And the rules should not be distracting from what the intent of the legislature was. So, I think, with that I’ll conclude before my time and somebody else can have the floor. Thank you.

Morris: Thank you, Linda. We had somebody else join us on the phone. [Silence.] Was there anybody else on the phone that wanted to provide testimony today? Or maybe somebody dropped off. [Silence.] All right. Well, we’ll wait for a few more minutes and see if anybody else joins us.

[00:20:04]

[Time passes.]

Morris: Good afternoon. Somebody just joined us on the phone?

StevensonA: Yeah, this is Art Stevenson.

Morris: Hi, Art. Good afternoon. Eric Morris here. Today’s hearing is for public comment on the proposed Business Enterprise rules. We’re giving everybody ten minutes to provide comment. The agency isn’t answering any questions today, similar to the Fiscal Impact Committee. And if you’d like to provide testimony today, just let me know and we’ll get this time clock going.

StevensonA: So has everybody else already testified?

Morris: Yep. We’ve had two people testify.

StevensonA: Oh, okay. ‘Cause there seemed to be some miscommunication. A lot of people thought this was supposed to be at 5:00 today. So, anyways. Yeah, I most definitely do want to give public testimony.

Morris: So, Art, if you could… if you could just give us your full name, address and your affiliation and we’ll get the clock going.

StevensonA: All right. Well, my name is Art Stevenson. I am a blind licensed manager in the vending program. I’m also a member of the American Council of the Blind of Oregon. And I guess that’s all the information I need to put on the record, as far as that goes. So you let me know when I can start my public testimony.

Morris: You may begin when you’re ready.

StevensonA: Okay. Well, anyways, first let me say that I’ve been a blind licensed manager in the vending program for 31 years and I’ve been a part of this program. And currently the program in Oregon has had a lot of controversy concerning the administration of the program and I’ve been very active in trying to make sure that the program was run in accordance with the federal Randolph-Sheppard Act and that this program in Oregon was putting as many blind people to work as… as possible. That has not occurred in the state of Oregon. And now we’re at a point where we’re re-writing rules to administer the program under the federal Randolph-Sheppard Act and our state mini-Randolph-Sheppard Act. And I’m very concerned about these rules because they are not complete. They most definitely, in my opinion, are not in compliance with the federal regs. And actually was intricately involved in getting an evaluation of these current rules by a national expert. Her name was… is Susan Gashel. She’s an attorney, a current attorney, who does a lot of things concerning the Randolph-Sheppard vending program, including working for state agencies to make sure that federal agencies are adhering to the federal Randolph-Sheppard Act and also as an attorney to protect the rights of blind licensed managers throughout the country. Susan, of course, was an Attorney General, representative in the state of Hawaii and was very intricate in making sure that program was run correctly under the Randolph-Sheppard Act and was creating jobs for blind licensed managers and also that the rules were written in a way to protect the blind licensed managers’ rights and make sure that the agency was… the State Licensing Agency was acquiring as many locations to put blind people to work. So, anyways, she did an evaluation on our current proposed rules and found lots of violations of the federal Randolph-Sheppard Act. Currently, the Oregon Commission for the Blind does have that evaluation. However, has chosen at this time not to re-write the rules to ensure compliance of the federal… of the federal law and to protect the rights of the blind licensed managers. Also, I would like to say that these current rules have not been okayed by the Department of Rehabilitation Services, RSA. And, therefore, moving forward, in adopting these rules, quite frankly, is a violation of the law because the State Licensing Agency is not supposed to promulgate rules or put forth rules that have not been given the blessing of the Department of Education, Department of Rehabilitation Services, to make sure that they are in compliance with federal law. Also, I’d like to say that I’m a member of the Elected Committee and these rules were basically not written under the true definition of active participation. There was not good faith negotiations with the Elected Committee in promulgating these rules. Basically, suggestions and recommendations were made by the Elected Committee and completely, basically, ignored. And the agency basically wrote the rules to say what they wanted them to say, not necessarily to do what the intent of this program is, and that is to put blind people to work and create jobs for blind people. I would also like to say that these rules are not in compliance with the state statutes, which says the State Licensing Agency will promulgate rules to ensure the proper and satisfactory operation of vending facilities and for the benefit of the blind licensed managers of this program. I contend that these rules have been written by the agency to do what they want the program to do, not necessarily what the program was intended to do, and that’s put more blind people to work here in the state of Oregon. I also would like to say that RSA has commented on the fact of what active participation is and it’s more than just an advisory committee, which has been put forth by several experts in the program. Terry Smith, who ran a successful vending program in the state of Tennessee for years and years and now he is running the BEI, which is a group that tries to help State Licensing Agencies and the managers in the Elected Committee work efficiently and effectively in the different states throughout this country. So, active participation in these rules are not spelled out; the definition of it should be. And Elected Committee involvement in these proposed rules is bare bones. It isn’t truly a joint effort by the State Licensing Agency. It’s more basically the agency is more dictatorial and doesn’t allow the blind licensed managers in the program to be independent entrepreneurs and make decisions which would be best for their individual locations. Let me see. Also, I would like to state that these current rules do not put forth any avenues for the State Licensing Agency to ensure compliance to the state law and to the federal law and making the program grow. The CFRs, the Code of Federal Regulations, set forth how the State Licensing Agency will make sure adherence to the federal program and federal locations… However, the Oregon Commission for the Blind has not, in these proposed rules, promulgated them to ensure compliance by the state…

Morris: That’s your time, Art.

StevensonA: … entities.

Morris: Thank you.

StevensonA: You’re welcome.

Morris: Did somebody else join us on the line? That wanted to provide testimony today?

Moore: This is Jeanne-Marie Moore and I just got here and I plan to write my testimony because I think I can express myself more clearly in writing. Thank you.

Morris: Thank you, Commissioner Moore. Was there anybody else on the phone that wanted to provide testimony today? [Silence.] All right. Well, with that being said, with no other takers, then I’ll go ahead and close the hearing for oral testimony. As I said previously, written testimony will be accepted through 5:00 pm today, as posted in the notice. And we welcome that, either online or via the US mail. So thank you to everybody for testifying today and have a good day.

[Ended 00:30:08]

Transcription: Mark Riesmeyer