BUSINESS ENTERPRISE PROGRAM OF OREGON

SPECIAL MEETING

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Oregon Commission for the Blind

535 Southeast 12th Avenue

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The proceedings in the above-entitled matter were held in Portland, Oregon, on the 12th day of August, 2017, before Randy Hauth, Business Enterprise Consumer Committee Chair.

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TRANSCRIPT OF PROCEEDINGS

MR. HAUTH: And it’s 9:04, so we’ll go ahead and call the meeting to order. And I wanted to thank everybody for being here on a Saturday. I know we all have better things to do, but maybe those in the program and the agency may not have anything more important to do, actually, because this is a pivotal part of the state statutes, I believe, the 3253. This will help implement that for the Licensed Blind Vendors, an agency moving forward successfully, I do believe, hope, and that is my desire. So these four-and-a-half days, I believe, will be a good starting point. We may not get it all done within the four-and-a-half days. If we do, so be it. And if we don’t, then we’ll continue to work on it.

But I did want to start with the room and go around and ask people to introduce themselves, and just give a quick word of encouragement for these--this session. And so we’ll start in the room and then we’ll go to the phone. And we’ll start with Jeanne-Marie, who’s seated to my right. We are set up in a horseshoe and there’s probably about 10, 12 people in the room. So Jeanne-Marie, if you would, please.

MS. MOORE: Well, I’m Jeanne-Marie Moore. I’m a Commissioner. I’m very interested in this process. And I’m going to really be interested in how two sets of people that have very clear positions can come together. I’m very interested in watching that happen.

MR. HAUTH: Thank you. Luther?

MR. GRUELICK: I’m Luther Gruelick. I’m Jeanne-Marie’s partner. I’m also interested in the process. I’ve been attending meetings for--

MR. MOORE: And you’re an ACB member.

MR. GRUELICK: --three or four years. And yeah, I’d like to see things come together.

MR. HAUTH: Thank you. Steve, before you start, can everybody on the phone hear us?

MS. JAYNES: Yes.

MR. YOUNG: Yes.

MR. HAUTH: Okay. Great. Steve?

UNKNOWN MALE: Yes.

MR. STEVE JACKSON: My name’s Steve Jackson. I’m a vendor and

--I’m excited to get things finalized and you know, wrapped up and ship-shape and move on. It’s a good thing.

MR. HAUTH: Okay.

MS. BROWN: My name is Celyn Brown and I’m the newest BE manager in the group. And I am excited to learn, basically, and add input as…

MR. HAUTH: Thank you for being here, Celyn. Art?

MR. ART STEVENSON: Hi, I’m Art Stevenson, blind licensed manager for 31 years. I am the current Elected Committee Vice Chair and also the Salem 2 rep. I’m really excited about House Bill 3253 and what it is going to do for our program. I’m very, very excited to hopefully have plenty of great, active participation between the agency and the Elected Committee to write rules that ensure the proper and satisfactory operation of vending facilities and benefit the blind licensed managers. Now that our state statutes talks about active participation, I think we have an opportunity to really come together and actively participate like we should be and write good rules.

MR. HAUTH: Thank you, Art. Cary?

MR. ALLEN: My name’s Cary Allen. I’m an attorney. Randy invited me to be here today. And I’m just here to observe, be a resource. I think this is a great opportunity. I know it’s being cast as a negotiation, but it’s not like this is collective bargaining or something. We have an agency that is here to help blind Oregonians be employed, and that’s a really exciting thing. And the Randolph-Sheppard program is a fantastic program. And you know, I think this is an exciting opportunity to kind of start fresh and for the agency and the vendors to really cooperate and work together, and maybe, you know, find consensus on a lot of the rules that will make the program more successful. So I’m really excited to be here. Thank you for having me.

MR. HAUTH: Yeah. Thank you, Cary. I’m going to defer and come back to myself. Steve Gordon?

MR. STEVE GORDON: Yep. Steve Gordon, North Santiam Distributors, Willamette Valley Vending. And kind of similar to Art Stevenson, I’ve been in the program for probably 32, 35 years or so, and working self-employed, have really loved the program. And we’ve come a long, long way from back in the old day when I first got started. And I’m excited to be here today and working together, that I’m positive that we’re going to have really some great things work out and just excited about the day. Thank you.

MR. HAUTH: Okay. Eric?

MR. MORRIS: Good morning, everybody. My name is Eric Morris. I’m the Business Enterprise Director for the Commission for the Blind. And I’m not going to say a whole bunch because I think I’m going to be doing lots of talking throughout the next four-and-a-half days, so I will defer my time until later.

MR. HAUTH: Thank you, Eric. Tom?

MR. PILEGGI: My name is Tom Pileggi. I am the Business Enterprise Operations Specialist. I look forward to today. Hopefully, my main goal is to make this program successful for all blind managers in Oregon. And I’m really excited about it.

MR. HAUTH: Thank you. Dacia?

MS. JOHNSON: Good morning, everyone. Dacia Johnson, Executive Director. And I thank the Chair for letting me participate this morning during the kickoff. And I just--the words, as the Chair indicated, we want to focus on what we’re hoping to get. And for me, it’s focusing on the future and the possibilities in this program. I think that we’ve been provided a new opportunity with this new legislation, and I’m just really excited about what we can build together.

MR. HAUTH: Thank you. Terry?

MR. TERRY SMITH: I’m Terry Smith and I’m the Director of the National Federation of Blind Entrepreneurs Initiative. And I’m here to help facilitate and be a resource for these conversations.

MR. HAUTH: Thank you, Terry. And also in the room, we have-- Do you guys want to say something over there? Do you want to--

MR. RIESMEYER: Mark Riesmeyer.

MR. HAUTH: --introduce yourself?

MR. RIESMEYER: This is Mark Riesmeyer. You all know who I am.

MS. EWING: And I’m Kathy Ewing, the BE Training Specialist. And I’m excited to see great cooperation today and introduce some new BE managers to working with the BECC.

MR. HAUTH: Thank you, Kathy and Mark. So we’re going to go to the phone. And if you guys can do your best to introduce yourself without talking over each other. And then after that, please make sure and mute your phone. So let’s go ahead and see how this works. Who’s on the phone?

MS. GUNN-MERRILL: This is Gretchen Gunn-Merrill. I’m a Senior Assistant Attorney General with the State of Oregon, representing Oregon Commission for the Blind. And I am here to briefly give you some overview of House Bill 3253 and rulemaking. And if there are a few questions related to the rulemaking that you guys are going to be working on over the next several days, then we can deal with some questions on that, too. Thank you.

MR. HAUTH: Thank you, Gretchen. Next?

MR. GORDON SMITH: This is--

MS. JAYNES: Lin Jaynes…

MR. GORDON SMITH: --Gordon Smith from Roseburg. Been in the program since 1980 and I’m looking forward to the meeting and hoping that this whole thing will gel and just be wonderful as we go on down the road.

MR. HAUTH: Thank you,--

MR. GORDON SMITH: Thank you.

MR. HAUTH: --Gordon. Next?

MS. MIRANDA: This is Lewanda Miranda. And I’m a licensed blind vendor here in eastern Oregon. And what I’d like to see from the summit is that we have good rules that will strengthen our program, be beneficial to the licensed blind managers, and that we will enhance the [garbled] between the vendors and the SLA. Thanks.

MR. HAUTH: Thank you, Lewanda. You are just a little bit hard to hear. I’m not sure if you’re on speaker phone or not, but just wanted to mention that. So thank you, though. Next?

MS. MIRANDA: Thank you.

MR. YOUNG: Harold Young.

MR. HAUTH: Hi, Harold.

MR. YOUNG: Hey. Yeah, I’ve been in the program for roughly 32 years. And this summit is a great thing. I wish I could be there, but family duties call. So good luck to everybody, and I hope it works out great. And welcome back, Terry.

MR. TERRY SMITH: Thank you.

MR. HAUTH: Okay. Next? Thank you, Harold.

MR. DERRICK STEVENSON: Derrick…

MS. JAYNES: Lin Jaynes.

MR. HAUTH: Lin? Did you want to say anything, Lin?

MS. JAYNES: Yes. I was waiting for the gentleman.

MR. HAUTH: Okay. Go ahead.

MS. JAYNES: I’m Lin Jaynes. I have the Oregon Coastal Vending. I’ve been in the program, in the BE program, for a little over 23 years now. And I’d like to say I’m very, very encouraged about the House Bill. A lot of work went into it from many people.

I’m also very, very happy to see the progress that we’re going to be making over the next four days with our rule development. And I’m also encouraged that the SLA, through active participation, is actually in this process working with all of our managers. That’s very encouraging. And I’m very grateful to be here, and I do appreciate everyone else who has taken the time to be here.

MR. HAUTH: Thank you, Lin. Next?

MR. DERRICK STEVENSON: Derrick Stevenson, Southern Oregon BECC Board member. Yeah, I’m excited to take part in this process and putting all other stuff behind. We’ve worked fully on improving and making our program stronger and better for Oregon people.

MR. HAUTH: Thank you, Derrick. Next?

MR. BIRD: Jerry Bird. I’m a rep and I’ve been in the program almost 30 years. I look forward to seeing this handbook completed so we can all move on and know the rules and, you know, abide by them, and watch this program succeed and grow. Thank you.

MR. HAUTH: Thank you, Jerry. Next?

MR. HODDLE: Vance Hoddle.

MR. HAUTH: Hey, Vance.

MR. HODDLE: It’s nice to hear the voices of many of my important teaming partners. I think this is--House Bill 3253 represents a great opportunity to make the program work better and stronger for each of you licensed blind vendors. And I look forward to assisting in the process however I can.

MR. HAUTH: Thank you, Vance. Next? Is there anyone else on the line?

MS. HASEMAN: Linda Haseman.

MR. HAUTH: Hi, Linda.

MS. HASEMAN: Yeah. I’m just looking forward to all of you guys working hard to get to the yes. That’s what had to happen to get House Bill 3253, all the licensed blind vendors, all of the interested party members, all stakeholders, all national as well as in Oregon finally came together and came to yes. So carrying that forward, I’m looking forward to you guys getting to yes in the next five days, whatever that takes, all of you rolling up your sleeves. And there might be points in time where I feel I need to comment on something, and I hope that’s free for the phone members to do as well, that we can comment. And just looking forward to this program flourishing in Oregon for blind Oregonians in the employment sector. Thank you.

MR. HAUTH: Thank you, Linda. Next? Anybody else? Okay. Not hearing anybody else, if you would please make sure and mute your phones so the background noise does not disrupt the meeting.

I’ll say a few words here. I’m really excited to have everybody here. And again, what an opportunity 3253 will bring to Oregon. Clearly, there’s been a lot of differences of opinions over, you know, a number of years here in the program, I believe, that maybe stifled the program’s growth. I think we’re in a different place now. While we might not all agree, I do believe through this process, like Linda said, we can get to yes. I would encourage everybody to listen, to not lecture, and also to point out concerns, but do it politely, professionally. Stand up for your program if you’re a licensed blind vendor and share your desires. The state statute clearly identifies that this program is to benefit the recipients, and those are the licensed blind vendors.

Now, I know the agency has a duty to administer properly the program. However, my question through this entire process will be, how does that benefit the licensed blind vendors? Right? I do believe that we can get to a point where this program will be flourishing, will be growing, and the contention will go away, or the majority of it will go away.

So again, thanks everybody for being here. And you know, we’re going to kind of play this by ear. But I’m really excited and hopeful and faithful that we’re going to get to that yes.

I do want to overview a little bit of how the outline will go today. I know Eric put together the agendas, which basically are to comply with the public meeting laws, I believe, the agenda. But there’s also a document that outlines what we’re going to be dealing with each day as required by the House Bill. There are certain requirements through the House Bill that is required to build rules around. And so you know, if we get those all done and there are some other things we need to address, then we’ll do it. But it will be somewhat free-flowing, but again, specific at times. And yes, the public, Terry and I have spoken, and I know Eric and I have spoken. The public and interested and impacted parties will have a chance to speak.

The Elected Committee, at the end of the day, who represents the managers, will be the voice of the program through this, the majority. But every half-hour, you know, we’ll defer back to the interested parties or impacted persons so that you can also weigh in. So if you’re listening and something raises your concern or interest, make sure and jot that down so we can call back to you.

And so I’ll overview what the intention of this is today, is Terry Smith with NFBEI and also Terry was instrumental, I believe, in the success of the Tennessee Business Enterprise Program. Terry worked as an administrator there in that agency and that services for the blind. And he can correct me if I’m wrong, but it was very instrumental. It was kind of a--you know, the program Terry took under his wing in Tennessee and made it grow. There’s 115, I believe, or close to, licensed blind vendors in Tennessee. And so during the process, we use Tennessee as somewhat of a model. You know, Tennessee also has some things that they continue to work on.

But bottom line, Terry has been very successful. He’s a great advocate and supporter of the program. And while Terry and I are--you know, anybody may not always agree, I think Terry is the right person to help us facilitate this process. And so he will be also sharing active participation. And the training that he did for Mississippi State University, he did a module that further explains and examines active participation and how really in successful states that functions.

I still think personally, we struggle here in Oregon to understand the entirety of it. I did invite numerous persons to join us today, especially for this section. But unfortunately, I don’t hear those persons on the line. However, Jeanne-Marie’s here as a representative of the Commission Board, so that’s a great thing. So Terry will do a training on and an overview on active participation.

Then we will hear from Gretchen Merrill from the perspective of the agency. And I will share that while maybe there’s been times where Gretchen and managers have been at odds, I can tell you I did work with her through this process and through the legislation, and there are some things that I was pleasantly surprised and pleased about. So she did a lot of work on this as well, and so thank you, Gretchen, for that. So we will hear from Gretchen and the perspective of the agency.

MR. MORRIS: Randy?

MR. HAUTH: Yes?

MR. MORRIS: Just real quick. Gretchen only had like first thing this morning available. So if she could go before Terry, that would…

MR. HAUTH: Sure. Sure. If you guys are fine with that, I have no problem. Then we will also do-- You know, how do we avoid landmines? How do we make this process not similar to processes before? And there’s been a lot of talk around and been a lot of issues and concerns around previous processes. So let’s find out how to make this an open and transparent process.

I can tell you, there was a few things around the legislation that were mentioned through testimony and also through meetings that I met with, and that was transparency of the agency and also integrity of the program. Okay. There were some other things that were mentioned. But let’s try and make this process open and transparent. And let’s try and get--you know, when we may be at odds, let’s try and find that happy medium there.

So also, we will then go into building ground rules that we can all adhere to through the process, so it can be a successful compilation of everybody’s efforts. Right? You only get so much time on this earth. We probably wasted years trying to get to where we are now, so let’s not waste any more time. Let’s make this a valuable--let’s make sure that this work that we all done--do collaboratively is not highjacked by, you know, anybody. Let’s make sure that our project and our product holds the test of time, and that we get to a place where we can agree on that.

So with that being said, and I would like to introduce-- And Eric, I don’t know if you have anything you wanted to share before we introduce Terry, but--or Dacia, you know, please feel free to do so, and then we’ll go ahead and introduce Terry and we’ll start the process.

MR. MORRIS: Thank you, Randy. I appreciate that.

MR. HAUTH: You bet.

MR. MORRIS: I think we’re on a good track. I think the thing that-- Any time you come into-- I mean, we’ve sat in this room. I’ve only been with the program for just a little over four years, and I’ve spent plenty of time in this room and on--I don’t want to think about how many hours’ worth of meetings dealing with the rules. So I think as we get ready to have this discussion--and it’s going to be controversial. That’s the thing. We talked about that the other night, Thursday. Randy asked me, “Well, how are you feeling about the weekend?” Great. Great. It’s going to be good because we’re going to get into a room. We’re all going to have varying opinions, and that’s never fun. But I think if you leave your ego at the door and you don’t worry about who gets the credit, then ultimately those will set up the process. Having that attitude sets up the process for success. Because if you don’t worry about who gets the credit and you leave your ego behind, lots of things can happen in those environments. So that’s how I’m facing these--facing? That’s how I’m going to get through these next four-and-a-half, five days is by doing just that. So that’s my perspective on it.

And I am optimistic. Not cautiously optimistic any more. I’m optimistic we’re going to get this done. We have to get it done. It’s not an optional thing like we’ve got another 10 years, lifetime achievement award to accomplish this. We’ve got to move from Point A to Point B and we’ve got--you know, we’ve got time to do it, but we have to be--we have to be strategic about it. Prioritize, execute, and get it done.

MR. HAUTH: Thank you, Eric. Dacia, would you like to say anything?

MS. JOHNSON: Certainly. And welcome, everyone. Hello again. You know, I was thinking about--and I really appreciate all of the comments that you guys have said, because it really is, as Chair Hauth indicated, this is a new day for this program. I think this is our opportunity to really seize the future of what this looks like. And I was reflecting this morning as I was preparing for coming today, and I haven’t been around a long time in terms of your Director. And I--four years ago, we were struggling with not having enough staff. We had two staff. Now we have five. We were trying to challenge our ways in terms of thinking about how we could invest in the vending side. And now, we have resources to purchase state-of-the-art vending machines.

And then there’s been this perennial conversation about the priority. We need the priority. But guess what, you guys? Because of your work, because of the work led by your Chair of your Elected Committee, we now have the priority. So this really is an unprecedented time for this program. And I am so excited to see the work that you’re doing. And the legislature, your Vice Chair, talked to the Commission. There was unanimous support in the legislature for this bill. And what the legislature said to us is, you have--we believe in you. Every single one of those elected officials believed in this program. But we have until November to do certain things. So I would just challenge all of us to remember that all of those elected officials believed in our capabilities collectively to get it done and not fight and not arise conflict, but actually come to some compromise and promulgate rules that will set this program forward in a direction that we had not envisioned was possible four years ago.

And it’s so exciting because as you know, I believe that you are the ambassadors of this agency. You’re out there every single day showing what Oregonians who are blind are capable of doing as they make hiring decisions, as they think about inclusivity of their communities. And we are, for the first time, going to be able to greatly expand that ambassador pool to have more Oregonians who are blind out there, engaged in successful businesses.

So thank you again, and I really look forward to the outcome.

MR. HAUTH: Thank you, Dacia. Before we turn it over to Gretchen, Char came in. Charlotta, I don’t know if you wanted to say anything. I think Char’s over there.

MS. HAWKINS: I believe they were just introducing themselves, but…

MS. HAUTH: Okay.

MS. HAWKINS: We’re--I’m manager of DMV headquarters in Salem, plus a 60-machine vending route. And right now, we’re trying to capitalize on the fairgrounds being the first thing as the--eclipse with 10,000 people at OMSI down there next week. And we’re wanting to sell some water because we make about 400 percent on water. And we’ve honestly made the fairgrounds--we were told, you know, it’s no good, don’t-- You know, well, I told Eric, I don’t want the fairgrounds. It’s just going to sit there. Well, we’ve made a lot of money this summer on the fairgrounds. And the fair hasn’t even started yet,--

MS. CELYN BROWN: Yay.

MS. HAWKINS: --so-- So anyway, we’re tired managers. Sorry we’re late.

MS. HAUTH: Thank you, Char. So Gretchen, if you would like to, I know that your time is limited, but you know, welcome. You have the floor.

MS. GUNN-MERRILL: Well, thank you, everyone. And good morning. And I am excited as well for this process to go forward. And all of the work that everyone has done, Chairman Hauth and Director Morris and Director Johnson, the committee, legislators. Everybody worked very, very hard. And I’m excited about the clarity and possibilities that this bill brings forth for the agency and for the blind managers, and for those who are coming in the future, too.

Just as an aside. Char, my husband works at the main DMV building, and he comments on how there are always long lines of people to get in because they like the food that you guys have at the cafeteria so much.

MS. HAWKINS: Thank you.

MS. GUNN-MERRILL: So good job.

MS. HAWKINS: Thank you.

MS. GUNN-MERRILL: Anyway, I will briefly go through each section of House Bill 3253, just kind of give you an overview of that. And then if you have--like I said, if you have questions about the specific sections that you’re working on, you know, over these next several days, 3, 5, 6 and 12, I can--you can ask me. I’ll see if I can answer. Maybe I can, maybe I can’t. I don’t know. And if I can’t, I’ll try and get back to you with an answer. And then I’ll just briefly talk about rulemaking, some just general things to keep in mind.

So House Bill 3253 has been signed by the Speaker of the House and by the President of the Senate. It has not yet been signed by the Governor into law. But we don’t anticipate any issues with that. So I think you’re very wise moving forward on the rulemaking process to get the rules in place.

It is--just so you know, like when you see at Section 1, it talks about all this stuff being part of ORS Chapter 346.510 to 570. The rules will be numbered once-- I mean, not rules. The statute will have the ORS numbers once this House Bill is incorporated into the statute. Up until that point, we need to refer to it by the sections and House Bill 3253. A legislative counsel is the one that’s responsible for numbering all the Oregon Revised Statutes, where they put them, et cetera. They understand where--that these were about--mostly about the Business Enterprise Program, so they were going to try and keep them all together. But we don’t have any control over the numbers. So up until the point they actually enacted in the statute and you see it written as ORS 346 whatever, it’s probably best to refer to it by Section 3 of House Bill 3253.

Section 2 basically puts the federal Randolph-Sheppard set-aside purpose language into statute. This Section 2 already existed, but without the explanation of the purposes of the set-aside. So this puts it into the statute and then also has the quarterly reports.

Section 3 is one that is subject to what you’re going to be working over the next several days, and that is the set-aside percentages. Now, it’s important to remember that you need to read this in conjunction with Section 4 because Section 3 will be subsumed by Section 4, I know this is complicated, as of January 1, 2020. So what you see right now with Section 3 and what you’re working on right now with Section 3 will only be valid through December 31st, 2019. As of January 1, 2020, Section 4, which takes out all the percentages, you know, reduction-type things, that’s going to be what you’re moving forward on. So you need to keep that in mind when you are working on the different matters.

This is a good point to note that the statute has specific percentages and what can be no less than, that sort of thing. When you are making rules, and I’ll mention this later as well, when you’re making rules, your authority to make the rules comes solely from the statute and what the legislature has authorized the agency to do. So if the statute says that you shall do something, you shall do it. If the statute says you must do something, you must do it. If the statute says you may, then that’s discretionary.

If the--in this particular case, it states that the Commission shall reduce, but not below a percentage determined by the Commission by rule, a percentage for the following amounts. So that means that you can’t deviate from what is in the statute. And that’s important to remember overall with all of the statutes.

Section--like I mentioned, Section 4 is effective January 1, 2020. Section 5 is another section that you will be discussing over the next several days. And that is the statement of full-time employment. This section requires the Commission to adopt by rule, a vending manager statement of full-time employment with which the managers shall comply. And the statement has to include the--at least the list that’s listed in the statute of the three weekly contact requirements, vending facility inspections, and development and maintenance of work logs. Those are not options. Those must be in the rules. And then the agency, as what is going on right now, which is great, is the active participation of the BECC and all the managers and is--in developing the statement of full-time employment.

The next section is Section 6, which is another section that is subject of your rules. This is the subcontracting section, and it codifies the ability of the agency to, upon request from a manager, to allow a manager to subcontract. And I know that there was controversy back and forth about what the statute did and didn’t allow in the past. This takes care of any of that because it does make, within the discretion of the Commission under the certain criteria, it makes subcontracting allowable.

The subcontracting is to be approved by the Commission. The Commission does have a couple of things that it has to consider in determining whether to approve an agreement with a subcontractor, which includes the quality of service and product storage requirements. Those again are mandatory items that must be in the rules when you’re making your rule about what the Commission considers.

Then it is--the Commission may establish the list or shall establish the list of approved subcontractors, and they are going to do that through consultation with Department of Administrative Services. And I expect it will probably be through a request for applications, so that multiple vendors, such as Canteen or whomever else is out there, can--there will be a request for application put out by Department of Administrative Services, and then they will apply, and then a list of approved subcontractors will be established.

And you all, in coming up with the criteria for the approval of subcontractors, you get to help participate in the criteria that are going to be used in that request for application. So you get to participate in what would be--what are the things that we’re looking for in who--what kind of integrity we want, what kind of business models, et cetera. So you get to participate in that.

And it also states that the agreement that is entered into with an approved subcontractor is subject to ORS Chapters 279A and 279B, which are the public contracting laws. And then the Commission may determine by rule, which you guys will be doing here, the services or products that a subcontractor may provide, and then also the extent to which a subcontractor may perform the duties of the vending facility manager, consistent with that full-time employment statement. So again, by rule, you can talk about what are the things that subcontractors can and cannot do.

And then the statute talks about your--upon the written approval and that a subcontracting agreement is entered into, a manager is responsible for the full-time employment agreement, they can’t have the subcontractor perform any of those duties. So for example, if you have in your full-time employment agreement that the manager has to provide a weekly written report, you can’t have the subcontractor by contract do that report for you. So that’s what that means. It takes away any liability of the agency for any issues that arise between the subcontractor and the manager, and then definitely has the active participation for the rules mentioned again here under Subsection 7 of Section 6. So it is--it’s definitely a long section here, but it gives you definite parameters of what you can and can’t put into the rules and gives you discretion and a lot of flexibility.

Section 7 is the surviving spouse, domestic partner section that gives that surviving spouse or domestic partner up to six months to operate the facility or when the operating agreement expires, whichever one comes first. So that’s in law. That is not subject to your rules today.

Section 8 is also not subject to the rules today, but that is the active participation definition, which again tracks the Randolph-Sheppard Act in stating that the Commission shall ensure the active participation of the Commission’s Business Enterprise Consumer Committee in the Commission’s major administrative policy and program development decisions that impact the BEP. So that’s your statutory definition of, and requirement for, active participation in Business Enterprise Program major administrative decisions. This language is--like I said, totally tracks 20 U.S.C. Section 107(b), which is the Randolph-Sheppard language.

We’ll move on here. It also then goes on in that subsection to talk about the relevant data and the fact that the Commission retains the final authority and responsibility for the BEP. And again, this is tracking the federal Randolph-Sheppard Act language that has now been tracked and now that same kind of language applies in Oregon for the Oregon facilities.

Section 9 is basically about materials, equipment, and machinery, and transferring. That’s not subject to your rules today. Subject 10--I mean, Section 10 is the priority and preference notice language. And that is very exciting, I know, for the program. And I wish I could come up with another adjective than exciting, but I really think that this is going to give you a chance to really grow your program. And I know that there was a lot of comment and involvement from other public entities with their concerns and questions, and that was all--I think they tried to incorporate everyone’s needs into the statute. And so you have the priority for vending, other than in cafeterias and community colleges and public buildings in this state. And then you have the preference for cafeterias and then vending facilities and community colleges. The new public building--and then it also has the notice requirements and requires the public entity to notify of intended actions. So it has a lot of good language in it.

Section 11 is just a cleanup. Section 12 is a lot of definitions, basically that describes cafeteria, and then it has the healthy vending item, which again, that part is subject definitely to your rulemaking and coming up in conjunction with-- someone, I think, from the Oregon Health Authority is coming to work with you to come up with a definition of what healthy vending items and local vending items are.

Then, again, there’s some clarification of the definitions, adding in descriptions of not just buildings but portions of buildings. And then, it also makes it clear that public universities and--are exempt. Elementary, secondary schools are exempt. And OHSU is exempt.

Sec--oh, and also, now you guys are vending facility managers. Sorry. I always say “you guys.” That’s just like my generic term for people. So sorry for that--if it’s “you people,” that doesn’t sound too formal. But the vending facility manager definition, that’s what you all are called in the terms of the statute. So it’s important to keep, again, the words that are in the statute, keeping those same words in your rules. So I--over the years, you’ve been licensed managers who are blind or blind managers, or managers. You want to make sure you’re using vending facility manager in your rule so that there is no question. It is a defined term. And in the law, a defined term has to be--you have to use that defined term.

And then that section also-- Oh, then we move on to Section 13, which is not subject to rules today--or for this process. Again, it’s some clarification language, and then it also has the--that you can’t--a public entity can’t charge the Commission or the vendor or blind manager for the priority. So they can’t say, “Oh, I have to give you a priority, so that’s going to be an extra 10 percent,” or something like that. They don’t get to do that.

The issues on rental, utility, and other charges do not apply to charges imposed by the Department of Transportation, and then they added in the Travel Information Council. And that’s subject to the availability for funds, they can refrain from charging. But so you all know, the reason that that is in existence is because there are constitutional restrictions on what ODOT and the Travel Information Council can use their highway funds for. And so there--it--there are certain restrictions they simply cannot, by constitution, use them for certain things, so--and then they’re allowed to use them if there’s excess in certain cases. So in this case, that gives them some discretion. But this isn’t like ODOT wanted some special exemption just for ODOT purposes. It’s because it’s a constitutional requirement.

Section 14 again has the notification clarity in there about informing the agency of vending possibilities. But what it adds that is good is it allows the Commission to try and resolve concerns. So the agency, they’re saying, we don’t want you--they have to give the Commission a chance for Eric to come back with--you know, with whomever it is, the manager, working together, however you guys end up deciding to do that in the end to say, “Hey, what are your concerns? You’ve told us this is your concern. This is how we can address those concerns.” So it gives you--we--it gives you an opportunity to go back and almost get like a second bite at the apple, to say, “Hey, we can address those issues, so now reconsider.” So that, I think, is going to be very, very helpful.

Section 15 discusses the surveys, you know, obligations of basically the Commission for the Blind and the BEP. It adds in the annual report obligations and the ability of the agency to make sure that its agreements are in compliance with statute. Sixteen, Section 16 is another clarifying statute. Same thing with 17. You know, a lot of this is, instead of calling you operator, it’s clearing up the language and saying vending facility manager, public building, making sure it complies with the definitions.

Section 18 has hardly changed. It’s like one little reference. Then Section 19 is what’s been termed the cliff. And it includes both the ability of the Commission to increase the set-aside by four percent if--which isn’t--that’s really not part of the cliff. If a vending facility manager doesn’t operate in compliance with the full-time employment statement. So basically, it’s a penalty. If there’s some reason that the manager isn’t in compliance with the full-time employment statement, they can increase in percentage of the set-aside, but I don’t anticipate that being an issue.

And then subsection (2) is the actual cliff cliff, which says, “A vending facility manager who is a party to an agreement for the operation of a vending facility that is in effect on or before the effective date of this Act is not subject to sections 5 and 6, and may continue to operate pursuant to their agreement until December 31, 2019.”

So basically, what that means is if you have agreements right now, whether it’s with subcontracting or not subcontracting, but it’s really kind of more directed at people who may have subcontractors, you don’t have to go through the process of, is it an approved subcontractor and all of that. You’re not subject to that for those existing agreements. But any agreement that is entered into on or after January 1 of 2018 will be subject to those. So anything that’s new after that date will be.

And then as of January 1, 2020, every single operating agreement, whether it is one that was grandfathered in or not, will have to comply with the new obligations regarding--if it is subcontracting with subcontracting in every other new obligation under the statute. So keep that in mind as businesspeople, as you’re looking at your agreements if you have subcontractors, et cetera, that whatever agreements you have, they’re only going to be effective through December 31st, 2019. And that’s what the bill says. And then after that, all agreements that--operating agreements are subject to the new statutes. And so then that Section 20 specifically repeals Section 19 on December 31st, 2019, which is the cliff date.

Section 21 is discussing that the full-time employment and subcontracting apply to all agreements entered on or after January 1, 2018. Twenty-two is the reason that you all are here, is because you are going to adopt rules for sections 3, 5, and 6, and 12, and 15 really doesn’t require any rules. And those rules are supposed to be adopted.

And then Section 23 repeals some other no-longer-effective statutes. It specifically goes--and Section 24 makes 2, 3, 5 to 8 and 19, and other amendments by sections 11 to 18 operative on January 1, 2018. If there is something that the agency needs to do prior to the operative date, then they can do that. And then the amendments to 3 by 4, that’s what I discussed way back when we were talking about Section 3. Section 4 takes over Section 3 on January 1, 2020.

So you have kind of there an overview of a very lengthy--I think we ended up with 10 versions of this bill by the end. But a very comprehensive and program-friendly House Bill there. If you have any questions about any of those sections, I can answer those now, or you can wait until I’m done just briefly talking about rulemaking.

MR. ART STEVENSON: Mr. Chair?

MR. HAUTH: Yes. Let’s go ahead, ladies first, I think Jeanne-Marie.

MS. MOORE: Gretchen, thank you so much for that explanation. It was very helpful. I’m wondering, if I take the law that I have and I take all the bracketed words out just so I can read it more easily, would that be an okay thing to do to use that as a guideline? Because I mean, it’s like--

MS. GUNN-MERRILL: Yeah.

MR. MOORE: --full of bracketed words.

MS. GUNN-MERRILL: This is not viewer-friendly for you all. I--

MR. MOORE: No.

MS. GUNN-MERRILL: --totally get that. And the bracketed information is the information that is going--either going to be deleted or is currently deleted. So keep in mind, in particular with Section 4, you just want to remember that 4 is replacing 3.

MR. MOORE: Right. Yeah. I get that.

MS. GUNN-MERRILL: But yeah. Yeah. But yeah. Everything in there that’s bracketed is the stuff that’s being eliminated or changed.

MR. HAUTH: Hey, Jeanne-Marie?

MS. MOORE: Yes.

MR. HAUTH: I believe Lewanda Miranda did that already.

MS. MOORE: Oh.

MR. HAUTH: So we’ll see if we can get that for you.

MS. MOORE: Yeah. Yeah.

MR. HAUTH: Art, do you have a question?

MR. ART STEVENSON: Yeah. Gretchen, thank you for participating today, and I do have a question. When the state statutes talk about full-time employment, here in the state of Oregon, we have a unique situation where we have vending assigned to cafeterias, snack bars, federal locations, state locations. And so I will give you an example. One of our cafeterias has four vending machines assigned to that location. Well, obviously, four vending machines does not and will never fit the criteria of full-time employment. And therefore, the Elected Committee voted in our last meeting that vending attached to cafeteria snack bars have to have a different kind of criteria to fit full-time employment because these people are spending more than 40 hours a week running their cafeterias, and the vending was attached to them to supplement their income.

And so as we go through--and by the way, I’ve had this discussion with Jesse Hartle at RSA. When we go through the process of making rules, the Elected Committee believes that we have to treat vending routes a little bit different than the cafeterias and snack bars because a lot of those locations, no matter how you look at it, it’s not going to be full-time employment. And so we should address that issue to make sure, you know, that full-time employment is being achieved, but that those cafeterias and snack bars aren’t being penalized, and we have to include the hours that they put in running their cafeterias. But obviously, they need to provide proper oversight of their subcontractors.

MR. HAUTH: Thanks, Art. Gretchen, I don’t know if you have any input on that right now or not, but…

MS. GUNN-MERRILL: Well, just briefly, the full-time employment requirement is for full-time employment. How you determine if, for example, that you say oh, the vending, it’s overarching as you as a blind manager being--working full-time with what you have, and meeting these certain criteria. And individual situations will be different, but you can’t add or take away from the statute. And so if you wanted to say all vending attached to cafeterias shall be subcontracted, that is something that you would not legally be allowed to do because that is in conflict with the statute that says that subcontracting is subject to all of these requirements and is at the discretion of the agency.

So--but you can say you work in a cafeteria and you have these four vending machines. That’s, you know, the overarching--are you still meeting the overarching full-time employment requirements? That’s what you all get to decide, other than the things that you have to have in there. You get to decide during these next several days what constitutes, you know, full-time employment for the purpose of the statement.

MR. HAUTH: Gretchen, thank you very much. I think before we get too many questions and get sideways on this, I’d like to go ahead and excuse you if you need to leave. And I appreciate your time and effort.

MR. ART STEVENSON: Talking about the rules.

MR. HAUTH: We’re going to go ahead and get…

MS. GUNN-MERRILL: I did--Randy, Randy, I just had a--excuse me, Chairman Hauth. I apologize for my informality.

MR. HAUTH: Go ahead.

MS. GUNN-MERRILL: Okay. But I did briefly just want to give you a couple of issues with the--or not issues, but discussion about rulemaking generally.

MR. HAUTH: Okay. Sure.

MS. GUNN-MERRILL: And I do appreciate that you all are cognizant of, you know, Oregon law regarding rulemaking and have been working with Eric on that. The overarching responsibility for the rulemaking is--lies with the agency. What you are like is--there is--there are formal groups called rule advisory committees, but there’s also something called collaborative rulemaking. Both of those are under the statute in Oregon. And you are a very unique public body in that you have your active participation requirement that, frankly, already exists and is--you’re doing that right now.

What is going on here is that you are almost--it’s like collaborative rulemaking where you’re trying to--you’re spending consensus-building time to result in final rules that are less--basically less subject to court challenge and more amenable for you guys to comply with them, and for the agency to comply with them. So--but as far as all of the formatting and the obligations of the rules and the timelines, and getting things published and making sure the appropriate meetings, all of that is the responsibility of the agency.

The other thing that I really wanted to mention is what I mentioned earlier, is that rules may not expand nor may they contract what is in the statute. You cannot add words that are not in the statutes, especially when the statute describes them a certain way. So you can’t redefine facility--vending facility manager because it’s a defined term.

An example in the rules would be--a couple examples are as we discussed, K through 12 schools are exempted. You couldn’t, by rule, say we’re no longer going to exempt them, they’re still obligated. You can’t do that because you don’t have authority under the rules. The same thing would be like, for example, the annual report that the agency has to require--is required to submit to the legislature. It says that they shall report annually. You can’t say, well, let’s just do it every two years when it’s a longer session. You can’t do that by rule, either. So that is something as you--every single rule that you’re looking at, you want to make sure, is this consistent with the statutory language? Am I trying to get more than what the statute allows, or am I taking away somebody else’s rights under the statute? And those are the two questions that you want to be asking yourself with everything that you’re doing along the way. So those are kind of the two overarching, just general rulemaking concepts to keep in mind.

And with that, I am done. And I appreciate, again, everyone, the time that you took listening to me. And if along the way, you have questions that you want to relay to Eric, again, if I can or can’t answer them, I will--I’ll try and do my best. Thank you.

MR. HAUTH: Yeah. Thank you very much, Gretchen.

MR. MORRIS: Thanks, Gretchen.

MS. MOORE: Thank you.

MS. JOHNSON: Thank you.

MR. HAUTH: Okay. I don’t know if there’s anybody on the line that just wanted to, for the record, identify themselves that didn’t get a chance to let us know you were here earlier. Okay. Nobody? All right. So Terry, I guess now we call upon you for your expertise in facilitation and technical support.

MR. TERRY SMITH: Okay. Well, I appreciate the chance to get to be back in Oregon and help you through this process. You are the fourth state in the last 14 months that I’ve been involved with in this process. Two of them--or one has been completed and been approved by RSA. One has completed the actual negotiations. And the third one, we’re just now starting with the review of the rules. So you are the fourth state that I have been--had the pleasure of getting to do this.

I do apologize, I don’t know what it is about Portland, but this is a true, honest statement. The plane landed at 9:35. I was at the front of the plane. The door opened, the air hit me, and I sneezed. And I’ve been sneezing ever since.

[Laughter.]

MS. MOORE: I have Claritin if you want it.

MR. TERRY SMITH: So I mean, it’s literally as soon as the door opened.

MS. HAWKINS: Yeah. Blame D.C. They’re the ones that gave us poor air quality.

MR. TERRY SMITH: So anyway, what I hope to do is to have a conversation about active participation and what it is and what it’s not, and how the process really should work. I first did this presentation in 2010. And Randy and Art were there. And it was the national conference that RSA sponsored. And we did some breakout sessions, and somebody wanted to do something on active participation. And so I was asked to do the presentation. And God, I had no idea what I was getting into, absolutely no idea.

[Laughter.]

And we had one state and--who came to the meeting, and the agency people were sitting on the right side of the room, and the vendors were sitting on the left side of the room. And you know, as I would do my presentation, they would start arguing back and forth about, “In my state, this is what happens.” And the state said, “No, that’s not what happens.” And then, you know, they would go back and forth. They were arguing and arguing and arguing. I had to, you know, calm them down a couple times. So I said, “Whew, I’m glad this is over.”

So I had to repeat the session. So I go back into the session, and I’ll be doggone if that same state did not come back for the second session. So from that, from that breakout session-- And that state was not Oregon, okay?

[Laughter.]

So out of that session, sort of grew the--you know, the active participation training that I’ve done. When Michigan State University got a contract--a grant, they got a grant from RSA to develop online training modules for new BEP staff, I wrote the one on active participation. When we did it on the Hadley webinar, I participated in that. And have been to many states where I’ve talked about active participation and how it works.

So I would like to start out, because everybody thinks they know everything there is to know about active participation. And I’ve got just eight quick questions that we’re going to ask. And we’re going to see, if I get my right notes. So true or false, the term “active participation” appears in the Randolph-Sheppard Act to describe the role of the Committee of Blind Vendors. True or false?

MR. GRUELICK: True.

MS. HAWKINS: That’s false.

MR. TERRY SMITH: True?

MR. MORRIS: False.

MR. TERRY SMITH: False?

UNKNOWN MALE: I think it’s false.

MR. TERRY SMITH: False. Okay. The term “active participation” is defined in the regulations, not the Act.

MR. ART STEVENSON: That’s right.

MR. TERRY SMITH: Okay. The next question, RSA has provided detailed policy directives on how active participation is to be implemented. True or false?

MULTIPLE VOICES: False.

MS. MOORE: False. That’s the problem.

MR. TERRY SMITH: Okay.

MR. HAUTH: Did you say “should have” or “did?”

MR. ART STEVENSON: No. They’re trying to, according to Jesse.

MR. TERRY SMITH: Active--good luck with that.

MR. ART STEVENSON: I know.

MR. TERRY SMITH: Active participation is a term limited to the Committee of Blind Vendors and does not include the vendors at large. True or false?

MR. MORRIS: True.

MS. JOHNSON: True.

MR. ART STEVENSON: False.

MS. MOORE: I don’t think that’s true.

MR. ART STEVENSON: Because we represent it.

MR. JACKSON: False.

MR. HAUTH: I think you’ll say true, but I think it’s false.

MR. TERRY SMITH: The active participation requirement in the law is now more than 70 years old and was passed in 1954. True or false?

MR. MORRIS: What was the previous answer?

MS. MOORE: Wait, we didn’t find out…

MR. ART STEVENSON: Well, in ’54… That’s false.

MR. TERRY SMITH: The regulations allow the Elected Committee of Blind Vendors to choose when to participate and when not to.

MR. HAUTH: False.

MR. ART STEVENSON: False.

MR. TERRY SMITH: And in the spirit of active participation, the state agency may defer to the committee on major administrative decisions. True or false?

MR. HAUTH: False.

MR. ART STEVENSON: False.

MS. MOORE: False.

MR. TERRY SMITH: The NCSAB and the two consumer groups once agreed on a definition of active participation. True or false?

MR. HAUTH: I think it’s true.

UNKNOWN MALE: True.

MR. MORRIS: I think it’s a rumor.

MR. ART STEVENSON: False.

MR. TERRY SMITH: You think it’s a rumor?

[Laughter.]

MR. ART STEVENSON: It’s false.

MR. TERRY SMITH: Okay. The word “active participation” does not show up anywhere in the Randolph-Sheppard Act. You will not find it.

MR. ALLEN: 395.14…

MR. TERRY SMITH: That’s not the Randolph-Sheppard Act.

MR. ART STEVENSON: No.

MR. TERRY SMITH: That’s not the Randolph-Sheppard Act.

MR. ART STEVENSON: That’s true, Terry.

MR. TERRY SMITH: 107(d) of the Randolph-Sheppard Act does not mention the word “active participation.”

MR. ART STEVENSON: True.

MR. TERRY SMITH: It says “participation.” It doesn’t say “active participation.” So when the Department of Education, based on all the history and everything that we--on the legislative history and the intent of Congress, it was clear that Congress intended for the blind vendors to play an integral role in the management of the program. So when they vote the regulations, they put--they added the word “active” as a way of emphasizing the importance and the role that the committee played in major administrative decisions.

MR. JACKSON: They both mean participate. Right?

MR. TERRY SMITH: Yeah. Well, one just means it just a little bit more.

MR. ART STEVENSON: It enhances.

MR. TERRY SMITH: Yeah.

MR. ART STEVENSON: It enhances.

MR. TERRY SMITH: Yeah.

MR. ART STEVENSON: It’s a modifier.

MR. TERRY SMITH: So the term is not defined in the Randolph-Sheppard Act, I mean--or in the regulations. There is no definition.

MR. ART STEVENSON: True.

MR. TERRY SMITH: It tells when you will actively participate, but it really doesn’t say what “actively participate” means. So you can’t go to the regulations and say, this is what--this is the definition of active participation. And I disagree with Gretchen, who said the definition of active participation is in the law. It’s not. It’s the same thing as in the federal law that tells you when you will actively participate.

MR. ART STEVENSON: Mm hm.

MR. TERRY SMITH: But it doesn’t say what active participation is. RSA has never issued guidance on what active participation really means.

MR. ART STEVENSON: True.

MR. TERRY SMITH: And so we came very, very close, and I think it was 2001 or 2002, RSA put together a task force. And at the time, I was the state agency Director in Tennessee, and I represented NCSAB, which is the National Council of State Agencies for the Blind, on that taskforce. And RSVA was on the taskforce. NABM was on the taskforce. And then you had--there was one other person from NCSAB on it. And several people from RSA were on that taskforce. And the idea was to write a policy directive that would give states the direction on how to implement active participation.

And we came up with the national definition of active participation, which is--you know, which we will talk about in a minute. And a minute ago, I said, did NCSAB and the two consumer groups agree on a definition? They most definitely did. The definition that’s being used by many, many states who have put a definition in their rules, many of them are using the definition that was agreed to by the consumer groups and RSA back then.

The problem with the policy directive was that it actually went--it used an example, and it went too far. And one of the states said if you implement this, we will sue the Department of Education. And the Department of Education, rather than tweaking it and fixing it, got scared and just dropped the whole thing. When Dan Frye was at the RSA, we tried to raise the issue again, and went in and fixed it. Told him, you know, the problems with it, fixed it. And Education did not have any appetite at that point to go back and address it again. When Dee Jones and Jesse Hartle were there, I mean, I couldn’t make it any easier on them. I said, I will write it for you. You’ve just got to send it out. And you know, again, there was no real appetite to take it on. So…

MR. ART STEVENSON: The powers that be.

MR. TERRY SMITH: So I--you know, and I don’t see RSA taking that on, you know, right now any time soon.

MS. MOORE: Was it Oregon who was--who made that threat?

MR. TERRY SMITH: No, it was not Oregon.

MR. ART STEVENSON: What state was it, Terry? Because I was there and I forgot.

MR. TERRY SMITH: Texas. It was Texas.

MR. ART STEVENSON: Yeah. Yeah. Michael...

MR. TERRY SMITH: No, no.

MR. ART STEVENSON: Peter Nolan.

MR. TERRY SMITH: Yeah.

MR. ART STEVENSON: Peter Nolan.

MR. TERRY SMITH: No. So anyway, they--and I’ll be honest with you. At the time, you know, it did go too far. I mean, you know, they were almost giving the committee veto power, and that was never the intent.

MR. ART STEVENSON: No.

MR. TERRY SMITH: And so like I said, rather than going back and tweaking it, they got scared and just dropped the whole thing. And that was…

MR. ART STEVENSON: That was a shame.

MR. TERRY SMITH: That was a shame. The term active participation is limited to the Committee of Blind Vendors. So you know, there does not have to be process whereby--you know, and I get this all the time, that you know, all the vendors get to participate. You know, all the vendors have to vote. All--you know, that’s not true. You, as Committee members, are elected to represent the vendors. And you are the only ones who are--that the agency has to allow to actively participate. There’s nothing wrong with having an open meeting and having other people there to observe and then to seek their comments from time to time. There’s nothing wrong with that whatsoever. But it’s the Committee of Blind Vendors that ultimately is the one that has to participate in the major administrative decisions. And the agency cannot just defer to the committee. Every one of them said that, so that wasn’t any problem.

So anyway, those are just some of the--what I call the myths of active participation that, you know, a lot of people get confused about. And so states are left to their--sort of their own devices out there on how to make it work.

I will say this. If I ask you, what are the best programs in the country? Forget active--but what are the best programs in the country? You’re probably going to say Tennessee,--

MS. MOORE: Hawaii.

MR. TERRY SMITH: --Alabama. You’re going to say Florida. You’re going to say Illinois.

MS. MOORE: Illinois.

MR. TERRY SMITH: Those are the ones that just quickly come to mind. But if you say, what states have the best active participation? You’re going to say, well, Tennessee, Alabama, and Florida, and Illinois. It’s not a coincidence that states who have-- Hawaii’s got a good program that, you know, there’s--they’re sort of out there on their own. They’re so unique.

MR. MORRIS: They are out there.

MR. TERRY SMITH: Yeah. So it’s--you know, it’s just not a coincidence. And that’s why it’s so important.

The place to start on active participation is, what does the law actually say? And the law says, and if you look at the regulations, 34 395.14, it tells you what you are--by law have to do. And the first thing is, you are to actively participate with the state licensing agency in major administrative decisions and policies, development--program development decisions affecting the overall administration of the state’s vending facility program. So that means that any major decision that’s going to affect the overall program, you are to participate in that decision, okay? So you know, we’ll get into what some more examples of that would be. The most obvious example is what you’re doing here, developing rules and regulations. So you know, you are to participate in all major administrative decisions.

You’re to participate in transmitting grievances, blind vendor grievances, to the agency. That does not mean that a blind vendor has to go to the committee to file a formal grievance. They don’t have to do that. This is for you, more of an informal process for if there are vendors who have issues and you will transmit those and advocate for them with the agency.

Now, some states will allow you to actually file your grievance with the committee, and the committee will send it to the agency, which is fine. But you know, there’s nothing that says that you have to be involved in the formal grievance process. And you know, some states treat that differently.

The third thing is, you have to be involved in the development or promotion and transfer process. And so that promotion and transfer process, you know, which you guys are familiar with, whether it be--you know, new vending facility assignments is the best way to say it. You have to be involved in the development of that. Now, it doesn’t say that you have to be involved in the actual decisions. Most states have a gone to a system in where the committee and the agency collaborate on those decisions. But you know, you’ve got the flexibility to set that up the way you want to.

The other thing you have to be involved in is developing training programs for your blind vendors. So you know, your annual conferences, your annual training conferences is one example of where you are involved in developing training for your vendors, as well as have input into the training for new blind vendors.

When I talk about active participation, I like to talk about what it’s not first. And it’s not advisory, okay? That’s one of my pet peeves. I hear somebody say that the Committee of Blind Vendors is just advisory. You can spend all day long going through the Randolph-Sheppard Act, and you will never find the word advisory. It’s not in there. State government is used to advisory councils. You have--you know, that’s just--every department has bunches of them. And that’s what they are, they’re advisory councils. But the federal law does not set you up as an advisory council. It sets you up to actively participate in the decision.

It’s also not simply an opportunity to comment. And this is another one of my pet peeves, when an agency will say--you know, when they will send a new policy to a committee, and they’ll say you have two weeks to comment and we’ll consider your comments. That’s not active participation. Simply having an opportunity to comment is not active participation.

On the flipside, it is not veto power. The committee does not have veto power over the agency, okay. So if the agency--you just can’t say, “Nope, you’re not going to do that,” and the agency can’t do it. You do not have veto power over the agency.

MR. GRUELICK: Terry?

MR. TERRY SMITH: Yes.

MR. GRUELICK: Are you speaking about the federal Randolph Sheppard or the Oregon…?

MR. TERRY SMITH: Well, it doesn’t--you’re covered under the federal Randolph Sheppard, so--and you know, what I’m talking about is, you know, my interpretation and what best practices are, and you know, how to make it work effectively. And so regardless of what the--you know, whether you’re federal or state or whatever, the requirements for active participation are the same no matter what.

So what is active participation? Active participation is an ongoing process of information sharing. There has to be information going back and forth so that decisions can be made. You can’t make--you can’t participate in decisions if you don’t have information. And the agency can’t make final decisions if they’re not getting information from you on how the committee feels. It’s ongoing information sharing going back and forth. It’s discussion. You’ve got to sit down and you’ve got to talk about these things. And you know, you discuss the issues. And you get to, you know, again, you’re exchanging information.

It’s good-faith negotiation, and that’s really what it is. There’s give and take when you sit down, and you’ll see hopefully over the next four days, there’s going to be give and take. And when you leave here on Wednesday, there’s going to be things in the rules that you’re not going to be happy with, both sides. If it works the way it should work, both sides are going to have things in the rules that they don’t necessarily agree with. And there are things in the Tennessee rules to this day that I don’t like. But you know, in the process of negotiating those rules over time, you give and take. And so--because the goal was to develop a package that we could all agree with, so you give and you take. And I get what I want here, and you get what you want over there. It’s negotiation. It’s joint decision-making. And that’s what participation means. You are jointly making the decisions that affect the overall management of the program.

So what are what we would call major administrative decisions? Major--program rules, that’s what we’re talking about here today. Actually, that is the obvious major administrative decision. Policies and procedures. You know, a lot of times, a lot of states will have their rules and regulations which aren’t as detailed, and then they develop policies to sort of go into more detail on what those rules and regulations say. So those policies are subject to--are major administrative decisions. Budgeting and how you’re going to spend the money, that’s a major administrative decision. Nothing affects the overall administration of the program more than that.

When I was the-- And then another thing. I get this question a lot. What about hiring staff? Is that a major administrative decision? You know, and I always looked at it--and this is the way I did it in Tennessee. If the person had statewide responsibilities and they were going to affect the overall operation of the program, then I considered that to be subject to active participation. If I was hiring a secretary or a consultant in a local area, then you know, we didn’t necessarily consider that to be active participation. So obviously, there’s nothing that affects the program more than hiring somebody that--your BEP Director. I mean, you know, that’s something that really affects the administration of the program. So you know, I think the committee should be--at least be involved in that process to some extent.

So as the director, why was I so big on active participation? And the reason was, to me, active participation acted as an insurance policy for me

because-- And Gretchen said it herself. When you go through the collaborative rulemaking process, they’re a lot harder to challenge in court. The same is true if--you know, forget the court, but the same is true in grievances and things like that. I can tell you, every fair hearing I ever had, the first person we called to testify was a committee person and say, did you actively participate in the development of this rule that we enforced? And they’d have to say yes, and we’d excuse them, and--because, you know, that’s all we have--the only question we could ask. And so, you know, the rule that we’re-- We hadn’t violated the rule. We were enforcing the rule. And so you know, that is an insurance policy for me.

When we--we did a lot of controversial things in Tennessee. You know, Randy talked about how the program grew and you know, it’s because we were aggressive and we took chances. And you know, but every time we did that, I had the committee vote because I wasn’t going to be caught out there on that limb by myself.

And so for example, the commissaries, we had four inmate commissaries for years. We had four inmate commissaries for years. We said there’s 90 more we could get. And so we--then the committee wanted us to you, you know, go get them. And I said okay, we’re going to go get them. This is--but I want you to vote on record, you know, that that’s what you want me to do because this is the danger. When we do this, the sheriffs are going to go try to get exempt from the law. And if they get exempt from the law, we’re going to lose our four biggest facilities. So now, I’m willing to gamble those four facilities if you’re willing to gamble those four facilities. So you know, they voted to do it. And now there are 40-some-odd commissaries. But the sheriffs did exactly what I said. They tried to get exempt twice. And you know, our blind vendors were able to-- But you know, again, it was an insurance policy for me that, you know, I wasn’t going to say, hey, the committee said do this, you know. I just did what they wanted me to do.

You know, another reason is that committees can file grievances. You know, if you’re not allowed to actively participate, you can file a grievance. Now, there is some question about, does the committee have standing to file a grievance? And I think that’s a silly debate because it says any blind vendor can file a grievance. So you know, it doesn’t necessarily mean that you can file--that the committee can file a grievance, but every member of the committee can file a grievance. So it’s a silly debate, in my opinion, as to whether or not the committee can file a grievance. You as individual members of the committee can certainly file grievances if you’re not allowed to actively participate. So as a state agency director, I didn’t want to waste my time in those kinds of hearings.

You know, you can talk about what the law says. You can talk about what the regulations say. You can talk about what your rules are going to say. You really cannot legislate true active participation. I don’t care what your rules say. You’re really not going to be able to put anything down in writing that’s going to do--that’s going to ensure active participation. And I tell people all the time, active participation is a mindset. It’s just how you think about things. It’s how--you know, it’s how you approach things. You just--you know, if you’re in that frame of thinking, that you know, then the process works. If you’re looking at what the letter of the law says and you’re just interested in complying, and you know, then you know, it’s not going to work.

And it’s a mindset on both sides, okay? Both sides have to come to the table with a mindset that, you know, we’re going to be collaborative and we’re going to make it work. And at the end of the day, we’re going to try to have something that we’re both proud of.

What does it take to have--to be successful at active participation? It takes a commitment to the process. There has to be a true commitment to active participation by both sides. It takes open communication. We talked about open communication. We talked about the exchange of information. We talked about the discussion. There has to be open communication for it to be successful.

Here’s one of the hard ones. There has to be trust. You know, when you sit down in a room, you have to establish trust, and that you--that everybody’s got the best interests of the program at heart and that you believe that the other person is going--you know, is going to do what they think is best for the program, and you trust them to do that.

It also takes flexibility. You know, you can’t--it’s not my way or no way. That’s not active participation. And I’m talking about, you know, committees are as bad as agencies on that, you know, that this is the way it’s going to be and we’re not going to budge. And so that’s not being very flexible. And if you’re not flexible, then active participation will not work.

Also key to active participation is follow-through. What happens after we leave here? That’s vitally important. And you know, there needs to be follow-through, and then that’s what develops the trust of--you know, that I talked about earlier that was so important.

So I talked about earlier that there was definition, that when we were developing the policy guides, it was not the definition that was challenged by the state of Texas. That was not what was challenged by the state of Texas. But the definition that was agreed to, and it’s called the Tennessee definition because Tennessee was the first one to put the definition of active participation in their regulations, is an ongoing process of negotiations between the state licensing agency and the committee to achieve joint planning and approval of program policies, standards, and procedures affecting the overall operation of a vending facility’s program prior to their implementation by the agency. “The implementation of agreed-upon policy standards and procedures affecting the overall operation of the vending facility program shall be subject to review by the committee. It is understood that the agency bears final authority and responsibility for the administration and operation of the vending facility’s program, including the assurance of continuing active participation with the committee.”

RSA is going to require, when your rules go up, they’re going to require that that statement in there that the agency has final authority be in there. That’s just something that has to be there. And so--but you know, what that means, you know, it means different things to different people. You know, I tell people, never in 28 years as the Director in Tennessee did I ever have to exert final authority, because we kept working at it, we kept working at it, and we kept working at it. The only time you’d really have to exercise final authority is if you’ve got a deadline and a decision has to be made. And we’ve got a deadline now on this, and a decision is going to have to be made. So you know, we’re in a situation where, you know, the agency may have to exert final authority if we can’t achieve agreement.

But I use the example, you know, if you’re doing a budget, and the state has to provide--and Dacia has to turn in a budget, and you know, it’s not something that you can wait until you achieve consensus. You can talk, you can discuss it, you want to put this much into equipment and she’s only going to put that much or something at that-- At some point, she’s got to move forward because, you know, the Governor is not going to understand why she hasn’t presented a budget. So you know, in those kinds of cases, then the agency needs to bear, you know, the final authority. And she has--she’s not only allowed, she’s required to move forward, you know, with that decision.

But the way I describe it to people is, you know, going back to sort of what we were talking about, the major administrative decisions. I describe it to people as to say that it’s up to the agency and the committee to set the framework for how the program’s going to be operated. And then the agency has the authority to--the responsibility to operate the program in accordance with that framework.

So if Randy wants a vending machine, that decision does not have to go to the Committee of Blind Vendors. Now, what the Committee of Blind Vendors should have done was participate in the development of a budget that says, you know, we’re going to spend this amount of money on equipment, and then it’s up to the agency to, you know, try to stay within that budget. But you know, every minute decision doesn’t go to the committee. It’s major administrative decisions that affect the overall operation of the program. And Randy getting one vending machine does not affect the overall operation of the program. I guess you could argue that it could, but--depending on your budget, but…

MR. HAUTH: Okay. Terry, let me just say something real quick. So I think the analogy you made about the agency and the committee being like-minded or one mind kind of takes away the--in my opinion, the hammer of ultimate authority. Right? You said in 29 years, you never, ever used it. I think there’s some states that use it as a tool or as a hammer. So I think if we can get to that point where we can work like-minded, that will certainly take us light years ahead through that. So I just wanted to mention that, so…

MR. TERRY SMITH: Yeah. And I agree. I think if you sit down and the first thing you say is, I’ve got final authority-- I’m not saying this is what Dacia

or--I’m not talking about-- But if you sit down and the first thing you say, I want to hear what you’ve got to say, but I’ve got final authority, you kill your active participation.

MR. HAUTH: Yeah.

MR. TERRY SMITH: I mean, there’s--you know, there’s no sense going any further. So you know, yes, that’s there, but it shouldn’t be used as a hammer or a club. It--you know, it should be used as a last resort when you just can’t get anything, you know, resolved.

MR. ART STEVENSON: Terry?

MR. TERRY SMITH: Yeah.

MR. ART STEVENSON: And that--I think the key there is having a relationship where both the Elected Committee and the state licensing agency gives full consideration to, you know, all the options, the pros and the cons, what the law says, and then jointly comes up with the best decision for the program. And then you got true active participation. And that’s how--you probably never had used final authority because in the process, you worked with the Elected Committee, just like you said, hey, we’re going to go out to the commissaries, but you’re going to buy all in because you’re going to vote that you want to do it, so then you can’t bitch about it if--things happen.

MR. HAUTH: And I didn’t want to take away from anything. Go ahead and finish your…

MR. TERRY SMITH: That was pretty much what I had to say.

MR. HAUTH: Okay.

MR. TERRY SMITH: And you know, that’s sort of the overview of--or Terry Smith’s view of the world as it relates to active participation. I realize that, you know, if--you know, I’m in a unique position. And matter of fact, I’m just--I’m one of the few people in the country that is in this position in that I was a state Director for 28 years, so I’ve got the agency perspective. I know what it’s like. Now for the last five-and-a-half years, I worked for the consumer side, so I know the consumer side, and I talk to vendors every single day of the week about stuff. So you know, I’ve got the perspective of both the agency side and the vendor side. And so you know, I think we’re--you know, we’re going to try to see if we can’t make this process work and bring both sides together. So I don’t…

MR. HAUTH: Yeah. I think if we can--like I said earlier, I think if we can listen to each other’s perspective, that will really help. And I don’t think simply just listening is active participation. Clearly, we have to listen to each other. But just listening, you know, and not necessarily having a meaningful outcome or discussion through that. That’s one thing that I believe has been a challenge in Oregon that we can move forward through, I believe, and work on. So I just wanted to say that. You know, and I think you’ve shared your perspective, and I believe your perspective has been a successful perspective.

You know, Raven Pulliam, the Illinois director, when John Gordon was in that position as the chair, he said look, I’m the mom and John’s the dad, and we work together on stuff. And if we don’t, it’s just going to cause us all kinds of trouble.

Ray Dennis, successful director in Alabama, same thing. He said, listen, if it’s not against the law and if we can make it happen, by gosh, I’m going to make it happen, and similar to what you do, rely on the Elected Committee to help--you know, help us both go in that direction.

I went to--on Monday, I went to a diversity and inclusion luncheon. And one thing that I took from it was diversity is being invited to the dance. Inclusion is being able to dance and dance to your song. So I think, as we move forward, the inclusion of the Licensed Blind Vendors and the Elected Committee and the agency will help us all collaboratively work through this together. So I just wanted to say a few things like that.

MR. TERRY SMITH: Just real quickly, I don’t want to correct you, but I am. Raven was the daddy and…

MR. HAUTH: Well, I thought John looked like the mom.

MR. TERRY SMITH: And John was the mama. And Raven would say, when mama’s happy, everybody’s happy.

MR. HAUTH: Yeah.

MR. TERRY SMITH: Okay. You want to take a quick break? Is that okay?

MR. HAUTH: Yeah. Sure. And before we do that, so how long are we going today? What’s kind of projected for, Eric? You know, so we can kind of pencil in breaks and lunch and…

MR. MORRIS: I was thinking like eight o’clock.

[Laughter.]

MR. HAUTH: By gosh, we’re past that by two hours and 44 minutes.

MR. MORRIS: Yeah. I think we were projected to have some public comment around four o’clock this afternoon. Then after that, it’s going to be, you know, the Elected Committee’s pleasure to either adjourn or wrap it up for the day, or push on.

MR. HAUTH: Okay. Well, so maybe we take lunch at like 12:00. And we’ll take a break now and a break later. So let’s--what, 10-minute break? What do you guys think?

MR. ART STEVENSON: Ten minutes. Yeah, ten. Fifteen, Mr. Chair.

MR. HAUTH: Fifteen? Fifteen minutes. We’ve got a smoker in the group.

(off the record)

MR. HAUTH: …Alabama program. He’ll be joining us by phone. And he also wants to kind of piggyback on what Terry had shared of active participation. And Alabama has been a successful program, and Michael is a leader in the Randolph-Sheppard Program as a blind vendor and chairperson and as an advocate. So in just a minute, he’ll share how active participation has worked in their state as well.

Another thing I did want to mention as we move forward through this, I had originally thought about maybe trying to talk about, you know, avoiding landmines or booby traps, kind of a sharing or a venting of some of the previous concerns. But I really would like to avoid that at this time. I believe when we get into discussion--because I think this is going really well, and I think as we get into discussions, if there’s concerns or scenarios or things that you’ve been impacted by that you believe are important-- Please mute your phone. You guys on the line, please mute your phone. There’s some background noise.

MR. TALLEY: And good morning, Randy, Michael Talley here.

MR. HAUTH: Hey, Michael. Good morning. Good morning. And I’ll turn you on in just one second here.

MR. TALLEY: No problem.

MR. HAUTH: But anyway,--

MR. TALLEY: Go ahead. I just wanted to let you know I was on the line.

MR. HAUTH: --so if you guys will allow me, we’ll just move past that and we’ll incorporate that as we develop ground rules because I believe it will be a more productive way to deal with those. So with that being said, Michael Talley, thanks for joining in. I know Art Stevenson, Vice Chair Stevenson reached out to you and asked you to participate, and I welcome your participation as well.

Terry just finished up with his active participation overview and training. And so if you wouldn’t mind doing--you know, doing your presentation that would be well-welcomed.

MR. TERRY SMITH: So Michael, there--we set ground rules to start with. And one of the ground rules is, you can’t say “roll tide.”

MR. TALLEY: I don’t know about that one. I don’t know if I can agree. Hang on just one second, guys. I’m spotting my driver. Just one second.

MS. MOORE: You can’t say what?

MR. TERRY SMITH: Roll tide.

MR. HAUTH: Roll tide. He’s from Alabama. He’s a big football guy.

MS. MOORE: Oh. Oh.

MR. HAUTH: They don’t have anything else to do in Alabama other than, you know, talk about football, so…

MR. TALLEY: Okay.

MR. HAUTH: Uh-uh, uh-oh.

MR. TALLEY: I’m back with you.

MR. HAUTH: Hey Michael, you bet. Have the floor.

MR. TALLEY: Hey, Randy. Okay. So I just wanted to say that, you know, I’m glad that y’all are having these talks and discussions. I think that anything that you can do to strengthen the program to help, to help the SLA, to help the blind vendors, and I think that’s a wonderful thing. I just--I did get the definition and I read it. And it did strike me as it was fair to both sides. And it wasn’t even saying that it was too demanding or out of bounds on the side of the SLA. But also, to me, it seemed like it would definitely help the--it would help with the relationship between the SLA and the vendors.

I think that--it reminded me of our rule a lot. And I know that over the last 5, 10 years, that active participation has been so important in Alabama, and it’s really helped us avoid grievances and concerns and issues. And we ever--we’ve had one grievance in the last three years. We probably had two in the last five years. And one of those actually made us go back and redo our rules. And we just did that. We spent three years on our rules from December of ’13 to December of ’16.

But the nice thing is, is once we got our rules in place and we sent them up to D.C., they were--because of the active participation, we were able to get them approved like in no time, within weeks, they signed off on them and sent them back. It took us longer to get them approved in Alabama than it did up in Washington. So that’s just a--one of the benefits of having a healthy active participation.

Another very important thing about active participation is it just builds a strong foundation for a program. And what--you can’t build a house on sand or dirt or clay. You’ve got to build it on a strong foundation. And I believe that once that--trust is earned, it’s not given. And so once both sides are doing their part to work together as a team, clearly embodying that idea of active participation, then it just makes both sides’ lives a lot easier. You have less frustrations, less arguments, less heated conversations. And it takes both sides coming to the table and saying--and meeting in the middle. We look at it this way in Alabama. It’s not our place to micromanage the program, but it is our place to constantly work to make it stronger and better. And so we do that by obviously advising and helping, but then trusting in the SLA, but they’ve had to earn that. And we still have to keep them accountable. We still have to make sure that they’re doing their part, just as they make sure we’re following the rules and regs and doing our part.

So what we do is we bring concerns to them and they--it works out because they listen to us. They may not like what we’re saying, but they listen to us. And then we try to come to a healthy middle ground. But active participation for us is just--it’s so critical. And one of the things that I love--and I may have said this before, and if I’m repeating myself, I apologize, but is that even if there’s something that’s not addressed in the rules, they will come to our chair and vice chair and say--

Hang on just one second.

MR. MORRIS: Is that what they say?

UNKNOWN MALE: Yeah.

(off the record)

MR. HAUTH: Obviously, Michael’s--

MR. TALLEY: So…

MR. HAUTH: --working, too, so bear with him.

MR. TALLEY: Okay. So anyway, so we literally have a rule that says, at the end of the day, the SLA has the final authority. They have the final say-so. But if there is a rule that does not specifically address, they’ll come to the chairman and vice chairman, and at least get our input, get our advice. And what that does is it helps where it doesn’t look like shady things are going on or the SLA’s being secretive about stuff. So we truly learned to trust them when they come to us and say, all right, guys, this is the situation, they won’t give us any names, but they kind of give us a scenario and say, what do y’all think? And we literally are able to say hey, you know, I might consider this, you might want to consider that. And then they go from there, obviously having final authority.

So active participation, that kind of stuff just makes it look--it does--for the SLA, it makes it look like they’re open, they’re not trying to do anything behind closed doors. But then for us, it’s a trust and it makes our program stronger. So I hope I’m not repeating myself. I’ll stop at that and answer any questions, but I really like that definition that was emailed to me. It did remind me of ours. I think that the SLA giving financial reports and listening and having a healthy dialogue is just crucial. And then from there, once you have those in place and honesty and working together, healthy communication, that’s where a program starts to grow. And especially having good bylaws is so key. We just suggested one of our bylaws.

So even though we have really good rules and really good bylaws, we’re constantly looking to make them stronger. And I would just encourage you to do that, too. Continue working on those and working together and meeting in the middle. And not arguing, but just having healthy conversation. And it’s not always going to be on the same page. The SLA and vendors are not always going to be on the same page, but at least you can try to get as close to an agreement as you can, and so--and that--I hope that helps.

MR. HAUTH: Yeah. Michael, thank you so much for joining us today. I want to follow up on what Terry Smith said earlier as follow-through. So you know, how many times have we sat down and talked about something and it’s gone the way of the buffalo? We need to really work hard on this, both the agency and the Elected Committee and managers to make sure that what we’re doing here today stands the test of time, and active participation here in Oregon continues to grow. And so…

MR. TALLEY: Absolutely. And let me say this, too. It doesn’t do any good if one side or the other hears them but then never acts on it, and you’re constantly getting input or suggestions, and then one side doesn’t do it or doesn’t do anything with it. Sometimes SLA comes to us and says hey--they literally just did this just a few weeks ago. Hey, y’all may want to look at tweaking this. Well, if we never act upon it, it’s not going to make our program stronger, and vice versa. If we come to SLA and say, we’d like for y’all to, you know, look at the way you handle vacation checks or whatever, and if they never do anything with it, it’s not going to make the program stronger.

So it’s great to be able to talk and to hear each other out. It’s another thing to follow through with it and to-- And another thing, too, is once you give someone your word, so whether that’s the EC members giving their word, you’ve got to stick to it. If it’s SLA that gives you your word and says hey, we’re committed to doing this, you’ve got to stick to it. And that way, both sides are working together toward the same goal. We’re all in this together. The SLA wouldn’t have a job if it weren’t for this program. And at the same time, we need the SLA to do their part, too. So we both need each other. At the end of the day, we’re all working to have a better, stronger program, and it makes each other’s lives easier when we’re--

MR. HAUTH: Yeah.

MR. TALLEY: --working together toward the same goal.

MR. HAUTH: It’s like a marriage.

MR. ART STEVENSON: Chair Hauth?

MR. TALLEY: It really is.

MR. HAUTH: And go ahead.

MR. ART STEVENSON: Michael, yeah, thank you for participating today. And one of the reasons that you probably like that so well is because your ex-Director, Ray Dennis, and your mentor and past chair of the Elected Committee, Charlie Carroll, helped us formulate that definition because they wanted--

MR. TALLEY: Yes.

MR. ART STEVENSON: --Oregon to have what Alabama had. And so thank you for that. We really do appreciate it. And hopefully, it is going to be extremely helpful as we move forward here in the Oregon vending program. Thank you, Michael.

MR. HAUTH: Thanks again, Michael. We’re going to go ahead…

MR. TALLEY: Absolutely. And if there’s anything else I can do, y’all please feel free that--you know, and you know how to get in touch with me, you know I’ll be glad to help in any way that I can. And I’m just proud you guys are having these discussions, and I wish you the very best of luck.

MR. HAUTH: Thank you very much, Michael. Enjoy your day, bud.

MR. TALLEY: Thank you. Have a good day. Bye.

MR. HAUTH: So you know, we’ve got a lot of work ahead of us. So I think to make sure this successfully rolls out over the next four-and-a-half days, we need to build ground rules that we can all live with and that are going to help us get the job done in a consensus or collaborative model. So I do want to--I know we haven’t really opened it up for discussion, but through this process, if any of you on the line have suggestion or ideas, or input to consider, as we work through these, please ask to be recognized and I’ll call on you. So Terry, back at ya.

MR. TERRY SMITH: Okay. Every time I go into one of these sessions like this or I do a strategic plan, or anything like that, I have what I call rules of engagement. And Randy and Art may remember those when we were up here 10 years ago or whenever that was.

MR. ART STEVENSON: Still got a copy of it, Terry.

MR. TERRY SMITH: So I want to go over those rules of engagement and I want, you know, everybody’s buy-in that you know, that that is the way they’re going to conduct themselves over the next four-and-a-half days. And there are six very basic things that I ask of you, and I want you to commit to doing.

The first thing is that, you know, let’s respect confidentiality. I don’t want to be hearing about, well, we need this rule because this--you know, what this vendor over--what Randy over here did and how he messed that facility up and this kind of stuff. Let’s keep confident--keep individuals and their situations confidential. Okay? So again, I don’t want to have--you know, we don’t need to be talking about problems that vendor X had or vendor Y. I can honestly tell you, you know, it’s a running joke in Tennessee and a lot of states that there are a lot of rules that you could put a vendor’s name beside that are in there because of certain vendors, you know, and--but you know, we don’t want to be talking about those, you know, if there--you know, if there are reasons that we need to, you know, address the issues, we can. But we don’t need to be talking…

Second thing is, you know, I expect people to be honest. You know, be truthful, be honest. And you know, in the comments that you’re making, in the feedback you’re offering, you know, let’s be honest with the comments that we’re making.

Third thing is, and this is vitally important, it’s respect. You know, we’ve got folks here on a Saturday when they could be someplace else doing something a lot more fun than this, and they’re here because they believe in the program. And that’s on both sides, the agency and the committee. Everybody here is because they want to see the program improve. They want to see the program grow. And so we need to treat each other with absolute and total respect. Because, you know, if we don’t, then we will accomplish absolutely nothing.

Keep your comments, the fourth one, is non-personal. Don’t attack. I don’t want Eric attacking Art personally. I don’t want Art attacking Dacia personally. Again, we’re talking about the issues. And so we don’t want to have any personal comments or--you know, let’s keep it, you know, on the issues.

The other thing is, make your remarks constructive. You know, let’s not be critical. Let’s not, you know, talk about all the things around the world. Let’s keep our things constructive. Our remarks need to be, how can we get to where we want to get at the end? So let’s be constructive in our comments.

And also, keep your comments focused, focused on the topic. You know, I don’t want to be talking about the priority and somebody take us off down the active participation rabbit hole. You know, we’re talking about priority. Let’s keep the comments about priority.

And the other thing is, that’s related to that is, you know, we don’t need to spend a lot of time talking about what happened ten years ago, five years ago, or five months ago. We’re here today. And I’m not saying forget the past. The past gives you perspective on--you know, on things, and you need to learn from the past. So I’m not saying forget the past. Let’s just not rehash the past over the next four-and-a-half days.

So let’s keep our remarks focused and keep them on the here and now. So those are six basic principles that I ask that we abide by over the next four-and-a-half days. Is there any other that you think we ought to add to that list?

MR. HAUTH: Hey, Terry, let me share with the group, I did send Terry a couple of suggestive ideas. And of course, we want to hear from you as well, but a couple of things that I’ve been contacted by some managers, I know that the Elected Committee is represented by the AG’s office. However, I’ve been contacted by some managers that believe that once we get through this process, it very well may be needed to have legal counsel review these for the managers, not necessarily on behalf of the BECC, but to provide an overview and a different perspective. So I know that was one thing that was brought to my attention as well-- any feedback.

Also, any feedback that the AG provides to the agency relative to these rules, I believe that needs to be an open and transparent process and make sure that that information is shared, you know, to the Board and managers. Any items that may be of contention that come up and we just can’t seem to get the answer for right today, I believe need to be set aside or in a parking lot, similar to what happened during the consensus model so that we can think through them and find out, you know, bottom line, we want to find fixes to these. Right? We want to make this a successful endeavor. So--and again, how are we going to get that consensus there? Maybe the agency has a different perspective than we have or vice-versa. So how are we going to get that? You know, do we let one person hold up the process? You know, so I’d like to figure out how we’re going to work around that majority rule or consensus, or however that will work.

Last but not least, I think when we get into discussions, I think issues of concern need to also be fact-based. I don’t think just comments can be made that can substantiate-- Let’s say, for instance, “Oh, subcontracting will help you guys as licensed blind vendors earn more money.” Well, you know, where’s the data behind that? Or vice versa, if the managers say, “No, I make more money this way,” where’s the data behind that? So I hope that as we move forward, we could keep focused on that. Again, I think getting the fix is what we’re all about. And again, being respectful and hearing from everybody. And so those are my two cents’ worth.

And so I’d like to hear from the Board members right at this point in time to see if you guys have any ideas or suggestions as far as ground rules.

MR. DERRICK STEVENSON: This is Derrick.

MR. HAUTH: Derrick.

MR. DERRICK STEVENSON: Yeah. Now, one of my main concerns is the final authority and whether or not it’s going to be exercised in this process, meaning, you know, if we all come to an agreement, you know, Eric agrees and we agree, is that going to be what’s going to be done? Or is it going to be--the final authority going to come later after we went through the process and there’s no more time for discussion. Does that make sense?

MR. TERRY SMITH: Can I address that? Let me address that. And I want to talk about--a little bit about the process and how I envision it working, and then we can see if, you know, Randy and Dacia agree with that process. Before I do that, I want to hear everybody say yes. Are you willing to abide by the six rules of engagement? Yes?

MULTIPLE VOICES: Yes.

MR. TERRY SMITH: Okay.

MR. DERRICK STEVENSON: Yes.

MR. TERRY SMITH: Anybody no? Okay.

MR. ART STEVENSON: They can’t, Terry. It’s in our bylaws that we have to--

MR. TERRY SMITH: Yeah, okay.

MR. ART STEVENSON: --engage in the rules of engagement.

MR. TERRY SMITH: So okay, good.

MR. ART STEVENSON: On the Elected Committee.

MR. TERRY SMITH: So with that said, this is the way I see the process working. Derrick, I think final authority doesn’t mean what you said it--the way you characterized it. The goal is that we’re going to go through a process over four-and-a-half days, and if it goes the way we hope it goes, in an ideal, perfect world, we will leave here on Wednesday with something that everybody--that you know, that there is, you know, a consensus on. And that’s from the agency and the committee.

At that point, the agency doesn’t go back and say, well, we’ve talked more about it and we’re going to take this out, this out, this out. As I said, this is a give-and-take process, so you can’t go back and change the stuff you gave away, you know, in that process. Once we have this package done, you know, I think there’s nothing wrong with Dacia and Randy jointly sending them to Gretchen. I mean, if--the BECC is a public entity, and so that any comments that she makes will go back to both Randy and Dacia. At that point, once you get it finalized, you know, it has to go to the Commission Board, and the Commission Board has to approve it. And again, the Commission Board can’t pick and choose what they want to approve. If there’s things in there they don’t like, it needs to come back to the committee and the agency for further negotiations. Once that’s happened, then it goes to RSA for approval.

And then once it gets back from RSA, then I don’t know what all state processes you have to go through. That’s a Gretchen question. But then it has to go through the state promulgation process. So you know, that’s sort of the way I see this happening. And I mean, I think, Dacia, you’re in agreement that-- Is that sort of…

MS. JOHNSON: Absolutely. And we have made a commitment that any feedback we got from the AG, from the legal sufficiency review, will be public.

MR. TERRY SMITH: Right.

MS. JOHNSON: Yes.

MR. ART STEVENSON: Terry?

MR. TERRY SMITH: Yes.

MR. ART STEVENSON: We kind of--because we are under time restraints and stuff, too, we kind of would like our recommendations simultaneously to go to RSA so they can have that opportunity to be examining what we’re doing also, so that Gretchen and they can work together so that we ensure if we do hit any bumps, that we’re going to be able to handle it on both ends to get it done simultaneously. You know what I’m saying? So I’m hoping it goes to both.

MR. TERRY SMITH: Yeah. I don’t--RSA is probably not going to want to do that.

MS. MOORE: Yeah.

MR. TERRY SMITH: Jesse’s so stressed right now trying to get everything done, he’s by himself, just to review the rules, you know, informally. And you know, maybe he’d have time to do that. I don’t know. But I--you know, I don’t see there being much going up there that he’s going to have much feedback. I’ve got to be honest. I have not really read through all your rules that were sent up there. I read through some of them.

But I think the process--and the way RSA wants the process to work is that once they’re approved here, they come to--they go to RSA for approval, and then they come back and go through the state promulgation process. That’s the way they want it done.

MR. ART STEVENSON: Okay.

MR. TERRY SMITH: If Jesse will provide some-- You know, if you have a specific rule that you want to send up to Jesse and say hey, is this going to fly? But you can bet between now and Wednesday, I will probably talk to Jesse 10 times, so…

MR. ART STEVENSON: You will talk to him?

MR. TERRY SMITH: Yeah.

MR. ART STEVENSON: Well, yeah.

MR. TERRY SMITH: I mean every--so I’m not going to-- If there’s something that I see is a potential problem, I will talk to Jesse, and we will…

MR. ART STEVENSON: Uh-huh.

MR. TERRY SMITH: I will know whether he’s going to have a problem with it before it gets up there.

MR. HAUTH: Terry, I like to process what I’m hearing. I also would encourage that any feedback or discussions with RSA relative to these rules also be inclusive of, you know, the committee as well. So is there any other Board member that has a suggested ground rule? Or you guys like what you’re hearing so far? What--okay. Is there anybody else that wanted to have their voice heard during this process right now? Okay. Well, let’s go ahead and keep going.

MR. TERRY SMITH: Okay. So to remind everybody, you know, we’re going to actually-- Let’s see. What time is it?

MR. ART STEVENSON: 11:28.

MR. TERRY SMITH: Okay. So we can start talking. There are no plans for lunch. Everybody’s sort of on their own?

MR. HAUTH: I think lunch--what time were we thinking about lunch? What would people like? 12:30? 12:00? What do you guys want?

MR. ART STEVENSON: When’s the food going to be ready? That’s the most important.

MR. HAUTH: Mark, when’s it coming, Mark?

MR. RIESMEYER: It’s here. It’s sandwiches. It’s here.

MS. MOORE: Well, I think…

MR. ART STEVENSON: In the refrigerator? Otherwise, let’s eat right now. No, I’m just…

MS. MOORE: I think we should--I’d love it if we could work for an hour because we’re just starting right now. Forty-five minutes to an hour.

MR. JACKSON: I could work for an hour, too.

MR. HAUTH: So 12:30 lunch?

MS. MOORE: That’s my vote.

MR. HAUTH: I’m good with that if you guys are.

MR. JACKSON: Sure, give or take 10 minutes.

MR. ART STEVENSON: Yeah.

MR. TERRY SMITH: Okay. So we’ll continue on. And if I hear stomachs growling, we’ll put a stop to it. Dacia, you’re leaving at lunch. Is that right? You have to leave?

MS. JOHNSON: Yeah, I’m going--if you guys start getting into the actual detailed stuff, I’ll stay around for a little bit. And I may be ducking out shortly, so…

MR. TERRY SMITH: Okay.

MS. JOHNSON: I’ll stay around until I get a feel for…

MR. HAUTH: And thank you for showing up.

MS. JOHNSON: Yeah.

MR. TERRY SMITH: Yeah.

MS. JOHNSON: Thank you for inviting me.

MR. TERRY SMITH: Okay. So the first thing that we want to do is, you know, rules were sent to RSA previously for approval. They never got approved. They were sort of sitting there in limbo because of everything else that was going on. So they never got approved. But those--yeah, we got those rules here. Those are sort of the basis for where to start with these discussions. And we need to add to and subtract from those rules is what we will ultimately be sending to RSA.

So we wanted to take some time, or I want--and it’s on the agenda to sort of go back and revisit those particular rules and see, you know, if there are areas in there that we need to address before we get into what’s got to be done as far as the House Bill that we’re currently dealing with.

So with that said, and again, let me also remind everybody, you know, at this point, from this point forward, you know, we want the members of the Committee participating in the conversation. Everybody else hold your remarks. We will give you more than ample opportunity for you to chime in with thoughts and ideas as we go through this process. So you’re not going to be cut out in any way. But while we’re in this part of discussion, let’s keep it to just the Committee members because they’re the ones who are charged with the active participation.

So with that said, we’ve got the rules. Does everybody have--I mean, everybody has those rules. Right? So are there things in there that we need to go through and address before we get into this House Bill stuff?

MR. HAUTH: I believe there are, Terry.

MR. TERRY SMITH: I know there are. I’m just…

MR. HAUTH: Yeah. And I…

MR. TERRY SMITH: It’s a rhetorical question.

MR. HAUTH: I actually--you know, just to kind of overview this as sensitively as possible, the rules have sat at RSA for a couple of years, so I know that there have been concerns around them. I think portions of them are good. A good portion of them are good. There are some things that need to be addressed in there.

I think the concerns at one time were more about the process and--but there are some things in the rules. And I’ll pull up my list. There may be some others. I know Jerry Bird had read through those pretty intently, and I know Art probably has some things. But how the best way to go through and address those, I don’t know.

I did share with you there was some other communication about why are we using these rules? Why don’t we use the consensus rules? Why don’t we use these? I would agree with you. I think we need to use those for a basis. I don’t know if that’s right, wrong, or indifferent, but we need to start somewhere. And instead of spending two or three days trying to figure out where to start, can we use those and delete or add to? So that’s just my thoughts. And I’m going to turn that over for anybody else’s input while I look through these.

MR. ART STEVENSON: Chair Hauth?

MR. TERRY SMITH: Well, rather than going through just randomly, do you want to go through just each section and sort of bring up and let people address one section at a time?

MR. ART STEVENSON: Well, I actually have a list, Terry.

MR. HAUTH: Yeah. And there was some content concerns as well. But yeah. That might be a good way to do it. I don’t know.

MR. TERRY SMITH: What were you going to say, Art?

MR. ART STEVENSON: I actually had a list that I sent out to all the managers. And I don’t know if I copied you.

MR. TERRY SMITH: I think each section probably needs to be…

MR. ART. STEVENSON: There are definite issues that are in the handbook. And I have a list of 10 things. But I’ve got to find the dang thing. I should have sent it to you. But one of the things that I agree with Randy is that we were kind of--we hadn’t had a real discussion about what we were going to use as a basis. And of course, the existing rules that are--proposed rules under RSA was one of the resources.

But as Randy said, I do think it’s important that we also use the rules that we developed through the consensus process because we--actually, the Elected Committee helped develop them. The OCB Board of Commissioners adopted them. And then they went to the AG’s office and we were just told that no, they aren’t satisfactory, and weren’t given the reasons why. And I do believe that we do have to get some answers of why they can’t be in the rules.

And one of the very critical things, I think, Terry, that we discussed this morning, was the active participation definition that we actually agreed upon but was never given specific reasons why it couldn’t be a definition in those proposed rules. So I think we should use both of--just like Randy said, both of those because it’s very important, I think. And I think we should do this to, you know, clear the air and get answers, you know, why we could not incorporate some of those rules in the proposed rules that are sitting at RSA. In fact, that’s one of the reasons they are still sitting there, because there were no answers.

MR. TERRY SMITH: Right. Well, I don’t think it matters.

MR. ART STEVENSON: Yeah.

MR. TERRY SMITH: I mean, I think…

MR. HAUTH: I just emailed you that list, Art. So if you have it on your phone, you should get it.

MR. ART STEVENSON: My list or your list?

MR. HAUTH: The one that you’re talking about.

MR. ART STEVENSON: Yeah. And the only thing on that, did you-- Oh, okay.

MR. TERRY SMITH: What I was going to say is, it doesn’t really matter--

MR. ART STEVENSON: Yeah.

MR. TERRY SMITH: --which--regardless of what set of rules we’re using, you’re going--we’re going to be--we’re going to have to be making changes. So for discussion purposes, yeah, you can use both sets of rules. But as far as what we’re going to be amending, you know, this will be the set we use. And if we want to put in, you know, a definition of active participation, then you know, and there’s agreement to do that, that can be done. And then when Gretchen does give her feedback this time, then she can--you know, you’ll be part of that.

MR. ART STEVENSON: Well, and that is, I believe, you know, the Elected Committee has--as you know, did an active participation definition and we incorporated it into the bylaws because--our bylaws. But we also voted that we would like to see that or a very similar form of that incorporated into the current rules at…

MR. HAUTH: And Art, I think when we get to that point, we’ll be able to deal--

MR. ART STEVENSON: But that’s one of the…

MR. HAUTH: --with that.

MR. ART STEVENSON: One of the key issues that I think needs to be addressed in the rules, and Terry asked that, is that we need to have an active participation definition. And I can forward you the list.

MR. TERRY SMITH: Well, I think, I mean, they need to be discussed here in the open.

MR. ART STEVENSON: Huh?

MR. TERRY SMITH: They need to be discussed here in this open session, so…

MR. JACKSON: Well, let’s talk about the first section. Let’s get into it.

MR. TERRY SMITH: Yeah.

MR. JACKSON: So…

MR. GRUELICK: Is there any chance I could get a copy of those or is that not doable?

MR. HAUTH: Well, yeah. I know one of them was that we do need an active participation definition. That’s…

MS. JOHNSON: Do you have any copies, if anyone needs a print copy?

MR. GRUELICK: I’d love one, please. Thank you.

MR. TERRY SMITH: Copy of what?

MS. JOHNSON: The proposed rules.

MS. MOORE: The proposed rules that are with RSA right now.

MR. TERRY SMITH: Okay.

MR. MORRIS: Yeah. Active participation is the first thing on your list, Art.

MR. ART STEVENSON: Yeah. Okay. I’m digging it up. Randy, you’ve got it right there.

MR. HAUTH: Yeah, so it says…

MR. ART STEVENSON: Why don’t you read it?

MR. HAUTH: We need an active participation definition. Most, if not all, successful states have one. Number two is we need program-relevant information and we need a rule to ensure we receive this information. Also, we must receive clarification on what confidential information is, and it must be within the parameters of federal and state law. That’s number two.

Number three, we need compliance language to ensure OCB will ensure that our preference and priority is granted to the program. Number four, we need an operating agreement that is far and--fair and equitable for our managers, and ensure OCB administers the program in accordance with the federal and state law. Number five, we need to ensure we can file group complaints and that we are given full evidentiary hearings. Summary judgments should only occur if both parties agree to that process.

Number six, we need to end the no-cause clause. Number seven, we need a training program that covers all the bases. Number eight, we need to address the federal and state vending machine income distribution issues. Number nine, we must define what a major administrative decision is and include a mutually agreed upon list of examples. In closing, I am probably forgetting-- Okay. Yeah. Yeah. I think that…

MR. ART STEVENSON: Yeah. The last one was the--that I didn’t put on the list was the transfer and promotion, the system that we talked about this morning, Terry. So that would be that one additional thing to that list that I think are real critical areas that need to be addressed.

MR. DERRICK STEVENSON: This is Derrick.

MR. HAUTH: Derrick?

MR. DERRICK STEVENSON: Yeah. Eric, would it be possible for you to send me a copy of those rules? I can’t seem to find them, ones that we submitted to RSA.

MR. MORRIS: Yeah, Derrick. Just give me a second.

MR. DERRICK STEVENSON: All right. Thank you.

MR. TERRY SMITH: Okay. So let’s go--let’s put this back on one at a time. Active--the definition of active participation. So I mean, in your--in the rules that were sent to RSA, you got the definition of active participation, which is basically the definition that I talked about, just sort of a shortened version of it. Is there an issue--but it’s not in the definition section. So is there an issue with that definition, or do you just think it needs to be in the definition section?

MR. HAUTH: Could you read that definition, Terry?

MS. MOORE: I can.

MR. HAUTH: All right.

MS. MOORE: Active participation. The Elected Committee is entitled to active participation in major administrative policy and program development decisions affecting the overall administration of the Business Enterprise Program. Although the active participation will not include individual decisions about assigning vending facilities, the Commission may confer with the Elected Committee on such matters as the Commission deems necessary. Active participation means an ongoing process of information sharing, discussions, good-faith negotiations between the Elected Committee and the Commission to achieve joint planning development and understanding of policies, standards, and procedures affecting the overall administration of the Business Enterprise Program prior to their implementation.

Major administrative policy and program development decisions affecting the overall administration of the BE program shall include, but are not limited to: one, setting the method of determining the set-aside charges to be levied against the net proceeds of the licensed blind managers. Two, developing the Business Enterprise Program rules and statutes. Three, development of the Business Enterprise Program budget request. Four, development of criteria for the establishment of new vending facilities.

Five, development of criteria for BE staff recruitment. Six, development of the training and retraining programs for licensed--well, vending facility managers, it’s going to be, and licensees. Seven, development of the administration of a system for the transfer and promotion of VFMs, managers, and licensees. Eight, sponsoring and planning with the assistance of the Commission, meetings and post-licensure trainings for licensed blind managers and licensees.

When the Elected Committee submits officially--sorry, approved requests and recommendations to the director in writing, the director shall provide a written response including the reasons for the decision reached by, or the action taken within 30 days of receipt of the request. The Commission bears final authority of the responsibility and administration, the operation of the vending facilities program.

MR. HAUTH: Okay.

MR. ART STEVENSON: Where’s the full consideration part? Where did you get that, Jeanne-Marie?

MS. MOORE: I read it straight out of the proposed rules.

MR. TERRY SMITH: Those are the rules that I sent to RSA.

MR. ART STEVENSON: Oh. Oh. Out of the proposed rules.

MS. MOORE: Yes.

MR. ART STEVENSON: Okay. But that’s not in the definition.

MS. MOORE: Well, it’s…

MR. TERRY SMITH: It’s under committee of blind vendors.

MS. MOORE: Yeah.

MR. TERRY SMITH: Section…

MR. HAUTH: Yeah. I think Jesse had mentioned that that needs to be included in the definition as well. And I think what Art had mentioned also, and I think you’re aware of it, that the Elected Committee just adopted a definition to be in the bylaws, and so I’ll let him speak to that, but…

MR. ART STEVENSON: Well, and Terry, I think there definitely needs to be a definition in the rules, in the definition part. We also incorporated a definition in our adopted bylaws which we think is very important, a definition for full consideration, so that it clarifies the process that will occur between the SLA and the Elected Committee before, you know, the decisions are made. And we do have--I do have a copy of that. I can forward it to you. But that’s what Michael Talley was talking about, that he had seen. I thought I had copied you on it.

But it does need to be a definition in the definition part, and also the definition of full consideration. And the reason that I feel that is we have a roadmap so there’s less controversy. And like you said, you know, if all that stuff occurs and it’s spelled out in the roadmap, then we do have less controversy and more trust and all that…

MR. HAUTH: So Art, let me ask you a question.

MR. ART STEVENSON: Yeah.

MR. HAUTH: So the definition that Jeanne-Marie just read with some slight tweaks to that, like as far as full consideration, is that something that the group would be acceptable to? Or I mean, what are your thoughts around that?

MR. ART STEVENSON: Well, I think it needs to be--there needs to be a definition. And then of course, as we go through the rules and do the training and the transfer and promotion thing, then we spell out what--you know, what that is through the active participation and stuff, and you know, where active participation will occur during the rules. Like you know, the establishment of a new facility--

MR. HAUTH: Sure. Sure.

MR. ART STEVENSON: --and contracts, et cetera, et cetera.

MR. HAUTH: Terry, what are your thoughts on like how we can…

MR. TERRY SMITH: Well, I think what you’re saying, all of that does not go in a definition. I mean, what she was reading was the section on the Committee of Blind Vendors and how active participation will happen. That does not go in the definition. The only thing that goes in the definition is the paragraph she read that says active participation means.

And if you want to put the definition, which you’ve already got in here, active participation means an ongoing process of information sharing, discussion, and good-faith negotiations between the Elected Committee and the Commission to actively--to achieve joint planning, developing, and understanding of policies, standards, and procedures affecting the overall administration of the Business Enterprise Program prior to implementation. That’s the definition.

MS. MOORE: Prior to implementation.

MR. ART STEVENSON: Right. And it needs to, in my opinion, go in the definition section along with the full consideration definition, to spell it out.

MR. TERRY SMITH: Okay. We’re talking about the definition of active participation.

MR. ART STEVENSON: Right.

MS. MOORE: Right.

MR. TERRY SMITH: So if you pick that up out of that section and just copy and paste it into definitions, you’ve got a def--you’ve got your definition of active participation, which is basically the same definition that you’re going to find

in--

MR. MORRIS: So--

MR. TERRY SMITH: --every other state.

MR. MORRIS: --I’d like to chime in, Terry. So the definition that Commissioner Moore read was drafted before House Bill 3253 was drafted. So Gretchen, this morning, talked about what you have to do for rule-writing versus the statute. So the statute is the umbrella. Your rule-writing has to be under that umbrella, as an analogy. I’m sure there’s better analogies, but that’s what I’m going to use.

So if you go to Section 8 of House Bill 3253, it is very specific about what active participation is at the high level. And it says, and this is like she said, I think it’s right from the federal code. It says the Commission for the Blind shall ensure active participation of the Commission’s Business Enterprise Consumer Committee in the Commission’s major administrative policy and program development decisions that impact the Commission’s Business Enterprise Program, period.

And then it says--then it talks about relevant data, which is a whole other issue. The Commission has final authority and the Commission do-- And then it talks about the recommendations. But the actual definition of active participation in this state law is what I just read in that first paragraph. So we can’t adopt a different definition of the rules that says, well, it’s close, but we’re going to say it’s actually this.

MR. TERRY SMITH: That’s not a definition.

MR. ART STEVENSON: That’s not a definition.

MS. MOORE: No, it is not.

MR. TERRY SMITH: That describes the process of active participation.

MR. ART STEVENSON: That’s right.

MR. TERRY SMITH: There’s no definition of active participation. And you know, as far as what Gretchen said, if you’re going to only promulgate rules based on those five categories, you’re going to have to strike about three-fourths of your rules that you’ve got now. Because there’s a lot of stuff in your rules that aren’t covered under the act that are just commonsense things that you’ve got in your act, so--and there is a--I mean, I think you got the authority to promulgate regulations to interpret the act. That’s what regulations are for is how do you interpret--how to interpret the act.

MR. MORRIS: But what I’m saying…

MR. TERRY SMITH: That’s not a definition.

MR. MORRIS: But what I’m…

MR. TERRY SMITH: So you’re saying, you’ve got to take that out of your rules?

MR. MORRIS: Well, what I’m saying is, this new statute needs to be the same in the rules. We can’t say that active participation is-- Because in the new House Bill, it says Commission in major administrative policy and program development decisions. We can’t say policy, program and cafeteria operation development decisions. You can’t expand it.

MS. MOORE: It’s not in there.

MR. MORRIS: So but what I’m trying to say, and maybe I missed my point, is these--the ones that Commissioner Moore read, I need to true them up because they were drafted before this language was drafted. So they need to be consistent. That’s my point.

MS. MOORE: Well, so blind--

MR. ART STEVENSON: It’s still not a definition.

MS. MOORE: --licensed manager gets changed to vending facility manager.

MS. BROWN: Yes.

MS. MOORE: But this ongoing dialogue thing is the definition. The other thing is the process that you read, I think. I don’t mean to speak for--at any person, but…

MR. ART STEVENSON: Our definition is further clarifying the process. That’s part of the statute. It isn’t even a definition. It talks about active participation. But it doesn’t define it. And therefore, the law, the state statute, allows you to promulgate rules to ensure the proper and satisfactory operation of the vending facilities, and for the benefit of the blind licensed managers. So developing in your rules clarification and a definition of active participation is completely allowable. And…

MR. MORRIS: I didn’t say it was not.

MR. ART STEVENSON: Okay.

MR. MORRIS: My point was is that the language we drafted before needs to true up with the House Bill.

MS. JOHNSON: Needs to be tweaked, at least.

MR. MORRIS: Yeah. So just keep that in mind.

MR. ART STEVENSON: It doesn’t detract from what the actual law says. It enhances it. And therefore, it’s completely legal to do that. You can further clarify it and enhance it. You can--any law you can enhance, but you can’t violate it. You can’t do less than.

MR. HAUTH: So Terry, so what do you think we do? I mean…

MR. TERRY SMITH: Where is that definition you’re reading from?

MR. HAUTH: I would tend to--I would tend to support what Art is saying. I think we can define what active participation means. I hear what Eric’s saying, too.

MR. MORRIS: Page 24.

MR. TERRY SMITH: It’s what?

MR. MORRIS: Page 24.

MR. HAUTH: What do you think, Terry?

MR. TERRY SMITH: I don’t have a page number. Is it section 24?

MS. JOHNSON: Are you talking about the law, Terry, or the…

MR. TERRY SMITH: The law.

MR. MORRIS: Oh, that’s Section--

MR. GRUELICK: The law is Section 8.

MR. MORRIS: --8.

MR. TERRY SMITH: Eight?

MS. MOORE: Yeah.

MR. HAUTH: I wanted to hear from Cary, if we can.

MS. MORRIS: He’s trying to find it.

MR. ALLEN: My reading of Section 16 is, you know, active participation shall be ensured. And you know, there’s still room in the rule to define what active participation means. It’s like Eric said, if you add something on to active participation to say, and you know, the vending unit at, you know, the state office building and, you know, X street shall be-- You can’t start making it a Christmas tree of, you know, a bunch of other things. As long as you define active participation and don’t go away from that concept, and you know, otherwise violate what the statutory language says, then I think that’s what the rulemaking is really all about is just clarifying the sort of broader things that are in the law itself.

MS. JOHNSON: And Gretchen’s review would catch that stuff. Right?

MR. TERRY SMITH: I was going to say, and we can’t--if we spend the next four-and-a-half days trying to figure out what Gretchen’s going to let go and what she’s not going to let go, then we’re going to get really bogged down because, you know, we’re not--you know, she’s going--this is going to go through a review process, and if--you know, if she can show that it’s--you can’t do that, I mean, I think you can define it. And all you’re doing--because in your rules, you’ve defined--you can--you’ve got a definition of active participation, and then you explain when that’s going to apply, and you’ve got that laundry list, which is actually a pretty good list. I mean, a lot of states don’t even spell it out as to the detail you guys have. So you’ve got a pretty good list there of, you know, where you’re going to be allowed to actively participate.

And so what you got with the legislature and their--what they say is you’re going to actively participate in major administrative decisions. So now what you’re doing is defining what active participate actually means and you’re defining what major administrative decisions are. I think it’s perfectly legit.

MR. ALLEN: I think the direct analysis, as you pointed out, the Randolph-Sheppard Act doesn’t say active participation. But then--

MS. JOHNSON: The regs did.

MR. ALLEN: --the federal rule clarifies active participation.

MR. TERRY SMITH: And you have--by federal law, you have to show how you’re going to allow, you know, that active participation to take place. And if you just say--I mean, I think you’ve got a responsibility there.

MS. JOHNSON: So can I just say something, because I’m going to be stepping out shortly? And I just want to challenge us that--or challenge you over the next four-and-a-half days. We have spent the better part of a decade on rulemaking. So I just want to make sure that we embrace the opportunity to focus on the four issues that the legislature teed up for us. And to the extent things are absolutely essential, but we will not be able to redo the rulemaking process that took many, many years. So I just want to make sure that you focus your energy on the areas that are new and not touched before we spend too much time and energy kind of recrafting and going back over information that has gone through many, many, many meetings and iterations.

So if you do that, which certainly the Elected Committee could do that, my encouragement would be that those kind of conversations are actually--if there’s substantive work, that that’s deferred as time allows, to allow the full focus to be on these new areas that really require the Elected Committee to help craft language that’s never been in existence. So with that, I’m so excited about the work that you guys are doing, and I wish you the best of luck.

MR. HAUTH: This may surprise you, but I agree with what Dacia is saying.

MS. JOHNSON: Yay! Now I should leave!

[Laughter.]

MR. TERRY SMITH: That’s what we agreed to on the phone the other day, but--

MS. JOHNSON: Yeah.

MR. TERRY SMITH: --Eric put it first on the agenda and I’m following his agenda.

MR. HAUTH: No, no, I mean, I obviously, we need to work through that,--

MR. TERRY SMITH: Yeah.

MR. HAUTH: --but maybe not get bogged down on it. I agree also, active participation, hello, we spent most of the morning on how important it is, so we need to also find a way to incorporate that in but not get too waylaid in all the other stuff.

MR. TERRY SMITH: And I agree with Dacia. We have to get those things done that the legislature is requiring.

MR. GORDON: Yeah. Yeah.

MR. TERRY SMITH: I think we…

MR. BIRD: Randy?

MR. TERRY SMITH: I think we can take a couple of hours here and hit these things, but we cannot spend--as Dacia said, we cannot renegotiate these rules, you know, from start to finish and go and spend four-- Because you can spend four-and-a-half days just on that, if you want to. Get caught up in all the minutiae. We can’t do that. If there are things that are really burning, that we really need to address like this we’re talking about, and it will, you know, help us build a consensus so that when these things go to RSA, the committee says yes, we support it, then yes, we have an obligation to take a couple hours and do that.

But you know, at the very--my goal is to get ahead of schedule, and this afternoon, be talking about the law. But at the very least, we’ve got to be talking about, you know, tomorrow morning. So but if we want--I think we can take a little bit more time on this and then get to what the statute says.

MS. MOORE: What about those four sentences?

MR. BIRD: Randy?

MR. HAUTH: Yeah?

MR. BIRD: This is Jerry. I’ve just got a quick…

MR. HAUTH: Oh.

MR. BIRD: I’ve just got a quick comment. I’ve just got a quick comment. What troubles me at the very first of the definition or part of that where it says they may, maybe I’m missing something, but that sounds like they may do it. I don’t like the word “may” in there, but I don’t know if we can look at that.

My other issue is, I know we’re spending some time on active participation definition here, but I think that’s the whole basis of this whole--of our whole program. And the thing is is, the legislatures did add them words active participations in these new laws. So therefore, it needs to be defined as we’re doing it. So it is part of these new statutes, I believe. Thank you.

MR. HAUTH: Thanks, Jerry. Okay.

MS. MOORE: So those four sentences--

MR. DERRICK STEVENSON: This is Derrick.

MS. MOORE: --the definition.

MR. HAUTH: Derrick?

MR. DERRICK STEVENSON: Yeah. I just wanted to make--try and get something clear in my head. We’re going to work on these four things and write them, and just those four things are going--is what’s going to be submitted to the AG’s office and to RSA? Or are they going to incorporate that into the rules, the whole rulebook, and then send it to RS, and them having the opinion that we’re all clear--

MR. HAUTH: Yeah. And you know,--

MR. DERRICK STEVENSON: --and don’t think…

MR. HAUTH: --Derrick, that’s a great question because that also becomes part of it. And you know, many believe that those other rules weren’t done properly. And so we don’t want you to just work on these four, even though we have to get them done, and then just stuff them into the rulebook right now that’s in existence. So how do we get all that done?

MR. TERRY SMITH: So to answer your question, the whole package goes to RSA. They’re not going to look at what--these four things. They’re going to look at your entire rule package.

MR. ART STEVENSON: That’s right.

MR. TERRY SMITH: So and I assume--well, yeah, and the whole package will go to Gretchen, too. So it’s not going to be--you’re not going to piecemeal it. You’re going to--hopefully, you’ll have a package when we leave here Wednesday and that will go to Gretchen. And then whatever you--whatever the whole package is when--after the Commission’s approved it, it will go to RSA.

MS. MOORE: So…

MR. ART STEVENSON: Well, and there’s-- Go ahead.

MS. MOORE: Well, it’s all--you know, it seems to me, can we agree that this definition, active participation means an ongoing process of information, sharing, discussions, good faith negotiations and that whole thing with the Elected Committee with the most important part being prior to their implementation?

MR. TERRY SMITH: Everybody agrees with that. It’s already in there.

MR. HAUTH: Yeah. And may has to come out.

MS. MOORE: Well, may is not in that part--

MS. HAUTH: Yeah.

MS. MOORE: --of the definition. May is in the part where it says, individual decisions about assignments of vending facilities, the Commission-- MR. TERRY SMITH: That’s not part of the definition.

MS. MOORE: --may confer with the Elected Committee. So that’s not part…

MR. HAUTH: So what Jeanne-Marie said, can we agree on that or get close to agreeing on that? Or are there any major concerns on that? Or what do we need to do?

MS. MOORE: Just those four sentences…

MR. DERRICK STEVENSON: This is Derrick.

MR. HAUTH: Derrick?

MR. DERRICK STEVENSON: Yeah. I kind of had a question about the very--at the very beginning when it says the Elected Committee is entitled. I don’t think it’s an entitlement. I think it’s more a requirement. And maybe we should put the Elected Committee is required to, not entitled.

MR. TERRY SMITH: Well, that’s not in the definition, either.

MR. ART STEVENSON: That’s not in the definition.

MS. MOORE: We’re going through the definition right now.

MR. DERRICK STEVENSON: Okay, because I thought I heard…

MS. MOORE: Well…

MR. TERRY SMITH: So does anybody have any--does anybody have any objection to picking that--the one section up out and moving it from the section that’s in the rules now over to the definition where just the part she just read, where it says active participation means. Forget whether it’s going to meet legal sufficiency. You’ve got it in your rules now. All you’re doing is agreeing to move it from one place over to the--over to definitions.

MR. JACKSON: Let’s make it [inaudible] final.

MR. TERRY SMITH: So Eric, Dacia, do you all have a problem with that?

MR. MORRIS: That’s a lot of cut and pasting.

MR. TERRY SMITH: Yeah, I know. Yes. You have to cut one thing and paste it in one other place.

MR. MORRIS: So just to get in the weeds just a little bit, I think that’s a good idea. The thing I would caution everybody to do, because I made this mistake years ago--that makes me sound like I’ve been around a long time. Active participation and actively participating sound like the same thing. But when we’re doing rule-writing, they--they’re not the same thing. So we have to use consistent language. So if we’re going to put active participation in the definition section, we can only call it--and I know this seems like it’s in the weeds, but when we get back to this section about the Elected Committee, we need to talk about active participation, not actively participating. But it’s something that will trip us up, and then I have to sit there and go, how do I rephrase this line of the rules?

MR. TERRY SMITH: That’s an easy fix.

MR. MORRIS: Yeah, but just keep that in mind. But I think moving this from here to the definition section, that’s probably…

MR. TERRY SMITH: So who’s your reporter? Who’s doing all this? I mean, you said you had somebody here doing all this.

MR. MORRIS: So Mark and Kathy are over there now and…

MS. EWING: Typing away.

MR. MORRIS: Yeah. Vigorously typing away. So I left it--I told them--I said we’re going to be doing this on the fly. And so…

MR. TERRY SMITH: It would be good if they had this document. They could just copy and paste it and stick it in there while we go, but…

MR. MORRIS: And you know what? They do have this document.

MR. TERRY SMITH: All right.

MR. MORRIS: So…

MR. TERRY SMITH: Okay. So…

MS. MOORE: One down.

MR. MORRIS: One down.

MS. MOORE: Five hundred million to go.

MR. HAUTH: Mark and Kathy, are you guys good with that? I mean, is that…

MR. TERRY SMITH: They were told. I didn’t ask them.

MR. ART STEVENSON: They were told.

[Laughter.]

MR. HAUTH: I was being nice. I was being respectful.

MR. GRUELICK: Hey, this is Luther.

MR. HAUTH: Hey, Luther.

MS. JOHNSON: All right, you guys. I’m stepping out. Good luck,

MR. TERRY SMITH: Bye, Dacia.

MR. ALLEN: Thanks for sharing your Sunday--or Saturday morning with us. I appreciate it.

MS. JOHNSON: It’s been a pleasure.

MR. TERRY SMITH: We’re going to church tomorrow, you know.

MS. JOHNSON: I’ll say a prayer for you tomorrow morning. How’s that?

[Laughter.]

MS. HAWKINS: More than one, please.

MR. GRUELICK: Randy, this is…

MR. HAUTH: Yeah, Luther.

MR. GRUELICK: I’d like to speak--just briefly come back to the point that we discussed at break, and that is any dates and pages and so on so we can track the different iterations of these rules and regulations. You know, so if you can mention that to them, either now or when it’s appropriate.

MR. MORRIS: So Luther, describe to me what you’re--I think I know what you’re saying, but can you describe…

MR. GRUELICK: What I’m saying is if we start--we have--she has on her computer right now a set of rules that came out on a given date.

MR. MORRIS: Yeah.

MR. GRUELICK: Those should be dated on that date.

MS. MOORE: That’s not...

MR. GRUELICK: And then any changes we make now, including moving this, should be...

MR. HAUTH: So we know the most recent document we’re working with.

MR. GRUELICK: Yeah, because I have…

MR. TERRY SMITH: Yeah.

MR. MORRIS: So the concern I would voice about track changes and stuff, especially from a visual perspective, is track changes is a nightmare.

MR. TERRY SMITH: Yeah.

MR. MORRIS: So--and that’s why I wanted to be specific about what you’re asking about.

MR. GRUELICK: What I’m asking is that she put a date on the set she has now.

MR. MORRIS: And I have a…

MR. GRUELICK: And save those. But we don’t have access to those.

MS. EWING: Yeah. What is the date--

MR. GRUELICK: Do you know what I’m saying.

MS. EWING: --of those proposed rules?

MR. MORRIS: So the last--the version that you guys, I think, have in your hands right now, the file as you’re looking at it on the electronic way is dated April of 2016, because that’s the last version that we--

MS. MOORE: Okay.

MR. MORRIS: --received back from RSA.

MS. MOORE: Okay.

MR. MORRIS: Or sent to RSA with the revisions that they requested. RSA has taken three separate swipes at this, so…

MR. GRUELICK: Yeah, I get that. I get that.

MR. MORRIS: Yeah.

MR. GRUELICK: But you know, Dacia just handed me a set of rules that had no dates and no page numbers. That’s what I’m saying.

MR. MORRIS: Yeah. And most of the time, I’m working on it electronically, so it’s dated on it electronically. But Kathy will basically reestablish a new file dated August--and we’ll call it the rules from August.

MR. TERRY SMITH: Let’s go--let’s move on real quick. The next--sticking to definitions. We’ll get to the rest of the rules. Definitions. We’ve got licensed blind managers. You’re now called what?

MS. MOORE: Vending facility manager.

MR. HAUTH: Vending facility manager.

MR. TERRY SMITH: So…

MS. MOORE: Every single page needs to be changed.

MR. HAUTH: VFM.

MR. TERRY SMITH: So you need to change the definition. Right?

MR. MORRIS: Yeah. So that’s…

MR. TERRY SMITH: You’ve got a definition of licensed blind manager. And what does the law call it?

MR. MORRIS: A vending facility manager.

MS. MOORE: Vending facility manager.

MR. ART STEVENSON: Vending facility manager.

MR. TERRY SMITH: Okay. So you want to change that to vending facility manager and then move it down under V, I guess, and strike it from there. You with me, Kathy?

MS. EWING: Yes. So we want to do a search and place right now?

MR. TERRY SMITH. Yeah. Yeah, you’ll--yeah, you need to do that, too. But that definition needs to go down. If you’ll change it, get it out of order.

MR. GRUELICK: That’s kind of high there on that list.

MR. TERRY SMITH: It’s on there. It will become something else.

MS. MOORE: Yeah, but…

MR. ART STEVENSON: Does it need to become something else?

MR. TERRY SMITH: Yes. The law says vending facility manager.

MR. MORRIS: Yeah. That’s one of those changes.

MR. ART STEVENSON: Well, no, I mean, I versus…

MR. TERRY SMITH: Yeah, because they’re in alphabetical order.

MR. MORRIS: Yeah.

MR. ART STEVENSON: Oh, okay.

MR. TERRY SMITH: So are there any other definitions--

MR. ART STEVENSON: Yes.

MR. TERRY SMITH: --that need to be dealt with as a result of a statute or any other reason?

MR. ART STEVENSON: Yes.

MR. TERRY SMITH: What’s that?

MR. ART STEVENSON: We’d like to insert the definition of “full consideration.”

MR. TERRY SMITH: Full consideration is not in the rules. You’re defining a rule--you’re defining a term that’s not in the rules.

MR. ART STEVENSON: Well, no. Because it has been a problem in the past, and we had to write to--write rules according to our state statutes that benefit the blind licensed managers and ensure the proper and satisfactory operation of the vending facilities, Terry. As a member of the Elected Committee, I believe that we need to insert what full consideration is so there’s no wiggle room or there’s no controversy that when active participation is going on and we’re examining a rule or something that’s going on with active participation, that it’s defined and spelled out including the information sharing, et cetera. And I don’t know if you have that definition. But it is in our new bylaw thing that--what full consideration is. And we have the right to put that in the rules. And I think it will help eliminate problems that we’ve had in the past.

MR. ALLEN: Okay. Well, what Terry is saying is that you don’t have full consideration as part of a rule. So defining full consideration without that just doesn’t mean anything. So you need first to, you know, propose language as part of a rule, then you can define what full consideration means once it’s--that language is in the rule.

MR. TERRY SMITH: Correct.

MR. ART STEVENSON: Okay. So…

MR. TERRY SMITH: You can put all kinds of words in…

MR. ART STEVENSON: Right. So when we get down--well, what I’m just saying is, when we get down to the section where we’re talking about active participation and all that, we’re going to have a definition--I mean, we’re going to talk about full consideration. So when I talk about the definition right now, because when we get there, we’re going to discuss it. Or do you want to go back…

MR. TERRY SMITH: There’s no consensus. I’d rather go through that in order and get--and we’ll--you know, we’ll get to that.

MR. ART STEVENSON: Okay. And then okay, that’s fine.

MR. TERRY SMITH: But if we had to put in the definition--currently, there’s no--that word’s not used.

MR. HAUTH: Hey, Terry, so just to--I had to step out to the bathroom for a second. But just to kind of piggyback on what Art is saying, I think one of the concerns is recently in a Commission for the Blind board meeting, the chair of the committee for the Commissioner said basically, you know, we’re providing you guys active participation through your public comment, and said a few other things that is just open to discretion. So I think maybe what Art’s concern is, how do we…

MR. TERRY SMITH: I understand what he’s saying.

MR. HAUTH: Yeah. Okay.

MR. TERRY SMITH: This isn’t the proper place to do it. Not in the definitions.

MR. ART STEVENSON: He wants to define it later--

MR. HAUTH: Okay.

MR. ART STEVENSON: --after we put it in the rules.

MR. TERRY SMITH: That word doesn’t appear in the...

MR. ART STEVENSON: I understand that part.

MR. MORRIS: Hey, Terry, real quick.

MR. TERRY SMITH: Yeah?

MR. MORRIS: On building manager, I highlighted on my copy just because it seems like in the new statute, I want to say it might not line up with what’s in here right this second. And I just haven’t had a chance to dig into that detail. I think they may have called it something different or referred to it differently, but I don’t remember exactly where. But stuff like that, it’s not really optional. It needs

to--the concept is we’re talking to somebody at the facility. I think they may call it a facility manager or something like that. But I think some of that stuff--I just want to go back later on and double check. So I’ll highlight it for now and I’ll look--I’ll dig into it and then come back.

MS. MOORE: Operating agreement may need to change to that--

MR. HAUTH: Yeah.

MS. MOORE: --state employment something or other.

MR. HAUTH: So I know there was one--if you’re going over definitions right now, I know there was one on Page 2 under definition. I don’t know if you want to…

MR. TERRY SMITH. Yeah. It’s a definition.

MR. HAUTH: Yeah. So Commission. It says under Commission, I think it was added that acts required to be undertaken by the Commission may be performed by the Director or the Director’s designee. And I think the question was, you know, how--what acts, you know, and it’s not defined and, you know, it’s very broad. And our concerns were that it may not be interpreted right. I don’t know that they can…

MR. TERRY SMITH: What are you reading? What…

MR. HAUTH: Number two. I think--hopefully this is correct. Page 2, item F.

MR. MORRIS: Line 36.

MR. HAUTH: Under definition of Commission.

MR. TERRY SMITH: Uh-huh.

MR. HAUTH: It says…

MS. MOORE: Oregon Commission…

MR. HAUTH: It was added, “acts required to be undertaken by the Commission may be performed by the Director or the Director’s designee.” And I don’t know that all acts required to be performed by Commission can be designated out. I think that was a concern that it was maybe ambiguous. Very broad and loosely stated, how does the statement apply to such items as rulemaking, the state licensing agency requirements under the RSA, et cetera, as the director is--neither the Commission nor the SLA. The SLA has certain requirements conveyed to them by RSA. So I think it was just ambiguous to those who reviewed it and had concerns about it. So what’s your thoughts on it?

MR. TERRY SMITH: I mean, it’s just saying--the way I read it is that the Commission can actually let the Director do the work rather than them do it. That’s how I read it. I don’t know if Eric…

MR. MORRIS: Well…

MR. TERRY SMITH: Where does the definition come from?

MR. MORRIS: I have no concept because it’s been…

MR. TERRY SMITH: Forever? Seems like forever?

MR. MORRIS: Back in the day. Yeah. I mean, as I read it, it’s basically that--you know, that I can do my job or I can assign people to do the job. You know, this is talking about the Commission. The Commission as a body hires the Administrator, who hires me, and I hire my people, so--

MR. TERRY SMITH: Right.

MR. MORRIS: --it’s just setting up the structure for that. Irrespective from a--at least from my point of view, irrespective of the responsibilities of the SLA, the SLA is still responsible for them irregardless of how they decide to do it. If I get hit by a bus and I’m in the hospital because I survived it this time, Tom could sit in as my designee to have active participation around, you know, hiring a new person because I’m in the hospital and you guys aren’t optimistic.

MR. TERRY SMITH: Well, I’m raising a concern…

MR. BIRD: Terry?

MR. HAUTH: Go ahead.

MR. BIRD: I would think that, like you say, it’s ambiguous and that it’s

--to me, why would it--why do we need it in there, the definition? Because what Eric just described, if he gets hit by a train or something, then my gosh, no one will be able to make no decisions there. I mean, there’s already them type of things put in place under state and stuff. I can’t see--no, I think it should be removed because it’s just almost another way of trying to use a word that I have control, I think. So I don’t see no reason to have that in there because it used to never be in there. I think this is something new they got put in that--well, like I said, it has no reason to be there, so it should be removed as far as I’m concerned. Thank you.

MS. MOORE: So the only part in--the only part in acts required to be undertaken by the Commission may be performed by the Director or the Director’s designee. God, isn’t that kind of the unwritten rule, I mean, expectation?

MR. TERRY SMITH: Yeah.

MR. ART STEVENSON: Well, my question…

MR. GRUELICK: What this speaks to is staff who works for the Commission.

MR. ART STEVENSON: Guys, guys, guys. I question the word “may,” too. I mean, they’re--this is a shell thing. I mean, the director does it--you know, I mean, it’s a given. And to put “may” in there, it’s like we’re giving the director permission to do his job or not to do his job, because may is--or his designee may or may not do his job. I mean, that’s just inappropriate language to be in a definition.

MR. ALLEN: We’ll switch it to shall, then.

MR. ART STEVENSON: Well, no. It should just be dropped because, I mean, it’s a given. It doesn’t have to be in the rules.

MR. ALLEN: Is it a definition? Is it something that we need in the statute?

MS. MOORE: It’s in the definition…

MR. ART STEVENSON: It doesn’t have to be in the rules.

MR. TERRY SMITH: Do you--Kathy? Where does the Commission show up in the rules?

MS. EWING: Okay. So…

MR. JACKSON: Because if we don’t need it, then let’s just strike it and move on.

MR. ART STEVENSON: Did you ever get--back from RSA...

MR. MORRIS: I can’t even remember the context of why we talked about that.

MR. HAUTH: You know, Terry--or Terry, should it--I mean, should it be acts or duties? I mean, I don’t think it’s a major concern, but I don’t know-- Like Eric was saying, it is the duty of the agency, so why does it have to be in there if there’s concerns about it? Is it that big of a deal that we can just remove it and go on or what? You know…

MR. TERRY SMITH: I don’t think it’s--I think it’s--okay. You’ve got the word Commission, like--normally, like our definition, we had like department. Department means the Department of Human Services. That’s all it said. It didn’t say all this other stuff.

MS. MOORE: Yeah.

MR. TERRY SMITH: I think you get--I mean, I think you’re reading a whole lot more into this than is there. But if you--you know, if you just want the definition to say, the Oregon Commission for the Blind, that is the rehab agency--the Commission means the Oregon Commission for the Blind, which is the agency of the State of Oregon which provides rehabilitation services for the legally blind persons within the state, you can stop right there.

MS. MOORE: Well, it is also licensing agency assigned to administer the act.

MR. TERRY SMITH: You could stop there, too.

MR. MORRIS: Yeah.

MR. TERRY SMITH: Because you’ve got to show RSA--one of the requirements of RSA is to show that you’ve got--you’re the--you have the authority to administer the program. The only one that can administer the program is the agency that provides rehabilitation services to the blind.

MS. MOORE: Yeah.

MR. ART STEVENSON: Yeah.

MR. TERRY SMITH: So I don’t think that--I mean, I don’t think that really is necessary, but I think it’s--you’re not--that’s sort of actually getting beyond definitions.

MR. ART STEVENSON: Chair Hauth?

MR. HAUTH: Yes.

MR. ART STEVENSON: Did you ever get the list from Eric on the feedback from RSA on the def-- I know there was questions about the definitions and stuff.

MR. HAUTH: Yeah, I think Eric sent that to the Board--

MR. ART STEVENSON: Also…

MR. HAUTH: --a couple of weeks ago.

MR. ART STEVENSON: Yeah, and I missed that. Wasn’t there something in there-- Well, anyways…

MR. HAUTH: I don’t have it pulled up right now, so I don’t know.

MR. ART STEVENSON: Right.

MR. HAUTH: But--Eric?

MR. MORRIS: I was just going to say, the RSA looked these--this specifically, these definitions and the whole thing three separate times. So they didn’t raise--they didn’t raise, that I can remember, anything specific. And if they did, we made changes to align with what they were asking for. And I’d have go back and actually see it because it was last year that they were talking about stuff. But this part that we’re talking about, I can’t even--it doesn’t even ring a vague bell of why it’s…

MR. ART STEVENSON: Why it’s there.

MR. MORRIS: But the other comment, too, as I made to Tom, was that if you take that out of there, then if you’re looking at it from perspective of a person doing their job or not doing their job, you take it out. Does a person have to do anything? This is…

MS. MOORE: We would hope so. The State pays you.

MR. MORRIS: Yes. That’s a rhetorical question. So but I mean if--like Terry said, it’s--we’re kind of--I don’t know.

MR. TERRY SMITH: And I don’t have a problem with...

MR. DERRICK STEVENSON: This is Derrick.

MR. TERRY SMITH: Do you have a problem with that, Eric?

MR. MORRIS: I do not.

MR. TERRY SMITH: Okay. So just…

MR. HAUTH: Derrick, I think we’re going to take that out. So do you still have a comment?

MR. DERRICK STEVENSON: Well, that whole line was defining who the Commission is? Is that what it was?

MR. TERRY SMITH: Yes.

MR. DERRICK STEVENSON: Yeah. I like what Terry said myself, how to define who the Commission is, they’re the state licensing agency that’s responsible for running the program, basically.

MR. HAUTH: Okay. Well, it looks like we’re going to--

MR. DERRICK STEVENSON: It doesn’t ask what they do.

MR. HAUTH: --take that out.

MR. DERRICK STEVENSON: It just asks who they are.

MR. MORRIS: Well, the one thing to remember, like for legal sufficiency, if somebody comes--if Gretchen comes back and says, hey, you need to have some language in there that allows the Director to actually perform his duties, his or her duties…

MS. MOORE: In the definition?

MR. TERRY SMITH: No, it shouldn’t be in the definition. That’s beyond the definition.

MR. DERRICK STEVENSON: Yeah, that’s in another section of the law.

MR. HAUTH: Okay. I have another thing here, Terry, also on Page 3, Item N, under definition. Non-direct competition vending machines, the definition was left in. But definition for direct competition vending machine was removed, as well as the sections discussing direct and non-direct were also removed. I guess the question was, how does this actually-- So again, it’s Page 3, Item N as in Nancy.

MR. TERRY SMITH: So you have non-direct competition, but you don’t have direct competition. Is that what you’re saying?

MS. MOORE: Non-direct competition…

MR. HAUTH: The note I have here, it says under definition, the non-direct competition vending machine definition was left in, but definition for direct competition vending machine was removed, as well as the sections discussing direct and non-direct were also removed. So apparently, somewhere through the language of the rules, there’s something that’s not defined. So again, this has been a while, though, so I’m going back to it.

MR. TERRY SMITH: Eric, do you…

MR. BIRD: Randy, well, why don’t we finish the--how come--we jumped--I hate to break in, but why don’t we finish this one we was just talking about?

MS. MOORE: We did.

MR. BIRD: And then we’ll move to another--the next one down the line definition, but…

MR. HAUTH: We finished that.

MR. BIRD: We were almost at the end of this.

MS MOORE: We did.

MR. TERRY SMITH: We did, Derrick. We finished it. We took that...

MR. DERRICK STEVENSON: Was the decision to remove it?

MR. TERRY SMITH: Yeah.

MR. BIRD: Okay. Thank you.

MR. TERRY SMITH: So Eric, you got any comments on that? I mean, obviously, this--somebody--there’s an oversight on somebody’s part here. You don’t have non-direct defined and not have direct defined. So do you know why direct came out?

MR. MORRIS: I don’t, not off the top of my head.

MS. MOORE: So now we need to define direct competition.

MR. TERRY SMITH: You don’t have to worry about it. That’s in the federal reg. I mean, you need to define it.

MS. MOORE: Okay. I just wanted to know where we’re going to put it.

MR. TERRY SMITH: Kathy can just put it--put direct competition in her --put a note there, pull it out of the federal regs.

MR. ART STEVENSON: Yeah.

MS. MOORE: So then we’re going to go to X.

MR. TERRY SMITH: I guess--but I guess the question is, do you discuss direct and non-direct competition in the rules?

MR. ART STEVENSON: Well, and see, we want to, we should. But we haven’t. Also, we don’t have a definition for vending machine income. You know, of course the federal law does. And we obviously, in the state of Oregon, have state vending machine income, and we don’t have that definition either. And as you know, in the federal act, of course the federal locations is defined, and we need to define it in the state rules, too, because we do have vending machine income.

MR. TERRY SMITH: Okay. Eric, do you know where that’s addressed in the rules?

MR. MORRIS: Which part?

MR. TERRY SMITH: Vending machine income.

MR. MORRIS: I don’t have it memorized.

MR. ART STEVENSON: Only the federal is addressed, I believe.

MR. TERRY SMITH: Okay. Do you know where that is?

MS. MOORE: Vending machine route.

MR. MORRIS: Do we want to go through the definitions, then go…

MS. MOORE: Set-aside fund.

MR. TERRY SMITH: I…

MR. MORRIS: Yeah.

MS. MOORE: Vending facilities. Vending facility agreement, vending facility, vending route. Yep. It’s not in here. It might be later, but it’s not…

MR. TERRY SMITH: Vending machine income is addressed in your expenses.

MR. ART STEVENSON: In the what?

MS. EWING: In the reporting section.

MR. TERRY SMITH: In the reporting section.

MS. MOORE: Yeah. But once again--definition, a little confusion.

MR. DERRICK STEVENSON: So are we talking about how the state monies are to be distributed, just like the federal laws?

MR. HAUTH: We’re going through the definitions right now, and I’m going back to the notes that were provided or brought up about the definition. And--

MR. DERRICK STEVENSON: Okay.

MR. HAUTH: --so I don’t have the rules in front of me and I’m not sure exactly. I’m just assuming that somewhere within our language of the law or the rules, proposed rules as we go forward, it will talk about direct and non-direct, but…

MR. TERRY SMITH: Well, I’m looking and I haven’t found it yet.

MR. ART STEVENSON: Well…

MR. DERRICK STEVENSON: Well, if we’re going to define one, we have to define the other. That’s just common sense.

MR. ART STEVENSON: In essence, Terry, it’s…

MR. TERRY SMITH: It’s not in your rules. I mean, even federal.

MR. HAUTH: Non-direct? Is that what you…

MR. ART STEVENSON: No. It talks about vending-- Oh, in the new rules, it isn’t? I mean, the proposed rules?

MR. TERRY SMITH: Right.

MR. ART STEVENSON: Well, it was supposed to be, but it was taken out. I mean, if you look at the current rules, and the Confluence Center rules, that was addressed. But it was taken out really without the active participation stuff, but I’m not going to, you know, get into that. But it needs to be in the rules. I mean, vending machine income federally and the state vending machine income, and you and I tried to address this a long time ago, but we need to address it. It has to be addressed as a definition, and it has to be addressed on, you know, the disbursement and all the stuff that’s--

MR. HAUTH: So…

MR. ART STEVENSON: --going on.

MR. HAUTH: So Terry, what I understand is, so Page 3, Item N under definition, the non-direct competition vending machine was removed, as well as the sections discussing direct and non-direct were also removed. So everything was taken out about non-direct and direct competition, except on Page 3, line N was left in. So only the definition was left in. But everything else was removed.

MR. GRUELICK: So can we look at the point of defining these things? Would that help us?

MS. MOORE: They’re already defined.

MR. TERRY SMITH: Do you know why it was taken out, Eric?

MR. MORRIS: I don’t. But I think Randy is right. I think we took out the definitions. I don’t remember…

MR. HAUTH: A lot of changes were made. You know, it was kind of…

MR. ART STEVENSON: Not active participation?

MR. HAUTH: You know, well, I mean, not going to go--

MR. ALLEN: No, we’re not going to…

MR. HAUTH: --there. But a lot of changes were made, and so that’s why people are wanting to work through this rules draft, so…

MR. TERRY SMITH: How did you-- Okay. Now, I think you need it in there, how are you going to do…

MR. ART STEVENSON: It has to be.

MR. TERRY SMITH: Gretchen or whoever did it, I mean, they thought maybe it was in the federal regs and not necessarily the state regs. Your state law doesn’t address how vending machine income on state property is going to be used. It doesn’t even say you’re entitled to it, does it?

MR. MORRIS: I don’t think it talks about it.

MR. TERRY SMITH: No, it doesn’t, so--but you get it anyway somehow.

MR. HAUTH: What do we need to have in there, Terry, in your opinion?

MR. ART STEVENSON: It has to be defined.

MR. TERRY SMITH: If you don’t define it, we don’t have it in the rules, so we need to--you need to--I mean-- How do you all use state unassigned now, Eric?

MR. MORRIS: Unassigned? We use it for set-aside, for the five big purposes.

MR. TERRY SMITH: So you treat it as set-aside?

MR. MORRIS: Yeah.

MR. TERRY SMITH: And how do you use federal unassigned?  
 MR. MORRIS: Same.

MR. HAUTH: And that’s--you know, that’s something that we’re hoping to address because, in the Board’s opinion, that’s done unilaterally without active participation. So it is a concern. I think we definitely need to fix it through this rulemaking process. There are sites that come into the agency just that the Director or the agency decides are coming in. And so even though it’s been, you know, discussed, I think we need a fix.

MR. TERRY SMITH: Okay. We’ve gone past 12:30. Let’s have lunch. And I’ll figure out...

MR. HAUTH: Okay.

MR. ART STEVENSON: Hopefully, huh, Terry?

(off the record)

MR. HAUTH: We’re going to go ahead and get the meeting started again and turn it back over to Terry.

MR. TERRY SMITH: Okay. When in doubt, I always go back to the Holy Bible, called Tennessee’s rules. [Laughs.] In our rules, we put--we have a section called vending machine income, and we had--the first section was from federal property and the second section was from state property. And it says, “In the event the Agency receives income from vending machines on federal property which may or may not be in direct competition with a licensed manager, the Agency will be guided by 34 C.F.R. § 395.32 in distributing any such funds to a licensed manager. Any funds not distributed to a licensed manager shall be used for the Agency in accordance with 34 C.F.R. § 395.8”-- Well, it says, “to pay for the managers’ benefits package,” but you can stop there because you don’t have a benefits package.

So then you could go on to say state property, “Vending machine income derived from vending machines on state or other public properties shall be spent” and for what purposes you want it spent, and that’s all you’ve got to say. And then you put a definition of vending machine income.

MS. MOORE: So like with the Agency, the question I think is, does the Agency--what amount of vending machine income can the Agency keep for itself?

MR. TERRY SMITH: Are you talking federal or state?

MS. MOORE: Uh-huh.

MR. TERRY SMITH: There’s a difference.

MR. JACKSON: I don’t think any of it goes to the Commission as long as there’s a manager that’s willing to do the job. Isn’t that correct, Terry? First, it goes to managers--the extent of the program.

MR. TERRY SMITH: You’re getting money form somewhere.

MS. MOORE: Yes, but a lot of…

MR. SMITH: It’s going…

MR. TERRY SMITH: Yeah. And there are different rules for federal property and state property. Federal law only dictates how you use vending machine income from federal property. It doesn’t dictate and can’t dictate how you use money from state property. But you guys use it for the same purposes as you use set-aside. Correct?

MR. MORRIS: Correct.

MR. TERRY SMITH: So you can put in there whatever--you can use verbatim what we said on--what I said--Kathy, I sent it to you. So you can say what we said for federal property. And then state property, you can say any money you receive…

MR. HAUTH: Somebody is off mute. You guys, please mute your phone. Well, I think one of the things, Terry, that our concern is, is that the Agency seems to be bringing the money in house and not necessarily--it’s not being directed by a vote of the Elected Committee and/or in compliance with the federal unassigned vending or whatever. I’m not sure if unassigned vending is used and the term is used in the regulations or not, but…

MR. TERRY SMITH: It’s not.

MR. HAUTH: So what’s the best practice on how we can decide though active participation that money to go to the beneficiary of the program and not simply be used as a funding mechanism. Is there a way to create a policy around that that dictates that, or allows for us to choose that with the Agency if we want to or…?

MR. TERRY SMITH: Federal--you have total control over federal dollars. Any unassigned money coming in from federal--the vendors have total control over that. You know, the state unassigned is a little different. So if you take that money, if you’re not going to use it to fund the program, then you’re going to have to make up that money somewhere. If you’re not using it to fund the program and you’re going to lose that money, then what are you going to do, raise set-aside to make up for the loss?

MR. HAUTH: But I mean, as far as the mechanism to decide that, shouldn’t the Committee, through active participation, decide that with the Agency?

MR. TERRY SMITH: Yes. Yes. And that’s in your rules right now. That’s a budget question. So you know, the Agency and the Committee should do a budget year on it, and you should--you’ve got to know, when you do budget, that means you know what’s coming in and you determine what’s going--how it’s going to go out.

MR. HAUTH: Because what I’ve seen recently, and just to use this for an example, to know that we need to address it, is it looked like there was like a $212,000 carryover in unassigned vending or-- I think it was kind of being put together, and I could be wrong on that. I don’t have the document in front of me. But to try and get to the meat of the matter, how do we create language that not only clearly directs federal but also doesn’t allow state just to be used-- You know, like even in Oregon, there’s been facilities that have been directed into that, so we’re trying to find a fix on how to work together to make that happen better, so…

MR. GORDON SMITH: Did you get…

MR. HAUTH: Gordo, you’re off mute, my friend.

MR. TERRY SMITH: Well…

MR. GRUELICK: So is this something that we need to discuss with regards to four issues right now?

MR. TERRY SMITH: No, but we’re not to the four issues right now. We--I mean, I think you need a section on--vending machine income. I think if you’re going to spend it--we’re not-- That’s a diff--that’s really a different issue. That’s--you know, that’s budgeting. I don’t know that you can--you can put like it’s in here and say it’s got to be spent for this purpose, but I don’t think you want to tie your hands that much, so…

MR. HAUTH: So as far as a definition, what do we need to do to be able to cover that when we get…?

MR. TERRY SMITH: I think you say vending machine income from federal property will be used the way the federal law says, which what I just read and what I sent Kathy. And then you go into the--then you add another sentence that says on state property, it will be used for the same purposes as outlined in, and whatever the section you outlined how set-aside is going to be used.

MR. ALLEN: Follow the federal--yeah.

MR. HAUTH: Art, what’s your thoughts on listening to that?

MR. ART STEVENSON: Well, it definitely has to be clearly defined. And with, of course, the active participation of the Elected Committee. I hear exactly what Terry says. You’ve got a choice. You may have to raise set-aside if you write guidelines that the money will go directly to the vendors. And I’m also looking at the aspect that, you know, the state statute says that it’s supposed to benefit the blind licensed managers, and obviously there’s two different sides here. Do we just designate it for set-aside purposes, or do we designate it to go to blind licensed managers and then possibly have to raise our set-aside? And that decision has to be made. It has to be made collaboratively, and then the appropriate adjustments need to be made in our rules. Obviously, we have the power and authority at any time to raise set-aside to do the purposes of the program. And so vending machine income, I think, if you get it, you’ve got to pay set-aside on it, so…

MR. HAUTH: So the definition, though…

MR. ART STEVENSON: Yeah.

MR. HAUTH: I mean…

MR. ART STEVENSON: You’ve got to have a definition, and it’s got to be clearly stated how we’re going to do it. We’ve just got to decide collaboratively what--how we want to do it. Right, Terry? I think…

MR. TERRY SMITH: Yeah, but I’m--what I’m saying is, you don’t decide it in the rules, you decide it annually as you look at your budget.

MR. ART STEVENSON: Or if we decide that state vending machine income does get distributed to the blind licensed managers, then that happens and then we, for budgetary purposes, either raise our set-aside or keep it where it’s at.

MR. TERRY SMITH: How much money are you getting, Eric? Do you have a clue?

MR. MORRIS: Not off the top of my head, no.

MR. TERRY SMITH: I mean, are we talking $10,000 a year? Are we talking $100,000 a year or more?

MR. ERIC MORRIS: Now we’re--like Randy’s saying, I think we’re probably close to 70 or 80 right this second. But we have some locations we need to go back to bid--

MR. TERRY SMITH: Yeah.

MR. ERIC MORRIS: --once we get that…

MR. TERRY SMITH: But of course, is that where the--when you don’t have a vendor and you got--for a while and then…

MR. MORRIS: Yeah. If there’s a sub--subbed out, it just comes in and goes into the set-aside. Yeah. And I think that’s the piece that, as we talk about this issue, the money, it’s not like it’s coming into a Send Eric to Hawaii Fund. The money is being spent on the managers and the programs. So I think--I just want to say that out loud because that’s how I think of it. It’s not like I’m building a personal chest of money to do with whatever. There’s only so many things we can do with it.

And like Terry said, the budget right this second is--we’re in a new biennium, so the budget has been established. But having that conversation going forward about the actual budget and how stuff is going to be used is a much wiser process, I think, because then as things happen in a dynamic environment that is life, budgets go up, budgets go down. You have to be able to, you know, adjust to that. If you put in a rule where it’s going to go one direction forever, then that’s the course, you know, for good or bad, so that’s my thought.

MR. HAUTH: Yeah, but we have to have a say in it as well.

MR. ART STEVENSON: Yeah, but…

MR. HAUTH: I guess that’s the point.

MR. ART STEVENSON: But also, the state statutes say that the Agency can only provide for the continued operation of established vending facilities if a blind licensed manager is not available until a blind licensed manager is available for--as manager. And so the vending…

MR. TERRY SMITH: Is that in the new law?

MS. MOORE: Yes.

MR. ART STEVENSON: Yes.

MR. HAUTH: Yeah. Yeah. It’s in the old law and the new law. And also in the new law, it calls for a vote of--the Elected Committee can vote on the uses of set-aside as well.

MR. TERRY SMITH: That’s the old law. It doesn’t matter anymore.

MR. HAUTH: Yeah.

MR. ART STEVENSON: Right. But in the established rules, you know, and the state statutes, it’s really clearly defined what needs to happen that hasn’t been happening. I mean, we had vending that managers have said, hey, I’m available and I need my income increased because I’m not making a lot of money. And you know, the Agency has not assigned it as required by the state statute. So we got to make sure that we have the rules that cover all the bases because the Agency can’t just arbitrarily and capriciously decide, hey, I’ve got vending and I’m putting it into set-aside when there’s a manager who may need it or should have it to enhance their income. So…

MR. JACKSON: Can I say something? Steve Jackson. Randy?

MR. HAUTH: Yeah. Sure. Sure.

MR. JACKSON: So pretty much what I’m trying to gather is we want something to say in the definition about the vending that may be--first thing will be a vacancy notice, and then we want active participation to decide if--who might go in there. And if nobody’s qualified, then we want to say we’ll go to a set-aside. Is that right?

MR. MORRIS: No.

MR. HAUTH: Well, I mean, I know what you’re saying, but we’re trying to use a definition that will allow the Elected Committee with the Agency to determine how those monies should best be used and not necessarily, I think, tie our hands of that, and hoping that we’re going to make the best decisions with the Agency. There’s over $60,000 coming in right now, Terry, I believe. And I think there was also some carryover. So I expect those kind of things to change, like I don’t believe whole routes will be taken into set-aside like Art was talking about as we move forward. But we want to have a definition that…

MR. TERRY SMITH: The definition that you’re talking about, Art, where you said you can only do it if there’s not a vendor available. Do you have any idea where that is?

MR. ART STEVENSON: It’s under Agency’s responsibilities, Terry, where it says…

MR. TERRY SMITH: In the Act?

MR. ART STEVENSON: Huh?

MR. TERRY SMITH: In the Act?

MR. ART. STEVENSON: In the mini.

MR. TERRY SMITH: Huh?

MR. ART STEVENSON: In our state statute.

MR. TERRY SMITH: That’s what I’m looking at.

MR. ART STEVENSON: Okay. The Agency can provide for the continued operation of an established vending facility if a blind licensed manager is not available for assignment until…

MR. JACKSON: So do we want to use that definition? Is that what we’re getting at…

MR. ART STEVENSON: Doesn’t it say that?

MR. JACKSON: Do we want to--a definition...

MR. TERRY SMITH: I remember reading exactly what you’re saying, but I can’t find it.

MS. MOORE: Yeah.

MR. HAUTH: Steve, I think we’re trying to come up with a definition that also allows for those things not to occur or not to tie our hands up, just being held to it once a year.

MR. JACKSON: So do we want to have active participation for that definition or something like that? It that what route we're moving towards? Because we want our input, right, the Elected Committee?

MR. ART STEVENSON: And Terry, you might not have that piece, the whole new statute. Do you have the whole new statute?

MR. TERRY SMITH: I do.

MR. ART STEVENSON: Okay.

MS. MOORE: Brackets and all.

MR. GRUELICK: What section is this in, Art?

MR. TERRY SMITH: No, this section I’ve got doesn’t have brackets in it. It’s a clean copy.

MS. MOORE: No, that’s--wait…

MR. ART STEVENSON: What’s that?

MR. GRUELICK: What--do you know what section you’re talking about, Art?

MS. MOORE: In the new law?

MR. JACKSON: It’s in the state section. It’s in the--it’s not included--I don’t know if it’s in the paperwork that you have.

MR. GRUELICK: Well, this is the…

MR. ALLEN: That’s the handbook. That’s not the state statutes that you…

MR. GRUELICK: This is the state statute. I have both of them.

MR. JACKSON: Oh, you have both. Okay. He says it’s under the Agency’s obligations. Isn’t that what you said, Art?

MR. MORRIS: That’s going to have to be in the old handbook, that’s where it’s going to be.

MS. MOORE: I’m actually looking in your 2016 handbook.

MR. ART STEVENSON: No, it’s not in the…

MR. HAUTH: The statute.

MR. ART STEVENSON: It’s in the statutes.

MS. MOORE: Yeah, I know. I know.

MR. GRUELICK: What section in the statutes? Can anybody tell us?

MS. MOORE: Well, I’ll go back to--wait. I’ll go back to what she said they were...

MR. GRUELICK: I have all of the statutes here.

MS. MOORE: I know.

MR. ART STEVENSON: Well, let me tell you, this--

UNKNOWN MALE: Section 6,--

MR. ART STEVENSON: --been a hell of a process. And if that was…

UNKNOWN MALE: --subparagraph 7, Terry.

MR. TERRY SMITH: Section 6, subparagraph 7.

MS. MOORE: Oh, yeah. I remember.

MR. GORDON SMITH: Randy, this is Gordon. It’s bounced around so much, I’ve lost where this thing is supposed to be going.

MR. HAUTH: We’re trying to define a definition that gives us flexibility and allowance on how to direct unassigned--well, vending machine income. Vending machine income.

MR. GORDON: Okay. Thank you. Sorry to interrupt.

MR. HAUTH: No.

MR. DERRICK STEVENSON: This is Derrick.

MR. HAUTH: Derrick?

MR. DERRICK STEVENSON: Yeah. I don’t know, but I think like the easiest thing to do would be that, you know, if there’s unassigned vending going--coming in, that it gets split equally and goes against the manager’s set-aside. That’s just my thought. You bring it in and adds to set-aside. The manager should get credited, you know, an equal amount towards what they have to pay.

MR. ART STEVENSON: Do you think we’re dropping that part?

MR. HAUTH: No. No.

MR. ART STEVENSON: It’s still in there. Right?

MR. HAUTH: Yeah.

MR. TERRY SMITH: It’s not in the statute.

MR. HAUTH: Well, let me find it.

MR. GRUELICK: Can I go back to the ground rules for a second? We got number six, which says stay focused. Defining unassigned vending income is one thing. What it’s going to be used for is a completely different--

MS. MOORE: Another thing.

MR. GRUELICK: --issue.

MR. TERRY SMITH: Well, I mean, I--yeah, I think we’re--I mean, I don’t necessarily think that we’re not focused on it, but I think we are trying to solve…

MR. ART STEVENSON: Clarify it all.

MR. TERRY SMITH: But I mean, I think at this point, you’re good to put in a section about vending machine income, what--you know, how it should be spent. And then you just--you say it can be used--for the set-aside, which means that it could be used for benefits. You could give it to the vendors as vacation pay, health pay, retirement, or however you want to do it. That’s one of the uses of set-aside. So…

MR. JACKSON: Are we not trying to find the definition--

MR. ART STEVENSON: Right. Right.

MR. JACKSON: --of unassigned vending, though?

MR. TERRY SMITH: Well, that’s…

MR. JACKSON: That’s the question…

MR. TERRY SMITH: That’s in the federal law.

MR. JACKSON: Well, so can we adopt that and put in…

MR. TERRY SMITH: Yeah. If we ever got to that…

MS. MOORE: That…

MR. TERRY SMITH: If we ever get--yeah.

MR. JACKSON: If we get there.

MR. TERRY SMITH: Yeah. I mean, what I’m saying is we add those two sections on the vending machine income, which says, federal law will be spent just the way I read it. You quote the federal law. State unassigned income will be used for the same purposes as outlined in section so and so, which is whatever section the set-aside is. And you’re done with that. You put in a definition for vending machine income, which you copy from the federal regs, and then you--how you’re going to spend it, you’ll deal with when you do the budget. You just don’t want to tie yourself down and say it’s going to be spent for this purpose and this person--this purpose alone. That’s just…

MR. HAUTH: Yeah. We want flexibility--

MR. TERRY SMITH: Yeah.

MR. HAUTH: --through active participation--

MR. TERRY SMITH: Exactly.

MR. HAUTH: --to be able to work through it, so how you do that-- I think that section we were looking for is 540(e).

MR. TERRY SMITH: 540?

MR. HAUTH: 540--346.540(e).

MS. MOORE: So my--

MR. HAUTH: I believe.

MS. MOORE: --thing says Section 7. Section 7 of Section 6 is where and how to do is located. So that’s why I think they were referring you there.

MR. TERRY SMITH: It just says, provide for the continued operation of established vending facilities if a qualified--

MR. ART STEVENSON: Blind person.

MR. TERRY SMITH: --vendor is not available and a qualified person who is blind is available for assignment as--what? Provide for the continued operation of established vending facilities if a qualified person who is blind is not available--until a qualified person who is blind is available for…

MR. ART STEVENSON: Right.

MR. TERRY SMITH: But I don’t…

MS. MOORE: Well, the pro--the thing is…

MR. TERRY SMITH: I think a vending facility and vending machine income are not necessarily the same thing. I mean, if you’re got money coming-- If it’s a vending facility, yes. But if it’s a--if you just have a sporadic--like on federal property, you usually have money coming in from vending machines that’s not a vending facility.

MR. HAUTH: So how do we prevent--how do we put something in the law--in the rules to prevent that from happening? Because it has happened and we’d like to change that direction somehow through the rules if there’s a way to do that.

MR. TERRY SMITH: I think--I see what you’re saying. But I…

MR. ART STEVENSON: In the state statutes, Terry…

MR. TERRY SMITH: That’s a totally different issue.

MR. ART STEVENSON: Yeah.

MR. TERRY SMITH: I think--see, that’s where we’re going to--getting astray.

MR. HAUTH: Okay.

MR. TERRY SMITH: We need to deal with vending machine income first.

MR. HAUTH: Okay.

MR. TERRY SMITH: And you know, I’m proposing that you put in the section that I talked about, and you put the definition of vending machine income straight from the federal law, and then we can find out where to put what you’re talking about.

MR. HAUTH: Okay. So even if that is happening, we can deal with it in a different section?

MR. TERRY SMITH: Yes.

MR. HAUTH: Okay. Got it.

MR. TERRY SMITH: You okay with that, Eric?

MR. MORRIS: Yeah, because you’re right. It’s a similar issue, but it’s not the same issue, though. That’s the thing.

MR. TERRY SMITH: So Kathy,--

MS. EWING: Yes.

MR. TERRY SMITH: --did you see my email?

MS. EWING: Yes.

MR. TERRY SMITH: So if you copy and paste that first section verbatim on federal property,--

MS. EWING: Uh-huh.

MR. TERRY SMITH: --that will be a new section in the rules.

MS. MOORE: A new definition?

MR. TERRY SMITH: No, in the rules. So put it at the end after arbitration. For right now, y’all--I’d suggest you sort of rearrange some of those things, but that doesn’t have to be done today. You may not want that to be the last one. And then the second section under there will read--pick up the same language, vending machine income from state property shall be used for the purposes as outlined in…

MR. JACKSON: Whatever section.

MR. ART STEVENSON: The same purposes as outlined in the federal Act.

MR. TERRY SMITH: Yeah, well, let’s cite the federal Act. Let’s make sure, you know, so you…

MR. ART STEVENSON: Yes. Because obviously, the state statute says vending machine income is used for retirement--blah, blah, blah. And then if whatever’s left over…

MR. TERRY SMITH: That’s federal you’re talking about?

MR. ART STEVENSON: Right. And that’s what we’re trying to do, the same thing that federal does.

MR. MORRIS: That’s not what we’re--

MR. ART STEVENSON: No.

MR. MORRIS: --trying to do, Art. Nobody said that.

MR. TERRY SMITH: What you’re trying to do is just make sure it’s spent for the same purposes as set-aside. Like you’re doing it now, that you’ll determine each year you do the budget on how it’s to be spent.

MR. JACKSON: Set-aside…

MR. HAUTH: And then later through the rules, we’ll define with the active participation and that type of thing through the requirement.

MR. ART STEVENSON: But--okay. And I’m just going to say that I think that state vending machine income should be treated just like federal vending machine income. And then you know, if we have to make the adjustments in the budget to do--to raise set-aside or whatever. But in my opinion, the state vending machine income should be used just like the federal vending machine income.

MR. HAUTH: Terry, is there any reason that that couldn’t be the case?

MR. MORRIS: I’ll chime in after Terry does.

MR. TERRY SMITH: You…

MR. HAUTH: Well, why don’t you chime in first?

MR. TERRY SMITH: 395.9, Kathy, is the section that he's citing.

MR. MORRIS: And the set-aside--the actual set-aside purposes in the state statute, the new House Bill 3253, under Section 2, it outlines the allowable purposes. The problem with saying hey, it’s going to be just like the federal law and then we’ll adjust set-aside as the budget requires it would require us to go back and change the rules around, which we’re going to be working on this week, about the set-aside rate. Then we get the flip--the way Terry talked about, allows us to make those adjustments in the budget process, which is a whole different process, you know, with active participation, but also the state budgeting process, that is more flexible. So by tying it back to the state statute for state vending, that allows us to spend it on the purposes of set-aside, which we all agree, we have no choice about. It is what it is. But it also offers a lot of flexibility within that, too.

MR. ART STEVENSON: No, but here’s the difference that I look at it. Okay. If the managers want it to go to benefits, then it goes for benefits. If we want it to go to set-aside, we say okay, it goes to set-aside. And it’s the same decision-making process, just reverse. And so there is no difference. If the managers decide --to just go ahead and go to set-aside, then that’s--you know, that’s the decision, if we want to decide we’re going to pay more set-aside. But to begin with, vending machine income is to benefit the blind licensed managers and for the retirement, et cetera, et cetera. And so in my opinion, it should be treated exactly the same way as the federal vending machine income. And obviously, you know, that’s--you know, in compliance with the federal act, too, and we have the right to do it, but…

MR. MORRIS: Art, just because you can do something doesn’t mean it’s the right way to do it. What I’m saying, the way I’m describing it and the way Terry described it is a more flexible way of accomplishing the same thing. Otherwise, how long--when’s the last time we wrote the rules here in Oregon?

MS. MOORE: 2001.

MR. MORRIS: 2001. Sixteen years. So if we got into a budget crisis and we were fixed on a set-aside rate and we needed to adjust that to allow the program to stay viable, are we going to be able to wait 16 years, which is an exaggeration, obviously, to make that decision and change the rule? Obviously, we couldn’t do that. In a budget cycle through the process with active participation, you can move the needle along in the decision-making process. Doing it the way you’re describing is--it’ll work, but just not effectively.

MR. ART STEVENSON: No, Eric, it will work just as effectively because every year, we should--we have the right to determine the set-aside rate. And as long as you don’t have a set rate in your rules,--

MR. MORRIS: Yeah, but you have to…

MR. ART STEVENSON: --you can change it. You can change it any time that you want to, and it isn’t cumbersome. All you do is say, “Hey, we need some money for these purposes, so we’re going to change the set-aside rate.” So it isn’t any different--difference in the process, but the vending machine income is being used for the benefit of the blind licensed managers for retirement…

MR. HAUTH: So Terry, is there a way to get a win-win on this? I mean,--

MR. TERRY SMITH: Yes.

MR. HAUTH: --I think the concern is, we’ve never been afforded an opportunity to actively participate, so I think that’s where you’re getting some of this input from in as far as the--you know, so let’s find a way to win-win on this.

MR. TERRY SMITH: Okay. Just for Art’s comment, I mean, I always tell states to do exactly what you said; do not put your set-aside rate in your rules because it’s too hard to change.

MR. ART STEVENSON: Uh-huh.

MR. TERRY SMITH: Your statute requires it. And so that’s…

MS. MOORE: Oh, wow.

MR. TERRY SMITH: That’s where we’re--I mean, I’m having to do something with you guys that I tell every state not to do. But if I’m not mistaken, your statute says it will establish by rule a set-aside rate, whatever it’s going to be. Isn’t that what it says?

MR. MORRIS: That’s like topic number three. I think that’s--

MR. TERRY SMITH: Yeah, so…

MR. MORRIS: --the day after tomorrow.

MR. TERRY SMITH: So it’s--we’re going to have to put that in the rules, and so you’re not going to be able to adjust that set-aside rate the way that you could under normal circumstances.

MS. MOORE: And I thought the percentages were according to whether you’re healthy or not healthy or whatever, all that.

MR. TERRY SMITH: Yeah, but it says it would establish by rule--

MS. MOORE: Yeah.

MR. TERRY SMITH: --a set-aside rate.

MS. MOORE: It does.

MR. TERRY SMITH: So you’re going to--you’re not going to have that flexibility.

MR. GRUELICK: Can I ask a question? Is it based on gross sales or…

MR. TERRY SMITH: Net.

MR. MORRIS: Net proceeds.

MR. HAUTH: So how do we get kind of past where we are right now? Is there any way to kind of…

MR. GRUELICK: Net proceeds is fine…

MR. MORRIS: It's a little different than net. Sorry.

MR. TERRY SMITH: I mean, I think--see, I can’t address the way it’s been done in the past, so I’m not even want to go there.

MR. HAUTH: Sure.

MR. TERRY SMITH: All I can address is how it should be done and how it should be done going forward. And the way it should be done going forward is that when you sit down with--and you do your budget, that the Agency shares with you all the revenue coming in and you guys actively participate in deciding how it’s all going to go out. And you know, you’re going to have to figure out, you know, how you’re going to make that happen.

MS. MOORE: I have a suggestion.

MR. TERRY SMITH: I don’t…

MS. MOORE: Could it be at--could we say set-aside rate--

MR. ART STEVENSON: Okay.

MS. MOORE: --shall be at least blank as a baseline?

MR. MORRIS: We have to do that--

MR. ART STEVENSON: Terry?

MR. MORRIS: --in the statute.

MR. ART STEVENSON: Terry?

MS. MOORE: I’m asking…

MS. HAUTH: Yeah, Art, go ahead.

MR. ART STEVENSON: Okay. Since we have to establish the set-aside rate by rule, and we can…

MR. TERRY SMITH: Somebody’s not muted.

MR. ART STEVENSON: Oh. And we can establish a set-aside rate by rule, and also in the rules, we can state “and can be adjusted as necessary to do the purposes that are needed in the program.” You can put that in the rule so you have a set amount, Terry, but you also have the discretion of adjusting it if you need it to administer the program. So we can do that and put it in the rules, and that way it allows us the discretion if we need to raise a set-aside for the purposes, we can do that. And if it’s in the rules, it’s doing exactly what the state statute tells us to do.

MR. HAUTH: So if I may say, I know a lot of this discussion is fleshing out issues when we get to that point. But as far as a definition, what do we need to do? Because that’s what we’re working on right now. Right?

MR. TERRY SMITH: That’s what we jumped over. We’re starting--the definition of vending machine income, that, Kathy, you just have to pick up in the federal regs.

MS. MOORE: That whole thing, yeah.

MR. TERRY SMITH: It’s there.

MR. ART STEVENSON: We could do that, couldn’t we, Terry?

MR. TERRY SMITH: What?

MR. ART STEVENSON: Put that in the rules, that the set-aside rate will be such and such?

MR. TERRY SMITH: I’ve got to see what it says, but you may be able to do that. I don’t know.

MR. GRUELICK: Aren’t you giving yourself the ability that the law hasn’t given you?

MR. ART STEVENSON: Has what?

MR. GRUELICK: Aren’t you giving yourself the ability by giving yourself, in the rules, a section to change the set-aside rate that the law really hasn’t given you yet?

MR. ART STEVENSON: Yeah, it has.

MS. MOORE: Well…

MR. ART STEVENSON: And as a matter…

MR. HAUTH: Okay. Hold on. Hold on. Don’t everybody talk at once. Let’s let…

MR. ART STEVENSON: Yeah. No. We have the right to do that. Terry said, I don’t know for sure, I’ll have to look at it, but the possibility is there. But we--we’re supposed to, on the federal side, you know, adjust set-aside as it’s needed with the active participation of the Elected Committee. If we write in the rules what I just said, then that allows us to comply with the state statute and comply with the federal statute because it would give us the latitude to be able to adjust it as needed to do the purposes of administering the program.

MS. MOORE: That’s why I suggested at least a percentage. So it will always be a baseline.

MR. MORRIS: The new state statute says we’re supposed to determine a standard set-aside rate.

MS. MOORE: That’s true.

MR. MORRIS: And then it talks about applying the discounts to no less than a baseline. It doesn’t say baseline but that’s what it means. So it doesn’t talk about having the-- And I think the flexibility idea is great, I think as Jerry said over there. It’s beyond what the legislature intended. It doesn’t say that. But hey, you can set a variable rate that meets, you know, to whatever you need to do. It’s a good idea but I don’t think it’s--that section, Section 3, doesn’t talk about that. It talks about a lot of other things.

MR. BIRD: Jerry. I just…

MR. TERRY SMITH: What it says is, “The Commission shall determine by rule the standard percentage of net proceeds to be collected under this section.”

MR. ART STEVENSON: Right.

MR. HAUTH: Jerry, go ahead.

MR. BIRD: I was just going to say, I can see both your points. It says it in there, but I think they made it kind of clear, they--for sure, they want the active participation of the Board. And I think that’s kind of what Terry’s saying, here and now, they want to see a figure, apparently. Not that we’ll decide it--and we determine necessary or not, which it should be, but it’s already in there. So maybe for our benefit, we would start--we would put it--we would want to put it low, wouldn’t we, so the managers maintain as much as they can. And then the set-aside is at a low part to where once it needs to be used more and stuff that it then can be changed. I can’t see it being put up there because--it needs to go up in three years, well, so I don’t-- My point is, I guess we’ve got to make the percentage. And let’s do it and make a reasonable percentage.

MS. MOORE: Well, and it says Section 3--Gretchen said this morning, Section 3 only applies through December 31st, 2019, and then it is subsumed under Section 4--

MS. HAWKINS: Right.

MS. MOORE: --as of January 1st, 2020. Authority to make rules only comes from the statute.

MR. ART STEVENSON: Well, and here’s a case where you might talk to RSA, Terry, and get some clarification maybe, on--to me, a standard, if you say your set-aside rate is 11 percent to be adjusted as necessary to administer the program, that’s a standard, and…

MR. TERRY SMITH: That’s not 11 percent if you do that.

MR. ART STEVENSON: Huh?

MR. TERRY SMITH: It’s not 11 percent. I mean, you can’t say the standard rate’s 11 percent and one year charge 13 and one year charge 5. That’s not a standard percent. I think they’re going to make you put it right…

MR. ART STEVENSON: So a standard for set-aside assessment.

MR. TERRY SMITH: Yeah. So you can’t say it’s 11 percent and not charge 11 percent.

MR. ART STEVENSON: Because well--but Terry, what I’m saying is, a standard is enough to--in my opinion, is enough to administer the program for the purposes. And you--if it’s 11 percent now, because you see in government all the time, you know, adjusted to inflation and all those kind of things. Well, we’re allowed to write those kind of rules, too, to administer the program. And what we’re doing is making a rule that fits the environment that we live in. I mean…

MR. HAUTH: So is this something that we come back to…

MR. ART STEVENSON: And discuss it, the legal…

MR. TERRY SMITH: Put that in the parking lot. Make a note over there on--put the section in that we talked about on vending machine income and then--except we’re going to put it in the parking lot where it says “shall be spent in accordance with,” and then we’ll come back to that.

MR. ART STEVENSON: Yeah. That’s a good idea.

MR. HAUTH: And you guys, if you would…

MR. TERRY SMITH: Are you with me, Kathy?

MR. HAUTH: If you would please, just…

MR. TERRY SMITH: I’ll get with you…

MR. HAUTH: Just announce yourselves so that--if you want to talk so we can try and get it more structured. I know sometimes it’s easy to just start talking and talking, and then we start talking over each other, so…

MR. TERRY SMITH: Okay. The other thing…

MR. DERRICK STEVENSON: This is Derrick.

MR. TERRY SMITH: Go ahead, Derrick.

MR. DERRICK STEVENSON: Yeah, I just wanted some clarification. So establishing the set-aside rate, is that the responsibility of the Elected Committee or solely on the discretion of the SLA? I mean, can they come in and say hey, we want to raise it to 50 percent? There you go, you can’t do anything about it.

MR. TERRY SMITH: No, they can’t do that.

MR. ART STEVENSON: There has to be justification.

MR. TERRY SMITH: There has to be active participation and they have to provide…

MR. DERRICK STEVENSON: Okay.

MR. TERRY SMITH: So we got off definition, so we are--we were working our way down Art’s list, but under definitions, a couple more suggestions to make. You have vending machine defined under your regulations, and I would suggest you use the federal definition, which--because that’s--it’s already been defined for you in the federal regulations. You just have it’s a manual or coin-operated machine or similar device for vending articles. You--the federal definition is much better than that. And it also talks about vending articles or services and so…

MR. HAUTH: Is there something we can put in there also to encompass commissaries and that type of thing, or electronic, I mean…

MR. TERRY SMITH: I think the definition of vending facility should…

MR. HAUTH: Okay.

MR. TERRY SMITH: It says carts and…

MR. HAUTH: Okay. Okay.

MR. TERRY SMITH: Or vending facility does, not vending machine. I would suggest you go to the federal definition and you say the same thing for vending facility. You’ve just got… means a facility--means a facility or a combination of facilities under the control of a licensed blind manager and identified in operating agreement. And I would just pick up the same def--vending facility as defined in the federal regs.

MR. ART STEVENSON: Yep.

MR. TERRY SMITH: And just use that definition.

MR. ART STEVENSON: I concur with that.

MR. TERRY SMITH: Any problem with that, Eric?

MR. MORRIS: Yeah. Hang on a second. Not yes, I have a problem with it, but it’s not probably what everybody’s thinking. So under the new statute, it talks--in Section 10 it says, “a vending facility,” quote, unquote, “has the meaning given to that term in ORS 346.510.” So I just want to make sure we’re not tripping ourselves up.

MR. TERRY SMITH: I think it’s the same definition.

MR. HAUTH: It’s the federal, I think.

MR. MORRIS: Is it? Okay.

MR. TERRY SMITH: Yeah.

MR. HAUTH: I think.

MR. MORRIS: I’m just trying to make sure.

MR. TERRY SMITH: It looked like it to me when I looked at it.

MR. MORRIS: Okay.

MR. HAUTH: And Steve, just so you know, I know it’s confusing because it is to me, too, but I understand the definition at the top of the document is just giving us a summary of what we’re going to do to define it further in the rule, or something close to that. So if that helps you kind of…

MR. TERRY SMITH: So assuming it matches, Eric, you’re okay with it?

MR. MORRIS: Yeah.

MR. TERRY SMITH: Okay. And if it doesn’t, if there’s a discrepancy, I don’t know what you’re going to do then, if you’ve got a federal law in conflict with a state law, that’s going to be--that will be a Gretchen question.

MR. MORRIS: It’s a marijuana question.

MR. TERRY SMITH: And then also in section--I think you need a definition of priority, you know, define priority. And of course, we don’t have it in--I don’t know if we have it in the regs now. Do we?

MR. MORRIS: Well, it talks about priority, so…

MR. TERRY SMITH: The statute does.

MR. MORRIS: Yeah.

MR. TERRY SMITH: And priority is defined under the federal law.

MR. MORRIS: But here, it’s important that we delineate between the two.

MR. TERRY SMITH: Why is that?

MR. GRUELICK: Between state and federal, is that what you’re saying, Eric?

MR. MORRIS: Yeah, because state is--I mean, it is different.

MR. JACKSON: There’s a difference. Right?

MR. MORRIS: Yeah. It’s subtly different.

MR. JACKSON: Subtly. Verbiage is different, yeah.

MR. TERRY SMITH: How is it different?

MR. BIRD: Jerry.

MR. JACKSON: You said that…

MR. HAUTH: Jerry, go ahead.

MR. BIRD: Yeah. Wouldn’t we just--basically just put priority means first right of refusal?

MR. HAUTH: Yeah, that’s what’s in the state statute.

MR. BIRD: Period.

MR. TERRY SMITH: Actually, priority is not defined in the regs. I’m wrong. I mean, it does say first right of refusal in the--in your statute. So you could just say that.

MR. MORRIS: It says…

MR. HAUTH: Well, how about for now, we put that in there and then-- I had a definition that was shared with me as we were working through this from Roger Harris. And if the group will entertain that as we move forward, maybe we could revisit that if that’s something that people want to do, so…

MR. TERRY SMITH: Okay.

MR. HAUTH: But for now, that should be good. Right? I mean…

MR. ART STEVENSON: Can you push that forward to us?

MR. HAUTH: Once I get it, yeah.

MR. TERRY SMITH: And then Section 12 in the Act has several definitions in it. I would say you put those in your regs, too, just so you don’t have to go back and forth.

MR. HAUTH: What is it, Terry?

MR. TERRY SMITH: Like Section 12 defines cafeteria.

MR. HAUTH: Okay.

MR. TERRY SMITH: You don’t have that defined. It has…

MR. MORRIS: Healthy vending and local vending.

MR. TERRY SMITH: Yeah. A person who is blind, you have that. Political subdivision is defined, public building is defined, that’s where vending facility is defined right there. And that’s--I think that’s--that is a little different. That’s going to be a problem.

MR. GRUELICK: Well, if we put priority in there, shouldn’t we also have preference, in terms of definitions?

MS. HAWKINS: No.

MS. MOORE: I don’t think…

MR. MORRIS: Well, the thing about--especially with the new statute is there’s pieces of it that are very, very descriptive, like you really don’t need a rule to make it happen, so I think some of that. And I think preference might be one of those things where--yeah.

MR. TERRY SMITH: Well, if we have time, we’re going to get it.

MR. HAUTH: Yeah, I have a definition of that also, preference, that was decided--or that was drafted by Roger. Some of these things, you know, as we went through the whole process, we negotiated back and forth. And of course, when it went through 12 different hands, some things ended up in and out. But you know, I’ll try and find those again if we want to circle back to them, if the…

MR. TERRY SMITH: For now, is everybody okay putting those definitions in Section 12 that’s defined just so you don’t have to go back and forth between the law and the regs putting it in there?

MR. ART STEVENSON: Absolutely.

MR. TERRY SMITH: You okay with that, Eric?

MR. MORRIS: Yeah, I think that’s fine. I just--as long as we true--

MR. TERRY SMITH: Exactly.

MR. MORRIS: --they all get trued up correctly.

MR. TERRY SMITH: And the definition of vending facility, Kathy, I said pick the one up in the federal law.

MS. EWING: Yep.

MR. TERRY SMITH: You better pick the one up in the state law instead. There is some subtle differences.

MR. EWING: Oh, okay.

MR. TERRY SMITH: And I don’t know that RSA is going to quibble over the differences and you--your approach is you’re probably better off using the state law than the federal law. Don’t you agree, Eric?

MR. MORRIS: Yeah, I think so.

MR. TERRY SMITH: I mean, there’s nothing in the federal--there’s nothing in one that makes it a vending facility that’s not a vending facility in the other. You know what I mean? So I don’t--okay. So we’ve gotten to what, two of Art’s list?

MR. HAUTH: Yeah.

MR. TERRY SMITH: What was the third one?

MR. MORRIS: There was a list?

MR. TERRY SMITH: Yeah. He had ten things.

MS. MOORE: He had ten.

MR. TERRY SMITH: We're going to knock these things out.

MS. EWING: Ten issues.

MR. TERRY SMITH: We're going to do them a lot faster than we did that one, though.

(off the record)

MR. HAUTH: Okay. Here we go. Number three. Was that two?

MR. TERRY SMITH: I think.

MR. HAUTH: Okay. Number three, we need compliance language to ensure OCB will ensure that our preference and priority-- So we basically just touched on that. Right?

MR. TERRY SMITH: Yeah, we said we were going to…

MR. HAUTH: Okay. So number four, we will need an operate--oh, this will be an easy one. We will need an operating agreement that is--which I agree with, fair and equitable. I think this might be a parking lot...

MR. TERRY SMITH: That’s part of--that’s one of the four things--six things we have to…

MR. ART STEVENSON: Yeah, it is.

MR. HAUTH: Yeah.

MR. TERRY SMITH: So we skipped over that one.

MR. HAUTH: So number five, we need to ensure we can file group complaints and that we are given full evidentiary hearings. Summary judgments should only occur both, you know…

MR. TERRY SMITH: What do you mean by group complaint?

MS. MOORE: So…

MR. TERRY SMITH: I mean, Art, that is yours.

MR. ART STEVENSON: If several managers want to file the same complaint, you said the Elected Committee has the right as individual managers…

MR. TERRY SMITH: I said there--yeah, as individual managers.

MR. ART STEVENSON: As individual managers. And I believe that if three managers want to file the same complaint, that they should be allowed to do it collectively instead of separately. I think that’s--I think…

MR. TERRY SMITH: See, that’s where the--it’s got to be individual…

MR. HAUTH: Yeah, I…

MR. TERRY SMITH: It says, each individual…

MR. HAUTH: Terry, I can tell you Dan Frye responded a few years--well, whatever, four or five years back, and said that you can file multiple complaints as long as you’re signed as an individual. But what we’ve run into previously, and hopefully it won’t be an issue, but if it is an issue--but what we’ve run into is no, you can’t file the--you can’t file the same complaint and us hear it collectively. You have to go through the process individually, so…

MR. TERRY SMITH: Okay. So…

MR. HAUTH: So I think that’s what Art’s--

MR. ART STEVENSON: Yep.

MR. HAUTH: --talking about.

MR. ART STEVENSON: Exactly.

MR. TERRY SMITH: Okay.

MS. MOORE: It’s like no class action suits.

MR. TERRY SMITH: That’s--well, yeah, but…

MR. ART STEVENSON: Individually…

MR. TERRY SMITH: We can address that, but that’s an easy fix. Okay. What was the next one?

MR. HAUTH: Okay. Two, three, four, five. We need to end the no-cause clause.

MR. TERRY SMITH: Okay.

MR. HAUTH: And I think what he’s talking about is in the operating agreement.

MR. TERRY SMITH: Right. That’s the operating agreement. So that’s--we’ve got to do that. That’s part of the six.

MR. HAUTH: We need a training program that covers all the bases.

MS. MOORE: That’s very undefined.

MR. TERRY SMITH: I don’t know if that’s a rule thing or not.

MR. ART STEVENSON: Terry?

MR. TERRY SMITH: Yeah?

MR. ART STEVENSON: Can we address it totally in the operating agreement? Because obviously, if OCB goes out and…

MR. TERRY SMITH: Address what?

MR. ART STEVENSON: Huh?

MR. TERRY SMITH: What are you addressing?

MR. ART STEVENSON: We’re talking about the no-cause clause, removing a manager for no cause.

MR. TERRY SMITH: We’ve moved on to training.

MS. BROWN: We moved on to training.

MR. JACKSON: We’re parking-lotting that one, I think.

MS. MOORE: Covering all the bases.

MR. TERRY SMITH: Even with the operating agreement, we’re not dealing with it right now because we’ve got to deal with it as part of the--of these rules, so that’s going to be--that’s going to be part of the whole…

MR. JACKSON: A different can of worms.

MR. TERRY SMITH: Whole can of worms, which we will--we can include that kind of stuff. All right.

MR. HAUTH: And just as a point of reference, I do know that in researching some complaints on the federal registry, there are and have been multiple complainants joined in like a class action--but whatever, we can get back to that.

MR. TERRY SMITH: That’s easy to…

MR. HAUTH: Yeah. So in this one we were talking about earlier, we need--number eight, we need to address the federal and state vending machine income distribution issues.

MR. ART STEVENSON: And we’re working on that.

MR. HAUTH: Number nine, we must define what a major administrative decision is and include a mutually agreed upon list of examples.

MR. TERRY SMITH: Okay.

MR. ART STEVENSON: If you look in the handbook that we have now, it says the Agency will decide what a major administrative decision is. And that’s not active participation. It should be--

MR. MORRIS: But I don’t think it’s…

MR. ART STEVENSON: --jointly that.

MS. MOORE: Yes, it does, actually.

MR. MORRIS: Let’s take a look.

MR. JACKSON: Defined as active participation of the BECC the decision would be made…

MS. MOORE: So there was a section, Eric, rights and responsibilities. What section was it?

MR. MORRIS: I was taking a look at the part talking about active participation, which was that on Page 24, line--

MS. MOORE: Yeah.

MR. MORRIS: --805. And it says major administrative policy and program development decisions affecting the overall administration of the Business Enterprise Program shall include, but not limited to, and then it gives that long list of eight different things. Is that what you’re talking about, Art?

MR. ART STEVENSON: No.

MR. MORRIS: Well, what are you talking about?

MR. ART STEVENSON: I’m talking the part of the thing--and unless it was changed without my knowledge, and I can’t scroll through and find the exact spot where it’s at, that it said the Agency will decide what major administrative-- Now, I don’t--it might be under the Agency’s responsibilities.

MS. MOORE: It is. It’s under Agency’s responsibilities.

MR. ART STEVENSON: There we go.

MS. MOORE: It starts--the whole thing is called responsibilities, and the first thing it talks about…

MR. TERRY SMITH: You have any idea…

MS. MOORE: I was going to say this a few minutes ago, but it was off the subject. And that is--that’s where it says what the Director does. Or doesn’t--I’m looking in the--trying to find it. All this braille feels the same.

MR. ART STEVENSON: When you’re going fast.

MS. MOORE: So b) additional--right after that.

MR. MORRIS: Got it.

MR. TERRY SMITH: You found it?

MR. MORRIS: Yeah. I found the Director responsibilities, so…

MR. ART STEVENSON: Yep. It was there. Huh?

MR. MORRIS: Director…

MR. TERRY SMITH: Where is that?

MR. MORRIS: It’s page 15, line 497.

MS. MOORE: Oh, and there’s also temporary assignment. “If a licensed blind manager or licensee is not available or select--for permanent assignment to a vending facility, Commission may select a licensed blind manager or licensee to operate the vending facility under a temporary operating agreement”, which is pretty interesting because…

MR. ART STEVENSON: No, it should be “shall”. A manager should get preference.

MR. JACKSON: It should be “shall”.

MR. GRUELICK: So does--if you go to like 805, and then it’s one that Terry referenced, why is this not what we’re speaking to? It reads “major administrative policy and program development decisions affecting the overall administration of the Business Enterprise Program shall include but are not limited to.”

MR. JACKSON: That’s why there’s a discrepancy. Because one says “shall”, one says “may”.

MR. ART STEVENSON: Did we find where it says the Agency…

MR. GRUELICK: It doesn’t say “shall”…

MR. MORRIS: I didn’t find that, Art. That’s why I was wondering…

MS. MOORE: The part I read says may.

MR. GRUELICK: Yeah.

MS. MOORE: That’s--see, there’s a lack of consistency.

MR. JACKSON: That’s what I’m noticing, too, yeah.

MR. GRUELICK: Okay. Where did you find the may?

MS. MOORE: Hold on. Oh God, I was just there.

MR. JACKSON: Obligate--or responsibilities…

MS. MOORE: It’s--no, no, no, no. It’s additional training, agencies-- It was a different thing. It’s about temporary--the may that I read was about temporary agencies or temporary opportunities or something like that. It’s right after operating agreement. C. It’s--no, E, temporary assignments. That’s one place it says “may”.

MR. GRUELICK: Section E of what?

MS. MOORE: I don’t know, Luther. I’m just looking at braille. So it’s probably on about page seven if there’s three braille pages to one, seven or eight. On the director--categories.

MR. GRUELICK: I don’t see it, Art.

MR. MORRIS: I found the program responsibilities and there’s like 25 different things, but I didn’t see anything about…

MR. TERRY SMITH: What page is that?

MR. MORRIS: It was on page 15, I think it was.

MR. TERRY SMITH: There was the director.

MR. MORRIS: Yeah. I think that’s…

MR. ART STEVENSON: Well, I’ll go through it again and…

MR. TERRY SMITH: Okay.

MR. ART STEVENSON: I can’t do it as quickly as you guys. You know, I’m not sighted and all that good stuff, and my screener--but yeah.

MR. TERRY SMITH: So what was the next--what was the--I forgot what the topic was.

MR. ART STEVENSON: Where…

MR. TERRY SMITH: Major administrative decisions?

55:20: Yeah.

MR. MORRIS: Yeah.

MR. JACKSON: Why don’t we just go with the federal…

MR. HAUTH: And I think the concern there, Terry, is…

MR. TERRY SMITH: Your rules spell out major--a major administrative decision a lot more than most states, so…

MR. HAUTH: And I think you know the concern there that, you know, if people say oh, that’s not a major administrative and others say yes, it is.

MS. MOORE: Yeah.

MR. HAUTH: So there’s a few other things here that I think are pretty simple, but again, I want to share them with you, that were identified through when we reviewed the RSA draft rules that were sent. And then I know Eric recently sent some changes, I think, and I don’t know where those are in here, but I think you sent us the changes that were made recently or the most recent changes?

MR. MORRIS: I think what you’re referring to, in April of last year, we had made some revisions based on RSA feedback. And so what I did, there was a separate document that accompanied this draft that basically said, here’s what RSA said we had to change. Here’s what we changed.

MR. HAUTH: Have those been changed in that draft that Terry has? Do you know?

MR. MORRIS: The one everybody’s looking at?

MR. HAUTH: Yes.

MR. MORRIS: I believe so, yeah.

MR. HAUTH: Okay. And I don’t have access to it right now, but I’ll look it over. But one thing on here, Terry, page five, I know the concern was brought up that--it says to be--like it’s page five, items C and D, and it deals with, I think, residency and blah, blah, blah. And it says to be present in the state of Oregon, Oregons. I don’t know if that was just a typo that was brought to concern.

MR. MORRIS: Is this under training selection?

MR. HAUTH: Page five, items C and D.

MR. MORRIS: Page five, C…

MR. GRUELICK: Referring to 160, approximately, Eric.

MR. MORRIS: Yeah, I got you. Thank you, Luther. No outstanding debt, not be suspended, shall be a citizen of the United States--oh, yeah. There’s an S on the end of there for some reason.

MR. HAUTH: So maybe it was just--I don’t know if there’s anything there, Terry, if you’re seeing it or if there’s anything that raises a concern. Maybe if it’s just state of Oregons, maybe it was just a simple typo.

MS. MOORE: Maybe it needs an apostrophe.

MR. HAUTH: I’m just…

MR. MORRIS: No, it needs to be a semicolon because that’s how they structure these rules. That’s one of those things that has stuck with me for a while now.

MR. HAUTH: That might have just--that might have just been it. I don’t know.

MR. MORRIS: Yeah. It should be just an apostrophe. Or not…

MR. BIRD: Jerry.

MR. MORRIS: Semicolon.

MR. HAUTH: Yeah, Jerry, go ahead.

MR. BIRD: I was just wondering, wasn’t it just kind of the big deal was, was one had “may” and one had “shall,” and we all know it should be “shall.” Can’t we just say that anything dealing with that, we’ll make sure that it has the “shall” where it replaces with “may” and…

MR. MORRIS: What was…

MR. HAUTH: Well, let’s take those out as we go through--as we go through it, Jerry. I mean, I think--I support that. I mean, in most every case, it should be “shall” or “must.” But you’re talking about as we go through the rules, to make them consistent. Right?

MR. BIRD: Yeah.

MR. HAUTH: Okay.

MR. BIRD: Because I think, if I remember right, some of the ones we done and then got sent in, and then some of the other ones that got changed without us kind of kind of knowing, I did think they did change some words, “shall” to “may,” which we’ve just got to be aware of as we go through this.

MR. HAUTH: Okay. Right now, we’re--and right now, we’re just kind of pointing out a few things that we had previously put together, and then let’s circle back to that.

MR. TERRY SMITH: Well, under C, which is why that first sentence needs to come out, you got it out of order. You say the Commission shall issue licenses to trainees and licenses to blind managers from other states when, and then you say with respect to issuing a license to a trainee, the Commission shall issue a license to a trainee who has met all eligibility requirements and has successfully completed the Business Enterprise Program’s training program and has passed the final training examination. Then you say, with respect to issuing a license to a licensed blind vendor from another state, then you lay out what…

MR. MORRIS: Yeah. It sets it up to delineate between the two.

MR. TERRY SMITH: Yeah, I know. Don’t you think that first sentence needs to come out or…

MR. MORRIS: Why?

MR. TERRY SMITH: I guess--its says shall issue licenses to trainees--

MS. MOORE: It’s a little bit repetitious.

MR. TERRY SMITH: --and licensed--okay. It’s all right. It will get on there.

MR. MORRIS: I dodged a bullet on that one.

MR. TERRY SMITH: First reading, maybe it--dealing with other states, but it’s not. So did you pick up the typo he was talking about, Kathy?

MS. EWING: Yes, it is.

MR. MORRIS: Yeah, Kathy got it.

MR. HAUTH: Maybe that was it. And the other thing was, to be present in the state of Oregon, is that relative to somebody seeking services, or is that-- I know at one time in our rules, it said you needed to be a resident of Oregon. And I think RSA says you just need to be present in the state. So I’m not sure…

MS. MOORE: Oh, interesting.

MR. HAUTH: It’s been a while back, so I’m trying to remember what these concerns were about, but…

MS. MOORE: Well, if someone moves here and they don’t live here for a year, in terms of state--a lot of state things, they’re not considered a resident yet. But if they move here and they manage a facility, is that okay if they’re qualified?

MR. HAUTH: No, I think you just have to be present. You don’t have to be…

MS. MOORE: Right. That’s what I’m asking.

MR. HAUTH: Yeah.

MR. TERRY SMITH: Where is that, right where you were?

MR. GRUELICK: 161.

MR. TERRY SMITH: 161?

MR. MORRIS: I think it’s back on…

MR. GRUELICK: Actually, 162, “the applicant should be a citizen of the United States and be present in the state of Oregon.”

MR. TERRY SMITH: Oh, there it is. I think that will…

MR. JACKSON: We’re going to need…

MR. TERRY SMITH: What the regs state--you cannot put a residency requirement in your regulations. You cannot say you have to be a citizen of Oregon to have a vending facility in Oregon.

MS. MOORE: A resident of Oregon.

MR. TERRY SMITH: You can’t say that. You can’t even say that they, you know, got--they don’t even have to be here to get a license. But you can say--I tell you--let me back up on that. You can say they have to be present because they’re going through the training program, and so therefore, they have to be present to complete your training program. But once they’re---once they’ve completed those requirements and they move to Washington or Idaho or wherever, that’s okay. They can do that.

MR. HAUTH: Okay. Well, that’s what I was wanting. So--and then there’s another thing here on page seven, item E14. I think it says, fails to pay set-aside charges or reschedule--or schedule repayments for more than 60. And I don’t think it says 60 days, which I think was intended.

MR. MORRIS: Line 14?

MR. HAUTH: On number six, page seven, E14.

MR. MORRIS: Fails to pay set-aside--for repayments for more than 60 days.

MR. HAUTH: Days. Okay. That might have got added in there because I know when we first looked it over, it was not in there. So then…

MR. GRUELICK: Randy, can we…?

MR. HAUTH: …number--and so days is in there. Correct, Terry?

MR. TERRY SMITH: Yes, it is.

MR. HAUTH: Okay. So number seven, page 10, item C.

MR. TERRY SMITH: Page 10?

MR. HAUTH: Page 10, item C. At the--at line 328, the word selection remains through the entire… for the rest of the section. In other words, half of the section reads “interview committee” and the remaining section reads “selection committee.” So I think the concern was just to try and make it consistent, unless it’s already been addressed.

MR. GRUELICK: Randy, this is Luther. Can we backtrack just a second here with a question?

MR. TERRY SMITH: Wait. Let’s get this straight first.

MR. MORRIS: Oh, I got you. I see what you’re saying.

MS. MOORE: So it’s either an interview committee or a selection committee?

MR. MORRIS: So the last paragraph says selection--it says selection committee.

MR. GRUELICK: Where are we looking?

MR. TERRY SMITH: Line 314 is where it starts, on page 10. They call it the interview committee. Then on down the page, they start calling it the selection committee.

MS. MOORE: Then they call it the interview and selection committee.

MR. HAUTH: So we want to make that what?

MR. TERRY SMITH: What do y’all want to call it? Interview committee or selection committee?

MS. MOORE: Wouldn’t it be interview and selection committee?

MR. MORRIS: It should be selection committee because it’s under a selection category.

MS. MOORE: All right.

MR. HAUTH: Luther, did you want something?

MR. GRUELICK: Yeah. Going back to…

MR. TERRY SMITH: Did you get that, Kathy?

MS. EWING: Selection committee.

MR. GRUELICK: To the question of present--

MR. TERRY SMITH: Yeah.

MR. GRUELICK: --as opposed to resident…

MR. TERRY SMITH: It says--the first part says now present.

MR. GRUELICK: Yeah, I understand what it says. But my question is, if you’re not present, how can you be a full-time manager?

MR. TERRY SMITH: You could live across state lines. You could live…

MR. GRUELICK: I suppose that’s true.

MR. TERRY SMITH: Like in Tennessee, Memphis,--

MS. MOORE: In Portland...

MR. TERRY SMITH: --southern, I mean, Southaven, Mississippi.

MR. GRUELICK: Okay. That makes sense.

MR. TERRY SMITH: Okay. So then…

MR. HAUTH: So what do you guys--we’re going to put selection? Is that…

MS. MOORE: Yeah, selection committee.

MR. HAUTH: Okay. So number eight is--on page 11, lines 346 and 347, ORS citation, it should--it’s incorrect. Maybe it’s been changed. But it should be 346.540(1)(c). I’m not sure what it reads right now.

MR. ART STEVENSON: That’s in the--yeah, so we’re going to have to check that.

MR. TERRY SMITH: Where are you at?

MR. HAUTH: Page 11, line 346 and 347.

MR. TERRY SMITH: “The Director shall consider the interview committee’s recommendation in the selection process and shall accept an applicant to be assigned in a vending facility.”

MR. MORRIS: I don’t see any cites in here.

MR. ART STEVENSON: No.

MR. TERRY SMITH: If there’s only one applicant for a vending facility, the director may select the applicant without using a selection committee.

MR. ART STEVENSON: Now, while we’re sitting right there…

MR. TERRY SMITH: Let’s deal with Randy’s thing first.

MR. HAUTH: So a citation and it says…

MR. TERRY SMITH: There’s no citation there.

MR. HAUTH: ORS 346.540. There’s nothing there?

MR. MORRIS: I don’t see anything.

MR. HAUTH: Well, I’ll find out. I might have mistyped it. On page 11.

MR. MORRIS: Yep.

MR. HAUTH: So number nine on page 11, lines 350 and 353, operating agreement in the February 2016 OCB--agreement, RSA, ask questions. Oh, okay. I think obviously we’re going to deal with this with the operating agreement. But I think the question was, is it part of the rules? Is it separate from the rules? How are we going to address it?

MS. MOORE: Wait…

MR. TERRY SMITH: And again, and I always tell people don’t put it as part of your rules, but I think-- It says by rule establishing...

MR. HAUTH: Number 10 is page 12, set-aside funds. There is no statement as to what set-aside funds are used for, even though the current rules outline such. Maybe that’s been changed. Number 10, page 12.

MR. MORRIS: I got--I think you’re right. Like the actual things you can spend set-aside funds on?

MS. MOORE: Yeah.

MR. MORRIS: I think that’s accurate, but I think with the new statute, it’s descriptive about exactly what we can spend it on.

MS. MOORE: It’s very clear. So that will just have to be changed.

MR. MORRIS: I don’t think it needs to be in there.

MS. MOORE: Well, that...

MR. ART STEVENSON: Say that again. Read that section.

MR. GRUELICK: That’s in…

MR. ART STEVENSON: Read that section, Randy.

MR. HAUTH: Page 12, set aside--page 12, it says set-aside funds, there is no statement as to what set-aside funds are used for, even though the current rules outline such.

MS. MOORE: Well, that’s in--this--the statute just got passed and this was written in 2015.

MR. HAUTH: And remember, some of these things were like--some of these things we addressed were maybe a year and a half old. So maybe some of the changes have been incorporated, but I still…

MR. TERRY SMITH: I mean, if you wanted to put in a section…

MS. MOORE: From the statute.

MR. MORRIS: Yeah, refer back to the statute.

MR. ART STEVENSON: You need to put the section in there.

MR. TERRY SMITH: Page 12, you were on. Weren’t you?

MR. MORRIS: Yeah, it’s like line--it starts at 397.

MR. TERRY SMITH: A, B…

MR. GRUELICK: A is assessment, B is deductions. C is reporting. I think what they’re suggesting is add a D.

MR. TERRY SMITH: Yeah. You got a D, recordkeeping. I would put it under C. I’d do a new C and then change C to D and D to E, and make a new C, use the set-aside and just say it will be spent, it will be used in--and just say what--inside the section. That’s all you’ve got to say.

MR. GRUELICK: So you’d use C and then--okay.

MR. MORRIS: And that’s Section 3, Kathy. Wait a minute. Wait, wait, wait. No.

MS. MOORE: No, it’s not.

MR. MORRIS: Section 2.

MS. EWING: So now reporting is D?

MR. TERRY SMITH: Yeah. Reporting would become D.

MS. EWING: Uh-huh. And then use of set-aside is C.

MR. TERRY SMITH: Yeah. Recordkeeping becomes E, I guess.

MR. GRUELICK: Yep. And retention would then become F.

MR. TERRY SMITH: Yeah.

MR. HAUTH: Okay. Can I give you another one?

MR. TERRY SMITH: Let me see if she’s got that. Do you--are you with us, Kathy?

MS. EWING: Yeah. Use of set-aside. We haven’t defined it yet, though?

MR. TERRY SMITH: All you’ve got to do is say, set-aside dollars will be spent in accordance with…

MR. MORRIS: It’s Section 2 of the new House Bill.

MR. TERRY SMITH: Yeah. And then just give the citation for the new statute. You could list it all out if you wanted to. Just take up paper. But you can use it if you want to.

MS. MOORE: Well, you’d save someone having to go to the statute.

MR. TERRY SMITH: Yeah. I usually like to list it out myself.

MS. MOORE: I mean, this is so frustrating to have to go find it.

MR. TERRY SMITH: Just copy and paste to the statute. Copy and paste to the statute.

MR. HAUTH: Page 16, item B3 states “the licensed blind manager may reimburse the Commission the total cost of the initial inventory in one payment or via monthly repayment plan of no more than 24 months.” As an example under the section, blah, blah, blah, blah, 100,000, okay. And so we’re getting down to what the concern is. However, on page 20 and 21, item D1 states, “a licensed blind manager newly assigned to a vending facility shall pay back to the Commission the amount of the initial inventory plus change fund beginning six months after taking over the facility at a rate of five percent of the initial balance per month. Licensed blind managers transferred from another vending facility will begin repayment immediately at the five percent rate. As an example, under the selection and--under the section, initial inventory of $100,000 would be paid back.” The question is here, two different sections on the same subject matter with two different calculation methods. Does it…

MS. MOORE: Which one applies?

MR. HAUTH: Is it in conflict? Does it matter? Does it make sense?

MR. TERRY SMITH: I think it matters.

MR. ART STEVENSON: It needs to be fair and equitable. Equal for both. I mean, the payment.

MR. MORRIS: It just needs to be the same.

MR. ART STEVENSON: The payments amount.

MR. MORRIS: So instead of 24 months, it should say 20.

MR. ART STEVENSON: And the duration.

MR. MORRIS: Does that make sense?

MS. EWING: Twenty-four months. It needs to say what?

MR. MORRIS: Twenty. At five percent a month would be 100 percent after 20 months.

MS. EWING: I see.

MR. MORRIS: I think that’s a typo.

MS. HAWKINS: No, that’s in--it makes it easy that way. Right?

MR. MORRIS: Yeah.

MS. HAWKINS: And the only thing that…

MR. TERRY SMITH: Is everybody okay with that…

MS. HAWKINS: …new managers getting an extra six months.

MR. TERRY SMITH: Does that fix it, Randy, if you just change 24 to 20?

MR. HAUTH: Whatever you--I mean, if the Board is--they respond to, you know…

MR. TERRY SMITH: I’m just asking, is that…

MR. HAUTH: It’s not high on my radar, but I did want to bring it up.

MR. ART STEVENSON: Twenty--it’s 20 months versus…

MS. MOORE: Twenty-four.

MR. TERRY SMITH: Where was the first one that said 24 months?

MS. HAWKINS: It always does 20 months anyway.

MR. GRUELICK: No, you’ve got another issue in here, because if you look at the second one…

MR. HAUTH: Page 11--or page 16, item B3.

MR. GRUELICK: Yeah, I know which one.

MR. HAUTH: Okay. Okay.

MR. GRUELICK: Randy, if you look at page 20, it’s starting at six months and five percent, so that means it’s 26 months.

MS. MOORE: Twenty-six months, really.

MR. GRUELICK: So, you know, we could either hash it now, or we can suggest--can we put it in the parking lot and hash it out later?

MR. HAUTH: Yeah, I think so. Maybe, Eric, you can kind of, you know, work it over in your--

MR. ART STEVENSON: Well, the payment period--

MR. HAUTH: --mind and…

MR. ART STEVENSON: --needs to be equal to 24 months per…

MR. MORRIS: Twenty.

MS. MOORE: Twenty.

MR. ART STEVENSON: Twenty or twenty-four. We can have the discussion whether we want to…

MR. TERRY SMITH: I mean, it’s 20. We know it’s 20.

MR. ART STEVENSON: Yeah.

MR. TERRY SMITH: That’s not the question. The question is, that

20--it says it doesn’t start for six months. I don’t see there’s conflict there.

MS. HAWKINS: Well, for a new manager.

MR. TERRY SMITH: Yeah.

MS. HAWKINS: For the other ones, like if we change and get new inventory, then it’s immediately starting.

MR. TERRY SMITH: Yeah. Yeah.

MS. HAWKINS: That’s always been that way.

MR. TERRY SMITH: I don’t see a conflict there, now that you fixed it to 20 and 24.

MS. HAWKINS: Yeah, and 20 makes…

MR. TERRY SMITH: So one of them really is new--the new manager?

MR. GRUELICK: Well, the--if you don’t…

MR. TERRY SMITH: Okay.

MR. GRUELICK: The only difference is when it starts.

MS. HAWKINS: Yeah, because it both should be 20 months.

MS. MOORE: For a new manager it’s six months for…

MR. MORRIS: But the repayment’s the same.

MS. HAWKINS: Yeah.

MR. MORRIS: Yeah.

MS. HAWKINS: Because it’s five percent then on both sides.

MR. HAUTH: So are we putting that to come back to?

MR. TERRY SMITH: No.

MR. HAUTH: Oh.

MR. MORRIS: You’ve got to change it to 20.

MR. TERRY SMITH: Just change it to 20 and you’re good.

MR. HAUTH: Okay. Are you guys good with that, Board?

MR. GORDON: Yes.

MR. TERRY SMITH: But on 16, it’s talking about equipment and stock.

MR. HAUTH: So Art, what are your thoughts?

MR. ART STEVENSON: Well, Randy, I don’t have that in front of me. But does that also talk about, you know, reimbursement to the manager for the outgoing--when they leave a facility that they’ll--I’m trying to remember if that’s all in there. I want to make sure…

MR. HAUTH: Yeah, I don’t have--

MR. ART STEVENSON: …our bases are covered.

MR. HAUTH: --that in front of me either.

MR. ART STEVENSON: Okay.

MR. MORRIS: I want to say this, Art. I have it in front of me, but I mean, it’s a huge document, so-- I remember when we worked through this, part of that was the Agency would be there during the turnover because I know that was kind of a bone of contention before, it just kind of, you know…

MR. ART STEVENSON: To do the inventory.

MR. MORRIS: Yeah, so…

MR. ART STEVENSON: Yeah.

MR. MORRIS: I think that’s in here. I don’t know why it wouldn’t be. But I don’t have it right in front of me, and I’m looking.

MS. MOORE: I just saw that. Hold on.

MR. MORRIS: Pay for additional equipment. It’s probably on that other section that Randy was talking about.

MS. HAWKINS: So what happens to that inventory, say that unit closes? Like my lottery inventory, I ended up just, you know, kind of washing it because I had to pick up inventory from DMV.

MR. MORRIS: Yeah. I don’t think we addressed that in the rules.

MS. HAWKINS: I know, it’s kind of--that’s kind of bad because I’ve gotten stuck with inventory a few times.

MR. ART STEVENSON: Well, and truthfully speaking, in the rules, I mean, it should be you’re supposed to maintain a certain level. And if they close the facility down, the manager should not be penalized for following the rules and stuff like that. They should still receive full benefit from the inventory if, you know, they can’t use it in their new facility and stuff. So obviously, you pay back for the inventory and stuff, and you...

MS. HAWKINS: Well, I had actually bought my own at that point and--but then I just ended up, you know, losing it.

MR. ART STEVENSON: Well, and…

MS. HAWKINS: And then I’ve also had issues where managers haven’t wanted my inventory or certain things and refused them. And so then…

MR. ART STEVENSON: Well, and that issue needs to be addressed.

MS. HAWKINS: Yeah, well, at some point…

MR. ART STEVENSON: Well…

MR. TERRY SMITH: So Randy, do you have any more?

MR. HAUTH: Yeah. I have a few more. So in--so number 12, this was, again, prior to the state statute. It talked about contracting, subcontracting, being unilaterally deleted. It talks about the fiscal impact of doing so. Number 13, line seven, 19 through 723, all licensed blind managers--set-aside owed, there’s RSA-- I think it’s doing something with the licensed blind managers’ vote on equipment credit. I think RSA did ask OCB about that. And I don’t remember, Eric, if you’re--if that’s been changed or--you guys can look up 719 to 723 and see.

MR. MORRIS: Yeah, that rings a bell, but I can’t--I’m trying to think just…

MR. HAUTH: Yeah. RSA did question it. I think it’s talking about licensed blind managers voting on an equipment credit.

MR. TERRY SMITH: What are you on? What section?

MR. HAUTH: Page 719 through 723.

MS. MOORE: Line?

MR. GRUELICK: Line 719.

MR. HAUTH: Yeah.

MR. ART STEVENSON: Line.

MR. HAUTH: Thank goodness for that.

MR. GRUELICK: That’s getting…

MR. HAUTH: Yeah. It’s called, what, Gone with the Wind or…

MR. MORRIS: I think we may have just taken that out, Randy, because I don’t see anything. It’s just talking about prior approval right now for emergency stuff.

MR. HAUTH: So maybe that was taken out. Again, this, you know, goes back a while. Number 14, line 770 through 773. The Elected Committee is supposed to be elected by the licensed blind managers, not appointed by members of the Elected Committee. I think it dealt with appointing people to the committee. Maybe that’s been taken out. I don’t know. I know when talking with Dee Jones, that was an issue when she was working with RSA that--she said look, you have members on the Committee that are appointed, and that’s not the intent of the Elected Committee.

MR. MORRIS: I see what you’re saying. So it says--right now it says, “In the event of a vacancy of any other Elected Committee member, the Elected Committee shall appoint another licensed blind manager to fulfill the remainder of the term. Preference shall be given to a licensed blind manager from the represented area.”

MR. HAUTH: I even think Gretchen Merrill, during one of her

trainings-- it was Lynn Rosik, during one of her trainings, said that you not--it’s not a best practice, you shouldn’t be appointing people to the Board. I know that I did it when I was Chair, and I believe probably Harold and Lewanda did as well. But I think if we’re going through the rules, we should probably--

MS. MOORE: Well, if you’re making…

MR. HAUTH: --tighten them up.

MS. MOORE: If Board members--like where an organization I’m in, if somebody for some reason doesn’t finish their term, they usually are appointed by the Board.

MS. CELYN BROWN: Just to finish that term.

MR. ART STEVENSON: Just to finish the term.

MS. MOORE: Just to finish that term. Exactly.

MR. MORRIS: And I think, Randy, maybe what you’re thinking about from Lynn Rosik, because that kind of rings a bell, is it seemed like before, Elected Committee members…

MR. ART STEVENSON: It was in the bylaws, guys.

MR. MORRIS: They would appoint somebody to like fill their place for that meeting.

MR. ART STEVENSON: Yeah. That was in the bylaws.

MR. HAUTH: Or yeah, and I know--I can tell--yeah, I talked with Dee Jones. You know, whatever. It’s not a major thing. But if we’re going through, Dee Jones said that’s not the proper thing to do. Of course, she’s not at RSA anymore. She moved on, but--so just wanted to through it out there. I know…

MS. MOORE: So you’d elect them no matter what?

MR. HAUTH: That’s what she said, the Elected Committee…

MR. TERRY SMITH: Why would you give preference to that? I mean, if it’s from a certain district, wouldn’t the replacement have to be from that district?

MS. CELYN BROWN: Mm hm. Yeah. That's what Eric read.

MR. MORRIS: But sometimes, in the massive amount of people that we have, there’s nobody from that area--

MR. ART STEVENSON: That wants to do it.

MR. MORRIS: --that wants to do it.

MR. BIRD: Jerry.

MR. TERRY SMITH: Yeah.

MS. CELYN BROWN: Go ahead.

MR. TERRY SMITH: Who’s on he phone?

MR. BIRD: Yeah, just, my little two cents is the way I took it was they meant kind of a--like say you’re going to miss a meeting. You can’t make it to this meeting. I’m a Board member. We kind of had it that you can appoint someone else to take your place while you’re not there. And the problem was, is that person you’re having to take their place was not elected, so you can’t have them doing a vote for you or anything like that. So you cannot have someone come in and replace you and have voting privileges, I think, is what they mean, because they weren’t voted in by...

MR. TERRY SMITH: It now talks about if there’s a vacancy. With RSA, they didn’t say anything about it. Did they?

MR. BIRD: No. This was just if we miss a meeting here, one of our BECC meetings, we had it in our things that members could appoint someone to take their place.

MR. TERRY SMITH: But that’s not what this rule’s about.

MR. MORRIS: Yeah, this is…

MR. TERRY SMITH: This rule’s not about that.

MS. MOORE: Okay.

MR. BIRD: Oh.

MR. TERRY SMITH: This rule is about a vacancy, if somebody resigns.

MR. HAUTH: So what’s the best practice, Terry? I mean, how would you deal with something like that? I mean, do you have any…

MR. TERRY SMITH: Well, we always had a special election.

MR. HAUTH: Yeah. I think that’s what it should be.

MR. MORRIS: Like I can speak--like Jeanne-Marie said, an organization that I’m a part of, we had somebody that said, I don’t want to do it anymore. And so the Chair or the mayor, in this case, actually interviewed people, came back to the Committee, to council, and we appointed that person the position for the remainder of the term, so…

MR. HAUTH: But I think being that this is in federal and state law about the Elected Committee, maybe it’s a conflict of somebody not being elected, so…

MR. ART STEVENSON: Well, and they are…

MR. TERRY SMITH: I’ll ask…

MR. HAUTH: I’m just sharing. I mean, again, it’s not a major thing for…

MR. TERRY SMITH: This is the easiest way to do it, the way you got it, that you have…

MR. ART STEVENSON: Just appoint to--for the remainder of the term, and it’s legal.

MS. CELYN BROWN: Yeah.

MR. TERRY SMITH: I don’t see that there’s an issue here.

MS. HAWKINS: Because if you go to electing somebody, you’ve got to take time to figure out who wants to run and…

MR. HAUTH: Well, anyway, I wanted to raise that as a concern that had been brought to my attention.

MS. HAWKINS: Then you’ve got to wait two weeks…

MR. TERRY SMITH: Okay. All right.

MR. ART STEVENSON: What did you find?

MS. MOORE: I had a question earlier about stock and reimbursement and stuff, and I found it. It’s under Business Enterprise Program Responsibilities. Section A is Director. Section B is equipment and stock. And I can’t tell you anything about the lines. The Commission shall supply a licensed blind manager of a new vending facility with equipment and initial inventory of merchandise necessary to begin the business in the vending. The right, title to, and interest in the equipment of each vending facility and the initial stock will be vended in the…

MR. ART STEVENSON: Vested.

MS. MOORE: Vested, sorry, in the Commission. Thanks, Art.

MR. ART STEVENSON: You’re welcome.

MS. MOORE: “The right, title to, and interest in the initial stock shall be transferred to licensed blind manager only after the licensed blind manager/VFM has reimbursed the Commission the total cost of the initial stock. The licensed blind manager may reimburse the Commission for the total cost of the initial inventory in one payment, or via the monthly payment or more than”--this is where it’s 20 months instead of 24.

MS. HAWKINS: And all those stocks should probably be changed to inventory.

MR. TERRY SMITH: Exactly.

MS. MOORE: So, “The need for any additional equipment for an established vending facility is determined by the Director in consultation with the assigned VFM”--I keep changing it. “The VFM surrenders a vending--when the VFM surrenders a vending facility, whether through transfer, resignation or retirement, or termination, the VFM shall turn over all Commission-owned equipment and stock. It’s inventory. The Commission shall return any monies owed, such as initial inventory--stock retained by the Commission, to the VFM, minus set-aside payments or other payments due to the Commission, within 30 days.” There you have it. That’s what it says.

MR. TERRY SMITH: Well, what happens--and now we are getting off track, but I’m going to do it anyway.

MS. MOORE: Well, I’m sorry it took me all that time to find it.

MR. TERRY SMITH: No, not that. So what happens if you go from a facility that had--let’s say you’re in a facility and you only had $2000 worth of inventory. And you go to a facility that now requires $10,000 worth of inventory. Who pays the $10,000?

MS. MOORE: It’s hard because…

MR. DERRICK STEVENSON: The new manager.

MR. ART STEVENSON: The manager does.

MS. MOORE: Yeah. Especially…

MR. TERRY SMITH: So you got to have $10,000 before you can even bid on a location?

MR. ART STEVENSON: No.

MR. GORDON: No, no. That’s the inventory recovery fund.

MR. MORRIS: Yeah, so the…

MR. ART STEVENSON: Then you’ve got to start making payments as on as the additional…

MR. TERRY SMITH: Right. The Agency gives you that $10,000.

MR. ART STEVENSON: Right. The additional $8000 you have to start making--

MR. TERRY SMITH: Okay.

MR. ART STEVENSON: --payments on.

MR. TERRY SMITH: All right. I got you. That’s fine.

MR. HAUTH: And I think it comes out of VR, the initial stock.

MR. TERRY SMITH: That’s fine. Okay. Are we on your list?

MR. HAUTH: Almost. 776, 777 is similar to what the federal regs talk about, elected. But we’ll just raise the question. Maybe it’s not a big deal. But the chairperson appointing a vice chair, is that what we want in the language or not?

MS. MOORE: Or is it elected?

MR. MORRIS: Are we negotiating about this?

MR. HAUTH: Well, I’m just bringing up what I was told by Deanna Jones, the program specialist, through RSA.

MR. MORRIS: Art, what do you think about vice chair?

MR. HAUTH: And if we’re redoing the rules…

MR. MORRIS: Yea or nay?

MR. ART STEVENSON: Well, and we really had this argument, and you know, it was basically because of, I think, relationships and personal issues. Every Elected Committee needs a vice chair to be able to conduct meetings, you know, in the absence of the Chair, and do those kind of things. And it actually…

MR. HAUTH: Well, should they be appointed or elected? I think that’s the question.

MS. MOORE: That’s the only question.

MR. ART STEVENSON: Well, it should be a bylaw thing. And in all actuality, it shouldn’t even be in the rules.

MR. HAUTH: Well, I think that’s why we’re bringing it up.

MR. ART STEVENSON: Yeah.

MS. CELYN BROWN: I would think that it should be a special election.

MS. MOORE: For the vice chair?

MR. HAUTH: Yeah, I don’t know why it’s in the rules. Terry, would you--I mean, do you find other states deal with the vice chair in the rules?

MS. MOORE: I don’t know how it ended up in here, but it’s in here.

MR. MORRIS: I think Art wanted it in there.

MR. ART STEVENSON: No.

MR. MORRIS: No, I’m pretty sure you did.

MR. ART STEVENSON: No, no, no, no, no, no, no.

MR. MORRIS: I know I’m not vested in it. I’m good either way, so…

MR. ART STEVENSON: It was--there was a big debate whether there should be a vice chair or there shouldn’t be a vice chair, and that it should be the whim of the chairperson. And for meeting purposes and stuff, there needs to be a vice chair for emergency reasons if a meeting needs to be conducted and the chair isn’t available. Not only that, to assist, you know, in--I mean, a president has a vice president and a…

MR. TERRY SMITH: So the chairman is elected by the vendors at large. Right?

MR. ART STEVENSON: Right.

MS. MOORE: So why shouldn’t--

MR. BIRD: Right.

MS. MOORE: --the vice chair be also?

MR. BIRD: Well, the vice chair is chosen from the remaining Board members.

MR. TERRY SMITH: Yes.

MS. MOORE: Among the…

MR. TERRY SMITH: But that person’s appointed.

MR. BIRD: Right. Should be appointed by the chair.

MR. ART STEVENSON: It’s voted on…

MR. HAUTH: They were voted--Art was voted by the Board.

MR. ART STEVENSON: By the Elected Committee.

MR. HAUTH: I guess the question is, should it be in the rules or should it be through the bylaws?

MR. ART STEVENSON: It should…

MR. HAUTH: What’s the best practice?

MR. ART STEVENSON: It shouldn’t be in the rules.

MS. MOORE: It should be...

MR. BIRD: It should be in the bylaws.

MR. TERRY SMITH: I think that’s what Art said. They just said it differently.

MR. HAUTH: Yeah. I would think so, too. I don’t know why it would be in the rules or need to be in the rules, but…

MR. TERRY SMITH: I mean, it doesn’t need to be in there. If you want to strike it, strike it. It doesn’t add anything to…

MR. HAUTH: I mean, I don’t think Eric cares. Do you, Eric?

MR. MORRIS: I’m vested now.

MS. MOORE: Now what do you want, Eric?

MR. HAUTH: So we have like--Terry, there’s like two or three more things, so I’m finishing it out…

MR. MORRIS: So we’ll take that out. Let me go talk to Kathy real quick for sure.

MR. HAUTH: Okay. So line 790 and 792, again, we’re going to the bylaws. And it currently calls for a two-thirds vote of the membership. But the language that we looked at seems to be allowing the Elected Committee to unilaterally adopt the bylaws, which we don’t--if it’s still in there, maybe it’s been changed. But at that point in time when we reviewed it, didn’t feel that was appropriate.

MR. ART STEVENSON: That should not be in there.

MS. MOORE: What should not be where?

MR. ART STEVENSON: The Elected Committee doesn’t change bylaws.

MR. HAUTH: Line 790 and 792.

MS. MOORE: Okay. It’s not in there.

MR. TERRY SMITH: The Elected Committee shall adopt bylaws to determine policies and procedures for the governor to the Elected Committee. That is 789 and 790.

MR. ART STEVENSON: Right.

MR. TERRY SMITH: Then you go to 70. The next line is actually…

MR. HAUTH: Well, I think you just read it because I think…

MR. ART STEVENSON: That was it, Terry. And that’s--the bylaws are the elected--I mean, the Elected Committee and managers deal jointly. And for the--only the Elected Committee to decide what’s going to be in the bylaws and what isn’t going to be in the bylaws, really, the whole body should decide. And it shouldn’t be in the rules anyway. It should be up to the managers how they make changes in their bylaws, not--and it shouldn’t be a state rule.

MS. MOORE: But see, this whole thing is about the BECC being the, for lack of better--responsible, culpable group that the Commission goes with rather than all of the managers at once. And I think that that’s partly where this is coming from. But I--you know…

MR. HAUTH: I would think it’s a best practice, especially for bylaws, to have a two-thirds vote of the managers.

MS. MOORE: Oh, yeah.

MR. ART STEVENSON: Or to have a vote--it doesn’t matter if it’s two-thirds or--

MR. HAUTH: Yeah. Yeah.

MR. ART STEVENSON: --51 percent of the vote. It’s determined by all the blind licensed managers--

MR. HAUTH: So I don’t know why that’s in there.

MR. ART STEVENSON: --in the state.

MR. HAUTH: If anybody has a problem with keeping it in…

MR. TERRY SMITH: What I would do--I mean, I think there’s nothing wrong with saying you’re going to have bylaws. I mean, that’s actually a good thing to say.

MS. MOORE: Which is basically what I said.

MR. TERRY SMITH: I’ll just say the Elected Committee shall adopt bylaws as approved by the vendors at large or whatever.

MR. ART STEVENSON: Yeah. Sure.

MR. TERRY SMITH: And you can do a majority vote.

MR. HAUTH: Yeah. That’s fine.

MR. ART STEVENSON: And that change is fine, too.

MR. TERRY SMITH: You follow that, Kathy?

MR. HAUTH: Okay. So then, I think…

MR. TERRY SMITH: The Elected Committee shall adopt bylaws as approved by a majority vote of all--what…

MS. MOORE: VFMs.

MR. TERRY SMITH: Whatever word we’re using now, vending facility managers, to determine policy, et cetera, et cetera.

MR. HAUTH: Okay.

MR. MORRIS: Wait, wait, wait, wait. So one other distinction we need to think about, especially with that kind of thing, you can have people who are vending facility managers and you can have licensees, somebody that’s not assigned to a facility yet, but they’re still licensed in the program. So when you have that kind of thing, do you want to include everybody in that vote? Or is it just the people who are assigned to a facility?

MR. HAUTH: I would think everybody should vote. I mean, that’s my initial thought. If they’re licensed, they should have a right to vote because they have a right to representation.

MR. ART STEVENSON: Well, and see…

MS. MOORE: So a licensee is somebody who had passed the program already? Because…

MR. MORRIS: Yeah.

MR. TERRY SMITH: They don’t have a vending facility.

MS. MOORE: This is a big issue.

MR. MORRIS: Yeah. So somebody that’s actually been licensed in the program but just hasn’t been assigned to a facility.

MS. MOORE: Assigned yet. Okay.

MR. MORRIS: Yeah.

MR. GRUELICK: So there’s a related issue here that may or may not be relevant. I don’t know. Is there a quorum required, and if so--

MS. MOORE: Yes.

MR. GRUELICK: --what is the quorum? And can it be done--does it need to be done in person or can it be done over the phone or by some other…

MR. ART STEVENSON: Well, it’s described in our bylaws how they vote already, so that’s up to…

MS. MOORE: Yeah…

MR. GRUELICK: Okay. As long as you sort it out, that’s fine.

MR. TERRY SMITH: So I would use the term blind---V--what do you call them?

MR. JACKSON: VFM.

MR. TERRY SMITH: VFM and licensees. That covers it. Because it says licensees can vote over the other section, says they get to vote.

MR. HAUTH: So the next one, Terry, if we’re good with that, and maybe these have changed lines a little bit because maybe changes have been done, but it should be close. So lines 795 through 801 was reworded. The Elected Committee is entitled to active participation, shall actively--shall have active--you know, I think the entitled to was not received well by some.

MS. MOORE: It’s in there still.

MR. HAUTH: Entitled to active participation, active participation and major administration policy and program development decisions affecting the overall administration of the Business Enterprise Program. So I think that was brought to our attention, entitled to or should it be, you know, must or shall. Or maybe it’s been changed. I don’t know if it’s still in there.

MS. MOORE: No, it says…

MR. TERRY SMITH: No, it still says it. It says entitled to active participation. I don’t understand. Okay. This is--I don’t quite follow Eric’s logic, but he said earlier that you can’t say active participation one time and actively participate somewhere else. If you change it, you’re going to have to say actively participate or come up with--word it entirely differently.

MR. MORRIS: Yeah, you have to restructure it.

MR. TERRY SMITH: So…

MR. MORRIS: Has to be the same…

MR. ART STEVENSON: Should it be entitled? Shouldn’t it be that we are supposed to do it because it’s mandated by the federal law that we…

MR. MORRIS: Well, I think--didn’t we say we were going to take out that whole first paragraph? We talked about that this morning.

MS. MOORE: We talked about it, but it was never-- That whole first paragraph, I think, would be a great thing to take out, but…

MR. MORRIS: Yeah, because that was going to go away because the new statute addresses that. And then the active participation, like lines--

MS. MOORE: Definition...

MR. MORRIS: --800 through 804 goes to definitions, and then active participation would fall into the--we had to reword this just a little bit to tee up that…

MR. TERRY SMITH: That takes care of it.

MR. MORRIS: The rest of it.

MR. HAUTH: And following on the heels of that, the other concern…

MR. TERRY SMITH: So did Kathy take that--have you taken that out already, Kathy?

MS. EWING: Well, are we taking out the…

MS. MIRANDA: Chairman Hauth, can I mention something?

MS. HAUTH: Sure. Sure, Lewanda.

MR. MIRANDA: Okay. Back on the last one where Jerry said to write the majority of the managers is for voting on bylaw changes. Our bylaws take two-thirds of the vote, so if Kathy’s writing it down, that’s what it should say.

MR. TERRY SMITH: Good catch.

MR. HAUTH: Thanks. And also, Terry, let me read it to you this while we’re trying to figure out that. It says, also…

MR. TERRY SMITH: Okay. You’re moving too fast on me.

MR. HAUTH: Okay.

MR. TERRY SMITH: Let’s get--if Kathy’s keeping up, more power to her. So that first paragraph that goes under active participation, remove that.

MS. EWING: So…

MR. TERRY SMITH: The Elected Committee is entitled to da, da, da, da, da.

MS. EWING: Do you want me to take it out or--

MS. MOORE: Yes.

MS. EWING: --change--just take the whole thing…

MR. TERRY SMITH: Just take that whole paragraph out.

MS. MOORE: Take that first paragraph out.

MR. MORRIS: 794 through 799.

MS. MOORE: And then the second paragraph goes into--

MR. MORRIS: The definitions.

MS. MOORE: --the definitions.

MR. TERRY SMITH: That’s the definitions and that…

MS. MOORE: The ongoing blah, blah, blah, blah.

MR. HAUTH: Yeah. I see something there that says “although active participation will not include individual decisions about assignments of vending facilities, the Commission may,--“

MS. MOORE: Yes.

MR. HAUTH: --which is a concern, may, “confer with the Elected Committee on such matters as the Commission deems necessary.”

MS. MOORE: That’s a--

MR. ART STEVENSON: That’s a…

MS. MOORE: --all duties as assigned statement.

MR. TERRY SMITH: We just took that out.

MR. MORRIS: That’s in the first paragraph.

MR. ART STEVENSON: No, that’s got to go.

MR. TERRY SMITH: That whole paragraph came out.

MS. MOORE: It’s gone.

MR. HAUTH: Okay. And I think last but not least, requirement to-- And line 821 through 825, the first sentence in this section is confusing. I don’t know. Maybe it’s been changed, but it at that time didn’t appear to make--I don’t know if it was a broken sentence or if it didn’t make sense, but…

MS. MOORE: What is it?

MS. BROWN: What does 821 say?

MR. HAUTH: And again, those lines may have changed as--you know, as things have been…

MR. GRUELICK: Can I read it, Randy?

MR. HAUTH: Yeah.

MR. GRUELICK: “When the Elected Committee submits officially approved requests and recommendations to the Director in writing, the Director shall provide a written response including reasons for the decision reached for action taken within 30 days--

MS. MOORE: Thirty days.

MR. GRUELICK: --of receipt of the request. The Commission bears final authority and responsibility for the administration and operation of the vending facilities.”

MR. MORRIS: So just to speak to the new statute a little bit, the language is very similar in the new statute but not exactly the same, nor does it have the day requirements. So if we’re going to keep that 30 days in there, we would want to match it up with--because the new statute says that the Commission would not follow a recommendation of their Committee regarding a matter on which the Committee actively participates, the Commission shall provide to the Committee a written explanation as to the reason for the Committee’s recommendation was not followed. So I think that that we want to make sure those…

MR. ART STEVENSON: Yeah.

MR. HAUTH: Yeah.

MR. ART STEVENSON: And right here is where we get into the full consideration thing. And it really needs to happen. I mean, just saying because I don’t want it is not a reason. It has to be based--

MS. MOORE: On law.

MR. ART STEVENSON: --on, you know, logical reasons and you know, is it the best for the program or the managers and all that. Because--and so it needs to be more clearly defined so that we get away from some of the problems that we had in the past. And so--and there’s no reason why we can’t put given full consideration and us defining full consideration so that we have less problems. We want to write complete rules and eliminate the pitfalls. And so that needs to go in here.

MS. MOORE: Well, full consideration, what do you mean by-- I knew we’d get back to this eventually.

MR. ART STEVENSON: Mm hm.

MS. MOORE: What do you mean by full consideration? Give me a two-sentence definition. Can you?

MR. ART STEVENSON: It’s in my thing, and I don’t have it right in front of me here up, but it defines full consideration of…

MR. TERRY SMITH: Full consideration. The term full consideration is used in this document. It is used in the context of explaining how the Agency and the BECC will respectfully consider one another’s point of view and will look for ways to reach agreement. When the term is used, it means that the Agency and the BECC will go through the following steps together. Legal context for what the law allows, pros and cons of different possibilities and their impact on BE. Everyone share preference and rationale for those preferences. This process is intended to apply to all areas, not just where it is explicitly mentioned. That’s what you said.

MS. HAWKINS: So is that going to be in definitions?

MR. TERRY SMITH: No.

MS. MOORE: No.

MR. ART STEVENSON: Not that whole thing.

MS. MOORE: Well, it would be right here…

MR. ART STEVENSON: So in other words, those words would be--instead of hey, when the Elected Committee makes a recommendation, you know, we’ll give a reason why. You know, the process of full consideration concerning that, in other words, you know, the true active participation when you’re---obviously when you’re discussing and making a major administrative decision, you know, the Elected Committee should give full consideration to the Agency’s perspective, and they should give full consideration to the managers’ perspectives, examine the legal reasons why, and then come up with solutions that best fit the program within the parameters of the law.

MR. GRUELICK: Well, that presupposes, Art, that you can come up with an agreement.

MS. MOORE: Yes.

MR. GRUELICK: And you know, there are times when, you know…

MR. ART STEVENSON: No, but that’s why you have full consideration. Because once you--as Terry was saying earlier about active participation, when you’re totally engaged and you’re doing the things that you need to do, I mean, Terry went to the-- Hey, you vote on this because this is what could happen. And then there was no problems, you know, there were no pitfalls. And the full consideration aspect is everything’s on the table and weighed and talked about and the pros and cons, and then the decision is made. And that’s--including the legal reasons why, because in the past, you know, not necessarily any legal reasons why or why not you couldn’t do it. It’s just not--we’re not going to do it--

MR. HAUTH: Yeah.

MR. ART STEVENSON: --because we don’t want to.

MR. HAUTH: So Terry, what’s your thought about a best practice on this? Because what Art’s saying is we don’t want all this active participation to mean nothing. Right? We want a measurable outcome and people in good faith working hard through the issue, so…

MR. TERRY SMITH: Well, I think--and this is just my take on it. I think full consideration is a step back from active participation. I think active participation is a stronger term than full consideration. Because when I talked this morning, I talked about you are participating in the decision. That’s what active participation is. If you say full consideration, you’re just saying they’ve just got to listen to you,--

MS. MOORE: Talk about it.

MR. TERRY SMITH: --then think about it, and then give you the reason. I think it--I think you actually take a step back--

MS. HAWKINS: Yeah.

MR. TERRY SMITH: --from my definition of active participation when you let them do full consideration. Now, having said that, I understand what Art’s saying. He wants there to be something in terms of--

MR. ART STEVENSON: Legal reasons why and…

MR. TERRY SMITH: --a legal reason. And I think--and that’s where maybe, rather than getting into all the full consideration and all that stuff, all the other stuff, you know, maybe there’s one more sentence that we could come up with there that sort of lays out what your expectations are in terms of the…

MR. HAUTH: Why don’t we think through that sentence and bring it back tomorrow or something?

MR. ART STEVENSON: Yeah. Reasons…

MR. TERRY SMITH: Here’s what I’m saying, Eric. Do you understand what I’m saying?

MR. MORRIS: All I’m thinking about is taking a break because I’ve got to go to the bathroom.

MR. TERRY SMITH: Well, hey, I’ll take a break. I’ve got to do that, too.

MR. HAUTH: Okay. Well, you know what? I think we can get this--I think we can get this finished up by, you know, 4:14, 4:30.

MR. TERRY SMITH: Get what finished up?

MR. MORRIS: I just need 60 seconds.

MR. HAUTH: At least get these issues that we--

MR. ART STEVENSON: Mr. Chair?

MR. HAUTH: --that we went through line by line.

MR. TERRY SMITH: We’re taking a break.

MR. ART STEVENSON: A 15-minute break.

(off the record)

MR. MORRIS: Randy, where are we headed to?

MR. HAUTH: Line 833.

MS. MOORE: Line 833.

MR. TERRY SMITH: Okay.

MR. HAUTH: And it says “may” on line 833, the Elected Committee may serve as advocates, and I’m sure it’s supposed to be “shall serve as advocates for the licensed blind manager,” or VFM or whatever we are. You’re finding that, Terry?

MR. TERRY SMITH: Yeah.

MR. HAUTH: Okay.

MR. TERRY SMITH: It says “may.”

MR. HAUTH: Okay. So I know that’s--I mean, we want to change that to “shall.” Right? So that’s--

MR. TERRY SMITH: It’s up to you guys.

MR. HAUTH: --in compliance. Okay.

MR. ART STEVENSON: Yeah.

MR. HAUTH: And then line 20 is…

MR. TERRY SMITH: Let’s--just so you understand, when you’re serving as an ad--that doesn’t mean you have to advocate that they’re right. You’re just advocating to make sure they get their rights--their rights are protected.

MS. MOORE: Right.

MR. HAUTH: Yeah, but I--yeah, and I agree, but I don’t think…

MR. TERRY SMITH: They’re wrong.

MR. HAUTH: I don’t think you have a right to…

MR. TERRY SMITH: Say you’re not going to…

MR. ART STEVENSON: No, you’re not going to advocate to them and say hey, you’re wrong, you’re barking up the wrong tree, and that’s advocating for a lawsuit.

MR. HAUTH: So line…

MR. ART STEVENSON: And that can screw us.

MR. HAUTH: Number 20, lines…

MS. MOORE: Wait, wait.

MR. MORRIS: Wait, wait, wait. So…

MS. MOORE: Luther, you have a question?

MR. GRUELICK: No, that’s fine.

MR. MORRIS: So does the federal act say “shall”?

MR. HAUTH: Yeah, I think it does. The CFRs say, “shall act as advocates, serve as advocates.”

MR. ART STEVENSON: Yes, it is “shall.”

MR. MORRIS: All right. Kathy, can you make that change?

MS. EWING: So it’s under H, grievances?

MR. MORRIS: Yes.

MS. EWING: “The Elected Committee shall serve as advocates?”

MR. MORRIS: Yeah.

MS. EWING: Okay.

MR. ART STEVENSON: Shall receive, transmit.

MR. HAUTH: Should be “may”. Then lines…

MR. MORRIS: Should be “shall.”

MS. EWING: Should be “shall.”

Part 4-1:39: Should be “shall.”

MR. HAUTH: Yeah, yeah, yeah.

MS. EWING: Randy…

MR. HAUTH: I was just checking you guys.

MR. MORRIS: Hang on, I need to report that.

MR. HAUTH: So lines 848 and 849 under dispute resolution, it also says “may.” Let’s say unilaterally change from “may” to “shall.”

MS. MOORE: Well, I don’t know if all the “mays” will be…

MR. HAUTH: 848, 849. I don’t know if you could read that to us.

MR. GRUELICK: “The director shall issue a written response to the complainant within 30 days of the meeting described under Subsection 4. Complainant and the director may mutually agree to extend the deadline.”

MR. HAUTH: So I don’t remember exactly what this was about, but as you’re reading through it, Terry, what are your--what’s your take on it?

MR. TERRY SMITH: I’m still back on the other one.

MR. HAUTH: Okay. Okay.

MR. GORDON SMITH: I think--oh, yes. Either there’s 11 that are at the Commission, the rest are on the…

MR. HAUTH: Hey, Gordo?

MR. ART STEVENSON: Gordo, mute.

MR. TERRY SMITH: Can we go back…

MR. GORDON SMITH: Yes.

MR. TERRY SMITH: I want to go back to that last one--

MR. HAUTH: 833.

MR. TERRY SMITH: --real quickly.

MR. HAUTH: Okay.

MR. TERRY SMITH: Yeah. Where it says--I just look--pulled up the federal law. It says, “The Elected Committee may serve as advocates for the licensee or licensed blind manager.” So you need to--of course, if you change that to-- What the law--what the federal regs say is you’ll receive, da, da, da, and serve as advocates for such vending--in connection with--but it says they…

MS. EWING: It says “may.”

MR. TERRY SMITH: No. At the--it says “at the request of the blind vendor.” So you may want to add that because if they don’t want you involved so that you don’t--you can’t advocate if they don’t want you…

MR. HAUTH: Sure. No, no. I get that.

MR. ART STEVENSON: But it does say “shall” if they ask.

MR. TERRY SMITH: It does--it says “shall” and it lists the things--

MR. HAUTH: Right.

MR. ART STEVENSON: Right.

MR. TERRY SMITH: --which include advocating. So I say--are you with--do you know where we are, Kathy, under grievances?

MS. EWING: At grievances?

MR. HAUTH: Line 833.

MS. EWING: Okay.

MR. TERRY SMITH: It says, “If the licensed or licensed blind manager chooses to submit a written grievance to the Elected Committee, the Elected Committee shall transmit it to the Commission. The Elected Committee, at the request of the…”

MS. EWING: VFM.

MR. TERRY SMITH: I have so much trouble with that. VFM shall serve as an advocate.

MS. EWING: Okay.

MR. HAUTH: Okay. Moving right along on…

MR. TERRY SMITH: Now I’ll catch up with you.

MR. HAUTH: Okay.

MR. TERRY SMITH: Okay. Go.

MR. HAUTH: 848 and 849. And that looks like a dispute resolution that I think we’d probably have to read it to see what the issues may be, but…

MS. MOORE: Okay. So--oh no, that’s arbitration.

MR. TERRY SMITH: It says the complainant shall meet with the director to discuss complaint details and potential resolutions. The director shall issue a written response to the complaint within 30 days of the meeting described under Subsection 4. The complainant and the director may mutually agree to extend the deadline of such response. If the complainant is dissatisfied with the director’s written response, the complainant may file a written request for an administrative review with the executive director of the Commission.

MS. MOORE: The executive director shall schedule and notify the complainant in writing the--and location for the administrative review. The executive director shall hold the administrative interview within a reasonable time, and the complainant’s request taking into consideration the length and complexity of complainant. Five, the administrative review is informal and is conducted at the direction of the executive director or the executive director’s designee.

MR. GRUELICK: Direction there should be discretion, I want to...

MS. MOORE: Oh.

MR. GRUELICK: It reads, “The administrative review is informal and is conducted at the direction of the executive…”

MS. MOORE: Oh, yeah. It should be discretion.

MR. GRUELICK: Direction should be discretion, or I would assume…

MR. TERRY SMITH: What number are we on?

MS. MOORE: Number five of this section.

MR. GRUELICK: Five. Item five.

MS. MOORE: “The administrative review is informal and shall be conducted at the direction of the executive director or the executive director’s designee.”

MR. TERRY SMITH: Right.

MS. MOORE: I don’t know, because it can’t be at the discretion because--

MR. TERRY SMITH: Yeah.

MS. MOORE: --it’s the next part of the grievance.

MR. TERRY SMITH: Yeah. They don’t have--yeah, they don’t have discretion, it’s direction.

MR. ART STEVENSON: Uh-huh. It should be direction.

MS. MOORE: “The complainant shall advise the executive director if they intend to have advocates or legal counsel attend the…”

MR. GRUELICK: With them.

MS. MOORE: With them. Sorry. “The executive director shall issue a written decision on the complainant within 60 days of completing the administrative review. The complainant shall request a fair hearing…”

MR. GRUELICK: May.

7:35: May.

MS. MOORE: Oh, really?

MR. GRUELICK: May request a fair hearing.

MS. MOORE: Oh, sorry. Yeah. “If the complainant is dissatisfied with the administrative review decision by filing a written request--” Just reading all of this exhausts me. “For a hearing…”

MR. ART STEVENSON: Really.

MR. HAUTH: Well, I think that’s it. It’s awful confusing.

MR. ART STEVENSON: It is.

MS. MOORE: Director within 30 days, so 30/60/30 so far, after issuing the administrative review decision. And then we come into fair hearing.

MR. ART STEVENSON: Uh-huh.

MS. MOORE: So all that section…

MR. TERRY SMITH: You got lots of problems in your fair hearing section.

MR. ART STEVENSON: There is no kidding. And I…

MS. MOORE: Well, we’re not there yet. We just read the…

8:20: Have to read it…  
 MS. MOORE: Well, we’re not.

MR. ART STEVENSON: So…

MR. TERRY SMITH: You just got there.

MS. MOORE: Well, I know, but we’re stuck with what we just read.

MR. ART STEVENSON: There are several issues here, and the Elected…

MR. TERRY SMITH: Are there issues with the administrative review part she just read?

MR. ART STEVENSON: Well, in all actuality, yes, because in the past, the hearing--I mean, the full evidentiary hearing aspects are totally left up and what’s going to be heard are totally left up to the Commission. And therefore, there may not be a full evidentiary hearing because the Agency can and does sometimes leave out some of the issues that need to be discussed. And it’s all at the whim of the Agency to what the Administrative Law Judge hears because if the issues are not addressed in the findings, then they’re not going to--the Administrative Law Judge is not going to hear those aspects because they haven’t been issued in the final order of the Agency. And so the administrative review is totally flawed and leads to a full evidentiary hearing not occurring. And therefore, you’re doomed to go to arbitration no matter what. And so there needs to be some specific language that…

MR. HAUTH: Yeah. What’s the best practices--

MR. ART STEVENSON: Yeah.

MR. HAUTH: --around that, Terry? Because that’s one thing that Art mentioned on his, and I read off of--

MR. ART STEVENSON: It is. Yes.

MR. HAUTH: --Art’s earlier. And so obviously, it’s a concern for most of us that have filed complaints. So what’s a fair way with--to work through this that…

MS. MOORE: See, what happened is, in 1999, the Oregon rules people, administrative rule people, instead of having all of these things go to--straight to arbitration or, you know, end up in court, they came--and it was--primarily started out as land use stuff because there was so much of it. That’s right when I moved here. And so they came up with the administrative--Oregon administrative rules. And so on one level, some people think the OARs have worked well. This group has historically not thought so is all I can say for the past twenty--well, five years that I’ve been here, almost. And the OARs, there isn’t very much leeway in terms of that. And usually, that’s not done in person. It’s done on paper, from what I’ve seen. Like six inches piled of paper.

MR. MORRIS: Jeanne-Marie, are you talking about the Oregon Office of Administrative Hearings, OAH?

MR. ART STEVENSON: Yep.

MR. MORRIS: Okay. You said OARs. I suspected…

MR. ART STEVENSON: Yeah.

MS. MOORE: Well, the OARs determine the--yeah, I am.

MR. MORRIS: Okay.

MR. ART STEVENSON: Well, the whole system’s flawed because in all actuality, an Administrative Law Judge, because I’ve been through this process, can’t even rule on some of the things that also occur in Randolph-Sheppard. They’re just not allowed to rule on contracts, anything to do with contracts, and those specific things. The Administrative Law Judges were put together to handle issues of state agencies and their employees, not Randolph-Sheppard.

MR. TERRY SMITH: Yeah.

MR. ART STEVENSON: And therefore, you know, there’s no way that anything is going to get settled on the state level.

MR. HAUTH: Is there a way to make it better, Terry? I mean, I agree with Art. It’s a messed-up system where the state spends a lot of money and the blind vendor actually doesn’t get their day in court until they get to arbitration. So is there a way to, you know, work through the system better?

MR. TERRY SMITH: I don’t know what Oregon state law says about what the Division of Law Judges can do or not do, to be honest with you.

MR. HAUTH: Yeah.

MR. TERRY SMITH: So I don’t know how to answer that. I could--I mean, I’m surprised--if RSA read this, I’m shocked that they didn’t--that they let that go. If Jesse reads through that, there’s no way that your--the way you’ve got that written, the fair hearing part will go through.

MR. MORRIS: Jesse’s read through it three times.

MR. TERRY SMITH: I just can’t believe…

MR. ART STEVENSON: And that’s why we don’t have rules.

MR. HAUTH: Okay.

MR. MORRIS: Jesse hasn’t said that.

MR. TERRY SMITH: Yeah.

MR. MORRIS: That’s the thing. And I’ve got--I mean, we’ve got feedback from them on it. If they had such an issue with it and we had the--the Office of Administrative Hearings has been around for…

MR. HAUTH: But they haven’t given you the final--right, they haven’t given you final input. I think they’ve given some simple input on some smaller issues, but maybe that--I’m not speaking for Jesse, maybe that was…

MR. MORRIS: I think if it was that big of a thing, and from your guys’ perspective, it obviously is a big thing, that if it was that big of a thing for the feds, they would have brought that out right away and said, wait a minute, you guys don’t have a fair hearing process. And if anything, my understanding is Oregon, compared to other states, has more of a fair hearing process than other states have in place.

MR. HAUTH: Yeah. And I’m sure that’s something we probably will agree to disagree on because we think that we’re limited in fair hearing, especially when a summary determination is the rule for the road. But again, I’m kind of--I know you can’t just come up with--you know, pull a rabbit out of a hat, but I believe…

MR. TERRY SMITH: We can’t--there’s no way we can address--

MR. HAUTH: Yeah.

MR. TERRY SMITH: --what the law judge under the law can and cannot rule on. I mean, if he can’t rule on--if there’s a state law that says he cannot rule on contract issues, then there’s a state law that says he can’t rule on contract issues and we can’t change that here, so…

MR. ART STEVENSON: But…

MR. TERRY SMITH: Go ahead.

MR. ART STEVENSON: But we can do a full evidentiary hearing in a way that is fair and equitable to both sides, and write a rule around that. And that’s actually, Terry, what, you know, I’ve been…

MR. HAUTH: Parking lot.

MS. MOORE: Parking lot.

MS. ART STEVENSON: Yes, parking lot.

MR. HAUTH: And I have one more, and then we can deal about the unassigned vending and that kind of thing.

MR. TERRY SMITH: Let me say--

MR. HAUTH: Okay.

MR. TERRY SMITH: --the part I thought--well, number one, I can’t believe you guys are going to let somebody from out of state file for a grievance. That’s just strange to me. There may be somebody that’s not even in the state can--or a vendor from another state can file for a grievance and they’re not even a licensed vendor. But the law only requires--you do not have to give hearings to anybody except licensed vendors. And if they’re not licensed, if they’re a trainee or they’re coming in from another state, you do not have to give them--they are not entitled to anything except what they might be entitled to through the VR process. They could--as a VR client, they’ve got rights. They have no rights as a Randolph-Sheppard vendor until they’ve got that license in their hands.

MS. MOORE: So as a Commission…

MR. ART STEVENSON: Terry, aren’t they allowed, if they have applied to become a vendor…

MR. TERRY SMITH: No, it says…

MR. ART STEVENSON: And if they then deny--

MR. TERRY SMITH: No.

MR. ART STEVENSON: --that right, aren’t they allowed--

MR. MORRIS: What part are you talking about, Terry?

MR. ART STEVENSON: --a full evidentiary hearing?

MR. TERRY SMITH: Under fair hearings, it says trainees can file for-- It says, “A trainee or licensed blind manager from another state may request a fair hearing in response to a notice denying licensure.”

MR. MORRIS: Oh, I got you. Okay.

MS. MOORE: And that’s what our...

MR. HAUTH: Well, you know, Terry, obviously, that--you know, I mean, that’s something we’re not going to resolve right this minute.

MR. TERRY SMITH: The other thing that gets at what y’all are talking about, the part that I’m surprised that Jesse--he just didn’t--maybe he just didn’t read through it. I don’t think you can require somebody to go to administrative review.

MS. MOORE: Well, that’s the thing about Oregon, see.

MR. TERRY SMITH: Okay.

MS. MOORE: The administrative review process is supposed to keep things out of arbitration. And what it has done is made everything end up in arbitration. And I don’t know whether we need to have some kind of a different panel evaluate stuff. But since I’ve been here, I mean, I remember having to vote on someone, whether they had a full evidentiary hearing or not. And based on everything I’ve been presented with, I’m like, my God, what else could we have done?

MR. HAUTH: Well, I did oral--what she’s talking about, I did oral argument as allowed through the OARs because I was denied a full evidentiary hearing with witnesses and so forth and so on. However, what I will share with you is that was called active participation. So you know, I’m glad you’re here to help kind of guide us in the right direction. But clearly, it’s amiss, at least from those who this Agency is serving and who are the complainants, and we need to find a way to clean it up, if we can.

18:10: Supreme Courts.

MS. MOORE: Yeah, because…

MR. HAUTH: We’re not going to do it today, but I mean, you know, let’s…

MS. MOORE: Everything ends up in arbitration here.

MR. HAUTH: Well, there’s one more thing, Terry, here, as you stand there puzzled, I know. But…

MR. ART STEVENSON: Welcome to our world, Terry.

MR. HAUTH: One more thing here, okay, on line…

18:31: Take his job away from him, obviously, he can see...

MR. HAUTH: Line 905, as far as arbitration, line 05 states “may,” line 08 states “shall.” So again, I think there’s…

MS. MOORE: The complainant may file a request for arbitration with the Secretary of Education as authorized by blah, blah, blah in the Randolph-Sheppard Act, and a bunch of other words, regulations issued, blah, blah, blah. A complainant shall file a request for arbitration.

MR. TERRY SMITH: That’s okay. You’re saying they may file…

MS. MOORE: With the Secretary of Education.

MR. TERRY SMITH: They may go to arbitration if they so choose, but if they do, they shall submit the request to the department…

MR. ART STEVENSON: The Agency, so…

MR. HAUTH: Okay. Okay. So could we circle back? I think we have like a half hour. But can we circle back to the unassigned vending or the vending assignment, or the use of set-aside? Or how do we work through that? Because obviously, that’s an important piece of today’s conversation.

MR. TERRY SMITH: Well, my suggestion, and I’ll go back to it, my suggestion was you put in the rule under--you copy the federal, like we did. We’ve already done that.

MR. ART STEVENSON: Yeah.

MR. TERRY SMITH: And under the state, you say any income will be spent in accordance with and lay out the same reason in the set-aside. And then we go somewhere else in the rules, we put it in the parking lot and we make sure we get it before we leave here. We put in the rules something that puts some controls over just taking vending facilities and taking the money and not bidding them out and that kind of stuff. That’s my suggestion. You know, I don’t see--because I think if you do anything else, you may create more problems for yourself than you’re solving.

MR. MORRIS: Randy, it’s creeping up on 4:00 o’clock. We said we’d take public comments. I think if you just…

MR. HAUTH: Okay. Well, so are you guys--are you guys--

MR. ART STEVENSON: No.

MR. HAUTH: --good on that?

MR. ART STEVENSON: Oh, on the vending?

MR. HAUTH: On what Terry just talked about.

MR. ART STEVENSON: I’ve got to see it right in front of me to--but it sounds...

MR. HAUTH: We’re probably not too far off on that, Terry, so--

MR. ART STEVENSON: Yeah.

MR. HAUTH: --you know.

MR. ART STEVENSON: Uh-huh.

MR. HAUTH: I think we should probably…

MR. TERRY SMITH: I can give Kathy the language. We can work on that. Eric, are you okay--

MR. HAUTH: Sure.

MR. TERRY SMITH: --with that, generally?

MR. MORRIS: Yeah, I think that’s good.

MR. TERRY SMITH: Okay.

MR. HAUTH: Okay. And you want to talk about transfer and promotion?

MR. ART STEVENSON: Yes.

MR. HAUTH: And then we need to open it up to…

MR. TERRY SMITH: No. Wait, wait, wait. Before we go to transfer and promotion, we’re going to go back. I want to just have a quick conversation because I’d really like to address this issue because I don’t think it’s that hard, if Eric can help us out here. We need--I mean, I understand what Art was getting at about, you know, if you don’t agree and you give reasons. And the whole full consideration thing is too complicated and actually, as I said, taking a step back, if we can add one more sense of that, that gives us a little more detail in what those reasons are, like you said, the reason could-- If they wrote back and said it’s--technically, they’d be compliant with the law if they wrote back and said, “The reason is, I don’t want to do it.” And they could do it, I mean, technically. You know, and I don’t think the reason has to say why it’s legal, because I don’t think it’s legal, but I think the response should include why the decision is in the best interest of the program or something to that extent--

MS. MOORE: Yeah.

MR. TERRY SMITH: --rather-- And that’s just--you just add that one little sentence to it. So you’re taking the sentence from the law, from the law as written, and you’re just adding that one little extra requirement that you’re going to say--so it gives you some protection that it-- I mean, I don’t think the legislature intended for it just to be any reason in the world. I think that, you know, there’s got to be a legitimate reason why the Agency is, you know, not accepting your recommendation, and you come up--because all we need is just one sentence here. Surely to God we can come up with one sentence that everybody can live with that says, the response will include the reasons why the decision is in the best interest of the program, and that’s all you have to do.

MR. GRUELICK: Can we flip it the other way, Terry? You know, can--they cannot reasonably withhold agreement?

MS. MOORE: Yeah. Make it a positive thing.

MR. TERRY SMITH: Well, that’s positive.

MR. ART STEVENSON: Well, and Terry, we could definitely come up with a one-liner and…

MR. TERRY SMITH: I’d like to--I would like to come up with that one-liner before we leave. I’d like…

MS. MOORE: Today.

MR. TERRY SMITH: If we can get that, I think--I don’t--because I don’t want to have to go back to visit that whole issue again. Okay. Well, tomorrow morning, we’re going to start on the, you know, subcontracting issues. And you know, we’re not going to--you know, until we--unless we have time Wednesday morning, we’re not going to be coming back to a lot of this stuff, so we--unless you guys want to work until 9:00 or 10:00 o’clock at night, which I’m fine, I’m here, I don’t have any…

MR. ART STEVENSON: Well, and how about…

MR. TERRY SMITH: Eric, do you understand what I’m saying?

MR. MORRIS: Yes, I do.

MR. ART STEVENSON: How about…

MR. TERRY SMITH: Would you be okay with just a little further--I mean, just so it doesn’t say, “Just because I don’t want to.” That’s the bottom line.

MR. ART STEVENSON: Okay.

MR. MORRIS: Can it say…

MR. ART STEVENSON: And--

MR. MORRIS: Can it just say no?

MR. ART STEVENSON: --we can…

MR. TERRY SMITH: Yeah.

MR. ART STEVENSON: Terry? Terry?

MR. TERRY SMITH: Yeah, Art?

MR. ART STEVENSON: While my brain is working here, the one-liner should be--should include the reason should explain that--and I’m paraphrasing here. We can revamp it as we go. Ensure the proper and satisfactory operation of the vending facility, benefits the blind licensed manager and the program. Show how it ensures the proper and satisfactory operation of the vending facility, benefits the blind licensed managers--manager, and--

MS. MOORE: The VFM.

MR. ART STEVENSON: --benefits the overall program.

MR. TERRY SMITH: I don’t know about the facility, but I think I understand what you’re saying if you say the reasons shall explain why the decision is beneficial to the licensed blind managers or the…

MR. HAUTH: Explain why the decision was reached? Or I don’t know…

MS. MOORE: Yeah.

MR. TERRY SMITH: Explain why the decision is in the best interest of the licensed blind--or VFM.

MS. MOORE: VFM.

MR. TERRY SMITH: And/or the program. I think that would get it.

MR. ART STEVENSON: Yeah.

MR. HAUTH: Well, let’s do that for now. I mean…

MR. TERRY SMITH: Can you handle that?

MR. BIRD: Well…

MR. HAUTH: If everyone’s good with it.

MS. MOORE: Yes.

MR. MORRIS: So here’s the thing. It sounds great. But put that into practical use. If you say, Terry wants--let’s say Terry wants a new refrigerator. And Terry’s a licensed blind manager. And the Committee votes on that for some reason. I’m just trying to get something for analogy. And I say, “Well, that’s not in the best interest of the program because we don’t have the money to buy that piece of equipment.” So somebody else is going to come back to me and say, “Well, show me legally where it says that.” I could…

MR. TERRY SMITH: That’s why I stay away from the legal part.

MR. MORRIS: Yeah. So if we can come--if we can come to a consensus about the language and what that actually means, because I know what it means on my end. I have to give a good reason for why we’re doing it. It has to make sense. And actually, in my opinion, it would have to make good business sense. But not everybody filters it the same way. We can all say the same words and all think different things. So that’s the piece that I want to hear from people.

MS. MOORE: That’s part of why we’re fighting--or discussing all these defined words, so…

MR. ART STEVENSON: And we’re sitting at this point right now, if in the categories that we’re going to write rules under for the other days here, we can put some process or wording here or there that incorporates what we really should be doing in active participation, then you know, the couple simple words that Eric--I mean, Terry’s talking about would be sufficient. Where we want to get is where, Eric, you and the Elected Committee, and Dacia, when need be, sit down and weigh the pros and cons, and talk about it and come up with mutual solutions. I--you know, truthfully speaking, we should be debating these issues and working collaboratively and--because that’s what active participation is all about. And then if we’re doing that, then you know, we’re not going to have any problems, so…

MR. HAUTH: Well, you keep talking, and talking,--

MR. ART STEVENSON: Yeah.

MR. HAUTH: --and talking.

MR. MORRIS: But I think the problem is, Art, the part we’re talking about very specifically here is when we’re not at that point. We’re--we get to a certain point where I say, “Yeah, we can’t do that.” For whatever reason, for whatever circumstance. And then that’s the piece--that’s the piece of the magic where we have to figure it out,--

MR. ART STEVENSON: Uh-huh.

MR. MORRIS: --what’s going to be acceptable for you guys and

that’s--because I can wrap my head around what’s acceptable for me, as a director and a representative of the Agency. But for the Elected Committee, besides me just saying “because I said so,” you know, that’s not the right response, but what is sufficient? Is it like what Terry said, is it, you know, what’s in the best interest of the program? I like that because we’ve talked about that already, what’s in the best interest of the managers, what’s in the best interest of the program? That’s something I have to focus on. What’s in the best interest of not only the managers, but the program and the future of the program, because this program is going to be around--and it’s been around for cruising on 100 years. So it’s going to be around for a lot longer--

28:48: We hope.

MR. MORRIS: --so…

MR. TERRY SMITH: Okay. So I’m--circle back around.

MR. MORRIS: Yeah.

MR. TERRY SMITH: So would it--so the sentence I suggested was, the response will explain the reasons the decision is in the best interest of the…

MS. MOORE: VFM.

MR. TERRY SMITH: I’m just going to look over here every time.

MS. MOORE: Under VFM.

MR. TERRY SMITH: VFM and/or the Business Enterprise Program.

MS. MOORE: We can both see…

29:15: They don’t have to agree on it.

MR. DERRICK STEVENSON: This is Derrick.

29:17: We just know…

MR. TERRY SMITH: Is that-- I mean, I’m trying to see if Eric can…

29:19: Yeah.

MR. TERRY SMITH: I’ve got a plan B.

MR. HAUTH: Derrick, hold on just one sec. Terry…

MR. DERRICK STEVENSON: This is Derrick.

MR. HAUTH: Okay. Go ahead, Derrick.

MR. DERRICK STEVENSON: Yeah. I like the part that they explain why--well, I think they should explain both why they’re rejecting our recommendation and then explaining why their recommendation is better or, you know…

MR. TERRY SMITH: That’s what we’re saying.

MS. MOORE: That’s basically it.

MR. ART STEVENSON: Yeah.

MR. HAUTH: What’s your plan B,--

MR. DERRICK STEVENSON: Okay.

MR. HAUTH: --Terry?

MR. TERRY SMITH: Well, maybe we marry A and B. The other thing I was thinking was, you could say such response will not be sent until after the full active participation of the Committee. I just--I’m trying to-- You know what I’m saying?

MR. ART STEVENSON: I hear what you’re saying, Terry. It’s just coming up with those magical words that make it flow.

MS. MOORE: Yeah.

MR. MORRIS: Yeah, but the whole preface is, is that that’s--this is the very last thing, talking about the Elected Committee. We went through active participation.

MS. MOORE: Right. The…

MR. TERRY SMITH: We’re in it.

MS. MOORE: So this is the unspoken thing in the room. Trust hasn’t always existed between the Agency and the managers. And we’re trying to come up with a way for both the Agency and the managers to feel assured that--you know, there is no guarantee, folks.

MR. MORRIS: No.

MS. MOORE: You can only go forward from here. And you can only, you know, write what appears to be the most ideal at the moment. And this is about as close as we’re going to get, I think. And it’s just going to have to be proven that there is going to be a different atmosphere. And I don’t know what else to say. But I know what this is about. I know what this is about. I’ve seen almost every complaint go to arbitration. It’s crazy. My thing at the Commission meeting the other day was, I’ll know if there’s active participation because--and I have no idea how right I was, because the grievances will drop down to close to zero. And I didn’t know that that was an actual measurement, but Terry proved it. What’s his name, Mike Talley,--

MR. ART STEVENSON: Michael Talley.

MS. MOORE: --said it. You know, the places where trust exists between the Agency and the managers, facility or blind or whatever,--

MR. HAUTH: Yeah, I…

MS. MOORE: --then there are way less grievances.

MR. MORRIS: Okay.

MR. HAUTH: And I would believe that the director of the Board, regardless who--if it’s Eric or whoever, the more they have to think through denying or rejecting the voice of the Elected Committee, then the more maybe that helps stimulate that whole, you know,--

MR. TERRY SMITH: So--

MR. HAUTH: --process.

MR. TERRY SMITH: --you would think when you give the reasons, you’re going to give the reasons why, and it’s not going to be just because I don’t want to. I mean, that’s common sense that tells you that. So I don’t see that the Agency--that this is in any way a threat to the Agency, if you add that--the response will explain why the decision is in the best interest of the VFMs or the--and/or the--

MR. ART STEVENSON: And the program.

MR. TERRY SMITH: --program. And the very next sentence says they have final authority, so--

MR. MORRIS: Yeah.

MS. MOORE: Yeah.

MR. TERRY SMITH: --I mean, it’s given. Can you live with it, Eric?

MR. MORRIS: Say it again.

MR. TERRY SMITH: Oh, God. The response will explain why the decision is in the best interest of the VFMs and/or the Business Enterprise Program, period.

MS. MOORE: I know what the missing thing is. If the Agency disagrees with the BECC…

MR. TERRY SMITH: Well, we already said that.

MS. MOORE: Oh, okay.

MR. TERRY SMITH: Yeah, that’s already…

MS. MOORE: The response will be explained…

MR. TERRY SMITH: Right now, it says--that’s what it says.

MS. MOORE: Okay.

MR. TERRY SMITH: But I’m just wanting one little more sentence to make sure that they just don’t say, “Just because I don’t want to.”

MS. MOORE: Yeah.

MR. ART STEVENSON: Should it be--did you say “or”? I mean…

MR. TERRY SMITH: And/or.

MR. ART STEVENSON: Huh?

MR. TERRY SMITH: And/or, depending--I mean, some decisions--I mean, you can argue that--I would argue if it’s in the best interest of the vending facility managers, it’s in the best interest of the program.

MR. ART STEVENSON: Well, exactly. And that’s why…

MR. TERRY SMITH: So you don’t--so you really only need to say “in the best interest of the program.” I threw “vending facility managers” in because you did, so I’m perfectly content saying why it’s in the best interest of the program.

MR. ART STEVENSON: Well, and why do you have to put the “or”?

MS. MOORE: Of the program as a whole…

MR. TERRY SMITH: I said I’m okay with not putting “or.”

MR. ART STEVENSON: And just put “the program and the managers.”

MR. TERRY SMITH: Well, no, you don’t need to say both.

MS. MOORE: The program as a whole.

MR. TERRY SMITH: Why it’s in the best interest of the Business Enterprise Program.

MR. MORRIS: Done.

MR. TERRY SMITH: Eric’s in agreement.

MR. GRUELICK: There are times, Art, when the interests of the program are going to supersede the interests of the individual.

MR. TERRY SMITH: Correct.

MS. MOORE: We had one case just…

MR. TERRY SMITH: You okay with that, Randy?

MR., HAUTH: With the program and the managers?

MR. TERRY SMITH: No, just the program. With the best interests of the Business Enterprise Program. Because that’s what they’re making--I mean, if it’s in the best interest, they’re not--I mean, they are…

MR. HAUTH: Well, yeah. And I don’t know. I can see a concern where maybe somebody would say it’s not in the best--it’s in the best interest of the program to collect this money because we need it.

MR. TERRY SMITH: If that’s their reason, that’s--I mean, that’s their reason.

MR. MORRIS: Yeah.

MR. ART STEVENSON: Well, and Terry…

MR. TERRY SMITH: But we’re going to deal with that somewhere else.

MR. ART STEVENSON: Terry, in--

MR. HAUTH: Okay. Yeah.

MR. ART STEVENSON: --the state statutes, it--you know, especially, you know, they are supposed to promulgate rules to ensure the proper and satisfactory operation of vending facility and the benefit of the blind licensed managers. And so you know, clarifying and, you know, giving the reason why it’s best for the program and the managers, I think, is just, you know, a little maybe extra…

MR. TERRY SMITH: It doesn’t have to be--they--it could be--they could be in conflict, as he just said.

MS. MOORE: Yeah.

MR. ART STEVENSON: Yeah.

MR. HAUTH: Yeah. And I think it always goes back to, in my mind, it’s supposed to benefit the licensed blind vendors, the beneficiaries. And I guess the argument can be, well, it is benefitting you because we’re taking this money and operating the program. I think it’s different than that. But hopefully, as we go through this and we define other sideboards in active participation, we won’t have that issue.

35:55: Programs...

MR. HAUTH: So I know we need to allow people for, you know, comment, public comment. I know Art wanted to talk about-- Is there anything else you wanted to finish up today, Terry, that we didn’t get to? We put a few things in the parking lot and it sounds like maybe we just worked through a couple of things, too, so…

MS. MOORE: Could I ask one quick question?

MR. HAUTH: Go ahead.

MS. MOORE: Randy, could you please mail Kathy the Lewanda thing so that Luther could have a clean copy of the law?

MR. HAUTH: Sure. Lewanda, if you’re still on the line, if you wouldn’t mind doing that.

36:35: Lewanda emailed it to you…

MS. EWING: I know, but I can’t print to that…

MR. HAUTH: Sure. Yeah. Well…

MS. MOORE: Can you print a copy?

MS. MIRANDA: Jeanne-Marie, I didn’t have your address, so I sent it to Linda Haseman and asked her to get it out to you.

MS. MOORE: Okay. That’s perfect. But do you have Kathy Ewing’s email address?

MS. MIRANDA: I also sent it to Kathy Ewing and Eric and Dacia, and asked them if they could print copies to submit them to the participants there today, but I don’t know if anyone read their email, so…

MR. TERRY SMITH: Yeah.

MS. EWING: It would be very much appreciated.

MS. MIRANDA: So those four people have it.

MS. EWING: Great. I…

MR. MORRIS: You wanted a print copy of it?

MS. EWING: Yeah, of the cleaned up…

MR. HAUTH: So public comment and Art wanted time…

MR. ART STEVENSON: Can I do mine real quick first,--

MR. HAUTH: Sure.

MR. ART STEVENSON: --Randy? Terry, the transfer and promotion system--

MR. TERRY SMITH: Yeah.

MR. ART STEVENSON: --that we had existed forever.

MR. TERRY SMITH: Uh-huh.

MR. ART STEVENSON: And the first set of rules that we did pretty well kept it the same and then all of a sudden, the Agency--

MR. HAUTH: Somebody’s not on mute.

MR. ART STEVENSON: --flipped and took away, you know, the rights of the Elected Committee to be a part of the promotion system in a real way, and relegated them to just strictly advise.

Now, in the quote, unquote opinion, and it’s only an opinion, from the AG’s office, that--the state statute says that the--the way it says that, you know, OCB will select, train, and install blind licensed person--blind licensed managers to vending facilities somehow meant that, you know, the blind--the Elected Committee didn’t have the right to be a part of the system and have more than just a recommendation thing.

And so number one, I believe that’s incorrect because I do believe that the Agency does select blind--qualified blind persons to be in the program. They do train them through the training system. And they do install them by buying the equipment, setting them up with the inventory, and so they are fulfilling their obligations under the law. Nowhere does it say that the Elected Committee or the blind licensed manager--I mean the Elected Committee should not be more than just, here’s my advice who you pick and leave the ultimate decision with just the director. So I think we need to talk about that. And I do believe that the system ran that way for years.

MR. TERRY SMITH: Do you know what section in the rules that is, Eric?

MR. MORRIS: It is page 10 and it starts at 300, line 300, I think it is. No, 310, I think. Line 310.

MR. ART STEVENSON: And I also believe the numbering system should--the point system should go up more from 1 to 10 to at least 1 to 25 so there’s less chance of a tie and that--

MS. MOORE: Each one, you mean?

MR. ART STEVENSON: --each category gets a little--that’s my bugaboos as a member of the Elected Committee and--concerning the transfer and promotion.

MR. TERRY SMITH: Well, everybody gets--you do interviews, right, selection committee?

MR. ART STEVENSON: Huh?

MR. TERRY SMITH: The selection committee does the interviews? They…

MS. MOORE: Yeah. That’s not it. That’s not what he’s talking about.

MR. TERRY SMITH: I know what he’s talking about. I’m just--so it should read the Committee chair, the director, a licensed blind manager, a licensee selected by the mutual agreement of the director and chair, and the building manager or representative, if the building manager requests…

MR. ART STEVENSON: Is that still in there?

MR. TERRY SMITH: That’s what it says.

MR. ART STEVENSON: Because--well, then I’m against that, too. The building manager should not be a part of the selection process because then, quote, unquote, totals and high partials, there’s a discrimination factor there no matter what. And that should never be in there that the building manager is part of the selection, you know.

41:55: It just happens that -- Well, another thing, too, is I think it should be two members of the managers of the Committee because--

MR. TERRY SMITH: There are two.

42:04: --in one of my-- Is it?

MR. TERRY SMITH: No, it’s one. One.

42:06: The chairman and…

MR. TERRY SMITH: Yeah, two. There’s two managers. There’s a chair and one other one.

42:10: Okay. Good. Because I had a situation where the manager on the Committee had trained the person, so--other person, so I ended up with a huge legal--which actually affected me getting it.

MS. MOORE: Well, the--I just saw that, that--for the seven categories?

MR. TERRY SMITH: Right. It’s one to four.

MS. MOORE: Yeah, that’s not my…

MR. TERRY SMITH: It’s not one to ten, it’s one to four.

MR. HAUTH: So what do we do on that, Terry? What’s your thoughts?

MR. TERRY SMITH: I mean, on which part?

MR. HAUTH: The like--on how to deal with those concerns by…

MS. MOORE: God, you guys bring up five things at a time.

MR. HAUTH: That Art brought up.

MR. TERRY SMITH: Well, the federal law said--let’s go back to the first we started. The federal law says that you’re going to participate in the development and administration of a promotion policy. This whole thing has evolved over time because I can remember a time when RSA did a review in Tennessee back in the 1980s. And we put in our rules, you know, that the--this interview committee would make the decision. And RSA at that time said you--you know, the appointment needs to be made by the director. They have changed that because all states--most of the states have gone the system whereby, you know, they’re not--and they’re letting the states do that.

I think there’s two ways to do it, and whichever one, if it is, you know, palatable to-- You know, I don’t see Gretchen’s point, but you know, there is a way around that if you, you know, add--if you add a sentence at the end that says the director, you know, shall select a vendor with the highest points. And then unless he can somehow provide…

MR. ART STEVENSON: Well…

MR. TERRY SMITH: If you pick somebody other than the one with the most points, he’s going to lose in a grievance. I mean, he’s going to say…

MR. ART STEVENSON: Well…

MR. TERRY SMITH: He has no reason not to do that. I mean, he’s going to have to have really, really, really strong, strong reasons for not accepting a person that has gotten it, so…

44:47: But we don’t know...

MR. ART STEVENSON: Well, and I’m trying to eliminate any problems, Terry. And I have no problem either with compromising because we used to do it that way, and then we just changed it to where the director was a part of it, allowing the director to award points and be part of the actual thing. And that way, you know, the Agency--I mean, you could solidify what Gretchen said, but also allow the Elected Committee and managers to help in the process. And so I think that would be a good compromise because then, I don’t think Gretchen could say anything about that because OCB is doing it because they’re scoring and--

MR. HAUTH: Yeah. Yeah. I like what Terry…

MR. ART STEVENSON: --they’re part of the process.

MR. HAUTH: I like what Terry said, if Eric doesn’t have any problems with it. Right?

MR. MORRIS: Yeah.

MR. HAUTH: Because we are jointly making the decision anyway because the Committee is basing their score and passing that along to the director to make that decision.

MR. MORRIS: That’s what it says right now.

46:04: Yeah. I think so.

MS. MOORE: Well…

MR. MORRIS: That’s why I’m getting confused.

MR. DERRICK STEVENSON: This is Derrick.

MR. TERRY SMITH: It just says you’ll consider is all it says.

MR. HAUTH: Yeah, Derrick.

MR. DERRICK STEVENSON: Yeah. I like the point system and everything, but you know, back in the day, we gave a whole lot of credit to a person who has seniority. I think people that have been in the program and proven themselves over the years should have priority over people that haven’t. I mean, they should be the ones that get to--get better locations or the step up than someone who just came into the program.

MR. TERRY SMITH: It says experience. So you get a rating based on that.

MR. ART STEVENSON: Yes, you do.

MS. MOORE: And it…

MS. HAUTH: So it’s 4:24. I expect we’re out of here at 5:00?

MS. MOORE: Mine says--

MR. HAUTH: I don’t expect…

MS. MOORE: --50.

MR. HAUTH: Oh, go ahead, Jeannie Marie.

MR. TERRY SMITH: Says what?

MS. MOORE: My thing right here says, “The director shall score each of the categories from 0 to 50 with the maximum score being 350.”

MR. MORRIS: I think you’re--I think that’s a different section, Jeanne-Marie. I think that might be the…

MS. MOORE: That’s the only thing I could find this whole thing about categories, where it talks about licensee and license--VFM experience, other management experience, customer service experience. When this is when two people apply for the same…

MR. HAUTH: Hey, you guys, listen. Just so if we’re okay with it, we’ll project leaving at 5:00. I still need to allow for public comment from people who have sat on the line all day, if they so choose.

MR. ART STEVENSON: Eric, do you have any problems with, you know, changing that to where it allows you to be a part of making the decision, but doesn’t just allow you to just consider what we say? In other words, the equal weight of the people who are interviewing the prospective--do you have a problem with that?

MR. MORRIS: Yeah, because I don’t understand what you’re saying because…

MS. MOORE: So the BECC would tell you their thoughts about who should have this facility. And there are two other people and you. And basically, it’s either a 50/50 split of importance or a one-third split.

MR. ART STEVENSON: What it says is, you’ll consider the people who participate, you’ll consider the score and make the decision. What I’m saying, would you be willing that your part of the scoring, like the managers who are participating with you, and then the decision is made by the point system instead of that--the word in there that you will consider what the member of the Elected Committee and the person in there. I think the contentious word for possible--

MS. MOORE: Is considered.

MR. ART STEVENSON: --conflict, you know,--

MS. MOORE: Is considered…

MR. ART STEVENSON: --now and in the future of the program is that there--it could cause problems.

MS. MOORE: The word “considered” is what you’re having an issue with. And I…

MR. MORRIS: Why?

MR. HAUTH: Why would you have a problem with it, Eric?

MR. MORRIS: No, I mean, why does Art have a problem with it?

MR. ART STEVENSON: Why? Because…

MR. HAUTH: Hey, hold on, hold on, hold on. I mean, I know he asked you that question and then you turned it back to him and say why, but is there a problem with you-- I would think it would protect me if I were the director.

MR. ART STEVENSON: It would. It does.

MR. HAUTH: But if you have a problem with it, let’s hear it.

MR. MORRIS: Well, I think--yeah, okay, I’ll talk about it. So the problem I have is we--we’ll take a step back because when Art was saying--because I’m kind of-- The structure that we built in here is to allow for a fair and equitable process, which everybody wants. Right? Everyone wants it fair and equitable.

Now, the first thing that Art says, we don’t want anybody from the building involved in the process. And I understand the concerns why. I’ve heard it since I walked in the door, started working here about, you know, people’s perceptions of blindness. But I think it is ignorant to say that the people in the building should have no say in who’s being selected. If anything, it’s the opposite. They’re part of the process. It helps reinforce how important that relationship is. And if we just say, you guys aren’t smart enough and you don’t have any dog in the fight because we’re going to be here serving you food for the next decade, that is short-sighted, no pun intended--

MR. HAUTH: Yeah.

MR. MORRIS: --in the long run. So…

MR. HAUTH: Well, instead of using ignorant, maybe we should use short-sighted.

MR. MORRIS: Short-sighted. Sorry. Sorry. I just, I think it’s…

MR. TERRY SMITH: Not personal.

MR. MORRIS: It’s not looking at the big picture.

MR. BIRD: This is Jerry.

MS. MOORE: But the total--but the prejudice--

MR. HAUTH: Hold on.

MS. MOORE: --against totally blind people is so proven and so strong that the concern is that a totally blind person wouldn’t ever get a shot because the building manager would need so much more education.

MR. HAUTH: And yeah, and I…

MS. MOORE: Even the other managers…

MR. HAUTH: I would say as a high partial, I believe that and I concur with that because--

MS. MOORE: Just that.

MR. HAUTH: --I have seen it. But what I’m saying is, how do we get--without going back and forth, how do we get to that win right know, you know? Is there a way to do it? And I know kind of Art’s saying this and Eric’s saying this, and so…

MS. HAWKINS: You’ve got three other people…

MR. HAUTH: How do we get past that?

MS. HAWKINS: You’ve got three other people offsetting the building manager’s vote. Don’t you?

MR. MORRIS: Yes.

MS. HAWKINS: So that should take care of it if the…

MS. MOORE: Yeah. But what happens, so the building manager says no, I don’t want that totally blind person in here; I don’t believe they can do it. And the other people say yes. So then they walk into that situation, they’re going to need a lot of advocacy...

MR. HAUTH: Same thing probably with the seeing eye dog. Right, Char?

MS. HAWKINS: Yeah.

MR. HAUTH: You probably have run into that type of situation.

MS. HAWKINS: Yeah.

MR. HAUTH: You know, so how do we make sure that--you know, I guess that’s a concern because that building manager, how much voice…

MR. BIRD: Could you just take--could you just take it under consideration, your thoughts? You take that under consideration and then the man--and then the rest of the people make the decision. And if Eric don’t like the one we pick, he has to justify to the Selection Committee why he’s refusing their picks.

MR. ART STEVENSON: There’s just a potential problem there.

MR. HAUTH: Okay, magic man, Terry, what are going to do here?

MR. MORRIS: Well, I think to Art’s point about the considered language, I think that--because I’ll tell you, the thing that I’m the most concerned about, in our program, there are factions within the program. People like each other, people don’t like each other. People are NFB, people are ACB. And this is going back to one of the rules about being open and honest.

MS. MOORE: Yeah.

MR. MORRIS: There are people who get along and people who don’t. And if it’s not Randy as the chair, but let’s say Tom’s the chair and Kathy’s the other person that we select mutually, and they don’t like Char, and it’s just me trying to-- I can’t throw the weight of the Committee. So eventually, as the director of the program, if I know that they’re just grinding an axe against Char and she’s fully qualified to run it, I need to be able to have the option to say, yeah, that’s not good, so we’re going to pick the right decision for that manager.

MS. MOORE: So would it…

MR. HAUTH: Devil’s advocate--hold on a second. Devil’s advocate. So let’s say that the director, not you,--

MR. MORRIS: Sure.

MR. HAUTH: --but the director doesn’t like somebody who’s fully qualified, you know, so--

MR. MORRIS: Sure.

MR. HAUTH: --wouldn’t it be safer to have the Elected Committee or members of that committee make that--help you make that recommendation? Because you know, you could be cited for being favored to people, too. So I’m not saying it would be that way, but…

MR. MORRIS: I think--well, I think what it does, Randy, is it sets up just like Terry described it. If I’m going to go--because I--this structure seems very familiar probably, because it is the arbitration structure. It’s not a coincidence that I set it up that way because I’m like, what structure do we use all the time that everybody kind of likes? So by the time it gets to me, if I say I’m going to buck that system, like Terry said, I’m going to have to have a pretty darn good explanation for why I would do that and have to justify it, and justify it pretty darn quickly because it’s going to go right into a complaint process if it’s not justifiable.

MR. TERRY SMITH: Which supports the language that I suggested.

MR. ART STEVENSON: And so…

MR. TERRY SMITH: Because if you say the--if you say that the director will appoint the person recommended by the Selection Committee, unless he can justify, you know, to the Committee, you’re going to have to justify it one way or the other, just like you said.

MR. MORRIS: Sure.

MR. TERRY SMITH: You’re going to have to justify it. So it doesn’t matter whether it’s in there or not. If it gives them some level of comfort, then it doesn’t cause any harm.

MR. ART STEVENSON: And then all…

MR. TERRY SMITH: But I mean, and that still gives you the ultimate authority. You just got to--you know, you just got to be able to justify it and then accept the consequences if--you know, if you’ve made a bad decision and somebody grieves it, so…

MR. ART STEVENSON: Well…

MR. TERRY SMITH: I think on the point that Art talked about, we can debate this about blindness versus partial all day long. I mean, it is absolutely 100 percent true that that bias exists, and--but I want to tell you, if you--you now have a priority, and that gives you a priority in commissaries. And if you think you’re going to walk into some of these jails and tell the sheriff he’s going to have zero say in who’s going to be coming into his jail every day, you’re going to have a tough time. We changed our rules just for the sheriffs, which made it optional to have them on the interview panel. And you know, what you can do, what I would suggest you do there is add a sentence which--one sentence to that which says that any independent person that’s going to serve on the panel will be oriented to blind--you know, a brief orientation to blindness by the Commission so that if Eric’s going to have somebody from such and such a county sit on a panel, then he needs to figure out a way to, you know, orient them to the facts of life as far as blindness goes.

MR. ART STEVENSON: So could you put--

MS. MOORE: That’s a good--

MR. ART STEVENSON: --that--

MS. MOORE: --question.

MR. ART STEVENSON: --the building manager may participate in the process, and that way…

MR. TERRY SMITH: That’s what it says now.

MR. ART STEVENSON: Huh?

MR. TERRY SMITH: That’s what it says now.

MR. ART STEVENSON: Right. May participate in the process, but they don’t necessarily have to do any scoring or any of that stuff.

MR. TERRY SMITH: I’ll tell you, the sheriff’s going to want to know…

MS. MOORE: Well, you…

MR. TERRY SMITH: The sheriff’s going to want a say in who’s coming into his jail.

MS. MOORE: But you say…

MR. TERRY SMITH: They are a fun bunch.

MR. ART STEVENSON: Well, and truthfully speaking, because they are sitting in there with the director and the blind managers who are conducting it, they can have that discussion, and you know, if there’s a potential problem, then that problem could be addressed.

MR. GORDON SMITH: This is Gordo. I’ve--

MR. ART STEVENSON: If they…

MR. GORDON SMITH: --got to leave now. I’ll see you guys in the morning.

MR. MORRIS: Thanks, Gordo.

MS. MOORE: Thank you.

MR. TERRY SMITH: So…

MR. EDWARDS: Chair Hauth?

MR. HAUTH: Yes.

MR. EDWARDS: Randy?

MR. HAUTH: Yes.

MR. EDWARDS: This is James Edwards.

MR. HAUTH: Hey, James.

MR. EDWARDS: I’m listening to this discussion about the manager being in--the building manager being involved in the decision-making on who is allowed in. So couldn’t you require that the building manager state his reason why he doesn’t want somebody to be in this building, such as a partial as opposed to a blind person? And that the building manager had to--had--was required to state why he doesn’t want that person in there? Wouldn’t that help to solve the issue?

MS. MOORE: Well, except that if they--how many building managers are going to feel comfortable knowing that that’s a discriminatory stance to take? What I was going to suggest earlier is, I think Terry’s suggestion about, you know, every building manager will receive a short orientation regarding blindness when needed.

But the other thing that I was going to say to both Art and Eric is, you know, sometimes, Eric, you see personality playing a role in a decision-making thing. And sometimes the Committee feels as if personality is in your decision-making. So if you guys could just be more open, I mean not at the top of your lungs or anything, but just be more open and say, hey, is it possible that personality is getting in your way here? And just put that out there. I think that would make a lot more dialogue happen.

MR. TERRY SMITH: What I’m suggesting that you say there, is like I said, the building manager or a representative, if the building manager requests to participate provided the Commission has provided that person with orientation to blindness,--

MR. ART STEVENSON: Uh-huh.

MR. TERRY SMITH: --that’s all you have to say.

MR. ART STEVENSON: That’s good.

MR. MORRIS: Yeah.

MR. TERRY SMITH: And then they--I mean, like I said, we can’t deny that the…

MS. MOORE: Yeah.

MR. TERRY SMITH: That the bias is there. So there’s--

MR. ART STEVENSON: Get rid of that one word.

MR. TERRY SMITH: --let’s try to deal with it, while at the same time not shutting them out of the process.

MR. HAUTH: Yeah. And it’s a double-edged sword. I mean, obviously, they have to be involved in it.

MR. ART STEVENSON: Uh-huh.

MR. HAUTH: So…

MR., ART STEVENSON: And get rid of the word.

MR. HAUTH: And obviously, there’s discrimination between partials. So how do we not cut our nose off to spite our face. Right?

MR. TERRY SMITH: Exactly.

MR. HAUTH: So…

MR. MORRIS: So--sorry.

MR. HAUTH: Go ahead.

MR. MORRIS: Well, I was just going to say, providing the orientation piece of it, and when I’ve met with building managers, I’ve had that as a high partial, that same--I’ve had people ask me, well, “How--what’s the best way to communicate with you?” And I laugh at them. I say, “You can send me an email.” “That’s great.” And they--providing that orientation piece of it is…

60:30: Yeah.

MR. MORRIS: Sometimes that person will end up being your best advocate.

60:33: Yeah.

MR. HAUTH: So did we get that?

MR. TERRY SMITH: Are you okay with that language, Eric?

MR. MORRIS: That’s fine.

MR. TERRY SMITH: So what does it say, Kathy?

MS. EWING: The director will appoint the person…

MR. EDWARDS: How about the building management is blindfolded?

MR. HAUTH: Hold on just a second.

MR. TERRY SMITH: Go ahead.

MR. MORRIS: Sleep shade.

MS. EWING: Well, what we--is that the director will appoint the person selected by the Committee…

MR. TERRY SMITH: No, no, we’re not there yet.

MS. EWING: We’re not? Okay.

MR. TERRY SMITH: Okay.

MS. EWING: Any independent…

MR. TERRY SMITH: Yeah. The building manager.

MS. EWING: The building manager.

MR. TERRY SMITH: Number four up there. It’s line 320.

MS. EWING: Right. The building manager or representative, if the building manager requests to participate, and you wanted to add…

MR. TERRY SMITH: Comma.

MS. EWING: Okay.

MR. TERRY SMITH: Provided--

MS. EWING: Uh-huh.

MR. TERRY SMITH: --the Commission has provided orientation to blindness.

MR. ART STEVENSON: Uh-huh.

MS. MOORE: And then the wording says--

MR. ART STEVENSON: I like it.

MS. MOORE: --provided twice.

MR. HAUTH: Okay.

MR. TERRY SMITH: Well, do we have provided in there?

MS. MOORE: Twice.

MR. MORRIS: Oh.

MS. MOORE: Provided if the--

MR. HAUTH: Derrick, what do you think about that?

MS. MOORE: --Commission has provided orientation.

MR. MORRIS: It’s okay in rulemaking to do that.

MS. EWING: Okay.

MR. MORRIS: Yeah. I learned that it--

MS. EWING: Okay.

MR. MORRIS: --can be just…

MR. TERRY SMITH: Has provided orientation and blindness training to that individual.

MS. EWING: Okay.

MR. HAUTH: Okay. Then did we get through that?

MR. TERRY SMITH: Yeah.

MR. HAUTH: Okay.

MR. TERRY SMITH: So now, let’s go back to where she was up there about--

MR. HAUTH: Okay.

MR. TERRY SMITH: --the language about recommendations. I mean, it’s got--it gives--can you-- Where are you, Eric?

MR. MORRIS: I’m right here.

MR. TERRY SMITH: I know, but…

MR. MORRIS: I’m over by the window.

MR. TERRY SMITH: So are you okay? I mean, where are you on this whole discussion we’ve had as far as accepting the recommendation unless you provide justification?

MR. MORRIS: That’s fine.

MR. TERRY SMITH: Which goes right back--it’s fine, he said. You’re all okay with-- I won’t talk anymore.

MS. EWING: We can review--we can remove the word “consideration.”

MR. TERRY SMITH: But what we’re doing is saying he will accept the recommendation provided unless he can provide…

MS. EWING: Unless he can provide…

MR. TERRY SMITH: I’ll give you the language in a minute, Kathy.

MS. EWING: Okay.

MR. TERRY SMITH: Okay. Can I--I’m going to just ask you one more thing. This is just sort of one other thing I like to do, and several states have implemented it. When you talk about the criteria, you--just throwing it out there for your consideration, you know, a lot of states have gone to where they require business plans rather than just walking in and, you know, not have any idea of what you’re going to be doing in their facility. You know, everything you’re talking about, everything you’re rating them in is based on what they’ve done. You’re not giving them any ratings based on what their plans are for the new facility. And I strongly consider you adding an eighth category there and have something to say, either their business plan or their plan for the--their operational plan for the new facility or something like that.

MR. ART STEVENSON: Uh-huh.

MR. HAUTH: I believe that’s what people who are in business should be doing.

MS. MOORE: Yeah.

MR. HAUTH: We should be raising the bar--

MS. MOORE: We have to.

MR. HAUTH: --on ourselves, right, across the land. Too often have we not done those type of things. So the only thing I would want to make sure is that everybody had the ability or the support to be able to put together a training plan--or a business plan. So if there’s somebody maybe who’s just brand new to business, would they be able to be provided the same--you know, so I guess that’s my only thought.

MR. TERRY SMITH: It should be part of your training program. It’s also...

MR. ART STEVENSON: Correct me if I’m wrong, but if there’s more than one manager, there’s an interview, and during the interview process, the manager not only should talk about their experience, but what their plan is for this new facility that they’re taking over.

MR. TERRY SMITH: Right. But that’s not in here. That’s not in here.

MR. ART STEVENSON: Right. But…

MS. MOORE: That’s what--more or less suggesting to add…

MR. HAUTH: Well, let’s put it in.

MR. ART STEVENSON: Let’s put…

MR. HAUTH: Is there anybody opposed to it? Any Board member opposed to it?

MR. ART STEVENSON: So let’s put during the interview…

MR. TERRY SMITH: They’re listed right here. Right now, they’re listed…

MS. MOORE: There are seven categories.

MR. TERRY SMITH: Seven categories. The licensed blind manager’s experience, other management experience, customer service experience, operational performance, financial performance, educational background, training completed, and…

MR. ART STEVENSON: Plans.

MR. TERRY SMITH: Operational plans--

MR. ART STEVENSON: Plans.

MR. TERRY SMITH: -- for vending facilities.

MR. ART STEVENSON: Yeah, plans for the facility if selected.

MR. TERRY SMITH: Do you got that, Kathy?

MS. EWING: Uh-huh.

MR. ART STEVENSON: Plans for the facility if selected.

MR. TERRY SMITH: You have to change the total down there. Right now, it’s 1 to 4 for each of those, for a total of 28.

MS. EWING: It says 1 to 50 in mine...

MR. TERRY SMITH: No, no. That’s on temporary managers. That’s a different thing.

MS. EWING: Oh, I’m sorry.

MR. TERRY SMITH: So it says one to four for each of those categories.

MS. EWING: Okay.

MR. TERRY SMITH: And for a total of 28, it would now be 32.

MR. ART STEVENSON: So how much are we doing per category?

MR. TERRY SMITH: Four.

MR. ART STEVENSON: Well…

MS. EWING: So it’s a total of 32 for non-temporary managers?

MR. ART STEVENSON: No, and 1 to 4 is too low. You’ve got to at least do 10. And I would prefer 25.

MR. MORRIS: Why?

MR. ART STEVENSON: Because there’s--if you’ve only got two people, Eric, there’s too close a chance for a tie. If you have some latitude to-- I mean, nobody’s going to give them a zero.

MS. MOORE: You never know.

MR. ART STEVENSON: Unless they hate the person.

MR. MORRIS: Art, how many interview panels have you been on? I’ve been on some where I’ve scored people zero. Not on this program, but life experience.

MS. MOORE: Well, it’s still not…

MR. ART STEVENSON: And okay. Well, what I’m saying is that if you have it 1 to 25, you have less a chance of a dang tie. And if you do it 1 to 4, then it’s…

MR. HAUTH: Art, my friend, you’ve gotten a lot of your way,--

MR. ART STEVENSON: Then…

MR. HAUTH: --okay, so let’s kind of find some middle ground.

MR. TERRY SMITH: So this is the way I see it will happen.

MR. ART STEVENSON: Make it 10.

MR. HAUTH: That’s fine. I think that is great.

MR. TERRY SMITH: If you say 1 to 4, the first-place person is going to get 4, their second choice is going to get 3. If you do 1 to 10, it’s going to be the first person is going to get 10, the second one is going to get 9. If you do 1 to 25, the first person is going to get 25, the other one is going to get 24. So it’s not going to really matter. But I understand what you’re saying. It does give you a little more range. So maybe 4 is too low. Twenty-five may be too high, so…

MR. HAUTH: He said 10. So if Eric’s okay--

MR. MORRIS: Yeah.

MR. HAUTH: --with that.

MR. TERRY SMITH: How high--how low can you come down? How low can you come down and how high can you come up?

MR. ART STEVENSON: I like 10 better.

MR. TERRY SMITH: Better than…

MR. ART STEVENSON: Four--well, I’ll drop from my 25 to 10 if Eric will come up from his 4 to 10. And I came a lot further because he’s only coming 6 points, and I’m going 15.

MS. MOORE: Lord have mercy. You’re at the end of your…

MR. TERRY SMITH: Do I hear 10, Eric?

MR. ART STEVENSON: Is that okay, Eric?

MR. MORRIS: I know, but there are things that I care about in this process.

MR. DERRICK STEVENSON: This is Derrick.

MR. MORRIS: This would be a zero.

MR. TERRY SMITH: A zero.

MR. HAUTH: That’s okay. Derrick, go ahead.

MR. TERRY SMITH: Derrick? Derrick, go ahead.

MR. DERRICK STEVENSON: Yeah. I just wanted to touch a little bit more on the business plan thing. I think it’s a good idea to get a--some kind of feeling how the person is going to run it and what the person is supposed to do. But I think, you know, a full-blown business plan is--to me, is not necessary. I think that we could come up with a form asking them what their plans would be and how they plan on taking over, what they’re going to do when they take over and stuff, but I don’t know if we need a full-blown business plan.

MR. ART STEVENSON: We didn’t.

MS. MOORE: Full-blown isn’t in there.

MR. ART STEVENSON: It’s going to be part of the interview.

MS. MOORE: It’s just a category.

MR. TERRY SMITH: It’s just an operational plan for the--

MR. ART STEVENSON: Yeah.

MR. TERRY SMITH: --vending facility. They can communicate it verbally, or if they come in with a written plan, that’s okay.

MR. ART STEVENSON: That’s fine, either. It’s their choice.

MR. TERRY SMITH: Yeah.

MS. HAWKINS: We used to have a folder at one--

MR. DERRICK STEVENSON: Okay. That’s cool.

MS. HAWKINS: --point in time. And I took a folder into my interview and--

MR. HAUTH: You guys? Hey. Oh, sorry, Char. Go ahead. I’m sorry.

MS. HAWKINS: --I gave them everything.

MR. GRUELICK: I’d like to make a comment on this here.

MR. HAUTH: Well, let’s go ahead and if we’re done with the business, or most part of the business right now, let’s see if there’s anybody on the phone that would like to make a comment. And if so, let’s hear from them. And if not, let’s circle around here and close it out, if that’s okay. Is there anybody on the phone that would like to make a comment or review what they’ve heard today?

MS. HASEMAN: Linda Haseman.

MR. EDWARDS1: Randy, this is…

MR. HAUTH: Hi, Linda. I knew you were on there. Go ahead.

MS. HASEMAN: Yeah. A couple of things. Just on housekeeping, I want to make sure that--you know, earlier on, I heard that there were some ORSs that referred maybe to the old ORSs. And I know with the new statute, a lot of those were rewritten or revised. So I hope that somebody is going to go back through and clean all that up to the new statute at some point in time, and also make sure that the terminology…

MR. HAUTH: Eric’s saying yes.

MS. HASEMAN: Okay. And make sure that the terminology correlates to the new statutes, too.

MS. MOORE: Yeah. We’ve been doing that.

MS. HASEMAN: So okay.

MR. HAUTH: Okay.

MS. MOORE: All day.

MS. HASEMAN: And then the other…

MR. EDWARDS: Randy, this…

MR. HAUTH: Hold on. Hold on. She’s still talking.

MS. HASEMAN: The other couple of things is I want to make sure that--I know you guys already stressed upon the operating agreement and a fair hearing and going in a parking lot. And maybe to prevent some of that going around in circles, when you pull it back out of the parking lot, maybe you guys could do almost like a--I guess you could call it like a sidebar or something like that where perhaps Jesse Hartle, Terry, Randy, and Eric all talk in a conference call or something about a couple of those items to get them cleared up. I think a lot of times, RSA is relying on all of you guys to send them what you believe is accurate, and sometimes, they don’t understand what that fair hearing actually is.

You guys--at one point, the Elected Committee got put in--probably didn’t even understand what the fair hearing is. And now that more issues are being fleshed out about that, perhaps it’s time to take it back to RSA and discuss what that--does it actually meet the requirement of the full evidentiary hearing process.

The last thing I have is a question. Again, just trying to provide pitfalls that have happened in the past. Is what you guys doing today, is that actually--is it active participation? Because what I hear active participation is, it’s supposed to be with the Commission. And so does Eric have the authority to represent the Commission in this meeting for active participation to be occurring? And I just don’t want to see where you guys put in all this time and then it goes back and, for whatever reason, the Commission doesn’t like some of the things and says no, or the AG gets veto power.

So I just want to make sure that those are being looked down the road, that if you guys are actively participating now, that you guys aren’t being tripped up later by somebody who wasn’t sitting in these meetings, veto powering over you guys. So that’s my question.

MR. HAUTH: Thank you, Linda. I don’t know if anybody wants to weigh on that before we call on the next person.

MR. TERRY SMITH: Yeah. We addressed that to a certain extent this morning. But I mean, Eric is here with the full authority from Dacia to be here, and to make decisions. And Dacia is not going to come back and say, “Well, I don’t agree with this and I don’t agree with that.” Now, we can’t control what Gretchen says and we can’t control what the Commission says, so--but if the Commission disagrees with this, you know, they can’t pick and choose and say we’re not going to approve this, we’re going to approve that. It has to come back for more active participation. I don’t think active part--why am I having trouble? Active participation doesn’t mean actually with the members…

MR. ART STEVENSON: It’s been a long day, Terry.

MR. TERRY SMITH: Members of the Commission. I think what we’re doing here, this is the way most states do it, is the BEP director and other staff who were there…

MR. HAUTH: Thank you, Terry. And thank you, Linda. Is there anybody else on there who’d like to make a comment?

MR. EDWARDS: Randy, this is James.

MR. HAUTH: Hey, James. Go ahead.

MR. EDWARDS: I just want to let you guys know that I have been listening--listening in on and off as time allows, and I will be throughout this process because you know I have a strong interest in it. And I just wanted to say thanks to Terry Smith for being there, facilitating it, and it’s a daunting process, so I’m wishing everybody luck. That’s all. And I’ll be on and off. But I wish I could be there in person, but I can’t be, so…

MR. HAUTH: Thank you, James.

MR. EDWARDS: Thanks.

MR. HAUTH: Is there anybody else on the phone that would like to make a comment?

MR. DERRICK STEVENSON: Yeah. This is Derrick.

MR. HAUTH: Derrick?

MR. DERRICK STEVENSON: Yeah. I like the way things were taking place today. I hope, you know, particularly that we pull the administrative review and a full hearing out of the parking lot and actually work towards something that’s going to not only benefit the program as a whole, but save the state a whole lot of money. And I…

MR. ART STEVENSON: Amen.

MR. DERRICK STEVENSON: There are other ways of having full evidentiary hearings that don’t include going through a state judge. We can set up--we can set up panels for a full evidentiary hearing. There’s other ways we can hold full evidentiary hearings that doesn’t include sending it to a judge who can’t really rule on anything.

MR. HAUTH: Thank you, Derrick. Anybody else on the phone? Is there anybody else that would like to make a comment on the phone? Okay.

MS. JAYNES: Yes, this is Lin Jaynes, Chairman Hauth.

MR. HAUTH: Lin, go ahead.

MS. JAYNES: Yes. I just wanted to say, you know, from a manager’s perspective, this was an extremely productive day. A lot of information to process, a lot of good information. A lot of questions in my mind I’m trying to formulate. But I did want to say it’s been a very good day. I’d like to thank everyone that was involved. You were all very professional and it was very informative.

MR. HAUTH: Thank you, Lin.

MS. JAYNES: Good first day.

MR. HAUTH: Thank you. Is there anybody else on the phone that would like to comment? Okay. Anybody in the room? I think, Luther, you had asked--

MR. GRUELICK: Yeah.

MR. HAUTH: --to comment?

MR. GRUELICK: I would. Thank you, Randy. In regards to the criteria for the operational plan, some new young blood would serve the program really well. And I don’t know exactly how to do it, but this criteria doesn’t take--somebody who just graduated from college, for example, and give them a huge opportunity. I don’t know exactly if this is the time or the place to address it. Perhaps some kind of apprenticeship program for people coming into the program or some direction to voc rehab about what’s needed and why specifically for vendors, you know, would be helpful.

MR. HAUTH: Yeah. I know the state statute calls for recruitment and so I believe the Elected Committee can work with the agency on developing a recruitment plan that probably talks about some of those things. And you know, I think you’re--

MR. ART STEVENSON: Field of Dreams.

MR. HAUTH: --barking up the right tree, so…

MR. GRUELICK: You know, I mean, somebody that--

MR. HAUTH: Yeah.

MR. GRUELICK: --doesn’t have any experience there.

MR. HAUTH: Thank you. Is there anybody else that would like to comment in the room or we wrap this up before we adjourn this?

MS. MOORE: That just made me think of that guy who worked at Harold Young’s deli. And it was so cool because that guy had never considered the concept before, so…

MR. MORRIS: Yeah. Ben’s got a few more years, but I think he’s thinking about it, so…

MR. HAUTH: So we’re going to meet here again tomorrow at 9:00 a.m.

MR. TERRY SMITH: Let me say something--

MR. HAUTH: Sure.

MR. TERRY SMITH: --before we adjourn. So we--the schedule was set up so that this afternoon, we would do exactly what we did. And so--and as I said, I would have done it the exact opposite. I’m glad Eric did it the other way. I think it was productive and we got some things, you know, resolved. And so tomorrow, anything that’s been put in the parking lot or anything else you’ve got about this current--the current rules…

MR. ART STEVENSON: We have to resolve.

MR. TERRY SMITH: Well, we’re coming in here tomorrow morning at 9:01, we’re going to be talking about subcontracting. Okay? And the statement of work and all that. So that’s what we’re going to be talking about at 9:01.

MR. ART STEVENSON: Mm hm.

MR. TERRY SMITH: The schedule calls for Wednesday morning, for us to sort of have our last wrap-up. I’ve got to be gone by probably 11:00, 11:30. I can’t remember what time my planes leaves, around 1:00 or something. So you know, whatever else we need to bring up parking lot-wise will be Wednesday morning, unless we get done early with the other stuff. Then if we get on it Tuesday, we can. And we can see--I don’t know what people with transportation issues, but you know, if we have to work late, I’m all for it. But I want to be sure--I want to leave here Wednesday thinking we accomplished something, and we…

MR. HAUTH: Well, and I think if there’s a few things that somehow don’t get done, we can still have time to work after you leave on it, right, somehow?

MR. TERRY SMITH: Sure. I don’t care.

MR. MORRIS: And I think the only real boundary we have is, how do you get somebody from Oregon Health Authority to help us with the vending--

MR. TERRY SMITH: All right.

MR. MORRIS: --all the vending stuff. So I scheduled them to come in, I believe it’s Tuesday after lunch, to deal with that piece of it, which I don’t think it’s going to take three or four hours. But we had to give them a time to come. So otherwise, we can compress or expand as needed.

MR. HAUTH: And we should probably kind of wrap our mind around maybe where to kind of guide that conversation to, I believe, so that we don’t get them guiding it. Right? So probably around FitPick or whatever it would be, or…

MR. MORRIS: For sure.

MR. HAUTH: You know, and I’m sure we can have some industry experts on that, and also, hopefully Vance or others will be on the line, so okay.

MR. MORRIS: Yeah. Katrina McDonald just sent some stuff from Mississippi State program, too, which I’ve got somewhere on here.

MR. HAUTH: Okay. Anything else, Terry?

MR. ART STEVENSON: Instead of--as far as…

MS. MOORE: And I won’t be here on Wednesday morning. I can spend through Tuesday, and I think Luther’s going to be here tomorrow, but not Monday or Tuesday.

MR. HAUTH: Well, Jeanne-Marie, I tell you, me personally, commend you and Luther for being here, and you guys have been great interested parties. So is there anybody else that wanted to make a comment before we go?

MR. MORRIS: Meeting adjourned.

MR. ART STEVENSON: Meeting adjourned.

MR. GRUELICK: Randy--including me.

MR. HAUTH: Sure. All right. Let’s adjourn this meeting. Thank you, everybody.

(WHEREUPON, the proceedings were adjourned.)

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**CERTIFICATION OF TRANSCRIPT**

I, Amanda Knapp, as the transcriber of the oral proceedings at the 8/12/17 meeting, certify this transcript to be true, accurate, and complete.

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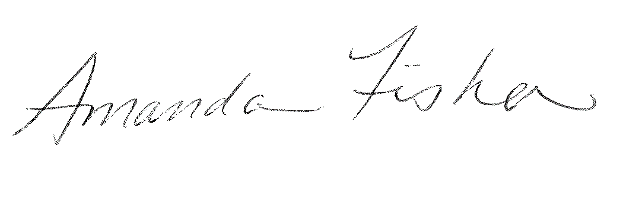


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