

February 10, 2019

SB 5503 - TESTIMONY FROM RANDY HAUTH, CHAIRPERSON BUSINESS ENTERPRISE CONSUMER COMMITTEE

Dear Members of the Joint Committee on Ways and Means Subcommittee on Human Services:

Please allow me to introduce myself to you. My name is Randy Hauth, and I am the Elected Committee Chairperson for the Business Enterprise Consumer Committee (BECC). The BECC is a Federally mandated representative board of business persons who happen to be blind. Specifically, 34 CFR 395.14 identifies the State Committee of Blind Vendors' duties and responsibilities, which, for the most part, aligns with ORS 346.546 and the Oregon Commission for the Blind's (OCB) agency rule OAR 585-015-0030.

Further for your consideration, the OCB recognizes the BECC as a public body, and we are comprised of (6) Vending Facility Managers (VFM) who have been elected to serve upon this committee within the Business Enterprise Program (BEP) by the Program Participants - other VFMs.

With that said, please know that these Program Participants, have bestowed upon the BECC an obligation to represent their interests in consideration of "all" Major Program Administrative Decisions, as well as in "all" Program and Policy Development Matters impacting the BEP Program, as prescribed by way of "active participation" which is a mandated requirement contained within CFR 395,14(b)(1), and further expanded upon within ORS 346.546, and identified within OCB's agency rule OAR 585-015-0005, and 585-015-0030, as follows:

585-015-0005

Definitions:

(1) ACTIVE PARTICIPATION MEANS an ongoing process of information sharing, discussions, and good faith negotiations, between the Business Enterprise Consumer Committee and the Commission to achieve joint planning, developing and understanding of the Commission's major administrative, policy and program development decisions that impact the Commission's Business Enterprise Program, prior to their implementation.

585-015-0030

Business Enterprise Consumer Committee

(6) ACTIVE PARTICIPATION — The Commission for the Blind 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 overall administration of the Commission's Business Enterprise Program.

(a) Active Participation includes, but is not limited to:

- (A) Setting out the method of determining the set aside charges to be levied against the net proceeds of the vending facility managers;
- (B) Development of Business Enterprise Program rules, policies, and standards;
- (C) Development of Business Enterprise Program budget requests;
- (D) Development of criteria for the establishment of new vending facilities;
- (E) Development of selection criteria for Business Enterprise staff recruitment;
- (F) Development of training and retraining programs for vending facility managers and licensees;
- (G) Development and administration of a system for the transfer and promotion of vending facility managers and licensees;
- (H) Sponsoring and planning, with the assistance of the Commission, meetings and

post licensure trainings for vending facility managers and licensees.

(b) As part of Active Participation, the Commission shall provide any program relevant information to the BECC when a particular matter is subject to Active Participation. This may include written or verbal program relevant information. It shall be provided, to the extent possible, in advance of any BECC meeting where the subject is on the agenda.

(c) On a quarterly basis, the Commission will provide to the BECC a financial report in sufficient detail, for the BECC to review. This report shall include listing of all revenues by source (Set Aside, Vending Income Federal, Vending Income State and Other, and Other) as well as expenditure by categories. Upon request, more detail shall be provided to the BECC. The Commission shall provide the BECC with a copy of the RSA-15 Report no later than January 15 for the prior federal fiscal year ending September 30th.

(d) If there is a matter or matters about which the Commission seeks the active participation of the BECC, notice of the request shall be provided to the members of the BECC at least ten (10) working days prior to any meeting where a vote may need to be taken. At the same time, the Commission shall provide any necessary background and reasons for the action, including any recommendations.

(e) When the Business Enterprise Consumer Committee submits officially approved requests and recommendations to the Director in writing, the Director shall provide a written response, including the reasons for the decision reached or the action taken, within 30 days of receipt of the request. The response shall explain why the decision is in the best interest of the Business Enterprise Program.

(f) The Commission bears final authority and responsibility for the administration and operating of the vending facilities program.

In addition to the above requirements, the BECC, is also designated to receive, transmit and to advocate on behalf of VFMs on grievances when requested by a VFM to do so. The role of the BECC in these is similar to the duties of Union Representatives.

With that shared, I provide to you today by way of this written correspondence the 2018 BEP Report from the BECC and VFMs prospective of the year in review.

This report attempts to reflect the BEP's "positive program outcomes realized" in 2018 which occurred due to the legislative revisions to ORS 346.510-570 by the passage of HB 3253, but will also identify "areas of improvement still needed" within the BEP. Beginning with the "positive program outcomes realized", then touching upon the "continuing areas of Program concern", and leaving you with several "suggestive remedies for consideration and relief".

2018 BEP Report from BECC and VFMs Perspective

A) POSITIVE PROGRAM OUTCOMES REALIZED:

1) Selection, training, and licensing of two (2) new VFMs into the BEP of Oregon. One of these VFM's is running a location, the other recently licensed VFM is awaiting a location to become available.

2) Recruitment of three (3) trainees currently in pre-license training for the BEP.

Footnote: While the BEP lost (2) VFMs during 2018, the BECC finds the addition of two (2) new VFMs a "positive program outcome." Whereas, prior to the State Legislators revisions of the ORS's, the BEP had a span of nearly nine (9) years where not (1) new VFM had been licensed.

3) All VFMs are now realizing benefits by way of "Vacation Pay" from Vending Machine Income - Federal, as prescribed within 34 CFR 395.8.

Footnote: These type of benefits had never occurred before for the VFMs, even though it's a CFR requirement for

the BEP.

4) The BEP staff and BECC worked in cooperation with each other to develop and circulate an outreach correspondence to public entities providing notice that ORS 346.510-570 had been revised granting to blind persons a “priority and the right of first refusal” on a vast array of properties, and a preference on certain other properties.

5) Placement of a VFM into the State of Oregon Capital Building Cafeteria as an “add on” to that person’s vending facility.

6) City of Portland acknowledged the priority of blind persons in consideration of the Portlandia Building renovation by way of a micro-market and espresso stand, awaiting placement of a VFM upon completion of renovations.

7) OCB is receptive to pursuing Commissary vending facilities, which have the potential to significantly increase income levels for selected VFMs, and is part of the BEP budget priorities. The BECC and VFMs are excited about these opportunities, and are hopeful that OCB will work with the BECC through active participation on the development of these sites.

B. AREAS WHERE IMPROVEMENT IS STILL NEEDED WITHIN THE BEP:

1) A 75.6% denial by OCB to the BECC’s motions in 2018 that required Active Participation. (The denial percentage equates to 31 denials out of the 41 motions that required Active Participation). This provides documented limitations by the OCB as those limitations are relevant to denying "Active Participation" of the BECC in Major Administrative Decisions affecting the overall BEP, as well as Program and Policy Development Decisions that impact the overall administration of the BEP.

Several members of the BECC, along with some VFMs, and agency staff attended a national training in November 2018, where a Randolph-Sheppard Administration’s (RSA) Program Analyst informed all of those in attendance that “ultimate authority” is only cited in the CFR’s as it relates to a nominee agency, which OCB is not. Active Participation is far greater than what OCB seems to be doing, which is BEP staff is simply going through the BECC motions and responding to them with a “high rate of denials to the BECC motions”, then documenting time spent the BEP staff expends in BECC meetings as a reason to invoke ultimate authority to net the outcome OCB wanted all along, thus eroding and destroying the intended purpose of "active participation". Often times when the BECC requests information or asks questions of the BEP staff during BECC meetings, the BECC receives limited to no information. Information sharing from BEP staff to the BECC in the BECC meetings is almost non-existent, as the BECC is often told by BEP staff in attendance at the meetings “that they don’t know the answer”, “they don’t have the information in front of them”, “they will have to get back to the BECC”, “I’m just waiting for you to make your motion, and vote, for me to respond to it”, I think BECC meetings are just for a few to lecture, I’m feeling ambushed, etc., rather than a productive dialogue of information sharing, discussions, and good faith negotiations to benefit the Business Enterprise Program and the VFMs.

Here is the link to the results of the 2018 Vending Facilities Managers’ Satisfaction Survey (apologies in advance as the survey contains some spelling errors) whereby the results correlate to information shared above from the perspective of the VFMs:

<https://www.surveymonkey.com/results/SM-5Q5VHH52V/>

Also, attached is a recap spreadsheet for 2018 BECC Motions & OCB Responses to active participation items. As referenced earlier, OCB’s “denial” rate is 75.6% to BECC’s motions, with only 19.5% of the BECC motions being “accepted” by OCB, and 4.9% of the BECC’s motions were “partially accepted” by OCB.

Both of the above identified and provided documents, reaffirm there are areas where improvement is still needed within the BEP

Footnote: The progressive Business Enterprise Programs across the land are successful because they support good faith practices of inclusion, integration, and active participation - which fosters much more productive Business Enterprise Program outcome for all, and such practices often reduce turmoil, grievances, and legal action.

2) The BECC just recently learned that 70 site surveys were conducted in 2018 by OCB, as captured within the RSA 15 Report, which include agency acceptances, and agency denials to "potential program opportunities" and which received no "active participation" by the BECC, nor did OCB even make the BECC of these possible site development opportunities as required.

A point of interest is that one (1) of the BECC's motions that OCB accepted from the January 26, 2018 BECC meeting was: "That the agency henceforth distribute to all vending facility managers a copy of all surveys, in accessible format, unless a manager requests other." The BECC as well as the VFMs the represent, however, remained unaware of the 70 site surveys conducted in 2018, until OCB provided them a copy of them on January 11, 2019, even though site surveys on the report are dated between October 2017 and September 2018. As the Chairperson of the BECC, I have recently submitted written questions to OCB staff to obtain answers as to who is currently running the sites accepted by OCB, because per the 2018 RSA-15 Report, all the sites accepted are "pending assignment" to blind vendors. Likewise, I am also asking for more in-depth rationale as to the sites that were rejected, etc. Unfortunately, at this time, the BECC is having to play catch up with the survey information since OCB opted to not discuss, information share, or good faith negotiate with the BECC on these sites.

Footnote: OCB provided to the Governor's Office and to both the Senate & House legislative committees on Health Care and Human Services the 2018 RSA-15 Report, which included a spreadsheet of the 70 survey sites, as part of the "Business Enterprise Annual Report." Therefore, please reference that document if you are interested in the RSA-15 data I am referencing.

3) OCB has been directing "Vending Machine Income – Non-Federal" into set-aside funds, thus accruing keeping those revenues away from the the VFM's, even though there are currently qualified persons who are blind and licensed by OCB in the BEP who are available to operate these opportunities in accordance with ORS 346.540(e), yet VFMs have been denied these opportunities. In fact, the BECC is unaware of most of these locations, and does not know who is actually servicing such locations. Several VFMs, which includes me at the BECC Chairperson, believe that OCB is contracting at many of these sites with third party persons who are not blind, thus keeping them away from VFMs in the BEP – which does not benefit the VFMs in the BEP.

At the end of the FFY 2018, the "levied" set aside fund was down to \$7,787.00 (which is the levied 11% VFM's pay to OCB from their net proceeds), with \$163,131.00 being expended from the "levied" fund in FFY 2018. Meanwhile, as of the FFY 2018, OCB had accrued the "Vending Machine Income – Non-Federal set aside fund" up to \$246,729, with only \$34,809 being expended from that fund during the FFY 2018.

When BECC members and VFMs have previously asked OCB and the Governor's staff about the "Vending Machine Income – Non-Federal" funds being apparently stock-piled, they are told "those funds are benefiting the program." This does not appear to be occurring, as only \$34,809 of the "Vending Machine Income – Non-Federal" funds were expended to benefit the program in 2018.

4) OCB did not accept a communication protocol, which was developed per the motion of the BECC in an effort to assist with the effective conduct of the BECC in the receiving of program relevant information and data necessary to properly actively participate with the OCB in Major Administration Decisions, as well as Policy, and Program Development.

On July 26, 2018, at a BECC meeting, the BECC motioned: "That Randy Hauth submits a communication protocol paper to Eric for his consideration." OCB's response to this motion: "This motion is accepted. The agency will work with the Elected Committee to develop a communication protocol." Following, this motion

and acceptance, I submitted a draft communication protocol paper to Mr. Eric Morris, BEP Director for his consideration.

On September 25, 2018, at a BECC meeting, the BECC motioned: "That the communications protocol document created by Randy Hauth be officially incorporated into the BECC rules. OCB's response to this motion: "This motion is not accepted. The agency is committed to developing a communications process, but the OARs would not be an appropriate venue for a communications process."

Attached is the "draft" Communication Protocol Motioned by the BECC and denied by OCB.

5) OCB adopted, as well enacted, BEP Rules without receiving approval by way of the Secretary of the Rehabilitation Services Administration, as is required by 34 CFR 395.4. The approval by the Secretary of the Rehabilitation Services Administration has been a long standing "stated position held by RSA". Prior to OCB adopting the BEP Rules, OCB rejected the "legal objections submitted by the BECC" which identified serious programmatic violations that the BECC wanted addressed and rectified prior to OCB's adoption.

Attached is the "Legal Objections Submitted by the BECC" to OCB, on the BEP Rules that OCB proceeded to adopt.

Footnotes: (a) To date, the Secretary of the Rehabilitation Services Administration has not approved the BEP Rules in question and OCB has been unwilling to participate in a re-working of the BEP Rules. Recently, a request for Federal Arbitration has been acknowledged by the Secretary of the Rehabilitation Services Administration, which is presently in a forty-five (45) days cooling off period, whereby the two (2) parties involved, which is OCB and three (3) VFMs, have the ability to work through the issues raised, if both parties agree to do so.

(b) In addition to the above, OCB continues to create, circulate, and support "other" Policies, Procedures, and Standards, that have not received approval from Rehabilitation Services Administration, and/or the "active participation" of the BECC. Examples include, but not limited to: Vending Services Policy, Intergovernmental Agency Agreements (IGA), Master Vending Contracts, Contracts, Program Contracts/Agreements, and have changed, and/or amended such without the "active participation" of the BECC, nor with the knowledge or involvement of the impacted VFMs. In some cases, VFMs haven't received amended or changed IGAs which directly affect how the VRMs are to service their location, product ratios, product positioning in vending machines, number of hours a VFM is to work at their location, etc.

6) A large portion of the legislative record relevant to HB 3253, was in fact not only to support the priority of persons who are blind, but as well for the allowance of VFMs to utilize subcontracting teaming partners as they deem necessary to assist them in their vending facilities, while following a structured VFM's duty of responsibility around such an arrangement.

In spite of the many positive supports and equipment that can be realized to VFMs by way of such a subcontracting teaming partner arrangement, OCB, thus far, has relied upon their continued perceived philosophical belief system and have denied such an allowance or choice of business model to VFMs. Specifically, this has occurred with recent vacancy announcements.

OCB has informed the BECC and VFMs that there is under one (1) million dollars remaining that were earmarked for the vending machine self-service project, which is substantially short of what would be needed to support all sixteen (16) VFMs in the required equipment and infrastructure to transition to a full self-service model. Accordingly, there remain serious concerns by VFMs around OCB's sponsored initiative with regards to the feasibility, practicability of such a plan, or to the outcome expected.

Most certainly, the BECC supports the VFMs in their "choice" of a business model, but we do not support a brood sweeping denial by OCB to the VFMs utilization of subcontracting teaming partners.

Footnote: BEP data that the few VFMs who have transitioned portions of their vending facilities from a subcontracting teaming partnership arrangement to a self-service model have, in some instances, fallen in the VFMs percent of net proceeds, which is in contrast to what OCB projected forecast was when submitting to the Oregon Legislature when seeking funds for this initiative. A historical to present spreadsheet one (1) such route is available. In an attempt to not overwhelm this

report, I haven't included it. However, if you would like to review the historical spreadsheet, please contact me to send it to you.

C. RECOMMENDATIONS FOR RELIEF:

- 1) That OCB work through the issues raised in the Federal Arbitration associated with the BEP Rules that has been acknowledged by the Secretary of the Rehabilitation Services Administration, if both parties agree to do so.
- 2) That OCB reverse its' denial of the Communication Protocol and adopt this practice to improve communications and "active participation" between OCB and the BECC.
- 3) That OCB reverse its denial of allowance for BECC participation during OCB Board Meetings, and support the opportunity for BECC participation in such meetings to information share about the happenings within the BEP.
- 4) That OCB, actively participate with the BECC to assign the Vending Machine Income – Non-Federal to VFMs with existing Vending Facilities, and/or to create New Vending Facilities for employment of VFMs, as intended by the implementing CFRs, and ORSs.

Sincerely,
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