

ALASKA LEGISLATURE COMMITTEE FILES 1981-1982 8672

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proceeds of the operation of the vending facilities and, to the extent applicable, from vending machine income under § 395.8(c) in an amount determined by the Secretary to be reasonable.

(b) Funds may be set aside under paragraph (a) of this section only for the purposes of:

(1) Maintenance and replacement of equipment;

(2) The purchase of new equipment;

(3) Management services;

(4) Assuring a fair minimum of return to vendors; or

(5) The establishment and maintenance of retirement or pension funds, health insurance contributions, and provision for paid sick leave and vacation time, if it is so determined by a majority vote of blind vendors licensed by the State licensing agency, after such agency provides to each such vendor information on all matters relevant to such proposed purposes.

(c) The State licensing agency shall further set out the method of determining the charge for each of the above purposes listed in paragraph (b) of this section, which will be determined with the active participation of the State Committee of Blind Vendors and which will be designed to prevent, so far as is practicable, a greater charge for any purpose than is reasonably required for that purpose. The State licensing agency shall maintain adequate records to support the reasonableness of the charges for each of the purposes listed in this section, including any reserves necessary to assure that such purposes can be achieved on a consistent basis.

§ 395.10 The maintenance and replacement of vending facility equipment.

The State licensing agency shall maintain (or cause to be maintained) all vending facility equipment in good repair and in an attractive condition and shall replace or cause to be replaced worn-out and obsolete equipment as required to ensure the continued successful operation of the facility.

§ 395.11 Training program for blind individuals.

The State licensing agency shall ensure that effective programs of vocational and other training services, including personal and vocational adjustment, books, tools, and other training materials, shall be provided to blind individuals as vocational rehabilitation services under the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516). Such programs shall include on-the-job training in all aspects of vending facility operation for blind persons with the capacity to operate a vending facility, and upward mobility training (including further education and additional training or retraining for improved work opportunities) for all blind licensees. The State licensing agency shall further ensure that post-employment services shall be provided to blind vendors as vocational rehabilitation services as necessary to assure that the maximum vocational potential of such vendors is achieved and suitable employment is maintained within the State's vending facility program.

§ 395.12 Access to program and financial information.

Each blind vendor under this part shall be provided access to all financial data of the State licensing agency relevant to the operation of the State vending facility program, including quarterly and annual financial reports, provided that such disclosure does not violate applicable Federal or State laws pertaining to the disclosure of confidential information. Insofar as practicable, such data shall be made available in braille or recorded tape. At the request of a blind vendor State licensing agency staff shall arrange a convenient time to assist in the interpretation of such financial data.

§ 395.13 Evidentiary hearings and arbitration of vendor complaints.

(a) The State licensing agency shall specify in writing and maintain procedures whereby such agency affords an opportunity for a full evidentiary hearing to each blind vendor (which

procedures shall also apply to cases under § 395.6(e)) dissatisfied with any State licensing agency action arising from the operation or administration of the vending facility program. When such blind vendor is dissatisfied with any action taken or decision rendered as a result of such hearing, he may file a complaint with the Secretary. Such complaint shall be accompanied by all available supporting documents, including a statement of the decision which was rendered and the reasons in support thereof.

(b) The filing of a complaint under paragraph (a) of this section with either the State licensing agency or the Secretary shall indicate consent by the blind vendor for the release of such information as is necessary for the conduct of a full evidentiary hearing or the hearing of an ad hoc arbitration panel.

(c) Upon receipt of a complaint filed by a blind vendor which meets the requirements established by the Secretary, the Secretary shall convene an ad hoc arbitration panel which shall, in accordance with the provisions of 5 U.S.C. chapter 5, subchapter II, give notice, conduct a hearing, and render its decision which shall be final and binding on the parties except that such decision shall be subject to appeal and review as a final agency action for purposes of the provisions of 5 U.S.C. chapter 7.

(d) The arbitration panel convened by the Secretary to hear the grievances of blind vendors shall be composed of three members appointed as follows:

(1) One individual designated by the State licensing agency;

(2) One individual designated by the blind vendor; and

(3) One individual not employed by the State licensing agency or, where appropriate, its parent agency, who shall be jointly designated by the other members of the panel and who shall serve as chairman of the panel.

(e) If either the State licensing agency or the blind vendor fails to designate a member of an arbitration panel, the Secretary shall designate such member on behalf of such party.

(f) The decisions of an arbitration panel convened by the Secretary

procedures shall also apply to cases under § 395.6(e) dissatisfied with any State licensing agency action arising from the operation or administration of the vending facility program. When such blind vendor is dissatisfied with any action taken or decision rendered as a result of such hearing, he may file a complaint with the Secretary. Such complaint shall be accompanied by all available supporting documents, including a statement of the decision which was rendered and the reasons in support thereof.

(b) The filing of a complaint under paragraph (a) of this section with either the State licensing agency or the Secretary shall indicate consent by the blind vendor for the release of such information as is necessary for the conduct of a full evidentiary hearing or the hearing of an ad hoc arbitration panel.

(c) Upon receipt of a complaint filed by a blind vendor which meets the requirements established by the Secretary, the Secretary shall convene an ad hoc arbitration panel which shall, in accordance with the provisions of 5 U.S.C. chapter 5, subchapter II, give notice, conduct a hearing, and render its decision which shall be final and binding on the parties except that such decision shall be subject to appeal and review as a final agency action for purposes of the provisions of 5 U.S.C. chapter 7.

(d) The arbitration panel convened by the Secretary to hear the grievances of blind vendors shall be composed of three members appointed as follows:

(1) One individual designated by the State licensing agency;

(2) One individual designated by the blind vendor; and

(3) One individual not employed by the State licensing agency or, where appropriate, its parent agency, who shall be jointly designated by the other members of the panel and who shall serve as chairman of the panel.

(e) If either the State licensing agency or the blind vendor fails to designate a member of an arbitration panel, the Secretary shall designate such member on behalf of such party.

(f) The decisions of an arbitration panel convened by the Secretary

under this section shall be matters of public record and shall be published in the FEDERAL REGISTER.

(g) The Secretary shall pay all reasonable costs of arbitration under this section in accordance with a schedule of fees and expenses which shall be published in the FEDERAL REGISTER.

(h) The provisions of this section shall not require the participation of grantors of permits for the operation of vending facilities on property other than Federal property.

§ 395.14 The State Committee of Blind Vendors.

(a) The State licensing agency shall provide for the biennial election of a State Committee of Blind Vendors which, to the extent possible, shall be fully representative of all blind vendors in the State program on the basis of such factors as geography and vending facility type with a goal of providing for proportional representation of blind vendors on Federal property and blind vendors on other property. Participation by any blind vendor in any election shall not be conditioned upon the payment of dues or any other fees.

(b) The State Committee of Blind Vendors shall:

(1) Actively participate with the State licensing agency in major administrative decisions and policy and program development decisions affecting the overall administration of the State's vending facility program;

(2) Receive and transmit to the State licensing agency grievances at the request of blind vendors and serve as advocates for such vendors in connection with such grievances;

(3) Actively participate with the State licensing agency in the development and administration of a State system for the transfer and promotion of blind vendors;

(4) Actively participate with the State licensing agency in the development of training and retraining programs for blind vendors; and

(5) Sponsor, with the assistance of the State licensing agency, meetings and instructional conferences for blind vendors within the State.

§ 395.15 Use of nominee agreements.

(a) The State licensing agency may enter into an agreement whereby another agency or organization undertakes to furnish services to blind vendors. Such agreement shall be in writing and shall contain provisions which:

(1) Clearly insure the retention by the State licensing agency of full responsibility for the administration and operation of all phases of the program;

(2) Specify the type and extent of the services to be provided under such agreement;

(3) Provide that no set-aside charges will be collected from blind vendors except as specified in such agreement;

(4) Specify that no nominee will be allowed to exercise any function with respect to funds for the purchase of new equipment or for assuring a fair minimum of return to vendors, except to collect and hold solely for disposition in accordance with the order of the State licensing agency any charges authorized for those purposes by the licensing agency; and

(5) Specify that only the State licensing agency shall have control with respect to selection, placement, transfer, financial participation and termination of the vendors, and the preservation, utilization, and disposition of program assets.

(b) If the State licensing agency permits any agency or organization other than a vendor to hold any right, title to, or interest in vending facilities or stock, the arrangement shall be one permitted by State law and shall specify in writing that all such right, title to, or interest is held by such agency or organization as the nominee of the State licensing agency for program purposes and subject to the paramount right of the State licensing agency to direct and control the use, transfer, and disposition of such vending facilities or stock.

§ 395.16 Permit for the establishment of vending facilities.

Prior to the establishment of each vending facility, other than a cafeteria, the State licensing agency shall submit an application for a permit setting forth the location, the amount of space necessary for the operation of

the vending facility; the type of facility and equipment, the number, location and type of vending machines and other terms and conditions desired to be included in the permit. Such application shall be submitted for the approval of the head of the Federal property managing department, agency, or instrumentality. When an application is not approved, the head of the Federal property managing department, agency, or instrumentality shall advise the State licensing agency in writing and shall indicate the reasons for the disapproval.

§ 395.17 Suspension of designation as State licensing agency.

(a) If the Secretary has reason to believe that, in the administration of the program, there is a failure on the part of any State licensing agency to comply substantially with the Act and this part, he shall so inform such agency in writing, setting forth, in detail, the areas in which there is such failure and giving it a reasonable opportunity to comply.

(b) If, after the lapse of a reasonable time, the Secretary is of the opinion that such failure to comply still continues and that the State licensing agency is not taking the necessary steps to comply, he shall offer to such agency, by reasonable notice in writing thereto and to the chief executive of the State, an opportunity for a hearing before the Secretary (or person designated by the Secretary) to determine whether there is a failure on the part of such agency to comply substantially with the provisions of the Act and of this part.

(c) If it is thereupon determined that there is a failure on the part of such agency to comply substantially with the Act and this part, appropriate written notice shall be given to such agency and to the chief executive of the State suspending such agency's designation as licensing agency effective 90 days from the date of such notice. A copy of such written notice shall be given to each department, agency, or instrumentality of the United States responsible for the maintenance, operation, and protection of Federal property on which

vending machines subject to the requirements of § 395.32 are located in the State. Upon the suspension of such designation, vending machines income from vending machines Federal property due for accrual to the State licensing agency under § 395.32 shall be retained in escrow by such department, agency, or instrumentality of the United States responsible for the maintenance, operation and protection of the Federal property on which such vending machines are located, pending redesignation of the State licensing agency or rescission of the suspension under paragraph (c) of this section.

(d) If, before the expiration of 90 days, the Secretary (or person designated by him) determines that the State licensing agency is taking necessary steps to comply, he may postpone the effective date of such suspension for such time as he deems necessary in the best interest of the program.

(e) If, prior to the effective date of such suspension, the Secretary (or person designated by him) finds there is no longer a failure on the part of the State licensing agency to comply substantially with the provisions of the Act and this part, he shall so notify the agency, the chief executive of the State, and each Federal department, agency, or instrumentality required to place funds in escrow under paragraph (c) of this section. In any event the suspension of the designation shall not become effective and the requirement to place funds in escrow shall be terminated.

Subpart C—Federal Property Management

§ 395.30 The location and operation of vending facilities for blind vendors—Federal property.

(a) Each department, agency, or instrumentality of the United States shall have control of the maintenance, operation and protection of Federal property on which shall take all steps necessary to provide that, wherever feasible, in light of appropriate space and potential for use, one or more vending facilities shall be operated by blind licensees at locations on all Federal property

vending machines subject to the requirements of § 395.32 are located in the State. Upon the suspension of such designation, vending machine income from vending machines on Federal property due for accrual to the State licensing agency under § 395.32 shall be retained in escrow by such department, agency, or instrumentality of the United States responsible for the maintenance, operation and protection of the Federal property on which such vending machines are located, pending redesignation of the State licensing agency or rescission of the suspension under paragraph (e) of this section.

(d) If, before the expiration of such 90 days, the Secretary (or person designated by him) determines that the State licensing agency is taking the necessary steps to comply, he may postpone the effective date of such suspension for such time as he deems necessary in the best interest of the program.

(e) If, prior to the effective date of such suspension, the Secretary (or person designated by him) finds that there is no longer a failure on the part of the State licensing agency to comply substantially with the provisions of the Act and this part, he shall so notify the agency, the chief executive of the State, and each Federal department, agency, or instrumentality required to place funds in escrow under paragraph (c) of this section. In such event the suspension of the designation shall not become effective and the requirement to place funds in escrow shall be terminated.

Subpart C—Federal Property Management

§ 395.30 The location and operation of vending facilities for blind vendors on Federal property.

(a) Each department, agency, or instrumentality of the United States in control of the maintenance, operation, and protection of Federal property shall take all steps necessary to assure that, wherever feasible, in light of appropriate space and potential patronage, one or more vending facilities for operation by blind licensees shall be located on all Federal property Pro-

vided that the location or operation of such facility or facilities would not adversely affect the interests of the United States. Blind persons licensed by State licensing agencies shall be given priority in the operation of vending facilities on any Federal property.

(b) Any limitation on the location or operation of a vending facility for blind vendors by a department, agency or instrumentality of the United States based on a finding that such location or operation or type of location or operation would adversely affect the interests of the United States shall be fully justified in writing to the Secretary who shall determine whether such limitation is warranted. A determination made by the Secretary concerning such limitation shall be binding on any department, agency, or instrumentality of the United States affected by such determination. The Secretary shall publish such determination in the FEDERAL REGISTER along with supporting documents directly relating to the determination.

(c) Priority in the operation of vending facilities in areas administered by the National Park Service or the National Aeronautics and Space Administration shall be given to blind vendors. Priority in the awarding of contracts for the operation of concessions in such areas when such concessions provide accommodations, facilities, and services of a scope or of a character not generally available in vending facilities operated by blind vendors shall be given in accordance with the provisions of the Concession Policy Act (Pub. L. 98-249, 16 U.S.C. 1) or the National Aeronautics and Space Act of 1958, as amended (Pub. L. 85-568, 42 U.S.C. 2473). The provisions of this part shall not apply when all accommodations, facilities, or services in such areas are operated by a single responsible concessioner.

§ 395.31 Acquisition and occupation of Federal property.

(a) Effective January 2, 1975, no department, agency, or instrumentality of the United States shall undertake to acquire by ownership, rent, or lease, or to otherwise occupy, in whole or in

part, any building unless it is determined that such building includes a satisfactory site or sites for the location and operation of a vending facility by a blind vendor. In those cases where a purchase contract, an agreement to lease, or other similar commitment was entered into prior to January 2, 1975, the provisions of this paragraph shall not apply.

(b) Effective January 2, 1975, no department, agency, or instrumentality of the United States, shall undertake to occupy, in whole or in part, any building which is to be constructed, substantially altered, or renovated, or in the case of a building which is occupied on January 2, 1975 by a department, agency, or instrumentality of the United States, no such department, agency, or instrumentality shall undertake to substantially alter or renovate such building, unless it is determined that the design for such construction, substantial alteration, or renovation includes a satisfactory site or sites for the location and operation of a vending facility by a blind vendor. In those cases where a design contract or other similar commitment was entered into prior to January 2, 1975, the provisions of this paragraph shall not apply. For purposes of this paragraph, "substantial alteration or renovation of a building" means a permanent material change in the floor area of such building which would render such building appropriate for the location and operation of a vending facility by a blind vendor.

(c) The determination that a building contains a satisfactory site or sites under paragraph (a) or (b) of this section shall be made after consultation between the State licensing agency and the head of the department, agency, or instrumentality of the United States which is planning to acquire or otherwise occupy such building. In order to make such determination, effective on the publication date of this part each such department, agency, or instrumentality shall provide to the appropriate State licensing agency written notice of its intention to acquire or otherwise occupy such building. Such written notice shall be by certified or registered mail with return receipt and shall be provided as

early as practicable but no later than 60 days prior to such intended action. The written notice shall indicate that a satisfactory site or sites for the location and operation of a vending facility by blind persons is included in the plans for the building to be acquired or otherwise occupied and shall further assure that the State licensing agency shall be afforded the opportunity to determine whether such building includes a satisfactory site or sites for a vending facility. The written notice shall further assure that the State licensing agency, subject to the approval of the head of the Federal property managing department, agency, or instrumentality, shall be offered the opportunity to select the location and type of vending facility to be operated by a blind vendor prior to the completion of the final space layout of the building. The receipt of such written notice shall be acknowledged in writing promptly by the State licensing agency but no later than within 30 days and the State licensing agency shall indicate at that time whether it is interested in establishing a vending facility. A copy of the written notice to the State licensing agency and the State licensing agency's acknowledgement shall be provided to the Secretary.

(d) When, after a written notice has been provided under paragraph (c) of this section, the State licensing agency determines that the number of persons using the Federal property is or will be insufficient to support a vending facility, and the Secretary concurs with such determination, the provisions of paragraphs (a) and (b) of this section shall not apply. The provisions of paragraphs (a) and (b) of this section shall also not apply when fewer than 100 Federal Government employees are or will be located during normal working hours in the building to be acquired or otherwise occupied or when such building contains less than 15,000 square feet of interior space to be utilized for Federal Government purposes in the case of buildings in which services are to be provided to the public.

(e) The operation of a vending facility established under pre-existing arrangements shall not be affected by

the provisions of this section. The provisions of this section shall further not preclude future arrangements under which vending facilities to be operated by blind vendors may be established in buildings of a size or with an employee population less than that specified in paragraph (d) of this section: *Provided*, That both the State licensing agency and the Federal property managing department, agency or instrumentality concur in such establishment.

(f) Each department, agency, and instrumentality of the United States, when leasing property in privately owned buildings, shall make every effort to lease property capable of accommodating a vending facility. When, however, such department, agency, or instrumentality is leasing part of a privately owned building in which prior to the execution of the lease, the lessor or any of his tenant had in operation or had entered into contract for the operation of a restaurant or other food facility in a part of the building not included in such lease and the operation of a vending facility by a blind vendor would be in proximate and substantial direct competition with such restaurant or other food facility, the provisions of paragraphs (a), (b), and (c) of this section shall not apply.

§ 395.32 Collection and distribution of vending machine income from vending machines on Federal property.

(a) The on-site official responsible for the Federal property of each property managing department, agency, instrumentality of the United States in accordance with established procedures of such department, agency, instrumentality, shall be responsible for the collection of, and accounting for, vending machine income from vending machines on Federal property under his control and shall otherwise ensure compliance with the provisions of this section.

(b) Effective January 2, 1975, ten per centum of all vending machine income from vending machines on Federal property which are in direct competition with a vending facility created by a blind vendor shall accrue to the State licensing agency with

the provisions of this section. The provisions of this section shall further not preclude future arrangements under which vending facilities to be operated by blind vendors may be established in buildings of a size or with an employee population less than that specified in paragraph (d) of this section: *Provided*, That both the State licensing agency and the Federal property managing department, agency or instrumentality concur in such establishment.

(f) Each department, agency, and instrumentality of the United States, when leasing property in privately owned buildings, shall make every effort to lease property capable of accommodating a vending facility. When, however, such department, agency, or instrumentality is leasing part of a privately owned building in which prior to the execution of the lease, the lessor or any of his tenants had in operation or had entered into a contract for the operation of a restaurant or other food facility in a part of the building not included in such lease and the operation of a vending facility by a blind vendor would be in proximate and substantial direct competition with such restaurant or other food facility, the provisions of paragraphs (a), (b), and (c) of this section shall not apply.

§ 395.32 Collection and distribution of vending machine income from vending machines on Federal property.

(a) The on-site official responsible for the Federal property of each property managing department, agency, or instrumentality of the United States, in accordance with established procedures of such department, agency, or instrumentality, shall be responsible for the collection of, and accounting for, vending machine income from vending machines on Federal property under his control and shall otherwise ensure compliance with the provisions of this section.

(b) Effective January 2, 1975, 100 per centum of all vending machine income from vending machines on Federal property which are in direct competition with a vending facility operated by a blind vendor shall accrue to the State licensing agency which

shall disburse such income to such blind vendor operating such vending facility on such property provided that the total amount of such income accruing to such blind vendor does not exceed the maximum amount determined under § 395.8(a). In the event that there is income from such vending machines in excess of the maximum amount which may be disbursed to the blind vendor under § 395.8(a), such additional income shall accrue to the State licensing agency for purposes determined in accordance with § 395.8(c).

(c) Effective January 2, 1975, 50 per centum of all vending machine income from vending machines on Federal property which are not in direct competition with a vending facility operated by a blind vendor shall accrue to the State licensing agency which shall disburse such income to the blind vendor operating such vending facility on such property. In the event that there is no blind vendor, such income shall accrue to the State licensing agency, except as indicated under paragraph (d) of this section. The total amount of such income disbursed to such blind vendor shall not exceed the maximum amount determined under § 395.8(a). In the event that there is income from such vending machines in excess of the maximum amount which may accrue to the blind vendor under § 395.8(a), such additional income shall accrue to the State licensing agency for purposes determined in accordance with § 395.8(c).

(d) Effective January 2, 1975, 30 per centum of all vending machine income from vending machines, which are not in direct competition with a vending facility operated by a blind vendor and which are on Federal property at which at least 50 per centum of the total hours worked on the premises occurs during a period other than normal working hours, shall accrue to the State licensing agency which shall disburse such income to the blind vendor operating a vending facility on such property. In the event that there is no blind vendor on such property, such income shall accrue to the State licensing agency. The total amount of such income disbursed to such blind vendor shall not exceed the maximum

amount determined under § 395.8(a). In the event that there is income from such vending machines in excess of the maximum amount which may be disbursed to the blind vendor under § 395.8(a), such additional income shall accrue to the State licensing agency for purposes determined in accordance with § 395.8(c).

(e) The determination that a vending machine on Federal property is in direct competition with a vending facility operated by a blind vendor shall be the responsibility of the on-site official responsible for the Federal property of each property managing department, agency or instrumentality of the United States, subject to the concurrence of the State licensing agency.

(f) In the case of vending machine income which, prior to the effective date of this part, has been disbursed to a blind vendor by a property managing department, agency, or instrumentality from proceeds which accrued from operations subsequent to January 2, 1975, pursuant to agreements in effect prior to such time, such income may be deducted, at the discretion of such property managing department, agency or instrumentality, from vending machine income due to the State licensing agency under paragraphs (b), (c), or (d) of this section.

(g) The collection of vending machine income and its disbursement to the appropriate State licensing agency shall be conducted on at least a quarterly basis.

(h) All arrangements pertaining to the operation of vending machines on Federal property not covered by contract with, or by permits issued to, State licensing agencies, shall be renegotiated upon the expiration of the existing contract or other arrangement for consistency with the provisions of this section.

(i) The provisions of this section shall not apply to income from vending machines within operated retail sales outlets under the control of post exchange or ships' stores systems authorized under Title 10 of the United States Code; to income from vending machines operated by the Veterans Canteen Service; or to income from

vending machines not in direct competition with a blind vending facility at individual locations, installations, or facilities on Federal property the total of which at such individual locations, installations, or facilities does not exceed \$3,000 annually.

(j) The provisions of this section shall not operate to preclude pre-existing or future arrangements, or regulations of departments, agencies, or instrumentalities of the United States, under which blind vendors or State licensing agencies may:

(1) Receive a greater percentage or amount of vending machine income than that specified in paragraphs (b), (c), and (d) of this section, or

(2) Receive vending machine income from individual locations, installations, or facilities on Federal property the total of which at such individual locations, installations, or facilities does not exceed \$3,000 annually.

§ 395.33 Operation of cafeterias by blind vendors.

(a) Priority in the operation of cafeterias by blind vendors on Federal property shall be afforded when the Secretary determines, on an individual basis, and after consultation with the appropriate property managing department, agency, or instrumentality, that such operation can be provided at a reasonable cost, with food of a high quality comparable to that currently provided employees, whether by contract or otherwise. Such operation shall be expected to provide maximum employment opportunities to blind vendors to the greatest extent possible.

(b) In order to establish the ability of blind vendors to operate a cafeteria in such a manner as to provide food service at a comparable cost and of comparable high quality as that available from other providers of cafeteria services, the appropriate State licensing agency shall be invited to respond to solicitations for offers when a cafeteria contract is contemplated by the appropriate property managing department, agency, or instrumentality. Such solicitations for offers shall establish criteria under which all responses will be judged. Such criteria

may include sanitation practices, personnel, staffing, menu pricing and portion sizes, menu variety, budget and accounting practices. If the proposal received from the State licensing agency is judged to be within a competitive range and has been ranked among those proposals which have a reasonable chance of being selected for final award, the property managing department, agency, or instrumentality shall consult with the Secretary as required under paragraph (a) of this section. If the State licensing agency is dissatisfied with an action taken relative to its proposal, it may file a complaint with the Secretary under the provisions of § 395.37.

(c) All contracts or other existing arrangements pertaining to the operation of cafeterias on Federal property not covered by contract with, or by permits issued to, State licensing agencies shall be renegotiated subsequent to the effective date of this part or before the expiration of such contracts or other arrangements pursuant to the provisions of this section.

(d) Notwithstanding the requirements of paragraphs (a) and (b) of this section, Federal property managing departments, agencies, and instrumentalities may afford priority in the operation of cafeterias by blind vendors on Federal property through direct negotiations with State licensing agencies whenever such department, agency, or instrumentality determines on an individual basis, that such operation can be provided at a reasonable cost, with food of a high quality comparable to that currently provided employees. *Provided, however,* That the provisions of paragraphs (a) and (b) of this section shall apply in the event that the negotiations authorized by this paragraph do not result in a contract.

§ 395.34 Application for permits.

Applications for permits for the operation of vending facilities other than cafeterias shall be made in writing, in the appropriate form, and submitted for the review and approval of the head of the Federal property managing department, agency, or instrumentality.

may include sanitation practices, personnel, staffing, menu pricing and portion sizes, menu variety, budget and accounting practices. If the proposal received from the State licensing agency is judged to be within a competitive range and has been ranked among those proposals which have a reasonable chance of being selected for final award, the property managing department, agency, or instrumentality shall consult with the Secretary as required under paragraph (a) of this section. If the State licensing agency is dissatisfied with an action taken relative to its proposal, it may file a complaint with the Secretary under the provisions of § 395.37.

(c) All contracts or other existing arrangements pertaining to the operation of cafeterias on Federal property not covered by contract with, or by permits issued to, State licensing agencies shall be renegotiated subsequent to the effective date of this part on or before the expiration of such contracts or other arrangements pursuant to the provisions of this section.

(d) Notwithstanding the requirements of paragraphs (a) and (b) of this section, Federal property managing departments, agencies, and instrumentalities may afford priority in the operation of cafeterias by blind vendors on Federal property through direct negotiations with State licensing agencies whenever such department, agency, or instrumentality determines, on an individual basis, that such operation can be provided at a reasonable cost, with food of a high quality comparable to that currently provided employees. *Provided, however,* That the provisions of paragraphs (a) and (b) of this section shall apply in the event that the negotiations authorized by this paragraph do not result in a contract.

§ 395.34 Application for permits.

Applications for permits for the operation of vending facilities other than cafeterias shall be made in writing on the appropriate form, and submitted for the review and approval of the head of the Federal property managing department, agency, or instrumentality.

§ 395.35 Terms of permit.

Every permit shall describe the location of the vending facility including any vending machines located on other than the facility premises, and shall be subject to the following provisions:

(a) The permit shall be issued in the name of the applicant State licensing agency which shall:

(1) Prescribe such procedures as are necessary to assure that in the selection of vendors and employees for vending facilities there shall be no discrimination because of sex, race, age, creed, color, national origin, physical or mental disability, or political affiliation; and

(2) Take the necessary action to assure that vendors do not discriminate against any person or persons in furnishing, or by refusing to furnish, to such person or persons the use of any vending facility, including any and all services, privileges, accommodations, and activities provided thereby, and comply with Title VI of the Civil Rights Act of 1964 and regulations issued pursuant thereto.

(b) The permit shall be issued for an indefinite period of time subject to suspension or termination on the basis of compliance with agreed upon terms.

(c) The permit shall provide that:

(1) No charge shall be made to the State licensing agency for normal cleaning, maintenance, and repair of the building structure in and adjacent to the vending facility areas:

(2) Cleaning necessary for sanitation, and the maintenance of vending facilities and vending machines in an orderly condition at all times, and the installation, maintenance, repair, replacement, servicing, and removal of vending facility equipment shall be without cost to the department, agency, or instrumentality responsible for the maintenance of the Federal property; and

(3) Articles sold at vending facilities operated by blind licensees may consist of newspapers, periodicals, publications, confections, tobacco products, food, beverages, chances for any lottery authorized by State law and conducted by an agency of a State within such State, and other articles or serv-

ices as are determined by the State licensing agency, in consultation with the on-site official responsible for the Federal property of the property managing department, agency or instrumentality, to be suitable for a particular location. Such articles and services may be dispensed automatically or manually and may be prepared on or off the premises in accordance with all applicable health laws.

(d) The permit shall further provide that vending facilities shall be operated in compliance with applicable health, sanitation, and building codes or ordinances.

(e) The permit shall further provide that installation, modification, relocation, removal, and renovation of vending facilities shall be subject to the prior approval and supervision of the on-site official responsible for the Federal property of the property managing department, agency, or instrumentality, and the State licensing agency; that costs of relocations initiated by the State licensing agency shall be paid by the State licensing agency; and that costs of relocations initiated by the department, agency, or instrumentality shall be borne by such department, agency, or instrumentality.

(f) The operation of a cafeteria by a blind vendor shall be covered by a contractual agreement and not by a permit.

§ 395.36 Enforcement procedures.

(a) The State licensing agency shall attempt to resolve day-to-day problems pertaining to the operation of the vending facility in an informal manner with the participation of the blind vendor and the on-site official responsible for the property of the property managing department, agency, or instrumentality as necessary.

(b) Unresolved disagreements concerning the terms of the permit, the Act, or the regulations in this part and any other unresolved matters shall be reported in writing to the State licensing agency supervisory personnel by the Regional or other appropriate official of the Federal property managing department, agency, or instrumentality in an attempt to resolve the issue.

§ 395.37 Arbitration of State licensing agency complaints.

(a) Whenever any State licensing agency determines that any department, agency, or instrumentality of the United States which has control of the maintenance, operation, and protection of Federal property is failing to comply with the provisions of the Act or of this part and all informal attempts to resolve the issues have been unsuccessful, such licensing agency may file a complaint with the Secretary.

(b) Upon receipt of a complaint filed under paragraph (a) of this section, the Secretary shall convene an ad hoc arbitration panel which shall, in accordance with the provisions of 5 U.S.C. ch. 5, subchapter II, give notice, conduct a hearing and render its decision which shall be final and binding on the parties except that such decision shall be subject to appeal and review as a final agency action for purposes of the provisions of 5 U.S.C. ch. 7. The arbitration panel convened by the Secretary to hear complaints filed by a State licensing agency shall be composed of three members appointed as follows:

(1) One individual designated by the State licensing agency;

(2) One individual designated by the head of the Federal department, agency, or instrumentality controlling the Federal property over which the dispute arose; and

(3) One individual, not employed by the Federal department, agency, or instrumentality controlling the Federal property over which the dispute arose, who shall be jointly designated by the other members of the panel and who shall serve as chairman of the panel.

(c) If either the State licensing agency or the head of the Federal department, agency, or instrumentality fails to designate a member of an arbitration panel, the Secretary shall designate such member on behalf of such party.

(d) If the panel finds that the acts or practices of any department, agency, or instrumentality are in violation of the Act or of this part, the head of any such department, agency, or instrumentality (subject to any appeal

under paragraph (b) of this section, shall cause such acts or practices to be terminated promptly and shall take such other action as may be necessary to carry out the decision of the panel.

(e) The decisions of an arbitration panel convened by the Secretary under this section shall be matters of public record and shall be published in the FEDERAL REGISTER.

(f) The Secretary shall pay all reasonable costs of arbitration under this section in accordance with a schedule of fees and expenses which shall be published in the FEDERAL REGISTER.

under paragraph (b) of this section) shall cause such acts or practices to be terminated promptly and shall take such other action as may be necessary to carry out the decision of the panel.

(e) The decisions of an arbitration panel convened by the Secretary under this section shall be matters of public record and shall be published in the FEDERAL REGISTER.

(f) The Secretary shall pay all reasonable costs of arbitration under this section in accordance with a schedule of fees and expenses which shall be published in the FEDERAL REGISTER.

§ 395.38 Reports.

At the end of each fiscal year, each property managing department, agency, or instrumentality of the United States shall report to the Secretary the total number of applications for vending facility locations received from State licensing agencies, the number accepted, the number denied, the number still pending, the total amount of vending machine income collected and the amount of such vending machine income disbursed to the State licensing agency in each State.

at least 14 days before the proposed vacation.
(Eff. 12/7/77, Reg. 64)

Authority: AS 14.07.060
AS 23.15.020(c)

4 AAC 54.260. VENDING FACILITY INCOME. (a) For the first six months of operation of a new vending facility, the division will assure that the manager receives minimum earnings equal to the state minimum hourly wage times the number of days the facility was operated, computed on an eight-hour day. Extensions of the period covered by this minimum earnings guarantee may be approved only by the division's chief of services.

(b) The Vocational Rehabilitation Small Business Enterprise Revolving Fund established by AS 23.15.130 will be used to aid licensees in operating vending facilities whether or not the licensee's facility is located in a public building.

(c) The net proceeds from vending machines operated by private persons in public buildings for the purpose of profit-making must be paid by the operator directly to the division's small business enterprise fund on a monthly or quarterly basis, as specified by the division. The net proceeds will be utilized as follows:

(1) if machines are in direct competition with a vending facility licensee in the same building, the net proceeds from those machines accrues to each vendor operating a vending facility in the building in an amount up to the average net income of all vending facility licensees within the state, as determined each fiscal year on the basis of the prior year's operation;

(2) the proceeds from vending machines not in direct competition with a licensed vending facility or in excess of the funds required to be paid to a vendor under (1) of this subsection will be used to

(A) defray in part or total the cost of constructing new vending facilities in state-operated buildings;

(B) pay for the maintenance and replacement of equipment and the purchase of new equipment;

(C) pay for management services; and

(D) pay for the cost of health insurance, paid vacation and sick leave for vending facility operators;

(d) Income from vending machines located in any federally owned or leased buildings will be maintained in a separate Randolph-Sheppard account and shall be disbursed according to applicable federal regulations. (Eff. 12/7/77, Reg. 64)

Authority: AS 14.07.060
AS 23.15.020(c)

ARTICLE 8. HEARINGS AND APPEAL PROCEDURES

Section

810. Requests for administrative review
820. Procedure for hearings
830. Appeals from final decisions of the division

4 AAC 54.810. REQUESTS FOR ADMINISTRATIVE REVIEW. (a) A person whose vending facility license is revoked pursuant to sec. 140 of this chapter, or who is otherwise adversely affected by a decision or other action of the division, may request administrative review of that action or decision, in writing, within 30 days of the date on which notice of the action or decision was mailed or personally given to him. The request must describe the action or decision and the grounds upon which review is being sought.

(b) Upon receipt of a request for administrative review, the division will schedule a meeting for a time and place convenient to the individual requesting the review and assign an employee of the division who was not involved in the initial action or decision to act as impartial conciliator.

(c) Participants in the administrative review are the individual requesting the review and, if desired, his representative and the division employee whose decision or action is to be reviewed. All participants will be afforded an opportunity to address the issues raised by the request for review. The impartial conciliator will attempt to resolve the issues and, if possible, inform the other participants of his decision immediately. The impartial conciliator will issue a written decision and mail it to the individual

requesting the review at his last reported address. The decision will inform the individual of his right to a further hearing on the matter pursuant to (d) of this section.

(d) If the individual requesting the review is dissatisfied with the decision of the impartial conciliator, he may request, in writing, a hearing on the matter within 30 days of mailing of the impartial conciliator's decision. The request for hearing must be addressed to the Director of Vocational Rehabilitation, Department of Education, Pouch F, Juneau, Alaska 99811, and must describe the matter on which the hearing is sought and the grounds upon which review is requested.

(e) Within 15 days of receipt of a request for hearing, the director will set a time and place convenient to the individual and appoint an individual who has not been involved in the matter under consideration to act as hearing officer. Written notice of the time and place of the hearing will be mailed to the individual at his last reported address at least 15 days before the hearing. (Eff. 5/10/78, Reg. 66)

Authority: AS 14.07.060
AS 23.15.100(b)(6)

4 AAC 54.820. PROCEDURE FOR HEARINGS. (a) Participants at the hearing are the individual requesting the hearing and, if desired, his representative and the division employee whose action or decision is to be reviewed. The hearing officer has full authority to control the proceedings of the hearing and to rule on questions of admissibility of testimony and other evidence and on any other legal issues raised by the participants.

(b) All participants may present relevant evidence at the hearing, including testimony, affidavits, and documents relevant to the issue for which the hearing is being held. Depositions, affidavits, and documents that have been stipulated to by the participants prior to the hearing will also be entered into the record.

(c) Oral evidence will be taken only upon oath or affirmation.

(d) Common law rules of evidence will apply except when the hearing officer determines that their application is not required in order to

assure fair treatment of the complainant or respondent and that the evidence offered is relevant and of the sort on which responsible persons are accustomed to rely in the conduct of serious matters.

(e) The participants and the hearing officer may

(1) call and examine witnesses;

(2) introduce exhibits and other evidence;

(3) cross-examine opposing witnesses on matters relevant to the issue even though the matter was not covered in the direct examination. If the individual requesting the hearing does not testify, he may be called and examined by the hearing officer.

(f) The hearing officer may require that the testimony of a material witness be taken by deposition.

(g) Documents or affidavits intended to be used at a hearing should be submitted to the division prior to the hearing so that they may be stipulated to whenever possible.

(h) The hearing officer may order the continuance of a hearing for good cause shown.

(i) If a participant does not appear at a hearing that has been set, the hearing officer, unless good cause is shown, shall act upon the evidence presently at his disposal without notice to the absent participant.

(j) The hearing officer shall submit his recommendations and the hearing record to the director. The director shall examine the record and the hearing officer's recommendations and issue a written decision which shall be final. A copy of the decision shall be mailed to the participants at their last reported address. (Eff. 5/10/78, Reg. 66)

Authority: AS 14.07.060
AS 23.15.100

4 AAC 54.830. APPEALS FROM FINAL DECISIONS OF THE DIVISION. (a) The decision of the director issued under sec. 820(j) of this chapter will inform the individual who requested the hearing and his representative, if

any, of his right to appeal that decision to the Superior Court within 30 days as provided in the Rules of Appellate Procedure of the State of Alaska.

(b) In the case of a blind vending facility manager covered under sec. 206 of the Randolph-Sheppard Act of 1973, the decision of the director issued under 4 AAC 54.820(j) will also inform the individual of his right to file a complaint with the United States Secretary of Health, Education and Welfare concerning the action or decision of the division. (Eff. 5/10/78, Reg. 66)

Authority: AS 14.07.060
AS 23.15.100(b)(6)

ARTICLE 9. GENERAL PROVISIONS

Section

990. Definitions

4 AAC 54.990. **DEFINITIONS.** Unless the context requires otherwise, in this chapter and AS 23.15.010 - 23.15.320

(1) "director" means the director of the division of vocational rehabilitation of the Department of Education or his designee;

(2) "division" means the division of vocational rehabilitation of the Department of Education;

(3) "net proceeds" means the conventional returns or commissions which would normally be paid by the machine operator to the building owner for the right to place his machines in that building, and will be negotiated between the machine operator and the division;

(4) "public building" means any building owned, leased or occupied by the state or an agency of the state for public purpose, financed by state funds or public bond indebtedness, however, it does not include buildings located on any land subject to the provisions of 42 USC §§ 354, 354a or 353, or which is similarly reserved in trust for the benefit of the University of Alaska. (Eff. 12/7/77, Reg. 64)

Authority: AS 14.07.060
AS 23.15.020(c)

CHAPTER 57. LIBRARY SERVICES

Article

1. State Plan (4 AAC 57.010)
2. Library Materials Grants-In-Aid (4 AAC 57.050-4 AAC 57.090)

ARTICLE 1. STATE PLAN

Section

10. Alaska state plan

4 AAC 57.010. **ALASKA STATE PLAN.** The Long Range Program for Library Development in Alaska 1977 - 1982, published in July 1977, is adopted by reference as the Alaska state plan for participation under the U.S. Library Services and Construction Act (Public Law 91-600). (In effect before 7/28/59; am 4/17/67, Reg. 24; am 10/4/73, Reg. 47; am 5/10/78, Reg. 66)

Authority: AS 14.56.010-080

Editor's Note: The Alaska State Plan may be obtained by writing the Commissioner, Department of Education, Pouch F, Juneau, Alaska 99811.

ARTICLE 2. LIBRARY MATERIALS GRANTS-IN-AID

Section

50. Purpose
60. Eligibility
70. Application
80. Exceptions
90. Definitions

4 AAC 57.050. **PURPOSE.** Grants-in-aid under AS 14.56.050 are available to assist municipalities and incorporated library associations in acquiring library materials for public use. Libraries and library associations may engage in cooperative agreements with other libraries for shared acquisitions and use of library materials acquired with grant-in-aid funds. (Eff. 5/25/79, Reg. 70)

Authority: AS 14.07.060
AS 14.56.050

4 AAC 57.060. **ELIGIBILITY.** (a) Any municipality or incorporated library association operating a public library may apply for a grant-in-aid.

Sec. 23.15.040. Division of vocational rehabilitation established. The division of vocational rehabilitation is established under the Board of Vocational Rehabilitation to carry out AS 23.15.010 — 23.15.210. (§ 37-9-6 ACLA 1949; am § 2 ch 169 SLA 1955; am § 2 ch 144 SLA 1957; am § 18 ch 208 SLA 1975)

Sec. 23.15.050. Director of vocational rehabilitation. The board shall appoint a director of the division of vocational rehabilitation. The director has the administrative authority delegated to him by the board and necessary to carry out AS 23.15.010 — 23.15.210 and the regulations and policies adopted by the board. (§ 37-9-6 ACLA 1949; am § 2 ch 144 SLA 1957; am §§ 2, 3 ch 79 SLA 1960; am § 9 ch 96 SLA 1967; am § 19 ch 208 SLA 1975)

Sec. 23.15.060. Agreements under Social Security Act. (a) The board acting through the division of vocational rehabilitation may enter into necessary agreements on behalf of the state with the Secretary of Health, Education and Welfare to carry out the provisions of the federal Social Security Act, as amended, and as it is subsequently amended, relating to the making of determinations of disability under Title II and Title XVI of that Act.

(b) The Department of Revenue shall act as the custodian of funds paid by the federal government to the state, shall comply with agreements entered into under the Social Security Act, and shall disburse the funds in accordance with instructions from the director of the division of vocational rehabilitation. (§ 37-9-6 ACLA 1949; am § 2 ch 169 SLA 1955; am § 2 ch 144 SLA 1957; am § 20 ch 208 SLA 1975; am § 1 ch 5 SLA 1978)

Effect of amendments. — The 1978 amendment inserted "and Title XVI" near the end of subsection (a).

Sec. 23.15.070. Personnel policies. The board shall adopt personnel policies for the division of vocational rehabilitation. The director shall execute these policies and keep them on file in his office. (§ 37-9-6 ACLA 1949; am § 2 ch 169 SLA 1955; am § 2 ch 144 SLA 1957; am § 21 ch 208 SLA 1975)

Sec. 23.15.080. Eligibility for vocational rehabilitation service.

(b) In determining the types and extent of vocational rehabilitation services to be provided to a handicapped individual, the division shall take into consideration any similar benefits which may be available to the individual under other programs. However, the division may not take other benefits into consideration when doing so would significantly delay the provision of needed services to the handicapped indi-

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vidual. The division need not take other benefits into consideration when they are for

- (1) diagnostic and related services (including transportation and subsistence in connection with those services);
 - (2) counseling, guidance, and referral;
 - (3) training, including personal and vocational adjustment training, and necessary training materials;
 - (4) services to members of families of handicapped individuals;
 - (5) job placement; and
 - (6) services necessary to assist handicapped individuals to maintain suitable employment.
- (am § 2 ch 2 SLA 1978)

Effect of amendments. — The 1978 amendment rewrote subsection (b). As the rest of the section was not affected by the amendment, it is not set out.

Sec. 23.15.100. Powers and duties.

- (b) In carrying out AS 23.15.010 — 23.15.210, the agency may
- (1) enter into agreements with other states to provide for the vocational rehabilitation of residents of the states concerned;
 - (2) establish and operate rehabilitation facilities and workshops and make grants to public and other nonprofit organizations for these purposes;
 - (3) supervise the operation of vending stands and other small businesses established under AS 23.15.010 — 23.15.210 to be conducted by severely handicapped individuals;
 - (4) make studies, investigations, demonstrations and reports, and provide training and instruction (including the establishment and maintenance of the research fellowships and traineeships with the stipends and allowances which are considered necessary) in matters relating to vocational rehabilitation;
 - (5) license blind and severely handicapped persons for the operation of vending facilities on federal property and in public buildings, with blind persons having first priority for operation of the vending facilities; and
 - (6) promulgate regulations necessary for carrying out the provisions of AS 23.15.010 — 23.15.210.
- (am § 1 ch 75 SLA 1976)

Cross references. — As to contracts to operate vending facilities in state buildings, see AS 44.21.025.

Editor's notes. — As the rest of the section was not affected by the amendment, it is not set out.

Sec. 23.15.110. Extension of services outside state. Vocational rehabilitation service may be extended to the continental United States to all individuals eligible under AS 23.15.010 — 23.15.210. The

director of the division of vocational rehabilitation may place professional or clerical personnel or both inside the continental United States to carry out the purposes of AS 23.15.010 — 23.15.210. (§ 37-9-8(3) ACLA 1949; am § 4 ch 144 SLA 1957; am § 22 ch 208 SLA 1975)

Sec. 23.15.130. Vocational rehabilitation small business enterprise revolving fund. (a) There is created in the state treasury a revolving fund designated as the vocational rehabilitation small business enterprise revolving fund. The fund shall be administered by the director.

(b) Receipts from the net proceeds of vending facilities in public buildings other than vending facilities operated by a licensee, shall be paid to the fund.

(c) The fund shall be used to aid licensees in operating vending machine facilities.

(d) In this section "net proceeds" means the gross receipts from operating a vending facility less the costs of operation and fair return to the operator, to be determined by the division. (§ 37-10 ACLA 1949; added by § 6 ch 144 SLA 1957; am § 3 ch 75 SLA 1976)

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Sec. 23.15.210. Definitions. In AS 23.15.010 — 23.15.210

(1) "agency" means the division of vocational rehabilitation;

(3) "director" means the director of the division of vocational rehabilitation;

(4) "handicapped individual" means an individual having a physical or mental disability which for that individual constitutes or results in a substantial handicap to employment and who can reasonably be expected to benefit in terms of employability from the provision of vocational rehabilitation services;

(5) "individual having a physical or mental disability" means an individual who has a physical or mental condition which materially limits, contributes to limiting, or, if not corrected, will probably result in limiting his activities or functioning;

(6) "vocational rehabilitation service" means goods and services, including diagnostic and related services, necessary to enable a handicapped individual to engage in gainful employment;

(7) "workshop" means a rehabilitation facility engaged in a production or service operation which is operated for the primary purpose of providing gainful employment or professional services to the handicapped as an interim step in the rehabilitation process for those who cannot readily be absorbed in the competitive labor market or during times when employment opportunities for them in the competitive labor market do not exist.

(8) "blind person" means a person whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or whose visual acuity, if better than 20/200, is accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter

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subtends an angle of no greater than 20 degrees; an examination by an ophthalmologist or by an optometrist is necessary before a person is found to be blind;

(9) "severely handicapped person" means a person who has one or more physical or mental disabilities which seriously limit the person's functional capacities in terms of regular employment, and whose vocational rehabilitation requires multiple vocational rehabilitation services over an extended period of time;

(10) "licensee" means a blind or severely handicapped person licensed by the division of vocational rehabilitation under the Randolph-Sheppard Act (20 U.S.C. §§ 107 — 107b, 107d — 107e, 107f), AS 23.15.100(b)(5), and any regulations issued under federal law or AS 23.15.100(b)(5);

(11) "public building" means any building owned by the state or an agency of the state, or any space leased by the state or any agency of the state, and designated by the division as being appropriate for participation in the business enterprise program;

(12) "vending facility" means an automatic vending machine, cafeteria, snack bar, shelter, or counter where food, tobacco, or sundries are offered for sale.

(am § 23 ch 208 SLA 1975; am § 2 ch 75 SLA 1976; am §§ 3 — 6 ch 5 SLA 1978)

Effect of amendments. — The 1978 amendment, in paragraph (4), substituted "having" for "under," "and who can" for "but which is of such a nature that vocational rehabilitation services may," and the language beginning "benefit in terms of employability" for "render him fit to engage in a remunerative occupation" and inserted "for that individual" and "or results in." The amendment also substituted "having" for "who is under" in paragraph (5), substituted "enable a handicapped individual to engage in gainful employment" for "render a handicapped individual fit to engage in a

remunerative occupation," at the end of paragraph (6), and in paragraph (7), substituted "rehabilitation facility engaged in a production or service operation" for "place where manufacture or handiwork is carried on, and," "gainful employment or professional services to the handicapped" for "remunerative employment to severely handicapped individuals (A)," and "times" for "a time," inserted "process" near the middle of the paragraph and deleted "it" following "competitive labor market or."

As the rest of the section was not affected by the amendments, it is not set out.

Article 2. Governor's Committee on Employment of Handicapped.

Section

270. Cooperation with other committees and agencies

290. Employ the handicapped week

Editor's notes. — Section 7, ch 5, SLA 1978 amended the Article 2 heading by deleting "Physically" preceding "Handicapped."

Sec. 23.15.270. Cooperation with other committees and agencies. The committee shall work in close cooperation with local committees and with the President's Committee on Employment of the Handicapped to carry out the purpose of AS 23.15.220 — 23.15.320 more effectively, and with state and federal agencies having responsibilities for employment and rehabilitation of the handicapped. (§ 1 ch 23 SLA 1960; am § 7 ch 5 SLA 1978)

Effect of amendments. — The 1978 amendment deleted "Physically" preceding "Handicapped" near the middle of the section.

Sec. 23.15.290. Employ the handicapped week. Each year the governor shall issue a proclamation designating the first full week in May as Alaska Employ the Handicapped Week. During this week, appropriate ceremonies shall be held throughout the state for the purpose of enlisting public support for, and interest in the employment of, the handicapped. The mayors of cities, and heads of government instrumentalities, and leaders of industry and business, educational and religious groups, labor, veterans, women, farm, scientific and professional, and all other interested organizations and individuals shall be invited to participate. (§ 4 ch 23 SLA 1960; am § 8 ch 5 SLA 1978)

Effect of amendments. — The 1978 amendment substituted "May as Alaska Employ the Handicapped Week" for "October as National Employ the Physically Handicapped Week" at the end of the first sentence and deleted "physically" preceding "handicapped" near the end of the second sentence.

Article 4. Manpower Development and Training.

Section

611. Department of Labor participation in manpower training programs

617. [Repealed]

Sec. 23.15.611. Department of Labor participation in manpower training programs.

(b) Repealed by § 2 ch 174 SLA 1975.

(am § 2 ch 174 SLA 1975)

Editor's notes. — As the rest of the section was not affected by the amendment, it is not set out

Sec. 23.15.617. Manpower Training Advisory Council. Repealed by § 2 ch 174 SLA 1975.

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Editor's notes. — The repealed section derived from § 3, ch. 74, SLA 1969; § 6, ch. 104, SLA 1971.

The repealed section was amended by § 80, ch. 218, SLA 1976, which substituted

"commissioner of commerce and economic development" for "commissioner of economic development" in paragraph (4) of subsection (a).

Chapter 20. Alaska Employment Security Act.

NOTES TO DECISIONS

This chapter establishes a comprehensive program which provides unemployed workers with job placement services and cash benefits during the period of their unemployment. State Dep't of Labor v. Boucher, Sup. Ct. Op. No. 1669 (File No. 3329), 81 P.2d 660 (1978).

The primary purpose of the Alaska

Employment Security Act is to ameliorate the negative effects that involuntary unemployment has on both the unemployed individual and society as a whole. State Dep't of Labor v. Boucher, Sup. Ct. Op. No. 1669 (File No. 3329), 81 P.2d 660 (1978).

Article 1. Administration.

Section

- 12. [Repealed]
- 15. [Repealed]
- 22. Actuarial studies
- 35. Duties and powers of director
- 45. Regulations and special rules

Section

- 85. Interstate benefit payments
- 110. Information obtained by department
- 115. Unauthorized disclosure of information

Sec. 23.20.005. Purpose.

NOTES TO DECISIONS

Remedial statute. — The Alaska Employment Security Act, AS 23.20.005 — 23.20.535, is a remedial statute with the primary purpose of ameliorating the negative effects that involuntary unem-

ployment has on both the unemployed individual and society as a whole. *Estes v. Department of Labor*, Sup. Ct. Op. No. 2276 (File No. 5033), 625 P.2d 733 (1981).

Sec. 23.20.010. Policy.

NOTES TO DECISIONS

The primary purpose of the Alaska Employment Security Act AS 23.20.005 — 23.20.535, is to ameliorate the negative effects that involuntary unemployment has on both the unemployed individual

and society as a whole. *State Dep't of Labor v. Boucher*, Sup. Ct. Op. No. 1669 (File No. 3329), 81 P.2d 660 (1978); *Estes v. Department of Labor*, Sup. Ct. Op. No. 2276 (File No. 5033), 625 P.2d 733 (1981).

(1) a passenger train shall have at least a minimum passenger crew, which shall consist of one locomotive engineer, one locomotive fireman (or helper), one conductor, one brakeman, and one flagman;

(2) a freight train shall have at least a minimum freight crew, which shall consist of one locomotive engineer, one locomotive fireman (or helper), one conductor, and two brakemen;

(3) a light engine without cars shall have at least a minimum light engine crew, which shall consist of one locomotive engineer, one locomotive fireman (or helper), and one conductor.

(b) Except for hostling movements and duties as negotiated for each railroad company, no person operating an Interstate Commerce Commission-regulated railroad offering passenger service in this state may operate an engine or locomotive, regardless of the form of energy used for propulsion, for switching cars or in transfer movements, unless every engine or locomotive is manned by a minimum crew consisting of one locomotive engineer, one locomotive fireman (or helper), one conductor, and two helpers.

(c) In this section "engine" includes connected, multiple units under single control.

(d) A person who violates a provision of this section may be fined up to \$500 upon conviction. Each violation constitutes a separate offense. (§ 1 ch 150 SLA 1970)

Legislative history reports. — For report on ch. 150, SLA 1970 (CSHB 666 am S), see 1970 House Journal, p. 604.

Chapter 15. Employment Services.

Article

1. Vocational Rehabilitation (§§ 23.15.010 — 23.15.210)
2. Governor's Committee on Employment of Handicapped (§§ 23.15.220 — 23.15.320)
3. Employment Agencies (§§ 23.15.330 — 23.15.520)
4. Manpower Development and Training (§§ 23.15.610 — 23.15.617)
5. Work Incentive Program for Welfare Recipients (§ 23.15.650)

Article 1. Vocational Rehabilitation.

Section	Section
10. Board of Vocational Rehabilitation	110. Extension of services outside state
20. Powers and duties of board	120. Cooperation with federal government
30. Appointment of administrative officers	130. Vocational rehabilitation small business enterprise revolving fund
40. Division of vocational rehabilitation established	140. (Repealed)
50. Director of vocational rehabilitation	150. Receipt and disbursement of funds
60. Agreements under Social Security Act	160. Gifts
70. Personnel policies	170. Maintenance not assignable
80. Eligibility for vocational rehabilitation service	180. Hearings
90. Priority as to eligibility	190. Misuse of lists and records
100. Powers and duties	200. Limitation on political activity
	210. Definitions

Collateral references. — 48A Am. Jur. 2d, Labor and Labor Relations, §§ 2662, 2663.

51 C.J.S., Labor Relations, § 1044.

Sec. 23.15.010. Board of Vocational Rehabilitation. The Board of Education which administers the program of vocational education is designated as the Board of Vocational Rehabilitation to administer the vocational rehabilitation program. (§ 37-9-6 ACLA 1949; am § 2 ch 169 SLA 1955; am § 2 ch 144 SLA 1957; am § 1 ch 79 SLA 1960)

Sec. 23.15.020. Powers and duties of board. (a) The board may cooperate with a federal agency, as provided and required by federal law for vocational rehabilitation.

(b) The board shall comply with these federal laws and the conditions necessary to secure the full benefit of the federal vocational rehabilitation laws, and shall do all things necessary to entitle the state to receive the benefits of the federal laws.

(c) The board may do all the things and adopt the regulations which are necessary to carry out the federal laws and the purposes of AS 23.15.010 — 23.15.210. (§ 37-9-6 ACLA 1949; am § 2 ch 169 SLA 1955; am § 2 ch 144 SLA 1957; am § 1 ch 79 SLA 1960)

Sec. 23.15.030. Appointment of administrative officers. The board may appoint administrative officers, and delegate to them the authority necessary to carry out AS 23.15.010 — 23.15.210. (§ 37-9-6 ACLA 1949; am § 2 ch 169 SLA 1955; am § 2 ch 144 SLA 1957; am § 1 ch 79 SLA 1960)

Sec. 23.15.040. Division of vocational rehabilitation established. The division of vocational rehabilitation is established under the Board of Vocational Rehabilitation to carry out AS 23.15.010 — 23.15.210. (§ 37-9-6 ACLA 1949; am § 2 ch 169 SLA 1955; am § 2 ch 144 SLA 1957; am § 18 ch 208 SLA 1975)

Sec. 23.15.050. Director of vocational rehabilitation. The board shall appoint a director of the division of vocational rehabilitation. The director has the administrative authority delegated to him by the board and necessary to carry out AS 23.15.010 — 23.15.210 and the regulations and policies adopted by the board. (§ 37-9-6 ACLA 1949; am § 2 ch 144 SLA 1957; am §§ 2, 3 ch 79 SLA 1960, am § 9 ch 96 SLA 1967; am § 19 ch 208 SLA 1975)

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Sec. 23.15.060. Agreements under Social Security Act. (a) The board acting through the division of vocational rehabilitation may enter into necessary agreements on behalf of the state with the Secretary of Health, Education and Welfare to carry out the provisions of the federal Social Security Act, as amended, and as it is subsequently amended, relating to the making of determinations of disability under Title II and Title XVI of that Act.

(b) The Department of Revenue shall act as the custodian of funds paid by the federal government to the state, shall comply with agreements entered into under the Social Security Act, and shall disburse the funds in accordance with instructions from the director of the division of vocational rehabilitation. (§ 37-9-6 ACLA 1949; am § 2 ch 169 SLA 1955; am § 2 ch 144 SLA 1957; am § 20 ch 208 SLA 1975; am § 1 ch 5 SLA 1978)

Effect of amendments. — The 1978 amendment inserted "and Title XVI" near the end of subsection (a).

Editor's notes. — The Secretary of Education has succeeded to the responsibilities of the Secretary of Health,

Education and Welfare referred to in subsection (a).

Title II and Title XVI of the federal Social Security Act may be found in 42 U.S.C. § 401 et seq. and 42 U.S.C. § 1381 et seq., respectively.

Sec. 23.15.070. Personnel policies. The board shall adopt personnel policies for the division of vocational rehabilitation. The director shall execute these policies and keep them on file in his office. (§ 37-9-6 ACLA 1949; am § 2 ch 169 SLA 1955; am § 2 ch 144 SLA 1957; am § 21 ch 208 SLA 1975)

Sec. 23.15.080. Eligibility for vocational rehabilitation service. (a) Vocational rehabilitation service shall be provided directly or through a public or private instrumentality to a handicapped individual (1) who is a resident of the state at the time he applies for the service and whose vocational rehabilitation the agency determines after full investigation can be satisfactorily achieved, or (2) who is eligible for the service under an agreement with another state or with the federal government.

(b) In determining the types and extent of vocational rehabilitation services to be provided to a handicapped individual, the agency shall take into consideration any similar benefits which may be available to the individual under other programs. However, the agency may not take other benefits into consideration when doing so would significantly delay the provision of needed services to the handicapped individual. The agency need not take other benefits into consideration when they are for

(1) diagnostic and related services (including transportation and subsistence in connection with those services);

(2) counseling, guidance, and referral;

- (3) training, including personal and vocational adjustment training, and necessary training materials;
- (4) services to members of families of handicapped individuals;
- (5) job placement; and
- (6) services necessary to assist handicapped individuals to maintain suitable employment. (§ 37-9 7(1) ACLA 1949; am § 3 ch 144 SLA 1957; am § 2 ch 5 SLA 1978)

Revisor's notes. — The word "agency" was substituted for "division" in three places in subsection (b) by the revisor of statutes to conform to the definition in AS 23.15.210 (1).

Effect of amendments. — The 1978 amendment rewrote subsection (b).

Sec. 23.15.090. Priority as to eligibility. If vocational rehabilitation service cannot be provided for all eligible handicapped individuals who apply, the agency shall provide by regulation for determining the order to be followed in selecting those to whom the services will be provided. (§ 37-9-7(2) ACLA 1949; am § 3 ch 144 SLA 1957)

Sec. 23.15.100. Powers and duties. (a) In carrying out AS 23.15.010 — 23.15.210 the agency shall

(1) take the action it considers necessary or appropriate to carry out the purposes of AS 23.15.010 — 23.15.210, and adopt regulations in conformity with these purposes;

(2) determine the eligibility of applicants for vocational rehabilitation service;

(3) submit to the governor annual reports of activities and expenditures and, before each regular session of the legislature, estimates of sums required for carrying out AS 23.15.010 — 23.15.210 and estimates of the amounts to be made available for this purpose from all sources; and

(4) cooperate with public and private departments, agencies and institutions in providing for the vocational rehabilitation of handicapped individuals, studying the problems involved in providing this rehabilitation, and establishing, developing and providing, in conformity with the purposes of AS 23.15.010 — 23.15.210, the programs, facilities and services which may be necessary or desirable.

(b) In carrying out AS 23.15.010 — 23.15.210, the agency may

(1) enter into agreements with other states to provide for the vocational rehabilitation of residents of the states concerned;

(2) establish and operate rehabilitation facilities and workshops and make grants to public and other nonprofit organizations for these purposes;

(3) supervise the operation of vending stands and other small businesses established under AS 23.15.010 — 23.15.210 to be conducted by severely handicapped individuals;

(4) make studies, investigations, demonstrations and reports, and provide training and instruction (including the establishment and

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maintenance of the research fellowships and traineeships with the stipends and allowances which are considered necessary) in matters relating to vocational rehabilitation;

(5) license blind and severely handicapped persons for the operation of vending facilities on federal property and in public buildings, with blind persons having first priority for operation of the vending facilities; and

(6) adopt regulations necessary for carrying out the provisions of AS 23.15.010 — 23.15.210. (§ 37-9-8(1) (2) ACLA 1949; am § 4 ch 144 SLA 1957; am § 1 ch 75 SLA 1976)

Cross references. — As to contracts to operate vending facilities in state buildings, see AS 44.21.025.

Sec. 23.15.110. Extension of services outside state. Vocational rehabilitation service may be extended to the continental United States to all individuals eligible under AS 23.15.010 — 23.15.210. The director of the division of vocational rehabilitation may place professional or clerical personnel or both inside the continental United States to carry out the purposes of AS 23.15.010 — 23.15.210. (§ 37-9-8(3) ACLA 1949; am § 4 ch 144 SLA 1957; am § 22 ch 208 SLA 1975)

Sec. 23.15.120. Cooperation with federal government. (a) The agency shall cooperate with the federal government in carrying out the purposes of federal laws pertaining to vocational rehabilitation (including the licensing of blind persons to operate vending stands on federal property) and may adopt the methods of administration which are found by the federal government to be necessary for the proper and efficient operation of agreements or plans for vocational rehabilitation. The agency may comply with the conditions which are necessary to obtain the full benefits of the federal laws for the state and its residents.

(b) Upon designation by the governor, the agency may perform functions and services for the federal government relating to individuals under a physical or mental disability, in addition to those provided in (a) of this section. (§ 37-9-9 ACLA 1949; am § 5 ch 144 SLA 1957)

Sec. 23.15.130. Vocational rehabilitation small business enterprise revolving fund. (a) There is created in the state treasury a revolving fund designated as the vocational rehabilitation small business enterprise revolving fund. The fund shall be administered by the director.

(b) Receipts from the net proceeds of vending facilities in public buildings, other than vending facilities operated by a licensee, shall be paid to the fund.

(c) The fund shall be used to aid licensees in operating vending machine facilities.

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(d) In this section "net proceeds" means the gross receipts from operating a vending facility less the costs of operation and a fair return to the operator, to be determined by the division. (§ 37-9-10 ACLA 1949; added by § 6 ch 144 SLA 1957; am § 3 ch 75 SLA 1976)

Cross references. — For provisions as to special funds, see AS 37-9-35.

132/133/134

Sec. 23.15.140. Vocational Rehabilitation Fund.
Repealed by § 2 ch 23 SLA 1968.

Editor's notes. — The repealed section derived from § 37-9-11, ACLA 1949; § 6, ch. 144, SLA 1957.

Sec. 23.15.150. Receipt and disbursement of funds. The Department of Revenue is designated custodian of all vocational rehabilitation funds in the state. (§ 37-9-12 ACLA 1949; added by § 6 ch 144 SLA 1957)

Sec. 23.15.160. Gifts. The board may accept a gift or donation from a public or a private source which is offered unconditionally for carrying out AS 23.15.010 — 23.15.210. The board may accept a conditional gift if, in the judgment of the agency, the conditions are proper and consistent with AS 23.15.010 — 23.15.210. (§ 37-9-13 ACLA 1949; added by § 6 ch 144 SLA 1957; am § 3 ch 23 SLA 1968)

Sec. 23.15.170. Maintenance not assignable. The right of a handicapped individual to maintenance under AS 23.15.010 — 23.15.210 is not transferable or assignable at law or in equity. (§ 37-9-14 ACLA 1949; added by § 6 ch 144 SLA 1957)

Sec. 23.15.180. Hearings. An individual applying for or receiving vocational rehabilitation who is aggrieved by the action or inaction of the agency is entitled to a fair hearing by the agency, in accordance with regulations. (§ 37-9-15 ACLA 1949; added by § 6 ch 144 SLA 1957)

Sec. 23.15.190. Misuse of lists and records. It is unlawful, except for purposes directly connected with the administration of the vocational rehabilitation program and in accordance with regulations, for a person to solicit, disclose, receive, or make use of, or authorize, knowingly permit, participate in, or acquiesce in the use of a list of, name, of, or information concerning, persons applying for or receiving vocational rehabilitation, directly or indirectly, derived from the records, papers, files, or communications of the state or an agency of the state, or acquired in the course of the performance of official duties. An officer or employee violating this provision is subject to discharge or suspension. (§ 37-9-16 ACLA 1949; added by § 6 ch 144 SLA 1957)

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Sec. 23.15.200. Limitation on political activity. No officer or employee engaged in the administration of the vocational rehabilitation program may use his official authority to influence or permit the use of the vocational rehabilitation program for the purpose of interfering with an election or affecting the results of an election or for a partisan political purpose. No officer or employee may solicit or receive, nor may an officer or employee be obliged to contribute or render, a service, assistance, subscription, assessment or contribution for a political purpose. An officer or employee violating this section is subject to discharge or suspension. (§ 37-9-17 ACLA 1949; added by § 6 ch 144 SLA 1957)

Sec. 23.15.210. Definition. In AS 23.15.010 — 23.15.210

(1) "agency" means the division of vocational rehabilitation;
(2) "board" means the Board of Education acting as the Board of Vocational Rehabilitation;

(3) "director" means the director of the division of vocational rehabilitation;

(4) "handicapped individual" means an individual having a physical or mental disability which for that individual constitutes or results in a substantial handicap to employment and who can reasonably be expected to benefit in terms of employability from the provision of vocational rehabilitation services;

(5) "individual having a physical or mental disability" means an individual who has a physical or mental condition which materially limits, contributes to limiting, or, if not corrected, will probably result in limiting his activities or functioning;

(6) "vocational rehabilitation service" means goods and services, including diagnostic and related services, necessary to enable a handicapped individual to engage in gainful employment;

(7) "workshop" means a rehabilitation facility engaged in a production or service operation which is operated for the primary purpose of providing gainful employment or professional services to the handicapped as an interim step in the rehabilitation process for those who cannot readily be absorbed in the competitive labor market or during times when employment opportunities for them in the competitive labor market do not exist;

(8) "blind person" means a person whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or whose visual acuity, if better than 20/200, is accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees; an examination by an ophthalmologist or by an optometrist is necessary before a person is found to be blind;

(9) "severely handicapped person" means a person who has one or more physical or mental disabilities which seriously limit the person's functional capacities in terms of regular employment, and whose

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vocational rehabilitation requires multiple vocational rehabilitation services over an extended period of time;

(10) "licensee" means a blind or severely handicapped person licensed by the division of vocational rehabilitation under the Randolph-Sheppard Act (20 U.S.C. §§ 107 — 107b, 107d — 107e, 107f), AS 23.15.100(b)(5), and any regulations issued under federal law or AS 23.15.100(b)(5);

(11) "public building" means any building owned by the state or an agency of the state, or any space leased by the state or any agency of the state, and designated by the division as being appropriate for participation in the business enterprise program;

(12) "vending facility" means an automatic vending machine, cafeteria, snack bar, shelter, or counter where food, tobacco, or sundries are offered for sale. (§ 37-9-5 ACLA 1949; am § 1 ch 169 SLA 1955; am § 1 ch 144 SLA 1957; am § 23 ch 208 SLA 1975; am § 2 ch 75 SLA 1976; am §§ 3 — 6 ch 5 SLA 1978)

Effect of amendments. — The 1978 amendment, in paragraph (4), substituted "having" for "under," "and who can" for "but which is of such a nature that vocational rehabilitation services may," and the language beginning "benefit in terms of employability" for "render him fit to engage in a remunerative occupation" and inserted "for that individual" and "or results in." The amendment also substituted "having" for "who is under" in paragraph (5), substituted "enable a handicapped individual to engage in gainful employment" for "render a handi-

capped individual fit to engage in a remunerative occupation" at the end of paragraph (6), and in paragraph (7), substituted "rehabilitation facility engaged in a production or service operation" for "place where manufacture or handiwork is carried on, and," "gainful employment or professional services to the handicapped" for "remunerative employment to severely handicapped individuals (A)," and "times" for "a time," inserted "process" near the middle of the paragraph and deleted "(B)" following "competitive labor market or."

Article 2. Governor's Committee on Employment of Handicapped.

Section	Section
220. Purpose	280. Appointment of advisors
230. Appointment of committee	290. Employ the handicapped week
240. Appointment and term of chairman	300. Manner of handling funds
250. Compensation and expenses	310. Gifts
260. Meetings	320. Annual report to governor
270. Cooperation with other committees and agencies	

Editor's notes. — Section 7, ch 5, SLA 1978 amended the Article 2 heading by deleting "Physically" preceding "Handicapped."

Sec. 23.15.220. Purpose. The purpose of AS 23.15.220 — 23.15.320 is to create a governor's committee on employment of the handicapped for Alaska to carry on a continuing program to promote the employment of the handicapped citizens of the state by creating statewide interest in the rehabilitation and employment of the handicapped, and by obtaining and maintaining cooperation with public and private groups and individuals in this field. (§ 1 ch 23 SLA 1960)

Sec. 23.15.230. Appointment of committee. The governor's committee consists of not more than 12 members appointed by the governor for a term not exceeding three years. The committee shall be composed of state leaders of industry, business, agriculture, labor, veterans, women, religious, educational, civic, fraternal, welfare, scientific, military, medical and other professions, or as many of these and like categories as may be feasibly represented. The initial members shall be appointed for terms of one, two, and three years as designated by the governor. A member may be reappointed and a vacancy shall be filled by the governor. (§ 2 ch 23 SLA 1960)

Sec. 23.15.240. Appointment and term of chairman. The governor shall appoint a chairman of the committee who serves as chairman for one year or until his successor is appointed. (§ 2 ch 23 SLA 1960)

Sec. 23.15.250. Compensation and expenses. Members of the committee may receive no compensation for services on the committee but are entitled to reimbursement for necessary expenses in accordance with existing law. (§ 2 ch 23 SLA 1960)

Sec. 23.15.260. Meetings. The committee shall meet annually, but at the request of the governor special meetings may be called. (§ 2 ch 23 SLA 1960)

Sec. 23.15.270. Cooperation with other committees and agencies. The committee shall work in close cooperation with local committees and with the President's Committee on Employment of the Handicapped to carry out the purpose of AS 23.15.220 — 23.15.320 more effectively, and with state and federal agencies having responsibilities for employment and rehabilitation of the handicapped. (§ 1 ch 23 SLA 1960; am § 7 ch 5 SLA 1978)

Effect of amendments. — The 1978 amendment deleted "Physically" preceding "Handicapped" near the middle of the section.

Sec. 23.15.280. Appointment of advisors. The division of vocational rehabilitation, the State Employment Service, the Department of Health and Social Services, and other state agencies which the committee names shall each designate a staff member who shall meet

BRIEFING PAPER

For Members of the Alaska State Legislature,
Twelfth Legislature-Second Session

From The National Federation of the Blind of Alaska
Sandy Sanderson, President
242 E. 5th Ave. Anchorage, Alaska 99501

Re; SPONSORED SUBSTITUTE FOR SENATE BILL NO. 776

Background: A program to encourage and enable blind persons to become self-supporting through the operation of vending facilities on public property was first established by an act of Congress in 1936, referred to as the Randolph-Sheppard Act. All states cooperate today in providing such business opportunities to the blind.

The vending facilities range from small candy, cigarette, and newspaper stands to large multi-service cafeterias. Approximately 4000 blind people operate such businesses in this nation-wide program. Six facilities are located in Alaska-four on federal property and two on sites owned by the State.

Regardless of location, the concept is the same, to help the blind achieve independence and self-support through the operation of small businesses. Consistent with this intent, the blind vendors are individual entrepreneurs, licensed by the State. Thus, management of the program should emphasize maximum personal independence for each blind vendor and seek to eliminate bureaucratic paternalism of the state licensing agency. In a report issued on October 9, 1981, the official advisory committee to the Alaska Division of Vocational Rehabilitation criticized the agency for excessive management control

and a paternalistic approach toward the blind vendors. SPONSORED SUBSTITUTE FOR SENATE BILL NO. 778 contains mechanisms to provide more independence and dignity for the blind while retaining a proper state licensing role.

Present Law: AS 23.15.100 (b) (5) authorizes the Division of Vocational Rehabilitation to issue licenses to blind and severely handicapped persons to operate vending facilities. This section also requires the Division to give a priority to blind persons in assigning vending facility locations. In this respect, the statute is consistent with the federal Randolph-Sheppard Act. The national program of vending facilities for the blind is governed largely by federal regulations, under which the Alaska Division of Vocational Rehabilitation is designated as the "State Licensing Agency." As such, the Division is responsible for supervising the vending facilities program under federal guidelines which are applicable to business enterprises located on federal and non-federal property. Financially the blind vending program is supported by federal funds matched by the state.

Need for additional State Legislation: Although the Randolph-Sheppard Act is very detailed in prescribing the conduct of the blind vendor program on federal property and assuring the priority for the blind, certain responsibilities are reserved to each state. Moreover, the priority for vending facilities to be operated by the blind on public property in each state must be secured by state law. The current Alaska Statute is deficient in several respects. As a result, the Division of Vocational Rehabilitation has filled this gap by exercising administrative discretion. This has led to

certain problems in implementing the blind vendor program, which now need to be addressed by the legislature in the form of SPONSORED SUBSTITUTE FOR SENATE BILL NO. 778.

Explanation of proposed legislation: The SPONSORED SUBSTITUTE FOR SENATE BILL NO. 778 is designed to update the Alaska Statute and to insure that certain requirements of the federal law are carried out within the State. For example, the bill establishes a requirement that vending facilities on public property in Alaska shall be made available for operation by the blind and severely handicapped, while retaining the priority of the present state law for the blind. It is important to note that the bill does not eliminate authority for the Division of Vocational Rehabilitation to license severely handicapped persons, other than blind persons, as vendors. As a practical matter, however, the Division has not licensed anyone other than blind persons to operate vending facilities in this program. This practice is also followed in other states and extends from the federal priority for the blind under the Randolph-Sheppard Act.

Among its other provisions, the bill requires the Division of Vocational Rehabilitation to furnish all necessary vending facility equipment and adequate, suitable, initial stocks of merchandise. This is included to enable new vending facilities to commence operation and to provide for program growth. In addition, increased revenue to meet these responsibilities will accrue to the division's vending facilities fund by means of payments from vending facilities on public property, other than those operated by blind or severely handicapped persons. The bill contains several features related to the establishment and operation of a State Committee of Blind Vendors. The Committee allows the blind vendors to participate in management

decisions as required by federal law. This management Committee for the vendors is especially critical in view of the intended emphasis on self-initiative and independence for the blind.

Thus, the purpose of a fully functioning Blind Vendors Committee is to reduce the possibility that the blind will be dominated by a paternalistic bureaucracy.

An important function of the Committee, along with the Division of Vocational Rehabilitation, is to develop and approve regulations which apply uniformly to each blind vendor and the overall administration of the program. Final decisions regarding program rules are reserved to the Commissioner of Education, after participation in negotiating the regulations by the Division and the Committee of Blind Vendors.

Finally, the bill assures that grievances of blind persons can be aired and resolved by means of administrative review and a full evidentiary hearing. If any dispute cannot be settled in this manner, a federal arbitration procedure is available, or the matter may be litigated in the State Courts.

Position of The National Federation of the Blind of Alaska: The National Federation of the Blind of Alaska urges the legislature to approve the SPONSORED SUBSTITUTE FOR SENATE BILL NO. 778. This bill will improve opportunities for the blind of Alaska to become self-supporting, tax paying citizens. It is a bill designed to strengthen current law and does not depart from legislative intent so far expressed in current law. Rather, this bill expands upon the framework of the State Statute now in effect by describing more fully the manner in which this program is intended to operate.

MEMORANDUM

April 7, 1982

SUBJECT: Vocational Rehabilitation
(CSSSSB 778 (State Affairs))

TO: Senator Brad Bradley

FROM: Tamara Brandt Cook
Legislative Counsel

You have asked for a section-by-section analysis of CSSSSB 778 (State Affairs) dealing with vocational rehabilitation:

Sec. 1. Adds to the list of duties of the division of vocational rehabilitation. The division must survey the potential for providing vending facilities on public property and establish vending facilities operated by blind or severely handicapped persons when feasible, provide training and supervision needed to enable blind persons and severely handicapped persons to operate vending facilities, and provide vending equipment and stock necessary to enable blind persons and severely handicapped persons to operate vending facilities.

Sec. 2. If the division of vocational rehabilitation licenses blind persons and severely handicapped persons for the operation of vending facilities, they must be licensed in accordance with a new section added by this Act. The license is for operation of vending facilities on public property rather than for the operation of vending facilities on federal property and in public buildings. "Public property" is defined elsewhere in the Act.

Sec. 3. Changes existing reference to "public buildings" to "public property".

Sec. 4. Several new sections are added.

Sec. 23.15.132 - a vending facility may not be established on state property except as authorized by the director of vocational rehabilitation. An authorized vending facility shall be selected and located after consulting with the persons responsible for the maintenance of the property.

Sec. 23.15.133 - the division of vocational rehabilitation is authorized to issue a license for the operation of a vending facility on public property to a qualified blind or severely handicapped person who is a state resident. A license does not expire but may be revoked if the licensed vendor is not operating the facility in accordance with regulations.

Sec. 23.15.134 - a Committee of Vendors consisting of licensed blind or severely handicapped vendors is established. The committee shall participate in administrative and program development decisions concerning vending facilities operated by licensed vendors. With active participation by the committee, the division of vocational rehabilitation is required to respond to grievances of licensed vendors, develop a statewide system for transfer and promotion of licensed vendors, develop training programs for vendors and persons interested in becoming licensed vendors, organize meetings for licensed vendors, adopt regulations necessary to assure that vending facilities operated by licensed vendors are administered uniformly whether the facility is located on state or federal property. Before each meeting of the Committee of Vendors the division must provide written information on matters to be considered. The division must provide reasons for decisions and actions that do not conform to recommendations of the committee.

Sec. 5. "Public property" is defined to include real or personal property owned or leased by the state or federal government, an agency of the state or federal government, or a political subdivision of the state or federal government.

Sec. 6. The definition of "vending facility" is expanded to include carts and to include facilities whether the goods are dispensed automatically or manually and whether prepared on or off the premises.

Sec. 7. "Active participation" for purposes of determining the powers of the Committee of Vendors is defined.

Sec. 8. Notwithstanding the provision of this Act requiring vending facilities to be established on public property only on authorization of the director of vocational rehabilitation, a vending facility being operated on the effective date of the Act is allowed to continue to be operated under the terms of the existing contract until the contract expires or is terminated.

TBC:jdn

PACKET FOR SB 778(SA)

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5. Briefing paper from National Federation of the Blind
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7. AS 23.15 , AAC 54.810, AS 44.62.330-630
8. Federal laws
9. Federal regulations
10. Proposed CS(HESS)
11. Comparative sectional analysis

ALASKA DIVISION OF VOCATIONAL REHABILITATION PROPOSED AMENDMENTS
TO HOUSE CS FOR CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO.778
(HESS)

Delete section 2.

Substitute the following language for that found on page 2, lines 14-22:

Sec. 23.15.133 VENDORS' LICENSES. (a) The agency shall issue a license for the operation of a vending facility to a person who is a resident of the state at the time of application and who qualifies for a license under (1) the Randolph-Sheppard Act (20 U.S.C. sec. 107); or (2) regulations adopted by the agency with active participation by the Committee of Vendors.

(b) A license issued under this section does not expire. However, a license may be revoked by the agency if the agency finds that the licensed vendor is not operating the facility in accordance with regulations adopted by the agency.

(c) The agency shall adopt regulations setting forth rights of persons licensed under (a) of this section. These rights shall be at least as extensive as those rights accorded by the Randolph-Sheppard Act (20 U.S.C. sec. 107). A blind person licensed under (a) of this section is entitled to all the rights accorded by the Randolph-Sheppard Act (20 U.S.C. 107).

Substitute the following language on page 2 lines 23-25:

Sec. 23.15.134 COMMITTEE OF VENDORS. (a) the Committee of Vendors consisting of six licensees elected by all persons who are licensed under AS 23.15.133 is established.

All references in the remainder of 23.15.134 shall be to the "Committee of Vendors" and to "licensed vendors".

Substitute the following language for that found on page 3, Section 5 (b) lines 27-29 and page 4, lines 1-2:

A person aggrieved by a decision or action of the agency
under AS 23.15.133 or 23.15.134....

A blind person may also

CROSS TABULATIONS

	SPACE	SPACE	SPACE	SPACE	51CUR	16MJR	16	MJR	51CUR	SPACE	SPACE	SPACE	SPACE
							COUNT	- ZEROS	COUNT	- ZEROS	COUNT	- ZEROS	COUNT
1					00		44		44				
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3					06	100	1						
4					06	106	1						
5					06	112	1	5					
6					06	122	1						Summary:
7					06	126	1						
8					06	212	1						
9					06	243	1						06 = 5
10					06	274	1						10 = 1
11					06	300	2						14 = 1
12					06	301	2						16 = 4
13					06	310	1						18 = 26
14					06	312	1						20 = 3
15					06	318	3						22 = 16
16					06	323	2						24 = 2
17					06	332	2						
18					06	338	2						
19					06	350	1						
20					06	359	3						TOTAL = 63
21					06	370	1						
22					06	376	1						
23					06	378	2						
24					06	390	1						
79					10	532	4						
80					10	630	3						
81					10	642	2						
82					10	643	1						
83					10	662	2						
84					10	669	1						100-10-1 = ...
85					10	689	1						NO legal protection
86					10	699	2	1	141				110-11-1 = ...
87					14	147	1						w/ ...
88					14	229	1						
89					14	310	1						
90					14	316	1						
91					14	318	1						
92					14	323	1						
93					14	338	1						
94					14	339	1						
95					14	350	2						
96					14	359	3						
97					14	363	1						
98					14	370	1						
99					14	379	3						
100					14	381	1						
101					14	383	1						
102					14	396	1						
103					14	398	3						
104					14	399	9						
105					14	409	1						
106					14	434	1						
107					14	449	2						
108					14	500	4						

Summary:

06 = 5
 10 = 1
 14 = 1
 16 = 4
 18 = 26
 20 = 3
 22 = 16
 24 = 2

TOTAL = 63

100-10-1 = ... NO legal protection

110-11-1 = ... w/ ...

120-12-1 = ...

140-11-1 = ...

MEMORANDUM

State of Alaska

TO: The Honorable Michael Beirne, Chairman
House Health, Education and Social
Services Committee
Alaska State Representative,

DATE: April 12, 1982

FILE NO:

TELEPHONE NO: 465-2800

FROM: Marshall L. Lind, Commissioner
Department of Education

SUBJECT: Memorandum on
CSSS SB 778 (SA)

Attached you will find a copy of a memorandum which addresses an important aspect of CS SS SB 778 (SA), a bill which has recently passed the Senate and which, I am sure, will be referred to your HESS committee. The attached memorandum addresses an issue associated with the bill which, in our view, forces us to oppose it as it is written.

The recommended amendment to the definition proposed in Section 7 of the bill, as posed in Mr. Botelho's memorandum, is, in our view, extremely critical and necessary.

Thank you for your consideration in this matter.

FISCAL NOTE

I. REQUEST

Bill/Resolution Number: SB-778

Title: "An Act relating to the operation of vending facilities on ..."

Requested by: Senator Brad Bradley

Date: 3-26-82

II. FISCAL DETAIL

Agency Affected: Education

Program Category Affected: Adult and Postsecondary Education

BRU, Program, or Subprogram(s) Affected: Vocational Rehabilitation

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 COMMODITIES	-	-	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LAND & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS, ETC	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	-	-	-	-	-	-
OTHER (Specify Source)	-	-	-	-	-	-

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME	N/A	-	-	-	-	-
PART TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

This bill has no fiscal impact on this agency.

IV. DATE: 3-26-82

PREPARED BY: Steve Hole

AGENCY: Department of Education

PHONE: 465-2890

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)



MEMORANDUM

State of Alaska

TO: Mike Morgan, Director
Division of Vocational
Rehabilitation
Department of Education

DATE: April 7, 1982

FILE NO:

TELEPHONE NO: 465-3603

FROM: WILSON L. CONDON
ATTORNEY GENERAL

SUBJECT: CSSSSB 778 (SA)

By: *BM*
Bruce M. Botelho
Assistant Attorney General

It is my understanding that the above bill passed out of Senate State Affairs on April 6, 1982. Proposed AS 23.15.134(b) provides in part:

"The director shall assure active participation by the committee of vendors in administrative, policy, program development decisions concerning vending facilities operated by licensed vendors."
(italics added)

Proposed AS 23.15.210(13) reads:

"Active participation" means a process that is more than an advisory role through which the committee of vendors is provided the opportunity to substantively influence program policies, standards, and procedures affecting the operation of vending facilities by licensed vendors.

I wish to express my deep concern about the proposed definition of "active participation". Under the federal regulations the state committee is clearly an advisory body. In contrast, the definition in CSSSB 778 implies that the committee has decision making power. ("... more than an advisory role"). The definition is a clear invitation for litigation in that the bill places the committee and the division in a tug of war over respective lines of authority because it fails to address whether and to what extent the committee of vendors may take independent action in the implementation of program policies, standards and procedures.

If the definition of "active participation" is intended to confer some concurrent authority on the committee of vendors, then it has the effect of defusing management responsibilities to two bodies, one of which consists exclusively of recipients of services provided by the other. The concept is both poor management and poor precedent for the many other advisory bodies established both by state and federal statute.

Accordingly, I suggest that the definition of "active participation" should read substantially as follows:

"active participation" means a process through which the committee of vendors is provided the opportunity to confer with the division, initiate recommendations and comment on program policies, standards, and procedures affecting the operation of vending facilities by licensed vendors.

BMB/jf

licensee, shall be paid into (TO) the fund.

1 for sale and dispensed automatically or manually whether prepared on
2 or off the premises.

3 * Sec. 7. AS 23.15.210 is amended by adding a new paragraph to read:

4 (13) "active participation" means a process that is more than
5 an advisory role through which the Committee of Vendors is provided the
6 opportunity to substantively influence program policies, standards, and
7 procedures affecting the operation of vending facilities by licensed
8 vendors.

9 * Sec. 8. Notwithstanding AS 23.15.132 enacted in sec. 3 of this Act, a
10 vending facility being operated on public property on the effective date of
11 this Act may continue in operation until the contract under which the vending
12 facility is being operated expires or is terminated. After the contract
13 expires or is terminated, the vending facility shall cease to operate until
14 the provisions of AS 23.15.132 are met.

SEVERELY DISABLED CLASSIFICATION

CLASSIFIED AS SEVERE

- 100-119 Blindness Both eyes -
- 120-129 Blindness: one eye, other eye defective -
- * 140-149 Other Visual impairments -
if, with correction, unable to obtain driver's license for visual reasons
- 200-219 Deafness: able or unable to talk -
- * 220-229 Other hearing impairments -
if loss exceeds 70 decibels in better ear in conversational range with correction
- 300-339 Orthopedic impairment involving 3 or more limbs involving one upper and one lower limb -
- 355, 375, 395 Muscular dystrophy -
- 356, 376, 396 Multiple sclerosis -
- 358, 378, 398 Accidents and injuries involving the spinal cord -
- * 340, 341, 343, 350, 352, 354, 357, 359 Impairment of one or both upper limbs -
if both, and assistance of another person or device is needed for activities of daily living
- * 360, 361, 363, 370, 372, 374, 377, 377 Impairment of one or both lower limbs -
if locomotion is impaired to a degree that bilateral upper limb assistance devices are required, or individual is unable to utilize public buses or trains

*Included among severely disabled provided additional factor(s) pertain

- 400-409 Loss of at least one upper and one lower extremity -
- 410-419 Loss of both major upper extremities -
- * 430-439 Loss of one or both major lower extremities -
 if bilateral at the ankle or above, or if one at mid-thigh that requires bilateral upper limb assistance devices, or individual is unable to utilize public buses or trains
- * 500 - Psychotic disorders -
 if now requiring institutional care in a mental hospital or psychiatric ward of a general hospital; or has history of being institutionalized for treatment for three months or more, or on multiple occasions; or meets the description on Page 4 for moderate or severe.
- * 510 - Psychoneurotic disorders -
 if now requiring institutional care in a mental hospital or psychiatric ward of a general hospital; or has history of being institutionalized for treatment for three months or more, or on multiple occasions; or meets the description on Page 5 for moderate or severe.
- 532-534 Mental retardation - moderate and severe -
- 600 - Colostomies resulting from malignant neoplasms -
- 601 - Laryngectomies resulting from malignant neoplasms -
- 602 - Leukemia and Aleukemia -
- * 615 - Other endocrine system disorders -
 if cystic fibrosis
- 620 - Hemophilia -
- * 629 Anaemia and other diseases of the blood and blood forming organs -
 if symptomatic sickle cell anaemia

- 630 Epilepsy -
 if not seizure - free for two years
- * 640,641,642, Cardiac & Circulatory conditions -
 643,644 if classified 2C** or worse
- * 651,652,653, Respiratory diseases -
 654,659 if maximum breath capacity is less than 55 percent
 of predicted or shortness of breath on climbing one
 flight of stairs or walking 100 yards on the level
- 664 - Colostomies -
- * 670 - Conditions of genito - urinary system -
 if end stage renal failure
- 680 - Cleft palate and harelip with speech imperfections -
- 684 - Laryngectomies -
- 685 - Aphasia resulting from intracranial hemorrhage, embolism,
 or thrombosis (stroke) -

** New York Heart Association Classification as adopted by the American Heart Association

Psychotic disorders

Mild: Minor distortions of thinking with little or no disturbance in activities of daily living. With provisions of rehabilitation services, can maintain independent living in the community and engage in competitive employment. Able to accept direction, maintain adequate interpersonal relations and concentrate sufficiently to perform job requirements. Only under occasional conditions of particular internal, social or economic stress, may require follow-up supervision, guidance or support. Includes one-time, short-term institutionalized discharges doing well on medication.

Moderate: Definite disturbances of thinking with definite but mild disturbances in behavior. Includes hospital discharges who require daily medication to avoid rehospitalization. With provision of rehabilitation services, capable of maintaining themselves in the community and of engaging in low-stress competitive employment, but at least initially requiring continuing supervision, guidance, motivation and support. Misunderstanding of instructions, activity, self-isolation, or over-reaction in gesture, speech or emotion may be displayed during the VR process and may cause concern to people in the work milieu.

Severe: (a) Severe disturbances of thinking and behavior that entail potential harm to self or others: (b) or, in the extreme, severe disturbances of all components of daily living, requiring constant supervision and care. Persons in (a) with the provision of rehabilitation services may be capable of maintaining themselves in the community and to engage in limited or sporadic productive activity only under continuing supervision in sheltered or protective environment, including halfway houses. Unable to communicate readily, have difficulty differentiating between their fantasies and reality, behavior is disruptive and often menacing to others, shouting, vulgarity, carelessness of dress and excretory functions, or possible suicidal attempts necessitate continuing observation, professional intervention and medication, especially during early stages of the rehabilitation process.

Psychoneurotic disorders

Mild: Stress reactions to daily living without substantial loss of personal or social efficiency. With the provision of rehabilitation services, can maintain independent living in the community and engage in competitive employment. Can accept direction, maintain adequate interpersonal relations and concentrate sufficiently to perform job requirements. Only under occasional conditions of particular internal, social or economic stress will require supervision, guidance and support after placement.

Moderate: Stress reactions which modify patterns of daily living. Can maintain themselves in the community and perform adequately in low-stress competitive employment with the provision of rehabilitation services. May require medication and continuing supervision, motivation and support at least during early post-placement. Their fears, indecision, loss of interest or occasional odd behavior will be evident during the rehabilitation process, and may moderately interfere with job performance and other workers' activities in employment when stressful situations arise.

Severe: Stress reactions to daily living that result in continuing regression and tissue-organ pathology. Capable of productive work but only under sheltered, non-competitive conditions in a highly structured or protective environment, at least initially. May require continuing medication. Bizarre and disruptive behavior, loss of interest in activities of daily living, problems with memory and concentration will be evident in the counseling process and with their interference with other workers necessitate continuing supervision, guidance, motivation and support by professional staff in the work situation. Conversion reactions, poor eating and cleanliness habits may create considerable health problems.

FUNCTIONAL LIMITATION FACTORS

In this grouping are those conditions, whether a single disability or a combination of disabilities, which when presented in terms of clinical description and functional limitations, the State agency/ (counselor/medical consultant) can determine:

- a. There exists substantial loss of functional capacity and restriction of activity attributable to medical factors, such that the client:
 - (1) Is unable to make use of public bus or train, or
 - (2) Is unable to perform sustained work activity of six hours or more, or
 - (3) Has disfigurement or deformity so pronounced as to cause social rejection, or
 - (4) Speech is unintelligible to non-family members, or
 - (5) Is unable to climb one flight of stairs or walk 100 yards on the level without pause, or
 - (6) Has loss of manual dexterity or coordination sufficient that he is unable to button buttons, wind a watch or write intelligibly; and
- b. The client will normally require multiple vocational rehabilitation services over an extended period of time.

CLASSIFICATION OF DISABLING CONDITIONS

RSA Code	Disabling Conditions
(1--)	<u>VISUAL IMPAIRMENTS</u>
(10-)	Blindness, both eyes, no light perception, due to:
100	cataract
101	glaucoma
102	general infectious, degenerative, and other specified diseases, including ocular and local infections
106	congenital malformations
107	accident, poisoning, exposure or injury
109	ill-defined and unspecified causes
(11-)	Blindness, both eyes (with correction not more than 20/200 in better eye or limitation in field within 20 degrees, but not code 10), due to:
110	cataract
111	glaucoma
112	general infectious, degenerative, and other specified diseases, including ocular and local infections
116	congenital malformations
117	accident, poisoning, exposure or injury
119	ill-defined and unspecified causes
(12-)	Blindness, one eye, other eye defective (better eye with correction less than 20/60, but better than 20/200, or corresponding loss in visual field), due to:
120	cataract
121	glaucoma
122	general infectious, degenerative, and other specified diseases, including ocular and local infections
126	congenital malformations
127	accident, poisoning, exposure or injury
129	ill-defined and unspecified causes
(13-)	Blindness, one eye, other eye good, due to:
130	cataract
131	glaucoma
132	general infectious, degenerative, and other specified diseases, including ocular and local infections
136	congenital malformations
137	accident, poisoning, exposure or injury
139	ill-defined and unspecified causes
()	These are not actual codes, but identifications of major groupings.

RSA Code	Disabling Conditions
(14-)	Other visual impairments, due to:
140	cataract
141	glaucoma
142	general infectious, degenerative, and other specified diseases, including ocular and local infections
146	congenital malformations
147	accident, poisoning, exposure or injury
149	ill-defined and unspecified causes
(2--)	HEARING IMPAIRMENTS
(20-)	Deafness, unable to talk, due to:
200	degenerative and other non-infectious and specified diseases of ear
202	upper respiratory infections and other infectious diseases
206	congenital malformations
208	accident, poisoning, exposure or injury
209	ill-defined and unspecified causes
(21-)	Deafness, able to talk, due to:
210	degenerative and other non-infectious and specified diseases of ear
212	upper respiratory infections and other infectious diseases
216	congenital malformations
218	accident, poisoning, exposure or injury
219	ill-defined and unspecified causes
(22-)	Other hearing impairments, due to:
220	degenerative and other non-infectious and specified diseases of ear
222	upper respiratory infections and other infectious diseases
226	congenital malformations
228	accident, poisoning, exposure or injury
229	ill-defined and unspecified causes
(3--)	ORTHOPEMIC DEFORMITY OR FUNCTIONAL IMPAIRMENT, EXCEPT AMPUTATIONS
(30-,31-)	Impairment involving three or more limbs or entire body, due to:
300	cerebral palsy
301	congenital malformation or other and ill-defined birth injury

RSA Code	Disabling Conditions
303	other diseases, infectious and non-infectious, other infections (including local), and other neurological and mental diseases (excluding code 630, epilepsy)
310	arthritis and rheumatism
312	intracranial hemorrhage, embolism, and thrombosis (stroke)
314	poliomyelitis
315	muscular dystrophy
316	multiple sclerosis
317	Parkinson's disease
318	accidents and injuries involving the spinal cord
319	all other accidents, injuries, and poisonings
(32-,33-)	Impairment involving one upper and one lower limb (including side), due to:
320	cerebral palsy
321	congenital malformations and ill-defined birth injury
323	other diseases, infectious and non-infectious, other infections (including local), and other neurological and mental diseases (excluding code 630, epilepsy)
330	arthritis and rheumatism
332	intracranial hemorrhage, embolism, and thrombosis (stroke)
334	poliomyelitis
335	muscular dystrophy
336	multiple sclerosis
337	Parkinson's disease
338	accidents and injuries involving the spinal cord
339	all other accidents, injuries, and poisonings
(34-,35-)	Impairment involving one or both upper limbs (including hands, fingers, and thumbs), due to:
340	cerebral palsy
341	congenital malformations and ill-defined birth injury
343	other diseases, infectious and non-infectious, other infections (including local), and other neurological and mental diseases (excluding code 630, epilepsy)
350	arthritis and rheumatism
352	intracranial hemorrhage, embolism, and thrombosis (stroke)
354	poliomyelitis
355	muscular dystrophy
356	multiple sclerosis
357	Parkinson's disease
358	accidents and injuries involving the spinal cord
359	all other accidents, injuries, and poisonings

RSA Code	Disabling Conditions
(36-,37-)	Impairment involving one or both lower limbs (including feet and toes) due to:
360	cerebral palsy
361	congenital malformations and ill-defined birth injury
363	other diseases, infectious and non-infectious, other infections (including local), and other neurological and mental diseases (excluding code 630, epilepsy)
370	arthritis and rheumatism
372	intracranial hemorrhage, embolism, and thrombosis (stroke)
374	poliomyelitis
375	muscular dystrophy
376	multiple sclerosis
377	Parkinson's disease
378	accidents and injuries involving the spinal cord
379	all other accidents, injuries, and poisonings
(38-,39-)	Other and ill-defined impairments (including trunk, back, and spine), due to:
380	cerebral palsy
381	congenital malformations and ill-defined birth injury
383	other diseases, infectious and non-infectious, other infections (including local), and other neurological and mental diseases (excluding code 630, epilepsy)
390	arthritis and rheumatism
392	intracranial hemorrhage, embolism, and thrombosis (stroke)
394	poliomyelitis
395	muscular dystrophy
396	multiple sclerosis
397	Parkinson's disease
398	accidents and injuries involving the spinal cord
399	all other accidents, injuries, and poisonings
(40-)	ABSENCE OR AMPUTATION OF MAJOR AND MINOR MEMBERS
(40-)	Loss of at least one upper and one lower major extremity (including hands, thumbs, and feet), due to:
400	malignant neoplasms
402	congenital malformations
404	diseases, infectious and non-infectious (including peripheral vascular, diabetes, tuberculosis of bones and joints), and infections (including gangrene)
409	accidents, injuries, and poisonings

RSA Code	Disabling Conditions
(41-)	Loss of both major upper extremities (including hands or thumbs), due to:
410	malignant neoplasms
412	congenital malformations
414	diseases, infectious and non-infectious (including peripheral vascular, diabetes, tuberculosis of bones and joints), and infections (including gangrene)
419	accidents, injuries, and poisonings
(42-)	Loss of one major upper extremity (including hand or thumb), due to:
420	malignant neoplasms
422	congenital malformations
424	diseases, infectious and non-infectious (including peripheral vascular, diabetes, tuberculosis of bones and joints), and infections (including gangrene)
429	accidents, injuries, and poisonings
(43-)	Loss of one or both major lower extremities (including feet), due to:
430	malignant neoplasms
432	congenital malformations
434	diseases, infectious and non-infectious (including peripheral vascular, diabetes, tuberculosis of bones and joints), and infections (including gangrene)
439	accidents, injuries, and poisonings
(44-)	Loss of other and unspecified parts (including fingers and toes, but excluding thumbs), due to:
440	malignant neoplasms
442	congenital malformations
444	diseases, infectious and non-infectious (including peripheral vascular, diabetes, tuberculosis of bones and joints), and infections (including gangrene)
449	accidents, injuries, and poisonings
(5--)	MENTAL, PSYCHONEUROTIC, AND PERSONALITY DISORDERS
(50-)	Psychotic disorders:
500	psychotic disorders
(51-)	Psychoneurotic disorders:
510	psychoneurotic disorders
(52-)	Other mental disorders:
520	alcoholism
521	drug addiction
522	other character, personality, and behavior disorders

RSA Code	Disabling Conditions
(52-)	Mental retardation: 1/
530	mental retardation, mild
532	mental retardation, moderate
534	mental retardation, severe
(6--)	OTHER DISABLING CONDITIONS FOR WHICH ETIOLOGY IS NOT KNOWN OR NOT APPROPRIATE
(60-)	Other conditions resulting from neoplasms (not elsewhere classified):
600	colostomies resulting from malignant neoplasms
601	laryngectomies resulting from malignant neoplasms
602	leukemia and aleukemia
605	other malignant neoplasms
609	benign and unspecified neoplasms
(61-)	Allergic, endocrine system, metabolic and nutritional diseases:
610	hay fever and asthma
611	other allergies
614	diabetes mellitus
615	other endocrine system disorders (except code 616, cystic fibrosis)
616	cystic fibrosis
619	avitaminoses and other metabolic diseases
(62-)	Diseases of the blood and blood-forming organs:
620	hemophilia
621	sickle cell anemia
629	other anemia and diseases of the blood and blood-forming organs (except code 602, leukemia and aleukemia)
(63-)	Other specified disorders of the nervous system:
630	epilepsy
639	other disorders of the nervous system, not elsewhere classified
(64-)	Cardiac and circulatory system conditions:
640	congenital heart disease
641	rheumatic fever and chronic rheumatic heart disease
642	arteriosclerotic and degenerative heart disease
643	other diseases or conditions of heart
644	hypertensive heart disease
645	other hypertensive disease
646	varicose veins and hemorrhoids
649	other conditions of circulatory system
1/	See page 31 for definitions.

RSA Code	Disabling Conditions
(65-)	Respiratory system conditions:
650	tuberculosis of the respiratory system
651	emphysema
652	pneumoconiosis and asbestosis
653	bronchiectasis
654	chronic bronchitis and sinusitis
659	other conditions of respiratory system
(66-)	Digestive system conditions:
660	conditions of teeth and supporting structures
661	ulcer of stomach and duodenum
662	chronic enteritis and ulcerative colitis
663	hernia
664	colostomies (from other than malignant neoplasms)
669	other conditions of digestive system
(67-)	Genito-urinary system conditions:
670	genito-urinary system conditions (except code 671, end-stage renal failure)
671	end-stage renal failure
(68-)	Speech impairments:
680	cleft palate and harelip with speech imperfections
682	stammering and stuttering
684	laryngectomies (from other than malignant neoplasms)
685	aphasia resulting from intracranial hemorrhage, embolism, or thrombosis (stroke)
689	other speech impairments (except code 685, aphasia resulting from stroke)
(69-)	Disabling diseases and conditions, not elsewhere classified:
690	diseases and conditions of the skin and cellular tissue
699	other disabling diseases and conditions

Michael C. Morgan, Director

April 12, 1982

Nancy Groszga
c/o Senator Fischer Office
Pouch V
Juneau, Alaska 99811

Dear Nancy:

Attached are the revised regulations covering all the areas the vendors presented to Senator Fischer's attention and which we discussed with Bruce Potelho on Tuesday April 6, 1982. Hopefully this will adequately address the concerns that the vendors presented to you about the regulations.

The changes made are as follows:

1. 4 AAC 54.310 (c)(2), "have completed a vocational evaluation to determine compatibility with management of a vending stand."

Number 5 of the same section was deleted.

2. 4 AAC 54.340 (e), "a temporary license is issued for an initial six month evaluation period. Following successful completion of the sixth month period as evidenced by the licensee's compliance with 4 AAC 54.370, a permanent license will be issued. A license is not transferable and is revocable pursuant to 4 AAC 54.460. The license does not authorize the holder to operate a vending facility at a location other than describe in the license."

Section (c)(1), was changed by the addition, "as described in 4 AAC 54.370."

3. 4 AAC 54.360, "In consultation with the committee of vendors, the division will provide appropriate in service training and post employment services for licensee's to expand and improve their capacity for upward mobility in the program."
4. 4 AAC 54.370 (6), "submitting accurate and timely reports to the division as the division requires"

Sections 8 and 9 were deleted.

5. 4 AAC 54.380 (a), "a vending facility operator shall personally operate the facility unless he has designated an assistant manager, a temporary relief manager or assistant vacation manager who has been approved by the division."

Section (b), "the vending facility operator must submit to the division the designated temporary relief manager or substitute vacation manager as far in advance as is possible. Except for good cause advance requests for substitute vacation managers must be submitted at least thirty days before the proposed vacation."

6. 4 AAC 54.460 (a)(2), "absences of more than four days without approval from the division."

Section (5), "operating the facility in a manner which places the division's investment in the facility at risk including destruction or neglect of equipment, failure to follow fire and safety standards, failure to pay wholesalers, failure to keep adequate stock on hand or carrying on illegal practices."

Section (8), "demonstrated incompetency in the operation of the vending facility including inadequate record keeping, failure to keep the required hours on a consistent basis, failure to employ report adequate staff during absences, and failure to accept division management oversight."

Section (9), "submitting untimely, inaccurate or false reports on expenditures and income to the division."

Section (h), "In its discretion the division may permit a licensee to continue operating the facility for a probationary period in lieu of revocation proceedings. The initial probationary period may not exceed ninety days. During the probation the licensee shall take corrective action. If the licensee takes corrective action but is experiencing difficulty in compliance, the division may extend the probation for an additional ninety days."

Section (i), "The licensee shall be notified of the probationary period in writing by certified mail with return receipt requested. Probation will begin when the letter is received."

Nancy Groszack
April 12, 1982
Page 3

7. 4 AAC 54.490 (9), "The licensee and the division may present oral or documentary evidence, submit rebuttal evidence and conduct examination and cross examination of witness's. The testimony shall be under oath."

Number 11, "The hearing shall be electronically recorded and the transcript may be made at the oral evidence of the discretion of the division. The division shall pay all transcript costs and will provide the licensee with one copy of the transcript."

Number 13, "The decision of the hearing officer shall set forth findings, fact, and conclusions with respect to each of the issues. The decision shall be made within fifteen working days of the hearing. The decision will be mailed promptly to the vending facility operator and the division personally or by certified letter with return receipt requested. Vendors shall be notified of his appeal rights and through a certified letter."

I want to express the Division's appreciation for your assistance with this matter. Also attached is a copy of a letter sent to every vendor on 12/15/82 with the regulations requesting their input and offering to meet with the entire committee at Division expense to discuss the proposed regulations. Should you have any additional comments on these please feel free to call.

Sincerely,

Theda Mason-Smith
Facilities Specialist

Enclosure

MS:lk

Section

- 300. Scope of Regulations
- 310. Prerequisites for Training of Vending Facility Managers
- 320. Training of Vending Facility Managers
- 330. Certification of Trained Vending Facility Managers
- 340. Licensing of Certified Vending Facility Managers
- 350. Reimbursement
- 360. Continuing Education
- 370. Responsibilities of a Licensee
- 380. Vending Facility Staffing
- 390. Establishment of Vending Facility Locations
- 400. Equipment, Fixtures and Initial Stock
- 410. Repair and Replacement of Equipment and Fixtures
- 420. Termination of Business
- 430. Distribution and Use of Vending Machine Income
- 440. Income and Set-Aside Funds
- 450. Access to Program and Financial Information
- 460. Revocation of Licenses
- 470. Administrative Review
- 480. Evidentiary Hearing

4 AAC 54.300. SCOPE OF REGULATIONS. Sections of this chapter apply to the Randolph-Sheppard Vending Facility Program (P.L. 83-565 as amended) administered by the Division of Vocational Rehabilitation and the state vending facility program established under AS 23.15.100 (b) and AS 23.15.130. (Eff. / / , Register)

Authority AS 23.15.020(c)
AS 23.15.100(b)(6)

4 AAC 54.310. PREREQUISITES FOR TRAINING OF VENDING FACILITY MANAGERS. (a) The division will provide training in vending facility management to an applicant who meets the following requirements:

(1) The applicant has had no previous training as a vending facility manager; and

(2) for placement in vending facilities on federal property, the applicant is blind and a citizen of the United States; or

(3) for placement in vending facilities on state property, the applicant is blind or severely handicapped.

(b) The division may provide training in vending facility management to an applicant meeting the requirements of (a)(2) or (3) of this section.

(c) Unless waived by the director for good cause shown, the applicant shall.

REGISTER

EDUCATION

4 AAC 54.310
4 AAC 54.320
4 AAC 54.330

(1) have had a complete physical examination within the preceeding six months, including an eye examination by an ophthalmologist or an optometrist if the applicant is blind;

(2) have completed a vocational evaluation to determine compatibility with management of a vending stand;

(3) have sufficient educational skills, knowledge, and capacity to benefit from on-the-job and formal training in the operation of a vending facility;

(4) be able to work an eight hour day, five days a week, based on the physical examination and vocational evaluation during placement in an actual vending facility setting for a minimum of thirty days. (Eff. / / , Reg.)

Authority AS 23.15.020(c)
AS 23.15.100(b)(6)

4 AAC 54.320. TRAINING OF VENDING FACILITY MANAGERS. (a) The division will determine the training necessary to prepare an applicant to operate as a manager of a vend'ng facility on an individual basis. The training may include:

(1) personal and vocational adjustment;

(2) business management (e.g. customer relations, business mathematics, merchandising, inventory control, financial reporting, taxation and accounting procedures);

(3) food handling and preparation;

(4) books, tests, and other training devices or materials; and

(5) relocation out-of-state for temporary periods of time. (Eff. / / , Reg.)

Authority AS 23.15.020(c)
AS 23.15.100(b)(6)

4 AAC 54.330. CERTIFICATION OF TRAINED VENDING FACILITY MANAGERS. (a) The division will certify an applicant for vending facilities on federal property who meets the requirements of 4 AAC 54.310(a)(2) and who has successfully completed the training program described in 4 AAC 54.320.

(b) The division will certify an applicant for vending facilities on state property who meets the requirements of 4 AAC 54.310(a)(3) and who has successfully completed the training program described in 4 AAC 54.320.

(c) An applicant who meets the requirements of 4 AAC 54.310(a)(2) and (3) and who has successfully completed the training program described in 4 AAC 54.320 shall be certified in both vending programs.

(d) A person who is certified in a vending program shall be enrolled on the vending program roster for placement in a vending facility as a substitute manager. (Eff. / / , Reg.)

Authority AS 23.15.020(c)
AS 23.15.100(b)(6)

4 AAC 54.340. LICENSING OF CERTIFIED VENDING FACILITY MANAGERS. (a) The division will license a certified vending facility manager into a vending program when:

(1) a vending facility in that vending program is available for immediate placement; and

(2) the division and the eligible manager have entered into a written operating agreement setting forth the duties under this chapter.

(b) A temporary license is issued for an initial six month evaluation period. Following successful completion of the six month period as evidenced by the licensee's compliance with 4 AAC 54.370, a permanent license will be issued. The license is not transferable and is revocable pursuant to 4 AAC 54.460. The license does not authorize the holder to operate a vending facility at a location other than that described in the license.

(c) The division will apply the following priorities in the order listed to select a certified vending vending facility manager for licensure:

(1) A current licensee who requests a new location. When more than one licensee requests promotion or transfer to another facility, the division will review each candidate based on seniority, training, and past performance as described in 4 AAC 54.370;

(2) a certified vending facility manager who has demonstrated his ability to manage a facility. When more than one manager requests placement in a facility, the division will review each candidate based on seniority, evaluations by the the division staff and evaluation reports filed by licensees for whom the manager has worked;

(3) a former licensee who desires to return to a vending program and whose previous record demonstrates his ability as a licensee. The division will review each candidate based on training, experience, past performance and reason for leaving the vending program. (Eff. / / , Reg.)

Authority AS 23.15.020(c)
AS 23.15.100(b)(6)

4 AAC 54.350. REIMBURSEMENT. (a) The division shall pay the personal moving costs at rates afforded division employees for a licensee entering a vending program for the first time when the vending facility to which he is assigned is at least 50 miles from his present home.

REGISTER

EDUCATION

4 AAC 54.350
4 AAC 54.360
4 AAC 54.370
4 AAC 54.380

(b) A current licensee selected for a new facility or a former licensee requesting re-entry into a vending program must pay his personal moving costs. (Eff. / / , Reg.)

Authority AS 23.15.020(c)
AS 23.15.100(b)(6)

4 AAC 54.360. CONTINUING EDUCATION. In consultation with the Committee of Vendors, the Division will provide appropriate in-service training and post-employment services for licensees to expand and improve their capacity for upward mobility within the program. (Eff. / / , Reg.)

Authority AS 23.15.020(c)
AS 23.15.100(b)(6)

4 AAC 54.370. RESPONSIBILITIES OF A LICENSEE. The responsibilities of a licensee include:

(1) operating the facility in accordance with laws relating to vending facilities, public health, taxes, compensation of employees, worker's compensation, insurance, civil rights, and fire and safety codes;

(2) maintaining business accounts and records separate from personal accounts;

(3) maintaining a commercial bank account in which all funds not required as cash on hand are deposited;

(4) making payment for all business expenses in a timely fashion;

(5) retaining receipts for goods and services bought for the business;

(6) submitting accurate and timely reports to the division as the division requires; and

(7) obtaining and maintaining personal and property damage liability insurance, naming the State of Alaska as an additional insuree, with limits of \$100,000 for each person and \$300,000 for each occurrence, and insurance against loss by fire or other hazard of the vending facility property. (Eff. / / , Reg.)

Authority AS 23.15.020(c)
AS 23.15.100(b)(6)

4 AAC 54.380. VENDING FACILITY STAFFING. (a) A vending facility operator shall personally operate the facility unless he has designated an assistant manager, a temporary relief manager or a substitute vacation manager who has been approved by the Division.

REGISTER

EDUCATION

4 AAC 54.380
 4 AAC 54.390
 4 AAC 54.400
 4 AAC 54.410

(b) The vending facility operator must submit to the division the designated temporary relief manager or substitute vacation manager as far in advance as is possible. Except for good cause, advance requests for substitute vacation managers must be submitted at least thirty (30) days before the proposed vacation. (Eff. / / , Reg.)

Authority AS 23.15.020(c)
 AS 23.15.100(b)(6)

4 AAC 54.390. ESTABLISHMENT OF VENDING FACILITY LOCATIONS. (a) In deciding to establish vending facility locations on federal property, in state buildings, and in private buildings where vending facilities are permitted by the owner, the division will apply the following criteria:

(1) The building in which the vending facility is to be located must either house at least 250 employees on a daily basis or evidence foot traffic through it of at least 400 persons daily;

(2) at least 250 square feet of floor space must be available for the vending facility;

(3) adequate utility outlets or hookups must be available; and

(4) a permit or authorization to establish a vending facility in the building must be obtainable. (Eff. / / , Reg.)

Authority AS 23.15.020(c)
 AS 23.15.100(b)(6)

4 AAC 54.400. EQUIPMENT, FIXTURES AND INITIAL STOCK. (a) The division will provide architectural services, equipment, fixtures, initial supplies and inventory, and initial operating funds, as it considers necessary, for each vending facility the division establishes in federal or state public buildings.

(b) All rights, title, and interest in the equipment, fixtures, initial inventory, and initial operating funds remain vested in the division.

(c) A licensee shall not acquire on his own or make additions to or reductions in equipment provided to the facility by the division without the prior written approval of the division. (Eff. / / , Reg.)

Authority AS 23.15.020(c)
 AS 23.15.100(b)(1)

4 AAC 54.410. REPAIR AND REPLACEMENT OF EQUIPMENT AND FIXTURES. (a) The division will maintain all vending equipment and will replace worn out or obsolete equipment as required. A licensee shall take reasonable care of equipment and give routine day-to-day maintenance of that equipment.

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EDUCATION

4 AAC 54.410

4 AAC 54.420

4 AAC 54.430

(b) the division will pay the entire cost of repair during:

(1) the first six months of operation of a facility (new licensee or new facility);

(2) the first three months of operation for equipment transferred from one facility to another; and

(3) the first thirty days for equipment in a facility to which a licensee has been transferred or promoted from another facility.

(c) After the lapse of time set forth in 4 AAC 54.410(b), the licensee shall pay the first \$50 of repair costs where the division has first authorized the repair. Unauthorized repairs are the sole responsibility of the licensee unless the repairs were necessary to avoid the loss of life or property.

(d) Vending facility operators are responsible for reporting, at the first opportunity, all incidents of damage, breakage, theft or malfunction of facility equipment or fixtures to the division. (Eff. / / , Reg.)

Authority AS 23.15.020(c)
AS 23.15.100(b)(6)

4 AAC 54.420. TERMINATION OF BUSINESS. (a) A licensee who discontinues operation of a vending facility is responsible for the financial liabilities incurred in operating the facility. If the wholesale value of saleable merchandise, cash on hand and the facility account is greater than the value of the original inventory and cash provided the facility by the division, the division will reimburse the licensee for the excess, less any unpaid bills or other liabilities. If the wholesale value of saleable merchandise, cash on hand and the facility account is less than the value of the original inventory and cash provided the facility by the division, the licensee shall pay the division the balance.

(b) When a licensee discontinues operation of a vending facility, the licensee and the division shall conduct an inventory to ensure the equipment, fixtures, and initial inventory the division provided are accounted for in operable condition. (Eff. / / , Reg.)

Authority AS 23.15.010(c)

4 AAC 54.430. DISTRIBUTION AND USE OF VENDING MACHINE INCOME. (a) The net proceeds from vending machines operated by private persons in state or federal buildings for profit must be paid into the Small Business Enterprise Fund on a quarterly basis. Income derived from vending machines in federally owned or leased buildings will be held and accounted for separately from any income from vending machines in state owned or leased buildings and will be expended only to assist licensees on federal property.

(b) If a vending machine is in direct competition with a licensee in the

same building, the net proceeds from the machine accrue to the licensee in an amount not to exceed the lesser of:

(1) the average net income of all licensees within the state, determined each fiscal year on the basis of the prior year's operation; or

(2) an amount equal to the average net income of all blind vending facility operators in the United States, determined on the basis of the prior year's operation.

(c) This section does not apply to income from a vending machine which is part of a vending facility operated by a licensee.

(d) The division will retain the net proceeds from vending machines not in direct competition with a licensed vending facility and net proceeds exceeding the requirements of 4 AAC 54.430(b). The division will use the proceeds to aid licensees for:

(1) vacation time, health insurance plans, retirement, and pension plans;

(2) maintenance of equipment;

(3) purchase of new or replacement equipment;

(4) management and consultative services;

(5) ensuring a fair minimum return to beginning licensees; and

(6) defraying, in part or total, the cost of constructing new vending facilities.

(e) Use of the net proceeds committed by the division to benefits described in 4 AAC 54.430(d)(1) will be determined by a majority of licensees on a biennial basis. (Eff. / / , Reg.)

Authority AS 23.15.020(c)
AS 23.15.100(b)(c)

4 AAC 54.440. INCOME AND SET-ASIDE FUNDS. (a) the monthly income of a licensee is the net profit of the vending facility for the month.

(b) The division will augment the income of a licensee up to the state minimum wage when the licensee's income is below the state minimum wage and:

(1) the licensee has been licensed six months or less; or

(2) the vending facility has been in operation for six months or less.

(c) The division will establish a set-aside fund from the net profits of the vending facilities to carry out programs under 430 (d)(1) when revenues

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EDUCATION

4 AAC 54.440

4 AAC 54.450

4 AAC 54.460

from (a) are insufficient only after majority vote of licensees.

(d) If the division establishes a set-aside fund, it will set forth in writing the assessment for each vending facility and, in the case of vending facilities on federal property, will submit the set-aside plan to the Commissioner of Rehabilitation Services for his review and approval as required under 34 CFR 395.3(a)(11)(IV).

(e) Set-aside revenues from vending facilities on federal property will be accounted for separately from those derived from vending facilities on state property, and will be expended in accordance with 4 AAC 54.430(e)(1) - (5) to assist only licensees on federal property. (Eff. / / , Reg.)

Authority AS 23.15.020(c)
AS 23.15.100(b)(6)

4 AAC 54.450. ACCESS TO PROGRAM AND FINANCIAL INFORMATION. The division will provide licensee access to all financial data respecting the vending programs and will prepare an annual financial report on the vending programs for distribution to licensees. (Eff. / / , Reg.)

Authority AS 23.15.020(c)
AS 23.15.100(b)(6)

4 AAC 54.460. REVOCATION OF LICENSES. (a) A license is issued for an indefinite period of time but may be suspended or revoked after affording the licensee an opportunity for a hearing under 4 AAC 54 for the following reasons:

(1) In the case of facilities on federal property, the licensee experiences an improvement of vision so that the licensee is no longer blind, or, in the case of facilities operated on state property, the licensee experiences an improvement in the disabling condition so that the licensee is no longer blind or severely disabled;

(2) absences of more than four days without approval from the division;

(3) extended illness (exceeding three months) with a documented medical diagnosis of prolonged incapacity to operate the vending facility in a manner consistent with the needs of the location, or other available locations in the vending facility program. This period may be extended by the director if adequate coverage of the facility can be arranged;

(4) a request by the management of the building in which the vending facility is located that the operator be moved for failure to comply with applicable building rules;

(5) operating the facility in a manner which places the division's investment in the facility, at risk including destruction or neglect of

equipment, failure to follow fire and safety standards, failure to pay wholesalers, failure to keep adequate stock on hand or carrying on illegal practices;

(6) failure to pay a government agency, supplier, or creditor of any taxes or other amounts of money due;

(7) refusal to cooperate with the division or to abide by the terms of the written operating agreement;

(8) demonstrated incompetency in the operation of a vending facility, including inadequate record keeping, failure to keep the required hours on a consistent basis, failure to employ adequate staff during absences, and failure to accept Division management oversight;

(9) submitting untimely, inaccurate or false reports on expenditures and income to the division; or

(10) failure to comply with the provisions of this chapter or with applicable health codes.

(b) In its discretion, the division may permit a licensee to continue operating the facility for a probationary period in lieu of revocation proceedings. The initial probationary period may not exceed 90 days. During the probation, the licensee shall take corrective action. If the licensee takes corrective action but is experiencing difficulty in compliance, the division may extend the probation for an additional 90 days. (Eff. / / . Reg.)

(1) The licensee shall be notified of the probationary period in writing by certified mail with return receipt requested. Probation will begin on the date the letter is received.

Authority AS 23.15.010(c)
AS 23.15.100(b)(6)

4 AAC 54.470. ADMINISTRATIVE REVIEW. An administrative review is the procedure through which a licensee or his representative may seek review of an adverse division action arising from the administration of the vending facility program. The following procedures apply in the conduct of an administrative review.

(1) At the time of licensing, the division will inform the licensee in writing of his right to seek administrative review of adverse actions and the procedures to be followed in obtaining one.

(2) A licensee or his designee must request an administrative review within fifteen (15) working days of the action with which he is aggrieved.

(3) A written request for an administrative review stating the issues to be resolved must be transmitted to the director of the division

(4) The division will assign a member of its administrative staff who has not in any way participated in the agency action in question as review officer.

(5) The division shall conduct the review within fifteen (15) working days of the receipt by the division of the written request of the licensee. The division shall hold the review in the division office nearest the licensee during regular agency hours at a time convenient to the licensee.

(6) The division shall provide transportation and reader or other communication services to the vending facility operator when necessary.

(7) A record of the administrative review will be maintained for two years.

(8) When an informal administrative review does not resolve a dispute to the satisfaction of the licensee, the licensee may request an evidentiary hearing. (Eff. / / , Reg.)

Authority AS 23.15.020(c)
AS 23.15.100(b)(6)

4 AAC 54.480. EVIDENTIARY HEARING. The following procedures apply in the conduct of an evidentiary hearing:

(1) A licensee, or his designee, must request an evidentiary hearing within fifteen (15) working days of any administrative review decision he wishes to appeal;

(2) A written request for an evidentiary hearing stating the issues to be appealed must be transmitted to the director of the division personally or by certified mail with return receipt requested;

(3) A licensee may retain local counsel or other representation at his own expense in an evidentiary hearing;

(4) The division will schedule the hearing within fifteen (15) working days of its receipt of the written request unless the division and the licensee agree in writing to another time. The division will hold the hearing in the division office nearest the vendor during regular agency hours at a time convenient to the licensee;

(5) The division will notify the licensee in writing of the time and place fixed for the hearing;

(6) The division will provide the licensee a copy of his case file at no charge;

(7) The division will provide transportation and reader or other communication services to the licensee if necessary;

(8) The hearing officer shall be an impartial official who has no involvement with the state agency action at issue or with the administration of the vending facility program. The hearing officer may be staff member of another agency or a state agency hearing officer.

(9) The licensee and the division may present oral or documentary evidence, submit rebuttal evidence, and conduct examination and cross examination of witnesses. The testimony shall be under oath.

(10) All papers and documents to be introduced into evidence at the hearing must be filed with the hearing officer and provided to the other party.

(11) The hearing shall be electronically recorded. A transcript may be made of the oral evidence at the discretion of the division. The division will pay all transcript costs and will provide the licensee with one copy of the transcript.

(12) The transcript of testimony, exhibits, and all papers and documents filed in the hearing shall constitute the exclusive record for the decision.

(13) The decision of the hearing officer shall set forth findings of fact and conclusions with respect to each of the issues. The decision shall be made within fifteen (15) working days of the hearing. The decision shall be mailed promptly to the vending facility operator and the division personally or by certified mail with return receipt requested. The vendor shall be notified of his appeal rights in the same certified letter.

(14) A licensee in the federal vending program who is dissatisfied with the decision rendered after an evidentiary hearing may request an Arbitration Panel be convened by filing a complaint with the Secretary to the Department of Education under 34 CFR 295.13(a) within fifteen (15) working days of his receipt of the decision. A licensee in the state vending program may exercise his right to appeal under the Alaska Rules of Appellate Procedure. (Eff. / / , Reg.)

Authority AS 23.15.020(c)
AS 23.15.100(b)(6)

4 AAC 54.490 should be amended by adding the following paragraphs:

() "blind" means a person who, after examination by a physician skilled in the diseases of the eye or optometrist, has been determined to have not more than 20/200 central visual acuity in the better eye with correcting lenses, or an equally disabling loss of a visual field as evidenced by limitation of the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees;

() "set-aside fund" means those funds paid by licensees to the division from the net proceeds of the operation of each vending facility.

() "severely handicapped" means a person who meets the criteria of severe disability published in _____, (19 ____ ed.);

() "vending program" means the state business enterprise program and the federal vending facility program for the blind established by the Randolph-Sheppard ACT (P.L. 83-565 as amended), (Eff. ____ / ____ / ____, Reg. ____)

Authority

How A Vending Business Operates

- A Vending Operator is a retailer who owns and places machines to sell products or services, sometimes in combination with other retailing methods.
- Automatic vending is a small local business. Of the 100,000 or so "vending operators," almost half employ three or fewer persons, only 18% have 20 or more employees.
- Through hard work and innovations the vending industry has increased its total sales volume from \$ 100 million in 1948 to \$5.5 billion in 1969. However, profit margins have remained low, averaging less than 6% before income taxes.

The History of Vending

Vending in the United States started in 1888 when the first gum venders were placed on location on elevated train platforms in New York.

Vending as we know it today did not begin however, until the late 1920's, with the first widespread use of cigarette machines.

It is during World War II that automatic retailing first became a well known type of business. The use of vending machines in defense plants to serve refreshments for production workers led to post-war inventions and developments for beverage and food service as we know it today.

The demand for convenience and for extra sales of goods and services around the clock established vending as an important factor in the economy in the 1950's. Since that time the public has expressed an increasing desire for convenient, inexpensive and sanitary service in thousands of factories, schools, offices and public entertainment sites. Vending has satisfied this

demand with ever improving equipment and trained service personnel.

The cornerstone of this business is the vending specialist, or "operator."

The Vending Operator

He buys vending machines from the manufacturer, seeks "locations" to place his equipment and is responsible for stocking, servicing and maintaining the machines. He stocks the machines with products purchased from literally thousands of "product suppliers."

Many of these products are name-brands which are also retailed in other channels of marketing.

To sell through machines the "operator" establishes a headquarters providing product storage, servicing, repair and bookkeeping facilities, commissaries for food production and garaging space for his service trucks.

He runs this business on the basis of "routes." Where volume requirements demand a single location may constitute a route. Essentially he is a retailer and food service specialist who employs machines as part of his over-all offer of service.

His main function is merchandising and selling. (Contrary to general belief vending is anything but "automatic.")

Key factors in his success are proper selection of equipment and products to satisfy customer preferences. Frequent and proper servicing of the machines is most important.

To this end he employs servicemen and repairmen who must be on the job around the clock for

(continued on back)

How A Vending Business Operates

(continued)

machine breakdowns mean customer dissatisfaction, loss of sales and further reduction of an already close profit margin.

Service is his main stock-in-trade and well trained "routemen" are the difference between profit and loss.

To place his machines in restaurants, transportation terminals, factories, offices, schools, hospitals or any other locations, the operator usually enters into a contractual agreement with the location owner.

For the privilege of placing his machines and furnishing the vending and manual food service the operator usually pays a percentage of his gross sales in "commissions" to the location owner.

At present there are some 6,000 vending and contract food service firms in the United States, nearly all of them locally owned and operated.

No vending business can operate beyond a radius of about 30 miles from its local headquarters, just like the dry cleaner or TV repair shop.

Therefore, even with the recent development of about 15 national and regional vending companies,

every vending business is a locally operated firm and all but a few are locally owned.

According to national statistics, almost half of all vending operators have three or fewer employees. Only 18 per cent employ 20 or more persons. All told, an estimated 50,000 employees derive their entire income working for vending companies.

Vending is a highly competitive business. Usually there are several local vending companies competing for any available "locations" in the community. Whether they be outdoor locations for a soft-drink machine or complete refreshment or food service installations in a factory, "new" locations seldom are obtained without strong competition among local companies.

The increasing volume of vending — from \$400 million in 1946 to \$5.5 billion in 1982 — is primarily due to the innovations in equipment and merchandising which progressive vending operators have applied with ingenuity and specialized know-how.

Vending Profit Margins

It should be noted that the increasing volume of sales has had no similar effect on profit margins. The original cost of vastly more complicated machines and the ever increasing expenses of servicing and costs of product have depressed net profits to an alarmingly low margin. The national average net profit (before income taxes) has continued at less than 6% of sales in 1982 in spite of higher volume.



Official Business

Alaska State Legislature

House of Representatives

Committee on

Health, Education & Social Services

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

TO: HOUSE H.E.S.S. COMMITTEE
FROM: Barbara Wilkins, C.A.
DATE: 4/20/82
RE: HCSCSSSSB778(HESS)

This bill introduces new language into the Alaska Statutes regarding Vocational Rehabilitation which duplicates the federal program for blind vendors, but goes even farther to establish equivalent rights for the severely handicapped in the event they participate in the vending facility program. The Committee of Blind Vendors is mandated under 20 USC 107b-1(2) and 34 CFR 395.14, but is left out of the Division's proposed regulations.

PROPOSED AMENDMENT #2

- ** Page 3, line 21: Delete "uniform" and replace with the phrase, "in a substantially equivalent manner"
- ** Page 1, line 21: Delete "vending"
- ** Page 2, line 28: Delete rest of line beginning with ~~the change requested by the XXXXX~~
"the Randolph-Sheppard. . . ." and insert "this Act."

Please have ready for final. Thank you.

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST.

Bill/Resolution Number: SB-778

Title: "An Act relating to the operation of vending facilities on ..."

Requested by: Senator Brao Brajley Date: 3-26-82

II. FISCAL DETAIL

Agency Affected: Education

Program Category Affected: Adult and Postsecondary Education

BRU, Program, or Subprogram(s) Affected: Vocational Rehabilitation

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)	FY					
	82	83	84	85	86	87
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 COMMODITIES	-	-	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LAND & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS, ETC	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)	FY					
	82	83	84	85	86	87
GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	-	-	-	-	-	-
OTHER (Specify Source)	-	-	-	-	-	-

POSITIONS	FY					
	82	83	84	85	86	87
FULL TIME	N/A	-	-	-	-	-
PART TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)
This bill has no fiscal impact on this agency.

DATE: 3-26-82

PREPARED BY: Steve Hole
AGENCY: Department of Education
PHONE: 465-7890

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator named)
12/81 (Rev. 12/81)

S

B

8

17

COMMITTEE REPORT

HOUSE

(5)

FURTHER: FINANCE

5/8/82

Date: 5/11/82

Mr. Speaker: HEALTH, EDUCATION & SOCIAL SERVICES
The Committee on HEALTH, EDUCATION & SOCIAL SERVICES has had CSSB 817 (Fin)

"An Act relating to medical assistance for needy persons; and providing for an effective date."

under consideration and reports it back as follows:

- do pass do not pass
- do pass with attached amendments(=)
- replace with CS for _____ same title
- and recommends _____ new title
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation *Handwritten note*
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Handwritten signature

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

SUMMARY FISCAL NOTE

I. REQUEST

Bill/Resolution No. CS for Senate Bill 817 (Finance)
 Title An Act relating to medical assistance for needy persons
 Requested by House HESS Committee Date 5/11/82

II. FISCAL DETAIL

Agency Affected Department of Health and Social Services
 Program Category Affected Health
 BRU, Program, Or Subprogram(s) Affected Medical Assistance *
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.		9185.2	10563.0	12147.4	13969.5	16064.9
TOTAL		9185.2	10563.0	12147.4	13969.5	16064.9

FUNDING (Thousands of Dollars)

		0	0	0	0	0
GENERAL FUND						
FEDERAL FUNDS		9185.2	10563.0	12147.4	13969.5	16064.9
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

- The Medical Assistance BRU would be created by combining the present Medicaid and General Relief Medical BRUs. This and the passage of CSSB 817 would permit the Department of Health and Social Services to claim additional federal funds for Medicaid without using any additional state funds.

IV. DATE 5/12/82 PREPARED BY David M. Davidson
 AGENCY Division of Public Assistance
 Original: Legislative Finance PHONE 465-3347
 ccc Budget and Management
 Prime Sponsor (First Legislator Named)
 33-() (Rev. 12/81)

David M. Davidson
 ACC

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. Senate Bill 817
 Title An Act relating to medical assistance for needy persons
 Requested by Senate HESS Committee Date 3/19/82

II. FISCAL DETAIL

Agency Affected Department of Health and Social Services
 Program Category Affected Social and Economic Assistance
 BRU, Program, Or Subprogram(s) Affected Eligibility Determination
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES		210.2	231.2	254.3	279.8	307.7
200 TRAVEL		7.7	8.5	9.3	10.3	11.3
300 CONTRACTUAL		79.5	87.4	96.1	105.8	116.3
400 COMMODITIES		3.9	4.3	4.7	5.2	5.7
500 EQUIPMENT		7.9				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		309.2	331.4	364.4	401.1	441.0

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND		160.7	172.3	189.5	208.6	229.3
FEDERAL FUNDS		148.5	159.1	174.9	192.5	211.7
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME		6	6	6	6	6
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

State General Funds transferred from General Relief Medical budget request unit to Eligibility Determination to provide funding for administrative costs associated with the addition of new eligibles to the Medicaid program.

IV. DATE 3/22/82 PREPARED BY David M. Davidson
 AGENCY Division of Public Assistance
 PHONE 455-3347
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/81)

CSSB 817--
 MEDICAID/GENERAL RELIEF MEDICAL
 FISCAL AND PROGRAM ADJUSTMENTS--FY 83

PROGRAM IMPACT	TOTAL MEDICAID	MEDICAID IMPACT STATE FUNDS	FEDERAL FUNDS	GENERAL RELIEF MEDICAL IMPACT GRM PROGRAM	GRM REDUCTIONS	CASELOAD IMPACT NEW PERSONS COVERED
FY 83 Budget Request	\$51914.6	\$24461.8	\$27452.8	\$12178.3		
Less Budget Deductions	(1355.2)	(1307.8)	(47.4)	(575.3)		
	50559.4	23154.0	27405.4	11603.0		
Cat Illness ReJuction	0	0	0	(2158.4)		
	50559.4	23154.0	27405.4	9444.6		
Transfer of services from GRM to Medicaid	101.0	52.8	48.2	(52.8)		
	50660.4	23206.8	27453.6	9391.8		
Coverage for pregnant women	467.6	243.2	224.4	(243.2)		191
	51128.0	23450.0	27678.0	9148.6		
IHS clinic services	1500.0	0	1500.0			
	52628.0	23450.0	29178.0	9148.6		
GRM children to Medicaid	6520.5	3390.7	3129.8	(3390.7)		700
	59148.5	26840.7	32307.8	5757.9		
New children/100% FFP	3346.6	0	3346.6			3300
	62495.1	26840.7	35654.4	5757.9		
Admin costs for new children	309.2	160.7	148.5	(160.7)		
	62804.3	27001.4	35802.9	5597.2		
Prescribed drugs	0	0	0	(1560.6)		
Totals--CSSB 817(Fin) changes	62804.3	27001.4	35802.9	4036.6		

5/11/82

ADDITIONAL CHANGES NEEDED BETWEEN
MEDICAID AND GRM BRUS

PROGRAM IMPACT	MEDICAID IMPACT			GENERAL RELIEF MEDICAL IMPACT		CASELOAD IMPACT
	TOTAL MEDICAID	STATE FUNDS	FEDERAL FUNDS	GRM PROGRAM	GRM REDUCTIONS	NEW PERSONS COVERED
	62804.3	27001.4	35802.9	4036.6		
GRM savings from participation in Medicare Part B buy-in	220.2	111.5	108.7	(111.5)		
	63024.5	27112.9	35911.6	3925.1		
Elimination of Medicaid penalty	1355.2	1007.7	347.5	(1007.7)		
	64379.7	28120.6	36259.1	2917.4		
IHS Medicaid transportation	1000.0	520.0	480.0	(520.0)		
Total--CSSB 817 and additional charges	65379.7	28640.6	36739.1	2397.4		

5/11/82



319 Seward St., Juneau, Alaska 99801 • (907) 586-1790

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Sitka

May 11, 1982
Dennis L. DeWitt
President

May 11, 1982

The Honorable Michael Beirne
Alaska House of Representatives
Pouch V, State Capitol Building
Juneau, AK 99811

Dear Representative Beirne:

The Alaska State Hospital Association wishes to encourage your prompt consideration of Senate Bill 817.

This Association has long advocated an overhaul of the relationship of Medicaid and General Relief/Medical to maximize federal financial participation and increase Alaska's ability to offer health care to its needy residents. The proposal is a bold and forthright step in recognizing the importance of prudent fiscal approach to providing health care. We believe that it is imperative that the legislature make those changes needed to maximize federal financial participation in indigent health care in Alaska before it adjourns the Second Session of the Twelfth Legislature.

We stand ready to lend our assistance to this activity.

Sincerely,

Dennis L. DeWitt
President

DLD:LL

cc: Representative Terry Martin
Representative Bette M. Cato
Representative Hugh Malone
Representative Sally Smith