

**MINUTES OF THE
UTAH TAX REVIEW COMMISSION**

Thursday, October 22, 2015 – 2:00 p.m. – Room 445 State Capitol

Members Present:

Mr. Curtis Trader, Chair
Sen. Deidre M. Henderson
Sen. Lyle W. Hillyard
Rep. Joel K. Briscoe
Rep. Steve Eliason
Mr. Kelly J. Applegate
Ms. Emily D. Bagley
Mr. Phil Dean
Ms. Kathleen Howell
Comm. John L. Valentine
Mr. Lawrence C. Walters

Members Absent:

Sen. Jim Dabakis
Rep. Daniel McCay
Mr. Troy K. Lewis
Mr. K. Tim Larsen
Mr. Gregory G. Prawitt

Staff Present:

Mr. Leif G. Elder, Policy Analyst
Mr. Bryant R. Howe, Deputy Director
Ms. Andrea Valenti Arthur, Associate General Counsel
Ms. Bree A. Frehner, Legislative Assistant

Note: A list of others present, a copy of related materials, and an audio recording of the meeting can be found at www.le.utah.gov.

1. Commission Business

Chair Trader called the meeting to order at 2:12 p.m. Rep. McCay, Mr. Larsen, and Mr. Lewis were excused from the meeting.

MOTION: Ms. Howell moved to approve the minutes of the September 24, 2015, meeting. The motion passed unanimously. Rep. Eliason was absent for the vote.

2. Earmarking of the State Sales and Use Tax

Chair Trader and Mr. Howe discussed "Earmark Criteria October 13, 2015, Draft" and "Earmark Criteria October 22, 2015, Draft." Mr. Howe explained the differences between the two drafts. Mr. Howe also discussed "UDAF, UDEQ, and UDNR Earmarks," which gives a summary of the earmarks the commission has reviewed to date this year.

Mr. Dean favored the shorter list, "Earmark Criteria October 22, 2015, Draft," and recommended adding a general statement that earmarking is discouraged. He also mentioned concern that including a criterion about federal funding could lead to even more earmarks.

Sen. Henderson expressed concern that creating a list of criteria might in fact encourage even more earmarks and agreed with Mr. Dean that a general statement discouraging earmarking should be added to the list. She favored including a criterion asking whether a program would be funded absent an earmark. She also mentioned concern with the broadness of certain criteria. She said that criterion #2 is too broad and questioned how "essential" and "widely accepted" should be applied.

Mr. Applegate addressed the need for a periodic review of earmarks and inquired what would trigger that review. Mr. Dean agreed that a criterion with some specificity should be added stating that earmarks should be subject to periodic reviews.

Sen. Hillyard discussed practical issues of sunset reviews. He noted that there are not situations where a dedicated revenue source would be required for a general obligation bond, thus eliminating the need for a criterion addressing bonds. He agreed that the criteria should not be used as a checklist for justifying the regular earmarking of revenue.

Mr. Walters commented that if an earmark is easy to modify, as suggested in criterion #5, then it is operationally the same as a base budget appropriation, and that if an earmark is difficult to modify then the question is whether the criteria for evaluating earmarks justifies tying the hands of the Legislature. He asked under what conditions the Legislature should be asked to forfeit its budgeting flexibility.

Rep. Briscoe agreed with others' statements that earmarking shouldn't be tied to federal funding and that the criteria shouldn't merely be a checklist that if cleared, the earmark is then approved. He proposed adding a criterion to evaluate the impact of the earmark on the budget as a whole and a criterion to evaluate whether an earmark is proportionate to the purpose for which it is intended. He explored whether all earmarks should be eliminated and how a review of earmarks could be effective.

Mr. Howe reminded commission members that they voted to eliminate the Department of Agriculture and Food earmark at a prior meeting. He reviewed the ways the Legislature could require automatic review of earmarks: (1) a repeal date specified in code; (2) a repeal date specified in code coupled with a sunset review by an interim committee during the interim immediately prior to the repeal date, as assigned by the Legislative Management Committee; or (3) a recommendation that the Executive Appropriations Committee direct the appropriate appropriations subcommittee to conduct a review during the interim.

Mr. Walters suggested that the Legislative Auditor General play a role in the review of earmarks.

Ms. Howell asked the legislators on the commission whether they have supported earmarks in legislation in the past. Commissioner Valentine detailed the reason he voted for the water earmark. He mentioned that the number of earmarks that have occurred since water earmarks began indicates that the earmarking model is overused and the Legislature should reevaluate its use of earmarks.

Rep. Briscoe mentioned his support for reinstating the Utah Tax Review Commission (TRC) due to concern about sales and use tax earmarks for transportation. He commented on the effectiveness of the program performance measures used by the Social Services Appropriations Subcommittee.

Sen. Henderson also commented on performance measures used in the budget review process by the Social Services Appropriations Subcommittee. She highlighted issues that arise due to an earmark request being heard in a committee that focuses on the issue being funded instead of a revenue and taxation committee that is focused on tax policy.

Mr. Walters posited two reasons why earmarks are created: (1) to fund something that does not fit in the budget by prematurely setting aside future revenue growth; and (2) to protect programs from the regular budget review process.

Sen. Hillyard commented that earmarks increase the difficulty of budgeting. He discussed future revenue shortages that the state may be facing and options to address the shortages. He discussed budgeting and emphasized the importance of keeping the prerogative with the Legislature.

Chair Trader summarized the discussion and review of the October 22, 2015 draft of the criteria as follows:

- Mr. Dean suggested that the commission strongly discourage additional earmarks of the state sales and use tax;
- A new earmark should only be approved if it meets criterion #1;
- All earmarks should have a sunset date;

- Eliminate criterion #4; and
- Adopt a new criterion #5 stating that the Revenue and Taxation Standing Committees of the Legislature review all newly proposed earmarks.

Chair Trader asked for comments regarding this summary.

Sen. Henderson questioned the need for criterion #3 and suggested that it only apply to existing bonds. She asked Sen. Hillyard if there is currently an earmarked source of state revenue that is used to service state debt. Sen. Hillyard said that he was not sure about state sales tax earmarks and also said that the commission should not concern itself with how local governments service debt. Sen. Henderson said that the criteria should not imply that it is acceptable to earmark a source of revenue as repayment for a bond.

Mr. Walters said that he agrees with the summary as stated by the chair. He asked if the proposed criteria are to be applied only to new earmarks or also to existing earmarks. Chair Trader said that the criteria also apply to existing earmarks. Mr. Walters recommend that all earmarks be subject to a regular sunset review process. Chair Trader agreed as long as it only applies to earmarks that are not recommended to be repealed.

Sen. Hillyard suggested that there be a relationship between the source and the benefit of revenue. He gave the example of using revenue from the sales of hunting licenses to fund animal wildlife programs. He recommended a process to avoid fiscal note issues if an earmark is recommended for repeal.

Rep. Briscoe discussed how earmarks facilitating a lower debt issuance cost and/or interest rate on the debt financing saves taxpayer money. He also said user fees can be an appropriate way to fund some services. He suggested keeping criterion #4a.

MOTION: Chair Trader moved that the commission adopt a statement opposing earmarks to the state sales tax and that this statement be added to October 22, 2015, draft. The motion passed unanimously with Rep. Eliason and Mr. Dean absent for the vote.

MOTION: Chair Trader moved to adopt criterion #1. The motion passed unanimously with Rep. Eliason and Mr. Dean absent for the vote.

MOTION: Chair Trader moved to eliminate criterion #2. The motion passed unanimously. Rep. Eliason and Mr. Dean absent for the vote.

MOTION: Chair Trader moved to eliminate criterion #3. The motion passed with Mr. Dean absent for the vote.

MOTION: Chair Trader moved to adopt criterion #4a. The motion failed with Rep. Briscoe voting in favor and Mr. Dean absent for the vote.

MOTION: Chair Trader moved to eliminate criterion #4b. The motion passed unanimously with Mr. Dean absent for the vote.

MOTION: Chair Trader moved to eliminate criterion #5. The motion passed unanimously with Mr. Dean absent for the vote.

Chair Trader summarized the earlier discussion where some commission members expressed support for assigning bills that concern earmarks of the state sales tax to the Revenue and Taxation Standing Committees for review.

Commissioner Valentine also expressed support that these bills be heard by the Revenue and Taxation Standing Committees but clarified that this does not imply that the approval of these committees should be required before these bills are adopted by the Legislature, only that a process be adopted where a committee hearing is conducted by the Revenue and Taxation Standing Committees.

Chair Trader summarized earlier discussion where some members of the TRC expressed support for subjecting state sales tax earmarks to the sunset review process. Commissioner Valentine suggested that repeal dates be adopted for all sales tax earmarks.

Sen. Hillyard expressed concern that the revenue assumptions process used by the Legislative Fiscal Analyst not be a barrier to reauthorizing a sales tax earmark and suggested that the commission seek input from the Office of the Legislative Fiscal Analyst regarding this question. The policy decision should not be influenced by the need to fund a fiscal note.

Commissioner Valentine recommended that with regard to the suggestion from Senator Hillyard on how revenue from expiring sales tax earmarks is to be considered, legislative rules be amended to direct the Legislative Fiscal Analyst to sequester projected revenue from an expiring sales tax earmark until the Legislature has made its final determination regarding that earmark. He stated that this promotes a transparent process regarding how this revenue is treated.

MOTION: Commissioner Valentine moved that the commission recommend that earmarks be repealed on a date certain and that the Legislature amend its rules to provide that in a fiscal year when an earmark is scheduled to be repealed, that the new projected unrestricted sales tax revenue to be realized due to the future repeal of the earmark be sequestered by the Legislative Fiscal Analyst and be considered as unavailable for other uses until such time as the Legislature makes a final determination regarding the repeal of the earmark. The motion passed with Rep. Briscoe and Mr. Walters voting in opposition and Mr. Dean absent for the vote.

MOTION: Commissioner Valentine moved that the commission recommend that any bill enacting a new sales tax earmark or concerning an expiring sales tax earmark be assigned to Revenue and Taxation Standing Committees for hearing and that legislative rules be modified accordingly.

Rep. Briscoe said that the motion would make Revenue and Taxation Standing Committees de facto appropriations subcommittees and that other committees have more expertise to consider specific policy areas. Sen. Henderson remarked that these bills concern only the tax policy of earmarking and that earmarks and bills concerned with preferential tax treatment for a given industry or segment of society will be heard in other committees as opposed to Revenue and Taxation Standing Committees, which are concerned with general tax policy.

The motion passed with Rep. Briscoe voting in opposition and Mr. Dean absent for the vote.

Commissioner Valentine suggested that the Legislative Fiscal Analyst be asked to provide an objective review of a sales tax earmark prior to its repeal date. Rep. Briscoe said that he supports this concept.

Mr. Walters said that the commission has discussed several different types of review and that it should be clear what type of review is being sought and who will be asked to conduct the review. He listed three

types of review: (1) whether there is a need for a program; (2) how well the program is functioning; and (3) what the best way may be to fund that program. He questioned whether Revenue and Taxation Committees have the expertise to consider the first two questions. He suggested that other committees also be involved in the review but acknowledged that this would complicate the legislative review process. He also noted that the question before the tax committees would be the best way to fund a program, not whether the program should exist.

Mr. Walters said that the programs funded by earmarks should also be reviewed for effectiveness and efficiency and suggested that programs funded by an earmark should be considered in light of competing needs and that these issues are best considered in specific programmatic committees that weigh programs to be funded with an earmark with other programs.

Sen. Henderson said that while this is a good point, the Legislature has limited time during its General Session to hold committee hearings and suggested that interim and appropriations committees conduct in-depth reviews of these programs beyond how the program is funded. She said that the legislative process and time limits during a General Session preclude a review of a bill by multiple committees and said that a bill proposing a new earmark should be heard in Revenue and Taxation Standing Committees, even if the programmatic expertise does not always reside in these committees.

Chair Trader said that an earmark sets aside revenue for future use. Sen. Henderson said that when the Legislature considers a bill, it considers whether it favors the policies espoused in the bill, but noted that even if the policies are favored the Legislature must find a way to fund the bill. She said that there are many bills that require funding to be implemented that never pass because the funding to implement these bills is not prioritized. She remarked that the funding of a bill is a separate question from consideration of its policy and commented that proponents of a bill choose an earmark as the method of funding, then they must also accept that the bill will be reviewed by tax committees and not subject area committees.

Sen. Hillyard recommended that the commission further consider this issue at its next meeting and that staff confer with the Legislative General Counsel to develop options for legislative rule changes to address this issue.

Rep. Eliason said he has been told that one reason why the General Fund ended the last fiscal year with a revenue deficit was due to growth in earmarked revenue. He said that he is troubled by earmarks that automatically remove some revenue for consideration and that past legislatures have limited the options of future legislatures. He said that the legislature should not limit the options of future rules committees in assigning bills for hearings and that in the future some bills related to earmarks should be sent to the subject area committee. He spoke against limiting the options of future legislatures in terms of where certain bills may be considered.

Ms. Howell said that consideration needs to be made for the review of both new and existing earmarks. She suggested that proposals for new earmarks be reviewed by Revenue and Taxation Standing Committees but was unsure what committee would provide the necessary oversight in a review of existing earmarks.

Chair Trader expressed the goal that the commission apply its criteria to existing earmarks and then recommend whether the earmark should be continued, modified, or repealed. He asked commission members if they wished to do this at today's meeting or to defer to the next meeting.

Commissioner Valentine agreed with Sen. Hillyard and suggested that staff be directed to return to the next meeting with options for consideration.

3. Other Items/Adjourn

MOTION: Rep. Eliason moved to adjourn the meeting. The motion passed unanimously. Mr. Dean was absent for the vote.

Chair Trader adjourned the meeting at 3:54 p.m.