

**MINUTES OF THE
UTAH TAX REVIEW COMMISSION**

Thursday, November 5, 2015 – 2:00 p.m. – Room 445 State Capitol

Members Present:

Mr. Curtis Trader, Chair
Sen. Jim Dabakis
Sen. Deidre M. Henderson
Rep. Joel K. Briscoe
Rep. Steve Eliason
Rep. Daniel McCay
Mr. Kelly J. Applegate
Ms. Emily D. Bagley
Ms. Kathleen Howell
Mr. Troy K. Lewis
Mr. Gregory G. Prawitt
Comm. John L. Valentine
Mr. Lawrence C. Walters

Members Absent:

Sen. Lyle W. Hillyard
Mr. Phil Dean
Mr. K. Tim Larsen

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. Mr. Dean and Mr. Larsen were excused from the meeting.

MOTION: Sen. Henderson moved to approve the minutes of the October 22, 2015, meeting. The motion passed unanimously. Rep. Eliason and Rep. McCay were absent for the vote.

2. Earmarking of the State Sales and Use Tax

Chair Trader discussed the format for today's meeting. He asked Mr. Howe to give an overview of the distributed booklet, "Review of Earmarks of the State Sales and Use Tax."

Mr. Howe discussed "Review of Earmarks of the State Sales and Use Tax," commenting on the documents included in the booklet. He reviewed a memo summarizing the recommendations adopted by the commission at its October 22, 2015, meeting, the list of earmarks of the state sales and use tax that were studied by the commission, the options for review and repeal of the earmarks, and the House and Senate rules governing bill assignment to standing committees along with concepts for potential changes to legislative rules that the commission could consider.

Sen. Henderson said that she is not comfortable with recommending specific changes to legislative rules. Instead, she suggested that the commission make more general recommendations to the Revenue and Taxation Interim Committee and then leave it to that committee and the Legislature to decide if and how to implement the recommendations.

Mr. Lewis questioned whether the first statement in the memo of recommendations, which says "The TRC opposes earmarks of the state sales and use tax," is too strong since the remainder of the recommendations describe what to do when an earmark is adopted. He wondered whether it would be appropriate to add "in general" to the first statement.

Mr. Walters preferred adding "in nearly all cases" to the first statement of the memo.

MOTION: Sen. Henderson moved that a declarative statement be added before the current #3 in the memo of recommendations to say that the TRC recommends assignment of any bills proposing new earmarks to the Revenue and Taxation Standing Committees.

Mr. Walters said that he supported Sen. Henderson's motion and asked whether the commission should provide guidance to the Legislature on how to have a Revenue and Taxation Standing Committee evaluate the funding aspect of an earmark bill and have a different standing committee evaluate the proposed program.

Mr. Howe explained three different scenarios, included in the legislative process tab of " Review of Earmarks of the State Sales and Use Tax," that would allow a bill proposing a new earmark to be considered by both a Revenue and Taxation Standing Committee and by a committee germane to the program. He noted that in these scenarios a Revenue and Taxation Standing Committee would evaluate the appropriateness of the earmark and the other committee would evaluate the appropriateness of the program.

Sen. Henderson commented that the commission should, either in addition to or in place of prescribing rule changes, make the declarative statement that tax bills should be heard in tax committees.

Rep. McCay said that there is value in the commission, a group of professionals, reminding legislators that it is bad practice to send bills with funding questions to a subject committee rather than to a Revenue and Taxation Standing Committee. He noted that bills that benefit a certain committee should not be heard in that committee; rather, those bills should be heard in a more neutral committee such as the Revenue and Taxation Standing Committee. He was not opposed to suggesting a change to House and Senate rules.

Responding to a question from Rep. Briscoe, Sen. Henderson clarified that her motion would add a declarative statement to the memo of recommendations so that whether or not the Legislature changes the rules as suggested, the commission's intent is conveyed. Rep. Briscoe noted the difference between a bill establishing a new earmark and any bill that increases taxes. He discussed the process of bill assignment.

SUBSTITUTE MOTION: Mr. Walters moved that the current #3a in the memo of recommendations be replaced with the language "The TRC recommends that funding of a state program through an earmark be reviewed by the Revenue and Taxation Standing Committees. The TRC recommends that appropriate rule changes be adopted that will assure that the earmark funding mechanism receives review and recommendation by the Revenue and Taxation Standing Committee."

Commissioner Valentine cited his experience as the president of the Senate and as the chair of the Senate Rules Committee and stated his support for the substitute motion.

Rep. Eliason wondered whether the commission should recommend that the Revenue and Taxation Interim Standing Committees be notified if a bill proposing a new earmark is assigned to a different committee and be given the reasons for that assignment.

The substitute motion passed unanimously with Rep. McCay absent for the vote.

Chair Trader suggested making #3b a standalone statement and eliminating #4 in the memo of recommendations. Mr. Howe inquired whether the commission would be comfortable with changing #3b to suggest that the Executive Appropriations Committee, rather than the Legislative Fiscal Analyst, when preparing revenue estimates for a new fiscal year, not consider the revenue from an earmark that is

scheduled to be repealed during the new fiscal year to be available as unrestricted revenue and as such available for appropriation by the Legislature. Commission members agreed with the suggested change to #3b and with eliminating #4.

Chair Trader directed members to the earmarks and options tabs of "Review of Earmarks of the State Sales and Use Tax" in preparation for voting on which of five options to apply to each of the water-related earmarks.

Responding to a question from Sen. Dabakis, Chair Trader pointed to #2 on the memo of recommendations as the criterion to be used to evaluate earmarks.

Rep. Briscoe asked about the difference between the five options for review and repeal. He mentioned the advantage of stating principles in recommendations, such as the statements listed on the memo. He inquired whether the commission would recommend a method for how future earmarks be reviewed. Rep. Briscoe stated that the issue is the creation of earmarks that do not include an automatic review.

Responding to a question from Rep. Briscoe, Chair Trader explained the process that the commission would follow to recommend a review and repeal requirement to each earmark under consideration.

Mr. Applegate commented on the process if the commission recommends that an earmark be repealed using option 4 or 5, stating that each earmark would be evaluated as a new earmark per the criteria discussed by the commission up to this point.

Mr. Lewis made comments supporting creating a mechanism for review of future earmarks.

MOTION: Chair Trader moved that the commission recommend repealing #8, the earmark to the Agriculture Resource Development Fund, on July 1, 2016. The motion passed unanimously. Sen. Dabakis and Sen. Henderson were absent for the vote.

MOTION: Chair Trader moved that the commission recommend repealing #9, the earmark to the Water Resource Conservation and Development Fund, on July 1, 2016. The motion passed unanimously. Sen. Dabakis and Sen. Henderson were absent for the vote.

MOTION: Chair Trader moved that the commission recommend repealing #10, the earmark to the Drinking Water Loan Program Subaccount, on July 1, 2016. The motion passed unanimously. Sen. Dabakis and Sen. Henderson were absent for the vote.

MOTION: Chair Trader moved that the commission recommend repealing #11, the earmark to the Utah Wastewater Loan Program Subaccount, on July 1, 2016. The motion passed unanimously. Sen. Dabakis and Sen. Henderson were absent for the vote.

MOTION: Chair Trader moved that the commission recommend repealing #12, the earmark to the Department of Natural Resources for protection of sensitive plant and animal species, on July 1, 2016. The motion passed unanimously. Sen. Dabakis and Sen. Henderson were absent for the vote.

MOTION: Chair Trader moved that the commission recommend repealing #13, the earmark to the Division of Water Rights for water rights adjudication, on July 1, 2016. The motion passed unanimously. Sen. Dabakis and Sen. Henderson were absent for the vote.

MOTION: Chair Trader moved that the commission recommend repealing #14, the earmark to the Department of Natural Resources for watershed rehabilitation or restoration, on July 1, 2016. The motion passed unanimously. Sen. Dabakis and Sen. Henderson were absent for the vote.

MOTION: Chair Trader moved that the commission recommend repealing #15, the earmark to the Division of Water Resources for cloud-seeding projects, on July 1, 2016. The motion passed unanimously. Sen. Dabakis and Sen. Henderson were absent for the vote.

MOTION: Chair Trader moved that the commission recommend repealing #16, the earmark to the Division of Water Rights for the administration of water rights, on July 1, 2016. The motion passed unanimously. Sen. Dabakis and Sen. Henderson were absent for the vote.

Chair Trader expressed appreciation to the commission members for their hard work in evaluation of all water-related earmarks. He noted that transportation earmarks should have a hearing before the commission makes recommendations on the transportation-related earmarks.

Mr. Shane Marshall, Deputy Director, Utah Department of Transportation, distributed "Utah Department of Transportation Earmarks Response," which was also distributed at the May 28, 2015, commission meeting. He discussed the earmarks designated for use by the Utah Department of Transportation through the Transportation Fund and the Transportation Investment Fund. He recommended keeping earmark #4, which is an earmark of 1/16% of the sales and use tax revenue to the Transportation Fund. He stated that the five earmarks to the Transportation Investment Fund account for 20% of the general sales and use tax and recommended that this amount be transitioned over time to account for 17% of the general sales and use tax.

Commissioner Valentine urged the commission not to recommend repeal of earmark #4, which is appropriated to ongoing costs associated with the operation, maintenance, and construction of the state highway system.

Rep. Briscoe asked Commissioner Valentine whether he was opposed to eliminating earmarks other than earmark #4. Commissioner Valentine further explained why earmark #4 should be maintained due to its connection to changes to the distribution of the gas tax.

Responding to a question from Mr. Lewis, Mr. Marshall clarified that approximately 17% of the general sales and use tax is collected on automobile-related items, which is why the department recommends that the earmark be transitioned over time to 17% of the general sales and use tax.

MOTION: Commissioner Valentine moved that earmark #4 be removed from the list of earmarks considered for repeal. The motion passed with Chair Trader and Mr. Walters voting in opposition. Sen. Dabakis, Sen. Henderson, and Rep. Eliason were absent for the vote.

MOTION: Chair Trader moved that the commission recommend repealing #1, an earmark to the Transportation Investment Fund for construction, reconstruction, or renovation of highway capacity projects, on July 1, 2016. The motion passed unanimously. Sen. Dabakis, Sen. Henderson, and Rep. Eliason were absent for the vote.

MOTION: Chair Trader moved that the commission recommend repealing #2, an earmark to the Transportation Investment Fund, on July 1, 2016. The motion passed unanimously. Sen. Dabakis, Sen. Henderson, and Rep. Eliason were absent for the vote.

MOTION: Chair Trader moved that the commission recommend repealing #3, an earmark to the Transportation Investment Fund, on July 1, 2016. The motion passed unanimously. Sen. Dabakis, Sen. Henderson, and Rep. Eliason were absent for the vote.

MOTION: Chair Trader moved that the commission recommend repealing #5, the earmark to the Transportation Fund that is used to address chokepoints in construction management, on July 1, 2016. The motion passed unanimously. Sen. Dabakis, Sen. Henderson, and Rep. Eliason were absent for the vote.

MOTION: Chair Trader moved that the commission recommend repealing #6, an earmark to the Transportation Investment Fund, on July 1, 2016. The motion passed unanimously. Sen. Dabakis, Sen. Henderson, and Rep. Eliason were absent for the vote.

MOTION: Chair Trader moved that the commission recommend repealing #7, an earmark to the Transportation Investment Fund, on July 1, 2016. The motion passed unanimously. Sen. Dabakis, Sen. Henderson, and Rep. Eliason were absent for the vote.

Chair Trader commented on the work done by the group since it met all together in May. He expressed appreciation for commission members' service in doing this work.

3. Other Items/Adjourn

MOTION: Mr. Prawitt moved to adjourn the meeting. The motion passed unanimously. Sen. Dabakis, Sen. Henderson, and Rep. Eliason were absent for the vote.

Chair Trader adjourned the meeting at 3:48 p.m.