

**MINUTES OF THE
REVENUE AND TAXATION INTERIM COMMITTEE**
Wednesday, November 18, 2015 – 1:15 p.m. – Room 445 State Capitol

Members Present:

Sen. Deidre M. Henderson, Senate Chair
Rep. Daniel McCay, House Chair
Sen. Curtis S. Bramble
Sen. Jim Dabakis
Sen. Wayne A. Harper
Sen. Howard A. Stephenson
Rep. Joel K. Briscoe
Rep. Kim Coleman
Rep. Steve Eliason
Rep. Gage Froerer
Rep. Eric K. Hutchings
Rep. Ken Ivory
Rep. John Knotwell

Rep. Jeremy A. Peterson
Rep. Marie H. Poulson
Rep. Jon E. Stanard

Members Absent:

Sen. Gene Davis
Rep. Rich Cunningham

Staff Present:

Mr. Leif G. Elder, Policy Analyst
Mr. Bryant R. Howe, Assistant 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. Committee Business

Chair McCay called the meeting to order at 1:40 p.m. Rep. Cunningham was excused from the meeting.

MOTION: Rep. Briscoe moved to approve the minutes of the October 21, 2015, meeting. The motion passed unanimously. Sen. Bramble, Sen. Dabakis, Sen. Harper, Rep. Eliason, Rep. Hutchings, and Rep. Stanard were absent for the vote.

2. Sales and Use Tax Earmarks

Mr. Curtis Trader, Chair, Utah Tax Review Commission, distributed and discussed "Report from the Utah Tax Review Commission: Earmarks of the State Sales and Use Tax." He summarized the commission's work and conclusions, including the commission's recommendations discouraging the use of earmarks, suggesting how earmarks should be reviewed, and repealing certain earmarks. He mentioned the commission's support for regular review of earmarks. Mr. Trader responded to questions from the committee.

Rep. Ivory inquired when earmarking should be considered appropriate, wondering why the commission did not recommend a repeal of the 1/16% earmark to the Transportation Fund. Mr. Trader explained the commission's discussion of the 1/16% earmark. He noted the commission's recommendation that the Legislature use earmarks only when revenue certainty and budget predictability outweigh all other considerations.

Sen. Stephenson expressed appreciation to the commission. He noted that the 1/16% earmark to the Transportation Fund could be replaced by a new revenue stream. He supported adopting as a committee bill, draft legislation that would implement the commission's recommended repeals, but he also suggested repealing the 1/16% earmark.

Rep. Froerer asked whether the commission had any suggestions for replacing funding if earmarks are repealed, particularly earmarks for transportation. Mr. Trader recognized the importance of revenue certainty for transportation but noted that other funding mechanisms can provide this predictability.

Rep. Briscoe, a member of the Utah Tax Review Commission, discussed the work of the commission. He commented on the importance of discussing how taxpayer money is spent. He mentioned that repealing earmarks does not necessitate a return to zero-based budgeting.

Rep. Eliason thanked Mr. Trader for his work as the chair of the Utah Tax Review Commission.

Sen. Bramble expressed appreciation for the work of the commission. He asked what alternatives to earmarks the Legislature could use to assure funding for projects that require long-term revenue certainty. Mr. Trader suggested base budget appropriations and bonding. Sen. Bramble noted other earmarks of state revenue and recommended periodic review of earmarks.

MOTION: Sen. Stephenson moved that draft legislation "Sales and Use Tax Modifications" (2016FL0587/004) be adopted as a committee bill.

Rep. Hutchings inquired whether eliminating earmarks would affect Utah's bond rating. Chair McCay responded that not all of Utah's bond payments come from dedicated earmarks and noted that the source of revenue for bond payments would be factored into a bond's risk.

Rep. Briscoe suggested that mechanisms other than earmarks can be used to fund a multi-year project.

Sen. Harper stated his understanding that the Utah Department of Transportation needs revenue from the sales and use tax earmarks for current and upcoming projects. He opposed Sen. Stephenson's motion.

Sen. Bramble commented that he supports review of the sales and use tax earmarks but is uncomfortable with repealing the earmarks. He supported modifying the absolute nature of earmarks and finding a middle ground between the status quo and the recommended repeal.

Rep. Froerer opposed Sen. Stephenson's motion and suggested that appropriations subcommittees review the sales and use tax earmarks.

SUBSTITUTE MOTION: Rep. Stanard moved that the committee move to the next item on the agenda. The motion passed with Sen. Stephenson, Rep. Briscoe, Rep. Coleman, Rep. Eliason, and Rep. Poulson voting in opposition. Sen. Dabakis and Rep. Hutchings were absent for the vote.

Sen. Stephenson noted his disappointment with the committee's discussion. He encouraged the committee to place confidence in the Utah Tax Review Commission's process, which resulted in the recommendations presented in the commission's report.

Sen. Henderson thanked Mr. Trader for his work and for the work of the Utah Tax Review Commission. She said that moving on without adopting draft legislation "Sales and Use Tax Modifications" should not end discussion on the commission's recommendations and on earmarks in general.

Chair McCay turned the chair over to Sen. Henderson.

3. New Growth and Centrally Assessed Property

Rep. McCay distributed "Rep. McCay New Growth Proposal" and "Revenue Impact of Proposal for Previous Ten Years." He discussed his proposal. He explained the current and proposed calculations for new growth in locally assessed real property, locally assessed personal property, and centrally assessed property. Rep. McCay responded to questions from the committee.

Mr. Lincoln Shurtz, Director of Government Affairs, Utah Association of Counties, discussed some of the issues with the current definition of new growth. He commented on the importance of maintaining the integrity of the system, including maintaining new growth from redevelopment agencies, consistent revenue, and a floating rate. He stated that the counties are still vetting the draft legislation.

Referencing "Revenue Impact of Proposal for Previous Ten Years," Rep. Stanard noted the greater impact on rural counties. Rep. McCay stated that rural counties would benefit from prior ratcheting and that revenue would be held harmless. Mr. Shurtz stated that most of the impact in rural counties comes from business personal property, which is a legislative issue that still needs to be handled. Rep. McCay discussed the effect of depreciating personal property and how the draft legislation addresses this issue.

Sen. Stephenson discussed draft legislation "Property Tax Changes" (2016FL0229/005) with the sponsor, and Rep. McCay noted the improved policy introduced in the draft legislation.

Rep. Briscoe mentioned concern with the locally assessed personal property tax. He questioned whether the revenue would be held harmless if there were losses over multiple years. Rep. McCay responded that the current policy would continue, and the revenue would be held harmless for years one through 10.

Mr. John Valentine, Chair, Utah State Tax Commission, noted that the State Tax Commission would be able to administer the proposal in draft legislation "Property Tax Changes."

Mr. Roger Tew, Utah League of Cities and Towns, spoke positively about Rep. McCay's proposal.

MOTION: Sen. Bramble moved that draft legislation "Property Tax Changes" be adopted as a committee bill. The motion passed unanimously. Sen. Harper and Rep. Hutchings were absent for the vote.

Chair Henderson turned the chair over to Rep. McCay.

4. Legislative Management Approved Study Items

Mr. Elder discussed "Revenue and Taxation Interim Committee Conclusions Reached for Study Items Approved by Legislative Management Committee." He explained the conclusion options and directed the committee to note the conclusions the committee has reached for each study item.

Chair McCay recommended that the conclusion for the item "Sales and use tax earmarks" be changed to "Significant issue but more time is needed to develop solutions and consensus" and that the conclusion for the item "Centrally Assessed Taxes" be changed to "Draft legislation."

MOTION: Sen. Henderson moved that the committee approve "Revenue and Taxation Interim Committee Conclusions Reached for Study Items Approved by Legislative Management Committee" with the changes noted by Chair McCay. The motion passed unanimously. Sen. Harper and Rep. Hutchings were absent for the vote.

5. Severance Tax for Oil and Gas

This agenda item was not discussed.

6. Pass-Through Entity Return Filing Date

Sen. Bramble discussed draft legislation "Pass-Through Entity Return Filing Date" (2016FL0470/007), which modifies the date for a pass-through entity to file a tax return.

Mr. Valentine advised the committee that the Bipartisan Budget Act of 2015 (H.R. 1314) changed some auditing requirements for partnerships, which would affect Utah pass-through entities in the future. He stated that draft legislation "Pass-Through Entity Return Filing Date" has a neutral impact on the issue.

MOTION: Rep. Peterson moved that draft legislation "Pass-Through Entity Return Filing Date" be adopted as a committee bill. The motion passed unanimously. Sen. Harper and Rep. Hutchings were absent for the vote.

7. Privilege Tax Amendments

Ms. Valenti Arthur introduced draft legislation "Privilege Tax Amendments" (2016FL0223/008).

Responding to a question from Rep. Eliason, Mr. Valentine explained that the privilege tax was enacted to balance competing interests between entities that use exempt properties for profit and entities that use nonexempt properties for profit. He discussed the issue of whether an entity that is using the property of an exempt entity is in exclusive possession of the property. He noted that draft legislation "Privilege Tax Amendments" would protect the privilege tax, which government entities rely on for revenue, from exempt entities that do not pay property tax.

Sen. Stephenson asked what currently happens when an exempt organization leases from a nonexempt organization and thus pays property tax that is embedded in rental rates. He stated that exempt entities that lease properties from nonexempt entities should be given a privilege credit. Mr. Valentine agreed that the property tax is embedded in rental rates because there is not currently a privilege credit and noted that enacting one would require separate legislation. Sen. Stephenson commented that the Legislature should consider the equity of exempt organizations paying property taxes when renting from nonexempt entities.

Sen. Dabakis noted the importance of education funding. He encouraged committee members to forgo equity if it would favor the broader goal of ensuring education funds.

Mr. Valentine commented that draft legislation "Privilege Tax Amendments" maintains the status quo.

8. Community Development and Renewal Agency Amendments

This agenda item was not discussed.

9. Tax Commission Amendments

Sen. Stephenson discussed draft legislation "Tax Commission Amendments" (2016FL0674/004). He explained that the draft legislation would allow the State Tax Commission to privately direct the property

tax division and the auditing division under certain circumstances. He stated that this would save taxpayer money that might otherwise be spent to obtain rulings from the State Tax Commission.

Mr. Valentine discussed the constitutional, statutory, and administrative rule provisions that direct the State Tax Commission. He noted that the commission is instructed to administer the state's tax laws and to establish a plan for managing the day-to-day operations, which includes meeting with the executive director to give direction. However, he explained that the commission is unable to do so privately due to the Open and Public Meetings Act. He discussed problems this creates.

Sen. Stephenson questioned whether protections should be instituted to ensure that the discussion at private meetings is germane to certain circumstances. Mr. Valentine responded that the State Tax Commission is considering weekly meetings to protect against drift and communicate with staff. He explained that there are other requirements that already cover Sen. Stephenson's concern.

Sen. Stephenson noted his concern that the commission plans to have weekly meetings and pointed out that certain circumstances would be required to trigger a private meeting. Ms. Rebecca Rockwell, Commissioner, State Tax Commission, proffered the assurance that any change in policy that is significant would be handled through the administrative rulemaking process. Responding to a question from Sen. Stephenson, Mr. Valentine concurred that weekly private meetings would not be appropriate.

Sen. Henderson questioned whether a process should be implemented so that any policy change not instituted by the Legislature that has a revenue impact is brought to the attention of the Legislature, specifically the Revenue and Taxation Interim Committee. Ms. Rockwell responded that draft legislation "Tax Commission Amendments" would aid this process by allowing the commission to better track changes. Mr. Valentine concurred that the Legislature makes policy and the commission implements policy and stated that the commission tries to notify legislative staff of any policy changes.

Chair McCay asked why it is appropriate in certain circumstances to institute private meetings and wondered whether a process could be implemented that would require the State Tax Commission to review decisions on a periodic basis. Sen. Stephenson responded that under the current law the State Tax Commission can only give direction after a costly challenge.

10. Corporate Franchise and Income Tax – Single Sales Factor Apportionment

Sen. Stephenson discussed "State Apportionment of Corporate Income Formulas for Tax Year 2013" and draft legislation "Corporate Franchise and Income Tax Amendments" (2016FL0227/004). He stated that moving to a single sales factor apportionment would attract businesses to Utah.

Dr. Thomas Young, Senior Economist, Office of Legislative Fiscal Analyst, discussed "Mandatory & Optional Single Sales, Static Note," which explored the possible fiscal impact of the draft legislation.

Sen. Dabakis asked for empirical evidence showing how much revenue would be gained if Utah moved to a single sales factor apportionment. Sen. Stephenson stated benefits of attracting businesses to Utah by decreasing the corporate tax burden and stated his belief that a dynamic fiscal note over multiple years would show an increase in tax revenue.

Rep. Briscoe echoed Sen. Dabakis's concern about a lack of evaluative evidence showing that tax revenue would be gained if Utah moved to a single sales factor apportionment.

Rep. Stanard pointed out that moving to a single sales factor apportionment would result in a loss of revenue to the budget, which currently faces a substantial shortfall.

Sen. Bramble mentioned comments he has heard stating that American corporate tax liability acts as a disincentive to corporations that might otherwise base business in America or in a particular state. He stated that this supports the notion that passing draft legislation "Corporate Franchise and Income Tax Amendments" would result in recouped revenue.

Sen. Dabakis urged the committee not to adopt draft legislation "Corporate Franchise and Income Tax Amendments" as a committee bill.

MOTION: Sen. Bramble moved that draft legislation "Corporate Franchise and Income Tax Amendments" be adopted as a committee bill. The motion passed with Sen. Dabakis and Rep. Briscoe voting in opposition. Sen. Harper, Rep. Froerer, Rep. Hutchings, Rep. Ivory, and Rep. Poulson were absent for the vote.

11. Other Items/Adjourn

MOTION: Rep Stanard moved that draft legislation "Privilege Tax Amendments" be adopted as a committee bill. The motion passed unanimously. Sen. Harper, Rep. Froerer, Rep. Hutchings, Rep. Ivory, and Rep. Poulson were absent for the vote.

MOTION: Rep. Knotwell moved to adjourn the meeting. The motion passed unanimously. Sen. Harper, Rep. Froerer, Rep. Hutchings, Rep. Ivory, and Rep. Poulson were absent for the vote.

Chair McCay adjourned the meeting at 3:52 p.m.